

**THE MINNESOTA CITIZENS' PERSONAL PROTECTION ACT
OF 2003:
HISTORY AND COMMENTARY**

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I. INTRODUCTION

On April 28, 2003, the Minnesota Senate concurred in House action on S.F. 842 and passed the Minnesota Citizens' Personal Protection Act² ("MPPA") as Article 2 of that bill on a 37-30 vote after the longest Senate floor debate in history. The MPPA may be the most thoroughly debated bill to pass the legislature in recent years. The earlier House floor debate took over five hours and included consideration of 8 amendments before the bill was passed on an 88-46 vote. The Governor signed the bill later that afternoon and it went into effect 30 days later.³ Thus Minnesota became the 35th state to adopt a non-discretionary, must-issue system for issuing permits to carry firearms on one's person in public places.⁴

¹ Professor of Law, Hamline University School of Law. © 2003 by J. E. Olson. Professor Olson is also President of Concealed Carry Reform, NOW!. He wrote initial drafts of most of the provisions that made their way into the MPPA. In his capacity as the registered lobbyist for the MPPA's citizen proponents, Professor Olson participated in virtually every negotiating session during the seven years that the bill was in the legislative process.

² The MPPA was amended into S.F. 842, 2003 Leg., 83rd Sess. (Minn. 2003) by the House after the bill had first passed the Senate (passage occurred on March 24, 2003). The amendment contained the language of H.F. 261, 2003 Leg., 83rd Sess. (Minn. 2003) with minor last minute adjustments. Most of the 2003 legislative history of the MPPA can be found by reference to H.F. 261 as it made its way through the House committee process.

³ H.F. 842 as enacted is found in Chapter 28 of Minnesota Laws 2003.

⁴ Missouri and Ohio would soon become the 36th and 37th states to join the list of non-discretionary, must-issue states when gubernatorial vetoes were overridden. Only 4 states do not have some form of carry permit system.

The process of passing the MPPA took seven years and the legislative history can be reviewed by following the evolution of the bill over those years. The proponents⁵ made compromises, good ideas from the opponents⁶ were included, and the bill grew in length and complexity as it made its way through the legislative process. This article describes that process and provides explanatory commentary on the resulting bill by a proponent who played a leading role throughout the legislative process.

A. Two Brave Women

Two brave women began the march to carry permit reform in Minnesota.

In 1996 a bill was introduced to amend Minnesota Statutes § 624.714 to make unlicensed carry of a pistol a felony⁷. A hearing was held on this bill before the House Judiciary Committee on February 1, 1996. A woman lawyer and a woman executive testified against the bill. In their testimony both women came within a hair's breath of admitting that they routinely broke the law because, to ensure their safety, they did carry handguns on their person without a carry permit. Although otherwise qualified, both women had been denied a permit through exercise of their police chief's "discretion"⁸ to deny anyone a permit. One woman was

⁵ The various citizen and organizational proponents worked under the supervision of the Senate and House bill authors. They worked out differences between themselves and presented a united position to others. Unless the context indicates otherwise, the term "proponents" includes the entire team actively working in support of change.

⁶ The opponents who participated in the legislative drafting process were from the Minnesota Sheriffs Association ("MSA"). Other opponents included the Minnesota Police Chiefs Association ("PCA") and the Minnesota Police and Peace Officers Association ("MPPOA").

⁷ H.F. 2578, 2003 Leg., 83rd Sess. (Minn. 2003) (Skoglund).

⁸ This unfettered discretion and arbitrary exercise of it was the primary flaw in the 1975 carry permit system. An issuing authority could exercise unfettered discretion over applicants in two ways: in determining whether the applicant had a "special need" sufficient to require a permit to carry and in determining

denied a permit because her police chief didn't think she needed it "enough" and the other because her police chief would only issue permits to security guards protecting large amount of money. They both testified that their lives were worth protecting, that they had clean records and proper training, and they wanted to be able to safeguard themselves when they were on the streets. They asked the committee to pass a non-discretionary carry permit system and not to face them with a "Hobson's choice" between risking a felony and risking life-threatening danger.

They were followed by a veteran suburban police chief⁹ who testified that although he knew Minnesota law allowed people to apply for permits on the basis of a personal safety hazard, he had not and would not issue a permit on that basis. Representative Dave Bishop asked if the chief really meant that he would not follow the law and the chief replied affirmatively, making the point that no one needed a carry permit unless they had the occupation of actively guarding valuable property. The chief testified that his own daughter worked for a security company and he would not give her a permit because she did not have "enough" need for one.

The women were partially successful because the felony provision didn't become law. They got nowhere, however, with their request for a non-discretionary carry permit system that would protect them. But, the ball was rolling.

In the next legislative session carry permit reform bills would be introduced by five female co-authors in the Senate¹⁰ and five female co-authors in the House¹¹. Eliminating the discrimination inherent in the discretionary permit system continued as a women's issue.¹² The bills would always have

whether to grant a permit even if the applicant met all the prerequisites set forth in the statute.

⁹ From Richfield, Minnesota and a former state Commissioner of Public Safety.

¹⁰ S.F. 792, 2003 Leg., 83rd Sess. (Minn. 2003) (Pariseau-R, Scheid-D, Fischbach-R, Lesewski-R, Hanson-D).

¹¹ H.F. 985, 2003 Leg., 83rd Sess. (Minn. 2003) (Bettermann-R, Schumacher-D, Boudreau-R, Daggett-R, Hasskamp-D).

¹² In 1991, only 2 women out of the 2.5 million residents in the seven-county

strong-minded female legislators, such as Senator Patricia Pariseau and Representative Lynda Boudreau, in the driver's seat.

B. Real Benefits

Carry permit reform brings real benefits.

First, it relieves citizens of the arbitrary, capricious, unreasonable, and vexatious effects of unfettered police discretion. Personal safety shouldn't be a trivial matter dependent on who is in the swivel chair this week or which side of the street one lives on. But it is trivialized when the police chief standard of decision is "what feels right" today.

At town meetings and committee hearing all over the state, legislators heard about permits freely given to campaign supporters, grade school buddies, relatives, neighbors, and other favored persons. The testifiers mentioned permits granted and renewed for 5 years and denied the next merely because "I've decided not to give them out anymore." Folks testified that the phrase I'm not going to give permits out anymore often meant "not to you" but did not mean "not to everyone." One man told of being advised by his lawyer that "you're a apartment dweller, move three blocks (into the next town)." A former prosecutor told of having to sue his police chief even though he had a letter from the FBI that said "you are being threatened by a serious bad guy who will hurt you so take precautions." It took the judge just five seconds to order that the prosecutor's permit be immediately issued but it still cost \$3000 in legal fees. Surprisingly, no police chief even showed up to testify that "we do issue permits fairly." When law enforcement officials denigrate citizens and flaunt the law, it hurts the entire society.

Second, a non-discretionary carry permit system is the most cost-effective means of reducing violent crime. Without the cost

Metropolitan Area held carry permits under the discretionary system (other than those employed as security guards). *Equal Rights*, MINNEAPOLIS STAR, Sept. 16, 1991 at 1C.

of hiring more police officers, hiring more prosecutors and judges, or building more prisons, significant reductions in violence occur whenever a state switches to a must-issue carry permit system. Homicides are reduced by 8.5%, rapes by 5.0%, robberies by 3.0%, and assault by 7.0% following such a policy change.¹³ Non-permit holders are benefited equally because criminals don't know who is armed so they have to modify their conduct toward everyone. Those without permits can "free ride" on those who have them. Concealed carry helps women more than men and urban residents more than their suburban and rural fellows. Crime goes down and accidents don't rise.¹⁴ Permit holders turn out to be the same folks who stop at a red light at 3:00 am just because it's red.¹⁵

C. The Role Played by Law Enforcement Representatives

The proponents wanted to draft a carry permit reform bill that achieved their goals while providing protection to the public interest. They drafted and negotiated with the objective of proposing a bill that would pass. Thus, they kept the substantive changes to a minimum, anticipated items that issuing authorities

¹³ See John R. Lott, Jr., *More Guns, Less Violent Crime*, WALL STREET JOURNAL, August 28, 1996 at A13 and John R. Lott, Jr., *Letting Citizens Carry Them Leads to Drop in Murder Rates*, MINNEAPOLIS STAR-TRIBUNE, March 21, 1997 at A-15. Dr. Lott testified in favor of carry permit reform at a joint hearing of the Senate and House Crime Prevention Committees in 1999.

¹⁴ See generally John R. Lott, Jr., *MORE GUNS, LESS CRIME* (2d ed. University of Chicago Press, 2000).

¹⁵ The revocation rate for permit holders committing gun crimes is indistinguishable from zero. For example, the Florida rate per 100,000 per year for such revocations is 0.0000014 and the revocation rate due to any crime is 0.0000166. *Concealed Weapon/Firearm Summary Report*, FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, available at http://licgweb.doacs.state.fl.us/stats/cw_monthly.html (last visited Jan. 24, 2004). States that are very close to Minnesota in demographics have had non-discretionary permitting for over 40 years without problem. For example, both Indiana and Washington have 300,000 peaceful permit holders in their populations while Pennsylvania has twice that number.

would desire to have included, reviewed statutes in other states, and dealt with the few controversial matters right off the bat. They had three goals: 1) issuing authority would be solely in county sheriffs, 2) all discretion in the criteria for issuing a permit would be eliminated, and 3) a clearly defined, expeditious, and inexpensive application and appeal process would be provided.

Once it was established by the frank admission of the former Commissioner of Public Safety at the February 1996 House hearing that there was widespread administrative abuse of the discretion lodged in issuing authorities and the Macklin amendment¹⁶ overwhelmingly passed the House in March 1996, the proponents of reform began to seek a meeting with Minnesota's major law enforcement organizations. Both the Minnesota Sheriffs Association ("MSA") and the Minnesota Police Chiefs Association ("PCA") were contacted in December 1996 and copies of the initial draft of what would become the 1997 reform bill were forwarded to them. No meetings were held. Although S.F. 792 (Pariseau) and H.F. 985 (Betterman) were introduced on February 24, 1997, no formal action was taken on either bill in the 1997-1998 legislative session.

The carry permit reform bill was reintroduced in 1999 as S.F. 274 (Pariseau) and H.F. 844 (Boudreau). A contrasting bill backed by the Minnesota Police and Peace Officers Association ("MPPOA") was also introduced. That bill, H.F. 897, fell far short of a reform package because it was non-discretionary only for residents of other states¹⁷ but not for Minnesota residents; it

¹⁶ The Macklin Amendment, proposed by Representatives Bill Macklin and Dave Bishop, would have eliminated one of the two elements of discretion in the 1975 carry permit system by requiring the issuance of a permit to every "qualified" applicant. The discretion to decide who was qualified because they had "enough" personal safety hazard remained in the police chief. The amendment did not create a non-discretionary, must-issue permit system and it was opposed by all of the proponents of carry reform. Nevertheless, it passed the House by a vote of 100 to 31 on March 6, 1996.

¹⁷ The out-of-state resident had to have a current permit from his or her state of residence.

eliminated occupational permits while retaining the discretionary personal safety hazard requirement; it eliminated judicial review of denials; and the bill treated police officers who carry firearms while intoxicated more leniently than permit holders. H.F. 897 was soon withdrawn. At this point, the proponents were far away from the one police group that had put a proposal on the table.

Over the interim between the 1999 session and start of the 2000 session, H.F. 844 was the subject of two hearings one in Waterville and one in St. Paul. At the Waterville hearing, Chief Dennis Delmont, Executive Director of the PCA acknowledged that some issuing authorities were acting arbitrarily in exercising their discretion. For the first time the PCA indicated a willingness to "refine" the law and identified the stumbling block that it saw in the bill. The bill set out objective criteria for permit issuance but the chiefs wanted to be able to deny applicants who, although otherwise qualified, were nevertheless considered untrustworthy. Chief Delmont's examples included gang "wannabes," and alcohol abusers, and those with borderline mental conditions affecting their conduct, but not severely enough for commitment. No action was taken on S.F. 274 or H.F. 844 in the 1999-2000 session.

In 2001, the carry permit reform bill (now S.F. 1395 (Pariseau) and H.F. 1360 (Boudreau)) was reworked in light of the PCA's specific objections. Nevertheless, at the suggestion of the MPPOA's chief lobbyist, the various law enforcement groups boycotted all five of the House Committee hearings on H.F. 1360. The bill went through minor refinements, such as, those giving police chiefs an informational role in the issuance process and the power to seek judicial suspension or revocation of a permit if the holder becomes ineligible or dangerous. The House passed H.F. 1360 on April 9, 2001 by an 85-46 vote. On May 15, 2001, the Senate author sought to amend the contents of H.F. 1360 into another Senate bill (S.F. 1481) that had reached the floor for a final vote. After some parliamentary maneuvering, the carry reform proposal lost by a 34-32 vote. But it was now clear that a change of only two votes would lead to Senate passage.

