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**Firearms Laws in
Minnesota
A Guide for Legislators**

Research Department
Minnesota House of Representatives

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Firearms Laws in Minnesota
An Overview for Legislators

This publication describes laws regulating the possession and use of firearms in Minnesota.

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Introduction

NOTE: This publication is not intended to provide legal advice and should not be used as a substitute for consulting with a private attorney. To the best of the author's knowledge, the law discussed here is current as of the date of publication. The laws cited in this publication are subject to frequent change and new case law interpreting the laws are published regularly. Serious criminal and civil consequences can follow a firearms law violation. If readers have any doubts about their firearms rights, they should consult an experienced private attorney before exercising their firearms rights.

This overview describes Minnesota laws and selected federal laws that regulate the possession or use of firearms in Minnesota, or provide penalties for criminal acts involving firearms. These laws are widely scattered throughout Minnesota and federal statutes.

This publication is organized topically, and because certain laws fall into more than one category, they may be described in more than one place. In addition, it presents and discusses Minnesota and federal law in combination, reflecting their joint application and effect. Selected Minnesota and federal case law is cited and discussed where it is relevant.

The overview is intended to be a guide only to Minnesota firearms laws. Federal law is referenced or described only where necessary. Unless otherwise noted, all state citations are to Minnesota Statutes 2012, while federal citations are to United States Code 2006.

The meaning of firearms law depends on precise definitions of key terms, most of which are defined in statutes. The appendices contain alphabetical listings of the statutory definitions of most of the key firearms-related terms that are used in state and federal law.

Constitutional Bases of Federal and State Roles in Gun Control

Congress derives its authority to regulate firearms from the Commerce Clause of the U.S. Constitution.¹ Generally, federal gun control law governs the licensing and roles of firearms dealers, importers and manufacturers, as well as the interstate transportation of firearms and the taxation and registration of certain firearms. Federal law also prohibits certain categories of persons (e.g., juveniles, certain criminals, chemically dependent and mentally ill persons, and certain others) from possessing, receiving, shipping, and transporting firearms.

U.S. Const. art. I, § 8, cl. 3

¹ The Commerce Clause is an enumerated power listed in the U.S. Constitution (art. I, § 8, cl. 3). The clause states that the U.S. Congress has the power "to regulate commerce with foreign Nations, and among the several states, and with the Indian Tribes."

The state derives its authority to regulate firearms from the 10th Amendment to the U.S. Constitution, which states: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

U.S. Const. amend. X

Minnesota Gun Control Act

Overview and Purpose of the Act

The 1975 Minnesota Legislature enacted the Minnesota Gun Control Act² as a state complement to the federal Gun Control Act of 1968.³ Codified in Minnesota Statutes, chapter 624, the Minnesota Gun Control Act declares state policy regarding firearms and governs:

- the possession and use of firearms generally;
- the transfer of firearms from federally licensed dealers to private individuals; and
- the carrying of pistols in public places (as significantly amended in 2003).⁴

The act also establishes several categories of persons who are prohibited from possessing firearms of any type, who are collectively referred to as “firearms-ineligible persons,” or simply prohibited persons. The equivalent federal term is “firearms disability,” or firearms-disabled person. These terms are used synonymously throughout this guidebook.

Courts have held that the legislative purpose behind the Minnesota Gun Control Act is to protect public safety, primarily by keeping firearms from convicted criminals who have committed crimes that, in the legislature’s judgment, are indicative of future dangerousness.⁵

Minn. Stat. §§ 624.711 to 624.717

Declaration of State Policy

In the Minnesota Gun Control Act, the legislature declared:

It is not the intent of the legislature to regulate shotguns, rifles and other long guns of the type commonly used for hunting and not defined as pistols or semiautomatic military-style assault weapons,⁶ or to place costs of administration upon those citizens who wish to possess or carry pistols or semiautomatic military-style assault weapons lawfully, or to confiscate or otherwise restrict the use of pistols or semiautomatic military-style assault weapons by law-abiding citizens.

² Laws 1975, ch. 378.

³ Pub. L. No. 90-618, The Gun Control Act of 1968 (1968).

⁴ As enacted, the Minnesota Gun Control Act pertained only to the possession and carrying of pistols (i.e., handguns). However, subsequent amendments have extended the application of most of its provisions to firearms generally (i.e., including rifles and shotguns, as well as handguns). See Minn. Stat. § 624.713, subd. 1.

⁵ Courts have held that this act is constitutional based on its legislative purpose of protecting public safety. *State v. Anderson*, 720 N.W.2d 854, 861 (Minn. App. 2006).

⁶ The references here to semiautomatic military-style assault weapons was added by amendment in Laws 1993, chapter 326, article 1, section 22.

Minn. Stat. § 624.711

Similarly, in the federal Gun Control Act of 1968 and the Firearms Owners' Protection Act, Congress affirmed the right of U.S. citizens to possess firearms for protection and sporting uses, and any other lawful purposes, stating that:

The purpose of this title is to provide support to federal, state, and local law enforcement officials in their fight against crime and violence, and it is not the purpose of this title to place any undue or unnecessary federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trapshooting, target shooting, personal protection, or any other lawful activity. . . (nor to) discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes.

Pub. L. No. 90-618 (1968); Pub. L. No. 99-308 (1986)

Legal Challenges to the Law and Limitations of Firearms Rights

The Minnesota Court of Appeals, in *State v. Knaeble*, 652 N.W.2d 551 (Minn. App. 2002), held that the statute declaring it was the legislature's intent not to regulate rifles, shotguns, and other long guns commonly used for hunting does not bar prosecution of prohibited persons who possess them, even though such firearms fall outside the stated policy scope of the Minnesota Gun Control Act. In the same ruling, the court held that a firearms-prohibited person in possession of a firearm can be prosecuted even though the firearm may be inoperable.

In a Second Amendment challenge to the Gun Control Act, the Minnesota Supreme Court held that the state is justified in regulating firearms since, in its view, the constitutional right to bear arms is not absolute and that any common-law right to bear arms is also limited.⁷

Minn. Stat. § 624.711

The U.S. Supreme Court declared that the Second Amendment to the U.S. Constitution protects "the individual right to possess and carry weapons in case of confrontation" and noted that this right is not absolute, stating that:

Nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms. . . [as well as] the historical tradition of prohibiting the carrying of 'dangerous and unusual weapons.'⁸

⁷ Application of *Atkinson*, 291 N.W.2d 396 (Minn. App. 1980).

⁸ *District of Columbia v. Heller*, 554 U.S. 570 (2008).

State Preemption of Local Control

When the law was first enacted in 1975, it contained a provision specifying that the law would supersede municipal and county regulation of the carrying or possessing of pistols, except for any more restrictive regulation within cities of the first class.

Laws 1975, ch. 378, § 7; Minn. Stat. § 624.717 (1975)

In 1985, the legislature expanded this preemption to apply to all local governments, except school districts, as follows:

The legislature preempts all authority of a home rule charter or statutory city including a city of the first class, county, town, municipal corporation, or other governmental subdivision, or any of their instrumentalities, to regulate firearms, ammunition, or their respective components to the complete exclusion of any order, ordinance or regulation by them except that:

- (a) a governmental subdivision may regulate the discharge of firearms; and
- (b) a governmental subdivision may adopt regulations identical to state law.

Local regulation inconsistent with this section is void.

Laws 1985, ch. 144, § 1; Minn. Stat. § 471.633

By definition, this state preemption does not apply to school districts when regulating school grounds, facilities, transportation services, programs, or the conduct of students at school activities. School districts continue to have authority to regulate such school matters.

Minn. Stat. § 471.634

Eligibility to Possess Firearms and Other Duties Associated with Possession

Generally, Minnesotans may possess and use firearms unless otherwise prohibited by state or federal law, or unless ordered by a court of law. However, both Minnesota and federal law prohibit certain categories of persons from possessing firearms. State and federal law overlap considerably in their definitions of those categories. The following describes Minnesota law on the possession of firearms in detail, including a description of federal law, as appropriate.

People Prohibited from Having Firearms

Categories of Firearms-Prohibited Persons under Law

The Minnesota Gun Control Act prohibits several categories of people from possessing, receiving, transferring, or shipping firearms. Minnesota has also adopted some federal categories of firearms-prohibited persons from the federal Gun Control Act.

These categories are commonly referred to as “firearms-ineligible persons,” except for youth under 18. The comparable term under federal law is “firearms-disabled persons.” They are commonly referred to as “firearms-prohibited persons.”⁹

Under Minnesota law, those prohibited from having firearms include the following:

- youth under age 18
- convicted felons
- mentally ill individuals
- illegal drug users
- chemically dependent individuals
- peace officers admitted for chemical dependency treatment
- people charged with a crime of violence
- domestic violence offenders
- fugitives
- illegal aliens
- those dishonorably discharged from the armed services
- people who have renounced their citizenship

⁹ The principle that Congress may prohibit felons from possessing firearms was reiterated by the U.S. Supreme Court in its recent landmark *Heller* and *McDonald* rulings (declaring respectively that: (1) the 2nd Amendment to the U.S. Constitution protects a fundamental individual right to keep and bear arms; and (2) the 2nd Amendment is incorporated via the due process clause of the 14th amendment as applying to the states). See *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. Chicago*, 561 U.S. 3025, 130 S. Ct. 3020 (2010).

In an earlier ruling, the U.S. Supreme Court went further, in noting that: “[t]his Court has recognized repeatedly that a legislature constitutionally may prohibit a convicted felon from engaging in activities far more fundamental than the possession of a firearm.” See *Lewis v. United States*, 445 U.S. 55 (1980).

- specific gross misdemeanants

Youth Under Age 18

Except for certain authorized situations, persons under the age of 18 are prohibited from possessing all firearms. Youth can possess firearms in the following situations:

- while under parental authority and direct supervision
- for official military drill
- for instruction, competition, or target practice on an approved and supervised firing range
- if the youth has successfully completed a Department of Natural Resources-approved firearms safety course

Minn. Stat. § 624.713, subd. 1, cl. (1)

For more on youth and firearms, see “Firearms Laws Affecting Minors” on page 61.

Convicted Felons

Minnesota law bars anyone convicted of a violent crime from possessing a firearm. This includes anyone convicted of or adjudicated delinquent or convicted as an extended jurisdiction juvenile (EJJ)¹⁰ for committing a crime of violence in this state or elsewhere,¹¹ including any felony-level drug offense. Convicted felons are prohibited from possessing any firearm for their lifetimes.^{12, 13}

Minn. Stat. ch. 152; § 624.713, subd. 1, cl. (2)

Courts have ruled that a felony-level crime of violence or drug offense that is later downgraded by statute to a misdemeanor count is still grounds for the prohibition.¹⁴ Courts have also determined that this prohibition on firearms possession is applicable to juveniles who are adjudicated delinquent for a crime of violence, even though under the Minnesota Constitution

¹⁰ Extended jurisdiction juvenile, commonly referred to as EJJ, refers to a judicial procedure for prosecuting a juvenile who is charged with designated felony crimes. Minn. Stat. § 260B.130.

¹¹ Minnesota Statutes, section 624.712, subdivision 5, lists crimes of violence, all of which are felonies.

¹² For the definition of the term “conviction,” as used in federal and state firearms law, see the definition of the term, “crime punishable by imprisonment for a term exceeding one year,” in Appendix A, and Minnesota Statutes, section 624.712, subdivision 10. Minnesota Statutes, section 609.165, subdivision 1a, provides the lifetime prohibition on firearms possession for a person convicted of a crime of violence in Minnesota.

¹³ Persons charged with a crime of violence are also prohibited from possessing firearms during the time that the charge is pending and following any conviction for the offense.

¹⁴ *State v. Anderson*, 733 N.W.2d 128 (Minn. App. 2007).

juveniles do not have the right to a jury trial.¹⁵ Courts have also determined that for purposes of this statute, the term “firearm” also includes BB guns.¹⁶

Many felony crimes are not crimes of violence, and the period of firearms disability or ineligibility for a person convicted of a nonviolent felony extends only until the person’s civil rights have been restored following completion of sentence for the crime, the person has been pardoned, or the conviction has been expunged or set aside, unless that official action explicitly states that the person may not possess firearms. (For more on this, see “Restoration of Firearms Eligibility” on page 23.)

Minnesota also has adopted the federal provision that prohibits a person from possessing firearms if that person is presently charged with a crime that is punishable by imprisonment for more than a year.¹⁷

Minn. Stat. § 624.713, subd. 1a

Mentally Ill

A person cannot possess a firearm if he or she has ever been involuntarily committed, as an inpatient or outpatient, to a treatment facility in Minnesota or elsewhere by a judicial determination that the person is mentally ill, developmentally disabled, or mentally ill and dangerous to the public, as defined in Minnesota Statutes, section 253B.02, or who has ever been found incompetent to stand trial or not guilty by reason of mental illness. This prohibition does not apply unless the person’s ability to possess a firearm has been restored under Minnesota Statutes, section 624.713, subdivision 4.¹⁸

Minn. Stat. §§ 624.713, subd. 1, cl. (3); 624.713, subd. 4; 253B.02; 253B.09; 253B.23, subd. 9; 253B.24

Illegal Drug User

Under state and federal law, people adjudicated in Minnesota or elsewhere for illegal drug violations cannot possess firearms, including:

¹⁵ In *State v. Turnbull*, 766 N.W.2d 78 (Minn. App. 2009), the Minnesota Court of Appeals upheld the conviction of a person who was found in possession of a firearm while hunting, subsequent to the person’s having been adjudicated delinquent for a crime of violence without the benefit of a trial by jury. The court held that even where juveniles were convicted of a firearms-disqualifying crime under the statute without a jury, as long as they were afforded notice, counsel, confrontation, cross-examination, and standard of proof similar to the adult system, they will have been found to have received all of the constitutional protections to which they are entitled.

¹⁶ *State v. Fleming*, 724 N.W.2d 537 (Minn. App. 2006).

¹⁷ This excludes certain crimes that are related to the regulation of business practices. Minn. Stat. § 624.712, subd. 10.

¹⁸ This provision was amended by Laws 2009, chapter 139, to conform Minnesota law to the federal National Instant Criminal Background Check System (NICS) Improvement Act of 2007, which requires states to include mental health records in the information provided to the FBI’s background check system for firearms purchases. This act was codified in Minnesota Statutes, section 624.713, subdivision 4.

- any person convicted of a misdemeanor or gross misdemeanor violation of drug law (Minn. Stat. ch. 152), unless three years have elapsed since the date of conviction and, during that time, the person has not been convicted of any other such violation of chapter 152 or a similar crime; or
- a person who is or has ever been committed by a judicial determination for treatment for the habitual use of a controlled substance or marijuana, as defined in Minnesota Statutes, sections 152.01 and 152.02, unless the person's ability to possess a firearm has been restored under Minnesota Statutes, section 624.713, subdivision 4.

Minn. Stat. § 624.713, subd. 1, cl. (4)

Chemically Dependent

People who have been committed to a treatment facility, whether for inpatient or outpatient treatment, in Minnesota or elsewhere by a judicial determination that the person is chemically dependent as defined in Minnesota Statutes, section 253B.02, cannot possess a firearm. There is an exception for people who have completed treatment, or if the person's ability to possess a firearm has been restored under the newly created judicial procedure for this purpose.^{19, 20} Firearms are not subject to forfeiture following a person's commitment, but his or her access to the firearms may be restricted by the courts.

Minn. Stat. § 624.713, subd. 1, cl. (5)

Peace Officer Informally Admitted

A peace officer who is informally admitted to a treatment facility pursuant to Minnesota Statutes, section 253B.04, for chemical dependency cannot possess a firearm. The officer can possess firearms after obtaining a certificate from the head of the treatment facility discharging or provisionally discharging the officer from the treatment facility. Firearms are not subject to forfeiture following a person's commitment, but his or her access to the firearms may be restricted by the courts.

Minn. Stat. § 624.713, subd. 1, cl. (6)

Pretrial Diversion for Crime of Violence

A person, including a juvenile, who is charged with a crime of violence and, before disposition, has been placed in a pretrial diversion program by the courts, cannot possess a firearm until the person has completed the diversion program and the charge for the crime of violence has been dismissed.

Minn. Stat. § 624.713, subd. 1, cl. (7)

¹⁹ This prohibition does not include persons who seek mental health treatment voluntarily.

²⁰ See footnote 18.

Domestic Violence Offenders

Misdemeanor Offenders. A person who has been convicted in Minnesota or elsewhere of misdemeanor assault against a family or household member may not possess firearms unless three years have elapsed since the date of conviction and during that time the person has not been convicted of any repeat violation.

Minn. Stat. §§ 609.224, subd. 3; 609.2242, subd. 3; 624.713, subd. 1, cl. (8)

Note that any temporary prohibition under this provision of Minnesota law is likely to be superseded by the Lautenberg Amendment to the federal Gun Control Act, which prohibits firearms possession by a person convicted of any qualifying crime of misdemeanor domestic violence.²¹

The federal Gun Control Act provides that the firearms disability imposed following conviction for a misdemeanor crime of domestic violence is to be lifted upon the restoration of the offender's civil rights. In Minnesota, due to the interplay of federal and Minnesota laws and a ruling of the 8th Federal Circuit Court of Appeals, for persons convicted of a misdemeanor crime of domestic violence in Minnesota the firearms prohibition under the Lautenberg Amendment effectively becomes a lifetime prohibition.²²

Pub. L. No. 104-208, § 658; 18 U.S.C. § 922(g)(9)

Use of Firearm in Domestic Assault. A person who has been convicted in Minnesota or elsewhere of assaulting a household member and who was found by the court to have used a firearm in any way during the commission of the assault is prohibited from possessing any type of firearm for the period determined by the court. Again, the federal Lautenberg Amendment likely preempts state law by effectively providing a lifetime firearms prohibition.

Minn. Stat. § 624.713, subd. 1, cl. (9)

Additional Restrictions for Domestic Abuse Offenders under Federal Law

Federal law temporarily prohibits firearms possession for persons subject to a domestic violence restraining order and permanently prohibits firearms possession for persons convicted of misdemeanor domestic violence, broadly defined.²³

²¹ The title of this section of federal law is Gun Ban for Individuals Convicted of a Misdemeanor Crime of Domestic Violence. However, it is widely known as the Lautenberg Amendment.

²² Under the Lautenberg Amendment, the firearms prohibition following conviction for misdemeanor domestic violence continues until the person's civil rights have been restored. However in *Smith*, the federal 8th Circuit Court of Appeals has ruled that a person's civil rights cannot be considered to have been restored unless those rights have first been revoked, which in Minnesota does not result from misdemeanor convictions. *United States v. Smith*, 171 F.3d 617 (8th Cir.1999). Thus in Minnesota, the firearms prohibition under the Lautenberg Amendment is effectively a lifetime ban (unless the conviction has been expunged or set aside, or the person has been pardoned or has had his or her firearms rights judicially restored, as under Minnesota Statutes, section 609.165, subdivision 1d).

²³ These two laws have been subjected to and have withstood a number of constitutional challenges, including under the Ex Post Facto Clause; the notice and fair warning principles of the Fifth Amendment; the equal protection

18 U.S.C. § 922(g)(9)

Persons Subject to a Restraining Order.²⁴ People subject to a restraining order cannot possess a firearm if the court order:

- was issued after a hearing where the person received actual notice and had an opportunity to participate;
- restrains the person from harassing, stalking, or threatening an intimate partner or child of the intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
- (a) includes a finding that the person represents a credible threat to the physical safety of an intimate partner or child; or (b) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.

18 U.S.C. §§ 921(a)(32); 922(g)(8)

Misdemeanor Domestic Violence Offender. Federal law also provides a firearms disability for any person who has been convicted in any court of a misdemeanor crime of domestic violence.

18 U.S.C. §§ 921 (a)(33); 922(g)(9)

Application: This firearms disability applies to anyone who has ever been convicted of a qualifying domestic violence misdemeanor at any time, including prior to the law's effective date of September 30, 1996.

The law broadly defines intimate partner to include current and former spouses, parents, and children, current and former cohabitants, putative spouses, common law spouses, and the children of such persons, as well as persons with whom the offender shares a child in common. Same-sex partners may be included.

The law broadly defines misdemeanor crime of domestic violence to include all misdemeanors that involve the use or attempted use of physical force—including simple assault, and assault and battery—provided that the crime was committed against one of the defined parties, and irrespective of whether or not the offense is specifically defined in state statute or local ordinance as a domestic violence misdemeanor.

However, the firearms disability would not apply if the conviction is procedurally defective due

component of the Fifth Amendment's Due Process Clause; the Tenth Amendment's guarantee of state sovereignty; Congress' authority under the Commerce Clause; impermissible Bill of Attainder; and the right to bear arms under the Second Amendment. For the case law citations of these challenges, see Lisa D. May, *The Backfiring of Domestic Violence Firearms Bans*, 14 Colum. J. Gender & L.1, 10-23 (2005).

²⁴ This prohibition was enacted as the Violence Against Women Act of 1994 (VAWA, Title IV, § 40001-40703) within the Violent Crime Control and Law Enforcement Act of 1994, signed as Public Law No. 103-322.

to representation or trial issues (e.g., if constitutional rights to counsel and/or a jury trial were not knowingly and intelligently waived).²⁵

18 U.S.C. § 921 (a)(33); 18 U.S.C. § 922(g)(9)

Specified Gross Misdemeanants

Minnesota law prohibits a person from possessing a firearm who has been convicted of the following offenses at the gross misdemeanor level: crimes committed for the benefit of a gang; assaults motivated by bias; false imprisonment; neglect or endangerment of a child; burglary in the fourth degree; setting a spring gun; riot; or harassment and stalking. Included in this category are crimes committed in other states or jurisdictions that would have been gross misdemeanors if the conviction had occurred in this state. Before a person can possess a firearm again, three years must have elapsed since the date of conviction and, during that time, the person has not been convicted of any other violation.

Minn. Stat. § 624.713, subd. 1, cl. (11)

Fugitives

Minnesota has adopted the federal category that prohibits any person who is a fugitive from justice as a result of having fled from any state to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding from possessing a firearm.

Minn. Stat. § 624.713, subd. 1, cl. (10)

Illegal Aliens

Minnesota has adopted the federal category that prohibits any person who is an alien and who is illegally or unlawfully in the United States from possessing a firearm. This prohibition does not apply to certain categories of foreign officials or to a lawfully admitted nonimmigrant alien who has been admitted for hunting or sporting purposes or possesses a valid hunting license.

Minn. Stat. § 624.713, subd. 1, cl. (10)

Dishonorably Discharged

Minnesota has adopted the federal category that prohibits any person who has been discharged from the United States armed forces under dishonorable conditions (this does not include a bad conduct, undesirable, general, or honorable discharge) from possessing a firearm.

Minn. Stat. § 624.713, subd. 1, cl. (10)

²⁵ Within the 8th federal Circuit for states like Minnesota, which do not revoke civil rights for misdemeanor convictions, restoration of firearms rights cannot be made contingent upon restoration of civil rights, since Minnesota does not revoke civil rights for misdemeanor crimes, and this Circuit has ruled that civil rights having not been taken away, cannot be considered as having been restored (following completion of sentence). *U.S. v. Smith*, 171 F.3d 617 (8th Cir 1999).

Renounced Citizenship

Minnesota has adopted the federal category that prohibits any person who, having been a citizen of the United States, has renounced that citizenship from possessing a firearm.

