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CONCEALED CARRY IN ILLINOIS
DC v. Heller, JUSTICE SCALIA: “in the course of analyzing the meaning of ‘carries a firearm’ in a federal criminal statute, JUSTICE GINSBURG wrote that ‘[s]urely a most familiar meaning is, as the Constitution’s Second Amendment . . . indicate[s]: ‘wear, bear, or carry . . . upon the person or in the clothing or in a pocket, for the purpose . . . of being armed and ready for offensive or defensive action in a case of conflict with another person.’’” 554 U.S. 570 (2008).
Moore v. Madigan (JUSTICE POSNER):
+ “The right to “bear” as distinct from the right to “keep” arms is unlikely to refer to the home.
+ “The Supreme Court has decided that the amendment confers a right to bear arms for self-defense, which is as important outside the home as inside.”
+ “…we order our mandate stayed for 180 days to allow the Illinois legislature to craft a new gun law that will impose reasonable limitations, consistent with the public safety and the Second Amendment as interpreted in this opinion, on the carrying of guns in public.”
  × 702 F.3d 933 (7th Circ., December 11, 2012)

People v. Aguilar – unanimous Illinois Supreme Court codifies Moore v. Madigan
  × 2013 IL 112116 (IL S. Ct; September 12, 2013)
LICENSEE DATA

- **Illinois Population:** 12.8 million
  - Currently, 1.5 million FOID card holders (11.7%)
  - Estimate:
    - 300,000 licensees in year one (2.3%)
    - 400,000-500,000 licensees by year two (3.1-3.9%)

- **Implementation Period**
  - 180 days from July 9, 2013
  - State Police: Licenses become available Jan. 5, 2014
“Shall Issue” – Illinois State Police shall issue a concealed carry license to a person who meets statutory qualifications:

+ At least 21 years old
+ Passes Criminal Background Check:
  ❌ No prior felony conviction
  ❌ No prior misdemeanor domestic violence conviction
  ❌ No prior violent misdemeanor conviction within past 5 years
  ❌ Has not received 2 or more DUI convictions within the past 5 years
  ❌ No prior misdemeanor controlled substance or cannabis conviction within the past year
+ Passes Mental Health Background Check:
  ❌ No mental disability adjudication (incompetent to stand trial; guilty but mentally ill; lost ability to manage estate in guardianship proceeding)
  ❌ Intellectual disability – “impairment in adaptive behavior”
  ❌ Developmental disability – “substantial handicap”
  ❌ Involuntary admission into mental health facility
  ❌ Voluntarily receives mental health treatment, and presents “clear and present danger”
+ 16 hours of training; $150 fee
After application is submitted to ISP, it is entered into a searchable database

- Includes Applicant’s Name; DOB; Driver’s License or State ID #; Any address within the past 10 years

Law enforcement may object within 30 days of entry into the database

- Objections may come from chief officer of any local, state, federal law enforcement agencies, sheriffs, State’s Attorneys, and Attorney General
- No jurisdictional requirement: any law enforcement agency may object to any applicant
AUTOMATIC OBJECTION

- Presumed objection where applicant has been arrested more than 5 times within the past 7 years; or 3 or more times within the past 7 years for gang-related offenses
All objections are submitted to 7 member review board

- Appointed by the Governor, confirmed by Senate
- Members come from each Judicial District
- Requires at least 5 years experience as federal judge, federal prosecutor (2), federal law enforcement (3), or mental health professional

Board deliberates; may hold hearings, and receive testimony or other evidence

Standard of Review: “by a preponderance of the evidence, whether applicant poses a danger to self or others, or is a threat to the public safety”

- Board then issues binding decision to ISP within 30 days
- Administrative and judicial review remain available on appeal
CONCEALED CARRY LICENSE

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

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

- Building, real property, or parking area under the control of a:
  + Hospital, mental health facility, or nursing home
  + Stadium, arena, or sporting event
  + Riverboat, racetrack, or off-track betting site
  + Airport
  + Amusement park, zoo, or museum
  + Public transportation property (includes train, bus, platform, or station property)
  + Public gathering or special event, where a permit is required
  + Colleges and Universities (unless authorized by school authorities)
  + *Nuclear facilities (includes parking lots)
Provision is designed to create a presumption that college/university property is a “no carry zone” – but allow for school administrators to craft specific policies, such as:

- Disciplinary rules for violations (in addition to existing criminal penalties)
- Allowing carry for university-sanctioned programs

Broadly extends to all university owned, controlled or leased real property, buildings, portions of buildings, sidewalks, common areas, and vehicles.
The owner of any private real property not specified in the Act, whether commercial or residential, may elect to prohibit carry on the property.

