



**Request for City Council Committee Action
From the City Attorney's Office**

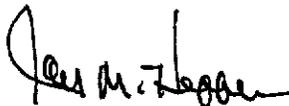
Date: June 11, 2003

To: Ways & Means/Budget Committee

Subject: Discussion of Minnesota Citizen's Personal Protection Act

Recommendation: That the Ways & Means/Budget Committee receive and file the City Attorney's Opinion

Prepared by: Caroline M. Bachun, Assistant City Attorney (673-2754)
Burt T. Osborne, Assistant City Attorney (673-5452)

Approved by: 
Jay M. Heffern
City Attorney

Presenter in Committee: Burt T. Osborne, Assistant City Attorney

Financial Impact (Check those that apply)

- No financial impact - or - Action is within current department budget at this time.
(If checked, go directly to Background/Supporting Information)
- Action requires an appropriation increase to the Capital Budget
- Action requires an appropriation increase to the Operating Budget
- Action provides increased revenue for appropriation increase
- Action requires use of contingency or reserves
- Other financial impact (Explain): Any new or additional enforcement efforts by the City may have a financial impact in terms of staffing or equipment for the City, in addition to increased civil and criminal legal services from the Office of the City Attorney, and increased law enforcement requirements.
- Request provided to the Budget Office when provided to the Committee Coordinator

Background/Supporting Information:

On April 29, 2003, Governor Pawlenty signed into law the Minnesota Citizens' Personal Protection Act of 2003. The new law, commonly known as the "Conceal and Carry" law, took effect on May 28, 2003.

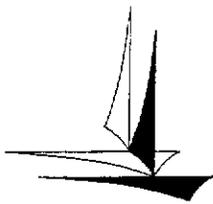
There are numerous issues related to the Conceal and Carry law that your Committee should consider. Some issues may have budgetary and financial consequences for the City of Minneapolis.

Some of the issues that the City Attorney's Office initially addressed in a May 30, 2003 interoffice memorandum to the Mayor and all the members of the City Council include:

1. **Human Resources Issues.** The City's previous policy prohibiting City employees from bringing weapons into the workplace has been revised to be consistent with the Conceal and Carry law. For instance, the City of Minneapolis, as an employer, can no longer prohibit employees (who possess valid permits to carry concealed weapons) from bringing those weapons onto City-owned parking lots or into City-owned parking ramps.
2. **Government Facilities Issues.** Although the Conceal and Carry law appears to preempt any local government regulation of weapons on government-owned property, several state statutes exist that may give local governments the authority to pass reasonable regulations regarding weapons in its buildings to protect the orderly conduct of governmental business. Additionally, two valid state statutes exist that make it a felony in most instances for any citizen, even citizens with otherwise valid permits, from bringing weapons of any kind onto the grounds of a building that houses jails, prisons or lockup facilities, or from bringing weapons into any courthouse complex.

To the extent that City-owned property is leased, used or operated by other entities that may be considered "private establishments" pursuant to the Conceal and Carry law, those entities can ban weapons on the City-owned property they are using.

3. **Law Enforcement Issues.** Several law enforcement issues have been created in the Conceal and Carry law that will have a direct impact on the Minneapolis Police Department. Those issues include under what circumstances street officers may require a person to produce their carry permits, what steps must be taken to check permit validity, under what circumstances police officers may seize weapons, what areas in the City weapons are banned under most circumstances such as schools, and the penalties for possession of a weapon while under the influence of a controlled substance.
4. **Prosecutorial Issues.** The Conceal and Carry law presents significant new responsibilities for the City's prosecutors in the City Attorney's Office. The law created new petty misdemeanor, misdemeanor, and gross misdemeanor offenses that the City's prosecutors must prosecute. Additionally, the new law imposes reporting requirements on the City's prosecutors that mandate tracking and reporting final dispositions of certain cases to the local sheriff. The more obvious resource implications for the City Attorney's Office include increased prosecutions of crimes set forth in the Conceal and Carry law.



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TO: Mayor R.T. Rybak
City Council President Ostrow
and Members of the City Council
Jay

FROM: Jay M. Heffern
City Attorney

DATE: May 30, 2003

RE: Minnesota Citizen's Personal Protection Act of 2003 - Conceal and Carry Law

INTEROFFICE MEMORANDUM

On April 29, 2003, Governor Pawlenty signed into law the Minnesota Citizens' Personal Protection Act of 2003. The new law, commonly known as the "Conceal and Carry" law, took effect on May 28, 2003.

The Conceal and Carry law allows an individual to obtain a permit to carry a pistol. In most instances, gun permits must be issued by county sheriffs, and the permits are effective throughout the State of Minnesota. An individual may obtain a permit if the individual is at least 21 years old and a citizen or permanent resident of the United States, has had training in the safe use of a pistol, and is not prohibited from possessing a firearm based on a variety of disqualifying factors. These disqualifying factors include a violation of a domestic abuse order for protection, prior assaults or stalking, mental illness or mental incapacity, violations of certain crimes against persons, and being listed in the criminal gang investigative data system.

