HB
269

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: May 1, 1997 FURTHER REFERRALS: Finance

Date of Committee Action: 5/3/97

The STATE AFFAIRS Committee considered: HB 269

HOUSE BILL NO. 269 CONCEALED HANDGUN PERMITS

"An Act relating to permits to carry concealed handguns; and relating to the possession of firearms."

recommends it be replaced
with the following committee substitute ______ [ ] the same title
[ ] a new title

[ ] additional referral to ______ Committee
[ ] attached amendment(s)

ADOPTS: ______ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) ______ [ ] fiscal note(s) ______

[ ] zero fiscal note(s) ______ [ ] zero fiscal note(s) ______

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
Jeannette James	✓			
[signature]	✓			
[signature]	✓			
[signature]	✓			

CHAIR'S SIGNATURE Jeannette James

Alaska State Legislature

House of Representatives
E-Mail: Representative Al_Vezey@LEGIS.state.ak.us

Interim Address:
119 N. Cushman, Suite 211
Fairbanks, AK 99701
(907)-456-5081
Fax# (907)-456-8245
Official Business

Session Address:
Room 13
(907)-465-3719
FAX# (907)-465-3258
State Capitol
Juneau, AK 99801-1182

Representative Al Vezey

HB 269

Revisions to Alaska's Concealed Handgun Permit Law:

Smaller, smarter government: less bureaucracy and more clarity for citizens

The intent of HB269(SB141) is simple:

There is no reason the permitted few should be more restricted than the unregulated many. Treat people and their handguns equally. All Alaskans, who are not otherwise prohibited by federal or state law from owning or possessing handguns, can carry handguns openly in certain places and can carry concealed without a permit in certain places. An Alaskan should be able to carry a concealed handgun in those same places, we should do no more than require fingerprinting, training, and background checks.

With the exception of the recognition of out-of-state permits and the lowering of the permit fee, the **Alaska Peace Officers Association supports HB269(SB141).**

The **Police Chiefs of the North Slope Borough, Valdez and Wasilla** have either spoken out or testified in favor of HB269(SB141).

HB269(SB141) is endorsed by the Alaska Outdoor Council and the National Rifle Association.

The Department of Public Safety supports most of the bill and opposes certain sections. The Department contends that without an increase in volume, reducing fees could result in not collecting enough funds to cover costs of the program. The Department also remains opposed to recognizing out-of-state permits and is cautious about changing the law at all.

OBSERVATIONS

There have been over 6,300 permits issued in Alaska for carrying concealed handguns since that right was recognized in state law in 1994. The Department of Public Safety has done a remarkable job of ensuring fair and speedy processing of applications.

However, Alaskans have voiced some complaints on overly restrictive and confusing prohibitions and regulations leading to a burdensome waste of time. Many of these stipulations were included in the original legislation due to courteous consideration of the dire predictions of mayhem in the streets from some members of the legal community and law enforcement. None of those dire predictions has proven accurate during years of experience and it is appropriate to restore equal rights for law-abiding citizens.

For the most part, the law is working. Crime is down. According to the information we have from the Department of Public Safety, of 6,300 permittees, not one person has used their concealed handgun to commit a crime.

Similar legislation (SB177) passed last session by large majorities, but was vetoed by the Governor. Even though legislation last year prohibited anyone from drinking and carrying a concealed handgun, some felt that whether one was drinking or not, no concealed handguns should be allowed in bars. In the spirit of compromise, we have drafted HB269(SB141) to allow concealed handguns in restaurants regulated under AS 04.16.049 and not in bars.

This bill does not change other state law restricting carrying weapons in bars or schools. All the other existing laws restricting handguns in bars and schools remain in force.

If HB269(SB141) is passed, the simple effect would be that anywhere you can carry a handgun openly (which you can do without training, without background checks, without fingerprinting, and without a permit) you will be able to carry a permitted concealed handgun.

If 300,000 adult Alaskans can legally carry a handgun openly, there is no reason to have greater restrictions for the 6,300 Alaskans who have been fingerprinted, checked, trained and permitted.

The existing law is too restrictive, too confusing and too expensive. For example, under current law you are prohibited from walking into a financial institution with a permitted concealed handgun, but you are allowed to take the handgun out and carry it openly into the bank. Existing law too often turns common sense on its head.

SECTIONAL ANALYSIS

Section 1 and 2 amend Alaska criminal statutes to make clear that no felon, even a non-violent felon, would ever be able to apply for a concealed carry permit.

Sections 3, 5 and 15 of the bill make several things much cleaner and easier to enforce. If a person is a concealed handgun permit holder from another state and comes to Alaska to visit, we will recognize that permit. However, that person is responsible for following the laws regulating Alaskan permit holders. Section 15 should be amended to recognize a visitor's out-of-state permit for 120 days in Alaska, but no longer. This also allows a new Alaskan resident an opportunity to make the transition from one state to Alaska and comply with the 90 day waiting period mandated by our permit law and the 30 day application period with the Department of Public Safety.

These amendments simply recognize equality of Americans as requested by SJR14, which supports legislation in the U.S. Congress seeking nationwide recognition of concealed carry permits issued by any government agency or subdivision.

Sections 3 and 5 improve definitions and continues to permit a municipality or village to prohibit possession of concealed handguns.

Section 5 leaves existing law in place making bars off limits to concealed handguns, but does allow access to restaurants identified under AS 04.16.049. If the Alcohol Beverage Control Board fins that a business, or a specific area of a business, is not a bar you will be allowed to carry concealed, but you will not be allowed to drink any alcohol.

Sections 7 and 11 ensure that the applicant for a permit receives a copy of the state law and regulations and certifies the applicant read them. The bill also requires the Department of Public Safety to compile a concise summary of where, when and by whom a handgun can be carried under state and federal law. The Department is already working to compile this summary.

Section 8 requires the Department to process the permit if the permittee is otherwise eligible without having to wait for weeks or months for the F.B.I. to complete fingerprinting checks. The Department is given authority to immediately revoke a conditional permit whenever it receives information from checking fingerprinting that makes the permittee ineligible. This conforms statute to what the Department of Public Safety already does in practice.

Section 10 simplifies the standards for qualifications to apply for a permit.

Under existing law, in order to carry openly you must be 21 years of age or older and be allowed by state or federal law to own or possess a handgun. Those under 21 can carry with their parent's permission.

Under existing state law, in order to carry concealed during outdoor activities, in your dwelling, in your business, where you are employed or on land owned or leased by the person (see AS 11.61.220) you must be 16, and you must be allowed by state and federal law to own or possess a firearm.

Under existing law, in order to carry concealed in other places than those mentioned above, you must acquire a permit. If HB269(SB141) is passed, in order to do that you must be 21, you must be allowed by state and federal law to own or possess a firearm, you must be a 90 day resident of the state immediately preceding your application for a concealed handgun permit, you must receive training and education and you must demonstrate competence with a handgun.

Federal and state law already address who may own or possess a handgun. In addition, HB269(SB141) prohibits anyone convicted of two Class A misdemeanors in the last six years from applying for or retaining a concealed carry permit. The Department of Public Safety strongly supports this provision in HB269(SB141).

Section 12 simply reduces the fees from $125 to $99 for initial application and from $60 to $30 for renewal or replacement to better reflect the true cost. Other States have even lower fees or no fees at all. This should still leave the Department with at least $40 for processing each permit above the costs for F.B.I. and background checks.

Section 13 amends language to clearly give the Department the authority to immediately suspend permits for anyone who is ineligible under state or federal law to own or possess a handgun.

Section 14 amends language to increase from 5 to 6 years the time frame for disallowing repeat offenders. This provision is tougher than existing law.

Section 16 repeals a long list of special prohibitions that don't apply to open carry or, in some cases, to concealed carry unpermitted. Instead, there is a flat prohibition for possession of a concealed handgun wherever federal or state law prohibits possession of a handgun. With a single exception for certain restaurants, existing law controlling the open carry of handguns while still apply to permitted concealed carry.

A restrictive laundry list of prohibitions tailored only for the fingerprinted, trained, permitted carriers make little sense when state law allows you to carry openly in those places. Federal

and state law already address where handguns can be possessed. In addition, any private business has the right to post signs prohibiting carrying handguns whether concealed or open (See Senate Finance testimony by Dean Guaneli, Department of Law and March 24 and April 29 memos from Legislative Legal counsel). State or public offices may also post signs The penalty for violating these provisions is criminal trespass.

Section 17 simplifies definitions so that shotguns, rifles and all weapons prohibited under AS 11.61.200 do not qualify for concealed carry. Otherwise, just as in every other state, any handgun not otherwise prohibited by state or federal law is treated equally. There are no examples, apparently, anywhere in the United States, where a permittee has used a derringer or "miniature" handgun in a crime. (See Tennessee Law Review, page 707)

Section 18 repeals renewal training requirements; sections no longer justified under the principle "where you can carry open, you can carry concealed." AS 18.65.715(b), 18.65.725(a)(3), and 18.65.755(b).

Sections 4, 6 and 9 are included to make special provisions for certain peace officers and carrying concealed. While there are objections to making special provisions for certain individuals, it is not unreasonable to amend the bill to provide special exemptions for peace officers. This especially seems reasonable in light of the increasing support from peace officers and their organizations for the concept of concealed carry by law-abiding citizens.

We urge the adoption of HB269(SB141) to continue the excellent record set this year by the Legislature toward reducing government regulation and taking practical steps to make Alaska's government smaller and smarter.

TONY KNOWLES, GOVERNOR
PLEASE REPLY TO:

☒ CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3428
FAX: (907) 465-4043

☐ OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501-2064
PHONE: (907) 269-6250
FAX: (907) 269-6270

DEPARTMENT OF LAW

CRIMINAL DIVISION

May 2, 1997

The Honorable Jeannette James
Alaska State House of Representatives
State Capitol, Room 102
Juneau, Alaska 99801

Re: Senate Bill 141 and House Bill 269

Dear Rep. James:

The current concealed handgun permit program was a carefully-crafted statute that established a number of important protections. As a result of the careful way in which the statute was written, there have been few, if any, problems with enforcement of the law. It has been less than three years since the law went into effect, and it is too soon to consider many of the sweeping changes envisioned by SB 141 and HB 269[1].

My objections to the bills fall into two primary areas: first, the bills greatly expand *where* concealed handgun can be carried, and second, the bills greatly expand *who* can carry one. I will first discuss *where* a concealed handgun can be carried or, rather, where it cannot be carried.

This will amplify and clarify a point mentioned in my testimony during the Senate State Affairs Committee and Senate Finance Committee hearings on SB 141. The Senate Rules version of SB 141, and HB 269, would sweep away all the specific protections in AS 18.65 that prevent concealed handguns from being carried in certain sensitive locations, such as domestic violence shelters, banks, government

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[1] HB 269 is very similar, but not identical, to CS SB 141 (RLS).

offices, police departments, etc., and would rely instead on existing criminal trespass laws.

During the committee hearings in the Senate, it was asserted by Senator Lyda Green's aide that, even if all these specific statutory protections are swept away, building managers will be able to accomplish the same result as current statutes by posting signs saying "No Concealed Handguns Allowed". According to the testimony, persons carrying concealed handguns could then be arrested for "criminal trespass". AS 11.46.320 -- 350.

During my testimony in both Senate State Affairs and Senate Finance, I acknowledged that the criminal trespass statutes were available, but I also pointed out that different rules applied to buildings that are open to the public than applied to buildings that are *not* open to the public. This point is discussed at length in an Attorney General's Opinion, dated July 12, 1995, a copy of which I provided to Senator Green's staff.

While it true that premises which are *not* open to the public, such as domestic violence shelters, can post signs to prevent concealed handguns from being carried, this is *not* true in buildings that are open to the public, such as the legislature, government offices, and police departments. In premises that are *open* to the public, a posted sign will *not* suffice to prevent concealed handguns from being carried. In those places, under the Senate bill it would be legal to carry concealed handguns onto the premises, and it will only be illegal to *fail to leave* "after being lawfully directed to do so personally by the person in charge." AS 11.46.350(a)(2).

Therefore, as a practical and legal matter, public buildings will have no way to prevent concealed handguns from being brought onto the premises, unless they establish airport-like security checkpoints to screen for weapons. Alternatively, the building could be remodeled so that the public is corralled into a limited "public area" and the remainder of the premises designated as not open to the public. In that case, signs prohibiting concealed handguns could be posted at the entrances to the non-public areas. While this type of remodeling may be practical in a few buildings, the design and function of most other buildings that are open to the public will likely make such remodeling highly impractical in a large number of instances. Even in

those cases in which remodeling is practical because of the specific layout of the building or office, it is likely to be quite expensive. I do not believe any of the fiscal notes previously submitted have considered remodeling costs.

Even in non-public buildings, the Senate version of this bill creates a burden on each building manager to install and maintain signs at every entrance to a building. This will create a crazy-quilt patchwork of private regulation. Currently permit-holders know precisely where they are allowed to carry concealed handguns and where they are not. Under the bill, confusion and inconsistency will be the norm. For example, permit-holders will not know in advance if they can carry a concealed handgun to a particular private building unless they have been to the building previously. Even then, buildings that are not posted off-limits one day may be posted off-limits the next. Moreover, it is likely there will be disagreements over whether particular premises are "not open to the public" (in which case signs are effective), or whether the premises are "open to the public" (in which case signs have no legal effect).

Overall, one wonders whether the Senate version achieves the stated goal of the bill's supporters of creating more uniformity and less confusion for permit-holders. Frankly, I think permit-holders , and building and office managers alike, will find present statutes much preferable.

Citizens have a right to bear arms, but other citizens (the 99% of Alaskans who do *not* have a concealed handgun permit) have a right to feel comfortable and to demand reasonable protection from guns carried secretly in sensitive locations.

It is up to the legislature to strike a balance between people who choose to carry firearms concealed and people who not only choose *not* to carry firearms concealed, but would prefer not to be around people who do. Three years ago, the legislature carefully considered these issues and struck this balance by allowing concealed firearms to be carried everywhere in the state except for a few specific places. By sweeping away all these protections, we would be elevating the desires of permit-holders above the rights of 99% of all other Alaskans.

Next, I will turn to the question of *who* ought to be allowed to obtain a permit to carry a concealed handgun.

Present law prevents certain persons from obtaining permits. Many of the limitations in current law simply repeat provisions in federal law, but some of the state law provisions provide additional guidance not found in the federal statutes. For example, these bills would propose to allow a person to obtain a permit, even if the person had been recently ordered by a court to go to treatment for alcohol or drug abuse, or if the person was currently in such treatment. Present law does not allow such a person to obtain a permit if the treatment occurred within the previous three years.

While it is true that federal law prohibits a person from carrying a handgun if they are an unlawful user of, or addicted to, a controlled substance, the federal law provides no clear guidelines to determine who is included and who is excluded, and does not limit possession by serious alcoholics. In contrast, current state law provides the clear guidance needed. Other provisions in AS 18.65.705 also give clearer guidelines than federal law and should remain a part of state law.

In addition, SB 141 allows unqualified people, with no knowledge of our laws, and no ties to Alaska, to carry concealed handguns here if they are allowed to carry concealed handguns in their home states. The handgun laws in other states, however, allow many people to qualify who would not qualify under Alaska law. Thus the "reciprocity" provision allows non-residents to carry concealed handguns here, even if they would not qualify to do so if they were a resident of Alaska. Such a law would allow *non-residents* to do things that similarly situated residents could *not* do.

Currently tourists can carry concealed handguns -- without a permit -- if they are hunting, fishing or hiking, where a firearm is needed for protection. These bills would allow people from other states to carry concealed handguns everywhere else they are likely to visit, such as tourist shops, hotels, bed and breakfast homes, and museums. This is not necessary to promote tourism.

The "reciprocity" provision also puts non-residents carriers of concealed handguns at great risk of violating our laws. The bill treats non-resident permit-holders as though they are permit-holders in Alaska. Non-residents would thus be held to the same legal standards as Alaska permit-holders. For example, if contacted by a peace officer, the non-resident would be required to notify the officer that he or she was carrying a concealed handgun. Failure to do so is a class A misdemeanor offense. Although ignorance of the law is never an excuse, as a practical matter most non-residents would be completely unaware of their obligation to so inform an officer. Similarly, non-residents would generally not be aware of which municipalities have enacted local options to ban concealed handguns. Thus the non-resident might violate municipal as well as state law.

In conclusion, I recommend

(1) that the current statutes in AS 18.65.755 not be repealed. I do, however, believe that the provision at page 7, lines 19-21 of CS SB 141 (RLS), relating to carrying concealed handguns into residences, is preferable to current AS 18.65.755(a)(9). HB 269 does not contain this provision, but it should.

(2) that the current statutes in AS 18.65.705 not be repealed.

(3) that the reciprocity provision be eliminated.

I would be happy to work with your committee on needed changes to either of these bills.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:
Dean J. Guaneli
Chief Assistant Attorney General

cc: State Affairs Committee members

0-LS0706\M.4
Luckhaupt
5/2/97

AMENDMENT #4 corrected By S. Green & Halford

OFFERED IN THE SENATE

TO: CSSB 141(RLS)

1 Page 7, lines ~~13 - 14:~~ 23-24

2 Delete "or who may lawfully carry a concealed handgun in public in the state where

3 the person resides"

4 Insert "with permit requirements at least as strict as those in AS 18.65.700 -

5 18.65.790"

WHAT DOES LAW ENFORCEMENT HAVE TO FEAR?

Law enforcement officers have enough to fear every day from violent repeat offenders, a revolving-door justice system, and working conditions that carry the threat of the ultimate sacrifice in the line of duty.

That's why law enforcement officers all over the country are lining up in support of Right-to-Carry. The simple truth is that honest citizens deserve an honest chance against crime. Legislative proposals known as Right-to-Carry codify the citizens' right to self-protection, and create a partnership of trust between law enforcement and law-abiding citizens.

After a close examination of the facts, thirty-one states have placed trust in their honest citizens to take responsibility for their own safety. Now we need to do it for the good citizens in the other nineteen states.

Right-to-Carry Reduces Crime

The verdict is in. A recent landmark study of FBI crime statistics from all the counties in America from 1977 to 1992, undertaken by the University of Chicago, has proven that Right-to-Carry laws reduce violent crime.

The study documented overwhelming evidence that if states without Right-to-Carry had permitted it, their citizens would have been spared approximately 1,570 murders, 4,177 rapes, 12,000 robberies and 60,000 aggravated assaults every year. The study's author, Professor John Lott, Ph.D., conclusively proved what law enforcement has known all along — that "criminals respond rationally to deterrence threats."

Not a Risk for Law Enforcement

Right-to-Carry doesn't jeopardize law enforcement or public safety for the simple reason that law-abiding citizens aren't the problem. But don't take our word for it:

> "When we were first talking about it, most of law enforcement was anti-concealed weapons. Now we're for it. It puts guns in the hands of the good guys instead of the bad guys."
>
> *— Commander Steve Jones, Orange County Sheriff's Dept., Florida (Where Right-to-Carry passed in 1987)*

> "It has impressed me how remarkably responsible the permit holders have been."
>
> *— Col. James Wilson, director of Texas Department of Public Safety (Where Right-to-Carry passed in 1995)*

The facts speak for themselves. Right-to-Carry is a responsible policy that saves lives and helps law enforcement protect the public — the same reasons the Law Enforcement Alliance of America has drafted and fought for the Community Protection Initiative, federal legislation to allow qualified retired and off-duty law enforcement officers to carry concealed firearms nationwide. It just makes sense.

For more information or to inquire about membership, contact:

The Law Enforcement Alliance of America
7700 Leesburg Pike, Suite 421, Dept. FF
Falls Church, Virginia 22043

Or call toll-free 1-800-766-8578

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House Bill 269
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4. Law Enforcement Letters of support

5. National Press - Professor John Lott study
   Tennessee Law Review of concealed carry laws

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7. AS 18.65.700

1

ALASKA STATE LEGISLATURE

Interim:
600 East Railroad Avenue
Wasilla, Alaska 99654
(907) 376-3370
(907) 376-3157 Fax

Session:
State Capitol
Juneau, Alaska 99801-1182
(907) 465-6600
Fax (907) 465-3805

SENATOR LYDA GREEN

SENATE DISTRICT N

SB 141
Revisions to Alaska's Concealed Handgun Permit Law:
Smaller, smarter government: less bureaucracy and more clarity for citizens

The intent of SB141 is simple:

There is NO reason the permitted few should be more restricted than the unregulated many. Treat people and their handguns equally. All Alaskans, who are not otherwise prohibited by federal or state law from owning or possessing handguns, can carry handguns openly in certain places and can carry concealed without a permit in certain places. If an Alaskan wants to carry a concealed handgun in more places, we should do no more than require fingerprinting, training, and background checks.

With the exception of the recognition of out-of-state permits and the lowering of the permit fee, the Alaska Peace Officers Association supports SB141.

The Police Chiefs of Barrow, Valdez and Wasilla have testified in favor of, or spoken favorably, about SB141.

SB141 is endorsed by the Alaska Outdoor Council and the National Rifle Association.

The Department of Public Safety supports portions of the bill and opposes some portions. The Department is primarily opposed to recognition of out-of-state permits and is cautious about the effect of changing the standards for where you can carry and who can apply.

OBSERVATIONS

There have been almost 6,300 permits issued in Alaska for carrying concealed handguns since that right was recognized in state law in 1994. The Department of Public Safety has done a remarkable job of ensuring fair and speedy processing of applications.

However, Alaskans have voiced some complaints on overly restrictive and confusing prohibitions and regulations leading to a burdensome waste of time. Many of these stipulations were included in the original legislation due to courteous consideration of the dire predictions of mayhem in the streets from some members of the legal

community and law enforcement. None of those dire predictions has proven accurate during years of experience and it is appropriate to restore equal rights for law-abiding citizens.

For the most part, the law is working. Crime is down. According to the information we have from the Department of Public Safety, of 6,000 permittees, not one person has used their concealed handgun to commit a crime.

Similar legislation (SB177) passed last session by large majorities, but was vetoed by the Governor. Even though legislation last year prohibited anyone from drinking and carrying a concealed handgun, some felt that whether one was drinking or not, no concealed handguns should be allowed in bars. In the spirit of compromise, we have drafted SB141 to allow concealed handguns in restaurants regulated under AS 04.16.049 and not in bars. Further objection was voiced in Senate State Affairs by the Department of Public Safety regarding a permittee drinking in a restaurant. Although current law already makes it illegal to carry firearms while intoxicated, Senator Green supports amending SB141 to specifically prohibit permittees from drinking intoxicating beverages in restaurants (**amended Section 5**).

This bill does not change other existing state or federal law restricting carrying weapons in bars or schools. Other existing laws restricting handguns in bars and schools remain in force.

If SB141 is passed, the simple effect would be that anywhere you can carry a handgun openly (which you can do without training, without background checks, without fingerprinting, and without a permit) you will be able to carry a permitted concealed handgun.

If 300,000 adult Alaskans can legally carry a handgun openly, there is no reason to have greater restrictions for the 6,000 Alaskans who have been fingerprinted, checked, trained and permitted.

The existing law is too restrictive, too confusing and too expensive. For example, under current law you are prohibited from walking into a financial institution with a permitted concealed handgun, but you are allowed to take the handgun out and carry it openly into the bank. Existing law too often turns common sense on its head.

Sections 1 and 2 amend Alaska criminal statutes to make clear that no felon, even a non-violent felon, would ever be able to apply for a concealed carry permit.

Sections 3, 5 and 14 of the bill make several things much cleaner and easier to enforce. If a person is a concealed handgun permit holder from another state and comes to Alaska to visit, we will recognize that permit. However, that person is responsible for following the laws regulating Alaskan permit holders. In addition, Section 12 requires that the visitor must, within 90 days, inform the Department of Public Safety of their presence so that, just as with Alaskan permit holders, the Department knows who is allowed to carry concealed handguns in Alaska.

These amendments simply recognize the equality of all Americans as requested by SJR14, which supports legislation in the U.S. Congress seeking nationwide recognition of concealed carry permits issued by any government agency or subdivision.

Sections 3 and 5 also improve definitions and still attempt to permit a municipality or village to prohibit possession of concealed handguns.

Section 5 leaves existing law intact and bars are off limits to concealed handguns, but SB141 does allow access to restaurants identified under AS 04.16.049. If the Alcohol Beverage Control Board finds that a business, or a specific area of a business, is not a bar, you will be allowed to carry concealed. The proposed committee substitute amends SB141 to also prohibit a permittee from consuming intoxicating liquor in the restaurant.

Sections 7 and 11 ensures that the applicant for a permit receives a copy of the state law and regulations and certifies the applicant read them. The bill also requires the Department of Public Safety to compile a concise summary of where, when and by whom a handgun can be carried under state and federal law. The Department is already working to compile this summary.

Section 8 requires the Department to process the permit within 30 days if the permittee is otherwise eligible without having to wait for weeks or months for the F.B.I. to complete fingerprinting checks. The Department is given authority to immediately revoke a conditional permit whenever it receives information from checking fingerprinting making the permittee ineligible. This conforms statute to what is actually being done already in practice.

Section 10 simplifies the standards for qualifications to apply for a permit.

Under existing law, in order to carry openly you must be 21 years of age or older and be allowed by state or federal law to own or possess a handgun.

Under existing state law, in order to carry concealed during recreation activities, in your dwelling, in your business, where you are employed or on land owned or leased by the person (see AS 11.61.220) you must be 16, and you must be allowed by state and federal law to own or possess a firearm.

Under existing law, in order to carry concealed in other places than those mentioned above, you must acquire a permit. If SB141 is passed, in order to do that you must be 21, you must be allowed by state and federal law to own or possess a firearm, you must be a 90 day resident of the state immediately preceding your application for a concealed handgun permit, you must receive training and education and you must demonstrate competence with a handgun.

A restrictive laundry list of prohibitions tailored only for the fingerprinted, trained, permitted carriers make little sense when state law allows almost any adult to carry openly, and, in many cases concealed, without a

permit. Federal and state law already address who may own or possess a handgun.

Section 12 reduces the fees from $125 to $99 for initial application and from $60 to $30 for renewal or replacement to better reflect the true cost. Almost every other state have even lower fees or no fees at all. This should still leave the Department with at least $40 for processing each permit above the costs for F.B.I. and background checks.

Section 13 amends language to clearly give the Department the authority to immediately suspend permits for anyone who is ineligible under state or federal law to own or possess a handgun.

Section 15 repeals a long list of special prohibitions that don't apply to open carry or, in some cases, to concealed carry unpermitted. Instead, there is a flat prohibition for possession of a concealed handgun wherever federal or state law prohibits possession of a handgun.

A restrictive laundry list of prohibitions tailored only for the fingerprinted, trained, permitted carriers make little sense when state law allows you to carry openly in those places. Federal and state law already address where handguns can be possessed. In addition, any private business has the right to post signs prohibiting carrying handguns whether concealed or open. Violators would be subject to criminal trespass statutes (the penalty can be just as severe for criminal trespass as current law prohibiting permittees from carrying in certain places).

Section 16 simplifies definitions so that shotguns, rifles and all weapons prohibited under AS 11.61.200 do not qualify for concealed carry. Otherwise, just as in every other state, any handgun not otherwise prohibited by state or federal law is treated equally. The Senate State Affairs Committee has received testimony from women requesting they be allowed to apply and train for a permit to carry handguns designed for concealed carry. There are no examples, apparently, anywhere in the United States, where a permittee has used a derringer or "miniature" handgun in a crime.

Section 17 repeals renewal training requirements; sections no longer justified under the principle "if you can carry open, you can carry concealed." AS 18.65.715(b), 18.65.725(a)(3), 18.65.740(a)(2), 18.65.755(b), and 18.65.755(c).
*

Sections 4, 6 and 9 are included to make special provisions for certain peace officers and the carrying of concealed handguns. While there are objections to making special provisions for certain individuals, it is not unreasonable to amend the bill to provide special exemptions for peace officers. This especially seems reasonable in light of the increasing support from peace officers and their organizations for the concept of concealed carry by law-abiding citizens.

I urge the adoption of SB141 to continue to excellent record set this year by the State Senate toward reducing government regulation and taking practical steps to make Alaska's government smaller and smarter.

* Deleted by Sen. Donley's amendment.

COMMITTEE
Amendment Number: 1
Bill Number:
Sponsor:
Date: 4-18-97
Logged In By:

0-LS0706\X.1
Luckhaupt
4/18/97

A M E N D M E N T

OFFERED IN THE SENATE BY SENATOR PHILLIPS

TO: CSSB 141( ) ("X" Version, Draft, Dated 4/17/97)

1 Page 7, lines 17 - 18:
2 Delete all material and insert:
3 "(a) A permittee may not possess a concealed handgun
4 (1) within a residence, other than the permittee's residence, unless the
5 permittee has first obtained the express permission of an adult residing there to bring
6 a concealed handgun within the residence; and
7 (2) anywhere a person is prohibited from possessing a handgun under
8 state or federal law."

9 Page 8, lines 6 - 7:
10 Delete "18.65.755(b), and 18.65.755(c)"
11 Insert "and 18.65.755(b)"

Adopted 4-3

AMENDMENT

SENATE FINANCE COMMITTEE
Amendment Number: 3
Bill Number: SB 141
Sponsor: ________ Date: 4-22
Logged In By: PY

OFFERED IN THE SENATE FINANCE COMMITTEE BY ADAMS

TO: CSSB 141 (FIN) (Work Draft Version X)

Rejected 2-5

Page 2, line 21:

Insert a new bill section to read:

"Sec. 3. AS 11.61.220(a) is amended to read:

(a) A person commits the crime of misconduct involving weapons in the fifth degree if the person

(1) knowingly possesses a deadly weapon, other than an ordinary pocket knife or a defensive weapon, that is concealed on the person;

(2) knowingly possesses a loaded firearm on the person in any place where intoxicating liquor is sold for consumption on the premises;

(3) being an unemancipated minor under 16 years of age, possesses a firearm without the consent of a parent or guardian of the minor;

(4) knowingly possessed a firearm within the grounds of or on the parking lot immediately adjacent to a center, other than a private residence, licensed under AS 47.33 or AS 47.35 or recognized by the federal government for the care of children; [OR]

(5) possesses or transports a switchblade or a gravity knife<u>; or</u>

<u>(6) knowingly possesses a firearm in</u>

<u>(A) a courthouse or a courtroom of this state unless the person is a judge or has been authorized to possess a firearm by a judge presiding at that courthouse or courtroom;</u>

(B) a building housing only state offices, unless authorized in writing by the commissioner of administration for purposes of public safety;

(C) an office of the state that is not located in a building described in (B) of this subsection, unless authorized in writing by the commissioner of administration for purposes of public safety;

(D) a facility providing services to victims of domestic violence or sexual assault;

(E) a law enforcement or correctional facility;

(F) a vessel of the Alaska Marine Highway System except when stored unloaded in a locked vehicle or when being delivered to the purser; or

(G) a school bus.

Renumber following sections accordingly.

Page 3, line 16:

Delete "and (4)"

Insert "'(4) and (6)"

ALASKA STATE LEGISLATURE

Interim:
600 East Railroad Avenue
Wasilla, Alaska 99654
(907) 376-3370
(907) 376-3157 Fax

Session:
State Capitol
Juneau, Alaska 99801-1182
(907) 465-6600
Fax (907) 465-3805

SENATOR LYDA GREEN

SENATE DISTRICT N

MEMO

TO: Members, Senate Finance Committee

FROM: Senator Lyda Green

DATE: April 21, 1997

RE: Amendment proposed by Mr. Art Snowden on behalf of the Alaska Court System

COPY

The amendment proposed by Mr. Snowden is not acceptable.

SB141 is legislation addressing permits for concealed carry. The legislation does not address the right of Alaskans to carry handguns openly. It is not my intent to sponsor legislation that addresses where someone can carry openly.

The Court System already has in place an administrative order based on the Constitutional authority granted to administer the court system that prohibits firearms for most Alaskans in a courthouse. If the court system has a real concern over the lack of specific statutory authority they have not brought the matter to the attention of the legislature until now. They can introduce their own legislation.

There is no immediate problem. I suggest that this issue be set aside for consideration during the interim and that we consider how all the laws inter-relate regarding where, when and by whom you can carry openly.

SB141 is not the appropriate vehicle to try to further regulate the open carry of firearms in Alaska. SB141 should be limited to clarifying statute dealing with permitted concealed carry.

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355

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April 17, 1997

RECEIVED
APR 2? 1997
Ans'd..........

Senator Lyda Green
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Dear Senator Green,

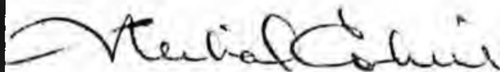
On behalf of the Alaska Peace Officers Association, I would like to thank you for introducing language in Senate Bill 141 waiving the permit process for Alaska certified and visiting out-of-state police officers on official business to carry concealed handguns, and the relaxation of the permit process for retired Alaska police officers.

At a recent meeting of the APOA State Board Legislative Subcommittee, we reviewed other language in SB 141 and do not oppose other sections of the bill except for:

1) Reciprocal acceptance of other out-of-state CCW permittees. We believe that Alaska has a thorough screening process for permittees which is not the case for a good portion of the other states.
2) We believe NO convicted felon should ever be allowed to apply for a CCW permit.
3) We believe the permit fees should remain the same.

We look forward to working with you further on this legislation. Please feel free to call me at 451-5316, or our business manager, Joseph Young at 277-0515.

Sincerely,



Michael Corkill
APOA State President

SB141

4-14-97

Honorable John Torgerson
Alaska State Legislature
State Capitol
Juneau, Alaska 99801

Dear Sir,

I wish to express my support of Senate Bill 141 proposed by Senator Green. Before I proceed further let me briefly state that I have been an Alaskan police officer for nearly twenty years and I am currently Chief of Police for the Valdez Police Department. I have been a member of the Alaska Police officer's Association since my arrival in Alaska and am currently a member of the Alaska Association of Chiefs of Police. My contacts with "road" police officers indicate that there is overwhelming support for the right of good citizens to legally carry concealed handguns. The observation from the street officer is that troublemakers do not go through the necessary steps to carry legally.

There have been concerns raised regarding some of the changes this bill would provide. Many of these issues are already covered by other statutes or sections of the existing statute. The Misconduct Involving Weapons Statute already covers drinking and firearms. Allowing CCW holders to enter a licensed premise restaurant with their firearm does not allow them to become intoxicated. A person doing so would be in violation of Misconduct Involving Weapons In The Fourth Degree whether or not they had a permit.

Another section addresses honoring out of state permits. CCW permits are not casually issued in any state (Vermont excepted, more later). Virtually all states require background checks. We honor out of state driver's licenses without question and most CCW permits are much more difficult to obtain. The "Vermont Issue" has been mentioned regarding Vermont's allowance of any citizen in good standing to carry concealed. This is an interesting point but I would like to ask how many Vermont citizens have been arrested in the state of Alaska for Misconduct Involving Weapons within the last ten years? As the old saying goes, "we have come up with an ingenious solution to a non-existant problem."

The original statute did not allow carry at banks and financial institutions. I found this very interesting since that is one of the main reasons for issuance in other states. I have heard merchants express dismay that they cannot use their cow when delivering large cash business deposits to their bank. For many this is the main reason they went through the process.

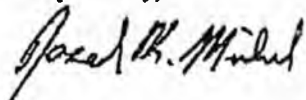
The legal carry of concealed weapons by good Alaskans is not a problem for Alaska Law Enforcement. The criminal element will carry and use weapons and not bother worrying about

the legality of their conduct.

As I previously stated, I have been a member of the major police organizations in the state. APOA and the Chiefs Association have opposed previous ccw bills. I would like to see these organizations poll their members prior to taking a stand on major issues. I have never been asked where I stand on this or any other issue going to the legislature by either organization. I have never talked to any other "road officer" who has been polled.

Thank you for your time and consideration.

Respectfully,



Chief Joseph K. Michaud
Valdez Police Department

Concealed weapon law gets police support

By MARK SABBATINI
THE JUNEAU EMPIRE

Weapons instructors and police officials gave their support today to a bill expanding where carriers of concealed handgun are allowed.

A controversial provision allowing some convicted felons to obtain permits has been removed.

Carriers of concealed handguns would be allowed into the same locations as those who carry weapons openly, including domestic violence shelters, banks and government buildings. Sen. Lyda Green, a Wasilla Republican sponsoring Senate Bill 141, said the state's 6,000 permit holders faced stricter requirements and no license has been revoked for misuse of a weapon.

About 15 people voiced support for the bill during a hearing by the Senate Finance Committee today.

"I think law abiding citizens checked out by the FBI should be allowed to carry concealed handguns into banks and have a handgun on school property to drop off their children," said Rod Christopher, a Kenai resident who has been a weapons instructor for 18 years. "No guns in the schools, of course."

Opponents have expressed concern about provisions allowing residents from other states to carry weapons for up to 90 days without notification and about where carriers would be allowed. Among the few opponents testifying against the bill today was Lauree Hugonin, executive director of the Alaska Network on Domestic Violence and Sexual Assault, who said eliminating certain restrictions leaves only vague language where a weapon involved in a domestic violence situation is seized.

"That wouldn't necessarily be a handgun or apply to other weapons the person may have access to," she said.

The bill reduces application and renewal fees, requires a temporary permit to be issued if federal background information has not been supplied within 30 days, and allows carriers into restaurants if they do not drink alcohol. Municipalities can vote to prohibit possession of concealed weapons.

Allowing out-of-state visitors to carry weapons, even if they haven't met Alaska's standards for a permit, didn't concern Joe Michaud, chief of the Valdez Police Department.

"We recognize out-of-state driver's licenses without question," he said. "Perhaps we could extend the same trust with concealed weapons."

The House still needs to consider the bill if the Senate approves it.

JUNEAU EMPIRE, FRIDAY, APRIL 18, 1997 3

DNM 4/19/97 B1

Bill aids businesses doing own environmental audits

By DOUGLAS FISCHER
Staff Writer

JUNEAU—Companies doing their own environmental audits found a limited relief from state fines under a measure the House passed Friday.

Senate Bill 41 grants limited immunity to businesses that conduct their own audits and reveal any violations. Companies would not face civil or administrative fines, though violations knowingly committed or caused by recklessness could still bring criminal charges.

"This bill in no way protects criminals," said Rep. Jeannette James, R-Fairbanks.

SB 41 also allows companies to keep secret portions of the audit considered self-incriminating. As with the immunity clause, records can only be withheld from civil or administrative hearings. Fraud or noncompliance can force disclosure.

That was not enough to calm Rep. John Davies, D-Fairbanks, who warned that companies could abuse the privilege.

"The state has to prove the violations discovered were unrelated matters to the audit," he said.

Davies tried to restrict the privilege provision, but other lawmakers said the bill's language answered concerns and voted down the amendment.

The administration has no quibbles with the bill, though it is not something the Department of Environmental Conservation would have requested, officials said.

Environmental groups protest the measure as bad public policy, noting businesses largely conduct audits already and need no new incentives.

SB 41 returns to the Senate for concurrence on House changes, then heads to the governor. Davies was the only Interior lawmaker to vote against the bill, which passed 32-4.

Farm bill moves

JUNEAU—Farmers might get that loan after all.

The House on Friday approved a measure removing the state from farm titles, paving the way for farmers to mortgage their land to buy needed equipment.

Alaska farmers have complained for years that lack of a clean title hampers their ability to get a bank loan.

Senate Bill 109 passed the House with nary debate nor amendment. But lawmakers spent considerable time tinkering with the bill in committee, hoping to appease a governor who vetoed a similar measure last year.

Currently, the state can seize some agricultural property without a court action and prohibits farmers from subdividing most plots.

SB 109 loosens those restrictions and gives farmers fee-simple title to their lands. The bill requires a court ruling before any property is seized and lets owners divide their plots into no more than four parcels—provided each is at least 40 acres and all continue to be farmed.

Unlike last year, anyone—an individual, the state, or a municipality—can sue if a violation is detected.

The bill also removes a host of regulations that, proponents say, permits state micro-management of farms.

Although the governor is "comfortable" with this year's bill, Division of Agriculture Director Jay Kerttula still opposes it.

"When farmers and would-be farmers purchased ag-rights land, they full well knew that they got exceedingly cheap land with farm restrictions," he said in a statement.

Farmers support the bill, saying full ownership gives them more control.

Fairbanks Democrat Rep. John Davies was the only Interior lawmaker to vote against SB 109, which passed 33-3.

Concealed concerns

JUNEAU—Sen. Lyda Green, R-Wasilla, cannot believe someone can openly carry a gun into a restaurant yet cannot carry it there in a pocket or purse—even if that person is licensed to carry a concealed weapon.

So she sponsored a bill to change that. Senate Bill 141, which was heard during a Senate Finance Committee meeting Friday, loosens current concealed-carry laws, allowing permit-holders to carry a weapon anywhere someone can openly carry a gun.

"The main premise is that (rules governing) those who are permitted to carry are consistent with the requirements to carry openly," she said. "The higher standard doesn't seem to make sense."

Those who carry the special permit endure a battery of background checks and must complete special firearms courses, Green noted.

"If you can carry open, you can carry concealed," Green said. Accordingly, SB 141 repeals training required for a permit renewal and limits possession of concealed handguns to wherever federal or state laws permits handguns.

More than 6,300 people are licensed to carry a concealed weapon in Alaska.

SB 141 also offers police officers limited exemptions to concealed-carry regulations and recognizes permits from other states.

Although the bill received enthusiastic support from almost 20 people across the state during Friday's hearing, the bill faces opposition from the governor. "We don't see any reason to broaden the definition of where weapons can be carried," said spokesman Bob King.

Marg[illegible]einert of South Dakota has been named [illegible]cipal at Hunter Elementary School. She is division director of education services and resources for the Department of Education in South Dakota.

Her background includes six years as an adjunct professor at South Dakota State University and 11 years teaching with Todd County Schools in South Dakota.

Roxa Hawkins has been named principal at University Park Elementary School. She has been interim principal at University Park since the beginning of the school year and has been with the district for 19 years, serving as

at Ryan Middle School. He has been interim principal at Ryan since the beginning of the school year and previously served as the school's assistant principal for four years.

The Hunter vacancy brought the district much controversy.

The former interim principal at Hunter, Mary Moore, did not make the list of finalists for the job and accused the school district of racism in its decision. She is now on medical leave, citing high blood pressure.

Moore was the district's only black principal, serving a school with the highest minority student population of the district's

Moore's future at the school had been a public topic since February, when parents appeared split over whether she should be offered the job permanently. She said she lacked support from parents, staff and school district officials.

John Pile, principal at Barnette Elementary, was assigned to oversee Hunter and Barnette through the end of the school year.

Moore has filed a complaint against the school district. That action is working its way through the grievance process and is scheduled to be heard by the school board.

been a few instances that have caught me by surprise," Hayes said.

He declined to el[illegible]orate.

MUS General Manager Frank Biondi said he initially interpreted the memo to mean he must first clear media requests with the mayor. But after talking with Hayes on Friday, Biondi said that's not the case. "It's before or after," he said.

Swarner said having everything go through the mayor is bound to slow down the informa-

See MEMO, Page B-2

Anchorage Daily News

Wednesday, April 9, 1997 B-7

Do-gooders need steady supply of victims

By PAUL JENKINS

The tiny woman sprawled on the kitchen floor had been punched and kicked and clubbed to death by a drunken ex-husband. Her own mother wouldn't have recognized her smashed face. She did not die neatly. It took hours. She screamed and cried and pleaded, neighbors reported. The cops came, but the beating continued after they left. She had not wanted the bum arrested.

Blood spattered every wall in her tiny, cluttered house. It pooled on the dirty linoleum in a closet where she tried to hide. It smeared across the floor when the man she once loved dragged her out by her hair.

The scene was not unusual if you covered cops at night as a reporter. There were many women just like her in the Florida city. What was unusual, at least to me, was that she, and other women who suffered the same fate, knew they were in mortal danger, but had not procured a weapon for self-defense. They were victims, even before the first blow was struck; powerless against their attackers.

Jenkins

But that was 20 years ago; this is now.

Sen. Lyda Green, R-Wasilla, recently tried to help domestic violence victims in Alaska. She offered some welcome changes to Alaska's tough concealed weapon law, including one that would have allowed troopers to immediately grant domestic violence victims — those in danger of further violence — free, 90-day concealed weapons permits so they could better defend themselves. It is not a new idea. California already has a similar provision on the books.

Surely, you'd think, people paid to deal with abuse survivors would welcome such a change here in Alaska. You'd be wrong. Green's office yanked the proposal after heavy flak from the very do-gooders who peddle themselves to government and other funding entities as protectors of domestic violence victims.

There was this, in a letter to Green from Women in Crisis in Fairbanks: "In most cases . . . chances are it's going to be the domestic violence victim who gets hurt or killed. Domestic violence victims are often capable, but not confident."

Or this from the Tundra Women's Coalition in Bethel: "I have no doubt that victims of domestic violence are often in fear of their physical safety. However, I don't believe giving a victim of domestic violence permission to carry a concealed weapon is really a reasonable solution to their need for protection."

And here's my absolute favorite, from a woman in Valdez: "Wouldn't it be a more positive thought to teach children from early kindergarten about conflict resolution, and then continue teaching it all the way through school? Doesn't it make sense to make games people play more fair and less win/lose so everyone feels better about playing?"

What planet are these people from? Why would any of that matter to someone in a fight for their life?

Green's office received other messages, too. Victims — and you get the idea that "victims" and "women" are synonymous to most of the writers — are much too incompetent, weak and timid to defend themselves, and they cannot be trusted with guns. Or, they wrote, it's better to die than be charged with murder if you shoot someone and it is not deemed self-defense. The only good answer, they said, is spending more money on shelters.

Now, a cynic might point out that do-gooders absolutely need victims or they'd be just regular folks, like you and me. Without victims to fret about, what would happen to their jobs, their state and federal grants and — most important — their god-like power over the weak and helpless?