- The property owner controls over tenants in a residential or commercial lease.
  - *N.B. - Does not include public housing tenants.
- Except for private residences, signs (uniform size of 4” x 6”) must be posted at the entrance of any non-resident private property if the owner elects to prohibit carry.
PRIVATE PROPERTY (CONT’D)

- Legislative Intent:
  - Freedom to contract
  - Freedom for control of buildings/property is vested with the owners, not the tenant/leaseholder

- Sign = 4” x 6”, clearly and conspicuously posted at the entrance of a building, premises, or real property
  - Must post a sign in order to give adequate notice to the public, and to be able to enforce
Rules and Regulations

- Where carry is prohibited/allowed
  - Parking lots
  - Common areas
  - Transport

- Where firearm storage is prohibited/allowed
  - Vehicle safe harbor
  - Area under Tenant/Leaseholder Control
  - “Gun lockers”
PRIVATE PROPERTY AND PREMISES LIABILITY

Premises Liability – liability under a negligence theory for creating or allowing an unsafe environment or condition that results in injury or harm to another; notice of danger and foreseeability of misconduct

- Respondeat Superior – assume liability of employees while in performance of work duties that they are hired to perform, which are intended to serve the employer
  - Negligent Hiring & Retention – background checks; screening; notice
  - Security Personnel
- Prohibiting Guns: “owner is not to be viewed as an insurer of visitor’s safety” - Restatement of Torts §344
  - Failure to enforce weapons prohibition
    - Uniform sign and postage requirement – necessary for legal effect
    - Criminal sanctions available, rather than self-policing
- Allowing Guns: People v. Aguilar, 2013 IL 112116 – 2nd Amendment grants an individual right to protect oneself against public violence
Despite the explicit prohibition on carry within the parking area of a prohibited area, a person may still carry within their car in the parking lot of a prohibited area.

He or she may only exit the vehicle while carrying to place an *unloaded* handgun in the trunk for safe storage.

If leaving the vehicle unattended, must place the handgun out of plain sight in a locked vehicle or the trunk.

“Safe Harbor” for vehicles has been upheld against impermissible taking and federal preemption challenges: *Ramsey Winch, Inc. v. Henry*, 555 F.3d 1199 (10th Cir. 2009)
NON-RESIDENT LICENSEES

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

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

- Carrying while intoxicated (same standards as set forth in 11-501 of the Vehicle Code)
  + First Offense: Class A misdemeanor
  + Second Offense: Class A mm, 6 month suspension
  + Third Offense: Class 4 felony, permanent revocation

- Carrying within a prohibited area
  + First Offense: Class B misdemeanor
  + Second Offense: Class A mm, 6 month suspension
  + Third Offense: Class A mm, permanent revocation

- Carrying with a suspended or revoked license
  + Class A misdemeanor
PREEMPTION

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

In response to current underreporting to Department of Human Services & Illinois State Police

- Mental health providers
- Circuit clerks

Provides streamlined cross-references and reporting accountability for:

- “mentally disabled” (formerly “mental defect”) adjudications under the FOID Act
- Involuntarily admitted; or voluntarily admitted and deemed a “clear and present danger” to self/others
Revocation of FOID/CCL Cards and Firearms

- ISP notifies cardholder that he or she has lost his or her right to possess a firearm, whether temporarily or permanently.

- He or she has 48 hours to turn firearms over to another lawful owner, and account for those firearms with law enforcement.

- If not, law enforcement may obtain a warrant, and seize the person’s FOID card and firearm(s) for the duration of his or her revocation/suspension.
THANK YOU

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