

2003 Criminal Justice Legislation

The criminal justice provisions passed by the 2003 Legislature include new laws and/or changes to existing laws related to driving while impaired, permits to carry a firearm, restrictions on firearm possession by certain convicted offenders, predatory offender registration and other sex offender issues, law enforcement and prosecution authority, general crime, corrections, the judiciary, the state's public defense system, and other miscellaneous areas. The \$4.2 billion state budget deficit affected legislation in this area, leading to judicial fee increases; decreased funding for public safety, corrections, judiciary, sentencing guidelines, public defender and civil legal services functions; and heightened concerns about increasing prison populations. The rapidly increasing prison population led to close scrutiny of new criminal penalties and accompanying incarceration costs.

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For more information about criminal justice issues, visit the criminal justice area of our web site, www.house.mn./hrd/issinfo/crime.htm.

For additional information on fiscal decisions made by the 2003 Legislature, see www.house.leg.state.mn.us/fiscal/files/03budsum.pdf and www.house.leg.state.mn.us/fiscal/files/0304cuts.pdf or contact Gary Karger, Judiciary Policy and Finance Fiscal Analyst, Minnesota House of Representatives Office of Fiscal Analysis, at 651-296-4181.

DWI Provisions

Other Approved Breath-Testing Instruments Authorized

The legislature authorized use of “approved breath testing instruments” other than those administered through an infrared breath-testing instrument for determining alcohol concentration. Previously, the law referred only to an infrared breath-testing instrument. The law the legislation drops references to calibration and instead refers to a control analysis, which is defined as a procedure that yields a predictable alcohol concentration reading.

The law gives the Commissioner of Public Safety authority to adopt expedited rules on the commissioner’s approval of instruments for preliminary screening or chemical tests for DWI-related breath-testing equipment. Conforming changes also are made in the flying-while-impaired law and in the evidentiary standards to refer to “other approved breath-testing instrument.” [Laws 2003, ch. 96](#); to be codified at [Minn. Stat. §§ 169A.03](#), subd. 11; [169A.45](#), subd. 4; [169A.51](#), subd. 5; [169A.75](#); [360.0753](#), subd. 4; [634.16](#); [Laws 2003, 1st spec. sess., ch. 2](#), art. 9, § 2; to be codified at [Minn. Stat. § 169A.03](#), subd. 5a. (Law effective August 1, 2003.)

Deficient Breath Tests; Second Deficient Test Equals Refusal

This law provides that, for purposes of revocation of an individual’s license for test failure or refusal, a breath test consisting of two separate, adequate breath samples within 0.02 percent alcohol concentration is acceptable. If the two separate, adequate breath samples differ by more than 0.02 percent alcohol concentration, the test is deficient. If a first breath test is deficient, it must be repeated. A second deficient breath test constitutes a refusal for the purpose of license revocation.

Prior to this law, there was no clear statutory standard for when a breath test was deemed deficient. DWI suspects would sometimes try to manipulate the test results by altering the manner in which they would provide breath samples for the test. As the test consists of two separate breath samples, with an intervening separate control test on a sample with a known alcohol concentration, an individual could try to alter the test by providing a deep, powerful breath on the first breath sample and a shallow, weak breath on the second sample, thereby increasing the likelihood the test will be deficient because the results will fall outside the 0.02 percent alcohol concentration. According to the Bureau of Criminal Apprehension (BCA), breath tests will only be that far apart when a DWI suspect is intentionally trying to manipulate the test results. [Laws 2003, ch. 96](#); to be codified at [Minn. Stat. §§ 169A.03](#), subd. 11; [169A.45](#), subd. 4; [169A.51](#), subd. 5; [169A.75](#); [360.0753](#), subd. 4; [634.16](#). (Law effective August 1, 2003.)

Staggered Sentencing Authorized and Defined

“Staggered sentencing” is defined as an executed jail sentence that is ordered by the court to be served in three or more segments spaced one year apart, where the offender may bring a motion before the court for forgiveness of any segment after the first segment.

