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CONCEALED CARRY IN ILLINOIS

THE JUDICIARY

- ✘ *DC v. Heller*, JUSTICE SCALIA: “in the course of analyzing the meaning of ‘carries a firearm’ in a federal criminal statute, JUSTICE GINSBURG wrote that ‘[s]urely a most familiar meaning is, as the Constitution’s Second Amendment . . . indicate[s]: ‘wear, bear, or carry . . . upon the person or in the clothing or in a pocket, for the purpose . . . of being armed and ready for offensive or defensive action in a case of conflict with another person.’” 554 U.S. 570 (2008).



THE JUDICIARY (CONT'D)

- ✘ *Moore v. Madigan* (JUSTICE POSNER):
 - + “The right to “bear” as distinct from the right to “keep” arms is unlikely to refer to the home.
 - + “The Supreme Court has decided that the amendment confers a right to bear arms for self-defense, which is as important outside the home as inside.”
 - + “...we order our mandate stayed for 180 days to allow the Illinois legislature to craft a new gun law that will impose reasonable limitations, consistent with the public safety and the Second Amendment as interpreted in this opinion, on the carrying of guns in public.”
 - ✘ 702 F.3d 933 (7th Circ., December 11, 2012)
- ✘ *People v. Aguilar* – unanimous Illinois Supreme Court codifies *Moore v. Madigan*
 - ✘ 2013 IL 112116 (IL S. Ct; September 12, 2013)

LICENSEE DATA

- ✘ Illinois Population: 12.8 million
 - + Currently, 1.5 million FOID card holders (11.7%)
 - + Estimate:
 - ✘ 300,000 licensees in year one (2.3%)
 - ✘ 400,000-500,000 licensees by year two (3.1-3.9%)
- ✘ Implementation Period
 - + 180 days from July 9, 2013
 - + State Police: Licenses become available Jan. 5, 2014

ISSUANCE

- × “Shall Issue” – Illinois State Police shall issue a concealed carry license to a person who meets statutory qualifications:
 - + At least 21 years old
 - + Passes Criminal Background Check:
 - × No prior felony conviction
 - × No prior misdemeanor domestic violence conviction
 - × No prior violent misdemeanor conviction within past 5 years
 - × Has not received 2 or more DUI convictions within the past 5 years
 - × No prior misdemeanor controlled substance or cannabis conviction within the past year
 - + Passes Mental Health Background Check:
 - × No mental disability adjudication (incompetent to stand trial; guilty but mentally ill; lost ability to manage estate in guardianship proceeding)
 - × Intellectual disability – “impairment in adaptive behavior”
 - × Developmental disability – “substantial handicap”
 - × Involuntary admission into mental health facility
 - × Voluntarily receives mental health treatment, and presents “clear and present danger”
 - + 16 hours of training; \$150 fee

LAW ENFORCEMENT OBJECTION

- ✘ After application is submitted to ISP, it is entered into a searchable database
 - + Includes Applicant's Name; DOB; Driver's License or State ID #; Any address within the past 10 years
- ✘ Law enforcement may object within 30 days of entry into the database
 - + Objections may come from chief officer of any local, state, federal law enforcement agencies, sheriffs, State's Attorneys, and Attorney General
 - + No jurisdictional requirement: any law enforcement agency may object to any applicant

AUTOMATIC OBJECTION

- ✘ Presumed objection where applicant has been arrested more than 5 times within the past 7 years; or 3 or more times within the past 7 years for gang-related offenses

LICENSING REVIEW BOARD

- ✘ All objections are submitted to 7 member review board
 - + Appointed by the Governor, confirmed by Senate
 - + Members come from each Judicial District
 - + Requires at least 5 years experience as federal judge, federal prosecutor (2), federal law enforcement (3), or mental health professional
- ✘ Board deliberates; may hold hearings, and receive testimony or other evidence
- ✘ Standard of Review: “by a preponderance of the evidence, whether applicant poses a danger to self or others, or is a threat to the public safety”
 - + Board then issues binding decision to ISP within 30 days
 - + Administrative and judicial review remain available on appeal

CONCEALED CARRY LICENSE

- ✘ Carry a loaded handgun concealed or partially concealed on the person
- ✘ Keep or carry a loaded handgun within a vehicle
 - + Vehicle serves as “safe harbor”
 - + May carry loaded handgun in plain view while driving
 - + If vehicle is left unattended, handgun must remain out of plain view (under seat, console, container, trunk), and vehicle must be locked

PROHIBITED AREAS

- ✘ Building, real property, or parking area under the control of a:
 - + School
 - + Child care facility
 - + Playground
 - + Municipal public park (excludes bike paths)
 - + Cook County Forest Preserve District
 - + Unit of state or local government
 - + Library
 - + Bars (if more than 50% of revenue comes from the sale of alcohol)

PROHIBITED AREAS (CONT'D)

- ✘ Building, real property, or parking area under the control of a:
 - + Hospital, mental health facility, or nursing home
 - + Stadium, arena, or sporting event
 - + Riverboat, racetrack, or off-track betting site
 - + Airport
 - + Amusement park, zoo, or museum
 - + Public transportation property (includes train, bus, platform, or station property)
 - + Public gathering or special event, where a permit is required
 - + Colleges and Universities (unless authorized by school authorities)
 - + *Nuclear facilities (includes parking lots)

COLLEGE AND UNIVERSITY PROHIBITIONS

- ✘ Provision is designed to create a presumption that college/university property is a “no carry zone” – but allow for school administrators to craft specific policies, such as:
 - + Disciplinary rules for violations (in addition to existing criminal penalties)
 - + Allowing carry for university-sanctioned programs
- ✘ Broadly extends to all university owned, controlled or leased real property, buildings, portions of buildings, sidewalks, common areas, and vehicles