Minn. Stat. § 624.713, subd. 1, cl. (10)

Additional Categories of Firearms-Prohibited Persons under Federal Law

Federal law provides some additional categories of firearms disabled persons beyond those provided in the Minnesota Gun Control Act, including further restrictions for domestic abuse offenders (explained on page 11), those indicted under federal law, and juveniles.

Under Indictment for a Felony Crime. Federal law also prohibits any person who is under indictment for a crime punishable by imprisonment for a term of more than one year (i.e., a felony) to receive, or to ship or transport through interstate commerce, any firearm or ammunition. Likewise, it is prohibited for any person to provide a firearm or ammunition to anyone whom the person knows is under indictment for such crime. An indicted person may continue to lawfully possess firearms obtained prior to the indictment. If the person is ultimately convicted of the felony, he or she then becomes a firearms-disabled person and is permanently prohibited from possessing firearms.

18 U.S.C. §§ 922(n); 922(d)(1)

Juveniles: Handguns Prohibited. Federal law generally prohibits anyone from selling, delivering, or otherwise transferring a handgun or ammunition suitable only for a handgun to a juvenile under the age of 18, and also generally prohibits a juvenile under the age of 18 from knowingly possessing a handgun or ammunition suitable only for a handgun.

These federal prohibitions pertaining to the sale of handguns to juveniles and the possession of handguns by them are broad. Nevertheless, the law provides several exceptions to these prohibitions, with most of the exceptions requiring written parental permission or other supervision for the juvenile. The following major exceptions allow transfer to or possession of a handgun by a juvenile:

- as a member of the U.S. armed forces while in the line of duty
- by inheritance of title (but not generally including possession as a juvenile)
- in defense of self or another against a home intruder
- in the course of employment
- in the course of ranching or farming
- while participating in target practice, hunting, or a course of instruction in the safe use of a handgun

- with the prior written consent of the juvenile's parent or guardian

Federal law does not provide age restrictions on the transfer of rifles and shotguns by nonlicensed sellers.²⁶

18 U.S.C. § 922(x)

Ammunition Also Prohibited

Throughout Minnesota and federal law, any prohibition relating to the possession and use of firearms generally applies, as well, to ammunition for firearms. The definition of the term ammunition is broad and includes any and all of the four principal components of a cartridge or shotshell, whether separately or assembled. Those components are the cartridge case or shellcase, the primer, the propellant powder, and the projectile (bullet) or projectiles (BBs).

18 U.S.C. § 921(a)(17)(A)

Knowledge Assumed Under the Law

Any person wishing to possess any firearm is assumed under law to know whether he or she is disqualified from doing so under any applicable federal or state law. Courts have ruled that absence of such knowledge is no excuse and does not bar conviction for illegal possession by a prohibited person.

For example, federal courts have affirmed a conviction for possession of a firearm even where the predicate federal convictions were reversed on appeal after a defendant's firearms conviction.²⁷ Likewise, Minnesota courts have affirmed a conviction for possession of a firearm by a person whose felony conviction (for burglary) was reduced to a misdemeanor following successful completion of probation, who claimed ignorance of the fact that he remained a firearms-prohibited person based on the definition of the term conviction for purposes of firearms law.^{28, 29}

²⁶ Apart from various restrictions on providing firearms and ammunition to firearms-prohibited persons, the private sales of firearms and ammunition between unlicensed individuals are not generally regulated by Minnesota or federal law.

²⁷ *U.S. v. MacGregor*, 617 F.2d 348 (3d Cir. 1980). The court held that the government has no duty to prove the validity of the predicate conviction resulting in a firearm disability, and that disability would be effective until either the conviction was vacated or the felon was relieved of the disability through some affirmative act, such as a pardon.

²⁸ *Minnesota v. Anderson*, 720 N.W.2d 854 (Minn. App. 2006).

²⁹ Further support is found in *Minnesota v. Moon*, 463 N.W.2d 517 (Minn. 1990). In that case, the Minnesota Supreme Court held that Moon, who was convicted of felonious theft, but later had the conviction reduced to a misdemeanor theft, was still required to abide by the applicable firearm prohibition. The court relied on the legislative intent, finding that the legislature sought to use the statute to predict future criminal behavior, and to keep firearms from persons determined to be predisposed to violence. Because Moon was subject only to probation (his jail time was stayed, making the punishment akin to that of a misdemeanor or gross misdemeanor), Moon argued

In short, under both federal and Minnesota law, a conviction for a predicate felony—even an invalid one—remains a conviction for purposes of defining a person as a felon in possession of a firearm, until that predicate conviction has been officially remedied.

Notice of Prohibited Person Status

When a person is convicted of, or adjudicated delinquent for, or convicted as an extended jurisdiction juvenile for a crime of violence, the court must inform the defendant that the person is prohibited, under felony penalties, from possessing any firearm for the remainder of the person's lifetime.³⁰ Failure of the court to inform the defendant does not nullify the prohibition or the felony penalty for its violation.

Minn. Stat. § 624.713, subd. 3, para. (a)

The Government Exception

The federal Gun Control Act contains a provision known as the Government Exception, which exempts government employees from federal firearm restrictions that would impinge on their governmental duties. The Government Exception exempts, for example, police, military, and any other federal, state, or local governmental personnel from all the firearms disabilities imposed by the federal Gun Control Act, except one—the firearms prohibition stemming from a misdemeanor domestic assault conviction.

Domestic violence misdemeanants are the only category of persons restricted by the Gun Control Act who do not benefit from the Government Exception. As a result, a government employee who is a domestic violence felon receives the Government Exception and may not lose a job due to an inability to possess a firearm. However, a domestic violence misdemeanant does not receive the Government Exception and may lose a job based on the inability to carry a weapon while on duty.³¹

Off-duty possession of firearms by police, military, and other government employees for official purposes would also be lawful if such possession is required or authorized by law or by official departmental policy. However, it is a violation for an officer who is a firearms-prohibited person to receive or possess a firearm or ammunition for other than official use.

that he had not been convicted of a felony and should not have been subject to a firearms prohibition. The Minnesota Court of Appeals agreed, but the Minnesota Supreme Court reversed, holding that it is the action, rather than the punishment, that should be used to determine whether a firearms ban is appropriate.

³⁰ Minnesota Statutes, section 624.713, subdivision 3, paragraph (a), states that the court warning applies only to a pistol or semiautomatic assault weapon; however, subdivision 1 of this statute clearly applies the prohibition to a pistol, a semiautomatic military-style assault weapon, or any other firearm.

³¹ See note 22, at 10.

The Government Exception does not extend to private sector employment that requires firearms. Nor does it apply to use of firearms for self-defense or sporting purposes.

18 U.S.C. §§ 925(a)(1); 922(d)(9); 922(g)(d)

Firearms-Disqualifying Felony Crimes

Both federal and Minnesota law designate a crime as a felony if it is punishable by imprisonment for a term exceeding one year. And as noted, conviction for a felony crime generally triggers firearms prohibition for the defendant. However, it is not necessary that a felony sentence be imposed or executed by the sentencing court for that result to occur, but only that such sentence could be ordered by the court under the law.

18 U.S.C. § 922(g)(1); Minn. Stat. §§ 609.02, subd. 2; 624.713, subd. 1, cl. (10), item (i)

For purposes of gun control laws, both federal and Minnesota law provide functionally identical definitions for the term “crime punishable by imprisonment for a term exceeding one year.” Under the definition, this does not include any federal or state offenses dealing with antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices; or state offenses that are misdemeanors and punishable by a term of imprisonment of two years or less.

18 U.S.C. § 921(a)(20); Minn. Stat. § 624.712, subd. 10

Defining “Conviction”

Federal law generally defers to the states for determining what constitutes a felony conviction for purposes of determining firearms eligibility. The following language of federal law is replicated verbatim in Minnesota gun control law:

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held.³²

18 U.S.C. § 921(a)(20); Minn. Stat. § 624.712, subd. 10

The definition of conviction that federal law provides for a relief from a firearms disability (i.e., one due to a firearms-disqualifying conviction) and, by verbatim replication, that Minnesota law provides for the restoration of firearms eligibility, is as follows:

Any conviction which has been expunged, or set aside, or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this definition, unless such pardon, expungement, or restoration of civil rights

³² Most felony convictions and nearly all misdemeanor convictions in Minnesota and other states occur within state courts.

expressly provides that the person may not ship, transport, possess, or receive firearms.

18 U.S.C. § 921(a)(20); Minn. Stat. § 624.712, subd. 10

Penalties for a Prohibited Person in Possession of a Firearm

When an act is a violation of both federal and state law—as is often the case for firearms law violations—the violation can be prosecuted in either federal or state court. The choice often depends upon the circumstances of the crime and decisions by prosecuting authorities in the relevant jurisdictions.

Minnesota Penalties for Illegal Possession

Illegal possession of firearms by a firearms-prohibited person is punishable under Minnesota law, as follows:

- Felony penalties of up to five years imprisonment and up to a \$10,000 fine for a juvenile who has been convicted of illegal possession of a handgun or military-style assault weapon
- Felony penalties of not less than five years imprisonment with no early release, and up to 15 years imprisonment and up to a \$30,000 fine, for a violent felon in possession of a firearm
 - This includes any person who has been convicted of, adjudicated delinquent, or convicted as an extended-jurisdiction juvenile for committing, in this state or elsewhere, a crime of violence, unless the person’s eligibility to possess firearms has been restored. Crime of violence includes crimes in other states or jurisdictions that would have been crimes of violence if they had been committed in Minnesota.
- Gross misdemeanor penalties of up to one year in local jail and up to a \$3,000 fine for any other prohibited person in possession of a firearm

Minn. Stat. §§ 624.713, subd. 2; 609.11, subds. 5, 6; 624.712, subd. 5; 609.165

Federal Penalties for Illegal Possession of a Firearm

Violation of the federal Gun Control Act through possession of firearms or ammunition by a prohibited person is a federal felony punishable by up to ten years imprisonment.

Federal law also provides a mandatory minimum 15-year sentence of incarceration upon conviction for illegal possession of a firearm by a defendant who has had three or more previous convictions by any court for any violent felony or serious drug offense arising from separate incidents (i.e., the career criminal penalty).^{33, 34}

³³ This provision of federal law is known as the Armed Career Criminal Act; see 18 U.S.C. § 924(e)(1).

³⁴ In *Lewis v. United States*, 445 U.S. 55 (1980), the U.S. Supreme Court addressed the question of whether a prior state felony conviction that was subject to collateral attack on the basis that it was obtained in the complete

18 U.S.C. §§ 924(a)(1); 924(e)(1); 922(a)(2); 922(g)

Application: Relief of Disability

Penalties under Minnesota law for illegal possession of a firearm do not apply to anyone who has received a relief of disability under United States Code, title 18, section 925(c) (a federal administrative petition process that, by congressional action, is no longer funded and, thus, is no longer available), or whose ability to possess firearms has been restored under Minnesota Statutes, section 609.165, subdivision 1d (following conviction for a violent felony), or section 624.713, subdivision 4 (following commitment by a court for mental health or chemical dependency treatment).

Minn. Stat. § 624.713, subd. 2, para. (b)

Pretrial Diversion

When a person, including a person under the jurisdiction of the juvenile court, is charged with committing a crime of violence and is placed in a pretrial diversion program by the court before disposition, the court is to inform the defendant that:

- the defendant is prohibited from possessing any firearm until the person has completed the diversion program and the charge of committing a crime of violence has been dismissed;
- it is a gross misdemeanor offense to violate this prohibition; and
- if the defendant violates this condition of participation in the diversion program, the charge of committing a crime of violence may be prosecuted.

The failure of the court to provide this information to a defendant does not nullify the prohibition or the gross misdemeanor penalty for its violation.

Minn. Stat. § 624.713, subd. 3, para. (b)

absence of defense counsel could serve as a predicate offense for a violation of 18 U.S.C § 921(g)(1)—i.e., felon in possession of a firearm. The court ruled that proof of a defendant’s prior felony convictions is admissible for purposes of proving such a violation, even if the prior convictions are constitutionally deficient (in this case, under *Gideon v. Wainwright*, 372 U.S. 335 (1963)). It reasoned that, unlike some state laws, federal gun laws focus not upon the reliability of a past uncounseled conviction, but rather on the mere fact of a conviction. See also *U.S. v. Julian*, 947 F. Supp. 809 (M.D. Pa. 1997), which advanced the proposition that expungement of a prior conviction after an arrest for possession of a firearm by a felon does not “relate back” and render the firearm possession lawful. In these cases, even where the prior conviction is an invalid conviction, the felon may not lawfully possess a firearm until the prior conviction is challenged and overturned.

Establishing Evidence

For a conviction under these provisions, it is not always necessary for the prosecution to physically produce the firearm; in its absence, strong circumstantial evidence and testimony, such as eyewitness testimony, may be sufficient to support a conviction.³⁵ However, in order for the state to obtain a conviction for possession of a firearm by a convicted felon, it must prove either that the defendant had the firearm in an area over which he or she had exclusive control where others do not have access, or that at the time of the offense, the defendant was consciously exercising control and dominion over the firearm.³⁶

Surrender of Firearms upon Pretrial Release for Crime of Violence

When a person is arrested or detained for committing a crime against the person constituting a crime of violence and the judge orders pretrial release, the judge may order as a condition of release that the person:

- surrender to law enforcement all firearms possessed by the person; and
- not live in a residence in which others possess firearms.

A surrendered firearm must be inventoried, preserved, and returned to the person if the person is acquitted or the charges are dismissed or not filed. If the person is convicted of a designated offense, as defined in section 609.531, the firearm is subject to forfeiture as provided under that section.

Minn. Stat. §§ 629.715, subd 2; 609.531, subd 1, para. (f)

Duty to Render Aid to Shooting Victim

A person who discharges a firearm and knows or should know that the discharge has caused bodily harm to another person must immediately investigate the extent of the injuries and render immediate reasonable assistance to the injured person.

A person who violates this duty is subject to gross misdemeanor or felony criminal penalties that

³⁵ *State v. Hendry*, 636 N.W.2d 158 (Minn. App. 2001); see also *State v. Breaux*, 620 N.W.2d 326 (Minn. App. 2001). The facts of *Hendry* indicate that the police search turned up the firearm. While the prosecutor was not able to show that the seized firearm fired the shots, it was possible that this firearm fired the shots. Still, this situation will likely be the exception and not the rule, since the burden of proof for a conviction in a criminal case remains beyond a reasonable doubt and the lack of the physical firearm at trial will require extremely strong corroboration by eyewitness testimony and circumstantial evidence, as was present in *Hendry*.

³⁶ *State v. Porter*, 674 N.W.2d 424 (Minn. App. 2004); and *State v. Smith*, 619 N.W.2d 766 (Minn. App. 2000). The court in *Porter* points out that to prove constructive possession, the test is for control “and” dominion, so both are required (whereas the lower court in *Porter* said “or,” where either control or dominion would suffice, which was determined to be a fatal error). Thus, the test applied for constructive possession of a firearm, for purposes of these statutes, is very specific and requires strict adherence to the law.

vary according to the extent of the shooting victim's injuries. A person who witnesses a shooting incident is subject to the same duty to investigate and render aid and is also subject to criminal penalties for failing to do so.

It is an affirmative defense to a charge under this section that the defendant proved by a preponderance of the evidence that he or she failed to investigate or render assistance as required because the defendant reasonably perceived that these actions could not be taken without a significant risk of bodily harm to the defendant or others.

Minn. Stat. § 609.662

Firearms Safety Course and Certificate

The commissioner of natural resources is responsible for administering and supervising firearms safety courses throughout Minnesota that provide instruction in commonly accepted principles of safety in hunting and handling common hunting firearms. The commissioner must issue a firearms safety certificate to a person who satisfactorily completes the course.

In order to get a state hunting license, all those born after December 31, 1979, must have a firearms safety certificate, an equivalent certificate,³⁷ or a previously issued hunting license. Minimum age for the firearms safety course is 11 years, but the certificate for successful completion is not valid until a person's 12th birthday. The commissioner may authorize volunteer instructors to charge a reasonable fee (i.e., \$15 per student maximum) for the course materials and necessary supplies.

Any person who has successfully completed basic training in the U.S. armed forces is exempt from the range and shooting exercise portion of the required course of instruction for the firearms safety certificate, but not from any other requirement. If such person is currently serving in active military duty, the person may obtain a hunting license without having a firearm safety certificate. (There is no similar exemption for trained law enforcement officers.)

Minn. Stat. §§ 97B.015; 97B.020

³⁷ The DNR information booklet defines "equivalent" as including, for example, an Minnesota Advanced Hunter Education Certificate, as well as a basic hunter training certificate from another state.

Restoration of Firearms Eligibility

Restoring Firearms Eligibility Following Criminal Conviction

Both federal and Minnesota law provide avenues for firearms-prohibited persons to regain their eligibility to lawfully possess firearms, and each jurisdiction recognizes the granting of such eligibility by the other. This concept is termed relief from firearms disability under federal law, and restoration of firearms eligibility under Minnesota law, as explained in the paragraphs below.

Any relief from a firearms disability under federal law or restoration of firearms eligibility under Minnesota law applies only to the disability or ineligibility stemming from the specifically named existing conviction; the relief or restoration does not apply to any other firearms disqualifying convictions that the person might incur in the future.

It is important to understand that to be valid, relief from any specific firearms disability can be granted only by the jurisdiction (federal or specific state) that imposed the disability. For example, a federal court or agency cannot provide relief for a firearms disability imposed upon conviction in a state court, nor vice versa. And for a state-imposed firearms disability, relief can be granted only by the specific state in which the proceedings (e.g., the trial) resulting in the disability had been conducted.

Relief from Firearms Disability upon Restoration of Civil Rights

Under both federal and Minnesota law a conviction for nearly any felony triggers a firearms disability, which is recognized by both jurisdictions as lasting at least until the person's civil rights have been restored. The U.S. Supreme Court has upheld the prohibition on the possession of firearms by convicted felons, as well as by certain other categories of presumably dangerous persons.³⁸

18 U.S.C § 922(g)(2); Minn. Stat. § 624.713, subd. 1

Minnesota law provides for the restoration of a person's civil rights following conviction for treason or a felony crime, as follows:

When a person has been deprived of civil rights by reason of conviction of a crime and is thereafter discharged,³⁹ such discharge shall restore the person to all civil rights and to

³⁸ The U.S. Supreme Court has upheld the prohibition on the possession of firearms by convicted felons, as well as by certain other categories of presumably dangerous persons. In *Heller*, for example, the Court held that “nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill” The Court explicitly held that: (1) such prohibitions are not violative of the Second Amendment and (2) such prohibitions are constitutional. *District of Columbia v. Heller*, 554 U.S. 570 (2008).

³⁹ A person is discharged from a sentence when he or she has successfully completed all the terms of the sentence for a criminal conviction.

full citizenship, with full right to vote and hold office, the same as if such conviction had not taken place, and the order of discharge shall so provide.

Minn. Stat. § 609.165, subd. 1

The discharge may be by court order, following a stay of the sentence or a stay of execution of the sentence, or when the sentence expires.⁴⁰

Minn. Stat. § 609.165, subd. 2

In practice, relief from a federal or state firearms disability for a firearms-disqualifying criminal conviction generally must await, and occurs upon, the automatic restoration of the person's civil rights following one or the other of these two means for discharge of sentence for such conviction. A federal relief from a firearms disability is recognized under Minnesota law, and vice versa. However, if a felony conviction within Minnesota has been for a crime of violence, then the resulting firearms prohibition is for the person's lifetime.⁴¹

A Federal Mechanism for Relief from Firearms Disability

Federal law provides that a person who is prohibited by federal law from possessing firearms for any reason may apply to the U.S. Attorney General for relief from the disability, and:

The Attorney General may grant such relief if it is established to his satisfaction that the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest.

Congress subsequently delegated this authority to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE), where it remains.⁴² However, since October 1992, BATFE has been prohibited by law from acting upon applications from individuals for firearms relief under this law.⁴³

⁴⁰ The statutory phrase discharge "upon expiration of sentence" refers to the complete fulfilling of the sentence ordered by the court upon conviction for a crime, including the serving of any ordered incarceration, parole, probation, or alternative sentencing, such as community service, chemical dependency treatment, work release, restitution, etc.

⁴¹ Minn. Stat. § 242.31, subd. 2a. Under the previous statute (amended in 2003), the ban lasted for ten years from the time the convicted person was restored to full civil rights. However, following the amendment, the prohibition on firearms possession is effective for the duration of the person's life.

⁴² The Bureau of Alcohol, Tobacco and Firearms, or ATF as it was initially designated, was created within the Internal Revenue Service. In 1972, it became an independent agency within the Treasury Department. In 1982, its role was expanded to include arson and, later, explosives. Then, under the Homeland Security Act of 2002, the BATFE, as it was then known, became a bureau within the U.S. Department of Justice.

⁴³ This provision was first enacted within the Treasury, Postal Service, and General Government Appropriations Act, Pub. L. No. 102-393, 106 Stat. 1729 (1992). The operative language, blocking BATFE from administering the firearms-disability relief process, has been reenacted by Congress each subsequent year through

This federal law further provides that any person whose application for relief is denied by the Attorney General may file a petition with the Federal District Court of Appeals for the district in which the applicant resides for a judicial review of the denial.

18 U.S.C. § 925(c)

Federal district courts have ruled that applicants may seek federal judicial review directly, without first exhausting all administrative remedies as otherwise required (i.e., without first receiving a denial from the Attorney General). Upon review, federal appeals courts have upheld such judicial policy.⁴⁴

In 2002 the U.S. Supreme Court overruled, stating that: “The absence of an actual denial of respondent’s petition by the ATF precludes judicial review under [18 U.S.C.] Section 925(c).”⁴⁵

Thus, for all practical purposes, federal avenues for seeking relief of firearms disabilities following criminal conviction, whether through BATFE or federal courts, are effectively closed to individuals.

Instead, relief from a firearms disability imposed following criminal conviction in federal court generally must await and occurs upon the automatic restoration of the person’s civil rights, following the full discharge of the sentence.

Restoration Automatic Under Minnesota Law If Not Crime of Violence

An important distinction in restoring eligibility under Minnesota law is whether the firearms-disqualifying conviction was for a crime of violence.⁴⁶

Minn. Stat. § 624.712, subd. 5

Following conviction in a Minnesota court for a nonviolent felony, a person is prohibited from possessing firearms until the person has been discharged from sentence and has had his or her civil rights restored.

However, the duration of the firearms prohibition following conviction in Minnesota for any crime of violence is for the remainder of the person’s lifetime.

the present. That language states: “None of the funds appropriated herein shall be available to investigate or act upon applications for relief from Federal firearm disabilities under 18 U.S.C. § 925(c).”

⁴⁴ *Rice v. U.S. Dept. of Alcohol, Tobacco and Firearms*, 68 F.3d 702 (3d Cir. 1995).

⁴⁵ *U.S. v. Bean*, 537 U.S. 71 (2002).

⁴⁶ Under the defining Minnesota statute, all crimes of violence are felonies. However, many Minnesota felonies are not crimes of violence. An example of a nonviolent felony is fraudulently altering an engrossed bill with intent to procure its approval by the governor, which is a felony under Minnesota Statutes, section 3.191, but which is not a crime of violence under Minnesota Statutes, section 624.712, subdivision 5.