But I won't say that. I'll give the professional hand-wringers the benefit of the doubt. I'll just say this: They are wrong.

Until we as a society can somehow muster the guts to deal harshly with bullies and predators, how can we deny anybody the right to immediate self defense? How can we require insurance companies to continue paying the recurring medical bills of domestic violence victims and then put the victims at risk? How can we do all that — and set up cottage industries to deal with abuse victims — and still kid ourselves that we're not creating more?

Instead of getting the vapors and trying to deny victims — women and men alike — a means of self-defense, do-gooders would do some actual good if they'd sponsor handgun-shooting classes for anybody who has been beaten or raped or stalked — or fears she, or he, might be. It would pay off. History shows that creeps get very nervous when people get fed up.

A case in point: Some years ago, in Orlando, Fla., rapists started targeting nurses as they walked to or from a large city hospital. The Orange County Sheriff's Department, to its credit, offered the nurses handgun classes — and the rapes stopped virtually overnight.

Turns out the rapists were more attuned to the real world than some of the people in a tizzy about Green's proposed legislation.

That's sad.

Paul Jenkins is an editor of The Anchorage Times.

GEORGE MAGAZINE
APRIL 97
PAGE 86

SELF-DEFENSE

JOHN LOTT

Gun control advocates have long argued that the fewer guns there are, the less crime there will be. Now John Lott, an economist at the University of Chicago Law School, is making a compelling case that violent crime rates would actually fall if every sane nonfelon adult could pack heat. "The evidence is very convincing that allowing law-abiding citizens to carry handguns has a net effect in saving lives," Lott says.

In a recent study, Lott crunched crime statistics from the 31 states whose laws allow people to carry concealed weapons as long as they meet certain criteria (usually, not having a criminal record or a history of mental illness). He concluded that such laws led to an 8.5 percent drop in murder rates. If concealed weapons were legal nationwide, he argues, some 1,570 murders, 4,177 rapes, and 60,000 aggravated assaults could have been prevented in 1992 (the last year of the 16-year period covered by his study). Increases in unintentional gun deaths from concealed weapons, Lott says, are next to none. A lean six-foot-three 38-year-old, Lott speaks in professorese as flat and passionless as his pronouncements are inflammatory. Pointing out the relatively low cost of guns, he says, "I don't think there's any type of deterrent that's been studied by economists that shows the same cost-benefit ratio."

Lott has a pistol at home, but he says he has no particular affection for guns or pro-gun affiliations. The Violence Policy Center in Washington, however, claims that "the Lott study is indelibly stained with the taint of the gun industry." The VPC says the "taint" results from alleged financial intimacy between the John M. Olin Foundation, which funds Lott's chair at U of C, and the Olin Corporation, whose Winchester division makes bullets. (Lott says he didn't know of any connection.) Meanwhile, Lott's work has won him new phone friends: "I get calls from people in Alaska who want to tell me about their gun collections."—*Mike Steere*

COPY

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM March 24, 1997

SUBJECT: Persons Prohibited from Possessing Firearms under Federal and State Law (SB 141)

TO: Senator Lyda Green
Attn: Tuckerman Babcock

FROM: Gerald P. Luckhaupt
Legislative Counsel

You have asked who is prohibited under state or federal law from possessing a firearm?

Under Federal Law

18 U.S.C. § 922(g) provides:

(g) It shall be unlawful for any person--

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
(2) who is a fugitive from justice;
(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));
(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;
(5) who, being an alien, is illegally or unlawfully in the United States;
(6) who has been discharged from the Armed Forces under dishonorable conditions;
(7) who, having been a citizen of the United States, has renounced his citizenship; or
(8) who is subject to a court order that--
(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
(B) restrains such person from harassing, stalking, or threatening an intimate partner or such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)(i) includes a finding that such person represents a creditable threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence;

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.[1]

Under State Law

AS 11.61.200(a)(1) provides that it is unlawful for a person to knowingly possess

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[1] Under the federal law "misdemeanor crime of domestic violence" means a crime that:

(i) is a misdemeanor under Federal or State law; and

(ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

(B)(i) A person shall not be considered to have been convicted of such an offense for purposes of this chapter, unless—

(I) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and

(II) in the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either

(aa) the case was tried by a jury, or

(bb) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

(ii) A person shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

> a firearm capable of being concealed on one's person after having been convicted of a felony or adjudicated a delinquent minor for conduct that would constitute a felony if committed by an adult by a court of this state, a court of the United States, or a court of another state or territory.[2]

There is no general ban in Alaska on the possession of long rifles or shotguns for persons convicted of felonies. Absent a special condition of probation or parole a felon could possess these long weapons without violating state law. Absent the conviction of a felony, persons may be prohibited from possessing firearms as a condition of release before trial for a crime (whether felony or misdemeanor) or through a domestic violence protective order.

GPL:jdr
97-210.jdr

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[2]AS 11.61.200(b)(1) provides an affirmative defense to a person accused of violating AS 11.61.200(a)(1) if

> (A) the person convicted of the prior offense on which the action is based received a pardon for that conviction;
> (B) the underlying conviction upon which the action is based has been set aside under AS 12.55.085 or as a result of post-conviction proceedings; or
> (C) a period of 10 years or more has elapsed between the date of the person's unconditional discharge on the prior offense or adjudication of juvenile delinquency and the date of the violation of (a)(1) of this section, and the prior conviction or adjudication of juvenile delinquency did not result from a violation of AS 11.41 or of a similar law of the United States or of another state or territory;

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM March 24, 1997

SUBJECT: Possession of Concealed Weapons (SB 141)

TO: Senator Lyda Green
Attn: Tuckerman Babcock

FROM: Gerald P. Luckhaupt
Legislative Counsel

You have asked where and when concealed weapons, particularly handguns, may be carried under Alaska law without a concealed handgun permit?

AS 11.61.220(a)(1) makes it a crime to "knowingly possess a deadly weapon, other than an ordinary pocket knife or a defensive weapon, that is concealed on the person. . .." Various defenses and affirmative defenses are supplied. First, this section does not apply to a peace officer acting within the scope and authority of the officer's employment. AS 11.61.220(c). AS 11.61.220(d) provides a defense to a person who possesses a concealed weapon on business premises owned or leased by the person or on business premises in the course of the person's employment for the owner or lessee of the premises. Finally, AS 11.61.220(b) provides affirmative defenses allowing a person to possess a concealed weapon in the person's dwelling or on land owned or leased by the person or while engaged in "lawful hunting, fishing, trapping, or other outdoor activity that necessarily involves the carrying of a weapon for personal protection."

AS 11.61.220(a)(2) also makes it a crime to possess a loaded firearm on the person (regardless of whether the firearm is concealed or not) in any place where alcoholic beverages are sold for consumption on the premises. AS 11.61.210(a)(1) provides that it is illegal to possess on the person (again, regardless of whether the firearm is concealed or openly displayed) or in the interior of a vehicle in which the person is present, a firearm when the person is impaired by intoxicating liquor or controlled substances. Finally, AS 11.61.210(a)(7) provides that a person may not possess a deadly weapon on school grounds without permission of the chief administrative officer of the school or district.

GPL:jdr
97-211.jdr

ALASKA COURT SYSTEM
OFFICE OF THE ADMINISTRATIVE DIRECTOR
ADMINISTRATIVE BULLETIN NO. 30
(Amended Effective January 15, 1989)

TO: ALL HOLDERS OF ADMINISTRATIVE BULLETIN SETS:

Area Court Administrators
Clerk of the Appellate Courts
Third District Rural Training Assistant
Full-Time Clerks of Court
Magistrates at locations with no full-time clerk
Law Libraries at Anchorage, Fairbanks, Juneau & Ketchikan
Presiding Judges
Senior Staff
Administrative Associate

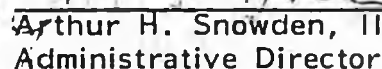
SUBJECT: Firearms

No firearms or other weapons may be brought onto the premises of any court facility, or into the portion of any other building occupied by the court system, except for weapons which are to be used as evidence in court proceedings.

Weapons to be used as evidence in court proceedings must be marked and prepared in accord with the terms of Administrative Bulletin No. 9, section IV(C). Each presiding judge may prescribe procedures for courts within his or her district requiring prior notification to designated court personnel before weapons to be used as evidence may be brought on court premises.

This bulletin does not apply to court system security employees and peace officers.

Dated: 10-24-88



Arthur H. Snowden, II
Administrative Director

Effective Date: January 15, 1989

This bulletin was originally issued as No. 86-7, effective December 17, 1986. Amended to correct reference to Bulletin No. 9.

Original Distribution:
- Supreme Court Justices
- Presiding Judges
- Area Court Administrators
- Stephanie Cole
- Gerry Dubie
- David Lampen

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NOTES TO DECISIONS

Quoted in Delahay v. State, 476 P.2d 908 (Alaska 1970).

Section 13. Compensation. Justices, judges, and members of the judicial council and the Commission on Judicial Qualifications shall receive compensation as prescribed by law. Compensation of justices and judges shall not be diminished during their terms of office, unless by general law applying to all salaried officers of the State.

Revisor's notes. — CSHJR 32(Jud) am S (1981), effective December 24, 1982, which changed the "Commission on Judicial Qualifications" to the "Commission on Judicial Conduct" inadvertently omitted express amendment of this section.

Effect of amendments. — The amendment, effective October 11, 1968 (5th Legislature's 2d FCCS SCS CSHJR 74 (1968)), inserted "and the Commission on Judicial Qualifications" in the first sentence.

NOTES TO DECISIONS

"Term". — With the exception of this article, wherever "term" or "service at the pleasure of" appears in the constitutional text originally adopted, the reference is to a period of service for a particular office, thus allowing the drafters to be precise in their terminology. The language of this section and § 4 of this article, on the other hand, applies to any judge of any court the legislature might create, and "term" in that context may intend only the more general, though equally valid connotation of any limitation on a period of service. Buckalew v. Holloway, 604 P.2d 240 (Alaska 1979).

"Term of office" as used in this section means the time to which a justice or judge is entitled to hold office and does not relate to the 10-year or six-year intervals between retention elections for justices and judges. Hudson v. Johnstone, 660 P.2d 1180 (Alaska 1983).

Collateral references. — 46 Am.Jur.2d, Judges, §§ 62 to 71.

48A C.J.S., Judges, §§ 75 to 81, 84.

Section 14. Restrictions. Supreme court justices and superior court judges while holding office may not practice law, hold office in a political party, or hold any other office or position of profit under the United States, the State, or its political subdivisions. Any supreme court justice or superior court judge filing for another elective public office forfeits his judicial position.

Opinions of attorney general. — The prohibition against dual office holding is literally enforced in Alaska. December 27, 1976 Op. Att'y Gen.

The purpose of the prohibition against dual office holding is to guard against conflicts of interest, self-aggrandizement, concentration of power, and dilution of separation of powers in regard to the exercise of the executive, judicial, and legislative functions of the state government. December 27, 1976 Op. Att'y Gen.

Since the Board of Regents of the University of Alaska is not an interbranch commission, a judge may not sit as a regent while holding office. December 27, 1976 Op. Att'y Gen.

A judge does not sit on the Board of Regents in a representative capacity of the judicial branch. When he sits as a regent he is not exercising judicial power but rather certain executive powers of control vested in the regents over the state's sole institution of higher learning. This he may not do. December 27, 1976 Op. Att'y Gen.

The University Alaska is an instrumentality of the state, and membership on its Board of Regents is necessary an office under the state. December 27, 1976 Op. Att'y Gen.

NOTES TO DECISIONS

Meaning of phrase "position of profit". — See Begich v. Jefferson, 441 P.2d 27 (Alaska 1968).

And its intent. — The term "position of profit" was intended to prohibit all other salaried non-temporary employment under the United States or the State of Alaska. Begich v. Jefferson, 441 P.2d 27 (Alaska 1968).

Applied in Acevedo v. City of N. Pole, 672 P.2d 130 (Alaska 1983).

Section 15. Rule-Making Power. The supreme court shall make and promulgate rules governing the administration of all courts. It shall make and promulgate rules governing practice and procedure in civil and criminal cases in all courts. These rules

may be changed by the legislature by two-thirds vote of the members elected to each house.

NOTES TO DECISIONS

I. General Consideration.
II. Legislative Review.

I. GENERAL CONSIDERATION.

Scope of rule-making power. — The supreme court's rule-making power under this section is explicitly broad and very nearly complete. Citizens Coalition for Tort Reform, Inc. v. McAlpine, 810 P.2d 162 (Alaska 1991).

Authority to enact procedures is judicial. — While the power to create substantive rights is a legislative power, the authority to enact procedures to implement those rights is, by virtue of this section, judicial. Thomas v. State, 566 P.2d 630 (Alaska 1977).

In Alaska, the supreme court is given exclusive, initial power to make rules governing practice and procedure and they need not look to the legislature's intentions to discern whether it has attempted to prescribe a different procedure than that contained in a court rule, unless the legislature has acted in the requisite manner to change a rule. Nolan v. Sea Airmotive, Inc., 627 P.2d 1035 (Alaska 1981).

Because administration of justice is day-to-day business of courts. — A reason for placing in the judicial branch of government rather than in the legislature the initial and primary responsibility for making rules of court practice and procedure is that the administration of justice is the day-to-day business of the courts, they are better equipped than a legislature to know the most effective and easiest methods of conducting that business. City of Valdez v. Valdez Dev. Co., 506 P.2d 1279 (Alaska 1973).

Promulgation of rules of practice and procedure. — The superior court has no responsibility or authority to promulgate rules of practice and procedure. Lee v. State, 374 P.2d 868 (Alaska 1962).

Under this section the responsibility for promulgating rules governing practice and procedure in civil and criminal cases in all courts rests with the supreme court. Lee v. State, 374 P.2d 868 (Alaska 1962).

Supreme court can return case to trial court for further proceedings. — In any appropriate case where there is disregard for the rules of court, the supreme court can exercise its supervisory power to return the case to the trial court for further proceedings. McCracken v. Davis, 560 P.2d 771 (Alaska 1977).

Declaration of appellate rule supremacy over procedural statutes is an expression of the judicial power distributed to the courts by this section and § 1 of this article. Winegardner v. Greater Anchorage Area Borough, 534 P.2d 541 (Alaska 1975).

Distinction between substantive and procedural law. — Substantive law creates, defines and regulates rights, while procedural law prescribes the method of enforcing the rights. Channel Flying, Inc. v. Bernhardt, 451 P.2d 570 (Alaska 1969); Nolan v. Sea Airmotive, Inc., 627 P.2d 1035 (Alaska 1981).

For the court to invalidate a statute as "procedural," requires them to find, first, that the statute indeed conflicts with a rule promulgated by the court, and, second, that the main subject of the statute is not substantive with only an incident effect on procedure, Winegardner v. Greater Anchorage Area Borough, 534 P.2d 541 (Alaska 1975), Channel Flying, Inc. v. Bernhardt, 451 P.2d 570 (Alaska 1969), and finally, that the legislature has not changed the rule with the stated intention of doing so, Leege v. Martin, 379 P.2d 447 (Alaska 1963). Nolan v. Sea Airmotive, Inc., 627 P.2d 1035 (Alaska 1981).

The manner in which the exercise of judicial power may be invoked, initially by commencing a civil action in court, is a matter directly involved with court practice and procedure, the regulation of which has been committed to the supreme court under the constitution. Silverton v. Marler, 389 P.2d 3 (Alaska 1964).

Children's proceedings are among "civil and criminal cases in all courts" over which this section gives the supreme court rule-making authority which is intended to be plenary and not capable of reduction by relabeling of proceedings. RLR v. State, 487 P.2d 27 (Alaska 1971).

The investigative demand procedure set forth in AS 45.50.590 and 45.50.592 does not conflict with the rulemaking power vested in the Supreme Court by this section insofar as it involves hearings to modify or set aside investigative demands and not proceedings to compel production of document. Matanuska Maid, Inc. v. State, 620 P.2d 182 (Alaska 1980).

The time limit for filing an appeal from an administrative order is a procedural matter and is therefore subject to the Alaska supreme court's supremacy over such matters pursuant to this section. Owsichek v. State, Guide Licensing & Control Bd., 627 P.2d 616 (Alaska 1981).

AS 47.10.070, providing for exclusion of the public from juvenile hearings, is procedural, so is outside the scope of legislative authority unless two-thirds of each house of the legislature votes to change the rule promulgated by the supreme court in this matter. RLR v. State, 487 P.2d 27 (Alaska 1971).

AS 22.20.022 is not constitutionally invalid as an attempt to usurp the rule-making powers of the supreme court insofar as it provides for a peremptory disqualification of a judge. Channel Flying, Inc. v. Bernhardt, 451 P.2d 570 (Alaska 1969).

AS 22.20.022 does not merely regulate procedure. With or without it the particular action in court takes the same course. The statute rather creates and defines a right — the right to have a fair trial before an unbiased and impartial judge. This is something more than merely prescribing a method of enforcing a right. The main subject matter of AS 22.20.022 is substantive in nature and was within the province of the legislature to deal with. Channel Flying, Inc. v. Bernhardt, 451 P.2d 570 (Alaska 1969).

Right under AS 22.20.022 subject to rule-making power. — While recognizing the legislature's authority to create the right to disqualify a judge by peremptory challenge under AS 22.20.022, the procedure to be followed in implementing that right is subject to the rule-making power vested in the supreme court by this section. Padie v. State, 566 P.2d 1024 (Alaska 1977).

Criminal Rule 24(d) is not unconstitutional insofar as it purports to allow the prosecution peremptory challenges of jurors. Smiloff v. State, 589 P.2d 28 (Alaska 1978).

CORRECTIONS

NOTES TO DECISIONS

Marijuana included. — Because neither AS 11.56.375 nor this section, both of which outlaw the promotion of contraband, including controlled substances, in correctional facilities, defined "controlled substance," there was reference to the general definition in the revised code for guidance; as of January 1, 1983, the revised code clearly defined controlled substances to include marijuana. State v. Resek, 706 P.2d 706 (Alaska Ct. App. 1985).

Quoted in Cleland v. State, 759 P.2d 553 (Alaska Ct. App. 1988).

Cited in Lefever v. State, 877 P.2d 1298 (Alaska Ct. App. 1994); Milton v. State, 879 P.2d 1031 (Alaska Ct. App. 1994).

Sec. 11.56.390. Definition. In AS 11.56.300 — 11.56.390, "contraband" means any article or thing which persons confined in a correctional facility are prohibited by law from obtaining, making, or possessing in that correctional facility. (§ 6 ch 166 SLA 1978)

Cross references. — For definition of terms used in this chapter, see AS 11.56.900; for definition of terms used in this title, see AS 11.81.900.

Article 4. Offenses Relating to Judicial and Other Proceedings.

Section
510. Interference with official proceedings
520. Receiving a bribe by a witness or juror
540. Tampering with a witness in the first degree
545. Tampering with a witness in the second degree
590. Jury tampering
600. Misconduct by a juror
610. Tampering with physical evidence
620. Simulating legal process

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MAR 2. 1997
Ans'd..........

Collateral references. — 58 Am. Jur. 2d, Obstructing Justice, §§ 1-9, 25-29.

67 C.J.S., Obstructing Justice, §§ 1-22.

Sec. 11.56.510. Interference with official proceedings. (a) A person commits the crime of interference with official proceedings if the person

(1) uses force on anyone, damages the property of anyone, or threatens anyone with intent to

(A) improperly influence a witness or otherwise influence the testimony of a witness;

(B) influence a juror's vote, opinion, decision, or other action as a juror;

(C) retaliate against a witness or juror because of participation by the witness or juror in an official proceeding; or

(D) otherwise affect the outcome of an official proceeding; or

(2) confers, offers to confer, or agrees to confer a benefit

(A) upon a witness with intent to improperly influence that witness; or

(B) upon a juror with intent to influence the juror's vote, opinion, decision, or other action as a juror or otherwise affect the outcome of an official proceeding.

(b) Interference with official proceedings is a class B felony. (§ 6 ch 166 SLA 1978)

NOTES TO DECISIONS

For case construing former AS 11.30.320, prohibiting influencing witnesses, judges or jurors or obstructing administration of justice, see Williams v. United States, 265 F.2d 214 (9th Cir. 1959).

This section applies broadly to all official proceedings. State v. Jones, 750 P.2d 828 (Alaska Ct. App. 1988).

Use of parental force. — Paragraph (a)(1) does not, as a matter of law, categorically preclude a defense based on justified use of parental force under AS 11.81.430(a)(1). State v. Jones, 750 P.2d 828 (Alaska Ct. App. 1988).

Indictment charging parents with interference with official proceedings was properly dismissed, where the parents' use of force in arranging for children to fly to Arizona in order to prevent them from testifying in a child abuse case was limited to that typical of any parental or custodial relationship. State v. Jones, 750 P.2d 828 (Alaska Ct. App. 1988).

Where defendant pointed his finger angrily at his child and yelled "Remember the rule" in a menacing tone as police were removing the child from the household after a report of abuse, a reasonable juror could readily have concluded that defendant's words

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from cooperating with the a
820 P.2d 1088 (Alaska Ct. A
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Admissibility in crimi
dant's guilt, of evidence

Sec. 11.56.370. Permitting an escape. (a) A public servant who is required by law to have charge of a person arrested for, charged with or convicted of a crime commits the crime of permitting an escape if with criminal negligence the public servant permits a person under official detention to escape.

(b) Permitting an escape is a class C felony. (§ 6 ch 166 SLA 1978; am § 20 ch 102 SLA 1980)

Legislative history reports. — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 29, 1980.

NOTES TO DECISIONS

For case construing former AS 11.30.180, concerning an officer's not executing process whereby a person escapes, see Larson v. State, 564 P.2d 365 (Alaska 1977).

Cited in Lefever v. State, 877 P.2d 1298 (Alaska Ct. App. 1994).

Sec. 11.56.375. Promoting contraband in the first degree. (a) A person commits the crime of promoting contraband in the first degree if the person violates AS 11.56.380 and the contraband is

(1) a deadly weapon or a defensive weapon;

(2) an article that is intended by the defendant to be used as a means of facilitating an escape; or

(3) a controlled substance.

(b) Promoting contraband in the first degree is a class C felony. (§ 6 ch 166 SLA 1978; am § 3 ch 59 SLA 1991)

Effect of amendments. — The 1991 amendment, effective September 15, 1991, added "or a defensive weapon" to the end of paragraph (a)(1).

NOTES TO DECISIONS

Constitutionality. — This section is not violative of an inmate's right to privacy in view of the fact that such right of an inmate is substantially limited and does not extend to protect possession of marijuana in a correctional institution. Cleland v. State, 759 P.2d 553 (Alaska Ct. App. 1988).

This statute is not unconstitutional in that it punishes the crime of possession of marijuana in a correctional facility more severely than possession of alcohol, since the statute is not inconsistent with the respective legal treatment of alcohol and marijuana for the general population. Cleland v. State, 759 P.2d 553 (Alaska Ct. App. 1988).

The term "controlled substance" in this section includes marijuana. State v. Resek, 706 P.2d 706 (Alaska Ct. App. 1985).

Because neither this section nor AS 11.56.380, both of which outlaw the promotion of contraband, including controlled substances, in correctional facilities, defined "controlled substance," there was reference to the general definition in the revised code for guidance; as of January 1, 1983, the revised code clearly defined controlled substances to include marijuana. State v. Resek, 706 P.2d 706 (Alaska Ct. App. 1985).

Cited in Jennings v. State, 713 P.2d 1222 (Alaska Ct. App. 1986); Brown v. State, 809 P.2d 421 (Alaska Ct. App. 1991).

Sec. 11.56.380. Promoting contraband in the second degree. (a) A person commits the crime of promoting contraband in the second degree if the person

(1) introduces, takes, conveys, or attempts to introduce, take, or convey contraband into a correctional facility; or

(2) makes, obtains, possesses, or attempts to make, obtain, or possess anything that person knows to be contraband while under official detention within a correctional facility.

(b) Promoting contraband in the second degree is a class A misdemeanor. (§ 6 ch 166 SLA 1978)

ALASKA STATE LEGISLATURE

Interim:
600 East Railroad Avenue
Wasilla, Alaska 99654
(907) 376-3370
(907) 376-3157 Fax

Session:
State Capitol
Juneau, Alaska 99801-1182
(907) 465-6600
Fax (907) 465-3805

SENATOR LYDA GREEN

SENATE DISTRICT N

CSSB141(FIN)

A committee substitute, which I supported, was adopted initially by Senate Finance. The changes in SB141 (version X) are reflected in the sponsor statement and sectional commentary.

Two additional amendments were adopted in Senate Finance and one amendment was rejected.

Senator Phillips offered an amendment (adopted 4-3) to mandate that in all cases, for each visit to the home, a person entering a home or property must announce that he or she is carrying a permitted concealed handgun. The homeowner is given no choice in the matter, but is required under Senator Phillips' amendment to force all visitors to announce they are carrying a permitted handgun. Failure to announce constitutes a class B misdemeanor for the permittee. No provision is made for anyone who does not wish to subject visitors to their home to this strange mandate. That new criminal penalty and mandate appears unenforceable, insignificant, and somewhat specious.

Senator Donley offered an amendment (adopted unanimously), which I supported, to leave in statute the provision that a repeat class A misdemeanor violation will result in the loss of a concealed carry permit.

Senators Adams and Phillips introduced an amendment that would have amended criminal law to prohibit carrying handguns openly or permitted concealed in a number of places. This amendment failed 2-5. I objected to this amendment on several points.

First, SB141 is about permitting concealed handguns, not about extending gun control to various locations around Alaska.

Second, SB141 is simply about extending the same right to carry to fingerprinted, background checked, trained permittees as currently enjoyed by almost every adult in Alaska to carry open.

Finally, SB141 does not alter existing law restricting open carry anywhere in Alaska. SB141 repeals special provisions in law that restricted only permitted concealed carry. Given the experience of every other state with permitted concealed and given Alaska's experience during the last three years, there is no reason to continue to be more restrictive with our background checked, trained, fingerprinted permittees than the some 300,000 adults free to carry handguns openly.

2

LEGAL SERVICES

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Mail Stop 3101

130 Seward Street, Suite 409
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M E M O R A N D U M   April 29, 1997

RECEIVED
APR 29 1997
Ans'd............

SUBJECT: Possession of Firearms (Work Order No. 20-LS0706\C)

TO: Senator Lyda Green
Attn: Tuckerman Babcock

FROM: Gerald P. Luckhaupt
Legislative Counsel

You have asked where state and federal law prohibit the carrying of open and unconcealed firearms by an adult who is not a felon or who otherwise suffers any other legal disability or impediment to possession of a firearm. While I believe I can identify most of the places where openly carried firearms cannot be carried under state law, I can only attempt to identify all of the places where federal law prohibits the carrying of firearms due to the time constraints presented with the production of this memorandum.[1]

State Law

Places

AS 11.61.210(a)(7) prohibits the possession of a firearm within the buildings of, on the grounds of, or on the school parking lot of a public or private preschool, elementary, junior high, secondary school, or while participating in a school sponsored event, without the permission of the chief administrative officer of the school or district.

AS 11.61.220(a)(2) prohibits the possession of a firearm on the person in any place where intoxicating liquor is sold for consumption on the premises.

AS 11.61.220(a)(4) prohibits the possession of firearms within the grounds of or on a parking lot adjacent to a child care center, other than a private residence, licensed under AS 47.33 or AS 47.35 or recognized by the federal government for the care of children.

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[1]This memorandum does not attempt to identify the situations when the discharge of a firearm is unlawful, even though the possession of the firearm in that situation may be lawful. See, e.g., AS 11.61.190(a)(2).

While I have not attempted to scour the state administrative code to discover regulations restricting the possession of firearms, I can point out a few such instances. **17 AAC 40.040(b)** prohibits the possession of loaded firearms at airports. The schedule for the Alaska Marine Highway System provides that passengers may not possess firearms, although I have not identified the regulation that prohibits the possession of firearms by passengers. 17 AAC 70.110(1)(D) does provide the ferry system with the authority to refuse to transport "any person who, in the opinion of the master of the vessel, might jeopardize the safety of the vessel or passengers or bring extreme discomfort to other passengers." The Alaska Court System has promulgated a policy that prohibits the possession of firearms in court facilities. The Juneau Empire carried a story a few weeks ago concerning the possession of firearms in the Capitol wherein a policy promulgated by Legislative Council was described that prohibited the possession of firearms in the Capitol. I do not have other information about this policy but I am making inquiries.

Circumstances

AS 11.61.190(a)(1) and 11.61.195(a)(1) prohibit the use or possession of a firearm during the commission of an offense under our controlled substance laws, AS 11.71.010 - 11.71.040.

AS 11.61.200(a)(3) prohibits the possession of a "prohibited weapon" which includes silencers and fully automatic firearms. See AS 11.61.200(f).

AS 11.61.200(a)(7) prohibits the possession of a firearm while the possessor's condition is impaired by liquor or controlled substances when the person is committing a violation of AS 11.46.320, trespass in the first degree.

AS 11.61.200(a)(8) prohibits the possession of a firearm while a person is committing trespass in the first or second degrees, AS 11.46.320 - 11.46.330, in violation of a domestic violence restraining order.

AS 11.61.200(a)(9) prohibits the possession of a firearm while the possessor is communicating with another person in violation of AS 11.56.740, violating a domestic violence restraining order.

AS 11.61.210(a)(1) prohibits the possession of firearm while the possessor is impaired by alcohol or controlled substances.

AS 11.56.375(a)(1) prohibits a person from taking a firearm into a correctional facility.

Federal Law

18 USC 922(q), the 1996 Gun-Free School Zones Act, prohibits the possession of firearms within a school zone, unless the possessor qualifies for one of the delineated exceptions.

18 USC 930 prohibits the possession of firearms in federal facilities.

49 USC 46303 prohibits the possession of a firearm when attempting to board an aircraft.

49 USC 46505 prohibits the possession of a firearm on board an aircraft.

14 CFR 107.21 prohibits the possession of a firearm when entering or in a sterile area of an airline terminal.

Contrary to the normal policy in the other 49 states, firearms may normally be possessed in National Parks in Alaska, "in accordance with applicable Federal and State laws, except where carrying is prohibited or otherwise restricted pursuant to [36 CFR 13.30]." 36 CFR 13.19(b).

While I have attempted to be as thorough as possible there quite possibly could be additional restrictions. Please do not consider this list as definitive on the subject.

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23

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Juneau, Alaska 99801-2105

MEMORANDUM March 24, 1997

RECEIVED
MAR 24 1997
Ans'd..........

SUBJECT: Possession of Concealed Weapons (SB 141)

TO: Senator Lyda Green
Attn: Tuckerman Babcock

FROM: Gerald P. Luckhaupt
Legislative Counsel

You have asked where and when concealed weapons, particularly handguns, may be carried under Alaska law without a concealed handgun permit?

AS 11.61.220(a)(1) makes it a crime to "knowingly possess a deadly weapon, other than an ordinary pocket knife or a defensive weapon, that is concealed on the person. . . " Various defenses and affirmative defenses are supplied. First, this section does not apply to a peace officer acting within the scope and authority of the officer's employment. AS 11.61.220(c). AS 11.61.220(d) provides a defense to a person who possesses a concealed weapon on business premises owned or leased by the person or on business premises in the course of the person's employment for the owner or lessee of the premises. Finally, AS 11.61.220(b) provides affirmative defenses allowing a person to possess a concealed weapon in the person's dwelling or on land owned or leased by the person or while engaged in "lawful hunting, fishing, trapping, or other outdoor activity that necessarily involves the carrying of a weapon for personal protection."

AS 11.61.220(a)(2) also makes it a crime to possess a loaded firearm on the person (regardless of whether the firearm is concealed or not) in any place where alcoholic beverages are sold for consumption on the premises. AS 11.61.210(a)(1) provides that it is illegal to possess on the person (again, regardless of whether the firearm is concealed or openly displayed) or in the interior of a vehicle in which the person is present, a firearm when the person is impaired by intoxicating liquor or controlled substances. Finally, AS 11.61.210(a)(7) provides that a person may not possess a deadly weapon on school grounds without permission of the chief administrative officer of the school or district.

GPL:jdr
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130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM March 24, 1997

SUBJECT: Persons Prohibited from Possessing Firearms under Federal and State Law (SB 141)

TO: Senator Lyda Green
Attn: Tuckerman Babcock

FROM: Gerald P. Luckhaupt
Legislative Counsel

You have asked who is prohibited under state or federal law from possessing a firearm?

Under Federal Law

18 U.S.C. § 922(g) provides:

(g) It shall be unlawful for any person--
(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
(2) who is a fugitive from justice;
(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));
(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;
(5) who, being an alien, is illegally or unlawfully in the United States;
(6) who has been discharged from the Armed Forces under dishonorable conditions;
(7) who, having been a citizen of the United States, has renounced his citizenship; or
(8) who is subject to a court order that--
(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
(B) restrains such person from harassing, stalking, or threatening an intimate partner or such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)(i) includes a finding that such person represents a creditable threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence;

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.[1]

Under State Law

AS 11.61.200(a)(1) provides that it is unlawful for a person to knowingly possess

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[1] Under the federal law "misdemeanor crime of domestic violence" means a crime that:

(i) is a misdemeanor under Federal or State law; and

(ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

(B)(i) A person shall not be considered to have been convicted of such an offense for purposes of this chapter, unless--

(I) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and

(II) in the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either

(aa) the case was tried by a jury, or

(bb) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

(ii) A person shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

> a firearm capable of being concealed on one's person after having been convicted of a felony or adjudicated a delinquent minor for conduct that would constitute a felony if committed by an adult by a court of this state, a court of the United States, or a court of another state or territory.[2]

There is no general ban in Alaska on the possession of long rifles or shotguns for persons convicted of felonies. Absent a special condition of probation or parole a felon could possess these long weapons without violating state law. Absent the conviction of a felony, persons may be prohibited from possessing firearms as a condition of release before trial for a crime (whether felony or misdemeanor) or through a domestic violence protective order.

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[2]AS 11.61.200(b)(1) provides an affirmative defense to a person accused of violating AS 11.61.200(a)(1) if

> (A) the person convicted of the prior offense on which the action is based received a pardon for that conviction;
> (B) the underlying conviction upon which the action is based has been set aside under AS 12.55.085 or as a result of post-conviction proceedings; or
> (C) a period of 10 years or more has elapsed between the date of the person's unconditional discharge on the prior offense or adjudication of juvenile delinquency and the date of the violation of (a)(1) of this section, and the prior conviction or adjudication of juvenile delinquency did not result from a violation of AS 11.41 or of a similar law of the United States or of another state or territory;

3

MEMORANDUM

State of Alaska
Department of Law

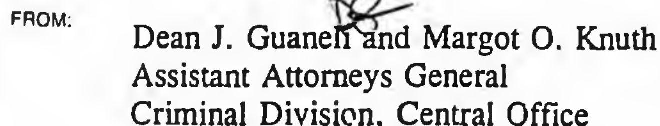
TO: Ronald L. Otte
Commissioner
Department of Public Safety

DATE: July 12, 1995

FILE NO.: 663-95-0323

TEL. NO.: 465-3428

SUBJECT: Enforcement of criminal trespass statutes in connection with concealed handguns



FROM: Dean J. Guaneli and Margot O. Knuth
Assistant Attorneys General
Criminal Division, Central Office

By memorandum dated December 21, 1994, you have requested advice as to whether a private business may bar from its premises someone who is carrying a concealed handgun and, if so, whether a person who nonetheless enters the business with a concealed handgun is guilty of a criminal offense. You have also requested advice as to whether a criminal offense is committed when a person carries a concealed handgun into a retail store that contains a branch office of a bank, in view of the new statute that prohibits concealed handguns from being carried into "financial institutions."

The Department of Law cannot provide legal advice to private parties, and consequently private businesses with questions about concealed firearms should contact their own legal advisors regarding their rights and liabilities for protecting patrons of their business and issues regarding employees of their business, civil actions for trespass[1] and general landlord and tenant matters.[2] Your question, however, is what action, if any, troopers should take when they receive a complaint about a person carrying a concealed handgun on private business premises. The following is our advice.

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[1] This memorandum addresses criminal trespass laws only and we express no opinion on the ability of private persons to maintain a civil suit for trespass. *See Brown Jug, Inc. v. International Brotherhood of Teamsters*, 688 P.2d 932, 937-38 (Alaska 1984) (in civil action, intentional entry onto land of another constitutes intentional trespass even if trespasser believes that he or she has the right to be on the land).

[2] This department has previously opined, in response to questions from the legislature, that a landlord has a right to prohibit firearms on leased property. 1983 Inf. Op. Att'y Gen. (Jul. 1; 366-444-83).

I. Summary

The short answer to you- first question is that it may, depending on the circumstances, be illegal under the state criminal trespass statutes for a person to carry concealed handguns on private business premises, even though the person has a permit for the weapon. The short answer to your second question is that clear demarcation of bank premises and notice to patrons are important considerations in enforcing the concealed handgun law on bank premises within larger stores. Issues regarding automatic teller machines and other premises of financial institutions will be discussed below. Before reaching these issues, however, we will first discuss the impact of the newly-enacted concealed handgun statutes on state criminal trespass laws.

II. Discussion

A. The Concealed Handgun Statutes Do Not Prevent Private Property Owners From Relying On Criminal Trespass Laws To Control Access To Their Premises

Under AS 11.61.220, it is a crime for a person to carry a concealed handgun unless the person is a peace officer, is on the person's own property, is engaged in a lawful outdoor activity requiring a weapon for protection, or has obtained a permit under the new statutes set out in AS 18.65.700 — 18.65.790. Even if a person has obtained a permit to carry a concealed handgun, there are several types of places where these guns cannot be carried. AS 18.65.755(c) makes it a class B misdemeanor for a person with a permit to possess a concealed handgun in one of these legislatively designated areas.[3]

The first question that you have asked is whether there are any other premises that can be designated as off-limits for concealed handguns, even though they do not appear on the list of prohibited premises in AS 18.65.755. We believe that there are.

Alaska has a criminal trespass statute, AS 11.46.330, which makes it a crime to enter or remain on premises when a person is not privileged to do so or has been directed to leave. It provides as follows: "A person commits the crime of criminal trespass in the second degree if the person enters or remains unlawfully (1) in or upon premises; or (2) in a propelled vehicle." AS 11.46.330. AS 11.46.350 defines "enter or remain unlawfully" as meaning to "(1) enter or remain in or upon premises . . . when the premises . . . at the time of the entry or

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[3] These places include, among others: law enforcement or correctional facilities, school grounds, courthouses, certain governmental buildings, portions of airline terminals, and residences where an appropriate notice has been given by oral statement or by a conspicuous notice. AS 18.65.755.

remaining is not open to the public and when the defendant is not otherwise privileged to do so; [or] (2) fail to leave premises . . . that is open to the public after being lawfully directed to do so personally by the person in charge."

These statutes give property owners the right to exclude a person from their property for any reason. That reason can include carrying a concealed handgun, even with a permit, unless the concealed handgun permit laws are interpreted as somehow superseding this aspect of the criminal trespass laws. It is therefore necessary to consider whether the legislature's enactment of AS 18.65.755 impliedly repealed the criminal trespass statute (and any municipal ordinance prohibiting criminal trespass) as applied to the carrying of concealed handguns. As explained below, we do not believe that AS 18.65.755 prevents property owners from choosing to exclude persons carrying concealed handguns, even if the person has a permit, and, accordingly, those who enter or remain on property with a concealed handgun despite the owner's request that they leave can be prosecuted for criminal trespass.

To determine whether a prior statute has been impliedly repealed, Alaska's courts look to the intent of the legislature in passing the new statute to determine if there is an irreconcilable conflict between the two. *Peter v. State*, 531 P.2d 1263, 1268 (Alaska 1975). Although the supreme court will not automatically apply the common law presumption against implied repeals, the court has quoted from a well-respected commentator who notes that "[t]he presumption has . . . special application to important public statutes of long standing." *Id.* (quoting 1A J. Sutherland, *Statutes and Statutory Construction* § 23.10 (4th ed. Sands 1972)).

Criminal trespass laws are important public statutes that protect private property rights by allowing owners to choose who may enter or remain on their premises. Although there are limits on the extent to which private property owners can control free speech on portions of their premises that have become the functional equivalent of public property (*see, e.g., Pruneyard Shopping Center v. Robins*, 447 U.S. 74, 100 S. Ct. 2035, 64 L. Ed. 2d 741 (1980)), there are no similar limitations in Alaska law on the ability of businesses to prohibit firearms or smoking on the premises, or to require a dress code or otherwise require that patrons behave in a way that is believed by the business owner to be appropriate for operation of the establishment or for preserving the safety and comfort of other patrons.[4]

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[4] We note that the Alaska Constitution was recentl amended to create an "individual" right to bear arms that is not to be infringed by state or local government. Art. I, § 19, Alaska Const. We conclude that this amendment does not prevent private persons from setting rules of conduct for their own property. For example, the Alaska Supreme Court has declared that ingesting substances (such as smoking tobacco) is constitutionally protected, *Gray v. State*, 525 P.2d 524 (Alaska 1974), as is choosing how to appear and what to wear, *Breese v. Smith*, 501 P.2d 159 (Alaska 1972). Nonetheless, private (continued...)

Also, criminal trespass laws have been part of Alaska society for many years. The present Model Penal Code formulation of the criminal trespass statute has been part of Alaska law since 1980, and earlier criminal trespass statutes were part of the Alaska criminal code since well before statehood.[5]

Given the importance and long history of these laws, it is probable that the Alaska courts would impose a presumption against the implied repeal of the criminal trespass statutes. Even if no presumption is applied, however, it is unlikely that a court would find that the concealed handgun statutes impliedly repealed the criminal trespass statutes to the extent of prohibiting businesses from excluding concealed handguns on their premises.

There is nothing on the face of the concealed handgun statutes in general, or in AS 18.65.755 in particular, that is inherently inconsistent with the criminal trespass statute set out in AS 11.46.330. The concealed handgun statutes create a detailed statutory scheme for obtaining permits to carry concealed handguns. They also create a large number of *new* offenses for carrying concealed handguns in certain designated areas or for misusing the permit. *See* AS 18.65.760; AS 18.65.765. The criminal trespass statute, on the other hand, gives private property owners the right to ensure that their property is used in the manner they choose. These purposes are not in conflict.[6] We accordingly conclude that AS 11.46.330, as applied to persons

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[4](...continued)
businesses indisputedly may ban smoking and impose dress codes. This is because the constitutional rights in Article I of the Alaska Constitution (like the Bill of Rights in the United States Constitution) are limitations on the power of government, rather than on the actions of private persons. *Luedtke v. Nabors Alaska Drilling, Inc.*, 768 P.2d 1123, 1129-30 (Alaska 1989).

[5] *See* former AS 11.20.610, AS 11.20.630 and AS 11.20.650. The Revised Criminal Code replaced these earlier, more specific laws with broader provisions so as to eliminate a "needless proliferation of statutes." *Alaska Criminal Code Revision*, Tentative Draft, Part 3, Offenses Against Property (April 1977) at 59.

[6] The legislative history of AS 18.65.755 discloses that an unsuccessful attempt was made in the House of Representatives to expand the list of prohibited premises to include retail establishments and other places that post signs prohibiting entrants from carrying concealed handguns. *See* Amendments 2 and 3 offered to CSHB 351(FIN) on April 15, 1994. House Journal at 3471-73 (1994). It is rarely appropriate to infer legislative intent from the defeat of a proposed amendment. Its defeat may mean only that legislators wanted to ensure that some areas would be off-limits to concealed handguns, regardless of whether a person carrying a concealed handgun noticed that a sign had been posted, while in other areas it is to be left to the discretion of the property owner whether to allow patrons to carry concealed handguns.

carrying concealed handguns, should not be interpreted as having been impliedly repealed by AS 18.65.755.[7]

B. Alaska's Criminal Trespass Laws

AS 11.46.330 makes it the crime of criminal trespass in the second degree, a class B misdemeanor, to "enter or remain unlawfully" in or upon land, buildings or propelled vehicles. Under AS 11.46.350, the phrase "enter or remain unlawfully" is defined to include

> (1) for premises *not open to the public*, entering or remaining "when the defendant is not otherwise privileged to do so"; and
>
> (2) for places *open to the public*, "fail[ing] to leave . . . after being lawfully directed to do so personally by the person in charge."

These two provisions differ slightly with regard to the type of notice that must be given to a person before that person may be deemed to have entered or remained unlawfully. We will first discuss places "*not* open to the public," and then places "*open* to the public."

1. Places Not Open to the Public

The primary elements of the crime of criminal trespass in the second degree, as applied to persons who carry concealed weapons into places that are *not* open to the public, are: (1) that the person knowingly entered or remained in the place with a concealed handgun, (2) that the person was not privileged to enter or remain in the place with a concealed handgun, and (3) that the person entered or remained with reckless disregard as to whether or not he or she was privileged to do so.

Whether a place is "not open to the public," for purposes of the criminal trespass statute, is a question ultimately to be decided by the factfinder in each specific criminal case and we accordingly will not attempt to try to list all the places that are "not open to the public." The term, however, almost certainly includes (1) private offices, (2) offices that require an

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[7] Our conclusion is bolstered by the analogy that can be made to the state's public drunkenness statutes. In *Peter v. State*, the Alaska Supreme Court held that the Uniform Alcoholism and Intoxication Treatment Act in AS 47.37 impliedly repealed Alaska's drunk-in-public law. The court found that the legislature's *expressed* intent in adopting the Uniform Act was to stop criminally punishing drunks and to rehabilitate them instead. 531 P.2d at 1271. This holding, however, has no impact on the ability of business owners to invoke the criminal trespass laws against drunks who are asked to leave the premises and refuse to do so.

appointment (such as doctor or dentist offices), (3) places reserved for residents or authorized guests of residents (such as nursing homes),[8] (4) places for employees or authorized personnel only, (5) places that are limited to only members or authorized guests of members (such as members-only stores or clubs), and (6) premises that are normally open to the public, but closed for special occasions (for example, restaurants closed for a "private party"). *Johnson v. State*, 739 P.2d 781, 783 n.1 (Alaska App. 1987).