The Conceal and Carry law allows an employer, such as the City, to create and enforce a human resources policy generally prohibiting employees from carrying and possessing guns in the workplace. While a municipality, as an employer, is allowed to prohibit employees from carrying guns in the workplace, the issue of whether the City can ban citizens, who are not City employees, from carrying guns on City facilities is not as clear. The law also affects law enforcement efforts of police officers and the subsequent prosecutorial responsibilities. Issues involved with the City's human resources, city facilities, law enforcement, prosecution, remedies, and potential challenges to the Conceal and Carry law are discussed below.

I. Human Resources Issues:

The Conceal and Carry law provides a means for employers to regulate the possession of weapons by employees as follows:

- Employers, whether public or private, may establish policies that restrict the carrying or possession of firearms by employees while acting in the course and scope of their employment.

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- Employers are permitted to impose "civil sanctions" for violations of such a policy. Thus, an employer can bar employees from having guns in the workplace and discipline them, up to and including termination, for violating this prohibition.
- Employers may not prohibit employees from lawfully carrying or possessing firearms in a parking facility or parking area.

Prior to the enactment of the Conceal and Carry law, did the City have a policy prohibiting guns in the workplace?

Yes. The City did have a policy prohibiting dangerous weapons in the workplace. The policy prohibited more than guns in the workplace; it also prohibited other dangerous weapons. That policy is no longer consistent with the new Conceal and Carry law because, among other things, it does not allow weapons in City-owned or City-leased parking facilities and areas.

Can the City create a new policy that complies with the new gun law?

Yes. The Executive Committee has approved a version of such a policy that will be considered by the Ways & Means/Budget Committee on June 2, 2003, and by the City Council on June 6, 2003.

Can the policy regulate independent contractors?

No. The City's policy only allows regulation of the possession of a firearm by an employee. An independent contractor is not an employee.

Can the City require by contract that independent contractors have personnel policies that prohibit the possession of guns in the workplace?

There is no clear answer. The Conceal and Carry law is silent on this issue. If the City attempts to make such a policy a condition of contracting and working with the City, the requirement could violate the independent contractor's right to carry or allow the carrying of firearms and it could appear that the City is regulating what it is not allowed to regulate. However, as discussed below, local governments may have the authority to pass reasonable regulations regarding the orderly flow of business at government-owned buildings.

Can a policy prohibit employees from carrying and possessing firearms in locations where the public may congregate on City premises?

Yes, although the outcome is somewhat absurd. For example, a convention center employee may be prohibited from carrying a weapon while working on the grounds of the convention center (other than the parking lot), but citizens may be allowed to carry firearms in the same building.

Must the City negotiate a gun policy with the various collective bargaining units?

No. Negotiation is not necessary to implement a gun policy. However, the City's labor agreements may include provisions that would require the City to meet and confer on new work rules.

II. Government Facilities Issues:

In passing the Conceal and Carry law, the Minnesota Legislature indicated a clear policy decision to prevent most local government control of peoples' rights to carry firearms in public in Minnesota when the firearms are properly permitted. One area of focus in the new legislation is the Legislature's apparent prohibition or preemption of any local government regulation of weapons on government-owned property. However, statutory provisions still exist regarding local governments' authority to regulate weapons at their facilities. At least two statutes provide for criminal penalties for bringing weapons, even with a permit, into courthouse complexes or jails and lockup facilities. Provisions in state law, including provisions in the Conceal and Carry law, and other state statutes, which relate to regulations of the possession of guns on City premises by citizens (other than employees) are summarized as follows:

- Owners or operators of "private establishments" may prohibit the lawful carry or possession of firearms on their premises, if the private establishment's prohibition is clearly posted and each patron is personally informed of the prohibition.
- A "private establishment" is defined in the Conceal and Carry law as any "nongovernmental" lessor, owner, controller or operator of any building or structure that is using such building or structure for "nongovernmental" purposes.
- Private establishments may conduct business on City premises. For instance, a private company may lease a hall in the Convention Center for nongovernmental purposes. Those private establishments may regulate the carry and possession of firearms if they meet the posting requirements and advise each patron of the requirements.
- The gun law specifies that no landlord can restrict the lawful carry or possession of firearms by tenants or their guests. To the extent the City acts as a landlord, it cannot regulate the lessor's right to allow guns on the premises. For example, the Convention Center cannot require a company that rents out a hall in the Convention Center to prohibit weapons in the leased hall.
- The City enjoys home rule authority to regulate only to the extent that the subject matter of the local regulation has not been preempted by clear state regulation of the area. A.C.E. Equip. Co. v. Erickson, 152 N.W.2d 739 (Minn. 1967); Lilly v. City of Minneapolis, 527 N.W.2d 107 (Minn. App. 1995). "The doctrine of preemption is premised on the right of the state to so extensively and intensively occupy a particular field or subject with state laws that there is no reason for municipal regulation." Mangold Midwest Co. v. Vill. of Richfield, 143 N.W.2d 813 (Minn. 1966). If preemption has occurred, a local law purporting to govern, regulate or control an aspect of the preempted field will be void, even if the local law is not in conflict with the state law. Id. The Conceal and Carry law provides that governmental units and

