

ARTS Law Memo

What is your sign? Missouri's Concealed Weapon Law

Concealed firearms are one of the hottest political topics in Missouri, and have garnered massive attention throughout the nation in recent years. Missouri is one of 35 states that have adopted laws allowing individuals to carry concealed weapons (Illinois does not, as of this date, permit concealed weapons).

These laws have sparked considerable controversy on many levels, from their constitutionality to their overall value to society.

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No matter on which side you fall in this raging debate, arts organizations in Missouri should educate themselves on the "concealed-carry" law to decide if and how to ban these weapons from their facilities. Additionally, employers should reexamine their workplace violence policies in light of concealed-carry.

The goal of this issue of *Arts Law Memo* is to inform organizations and employers in the arts of their options in this volatile area of law.

THE CONCEALED WEAPON LAW

In 1999, Missouri citizens voted down a concealed-carry proposition on a referendum ballot. Undeterred, the Missouri state legislature passed a concealed-carry law (over the governor's veto) on Sept. 23, 2003.

The law consists of a series of statutes repealing a former weapons law and enacting three new statutes in its place.

The new law allows citizens who are at

least 23 years of age to obtain a permit to carry concealed weapons, provided they meet certain qualifications and subject to certain conditions of use. It also allows holders of permits issued by other states to conceal and carry throughout Missouri and gives all citizens 21 and older the right to keep a weapon concealed in the glove box of their cars without any kind of permit.

Despite a recent court dispute over funding for the law, and certain counties who are refusing to accept permit applications, individuals currently can conceal and carry everywhere in Missouri.

To obtain a Missouri-issued permit, citizens must apply to a county sheriff's office. The office then fingerprints the applicant, conducts a criminal background check, and otherwise determines if the applicant meets all the statutory qualifications (evaluating mental disability, history of dangerous behavior, and the completion of gun safety and training requirements, etc.).

Once all requirements are met, the individual is given a temporary permit and can then go to the DMV to get a driver's or non-driver's license with the permit listed on it. A permit allows the holder to conceal and carry a "knife, a firearm, a blackjack or any other weapon readily capable of lethal use."

Several restrictions are placed on a permit holder's ability to conceal and carry in certain places. Concealed guns may not be carried in police stations, prisons, courthouses, hospitals, airports, amusement parks, and sports arenas that seat at least 5,000. Schools and churches must give consent for a holder to conceal and carry onto their property. Also, private entities may ban concealed weapons, subject to certain conditions.

BANNING CONCEALED WEAPON

Any owner, business or commercial lessee, manager of a private business enterprise, or any other organization, entity, or person can ban concealed

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VLAA helps artists and arts organizations solve and avoid legal and accounting problems by:

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- Arranging for guest speakers;
- Maintaining a reference library;
- Operating an arts space clearinghouse;
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- Conducting and disseminating research;
- Contributing articles to publications;
- Collaborating on arts advocacy initiatives;
- Matching volunteers with arts organizations seeking board members; and
- Providing access to the national volunteer lawyers for the arts network.

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weapons from private property. This basically means that any legal resident of a property, like an arts organization, may ban concealed weapons from its space.

To ban them, an organization must place one or more signs — at least 11- by 14-inches in size with at least one-inch tall writing — in a “conspicuous place,” notifying people that the premises are off-limits to concealed firearms.

Further, the organization may prohibit employees from carrying concealed weapons on its property. Employees may also be restricted from carrying concealed firearms in vehicles owned by the employer.

Clearly, an organization wishing to effectively ban concealed weapons should post the required signs at all entrances to the property. Additionally, workplace violence policies can be installed or updated to prohibit employees from carrying weapons of any kind.

Enforcing these policies is another matter — one on which the law does not give specific guidance. There is nothing in the law that requires metal detectors and security checks to enforce a no-weapons policy, but an organization may want to set up some type of procedure to handle a situation where a prohibited weapon is discovered.

A policy could (1) direct employees to report any signs of a weapon to the organization, (2) direct an agent of the organization to ask the carrying individual to leave, and (3) instruct the agent to call the police if the individual refuses to leave.

The Missouri concealed-carry law specifically allows organizations to implement (2) and (3), but it appears that the police may only issue a ticket (with a fine and, at worst, a permit revocation) to the weapon-toting individual for refusing to leave. Under the law, this type of violation is not classified as a criminal act.

TO BAN OR NOT TO BAN?

After wading through the “how,” you are probably asking “why,” or “what happens if we do or we don’t?” There

WRITING SIGNS

Private businesses and other organizations have already begun posting signs prohibiting concealed weapons on their property. Chances are you have already seen signs in your area.

Other than specifying the size of the sign (at least 11- by 14-inches) and its lettering (at least one-inch tall), the concealed-carry law does not give any required language to be used in designating property as “off-limits to concealed firearms.”

In deciding what to put on a sign, an organization should consider whether it wishes only to prohibit concealed firearms, in general, or all weapons.

Here are some samples that may help in creating a sign:

- “Organization X” prohibits the possession of a firearm, or any other weapon of any kind, on its property, by anyone, regardless of an authorized permit.
- No firearms permitted on premises.
- All weapons, including concealed firearms, are prohibited on these premises.
- Security Notice: Concealed weapons are prohibited in this facility.
- All weapons, including those kept in a vehicle, are prohibited on these premises, regardless of an authorized permit.