Minn. Stat. § 609.165, subds. 1 and 1a

This distinction is the result of a series of legislative actions, beginning in 1975. Initially under the Minnesota gun control law, a convicted felon's eligibility to possess firearms would be restored automatically upon restoration of the person's civil rights, which for a felony crime occurs upon discharge of sentence.⁴⁷ As noted, such automatic restoration of firearms rights is still the case under Minnesota law following discharge of sentence for felony convictions that are not crimes of violence (and, under federal law, for essentially all felony convictions).

Laws 1975, ch. 378, § 1; Minn. Stat. § 609.165, subd. 1

However, a 1987 legislative enactment established that the order of discharge from sentence for a person convicted of a crime of violence must state that the person is not entitled to possess firearms until ten years have elapsed since the person was restored to civil rights, and during that time, the person was not convicted of any other crime of violence, unless the person has received a relief of disability under federal law.⁴⁸

Laws 1987, ch. 276, § 1; Minn. Stat. § 609.165, subd. 1a; 18 U.S.C. § 921(a)(20)

This law applied the same requirement for and notification regarding: (1) the ten-year postdischarge extension of firearms ineligibility following conviction for a crime of violence; (2) set-aside orders of a court; and (3) a pardon extraordinary issued by the Minnesota Board of Pardons (since disbanded). It also expanded the statutory list of crimes of violence to include felony drug violations.⁴⁹

Minn. Stat. ch. 152; §§ 609.168; 638.02, subd. 2; 624.712, subd. 5

Upon enactment of the Minnesota Personal Protection Act (MPPA) of 2003, the duration of firearms prohibition for a person convicted of a crime of violence was amended to be for the remainder of the person's lifetime. This law also raised the maximum penalty to 15 years incarceration (up from three years) for a violation involving a convicted violent felon in possession of a firearm.⁵⁰ For more about the MPPA, see page 43.

⁴⁷ Such simultaneous restoration of civil rights and firearms eligibility has led to legal challenges in which plaintiffs have asserted that firearms possession is itself a civil right. However, courts have rejected this claim, ruling that firearms possession is not a civil right similar to the rights of full citizenship, including the right to vote and hold office, and the U.S. Supreme Court has held that the right to possess a firearm after a disabling conviction is a privilege, not a right, and thus can be denied by law. *Lewis v. United States*, 445 U.S. 55 (1980).

⁴⁸ A 1994 enactment established a three-year term of imprisonment, later raised to 15 years, as the maximum penalty upon conviction for firearm possession when the firearm disability itself had resulted from conviction for a crime of violence. See Minn. Stat. § 624.713, subd. 2.

⁴⁹ The list of crimes of violence has since been steadily expanded over the years. See Minn. Stat. § 624.712, subd. 5.

⁵⁰ The maximum penalty for any other (nonviolent) felon in possession of a firearm is five years of incarceration and a \$10,000 fine. Minn. Stat. § 624.713, subd. 2.

Laws 2003, ch. 28, art. 2, codified as Minn. Stat. § 624.714; Minn. Stat. § 624.713, subd. 2

Judicial Restoration of Firearms Eligibility Following a Crime of Violence

The Minnesota Personal Protection Act of 2003 also established a new judicial process whereby a person who has been convicted in a Minnesota court for a crime of violence and is therefore subject to a lifetime firearms prohibition, may, following discharge of sentence, petition the court for a restoration of firearms eligibility.

Once the person petitions the court, the court may grant relief if the person shows good cause for the relief and is no longer confined.

If a petition is denied, the person may not file another petition until three years have elapsed, unless the court has granted permission otherwise.

This method of restoration applies exclusively to persons whose ineligibility is due to their conviction for a crime of violence.

Minn. Stat. § 609.165, subs. 1a, 1d

Restoration Following Conviction for a Gross Misdemeanor

Various Minnesota laws provide specific periods of firearms ineligibility following conviction for certain gross misdemeanor crimes. However, in Minnesota, unlike in some states, misdemeanor and gross misdemeanor convictions do not result in forfeiture of the person's civil rights (which impacts the automatic restoration of firearm eligibility following discharge of sentence).

In *Smith*, the federal 8th Circuit Court of Appeals has ruled that civil rights, having not been taken away following a misdemeanor conviction, cannot be assumed to have been restored following discharge of sentence.⁵¹ A concordant ruling by the 2nd federal Circuit Court in *McGrath* reasoned that: "The word 'restore' means 'to give back (as something lost or taken away).' The 'restoration' of a thing never lost or diminished is a definitional impossibility."

⁵¹ *U.S. v. Smith*, 171 F.3d 617 (8th Cir.1999), Federal Circuit Courts in concurrence with *Smith* include *McGrath v. U.S.*, 60 F.3d 1005 (2nd Cir. 1995); *U.S. v. Hancock*, 231 F.3d 557, (9th Cir. 2000); *U.S. v. Barnes*, 295 F.3d 1354 (D.C. Cir. 2002); and *U.S. v. Jennings*, 323 F.3d 263 (4th Cir. 2003). See also *U.S. v. Hall*, 20 F.3d 1066 (10th Cir. 1994) (holding that because Colorado state law provides that civil rights are restored upon release from confinement, they could not be restored under 18 U.S.C. § 921 (a)(20)); and *U.S. v. Thomas*, 991 F.2d 206 (5th Cir. 1993) (finding that because Texas law did not provide for any restoration of civil rights to felons, defendant could not claim that his civil rights had been restored for purposes of firearm prohibition statute).

But cf. *U.S. v. Indelicato*, 97 F.3d 627 (1st Cir. 1996), and *U.S. v. Wegrzyn*, 305 F.3d 593 (6th Cir. 2002), two federal circuit courts reached an opposite conclusion, ruling that "the defendant's rights, to the extent that they were never taken away (following a misdemeanor conviction for which the defendant was not incarcerated), should be treated as (having been) 'restored'."

Minnesota, lying within the federal 8th Circuit Court of Appeals, is governed by the ruling in *Smith*. Thus, unlike in many other states, following conviction in Minnesota courts for certain firearms-disqualifying misdemeanor and gross misdemeanor crimes, the restoration of civil rights (having not been revoked) is not available as a means for the simultaneous restoration of firearms rights.

Accordingly, Minnesota has provided an alternate means for reinstating firearms rights for most gross misdemeanants, except for misdemeanor domestic assault offenders, by means of specific time periods of ineligibility. Generally, for firearms-disqualifying gross misdemeanor crimes, firearms eligibility is restored automatically when three years have elapsed since the date of conviction, and the person has not been convicted of violating any of the following laws:

- crimes committed for the benefit of a gang
- assaults motivated by bias
- false imprisonment
- neglect or endangerment of a child
- burglary in the fourth degree
- setting a spring gun
- rioting
- harassment and stalking

Minn. Stat. § 624.713, subd. 1, cl. (11)

Pardons – A Rare Method for Restoration of Firearms Eligibility

Both federal and Minnesota law state that an otherwise firearms-disabling conviction is not a disabling conviction if it has been pardoned or set aside. The Minnesota Board of Pardons (established in 1905) has discretionary authority to grant an absolute or conditional “pardon extraordinary,” which when granted will:

[Have] the effect of setting aside and nullifying the conviction and or purging the person of it, and the person shall never after that be required to disclose the conviction at any time or place other than in a judicial proceeding or as part of the licensing process for peace officers.

Minn. Stat., ch. 638

Use of the word “extraordinary” implies a method of relief from a conviction beyond what is customary and that it is an exception to the ordinary practice of maintaining permanent records of the conviction. Only a relative handful of pardons are granted by the Board of Pardons during its semi-annual meetings each year. Nevertheless, the board is authorized to grant such a pardon if it determines that the applicant is of good character and reputation, and meets other criteria, including completing service of the sentence.

As with other methods of restoring firearms eligibility, however, the criteria for “pardon extraordinary” are more stringent for a person who has been convicted of a crime of violence. If

a person has been convicted of a crime of violence, ten years must have elapsed since the sentence was discharged and during which the person was not convicted of any other crime.

This is double the five-year waiting period following discharge of sentence before the granting of a “pardon extraordinary” for any other firearms-disqualifying felony conviction.

Minn. Stat. § 638.02

Pretrial Diversion – A Setting Aside

Pretrial diversion is another avenue for restoration of firearms eligibility. Minnesota law provides that when a person, including any juvenile, is charged with committing a crime of violence and is placed in a pretrial diversion program by the court before disposition, the court is to inform the defendant that:

- he or she cannot possess a pistol or semiautomatic military-style assault weapon until he or she has completed the diversion program and the charge of committing a crime of violence has been dismissed; and
- it is a gross misdemeanor offense to violate this prohibition. If the defendant violates this condition, the charge of committing a crime of violence may be prosecuted.

Minn. Stat. § 624.713, subd. 3, para. (b)

Successful completion of a pretrial diversion program prevents a charged crime from fully becoming a firearms-disqualifying conviction. Nevertheless, the defendant is prohibited from possessing certain types of firearms during the time that he or she is participating in the program. In this manner, Minnesota’s pretrial diversion program constitutes the setting aside of a conviction, thereby meeting the standard for relief of firearms disability under both Minnesota and federal law.

18 U.S.C. § 925(a)

Expungement of Criminal Records

Minnesota Statutes, chapter 609A, governs the expungement of criminal records maintained by Minnesota’s courts and other state and local agencies. The law states that the remedy available is limited to a court order sealing the records and prohibiting the disclosure of their existence or their opening, except under court order or certain statutory authority. Unlike in some states, nothing in this chapter authorizes the destruction of records or their return to the subject of the records.

This law also provides that, apart from the expungement of a record of not guilty by reason of mental illness, where the presumption in favor of expungement is strong:

[E]xpungement of a criminal record is an extraordinary remedy to be granted only upon clear and convincing evidence that it would yield a benefit to the petitioner commensurate with the disadvantages to the public and public safety of:

- (1) sealing the record; and
- (2) burdening the court and public authorities to issue, enforce, and monitor an expungement order.

Minn. Stat. §§ 609A.01; 609A.03, subd. 5, para. (a)

Under the definition of the term “conviction” in both federal and Minnesota law, the expungement of a criminal conviction for a firearms-disqualifying crime generally results in the restoration of the person’s ability to possess firearms, unless the order expressly provides that the person may not possess firearms, or in the case of a Minnesotan convicted of a crime of violence:

Any conviction which has been expunged, or set aside, or for which a person has been pardoned or has had civil rights restored, shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

18 U.S.C. § 921(a)(20); Minn. Stat. § 624.712, subd. 10

For any person convicted of a crime of violence, the expungement order for the record of the conviction for a crime of violence must provide that the person is not entitled to possess a firearm for the remainder of the person’s lifetime. The law does not apply to people who receive a relief from disability under federal law or those whose ability to possess firearms has been restored under section 609.165, subdivision 1d.

Minn. Stat. § 609A.03, subd. 5a

Another provision of expungement law deals with the restoration of firearms eligibility for first-time drug offenders who receive a deferred prosecution under Minnesota Statutes, section 152.18. The expungement order in this case restores the person to his or her statute before the arrest, indictment, or information.

In addition, the law relieves the person of the legal requirement to acknowledge at any time, including when submitting to a federal or state background check for the purpose of purchasing a firearm or obtaining a permit to carry a pistol, that the person had previously been arrested and adjudicated as a first-time drug offender.

Minn. Stat. § 609A.03, subd. 6

Buying, Selling, and Registering Firearms

This section describes federal and Minnesota laws governing commerce in firearms, including: federal licensing of firearms dealers; the federal criminal history background check process required for the transfer of any firearm from federally licensed firearms dealers to unlicensed individuals; Minnesota's background check and permit process for purchasers of pistols and certain military-style rifles; and firearms transfers between unlicensed individuals. All of these provisions appear in either the federal or Minnesota gun control acts.

Registration of Firearms and Firearms Owners

The only firearms registration law applicable within Minnesota is the National Firearms Act of 1934, which requires registration by sellers and owners of gangster-type weapons, such as machine guns (i.e., automatic weapons), short-barreled rifles, short-barreled shotguns, and firearm silencers.

However, unlike a few states,⁵² Minnesota has no laws requiring registration of firearms or firearms owners.⁵³

26 U.S.C., ch. 53

Federal Licensing for Firearms Dealers

A key provision of the federal Gun Control Act creates a nationwide dealer-licensing scheme to regulate interstate commerce in firearms. Under the act, any person wishing to engage in the manufacturing, importing, or dealing in firearms (excluding antique firearms) must first obtain a license from the U.S. Secretary of Treasury and become a federal firearms licensee (FFL). The license enables the holder to ship, transport, and receive firearms in interstate or foreign commerce. The FFL must maintain detailed records of all acquisitions and dispositions of firearms and comply with applicable federal, state, and local laws when transferring firearms (by sale or otherwise).⁵⁴

The Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE) is the agency charged with enforcing the dealer-licensing provisions of the federal Gun Control Act. BATFE notes that

⁵² California, Connecticut, Hawaii, Michigan, and New Jersey, as well as Chicago, New York City, and Washington, D.C., each have laws or ordinances requiring the registration of handguns, semi-automatic, military-style assault weapons, or other firearms.

⁵³ While dealer recordkeeping required by the federal Gun Control Act does not constitute registration, it does facilitate gun tracing to some extent.

⁵⁴ Federal law provides for distinct categories of licensing for firearms importers, manufacturers, dealers, and collectors, with corresponding distinct license fees and regulations. Unless necessary, this publication ignores that distinction by use of the "federal firearms licensee" or "FFL." "Unlicensed" persons are commonly referred to as "non-FFLs."

such transaction records are helpful in enabling tracing of some guns used in crimes and also provide a basis for investigating illegal firearms trafficking. With a few exceptions,⁵⁵ the federal government itself is prohibited from keeping identifying information on gun buyers.⁵⁶

FFLs, including dealers, are licensed to operate from a fixed location, such as a specific commercial store. However, FFLs may conduct business temporarily at a location other than the location specified on the license if the temporary location is at a gun show or event sponsored by any local, state, or national organization devoted to the collection, competitive use, or other sporting use of firearms in the community. The temporary location must be within the same state as the licensed location.

A key role of the FFL is to ensure that a background check has been conducted on any prospective firearm purchaser—i.e., the transferee—prior to completion of the transfer and irrespective of where the transfer takes place.

18 U.S.C. § 923

Federal Waiting Period and Background Check System

The Brady Handgun Violence Prevention Act of 1993 amended the federal GCA by creating two specific mechanisms for screening prospective firearms buyers to help prevent firearms sales (of both handguns and long guns) to persons who are prohibited from possessing firearms under either federal or state law, or both.⁵⁷

The Brady Bill or Brady Act, as it is commonly known, created a national five-day waiting period for the purchase of handguns (which was already required under Minnesota law), and directed the U.S. Attorney General to create a computerized national instant criminal background check system (NICS), which was planned to obviate the need for the waiting period. The act directed that the new federal five-day waiting period be temporary, and expire on the date that the attorney general determined that NICS is fully operational. This occurred on November 30, 1998.

As amended by the Brady Bill, the federal Gun Control Act currently prohibits an FFL from transferring, including selling, a firearm to a private citizen who is not an FFL, unless the prospective buyer first submits to and passes a point-of-sale background check using the FBI's

⁵⁵ The act directs that an FFL must report any sales involving the transfer of more than one pistol or revolver to a non-FFL within any five-day period.

⁵⁶ United States Code, title 18, section 923(g)(1)(A), directs FFLs to maintain records of firearms transactions at the FFL's place of business as prescribed by the U.S. Attorney General, but does not require FFLs to submit reports and information with respect to such records and the contents thereof, except as expressly prescribed by this statute. Required reports include: (1) reports on multiple sales of handguns to any unlicensed person (any non-FFL) within any five-day period; and (2) forms completed by firearms-ineligible persons who attempt to purchase a firearm.

⁵⁷ Pub. L. No. 103-159; 107 Stat. 1536 (1993).

NICS.⁵⁸

When making a sale to a nonlicensed, private individual (a non-FFL), the FFL must request and review the prospective buyer's government-issued identity card (e.g., a driver's license), and have the buyer complete a federal form on which the buyer is queried under oath about his or her eligibility within each of the several firearms-prohibition categories.⁵⁹

The buyer must provide yes/no answers to several very specific questions regarding the person's eligibility to possess firearms, including one explicitly asking whether the applicant is prohibited from possessing firearms under either federal or state laws. The application also requires a signed authorization for the release of relevant mental health commitment information to the investigating law enforcement agency. Federal law provides significant felony penalties for any fraudulent response on this form.

The FFL must screen the form for completeness and phone the FBI's NICS for what is typically an instantaneous check of the buyer's eligibility. This check generally takes only a minute or two, but it is allowed to take up to three days if the FBI needs the time to sort out a data question. If the sale is approved, the FBI issues a code number, which the FFL records on the completed form and must retain on file for a period of at least 20 years.⁶⁰ The dealer can then complete the sale and transfer the firearm to the buyer.

The NICS background check requirement applies to all types of firearms, not just to handguns as did the now expired waiting-period requirement. But like the waiting period, NICS applies only to firearms transfers from an FFL to an unlicensed, private individual. Sales between private parties residing within the same state are not regulated under the federal Gun Control Act nor Minnesota law, and thus are not subject to background checks under NICS. Transfers of firearms between unlicensed individuals in interstate commerce is prohibited. Transfer of both handguns and long guns between unlicensed individuals living in different states must be done through arrangements with FFLs. The buyer and seller are responsible for arranging these transactions with willing FFLs. The FFL must then perform a NICS check, and typically charges a fee. Also, FFLs are not required to perform background checks when transferring firearms to other FFLs.⁶¹

⁵⁸ Some states do not share certain background data (e.g., mental health commitment data) with the federal government and have applied for and received FBI approval for acting as their own state point of contact (POC) for instant criminal background checks on prospective gun purchasers by agreeing to have a state agency conduct them. Currently, 13 states serve as full POCs and ten others serve as partial POCs under such arrangement. For the firearm purchaser and the licensed dealer, nothing differs from the usual NICS check in any other state, except the phone number the dealer calls at the time of sale.

⁵⁹ This is Form 4473, Firearms Transaction Record, as designed by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE), U.S. Department of Justice.

⁶⁰ The Brady Bill explicitly prohibits federal and state government agencies from keeping any record of the transaction, unless the person has purchased two or more handguns within a five-day period, or the request for approval for the transfer has been denied due to the applicant being a firearms-prohibited person, in which case the agency must keep a record.

⁶¹ Each FFL must submit to a thorough background check when applying for federal licensing and, thus, is not required to undergo a duplicative background check when transferring a firearm.

In addition to the federal background check, Minnesota law places further requirements on the transfer of a pistol or semiautomatic military-style assault weapon (but not other long guns) from an FFL to a person who is not an FFL.

18 U.S.C. §§ 921; 922(s), (t); 923

Transfers Between Unlicensed Individuals: No Background Checks

In contrast to the provisions governing sales by licensed dealers, there is no provision in federal or Minnesota law that requires background checks, record-keeping, or location restrictions for firearms transfers between private individuals who are not FFLs, other than certain federal law restrictions pertaining to acquiring or disposing of firearms across state lines.⁶²

Exempted Transfers

Federal law authorizes an unlicensed individual (a non-FFL) who is not a prohibited person to sell a firearm (handgun, rifle, or shotgun) to an unlicensed resident of his or her own state, as well as to loan or rent a firearm to a nonresident of the state for temporary use for lawful sporting purposes, provided that:

- (1) the transferor does not know or have reasonable cause to believe that the transferee is prohibited from receiving or possessing firearms under federal or state law;
- (2) the sale, delivery, and receipt fully comply with the laws of both states; and
- (3) the transferor and transferee meet in person to make the transfer.

Since these types of firearms transfers are not regulated by either federal or Minnesota law, they entail no legal requirements for background checks.

Federal law also provides that an unlicensed individual may sell or transfer a firearm to an FFL in any state, but is prohibited from transferring interstate to a licensed collector any firearm other than a curio or relic.⁶³

18 U.S.C. §§ 922(a)(3) and (5); 922(b)(3); 27 CFR §§ 478.29; 478.30

Minnesota Penalties

It is a gross misdemeanor for any person, including a private party, to intentionally transfer a pistol or assault weapon to another knowing that the transferee is disqualified by law from

⁶² However, there are limitations on the transfer of certain types of firearms (categorized as Class II), such as machine guns, short-barreled shotguns, short-barreled rifles, and firearm silencers.

⁶³ A federal firearms collector's license is limited in application to firearms that qualify as curios and relic. See 18 U.S.C. §§ 922(z)(2)(C); 921(a)(13).

possessing the weapon.

The transfer violation becomes a felony if the transferee possesses or uses the weapon in furtherance of a felony crime of violence within one year after the transfer. However, the felony penalty does not apply if the transferee subsequently becomes eligible to possess the weapon before using or possessing it in the commission of a crime.⁶⁴

Minn. Stat. § 624.7141

Dealing in Firearms without a License

The federal Gun Control Act requires federal licensing for any person acting as a firearms dealer. Under the law, the term “dealer” means a person who is engaged in the business of selling firearms at wholesale or retail or the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms. A pawnbroker is also considered a firearms dealer. Additionally, “licensed dealer” means any dealer who is licensed under the provisions of the law.

18 U.S.C. § 921(a)(11)

As a general test of this statute, courts have used the totality-of-the-circumstances approach. For example, an individual was found guilty of violating the statute for selling 11 firearms within a “reasonably short period of time.” In upholding that conviction, the 7th federal Circuit Court of Appeals stated:

There appears to be little doubt that “dealer” means anyone who is engaged in any business of selling firearms, and that “business” is that which occupies time, attention and labor for the purpose of livelihood or profit.⁶⁵

That ruling cited another federal circuit court’s reasoning, as follows:

In construing a similar definition of a “dealer” in 15 U.S.C. § 901(5), the Ninth Circuit has recently said in *Kaneshiro v. United States*, 445 F.2d 1266, 1269-1270 (9th Cir. 1971):

“Next, appellants contend that there was no evidence, outside of the single shipment of guns to Tokyo, from which the jury could reasonably have inferred that either of them was a dealer. An isolated transaction, while not in itself a business, is, nevertheless, evidence to be considered in determining whether the seller is engaged in a business. *Bush v. United States*, 218 F.2d 223 (10th Cir. 1954); *Supreme Malt Products Co. v. United States*, 153 F.2d 5 (1st Cir. 1946). . . . [T]he fact that the guns were sold in two separate installments to two

⁶⁴ As a practical matter, authorities generally strongly advise any unlicensed individual (non-FFL) desiring to transfer a firearm to another unlicensed person to request in advance that the prospective buyer demonstrate eligibility by means of having a valid permit to purchase or permit to carry the firearm, as evidence that the recipient is not a firearms-prohibited person.

⁶⁵ *U.S. v. Gross*, 451 F.2d 1355.

different people, is ample evidence to support a finding that appellants were ‘engaged in the business of selling firearms’ and were to that extent dealers under section 901(5).”^{66, 67}

Firearms Dealer Security Measures

All FFLs who operate a retail business establishment in which pistols are sold (excluding the dealer’s home) must comply with certain security measures designed to reduce the risk of burglary. These security measures are established in Minnesota Statutes and in standards adopted by the Department of Public Safety and are different for small firearms dealers (up to 50 pistols displayed for sale at a time) and large firearms dealers.

Minn. Stat. § 624.7161

Firearms Dealers: Child Safety Requirements

In each business location in which firearms are sold by a licensed firearms dealer, the dealer must post a conspicuous warning that states: “It is unlawful to store or leave a loaded firearm where a child can obtain access.” Violation is a petty misdemeanor with a maximum fine of \$300.