The simplest element of the offense of criminal trespass is whether the person knowingly entered or remained on the premises. Unless a person has entered a place by mistake, or for some reason is unaware of his or her location, this element can easily be proven.[9]

Assuming that a person has a permit to carry a concealed handgun, whether that person is privileged to carry the gun onto premises that are not open to the public depends on the policies of the office, theater, sporting event, or other premise operator. The prohibition against bringing guns onto the premises must be an official policy of the organization or be imposed by someone managing the premises.[10]

Whether or not a person entered or remained in reckless disregard of a lack of privilege depends on the type of notice provided. Although the statutory definition of "reckless" in AS 11.81.900(a) requires only awareness and disregard of a *risk* that the circumstance (in this case, a lack of privilege) exists, most juries will likely want proof that the person actually *knew* he or she was prohibited from carrying a concealed handgun on the premises.

The strongest evidence that a person knew he or she was not allowed to enter or remain on the premises with a concealed handgun is if the property manager or an agent of the manager provides this information to the person in a face-to-face conversation or by telephone.

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[8] *But see Steele v. Breinholt*, 747 P.2d 433 (Utah App. 1987), in which the issue of whether a nursing home was open to a particular visitor was deemed to be question of fact for the jury.

[9] In most instances, a person both enters and remains either with or without the permission of the property owner. In some cases, however, a person may initially enter with the permission of the owner but thereafter lose that permission.

[10] There is nothing, however, that precludes an organization from applying different rules at different times. For example, an arena or convention center may choose to allow guests to carry firearms, including concealed handguns, at a gun collectors show, but prohibit concealed weapons at a rock concert. It is also permissible for an organization to allow peace officers or other authorized persons (such as security guards) to carry concealed handguns, but prohibit other persons from carrying them.

Proof of a written communication of this information would also establish the fact. For example, in *Johnson v. State*, 739 P.2d 781 (Alaska App. 1987), the court upheld a criminal trespass conviction against a skier on the basis of a letter that the Alyeska Ski Resort had written to him, barring him from the resort for the remainder of the season because of the danger posed by his reckless conduct.

Alternatively, a business may communicate the information by placing a placard at each of its entrances. The Alaska Statutes specify the size and contents of a notice against trespass in AS 11.46.350(c).[11] The notice must be "printed legibly in English," be "at least 144 square inches in size," contain "the name and address of the person under whose authority the property is posted and the name and address of the person who is authorized to grant permission to enter the property," and be "placed at each . . . way of access onto the property. "AS 11.46.350(c)(1) -- (4).[12]

There may, however, be circumstances under which a posted notice described in AS 11.46.350(c) may not be visible enough and therefore it will be difficult to prove that the entrant had actual knowledge. For example, persons seeking admission to a crowded auditorium may not be able to see a sign of the statutory minimum 144 square inches (12 inches by 12 inches). Or a person who enters an office or a "members-only" store for the first time may not notice a small sign. In these situations, one option would be for the business to increase the size of the sign.

In terms of the content of the notice, the following is an example of language that might be used:

NO CONCEALED HANDGUNS

EVEN IF YOU HAVE A PERMIT

Violators will be arrested and prosecuted.
This warning does not apply to peace officers
or authorized security personnel.

John Doe, Manager, P.O. Box 123
Anchorage, Alaska 99501

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[11] AS 11.46.350 was enacted with other statutes in ch. 168, SLA 1988, dealing with trespasses to unoccupied land. Its terms, however, are not explicitly limited to unoccupied land.

[12] *See also* AS 18.65.755, setting out similar requirements for the posting of notice by homeowners that permittees are prohibited from bringing concealed handguns into their homes.

Organizations that wish to preclude firearms generally should use the phrase "no firearms" instead of "no concealed handguns."

There are a myriad of alternative means that may be used by businesses to provide the necessary notice. For example, a business may decide to give out handbills to persons entering the establishment. A similar notice could be given at the time a ticket is purchased or an application for membership is obtained. Alternatively, in theaters, sporting events, or members-only stores, it would seem to be a simple matter to print a written warning (similar to the sample sign set out above) directly on the admission ticket or membership card.

It would be difficult to list all the ways in which the necessary notice can be given, and it is impossible to predict all of the defenses that might be raised by persons claiming they were unaware that they did not have a privilege to possess firearms on the premises. State troopers investigating cases of trespass will have to determine whether, based on all the circumstances, there is evidence establishing that the person was aware of the prohibition.

2. Places Open to the Public

The primary elements of the crime of criminal trespass in the second degree, as applied to persons who carry concealed weapons into places that *are* open to the public, are: (1) that the person knowingly entered or remained in a place with a concealed handgun, (2) that the person was directed to leave personally by the person in charge or someone authorized by the person in charge, and (3) that the person recklessly disregarded the lawful order not to remain. *Johnson v. State*, 739 P.2d at 783-84.

Again, the element of whether the person knowingly entered or remained in the place is easily proven.

The second element, that the person was "directed to leave personally," is more difficult. A prosecution cannot easily be based on notice provided solely by a sign posted at an entryway. Notice, however, will be sufficient if the business owner, or the person in charge, acts through an agent to provide actual notice. *Cleveland v. Municipality of Anchorage*, 631 P.2d 1073, 1077 (Alaska 1981). As before, a face-to-face or telephone conversation is the clearest example of personal notice. It is likely that most cases of criminal trespass that require trooper involvement will occur *after* a person has been told not to bring a firearm into an establishment. This advisement should be deemed to remain in effect until rescinded.

As in *Johnson*, a letter directed to the person will also suffice under this subsection of the criminal trespass statute. Similarly, a handbill given to an entrant will also be

sufficient. The adequacy of other types of personal directions (for example, an announcement made over a loudspeaker) will depend on the circumstances.

If there is sufficient evidence that the person was personally directed to leave, then there should be no problem proving the final element, that the person recklessly disregarded that direction. The lawfulness of an order to leave — like other legal issues — would seem to be a question for a judge, rather than a question of fact for the jury to decide.[13]

C. The Defense of "Necessity" Is Not Available

Persons who carry concealed handguns often claim they are doing so for purposes of self-defense. It is foreseeable that a person charged with criminal trespass may try to raise the defense of "necessity." Thus, for example, a defendant charged with criminal trespass for refusing to leave premises when asked to do so by an owner who objects to the presence of concealed weapons may argue that his "need" to carry a concealed handgun outweighs the owner's interest in barring the presence of such weapons on the premises.

The defense of "necessity" is governed in Alaska by the common law and by AS 11.81.320. In accordance with these authorities, it is only rarely, if ever, that the defense of necessity will justify a person's possession of a concealed handgun on premises where such possession is prohibited by the owner.[14] *See Cleveland v. Municipality of Anchorage*, 631 P.2d 1073 (Alaska 1981) (defense of necessity to "preserve life" rejected in trespass case arising from

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[13] *But see Johnson v. State*, 739 P.2d 781 (Alaska App. 1987), in which the court indicated that the lawfulness of the order was a "circumstance" in the case that the jury could review. It is not clear what the *Johnson* court meant by this. The court observed that, under the facts in that case, the defendant could claim he was not reckless because he reasonably questioned the "validity" of a warning letter. We believe that the technical lawfulness of an order is a question for a judge to decide. *Johnson*, however, suggests that the reasonableness of the defendant's belief with respect to that order is a question for the jury. In the rare case in which there may be a question about the legality of an order to leave (*e.g.*,a property owner changes the terms of a lease in the middle of the tenancy), a judge would be the more appropriate one to decide the issue than a jury.

[14] It is at least theoretically possible for a "necessity" defense to arise if, for example, a person with a concealed weapon were chased by attackers into a prohibited area. In the unlikely event that the person were prosecuted for trespass for entering the prohibited area, a defense of "necessity" or perhaps duress would be applicable. Note, however, that prisoners who escape can raise a defense of "necessity" if they were in danger in prison, but they must then turn themselves in and inform authorities immediately, or else justify their continuing absence. *Wells v. State*, 687 P.2d 346 (Alaska App. 1984). Like escape, criminal trespass is a continuing offense that would have to be justified.

defendant's refusal to leave an abortion clinic); *Bird v. Municipality of Anchorage,* 787 P.2d 119 (Alaska App. 1990) (abortion clinic trespass case). Nonetheless, we recommend that the investigating officer provide a suspect with the opportunity to explain why the suspect thought it was necessary to carry a concealed handgun onto the premises in contravention of the owner's explicit directions.

D. "Financial Institutions" under AS 18.65.755

Under AS 18.65.755(a)(11), a person with a permit to carry a concealed handgun is prohibited from carrying the gun "into . . . a financial institution." The statute defines "financial institution" as a "bank, savings bank, savings association, credit union, or other institution regulated by the Department of Commerce and Economic Development under AS 06."

You have asked whether a branch office of a financial institution fits within the prohibition of AS 18.65.755(a)(11) when the branch office is located within a larger retail store that is not a "financial institution." We conclude that a branch office of a bank is a financial institution under AS 18.65.755. This, however, does not mean that the entire retail store enclosing the branch office automatically becomes a financial institution for purposes of the prohibition set out in the concealed handgun law.

If the bank branch office is physically separated from the remainder of the store by walls or other barriers, then the statutory prohibition against carrying concealed handguns into a financial institution applies to that separate area, but not to the surrounding store. If the branch office is not physically separated from the remainder of the store, we believe that the prohibition set out in AS 18.65.755 applies only to those areas where a patron of the bank deals face-to-face with a bank employee, or in those waiting areas where patrons of the bank congregate or line up to wait to see a bank employee. In either situation, it is advisable for notice (through use of a sign or one of the other means discussed above) to be provided to the customers of the bank that concealed handguns or firearms are not allowed in that area.

A related question is whether drive-up teller windows, outdoor automatic teller machines, and bank parking lots are included within the term "financial institution" for purposes of AS 18.65.755. We believe that drive-up teller windows and automatic teller machines fall within the ambit of that term, while bank parking lots do not.

This, however, does not end the inquiry. For purposes of AS 18.65.755(a)(11), the key question about drive-up teller windows and outdoor automatic teller machines is whether the person using that service has come "into" a financial institution. We conclude that a person who uses a drive-up teller window has not entered "into" a financial institution. Similarly, a person who uses an outdoor automatic teller machine, even one that is connected to a bank, has

not entered "into" the bank itself. On the other hand, if the automatic teller machine is located inside bank premises, or in a foyer or other entry to the bank, a person who uses such a machines has entered "into" the institution.

If a financial institution reports that a person is carrying a firearm in a parking lot or when using a drive-up window or outdoor automatic teller machine, then the state troopers may take action if the elements of the offense of criminal trespass have been met, as discussed in earlier sections of this memorandum (*e.g.*, notice has been provided to the patron, etc).

III. Conclusion

For the reasons set out in this memorandum, we conclude that the state's criminal trespass laws can be used to arrest and prosecute a person who possesses a concealed handgun on private business premises, even if the person has obtained a permit for the concealed weapon, if the owner or management of the business has provided notice that concealed handguns (or all firearms) are prohibited on the premises.

We also conclude that a branch office of a bank that is located in a retail store is a financial institution under AS 18.65.755. If the branch office in the retail store has been physically separated from the rest of the store, through the use of walls or other types of dividers, then AS 18.65.755 prohibits a person from carrying a concealed weapon into the area. It is not a violation of AS 18.65.755, however, to carry concealed handguns to drive-up teller windows, outdoor automatic teller machines, or bank parking lots, although this conduct might constitute criminal trespass if all of the elements of that offense can be proven.

Please contact this office if you have further questions.

DJG/MOK/jf

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STATE OFFICE

ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355

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Joseph E. Young
Anchorage

Board of Directors
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Fairbanks
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Juneau
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Pres. Prince of Wales Chapter

April 17, 1997

Senator Lyda Green
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Dear Senator Green,

On behalf of the Alaska Peace Officers Association, I would like to thank you for introducing language in Senate Bill 141 waiving the permit process for Alaska certified and visiting out-of-state police officers on official business to carry concealed handguns, and the relaxation of the permit process for retired Alaska police officers.

At a recent meeting of the APOA State Board Legislative Subcommittee, we reviewed other language in SB 141 and do not oppose other sections of the bill except for:

1) Reciprocal acceptance of other out-of-state CCW permittees. We believe that Alaska has a thorough screening process for permittees which is not the case for a good portion of the other states.
2) We believe NO convicted felon should ever be allowed to apply for a CCW permit.
3) We believe the permit fees should remain the same.

We look forward to working with you further on this legislation. Please feel free to call me at 451-5316, or our business manager, Joseph Young at 277-0515.

Sincerely,

Michael Corkill
APOA State President

Post-it® Fax Note 7671	Date	# of pages ▶
To Sen. Lyda Green	From Michael Corkill	
Co./Dept.	Co.	
Phone #	Phone #	
Fax # 465-3805	Fax # 451-5317	

4-14-97

Honorable John Torgerson
Alaska State Legislature
State Capitol
Juneau, Alaska 99801

Dear Sir,

I wish to express my support of Senate Bill 141 proposed by Senator Green. Before I proceed further let me briefly state that I have been an Alaskan police officer for nearly twenty years and I am currently Chief of Police for the Valdez Police Department. I have been a member of the Alaska Police officer's Association since my arrival in Alaska and am currently a member of the Alaska Association of Chiefs of Police. My contacts with "road" police officers indicate that there is overwhelming support for the right of good citizens to legally carry concealed handguns. The observation from the street officer is that troublemakers do not go through the necessary steps to carry legally.

There have been concerns raised regarding some of the changes this bill would provide. Many of these issues are already covered by other statutes or sections of the existing statute. The Misconduct Involving Weapons Statute already covers drinking and firearms. Allowing CCW holders to enter a licensed premise restaurant with their firearm does not allow them to become intoxicated. A person doing so would be in violation of Misconduct Involving Weapons In The Fourth Degree whether or not they had a permit.

Another section addresses honoring out of state permits. CCW permits are not casually issued in any state (Vermont excepted, more later). Virtually all states require background checks. We honor out of state driver's licenses without question and most CCW permits are much more difficult to obtain. The "Vermont Issue" has been mentioned regarding Vermont's allowance of any citizen in good standing to carry concealed. This is an interesting point but I would like to ask how many Vermont citizens have been arrested in the state of Alaska for Misconduct Involving Weapons within the last ten years? As the old saying goes, "we have come up with an ingenious solution to a non-existant problem."

The original statute did not allow carry at banks and financial institutions. I found this very interesting since that is one of the main reasons for issuance in other states. I have heard merchants express dismay that they cannot use their cow when delivering large cash business deposits to their bank. For many this is the main reason they went through the process.

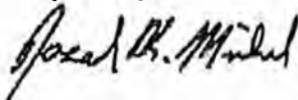
The legal carry of concealed weapons by good Alaskans is not a problem for Alaska Law Enforcement. The criminal element will carry and use weapons and not bother worrying about

the legality of their conduct.

As I previously stated, I have been a member of the major police organizations in the state. APOA and the Chief's Association have opposed previous ccw bills. I would like to see these organizations poll their members prior to taking a stand on major issues. I have never been asked where I stand on this or any other issue going to the legislature by either organization. I have never talked to any other "road officer" who has been polled.

Thank you for your time and consideration.

Respectfully,



Chief Joseph K. Michaud
Valdez Police Department

Concealed weapon law gets police support

By MARK SABBATINI
THE JUNEAU EMPIRE

Weapons instructors and police officials gave their support today to a bill expanding where carriers of concealed handgun are allowed.

A controversial provision allowing some convicted felons to obtain permits has been removed.

Carriers of concealed handguns would be allowed into the same locations as those who carry weapons openly, including domestic violence shelters, banks and government buildings. Sen. Lyda Green, a Wasilla Republican sponsoring Senate Bill 141, said the state's 6,000 permit holders faced stricter requirements and no license has been revoked for misuse of a weapon.

About 15 people voiced support for the bill during a hearing by the Senate Finance Committee today.

"I think law abiding citizens checked out by the FBI should be allowed to carry concealed handguns into banks and have a handgun on school property to drop off their children," said Rod Christopher, a Kenai resident who has been a weapons instructor for 18 years. "No guns in the schools, of course."

Opponents have expressed concern about provisions allowing residents from other states to carry weapons for up to 90 days without notification and about where carriers would be allowed. Among the few opponents testifying against the bill today was Lauree Hugonin, executive director of the Alaska Network on Domestic Violence and Sexual Assault, who said eliminating certain restrictions leaves only vague language where a weapon involved in a domestic violence situation is seized.

"That wouldn't necessarily be a handgun or apply to other weapons the person may have access to," she said.

The bill reduces application and renewal fees, requires a temporary permit to be issued if federal background information has not been supplied within 30 days, and allows carriers into restaurants if they do not drink alcohol. Municipalities can vote to prohibit possession of concealed weapons.

Allowing out-of-state visitors to carry weapons, even if they haven't met Alaska's standards for a permit, didn't concern Joe Michaud, chief of the Valdez Police Department.

"We recognize out-of-state driver's licenses without question," he said. "Perhaps we could extend the same trust with concealed weapons."

The House still needs to consider the bill if the Senate approves it.

JUNEAU EMPIRE, FRIDAY, APRIL 18, 1997

Study: Weapons laws deter crime

Fewer rapes, killings found where concealed guns legal

By Dennis Cauchon
USA TODAY

In a comprehensive study that may reshape the gun control debate, researchers have found that letting people carry concealed guns appears to sharply reduce killings, rapes and other violent crimes.

The nationwide study found that violent crime fell after states made it legal to carry concealed handguns:

- ▶ Homicide, down 8.5%.
- ▶ Rape, down 5%.
- ▶ Aggravated assault, down 7%.

The University of Chicago study, obtained by USA TODAY, is set to be released next Thursday. But its impending release has already sent shock waves through the gun-control debate because of the effect it may have on one of the most controversial areas of gun law.

Since 1986, the number of states making it legal to carry concealed weapons has grown from nine to 31.

The National Rifle Association has led this fight in state legislatures, arguing that concealed weapons deter crime.

Gun control supporters counter that these laws cost lives by increasing accidental deaths and impulsive killings.

The study analyzed FBI crime statistics in the nation's 3,054 counties from 1977 to 1992 to see if the introduction of concealed-weapons laws had any effect on crime.

The results overwhelmingly supported the idea that these laws deter violent crime.

The drop isn't primarily caused by people defending themselves with guns, says John Lott, the study's author. Rather, criminals seem to alter their behavior to avoid coming into contact with a person who might have a gun.

Concealed-weapons laws have drawbacks, too, the study found. Auto theft and larceny increased. Criminals shifted to property offenses, in which contact with a victim is rare, says Lott.

"The policy implications are undeniable: If you're interested in reducing murder and rape, then letting law-abiding, mentally competent citizens carry concealed weapons has a positive impact," says Lott.

Gun control backer Josh Sugarman of the Violence Policy Center blasted the study: "Anyone who argues that these laws reduce crime either doesn't understand the nature of crime or has a preset agenda."

Lott, who spent two years on the study, says he sent his research to scholars who might disagree with him and made changes to satisfy the critics.

David Kopel, a gun control scholar who did a smaller study on the same issue, says, "Lott's study is so far ahead of all previous studies that it makes them all worthless."

GEORGE MAGAZINE
APRIL 97
PAGE 86

SELF-DEFENSE
JOHN LOTT

Gun control advocates have long argued that the fewer guns there are, the less crime there will be. Now John Lott, an economist at the University of Chicago Law School, is making a compelling case that violent crime rates would actually fall if every sane nonfelon adult could pack heat. "The evidence is very convincing that allowing law-abiding citizens to carry handguns has a net effect in saving lives," Lott says.

In a recent study, Lott crunched crime statistics from the 31 states whose laws allow people to carry concealed weapons as long as they meet certain criteria (usually, not having a criminal record or a history of mental illness). He concluded that such laws led to an 8.5 percent drop in murder rates. If concealed weapons were legal nationwide, he argues, some 1,570 murders, 4,177 rapes, and 60,000 aggravated assaults could have been prevented in 1992 (the last year of the 16-year period covered by his study). Increases in unintentional gun deaths from concealed weapons, Lott says, are next to none. A lean six-foot-three 38-year-old, Lott speaks in professorese as flat and passionless as his pronouncements are inflammatory. Pointing out the relatively low cost of guns, he says, "I don't think there's any type of deterrent that's been studied by economists that shows the same cost-benefit ratio."

Lott has a pistol at home, but he says he has no particular affection for guns or pro-gun affiliations. The Violence Policy Center in Washington, however, claims that "the Lott study is indelibly stained with the taint of the gun industry." The VPC says the "taint" results from alleged financial intimacy between the John M. Olin Foundation, which funds Lott's chair at U of C, and the Olin Corporation, whose Winchester division makes bullets. (Lott says he didn't know of any connection.) Meanwhile, Lott's work has won him new phone friends: "I get calls from people in Alaska who want to tell me about their gun collections."—*Mike Steere*

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TENNESSEE LAW REVIEW

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"*SHALL* ISSUE": THE NEW WAVE OF CONCEALED HANDGUN PERMIT LAWS*

CLAYTON E. CRAMER** AND DAVID B. KOPEL***

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* An earlier version of this article has been published by the Independence Institute.

** Clayton E. Cramer is a software engineer with a telecommunications manufacturer in northern California. His first book, *By The Dim And Flaring Lamps: The Civil War Diary of Samuel McIlvaine*, was published in 1990. His second book, *For The Defense of Themselves and the State: The Original Intent and Judicial Interpretation of the Right To Keep and Bear Arms*, was published by Praeger Press in 1994.

*** David B. Kopel is Research Director of the Independence Institute. His book *The Samurai, the Mountie, and the Cowboy: Should America Adopt the Gun Controls of Other Democracies?* (1992) was chosen as Book of the Year by the American Society of Criminology's Division of International Criminology.

Independence Institute is a nonprofit, nonpartisan free-market Colorado think tank.

Research assistance for this Article was provided by Charles R. Hardy and Deron Dilger. The authors are especially indebted to Don B. Kates, Jr., for his advice and criticism. Errors are of course the authors' alone.

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What would happen if essentially all adults who passed a background check and safety test could qualify for a permit to carry a concealed handgun? About one-third of all states have adopted laws or practices that enable persons who are legally allowed to possess a handgun in their own home to be eligible for a license to carry a concealed handgun for protection. The laws require that after passing a background check (and sometimes a firearms safety class), eligible persons must be granted the permit if they apply. If the application is rejected, the burden of proof is on the non-issuing sheriff, police chief, or judge to show that an applicant is either unqualified or a danger to public safety. Typically, about one to four percent of a state's population decides to obtain such a permit.[1]

This Article examines how these laws have been written to satisfy concerns about public safety. The Article specifically investigates the concern that more permits will lead to more needless killings. After analysis of all available data, the Article concludes that concealed carry laws can be enacted by states with little fear that such laws will compromise public safety. In some cases, such laws may even enhance public safety.

I. A SHORT HISTORY OF CONCEALED HANDGUN PERMITS

In most of the United States, laws prohibiting concealed carrying of handguns without a permit are relatively recent. While some antebellum

1. *See infra* Part II.

In most of the United States, laws prohibiting concealed carrying of handguns without a permit are relatively recent. While some antebellum statutes did address concealed carrying, they did so by outlawing the practice entirely, rather than by setting up a system under which concealed carrying would be lawful only with a permit. These statutes usually had no exemptions for sheriffs or other peace officers, even when on duty.[2] During the 1920s and 1930s, many states adopted "A Uniform Act to Regulate the Sale and Possession of Firearms." This model law, adopted by the National Conference of Commissioners on Uniform State Laws and supported by the National Rifle Association, prohibited unlicensed concealed carry.[3]

Recognizing that at least some civilians would have a legitimate need for concealed carry of a handgun, most states adopted provisions allowing a sheriff, police chief, or judge to issue concealed handgun permits. Significantly, such statutes were broadly discretionary; while the law might specify certain minimum standards for obtaining a permit, the decision whether a permit should be issued was not regulated by express statutory standards.[4]

Concealed handgun permit statutes were passed in some parts of the United States as a method of prohibiting blacks from carrying arms. In the words of a Florida Supreme Court justice, "The statute was never intended to be applied to the white population and in practice has never been so applied."[5]

While the motivations behind California's concealed handgun statute are not as clearly understood, the effect has been similar to frankly racist statutes. California's legislative research body studied the issue in 1986

2. *See* State v. Reid, 1 Ala. 612 (1840). *See generally* CLAYTON E. CRAMER, FOR THE DEFENSE OF THEMSELVES AND THE STATE: THE ORIGINAL INTENT & JUDICIAL INTERPRETATION OF THE RIGHT TO KEEP AND BEAR ARMS 76-78 (1994).

3. *See, e.g.*, CALIFORNIA ASSEMBLY OFFICE OF RESEARCH, SMOKING GUN: THE CASE FOR CONCEALED WEAPON PERMIT REFORM 6 (1986) [hereinafter SMOKING GUN].

4. *See infra* Part II. *See also*, SMOKING GUN, *supra* note 3, at 6-8. For details of the late arrival of concealed handgun statutes in the North and West, see CRAMER, *supra* note 2, at 172-78, 263-64; Don B. Kates, Jr., *Toward a History of Handgun Prohibition*, *in* RESTRICTING HANDGUNS: THE LIBERAL SKEPTICS SPEAK OUT 7-30 (Don B. Kates, Jr. ed. 1979).

5. Watson v. Stone, 4 So. 2d 700, 703 (Fla. 1941) (Buford, J., concurring specially). Commenting on the historically racist origins of the statute, Justice Buford stated:

> [The] Act was passed for the purpose of disarming the negro laborers and to thereby reduce the [number of] unlawful homicides . . . and to give the white citizens in sparsely settled areas a better feeling of security. . . . [T]here has never been, within my knowledge, any effort to enforce the provisions of this statute as to white people, because it has been generally conceded to be in contravention of the Constitution and non-enforceable if contested.

Id.

males."[6] Because so many victims of violent crime are female or non-white, discriminatory granting of carry permits is especially hard to justify.[7]

Not every state adopted the Uniform Act. Some states had already enacted their own statutes.[8] Vermont adopted *no* statute prohibiting concealed carry of handguns, at least partly because of the Vermont Supreme Court's expansive reading of the Vermont Constitution's protections in *State v. Rosenthal*.[9] Even today, Vermont has no laws prohibiting or regulating concealed carry except "with the intent or avowed purpose of injuring a fellow man . . . ."[10]

A. Modern Discretionary Permits

In many jurisdictions which continue to retain unlimited administrative discretion, abuse of discretion is common. Conversely, persons granted permits are often politically influential, rather than the people really in need of carrying firearms.[11]

Denver Police Chief Ari Zavaras slashed the number of carry permits, granting only forty-five permits in a city of one-half million people.[12] Detective William Phillips, the administrator of Zavaras' permit program, explained that only applicants with a "true and compelling need" could be granted permits. "Just because you fear for your life is not a compelling reason to have a permit," he elaborated.[13] After Chief Zavaras retired, he admitted that he carries a handgun almost constantly. "Now, when wandering around Denver, I very rarely go without one."[14]

Denver talk-show host Alan Berg was Jewish, passionate, highly provocative, and fond of insulting people with whom he disagreed. When Berg began receiving death threats from white supremacists, he went to a local police department to apply for a handgun carry permit. The police

6. SMOKING GUN, *supra* note 3, at 2.

7. According to the FBI, 49.6% of murder victims in 1991 were black. FEDERAL BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTS FOR THE UNITED STATES 1991 16 tbl. 2.4 (1992).

8. At least one state, California, replaced an existing statute with the Uniform Act. *See* STATUTES OF CALIFORNIA AND AMENDMENTS TO THE CODES PASSED AT THE FORTY-SECOND SESSION OF THE LEGISLATURE 221 (1917) (comparing the 1917 California concealed handgun statute and the Uniform Act adopted by California in 1923).

9. 55 A. 610, 611 (Vt. 1903).

10. VT. STAT. ANN. tit. 13, § 4003 (1974). The statute also prohibits the non-authorized carrying of a "dangerous or deadly weapon" within the confines and grounds of state institutions. *Id.*

11. *See infra* Part II.

12. Steve Garnass, *Cops Get Tougher on Gun Permits*, DENVER POST, Apr. 24, 1988, at A1.

13. *Id.*

14. *Id.*

chief attempted to dissuade Berg and finally rejected his application. Shortly thereafter, Berg was assassinated by members of the Aryan Nation.[15] No one will ever know whether, had Berg been armed, he might have frightened off his murderers. What is known is that Berg was unarmed and was speedily killed.

From 1984 to 1992, in the City of Los Angeles police administration refused to issue any permits. In a city of over three million people, not one person was found needful of a handgun permit. The Los Angeles policy changed, however, on June 28, 1992. The new police chief, Willie Williams, twice failed practice versions of the POST (Police Officer Standards and Training) test. As a result, although he could retain the appointive position of police chief, Mr. Williams could not legally qualify to be a police officer in Los Angeles. Nonetheless, Mr. Williams was issued a concealed carry permit, the first civilian since 1984 to be so honored. The City of Los Angeles was subsequently sued for its discriminatory handling of permits; the City settled before trial, promising to issue licenses on the basis of need.[16]

Despite the City's agreement to the settlement, only five permits were issued in the ensuing nine months. Three permits went to government employees, and two went to private attorneys. On the basis of the absence of a "compelling" need, a permit was denied to a jeweler who 1) routinely carried large amounts of jewelry and valuables, 2) had been burgled, 3) had received police-documented death threats from a criminal he had helped to apprehend, and 4) had passed a defensive handgun class.[17]

Licensing in the rest of California is similarly haphazard and local officials enforce their own criteria in determining who is *qualified* to exercise the *privilege* of self-defense with a firearm.[18] For example, in addition to other requirements, the police department of Escalon, California requires applicants to pass a written exam with questions such as the following:

> The shock of firing may on occasion place an unusual stress on the gun resulting in damage or a need for adjustments. Which of the following parts are likely to require attention after firing:

15. STEPHEN SINGULAR, TALKED TO DEATH 142 (1987). The police department in question was in Englewood, a suburb of Denver.

16. Patrick McGreevy, *Permit Rules on Concealed Guns Eased*, DAILY NEWS (Los Angeles), June 30, 1993, at 1.

17. John Hurst, *LAPD's Tight Control on Gun Permits May Prompt New Lawsuit*, L.A. TIMES, June 25, 1994, at A30, A31.

18. In Los Angeles County, a female private detective was disqualified from obtaining a permit because of her gender. Paul H. Blackman, Carrying Handguns for Personal Protection: Issues of Research and Public Policy 9 (paper presented at annual meeting of the American Society of Criminology, San Diego, Nov. 13-16, 1985).

- the screws of the face plate
- the ejector rod if revolver
- the firing pin
- all of the above.[19]

Such questions are equivalent to conditioning the issuance of a driver's license on passing a test for becoming an auto mechanic.

In New York City, carry permits are arguably awarded on the basis of political and social influence. Permits have been awarded to the following individuals:

- Laurence Rockefeller (a gun control advocate whose justification for the permit was "carry large sums of money")
- Gun prohibition advocate and *New York Times* publisher Arthur Ochs "Punch" Sulzberger (justification: "carry large sums of money, securities, etc.")
- Brady Bill advocate William F. Buckley (whose first application cited his need for "protection of personal property while traveling in and about the city")
- The husband of Dr. Joyce Brothers (Dr. Brothers has written that gun ownership is a sign of sexual dysfunction in males.)[20]
- Celebrities including Bill Cosby, Howard Stern, and publisher Michael Korda.[21]

Other licensees include an aide to a city councilman widely regarded as corrupt, several major slumlords, a Teamsters Union boss who was a defendant in a major racketeering suit, and a restaurateur identified with organized crime and alleged to control important segments of the hauling industry.[22]

Conversely, permits are generally not awarded to persons in genuine need of carrying firearms. For example, crime victims are denied permits even though they are cooperating with the police, will testify against a criminal, and are receiving death threats from the criminal. Such persons will not even have their permit applications for home handgun possession processed within the required six months. And while being a publisher of a respectable publication such as the *New York Times* or *National Review*

19. NRA Institute for Legislative Action, Report, Mar. 23, 1994 (Sacramento, Cal.) (on file with authors).

20. *Permit 29,000 to Pack Guns*, DAILY NEWS (New York), June 22, 1981, at 1; Carol R. Silver & Don B. Kates, Jr., *Self-Defense, Handgun Ownership, and the Independence of Women in a Violent, Sexist Society*, in RESTRICTING HANDGUNS, *supra* note 4, at 153. *See also* Susan Hall, *Nice People Who Carry Guns*, NEW YORK, Dec. 12, 1977, at 38.

21. Susan Lehman, *If Punch Sulzberger's Packing Heat, Screw Mogul Fumes, Why Not Me?* N.Y. OBSERVER, Dec. 21, 1992, at 1; Colum Lynch, *Elite in NYC are Packing Heat*, BOSTON GLOBE, Jan. 8, 1993, at 21.

22. William Bastone, *Born to Gun: 65 Big Shots With Licenses to Carry*, VILLAGE VOICE, Sept. 29, 1987, at 11, 12.

is apparently sufficient in itself for a carry permit, being the recipient of death threats such as "kill the white creep," "you will be shot," and "This is no joke. We are going to kill Al Goldstein," is not a sufficient basis. Mr. Goldstein, while the recipient of death threats considered serious by the police, is also the publisher of the highly unrespectable *Screw* magazine.[23]

Class discrimination pervades the permit application and approval process. New York City taxi drivers, although greatly at risk of robbery, are denied gun permits because they carry less than $2000 in cash. Many taxi drivers carry weapons anyway. As the courts have ruled, ordinary citizens and storeowners in the city may not receive carry permits because they have no greater need for protection than anyone else in the city.[24]

Not surprisingly, given the problems inherent with a discretionary permit system, many people have begun calling for—and many legislatures have enacted--laws to regularize the carry permit application process.[25]

B. *The New Breed Of Concealed Handgun Permit Laws*

Since 1987, states have increasingly adopted a new breed of concealed handgun permit laws that make easier the process for many adults to get a permit to carry a concealed handgun. While most residents of these states

23. Lehman, *supra* note 21, at 1.

24. Slatky v. Murphy, N.Y.L.J., Oct. 14, 1971, at 2.

Class discrimination is not limited to New York City. A federal district court in California recently upheld Los Angeles County's policy of issuing handgun carry permits almost entirely to retired police officers and to celebrities. The court found the county's policy rational "because famous persons and public figures are often subjected to threats of bodily harm." Hickman v. County of Los Angeles, No. CV 91-5594-RMT(Bx) (C.D. Cal. Apr. 21, 1994) (Takasugi, J.). The court's point is obviously correct; but the fact that famous persons who are subjected to threats of bodily harm are legitimately issued permits does not prove that nonfamous persons who are also subjected to equally serious threats of bodily harm can rationally be denied permits. Similarly, the court upheld the policy of issuing permits to ex-police officers because they are "particularly well-trained in the use of weapons." *Id.* The fact that ex-police may be particularly well-trained does not provide a justification for denying a permit to an applicant who can prove that he or she is as well-trained (or even better-trained) than a former police officer. The case against Los Angeles County is distinct from the case against the City of Los Angeles, discussed *supra* text accompanying notes 16-17.

25. Courts have sometimes stepped in to deal with egregious licensing abuses. For example, the Supreme Judicial Court of Maine held that the word "may" in a licensing statute means that a police department "must" issue permits to qualified applicants. Schwanda v. Bonney, 418 A.2d 163, 167 (Me. 1980). As the discussion on the pages above illustrates, however, the judiciary has been unable or unwilling to stop the rampant abuse of discretion in many jurisdictions; legislative reform remains the surest, most effective remedy for licensing abuse.

are unlikely ever to apply for a concealed weapon permit, the process is a matter of choice.[26]

These more permissive, nondiscretionary laws invite certain questions. How many permits have been issued? What happened to the murder rate when these laws took effect? How many serious problems developed because of the laws? The state-by-state analysis below in subpart I. C. will examine (1) the peculiarities of each state's non-discretionary concealed handgun permit law and (2) what happened to murder rates before and after these laws took effect.

C. *Methodology for Judging Effects of the Laws*

Proponents of carry reform have hoped that such laws would reduce crime of all types, including homicide. Reform advocates suggest that crime will fall not only because lawfully armed citizens will use guns to thwart criminal attack, but also because the general deterrent effect of citizens carrying guns will cause some criminals to desist from confrontational crime.

The expectation of carry advocates is consistent with research performed for the National Institute of Justice. When professors James D. Wright and Peter H. Rossi interviewed and polled felony prisoners in ten state correctional systems, fifty-six percent of the prisoners said that a criminal would not attack a potential victim who was known to be armed. Thirty-nine percent of the felons had personally decided not to commit a crime because they thought the victim might have a gun; and eight percent said that this experience had occurred "many times." Criminals in states with higher civilian gun ownership rates worried the most about armed victims.[27]

Nonetheless, opponents of carry reform have argued that reform will lead to tragic increases in homicide. While there is a need for further research to examine what, if any, effect the carry reform laws have had on crimes such as rape and robbery, the examination of murder rates is a reasonable starting point for carry reform analysis. In particular, studying the murder rates allows an evaluation of the "worst case" scenario offered by carry opponents: that carry reform will lead to increased homicide.

Simply to compare the murder rates of each reform state after the new laws took effect to that of the national average is not an appropriate comparison. Many of the states that adopted non-discretionary permit laws have always been low murder rate states. Therefore, any comparison that fails to see how much murder rates *changed* because of these laws will give an artificially rosy analysis of the effects of carry reform.

26. *See infra* Part II.

27. JAMES D. WRIGHT & PETER H. ROSSI, ARMED AND CONSIDERED DANGEROUS: A SURVEY OF FELONS AND THEIR FIREARMS 149-51 (1986).

An examination of simply whether the murder rates declined after the new laws took effect would also be inappropriate because many of the new laws took effect between 1986 and 1990, when the murder rates for the entire country were on the rise. Thus, to necessarily attach significance to a rising murder rate in a reform state when most other states were also experiencing a rise would be misleading.

A more meaningful measurement is *murder rate percentage*: What is the relationship between the murder rate for a particular state and the murder rate for the rest of the United States? As an example, if Florida's murder rate for 1975 was 13.5 per 100,000 people per year, and the murder rate for the rest of the United States was 9.3 per 100,000 people per year, then Florida's murder rate percentage for 1975 was 145%. In other words, for every 100 murders per 100,000 people in the rest of the United States, there were 145 murders per 100,000 people in Florida. Because the murder rates for many states rise and fall roughly in parallel with the rest of the United States, the *murder rate percentage* can be a meaningful measure of how a particular state's policies influence the murder rate.

Recognizing that some readers will regard with suspicion such a synthetic measure (Disraeli's epigram—"lies, damn lies, and statistics"—comes to mind), we supply graphs for the murder rate of each state and the rest of the United States for the years examined.

This study also examines the years in which these laws were passed. The logic behind such an examination is two-fold. First, in some cases the law took effect part-way through the year, as it did in Florida. Second, the deterrent effect of such laws may be related to public discussion of these new laws. Thus, some benefit may be witnessed even before a particular reform law takes effect, as it increases the criminal's fear that the next victim may be armed.

II. STATE-BY-STATE ANALYSIS

A. *Washington*

The state of Washington adopted the Uniform Pistol & Revolver Act in 1935. In 1961, the state departed from the discretionary permit system, and required that if the applicant for a concealed weapon permit was allowed to possess a handgun under Washington law, the permit had to be issued.[28] At first glance, Washington's new policy appears quite remarkable. However, a little reflection on the nature of concealed weapons suggests the state's decision reflected a realistic understanding of handgun ownership.

The only circumstances under which a concealed handgun is likely to come to the attention of the police are that either the weapon was drawn, or that the person carrying it was searched by the police for some other,

28. WASH. REV. CODE ANN. § 9.41.070(1) (West 1988 & Supp. 1994).

presumably criminal reason. If a person is allowed to *possess* a concealable firearm within the home, practically speaking, that person cannot be prevented from *carrying* the weapon concealed outside the home. As a New York court upholding New York State's handgun licensing law (the Sullivan Act) observed, "If he has it in his possession, he can readily stick it in his pocket when he goes abroad."[29] If large numbers of handgun owners choose to ignore a concealed weapon law, the state has only three ways of responding: repeal the law, restrict handgun ownership at home, or make concealed weapon permits available to nearly anyone who is allowed to own a handgun. Washington State decided to make permits easy to get, thus keeping handgun ownership safe and legal.

Washington's statute is astonishingly forceful:

> The judge of a court of record, the chief of police of a municipality, or the sheriff of a county, shall within thirty days after the filing of an application of any person issue a license to such person to carry a pistol concealed on his or her person within this state for four years from date of issue, for the purposes of protection or while engaged in business, sport, or while traveling.[30]

The statute goes on to list conditions that would cause "[s]uch applicant's constitutional right to bear arms" to be denied. Among others, these conditions include the applicant's being (1) under twenty-one years old, (2) subject to a court order or injunction regarding firearms, (3) out on bail pending trial or appeal, (4) awaiting sentencing for a crime of violence, or (5) subject to an outstanding arrest warrant for a misdemeanor or felony.[31]

The same statute also includes provisions for filing a civil suit against any agency that wrongfully refuses to issue a license or modifies the requirements of the law.[32] Notably, the statute allows non-residents to obtain such permits, although the state has up to sixty days to perform a background check on non-residents and on residents who have moved into Washington within the previous ninety days.[33]

In 1983, Washington made two important changes. First, the licenses would be valid for a four-year term, increased from two years. Second, license applicants who were improperly denied and who successfully sued an issuing agency for wrongful denial would be automatically awarded attorneys fees.[34]

29. People *ex rel* Darling v. Warden of City Prison, 139 N.Y.S. 277, 285 (N.Y. App. Div. 1913).

30. WASH. REV. CODE ANN. § 9.41.070 (West 1988 & Supp. 1994).

31. *Id.*

32. *Id.* § 9.41.070(11).

33. *Id.* § 9.41.070(1).

34. *Id.* § 9.41.070(11).

As of 1993 there were 241,606 licenses outstanding in Washington.[35] Given Washington's population of approximately five million, about four percent of the state population have carry permits.[36]

The effects of the law in Washington State were subtle. As graphs (1) and (2) below show, after the passage of the nondiscretionary issuance law, murder rates rose and fell largely in line with the national rate. In the two years before the new law took effect, Washington's murder rate was somewhat less than half of the rate for the rest of the United States.[37] From 1961 through 1982, the Washington murder percentage rates stayed between forty-four and sixty percent of the rate for the United States. While U.S. murder rates dropped in the early 1980s, the Washington murder rate percentage continued to rise, reaching a peak of sixty-eight percent of the U.S. rate in 1988, before dropping back to more normal levels in 1980-82. The increased rates were most likely not the result of all those Washingtonians carrying concealed handguns. In fact, the murder rate percentage was rising *before* the new law took effect. In addition, at least part of the increase can be attributed to the actions of one individual, the Green River Killer, who murdered at least forty-eight Washington women during the years 1982-84.[38] Another infamous killer, Ted Bundy, murdered at least ten women in Washington State in 1974 before moving on to other states.[39] These aberrations must not be allowed to explain too much. The Green River Killer's activities stopped in 1984 for no known reason. Meanwhile, the murder rate percentages in Washington remained unusually high until 1989, when they suddenly plunged to levels typical of the period before 1982.

35. Bill MacKenzie, *Packin' the Heat*, OREGONIAN (Portland), Nov. 4, 1993, at A1.

36. Washington, like Florida and some other states, issues concealed carry permits to non-residents, who can use the permit when traveling in Washington. Presumably, the number of nonresident permit holders is not so large as to significantly change the estimated percentage of the Washington population having a carry permit.

37. Unfortunately, the Uniform Crime Reports program only began to produce reasonably complete statewide murder statistics in 1959.

38. Andrea Sachs & Joni H. Blackman, *Stalking the Green River Killer*, TIME, July 31, 1989, at 57. Many of the Green River Killer's victims may not have been identified as *his* victims.

39. *See generally* STEPHEN G. MICHAUD & HUGH AYNESWORTH, THE ONLY LIVING WITNESS (1983). While Ted Bundy's bloody path of murders perpetrated with clubs and bare hands also led through Utah and Florida, the effects on murder rates in those states were less dramatic. In Utah, he did not kill as many people; in Florida, the murders were diluted in Florida's much larger population. *Id.*

Although Bundy did not use firearms in his crimes and his victims were apparently unarmed, citizen gun ownership did come into play at least once in Bundy's career. In June 1977, the Aspen, Colorado sheriff called out the *posse comitatus* (ordinary citizens with their own guns) to hunt for Bundy after he escaped from jail. *Id.*

The state of Washington remained an aberration for many years with its nondiscretionary permit process. Permits were relatively easy to get in many other states, and some courts were prepared to hold that a concealed weapon permit was, in some sense, a right guaranteed by state constitution.[40] Nonetheless, the language of many state statutes still allowed state officials substantial discretion to deny a permit.[41] This practice started to change in 1987, when the new wave of nondiscretionary concealed handgun permit laws began to appear.

B. Florida

Florida's 1987 reform law set off the modern wave of carry reform that has now been copied in many other states.[42] Among all the states, Florida has collected the most detailed information about the impact of the carry laws. Florida also provides a good test case for the possible negative impacts of carry reform.

A state such as Vermont, which has never required a license for open or concealed carry, might be expected to suffer few consequences from widespread handgun carrying: Vermont already has a low crime rate, is relatively homogeneous, and is mostly rural. Florida, however, has all the ingredients for concealed carry disaster: a high-crime state with heavy urbanization, a massively overcrowded prison system, and an extremely diverse (and often tense) ethnic population mix. Reform-related problems might be expected to be especially severe in Dade County (Miami), where crime and racial tensions are particularly high.

