

HOUSE RESEARCH

Bill Summary

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Overview

This bill establishes a "shall issue" policy for permits to carry a pistol in public. Essentially, it reverses the presumption on the issuance of permits to carry a pistol. Under current law, a person must demonstrate "an occupation or personal safety hazard" that requires a permit. Issuance of a permit is discretionary and a permit may be limited in its scope. Under the bill, a sheriff is required to issue a permit to a person unless the person is disqualified under specific, listed factors.

Section

- 1** **Pistol permit data.** Conforming amendment to the data practices chapter clarifying that a sheriff may share certain data on permit holders with the department of public safety (DPS).
- 2** **Possession on school property.** Provides that, in relation to the current law prohibiting possession of dangerous weapons on school property, a person must know he or she is on school property to be guilty of the crime. Provides that it is a petty misdemeanor for a person with a permit to carry a pistol to carry on school property. An exception is made for people in motor vehicles and for placing a firearm in, or retrieving it from, the trunk of a vehicle. Certain other exceptions in current law, such as having written permission from the principal, also apply. Provides that a violation does not subject the firearm to forfeiture. Makes certain changes to the definition of school property, including adding licensed child care centers to the definition.
- 3** **Commissioner.** Defines "commissioner" as the commissioner of public safety for the carry permit section, and related sections, of law.
- 4** **Permit required; penalty.** (a) Similar to current law. Provides that a person may not carry a pistol in a public place without a permit to do so. Does not apply to law enforcement officers.

Provides that a violation is a gross misdemeanor. Second and subsequent violations are felonies. (Note: current law provides certain exceptions to the general prohibition, such as carrying a pistol from the place of purchase to home. This bill does not change the exceptions.)

5 Display of permit; penalty. (a) Requires permit holders to have the permit card and other government issued photo-ID in possession at all times when carrying a pistol. Permit holders must show the card and other ID to a peace officer upon lawful demand. Provides that a violation is a petty misdemeanor. The fine for a first offense must not exceed \$25. Provides that a firearm is not subject to forfeiture for violating this paragraph.

(b) Provides that a citation must be dismissed if a person demonstrates that he or she had a valid permit at the time of the alleged violation.

(c) Requires a permit holder to provide a sample signature to aid in identification.

6 Where application made; authority to issue permit; criteria; scope. (a) Vests authority to issue permits with sheriffs. Residents apply to the sheriff in the county where the person resides. Nonresidents may apply to any sheriff.

(b) Provides that a permit must be issued if a person:

- has training in the safe use of a pistol,
- is at least 21 and a citizen or permanent resident of the U.S.,
- completes a permit application, and
- is not otherwise prohibited from possessing a firearm under law.

(A more detailed list of persons ineligible for a permit to carry a pistol under this bill is included at the end of this summary.)

(c) Provides that a permit is a statewide permit.

(d) Permits a sheriff to contract with a police chief to issue permits.

7 Training in the safe use of a pistol. (a) Requires an applicant to present evidence of being trained in the safe use of a pistol within four years of an original or renewal application. Training may be demonstrated by licensure as a peace officer in Minnesota or completion of a basic training course conducted by a certified instructor.

(b) Basic training must include:

- instruction in the fundamentals of pistol use,
- successful completion of a shooting exercise, and
- legal instruction on pistol possession, carry, and use, including self-defense.

(c) Instructors may be certified within the last four years. The following organizations may certify instructors:

- the bureau of criminal apprehension, training and development section
- the Minnesota Association of Law Enforcement Firearms Instructors
- the National Rifle Association
- the American Association of Certified Firearms Instructors

- the POST board or a similar agency of another state
- the DNR or a similar agency of another state, or
- the DPS or a similar agency of another state.

(d) Requires a sheriff to accept the training described in this subdivision. Permits a sheriff to accept other satisfactory evidence of training in the safe use of a pistol.

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Form and contents of application. (a) Requires applications to be on a standard form. Provides that only information required by statute may be requested on the form. In addition to items such as name and date of birth, requires an applicant to list all states of residence in the last ten years, requires authorizing the release of civil commitment information, and requires an applicant to state that, to the best of the applicant's knowledge, he or she is not prohibited from possessing a firearm.