Minn. Stat. § 624.7162

⁶⁶ *Stone v. District of Columbia*, 91 U.S. App. D.C. 140, 198 F.2d 601, 603 (1952).

⁶⁷ The 8th Circuit has adopted the same approach in *U.S. v. Williams*, 502 F.2d 581. The fact that the statute does not provide guidance on the number of sales, dollar amount, nor as to whether a fixed place of business and certain number of employees does not make it unconstitutionally vague.

Shipping Firearms

Postal Service: Mailing Firearms Generally Prohibited

Federal law prohibits any non-FFL from transferring a firearm to a nonlicensed resident of another state. A non-FFL may mail a shotgun or rifle to a resident of his or her own state, or to an FFL in any state. The U.S. Postal Service recommends that long guns be sent by registered mail and that no marking of any kind that would indicate the nature of the contents be placed on the outside of any parcel containing firearms. Handguns are not mailable.

18 U.S.C. §§ 1715; 922(a)(3); 922(a)(5); 922 (a)(2)(A)

Shipping Firearms by Common Carrier

A non-FFL may ship a firearm by a common or contract carrier to a resident of his or her own state or to an FFL in any state. To ship a handgun, a common or contract carrier must be used since it is prohibited to send handguns by mail via the U.S. postal service. In addition, federal law requires that the carrier be notified that the shipment contains a firearm, and prohibits common or contract carriers from requiring or causing any label to be placed on any package indicating that it contains a firearm.

18 U.S.C. §§ 922(a)(2)(A); 922(a)(3); 922(a)(5); 922(e); 27 CFR §§ 478.31; 478.30

Many common carriers have strict company policy restrictions on shipping firearms, and these shipping policies should be checked in advance to determine the available options.

Shipping a Firearm for One's Own Use

Anyone may ship a firearm to himself or herself in care of another person in the state where he or she intends to hunt or engage in any other lawful activity. The package should be addressed to the owner. Persons other than the owner should not open the package and take possession of the firearm.

27 CFR §§ 478.31; 478.30

Out-of-State Acquisition of a Firearm

Nondealers who are not prohibited from possessing firearms may legally obtain firearms from outside their state of residence in the following ways.⁶⁸

⁶⁸ The following contain a survey of federal law. Full compliance with each respective state's law is necessary as well, as state regulations with regard to sales and possession of firearms are not preempted by federal law.

Licensed Firearms Dealers – Any Firearm: An FFL may obtain firearms from an FFL residing in any state. FFLs may also legally receive firearms shipped or otherwise provided to them by non-FFLs from any state.

Through a Home-state Dealer – Any Firearm: A non-FFL may purchase any firearm from an out-of-state FFL or non-FFL, provided that a prior arrangement is made to route the transaction through a licensed dealer in the buyer's state of residence. The dealer must ensure that the buyer submits to the required background check(s).

By Appearing In-person – Long guns: Any person may purchase a rifle or shotgun, but not a handgun, directly from an FFL in another state without involving a home-state dealer, but only by appearing in person at the selling dealer's licensed business premises.

By Loan or Rental – Any Firearm: A licensed dealer may lend or rent any firearm to any person, including a person who is not a resident of the state, for temporary use on or off the premises.

In Any Manner – Antique Firearm: Since an antique firearm (including a muzzleloader) is not regulated as a firearm under the federal Gun Control Act, it may be acquired in any manner from an out-of-state source, including by mail-order sales. However, Minnesota law defines an antique firearm as a firearm and, thus, any person who is prohibited by federal or state law from possessing firearms could be subject to Minnesota penalties for possession of an antique firearm within this state.

Temporary Use at an Event – Any Firearm: A club or association temporarily furnishing firearms, through loan, rental, or otherwise, to participants in a shooting activity does not cause such club to be engaged in the business of a firearms dealer. Thus, the licensing, recordkeeping, and background check requirements of the federal Gun Control Act do not apply, and nonstate residents may participate.

18 U.S.C. §§ 922(a)(3); 922(b)(3); also 27 CFR §§ 478.96; 478.97

Out-of-State Acquisition of Ammunition

An unlicensed person may obtain ammunition from an in-state or out-of-state source, whether in-person or through shipping by common carrier, provided he or she is not a person prohibited from possessing or receiving firearms and ammunition. Neither federal law nor Minnesota law limits the amount or variety of firearms ammunition that an FFL or non-FFL may purchase or safely store.

18 U.S.C. § 922(g) and (n)

Contiguous States

A provision of Minnesota's firearms law referring to "contiguous states" often causes confusion among federally licensed firearms dealers and the unlicensed public. It began with a federal enactment.

The "contiguous state" provision of the federal Gun Control Act of 1968 (GCA) generally allowed unlicensed purchasers to acquire long guns (but not handguns) from FFLs located in a state contiguous to the state in which the purchaser resides if:

- (1) the purchaser's state of residence permitted such sale; and
- (2) the sale fully complied with the legal conditions of sale in both such contiguous states.

Conforming language was enacted into Minnesota Statutes the following year.

In 1986, Congress amended this provision of the GCA to allow FFLs to sell or dispose of long guns to residents of any other state—not just contiguous states—provided that the buyer meets in person with the FFL to accomplish the transfer, and the transfer complies with the laws of both the buyer's and seller's states.

Since the Minnesota statute had been written in permissive rather than restrictive language, it needed, and received, no amending to accommodate this federal law change. Nevertheless, since the provision's title and language continue to read as "contiguous states," it can be confusing. The reader should regard the Minnesota statute as conforming with current federal law and read it as applying in "any other state," rather than being limited to a contiguous state.

Minn. Stat. § 624.71

Background Checks for Firearms Purchasers

Minnesota Permit to Purchase a Pistol: State Background Check

Minnesota law requires that a person who wants to buy a pistol or a semiautomatic military-style assault weapon (but not other long guns) from a federally licensed firearms dealer (FFL)⁶⁹ must first obtain one of the following Minnesota permits, each of which requires a separate state-mandated background check:

- a permit to purchase a pistol, which authorizes the permittee to purchase one or more pistols and/or semiautomatic military-style assault weapons from an FFL, or
- a permit to carry a pistol, which substitutes for a permit to purchase a pistol, and also authorizes the permittee to carry a pistol in most public places.

The background checks for these permits are in addition to the federal NICS background check conducted at the time of purchase, the latter as described in a preceding section.

Minnesota Permit to Purchase a Pistol: Chief's Background Check

In order to obtain a Minnesota permit to purchase a pistol (also referred to as a transferee permit in Minnesota Statutes), a person must apply to the chief of police in the person's city of residence, or to the county sheriff if there is no local police department. No fee may be charged by either authority for this service. The application form requests certain personal information about the applicant, including a statement that the applicant is not prohibited from possessing a pistol or assault weapon. The application also requires a signed authorization for the release of any existing personal mental health commitment information to the investigating law enforcement agency.⁷⁰ Following application, there is a seven-day waiting period (five business days, plus the weekend) while the chief (or sheriff) checks the person's criminal history and mental health commitment information, if any, as well as any other information deemed relevant by the chief.

An application for a permit to purchase may be denied by the issuing authority only if the law enforcement agency determines that the applicant is prohibited from possessing the pistol or assault weapon and provides the applicant specific written reason(s) for the denial. The applicant may appeal a denial to the appropriate district court.

Barring any disqualifying information, following a successful background check and waiting period, the chief issues the person a permit to purchase, which is valid statewide for one year and

⁶⁹ Neither federal nor Minnesota law requires record keeping or background checks for a firearm transfer between unlicensed persons (non-FFLs), irrespective of where such transfer occurs (e.g., at a gun show, a private residence, or elsewhere).

⁷⁰ Police chiefs and sheriffs in Minnesota generally require BATFE Form 4473 for such applications for the state permit. This is the same form required for the NICS background check under federal law.

permits the person to purchase any number of pistols or semiautomatic military-style assault weapons from FFLs throughout the state (provided that with each sale, the person also passes the national instant criminal history background check at the point of purchase (NICS), as described earlier).

A permit to purchase may be renewed annually as often as desired, using the same application and background check process as for the first issuance. However, if at any time the permit holder becomes ineligible to possess firearms under federal or state law, the permit immediately becomes void and must be returned to the issuing authority within five days. It is the legal responsibility of the citizen to know if and when he or she becomes a firearms-prohibited person.

A permit to purchase a handgun is not transferable. Anyone who transfers such a permit to another person is guilty of a misdemeanor. Failure to return a voided permit to purchase to the issuing authority within five days without good cause is also a misdemeanor. It is a gross misdemeanor to knowingly make a false statement in order to obtain a transferee permit.

Minn. Stat. § 624.7131

Application through the Dealer for a Single Transaction

Minnesota law provides a variation on the permit-to-purchase application process that firearms dealers generally no longer utilize.

Under the alternative, a person who does not have a permit to purchase a pistol could first agree to purchase one or more pistols, and/or semiautomatic military-style assault weapons (in a single transaction) from a licensed dealer, contingent upon subsequent approval of that single purchase by the local chief of police. The prospective buyer then must apply for authorization to complete that transaction by applying for a permit to purchase at the store. The dealer submits the prospective buyer's completed application form to the chief of police in the buyer's city of residence. This application through the dealer is subject to the same mandatory seven-day waiting period as the direct application while the chief performs the same background check and employs the same criteria for evaluating the application.

Approval of the application authorizes the prospective buyer to complete only the single planned transaction, that may involve more than one handgun and/or semiautomatic military-style assault weapon. A buyer wishing to employ this permit application process must repeat the full process for each subsequent transaction whether with the same or a different dealer.

It is a misdemeanor for a federally licensed firearms dealer to transfer a pistol or assault weapon to any person whom he or she does not know personally or who does not present evidence of identity. It is also a misdemeanor for a person to fail to provide evidence of identity to an FFL.

It is a gross misdemeanor: (1) to knowingly become a transferee in violation of the law or knowingly make a false statement in order to become a transferee; (2) for an FFL to transfer a pistol or assault weapon in violation of the transfer report requirements; or (3) for an FFL to

transfer a pistol or assault weapon to a transferee, knowing the transferee has made such a false statement, or is otherwise in violation of the transfer requirements of this statute.

It is a felony for an FFL to transfer a pistol or assault weapon to a minor under the age of 18 or otherwise in violation of the law, or to transfer such a weapon to a minor knowing the minor has made a false statement regarding eligibility.

Minn. Stat. § 624.7132

Permit to Carry a Pistol as an Alternative

Minnesota law exempts a person who has a valid permit to carry a pistol from the requirement to have a permit to purchase a pistol, when purchasing a pistol or semiautomatic military-style assault weapon from an FFL.

The background check requirements for the two permits are essentially identical, except for the different issuing authorities who make the checks and the different waiting periods.⁷¹ The application for a permit to carry entails a criminal and mental health commitment background check by the person's local sheriff, with a waiting period of up to 30 days for issuance. Once issued, the permit to carry is valid statewide for a period of five years from date of issuance and may be used in place of a permit to purchase a pistol as well as for carrying a pistol in public places.

Minn. Stat. §§ 624.7131, subd. 9; 624.714

⁷¹ The difference between the background checks is that one is conducted by the person's local police chief (for the permit to purchase) while the other is performed by the person's county sheriff (for the permit-to-carry). In practice, each authority generally relies on the FBI's NICS for performing the criminal history background checks for these permits.

Carrying Firearms in Public: The Minnesota Personal Protection Act

In Minnesota, it is prohibited for any person other than a law enforcement officer on official duty, to carry a pistol or any other firearm in public, unless the person possesses a valid permit to carry a pistol.

Under a 2003 law, the Minnesota Personal Protection Act (MPPA), people can apply for a permit to carry a pistol in public places throughout Minnesota. Included here are brief discussions of major court rulings, as well as selected provisions of the law that have generated continued public debate since the law's enactment—i.e., those related to employers, churches, parking lots and higher educational institutions.⁷²

Legislative History of MPPA and Court Challenges

A number of states, including Minnesota, have enacted shall-issue language into their firearms statutes over the past few decades. Shall-issue laws require licensing officials within a state to issue a permit to carry a handgun in public places to any applicant who meets specific qualifications and who is not prohibited from possessing firearms. Such laws limit the discretion of local law enforcement officials that previously existed under the laws of many states (i.e., may-issue laws).

While similar shall-issue bills were introduced in the Minnesota Legislature during the late 1990s, shall-issue legislation was enacted in the 2003 Legislature, as an amendment to a Department of Natural Resources bill. The act was titled the Minnesota Citizens' Personal Protection Act of 2003 (MPPA).⁷³

The new law was immediately challenged on a number of grounds, principally by a group of Twin Cities-area churches. Soon after enactment, Minnesota district and appellate courts overturned the MPPA, finding its enactment in violation of the single-subject provision of the Minnesota Constitution.⁷⁴ In 2005, the Minnesota Legislature reenacted the MPPA as a stand-

⁷² Additional information about the Minnesota permit-to-carry law may be found at the following two websites: Minnesota Bureau of Criminal Apprehension (BCA): <http://www.bca.state.mn.us/CJIS/Documents/CarryPermit/permittocarry.html>; and Minnesota Legislative Reference Library: <http://http://www.leg.state.mn.us/lrl/issues/issues.aspx?issue=firearmcarry>.

⁷³ Minn. Stat. § 624.714; Laws 2003, ch.28, art. 2, § 30; See also Laws 2005, ch. 83, § 1.

⁷⁴ On January 13, 2005, the Minnesota Court of Appeals upheld a Ramsey County District Court ruling holding that the MPPA was unconstitutional due to the legislature's violation of the single-subject requirement during enactment (*Unity Church of St. Paul v. State of Minnesota*, 694 N.W.2d 585 (Minn. App. 2005)). In upholding the lower court ruling, the court of appeals said that the MPPA was not sufficiently germane to the original bill.

The court noted that articles 2 and 3 of chapter 28 clearly dealt with "handgun permitting," but that article 1 dealt with "an array of 'boilerplate' DNR-related statutory amendments addressing: (1) legislative approval of state park fees; (2) the commissioner's authority to enter into grant agreements" and so on. The court relied on the fact

alone bill.⁷⁵

Other legal challenges to the MPPA have been brought. In February 2008, the Minnesota Court of Appeals affirmed a district court ruling that churches are exempt from the provisions of the act that prohibit private establishments from restricting the carrying of firearms within their parking lots and parking facilities and can decide for themselves how to notify people of any weapons prohibition policies they may have.⁷⁶ This finding limited the law's application to religious institutions.

MPPA Provisions Generally

Permit Required; Penalties

Any person, other than a peace officer, who carries, holds, or possesses a pistol in a motor vehicle, snowmobile, or boat, or on or about the person's clothes or person, or otherwise is in possession of a pistol in a public place without first having obtained a permit to carry the pistol commits a gross misdemeanor. Any repeat violation is a felony.

Minn. Stat. § 624.714, subd. 1a

Permit Not Required in Certain Instances

A permit to carry a pistol is not required for any the following activities:

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

Minn. Stat. § 624.714, subd. 9

that while articles 2 and 3 clearly dealt with handgun permitting, article 1 dealt with "natural resources" and "the environment."

⁷⁵ Senate File 2259 (2005) was drafted to retroactively reenact the MPPA of 2003 verbatim, such that it continued to be in force regarding existing permits previously issued under the act. Subsequent sections of the reenacting legislation then amended the act, in response to the court rulings and certain other legislative concerns.

⁷⁶ *Edina Community Lutheran Church and Unity Church of St. Paul v. State of Minnesota*, 745 N.W.2d 194 (Minn. App. 2008).

Issuing Authority

Sheriffs are the sole issuing authority for Minnesota permits to carry a pistol. A sheriff may contract with a police chief to process permit applications, but even then the sheriff remains the issuing authority and the police chief acts as the sheriff's agent.

Minn. Stat. § 624.714, subd. 2, para. (d)

Shall Issue

A sheriff must issue a permit to an applicant who meets the statutory requirements, applies in the prescribed manner, and passes the required criminal and mental history background check. However, an exception allows the sheriff to deny a permit to carry application on the grounds that there exists a substantial likelihood that the applicant is a danger to self or the public if authorized to carry a pistol under a permit. Such denial may be judicially appealed.

Minn. Stat. §§ 624.714, subd. 2, para. (b); 624.714, subd. 4; 624.714, subd. 6, para. (a), cl. (3)

Permit Valid Statewide for Term of Five Years

A Minnesota permit to carry a pistol is valid statewide, for a period of five years from the date of issuance, whether new or a renewal. It becomes invalid upon expiration, or upon suspension, revocation, or surrender at any time.

Minn. Stat. § 624.714, subd. 7, para. (c)

Eligibility Requirements

To be eligible for a Minnesota permit to carry a pistol, a person must:

- be a United States citizen or a permanent resident alien;
- be at least 21 years of age;
- complete an application form;
- not be prohibited from possessing a firearm under Minnesota Statutes, section 624.714;
- not be listed in the criminal gang investigation system;
- be a resident of the county from which the person is requesting a permit, if a Minnesota resident (nonresidents may apply to any Minnesota county sheriff); and
- provide a certificate indicating that the applicant has completed authorized firearms training by a certified instructor within the previous year, whether for a new or renewal application.

Minn. Stat. § 624.714, subd. 2, para. (b)

Application Procedure

To obtain a Minnesota permit to carry a pistol, a person must successfully complete a certified

firearms safety and legal training course from a certified instructor within one year of application, complete a standardized Minnesota application form,⁷⁷ and show proof of identity during application. Minnesota residents must submit the application and identifying documentation and the requisite fee to the sheriff in the county where the applicant resides. Non-Minnesota residents may apply to any Minnesota county sheriff. All applications must be made in person.

A person who is not a U.S. citizen but has permanent resident status in the United States may apply by providing the sheriff with the applicant's resident alien card issued by the federal government.

Application forms and instructions are available at the county sheriff's office and on the Minnesota Bureau of Criminal Apprehension's (BCA) website.

The sheriff is required to perform a criminal and mental history background check on the applicant, which may be the basis of any application denial.

The sheriff may charge a fee of up to \$100 for a new application, and up to \$75 for a renewal application, to cover actual application processing expenses.

Minn. Stat. § 624.714, subd. 3

No Specific Pistol Required

Unlike in a few states, it is not necessary to show, or even possess, a pistol in order to apply for a Minnesota permit to carry a pistol. An applicant or permit holder is not limited to carrying any particular pistol or particular type of pistol, and there is no limit to the number of pistols that may be simultaneously carried by a permit holder.

Disclosure Required Upon Request

Upon the request of a peace officer, a permit holder must disclose to the officer whether or not he or she is currently carrying a firearm.

Minn. Stat. § 624.714, subd. 1b, para. (d)

Private Establishments May Prohibit Firearms

The owners of private establishments may prohibit possession and carrying of firearms on their property, although these prohibitions cannot include public or private parking lots and parking facilities.

Employers also may restrict their employees from possessing firearms in any location (other than parking lots and parking facilities) while the employee is acting in the course and scope of

⁷⁷ The basic application form used for both the Minnesota permit to purchase a pistol, as well as the Minnesota permit to carry a pistol, is ATF Form 4473, Firearms Transaction Record, BATFE, U.S. Dept. of Treasury.

employment.

The law defines a private establishment as one that is owned, leased, or controlled by a nongovernmental entity and is being used for a nongovernmental purpose. The owner or operator of a private establishment may prohibit firearms in the establishment by making a reasonable request to that effect of persons entering the establishment by either posting a sign at each entrance stating that firearms are prohibited on these premises or by personally informing them.⁷⁸ Failure to comply with such a request by leaving the premises once notified is a petty misdemeanor, punishable upon a first offense by a fine of up to \$25. A firearm carried in violation of this requirement is not subject to forfeiture.

The statute also explicitly allows the lawful occupant of any private dwelling to prohibit firearms from or to regulate them within the dwelling and to notify others of such desire in any lawful manner. However, the statute prohibits landlords of commercial and residential properties from restricting renters or their guests from possessing firearms on the premises.

Minn. Stat. § 624.714, subd. 17

Other Prohibited Places

Other Minnesota and federal laws generally prohibit and penalize firearms possession and carrying by any member of the public on school property at any time, and on the property of day care centers while children are present, as well as on the grounds of correctional institutions, state psychiatric hospitals, courthouses, and into any public building within the State Capitol complex.

Minn. Stat. §§ 609.66, subds. 1d, 1g; 641.165

Reciprocity States

Minnesota law requires that in order for another state to be granted permit-to-carry reciprocity with Minnesota, that state must have substantially similar standards for issuance, as determined and published periodically by the BCA. A resident of any state, including Minnesota, who is not otherwise prohibited from possessing a pistol, may lawfully carry a pistol in Minnesota, if the person has a valid permit to carry issued by the state of Minnesota or a reciprocity state.⁷⁹

However, a permit issued by a reciprocity state does not supersede Minnesota's laws or

⁷⁸ Upon reenactment of the MPPA in 2005, the joint notification requirements was made into separate alternatives, such that a property owner is now able to notify the public that "firearms are prohibited in these premises" either by posting a sign or by otherwise informing them. Prior to this amendment, property owners who sought to prohibit firearms on their property were required to both post and notify.

⁷⁹ Some Minnesotans are opting to obtain a pistol-carry permit from a reciprocity state (especially from Utah and/or Florida, until they were delisted in 2011 as reciprocity states for Minnesota), in addition to, or instead of, a Minnesota permit to carry. Some reciprocity states have lower application and renewal fees and have broader reciprocity with other states than does Minnesota. Thus, permits from those state enable permittees to carry a pistol in more states than does a Minnesota permit and at a lower fee.

regulations and conduct that is legal in a reciprocity state may not be legal in Minnesota, and vice versa. Each permit holder is expected to know Minnesota firearms laws when possessing and carrying firearms in Minnesota.

According to the BCA website, as of November 2012, the following 15 states have been granted reciprocity by Minnesota: Alaska, Arkansas, Kansas, Kentucky, Louisiana, Michigan, Missouri, New Mexico, Nevada, Ohio, Oklahoma, Tennessee, Texas, Utah, and Wyoming.^{80, 81}

Minn. Stat. § 624.714, subd. 16

Concealment Not Required

Minnesota law does not require that a pistol being carried under a valid permit to carry be concealed, although it is permissible to conceal it in any manner. The pistol may be carried either openly or concealed, but only if the person possesses a valid permit to carry.

Evidence of a Permit

A permit holder who is cited for failure to have the permit in possession when requested by law enforcement can later introduce evidence of a permit, including a public record of the permit, as a defense against the violation.⁸² The defendant bears the burden of proving he or she has a permit.⁸³

Alcohol Consumption While Carrying a Pistol

The MPPA does not generally prohibit a person with a valid permit from carrying a pistol into a bar or other alcohol-serving establishment, nor from consuming alcohol while carrying a pistol. However, state law prohibits carrying a pistol when the permit holder is under the influence of alcohol, or when the person's alcohol concentration (AC) is greater than .04 percent.⁸⁴

Violations of this alcohol restriction while carrying a firearm are punishable as a misdemeanor, or in certain circumstances as a gross misdemeanor, along with revocation of the permit for up to one year. Alcohol test refusal in the face of probable cause is punishable with a civil fine of up to \$500, along with similar revocation of the permit.