In the summer of 2001, the MSA left the law enforcement

boycott and began to negotiate an acceptable bill. Sheriff Steve Borchardt of Olmsted County was the MSA committee chairman and became the point man for law enforcement in the ensuing negotiations. At the first meeting with the MSA committee, the proponents realized that the framework for agreement existed. The major goal, a non-discretionary carry permit system, was never in doubt nor was the need to have specificity in the statutory procedures to avoid misunderstandings. The analogy of a 6-lane freeway to the permit with a small off-ramp to divert the few applicants who need more thorough review or even denial described the situation. But what lettering to put on the off-ramp sign? The issue became how to define the few persons who might be objectively qualified but whom the sheriff was unwilling to trust carrying a pistol in public (e.g. the man in the tinfoil hat). Negotiating this point would take 18 months. Other sticking points were the MSA insistence that police chiefs remain as the primary issuing authority (a deal breaker for the proponents) and the amount of the application fee. The other issues were minor and either the proponents gave in (most often) or the MSA negotiators did.

On December 4, 2001 the MSA Legislative Affairs Committee adopted a formal Position Statement. In the Statement the MSA accepted a non-discretionary, must-issue permit system and agreed that the issuing authority should bear the burden of proving by clear and convincing evidence that the specific applicant would be a threat to public safety if issued a permit provided the applicant initiated an appeal.¹⁸ The MSA sought a co-equal role for police chiefs in issuing permits, a \$150 fee, a 3-year term, and control over training. Their position on the other 5 points was similar to that of the proponents. The proponents refused to budge on the elimination of police chiefs from the issuing process and negotiations continued over the burden of proof the sheriff must carry and the evidence that could be used to

¹⁸ The MSA and the proponents would negotiate over exactly what language to use in the statute for another year.

establish dangerousness.

Although never made public in an introduced bill, a PCA committee had also drafted a proposed revision. It became widely available to Legislators in early January 2002. Like the MSA Position Statement, the PCA bill draft accepted a non-discretionary, must-issue permit system and the burden of proving that a particular otherwise qualified applicant would be a threat to public safety (the chiefs however, wanted the lower "preponderance on the evidence" standard of proof). The PCA was still not participating in the ongoing negotiations; apparently satisfied to leave that task to the MSA representatives. With both law enforcement group's proposals before them, the proponents accepted 90% of the MSA positions and a *bona fide* compromise was negotiated by January 25, 2002. In a January 31st e-mail message, the MSA's chief negotiator stated that "I'm going to recommend to my Board tomorrow that MSA support an amended H.F. 1360 that meets the compromises we have reached... . You will then be in a position to rightfully claim that you have met our previous objections to H.F. 1360." Summaries of the compromise were distributed to Senators in anticipation of an early vote on the matter.¹⁹

On February 11, 2002 the BCA summary report on carry permit practices was released.²⁰ It showed that twenty times as many applications were approved in low population greater Minnesota than were approved in the heavily populated seven-county metro area. That afternoon an attempt was made to move the carry permit reform bill in the Senate but it was blocked on a 33-33 tie. The proponents were now one vote away from victory and 2002 was an election year for the Senate.

Carry permit reform bills were reintroduced in 2003 as S.F. 222 (Pariseau) and H.F. 261 (Boudreau). The 2002 compromise

¹⁹ It would not be a straight vote on H.F. 1360 because the Senate companion bill was "killed" in committee by the Senate leadership.

²⁰ The BCA report is *available at* <http://www.dps.state.mn.us/bca/CJIS/documents/Page-19.html> (last visited Jan. 24, 2004).

between the MSA and the proponents held for the most part except for the proponents eliminating the chief's issuing authority and strengthening the evidentiary criteria for proving dangerousness. The MSA opposed those positions and wanted a higher application fee.

In January 2003, representatives of the MPPOA met with the bill authors and the proponents. In conversation, they indicated that going to a non-discretionary must-issue permit system was "not a primary concern." They did want, however, the ability to deny permits on the basis of unofficial knowledge of non-documented concerns regarding chemical abuse or mental health issues, raising due process concerns among the proponents. In addition, the MPPOA representatives requested a full-scale "police officer employment"-style investigation of every permit holder. The proponents viewed that request as an attempt to kill the bill by causing application processing costs to skyrocket.²¹ Later, in February 2003, the PCA approached the proponents with a list of 14 concerns but the PCA's legislative emissary wasn't authorized to give out written copies so he read them and the proponents took notes. The PCA wanted equal issuing authority, a posting provision for private property with a large sign, a mandated training curriculum under their control, and a concealment requirement. Their other 10 items were nearly identical to the proponents' proposal.

For the first time on February 24, 2003, the MSA and the PCA formally presented their written objections to S.F. 222/H.F. 261 at the Judiciary Policy and Finance Committee hearing. Both organizations acknowledged the arbitrary administration of the 1975-era discretionary system and articulated only two remaining concerns: that the evidentiary restrictions on evidence of dangerous are too restrictive²² and that there was no list of venues where

²¹ All other must-issue states are satisfied with computerized record checks followed by personal investigation only in those instances where probable cause is found to justify further investigation.

²² They wanted a long laundry list of disqualifying minor offenses and

permits are inoperative.

Just before the Ways and Means Committee hearing on April 3, the proponents agree to strike the portions of subd. 12 in H.F. 261 that tried to specify the types of evidence admissible to show dangerousness. Relevance remains a necessity but the three-year look back rule is eliminated and the list of specific evidence is removed. The proponents insisted, though, that there be no venue restrictions beyond the posting authority of private property owners set forth in subd. 17 of H.F. 261.²³ Although no “deal” is announced, since the MSA objections have been addressed, that organization’s institutional opposition ends.

D. Commentary on the End Product of This Legislative Process

Statutory language like a cracker barrel “stands on its own bottom” (to quote an old North Carolina saying), but in finding that bottom it is always helpful to know where those who crafted barrel thought it was located. Providing that insight is the goal of this commentary.

One example may serve to illustrate the author’s objective in writing this article. At a CLE program on the new MPPA, one commentator complained that the bill calls for “black arial typeface” and pointed out that there is an arial typeface and a black arial typeface. Which did the statute mean? The answer is arial typeface in black ink. In the Third Engrossment of H.F. 261, the posting provision required “black block letters.” After seeing a sample sign with 1.5 inch tall but thin lettering that was unintelligible at 30 feet, the proponents realized that more specificity was needed and choose arial typeface as commonly available font visible enough to give notice at a distance.

conditions.

²³ The proponents of reform insisted that carrying a gun in public was a question of “who” not “where.” Character not geography was to be the key.

II. COMMENTARY: THE MINNESOTA CITIZENS' PERSONAL PROTECTION ACT OF 2003

A. Minnesota Statutes, § 609.66, subd. 1d. Possession [of weapons] on school property; penalty.

Subdivision 1d. Possession on school property; penalty.

(a) Except as provided under paragraphs (c) and (e), whoever possesses, stores, or keeps a dangerous weapon or uses or brandishes a replica firearm or a BB gun while knowingly on school property is guilty of a felony and may be sentenced to imprisonment for not more than two years or to payment of a fine of not more than \$5,000, or both.

(b) Whoever possesses, stores, or keeps a replica firearm or a BB gun on school property is guilty of a gross misdemeanor.

(c) Notwithstanding paragraph (a) or (b), it is a misdemeanor for a person authorized to carry a firearm under the provisions of a permit or otherwise to carry a firearm on or about the person's clothes or person in a location the person knows is school property. Notwithstanding section 609.531, a firearm carried in violation of this paragraph is not subject to forfeiture.

(d) As used in this subdivision:

(1) "BB gun" means a device that fires or ejects a shot measuring .18 of an inch or less in diameter;

(2) "dangerous weapon" has the meaning given it in section 609.02, subdivision 6;

(3) "replica firearm" has the meaning given it in section 609.713; and

(4) "school property" means:

(i) a public or private elementary, middle, or secondary school building and its improved grounds, whether leased or owned by the school;

(ii) a child care center licensed under chapter 245A during the period children are present and participating in a child care program;

(iii) the area within a school bus when that bus is being used by a school to transport one or more elementary, middle, or secondary school students to and from school-related activities, including curricular, co-curricular, non-curricular, extracurricular, and supplementary activities; and

(iv) that portion of a building or facility under the temporary, exclusive control of a public or private school, a school district, or an association of such entities where conspicuous signs are prominently posted at each entrance that give actual notice to persons of the school-related use.

(e) This subdivision does not apply to:

(1) licensed peace officers, military personnel, or students participating in military training, who are on-duty, performing official duties;

(2) persons authorized to carry a pistol under section 624.714 while in a

motor vehicle or outside of a motor vehicle to directly place a firearm in, or retrieve it from, the trunk or rear area of the vehicle;

(3) persons who keep or store in a motor vehicle pistols in accordance with section 624.714 or 624.715 or other firearms in accordance with section 97B.045;

(4) firearm safety or marksmanship courses or activities conducted on school property;

(5) possession of dangerous weapons, BB guns, or replica firearms by a ceremonial color guard;

(6) a gun or knife show held on school property;

(7) possession of dangerous weapons, BB guns, or replica firearms with written permission of the principal or other person having general control and supervision of the school or the director of a child care center; or

(8) persons who are on unimproved property owned or leased by a child care center, school, or school district unless the person knows that a student is currently present on the land for a school-related activity.

(f) Notwithstanding section 471.634, a school district or other entity composed exclusively of school districts may not regulate firearms, ammunition, or their respective components, when possessed or carried by nonstudents or nonemployees, in a manner that is inconsistent with this subdivision.

COMMENT

Prior law

The 1994 statute made it a felony to carry a dangerous weapon on school grounds. The statute allowed permit holders to carry a pistol on school grounds²⁴ and did not apply to day care centers or property in temporary use for school purposes.

Reason for change

Weapons offenses in schools are fortunately few. In 2001, only 3 persons were sentenced for this offense and all received probationary sentences.²⁵ Nevertheless, the expected large increase in permit holders led to a narrowing of the exception for carry on school grounds by permit holders, coupled with a reduction in

²⁴ Minn. Stat. § 609.66, subd. 1d (d)(2) (2002).

²⁵ These facts were disclosed by the Sentencing Guidelines Commission in their portion of the Fiscal Note prepared to accompany H.F. 261.

penalty for errors by these licensed persons. The definition of “school property” became more clearly focused and ambiguities were addressed. An inconsistency between the criminal code and school district law was eliminated in favor of the criminal code.

Explanation of provision

The felony offense of possessing or brandishing a weapon on school property was clarified by the addition of a requirement that the actor know they were on school property. The new requirement will not be an impediment with regard to most school facilities, which are clearly marked. With regard to satellite facilities, such as those in shopping centers or office buildings, the knowledge requirement will insure that adequate notice is given of the school use.

The major change in the MPPA is the prohibition on a permit holder carrying a firearm on school property. Since holders of carry permits are persons who present no threat because they are responsible, competent, adults; their knowing possession of a firearm on school property is properly a misdemeanor and should be dealt with without arrest in the usual case. Although police officers can secure the permit holder’s firearm while on the school property, it is not subject to forfeiture under section 609.531.

School property has always been limited to locations that give notice of their primary use as schools²⁶. In many parts of the state, however, school districts own large tracts of unimproved land and often own unimproved lots adjacent to schools. Several clarifications were made in this regard. “School property” means elementary, middle, or secondary school buildings and their improved grounds. Subdivision 1d has no application to school district office buildings nor to higher education facilities.

School buses are not exclusively devoted to school use. Subdivision 1d is focused on school-related activities conducted by

²⁶ In this context, “school” means a location regularly and primarily devoted to the instruction of students. The emphasis on the actual presence of students in other aspects of the definition of “school property” emphasizes this point.

a school and the definition of "school bus" was limited by that use.

Concern was raised that weapons could be present at the state high school hockey tournament or other athletic events conducted at publicly owned facilities (which cannot prohibit carry by permit holders), or dances at hotels or banquet facilities (which cannot be posted when used by governmental units). The solution was to recognize those portions of such facilities under the temporary, exclusive control of a school or school district as being, in effect, a "temporary school" where the usual statutory prohibitions applied. In keeping with the rest of subsection 1d, actual notice must be given of the school-related use by conspicuous signs prominently posted at each entrance to that portion of the building. Signs that comply with the specifications set forth in subd. 17 should be used because permit holders will be looking for them when entering a building or facility.

A safe-harbor is provided for permit holders who desire to pick up students or conduct business at a school. Consistent with subdivisions 17 and 18, the permit holder's automobile is a safety zone where the firearm can be legally carried and secured.

The 1985 statute that preempted to the state the power formerly held by governmental subdivisions to regulate activities involving firearms excepted "school boards or school administrators regulating school grounds" so that those entities retained authority to act. In 1994, the legislature dealt comprehensively with weapons in schools by enacting subd. 1d. A potential clash of authority was averted by amending the current law to require school officials to act consistently with the MPPA.

B. Minnesota Statutes, § 624.714. Carrying of weapons without permit; penalties.

Subdivision 1a. Permit required; penalty.

A person, other than a peace officer, as defined in section 626.84, subdivision 1, who carries, holds, or possesses a pistol in a motor vehicle, snowmobile, or boat, or on or about the person's clothes or the person, or otherwise in possession or control in a public place, as defined in section 624.7181, subdivision 1, paragraph (c), without first having obtained a permit to carry the

pistol is guilty of a gross misdemeanor. A person who is convicted a second or subsequent time is guilty of a felony.

