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TO: Minnesota Sheriffs

FROM: Richard Hodsdon, MSA General Counsel

RE: Firearm Carry Authority and Venue Issues

With the on-going struggles between the federal government and state and local governments in Minnesota coupled with statements made about carrying firearms I have been contacted by several law enforcement folks about the current state of the laws concerning where firearms can and cannot be possessed by people who are not licensed peace officers. I hope this document provides some help. This document does not address firearms disqualifications. If it seems rather long it is because to try to establish that it is an objective and "just the facts" document I have included the citation and actual language of the referenced statutes as they exist on this date.

**WHO MAY CARRY IN PUBLIC**

**GENERAL PROVISIONS**

A person who carries a firearm in public and is not a peace officer must have a permit to carry under the relevant statute:

**624.714 CARRYING OF WEAPONS WITHOUT PERMIT; PENALTIES.**

Subd. 1a. **Permit required; penalty.**

A person, other than a peace officer, as defined in section [626.84, subd. 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, subd. 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.

A public place is defined by 624.7181, subd. 1(c) as:

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

Therefore, any person who has a carry permit issued by the State of Minnesota or one of the approximately 33 other states whose permits we honor may lawfully carry a firearm in any public place and the statutes make no distinction of whether they are alone or any number of other people are present.

## LONG GUNS

If a person has a permit to carry a pistol in public they may also carry a long gun in public. The statute, Minn. Stat. 624.7181, that makes it a gross misdemeanor to carry a long gun in public expressly states that the statute is not violated if the person has a valid carry permit. The statute reads:

(b) "Carry" does not include:

(1) the carrying of a BB gun, rifle, or shotgun to, from, or at a place where firearms are repaired, bought, sold, traded, or displayed, or where hunting, target shooting, or other lawful activity involving firearms occurs, or at funerals, parades, or other lawful ceremonies;

(2) the carrying by a person of a BB gun, rifle, or shotgun that is unloaded and in a gun case expressly made to contain a firearm, if the case fully encloses the firearm by being zipped, snapped, buckled, tied, or otherwise fastened, and no portion of the firearm is exposed;

**(3) the carrying of a BB gun, rifle, or shotgun by a person who has a permit under section [624.714](#);**

(4) the carrying of an antique firearm as a curiosity or for its historical significance or value; or

(5) the transporting of a BB gun, rifle, or shotgun in compliance with section [97B.045](#).

## CARRYING UNDER THE INFLUENCE

A person who carries or possesses a firearm in public, which for this purpose, according to the Minnesota Supreme Court includes in a motor vehicle being operated on a public roadway, may not be under the influence. The carrying under the influence statute provides:

### **624.7142 CARRYING WHILE UNDER INFLUENCE OF ALCOHOL OR 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, subd. 4](#);

- (2) when the person is under the influence of a combination of any two or more of the elements named in clauses (1), (4), and (7);
- (3) when the person is under the influence of an intoxicating substance as defined in section [169A.03, subd. 11a](#), and the person knows or has reason to know that the substance has the capacity to cause impairment;
- (4) when the person is under the influence of alcohol;
- (5) when the person's alcohol concentration is 0.10 or more;
- (6) when the person's alcohol concentration is less than 0.10, but more than 0.04; or
- (7) when the person is under the influence of cannabis flower, a cannabis product, a lower-potency hemp edible, a hemp-derived consumer product, an artificially derived cannabinoid, or tetrahydrocannabinols, as those terms are defined in section [342.01](#).

## PUBLIC EMPLOYEES

While like all other people, employees of local government may obtain a carry permit and may carry a firearm in public but there is a special statute that prohibits employees and agents of local governments from carrying a firearm while on duty unless they are a licensed peace officer. The ban does not apply to state employees and there is no jurisdiction to apply it to federal employees, although nothing exempts non-law enforcement federal employees from state gun law permit and carry laws. The statute states:

**Minn. Stat. 626.84, subd. 2.**

Notwithstanding sections [12.03, subd. 4](#), [12.25](#), or any other law to the contrary, no individual employed or acting as an agent of any political subdivision shall be authorized to carry a firearm when on duty unless the individual has been licensed under sections [626.84](#) to [626.863](#). Nothing herein shall be construed as requiring licensure of a security guard as that term is defined in section [626.88, subd. 1\(c\)](#).