(c) Outlines the required contents of an application packet:

- a signed and dated application
- documentation of pistol training, and
- an accurate photocopy of government issued ID.

(d) Requires applications to be submitted in person.

(e) Sets the application fee at actual cost or \$40, whichever is less. Of that amount \$10 is transferred to the state general fund.

(f) Provides that no additional information or fees may be required of an applicant.

(g) Requires sheriffs to make new and renewal applications available. Requires DPS to make forms available on the internet.

(h) Requires application forms to display a notice that a permit is void if the permit holder becomes prohibited from possessing a firearm. Requires the notice to list applicable criminal offenses and civil categories.

(i) Requires sheriffs to provide a signed receipt when an application is filed.

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Investigation. (a) Requires sheriffs to conduct background checks on applicants by electronic means in state databases and the federal National Instant Check System. The sheriff must also make a reasonable effort to check other available, relevant databases.

(b) Requires the sheriff to notify the police chief, if any, of the municipality where the applicant resides. The chief may supply the sheriff with information relevant to permit issuance.

(c) Requires sheriffs to update background checks yearly. Permits additional checks at any time.

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Granting and denial of permits. (a) Requires a sheriff to act on a permit application within 15 business days. Provides that, in addition to failing to meet the requirements under section 0, a permit may be denied if there is a substantial likelihood that the applicant is dangerous to the public if given a permit to carry a pistol.

(b) Provides that the failure to notify an applicant of a denial constitutes the issuance of a permit. Requires denials to be in writing and to set forth a factual basis for the denial. Provides procedures for reconsideration.

(c) Requires sheriffs to provide laminated permit cards. Requires the sheriff to notify DPS to include the permit holder in the state database.

- (d) Requires sheriffs to notify DPS when a permit is suspended or revoked.
- (e) Permits the sheriff to suspend the application process if certain charges are pending against the applicant.

- 11 Permit card contents; expiration; renewal.** (a) Requires permit cards to be uniform. Specifies the information that must be present on permit cards.
- (b) Requires permit cards to identify the issuing sheriff and state an expiration date. Requires permit cards to display a notice that a permit is void and must be returned if the permit holder becomes ineligible to possess a firearm.
 - (c) Provides that permits expire after four years. Provides that permits may be renewed under the same criteria as an original permit, subject to certain renewal procedures. The renewal fee is \$30. Of that, \$5 is submitted to DPS and deposited in the general fund.
 - (d) Provides that a renewal permit is effective on the day the prior permit expires.
- 12 Change of address; loss or destruction of permit.** (a) Requires permit holders to notify the sheriff within 30 days of changing address, or losing or destroying a permit card. Provides that a violation is a petty misdemeanor and the fine for a first offense may not exceed \$25. Provides that a firearm is not subject to forfeiture for a violation.
- (b) Provides for replacement of permit cards upon change of address, loss, or destruction. Provides for a \$10 fee. Requires completion of a specialized application and a notarized statement if the card was lost or destroyed.
- 13 Permit to carry voided.** (a) Similar to current law. Provides that a permit is void and must be revoked if a permit holder becomes ineligible to possess a firearm. Requires the permit holder to return the permit card.
- (b) Requires the court to take possession of a permit card if the permit holder is convicted of a disqualifying offense.
 - (c) Permits the issuing sheriff or the sheriff of the county of current residence to petition for the revocation of a permit if the sheriff believes the permit holder has demonstrated dangerousness to the public. If the sheriff's petition is denied, the sheriff must pay the permit holders costs and attorney fees.
 - (d) Requires permit revocations to be promptly reported to the issuing sheriff.
- 14 Prosecutor's duty.** Requires prosecutor's to determine whether a person charged with a disqualifying offense is a permit holder. If the defendant is a permit holder, the prosecutor must notify the sheriff of the charges and the final disposition of the case. (Section 0of the bill governs the suspension of the permit as a condition of release.)
- 15 False representations.** Amends current law to provide that false information given in an application must be material to constitute a criminal violation.
- 16 Emergency issuance of permits.** Permits a sheriff to issue an emergency permit to a person when the person's safety is at immediate risk. Requires completion of an application and affidavit. Does not require evidence of training. Provides that an emergency permit is valid for 30 days, may not be renewed, and may be revoked without a hearing. Prohibits a fee. Provides that an emergency permit holder may seek a regular permit subject to the regular procedures.
- 17 Hearing upon denial or revocation.** (a) Permits an applicant to appeal the denial or revocation of a permit. The sheriff is the respondent. The court must hold a hearing as soon as possible, but not later than 60 days. Requires the record to be sealed.