COMMENT

Prior law

Since enactment in 1975, the statute referred to “law enforcement officer who has authority to make arrests other than citizens arrests” and to “public place or public area.”

Reason for change

Although this subdivision was completely reenacted, the changes were designed to bring consistency with other, more recent statutes defining these terms.

Explanation of provision

The changes consist of the inclusion of cross-references to specific definitions of these terms in other statutes.

Section 626.84, subd. 1, now contains the definition of a “peace officer” referred to in most Minnesota statutes.²⁷

Section 624.7181, subd. 1, contains the current function-based definition of “public place” for purposes of regulating the carry of long-guns in public.²⁸

²⁷ Peace officer” means “(1) an employee or an elected or appointed official of a political subdivision or law enforcement agency who is licensed by the board, charged with the prevention and detection of crime and the enforcement of the general criminal laws of the state and who has the full power of arrest, and shall also include the Minnesota state patrol, agents of the division of alcohol and gambling enforcement, state conservation officers, metropolitan transit police officers, and department of corrections’ fugitive apprehension unit officers; and (2) a peace officer who is employed by a law enforcement agency of a federally recognized tribe and who is licensed by the board.” Minn. Stat. § 626.84, subd. 1 (2003).

²⁸ “Public place” means “property owned, leased, or controlled by a governmental unit and private property that is regularly and frequently open to or

Subdivision 1b. Display of permit; penalty.

(a) The holder of a permit to carry must have the permit card and a driver's license, state identification card, or other government-issued photo identification in immediate possession at all times when carrying a pistol and must display the permit card and identification document upon lawful demand by a peace officer, as defined in section 626.84, subdivision 1. A violation of this paragraph is a petty misdemeanor. The fine for a first offense must not exceed \$25. Notwithstanding section 609.531, a firearm carried in violation of this paragraph is not subject to forfeiture.

(b) A citation issued for violating paragraph (a) must be dismissed if the person demonstrates, in court or in the office of the arresting officer, that the person was authorized to carry the pistol at the time of the alleged violation.

(c) Upon the request of a peace officer, a permit holder must write a sample signature in the officer's presence to aid in verifying the person's identity.

COMMENT**Prior law**

None.

Reason for change

Prevents confusion in routine police encounters with carry permit holders.

Explanation of provision

This section allows a police officer to readily determine if a person carrying a firearm in a public place is authorized to do so. Since the permit card is merely evidence that the holder has a permit to carry (an intangible right), the holder must coincidentally carry a government-issued photo identification document, such as a

made available for use by the public in sufficient numbers to give clear notice of the property's current dedication to public use but does not include: a person's dwelling house or premises, the place of business owned or managed by the person, or land possessed by the person; a gun show, gun shop, or hunting or target shooting facility; or the woods, fields, or waters of this state where the person is present lawfully for the purpose of hunting or target shooting or other lawful activity involving firearms." Minn. Stat. § 624.7181, subd. 1 (2003).

driver's license, state identification card, or a passport whenever carrying a pistol. The permit need only be displayed to a peace officer making a lawful demand.

Since the authority of a permit holder who fails to have their permit card in immediate possession can nevertheless be verified through the DPS computerized database (see subd. 15), any citation is dismissed if the holder displays the permit card to the arresting officer's agency or the court prior to any court proceeding. The procedures in clauses [b] and [c] is the same as that used for driver's licenses.²⁹

Subdivision 2. Where application made; authority to issue permit; criteria; scope.

(a) Applications by Minnesota residents for permits to carry shall be made to the county sheriff where the applicant resides. Nonresidents, as defined in section 171.01, subd. 42, may apply to any sheriff.

(b) Unless a sheriff denies a permit under the exception set forth in subdivision 6, paragraph (a), clause (3), a sheriff must issue a permit to an applicant if the person:

- (1) has training in the safe use of a pistol;
- (2) is at least 21 years old and a citizen or a permanent resident of the United States;
- (3) completes an application for a permit;
- (4) is not prohibited from possessing a firearm under the following sections:
 - (i) 518B.01, subdivision 14;
 - (ii) 609.224, subdivision 3;
 - (iii) 609.2242, subdivision 3;
 - (iv) 609.749, subdivision 8;
 - (v) 624.713;
 - (vi) 624.719;
 - (vii) 629.715, subdivision 2; or
 - (viii) 629.72, subdivision 2; and
- (5) is not listed in the criminal gang investigative data system under section 299C.091.

(c) A permit to carry a pistol issued or recognized under this section is a state permit and is effective throughout the state.

(d) A sheriff may contract with a police chief to process permit applications under this section. If a sheriff contracts with a police chief, the sheriff remains the issuing authority and the police chief acts as the sheriff's agent. If a sheriff

²⁹ See Minn. Stat. § 171.08.

contracts with a police chief, all of the provisions of this section will apply.

COMMENT

Prior law

Required most applicants to apply to the police chief of the municipality where the applicant resided. An issuing authority could exercise unfettered discretion over applicants in two ways: 1) in determining whether the applicant has a “special need” sufficient to require a permit to carry and 2) in determining whether to grant a permit even if the applicant met all the requirements of the statute.

The prior law provided that a permit could be issued only to an applicant was 18 years of age and had no criminal, mental health or chemical dependency record that prohibited them from possessing a firearm (see § 624.713, subd. 1), held a DNR firearms safety certificate, passed a test devised by the issuing authority, or presented other satisfactory proof of ability to use a pistol safely, and had a special need to carry a pistol because of an occupation or personal safety hazard. But, there was no requirement that a permit actually be issued to a person who did meet those four criteria. Additionally, what constituted a “personal safety hazard” was left to the discretion of the issuing authority.³⁰

Reason for change

The most significant changes to the carry permit law occur in this subdivision. The elimination of the issuing authority's unfettered discretion over the issuing of permits is the essence of the CPPA.

In the early 1990's news stories confirmed that metro-area police chiefs had “altered the rules” to serve their new agenda.³¹

³⁰ Almost all requests from non security guards were denied on the basis that the applicant, otherwise qualified, had insufficient “personal safety hazard.”

³¹ Tony Blass, *Suburbs Cracking Down on Permits to Carry Handguns*, ST. PAUL PIONEER PRESS, November 29, 1991 at 1A.

Believing that state law allowed unfettered subjective decisions, members of the Suburban Law Enforcement Association began eliminating permits to carry for persons with personal safety concerns. Existing permits were not renewed and new permits were denied irrespective of the characteristics of the applicant. Proponents of carry permit reform soon carried complaints to the Legislature that such discretion resulted in arbitrary actions.

Testimony at various House hearing established a widespread pattern of arbitrary decisions, administrative abuse, and occasional flat-out refusal to follow the permit law by police chiefs, especially in the metro area, and by some sheriffs. Letters from chiefs stating that it is my policy not to issue permits under the “personal safety hazard” portion of the statute were distributed to legislators. Law Enforcement representatives never denied these allegations. The 2001 BCA statistical report on permits indicated there were 20 times fewer permits issued by metro-area police chiefs than by those located elsewhere.

Uniformity is much easier to achieve among 87 sheriffs than among over 600 police chiefs and sheriffs. Additionally, county sheriffs are elected officials accountable to the people while chiefs are appointed, often by unelected city administrators. Only 6 other states have police chiefs as issuing authorities.

Explanation of provision

The sole issuing authority for residents of Minnesota is the county sheriff where they reside. Persons who reside in other states and who want a Minnesota permit may apply to any sheriff.

The sheriff “must issue” a carry permit to any responsible, competent, adult applicant. First, the applicant must be able to lawfully possess a firearm and not be named in Minnesota’s gang list.³² The statute lists the specific provisions of Minnesota law that prohibit certain persons from possessing a firearm. Those

³² The “gang list” is an investigative tool used to alert police to a person’s possible involvement with a criminal gang. *See generally* Minn. Stat. § 299C.091.

provisions relate to criminal activity, mental conditions and chemical dependency. Confirmed gang activity is also a disqualifier. Second, the applicant must be competent to safely use a pistol as demonstrated by appropriate training as described in subd. 2a. Third, the applicant must be an adult citizen or permanent resident of the United States.³³ Finally, a “safety valve” exists under which a *specific* applicant who meets these objective criteria can nevertheless be denied a permit if the sheriff concludes that there exists a substantial likelihood that the particular individual would be dangerous if authorized to carry a pistol in public places.³⁴

The carry permit is a state permit although issued by the county sheriff. This is important in order that the Minnesota permit will qualify for recognition in other states. The permit is “effective” throughout the state without limitation except as provided in § 624.714.³⁵

Subdivision 2a. Training in the safe use of a pistol.

(a) An applicant must present evidence that the applicant received training in the safe use of a pistol within one year of the date of an original or renewal application. Training may be demonstrated by:

(1) employment as a peace officer in the state of Minnesota within the past year; or

(2) completion of a firearms safety or training course providing basic training in the safe use of a pistol and conducted by a certified instructor.

(b) Basic training must include:

(1) instruction in the fundamentals of pistol use;

(2) successful completion of an actual shooting qualification exercise; and

(3) instruction in the fundamental legal aspects of pistol possession, carry, and use, including self-defense and the restrictions on the use of deadly force.

(c) A person qualifies as a certified instructor if the person is certified as a firearms instructor within the past five years by:

(1) the bureau of criminal apprehension, training and development section;

(2) the Minnesota Association of Law Enforcement Firearms Instructors;

³³ The MPPA raised the age for a carry permit from 18 to 21.

³⁴ See subd. 12, *infra*.

³⁵ See subsd. 17 and 18, *infra*, for limitations and compare subd. 23, *infra*, on exclusivity.

- (3) the National Rifle Association;
 - (4) the American Association of Certified Firearms Instructors;
 - (5) the peace officer standards and training board of this state or a similar agency of another state that certifies firearms instructors; or
 - (6) the department of public safety of this state or a similar agency of another state that certifies firearms instructors.
- (d) A sheriff must accept the training described in this subdivision as meeting the requirement in subdivision 2, paragraph (b), for training in the safe use of a pistol. A sheriff may also accept other satisfactory evidence of training in the safe use of a pistol.

COMMENT

Prior Law

A DNR hunter safety certificate was acceptable under the 1975 statute. Alternatively, the applicant could take an unspecified “test” supervised by the issuing authority or provide other proof (not further specified) satisfactory to the chief or sheriff.

Reason for change

The DNR hunter safety course is a once-in-a-lifetime experience that doesn’t necessarily involve handguns (the firearm most likely to be carried under a permit). There were no standards for the test or other proof allowed under prior law.

Explanation of provision

Training must be taken within one year of filing the initial or renewal application. Two forms of training are recognized: 1) on-the-job training through recent employment as a Minnesota peace officer or 2) completion of a firearms training course from a certified instructor. The firearms training course must provide “basic training” in the safe use of a pistol.

Basic training must include instruction in the fundamental legal aspects of pistol ownership, carry, and lawful use in self-defense. Self-defense issues will be the major focus of a carry permit course. In addition, the course includes fundamentals of pistol use and a shooting exercise. The material takes about eight hours to present. The training includes “fundamentals” of safe shooting but

it does not include tactics and other advanced subjects.

Instructors must be currently (within the past five years) certified by the National Rifle Association, the American Association of Certified Firearms Instructors, or an appropriate state agency.³⁶ The course need not be taken in Minnesota. Because certified trainers might not be available in rural counties, sheriffs are also authorized to accept other evidence of competence.

Subdivision 3. Form and contents of application.

(a) Applications for permits to carry must be an official, standardized application form, adopted under section 624.7151, and must set forth in writing only the following information:

- (1) the applicant's name, residence, telephone number, if any, and driver's license number or state identification card number;
- (2) the applicant's sex, date of birth, height, weight, and color of eyes and hair, and distinguishing physical characteristics, if any;
- (3) all states of residence of the applicant in the last ten years, though not including specific addresses;
- (4) a statement that the applicant authorizes the release to the sheriff of commitment information about the applicant maintained by the commissioner of human services or any similar agency or department of another state where the applicant has resided, to the extent that the information relates to the applicant's eligibility to possess a firearm; and
- (5) a statement by the applicant that, to the best of the applicant's knowledge and belief, the applicant is not prohibited by law from possessing a firearm.

(b) The statement under paragraph (a), clause (4), must comply with any applicable requirements of Code of Federal Regulations, title 42, sections 2.31 to 2.35, with respect to consent to disclosure of alcohol or drug abuse patient records.

(c) An applicant must submit to the sheriff an application packet consisting only of the following items:

- (1) a completed application form, signed and dated by the applicant;
- (2) an accurate photocopy of a certificate, affidavit, or other document that is submitted as the applicant's evidence of training in the safe use of a pistol; and
- (3) an accurate photocopy of the applicant's current driver's license, state

³⁶ Departments of Natural Resources were eliminated from the list of agencies whose hunter safety instructors are "certified" to teach the carry permit course. This was done at the request of the Minnesota DNR commissioner.

identification card, or the photo page of the applicant's passport.

(d) In addition to the other application materials, a person who is otherwise ineligible for a permit due to a criminal conviction but who has obtained a pardon or expungement setting aside the conviction, sealing the conviction, or otherwise restoring applicable rights, must submit a copy of the relevant order.

(e) Applications must be submitted in person.

