

SB

141

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 4/24/97

FURTHER: REPORTED OUT OF
 DATE TURNED APR 24 1997
 IN TO OFFICE: 4-25-97

Finance Committee considered SENATE BILL NO. 141

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

and recommends:

- be replaced with _____ CS SB 141 (FW)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical change
 - new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
XXXXXXXXXXXXXXXXXXXX	DP	Sean Farrell	✓		
		Al Adams		X	
		John Jagan	✓		
		David Stanley	✓		
		Roll & Pelt	✓		
Co-Chair:		Co-Chair: Keace	✓		
Co-Chair: <i>Ben [Signature]</i>		Co-Chair:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

#2 DPS/CDVSA	3/19	0	
#3 DPS/Admin Sys.	3/19	0	
#5 DPS/AST	3/31		5.0

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

REPORTED BILL NO: SFC
APR 24 1997

N 5
Bill Version: CSSB 141 (STA)
(S) Publish Date: 4-3-97

Revision Date: 03/28/97 Dept. Affected: Public Safety
Title: Concealed Handguns BRU: Alaska State Troopers
Component: Detachments
Sponsor: Sen. Green
Requestor: S. STA 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-
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CHANGE IN REVENUES () Revenue Code	(37.8)	(37.8)	(37.8)	(37.8)	(37.8)	(37.8)
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FUNDING: (Thousands of Dollars)

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:

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 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.

FISCAL NOTE No. 4

Not Applicable to FIN CS

STATE OF ALASKA
1997 LEGISLATIVE SESSION

Bill Verson: SB 141
(S) Publish Date: 3-26-97

Revision Date: _____ Dept. Affected: All Departments
Title: An Act relating to permits to carry concealed handguns. BRU: N/A
Sponsor: Sen. Green Component: N/A
Requester: Senate State Affairs Committee COMPONENT SERIAL NO. N/A

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	632.0					
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	632.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	632.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: \$ _____

POSITIONS

FULL-TIME					
PART-TIME					
TEMPORARY					

Not Adopted

ANALYSIS: (Attach a separate page if necessary)

Under this bill, concealed handguns would be allowed in most state facilities unless "notice that carrying a concealed handgun is prohibited has been given by the posting of conspicuous notice and a secure provided for the storage of a permittee's handgun until the permittee leaves the facility or meeting."

If this bill is enacted, the Executive Branch would install the notices and lock boxes (gun cabinets) required under the bill in all Executive Branch facilities with office space. This includes approximately 142 state-owned facilities and 174 leased facilities, for a total of 316 facilities.

The estimated cost of purchasing and installing the required notices and gun cabinets is approximately \$2,000 per facility, for a total cost of \$632,000. Some of the larger facilities with multiple entrances may require multiple gun cabinets at additional cost.

Prepared by: Annalee McConnell Phone: 455-4660
Division: Office of Management and Budget Date: March 20, 1997
Approved by Commissioner: Jim Ayers, Chief of Staff Date: March 20, 1997
Agency: Office of the Governor

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. 3
 Bill Version: SB141
 (S) Publish Date: 3-26-97

Revision Date: _____ Dept. Affected: Public Safety
 Title: Concealed handgun permits BRU: Statewide Support
 Component: Information Systems
 Sponsor: Senator Green
 Requester: Senate State Affairs COMPONENT SERIAL NO. 0528

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						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES () Revenue Code	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts	0	0	0	0	0	0
1003 GE Match						
1004 GE						
1005 GE/Program Receipts						
1006 GE/MHTIA						
Other						
TOTAL						

Estimate of current year (FY 97) impact: \$ 13.2

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.)

See attachment.

Prepared By: Ken Bischoff, Director Phone: (907) 465-4336
 Division: Division of Administrative Services Date: _____
 Approved by Commissioner: *Ronald L. Otte* Date: 3/19/97
 Agency: Ronald L. Otte, Dept. of Public Safety

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STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 141

Revision Date: _____ Dept. Affected: Public Safety

ANALYSIS CONTINUED:

Assumptions:

1. Since no effective date is given, it is assumed the law will become effective during this fiscal year. If this assumption is incorrect, the current year impact will be moved to the appropriate year to allow Information Systems to complete computer programming work in time to comply with the new law.
2. Section 5 will require Information Systems to contract for computer programming to modify the current application for a new type of permit (emergency), with a new fee (none), different expiration date (90 days) new eligibility criteria (no similar permit issued within past 5 years), and rejecting renewal. Section 10 will require computer programming to change the current fees for regular permits and renewals. Contractual fees for computer programming and technical consultation for changes needed to the permit photograph machine, modifications to the download program, and training on the application changes are estimated as follows:

$$175 \text{ hours} \times \$75/\text{hour} = \$ 13, 125$$
3. It is assumed that the lower fees for regular permits and renewals will not change the \$59 fingerprint processing fees forwarded to the Records and Identification Bureau by AST, and that the impact of the lower fee will be reflected in AST's fiscal note.

FISCAL NOTE

Not App.

STATE OF ALASKA
1997 LEGISLATIVE SESSION

- BILL NO: Bill Verson: SB 141
 (S) Publish Date: 3-26-97

Revision Date: _____ Dept. Affected: Public Safety
 Title: Concealed Handguns BRU: Alaska State Troopers
 Component: Detachments
 Sponsor: Sen. Green
 Requestor: S. 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	5.0	-0-	-0-	-0-	-0-	-0-
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CHANGE IN REVENUES () <small>Revenue Code</small>	(37.8)	(37.8)	(37.8)	(37.8)	(37.8)	(37.8)
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	5.0					
1005 GF/Program						
1006 GF/MHTIA						
Other						
TOTAL	5.0	-0-	-0-	-0-	-0-	-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.

Prepared By: Capt. Ted M. Bachman Phone: 269-5650
 Division: Alaska State Troopers Date: 03/19/97
 Approved by Commissioner: Ronald L. Otte Date: 3/18/97
 Agency: Department of Public Safety

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

-BILL NO: SB 141

Revision Date: _____ Dept. Affected: Public Safety

Attachment to SB 141 fiscal note:

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.
2. 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.
3. 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 may have the effect of increasing the volume of permit requests and may not have an impact on the level of program receipts presently collected, however, would increase the number of permits necessary to process. If the number of permit applications does not increase then the program receipts will be dramatically impacted and operational costs will have to be reduced.

At present staffing levels a permit costs just over what the fee is when you take into account the AAFIS fee of \$35.00 and the FBI fee of \$24.00 per permit. If the volume remains the same and the permit fee is reduced, the staffing level of the program will have to be reduced to make up the cost difference. This will have the effect of increasing the processing time.

If the volume increases to maintain the level of program receipts, the staffing level could remain the same, however, the increase in volume will increase the processing time as well.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. 2

Bill Version: SB 141

REPORTED DATE OF
 SFC APR 24 1997

(S) Publish Date: 3-26-97

Revision Date: _____
 Title: Concealed handgun permits
 Sponsor: Sen. Green
 Requestor: S. State Affairs

Dept. Affected: Public Safety
 BRU: CDVSA
 Component: CDVSA
 COMPONENT SERIAL NO. 0521

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						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ()	0	0	0	0	0	0
Revenue Code						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GE Match						
1004 GE						
1005 GE/Program Receipts						
1006 GE/MHTIA						
Other						
TOTAL	0	0	0	0	0	0

Estimate of current year (FY 97) impact: \$ 0

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.)

Prepared By: Jayne E. Andersen, Executive Director Phone: 907-465-4356
 Division: Council on Domestic Violence and Sexual Assault Date: 3/19/97
 Approved by Commissioner: *Ronald L. Otte* Date: 3/19/97
 Agency: Ronald L. Otte, Dept. of Public Safety

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AMENDMENT

OFFERED IN THE SENATE
TO: CSSB 141(FIN)

BY: SEN. SHARP
BY REQUEST

- 1 Page 7, following line 5:
- 2 Insert a new bill section to read:
- 3 **** Sec. 14.** AS 18.65.740(a) is amended to read:
- 4 (a) A permit to carry a concealed handgun shall be immediately revoked by
- 5 the department when the permittee
- 6 (1) becomes disqualified to receive and hold a permit under
- 7 AS 18.65.705;
- 8 (2) is convicted of two class A misdemeanors of this state or similar
- 9 laws of another jurisdiction within a five-year period if at least one offense [OF THE
- 10 CONVICTIONS] occurs after a permit has been issued to the permittee [THE
- 11 APPLICATION];
- 12 (3) knowingly supplied a false or fraudulent answer, statement, or
- 13 document, or made a material misstatement or omission, in connection with an
- 14 application for a permit or renewal or replacement of a permit."

15 Renumber the following bill sections accordingly.

Am#4 by Donley :

p. 8, line 6 :

delete " 18.65.740(a)(2)

Am#4 by Donley

Moved by Donley

Adopted w/o

p. 8, line 6

delete

18.65.740(a)(2)

AMENDMENT

OFFERED IN THE SENATE FINANCE COMMITTEE

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

BY ADAMS

Adams moved
Sharp Obj; FAILED
SENATE FINANCE 215
COMMITTEE

Amendment Number: 3

Bill Number: SB 141

Sponsor: _____ Date: 4-22-97

Logged In By: [Signature]

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; or
 - (6) knowingly possesses a firearm in

(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;

(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)"

Not offered

SENATE FINANCE
COMMITTEE

Amendment Number: 2

Bill Number: SP 141

Sponsor: Phillips Date: 4/22/99

Logged In By: gallant

A M E N D M E N T

TO: CSSB 141(FIN)
(work draft version X)

BY: Senator Phillips

Insert new bill sections to read:

Sec. 3. AS 11.61.210(a) is amended by adding a new paragraph to read:

(9) knowingly possesses a firearm within a courthouse of this state, unless otherwise authorized by court rule; in this paragraph, "courthouse" means

(A) a building housing only courtrooms, court offices, and other justice-related agencies, or

(B) courtrooms or court offices that are not located in a building described in (A) of this paragraph.

Sec. 4. AS 11.61.210(c) is amended to read:

(c) The provisions of (a)(7) and (a)(9) of this section do not apply to a peace officer within the scope and authority of the officer's employment.

Renumber following sections accordingly.

SENATE FINANCE COMMITTEE

AMENDMENT

Amendment Number: 2

OFFERED BY: SB 141

Sponsor: Phillips Date: 7/21/97

Sen. Logged by: J. Soltane

TO: CSSB 141 ()

Insert new bill sections to read:

Sec. __. AS 11.61.210(a) is amended by adding a new paragraph to read:

(9) knowingly possesses a firearm within a courthouse of this state, unless otherwise authorized by court rule; in this paragraph, "courthouse" means

(A) a building housing only courtrooms, court offices, and other justice-related agencies, or

(B) courtrooms or court offices that are not located in a building described in (A) of this paragraph.

Sec. __. AS 11.61.210(c) is amended to read:

(c) The provisions of (a)(7) and (a)(9) of this section do not apply to a peace officer acting within the scope and authority of the officer's employment.

EXPLANATION: This amends AS 11.61.210 (the statute which restricts possession of firearms on school property, among other things) to make it a class A misdemeanor to knowingly possess a firearm in a courthouse, except for peace officers acting within the scope of their employment. "Courthouse" is defined as either of the following:

1. A building which houses only court functions and other justice-related agencies (such as the Nesbet Courthouse in Anchorage, which houses court functions as well as an ASAP office and an APD warrants office).

2. The courtrooms or court offices which are contained in a building that does not meet the definition set forth above (such as the court space leased in a private building in Barrow which also houses tenants who are not justice-related government agencies).

The supreme court would be authorized to establish exceptions by court rule. This is necessary to allow, for example, firearms to be brought into courthouses for use as evidence or for armed security guards to pick up cash received by the court system.

(Replaced w/ new)

Am #2

SENATE FINANCE
COMMITTEE

Phillips Moved P.02
Shamp obj/WJD
Payroll obj/WJD
1 **ADOPTED** **4/3** **VOTE**

Amendment Number: _____ 0-LS07061X.1
Bill Number: _____ Luckhaupt
Sponsor: _____ Date: *4-18-97* 4/18/97
Logged In By: *[Signature]*

AMENDMENT

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)"

TEN MYTHS ABOUT GUN CONTROL

- * MYTH 1 -- Public opinion polls
- * MYTH 2 -- The purpose of a handgun
- * MYTH 3 -- Armed citizens don't deter crime
- * MYTH 4 -- Licensing and registration
- * MYTH 5 -- Foreign gun control works
- * MYTH 6 -- Crimes of passion and guns
- * MYTH 7 -- Semi-autos should be banned
- * MYTH 8 -- No 'right' to own a gun
- * MYTH 9 -- Concealed carry laws are dangerous
- * MYTH 10 -- Gun control reduces crime

* Facts we can all live with.

 Ten Myths About "Gun Control"

"We will never fully solve our nation's horrific problem of gun violence unless we ban the manufacture and sale of handguns and semi-automatic assault weapons."--USA Today, December 29, 1993

"Why should America adopt a policy of near-zero tolerance for private gun ownership?... (W)ho can still argue compellingly that Americans can be trusted to handle guns safely? We think the time has come for Americans to tell the truth about guns. They are not for us, we cannot handle them."--Los Angeles Times, December 28, 1993

These editorial opinions expressed by two of the nations most widely read newspapers represent the absolute extreme in the firearms controversy: that no citizen can be trusted to own a firearm. It is the product of a series of myths which--through incessant repetition--have been mistaken for truth. These myths are being exploited to generate fear and mistrust of the 60-65 million decent and responsible Americans who own firearms. Yet, as this document proves, none of these myths will stand up under the cold light of fact.

MYTH 1: "The majority of Americans favor strict new additional federal gun controls."

Polls can be slanted by carefully worded questions to achieve any desired outcome. It is a fact that most people do not know what laws currently exist; thus, it is meaningless to assert that people favor "stricter" laws when they do not know how "strict" the laws are in the first place. Asking about a waiting period for a police background check presumes, incorrectly, that police can and will actually conduct a check during the wait. Similarly, it is meaningless to infer anything from support of a 7- or 5-day waiting period when respondents live in a state with a 15-day wait or a 1-6 month permit scheme in place. Asked whether they favor making any particular law "stricter," however, most people do not. Unbiased, scientific polls have consistently shown that most people:

- * Oppose costly registration of firearms.
- * Oppose giving police power to decide who should own guns.
- * Do not believe that stricter gun laws would prevent criminals from illegally obtaining guns.

In 1993, Luntz Weber Research and Strategic Services found that only 9% of the American people believe "gun control" to be the most important thing that could be done to reduce crime. By a margin of almost 3-1, respondents said mandatory prison would reduce crime more than "gun control." This poll, unlike many others, allowed respondents to answer more honestly by using open ended questions without leading introductions. The result was an honest appraisal of the attitude of the American people: "gun control" is not crime control.

One clear example of a poll done which used biased questions and flawed procedures was conducted by Louis Harris Research Inc. (LHRI) in the summer of 1993. The poll reported unprecedented levels of gun abuse by high school students. However, after examining the poll, Professor Gary Kleck of Florida State University, the nation's leading scholar on crime and firearms, called the findings "...implausible, being inconsistent with more sophisticated prior research." Prof. Kleck found the Harris findings of students who had been shot at or who had actually shot at someone to be insupportable by crime and victimization statistics as reported by the Department of Justice: "Even if the percent of handgun crime victimization had doubled from the average for the 1979-1987 period, the LHRI results would still be overstated by a factor of 100." In the end, he labeled the LHRI poll "advocacy polling."¹

A more direct measure of the public's attitude on "gun control" comes when the electorate has a chance to speak on the issue. Public opinion polls do not form public policy, but individual actions by hundreds of thousands of citizens do. For example, in 1993, the voters of Madison, Wisconsin, were presented with a referendum calling for a ban on handgun ownership in that city. Pollsters predicted an overwhelming win for the gun banners. When Second Amendment rights activists rallied opposition and educated the electorate on the facts about gun ownership, the referendum was defeated.

In the 1993 gubernatorial elections, the incumbent governor in New Jersey and the front-runner in Virginia made "gun control" a central theme of their campaigns. Both candidates lost to opponents who stressed real criminal justice reforms, not "gun control."

In November 1982, Californians rejected, by a 63-37% margin, a statewide handgun initiative that called for the registration of all handguns and a "freeze" on the number of handguns allowed in the state. Again, pre-election pollsters reported support for the measure. That initiative was also opposed by the majority of California's law enforcement community. Fifty-one of the state's 58 working sheriffs opposed Proposition 15, as did 101 chiefs of police. Nine law enforcement organizations, speaking for rank-and-file police, went on record against the initiative.

Increasingly, the American people are voicing support for reform of the criminal justice system. The NRA also actively supports initiatives calling for mandatory jail time for violent criminals. In 1982, the residents of Washington, D.C., enacted an NRA-endorsed mandatory penalty bill, actively opposed by the anti-gun D.C. City Council, that severely punishes those who use firearms to commit a violent crime. In 1988, the residents of Oregon approved, by a 78-22% margin, an NRA-supported initiative mandating prison sentences for repeat offenders after the state legislature and governor failed to act on the issue. In 1993, the residents of Washington state overwhelmingly approved the "three strikes you're out" initiative calling for life sentences without parole for anyone convicted of a third serious crime. NRA's CrimeStrike program was instrumental in collecting the needed signatures to put that question on the ballot.

In 1993, the Southern States Police Benevolent Association conducted a scientific poll of its members. Sixty-five percent of the respondents identified "gun control" as the least effective method of combating violent crime. Only 1% identified guns as a cause of violent crime, while 48%

selected drug abuse, and 21% said the failure of the criminal justice system was the most pressing cause. The officers also revealed that 97% support the right of the people to own firearms, and 90% said they believed the Constitution guarantees that right.

The SSPBA findings affirmed a series of polls conducted by the National Association of Chiefs of Police of every chief and sheriff in the country, representing over 15,000 departments. In 1991 the poll discovered for the third year in a row that law enforcement officers overwhelmingly agree that "gun control" measures have no effect on crime. A clear majority of 93% of the respondents said that banning firearms would not reduce a criminal's ability to get firearms, while 89% said that the banning of semi-automatic firearms would not reduce criminal access to such firearms. Ninety-two percent felt that criminals obtain their firearms from illegal sources; 90% agreed that the banning of private ownership of firearms would not result in fewer crimes. Seventy-three percent felt that a national waiting period would have no effect on criminals getting firearms. An overwhelming 90% felt that such a scheme would instead make agencies less effective against crime by reducing their manpower and only serve to open them up to liability lawsuits.

These are the only national polls of law enforcement officers in the country, with the leadership of most other major groups adamantly refusing to poll their membership on firearms issues.

1 Kleck, "Reasons for Skepticism on the Results from a New Poll on: The Incidence of Gun Violence Among Young People," The Public Perspective, Sept./Oct. 1993.

MYTH 2: "The only purpose of a handgun is to kill people."

This often repeated statement is patently untrue, but to those Americans whose only knowledge of firearms comes from the nightly violence on television, it might seem believable. When anti-gun researcher James Wright, then of the University of Massachusetts, studied all the available literature on firearms, he concluded: "Even the most casual and passing familiarity with this literature is therefore sufficient to belie the contention that handguns have 'no legitimate sport or recreational use.' "

There are an estimated 75-80 million privately owned handguns in the United States that are used for hunting, target shooting, protection of families and businesses, and other legitimate and lawful purposes. By comparison, handguns were used in an estimated 13,000 homicides in 1994--less than 0.02% (two hundredths of 1%) of the handguns in America. Many of these reported homicides (1,500-2,800) were self-defense or justifiable and, therefore, not criminal. That fact alone renders the myth about the "only purpose" of handguns absurd, for more than 99% of all handguns are used for no criminal purpose.

By far the most commonly cited reason for owning a handgun is protection against criminals. At least one-half of handgun owners in America own handguns for protection and security. A handgun's function is one of insurance as well as defense. A handgun in the home is a contingency, based on the knowledge that if there ever comes a time when it is needed, no substitute will do. Certainly no violent intent is implied, any more than a purchaser of life insurance intends to die soon.

