

**STATE OF MICHIGAN
IN THE COURT OF APPEALS**

**MICHIGAN OPEN CARRY, INC.; and,
KENNETH HERMAN, individually,**

Appellees,

COA # 329418
LC# 15-104373 CZ

v.

**CLIO AREA SCHOOL DISTRICT;
FLETCHER SPEARS, III, individually; and,
KATRINA MITCHELL, individually;**

Appellants.

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PLAINTIFF-APPELLEES' BRIEF ON APPEAL

**** This appeal involves interpretation of a constitutional or statutory provision ****

ORAL ARGUMENT REQUESTED

PROOF OF SERVICE

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JURISDICTIONAL STATEMENT

Plaintiff-Appellee, Michigan Open Carry, Inc., states that this Court has jurisdiction to decide this appeal of right pursuant to MCR 7.203(A)(1) & MCR 7.204.

On September 7, 2015, the Honorable Archie Hayman, Genesee County Circuit Court Judge, granted denied summary disposition in favor of Plaintiff-Appellees, Kenneth Herman and Michigan Open Carry, Inc., pursuant to MCR 2.116(C)(8); granted Plaintiff-Appellees declaratory relief and entered its *Order Denying Defendants' Motion for Summary Disposition and Granting Plaintiffs Declaratory Relief* (Apx 2). On September 25, 2015, Defendant-Appellant, Clio Area School District timely filed its Claim of Appeal.

STATEMENT OF QUESTIONS INVOLVED

- I. WHETHER THE CLIO AREA SCHOOL DISTRICT'S WEAPONS POLICY DIRECTLY CONFLICTS WITH STATE STATUTE AND IS THEREFORE PREEMPTED BY STATE STATUTE?

The trial court did not address this issue.

Plaintiff-Appellee states the answer should be "YES."

- II. WHETHER CLIO AREA SCHOOL DISTRICT IS IMPLIEDLY / FIELD PREEMPTED FROM PROMULGATING FIREARM RULES OR REGULATIONS?

The trial court answered "YES."

Plaintiff-Appellee states that the answer should be "YES."

STATEMENT OF FACTS

A. THE PARTIES:

Plaintiff Michigan Open Carry, Inc. [hereinafter “MOC”] is a Michigan not-for-profit advocacy organization that supports the lawful carry of handguns, created under the Nonprofit Corporation Act of 1982, MCL §§ 450.2101 - 450.3192. MOC provides written material for the use of its members, municipalities, and law enforcement that outlines the laws associated with open carrying of handguns, and offers seminars on the topic.

Plaintiff Kenneth Herman is a local resident whose daughter attends Edgerton Elementary School within the Clio Area School District. Mr. Herman is licensed by the State to carry a concealed weapon. Mr. Herman lawfully possesses and carries a pistol.

Defendant Clio Area School District is a school district, pursuant to MCL 380.6; a local unit of government, pursuant to MCL 123.1101(a) and MCL 169.209(6) [hereafter referred to as “CASD”]. Remaining defendants are employees of CASD who are engaged in the enforcement of CASD’s weapons policy.

B. PROCEDURAL AND FACTUAL HISTORY:

MCL 750.237a(4) generally prohibits possession of a firearm within a “weapon free school zone”. MCL 750.237a(5)(c) exempts “an individual who is licensed by this state or another state to carry a concealed weapon”.

MCL 28.425o(1)(a) generally prohibits the carrying of a “concealed weapon” at a school or school property. However, this statute specifically provides an exception for a concealed pistol licensee while in a vehicle on school property, if he or she is dropping the student off at the school or picking up the student from the school.

18 USC §922(q)(2)(A) restricts knowingly possessing a firearm in a school zone. An exception exists for an individual licensed to do so by the State in which the school zone is located. 18 USC §922(q)(2)(B)(ii).

Reading the three statutes in concert, an individual who is licensed by this state to carry a concealed weapon may not carry a concealed weapon onto a school or school property, excepting those who are in a vehicle and picking up or dropping off the student from school. An individual who is in possession of a firearm that is not concealed, (i.e. openly carried), is not prohibited from possessing that firearm at a school or on school property if that individual is licensed by this state to carry a concealed weapon. The sole concealed-carry exception of picking up or dropping off a student does not act as a limitation to those who are openly-carrying elsewhere at a school or on school property.

Defendant-Appellant CASD implemented its Policy “7217 – WEAPONS” prohibiting Plaintiff-Appellee and others from *inter alia* possessing a weapon in any setting under the control or sponsored by CASD. (Apx A). As a result of this policy and the actions of Defendant-Appellants, Plaintiff-Appellee Herman was prohibited from possessing a concealed pistol in compliance with MCL 28.425o(1)(a), or attending school functions while openly carrying. Plaintiff-Appellee Herman was threatened with criminal prosecution for trespass by Defendant-Appellants. Because of Plaintiff-Appellee Herman’s political position on firearm rights in general, and CASD’s policy in particular, his daughter has been singled-out by CASD employees for public ridicule and contempt.

On March 5, 2015, Plaintiff-Appellees brought their suit for declaratory relief in an effort to conclusively establish that the CASD policy implementation was unlawful as it affects lawful firearm possession.

On July 6, 2015, Defendant-Appellants responded by filing their Motion for Summary Disposition and Declaratory Judgment. Defendant-Appellants' motion did not specify a court rule upon which relief was sought. Defendant-Appellants' motion was heard on August 10, 2015 before the trial court. At the motion hearing, the trial court denied Defendant-Appellants' motion(s) and granted Plaintiff-Appellees' request for declaratory relief. The trial court issued its written Order Denying Defendants' Motion for Summary Disposition and Granting Plaintiffs Declaratory Relief on September 7, 2015 (Apx B).¹ The Order incorporated the court's Transcript of Proceedings of August 10, 2015.

¹ All documents attached hereto were considered by the court below, or are properly part of the record on appeal. See *Coburn v Coburn*, 230 Mich App 118, 583 NW2d 490, *rev'd on other grounds*, 459 Mich 874, 585 NW2d 302 (1998). Copies of constitutional, statutory or court rule provisions are included in the appendix, pursuant to MCR 7.212(C)(7).

ARGUMENTS

I. WHETHER THE CLIO AREA SCHOOL DISTRICT'S WEAPONS POLICY DIRECTLY CONFLICTS WITH STATE STATUTE AND IS THEREFORE PREEMPTED BY STATE STATUTE?

A. STANDARD OF REVIEW

A trial court's grant of summary disposition is reviewed de novo. *Spiek v Mich. Dep't of Transp*, 456 Mich. 331, 337; 572 N.W.2d 201 (1998). "MCR 2.116(C)(8) tests the legal sufficiency of the claim on the pleadings alone to determine whether the plaintiff has stated a claim on which relief may be granted." *Spiek*; 456 Mich. at 337; MCR 2.116(G)(5). "A motion under MCR 2.116(C)(8) may be granted only where the claims alleged are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Maiden v Rozwood*, 461 Mich. 109, 119; 597 N.W.2d 817 (1999). "All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant." *Id.*

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Kreiner v. Fischer*, 471 Mich. 109, 129, 683 N.W.2d 611 (2004). Also reviewed de novo are issues of constitutional law, *Wayne Co. v. Hathcock*, 471 Mich. 445, 455, 684 N.W.2d 765 (2004), and statutory interpretation, *Feyz v. Mercy Mem. Hosp.*, 475 Mich. 663, 672, 719 N.W.2d 1 (2006) *Duncan v. State*, 774 N.W.2d 89, 284 Mich.App. 246 (Mich.App. 2009)

A litigant must meet the requirements of MCR 2.605 in order to seek a declaratory judgment. *Lansing Schools Educ Ass'n v Lansing Bd of Educ*, 487 Mich. 349, 373; 792 N.W.2d 686 (2010). ... MCR 2.605(A)(1) provides, in relevant part:

In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted. Pursuant to MCR 2.605, "[t]he existence of an 'actual controversy' is a condition precedent to invocation of declaratory relief."

Lansing Schools Educ Ass'n v Lansing Bd of Educ (On Remand), 293 Mich.App. 506, 515; 810 N.W.2d 95 (2011) (citation omitted). "An actual controversy exists when declaratory relief is needed to guide a plaintiff's future conduct in order to preserve the plaintiff's legal rights." *Id.* at 515, citing *Citizens for Common Sense in Gov't v Attorney Gen*, 243 Mich.App. 43, 55; 620 N.W.2d 546 (2000). "The essential requirement of the term 'actual controversy' under the rule is that plaintiffs plead and prove facts that demonstrate an adverse interest necessitating the sharpening of the issues raised." *UAW v Central Michigan Trustees*, 295 Mich.App. 486, 495; 815 NW2d 132. "Generally, where the injury sought to be prevented is merely hypothetical, a case of actual controversy does not exist." *Citizens for Common Sense*, 243 Mich.App. at 55.

Defendants' appeal does not allege a lack of actual controversy, nor that Plaintiff-Appellees have somehow failed to meet the requirements of MCR 2.605.

B. ISSUE PRESERVATION

During the lower court proceedings, in their pleadings and during the motion hearing, Plaintiff-Appellees argued that CASD was directly and impliedly preempted from promulgating regulations regarding firearms on its property. The same claim is addressed on appeal and the issue, therefore, is preserved.

C. DISCUSSION

State Law Preempts the School District's Weapon Policy which is in Direct Conflict with State Law.

CASD's weapons policy is in direct contravention with State statute at MCL 28.425o(1)(a) which specifically permits possession of concealed weapons at a school or on school property under certain circumstances.

“A state statutory scheme preempts regulation by a lower-level governmental entity when either of two conditions exist: (1) **the local regulation directly conflicts with the state statutory scheme** or (2) the state statutory scheme occupies the field of regulation that the lower-level government entity seeks to enter, " even where there is no direct conflict between the two schemes of regulation." *People v Llewellyn*, 401 Mich 314, 322, 257 N.W.2d 902 (1977); see also *Beek v City of Wyoming*, 297 Mich.App. 446, 453, 823 N.W.2d 864 (2012); *Mich. Coalition*, 256 Mich.App. at 408, 662 N.W.2d 864. (emphasis added)

State Law specifically permits possession of concealed weapons at a school or on school property when carried in accordance with the requirements of MCL 28.425o(1)(a). CASD’s weapons policy ignores that provision and introduces their own ban on such possession. As such, the CASD weapons policy directly conflicts with state statute and is preempted by the state statutory scheme.

II. WHETHER CLIO AREA SCHOOL DISTRICT IS IMPLIEDLY / FIELD PREEMPTED FROM PROMULGATING FIREARM RULES OR REGULATIONS?

A. STANDARD OF REVIEW

Plaintiff-Appellees incorporate the standard of review cited for the previous question herein.

B. ISSUE PRESERVATION

During the lower court proceedings, in their pleadings and during the motion hearing, Plaintiff-Appellees argued that CASD was directly and impliedly preempted from promulgating regulations regarding firearms on its property. The same claim is addressed on appeal and the issue, therefore, is preserved.

C. DISCUSSION

The School District's Weapon Policy is Field-Preempted as it Relates to Firearms.

In a case that mirrors the instant issue quite cleanly, the Court of Appeals has clearly established that a quasi-municipal corporation, i.e., a governmental agency authorized by constitution or statute to operate for and about the business of the state, such as a school district, is preempted from instituting firearm regulations and intruding on the state statutory scheme.

Capital Area Dist. Library v. Michigan Open Carry, Inc., 826 N.W.2d 736, 298 Mich.App. 220 (2012) lv. denied 495 Mich 898, 839 NW2d 198 (2013).

In *Capital Area Dist. Library*, (hereafter alternatively referred to as “CADL”) the court addressed “*whether district libraries established under the District Library Establishment Act (DLEA), MCL 397.171 et seq. , are subject to the same restrictions regarding firearm regulation that apply to public libraries established by local units of government. Plaintiff, the Capital Area District Library (CADL), brought this action for declaratory and injunctive relief, seeking to validate and enforce its ban on firearms on its premises. Defendant, Michigan Open Carry, Inc. (MOC), argues that CADL does not have the power to regulate firearms. Our job is not to determine who has the better moral argument regarding when and where it is appropriate to carry guns. Instead, we are obligated to interpret and apply the law, regardless of whether we personally like the outcome.*” Id. at 223.

Many of the same arguments present in CASD’s motion were addressed by the CADL court. Including the following identical points:

First, CADL argued that it properly instituted its firearm policy pursuant to its power derived from the DLEA (MCL 397.182(1))². Similarly, CASD now argues that the Revised School Code, MCL 380.11a(3)(b)³ expressly authorizes the school district to implement a weapons policy to provide for the safety and welfare of pupils. The CADL court found that the library’s weapons policy was permitted under the DLEA in so far as it was not in direct conflict with state statutes. It is not likely that CASD’s weapons policy would be similarly permitted under The Revised School Code without an exception mirroring MCL 28.425o(1)(a). However, with such a carve-out for concealed carry at school in compliance with the statute, a modified CASD weapons policy might be permissible under The Revised School Code.

Second, CADL argued that district libraries were not expressly preempted by the Firearm and Ammunition Act because “in MCL 123.1101(a), the Legislature defined the phrase ‘local unit of government’ to mean ‘a city, village, township, or county.’” *Id.* at 231. CASD similarly argues that the statute does not expressly include “school district” in the above definition. See *Appellants’ Brief on Appeal* at 1. The CADL court found that libraries were not expressly barred from imposing firearm regulations because a library is not a city, village, township or county. *Capital Area Dist. Library* at 231. It is also likely that CASD would not be expressly barred from imposing their firearm regulation if it did not directly conflict with state statutes.

The CADL court did address the nature of both district libraries and school districts, finding that ...

“although district libraries have the authority to adopt bylaws and regulations and do any other thing necessary for conducting the district-library service, as stated earlier, this Court has held that a district library is a quasi-municipal corporation, i.e., a governmental agency authorized by constitution or statute to operate for and about the

² The District Libraries Establishment Act (1989) precedes the Firearms and Ammunition Act (1990) by one year.

³ The Revised School Code (1976) predated the Firearms and Ammunition Act (1990) by fourteen years.

business of the state. Jackson Dist. Library v. Jackson Co. # 1, 146 Mich.App. 392, 396, 380 N.W.2d 112 (1985), citing Attorney General ex rel. Kies v. Lowrey, 131 Mich. 639, 643, 92 N.W. 289 (1902). "[T]he term 'municipal corporation' may be used in the broad sense to include ... quasi-municipal corporations." Huron-Clinton Metro. Auth. v. Attorney General, 146 Mich.App. 79, 82, 379 N.W.2d 474 (1985). Quasi-municipal corporations "possess and can exercise only such powers as are granted in express words or those necessarily and fairly implied in or incident to powers expressly conferred by the Legislature." *Id.* As previously discussed, the DLEA gives CADL's board the authority to adopt regulations that govern the library, to supervise and control library property, and to do any other thing necessary to conduct the CADL district-library service. MCL 397.182(1). Nevertheless, a quasi-municipal corporation such as a district library remains subject to the Constitution and the laws of this state. **See Detroit Sch. Dist. Bd. of Ed. v. Mich. Bell Tel. Co., 51 Mich.App. 488, 494-495, 215 N.W.2d 704 (1974) (explaining that a school district, a quasi-municipal corporation, is a state agency that is subject to the Constitution and laws of the state); Lowrey, 131 Mich. at 644, 92 N.W. 289 ("The school district is a State agency. Moreover, it is of legislative creation. It is true that it was provided for in obedience to a constitutional requirement; and whatever we may think of the right of the district to administer in a local way the affairs of the district, under the Constitution, we cannot doubt that such management must be in conformity to the provisions of such laws of a general character as [826 N.W.2d 743] may from time to time be passed....")**; see also generally Llewellyn, 401 Mich. at 321, 257 N.W.2d 902 ("Under Const. 1963, art. 7, § 22, a Michigan municipality's power to adopt resolutions and ordinances relating to municipal concerns is 'subject to the Constitution and law'."). Indeed, state law may preempt a regulation by any inferior level of government that attempts to regulate the same subject matter as a higher level of government. See *McNeil v. Charlevoix Co.*, 275 Mich.App. 686, 697 & n. 11, 741 N.W.2d 27 (2007). "Thus, although we deal here with a regulation promulgated by a local administrative agency, application of the principles developed in determining the validity of local ordinances in light of statutory enactments on the same or similar subject matter is appropriate." *Id.* at 697 n. 11, 741 N.W.2d 27.

Id. at 231. Emphasis added.

After determining that CADL was not expressly barred under the State's preemption statute, and that CADL was authorized under the DLEA to implement its weapons policy, the court's analysis continued.

A state statutory scheme preempts regulation by a lower-level governmental entity when either of two conditions exist: (1) the local regulation directly conflicts with the state statutory scheme or (2) the state statutory scheme occupies the field of regulation that the lower-level government entity seeks to enter, "even where there is no direct conflict between the two schemes of regulation." Llewellyn, 401 Mich. at 322, 257 N.W.2d 902; see also *Ter Beek*, 297 Mich.App. at 453, 823 N.W.2d 864; Mich.

Coalition, 256 Mich.App. at 408, 662 N.W.2d 864. CADL's weapons ban does not directly conflict with Michigan's statutory scheme pertaining to gun regulation because no Michigan statute expressly prohibits district libraries from regulating weapons. To determine whether field preemption applies, i.e. whether the state has occupied the field of regulation that CADL seeks to enter in this case, we must evaluate the law using the guidelines set forth by our Michigan Supreme Court in *Llewellyn*. *Id.* at 233

The four guidelines in *Llewellyn* are as follows:

First, where the state law expressly provides that the state's authority to regulate in a specified area of the law is to be exclusive, there is no doubt that municipal regulation is pre-empted.

Second, pre-emption of a field of regulation may be implied upon an examination of legislative history.

Third, the pervasiveness of the state regulatory scheme may support a finding of pre-emption.

Fourth, the nature of the regulated subject matter may demand exclusive state regulation to achieve the uniformity necessary to serve the state's purpose or interest.

Michigan Coalition for Responsible Gun Owners v. City of Ferndale; 256 Mich.App. 401, 414 (2003); cert. den. 469 Mich. 880 (2003) citing *People v Llewellyn*, 401 Mich 314, 322 (1977).

After applying the first two *Llewellyn* guidelines, the CADL court turned to an analysis which directly touches upon the issues in the instant motion:

The third guideline set forth in *Llewellyn* requires us to examine the pervasiveness of the state regulatory scheme. In addition to the Legislature's enactment of MCL 123.1102, the Legislature's statutory scheme regarding firearm regulation addresses who may possess a firearm and how, when, and where a firearm may be possessed. Subject to exceptions for certain individuals, MCL 750.234d(1) prohibits a person from possessing a firearm on the premises of any of the following: depository financial institutions, churches or other places of religious worship, courts, theatres, sports arenas, daycare centers, hospitals, and establishments licensed under the former Michigan Liquor Control Act.

With the exception of certain individuals, MCL 750.237a(4) prohibits the possession of a weapon in a weapon-free school zone, which is defined as "school property and a vehicle used by a school to transport students to or from school property." MCL 750.237a(6)(d).

Subject to certain exceptions, MCL 28.425o(1) prohibits a person who is licensed to carry a concealed pistol from carrying a concealed pistol on the

premises of any of the following: a school or school property; a public or private child-care center, daycare center, child-caring institution, or child-placing agency; a sports arena or stadium; a bar or tavern licensed under the Michigan Liquor Control Code, MCL 436.1101 et seq.; any property or facility owned by a church or [826 N.W.2d 746] other place of worship; certain entertainment facilities falling within MCL 28.425o(1)(f); a hospital; and a dormitory or classroom of a college or university.

...

As can be gleaned from these numerous statutes included in the Legislature's statutory scheme regulating firearms, the statutory scheme includes " a broad, detailed, and multifaceted attack" on the possession of firearms. Llewellyn, 401 Mich. at 326, 257 N.W.2d 902. The extent and specificity of this statutory scheme, coupled with the Legislature's " clear policy choice [in MCL 123.1102] to remove from local units of government the authority to dictate where firearms may be taken," Mich. Coalition, 256 Mich.App. at 414, 662 N.W.2d 864, demonstrates that the Legislature has occupied the field of firearm regulation that the library's weapons policy attempts to regulate: the possession of firearms.

This conclusion is supported by consideration of the fourth Llewellyn guideline: whether the nature of the regulated subject matter demands exclusive state regulation " to achieve the uniformity necessary to serve the state's purpose or interest." Llewellyn, 401 Mich. at 324, 257 N.W.2d 902. The regulation of firearm possession undoubtedly calls for such exclusive state regulation. If the state prevents all public libraries established by a city, village, township, or county from passing their own firearms regulations but does not similarly prevent district libraries from doing so, it would result in a " Balkanized patchwork of inconsistent local regulations." See *City of Brighton v. Hamburg Twp.*, 260 Mich.App. 345, 355, 677 N.W.2d 349 (2004). In such a case, citizens of this state would be subject to varying and possibly conflicting regulations regarding firearms and " a great deal of uncertainty and confusion would be created." Llewellyn, 401 Mich. at 327, 257 N.W.2d 902. It would be extremely difficult for firearm owners to know where and under what circumstances they could possess a gun and just as difficult for other members of the public to know what libraries to avoid should they wish not to be around guns. [826 N.W.2d 747] An exclusive, uniform state regulatory scheme for firearm possession is far more efficient for purposes of obedience and enforcement than a patchwork of local regulation.

Accordingly, we hold that state law preempts CADL's weapons policy because the Legislature, through its statutory scheme in the field of firearm regulation, has completely occupied the field that CADL's weapons policy attempts to regulate.[4] The trial court, therefore, erroneously granted summary disposition in favor of CADL on the basis that the weapons policy was valid as a matter of law. Furthermore, we hold that the trial court abused its discretion by granting CADL's request for permanent injunctive relief, i.e., by permanently enjoining MOC, its members, their agents, and members of the public from

entering CADL's buildings and branches while openly carrying a weapon in violation of CADL's weapons policy. Id. at 237.

CASD's weapons policy is similarly field preempted. For how could the State occupy the field of firearm regulation when the CADL decision was reached, but not now?

RESPONSE TO VARIOUS ISSUES RAISED BY APPELLANT

Defendant-Appellants reference to the "preemption" exception in *Davis v Hillsdale* is grossly misleading and inapplicable.

Defendant-Appellants argue at page 2 of their brief that the Court of Appeals has already rejected preemption of a school district's weapons policies in *Davis v Hillsdale Community School District*, 226 Mich.App. 375; 573 N.W.2d 77 (1997) and infers that *Davis* grants school districts "plenary power" to regulate weapons. This case, however, did not involve either the Firearm and Ammunition Act; field preemption; or lawfully carried firearms. Instead, in *Davis*, two students were expelled for possessing a BB gun on school grounds. The definition of "dangerous weapon" became an issue in the expulsion. It was argued that the school's definition was preempted through the school's adoption of the State's standard for suspensions or expulsions under MCL 380.1311. The *Davis* court found that MCL 380.1311 did not preempt the school's definition of "dangerous weapon" nor implementation of its own policy for suspensions and expulsions.

The trial court addressed the *Davis* holding and found that the case was factually distinguishable from the instant case. Order Denying Defendants' Motion for Summary Disposition and Granting Plaintiffs Declaratory Relief, Exhibit A at Page 17. (Apx A)

Again, the *Davis* court ruling is not remotely related to the issues presented in this case. The *Davis* ruling addresses only a challenge administrative enforcement and the definition of "dangerous weapon" under a student code of conduct.

The U.S. Supreme Court's decision in *District of Columbia v Heller*, 554 US 570, 128 S Ct 2783 (2008) does not further Defendants' case.

Defendant-Appellants argue that the Second Amendment does not prevent enactment of laws prohibiting the possession of firearms in sensitive places such as schools. Appellants' Brief on Appeal at 8. Plaintiffs need not address this point. The issue is not whether restrictive laws may be enacted, but whether the *Llewellyn* test and the Firearm and Ammunition Act preempts CASD's attempt to do so. If the answer to both questions is "yes", it does not matter what the holding in *Heller* allows. The State of Michigan does not prohibit the possession of lawfully-owned firearms on school property if they are possessed by individuals who are also licensed under MCL 28.425.

Hopophobic responses to lawfully carried firearms is neither warranted nor required.

Defendant-Appellants argue that "school districts are forced to initiate 'lockdowns' when guns are present on campus". Appellants' Brief on Appeal at 15. The presence of openly-carried pistols in school districts do not require lockdowns. Policies vary depending upon the political views of the school board involved. As an example of a policy which does not artificially create a panic, the Lenawee Intermediate School District enacted a policy which neither bans open carry nor requires a school lockdown. (Apx C).

In the case of Plaintiff-Appellee Herman, the employees of CASD are well informed of the law and know Mr. Herman personally. Since issuance of the lower court's *Order* in this case, Mr. Herman has appeared at CASD facilities while open-carrying. No lockdowns were implemented and there was no disruption of the educational environment nor displays of fear or

apprehension. It is not the presence of a holstered-pistol that creates disruption, but rather the situations where politically-motivations dictate lockdown procedures for individuals that the school employees know pose no threat.

STATEMENT REGARDING ORAL ARGUMENT

Pursuant to MCR 7.214(E), Plaintiff-Appellees submit that the factual and legal issues in this appeal are sufficiently complex, such that this case should not be selected for decision without oral argument, because the Court will be aided in its decision if it hears oral arguments from counsel. MCR 7.214(E)(2).

REQUEST FOR RELIEF

WHEREFORE, for the reasons stated in this responsive brief on appeal, Plaintiff-Appellees Kenneth Herman and MOC respectfully request that this Honorable Court sustain the decision of the trial court granting summary judgment to Plaintiff-Appellee. Plaintiff-Appellees submit that the law is well-established with respect to direct and field preemption in this State and that Defendants-Appellants appeal is not legally justifiable. Therefore, Plaintiffs-Appellees respectfully request that Defendant-Appellants be assessed and ordered to pay the legal costs and expenses of Plaintiff-Appellees.

Date: December 10, 2015

Respectfully submitted,

s/ Dean G. Greenblatt

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APPENDIX DESIGNATION

- A.** Clio Area School District Policy 7217 – Weapons.
- B.** Order Denying Defendants’ Motion for Summary Disposition and Granting Plaintiffs Declaratory Relief, dated September 7, 2015, with attachment.
- C.** Lenawee Intermediate School District (Open Carry procedures)
- D.** MCL §§28.421-35 (various statutory provisions regarding regulation of firearms)
- E.** MCL §§123.1101—05, Firearms and Ammunition Act of 1990
- F.** MCL §§750.222 – 750.39, (various penal statutes regarding firearms)

APPENDIX A

Clio Area Bylaws & Policies

7217 - WEAPONS

The Board of Education prohibits visitors from possessing, storing, making, or using a weapon in any setting that is under the control and supervision of the Board for the purpose of school activities approved and authorized by the Board including, but not limited to, property leased, owned, or contracted for by the Board, a school-sponsored event, or in a Board-owned vehicle.

State law establishes a "Weapon-Free School Zone" that extends 1,000 feet from the boundary of any school property.

The term "weapon" means any object which, in the manner in which it is used, is intended to be used, or is represented, is capable of inflicting serious bodily harm or property damage, as well as endangering the health and safety of persons. Weapons include, but are not limited to, firearms, guns of any type, including air and gas-powered guns, (whether loaded or unloaded), knives, razors, clubs, electric weapons, metallic knuckles, martial arts weapons, ammunition, and explosives.

The Superintendent shall refer a visitor who violates this policy to law enforcement officials and may take any necessary steps to exclude the visitor from Board property and Board-sponsored events.

Exceptions to this policy include:

- A. weapons under the control of law enforcement personnel;
- B. items approved by a principal as part of a class or individual presentation under adult supervision, if used for the purpose of and in the manner approved (working firearms and ammunition shall never be approved);
- C. theatrical props used in appropriate settings;
- D. starter pistols used in appropriate sporting events.

These restrictions shall not apply in the following circumstances to persons who are properly licensed to carry a concealed weapon:

- A. A parent or legal guardian of a student of the school may carry a concealed weapon while in a vehicle on school property, if s/he is dropping the student off at the school or picking up the child from the school.
- B. A county corrections officer, a member of a Sheriff's posse, a police or sheriffs reserve or auxiliary officer, or a State Department of Corrections parole or corrections officer, a private investigator, a Michigan State Police motor carrier officer or Capitol security officer, a State court judge, a security officer required by the employer to carry a concealed weapon while on the premises.
- C. A retired police or law enforcement officer or a retired State court judge.

The Superintendent shall take the necessary steps to prosecute for a violation of the Weapon-Free School Zone.

18 U.S.C. 922
M.C.L.A. 28.425o
20 U.S.C. 4141(g)

Adopted 6/5/96
Revised 9/11/96
Revised 2/11/03
Revised 1/27/04
Revised 9/26/06
Revised 6/23/09

APPENDIX B

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

MICHIGAN OPEN CARRY, INC., and
KENNETH HERMAN,

Plaintiffs,

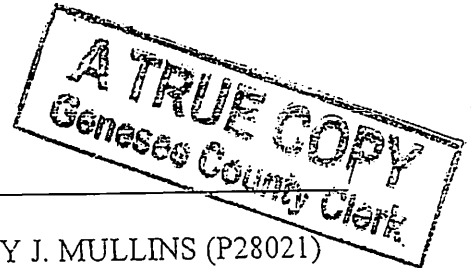
Judge Archie L. Hayman

vs.

No. 15-104373-CZ

CLIO AREA SCHOOLS, FLETCHER
SPEARS, III, and KATRINA MITCHELL,

Defendants.



DEAN G. GREENBLATT (P54139)
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(248) 457-7020

**ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY DISPOSITION
AND GRANTING PLAINTIFFS DECLARATORY RELIEF**

At a session of said Court, held in the
City of Flint, Michigan, on the _____
day of _____, 2015.

PRESENT: THE HONORABLE _____
Circuit Court Judge

This matter having been fully briefed, and the Court having heard oral argument, it is
hereby ORDERED:

1. Defendants' Motion for Summary Disposition is DENIED;
2. For the reasons stated on the record, and in accordance with the oral opinion in
the attached transcript of proceedings, Plaintiffs are granted declaratory relief;

and

3. This is a final judgment that adjudicates all claims, rights, and liabilities of the parties.

ARCHIE L. HAYMAN
P-37516

HONORABLE JUDGE HAYMAN

APPROVED AS TO FORM:

Donna [Signature] w/consent

Attorney for Plaintiffs

[Signature]

Attorney for Defendants

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

MICHIGAN OPEN CARRY, INCORPORATED,
AND KENNETH HERMAN,

Plaintiffs,

-vs-

CASE NO. 14-103476-CZ

CLIO AREA SCHOOL DISTRICT,
ET AL,

Defendants.

JUDGE HAYMAN

_____ /

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE ARCHIE L. HAYMAN, CIRCUIT JUDGE

Flint, Michigan - Monday, August 10, 2015

APPEARANCES:

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RULING OF THE COURT ON MOTIONS	11

<u>EXHIBITS:</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
NONE.		

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Flint, Michigan
Monday, August 10, 2015
2:40 o'clock p.m.

THE COURT: All right, we are on the record in the case of Michigan Open Carry, Incorporated, and Kenneth Herman versus Clio Area Schools, Case Number 15-104373-CZ. And, gentlemen, state your appearances, please?

MR. MULLINS: Good morning, your Honor! Timothy Mullins appearing on behalf of the Defendant School District and the Board of Education.

THE COURT: Thank you, Mr. Mullins.

MR. GREENBLATT: Good afternoon, your Honor! Dean Greenblatt on behalf of Michigan Open Carry and Kenneth Herman.

THE COURT: All right. Thank you, Mr. Greenblatt. And this is a motion that was filed by you, Mr. Mullins?

MR. MULLINS: Yes, your Honor.

THE COURT: You may proceed, sir.

MR. GREENBLATT: Your Honor, there are two motions that are up. I'm hoping that you have both.

THE COURT: Yeah, I do. I see also a motion to compel?

MR. GREENBLATT: Yes, your Honor.

THE COURT: Yes, sir. And Mr. Mullins, I'm gonna let him go first and then we'll address the motion to

1 compel.

2 MR. GREENBLATT: Very good, your Honor.

3 MR. MULLINS: Your Honor, I know you read the
4 briefs, so I'll be - I will be brief.

5 THE COURT: Yes, sir.

6 MR. MULLINS: As you know, this is a declaratory
7 action brought by the Plaintiffs herein seeking to allow
8 individuals to openly carry firearms onto school
9 premises. Specifically, the Plaintiff in this case is
10 the parent of a student of one - at one of our elementary
11 schools; and he seeks, with and through this
12 organization, to contravene school policy which declares
13 the school to be a weapons-free and a drug free zone.

14 It's undisputed that the school district has
15 passed a policy making such a declaration. Plaintiff
16 would claim that this would be - that this would
17 contravene State law and is preempted. We would argue
18 that, indeed, the case of Davis vs Hillsdale Schools has
19 already ruled on this wherein a student was expelled
20 from school for carrying a B.B. gun on school premises.
21 The Michigan School code specifically provides not just
22 the right, but I would argue the obligation that school
23 boards and school administrators pass rules and
24 regulations to protect students; and, indeed, that's
25 what the Clio School District has done here. We would

1 argue that that is entirely consistent with State statute
2 and State policy.

3 As your Honor knows, even be it in this
4 courtroom, in many State agencies, you're not allowed to
5 carry a - a firearm; and the Clio School Board would
6 argue consistent with the Hillsdale case that the
7 interest and safety of elementary students, much less all
8 students, should be paramount; and that is consistent
9 with law and we believe that is why the Michigan School
10 Code has indicated and discusses at length in the
11 Hillsdale case that the primary obligation of a school
12 district is to provide a safe environment in which
13 students can learn and the school district can accomplish
14 it's scholastic goals.