(f) The sheriff may charge a new application processing fee in an amount not to exceed the actual and reasonable direct cost of processing the application or \$100, whichever is less. Of this amount, \$10 must be submitted to the commissioner and deposited into the general fund.

(g) This subdivision prescribes the complete and exclusive set of items an applicant is required to submit in order to apply for a new or renewal permit to carry. The applicant must not be asked or required to submit, voluntarily or involuntarily, any information, fees, or documentation beyond that specifically required by this subdivision. This paragraph does not apply to alternate training evidence accepted by the sheriff under subdivision 2a, paragraph (d).

(h) Forms for new and renewal applications must be available at all sheriffs' offices and the commissioner must make the forms available on the Internet.

(i) Application forms must clearly display a notice that a permit, if granted, is void and must be immediately returned to the sheriff if the permit holder is or becomes prohibited by law from possessing a firearm. The notice must list the applicable state criminal offenses and civil categories that prohibit a person from possessing a firearm.

(j) Upon receipt of an application packet and any required fee, the sheriff must provide a signed receipt indicating the date of submission.

COMMENT

Prior law

Paragraphs (a), (b), (e), (h), and (j) are similar to the 1975 statute.

Reasons for change

Application forms and procedures were not standardized under prior law. Every issuing authority operated differently and often changed at will. The items demanded of applicant varied as well. This "freelancing" was very frustrating for applicants.

Explanation of provision

The major changes are 1) the addition of the word “only” in paragraph (a) and (c), 2) the prohibition on demanding extraneous information, and 3) the restrictions on the processing fee.

The application must be on a standardized form promulgated by the Department of Public Safety which calls for only the information expressly specified in paragraph (a). Fingerprints are not in the list because they have never been required for a Minnesota carry permit. There was no request for them from the MSA or the PCA. Unlike prior practice, no photograph is needed because the permit card is not an identification document and doesn't display a photograph.

The applicant must personally submit an application packet consisting only of four items: 1) a signed and dated application form, 2) a photocopy of the applicant's evidence of training, 3) a photocopy of the applicant's identification document, and 4) a check for the processing fee. The statute does not require “filing” of an application but merely requires the applicant to submit the packet. The sheriff has no discretion to refuse to process a submitted packet (although the application can be denied if the application is insufficient). The applicant is then provided with a signed, dated receipt that starts the clock on the allowable processing time.³⁷

The processing fee may be in an amount not exceeding the actual, reasonable, direct cost of processing the application but never in excess of \$100.³⁸ The fee may be used to defray the costs of administering § 624.714 and for no other purpose.³⁹ During the legislative process the sheriffs' representatives repeatedly assured legislators that the fee would not exceed \$50.

Freelancing is forbidden by paragraph (g). The contents of

³⁷ Compare subd. 6, *infra*.

³⁸ The fee for a one-year permit under prior law was \$10. Since the maximum fee for the new five-year permit is \$100, the direct cost of a carry permit is now \$20 per year. For comparison, the cost of training should be amortized in similar fashion.

³⁹ See subd. 21, *infra*.

the application packet listed in paragraph (c) are complete and exclusive. Sheriffs are expressly forbidden to ask or demand any information, fees, or documentation beyond that specified in this section.

Subdivision 4. Investigation.

(a) The sheriff must check, by means of electronic data transfer, criminal records, histories, and warrant information on each applicant through the Minnesota Crime Information System and, to the extent necessary, the National Instant Check System. The sheriff shall also make a reasonable effort to check other available and relevant federal, state, or local record keeping systems. The sheriff must obtain commitment information from the commissioner of human services as provided in section 245.041 or, if the information is reasonably available, as provided by a similar statute from another state.

(b) When an application for a permit is filed under this section, the sheriff must notify the chief of police, if any, of the municipality where the applicant resides. The police chief may provide the sheriff with any information relevant to the issuance of the permit.

(c) The sheriff must conduct a background check by means of electronic data transfer on a permit holder through the Minnesota Crime Information System and, to the extent necessary, the National Instant Check System at least yearly to ensure continuing eligibility. The sheriff may conduct additional background checks by means of electronic data transfer on a permit holder at any time during the period that a permit is in effect.

COMMENT

Prior law

Paragraph (a) generally follows the 1975 act.

Reasons for change

The background check is a crucial part of the permit issuing process. Although a major feature the MPPA was removal of police chiefs from a decision making role, the proponents and the sheriffs' representatives viewed input from police chiefs as important in regard to recent or non-database information. Chiefs have access to reports involving conduct that is not criminal, that is too minor to be the subject of data collection, or conduct that is too

recent to be contained in computerized records repositories. Minor changes were made in paragraph (a) to mirror the language of § 624.7131, subd. 2, which was amended in 1994 to meet federal standards. Electronic data transfer, rather than personal investigation, was made the norm for the mandatory checks in order to reduce cost and speed processing.

Explanation of provision

All mandatory record checks required by this section are required to be made by electronic data transfer. Paragraph (a) is substantially identical to its counterpart in the acquisition permit law.⁴⁰ The requirement to check the federal NICS system is new however. The CrimNet data system maintained by the Department of Public Safety automatically checks both MnCIS and NICS for criminal records, histories, and warrants whenever a sheriff initiates a request under this section. CrimNet then reports the information, if any, to the sheriff. As part of that report, commitment information is obtained from the Commissioner of Human Services through the MnCIS by electronic data transfer as required by Minn. Stat. § 245.041. Almost all mandatory checks are completed in moments. In addition, the sheriff may choose to check other available and relevant federal, state, or local records for relevant information and for commitment data from other states. Those who negotiated the bill anticipated that further investigation (personal verification, interviews, or other actions) only will occur when the initial electronic checks raise some question about the applicant's qualification. There is, however, no prohibition on such activity whenever indicated.

Sheriffs are required to notify the applicant's police chief that an application has been filed. The chief may, but need not, provide the sheriff with any relevant information regarding the applicant. The chief's role in permit issuance is solely that of information source.

Although permits are for 5-year terms, the holder will be

⁴⁰ Minn. Stat. § 624.7132.

the subject of an annual background check by electronic means. The Department of Public Safety will automatically run these on each anniversary of the permit at no additional charge to the sheriff. In addition, sheriffs may run additional electronic background checks at any time for official use.

Subdivision 5. Granting of permits.

Repealed by Laws 2003, c. 28, art. 2, sec. 35.

COMMENT

Reason for provision

Former subdivision contained the two discretionary elements of the 1975 act that the MPPA was designed to remove. It was repealed and replaced with the criteria set forth in subd. 2(b).

Subdivision 6. Granting and denial of permits.

(a) The sheriff must, within 30 days after the date of receipt of the application packet described in subdivision 3:

- (1) issue the permit to carry;
- (2) deny the application for a permit to carry solely on the grounds that the applicant failed to qualify under the criteria described in subdivision 2, paragraph (b); or
- (3) deny the application on the grounds that there exists a substantial likelihood that the applicant is a danger to self or the public if authorized to carry a pistol under a permit.

(b) Failure of the sheriff to notify the applicant of the denial of the application within 30 days after the date of receipt of the application packet constitutes issuance of the permit to carry and the sheriff must promptly fulfill the requirements under paragraph (c). To deny the application, the sheriff must provide the applicant with written notification of and the specific factual basis justifying the denial under paragraph (a), clause (2) or (3), including the source of the factual basis. The sheriff must inform the applicant of the applicant's right to submit, within 20 business days, any additional documentation relating to the propriety of the denial. Upon receiving any additional documentation, the sheriff must reconsider the denial and inform the applicant within 15 business days of the result of the reconsideration. Any denial after reconsideration must be in the same form and substance as the original denial and must specifically address any continued deficiencies in light of the additional documentation submitted by the applicant. The

applicant must be informed of the right to seek de novo review of the denial as provided in subdivision 12.

(c) Upon issuing a permit to carry, the sheriff must provide a laminated permit card to the applicant by first class mail unless personal delivery has been made. Within five business days, the sheriff must submit the information specified in subdivision 7, paragraph (a), to the commissioner of public safety for inclusion solely in the database required under subdivision 15, paragraph (a). The sheriff must transmit the information in a manner and format prescribed by the commissioner.

(d) Within five business days of learning that a permit to carry has been suspended or revoked, the sheriff must submit information to the commissioner regarding the suspension or revocation for inclusion solely in the databases required or permitted under subdivision 15.

(e) Notwithstanding paragraphs (a) and (b), the sheriff may suspend the application process if a charge is pending against the applicant that, if resulting in conviction, will prohibit the applicant from possessing a firearm.

COMMENT

Prior law

Failure to deny an application within 21 days by providing written notification and reasons was deemed a grant thereof.

Reason for change

The subdivision clarifies and reinforces the principal that delay or inaction is the same as issuance of the permit to carry. Time is of the essence in processing applications under the MPPA. Under prior law some judges were reluctant to enforce the specifics of the statute. The disclosures required to properly notify a denied applicant are also clarified. An optional administrative appeal process is made available to a denied applicant.

Explanation of provision

Unless the sheriff notifies an applicant that an application is denied within 30 days after receipt of the application packet, the permit "is issued" and a permit card must be promptly delivered by U.S. mail. The statute requires the sheriff to take one of three actions on a permit application. First, issue the permit. Second, deny the application because the applicant fails the objective

criteria set forth in subd. 2(b) because the applicant is underage, lacking appropriate training, prohibited by law from possessing a firearm, or on the state's "gang list." Third, deny the permit on the ground of dangerousness under the objective criteria set forth.

There is no discretion. If the applicant meets the objective criteria set forth in the statute, the sheriff "**must** ... issue" a carry permit. If a sheriff properly concludes that the person is unqualified or presently dangerous, the sheriff "**must** ...deny" the application.

The concession by the proponents allowing inclusion of a straight "dangerousness" ground for denial of a permit was the most important act in eliminating active opposition by official representatives of the sheriffs and police chiefs to the MPPA. This item had been on the table since the PCA representative brought it up during the House Crime Prevention Committee hearing in Waterville in September 1999. It was the subject of extensive negotiations between the proponents and representatives of the sheriffs between August 2001 and March 2003. The meaning and application of the "dangerousness" criteria are discussed in connection with appeal provisions of subd. 12.

The full extent of the sheriff's denial authority becomes clear if several subdivisions are examined together. New subd. 6(a) in conjunction with subd. 12 allows the issuing sheriff to use anything relevant that has been investigated and documented (at any time), going back to the applicant's birth, to deny an application because the applicant is objectively disqualified or the particular applicant is now dangerous if granted a permit. There are similar "dangerousness" provisions in a number of other states⁴¹, all designed to avoid the under inclusiveness and over inclusiveness of any list. If the applicant actually is a present danger, he or she gets no carry permit.

As long as the sheriff has real evidence, the sheriff can deny anyone a carry permit regardless of lack of a conviction, lack of a

⁴¹ Oregon and Pennsylvania among others. See Or. Rev. Stat. § 166.293(2) and Pa. Cons. Stat. Ann. § 6109(e).

judicial commitment, lack of a hospitalization, etc. The testimony of a spouse or neighbor can be sufficient.

New subd. 4(a) requires the Sheriff to check, by means of electronic data transfer, criminal histories, etc., through MnCIS and NICS. That same section goes further, though, and allows the Sheriff to "check other available and relevant federal, state, or local record keeping systems" when appropriate. In addition new subd. 4(b) expressly requires notice of filing an application to the applicant's police chief and goes on to say "the police chief may provide the sheriff with any information relevant to the issuance on the permit."

Everything the police know or can learn about an applicant can be considered if it is relevant to either automatic disqualification or a disqualification decision based on dangerousness.

In order successfully to deny an application the sheriff must provide written notification with more than just a reason ("your training is inadequate"). The sheriff must specify the specific factual basis ("trainer lacks certification") and the source thereof ("your course completion document doesn't reveal the trainer's certification information").

The sheriff's action will be judged on the information disclosed in the denial letter. The denial letter must contain the following four items: 1) a statement of the basis or reason that the application is denied, 2) a detailed statement of the specific factual basis for the conclusion that the applicant is unqualified and of the source of those facts, 3) a notice that the applicant may, if they choose, submit additional information to the sheriff and the procedure for doing so, and 4) a notice that the applicant may seek *de novo* review by the district court of the propriety of the denial and the procedure for doing so.

An optional administrative process is provided to deal with easily rectified defects in an application such as documentary deficiencies, identity issues, trainer issues, and so forth. It is not mandatory. Express time limits for action are provided and the sheriff is required to specifically address any continuing

deficiencies. The goal is resolve these matters quickly and cheaply.

Any denial, whether or not the applicant has chosen to seek administrative review, can be appealed directly to district court.⁴²

The applicant is required to submit the application in person but the applicant need not take additional time off from work to pick up the permit card. The sheriff is required to deliver the permit card to the applicant by mail.⁴³ The sheriff is also required to promptly submit current information on permits granted, suspended or revoked to the Department of Public Safety for entry into its database.

Subdivision 7. Permit card contents; expiration; renewal.

(a) Permits to carry must be on an official, standardized permit card adopted by the commissioner, containing only the name, residence, and driver's license number or state identification card number of the permit holder, if any.