In 1987, Florida adopted a nondiscretionary concealed weapon permit law guaranteeing issuance of a concealed weapon permit to any Floridian who is (1) at least twenty-one years old, (2) "Does not suffer from a physical infirmity which prevents the safe handling of a weapon or firearm", (3) has not been convicted of a felony, (4) has not been convicted of a drug charge within the preceding three years, (5) has not been confined for alcohol problems within the preceding three years, (6) has completed any of a number of firearms safety classes, and (7) has not been committed to a

40. Schubert v. DeBard, 398 N.E.2d 1339, 1341 (Ind. Ct. App. 1980).

41. Mr. Cramer has been repeatedly told by New Hampshire gun owners that concealed handgun permit issuance is non-discretionary in the Granite State. However, while New Hampshire authorities may issue permits readily, there is nothing in the statutes that requires them to do so. Conway v. King, 718 F. Supp. 1059, 1060 n.1, 1061 (D.N.H. 1989).

A number of Connecticut residents are also under the same impression. While Connecticut's concealed weapon permit law does provide an appeal process that appears to be weighted in favor of law-abiding citizens who wish a permit, there is nothing explicit in the statute that requires a permit to be issued. CONN. GEN. STAT. ANN. § 29-28 (West 1990 & Supp. 1994).

42. *See infra* subparts II. C. to O.

mental hospital within the preceding five years. A 1993 revision allows American citizens who are not Florida residents to obtain a permit that can be used when visiting Florida.[43]

The Florida reform law essentially ended the power of local law enforcement to deny carry permits for arbitrary reasons. Under the old system, for example, a doctor who performed abortions and whose clinic had been bombed was denied a permit because he was not in the professional security business.[44] The only area of discretion allowed by the Florida statute is that a license could be denied if an applicant has been convicted of any misdemeanor crime of violence, or is on probation for such a crime, within the preceding three years.[45] Judges are required to take the firearms safety class, but are otherwise exempt from the remaining requirements.[46]

The tenor of the national media coverage of the Florida reform was echoed internationally by the British newsweekly, *The Economist*. The magazine asserted that after taking a few hours of training, "Anyone who wants to carry a pistol may now do so."[47] According to *The Economist*, the provisions about minimum age requirements, drug abuse, and misdemeanor convictions apparently excluded no one.

How many permits were actually issued? From October 1, 1987, when the new law went into effect, to April 30, 1994, there were 233,870 applications received. A total of 1019 applications were denied (585 for criminal history, 434 for incomplete application). A total of 221,443 licenses were issued, of which 124,405 were valid as of April 30, 1994. Many licensees did not renew; several thousand applications were either in process, denied and under appeal, suspended, or withdrawn by the applicant.[48]

A total of 362 licenses have been revoked. The revocations were for: clemency rule change or legislative change (66), illegible prints (10), crime prior to licensure (78, of which 4 involved a firearm), crime after licensure (193, of which 18 involved a firearm), and "other" (15). Thus, of the 221,443 licensees, approximately 1 in 10,000 (1/100th of 1%) had a license revoked for a crime involving a firearm.[49]

Dade County has compiled even more detailed data. The number of permits increased dramatically from 1200 in September 1987 to 21,092 in

43. FLA. STAT. ANN. § 790.06(2)(b) to (j) (West 1992 & Supp. 1994).

44. Blackman, *supra* note 18, at 8-9.

45. FLA. STAT. ANN. § 790.06(3) (West 1992 & Supp. 1994).

46. *Id.* § 790.061.

47. *Come Armed*, THE ECONOMIST, Oct. 10, 1987, at 31. The article does preface its conclusion by saying, "It is now legal for anyone except convicted felons, certified psychotics and twice-convicted drunks to carry handguns." *Id.*

48. FLORIDA DEP'T OF STATE, *Concealed Weapons/Firearms License Statistical Report for Period 10/01/87 - 04/30/94* 1 (1994).

49. *Id.*

August 1992. The Dade police kept records of all arrest and non-arrest incidents involving permit-holders in Dade County.[50]

The following incidents of criminal misuse of a firearm leading to a conviction and a license revocation were reported: two cases of aggravated assault involving a firearm (one of which involved the gun being fired), one case of armed trespass of cultivated land, and one case of a motorist shooting at another car. In addition to the above firearms crimes, one permit-holder accidentally attempted to enter the secured area at Miami International Airport carrying a firearm in her purse, and another individual accidentally shot himself in the leg.[51]

The Dade police recorded the following incidents involving the defensive use of licensed carry firearms: two robbery cases in which the permit-holder produced a firearm and the robbers fled, two cases involving permit-holders who unsuccessfully attempted to stop and apprehend robbers (no one was hurt), one robbery victim whose gun was taken away by the robber, a victim who shot an attacking pit bull; two captures of burglars, three scaring off of burglars,[52] one thwarted rape, and a bail bondsman firing two shots at a fleeing bond-jumper who was wanted for armed robbery.[53]

The combined Florida/Dade reports thus show the following:

- A very small number of permit holders were convicted of perpetrating crimes with firearms.
- A relatively larger, but still small overall number of permit holders used their firearms to thwart or attempt to thwart crimes.
- Not a single permit-holder intervened in an incompetent or dangerous manner, as by shooting an innocent bystander by mistake.

From the enactment of the 1987 Florida carry reform until August 31, 1992, the Dade County permit incident tracking project provided the most detailed information available about actual incidents involving carry permit holders. The tracking program had been created as a result of intense fears among some police administrators about the consequences of the carry reform law. The program was abandoned in the fall of 1992 because of the

50. METRO DADE POLICE DEP'T, Aug. 31, 1992, at 1 (untitled report).

51. *Id.* at 2-7.

52. *Id.* Some of the burglaries occurred in the victim's home, a place where a concealed carry permit would not be necessary. Arguably, the greater familiarity with firearms encouraged by the carry law might have made some of the burglary victims more proficient with firearms.

53. A sample incident reported, "Victim thwarted a robbery. While at an intersection the subject approached her vehicle, produced a knife and demanded her money. The victim raised a .32 caliber handgun and stated, 'Let's see which is fastest, the bullet or the knife,' at which time the subject fled on foot." *Id.* at 6.

rarity of incidents involving carry permit holders and the subsequently diminished concern on the part of law enforcement administrators.

The very fact that negative incidents involving permit holders were so rare as to not be worth counting is evidence of the lack of negative effects of carry reform. Representative Ron Silver, the leading opponent of Florida's carry reform, graciously admitted in November 1990: "There are a lot of people, including myself, who thought things would be a lot worse as far as that particular situation [carry reform] is concerned. I'm happy to say they're not."[54] John Fuller, general counsel for the Florida Sheriffs Association, stated, "I haven't seen any instance of persons with permits causing violent crimes, and I'm constantly on the lookout."[55]

Based on the reports of incidents known to the police, the Florida carry reform law appears to be a net plus for public safety. This result becomes even more lopsided if one believes that the persons who committed crimes with their licensed firearms probably would have committed the same crimes even without a license. Nonetheless, the sum of known incidents does not reveal everything that would be desirable to know. Not all crimes are reported to the police. As a result, a number of crimes perpetrated or thwarted by permit holders never come to the attention of the police. Accordingly, a look at the overall trends in Florida murder rates gives an additional insight into the effects of the reform law.

Of all the states that enacted concealed carry reform, Florida shows the most dramatic change. As graphs 3 and 4 indicate, Florida's murder rate from 1975 to 1986 was between 118 and 157% of the murder rate elsewhere in the United States. After the passage of Florida's law, the state's murder rate began declining rapidly and consistently. The decline provided dramatic contrast to the increase in murder rates experienced in the rest of the United States. By 1991, Floridians were less likely to be murdered than people elsewhere in America.

Greater safety for Florida residents and American tourists may be a factor behind the recent and sensationalized criminal attacks on foreign tourists. These tourists stood out because of the distinctive rental car license plates that Florida issued until only recently. The head of the Florida Department of Law Enforcement suggests that unlike Florida residents or

54. Michael Warren, *Concealed Weapons Owners No Trouble*, GAINESVILLE SUN, Nov. 4, 1990, at 1A, 12A.

55. *Police Say Concealed Weapons Law Has Not Brought Rise in Violence*, PALM BEACH POST, July 26, 1988, at 7 (views of executive director of Florida Chiefs of Police and an official with the Florida Sheriffs' Association). *See also Concealed Weapon Law Opponents Still Searching for Ammunition*, FLORIDA TIMES-UNION, May 9, 1988, at A1 (Florida Chiefs of Police efforts to document problems in every police department in the state results in finding none).

American tourists, foreign tourists were targeted because they would certainly be unarmed.[56]

C. Virginia[57]

Virginia's concealed weapon statute was modified in 1988.[58] The changes were not quite as explicit as the Washington or Florida statutes. Nevertheless, the statute's intent remains clear:

> The court, after consulting the law-enforcement authorities of the county or city and receiving a report from the Central Criminal Records Exchange, shall issue such permit if the applicant is of good character, has demonstrated a need to carry such concealed weapon, which need may include but is not limited to lawful defense and security, is physically and mentally competent to carry such weapon and is not prohibited by law from receiving, possessing, or transporting such weapon.[59]

Because some judges continually refused to renew permits, the law was amended in 1992 to require judges to renew permits "unless there is good cause shown for refusing to reissue a permit."[60]

Virginia has no centralized data base of concealed weapon permits. One must contact each of the 123 circuit courts in Virginia in order to determine how many permits are currently issued.[61]

As indicated in graphs 5 and 6, Virginia witnessed a dramatic decline in murder rate percentages during the first year following reform. This decline was short lived as the murder rate percentages returned to levels typical of the period before the law. However, one explanation of this return may be the fact that Virginia borders Washington, D.C. As a result, some of the increase in rates may represent spillover of rapidly increasing crime from the District of Columbia, where handgun possession is almost

56. Doyle Jourdan, head of the Florida Department of Law Enforcement, observed, "The bad guys are not stupid. They understand that a tourist from Germany is far less likely to come back here and testify against them in court, and they know that these people carry large amounts of cash, don't have weapons and are generally not that well aware of where they're going." Larry Rohter, *Miami Unnerved by a Tourist's Killing*, N.Y. TIMES, Sept. 12, 1993, at 26.

57. The story of the remaining states is essentially the same as Washington and Florida. In general, the adoption of concealed carry reform did not lead to a noticeable increase in the homicide rate. In a few cases, the homicide rate dropped, but the drop cannot be necessarily tied to the new law. Readers in a hurry may wish to proceed directly to the "analysis" section. *See infra* subpart II.O.

58. VA. CODE ANN. § 18.2-203(D) (1988 & Supp. 1994).

59. *Id.*

60. Unlike the other nondiscretionary permit laws, Virginia's statute does not specify a maximum time limit in which an application must be processed. *Id.*

61. Letter from John B. Russell, Jr., Office of the Attorney General, Commonwealth of Virginia, to author Cramer, Oct. 14, 1992.

entirely outlawed.[62] Moreover, the Virginia Legislature has revised its statutes several times to make it clear that judges really *are* supposed to issue permits.[63] The need for repeated revision suggests that while the law required issuance of permits, many judges effectively nullified it by using unauthorized discretion.

While the law is currently applied as written in most of Virginia, in the two counties of Virginia closest to Washington, D.C., carry permit applicants must often spend thousands of dollars in legal fees to force courts to issue permits according to legislative command.[64] Thus, where permits are arguably the most needed, they are the least available.

D. Georgia

Georgia's concealed weapon permit law was somewhat ambiguous prior to 1989. One part of the concealed weapon statute states, "The judge of the probate court of each county may . . . issue a license . . . ."[65] In contrast, a later portion specifies:

> Not later than 60 days after the date of the application the judge of the probate court *shall* issue the applicant a license to carry any pistol or revolver if no facts establishing ineligibility have been reported and if the judge determines the applicant has met all the qualifications, is of good moral character, and has complied with all the requirements contained in this code section.[66]

Other portions of the statute specify that licenses shall not be issued to anyone under twenty-one,[67] a fugitive from justice, or anyone awaiting court proceedings for a felony or "forcible misdemeanor."[68] Also disqualified is anyone placed under supervision by a court within the last ten years for a "forcible felony," or the last five years for a "forcible misdemeanor or a nonforcible felony,"[69] or hospitalized for alcohol or drug treatment in the

62. Handguns registered in Washington, D.C. before 1976 may lawfully be possessed under a "grandfathering" clause. However, carry permits are impossible for ordinary citizens to obtain, and even guns kept at home must be locked up, greatly reducing their defensive utility.

63. *See supra* notes 59-60 and accompanying text.

64. There are approximately 10,000 carry permits in Virginia, but in Fairfax County (next to Washington, D.C.), only three permits were issued during 1990-91. Carlos Santos, *10,000 in State Legally Carry Concealed Guns*, RICHMOND TIMES-DISPATCH, Oct. 3, 1993, at A1. Prince William County, also in northern Virginia, issued only seven permits during 1990-91. *Tidewater Dominates List for Gun Permits*, AP, Sept. 30, 1993.

65. GA. CODE ANN. § 16-11-129(a) (1992 & Supp. 1994) (emphasis added).

66. *Id.* § 16-11-129(d) (emphasis added).

67. *Id.* § 16-11-129(b)(1).

68. *Id.* § 16-11-129(b)(2).

69. *Id.* § 16-11-129(b)(3).

last five years.[70] Anyone convicted of any sort of manufacturing, distribution, or possession of a controlled substance is likewise ineligible for a license.[71]

Whether or not the issuance of a permit was discretionary remained a question. The use of "may" in one place suggested issuance was discretionary. Yet the language "shall issue" suggested nondiscretionary issuance. The Georgia Attorney General resolved the question in 1989 by issuing an opinion holding that a judge "has no discretion to exercise, but must issue the permit unless provided with information indicating the disqualification of applicant."[72]

The effect of the 1989 reinterpretation of the Georgia concealed weapon permit law was inconclusive. About 11,000 people in the Atlanta area now have permits.[73] As indicated in graphs 7 and 8, the Georgia murder rate fell 16% during 1989-92, while the rest of the United States experienced a 1.6% increase in murder rates. This contrast might indicate that the new interpretation of the law acted in a positive way to reduce the murder rate, relative to what the rate might otherwise have been.

One must not draw this conclusion too hastily, because examination of Georgia murder rates for the years 1975-88 shows a rather dramatic and otherwise unpredictable variation in the relationship between Georgia and U.S. murder rates. Examination after a few more years may provide an opportunity to evaluate more clearly the effectiveness of the change in the Georgia law. The most cautious conclusion to be drawn is that the change at least did no harm. More optimistically, the change *may* have reduced murder rates.

E. Pennsylvania

Pennsylvania took action in 1989. While not as explicit as Florida's law, or as forcefully worded as Washington's, the Pennsylvania reform put some teeth into the Pennsylvania Constitution's "right to keep and bear arms" provision. The requirements include that the applicant be twenty-one or over; have no drug convictions, no convictions for crimes of violence, no prior mental hospital commitments; not be addicted to "marijuana or a stimulant, depressant or narcotic drug"; not be "a habitual drunkard," convicted of a felony, or awaiting trial for a felony; an illegal alien; and not

70. *Id.* § 16-11-129(b)(4).

71. *Id.* § 16-11-129(b)(5)(A). The maximum fee for processing is set at $30. *Id.* § 16-11-129(c)(2).

72. Op. Att'y Gen. No. U89-21 (Aug. 25, 1989); GA. CODE ANN. § 16-11-129 Compiler's notes.

73. As of December 1993, the permit figures for four major counties were: Cobb 2920; DeKalb 3050; Fulton 3100; and Gwinnett 2299. Mike Fish, *Atlanta Celebrities (quietly) Toting Guns*, ATLANTA JOURNAL-CONSTITUTION, Dec. 12, 1993, at A1, A14.

be dishonorably discharged from the U.S. military, or a fugitive from justice. Non-residents are eligible for a concealed weapon permit on the same basis as residents, except that the statute requires they must currently possess an equivalent permit in their home state, provided such permits exist.[74]

Some discretionary authority remains, however. A sheriff can refuse a permit to "[a]n individual whose character and reputation is such that the individual would be likely to act in *a manner dangerous to public safety*."[75] While the emphasized phrase is not defined anywhere in the statute, the law does state:

> A license to carry a firearm shall be for the purpose of carrying a firearm concealed on or about one's person or in a vehicle and shall be issued if, after an investigation not to exceed 45 days, it appears that the applicant is an individual concerning whom no good cause exists to deny the license.[76]

Accordingly, the burden of proof seems to fall on the sheriff to show good cause for refusing a permit.

One unique feature of the Pennsylvania law is that in a city of "the first class"—i.e., Philadelphia[77]—the chief of police retains the authority to deny a permit unless "the applicant has good reason to fear an injury to the applicant's person or property or has any other proper reason for carrying a firearm and that the applicant is a suitable individual to be licensed."[78] In practice, "suitable individual to be licensed" could mean a politician or other person with political influence. Nonetheless, permits issued elsewhere in Pennsylvania are statutorily valid in Philadelphia.[79]

As of January 1992, 362,142 carry licenses were issued in the state. In other words, about three percent of Pennsylvanians had a permit.[80]

The Pennsylvania results are primarily interesting because even though Philadelphia is expressly exempted from nondiscretionary issuance of permits, permits issued elsewhere in the state are good in Philadelphia. Graph 9 shows no significant difference in Pennsylvania murder rate percentages after adoption of the new permit law. The murder rate

74. PA. CONS. STAT. ANN. § 6109(e) (West 1983 & Supp. 1994).

75. *Id.* § 6109(e) (emphasis added).

76. *Id.*

77. PA. STAT. ANN. § 101 (West 1974 & Supp. 1994) defines the classes of cities based on population. Only Philadelphia currently qualifies as a city of "the first class" by having a population above one million; the next closest city, Pittsburgh, is declining in population.

78. PA. CONS. STAT. ANN. § 6109(e)(2) (West 1983 & Supp. 1994).

79. *Id.* § 6109(a).

80. As with the state of Washington, the number of non-residents issued permits is presumed not large enough to significantly change the estimated percentage of the Pennsylvania population which has obtained a permit.

percentage rose slightly during 1989-90. In 1991, the murder rate percentage declined, but then returned in 1992 to near the 1989-90 level.

As graph 10 indicates, however, when we plot the murder rates for Philadelphia by itself or for the rest of the state (excluding Philadelphia), the results are puzzling. Philadelphia experienced a small rise in murder rates in 1990, followed by declines during 1991-92 to below the 1989 level. In contrast, the murder rates for the rest of the state declined slightly in 1989, increased slightly in 1990-91 and leveled off in 1992. This result roughly paralleled what happened to murder rates in the rest of the United States. Because murder rates in most of the rest of Pennsylvania are very low, and the need to carry a concealed weapon may therefore be rare, the concealed weapon permit law may not have made much practical difference in those areas.

Nonetheless, the 1991-92 decline in Philadelphia, if it continues, may suggest some benefit from the increased number of permits being issued elsewhere in the state. Does the knowledge that people walking the streets of Philadelphia might be from other Pennsylvania cities, where permits are readily issued, act as some sort of restraint on Philadelphia criminals? Has there been a dramatic increase in the number of Philadelphia residents who have taken up residence elsewhere (at least from a legal standpoint) in order to obtain permits? Or, is this decline just another random variation? Only time will tell. At a minimum, the easy availability of permits does not seem to have made Pennsylvania a more dangerous state.

F. Oregon

In 1989, Oregon adopted its nondiscretionary policy for issuance of handgun permits. The requirements are similar, though not identical to those already discussed. The applicant must (1) be over twenty-one, (2) have a principal residence in the county where the application is made, (3) have no outstanding arrest warrants, (4) be "not free on any form of pretrial release," (5) have demonstrated competence through any of a number of firearm safety classes, (6) have no felony convictions, (7) have no misdemeanor convictions or mental hospital commitments in the preceding four years, and (8) not be prohibited by a court from owning a firearm for mental illness.[81]

The Oregon statute contains an escape clause similar to Pennsylvania's that allows a sheriff to deny a permit:

> [I]f the sheriff has reasonable grounds to believe that the applicant has been or is reasonably likely to be a danger to self or others, or to the community at large, as a result of the applicant's mental or psychological state, as demonstrated by past pattern of behavior or participation in incidents involving unlawful violence or threats of unlawful violence.[82]

81. OR. REV. STAT. § 166.291 (1993).

The escape clause handles a situation such as an applicant who has a history of wandering the streets shouting threats at Martians or pink elephants, or getting into bar fights, but has so far managed to avoid criminal conviction or commitment to a mental hospital. Yet, the language is narrowly drawn so that a sheriff would need a "pattern" of behavior to refuse a permit. If the sheriff simply refused an applicant based on a single such incident, that refusal would lead to an appeal to the courts. If the applicant were to win the appeal, the sheriff would be liable for the filing fee.[83]

A unique provision requires the Oregon State Police to determine if any other states have substantially comparable requirements for issuance of a permit. If any such comparable state laws are found, permits from that state are to be recognized as valid in Oregon.[84] To date, however, the Oregon State Police have refused to recognize any other state's concealed handgun law as substantially comparable.

As graphs 11 and 12 indicate, murder rates were already on the decline in Oregon when the new law was passed, both relative to the U.S. rate, and compared to the 1986 state peak. As a result, it would be unrealistic to give the new law all the credit for the continuing sharp decline of murder rates in 1990. In addition, while murder rate percentages in 1991 and 1992 rebounded, examination of the murder rates chart shows this is more a result of the sharp decline in the U.S. murder rate in 1992, rather than because of a dramatic increase in the Oregon murder rate. Indeed, the Oregon murder rate in 1992 was on a par with the rate in 1989 when the new law was passed—well below the rate for the three years before the new law.

In Oregon, over 37,000 citizens—about 2% of the adult population—now have a carry permit. Women are applying for permits in increasing numbers.[85] Of the 37,390 Oregonians who have been issued permits, 194 (about one-half of one percent) have had their licenses revoked; revocations have been based on offenses such as shoplifting or assault. No license holder has been convicted of a crime involving a gun. Captain F. Sherwood Stillman, coordinator of the statewide licensing program, observed, "The people who get these concealed handgun licenses are not people we should be concerned about having firearms; these are law-abiding citizens."[86]

82. *Id.* § 166.293(2).

83. *Id.* § 166.274(8).

84. *Id.* § 166.292(4)(a).

85. MacKenzie, *supra* note 35, at A1. For example, in Multnomah County, police estimated that 25% of the 1993 permits would be issued to women. *Id.*

86. *Id.* at A16.

percent of the rate for the rest of the nation. In the period 1980-89, under the old, discretionary concealed handgun permit law, Idaho's murder percentage rate had declined, staying in the twenty-eight to forty-eight percent range. In the two following years, the murder rate continued to decline, reaching nineteen percent of the United States murder rate in 1991. Is this result just another statistical fluke of small population?

The murder decline in 1990 could be just the result of Idaho's small population causing a random fall in murder rates, similar to the pattern in previous years. When the murder percentage rate fell again in 1991, however, one might suspect that progress is being made. Nevertheless, the 1992 results suggest random variation was the explanation for the 1990 and 1991 declines.

I. Montana

In 1991, Montana adopted a statute similar to Idaho's. Whereas the old Montana law gave judges considerable discretionary authority to issue concealed weapon permits, the new statute was unambiguous and nondiscretionary: "A county sheriff shall, within 60 days after the filing of an application, issue a permit to carry a concealed weapon to the applicant."[99]

Unlike in Idaho, an applicant must be a resident for at least six months, be at least eighteen, and have some sort of state-issued picture identification card. The prohibited categories are similar to the other states: those ineligible under state or federal law to possess a firearm, those convicted of a felony, those with an outstanding arrest warrant, drug addicts (including such determinations in civil proceedings), the "mentally ill, mentally defective, or mentally disabled," those dishonorably discharged from the United States military, or those convicted in the last five years[100] of violating Montana's statutes that prohibit carrying a concealed weapon while under the influence, or in a prohibited place, such as a government building, bank, or bar.[101]

Montana has an escape clause similar to that of Pennsylvania and Oregon. The clause allows a sheriff to deny a permit to an applicant based on "reasonable cause" for concern about "the peace and good order of the community . . . ."[102] While the Idaho statute allows the sheriff the discretion to require proof of firearms competence, the Montana statute requires an applicant to complete any of a number of firearms safety courses. The statute purposely avoids naming the NRA, by referring to "an organization that uses instructors certified by a national firearms associa-

99. MONT. CODE ANN. § 45-8-321 (1993).
100. *Id.* § 45-8-321(1)(c).
101. *Id.* § 45-8-327, -328.
102. *Id.* § 45-8-321.

tion." Also unlike the Idaho law, the Montana statute refers to the carrying of concealed weapons as "this privilege" rather than as a right.[103]

By the end of 1993, Montana had 1369 residents with carry permits.[104] As demonstrated by graphs 17 and 18, Montana, like Idaho, has a very small populace with a resultant "notchy" murder percentage rate. Therefore, one should not attach too much significance to the apparent first year's murder reduction, especially since it followed 1990, a year with an unusually high murder rate percentage. Nonetheless, the 1991 Montana murder rate percentage was the lowest since 1975, and 1992's murder rate percentage is near the bottom of the rates for the period 1975-91.[105] Only time will provide evidence as to the effects of the Montana concealed handgun permit law.

J. Mississippi

Mississippi adopted a nondiscretionary concealed handgun law effective July 1, 1991. The statute requires an applicant to (1) be a resident of the state for at least twelve months, (2) be twenty-one, (3) have no "physical infirmity which prevents the safe handling of a pistol or revolver," (4) have no felony conviction in the United States, (5) have no drug abuse problem (as indicated by commitment to a treatment facility or conviction within the preceding three years), (6) have no mental hospital commitments in the last five years, (7) "not [have] been adjudicated mentally incompetent," and (8) not be a fugitive from justice.[106] The use of discretion by the Mississippi Department of Public Safety in issuing a permit is limited to one area. If a person has been convicted of "one or more crimes of violence constituting a misdemeanor" in the preceding three years, the department is not required to issue a permit.[107]

The permit is valid for four years, and the application fee is $100. The renewal fee is $50. Unlike many of the other non-discretionary permit laws, Mississippi's law includes a long list of places where this permit is *not* valid: police stations, courthouses, public parks, bars, schools, and meetings of the Mississippi Legislature.[108]

The Mississippi Department of Public Safety had issued at least 7000 permits as of October 27, 1993.[109] That means .27% of the total popula-

103. *Id.*
104. *Concealed Weapons Permits Skyrocket in Montana*, GUN WEEK, Mar. 11, 1994, at 7.
105. The comments about declining United States murder rates in 1992 and Idaho's murder rate percentage rise apply here as well.
106. MISS. CODE ANN. § 45-09-101(2) (1993).
107. *Id.* § 45-09-101(3).
108. *Id.* § 45-09-101(13).
109. Letter from Jim Ingram, Comm'r, Dep't of Pub. Safety, to Donald Newcomb

G. West Virginia

West Virginia adopted a nondiscretionary permit system as the result of its voters adding a right to keep and bear arms provision to the state constitution in 1986.[87] A person charged with carrying a concealed weapon in violation of a state statute challenged the statute on the grounds that it violated the right given by the West Virginia Constitution to keep and bear arms. The plaintiff argued that the law gave too much discretion to local government to deny permits. The West Virginia Supreme Court agreed.[88]

The West Virginia legislature responded by writing a new concealed weapon permit law requiring an applicant to (1) be a U.S. citizen, (2) reside in the county where application was made, (3) be at least eighteen, (4) not be a drug or alcohol addict, (5) have no conviction of a felony or violent crime involving a deadly weapon, (6) be "physically and mentally competent to carry such a weapon," and (7) at least for first time applicants, complete one of a number of firearms safety classes.[89]

The lower courts were recalcitrant in issuing permits under the new law, and applicants who were denied permits appealed. In *In re Metheney*,[90] the West Virginia Supreme Court of Appeals clearly specified that while a judge was allowed discretion in determining whether the applicant's purpose was actually "defense of self, family, home or state, or other lawful purpose,"[91] if the evidence showed such to be the case, the judge was obligated to issue a permit.[92]

In West Virginia, the Department of Public Safety maintains information on concealed weapon permits. However, the filing system "is manual at this time, therefore, it would be virtually impossible to compile the data requested."[93]

Because West Virginia has a small populace, even a single criminal can make an enormous difference in the state's murder rate. As a result, the examination of the rate is inconclusive. As shown in graphs 13 and 14, the year the new law was passed, West Virginia experienced a dramatic increase in its murder rates. That increase was followed by a decline in 1990, and increases in 1991 and 1992. The number of murders in 1989 was 121; in 1990, 102; in 1991, 111; in 1992, 115.

87. City of Princeton v. Buckner, 377 S.E.2d 139, 141-43 (W. Va. 1988).

88. *Id.* at 144-45.

89. W. VA. CODE ANN. § 61-7-4(a) (1992). The statute additionally requires "[t]hat the applicant desires to carry such deadly weapon for the defense of self, family, home or state, or other lawful purpose." *Id.*

90. 391 S.E.2d 635 (W. Va. 1990).

91. *See supra* note 89.

92. 391 S.E.2d at 638.

93. Letter from T.A. Barrick, W. Va. Dep't of Pub. Safety, to author Cramer (Aug. 26, 1992) (on file with author).

H. Idaho

Idaho's change to a nondiscretionary permit system is more complex than most of the other states examined. As originally adopted in 1990, the language of the first paragraph was nearly identical to Washington's statute, even to the extent of asserting that a "citizen's constitutional right to bear arms shall not be denied him, unless . . . ."[94] Like the Washington statute, the Idaho law provided for permits for both residents and non-residents. (The provision for non-resident permits was removed, effective July 1, 1991. An amendment effective April 2, 1991, adjusted the formula used for allocating the license fee to the various parts of the government.)[95]

Even with subsequent amendments, the Idaho statute is somewhere between the Washington and Oregon statutes in its liberality. It denies a permit to non-residents, anyone ineligible to own a firearm under state or federal law, anyone awaiting trial on or convicted of a felony, fugitives from justice, drug addicts, those lacking "mental capacity" as defined by Idaho law, the mentally ill, gravely disabled, or incapacitated, as defined by Idaho law, those dishonorably discharged from the U.S. military, anyone convicted of a violent misdemeanor in the last three years, and illegal aliens.[96]

There is *some* discretion in the Idaho statute—but in such a limited way as to provide no real obstacle to those over twenty-one. While the first part of the statute declares that those under twenty-one are ineligible for a permit, a later part provides that a sheriff *may* issue a carry license to an applicant between eighteen and twenty-one if the sheriff feels that good cause exists.[97] For an applicant over twenty-one, who is not in one of the prohibited categories listed above, the only discretionary authority available to the sheriff is that, "the sheriff may require the applicant to demonstrate familiarity with a firearm by any of the following [firearms safety classes], provided the applicant may select which one . . . ."[98] The list of available firearms safety classes is sufficiently broad—including any NRA firearms safety, training, or hunter education course—that even if a sheriff exercises discretion in requiring one of these courses, it provides little obstacle to obtaining a permit.

As is typical of states with small populations, Idaho's murder rate is subject to major variations from year to year. As indicated in graphs 15 and 16, in the late 1970s the Idaho murder rate was as high as sixty-three

94. IDAHO CODE ANN. § 18-3302 (1987 & Supp. 1994).

95. *Id.* § 18-3302 compiler's notes.

96. *Id.* § 18-3302(1).

97. *Id.* § 18-3302(11).

98. *Id.* § 18-3302(13).

tion of the state obtained a permit in a little over two years following the passage of the new law. Like Montana, Mississippi's experience with nondiscretionary concealed handgun permit laws is too recent to meaningfully judge the results. However, as graphs 19 and 20 indicate, one can at least conclude that the murder rate did not rise dramatically during the first one and one-half years after the passage of the new law.

K. Wyoming

Prior to 1994, Wyoming's concealed handgun law was somewhat different from that of most other states. Each county's sheriff was allowed to issue permits by discretion, but such permits were often not recognized in other counties.[110] As State Senator Mark Harris explained, "I tried to get permits from all the sheriffs along the Interstate from my home to Cheyenne [where the Wyoming Legislature meets] and I couldn't."[111] As a result, Senator Harris introduced legislation to reform the existing concealed weapon law.[112]

The usual provisions appear. Applicants must (1) be a resident of Wyoming for at least six months, (2) be at least twenty-one, (3) "not suffer from a physical infirmity which prevents the safe handling of a firearm," (4) be "not ineligible to possess a firearm" under federal law, (5) have no drug or alcohol abuse history, and (6) have no mental illness history. The statute also requires the applicant to demonstrate "familiarity with a firearm" through any of a wide variety of courses listed as acceptable. The Wyoming Attorney General's office is responsible for issuing the permits. The only discretion allowed in the issuance of permits is that applicants *may* be rejected for pleading guilty or no contest to any misdemeanor crime of violence in the preceding three years.[113]

Like that of many of the other states, Wyoming's law allows the sheriff of the applicant's residence county to deny a permit if that sheriff believes "that the applicant has been or is reasonably likely to be a danger to himself or others, or to the community at large as a result of the applicant's mental or psychological state, as demonstrated by a past pattern or practice of behavior . . . ." Similar to the practice in Idaho, permits *may* be issued to applicants between eighteen and twenty-one at the recommendation of the applicant's sheriff.[114]

(Oct. 27, 1993).

110. WYO. STAT. § 6-8-104 (1994).

111. Sen. Mark Harris, telephone conversation with author Cramer, April 1994.

112. WYO. STAT. § 6-8-104 (1994).

113. *Id.* § 6-8-104(b).

114. *Id.* § 6-8-104(g), (j).

The application fee is $50 plus actual fingerprinting costs, and the permit is good for five years. The permit must be issued or denied within sixty days of application.[115]

Perhaps reflective of Wyoming's experience with permits good only in the county of issuance, the Wyoming law recognizes permits issued in other states, as long as they are issued by "a state agency."[116] It is not clear whether permits issued under the authority of a state law, even if issued by a county sheriff, would qualify under this provision.

L. Arizona

Although Arizona has long allowed open carry of handguns, it did not have even a discretionary permit system for concealed carry. In April of 1994, a statute originally intended to prohibit the carrying of guns by minors was amended to create a nondiscretionary, concealed weapon permit system for adults. The new law requires the Department of Public Safety to issue a permit to anyone who is a resident of the state, at least twenty-one, not under indictment for and not convicted of a felony, not mentally ill or "adjudicated mentally incompetent or committed to a mental institution," "not unlawfully present in the United States," and who has completed a firearms safety training program approved by the Department of Public Safety.[117]

Unlike many of the other state laws that simply required some sort of safety training as a condition of permit issuance, Arizona specifies what such training must include. The training must deal with "the legal issues relating to the use of deadly force" along with the safe handling and maintenance of weapons.[118]

Permits must be issued or denied within sixty days. The permit is good for four years. Unlike the other state laws examined, the application fee is not specified in the statute, but is to be "determined by the director of the [Public Safety] department."[119] There is neither a provision for non-resident application for a permit, nor a recognition of out-of-state permits. Of course, Arizona law does allow non-residents to carry openly without need for a permit.

M. Tennessee

In May 1994, Tennessee passed a concealed handgun permit law that, while not as strong as some of the other laws considered, is nondiscre-

115. *Id.* § 6-8-104(e), (m).

116. *Id.* § 6-8-104(a).

117. ARIZ. REV. STAT. ANN. § 13-3112(E) (1994).

118. *Id.* § 13-3112(N).

119. *Id.* § 13-3112(F).

tionary. The revised version of Tennessee Code § 39-17-1315 changes, "the sheriff may issue such a permit . . ." to "the sheriff *shall* issue such a permit . . . ."[120] Unlike some of the other laws examined, the law does not explicitly prohibit the issuance of permits to convicted felons. The law rather allows the sheriff to refuse to issue a permit if, "in the sheriff's opinion, [the applicant] has a history of instability or physical infirmity," or "poses a likelihood of risk to the public . . . ."[121]

Tennessee is unique among carry reform states in its requiring an applicant to have liability insurance or a surety bond of at least $50,000. This requirement, along with the required completion of a training course in firearms, was retained from the prior law.[122]

N. Alaska

Like Arizona and Wyoming, Alaska has long allowed the open carry of handguns. In 1994, Alaska passed a concealed handgun permit law that, at first glance, seems similar to the other laws examined. However, the Alaska version contains some surprising differences. Nonetheless, it is still a nondiscretionary permit law.

The qualifications are quite similar to the previously examined statutes. The applicant must be twenty-one, "eligible to own or possess a firearm under the laws of this state and under federal law," not convicted or under indictment for a felony, not convicted of any of a number of misdemeanors within the last five years or currently under indictment for any of those misdemeanors, "not now suffering, and [having] not within the five years immediately preceding the application suffered" from mental illness, not adjudicated "mentally incapacitated," and a resident of Alaska. Anyone currently in a court-ordered drug or alcohol program is also prohibited, as well as anyone in such a program within the previous three years.[123]

Like many of the other states, Alaska's law requires a demonstration of competence with a handgun. Unlike the other states, however, the certificate of competence must specify the "action type and caliber of handgun or handguns" with which the applicant has demonstrated competence. A permit holder may carry a lesser caliber gun of the same action type, but not a different action type.[124]

Like Arizona, Alaska specifies considerable detail about the content of the firearms safety course, including knowledge of "Alaska law relating to

120. The statute continues, "The Sheriff *may*, for good cause and in the reasonable exercise of discretion, deny a permit." TENN. CODE ANN. § 39-17-1315(b)(1) (1991 & Supp. 1994) (emphasis added).

121. *Id.* § 39-17-1315(b)(1)(C).

122. *Id.* § 39-17-1315(b)(2).

123. ALASKA STAT. §§ 11.61.220(b), .220(f); 18.65.705 (1994).

124. *Id.* § 18.65.715(a).

firearms and the use of deadly force."[125] Unlike in all the other states examined, a permit holder must demonstrate competence not only when applying for a permit, but also in the twelve months immediately before renewing a permit.[126]

The application fee is to be based on the actual costs of processing the application fee, but not to exceed $125 for original application and $60 for renewal.[127] Permits are valid for five years. Permits must be issued or denied within fifteen days of the FBI providing background check information, and the background check request to the FBI must be made within five days of receipt of the application.[128]

Permits are not valid in a number of places that other states also restrict: jails, police stations, courthouses, and airline terminals. In addition, Alaska restricts concealed carry in many places where other states provide no such restriction: school grounds, "a building housing only state or federal offices or the offices of a political subdivision of the state," "a vessel of the Alaska marine highway system," "a facility providing services to victims of domestic violence or sexual assault," financial institutions, and residences, businesses, or charitable organizations that have posted a sign prohibiting concealed carry.[129]

Most interesting of all is the authority given to cities to prohibit concealed carry by permitees. To do so, however, at least ten percent of the voters (as counted at the last regular election) must petition the city to put the matter on the next special election ballot, and a majority must vote to prohibit concealed carry.[130]

In signing the law, Governor Hickel explained that the decisive factor was the women who called his office: "Those that impressed me the most were the women who called and said they worked late and had to cross dark parking lots, and why couldn't they carry a concealed gun?"[131]

The Alaska law certainly suggests less trust in people than many of the other laws examined. Most indicative of this lack of trust is the specific restriction of the sort of handguns that may be carried concealed. The law prohibits the carrying of derringers and "miniature handguns."[132] Nearly every other state allows the permit holder to decide what sort of handgun to carry for self-defense. Alaska requires carry guns to have trigger guards so as to reduce the risk of accidental discharge—a not entirely unreasonable

125. *Id.* § 18.65.715(a)(1).

126. *Id.* § 18.65.715(b).

127. *Id.* § 18.65.720.

128. *Id.* § 18.65.700(b).

129. *Id.* § 18.65.755 (Oral notice is sufficient for a residence.)

130. *Id.* §§ 18.65.780, .785.

131. *Alaska Legalizes Concealed Guns*, N.Y. TIMES, May 29, 1994, § 1, at 6.

132. ALASKA STAT. § 18.65.790 (1994). The statute defines miniature handguns as handguns lacking a trigger guard and having a barrel length of 3.5 inches or less.

requirement. Nonetheless, the authors are not aware of a single instance of an accidental discharge involving a derringer or other gun without a trigger guard in the states which do not specify which type of gun may be carried.

Finally, although two international jurisdictions have changed their handgun carry laws recently, data from which to draw any conclusions about the effects of these new laws is unavailable. Citizens of Lithuania and Estonia are now allowed to own and carry handguns for protection. The laws were enacted in response to the rising crime rates now characteristic of most of the former Soviet republics.[133]

O. Analysis of State Homicide Data

In the states discussed above, the dire consequences predicted by the gun control lobbies were not realized. That the carry laws appear not to have had a noticeable impact on the homicide rate in most states—Florida, perhaps, excepted—should not be surprising. To begin with, in most of the states studied, the general rise and fall of murder rates before the new laws took effect roughly approximated the rate in the rest of the country. This similarity suggests that changes in murder rates are generally determined by national causes.

Many criminologists have suggested that the state of the economy has a significant impact on murder rates, and that the mass media's glorification of violence plays a significant role in promoting violence.[134] Almost all criminologists agree that demographics play a crucial role in crime rates. For example, because males in the late teens and early twenties age groups are disproportionately involved in violent crime—about fifty percent of murderers are under twenty-five—as the percentage of the population in this age group increases, so will the murder rate.[135] One must also recognize the dramatic effects a small number of murderers can have in some of the smaller states from year to year. The murder rates of West Virginia, Idaho, and Montana are all highly variable from year to year because the populations are small. A single psychopathic criminal can dramatically raise the

133. *Baltics Take Up Arms*, AP, Apr. 1, 1994.

134. A number of studies have examined whether and how violence in the electronic media promotes violence. Brandon Centerwall, *Television and Violence: The Scale of the Problem and Where to Go from Here*, JAMA, June 10, 1992, at 3059-63; Wendy Wood et al., *Effects of Media Violence on Viewers' Aggression in Unconstrained Social Interaction*, PSYCHOLOGICAL BULLETIN, May 1991, at 371-83 (one of the more detailed recent attempts to analyze existing statistical studies of the effects of television and film violence on children). *But see* Mary B. Harris, *Television Viewing, Aggression, and Ethnicity*, PSYCHOLOGICAL REPORTS, Feb. 1992, at 137-38 (suggesting that the link is so weak as to be undetectable).

135. BUREAU OF JUSTICE STATISTICS, REPORT TO THE NATION ON CRIME AND JUSTICE, 543 (1994) (provides information on the relationship between violent crime arrests and offender age).

murder rate one year, followed by a dramatic drop when that criminal is caught or moves on. As a result, the data of the larger states are more useful for judging the effects of the nondiscretionary issuance laws.

What, if any, conclusions may be drawn from the above state-to-state analysis? In Florida, carry reform appears to have done some good and perhaps saved a number of lives. Nevertheless, much more detailed statistical analysis would be required to isolate with certainty the carry reform law as a factor in the homicide rate decline. In Virginia, where some judges subverted the clear intent of the legislature, the reform law appears to have been ineffective. In Georgia, where the change resulted from an Attorney General's reinterpretation of the law, the evidence suggests that carry reform may have reduced murder rates. The West Virginia results are inconclusive. In Oregon, because the new law took effect with murder rates already in decline, it is impossible to determine whether or how much the new law contributed to that decline. In Pennsylvania, legal reform may arguably have done some good in Philadelphia, and apparently did no harm outside of Philadelphia. The Idaho, West Virginia, Montana, and Mississippi results are inconclusive.

In several of the states, the positive results seem to have been most dramatic the year of adoption, with results tapering off afterwards. This pattern may suggest that the publicity about the law either discouraged criminals or encouraged a short burst of law-abiding citizens applying for permits.

The most significant, certain conclusion to be drawn is that neither large nor small states evidence obvious long-term increases in murder rates after passage of these laws. The experience of the carry reform states plainly shows that homicide rates will not *increase* as a result of crimes committed by persons with carry permits. Carry reform legislation may or may not reduce the homicide rate, but reform legislation apparently does *not* raise the homicide rate.

III. ADDITIONAL CARRY REFORM RESEARCH

In addition to the state-by-state research discussed above, two other research projects have examined the impact of concealed carry laws. One study (performed by author Cramer) looked at comparative data from California counties. The other study, a master's thesis at a public policy school, analyzed crime trends in six states.

A. Effects of Different Policies Among California Counties

To carry a concealed firearm in California requires a permit.[136] Open carry of a loaded firearm is prohibited in cities and the unincorporated parts

136. CAL. PENAL CODE § 12025 (West 1992 & Supp. 1994).

of many of the more populated counties.[137] Even in those unincorporated areas where open carry of a loaded firearm is legal, social pressure or police harassment can make carrying a gun for self-defense impractical.

Concealed carry permits (CCWs) are issued at the discretion of the chief of police of a city in the county, or sheriff of the county, in which the applicant resides. As long as the applicant passes the background check provided by the California Department of Justice, a chief of police or sheriff may issue a permit.[138]

The ideal test of how different government approaches to CCWs affect crime rates would be to contrast two counties with comparable policing, laws, and demographics, with the only difference being that one county issued CCWs readily and the other did not issue them at all. Such a perfect test case does not exist; what does exist is an enormous variation in CCW issuance rates in California. In some counties, CCWs are nearly unobtainable; in other counties, more than three percent of the *total* population have such permits.[139] The question remains: Is there any evidence to support the notion that where CCWs are easily obtained, guns are more likely to be used criminally?