15 Indeed, as a practical matter, if we are
16 administering a school and we see somebody approaching
17 the school, in today's day and age, openly carrying a
18 firearm, what happens? The police are called, the school
19 district is shut down, it goes into lockdown and parents,
20 to the extent that they're present, are upset, children
21 are terrified and education stops. Everything comes to a
22 stop, and potentially you have a confrontation between
23 law enforcement, administration and an individual
24 carrying a firearm. It doesn't make good practical and
25 common sense, but for the purposes we're here today, it's

1 consistent with the law. The School Code says that
2 school districts should and must pass rules and
3 regulations to provide for the safety of schools. In
4 today's day and age, we know the problems that guns,
5 knives, weapons - not to mention drugs and the like, what
6 kind of problems those cause in schools.

7 So we would argue that our elementary -
8 elementary school students, much less all of the students
9 and the administrators and the parents and the teachers
10 within the school districts should be provided with the
11 same protections as our many governmental employees,
12 airports and the like.

13 Did you have any questions, your Honor?

14 THE COURT: No, sir. I'll hear from Mr. Greenblatt.
15 Thank you, Mr. Mullins.

16 MR. GREENBLATT: Your Honor, if I could approach?

17 THE COURT: Yes, sir, you may approach.

18 (Whereupon Mr. Greenblatt approached Court with
19 document at 2:45 p.m.)

20 Thank you, sir.

21 MR. GREENBLATT: Your Honor, I'm not here to argue
22 public policy. I'm not here to argue emotions. I will
23 state that, as far as school policies relating to
24 lockdowns, terrified children and confrontation goes, all
25 those things are within the control of the Clio Area

1 School District. The issue in this case is whether or
2 not the Clio Area School District has the regulatory
3 authority to regulate firearms on its property. This
4 has already been addressed by the Michigan Court of
5 Appeals. It's already been addressed by statute. The
6 policy of the Clio Area School District is that the
7 Board of Education prohibits visitors from possessing,
8 storing, making or using a weapon in any setting that is
9 under control and supervision of the Board. That's a
10 quote from Policy 7217 that was provided by the
11 Defendants in their motion.

12 I would add that much of the evidence that was
13 presented within the motion was denied in a motion - in a
14 request for production of documents; so we only have what
15 the school district is willing to provide. But what they
16 are willing to provide is that they're - have come up
17 with a policy - it's a Board policy - to ban firearms on
18 their property, not just in the buildings, but on the
19 school grounds. That is in direct conflict with State
20 law and specifically MCL 28.425(o)(1)(a). The statute
21 provides that CPL licensees may carry concealed upon
22 school property that is under the control of the Clio
23 Area School District Board. Because it's directly
24 preempted, the regulation of the school board is
25 preempted.

1 The second issue that is brought before the
2 Court today in our motion - in the motion that I'm sure
3 your Honor's had an opportunity to review it and the
4 response. The second issue is that, in Capitol Area
5 District Library vs MOC, the Court of Appeals has already
6 ruled on this. This case couldn't any more closely
7 mirror that case. We're specifically dealing with a
8 subordinate unit of government, in this case the school
9 district. In the Capitol Area District Library case, it
10 was the District Library; and the Court of Appeals has
11 already ruled that the legislature has occupied the field
12 of firearm regulations and there's nothing left for the
13 Capitol Area District Library to regulate with respect
14 to firearms; and there's nothing left for the Clio Area
15 School District to regulate. It simply isn't within
16 their purview.

17 The proper remedy, if there is - if you want
18 to call it a remedy or the proper course of action for
19 the school district to take is something that they took
20 on March 24th of 2015. The document that I provided to
21 you, which I did not have at my disposal when I wrote
22 the response specifically states in a resolution by the
23 Defendant that whereas, in effect, the aforementioned
24 laws allow an individual with a Concealed Pistol License
25 to openly carry an unconcealed pistol into a Michigan

1 Public School - in my understanding of the practice of
2 law, that is an admission. They admit that that is the
3 case; and it is an appeal to the legislature to change
4 the law. That's the proper course of action. They
5 undertook it in March; the legislature has not responded.
6 The legislature has already created the law in Michigan;
7 and the law is the school district doesn't have this
8 authority.

9 As for the case cited in the Defendant's brief,
10 I believe it was the Davis case, it didn't have anything
11 to do with firearm preemption in the Firearms and
12 Ammunition Act. What it had to do is whether or not the
13 school district had to follow the revised school code
14 with their definition of what a dangerous weapon was in
15 their expulsion of two students. The court rule in that
16 case, which had nothing to do with firearms, for one, and
17 with the Firearms and Ammunition Act for another, and
18 State preemption, was the - the school can have its own
19 regulation or its own rule about what a dangerous weapon
20 is and when they're expelling a student. This isn't an
21 administrative act; this is a - a venture into firearm
22 regulations that is the sole purview of the State of
23 Michigan.

24 So, with that, we would ask that the Court deny
25 the motion for summary in this case. I'd like to point

1 out that the concurrent motion by Defendants for
2 declaratory relief is not a proper form of pleading. It
3 is a cause of action. You can't claim a cause of action
4 in a motion; and so we're - I suppose that if it's the
5 opposing party's position, that they're asking for
6 2116(i)(2) relief, that's a possibility, but that's not
7 what the motion says. So they haven't claimed a cause of
8 action here. The Plaintiffs have; and we'd ask that the
9 motion for declaratory relief be denied.

10 And with that, we would leave it to your
11 Honor's discretion.

12 THE COURT: All right, Mr. Mullins, anything else
13 you wish to add to this, sir?

14 (Whereupon rebuttal argument begins at 2:51
15 p.m.)

16 MR. MULLINS: Just briefly, your Honor, the
17 resolution by the School Board referred to by the
18 Plaintiff herein was the request by the School Board to
19 clear up any confusion that might have been created by
20 the Capitol Area - Capitol Area Library case. But
21 certainly it was a declaration on the part of the Board
22 not admitting - the Board doesn't interpret or declare
23 law; it - it was an appeal to the legislature to clear
24 up any confusion that might exist in this area.

25 As to his argument on preemption, that was

1 specifically addressed in the Hillsdale case, which
2 indeed did involve a weapon, a B.B. gun; and there, it
3 was very clearly pointed out that, as school districts
4 interpret the law, that preemption simply does not apply.
5 I'm somewhat shocked by the Plaintiffs - if I understood
6 his reply brief, that - that this case shouldn't be
7 interpreted with regard to any considerations of the
8 hoopla surrounding the concern of the safety of students
9 in this case; and I would suggest that the safety of
10 students is not hoopla. It's a serious concern in
11 today's society and through all time. Our children
12 should be able to learn in a safe environment free of
13 concerns about the violence that might be presented by
14 a presentation of firearms in the - in the school
15 building.

16 Thank you, your Honor.

17 (Whereupon ruling begins at 2:52 p.m.)

18 THE COURT: Okay, thank you, Mr. Mullins. The
19 Plaintiff, Kenneth Herman and Michigan Open Carry,
20 Incorporated, collectively the Plaintiffs, have filed
21 this lawsuit after Herman was either denied access to,
22 asked to leave from or removed from a school building
23 operated by Defendant Clio Area Schools because he was
24 openly carrying a holstered handgun.

25 Defendants Fletcher Spears III and Katrina

1 Mitchell are employed by Clio Area Schools collectively
2 as Defendants. The Clio Area Schools Board of Education
3 promulgated Policy 7217, which states as follows:

4 "The Board of Education prohibits visitors from
5 possessing, storing, making or using a weapon in any
6 setting that is under the control and supervision
7 of the Board for the purpose of school activities
8 approved and authorized by the Board, including by
9 not limited to property leased, owned or contracted
10 for by the Board, a school sponsored event or in a
11 Board owned vehicle."

12 Defendants have filed this motion for summary
13 disposition seeking an order from the Court dismissing
14 this lawsuit. Defendants do not specify under which
15 court rule they seek summary disposition, but it appears
16 that Defendants are arguing an issue of law; so the Court
17 will treat the motion as if it was requested under MCR
18 2.116(C)(8).

19 A motion for summary disposition under (C)(8)
20 may be granted when the opposing party has failed to
21 state a claim on which relief can be granted. The
22 moving party must specify the grounds on which it is
23 based. Only the pleadings may be considered when
24 reviewing a motion based on (C)(8). In supporting the
25 motion or opposing it, a party may not submit affidavits,

1 depositions, admissions or other documentary evidence in
2 support of such a motion.

3 A motion for summary disposition based on a
4 pleading that the opposing party has failed to state a
5 claim on which relief can be granted tests the legal
6 sufficiency of the complaint. It must be resolved by
7 treating as true all well-pled factual allegations and
8 determining whether the claims made are so clearly
9 unenforceable as a matter of law that no factual
10 development could possibly justify a right to recovery.

11 Defendants argue that they can prohibit weapons
12 on school property pursuant to MCL 380.11(a)(3)(b),
13 which allows schools to provide "for the safety and
14 welfare of pupils while at school or a school sponsored
15 activity or while in route to or from school or a school
16 sponsored activity." Defendants further argue that
17 Davis vs Hillsdale Community School District, which is
18 at 226 Michigan Appeals 375, a 1997 case, held that
19 State law does not preempt a school district's regulation
20 of firearms on school property.

21 Plaintiffs argue that this case is directly
22 controlled by the holding in Capitol Area District
23 Library vs Michigan Open Carry, Incorporated, which is
24 found at 298 Michigan Appeals 220; that is a 2012 case.

25 At the outset, it is important to start out

1 with a basic civics lesson. The Michigan Legislature
2 makes the law. The law - the Michigan Judiciary
3 interprets and applies that law. This Court is a
4 Circuit Court; and Michigan Circuit Courts must adhere
5 to the legal interpretations contained within published
6 opinions issued by the Michigan Court of Appeals and the
7 Michigan Supreme Court. The legal interpretations within
8 published opinions are binding on Circuit Courts.

9 With these basic principles in mind, the
10 outcome of this case is relatively simple. In Michigan,
11 "Every person has a right to keep and bear arms for the
12 defense of himself and the State." This is found at
13 Constitution, 1963, Articles I, Sections 6. The United
14 States Constitution guarantees the same right.

15 The U.S. Constitution, the Second Amendment
16 guarantees "the individual right to possess and carry
17 weapons in case of confrontation." This is found at the
18 District of Columbia vs Heller, which is at 554 U.S. 570;
19 this is a 2008 case. However, this constitutional right
20 to bear arms is not unlimited. The Court, in Heller is
21 not unlimited held only that a ban on handguns in a
22 person's home for self-defense violates the Federal
23 Constitutional right to keep and bear arms. Heller went
24 on to clarify that second amendment right and its
25 limitations by stating "nothing, in our opinion, should

1 be taken to cast doubt on longstanding prohibitions on
2 the possession of firearms by felons and the mentally ill
3 or laws forbidding the carrying of firearms in sensitive
4 places such as schools or government buildings or laws
5 imposing conditions and qualifications on the commercial
6 sale of arms."

7 The Michigan Legislature has seen fit to pass
8 certain laws limiting the right of individual to possess
9 firearms specifically with respect to the issue in this
10 case, an individual shall not possess a concealed weapon
11 in a weapons-free school zone, MCL 750.237(a)(1). An
12 individual shall not possess a weapon in a weapons free
13 school zone - that's MCL 750.237(a)(4) - unless that
14 individual is licensed to carry a concealed weapon, MCL
15 750.237(a)(5). An individual licensed to carry a
16 concealed pistol shall not carry a concealed pistol on
17 school property; that's MCL 28.425(o)(1)(a); however, a
18 parent or guardian licensed to carry a concealed pistol,
19 may carry that pistol concealed while in a vehicle on
20 school property either dropping the student off at school
21 or picking the student up from school.

22 When you read this law as a whole and these
23 statutes as a whole, these statutes do not prohibit an
24 individual, who is licensed to carry a concealed pistol,
25 from openly possessing a pistol in a weapons free school

1 zone. The Michigan Legislature evidently has not seen
2 fit to completely prohibit individuals from possessing
3 firearms on school property.

4 In this case, Clio Area School District is
5 attempting to prohibit individuals from openly possessing
6 firearms on school property. The Defendants argue that
7 Davis vs. Hillsdale Community School District stands for
8 the proposition that a school authority has plenary power
9 that enables it to ban guns from its premises; and that
10 a school district's regulation of firearms on school
11 property is not preempted by State law. This Court
12 finds that case to be distinguishable from this case
13 concerned the school district's ability to discipline,
14 that is expel a student, for being in possession of a
15 dangerous weapon while at school. With respect to the
16 concept of plenary power, that Court noted that a school
17 has plenary power regarding maintaining order and
18 discipline in the schools; that Court did not hold that
19 a school can do anything that it wants. Specifically,
20 that Court quoted from a Federal case Davis vs. Ann Arbor
21 Public Schools, which is at 313 Fed Supplement 217, a
22 1970 case; and the quote is as follows:

23 "The school authorities, for their part, in
24 order to carry out their important function, have
25 both the inherent and the statutory power to

1 maintain order and discipline in the schools and to
2 exclude from the student body those who are
3 detrimental to such body and whose conduct is
4 inimical to the exercise of the institution of
5 scholastic function."

6 Therefore, because this case before this Court
7 is factually distinguishable from that case, that case
8 does not control the outcome of this case.

9 Defendant also argues that Davis vs Hillsdale
10 Community School District, which this Court notes was
11 published in 1997, specifically held that a school
12 district's weapons' policy was not preempted by State
13 Law. Again, this Court finds that that case is factually
14 distinguishable from the case - from this case because
15 that case involved the issue of the school's ability to
16 discipline its students; and this case involves a
17 school's purported ability to completely ban firearms on
18 school property.

19 Plaintiffs' argue that Capitol Area District
20 Library vs Michigan Open Carry, Incorporated, again
21 which is at 298 Michigan Appeals 220, a 2012 case, is
22 controlling in this case and prohibits Clio Area Schools
23 from enacting and/or enforcing its firearm ban. That
24 case held that State law preempts a quasi-municipal
25 corporation's "weapons policy because the Michigan

1 Legislature, through its statutory scheme in the field
2 of firearm regulation, has completely occupied the field
3 that the quasi-municipal corporation's weapons policy
4 attempts to regulate."

5 It is this Court's opinion that this case
6 is directly controlled by the holding in Capitol Area
7 District Library because the facts of that case and this
8 case are virtually identical; and the legal holdings in
9 that case directly apply to this case. The Michigan
10 Legislature, the body responsible for passing laws in
11 this state, has decided, for whatever reason, not to
12 completely ban the possession of openly carried firearms
13 on school property. Defendant, Clio Area School
14 District, which is a quasi-municipal corporation, has
15 decided to take it upon itself to completely ban the
16 possession of firearms on school property. This Court
17 is bound by the published decision of the Michigan Court
18 of Appeals in Capitol Area District Library vs. Michigan
19 Open Carry, which specifically held that Michigan - held
20 that the Michigan Legislature has occupied the field of
21 firearm regulation to such an extent that State law
22 preempts a quasi-municipal corporation's attempts to
23 regulate in that same field.

24 Accordingly, Clio Area School District's
25 firearms ban, while likely smart and well-intentioned,

1 is not allowed under current law. Only the Michigan
2 Legislature can completely ban the possession of
3 firearms on school property; and, as of yet, the
4 Michigan Legislature has not fit - or seen fit to impose
5 that ban. Because of this, Defendants' motion for
6 summary disposition under (C)(8) should be denied
7 because Plaintiffs have indeed stated a claim on which
8 this Court can grant relief.

9 Moreover, Plaintiffs are entitled to a
10 declaratory judgment in their favor for the reasons
11 already stated.

12 And, if you'll submit the order, Mr.
13 Greenblatt, I will sign it.

14 MR. GREENBLATT: Thank you, your Honor. I believe
15 that it was attached to the filing.

16 THE COURT: I think you're gonna have to submit me
17 another order, okay, 'cause I don't want to look through
18 the file.

19 MR. GREENBLATT: We - we'll do that, your Honor.

20 THE COURT: I've got two volumes here; and I don't
21 want to have to look through to find it, okay.

22 MR. GREENBLATT: Very good, your Honor.

23 THE COURT: All right, and thank you.

24 And, Mr. Mullins, an excellent job on your
25 behalf, also, sir.

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MR. MULLINS: Thank you, your Honor.

MR. GREENBLATT: And, your Honor, as far as the other motion goes, since it's a moot point, there's -

THE COURT: Moot point at this point, gentlemen. Thank you.

MR. GREENBLATT: Thank you, your Honor.

MR. MULLINS: Thanks.

(Whereupon proceedings concluded at 3:04 p.m.)

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STATE OF MICHIGAN)
COUNTY OF GENESEE)

I certify that this transcript, consisting of 20 pages,
is a complete, true and correct transcript, to the best
of my ability, of proceedings taken in the matter of
Michigan Open Carry, Inc., et al vs. Clio Area School
District, et al, Case Number 15-104373-CZ, recorded by
video recording, on Monday, August 10, 2015.

Dated: August 20, 2015

Jacqueline J. Bolt, CER-4272
Certified Electronic Recorder
3271 Dillon Road
Flushing, Michigan 48433
(810) 424-4454

APPENDIX C

OPEN CARRY

As you may know, the open carry of weapons in school buildings has recently emerged as an issue in some Michigan school districts. Under current Michigan law, an individual with a Concealed Pistol License (CPL) may legally open carry a weapon (subject to certain limitations regarding the type of weapon) in Michigan schools (they cannot however carry a concealed weapon). LISD Board policy prohibits LISD staff from carrying a weapon, either open or concealed, on District property or while participating in District sponsored events while acting as an employee of the District.

In an effort to be proactive about how LISD staff should respond to a situation in which someone elects to open carry on District property, we have developed the following procedures, which must be followed by District staff encountering a visitor with a weapon:

1. The visitor should sign in pursuant to district policies.
2. If a district staff member notices that the individual is carrying a gun, he/she should acknowledge their right to open carry such provided that they have a Michigan CPL and ask that they produce a copy of the license (Michigan law requires that the individual carry his/her license at all times that he/she is carrying the weapon).
3. The district staff member should ask if it would be OK if they made a copy of the license and should do so provided the individual is amenable to such (Do not risk agitating them just to get a copy).
4. If the individual refuses to show his/her CPL or it is expired, call the appropriate police agency and explain the situation, and ask if they would come to verify whether the CPL is valid. Also, explain to the individual what you are doing and ask them to wait with you until the police arrive.
5. The district staff member should indicate that while the individual is well within his/her legal rights to open carry *in*

the school, that the presence of a gun may make staff and students uncomfortable and that they should anticipate this while conducting their business in the school.

6. The individual should be required to wear the district's standard guest identifier (ID badge).
7. Staff shall notify supervisor that an individual who is open carrying is in the building and of their intended destination.
8. The LISD supervisor shall notify relevant staff person(s) that this person is in the building.
9. If the individual is not able to produce a concealed carry license, the building is to be placed on lock-down status, per LISD lockdown procedure, and police are to be called.

Please contact your supervisor if you have questions regarding this procedure.

APPENDIX D

FIREARMS
Act 372 of 1927

AN ACT to regulate and license the selling, purchasing, possessing, and carrying of certain firearms, gas ejecting devices, and electro-muscular disruption devices; to prohibit the buying, selling, or carrying of certain firearms, gas ejecting devices, and electro-muscular disruption devices without a license or other authorization; to provide for the forfeiture of firearms and electro-muscular disruption devices under certain circumstances; to provide for penalties and remedies; to provide immunity from civil liability under certain circumstances; to prescribe the powers and duties of certain state and local agencies; to prohibit certain conduct against individuals who apply for or receive a license to carry a concealed pistol; to make appropriations; to prescribe certain conditions for the appropriations; and to repeal all acts and parts of acts inconsistent with this act.

History: 1927, Act 372, Eff. Sept. 5, 1927;—Am. 1929, Act 206, Imd. Eff. May 20, 1929;—Am. 1931, Act 333, Imd. Eff. June 16, 1931;—Am. 1980, Act 345, Eff. Mar. 31, 1981;—Am. 1990, Act 320, Eff. Mar. 28, 1991;—Am. 2000, Act 265, Imd. Eff. June 29, 2000;—Am. 2000, Act 381, Eff. July 1, 2001;—Am. 2012, Act 123, Eff. Aug. 6, 2012.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

The People of the State of Michigan enact:

28.421 Definitions; lawful owning, possessing, carrying, or transporting of pistol greater than 26 inches in length; conditions; firearm not considered as pistol; election.

Sec. 1. (1) As used in this act:

(a) "Felony" means, except as otherwise provided in this subdivision, that term as defined in section 1 of chapter I of the code of criminal procedure, 1927 PA 175, MCL 761.1, or a violation of a law of the United States or another state that is designated as a felony or that is punishable by death or by imprisonment for more than 1 year. Felony does not include a violation of a penal law of this state that is expressly designated as a misdemeanor.

(b) "Firearm" means any weapon which will, is designed to, or may readily be converted to expel a projectile by action of an explosive.

(c) "Firearms records" means any form, information, or record required for submission to a government agency under sections 2, 2a, 2b, and 5b, or any form, permit, or license issued by a government agency under this act.

(d) "Misdemeanor" means a violation of a penal law of this state or violation of a local ordinance substantially corresponding to a violation of a penal law of this state that is not a felony or a violation of an order, rule, or regulation of a state agency that is punishable by imprisonment or a fine that is not a civil fine, or both.

(e) "Peace officer" means, except as otherwise provided in this act, an individual who is employed as a law enforcement officer, as that term is defined under section 2 of the commission on law enforcement standards act, 1965 PA 203, MCL 28.602, by this state or another state, a political subdivision of this state or another state, or the United States, and who is required to carry a firearm in the course of his or her duties as a law enforcement officer.

(f) "Pistol" means a loaded or unloaded firearm that is 26 inches or less in length, or a loaded or unloaded firearm that by its construction and appearance conceals it as a firearm.

(g) "Purchaser" means a person who receives a pistol from another person by purchase or gift.

(h) "Reserve peace officer", "auxiliary officer", or "reserve officer" means, except as otherwise provided in this act, an individual authorized on a voluntary or irregular basis by a duly authorized police agency of this state or a political subdivision of this state to act as a law enforcement officer, who is responsible for the preservation of the peace, the prevention and detection of crime, and the enforcement of the general criminal laws of this state, and who is otherwise eligible to possess a firearm under this act.

(i) "Retired federal law enforcement officer" means an individual who was an officer or agent employed by a law enforcement agency of the United States government whose primary responsibility was enforcing laws of the United States, who was required to carry a firearm in the course of his or her duties as a law enforcement officer, and who retired in good standing from his or her employment as a federal law

enforcement officer.

(j) "Retired police officer" or "retired law enforcement officer" means an individual who was a police officer or law enforcement officer who was certified as described under section 9a of the commission on law enforcement standards act, 1965 PA 203, MCL 28.609a, and retired in good standing from his or her employment as a police officer or law enforcement officer. A police officer or law enforcement officer retired in good standing if he or she receives a pension or other retirement benefit for his or her service as a police officer or law enforcement officer or actively maintained a Michigan commission on law enforcement standards or equivalent state certification for 10 or more consecutive years.

(k) "Seller" means a person who sells or gives a pistol to another person.

(l) "State court judge" means a judge of the district court, circuit court, probate court, or court of appeals or justice of the supreme court of this state who is serving either by election or appointment.

(m) "State court retired judge" means a judge or justice described in subdivision (l) who is retired, or a retired judge of the recorders court.

(2) A person may lawfully own, possess, carry, or transport as a pistol a firearm greater than 26 inches in length if all of the following conditions apply:

(a) The person registered the firearm as a pistol under section 2 or 2a before January 1, 2013.

(b) The person who registered the firearm as described in subdivision (a) has maintained registration of the firearm since January 1, 2013 without lapse.

(c) The person possesses a copy of the license or record issued to him or her under section 2 or 2a.

(3) A person who satisfies all of the conditions listed under subsection (2) nevertheless may elect to have the firearm not be considered to be a pistol. A person who makes the election under this subsection shall notify the department of state police of the election in a manner prescribed by that department.

History: 1927, Act 372, Eff. Sept. 5, 1927;—CL 1929, 16749;—CL 1948, 28.421;—Am. 1964, Act 216, Eff. Aug. 28, 1964;—Am. 1992, Act 219, Imd. Eff. Oct. 13, 1992;—Am. 2000, Act 381, Eff. July 1, 2001;—Am. 2002, Act 719, Eff. July 1, 2003;—Am. 2008, Act 407, Eff. Apr. 6, 2009;—Am. 2012, Act 243, Eff. Jan. 1, 2013;—Am. 2014, Act 203, Eff. Dec. 21, 2014;—Am. 2015, Act 3, Eff. Dec. 1, 2015;—Am. 2015, Act 16, Eff. July 13, 2015;—Am. 2015, Act 25, Eff. July 1, 2015.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.421a Concealed pistol licenses; issuance; creation of standardized system.

Sec. 1a. It is the intent of the legislature to create a standardized system for issuing concealed pistol licenses to prevent criminals and other violent individuals from obtaining a license to carry a concealed pistol, to allow law abiding residents to obtain a license to carry a concealed pistol, and to prescribe the rights and responsibilities of individuals who have obtained a license to carry a concealed pistol. It is also the intent of the legislature to grant an applicant the right to know why his or her application for a concealed pistol license is denied and to create a process by which an applicant may appeal that denial.

History: Add. 2000, Act 381, Eff. July 1, 2001.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.421b Firearms records; confidentiality; disclosure prohibited; exceptions; violation as civil infraction; fine.

Sec. 1b. (1) Firearms records are confidential, are not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed to any person, except as otherwise provided by this section.

(2) Firearms records may only be accessed and disclosed by a peace officer or authorized system user for the following purposes:

(a) The individual whose firearms records are the subject of disclosure poses a threat to himself or herself or other individuals, including a peace officer.

(b) The individual whose firearms records are the subject of disclosure has committed an offense with a pistol that violates a law of this state, another state, or the United States.

(c) The pistol that is the subject of the firearms records search may have been used during the commission of an offense that violates a law of this state, another state, or the United States.

(d) To ensure the safety of a peace officer.

(e) For purposes of this act.

(f) A peace officer or an authorized user has reason to believe that access to the firearms records is necessary within the commission of his or her lawful duties. The peace officer or authorized system user shall enter and record the specific reason in the system in accordance with the procedures in section 5e.

(3) A person who intentionally violates subsection (2) is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$500.00.

History: Add. 2014, Act 202, Eff. Dec. 21, 2014.

***** 28.422 THIS SECTION IS AMENDED EFFECTIVE FEBRUARY 22, 2016: See 28.422.amended

28.422 License to purchase, carry, possess, or transport pistol; issuance; qualifications; applications; sale of pistol; exemptions; nonresident; active duty status; forging application as felony; implementation during business hours.

Sec. 2. (1) Except as otherwise provided in this act, a person shall not purchase, carry, possess, or transport a pistol in this state without first having obtained a license for the pistol as prescribed in this section.

(2) A person who brings a pistol into this state who is on leave from active duty with the armed forces of the United States or who has been discharged from active duty with the armed forces of the United States shall obtain a license for the pistol within 30 days after his or her arrival in this state.

(3) The commissioner or chief of police of a city, township, or village police department that issues licenses to purchase, carry, possess, or transport pistols, or his or her duly authorized deputy, or the sheriff or his or her duly authorized deputy, in the parts of a county not included within a city, township, or village having an organized police department, in discharging the duty to issue licenses shall with due speed and diligence issue licenses to purchase, carry, possess, or transport pistols to qualified applicants unless he or she has probable cause to believe that the applicant would be a threat to himself or herself or to other individuals, or would commit an offense with the pistol that would violate a law of this or another state or of the United States. An applicant is qualified if all of the following circumstances exist:

(a) The person is not subject to an order or disposition for which he or she has received notice and an opportunity for a hearing, and which was entered into the law enforcement information network under any of the following:

(i) Section 464a of the mental health code, 1974 PA 258, MCL 330.1464a.

(ii) Section 5107 of the estates and protected individuals code, 1998 PA 386, MCL 700.5107, or section 444a of former 1978 PA 642.

(iii) Section 2950 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950.

(iv) Section 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950a.

(v) Section 14 of 1846 RS 84, MCL 552.14.

(vi) Section 6b of chapter V of the code of criminal procedure, 1927 PA 175, MCL 765.6b, if the order has a condition imposed under section 6b(3) of chapter V of the code of criminal procedure, 1927 PA 175, MCL 765.6b.

(vii) Section 16b of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.16b.

(b) The person is 18 years of age or older or, if the seller is licensed under 18 USC 923, is 21 years of age or older.

(c) The person is a citizen of the United States or an alien lawfully admitted into the United States and is a legal resident of this state. For the purposes of this section, a person shall be considered a legal resident of this state if any of the following apply:

(i) The person has a valid, lawfully obtained Michigan driver license issued under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or an official state personal identification card issued under 1972 PA 222, MCL 28.291 to 28.300.

(ii) The person is lawfully registered to vote in this state.

(iii) The person is on active duty status with the United States armed forces and is stationed outside of this state, but the person's home of record is in this state.

(iv) The person is on active duty status with the United States armed forces and is permanently stationed in this state, but the person's home of record is in another state.

(d) A felony charge or a criminal charge listed in section 5b against the person is not pending at the time of application.

(e) The person is not prohibited from possessing, using, transporting, selling, purchasing, carrying, shipping, receiving, or distributing a firearm under section 224f of the Michigan penal code, 1931 PA 328, MCL 750.224f.

(f) The person has not been adjudged insane in this state or elsewhere unless he or she has been adjudged restored to sanity by court order.

(g) The person is not under an order of involuntary commitment in an inpatient or outpatient setting due to mental illness.

(h) The person has not been adjudged legally incapacitated in this state or elsewhere. This subdivision does not apply to a person who has had his or her legal capacity restored by order of the court.

(4) Applications for licenses under this section shall be signed by the applicant under oath upon forms provided by the director of the department of state police. Licenses to purchase, carry, possess, or transport pistols shall be executed in triplicate upon forms provided by the director of the department of state police and shall be signed by the licensing authority. Three copies of the license shall be delivered to the applicant by the licensing authority. A license is void unless used within 30 days after the date it is issued.

(5) If an individual purchases or otherwise acquires a pistol, the seller shall fill out the license forms describing the pistol, together with the date of sale or acquisition, and sign his or her name in ink indicating that the pistol was sold to or otherwise acquired by the purchaser. The purchaser shall also sign his or her name in ink indicating the purchase or other acquisition of the pistol from the seller. The seller may retain a copy of the license as a record of the transaction. The purchaser shall receive 2 copies of the license. The purchaser shall return 1 copy of the license to the licensing authority within 10 days after the date the pistol is purchased or acquired. The return of the copy to the licensing authority may be made in person or may be made by first-class mail or certified mail sent within the 10-day period to the proper address of the licensing authority. A purchaser who fails to comply with the requirements of this subsection is responsible for a state civil infraction and may be fined not more than \$250.00. If a purchaser is found responsible for a state civil infraction under this subsection, the court shall notify the department of state police of that determination.

(6) Within 10 days after receiving the license copy returned under subsection (5), the licensing authority shall electronically enter the information into the pistol entry database as required by the department of state police if it has the ability to electronically enter that information. If the licensing authority does not have that ability, the licensing authority shall provide that information to the department of state police in a manner otherwise required by the department of state police. Any licensing authority that provided pistol descriptions to the department of state police under former section 9 of this act shall continue to provide pistol descriptions to the department of state police under this subsection. Within 48 hours after entering or otherwise providing the information on the license copy returned under subsection (5) to the department of state police, the licensing authority shall forward the copy of the license to the department of state police. The purchaser has the right to obtain a copy of the information placed in the pistol entry database under this subsection to verify the accuracy of that information. The licensing authority may charge a fee not to exceed \$1.00 for the cost of providing the copy. The licensee may carry, use, possess, and transport the pistol for 30 days beginning on the date of purchase or acquisition only while he or she is in possession of his or her copy of the license. However, the person is not required to have the license in his or her possession while carrying, using, possessing, or transporting the pistol after this period.

(7) This section does not apply to the purchase of pistols from wholesalers by dealers regularly engaged in the business of selling pistols at retail, or to the sale, barter, or exchange of pistols kept as relics or curios not made for modern ammunition or permanently deactivated. This section does not prevent the transfer of ownership of pistols that are inherited if the license to purchase is approved by the commissioner or chief of police, sheriff, or their authorized deputies, and signed by the personal representative of the estate or by the next of kin having authority to dispose of the pistol.

(8) An individual who is not a resident of this state is not required to obtain a license under this section if all of the following conditions apply:

(a) The individual is licensed in his or her state of residence to purchase, carry, or transport a pistol.

(b) The individual is in possession of the license described in subdivision (a).

(c) The individual is the owner of the pistol he or she possesses, carries, or transports.

(d) The individual possesses the pistol for a lawful purpose.

(e) The individual is in this state for a period of 180 days or less and does not intend to establish residency in this state.

(9) An individual who is a nonresident of this state shall present the license described in subsection (8)(a) upon the demand of a police officer. An individual who violates this subsection is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$100.00, or both.

(10) The licensing authority may require a person claiming active duty status with the United States armed

forces to provide proof of 1 or both of the following:

- (a) The person's home of record.
- (b) Permanent active duty assignment in this state.