(b) Requires the court to order issuance of a permit unless the sheriff clearly and convincingly establishes that the applicant does not meet the basic statutory criteria (e.g.; 21 years old, trained in the use of a pistol) or that there is a substantial likelihood that the applicant is dangerous to the public if authorized to carry a pistol.

(c) Dangerousness may only be established by criminal or noncriminal history within the past 3 years involving at least one of the following: (1) investigated and documented behavioral incidents of unlawful violence or behaviors that exhibit a clear propensity for unlawful violence, (2) a condition of mental impairment, or (3) being listed in the BCA gang database. These elements must be proven by a preponderance of the evidence.

Taken together, paragraphs (b) and (c) use a two-step approach to establishing "dangerousness." First, at least one of the elements listed in paragraph (c) must be established (by a preponderance of the evidence). Other relevant evidence may also be considered. The sheriff next has the burden of persuading the court, this time clearly and convincingly, that, based on the evidence presented, there is a substantial likelihood that the person is dangerous to the public if given a permit.

(d) If a person is denied a permit for being in the BCA gang database, the person may appeal on the grounds of misidentification, improper inclusion, or by showing withdrawal from gang activities.

(e) Requires the court to award costs and attorney fees to a successful applicant.

- 18** **Suspension as condition of release.** Permits the court to suspend a permit as a condition of release pursuant to the same criteria as the surrender of firearms under Minn. Stat. ' 629.715 if a permit holder is charged with a violent crime. The court must report a suspension to the issuing sheriff or to DPS.
- 19** **Records.** (a) Prohibits a sheriff from maintaining permit application data not necessary to support an outstanding permit. Requires sheriffs to purge unnecessary information yearly.
(b) Notwithstanding paragraph (a), information on a permit holder whose permit was denied or revoked for cause may be kept for six years.
- 20** **Commissioner of public safety; contracts.** Requires DPS to maintain a database of persons with valid carry permits. Provides that DPS may also maintain a separate database of persons who were denied permits or who had permit revoked. Permits DPS to contract with an outside source to fulfill this duty.
- 21** **Recognition of permits from other states.** (a) Requires DPS to establish and publish a list of states that have laws governing carry permits that are not substantially similar to Minnesota's. A person with a license or permit from a state not on the list may use it in Minnesota subject to Minnesota law.
(b) Notwithstanding paragraph (a), provides that an out of state permit is not valid if the permit holder is, or becomes, prohibited from possessing a firearm.
(c) Provides that a sheriff may file a petition against an out of state permit holder under section 0of the bill.
(d) Requires DPS to execute reciprocity agreements with other states when necessary.
- 22** **Posting; Trespass.** (a) Establishes a petty misdemeanor offense for failing to leave private property that is open to the public after being requested to place a firearm into secure storage.
(b) Provides that a request is reasonable only if the requester has posted a sign, provides secure storage on site, assumes strict liability for the firearm and the safety of the person, and

personally demands compliance. Provides specific requirements for the signs and the secure storage.

(c) Permits a property owner to monitor the secure storage area. Establishes a process for handling firearms not recovered from the secure storage area by the owner.

(d) Provides an exception for on-duty police officers and security guards.

23 **Immunity.** Provides immunity to sheriffs, sheriff's employees, and certified instructors for acts committed by permit holders, unless the sheriff, employee, or instructor had actual knowledge that an applicant was disqualified from possessing a pistol.

24 **Monitoring.** Requires DPS to report to the legislature on permits to carry pistols. Requires sheriffs to supply necessary information to DPS. Provides that copies of reports must be available to the public for the cost of duplication. Provides that nothing in this law requires or permits the registration of firearms.

25 **Use of fees.** Provides that permit fees may only be used to pay costs related to permits, specifically including any attorney fees the sheriff is ordered to pay. Requires fee money to be maintained in a segregated fund. Requires sheriffs to report to the commissioner annually on fund revenues, expenditures, and balances.