MYTH 3: "Since a gun in a home is many times more likely to kill a family member than to stop a criminal, armed citizens are not a deterrent to crime. "

This myth, stemming from a superficial "study" of firearm accidents in the Cleveland, Ohio, area, represents a comparison of 148 accidental deaths (including suicides) to the deaths of 23 intruders killed by home owners over a 16-year period. 2

Gross errors in this and similar "studies"--with even greater claimed ratios of harm to good--include: the assumption that a gun hasn't been used for protection unless an assailant dies; no distinction is made between handgun and long gun deaths; all accidental firearm fatalities were counted whether the deceased was part of the "family" or not; all accidents were counted whether they occurred in the home or not, while self-defense outside the home was excluded; almost half the self-defense uses of guns in the home were excluded on the grounds that the criminal intruder killed may not have been a total stranger to the home defender; suicides were sometimes counted and some self-defense shootings misclassified. Cleveland's experience with crime and accidents during the study period was atypical of the nation as a whole and of Cleveland since the mid-1970s. Moreover, in a later study, the same researchers noted that roughly 10% of killings by civilians are justifiable homicides. 3

The "guns in the home" myth has been repeated time and again by the media, and anti-gun academics continue to build on it. In 1993, Dr. Arthur Kellermann of Emory University and a number of colleagues presented a study that claimed to show that a home with a gun was much more likely to experience a homicide. 4 However, Dr. Kellermann selected for his study only homes where homicides had taken place--ignoring the millions of homes with firearms where no harm is done--and a control group that was not representative of American households. By only looking at homes where homicides had occurred and failing to control for more pertinent variables, such as prior criminal record or histories of violence, Kellermann et al. skewed the results of this study. Prof. Kleck wrote that with the methodology used by Kellermann, one could prove that since diabetics are much more likely to possess insulin than non-diabetics, possession of insulin is a risk factor for diabetes. Even Dr. Kellermann admitted this in his study: "It is possible that reverse causation accounted for some of the association we observed between gun ownership and homicide." Law Professor Daniel D. Polsby went further, "Indeed the point is stronger than that: 'reverse causation' may account for most of the association between gun ownership and homicide. Kellermann's data simply do not allow one to draw any conclusion." 5

Research conducted by Professors James Wright and Peter Rossi,⁶ for a landmark study funded by the U.S. Department of Justice, points to the armed citizen as possibly the most effective deterrent to crime in the nation. Wright and Rossi questioned over 1,800 felons serving time in prisons across the nation and found:

- * 81% agreed the "smart criminal" will try to find out if a potential victim is armed.
- * 74% felt that burglars avoided occupied dwellings for fear of being shot.
- * 80% of "handgun predators" had encountered armed citizens.
- * 40% did not commit a specific crime for fear that the victim was armed.
- * 34% of "handgun predators" were scared off or shot at by armed victims
- * 57% felt that the typical criminal feared being shot by citizens more than he feared being shot by police.

Professor Kleck estimates that annually 1,500-2,800 felons are legally killed in "excusable self-defense" or "justifiable" shootings by civilians, and 8,000-16,000 criminals are wounded. This compares to 300-600 justifiable homicides by police. Yet, in most instances, civilians used a firearm to threaten, apprehend, shoot at a criminal, or to fire a warning shot without injuring anyone.

Based on his extensive independent survey research, Kleck estimates that

each year Americans use guns for protection from criminals more than 2.5 million times annually. 7 U.S. Department of Justice victimization surveys show that protective use of a gun lessens the chance that robberies, rapes, and assaults will be successfully completed while also reducing the likelihood of victim injury. Clearly, criminals fear armed citizens.

- 2 Rushforth, et al., "Accidental Firearm Fatalities in a Metropolitan County, " 100 American Journal of Epidemiology 499 (1975).
- 3 Rushforth, et al., "Violent Death in a Metropolitan County," 297 New England Journal of Medicine 531, 533 (1977).
- 4 Kellermann, et al., "Gun Ownership as a Risk Factor for Homicide in the Home," New England Journal of Medicine 467 (1993).
- 5 Polsby, "The False Promise of Gun Control," The Atlantic Monthly, March 1994.
- 6 Wright and Rossi, Armed and Considered Dangerous: A Survey of Felons and Their Firearms (N.Y.: Aldine de Gruyter, 1986).
- 7 Gary Kleck and Mark Gertz, "Armed Resistance to Crime: The Prevalence and Nature of Self-Defense with a Handgun," The Journal of Criminal Law and Criminology, 86 (1995): 150.

MYTH 4: "Honest citizens have nothing to fear from gun registration and licensing which will curb crime by disarming criminals."

"Gun control" proponents tout automobile registration and licensing as model schemes for firearm ownership. Yet driving an automobile on city or state roads is a privilege and, as such, can be regulated, while the individual right to possess firearms is constitutionally protected from infringement. Registration and licensing do not prevent criminal misuse nor accidental fatalities involving motor vehicles in America, where more than 40,000 people die on the nation's highways each year. By contrast, about 1,400 persons are involved in fatal firearm accidents each year.

Registration and licensing have no effect on crime, as criminals, by definition, do not obey laws. Indeed, a national survey of prisoners conducted by Wright and Rossi for the Department of Justice found that 82% agreed that "gun laws only affect law-abiding citizens; criminals will always be able to get guns."

Further, felons are constitutionally exempt from a gun registration requirement. According to the U.S. Supreme Court's decision in Haynes v. U.S., since felons are prohibited by law from possessing a firearm, compelling them to register firearms would violate the Fifth Amendment protection against self-incrimination. 8 Only law-abiding citizens would be required to comply with registration--citizens who have neither committed crimes nor have any intention of doing so.

Registration and licensing of America's 60-65 million gun owners and their 200 million firearms would require the creation of a huge bureaucracy at tremendous cost to the taxpayer, with absolutely no tangible anti-crime return. Indeed, New Zealand authorities repealed registration in the 1980s after police acknowledged its worthlessness, and a similar recommendation was made by Australian law enforcement. Law enforcement would be diverted from its primary responsibility, apprehending and arresting criminals, to investigating and processing paperwork on law-abiding citizens.

In the U.S., after President Clinton, Attorney General Reno, and others announced support for registration and licensing, police response was immediate and non-supportive. Dewey Stokes, President of the Fraternal Order of Police said "... I don't want to get into a situation where we have gun registration." Other law enforcement officers responded even more strongly. Charles Canterbury, President of the South Carolina FOP said, "On behalf of the South Carolina law enforcement, I can say we are adamantly

opposed to registration of guns." Dennis Marrin, President of the National Association of Chiefs of Police reported, "I have had a lot of calls from police chiefs and sheriffs who are worried about this. They are afraid that we're going to create a lot of criminals out of law-abiding people who don't want to get a license for their gun."

Finally, a national registration/licensing scheme would violate an individual's right to privacy protected by the Fourth Amendment and establish a basis upon which gun confiscation could be implemented. More than 60,000 rifles and shotguns were confiscated in April, 1989 from honest citizens who had dutifully registered their guns with the authorities in Soviet Georgia (Chicago Sun-Times, April 12, 1989, The Atlanta Journal and Constitution, May 21, 1989). Could that happen in America? Gun prohibitionists in Massachusetts, Ohio, and Washington, D.C., have already proposed using registration lists for such purposes. And, since 1991, New York City authorities have used registration lists to enforce a ban on semi-automatic rifles and shotguns. Avowed handgun prohibitionist Charles Morgan, as director of the American Civil Liberties Union's Washington office, in a 1975 hearing before the House Subcommittee on Crime stated: "I have not one doubt, even if I am in agreement with the National Rifle Association, that kind of a record-keeping procedure is the first step to eventual confiscation under one administration or another."

Reasonable fears of such confiscation lead otherwise law-abiding citizens to ignore such laws, creating a disrespect for law and a lessened support for government. In states and cities which recently required registration of semi-automatic firearms, estimates of compliance range from 5 to 10% .

8 Haynes v. U.S., 309 U.S. 85 (1968).

MYTH 5: "Stiff 'gun control' laws work as shown by the low crime rates in England and Japan, while U. S crime rates continue to soar."

All criminologists studying the firearms issue reject simple comparisons of violent crime among foreign countries. It is impossible to draw valid conclusions without taking into account differences in each nation's collection of crime data, and their political, cultural, racial, religious, and economic disparities. Such factors are not only hard to compare, they are rarely, if ever, taken into account by "gun control" proponents. 9

Only one scholar, attorney David Kopel, has attempted to evaluate the impact of "gun control" on crime in several foreign countries. In his book The Samurai, The Mountie and The Cowboy: Should America adopt the gun controls of other democracies?, named a 1992 Book of the Year by the American Society of Criminology, Kopel examined numerous nations with varying gun laws, and concluded: "Contrary to the claims of the American gun control movement, gun control does not deserve credit for the low crime rates in Britain, Japan, or other nations." He noted that Israel and Switzerland, with more widespread rates of gun ownership, have crime rates comparable to or lower than the usual foreign examples. And he stated: "Foreign style gun control is doomed to failure in America. Foreign gun control comes along with searches and seizures, and with many other restrictions on civil liberties too intrusive for America. Foreign gun control...postulates an authoritarian philosophy of government fundamentally at odds with the individualist and egalitarian American ethos." 10

America's high crime rates can be attributed to revolving-door justice. In a typical year in the U.S., there are 8.1 million serious crimes like homicide, assault, and burglary. Only 724,000 adults are arrested and fewer still (193,000) are convicted. Less than 150,000 are sentenced to prison, with 36,000 serving less than a year (U.S. News and World Report, July 31,

1989). A 1987 National Institute of Justice study found that the average felon released due to prison overcrowding commits upwards of 187 crimes per year, costing society approximately \$430,000.

Foreign countries are two to six times more effective in solving crimes and punishing criminals than the U.S. In London, about 20% of reported robberies end in conviction; in New York City, less than 5% result in conviction, and in those cases imprisonment is frequently not imposed. Nonetheless, England annually has twice as many homicides with firearms as it did before adopting its tough laws. Despite tight licensing procedures, the handgun-related robbery rate in Britain rose about 200% during the past dozen years, five times as fast as in the U.S.

Part of Japan's low crime rate is explained by the efficiency of its criminal justice system, fewer protections of the right to privacy, and fewer rights for criminal suspects than exist in the United States. Japanese police routinely search citizens at will and twice a year pay "home visits" to citizens' residences. Suspect confession rate is 95% and trial conviction rate is over 99.9%. The Tokyo Bar Association has said that the Japanese police routinely "...engage in torture or illegal treatment. Even in cases where suspects claimed to have been tortured and their bodies bore the physical traces to back their claims, courts have still accepted their confessions." Neither the powers and secrecy of the police nor the docility of defense counsel would be acceptable to most Americans. In addition, the Japanese police understate the amount of crime, particularly covering up the problem of organized crime, in order to appear more efficient and worthy of the respect the citizens have for the police.

Widespread respect for law and order is deeply ingrained in the Japanese citizenry. This cultural trait has been passed along to their descendants in the United States where the murder rate for Japanese-Americans (who have access to firearms) is similar to that in Japan itself.

If gun availability were a factor in crime rates, one would expect European crime rates to be related to firearms availability in those countries, but crime rates are similar in European countries with high or relatively high gun ownership, such as Switzerland, Israel, and Norway, and in low availability countries like England and Germany. Furthermore, one would expect American violent crime rates to be more similar to European rates in crime where guns are rarely used, such as rape, than in crimes where guns are often used, such as homicide. But the reverse is true: American non-gun violent crime rates exceed those of European countries.

9 Wright, et al., *Under the Gun: Weapons, Crime and Violence in America* (N.Y.: Aldine, 1983). 10 Kopel, "The Samurai, The Mountie, and the Cowboy: Should America adopt the gun controls of other democracies?" (Buffalo, N.Y.: Prometheus Books, 1992), 431-32.

MYTH 6: "Most murders are argument-related 'crimes of passion' against a relative, neighbor, friend or acquaintance. "

The vast majority of murders are committed by persons with long established patterns of violent criminal behavior. According to analyses by the U.S. Senate Subcommittee on Juvenile Delinquency, the FBI, and the Chicago, New York City, and other police departments, about 70% of suspected murderers have criminal careers of long standing--as do nearly half their victims. FBI data show that roughly 47% of murderers are known to their victims.

The waiting period, or "cooling-off" period, as some in the "gun control" community call it, is the most often cited solution to "crimes of passion." However, state crime records show that in 1992, states with waiting periods and other laws delaying or denying gun purchases had an overall violent

crime rate more than 47% higher and a homicide rate 19% higher than other states. In the five states that have some jurisdictions with waiting periods (Georgia, Kansas, Nevada, Ohio and Virginia), the non-waiting period portions of all five states have far lower violent crime and homicide rates.

Recent studies by the Justice Department suggest that persons who live violent lives exhibit those violent tendencies "both within their home and among their family and friends and outside their home among strangers in society." A National Institute of Justice study reveals that the victims of family violence often suffer repeated problems from the same person for months or even years, and if not successfully resolved, such incidents can eventually result in serious injury or death. A study conducted by the Police Foundation showed that 90% of all homicides, by whatever means committed, involving family members, had been preceded by some other violent incident serious enough that the police were summoned, with five or more such calls in half the cases.

Circumstances which might suggest "crimes of passion" or "spontaneous" arguments, such as a lover's triangle, arguments over money or property, and alcohol-related brawls, comprise 29% of criminal homicides, according to FBI data.

Professor James Wright of the University of Massachusetts describes the typical incident of family violence as "that mythical crime of passion" and rejects the notion that it is an isolated incident by otherwise normally placid and loving individuals. His research shows that it is in fact "the culminating event in a long history of interpersonal violence between the parties."

Wright also speaks to the protective use of handguns. "Firearms equalize the means of physical terror between men and women. In denying the wife of an abusive man the right to have a firearm, we may only be guaranteeing her husband the right to beat her at his pleasure," says Wright. 11

11 Wright, "Second Thoughts About Gun Control," 91 [The] Public Interest, 23 (Spring 1988).

MYTH 7: "Semi-automatic firearms have no legitimate sporting purpose, are the preferred weapon of choice of criminals, and should be banned."

Use of this myth by gun prohibitionists is predicated purely on pragmatism: whichever "buzzword" can produce the most anti-gun emotionalism--"Saturday Night Special," "assault weapons," and "plastic guns"--will be utilized in efforts to generate support for a ban on entire classes of firearms.

Examples of this anti-gun legislative history abound. A "Saturday Night Special" ban bill enacted in Maryland establishes a politically appointed "Handgun Roster Board" with complete authority to decide which handguns will be permitted in the so-called "Free State"-- any handgun could therefore be banned. Federal legislation aimed at the nonexistent "plastic gun" would have banned millions of metal handguns suitable for personal protection. In the 1994 crime bill, Congress did ban semi-automatic "assault weapons," based on their cosmetic appearance. After passage, however, not even the virulently anti-gun Washington Post pretended the ban would have a crime fighting effect, labeling it "mainly symbolic."

Criminals and law-abiding citizens both follow the lead of police and military in choosing a gun. Criminals generally pick as handguns .38 Spl. and .357 Mag. revolvers, with barrels about 4" long and retailing (an unimportant matter for criminals) at over \$200. Only about one-sixth fit

the classic description of the so-called "Saturday Night Special"--small caliber, short barrel and inexpensive. While criminals are unconcerned with the cost of a firearm, the law-abiding certainly are. A ban on inexpensive handguns will have a disproportionate impact on low income Americans, effectively disarming them. This is particularly unfair, since it is the poor who more often must live and work in high crime areas.

As more and more police departments, following the lead of the military, switch from revolvers to 9 mm semi-auto pistols, criminals and honest citizens will both follow suit. Indeed, semi-auto pistols have risen from one-fourth of American handgun manufacturing in the 1970s to three-fourths today.

Criminals rarely use long guns and, when they do, are more apt to use a sawed-off shotgun than a semi-automatic rifle, whether military style or not. In America's largest and most crime ravaged cities, only about 1/2-3% of "crime guns" are military-style semi-autos. As military establishments adopted medium-velocity rifles with straight-stock configuration, target shooters, hunters, and collectors have acquired the semi-automatic models of these firearms.

While not all guns incorrectly attacked as "preferred by criminals" are popular for hunting, many are, but hunting is not the only valid purpose for owning a firearm. Small handguns, which may be ill-suited for hunting or long-range target shooting, are useful for personal protection, where the accuracy range rarely needs to exceed ten feet. Semi-automatic rifles and shotguns are suitable for hunting a variety of game. Semi-automatic, military and military-style rifles, including the M1 Garand, Springfield M1A, and the Colt Sporter, are used in thousands of sanctioned Highpower Tournaments each year and the National Matches at Camp Perry, Ohio. Hundreds of thousands of individuals use these rifles for recreational target shooting and plinking.

The Second Amendment clearly protects ownership of firearms which are useful "for the security of a free state" and semi-automatic versions of military arms are clearly appropriate for that purpose. It was the clear intention of the Framers of our Constitution that the citizenry possess arms equal or superior to those held by the government. That was viewed as the best deterrent to tyranny, and it has worked for over 200 years. It was also the intention of the Founding Fathers that citizens be able to protect themselves from criminals, and that doesn't necessarily require a gun suitable for hunting, target shooting, or plinking. All modern firearms may be used for such protective purposes.

MYTH 8: "The right guaranteed under the Second Amendment is limited specifically to the arming of a 'well-regulated Militia' that can be compared today to the National Guard."

The Second Amendment reads: "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." In contrast to other portions of the Constitution, this Amendment contains no qualifiers, no "buts" or "excepts." It is a straightforward statement affirming the people's right to possess firearms.

The perception that the Second Amendment guarantees a "collective right" or a "right of states to form militias" rather than an individual right is a wholly inaccurate 20th-century invention. Historically, the term "militia" refers to the people at large, armed and ready to defend their homeland and their freedom with arms supplied by themselves (U.S. v. Miller, 1939). Federal law (Title 10, Section 311 of the U.S. Code) states:

"The militia of the United States consists of all able-bodied males at least 17 years of age...."

Moreover, historical records, including Constitutional Convention debates and the Federalist Papers, clearly indicate that the purpose of the Second Amendment was to guard against the tyranny that the Framers of the Constitution feared could be perpetrated by any professional armed body of government. The arms, records and ultimate control of the National Guard today lie with the Federal Government, so that it clearly is not the "militia" protected from the federal government.

The Supreme Court recently affirmed this virtually unlimited control of the Guard by the federal government in the case of *Ferpich v. Department of Defense* (1990). The Court held that the power of Congress over the National Guard is plenary (entire, absolute, unlimited) and such power is not restricted by the Constitution's Militia Clause. The Second Amendment was not even mentioned by the Court, undoubtedly because it does not serve as a source of power for a state to have a National Guard.

In *The Federalist No. 29*, Alexander Hamilton argued that the army would always be a "select corps of moderate size" and that the "people at large (were) properly armed" to serve as a fundamental check against the standing army, the most dreaded of institutions. James Madison, in *The Federalist No. 46*, noted that unlike the governments of Europe which were "afraid to trust the people with arms," the American people would continue under the new Constitution to possess "the advantage of being armed," and thereby would continually be able to form the militia when needed as a "barrier against the enterprises of despotic ambition."

A 1990 Supreme Court decision regarding searches and seizures confirmed that the right to keep and bear arms was an individual right, held by "the people"--a term of art employed in the Preamble and the First, Second, Fourth, Ninth, and Tenth Amendments referring to all "persons who are part of a national community" (*U.S. v. Verdugo-Urquidez*, 1990).

The case of *U.S. v. Miller* (1939) is frequently, though erroneously, cited as the definitive ruling that the right to keep and bear arms is a "collective" right, protecting the right of states to keep a militia rather than the individual right to possess arms. But that was not the issue in *Miller*, and no such ruling was made; the word "collective" is not used any place in the court's decision.

While such a decision was sought by the Justice Department, the Court decided only that the National Firearms Act of 1934 was constitutional in the absence of evidence to the contrary. The case hinged on the narrow question of whether a sawed-off shotgun was suitable for militia use, and its ownership by individuals thus protected by the Second Amendment.

The Court ruled that: "In the absence of (the presentation of) any evidence tending to show that possession or use of a 'shotgun having a barrel of less than eighteen inches in length' at this time has some reasonable relationship to the preservation or efficiency of a well-regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument. Certainly it is not within judicial notice--common knowledge, that need not be proven in court--that this weapon is any part of the military equipment or that its use could contribute to the common defense."

