



INTERNAL MEMORANDUM

TO: DPS All Sworn

FROM: Catherine M. Lucas, General Counsel

Date: July 29, 2021

Re: HF 756, an Act relating to the acquisition and possession of weapons and providing penalties

HF 756 significantly changed carrying firearms in the State of Iowa. A non-disqualified person no longer needs a permit to lawfully carry, transport, or purchase a firearm. Permits to acquire and carry are still available and it is advisable to obtain a permit. The ability to carry without a permit is applicable to all persons, not just Iowans. For example, a person from another state may not be able to lawfully carry in her home state due to a lack of a permit, but may be able to lawfully carry in Iowa. This memo addresses the general issues law enforcement might encounter regarding the new "permit-less carry."

Who can have acquire a gun without a permit:

See attached. Unless otherwise provided for, a person who should not carry or possess a dangerous weapon and who does so commits serious misdemeanor. The abbreviated list of persons ineligible to acquire is:

- Under age 21 (with professional exceptions)
- Prohibited by Iowa code section 724.26 or federal law;
- Prohibited by court order;
- Intoxicated pursuant to Iowa Code section 321J.2

Use of a Dangerous Weapon in the Commission of a Crime:

Iowa Code section 724.4 (previously carrying weapons) is now "use of a dangerous weapon in the commission of a crime." It is an aggravated misdemeanor when:

A person who goes armed with a dangerous weapon on or about the person, and who uses the dangerous weapon in the commission of a crime . . . except as provided in section 708.8 [going armed with intent]."

A person still needs to be at least 21 years old to carry without a permit, even after July 1, 2021. In addition to the serious misdemeanor above, it is also an aggravated misdemeanor under Iowa Code section 724.4 for a 18, 19, or 20 year old to have a handgun.

Duty to cooperate:

Terry-stop: Previously, possession of a weapon permit was an affirmative defense to a weapons offense. That meant law enforcement had reasonable suspicion of a weapon offense if the officer viewed a gun or had reason to believe the person had a gun, and therefore, law enforcement could *Terry-stop* that person to investigate the status. Now, unless there is reasonable suspicion to believe the person is prohibited (e.g. intoxicated, under 21, possessing a controlled substance, etc) or the person is on public property and within 1,000 feet of a school, there is no basis for a *Terry-stop* to inquire about the legality of a gun. Someone could open carry down the street and unless you have reason to believe they are somehow prohibited, you cannot stop/seize the person. Also, Iowa does not have a stop-and-identify law, so unless you otherwise suspect the person of a crime, you cannot demand identification from a person carrying a firearm unless you have reasonable suspicion the person is prohibited.

Statutory duty to cooperate: While it is best practice to notify law enforcement during an encounter that you have a weapon and/or a permit, that requirement has never been codified. The new law codified some minimal duty to cooperate in Section 724.4D:

A person carrying a dangerous weapon whose behavior creates a reasonable suspicion that the person presents a danger to the person's self or others shall cooperate with an investigating officer.

However, if there is cause to believe the person would use the weapon unlawfully or in such a manner that would endanger the life of the suspect or others, the person is prohibited from carrying, so there would be reasonable suspicion/probable cause to seize that person anyway. So this codified duty to cooperate does not add any additional officer safety elements but rather is redundant.

Minors:

A minor who goes armed with a concealed weapon commits a serious misdemeanor. A minor who carries, transports, or possess a loaded firearm of any kin within the limits of a city or knowingly carries or transports a pistol or revolver (not a long gun) commits a serious misdemeanor pursuant to Iowa Code section 724.4E. A minor who goes armed with an electric current weapon designed to immobilize a person, whether concealed or not, commits a simple misdemeanor. If an officer has reasonable suspicion to believe the person with the weapon is below 21, the officer may seize the person and demand identification.

School zone:

Federal prohibition for non-permit-holders: The federal Gun-Free School Zones Act (GFSZA) prohibits an unauthorized individual from knowingly possessing a loaded or unsecured firearm in a school zone. The restriction applies to elementary and high schools, and to non-private property within 1,000 feet of the schools. This includes public sidewalks, roads, and highways within 1,000 feet of schools. This would also include public housing projects within 1,000 feet of a school. States and political subdivisions may issue licenses that exempt the licensed individuals from the prohibition. Therefore, a person carrying without a permit cannot lawfully carry on public property within 1,000 feet of a school. Having a permit is an affirmative defense to violating the GFSZA and thus, there is reasonable suspicion or probable cause to stop a person with a firearm within 1,000 feet of a school to check the permit status.

724.4B provides it is a class D felony for a person to go armed with, carry, or transport a firearm, whether concealed or not, on school grounds. This prohibition does not apply to the following:

- A person specifically authorized by the school
- A peace officer, whether or not the officer is acting in the performance of official duties
- A member of the armed forces or a correctional officer when the firearm is carried in connection with the person's duties as such
- A person for any lawful purpose carries an unloaded firearm inside a closed and fastened container or securely wrapped package that is too large to be concealed on the person
- A person who for any lawful purpose carries or transports an unloaded firearm in a vehicle inside a closed and fastened container, or transports an unloaded firearm inside a cargo or luggage compartment where the pistol or revolver will not be readily accessible to a person riding in the vehicle
 - Note, it is only pistols and revolvers that have to be unloaded and not readily available to any person. The same restriction for "other firearms" is not there, so long guns do not have to be non-accessible so long as they are unloaded and either is a closed and fastened container or securely wrapped package that is too large to conceal

Capitol building:

All persons (not just peace officers) can openly carry a pistol or revolver in the Iowa State Capitol building, State parking lots, and parking garages. DAS will draft new rules accordingly. Open long gun are still prohibited in the Capitol building.

Manner of Conveyance:

The law is very unclear on the status of manner of conveyance. There is a colorable argument that manner of conveyance is still valid, despite the legislative intent to make it invalid. Please work with your county attorney if proceeding on a manner of conveyance matter.

Iowa Code section 483A.36 Manner of Conveyance

A person, except as permitted by law, shall not have or carry a gun in or on a vehicle on a public highway, unless the gun is taken down or totally contained in a securely fastened case, and its barrels and attached magazines unloaded.

HF 756, new section 724.5 Availability of permit not be construed as prohibition on unlicensed carrying of weapons

The availability of a professional or nonprofessional permit to carry weapons under this chapter shall not be construed to impose a general prohibition on the otherwise lawful unlicensed carrying or *transport*, whether openly or concealed, of a dangerous weapon, including a loaded firearm.

New section 724.5 does not allow for any new carrying, it must be allowed elsewhere, it merely states the permitting does not prohibit carrying. Therefore, carrying must follow all other laws.

Regarding manner of conveyance, a firearm must be broken down unless there is a grant elsewhere that it need not be. Therefore, the "otherwise lawful" from new 724.5 is that the firearm in the car must be broken down because broken down is the standard unless there is an affirmative grant otherwise.

Said somewhat differently, under 483A.36, a person needs a grant of authority to carry a non-broken-down firearm in their car. HF 756 does not provide that grant, the carrying must be "otherwise lawful." Therefore, manner of conveyance law is still in place for non-permitted gun carriers