their employees are prohibited from changing, modifying, supplementing, or otherwise limiting the exercise of a permit to carry. See, Minn. Stat. § 624.714, subd. 23. The new law manifests a clear legislative intent to exclude local governments from regulating a person's right to carry and possess a permitted weapon in public places. A Minnesota Court may conclude that the Minnesota Legislature, through passage of the new gun law, fully intended to preempt any additional or different local regulation on a citizen's right to conceal and carry a weapon. See, City of Minneapolis Charter, Chap. 4, sec. 5, which provides that the City has the power to license, prohibit, regulate and control the carrying of concealed weapons in the City.

- Minn. Stat. § 609.66 makes it a felony to possess a dangerous weapon within any courthouse complex unless the person carrying the weapon into the complex has a properly issued permit and has notified the local sheriff or the Minnesota Commissioner of Public Safety, depending on the courthouse complex at issue. City Hall, which is owned by the Municipal Building Commission, has 4th Judicial District courtrooms. If a person carries a weapon into City Hall, has the proper permit, but has not received the express consent of the Hennepin County Sheriff, the person may be guilty of a felony.
- Minn. Stat. § 641.165 makes it a felony for anyone, with or without a properly issued permit, to bring a dangerous weapon into any "jail, lockup, or correctional facility" without the consent of the "person in charge." That criminal prohibition applies to the introduction or possession of a dangerous weapon while within the jail, lockup or correctional facility or anywhere on the grounds surrounding such facility. If a citizen carries a weapon into City Hall, with or without a permit, but has not notified the person in charge of the facility he or she may be guilty of a felony.
- Minn. Stat. § 624.72 provides that local governments can promulgate reasonable rules and regulations for the purpose of ". . . protecting the free, proper and lawful access to, egress from and proper use of public property, and for the purpose of protecting the conduct of public businesses therein or thereon, free from interference, or disruption or the threat thereof . . ." See, Minn. Stat. § 624.72, subd. 3.

Can local governments regulate the exercise of a permit to carry through contracting, licensing or bidding processes?

It has been suggested that the City could enact some sort of blanket exclusion against entering into leases or rental agreements with any private establishments that refuse to ban weapons at their events on City-owned premises. It has also been suggested that local governments could condition approval of licenses or participation in bidding processes on the applicants' or bidders' intentions to ban guns at their private establishments. Such a blanket exclusion or such conditions could be struck down as the City's attempt to otherwise "limit the exercise of a permit to carry" in the public portions of publicly owned facilities. See, Minn. Stat. § 624.714, subd. 23. Additionally, to the extent the City could be considered a "landlord" regarding its ownership of any of the mentioned facilities, the Conceal and Carry law clearly prohibits the City from restricting the otherwise lawful carry of weapons by tenants or their guests.

May the City of Minneapolis ban weapons at the City-owned Convention Center?

The City and the M.C.D.A. own all or parts of numerous facilities that are leased to, rented to, controlled or operated by nongovernmental private enterprises engaging in nongovernmental activities. Such private

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enterprises, or "private establishments" as they are referred to in the Conceal and Carry law, can ban weapons on government-owned premises at issue if the proper posting is made and each patron is personally notified of the ban. Examples include lessors, renters or operators of the Convention Center, the Target Center, the State Theater, the Orpheum, and the Pantages theatres. There are numerous other properties throughout the City that are owned wholly or in part by local government agencies. To the extent those government-owned properties are operated and controlled by private establishments, weapons may clearly be banned on those properties, or portions thereof, by the controlling private establishments.

In the common areas of the Convention Center, the City may be prohibited by the gun law from banning weapons, unless some lessor or private enterprise has rented, or is controlling, the entire building. Of course, the City can enact policies, discussed above, limiting Convention Center employees from bringing weapons into the workplace.

May weapons be banned in City Hall?

It could be argued that the state legislature has already banned weapons in City Hall to the extent City Hall can be considered a courthouse complex and/or has a jail or lockup facility. See, Minn. Stat. § 609.66 and Minn. Stat. § 641.165. On May 27, 2003, Chief Judge Kevin Burke, Hennepin County District Court, issued an order banning all weapons in any building containing a district courtroom of any kind, including City Hall. The Chief Judge's Order does not cite any statutory authority and my staff is not aware of any specific legislation authorizing such a broad ban, notwithstanding a properly issued permit to carry a concealed weapon. The Chief Judge may be relying on the inherent power of the judiciary, as a separate and independent branch of government, to ban weapons.