(b) The permit card must also identify the issuing sheriff and state the expiration date of the permit. The permit card must clearly display a notice that a permit, if granted, is void and must be immediately returned to the sheriff if the permit holder becomes prohibited by law from possessing a firearm.

(c) A permit to carry a pistol issued under this section expires five years after the date of issue. It may be renewed in the same manner and under the same criteria which the original permit was obtained, subject to the following procedures:

(1) no earlier than 90 days prior to the expiration date on the permit, the permit holder may renew the permit by submitting to the appropriate sheriff the application packet described in subdivision 3 and a renewal processing fee not to exceed the actual and reasonable direct cost of processing the application or \$75, whichever is less. Of this amount, \$5 must be submitted to the commissioner and deposited into the general fund. The sheriff must process the renewal application in accordance with subdivisions 4 and 6; and

(2) a permit holder who submits a renewal application packet after the expiration date of the permit, but within 30 days after expiration, may renew the permit as provided in clause (1) by paying an additional late fee of \$10.

⁴² See subd. 12, *infra*.

⁴³ The Anoka county sheriff has already lost a lawsuit and paid the applicant's attorney fees because of refusal to comply with this simple requirement.

(d) The renewal permit is effective beginning on the expiration date of the prior permit to carry.

COMMENT

Prior law

Paragraph (c) generally follows the 1975 act.

Reason for change

Clarifications are made and specificity increased to achieve uniformity among issuing authorities.

Explanation of provision

Permit cards will be in a standardized format, containing only basic information concerning the permit holder. The permit card serves only as evidence that the person specified on it has been issued a carry permit. The permit is an intangible right not embodied in the card. When the permit is in use, the holder must carry both the permit card and a separate government-issued photo-identification document. Since the permit card does not function as an identification document, it contains no photograph nor signature of the holder.⁴⁴ The permit expires after five years.⁴⁵

More specificity is provided for the renewal process. The permit holder has a 120-day window in which to renew a permit at the reduced fee of no more than \$75. Renewal permits, whenever issued, take effect on the expiration date of the prior permit.

Subdivision 7a. Change of address; loss or destruction of permit.

(a) Within 30 days after changing permanent address, or within 30 days of having lost or destroyed the permit card, the permit holder must notify the issuing sheriff of the change, loss, or destruction. Failure to provide notification as required by this subdivision is a petty misdemeanor. The fine for a first offense must not exceed \$25. Notwithstanding section 609.531, a

⁴⁴ The accompanying identification document, e.g. a Minnesota driver's license, does have those identifying features.

⁴⁵ About 3/4 of the permit states have a 5-year term for their carry permits. The 5-year term was a trade-off for the increased application fee limit.

firearm carried in violation of this paragraph is not subject to forfeiture.

(b) After notice is given under paragraph (a), a permit holder may obtain a replacement permit card by paying \$10 to the sheriff. The request for a replacement permit card must be made on an official, standardized application adopted for this purpose under section 624.7151, and, except in the case of an address change, must include a notarized statement that the permit card has been lost or destroyed.

COMMENT

Prior law

None.

Reason for change

With 5-year permits and annual electronic background checks, maintaining the current address of a permit holder is necessary. A procedure for reporting lost or stolen permit cards and deleting them from the DPS database is also required.

Explanation of provision

Failing promptly to report these matters is a petty misdemeanor, but no forfeiture action may be undertaken. The subdivision is otherwise self-explanatory and was supported by the sheriffs' representatives.

Subdivision 8. Permit to carry voided.

(a) The permit to carry is void and must be revoked at the time that the holder becomes prohibited by law from possessing a firearm, in which event the holder must return the permit card to the issuing sheriff within five business days after the holder knows or should know that the holder is a prohibited person. If a permit is revoked under this subdivision, the sheriff must give notice to the permit holder in writing in the same manner as a denial. Failure of the holder to return the permit within the five days is a gross misdemeanor unless the court finds that the circumstances or the physical or mental condition of the permit holder prevented the holder from complying with the return requirement.

(b) When a permit holder is convicted of an offense that prohibits the permit holder from possessing a firearm, the court must revoke the permit and, if it is available, take possession of it and send it to the issuing sheriff.

(c) The sheriff of the county where the application was submitted, or of the

county of the permit holder's current residence, may file a petition with the district court therein, for an order revoking a permit to carry on the grounds set forth in subdivision 6, paragraph (a), clause (3). An order shall be issued only if the sheriff meets the burden of proof and criteria set forth in subdivision 12. If the court denies the petition, the court must award the permit holder reasonable costs and expenses, including attorney fees.

(d) A permit revocation must be promptly reported to the issuing sheriff.

COMMENT

Prior law

Paragraph (a) generally follows the 1975 act.

Reason for change

Clarifies that revocation is automatic if the holder becomes a prohibited person. Expressly authorizes courts to revoke a permit and seize the permit card immediately upon conviction of a disqualifying crime. Sheriffs are granted express authority to seek revocation of a current permit on the basis that the permit holder is now dangerous to themselves or the public if authorized to carry a pistol.

Explanation of provision

A permit is automatically revoked if the permit holder is no longer entitled to possess a firearm under the objective criteria set forth in subd. 2(b)(4). The permit card must be turned in within five business days after the holder knows or should know they have become a prohibited person. In order to insure that the holder does know this fact, the sheriff is required to notify the holder of the revocation and demand return of the permit card. The sheriff will not have to provide duplicative notice in cases where the trial court, pursuant to paragraph (b), revokes the permit and seizes the permit card upon the conviction.

Because permits run for five years, it was recognized that the permit holder's circumstances could change and a person who was not dangerous could become so. To deal with this situation, the sheriff is given express authority to seek judicial revocation of

a permit on this basis. The procedures of subd. 12 apply to the revocation action.

Revocations, however they occur, must be reported to the issuing sheriff. Under the MPPA, the issuing sheriff is the information switchboard regarding actions that affect a permit. That sheriff has a continuing obligation to promptly report changes in the status of a permit to the DPS for inclusion in the database required by subd. 15(a).

Subdivision 8a. Prosecutor's duty.

Whenever a person is charged with an offense that would, upon conviction, prohibit the person from possessing a firearm, the prosecuting attorney must ascertain whether the person is a permit holder under this section. If the person is a permit holder, the prosecutor must notify the issuing sheriff that the person has been charged with a prohibiting offense. The prosecutor must also notify the sheriff of the final disposition of the case.

COMMENT

Prior law

None.

Reason for change

The issuing sheriff needs this information in order to consider seeking revocation for dangerousness under subd. 8(c) and to make timely status updates to the DPS database.

Explanation of provision

This provision was suggested by law enforcement representatives and not opposed by the County Attorneys Association. Both ascertaining whether the defendant is a permit holder and notifying the issuing sheriff are expected to occur as part of normal CrimNet reporting through the automated database maintained by the DPS pursuant to subd. 15 as a minor clerical function of the county attorney's function under CrimNet.

Subdivision 9. Carrying pistols about one's premises or for purposes

of repair, target practice.

A permit to carry is not required of a person:

- (a) To keep or carry about the person's place of business, dwelling house, premises or on land possessed by the person a pistol;
- (b) To carry a pistol from a place of purchase to the person's dwelling house or place of business, or from the person's dwelling house or place of business to or from a place where repairing is done, to have the pistol repaired;
- (c) To carry a pistol between the person's dwelling house and place of business;
- (d) To carry a pistol in the woods or fields or upon the waters of this state for the purpose of hunting or of target shooting in a safe area; or
- (e) To transport a pistol in a motor vehicle, snowmobile or boat if the pistol is unloaded, contained in a closed and fastened case, gunbox, or securely tied package.

COMMENT**Prior law**

Unchanged.

Explanation of provision

Under the exceptions in this subdivision a person who does not have a carry permit may nevertheless lawfully carry a pistol in a public place.

Subdivision 10. False representations

A person who gives or causes to be given any false material information in applying for a permit to carry, knowing or having reason to know the information is false, is guilty of a gross misdemeanor.

COMMENT**Prior law**

Unchanged from the 1975 act except for the addition of "material."

Subdivision 11. No limit on number of pistols.

A person shall not be restricted as to the number of pistols the person may carry.

COMMENT

Prior law

Unchanged.

Subdivision 11a. Emergency issuance of permits.

A sheriff may immediately issue an emergency permit to a person if the sheriff determines that the person is in an emergency situation that may constitute an immediate risk to the safety of the person or someone residing in the person's household. A person seeking an emergency permit must complete an application form and must sign an affidavit describing the emergency situation. An emergency permit applicant does not need to provide evidence of training. An emergency permit is valid for 30 days, may not be renewed, and may be revoked without a hearing. No fee may be charged for an emergency permit. An emergency permit holder may seek a regular permit under subdivision 3 and is subject to the other applicable provisions of this section.

COMMENT

Prior law

None.

Reason for change

Applicants facing an immediate risk to the safety of the person or someone residing in the person's household cannot be delayed for the ordinary permit processing.

Explanation of provision

An emergency permit is discretionary with the sheriff (and may be revoked at any time) because neither background checks nor evidence of training are required prior to issuance. The permit may be issued immediately, but it is only good for 30 days.

It is expected that many holders of emergency permits will seek training and file a regular application. With timely processing by the sheriff, that application should be approved before the emergency permit expires.

Subdivision 12. Hearing upon denial or revocation.

(a) Any person aggrieved by denial or revocation of a permit to carry may appeal by petition to the district court having jurisdiction over the county or municipality where the application was submitted. The petition must list the sheriff as the respondent. The district court must hold a hearing at the earliest practicable date and in any event no later than 60 days following the filing of the petition for review. The court may not grant or deny any relief before the completion of the hearing. The record of the hearing must be sealed. The matter must be heard *de novo* without a jury.

(b) The court must issue written findings of fact and conclusions of law regarding the issues submitted by the parties. The court must issue its writ of mandamus directing that the permit be issued and order other appropriate relief unless the sheriff establishes by clear and convincing evidence:

(1) that the applicant is disqualified under the criteria described in subdivision 2, paragraph (b); or

(2) that there exists a substantial likelihood that the applicant is a danger to self or the public if authorized to carry a pistol under a permit. Incidents of alleged criminal misconduct that are not investigated and documented, and incidents for which the applicant was charged and acquitted, may not be considered.

(c) If an applicant is denied a permit on the grounds that the applicant is listed in the criminal gang investigative data system under section 299C.091, the person may challenge the denial, after disclosure under court supervision of the reason for that listing, based on grounds that the person:

(1) was erroneously identified as a person in the data system;

(2) was improperly included in the data system according to the criteria outlined in section 299C.091, subdivision 2, paragraph (b); or

(3) has demonstrably withdrawn from the activities and associations that led to inclusion in the data system.

(d) If the court grants a petition brought under paragraph (a), the court must award the applicant or permit holder reasonable costs and expenses including attorney fees.

COMMENT**Prior law**

The 1975 act provided for a *de novo* non-jury hearing in district court upon appeal by a denied applicant.

Reasons for change

There is a correlation between the ground for denial of a permit

based on a determination of dangerousness under subd. 6(a)(3) and the burden of persuasion and burden of proof required to sustain the sheriff's action on appeal. As one goes down, the other goes up. There was early agreement between the proponents and the MSA that 1) the criteria for denial would be the existence of a substantial likelihood⁴⁶ that the applicant would be dangerous carrying a pistol in public, 2) the burden of persuasion and proof would be on the sheriff, and 3) the burden was by clear and convincing evidence. There was a months-long controversy over whether the statute should expressly define and limit the type of evidence that was relevant, proximate, and probative of an inference that the applicant is dangerous if issued a permit to carry. Both sides presented hypothetical situations at the fringe of relevancy and advanced numerous formulations. The proponents preferred the paragraph contained in HF261, Second Engrossment, subd. 12, providing:

(c) The applicant's dangerousness to the public under paragraph (b), clause (2), may only be established by the applicant's criminal or noncriminal history, within the past three years, including at least:

(1) behavioral incidents of unlawful violence or other behaviors that exhibit a clear propensity for unlawful violence that were investigated and documented, not including incidents for which the applicant was charged and acquitted;

(2) a condition of mental impairment not addressed under § 624.713, subd. 1, clause (c). For purposes of this paragraph, "mental impairment" means a "mentally ill person," "mentally retarded person," or "a person

⁴⁶ By this the negotiators understood "high probability" and often used either term. At one point an amendment was prepared with that phrase but it was never used.

mentally ill and dangerous to the public" as those terms are defined in § 253B.02; or

(3) being listed on the criminal gang investigative data system under § 299C.091.

Shortly before the House Ways and Means Committee hearing, it became obvious that the tail was wagging the dog and the proponents agreed to trust the courts to draw inferences only on the basis of relevant, proximate, and probative evidence. The evidentiary guidelines proposed appeared to be too rigid - under inclusive or over inclusive - as a statutory rule, but fine as a guideline for judicial decision. So, those matters were deleted from the bill.

Explanation of provision

A denied applicant must initiate an appeal by filing a petition in court in the location where the application was filed. Because the applicant's safety is a risk, a rapid disposition of the matter is required with a 60-day deadline set. The court record is to be sealed because applicant information is "private data on individuals" as defined in the Minnesota data practices act.⁴⁷ The hearing is *de novo* and there is no presumption that the sheriff's action is correct. The court makes its own determination on all issues. The judge is required to issue written finding of fact and conclusions of law supporting any decision.

