

BowTieLawyer

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Open Carry in MS?

I have previously blogged on [MS gun laws](#) and [recent tweaks in the law](#). In the paper, Sunday, that stated effective July, MS will allow open carry. (Perhaps, more accurately stated is that is a prohibited.)



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photos.net

Previously, the MS Attorney General opined, in June 2012, which is only “advisory,” that it is illegal to carry a handgun without a license (concealed carry permit). The license requires that the entirety of the handgun be concealed. The above picture would be a violation of the old law. If the jacket were covering it completely, it would not be if you had a concealed carry permit. This will be changed effective July 1, 2013, and including open carry. Unconcealment will not be a violation. My prior article regarded this “tweak” of the law. However, a closer inspection of the law change also reveals a few other things ADDED to and REMOVED from the previous law.

ADDED (paraphrasing)

97-37-1. (1) Except as otherwise provided in Section 45-9-101, any person who carries, conceals, transports, or manufactures a handgun, or any other firearm, about one's person, any *pistol, revolver... must have a concealed carry license.*

(4) For the purposes of this section, “**concealed**” means **hidden or obscured from common observation** and **shall not include** any weapon listed in subsection (1) of this section, including, but not limited to, **a loaded or unloaded pistol carried upon the person in a sheath, belt holster or shoulder holster, or carried upon the person in a scabbard or case for carrying the weapon wholly or partially visible,** or carried upon the person in a scabbard or case for carrying the weapon wholly or partially visible.

This change now takes any pistol out of the definition of “concealed” if in a holster and visible or partially visible. This means the above picture is no longer a concealed handgun and no longer is subject to concealed carry requirements.

The **licensing requirements of this section do not apply to the carrying by any person of a handgun, pistol or revolver, ...that is not concealed as defined in Section 97-37-1.**

So now the law change has established what the definition of “concealed” is NOT and that a pistol in plain view on your person, that is visible is not concealed.

Now for the **REMOVED** section.

The prior law had a clause to the effect ‘**that nothing herein may be used to authorize open**’ language has been deleted from the new law. The reason is because now this concealed carry law, “concealed,” specifically excludes being applied to a pistol in a holster that is visible. It, by default carry.

There is a maxim in the law that holds that which is not prohibited is allowed. “**Everything which forbidden is allowed**” is a [constitutional](#) principle of [English law](#) – an essential [freedom](#) of the or MS has no law, effective July, that prohibits open carry (and did not prior to this either, really). (now defines a pistol in a holster as not concealed and therefore not subject to concealed carry licens

So, what else is on the books? The MS Constitution guarantees our rights to keep and bear arms (a Constitution). There is nothing else in the law regarding concealed or open carry for citizens.

[You can read the bill for yourself here](#). While it is not black and white law [allowing](#) for open carry (July 2013) “nothing” which can be used to prohibit open carry. Interestingly, I have heard that restrictions to concealed carry apply to open carry, meaning limitations on locations and that if a sign that you could not carry on premises. I say “interestingly” because the prohibitions are all in carry license statute, the law which specifically authorizes concealed carry. The argument could carry is not subject to concealed carry rules because it is specifically excluded from the definition.

I guaranty some more law changes and litigation about this one.

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