As mentioned above, people who have permits to carry weapons cannot carry such weapons into courthouse complexes without first notifying the county sheriff or the Commissioner of Public Safety. See, Minn. Stat. §609.66. In the case of City Hall, which houses several courtrooms and district court administrative offices, the person to notify is the Hennepin County Sheriff. The Municipal Building Commission could post signs throughout City Hall which remind the public that it is a felony to possess a weapon in any courthouse complex without a properly issued permit and without first having notified the Hennepin County Sheriff.

Minn. Stat. § 641.165 makes it a felony for anyone, even if properly permitted, to introduce or possess a dangerous weapon in any jail or lockup facility, or on the grounds thereof, without the express permission of the person in charge of the jail or lockup facility. In the case of City Hall (which contains a lockup facility) and the new county jail facility across the street from City Hall, the "person in charge" is the Hennepin County Sheriff. Concerning City Hall, the Municipal Building Commission could post signs reminding the public of the criminal consequences of possessing any weapon anywhere in the entire building or on the building grounds without the express permission of the Hennepin County Sheriff because of the existence of the lockup facility in City Hall.

Inasmuch as significant portions of City Hall are occupied and operated by Hennepin County offices and City of Minneapolis offices, the City and the County should work jointly to advise the Municipal Building Commission on the effects and operation of Minn. Stat. § 609.66 and Minn. Stat. § 641.165.

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May local governments ban members of the public from bringing weapons into government-owned or government-operated buildings that do not otherwise include courthouse or lockup facilities?

In the many government-owned and/or government-operated buildings that do not contain courthouse complexes or jails, lockups or correctional facilities, it may be argued that local governments retain the authority to ban weapons altogether. In passing the gun law, the Minnesota Legislature expressed a clear policy intent that people with permits should be able to carry firearms without much restriction. However, Minn. Stat. § 624.72, which is still part of the new gun law, provides that political subdivisions of the state can promulgate reasonable rules and regulations for the purpose of “. . . protecting the free, proper and lawful access to, egress from and proper use of public property, and for the purpose of protecting the conduct of public businesses therein or thereon, free from interference, or disruption or the threat thereof . . .” See, Minn. Stat. § 624.72, subd. 3.

That provision in state law suggests a legislative intent to allow local governments to place reasonable time, place and manner restrictions (much like valid time, place and manner restrictions on First Amendment rights to speech and protest) on bringing weapons into public buildings if doing so would disrupt the business of the government. Of course, Minn. Stat. § 624.72, subd. 3, which is actually part of the state statute that now includes the Conceal and Carry law, may be in conflict with the new law. See, discussion of preemption, *supra*. The exclusivity provision of the Conceal and Carry law states that “[T]his section sets forth the complete and exclusive criteria and procedures for the issuance of permits to carry and establishes their nature and scope. No . . . government . . . may change, modify, or supplement these criteria or procedures, or limit the exercise of a permit to carry.” Minn. Stat. § 624.74, subd. 23. It could be argued that a reasonable regulation passed by a local government pursuant to Minn. Stat. §624.74, subd. 3 constitutes an impermissible “limit” on the exercise of a permit to carry.

In some City space, sometimes contentious and acrimonious debate take place. Citizens' livelihoods and other rights are often adversely affected by the actions of public officials and their employees. Based on the authority in Minn. Stat. § 624.72, subd. 3, local governments could make the decision not to allow, or in some way restrict, citizens from bringing weapons, even with a proper permit, into certain parts of City buildings. For example, the process of a contentious discharge hearing in the Human Resources building, or the necessary questioning of an especially aggressive deponent in the City Attorney's Office, may permit a local government restriction on all weapons in those environs pursuant to the need to protect the conduct of the public business from being threatened or interrupted by the presence of weapons. A case-by-case analysis should be done on each building owned or operated by the City to determine what restrictions, if any, may be appropriate and legally permitted. Of course, regulations and their enforcement have broad financial resource implications that will need to be considered in each case.

As you may be aware, the Ramsey County Board of Commissioners has chosen to ban all weapons on any county property pursuant to Minn. Stat. § 624.72, subd. 3. My staff is not aware of what specific measures Ramsey County intends to take to enforce compliance with its broad ban; however, my office will monitor this situation and update you as necessary.

May a City Council member attending a neighborhood meeting at a Park Board facility demand that no weapons be brought into the meeting?

No. The neighborhood organization hosting the meeting, if any, could choose to institute a ban on weapons at its event, if it were considered a private establishment. Alternatively, the Park Board may be able to pass and enforce some sort of regulation on weapons at its facilities and property pursuant to Minn. Stat. § 624.72, subd. 3. However, a City Council member, or the City Council, has no power to regulate the introduction of weapons at neighborhood meetings not held on City property. Of course, council members and city staff could simply choose not to attend meetings lacking assurances that no weapons will be present.

May a City Council member attending a meeting at a public school demand that no weapons be brought into the meeting?