26 **Short title; construction; severability.** Minnesota Citizens' Personal Protection Act of 2003. Makes certain legislative declarations regarding intent and construction. Provides that if one section is deemed invalid, the remaining sections are not invalid.

27 **Exclusivity.** Provides that no additional or different criteria or procedures for the issuance of permits to carry pistols may be utilized.

28 **Carrying while under the influence of alcohol or a controlled substance.**

Subd. 1. Acts prohibited. Prohibits carrying a pistol in public when under the influence of a controlled substance, a hazardous substance, alcohol, or a combination. Prohibits carrying when BAC is .10 or more, or when BAC is between .04 and .10 (a distinction is made between .04 and .10 because different penalties apply depending on the BAC level).

Subd. 2. Arrest. An arrest for a violation of subd. 1 may be made upon probable cause, without regard to whether it was committed in the officer's presence.

Subd. 3. Preliminary screening test. Provides that an officer with reason to believe a person has violated subd. 1 may require the person to provide a breath sample for an in-field screening device. The results may be used to determine whether an arrest should be made and further testing required. The results of the preliminary test have limited admissibility in court.

Subd. 4. Evidence. Provides that admission of evidence relating to a person's BAC is governed by section 169A.45 (in Minnesota's DWI laws).

Subd. 5. Suspension. Provides the court may suspend a person's authority to carry a pistol as a condition of release for a violation of this section.

Subd. 6. Penalties. (a) and (c) Provides that a violation for BAC over .10 or a controlled or hazardous substance is a misdemeanor. A second violation is a gross misdemeanor. Provides that the authority to carry a pistol is revoked and the person may not reapply for 1 year.

(b) and (d) A violation for BAC of .04 to .10 is a petty misdemeanor. A second violation within a year is a misdemeanor. For a first violation, the authority to carry a pistol is suspended 60 days. For a second violation within a year it is suspended 180

days.

(e) Provides that for a violation with a BAC of .04 to .10, a firearm is not subject to forfeiture.

Subd. 7. Reporting. Provides that suspensions and revocations must be reported to the sheriff or to DPS.

29 Chemical testing.

Subd. 1. Mandatory chemical testing. Requires a person carrying a pistol in public to submit to a chemical test when an officer has probable cause to believe the person violated section 0 and the person was arrested, the person was involved in a firearms-related accident, the person refused a preliminary screening test, or the screening test indicated a BAC of .04 or more.

Subd. 2. Penalties; refusal; revocation. Provides that if a person refuses to take a test, a court may impose a civil penalty of \$500 and may revoke the authority to carry a pistol in public for one year. Provides that the person must be given notice and an opportunity to be heard.

Subd. 3. Rights and obligations. Lists certain things about which a person must be informed when a test is requested.

Subd. 4. Requirement of blood or urine test. Provides that a blood or urine test may be required after a blood test if there is reason to believe the person is impaired by a controlled substance.

Subd. 5. Chemical tests. Chemical tests are governed by section 169A.51 (in Minnesota's DWI laws).

30 Appropriation. Appropriates \$1,071,000 in FY 2004 and \$119,000 in FY 2005 from the general fund to DPS for implementation. Provides that money not spent in FY 2004 carries over to FY 2005.

31 Temporary permit fee. Provides that until July 1, 2004, permit fees are \$50. Of that amount, \$21.50 goes to the general fund to cover DPS start-up costs. After July 1, 2004, the fee reverts to actual costs, but not to exceed \$40 (with \$10 of that amount going to the general fund), as provided in section 0.

32 Grandfather clause. Provides that current permits remain valid until they expire.

33 Revisor's instruction. Instructs the Revisor to change the term "commissioner of public safety" to "commissioner" in the laws relating to carry permits. "Commissioner" is defined in section 0 of the bill.

34 Repealer. Repeals sections of law that are replaced by sections in this bill.

35 Effective date. The effective date for the bill is 30 days after final enactment, except that the attorney general must promulgate the list required under section 0 within 60 days of final enactment.