Because no evidence or argument was presented except by the federal government, the Court was not made aware that some 30,000 short-barreled shotguns were used as "trench guns" during World War I.

The Supreme Court has ruled on only three other cases relating to the Second Amendment--all during the last half of the nineteenth century. In

each of these cases, the Court held that the Second Amendment only restricted actions of the federal government, not of private individuals (U.S. v. Cruikshank, 1876) or state governments (Presser v. Illinois, 1886, and Miller v. Texas, 1894). The Court also held, in Presser, that the First Amendment guarantee of freedom of assembly did not apply to the states; and in Miller v. Texas, it held that the Fourth Amendment guarantee against unreasonable search and seizure did not apply to the states, since the Court believed that all the amendments comprising the Bill of Rights were limitations solely on the powers of Congress, not upon the powers of the states.

It was not until two generations later that the Court began to rule, through the Fourteenth Amendment, that the First, Fourth, and other provisions of the Bill of Rights limited both Congress and state legislatures. No similar decision concerning the Second Amendment has ever been made in spite of contemporary scholarship proving that the purpose of the Fourteenth Amendment was to apply all of the rights in the Bill of Rights to the states. 12 That research proves that the Fourteenth Amendment was made a part of the Constitution to prevent states from depriving the newly freed slaves of the rights guaranteed in the Bill of Rights, including what the Supreme Court's Dred Scott decision referred to as one of the rights of citizens, the right "to keep and carry arms wherever they went."

The only significance of the Supreme Court's refusal to hear a challenge to the hand-gun ban imposed by Morton Grove, Illinois, is that the Court will still not rush to apply the Second Amendment to the states. The refusal to hear the case has no legal significance and, indeed, it would have been very unusual for the Court to make a decision involving the U.S. Constitution when the Illinois courts had not yet decided if Morton Grove's ban conflicted with the state's constitution.

12 Halbrook, *That Every Man Be Armed: The Evolution of a Constitutional Right* (Albuquerque: University of New Mexico Press, 1984).

MYTH 9: "A person in a public place with a gun is looking for trouble."

Gun prohibitionists use this myth to oppose legislative proposals to allow law-abiding citizens to obtain permits to carry concealed firearms. In spite of this opposition, numerous states have adopted favorable concealed carry laws over the past few years. In each case, anti-gun activists and politicians predicted that allowing law-abiding people to carry firearms would result in more deaths and injuries as people would resort to gunfire to settle minor disputes. Shoot-outs over fender-benders and Wild-West lawlessness were predicted in an effort to stir up public fear of reasonable laws.

This tactic--seeking to frighten people into supporting desired positions--is employed more and more frequently by gun prohibitionists. Prof. Gary Kleck explains the reasoning thusly: "Battered by a decade of research contradicting the central factual premises underlying gun control, advocates have apparently decided to fight more exclusively on an emotional battlefield, where one terrorizes one's targets into submission rather than honestly persuading them with credible evidence." 13

When the concealed carry laws were passed and put into practice, the result was completely different from the hysterical claims of the gun prohibitionists. In Florida, since the concealed carry law was changed in 1987, the homicide rate has dropped 21% , while the national rate has risen 12% . Across the nation, states with favorable concealed carry laws have a 33% lower homicide rate overall and 37% lower robbery rate than states that

allow little or no concealed carry.

Gun prohibitionists have also acted to penalize and discourage gun ownership by imposing mandatory prison terms on persons carrying or possessing firearms without a license or permit, a license or permit they have also made impossible or very difficult to obtain. Massachusetts' Bartley-Fox Law and New York's Koch-Carey Law are premier examples of this "gun control" strategy. Such legislation is detrimental only to peaceful citizens, not to criminals.

By the terms of such a mandatory or increased sentence proposal, the unlicensed carrying of a firearm--no matter how innocent the circumstances--is penalized by a six-to-twelve month jail sentence. It is imposed on otherwise law-abiding citizens although in many areas it is virtually impossible for persons to obtain a carry permit. It is easy to see circumstances in which an otherwise law-abiding person would run afoul of this law: fear of crime, arbitrary denial of authorization, red-tape delay in obtaining official permission to carry a firearm, or misunderstanding of the numerous and vague laws governing the transportation of firearms.

The potential for unknowingly or unwittingly committing a technical violation of a licensing law is enormous. Myriad legal definitions of "carrying" vary from state to state and city to city, including most transportation of firearms--accessible or not, loaded or not, in a trunk or case. And out-of-state travelers are exceedingly vulnerable because of these various definitions.

One need only examine the first persons arrested under the Massachusetts and New York City "mandatory penalty" laws for proof that such laws are misdirected: an elderly woman passing out religious pamphlets in a dangerous section of Boston and an Ohio truck driver coming to the aid of a woman apparently being kidnapped in New York City.

In New York City--prior to the enactment of the Koch-Carey mandatory sentence for possession law--the bureaucratic logjam in the licensing division, combined with a soaring crime rate, forced law-abiding citizens to obtain guns illegally for self-protection. In effect, citizens admitted that they would rather risk a mandatory penalty for illegally owning a firearm than risk their lives and property at the hands of New York's violent, uncontrolled criminals. Honest citizens feared the streets more than the courtrooms.

By contrast, the city's criminal element faces no similar threat of punishment. A report carried in the March 1, 1984, issue of the New York Times says it all: "Conviction on felony charges is rare. Because of plea-bargaining, the vast majority of those arrested on felony charges are tried on lesser, misdemeanor charges." In one year, according to the Times, there were 106,171 felony arrests in New York City, but only 25,987 cases received felony indictments and only 20,641 resulted in convictions, with imprisonment a rarity. This condition persists, the New York Times reported again on June 23, 1991: in 1990 felony indictments were resolved by plea bargains in over 83% of cases. Only 5.7% of cases ended with a trial verdict, with only 3.8% ending in conviction. Not surprisingly, with just 3% of the nation's population, in 1992 New York City accounted for 12% of the nation's homicides.

In championing New York's tough Koch-Carey Law, then Mayor Ed Koch said contemptuously of gun owners, "Nice guys who own guns aren't nice guys." No such rancor was expressed about the city's revolving-door criminal justice system where the chances of hardened criminals being arrested on felony charges are one in one hundred. Later, the Police Foundation study of New York's Koch-Carey Law found that it failed to reduce the number of guns on the street and did not reduce gun use in rape, robbery or assault.

Such legislation invites police to routinely stop and frisk people randomly on the street on suspicion of firearms possession. In fact, the Police Foundation has called for the random use of metal detectors on the streets to apprehend people carrying firearms without authorization. In disregarding the constitutionally guaranteed right to privacy and against unreasonable searches and seizures, police would be empowered under the Police Foundation's blueprint for disarmament to "systematically stop a certain percentage of people on the streets... in business neighborhoods and run the detectors by them, just as you do at the airport. If the detectors produce some noise then that might establish probable cause for a search."

While admitting that such "police state" tactics would require "methods... that liberals instinctively dislike," government researchers James Q. Wilson and Mark H. Moore called for more aggressive police patrolling in public places, saying: "To inhibit the carrying of handguns, the police should become more aggressive in stopping suspicious people and, where they have reasonable grounds for their suspicions, frisking (i.e. patting down) those stopped to obtain guns. Hand-held magnetometers, of the sort used by airport security guards, might make the street frisks easier and less obtrusive. All this can be done without changing the law." (The Washington Post, April 1, 1981) Note, they said "people," not criminals.

13 Kleck, "Reasons for Skepticism on the Results from a New Poll on: The Incidence of Gun Violence Among Young People," The Public Perspective, Sept./Oct. 1993.

MYTH 10: "Gun control reduces crime."

This is perhaps, the greatest myth that is perpetrated today by national gun ban groups.

No empirical study of the effectiveness of gun laws has shown any positive effect on crime. To the dismay of the prohibitionists, such studies have shown a negative effect. That is, in areas having greatest restrictions on private firearms ownership, crime rates are typically higher, because criminals are aware that their intended victims are less likely to have the means with which to defend themselves.

If gun laws worked, the proponents of such laws would gleefully cite examples of reduced crime. Instead, they uniformly blame the absence of tougher or wider spread measures for the failures of the laws they advocated. Or they cite denials of applications for permission to buy a firearm as evidence the law is doing something beyond preventing honest citizens from being able legally to acquire firearms. They cite Washington, D.C., as a jurisdiction where gun laws are "working." Yet crime in Washington has risen dramatically since 1976, the year before its handgun ban took effect. Washington, D.C., now has outrageously higher crime rates than any of the states (D.C. 1992 violent crime rate: 2832.8 per 100,000 residents; U.S. rate: 757.5), with a homicide rate 8 times the national rate (1992 rate 75.4 per 100,000 for D.C., 9.3 nationally.)

No wonder former D.C. Police Chief Maurice Turner said, "What has the gun control law done to keep criminals from getting guns? Absolutely nothing... [City residents] ought to have the opportunity to have a handgun."

Criminals in Washington have no trouble getting either prohibited drugs or prohibited handguns, resulting in a skyrocketing of the city's murder rate. D.C.'s 1991 homicide rate of 80.6 per 100,000 population was the highest ever recorded by an American big city, and marked a 200% rise in homicide since banning handguns, while the nation's homicide rate rose just 11%. Since 1991, the homicide rate has remained near 75 per 100,000, while the

national rate hovers around 9-10.

Clearly, criminals do not bother with the niceties of obeying laws--for a criminal is, by definition, someone who disobeys laws. Those who enforce the law agree.

In addition, restrictive gun laws create a "Catch-22" for victims of violent crime. Under court decisions, the police have no legal obligation to protect any particular individual. This concept has been tested numerous times including cases as recent as 1993. In each case the courts have ruled that the police are responsible for protecting society as a whole, not any individual. This means that under restrictive gun laws, people may be unable to protect themselves or their family from violent criminals.

The evidence that restrictive gun laws create scofflaws is evident to anyone willing to look. In New York City, there are only about 70,000 legally-owned handguns, yet survey research suggests that there are at least 750,000 handguns in the city, mostly in the hands of otherwise law-abiding citizens. In Chicago, a recent mandatory registration law has resulted in compliance by only a fraction of those who had previously registered their guns. The rate of compliance with the registration requirement of California's and New Jersey's semi-automatic bans have been very low. The same massive noncompliance--not by criminals, whom no one expects will comply, but by people fearful of repression--is evident wherever stringent gun laws are enacted.

FACTS WE CAN ALL LIVE WITH

Laws aimed at criminal misuse of firearms are proven crime deterrents. After adopting a mandatory penalty for using a firearm in the commission of a violent crime in 1975, Virginia's murder rate dropped 23% and robbery 11% in 15 years. South Carolina recorded a 24% murder rate decline between 1975 and 1990 with a similar law. Other impressive declines were recorded in other states using mandatory penalties, such as Florida (homicide rate down 33% in 17 years), Delaware (homicide rate down 33% in 19 years), Montana (down 42% 1976-1992) and New Hampshire (homicide rate down 50% 1977-1992).

The solution to violent crime lies in the promise, not the mere threat, of swift, certain punishment.

Our challenge: To reform and strengthen our federal and state criminal justice systems. We must bring about a sharp reversal in the trend toward undue leniency and "revolving door justice." We must insist upon speedier trials and upon punishments which are commensurate with crimes. Rehabilitation should be tempered with a realization that not all can be rehabilitated, and that prisons cost society less than the crime of active predatory criminals.

NRA is meeting that challenge with its CrimeStrike division, established to advance real solutions to the crime problem while protecting the rights of all honest citizens. Working in states across the nation, CrimeStrike has worked for passage of "truth in sentencing laws" which require that criminals actually serve at least 85% of time sentenced, "Victim's Bill of Rights" constitutional amendments, and "Three Strikes You're Out" laws.

The job ahead will not be an easy one. The longer "gun control" advocates distract the nation from this task by embracing that single siren song, the longer it will take and the more difficult our job will be. Beginning is the hardest step, and the NRA's Institute for Legislative Action has taken it.

Join the NRA. Support ILA. Work with us. We need your help.

FINAL WORDS FROM THE FOUNDING FATHERS
ON THE RIGHT TO KEEP AND BEAR ARMS

"I ask, sir, what is the militia? It is the whole people... To disarm the people is the best and most effectual way to enslave them..."--George Mason

"No free man shall ever be debarred the use of arms."--Thomas Jefferson

"Arms in the hands of citizens may be used at individual discretion...in private self-defense."--John Adams

"The Constitution shall never be construed to prevent the people of the United States who are peaceable citizens from keeping their own arms."--Samuel Adams

"...arms discourage and keep invader and plunderer in awe, and preserve order in the world as well as property...Horrid mischief would ensue were [the law-abiding] deprived of the use of them."
--Thomas Paine

"[The Constitution preserves] the advantage of being armed which Americans possess over the people of almost every other nation...(where) the governments are afraid to trust the people with arms."--James Madison

"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 the people always possess arms and be taught alike...how to use them."--Richard Henry Lee

"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."--Amendment II, Constitution of the United States

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FBI NATIONAL PRESS OFFICE

For Release January 5, 1997

A 3-percent decrease in serious crime was reported by the Nation's law enforcement agencies during the first six months of 1996, according to preliminary Uniform Crime Reporting Program figures released today by the Federal Bureau of Investigation.

An Index of violent and property crimes is used to measure serious crime. Violent crime decreased 5 percent, and property crime decreased 2 percent.

In the violent crime category, murder dropped 7 percent; robbery and aggravated assault both fell 5 percent; and forcible rape declined 1 percent. Among the property crimes, burglary decreased 5 percent; motor vehicle theft, 4 percent; and larceny-theft, 1 percent. Arson was the only offense to show an increase, 2 percent.

Serious crime declined in three of the four geographic regions. The declines were 8 percent in the West, 7 percent in the Northeast, and 2 percent in the Midwest. In the South, a 3-percent increase was recorded.

The Nation's largest cities, those with populations over 1 million, recorded the greatest decline -- 6 percent -- in serious crime for the 6-month period. Those with 500,000 to 999,999 inhabitants recorded no change, and the remaining city groupings showed declines. The decreases reported by rural and suburban county law enforcement agencies were 3 and 1 percent, respectively.

The Complete Semiannual UNIFORM CRIME REPORT - this report is a pdf file and will display in Acrobat Reader-



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Bureau of Justice Statistics

Statistics About Crime and Victims

BJS' National Crime Victimization Survey (NCVS) is the Nation's second largest ongoing household survey. Survey data tell us how many rapes, sexual assaults, robberies, assaults, thefts, household burglaries, and motor vehicle thefts U.S. residents age 12 or older and their households experience each year.

For the most recent data, see the National Crime Victimization Survey, 1995: Preliminary Findings.

- 1995 preliminary findings showed that U.S. residents age 12 or older experienced approximately 39.6 million crimes, according to the National Crime Victimization Survey. Twenty-nine million (74%) were property crimes, 9.9 million (25%) were crimes of violence and (1%) were personal thefts.
- The violent crime rate declined 10% from 1994 to 1995 after having been essentially unchanged since 1992. Property crime continued a 16-year decline.
- In 1995 for every 1,000 persons age 12 or older, there occurred
 - 2 rapes or attempted rapes
 - 2 assaults with serious injury
 - 5 robberies
- In 1994, the young, blacks, and males were most vulnerable to violent crime:
 - 1 in 9 persons age 12 to 15, compared to 1 in 196 age 65 or more
 - 1 in 16 blacks, compared to 1 in 20 whites
 - 1 in 17 males, compared to 1 in 24 females
- Women age 12 + annually sustained 5 million violent victimizations in 1994. Persons whom the victim knew were responsible for the majority of these victimizations.
- In 1994, women were about twice as likely as men to experience violence committed by a relative.

Additional information about crimes reported to police is available from the Federal Bureau of Investigation's Uniform Crime Reports Program (UCR). The Nation's Two Crime Measures describes the purposes and advantages of the UCR and the NCVS.

Nontechnical users can explore homicide data and arrest statistics using Easy Access to the FBI's Supplementary Homicide Reports, 1980-94 and to FBI arrest statistics, 1990-94, packages of software and data available on the Internet from the Office of Juvenile Justice and Delinquency Prevention.

BJS Crime and Victims Publications
BJS Criminal Victimization Statistical Programs
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BJS Crime and Victims Publications

Choose one of these headings:

- Criminal Victimization, general
 - Victims
 - Characteristics of crime
 - Redesign of the National Crime Victimization Survey
-

To see a full abstract of a publication and to download electronic versions of the publication, click on the title.

Criminal Victimization, general

National Crime Victimization Survey, 1995: Preliminary Findings, 9/96. Reports in a press release on the 1995 preliminary National Crime Victimization Survey (NCVS) findings that crimes of nonfatal violence and theft in the Nation declined by almost 7 percent in 1995, almost 3 million fewer offenses than in 1994. NCJ 162603

Criminal Victimization in the United States 1993, 5/96. Gives detailed data tables for the final 1993 National Crime Victimization Survey, presenting the major variables measured in the survey. NCJ 151657

Criminal Victimization 1994: National Crime Victimization Survey, 4/14/96. Presents the first 1994 findings from National Crime Victimization Survey (NCVS), based on an ongoing survey of households, each year interviewing about 100,000 persons in 50,000 household. NCJ 158022

Criminal Victimization 1993: National Crime Victimization Survey, 5/31/95. Summarizes 1993 findings from the redesigned NCVS and presents the first tabulations of 1992 data based on the redesigned survey, an ongoing survey of households, each year interviewing about 100,000 persons in 50,000 households. NCJ 151658

Criminal Victimization in the United States: 1973-92 Trends, 8/94. Presents the victimization rates for selected major crimes, based on victims' demographic characteristics and reporting of the crimes. NCJ147006

Criminal Victimization in the United States 1992, 3/94. Gives detailed, final 1992 National Crime Victimization Survey findings on rape, robbery, assault, personal and household larceny, household burglary, and motor vehicle theft. NCJ 145125

Criminal Victimization 1992: National Crime Victimization Survey, 11/93. Summarizes 1992 findings from the NCVS and presents change estimates from 1991. NCJ 144776

The Costs of Crime to Victims, 2/94. Provides information on both the overall and the average cost of crime to victims. NCJ 145865

Highlights from 20 years of Surveying Crime Victims: The National Crime Victimization Survey, 1973-92, 11/93. Reports 20 years of the most interesting and important findings from the NCVS. NCJ 144525

Highlights from 20 years of Surveying Crime Victims: The National Victimization Survey, 1973-92 -- Color Slides. Includes 39 slides of figures from the Highlights report, 5 bonus slides of homicide graphs from Vital Statistics of the United States, paper copies of the figures for making overheads, the data tables on which the graphics are based, the Highlights report, and a list of slides keyed to report page numbers, all in a three-ring binder. NCJ 148140

Crime and the Nation's Households, 1992, 9/93. Presents the percentages of households touched by rape, robbery, assault, burglary, theft, and motor vehicle theft, as well as the victims' race, ethnicity, income, region, and place of residence. NCJ143288

Victims

Female Victims of Violent Crime, 12/96. Summarizes data collected from the National Crime Victimization Survey and the FBI's Uniform Crime Reports on the number of violent incidents involving female victims. NCJ 162602

Domestic and Sexual Violence Data Collection: A Report to Congress Under Violence Against Women Act, 7/96. Reports how States and the Federal government collect data on the incidence of sexual and

domestic violence offenses. NCJ 161405

Violence Against Women: Estimates from the Redesigned National Crime Victimization Survey, 8/16/95. The first release of the 1992-93 estimates of violence against women after an extended effort to improve the victimization survey's ability to measure violence against women. NCJ 154348

Violence between Intimates, 11/94. Examines murders, rapes, robberies, and assaults committed by spouses, ex-spouses, boyfriends, or girlfriends using data from a variety of sources. NCJ 149259

Child Rape Victims, 1992, 6/22/94. Provides information on the ages of female rape victims in the 15 States that compile such detailed data. NCJ 147001

Elderly Crime Victims, 3/94. Summarizes levels and rates of violent and non-violent crimes against persons 65 or older (using data from the National Crime Victimization Survey). NCJ 147186

Characteristics of crime

Violence and Injuries in the Workplace, 7/24/94. Profiles victims of workplace crime and discusses the extent to which workplace violence occurs, offender weapon use, victim/offender relationship, and the extent of injury and time lost from work resulting from these crimes. NCJ 148199

Crime and Neighborhoods, 7/19/94. Compares victimization levels and perceptions of neighborhood crime for the Nation's households using data from a variety of sources. NCJ 147005

Guns and Crime: Handgun Victimization, Firearm Self-Defense, and Firearm Theft, 5/15/94. Provides estimates of the extent of handgun crime in the United States through 1992, as well as estimates from the National Crime Victimization Survey of thefts of firearms and the extent of firearm use for self-defense. NCJ 147003

Violent Crime, 4/94. Summarizes 1973-92 trends in rape, robbery, and assault from the National Crime Victimization Survey; homicide data from *Vital Statistics of the United States*, National Center for Health Statistics; and 1992 murder data from the *FBI Uniform Crime Reports*. NCJ 147486

Carjacking, 3/15/94. Presents the first National Crime Victimization Survey estimates of the extent and characteristics of the recently identified crime of carjacking. NCJ 147002

School Crime 1991, 9/91. Analyzes the experiences of U.S. students in grades 6-12 regarding crime victimization at school, the availability of illicit substances, gang presence, fear of crime, and school security measures. NCJ 131645

Redesign of the National Crime Victimization Survey

National Crime Victimization Survey (NCVS) Redesign: Press Release, 10/30/94. Provides basic findings on the first data for 1993 from the NCVS, comparing levels and rates of crime in 1993 versus 1992. NCJ 151169

National Crime Victimization Survey (NCVS) Redesign: Fact Sheet 10/94. Summarizes the redesign of the National Crime Victimization Survey. NCJ 151170

National Crime Victimization Survey Redesign: Technical Background, 10/30/94. Explains changes in the questionnaire and survey procedures and shows the impact on findings of the redesign. NCJ 151172

National Crime Victimization Survey (NCVS) Redesign: Questions & Answers, 10/30/94. Provides answers to frequently asked questions about the redesign. NCJ 151171

The Nation's Two Crime Measures, 11/95. Describes the purposes and advantages of the Uniform Crime Reports of the FBI and the National Crime Victimization Survey of the Bureau of Justice Statistics. NCJ-122795

BJS Criminal Victimization Statistical Programs

National Crime Victimization Survey (NCVS) is the Nation's primary source of information on criminal victimization. Each year, data are obtained from a nationally representative sample of roughly 49,000 households

comprising more than 100,000 persons on the frequency, characteristics and consequences of criminal victimization in the United States. The survey fully reports the likelihood of victimization by rape, sexual assault, robbery, assault, theft, household burglary, and motor vehicle theft for the population as a whole as well as for segments of the population such as women, the elderly, members of various racial groups, city dwellers, or other groups. The NCVS provides the largest national forum for victims to describe the impact of crime and characteristics of violent offenders. Ongoing from 1973; Redesign 1992.