⁸⁰ Minnesota law requires that the current list of reciprocity states be published on the Internet. The list is available from the BCA, at: <https://dps.mn.gov/divisions/bca/bca-divisions/administrative/pages/permit-to-carry-reciprocity.aspx>

⁸¹ The use of the term "reciprocity" in this context does not necessarily mean that Minnesota permit holders are allowed under the laws of any other state to carry in that state. To determine whether a Minnesota permit to carry is valid in another state, it is necessary to directly inquire of proper authority in that state.

⁸² *State v. Paige*, 256 N.W.2d 298, 304 (Minn. 1977); see also *State v. Poupard*, 471 N.W.2d 686, 689 (Minn. App. 1991).

⁸³ *State v. Taylor*, 594 N.W.2d 533, 535 (Minn. App. 1999).

⁸⁴ Minnesota's per se alcohol concentration limit for driving while impaired (DWI) is .08 percent, or .04 percent for commercial vehicle driving.

Minn. Stat. §§ 624.7142; 624.7143

Penalties for Carrying a Pistol without a Permit

Under the law, it is a gross misdemeanor for a person to carry or possess a pistol in a public place without first obtaining a permit to carry. A person who is convicted a second or subsequent time is guilty of a felony.

Minn. Stat. §§ 624.714, subd. 1; 624.84, subd. 1; 624.7181, subd. 1, para. (c)

Relevant Case Law

Although the MPPA was significantly revised with its enactment in 2003 and reenactment in 2005, several major court interpretations of provisions of this statute are still in effect, including the following ones.

- **Vehicle as a Public Place:** For purposes of carrying a firearm, an individual's car is considered a public place and, thus, with certain exceptions,⁸⁵ a person must have a permit to carry a loaded or uncased firearm inside a vehicle.⁸⁶ In addition, apartment building hallways and common areas are considered public, although the individual units are private.⁸⁷ "Public place" also includes private property where discharge of a gun could easily cause injury to people passing by, such as a driveway near a public street.⁸⁸
- **Place of Business:** This topic was litigated on several occasions before the "shall issue" provisions were established. In the past, courts have ruled that a person may carry a handgun without a permit in his or her place of business, although this must be a fixed place and not a vehicle.⁸⁹ According to an opinion issued by the state attorney general in 1991, the "place of business" exception (to the prohibition against carrying a firearm without a permit) applies only to persons with a proprietary interest in the business, not to employees.⁹⁰

Courts have also ruled that it is permissible to carry a firearm from one's home to one's place of business without a permit, as long as the home is within reasonable proximity to the place of business.⁹¹

⁸⁵ The exceptions are specified in Minnesota Statutes, section 97B.045, which deals with transportation of firearms.

⁸⁶ *State v. Taylor*, 594 N.W.2d 533, 535 (Minn. App. 1999).

⁸⁷ *State v. Hicks*, 583 N.W.2d 757, 759-60 (Minn. App. 1998).

⁸⁸ *State v. DeLegge*, 390 N.W.2d 10, 11 (Minn. App. 1986).

⁸⁹ *State v. Palmer*, 636 N.W.2d 810, 812-13 (Minn. App. 2001).

⁹⁰ Op. Atty. Gen. 201a-2 (May 23, 1991) 1991 WL 529518, at *1.

⁹¹ *State v. Linville*, 598 N.W.2d 1, 3 (Minn. App. 1999). This case dealt with a person trying to use the exception when his place of work and home were 1,000 miles apart, and he had to use an airplane to get back and

The court has also determined that the defendant bears the burden of proof that he was travelling directly between home and his business if arrested for carrying a firearm without a permit to carry. The court showed some flexibility in interpreting that term, reasoning that, for the business-home travel exception to apply, evidence that the person was travelling along a direct route between the two locations is helpful, but neither sufficient nor required, for demonstrating compliance with the law.⁹²

- **Validity of Restrictions:** Courts have determined that the state can reasonably restrict, by permit requirement, classes of persons who are allowed to carry pistols, where restriction is in the interest of public safety.⁹³ State law preempts local government criteria for issuing permits.⁹⁴
- **Legal Defenses:** Other court rulings address legal defenses against the charges of violation. A person who does not have a permit with him or her at the time law enforcement requests it can later introduce evidence of a permit, including a public record of the permit, as a defense against a charge of violating this statute.⁹⁵ The defendant bears the burden of proving he or she has a permit.⁹⁶

Vehicles and Parking Lots: Employers, Churches, and Higher Educational Institutions

Employer Policies for Employees

Part of the law authorizes employers to establish firearms policies for their employees. Under Minnesota Statutes, section 624.714, subdivision 18, paragraph (a), provides that:

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.

“Acting in the course and scope of employment” is not defined in statute. Under common law, it roughly means acts by an employee relating to the employee’s duties as an employee and within

forth. The court noted that allowing the defendant to use this exception would allow the exception to swallow the rule, in that anyone would be able to fall under it regardless of proximity. Thus, “reasonable” proximity remains for the courts to decide. Conceivably, most intra-metro travelers would fall within this broad definition, as well as possibly those who travel from other parts of the state into the metro and vice versa.

⁹² *State v. Poupard*, 471 N.W.2d 686 (Minn. App. 1991).

⁹³ *State v. Folstrom*, 331 N.W.2d 231, 233 (Minn. 1983).

⁹⁴ *Application of Hoffman*, 430 N.W.2d 210, 213-14 (Minn. App. 1988).

⁹⁵ *State v. Paige*, 256 N.W.2d 298, 304 (Minn. 1977).

⁹⁶ *State v. Taylor*, 594 N.W.2d 533, 535 (Minn. App. 1999).

work-related limits of time and place. Employees working within their employer's place of business are subject to their employer's firearms policies.

But, under the law, only if an employee has agreed to use his or her vehicle for the employer's job-related transportation (and is compensated for time and/or mileage, for example), does the employee's vehicle become a temporary workplace, and even then, only during the hours and for the purpose that the employee is at work.

Apart from that narrowly defined situation, an employer's policies may not apply to an employee's vehicle. For example, an employer may not restrict firearms carry by an employee while the person is commuting to work, parking while at work, nonwork activities off the employer's premises (such as during unpaid time off-premises for lunch or personal errands), activities at home, activities during an employee's off hours, and so on.

Minn. Stat. § 624.714, subd. 18, para. (a)

Employers Parking Lots – An Exception. Minnesota Statutes, section 624.714, subdivision 18, paragraph (c), further provides that an employer “may not prohibit the lawful carry or possession of firearms in a parking facility or parking area.”

This exception authorizes an employee to secure any lawfully possessed firearm in his or her vehicle located in or on the employer's parking facility or parking lot, in spite of any company policy that might exist to the contrary. It also allows the person to lawfully carry the firearm outside the vehicle while in the parking facility or parking lot, even if that facility or lot is owned by an employer with a policy prohibiting carrying of firearms.⁹⁷

Except for the time that an employee's vehicle is being used directly in the course and scope of employment in accordance with company policy, this exception authorizes an employee to secure his or her firearms in the employee's vehicle located in or on the employer's parking facility or parking lot. State law authorizing such behavior supersedes any company policy to the contrary. No employment sanctions are authorized with regard to this exception.⁹⁸

This aspect of the law on firearms in employer parking lots does not supersede or set aside any other Minnesota laws prohibiting the possession of firearms on the grounds of a state correctional facility or state hospital.

Minn. Stat. §§ 624.714, subd. 18, para. (c); 243.55; 641.165

⁹⁷ Under this statute, the only exception to this rule is where the employee's vehicle is being used directly in the course and scope of the employment. During that specific time period, the company policy is in effect, but beyond that the company policy cannot extend to vehicles.

⁹⁸ Employer sanctions are expressly authorized only for violations of paragraph (a). That express authorization prevents reading an implied authorization into another paragraph of the same statute. Use of the term “notwithstanding” also makes this clear.

Churches and Parking Lots. Case law provides an exception to possession of firearms when the employer is a church. The Minnesota Court of Appeals has ruled that churches may prohibit firearms from their property in any reasonable manner, including from their parking lots and parking facilities.⁹⁹ Churches' firearms policies apply to anyone, including their own employees, parishioners, and other visitors.¹⁰⁰

Public Postsecondary Educational Institutions

Minnesota Statutes, section 624.714, subdivision 18, paragraph (b), provides:

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.

Read together with the language relating to employers above, the law authorizes public postsecondary institutions to prohibit firearms carrying and possession by:

- its employees, while they are in the course and scope of employment, whether on or off campus; and
- by its students while on campus.

However, the law explicitly provides that public postsecondary institutions may not prohibit the carrying of or possession of firearms by either its employees or students in parking facilities or parking lots. Additionally, such institutions may not prohibit the carrying of or possession of firearms by its employees on campus during times when they are not acting in the course and scope of employment.¹⁰¹

The law does not authorize public postsecondary institutions to prohibit the carrying of firearms or possession by members of the public who are not its own students or employees. Only private establishments, including private schools at all levels, are so authorized. Thus, members of the public who are neither employees nor students of a public postsecondary institution may lawfully carry on campus in compliance with a valid permit to carry.

Minn. Stat. § 624.714, subd. 18, para. (b)

The University of Minnesota. The University of Minnesota (UMN) prohibits the carrying of

⁹⁹ *Edina Community Lutheran Church v. State*, 745 N.W.2d 194, 210-12 (Minn. App. 2008).

¹⁰⁰ *Id.* A church, at its discretion, may also allow exceptions to the policy, such as for security guards or for other specific church officials or church members.

¹⁰¹ An employee of a public postsecondary institution wishing to carry or possess firearms while on institution property would need to have a clear understanding of the meaning of his or her own scope of employment to determine whether such behavior is permissible under the law. For example, it is conceivable that an employment contract could be written such that employees are always acting in the course and scope of employment whenever they are on campus or at an institution event. In that situation, an employee might always be subject to the institution's firearms prohibition policy while on campus (except for parking lots and parking facilities).

firearms on its campuses and various other institutional properties. UMN has a special legal status known as constitutional autonomy that makes it a separate department of government, not just a government agency. Its autonomy is based on recognition in the Minnesota Constitution of the university charter when Minnesota became a state. The constitutional status has been affirmed in a number of Minnesota Supreme Court cases.¹⁰² In the advent of a contested case, a court may or may not determine that UMN policy supersedes the MPPA law in regard to firearms carrying by its employees and staff. In contrast, the Minnesota State Colleges and Universities System (MnSCU) is a statutory entity that is subject to Minnesota laws.

Private Postsecondary Educational Institutions. The MPPA does not limit the authority of private postsecondary institutions to regulate or prohibit the carrying or possession of firearms on the institution's property. As private entities, private postsecondary institutions may prohibit firearms from their property for anyone, including its employees and students, as well as other members of the public—except in its parking lots and parking facilities—just as any other private establishment by either posting in the manner prescribed by law, or by personally notifying each person entering.

Minn. Stat. § 624.714, subd. 17

¹⁰² *State ex rel. University of Minnesota v. Chase*, 175 Minn. 259, 220 N.W. 951 (1928).

Transporting Firearms

Transporting a Firearm in a Motor Vehicle

The general law pertaining to transporting a firearm in a motor vehicle stipulates that no person may transport a firearm in a motor vehicle unless the firearm:

- is unloaded and in a closed gun case expressly made for that purpose;
- is unloaded and in the closed trunk of the motor vehicle; or
- is a pistol carried in compliance with the carry permit requirements of the Gun Control Act.¹⁰³

There are exceptions to this law for people who are disabled and wish to transport the firearm for hunting purposes in compliance with the game and fish laws.^{104, 105}

Under Minnesota law, it is not necessary for a firearm being transported in the closed trunk of a motor vehicle within Minnesota to be enclosed in a gun case. Casing is required when transporting a firearm within the passenger areas of the vehicle.

The general law is that a firearm must be unloaded when being transported in a vehicle, unless it is a pistol being carried in accordance with a valid permit to carry.

The 2009 Legislature amended the game and fish laws to allow an uncased, unloaded rifle or shotgun to be transported anywhere within a motor vehicle in the following specific situations:

- while at a shooting range, where the person has received permission from the lawful owner or possessor to discharge firearms
- while lawfully hunting on private or public land, as evidenced by possession of a valid hunting license (if required for the person for the species being hunted)
- while traveling to or from a site where the person intends to lawfully hunt that day or has lawfully hunted that day

¹⁰³ Minn. Stat. § 97B.045, subd. 1. From its enactment in 1945 (Laws 1945, ch. 248, § 4) until being amended in 1982 (Laws 1982, ch. 543, § 19), the requirement for unloading and casing firearms during transportation applied only to shotguns and rifles, while exempting handguns (i.e., pistols and revolvers). The 1982 amendment limited this exception to the firearms transportation law to only handguns being carried in compliance with Minnesota's then still new pistol-permit law. (See Minn. Stat. § 100.29, subd. 5 (1980), recodified as Minn. Stat. § 97B.045 (1982), by Laws 1986, ch. 386, art. 2, § 10.)

¹⁰⁴ For example, people who are unable to walk or step from a vehicle without a wheelchair may apply to the DNR for a special permit authorizing them to hunt deer in an authorized hunting area from a stationary motor vehicle, notwithstanding the general prohibition on shooting from a motor vehicle.

¹⁰⁵ Prior to enactment of the Minnesota Gun Control Act of 1975, it was lawful to carry a pistol or revolver uncased and/or loaded with ammunition in a motor vehicle or airplane within the state. There was no requirement that such handgun must be carried along with a permit to carry.

In these situations, the rifle or shotgun must remain unloaded while being transported in a motor vehicle.

There are some exceptions to the new law allowing for the uncased transportation of a rifle or shotgun in a motor vehicle. A rifle or shotgun must be cased while being transported in a motor vehicle:

- within Anoka, Hennepin, and Ramsey Counties;
- within an area where discharge of a firearm has been prohibited by ordinance;
- within the boundaries of a home rule charter or statutory city with a population of 2,500 or more;
- on school grounds; or
- as regulated under statutes governing game refuges, shining of artificial lights, and use of night vision devices.

For a firearm to be transported in a motor vehicle, it is not necessary that the vehicle actually be moving; according to the Minnesota Attorney General, placing a firearm in a motor vehicle constitutes transportation.¹⁰⁶ Violation of this statute is a misdemeanor.

Minn. Stat. §§ 97B.045; 97B.055, subd. 3; 624.714; Laws 2009, ch. 176, art. 2, § 40

Transporting a Firearm in a Private Airplane

No person may carry a firearm in a private airplane unless the firearm is unloaded and in a closed gun case, or is unloaded and in the closed baggage area of the aircraft.

Exceptions apply to certain hunting activity otherwise authorized by law and to pilots, law enforcement officers, and military personnel who are engaged in official duties.

Violation of this statute is a misdemeanor, and repeat violation is a gross misdemeanor.

Minn. Stat. § 360.075, subd. 1

¹⁰⁶ Minnesota Attorney General Opinion, May 27, 1953. This AG's opinion cites a Virginia state court ruling in a case involving the illegal transportation of alcoholic spirits in which the court stated that:

The legislature never intended to put upon the Commonwealth the burden of proving that the automobile was actually in motion while the liquor was in it; it is sufficient to show that the vehicle was being used in the process of transporting the ardent spirits, and transportation begins when the spirits are loaded into the car for illegal transportation and ends only when they are removed therefrom. The loading and unloading are necessarily a part of the transportation. (*One Chrysler Roadster v. Commonwealth*, 147 S.E., 243, 244 (Va. 1949)).

Interstate Transportation of Firearms – Federal Preemption

Federal law explicitly preempts all state and local laws regulating the transportation of firearms. Federal law allows any person who is not otherwise prohibited from possessing a firearm to transport a firearm for any lawful purpose from any place where he or she may lawfully possess the firearm to any other place where he or she may lawfully possess it.

During transportation, the firearm must be unloaded, and neither the firearm nor any ammunition may be directly accessible from the passenger compartment of the vehicle. If the vehicle does not have a compartment separate from the driver's compartment, the firearm and ammunition must be contained in a locked container other than the glove compartment or console. A person wishing to claim this federal exemption, must transport the firearm and ammunition in this manner.

Federal preemption applies when the transportation is entirely within the boundaries of a single state, as well as in situations involving interstate transportation.

18 U.S.C. § 926A

Firearms Laws Affecting Minors

Possession of a Pistol or Assault Weapon by a Minor

No person under the age of 18 may possess a pistol or semiautomatic military-style assault weapon unless the person:

- is in the actual presence or under the direct supervision of a parent or guardian;
- is possessing the weapon for military drill purposes;
- is using the weapon in an approved and supervised target practice range; or
- has completed a course designed to teach marksmanship and safety with a pistol or semiautomatic military-style assault weapon as approved by the commissioner of natural resources.

Minn. Stat. § 624.713, subd. 1, cl. (1)

Possession of a Firearm by a Person under Age 16

No child under 16 years of age may possess a firearm without being accompanied by a parent or guardian unless he or she:

- is on the parent or guardian's residential property or on other land owned by them;
- is participating in an adult-supervised target shooting program;
- is participating in a firearms safety program or is traveling to or from the program; or
- is 14 or more years old and has a firearms safety certificate from the DNR.

Minn. Stat. § 97B.021

Certification to Adult Court for Firearms Offenses

The law presumes that a juvenile court proceeding shall be certified to adult court for criminal prosecution if the juvenile was 16 or 17 years old at the time of the alleged offense and if the court finds probable cause to believe the juvenile used a firearm to commit a felony offense.

Minn. Stat. § 260B.125

Committing a Delinquent Act with a Firearm

If a juvenile is adjudicated delinquent for committing an unlawful act while possessing a firearm, the court must order immediate seizure of the firearm and must order the juvenile to perform at least 100 hours of community work service unless the juvenile is placed in a residential treatment program or juvenile correctional facility.

Furthermore, if the court finds that a juvenile committed an unlawful act on school property or in a school bus and possessed any type of dangerous weapon at the time of the offense, the court must order that the juvenile's driver's license be canceled or driving privileges denied until the juvenile's 18th birthday.

Minn. Stat. § 260B.198, subd. 2

Expulsion from School for Possession of Firearm

If a juvenile is found to have brought a firearm to school, the school board is required to expel the juvenile for at least one year. The board is permitted to modify this expulsion requirement on a case-by-case basis.

Minn. Stat. § 121A.44

Referral of Firearm Possessors to Criminal or Juvenile Justice System

Every school board must have a policy requiring school authorities to refer to the criminal or juvenile justice system any pupil who unlawfully brings a firearm to school.

Minn. Stat. § 121A.05

Peace Officer Records and Juvenile Court Disposition Orders Transmitted to School Authorities

A law enforcement agency must notify school authorities when the agency has probable cause to believe a juvenile enrolled in the school has committed an offense involving the use or possession of a dangerous weapon. Additionally, a juvenile offender's probation officer must transmit a copy of the juvenile court's disposition order to school authorities when a juvenile enrolled in the school is adjudicated delinquent for any act involving the possession or use of a dangerous weapon.

Minn. Stat. § 260B.171, subds. 3, 5

Child Endangerment; Access to Firearms

It is a gross misdemeanor to intentionally or recklessly cause a child under the age of 14 to be placed in a situation likely to substantially harm the child's physical health or cause the child's death as a result of the child's access to a loaded firearm. It is also a gross misdemeanor to negligently store or leave a loaded firearm in a location where the person knows or should know that a child under the age of 18 is likely to gain access, unless reasonable steps are taken to secure the firearm against access by the child.

Firearms dealers must post a conspicuous warning to firearms purchasers advising them of these criminal penalties. A dealer who fails to do so is guilty of a petty misdemeanor.

Minn. Stat. §§ 609.378, subd. 1, para. (c); 609.666; 624.7162

Furnishing a Minor with a Firearm

It is a misdemeanor to furnish a child under the age of 14 with a firearm, airgun, or ammunition outside a municipality and without consent of the child's parent or guardian.

The crime becomes a gross misdemeanor if the act occurs on or near school property, park property, or public housing property.

Within a municipality, it is a ten-year felony to furnish a minor under age 18 with a firearm, airgun, or ammunition without the prior consent of the minor's parent or guardian or of the local police department.

Minn. Stat. § 609.66, subds. 1, 1b

Display of Handgun Ammunition

It is a petty misdemeanor to display center-fire handgun ammunition for sale to the public in a manner that makes the ammunition directly accessible to minors under age 18 who are not employees or agents of the store, unless the ammunition is under observation by store employees or the store takes reasonable steps to exclude minors from the vicinity of the ammunition display. Ammunition that is displayed in an enclosed display case or behind a counter is not directly accessible to minors.

Minn. Stat. § 609.663

Hunting Licenses

A person under the age of 16 must obtain a small game license to take small game using a firearm, but may do so without fee if the person is a resident:

- (1) age 14 or 15 who possesses a firearms safety certificate;
- (2) age 13 who possesses a firearms safety certificate and is accompanied by a parent or guardian;
- (3) age 13, 14, or 15 who possesses an apprentice hunter validation and is accompanied by a parent or guardian who possesses a small game license; or
- (4) age 12 or under who is accompanied by a parent or guardian.

Minn. Stat. § 97A.451

Employment-related Firearms Requirements

Criminal Background Check for Human Services License

A person who has been convicted of certain crimes is disqualified from obtaining a foster care or day care license for a specified period of time after sentence discharge. The disqualification period for persons convicted of a weapon-related crime ranges from seven to 15 years.

For a person convicted of being a felon in possession of a firearm, the disqualification period may be set aside after ten years.

Minn. Stat. §§ 245A.04; 245C.14; 245C.15; 245C.24, subd. 3; 245A.09

Criminal Background Check for Gambling Licenses

Criminal background checks must be conducted on applicants for the following types of gambling licenses: gambling equipment distributor licenses, gambling equipment manufacturer licenses, bingo hall licenses, and lawful gambling manager licenses. A prior conviction for any criminal violation involving the use of a firearm disqualifies an individual from receiving any of these licenses.

Minn. Stat. §§ 299L.07, subd. 8, para. (a), cl. (3), item (ii); 349.155, subd. 3, para. (a), cl. (2), item (ii)

Criminal Background Check of Private Detective and Protective Agency Employees

Applicants for a private detective or protective agent license and employees of such business entities must submit to a criminal background check as a prerequisite to licensure or employment. Additionally, an applicant for employment as a security guard must submit to a criminal background check as a prerequisite to employment. A prior felony conviction or conviction for, among other things, the crime of unlawfully carrying a weapon disqualifies a license applicant or prospective employee from these occupations.

Minn. Stat. §§ 326.336; 326.3381

Firearms Training for Private Detectives and Protective Agents

An employee of a private detective or protective agent who carries a weapon in the course of employment must satisfactorily complete training in the safe use of firearms and other weapons and in first aid, as well as in the legal limitations on the justifiable use of force and deadly force.

A person licensed as a peace officer by the Board of Peace Officer Standards and Training meets the training requirements of this section.

Minn. Stat. § 326.3361

Licensed Peace Officers Authorized to Carry Firearms

With one exception, no individual employed or acting as an agent of a political subdivision may carry a firearm while on duty unless the individual is licensed as a peace officer or a part-time peace officer. Reserve officers and deputy constables are specifically prohibited from carrying a firearm while on duty.¹⁰⁷ However, county attorneys may authorize their permit-holding assistants to carry firearms while working. Minnesota's prohibition is superseded, in part, by the federal Law Enforcement Officers Safety Act (LEOSA) discussed below.