There is an exception to this ban for attorneys who work in the office of the county attorney. That exception states:

**Subd. 4. Firearms exemption.**

Notwithstanding section [626.84, subd. 2](#), a county attorney, or an assistant county attorney appointed under section [388.10](#), who lawfully possesses a permit to carry a pistol issued in accordance with section [624.714](#) may possess and carry a firearm while on duty, unless restricted by the county attorney.

## VENUE AND LOCATION RESTRICTIONS

The ability to ban and limit possession of firearms at locations is significantly different for public locations and private locations. Whether or not a particular location is a public or private location may sometimes be subject to reasonable dispute and the statutes do not give clear direction. For example, a city may contract with a private party to operate a restaurant that occupies the entire building in a public park. The unresolved question is whether for firearms carry purposes is whether that is deemed a private location that could ban firearms using the process described below or a public location that could not legally ban firearms.

Public locations can only ban firearms consistent with statutory authority based on state laws. Any local ordinance, rule or regulation that seeks to impose restrictions not authorized by state law on carrying or possession of pistols are superseded and void. The statute states:

**624.717 LOCAL REGULATION.**

Sections [624.711](#) to [624.716](#) shall be construed to supersede municipal or county regulation of the carrying or possessing of pistols and the regulation of Saturday night special pistols.

It has been argued that because the statute only speaks to regulation of “carrying or possessing of pistols” that local governments could ban carrying long guns in public. As of this date very few cities have sought to do that and one that has, St. Cloud, has resulted in unresolved legal challenges.

A second preemption provision is in Minn. Stat. 624.714, Subd. 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.

**SCHOOLS AND LICENSED DAY CARES**

Public and private schools and licensed daycare facilities when children are present are the places most able to ban firearms possessed by non-peace officers.

Minn. Stat. 609.66:

**Subd. 1d. Possession on school property; penalty.**

(a) Except as provided under paragraphs (d) and (f), whoever possesses, stores, or keeps a dangerous weapon while knowingly on school property is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

(b) Whoever uses or brandishes a replica firearm or a BB gun while knowingly on school property is guilty of a gross misdemeanor.

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

(d) Notwithstanding paragraph (a), (b), or (c), 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.

(e) 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, subd. 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 childcare center licensed under chapter 142B during the period children are present and participating in a childcare 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, cocurricular, noncurricular, 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.
- (f) This subdivision does not apply to:
- (1) active licensed peace officers;
  - (2) military personnel or students participating in military training, who are on-duty, performing official duties;
  - (3) 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;
  - (4) 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](#);
  - (5) firearm safety or marksmanship courses or activities conducted on school property;
  - (6) possession of dangerous weapons, BB guns, or replica firearms by a ceremonial color guard;
  - (7) a gun or knife show held on school property;
  - (8) 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 childcare center; or
  - (9) persons who are on unimproved property owned or leased by a childcare center, school, or school district unless the person knows that a student is currently present on the land for a school-related activity.
- (g) 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.