Codebooks and Datasets

Emergency Room Statistics on Intentional Violence collects data on intentional injuries, such as domestic violence, rape, and child abuse, from a national sample of hospital emergency rooms. Through the Consumer Product Safety Commission's National Electronic Injury Surveillance System information is obtained on characteristics of the victim and perpetrator, victim-perpetrator relationship, alcohol/drug involvement in the incident, and description of circumstances of injury.
1994.

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NCIC 2000



Linking It All Together

February 15, 1996
Volume 1, Number 1

What is NCIC 2000?

Since its development in the sixties, improvements and additions to National Crime Information Center (NCIC) have been implemented to satisfy new requirements and to keep pace with growing transaction volumes. NCIC 2000 is a new system being developed to replace NCIC. NCIC 2000 will perform the existing NCIC functions augmented with new capabilities. NCIC 2000 will increase capacity, update technology and add fingerprint and image processing functions. NCIC 2000 will provide increased flexibility to meet future user requirements and will be easier to maintain. New and improved capabilities associated with NCIC 2000 include:

- Addition of image processing (i.e., mugshot, signature, identifying marks),
- Addition of automated single-finger fingerprint matching,
- Automation of some NCIC functions that are currently manually performed (e.g., validation, collection of benefits data),
- Access to new databases (e.g., Convicted Person on Supervised Release),
- Addition of linkage fields, providing the ability to associate multiple records with the same criminal or the same crime,
- Access to external databases (e.g., the Canadian Police Information Center (CPIC) and the Federal Bureau of Prisons' "SENTRY" database), and;
- Automatic collection of statistics for system evaluation.

Implementation Schedule and Necessary Equipment

The FBI originally scheduled NCIC 2000 to be fully operational in December of 1995. Significant problems and addition of new requirements have delayed the implementation of this system. NCIC 2000 is now expected to be fully operational in the fall of 1999. Many Control Terminal Agencies (CTA) have already begun gearing up to take full advantage of this program. Although NCIC 2000 will support existing interfaces and equipment, it is recommended that agencies begin to replace existing NCIC terminals with newer equipment. To take advantage of all the features of NCIC 2000, the user will need a workstation at a centralized site and special equipment in the patrol car. Equipment needed at the workstation includes at least a 386 personal computer or compatible newer technology, a flat bed scanner, a livescan device, an image printer, and two-way radio equipment. The patrol car will need a mobile display, keyboard, a one-finger livescan, radio interface, and a camera. Of course, an agency does not have to have all of this equipment. An agency can have partial implementation of NCIC 2000 functionality but all agencies need to be able to receive NCIC 2000 text responses when NCIC 2000 is installed and need to be able to send NCIC 2000 transaction formats within three years of its initial implementation. Within that three year span, agencies must migrate from bisync protocols to one of the newer protocols (X.25, SNA, or TCP/IP). The FBI will make all its workstation design and software available for implementation and/or customization by the user. Hopefully, this will assist the agencies in quickly developing their interfaces. However, it should be noted that once you have customized the software, upgrades may be more difficult to integrate.

New Faces

NCIC 2000 project development and administration has moved from the Criminal Justice Information Services (CJIS) division of the FBI to the Information Resources Division (IRD). Ms. JoAnn Casteel, the new project manager, brings extensive experience in monitoring and administrating large projects. In addition, the FBI has hired or transferred system analysts, risk management personnel, and program administrators into the NCIC 2000 Program Office. The FBI is also in the process of hiring additional data processing professionals to keep this project on time and on budget. The FBI has sought out varied technical advice as well. MITRE and User Technology Associates, expert systems/software engineering firms, have personnel on site to assist with the technical oversight of the project development. The Illinois State Police (ISP) has temporarily assigned two staff members, a system analyst and an operational expert, to IRD for six months. The FBI has confidence that this new team will ensure the successful and timely development and implementation of the NCIC 2000 system.

Progress, Plans and Problems

As stated previously, NCIC 2000 has had significant design and implementation challenges. The following is a list of some problems with which the FBI is still wrestling with. Although this list is not all inclusive, it will provide you with the flavor of the problems encountered by NCIC 2000.

- Harris Corporation, the company that is developing NCIC 2000, has submitted Change Order Proposal (COP) 8 which contains their technical approach to complete development of NCIC 2000. In addition, it includes the cost and schedule estimates to finish the effort. After intense negotiations, the FBI has accepted a modified COP 8.
- The Advisory Policy Board (APB) has levied new requirements, such as the Violent Gang/Terrorist Organization File, the Protective Order File and the Deported Felon file, that will be implemented into the current NCIC in 1996. These new files will also be operational in the NCIC 2000 environment.
- Preliminary design is incomplete for new functionality such as On-Line Special Requests (SPRQ), delayed query and data extracts.
- The FBI was just recently provided with the Workstation (WS), MIU and Computer Based Training (CBT) software for product evaluation. Hands-on review may uncover unforeseen problems. This newsletter will keep you posted on how the FBI's review progresses.
- The images captured by the patrol car segment are gray scale, but are not the ANSI/NIST standard. The size of ANSI/NIST standard fingerprint images prohibits transmission over mobile radio frequency networks. If an agency wants to submit an image to the local or state Automated Fingerprint Identification System (AFIS), it will have to develop modifications in the Mobile Imaging Unit and the Workstation software.

APB Meeting Update

At the APB meeting in December, the APB had three recommendations for the NCIC 2000 program. One recommendation requires the NCIC 2000 program staff to write an impact document on cessation of all work on the MIU and the WS. Another recommendation requires the NCIC 2000 program office to study the feasibility of integrating NCIC 2000 and Integrated Automated Fingerprint Identification System (IAFIS) imaging by adopting the same format and compression standard. The NCIC 2000 staff was to develop a contingency plan in the event that negotiations with Harris Corporation failed or if Harris is unable to meet discrete milestones.

STATE YOUR OPINION

This space is provided for authorized criminal justice agencies to provide commentary, questions, or suggestions. We will provide an answer to all questions. If you would like to submit an article, send it to:

**Federal Bureau of Investigation
Attn: Ms. Katina Mackall
Room 9504
NCIC 2000 Program Office
935 Pennsylvania Avenue, NW
Washington, DC 20535**

This first article was submitted by the Illinois State Police.

Each state eagerly anticipates the new functions that NCIC 2000 will bring to the local agency and the individual police officer. Illinois is no different. In this highly mobile world, it is even more imperative that officers know with whom they are dealing. The functionality that will be available through NCIC 2000 is much needed by the law enforcement community. Getting information to the officer in the car, having photographic images available and using single fingerprint technology to provide immediate positive identification will ensure increased officer safety while minimizing the risk of detaining the wrong individual. As such, Illinois has several initiatives underway that fit under the umbrella of providing NCIC 2000 type functionality to police officers.

One of these initiatives involves upgrading and expanding the ALERTS mobile data network. Currently, the ALERTS network, which was created and is managed by the Illinois Criminal Justice Information Authority, provides mobile data service to over 200 law enforcement agencies in an 18 county area. In March 1995, the Illinois State Police formed a partnership with the Authority for the purpose of expanding and enhancing the ALERTS network. Since that time, a number of other agencies, realizing the benefits the new network can provide, have joined the partnership and will be providing funding to make Phase I of the project a reality. The goal of this cooperative, three-phased project is to upgrade the existing system so that it is a statewide, high speed network capable of transmitting images and meeting state and local agencies' mobile data needs now and in the future.

The Illinois State Police is also releasing an image-based Violent Crime Tracking and Linking system application called VITAL that provides photographic images of known gang members. While currently being used as an intelligence tool, the true value of such technology will come when the officer is capable of receiving these images in the vehicle. ISP is also completing the groundwork necessary to rewrite our 26 year old statewide data network known as LEADS. Once completed, it will be a WAN based network capable of supporting applications such as VITAL.

Another objective is the positive and rapid identification of those arrested for reportable crimes by upgrading our AFIS and adding single print identification. Illinois is also reviewing use of single fingerprint technology for visitor control in maximum security prisons. As the state pursues these initiatives, one of the primary goals is to ensure images are compatible in all systems. Therefore, the Illinois State Police is urging the use of the IAFIS approved ANSI/NIST standards. If these standards are adopted, states, such as Illinois, will be able to link photos to positive identification of individuals and share information across systems.

Our two primary concerns in implementing NCIC 2000 are the need for standards and funding. Illinois is looking to the NCIC 2000 project to continue setting federal standards for positive identification technology and the exchange of criminal history information. We encourage the meshing of standards between the IAFIS and NCIC 2000 projects. Standards defined at the federal level have a rippling effect throughout state and local government. The leadership exercised in the NCIC 2000 project will benefit all levels of law enforcement if the program is given proper support and commitment from law enforcement agencies across the country.

Implementation of NCIC 2000 will require each state to update its law enforcement network. This will be a major expense for each state and many large cities and counties. A unified and aggressive effort is needed within each state and across the country to ensure necessary funding is provided for each level of government. With federal funding agencies moving toward block grants and perhaps a decreased role for state planning agencies in awarding these funds, care must be taken to ensure



Milbank Memorial Fund

Preventing Violence Against Women and Children

Ronald B. Taylor

INTRODUCTION

Domestic violence is a deadly crime, a social menace, and a costly public health problem. Most of the victims are women and children. Community leaders and legislators continue to search for workable — and affordable — policies to curb the violence and heal the wounds.

Domestic violence can explode anywhere, anytime, and within any economic class. In Los Angeles, for example, a doctor was arrested, in September, 1995, after shooting and killing his ex-wife in a crowded courthouse hallway as the couple's young daughter watched in horror. He had previously been arrested for battering his wife, and, after the divorce, had violated court orders to stay away from her. Weeks before her death, this frightened, battered woman had reported that her ex-husband was still harassing her. According to the *Los Angeles Times*, she told the court, "I cannot free myself from his attempts to dominate and control my life."

Domestic violence can take the form of threats, verbal abuse, battering, rape, and murder. It is an escalating pattern of coercive behavior that includes physical, sexual, and psychological assaults against a current or former intimate partner or against children.

Researchers Evan Stark and Anne H. Flitcraft, co-directors of the University of Connecticut Health Care Center's Domestic Violence Training Project, have concluded that domestic violence may be the single most

common cause of injury among women seeking medical attention, surpassing auto accidents, muggings, and rape combined. Their studies show that 40 percent of the women seeking medical attention are, or have been, victims of such violence. They estimate that from 20 to 25 percent of the women in the United States — more than 12 million — are at risk of being abused by an intimate male partner. As many as 4 million women are battered each year in this country; nearly three thousand are killed.

Child abuse and domestic violence are closely linked. Clinical studies show that men who batter women frequently abuse their children. Some battered women neglect their children, fail to protect them, abuse, and even kill them.

The statistics are grim: two thousand children die in outbursts of family violence each year; 140,000 are injured physically and emotionally. In at least half of these cases there is evidence of both child abuse and domestic violence. Child abuse and woman battering have often been (and in many areas continue to be) addressed as separate issues. Although child abuse laws predate domestic violence legislation by decades, the term "domestic violence" as it is applied by the law and by battered women's advocates tends to obscure its impact on children.

VIOLENCE AGAINST WOMEN AND CHILDREN:
IMPACTS AND REACTIONS

Many women, victims of domestic violence, live in fear of pain and death. They are isolated, often lacking in self-esteem. They tend to blame themselves for what is happening and they try to explain away the bruises and broken bones. They may suffer depression and anxiety; some turn to drugs or alcohol and attempt suicide. A surprising number of them prove to be survivors; they develop strategies to endure and to protect themselves and their children. However, without help, escape is terrifyingly difficult. Few can simply walk away. Even if they flee, they may be stalked, harassed, or killed.

The traumatic impact of domestic violence on children is well documented. Rich or poor, these are children at risk. Most survive (often at great physical and emotional cost), others do poorly in school, drop out, or run away. Some turn to violent crime, some find marginal jobs, and others may even have successful careers. They have children and repeat the violent cycle: abused boys and girls who become abusive parents.

Long-range studies of school children show that youngsters from violent homes are twice as likely to commit brutal acts as children growing up in nonviolent homes; victims of child abuse and/or neglect are far more apt to become violent teenagers; the highest rates of youth violence and criminal conduct occur where there is both spouse abuse and child abuse.

These studies show an alarming connection between family violence and violent juvenile behavior. Violence of all kinds is on the increase. U. S. Justice Department reports show that the number of juveniles charged with violent crimes is up sharply; teen murder rates have more than doubled in two decades; the suicide rate has doubled.

While their numbers may be relatively small, the most violent of these youngsters display shocking behavior. The damage they do is horrendous. The cost of apprehending and incarcerating these violent young criminals runs into the billions of dollars.

New York Times reporter Fox Butterfield, in his book, *All God's Children*, gives examples of these costs. Nearly 100,000 youngsters were incarcerated in the United States in 1995, which represents a tripling of the numbers in two decades. The chronic juvenile offenders often end up in adult prisons. The cost of running the nation's adult prisons (including parole and probation) totaled \$50 billion, up from just \$4 billion in 1975. These figures do not include the billions spent on police work.

Butterfield traces the costly origins of violence by looking closely at a single case, that of convicted murderer Willie Bosket, considered the most violent criminal in the New York penal system where it costs \$75,000 a year to jail a juvenile. Bosket has

a quick mind but lacks empathy or conscience. He bragged about committing scores of robberies and stabbings before he shot and killed two Manhattan subway riders in separate 1978 crimes. He was 15 at the time, a violent, abused, and neglected child who had been in and out of foster care and juvenile lockups.

"The seeds of Willie's problems were planted early," writes Butterfield. When Bosket was born his father was in prison for murder. His mother lived in Brooklyn with men who beat her and the boy. She neglected him, beat him. In Butterfield's words, Willie began the "long journey into a kind of social void" at an early age. In public school, he threw tantrums, hit teachers, fought other kids, skipped class, and ran the streets robbing and, finally, killing.

"Children who are beaten learn to treat others the same way, using aggression to get what they want," Butterfield concludes. In other words, they are conditioned to react violently.

The Willie Bosket case is an extreme example of how a violent personality was formed and at what cost.

Recent studies of brain development and function reveal that the impact of parenting on emotional competence and stability starts very early. Children who are cared for and loved learn self-worth, empathy, and self-control.

"The emotional lessons we learn as children at home and at school shape the emotional circuits," writes psychologist and *New York Times* reporter Daniel Coleman in the best-selling book *Emotional Intelligence*. This means that childhood and adolescence are critical times in shaping the powerful emotions that govern our lives. A chaotic, brutal family environment can be a school for violent, deviant behavior.

Domestic violence can be found anywhere: the inner city, suburbia, rural areas. Reactions to it are most often crisis oriented: a 911 call to police, a bloody victim rushed to the hospital. If there are children in the home and they are uninjured, police take them to a juvenile hall or an emergency shelter and report the case to child welfare workers. If the children are in danger, they may be placed in foster care.

If charges are filed against the batterer, he is booked and sometimes jailed briefly. The woman's wounds are treated and, when she is released from the hospital, she may find temporary safety in a crisis shelter. In many communities little else is done to change the dynamics of violence. Eventually the woman and her children may go home or they may move to a safer place. Even when the courts order the batterer to stay away, a woman may be attacked again.

Take Nicole Brown Simpson, for example. Los Angeles police responded to

police. The police department has a mandatory arrest policy. Arrests and conviction rates are up. Most convicted batterers (92 percent) choose group counseling and therapy rather than jail.

While the long-term results are not spectacular, they offer hope. A five-year follow-up shows that 40 percent of the convicted batterers returned to their violent ways, but 60 percent have stopped being abusive.

DDAIP's aggressive victim advocacy helps battered women and children find safety. DDAIP provides legal aid, counseling, and support groups. The project has instituted cross-training programs to bring domestic violence advocates and child protection workers together in a coordinated effort.

In addition, DDAIP operates the Duluth Visitation Center where children can safely visit an abusive father and where separated parents can meet and work out custody issues. DDAIP has a 911 tracking system to monitor police responses. Funded by the Centers for Disease Control and Prevention, DDAIP is developing domestic violence assessment tools to help the justice system detect such violence before it becomes fatal.

Prosecution and the Courts

Domestic violence laws and court practices vary among states, counties, and cities.

Prosecutors and judges are not always well

trained in domestic violence issues. Protective orders are often difficult to obtain and are not always enforced. Sentencing is uneven and too often biased against women. Many women who murdered their abusive partners have received longer prison sentences than men who killed their wives, girlfriends, or ex-lovers.

The National Council of Juvenile and Family Court Judges has acknowledged that there are problems in the court system and that it is in need of overhaul. "The whole area of family violence has long been a troublesome one for the courts. Frankly, we have not handled these cases well," said Judge Stephen B. Herrell, chairman of the council's Family Violence Committee.

The council has published a manual, *Family Violence: Improving Court Practices*, and launched a Family Violence Project to help find ways to improve the system. The FVP recommends domestic violence training for all criminal and civil justice officials, including judges.

The Family Violence Project has developed a package of model laws — a model state code — to guide policy makers in drafting effective criminal and civil justice legislation.

The code does the following:

1. Defines domestic violence.
2. Sets criminal penalties and procedures.
3. Establishes civil orders protecting victims and their children.
4. Sets custody procedures and protective

visitation rights.