The court must issue a writ of mandamus unless the sheriff establishes the propriety of the denial. The sheriff has the burden and must prove by clear and convincing evidence that the applicant is disqualified either (1) because the specific criteria of subd. 2(b) - prohibited person, underage, lacking in appropriate training, or listed in the state's "gang list - apply or (2) because there exists a substantial likelihood that the applicant is dangerous if authorized to carry a pistol in public.

The applicant's dangerousness must be factually present at the time of the decision to deny, suspend, or revoke. The criteria is

⁴⁷ Minn. Stat. § 13.87, subd. 2.

deliberately written in the present tense – “exists ... is” - and not in the future tense - “indicates ... may be.” The proponents were determined to focus the decision on the here and now.⁴⁸ Remote events are only relevant if they implicate likely conduct in the present.

In proving dangerousness the sheriff may not use incidents of alleged criminal misconduct that have not been investigated and documented. The investigation need not be contemporaneous with the alleged incident but there must be some indication that it is real and not simply gossip. If the applicant was charged and acquitted of the incident, the matter is closed and may not support a permit denial.

Disqualification for listing in the state’s “gang list” requires a special procedure because that list is developed and maintained as a police investigative tool to identify persons who *might* be a problem. There is no due process required before putting an individual on the list, notice that an individual is on the list is not provided, and there is no procedure to challenge the correctness of one’s presence on the list. Subdivision 12(c) provides after-the-fact due process in these cases. Although disclosure must be made of the reason for listing an individual because of the nature of the “gang list,” disclosure is under court supervision. In some instances a sheriff might, for example, request to court to limit disclosure of informant’s identities to the applicant’s counsel or provide other appropriate safeguards.

Successful applicants must be awarded their reasonable costs and expenses, including attorney fees. The award to the applicant may be paid out of the permit fee fund set up under subd. 21 and the county attorney’s bill may also be charged against that fund. The fee award provides an incentive for sheriffs to act properly in denying permits.

⁴⁸ When the evidentiary limitations were dropped from the bill, the present tense nature of the criteria became crucial and the proponents’ formulation was adopted.

Subdivision 12a. Suspension as condition of release.

The district court may order suspension of the application process for a permit or suspend the permit of a permit holder as a condition of release pursuant to the same criteria as the surrender of firearms under section 629.715. A permit suspension must be promptly reported to the issuing sheriff. If the permit holder has an out-of-state permit recognized under subdivision 16, the court must promptly report the suspension to the commissioner for inclusion solely in the database under subdivision 15, paragraph (a).

COMMENT**Prior law**

None.

Reason for change

Permits a court, in its discretion, to suspend immediately a permit to carry when the holder is arrested for certain crimes against the person.

Explanation of provision

If a judge could order an arrestee to surrender their firearms as a condition of release under § 629.715, the judge may order that person's permit to carry suspended as well. The issuing sheriff (or the Commissioner of Public Safety in cases involving non-residents) must be notified so that the status of the permit may be updated in the DPS automated database.

Subdivision 13. Exemptions; adult correctional facility officers.

A permit to carry a pistol is not required of any officer of a state adult correctional facility when on guard duty or otherwise engaged in an assigned duty.

COMMENT**Prior law**

Unchanged.

Subdivision 14. Records.

(a) A sheriff must not maintain records or data collected, made, or held under this section concerning any applicant or permit holder that are not necessary under this section to support a permit that is outstanding or eligible for renewal under subdivision 7, paragraph (b). Notwithstanding section 138.163, sheriffs must completely purge all files and databases by March 1 of each year to delete all information collected under this section concerning all persons who are no longer current permit holders or currently eligible to renew their permit.

(b) Paragraph (a) does not apply to records or data concerning an applicant or permit holder who has had a permit denied or revoked under the criteria established in subdivision 2, paragraph (b), clause (1), or subdivision 6, paragraph (a), clause (3), for a period of six years from the date of the denial or revocation.

COMMENT

Prior law

None.

Reason for change

Privacy concerns regarding retention of records after their relevance as ceased.

Explanation of provision

Records may only be maintained to support a current permit. A permit is current for its application period, its 5-year term, and the thirty-day grace period for renewal. Records should be removed as soon as practicable thereafter but no later than the succeeding March 1st. All files and databases are to be purged of all information irrespective of the type or location of the data whether in hard copy, electronic media, or other form. The only exception relates to information regarding person whose application has been finally denied or whose permit has been finally revoked. Those records may be maintained for six years from the date of the action.

Subdivision 15. Commissioner; contracts; database.

(a) The commissioner must maintain an automated database of persons authorized to carry pistols under this section that is available 24 hours a day,

seven days a week, only to law enforcement agencies, including prosecutors carrying out their duties under subdivision 8a, to verify the validity of a permit.

(b) The commissioner may maintain a separate automated database of denied applications for permits to carry and of revoked permits that is available only to sheriffs performing their duties under this section containing the date of, the statutory basis for, and the initiating agency for any permit application denied or permit revoked for a period of six years from the date of the denial or revocation.

(c) The commissioner may contract with one or more vendors to implement the commissioner's duties under this section.

COMMENT

Prior law

None.

Reason for change

Many states will not recognize Minnesota permits in their jurisdictions without a means to verify the validity of a permit.

Explanation of provision

The two databases authorized by the subdivision are very restrictive. The 24/7 database of current permits described in paragraph (a) may be accessed only by law enforcement personnel, including prosecutorial personnel acting pursuant to subd. 8a, only for the purpose of verifying the validity of the permit. The database will not contain information beyond that shown on the face of the permit card. Only current permits may be included in the database and data regarding expired, non-renewable permits cannot be retained. The working hours database of denied applications or revoked permits described in paragraph (b) may be accessed only by sheriffs (not law enforcement or court personnel) in connection with their duties under the carry permit law (not for general investigations) and contains only data identifying where the sheriff can get fuller information. This database can only maintain data for six years from the action.

Subdivision 16. Recognition of permits from other states

(a) The commissioner must annually establish and publish a list of other states that have laws governing the issuance of permits to carry weapons that are not substantially similar to this section. The list must be available on the Internet. A person holding a carry permit from a state not on the list may use the license or permit in this state subject to the rights, privileges, and requirements of this section.

(b) Notwithstanding paragraph (a), no license or permit from another state is valid in this state if the holder is or becomes prohibited by law from possessing a firearm.

(c) Any sheriff or police chief may file a petition under subdivision 12 seeking an order suspending or revoking an out-of-state permit holder's authority to carry a pistol in this state on the grounds set forth in subdivision 6, paragraph (a), clause (3). An order shall only be issued if the petitioner meets the burden of proof and criteria set forth in subdivision 12. If the court denies the petition, the court must award the permit holder reasonable costs and expenses including attorney fees. The petition may be filed in any county in the state where a person holding a license or permit from another state can be found.

(d) The commissioner must, when necessary, execute reciprocity agreements regarding carry permits with jurisdictions whose carry permits are recognized under paragraph (a).

COMMENT**Prior law**

None.

Reason for change

Minnesota's carry permit law is substantially similar to that of many other states, such as Arizona, Kentucky, and Virginia. Most states recognize automatically or through reciprocity agreements permits from many other jurisdictions. For example Florida permits are valid in 24 states.⁴⁹ Arizona recognizes permits from 28 states (including Minnesota),⁵⁰ and Indiana, Missouri,

⁴⁹ See *Concealed Carry Reprocity*, FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, available at http://licgweb.doacs.state.fl.us/news/concealed_carry.html (last visited Jan. 24, 2004).

⁵⁰ See *Reciprocity and Recognition*, available at <http://www.dps.state.az.us/ccw/>

Oklahoma and North Carolina automatically recognize permits issued by any state. The proponents expected that few states - those with no background check at all, no training whatsoever, or no adult age requirement - would not qualify for recognition. The MSA and PCA both supported this provision. When required by other states the commissioner of public safety is required to execute reciprocity agreements.

Explanation of provision

Only matters relating to the "issuance of permits to carry" are subject to the "substantially similar" requirement under paragraph (a). The statutory standard is "similar" not "identical." The standard relates to the essential criteria for issuing permits not to specifics of statutory language and incidental features. The addition of "substantial" (in this context) focuses the standard on the significant and essential criteria for issuing permits not on the procedures of the sheriff's office; fees; incidental features of the law such as posting, databases, or reports; or other laws such as Minnesota's carrying while intoxicated statute.

The crucial substantive criteria are set forth in subd. 2(b); 1) a background check for prohibition to possess a firearm (which need not be identical to Minnesota's in scope, etc.), 2) training in the safe use of a pistol (which need not be identical to Minnesota's in scope, etc.), and 3) adult age, i.e. 21 years.

Only similarity is required because, although other states may not have identical criteria for issuing permits (for example, lacking identical criminal laws, lacking a gang member "list" or specifying training different from Minnesota's), out-of-state permit holders are expressly subject to loss of their authority to carry in Minnesota in certain circumstances. Paragraph (b) of this subdivision denies the holder of an out-of-state permit the authority to carry in Minnesota if they are prohibited persons under Minnesota law (see subd. 2(b)(4)). In addition, paragraph (c) of this subdivision denies the holder of an out-of-state permit the

recip.asp (last visited Jan. 24, 2004).

authority to carry in Minnesota if they are determined to be dangerous to themselves or the public (see subd. 6(a)(3)).

Irrespective of the other state's criminal code or mental health and chemical dependency laws, neither a prohibited nor dangerous person can hide behind an out-of-state permit in Minnesota.

Subdivision 17. Posting; trespass.

(a) A person carrying a firearm on or about his or her person or clothes under a permit or otherwise who remains at a private establishment knowing that the operator of the establishment or its agent has made a reasonable request that firearms not be brought into the establishment may be ordered to leave the premises. A person who fails to leave when so requested is guilty of a petty misdemeanor. The fine for a first offense must not exceed \$25. Notwithstanding section 609.531, a firearm carried in violation of this subdivision is not subject to forfeiture.

(b) As used in this subdivision, the terms in this paragraph have the meanings given.

(1) "Reasonable request" means a request made under the following circumstances:

(i) the requester has prominently posted a conspicuous sign at every entrance to the establishment containing the following language: "(INDICATE IDENTITY OF OPERATOR) BANS GUNS IN THESE PREMISES."; and

(ii) the requester or its agent personally informs the person of the posted request and demands compliance.

(2) "Prominently" means readily visible and within four feet laterally of the entrance with the bottom of the sign at a height of four to six feet above the floor.

(3) "Conspicuous" means lettering in black arial typeface at least 1- 1/2 inches in height against a bright contrasting background that is at least 187 square inches in area.

(4) "Private establishment" means a building, structure, or portion thereof that is owned, leased, controlled, or operated by a nongovernmental entity for a nongovernmental purpose.

(c) The owner or operator of a private establishment may not prohibit the lawful carry or possession of firearms in a parking facility or parking area.

(d) This subdivision does not apply to private residences. The lawful possessor of a private residence may prohibit firearms, and provide notice thereof, in any lawful manner.

(e) A landlord may not restrict the lawful carry or possession of firearms by tenants or their guests.

(f) Notwithstanding any inconsistent provisions in section 609.605, this

subdivision sets forth the exclusive criteria to notify a permit holder when otherwise lawful firearm possession is not allowed in a private establishment and sets forth the exclusive penalty for such activity.

(g) This subdivision does not apply to an on-duty peace officer or security guard acting in the course and scope of employment.

COMMENT

Prior law

None. Compare Minn. Stat. § 609.605, subd. 1(b)(3).

Reason for change

The proponents were aware of the problems created by private restriction on permitted carrying in other states and sought to a clear and practical provision for Minnesota that properly balanced the interests of permit holders and private property occupiers. The PCA put this issue on their list of concerns and representatives of the Minnesota Chamber of Commerce and the Business Partnership took an active part in negotiations over it.

Explanation of provision

The essence of the posting provision is the requirement that the permit holder must “know”⁵¹ of the property operator’s policy before the permit holder commits an offense. The statute mandates precise steps to insure the permit holder receives actual notice that lawful carry is banned in the premises. The subdivision is crafted to encourage compliance with property occupier’s clearly expressed desires while respecting the interest of permit holders in having access to most effective tool for personal protection.

The “posting” provision makes one significant change from existing trespass law - requiring advance notice sufficient to create **actual knowledge** before an arrest can take place. Operators of private property may set their own policies regarding who may remain on their property. The advance notice requirement does not transform the “trespass” provision into a “burglary” provision. The

⁵¹ Proof of actual knowledge is required.

essence of trespass is failing to leave (remaining at) the premises after the direct verbal request to leave.

Under § 609.605, subd. 1(b)(3) the current substantive elements of a trespass by a non-permit holder are:

- 1) notice of the policy given to the person but it need not be given in advance of a request to leave,
- (2) request must be made by verbally asking the person to leave the premises, and
- (3) failure of the person to depart the premises is the trespass offense.