The council member may not have to. Even with a proper permit, individuals are not allowed to bring guns into schools unless they are licensed peace officers or have a permit and the written permission of the principal of the school. The gun law does provide that people with permits can bring their guns onto school property in their cars, as long as they leave them secured in the car. The City has no independent power to regulate the carrying of weapons on public school property.

III. Law Enforcement Issues:

The following are suggested guidelines for enforcing the new Conceal and Carry Law that have been provided to sworn personnel. These guidelines do not contemplate all situations that can occur but merely give some guidance on the new law.

When may an officer ask to see someone's permit to carry?

If an officer sees an individual carrying, holding, or otherwise possessing a weapon on, about the person's clothes, or on the person in a public place, that officer may ask to see that person's permit. Until the courts say otherwise, mere possession is enough to ask to see a permit. For purposes of this new statute, such a request is deemed a lawful demand. If the suspect does not have a permit to carry, they are guilty of a gross misdemeanor pursuant to Minn. Stat. § 624.714, subd. 1a.

What must the individual provide upon an officer's lawful demand to see that individual's permit?

The new law requires that individuals have their permit and driver's license, or state issued ID, or other government-issued ID in their immediate possession at all times while carrying a pistol. If the suspect does not have a permit to carry, they are guilty of a gross misdemeanor pursuant to Minn. Stat. § 624.714, subd. 1a.

What if an individual is missing his or her permit or photo ID?

If the person does not have a permit, they have committed a gross misdemeanor. If, however, access to the state database says the person has a permit, then the individual should be cited for failure to properly display their permit.

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The officer should issue a citation for failure to properly display a gun permit and remind the individual that a photo ID is required in addition to the gun permit.

What if the individual has the permit but not a photo ID?

It is still a violation because a photo ID is required with the permit.

Can the officer seize the weapon for failure to properly display a permit?

Yes. Although the new law states that weapons carried in violation of the above are not subject to forfeiture, officers can temporarily seize weapons carried with no permit or ID as evidence of the violation and to enforce the law and deter crime. Minn. Stat. § 609.531, subd. 1a, the law governing forfeitures and seizure provides: "Sections 609.531 to 609.5318 must be liberally construed to carry out the following purposes: (1) to enforce the law; (2) to deter crime..." (Emphasis added). The weapon can be returned when the violation is resolved in court or with the violations bureau. Under some circumstances, it may be impracticable to seize the weapon. The officer should use careful discretion.

What can officers do to verify an ID for citation purposes?

In those situations where the permit holder has a permit but no photo ID, officers can ask the individual to provide a sample signature in that officer's presence to verify identification. By law, that individual must comply. See, Minn. Stat. § 624.714 subd. 1b(c).

What should officers know about being on school property with a weapon?

Officers should know that it is a felony to possess a weapon while knowingly on school property if the person does not have a permit. Minn. Stat. § 609.66, subd. 1d(a).

Can a person possess a weapon on school property if they have a permit to carry?

No. It's a misdemeanor. See, Minn. Stat. § 609.66, subd. 1d(c).

But a person may bring a weapon onto school property under the following circumstances:

- 1) The person is a licensed peace officer, military personnel, or a students participating in military training who are on duty performing official duties.
- 2) The person has a permit to carry but remains in their motor vehicle while on school property.
- 3) The person has a permit to carry but is in the active process of either putting their firearm in their trunk, or retrieving it and going back to their vehicle.
- 4) The person is conducting a firearm safety or marksmanship course in the school.
- 5) The person is participating in a ceremonial color guard.
- 6) The school is putting on a gun or knife show.

- 7) If the person has a permit to carry, they may enter on school property if they have written permission of the principal or other person having general control and supervision of the school or the director of a child care center. Minn. Stat. § 609.66, subd. 1d(e).

Can off-duty officers enter school property with firearms to pick up their children?

Because they are off-duty, they would be treated as any other citizen and could bring a firearm onto school property under the exceptions listed in the answer above to the question, "When can a person bring a weapon onto school property."

What is considered school property for purposes of the law?

The following are considered school property:

- (1) Public or private elementary, middle, or secondary buildings and their improved grounds, whether leased or owned.
- (2) A child-care center during the period in which children are present.
- (3) A school bus being used to transport elementary, middle or secondary students to school related activities.

Minn. Stat. § 609.66, subd. 1d(d)(4).

What about state colleges?

The new law provides that state colleges can establish policies that restrict the carry or possession of firearms by its students while on the institution's property.¹

What should officers know about carrying a weapon while under the influence of alcohol or a controlled substance?

It's against the law to carry a pistol on public property while under the influence of alcohol or a controlled substance, or any combination of the two.²

What constitutes probable cause for carrying while under the influence?

If an officer sees a weapon on someone's person, he or she can always ask to see the individual's permit. If, while checking for a permit, one or several indicia of intoxication, e.g., bloodshot watery eyes, slurred speech, difficulty walking or the smell of alcohol on their breath are noticed, sufficient probable cause exists to suspect someone is carrying while under the influence. According to Minn. Stat. § 624.7142, subd 2, an arrest can be made.