5. Suggests prevention and treatment modalities.

While the model code is proving useful in drafting new laws in some states, all sections of the document have not been embraced by all advocates for battered women. Proponents, like the Family Violence Prevention Fund, give the model code high marks. Others say the code fails to define adequately critical words, like "abuse" and "self-defense."

Joan Zorza, former senior attorney with the New York-based National Center on Women and Family Law, expressed the view that the code gives judges too much discretion in a sensitive area like court-ordered mediation where issues of divorce, child custody, income, and property settlement are decided. Such a well-intended but ill-conceived court order forcing an abused and intimidated woman into mediation with a man she fears can tip the scales in the batterer's favor, Zorza explained. And mediation can quickly turn to violent confrontation if the man feels he is losing control.

Under the code's guidelines, each state would have a Domestic Violence Advisory Council to set statewide policies. Each community would have a Family Violence Council operating under the state council's guidelines to advise and coordinate local efforts. These state and local councils are

to be appointed by governors, county commissioners, or boards of supervisors and chaired by a supervising judge.

Representatives from government departments, private agencies, community organizations, and women's advocacy programs should sit on these councils.

Several states have established advisory councils, with mixed results. In Minnesota, critics say these councils tend to be heavy-handed, top-down operations that are dominated by the judges, that battered women and their community-based advocates are underrepresented, and that there are questions about conflicts of interest. For example, should a judge preside over a council that includes child welfare workers, probation officers, and women's advocates who later may have to represent clients in that judge's court?

The model code's usefulness as a resource will depend entirely on how well domestic violence experts, policy makers, and legislators within a particular state can adapt the model to meet the needs of their community and region.

Battered Woman Syndrome. At least 14 of the 33 women on death row in the United States in 1991 had killed men who battered them.

Hundreds more are serving long sentences for murder or assault with deadly intent.

For years the courts refused to hear a

defendant's testimony about prior abusive conduct: the "Battered Woman Syndrome" was not an allowable self-defense. Today, after years of trials and appeals, the courts and legislatures in some states recognize that the use of deadly force is sometimes justified, but only if a woman is defending herself, not acting in retribution or to stop anticipated assaults.

In Ohio the supreme court ruled that under the language of the then-current law, the Battered Woman Syndrome could not be used as a defense in criminal cases. Reacting to this, the Ohio legislature changed the law, explicitly permitting such a defense in criminal cases. No mention was made of its use in civil cases where child custody, property settlements, and other issues are heard. Battered women's legal advocates considered this a setback.



Community-Based Services and Advocacy

Community by community, women's advocates have put together services for abused women. Most often, these efforts have not included the child advocacy groups or child welfare workers.

The relationship between domestic violence advocates and child welfare advocates has not always been cordial. That situation is beginning to change in a few states — Minnesota, Michigan, and Massachusetts —

where the two parties are trying to work out a common, community-based approach. To support the development of coordinated strategies, the AMA has produced a guidebook for working at the local level and is sponsoring regional training conferences to provide multidisciplinary community teams with skills in assessment and collaboration and to share information about ongoing successful efforts.

The domestic violence movement is a loosely federated group of organizations and individuals. At last count there were more than 1,800 community-based groups and organizations focused on domestic violence issues, including 1,200 shelter programs. Finding public and private funding where they can, these groups have responded to victims' needs and have made domestic violence a public issue.

State Coalitions

Statewide coalitions were usually outgrowths of the battered women's movement. The oldest, the Pennsylvania Coalition Against Domestic Violence (PCADV), was founded in 1976 by nine independent domestic violence organizations that had come to the state capitol in Harrisburg to lobby for changes in the law.

Over the next few years similar coalitions were formed in other states. They provide technical assistance to local programs, offer

JUNEAU EMPIRE

Legislation would ease gun permit rules

By MARK SABBATINI
JUNEAU EMPIRE

Easing concealed handgun permit requirements, including mandatory temporary permits when delays in background checks occur, is being proposed by a state lawmaker.

The bill by Sen. Lyda Green, a Wasilla Republican, would reduce permit and renewal costs, allow people with permits from other states to carry weapons, create emergency permits for domestic violence victims, and allow carriers into restaurants that serve alcoholic beverages. It would also require agencies wanting to exclude carriers from meetings to post a sign and

provide a locked strongbox for weapons.

Excluded are some of the more controversial provisions from a similar bill by Green last year, including allowing concealed weapons in bars, which passed the Legislature but was vetoed by Gov. Tony Knowles.

Green did not return phone calls made to her office today about SB 141. She stated the intent of her previous bill was to lower fees to their actual cost and lift restrictions that could cause carriers to inadvertently violate the law while going about their daily business.

Please see Guns, Page 8

MONDAY
MARCH 17, 1997

“ (The bill) causes me a whole lot of concern. We're walking into a dangerous area, where there's a question of whether there's been a check of a permit.

Senate Minority Leader Jim Duncan

Guns . . .

Continued from Page 1

Among the bill's provisions is requiring the Department of Public Safety to issue a temporary permit within 15 days of receiving an application if the Federal Bureau of Investigation has not provided the results of a fingerprint check. The permit would be revoked if the fingerprint information revealed the person was ineligible.

Senate Minority Leader Jim Duncan, a Juneau Democrat, said he hasn't read Green's bill, but hearing about that provision "causes me a whole lot of concern."

ous area, where there's a question of whether there's been a check of a permit," he said.

A concern of Department of Public Safety officials is allowing carriers in other states to carry concealed weapons up to 90 days in Alaska, with a notification to the state required for longer periods.

Alaska requires a fingerprint check, a criminal background check and weapons training, said Sandy Perry-Provost, a special assistant for the department. She said many states have less stringent requirements - Vermont, for example, requires merely a signature.

"As I read it, Senator Green's bill permits someone who has a

come into Alaska and not have to follow our laws," she said.

The bill reduces the \$125 application fee to \$99 and the \$60 renewal fee to \$30. Domestic violence victims could obtain a free non-renewable 90-day permit without a background check once every five years.

Carriers could also bring their weapons onto Alaska Marine Highway Vessels, but would be required to turn them over to a purser if they have a place to store the firearm.

A draft memo from Green's office states nearly 6,000 concealed weapons permits have been issued in Alaska and none of the permit holders has used their weapons to



Senator resubmits gun bill

The Associated Press

JUNEAU — A bill that would ease the state's concealed handgun law has been reintroduced, but the measure has been toned down this time around.

The bill by Sen. Lyda Green, R-Wasilla, would reduce permit costs, create emergency permits for victims of domestic violence, and allow the weapons in some restaurants that serve alcoholic beverages.

Green filed a bill last year that would have loosened restrictions on where the handguns could be carried, including allowing the

weapons to be brought to bars. Though it passed the Legislature, Gov. Tony Knowles vetoed the measure in June, saying it would have undermined safeguards in the concealed weapons law and would have jeopardized public safety.

Green said last year's legislation would not have allowed permittees to drink while carrying their weapons. She said allowing the concealed handguns in bars was dropped from the new bill because of administration concerns.

"We're trying to work to get some of the other provisions in place. They're more

important," Green said Monday.

Under her new bill, most state, federal and municipal offices could restrict permittees from bringing in their concealed weapon by posting a notice barring the handguns. The offices also would have to provide a secure place for storage.

The bill would require the state to issue temporary permits to applicants if the Federal Bureau of Investigation did not complete a fingerprint check within 15 days. The permit would be revoked if the applicant was later determined ineligible.

RECEIVED

MAR 20 1997

Ans'd.....

Testimony concerning SB-141

My approach to acceptance of SB-141 is mixed. I wish to testify in support of the following provisions of SB-141:

a. increasing the number of places where a permittee can legally carry a concealed handgun..

b. the reciprocity provisions for persons who have concealed carry permits in other states. However, when nonresident who wish to "carry" and report to the Department of Public Safety about carrying, the non-resident should be issued a copy of applicable Alaska Statutes.

c. with distribution of "concealed carry" application forms, the providing of copies of Alaska law related to "concealed carrying" ..

d. provisions which shorten waiting time for the issuance of a a permit to eligible applicants.

e. amendments to the law which allows the concealed carry of firearm which previously were described as a "miniature handgun" or "derringer". While these are less than ideal for defensive purposes, they can be effective. Their use for defense purposes should be at the discretion of the trained permittee.

f. reduction in the cost of initial permit applications and renewals, though it is conceivable that with modified background checks, the cost of original application could be further reduced. See Notation below.

I support the concept of a temporary "Emergency Permit" victims of domestic violence or other threatened individuals. However, I oppose issuing such permits as prescribed in Sec. 18.65.702 without rudimentary training. Instead SB-141 should specify that a candidate be subjected to an "instant" computer background check.and

1. A candidate for an emergency permit should demonstrate (a) safe handgun handling, (b) proficiency in firing a handgun, and the (c) key provisions of the the Alaska Statute as it addresses the use of deadly force. Additionally, the candidate should be advised where concealed carry is not permitted, especially as this may apply to the candidate's situation or concerns..

or

2. Participate in a minimum of three hours of intensive training directed at each of the three subjects above. Additionally, for candidates who require training, a revolver of .32 of larger caliber should be specified for the permit, and the candidate should be advised where concealed carry is not permitted, especially as this may apply to the candidate's situation or concerns.. Training should be provided by a volunteer certified instructor or sworn police officer at no cost to the candidate.

Notation: It should be a provision of SB-141, that unless it can be demonstrated that an "instant computer check" as required by U.S. Code for a handgun purchase, is less thorough for detecting an individual who would not qualify for a concealed handgun permit, the instant computer check should substitute for submitting fingerprints for an FBI check. Since the an "instant check" satisfy requirements to purchase a handgun, it should suffice for a concealed handgun permit. This would further reduce the cost of processing an application.

Submitted by:



Robert H. Parkerson, HC-02, Box 7630-A1, Palmer, AK 99645
Ph: (907) 745-4358

TO: Senator Green

FROM: Letitia Raub
PO Box 3663
Kodiak, AK 99615
(907) 487-2782

RE: SB141

DATE: 3/20/97

RECEIVED
MAR 20 1997
ANS'd.....

Violence is a huge problem in our State and weapons concealed or unconcealed, are involved in many of these incidents.

People should plan for their application to carry a concealed weapon and be willing to wait for a background check to be completed. There is no need to rush through the background/fingerprint checking process. I do not support shortening the current process.

The list of people who are not eligible to receive a concealed weapons permit should stay in the law. The more specific the is - the better.

The 1996 DV Act added a person currently charged with or convicted within the five years preceding the application for a permit of a crime involving domestic violence to the list of those who could not qualify for a permit. Anyone who has been convicted of a crime involving domestic violence should not be able to legally carry a concealed weapon, and that provision needs to remain in the statute.

I do not support emergency permits for victims of Domestic Violence, as this may put them in more danger as well as the law enforcement officers who respond to these often volatile situations.

Anyone who is convicted of two class A misdemeanors should lose their right to carry a concealed weapon. Law-abiding citizens will not have to worry about this penalty and those who choose to commit a crime serious enough to be classified as a class A misdemeanor not once but twice deserve a stiff penalty.

In short, please do not support the dilution of requirements for carrying concealed weapons in Alaska.

FEB 06 1997 Const.

Representative Scott Ogan
State Capitol, Room 128
Juneau, AK 99801-1182

January 31, 1997

I urge you to act promptly on reform legislation on the Concealed Carry program. If you wait until late in the session, like last year, it will only be vetoed again with no chance to override the veto. Please do not delay, because the Departments of Law and Public Safety and the Governor are implacably opposed to the entire program and especially any relaxing of the restrictions currently in place.

Here are my suggestions for modifications:

1. The current prohibitions against carrying a weapon into "Licensed Establishments" and Financial Institutions have created "Robber Safety Zones". Criminals know that if they "work" these areas, they are unlikely to encounter armed opposition. This has contributed to an increase in bank robberies and parking lot robberies near restaurants. The current broad definition of "Licensed Establishments" includes any place that sells alcohol, no matter how small the volume. This means I cannot carry a gun into restaurants such as Simon and Seafort's, Cattle Company, or even Skippers, even if I have no intention of consuming any alcohol. If I want to make a late night run to an ATM to get some cash, I cannot take my gun because the ATM is in the "Arctic Entryway", thus "inside" the bank. This is absurd. The people that have the permits are not the problem. The people illegally carrying guns are the problem. I suggest you change the law to allow carrying weapons into "Licensed Establishments" as long as no alcohol is consumed (It is already a separate crime to have a gun and drink). Eliminate the restrictions about carrying into banks. The people that have permits are not going to rob banks, especially at the ATM, late at night.

2. The current restrictions about Schools cause problems. Under current law, I cannot carry a gun, even locked in my trunk, onto any school ground such as a parking lot. So, if I want to take my kid to school, I then have to return home (a 12 mile round trip) to get my gun. Even current Federal School Gun legislation exempts persons with concealed carry permits based on a background check. Change the law to allow permit holders to carry guns onto the grounds, but not into the school buildings (we can leave the gun in the car, if necessary).

3. The current law makes no provisions for Law Enforcement Personnel (Police Officers, Reserve Police Officers, Corrections Officers, Parole Officers, and Retired Officers), who are trained to a much higher standard than required by the statute, to be exempted from the training requirements to get a permit. I convinced the Troopers to include such an exemption in their licensing rules when the program was initiated, but the Department of Law vetoed it, claiming the statute contained no such provision. Change the law to allow exemption for Law Enforcement Personnel that are currently trained and certified to state standards. This is necessary because some departments limit their officers off duty carry authorization. Additionally, Police Officers must now comply with the 5 day "Brady Bill" waiting period. Permit holders do not. Many cops get permits to avoid the waiting period.

The current program has worked well. I am not aware of any permit holder being involved in anything more serious than a traffic ticket. Remember, we are the good guys. Please, treat us as such.

Thank you,

Michael V. Avery

Michael V. Avery

Alaska State Legislature



Official Business:
Fax : (907) 465-3472

Speaker of the House of Representatives

State Capitol
Juneau, Alaska 99801-1182
(907) 465-3720
(907) 465-2689

MEMORANDUM

Date: January 21, 1997

Attn: Representative Jeannette James
Chair, House State Affairs Committee *Jeannette*

From: Representative Gail Phillips
SPEAKER OF THE HOUSE *Gail*

Re: Concealed Permit - Reciprocity

Attached please find a letter from one of my constituents regarding reciprocity for concealed carry legislation. I would appreciate your consideration of Mr. Hoyt's comments and enclosed information during the bill process in State Affairs.

GP:brg
Enclosure

cc: Mr. Roy Hoyt Jr.

Roy E. Hoyt Jr.
P.O. Box 2121
Homer, AK 99603-2121

RECEIVED

DEC 19 1996

December 17, 1996

Ans'd.....

Representative Gail Phillips
Speaker of the House
P.O. Box 3304
Homer, AK 99603

Dear Speaker Phillips:

Enclosed is a copy of the NRA Guide to the Interstate Transportation of Firearms. Additional copies may be obtained from the NRA Institute for Legislative Action, address and toll free telephone number are listed on the back of the pamphlet.

I understand that the concealed carry legislation may be revisited this session. I strongly feel that reciprocity for visitors to the state should be included in this legislation. Reciprocity would also allow Alaska Licensees to carry concealed firearms in some other states while traveling. We often carry large sums of money and valuables. A number of other states have reciprocal privileges, why not Alaska?

I also feel that when someone establishes residency in the state, even by the obtaining of an Alaska drivers licence, they should be required to complete the same requirements of classroom and weapons proficiency as any other resident. In other words a resident must hold an State of Alaska Concealed Handgun Permit. Their out of state permit would be void once an individual becomes a resident.

I request your help in in obtaining the inclusion of reciprocity in any concealed carry legislation.

Thanking you in advance for your consideration of the above I remain,

Sincerely

Roy E Hoyt Jr.
Roy E. Hoyt Jr.

*BR - Sent to
Rep. James for
her information.
Thanks -
G
235-6387 Homer*

RECEIVED

FEB 07 1997

Ans'd.....

Senator Lyda Green
State Capitol, Room 125
Juneau, AK 99801-1182

January 31, 1997

I urge you to act promptly on reform legislation on the Concealed Carry program. If you wait until late in the session, like last year, it will only be vetoed again with no chance to override the veto. Please do not delay, because the Departments of Law and Public Safety and the Governor are implacably opposed to the entire program and especially any relaxing of the restrictions currently in place.

Here are my suggestions for modifications:

1. The current prohibitions against carrying a weapon into "Licensed Establishments" and Financial Institutions have created "Robber Safety Zones". Criminals know that if they "work" these areas, they are unlikely to encounter armed opposition. This has contributed to an increase in bank robberies and parking lot robberies near restaurants. The current broad definition of "Licensed Establishments" includes any place that sells alcohol, no matter how small the volume. This means I cannot carry a gun into restaurants such as Simon and Seafort's, Cattle Company, or even Skippers, even if I have no intention of consuming any alcohol. If I want to make a late night run to an ATM to get some cash, I cannot take my gun because the ATM is in the "Arctic Entryway", thus "inside" the bank. This is absurd. The people that have the permits are not the problem. The people illegally carrying guns are the problem. I suggest you change the law to allow carrying weapons into "Licensed Establishments" as long as no alcohol is consumed (It is already a separate crime to have a gun and drink). Eliminate the restrictions about carrying into banks. The people that have permits are not going to rob banks, especially at the ATM, late at night.

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Reserve

3. The current law makes no provisions for Law Enforcement Personnel (Police Officers, Reserve Police Officers, Corrections Officers, Parole Officers, and Retired Officers), who are trained to a much higher standard than required by the statute, to be exempted from the training requirements to get a permit. I convinced the Troopers to include such an exemption in their licensing rules when the program was initiated, but the Department of Law vetoed it, claiming the statute contained no such provision. Change the law to allow exemption for Law Enforcement Personnel that are currently trained and certified to state standards. This is necessary because some departments limit their officers off duty carry authorization. Additionally, Police Officers must now comply with the 5 day "Brady Bill" waiting period. Permit holders do not. Many cops get permits to avoid the waiting period.

The current program has worked well. I am not aware of any permit holder being involved in anything more serious than a traffic ticket. Remember, we are the good guys. Please, treat us as such.

Thank you,

Michael V. Avery
Michael V. Avery

MV Avery
800 Win Circle
Wasilla, AK 99654

RECEIVED BY

NOV 25 1996

Rep. Joannette Ja

Frank E. Rice
3641 Hazen Circle
Anchorage, AK 99515
November 20, 1996

Representative James
Post Office Box 56622
North Pole, AK 99705

Dear Representative James:

Recently, I have noticed some material that might be of assistance to you in your efforts to remedy our concealed carry law. Hopefully, the next legislature will be veto proof.

The first item is a copy of the Alaska part of a Second Amendment Symposium conducted by the Tennessee Law Review. It begins with the observation that Alaska's law seems similar to other laws examined, but contains surprising differences. It then goes on to list some of the differences.

Alaska limits the types and calibres of handguns which may be carried. It has a renewal fee of \$60.00 and requires a permit holder to again demonstrate competence by retaking qualifying training. It restricts concealed carry in many places where other states provide no such restrictions. It also provides authority to cities to prohibit concealed carry. The Symposium then observes that Alaska law certainly suggests less trust in its people than many other states. Then having made its case, it adds a superfluous discussion of derringers.

The Symposium does not provide a cost analysis of licensing fees other than to comment on the \$60.00 renewal fee. Perhaps it was unaware of the \$123.00 fee for the initial license. Anyway a renewal permit seems to have the same requirements as the issuance of the original permit. Assuming a new background investigation, why does the original permit cost \$123.00? Assuming no new background, why does it cost \$60.00 to do nothing more than issue the permit? As an aside, why does it cost a Montana Sheriff only \$50.00 to provide a background and issue a permit? And for an additional \$5.00 he provides the license picture and takes the required fingerprints.

The second item is a copy of a brochure put out by the Montana Shooting Sports Association explaining Montana's concealed carry law and containing a copy of the law. There are differences between the Montana and Alaska laws, of course, just as there are different circumstances in the two States. Generally the Montana law is much more relaxed. At least until their Supreme Court rules otherwise, it does not appear that most people who need to carry a weapon need a permit.