To receive forgiveness for a subsequent segment of incarceration, the offender must be regularly involved in a structured sobriety group and bring a motion requesting to have that segment of incarceration stayed. The motion must be brought before the same judge who initially pronounced the sentence. Before bringing the motion, an offender must participate for 30 days in remote electronic alcohol monitoring under the direction of the person's probation agent. The court must consider alcohol monitoring results and the recommendation of the person's probation officer. At that time, the court has discretion to stay the second or subsequent segment of remote electronic alcohol monitoring or incarceration previously ordered.

When the court stays a segment of incarceration previously ordered to be executed, that portion of the sentence is added to the total number of days the defendant must serve if there is a subsequent violation of any conditions of the stay.

Finally, the provision clarifies that staggered sentencing qualifies as a sentencing choice under the mandatory minimum penalty requirement for multiple repeat offenders who are given a non-prison sentence. [Laws 2003, 1st spec. sess., ch. 2, art. 9, § 9](#); to be codified at [Minn. Stat. § 169A.275](#), subd. 6. (Law effective August 1, 2003.)

Modification of Penalties for Refusal to Submit to a Chemical Test

A person who commits a DWI test refusal crime with one "aggravating factor" present is guilty of second-degree DWI. Applicable aggravating factors are (1) having a child under age 16 in the car and (2) having a prior DWI offense in the last ten years.

A person who refuses to submit to a chemical test when a peace officer has probable cause to believe the person is impaired is guilty of third-degree DWI.

The test refusal crime is moved from fourth-degree DWI (the lowest level of DWI crime in Minnesota), since test refusal will always be third-degree or higher. [Laws 2003, 1st spec. sess., ch. 2, art. 9, §§ 4 to 6](#); to be codified at [Minn. Stat. §§ 169A.25](#), subd. 1; [169A.26](#), subd. 1; [169A.27](#), subd. 1. (Law effective August 1, 2003.)

Prohibition on Using Certain Revocation Violations to Enhance Penalty

The DWI law includes an amended definition of "prior impaired driving-related loss of license" to exclude revocations stemming solely from prior violations of any of the following "zero-tolerance" laws: (1) underage driving after drinking ("youth zero-tolerance," [§ 169A.33](#)); (2) the "no-alcohol" condition of a restricted driver's license ("B-card violation," [§ 171.09](#)); and (3) alcohol purchasing or consumption by youth under age 21 ([§ 340A.503](#)).

Under previous law, these "zero-tolerance" violations could technically be interpreted to apply equally to a prior DWI violation for enhancing sanctions and penalties for a subsequent DWI violation. This provision clarifies the language and prevents them from being used for enhancement purposes. [Laws 2003, 1st spec. sess., ch. 2, art. 9, § 1](#); to be codified at [Minn. Stat. § 169A.03](#), subd. 21. (Law effective August 1, 2003.)

Longer Probationary Periods for Individuals Guilty of Criminal Vehicular Operation Resulting in Injury

The stay for an imposed sentence to incarceration is lengthened from two years to six years following conviction for the crime of criminal vehicular injury involving great bodily harm, substantial bodily harm, injury to an unborn child (all felonies), or bodily harm (a gross misdemeanor). Under current law, the maximum stay (and, thus, the maximum period of probation) is six years for gross misdemeanor DWI crimes, but ranges from only two to five years for these other crimes involving criminal vehicular injury. [Most crimes involving criminal vehicular homicide or injury also involve impaired driving.] [Laws 2003, 1st spec. sess., ch. 2](#), art. 9, § 18; to be codified at [Minn. Stat. § 609.135](#), subd. 2. (Law effective August 1, 2003.)