(11) This section does not apply to a person who is younger than the age required under subsection (3)(b) and who possesses a pistol if all of the following conditions apply:

- (a) The person is not otherwise prohibited from possessing that pistol.
- (b) The person is at a recognized target range.

(c) The person possesses the pistol for the purpose of target practice or instruction in the safe use of a pistol.

(d) The person is in the physical presence and under the direct supervision of any of the following:

- (i) The person's parent.
- (ii) The person's guardian.

(iii) An individual who is 21 years of age or older, who is authorized by the person's parent or guardian, and who has successfully completed a pistol safety training course or class that meets the requirements of section 5j(1)(a), (b), or (d), and received a certificate of completion.

(e) The owner of the pistol is physically present.

(12) This section does not apply to a person who possesses a pistol if all of the following conditions apply:

- (a) The person is not otherwise prohibited from possessing a pistol.
- (b) The person is at a recognized target range or shooting facility.

(c) The person possesses the pistol for the purpose of target practice or instruction in the safe use of a pistol.

(d) The owner of the pistol is physically present and supervising the use of the pistol.

(13) A person who forges any matter on an application for a license under this section is guilty of a felony, punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.

(14) A licensing authority shall implement this section during all of the licensing authority's normal business hours and shall set hours for implementation that allow an applicant to use the license within the time period set forth in subsection (4).

History: 1927, Act 372, Eff. Sept. 5, 1927;—CL 1929, 16750;—Am. 1931, Act 333, Imd. Eff. June 16, 1931;—Am. 1941, Act 112, Imd. Eff. May 21, 1941;—Am. 1943, Act 51, Imd. Eff. Mar. 30, 1943;—CL 1948, 28.422;—Am. 1949, Act 170, Eff. Sept. 23, 1949;—Am. 1957, Act 259, Eff. Sept. 27, 1957;—Am. 1964, Act 216, Eff. Aug. 28, 1964;—Am. 1967, Act 158, Eff. Nov. 2, 1967;—Am. 1968, Act 301, Eff. Nov. 15, 1968;—Am. 1972, Act 15, Imd. Eff. Feb. 19, 1972;—Am. 1986, Act 161, Eff. Aug. 1, 1986;—Am. 1990, Act 320, Eff. Mar. 28, 1991;—Am. 1992, Act 219, Imd. Eff. Oct. 13, 1992;—Am. 1992, Act 220, Imd. Eff. Oct. 13, 1992;—Am. 1994, Act 338, Eff. Apr. 1, 1996;—Am. 2004, Act 101, Imd. Eff. May 13, 2004;—Am. 2008, Act 195, Eff. Jan. 7, 2009;—Am. 2008, Act 406, Imd. Eff. Jan. 6, 2009;—Am. 2010, Act 20, Imd. Eff. Mar. 25, 2010;—Am. 2012, Act 377, Imd. Eff. Dec. 18, 2012;—Am. 2014, Act 201, Imd. Eff. June 24, 2014;—Am. 2015, Act 37, Imd. Eff. May 21, 2015.

Constitutionality: The Michigan Court of Appeals held in *Chan v City of Troy*, 220 Mich App 376; 559 NW2d 374 (1997), that the citizen requirement, now MCL 28.422(3)(c), for a permit to purchase a pistol contained in MCL 28.422(3)(b) violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and is unconstitutional.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

***** 28.422.amended THIS AMENDED SECTION IS EFFECTIVE FEBRUARY 22, 2016 *****

28.422.amended License to purchase, carry, possess, or transport pistol; issuance; qualifications; applications; sale of pistol; exemptions; transfer of ownership to heir or devisee; nonresident; active duty status; forging application as felony; implementation during business hours.

Sec. 2. (1) Except as otherwise provided in this act, a person shall not purchase, carry, possess, or transport a pistol in this state without first having obtained a license for the pistol as prescribed in this section.

(2) A person who brings a pistol into this state who is on leave from active duty with the armed forces of the United States or who has been discharged from active duty with the armed forces of the United States shall obtain a license for the pistol within 30 days after his or her arrival in this state.

(3) The commissioner or chief of police of a city, township, or village police department that issues licenses to purchase, carry, possess, or transport pistols, or his or her duly authorized deputy, or the sheriff or his or her duly authorized deputy, in the parts of a county not included within a city, township, or village

having an organized police department, in discharging the duty to issue licenses shall with due speed and diligence issue licenses to purchase, carry, possess, or transport pistols to qualified applicants unless he or she has probable cause to believe that the applicant would be a threat to himself or herself or to other individuals, or would commit an offense with the pistol that would violate a law of this or another state or of the United States. An applicant is qualified if all of the following circumstances exist:

(a) The person is not subject to an order or disposition for which he or she has received notice and an opportunity for a hearing, and which was entered into the law enforcement information network under any of the following:

(i) Section 464a of the mental health code, 1974 PA 258, MCL 330.1464a.

(ii) Section 5107 of the estates and protected individuals code, 1998 PA 386, MCL 700.5107, or section 444a of former 1978 PA 642.

(iii) Section 2950 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950.

(iv) Section 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950a.

(v) Section 14 of 1846 RS 84, MCL 552.14.

(vi) Section 6b of chapter V of the code of criminal procedure, 1927 PA 175, MCL 765.6b, if the order has a condition imposed under section 6b(3) of chapter V of the code of criminal procedure, 1927 PA 175, MCL 765.6b.

(vii) Section 16b of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.16b.

(b) The person is 18 years of age or older or, if the seller is licensed under 18 USC 923, is 21 years of age or older.

(c) The person is a citizen of the United States or an alien lawfully admitted into the United States and is a legal resident of this state. For the purposes of this section, a person is considered a legal resident of this state if any of the following apply:

(i) The person has a valid, lawfully obtained Michigan driver license issued under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or an official state personal identification card issued under 1972 PA 222, MCL 28.291 to 28.300.

(ii) The person is lawfully registered to vote in this state.

(iii) The person is on active duty status with the United States armed forces and is stationed outside of this state, but the person's home of record is in this state.

(iv) The person is on active duty status with the United States armed forces and is permanently stationed in this state, but the person's home of record is in another state.

(d) A felony charge or a criminal charge listed in section 5b against the person is not pending at the time of application.

(e) The person is not prohibited from possessing, using, transporting, selling, purchasing, carrying, shipping, receiving, or distributing a firearm under section 224f of the Michigan penal code, 1931 PA 328, MCL 750.224f.

(f) The person has not been adjudged insane in this state or elsewhere unless he or she has been adjudged restored to sanity by court order.

(g) The person is not under an order of involuntary commitment in an inpatient or outpatient setting due to mental illness.

(h) The person has not been adjudged legally incapacitated in this state or elsewhere. This subdivision does not apply to a person who has had his or her legal capacity restored by order of the court.

(4) Applications for licenses under this section shall be signed by the applicant under oath upon forms provided by the director of the department of state police. Licenses to purchase, carry, possess, or transport pistols shall be executed in triplicate upon forms provided by the director of the department of state police and shall be signed by the licensing authority. Three copies of the license shall be delivered to the applicant by the licensing authority. A license is void unless used within 30 days after the date it is issued.

(5) If an individual purchases or otherwise acquires a pistol, the seller shall fill out the license forms describing the pistol, together with the date of sale or acquisition, and sign his or her name in ink indicating that the pistol was sold to or otherwise acquired by the purchaser. The purchaser shall also sign his or her name in ink indicating the purchase or other acquisition of the pistol from the seller. The seller may retain a copy of the license as a record of the transaction. The purchaser shall receive 2 copies of the license. The purchaser shall return 1 copy of the license to the licensing authority within 10 days after the date the pistol is purchased or acquired. The return of the copy to the licensing authority may be made in person or may be made by first-class mail or certified mail sent within the 10-day period to the proper address of the licensing authority. A purchaser who fails to comply with the requirements of this subsection is responsible for a state civil infraction and may be fined not more than \$250.00. If a purchaser is found responsible for a state civil infraction under this subsection, the court shall notify the department of state police of that determination.

(6) Within 10 days after receiving the license copy returned under subsection (5), the licensing authority shall electronically enter the information into the pistol entry database as required by the department of state police if it has the ability to electronically enter that information. If the licensing authority does not have that ability, the licensing authority shall provide that information to the department of state police in a manner otherwise required by the department of state police. Any licensing authority that provided pistol descriptions to the department of state police under former section 9 of this act shall continue to provide pistol descriptions to the department of state police under this subsection. Within 48 hours after entering or otherwise providing the information on the license copy returned under subsection (5) to the department of state police, the licensing authority shall forward the copy of the license to the department of state police. The purchaser has the right to obtain a copy of the information placed in the pistol entry database under this subsection to verify the accuracy of that information. The licensing authority may charge a fee not to exceed \$1.00 for the cost of providing the copy. The licensee may carry, use, possess, and transport the pistol for 30 days beginning on the date of purchase or acquisition only while he or she is in possession of his or her copy of the license. However, the person is not required to have the license in his or her possession while carrying, using, possessing, or transporting the pistol after this period.

(7) This section does not apply to the purchase of pistols from wholesalers by dealers regularly engaged in the business of selling pistols at retail, or to the sale, barter, or exchange of pistols kept as relics or curios not made for modern ammunition or permanently deactivated.

(8) This section does not prevent the transfer of ownership of pistols to an heir or devisee, whether by testamentary bequest or by the laws of intestacy regardless of whether the pistol is registered with this state. An individual who has inherited a pistol shall obtain a license as required in this section within 30 days of taking physical possession of the pistol. The license may be signed by a next of kin of the decedent or the person authorized to dispose of property under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8206, including when the next of kin is the individual inheriting the pistol. If the heir or devisee is not qualified for a license under this section, the heir or devisee may direct the next of kin or person authorized to dispose of property under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8206, to dispose of the pistol in any manner that is lawful and the heir or devisee considers appropriate. The person authorized to dispose of property under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8206, is not required to obtain a license under this section if he or she takes temporary lawful possession of the pistol in the process of disposing of the pistol pursuant to the decedent's testamentary bequest or the laws of intestacy. A law enforcement agency may not seize or confiscate a pistol being transferred by testamentary bequest or the laws of intestacy unless the heir or devisee does not qualify for obtaining a license under this section and the next of kin or person authorized to dispose of property under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8206, is unable to retain his or her temporary possession of the pistol or find alternative lawful storage. If a law enforcement agency seizes or confiscates a pistol under this subsection, the heir or devisee who is not qualified to obtain a license under this section retains ownership interest in the pistol and, within 30 days of being notified of the seizure or confiscation, may file with a court of competent jurisdiction to direct the law enforcement agency to lawfully transfer or otherwise dispose of the pistol. A pistol seized under this subsection shall not be destroyed, sold, or used while in possession of the seizing entity or its agents until 30 days have passed since the heir or devisee has been notified of the seizure and no legal action regarding the lawful possession or ownership of the seized pistol has been filed in any court and is pending. As used in this subsection:

(a) "Devisee" means that term as defined in section 1103 of the estates and protected individuals code, 1998 PA 386, MCL 700.1103.

(b) "Heir" means that term as defined in section 1104 of the estates and protected individuals code, 1998 PA 386, MCL 700.1104.

(9) An individual who is not a resident of this state is not required to obtain a license under this section if all of the following conditions apply:

(a) The individual is licensed in his or her state of residence to purchase, carry, or transport a pistol.

(b) The individual is in possession of the license described in subdivision (a).

(c) The individual is the owner of the pistol he or she possesses, carries, or transports.

(d) The individual possesses the pistol for a lawful purpose.

(e) The individual is in this state for a period of 180 days or less and does not intend to establish residency in this state.

(10) An individual who is a nonresident of this state shall present the license described in subsection (9)(a) upon the demand of a police officer. An individual who violates this subsection is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$100.00, or both.

(11) The licensing authority may require a person claiming active duty status with the United States armed forces to provide proof of 1 or both of the following:

- (a) The person's home of record.
- (b) Permanent active duty assignment in this state.

(12) This section does not apply to a person who is younger than the age required under subsection (3)(b) and who possesses a pistol if all of the following conditions apply:

- (a) The person is not otherwise prohibited from possessing that pistol.
- (b) The person is at a recognized target range.

(c) The person possesses the pistol for the purpose of target practice or instruction in the safe use of a pistol.

(d) The person is in the physical presence and under the direct supervision of any of the following:

- (i) The person's parent.
- (ii) The person's guardian.

(iii) An individual who is 21 years of age or older, who is authorized by the person's parent or guardian, and who has successfully completed a pistol safety training course or class that meets the requirements of section 5j(1)(a), (b), or (d), and received a certificate of completion.

(e) The owner of the pistol is physically present.

(13) This section does not apply to a person who possesses a pistol if all of the following conditions apply:

- (a) The person is not otherwise prohibited from possessing a pistol.
- (b) The person is at a recognized target range or shooting facility.

(c) The person possesses the pistol for the purpose of target practice or instruction in the safe use of a pistol.

(d) The owner of the pistol is physically present and supervising the use of the pistol.

(14) A person who forges any matter on an application for a license under this section is guilty of a felony, punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.

(15) A licensing authority shall implement this section during all of the licensing authority's normal business hours and shall set hours for implementation that allow an applicant to use the license within the time period set forth in subsection (4).

History: 1927, Act 372, Eff. Sept. 5, 1927;—CL 1929, 16750;—Am. 1931, Act 333, Imd. Eff. June 16, 1931;—Am. 1941, Act 112, Imd. Eff. May 21, 1941;—Am. 1943, Act 51, Imd. Eff. Mar. 30, 1943;—CL 1948, 28.422;—Am. 1949, Act 170, Eff. Sept. 23, 1949;—Am. 1957, Act 259, Eff. Sept. 27, 1957;—Am. 1964, Act 216, Eff. Aug. 28, 1964;—Am. 1967, Act 158, Eff. Nov. 2, 1967;—Am. 1968, Act 301, Eff. Nov. 15, 1968;—Am. 1972, Act 15, Imd. Eff. Feb. 19, 1972;—Am. 1986, Act 161, Eff. Aug. 1, 1986;—Am. 1990, Act 320, Eff. Mar. 28, 1991;—Am. 1992, Act 219, Imd. Eff. Oct. 13, 1992;—Am. 1992, Act 220, Imd. Eff. Oct. 13, 1992;—Am. 1994, Act 338, Eff. Apr. 1, 1996;—Am. 2004, Act 101, Imd. Eff. May 13, 2004;—Am. 2008, Act 195, Eff. Jan. 7, 2009;—Am. 2008, Act 406, Imd. Eff. Jan. 6, 2009;—Am. 2010, Act 20, Imd. Eff. Mar. 25, 2010;—Am. 2012, Act 377, Imd. Eff. Dec. 18, 2012;—Am. 2014, Act 201, Imd. Eff. June 24, 2014;—Am. 2015, Act 37, Imd. Eff. May 21, 2015;—Am. 2015, Act 200, Eff. Feb. 22, 2016.

Constitutionality: The Michigan Court of Appeals held in *Chan v City of Troy*, 220 Mich App 376; 559 NW2d 374 (1997), that the citizen requirement, now MCL 28.422(3)(c), for a permit to purchase a pistol contained in MCL 28.422(3)(b) violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and is unconstitutional.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.422a Individuals not required to obtain license; completion of record by seller; duties of purchaser; noncompliance as state civil infraction; penalty; entering information into pistol entry database; obtaining copy of information; exemption; material false statement as felony; penalty; rules; definitions.

Sec. 2a. (1) The following individuals are not required to obtain a license under section 2 to purchase, carry, possess, use, or transport a pistol:

(a) An individual licensed under section 5b, except for an individual who has an emergency license issued under section 5a(4) or a receipt serving as a concealed pistol license under section 5b(9) or 5l(3).

(b) A federally licensed firearms dealer.

(c) An individual who purchases a pistol from a federally licensed firearms dealer in compliance with 18 USC 922(t).

(2) If an individual described in subsection (1) purchases or otherwise acquires a pistol, the seller shall complete a record in triplicate on a form provided by the department of state police. The record shall include

the purchaser's concealed weapon license number or, if the purchaser is a federally licensed firearms dealer, his or her dealer license number. If the purchaser is not licensed under section 5b and is not a federally licensed firearms dealer, the record shall include the dealer license number of the federally licensed firearms dealer who is selling the pistol. The purchaser shall sign the record. The seller may retain 1 copy of the record. The purchaser shall receive 2 copies of the record and forward 1 copy to the police department of the city, village, or township in which the purchaser resides, or, if the purchaser does not reside in a city, village, or township having a police department, to the county sheriff, within 10 days following the purchase or acquisition. The return of the copy to the police department or county sheriff may be made in person or may be made by first-class mail or certified mail sent within the 10-day period to the proper address of the police department or county sheriff. A purchaser who fails to comply with the requirements of this subsection is responsible for a state civil infraction and may be fined not more than \$250.00. If a purchaser is found responsible for a state civil infraction under this subsection, the court shall notify the department of state police. If the purchaser is licensed under section 5b, the court shall notify the licensing authority of that determination.

(3) Within 10 days after receiving the record copy returned under subsection (2), the police department or county sheriff shall electronically enter the information into the pistol entry database as required by the department of state police if it has the ability to electronically enter that information. If the police department or county sheriff does not have that ability, the police department or county sheriff shall provide that information to the department of state police in a manner otherwise required by the department of state police. Any police department or county sheriff that provided pistol descriptions to the department of state police under former section 9 of this act shall continue to provide pistol descriptions to the department of state police under this subsection. Within 48 hours after entering or otherwise providing the information on the record copy returned under subsection (2) to the department of state police, the police department or county sheriff shall forward the copy of the record to the department of state police. The purchaser has the right to obtain a copy of the information placed in the pistol entry database under this subsection to verify the accuracy of that information. The police department or county sheriff may charge a fee not to exceed \$1.00 for the cost of providing the copy. The purchaser may carry, use, possess, and transport the pistol for 30 days beginning on the date of purchase or acquisition only while he or she is in possession of his or her copy of the record. However, the person is not required to have the record in his or her possession while carrying, using, possessing, or transporting the pistol after this period.

(4) This section does not apply to a person or entity exempt under section 2(7).

(5) An individual who makes a material false statement on a sales record under this section is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,500.00, or both.

(6) The department of state police may promulgate rules to implement this section.

(7) As used in this section:

(a) Before December 18, 2012, "federally licensed firearms dealer" means an individual who holds a type 01 dealer license under 18 USC 923.

(b) Beginning December 18, 2012, "federally licensed firearms dealer" means a person licensed to sell firearms under 18 USC 923.

(c) "Person" means an individual, partnership, corporation, association, or other legal entity.

History: Add. 2000, Act 381, Eff. July 1, 2001;—Am. 2008, Act 194, Eff. Jan. 7, 2009;—Am. 2010, Act 210, Eff. Feb. 15, 2011;—Am. 2012, Act 377, Imd. Eff. Dec. 18, 2012;—Am. 2013, Act 3, Eff. Mar. 12, 2013;—Am. 2015, Act 3, Eff. Dec. 1, 2015.

Compiler's note: Former MCL 28.422a, which pertained to a basic pistol safety brochure, was repealed by Act 220 of 1992, Imd. Eff. Oct. 13, 1992.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.422b Entry of order or disposition into law enforcement information network; written notice; person subject of order; request to amend inaccuracy; notice of grant or denial of request; hearing; entry of personal protection order; service required.

Sec. 2b. (1) Except as provided in subsection (5), upon entry of an order or disposition into the law enforcement information network under any provision of law described in section 2(3)(a), the department of state police shall immediately send written notice of that entry to the person who is the subject of the order or disposition. The notice shall be sent by first-class mail to the last known address of the person. The notice

shall include at least all of the following:

(a) The name of the person.

(b) The date the order or disposition was entered into the law enforcement information network.

(c) A statement that the person cannot obtain a license to purchase a pistol or obtain a concealed weapon license until the order or disposition is removed from the law enforcement information network.

(d) A statement that the person may request that the state police correct or expunge inaccurate information entered into the law enforcement information network.

(2) A person who is the subject of an order entered into the law enforcement information network under any provision of law described in section 2(3)(a) may request that the department of state police do either of the following:

(a) Amend an inaccuracy in the information entered into the law enforcement information network under any provision of law described in section 2(3)(a).

(b) Expunge the person's name and other information concerning the person from the law enforcement information network regarding 1 or more specific entries in the law enforcement information network under any provision of law described in section 2(3)(a) because 1 or more of the following circumstances exist:

(i) The person is not subject to an order of involuntary commitment in an inpatient or outpatient setting due to mental illness.

(ii) The person is not subject to an order or disposition determining that the person is legally incapacitated.

(iii) The person is not subject to a personal protection order issued under any of the following:

(A) Section 2950 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950.

(B) Section 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950a.

(C) Section 14 of 1846 RS 84, MCL 552.14.

(iv) The person is not subject to an order for release subject to protective conditions that prohibits the purchase or possession of a firearm by the person issued under section 6b of chapter V of the code of criminal procedure, 1927 PA 175, MCL 765.6b.

(3) Before the expiration of 30 days after a request is made to amend an inaccuracy in the law enforcement information network under subsection (2)(a) or to expunge 1 or more specific entries from the law enforcement information network under subsection (2)(b)(i) to (iv), the department of state police shall conduct an investigation concerning the accuracy of the information contained in the law enforcement information network, either grant or deny the request and provide the person with written notice of that grant or denial. A notice of denial shall include a statement specifying the basis of the denial, and that a person may appeal the denial pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(4) If the department of state police refuses a request by a person for amendment or expunction under subsection (2), or fails to act within 30 days after receiving the request under subsection (2), the person may request a hearing before a hearing officer appointed by the department of state police for a determination of whether information entered into the law enforcement information network should be amended or expunged because it is inaccurate or false. The department of state police shall conduct the hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(5) The department of state police shall not send written notice of an entry of an order or disposition into the law enforcement information network as required for a personal protection order issued under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, until that department has received notice that the respondent of the order has been served with or has received notice of the personal protection order.

History: Add. 1994, Act 338, Eff. Apr. 1, 1996;—Am. 2001, Act 199, Eff. Apr. 1, 2002;—Am. 2014, Act 205, Eff. Dec. 21, 2014.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.423 Repealed. 2000, Act 381, Eff. July 1, 2001.

Compiler's note: The repealed section pertained to application fee.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.424 Restoration of rights by circuit court; application; fee; determination; order; circumstances.

Sec. 4. (1) A person who is prohibited from possessing, using, transporting, selling, purchasing, carrying, shipping, receiving, or distributing a firearm under section 224f(2) of the Michigan penal code, 1931 PA 328, MCL 750.224f, may apply to the circuit court in the county in which he or she resides for restoration of those rights.

(2) A person who is prohibited from possessing, using, transporting, selling, carrying, shipping, or distributing ammunition under section 224f(4) of the Michigan penal code, 1931 PA 328, MCL 750.224f, may apply to the circuit court in the county in which he or she resides for restoration of those rights.

(3) Not more than 1 application may be submitted under subsection (1) or (2) in any calendar year. The circuit court shall charge a fee as provided in section 2529 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2529, unless the court waives that fee.

(4) The circuit court shall, by written order, restore the rights of a person to possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm or to possess, use, transport, sell, carry, ship, or distribute ammunition if the circuit court determines, by clear and convincing evidence, that all of the following circumstances exist:

(a) The person properly submitted an application for restoration of those rights as provided under this section.

(b) The expiration of 5 years after all of the following circumstances:

(i) The person has paid all fines imposed for the violation resulting in the prohibition.

(ii) The person has served all terms of imprisonment imposed for the violation resulting in the prohibition.

(iii) The person has successfully completed all conditions of probation or parole imposed for the violation resulting in the prohibition.

(c) The person's record and reputation are such that the person is not likely to act in a manner dangerous to the safety of other persons.

History: Add. 1992, Act 219, Imd. Eff. Oct. 13, 1992;—Am. 2014, Act 6, Eff. May 12, 2014;—Am. 2015, Act 3, Eff. Dec. 1, 2015.

Compiler's note: Former section 4 of this act was not compiled.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.425 Concealed pistol application kits.

Sec. 5. (1) County clerks shall provide concealed pistol application kits during normal business hours and free of charge to individuals who wish to apply for licenses to carry concealed pistols. Each kit shall only contain all of the following:

(a) A concealed pistol license application form provided by the director of the department of state police.

(b) The fingerprint cards under section 5b(10), if required.

(c) Written information regarding the procedures involved in obtaining a license to carry a concealed pistol.

(d) Written information identifying entities that offer the training required under section 5b(7)(c), if maintained by the county clerk.

(2) A county clerk shall not deny an individual the right to receive a concealed pistol application kit under this section.

(3) An individual who is denied an application kit under this section and obtains an order of mandamus directing the county clerk to provide him or her with the application kit shall be awarded his or her actual and reasonable costs and attorney fees for obtaining the order.

(4) The department of state police shall provide the application kits required under this section to county clerks in an electronic format. The department of state police shall not charge a fee for the kits.

History: Add. 2000, Act 381, Eff. July 1, 2001;—Am. 2015, Act 3, Eff. Dec. 1, 2015.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.425a Elimination of county concealed weapon licensing boards; pending applications; validity and duration of concealed pistol license issued before December 1, 2015; duties of county clerk; verification by state police; applicant issued personal protection order; emergency license; requirements; notice of statutory disqualification; surrender of emergency license; compilation of firearms laws by legislative service bureau; distribution; statement.

Sec. 5a. (1) Beginning December 1, 2015, the county concealed weapon licensing boards are eliminated. Each county concealed weapon licensing board shall transfer all license applications and official documents in its possession to the county clerk of the county in which the board is located no later than November 30, 2015. All pending applications remain in place, are considered to have a December 1, 2015 application date, and shall be processed by the county clerk as provided in this act. If an applicant has an initial or renewal application that is pending on December 1, 2015, that applicant may request a receipt from the county clerk that meets the requirements of section 5b(9) or 5l(3). The county clerk shall issue that receipt by first-class mail unless requested in person. The receipt is effective on the date the county clerk issues that receipt. The county clerk shall not charge any additional fee for receiving or processing an application previously submitted to the county concealed weapon licensing board, except as otherwise provided in this act. A license to carry a concealed pistol issued by a concealed weapon licensing board before December 1, 2015 is valid and remains in effect until the expiration of that license or as otherwise provided by law.

(2) The county clerk is responsible for all of the following:

(a) Storing and maintaining all records related to issuing a license or notice of statutory disqualification in that county.

(b) Issuing licenses to carry a concealed pistol.

(c) Issuing notices of statutory disqualification, notices of suspensions, and notices of revocations.

(3) The department of state police shall verify under section 5b(6) whether an applicant for a license to carry a concealed pistol is eligible to receive a license to carry a concealed pistol.

(4) A county clerk shall issue an emergency license to carry a concealed pistol to an applicant if the individual has obtained a personal protection order issued under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, or to an applicant if a county sheriff determines that there is clear and convincing evidence to believe the safety of the applicant or the safety of a member of the applicant's family or household is endangered by the applicant's inability to immediately obtain a license to carry a concealed pistol. Clear and convincing evidence includes, but is not limited to, an application for a personal protection order, police reports and other law enforcement records, or written, audio, or visual evidence of threats to the applicant or member of the applicant's family or household. A county clerk shall only issue an emergency license to carry a concealed pistol to an applicant who has obtained a personal protection order if the individual is eligible under section 5b(7)(d), (e), (f), (h), (i), (j), (k), and (m) to receive a license based on a criminal record check through the law enforcement information network conducted by the department of state police. The county sheriff shall only issue a determination under this subsection to an individual who is eligible under section 5b(7)(d), (e), (f), (h), (i), (j), (k), and (m) to receive a license based on a criminal record check through the law enforcement information network and only after the county sheriff has taken the individual's fingerprints in compliance with section 5b(9). An emergency license shall be on a form provided by the department of state police. An applicant for an emergency license shall, within 10 business days of applying for an emergency license, complete a pistol training course under section 5j and apply for a license under section 5b. A county sheriff who makes a determination under this section, performs a criminal record check, and takes the applicant's fingerprints may charge a fee not to exceed \$15.00. A county clerk may charge a fee not to exceed \$10.00 for printing an emergency license. A county clerk shall deposit a fee collected by the county clerk under this subsection in the concealed pistol licensing fund of that county created in section 5x. An emergency license is unrestricted and is valid for 45 days or until the county clerk issues a license or a notice of statutory disqualification, whichever occurs first. Except as otherwise provided in this act, an emergency license is, for all other purposes of this act, a license to carry a concealed pistol. The county clerk shall include an indication on the license if an individual is exempt from the prohibitions against carrying a concealed pistol on premises described in section 5o if the applicant provides acceptable proof that he or she qualifies for that exemption. An individual shall not obtain more than 1 emergency license in any 5-year period. If a county clerk issues a notice of statutory disqualification to an applicant who received an emergency license under this section, the applicant shall immediately surrender the emergency license to the county clerk by mail or in person if that emergency license has not expired. An individual who fails to surrender a license as required by this subsection after he or she is notified of a statutory disqualification is guilty of a misdemeanor punishable by

imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

(5) The legislative service bureau shall compile the firearms laws of this state, including laws that apply to carrying a concealed pistol, and shall provide copies of the compilation in an electronic format to the department of state police. The department of state police shall provide a copy of the compiled laws to each county clerk in this state. The department of state police shall also provide forms to appeal any notice of statutory disqualification, or suspension or revocation of a license under this act. The department of state police shall distribute copies of the compilation and forms required under this subsection in an electronic format to each county clerk. The county clerk shall distribute a copy of the compilation and forms at no charge to each individual who applies for a license to carry a concealed pistol at the time the application is submitted. The county clerk shall require the applicant to sign a written statement acknowledging that he or she has received a copy of the compilation and forms provided under this subsection. An individual is not eligible to receive a license to carry a concealed pistol until he or she has signed the statement.

History: Add. 2000, Act 381, Eff. July 1, 2001;—Am. 2015, Act 3, Eff. Dec. 1, 2015.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.425b License application; form; contents; material false statement as felony; record; fee; verification of requirements; determination; circumstances for issuance; information of court order or conviction; fingerprints; issuance or denial; temporary license; suspension or revocation of license; furnishing copy of application to individual; list of certified instructors; liability for civil damages; voluntary surrender of license; definitions.

Sec. 5b. (1) Until November 30, 2015, to obtain a license to carry a concealed pistol, an individual shall apply to the concealed weapon licensing board in the county in which that individual resides. Beginning December 1, 2015, to obtain a license to carry a concealed pistol, an individual shall apply to the county clerk in the county in which the individual resides. The applicant shall file the application with the county clerk in the county in which the applicant resides during the county clerk's normal business hours. The application shall be on a form provided by the director of the department of state police. Until November 30, 2015, the application shall allow the applicant to designate whether the applicant seeks a temporary license. Beginning December 1, 2015, the application shall allow the applicant to designate whether the applicant seeks an emergency license. The application shall be signed under oath by the applicant. The oath shall be administered by the county clerk or his or her representative. Beginning December 1, 2015, not more than 1 application may be submitted under this subsection in any calendar year. Beginning December 1, 2015, an application under this subsection is not considered complete until an applicant submits all of the required information and fees and has fingerprints taken under subsection (9). Beginning December 1, 2015, an application under this subsection is considered withdrawn if an applicant does not have fingerprints taken under subsection (9) within 45 days of the date an application is filed under this subsection. Beginning December 1, 2015, a completed application under this section expires 1 year from the date of application. Beginning December 1, 2015, the county clerk shall issue the applicant a receipt for his or her application at the time the application is submitted containing the name of the applicant, the applicant's state-issued driver license or personal identification card number, the date and time the receipt is issued, the amount paid, the name of the county in which the receipt is issued, an impression of the county seal, and the statement, "This receipt was issued for the purpose of applying for a concealed pistol license and for obtaining fingerprints related to that application. This receipt does not authorize an individual to carry a concealed pistol in this state.". The application shall contain all of the following:

(a) The applicant's legal name, date of birth, the address of his or her primary residence, and, beginning December 1, 2015, his or her state-issued driver license or personal identification card number. Until November 30, 2015, if the applicant resides in a city, village, or township that has a police department, the name of the police department.

(b) A statement by the applicant that the applicant meets the criteria for a license under this act to carry a concealed pistol.

(c) Until November 30, 2015, a statement by the applicant authorizing the concealed weapon licensing board to access any record, including any medical record, pertaining to the applicant's qualifications for a license to carry a concealed pistol under this act. The applicant may request that information received by the concealed weapon licensing board under this subdivision be reviewed in a closed session. If the applicant

requests that the session be closed, the concealed weapon licensing board shall close the session only for purposes of this subdivision. The applicant and his or her representative have the right to be present in the closed session. Beginning December 1, 2015, a statement by the applicant authorizing the department of state police to access any record needed to perform the verification in subsection (6).

(d) A statement by the applicant regarding whether he or she has a history of mental illness that would disqualify him or her under subsection (7)(j) to (l) from receiving a license to carry a concealed pistol.

(e) A statement by the applicant regarding whether he or she has ever been convicted in this state or elsewhere for any of the following:

(i) Any felony.

(ii) A misdemeanor listed under subsection (7)(h) if the applicant was convicted of that misdemeanor in the 8 years immediately preceding the date of the application, or a misdemeanor listed under subsection (7)(i) if the applicant was convicted of that misdemeanor in the 3 years immediately preceding the date of the application.

(f) A statement by the applicant whether he or she has been dishonorably discharged from the United States armed forces.

(g) Until November 30, 2015, if the applicant seeks a temporary license, the facts supporting the issuance of that temporary license.

(h) Until November 30, 2015, the names, residential addresses, and telephone numbers of 2 individuals who are references for the applicant.