Handguns carried in purses, backpacks, briefcases, etc. are considered to be carried in personal luggage rather than conceal on the person. Concealed or partially under the clothing requires a permit.

Note to. training requirements differ. Most of the training that is readily available to the general public is that conducted by NRA instructors, e.g. training that

utilizes instructors certified by a national firearms association. All of these courses provide safety training. Only the pistol and the personal protection courses provide handgun proficiency training.

For Montana this is probably O. K. Its population of 87,000 people is made up of almost entirely of people who have lived there all of their lives. Except for the Yellowstone County metropolitan area this population is scattered rather evenly throughout the State in small towns, ranches, and farms. Even in the metropolitan area most of the people have moved there from the outlying areas. In other words, these are people who grew up with guns, have used them all their lives, and probably a safety course is sufficient.

Alaska's population is somewhat different. Half of our population is in Anchorage and is highly mobile. Many of the people have come here from cities stateside where guns are not common or even prohibited. The people we see at the rifle ranges are often not familiar with guns. Many have never fired a handgun. Thus our initial training is necessary both from the standpoint of the individual and and public safety.

The third item is copies of the application forms for Yellowstone and Carbon Counties. You will note first that the forms are not appropriate for Alaska. But note, the two counties are providing different information attachments. Yellowstone, Montana's principal metropolitan center, provides a detailed cover memo and an attachment dealing

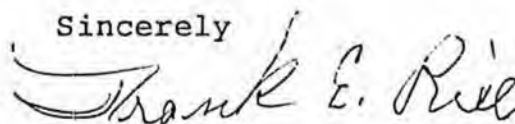
mostly with the legalities of concealed carry. Carbon, on the other hand, provides the application and the legalities but also deals with the situation when a permit is not required, in a purse etc. The section "Reasons for Requesting a Permit" is not a rating factor, but at least in Carbon County is used to advise the person wishing to carry while hunting or fishing that they do not need a permit. They can still have one if they want it.

Montana's concealed carry permits program differs from Alaska's probably because everyone involved is an elected official, the persons passing the law, the persons administering the law, and the persons enforcing the law. Additionally the principal advisor to the legislature was the Montana Shooting Sports Association. In Alaska the principal advisor seems to have been unelected or opposed and the regulations were written by the unelected. Most of unelected seems to have been less than gleeful over its passage. Something only the legislature can correct.

cc: Bob Brumlow

NRA Training Counselor

Sincerely

A handwritten signature in cursive script that reads "Frank E. Rice". The signature is written in dark ink and is positioned above the printed name.

Frank E. Rice

March 18, 1997

RECEIVED
MAR 21 1997
Ans'd.....

Reference: Senate Bill 141

Dear Senators,

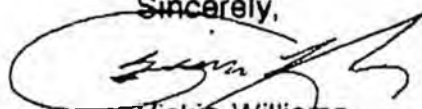
After reviewing Senator Greens bill to arm victims with guns, I find it very reactionary.

I thought the whole idea in our country was to stop the violence and teach adults and children better skills around the whole issue of anger. Do you honestly think it will teach non-violence to just arm more people to shoot other people to solve problems?

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? Wouldn't it make more sense to help children in dysfunctional families so that they don't feel like they have to use force and control on other people to get what they want or need in our society. Doesn't it make sense to make games people play more fair and less win/lose so everyone feels better about playing. If we continue to teach and preach violence and control as a way of life then we certainly will "reap the whirlwind", we already are, aren't we learning anything?

I definitely oppose SB141. Violence and control have become a way of life in America, we need to learn....

Sincerely,



Vickie Williams
PO Box 113
Valdez, AK 99686



RECEIVED
MAR 17 1997
Ans'd.....
advocates for victims of violence

P.O. Box 524 • Valdez, Alaska 99686
24 Hour Crisis Line (907) 835-2999 • Office (907) 835-2980

Date: March 18, 1997

To: Senator Green

From: Debra Pexa

Re: SB141

I am writing in response to Senate Bill 141, introduced on Friday, March 14th. I have grave concerns about weakening existing laws on concealed weapons. I am especially concerned about the provision for victims of domestic violence to gain permits to concealed weapons. I strongly oppose any measure that provides for violence as an answer to violence. What message does this send to our children? To our community? As a state, Alaska must have the foresight and vision to address the underlying causes of domestic violence in our society, rather than implement band-aid measures which will only perpetuate the cycle of violence. Please reconsider this bill.

Sincerely,

Debra Pexa
Executive Director



Public Opinion Message

Anchorage Legislative Information Office (LIO)
716 W. 4th Ave. Suite 250 Anchorage, AK 99501 • Phone: 258-8111 Fax 258-1266

RECEIVED
MAR 20 1997
ANS 4

From: Print your name and address as it appears on your voter registration card.

NAME (LAST, FIRST, MIDDLE)	Susan J Pearson
RESIDENCE (NUMBER, STREET)	814 W/11th Ave Anchorage AK 99501
PHONE NUMBER (AREA CODE)	(907) 279 9585

To: Write an H or an S in a Committee box; put a ✓ in a Caucus or Member's box.

Committees (H or S)	House members	Senate members
<input type="checkbox"/> Community & Regional Affairs (ca)	<input type="checkbox"/> Avastman (aus)	<input type="checkbox"/> Adams (ada)
<input type="checkbox"/> Finance (fn)	<input type="checkbox"/> Barter (bar)	<input type="checkbox"/> Conway (con)
<input type="checkbox"/> Health, Ed. & Social Services (hes)	<input type="checkbox"/> Bice (bi)	<input checked="" type="checkbox"/> Duncan (dun)
<input type="checkbox"/> Judiciary (ju)	<input type="checkbox"/> Brown (br)	<input type="checkbox"/> Eise (ei)
<input type="checkbox"/> Labor & Commerce (lc)	<input type="checkbox"/> Blunde (blun)	<input type="checkbox"/> Frank (fra)
<input type="checkbox"/> Resources (res)	<input type="checkbox"/> Daves (dav)	<input checked="" type="checkbox"/> Green (gre)
<input type="checkbox"/> Rules (ru)	<input type="checkbox"/> Davis B. (dab)	<input type="checkbox"/> Harford (har)
<input type="checkbox"/> State Affairs (sa)	<input type="checkbox"/> Davis G. (dag)	<input type="checkbox"/> Hoffman (hof)
<input type="checkbox"/> Transportation (ta)	<input type="checkbox"/> Elton (el)	<input type="checkbox"/> Kelly T. (ket)
<input type="checkbox"/> Other:	<input type="checkbox"/> Finkelshtn (fk)	<input type="checkbox"/> Leman (lem)
<input type="checkbox"/> Other:	<input type="checkbox"/> Foster (fos)	<input type="checkbox"/> Lincoln (lin)
	<input type="checkbox"/> Green (gm)	<input checked="" type="checkbox"/> Miller (mil)
	<input type="checkbox"/> Grossencliff (gr)	<input type="checkbox"/> Pearce (par)
	<input type="checkbox"/> Hanley (han)	<input type="checkbox"/> Phillips R. (phr)
	<input type="checkbox"/> Ivan (iva)	<input type="checkbox"/> Rieger (rie)
	<input type="checkbox"/> James (jam)	<input type="checkbox"/> Salo (sal)
	<input type="checkbox"/> Kelly P. (kil)	<input type="checkbox"/> Sharp (sha)
	<input type="checkbox"/> Karring (kar)	<input type="checkbox"/> Taylor (tay)
	<input type="checkbox"/> Kot (kot)	<input type="checkbox"/> Torgerson (tor)
	<input type="checkbox"/> Kubine (kub)	<input type="checkbox"/> Zharoff (zha)
		<input checked="" type="checkbox"/> Mackie Ward

Subject: Enter a bill number and check one box below OR enter a subject.

HB or SB	Bill number	and check one:	Support	OR	Subject
SB	141	<input checked="" type="checkbox"/> Oppose			
		<input type="checkbox"/> Amend			

Message: * This form MUST be completely filled out, including a phone number. You may phone, fax, or deliver your POM to any LIO. Please PRINT. Your message cannot exceed 30 words (one word per box) and cannot contain any vulgar language.

I	oppose	the	legislation	being
introduced	to	weaken	the	concealed
weapons	law.	easy	access	to
a	gun	because	a	person
is	involved	in	domestic	violence
as	a	victim	or	perpetrator
creates	an	even	more	dangerous
situation.	keeping	in	place	a
waiting	period	for	all	citizens
is	more	effective	than	placing
a	gun	in	the	hand
of	an	angry	and	emotional
person.	Please	also	reconsider	using
lockers	for	concealed	weapons	anywhere
near	a	victims	or	batterers

Public Opinion Message

Anchorage Legislative Information Office (LIO)
 716 W. 4th Avenue, Suite 220 Anchorage, AK 99501 • Phone: 258-5111 Fax 258-1281

RECEIVED
 MRS

From: Print your name and address as it appears on your voter registration card.

MS	Jennifer	Blackwell
31009 Rhode Cir Anch. AK 99503		
same		
279-9581		

To: Write an H or an S in a Committee box; put a V in a Caucus or Member's box.

Committees (enter H or S)	House members	Single members
<input type="checkbox"/> Community & Regional Affairs (ca)	<input type="checkbox"/> Austerman (aut)	<input type="checkbox"/> Adams (ada)
<input type="checkbox"/> Finance (fin)	<input type="checkbox"/> Barrak (bar)	<input type="checkbox"/> Dorsey (dor)
<input type="checkbox"/> Health, Ed. & Social Services (hes)	<input type="checkbox"/> Erze (erz)	<input type="checkbox"/> Duncan (dun)
<input type="checkbox"/> Judiciary (jud)	<input type="checkbox"/> Brown (bro)	<input type="checkbox"/> Ellis (ell)
<input type="checkbox"/> Labor & Commerce (lnc)	<input type="checkbox"/> Bunde (bun)	<input type="checkbox"/> Franz (fra)
<input type="checkbox"/> Resources (res)	<input type="checkbox"/> Davies (dav)	<input type="checkbox"/> Green (gre)
<input type="checkbox"/> Rules (rs)	<input type="checkbox"/> Davs. B. (dab)	<input type="checkbox"/> Harford (har)
<input type="checkbox"/> State Affairs (sta)	<input type="checkbox"/> Davs. G. (dag)	<input type="checkbox"/> Hoffman (hof)
<input type="checkbox"/> Transportation (tra)	<input type="checkbox"/> Elton (elt)	<input type="checkbox"/> Kelly, T. (kaf)
<input type="checkbox"/> Other:	<input type="checkbox"/> Finkalstein (fik)	<input type="checkbox"/> Lemmon (lem)
<input type="checkbox"/> Other:	<input type="checkbox"/> Foster (fos)	<input type="checkbox"/> Lincoln (lin)
<input type="checkbox"/> Other:	<input type="checkbox"/> Green (grn)	<input type="checkbox"/> Miller (mil)
CAUCUSES	<input type="checkbox"/> Gaussonon (gna)	<input type="checkbox"/> Francis (fnc)
<input type="checkbox"/> Anchorage (aga)	<input type="checkbox"/> Hanley (han)	<input type="checkbox"/> Phillips, R. (phr)
<input type="checkbox"/> Delta (dta)	<input type="checkbox"/> Ivan (iva)	<input type="checkbox"/> Rieger (rie)
<input type="checkbox"/> Fairbanks (fainon) (fi)	<input type="checkbox"/> James (jam)	<input type="checkbox"/> Sato (sato)
<input type="checkbox"/> Matliu (mat)	<input type="checkbox"/> Kelly, P. (kpf)	<input type="checkbox"/> Sharp (shp)
<input type="checkbox"/> Majority (maj)	<input type="checkbox"/> Kohring (kon)	<input type="checkbox"/> Taylor (tay)
<input type="checkbox"/> Minority (min)	<input type="checkbox"/> Kot (kot)	<input type="checkbox"/> Torgerson (ton)
	<input type="checkbox"/> Kubins (kub)	<input type="checkbox"/> Zieroff (zhr)

Subject: Enter a bill number and check one box below OR enter a subject.

H# or S#	Bill number	and check one:	<input checked="" type="checkbox"/> Support	OR	Subject
SB	141		<input type="checkbox"/> Oppose		
			<input type="checkbox"/> Amend		

Message: * This form MUST be completed and include a phone number. You may phone, fax or deliver your POM to any LIO. * Please PRINT. Your message cannot exceed 50 words (one word per box), and cannot contain any vulgar language.

I	oppose	This	legislation	and
believe	it	will	create	more
violent	situations	More	people	with
easy	access	to	weapons	does
not	provide	positive	change	or
choices				

Public Opinion Message

Anchorage Legislative Information Office (LIO)
 716 W. 4th Avenue, Suite 200 Anchorage, AK 99501 • Phone: 258-8111 Fax 258-1261

RECEIVED

From: Print your name and address as it appears on your voter registration card.

NAME (LAST, FIRST, MIDDLE)	LAST NAME	LAST NAME
US Lisa M Johnson		
RESIDENCE (STREET ADDRESS)	CITY AND ZIP CODE	
1734 Thunderbird Place	99578	
PHONE NUMBER	ELECTORAL DIVISION (IF APPLICABLE)	
277-3885	None	

To: Write an H or an S in a Committee box; put a ✓ in a Caucus or Member's box.

Committee (enter H or S)	House members	Senate members	
<input type="checkbox"/> Community & Regional Affairs (ca) <input type="checkbox"/> Finance (fin) <input type="checkbox"/> Health, Ed. & Social Services (hes) <input type="checkbox"/> Judiciary (jud) <input type="checkbox"/> Labor & Commerce (l&c) <input type="checkbox"/> Resources (res) <input type="checkbox"/> Rules (rs) <input type="checkbox"/> State Affairs (sta) <input type="checkbox"/> Transportation (tra) <input type="checkbox"/> Other: <input type="checkbox"/> Other:	<input type="checkbox"/> Austerman (aus) <input type="checkbox"/> Barrer (bar) <input type="checkbox"/> Bice (br) <input type="checkbox"/> Brown (bro) <input type="checkbox"/> Bunde (bun) <input type="checkbox"/> Davies (dav) <input type="checkbox"/> Davis, B. (dab) <input type="checkbox"/> Davis, G. (dag) <input type="checkbox"/> Elton (el) <input type="checkbox"/> Finkelshteyn (fik) <input type="checkbox"/> Foster (fos) <input type="checkbox"/> Green (grn) <input type="checkbox"/> Grossenart (gro) <input type="checkbox"/> Hanley (han) <input type="checkbox"/> Ivan (iva) <input type="checkbox"/> James (jam) <input type="checkbox"/> Kelly, P. (kil) <input type="checkbox"/> Kohring (kor) <input type="checkbox"/> Koc (koc) <input type="checkbox"/> Kubina (kub)	<input type="checkbox"/> Long (lng) <input type="checkbox"/> Macke (mak) <input type="checkbox"/> Martin (mar) <input type="checkbox"/> Meek (mea) <input type="checkbox"/> Moses (mos) <input type="checkbox"/> Muder (mul) <input type="checkbox"/> Nevada (nav) <input type="checkbox"/> Nichols (nic) <input type="checkbox"/> Ogan (oga) <input type="checkbox"/> Patton (pat) <input type="checkbox"/> Phillips, G. (phg) <input type="checkbox"/> Porter (por) <input type="checkbox"/> Robinson (rob) <input type="checkbox"/> Rosenberg (rok) <input type="checkbox"/> Sanders (san) <input type="checkbox"/> Theriault (trv) <input type="checkbox"/> Tooley (tol) <input type="checkbox"/> Vezev (vez) <input type="checkbox"/> Williams (wit) <input type="checkbox"/> Wolfe (wif)	<input type="checkbox"/> Adams (ada) <input type="checkbox"/> Dewey (deu) <input type="checkbox"/> Duncan (dun) <input type="checkbox"/> Ellis (ell) <input type="checkbox"/> Frank (fra) <input type="checkbox"/> Green (gre) <input type="checkbox"/> Harford (har) <input type="checkbox"/> Hoffman (hof) <input type="checkbox"/> Kelly, T. (kal) <input type="checkbox"/> Leman (lem) <input type="checkbox"/> Lincoln (lin) <input type="checkbox"/> Miller (mil) <input type="checkbox"/> Pearce (pea) <input type="checkbox"/> Phillips, R. (phr) <input type="checkbox"/> Rieger (rie) <input type="checkbox"/> Selo (sel) <input type="checkbox"/> Sharp (sha) <input type="checkbox"/> Taylor (tav) <input type="checkbox"/> Torgerson (tor) <input type="checkbox"/> Zaroff (zra)
Caucuses			
<input checked="" type="checkbox"/> Anchorage (aga) <input type="checkbox"/> Bar (bar) <input type="checkbox"/> Fairbanks (fai) <input type="checkbox"/> Matig (mat) <input type="checkbox"/> Majority (maj) <input type="checkbox"/> Minority (min)			

Subject: Enter a bill number and check one box below OR enter a subject.

H or SB	Bill number	and check one:	Support	OR	Subject
SB	141	<input checked="" type="checkbox"/> Support	<input type="checkbox"/> Oppose		
		<input type="checkbox"/> Amend			

Message: This form MUST be completed by hand, including a phone number. You may phone, fax or deliver your POM to any LIO. Please PRINT. Your message cannot exceed 50 words (one word per box), and cannot contain any vulgar language.

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Public Opinion Message

Anchorage Legislative Information Office (LIO)
716 W. 4th Avenue, Suite 250 Anchorage, AK 99501 - Phone: 258-5111 Fax: 258-1287

From: Print your name and address as it appears on your voter registration card.

MR. OR MRS.	First Name	Last Name	City, State, Zip
MRS	Rita	M Johnson	1545 S. Hoyt #72 Anchorage, AK 99508
Home phone	272-4222		Office or work (if different)
			None

To: Write an H or an S in a Committee box; put a ✓ in a Caucus or Member's box.

Committees (enter H or S)	HOUSE MEMBERS	Senate members
<input type="checkbox"/> Community & Regional Affairs (cra)	<input type="checkbox"/> Austerman (aue)	<input type="checkbox"/> Adams (ada)
<input type="checkbox"/> Finance (fin)	<input type="checkbox"/> Barnes (bar)	<input type="checkbox"/> Jolley (jole)
<input type="checkbox"/> Health, Ed. & Social Services (hes)	<input type="checkbox"/> Erce (er)	<input type="checkbox"/> Duncan (dun)
<input type="checkbox"/> Judiciary (jud)	<input type="checkbox"/> Brown (bro)	<input type="checkbox"/> Ellis (eli)
<input type="checkbox"/> Labor & Commerce (lco)	<input type="checkbox"/> Bunde (bun)	<input type="checkbox"/> Frank (fra)
<input type="checkbox"/> Resources (res)	<input type="checkbox"/> Davies (dav)	<input type="checkbox"/> Green (gre)
<input type="checkbox"/> Rules (ru)	<input type="checkbox"/> Davis, B. (dab)	<input type="checkbox"/> Harford (har)
<input type="checkbox"/> State Affairs (sta)	<input type="checkbox"/> Davis, G. (dag)	<input type="checkbox"/> Hoffman (hof)
<input type="checkbox"/> Transportation (tra)	<input type="checkbox"/> E'lon (el)	<input type="checkbox"/> Kelly, T. (kel)
<input type="checkbox"/> Other:	<input type="checkbox"/> Finkelshteyn (fik)	<input type="checkbox"/> Leman (lem)
<input type="checkbox"/> Other:	<input type="checkbox"/> Foster (fos)	<input type="checkbox"/> Lincoln (lin)
	<input type="checkbox"/> Green (grn)	<input type="checkbox"/> Miller (mil)
	<input type="checkbox"/> Gruesbeck (gre)	<input type="checkbox"/> Pomeroy (pom)
	<input type="checkbox"/> Hanley (han)	<input type="checkbox"/> Robinson (rob)
	<input type="checkbox"/> Iwan (iwa)	<input type="checkbox"/> Rosenberg (ros)
	<input type="checkbox"/> James (jam)	<input type="checkbox"/> Sanders (san)
	<input type="checkbox"/> Kelly, P. (kpl)	<input type="checkbox"/> Thomsen (tho)
	<input type="checkbox"/> Kohring (koh)	<input type="checkbox"/> Toohay (toh)
	<input type="checkbox"/> Koff (kof)	<input type="checkbox"/> Vezev (vev)
	<input type="checkbox"/> Kubina (kub)	<input type="checkbox"/> Williams (wil)
		<input type="checkbox"/> Wolf (wol)
		<input type="checkbox"/> Zheroff (zhe)

Subject: Enter a bill number and check one box below OR enter a subject.

