

Open Carry: A guide to both positive and negative encounters with Law Enforcement and the public in the state of Michigan

Written by malignity; edited by autosurgeon

As the Open Carry community grows, more and more seem to want to jump on the bandwagon. Before doing so however, one must give thought to their actions and prepare themselves for whatever they may encounter, whether the encounter is highly positive, neutral, or negative. The following essay is meant to assist in aiding both positive and negative encounters to ensure that you can not only educate others on Open Carry, but also to ensure that if you do experience a negative encounter, that you will be properly prepared to deal with such situations. The following information presented in this document refers directly to Michigan and Michigan law, and while some of the information here may be useful if you are from another state, it would be best if you checked your local and state laws before Open Carrying in your state. Please note that nothing in this document is to be taken as legal advice, and the only one that is responsible for your actions is you. The following information portrayed in this essay has been used countless times by countless people who open carry in Michigan and has worked well for them the *vast* majority of the time. That being said, **it is highly recommended that you to read the rest of this document in it's entirety before deciding to Open Carry** for the first time. Even if Open Carry is not new to you, there is plenty of information to be learned here that may be beneficial.

Image

The first thing to discuss is image. Image goes far beyond simple appearance. Though it is perfectly legal for anyone to openly carry a firearm no matter what race, style of dress, etc., unfortunately it must be said that in the world we live in, image is everything; it's the first thing we see, and we base our first and lasting impressions on how people carry themselves, how they dress, and what they say.

Attitude

Image is not just what you wear, but also how you carry yourself and how you present yourself to others. Though the vast majority of people will probably not notice you openly carrying your firearm unless you're wearing a drop leg holster, those that do notice will likely watch you carefully, whether they are either pedestrians or law enforcement. It is therefore absolutely **crucial** that you present yourself in a positive way, even during a negative encounter. If you choose to open carry a firearm, people in our state **will** watch you from time to time, and will be critical of your actions. You are a beacon for all of us that open carry; please represent your fellow man well.

All encounters should be polite and professional. This may be difficult, especially if the person, whether it is a pedestrian or law enforcement official is not. Be courteous and cooperative, and do not portray a negative attitude, even if the attitude portrayed against you is negative. There is almost always a witness to any encounter in public, and if for whatever reason a scene attracting attention is created, you do not want to be the one causing the scene. Being level headed and remaining calm is the key here, as there is nothing more frustrating than yelling and being angry at someone that refuses to become angry and react to your outburst. Though this is common sense to most, applying the contents of this document in its entirety during a negative situation can be difficult. Later we will be discussing in more detail the encounters with law enforcement, as encounters with them should be handled in a specific manner that through the experiences of many who open carry in Michigan have had positive results.

Dress and general appearance

Dress is another factor that may play a role in your encounters with both the public and law enforcement that can both sway people's opinion of you. The last thing you want is someone to be afraid of you. Though most will not agree that stereotyping is 'right', all can agree that it happens. There is no way to avoid this. Everyone has pre-conceived notions about certain people whether they are true or not. Unfortunately this is simply the way the world works, and there's nothing that can be done to change it. This section is not meant to tell you to dress a certain way, however because stereotyping exists and is a very real thing in this world, before you begin to open carry, ask what kind of image you want to present to others. Again, you do not want people to fear you, and even if their pre-conceived notion of you is completely wrong, some people will have a difficult time getting past your physical appearance. It has been said that you will attract more bees with honey than with vinegar; and your interactions with both the public and law enforcement can vary greatly depending on what you are wearing and your overall general appearance.

Carry yourself with confidence

If you are going to open carry, your best defense against someone ignorant of the law is knowledge. Memorize your Michigan Compiled Law (MCL's). Even if you can't cite them word for word, simply knowing exactly where relevant laws can be found can be highly beneficial. Many in the open carry community carry either pocket cards or pamphlets for this very reason. Many of the pamphlets carried contain the specific MCL's needed, either as reference, or to educate someone curious about open carry that would like to know more. If someone approaches you specifically and says that you cannot carry that way, ask them where in the law it specifically says you cannot. **Remember, there is no law in Michigan that states that you *can* open carry, however there is also no law saying that you cannot, so by default, if something is not illegal, it is therefore legal.** Since no such law is able to be cited, encourage them to do some research and give them a card or pamphlet if you have one available.

Lastly, in portraying a positive image for open carry, take the time to smile! Be approachable. If you're smiling, the whole world will smile with you. It's that simple.

