**Guns in Libraries**

**Info Sheet**

**Prepared by:**

**Clare D. Membiela, MLS, J.D.**

**Library Law Consultant**

**Library of Michigan**

**Q. What can a library do (if anything) to prevent or discourage patrons from carrying firearms to children’s and family activities – or better yet, not bring them to the library at all?**

**A**. There are not many enforceable options. Laws covering the possession and carrying of firearms are included in both the sections of the Michigan Compiled Laws (MCL) dealing with the Michigan State Police (“Firearms,” [MCL 28.421, et.seq](http://legislature.mi.gov/doc.aspx?mcl-Act-372-of-1927).), and the Michigan Penal Code ( “Firearms” [MCL 750.222, et. seq](http://legislature.mi.gov/doc.aspx?mcl-328-1931-XXXVII).)

 Michigan’s Firearm Laws permit two types of firearm possession and carrying:

1. “Open Carry.” The owner of a lawfully acquired and registered firearm may carry the firearm in permitted public areas:
	1. [*28.422 (1)*](http://legislature.mi.gov/doc.aspx?mcl-28-422) *Except as otherwise provided in this act, a person shall not purchase, carry, possess, or transport a pistol in this state without first having obtained a license for the pistol as prescribed in this section.*

 There are only a few areas where lawful Open Carry firearm owners may NOT open carry weapons (and Libraries are not included):

*“*[*750.234d*](http://legislature.mi.gov/doc.aspx?mcl-750-234d) *Possession of firearm on certain premises prohibited; applicability; violation as misdemeanor; penalty. Sec. 234d. (1) Except as provided in subsection (2****), a person shall not possess a firearm on the premises of any of the following: (a) A depository financial institution or a subsidiary or affiliate of a depository financial institution. (b) A church or other house of religious worship. (c) A court. (d) A theatre. (e) A sports arena. (f) A day care center. (g) A hospital. (h) An establishment licensed under the Michigan liquor control act, Act No. 8 of the Public Acts of the Extra Session of 1933, being sections 436.1 to 436.58 of the Michigan Compiled Laws. FIREARMS LAWS OF MICHIGAN — 2015 Page 144*** *(2) This section does not apply to any of the following: (a) A person who owns, or is employed by or contracted by, an entity described in subsection (1) if the possession of that firearm is to provide security services for that entity. (b) A peace officer. (c) A person licensed by this state or another state to carry a concealed weapon. (d) A person who possesses a firearm on the premises of an entity described in subsection (1) if that possession is with the permission of the owner or an agent of the owner of that entity. (3) A person who violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $100.00, or both. History: Add. 1990, Act 321, Eff. Mar. 28, 1991;Am. 1992, Act 218, Imd. Eff. Oct. 13, 1992;Am. 1994, Act 158, Eff. Aug. 15, 1994.” (emphasis added)*

**NOTE** – The statute provides an exception to those with a concealed carry license – but NOT an open carry owner who does NOT possess a concealed carry license.

1. “Concealed Carry.” Firearm owners in Michigan are entitled to obtain a license to conceal carry their firearm, in accordance with applicable licensing laws and procedures:

***“***[***28.421a***](http://legislature.mi.gov/doc.aspx?mcl-28-421a) ***Concealed pistol licenses; issuance; creation of standardized system.***

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

*There are, however certain rules regarding the ability to Open Carry:*

[***750.227***](http://legislature.mi.gov/doc.aspx?mcl-750-227) ***Concealed weapons; carrying; penalty.***

*(2) A person shall not carry a pistol concealed on or about his or her person, or, whether concealed or otherwise, in a vehicle operated or occupied by the person, except in his or her dwelling house, place of business, or on other land possessed by the person, without a license to carry the pistol as provided by law and if licensed, shall not carry the pistol in a place or manner inconsistent with any restrictions upon such license.*

 However, there are some areas (essentially the same areas as the restrictions in the open carry legislation, above) where concealed carry is not permitted:

*“*[***28.425o***](http://legislature.mi.gov/doc.aspx?mcl-28-425o) ***Premises on which carrying concealed weapon or portable device that uses electro-muscular disruption technology prohibited; “premises” defined; exceptions to subsections (1) and (2); violation; penalties.***

