

What is Brandishing?

A.G. Opinion No. 7101 February 6, 2002:

...In the absence of any reported Michigan appellate court decisions defining "brandishing," it is appropriate to rely upon dictionary definitions. The term brandishing is defined as:

"1. To wave or flourish menacingly, as a weapon.

2. To display ostentatiously. A menacing or defiant wave or flourish."

This definition comports with the meaning ascribed to this term by courts of other jurisdictions...the court recognized that in federal sentencing guidelines, "brandishing" a weapon is defined to mean "that the weapon was pointed or waved about, or displayed in a threatening manner." Applying these definitions to your question, it is clear that a reserve police officer, regardless whether he or she qualifies as a "peace officer," when carrying a handgun in a holster in plain view, is not waving or displaying the firearm in a threatening manner. Thus, such conduct does not constitute brandishing a firearm in violation of section 234e of the Michigan Penal Code.

It is my opinion, therefore, that...by carrying a handgun in a holster that is in plain view, does not violate section 234e of the Michigan Penal Code, which prohibits brandishing a firearm in public. JENNIFER M. GRANHOLM, Attorney General

ADVISORY NOTE: Though this section on disturbing the peace does not deal with firearms, due to the nature of this code, this law has been cited by officers to suppress or discourage lawful open carry. Since a person who is not licensed to carry concealed MUST open carry their firearms on foot in order to avoid criminal charge, nor is there any duty for anyone licensed to conceal their handgun, open carry

is not disorderly conduct. The open carrying of firearms is not by itself threatening, nor does it cause a hazardous or physically offensive condition.

What places are off limits to firearms without a CPL? (Sec. 234d)

(1) Except as otherwise provided in subsection (2), a person shall not possess a firearm on the premises of any of the following:

- a) A bank.
- b) A church
- c) A court
- d) A theatre
- e) A sports arena
- f) A day care center
- g) A hospital.
- h) An establishment licensed under the Michigan liquor control act.

(2) This section does not apply to any of the following:

- a) A person who owns, or is employed by or contracted by, an entity described in subsection (1) if the possession of that firearm is to provide security services for that entity.
- b) A peace officer.
- c) A person licensed by this state or another state to carry a concealed weapon.
- d) A person who possesses a firearm on the premises of an entity described in subsection (1) if that possession is with the permission of the owner or an agent of the owner of that entity.

*The information contained above is not meant to be legal advice, but is solely intended as a starting point for further research on the subject of open carry in Michigan. You are responsible in determining the accuracy of any information listed above. If you have further questions it is advisable to seek out an attorney that is well-versed in firearm law.

FOR MORE INFO VISIT:
WWW.MIOPENCARRY.ORG

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**YOU CAN OPENLY
CARRY A HANDGUN
IN MICHIGAN**



Any 18-yr old or older, law-abiding citizen of the State of Michigan who owns a legally registered handgun may openly carry (in a fully visible holster) said firearm in all places not explicitly exempt by law with or without a CPL. Private property rules over-ride state law in regards to firearm possession.

www.miopencarry.org

Why to openly carry a firearm?

- 1) To deter potential crime
- 2) To protect yourself
- 3) To protect your family
- 4) To protect your rights
- 5) To have a faster draw
- 6) To carry more comfortably

Won't I be a target if I open carry?

There is no documented evidence that this has happened to a citizen while open carrying a handgun. Data shows that criminals avoid victims they know are armed.

Won't this behavior scare people?

Of the thousands of hours people have open carried in Michigan, we have found that some people are at first apprehensive seeing armed citizens but they quickly see we are regular people and there is no reason to be afraid. Law enforcement dispatchers have been and continue to be trained on how to handle 911 calls from concerned citizens.

Do I need to provide ID if stopped by a police officer?

A person openly carrying a firearm on foot in a legal manner when approached by a police officer and questioned where the only reason for the questioning is because of the openly carried firearm need not give that officer their name and address. No license or ID is required to openly carry a firearm. It is your option to provide ID/CPL.

ADVISORY NOTE: Each situation is different. We recommend you cooperate with all lawful questions and requests. Ask the officer if the reason you are being detained is for the legal open carry of a firearm. Ask if you are free to go, ask if you are being detained. If they continue to ask questions about ID and why you are carrying a gun, repeat the question, am I free to go? Am I being detained? If the situation escalates ask for a supervisor. Remember the officer

can arrest you for anything, don't resist the arrest. After an illegal arrest you may have legal options you can employ.

Are local ordinances concerning firearm possession enforceable with Michigan's preemption law?

NO! In 1990, the Michigan legislature enacted MCL 123.1102 which provides, in pertinent part: A local unit of government shall not impose special taxation on, enact or enforce any ordinance or regulation pertaining to, or regulate in any other manner the ownership, registration, purchase, sale, transfer, transportation, or possession of pistols or other firearms, ammunition for pistols or other firearms, or components of pistols or other firearms, except as otherwise provided by federal law or a law of this state.

Does having a CPL provide any benefits to open carrying?

An AG opinion, Senator Prusi, and the MSP stated that a person with a CPL can carry a firearm openly in the exempted areas listed in MCL 750.234d.

Opinion No. 7097 January 11, 2002... *A person licensed by this state... to carry a concealed weapon....By its express terms, section 234d prohibits certain persons from carrying a firearm in the enumerated places but explicitly exempts from its prohibition "[a] person licensed by this state or another state to carry a concealed weapon."* **Thus, any person licensed to carry a concealed pistol, including a private investigator, is exempt from the gun-free zone restrictions imposed by section 234d of the Penal Code and may therefore possess firearms while on the types of premises listed in that statute.**

"...My office has contacted the Michigan State Police legislative liaison and has received some answers to share with you. According to the liaison, it is legal to openly carry a firearm in a "Pistol Free Zone" if you are a licensed CPL holder. I was advised that your information was correct that MCL 28.425o and MCL 750-234d permit this activity. I was informed that there was no other additional relevant laws regarding this matter..." Michael A Prusi, State Senator 38th District

"Your analysis is correct. Non-CPL pistol free zones do not apply to CPL holders. The CPL pistol free zones only apply to CPL holders carrying a concealed pistol. Therefore, a CPL holder may openly carry a pistol in Michigan's pistol free zones." Sgt. Thomas Deasy, Michigan State Police Executive Resource Section

ADVISORY NOTE: Before carrying a handgun we recommend that you become familiar with all state and federal laws in regards to firearm laws and the use of deadly force. Taking a self-defense / firearm course is recommended. Michigan has a self defense act PA No. 309 July 18, 2006 that states you do not have to retreat from a threat, but you must meet the legal requirements before you engage in the use of deadly force.

"The charge of every citizen of a free state is to be ever vigilant of the government's role as their servant and not allow it to become their master" Brian Jeffs, First Michigan Open Carry, Inc. President