## **COURTHOUSE COMPLEXES AND STATE CAPITOL AREA**

Minn. Stat. 609.66 Subd. 1g. **Felony; possession in courthouse or certain state buildings.**

- (a) A person who commits either of the following acts is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both:

- (1) possesses a dangerous weapon, ammunition, or explosives within any courthouse complex; or
  - (2) possesses a dangerous weapon, ammunition, or explosives in any state building within the Capitol Area described in chapter 15B, other than the National Guard Armory.
- (b) Unless a person is otherwise prohibited or restricted by other law to possess a dangerous weapon, this subdivision does not apply to:
- (1) licensed peace officers or military personnel who are performing official duties;
  - (2) persons who carry pistols according to the terms of a permit issued under section [624.714](#) and who so notify the sheriff or the commissioner of public safety, as appropriate;
  - (3) persons who possess dangerous weapons for the purpose of display as demonstrative evidence during testimony at a trial or hearing or exhibition in compliance with advance notice and safety guidelines set by the sheriff or the commissioner of public safety; or
  - (4) persons who possess dangerous weapons in a courthouse complex with the express consent of the county sheriff or who possess dangerous weapons in a state building with the express consent of the commissioner of public safety.
- (c) For purposes of this subdivision, the issuance of a permit to carry under section [624.714](#) constitutes notification of the commissioner of public safety as required under paragraph (b), clause (2).

**Note:** the exception under clause (b)(2) only requires notice to the sheriff and does not grant the sheriff authority to deny permission for valid permit holders to bring firearms into a courthouse complex. The holding of a valid carry permit is by statute deemed to be sufficient notice to the Commissioner of Public Safety for the Capitol area.

## **PUBLIC COLLEGES AND UNIVERSITIES**

Minn. Stat. 624.714, Subd. 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.

## **JAILS**

Under Minn. Stat. 641.165 dangerous weapons are deemed contraband and subd. 2 provides:

- (b) Whoever introduces or in any manner causes the introduction of a dangerous weapon, as defined in section [609.02, subd. 6](#), into any jail, lockup, or correctional facility, as defined in section [241.021, subd. 1](#), without the consent of the person in charge, or is found in possession of a dangerous weapon while within the facility or upon the grounds

thereof, is guilty of a felony and, upon conviction, may be sentenced to imprisonment for not more than five years.

## **PRIVATE PROERTY OPEN TO PUBLIC AND RENTAL PROPERTY**

Private property owners, including those that are open to the public such as retail merchants, may ban possession of firearms in their establishments by complying with the provisions of Minn. Stat. 624.714. The relevant subdivisions are noted below.

### **Subd. 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."; or

(ii) the requester or the requester's agent personally informs the person that guns are prohibited in the premises 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) The owner or operator of a private establishment may not prohibit the lawful carry or possession of firearms by a peace officer, as defined in section [626.84, subdivision 1](#), paragraph (c), within the private establishment or deny the officer access thereto, except when specifically authorized by statute. The owner or operator of the private establishment may require the display of official credentials issued by the agency that employs the peace officer prior to granting the officer entry into the private establishment.

(e) 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.

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

(g) 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.

(h) This subdivision does not apply to a security guard acting in the course and scope of employment. The owner or operator of a private establishment may require the display of official credentials issued by the company, which must be licensed by the Private Detective and Protective Agent Services Board, that employs the security guard and the guard's permit card prior to granting the guard entrance into the private establishment.

### **DISPLAY OF FIREARM, PERMIT AND IDENTIFICATION**

Minnesota law neither requires nor prohibits the concealed carrying of a firearm. While many people use the terms “CCW” or “Conceal and Carry” those terms appear to have come from states that allowed for open carry of firearms and only required a permit to carry one secretly. Therefore once one has a valid permit so long as they are not committing some other crime such as recklessly pointing a firearm, nothing in state law prohibits openly carrying the weapon.

If one carries a firearm in public under a permit there are requirements to present it and valid identification to a licensed Minnesota peace officer upon lawful demand. Minn. Stat. 624.714, Subd. 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, subd.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.

(d) Upon the request of a peace officer, a permit holder shall disclose to the officer whether or not the permit holder is currently carrying a firearm.

### **CONCLUSION**

I compiled this document for such use and sharing as you see fit, including for public or educational use if you think it is helpful. The legislature and courts can always change the statutes and how they are interpreted so please remember this document may have a limited shelf-life. As always feel free to share with staff, your attorneys and police departments.