(i) Until November 30, 2015, a passport-quality photograph of the applicant provided by the applicant at the time of application. Beginning December 1, 2015, if an applicant does not have a digitized photograph on file with the secretary of state, a passport-quality photograph of the applicant provided by the applicant at the time of application.

(j) A certificate stating that the applicant has completed the training course prescribed by this act.

(2) The county clerk shall not require the applicant to submit any additional forms, documents, letters, or other evidence of eligibility for obtaining a license to carry a concealed pistol except as set forth in subsection (1) or as otherwise provided for in this act. The application form shall contain a conspicuous warning that the application is executed under oath and that intentionally making a material false statement on the application is a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,500.00, or both.

(3) An individual who intentionally makes a material false statement on an application under subsection (1) is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,500.00, or both.

(4) The county clerk shall retain a copy of each application for a license to carry a concealed pistol as an official record. One year after the expiration of a concealed pistol license, the county clerk may destroy the record and maintain only a name index of the record.

(5) Until November 30, 2015, each applicant shall pay a nonrefundable application and licensing fee of \$105.00 by any method of payment accepted by that county for payments of other fees and penalties. Beginning December 1, 2015, each applicant shall pay an application and licensing fee of \$100.00 by any method of payment accepted by that county for payments of other fees and penalties. Except as provided in subsection (9), no other charge, fee, cost, or assessment, including any local charge, fee, cost, or assessment, is required of the applicant except as specifically authorized in this act. The application and licensing fee shall be payable to the county. Until November 30, 2015, the county treasurer shall deposit \$15.00 of each application and licensing fee collected under this section in the general fund of the county and credit that deposit to the credit of the county sheriff and deposit \$26.00 of each fee collected under this section in the concealed pistol licensing fund of that county created in section 5x. Beginning December 1, 2015, the county treasurer shall deposit \$26.00 of each application and licensing fee collected under this section in the concealed pistol licensing fund of that county created in section 5x. The county treasurer shall forward the balance remaining to the state treasurer. The state treasurer shall deposit the balance of the fee in the general fund to the credit of the department of state police. The department of state police shall use the money received under this act to process the fingerprints and to reimburse the Federal Bureau of Investigation for the costs associated with processing fingerprints submitted under this act. The balance of the money received under this act shall be credited to the department of state police.

(6) Until November 30, 2015, the county sheriff on behalf of the concealed weapon licensing board shall verify the requirements of subsection (7)(d), (e), (f), (h), (i), (j), (k), (l), and (m) through the law enforcement information network and report his or her finding to the concealed weapon licensing board. Beginning December 1, 2015, the department of state police shall verify the requirements of subsection (7)(d), (e), (f), (h), (i), (j), (k), and (m) through the law enforcement information network and the national instant criminal

background check system and shall report to the county clerk all statutory disqualifications, if any, under this act that apply to an applicant. Until November 30, 2015, if the applicant resides in a city, village, or township that has a police department, the concealed weapon licensing board shall contact that city, village, or township police department to determine only whether that city, village, or township police department has any information relevant to the investigation of whether the applicant is eligible under this act to receive a license to carry a concealed pistol. Until November 30, 2015, the concealed weapon licensing board may require a person claiming active duty status with the United States armed forces under this section to provide proof of 1 or both of the following:

- (a) The person's home of record.
- (b) Permanent active duty assignment in this state.

(7) Until November 30, 2015, the concealed weapon licensing board and, beginning December 1, 2015, the county clerk shall issue and shall send by first-class mail a license to an applicant to carry a concealed pistol within the period required under this act if the concealed weapon licensing board or county clerk determines that all of the following circumstances exist:

- (a) The applicant is 21 years of age or older.

(b) The applicant is a citizen of the United States or is an alien lawfully admitted into the United States, is a legal resident of this state, and has resided in this state for not less than the 6 months immediately preceding the date of application. Until November 30, 2015, the concealed weapon licensing board may waive the 6-month residency requirement for a temporary license under section 5a(8) if the concealed weapon licensing board determines that there is probable cause to believe that the safety of the applicant or the safety of a member of the applicant's family is endangered by the applicant's inability to immediately obtain a license to carry a concealed pistol. Until November 30, 2015, if the applicant holds a valid concealed pistol license issued by another state at the time the applicant's residency in this state is established, the concealed weapon licensing board may waive the 6-month waiting period and the applicant may apply for a concealed pistol license at the time the applicant's residency in this state is established. Until November 30, 2015, the concealed weapon licensing board shall immediately issue a temporary license to that applicant. Until November 30, 2015, the temporary license is valid until the concealed weapon licensing board decides whether to grant or deny the application. Beginning December 1, 2015, the county clerk shall waive the 6-month residency requirement for an emergency license under section 5a(4) if the applicant is a petitioner for a personal protection order issued under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, or if the county sheriff determines that there is clear and convincing evidence to believe that the safety of the applicant or the safety of a member of the applicant's family or household is endangered by the applicant's inability to immediately obtain a license to carry a concealed pistol. Beginning December 1, 2015, if the applicant holds a valid concealed pistol license issued by another state at the time the applicant's residency in this state is established, the county clerk shall waive the 6-month waiting period and the applicant may apply for a concealed pistol license at the time the applicant's residency in this state is established. For the purposes of this section, a person is considered a legal resident of this state if any of the following apply:

(i) The person has a valid, lawfully obtained driver license issued under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or official state personal identification card issued under 1972 PA 222, MCL 28.291 to 28.300.

(ii) The person is lawfully registered to vote in this state.

(iii) The person is on active duty status with the United States armed forces and is stationed outside of this state, but the person's home of record is in this state.

(iv) The person is on active duty status with the United States armed forces and is permanently stationed in this state, but the person's home of record is in another state.

(c) The applicant has knowledge and has had training in the safe use and handling of a pistol by the successful completion of a pistol safety training course or class that meets the requirements of section 5j.

(d) The applicant is not the subject of an order or disposition under any of the following:

(i) Section 464a of the mental health code, 1974 PA 258, MCL 330.1464a.

(ii) Section 5107 of the estates and protected individuals code, 1998 PA 386, MCL 700.5107.

(iii) Sections 2950 and 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a.

(iv) Section 6b of chapter V of the code of criminal procedure, 1927 PA 175, MCL 765.6b, if the order has a condition imposed under section 6b(3) of chapter V of the code of criminal procedure, 1927 PA 175, MCL 765.6b.

(v) Section 16b of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.16b.

(e) The applicant is not prohibited from possessing, using, transporting, selling, purchasing, carrying,

shipping, receiving, or distributing a firearm under section 224f of the Michigan penal code, 1931 PA 328, MCL 750.224f.

(f) The applicant has never been convicted of a felony in this state or elsewhere, and a felony charge against the applicant is not pending in this state or elsewhere at the time he or she applies for a license described in this section.

(g) The applicant has not been dishonorably discharged from the United States armed forces.

(h) The applicant has not been convicted of a misdemeanor violation of any of the following in the 8 years immediately preceding the date of application and a charge for a misdemeanor violation of any of the following is not pending against the applicant in this state or elsewhere at the time he or she applies for a license described in this section:

(i) Section 617a (failing to stop when involved in a personal injury accident), section 625 as punishable under subsection (9)(b) of that section (operating while intoxicated, second offense), section 625m as punishable under subsection (4) of that section (operating a commercial vehicle with alcohol content, second offense), section 626 (reckless driving), or a violation of section 904(1) (operating while license suspended or revoked, second or subsequent offense) of the Michigan vehicle code, 1949 PA 300, MCL 257.617a, 257.625, 257.625m, 257.626, and 257.904.

(ii) Section 185(7) of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.185 (operating aircraft while under the influence of intoxicating liquor or a controlled substance with prior conviction).

(iii) Section 29 of the weights and measures act, 1964 PA 283, MCL 290.629 (hindering or obstructing certain persons performing official weights and measures duties).

(iv) Section 10 of the motor fuels quality act, 1984 PA 44, MCL 290.650 (hindering, obstructing, assaulting, or committing bodily injury upon director or authorized representative).

(v) Section 80176 as punishable under section 80177(1)(b) (operating vessel under the influence of intoxicating liquor or a controlled substance, second offense), section 81134 as punishable under subsection (8)(b) of that section (operating ORV under the influence of intoxicating liquor or a controlled substance, second or subsequent offense), or section 82127 as punishable under section 82128(1)(b) (operating snowmobile under the influence of intoxicating liquor or a controlled substance, second offense) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.80176, 324.80177, 324.81134, 324.82127, and 324.82128.

(vi) Section 7403 of the public health code, 1978 PA 368, MCL 333.7403 (possession of controlled substance, controlled substance analogue, or prescription form).

(vii) Section 353 of the railroad code of 1993, 1993 PA 354, MCL 462.353, punishable under subsection (4) of that section (operating locomotive under the influence of intoxicating liquor or a controlled substance, or while visibly impaired, second offense).

(viii) Section 7 of 1978 PA 33, MCL 722.677 (displaying sexually explicit matter to minors).

(ix) Section 81 (assault or domestic assault), section 81a(1) or (2) (aggravated assault or aggravated domestic assault), section 115 (breaking and entering or entering without breaking), section 136b(7) (fourth degree child abuse), section 145n (vulnerable adult abuse), section 157b(3)(b) (solicitation to commit a felony), section 215 (impersonating peace officer or medical examiner), section 223 (illegal sale of a firearm or ammunition), section 224d (illegal use or sale of a self-defense spray), section 226a (sale or possession of a switchblade), section 227c (improper transportation of a loaded firearm), section 229 (accepting a pistol in pawn), section 232 (failure to register the purchase of a firearm or a firearm component), section 232a (improperly obtaining a pistol, making a false statement on an application to purchase a pistol, or using false identification to purchase a pistol), section 233 (intentionally aiming a firearm without malice), section 234 (intentionally discharging a firearm aimed without malice), section 234d (possessing a firearm on prohibited premises), section 234e (brandishing a firearm in public), section 234f (possession of a firearm by an individual less than 18 years of age), section 235 (intentionally discharging a firearm aimed without malice causing injury), section 235a (parent of a minor who possessed a firearm in a weapon free school zone), section 236 (setting a spring gun or other device), section 237 (possessing a firearm while under the influence of intoxicating liquor or a controlled substance), section 237a (weapon free school zone violation), section 335a (indecent exposure), section 411h (stalking), or section 520e (fourth degree criminal sexual conduct) of the Michigan penal code, 1931 PA 328, MCL 750.81, 750.81a, 750.115, 750.136b, 750.145n, 750.157b, 750.215, 750.223, 750.224d, 750.226a, 750.227c, 750.229, 750.232, 750.232a, 750.233, 750.234, 750.234d, 750.234e, 750.234f, 750.235, 750.235a, 750.236, 750.237, 750.237a, 750.335a, 750.411h, and 750.520e.

(x) Former section 228 of the Michigan penal code, 1931 PA 328.

(xi) Section 1 (reckless, careless, or negligent use of a firearm resulting in injury or death), section 2 (careless, reckless, or negligent use of a firearm resulting in property damage), or section 3a (reckless discharge of a firearm) of 1952 PA 45, MCL 752.861, 752.862, and 752.863a.

(xii) A violation of a law of the United States, another state, or a local unit of government of this state or another state substantially corresponding to a violation described in subparagraphs (i) to (xi).

(i) The applicant has not been convicted of a misdemeanor violation of any of the following in the 3 years immediately preceding the date of application unless the misdemeanor violation is listed under subdivision (h) and a charge for a misdemeanor violation of any of the following is not pending against the applicant in this state or elsewhere at the time he or she applies for a license described in this section:

(i) Section 625 (operating under the influence), section 625a (refusal of commercial vehicle operator to submit to a chemical test), section 625k (ignition interlock device reporting violation), section 625l (circumventing an ignition interlock device), or section 625m punishable under subsection (3) of that section (operating a commercial vehicle with alcohol content) of the Michigan vehicle code, 1949 PA 300, MCL 257.625, 257.625a, 257.625k, 257.625l, and 257.625m.

(ii) Section 185 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.185 (operating aircraft under the influence).

(iii) Section 81134 (operating ORV under the influence or operating ORV while visibly impaired), or section 82127 (operating a snowmobile under the influence) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.81134 and 324.82127.

(iv) Part 74 of the public health code, 1978 PA 368, MCL 333.7401 to 333.7461 (controlled substance violation).

(v) Section 353 of the railroad code of 1993, 1993 PA 354, MCL 462.353, punishable under subsection (3) of that section (operating locomotive under the influence).

(vi) Section 167 (disorderly person), section 174 (embezzlement), section 218 (false pretenses with intent to defraud), section 356 (larceny), section 356d (second degree retail fraud), section 359 (larceny from a vacant building or structure), section 362 (larceny by conversion), section 362a (larceny – defrauding lessor), section 377a (malicious destruction of property), section 380 (malicious destruction of real property), section 535 (receiving or concealing stolen property), or section 540e (malicious use of telecommunications service or device) of the Michigan penal code, 1931 PA 328, MCL 750.167, 750.174, 750.218, 750.356, 750.356d, 750.359, 750.362, 750.362a, 750.377a, 750.380, 750.535, and 750.540e.

(vii) A violation of a law of the United States, another state, or a local unit of government of this state or another state substantially corresponding to a violation described in subparagraphs (i) to (vi).

(j) The applicant has not been found guilty but mentally ill of any crime and has not offered a plea of not guilty of, or been acquitted of, any crime by reason of insanity.

(k) The applicant is not currently and has never been subject to an order of involuntary commitment in an inpatient or outpatient setting due to mental illness.

(l) The applicant has filed a statement under subsection (1)(d) that the applicant does not have a diagnosis of mental illness that includes an assessment that the individual presents a danger to himself or herself or to another at the time the application is made, regardless of whether he or she is receiving treatment for that illness.

(m) The applicant is not under a court order of legal incapacity in this state or elsewhere.

(n) The applicant has a valid state-issued driver license or personal identification card.

(8) Upon entry of a court order or conviction of 1 of the enumerated prohibitions for using, transporting, selling, purchasing, carrying, shipping, receiving, or distributing a firearm in this section the department of state police shall immediately enter the order or conviction into the law enforcement information network. For purposes of this act, information of the court order or conviction shall not be removed from the law enforcement information network, but may be moved to a separate file intended for the use of the county concealed weapon licensing boards, department of state police, the courts, and other government entities as necessary and exclusively to determine eligibility to be licensed under this act.

(9) An individual, after submitting an application and paying the fee prescribed under subsection (5), shall request that classifiable fingerprints be taken by the county clerk, department of state police, county sheriff, a local police agency, or other entity, if the county clerk, department of state police, county sheriff, local police agency, or other entity provides fingerprinting capability for the purposes of this act. Beginning December 1, 2015, an individual who has had classifiable fingerprints taken under section 5a(4) does not need additional fingerprints taken under this subsection. If the individual requests that classifiable fingerprints be taken by the county clerk, department of state police, county sheriff, a local police agency, or other entity, the individual shall also pay a fee of \$15.00 by any method of payment accepted for payments of other fees and penalties. A county clerk shall deposit any fee it accepts under this subsection in the concealed pistol licensing fund of that county created in section 5x. The county clerk, department of state police, county sheriff, local police agency, or other entity shall take the fingerprints within 5 business days after the request. County clerks, the department of state police, county sheriffs, local police agencies, and other entities shall provide reasonable

access to fingerprinting services during normal business hours as is necessary to comply with the requirements of this act if the county clerk, department of state police, county sheriff, local police agency, or other entity provides fingerprinting capability for the purposes of this act. Beginning December 1, 2015, the entity providing fingerprinting services shall issue the applicant a receipt at the time his or her fingerprints are taken. Beginning December 1, 2015, the county clerk, department of state police, county sheriff, local police agency, or other entity shall not provide a receipt under this subsection unless the individual requesting the fingerprints provides an application receipt received under subsection (1). Beginning December 1, 2015, a receipt under this subsection shall contain all of the following:

- (a) The name of the applicant.
- (b) The date and time the receipt is issued.
- (c) The amount paid.
- (d) The name of the entity providing the fingerprint services.
- (e) The applicant's state-issued driver license or personal identification card number.

(f) The statement "This receipt was issued for the purpose of applying for a concealed pistol license. As provided in section 5b of 1927 PA 372, MCL 28.425b, if a license or notice of statutory disqualification is not issued within 45 days after the date this receipt was issued, this receipt shall serve as a concealed pistol license for the individual named in the receipt when carried with an official state-issued driver license or personal identification card. The receipt is valid as a license until a license or notice of statutory disqualification is issued by the county clerk. This receipt does not exempt the individual named in the receipt from complying with all applicable laws for the purchase of firearms."

(10) The fingerprints shall be taken, under subsection (9), in a manner prescribed by the department of state police. The fingerprints taken by a county clerk, county sheriff, local police agency, or other entity shall be immediately forwarded to the department of state police for comparison with fingerprints already on file with the department of state police. The department of state police shall immediately forward the fingerprints to the Federal Bureau of Investigation. Until November 30, 2015, within 10 days after receiving a report of the fingerprints from the Federal Bureau of Investigation, the department of state police shall provide a copy to the submitting sheriff's department or local police agency as appropriate and the clerk of the appropriate concealed weapon licensing board. Beginning December 1, 2015, within 5 business days of completing the verification under subsection (6), the department shall send the county clerk a list of an applicant's statutory disqualifications under this act. Until November 30, 2015, and except as provided in subsection (14), the concealed weapon licensing board shall not issue a concealed pistol license until it receives the fingerprint comparison report prescribed in this subsection. Beginning December 1, 2015, and except as provided in section 5a(4), the county clerk shall not issue a concealed pistol license until he or she receives the report of statutory disqualifications prescribed in this subsection. Beginning December 1, 2015, if an individual's fingerprints are not classifiable, the department of state police shall, at no charge, take the individual's fingerprints again or provide for the comparisons under this subsection to be conducted through alternative means. Until November 30, 2015, the concealed weapon licensing board may deny a license if an individual's fingerprints are not classifiable by the Federal Bureau of Investigation. Beginning December 1, 2015, the county clerk shall not issue a notice of statutory disqualification because an individual's fingerprints are not classifiable by the Federal Bureau of Investigation.

(11) Until November 30, 2015, the concealed weapon licensing board shall deny a license to an applicant to carry a concealed pistol if the applicant is not qualified under subsection (7) to receive that license. Beginning December 1, 2015, the county clerk shall send by first-class mail a notice of statutory disqualification for a license under this act to an applicant if the applicant is not qualified under subsection (7) to receive that license.

(12) A license to carry a concealed pistol that is issued based upon an application that contains a material false statement is void from the date the license is issued.

(13) Until November 30, 2015, and subject to subsections (10) and (14), the concealed weapon licensing board shall issue or deny issuance of a license within 45 days after the concealed weapon licensing board receives the fingerprint comparison report provided under subsection (10). Beginning December 1, 2015, and subject to subsection (10), the department of state police shall complete the verification required under subsection (6) and the county clerk shall issue a license or a notice of statutory disqualification within 45 days after the date the applicant has classifiable fingerprints taken under subsection (9). Beginning December 1, 2015, the county clerk shall include an indication on the license if an individual is exempt from the prohibitions against carrying a concealed pistol on premises described in section 5o if the applicant provides acceptable proof that he or she qualifies for that exemption. Until November 30, 2015, if the concealed weapon licensing board denies issuance of a license to carry a concealed pistol, or beginning December 1, 2015, if the county clerk issues a notice of statutory disqualification, the concealed weapon licensing board or

the county clerk, as appropriate, shall within 5 business days do all of the following:

(a) Inform the applicant in writing of the reasons for the denial or disqualification. Information under this subdivision shall include all of the following:

(i) Until November 30, 2015, a statement of the specific and articulable facts supporting the denial. Beginning December 1, 2015, a statement of each statutory disqualification identified.

(ii) Until November 30, 2015, copies of any writings, photographs, records, or other documentary evidence upon which the denial is based. Beginning December 1, 2015, the source of the record for each statutory disqualification identified.

(iii) Beginning December 1, 2015, the contact information for the source of the record for each statutory disqualification identified.

(b) Inform the applicant in writing of his or her right to appeal the denial or notice of statutory disqualification to the circuit court as provided in section 5d.

(c) Beginning December 1, 2015, inform the applicant that he or she should contact the source of the record for any statutory disqualification to correct any errors in the record resulting in the statutory disqualification.

(14) Until November 30, 2015, if the fingerprint comparison report is not received by the concealed weapon licensing board within 60 days after the fingerprint report is forwarded to the department of state police by the Federal Bureau of Investigation, the concealed weapon licensing board shall issue a temporary license to carry a concealed pistol to the applicant if the applicant is otherwise qualified for a license. Until November 30, 2015, a temporary license issued under this section is valid for 180 days or until the concealed weapon licensing board receives the fingerprint comparison report provided under subsection (10) and issues or denies issuance of a license to carry a concealed pistol as otherwise provided under this act. Until November 30, 2015, upon issuance or the denial of issuance of the license to carry a concealed pistol to an applicant who received a temporary license under this section, the applicant shall immediately surrender the temporary license to the concealed weapon licensing board that issued that temporary license. Beginning December 1, 2015, if a license or notice of statutory disqualification is not issued under subsection (13) within 45 days after the date the applicant has classifiable fingerprints taken under subsection (9), the receipt issued under subsection (9) shall serve as a concealed pistol license for purposes of this act when carried with a state-issued driver license or personal identification card and is valid until a license or notice of statutory disqualification is issued by the county clerk.

(15) If an individual licensed under this act to carry a concealed pistol moves to a different county within this state, his or her license remains valid until it expires or is otherwise suspended or revoked under this act. Beginning December 1, 2015, an individual may notify a county clerk that he or she has moved to a different address within this state for the purpose of receiving the notice under section 5l(1). A license to carry a concealed pistol that is lost, stolen, or defaced may be replaced by the issuing county clerk for a replacement fee of \$10.00. A county clerk shall deposit a replacement fee under this subsection in the concealed pistol licensing fund of that county created in section 5x.

(16) If a license issued under this act is suspended or revoked, the license is forfeited and the individual shall return the license to the county clerk forthwith by mail or in person. Beginning December 1, 2015, the county clerk shall retain a suspended or revoked license as an official record 1 year after the expiration of the license, unless the license is reinstated or a new license is issued. Beginning December 1, 2015, the county clerk shall notify the department of state police if a license is suspended or revoked. Beginning December 1, 2015, the department of state police shall enter that suspension or revocation into the law enforcement information network. An individual who fails to return a license as required under this subsection after he or she was notified that his or her license was suspended or revoked is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

(17) An applicant or an individual licensed under this act to carry a concealed pistol may be furnished a copy of his or her application under this section upon request and the payment of a reasonable fee not to exceed \$1.00. The county clerk shall deposit any fee collected under this subsection in the concealed pistol licensing fund of that county created in section 5x.

(18) This section does not prohibit the county clerk from making public and distributing to the public at no cost lists of individuals who are certified as qualified instructors as prescribed under section 5j.

(19) Beginning December 1, 2015, a county clerk issuing an initial license or renewal license under this act shall mail the license to the licensee by first-class mail in a sealed envelope. Beginning December 1, 2015, upon payment of the fee under subsection (15), a county clerk shall issue a replacement license in person at the time of application for a replacement license unless the applicant requests that it be delivered by first-class mail.

(20) A county clerk, county sheriff, county prosecuting attorney, police department, or the department of

state police is not liable for civil damages as a result of the issuance of a license under this act to an individual who later commits a crime or a negligent act.

(21) Beginning December 1, 2015, an individual licensed under this act to carry a concealed pistol may voluntarily surrender that license without explanation. Beginning December 1, 2015, a county clerk shall retain a surrendered license as an official record for 1 year after the license is surrendered. Beginning December 1, 2015, if an individual voluntarily surrenders a license under this subsection, the county clerk shall notify the department of state police. Beginning December 1, 2015, the department of state police shall enter into the law enforcement information network that the license was voluntarily surrendered and the date the license was voluntarily surrendered.

(22) As used in this section:

(a) "Acceptable proof" means any of the following:

(i) For a retired police officer or retired law enforcement officer, the officer's retired identification or a letter from a law enforcement agency stating that the retired police officer or law enforcement officer retired in good standing.

(ii) For an individual who is employed or contracted by an entity described under section 5o(1) to provide security services, a letter from that entity stating that the employee is required by his or her employer or the terms of a contract to carry a concealed firearm on the premises of the employing or contracting entity and his or her employee identification.

(iii) For an individual who is licensed as a private investigator or private detective under the professional investigator licensure act, 1965 PA 285, MCL 338.821 to 338.851, his or her license.

(iv) For an individual who is a corrections officer of a county sheriff's department, his or her employee identification.

(v) For an individual who is a motor carrier officer or capitol security officer of the department of state police, his or her employee identification.

(vi) For an individual who is a member of a sheriff's posse, his or her identification.

(vii) For an individual who is an auxiliary officer or reserve officer of a police or sheriff's department, his or her employee identification.

(viii) For an individual who is a parole or probation officer of the department of corrections, his or her employee identification.

(ix) For a state court judge or state court retired judge, a letter from the judicial tenure commission stating that the state court judge or state court retired judge is in good standing.

(x) For an individual who is a court officer, his or her employee identification.

(xi) For a retired federal law enforcement officer, the identification required under the law enforcement officers safety act or a letter from a law enforcement agency stating that the retired federal law enforcement officer retired in good standing.

(b) "Convicted" means a final conviction, the payment of a fine, a plea of guilty or nolo contendere if accepted by the court, or a finding of guilt for a criminal law violation or a juvenile adjudication or disposition by the juvenile division of probate court or family division of circuit court for a violation that if committed by an adult would be a crime.

(c) "Felony" means, except as otherwise provided in this subdivision, that term as defined in section 1 of chapter I of the code of criminal procedure, 1927 PA 175, MCL 761.1, or a violation of a law of the United States or another state that is designated as a felony or that is punishable by death or by imprisonment for more than 1 year. Felony does not include a violation of a penal law of this state that is expressly designated as a misdemeanor.

(d) "Mental illness" means a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life, and includes, but is not limited to, clinical depression.

(e) "Misdemeanor" means a violation of a penal law of this state or violation of a local ordinance substantially corresponding to a violation of a penal law of this state that is not a felony or a violation of an order, rule, or regulation of a state agency that is punishable by imprisonment or a fine that is not a civil fine, or both.

(f) "Treatment" means care or any therapeutic service, including, but not limited to, the administration of a drug, and any other service for the treatment of a mental illness.

History: Add. 2000, Act 381, Eff. July 1, 2001;—Am. 2002, Act 719, Eff. July 1, 2003;—Am. 2003, Act 31, Imd. Eff. July 1, 2003;—Am. 2006, Act 350, Imd. Eff. Sept. 18, 2006;—Am. 2008, Act 406, Imd. Eff. Jan. 6, 2009;—Am. 2014, Act 207, Eff. Dec. 21, 2014;—Am. 2015, Act 3, Eff. June 2, 2015;—Am. 2015, Act 16, Eff. July 13, 2015.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.425c License; form; contents; authorized conduct; photograph.

Sec. 5c. (1) A license to carry a concealed pistol shall be in a form, with the same dimensions as a Michigan operator license, prescribed by the department of state police. Beginning December 1, 2015, the license shall be constructed of plastic laminated paper or hard plastic. No additional fee shall be charged for the license unless otherwise prescribed in this act. A fee not to exceed \$10.00 may be charged for an optional hard plastic license only if the county clerk also provides the option of obtaining a plastic laminated paper license at no charge. A county clerk shall deposit a fee collected under this subsection in the concealed pistol licensing fund of that county created in section 5x. The license shall contain all of the following:

- (a) The licensee's full name and date of birth.
- (b) A photograph and a physical description of the licensee.
- (c) A statement of the effective dates of the license.
- (d) An indication of exceptions authorized by this act applicable to the licensee.
- (e) The licensee's state-issued driver license or personal identification card number.
- (f) The premises on which carrying a concealed pistol is prohibited under section 5o.
- (g) The peace officer disclosure required under section 5f(3).
- (h) An indication whether the license is a duplicate or an emergency license.
- (i) If the license is an emergency license, an indication that the emergency license does not exempt the individual from complying with all applicable laws for the purchase of firearms.

(2) The department of state police or a county clerk shall not require a licensee's signature to appear on a license to carry a concealed pistol.

(3) Subject to section 5o and except as otherwise provided by law, a license to carry a concealed pistol issued by the county clerk authorizes the licensee to do all of the following:

- (a) Carry a pistol concealed on or about his or her person anywhere in this state.
- (b) Carry a pistol in a vehicle, whether concealed or not concealed, anywhere in this state.

(4) The secretary of state shall make a digitized photograph taken of the applicant for a driver license or personal identification card available to the department for use under this act. The department shall provide the photograph of the applicant received from the secretary of state to the county clerk who shall use the photograph on the individual's license unless the applicant does not have a digitized photograph on file with the secretary of state. If an applicant does not have a digitized photograph on file with the secretary of state, the applicant shall provide a passport-quality photograph of the applicant as provided under section 5b(1).

History: Add. 2000, Act 381, Eff. July 1, 2001;—Am. 2002, Act 719, Eff. July 1, 2003;—Am. 2015, Act 3, Eff. Dec. 1, 2015.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.425d Denial or failure to issue notice of statutory disqualification, receipt, or license; appeal.

Sec. 5d. (1) If the county clerk issues a notice of statutory disqualification, fails to provide a receipt that complies with section 5b(1) or 5l(3), or fails to issue a license to carry a concealed pistol as provided in this act, the department of state police fails to provide a receipt that complies with section 5l(3), or the county clerk, department of state police, county sheriff, local police agency, or other entity fails to provide a receipt that complies with section 5b(9), the applicant may appeal the notice of statutory disqualification, the failure to provide a receipt, or the failure to issue the license to the circuit court in the judicial circuit in which he or she resides. The appeal of the notice of statutory disqualification, failure to provide a receipt, or failure to issue a license shall be determined by a review of the record for error.

(2) If the court determines that the notice of statutory disqualification, failure to provide a receipt that complies with section 5b(1) or (9) or 5l(3), or failure to issue a license was clearly erroneous or was arbitrary and capricious, the court shall order the county clerk to issue a license or receipt as required by this act. For applications submitted after November 30, 2015, if the court determines that the notice of statutory disqualification, failure to provide a receipt that complies with section 5b(1) or (9) or 5l(3), or failure to issue

a license was clearly erroneous, the court may order an entity to refund any filing fees the applicant incurred in filing the appeal, according to the degree of responsibility of that entity.

(3) For applications submitted before December 1, 2015, if the court determines that the decision of the concealed weapon licensing board to deny issuance of a license to an applicant was arbitrary and capricious, the court shall order this state to pay 1/3 and the county in which the concealed weapon licensing board is located to pay 2/3 of the actual costs and actual attorney fees of the applicant in appealing the denial. For applications submitted on or after December 1, 2015, if the court under subsection (2) determines that the notice of statutory disqualification, failure to provide a receipt that complies with section 5b(1) or (9) or 5l(3), or failure to issue a license to an applicant was arbitrary and capricious, the court shall order the county clerk, the entity taking the fingerprints, or the state to pay the actual costs and actual attorney fees of the applicant in appealing the notice of statutory disqualification, failure to provide a receipt that complies with section 5b(1) or (9) or 5l(3), or failure to issue a license, according to the degree of responsibility of the county clerk, the entity taking the fingerprints, or the state.

(4) If the court determines that an applicant's appeal was frivolous, the court shall order the applicant to pay the actual costs and actual attorney fees of the county clerk, entity taking the fingerprints, or the state in responding to the appeal.

History: Add. 2000, Act 381, Eff. July 1, 2001;—Am. 2002, Act 719, Eff. July 1, 2003;—Am. 2015, Act 3, Eff. Dec. 1, 2015.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.425e Database; annual report.

Sec. 5e. (1) The department of state police shall create and maintain a computerized database of individuals who apply under this act for a license to carry a concealed pistol. The database shall contain only the following information as to each individual:

(a) The individual's name, date of birth, address, county of residence, and state-issued driver license or personal identification card number.

(b) If the individual is licensed to carry a concealed pistol in this state, the license number and date of expiration.

(c) Except as provided in subsection (2), if the individual was denied a license to carry a concealed pistol after July 1, 2001 or issued a notice of statutory disqualification, a statement of the reasons for that denial or notice of statutory disqualification.

(d) A statement of all criminal charges pending and criminal convictions obtained against the individual during the license period.

(e) A statement of all determinations of responsibility for civil infractions of this act pending or obtained against the individual during the license period.

(f) The status of the individual's application or license.

(2) If an individual who was denied a license to carry a concealed pistol after July 1, 2001 or issued a notice of statutory disqualification is subsequently issued a license to carry a concealed pistol, the department of state police shall delete from the computerized database the previous reasons for the denial or notice of statutory disqualification.

(3) The department of state police shall enter the information described in subsection (1)(a), (b), and (f) into the law enforcement information network.

(4) Information in the database shall only be accessed and disclosed according to an access protocol that includes the following requirements:

(a) That the requestor of the firearms records uses the law enforcement information network or another system that maintains a record of the requestor's identity, time, and date that the request was made.

(b) Requires the requestor in an intentional query by name of the firearms records to attest that the firearms records were sought under 1 of the lawful purposes provided in section 1b(2).

(5) The department of state police shall by January 1 of each year file with the secretary of the senate and the clerk of the house of representatives, and post on the department of state police's internet website, an annual report setting forth all of the following information for the state for the previous fiscal year:

(a) The number of concealed pistol applications received.

(b) The number of concealed pistol licenses issued.

(c) The number of statutorily disqualified applicants.