DWI Maximum Bail Provisions Inapplicable in Felony Cases

This provision clarifies that the maximum bail provisions applicable to misdemeanor and gross misdemeanor DWI do not apply in felony cases. [Laws 2003, 1st spec. sess., ch. 2](#), art. 9, § 11; to be codified at [Minn. Stat. § 169A.43](#), subd. 1. (Law effective August 1, 2003.)

Changes in Implied Consent Hearings

This section repeals language that required implied consent hearings to be held at the earliest practicable date and no later than 60 days after the petition is filed. It also repeals language requiring the court to file its order within 14 days of the hearing. [Laws 2003, 1st spec. sess., ch. 2](#), art. 9, § 13; to be codified at [Minn. Stat. § 169A.53](#). (Law effective August 1, 2003.)

Restriction on Shorter License Revocation Periods

The shortened period of license revocation for a first-time DWI violator, upon conviction, does not apply if the crime involved either of the following aggravating factors: (1) an alcohol concentration of .20 percent or more; or (2) child endangerment. [Laws 2003, 1st spec. sess., ch. 2](#), art. 9, § 14; to be codified at [Minn. Stat. § 169A.54](#), subd. 6. (Law effective August 1, 2003.)

Minimum Period of Plate Impoundment

This provision simplifies the minimum period of plate impoundment to make it one year. Under previous law, the minimum was one year “and until the next scheduled renewal date.” [Laws 2003, 1st spec. sess., ch. 2](#), art. 9, § 15; to be codified at [Minn. Stat. § 169A.60](#), subd. 8. (Law effective August 1, 2003.)

Elimination of Inconsistencies Between Persons Subject to Custodial Arrest and Persons Subject to Conditional Release

These provisions in the DWI law ensure that the law is consistent with regard to two targeted groups of impaired driving offenders. Under previous law, there were some inconsistencies

between persons subject to custodial arrest and persons subject to conditional release. [Laws 2003, 1st spec. sess., ch. 2](#), art. 9, §§ 10 and 11; to be codified at [Minn. Stat. §§ 169A.40](#), subd. 3; [169A.43](#), subd. 1. (Law effective August 1, 2003.)

Clarification of Legislative Intent: Lookback Period for Felony Crimes

This provision clarifies that the legislature intended, through its 2000 recodification of the DWI laws, to count as aggravating factors all qualified prior impaired driving incidents occurring within the ten years preceding an incident for purposes of the criminal and civil sanctions found in [chapter 169A](#). This is true whether the prior incident occurred before, during, or after 1996 or 1998. References to those laws in the recodified statutes exist simply as a tool to help the user of the law refer back to the most recent version of the statutes containing a particular version of the law. [Laws 2003, 1st spec. sess., ch. 2](#), art. 9, § 20. (Law effective the day following final enactment.)

Aiding and Abetting in DWI Crime

This provision corrects an oversight that occurred during the 2000 recodification of DWI law by bringing over to the new chapter aiding and abetting language from the pre-recodification chapter of DWI law (i.e., this language shift completes the 2000 recodification of DWI law). [Laws 2003, 1st spec. sess., ch. 2](#), art. 9, § 17; to be codified at [Minn. Stat. § 169A.78](#). (Law effective August 1, 2003.)

Firearm Provisions

“Shall Issue” Permit to Carry Law (“Conceal and Carry”)

The 2003 Legislature established a “shall issue” policy for permits to carry a pistol in public. Essentially, this legislation reverses the presumption on the issuance of permits to carry a pistol. Under previous law, a person was required to demonstrate “an occupation or personal safety hazard” that required a permit. Issuance of a permit was discretionary and a permit could be limited in its scope. Under the 2003 law, a sheriff must issue a permit to a person unless the person is disqualified under specific, listed factors.

The law specifies that it shall be known by the short title “Minnesota Citizens’ Personal Protection Act of 2003,” makes certain legislative declarations regarding intent and construction, and provides that if one section is deemed invalid, the remaining sections are not invalid. [Laws 2003, ch. 28](#), art. 2, § 27; to be codified at [Minn. Stat. § 624.714](#), subd. 22. (Law effective May 28, 2003.)