Minn. Stat. §§ 626.84 to 626.863; 338.051, subd. 4

Peace Officer Training in Firearms and Use of Deadly Force

All law enforcement agencies must establish and enforce a written policy governing the lawful use of force and deadly force by its peace officers and part-time peace officers. All law enforcement agencies must also provide instruction in the use of force, deadly force, and firearms to all peace officers who are beginning employment with the agency. This instruction must occur before the officer is issued a firearm and allowed to carry it for employment purposes. In addition, continuing education instruction on these matters must be provided to the agency's peace officers and part-time peace officers at least annually.

Minn. Stat. § 626.8452

Concealed Carry by Law Enforcement Officers

The federal Law Enforcement Officers Safety Act of 2004 (LEOSA)¹⁰⁸ authorizes qualified law enforcement officers, both active and retired, to carry concealed firearms without a state permit to carry and without regard for state residency. LEOSA provides this authority "notwithstanding any other provision of the law of any state or any political subdivision thereof."

However, LEOSA explicitly states that this authority does not supersede or limit any state laws that:

- (1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or
- (2) prohibit or restrict the possession of firearms on any state or local government

¹⁰⁷ Reserve officers and deputy constables are not required to undertake the same high level of training in the use of force as are licensed peace officers. Minn. Stat. § 626.8466.

¹⁰⁸ 18 U.S.C. §§ 926B to 926C (2006) (amended 2010).

property, installation, building, base, or park.

This does not mean that LEOSA-qualified persons are prohibited from carrying concealed firearms in such areas, but only that they must obey whatever state laws apply on those two points. Other state and local laws that govern the carrying of concealed firearms are generally superseded by LEOSA.

Nevertheless, LEOSA does not override other federal laws. Thus, LEOSA-qualified individuals must continue to obey federal laws and federal agency policies that restrict the carrying of concealed firearms in certain federal buildings and lands, as well as in and around schools. For purposes of LEOSA, “qualified law enforcement officer” means an employee of any federal, state or local governmental agency who:

- (1) is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest;
- (2) is authorized by the agency to carry a firearm;
- (3) is not the subject of any disciplinary action by the agency which could result in suspension or loss of police powers;
- (4) meets standards, if any, established by the agency that require the employee to regularly qualify in the use of a firearm;
- (5) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
- (6) is not prohibited by federal law from receiving a firearm.

18 U.S.C. § 926B(c)(1)-(6)

The term qualified retired law enforcement officer is defined similarly, except that the person also:

- (1) separated from service in good standing from service with a public agency as a law enforcement officer;
- (2) before separation, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest;
- (3) (a) before separation, was regularly employed as a law enforcement officer for an aggregate of ten years or more; or (b) separated from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by the agency;
- (4) during the most recent 12-month period, has met, at the individual’s expense, the standards for qualification in firearms training for active law enforcement officers, as determined by the former agency of the individual, the state in which the individual resides or, if the state has not established such standards, either a law enforcement

agency within the state in which the individual resides or the standards used by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that state

- (5) (a) has not been officially found by a qualified medical professional employed by the agency to be unqualified for reasons related to mental health and as a result of this finding will not be issued the photographic identification in law; or (b) has not entered into an agreement with the agency from which the individual is separating from service in which that individual acknowledges he or she is not qualified under this section for reasons relating to mental health and for those reasons will not receive or accept the photographic identification in law;
- (6) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
- (7) is not prohibited by federal law from receiving a firearm.

18 U.S.C. § 926C(c)(1)-(7)

The identification required by LEOSA is the photo ID issued by the governmental agency for which the individual is employed, or from which the individual retired, as a law enforcement officer. For a retired officer, the identification must indicate receipt within the past year of having been tested or otherwise found by the agency or by the state to meet the standards for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm. The person must possess the ID at any time the person is carrying the firearm.

For purposes of LEOSA, the term “firearm” specifically does not include a machine gun, firearm silencer, or destructive device. Thus, it is limited to other types of handguns and long guns that a person may legally possess and for which the officer’s training applies.

Following enactment, there was some debate over whether the heads of individual law enforcement agencies—for example, a local police chief or county sheriff—may order his or her own agency’s employees not to carry firearms off-duty. By now, it is generally understood by its “notwithstanding clause,” that this federal act fully supersedes all conflicting state and local government laws, including those laws governing law enforcement agencies,¹⁰⁹ thereby blocking law enforcement employers from enforcing policies prohibiting off-duty firearms carry by employees defined by LEOSA as authorized law enforcement officers. Nevertheless, an agency can forbid an employee from carrying off-duty any specific weapon that is the property of the agency.

¹⁰⁹ The reasoning has been that the heads of state and local law enforcement agencies derive their authority from state and local law, and LEOSA explicitly overrides “any other provision of the law of any state or any political subdivision . . .” (except for the two types of laws explicitly enumerated). Furthermore, courts have interpreted the term “law” to include agency rules and regulations. The U.S. Supreme Court has ruled that this term specifically includes contractual obligations between employers and employees, such as work rules, policies, and practices promulgated by state and local police departments. See generally *Norfolk & W. Ry. Co. v. Am. Dispatchers’ Ass’n* 499 U.S. 117 (1991).

There have been a few test cases of this interpretation that LEOSA applies to qualified law enforcement officers irrespective of employing agency policies to the contrary. A New York court has ruled, for example, that LEOSA applied to exempt a defendant from a felony charge of criminal possession of a handgun (i.e., for the act of carrying a concealed handgun without a New York state license), even though the defendant's off-duty carrying was in violation of the rules, regulations, and policies of his employer, the U.S. Coast Guard. The court noted that, as a Coast Guard boarding officer, the defendant meets the criteria for qualified law enforcement officer under LEOSA and, therefore, is not limited by employer policies.¹¹⁰

LEOSA does not limit authorized carrying of a firearm to off-duty only. In one application, a New York court, in dismissing a felony charge for the unauthorized possession of a firearm, ruled that the on-duty carrying within Manhattan (i.e., while serving warrants) by a Pennsylvania State Constable who did not possess a New York state-issued permit to carry, was nevertheless authorized by LEOSA.¹¹¹

Whether or not a person is covered by LEOSA depends on whether he or she meets the definitions in the federal law for either "qualified law enforcement officer" or "qualified retired law enforcement officer." LEOSA does not require that person be defined under state law as a peace officer or a police officer. In this regard, LEOSA supersedes the Minnesota Statutes discussed previously (i.e., Minn. Stat. §§ 626.84 to 626.863).

The option of carrying concealed firearms under LEOSA does not prevent a qualified law enforcement officer or qualified retired law enforcement officer from carrying under the more limited authority of a Minnesota pistol carry permit. For example, some officers might prefer not having to annually renew their police firearm training to stay qualified under LEOSA. Other officers who do stay qualified under LEOSA might nevertheless prefer to carry under the authority of a state permit that also authorizes open carry.¹¹²

18 U.S.C. §§ 926B to 926C

¹¹⁰ *People v. Booth*, 862 N.Y.S.2d 767 (Orange Cty. Ct. 2008).

¹¹¹ *Rodriguez v. City of New York*, 649 F. Supp. 2d 301 (S.D.N.Y. 2009).

¹¹² LEOSA authorizes concealed carry only, not open carry.

Crimes Relating to Firearms

Many of the criminal offenses described in this section also cover other prohibited acts that do not involve the possession or use of a firearm. **Note:** This section only discusses criminal liability and not civil liability. A table at the end of this section outlines the crimes in statutory order.

Crimes Against a Person

Murder in the First Degree (Felony)

A person commits murder in the first degree if the person intentionally causes a death in the course of committing a drive-by shooting crime. Penalty: mandatory life imprisonment.

Minn. Stat. § 609.185

Murder in the Second Degree (Felony)

A person commits murder in the second degree if the person unintentionally causes a death in the course of committing a drive-by shooting crime. Maximum penalty: 40 years imprisonment.

Minn. Stat. § 609.19

Manslaughter in the Second Degree (Felony)

A person commits manslaughter in the second degree if the person causes the death of another person or that of an unborn child by: (1) shooting another with a firearm or other dangerous weapon as a result of negligently believing the victim to be a deer or other animal; or (2) setting a spring gun or other similar dangerous weapon or device. Maximum penalty: ten years imprisonment and/or \$20,000 fine.

Minn. Stat. §§ 609.205; 609.2665

Assault in the Second Degree (Felony)

A person commits assault in the second degree if the person assaults another with a dangerous weapon. Maximum penalty: ten years imprisonment and/or a \$20,000 fine if substantial bodily harm to the victim results; otherwise seven years imprisonment and/or \$14,000 fine.

Minn. Stat. § 609.222

Aggravated Robbery (Felony)

A person commits aggravated robbery in the first degree if the person commits a robbery while armed with a dangerous weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a dangerous weapon. Maximum penalty: 20 years imprisonment

and/or \$35,000 fine.

A person commits aggravated robbery in the second degree if the person commits a robbery and implies, by word or act, possession of a dangerous weapon. Maximum penalty: 15 years imprisonment and/or \$30,000 fine.

Minn. Stat. § 609.245

Depriving Another of Custodial or Parental Rights (Felony)

A person who deprives another of parental or custodial rights to a child by concealing, taking, or failing to return the child to the child's parent or lawful custodian is subject to an increased criminal penalty if the person possessed a dangerous weapon while committing the criminal act. Maximum penalty: four years imprisonment and/or \$8,000 fine.

Minn. Stat. § 609.26

Criminal Sexual Conduct in the First and Second Degree (Felony)

Among other acts, a person commits criminal sexual conduct in the first or second degree if the person engages in sexual conduct with another while armed with a dangerous weapon and uses the weapon to cause the victim to submit. Maximum penalty: 30 years imprisonment and/or \$40,000 fine (first degree; sexual penetration); 25 years imprisonment and/or \$35,000 fine (second degree; sexual contact).

Minn. Stat. §§ 609.342; 609.343

Child Endangerment; Access to Firearms (Gross Misdemeanor)

It is a gross misdemeanor to intentionally or recklessly cause a child under the age of 14 to be placed in a situation likely to substantially harm the child's physical health or cause the child's death as a result of the child's access to a loaded firearm. It is also a gross misdemeanor to negligently store or leave a loaded firearm in a location where the person knows or reasonably should know that a child under the age of 18 is likely to gain access, unless reasonable steps are taken to secure the firearm against access by the child.

Minn. Stat. §§ 609.378, subd. 1, para. (c); 609.666

Harassment Restraining Order Violation (Felony)

A person who knowingly violates an anti-harassment restraining order while in possession of a firearm is subject to custody arrest and is guilty of a five-year felony.

Minn. Stat. § 609.748, subd. 6, cl. (d)

Stalking (Felony)

A person who commits the crime of stalking is subject to an increased penalty if the person

possesses a dangerous weapon at the time of the offense. Maximum penalty: five years imprisonment and/or a fine of \$10,000.

Minn. Stat. § 609.749

Harassment (Felony)

A person convicted of a harassment or stalking crime who has been found to have used a firearm in any way during commission of the crime is additionally prohibited from possessing any type of firearm for a minimum of three years, or up to the person's lifetime as ordered by the court. Violation of the order is a gross misdemeanor. Any firearm used in the crime is subject to forfeiture under Minnesota Statutes, section 609.5316, subdivision 3, and the court may restrict access by the person to any other firearms the person owns or possesses.

Minn. Stat. § 609.749, subd. 8

Crimes in Using or Carrying a Firearm

Bringing a Firearm into a Correctional Facility or State Hospital (Felony)

Any person who brings or sends a firearm, weapon, or explosive into a state or local correctional facility or into a state hospital or a state chemical dependency treatment facility without the consent of the facility head is guilty of a felony. These provisions do not apply to peace officers carrying firearms in the discharge of their duties. Maximum penalty: five years imprisonment (violation occurs in local facility) or ten years imprisonment (violation occurs in state facility).

Minn. Stat. §§ 243.55; 641.165

Discharge over Cemetery Grounds (Gross Misdemeanor)

It is a gross misdemeanor to intentionally and knowingly discharge a firearm upon or over the grounds of a cemetery or authenticated Indian burial ground without authority from the cemetery trustees, state archaeologist, or Indian Affairs Intertribal Board.

Minn. Stat. § 307.08, subd. 2, para. (b), cl. (3)

Discharge from an Airplane (Misdemeanor)

It is a misdemeanor to discharge a firearm in or from any airplane unless the discharge is permitted by state hunting laws or the person discharging the firearm is the pilot, a peace officer, or a member of the military engaged in the performance of duty. It is also a misdemeanor to carry in any aircraft, other than a public aircraft, any firearm or small-arms ammunition, except in the manner in which such articles may be lawfully carried in motor vehicles in this state, or the person carrying is excepted as described above.

Minn. Stat. § 360.075

Obstruction of Legal Process or Arrest (Felony)

A person who obstructs legal process or obstructs, resists, or interferes with a peace officer or firefighter while the officer is performing official duties is subject to an increased penalty if the person takes or attempts to take the peace officer's firearm from the officer's possession without the officer's consent. Maximum penalty: five years imprisonment and/or \$10,000 fine.

Minn. Stat. §§ 609.50; 609.504

Dangerous Weapon Offenses

Several separate firearms-related offenses, with various penalties, are grouped within a single statute—Minnesota Statutes, section 609.66, the Dangerous Weapons statute—as follows.

- (1) **Misdemeanor/Gross Misdemeanor:** The following crimes involving firearms are misdemeanors; except that they are gross misdemeanors if the act was committed on or near a school, park, or public housing property:

- recklessly handling or using a gun so as to endanger the safety of another
- intentionally pointing a gun, whether loaded or unloaded, at another
- furnishing a child under the age of 14 with a firearm or ammunition outside a municipality and without parental or guardian consent

It is also a misdemeanor for a person authorized to carry a firearm, whether under the provisions of a permit or otherwise, in a location the person knows is school property.

- (2) **Gross Misdemeanor:** It is a gross misdemeanor for a person to possess, store, or keep a replica gun or BB gun on school property.

It is also a gross misdemeanor for a person, other than a federally licensed firearms dealer, to transfer a pistol or semiautomatic military-style assault weapon to another person without complying with the firearms transfer requirements of Minnesota Statutes, section 624.7132, if the transferee possesses or uses the firearm within one year in furtherance of a felony crime of violence, and if the transferee was prohibited from possessing the weapon at the time of the transfer or it was reasonably foreseeable at the time of the transfer that the transferee was likely to use or possess the firearm in furtherance of a felony crime of violence.

- (3) **Felony:** The following crimes are felonies, punishable by various maximum penalties, depending on the offense:

- selling or possessing a firearm silencer, with exceptions for licensed peace officers using silencers for tactical emergency response operations and persons authorized by the commissioner of Natural Resources using silencers for wildlife control operations requiring stealth

- intentionally discharging a firearm under circumstances that endanger the safety of another
- recklessly discharging a firearm within a municipality
- furnishing a minor with a firearm or ammunition within a municipality and without prior parental or guardian consent or the consent of the local police department
- recklessly furnishing another with a dangerous weapon in conscious disregard of a known substantial risk that the weapon will be used in furtherance of a violent felony
- possessing, storing, or keeping a firearm or other dangerous weapon, or using or brandishing a replica firearm or BB gun on elementary or secondary school property or in a school bus while it is transporting students (certain exceptions apply)
- recklessly discharging a firearm at or toward a person, motor vehicle, or building while in or having just exited from a motor vehicle
- possessing a dangerous weapon, ammunition, or explosives within any courthouse complex or any state building within the capitol complex area (other than the National Guard Armory), unless included within a specified exception

Minn. Stat. § 609.66, subds. 1a to 1h

Set Guns, Swivel Guns, and Spring Guns (Gross Misdemeanor)

A person who takes deer with the assistance of a set gun or swivel gun is guilty of a gross misdemeanor. A person who sets a spring gun may be sentenced to up to six months imprisonment and/or up to a \$1,000 fine.

Minn. Stat. §§ 97B.321; 609.661; 609.665

Riot in the First or Second Degree (Felony)

A person who commits the crime of riot is subject to increased penalties if the person is armed with a dangerous weapon during commission of the crime. Maximum penalty: 20 years imprisonment and/or a charge of \$35,000 if a death results; otherwise five years imprisonment and/or \$10,000 fine. This crime requires at least three people to be gathered, and only the person armed will be subject to riot first degree; otherwise, everyone in the group who “knows that any other participant is armed with a dangerous weapon is guilty of riot second degree.”

Minn. Stat. § 609.71

Terroristic Threats (Gross Misdemeanor)

A person commits the crime of terroristic threats if the person displays, exhibits, brandishes, or otherwise employs a replica firearm or a BB gun in a threatening manner, and may be sentenced to one year and one day imprisonment or a \$3,000 fine. A person may be subject to both a one year and one day imprisonment and a \$3,000 fine if they complete the act above and cause or attempt to cause terror in another, or act in reckless disregard of the risk of causing terror in

another person.

Minn. Stat. § 609.713

Shooting at a Railroad Train (Gross Misdemeanor)

A person who intentionally shoots a firearm at any portion of a railroad train so as to endanger the safety of another is guilty of a gross misdemeanor.

Minn. Stat. § 609.85

Shooting at or in a Public Transit Vehicle or Facility (Felony)

A person who recklessly discharges a firearm at or in any portion of a public transit vehicle or transit facility is guilty of a felony. Maximum penalty: five years imprisonment and/or \$10,000 fine if the vehicle or facility is occupied by any person other than the offender; otherwise, three years imprisonment and/or \$6,000 fine.

Minn. Stat. § 609.855

Dangerous Exhibitions (Gross Misdemeanor)

It is a misdemeanor to aim a firearm or allow a firearm to be aimed at any person as part of an exhibition of skill in a place of amusement or other place or building.

Minn. Stat. § 624.63

Carrying a BB Gun, Rifle, or Shotgun in a Public Place (Felony; Gross Misdemeanor)

A person who carries a BB gun, rifle, or shotgun in a public place is guilty of a gross misdemeanor, unless the act is included in one of several statutory exceptions.¹¹³ If the person is under the age of 21 and carries a semiautomatic military-style assault weapon in a public place, the penalty becomes a felony punishable by up to five years imprisonment and/or \$10,000 fine.

Minn. Stat. § 624.7181

Crimes Against Property

Removal or Alteration of Firearm Serial Number (Felony)

A person who obliterates, removes, or alters the serial number of a firearm, or receives or possesses a firearm whose serial number has been obliterated, altered, or removed, is guilty of a felony. Maximum penalty: five years imprisonment and/or \$10,000 fine.

¹¹³ The exceptions include transporting in a closed case in an automobile, transporting from the place of purchase or repair, the carrying of antiques, etc.

Minn. Stat. § 609.667

Theft of a Firearm (Felony)

A person who commits theft is subject to an increased penalty if the property stolen was a firearm. Maximum penalty: 20 years imprisonment and/or \$100,000 fine.

Minn. Stat. § 609.52

Burglary First Degree (Felony)

A person who commits a burglary is subject to an increased penalty if the person committed the offense while possessing a dangerous weapon or another article used or fashioned in a manner to lead the victim to reasonably believe it to be a dangerous weapon. Maximum penalty: 20 years imprisonment and/or \$35,000 fine.

Minn. Stat. § 609.582

List of Crimes Relating to Firearms, in Statutory Order

Offense	Penalty	Minnesota Statutes Citation
Bringing a firearm into a correctional facility	Felony	§§ 243.55; 641.165
Discharge over cemetery grounds	Gross Misdemeanor	§ 307.08, subd. 2, para. (b), cl. (3)
Discharge from an airplane	Misdemeanor	§ 360.075
Murder in the first degree	Felony	§ 609.185
Murder in the second degree	Felony	§ 609.19
Manslaughter in the second degree	Felony	§§ 609.205; 609.2665
Assault in the second degree	Felony	§ 609.222
Aggravated robbery	Felony	§ 609.245
Depriving another of custodial or parental rights	Felony	§ 609.26
Criminal sexual conduct in the first and second degree	Felony	§§ 609.342; 609.343
Child endangerment; access to firearms	Gross misdemeanor	§§ 609.378, subd. 1, para. (c); 609.666
Obstruction of legal process or arrest	Felony	§§ 609.50; 609.504
Theft of a firearm	Felony	§ 609.52
Burglary first degree	Felony	§ 609.52
Dangerous weapon offenses	Varies	§ 609.66
Removal or alteration of firearm serial number	Felony	§ 609.667
Set guns, swivel guns, and spring guns	Gross misdemeanor	§§ 97B.321; 609.661; 609.665
Riot in the first or second degree	Felony	§ 609.71
Terroristic threats	Gross misdemeanor	§ 609.713
Harassment restraining order violation	Felony	§ 609.749
Stalking	Felony	§ 609.749
Harassment	Felony	§ 609.749, subd. 8
Shooting at a railroad train	Gross misdemeanor	§ 609.85

Offense	Penalty	Minnesota Statutes Citation
Shooting at or in a public transit vehicle or facility	Felony	§ 609.855
Dangerous exhibitions	Gross misdemeanor	§ 624.63
Carrying a BB gun, rifle, or shotgun in a public place	Felony; gross misdemeanor	§ 624.7181

Mandatory Minimum Sentences

For Certain Felonies Committed with a Firearm

A person who is convicted of a violent felony or a felony-level drug offense must be sentenced to a mandatory minimum prison sentence if the person or an accomplice possessed or used a firearm to commit the offense. The mandatory minimum prison sentence is three years for a first-time offense and five years if the person has a previous conviction for possessing or using a firearm during the commission of one of these offenses. The law contains procedures allowing the judge or the prosecutor to waive the mandatory minimum sentence when mitigating circumstances are present; however, the mandatory minimum sentence may not be waived for persons who are repeat offenders subject to the five-year minimum.

Minn. Stat. § 609.11

Possession of Firearm by Convicted Violent Offender

It is a felony for any person who has been convicted of, or adjudicated delinquent as a juvenile for, a crime of violence¹¹⁴ to ship, transport, possess, or receive a firearm. This felony is punishable by imprisonment of five years mandatory minimum to 15 years maximum, and/or a \$30,000 fine. The person also may be sentenced for any other offense committed during the same behavioral incident. This prohibition does not apply to any person who has received a discharge of sentence for the crime of violence and who thereafter has received a relief of disability under United States Code, title 18, section 925, or whose ability to possess firearms has been restored under Minnesota Statutes, section 609.165, subdivision 1d.

Minn. Stat. §§ 609.165; 609.11; 609.035

¹¹⁴ See the appendix for the definition of “crime of violence.”

Illegal Firearms

Silencers

It is a felony to sell or possess any device designed to muffle or silence the discharge of a firearm. The maximum penalty for this offense is two years' imprisonment and/or a \$5,000 fine; however, if the offense is committed in or near a school, park, or public housing property, the maximum penalty is five years' imprisonment and/or a \$10,000 fine.

Minn. Stat. § 609.66, subd. 1a

Notwithstanding the above prohibition, silencers are authorized for purposes of certain law enforcement activities (i.e., tactical response) and limited wildlife control purposes (e.g., cormorant control on designated lakes), under the written policy and strict enforcement of the employing public agency.

Also, any person who is licensed by BATFE, under United States Code, title 18, section 923, as a firearms importer, manufacturer, or dealer, and who is acting in full compliance with all federal requirements under that license, may possess firearm silencers for the purpose of selling or otherwise transferring in any lawful manner the devices or firearms tested with the devices, to:

- the chief administrator of any federal, state, or local governmental agency;
- the commander or commander's designee of any unit of the U.S. Armed Forces; or
- a person similarly licensed as a firearms importer, manufacturer, or dealer, who is acting in full compliance with all federal requirements under that license.