Under the MPPA the elements of a permit holder's trespass under paragraph (a) are:

- (1) notice of the policy must be given by a readily visible sign in advance and before the customer enters the premises. This allows the carry permit holder to act "Minnesota nice" and politely take their business elsewhere, secure the firearm in their vehicle, or request the owner's permission to enter with their firearm,
- (2) request must only be made of a person who doesn't comply with the sign by personally informing the person of the sign and verbally asking the person to leave the premises, and
- (3) failure of the person to depart the premises or (to properly secure the firearm) is the offense.

The key to understanding subd. 17 is that failure to leave the premises is the only offense and that the only action that triggers the permit holder's duty to leave is a personal, verbal notice to them that the occupier demands compliance with the posted policy. The offense requires actual knowledge by the permit holder. The readily visible, conspicuous notice is merely a prerequisite to the personal request.⁵² The visible notice and the verbal request are separated by both time and space. These

⁵² This was made clear in *Session Weekly*, a publication of the Minnesota House, shortly after the bill was enacted:

Businesses wishing to ban guns on their premises will have to post a sign near the entrance before they can personally request that a gun carrier leave their business. (*Session Weekly*, page 27, May 30, 2003)

requirements are designed to work in tandem to encourage voluntary compliance by permit holders. As demonstrably responsible citizens (shown by their background, training, and permit), permit holders were not considered likely to force themselves in where they aren't wanted, but only if they are aware of the occupier's desires.

A person carrying a pistol on or about their person or clothes knowing that the establishment has a "no guns" policy may be ordered to leave. The permit holder who misses the sign gets a personal, verbal request *before* the police can be called. Only if they fail to depart after "knowing" of the actual notice given by reasonable request have they committed a petty misdemeanor offense.⁵³

Paragraph (b) specifies the notice that may create actual knowledge of the establishment's "no guns" policy. Following the recent trend in such statutes⁵⁴, paragraph (b) is quite specific in its requirements. The sign must be *both* prominent and conspicuous. The objective is to let the permit holder know what to look for (11 by 17 inch bright colored sign with 1.5 inch high bold black lettering), where to look (at any entrance at eye level next to the door⁵⁵), and to provide a clear message readily visible at a distance ("XYZ Co. bans guns in these premises").⁵⁶ The statute deliberately goes into great detail so that there can be no doubt as to the mandatory nature of the notice requirements. Close is not

⁵³ Minn. Stat. § 624.714, subd. 17(a).

⁵⁴ Cf, e.g., Texas Penal Code § 30.06 (c)(3) and South Carolina Code § 23-31-235.

⁵⁵ The sign has to be "prominent" which means it must be readily visible and properly located. The sign, for example, must be within four feet "laterally of the entrance" and at eye level. It cannot be hidden behind a potted palm nor posted on the door. The proponents knew that doors are often propped open (so the sign would be edgewise and not easily visible) and that vision is often blocked by persons entering or exiting through the door.

⁵⁶ The identity of the operator of the establishment must be disclosed so the permit holder knows who to ask for permission to remain and to whom their complaints, if any, should be directed.

good enough here. Paragraph (b) is related to paragraph (c) because a permit holder reading the prominent sign from the parking lot can decide to comply by securing their pistol in their vehicle before entering the premises or decide to go elsewhere.

Only “private establishments” may post. That definition extends only to “a building, structure, or portion thereof” that is owned, leased, controlled, or operated by a non-governmental entity for a non-governmental purpose. Grounds, improved or unimproved, may not be posted. Both the entity and the purpose must be private in order to fall within the definition. Occupiers who post improperly cannot seek to apply the general trespass law because subd. 17 provides the exclusive remedy for excluding a permit holder based on lawful carry of a pistol. There is no barrier, however, to use of the trespass statute to eject a person on the bases of other objectionable conduct.⁵⁷

Public property, that is, property owned, leased, controlled, or operated by a governmental entity for a governmental purpose, is not within the scope of subd. 17 and may not be “posted.” See subd. 23 for further restrictions on public entities. But, for example, the Metrodome (a publicly owned sports facility) while leased by the Minnesota Vikings Football Club during a NFL football game is temporarily a “private establishment” and the private operator, the Vikings, may post the portions of the property under their temporary, exclusive control. Compare § 609.66, subd. 1d(d)(4)(iv) dealing with off-premises school activities.

In order to create a safety zone for permit holders and to prevent private property postings from becoming, in practical effect, general bans on the exercise of a carry permit, posted restrictions do not apply in a parking facility or parking area. The permit holder who wishes to comply with a property occupier’s wishes may secure their pistol in a vehicle in the parking lot and go about their business at that location.

⁵⁷ A carry permit provides no protection for a shoeless permit holder from the effect of a “no shoes, no service” policy.

The occupier of a private residence need not post his or her home. A notice that they prohibit the lawful carry of firearms in their dwelling may be given by any means that provides actual notice.⁵⁸

Commercial or residential landlords⁵⁹ may not “restrict the lawful carry or possession of firearms by tenants or their guests.” It is the tenant-operator of a private establishment and the tenant-occupier of a private residence who is in immediate possession of that property, and it is they who have the sole authority to post the property in accordance with this subdivision: the right to exclude.⁶⁰

In multi-tenant properties, landlords do not have the power to negate exercise by a tenant or guest⁶¹ of their right to carry or to possess firearms by posting any areas to which the tenant or guest otherwise has access. The legislature has avoided any conflict by establishing a priority of rights concerning this particular subject matter - the lawful carry or possession of firearms. The statute is not concerned about “geography,” but rather about rights and relationships in a situation that, absent the legislative allocation of authority, would present a conflict between landlord and tenant (or guest).

Subdivision 17(e) does not contain or allow a geographical restriction or limitation, as it easily could have by saying, “in the leased premises” or “only in the leased premises.” The protection of paragraph (e) is extended to described **persons**, not to limited geographic locations. The proper analogy is to the seeing-eye dog

⁵⁸ The notice must be the functional equivalent of the notice specified in paragraph (b).

⁵⁹ Subdivision 17 makes no distinction. That is consistent with other Minnesota law. See Minn. Stat. § 504B.001, subd. 7.

⁶⁰ The right to exclude others is an essential part of general property rights created by state law. See generally *PruneYard Shopping Ctr. v. Robins*, 447 U.S. 74, 82, 100 S. Ct. 2035, 2041 (1980). Who possesses a property right and the scope of any right are subject to legislative control through statute.

⁶¹ The term “guest” in regard to a commercial tenant means “business invitee.” See generally *Peterson v. Balach*, 199 N. W. 2d 639 (1972).

statute⁶² – as the operator of a “private establishment, the landlord of a multi-tenant property can post the common areas of the property but the posting is *not* effective against tenants or their guests. Thus a tenant (or guest) may carry in their vehicle in the parking lot⁶³ or in other locations where the tenant (or guest) has access rights⁶⁴ and while going from one place to another through the common areas of the building, structure, or grounds on which the leased premises are located.

Some have suggested that these carry rights are available only piecemeal, that they are inherently limited and require an express grant as to any geographical or legal subdivision that may be imagined or conjured up. To the contrary, it is any restrictions on the right that that must proven necessary to serve a compelling state interest; the exercise of the right need not be justified.⁶⁵ The Legislature did not intend to create the absurd situation where a permit may be exercised only up to the front door of a building; then the disarmed permit holder must magically transverse the prohibited common hallway to their premises; and only upon arrival there, the permit holder may once again exercise the authority of his permit.⁶⁶ Such an interpretation makes nonsense of the plain, simple, explicit, and precise language of the statute and negates the Legislature’s express intention to allow tenants and guests the free and unfettered exercise of their permitted authority to carry a firearm in public places.

Posting, sensibly, does not prevent access by on-duty police officers or security guards acting in the course and scope of their employment.

⁶² Minn. Stat. § 256C.02.

⁶³ See Minn. Stat. § 624.714, subd. 17(c).

⁶⁴ At a minimum the exception covers these locations. See Minn. Stat. § 624.714, subd. 17(e).

⁶⁵ See Minn. Stat. § 624.714, subd. 22.

⁶⁶ See Minn. Stat. § 624.714, subd. 23 concerning “other person or body acting under color of law or governmental authority . . . limit[ing] the exercise of a permit to carry.”

Subdivision 18. Employers; public colleges and universities.

(a) An employer, whether public or private, may establish policies that restrict the carry or possession of firearms by its employees while acting in the course and scope of employment. Employment related civil sanctions may be invoked for a violation.

(b) A public postsecondary institution regulated under chapter 136F or 137 may establish policies that restrict the carry or possession of firearms by its students while on the institution's property. Academic sanctions may be invoked for a violation.

(c) Notwithstanding paragraphs (a) and (b), an employer or a postsecondary institution may not prohibit the lawful carry or possession of firearms in a parking facility or parking area.

COMMENT**Prior law**

None.

Reason for change

Clarifies authority over employees and students.

Explanation of provision

The employer provision was negotiated to the satisfaction of business groups.⁶⁷ Both private and public⁶⁸ employers are covered. The employer's regulatory authority only extends to times and places where the employee is on the job. "On the job" is determined through application of the traditional legal standard: "acting in the course and scope of employment." As a result, employees may be regulated while on the employer's property to which they have access because they are employees, while in the employer's vehicles whether on the employers premises or not, and

⁶⁷ Representatives of both the Minnesota Business Partnership and the Minnesota chamber of Commerce testified that their organizations were satisfied with this language.

⁶⁸ The exclusivity provision contained in subd. 23, *infra*, would otherwise prevent public employers from regulating licensed carry by their employees.

while acting for their employer at an off-site location. There is no criminal penalty for violating an employer's policy.

Public colleges are granted express authority to limit the exercise of a permit to carry by students.⁶⁹ The colleges covered are the Minnesota State College and University System⁷⁰ and the University of Minnesota.⁷¹ There is no criminal penalty for violating a college policy.

In order to encourage compliance with employer and college policies, the employee or student's vehicle once again serves as a safety zone where the pistol may be secured while the holder completes his or her business. Employees who actually "work" in a parking lot or parking facility may be prohibited from carrying a firearm on their person at work but, like every other employee, they may secure their firearm in their vehicle.⁷²

Subdivision 19. Immunity.

Neither a sheriff, police chief, any employee of a sheriff or police chief involved in the permit issuing process, nor any certified instructor is liable for damages resulting or arising from acts with a firearm committed by a permit holder, unless the person had actual knowledge at the time the permit was issued or the instruction was given that the applicant was prohibited by law from possessing a firearm.

⁶⁹ The exclusivity provision contained in subd. 23, *infra*, would otherwise prevent public colleges from regulating licensed carry by their students. Private colleges may post under subdivision 17 because they are private establishments.

⁷⁰ Minnesota State Colleges and Universities are regulated under Minn. Stat. Ch. 136F. The MnSCU policy can be found at <http://www.mnscu.edu/policies/521.html> (last visited Jan. 24, 2004).

⁷¹ The University of Minnesota is regulated under Minn. Stat. Ch. 137. The University of Minnesota policy can be found at www1.umn.edu/regents/minutes/2003/july/board.html (last visited Jan. 24, 2004).

⁷² Comparison with the provisions of the MPPA dealing with schools and private establishments demonstrates the Legislature's strong general policy to treat vehicles as the permit holder's safety zone in which a firearm may be secured while the holder *complies* with the request of business owners, employers, and schools. That policy also applies to an employee who is at work in a parking lot and the statute should be interpreted in this fashion.

COMMENT

Prior law

No specific provision. Compare Minn. Stat. §§ 3.736, subd. 3(a) and 466.03, subd. 5.

Reason for change

Insures that only criminals are responsible for the damages caused by their crimes.

Explanation of provision

Both sheriffs and certified instructors are immune from liability for the criminal activity of a permit holder. There is a very narrow exception for a situation where the sheriff or certifier instructor actually knew that they were assisting a prohibited person to acquire the permit.

Subdivision 20. Monitoring.

(a) By March 1, 2004, and each year thereafter, the commissioner must report to the legislature on:

(1) the number of permits applied for, issued, suspended, revoked, and denied, further categorized by the age, sex, and zip code of the applicant or permit holder, since the previous submission, and in total;

(2) the number of permits currently valid;

(3) the specific reasons for each suspension, revocation, and denial and the number of reversed, canceled, or corrected **actions**;

(4) without expressly identifying an applicant, the number of denials or revocations based on the grounds under subdivision 6, paragraph (a), clause (3), the factual basis for each denial or revocation, and the result of an appeal, if any, including the court's findings of fact, conclusions of law, and order;

(5) the number of convictions and types of crimes committed since the previous submission, and in total, by individuals with permits including data as to whether a firearm lawfully carried solely by virtue of a permit was actually used in furtherance of the crime;

(6) to the extent known or determinable, data on the lawful and justifiable use of firearms by permit holders; and

(7) the status of the segregated funds reported to the commissioner under subdivision 21.

(b) Sheriffs and police chiefs must supply the department of public

safety with the basic data the department requires to complete the report under paragraph (a). Sheriffs and police chiefs may submit data classified as private to the department of public safety under this paragraph.

(c) Copies of the report under paragraph (a) must be made available to the public at the actual cost of duplication.

(d) Nothing contained in any provision of this section or any other law requires or authorizes the registration, documentation, collection, or providing of serial numbers or other data on firearms or on firearms' owners.

COMMENT

Prior law

None.

