



Dear Chief or Sheriff:

Attached is information on the legality of the open carry of a handgun in Michigan. The open carry of a handgun has increased in Michigan in the last year as more and more citizens are becoming aware of its legality. It is our hope that this information is helpful to you and that you will take the time to review the information and inform your officers on the legality of the open carry of a handgun in Michigan. We also hope that you work with your 911 dispatchers in regards to asking some simple question when they receive a call of a "person with a gun". If you have questions please talk with your prosecuting attorney or you can contact me via email or phone for more information. We thank you for your time and consideration in this regard and appreciate the difficult job you all do.

Sincerely,
Michigan Open Carry.

PURPOSE: To provide guidance in calls for services that involves a person who is openly carrying a pistol in a holster.

As you may know any law abiding citizen of the State of Michigan who can legally possess a firearm may openly carry (in a holster) said firearm in all places not explicitly exempt by law without a CPL (1). Those that do not have a CPL when transporting their firearms must do so as prescribe by law. No local ordinance concerning firearm possession is enforceable due to Michigan's preemption law (2).

Brandishing and disturbing the peace are not an offense while lawfully openly carrying a firearm (3). Attorney General Opinion 7101, 2/02 states "...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." In regards to disorderly conduct 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.

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. Officers should not editorialize against open carry by private citizens in any way shape or form, or in any way suggest that a person should conceal their firearm. Suggestions and editorializing against lawful open carry may be interpreted as "commands" by civilians who are lawfully open carrying and may subject officers to complaints filed against them, as well as possible legal action against themselves and the department.

Recently it has been opined by the AG opinion, the MSP and Senator Prusi that persons with a CPL can carry a firearm openly in the exempted areas listed in MCL 750.234d. (4).

It is suggested that Law enforcement supervisors inform their staff in regards to the legality of openly carrying a handgun in Michigan. It is also suggested that an officer protocol be developed in dealing with such a call. It also would be beneficial to inform your dispatchers and your county 911 department in developing a protocol on receiving a "man with a gun" call. An example of some questions to ask a person calling 911 about a person openly carrying is included.

It is our hope that by informing you and all law enforcement personnel throughout the state about the legality of open carry that we can avoid any civil or criminal actions that might otherwise occur. If you have questions or concerns please contact your prosecuting attorney. We thank you for your time and consideration in this regard, and as law abiding citizens we appreciate the demanding and dangerous work you all do.

Footnotes:

(1) 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 depository financial institution or a subsidiary or affiliate of a depository financial institution.
- b) A church or other house of religious worship.
- 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.

(2) MSP Legal Update Newsletter: April 2007 and June 2008

Did You Know: **It is not illegal under Michigan law to openly carry a pistol.**

Preemption: In MCRGO v. Ferndale, the Michigan Court of Appeals held that local units of government may not impose restrictions upon firearms possession. Therefore, officers should check with their prosecutors before enforcing an ordinance that imposes a general ban on openly carrying a pistol.

THE MICHIGAN APPEALS COURT CONCLUDED:

April 29, 2003 9:10 am. v No. 242237

In sum, we conclude that § 1102 is a statute that specifically imposes a prohibition on local units of government from enacting and enforcing any ordinances or regulations pertaining to the transportation and possession of firearms, and thus preempts any ordinance or regulation of a local unit of government concerning these areas.

Further, we conclude that the specific language of the 2000 amendments to MCL 28.421 *et seq.*, particularly §§ 5c and 5o, which were adopted more than a decade after the enactment of § 1102, do not repeal § 1102 or otherwise reopen this area to local regulation of the carrying of firearms.¹⁷ Accordingly, we hold that the Ferndale ordinance is preempted by state law and, consequently, we reverse.

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.

(3) Act 328 of 1931

750.234e Brandishing firearm in public; applicability; violation as misdemeanor.

Sec. 234e.

(1) Except as provided in subsection (2), a person shall not knowingly brandish a firearm in public.

(2) Subsection (1) does not apply to any of the following:

(a) A peace officer lawfully performing his or her duties as a peace officer.

(b) A person lawfully engaged in hunting.

(c) A person lawfully engaged in target practice.

(d) A person lawfully engaged in the sale, purchase, repair, or transfer of that firearm.

History: Add. 1990, Act 321, Eff. Mar. 28, 1991

Opinion No. 7101 February 6, 2002 In part:

... Section 234e of the Michigan Penal Code does not define the crime of brandishing a firearm in public. The Michigan Criminal Jury Instructions, published by the Committee on Standard Criminal Jury Instructions, does not include a recommended jury instruction on brandishing a firearm. Research discloses that while the term "brandishing" appears in reported Michigan cases,² none of the cases define the term.

In the absence of any reported Michigan appellate court decisions defining "brandishing," it is appropriate to rely upon dictionary definitions. *People v Denio*, 454 Mich 691, 699; 564 NW2d 13 (1997). According to *The American Heritage Dictionary, Second College Edition (1982)*, at p 204, the term brandishing is defined as: "1. To wave or flourish menacingly, as a weapon. 2. To display ostentatiously. -n. A menacing or defiant wave or flourish." This definition comports with the meaning ascribed to this term by courts of other jurisdictions. For example, in *United States v Moerman*, 233 F3d 379, 380 (CA 6, 2000), 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, ...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

(4) Three opinions on this topic. An AG's opinion, the Michigan State Police, and a State Senator's.