- (d) Categories for statutory disqualification under subdivision (c).
- (e) The number of concealed pistol licenses suspended or revoked.
- (f) Categories for suspension or revocation under subdivision (e).
- (g) The number of applications pending at the time the report is made.
- (h) The mean and median amount of time and the longest and shortest amount of time used by the Federal Bureau of Investigation to supply the fingerprint comparison report required in section 5b(10). The department may use a statistically significant sample to comply with this subdivision.
- (i) The total number of individuals licensed to carry a concealed pistol found responsible for a civil violation of this act, the total number of civil violations of this act categorized by offense, the total number of individuals licensed to carry a concealed pistol convicted of a crime, and the total number of those criminal convictions categorized by offense.
- (j) The number of suicides by individuals licensed to carry a concealed pistol.
- (k) The total amount of revenue the department of state police has received under this act.
- (l) Actual costs incurred per initial and renewal license by the department of state police under this act, itemized by each statutory section of this act.
- (m) A list of expenditures made by the department of state police from money received under this act, regardless of purpose.
- (n) Actual costs incurred per permit for each county clerk.
- (o) The number of times the database was accessed, categorized by the purpose for which the database was accessed.

History: Add. 2000, Act 381, Eff. July 1, 2001;—Am. 2014, Act 204, Eff. Dec. 21, 2014;—Am. 2015, Act 3, Eff. Dec. 1, 2015.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.425f Concealed pistol license; possession; disclosure to peace officer; violation; fine; notice to department; suspension or revocation by county clerk; entry into law enforcement information network; seizure by peace officer; forfeiture; "peace officer" defined.

Sec. 5f. (1) An individual who is licensed to carry a concealed pistol shall have his or her license to carry that pistol and his or her state-issued driver license or personal identification card in his or her possession at all times he or she is carrying a concealed pistol or a portable device that uses electro-muscular disruption technology.

(2) An individual who is licensed to carry a concealed pistol and who is carrying a concealed pistol or a portable device that uses electro-muscular disruption technology shall show both of the following to a peace officer upon request by that peace officer:

- (a) His or her license to carry a concealed pistol.
- (b) His or her state-issued driver license or personal identification card.

(3) An individual licensed under this act to carry a concealed pistol and who is carrying a concealed pistol or a portable device that uses electro-muscular disruption technology and who is stopped by a peace officer shall immediately disclose to the peace officer that he or she is carrying a pistol or a portable device that uses electro-muscular disruption technology concealed upon his or her person or in his or her vehicle.

(4) An individual who violates subsection (1) or (2) is responsible for a state civil infraction and shall be fined \$100.00.

(5) An individual who violates subsection (3) is responsible for a state civil infraction and shall be fined as follows:

(a) For a first offense, by a fine of \$500.00 and by the individual's license to carry a concealed pistol being suspended for 6 months.

(b) For a subsequent offense within 3 years of a prior offense, by a fine of \$1,000.00 and by the individual's license to carry a concealed pistol being revoked.

(6) If an individual is found responsible for a state civil infraction under subsection (5), the peace officer shall notify the department of state police of that civil infraction. The department of state police shall notify the county clerk who issued the license, who shall suspend or revoke that license. The county clerk shall send notice by first-class mail of that suspension or revocation to the individual's last known address as indicated in the records of the county clerk. The department of state police shall immediately enter that suspension or

revocation into the law enforcement information network.

(7) A pistol or portable device that uses electro-muscular disruption technology carried in violation of this section is subject to immediate seizure by a peace officer. If a peace officer seizes a pistol or portable device that uses electro-muscular disruption technology under this subsection, the individual has 45 days in which to display his or her license or documentation to an authorized employee of the law enforcement entity that employs the peace officer. If the individual displays his or her license or documentation to an authorized employee of the law enforcement entity that employs the peace officer within the 45-day period, the authorized employee of that law enforcement entity shall return the pistol or portable device that uses electro-muscular disruption technology to the individual unless the individual is prohibited by law from possessing a firearm or portable device that uses electro-muscular disruption technology. If the individual does not display his or her license or documentation within the 45-day period, the pistol or portable device that uses electro-muscular disruption technology is subject to forfeiture as provided in section 5g. A pistol or portable device that uses electro-muscular disruption technology is not subject to immediate seizure under this subsection if both of the following circumstances exist:

(a) The individual has his or her state-issued driver license or personal identification card in his or her possession when the violation occurs.

(b) The peace officer verifies through the law enforcement information network that the individual is licensed to carry a concealed pistol.

(8) As used in this section, "peace officer" includes a motor carrier officer appointed under section 6d of 1935 PA 59, MCL 28.6d, and security personnel employed by the state under section 6c of 1935 PA 59, MCL 28.6c.

History: Add. 2000, Act 381, Eff. July 1, 2001;—Am. 2002, Act 719, Eff. July 1, 2003;—Am. 2008, Act 194, Eff. Jan. 7, 2009;—Am. 2012, Act 123, Eff. Aug. 6, 2012;—Am. 2015, Act 3, Eff. Dec. 1, 2015.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.425g Pistol or portable device that uses electro-muscular disruption technology; subject to seizure and forfeiture; exception.

Sec. 5g. A pistol or portable device that uses electro-muscular disruption technology carried in violation of this act is subject to seizure and forfeiture in the same manner that property is subject to seizure and forfeiture under sections 4701 to 4709 of the revised judicature act of 1961, 1961 PA 236, MCL 600.4701 to 600.4709. This section does not apply if the violation is a state civil infraction under section 5f unless the individual fails to present his or her license within the 45-day period described in that section.

History: Add. 2000, Act 381, Eff. July 1, 2001;—Am. 2012, Act 123, Eff. Aug. 6, 2012.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.425h Expiration of license issued under former law; renewal license.

Sec. 5h. (1) An individual who is licensed to carry a concealed pistol on the effective date of the amendatory act that added this section may carry a concealed pistol under that license until the license expires or the individual's authority to carry a concealed pistol under that license is otherwise terminated, whichever occurs first.

(2) An individual who is licensed under this act to carry a concealed pistol on the effective date of the amendatory act that added this section may apply for a renewal license upon the expiration of that license as provided in section 5l.

History: Add. 2000, Act 381, Eff. July 1, 2001.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.425i Instruction or training; liability.

Sec. 5i. (1) A person or entity that provides instruction or training to another person under section 5b is immune from civil liability for damages to any person or property caused by the person who was trained.

(2) This section does not apply if the person or entity providing the instruction or training was grossly negligent.

(3) This section is in addition to and not in lieu of immunity otherwise provided by law.

History: Add. 2000, Act 381, Eff. July 1, 2001.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.425j Pistol training or safety program; conditions; prohibited conduct; violation; certificate of completion.

Sec. 5j. (1) A pistol training or safety program described in section 5b(7)(c) meets the requirements for knowledge or training in the safe use and handling of a pistol only if the training was provided within 5 years preceding the date of application and consisted of not less than 8 hours of instruction and all of the following conditions are met:

(a) The program is certified by this state or a national or state firearms training organization and provides 5 hours of instruction in, but is not limited to providing instruction in, all of the following:

(i) The safe storage, use, and handling of a pistol including, but not limited to, safe storage, use, and handling to protect child safety.

(ii) Ammunition knowledge, and the fundamentals of pistol shooting.

(iii) Pistol shooting positions.

(iv) Firearms and the law, including civil liability issues and the use of deadly force. This portion shall be taught by an attorney or an individual trained in the use of deadly force.

(v) Avoiding criminal attack and controlling a violent confrontation.

(vi) All laws that apply to carrying a concealed pistol in this state.

(b) The program provides at least 3 hours of instruction on a firing range and requires firing at least 30 rounds of ammunition.

(c) The program provides a certificate of completion that states the program complies with the requirements of this section and that the individual successfully completed the course, and that contains the printed name and signature of the course instructor. The certificate of completion shall contain the statement, "This course complies with section 5j of 1927 PA 372.". For certificates issued on or after December 1, 2015, each certificate shall also contain both of the following, which shall be printed on the face of the certificate or attached in a separate document:

(i) The instructor's name and telephone number.

(ii) The name and telephone number of the state agency or a state or national firearms training organization that has certified the individual as an instructor for purposes of this section, his or her instructor certification number, if any, and the expiration date of that certification.

(d) The instructor of the course is certified by this state or a state or national firearms training organization to teach the pistol safety training courses described in this section. The county clerk shall not require any other certification or require an instructor to register with the county or county clerk.

(2) A training certificate that does not meet the requirements under state law applicable at the time the certification was issued may otherwise meet the requirements of subsection (1)(c) if the applicant provides information that reasonably demonstrates that the certificate or the training meets the applicable requirements.

(3) A person shall not do either of the following:

(a) Grant a certificate of completion described under subsection (1)(c) to an individual knowing the individual did not satisfactorily complete the course.

(b) Present a certificate of completion described under subsection (1)(c) to a county clerk knowing that the individual did not satisfactorily complete the course.

(4) A person who violates subsection (3) is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,500.00, or both.

(5) A county clerk shall not require that a specific form, color, wording, or other content appear on a certificate of completion, except as otherwise required under this act.

History: Add. 2000, Act 381, Eff. July 1, 2001;—Am. 2002, Act 719, Eff. July 1, 2003;—Am. 2004, Act 254, Imd. Eff. July 23, 2004;—Am. 2015, Act 3, Eff. Dec. 1, 2015.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.425k Acceptance of license as implied consent to submit to chemical analysis of breath, blood, or urine; collection and testing; refusal to take chemical test; definitions.

Sec. 5k. (1) Acceptance of a license issued under this act to carry a concealed pistol constitutes implied consent to submit to a chemical analysis under this section. This section also applies to individuals listed in section 12a.

(2) An individual shall not carry a concealed pistol or portable device that uses electro-muscular disruption technology while he or she is under the influence of alcoholic liquor or a controlled substance or while having a bodily alcohol content prohibited under this section. An individual who violates this section is responsible for a state civil infraction or guilty of a crime as follows:

(a) If the person was under the influence of alcoholic liquor or a controlled substance or a combination of alcoholic liquor and a controlled substance, or had a bodily alcohol content of .10 or more grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, the individual is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or \$100.00, or both. The court shall order the county clerk in the county in which the individual was issued a license to carry a concealed pistol to revoke the license. The county clerk shall notify the department of state police of the revocation in a manner prescribed by the department of state police. The department of state police shall immediately enter that revocation into the law enforcement information network.

(b) If the person had a bodily alcohol content of .08 or more but less than .10 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, the individual is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or \$100.00, or both. The court shall order the county clerk in the county in which the individual was issued a license to carry a concealed pistol to suspend the license for 3 years. The county clerk shall notify the department of state police of that suspension in a manner prescribed by the department of state police. The department of state police shall immediately enter that suspension into the law enforcement information network.

(c) If the person had a bodily alcohol content of .02 or more but less than .08 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, the individual is responsible for a state civil infraction and shall be fined \$100.00. The peace officer shall notify the department of state police of a civil infraction under this subdivision. The department of state police shall notify the county clerk in the county in which the individual was issued the license, who shall suspend the license for 1 year. The department of state police shall immediately enter that suspension into the law enforcement information network.

(3) This section does not prohibit an individual licensed under this act to carry a concealed pistol who has any bodily alcohol content from doing any of the following:

(a) Transporting that pistol in the locked trunk of his or her motor vehicle or another motor vehicle in which he or she is a passenger or, if the vehicle does not have a trunk, from transporting that pistol unloaded in a locked compartment or container that is separated from the ammunition for that pistol.

(b) Transporting that pistol on a vessel if the pistol is transported unloaded in a locked compartment or container that is separated from the ammunition for that pistol.

(c) Transporting a portable device using electro-muscular disruption technology in the locked trunk of his or her motor vehicle or another motor vehicle in which he or she is a passenger, or, if the vehicle does not have a trunk, from transporting that portable device in a locked compartment or container.

(d) Transporting a portable device using electro-muscular disruption technology on a vessel if the portable device is transported in a locked compartment or container.

(4) A peace officer who has probable cause to believe an individual is carrying a concealed pistol or a portable device using electro-muscular disruption technology in violation of this section may require the individual to submit to a chemical analysis of his or her breath, blood, or urine.

(5) Before an individual is required to submit to a chemical analysis under subsection (4), the peace officer shall inform the individual of all of the following:

(a) The individual may refuse to submit to the chemical analysis, but if he or she chooses to do so, all of the following apply:

- (i) The officer may obtain a court order requiring the individual to submit to a chemical analysis.
- (ii) The refusal shall result in his or her license to carry a concealed pistol being suspended for 6 months.
- (b) If the individual submits to the chemical analysis, he or she may obtain a chemical analysis described in subsection (4) from a person of his or her own choosing.
- (6) The collection and testing of breath, blood, and urine specimens under this section shall be conducted in the same manner that breath, blood, and urine specimens are collected and tested for alcohol- and controlled-substance-related driving violations under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.
- (7) If a person refuses to take a chemical test authorized under this section, the person is responsible for a state civil infraction and shall be fined \$100.00. A peace officer shall promptly report the refusal in writing to the department of state police. The department of state police shall notify the county clerk in the county in which the license was issued, who shall suspend the license for 6 months. The department of state police shall immediately enter that suspension into the law enforcement information network.
- (8) As used in this section:
- (a) "Alcoholic liquor" means that term as defined in section 105 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1105.
- (b) "Controlled substance" means that term as defined in section 7104 of the public health code, 1978 PA 368, MCL 333.7104.
- (c) "Under the influence of alcoholic liquor or a controlled substance" means that the individual's ability to properly handle a pistol or to exercise clear judgment regarding the use of that pistol was substantially and materially affected by the consumption of alcoholic liquor or a controlled substance.

History: Add. 2000, Act 381, Eff. July 1, 2001;—Am. 2012, Act 123, Eff. Aug. 6, 2012;—Am. 2015, Act 3, Eff. Dec. 1, 2015.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.425/ License; validity; duration; renewal; waiver of educational requirements; fingerprints.

Sec. 5l. (1) A license to carry a concealed pistol, including a renewal license, is valid until the applicant's date of birth that falls not less than 4 years or more than 5 years after the license is issued or renewed, as applicable. Beginning December 1, 2015, the county clerk shall notify the licensee that his or her license is about to expire and may be renewed as provided in this section. The notification shall be sent by the county clerk to the last known address of the licensee as shown on the records of the county clerk. The notification shall be sent in a sealed envelope by first-class mail not less than 3 months or more than 6 months before the expiration date of the current license. Except as provided in this section, a renewal of a license under section 5b shall be issued in the same manner as an original license issued under section 5b. Beginning December 1, 2015, an applicant is eligible for a renewal of a license under this section if his or her license is not expired, or expired within a 1-year period before the date of application under this section. Beginning December 1, 2015, each applicant who submits an application for a renewal license to a county clerk under this section shall pay an application and licensing fee of \$115.00 by any method of payment accepted by that county for payments of other fees and penalties. No other charge, fee, cost, or assessment, including any local charge, fee, cost, or assessment, is required of the applicant except as specifically authorized in this act. The application and licensing fee shall be payable to the county. The county treasurer shall deposit \$36.00 of each fee collected under this subsection in the concealed pistol licensing fund of that county created in section 5x. The county treasurer shall forward the balance remaining to the state treasurer. The state treasurer shall deposit the balance of the fee in the general fund to the credit of the department of state police.

(2) Subject to subsections (8) and (9), an application to renew a license to carry a concealed pistol may be submitted not more than 6 months before the expiration of the current license. No later than December 1, 2018, the department of state police shall provide a system for an applicant to submit his or her application to renew a license to carry a concealed pistol online or by first-class mail and shall accept those applications on behalf of the county clerk as required under this act at no additional charge. Each applicant who submits a renewal license online or by first-class mail to the department of state police under this section shall pay an application and licensing fee of \$115.00 by any method of payment accepted by the department of state police. No other charge, fee, cost, or assessment is required of the applicant except as specifically authorized in this act. The application and licensing fee shall be payable to the state. The state treasurer shall forward \$36.00 of each fee collected under this subsection to the county treasurer who shall deposit the \$36.00 in the

concealed pistol licensing fund of that county created in section 5x. The state treasurer shall deposit the balance of the fee in the general fund to the credit of the department of state police. The department of state police shall notify the county clerk of the county in which the applicant resides of a properly submitted online application or application by first-class mail received by the department. Beginning December 1, 2015, if the county clerk issues a renewal license under this section, the county clerk shall send the license to the licensee by first-class mail in a sealed envelope. If the concealed weapon licensing board approves or county clerk issues the renewal, the effective date of the renewal license is the date of expiration of the current license or the date of approval or issue of the renewal, whichever is later, and the date of expiration is the applicant's date of birth which is not less than 4 years or more than 5 years from the effective date of the license.

(3) Until November 30, 2015, the concealed weapon licensing board shall issue or deny issuance of a renewal license within 60 days after the application for renewal is properly submitted. The county clerk shall issue the applicant a receipt for his or her renewal application at the time the application is submitted to the county clerk. Beginning December 1, 2015, the department of state police shall complete the verification required under section 5b(6) and the county clerk shall issue a renewal license or a notice of statutory disqualification within 30 days after the date the renewal application was received. Beginning on the date the department of state police establishes a system under subsection (2), the department of state police shall provide an applicant a digital receipt, or a receipt by first-class mail if requested, for his or her renewal application submitted online at the time the application is received by the department of state police. Beginning on the date the department of state police establishes a system under subsection (2), the department of state police shall mail an applicant a receipt by first-class mail for his or her renewal application submitted by first-class mail at the time the application is received by the department of state police. The receipt issued under this subsection shall contain all of the following:

- (a) The name of the applicant.
- (b) The date and time the receipt is issued.
- (c) The amount paid.

(d) Beginning December 1, 2015, the applicant's state-issued driver license or personal identification card number.

(e) Until November 30, 2015, the statement that the receipt is for a license renewal. Beginning December 1, 2015, the statement "This receipt was issued for the purpose of renewal of a concealed pistol license. As provided in section 5l of 1927 PA 372, MCL 28.425l, this receipt shall serve as a concealed pistol license for the individual named in the receipt when carried with the expired license and is valid until a license or notice of statutory disqualification is issued by the county clerk. This receipt does not exempt the individual named in the receipt from complying with all applicable laws for the purchase of firearms."

(f) Until November 30, 2015, a statement of whether the applicant qualifies for an extension under subsection (5).

- (g) The name of the county in which the receipt is issued, if applicable.
- (h) An impression of the county seal, if applicable.

(4) Until November 30, 2018, a member of the United States armed forces, the United States armed forces reserve, or the Michigan National Guard who is on orders to a duty station outside of this state may submit his or her application to renew a license to carry a concealed pistol by first-class mail, containing the required fee, a notarized application, the licensee's address of record within the state, the licensee's orders to report to a duty station outside of this state, and if the licensee desires to have his or her application receipt, renewal license, or any other notices mailed to his or her address of assignment or deployment, a letter requesting that action including the address of assignment or deployment. If the concealed weapon licensing board approves or a county clerk issues a renewal license under this section, the county clerk shall send the license to the licensee by first-class mail in a sealed envelope. If the licensee is a member of the United States armed forces, the United States armed forces reserve, or the Michigan National Guard who is on orders to a duty station outside of this state and requests that his or her license be sent to the address of assignment or deployment, the county clerk shall mail the license to the licensee at the address of assignment or deployment provided in the renewal application. Until November 30, 2018, if a renewal application is submitted by a member of the United States armed forces, the United States armed forces reserve, or the Michigan National Guard who is on orders to a duty station outside of this state, the county clerk shall mail a receipt to the licensee by first-class mail.

(5) Until November 30, 2015, if the concealed weapon licensing board fails to deny or issue a renewal license to the person within 60 days as required under subsection (4), the expiration date of the current license is extended by 180 days or until the renewal license is issued, whichever occurs first. This subsection does not apply unless the person pays the renewal fee at the time the renewal application is submitted and the person has submitted a receipt from a police agency that confirms that a background check has been requested by the

applicant. Beginning December 1, 2015, if an individual applies for a renewal license before the expiration of his or her license, the expiration date of the current license is extended until the renewal license or notice of statutory disqualification is issued. Beginning December 1, 2015, the county clerk shall notify the department of state police in a manner prescribed by the department of state police after he or she receives an application for renewal. Beginning December 1, 2015, the department of state police shall immediately enter into the law enforcement information network the date that application for renewal was submitted and that the renewal application is pending.

(6) A person carrying a concealed pistol after the expiration date of his or her license under an extension under subsection (5) shall keep the receipt issued by the county clerk under subsection (3) and his or her expired license in his or her possession at all times that he or she is carrying the pistol. For the purposes of this act, the receipt is considered to be part of the license to carry a concealed pistol until a renewal license is issued or denied or a notice of statutory disqualification is issued.

(7) The educational requirements under section 5b(7)(c) are waived for an applicant who is a retired police officer or retired law enforcement officer.

(8) The educational requirements under section 5b(7)(c) for an applicant who is applying for a renewal of a license under this act are waived except that the applicant shall certify that he or she has completed at least 3 hours' review of the training described under section 5b(7)(c) and has had at least 1 hour of firing range time in the 6 months immediately preceding the subsequent application. Beginning December 1, 2015, the educational and firing range requirements of this subsection are met if the applicant certifies on the renewal application form that he or she has complied with the requirements of this subsection. Beginning December 1, 2015, an applicant is not required to verify the statements made under this subsection and is not required to obtain a certificate or undergo training other than as required by this subsection.

(9) An applicant who is applying for a renewal of a license issued under section 5b is not required to have fingerprints taken again under section 5b(9) if all of the following conditions have been met:

(a) There has been established a system for the department of state police to save and maintain in its automated fingerprint identification system (AFIS) database all fingerprints that are submitted to the department of state police under section 5b.

(b) The applicant's fingerprints have been submitted to and maintained by the department of state police as described in subdivision (a) for ongoing comparison with the automated fingerprint identification system (AFIS) database.

History: Add. 2000, Act 381, Eff. July 1, 2001;—Am. 2002, Act 719, Eff. July 1, 2003;—Am. 2005, Act 262, Eff. July 1, 2006;—Am. 2006, Act 92, Eff. July 1, 2006;—Am. 2006, Act 184, Imd. Eff. June 19, 2006;—Am. 2006, Act 456, Imd. Eff. Dec. 20, 2006;—Am. 2008, Act 406, Imd. Eff. Jan. 6, 2009;—Am. 2012, Act 32, Imd. Eff. Feb. 28, 2012;—Am. 2015, Act 3, Eff. June 2, 2015.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.425m Repealed. 2015, Act 3, Eff. June 2, 2015.

Compiler's note: The repealed section pertained to notification to county concealed weapon licensing board of criminal charge against license holder.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.425n Other license or permit; limitations by employer prohibited.

Sec. 5n. (1) This state or a local unit of government of this state shall not prohibit an individual from doing either of the following as a condition for receiving or maintaining any other license or permit authorized by law:

(a) Applying for or receiving a license to carry a concealed pistol under this act.

(b) Carrying a concealed pistol in compliance with a license issued under this act.

(2) Except as provided in subsection (3), an employer shall not prohibit an employee from doing either of the following:

(a) Applying for or receiving a license to carry a concealed pistol under this act.

(b) Carrying a concealed pistol in compliance with a license issued under this act. This subdivision does not prohibit an employer from prohibiting an employee from carrying a concealed pistol in the course of his or her employment with that employer.

(3) A police agency may prohibit an employee of that police agency from carrying a concealed pistol if carrying a concealed pistol would result in increased insurance premiums or a loss or reduction of insurance coverage for that employer.

History: Add. 2000, Act 381, Eff. July 1, 2001.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.4250 Premises on which carrying concealed weapon or portable device that uses electro-muscular disruption technology prohibited; "premises" defined; exceptions to subsections (1) and (2); violation; penalties.

Sec. 50. (1) Subject to subsection (5), an individual licensed under this act to carry a concealed pistol, or who is exempt from licensure under section 12a(1)(h), shall not carry a concealed pistol on the premises of any of the following:

(a) A school or school property except that a parent or legal guardian of a student of the school is not precluded from carrying a concealed pistol while in a vehicle on school property, if he or she is dropping the student off at the school or picking up the student from the school. As used in this section, "school" and "school property" mean those terms as defined in section 237a of the Michigan penal code, 1931 PA 328, MCL 750.237a.

(b) A public or private child care center or day care center, public or private child caring institution, or public or private child placing agency.

(c) A sports arena or stadium.

(d) A bar or tavern licensed under the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1101 to 436.2303, where the primary source of income of the business is the sale of alcoholic liquor by the glass and consumed on the premises. This subdivision does not apply to an owner or employee of the business. The Michigan liquor control commission shall develop and make available to holders of licenses under the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1101 to 436.2303, an appropriate sign stating that "This establishment prohibits patrons from carrying concealed weapons". The owner or operator of an establishment licensed under the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1101 to 436.2303, may, but is not required to, post the sign developed under this subdivision.

(e) Any property or facility owned or operated by a church, synagogue, mosque, temple, or other place of worship, unless the presiding official or officials of the church, synagogue, mosque, temple, or other place of worship permit the carrying of concealed pistol on that property or facility.

(f) An entertainment facility with a seating capacity of 2,500 or more individuals that the individual knows or should know has a seating capacity of 2,500 or more individuals or that has a sign above each public entrance stating in letters not less than 1-inch high a seating capacity of 2,500 or more individuals.

(g) A hospital.

(h) A dormitory or classroom of a community college, college, or university.

(2) Subject to subsection (5), an individual shall not carry a portable device that uses electro-muscular disruption technology on any of the premises described in subsection (1).

(3) An individual licensed under this act to carry a concealed pistol, or who is exempt from licensure under section 12a(1)(h), shall not carry a concealed pistol in violation of R 432.1212 or a successor rule of the Michigan administrative code promulgated under the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.201 to 432.226.

(4) As used in subsection (1), "premises" does not include parking areas of the places identified under subsection (1).

(5) Subsections (1) and (2) do not apply to any of the following:

(a) An individual licensed under this act who is a retired police officer, retired law enforcement officer, or retired federal law enforcement officer.

(b) An individual who is licensed under this act and who is employed or contracted by an entity described under subsection (1) to provide security services and is required by his or her employer or the terms of a contract to carry a concealed firearm on the premises of the employing or contracting entity.

(c) An individual who is licensed as a private investigator or private detective under the professional investigator licensure act, 1965 PA 285, MCL 338.821 to 338.851.

(d) An individual who is licensed under this act and who is a corrections officer of a county sheriff's department.

(e) An individual who is licensed under this act and who is a motor carrier officer or capitol security officer of the department of state police.

(f) An individual who is licensed under this act and who is a member of a sheriff's posse.

(g) An individual who is licensed under this act and who is an auxiliary officer or reserve officer of a police or sheriff's department.

(h) An individual who is licensed under this act and who is a parole or probation officer of the department of corrections.

(i) A state court judge or state court retired judge who is licensed under this act.

(j) An individual who is licensed under this act and who is a court officer.

(6) An individual who violates this section is responsible for a state civil infraction or guilty of a crime as follows:

(a) Except as provided in subdivisions (b) and (c), the individual is responsible for a state civil infraction and may be fined not more than \$500.00. The court shall order the individual's license to carry a concealed pistol suspended for 6 months.

(b) For a second violation, the individual is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00. The court shall order the individual's license to carry a concealed pistol revoked.

(c) For a third or subsequent violation, the individual is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$5,000.00, or both. The court shall order the individual's license to carry a concealed pistol revoked.

History: Add. 2000, Act 381, Eff. July 1, 2001;—Am. 2002, Act 719, Eff. July 1, 2003;—Am. 2008, Act 194, Eff. Jan. 7, 2009;—Am. 2008, Act 406, Imd. Eff. Jan. 6, 2009;—Am. 2008, Act 407, Eff. Apr. 6, 2009;—Am. 2012, Act 123, Eff. Aug. 6, 2012;—Am. 2014, Act 206, Eff. Dec. 21, 2014;—Am. 2015, Act 3, Eff. Dec. 1, 2015;—Am. 2015, Act 16, Eff. July 13, 2015.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.425v Concealed weapon enforcement fund; creation; disposition of funds; lapse; expenditures.

Sec. 5v. (1) The concealed weapon enforcement fund is created in the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department of state police shall expend money from the fund only to provide training to law enforcement personnel regarding the rights and responsibilities of individuals who are licensed to carry concealed pistols in this state and proper enforcement techniques in light of those rights and responsibilities.

History: Add. 2000, Act 381, Eff. July 1, 2001.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.425w Appropriation; amount; purpose; total state spending; appropriations and expenditures subject to MCL 18.1101 to 18.1594.

Sec. 5w. (1) One million dollars is appropriated from the general fund to the department of state police for the fiscal year ending September 30, 2001 for all of the following:

(a) Distributing trigger locks or other safety devices for firearms to the public free of charge.

(b) Providing concealed pistol application kits to county sheriffs, local police agencies, and county clerks for distribution under section 5.

- (c) The fingerprint analysis and comparison reports required under section 5b(11).
 - (d) Photographs required under section 5c.
 - (e) Creating and maintaining the database required under section 5e.
 - (f) Creating and maintaining a database of firearms that have been reported lost or stolen. Information in the database shall be made available to law enforcement through the law enforcement information network.
 - (g) Grants to county concealed weapon licensing boards for expenditure only to implement this act.
 - (h) Training under section 5v(4).
 - (i) Creating and distributing the reporting forms required under section 5m.
 - (j) A public safety campaign regarding the requirements of this act.
- (2) Pursuant to section 30 of article IX of the state constitution of 1963, total state spending under subsection (1) for the fiscal year ending September 30, 2001 is \$1,000,000.00.
- (3) The appropriations made and the expenditures authorized under this section and the departments, agencies, commissions, boards, offices, and programs for which an appropriation is made under this section are subject to the management and budget act, 1984 PA 431, MCL 18.1101 to 18.1594.

History: Add. 2000, Act 381, Eff. July 1, 2001.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.425x Concealed pistol licensing fund.

Sec. 5x. (1) Each county shall establish a concealed pistol licensing fund for the deposit of fees collected for the county clerk under this act. The county treasurer shall direct investment of the concealed pistol licensing fund and shall credit to the fund interest and earnings from fund investments.

(2) Money credited to the county concealed pistol licensing fund shall be expended in compliance with the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a, subject to an appropriation. Expenditures from the county concealed pistol licensing fund shall be used by the county clerk only for the cost of administering this act. Allowable expenditures include, but are not limited to, any of the following costs of the county clerk:

- (a) Staffing requirements directly attributable to performing functions required under this act.
- (b) Technology upgrades, including technology to take fingerprints by electronic means.
- (c) Office supplies.
- (d) Document storage and retrieval systems and system upgrades.

History: Add. 2015, Act 3, Eff. June 2, 2015.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.426 Issuance of license; conditions.

Sec. 6. A license shall not be issued to an applicant under section 2 or 5b unless both of the following apply:

- (a) The issuing agency has determined through the federal national instant criminal background check system (NICS) that the applicant is not prohibited under federal law from possessing or transporting a firearm.
- (b) If the applicant is not a United States citizen, the issuing agency has verified through the United States immigration and customs enforcement databases that the applicant is not an illegal alien or a nonimmigrant alien.

History: Add. 2005, Act 242, Imd. Eff. Nov. 22, 2005.

Compiler's note: Former MCL 28.426, which pertained to concealed weapon licensing board, was repealed by Act 381 of 200, Eff. July 1, 2001.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.426a Repealed. 2015, Act 3, Eff. June 2, 2015.

Compiler's note: The repealed section pertained to license to equip premises or vehicle with gas ejecting device or authorize manufacture or sale of gas ejecting device.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

Popular name: R 28.91 and R 28.92 of the Michigan Administrative Code

28.427 Concealed weapons licenses; expiration.

Sec. 7. All licenses heretofore issued in this state permitting a person to carry a pistol concealed upon his person shall expire at midnight, December 31, 1927.

History: 1927, Act 372, Eff. Sept. 5, 1927;—CL 1929, 16756;—CL 1948, 28.427.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.428 Suspension, revocation, or reinstatement of license.

Sec. 8. (1) The county clerk in the county in which a license was issued to an individual to carry a concealed pistol shall suspend, revoke, or reinstate a license as required under this act if ordered by a court or if the county clerk is notified of a change in the licensee's eligibility to carry a concealed pistol under this act.

(2) Except as provided in subsections (3) or (4), a license shall not be suspended or revoked under this section except upon written complaint and an opportunity to request the county clerk to conduct a review of that suspension or revocation.

(3) If an individual licensed to carry a concealed pistol is charged with a felony or misdemeanor as defined in this act, the court shall immediately order the county clerk in the county in which the license to carry a concealed pistol was issued to suspend the individual's license until there is a final disposition of the charge for that offense. The court shall notify the county clerk of each statutory provision with which the individual has been charged. The county clerk shall send notice by first-class mail in a sealed envelope of that suspension to the individual's last known address as indicated in the records of the county clerk. The notice shall include the statutory reason for the suspension, the source of the record supporting that suspension, the length of the suspension, and whom to contact for reinstating the license on expiration of the suspension, correcting errors in the record, or appealing the suspension. The requirements of subsection (2) do not apply to this subsection. If a court ordered a license suspended under this subsection and the individual is acquitted of the charge or the charge is dismissed, the court shall notify the county clerk who shall automatically reinstate the license if the license is not expired and the individual is otherwise qualified to receive a license to carry a concealed pistol, as verified by the department of state police. A county clerk shall not charge a fee for the reinstatement of a license under this subsection.