Criminal Penalty for Carrying in Public Without a Permit

The key provision in Minnesota’s law relating to pistol permits is a criminal penalty. Under the law, a person (other than a law enforcement officer) may not carry a pistol in a public place without a permit to do so. A violation of this law is a gross misdemeanor, and second and

subsequent violations are felonies. [Laws 2003, ch. 2](#), art. 2, § 4; to be codified at [Minn. Stat. § 624.714](#), subd. 1a. (Law effective May 28, 2003.)

Process for Obtaining a Permit

A person seeking a permit must apply to the sheriff in the county where the person resides. Nonresidents may apply to any sheriff. A sheriff may contract with a police chief to process permit applications, but the sheriff remains the issuing authority and the police chief acts as the sheriff's agent.

Unless an exception exists in law for denying the permit, a sheriff must issue a permit if a person:

- has training in the safe use of a pistol,
- is at least 21 and a citizen or permanent resident of the United States,
- completes a permit application,
- is not otherwise prohibited from possessing a firearm under law, and
- is not listed in the criminal gang investigative data system.

A permit that is issued is a statewide permit. [Laws 2003, ch. 28, art. 2](#), § 6; to be codified at [Minn. Stat. § 624.714](#), subd. 2. (Law effective May 28, 2003.)

Training Requirements

An applicant must present evidence of training in the safe use of a pistol within one year of the date of an original or renewal application. Training may be demonstrated by (1) employment as a peace officer in Minnesota within the past year or (2) completion of a firearms safety or training course providing basic training in the safe use of a pistol and conducted by a certified instructor.

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 and restrictions on the use of deadly force.

A person qualifies as a certified instructor if the person has been certified as a firearms instructor within the last five 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, and
- the DPS or a similar agency of another state.

A sheriff must accept the training described. A sheriff also may accept other satisfactory evidence of training in the safe use of a pistol. [Laws 2003, ch. 28](#), art. 2, § 7; to be codified at [Minn. Stat. § 624.714](#), subd. 2a. (Law effective May 28, 2003.)

Permit Application Process

An application for a permit must be on an official, standardized form governed by statute and must be submitted in person. Sheriffs are required to make new and renewal applications available, and the Department of Public Safety (DPS) is required to make forms available on the Internet.

The application may not request information beyond the information designated by statute. In addition to providing items such as name, date of birth, and other identifying information, an applicant must list all states of residence in the last ten years, authorize the release of civil commitment information, and state that, to the best of the applicant's knowledge, he or she is not prohibited from possessing a firearm. The application form must display a notice that a permit is void if the permit holder becomes prohibited from possessing a firearm and must list the applicable criminal offenses and civil categories that would prohibit a person from possessing a firearm.

To obtain a permit, an applicant must submit to the appropriate sheriff an applicant packet including:

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

Applicants who would otherwise be ineligible for a permit due to a criminal conviction, but whose rights are restored by court order or pardon, must submit a copy of the relevant order with the application.

A list of those individuals ineligible for a permit to carry a pistol or firearm are listed in the section "Persons Ineligible for Permits to Carry Pistols or Firearms," beginning on page 16. The law contains a "grandfather clause," whereby permits to carry pistols prior to May 28, 2003, remain in effect and are valid under the terms of issuance until the date of expiration. However, a person with a permit issued prior to May 28, 2003, may apply for a permit under the new law if the person elects to do so.

The application fee for a permit must be the actual cost of processing the application or \$100, whichever is less. Sheriffs must provide a signed receipt when an application is filed. An applicant may not be asked or required to submit any information, fees, or documentation beyond that required by this section of law, except for evidence of alternative training if the person's training falls outside the statutory list of accepted types of training.