Before presenting the data, consideration should be given to the circumstances in which carrying a handgun for self-defense in public might be useful. The majority of murders in the United States are unlikely to be prevented by wider issuance of such permits. Domestic disturbances turned lethal usually do not take place on the streets, except as spillover from a fight inside a private dwelling. The homicidal attacks against which carrying a gun in public has the most hope of making a difference are those committed in the course of some other public felony such as robbery, burglary, rape, or kidnapping.

Of the 18,269 murders committed nationally in 1988, about nineteen percent were "felony type," one percent were "suspected felony type," and twenty-seven percent were classed as "Unable to determine"—the police either do not know who did it, or the suspect or witnesses could not or would not explain it.[140] Some of the remaining murders—"Romantic

137 *Id* § 12031.

138 *Id* § 12050.

139 *See infra* note 145

140 FEDERAL BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES, 12-13 (1988) [hereinafter FBI] In a precise legal sense, a "felony murder" is an unintentional murder that occurs during a violent felony For example, a bank robber shoots a gun into the ceiling to get the attention of the customers of the bank, the bullet strikes a chandelier which falls on a customer and kills her Under traditional common law rules, the bank robber would be guilty of murder ("felony murder") under the theory that perpetrating the violent felony evinced such a disregard for human life that it is fair to punish the robber for the fatal, but unforeseen consequences of the robbery

"Felony murder" is used in this Article and in FBI statistics in a broader sense to include all murders related to violent felonies, whether or not intentional For example, a

triangle," "Argument over money or property," "Other arguments," and "Miscellaneous nonfelony type"— might be preventable by wider issuance of CCWs, but only to the extent that these involved stalking-type situations or confrontations in public areas. However, to the extent that murders involved fights between people who lived in the same household, or who met in other private circumstances, laws relating to carrying of concealed weapons would have little impact.

The California study presumes that more civilians carrying handguns for self-defense will not reduce the nonfelony murder rate: that all the nonfelony murders involve fights inside a home or other circumstances where handgun carrying would be irrelevant. What is left to consider is the twenty percent of murders that are felony or suspected felony murders. Some felony murders are simply not preventable by armed citizens because of the weapons used. For example, arson was the method for 258 of the murders committed nationally in 1988.[141] Similarly, murders committed with poison, explosives, and narcotics would seem outside the realm of an armed defense solution. But for the ninety-seven percent of felony murders using direct physical force—guns, knives, clubs, bare hands, or strangulation,[142] a handgun carried on the person of the intended victim or a fortuitous bystander at least has the *potential* to save the victim.

As with murder, many rapes do not involve attacks by total strangers outside the home. Concealed weapons permits are thus unlikely to help prevent either incestuous rape in the home or date rape. However, carrying of concealed weapons could possibly help prevent rapists who attack strangers in parking lots and other public spaces. Of course, to the extent that men continue to obtain concealed carry permits in greater numbers than women, the impact on rape would be reduced.

The crimes which a concealed handgun carried on public streets has the greatest potential to prevent are robbery and the murders which result from a robbery. Only 33.4% of reported robberies involve the use of a firearm, so an armed potential victim stands an excellent chance of defending himself successfully in the remaining two-thirds of robberies in which the perpetrator attempts to use brute force or weapons inferior to a gun.[143] A trained citizen could arguably prevail in a fight with a criminal who had a gun, because unlike many trained citizens, few criminals practice with their guns. Nonetheless, the citizen's odds of success are obviously higher when he is better-armed than the attacker. In addition, a significant portion of robberies take place in public places where the victim's carrying a concealed handgun would be relevant. In western states (including California), 49.7% of

street robbery in which the robber deliberately kills the victim in order to eliminate a witness would be a "felony murder" for purposes of this Article.

141 *Id*

142. *Id*

143 *Id* at 21

robberies in 1988 were described by the FBI Uniform Crime Reports as "Street/highway."[144]

The final crime to be measured is aggravated assault, a crime which also frequently takes place out of doors. Some people have long held as an article of faith that the presence of a gun turns a fistfight into a gunfight, and battery into at least attempted murder. Accordingly, if the widespread availability of concealed firearms permits results in an increase of the murder rate, one mechanism might be by the escalation of the seriousness of conflicts that begin with an aggravated assault. Conversely, if the widespread carrying of concealed firearms proves to be a general deterrent effect to crime (because criminals do not know which potential victim is carrying a gun), then aggravated assault might be expected to decrease.

1. Permit Issuance In California

The California Department of Justice maintains statistics on issuance of CCWs, broken down by the particular police agency issuing the permit.[145] These statistics provide some great surprises. The City of Los Angeles, for example, with almost 3.5 million people, had *no* concealed weapons permits outstanding in 1989. Note that Table 1 shows concealed weapon permit figures by *county*, not city: all the permits issued in Los Angeles County in 1989 were issued by either the Los Angeles Sheriff's Department or by one of the other cities in Los Angeles County. By contrast, many small California cities with populations less than 10,000 had dozens of outstanding CCWs.

The study of the relationship between CCWs and crime rates on a county-by-county basis makes sense for two reasons. First, California law allows a person to obtain a CCW either from any police chief or the sheriff of the county in which the applicant resides. Second, few people restrict their activities to the city in which they live. The California study divides the state's fifty-eight counties into three groups: those counties where fewer than one-tenth of 1% of the population have CCWs; those counties where .1% to 1% of the population have CCWs; and those counties where more than 1% of the population have CCWs. As used here, "population" means everyone living in the county, including large numbers of people who are ineligible for CCWs because of age, criminal history, or mental illness.[146]

The first group is comprised of nineteen predominantly urban or urban dominated counties. The number of CCWs in these counties is less than

144. *Id* at 19.

145. CALIFORNIA DEP'T OF JUSTICE, AUTOMATED FIREARMS UNIT LICENSES TO CARRY CONCEALED WEAPONS TOTAL (1989). This report provides all CCW numbers contained in this Article.

146. All county population figures and crime rates are from OFFICE OF THE CALIFORNIA ATTORNEY GENERAL, CRIMINAL JUSTICE PROFILE (Statewide) 23-25 (1989).

one-tenth of one percent of the total population. In some of these counties, a criminal faces almost no risk of attacking a legally armed civilian on the street. In San Francisco, only 1.5 per 100,000 people have CCWs; in Los Angeles County, fewer than 5 per 100,000 people have CCWs. Stated another way, each of the following events are about equally likely to occur:

- A criminal will attack a Los Angeles citizen who has a permit to carry a concealed weapon.
- A poker player will be dealt a straight flush in the first five cards.[147]
- A randomly selected high school football player will one day be the starting quarterback in the Super Bowl.[148]

Thus, when a criminal in Los Angeles or San Francisco attacks someone, that criminal can essentially ignore the risk that the victim may be legally carrying a gun: the criminal is more likely to attack an off-duty or plainclothes police officer than a legally armed civilian. This probability is particularly significant because the first group of counties contains five-sixths of the state's population. As a result, the crime rates in these counties largely determine the statewide averages.

The second group is comprised of twenty-two counties, in which between .1% and 1% of the population held a CCW in 1989. Primarily rural, some of the counties, like Fresno and Sonoma, have at least one medium-sized city. This group's major violent felony rates were below the statewide average, although rape was barely so. In fact, the murder rate for this group was the *lowest* of all three groups of counties. However, the rate was not much lower than that of the third group.

The third group is comprised of seventeen counties, in which more than one percent of the population has a CCW. These counties are predominately rural with only a few small cities. Most of these counties have so few people that crime rates per 100,000 people can be somewhat misleading. For example, a single murder can make a county of 3600 people appear artificially dangerous. By contrast, some of these counties went all of 1989 without a murder. In 1989, this group had the lowest rates for rape, aggravated assault, and robbery. However, this group had a slightly higher murder rates than did the second group examined above. Even so, the third group's rate was *still* less than sixty-nine percent of the statewide average. Even this result may be a statistical fluke, because this third group of counties had the lowest murder rate in 1988. To give some idea of how smaller sample sizes can affect results, if these seventeen counties had experienced seven fewer murders in 1989, the third group would have had the lowest crime rates in *all* categories of violent crime. Significantly, more

147. LES KRANTZ, WHAT THE ODDS ARE 213 (1992) (the odds are 72,192 to 1).

148. *Id.* at 108 (100,000 to 1).

than half the murders committed in the third group were in the two counties (Madera and Yuba) having the *lowest* CCW issuance rates in this group.

Now look at Table 2. Theoretical analysis predicted a correlation between a higher number of CCWs and a more effective prevention of robbery: and, indeed the liberal issuance counties experienced robbery rates that were only *fifteen percent* of the statewide average. The incidence of rape was expected to be relatively unaffected by a higher number of CCWs; and while rape rates were lower than the statewide average, the difference was not dramatic. Finally, murder and aggravated assault rates were about one-third below the statewide average, even with all those guns ready to be drawn.

TABLE 1: CALIFORNIA CONCEALED WEAPONS PERMITS & VIOLENT CRIME RATES

	CCW's per 100,000	Aggravated Assault	Homicide	Rape	Robbery
Highly restrictive counties	28.3	621.5	11.7	41.5	372.7
Moderately restrictive counties	437.5	449.9	6.5	40.4	124.4
Non-restrictive counties	1,736.5	414.2	7.5	31.3	48.5
California total	122.5	593.5	10.9	41.1	331.8

TABLE 2: CALIFORNIA COUNTY CRIME RATES AS A PERCENTAGE OF STATEWIDE AVERAGES

County Group	Permits per 100,000	Aggravated Assault	Homicide	Rape	Robbery
Highly restrictive counties	less than 100	105%	107%	101%	112%
Moderately restrictive counties	100 to 1,000	76%	60%	98%	38%
Non-restrictive counties	greater than 100,000	70%	69%	76%	15%

2. What Do the Data Tell Us?

It would, of course, be foolish to assert that the large percentage of outstanding CCWs in the third group of counties is *the* reason for the lower rates for aggravated assault, robbery, and rape. These are rural counties, with dramatically different demographics than the urban counties in California. Nonetheless, the correlation between the number of CCWs and the lower rates may be *a* reason. Why are the aggravated assault rates so low in these counties where an individual would seemingly have trouble walking down the street without passing an armed civilian? Perhaps the conventional wisdom—*have* gun *will* fight—is simply wrong. Perhaps the presence of a gun instead causes a great many aggressors simply to withdraw from the possibility of fight, because the risk of death is so obvious. The above are all suppositions. Nevertheless, even with all those people authorized to carry guns, the rates for murder, rape, aggravated assault, and most dramatically, robbery, were lower than the statewide average.

Put another way, although the percentage of the population who are licensed to carry a gun in this third group of counties is roughly analogous to the percentage of the U.S. population that watches the Phil Donahue show, the murder rate remains quite low.[149] Considering the large number

149 One out of 15 households with television sets watches the Phil Donahue show. *Id.* at 260.

of CCWs outstanding in this third group of counties, *if* greater numbers of CCWs are really a threat to public safety, the other factors that determine murder and aggravated assault rates must be truly enormous to so completely overwhelm the effects of all those CCWs.

In sum, the comparative data from California counties suggest, but do not prove, that making concealed carry permits available to licensed, trained citizens may reduce the robbery rate, and perhaps the rates for other violent crimes. Conversely, the data are inconsistent with the hypothesis that CCW issuance will lead to more murders or other crimes.

B. Six-State Comparative Study

Brian Withrow, a master's degree candidate at Southwest Texas State University, took a different approach to the study of carry reform.[150] Withrow looked at three states which had implemented carry reform: Florida, Pennsylvania, and Oregon. He then paired each state with the closest matching state having similar demographics, but no carry reform. He paired Florida with Texas, Pennsylvania with Illinois, and Oregon with Arizona. As Withrow acknowledges, the pairings do not represent exact matches but only as similar as is possible.[151] The attempts to match any pair of states suffers from this limitation.

Withrow examined each pair of states to test the impact of carry reform laws.[152] If carry reform laws were effective in producing a statistically noticeable reduction in the crime rate, then a state which enacted carry reform would be expected to show an improving trend (relative to a non-reform state) in various crime categories. For example, assume Pennsylvania (pre-reform) and Illinois (no reform) had similar rape rates before concealed carry reform was enacted in Pennsylvania. However, if after Pennsylvania reformed its carry law, the Pennsylvania rape rate remained stable while the Illinois rate rose sharply, such a result would be consistent with the hypothesis that concealed carry reduces the rape rate.

The Withrow research suggests that concealed carry reform can save lives. The Florida/Texas and Pennsylvania/Illinois pairings are good test cases. Prior to any carry reform, all four states had strong laws against carrying firearms; after the reform laws were enacted, the Florida and Pennsylvania systems were allowed to work so that large numbers of citizens acquired permits (As compared to Virginia, where some local officials refuse to implement the state's "shall issue" system.).[153]

150. Brian L. Withrow, The Effectiveness of Firearms Conceal Carry Laws on the Incidence and Pattern of Violent Crime (1993) (unpublished M. Pub. Admin. thesis, Southwest Texas State University)

151. *Id.* at 3, 38-39

152. *Id.* at 43-73

153. *See supra* notes 60-61, 63-64 and accompanying text.

The Oregon/Arizona pairing, however, is poorly chosen. Although Arizona did not have a "shall issue" concealed carry law at the time of the Withrow study (Arizona enacted a "shall issue" law in 1994), Arizona has always allowed adults to carry an *unconcealed* handgun without a permit.[154] Unlike in some other states where open carry is ostensibly legal such as Colorado and North Carolina,[155] open carry in Arizona has always been tolerated by the police, and is common, even in downtown Phoenix. Accordingly, the Oregon/Arizona pairing compares a state which moved from limited concealed carry to widespread concealed carry (Oregon) with a state that has always had limitless open carry (Arizona). Unlike the Florida/Texas and Pennsylvania/Illinois pairings, the Oregon/Arizona comparison does not contrast a state which changed its restricted carry policy—e.g., Florida and Pennsylvania—with a state which retained its restrictive policy—e.g., Texas and Illinois. Thus, the Oregon/Arizona results do not provide worthwhile information about the contrast between a restrictive and a "shall issue" carry policy, and may be appropriately discarded.

By contrast, the results of the Florida/Texas and Pennsylvania/Illinois comparisons legitimately provide strong support for the hypothesis that concealed carry reform reduces murder, weak support for reduction in aggravated assault and in robbery, and no support for a statistically noticeable reduction in rape. Significantly, the results in both pairings are identical.

TABLE 3: SUPPORT FOR HYPOTHESIS THAT CONCEALED CARRY REFORM REDUCES CRIME[156]

State Pairs	Murder	Aggravated Assault	Rape	Robbery
Florida/ Texas	supports	weakly supports	does not support	weakly supports
Pennsylvania/ Illinois	supports	weakly supports	does not support	weakly supports
Oregon/ Arizona	does not support	supports	does not support	does not support

Recall that in the state-by-state analysis of homicide trends, Florida, a highly populous state with a major homicide problem, was the only state to

154. *See supra* notes 117 and accompanying text

155. COLO. REV. STAT. ANN. § 18-12-105(1)(b) (West 1990 & Supp. 1994), N.C. GEN. STAT. § 14-269(a) (1993)

156. Withrow, *supra* note 150, at 75

show a major change in its homicide rate after the enactment of concealed carry.[157] The Withrow data reinforces the tentative conclusion suggested by the raw Florida data: in a large state with a serious crime problem, concealed carry reform may have a significant life-saving effect. Withrow's research also suggests that carry reform could have a small but statistically significant effect in reducing aggravated assault and robbery.

In sum, three different approaches to studying the effects of concealed carry reform on crime rates have been presented: (1) a comparison of state homicide trends with national trends, (2) a comparison of crime rates among different counties with different carry policies in California, and (3) before and after crime rates as compared between Florida and Texas, and between Pennsylvania and Illinois. The results are consistent in all three studies. Concealed carry reform may reduce murder rates, at least in large, high-crime states. Concealed carry reform may also reduce aggravated assault and robbery rates. Perhaps most significantly, evidence does not suggest that concealed carry reform will cause a net increase in the homicide rate, or in any other crime rate. Despite the results in the many American states which have passed carry reform, the gun control lobbies persist in predicting a major increase in homicide whenever concealed carry reform is introduced. This continued effort must be attributed to the triumph of ghoulish hope over experience.

IV. Other Issues

The evidence presented thus far cannot guarantee that carry reform will significantly reduce a state's homicide rate. So why change the laws if they are not *clearly* going to reduce murder rates? Conversely, however, if carry reform does not present a clear threat to public safety, why not allow law-abiding citizens who have passed a background check for criminal behavior and mental stability to have the means to defend themselves most effectively? Also, because results of carry reform in states such as Florida suggest that carry reform has the potential to contribute to public safety, why not allow law-abiding citizens to make their own choice about carrying? Thus, this Part explores issues specifically related to that choice.

A. *Saving Lives*

Carry reform is no panacea for crime. However, the failure to enact carry reform can have deadly consequences. In October 1991 in Killeen, Texas, George Hennard rammed his pickup truck through the plate glass window of Luby's cafeteria. Using a pair of ordinary pistols, he murdered twenty-three people in ten minutes, stopping only when the police arrived. Dr. Suzanna Gratia, a cafeteria patron, had a gun in her car. In conformity

157. *See supra* subpart II D.

to Texas law, however, the gun was not carried on her person; Texas, despite its Wild West image, was the first state in the nation to completely prohibit the carrying of handguns.[158] Carry reform legislation had almost passed the legislature, but had been stopped in the House Calendars Committee by the gun control lobby.[159]

A few months later, Dr. Gratia testified to the Missouri Legislature (concerning a concealed handgun permit law being considered in that state) that if she had been carrying her gun, she could have shot at Hennard:

> I know what a lot of people think, they think, "Oh, my God, then you would have had a gunfight and then more people would have been killed." Unhunh, no. I was down on the floor; this guy is standing up; everybody else is down on the floor. I had a perfect shot at him. It would have been clear. I had a place to prop my hand. The guy was not even aware of what we were doing. I'm not saying that I could have saved anybody in there, but I would have had a chance.[160]

Hennard reloaded five times and threw away one pistol because it jammed, so plenty of opportunity existed for someone to fire at him. Dr. Gratia may not have been able to kill or wound Hennard. Nonetheless, Hennard would at least have been forced to dodge hostile gunfire and would not have been able to methodically finish off his victims as they lay wounded on the floor. The hypothetical risks of a stray bullet from Dr. Gratia's gun would have been rather small compared to the actual risks of Hennard not facing any resistance. Because of the restrictive Texas law, Dr. Gratia was helpless as Hennard murdered both her parents.

Two months later, a pair of criminals with stolen pistols herded twenty customers and employees into the walk-in refrigerator of a Shoney's restaurant in Anniston, Alabama. A customer, Thomas Glenn Terry, was hiding under a table. Unlike Dr. Gratia, Terry was armed with the .45 semi-automatic pistol he carried legally under Alabama law. One of the robbers discovered Terry, but Terry killed him with five shots in the chest. The second robber, who had been holding the manager hostage, shot at Terry and grazed him. Terry returned fire, critically wounding the robber.[161] Twenty-three innocent people died in Killeen, Texas, where carrying a gun for self-defense was illegal. Twenty innocent lives were saved in Anniston, Alabama, where self-defense permits are legal.[162]

158. Cramer, *supra* note 2, at 113-19; Suzanna M. Gratia, *If I Had My Gun . . .*, WASH. POST, Feb. 27, 1993, at A21.

159. Telephone Interview with NRA official (Oct. 1991).

160. David B. Kopel, *Hold Your Fire*, POL'Y REV., Winter 1993, at 7.

161. J. Neil Schulman, *A Massacre We Didn't Hear About*, L.A. TIMES, Jan. 1, 1992, at B5.

162. Abraham Tennenbaum, *Handguns Could Help*, BALTIMORE MORNING SUN, Oct. 26, 1991, at 9A.

After the Luby's incident, the Texas legislature once again debated carry reform. In an ironic reversal of gun control advocates' frequent efforts to use massacres as springboards for various gun prohibition measures, these same advocates insisted that public policy should not be based on isolated massacres. Control advocates would suggest that, although Dr. Gratia might have saved lives with her gun, more lives would be lost in the long run because of mistakes made by angry or incompetent citizens carrying guns. As the research above has indicated, such a prediction has poor factual support.

Mass murders in public places are rare. Nonetheless, the Anniston incident is not the only time a citizen armed with a gun has stopped a potential massacre. In 1986, a homeless Cuban refugee, armed with a "two-foot ornamental blade apparently purchased in Time Square," went on a rampage on the Staten Island Ferry. He killed two people and wounded nine others, but was subdued by a retired police officer at gunpoint.[163] In Las Vegas in July 1993, a man with a shotgun screamed, "I'm sick of this, and I'm not going to take it any more," and then opened fire in a state disability insurance office. He jumped into his truck and began driving wildly through the building. A security guard shot him in the head.[164]

One could possibly argue that the above two cases are distinguishable because a retired police officer just happened to be present at fortuitous times. Unfortunately, not every mass-murderer makes the mistake of picking crowd that includes a retired police officer or a security guard. Nevertheless, assuming proper training and a background check, if the average citizen can use a gun and pose no more danger to society than does a former police officer or a security guard with a gun (as will be demonstrated below), then expanding the number of licensed, trained people who are allowed to carry firearms will commensurately reduce the potential for carnage by psychotic killers.

In Israel, a permit to own a handgun (which is granted to every law-abiding citizen) is equivalent to a carry permit. In April 1984, three terrorists opened fire with automatic rifles and began throwing hand grenades at the busiest intersection in West Jerusalem. As the *Los Angeles Times* reported, "One of the attackers was killed in a hail of answering fire from the owners and customers of nearby shops."[165] A wild firefight broke out between the Israelis and the two remaining terrorists until the police arrived and captured the terrorists. During the chaotic and flurried exchange of bullets, some of the Israelis were possibly wounded by

163. Robert D. McFadden, *Man with a Sword Kills 2 and Wounds 9 on Staten Island Ferry*, N.Y. TIMES, July 8, 1986, at A1. The retired officer carried a gun for a part-time job as a security guard. *Id.*

164. *Man Shoots Up Disability Office*, L.A. TIMES, July 9, 1993, at A22.

165. Norman Kempster, *48 Wounded in Terrorist Attack in Jerusalem*, L.A. TIMES, Apr. 3, 1984, at 1, 19.

"friendly fire."[166] When the shooting stopped, however, the only death was that of a terrorist. The next day, the surviving terrorists were presented to the media. They explained their foiled plan to machine-gun a succession of crowded areas, fleeing before the police arrived. One terrorist complained indignantly that his bosses had not told him that Israeli citizens carry guns.[167]

Now contrast the opposite results of two otherwise similar incidents. In November 1993, a lone gunman shot twenty-two unarmed, innocent victims on the Long Island Railroad. Four months later, a terrorist group intent on sabotaging the new peace accord between Israel and the Palestinians, attempted to perpetrate a mass murder of people using public transportation in Israel. The Associated Press reports:

> A Palestinian opened fire with a submachine gun at a bus stop near the port of Ashod today, killing one Israeli and wounding four before being shot to death by bystanders . . . . National police spokesman Erich Bar-Chen said today's attacker, who was armed with an Uzi submachine guns, was shot and killed by a civilian and a soldier who were at the bus stop and hitchhiking post used by soldiers. Ashod is 15 miles south of Tel Aviv and 15 miles north of the Gaza Strip.[168]

At the very least, carry permits for licensed, trained citizens clearly have saved lives when madmen or terrorists have attempted mass murder in public places. Accordingly, opponents of carry licenses must bear the burden of demonstrating that the number of lives lost from the issuance of carry licenses will outweigh the lives saved during attempted massacres. As detailed above, opponents of carry reform cannot carry their burden of proof. Evidence does not suggest that carry reform will cause any increase in murder, let alone an increase so large as to outweigh the significant number of lives that could be saved by allowing people like Dr. Suzanna Gratia to help protect the public.

B. Peace of Mind

Another important benefit to be derived from properly licensed, trained, and armed citizens is peace of mind. By way of analogy, many people choose to buy automobiles with passenger-side air bags or other safety features. Many people also choose to use the seat belts in a car. Of course, the odds are small that on any given automobile trip there will be an accident in which the safety belt or other safety device will serve its ultimate purpose. Similarly, the odds are small that a person who goes out

166. *Id.*

167. Don B. Kates, Jr., *Firearms and Violence: Old Premises, New Research*, in 1 VIOLENCE IN AMERICA 209 (Ted R. Gurr ed., 1989).

168. AP, Apr. 7, 1994, *reprinted in* MARIN INDEPENDENT JOURNAL, at A3.

in public will be attacked by a criminal on any given day. But even on days when drivers are not struck by other cars, the car's safety devices confer a genuine benefit because the drivers feel safer. Likewise, if people feel safer because they carry a gun and in turn lead happier lives because they feel safer and more secure, then the carrying of guns makes a direct and nontrivial contribution to their overall quality of life.[169] If women feel safer walking at night because they can carry a firearm, then the firearm makes a tangible contribution to a better society, whether or not a statistically significant drop in the crime rate results.

Of course, the increased peace of mind that results from people knowing they will be able to protect themselves would not be ultimately beneficial if the increased carrying of firearms actually caused more criminal violence. As the data presented above indicate, however, allowing licensed, trained citizens to carry firearms for protection does not appear to cause more gun crime.

C. The Morality of Defensive Firearms

1. Taking the Law into One's Hands

The use of firearms for lawful self-defense by licensed, trained citizens is sometimes decried as "taking the law into one's hands." In a legal sense, however, the use of armed force for self-defense is not "taking the law into one's hands." Using deadly force or the threat thereof to defend against a violent felony is legal in all fifty states. American law unanimously authorizes deadly force whenever no lesser force will suffice—not merely against attempted murder, but also to thwart violent felonies such as rape.[170] Many circumstances therefore legally justify exercising the choice to use force for self-defense or defense of another. Accordingly, using such force cannot be "taking the law into one's hands" any more than exercising other lawful choices, such as signing a contract. Moreover, every American state recognizes the right of citizens to arrest a person committing a violent felony in their presence.

Thus, more accurately speaking, when criminals violate the law and use force, they truly take the law into their own hands. When law-abiding citizens react by using or threatening force to stop the law-breaking act, they are merely taking the law *back* from the criminals, *restoring* the law to its rightful owners—law-abiding citizens.

169. James D. Wright, *The Ownership of Firearms for Reasons of Self Defense*, *in* FIREARMS AND VIOLENCE 327 (Don B. Kates, Jr. ed., 1984).

170. Don B. Kates, Jr. & Nancy J. Engberg, *Deadly Force Self-Defense Against Rape*, 15 U.C. DAVIS L. REV. 873, 877-80 (1982).

2. Violence Begets Violence

Some may assert that carrying or using a gun for protection is immoral, or that "violence begets violence." For example, author Betty Friedan argues "that lethal violence even in self-defense only engenders more violence."[171]

Ms. Friedan's remark implies that a woman who shoots a homicidal rapist should be condemned for engendering violence, rather than be commended for preventing even worse violence. According to Ms. Friedan's logic, victims of murderous assault should forgo violence and rather rely, post-mortem, on the police to arrest the murderer. Although pacifism may have its adherents, the American legal system is not among them. As criminal law scholar Herbert Weschler observed, the right of crime victims to use deadly force is based on what Weschler called the "universal judgment that there is no social interest in preserving the lives of aggressors at the cost of those of their victims."[172]

The American people overwhelmingly believe in the moral legitimacy of the use of deadly force against criminal attack. A 1985 Gallup survey asked, "If the situation arose, would you use deadly force against another person in self-defense?" Only thirteen percent said "no." Presumably, some were expressing their own preference, but still would not felonize persons who chose differently.[173]

After Bernhard Goetz shot four teenagers who were attempting to rob him on a Manhattan subway in 1984, a *Newsweek* poll asked the following question: "Do you feel that taking the law into one's own hands, often called vigilantism, is justified by circumstances?"[174] Intentionally or not, the question was phrased in a way that was quite prejudicial to self-defense; "vigilantism" has nothing to do with self-defense, but instead refers to extra-judicial punishment of a suspect by a mob.[175] The question was asked in two separate surveys. In one group, twenty-three percent said violence was never justified; in the other survey, seventeen percent so opined.[176]

171. Ann Japenga, *Would I Be Safer With a Gun?*, HEALTH, March/April 1994, at 54.

172. Herbert Wechsler & Jerome Michael, *A Rationale of the Law of Homicide: I*, 27 COLUM. L. REV. 701, 736 (1937).

173. Tom Morganthal et al., *A Goetz Backlash?*, NEWSWEEK, Mar. 11, 1985, at 53.

174. *Id.*

175. Richard M. Brown, *The American Vigilante Tradition*, *in* THE HISTORY OF VIOLENCE IN AMERICA: HISTORICAL AND CONTEMPORARY PERSPECTIVES 154-217 (Hugh D. Graham & Ted R. Gurr eds., 1969).

176. Morganthal et al., *supra* note 173, at 53. New York Governor Mario Cuomo stated, however, that "[i]f this man was defending himself against attack with reasonable force, he could be legally [justified, but] not morally . . . ." *"Deathwish" Vigilante*, NEWSWEEK, Jan. 7, 1985, at 10.

Plainly then, the very large majority of the American people believe that use of force, including deadly force if necessary, is a legitimate response to dangerous criminal attacks. In a society that respects liberty of conscience, this large majority should not attempt to force its morality of lawful self-defense onto the minority of the population that would prefer not to use such force. At the same time, the pacifist minority should not attempt to force its morality onto the majority that approves of otherwise lawful, defensive force.

3. Religion

Whenever legislative bodies debate concealed carry laws, representatives of organizations such as the National Council of Churches commonly show up and announce the "moral" opposition to concealed carry on behalf of "the religious community." Nonetheless, reflexive hostility to the lawful use of force for legitimate defense is hardly the only moral position a sincerely religious person may hold.[177]

The *Book of Exodus* specifically absolves a homeowner who kills a burglar under certain circumstances.[178] The Sixth Commandment, "Thou shalt not kill," refers to murder only, and does not prohibit the taking of life under any circumstances; notably, the law of Sinai specifically requires capital punishment for a large number of offenses.[179] Earlier in *The Bible*, Abram, the father of the Hebrew nation, learns that his nephew Lot has been taken captive. Abram (whom God later renames "Abraham") immediately calls out his trained servants, sets out on a rescue mission, finds his nephew's captors, and attacks and routs those captors, thereby rescuing Lot.[180] *The Bible* presents Abram's violent rescue of an innocent captive as the morally appropriate and necessary choice.

Gun prohibitionists who look to *The Bible* for support cannot find specific interdictions of weapons, but rather point to general passages about peace and love. They cite such verses as "Do not resist an evil person. If someone strikes you on the right cheek, turn to him the other also";[181]

177. For a thorough discussion of the issue, see BRENDAN FURNISH & DWIGHT SMALL, THE MOUNTING THREAT OF HOME INTRUDERS: WEIGHING THE MORAL OPTION OF ARMED SELF-DEFENSE (1993).

178. *Exodus* 22:2 (NIV) ("If the thief is caught while breaking in and is struck so that he dies, the defender is not guilty of bloodshed."). The next verse continues, "[B]ut if it happens after sunrise, he is guilty of bloodshed. 'A thief must certainly make restitution, but if he has nothing, he must be sold to pay for his theft.'" *Id.* 22:3.

179. *Id.* 21-22.

180. *Id.* 14.

181. *Matthew* 5:39.

"Love your enemies and pray for those who persecute you";[182] and "Do not repay anyone evil for evil."[183]

None of these exhortations take place in the context of an imminent threat to life. A slap on the cheek is a blow to pride, but not a threat to life. Reverend Anthony Winfield, author of a study of Biblical attitudes towards weapons, suggests these verses command the faithful not to seek revenge for evil acts and not to bear grudges against persons who have done them wrong. He cites *Romans* 12:18, "If it is possible, as far as it depends on you, live in peace with everyone," as showing an awareness that in extreme situations, one may find it impossible to live in peace.[184]

The preaching of John the Baptist and Peter, both of whom converted soldiers, further evidences that the New Testament does not command universal pacifism. Neither John nor Peter demanded that the soldiers lay down their arms or find another job.[185] John instructed the soldiers, "Don't extort money and don't accuse people falsely," just as he instructed tax collectors, "Don't collect any more than you are required to."[186] John plainly implies that being a soldier or a tax collector is not itself wrong, so long as the inherent power of these positions is not used for selfish or improper purposes.

Of course, many gun prohibitionists would approve of soldiers carrying and using weapons when necessary. But if—as the New Testament strongly implies—a person may be both a good soldier and a good Christian, then one cannot claim *The Bible* always forbids the use of violence, no matter what the purpose. The conversions of the soldiers support Winfield's thesis that general "peace and love" passages are not blanket prohibitions on the use of force in all circumstances.[187]

The Bible's approving attitude towards the bearing of arms is not confined to professional soldiers. At the Last Supper, Jesus begins his final instructions to the apostles before his death:

> "When I sent you without purse, bag or sandals, did you lack anything?"
> "Nothing," they answered.
> [Jesus] said to them, "But now if you have a purse, take it, and also a bag; and if you don't have a sword, sell your cloak and buy one. . . . [W]hat is written about me is reaching its fulfillment."[188]

The disciples then announced, "See Lord, here are two swords." Jesus replied, "That is enough."[189] Even if the passage is read with absolute

182. *Id.* 5:44.

183. *Romans* 12:17.

184. REV. ANTHONY L. WINFIELD, SELF-DEFENSE AND THE BIBLE 28-32 (1991).

185. *Luke* 3:14; *Acts* 10:22-48.

186. *Luke* 3:13-14.

187. *See supra* note 184 and accompanying text.

188. *Luke* 22:35-37.

189. *Id.* 22:38.

literalness, Jesus was no more commanding that every apostle *must* carry a sword than was he commanding them to carry a purse or a bag. For the eleven,[190] two swords were sufficient or "enough."

More importantly, Jesus may not have been issuing an actual command that anybody carry swords, or purses, or bags. Jesus was making the broader, metaphorical point that after he was gone, the apostles would have to take care of their own worldly needs to some degree. The purse (generally used for money), the bag (generally used for clothing and food), and the sword (generally used for protection) are all examples of tools used to take care of such needs. When the apostles took Jesus too literally and started showing him their swords, Jesus, possibly frustrated that they missed the metaphor, ended the discussion.

Even when reduced to metaphor, however, the passage still contradicts the rigid pacifist viewpoint. In the metaphor, the sword, like the purse or the bag, is treated as an ordinary item for any person to carry. If weapons and defensive violence were illegitimate under all circumstances, Jesus would not have instructed the eleven to carry swords, even in metaphor, any more than Jesus would have created metaphors suggesting that people carry demonic statues for protection, or that they metaphorically rape, rob, and murder.

A few hours later, when soldiers arrived to arrest Jesus, Peter sliced off the ear of one of their leaders. Jesus healed the ear and then commanded, "No more of this,"[191] or "Put your sword away,"[192] or "Put your sword back in its place, for all who draw the sword will die by the sword."[193]

190. Judas Iscariot had already left to meet with those who would arrest Jesus. *John* 13:27.

191. *Luke* 22:49-51.

192. *John* 18:11.

193. *Matthew* 26:52. The quotation is sometimes rendered, "He who lives by the sword will die by the sword."

Biblical scholar John Spong suggests that the sword incident in the Garden of Gethsemane never happened. He notes that *The Gospel According to Mark*, generally agreed to be the oldest of the four gospels, mentions no such incident. As the gospels proceed chronologically in order of composition from *Matthew* to *Luke* to *John*, the garden confrontation is introduced and then additional details are added. Spong notes the considerable textual evidence that when Jesus was arrested, the disciples panicked and fled, and did not regain their courage until after Easter. Spong suggests that the story of the disciples confronting the Roman soldiers was an invention of the later gospel authors (or their sources) who simply would not accept the humiliation of the disciples' apparent, if temporary, cowardice. JOHN S. SPONG, RESURRECTION: MYTH OR REALITY? 224-25 (1994). Spong subscribes to the "reality" side of the question posed by his book's title, although he finds considerable myth in many of the details and argues that a significant number of stories in the gospels are not intended as literal history.

Jesus then rebuked the soldiers for "com[ing] out with swords and clubs," for Jesus was not "leading a rebellion."[194]

The most immediate meaning of these passages is that Jesus was preventing interference with God's plan for the arrest and trial.[195] Additionally, Jesus was instructing the eleven not to begin an armed revolt against the local monarchy or the Roman imperialists. Jesus had already refused the Zealots' urging to lead a war of national liberation.

Do the passages also suggest a general prohibition against drawing swords or other weapons for defense? Luke and John's versions of the story do not indicate such a prohibition, but the version in *Matthew* could be so read.

If *Matthew* is analyzed along the lines of "He who lives by the sword will die by the sword," the passage is an admonition that a person who centers his life on violence (such as a gang member) will likely perish. On the other hand, a translation of "all who draw the sword will die by the sword" could be read as a general rule against armed violence in any situation.

Most theologians would concur that the best way to understand *The Bible* is not to look at passages in isolation, but rather to carefully study passages in the context of the rest of *The Bible*. If the single line in *Matthew* were interpreted to mean that to draw the sword is always wrong, then it would be difficult to account for other passages which suggest that drawing a sword as a soldier (or carrying a sword as an apostle) is neither inappropriate nor prohibited. Viewed in the context of the rest of *The Bible*, this passage in *Matthew* is a warning against violence as a way of life, rather than as a complete ban on defensive violence in all situations.

The Vatican's Pontifical Council for Justice and Peace recently surmised, "In a world marked by evil and sin, the right of legitimate defense by armed means exists. This right can become a serious duty for those who are responsible for the lives of others, for the common good of the family or of the civil community."[196]

The Catholic Church recognizes people as saints because, among other reasons, the lives of saints are considered to be worthy of study and emulation. February 27 is the feast day of Saint Gabriel Possenti. According to *The One Year Book of Saints*, as a young man in nineteenth-century Italy, Francesco Possenti was known as the best dresser in town, as

194. *Matthew* 26:55; *Mark* 14:48; *Luke* 22:52.

195. After telling Peter to put his sword away, Jesus rhetorically asks, "Shall I not drink the cup the Father has given me?" *John* 18:11. *See also Matthew* 26:53.

196. PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, THE INTERNATIONAL ARMS TRADE: AN ETHICAL REFLECTION 12 (1994). The document notes that "the right" to armed defense "is coupled with the duty to do all possible to reduce to a minimum, and indeed eliminate, the causes of violence." *Id.*

a "superb horseman," and as "an excellent marksman."[197] The young Possenti was also a consummate partygoer, who was engaged to two women at the same time. Twice during school he fell desperately ill, promised to give his life to God if he recovered, and then forgot his promise. One day at church, Possenti saw a banner of Mary. He felt that her eyes looked directly at him, and he heard the words "Keep your promise." As a result of his vision, Possenti immediately joined an order of monks, taking the name Brother Gabriel.[198]

Saint Gabriel Possenti is primarily remembered for the following incident:

> On a summer day a little over a hundred years ago, a slim figure in a black cassock [Possenti] stood facing a gang of mercenaries in a small town in Piedmont, Italy. He had just disarmed one of the soldiers who was attacking a young girl, had faced the rest of the band fearlessly, then drove them all out of the village at the point of a gun. . . . [W]hen Garibaldi's mercenaries swept down through Italy ravaging villages, Brother Gabriel showed the kind of man he was by confronting them, astonishing them with his marksmanship, and saving the small village where his monastery was located.[199]

Saint Gabriel Possenti displayed his "astonishing marksmanship" after having disarmed the soldier. The mercenaries' leader told Possenti that it would take more than just one monk with a handgun to make the mercenaries leave town. Possenti pointed to a lizard that was running across the road. He then shot the lizard through the head. The mercenaries immediately decided that discretion was the better part of valor, and fled the village.

Jewish law draws the same conclusion as the Vatican Pontifical Council: "If someone comes to kill you, rise up and kill him first."[200] Bystanders are likewise required to kill persons who are attempting rape.[201] Although Jewish law imposes a duty of self-defense, the duty to defend others takes precedence.[202]

197. REV. CLIFFORD STEVENS, THE ONE YEAR BOOK OF SAINTS 66 (1989).

198. *Id.*

199. *Id.*

200. *Babylonian Talmud, Sanhedrin* 72a. The context of this passage is a discussion of the protection of one's property. The passage is a direct response to the offending thief having reasoned, "If I go there, he [the owner] will oppose me and prevent me, but if he does, I will kill him." *Id.*

201. *Id.* 73a.

202. For excellent discussions of Jewish law and the duty to use force, see George P. Fletcher, *Defensive Force as an Act of Rescue*, SOC. PHIL. AND POL'Y, Spring 1990, at 170, and George P. Fletcher, *Self-Defense as a Justification for Punishment*, 12 CARDOZO L. REV. 859 (1991).

The view that forcible resistance to evil attack is itself evil presents serious implications. According to this logic, Patrick Henry and the other founding fathers were wrong to urge armed resistance against the British Redcoats; the Jews who led the Warsaw Ghetto revolt against Hitler were immoral; Jeffrey Dahmer's victims would have been wrong to use a weapon to protect themselves; Saint Gabriel Possenti was a paragon of evil; Abraham should not have rescued his kidnapped nephew; and police officers who fire their guns to protect innocent people are sinful.

Consider the following situation. A mother in a rough Los Angeles neighborhood is confronted with an escaped psychopathic murderer who has broken into her house. The woman has good reason to fear that the intruder is about to slaughter her three children. If she does not shoot him with her .38 special, the children will most likely be dead before the police can arrive. Is the woman morally obligated to simply murmur "violence engenders violence," keep her handgun in the drawer, and watch her children die? Or, is the mother rather morally *obligated* to save her children by using her gun to stop the intruder?

The view that life is a gift from God and that permitting the wanton destruction of one's own life (or the life of a person under one's care) amounts to hubris is hardly new. As stated in a 1747 sermon in Philadelphia:

> He that suffers his life to be taken from him by one that hath no authority for that purpose, when he might preserve it by defense, incurs the Guilt of self murder since God hath enjoined him to seek the continuance of his life, and Nature itself teaches every creature to defend [it]self.[203]

Whatever their disagreements on other matters, the natural rights philosophers who provided the intellectual foundation of the American Revolution collectively viewed self-defense as "the primary law of nature," from which many other legal principles could be deduced.[204]

As the great Justice Louis Brandeis proclaimed: "We shall have lost something vital and beyond price on the day when the state denies us the right to resort to force in defense of a just cause."[205]

Leading criminal law scholars have emphasized a different, less philosophical point: Victims protect the entire community when they kill a

203. C. Asbury, The Right to Keep and Bear Arms in America: The Origins and Application of the Second Amendment to the Constitution 39-40 (1974) (unpublished Ph.D. dissertation in history, University of Michigan) (available at U. of Mich. Graduate Library), *quoted in* Don B. Kates, Jr., *Handgun Prohibition and the Original Meaning of the Second Amendment*, 82 MICH. L. REV. 204, 230 (1982).

204. 3 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND *4 (also asserting that the right was inalienable); THOMAS HOBBES, LEVIATHAN 88, 95 (1964) (such a covenant against self-defense is void); 2 MONTESQUIEU, SPIRIT OF THE LAWS 64 ("Who does not see that self-defense is a duty superior to every precept?").

205. THE BRANDEIS GUIDE TO THE MODERN WORLD 212 (Alfred Lief ed., 1941).

dangerous criminal rather than leaving that criminal free to prey on others. To theorists such as Bishop and Pollock, "sudden and strong resistance to unrighteous attack is not merely to be tolerated," not merely "a necessary evil," but "a just and perfect" right.[206] A good citizen attacked thus has "a moral duty" to use all force necessary to apprehend or otherwise incapacitate criminals rather than to submit or retreat.

The assertion that use of force to defend innocent life is immoral necessarily presumes that persons who use such force are "selfish." To the extent that social science can shed any light on this presumption, the presumption of selfishness is unfounded. A study of "Good Samaritans" who came to aid of victims of violent crime found that eighty-one percent "own guns, and some carry them in their cars. They are familiar with violence, feel competent to handle it, and don't believe they will be hurt if they get involved."[207] Are these people thus inferior moral beings who "engender violence"?

Regardless of one's response to the above question, as a moral or practical matter, one may claim that a crime victim should rely on the government for protection *only if* the government has an obligation to protect the victim. Under United States law, the government quite clearly has no such obligation.

D. *The Absence of a Legal Government Obligation to Protect Citizens*

It is well-settled law that police in the United States have no legal duty to protect any individual citizen from crime, even if the citizen has received death threats and the police have negligently failed to provide protection.[208] For example, the New York Court of Appeals explicated the rule

206. F. POLLOCK, TREATISE ON THE LAW OF TORTS 123 (15th ed. 1951); ROLLIN M. PERKINS, CRIMINAL LAW 997-1004 (2d ed. 1969) (describing view of Bishop).