(4) The department of state police shall notify the county clerk in the county in which a license was issued to an individual to carry a concealed pistol if the department of state police determines that there has been a change in the individual's eligibility under this act to receive a license to carry a concealed pistol. The county clerk shall suspend, revoke, or reinstate the license as required under this act and immediately send notice of the suspension, revocation, or reinstatement under this subsection by first-class mail in a sealed envelope to the individual's last known address as indicated on the records of the county clerk. The notice shall include the statutory reason for the suspension, revocation, or reinstatement, the source of the record supporting the suspension, revocation, or reinstatement, the length of the suspension or revocation, and whom to contact for correcting errors in the record, appealing the suspension or revocation, and reapplying for that individual's license. The department of state police shall immediately enter that suspension, revocation, or reinstatement into the law enforcement information network. The requirements of subsection (2) do not apply to this subsection.

(5) If a suspension is imposed under this section, the suspension shall be for a period stated in years, months, or days, or until the final disposition of the charge, and shall state the date the suspension will end, if applicable. The licensee shall promptly surrender his or her license to the county clerk after being notified that

his or her license has been revoked or suspended. An individual who fails to surrender a license as required under this subsection after he or she was notified that his or her license was suspended or revoked is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

(6) Except as otherwise provided in subsections (3) and (7), if a license is suspended under this section and that license was surrendered by the licensee, upon expiration of the suspension period, the applicant may apply for a renewal license in the same manner as provided under section 5l. The county clerk or department of state police, as applicable, shall issue the applicant a receipt for his or her application at the time the application is submitted. The receipt shall contain all of the following:

(a) The name of the applicant.

(b) The date and time the receipt is issued.

(c) The amount paid.

(d) The applicant's state-issued driver license or personal identification card number.

(e) The statement, "This receipt was issued for the purpose of applying for a renewal of a concealed pistol license following a period of suspension or revocation. This receipt does not authorize an individual to carry a concealed pistol in this state."

(f) The name of the county in which the receipt is issued, if applicable.

(g) An impression of the county seal, if applicable.

(7) If a license is suspended because of an order under section 5b(7)(d)(iii) and that license was surrendered by the licensee, upon expiration of the order and notification to the county clerk, the county clerk shall automatically reinstate the license if the license is not expired and the department of state police has completed the verification required under section 5b(6). The county clerk shall not charge a fee for the reinstatement of a license under this subsection.

(8) If the court orders a county clerk to suspend, revoke, or reinstate a license under this section or amends a suspension, revocation, or reinstatement order, the county clerk shall immediately notify the department of state police in a manner prescribed by the department of state police. The department of state police shall enter the order or amended order into the law enforcement information network.

(9) A suspension or revocation order or amended order issued under this section is immediately effective. However, an individual is not criminally liable for violating the order or amended order unless he or she has received notice of the order or amended order.

(10) If an individual is carrying a pistol in violation of a suspension or revocation order or amended order issued under this section but has not previously received notice of the order or amended order, the individual shall be informed of the order or amended order and be given an opportunity to properly store the pistol or otherwise comply with the order or amended order before an arrest is made for carrying the pistol in violation of this act.

(11) If a law enforcement agency or officer notifies an individual of a suspension or revocation order or amended order issued under this section who has not previously received notice of the order or amended order, the law enforcement agency or officer shall enter a statement into the law enforcement information network that the individual has received notice of the order or amended order under this section.

History: 1927, Act 372, Eff. Sept. 5, 1927;—CL 1929, 16757;—CL 1948, 28.428;—Am. 2000, Act 381, Eff. July 1, 2001;—Am. 2008, Act 406, Imd. Eff. Jan. 6, 2009;—Am. 2015, Act 3, Eff. Dec. 1, 2015.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.429 Repealed. 2008, Act 195, Eff. Jan. 7, 2009.

Compiler's note: The repealed section pertained to safety inspection requirements for pistols.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.429a Repealed. 2012, Act 377, Imd. Eff. Dec. 18, 2012.

Compiler's note: The repealed section pertained to approval of basic pistol safety pamphlet and questionnaire by department of state
Rendered Wednesday, December 9, 2015

police.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.429b Repealed. 2012, Act 377, Imd. Eff. Dec. 18, 2012.

Compiler's note: The repealed section pertained to printing and distribution of basic pistol safety pamphlet and questionnaire by department of state police.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.429c Repealed. 2012, Act 377, Imd. Eff. Dec. 18, 2012.

Compiler's note: The repealed section pertained to distribution of basic pistol safety pamphlet and questionnaire.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.429d Repealed. 2000, Act 381, Eff. July 1, 2001.

Compiler's note: The repealed section pertained to forfeiture of firearm.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.430 Theft of firearm; report required; failure to report theft as civil violation; penalty.

Sec. 10. (1) A person who owns a firearm shall, within 5 days after he or she knows his or her firearm is stolen, report the theft to a police agency having jurisdiction over that theft.

(2) A person who fails to report the theft of a firearm as required under subsection (1) is responsible for a civil violation and may be fined not more than \$500.00.

History: Add. 1990, Act 320, Eff. Mar. 28, 1991.

Compiler's note: Former sections 10 and 11 were not compiled.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.431 Repealed. 2012, Act 377, Imd. Eff. Dec. 18, 2012.

Compiler's note: The repealed section pertained to system for review of criminal histories of individuals purchasing firearms.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.432 Inapplicability of MCL 28.422; amendatory act as "Janet Kukuk act".

Sec. 12. (1) Section 2 does not apply to any of the following:

(a) A police or correctional agency of the United States or of this state or any subdivision of this state.

- (b) The United States army, air force, navy, or marine corps.
 - (c) An organization authorized by law to purchase or receive weapons from the United States or from this state.
 - (d) The national guard, armed forces reserves, or other duly authorized military organization.
 - (e) A member of an entity or organization described in subdivisions (a) through (d) for a pistol while engaged in the course of his or her duties with that entity or while going to or returning from those duties.
 - (f) A United States citizen holding a license to carry a pistol concealed upon his or her person issued by another state.
 - (g) The regular and ordinary possession and transportation of a pistol as merchandise by an authorized agent of a person licensed to manufacture firearms or a licensed dealer.
 - (h) Purchasing, owning, carrying, possessing, using, or transporting an antique firearm. As used in this subdivision, "antique firearm" means that term as defined in section 231a of the Michigan penal code, 1931 PA 328, MCL 750.231a.
 - (i) An individual carrying, possessing, using, or transporting a pistol belonging to another individual, if the other individual's possession of the pistol is authorized by law and the individual carrying, possessing, using, or transporting the pistol has obtained a license under section 5b to carry a concealed pistol or is exempt from licensure as provided in section 12a.
- (2) The amendatory act that added subsection (1)(h) shall be known and may be cited as the "Janet Kukuk act".

History: 1927, Act 372, Eff. Sept. 5, 1927;—CL 1929, 16761;—CL 1948, 28.432;—Am. 1964, Act 216, Eff. Aug. 28, 1964;—Am. 2000, Act 381, Eff. July 1, 2001;—Am. 2004, Act 99, Imd. Eff. May 13, 2004;—Am. 2006, Act 75, Eff. July 1, 2006;—Am. 2008, Act 195, Eff. Jan. 7, 2009;—Am. 2010, Act 209, Eff. Feb. 15, 2011.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.432a Persons to whom requirements inapplicable; "local corrections officer" defined.

Sec. 12a. (1) The requirements of this act for obtaining a license to carry a concealed pistol do not apply to any of the following:

- (a) A peace officer of a duly authorized police agency of the United States or of this state or a political subdivision of this state, who is regularly employed and paid by the United States or this state or a subdivision of this state, except a township constable.
- (b) A constable who is trained and certified under the commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.616, while engaged in his or her official duties or going to or coming from his or her official duties, and who is regularly employed and paid by a political subdivision of this state.
- (c) A person regularly employed by the department of corrections and authorized in writing by the director of the department of corrections to carry a concealed pistol during the performance of his or her duties or while going to or returning from his or her duties.
- (d) A person regularly employed as a local corrections officer by a county sheriff, who is trained in the use of force and is authorized in writing by the county sheriff to carry a concealed pistol during the performance of his or her duties.
- (e) A person regularly employed in a city jail or lockup who has custody of persons detained or incarcerated in the jail or lockup, is trained in the use of force, and is authorized in writing by the chief of police or the county sheriff to carry a concealed pistol during the performance of his or her duties.
- (f) A member of the United States army, air force, navy, or marine corps while carrying a concealed pistol in the line of duty.
- (g) A member of the national guard, armed forces reserves, or other duly authorized military organization while on duty or drill or while going to or returning from his or her place of assembly or practice or while carrying a concealed pistol for purposes of that military organization.
- (h) A resident of another state who is licensed by that state to carry a concealed pistol.
- (i) The regular and ordinary transportation of a pistol as merchandise by an authorized agent of a person licensed to manufacture firearms.
- (j) A person while carrying a pistol unloaded in a wrapper or container in the trunk of his or her vehicle or, if the vehicle does not have a trunk, from transporting that pistol unloaded in a locked compartment or container that is separated from the ammunition for that pistol from the place of purchase to his or her home

or place of business or to a place of repair or back to his or her home or place of business, or in moving goods from 1 place of abode or business to another place of abode or business.

(k) A peace officer or law enforcement officer from Canada.

(2) As used in this act, "local corrections officer" means that term as defined in section 2 of the local corrections officers training act, 2003 PA 125, MCL 791.532.

History: Add. 1964, Act 216, Eff. Aug. 28, 1964;—Am. 1976, Act 102, Imd. Eff. Apr. 27, 1976;—Am. 1978, Act 282, Imd. Eff. July 6, 1978;—Am. 1978, Act 519, Imd. Eff. Dec. 19, 1978;—Am. 2000, Act 381, Eff. July 1, 2001;—Am. 2002, Act 719, Eff. July 1, 2003;—Am. 2006, Act 559, Imd. Eff. Dec. 29, 2006.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.432b Signaling devices to which MCL 28.422 inapplicable.

Sec. 12b. Section 2 does not apply to a signaling device that is approved by the United States coast guard pursuant to regulations issued under 46 USC 481, or under 46 USC 1454.

History: Add. 1982, Act 182, Eff. July 1, 1982;—Am. 2008, Act 195, Eff. Jan. 7, 2009.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.432c Repealed. 2000, Act 381, Eff. July 1, 2001.

Compiler's note: The repealed section pertained to license renewal.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.433 Unlawful possession of weapon; complaint, search warrant, seizure.

Sec. 13. When complaint shall be made on oath to any magistrate authorized to issue warrants in criminal cases that any pistol or other weapon or device mentioned in this act is unlawfully possessed or carried by any person, such magistrate shall, if he be satisfied that there is reasonable cause to believe the matters in said complaint be true, issue his warrant directed to any peace officer, commanding him to search the person or place described in such complaint, and if such pistol, weapon or device be there found, to seize and hold the same as evidence of a violation of this act.

History: 1927, Act 372, Eff. Sept. 5, 1927;—CL 1929, 16762;—CL 1948, 28.433.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.434 Unlawful possession; weapon forfeited to state; disposal; immunity.

Sec. 14. (1) Subject to sections 5g and 14a, all pistols, weapons, or devices carried or possessed contrary to this act are declared forfeited to the state, and shall be turned over to the director of the department of state police or his or her designated representative, for disposal under this section.

(2) The director of the department of state police shall dispose of firearms under this section by 1 of the following methods:

(a) By conducting a public auction in which firearms received under this section may be purchased at a sale conducted in compliance with section 4708 of the revised judicature act of 1961, 1961 PA 236, MCL 600.4708, by individuals authorized by law to possess those firearms.

(b) By destroying them.

(c) By any other lawful manner prescribed by the director of the department of state police.

(3) Before disposing of a firearm under this section, the director of the department of state police shall do both of the following:

(a) Determine through the law enforcement information network whether the firearm has been reported lost or stolen. If the firearm has been reported lost or stolen and the name and address of the owner can be determined, the director of the department of state police shall provide 30 days' written notice of his or her intent to dispose of the firearm under this section to the owner, and allow the owner to claim the firearm within that 30-day period if he or she is authorized to possess the firearm.

(b) Provide 30 days' notice to the public on the department of state police website of his or her intent to dispose of the firearm under this section. The notice shall include a description of the firearm and shall state the firearm's serial number, if the serial number can be determined. The department of state police shall allow the owner of the firearm to claim the firearm within that 30-day period if he or she is authorized to possess the firearm. The 30-day period required under this subdivision is in addition to the 30-day period required under subdivision (a).

(4) The department of state police is immune from civil liability for disposing of a firearm in compliance with this section.

History: 1927, Act 372, Eff. Sept. 5, 1927;—CL 1929, 16763;—Am. 1943, Act 113, Eff. July 30, 1943;—CL 1948, 28.434;—Am. 2000, Act 381, Eff. July 1, 2001;—Am. 2010, Act 295, Imd. Eff. Dec. 16, 2010.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

28.434a Disposition of firearm; immunity from civil liability; "law enforcement agency" defined.

Sec. 14a. (1) A law enforcement agency that seizes or otherwise comes into possession of a firearm or a part of a firearm subject to disposal under section 14 may, instead of forwarding the firearm or part of a firearm to the director of the department of state police or his or her designated representative for disposal under that section, retain that firearm or part of a firearm for the following purposes:

(a) For legal sale or trade to a federally licensed firearm dealer. The proceeds from any sale or trade under this subdivision shall be used by the law enforcement agency only for law enforcement purposes. The law enforcement agency shall not sell or trade a firearm or part of a firearm under this subdivision to any individual who is a member of that law enforcement agency unless the individual is a federally licensed firearms dealer and the sale is made pursuant to a public auction.

(b) For official use by members of the seizing law enforcement agency who are employed as peace officers. A firearm or part of a firearm shall not be sold under this subdivision.

(2) A law enforcement agency that sells or trades any pistol to a licensed dealer under subsection (1)(a) or retains any pistol under subsection (1)(b) shall complete a record of the transaction under section 2 or section 2a, as applicable.

(3) A law enforcement agency that sells or trades a firearm or part of a firearm under this section shall retain a receipt of the sale or trade for a period of not less than 7 years. The law enforcement agency shall make all receipts retained under this subsection available for inspection by the department of state police upon demand and for auditing purposes by the state and the local unit of government of which the agency is a part.

(4) Before disposing of a firearm under this section, the law enforcement agency shall do both of the following:

(a) Determine through the law enforcement information network whether the firearm has been reported lost or stolen. If the firearm has been reported lost or stolen and the name and address of the owner can be determined, the law enforcement agency shall provide 30 days' written notice of its intent to dispose of the firearm under this section to the owner, and allow the owner to claim the firearm within that 30-day period if he or she is authorized to possess the firearm. If the police agency determines that a serial number has been altered or has been removed or obliterated from the firearm, the police agency shall submit the firearm to the department of state police or a forensic laboratory for serial number verification or restoration to determine legal ownership.

(b) Provide 30 days' notice to the public on a website maintained by the law enforcement agency of its intent to dispose of the firearm under this section. The notice shall include a description of the firearm and shall state the firearm's serial number, if the serial number can be determined. The law enforcement agency

shall allow the owner of the firearm to claim the firearm within that 30-day period if he or she is authorized to possess the firearm. The 30-day period required under this subdivision is in addition to the 30-day period required under subdivision (a).

(5) The law enforcement agency is immune from civil liability for disposing of a firearm in compliance with this section.

(6) As used in this section, "law enforcement agency" means any agency that employs peace officers.

History: Add. 2010, Act 295, Imd. Eff. Dec. 16, 2010.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Constitutionality: Right to Carry

Compiler's note: Shall Issue

28.435 Sale of firearms by federally licensed firearms dealer; sale of trigger lock or secured container; exceptions; brochure or pamphlet; statement of compliance; notice of liability; action by political subdivision against firearm or ammunition producer prohibited; rights of state attorney general; exceptions; effect of subsections (9) through (11); violation; penalties; definitions.

Sec. 15. (1) Except as provided in subsection (2), a federally licensed firearms dealer shall not sell a firearm in this state unless the sale includes 1 of the following:

(a) A commercially available trigger lock or other device designed to disable the firearm and prevent the discharge of the firearm.

(b) A commercially available gun case or storage container that can be secured to prevent unauthorized access to the firearm.

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

(a) The sale of a firearm to a police officer or a police agency.

(b) The sale of a firearm to a person who presents to the federally licensed firearms dealer 1 of the following:

(i) A trigger lock or other device designed to disable the firearm and prevent the discharge of the firearm together with a copy of the purchase receipt for the federally licensed firearms dealer to keep. A separate trigger lock or device and a separate purchase receipt shall be required for each firearm purchased.

(ii) A gun case or storage container that can be secured to prevent unauthorized access to the firearm together with a copy of the purchase receipt for the federally licensed firearms dealer to keep. A separate gun case or storage container and a separate purchase receipt shall be required for each firearm purchased.

(c) The sale of an antique firearm. As used in this subdivision, "antique firearm" means that term as defined in section 231a of the Michigan penal code, 1931 PA 328, MCL 750.231a.

(d) The sale or transfer of a firearm if the seller is not a federally licensed firearms dealer.

(3) A federally licensed firearms dealer shall not sell a firearm in this state unless the firearm is accompanied with, free of charge, a brochure or pamphlet that includes safety information on the use and storage of the firearm in a home environment.

(4) Upon the sale of a firearm, a federally licensed firearms dealer shall sign a statement and require the purchaser to sign a statement stating that the sale is in compliance with subsections (1), (2), and (3).

(5) A federally licensed firearms dealer shall retain a copy of the signed statements prescribed in subsection (4) and, if applicable, a copy of the receipt prescribed in subsection (2)(b), for at least 6 years.

(6) A federally licensed firearms dealer in this state shall post in a conspicuous manner at the entrances, exits, and all points of sale on the premises where firearms are sold a notice that says the following: "You may be criminally and civilly liable for any harm caused by a person less than 18 years of age who lawfully gains unsupervised access to your firearm if unlawfully stored."

(7) A federally licensed firearms dealer is not liable for damages arising from the use or misuse of a firearm if the sale complies with this section, any other applicable law of this state, and applicable federal law.

(8) This section does not create a civil action or liability for damages arising from the use or misuse of a firearm or ammunition for a person, other than a federally licensed firearms dealer, who produces a firearm or ammunition.

(9) Subject to subsections (10) to (12), a political subdivision shall not bring a civil action against any person who produces a firearm or ammunition. The authority to bring a civil action under this section is reserved exclusively to the state and can be brought only by the attorney general. The court shall award costs and reasonable attorney fees to each defendant named in a civil action filed in violation of this subsection.

(10) Subject to subsection (11), subsection (9) does not prohibit a civil action by a political subdivision based on 1 or more of the following, which the court shall narrowly construe:

(a) A breach of contract, other contract issue, or an action based on a provision of the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102, in which the political subdivision is the purchaser and owner of the firearm or ammunition.

(b) Expressed or implied warranties arising from the purchase of a firearm or ammunition by the political subdivision or the use of a firearm or ammunition by an employee or agent of the political subdivision.

(c) A product liability, personal injury, or wrongful death action when an employee or agent or property of the political subdivision has been injured or damaged as a result of a defect in the design or manufacture of the firearm or ammunition purchased and owned by the political subdivision.

(11) Subsection (10) does not allow an action based on any of the following:

(a) A firearm's or ammunition's inherent potential to cause injury, damage, or death.

(b) Failure to warn the purchaser, transferee, or user of the firearm's or ammunition's inherent potential to cause injury, damage, or death.

(c) Failure to sell with or incorporate into the product a device or mechanism to prevent a firearm or ammunition from being discharged by an unauthorized person unless specifically provided for by contract.

(12) Subsections (9) through (11) do not create a civil action.

(13) Subsections (9) through (11) are intended only to clarify the current status of the law in this state, are remedial in nature, and, therefore, apply to a civil action pending on the effective date of this act.

(14) Beginning September 1, 2000, a person who violates this section is guilty of a crime as follows:

(a) Except as provided in subdivision (b) or (c), the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

(b) For a second conviction, the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(c) For a third or subsequent conviction, the person is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$5,000.00, or both.

(15) As used in this section:

(a) "Federally licensed firearms dealer" means a person licensed under section 923 of title 18 of the United States Code, 18 U.S.C. 923.

(b) "Firearm or ammunition" includes a component of a firearm or ammunition.

(c) "Person" means an individual, partnership, corporation, association, or other legal entity.

(d) "Political subdivision" means a county, city, village, township, charter township, school district, community college, or public university or college.

(e) "Produce" means to manufacture, construct, design, formulate, develop standards for, prepare, process, assemble, inspect, test, list, certify, give a warning or instructions regarding, market, sell, advertise, package, label, distribute, or transfer.

History: Add. 2000, Act 265, Imd. Eff. June 29, 2000.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: CPL

Popular name: Right to Carry

Popular name: Shall Issue

APPENDIX E

FIREARMS AND AMMUNITION
Act 319 of 1990

AN ACT to prohibit local units of government from imposing certain restrictions on the ownership, registration, purchase, sale, transfer, transportation, or possession of pistols, other firearms, or pneumatic guns, ammunition for pistols or other firearms, or components of pistols or other firearms.

History: 1990, Act 319, Eff. Mar. 28, 1991;—Am. 2015, Act 29, Eff. Aug. 10, 2015.

The People of the State of Michigan enact:

123.1101 Definitions.

Sec. 1. As used in this act:

(a) "Firearm" means any weapon which will, is designed to, or may readily be converted to expel a projectile by action of an explosive.

(b) "Local unit of government" means a city, village, township, or county.

(c) "Pistol" means that term as defined in section 222 of the Michigan penal code, 1931 PA 328, MCL 750.222.

(d) "Pneumatic gun" means any implement, designed as a gun, that will expel a BB or pellet by spring, gas, or air. Pneumatic gun includes a paintball gun that expels by pneumatic pressure plastic balls filled with paint for the purpose of marking the point of impact.

History: 1990, Act 319, Eff. Mar. 28, 1991;—Am. 2015, Act 29, Eff. Aug. 10, 2015.

123.1102 Regulation of pistols, other firearms, pneumatic guns, or ammunition.

Sec. 2. 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, other firearms, or pneumatic guns, 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.

History: 1990, Act 319, Eff. Mar. 28, 1991;—Am. 2015, Act 29, Eff. Aug. 10, 2015.

123.1103 Local unit of government; permissible prohibitions or regulation.

Sec. 3. This act does not prohibit a local unit of government from doing any of the following:

(a) Prohibiting or regulating conduct with a pistol, other firearm, or pneumatic gun that is a criminal offense under state law.

(b) Prohibiting or regulating the transportation, carrying, or possession of pistols, other firearms, or pneumatic guns by employees of that local unit of government in the course of their employment with that local unit of government.

(c) Regulating the possession of pneumatic guns within the local unit of government by requiring that an individual below the age of 16 who is in possession of a pneumatic gun be under the supervision of a parent, a guardian, or an individual 18 years of age or older, except that an ordinance shall not regulate possession of a pneumatic gun on or within private property if the individual below the age of 16 is authorized by a parent or guardian and the property owner or legal possessor to possess the pneumatic gun.

(d) Prohibiting an individual from pointing, waving about, or displaying a pneumatic gun in a threatening manner with the intent to induce fear in another individual.

History: 1990, Act 319, Eff. Mar. 28, 1991;—Am. 2015, Act 29, Eff. Aug. 10, 2015.

123.1104 City or charter township; permissible prohibitions or regulation.

Sec. 4. This act does not prohibit a city or a charter township from doing any of the following:

(a) Prohibiting the discharge of a pistol or other firearm within the jurisdiction of that city or charter township.

(b) Prohibiting the discharge of pneumatic guns in any area within the jurisdiction of the city or charter township that is so heavily populated as to make that conduct dangerous to the inhabitants of that area, except that an ordinance shall not prohibit the discharge of pneumatic guns at authorized target ranges, on other property where firearms may be discharged, or on or within private property with the permission of the owner or possessor of that property if conducted with reasonable care to prevent a projectile from crossing the bounds of the property.

History: 1990, Act 319, Eff. Mar. 28, 1991;—Am. 2015, Act 29, Eff. Aug. 10, 2015.

123.1105 Conditional effective date.

Sec. 5. This act shall not take effect unless all of the following bills of the 85th Legislature are enacted into law:

- (a) House Bill No. 6009.
- (b) House Bill No. 6010.

History: 1990, Act 319, Eff. Mar. 28, 1991.

Compiler's note: House Bill No. 6009, referred to in this section, was filed with the Secretary of State December 20, 1990, and became P.A. 1990, No. 320, Eff. Mar. 28, 1991.

House Bill No. 6010, also referred to in this section, was filed with the Secretary of State December 20, 1990, and became P.A. 1990, No. 321, Eff. Mar. 28, 1991.

APPENDIX F

THE MICHIGAN PENAL CODE (EXCERPT)

Act 328 of 1931

CHAPTER XXXVII

FIREARMS

750.222 Definitions.

Sec. 222. As used in this chapter:

(a) "Alcoholic liquor" means that term as defined in section 105 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1105.

(b) "Barrel length" means the internal length of a firearm as measured from the face of the closed breech of the firearm when it is unloaded, to the forward face of the end of the barrel.

(c) "Brandish" means to point, wave about, or display in a threatening manner with the intent to induce fear in another person.

(d) "Controlled substance" means a controlled substance or controlled substance analogue as those terms are defined in section 7104 of the public health code, 1978 PA 368, MCL 333.7104.

(e) "Firearm" means any weapon which will, is designed to, or may readily be converted to expel a projectile by action of an explosive.

(f) "Pistol" means a loaded or unloaded firearm that is 26 inches or less in length, or a loaded or unloaded firearm that by its construction and appearance conceals itself as a firearm.

(g) "Pneumatic gun" means that term as defined in section 1 of 1990 PA 319, MCL 123.1101.

(h) "Purchaser" means a person who receives a pistol from another person by purchase, gift, or loan.

(i) "Rifle" means a firearm designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(j) "Seller" means a person who sells, furnishes, loans, or gives a pistol to another person.

(k) "Short-barreled rifle" means a rifle having 1 or more barrels less than 16 inches in length or a weapon made from a rifle, whether by alteration, modification, or otherwise, if the weapon as modified has an overall length of less than 26 inches.

(l) "Short-barreled shotgun" means a shotgun having 1 or more barrels less than 18 inches in length or a weapon made from a shotgun, whether by alteration, modification, or otherwise, if the weapon as modified has an overall length of less than 26 inches.

(m) "Shotgun" means a firearm designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single function of the trigger.

History: 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 750.222;—Am. 1964, Act 215, Eff. Aug. 28, 1964;—Am. 1978, Act 564, Imd. Eff. Dec. 29, 1978;—Am. 1992, Act 217, Imd. Eff. Oct. 13, 1992;—Am. 2001, Act 135, Eff. Feb. 1, 2002;—Am. 2012, Act 242, Eff. Jan. 1, 2013;—Am. 2015, Act 26, Eff. July 1, 2015;—Am. 2015, Act 28, Eff. Aug. 10, 2015.

750.222a "Double-edged, nonfolding stabbing instrument" defined.

Sec. 222a. (1) As used in this chapter, "double-edged, nonfolding stabbing instrument" does not include a knife, tool, implement, arrowhead, or artifact manufactured from stone by means of conchoidal fracturing.

(2) Subsection (1) does not apply to an item being transported in a vehicle, unless the item is in a container and inaccessible to the driver.

History: Add. 2000, Act 343, Imd. Eff. Dec. 27, 2000.

750.223 Selling firearms and ammunition; violations; penalties; "licensed dealer" defined.

Sec. 223. (1) A person who knowingly sells a pistol without complying with section 2 of 1927 PA 372, MCL 28.422, is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than \$100.00, or both.

(2) A person who knowingly sells a firearm more than 26 inches in length to a person under 18 years of age is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than \$500.00, or both. A second or subsequent violation of this subsection is a felony punishable by imprisonment for not more than 4 years, or a fine of not more than \$2,000.00, or both. It is an affirmative defense to a prosecution under this subsection that the person who sold the firearm asked to see and was shown a driver's license or identification card issued by a state that identified the purchaser as being 18 years of age or older.

(3) A seller shall not sell a firearm or ammunition to a person if the seller knows that either of the following circumstances exists:

(a) The person is under indictment for a felony. As used in this subdivision, "felony" means a violation of a law of this state, or of another state, or of the United States that is punishable by imprisonment for 4 years or more.

(b) The person is prohibited under section 224f from possessing, using, transporting, selling, purchasing, carrying, shipping, receiving, or distributing a firearm.

(4) A person who violates subsection (3) is guilty of a felony, punishable by imprisonment for not more than 10 years, or by a fine of not more than \$5,000.00, or both.

(5) As used in this section, "licensed dealer" means a person licensed under 18 USC 923 who regularly buys and sells firearms as a commercial activity with the principal objective of livelihood and profit.

History: 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 750.223;—Am. 1969, Act 210, Eff. Mar. 20, 1970;—Am. 1990, Act 321, Eff. Mar. 28, 1991;—Am. 1992, Act 217, Imd. Eff. Oct. 13, 1992;—Am. 1992, Act 221, Eff. Mar. 31, 1993;—Am. 2012, Act 242, Eff. Jan. 1, 2013.

750.224 Weapons; manufacture, sale, or possession as felony; violation as felony; penalty; exceptions; "muffler" or "silencer" defined.

Sec. 224. (1) A person shall not manufacture, sell, offer for sale, or possess any of the following:

(a) A machine gun or firearm that shoots or is designed to shoot automatically more than 1 shot without manual reloading, by a single function of the trigger.

(b) A muffler or silencer.

(c) A bomb or bombshell.

(d) A blackjack, slungshot, billy, metallic knuckles, sand club, sand bag, or bludgeon.

(e) A device, weapon, cartridge, container, or contrivance designed to render a person temporarily or permanently disabled by the ejection, release, or emission of a gas or other substance.

(2) A person who violates subsection (1) is guilty of a felony, punishable by imprisonment for not more than 5 years, or a fine of not more than \$2,500.00, or both.

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

(a) A self-defense spray or foam device as defined in section 224d.

(b) A person manufacturing firearms, explosives, or munitions of war by virtue of a contract with a department of the government of the United States.

(c) A person licensed by the secretary of the treasury of the United States or the secretary's delegate to manufacture, sell, or possess a machine gun, or a device, weapon, cartridge, container, or contrivance described in subsection (1).

(4) As used in this chapter, "muffler" or "silencer" means 1 or more of the following:

(a) A device for muffling, silencing, or deadening the report of a firearm.

(b) A combination of parts, designed or redesigned, and intended for use in assembling or fabricating a muffler or silencer.

(c) A part, designed or redesigned, and intended only for use in assembling or fabricating a muffler or silencer.

History: 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 750.224;—Am. 1959, Act 175, Eff. Mar. 19, 1960;—Am. 1978, Act 564, Imd. Eff. Dec. 29, 1978;—Am. 1980, Act 346, Eff. Mar. 31, 1981;—Am. 1990, Act 321, Eff. Mar. 28, 1991;—Am. 1991, Act 33, Imd. Eff. June 10, 1991;—Am. 2006, Act 401, Eff. Dec. 28, 2006.

Constitutionality: The Michigan supreme court held that the statute was not unconstitutionally vague as applied to the defendant in *People v Lynch*, 410 Mich 343; 301 NW2d 796 (1981).

Former law: See section 3 of Act 372 of 1927, being CL 1929, § 16751; and Act 206 of 1929.

750.224a Portable device or weapon directing electrical current, impulse, wave, or beam; sale or possession prohibited; exceptions; use of electro-muscular disruption technology; violation; penalty; verification of identity and possession of license; prohibited use; definitions.

Sec. 224a. (1) Except as otherwise provided in this section, a person shall not sell, offer for sale, or possess in this state a portable device or weapon from which an electrical current, impulse, wave, or beam may be directed, which current, impulse, wave, or beam is designed to incapacitate temporarily, injure, or kill.

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

(a) The possession and reasonable use of a device that uses electro-muscular disruption technology by a peace officer, or by any of the following individuals if the individual has been trained in the use, effects, and risks of the device, and is using the device while performing his or her official duties:

(i) An employee of the department of corrections who is authorized in writing by the director of the department of corrections to possess and use the device.

(ii) A local corrections officer authorized in writing by the county sheriff to possess and use the device.

(iii) An individual employed by a local unit of government that utilizes a jail or lockup facility who has custody of persons detained or incarcerated in the jail or lockup facility and who is authorized in writing by the chief of police, director of public safety, or sheriff to possess and use the device.

(iv) A probation officer.

(v) A court officer.

(vi) A bail agent authorized under section 167b.

(vii) A licensed private investigator.

(viii) An aircraft pilot or aircraft crew member.

(ix) An individual employed as a private security police officer. As used in this subparagraph, "private security police" means that term as defined in section 2 of the private security business and security alarm act, 1968 PA 330, MCL 338.1052.

(b) The possession and reasonable use of a device that uses electro-muscular disruption technology by an individual who holds a valid license to carry a concealed pistol under section 5b of 1927 PA 372, MCL 28.425, and who has been trained under subsection (5) in the use, effects, and risks of the device.

(c) Possession solely for the purpose of delivering a device described in subsection (1) to any governmental agency or to a laboratory for testing, with the prior written approval of the governmental agency or law enforcement agency and under conditions determined to be appropriate by that agency.

(3) A manufacturer, authorized importer, or authorized dealer may demonstrate, offer for sale, hold for sale, sell, give, lend, or deliver a device that uses electro-muscular disruption technology to a person authorized to possess a device that uses electro-muscular disruption technology and may possess a device that uses electro-muscular disruption technology for any of those purposes.

(4) A person who violates subsection (1) is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.