AG opinion No. 7097 FIREARMS LAWS OF MICHIGAN January 11, 2002: This conclusion is not affected by the provisions of section 234d of the Michigan Penal Code, 1931 PA 328, MCL 750.1 *et seq.* That statute prohibits certain persons from possessing firearms on certain types of premises as follows: 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 depository financial institution or a subsidiary or affiliate of a depository financial institution.
- b) A church or other house of religious worship.
- 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. [*Emphasis added.*]

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,... 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.**

MSP opinion: 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.

Sincerely,
Sgt. Thomas Deasy, Michigan State Police
Executive Resource Section, 714 S. Harrison Rd.
East Lansing, MI 48823
(517) 336-6441

Senator Prusi's opinion: My office received your inquiry regarding the legality of a licensed CPL holder to open carry a firearm in "Pistol Free Zones." On Friday we received a copy of your correspondence, as Senator Carl Levin's Office referred your letter to my office because your concerns mainly pertain to state issues. As such, I am happy to assist you in this matter.

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 licensed a 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"

Example of a 911 Protocol for a “Person with a gun call”

911: This is 911 what is your emergency?

Caller: Ah....not sure if this is an emergency but there's some guy with a gun on his belt here in the Wal-Mart.

911: Is the gun in a holster or is this person waving the gun around or threatening anyone? Is anyone injured? What is the man doing?

Caller: Aaah...no one is hurt. Aaaah...the guy is just shopping. Pushing a cart looking at some frozen carrots I think. Yah he's looking at carrots.

911: Does this man seem to be intoxicated or mentally impaired? Does he appear to be acting irrationally?

Caller: No he doesn't seem to be acting strange other than the gun. Can't you send some officers here to check him out? Think of the children.

911: Does the person appear to be 18 years old or older?

Caller: I would say he's about 35 years old, average build, dark short hair, and he has a short beard. He's wearing khaki pants with a dark blue polo shirt.

911: Sir, the open carry of a handgun is legal in Michigan by any lawful person 18 years old or older. Unless the person is waving it around in a threatening manner or is acting irrationally there is nothing we can legally do. Now if the person should threaten someone or become agitated let us know and we'll send a car, but until then have a good night.

If 911 dispatchers had a protocol similar to this over simplified example for handling this type of call; that is just by asking a few short questions the adrenalin factor would be reduced and officer stress would be diminished. Each department can decide if a patrol car needs to be dispatched to investigate this kind of call, and if so, the officer would have more information on how to handle the encounter.

Mich. is among states that allow citizens to openly carry handguns

Some restrictions do apply, but citizens have right to carry

A movement is growing nationwide as more residents are exerting a right that is not often exercised. That right is the open carry of a handgun for all lawful purposes.

Forty-four states allow the open carry of a handgun by adults who can lawfully own one. Few realize, including some in law enforcement, that Michigan is one of these states.

One does not need a concealed pistol license to open carry, but it makes it easier to do so. In Michigan, non-CPL holders can only transport an unloaded handgun secured in a case or in the trunk of their vehicle under specific conditions defined by law (MCL 750.227).

CPL holders, however, can transport a loaded handgun in their vehicle or on their person, either concealed or openly.

CPL holders can carry or transport a handgun registered to another

person as long as the handgun is lawfully owned and registered in Michigan (MCL Act 372, 28.432). A non-CPL holder can only carry a handgun that is registered in their name.

If one spouse is a CPL holder and the other is not, the CPL holding spouse can transport the other's handgun as well as their own. Once the non-CPL holding spouse leaves the vehicle they can carry their loaded handgun openly. This method can be employed by non-relatives as well. A non-CPL holder must unload and secure his handgun before entering a vehicle.

Why open carry? One reason is that an adult under 21 years of age can not get a CPL in Michigan, but the law allows them to openly carry. A second reason is that a person may not be able to afford the high cost of the initial permit, which can exceed \$300.

Before deciding to openly carry a handgun, it behooves you to research Michigan firearm laws (www.michigan.gov/msp). There are restrictions in which a person can possess a firearm. These restrictions vary slightly for concealed carry and open carry. These restrictions can be found in MCL 28.424o and 750.234d. Game laws also exist that restrict times and areas a firearm can be carried.

Michigan has a firearm preemp-

One does not need a concealed pistol license to open carry, but it makes it easier to do so.

tion law that disallows local municipalities from passing laws more restrictive than the state without state approval. This allows open carry in any city as well as most municipal buildings.

Most federal property has restrictions on firearm possession. A review of federal firearm laws is recommended.

Additionally, private property owners can restrict firearms in their building and on their property. If you are asked to leave private property, you must do so or face a trespass charge.

Openly carrying a firearm has restrictions and is not for everyone. Become familiar with firearm laws and the use of deadly force. Carrying a firearm is a great responsibility each person must consider.

For those wishing to carry a firearm for protection and all lawful purposes, though, it is an option worth looking into. Remember, a right not exercised is a right lost.



**BRIAN
JEFFS**
lives in Bath.