Knowing the Law

Knowing the relevant laws pertaining to firearms and the laws in Michigan is going to not only bring confidence, but also will arm you with information that will assist you in various ways if you are ever asked a question about open carry. Part of being a responsible gun owner is taking responsibility for your actions. The only way you can take responsibility for your actions is to arm yourself with the needed knowledge about those actions. Keep in mind that all private property rules automatically override any state law, and therefore if you are asked to leave someone's property for whatever reason, you are automatically obligated to do so without question or you can be charged with trespassing.

Open Carry without a Concealed Pistol License

Believe it or not, there are in fact two types of open carry in Michigan. The first type of Open Carry is for those who do not own a Concealed Pistol License (or CPL, formerly a CCW). There are different laws that apply to both those that have and do not have a Concealed Pistol License.

Without a CPL, you are only allowed to carry a legally registered firearm **that is registered to you specifically**. The places that are off limits to firearms are in MCL 750.234d[1].

The appendix contains the entire law as it is written in the state of Michigan, however there are exceptions and additions that must be stated. These are simple words of warning that will potentially save you from having a very bad day. In the state of Michigan, when transporting a firearm without your CPL, you must have your firearm in a case and it must be unloaded and out of reach, such as a trunk, etc. This can simply mean having your magazine loaded and next to your firearm and in a case. **Carrying a firearm in a motorized or moving vehicle regardless of if it is visible or not is considered concealing it in Michigan.** Note that **ON a vehicle such as a Motorcycle or Bicycle is a grey area and is recommended that only someone with a CPL carry on a Motorcycle or Bicycle. The only place you can conceal your firearm without a CPL is on your own property (Deeded or rented to YOU). It also must be said that in Section 234d, (1) h; An establishment licensed under the Michigan liquor control act. Also applies to the parking lot of said location.** Therefore, if you are in the parking lot of a grocery store that sells liquor, or a restaurant that happens to have a bar, not only can you not carry there but you cannot legally have a firearm on the premises. It must also be noted that all federally owned buildings are completely off-limits to all firearms, regardless of CPL status and method of carry. Buildings like Federal Reserve Banks (which is different from a normal bank), Social Security offices, Post Offices, etc, are regulated by the federal government and not the state government.

Open Carrying with a Concealed Pistol License

Carrying a firearm openly with a CPL is unfortunately *much* easier than carrying without one. The pistol needs to simply be registered, and it can be carried however you wish in your vehicle. The myth that if you have a CPL, you must conceal your firearm is simply false. Stating such is equivalent to stating that since you have your Driver's License, you are no longer allowed to walk. If approached with this type of statement, feel free to politely ask where exactly in the law it says you must keep your firearm concealed. Concealed Carry laws are to be found in MCL 28.425o[2]

Potential Gray Areas and/or Situations to be Aware of

Though this is not truly a gray area, unfortunately in the eyes of some law enforcement officials, you cannot openly carry in a PFZ (Pistol-Free Zone). There have been numerous explanations and/or Michigan State Police opinions and statements on this stating that it is legal to open carry in a PFZ with a CPL, however, many local law enforcement officials do not see it this way. There are many people in Michigan's open carry community that have carried in PFZ's with absolutely no issue, however it should be noted that a negative response from law enforcement is *much* more likely. Ultimately whether or not you openly carry with your CPL in a PFZ is your decision, however if you decide to do so, be sure that you are completely on top of your game. Located below is part of MCL 28.425o with highlighted relevancy on key terms, an Attorney General Opinion and documentation from the Michigan State Police.

MCL 28.425o[2]:

(1) Subject to subsection (4), an individual licensed under this act to carry a concealed pistol, or who is exempt from licensure under section 12a(1)(f), shall not carry a concealed pistol on the premises of any of the following: ...

Attorney General Opinion about openly carrying with a CPL in a PFZ, key points

highlighted.[3]

Michigan State Police response to carrying openly with a CPL in a PFZ.[4]

As of October 26, 2010, the Michigan State Police have released an official statement stating that it is indeed legal to open carry with a CPL in certain Pistol-Free Zones. This documentation is called Michigan State Police Legal Update #86, and is viewable to the public on the official state of Michigan website located at:

www.michigan.gov/msp-legal

Police Interaction

The types of police interactions you have will vary greatly. Some Law Enforcement Officers are highly supportive of open carry, some are not. Ultimately, though the police are NOT there to be your friend. However it is important to try and remain friendly if possible. Again, people will judge you based on your actions, and this can work to your advantage. Law Enforcement Officials make mistakes too, and if you are stopped and questioned by police, once the officer realizes that you are not a threat, you will likely be on your way. Anything that can be done to get to the final result of going back to daily life more quickly is ultimately what should be accomplished. The following information gathered below is a compilation of strategies that have been used successfully in the state of Michigan directly by those that open carry on a daily basis.