(5) An authorized dealer or other person who sells a device that uses electro-muscular disruption technology to an individual described in subsection (2)(b) shall verify the individual's identity and verify that the individual holds a valid concealed pistol license issued under section 5b of 1927 PA 372, MCL 28.425b, and shall provide to the individual purchasing the device, at the time of the sale, training on the use, effects, and risks of the device. A person who violates this subsection is guilty of a misdemeanor punishable by imprisonment for not more than 30 days or a fine of not more than \$500.00, or both.

(6) An individual described in subsection (2) shall not use a device that uses electro-muscular disruption technology against another person except under circumstances that would justify the individual's lawful use of physical force. An individual who violates this subdivision is guilty of a misdemeanor punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.

(7) As used in this section:

(a) "A device that uses electro-muscular disruption technology" means a device to which both of the following apply:

(i) The device is capable of creating an electro-muscular disruption and is used or intended to be used as a defensive device capable of temporarily incapacitating or immobilizing a person by the direction or emission of conducted energy.

(ii) The device contains an identification and tracking system that, when the device is initially used, dispenses coded material traceable to the purchaser through records kept by the manufacturer, and the manufacturer of the device has a policy of providing that identification and tracking information to a police agency upon written request by that agency. However, this subdivision does not apply to a launchable device that is used only by law enforcement agencies.

(b) "Local corrections officer" means that term as defined in section 2 of the local corrections officers training act, 2003 PA 125, MCL 791.532.

(c) "Peace officer" means any of the following:

(i) A police officer or public safety officer of this state or a political subdivision of this state, including motor carrier officers appointed under section 6d of 1935 PA 59, MCL 28.6d, and security personnel employed by the state under section 6c of 1935 PA 59, MCL 28.6c.

(ii) A sheriff or a sheriff's deputy.

(iii) A police officer or public safety officer of a junior college, college, or university who is authorized by the governing board of that junior college, college, or university to enforce state law and the rules and ordinances of that junior college, college, or university.

(iv) A township constable.

- (v) A marshal of a city, village, or township.
- (vi) A conservation officer of the department of natural resources or the department of environmental quality.
- (vii) A reserve peace officer, as that term is defined in section 1 of 1927 PA 372, MCL 28.421.
- (viii) A law enforcement officer of another state or of a political subdivision of another state or a junior college, college, or university in another state, substantially corresponding to a law enforcement officer described in subparagraphs (i) to (vii).
- (ix) A federal law enforcement officer.

History: Add. 1976, Act 106, Eff. July 1, 1976;—Am. 2002, Act 709, Imd. Eff. Dec. 30, 2002;—Am. 2004, Act 338, Imd. Eff. Sept. 23, 2004;—Am. 2006, Act 457, Imd. Eff. Dec. 20, 2006;—Am. 2012, Act 122, Eff. Aug. 6, 2012.

750.224b Short-barreled shotgun or rifle; making, manufacturing, transferring, or possessing as felony; penalty; exceptions; short-barreled shotgun or rifle 26 inches or less; short-barreled shotgun or rifle greater than 26 inches; violation of subsection (5) as civil infraction; seizure and forfeiture; applicability of MCL 776.20 to subsection (3).

Sec. 224b. (1) A person shall not make, manufacture, transfer, or possess a short-barreled shotgun or a short-barreled rifle.

(2) A person who violates subsection (1) is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$2,500.00, or both.

(3) Subsection (1) does not apply to a short-barreled shotgun or short-barreled rifle that is lawfully made, manufactured, transferred, or possessed under federal law.

(4) A person, excluding a manufacturer, lawfully making, transferring, or possessing a short-barreled shotgun or short-barreled rifle that is 26 inches or less in length under this section shall comply with section 2 or 2a of 1927 PA 372, MCL 28.422 and 28.422a.

(5) A person who possesses a short-barreled shotgun or short-barreled rifle that is greater than 26 inches in length under this section shall possess a copy of the federal registration of that short-barreled shotgun or short-barreled rifle while transporting or using that short-barreled shotgun or short-barreled rifle and shall present that federal registration to a peace officer upon request by that peace officer.

(6) A person who violates subsection (5) is responsible for a state civil infraction and may be fined not more than \$100.00. A short-barreled shotgun or short-barreled rifle carried in violation of subsection (5) is subject to immediate seizure by a peace officer. If a peace officer seizes a short-barreled shotgun or short-barreled rifle under this subsection, the person has 45 days in which to display the federal registration to an authorized employee of the law enforcement entity that employs the peace officer. If the person displays the federal registration to an authorized employee of the law enforcement entity that employs the peace officer within the 45-day period, the authorized employee of that law enforcement entity shall return the short-barreled shotgun or short-barreled rifle to the person unless the person is prohibited by law from possessing a firearm. If the person does not display the federal registration within the 45-day period, the short-barreled shotgun or short-barreled rifle is subject to seizure and forfeiture in the same manner that property is subject to seizure and forfeiture under sections 4701 to 4709 of the revised judicature act of 1961, 1961 PA 236, MCL 600.4701 to 600.4709.

(7) Section 20 of chapter XVI of the code of criminal procedure, 1927 PA 175, MCL 776.20, applies to subsection (3).

History: Add. 1978, Act 564, Imd. Eff. Dec. 29, 1978;—Am. 2008, Act 196, Eff. Jan. 7, 2009;—Am. 2014, Act 63, Imd. Eff. Mar. 27, 2014.

750.224c Armor piercing ammunition; manufacture, distribution, sale, or use prohibited; exceptions; violation as felony; penalty; definitions; exemption of projectile or projectile core; rule.

Sec. 224c. (1) Except as provided in subsection (2), a person shall not manufacture, distribute, sell, or use armor piercing ammunition in this state. A person who willfully violates this section is guilty of a felony, punishable by imprisonment for not more than 4 years, or by a fine of not more than \$2,000.00, or both.

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

(a) A person who manufactures, distributes, sells, or uses armor piercing ammunition in this state, if that manufacture, distribution, sale, or use is not in violation of chapter 44 of title 18 of the United States Code.

(b) A licensed dealer who sells or distributes armor piercing ammunition in violation of this section if the licensed dealer is subject to license revocation under chapter 44 of title 18 of the United States Code for that sale or distribution.

(3) As used in this section:

(a) “Armor piercing ammunition” means a projectile or projectile core which may be used in a pistol and which is constructed entirely, excluding the presence of traces of other substances, of tungsten alloys, steel, iron, brass, bronze, beryllium copper, or a combination of tungsten alloys, steel, iron, brass, bronze, or beryllium copper. Armor piercing ammunition does not include any of the following:

(i) Shotgun shot that is required by federal law or by a law of this state to be used for hunting purposes.

(ii) A frangible projectile designed for target shooting.

(iii) A projectile that the director of the department of state police finds is primarily intended to be used for sporting purposes.

(iv) A projectile or projectile core that the director of the department of state police finds is intended to be used for industrial purposes.

(b) “Licensed dealer” means a person licensed under chapter 44 of title 18 of the United States Code to deal in firearms or ammunition.

(4) The director of the department of state police shall exempt a projectile or projectile core under subsection (3)(a)(iii) or (iv) if that projectile or projectile core is exempted under chapter 44 of title 18 of the United States Code. The director of state police shall exempt a projectile or projectile core under subsection (3)(a)(iii) or (iv) only by a rule promulgated in compliance with the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

History: Add. 1990, Act 318, Eff. Mar. 28, 1991.

750.224d Self-defense spray or foam device.

Sec. 224d. (1) As used in this section and section 224, “self-defense spray or foam device” means a device to which all of the following apply:

(a) The device is capable of carrying, and ejects, releases, or emits 1 of the following:

(i) Not more than 35 grams of any combination of orthochlorobenzalmalonitrile and inert ingredients.

(ii) A solution containing not more than 10% oleoresin capsicum.

(b) The device does not eject, release, or emit any gas or substance that will temporarily or permanently disable, incapacitate, injure, or harm a person with whom the gas or substance comes in contact, other than the substance described in subdivision (a)(i) or (ii).

(2) Except as otherwise provided in this section, a person who uses a self-defense spray or foam device to eject, release, or emit orthochlorobenzalmalonitrile or oleoresin capsicum at another person is guilty of a misdemeanor, punishable by imprisonment for not more than 2 years, or a fine of not more than \$2,000.00, or both.

(3) If a person uses a self-defense spray or foam device during the commission of a crime to eject, release, or emit orthochlorobenzalmalonitrile or oleoresin capsicum or threatens to use a self-defense spray or foam device during the commission of a crime to temporarily or permanently disable another person, the judge who imposes sentence upon a conviction for that crime shall consider the defendant’s use or threatened use of the self-defense spray or foam device as a reason for enhancing the sentence.

(4) A person shall not sell a self-defense spray or foam device to a minor. A person who violates this subsection is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00, or both.

(5) Subsection (2) does not prohibit either of the following:

(a) The reasonable use of a self-defense spray or foam device containing not more than 10% oleoresin capsicum by a person who is employed by a county sheriff or a chief of police and who is authorized in writing by the county sheriff or chief of police to carry and use a self-defense spray or foam device and has been trained in the use, effects, and risks of the device, while in performance of his or her official duties.

(b) The reasonable use of a self-defense spray or foam device containing not more than 10% oleoresin capsicum by a person in the protection of a person or property under circumstances that would justify the person’s use of physical force.

History: Add. 1980, Act 346, Eff. Mar. 31, 1981;—Am. 1991, Act 33, Imd. Eff. June 10, 1991;—Am. 1992, Act 4, Imd. Eff. Feb. 21, 1992;—Am. 2006, Act 401, Eff. Dec. 28, 2006;—Am. 2010, Act 365, Imd. Eff. Dec. 22, 2010.

750.224e Conversion of semiautomatic firearm to fully automatic firearm; prohibited acts; penalty; applicability; “fully automatic firearm”, “licensed collector”, and “semiautomatic firearm” defined.

Sec. 224e. (1) A person shall not knowingly do any of the following:

(a) Manufacture, sell, distribute, or possess or attempt to manufacture, sell, distribute, or possess a device that is designed or intended to be used to convert a semiautomatic firearm into a fully automatic firearm.

(b) Demonstrate to another person or attempt to demonstrate to another person how to manufacture or

install a device to convert a semiautomatic firearm into a fully automatic firearm.

(2) A person who violates subsection (1) is guilty of a felony punishable by imprisonment for not more than 4 years, or a fine of not more than \$2,000.00, or both.

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

(a) A police agency of this state, or of a local unit of government of this state, or of the United States.

(b) An employee of an agency described in subdivision (a), if the manufacture, sale, distribution, or possession or attempted manufacture, sale, distribution, or possession or demonstration or attempted demonstration is in the course of his or her official duties as an employee of that agency.

(c) The armed forces.

(d) A member or employee of the armed forces, if the manufacture, sale, distribution, or possession or attempted manufacture, sale, distribution, or possession or demonstration or attempted demonstration is in the course of his or her official duties as a member or employee of the armed forces.

(e) A licensed collector who possesses a device that is designed or intended to be used to convert a semiautomatic firearm into a fully automatic firearm that was lawfully owned by that licensed collector before the effective date of the amendatory act that added this section. This subdivision does not permit a licensed collector who lawfully owned a device that is designed or intended to be used to convert a semiautomatic firearm into a fully automatic firearm before the effective date of the amendatory act that added this section to sell or distribute or attempt to sell or distribute that device to another person after the effective date of the amendatory act that added this section.

(4) As used in this section:

(a) "Fully automatic firearm" means a firearm employing gas pressure or force of recoil to mechanically eject an empty cartridge from the firearm after a shot, and to load the next cartridge from the magazine, without renewed pressure on the trigger for each successive shot.

(b) "Licensed collector" means a person who is licensed under chapter 44 of title 18 of the United States code to acquire, hold, or dispose of firearms as curios or relics.

(c) "Semiautomatic firearm" means a firearm employing gas pressure or force of recoil to mechanically eject an empty cartridge from the firearm after a shot, and to load the next cartridge from the magazine, but requiring renewed pressure on the trigger for each successive shot.

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

750.224f Possession of firearm or distribution of ammunition by person convicted of felony; circumstances; penalty; applicability of section to expunged or set aside conviction; definitions.

Sec. 224f. (1) Except as provided in subsection (2), a person convicted of a felony shall not possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm in this state until the expiration of 3 years after all of the following circumstances exist:

(a) The person has paid all fines imposed for the violation.

(b) The person has served all terms of imprisonment imposed for the violation.

(c) The person has successfully completed all conditions of probation or parole imposed for the violation.

(2) A person convicted of a specified felony shall not possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm in this state until all of the following circumstances exist:

(a) The expiration of 5 years after all of the following circumstances exist:

(i) The person has paid all fines imposed for the violation.

(ii) The person has served all terms of imprisonment imposed for the violation.

(iii) The person has successfully completed all conditions of probation or parole imposed for the violation.

(b) The person's right to possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm has been restored under section 4 of 1927 PA 372, MCL 28.424.

(3) Except as provided in subsection (4), a person convicted of a felony shall not possess, use, transport, sell, carry, ship, or distribute ammunition in this state until the expiration of 3 years after all of the following circumstances exist:

(a) The person has paid all fines imposed for the violation.

(b) The person has served all terms of imprisonment imposed for the violation.

(c) The person has successfully completed all conditions of probation or parole imposed for the violation.

(4) A person convicted of a specified felony shall not possess, use, transport, sell, carry, ship, or distribute ammunition in this state until all of the following circumstances exist:

(a) The expiration of 5 years after all of the following circumstances exist:

(i) The person has paid all fines imposed for the violation.

(ii) The person has served all terms of imprisonment imposed for the violation.

(iii) The person has successfully completed all conditions of probation or parole imposed for the violation.

(b) The person's right to possess, use, transport, sell, purchase, carry, ship, receive, or distribute ammunition has been restored under section 4 of 1927 PA 372, MCL 28.424.

(5) A person who possesses, uses, transports, sells, purchases, carries, ships, receives, or distributes a firearm in violation of this section is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$5,000.00, or both.

(6) A person who possesses, uses, transports, sells, carries, ships, or distributes ammunition in violation of this section is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$5,000.00, or both.

(7) Any single criminal transaction where a person possesses, uses, transports, sells, carries, ships, or distributes ammunition in violation of this section, regardless of the amount of ammunition involved, constitutes 1 offense.

(8) This section does not apply to a conviction that has been expunged or set aside, or for which the person has been pardoned, unless the expunction, order, or pardon expressly provides that the person shall not possess a firearm or ammunition.

(9) As used in this section:

(a) "Ammunition" means any projectile that, in its current state, may be expelled from a firearm by an explosive.

(b) "Felony" means a violation of a law of this state, or of another state, or of the United States that is punishable by imprisonment for 4 years or more, or an attempt to violate such a law.

(10) As used in subsections (2) and (4), "specified felony" means a felony in which 1 or more of the following circumstances exist:

(a) An element of that felony is the use, attempted use, or threatened use of physical force against the person or property of another, or that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

(b) An element of that felony is the unlawful manufacture, possession, importation, exportation, distribution, or dispensing of a controlled substance.

(c) An element of that felony is the unlawful possession or distribution of a firearm.

(d) An element of that felony is the unlawful use of an explosive.

(e) The felony is burglary of an occupied dwelling, or breaking and entering an occupied dwelling, or arson.

History: Add. 1992, Act 217, Imd. Eff. Oct. 13, 1992;—Am. 2014, Act 4, Eff. May 12, 2014.

750.225 Repealed. 1993, Act 254, Imd. Eff. Nov. 29, 1993.

Compiler's note: The repealed section pertained to printed matter selling or delivering firearms.

750.226 Firearm or dangerous or deadly weapon or instrument; carrying with unlawful intent; violation as felony; penalty.

Sec. 226. (1) A person shall not, with intent to use the same unlawfully against the person of another, go armed with a pistol or other firearm, or a pneumatic gun, dagger, dirk, razor, stiletto, or knife having a blade over 3 inches in length, or any other dangerous or deadly weapon or instrument.

(2) A person who violates this section is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$2,500.00.

History: 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 750.226;—Am. 2015, Act 26, Eff. July 1, 2015.

Former law: See section 4 of Act 372 of 1927, being CL 1929, § 16752.

750.226a Pocket knife opened by mechanical device; unlawful sale or possession; persons exempted.

Sec. 226a. Any person who shall sell or offer to sell, or any person who shall have in his possession any knife having the appearance of a pocket knife, the blade or blades of which can be opened by the flick of a button, pressure on a handle or other mechanical contrivance shall be guilty of a misdemeanor, punishable by imprisonment in the county jail for not to exceed 1 year or by a fine of not to exceed \$300.00, or both.

The provisions of this section shall not apply to any one-armed person carrying a knife on his person in connection with his living requirements.

History: Add. 1952, Act 233, Eff. Sept. 18, 1952.

750.227 Concealed weapons; carrying; penalty.

Sec. 227. (1) A person shall not carry a dagger, dirk, stiletto, a double-edged nonfolding stabbing

instrument of any length, or any other dangerous weapon, except a hunting knife adapted and carried as such, concealed on or about his or her person, or whether concealed or otherwise in any vehicle operated or occupied by the person, except in his or her dwelling house, place of business or on other land possessed by the person.

(2) A person shall not carry a pistol concealed on or about his or her person, or, whether concealed or otherwise, in a vehicle operated or occupied by the person, except in his or her dwelling house, place of business, or on other land possessed by the person, without a license to carry the pistol as provided by law and if licensed, shall not carry the pistol in a place or manner inconsistent with any restrictions upon such license.

(3) A person who violates this section is guilty of a felony, punishable by imprisonment for not more than 5 years, or by a fine of not more than \$2,500.00.

History: 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 750.227;—Am. 1973, Act 206, Eff. Mar. 29, 1974;—Am. 1986, Act 8, Eff. July 1, 1986.

Constitutionality: The double jeopardy protection against multiple punishment for the same offense is a restriction on a court's ability to impose punishment in excess of that intended by the Legislature, not a limit on the Legislature's power to define crime and fix punishment. People v Sturgis, 427 Mich 392; 397 NW2d 783 (1986).

Former law: See section 5 of Act 372 of 1927, being CL 1929, § 16753.

750.227a Pistols; unlawful possession by licensee.

Sec. 227a. Any person licensed in accordance with law to carry a pistol because he is engaged in the business of protecting the person or property of another, except peace officers of the United States, the state or any subdivision of the state railroad policemen appointed and commissioned under the provisions of Act No. 114 of the Public Acts of 1941, being sections 470.51 to 470.61 of the Compiled Laws of 1948 or those in the military service of the United States, who shall have a pistol in his possession while not actually engaged in the business of protecting the person or property of another, except in his dwelling house or on other land possessed by him, is guilty of a felony. This section shall not be construed to prohibit such person from carrying an unloaded pistol to or from his place of employment by the most direct route.

History: Add. 1966, Act 100, Eff. Mar. 10, 1967;—Am. 1967, Act 49, Eff. Nov. 2, 1967.

750.227b Carrying or possessing firearm when committing or attempting to commit felony; carrying or possessing pneumatic gun; exception; "law enforcement officer" defined.

Sec. 227b. (1) A person who carries or has in his or her possession a firearm when he or she commits or attempts to commit a felony, except a violation of section 223, 227, 227a, or 230, is guilty of a felony and shall be punished by imprisonment for 2 years. Upon a second conviction under this subsection, the person shall be punished by imprisonment for 5 years. Upon a third or subsequent conviction under this subsection, the person shall be punished by imprisonment for 10 years.

(2) A person who carries or has in his or her possession a pneumatic gun and uses that pneumatic gun in furtherance of committing or attempting to commit a felony, except a violation of section 223, 227, 227a, or 230, is guilty of a felony and shall be punished by imprisonment for 2 years. Upon a second conviction under this subsection, the person shall be punished by imprisonment for 5 years. Upon a third or subsequent conviction under this subsection, the person shall be punished by imprisonment for 10 years.

(3) A term of imprisonment prescribed by this section is in addition to the sentence imposed for the conviction of the felony or the attempt to commit the felony and shall be served consecutively with and preceding any term of imprisonment imposed for the conviction of the felony or attempt to commit the felony.

(4) A term of imprisonment imposed under this section shall not be suspended. The person subject to the sentence mandated by this section is not eligible for parole or probation during the mandatory term imposed under subsection (1) or (2).

(5) This section does not apply to a law enforcement officer who is authorized to carry a firearm while in the official performance of his or her duties and who is in the performance of those duties. As used in this subsection, "law enforcement officer" means a person who is regularly employed as a member of a duly authorized police agency or other organization of the United States, this state, or a city, county, township, or village of this state and who is responsible for the prevention and detection of crime and the enforcement of the general criminal laws of this state.

History: Add. 1976, Act 6, Eff. Jan. 1, 1977;—Am. 1990, Act 321, Eff. Mar. 28, 1991;—Am. 2015, Act 26, Eff. July 1, 2015.

Constitutionality: The double jeopardy protection against multiple punishment for the same offense is a restriction on a court's ability to impose punishment in excess of that intended by the Legislature, not a limit on the Legislature's power to define crime and fix punishment. People v Sturgis, 427 Mich 392; 397 NW2d 783 (1986).

750.227c Transporting or possessing loaded firearm in or upon vehicle propelled by

mechanical means; violation as misdemeanor; penalty.

Sec. 227c. (1) Except as otherwise permitted by law, a person shall not transport or possess in or upon a sailboat or a motor vehicle, aircraft, motorboat, or any other vehicle propelled by mechanical means either of the following:

- (a) A firearm, other than a pistol, that is loaded.
- (b) A pneumatic gun that is loaded and expels a metallic BB or metallic pellet greater than .177 caliber.

(2) A person who violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 2 years or a fine of not more than \$2,500.00, or both.

History: Add. 1981, Act 103, Eff. Mar. 31, 1982;—Am. 2015, Act 26, Eff. July 1, 2015.

750.227d Transporting or possessing firearm in or upon motor vehicle or self-propelled vehicle designed for land travel; violation as misdemeanor; penalty.

Sec. 227d. (1) Except as otherwise permitted by law, a person shall not transport or possess in or upon a motor vehicle or any self-propelled vehicle designed for land travel either of the following:

- (a) A firearm, other than a pistol, unless the firearm is unloaded and is 1 or more of the following:

- (i) Taken down.
- (ii) Enclosed in a case.
- (iii) Carried in the trunk of the vehicle.
- (iv) Inaccessible from the interior of the vehicle.

(b) A pneumatic gun that expels a metallic BB or metallic pellet greater than .177 caliber unless the pneumatic gun is unloaded and is 1 or more of the following:

- (i) Taken down.
- (ii) Enclosed in a case.
- (iii) Carried in the trunk of the vehicle.
- (iv) Inaccessible from the interior of the vehicle.

(2) A person who violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$100.00, or both.

History: Add. 1981, Act 103, Eff. Mar. 31, 1982;—Am. 2015, Act 26, Eff. July 1, 2015.

750.227f Committing or attempting to commit crime involving violent act or threat of violent act against another person while wearing body armor as felony; penalty; consecutive term of imprisonment; exception; definitions.

Sec. 227f. (1) Except as provided in subsection (2), an individual who commits or attempts to commit a crime that involves a violent act or a threat of a violent act against another person while wearing body armor is guilty of a felony, punishable by imprisonment for not more than 4 years, or a fine of not more than \$2,000.00, or both. A term of imprisonment imposed for violating this section may be served consecutively to any term of imprisonment imposed for the crime committed or attempted.

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

(a) A peace officer of this state or another state, or of a local unit of government of this state or another state, or of the United States, performing his or her duties as a peace officer while on or off a scheduled work shift as a peace officer.

(b) A security officer performing his or her duties as a security officer while on a scheduled work shift as a security officer.

(3) As used in this section:

(a) "Body armor" means clothing or a device designed or intended to protect an individual's body or a portion of an individual's body from injury caused by a firearm.

(b) "Security officer" means an individual lawfully employed to physically protect another individual or to physically protect the property of another person.

History: Add. 1990, Act 321, Eff. Mar. 28, 1991;—Am. 1992, Act 218, Imd. Eff. Oct. 13, 1992;—Am. 1996, Act 163, Imd. Eff. Apr. 11, 1996;—Am. 2000, Act 226, Eff. Oct. 1, 2000.

750.227g Body armor; purchase, ownership, possession, or use by convicted felon; prohibition; issuance of written permission; violation as felony; definitions.

Sec. 227g. (1) Except as otherwise provided in this section, a person who has been convicted of a violent felony shall not purchase, own, possess, or use body armor.

(2) A person who has been convicted of a violent felony whose employment, livelihood, or safety is dependent on his or her ability to purchase, own, possess, or use body armor may petition the chief of police of the local unit of government in which he or she resides or, if he or she does not reside in a local unit of

government that has a police department, the county sheriff, for written permission to purchase, own, possess, or use body armor under this section.

(3) The chief of police of a local unit of government or the county sheriff may grant a person who properly petitions that chief of police or county sheriff under subsection (2) written permission to purchase, own, possess, or use body armor as provided in this section if the chief of police or county sheriff determines that both of the following circumstances exist:

- (a) The petitioner is likely to use body armor in a safe and lawful manner.
- (b) The petitioner has reasonable need for the protection provided by body armor.

(4) In making the determination required under subsection (3), the chief of police or county sheriff shall consider all of the following:

- (a) The petitioner's continued employment.
- (b) The interests of justice.
- (c) Other circumstances justifying issuance of written permission to purchase, own, possess, or use body armor.

(5) The chief of police or county sheriff may restrict written permission issued to a petitioner under this section in any manner determined appropriate by that chief of police or county sheriff. If permission is restricted, the chief of police or county sheriff shall state the restrictions in the permission document.

(6) It is the intent of the legislature that chiefs of police and county sheriffs exercise broad discretion in determining whether to issue written permission to purchase, own, possess, or use body armor under this section. However, nothing in this section requires a chief of police or county sheriff to issue written permission to any particular petitioner. The issuance of written permission to purchase, own, possess, or use body armor under this section does not relieve any person or entity from criminal liability that might otherwise be imposed.

(7) A person who receives written permission from a chief of police or county sheriff to purchase, own, possess, or use body armor shall have that written permission in his or her possession when he or she is purchasing, owning, possessing, or using body armor.

(8) A law enforcement agency may issue body armor to a person who is in custody or who is a witness to a crime for his or her own protection without a petition being previously filed under subsection (2). If the law enforcement agency issues body armor to the person under this subsection, the law enforcement agency shall document the reasons for issuing body armor and retain a copy of that document as an official record. The law enforcement agency shall also issue written permission to the person to possess and use body armor under this section.

(9) A person who violates this section is guilty of a crime as follows:

(a) For a violation of subsection (1), the person is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.

(b) For a violation of subsection (7), the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$100.00, or both.

(10) As used in this section:

(a) "Body armor" means that term as defined in section 227f.

(b) "Violent felony" means that term as defined in section 36 of 1953 PA 232, MCL 791.236.

History: Add. 2000, Act 224, Eff. Oct. 1, 2000.

750.228 Ownership of pistol greater than 26 inches in length; conditions; election to have firearm not considered as pistol.

Sec. 228. (1) A person may lawfully own, possess, carry, or transport as a pistol a firearm greater than 26 inches in length if all of the following conditions apply:

(a) The person registered the firearm as a pistol under section 2 or 2a of 1927 PA 372, MCL 28.422 and 28.422a, before January 1, 2013.

(b) The person who registered the firearm as described in subdivision (a) has maintained registration of the firearm since January 1, 2013 without lapse.

(c) The person possesses a copy of the license or record issued to him or her under section 2 or 2a of 1927 PA 372, MCL 28.422 and 28.422a.

(2) A person who satisfies all of the conditions listed under subsection (1) nevertheless may elect to have the firearm not be considered to be a pistol. A person who makes the election under this subsection shall notify the department of state police of the election in a manner prescribed by that department.

History: Add. 2012, Act 242, Eff. Jan. 1, 2013.

Compiler's note: Former MCL 750.228, which pertained to penalties to have pistol inspected, was repealed by Act 196 of 2008, Eff. Jan. 7, 2009.

750.229 Pistols accepted in pawn, by second-hand dealer or junk dealer.

Sec. 229. Any pawnbroker who shall accept a pistol in pawn, or any second-hand or junk dealer, as defined in Act No. 350 of the Public Acts of 1917, who shall accept a pistol and offer or display the same for resale, shall be guilty of a misdemeanor.

History: 1931, Act 328, Eff. Sept. 18, 1931;—Am. 1945, Act 236, Eff. Sept. 6, 1945;—CL 1948, 750.229.

Compiler's note: For provisions of Act 350 of 1917, referred to in this section, see MCL 445.401 et seq.

Former law: See section 10 of Act 372 of 1927, being CL 1929, § 16759.

750.230 Firearms; altering, removing, or obliterating marks of identity; presumption.

Sec. 230. A person who shall wilfully alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark of identity of a pistol or other firearm, shall be guilty of a felony, punishable by imprisonment for not more than 2 years or fine of not more than \$1,000.00. Possession of a firearm upon which the number shall have been altered, removed, or obliterated, other than an antique firearm as defined by section 231a(2)(a) or (b), shall be presumptive evidence that the possessor has altered, removed, or obliterated the same.

History: 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 750.230;—Am. 1976, Act 32, Imd. Eff. Mar. 5, 1976.

Constitutionality: The statutory presumption contained in this section is unconstitutional. *People v Moore*, 402 Mich 538; 266 NW2d 145 (1978).

Former law: See section 11 of Act 372 of 1927, being CL 1929, § 16760.

750.231 MCL 750.224, 750.224a, 750.224b, 750.224d, 750.226a, 750.227, 750.227c, and 750.227d inapplicable to certain persons and organizations.

Sec. 231. (1) Except as provided in subsection (2), sections 224, 224a, 224b, 224d, 226a, 227, 227c, and 227d do not apply to any of the following:

(a) A peace officer of an authorized police agency of the United States, of this state, or of a political subdivision of this state, who is regularly employed and paid by the United States, this state, or a political subdivision of this state.

(b) A person who is regularly employed by the state department of corrections and who is authorized in writing by the director of the department of corrections to carry a concealed weapon while in the official performance of his or her duties or while going to or returning from those duties.

(c) A person employed by a private vendor that operates a youth correctional facility authorized under section 20g of 1953 PA 232, MCL 791.220g, who meets the same criteria established by the director of the state department of corrections for departmental employees described in subdivision (b) and who is authorized in writing by the director of the department of corrections to carry a concealed weapon while in the official performance of his or her duties or while going to or returning from those duties.

(d) A member of the United States army, air force, navy, or marine corps or the United States coast guard while carrying weapons in the line of or incidental to duty.

(e) An organization authorized by law to purchase or receive weapons from the United States or from this state.

(f) A member of the national guard, armed forces reserve, the United States coast guard reserve, or any other authorized military organization while on duty or drill, or in going to or returning from a place of assembly or practice, while carrying weapons used for a purpose of the national guard, armed forces reserve, United States coast guard reserve, or other duly authorized military organization.

(g) A security employee employed by the state and granted limited arrest powers under section 6c of 1935 PA 59, MCL 28.6c.

(h) A motor carrier officer appointed under section 6d of 1935 PA 59, MCL 28.6d.

(2) As applied to section 224a(1) only, subsection (1) is not applicable to an individual included under subsection (1)(a), (b), or (c) unless he or she has been trained on the use, effects, and risks of using a portable device or weapon described in section 224a(1).

History: 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 750.231;—Am. 1958, Act 107, Eff. Sept. 13, 1958;—Am. 1964, Act 215, Eff. Aug. 28, 1964;—Am. 1981, Act 103, Eff. Mar. 31, 1982;—Am. 1998, Act 510, Imd. Eff. Jan. 8, 1999;—Am. 2002, Act 536, Imd. Eff. July 26, 2002;—Am. 2006, Act 401, Eff. Dec. 28, 2006.

750.231a Exceptions to MCL 750.227(2); "antique firearm" defined.

Sec. 231a. (1) Subsection (2) of section 227 does not apply to any of the following:

(a) To a person holding a valid license to carry a pistol concealed upon his or her person issued by his or her state of residence except where the pistol is carried in nonconformance with a restriction appearing on the

license.

(b) To the regular and ordinary transportation of pistols as merchandise by an authorized agent of a person licensed to manufacture firearms.

(c) To a person carrying an antique firearm, completely unloaded in a closed case or container designed for the storage of firearms in the trunk of a vehicle.

(d) To a person while transporting a pistol for a lawful purpose that is licensed by the owner or occupant of the motor vehicle in compliance with section 2 of 1927 PA 372, MCL 28.422, and the pistol is unloaded in a closed case designed for the storage of firearms in the trunk of the vehicle.

(e) To a person while transporting a pistol for a lawful purpose that is licensed by the owner or occupant of the motor vehicle in compliance with section 2 of 1927 PA 372, MCL 28.422, and the pistol is unloaded in a closed case designed for the storage of firearms in a vehicle that does not have a trunk and is not readily accessible to the occupants of the vehicle.

(2) As used in this section, "antique firearm" means either of the following:

(i) A firearm not designed or redesigned for using rimfire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898, including a matchlock, flintlock, percussion cap, or similar type of ignition system or replica of such a firearm, whether actually manufactured before or after 1898.

(ii) A firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

History: Add. 1964, Act 215, Eff. Aug. 28, 1964;—Am. 1973, Act 191, Eff. Mar. 29, 1974;—Am. 1974, Act 55, Imd. Eff. Apr. 1, 1974;—Am. 1978, Act 280, Imd. Eff. July 6, 1978;—Am. 2002, Act 82, Imd. Eff. Mar. 26, 2002;—Am. 2008, Act 196, Eff. Jan. 7, 2009;—Am. 2012, Act 427, Imd. Eff. Dec. 21, 2012.

750.231b Sale and safety inspection; persons exempt.