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

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

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

*(c) A sports arena or stadium.*

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

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

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

*(g) A hospital.*

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

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

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

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

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

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

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

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

*(d) An individual who is licensed under this act and who is a corrections officer of a county sheriff's department or who is licensed under this act and is a retired corrections officer of a county sheriff's department, if that individual has received county sheriff approved weapons training.*

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

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

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

*(h) An individual who is licensed under this act and who is any of the following:*

*(i) A parole, probation, or corrections officer, or absconder recovery unit member, of the department of corrections, if that individual has obtained a Michigan department of corrections weapons permit.*

*(ii) A retired parole, probation, or corrections officer, or retired absconder recovery unit member, of the department of corrections, if that individual has obtained a Michigan department of corrections weapons permit.*

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

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

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

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

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

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

Note: Libraries still are not on the list!

So, according to the statutes, a lawful gun owner in Michigan (that is, one who has obtained their weapon lawfully and who possesses a lawful license (whether that license is for concealed or open carry), IS permitted to possess a firearm in MOST public libraries..

However, if you read the statutes carefully, it becomes apparent that an owner with a lawful Concealed Carry license may openly carry a firearm pretty much ANYWHERE – even those places listed in MCL [*750.234d*](http://legislature.mi.gov/doc.aspx?mcl-750-234d)**AND** MCL [*28.425o*](http://legislature.mi.gov/doc.aspx?mcl-28-425o) (750.234d specifically exempts those with concealed carry permits, and 28.425o specifically applies to only CONCEALED CARRY – NOT Open Carry. Therefore, it would seem that concealed carry license holders can OPEN CARRY pretty much anywhere.) There is some legal authority that supports this:

Attorney General Jennifer Granholm - June 2002 - Opinion No. [7113](http://www.ag.state.mi.us/opinion/datafiles/2000s/op10188.htm)

Michigan State Police - October 2010 - [MSP Legal Update #86](http://www.michigan.gov/documents/msp/MSP_Legal_Update_No._86_2_336854_7.pdf)

 In addition, under [MCL 750.234d(2)(d)](http://legislature.mi.gov/doc.aspx?mcl-750-234d),even those owners with lawful licenses that permit only open carry may carry on prohibited premises if the owner of the premises provides permission.

The one exception to the ability of concealed carry licensees to open carry may be certain U.S. Federal buildings (such as courthouses and post offices), which are under the purview of Federal statutes and not State laws on these matters. Certain Federal buildings, such as courthouses, prohibit ANY weapons.

**So where does that leave us?**

 Public Libraries, as Public Bodies, can’t create a “no gun” policy, under CADL v. Michigan Open Carry:

*“District library established under the District Library Establishment Act (DLEA) was prohibited by field preemption from banning firearms on its premises due to statute prohibiting local governments from imposing certain restrictions on firearms; legislature had expressly prohibited local government regulation of firearms and ammunition generally in cities, villages, townships, and counties, including in their libraries, and, although a district library was not a local unit of government as defined by legislature, legislative history, the pervasiveness of the legislature's regulation of firearms, and the need for exclusive, uniform state regulation of firearm possession as compared to a patchwork of inconsistent local regulations indicated that the legislature had completely occupied the field that library district sought to enter. M.C.L.A. § 123.1102.*

*Capital Area Dist. Library v. Michigan Open Carry, Inc., 298 Mich. App. 220, 826 N.W.2d 736 (2012)”*

However, there are certain firearm laws that are important, and may be useful, for Library Directors and Boards to know when considering a policy:

* It is unlawful for someone to “Brandish” a firearm in public:

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

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

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

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

*(b) A person lawfully acting in self-defense or defense of another under the self-defense act, 2006 PA 309, MCL 780.971 to 780.974.*

*(3) A person who violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 90 days, or a fine of not more than $100.00, or both.”*

[750.222](http://legislature.mi.gov/doc.aspx?mcl-750-222) **Definitions. Sec. 222. As used in this chapter:**

(c) **“Brandish**” means to point, wave about, or display in a threatening manner with the intent to induce fear in another person. (emphasis added).

In other words, if a patron is displaying their weapon in a threatening manner (in accordance with the definition, above), a Library should call the police, and the person would be removed from the building.