Persons Ineligible for Permits to Carry Pistols

The people listed below are prohibited from possessing a pistol or firearm under state law (some exceptions may apply B statute and case law must be consulted to determine eligibility in any specific case). In addition to the people who are ineligible to receive a permit under the policies outlined in H.F. 261, the people listed below could not carry a pistol under the terms of a permit.

General/Civil Status:

- Persons who have been committed as mentally ill, mentally retarded, or mentally ill and dangerous
- Persons who have been found incompetent to stand trial or not guilty by reason of mental illness
- Persons currently committed as chemically dependent
- Peace officers informally admitted to treatment facilities for chemical dependency
- Fugitives from justice
- Illegal aliens
- Persons dishonorably discharged from the armed forces
- Persons who have renounced U.S. citizenship

Criminal History Status:

The following crimes are defined by law as violent crimes. Persons convicted of these crimes (or an attempt to commit them) are ineligible for permits to carry a pistol (or to possess any firearm) for ten years after expiration of sentence or restoration of civil rights. Conviction for a similar crime in another state also applies:

- Murder
- Manslaughter
- Aiding suicide or attempted suicide
- Felony violations of first through fourth degree assault
- Assaults motivated by bias
- Drive-by shooting
- Terroristic threats
- Use of drugs to injure or to facilitate crime
- Crimes committed for the benefit of a gang
- Commission of a crime while wearing or possessing a bullet-resistant vest
- Simple or aggravated robbery
- Kidnapping
- False imprisonment
- Criminal sexual conduct in the first through fourth degrees
- Felony firearm theft
- Felony motor vehicle theft
- Felony theft B looting
- Felony theft of a controlled substance, an explosive, or an incendiary device
- First or second degree arson
- Riot
- Burglary in the first through fourth degree
- Harassment and stalking
- Shooting at a public transit vehicle or facility
- Reckless use of a gun or dangerous weapon
- Intentionally pointing a gun at or towards a human being
- Setting a spring gun
- Unlawfully owning, possessing, or operating a machine gun or short-barreled shotgun
- Felony malicious punishment of a child
- Felony neglect or endangerment of a child

- Any felony violation of a controlled substance law

Other felonies. A person convicted of any other felony is ineligible for a permit to carry a pistol until the person's civil rights are restored. The time period may be longer for persons expressly prohibited from possessing a firearm as a condition of a pardon, expungement, or restoration of civil rights. Certain antitrust and other business practice violations are excluded.

Other controlled substance crimes. A person convicted of a misdemeanor or gross misdemeanor controlled substance crime, or hospitalized or committed for controlled substance abuse, is ineligible for a permit to carry a pistol unless the person obtains a doctor's certificate, or other satisfactory proof, that the person has not abused a controlled substance for two years.

Domestic assault/Order for protection violation/Stalking/Harassment. A person convicted of domestic assault, an OFP violation, stalking, or harassment may not possess a *pistol* for three years from the date of conviction. If the person used a firearm in committing the crime, the court may extend the restriction to *any* type of firearm for a period from three years to life. (Note: under federal law, a person in Minnesota convicted of misdemeanor domestic assault may not possess a firearm unless the conviction has been expunged or a pardon has been granted.)

Other assault crimes (non-domestic). A person who is convicted of assault twice in three years may not possess a *pistol* for three years from the date of the second conviction.

Person charged with felony. A person charged with a felony may not receive, ship, or transport a pistol or assault weapon.

Others. A firearm may not be possessed by a person:

- charged with a *crime of violence* and placed in a pretrial diversion program;
- who flees from a state to avoid prosecution or testifying; or
- who "is an unlawful user" of a controlled substance.

Places Where Permits to Carry Pistols are Invalid

Despite the general rule that permits to carry pistols are valid statewide, pistols, or other firearms, are nevertheless not allowed in the following places:

- Correctional facilities or state hospitals (Minn. Stat. ' 243.55)
- County jails (Minn. Stat. ' 641.165)
- Courthouse complexes, unless the sheriff is notified (Minn. Stat. ' 609.66)
- The Capitol complex, unless the commissioner of public safety is notified (Minn. Stat. ' 609.66)
- A field while hunting big game by archery, except bear (Minn. Stat. ' 97B.211)

Additionally, firearms are not permitted in federal court facilities or other federal facilities (Title 18 U.S.C. ' 930).