207. Ted L. Huston et al., *The Angry Samaritans*, PSYCHOL. TODAY, June 1976, at 64. The study does suggest, however, that anger toward criminals may be the motivation behind the actions of a "samaritan" rather than concern for a victim. *Id.*

208. *See, e.g.*, CAL. GOV'T CODE §§ 845-846 (West Supp. 1994) (no liability for failure to arrest or to retain arrested person in custody); Bowers v. DeVito 686 F.2d 616 (7th Cir. 1982) (no federal constitutional requirement that police provide protection); Calogrides v. City of Mobile, 475 So. 2d 560 (Ala. 1985); Davidson v. City of Westminster, 649 P.2d 894 (Cal. 1982); Stone v. State, 165 Cal. Rptr. 339 (1980); Warren v. District of Columbia, 444 A.2d 1 (D.C. 1981); Sapp v. City of Tallahassee, 348 So. 2d 363 (Fla. Dist. Ct. App.), *cert. denied* 354 So. 2d 985 (Fla. 1977); Jamison v. City of Chicago, 363 N.E.2d 87 (Ill. App. Ct. 1977); Keane v. City of Chicago, 240 N.E.2d 321 (Ill. App. Ct. 1968); Simpson's Food Fair, Inc. v. City of Evansville, 272 N.E.2d 871 (Ind. Ct. App. 1971); Silver v. City of Minneapolis, 170 N.W.2d 206 (Minn. 1969); Wuethrich v. Delia, 382 A.2d 929, 930 (N.J. Super. Ct. App. Div.), *cert. denied* 391 A.2d 500 (1978); Chapman v. City of Philadelphia, 434 A.2d 753 (Pa. Super. Ct. 1981); Morris v. Musser, 478 A.2d 937 (Pa. Comm'r Ct. 1984).

in Riss *v. City of New York*:[209] The government is not liable even for a grossly negligent failure to protect a crime victim. In *Riss*, a young woman telephoned the police and begged for help because her ex-boyfriend had repeatedly threatened, "If I can't have you, no one else will have you, and when I get through with you, no-one else will want you." The next day, the ex-boyfriend threw lye in her face, blinding her in one eye, severely damaging the other, and permanently scarring her features. "What makes the City's position particularly difficult to understand," wrote a dissenting judge, "is that, in conformity to the dictates of the law, Linda did not carry any weapon for self-defense. Thus, by a rather bitter irony she was required to rely for protection on the City of New York which now denies all responsibility to her."[210]

In *Warren v. District of Columbia*,[211] two women were upstairs when they heard their roommate being attacked by men who had broken in downstairs. They immediately telephoned the police for assistance. Crawling from their window onto an adjoining roof, they saw police arrive and then leave without entering the house. The two women went back inside and again heard screams. They called the police a second time. Their roommate's screams having ceased, they assumed the police must have arrived and taken care of the situation. Actually, their second call was somehow never dispatched. The women called out to their roommate and alerted the attackers of their presence. As the court's opinion graphically describes: "For the next fourteen hours [all three] women were held captive, raped, robbed, beaten, forced to commit sexual acts upon each other, and made to submit to the sexual demands" of their attackers.[212]

The roommates later sued the District of Columbia for ignoring their phone call for help. The District of Columbia's highest court exonerated the District and its police, concluding it is "a fundamental principle of American law that a government and its agents are under no general duty to provide public services, such as police protection, to any individual citizen."[213]

Given the doctrine of police immunity, the contention that trained citizens should not be allowed to carry firearms in order to protect

Ruth Brunell called the police on 20 different occasions, begging for protection from her husband. He was arrested only one time. Mr. Brunell telephoned his wife one evening and told her that he was coming over to kill her. When she called the police, they refused her request for protection, telling her to call back when he got there. Mr. Brunell stabbed his wife to death before she could call the police. The court held that the San Jose police were not liable for ignoring Mrs. Brunell's pleas for help. Hartzler v. City of San Jose, 120 Cal. Rptr. 5 (Cal. Ct. App. 1975).

209. 240 N.E.2d 860 (N.Y. 1968).

210. *Id.* at 862 (Keating, J., dissenting).

211. 444 A.2d 1 (D.C. 1981).

212. *Id.* at 2.

213. *Id.* at 6.

themselves would appear untenable. At the very least, in cases where the government affirmatively interferes with a person's ability to protect, government immunity from lawsuit should be waived. If a person passes a background check and a safety class, and is then denied a firearms carry permit because the police administration does not believe that citizens should carry guns, government legal immunity should not apply if that person is subsequently injured by a criminal. The government should not be able to take away person's right of self-defense, and then assert that it has no responsibility for the consequences. If the person is killed because the police failed to act, the survivors should have the right to sue.[214]

Some police administrators and politicians use legal immunity to disclaim government responsibility to protect ordinary people, but these same officials hypocritically carry guns and work in buildings protected by government-issue police bodyguards. In addition, they generally live in relatively safe areas. Yet these same officials use overly restrictive handgun carry laws to prevent from ordinary citizens from protecting themselves.

Judge David Shields, who sits on Chicago's special "gun court," explained to Congress the kinds of persons who came before his court for failing to possess a handgun carry permit (impossible to obtain in Chicago, except for the politically connected):

> For most, this is their first arrest of any kind. I don't mean now that this is their first conviction, but I mean this is their very first arrest of any kind, and many of them are old people. Many of them are shopkeepers, persons who have been previous victims of violent crimes.
>
> . . . .
>
> I think most of the defendants who come to court believe that they need a gun to protect themselves in the community, and I have one statement that was made by an elderly defendant that I think summed up the attitude of such people. When he responded, he said, "I would much rather be caught by the police with a gun than to be caught out on the street in my neighborhood without a gun."
>
> And I didn't think that when that remark was made that he was in any way capricious or arbitrary with the court. I think that was his sincere belief. I think the courts and probably most members of this committee aren't really exposed to the problems of the ghetto community and it is probably fair to say that most of us aren't likely to voluntarily go into those communities except under the most optimum circumstances; meaning broad daylight and certainly not alone or at night or on foot.[215]

214. Precedent for such a conclusion could be based on Chambers-Castanes v. King County, 669 P.2d 451 (Wash. 1983) (en banc), which upheld an exception to the immunity principle when some form of privity is found between police and specific victims, and when the victims are dissuaded from taking steps to protect themselves because when they relied on specific police assurances that help was on its way.

215. *Firearms Legislation, 1975: Hearings on H. 521-38 Before the Subcomm. on Crime of the House Comm. on the Judiciary*, 94th Cong., 1st Sess. 587 (1975).

E. Can Citizens Use Guns Competently?

Whenever and wherever the concealed carry issue is raised in the future, objections will undoubtedly be raised by reform opponents, including many law enforcement professionals who claim expertise on the issue. These opponents predict that ordinary people, even if they have passed a firearms safety class, cannot be trusted to use guns competently. Supposedly, the guns will be taken away by criminals, or the gun-owners will shoot an innocent bystander by mistake.

The existing body of research provides no support for these fears. The best evidence as to what happens when people have carry permits is the experience of the many American states that issue such permits routinely. From these states, the most detailed data are those compiled by the Dade County (Miami) police.[216] As discussed in subpart II. B., the police kept track of every known incident involving the county's more than 21,000 handgun carry permitees over a six-year period. In that six-year period, only one known incident of a crime victim having his gun taken away by the criminal was reported. No known incidents of a crime victim injuring an innocent person by mistake were reported. Although the handgun permit holder was not always successful in preventing a crime, no innocent person was injured as a result of a mistake by a permit-holder.

Another study examined newspaper reports of gun incidents in Missouri that involved both police and civilians. Civilians were successful in wounding, driving off, or capturing criminals eighty-three percent of the time, compared with a sixty-eight percent success rate for the police. Civilians intervening in crime were slightly less likely to be wounded than were police. Only two percent of shootings by civilians, compared to eleven percent of shootings by police, involved the shooting of an innocent person mistakenly thought to be a criminal.[217]

The Missouri research does *not* prove that civilians are more competent than police in armed confrontations. Civilians can often choose whether or not to intervene in a crime in progress, whereas police officers are required to intervene. Accordingly, police officers quite naturally have a lower success rate and make more mistakes. Attorney Jeffrey Snyder elaborates:

> Rape, robbery, and attempted murder are not typically actions rife with ambiguity or subtlety, requiring special powers of observation and great book-learning to discern. When a man pulls a knife on a woman and says, "You're coming with me," her judgment that a crime is being committed is not likely to be in error. There is little chance that she is going to shoot the wrong person. It is the police, because they are rarely at the scene of the crime when it occurs, who are more likely to find themselves in

216. *See supra* notes 50-53 and accompanying text.

217. Silver & Kates, *supra* note 20, at 139-70.

circumstances where guilt and innocence are not so clear-cut, and in which the probability for mistakes is higher.[218]

In addition, the Missouri study was not restricted to "carry" situations, but also included self-defense in the home. Persons using a gun to defend their own home, who know its layout much better than does an intruder, might be expected to have a higher success rate than would persons using a gun in a less familiar public setting.

Professor Gary Kleck, a member of the ACLU and Common Cause, has compiled the most detailed information about civilian defensive gun use in his book *Point Blank: Guns and Violence in America*. In 1992, the American Society of Criminology awarded the book the Hindelang Prize, as the most significant contribution to criminology in the previous three years. In *Point Blank*, Kleck presents his study of computer tapes from the United States Department of Justice's National Crime Survey, for the years 1979-85. Analyzing the data from over 180,000 crime incidents in the National Crime Survey, as well as from other studies, Kleck found the following:

- In no more than one percent of defensive gun uses was the gun taken away by a criminal.
- The odds of a defensive gun user accidentally killing an innocent person are less than 1 in 26,000.
- For robbery and assault victims, the lowest injury rates were among victims who resisted with a gun (17.4% for robberies, and 12.1% for assaults).
- The next lowest injury rates were among persons who did not resist. Other forms of resistance such as shouting for help or using a knife, had higher injury rates than either passive compliance or resistance with a gun.[219]

Significantly, the above data do not separate defensive home use (where victim success rates would be expected to be higher) from use in public areas. Still, taken as a whole, the National Crime Survey data, like the Missouri data,[220] suggest that uniformed government employees are not the only class of people who can use a firearm successfully to defend self and others.

F. The Wild West, or "What If Everyone Carried a Handgun?"

Persons opposed to carry reform sometimes state that allowing licensed, trained citizens to carry guns would make modern America like the Wild

218. Jeffrey R. Snyder, *A Nation of Cowards*, THE PUB. INTEREST, Fall 1993, at 40, 50.

219. GARY KLECK, POINT BLANK: GUNS AND VIOLENCE IN AMERICA 120-26 (1991).

220. *See supra* note 217 and accompanying text.

West. A shorthand version of this statement is simply to raise the rhetorical question: "What if everyone carried a gun?"

Asking a question such as "What if everyone did X?" contributes to a debate only if a realistic possibility exists that everyone might actually do *X*. What if everyone had fifteen children? What if everyone remained celibate?[221] Universal celibacy would destroy the human race in one generation, whereas the universal bearing of fifteen children per family could cause huge social and environmental problems. If "What if" questions guided public policy, then it would be logical to enact a law requiring every family to have exactly two children, thus preventing the horrible potential consequences of universal celibacy or universal over-fecundity. In the real world, however, some people choose to be celibate, and some people choose to have fifteen children. Most people choose something between these extremes, resulting in a reasonable population growth rate without the need of government regulation.

In the real world, the question "What if everyone carried a gun?" is as meaningless as the question "What if everyone tried to park at the state capitol at the same time?" The research presented throughout this Article demonstrates that no more than four percent of a state's population is likely to choose to obtain a handgun carry permit.[222] If the "What if" question does have any relevance, such can best be found by looking at the most recent era in American history when everyone really did carry a gun.

Late twentieth-century Americans have an image of the "Wild West" that is based primarily on television and the movies. In contrast, historian Roger McGrath set out to study the West in detail in order to determine how violent it really was. In *Gunfighters, Highwaymen, & Vigilantes*, McGrath examines the nineteenth-century Sierra Nevada mining towns of Aurora and Bodie.[223]

Aurora and Bodie certainly had more potential for violence than most other places in the West. The population was mainly young, transient males who recognized few social controls. There was one saloon for every twenty-five men; brothels and gambling houses were also common. "Sobriety was thought proper only for Sunday school teachers and women," McGrath observes.[224] Governmental law enforcement was ineffectual, and sometimes the sheriff doubled as the head of a criminal gang. Nearly everyone carried a gun.[225]

The homicide rate in these towns was extremely high, as the "bad men" who hung out in saloons shot each other at a fearsome rate, in some cases

221. Blackman, *supra* note 18, at 29.

222. *See supra* Part II.

223. ROGER D. MCGRATH, GUNFIGHTERS, HIGHWAYMEN, & VIGILANTES: VIOLENCE ON THE FRONTIER (1984).

224. *Id.* at 255.

225. *Id.* at 250.

exceeding the homicide rate in modern Washington, D.C.[226] These shootings amounted to consensual violence among disreputable young men who enjoyed getting drunk and getting into fights. The presence of guns thus turned many petty drunken quarrels into fatalities.[227]

Other crime in Aurora and Bodie, however, was virtually nil. The per capita annual robbery rate was seven percent of modern New York City's. The burglary rate, less than one percent. Rape was unknown.[228] "The old, the weak, the female, the innocent, and those unwilling to fight were rarely the targets of attacks," McGrath found.[229] One resident of Bodie did

> not recall ever hearing of a respectable woman or young girl in any manner insulted or even accosted by the hundreds of dissolute characters that were everywhere. In part, this was due to the respect depravity pays to decency; in part, to the knowledge that sudden death would follow any other course.[230]

Nearly everyone carried a gun. Except for young men who liked to drink and fight with each other, everyone was far more secure than today's residents of cities, where ordinary people cannot carry a firearm for protection.

The experience of Aurora and Bodie was repeated throughout the West. One study of five major cattle towns with a reputation for violence—Abilene, Ellsworth, Wichita, Dodge City, and Caldwell—found that the towns had a combined average of around two criminal homicides per year.[231] During the 1870s, Lincoln County, New Mexico, was experiencing in a state of anarchy and civil war. The homicide rate was astronomical. Similar to the experience in Bodie and Aurora, however, these homicides were almost exclusively confined to drunken males upholding their "honor." Modern big-city crimes such as rape, burglary, and mugging were virtually unknown.[232] A study of the Texas frontier from 1875-90 found that

226. The homicide rate in Aurora was approximately 64 per 100,000; in Bodie, the rate was 116. *Id.* at 254.

227. *Id.* at 255.

228. Bodie had an annual robbery rate of 84 per 100,000 persons. In 1980, the rate in New York City was 1140; in San Francisco-Oakland, 521, and in the United States as a whole, 243. The annual Bodie burglary rate was 6.4 per 100,000. In 1980, the New York City rate was 2661; the San Francisco-Oakland rate was 2267. The overall American rate was 1668. The Bodie theft rate was 180. By contrast, the New York rate was 3369 while San Francisco-Oakland had a rate of 4571. The American rate was 3156. *Id.* at 247-54.

229. *Id.* at 255.

230. Grant H. Smith, *Bodie, Last of the Old-Time Mining Camps*, 4 CAL. HIST. SOC'Y Q. 78-79 (1925).

231. ROBERT A. DYKSTRA, THE CATTLE TOWNS 144-47 (1968). "The average number of homicides per cattle town trading season amounted to only 1.5 per year." *Id.* at 146.

232. ROBERT M. UTLEY, HIGH NOON IN LINCOLN: VIOLENCE ON THE WESTERN

except for bank, train, and stage-coach robberies, robberies of homes and business were essentially nonexistent. People did not bother locking doors; and except for young men shooting each other in voluntary "fair fights," murder was rare.[233]

John Umbeck's investigation of the High Sierra gold fields in the mid-nineteenth century yielded similar results. After the discovery of gold at Sutter's Mill in 1848, thousands of prospectors rushed to gold fields in the California mountains. There was no police force. Indeed, no property rights law existed because the military governor of California had just proclaimed as invalidated the former Mexican land law without offering a replacement. The competitive greed for gold was intense, and nearly everyone carried firearms. Yet, hardly any violence occurred.[234] Similarly, when much of the Indian territory of Oklahoma simultaneously opened for white settlement, heavily armed settlers rushed in immediately to stake their claims long before effective law enforcement arrived. Still, almost no shooting occurred.[235]

In sum, historian W. Eugene Hollon found "the Western frontier was a far more civilized, more peaceful, and safer place than American society is today."[236] Frank Prassel concluded that this "last great frontier left no significant heritage of offenses against the person, relative to other sections of the country."[237] Americans living with the prevalence of guns of the Old West were thus arguably far safer than Americans living in modern cities such as San Francisco, Detroit, or Cleveland—cities where citizens are restricted in the means with which they may legally protect themselves when they leave their homes.

In modern Washington, D.C., criminals sometimes murder drivers stopped at a traffic light, simply for the pleasure of watching them die. The city government, seemingly incapable of protecting these drivers, forbids the law-abiding populace to possess a handgun in their car, their home, or on their person. Columnist Samuel Francis describes this and other similar city

FRONTIER 173-79 (1987). Again, as in Aurora and Bodie, the ubiquity of firearms turned many drunken quarrels into homicides. *Id.* at 176.

233. W.C. Holden, *Law and Lawlessness on the Texas Frontier 1875-1890*, 44 SW. HIST. Q. 188 (1940).

234. John Umbeck, *Might Makes Rights: A Theory of the Formation and Distribution of Property Rights*, 19 ECON. INQUIRY 38 (1981).

In other parts of the West, citizens also successfully used a variety of private mechanisms to protect property rights in the absence of effective government. Terry L. Anderson & P.J. Hill, *An American Experiment in Anarcho-Capitalism: The Not So Wild, Wild West*, 3 J. LIBERTARIAN STUD. 9 (1979).

235. Robert Day, *'Sooners' or 'Goners,' They Were Hell Bent on Grabbing Free Land*, SMITHSONIAN, Nov. 1989, at 192, 202.

236. W. EUGENE HOLLON, FRONTIER VIOLENCE: ANOTHER LOOK x (1974).

237. FRANK R. PRASSEL, THE WESTERN PEACE OFFICER: A LEGACY OF LAW AND ORDER 17 (1972).

government systems as "anarcho-tyranny."[218] Such government provides little effective protection against violent criminals, but mobilizes the full power of the state against crime victims who attempt to protect themselves.

Crime flourishes in modern American cities because the American people and their government tolerate it. Bodie, Aurora, and the rest of the Old West had little high culture. Their streets were made of dirt and littered with horse manure. Nonetheless, a woman could walk alone safely after dark in those towns; good people did not cower in fear and allow predatory thugs to terrorize the innocent. Perhaps the people of the Old West better understood what *civilization* implied than do modern Americans.

The evidence from Aurora, Bodie, and the rest of the United States does not prove that guns are an unalloyed good, or that no form of gun control is desirable. Guns in the wrong hands can wreak great harm. Disarming gun abusers would obviously benefit society. The problem with the laws proposed by the various "gun control" groups, however, is that the very persons who have no compunction about perpetrating violent crime will also have no compunction about illegally carrying guns.

G. Police Opinion and Police Competence

Virtually all United States citizens agree that the police may lawfully use force to protect crime victims. Accordingly, the question is not whether force per se is legitimate, but who may legitimately use force. As a moral matter, the creature of government should not have powers greater than its creator, the people. An individual police officer, acting under the best judgment and reasonable understanding of the facts of a particular encounter, has the individual moral authority to fire a weapon for protection of self or another person. How then can the same act, performed by a crime victim, suddenly become immoral? Many police officers would agree that citizen self-defense is legitimate.

The first survey of police attitudes toward concealed carry was a 1976 poll conducted by Boston Police Commissioner Robert diGrazia. Ironically, the poll was part of an effort to find national police support for an initiative to ban handgun ownership in Massachusetts. In the national survey, fifty-one percent of police chiefs agreed with the statement, "Persons who have a general need to protect their own life and property, like those who regularly carry large sums of money to the bank late at night, should be allowed to possess and carry handguns on their person." Fifty-seven percent of chiefs expected their subordinates to be more supportive of such carrying.[219]

Rank-and-file police officers are even more supportive of citizens carrying guns. In 1991, *Law Enforcement Technology* conducted a poll of

218. Samuel Francis, *Anarcho-Tyranny, U.S.A.*, CHRONICLES, July 1994, at 14-19.

219. Blackman, *supra* note 18, at 31.

all ranks of police officers. Seventy-six percent of street officers believed that all trained, responsible adults should be allowed to obtain handgun carry permits; fifty-nine percent of managers agreed.[240] In fact, the above data suggests that police are arguably *more* supportive of carry reform laws than is the general public. Carry reform generally garners about thirty-five percent support in opinion polls of the general public; the range is between about twenty and fifty-seven percent.[241]

Those who hold that the police, and the police alone, should carry defensive firearms apparently presume the police possess abilities that are not possessed by licensed, trained permit holders. As demonstrated earlier in subpart IV. E., however, both scholarly research and police data indicate that ordinary citizens are capable of using firearms competently for defense. In addition, while the vast majority of police officers are likewise competent, police officers are not immune from the foibles and stresses that can lead to unlawful or accidental shootings.

One study of 911 incidents involving police use of deadly force concluded that 125 innocent civilians (16%) were killed in error.[242] Another study found almost thirteen percent of killings by Chicago officers during 1969-70 to be "prima facie cases of manslaughter or murder," and "several others presented factual anomalies sufficient to suggest that a thorough investigation might well have revealed such prima facie cases."[243] Only one of these cases resulted in prosecution or even reprimand, despite being in plain violation of official policy.[244] By contrast, seventy-

240. *The Law Enforcement Technology Gun Control Survey*, LAW ENFORCEMENT TECH., July-Aug. 1991, at 14-15. The poll was based on readers sending in a survey form to the magazine. Because the polling was not conducted by random sample, the poll arguably may not reflect a true cross-section of all police opinion. Of course a cadre of police chiefs who show up at a state capitol to testify against a concealed carry bill may also not be representative of police opinion, especially the opinion of street patrol officers.

241. For example, in a recent U.S. NEWS & WORLD REPORT poll, 29% of 1000 citizens polled favored allowing "ordinary Americans . . . , after proper training, to carry a concealed weapon." *News Release*, U.S. NEWS & WORLD REPORT, Aug. 8, 1994, at 4. *See also supra* note 173 and accompanying text.

242. Arthur L. Kobler, *Figures (and Perhaps some Facts) on Police Killings of Civilians in the United States 1965-1969*, 31 J. SOC. ISSUES 185, 190 (1975). Internal police department review of Kansas City police shootings in which a person was struck by a bullet found that for the years 1973-1978, 40.2% of the discharges were unjustifiable. WILLIAM A. GELLER & MICHAEL S. SCOTT, DEADLY FORCE: WHAT WE KNOW 282 (1992).

243. Richard W. Harding & Richard P. Fahey, *Killings by Chicago Police, 1969-70: An Empirical Study*, 46 S. CAL. L. REV. 284 (1973). *See also* William A. Geller & Kevin J. Karales, *Shootings of and By Chicago Police: Uncommon Crises, Part I: Shootings by Chicago Police*, 72 J. CRIM. L. & CRIMINOLOGY 1813 (1981).

244. Harding & Fahey, *supra* note 243, at 284.

five percent of shootings by Los Angeles police officers led to either the disciplining or retraining of the officer because of error.[245]

New York City police officials review any incidence when a police officer fires a gun other than during target practice. Such reviews have found that about twenty percent of discharges are accidental, and another ten percent are intentional discharges in violation of force policy. In other words, only seventy percent of firearms discharges by New York City police are both intentional and in compliance with force policy.[246]

Not only are police misuses of firearms in the line of duty far from uncommon, police misuse of guns outside the line of duty is all too frequent. When an off-duty New York City policeman fires a gun, one out of four firings will be an "accident, a suicide, or an act of frustration."[247] The rate of substantiated crimes perpetrated by New York City police officers is approximately 7.5 crimes per year, per thousand officers. The number of New York police crimes alleged is 112.7 per thousand officers.[248]

Opponents of concealed carry readily suggest hypotheticals of how an armed citizen might overreact to a particular situation. In reality, however, actual instances of such overreaction by licensed, trained citizens are rare.[249] In contrast, actual instances of police overreaction are well known.

In Portland, Oregon, police officers on a drug raid used German MP-5 submachine guns to shoot a grandfather at least twenty-eight times. The autopsy suggested that over twenty shots were fired into his back as he lay

245. Eric Lichtblau, *LAPD Officers Faulted In 3 of 4 Shooting Cases*, L.A. TIMES, Aug. 14, 1994, at A1.

246. Gina Gochl, *1989 Firearms Discharge Assault Report* (New York: Police Academy Firearms and Tactics Section, April 1989) (BM 369). For 1985-89, the cumulative figures are 1193 total discharges, 824 intentional and not in violation of force policy (69.1%), 112 intentional and in violation (9.4%); 135 accidental but not in violation of policy (11.3%), and 122 accidental and in violation (10.2%). The percentages and numbers are slightly different from those in the Report itself, due to a Departmental mathematical errors in addition; the Department mistakenly totals the number of intentional lawful shootings as 836 (rather than 824), and mistakenly records the total of all incidents at 1,143, rather than 1,193. As a result, the Department reports the sum of all categories of incidents is 105.4%, rather than 100%. In Philadelphia, accidents in 1989 comprised 27% of police firearms discharges; in Dade County that same year, accidents were 31%. GELLER & SCOTT, *supra* note 242, at 196.

247. *The Guns of Kennesaw*, N.Y. TIMES, Mar. 18, 1982, at A26. Some studies suggest that as many as one in four police officers may be an alcoholic. GELLER & SCOTT, *supra* note 242, at 288 n.26.

248. RICHARD NEELY, TAKE BACK YOUR NEIGHBORHOOD: A CASE FOR MODERN-DAY VIGILANTISM 74-75 (1990). Other major cities reported similar rates of substantiated allegations. *Id.*

249. *See supra* subpart IV.E.

face down over a chair. Rationalizing the police action, the police chief predicted the shooting was "a sign of things to come as criminals become better armed and the police try to match their firepower." The grandfather had been carrying an unloaded two-shot derringer.[250]

In Tyler, Texas, a police officer, previously accused of using excessive force, shot to death a bedridden eighty-four-year-old black woman during an early-morning drug raid. No drugs were found.[251]

In Los Angeles, an officer entered the following message on his computer report: "I almost got me a Mexican last nite [sic] but he dropped the dam [sic] gun to [sic] quick, lots of wit."[252]

The above incidents are, of course, exceptions to the generally high level of police conduct. Therefore, anecdotal stories of police abuse do not provide a good reason for believing that the police as a whole cannot be trusted with guns. By the same reasoning, unsupported hypotheticals about how a licensed, trained citizen *might* act do not provide appropriate argument for believing that citizens cannot be trusted with guns. Moreover, with the proliferation of high-technology training and firearms schools, citizens willing to invest some time can be readily schooled in defensive firearms use to at least the same level of competence as the average police officer.[253]

Few persons who object to ordinary citizens carrying handguns raise the same objections about security guards carrying handguns.[254] Ironically, security guards generally receive even less training than the police.[255] Security guards are visible targets for attack, but so are women who must walk alone at night in dangerous neighborhoods. If law-abiding citizens pass a licensing and training system equivalent to that of security guards or police, no basis exists for denying these citizens a permit. A wealthy owner of a jewelry store can hire security guards for protection. Generally, however, a low-income owner of a convenience store cannot afford a security guard. If the convenience store owner is as objectively qualified as most security guards to carry a gun, to deny a handgun permit results in

250. James Crawford, *Police Firepower a Cause for Concern*, OREGONIAN, May 29, 1991, at C11; Letter from Hap Wong, attorney for the family of the shooting victim, to James Crawford (Mar. 16, 1992) (on file with authors).

251. *Texas Grand Jury Fails to Indict Officer Who Killed Elderly Black Woman in "Cocaine Raid" That Yielded No Drugs or Charges*, NEWS BRIEFS, Aug. 1992, at 8.

252. GELLER & SCOTT, *supra* note 242, at 205.

253. For a good analysis of giving the police special handgun privileges, see James B. Jacobs, *Exceptions to a General Prohibition on Handgun Possession: Do They Swallow Up the Rule?*, 49 LAW & CONTEMP. PROBS. 5 (1986).

254. "Private security guards are simply vigilantes for the rich," observes West Virginia Supreme Court Justice Richard Neely. NEELY, *supra* note 248, at 51.

255. *Id.* at 51-52.

economic discrimination that values the property of the jewelry store owner more highly than the life of the convenience store owner.

H. Does the Gun Control Lobby Mean What it Says?

If the forces that have imposed a national background check for purchasing a handgun are serious about their goals, they should endorse concealed carry reform. The gun control lobbies support all sorts of bills as being worthwhile if it saves just one life. Concealed carry reform clearly passes the "saves one life" test.[256] Nevertheless, the gun control lobbies have opposed concealed carry reform in every state where it has been proposed.

Concealed carry reform laws usually feature the exact kinds of controls that groups such as Handgun Control, Inc. (HCI) claim are the essence of a sensible gun policy: mandatory safety training, licenses which must be renewed every few years, fingerprinting, background checks, disqualifications for people with records of alcoholism or drug abuse, and a months-long application/cooling-off period.[257] Although every one of these HCI-backed controls is also backed by the National Rifle Association and by other advocates of concealed carry reform, HCI rejects any idea that concealed carry reform can form the basis of any kind of compromise regarding gun control. As HCI Chair Sarah Brady put it, "To me, the only reason for guns in civilian hands is for sporting purposes."[258] Brady's husband, former White House press secretary, Jim Brady, answered a reporter's question about whether any handguns were defensible: "For target shooting, that's okay. Get a license and go to the range. For defense of the home, that's why we have police departments."[259]

The views of HCI's current leaders are consistent with those of its patriarch, the late Nelson "Pete" Shields, who advised: "As police officers have said for years, the best defense against injury is to put up no defense—give them what they want, or run. This may not be 'macho,' but it can keep you alive."[260] HCI's advice may be prudent when a victim believes a mugger's promise that handing over the wallet will speedily end the encounter. But should Mr. Shield's philosophy become the binding legal rule for potential rape victims? For stalking victims? For persons who reasonably fear that the mugger will kill them, so as to eliminate a witness?

256. *See supra* subpart IV.A.
257. *See supra* Part II.
258. Tom Jackson, *Keeping the Battle Alive*, TAMPA TRIB., Oct. 21, 1993, at 1, 6.
259. James Brady, *In Step With: James Brady*, PARADE MAGAZINE, June 26, 1994, at 18 (The author is coincidentally named James Brady.). Brady further argues that having a firearm to defend one's home is "six times more likely to kill a loved one." *Id.*
260. PETE SHIELDS, GUNS DON'T DIE, PEOPLE DO 124-25 (1981).

HCI has a right to participate in the political process and to advance laws based on the belief that civilians should not have guns for defensive purposes. The gun control debate would be more productive, however, if HCI's moral intuition were not subsumed to the implausible claim that the very laws which HCI considers perfect for determining who may buy a gun suddenly become hopelessly flawed when used to determine who may carry a gun.

V. DOMESTIC VIOLENCE AND OTHER IMMINENT PERILS

Regardless of how the general issue regarding concealed carry reform is resolved, one law deserves consideration for immediate enactment in every jurisdiction in the country: that stalking victims, domestic violence victims, and other persons who are in immediate peril may carry a firearm, without a need to go through the carry permit application process. Such a law is already in effect in California. It states:

> A violation of Section 12025 is justifiable when a person who possesses a firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis for a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to his or her life or safety.[261]

The California law reflects the reality that, even in a jurisdiction where a sheriff may appreciate the need of citizens to protect themselves, the carry permit application process may take weeks or months. When a stalker may attack within hours, a six-week delay may be fatal. The California law is also carefully bounded because it does not allow a person to carry a gun simply because of vague, subjective fears. The California law applies only when an independent governmental body—a court—has found a particular threat to the victim, a threat sufficient to warrant a restraining order. Notably, the California law applies only so long as the restraining order remains in effect. Once the threat has passed, so does the exemption from the normal carry permit law.[262]

Ohio has an even broader exemption from the need for a carry permit. Under the Ohio statute, any merchant who is engaged in or going to or from his or her business may also carry a firearm for defensive purposes without obtaining a permit. In addition, any other person who reasonably has cause to fear criminal attack may carry.[263]

261. CAL. PENAL CODE § 12025.5 (West 1992 & Supp. 1995).
262. *Id.*
263. OHIO REV. CODE ANN. § 2923.12(C) (Anderson 1993 & Supp. 1994). The law is discussed in Ohio v. Assad, 614 N.E.2d 772 (Ohio Ct. App. 1992) (reversing conviction of merchant who carried a gun).

Because criminals will carry anyway, whether or not they are being threatened, the Ohio law deserves consideration by legislatures that want to avoid getting into the detail of creating a licensing system. Even in states which do have a licensing system, the California and Ohio statutes may be appropriate exceptions to the requirement to obtain a license.

VI. FEDERAL CARRY PERMITS?

At the state or federal level, a law similar to that of the state of Washington—clear and unambiguous as to who may obtain a permit, and clearly excluding people who are threats to public safety—ought to satisfy gun control advocates whose goal is keeping handguns out of the wrong hands, rather than banning handguns entirely. Consistent with general principles of federalism, carry reform laws might best be adopted by the individual states, rather than imposed by the federal government. As the fact that concealed carry reform protects rather than endangers public safety becomes clearer with the experience of various states, the remaining nonreform states will have the option of copying or refining successful carry reforms.

Nonetheless, a national concealed weapon permit would facilitate interstate travel by simplifying the permit status of a person who travels from state to state. The supporters of a national background check have no problem with the federal government imposing on the states a handgun purchase background check or waiting period. Accordingly, gun control advocates would be inconsistent to claim that a national carry permit law using a "Brady Bill" type background check would violate states' rights.

National carry reform would prevent such a situation as recently occurred in New Jersey. A North Carolina man was driving through New Jersey when he was stopped and his car searched. The New Jersey police arrested the man and confiscated his gun. The arrest was based on the theory that anyone who sets foot (or tire) in New Jersey, for even a moment, may not possess any firearm unless the person has a New Jersey gun permit.[264]

National carry reform legislation could, however, be an imposition on (1) those states that have no concealed weapon statute, such as Vermont, or (2) states whose concealed carry statutes only apply in cities and towns, such as Idaho. Accordingly, a federal reform statute could require states to

264. Tom Joyce, *Price of Freedom: North Carolina Man Gives up Gun He Can Carry at Home*, GLOUCESTER COUNTY TIMES (N.J.), Apr. 6, 1993, at 15. The man accepted a plea bargain in which he agreed to probation, making regular visits to a New Jersey probation officer, and forfeiting his handgun. Allegedly, the man had been speeding when he was stopped on the New Jersey Turnpike. Having no basis for any suspicion, the arresting officer asked the man if he had any weapons in the car. Being an honest person, the man admitted that he did. *Id.*

issue permits, but need not prevent states from allowing citizens to carry in their own states without a permit. Alternatively, at least as a starting point, each state could be required to honor every other state's concealed handgun permits, just as drivers licenses are recognized by all states.

Advocates of national carry reform legislation should recognize the inherent risks that the sometimes more restrictive training and misdemeanor disqualification portions of carry permit laws might be expanded into conditions for mere possession of handguns. Given the current national administration's fixation with gun control, the potential for such restrictions being enacted at the national level is much greater than the prospects for similar restrictions at the state level.

A federal carry permit could additionally lead to partial federal registration of gun owners, because everyone applying for a permit would be on a federal list. State-level carry reform laws also create a risk of centralized record-keeping of gun owners. State or federal carry reform could minimize the centralization of data by having licenses issued by city or county officials and forbidding the consolidation of the local government data. But, as the computer hacker saying goes, "Data want to be free." Any system of licensing or permitting any activity relating to individual gun owners thus necessarily creates risks of government registration, especially as sharing of information in computer data bases becomes easier.

A law requiring states to issue carry permits to licensed, trained citizens after a background check would probably not violate principles of federalism. First of all, under section five of the Fourteenth Amendment of the Constitution, Congress has the power to enact laws that require states to respect fundamental civil rights.[265] Accordingly, Congress would have the power to pass remedial legislation regarding states whose carry laws infringe the Second-Amendment right "to keep *and bear* arms." This remedial power would also extend to the separate right to own and carry handguns for self-defense, which recent scholarship suggests is contained within the Ninth Amendment.[266] Because Congress has repeatedly determined that the Second Amendment guarantees an individual right,[267] and because the

265. The Fourteenth Amendment states in part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. U.S. CONST. amend. XIV, § 1.

Furthermore, "[T]he Congress shall have power to enforce, by appropriate legislation, the provisions of this article." *Id.* § 5.

266. *E.g.*, Nicholas J. Johnson, *Beyond the Second Amendment: An Individual Right to Arms Viewed Through the Ninth Amendment*, 24 RUTGERS L.J. 1 (1992).

267. When introducing the Second Amendment and other guarantees in the Bill of Rights, Congressman James Madison explained that the amendments "relate first to private rights." James Madison, 12 PAPERS 193-94 (1979). Madison praised the major popular analysis of the Second Amendment, which explained, "the people are confirmed . . . in their

history of the Fourteenth Amendment shows that it was adopted with the expressed intent to end state infringements on the right to bear arms,[268] congressional use of the Fourteenth Amendment to enforce the Second Amendment would pose few constitutional problems.

In addition, Article IV of the Constitution guarantees that "[t]he Citizens of each State shall be entitled to all Privileges and Immunities of citizens in the several States," and Congress is empowered to enforce the guarantee.[269] Precedent suggests that the right to carry a firearm for protection is within the scope of the "privileges and immunities" clause.[270]

Although the modern American debate over the carrying of defensive firearms dates from Florida's 1987 reform statute,[271] the issue is much older. The founders of the American republic were well aware of the severe gun control laws in despotisms such as France, especially regarding the carrying of firearms. Although monarchists defended these laws on the grounds of public safety, the founders cynically viewed such laws as merely a prop for authoritarian rule. John Adams and Thomas Jefferson, who disagreed on many issues, both cited with approval the following passage from Cesare Beccaria's 1764 book, *On Crimes and Punishments*:

right to keep and bear their private arms." *Id.* at 239-40, 257; Tench Coxe, FED. GAZETTE, June 18, 1789, at 2.

In 1982, the Senate Subcommittee on the Constitution investigated historical evidence, and unanimously concluded that the Second Amendment guaranteed an individual right to arms that was made enforceable against the states by the Fourteenth Amendment. Staff of Senate Comm. on the Judiciary, 97th Cong., 2d Sess., Report on The Right to Keep and Bear Arms 11 (Comm. Print 1982) (unanimous report). In 1986, Congress enacted the Firearm Owners' Protection Act, whose preamble stated: "The Congress finds that—(1) the rights of citizens—(A) to keep and bear arms under the Second Amendment to the United States Constitution [and Fourth, Fifth, Ninth, and Tenth Amendment rights]" required additional protection, which Congress was enacting. In enacting the Property Requisition Act of 1941 to meet defense needs for the global conflict, Congress specifically forbade the requisitioning or registration of firearms. In enacting the Fourteenth Amendment, Congress made frequent references to its desire to prevent state governments from interfering with the right to freedmen to keep and bear arms. *See* Stephen P. Halbrook, *Congress Interprets the Second Amendment: Declarations of a Coequal Branch on the Individual Right to Keep and Bear Arms*, 62 TENN. L. REV. 597 (1995).

268. Michael K. Curtis, NO STATE SHALL ABRIDGE: THE FOURTEENTH AMENDMENT AND THE BILL OF RIGHTS 52-53, 56, 72, 88, 104, 140-41, 164 (1986).

269. U.S. CONST. art. IV, § 2, cl. 1.

270. In the notorious but never overruled *Dred Scott* decision, Chief Justice Taney asserted the "absurdity" of the idea that a black man had equal rights with a white man under the United States Constitution by listing the results that would stem from such a decision. Blacks would be free to travel wherever they wished "without pass or passport," would enjoy "full liberty of speech in public and in private," and would be allowed "to hold public meetings upon political affairs, and to keep and carry arms wherever they went." Dred Scott v. Sandford, 60 U.S. 393, 417 (1856).

271. *See supra* subpart II.B.

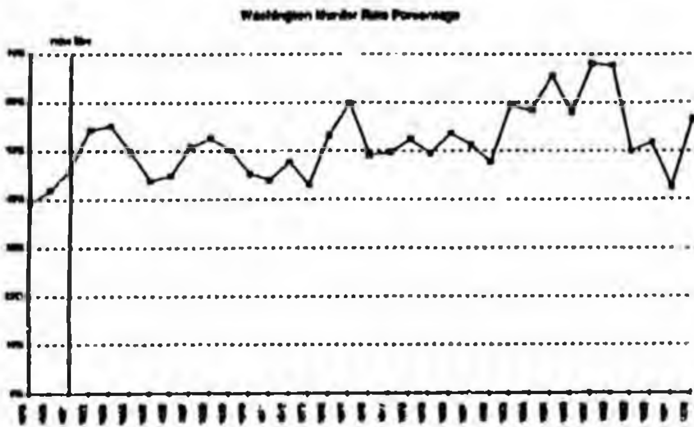
> False is the idea of utility that sacrifices a thousand real advantages for one imaginary or trifling inconvenience; that would take fire from men because it burns, and water because one may drown in it; that has no remedy for evils, except destruction. The laws that forbid the carrying of arms are laws of such a nature. They disarm those only who are neither inclined nor determined to commit crimes. Can it be supposed that those who have the courage to violate the most sacred laws of humanity, the most important of the code, will respect the less important and arbitrary ones, which can be violated with ease and impunity, and which, if strictly obeyed, would put an end to personal liberty—so dear to men, so dear to the enlightened legislator—and subject innocent persons to all the vexations that the guilty alone ought to suffer? Such laws make things worse for the assaulted and better for the assailants; they serve rather to encourage than to prevent homicides, for an unarmed man may be attacked with greater confidence than an armed man. They ought to be designated as laws not preventative but fearful of crimes, produced by the tumultuous impression of a few isolated facts, and not by thoughtful consideration of the inconveniences and advantages of a universal decree.[272]

Whether or not concealed carry reform becomes an important issue before Congress, the issue will continue to arise before state legislatures. Concealed carry reform does not turn otherwise law-abiding citizens into hot-tempered murderous psychopaths. To the contrary, the evidence shows that concealed carry reform is sometimes associated with saving lives; and where it does not appear to have done any good, it at least did no harm.

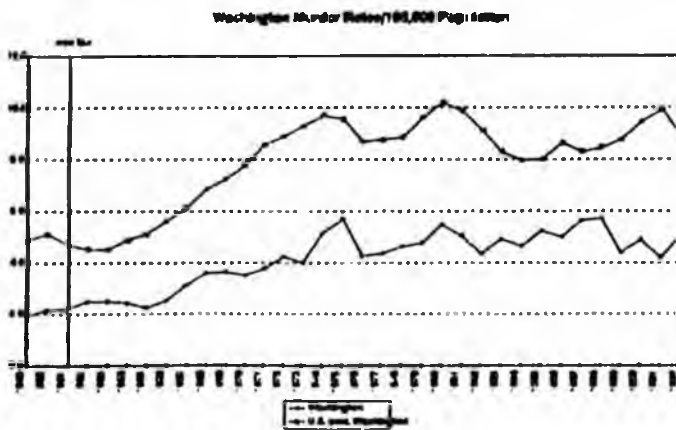
272. CESARE BECCARIA, ON CRIMES AND PUNISHMENTS 87-88 (Henry Paolucci trans., 1963) (1764). Beccaria is generally regarded as the founder of criminology. Adams quoted Beccaria's analysis at the opening of the Boston Massacre trial. Kates, *supra* note 203, at 234 n.132.