¹ However, an employer or a postsecondary institution may not prohibit the lawful carry or possession of firearms in a parking facility or parking area.

² Violations for this offense should be reported under Minn. Stat. § 624.7142. Pursuant to Section 624.1742 subd. 6, the first offense is a misdemeanor and a subsequent offense is a gross misdemeanor.

Does an officer have to administer a Preliminary Breath Test before an arrest can be made?

No. The statute is clear on this point.³ As long as the officer has probable cause for the arrest, an arrest can be made. The reasons for the arrest must be well articulated in the officer's report.

When should a Preliminary Breath Test be used?

A Preliminary Breath Test should be used for arrest purposes only. The results are not admissible in court as evidence. However, the Preliminary Breath Test is another valuable tool in determining whether or not probable cause exists to arrest. However, if an officer sees someone with a concealed weapon, walking off-balance or swaying, slurring his or her speech, smelling of alcohol, or demonstrating other indicia of intoxication, the fact that an officer does not have a preliminary breath test should not stop the officer from making a lawful arrest.

What blood concentration constitutes a violation?

If a person's blood concentration is between .04 and .10, a violation has occurred. Minn. Stat. § 624.7142, subd. 1(b).

What if they refuse to blow into the Preliminary Breath Test?

If a suspect refuses to blow into the Preliminary Breath Test, they may be arrested and taken down to chemical test for further chemical testing. The new law makes chemical testing mandatory. Minn. Stat. § 624.7143, subd. 1(2).

Can a person be arrested even though their blood concentration is below .04?

Yes. Just because a person's alcohol concentration is below .04 doesn't mean they cannot be arrested if the individual shows outward signs of being under the influence or strong indicia of intoxication. Minn. Stat. § 624.7142, subd. 1(1).

Is consent required for chemical testing under the new law?

The new law resembles the implied consent provisions of the driving while impaired statutes. The consent is implied by law by merely possessing a pistol in a public place. Therefore, if a suspect has a pistol in a public place, in essence, the individual has consented to chemical testing if an officer has probable cause to believe a violation as occurred.⁴

When should a suspect be taken down to chemical test?

A person should be taken down to chemical test under any of the following circumstances:

- (1) The person has been placed under arrest for carrying while under the influence.

³ According to Minn. Stat. § 624.7142, subd. 3, "When an officer ...has reason to believe the person [may be carrying under the influence], the officer may require the person to provide a breath sample for a preliminary screening test..." (Emphasis added).

⁴ Minn. Stat. § 624.7143, subd. 1 provides: "A person who carries a pistol in a public place on or about the person's clothes or person is required...to take or submit to a test of the person's blood, breath, or urine for the purpose of determining the presence and amount of alcohol or a controlled substance. The test shall be administered at the direction of an officer authorized to make arrests..."

- (2) The person has been involved in a firearms related accident resulting in property damage, personal injury, or death.
- (3) The person refused the Preliminary Breath Test.
- (4) The person blew a .04 or higher on a Preliminary Breath Test. Minn. Stat. § 624.7143, subd. 1.

What must an officer advise the suspect of before testing?

Once an officer takes a suspect down to chemical test, the suspect must be advised of the following before any test is administered:

- (1) The test is required by law.
- (2) If they refuse to submit to testing, they are subject to a civil penalty of \$500 and will be prohibited from carrying a weapon for a period of one year.
- (3) They have a right to consult an attorney before testing. However, the right is limited to the extent it does not unreasonably delay testing. An unreasonable delay will constitute a refusal. Minn. Stat. § 624.7143, subd. 3.

When can an officer ask the suspect to submit to a blood or urine test?

When the officer has probable cause to believe the suspect is under the influence of a controlled substance that can not be detected by a breath test, the officer may require the suspect to undergo blood or urine testing. Minn. Stat. § 624.7143, subd. 4.

What should an officer do when a subject refuses to test?

If a suspect refuses to submit to testing, the officer shall report the refusal to the Hennepin County Sheriff and the Minneapolis City Attorney's Office. An officer's CAPRS statement should articulate the probable cause for the arrest as well as the behavior amounting to the refusal. Minn. Stat. § 624.7143, subd. 2.

How does the new law impact the offense of trespass?

The new law makes it a petty misdemeanor to remain in a private establishment while carrying a weapon under permit after the owner or manager⁵ has made a "reasonable request" that firearms not be brought in and has asked that person to leave.⁶

What constitutes a reasonable request under the law?

The following constitutes a reasonable request:

- (1) The requestor prominently posts a conspicuous sign at every entrance to the establishment saying that "[name of establishment] BANS GUNS IN THESE PREMISES."

⁵ Minn. Stat. § 624.714, subd. 17 provides that "the 'operator' of the establishment or its 'agent'" make the reasonable request.