What to say and what not to say

Again, it must be said that the police are not your friend. This is not intended to be a derogatory statement about the police, but is simply the truth. They have a job to do, and it is not in their job description to become friends with people they may have to potentially arrest later. If a police officer stops you, there are certain key phrases that should be used. **It is not recommended that you deviate from these specific phrases, because there is truth that anything you say can and will be held against you in the court of law.** The following tactics are designed and engineered to help you stay out of a bad situation.

If a member of Law Enforcement approaches you and says they need to talk to you for a moment, in a courteous and cooperative manner, greet them and ask them immediately if you are being detained. The simple phrase "Am I being detained?" is sufficient. **If the officer's answer is no, then it is in your best interest to leave and have no further contact with the officer if possible.** The officer may attempt to approach you again. If he does, repeat your question again, and state that you would like to leave if not being detained. Under no legal obligation are you required to talk to a police officer or produce identification of any kind if you are not being detained, and the officer may be looking for Reasonable Suspicion (or RS; Reasonable Articulable Suspicion) to legally detain you. The officer may continue to talk to you and in an attempt to get you to respond in a negative manner, and may even become angry if you say nothing and do not respond in the way they are looking for. *Do not incriminate yourself. If the officer continues to talk to you, immediately state that any questions he or she may have must be directed to your lawyer, and evoke your right to remain silent.* **Deviating from this is not suggested in the open carry community as this tactic has worked for the vast majority of police**

encounters.

If the officer does state that he is detaining you, that means that for whatever reason the officer believes he or she has developed RS against you and have officially decided that they would like to investigate you in a formal matter, which is most commonly referred to as a Terry Stop, derived from the Supreme Court case Terry vs. Ohio. **If you are being detained, you have a right to know why, so it is in your best interest to ask "For what reason or under what suspicion are you detaining me?"** A law enforcement official may simply state 'because you have a gun'. Though this is not a legitimate reason as the carry of a firearm alone is not RS according to Terry vs. Ohio, and because open carry is perfectly legal and concealed carry is legal with a permit, **do not argue with the officer and comply with whatever orders they give you.** At this point, you may be disarmed, handcuffed and put in the back of a police cruiser. This has in fact happened to a few in the open carry community. Though this is extremely rare, it can be absolutely terrifying. Since you know the law and have done nothing wrong, you likely have little to worry about. Your officer may not be as familiar as you are with firearm laws, and may be looking through his books, computer, and/or be contacting the station to charge you with something. When they find nothing to charge you with, they will likely let you go. If this is happening, invoke your right to remain silent and do so, and if they continue to talk to you ignore them and remain silent.

When to seek legal counsel

If for whatever reason the officer does charge you with something and either decides to ticket you or take you into the station, seek legal counsel immediately. Refuse to answer any and all questions, and invoke your right to remain silent. Repeat that any questions will need to be answered by your attorney. You may be interrogated, yelled or screamed at, etc. This essay is not designed to help you out of this type of situation, but rather avoid this situation completely. Remain silent and let your attorney do the talking. **At this point, there is absolutely nothing that you can say that will help your situation. Everything you say will only hurt the situation and make it worse. You are protected by the Fifth Amendment of the Constitution of the United States against any sort of self-incrimination.** If you can avoid using a public defense attorney, by all means do so. It is highly suggested that you research local attorneys in the area and find one that specifically deals with Criminal Defense. You do not want a 'catch all' attorney representing you, but rather, one that knows the specifics of firearms law to be on your side.