Minn. Stat. § 609.66, subd. 1h

Machine Guns, Short-barreled Shotguns, Conversion Kits, and Trigger Activators

Federal Law

With certain limited exceptions, it is prohibited under federal law to own, possess, or operate a machine gun, short-barreled shotgun, short-barreled rifle, trigger activator, or machine gun conversion kit, unless the device has been registered with the FBI in compliance with federal law, including payment of a prescribed federal excise tax.¹¹⁵

Violation is punishable as a felony, with imprisonment of up to ten years and/or a \$10,000

¹¹⁵ The National Firearms Act (the NFA, codified as 26 U.S.C., ch. 53) imposes a statutory excise tax on the manufacture and transfer of all Title II weapons, including machine guns and short-barreled rifles and shotguns, and mandates the registration of such weapons.

fine.¹¹⁶

26 U.S.C. ch. 53

Minnesota Law

With certain exceptions, the ownership, possession and use of a machine gun, short-barreled shotgun, trigger activator, or machine gun conversion kit is also prohibited under Minnesota law, punishable with felony penalties of up to five years imprisonment and/or a \$10,000 fine.

Minn. Stat. § 609.67, subd. 2

Permitted Uses; Required Report

Under Minnesota law, the following persons may own or possess a machine gun or short-barreled shotgun, provided certain reporting requirements are complied with:

- (1) law enforcement officers for use in the course of their duties
- (2) [authorized correctional officials], for use in the course of their duties
- (3) persons possessing machine guns or short-barreled shotguns that, although designed as weapons, have been determined by the superintendent of the [BCA] to be primarily collector's items [or relics, museum pieces, etc.], and are not likely to be used as weapons
- (4) manufacturers of ammunition who possess and use machine guns for the sole purpose of testing ammunition manufactured for sale to federal and state agencies or political subdivisions
- (5) dealers and manufacturers who are federally licensed to buy and sell, or manufacture machine guns or short-barreled shotguns and who either use [them] in peace officer training in [POST Board-approved courses], or are engaged in the sale of machine guns or short-barreled shotguns to federal and state agencies or political subdivisions
- (6) persons employed by the Minnesota National Guard as security guards, for use in accordance with applicable federal military regulations

A person owning or possessing a machine gun or short-barreled shotgun (as authorized by Minn. Stat. § 609.67, subd. 3, cls. (1) to (4), listed above) shall, within ten days after acquiring it, report that fact to the BCA. A federally licensed dealer or manufacturer owning or having a machine gun or short-barreled shotgun (as listed in clause (5) above) must report in writing monthly (by the tenth day of each month) to the BCA identifying each such weapon manufactured or acquired during the previous month.

¹¹⁶The Hughes Amendment, named after Rep. W. J. Hughes, D-N.J. and codified at 18 U.S.C. § 922 (o), to the federal Firearms Owners Protection Act (18 U.S.C. § 921 et seq.) bans the civilian ownership or transfer of any fully automatic weapon that was not registered by May 19, 1986. However, any such weapon manufactured and registered before the May 19 cutoff may still be legally owned and transferred by civilians, provided the transferor and transferee comply with the requirements of the National Firearms Act regarding registration and the payment of the required federal excise tax.

Members of the armed forces, as well as security guards employed by the Minnesota National Guard, acting in the course of their duties, are exempted from reporting under this section.

Minn. Stat. § 609.67

Saturday Night Special Pistols

It is prohibited under Minnesota law for an FFL to sell, or for any person to manufacture or assemble, in whole or in part, a Saturday night special pistol. Violation is a gross misdemeanor.

The term “Saturday night special pistol” is defined in statute. Generally, these pistols are defined by reference to the materials used to make and operate them. For instance, “a pistol other than an antique firearm or a pistol for which the propelling force is carbon dioxide, air, or other vapor . . .” is part of the definition. The focus is on the melting point of the material used to make the pistol, the tensile strength of that material, and the weight of any powdered metal used.

However, it is not prohibited under any Minnesota law for a person, who is not otherwise prohibited from possessing firearms, to possess or lawfully use a Saturday night special pistol.

Minn. Stat. §§ 624.712, subd. 4; 624.716

Forfeiture and Confiscation of Firearms

Firearm Knowingly Used to Commit Hunting Law Violation

A conservation officer may seize a firearm that is used with the owner's knowledge to unlawfully take wild animals. The firearm may be confiscated administratively if the person is convicted of the hunting violation and the firearm's value is less than \$1,000. If the firearm's value is greater, a judicial forfeiture process must be followed.¹¹⁷

Minn. Stat. §§ 97A.221; 97A.225

Firearm Unlawfully Possessed by Person under Age 16

If a firearm is unlawfully possessed by a person under age 16 (without a parent or guardian present), a law enforcement officer must seize the firearm and place it in the custody of the local conservation officer.¹¹⁸ The firearm must be returned to the person from whom it was seized if the person presents a firearms safety certificate to the conservation officer. Such a certificate must be presented within 90 days after the start of the first firearms training course offered in the county after the seizure. If not, the firearm becomes contraband and is forfeited to the state.

Minn. Stat. § 97B.021

Weapons Found in Controlled Substance Seizure; Pre-Trial

Firearms, ammunition, and firearms accessories may be forfeited administratively if they are found:

- (1) in a conveyance device used or intended for use to commit a felony drug offense;
- (2) on or in proximity to a person from whom a felony-level amount of drugs was seized; or
- (3) on the premises where drugs were seized and in proximity to the drugs, if the possession or sale of the drugs would be a felony offense.

The law enforcement agency is permitted to seize the property immediately and send a notice to the owner stating that the property will be forfeited unless the property claimant files a demand for a judicial forfeiture hearing within 60 days. If the demand is filed, the judicial forfeiture procedures must be followed. If no demand for judicial forfeiture is filed, the property is administratively forfeited.

Minn. Stat. § 609.5314

¹¹⁷ A judicial forfeiture process involves a hearing in front of a judge where a person is afforded the opportunity to argue why his or her firearm should not be confiscated.

¹¹⁸ There are a number of exceptions contained in the statute where a person under 16 can possess a firearm.

Weapons Used to Commit a Crime: Postconviction

Any weapon used in furtherance of any criminal code violation, controlled substance offense, domestic abuse order for protection violation, or violation of chapter 624 (i.e., Minnesota Gun Control Law) is contraband and may be summarily forfeited (i.e., without a judicial proceeding) by the law enforcement agency upon the owner's or possessor's conviction for the crime, or without conviction under some circumstances.

If the forfeited weapon is an assault weapon, the law enforcement agency must either destroy it or keep it for official use. If it is an antique, the agency may sell it at a public sale. If the firearm is neither of the foregoing, the agency may destroy it, keep it for official use, or sell it to a federally licensed firearms dealer.¹¹⁹

Minn. Stat. §§ 609.5315; 609.5316; 609.531

Firearms Used to Commit Domestic Assault, Harassment, Stalking, or Order for Protection Violation

When a person is convicted of domestic assault, harassment or stalking, or a domestic abuse order for protection violation, the court must determine whether the defendant used a firearm in any way during commission of the offense. If so, the court must order that the firearm be summarily forfeited.

Minn. Stat. §§ 518B.01, subd. 14; 609.2242, subd. 3; 609.749, subd. 8

Possession of Firearm by Nonresident Alien

A nonresident alien may not possess a firearm except to take game as a nonresident under the game and fish laws. A firearm possessed in violation of this provision is contraband and may be confiscated.

Minn. Stat. § 624.719

Surrender of Firearm as a Condition of Pretrial Release

When a person is arrested for committing a crime against another person (i.e., a crime of violence), the judge before whom the defendant is taken may order, as a condition of pretrial release, that the defendant surrender to the local law enforcement agency all firearms, destructive devices, and other dangerous weapons he or she owns or possesses. If the charges are not filed

¹¹⁹ In Hennepin and Ramsey Counties, the county board is authorized by statute to disapprove of the sale of forfeited firearms to firearms dealers.

or are dismissed, or if the defendant is acquitted, the weapons must be returned.

Minn. Stat. § 629.715

Firearms Laws for Hunting

Firearms Requirements for Taking Big Game

The following requirements apply for the firearms and ammunition used in taking big game by firearms in Minnesota:

For a rifle, shotgun, or handgun:

- (1) the firearm is a caliber of at least .22 inches and with centerfire ignition
- (2) the firearm is loaded only with single projectile ammunition
- (3) a projectile used is a caliber of at least .22 inches and has a soft point or is an expanding bullet type

For a muzzleloader:

- (1) the muzzleloader used is incapable of being loaded at the breech
- (2) the smooth-bore muzzleloader used is a caliber of at least .45 inches
- (3) the rifled muzzleloader used is a caliber of at least .40 inches

Other restrictions:

- (1) A person may take small game with a handgun of any caliber in a manner prescribed by the commissioner.
- (2) A person may not use a firearm with a bore larger than a ten gauge to take a protected wild animal.
- (3) Except as provided in Minnesota Statutes, section 609.66, subdivision 1h, a person may not own or possess a silencer for a firearm or a firearm equipped to have a silencer attached.

Minn. Stat. § 97B.031, subds. 1, 2, 3, 41

Firearms Inspection

It is a misdemeanor to refuse to submit to an inspection of one's firearm by a conservation officer while in the field. A violator may also be subject to civil damages and injunctive relief.

Minn. Stat. §§ 97A.251; 97A.301

Firearm; Hunting Law Violation

A conservation officer may confiscate a firearm that is used with the owner's knowledge to unlawfully take wild animals.

Minn. Stat. § 97A.221

Firearms Safety Course and Certificate

The commissioner of natural resources is responsible for administering and supervising firearms safety courses throughout the state that provide instruction in commonly accepted principles of safety in hunting and handling common hunting firearms. The commissioner shall issue a firearms safety certificate to a person who satisfactorily completes the course.

All persons born after December 31, 1979, must have a firearms safety certificate, an equivalent certificate, or a previously issued hunting license as a prerequisite to obtaining a hunting license in this state. A person may take the course at age 11 and receive a firearms safety certificate, but the certificate is invalid until that person's 12th birthday.

A person who has successfully completed basic training in the United States armed forces is exempt from the range and shooting exercise portion of the required course of instruction for the firearms safety certificate. The commissioner must publicly announce this exemption and the availability of the department's online, remote study option for adults seeking firearms safety certification. There is no similar exemption for licensed peace officers.

Minn. Stat. §§ 97B.015; 97B.020

Hunting on Game Refuges

Unless specifically authorized by the commissioner of natural resources, no person may take a wild animal, except fish, within a state game refuge, nor may any person carry a firearm within a refuge unless the firearm is unloaded and either contained in a gun case or broken down.

Minn. Stat. § 97A.091

Hunting Prohibited in Certain Areas

A person may not take a wild animal with a firearm in the following areas:

- (1) within 500 feet of a building located on another person's private agricultural land or on a public right-of-way if the building is occupied by human beings or livestock, unless the written permission of the owner, occupant, or lessee is obtained
- (2) within 500 feet of a stockade or corral containing livestock, without the written

- permission of the owner, occupant, or lessee
- (3) on any land on which notices have been posted prohibiting trespassing for outdoor recreational purposes without the permission of the owner, occupant, lessee, or authorized manager

Minn. Stat. § 97B.001, subd. 7

Careless Use of Firearm; Fire Hazard

It is a misdemeanor to carelessly or negligently use a firearm with tracer ammunition or ammunition with combustible wads and, thereby, start a fire that endangers or causes damage to the property of another person or the state.

Minn. Stat. § 88.195, subd. 4

Transporting a Firearm in a Motor Vehicle

Since 1986, it has been prohibited under game and fish law to transport a firearm in a motor vehicle unless the firearm is unloaded and in a closed gun case, or is unloaded and in the closed trunk of the motor vehicle. These requirements do not apply to pistols carried in compliance with the Gun Control Act or to certain disabled persons when transporting the firearm for hunting purposes.

However, a 2009 amendment has removed the requirement for casing the rifle or shotgun, in the following situations:

- while at a shooting range, as defined in law, with permission of the owner or manager
- while lawfully hunting on public or private land
- while travelling to or from a site the person intends to lawfully hunt that day or has lawfully hunted that day

The rifle or shotgun, whether cased or uncased, must still be unloaded while being transported in a motor vehicle.

In addition, the new law continues to require that a rifle or shotgun be cased (and unloaded) when it is being transported in a motor vehicle:

- within Anoka, Hennepin, or Ramsey Counties;
- within an area where discharge of a firearm has been prohibited by ordinance;
- within the boundary of a city with a population of 2,500 or more;
- on school grounds; or

- as regulated under statutes governing game refuges, shining or artificial lights, and use of night vision devices.

Minn. Stat. §§ 87A.01, subd. 3; 97B.045; Laws 2009, ch. 176, art. 2, § 40

Hunting Big Game by Archery; Possession of Firearm

A person may not take deer by archery while in possession of a firearm, except that while hunting deer a person may carry a handgun in compliance with Minnesota's permit to carry a pistol law.

Minn. Stat. § 97B.211

Improved Roads: No Discharging Firearms

No person may discharge a firearm or an arrow from a bow at a big game animal, or a decoy of a big game animal, on, over, or across an improved public highway or within the right-of-way of an improved public highway. The commissioner of natural resources may by rule extend the application of this subdivision to the taking of migratory waterfowl in designated locations. This restriction does not apply to small game and unprotected species (e.g., varmints).

Unless the person has a special permit to hunt from a stationary motor vehicle, no person may take a wild animal with a firearm from a motor vehicle.

Minn. Stat. § 97B.055, subd. 1

No Hunting While Intoxicated

It is a gross misdemeanor to take wild animals with a firearm while under the influence of alcohol or a controlled substance, or with an alcohol concentration of .08 percent or more. A person who is convicted of this offense is ineligible to have a firearms hunting license for five years.

Minn. Stat. §§ 97B.065; 97A.421, subd. 4

No Hunting between Evening and Morning

A person may not take protected wild animals, except raccoon and fox, with a firearm between the evening and morning hours set by the commissioner of natural resources, except that big game may be taken from one-half hour before sunrise until one-half hour after sunset. Further, except as otherwise prescribed by the commissioner on or before the Saturday nearest October 8, waterfowl may be taken from one-half hour before sunrise until sunset during the entire season prescribed by the commissioner. On the opening day of the duck season, shooting hours for migratory game birds, except for woodcocks, begin at 9:00 a.m.

Minn. Stat. § 97B.075

No Artificial Lights to Locate Wild Animals

A person may not, while possessing a loaded or uncased firearm, use an artificial light to spot, locate, or take a wild animal unless the person is taking raccoons or tending traps in accordance with law.

Minn. Stat. § 97B.081

No Snares, Traps, Set Guns, and Swivel Guns

A person may not take deer with the aid of a snare, trap, set gun, or swivel gun.

Minn. Stat. § 97B.321

Code of Criminal Procedure as it Affects Other Laws

A provision of the game and fish laws that is inconsistent with the Code of Criminal Procedure or of penal law is only effective under the game and fish laws.

Minn. Stat. § 97A.021, subd. 1

Miscellaneous Firearms-related Laws

Permissive Inference of Firearm Possession in Motor Vehicle

The presence of a firearm in a passenger automobile permits the fact finder to infer knowing possession of the firearm by the driver or person in control of the automobile. This permissive inference does not apply:

- (1) to a licensed operator of an automobile who is at the time operating it for hire in the lawful and proper pursuit of the operator's trade;
- (2) to any person in the automobile if one of them legally possesses a firearm; or
- (3) when the firearm is concealed on the person of one of the occupants.

Minn. Stat. § 609.672

Landlord-Tenant Lease Covenant

Every lease of residential property contains an implied covenant that neither the landlord nor tenant will allow the unlawful use or possession of a firearm on the premises, in the common areas of the building, or in the area immediately outside the building. Violation of this covenant may be deemed a violation of the lease.¹²⁰

This provision of landlord-tenant law does not prohibit any of the various lawful uses and possession of firearms on the premises or in the common areas or curtilage of the building. The carrying of a pistol in compliance with a valid permit to carry is one such lawful use.

Minn. Stat. §§ 504B.171; 624.714

Attorney General May Assist City Attorneys in Prosecuting Firearms Offenses

A city attorney in the metropolitan area may request the attorney general to assist in the prosecution of nonfelony firearms offenses.

Minn. Stat. § 484.87, subd. 5

Surety Bond for Carrying Pistol or Other Dangerous Weapon

A person who carries a pistol or other dangerous weapon without reasonable cause to fear injury

¹²⁰ As stated previously, this does not mean that a landlord can restrict a tenant or his guest from lawful possession of a firearm on the premises.

to person, property, or family members may, upon the complaint of another person having reason to fear injury or breach of the peace, be required to post a surety bond for up to six months.

Minn. Stat. § 625.16

Replica Firearm Warning Label

It is unlawful for a retailer to sell a replica firearm unless a warning label is attached to the package advising buyers of the criminal penalties that apply to the unlawful use of the replica firearm. A “replica firearm” is a facsimile or toy version of a firearm that reasonably appears to be an actual firearm.

This section may be enforced by the attorney general under the attorney general’s commerce law authority; however, a court may not impose a civil penalty of more than \$500 for a violation.

Minn. Stat. § 325F.81

Innkeeper May Eject Guests with Firearms

An innkeeper may remove or cause to be removed from the hotel or refuse to admit any guest or other person whom the innkeeper reasonably believes has brought a firearm or explosives onto the premises.

It is a misdemeanor for any person to refuse to depart from a hotel after having been requested to leave for this reason.

Minn. Stat. § 327.73

Appendix A: Definitions in Minnesota Statutes

The definitions in this section are from Minnesota Statutes, as cited. Most of the definitions are reproduced here as they appear in statute, unless otherwise noted.

Abode

“Abode” means domicile. **Minn. Stat. § 645.45, cl. (1)**

According to Black’s Law Dictionary, “domicile” means (1) a dwelling place; place of residence; home; and (2) a person’s fixed, permanent, and principal home for legal purposes.

Antique Firearm

“Antique firearm” means any firearm, including any pistol, with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured before 1899 and any replica of any firearm described herein if such replica is not designed or redesigned, made or remade, or intended to fire conventional rimfire or conventional centerfire ammunition, or uses conventional rimfire or conventional centerfire ammunition which is not readily available in the ordinary channels of commercial trade. **Minn. Stat. § 624.712, subd. 3**

Under this definition, antique firearms include original and replica muzzle-loading muskets, rifles, shotguns, and pistols having matchlock, flintlock, percussion cap, or a similar type of ignition system.

Muzzle-loading rifles designed with the newer styled, inline-percussion-ignition systems also meet the definition of antique firearm. However, Minnesota Courts have not yet ruled on whether possessing and hunting with this style of muzzleloader qualifies as the carrying of an antique firearm as a curiosity or for its historical significance or value, for purposes of section 624.715 providing an exemption to section 624.713 (the prohibited persons statute) and section 624.714 (the Minnesota Citizen’s Personal Protection Act of 2003).

BB Gun

“BB gun” means a device that fires or ejects a shot measuring .18 of an inch or less in diameter. **Minn. Stat. §§ 609.713, subd. 3, para. (b), cl. (1); 624.7181, subd. 1, para. (a)**

Minnesota courts have ruled that a BB gun is a firearm. However, see the statutory exception under the definition of pistol.

Bodily Harm

“Bodily harm” means physical pain or injury, illness, or any impairment of physical condition. **Minn. Stat. § 609.02, subd. 7**

“Substantial bodily harm” means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member. **Minn. Stat. § 609.02, subd. 7a**

“Great bodily harm” means bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm. **Minn. Stat. § 609.02, subd. 8**

Conviction

“Conviction” means any of the following accepted and recorded by the court:

- (1) a plea of guilty; or
- (2) a verdict of guilty by a jury or a finding of guilty by a court.

Minn. Stat. § 609.02, subd. 5

However, “conviction” is specially and identically defined in both the Minnesota and federal gun control acts to mean something more specific than what the general definition in the criminal code asserts. This special definition is important in determining whether a person who has been “convicted” of a firearms-disabling crime in any court remains “convicted” for purposes of Minnesota and federal firearms law.

That special definition of “conviction” is subsumed within the definition of the term “Crime punishable by imprisonment for a term of exceeding one year,” which follows below.

Crime Punishable by Imprisonment for a Term Exceeding One Year

“Crime punishable by imprisonment for a term exceeding one year” does not include:

- (1) any federal or state offense pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices; or
- (2) any state offense classified by the laws of this state or any other state as a misdemeanor and punishable by a term of imprisonment of two years or less.

What constitutes a conviction of a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside, or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this definition, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.” **Minn. Stat. § 624.712, subd. 10**

Crime of Violence

According to Minnesota Statutes, section 624.712, subdivision 5, “crime of violence” means felony convictions of, or attempts to commit, the following offenses in sections:

- 609.185 (murder in the first degree)
- 609.19 (murder in the second degree)
- 609.195 (murder in the third degree)
- 609.20 (manslaughter in the first degree)
- 609.205 (manslaughter in the second degree)
- 609.215 (aiding suicide and aiding attempted suicide)
- 609.221 (assault in the first degree)
- 609.222 (assault in the second degree)
- 609.223 (assault in the third degree)
- 609.2231 (assault in the fourth degree)
- 609.229 (crimes committed for the benefit of a gang)
- 609.235 (use of drugs to injure or facilitate crime)
- 609.24 (simple robbery)
- 609.245 (aggravated robbery)
- 609.25 (kidnapping)
- 609.255 (false imprisonment)
- 609.342 (criminal sexual conduct in the first degree)
- 609.343 (criminal sexual conduct in the second degree)
- 609.344 (criminal sexual conduct in the third degree)
- 609.345 (criminal sexual conduct in the fourth degree)
- 609.377 (malicious punishment of a child)
- 609.378 (neglect or endangerment of a child)
- 609.486 (commission of crime while wearing or possessing a bullet-resistant vest)
- 609.52 (involving theft of a firearm, theft involving the intentional taking or driving of a motor vehicle without the consent of the owner or authorized agent of the owner, theft involving the taking of property from a burning, abandoned, or vacant building, or from an area of destruction caused by civil disaster, riot, bombing, or the proximity of battle, and theft involving the theft of a controlled substance, an explosive, or an incendiary device)
- 609.561 (arson in the first degree)
- 609.562 (arson in the second degree)

- 609.582, subdivision 1, 2, or 3 (burglary in the first through third degrees)
- 609.66, subdivision 1e (drive-by shooting)
- 609.67 (unlawfully owning, possessing, operating a machine gun or short-barreled shotgun)
- 609.71 (riot)
- 609.713 (terroristic threats)
- 609.749 (harassment and stalking)
- 609.855, subdivision 5 (shooting at a public transit vehicle or facility)
- chapter 152 (drugs, controlled substances)

Dangerous Weapon

“Dangerous weapon” means any firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or great bodily harm, any combustible or flammable liquid or other device or instrumentality that, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm, or any fire that is used to produce death or great bodily harm.