⁶ Citations for this offense should be cited under Minn. Stat. § 624.714, subd. 17.

- (2) The requestor or its agent personally informs the suspect of the sign and demands compliance.
- (3) The sign is at least four feet laterally from the entrance with the bottom being four to six feet above the floor.
- (4) The lettering of the sign is at least 1-1/2 inches in height in black arial typeface against a bright background that is at least 187 square inches.

Minn. Stat. § 624.714, subd. 17(b).

Are off-duty officers carrying their weapons impacted by the new trespass law?

No. Minn. Stat. § 624.714, subd. 17, applies to weapons being carried under permit. Police Officers do not carry weapons pursuant to permit. They carry because they are licensed peace officers. Furthermore, peace officers are specifically exempted under Minn. Stat. § 624.714, subd. 1a.

Do officers need a permit when they are working off-duty?

No. The statute specifically exempts licensed peace officers from the new law. For purposes of this law, officers remain "peace officers" as defined by Minn. Stat. § 626.84, subd. 1, while they are working off-duty. Minn. Stat. § 624.714, subd. 17(c).

IV. Prosecutorial Issues:

Under the Minnesota Citizens' Personal Protection Act of 2003, the Minnesota Legislature has enacted additional criminal code violations, ranging from petty misdemeanors to gross misdemeanors, that the City Attorney's Office will be enforcing. The new law also enacts new felony offenses; however, the City Attorney's Office prosecutes only petty misdemeanor, misdemeanor and gross misdemeanor offenses. In addition, the new law provides for civil penalties for certain violations and imposes mandatory reporting requirements on the City Attorney's Office. Following are some of the key criminal-related elements of the new gun law:

- The most significant change involves Minn. Stat. § 624.7142, which prohibits a person from carrying a pistol in a public place while under the influence of drugs or alcohol, or where the person's blood alcohol concentration is more than 0.04. The law makes it a misdemeanor for a person to carry a pistol in a public place when the person's alcohol concentration is less than 0.10, but more than 0.04. If the person carrying the gun is under the influence of alcohol, has a blood alcohol concentration of .10, or is under the influence of a controlled substance, the first offense is a misdemeanor. Subsequent violations are gross misdemeanors. Unlike the driving under the influence law, refusing to take the breath test results in a civil penalty only.
- The law amends and expands Minn. Stat. § 624.714 and assigns petty misdemeanor charges to violations for the failure to carry a permit card and proper identification while carrying a pistol.
- The law imposes reporting requirements on the prosecuting attorney that mandate tracking and reporting final dispositions to the local sheriff in certain cases. Minn. Stat. § 624.714, subd. 8a.

What are the prosecutor's reporting requirements under the new law?

Under the law, prosecutors are required to notify the local sheriff of any charge made against a permit holder if a conviction of the violation would prohibit the possession of a gun. Prosecutors also must notify the sheriff of the final disposition of the case. This applies when a person is charged with offenses such as violations of orders for protection, domestic assault, and harassment and stalking.

Many of the cases that may trigger a reporting requirement under the new law are currently charged in Minneapolis by a "tab charge". This means that the police officer, and not the prosecutor, initiates the charges against the person. The City Attorney's Office prosecution case management system currently is incapable of flagging the cases that may trigger a reporting requirement in the manner needed to comply with the mandates of the new law.

Because the new law mandates that the prosecuting attorney first ascertain whether the person is a permit holder, and if the person is a permit holder, the prosecutor report to the sheriff that the person has been charged with a triggering offense, the City Attorney's Office will immediately assign staff to manually review every case that may trigger this reporting requirement. In addition, the Minnesota Department of Public Safety database that is required by the law has not yet been established. Therefore, the City Attorney's Office does not have this tool available to determine whether a person is a permit holder.

In the absence of a fully-functional prosecution case management system, this office will immediately assign staff to manually track cases as they are charged, and monitor the cases as they progress through the court system to final disposition, and notify the Hennepin County Sheriff of the final disposition of the case.

What if the Minnesota Department of Public Safety does not have an automated database?

As indicated above, the Minnesota Department of Public Safety does not yet have an automated database which the City Attorney's Office can use to check for permit holders. In the absence of such a database, my staff will contact the Hennepin County Sheriff's office to determine whether an individual has a permit.

What are the staffing implications presented by the new law?

The law directly impacts the City Attorney's Office Criminal Division's domestic and charging teams. Since the Office does not have a fully-functional prosecution case management system that tracks cases by offense type, the Office must rely on information from other sources. Based on figures from Hennepin County District Court for 2002, there were approximately 2200 domestic related assault cases filed with the court. Thus, the Office will need to identify, track, and report final dispositions manually on at least these 2200 cases. A paralegal is being assigned to review all domestic-related tab charged cases to comply with the tracking and reporting requirements of the law.

What other impacts will the new law have on the City Attorney's Office?