Tactics that have been used against the open carry community by officers

Though the vast majority of officers know that open carry is completely legal, some are not up to snuff on every law in the book, or simply may not agree with open carry and may attempt various tactics to try and convince you not to openly carry your firearm in the future. **The vast majority of Law Enforcement Officers are familiar with open carry and will not bother you. They understand that it is a citizen's right to carry a firearm, and likely support your rights.** Some tactics they may employ are only scare tactics. There is a remote possibility that you could be detained, handcuffed, and put in the back of a police cruiser while they begin looking for something to charge you with. This type of experience may scare some into not carrying their firearm openly. Other tactics unfortunately are not as subtle, **and though the odds of this happening to you are extremely small**, some open carriers in Michigan have been forcefully violated by police, and have experienced numerous traumatic experiences because they open carry. This is not meant to scare you into not open carrying, however know that there is a very small possibility that this can happen to you. Please do not let this deter you from

open carry. As the community grows, more officer education is being developed and the frequency of instances like these will only be reduced.

Another tactic that has been used by a small majority of officers is typically invoked when on private property. An officer may approach you and state that a Man With A Gun call (MWAG) has been made and that someone has asked you to leave the premises. The officer may then continue to talk to you and delay you in immediately leaving the premises. After a short discussion, they may attempt to charge you with trespassing since you did not leave immediately. Keep this in mind; that if you are asked to leave private property by a law enforcement official or someone in authority at the private property, you are to do so immediately and without question. Do not let anyone delay you. **The chances of either of these happening to you are small, as most officers support or at least accept your right to carry. This is only mentioned for educational purposes to help protect you.** Many police recognize that open carry overall helps deter crime, and ultimately, the less crime reported because of a citizen's deterrent means less paperwork on their end, quicker response times when police are needed, and more time spent catching the undeterred in the act.

Considerations that may assist you while open carrying

There are many things that can help assist you while open carrying. Some of these are the simple sharing of knowledge; other tools will help you if you have any legal issues that might arise. Some tips are more important to use than others, however all of them will be useful in some way.

Digital Media Recorders; Voice, Video and Cameras

The most common item that can legally save you is a voice recording device. A voice recorder can be purchased almost anywhere and is the cheapest and perhaps best way to protect you in any negative encounter with either the police or the public. You may want to consider purchasing a digital recording device that allows you to upload recordings onto a computer not only so a backup can be created easily, but also so that you can share the interaction with legal counsel later. The police record nearly every single encounter they have with a potential suspect. You do not need permission to record a conversation with a police officer, nor do you need permission to record in a public place where there is no expectation of privacy. It is your right and in your best interest to carry a voice recorder at the very minimum and possibly a video recorder to protect yourself in case of an incident. Though it is usually not intentional, when filing for copies of police recordings under the Freedom of Information Act (FOIA), sometimes data gets lost, and you want to paint a clear picture of exactly what happened with absolutely no hearsay involved. The only way to truly insure this is to record the encounter yourself.

Video recording and cameras are also helpful tools in a legal battle. Though the vast majority of people do not like to be video recorded, having someone with a video recorder or camera is especially helpful when in a group of others that are also open carrying.

Informational Pamphlets / Information cards

As stated before, informational pamphlets and information cards are very helpful in educating others on open carry. Once you know the laws provided in this document, you can easily make your own educational sheet or guideline on a computer, or you can seek an open carry organization in Michigan who may be able to help provide such

documents to you at little to no charge.

Networking/knowledgeable people and organizations

The best place to share knowledge, ask questions you may still have, and share experiences are through networking. One of the most common ways of doing this is signing up for a public forum. There are various public forums dedicated to Michigan gun owners, open carry in Michigan, and open carry in general. The best way to learn is to ask questions, and the easiest way is to sign up on a forum. The vast majority are free and can be signed up for in a matter of minutes. The open carry community is always welcoming more people with open arms. Come talk to us; we don't bite.

Helpful links

News report regarding open carry:

<http://www.youtube.com/watch?v=ISQ7KCHrAzM>
<http://www.youtube.com/watch?v=ISQ7KCHrAzM>
<http://www.youtube.com/watch?v=ISQ7KCHrAzM>
<http://www.youtube.com/watch?v=ISQ7KCHrAzM>
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http://www.youtube.com/watch?v=tDw_UxnIpXk
http://www.youtube.com/watch?v=tDw_UxnIpXk

Examples of police encounters:

<http://www.youtube.com/watch?v=rqdUdr7K-ko>
<http://www.youtube.com/watch?v=rqdUdr7K-ko>
<http://www.youtube.com/watch?v=rqdUdr7K-ko>
<http://www.youtube.com/watch?v=rqdUdr7K-ko>
<http://www.youtube.com/watch?v=rqdUdr7K-ko>
<http://www.youtube.com/watch?v=rqdUdr7K-ko>

Don't talk to Police Part 1 and 2:

<http://www.youtube.com/watch?v=i8z7NC5sgik>
<http://www.youtube.com/watch?v=i8z7NC5sgik>
<http://www.youtube.com/watch?v=i8z7NC5sgik>
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Appendix/Legal Citations and References

1.) MCL 750.234d

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.