HB or SB	Bill number	and check one:	<input type="checkbox"/> Support	OR	Subject
SB	141	<input checked="" type="checkbox"/> Oppose			
		<input type="checkbox"/> Amend			

Message: * The form MUST be completely filled out, including a phone number. You may phone, fax, or deliver your POM to the LIO. Please PRINT. Your message cannot exceed 50 words (one word per box), and must contain any subject language.

I	believe	this	will	lead	1
to	more	vigilance.			12
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Public Opinion Message

Anchorage Legislative Information Office (LIO)
716 W. 4th Avenue, Suite 200 Anchorage, AK 99501 • Phone: 258-5111 Fax 258-1267

From: Print your name and address as it appears on your voter registration card.

First Name Jean	Last Name MAYES
Address (street address)	
City 4151 E 20th #21 Anch AK 99508	
Phone (area code) 338-9785	
Group (if known or desired) AWAIC	

To: Write an H or an S in a Committee box; put a ✓ in a Caucus or Member's box.

Committee (H or S)	House members	Senate members
<input type="checkbox"/> Community & Regional Affairs (cra)	<input type="checkbox"/> Austerman (aue)	<input type="checkbox"/> Adams (ada)
<input type="checkbox"/> Finance (fin)	<input type="checkbox"/> Barnes (bar)	<input type="checkbox"/> Donley (don)
<input type="checkbox"/> Health, Ed. & Social Services (hes)	<input type="checkbox"/> Erbe (ere)	<input checked="" type="checkbox"/> Duncan (dun)
<input type="checkbox"/> Judiciary (jud)	<input type="checkbox"/> Brown (bro)	<input type="checkbox"/> Ellis (eli)
<input type="checkbox"/> Labor & Commerce (lbc)	<input type="checkbox"/> Bunde (bun)	<input type="checkbox"/> Frank (fra)
<input type="checkbox"/> Resources (res)	<input type="checkbox"/> Davies (dav)	<input checked="" type="checkbox"/> Green (gre)
<input type="checkbox"/> Rules (rta)	<input type="checkbox"/> Devo. B. (deb)	<input type="checkbox"/> Harford (har)
<input type="checkbox"/> State Affairs (sta)	<input type="checkbox"/> Davis, G. (dgv)	<input type="checkbox"/> Hoffman (hof)
<input type="checkbox"/> Transportation (tra)	<input type="checkbox"/> Elton (ell)	<input type="checkbox"/> Kelly, T. (kel)
<input type="checkbox"/> Other:	<input type="checkbox"/> Feinbstein (fik)	<input type="checkbox"/> Leman (lem)
<input type="checkbox"/> Other:	<input type="checkbox"/> Foster (fos)	<input type="checkbox"/> Lincoln (lin)
	<input type="checkbox"/> Green (grn)	<input checked="" type="checkbox"/> Miller (mil)
	<input type="checkbox"/> Grossendorf (gro)	<input type="checkbox"/> Pearce (pear)
	<input type="checkbox"/> Hanley (han)	<input type="checkbox"/> Phillips, R. (phi)
	<input type="checkbox"/> Ivan (iva)	<input type="checkbox"/> Rieger (rie)
	<input type="checkbox"/> James (jam)	<input type="checkbox"/> Sajo (saj)
	<input type="checkbox"/> Kelly, P. (kpl)	<input type="checkbox"/> Sharp (sha)
	<input type="checkbox"/> Kohring (kon)	<input type="checkbox"/> Taylor (tay)
	<input type="checkbox"/> Kotz (kot)	<input type="checkbox"/> Torgerson (tor)
	<input type="checkbox"/> Kubina (kub)	<input type="checkbox"/> Zaroff (zha)
		<input checked="" type="checkbox"/> Mackie
		<input checked="" type="checkbox"/> Ward

Subject: Enter a bill number and check one box below OR enter a subject.

HB or SB SB	Bill number 141	and check one:	<input checked="" type="checkbox"/> Support	OR	Subject
			<input type="checkbox"/> Oppose		
			<input type="checkbox"/> Amend		

Message:

* This form MUST be completed. Fill in, including a phone number. You may phone, fax, or deliver your POM to any LIO.
* Please PRINT. Your message cannot exceed 30 words (one word per box) and cannot contain any vulgar language.

This	bill	will	encourage	violence.
to	answer	violence	and	will
allow	people	who	may	have
violent	histories	of	their	own
to	easily	access	weapon	Domestic
violence	situations	that	involve	weapons
have	more	chance	of	leading
to	the	death	of	someone
involved	in	the	situation.	Who
else	needs	to	be	violated?

STOP!

SB 141 Section 18.65.702

RECEIVED

MAR 20 1987

Ans'd.....

Bush Alaska is a haven for transient beach miners, Adventurers & seasonal workers. Who are these people?

LOOK!

Fingerprints must be mandatory before concealed weapon permit is issued.

LISTEN!

Shelters provide safety for women & children without resorting to more violence & deaths! Laws are in place to deal with perpetrators of violence

Fund Shelters Enforce the LAW

To Senator Green, Chair

Senator Ward

Senator Mackie

Senator Miller

Senator Duncan

From Sue Christensen, Bering Sea Unions Co

March 18, 1997

RECEIVED
MAR 27 1997
Ans'd.....

Reference: Senate Bill 141

Dear Senators,

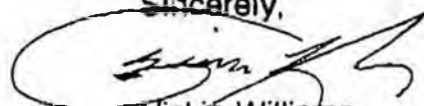
After reviewing Senator Greens bill to arm victims with guns, I find it very reactionary.

I thought the whole idea in our country was to stop the violence and teach adults and children better skills around the whole issue of anger. Do you honestly think it will teach non-violence to just arm more people to shoot other people to solve problems?

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? Wouldn't it make more sense to help children in dysfunctional families so that they don't feel like they have to use force and control on other people to get what they want or need in our society. Doesn't it make sense to make games people play more fair and less win/lose so everyone feels better about playing. If we continue to teach and preach violence and control as a way of life then we certainly will "reap the whirlwind", we already are, aren't we learning anything?

I definitely oppose SB141. Violence and control have become a way of life in America, we need to learn....

Sincerely,



Vickie Williams
PO Box 113
Valdez, AK 99686



RECEIVED
MAR 17 1997
Ans'd.....
advocates for victims of violence

P.O. Box 524 • Valdez, Alaska 99686
24 Hour Crisis Line (907) 835-2999 • Office (907) 835-2980

Date: March 18, 1997

To: Senator Green

From: Debra Pexa

Re: SB141

I am writing in response to Senate Bill 141, introduced on Friday, March 14th. I have grave concerns about weakening existing laws on concealed weapons. I am especially concerned about the provision for victims of domestic violence to gain permits to concealed weapons. I strongly oppose any measure that provides for violence as an answer to violence. What message does this send to our children? To our community? As a state, Alaska must have the foresight and vision to address the underlying causes of domestic violence in our society, rather than implement band-aid measures which will only perpetuate the cycle of violence. Please reconsider this bill.

Sincerely,

Debra Pexa
Executive Director



SIXTY THIRTY NORTH

P.O. Box 783
Cooper Landing, Alaska 99572
Mile 47.5 Sterling Hwy.
(907) 595-1224

FFL 92-03645
February 18, 1997

RECEIVED

FEB 22 1997

ANS U.....

*Janey
Please
call*

The Hon. Lyda Green
State Senate
State Capitol
Juneau, AK 99801

Dear Sen. Green:

I, and a lot of my friends, are wondering whether there are any plans to reintroduce the improved (but not perfect) Handgun Concealed Carry bill that passed both houses last year only to be vetoed by our good governor. I asked our Sen. John Torgerson about this, but he thought there were no such plans because of assumed lack of grassroots support, an opinion echoed by Rep. Gary Davis.

As an NRA Personal Protection Course instructor, I've discussed this with many people and all favor the modified bill and are just waiting to see it come up. There was plenty of grassroots support last session, and there would be a lot more now if this bill is reintroduced with a little publicity. The current law is passable, but certainly needs at least the modifications included in last session's bill. Hopefully, the legislature would have the power to override any veto this year.

I would very much appreciate hearing your ideas on this subject. Thank you.

Sincerely,



Lyman Nichols

Gene A. Carley
13720 Arne Erickson
Anchorage, Alaska 99515
March 22, 1997

RECEIVED
MAR 22 1997
APR 6

Senator Lyda Green
Alaska State Senate
Juneau, AK 99801-1182

cc: Senator Jerry Ward, Alaska State Senate, Juneau, AK 99801-1182
cc: Representative Joe Green, Alaska State House, Juneau, AK 99801-1182

Subject: SB 141

Dear Senator Green:

I heartily support your efforts to make the changes you propose in your bill SB141 concerning concealed handguns.

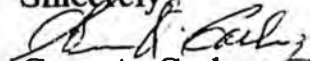
By carbon copy, I urge my Senator Ward and Representative Green to give you their full support in this matter, including any measures necessary to over-ride a probable Knowles veto.

Your observations were very helpful in understanding the intent of the changes.

Thank you very much for sending me the copy of your bill, and also for the questionnaire about the Permanent Fund.

You may want to consider one further amendment to exempt from the fingerprint requirement any person who is a member of the Armed Forces or can show proof of Honorable discharge from the Armed forces on the grounds that their fingerprints are already on file. Most American citizens grown to maturity in the tradition of freedom from intrusion by the Government have, I believe, a natural and well founded reluctance to be fingerprinted every time they turn around. In the Service it had a useful purpose. Once is enough.

Sincerely,


Gene A. Carley
907-345-1697

SIXTY THIRTY NORTH

P.O. Box 783
Cooper Landing, Alaska 99572
Mile 47.5 Sterling Hwy.
(907) 595-1224

FFL 92-03645
February 18, 1997

The Hon. Jeannette A. James
House of Representatives
State Capitol
Juneau, AK 99801

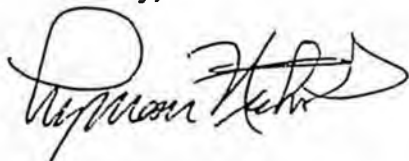
Dear Rep. James:

I, and a lot of my friends, are wondering whether you plan to reintroduce the improved (but not perfect) Handgun Concealed Carry bill that passed both houses last year only to be vetoed by our good governor. I asked our Sen. John Torgerson about this, but he thought there were no such plans because of assumed lack of grassroots support, an opinion echoed by Rep. Gary Davis.

As an NRA Personal Protection Course instructor, I've discussed this with many people and all favor the modified bill and are just waiting to see it come up. You had plenty of grassroots support last session, and would get lots more now if this bill is reintroduced with a little publicity. The current law is passable, but certainly needs at least the modifications included in last session's bill.

I would very much appreciate hearing your ideas on this subject. Thank you.

Sincerely,



Lyman Nichols

RECEIVED BY

FEB 24 1996

Rep. Jeannette James

P.O. Box 5726
Ketchikan, AK 99901
Ph/Fax:(907)225-4618

RECEIVED
MAR 20 1997
Ans'o.....

March 20, 1997

Senator Lyda Green
State Capitol
Juneau, AK 99801-1182

Dear Senator Green:

Thank you for the correspondence reference the Concealed Weapons permits.

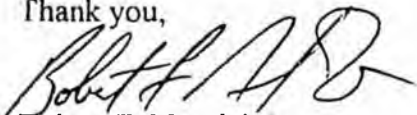
I have no problem with the fingerprints. It keeps honest people honest and safety for the citizens. I do however wonder why all the uproar over people who take time to get the permits and then can't carry their gun into most places. Seems we should be looking at all the people in Alaska who carry concealed weapons who don't have the permits. You can be assured they carry anywhere they wish and don't worry about a permit.

The other question I have is why Honorably Retired Troopers/Police officers can't continue to carry their weapons concealed with their Retired Identification. In the States of **California** and **Oregon** this is done and I'm sure in other states. After a career in law enforcement, where you carried a gun everyday for years and made a lot people mad at you (due to their being arrested), it seem ridiculous to all of a sudden be told you can't carry anymore because you retired.

I went to the CCW class taught by a person who use to work for me and did all the thing necessary to obtain the permit, just to be legal. I could have probably carried for every without anyone knowing, like a lot of other persons in this state.

Just some of my concerns.

Thank you,



Robert F. Nesvick Jr.
Former Police Chief, Metlakatla Indian Community
Retired Alaska State Trooper

WILLIAM E. BLACKBURN
4143 ASPEN STREET
JUNEAU, AK 99801

March 24, 1997

Sen. Lyda Green:
Alaska State Legislature
Juneau, AK. 99801-1102

RECEIVED
MAY 1 1997
AKS

Thank you for the opportunity to comment
on S.B. 141.

I question the high fee for a permit when
the fingerprints, photos and 15 to 18 hours of
training is paid for by the applicant. The
6000 permits thus far have cost the applicants
 $6000 \times \$150 = \$900,000$, plus at least $6000 \times$
 $\$100.00$ for instruction, photos, fingerprints, so
added to the $\$900,000.00$ another $600,000.00$
totals $\$1,500,000.00$. That is a high cost
with no crimes committed.



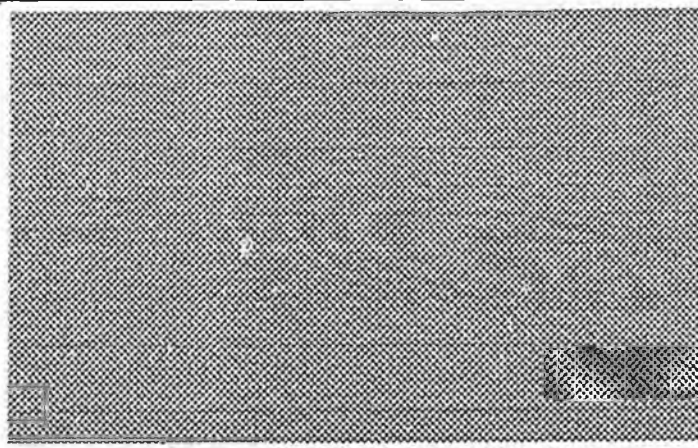
I support the Vermont carry concept, and we
should work toward that goal. Until that
goal is reached, I support your efforts with
S.B. 141.

Thank you.

Sincerely

W. E. Blackburn

1-attachment



FAX COVER PAGE

RECEIVED
MAR 28 1997
ANS'D ✓
Janey

To: The Honorable Lyda Green	For Information Call: (907) 488-4438
From : Mark Nix	At: M&M Health Care Billing Services
Pages: 2	Fax Number : (907) 488-4438

Thank you for your letter keeping me informed on possible advances concerning our right as American citizens to keep and possess firearms. The following is your completed questionnaire.

Mark Nix, Owner &
Concerned citizen

PROFESSIONAL PRACTICE MANAGEMENT

- | | |
|--|--------------------------------|
| Electronic Claims | Revenue Enhancement Projects |
| Electronic Statements | Coding Reviews |
| Patient Re-Calls | "End Stage" Collections |
| Birthday/Holiday Greeting Cards | Customized Management Reports |
| Secondary Insurance Billing Services to Patients | Superbill Review and Re-design |
| Software Reselling | Advance Funding |
| Software Leasing (w'/option to buy) | |

Box 783
Cooper Landing, AK 99572
March 29, 1997

RECEIVED
APR 03 1997
Ans d.....

Sen. Lyda Green
State Capitol
Juneau, AK 99801-1182

Dear Lyda;

Many thanks for your reply to my letter asking for info about your SB141. I have gone over it in detail and generally am very much in favor of the bill. Frankly, I would prefer the Vermont system where law-abiding citizens are trusted by "their" government. However, I guess we in Alaska are lucky to have a permit system rather than what we had before.

It's funny that some members of the government and the politically-appointed leaders of the police can't seem to understand that criminals are going to carry whatever weapons they feel like regardless of the law (that's what makes them criminals), so restrictive firearms laws will only affect the law-abiding folks who wouldn't cause any problems with them in the first place.

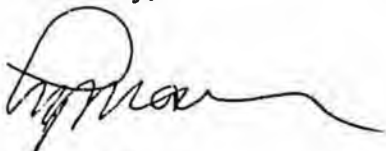
Something I think of every time we have a tragic shooting by some crazy - like the recent school massacre, or the Empire State killings - is that if there had been only one honest person present who was armed and competent, he/she just might have been able to prevent or reduce the tragedy. It's sad that those who want to disarm law-abiding citizens can't see this, too.

Anyhow, back to SB141. I took the liberty of superimposing your new proposals on top of the current law to make it easier to understand the proposed changes, then distributing them among interested friends. I hope you and other legislators will be getting some supportive feedback.

I would very much like to see one addition to the proposed changes: as an NRA instructor in a small village, I have had a problem every class with getting a lawyer to teach the required portion. All of my students have had to drive the 110+ miles into Kenai and back and pay a lawyer there to do this - an obviously expensive and time-consuming nuisance. How do instructors in villages without a road system handle this? We have only one state trooper stationed here, but DPS has made it so difficult for him to get approval to teach this part of the course that he can't or won't do it. Therefore, how about adding in a clause that the legal-instruction portion of this course can be done by an approved video? Such a video could be made by a knowledgeable lawyer and sold to instructors. As I recall, Wayne A. Ross already attempted to do this but was refused by DPS. The attorney we use puts on an excellent class and would probably be willing to do so.

Thanks again for your work on this bill, and my regards to Janey.

Sincerely,



Lyman Nichols

cc: Sens. Halford, Torgerson, Ward
Reps. Davis, Hodgins

PS - This bill needs more publicity to generate more support.

(3) allow a drunken person to enter and remain within licensed premises or to consume an alcoholic beverage within licensed premises;

(4) permit a drunken person to sell or serve alcoholic beverages.

(b) A person receiving compensation for transporting alcoholic beverages may not knowingly deliver alcoholic beverages to a drunken person. (§ 3 ch 131 SLA 1980; am § 6 ch 156 SLA 1988)

Cross references. — For authorization to refuse service, see AS 14.21.055.

Legislative history reports. — For Senate letter

of intent relating to the enactment of (b) of this section by sec. 6, ch. 156, SLA 1988 (HCS CSSB 371 (Jud) am H), see 1988 Senate Journal 2939.

NOTES TO DECISIONS

Legislative history of this section supports the argument that the section does impose an affirmative duty on the employees. *Kavorkian v. Tommy's Elbow Room, Inc.*, 694 P.2d 160 (Alaska 1985).

Legislative history of this section reflects an intent to let the jury evaluate whether or not a patron of a bar has exhibited such outward manifestations as to be recognizable as a drunken person. *Kavorkian v. Tommy's Elbow Room, Inc.*, 694 P.2d 160 (Alaska 1985).

Civil liability. — A vendor of alcoholic beverages may be civilly liable when the sale of his liquor is a substantial factor in causing an injury. *Nazareno v. Urie*, 638 P.2d 671 (Alaska 1981) (decided under former AS 04.15.020(a)), overruled on other grounds, *Kavorkian v. Tommy's Elbow Room, Inc.*, 711 P.2d 521 (Alaska 1985).

Effect of AS 04.21.020. — Section 04.21.020, which provides conditions for the civil liability of persons providing alcoholic beverages, does not immunize vendors who violate this section. *Williford v. L.J. Carr Invs., Inc.*, 783 P.2d 235 (Alaska 1989).

Assuming this section states duties giving rise to tort liability, such liability, in cases arising out of liquor sales, is nonetheless subject to the rule of immunity expressed in AS 04.21.020. *Gonzales v.*

Collateral references. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 265, 266.

48 C.J.S., Intoxicating Liquors, §§ 257, 258.

Sec. 04.16.040. Access of drunken persons to licensed premises. A drunken person may not knowingly enter or remain on premises licensed under this title. (§ 3 ch 131 SLA 1980)

Sec. 04.16.045. Obligation to enforce restrictions in licensed premises. A licensee, an agent, or employee may not permit the consumption of alcoholic beverages by any person within licensed premises unless it is permitted by the license. (§ 3 ch 131 SLA 1980)

Reviser's notes. — Enacted as AS 04.16.041. Re-numbered in 1980.