A person who provides false information in applying for a permit is guilty of a criminal offense only if the information is *material* information. Previously, the gross misdemeanor penalty applied to any false information. [Laws 2003, ch. 28](#), art. 2, §§ 8, 15 and 33; to be codified at [Minn. Stat. § 624.714](#), subds. 3 and 15. (Law effective May 28, 2003.)

Investigation by Sheriff into Permit Holder's Background

Sheriffs must conduct background checks on applicants by electronic means in state databases and the federal National Instant Check System for criminal records, histories, and warrant information. A sheriff also must make a reasonable effort to check other available, relevant databases. Sheriffs must update background checks yearly, and additional checks may be made at any time.

The sheriff also must notify the police chief, if any, of the municipality where the applicant resides, and the police chief may supply the sheriff with information relevant to permit issuance. [Laws 2003, ch. 28](#), art. 2, § 9; to be codified at [Minn. Stat. § 624.714](#), subd. 4. (Law effective May 28, 2003.)

Granting and Denial of Permit; Suspension of Permit Process; Renewal of Permit

A sheriff must act on a permit application within 30 days. A permit may be denied for failure to meet the requirements set forth in law, as well as if there is a substantial likelihood that the applicant is a danger to self or to the public if given a permit to carry a pistol. A denial must be made in writing and set forth a factual basis for the denial.

If the permit application is denied, the sheriff must inform the applicant of the right to submit, within 20 business days, any additional information challenging the denial. The sheriff must then consider this information and inform the applicant within 15 days of the sheriff's decision. The sheriff also must notify the person of the right to appeal the denial pursuant to [Minnesota Statutes, section 624.714](#), subdivision 12.

If a sheriff fails to notify an applicant of the denial of a permit within 30 days, the denial constitutes the issuance of a permit.

Sheriffs must provide laminated permit cards to individuals issued a permit to carry. The sheriff also must notify DPS of the issuance of the permit so that DPS can include information on the permit holder in the state database. If a permit is suspended or revoked, the sheriff must notify DPS of this fact.

A permit issued under this law expires after five years. A permit may be renewed under the same criteria as that for an original permit, subject to the renewal procedures set forth in law. The renewal fee is the actual cost of processing the application or \$75, whichever is less. A renewal permit is effective on the day the prior permit expires.

A sheriff has authority to suspend the application process if charges are pending against the applicant for a conviction that would prohibit an applicant from possessing a firearm. [Laws](#)

2003, ch. 28, art. 2, §§ 10 and 11; to be codified at [Minn. Stat. § 624.714](#), subsds. 6 and 7. (Law effective May 28, 2003.)

Emergency Issuance of Permits

A sheriff may issue an emergency permit to a person when the person's safety is at immediate risk. Issuance of a permit in this manner requires completion of an application and affidavit and does not require evidence of training. An emergency permit is valid for 30 days, may not be renewed, and may be revoked without a hearing. No fee may be charged. An emergency permit holder may seek a regular permit subject to the regular procedures. [Laws 2003, ch. 28](#), art. 2, § 16; to be codified at [Minn. Stat. § 624.714](#), subd. 11a. (Law effective May 28, 2003.)

Permits from Other States

DPS must establish and publish a list of states that have laws governing carry permits that are not substantially similar to Minnesota's by June 27, 2003, and make this list available on the Internet. The Department of Public Safety must execute reciprocity agreements with other states when necessary.

A person with a license or permit from a state not on the list may use it in Minnesota subject to Minnesota law. However, an out-of-state permit is not valid if the permit holder is, or becomes, prohibited from possessing a firearm. A sheriff may file a petition against an out-of-state permit holder under [Minnesota Statutes, section 624.714](#), subdivision 12. [Laws 2003, ch. 28](#), art. 2, § 21; to be codified at [Minn. Stat. § 624.714](#), subd. 16. (Law effective May 28, 2003.)

Immunity for Sheriffs and Certified Instructors

The law 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. [Laws 2003, ch. 28](#), art. 2, § 24; to be codified at [Minn. Stat. § 624.714](#), subd. 19. (Law effective May 28, 2003.)