As used in this subdivision, “flammable liquid” means any liquid having a flash point below 100 degrees Fahrenheit and having a vapor pressure not exceeding 40 pounds per square inch (absolute) at 100 degrees Fahrenheit but does not include intoxicating liquor as defined in section 340A.101. As used in this subdivision, “combustible liquid” is a liquid having a flash point at or above 100 degrees Fahrenheit. **Minn. Stat. § 609.02, subd. 6**

Deadly Force

“[D]eadly force” means force which the actor uses with the purpose of causing, or which the actor should reasonably know creates a substantial risk of causing, death or great bodily harm. The intentional discharge of a firearm, other than a firearm loaded with less lethal munitions and used by a peace officer within the scope of official duties, in the direction of another person, or at a vehicle in which another person is believed to be, constitutes deadly force. **Minn. Stat. § 609.066, subd. 1**

Explosive

“Explosive” means any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion; that is, with substantially instantaneous release of gas and heat, unless the compound, mixture, or device is otherwise specifically classified by the United States Department of Transportation. The term does not mean or include black powder, smokeless powder, primers, and fuses when used for antique or replica muzzle-loading rifles, pistols, muskets, shotguns, and cannons or when possessed or used for rifle, pistol, and shotgun ammunition, nor does it include fireworks as defined in section 624.20. **Minn. Stat. § 299F.72, subd. 2**

Facsimile Firearm

“Facsimile firearm” means a toy version of a firearm. See also “replica firearm.”

Firearm

“Firearm” means a gun that discharges shot or a projectile by means of an explosive, a gas, or compressed air. **Minn. Stat. § 97A.015, subd. 19**

Minnesota courts have ruled that, under this definition, rifles, shotguns, handguns (both pistols and revolvers), muzzleloaders, and BB guns are firearms, but that a paintball gun is not a firearm. However, also see the definition of “pistol” below, which states that a BB gun designed as a handgun is not a pistol; thus, a BB gun pistol is not a firearm.

Firearm-Carry

“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.

Minn. Stat. § 624.7181, subd. 1, para. (b)

Firearms Dealer

“Firearms dealer” means a dealer federally licensed to sell pistols who operates a retail business in which pistols are sold from a permanent business location other than the dealer’s home. **Minn. Stat. § 624.7161, subd 1, para. (b)**

Firearm Transfer

“Transfer” means a sale, gift, loan, assignment or other delivery to another, whether or not for consideration, of a pistol or semiautomatic military-style assault weapon or the frame or receiver of a pistol or semiautomatic military-style assault weapon. **Minn. Stat. § 624.712, subd. 6**

Handgun

See definition of “pistol,” which is used synonymously with “handgun” in Minnesota Statutes. Also see federal law definition of handgun in Appendix B.

Hunting

“Hunting” means taking birds or mammals. **Minn. Stat. § 97A.015, subd. 26**

Included Weapons

By August 1, 1993, and annually thereafter, the superintendent of the Bureau of Criminal Apprehension shall publish a current authoritative list of the firearms included within the definition of “semiautomatic military-style assault weapon” under this section. Dealers, purchasers, and other persons may rely on the list in complying with this chapter. **Minn. Stat. § 624.712, subd. 8**

Large Firearms Dealer

“Large firearms dealer” means a firearms dealer who operates a retail business at which more than 50 pistols are displayed for sale at any time. **Minn. Stat. § 624.7161, subd 1, para. (d)**

Less Lethal Munitions

“Less lethal munitions” means projectiles which are designed to stun, temporarily incapacitate, or cause temporary discomfort to a person. **Minn. Stat. § 609.066, subd. 1**

Machine Gun

“Machine gun” means any firearm designed to discharge, or capable of discharging automatically more than once by a single function of the trigger. **Minn. Stat. § 609.67, subd. 1, para. (a)**

Machine Gun Conversion Kit

“Machine gun conversion kit” means any part or combination of parts designed and intended for use in converting a weapon into a machine gun, and any combination of parts from which a machine gun can be assembled, but does not include a spare or replacement part for a machine gun that is possessed lawfully under section 609.67, subdivision 3. **Minn. Stat. § 609.67, subd. 1, para. (e)**

Peace Officer

“Peace officer” means:

- (1) an employee or an elected or appointed official of a political subdivision or law enforcement agency who is licensed by the board, charged with the prevention and

- detection of crime and the enforcement of the general criminal laws of the state and who has the full power of arrest, and shall also include the Minnesota State Patrol, agents of the Division of Alcohol and Gambling Enforcement, state conservation officers, Metropolitan Transit police officers, Department of Corrections Fugitive Apprehension Unit officers, and Department of Commerce Insurance Fraud Unit officers, and the statewide coordinator of the Violent Crime Coordinating Council; and
- (2) a peace officer who is employed by a law enforcement agency of a federally recognized tribe, as defined in United States Code, title 25, section 450b(e), and who is licensed by the board. **Minn. Stat. § 626.84, subd. 1**

Pistol

“Pistol” includes a weapon designed to be fired by the use of a single hand and with an overall length less than 26 inches, or having a barrel or barrels of a length less than 18 inches in the case of a shotgun or having a barrel of a length less than 16 inches in the case of a rifle (1) from which may be fired or ejected one or more solid projectiles by means of a cartridge or shell or by the action of an explosive or the igniting of flammable or explosive substances, or (2) for which the propelling force is a spring, elastic band, carbon dioxide, air or other gas, or vapor.

“Pistol” does not include a device firing or ejecting a shot measuring .18 of an inch, or less, in diameter and commonly known as a “BB gun,” a scuba gun, a stud gun or nail gun used in the construction industry or children’s pop guns or toys. **Minn. Stat. § 624.712, subd. 2**

“Pistol” is defined in Minnesota law to mean “handgun.” In federal law, as well as in the vernacular, the term handgun includes both revolvers¹²¹ and pistols,¹²² where the latter term includes semiautomatic pistols as well as single-shot pistols and any other type of handgun that is not a revolver. The term pistol is sufficiently broad to encompass all firearms that are handguns.

Qualified Domestic Violence-Related Offense

Minnesota Statutes, section 609.02, subdivision 16, lists what constitutes a “qualified

¹²¹ A “revolver” is a handgun that is equipped with a highly visible cylinder that holds the ammunition cartridges and allows them to be rotated into firing position (i.e., into alignment with the gun’s hammer, firing pin and barrel) one at a time, with each cocking of the hammer. For reference, the six-shooters of the Old West were revolvers, as are many modern handguns.

¹²² With a “semiautomatic pistol,” the ammunition is typically manually loaded into a clip or magazine that is then placed vertically inside the pistol grip, from which one cartridge at a time is automatically lifted and inserted into the chamber within the barrel for separate firing with each individual pull of the trigger. Following each trigger pull and firing, the operating slide moves quickly to the rear in order to eject the spent cartridge and to load the next available one, thereby typically also cocking the trigger, which must again be pulled for the pistol to fire—hence, the term “semiautomatic pistol” (or auto-loading pistol). Most current police firearms and many civilian-owned handguns are semiautomatic pistols. Both revolvers and semiautomatic pistols are used for self-defense, target shooting, and hunting.

domestic violence-related offense” as a violation or an attempt to violate the following sections of law:

- 518B.01, subdivision 14 (violation of domestic abuse order for protection)
- 609.185 (first-degree murder)
- 609.19 (second-degree murder)
- 609.221 (first-degree assault)
- 609.222 (second-degree assault)
- 609.223 (third-degree assault)
- 609.2231 (fourth-degree assault)
- 609.224 (fifth-degree assault)
- 609.2242 (domestic assault)
- 609.2247 (domestic assault by strangulation)
- 609.342 (first-degree criminal sexual conduct)
- 609.343 (second-degree criminal sexual conduct)
- 609.344 (third-degree criminal sexual conduct)
- 609.345 (fourth-degree criminal sexual conduct)
- 609.377 (malicious punishment of a child)
- 609.713 (terroristic threats)
- 609.748, subdivision 6 (violation of harassment restraining order)
- 609.749 (harassment/stalking)
- 609.78, subdivision 2 (interference with an emergency call)
- 629.75 (violation of domestic abuse no contact order)

The law also states that this includes violations of similar laws of other states, the United States, the District of Columbia, tribal lands, and United States territories.

Reasonable Assistance

“Reasonable assistance” means aid appropriate to the circumstances, and includes obtaining or attempting to obtain assistance from a conservation or law enforcement officer, or from medical personnel. **Minn. Stat. § 609.662**

Replica Firearm

“Replica firearm” means a device or object that is not defined as a dangerous weapon, and that is a facsimile or toy version of, and reasonably appears to be a pistol, revolver, shotgun, sawed-off shotgun, rifle, machine gun, rocket launcher, or any other firearm.

Minn. Stat. § 325F.81

An identical definition of “replica firearm” is found in the terroristic threats statute, with the following additional language:

“The term “replica firearm” includes, but is not limited to, devices or objects that are designed to fire only blanks.” **Minn. Stat. § 609.713, subd. 3**

Resident

“Resident” means: (1) an individual who is a citizen of the United States or a resident alien, and has maintained a legal residence in the state at least the immediately preceding 60 days; (2) a nonresident under the age of 21 who is the child of a resident; (3) a domestic corporation; or (4) a foreign corporation authorized to do business in the state that has conducted a licensed business at a location within the state for at least ten years. **Minn. Stat. § 97A.015, subd. 42**

Saturday Night Special Pistol

“Saturday night special pistol” means a pistol other than an antique firearm or a pistol for which the propelling force is carbon dioxide, air or other vapor, or children’s pop guns or toys, having a frame, barrel, cylinder, slide or breechblock:

- (1) of any material having a melting point (liquidus) of less than 1,000 degrees Fahrenheit, or
- (2) of any material having an ultimate tensile strength of less than 55,000 pounds per square inch, or
- (3) of any powdered metal having a density of less than 7.5 grams per cubic centimeter.

Minn. Stat. § 624.712, subd. 4

Semiautomatic Military-Style Assault Weapon

“Semiautomatic military-style assault weapon” means:

- (1) any of the following firearms:
 - (i) Avtomat Kalashnikov (AK-47) semiautomatic rifle type;
 - (ii) Beretta AR-70 and BM-59 semiautomatic rifle types;
 - (iii) Colt AR-15 semiautomatic rifle type;
 - (iv) Daewoo Max-1 and Max-2 semiautomatic rifle types;
 - (v) Famas MAS semiautomatic rifle type;
 - (vi) Fabrique Nationale FN-LAR and FN-FNC semiautomatic rifle types;
 - (vii) Galil semiautomatic rifle type;
 - (viii) Heckler & Koch HK-91, HK-93, and HK-94 semiautomatic rifle types;
 - (ix) Ingram MAC-10 and MAC-11 semiautomatic pistol and carbine types;

- (x) Intratec TEC-9 semiautomatic pistol type;
 - (xi) Sigarms SIG 550SP and SIG 551SP semiautomatic rifle types;
 - (xii) SKS with detachable magazine semiautomatic rifle type;
 - (xiii) Steyr AUG semiautomatic rifle type;
 - (xiv) Street Sweeper and Striker-12 revolving-cylinder shotgun types;
 - (xv) USAS-12 semiautomatic shotgun type;
 - (xvi) Uzi semiautomatic pistol and carbine types; or
 - (xvii) Valmet M76 and M78 semiautomatic rifle types;
- (2) any firearm that is another model made by the same manufacturer as one of the firearms listed in clause (1), and has the same action design as one of the listed firearms, and is a redesigned, renamed, or renumbered version of one of the firearms listed in clause (1), or has a slight modification or enhancement, including but not limited to a folding or retractable stock; adjustable sight; case deflector for left-handed shooters; shorter barrel; wooden, plastic, or metal stock; larger clip size; different caliber; or a bayonet mount; and
- (3) any firearm that has been manufactured or sold by another company under a licensing agreement with a manufacturer of one of the firearms listed in clause (1) entered into after the effective date of Laws 1993, chapter 326, to manufacture or sell firearms that are identical or nearly identical to those listed in clause (1), or described in clause (2), regardless of the company of production or country of origin.

The weapons listed in clause (1), except those listed in items (iii), (ix), (x), (xiv), and (xv), are the weapons the importation of which was barred by the Bureau of Alcohol, Tobacco, and Firearms of the United States Department of the Treasury in July 1989.

Except as otherwise specifically provided in paragraph (d), a firearm is not a “semiautomatic military-style assault weapon” if it is generally recognized as particularly suitable for or readily adaptable to sporting purposes under United States Code, title 18, section 925, paragraph (d)(3), or any regulations adopted pursuant to that law. **Minn. Stat. § 624.712, subd. 7**

Short-Barreled Shotgun

“Short-barreled shotgun” means a shotgun having one or more barrels less than 18 inches in length and any weapon made from a shotgun if such weapon as modified has an overall length less than 26 inches. **Minn. Stat. § 609.67, subd. 1, para. (c)**

Shotgun

“Shotgun” means a weapon designed, redesigned, made or remade which is intended to be fired from the shoulder and uses the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger. **Minn. Stat. § 609.67, subd. 1, para. (b)**

See also the definition of “shotgun use area,” which indicates that the term shotgun

includes rifle-barreled slug guns of the type commonly used for deer hunting throughout much of Minnesota.

Shotgun Use Area

During the regular firearms season in the shotgun use area, only legal shotguns loaded with single-slug shotgun shells, legal muzzle-loading long guns, and legal handguns may be used for taking deer. Legal shotguns include those with rifled barrels. **Minn. Stat. § 97B.318, subd. 1**

Small Firearms Dealer

“Small firearms dealer” means a firearms dealer who operates a retail business at which no more than 50 pistols are displayed for sale at any time. **Minn. Stat. § 624.7161, subd 1, para. (c)**

Taking

“Taking” means pursuing, shooting, killing, capturing, trapping, snaring, angling, spearing, or netting wild animals, or placing, setting, drawing, or using a net, trap, or other device to take wild animals. Taking includes attempting to take wild animals, and assisting another person in taking wild animals. **Minn. Stat. § 97A.015, subd. 47**

Trigger Activator

“Trigger activator” means a removable manual or power driven trigger activating device constructed and designed so that, when attached to a firearm, the rate at which the trigger may be pulled increases and the rate of fire of the firearm increases to that of a machine gun. **Minn. Stat. § 609.67, subd. 1, para. (d)**

Unloaded

“Unloaded” means, with reference to a firearm, without ammunition in the barrels and magazine, if the magazine is in the firearm. A muzzle-loading firearm with a flintlock ignition is unloaded if it does not have priming powder in a pan. A muzzle-loading firearm with percussion ignition is unloaded if it does not have a percussion cap on a nipple. **Minn. Stat. § 97A.015, subd. 51**

Appendix B: Definitions in Federal Law

This section presents definitions in federal firearms law that are important for properly interpreting Minnesota law. In some cases, Minnesota courts have relied on these federal definitions in the absence of definitions of the same terms within Minnesota Statutes. In other cases, the federal law definitions offer elaboration or distinctions on nuances not addressed in the state definitions, but which are important to understand for interpreting Minnesota law. In a few cases, the federal law definition differs greatly from the corresponding definition in Minnesota Statutes.

The following definitions are from United States Code, title 18, section 921—the federal Gun Control Act of 1968. Most are reproduced here as they appear in statute, unless otherwise noted.

Ammunition

The term “ammunition” means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm. **18 U.S.C. § 921(a)(17)(A)**

Note that, under this definition, even ammunition components and empty cartridge cases are regarded as ammunition.

Antique Firearm

The term “antique firearm” means:

- (A) any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; or
- (B) any replica of any firearm described in subparagraph (A) if such replica:
 - (i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or
 - (ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; or
- (C) any muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol, which is designed to use black powder, or a black powder substitute, and which cannot use fixed ammunition. For purposes of this subparagraph, the term “antique firearm” shall not include any weapon which incorporates a firearm frame or receiver, any firearm which is converted into a muzzle loading weapon, or any muzzle loading weapon which can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechlock, or any combination thereof. **18 U.S.C. § 921(a)(16)**

Note that, under this definition, “antique firearms,” including muzzleloaders, are firearms. However, antique firearms are not defined as “firearms” under federal law and, thus, they

are not regulated under the federal Gun Control Act. This exception has implications for antique firearms; for example, unlike for the purchase of a “firearm” from a licensed dealer, purchase of an “antique firearms” (even one that is a handgun) bears no requirement for a background check of any kind.

BATFE

The Bureau of Alcohol, Tobacco, Firearms and Explosives (abbreviated BATFE and sometimes as ATF) is a specialized federal law enforcement and regulatory organization within the U.S. Department of Justice (DOJ). The agency’s responsibilities include the investigation and prevention of federal offenses involving the unlawful use, manufacture, and possession of firearms and explosives, acts of arson and bombings, and illegal trafficking of alcohol and tobacco products. The BATFE also regulates via licensing the sale, possession, and transportation of firearms, ammunition, and explosives in interstate commerce. Many of the BATFE’s activities are carried out in conjunction with task forces made up of state and local law enforcement officers. <http://www.atf.gov>

BATFE Form 4473

A Firearms Transaction Record, or Form 4473, is a U.S. government form that must be filled out when a person purchases a firearm from a federally licensed firearms dealer (i.e., an FFL, such as at a sporting goods store).

The Form 4473 contains the name, address, date of birth, government-issued photo ID number, National Instant Criminal Background Check System (NICS) background check transaction number, make/model/serial number of the firearm, and a short federal affidavit stating that the purchaser is eligible to purchase firearms under federal law. Lying on this form is a felony, punishable by up to five years imprisonment and a fine, even if the transaction is denied by the National Instant Check System (NICS) and no transfer occurs.

This federal form is also required by most Minnesota police chiefs and sheriffs for background check purposes involving citizen applications for a Minnesota permit to purchase a handgun or a Minnesota permit to carry a handgun.
<http://www.atf.gov/forms/download/atf-f-4473-1.pdf>

Body Armor

The term “body armor” means any product sold or offered for sale, in interstate or foreign commerce, as personal protective body covering intended to protect against gunfire, regardless of whether the product is to be worn alone or is sold as a complement to another product or garment. **18 U.S.C. § 921(a)(35)**

Brandish

The term “brandish” means, with respect to a firearm, to display all or part of the firearm, or otherwise make the presence of the firearm known to another person, in order to intimidate that person, regardless of whether the firearm is directly visible to that person.

18 U.S.C. § 924(c)(4)

Collector

The term “collector” means any person who acquires, holds, or disposes of firearms as curios or relics, as the Attorney General shall by regulation define, and the term “licensed collector” means any such person licensed under the provisions of this chapter. **18 U.S.C. § 921(a)(13)**

Conviction

“Conviction” generally means a guilty plea or a verdict of guilty by a jury or a finding of guilty by a court.

However, “conviction” is specially and identically defined in both the Minnesota and federal gun control acts to mean something more specific than the general definition in the criminal code. This special definition is important in determining whether a person who has been “convicted” of a firearms-disabling crime in any court remains “convicted” for purposes of Minnesota and federal firearms law.

That special definition of “conviction” is subsumed within the definition of the term “Crime punishable by imprisonment for a term of exceeding one year,” which follows below.

Crime Punishable by Imprisonment for a Term Exceeding One Year

The term “crime punishable by imprisonment for a term exceeding one year” does not include:

- (A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or
- (B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms. **18 U.S.C. § 921(a)(20)**

Dealer; Licensed Dealer; FFL

The term “dealer” means (A) any person engaged in the business of selling firearms at wholesale or retail, (B) any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms, or (C) any person who is a pawnbroker. The term “licensed dealer” means any dealer who is licensed under the provisions of this chapter. **18 U.S.C. § 921(a)(11)**

BATFE is the federal agency with responsibility to license firearms dealers (and manufacturers and importers). A person with such license is known as a federal firearms licensee, or FFL, as well as a licensed dealer. Each firearms selling establishment must have at least one staff member who is an FFL assigned to handle firearm shipments and transfers or sales both into and out of the business.

A person who is not an FFL is commonly referred to as a “non-FFL” or “an unlicensed person.” Many federal and state firearms laws designate the duties and responsibilities of these roles and the formal relationships between and among them.

Firearm

The term “firearm” means: (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm. **18 U.S.C. § 921(a)(3)**

Note that this federal definition of “firearm” is both broader and narrower than the definition of this term in Minnesota Statutes. It is broader in defining the frame of a firearm, as well as a firearm silencer, as being a “firearm.” Conversely, it is narrower than Minnesota law by explicitly excluding muzzle-loading guns from being “firearms.” These differences have important implications in certain situations for licensed dealers, the courts, and the citizenry.

Firearm Silencer

The terms “firearm silencer” and “firearm muffler” mean any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication. **18 U.S.C. § 921(a)(24)**

Handgun

The term “handgun” means:

- (A) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and

(B) any combination of parts from which a firearm described in subparagraph (A) can be assembled. **18 U.S.C. § 921(a)(29)**

Intimate Partner

The term “intimate partner” means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabitated with the person. **18 U.S.C. § 921(a)(32)**

Machine Gun

The term “machinegun” has the meaning given such term in section 5845(b) of the National Firearms Act (26 U.S.C. § 5845(b)). **18 U.S.C. § 921(a)(23)**

Any automatic rifle, pistol, or shotgun is a machine gun. Such weapons are commonly referred to as “automatic” weapons. The distinguishing characteristic of a machine gun or automatic weapon is that a single pull of the trigger will generally result in the sequential firing of more than one cartridge. In contrast, a semiautomatic pistol, rifle, or shotgun is designed to fire only one cartridge per single pull of the trigger.¹²³

Misdemeanor Crime of Domestic Violence

This term is defined in the federal Gun Control Act as follows:

“(33)(A) Except as provided in subparagraph (C), the term “misdemeanor crime of domestic violence” means an offense that:

- (i) is a misdemeanor under Federal, State, or Tribal law; and
- (ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

(B)(i) A person shall not be considered to have been convicted of such an offense for purposes of this chapter, unless:

- (I) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and

¹²³ Under the National Firearms Act of 1934, machine guns and short-barreled shotgun have been heavily regulated by the BATFE and, thus, they are not widely available to civilians (i.e., persons other than police and military). Technically, the act requires registration of, and a federal tax on, any civilian-owned machinegun, as well as prior written permission of the authorized federal agency to acquire one. It is prohibited for a manufacturer to transfer any machine gun manufactured after May 19, 1986, to any recipient other than a government agency (federal, state, and local), a police agency, or the military.

(II) in the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either

(aa) the case was tried by a jury, or

(bb) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

(ii) A person shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.” 18 U.S.C. § 921(a)(33)

[Note that Subparagraph (C), referenced above in this law, was never enacted. Legal scholars presume the reference should have been to subparagraph (B).]

Rifle

The term “rifle” means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire only a single projectile through a rifled bore for each single pull of the trigger. 18 U.S.C. § 921(a)(7)

Semiautomatic Rifle

The term “semiautomatic rifle” means any repeating rifle which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge. 18 U.S.C. § 921(a)(28)

Note that it is the characteristic of requiring a separate pull of the trigger to fire each cartridge that distinguishes a semiautomatic rifle from a machine gun (for which one pull of the trigger will fire more than one cartridge).

Short-Barreled Rifle

The term “short-barreled rifle” means a rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon, as modified, has an overall length of less than twenty-six inches. 18 U.S.C. § 921(a)(8)

Shotgun

The term “shotgun” means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger. **18 U.S.C. § 921(a)(5)**

Note that the reference in this definition to “smooth bore” would seem to imply that a rifled barrel in what is otherwise a shotgun would disqualify the weapon from being a shotgun under this federal definition. Notwithstanding that possibility, federal law conforms in practice to Minnesota law (and to common understanding) in defining a shotgun with a rifled slug-barrel as being a shotgun.

Short-Barreled Shotgun

The term “short-barreled shotgun” means a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun (whether by alteration, modification, or otherwise) if such a weapon as modified has an overall length of less than 26 inches. **18 U.S.C. § 921(a)(6)**