An organization that authorizes certain individuals, like security guards, to carry guns on the premises may want to consider this when creating a sign. Again, a sample that may help:

- Unauthorized firearms or weapons are prohibited on these premises, regardless of a concealed-carry permit.

are several concerns to address when answering these questions:

First, an organization should decide how best to protect its employees and patrons. People who support weapon bans focus on preventing violence. The immediate availability of a weapon may cause an otherwise minor dispute to escalate.

Opponents to such bans cite statistics linking an increase in concealed weapons to reductions in crime. They also point to anecdotal evidence of incidents where individuals with firearms defused explosive situations or overcame a threatening individual before he or she could harm others.

Second, an organization should seriously consider the potential legal

liability it faces. If a person brings a firearm or other lethal weapon onto its property and injures someone, an organization could be sued for negligence.

However, there is scant legal precedent and no consensus among employment law experts as to whether banning weapons increases or decreases liability in a potential lawsuit.

Some say that installing a policy, like posting signs, etc., and failing to adequately enforce it can make you more liable. But most experts seem to believe that a no-weapons policy likely will, if anything, decrease liability — because then no one can argue: “Why didn’t you put a sign up? It could have prevented this injury.”

Third, insurance costs are an issue.

Insurers may begin to change premiums or issue credits or debits for those who do or do not post signs. You should check with your insurance provider to see what its current policies and recommendations are in this regard.

Fourth, non-legal business considerations, as is often the case, are an important factor. An organization should assess its client/patron base in light of conceal-carry. If you post signs prohibiting concealed weapons, are you going to turn away a significant number of concealed-carry customers?

On the other hand, openly prohibiting weapons may attract certain customers by demonstrating to them that your establishment is a weapon-free environment.

In the end, each organization must decide for itself what it believes is the best way to ensure its patrons' and employees' safety, pursue its financial well-being, and insulate itself from legal liability — then act accordingly.

OPEN QUESTIONS

As if there wasn't enough to mull over already, there are two remaining (and somewhat unclear) concealed-carry issues that may affect your organization.

First, concealed-carry does not regulate the open carrying of lethal weapons. However, Missouri law allows local governments to make laws regarding open-carry. For example, St. Louis County's "Firearms Code" requires individuals to get written permission from a private property owner to carry a firearm onto his or her property.

An organization should consult the law of its county or municipality when contemplating a ban of all weapons (not just concealed). A call to your local prosecutor may be a good start.

Second, the concealed-carry law includes language that may allow patrons and employees to bring firearms onto a private parking area, as long as the weapons are kept in the individual's car (unless the car is owned by the employer, as discussed above).

The law is ambiguous in that it states that such possession is "not

a criminal offense," but it does not explicitly prohibit private entities from denying access to those who have guns in their cars.

Washington University, for instance, is a private institution that has specifically prohibited firearms in cars parked on its property.

Again, a call to your local prosecutor or police department could reveal whether the authorities in your area will assist in the removal of an individual who violates such a policy.

The law on concealed-carry is clearly still developing in Missouri. In February, for example, the Missouri

Supreme Court ruled that four counties were not required to issue concealed-carry permits because the state of Missouri had imposed an unfunded mandate.

Future court cases and revisions to the law will likely provide more guidance on how to deal with the hornet's nest of issues that concealed-carry presents. Until then, consult your local law enforcement officials or an attorney for advice on fashioning policies best suited for ensuring the safety and vitality of your arts organization.

WORKPLACE VIOLENCE POLICIES

The new concealed-carry law adds a new wrinkle to a larger issue that all organizations must grapple with, namely, workplace violence. Violence in the workplace has steadily risen in recent years and continuously splashes across the headlines in the papers and our evening news.

Concealed-carry is just one new way in which employees may introduce violence into your organization. So it is important to decide if and how to establish policies to prevent violence at work before it starts.

Each organization must determine what measures it is prepared to adequately enforce (in order to stave off legal liability), but here are a few ideas:

- Establish a written "zero tolerance" policy for violence in the workplace.
- Specify prohibited conduct. A policy can strictly prohibit threats of violence, intimidation, physical altercations, vandalism, etc.
- Include a specific provision for zero tolerance of concealed weapons. This can be incorporated into a ban of other prohibited materials (i.e. drugs) and/ or a ban of all weapons in the workplace.
- Specify the consequences and enforce them. A policy can provide for both progressive discipline (for multiple offenses) and the possibility of immediate termination.
- Communicate the policy effectively to all employees. At minimum, it can be included in your employee handbook. Training can also be given regarding threat recognition and complaint resolution.
- Provide procedures for making, investigating, and resolving complaints.
- Include a crisis management procedure, which can address the stabilization of dangerous situations, emergency notification, and internal crisis management team.

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RESOURCES

MISSOURI'S CONCEALED-CARRY LAW

To read the concealed-carry law (R.S.Mo. §571.030, R.S.Mo. §50.535, and R.S.Mo. §571.094), go to the Missouri General Assembly's web site (www.moga.state.mo.us).

WORKPLACE VIOLENCE POLICIES

For an example of a workplace violence policy, visit CCH Business Owner's Toolkit (www.toolkit.cch.com). Policies should be reviewed by an attorney and presented to your board of directors for approval.

GUNS ON STAGE

A safety and security note: any person handling theatrical firearms should be trained in the use of firearms. For a brief overview of the use and dangers of using guns on stage, visit the Community Theater Green Room web site (www.communitytheater.org). Also, Jauchem Meeh Inc. (www.jmfx.net), a New York-based theatrical effects company, provides a helpful list of precautions. Finally, in some jurisdictions, theatres using guns on stage are required to obtain a special license from the sheriff or police department.