Form of Permit Cards; Change of Address; Loss and Destruction

The law requires permit cards to be uniform and specifies the information that must be present on the cards. Each card must identify the issuing sheriff and include an expiration date. A permit card also must display a notice that a permit is void and the permit card must be returned if the permit holder becomes ineligible to possess a firearm.

A permit holder must notify the sheriff within 30 days of a change of address or loss or destruction of a permit card. The failure to notify the issuing sheriff is a petty misdemeanor with a fine not to exceed \$25 for the first offense. A firearm carried in violation of this provision is not subject to forfeiture.

A replacement permit card may be obtained upon change of address, loss, or destruction for a \$10 fee. The replacement process requires completion of a specialized application and a notarized statement if the card was lost or destroyed. [Laws 2003, ch. 28](#), art. 2, §§ 11 and 12; to be codified at [Minn. Stat. § 624.714](#), subsds. 7 and 7a. (Law effective May 28, 2003.)

Voiding, Revoking, and Suspending Permits

Provisions for voiding of permits and revocation are similar to prior law. A permit is void and must be revoked if a permit holder becomes ineligible to possess a firearm. The permit holder is required to return the permit card.

If the permit holder is convicted of a disqualifying offense, the court must take possession of the permit card. Also, the issuing sheriff or the sheriff of the county of current residence may 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 holder's costs and attorney fees.

A prosecutor must 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.

All permit revocations must be promptly reported to the issuing sheriff.

A court may suspend a permit as a condition of release pursuant to the same criteria as the surrender of firearms under Minnesota Statutes, section 629.715 if a permit holder is charged with a violent crime. The court must report a suspension to the issuing sheriff, unless the permit is an out-of-state permit, in which case the court must report the information to the DPS. [Laws 2003, ch. 28](#), art. 2, §§ 13, 14, and 18; to be codified at [Minn. Stat. § 624.714](#), subsds. 8, 8a, and 12a. (Law effective May 28, 2003.)

Hearings Upon Permit Denial or Revocation

An applicant may appeal the denial or revocation of a permit. The sheriff is the respondent in such cases. The court must hold a hearing as soon as possible, but not later than 60 days from the filing of the petition for review. The record of the hearing must be sealed. If the appeal is successful, the court must award costs and attorney fees to the applicant.

The court must issue a permit unless the sheriff establishes by clear and convincing evidence 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 a danger to self or the public if authorized to carry a pistol. The court must issue written findings and conclusions of law. The court may not consider incidents of alleged criminal misconduct that were not investigated and documented, and incidents for which the applicant was acquitted.

If a person was 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. [Laws 2003, ch. 28, art. 2, § 17](#); to be codified at [Minn. Stat. § 624.714](#), subd. 12. (Law effective May 28, 2003.)

Civil Penalty for Failure to Display Permit

Permit holders must have their permit card and other government-issued photo identification in possession at all times when carrying a pistol. Permit holders must show the card and other identification to a peace officer upon lawful demand. If a peace officer requests a permit holder to write a sample signature in the officer's presence to help verify the person's identity, the permit holder must do so.

A violation is a petty misdemeanor, and the fine for a first offense must not exceed \$25. A firearm is not subject to forfeiture for violating this provision. A citation must be dismissed if a person demonstrates that he or she had a valid permit at the time of the alleged violation. [Laws 2003, ch. 28, art. 2, § 5](#); to be codified at [Minn. Stat. § 624.714](#), subd. 1b. (Law effective May 28, 2003.)

Posting Private Premises to Ban Guns; Trespass

This provision establishes a petty misdemeanor offense with a fine of not more than \$25 for a first offense for failing to leave private property while possessing a firearm knowing that the operator of the establishment or its agent has made a reasonable request that firearms not be brought into the premises. Before a person may be found in violation of this offense, the person must be ordered to leave the premises. A firearm carried in violation of this law is not subject to forfeiture. This provision does not apply to on-duty police officers and security guards.