Reason for change

Without good data, policy choices must be made in an informational vacuum.

Explanation of provision

A survey compiled by the Department of Public Safety will be available each year that reports on the permit to carry system and relevant information concerning permit holders.⁷³ Information will be broken down by age, sex, and zip code and the report will contain data on permits applied for, denied, issued, suspended, or revoked. Data revealing reasons for adverse actions will be disclosed and summarized and the specific factual reasons for adverse actions based on "dangerousness" will be catalogued. Conviction information regarding permit holders will be tabulated as well as the relevant linkage, if any, between possession of a carry permit and the particular offense. Information on lawful use of firearms by permit holders will also be summarized. The Survey will be designed not to reveal the identity of specific permit

⁷³ Florida provides similar information at *Statistical Reports*, FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, at <http://licgweb.doacs.state.fl.us/news/reports.html> (last visited Jan. 24, 2004).

holders.

The Survey will also contain complete information regarding the sheriff's administration of the separate permit fee fund created by subd. 21.

Subdivision 21. Use of fees.

Fees collected by sheriffs under this section and not forwarded to the commissioner must be used only to pay the direct costs of administering this section. Fee money may be used to pay the costs of appeals of prevailing applicants or permit holders under subdivision 8, paragraph (c); subdivision 12, paragraph (e); and subdivision 16, paragraph (c). Fee money may also be used to pay the reasonable costs of the county attorney to represent the sheriff in proceedings under this section. The revenues must be maintained in a segregated fund. Fund balances must be carried over from year to year and do not revert to any other fund. As part of the information supplied under subdivision 20, paragraph (b), by January 31 of each year, a sheriff must report to the commissioner on the sheriff's segregated fund for the preceding calendar year, including information regarding: (1) nature and amount of revenues; (2) nature and amount of expenditures; and (3) nature and amount of balances.

COMMENT

Prior law

None.

Reason for change

Sheriffs are expected to administer the carry permit system on a break-even basis by limiting expenditures to the "actual and reasonable direct costs of processing the application."⁷⁴ Experience in other states has shown that oversight and public disclosure of these funds is desirable.⁷⁵

Explanation of provision

The MPPA requires a sheriff to maintain a separate,

⁷⁴ The cost restriction is set forth in subd. 3(f), *supra*.

⁷⁵ See generally Christopher Tritto, *Sheriff Buys Truck, Badges with Gun Fees*, CHARLESTON (W. VA.) GAZETTE MAIL, January 19, 2003 at 1B.

segregated fund for permit fees. The revenues of that fund come from the processing fees paid by permit applicants and the expenditures are expressly restricted to the 1) actual, 2) reasonable, 3) direct costs of 4) administering § 624.714.⁷⁶ The segregated fund exists separately from other county budget items because it carries over from year to year and its balance does not revert to the county general fund under any circumstances.

Specific authority to pay attorney fee awards to successful appellants in actions under subdivisions 8, 12, and 16 is provided. That authority is not a limitation, however, and the sheriff must pay the award in any event. A sheriff's defense costs, incurred by the county attorney, in an action based on the MPPA may also be charged against the permit fund.

Public reporting on the permit fund is required. The sheriff must make a report to the commissioner of public safety including, but not limited to, the items specified in the statute. The report must be in sufficient detail to enable the public to tell whether the revenue and expenditure restrictions of the MPPA are being met.

Subdivision 22. Short title; construction; severability.

This section may be cited as the Minnesota Citizens' Personal Protection Act of 2003. The legislature of the state of Minnesota recognizes and declares that the second amendment of the United States Constitution guarantees the fundamental, individual right to keep and bear arms. The provisions of this section are declared to be necessary to accomplish compelling state interests in regulation of those rights. The terms of this section must be construed according to the compelling state interest test. The invalidation of any provision of this section shall not invalidate any other provision.

COMMENT

Prior law

None.

⁷⁶ The expenditure restrictions arise from the limitations contained in subds. 3(f) and 21.

Reason for change

Expressly declares the legislative intent that the MPPA set state policy that drives the interpretation and construction of § 624.714. This subdivision establishes that the right to keep and bear arms is a civil right and must be given the same deference given to other fundamental civil liberties by applying strict construction to any proposed state regulation of the right. The strict scrutiny standard of review 1) demands that a compelling state interest necessitate any regulation unrelated to the underlying right; 2) demands that any regulation must directly address the problem created by the compelling interest; 3) demands that there be no overbreadth in the regulation; and 4) demands the narrowest possible approach in the solution to the problem found to be compelling.⁷⁷ Any doubts regarding statutory language are to be resolved in favor of the applicant or permit holder's rights; and any doubts concerning any regulation of the right are resolved by invalidating the regulation.

Explanation of provision

The MPPA's system for issuing carry permits and regulating the carry of pistols on or about a person is a limitation on the fundamental right of each individual to keep and bear arms. As such, it may only contain restrictions necessary to meet a compelling state interest. Strict scrutiny must be applied to any encroachment on this facet of personal liberty.

The MPPA's express provision for a non-discretionary, must-issue permit system (and the deliberate lack of restrictions on the scope of a permit, the absolute prohibition on further restriction

⁷⁷ The citation for the four pronged test set out is U.S. v. O'Brien, 391 U.S. 367 (1968) and the Detroit pornography zoning decision, Young v. American Mini Theatres, Inc., 427 U.S. 50 (1976) involving the concept of adverse secondary impacts, which was further developed in Brockett v. Spokane Arcades, Inc., 472 U.S. 491 (1985), and given expression, locally in Upper Midwest Booksellers Assoc. v. City of Minneapolis, 780 F.2d 1389 (8th Cir. 1985), affirming Judge McLaughlin, 602 F. Supp. 1361 (1985).

by subordinate entities, public and private, and the other provisions of § 624.714) exhaust the restrictions necessary to accomplish any compelling state interest and they are totally preemptive. Section 624.714 is a comprehensive regulation of the right to carry that goes as far as allowed and no farther. Compare Minn. Stat. § 471.633; 624.714, subd. 23; and 624.717.

Subdivision 23. Exclusivity.

This section sets forth the complete and exclusive criteria and procedures for the issuance of permits to carry and establishes their nature and scope. No sheriff, police chief, governmental unit, government official, government employee, or other person or body acting under color of law or governmental authority may change, modify, or supplement these criteria or procedures, or limit the exercise of a permit to carry.

COMMENT

Prior law

None.

Reason for change

To make it clear that the Legislature's 1985 total preemption of all authority to regulate activities involving firearms is absolute⁷⁸ and expressly applies to carrying firearms.

Explanation of provision

The Legislature has spoken the same message repeatedly – the legislature has sole authority to enact regulations with respect to activities involving firearms – although some municipalities have simply refused to obey the law. Section 471.633 (enacted in 1985) is a general preemption and revocation of authority provision regarding all regulation of activities involving firearms. Section 624.717 (enacted in 1975 and amended in 1985) is a specific preemption and revocation of authority regarding the carrying or

⁷⁸ There are very limited express exceptions to the absolute preemption set forth in Minn. Stat. §§ 471.633 and 471.635.

possessing of pistols. The MPPA (§ 624.714, subd. 23 enacted in 2003) contains a specific preemption that

- (1) sets forth completely and exclusively the nature and scope of carry permits and
- (2) revokes all authority of a “governmental unit” to “limit the exercise of a permit to carry.”

There is not a shred of authority remaining for a county or city (or instrumentality thereof) to exercise with regard to carry permits.

Subd. 23 tries to capture every role and guise in which governmental authority can be exercised by using this list: “sheriff, police chief, governmental unit, government official, government employee, or other person or body acting under color of law or governmental authority” to describe those subject to its mandate. Without limitation, any entity that can exercise any degree of governmental authority – taxing, taking, jailing, regulating, criminalizing, punishing – is encompassed by the subdivision. “Governmental unit” includes state agencies (e.g., the department of natural resources regarding state parks), state corporate bodies (e.g., the University of Minnesota and the State Agricultural Society regarding the state fair), counties (following home rule procedures or otherwise), cities (following home rule procedures or otherwise), and all public entities subordinate to the state.

In the MPPA itself, the legislature demonstrates that it is quite capable of regulating carry of pistols in a public place, or on school property, or in lieu of school district action. Other examples abound.⁷⁹

⁷⁹ See e.g., Minn. Stat. §§ 97B.211 (while hunting big game by archery, except bear); 243.55 (correctional facilities or state hospitals); 641.165 (county jails); 609.66, subd. 1g 165 (courthouse facilities or the capital complex unless notice is given). These sections are express exceptions to the general rule that carry permits are “effective throughout the state” and should be strictly construed. For example, a jail is a locked, secure facility dedicated to the custody of prisoners. The presence of holding cells in a multi-use building does not “taint” the entire structure. Only the secure, non-public area actually used to house prisoners is a jail. Of course, federal law is supreme in regard to United States court facilities and offices, secured areas of airports, etc. See *generally* 18 U.S.C. § 930.

The absolute nature of the preemption is illustrated by the need expressly to empower “public” employers and “public” colleges to limit the exercise of a carry permit by employees on the job and students on campus. Subdivision 18 would have been unnecessary if there was any authority remaining in the public sphere after enactment of subd. 23. Private employers were also concerned about the preemptive effect of subdivision because they might be “person[s]...acting under color of law” when they restrict the rights of their employees. This was one of the reasons the Minnesota Chamber of Commerce wanted subd. 18(a) in the MPPA and the state college lobbyists sought express authority through subd. 18(b).

C. 624.7142. *Carrying while under the influence of alcohol or a controlled substance.*

Subdivision 1. Acts prohibited.

A person may not carry a pistol on or about the person's clothes or person in a public place:

- (1) when the person is under the influence of a controlled substance, as defined in section 152.01, subdivision 4;
- (2) when the person is under the influence of a combination of any two or more of the elements named in clauses (1) and (4);
- (3) when the person is knowingly under the influence of any chemical compound or combination of chemical compounds that is listed as a hazardous substance in rules adopted under section 182.655 and that affects the nervous system, brain, or muscles of the person so as to impair the person's clearness of intellect or physical control;
- (4) when the person is under the influence of alcohol;
- (5) when the person's alcohol concentration is 0.10 or more; or
- (6) when the person's alcohol concentration is less than 0.10, but more than 0.04.

Subd. 2. Arrest. A peace officer may arrest a person for a violation under subdivision 1 without a warrant upon probable cause, without regard to whether the violation was committed in the officer's presence.

Subd. 3. Preliminary screening test. When an officer authorized under subdivision 2 to make arrests has reason to believe that the person may be violating or has violated subdivision 1, the officer may require the person to provide a breath sample for a preliminary screening test using a device approved by the commissioner for this purpose. The results of the

preliminary screening test must be used for the purpose of deciding whether an arrest should be made under this section and whether to require the chemical tests authorized in section 624.7143, but may not be used in any court action except: (1) to prove that the test was properly required of a person under section 624.7143, or (2) in a civil action arising out of the use of the pistol. Following the preliminary screening test, additional tests may be required of the person as provided under section 624.7143. A person who refuses a breath sample is subject to the provisions of section 624.7143 unless, in compliance with that section, the person submits to a blood, breath, or urine test to determine the presence of alcohol or a controlled substance.

Subd. 4. Evidence. In a prosecution for a violation of subdivision 1, the admission of evidence of the amount of alcohol or a controlled substance in the person's blood, breath, or urine is governed by section 169A.45.

Subd. 5. Suspension. A person who is charged with a violation under this section may have their authority to carry a pistol in a public place on or about the person's clothes or person under the provisions of a permit or otherwise suspended by the court as a condition of release.

Subd. 6. Penalties. (a) A person who violates a prohibition under subdivision 1, clauses (1) to (5), is guilty of a misdemeanor. A second or subsequent violation is a gross misdemeanor.

(b) A person who violates subdivision 1, clause (6), is guilty of a misdemeanor.

(c) In addition to the penalty imposed under paragraph (a), if a person violates subdivision 1, clauses (1) to (5), the person's authority to carry a pistol in a public place on or about the person's clothes or person under the provisions of a permit or otherwise is revoked and the person may not reapply for a period of one year from the date of conviction.

(d) In addition to the penalty imposed under paragraph (b), if a person violates subdivision 1, clause (6), the person's authority to carry a pistol in a public place on or about the person's clothes or person under the provisions of a permit or otherwise is suspended for 180 days from the date of conviction.

(e) Notwithstanding section 609.531, a firearm carried in violation of subdivision 1, clause (6), is not subject to forfeiture.

Subd. 7. Reporting. Suspensions and revocations under this section must be reported in the same manner as in section 624.714, subdivision 12a.

COMMENT

Prior law

None.

Reason for change

The MPPA is concerned with “character” not “geography.”⁸⁰ Unlike other statutes that restrict carry in locations where liquor is served even if the person does not drink, the MPPA focuses on the ability of the person to act responsibly.

Explanation of provision

The carrying while intoxicated prohibition applies to all persons with authority to carry a pistol on or about the person in a public place. Thus it covers both carry permit holders and law enforcement officers (federal and state). Section 624.7142 is based on the hunting while intoxicated law.⁸¹

⁸⁰ In this context, “who” not “where.”

⁸¹ Minn. Stat. §§ 97B.065 and 97B.066.