When charging cases by complaint, the City Attorney's Office Criminal Division uses standard charging language for the various offenses that are prosecuted. Because of the new law, the Criminal Division is creating new charging language to prosecute the crimes covered under this law. These "templates" will be used in charging cases.

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The City Attorney's Office Criminal Division will work with the Minneapolis Police Department to ensure submission of all possible cases to the City Attorneys' office for charging by formal complaint. This will allow better tracking of these cases.

V. Legal Remedies:

The Conceal and Carry law provides that citizens aggrieved by the denial or revocation of a permit may appeal by petition for a writ of mandamus to the district court in the county in which the application was submitted. The court must schedule the hearing on an expedited basis, and the Conceal and Carry law dictates the findings the court must make in granting or denying the requested relief. Among other things, the Conceal and Carry law commands the court to order the permit issued to the aggrieved applicant unless the local sheriff proves the legitimacy of the revocation or denial by clear and convincing evidence. If the permit is granted through that process, reasonable costs and attorney fees must be awarded to the applicant.

If the current state criminal statutes are enforced regarding introducing weapons into courthouse complexes (Minn. Stat. § 609.66) or jails or lockups (Minn. Stat. § 641.165), felony prosecutions of the violators would take place at the discretion of the county attorney in each county. In the case of a violation of an otherwise reasonable government regulation passed pursuant to Minn. Stat. § 624.72, subd. 3, the gun law provides for gross misdemeanor prosecution of such a violation. Such criminal prosecutions may result in a writ of habeas corpus, or some other extraordinary petition for relief, requesting that the local regulation or state law be immediately struck down as violative of the constitution.

If a local government passes or attempts to enforce a local regulation, such as a ban on any weapons in City Hall, or a restriction on weapons in other government buildings, a challenge would likely come in the form of an action based on 42 U.S.C. §1983 for the deprivation of a constitutional right, in this case the Second Amendment. Such claims, if successfully pursued, often are accompanied by awards of reasonable costs and attorney fees, and the relief may include money damages of some sort, or a declaration that a local ordinance or policy is unconstitutional and thus invalid. Additionally, it is highly likely that such claims may begin with an expedited request for relief, such as a motion for immediate injunctive relief from passage or enforcement of an ordinance or a regulation, and a summons and complaint.

VI. Potential Legal Challenges to the Conceal and Carry Law:

Local governments could challenge the Conceal and Carry law based on a theory that the law violates the City's home rule charter. As mentioned above, the City's charter clearly states that the City has the power to license, prohibit, regulate and control the carrying of concealed weapons in the City. See, City of Minneapolis Charter, Ch. 4, sec. 5. However, the Charter provision granting the City that power may have been preempted by the Conceal and Carry law. Thus, such a challenge may not be successful in the Minnesota courts. My office is monitoring the City of Denver's challenge to Colorado's Conceal and Carry law on the basis that Colorado's Conceal and Carry legislation violates Denver's home rule charter.

Local governments also could challenge the Conceal and Carry law on the basis that the omnibus bill (which includes the Conceal and Carry law) violates the Minnesota constitution's prohibition on legislation that

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embraces more than one subject. Minn. Const. Art. IV, §17, requires that "no laws shall embrace more than one subject." The Conceal and Carry law, which contain additions and amendments to the existing legislation at issue, is part of a larger omnibus bill containing sections on Minnesota Department of Natural Resources policies regarding general licensing issues, the Conceal and Carry law itself, and a section imposing a life time ban on any firearm possession for some violent felons. Despite the constitutional restrictions, Minnesota Courts have rarely struck down legislation for violating the single-subject requirement. The Minnesota Supreme Court has opined that "the common thread which runs through the various sections need only be a "mere filament." Blanch v. Suburban Hennepin Reg'l Park Dist., 449 N.W.2d 150, 155 (Minn. 1989). However, such a challenge was successful recently in Associated Builders and Contractors v. Ventura, 610 N.W.2d 293 (Minn. 2000).

Local governments also could claim that even if the omnibus bill that includes the Conceal and Carry law does not violate the single-subject requirement in the Constitution, the bill constitutes impermissible "logrolling" legislation. Logrolling is defined as the combination of different measures, dissimilar in character, yet united together, compelling the requisite support to secure their passage. See, State v. Cassidy, 22 Minn. 312 (1875). The prohibition on logrolling is to preclude unrelated subjects from appearing in a single popular bill. The other sections of the omnibus bill that contained the Conceal and Carry law are routine, non-controversial pieces of legislation, and it may be difficult to characterize the inclusion of the Conceal and Carry law as having been logrolled into a larger, more popular piece of legislation merely to secure passage of the entire bill.

My office will continue to update you on any legislative or judicial developments that may occur. If you have any questions regarding the application of the Conceal and Carry Law to the City of Minneapolis, please give me a call.

JMH:hhp

cc: David Fey, Deputy Mayor
John Moir, City Coordinator
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