Under the law, a "reasonable request" means the requester has prominently posted a conspicuous sign at every entrance to the establishment containing the following language: "(INDICATE IDENTITY OF OPERATOR) BANS GUNS IN THESE PREMISES" and the requester or its agent personally informs the person of the posted request and demands compliance. Owners or operators of private property may not restrict the lawful possession of firearms in a parking area or facility.

The law also defines "prominently," "conspicuously," and "private establishment." The requirements for signs are specific as to their exact placement and typeface. A "private establishment" is a building, structure, or portion thereof that is owned, leased, controlled, or operated by a nongovernmental entity for a nongovernmental purpose.

The requirements of this section of law do not apply to private residences, and a possessor of a private residence may prohibit firearms in any lawful manner. A landlord, however, may not restrict the lawful possession of firearms by tenants or their guests.

This section overrides any policies relating to similar conduct in the trespass law. [Laws 2003, ch. 28](#), art. 2, § 22; to be codified at [Minn. Stat. § 624.714](#), subd. 17. (Law effective May 28, 2003.)

State Preemption of Local Authority

The law contains an exclusivity statement that it “sets forth the complete and exclusive criteria and procedures for the issuance of permits to carry and establishes their nature and scope. No sheriff, police chief, governmental unit, government official, government employee, or other person or body acting under color of law of governmental authority may change, modify, or supplement these criteria or procedures, or limit the exercise of a permit to carry.” [Laws 2003, ch. 28](#), art. 2, § 28; to be codified at [Minn. Stat. § 624.714](#), subd. 23. (Law effective May 28, 2003.)

Possession on School Property Prohibited

It is a misdemeanor for a person with a permit to carry a firearm on or about the person’s clothes or person on school property. An exception is made for permit holders while in a motor vehicle or while placing a firearm in, or retrieving it from, the trunk of a vehicle. A violation does not subject the firearm to forfeiture. The following changes also are made.

- Contrary to previous law, a person now must know the person is on school property to be guilty of the crime.
- The definition of school property is clarified and expanded, specifically including buildings under temporary school control, and the definition of carrying a firearm within a school bus also is clarified.
- Childcare centers are added to the definition, such that the same prohibitions applying to carrying a firearm in a school apply to childcare centers.
- A school district may not regulate firearms carried by nonstudents or nonemployees in a manner inconsistent with the amended statute.

[Laws 2003, ch. 28](#), art. 2, §2; to be codified at [Minn. Stat. § 609.66](#), subd. 1d. (Law effective May 28, 2003.)

Employers and Public Colleges and Universities; Policies to Prohibit Possession

This law clarifies that public and private employers may establish policies that restrict firearm possession by their employees. In addition a public college or university may establish a policy that restricts firearm possession by its students while on campus. Employers and public colleges, however, may not restrict the lawful possession of firearms in parking areas and facilities.

A private college, however, qualifies as a private establishment and can therefore restrict firearms in the same manner as any other private establishment. [Laws 2003, ch. 28](#), art. 2, § 23; to be codified at [Minn. Stat. § 624.714](#), subd. 18. (Law effective May 28, 2003.)

Places Where Pistols or Firearms May Not Be Carried Even with a Permit to Carry or Where There Are Restrictions on the Permit to Carry

Despite the general rule that permits to carry pistols are valid statewide, pistols or other firearms are restricted or 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](#));
- in a capitol area building, unless the Commissioner of Public Safety is notified ([Minn. Stat. § 609.66](#)) (“capitol area” is defined in [Minn. Stat. § 15.50](#), subd. 2); and
- afield 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). This restriction is just one of many federal laws regulating firearms. Federal law must be consulted to ensure compliance with all applicable firearms laws.