APPENDIX: STATE GRAPHS

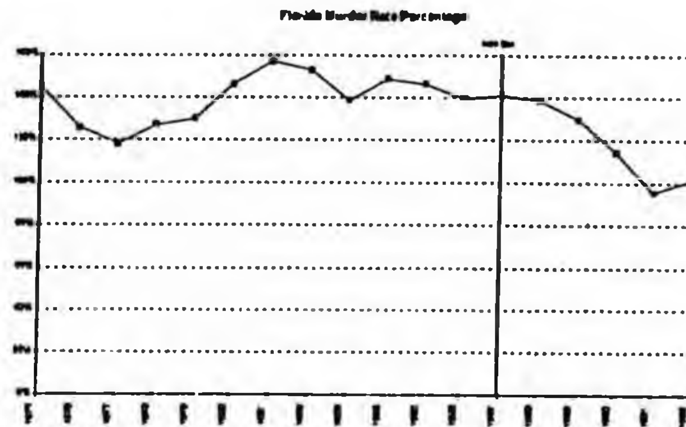
GRAPH 1



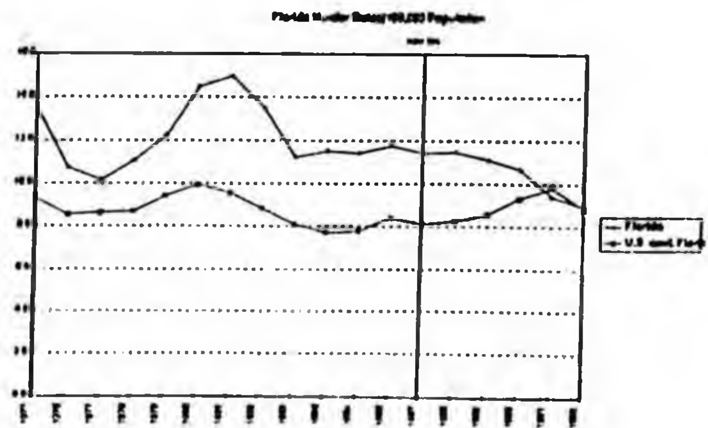
GRAPH 2



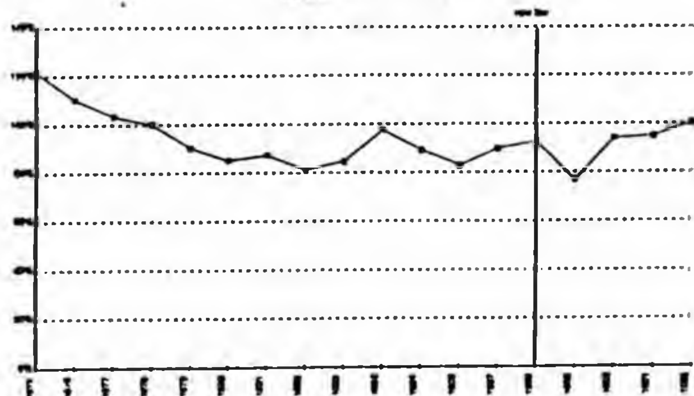
GRAPH 3



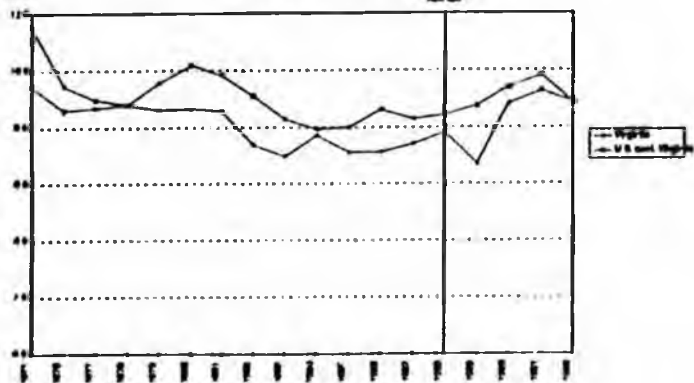
GRAPH 4



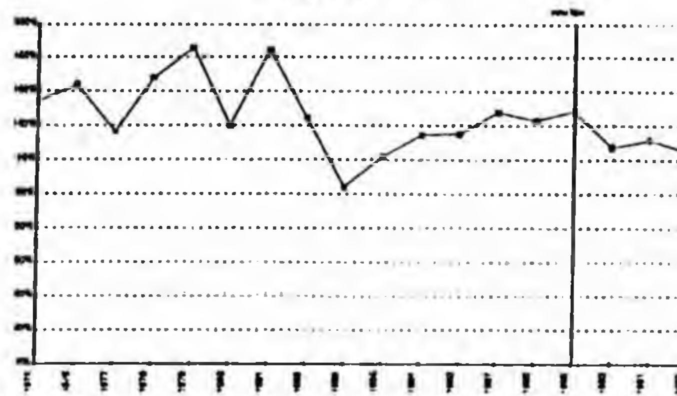
GRAPH 5



GRAPH 6



GRAPH 7



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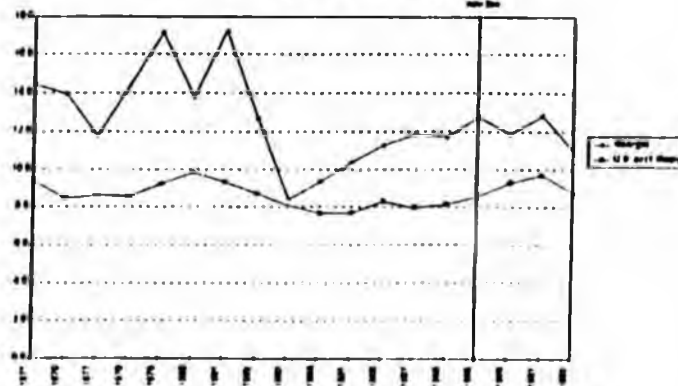

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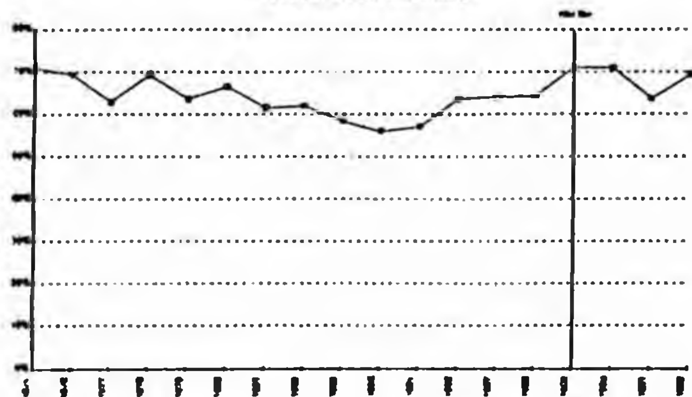

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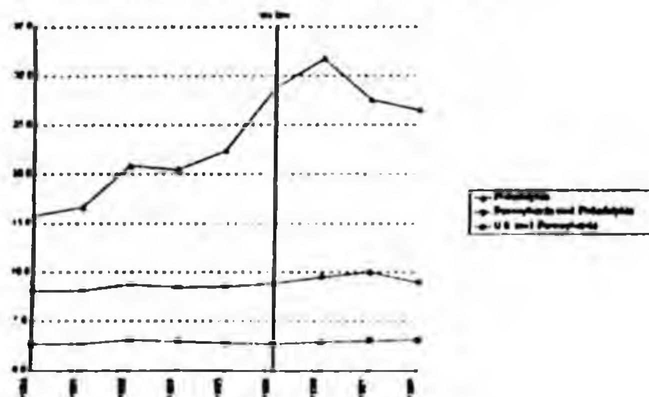

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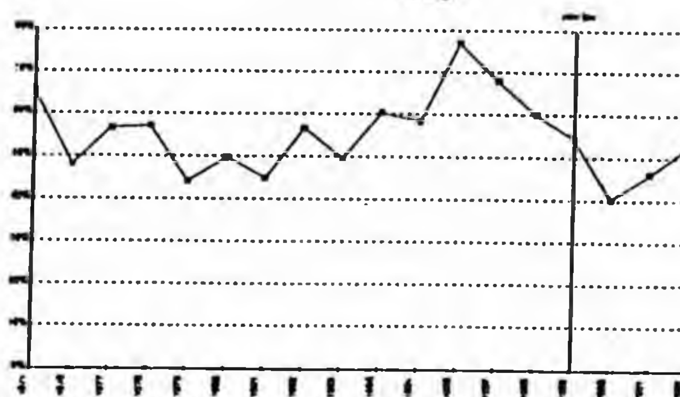

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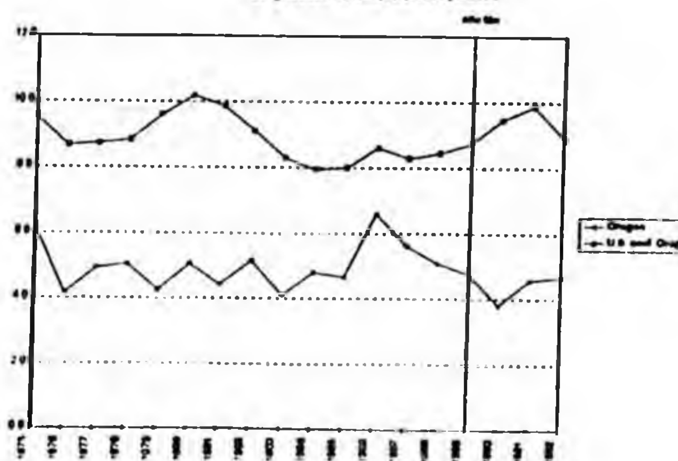

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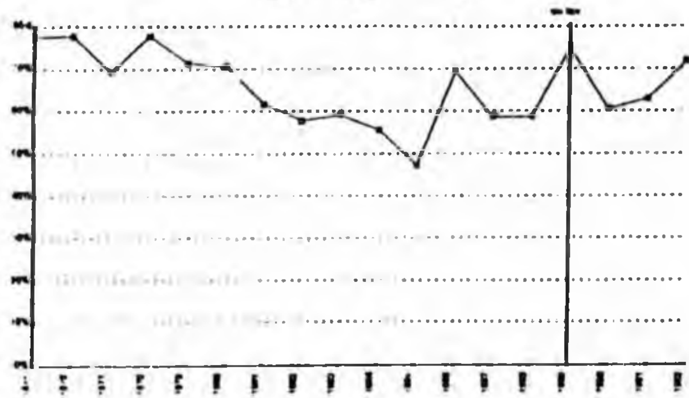
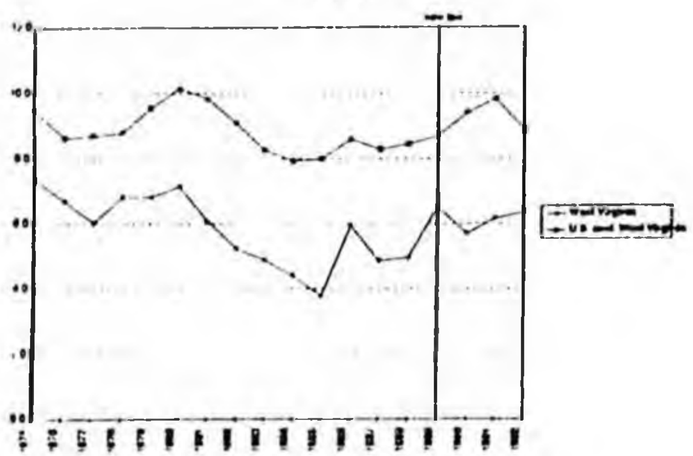
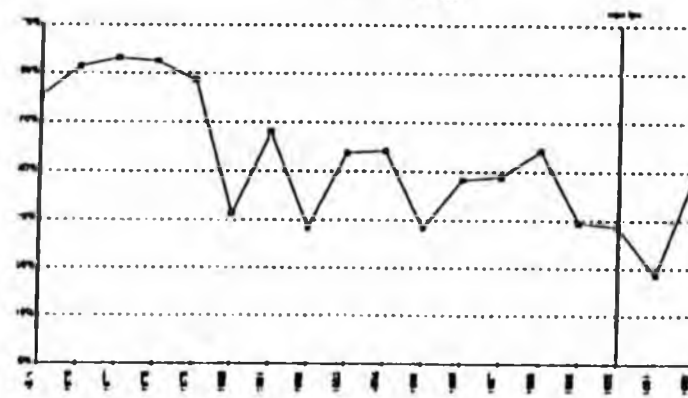


GRAPH 14



GRAPH 15



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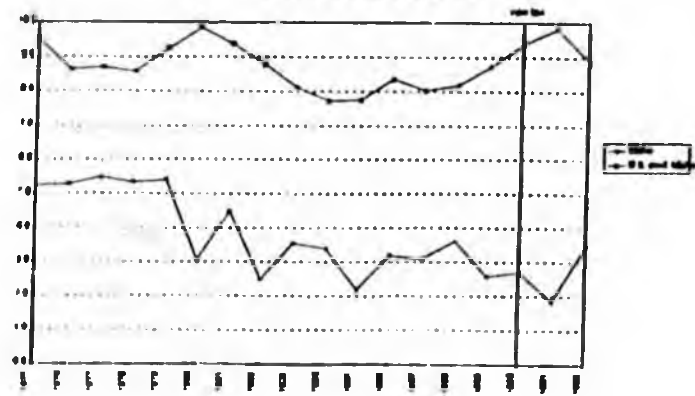
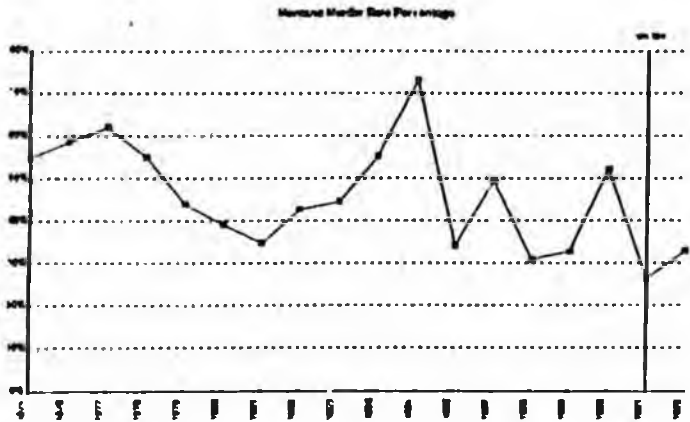
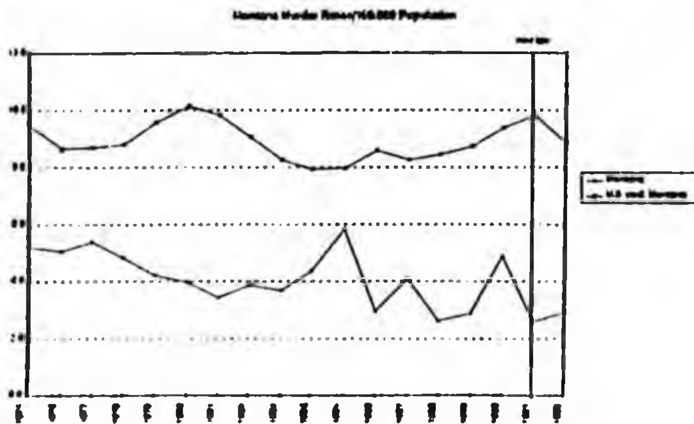


GRAPH 17



GRAPH 18



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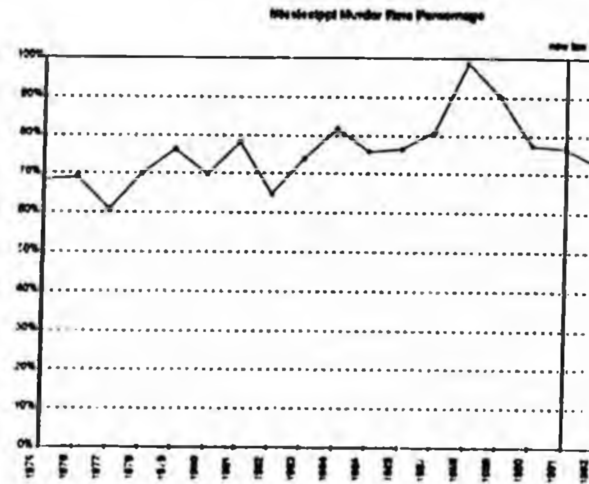
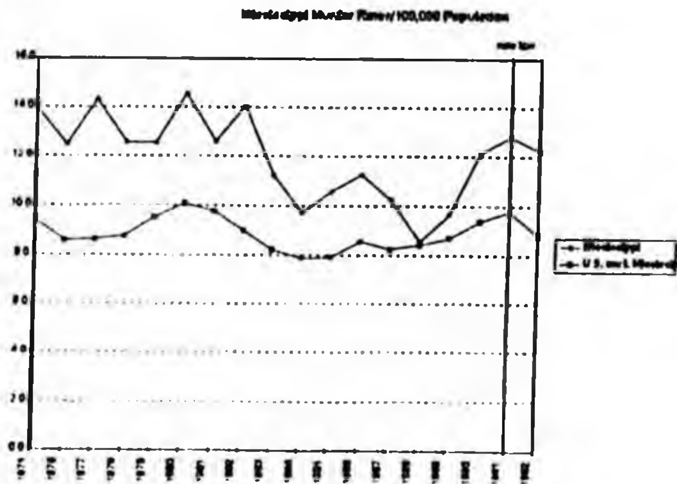


GRAPH 20



6

Fact Sheet

National Rifle Association of America • Institute for Legislative Action • Research & Information Division
11250 Waples Mill Road • Fairfax, VA 22030 • 703-267-1170 • http://www.nra.org

1/27/97

The Right To Carry

ASK most Americans today, and they'll tell you that they, not government, are the best guarantors of their lives, liberty and happiness. In back-to-back elections in 1994 and 1996, a majority of voters cast ballots for candidates who support restoring the full range of individual citizens' traditional rights, and returning government to the limited role prescribed for it by the Constitution. It has been some time coming, but the day has arrived, much to the dismay of those who believe that big government should only get bigger, wielding more and more control over every American's personal affairs, and commandeering a greater share of every American's rights and responsibilities.

Where the right to keep and bear arms is concerned, nothing so clearly represents the will of the American people as the right-to-carry movement sweeping the nation during the last decade. From just a few states only a short time ago, nearly two-thirds of the states now have laws respecting the right of individual citizens to exercise their fundamental right of self-defense by carrying concealed firearms for protection against criminals. Nothing so clearly represents America's new wave of freedom, and nothing so thoroughly disillusions those whose *control*-oriented philosophy is being left behind.[1]

• 31 states have right-to-carry laws—127 million Americans — nearly half the U.S. population, including 60% of handgun owners — live in right-to-carry states. During the last decade, 22 states have adopted "shall issue" right-to-carry laws. During 1995-1996 alone, 16 states adopted or improved their right-to-carry laws.[2]

• States with right-to-carry laws have lower overall violent crime rates, compared to states without right-to-carry laws — total violent crime is 18% lower, homicide is 21% lower, robbery is 32% lower, and aggravated assault is 11% lower. (FBI)

• In their ground breaking study, Professor John R. Lott, Jr., and David B. Mustard, of the University of Chicago, found that "allowing citizens to carry concealed weapons deters violent crimes and it appears to produce no increase in accidental deaths. If those states which did not have right-to-carry concealed gun provisions had adopted them in 1992, approximately 1,570 murders; 4,177 rapes; and over 60,000 aggravated assaults would have been avoided yearly. . . . [T]he estimated annual gain from allowing concealed handguns is at least $6.214 billion. . . . [W]hen state concealed handgun laws went into effect in a county, murders fell by 8.5 percent, and rapes and aggravated assaults fell by 5 and 7 percent."[3]

• In Florida, the homicide, firearm homicide, and handgun homicide rates have decreased 36%, 37%, and 41%, respectively, since its 1987 carry law. During the same period, the national homicide rate decreased 0.4% while the national firearm and handgun homicide rates increased 15% and 24%, respectively. (FBI) Florida carry license holders are more law-abiding than the general public. Only 0.019% of licenses issued through Nov. 30, 1996 (72 out of 383,452) have been revoked because licensees committed firearm crimes.[4] In an official correspondence to the governor and other state officials, Florida Dept. of Law Enforcement Commissioner James T. Moore stated that "From a law enforcement perspective, the licensing process has not resulted in problems in the community from people arming themselves with concealed weapons."[5]

Florida's homicide and total violent crime trends since right-to-carry adopted

As noted, Florida's homicide, firearm-homicide, and handgun-homicide rates have decreased dramatically since the state's right-to-carry law took effect. "Gun control" supporters claim that Florida's 3-day waiting period is responsible for the state's homicide rate decrease, but historically waiting periods have not caused reductions in homicide. Despite having the nation's longest waiting period (15 days), California's homicide rate has risen, and is now 43% higher than the rate for the rest of the country; California's total violent crime rate is more than 50% higher. States subject to the Brady Act's 5-day waiting period have experienced worse violent crime trends than states exempt from that law. (FBI) Anti-gun researcher David McDowell has observed that "waiting periods have no influence on either gun homicides or gun suicides."[8]

"Gun control" supporters contend that Florida's high total violent crime rate "proves" that right-to-carry doesn't work. The fact is, though, that Florida's violent crime rate trend is better than the trend for the country on the whole — since 1987, Florida's rate is up 4.5%; the U.S. rate is up 12.3%. Also, in Florida and nationwide, only 30% of "violent crimes" involve firearms. More than 93% of violent crimes are aggravated assaults and robberies, and firearms are used in only 22% of aggravated assaults in Florida (23% nationwide), and in 39% of robberies in Florida (41% nationwide). (FBI)

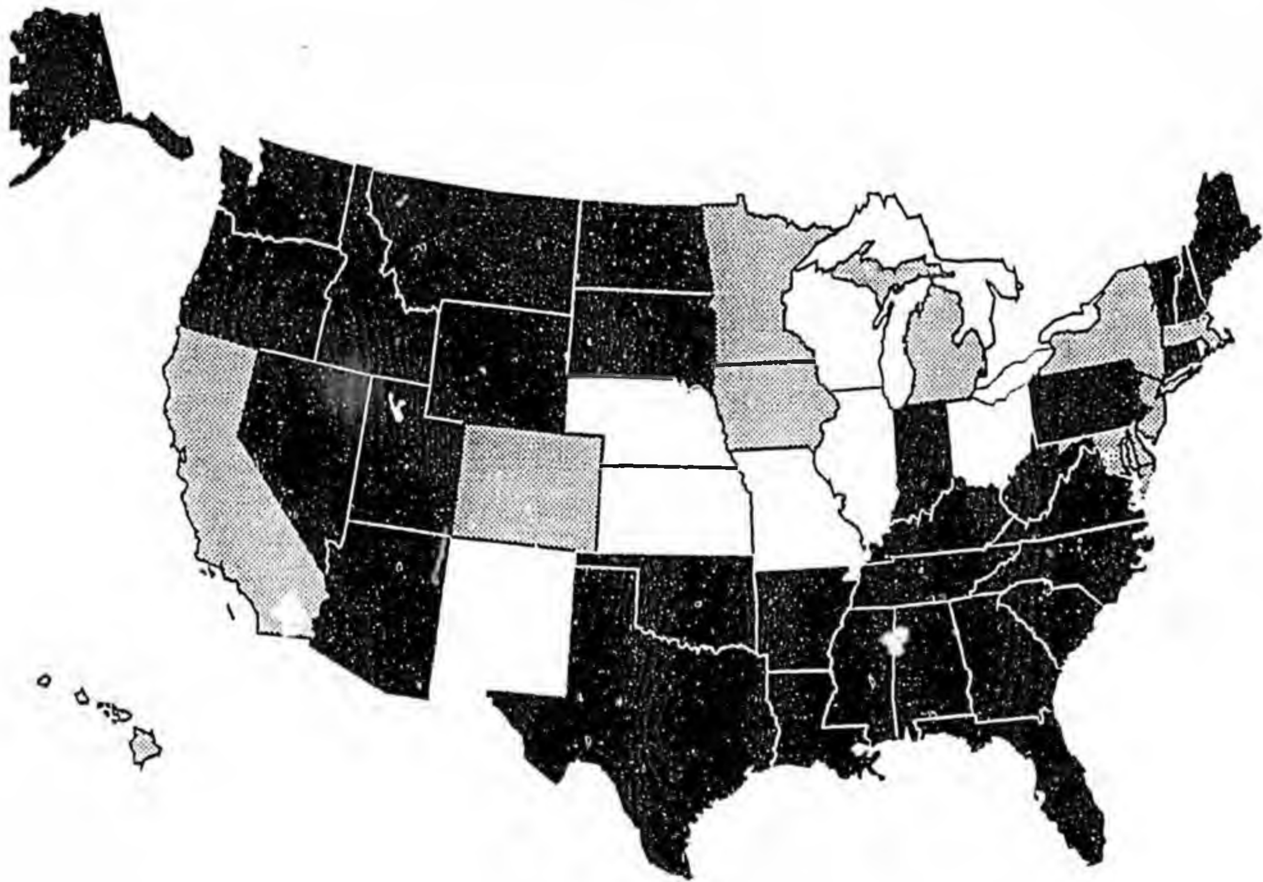
The University of Maryland "study" -- using your money to fund anti-gun "research"

In March 1995, David McDowell and some colleagues released a "study"[9] paid for with *taxpayers' money* by the federal Centers for Disease Control and Prevention (CDC), which regularly uses tax dollars to fund anti-gun "research." (Legislation to stop the CDC's misuse of funds has been proposed in Congress.) The "study" claimed gun homicide rates increased in Miami, Jacksonville and Tampa after Florida's carry law took effect. Florida Dept. of Law Enforcement Commissioner James T. Moore has said that he doubts the researchers' figures.[10] For good reason: total homicide rates declined 10%, 18% and 20%, respectively, in those metropolitan areas, from 1987 until 1993, the latest available data when the study was released. (FBI)

Through 1995, the Florida city trends are as follows: Two-thirds of Florida cities of 10,000 or more population have experienced decreases in their homicide rates since Florida's carry law took effect, 1 out of 3 experiencing a 100% reduction in homicide, having had no homicides in 1995 (improved from 1-in-4 during 1994). Approximately 20% of cities have experienced increases. Eight of Florida's ten largest cities have experienced homicide rate decreases since 1987: Jacksonville - down 46%, Miami - down 13%, Tampa - down 24%, St. Petersburg - up 12%, Orlando - down 41%, Ft. Lauderdale - down 53%, Tallahassee - up 36%. Hollyw d - down 30%, Clearwater - down 21% and Miami Beach - down 93%. (FBI)

McDowell, et al., came up with their figures by calculating Jacksonville and Tampa homicide trends from the early 1970s, when homicide rates were lower than today, to create the false impression that Florida's 1987 carry law caused homicide to rise. Then they calculated Miami's trend from 1983 forward, since homicide rates before 1983 were higher, and their inclusion in the comparison would have shown that the city's homicide rate decreased. None of the homicides they studied were committed by license holders, and no distinction was made between homicides that occurred in situations where a license would be required to carry a firearm, and other homicides. McDowell's brand of math comes as no surprise. In a previous study, he claimed Washington, D.C.'s homicide rate decreased after its handgun ban, which took effect in 1977. In reality, D.C.'s homicide rate tripled after the ban. (FBI)

Right-to-Carry Map of the U.S.
January 1997



- ■ Right-to-Carry States
- ▫ States w. restrictive permit systems
- □ States with no permit, and restrictive carrying laws

The police are not obligated to protect citizens

Courts have held that the police are under no obligation to provide protection to individual citizens. In *Warren v. District of Columbia*,[28] the District of Columbia Court of Appeals ruled that "official police personnel and the government employing them are not generally liable to victims of criminal acts for failure to provide adequate police protection . . . this uniformly accepted rule rests upon the fundamental principle that a government and its agents are under no general duty to provide public services, such as police protection, to any particular citizen . . . a publicly maintained police force constitutes a basic governmental service provided to benefit the community at large by promoting public peace, safety and good order." In *Bowers v. DeVito*,[29] the Court of Appeals for the Seventh Circuit ruled that "[T]here is no constitutional right to be protected by the state against being murdered by criminals or madmen."

Handgun Control, Inc's., and other gun-control supporters' views on self-defense

Gun control activists have claimed that women shouldn't resist attackers. Then-Handgun Control, Inc., Chair, the late Pete Shields, advised that, if attacked, people should "put up no defense - give them what they want."[30] According to Dennis Henigan, the director of Handgun Control, Inc.'s Center to Prevent Handgun Violence Legal Action Project, self-defense is "not a federally guaranteed constitutional right."[31] According to anti-gun researchers George D. Newton and Franklin E. Zimring, "women generally are less capable of self-defense and less knowledgeable about firearms."[32]

Gun control supporters cite a small study of King's County (Seattle), Washington, claiming a gun in the home is "43 times more likely" to be used to kill a family member than to kill in self-defense.[33] To reach that ratio, suicides were counted as family member killings, increasing their number more than 500%. Self-defense firearms uses were grossly undercounted by counting only cases in which criminals were killed. In most protective firearms uses, criminals are scared off, captured or non-fatally wounded. The claim that women use handguns to kill few criminals, but are more often killed by criminals with handguns, is misleading for the same reason: criminals are rarely killed in self-defense. Also, the claim is based upon police reports only, excluding fatal shootings ruled self-defense or justifiable by the courts.

Rep. Stearns introduces national right-to-carry reciprocity bill

In January 1997, Rep. Cliff Stearns (R-Fla.) introduced H.R. 339, the Right to Safety and Personal Protection Act, a bill to allow any person with a valid concealed firearm carrying permit or license, issued by a state, to carry a concealed firearm in any other state, as follows: In states that issue concealed firearm permits, each state's laws governing where concealed firearms may be carried would apply within its own borders. In states that do not issue carry permits, a federal "bright-line" standard would permit carrying in places other than police stations; courthouses; public polling places; meetings of state, county, or municipal governing bodies; schools; passenger areas of airports; and certain other locations. H.R. 339 would also apply to the District of Columbia, Puerto Rico and U.S. territories, though D.C. residents, are prohibited from purchasing handguns.

In announcing his bill, Rep. Stearns noted that the Lott/Mustard study showed that right-to-carry laws deter crime. Stearns says that H.R. 339 is needed "to greatly expand the security individuals enjoy in their own states when they travel or simply cross state lines." Under H.R. 339, people who have carry permits issued by their home states would be able to carry lawfully in any other state, under either the laws of the state they are carrying in (if the state issues permits) or under the federal standard (if the state does not issue permits). People who live in states that do not issue permits would be allowed to carry in any state, provided they possess a carry permit issued by any state, under either the state or federal law, as noted.

THE
FOLLOWING
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COPIES

research by award-winning criminologists Gary Kleck and Marc Gertz reveals Americans use guns for self-defense as often as 2.5 million times a year—that's three to five times more often than they are misused by criminals.

THE February 198[illegible] major effort [illegible] firearms in Am[illegible] are used for pr[illegible] tective uses is[illegible] nologist Gary K[illegible] of *American Rifleman*—re[illegible] estimate that nearly one mi[illegible] tion from criminals. The sur[illegible] ducted by Peter Hart Associ[illegible] Alliance Against Violence (NAAV[illegible] 1988, the most sophisticated [illegible] handguns, despite some limitations. [illegible] example, it asked only about pro-tective use of handguns, so that long-gun estimates had to be made based upon various estimates on relative long-gun to handgun protective uses.

Detailed evaluations of the Hart survey—for example, breakdowns by sex, age, ethnicity and [illegible]—were effectively prevented. Published reports by the NAAV excluded all protective uses of handguns by non-owners, a significant exclusion. And, when the NAAV ceased to exist, it turned its files over to the National Coalition to Ban Handguns (now the Coalition to Stop Gun Violence), and the data have effectively vanished from the face of the earth, except for the summary results Kleck was able to obtain from Peter Hart Associates orally.

In addition to calculating how often guns were used for protection, Kleck used the National Crime Victimization Surveys (NCVS) to evaluate the utility of such protective use. Those data clearly indicated that using a gun for protection decreases the likelihood that a violent crime (particularly robbery and assault) will be completed or that the intended victim will be injured, compared to taking some other protective measures or taking no protective measure.

Kleck's analysis was incorporated into his 1991 book, *Point Blank: Guns and Violence in America*, which won the 1993 Michael J. Hindelang Award from the American Society of Criminology—the nation's preeminent criminological professional organization—given "for the book published in the past two to three years that makes the most outstanding contribution to criminology."

Anti-gun criminologists and public-health professionals have been denouncing Kleck's research ever since and relying upon the NCVS surveys to estimate the number of times guns are used for protection.[1] They've done this by attacking the single survey Kleck most relied upon and ignoring the fact that most of the surveys previously used by Kleck would have suggested about three-quarters of a million protective uses of guns (give or take a few hundred thousand). They thus acted as if it was the Hart survey versus the NCVS survey, and they preferred the latter, which would put the figure of protective gun uses in the 60-80,000 range.

The NCVS, however, has a number of serious flaws. Indeed, Kleck has noted that it is an outlier, yielding far lower estimates than any of at least 14 state or national surveys measuring protective gun use. This outlier status undermines its credibility. "The strongest evidence [illegible] virtually all other known estimates [illegible] be sufficient to persuade any serious scholar that the NCVS estimate [illegible].

[illegible] The NCVS has many flaws. It was developed [illegible] victimization—getting people to report illegal things which [illegible] people did to them—rather than to get people to admit controversial and possibly illegal things which the *R's [respondents] themselves* [illegible] done to protect themselves." Kleck notes, too, that the "NCVS is a nonanonymous national survey conducted by a branch of the federal government [illegible] behalf of the U.S. Department of Justice, the law enforcement branch of the federal government." With the ownership, carrying and often the use of guns for protection possibly illegal, gun users would be discouraged from reporting too much such use to government personnel.[2] In addition, while the NCVS may provide the best measure of criminal victimization, respondents are never directly asked whether they used a gun for protection. Respondents in the NCVS "are not even asked the general self-protection question unless they already independently indicated

FREQ

Survey:[1]	Field	Bordua	Cambridge Report	Decision Making Information-a	Decision Informat
Area:	California	Illinois	U.S.	U.S.	U.S.
Year of Interviews:	1976	1977	1978	1978	1978
Populations Covered:	NIA	NIA	NIA	RV	RV
Gun Type Covered:	Handguns	All guns	Handguns	All guns	All guns
Recall Period:	Ever/1,2 yrs.	Ever	Ever	Ever	Ever
Excluded Uses Against Animals?	No	No	No	No	Yes
Excluded Military, Police Uses?	Yes	No	No	Yes	Yes
Defensive Question Asked of:	AR	AR	Protection Handgun Owners	AR	AR
Defensive Question Refers To:	Res.	Res.	Res.	Household	Househo
%Who Used:	1.4/3/8.6[2]	5.0	18	15	7
%Who Fired Gun:	2.9	n.a.	12	6	n.a.
Implied Number of Defensive Gun Uses[3]	3,052,717	1,414,544	n.a.	2,141,512	1,098,40

Footnotes

1-Field Institute, Of The Findings Of A Study Of Handgun Ownership and Access Among A Cross Section Of The California Adult Public (19
Control (1978); DMI (Decision/Making/Information), Attitudes of the American Electorate Toward Gun Control (1979); Peter D. Hart Research
Justice (1982); H. Quinley, Memorandum reporting results from Time/CNN Poll of Gun Owners, (1990); Mauser, Gary A., Firearms and Self-D
DIALOG Public Opinion online computer database; Gary Kleck and Marc Gertz, "Armed Resistance to Crime: The Prevalence and Nature of

2-1.4% in past year, 3% in past two years, 8.6% Ever. 3-Estimated annual number of defensive uses of guns of all types against huma
manuscript on file with the School of Criminology and Criminal Justice, Florida State University, Tallahassee, FL).
latter could be defensive uses not overlapping with the former.

NIA - Non-Institutionalized Adults RV - Registered Voters AR - All Respondents

[illegible] Anti-gun scholars such as [illegible] refined survey to reduce [illegible] expected hundreds of [illegible] rather than the NCVS [illegible] 80,000.

Refining the survey [illegible] previous [illegible]. For one thing, some earlier surveys asked whether someone had ever used a gun, making annual estimates [illegible] come by and missing forgotten incidents. So Kleck and Gertz [illegible] two time frames, one year and five years, with the one-year [illegible]. In addition, prior surveys [illegible] household use, rather than individual use. Kleck [illegible] and his survey strongly supports the conclusion, that for a [illegible] by some respondents of what others have done, reluctance to talk about possibly unlawful protective use by other members of the family despite a willingness to talk about one's own—household measures, followed by household projections, dramatically undercount protective gun uses. Some surveys have asked only gun owners about protective use, but many protective uses of guns are by persons who do not own a gun at the time of the survey. This was true in the Hart survey and in the more refined Kleck/Gertz survey. And the Kleck/Gertz survey, unlike any others, asked how many protective uses had occurred, while previous surveys necessitated assuming just one for each affirmative respondent.

The new survey suggests 2.2-2.5 million protective uses of guns each year, of which 1.5-1.9 million incidents involve the use of handguns. While the refinements increased protective gun use dramatically, the reports are still similar to the various other surveys taken over the past two decades, unlike the NCVS, which reports about one-ninth of the protective uses recorded at the low end of the surveys attempting to measure protective gun use. That women account for 46% of the reported self-defense uses of guns suggests to Kleck and Gertz that some possibly less clearly justified protective uses by men are left out; that is, with [illegible]

[illegible] African-Americans [illegible] general population and especially [illegible] owners. [illegible]

[illegible] persons that would leave injured by gun[illegible] than are treated [illegible] in hospitals—unconvincing since most minor injuries [illegible] criminals would not lead them to seek medical care—and then claiming that makes the whole survey indefensible. On the other hand, [illegible] would suggest marksmanship accuracy rate about three [illegible] would be expected and is based on too small a portion [illegible] sample to be deemed reliable. A substantial minority of those [illegible] guns for protection also reported perceiving the situation as [illegible] enough so that a victim might have died if a gun had not been used for protection. As with the injury figure, the keys are the perception of the protective gun user, wishing to justify to himself and the questioner the use of deadly force, and the small numbers in that portion of the sample.

[illegible]ENCY OF DEFENSIVE GUN USE

[illegible]Making [illegible]n-b	Hart	Ohio	Time/CNN	Mauser	Gallup	Gallup	L.A.Times	Tarrance	Kleck/Gertz
	U.S. 1981 RV	Ohio 1982 Residents	U.S. 1989 Firearm Owners	U.S. 1990 Residents	U.S. 1991 NIA	U.S. 1993 NIA	U.S. 1994 NIA	U.S. 1994 NIA	U.S. 1993 NIA
	Handguns 5 years	Handguns Ever	All guns Ever	All guns 5 years	All guns Ever	All guns Ever	All guns Ever	All guns 5 years	All guns 1yr./5yrs.
	Yes	No	No	Yes	No	No	No	Yes	Yes
	Yes	No	Yes	Yes	No	Yes	Yes	Yes	Yes
	AR	Res. in Handgun Households	Gun Owners	AR	Res. in Handgun Households	Gun Owners	All	All	AR
	Household	Res.	Res.	Household	Res.	Res.	Res.	Res./ Household	Res.
	4	6.5	n.a.	3.79	8	11	8[4]	1/2[5]	1.3/3.3
	n.a.	2.6	9-16[6]	n.a.	n.a.	n.a.	n.a.	n.a.	n.a./0.8
	1,797,461	771,043	n.a.	1,487,342	777,153	1,621,377	3,609,682	764,036	2,549,862/ 6,374,655

[illegible]), Bordua, David J., Illinois Law Enforcement Commission, Patterns of Firearms Ownership, Regulation And Use in Illinois (1979); Cambridge Reports, Inc., An Analysis of Public Attitudes Towards Handgun [illegible]ssociates, Inc., Questionnaire used in October 1981 Violence in America Survey, with marginal frequencies (1981); The Ohio Statistical Analysis Center, Ohio Citizen Attitudes Concerning Crime and Criminal [illegible]lense. The Canadian Case, Presented at the Annual Meetings of the American Society of Criminology (1993); the Gallup polls of 1991 and 1993, L.A. Times poll, and Tarrance Poll were taken from a search of the [illegible]elf-Defense with a Gun," *Journal of Criminal Law and Criminology* 86(1):150-187 (Fall 1995).

[illegible], excluding uses connected with military or police duties, after any necessary adjustments were made, for U.S., 1993. Adjustments are explained in detail in Kleck, Guns and Self-Defense (1994) (unpublished [illegible]covered only uses outside the home. 5-1% of respondents, 2% of households. 6-9% fired gun for self-protection, 7% used gun to scare someone. An unknown share of the

Res - Respondents N. A. - Not Applicable

Research by award-winning criminologist Gary Kleck and Marc Gertz reveals Americans use guns for self-defense as often as 2.5 million times a year—that's three to five times more often than they are misused by criminals.

The February 1988 issue of *Social Problems* published the first major effort actually to measure the protective value of firearms in America by estimating the extent to which guns are used for protection and what the results of attempted protective uses is. That study by Florida State University criminologist Gary Kleck—and summarized in the July 1988 issue of *American Rifleman*—relied upon several national and state surveys to estimate that nearly one million adults each year use firearms for protection from criminals. The survey most relied upon by Prof. Kleck was conducted by Peter Hart Associates for an anti-gun organization, the National Alliance Against Violence (NAAV), since the Hart survey was, as of 1988, the most sophisticated at actually measuring protective uses of handguns, despite some limitations. For example, it asked only about protective use of handguns, so that long-gun estimates had to be made based upon various estimates on relative long-gun to handgun protective use.

Detailed evaluations of the Hart survey—for example, breakdowns by sex, age, ethnicity and the like—were effectively prevented; published reports by the NAAV excluded all protective uses of handguns by non-owners, a significant exclusion. And, when the NAAV ceased to exist, it turned its files over to the National Coalition to Ban Handguns (now the Coalition to Stop Gun Violence), and the data have effectively vanished from the face of the earth, except for the summary results Kleck was able to obtain from Peter Hart Associates orally.

In addition to calculating how often guns were used for protection, Kleck used the National Crime Victimization Surveys (NCVS) to evaluate the utility of such protective use. Those data clearly indicated that using a gun for protection decreases the likelihood that a violent crime (particularly robbery and assault) will be completed or that the intended victim will be injured, compared to taking some other protective measures or taking no protective measure.

Kleck's analysis was incorporated into his 1991 book, *Point Blank: Guns and Violence in America*, which won the 1993 Michael J. Hindelang Award from the American Society of Criminology—the nation's preeminent criminological professional organization—given "for the book published in the past two to three years that makes the most outstanding contribution to criminology."

Anti-gun criminologists and public-health professionals have been denouncing Kleck's research ever since and relying upon the NCVS surveys to estimate the number of times guns are used for protection. They've done this by attacking the single survey Kleck most relied upon and ignoring the fact that most of the surveys previously used by Kleck would have suggested about three-quarters of a million protective uses of guns (give or take a few hundred thousand). They thus acted as if it was the Hart survey versus the NCVS survey, and they preferred the latter, which would put the figure of protective gun uses in the 60-80,000 range.

The NCVS, however, has a number of serious flaws. Indeed, Kleck has noted that it is an outlier, yielding far lower estimates than any of at least 14 state or national surveys measuring protective gun use. This outlier status undermines its credibility. "The strongest evidence that a measurement is inaccurate is that it is inconsistent with many other independent measurements or observations of the same phenomenon . . . the gross inconsistency of the NCVS-based estimates with all other known estimates . . . would be sufficient to persuade any serious scholar that the NCVS estimates are unreliable . . ."

The NCVS has many flaws. It was developed to measure victimization—getting people to report illegal things which other people did to them—rather than "to get people to admit controversial and possibly illegal things which the Rs [respondents] themselves have done" to protect themselves. Kleck notes, too, that the "NCVS is a nonanonymous national survey conducted by a branch of the federal government . . . on behalf of the U.S. Department of Justice, the law enforcement branch of the federal government." With the ownership, carrying and often the use of guns for protection possibly illegal, gun users would be discouraged from reporting too much such use to government personnel.[2] In addition, while the NCVS may provide the best measure of criminal victimization, respondents are never directly asked whether they used a gun for protection. Respondents in the NCVS "are not even asked the general self-protection question unless they already independently indicated

FREQ

Survey:[1]	Field	Bordua	Cambridge Report	Decision Making Information-a	Decision Informat
Area:	California	Illinois	U.S.	U.S.	U.S.
Year of Interviews:	1976	1977	1978	1978	1978
Populations Covered:	NIA	NIA	NIA	RV	RV
Gun Type Covered:	Handguns	All guns	Handguns	All guns	All guns
Recall Period:	Ever/1,2 yrs	Ever	Ever	Ever	Ever
Excluded Uses Against Animals?	No	No	No	No	Yes
Excluded Military, Police Uses?	Yes	No	No	Yes	Yes
Defensive Question Asked of:	AR	AR	Protection Handgun Owners	AR	AR
Defensive Question Refers To:	Res.	Res.	Res.	Household	Househo
%Who Used:	1.4/3/8.6[2]	5.0	18	15	7
%Who Fired Gun:	2.9	n.a.	12	6	n.a.
Implied Number of Defensive Gun Uses[3]	3,052,717	1,414,544	n.a.	2,141,512	1,098,40[illegible]

Footnotes

1 Field Institute, Of The Findings Of A Study Of Handgun Ownership and Access Among A Cross Section [illegible] Control (1978), DMI (Decision Making Information), Attitudes of the American Electorate Toward Gun Control [illegible] [illegible] Gary Kleck and Marc Gertz "Armed Resistance to Crime: The Prevalence and Nature of [illegible]

2 1.4% in past year, 3% in past two years, 8.6% Ever [illegible] 3 Estimated annual number of defensive uses of guns [illegible] manuscript on file with the School of Criminology and Criminal Justice, Florida State University, Tallahassee, FL [illegible] latter could be defensive uses not overlapping with the former.

NIA - Non-Institutionalized Adults RV - Registered Voters AR - All Respondents

that they had been a victim of a crime.

Kleck, too, recognized the flaws in the Hart survey and the other surveys. However, instead of relying upon the NCVS, he and his colleague at Florida State, Marc Gertz, developed a more refined survey questionnaire, with a national sample of nearly 5,000, compared to the 1,000-1,500 normally used in survey research. There was a legitimate question about what would happen if surveys became more refined. Anti-gun scholars such as Phil Cook of Duke University expected a more refined survey to reduce the estimates of protective gun use, but still expected hundreds of thousands of uses, rather than the NCVS's 60-80,000.

Refining the survey meant correcting for previous flaws. For one thing, some earlier surveys asked whether someone had *ever* used a gun, making annual estimates hard to come by, and missing forgotten incidents. So Kleck and Gertz provided two time frames, one year and five years, with the one-year period being better, since less is forgotten. In addition, prior surveys had sometimes asked about household use, rather than individual use. Kleck surmised, and his survey strongly supports the conclusion, that for a variety of reasons—ignorance by some respondents of what others have done, reluctance to talk about possibly unlawful protective use by other members of the family despite a willingness to talk about one's own—household measures, followed by household projections, dramatically undercount protective gun uses. Some surveys have asked only gun owners about protective use, but many protective uses of guns are by persons who do not own a gun at the time of the survey. This was true in the Hart survey and in the more refined Kleck/Gertz survey. And the Kleck/Gertz survey, unlike any others, asked how many protective uses had occurred, while previous surveys necessitated assuming just one for each affirmative respondent.

The new survey suggests 2.2-2.5 million protective uses of guns each year, of which 1.5-1.9 million incidents involve the use of handguns. While the refinements increased protective gun use dramatically, the reports are still similar to the various other surveys taken over the past two decades, unlike the NCVS, which reports about one-ninth of the protective uses recorded at the low end of the surveys attempting to measure protective gun use. That women account for 46% of the reported self-defense uses of guns suggests to Kleck and Gertz that some possibly less clearly justified protective uses by men are left out; that is, with female gun ownership relatively low and men more apt to be in criminal victimization situations, Kleck and Gertz suspect that there may actually be more male protective uses, but that those uses are in the area Cook and others have suspected might be "mutual combat" types of defensive use, where determining who was the initial aggressor could be difficult.

In addition to disproportionate protective use by women relative to their rates of gun ownership, Kleck and Gertz found that a disproportionate share of defenders are African-American or Hispanic compared to the general population and especially compared to gun owners. Additionally, defenders are disproportionately likely to reside in big cities compared to other people.