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2.) MCL 28.425o

28.425o Premises on which carrying concealed weapon prohibited; "premises" defined; exceptions to subsection (1); violation; penalties.

Sec. 5o.

(1) Subject to subsection (4), an individual licensed under this act to carry a concealed pistol, or who is exempt from licensure under section 12a(1)(f), 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 child 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. A record made available by an establishment licensed under the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1101 to 436.2303, necessary to enforce this subdivision is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.
 - (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) An individual licensed under this act to carry a concealed pistol, or who is exempt from licensure under section 12a(1)(f), 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.
- (3) As used in subsection (1), "premises" does not include parking areas of the places identified under subsection (1).
- (4) Subsection (1) does not apply to any of the following:
- (a) An individual licensed under this act who is a retired police officer or retired law enforcement officer. The concealed weapon licensing board may require a letter from the law enforcement agency stating that the retired police officer or law enforcement officer retired in good standing.
 - (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. The concealed weapon licensing board may require a state court retired judge to obtain and carry a letter from the judicial tenure commission stating that the state court retired judge is in good standing as authorized under section 30 of article VI of the state constitution of 1963, and rules promulgated under that section, in order to qualify under this subdivision.

(5) 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.

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3.) Attorney General Opinion on OC in PFZ citation

CONCEALED WEAPONS: FIREARMS: LAW ENFORCEMENT: PEACE OFFICERS:	Reserve police officer carrying exposed pistol in gun-free zones established by Concealed Pistol Licensing Act Reserve police officer carrying exposed pistol in gun-free zones established by Michigan Penal Code.
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A uniformed reserve police officer acting as an unpaid volunteer for a local police agency may carry an exposed, holstered pistol within the gun-free zones established by the Concealed Pistol Licensing Act; and if the officer is either a fully authorized "peace officer" or, ***alternatively, possesses a valid concealed pistol license*** issued under the Concealed Pistol Licensing Act, he or she may also carry an exposed, holstered pistol within the gun-free zones established by the Michigan Penal Code.

Opinion No. 7113

June 28, 2002

Honorable Gary C. Peters

State Senator

The Capitol

Lansing, MI

Honorable Mary Ann Middaugh

State Representative

The Capitol

Lansing, MI

Honorable Larry Julian

State Representative

The Capitol

Lansing, MI

You have asked whether a uniformed reserve police officer acting as an unpaid volunteer for a local police agency may carry an exposed, holstered pistol within a "gun-free zone" established by the Concealed Pistol Licensing Act.

Your inquiry is governed by the interplay between two separate but related statutes, both of which regulate the possession of firearms.

The Concealed Pistol Licensing Act, 1927 PA 372, MCL 28.421 *et seq*, regulates the possession and carrying of *concealed* pistols. The Act prohibits persons from carrying a concealed pistol unless they have been licensed in accordance with the provisions of that Act. Amendatory 2000 PA 381 made significant changes to the Act. Section 5b(7) sets forth specific qualifications a person must possess in order to receive a license to carry a concealed pistol and further provides that a county concealed weapon licensing board "shall issue a license" to an applicant who meets those requirements. The Act also provides that a person who is issued a license under the Act may carry a concealed pistol "anywhere in this state" except in certain designated classes of locations listed in section 5o of the Act. Those exceptions, commonly referred to as "gun free zones," include the following:

- a) A school or school property
- b) A public or private day care center, public or private child caring agency, or public or private child placing agency.
- c) A sports arena or stadium.
- d) A dining room, lounge, or bar area of a premises licensed under the Michigan liquor control code of 1998 This subdivision shall not apply to an owner or employee of the premises.
- 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 [that has a seating capacity of 2,500 or more]
- g) A hospital.
- h) A dormitory or classroom of a community college, college, or university. [Section 5o(1).]

Section 12a of the Act expressly exempts certain persons from the requirements of the Act, including:

- (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. [Emphasis added.]

