



Alerts

Illinois Schools Must Comply With New Laws on Guns

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Hinshaw Alert

In the wake of the Sandy Hook Elementary School tragedy, there was a national push to pass legislation making schools safer when it comes to guns and violence. In Illinois, two of the three laws recently enacted require additional reporting by school administrators to law enforcement authorities of students who present a safety risk in regard to weapons offenses. The third law aims to ensure that schools are prepared to act in the event a shooting occurs. Schools also are specifically excluded from the state's new concealed carry law.

The Firearm Concealed Carry Act — PA 98-0063

On Tuesday, July 9, 2013, the Illinois legislature overrode Governor Pat Quinn's amendatory veto of the Firearm Concealed Carry Act. As a result, properly registered individuals 21 years of age or older may carry concealed handguns, loaded or unloaded, except in specifically identified public venues; private venues open to the public; or on private, nonresidential property where the owner has posted notice that firearms are not permitted on the property. For purposes of the act, a handgun is defined as "any device designed to expel a projectile by the action of an explosion, expansion of gas or escape of gas that is designed to be held and fired by the use of a single hand." It does not include:

1. Stun guns or tasers;
2. Machine guns, as defined in Section 24-1(a)(7) of the Criminal Code;
3. Short-barreled rifles or shotguns, as defined at Section 24-1(a)(7)(ii) of the Criminal Code; or
4. Any pneumatic gun, spring gun, paint ball gun or BB gun that: (a) expels a single globular projectile .18 inches in diameter or smaller, or (b) has a maximum muzzle velocity of less than 700 feet per second, or (c) expels breakable paint balls.

Given timelines within the law for the preparation of applications for concealed carry registration and initial reviews it is not anticipated that persons will be authorized to engage in concealed carry activity until at least January 2014.

Concealed carry remains prohibited in public and private educational institutions — from preschools through post-secondary institutions. However, the scope of the exclusion varies, depending on the nature of the educational institution, and any parking restriction still allows a properly registered person to possess the handgun within the vehicle on his/her person while in the vehicle, or stored in a concealed case/locked vehicle or locked container within the vehicle, out of plain view. The individual also may possess the firearm in the immediate vicinity of the vehicle for the limited purpose of properly securing the firearm within or retrieving it from the vehicle prior to or after conducting business with the school.

- For **preschools and other child care facilities**, the prohibition on concealed carry includes buildings, real property or parking areas under the control of the entity and includes rooms or areas of a building under the control of the child care facility, when the building is not a stand-alone child care facility. If the facility is a private home, the prohibition against carrying is limited to times when children receiving care are present. But it does not preclude the ownership of covered firearms so long as they are in a secured cabinet when children receiving care are present.
- For **elementary and secondary schools**, the prohibition extends to carrying a handgun in buildings, on real property or in parking lots controlled by the school.



- Prohibitions in **post-secondary education institutions** (community colleges, colleges, universities) extend to buildings, classrooms, laboratories, medical clinics, hospitals, artistic or athletic venues, entertainment venues, officially recognized university-related organization property (leased/owned), and real property, including parking areas, sidewalks, and common areas under the control of the institution. Additionally, the institution may: (a) prohibit the carrying of a firearm in a vehicle owned, leased or controlled by the college or university; (b) establish discipline and misconduct rules applicable to students, employees and visitors; (c) establish rules regarding storage and/or maintenance of firearms, which may include limiting where vehicles with stored firearms may park; and (d) allow the carrying of firearms for instructional purposes or in designated areas for hunting or target practice.

The Firearm Concealed Carry Act also contains a law titled “School Administrator Reporting of Mental Health Clear and Present Danger Determinations Law.” This law requires public and private elementary, secondary or post-secondary school administrators (principals or chief academic officers) or their designees to report to the Department of State Police any student who presents a clear and present danger to himself or herself or to others, within 24 hours of such a determination being made. For purposes of the reporting obligation of school administrators, a clear and present danger exists when a student “demonstrates threatening physical or verbal behavior, such as violent, suicidal, or assaultive threats, actions or other behavior, as determined by the...school administrator.” 430 ILCS 65/1.1(13)(2). This reporting requirement applies to students of all ages. Taken literally, a kindergarten student who demonstrates “assaultive actions or other behavior” must be reported to the same extent as a high school student demonstrating such behavior. However, school administrators and their designees do have authority to exercise discretion in determining when conduct presents a true threat rather than one that falls within normative developmental behavior. It is advisable to consider developing internal guidelines to assist administrators in making such determinations, absent the development of clarifying regulations.

School administrators should consider consulting with legal counsel prior to filing a report consistent with the terms of the School Administrator Reporting of Mental Health Clear and Present Danger Law. Reporting may conflict with Family Educational Rights and Privacy Act (FERPA) requirements. Whether or not to report will depend on the circumstances of each case and how the reporting administrator or designee learned of the risk presented by the student. FERPA does contain an exception allowing for release of information to juvenile justice authorities, consistent with state law. However, this release is not as simple as it first appears. It does not cover, for example, students who are 17 years of age or older as these students generally are not considered minors under the Illinois Juvenile Court Act unless they are charged with a felony offense.

Neither does the School Administrator Reporting of Mental Health Clear and Present Danger Law fit neatly within FERPA’s emergency exception. Not every student determined to be a clear and present danger, as defined in this new state law, will present an emergency warranting the release of information absent consent as contemplated by FERPA. Even if an emergency does exist, does reporting to the State Department of Police for purposes of inclusion on a statewide database accessed to make determinations around concealed carry registration cards really qualify as reporting to an individual capable of responding to the emergency? Most likely not, particularly when one considers that an individual is not even eligible to obtain a concealed carry permit until he or she reaches the age of 21.

Finally, there may be other personnel working within the school system who have a separate reporting obligation imposed by the Firearm Concealed Carry Act but not covered within the School Administrator Reporting of Mental Health Clear and Present Danger Law. Specifically, law enforcement personnel are required to report individuals who present a clear and present danger, using the same definition imposed for reporting by school administrators. This would include law enforcement personnel working in schools. In addition, a different definition of clear and present danger exists for mandated reporting by physicians, clinical psychologists and qualified examiners. To the extent that schools have on staff law enforcement personnel or clinical psychologists who may make a determination of clear and present danger, steps should be taken to ensure that they know of their obligations under this law and how their obligation varies from school administrators.

School Safety Drills — PA 98-0048



Effective July 1, 2013, inconsistent language regarding student involvement in evacuation drills related to school shootings was clarified, limiting these evacuation drills to participation by school personnel only. The act also makes law enforcement personnel involvement in these drills mandatory instead of discretionary. Students must continue to participate in evacuation drills involving the presence of suspicious items or persons, fire, bombs or hazardous materials that make it safer outside of the school than inside. School safety policies and emergency response plans should be reviewed and updated accordingly.

Reporting of Illegal Weapons and Gang Activity — PA 98-0059

The School Code was amended to add to principals' mandatory law enforcement reporting responsibilities the presence or use of illegal weapons or gang activity, when such activity threatens the safety or welfare of students or staff. The act also makes it clear that detention and prosecution of students for illegal gang activity falls within the ambit of reporting of criminal activity by courts and local law enforcement authorities to the principals of the school in which the student is enrolled. This law goes into effect January 1, 2014, leaving schools and local law enforcement agencies time to update their reciprocal reporting agreements as necessary.

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