PROHIBITED AREAS – PRIVATE PROPERTY

- ✘ The owner of any private real property not specified in the Act, whether commercial or residential, may elect to prohibit carry on the property
 - + The property owner controls over tenants in a residential or commercial lease
 - ✘ *N.B. - Does *not* include public housing tenants
 - + Except for private residences, signs (uniform size of 4” x 6”) must be posted at the entrance of any non-resident private property if the owner elects to prohibit carry

PRIVATE PROPERTY (CONT'D)

- ✘ Legislative Intent:
 - + Freedom to contract
 - + Freedom for control of buildings/property is vested with the owners, not the tenant/leaseholder
- ✘ Sign = 4" x 6", clearly and conspicuously posted at the entrance of a building, premises, or real property
 - + Must post a sign in order to give adequate notice to the public, and to be able to enforce

RULES AND REGULATIONS

- ✘ Where carry is prohibited/allowed
 - + Parking lots
 - + Common areas
 - + Transport
- ✘ Where firearm storage is prohibited/allowed
 - + Vehicle safe harbor
 - + Area under Tenant/Leaseholder Control
 - + “Gun lockers”

PRIVATE PROPERTY AND PREMISES LIABILITY

- ✘ Premises Liability – liability under a negligence theory for creating or allowing an unsafe environment or condition that results in injury or harm to another; notice of danger and foreseeability of misconduct
 - + Respondeat Superior – assume liability of employees while in performance of work duties that they are hired to perform, which are intended to serve the employer
 - ✘ Negligent Hiring & Retention – background checks; screening; notice
 - ✘ Security Personnel
 - + Prohibiting Guns: “owner is not to be viewed as an insurer of visitor’s safety” - Restatement of Torts §344
 - ✘ Failure to enforce weapons prohibition
 - ★ Uniform sign and postage requirement – necessary for legal effect
 - ★ Criminal sanctions available, rather than self-policing
 - + Allowing Guns: *People v. Aguilar*, 2013 IL 112116 – 2nd Amendment grants an individual right to protect oneself against public violence

PROHIBITED AREAS AND THE VEHICLE SAFE HARBOR

- ✘ Despite the explicit prohibition on carry within the parking area of a prohibited area, a person may still carry within their car in the parking lot of a prohibited area.
- ✘ He or she may only exit the vehicle while carrying to place an *unloaded* handgun in the trunk for safe storage.
- ✘ If leaving the vehicle unattended, must place the handgun out of plain sight in a locked vehicle or the trunk.
 - + “Safe Harbor” for vehicles has been upheld against impermissible taking and federal preemption challenges: *Ramsey Winch, Inc. v. Henry*, 555 F.3d 1199 (10th Cir. 2009)

NON-RESIDENT LICENSEES

- ✘ No reciprocity with out-of-state concealed carry licenses
 - + However, vehicle “safe harbor” provision applies to out-of-state concealed carry licensees
- ✘ Non-residents must apply for an Illinois license
 - + State’s concealed carry requirements must be “substantially similar” to that of Illinois
 - + Subject to approval by the Illinois State Police
 - + Heightened \$300 fee

DUTY TO INFORM

- ✘ If an officer initiates an investigative stop
 - + And asks whether a person is carrying a firearm
 - ✘ If the person has a CCL, and is carrying a handgun, he or she has a duty to inform the officer of the handgun's location and present his or her license
- ✘ Failure to inform the officer is a Class B misdemeanor, or Class A misdemeanor for a second or subsequent offense

OTHER PENALTIES

- ✘ Carrying while intoxicated (same standards as set forth in 11-501 of the Vehicle Code)
 - + First Offense: Class A misdemeanor
 - + Second Offense: Class A mm, 6 month suspension
 - + Third Offense: Class 4 felony, permanent revocation
- ✘ Carrying within a prohibited area
 - + First Offense: Class B misdemeanor
 - + Second Offense: Class A mm, 6 month suspension
 - + Third Offense: Class A mm, permanent revocation
- ✘ Carrying with a suspended or revoked license
 - + Class A misdemeanor

PREEMPTION

× Tiered Preemption

- + Tier I: Total preemption over the concealed carry of handguns by CCL holders
 - × Illinois Firearms Concealed Carry Act controls statewide
- + Tier II: Total preemption over the regulation of handguns by FOID card holders
- + Tier III: Preemption over the transportation of all firearms by FOID card holders
 - × Must abide by current UUW law (broken down; unloaded & encased; inaccessible)
- + Tier IV: Preemption over assault weapons bans and magazine limits, unless...
 - × Home rule unit already has a current assault weapons ban
 - × Home rule unit passes an assault weapons ban within 10 days of the Act becoming law

EXTRAS

✘ Mental Health Reporting

- + In response to current underreporting to Department of Human Services & Illinois State Police
 - ✘ Mental health providers
 - ✘ Circuit clerks
- + Provides streamlined cross-references and reporting accountability for:
 - ✘ “mentally disabled” (formerly “mental defect”) adjudications under the FOIA Act
 - ✘ Involuntarily admitted; or voluntarily admitted and deemed a “clear and present danger” to self/others

EXTRAS (CONT'D)

- ✘ Revocation of FOID/CCL Cards and Firearms
 - + ISP notifies cardholder that he or she has lost his or her right to possess a firearm, whether temporarily or permanently
 - + He or she has 48 hours to turn firearms over to another lawful owner, and account for those firearms with law enforcement
 - + If not, law enforcement may obtain a warrant, and seize the person's FOID card and firearm(s) for the duration of his or her revocation/suspension

THANK YOU

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