



STATE OF MICHIGAN  
JOCELYN BENSON, SECRETARY OF STATE  
DEPARTMENT OF STATE  
LANSING

November 2, 2020

### **Overview of Current Voter Intimidation and Firearms Laws**

The Michigan Supreme Court has not yet rendered a decision as to whether the Secretary of State's October 16, 2020 Directive prohibiting the open carry of firearms at polling places, absent voter counting boards, and clerks' offices, was properly enjoined by the Court of Claims. As a result, the Directive remains unenforceable.

In the interim, the Secretary of State advises clerks, precinct inspectors, and other election officials, of the current state of the law:

#### **OPEN CARRY & CONCEALED CARRY OF FIREARMS**

The **open carry** of firearms is prohibited by law in certain places that may be used for election purposes, including school buildings and places of worship.<sup>1</sup> The exception to this rule is (1) if the person has express permission from school officials or the owner of the place of worship to possess a firearm on the premises,<sup>2</sup> or (2) the person possesses a valid, concealed pistol license,<sup>3</sup> and no other building policy prohibits firearms possession by a concealed pistol license holder.<sup>4</sup> If neither exception applies, a person cannot openly possess a firearm in these places, and law enforcement should be contacted to assist election officials as necessary.

The **concealed carry** of firearms is generally prohibited in school buildings and places of worship unless a specific exception applies to the concealed pistol license holder.<sup>5</sup> If no exception applies, a person cannot carry a concealed firearm in these places, and law enforcement should be contacted to assist election officials as necessary.

Further, it is generally understood that private property owners have the right to exclude possession of firearms in buildings they own or control and in which polling places or other election-related activities may be held on election day.<sup>6</sup>

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<sup>1</sup> MCL 750.237a, MCL 750.234d. Other prohibited places include a bank, "court," theater, sports arena, day care, hospital, or bar. MCL 750.234d.

<sup>2</sup> MCL 750.234d(2)(d), MCL 750.237a(5)(e).

<sup>3</sup> MCL 750.234d(2)(c), MCL 750.237a(5)(c).

<sup>4</sup> See *Michigan Gun Owners, Inc v Ann Arbor Public Schools*, 502 Mich 695 (2018).

<sup>5</sup> MCL 28.425o(1). Exceptions include current and retired law enforcement, security guards, private investigators, current and retired corrections/parole/probation officers, and current or retired state court judges. MCL 28.425o(5).

<sup>6</sup> The right of a private property owner to exclude a person possessing firearms is enforceable through criminal trespass provisions. See, e.g., *Adams v Cleveland-Cliffs Iron Co.*, 237 Mich App 51 (1999); *Dressler v Rice*, 739 Fed Appx 814 (CA 6, 2018).

## **FIREARMS OFFENSES**

It is unlawful for a person to brandish, waive, or display a firearm in a threatening manner in public, unless acting in self-defense.<sup>7</sup> It is also unlawful for a person to intentionally point or aim a firearm towards another person.<sup>8</sup> If an election official observes or is notified of this kind of activity occurring in a place where elections are conducted, law enforcement should be contacted immediately to assist election officials as necessary.

## **VOTER INTIMIDATION**

It is unlawful for a person to attempt through menace or other means to influence another person in how to vote, or to deter or interrupt another person in voting at an election.<sup>9</sup> Voter intimidation may occur in a number of forms. Depending upon the circumstances, the presence of an openly carried firearm in a place where voting is occurring, even without brandishing, may intimidate voters and deter or hinder them from voting. If an election official observes or is notified of activity that is deterring or hindering voters in the act of voting, law enforcement should be contacted immediately to assist election officials as necessary.

## **DISTURBING THE PEACE**

It is also unlawful for a person to make a disturbance at a place where elections are being conducted by interrupting peace and quiet, violating public order or decorum, or hindering other persons in the pursuit of their rights.<sup>10</sup> If an election official observes or is notified of this kind of activity occurring in a place where elections are conducted, law enforcement should be contacted to assist election officials as necessary.

**Clerks are advised to contact local law enforcement before election day to establish points of contact in the event assistance is required in addressing any of the scenarios described above, or with respect to any other matter that threatens a safe, secure, and orderly election.**

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<sup>7</sup> MCL 750.234e. The Court of Appeals recognized the potential applicability of this offense in orders issued on October 29, 2020, in the consolidated cases of *Davis v Benson*, Court of Claims, No. 20-000207, and *Lambert, et al v Benson, et al*, Court of Claims No. 20-000208.

<sup>8</sup> MCL 750.233.

<sup>9</sup> MCL 168.932(1)(a). Federal law includes a similar offense. See 18 USC 594.

<sup>10</sup> MCL 750.170.