Just under one quarter of protective gun users said they fired a shot, with half believing they had struck the criminal. The other side tries to refute that by citing how many more persons that would leave injured by gunfire than are treated in hospitals—unconvincing since most minor injuries to criminals would not lead them to seek medical care—and then claiming that makes the whole survey indefensible. On the other hand, it would suggest marksmanship accuracy rate about three times what would be expected and is based on too small a portion of the sample to be deemed reliable. A substantial minority of those using guns for protection also reported perceiving the situation as serious enough so that a victim might have died if a gun had not been used for protection. As with the injury figure, the keys are the perception of the protective gun user, wishing to justify to himself and the questioner the use of deadly force, and the small numbers in that portion of the sample.

JENCY OF DEFENSIVE GUN USE

Making n-b	Hart	Ohio	Time/CNN	Mauser	Gallup	Gallup	L.A.Times	Tarrance	Kleck/Gertz
	U.S. 1981 RV	Ohio 1982 Residents	U.S. 1989 Firearm Owners	U.S. 1990 Residents	U.S. 1991 NIA	U.S. 1993 NIA	U.S. 1994 NIA	U.S. 1994 NIA	U.S. 1993 NIA
	Handguns 5 years	Handguns Ever	All guns Ever	All guns 5 years	All guns Ever	All guns Ever	All guns Ever	All guns 5 years	All guns 1yr./5yrs.
	Yes	No	No	Yes	No	No	No	Yes	Yes
	Yes	No	Yes	Yes	No	Yes	Yes	Yes	Yes
	AR	Res. in Handgun Households	Gun Owners	AR	Res. in Handgun Households	Gun Owners	All	All	AR
	Household	Res.	Res.	Household	Res.	Res.	Res.	Res./ Household	Res.
	4 n.a.	6.5 2.6	n.a. 9-16°	3.79 n.a.	8 n.a.	11 n.a.	8* n.a.	1/2* n.a.	1.3/3.3 n.a./0.8
	1,797,461	771,043	n.a.	1,487,342	777,153	1,621,377	3,609,682	764,036	2,549,862/ 6,374,655

[illegible] Illinois Law Enforcement Commission, Patterns of Firearms Ownership, Regulation And Use in Illinois (1979), Cambridge Reports, Inc., An Analysis of Public Attitudes Towards Handgun [illegible] Questionnaire used in October 1981 Violence in America Survey with marginal frequencies (1981), The Ohio Statistical Analysis Center, Ohio Citizen Attitudes Concerning Crime and Criminal [illegible] The Canadian Case, Presented at the Annual Meetings of the American Society of Criminology (1993), the Gallup polls of 1991 and 1993, L.A. Times poll, and Tarrance Poll were taken from a search of the [illegible] Defense with a Gun," Journal of Criminal Law and Criminology 86(1) 150-187 (Fall 1995)

[illegible] excluding uses connected with military or police duties, after any necessary adjustments were made for U.S., 1993. Adjustments are explained in detail in Kleck, Guns and Self-Defense (1994) (unpublished [illegible] uses outside the home. [illegible] % of respondents, 2% of households [illegible] 6.9% fired gun for self-protection, 7% used gun to scare someone. An unknown share of the

Res - Respondents N. A. - Not Applicable

EDITOR' S NOTE

In 1994, the Clinton/Reno Justice Department provided a grant to the anti-gun Police Foundation to conduct a National Survey of Private Ownership of Firearms, part of which asked about the protective use of guns. Although the survey's findings have not yet been fully analyzed or reviewed by DOJ and outside scholars, preliminary indications are that its projection for protective gun use would fall in the middle of the range of the 14 reported in the Kleck/Gertz article, and be far above those estimates based on analyses of the NCVS.

While Kleck and Gertz recognize that telescoping—remembering as less than a year ago a protective gun use which actually occurred somewhat more—might reduce gun use to 2.1 million incidents annually, they note that their survey also missed some incidents because adolescents were not respondents, and, as a telephone survey, households without telephones would have been excluded. Those households are disproportionately low income persons who are more likely to be crime victims, and thus be in a position to use guns protectively, and rural Americans, who have higher levels of gun ownership and are more distant from the nearest police officer.

As Kleck and Gertz note, whatever the precise figure, protective gun use is far more common than misuse of guns in victimization, particularly since the NCVS reports on the latter exaggerate such use. "[T]he NCVS estimate of 'gun crimes' overstates the number of crimes in which the offender actually used the gun," since the respondents are reporting whether they thought a gun was present, and the "victims are not asked why they thought the offender possessed a gun or if they saw a gun."*

Because Kleck and Gertz used a large sample, their analysis is based on 213 respondents reporting actual gun use for protection.[3] Although the 213 is a large enough sample for projecting annual protective gun use, further breakdowns—fractions of the 213—are more problematic, because the small numbers make details less reliable. Curiously, some critics of the Kleck/Gertz survey have used the admittedly less reliable breakdowns as a basis for rejecting the overall estimate of about 2.5 million protective uses of guns. This would be like rejecting an overall survey on the number of gun-owning households nationally because analyses from the same survey about the nature of low-income, educated, rural unmarried gun-owning households presented some odd possible conclusions.

Guns were most commonly used for protection against burglary, assault and robbery. As was true with the NCVS surveys, using guns for protection is rarely associated with loss of property or injury, and in the few instances where injury occurred, it preceded rather than followed protective gun use. Thus there is no indication that protective gun use provokes criminals to further violence. Contrary to hypotheses by anti-gunners that guns are used protectively more in "easy" circumstances, gun users "were more likely than other victims to face gun-armed criminals and multiple offenders."* And protective gun use—similar to criminal misuse—involves handguns about 80% of the time.

It should be noted that Kleck and Gertz are willing to endorse some restrictive gun laws, if carefully aimed at criminals. "[P]rohibitionist measures," they write, "whether aimed at all guns or just handguns . . . [would] discourage and presumably decrease the frequency of DGU [defensive gun use] among noncriminal crime victims because even minimally effective gun bans would disarm at least some noncriminals. The same would be true of laws which ban gun carrying. In sum, measures that effectively reduce gun availability among the noncriminal majority also would reduce DGUs that otherwise would have saved lives, prevented injuries, thwarted rape attempts, driven off burglars, and helped victims retain their property." As with Kleck's earlier studies, then, the conclusion remains that general efforts to restrict gun availability, inside or outside the home, are likely to be counterproductive in terms of ensuring the safety of the law-abiding citizenry.

Anti-gunners understandably are aghast at the Kleck/Gertz survey, and the ever-increasing evidence that guns are effectively used for protection much more than they are criminally misused. Thus, when HCI's Center to Prevent Handgun Violence decided to show that its disdain for the Second Amendment could almost be matched by its disdain for the First, and it asked the Federal Trade Commission to prohibit ads suggesting handguns were an effective means of protection, they said that Kleck's findings had been denounced in the scientific community. That ignored, of course, the award Kleck had won from the American Society of Criminology. The more denunciatory of the two sources it cited was to a book co-authored by an employee of HCI's Center, with a second co-author a close associate of a second employee of HCI's Center.

More significantly, the *Journal of Criminal Law and Criminology* invited Marvin Wolfgang to submit comments on the Kleck/Gertz study.[4] Prof. Wolfgang is one of the most prominent criminologists in the world. His "round criticism" speaks for itself:

"I am as strong a gun-control advocate as can be found among the criminologists in this country. If I were Mustapha Mond of *Brave New World*, I would eliminate all guns from the civilian population and maybe even from the police. I hate guns—ugly, nasty instruments designed to kill people. . . . What troubles me is the article by Gary Kleck and Marc Gertz. The reason I am troubled is that they have provided an almost clear-cut case of methodologically sound research in support of something I have theoretically opposed for years, namely, the use of a gun in defense against a criminal perpetrator. . . . I have to admit my admiration for the care and caution expressed in this article and this research.

"Can it be true that about two million instances occur each year in which a gun was used as a defensive measure against crime? It is hard to believe. Yet, it is hard to challenge the data collected. We do not have contrary evidence. The National Crime Victim Survey does not contravene this latest research. . . .

"The Kleck and Gertz study impresses me for the caution the authors exercise and the elaborate nuances they examine methodologically. I do not like their conclusions that having a gun can be useful, but I cannot fault their methodology. They have tried earnestly to meet all objections in advance and have done exceedingly well."

Footnotes:

1. They also prefer studies that look exclusively at self-defense killings compared to other gun-related deaths. But, as Kleck and Gertz note, the large number of protective gun uses is "too serious a matter to base conclusions on silly statistics comparing the number of lives taken with guns with the number of criminals killed by victims. Killing a criminal is not a benefit to the victim, but rather a nightmare to be suffered for years afterward." Since only about one-thousandth of protective gun uses involve killing a criminal, "The number of justifiable homicides cannot serve as even a rough index of life-saving gun uses . . . [and] can shed no light on the benefits and costs of keeping guns in the home for protection."

2. Still worse, of course, would be an attempt to measure protective use of guns by relying upon reports to police. Where gun use prevents a crime from being completed, the crime itself is often unreported—indeed, nationally, only about half of victimizations reported to NCVS indicates there was a police report as well. And police rarely ask about, and never systematically record, protective measures taken by victims reporting crimes. Thus a Centers for Disease Control and Prevention-funded study by Arthur Kellermann which reviewed some home-invasion crimes reported to the Atlanta police was not worth the paper the *Journal of the American Medical Association* printed it on.

3. Interestingly, among those most critical of Kleck's analysis, as being based on too small a sample, is Douglas Weil, of Handgun Control's Center to Prevent Handgun Violence. Weil once based an entire article on how NRA members feel about the NRA on a survey including only 102 such persons. Apparently, to HCI, 213 is too few, but 102 is plenty, even if only 30 persons in a survey of that size (about 600 respondents) should have been NRA members, if the sample were honest and randomly selected.

4. Marvin E. Wolfgang, "A Tribute To A View I Have Opposed," *Journal of Criminal Law and Criminology*, 86(1): 188-192 (Fall 1995).

*Gary Kleck and Marc Gertz, "Armed Resistance to Crime: The Prevalence and Nature of Self-Defense with a Gun," *Journal of Criminal Law and Criminology* 86(1):150-187 (Fall 1995).

Copies of this article are available through NRA-ILA Grassroots, (800) 392-8683.

For a copy of the Kleck/Gertz study "Armed Resistance to Crime: The Prevalence and Nature of Self-Defense With a Gun," published by *The Journal of Criminal Law and Criminology* Volume 86, Number 1, Fall 1995, send $5 (shipping and handling) to NRA-Institute for Legislative Action; Grassroots Division; 11250 Waples Mill Road; Fairfax, VA 22030. Please make check payable to NRA/ILA.

11/96 20M

ILA Research & Information Division
Fact Sheet

America's Founding Fathers On the Individual Right to Keep and Bear Arms

Thomas Jefferson, of Virginia:

"No free man shall ever be debarred the use of arms." -- **Proposed Virginia Constitution, 1776**

"Laws that forbid the carrying of arms. . . disarm only those who are neither inclined nor determined to commit crimes. . . Such laws make things worse for the assaulted and better for the assailants; they serve rather to encourage than to prevent homicides, for an unarmed man may be attacked with greater confidence than an armed man." -- **Jefferson's "Commonplace Book," 1774-1776, quoting from On Crimes and Punishment, by criminologist Cesare Beccaria, 1764**

George Mason, of Virginia:

"[W]hen the resolution of enslaving America was formed in Great Britain, the British Parliament was advised by an artful man, who was governor of Pennsylvania, to disarm the people; that it was the best and most effectual way to enslave them; but that they should not do it openly, but weaken them, and let them sink gradually.". . . I ask, who are the militia? They consist now of the whole people, except a few public officers." -- **Virginia's U.S. Constitution ratification convention, 1788**

"That the People have a right to keep and bear Arms; that a well regulated Militia, composed of the Body of the People, trained to arms, is the proper, natural, and safe Defence of a free state." -- Within Mason's declaration of "the essential and unalienable Rights of the People," -- **later adopted by the Virginia ratification convention, 1788**

Samuel Adams, of Massachusetts:

"The said Constitution [shall] be never construed to authorize Congress to infringe the just liberty of the press, or the rights of conscience; or to prevent the people of the United States, who are peaceable citizens, from keeping their own arms." -- **Massachusetts' U.S. Constitution ratification convention, 1788**

William Grayson, of Virginia:

"[A] string of amendments were presented to the lower House; these altogether respected personal liberty." -- **Letter to Patrick Henry, June 12, 1789, referring to the introduction of what became the Bill of Rights**

Richard Henry Lee, of Virginia:

"A militia when properly formed are in fact the people themselves . . . and include all men capable of bearing arms. . . To preserve liberty it is essential that the whole body of people always possess arms... The mind that aims at a select militia, must be influenced by a truly anti-republican principle." -- **Additional Letters From The**

7

State of Alaska

(b) With funds appropriated for that purpose, the commissioner of public safety shall provide grants to nonprofit regional corporations for village public safety officers.

(c) The commissioner of public safety may adopt regulations related to village public safety officers, including minimum standards and training, criteria for community or corporation participation, and the interaction between the Department of Public Safety and village public safety officers. (§ 1 ch 48 SLA 1993)

Article 9. Permit to Carry a Concealed Handgun.

Section
700. Permit to carry a concealed handgun
705. Qualifications to obtain a permit
710. Application for permit to carry a concealed handgun
715. Demonstration of competence with handguns
720. Fees
725. Permit renewal
730. Replacement of permit
735. Suspension of permit
740. Revocation of permit; appeal
745. No liability for issuance of permit or for training
750. Possession and display of permit
755. Places where permittee may not possess a concealed handgun
760. Misuse of a permit
765. Responsibilities of the permittee
770. Access to list of permittees by peace officers
775. Regulations
778. Municipal preemption
780. Prohibition of possession of concealed handguns
785. Procedure for local option elections
790. Definitions

Sec. 18.65.700. Permit to carry a concealed handgun. (a) The department shall issue a permit to carry a concealed handgun to a person who

(1) applies in person at an office of the Alaska State Troopers;

(2) qualifies under AS 18.65.705;

(3) submits a completed application on a form provided by the department, that provides the information required under AS 18.65.705 and 18.65.710 and is executed under oath; new language added p.4 ln 26-29

SEC. 7 p.4 ln 26-29

(4) submits two complete sets of fingerprints on Federal Bureau of Investigation approved fingerprint cards that are of sufficient quality so that the fingerprints may be processed; the fingerprints must be taken by a person, group, or agency approved by the department; the department shall maintain a list of persons, groups, or agencies approved to take fingerprints and shall provide the list to the public upon request;

(5) submits evidence of competence with handguns as provided in AS 18.65.715;

(6) provides two frontal view color photographs of the person taken within the preceding 30 days that include the head and shoulders of the person and are of a size specified by the department;

(7) shows a valid Alaska driver's license or identification card at the time of application;

(8) does not suffer a physical infirmity that prevents the safe handling of a handgun; and

(9) pays the application fee required by AS 18.65.720.

(b) The department shall either approve or reject an application for a permit to carry a concealed handgun under (a) of this section within [15] days of receipt of [permit eligibility information from the Federal Bureau of Investigation or other agency necessary to make a determination concerning] the application. [The department shall request permit eligibility information under this subsection within five days of the receipt of the application.] The department shall notify the applicant in writing of the reason for a rejection.

(c) A person whose application is rejected under this section may appeal the rejection decision to the commissioner. A person may seek judicial review of the decision of the commissioner under AS 44.62.560 — 44.62.570.

(d) A permit issued under (a) of this section is valid for five years from the date of issue. The permit must specify the action types and maximum calibers of handgun described in the permittee's certificate of competency under AS 18.65.715 but may not specifically identify a handgun by make, model, or serial number. (§ 4 ch 67 SLA 1994)

Sec. 18.65.705. Qualifications to obtain a permit. A person is qualified to receive and hold a permit to carry a concealed handgun if the person

(1) is 21 years of age or older;

(2) is eligible to own or possess a firearm under the laws of this state and under federal law;

(3) has not been convicted of and is not currently charged under a complaint, information, indictment, or presentment with a felony under the laws of this state or a similar law of another jurisdiction;

(4) has not been convicted, within the five years immediately preceding the application, of, and is not currently charged under a complaint, information, indictment, or presentment with, any of the following misdemeanor offenses or similar laws of another jurisdiction:

(A) AS 11.41.230, 11.41.250, 11.41.270;

(B) AS 11.46.315, 11.46.320, 11.46.330, 11.46.430, 11.46.484;

(C) AS 11.51.130;

(D) AS 11.56.330, 11.56.350, 11.56.380, 11.56.545, 11.56.700, 11.56.710, 11.56.740, 11.56.780, 11.56.790, 11.56.800, 11.56.805;

(E) AS 11.61.110, 11.61.120, 11.61.210, 11.61.220, 11.61.240; or

(F) AS 11.71.050, 11.71.060;

(5) has not been convicted of two or more class A misdemeanors of this state or similar laws of another jurisdiction within the five years immediately preceding the application;

(6) has not within the 10 years immediately preceding the application been adjudicated a delinquent for a felony offense of this state or another jurisdiction;

(7) is not now suffering, and has not within the five years immediately preceding the application suffered, from a mental illness as defined in AS 47.30.915;

(8) has not been adjudicated as mentally incapacitated by a court of this state, another state, territory, or jurisdiction, or of the United States, unless the guardianship or similar arrangement has been closed or terminated and five years have elapsed since the closure or other termination;

(9) is a resident of the state and has been for the one year immediately preceding the application for a permit;

(10) has not been discharged from the armed forces of the United States under dishonorable conditions;

(11) is not an alien who is residing in the United States illegally or a former citizen of the United States who has renounced the person's citizenship;

(12) is not an unlawful user of, or addicted to, a controlled substance;

(13) is not now the subject of an injunction under AS 25.35.010 — 25.35.020 unless the injunction has been dissolved or has expired;

(14) is not now in and has not in the three years immediately preceding the application been ordered by a court to complete an alcohol treatment program;

(15) is not now in and has not in the three years immediately preceding the application entered a substance abuse treatment program; and

(16) has demonstrated competence with handguns as provided in AS 18.65.715. (§ 4 ch 67 SLA 1994)

Sec. 18.65.710. Application for permit to carry a concealed handgun. (a) The application for a permit to carry a concealed handgun must contain the following information:

(1) the applicant's name, physical residence, mailing address, place and date of birth, physical description, including height, weight, race, hair color, and eye color, Alaska driver's license or identification card number, and the city and state of each place the applicant has resided in the five years immediately preceding the application;

(2) a statement that the applicant qualifies under AS 18.65.705;

(3) a statement that the applicant has been furnished with a copy of AS 18.65.700 — 18.65.790, has read those sections, and understands them;

(4) a statement that the applicant desires a permit to carry a concealed handgun for a lawful purpose, which may include self-defense;

(5) a sworn statement by the applicant that all statements, answers. and attachments to the application are true and complete;

(6) a conspicuous warning that the application is executed under oath and that an applicant who supplies a false statement, answer, or

document, in connection with the application that the applicant does not believe to be true, may be prosecuted for perjury under AS 11.56.200 and, if found guilty, may be punished for violation of a class B felony, and that in such cases the permit shall be revoked and the applicant may be barred from any further application for a permit; and

(7) a statement that the applicant understands that a permit eligibility investigation will be conducted as a part of the application process, that this may involve computerized records searches, and that the applicant authorizes the investigation.

(b) An application under (a) of this section may not inquire of an applicant about or require the submission of information beyond that described in that subsection. As part of an application under (a) of this section, the department may not inquire of an applicant as to any firearms owned by the applicant. (§ 4 ch 67 SLA 1994)

Sec. 18.65.715. Demonstration of competence with handguns. (a) An applicant for a permit to carry a concealed handgun shall provide a certificate of successful completion of a handgun course that is approved by the department. The certificate must state the action type and caliber of handgun or handguns the applicant has demonstrated competence with and that the applicant may be permitted to carry. A permittee may only carry as a concealed handgun an action type of handgun described in the certificate. A permittee may only carry as a concealed handgun the caliber of the action type that the permittee demonstrated competence with or any lesser caliber of the same action type. The handgun course must have been completed within the 12 months immediately preceding the application. The department shall approve a handgun course, including the personal protection course offered by the National Rifle Association, if the course tests the applicant's

(1) knowledge of Alaska law relating to firearms and the use of deadly force;

(2) familiarity with the basic concepts of the safe and responsible use of handguns;

(3) knowledge of self-defense principles; and

(4) physical competence with each action type of handgun the applicant wishes to carry under the permit and the maximum caliber for each action type the applicant wishes to carry under the permit.

(b) At the time the permittee renews a permit under AS 18.65.725, the permittee shall provide a certificate of successful completion of a handgun course approved by the department under (a) of this section. The handgun course required under this subsection must be completed in the 12 months immediately preceding the renewal.

(c) The department may not require a certificate of competence submitted under this section to contain any specifically identifying infor-

mation, including make, model, or serial number, of a handgun with which an applicant or permittee has demonstrated competence.

(d) The department shall maintain a list of approved courses and shall provide the list to the public upon request. (§ 4 ch 67 SLA 1994)

Sec. 18.65.720. Fees. The department shall charge a nonrefundable fee for the processing of the application for and initial issuance of a permit, renewal of a permit, or replacement of a permit. The fees shall be set by regulation and must be based on the actual costs incurred by the department. However, the fee for the processing of an application and initial issuance of a permit may not exceed $125 and the fee for renewal of a permit or replacement of a permit may not exceed $60. (§ 4 ch 67 SLA 1994)

Sec. 18.65.725. Permit renewal. (a) A permittee shall apply in person for renewal of a permit to carry a concealed handgun within 90 days before the expiration of the permit and shall present a complete renewal form provided by the department. The renewal form shall be submitted under oath and must include

(1) any change in the information originally submitted under AS 18.65.710;

(2) a statement that the person remains qualified to receive and hold a permit to carry a concealed handgun under AS 18.65.705;

(3) a certificate of successful completion of a handgun course within the 12 months immediately preceding the renewal;

(4) two frontal view photographs of the person taken within the preceding 30 days that include the head and shoulders of the person and are of a size specified by the department; and

(5) the renewal fee required under AS 18.65.720.

(b) The department shall take a single thumb or fingerprint from the permittee to compare against the fingerprints originally submitted with the application.

(c) A renewal of a permit to carry a concealed handgun submitted on or after the expiration date is subject to a late fee of $25. The department may not accept a renewal for a permit that is submitted more than 30 days after the expiration date of the permit. Nothing in this subsection prohibits the holder of an expired permit from applying for a new permit.

(d) A renewal form under (a) of this section may not inquire of a permittee about, or require the submission of, information beyond that described in (a) of this section. (§ 4 ch 67 SLA 1994)

Sec. 18.65.730. Replacement of permit. The department may replace a permit that the permittee certifies under oath has been lost, stolen, or destroyed, provided the permittee applies in person and

(1) provides two frontal view photographs of the permittee taken within the preceding 30 days that include the head and shoulders and are of a size specified by the department;

(2) submits to the taking of a single thumb or fingerprint by the department to compare against the fingerprint originally submitted with the application; and

(3) pays the replacement fee required under AS 18.65.720. (§ 4 ch 67 SLA 1994)

Sec. 18.65.735. Suspension of permit. (a) The department shall immediately suspend a permit to carry a concealed handgun if a permittee is arrested for or formally charged with a crime that would disqualify the permittee under AS 18.65.705(3) — (4) from being eligible for a permit to carry a concealed handgun or is the subject of an injunction under AS 25.35.010 — 25.35.020. A suspension of a permit remains in effect until the permit is revoked under AS 18.65.740, the department has been notified of a disposition favorable to the defendant or the defendant has been released from custody without being charged, or the injunction under AS 25.35.010 — 25.35.020 is dissolved or expires without being renewed. In this subsection, "disposition favorable to the defendant" means a dismissal by the prosecutor or an adjudication by a court other than a conviction or a suspended imposition of sentence.

(b) A person whose permit is suspended under this section shall immediately surrender the permit to the nearest peace officer. A peace officer receiving a permit under this section shall immediately forward the permit to the department.

(c) The department shall retain a permit suspended under this section until the permit is revoked or returned to the permittee. (§ 4 ch 67 SLA 1994)

Sec. 18.65.740. Revocation of permit; appeal. (a) A permit to carry a concealed handgun shall be immediately revoked by the department when the permittee

(1) becomes disqualified to receive and hold a permit under AS 18.65.705;

(2) is convicted of two class A misdemeanors of this state or similar laws of another jurisdiction within a five-year period if at least one of the convictions occurs after the application;

(3) knowingly supplied a false or fraudulent answer, statement, or document, or made a material misstatement or omission, in connection with an application for a permit or renewal or replacement of a permit.

(b) A person whose permit is revoked under (a) of this section shall immediately surrender the permit to the nearest peace officer. A peace officer receiving a permit under this section shall immediately forward the permit to the department.

(c) A person whose permit is revoked under this section may appeal the revocation decision to the commissioner. A person may seek judicial review of the decision of the commissioner under AS 44.62.560 — 44.62.570.

(d) A person whose permit is revoked may not apply for a permit until at least five years after the revocation. (§ 4 ch 67 SLA 1994)

Sec. 18.65.745. No liability for issuance of permit or for training. (a) The state, and its officers and employees, are not liable by virtue of having issued a permit to carry a concealed handgun for damage or harm caused by the permittee.

(b) A person who provides firearm training to a person who receives a permit under AS 18.65.700 — 18.65.790 is not liable for damage or harm caused by the permittee. (§ 4 ch 67 SLA 1994)

Sec. 18.65.750. Possession and display of permit. (a) A permittee shall carry the permit at all times the permittee carries a concealed handgun. The permittee shall display both the license and other proper identification when asked to do so by a peace officer at any time.

(b) Whenever a permittee who is carrying a concealed handgun is contacted by a peace officer, the permittee shall immediately inform the peace officer that the permittee is carrying a concealed handgun under the permit.

(c) During a contact with a permittee, a peace officer may secure a handgun, or direct that it be secured, during the duration of the contact if the peace officer determines that the action is necessary for the safety of any person, including the peace officer, present. The permittee shall submit to the securing of the handgun.

(d) In this section, "contacted by a peace officer" means stopped, detained, questioned, or addressed in person by the peace officer for an official purpose.

(e) A person who violates (a) of this section is guilty of a violation and upon conviction may be punished by a fine of not more than $100.

(f) A person who violates (b) or (c) of this section is guilty of a class A misdemeanor. (§ 4 ch 67 SLA 1994)

Sec 16 pp 7-8 repealed

Sec. 18.65.755. Places where permittee may not possess a concealed handgun. (a) A permittee may not carry a concealed handgun into

(1) a law enforcement or correctional facility;

(2) or on school grounds or a school bus; in this paragraph, "school grounds" has the meaning given in AS 11.71.900;

(3) a courthouse or a courtroom of this state, unless the permittee

(A) is a judge; or

(B) has been authorized to possess a concealed handgun by a judge presiding at that courthouse or courtroom;

(4) a building housing only state or federal offices or the offices of a political subdivision of the state, except as authorized under (3) of this subsection;

(5) an office of the state, federal government, or of a political subdivision of the state that is not located in a building described in (4) of this subsection;

(6) a passenger loading or unloading area of an airline terminal;

(7) a vessel of the Alaska marine highway system;

(8) a facility providing services to victims of domestic violence or sexual assault;

(9) a residence where notice that carrying a concealed handgun is prohibited has been given by the posting of a conspicuous notice or by oral statement by the resident to the permittee;

(10) a meeting of a business, charitable, or other organization or entity where notice that carrying a concealed handgun is prohibited has been given by the posting of conspicuous notice;

(11) a financial institution; in this paragraph, "financial institution" means a bank, savings bank, savings association, credit union, or other institution regulated by the Department of Commerce and Economic Development under AS 06;

(12) another place where the possession of a deadly weapon or firearm is prohibited by law; or

(13) a municipality or established village that has prohibited the possession of concealed handguns by a permit under AS 18.65.780 — 18.65.785.

(b) In (a) of this section, the posting of a conspicuous notice is satisfied if the notice

(1) is printed in legible English;

(2) is at least 144 square inches in size;

(3) contains the name and address of the person under whose authority the notice is posted; and

(4) is posted at each entrance to the residence or place where a meeting is being held.

(c) In addition to any other penalty provided by law, a person who violates this section is guilty of a class B misdemeanor. (§ 4 ch 67 SLA 1994)

repealed
New language
Sec 16
pp 7-8

repealed
Sec 17
p 8 ln 24

O.K.

Cross references. — For prohibition on possessing a loaded firearm in a place where alcohol is sold for consumption, see AS 11.61.220(a)(2); for prohibition on possession of a firearm when impaired by an intoxicating liquor or controlled substance, see AS 11.61.210(a)(1).

Sec. 18.65.760. Misuse of a permit. (a) The holder of a permit issued under AS 18.65.700 — 18.65.790 may not

(1) alter the permit;

(2) allow another person to use the permit;

(3) possess or display a suspended or revoked permit; or

(4) display an expired permit.

(b) A person who violates (a)(1) — (3) of this section is guilty of a class A misdemeanor.

(c) A person who violates (a)(4) of this section is guilty of a violation and upon conviction may be punished by a fine of not more than $100. (§ 4 ch 67 SLA 1994)

Sec. 18.65.765. Responsibilities of the permittee. (a) The holder of a permit issued under AS 18.65.700 — 18.65.790

(1) shall notify the department of a change in the permittee's address within 30 days;

(2) shall immediately report a lost, stolen, or illegible permit to the department;

(3) shall immediately notify the department if the holder is no longer qualified to hold a permit under AS 18.65.705; and

(4) may only carry a concealed handgun of the action type and caliber the holder has demonstrated competency with or of any lesser caliber of the same action type as authorized in the permit issued under AS 18.65.700.

(b) A person who violates this section is guilty of a violation and upon conviction may be punished by a fine of not more than $100. (§ 4 ch 67 SLA 1994)

Sec. 18.65.770. Access to list of permittees by peace officers. The department shall compile a list of permittees in a manner that allows immediate access to the information by peace officers. The list of permittees and all applications, permits, and renewals are not public records under AS 09.25.110 — 09.25.125 and may only be used for law enforcement purposes. (§ 4 ch 67 SLA 1994)

Sec. 18.65.775. Regulations. The department shall adopt regulations to implement AS 18.65.700 — 18.65.790. This section does not delegate to the department the authority to regulate or restrict the issuing of permits beyond those provisions contained in AS 18.65.700 — 18.65.790. (§ 4 ch 67 SLA 1994)

Sec. 18.65.778. Municipal preemption. A municipality may not restrict the carrying of a concealed handgun by permit under AS 18.65.700 — 18.65.790 except as provided in AS 18.65.780 — 18.65.785. (§ 4 ch 67 SLA 1994)

Sec. 18.65.780. Prohibition of possession of concealed handguns. (a) The following question, appearing alone, may be placed before the voters of a municipality or an established village in accordance with AS 18.65.785:

Shall the possession of concealed handguns by permit in .... (name of municipality or village) be prohibited?

[ ] Yes [ ] No.

(b) If a majority of the voters vote "yes" on the question set out in (a) of this section, the department shall be notified immediately after certification of the results of the election, and so long as the prohibition remains in effect, a person may not possess a concealed handgun with a permit issued under AS 18.65.700 — 18.65.790 in the municipality or the established village. (§ 4 ch 67 SLA 1994)

Sec. 18.65.785. Procedure for local option elections. (a) The local governing body of a municipality, whenever a number of registered voters equal to at least 10 percent of the number of votes cast at the last regular municipal election petition the local governing body to do so, shall place upon a separate ballot at the next regular election or at a special election the question set out in AS 18.65.780 that is the subject of the petition. The local governing body shall conduct the election in accordance with the election ordinance of the municipality.

(b) The lieutenant governor, whenever 10 percent of the registered voters residing within an established village petition the lieutenant governor to do so, shall place upon a separate ballot at a special election the question set out in AS 18.65.780 that is the subject of the petition. The lieutenant governor shall conduct the election in the manner prescribed by AS 15 (Alaska Election Code).

(c) Notwithstanding another provision of law, an election under (a) or (b) of this section relating to the possession of concealed handguns by permit under AS 18.65.780 may not be conducted more than once every 12 months.

(d) AS 29.26.110 — 29.26.160 apply to a petition under (a) of this section in a general law municipality except the

(1) number of required signatures is determined under (a) of this section rather than under AS 29.26.130;

(2) application filed under AS 29.26.110 must contain the question set out under AS 18.65.780 rather than containing an ordinance or resolution;

(3) petition must contain the question set out under AS 18.65.780 rather than material required under AS 29.26.120(a)(1) and (2). (§ 4 ch 67 SLA 1994)

Sec. 18.65.790. Definitions. In AS 18.65.700 — 18.65.790,

(1) "commissioner" means the commissioner of public safety;

(2) "competence" means the ability to place in a life size silhouette target

(A) seven out of 10 shots at seven yards;

(B) six out of 10 shots at 15 yards;

(3) "concealed handgun" means a firearm, that is a pistol or a revolver, and that is covered or enclosed in any manner so that an observer cannot determine that it is a handgun without removing it from that which covers or encloses it or without opening, lifting, or removing that which covers or encloses it; however, "concealed handgun" does not include a shotgun, rifle, derringer or other miniature handgun or a prohibited weapon as defined under AS 11.61.200; in this paragraph,

(A) "derringer" means a handgun that has individual barrels for each cartridge it is capable of firing and lacks a manufacturer's installed trigger guard that completely encircles the trigger and which is part of the frame; and

(B) "miniature handgun" means a handgun that has a barrel length of three and one-half inches or less and lacks a manufacturer's installed trigger guard that completely encircles the trigger and which is part of the frame;

(4) "department" means the Department of Public Safety;

(5) "established village" has the meaning given in AS 04.21.080;

(6) "local governing body" has the meaning given in AS 04.21.080;

(7) "permit" means a permit to carry a concealed handgun issued under AS 18.65.700 — 18.65.790. (§ 4 ch 67 SLA 1994)

Chapter 66. Council on Domestic Violence and Sexual Assault.

Section
10. Council on domestic violence and sexual assault; purpose
20. Membership, terms, vacancies, and disqualification
30. Compensation and expenses
40. Meetings and quorum
50. Duties of the council
60. Qualifications for grants and contracts
900. Definitions

Sec. 18.66.010. Council on domestic violence and sexual assault; purpose. There is established in the Department of Public Safety the Council on Domestic Violence and Sexual Assault. The purpose of the council is to provide for planning and coordination of services to victims of domestic violence or sexual assault or to their

ALASKA State Firearms Laws

ALASKA
(As of May 1995)

PLEASE NOTE: In addition to state laws, the purchase, sale and (in certain circumstances) the possession and interstate transportation of firearms is regulated by the Gun Control Act of 1968 as amended by the Firearms Owners' Protection Act. Also, cities and localities may have their own firearms ordinances in addition to federal and state laws. Details may be obtained by contacting local law enforcement authorities, and by consulting the State Laws and Published Ordinances--Firearms, available from the U. S. Government Printing Office, Washington, D.C. 20402.

QUICK REFERENCE CHART

	Rifles and Shotguns	Handguns
Permit to Purchase	NO	NO
Registration of Firearms	NO	NO
Licensing of Owners	NO	NO
Permit to Carry	NO	YES

STATE CONSTITUTIONAL PROVISION

"A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed. The individual right to keep and bear arms shall not be denied or infringed by the state or political subdivision of the State." Article 1, Section 19.

POSSESSION

No state permit is required to possess a rifle, shotgun or handgun.

It is unlawful for a person convicted of a felony or adjudicated a delinquent minor for conduct that would constitute a felony if committed by an adult to possess a "firearm capable of being concealed on his person" unless a period of 10 years or more has elapsed between the date of the person's unconditional discharge on the prior offense or adjudication of juvenile delinquency.

It is unlawful to knowingly possess a firearm on which the manufacturer's serial number has been removed, covered, altered or destroyed with the intent of rendering the firearm untraceable. A person may not possess a firearm while his physical or men- tal condition is "substantially impaired" as a result of an intoxicating liquor or drug.

Loaded firearms may not be possessed in any place where intoxicating liquor is sold for consumption on the premises. Exempt from this prohibition is the owner or lessee or an employee in the course of his employment for the owner or lessee while on the business premise. A firearm is loaded if the firing chamber, magazine, clip or cylinder of the

firearm contains a cartridge.

An unemancipated minor under 16 years of age may not possess a firearm without the consent of his parent or guardian.

PURCHASE

No state permit is required to purchase a rifle, shotgun or handgun.

It is unlawful to sell or transfer a firearm capable of being concealed on one's person to anyone who has been convicted of a felony. It is an affirmative defense that 10 ybars or more has elapsed since the uncon- ditional discharge on the prior offense.

It is unlawful to knowingly sell or transfer a firearm to a person whose physical or mental condition is "substantially impaired" as a result of an intoxicating liquor or drug.

CARRYING

A person can obtain a permit to carry a con- cealed handgun if the person (1) is 21 years of age or older; (2) is eligible to own or possess a firearm (SEE POSSESSION); (3) is not currently charged with a felony; (4) has not been convicted within 5 years and is not currently charged with a misdemeanor offense such as: assault, battery, reckless endangerment, or stalking; (5) has not suffered within 5 years and is not currently suffering from a mental illness; (6) dishonorably discharged from the armed forces; (7) is not an illegal alien; (8) not currently or has not within 3 years been ordered by a court to complete an alcohol treatment or substance abuse program; (9) is not under a restraining order unless the injunction has been dissolved or has expired (10) has not been convicted of two or more class A misdemeanors within the preceding 5 years; (11) is not an unlawful user of, or addicted to, a controlled substance; (12) has demonstrated competence with handguns.

It is unlawful to possess a handgun concealed on the person. A handgun is concealed if it is "covered or enclosed in any manner so that an observer cannot determine that it is a weapon without removing it from that which covers or encloses it or without opening, lifting or removing that which covers or encloses it." Carrying a handgun in a glove compartment is not considered carrying concealed.

It is a defense to a charge under that paragraph that the person at the time of his possession was: 1) in his dwelling or on property appurtenant to his dwelling or 2) actually engaged in lawful hunting, fishing, trapping, or other lawful outdoor activity that necessarily involves the carrying of a weapon for personal protection 3) the holder of a valid permit to carry a concealed handgun and the possession did not occur in a municipality or established village in which the possession of concealed handguns is prohibited by popular vote.

The Department of Public Safety shall issue a permit to carry a concealed handgun to a person who applies in person

at an office of the Alaska State Troopers and is not prohibited from possessing a handgun. A completed application must be submitted underoath; two complete sets of fingerprints; provide two frontal view color photographs that include the head and shoulders of the person taking within 30 days prior to submitting application. Applicant must be a resident of the state for one year; does not suffer aphysical infirmity that prevents the safe handling of a handgun and pay the nonrefundable application fee which cannot exceed $125.00 and the renewal fee or replacement of a permit may not exceed $60.00.

The Department shall either approve or reject an application within 15 days of receipt of permit eligibility information from the F.B.I. or other agency necessary to make a determination con- cerning the application. The department shall notify the applicant in writing of the reason for the rejection. A person whose application is rejected may appeal to the commissioner. If commissioner rejects the application a person may seek judicial review. A permit is valid for 5 years from the date of issue. The permit must specify the action types and maxim calibers of handgun.

A person shall apply in person for renewal of a permit to carry within 90 days before the expiration of the permit and shall present a complete renewal form under oath. A permit to carry shall be immediately revoked if the permittee becomes disqualified to receive and hold a permit. A person whose permit is revoked may appeal to the commissioner, if commissioner upholds the revocation a person may seek judicial review. If permit is revoked such person cannot apply for a permit until at least 5 years after the revocation.

A permittee shall carry the permit at all times when carrying a concealed handgun. The license and other proper identification must be shown when asked by a peace officer. A permittee may not carry a concealed handgun into (1) a law enforcement or correctional facility; (2) on school grounds or a school bus; (3) a courthouse or courtroom of this state, unless such person has been authorized by a judge or is a judge; (4) an office or building housing only state or federal government, or a political subdivision; (5) an oral statement or where a notice is displayed prohibiting carrying a concealed handgun; (6) a municipality or established village that has prohibited the possession of concealed handguns; (7) financial institution; (8) air terminal area for loading and unloading passengers, (9) Alaska Marine highway system vessel, (10) domestic violence or sexual assault services facility; (1 1)any other place where a deadly weapon is prohibited by law.
It is unlawful to carry a loaded rifle or shotgun in a vehicle.

MACHINE GUNS

A machine gun is defined as a firearm that is capable of shooting more than one shot automatically, without manual reloading, by a single function of the trigger. It is unlawful to manufacture, possess, transport or sell a machine gun unless in accordance with registration under the National Firearms Act.

ANTIQUES AND REPLICAS

Alaska statutes are silent on antique and replica firearms. They are treated as ordinary firearms for possession and carrying purposes.

MISCELLANEOUS

It is unlawful to remove, alter, cover, or destroy the manufacturer's serial number on a firearm with the intent to render the firearm untraceable. It is unlawful to discharge a firearm with reckless disregard of damage to property or risk of physical injury to persons.

It is unlawful to discharge a firearm from a vehicle while the vehicle is being operated.

CAUTION: State firearms laws are subject to frequent change. The above summary is not to be considered as legal advice or a restatement of law. To determine the applicability of these laws to specific situations which you may encounter, you are strongly urged to consult a local attorney.

Compiled by:
NRA Institute for Legislative Action
11250 Waples Mill Road
Fairfax, Virginia 22030

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FISCAL NOTE

STATE OF ALASKA **BILL NO: HB 269**
1997 LEGISLATIVE SESSION

Revision Date: 05/03/97 Dept. Affected: Public Safety
Title: Concealed Handguns BRU: Alaska State Troopers
Component: Detachments
Sponsor: Rep. Vezey
Requestor: House State Affairs **COMPONENT SERIAL NO.** 0799

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS	5.0					
TOTAL OPERATING	**5.0**	**-0-**	**-0-**	**-0-**	**-0-**	**-0-**

CAPITAL	**-0-**	**-0-**	**-0-**	**-0-**	**-0-**	**-0-**

CHANGE IN REVENUES (1005) Revenue Code	**(37.8)**	**(37.8)**	**(37.8)**	**(37.8)**	**(37.8)**	**(37.8)**

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	5.0	5.0	5.0	5.0	5.0	5.0
1005 GF/Program						
1006 GF/MHTIA						
Other						
TOTAL	**5.0**	**5.0**	**5.0**	**5.0**	**5.0**	**5.0**

Estimate of current year (FY 97) impact: $ __________

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)
This bill will have fiscal impact on AST depending on further clarification of some parts and depending on modifications to others. An indeterminate fiscal note is being submitted at this time. Some areas of concern are noted on the attachment.

Unless GF is provided to make up the lost program receipts, AST enforcement efforts will have to be reduced to absorb the loss.

Prepared By: F/Sgt. Robert Gorder Phone 269-5650
Division: Alaska State Troopers Date: 05/03/97

Approved by Commissioner: Ronald L. Otte [signature] Date: 5/3/97
Agency: Department of Public Safety

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Attachment to HB 269 fiscal note.

The areas of greatest fiscal concern are as follows:

1. Changes proposed by this bill in the areas of qualifications, suspension and revocation, domestic violence, nationwide reciprocity, etc. will require DPS to undertake a regulation project to modify existing regulations and add new regulations to administer the new provisions in this bill. The average regulation project costs approximately $5000.00.

3. Provisions outlining national reciprocity will require modification to the statewide information system (APSIN) or will require the creation of a LAN/WAN based information system that can be made accessible to law enforcement agencies statewide, 24 hours a day.

4. Reduction of the permit fee from a maximum of $125.00 (actual fee has been set at $122.00) to a new maximum fee of $99.00 will have an effect on the costs to the division. Currently, the costs to operate the ACHP are just being offset by the revenues collected. Any reduction in the fees will require the division to absorb the shortfall. How much that will be depends on the amount of permits processed. An estimated $23 per permit would have to be absorbed.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO: 5
Bill Verson: CSSB 141 (STA)
(S) Publish Date: 4-3-97

Revision Date: 03/28/97
Title: Concealed Handguns
Sponsor: Sen. Green
Requestor: S.STA

Dept. Affected: Public Safety
BRU: Alaska State Troopers
Component: Detachments
COMPONENT SERIAL NO. 0799

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS	5.0					
TOTAL OPERATING	5.0	-0-	-0-	-0-	-0-	-0-
CAPITAL	5.0	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ( ) Revenue Code	(37.8)	(37.8)	(37.8)	(37.8)	(37.8)	(37.8)

FUNDING: (Thousands of Dollars)

	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 97) impact: $ ______

POSITIONS:

	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

This bill will have fiscal impact on AST depending on further clarification of some parts and depending on modifications to others. An indeterminate fiscal note is being submitted at this time. Some areas of concern are noted on the attachment.

Prepared By: F/Sgt. Robert Gorder
Phone 269-5650
Division: Alaska State Troopers
Date: 03/28/97

Approved by Commissioner: Ronald L. Otte [signature]
Date: 3-31-97
Agency: Department of Public Safety

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Attachment to CSSB 141 fiscal note.

The areas of greatest fiscal concern are as follows:

1. Changes proposed by this bill in the areas of qualifications, suspension and revocation, domestic violence, nationwide reciprocity, etc. will require DPS to undertake a regulation project to modify existing regulations and add new regulations to administer the new provisions in this bill. The average regulation project costs approximately $5000.00.

3. Provisions outlining national reciprocity will require modification to the statewide information system (APSIN) or will require the creation of a LAN/WAN based information system that can be made accessible to law enforcement agencies statewide, 24 hours a day.

4. Reduction of the permit fee from a maximum of $125.00 (actual fee has been set at $122.00) to a new maximum fee of $99.00 will have an effect on the costs to the division. Currently, the costs to operate the ACHP are just being offset by the revenues collected. Any reduction in the fees will require the division to absorb the shortfall. How much that will be depends on the amount of permits processed. An estimated $23 per permit would have to be absorbed.