Prohibitions on Permit to Carry; Carrying While Under the Influence of Alcohol or a Controlled Substance (New Section [624.7142](#))

The law prohibits carrying a pistol in public when under the influence of a controlled substance, a hazardous substance, alcohol, or a combination of these. A person may not carry a pistol when the person’s alcohol concentration (AC) is .04 percent or more.

The penalties that apply when a person carries a firearm with alcohol present in the person’s body vary depending on the person’s alcohol concentration. A violation for AC of .04 percent to .10 percent is a misdemeanor. The maximum penalty is not increased for subsequent violations. The authority to carry a pistol is suspended for 180 days. A violation for AC over .10 percent or for a controlled or hazardous substance is a misdemeanor. A second violation, however, is a gross misdemeanor. A conviction results in revocation of the authority to carry a pistol for one year. Both suspensions and revocations must be reported to the issuing sheriff and DPS.

An arrest for a violation may be made upon probable cause, without regard to whether it was committed in the officer’s presence. An officer with reason to believe a person has violated this section may require the person to provide a breath sample for an in-field screening test. 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. Admission of evidence relating to a person’s AC is governed by section 169A.45 (in Minnesota’s DWI laws). [Laws 2003, ch. 28](#), art. 2, § 29; to be codified at [Minn. Stat. § 624.7142](#), subs. 1 to 7. (Law effective May 28, 2003.)

Chemical Testing Based Upon Probable Cause That Person Is Under Influence of Alcohol or a Controlled Substance (New Section [624.7143](#))

A person carrying a pistol in public must submit to a chemical test when an officer has probable cause to believe the person violated section [624.7143](#) 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 an AC of .04 percent or more.

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. The person must be given notice and an opportunity to be heard.

At the time a test is requested, a person must be informed that Minnesota law requires a person to take a test to determine if the person is under the influence of alcohol or a controlled substance; if the person refuses, the person is subject to a civil penalty of \$500 and prohibited from carrying a pistol for one year; and the person has the right to consult with an attorney, but the right is limited to the extent it cannot unreasonably delay administration of the test or the person will be deemed to have refused the test.

A blood or urine test may be required after a breath test if there is reason to believe the person is impaired by a controlled substance. Chemical tests are governed by section [169A.51](#), as long as not inconsistent with this law (in Minnesota's DWI laws). [Laws 2003, ch. 28](#), art. 2, § 30; to be codified at [Minn. Stat. § 624.7143](#). (Law effective May 28, 2003.)

Monitoring of Permits

The Department of Public Safety must report to the legislature annually on the number of permits applied for, issued, suspended, revoked, and denied, along with additional demographic information; the number of permits currently valid; the specific reasons for each suspension, revocation, and denial and the number of corrected actions; the number of revocations and the grounds for revocation; the number of convictions and types of crimes committed by individuals with permits in situations where a person used a permitted firearm in furtherance of the crime; data on the lawful and justifiable use by permit holders; and funds reported to the commissioner as part of the permit granting process.

Copies of this report must be available to the public for the cost of duplication. The provision clarifies that nothing in the law requires or allows the registration of firearms. [Laws 2003, ch. 28](#), art. 2, § 25; to be codified at [Minn. Stat. § 624.714](#), subd. 20. (Law effective May 28, 2003.)

Data and Records

Under the Government Data Practices Act, sheriffs must share certain data on permit holders with DPS. DPS must maintain a database of persons with valid carry permits and a separate database of persons who were denied permits or who had their permits revoked. This database must be operational by October 25, 2003.

A sheriff may not maintain permit application data not necessary to support an outstanding permit and must purge unnecessary information yearly. However, information on a permit holder whose permit was denied or revoked for cause may be kept for six years. [Laws 2003, ch. 28](#), art. 2, §§ 1, 19, and 20; to be codified at [Minn. Stat. §§ 13.871](#), subd. 9; [624.714](#), subds. 14 and 15. (Law effective May 28, 2003.)