Sec. 231b. Sections 223 and 228 do not apply to a duly authorized police or correctional agency of the United States or of the state or any subdivision thereof, nor to the army, air force, navy or marine corps of the United States, nor to organizations authorized by law to purchase or receive weapons from the United States or from this state, nor to the national guard, armed forces reserves or other duly authorized military organizations, nor to a member of such agencies or organizations for weapons used by him for the purposes of such agencies or organizations, nor to a person holding a license to carry a pistol concealed upon his person issued by another state, nor to the regular and ordinary transportation of pistols as merchandise by an authorized agent of a person licensed to manufacture firearms.

History: Add. 1964, Act 215, Eff. Aug. 28, 1964.

750.231c "Aircraft," "approved signaling device," and "vessel" defined; sections inapplicable to approved signaling device; sale, purchase, possession, or use of approved signaling device; violation as misdemeanor; penalties.

Sec. 231c. (1) As used in this section:

(a) "Aircraft" means aircraft as defined in section 43.

(b) "Approved signaling device" means a pistol which is a signaling device approved by the United States coast guard pursuant to regulations issued under former section 4488 of the Revised Statutes of the United States, 46 U.S.C. Appx. 481, or under former section 5 of the federal boat safety act of 1971, Public Law 92-75, 46 U.S.C. 1454.

(c) "Vessel" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

(2) Sections 223, 227, 228, 232, 232a, and 237 shall not apply to an approved signaling device.

(3) A person shall not sell an approved signaling device to a person, nor shall a person purchase an approved signaling device, unless the purchaser is 18 years of age or older and either of the following apply:

(a) The purchaser possesses and displays to the seller any of the following:

(i) A valid and current certificate of number issued pursuant to section 80124 of part 801 (marine safety) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being section 324.80124 of the Michigan Compiled Laws, for a vessel.

(ii) If a vessel is considered in compliance with the numbering requirements of this state pursuant to section 80122 of part 801 of Act No. 451 of the Public Acts of 1994, being section 324.80122 of the Michigan Compiled Laws, proof of ownership or proof of the vessel's being numbered in another state.

(iii) If a vessel is not required to be numbered or to display a decal under part 801 of Act No. 451 of the Public Acts of 1994, being sections 324.80101 to 324.80199 of the Michigan Compiled Laws, proof of ownership of the vessel.

(b) The purchaser is the holder of and displays to the seller a valid and effective airman's certificate of

competency issued by the United States or a foreign government.

(4) A person may possess an approved signaling device only under the following circumstances:

(a) The possession occurs in the process of manufacturing, marketing, or sale of the device, including the transportation of the device as merchandise, and the device is unloaded.

(b) The device is on a vessel or on an aircraft.

(c) The device is at a person's residence.

(d) The person is en route from the place of purchase to the person's residence or the person's vessel or aircraft or between the person's residence and the person's vessel or aircraft.

(e) The device is in a vehicle other than a vessel or aircraft and all of the following apply:

(i) The device is unloaded.

(ii) The device is enclosed in a case and either is carried in the trunk of the vehicle which has a trunk or is otherwise not readily accessible to the occupants of the vehicle.

(iii) Subdivision (d) applies.

(5) A person shall not use an approved signaling device unless he or she reasonably believes that its use is necessary for the safety of the person or of another person on the waters of this state or in an aircraft emergency situation.

(6) A person who sells, purchases, or possesses an approved signaling device in violation of this section is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than \$200.00, or both.

(7) A person who uses an approved signaling device in violation of this section is guilty of a misdemeanor, punishable by a fine of not more than \$200.00.

History: Add. 1982, Act 185, Eff. July 1, 1982;—Am. 1996, Act 80, Imd. Eff. Feb. 27, 1996.

750.232 Purchasers of firearms; registration.

Sec. 232. Registration of purchasers of pistols, etc.—Any person engaged in any way or to any extent in the business of selling at retail, guns, pistols, other fire-arms or silencers for fire-arms who shall fail or neglect to keep a register in which shall be entered the name, age, occupation and residence (if residing in the city with the street number of such residence) of each and every purchaser of such guns, pistols, other fire-arms or silencers for fire-arms together with the number or other mark of identification, if any, on such gun, pistol, other fire-arms or silencer for fire-arms, which said register shall be open to the inspection of all peace officers at all times, shall be guilty of a misdemeanor.

History: 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 750.232.

Former law: See sections 1 and 2 of Act 250 of 1913, being CL 1915, §§ 15247 and 15248; and CL 1929, §§ 16768 and 16769.

750.232a Obtaining pistol in violation of MCL 28.422; intentionally making material false statement on application for license to purchase pistol; using or attempting to use false identification or identification of another person to purchase firearm; penalties.

Sec. 232a. (1) Except as provided in subsection (2), a person who obtains a pistol in violation of section 2 of Act No. 372 of the Public Acts of 1927, as amended, being section 28.422 of the Michigan Compiled Laws, is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days or a fine of not more than \$100.00, or both.

(2) Subsection (1) does not apply to a person who obtained a pistol in violation of section 2 of Act No. 372 of the Public Acts of 1927 before the effective date of the 1990 amendatory act that added this subsection, who has not been convicted of that violation, and who obtains a license as required under section 2 of Act No. 372 of the Public Acts of 1927 within 90 days after the effective date of the 1990 amendatory act that added this subsection.

(3) A person who intentionally makes a material false statement on an application for a license to purchase a pistol under section 2 of Act No. 372 of the Public Acts of 1927, as amended, is guilty of a felony, punishable by imprisonment for not more than 4 years, or a fine of not more than \$2,000.00, or both.

(4) A person who uses or attempts to use false identification or the identification of another person to purchase a firearm is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days or a fine of not more than \$100.00, or both.

History: Add. 1943, Act 54, Eff. July 30, 1943;—CL 1948, 750.232a;—Am. 1990, Act 321, Eff. Mar. 28, 1991.

Compiler's note: For provisions of section 2, referred to in this section, see MCL 28.422.

750.233 Pointing or aiming firearm at another person; misdemeanor; penalty; exception; "peace officer defined."

Sec. 233. (1) A person who intentionally but without malice points or aims a firearm at or toward another person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

(2) This section does not apply to a peace officer of this state or another state, or of a local unit of government of this state or another state, or of the United States, performing his or her duties as a peace officer. As used in this section, "peace officer" means that term as defined in section 215.

History: 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 750.233;—Am. 2005, Act 303, Imd. Eff. Dec. 21, 2005.

Former law: See section 1 of Act 68 of 1869, being CL 1871, § 7548; How., § 9110; CL 1897, § 11509; CL 1915, § 15232; and CL 1929, § 16776.

750.234 Firearm; discharge; intentionally aimed without malice; misdemeanor; penalty; exception; "peace officer" defined.

Sec. 234. (1) A person who discharges a firearm while it is intentionally but without malice aimed at or toward another person, without injuring another person, is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$500.00, or both.

(2) This section does not apply to a peace officer of this state or another state, or of a local unit of government of this state or another state, or of the United States, performing his or her duties as a peace officer. As used in this section, "peace officer" means that term as defined in section 215.

History: 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 750.234;—Am. 2005, Act 303, Imd. Eff. Dec. 21, 2005.

Former law: See section 2 of Act 68 of 1869, being CL 1871, § 7548; How., § 9111; CL 1897, § 11510; CL 1915, § 15233; and CL 1929, § 16777.

750.234a Intentionally discharging firearm from motor vehicle, snowmobile, or off-road vehicle as crime; penalty; exceptions; other violation; consecutive terms; self-defense; "peace officer" defined.

Sec. 234a. (1) An individual who intentionally discharges a firearm from a motor vehicle, a snowmobile, or an off-road vehicle is guilty of a crime as follows:

(a) If the violation endangers the safety of another individual, the individual is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$10,000.00, or both.

(b) If the violation causes any physical injury to another individual, the individual is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$15,000.00, or both.

(c) If the violation causes the serious impairment of a body function of another individual, the individual is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than \$25,000.00, or both.

(d) If the violation causes the death of another individual, the individual is guilty of a felony punishable by imprisonment for life or any term of years.

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

(a) A peace officer of this state or another state, or of a local unit of government of this state or another state, or of the United States, performing his or her duties as a peace officer while on or off a scheduled work shift as a peace officer.

(b) An individual who discharges a firearm in self-defense or the defense of another individual.

(3) This section does not prohibit an individual from being charged with, convicted of, or punished for any other violation of law that is committed by that individual while violating this section.

(4) A term of imprisonment imposed for a violation of this section may run consecutively to any term of imprisonment imposed for another violation arising from the same transaction.

(5) As used in this section:

(a) "Peace officer" means that term as defined in section 215.

(b) "Serious impairment of a body function" means that term as defined in section 58c of the Michigan vehicle code, 1949 PA 300, MCL 257.58c.

History: Add. 1990, Act 321, Eff. Mar. 28, 1991;—Am. 1992, Act 218, Imd. Eff. Oct. 13, 1992;—Am. 1996, Act 163, Imd. Eff. Apr. 11, 1996;—Am. 2005, Act 303, Imd. Eff. Dec. 21, 2005;—Am. 2014, Act 191, Eff. Sept. 22, 2014.

750.234b Intentionally discharging firearm at dwelling or potentially occupied structure as felony; penalty; exceptions; other violation; consecutive terms; definitions.

Sec. 234b. (1) Except as otherwise provided in this section, an individual who intentionally discharges a firearm at a facility that he or she knows or has reason to believe is a dwelling or a potentially occupied structure, whether or not the dwelling or structure is actually occupied at the time the firearm is discharged, is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than

\$10,000.00, or both.

(2) An individual who intentionally discharges a firearm in a facility that he or she knows or has reason to believe is a dwelling or a potentially occupied structure, in reckless disregard for the safety of any individual and whether or not the dwelling or structure is actually occupied at the time the firearm is discharged, is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$10,000.00, or both.

(3) If an individual violates subsection (1) or (2) and causes any physical injury to another individual, the individual is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$15,000.00, or both.

(4) If an individual violates subsection (1) or (2) and causes the serious impairment of a body function of another individual, the individual is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than \$25,000.00, or both.

(5) If an individual violates subsection (1) or (2) and causes the death of another individual, the individual is guilty of a felony punishable by imprisonment for life or any term of years.

(6) Subsections (1) and (2) do not apply to a peace officer of this state or another state, or of a local unit of government of this state or another state, or of the United States, performing his or her duties as a peace officer.

(7) Subsections (1) and (2) do not apply to an individual who discharges a firearm in self-defense or the defense of another individual.

(8) This section does not prohibit an individual from being charged with, convicted of, or punished for any other violation of law that is committed by that individual while violating this section.

(9) A term of imprisonment imposed for a violation of this section may run consecutively to any term of imprisonment imposed for another violation arising from the same transaction.

(10) As used in this section:

(a) "Dwelling" means a facility habitually used by 1 or more individuals as a place of abode, whether or not an individual is present in the facility.

(b) "Peace officer" means that term as defined in section 215.

(c) "Potentially occupied structure" means a structure that a reasonable person knows or should know is likely to be occupied by 1 or more individuals due to its nature, function, or location.

(d) "Serious impairment of a body function" means that term as defined in section 58c of the Michigan vehicle code, 1949 PA 300, MCL 257.58c.

History: Add. 1990, Act 321, Eff. Mar. 28, 1991;—Am. 1992, Act 218, Imd. Eff. Oct. 13, 1992;—Am. 2005, Act 303, Imd. Eff. Dec. 21, 2005;—Am. 2014, Act 191, Eff. Sept. 22, 2014.

750.234c Intentionally discharging firearm at emergency or law enforcement vehicle as felony; penalty; "emergency or law enforcement vehicle" defined.

Sec. 234c. (1) An individual who intentionally discharges a firearm at a motor vehicle that he or she knows or has reason to believe is an emergency or law enforcement vehicle is guilty of a felony, punishable by imprisonment for not more than 4 years, or a fine of not more than \$2,000.00, or both.

(2) As used in this section, "emergency or law enforcement vehicle" means 1 or more of the following:

(a) A motor vehicle owned or operated by a fire department of a local unit of government of this state.

(b) A motor vehicle owned or operated by a police agency of the United States, of this state, or of a local unit of government of this state.

(c) A motor vehicle owned or operated by the department of natural resources that is used for law enforcement purposes.

(d) A motor vehicle owned or operated by an entity licensed to provide emergency medical services under part 192 of article 17 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.20901 to 333.20979 of the Michigan Compiled Laws, and that is used to provide emergency medical assistance to individuals.

(e) A motor vehicle owned or operated by a volunteer employee or paid employee of an entity described in subdivisions (a) to (c) while the motor vehicle is being used to perform emergency or law enforcement duties for that entity.

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

750.234d Possession of firearm on certain premises prohibited; applicability; violation as misdemeanor; penalty.

Sec. 234d. (1) Except as 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, Act No. 8 of the Public Acts of the Extra Session of 1933, being sections 436.1 to 436.58 of the Michigan Compiled Laws.

(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.

(3) A person who violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$100.00, or both.

History: Add. 1990, Act 321, Eff. Mar. 28, 1991;—Am. 1992, Act 218, Imd. Eff. Oct. 13, 1992;—Am. 1994, Act 158, Eff. Aug. 15, 1994.

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

Sec. 234e. (1) Except as provided in subsection (2), a person shall not willfully and knowingly brandish a firearm in public.

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

- (a) A peace officer lawfully performing his or her duties as a peace officer.
- (b) A person lawfully acting in self-defense or defense of another under the self-defense act, 2006 PA 309, MCL 780.971 to 780.974.

(3) A person who violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 90 days, or a fine of not more than \$100.00, or both.

History: Add. 1990, Act 321, Eff. Mar. 28, 1991;—Am. 2015, Act 27, Eff. Aug. 10, 2015.

750.234f Possession of firearm by person less than 18 years of age; exceptions; violation as misdemeanor; penalty.

Sec. 234f. (1) Except as provided in subsection (2), an individual less than 18 years of age shall not possess a firearm in public except under the direct supervision of an individual 18 years of age or older.

(2) Subsection (1) does not apply to an individual less than 18 years of age who possesses a firearm in accordance with part 401 (wildlife conservation) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being sections 324.40101 to 324.40119 of the Michigan Compiled Laws, or part 435 (hunting and fishing licensing) of Act No. 451 of the Public Acts of 1994, being sections 324.43501 to 324.43561 of the Michigan Compiled Laws. However, an individual less than 18 years of age may possess a firearm without a hunting license while at, or going to or from, a recognized target range or trap or skeet shooting ground if, while going to or from the range or ground, the firearm is enclosed and securely fastened in a case or locked in the trunk of a motor vehicle.

(3) An individual who violates this section is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than \$100.00, or both.

History: Add. 1990, Act 321, Eff. Mar. 28, 1991;—Am. 1992, Act 218, Imd. Eff. Oct. 13, 1992;—Am. 1996, Act 80, Imd. Eff. Feb. 27, 1996.

750.235 Maiming or injuring person by discharging firearm; intentionally aimed without malice; exception; "peace officer" defined.

Sec. 235. (1) A person who maims or injures another person by discharging a firearm pointed or aimed intentionally but without malice at another person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$500.00, or both.

(2) This section does not apply to a peace officer of this state or another state, or of a local unit of government of this state or another state, or of the United States, performing his or her duties as a peace officer. As used in this section, "peace officer" means that term as defined in section 215.

History: 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 750.235;—Am. 2005, Act 303, Imd. Eff. Dec. 21, 2005.

Former law: See section 3 of Act 68 of 1869, being CL 1871, § 7549; How., § 9112; CL 1897, § 11511; CL 1915, § 15234; and CL 1929, § 16778.

750.235a Parent of minor guilty of misdemeanor; conditions; penalty; defense; definitions.

Sec. 235a. (1) The parent of a minor is guilty of a misdemeanor if all of the following apply:

- (a) The parent has custody of the minor.
- (b) The minor violates this chapter in a weapon free school zone.
- (c) The parent knows that the minor would violate this chapter or the parent acts to further the violation.

(2) An individual convicted under subsection (1) may be punished by 1 or more of the following:

- (a) A fine of not more than \$2,000.00.
- (b) Community service for not more than 100 hours.
- (c) Probation.

(3) It is a complete defense to a prosecution under this section if the defendant promptly notifies the local law enforcement agency or the school administration that the minor is violating or will violate this chapter in a weapon free school zone.

(4) As used in this section:

- (a) "Minor" means an individual less than 18 years of age.
- (b) "School" means a public, private, denominational, or parochial school offering developmental kindergarten, kindergarten, or any grade from 1 through 12.
- (c) "School property" means a building, playing field, or property used for school purposes to impart instruction to children or used for functions and events sponsored by a school, except a building used primarily for adult education or college extension courses.
- (d) "Weapon free school zone" means school property and a vehicle used by a school to transport students to or from school property.

History: Add. 1994, Act 158, Eff. Aug. 15, 1994.

Compiler's note: Former MCL 750.235a, which made the reckless use of firearms a misdemeanor, was repealed by Act 45 of 1952, Eff. Sept. 18, 1952.

750.236 Spring gun, trap or device; setting.

Sec. 236. Setting spring guns, etc.—Any person who shall set any spring or other gun, or any trap or device operating by the firing or explosion of gunpowder or any other explosive, and shall leave or permit the same to be left, except in the immediate presence of some competent person, shall be guilty of a misdemeanor, punishable by imprisonment in the county jail not more than 1 year, or by a fine of not more than 500 dollars, and the killing of any person by the firing of a gun or device so set shall be manslaughter.

History: 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 750.236.

Former law: See section 1 of Act 97 of 1875; being How., § 9114; CL 1897, § 11515; CL 1915, § 15250; and CL 1929, § 16782.

750.236a Computer-assisted shooting; prohibited acts; definitions.

Sec. 236a. (1) A person in this state shall not do any of the following:

- (a) Engage in computer-assisted shooting.
- (b) Provide or operate, with or without remuneration, facilities for computer-assisted shooting.
- (c) Provide or offer to provide, with or without remuneration, equipment specially adapted for computer-assisted shooting. This subdivision does not prohibit providing or offering to provide any of the following:
 - (i) General-purpose equipment, including a computer, a camera, fencing, building materials, or a firearm.
 - (ii) General-purpose computer software, including an operating system and communications programs.
 - (iii) General telecommunications hardware or networking services for computers, including adapters, modems, servers, routers, and other facilities associated with internet access.

(d) Provide or offer to provide, with or without remuneration, an animal for computer-assisted shooting.

(2) As used in this section:

- (a) "Computer-assisted shooting" means the use of a computer or any other device, equipment, or software to remotely control the aiming and discharge of a firearm to kill an animal, whether or not the animal is located in this state.
- (b) "Facilities for computer-assisted remote shooting" includes real property and improvements on the property associated with computer-assisted shooting, such as hunting blinds, offices, and rooms equipped to facilitate computer-assisted shooting.

History: Add. 2005, Act 110, Imd. Eff. Sept. 22, 2005.

750.236b Computer-assisted shooting; prohibited conduct; definitions.

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Sec. 236b. (1) A person in this state shall not do any of the following:

(a) Engage in computer-assisted shooting.

(b) Provide or operate, with or without remuneration, facilities for computer-assisted shooting.

(c) Provide or offer to provide, with or without remuneration, equipment specially adapted for computer-assisted shooting. This subdivision does not prohibit providing or offering to provide any of the following:

(i) General-purpose equipment, including a computer, a camera, fencing, building materials, or a bow or crossbow.

(ii) General-purpose computer software, including an operating system and communications programs.

(iii) General telecommunications hardware or networking services for computers, including adapters, modems, servers, routers, and other facilities associated with internet access.

(d) Provide or offer to provide, with or without remuneration, an animal for computer-assisted shooting.

(2) As used in this section:

(a) "Computer-assisted shooting" means the use of a computer or any other device, equipment, or software to remotely control the aiming and discharge of a bow or crossbow to kill an animal, whether or not the animal is located in this state.

(b) "Facilities for computer-assisted remote shooting" includes real property and improvements on the property associated with computer-assisted shooting, such as hunting blinds, offices, and rooms equipped to facilitate computer-assisted shooting.

History: Add. 2005, Act 111, Imd. Eff. Sept. 22, 2005.

750.236c Violation of MCL 750.236a or 750.236b; penalty; forfeiture.

Sec. 236c. (1) A person who violates section 236a or 236b is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

(2) A person who has been convicted of violating section 236a or 236b and subsequently violates either of those sections is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both. In addition, the instrumentalities of the crime are subject to forfeiture in the same manner as provided in part 47 of the revised judicature act of 1961, 1961 PA 236, MCL 600.4701 to 600.4709.

History: Add. 2005, Act 112, Eff. Oct. 15, 2005.

750.237 Liquor or controlled substance; possession or use of firearm by person under influence; violation; penalty; chemical analysis.

Sec. 237. (1) An individual shall not carry, have in possession or under control, or use in any manner or discharge a firearm under any of the following circumstances:

(a) The individual is under the influence of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance.

(b) The individual has an alcohol content of 0.08 or more grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(c) Because of the consumption of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance, the individual's ability to use a firearm is visibly impaired.

(2) Except as provided in subsections (3) and (4), an individual who violates subsection (1) is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$100.00 for carrying or possessing a firearm, or both, and not more than \$500.00 for using or discharging a firearm, or both.

(3) An individual who violates subsection (1) and causes a serious impairment of a body function of another individual by the discharge or use in any manner of the firearm is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not less than \$1,000.00 or more than \$5,000.00, or both. As used in this subsection, "serious impairment of a body function" includes, but is not limited to, 1 or more of the following:

(a) Loss of a limb or use of a limb.

(b) Loss of a hand, foot, finger, or thumb or use of a hand, foot, finger, or thumb.

(c) Loss of an eye or ear or of use of an eye or ear.

(d) Loss or substantial impairment of a bodily function.

(e) Serious visible disfigurement.

(f) A comatose state that lasts for more than 3 days.

(g) Measurable brain damage or mental impairment.

(h) A skull fracture or other serious bone fracture.

(i) Subdural hemorrhage or subdural hematoma.

(j) Loss of an organ.

(4) An individual who violates subsection (1) and causes the death of another individual by the discharge or use in any manner of a firearm is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not less than \$2,500.00 or more than \$10,000.00, or both.

(5) A peace officer who has probable cause to believe an individual violated subsection (1) may require the individual to submit to a chemical analysis of his or her breath, blood, or urine. However, an individual who is afflicted with hemophilia, diabetes, or a condition requiring the use of an anticoagulant under the direction of a physician is not required to submit to a chemical analysis of his or her blood.

(6) Before an individual is required to submit to a chemical analysis under subsection (5), the peace officer shall inform the individual of all of the following:

(a) The individual may refuse to submit to the chemical analysis, but if he or she refuses, the officer may obtain a court order requiring the individual to submit to a chemical analysis.

(b) If the individual submits to the chemical analysis, he or she may obtain a chemical analysis from a person of his or her own choosing.

(7) The failure of a peace officer to comply with the requirements of subsection (6) does not render the results of a chemical analysis inadmissible as evidence in a criminal prosecution for violating this section, in a civil action arising out of a violation of this section, or in any administrative proceeding arising out of a violation of this section.

(8) The collection and testing of breath, blood, or urine specimens under this section shall be conducted in the same manner that breath, blood, or urine specimens are collected and tested for alcohol- and controlled-substance-related driving violations under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

(9) This section does not prohibit the individual from being charged with, convicted of, or sentenced for any other violation of law arising out of the same transaction as the violation of this section in lieu of being charged with, convicted of, or sentenced for the violation of this section.

History: 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 750.237;—Am. 2001, Act 135, Eff. Feb. 1, 2002.

Former law: See sections 1 and 2 of Act 25 of 1929, being CL 1929, §§ 16780 and 16781.

750.237a Individual engaging in proscribed conduct in weapon free school zone; violation; penalties; definitions.

Sec. 237a. (1) An individual who engages in conduct proscribed under section 224, 224a, 224b, 224c, 224e, 226, 227, 227a, 227f, 234a, 234b, or 234c, or who engages in conduct proscribed under section 223(2) for a second or subsequent time, in a weapon free school zone is guilty of a felony punishable by 1 or more of the following:

(a) Imprisonment for not more than the maximum term of imprisonment authorized for the section violated.

(b) Community service for not more than 150 hours.

(c) A fine of not more than 3 times the maximum fine authorized for the section violated.

(2) An individual who engages in conduct proscribed under section 223(1), 224d, 226a, 227c, 227d, 231c, 232a(1) or (4), 233, 234, 234e, 234f, 235, 236, or 237, or who engages in conduct proscribed under section 223(2) for the first time, in a weapon free school zone is guilty of a misdemeanor punishable by 1 or more of the following:

(a) Imprisonment for not more than the maximum term of imprisonment authorized for the section violated or 93 days, whichever is greater.

(b) Community service for not more than 100 hours.

(c) A fine of not more than \$2,000.00 or the maximum fine authorized for the section violated, whichever is greater.

(3) Subsections (1) and (2) do not apply to conduct proscribed under a section enumerated in those subsections to the extent that the proscribed conduct is otherwise exempted or authorized under this chapter.

(4) Except as provided in subsection (5), an individual who possesses a weapon in a weapon free school zone is guilty of a misdemeanor punishable by 1 or more of the following:

(a) Imprisonment for not more than 93 days.

(b) Community service for not more than 100 hours.

(c) A fine of not more than \$2,000.00.

(5) Subsection (4) does not apply to any of the following:

(a) An individual employed by or contracted by a school if the possession of that weapon is to provide security services for the school.

- (b) A peace officer.
- (c) An individual licensed by this state or another state to carry a concealed weapon.
- (d) An individual who possesses a weapon provided by a school or a school's instructor on school property for purposes of providing or receiving instruction in the use of that weapon.
- (e) An individual who possesses a firearm on school property if that possession is with the permission of the school's principal or an agent of the school designated by the school's principal or the school board.
- (f) An individual who is 18 years of age or older who is not a student at the school and who possesses a firearm on school property while transporting a student to or from the school if any of the following apply:
 - (i) The individual is carrying an antique firearm, completely unloaded, in a wrapper or container in the trunk of a vehicle while en route to or from a hunting or target shooting area or function involving the exhibition, demonstration or sale of antique firearms.
 - (ii) The individual is carrying a firearm unloaded in a wrapper or container in the trunk of the person's vehicle, while in possession of a valid Michigan hunting license or proof of valid membership in an organization having shooting range facilities, and while en route to or from a hunting or target shooting area.
 - (iii) The person is carrying a firearm unloaded in a wrapper or container in the trunk of the person's vehicle from the place of purchase to his or her home or place of business or to a place of repair or back to his or her home or place of business, or in moving goods from one place of abode or business to another place of abode or business.
 - (iv) The person is carrying an unloaded firearm in the passenger compartment of a vehicle that does not have a trunk, if the person is otherwise complying with the requirements of subparagraph (ii) or (iii) and the wrapper or container is not readily accessible to the occupants of the vehicle.
- (6) As used in this section:
 - (a) "Antique firearm" means either of the following:
 - (i) A firearm not designed or redesigned for using rimfire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898, including a matchlock, flintlock, percussion cap, or similar type of ignition system or a replica of such a firearm, whether actually manufactured before or after the year 1898.
 - (ii) A firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.
 - (b) "School" means a public, private, denominational, or parochial school offering developmental kindergarten, kindergarten, or any grade from 1 through 12.
 - (c) "School property" means a building, playing field, or property used for school purposes to impart instruction to children or used for functions and events sponsored by a school, except a building used primarily for adult education or college extension courses.
 - (d) "Weapon" includes, but is not limited to, a pneumatic gun.
 - (e) "Weapon free school zone" means school property and a vehicle used by a school to transport students to or from school property.

History: Add. 1994, Act 158, Eff. Aug. 15, 1994;—Am. 2015, Act 26, Eff. July 1, 2015.

750.238 Search warrant.

Sec. 238. Search warrant—When complaint shall be made on oath to any magistrate authorized to issue warrants in criminal cases that any pistol or other weapon or device mentioned in this chapter is unlawfully possessed or carried by any person, such magistrate shall, if he be satisfied that there is reasonable cause to believe the matters in said complaint be true, issue his warrant directed to any peace officer, commanding him to search the person or place described in such complaint, and if such pistol, weapon or device be there found, to seize and hold the same as evidence of a violation of this chapter.

History: 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 750.238.

750.239 Forfeiture of weapons; disposal; immunity from civil liability.

Sec. 239. (1) Except as provided in subsection (2) and subject to section 239a, all pistols, weapons, or devices carried, possessed, or used contrary to this chapter are forfeited to the state and shall be turned over to the department of state police for disposition as determined appropriate by the director of the department of state police or his or her designated representative.

(2) The director of the department of state police shall dispose of firearms under this section by 1 of the following methods:

(a) By conducting a public auction in which firearms received under this section may be purchased at a sale conducted in compliance with section 4708 of the revised judicature act of 1961, 1961 PA 236, MCL 600.4708, by individuals authorized by law to possess those firearms.

(b) By destroying them.

(c) By any other lawful manner prescribed by the director of the department of state police.

(3) Before disposing of a firearm under this section, the director of the department of state police shall do both of the following:

(a) Determine through the law enforcement information network whether the firearm has been reported lost or stolen. If the firearm has been reported lost or stolen and the name and address of the owner can be determined, the director of the department of state police shall provide 30 days' written notice of his or her intent to dispose of the firearm under this section to the owner, and allow the owner to claim the firearm within that 30-day period if he or she is authorized to possess the firearm.

(b) Provide 30 days' notice to the public on the department of state police website of his or her intent to dispose of the firearm under this section. The notice shall include a description of the firearm and shall state the firearm's serial number, if the serial number can be determined. The department of state police shall allow the owner of the firearm to claim the firearm within that 30-day period if he or she is authorized to possess the firearm. The 30-day period required under this subdivision is in addition to the 30-day period required under subdivision (a).

(4) The department of state police is immune from civil liability for disposing of a firearm in compliance with this section.

History: 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 750.239;—Am. 1949, Act 168, Eff. Sept. 23, 1949;—Am. 1964, Act 215, Eff. Aug. 28, 1964;—Am. 2010, Act 294, Imd. Eff. Dec. 16, 2010.

750.239a Disposition of seized weapon; immunity from civil liability; "law enforcement agency" defined.

Sec. 239a. (1) A law enforcement agency that seizes or otherwise comes into possession of a firearm or a part of a firearm subject to disposal under section 239 may, instead of forwarding the firearm or part of a firearm to the director of the department of state police or his or her designated representative for disposal under that section, retain that firearm or part of a firearm for the following purposes:

(a) For legal sale or trade to a federally licensed firearm dealer. The proceeds from any sale or trade under this subdivision shall be used by the law enforcement agency only for law enforcement purposes. The law enforcement agency shall not sell or trade a firearm or part of a firearm under this subdivision to any individual who is a member of that law enforcement agency unless the individual is a federally licensed firearms dealer and the sale is made pursuant to a public auction.

(b) For official use by members of the seizing law enforcement agency who are employed as peace officers. A firearm or part of a firearm shall not be sold under this subdivision.

(2) A law enforcement agency that sells or trades any pistol to a licensed dealer under subsection (1)(a) or retains any pistol under subsection (1)(b) shall complete a record of the transaction under section 2 or section 2a, as applicable.

(3) A law enforcement agency that sells or trades a firearm or part of a firearm under this section shall retain a receipt of the sale or trade for a period of not less than 7 years. The law enforcement agency shall make all receipts retained under this subsection available for inspection by the department of state police upon demand and for auditing purposes by the state and the local unit of government of which the agency is a part.

(4) Before disposing of a firearm under this section, the law enforcement agency shall do both of the following:

(a) Determine through the law enforcement information network whether the firearm has been reported lost or stolen. If the firearm has been reported lost or stolen and the name and address of the owner can be determined, the law enforcement agency shall provide 30 days' written notice of its intent to dispose of the firearm under this section to the owner, and allow the owner to claim the firearm within that 30-day period if he or she is authorized to possess the firearm. If the police agency determines that a serial number has been altered or has been removed or obliterated from the firearm, the police agency shall submit the firearm to the department of state police or a forensic laboratory for serial number verification or restoration to determine legal ownership.

(b) Provide 30 days' notice to the public on a website maintained by the law enforcement agency of its intent to dispose of the firearm under this section. The notice shall include a description of the firearm and shall state the firearm's serial number, if the serial number can be determined. The law enforcement agency shall allow the owner of the firearm to claim the firearm within that 30-day period if he or she is authorized to possess the firearm. The 30-day period required under this subdivision is in addition to the 30-day period required under subdivision (a).

(5) The law enforcement agency is immune from civil liability for disposing of a firearm in compliance with this section.

(6) As used in this section, "law enforcement agency" means any agency that employs peace officers.

History: Add. 1996, Act 496, Eff. Mar. 31, 1997;—Am. 2010, Act 294, Imd. Eff. Dec. 16, 2010.

**STATE OF MICHIGAN
IN THE COURT OF APPEALS**

**MICHIGAN OPEN CARRY, INC.; and,
KENNETH HERMAN, individually,**

Appellees,

COA # 329418
LC# 15-104373 CZ

v.

**CLIO AREA SCHOOL DISTRICT;
FLETCHER SPEARS, III, individually; and,
KATRINA MITCHELL, individually;**

Appellants.

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PROOF OF SERVICE

I hereby certify that on December 10, 2015, I served the following documents upon counsel of record at the addresses provided herein by e-filing:

- 1. PLAINTIFF-APPELLEES' BRIEF ON APPEAL; and,**
- 2. PROOF OF SERVICE**

Respectfully submitted,

Dated: December 10, 2015

/s/ Dean G. Greenblatt