* A person needs to be over 18 to carry a firearm legally – if a patron looks too young to have a firearm, staff can contact the police:

[**750.234f**](http://legislature.mi.gov/doc.aspx?mcl-750-234f) **Possession of firearm by person less than 18 years of age; exceptions; violation as misdemeanor; penalty.**

*(1) Except as provided in subsection (2), an individual less than 18 years of age shall not possess a firearm in public except under the direct supervision of an individual 18 years of age or older.*

*(2) Subsection (1) does not apply to an individual less than 18 years of age who possesses a firearm in accordance with part 401 (wildlife conservation) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being sections 324.40101 to 324.40119 of the Michigan Compiled Laws, or part 435 (hunting and fishing licensing) of Act No. 451 of the Public Acts of 1994, being sections 324.43501 to 324.43561 of the Michigan Compiled Laws. However, an individual less than 18 years of age may possess a firearm without a hunting license while at, or going to or from, a recognized target range or trap or skeet shooting ground if, while going to or from the range or ground, the firearm is enclosed and securely fastened in a case or locked in the trunk of a motor vehicle.*

*(3) An individual who violates this section is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than $100.00, or both.*

A library is always within their rights to **request** that a patron refrain from carrying their weapon. Some libraries’ policies request that visitors who carry firearms leave the weapon in their vehicles when visiting the library. However, if a patron declines to comply, there is no recourse, as long as they have a valid license. Many Public libraries have “no weapons” language within their policies, and essentially, this language is simply a request to patrons to leave their guns at home. Absent any provocation or illegal action from a patron, a “no gun” policy is unenforceable in Michigan.

 If a patron is becoming difficult and a staff member has reason to believe that the patron is in possession of a weapon, the staff member should call the police – who can ask the patron to produce a valid license for the weapon, and handle the situation as warranted.

Now, these are all fine suggestions, but how does this help a situation where an open carry patron participates in a family-oriented or child-oriented activity, much to the dismay and anxiety of other participants?

The only real solution right now to this issue is to respectfully request that gun owners refrain from bringing weapons to certain events at the library – and the success of this will vary widely depending on the climate and culture of the library community, as well as on HOW the question is asked. Appealing to the gun-owning parents’ by explaining WHY the request is being made ( because children are often afraid of the sight of guns at events in the library), and not singling any individual out may increase a library’s success. For example, perhaps including language like the sample below in materials that publicize an event:

*“In order to create for our youngest patrons a relaxed atmosphere that is conducive to fun and reading, we are asking that participants please consider refraining from carrying firearms to this event. Please contact a library staff member if you have any questions! We are glad you are here*!”

Now, of course, libraries will want to gauge their community and patron base before deciding on appropriate language – or, even, whether to implement such language. However, if your library has issues with young participants being intimidated or fearful of open carrying patrons, then this may be an option to at least start a dialogue with the constituents involved in this issue.

Library staff can respond to any patron who questions the request and reassure them that their right to carry is not being questioned - that the library is simply asking because (for example), they have received feedback that children are afraid of seeing guns, and that no patron will be turned away from an event because they are lawfully carrying a firearm.

Another, or additional option could be policy language similar to what the Seattle Public Library has. The [Seattle Public Library’s language](https://www.spl.org/about-the-library/library-use-policies/rules-of-conduct) on firearms includes:

“Carrying, exhibiting, displaying, or drawing any firearm in a manner that demonstrates an intent to intimidate another or that warrants alarm for the safety of other people.” (this language is consistent to Michigan’s definition of “brandishing,” which is an illegal act)

In the end, other than the suggestions listed above, there is just not much a library can do if the patron is in compliance with applicable carry laws.

As with any policy matters affecting your institution, you and your board may wish to consult an attorney in the drafting of policies most effective for your institution

Here are some links to additional information that may be useful:

<https://americanlibrariesmagazine.org/2014/01/14/taking-aim-at-the-reality-of-guns-in-libraries/> (NOTE update language at end of article).

<http://publiclibrariesonline.org/2012/12/gun-toting-as-a-teachable-moment/>

<http://www.aallnet.org/mm/Publications/spectrum/Archives/Vol-19/No-4/open-carry.pdf>

Michigan Open Carry Organization – School Carry information guide:

<https://media.miopencarry.org/publications/moc/Open%20Carry%20Guide%20for%20Schools.pdf?_ga=2.216235158.1211157057.1510930446-859890249.1508946316>

cdm/sept 2016, REV Nov 2017