Under the express terms of this section, a police officer or reserve police officer is exempt from the requirements of the Concealed Pistol Licensing Act, including the prohibition against carrying a concealed weapon in a "gun free zone," but only if the officer (1) possesses the full authority of a peace officer, and not merely special or limited law enforcement authority; and (2) is regularly employed and paid for those services. See OAG, 2001-2002, No 7098, p 74 (January 11, 2002). Your inquiry does not specify whether the uniformed reserve officer in question possesses the full authority of a peace officer. You do, however, specify that the officer in question serves as an unpaid volunteer. Because the exemption contained in section 12a(a) is limited to officers who are "regularly employed," an unpaid volunteer officer is not exempt from the provisions of the Concealed Pistol Licensing Act and is, therefore, prohibited from carrying a *concealed* pistol in a designated "gun free zone." OAG No 7098, *supra*.

A plain reading of section 5o(1) of the Concealed Pistol Licensing Act discloses, however, that its prohibition applies only to the carrying of pistols that are "concealed." A holstered pistol carried openly and in plain view is not "concealed" and therefore does not violate the prohibition contained in that section. See, e.g., OAG, 1951-1952, No 1388, p 228 (April 18, 1951) ("Should they be so directed by their superior officers, auxiliary police while on duty may carry weapons openly, the prohibition in the Penal Code applying only to 'concealed' weapons."), *Cf., People v Johnnie W. Jones*, 12 Mich App 293, 296; 162 NW2d 847 (1968); and *People v Kincade*, 61 Mich App 498, 502; 233 NW2d 54 (1975).

This, however, does not end the analysis of your question. The carrying of firearms in public is also restricted by the Michigan Penal Code, 1931 PA 328, MCL 750.1 *et seq*. Section 234d of the Penal Code identifies certain "gun free zones" similar to those enumerated in section 5o of the Concealed Pistol Licensing Act; within those specified zones, the possession of firearms is strictly prohibited, subject to limited exceptions. Specifically, section 234d(1) of the Penal Code provides that:

- (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. This language is significantly broader than that employed by section 5o of the Concealed Pistol Licensing Act. By its express terms, section 234d(1) of the Penal Code applies to firearms generally, not merely to pistols, and applies to firearms whether concealed or not. Subsection (2) of this provision creates several specific exceptions to this prohibition, two of which are germane to your inquiry. It provides, in pertinent part that:

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

* * *

(b) A peace officer.

(c) A person licensed by this state or another state to carry a concealed weapon.

Similarly, section 237a(4) of the Penal Code prohibits possession of a firearm in a weapon free school zone, a term defined in section 237a(6)(d) as "school property and a vehicle used by a school to transport students to or from school property." Like section 234d(2), the prohibition against possessing firearms in a school zone does not apply to a peace officer or to a person licensed to carry a concealed weapon. Section 237a(5).

If a reserve officer qualifies as a peace officer, then the officer is exempt from the prohibition contained in sections 234d(1) and 237a(4) of the Penal Code concerning the possession of firearms on specified premises. If not, sections 234d(2)(c) and 237a(5)(c) of the Penal Code also exempt "[a] person licensed by this state or another state to carry a concealed weapon." A license issued by a county concealed weapon licensing board under section 5b(7) of the Concealed Pistol Licensing Act clearly satisfies the latter exemption. Thus, possession of such a license would enable a reserve police officer to carry an exposed, holstered pistol in the "gun free zones" described in sections 234d and 237a of the Penal Code.

It is my opinion, therefore, that a uniformed reserve police officer acting as an unpaid volunteer for a local police agency may carry an exposed, holstered pistol within the gun-free zones established by the Concealed Pistol Licensing Act; and if the officer is either a fully authorized "peace officer" or, alternatively, possesses a valid concealed pistol license issued under the Concealed Pistol Licensing Act, he or she may also carry an exposed, holstered pistol within the gun-free zones established by the Michigan Penal Code.

JENNIFER M. GRANHOLM

Attorney General

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State of Michigan, Department of Attorney General

Last Updated 11/10/2008 15:49:31

4.) Michigan State Police response regarding OC in PFZ

Your analysis is correct. Non-CPL pistol free zones do not apply to CPL holders. The CPL pistol free zones only apply to CPL holders carrying a concealed pistol. Therefore,

a CPL holder may openly carry a pistol in Michigan's pistol free zones.

Sincerely,
Sgt. Thomas Deasy, Michigan State Police
Executive Resource Section, 714 S. Harrison Rd.
East Lansing, MI 48823
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5.) Michigan State Police Legal Update #86.

www.michigan.gov/msp-legal

Final disclaimer

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