Cross references. — For responsibility of licensee for violations, see AS 04.16.150.

Sec. 04.16.049. Access of persons under the age of 21 to licensed premises. (a) A person under the age of 21 years may not knowingly enter or remain in premises licensed under this title unless

(1) accompanied by a parent, guardian, or spouse who has attained the age of 21 years;

(2) the person is at least 16 years of age, the premises are designated by the board as a restaurant for the purposes of this section, and the person enters and remains only for dining; or

(3) the person is under the age of 16 years, is accompanied by a person over the age of 21 years, the parent or guardian of the underaged person consents, the premises are designated by the board as a restaurant for the purposes of this section, and the person enters and remains only for dining.

(b) Notwithstanding (a) of this section, a licensee or an agent or employee of the licensee may refuse entry to a person under the age of 21 years to that part of licensed premises in which alcoholic beverages are sold, served, or consumed, may refuse service to a person under the age of 21 years, or may require a person under the age of 21 years to leave the portion of the licensed premises in which alcoholic beverages are sold, served, or consumed.

(c) Notwithstanding any other provision in this section, a person between 16 and 19 years of age may enter and remain within the licensed premises of a hotel, restaurant, or eating place in the course of employment if (1) the employment does not involve the serving, mixing, delivering, or dispensing of alcoholic beverages; (2) the person has the written consent of a parent or guardian; and (3) an exemption from the prohibition of AS 23.10.355 is granted by the Department of Labor. The board, with the approval of the governing body having jurisdiction and at the licensee's request, shall designate which premises are hotels, restaurants, or eating places for the purposes of this subsection.

(d) Notwithstanding any other provision in this section, a person 19 or 20 years of age may be employed within the licensed premises of a hotel, restaurant, or eating place, may enter and remain within those premises for the purpose of employment, but may not in the course of employment, sell, serve, deliver, or dispense alcoholic beverages. (§ 3 ch 131 SLA 1980; am § 16 ch 28 SLA 1981; am §§ 4 — 7 ch 109 SLA 1983)

NOTES TO DECISIONS

Cited in *Wiko v. State*, 623 P.2d 356 (Alaska Ct. App. 1981); *M.O.W. v. State*, 645 P.2d 1229 (Alaska Ct. App. 1982).

Sec. 04.16.050. Possession, control, or consumption by persons under the age of 21. (a) A person under the age of 21 years may not knowingly consume, possess, or control alcoholic beverages except those furnished persons under AS 04.16.051(b).

(b) A person who violates (a) of this section is guilty of a violation. Upon conviction in the district court, the court may impose a fine of not less than \$100. (§ 3 ch 131 SLA 1980; am § 8 ch 109 SLA 1983; am § 1 ch 81 SLA 1995)

Effect of amendments. — The 1995 amendment, effective September 13, 1995, added subsection (b).

Provides that subsection (b), added by § 1, ch. 81, SLA 1995, "applies to an offense committed on or after September 13, 1995."

Editor's notes. — Section 6, ch. 81, SLA 1995

NOTES TO DECISIONS

Comparative negligence. — A licensee who violates this section is not entitled to assert the comparative fault of the minor/consumer, in an action for damages resulting from the unlawful sale of intoxicating liquor. *Loeb v. Raamussen*, 622 P.2d 914 (Alaska 1991).

Stated in *Shumberg v. State*, 762 P.2d 488 (Alaska Ct. App. 1988).

Cited in *M.O.W. v. State*, 645 P.2d 1229 (Alaska Ct. App. 1982); *Alfred v. State*, 768 P.2d 130 (Alaska Ct. App. 1988).

Sec. 04.16.051. Furnishing or delivery of alcoholic beverages to persons under the age of 21. (a) A person may not furnish or deliver an alcoholic beverage to a person under the age of 21 years.

(b) This section does not prohibit the furnishing or delivery of an alcoholic beverage

15 AAC 104.695. THEATRE LICENSE. (a) A theatre license authorizes a beverage dispensary licensee or a restaurant or eating place licensee to sell alcoholic beverages for consumption on licensed premises at a specified theatre site. Sale and consumption may occur only during intermissions and one hour before an event. Alcoholic beverages may only be sold and consumed in designated areas at the site. Alcoholic beverages may not be sold or consumed in the audience viewing area at the theatre site.

(b) A theatre license may not be exercised during events that are expected to attract audiences under 21 years of age.

(c) The biennial fee for a theatre license is \$600.

(d) A theatre license may not be transferred or relocated.

(e) An application for a theatre license must clearly identify designated areas for the sale and consumption of alcoholic beverages. An application will be approved by the board only if it is approved by the local governing body of the municipality in which the theatre site is located, or, for a theatre site outside a municipality, approved by the law enforcement agency that has jurisdiction over the theatre site.

(f) An application for renewal of a theatre license must be accompanied by the fee required by (c) of this section and must contain the information required for a new license.

(g) The board will, in its discretion, deny renewal of a theatre license that was not exercised for at least one event during each calendar year of the license period.

(h) The license must be conspicuously posted in the theatre during times when alcoholic beverages are sold.

(i) For purposes of this section, "theatre" means a location where events, including plays, operas, orchestra concerts, readings, and similar activities approved by the board, are presented by live performers on a stage. (Eff. 10/24/87, Register 104; am 7/30/89, Register 111; am 5/1/94, Register 130)

Authority: AS 04.06.030 AS 04.06.100

ARTICLE 7. RESTAURANT DESIGNATION PERMITS.

Section	Section
715. Application for designation	775. Certificate of designation
725. Dining by persons under the age of 21	785. Termination of designation
745. Employment of persons under the age of 21	795. Suspension or revocation of designation
765. Limitation of designation	

15 AAC 104.715. APPLICATION FOR DESIGNATION. (a) A licensee desiring designation under 15 AAC 104.715 — 15 AAC 104.795 as a bona fide restaurant, hotel, or eating place for purposes of AS 04.16.049 must file with the director an application, on a form prescribed by the board, together with an initial application fee of \$50. Designation will be granted only to a holder of a beverage dispensary,

club, recreational site, or restaurant or eating place license, and only if the requirements of 15 AAC 104.725 and 15 AAC 104.745, as applicable, are met.

(b) The designation application must include

(1) a statement of the type of designation requested, whether for employment under AS 04.16.049(c), for dining under AS 04.16.049(a)(2), for dining under AS 04.16.049(a)(3), or for any combination of those designations;

(2) a description of the location of the premises for which the designation is desired;

(3) a listing of meals to be offered to patrons; if a menu is not available, the applicant shall state what the menu is expected to be;

(4) a detailed floor plan of the proposed designated and undesignated areas of the licensed business;

(5) a description of any entertainment offered or available within the licensed business, and on the proposed designated portions of the premises;

(6) a description of the manner of food and beverage service offered or anticipated, whether table service, buffet service, counter service, or other;

(7) a statement of whether an owner, manager, or assistant manager is always present on the premises during business hours; and

(8) any other information required by the board.

(c) The board will, in its discretion, reduce the premises area requested to be designated in the application. (Eff. 10/24/87, Register 104)

Authority: AS 04.06.100 AS 04.16.019

15 AAC 104.725. DINING BY PERSONS UNDER THE AGE OF 21. (a) Upon application under 15 AAC 104.715 for a designation under AS 04.16.049(a)(2) or (3), or both, the board will, in its discretion, designate a licensed premises for dining by a person under the age of 21 who is not accompanied by a parent, legal guardian, or spouse who has attained the age of 21, only if it finds that

(1) the premises are a bona fide restaurant;

(2) there is supervision on the premises adequate to reasonably ensure that a person under the age of 21 will not obtain alcoholic beverages; and

(3) it is unlikely persons under the age of 21 will enter and remain on the premises for purposes other than dining.

(b) The board will generally presume that the premises are a bona fide restaurant for purposes of (a)(1) of this section if

(1) the premises are licensed as a restaurant or eating place;

(2) at least 50 percent of the gross revenue of the licensed business is from the sale of food and non-alcoholic beverages; or

(3) the premises are a facility at which the patron's primary activity is dining.

(c) For purposes of (a)(3) of this section, the board generally will presume that premises are unlikely to be entered by persons under the age of 21 other than for purposes of dining if no entertainment other than dining is provided or available. "Entertainment" includes live music, dancing, pool and other table games, sports, pinball, and video games.

(d) The presumptions in (b) and (c) of this section are neither conclusive nor exclusive. The board will, in its discretion, find that premises that satisfy the presumptions are not a bona fide restaurant or do not provide adequate supervision. The board will, in its discretion, find that premises not satisfying the presumptions in (b) and (c) of this section are nonetheless a bona fide restaurant with adequate supervision.

(e) An application for a new designation of premises under this section will be approved by the board only if it is approved by the local governing body having jurisdiction over the area in which the licensed premises exists. (Eff. 10/24/87; Register 104)

Authority: AS 04.06.100 AS 04.16.049

15 AAC 104.745. EMPLOYMENT OF PERSONS UNDER THE AGE OF 21. (a) Upon application under 15 AAC 104.715 for a designation under AS 04.16.049(c), the board will, in its discretion, designate licensed premises for employment of persons between the ages of 16 and 19 years only if the board finds that the premises are a bona fide hotel, restaurant, or eating place, and if all the other requirements of AS 04.16.049(c) are met.

(b) For the purpose of AS 04.16.050, an underaged person, who is employed in compliance with AS 04.16.049, is not in possession or control of alcohol if, while supervised by a person over the age of 21 who is also present on the licensed premises, the underaged employee handles empty or partially empty glassware and containers of alcoholic beverages while bussing tables or washing dishes. Any remaining alcohol in the glassware or container must be discarded as soon as possible by placing it in the wastewater, if available, or in a waste container. (Eff. 10/24/87, Register 104; am 5/1/94, Register 130)

Authority: AS 04.06.090 AS 04.16.019
AS 04.06.100 AS 04.16.050

15 AAC 104.765. LIMITATION OF DESIGNATION. (a) The board will, in its discretion, designate only a portion of a licensed premises under 15 AAC 104.725 and 15 AAC 104.745, and will, in its discretion, limit the hours when persons under the age of 21 may be present on the designated premises.

(b) A licensee may make changes to the designated premises only with the prior approval of the board. (Eff. 10/24/87, Register 104)

Authority: AS 04.06.100 AS 04.16.019

15 AAC 104.775. CERTIFICATE OF DESIGNATION. Upon approval by the board of a designation application, the director will issue a certificate of designation of premises, which will state whether the designation is under AS 04.16.049(a)(2), AS 04.16.049(a)(3), AS 04.16.049(c), or a combination of those statutes. The certificate must be prominently displayed in the license premises. (Eff. 10/24/87, Register 104)

Authority: AS 04.06.100 AS 04.16.019

15 AAC 104.785. TERMINATION OF DESIGNATION. A designation issued under 15 AAC 104.715 — 15 AAC 104.795 terminates upon expiration, revocation, transfer, or relocation of the holder's alcoholic beverage license. A local governing body may protest continuation of a designation in the same manner it protests other license actions under AS 04.11.480. (Eff. 10/24/87, Register 104)

Authority: AS 04.06.100 AS 04.16.019

15 AAC 104.795. SUSPENSION OR REVOCATION OF DESIGNATION. A designation under 15 AAC 104.715 — 15 AAC 104.795 is a privilege over and above that of a license, and is issued with the understanding that the board will, in its discretion, suspend or revoke the designation for good cause without a hearing under AS 04.11.510 or the Administrative Procedure Act, AS 44.62. The director will notify a licensee in writing not less than 10 days before board consideration of suspension or revocation of a licensee's designation. The board will afford the licensee an opportunity to be heard. (Eff. 10/24/87, Register 104)

Authority: AS 04.06.100 AS 04.16.019

ARTICLE 9. GENERAL PROVISIONS.

Section	Section
905. Determining population criteria	990. Definition

15 AAC 104.905. DETERMINING POPULATION CRITERIA. (a) The board will use population figures generated by the Department of Community and Regional Affairs to establish a population figure for determining the quota of licenses available under AS 04.11.400(a)(2). The Department of Community and Regional Affairs' figures will be adjusted, however, in the following respects:

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 *GPL*
Legislative Counsel

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

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

24

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y degree. Lefever
pp. 1994).

51 SLA 1995.]

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 1980 House Journal Supplement, No. 79, May 29, Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 1980. Senate Journal Supplement, No. 44, May 29, 1980, or

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 sec-

tion 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)

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 sub-

stances 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 1296 (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.

Table with 2 columns: Section and Description. Rows include 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.

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

were spoken as a threat from cooperating with the 820 P.2d 1088 (Alaska Ct. App. 1992).

The parental justification under AS 11.81.430(a)(1) is not dependent on the defendant's knowledge or belief that the defense is available to the defendant. Lawful custodians of children are not liable for interference with the jury's question for the jury was fact her child's lawful guardian believed herself to be. Ct. App. 1996).

Under the parental justification under AS 11.81.430(a)(1), the defendant's actions were reasonably justified to promote her child's welfare. Thus, in a prosecution for interference with proceedings, the question is whether the defendant's actions were objectively necessary and appropriate, and in fact reasonably necessary. Cornwall v. State, 915 P.2d 1088 (Alaska Ct. App. 1996).

Retaliation against a witness who has previously testified against a state proved defendant is not a crime if the defendant is apparently unprovoked and the defendant's actions are objectively necessary and appropriate.

Sec. 11.56.520. I crime of receiving a bribe is a crime if the person has the intent that, or accepts the intent that,

- (1) the person will receive a bribe;
(2) the person's witness will receive a bribe;
(b) Receiving a bribe.

Sec. 11.56.540. Tampering with a witness or juror. A person commits the crime of tampering with a witness or juror if the person induces or attempts to induce or attempts

- (1) testify falsely, or otherwise influence the outcome of an official proceeding; or
(2) be absent from an official proceeding; or
(b) Tampering with a witness or juror. 1978; am § 1 ch 122

Scope of provisions. — This section applies to a witness statute, and extends its provisions only to a witness who is lawfully summoned to appear in court. 828 (Alaska Ct. App. 1988).

Evidence sufficient to establish tampering with a witness. Evidence was sufficient to establish tampering with a witness where the defendant's attempt to dissuade his wife from giving testimony was sufficient to establish tampering with a witness.

Collateral references. — This section begins to run on chapter 11.56. It begins to run on chapter 11.56. It begins to run on chapter 11.56.

Admissibility in criminal proceedings. — Evidence of a defendant's guilt, of evidence

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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.

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

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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.

1. 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."³ 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.⁴

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 Gamass, *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 Funes, 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. *Siatky 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 *supra*, 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. § 9A1.070(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

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.*

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).

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 DEPT OF STATE, Concealed Weapons/Firearms License Statistical Report for Period 10/01/87 - 04/30/94* (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. Virginia⁵⁷

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 Jordan, 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 3350; 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., Philadelphia⁷⁷—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(n).

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

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.

81. OR. REV. STAT. § 166.291 (1993).

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 decline 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 years¹⁰⁰ 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)(e).

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 Metheny*,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

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).

increases in 1991 and 1992. The number of murders in 1989 was 121; in 1990, 102; in 1991, 111; in 1992, 115.

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

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-

(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).

115. *Id.* § 6-8-104(e), (m).

116. *Id.* § 6-8-104(n).

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

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 permittees. 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.

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).

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

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 rate 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

144. *Id.* nt 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).

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

148. *Id.* nt 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

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 CRIME¹⁵⁶

State Pairs	Murder	Aggravated Assault	Rape	Robbery
Florida/ Texas	support	w e a k l y supports	does not support	w e a k l y supports
Pennsylvania/ Illinois	supports	w e a k l y supports	does not support	w e a k l y supports
O r e g o n / 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

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.

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.B.

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." Unhuh, 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. Ne 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 gun, 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 *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 Wechsler observed, the right of crime victims to use deadly force is based on what Wechsler 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 extrajudicial 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* 1, 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 (1984). 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 "astounding 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. Ashby, *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) (stating 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); *Wuelhrich 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'n 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-issued 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 permittees 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

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.

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.

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." 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."²³⁸ 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.²³⁹

Rank-and-file police officers are even more supportive of citizens carrying guns. In 1991, *Law Enforcement Technology* conducted a poll of

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.

238. Samuel Francis, *Anarcho-Tyranny, U.S.A.*, CHRONICLES, July 1994, at 14-19.

239. Blackman, *supra* note 18, at 31.

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 Goehl, *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 11%. 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 Thomas B. Jacobs, *Exceptions to a General Prohibition on Handgun Possession: Do They Allow 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.

II. 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, license; 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.

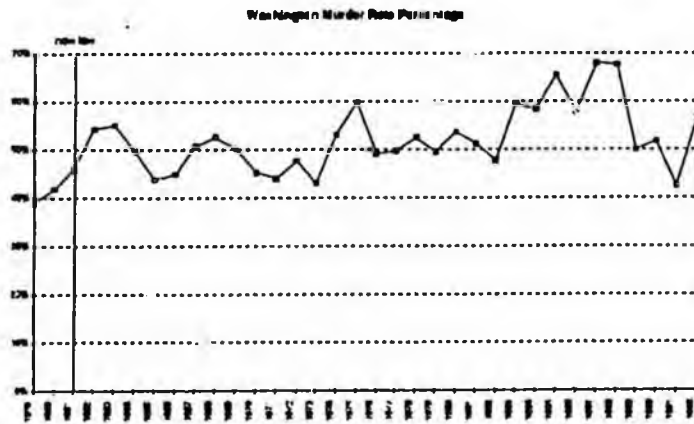
False is the idea of utility that sacrifices a thousand real advantages for one imaginary or trifling inconvenience; that would take fire from men because it burns, and water because one may drown in it; that has no remedy for evils, except destruction. The laws that forbid the carrying of arms are laws 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.

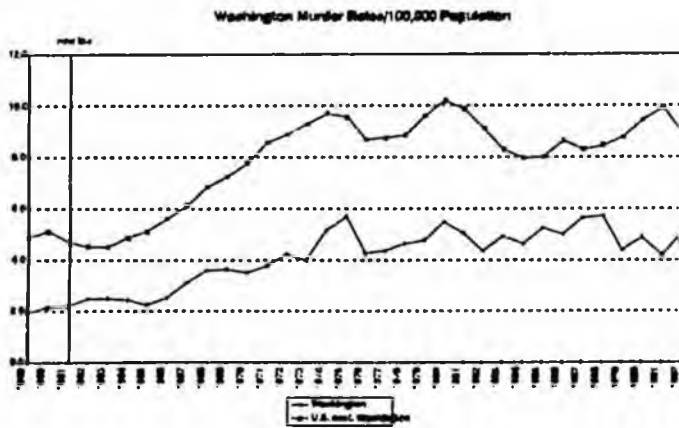
272. CESARE BECCARIA, *ON CRIMES AND PUNISHMENTS* 87-88 (Henry Paloucci trans., 1963) (1764). Beccaria is generally regarded as the founder of criminology. Adams quoted Beccaria's analysis of the sentencing of the Boston Massacre trial. Kates, *supra* note 203, at 234 n.132.

APPENDIX: STATE GRAPHS

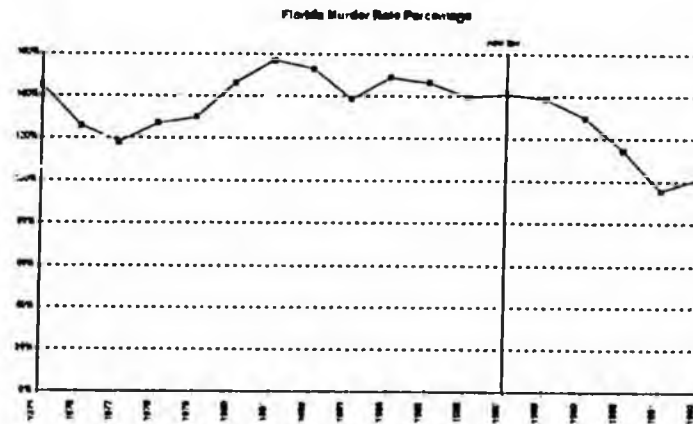
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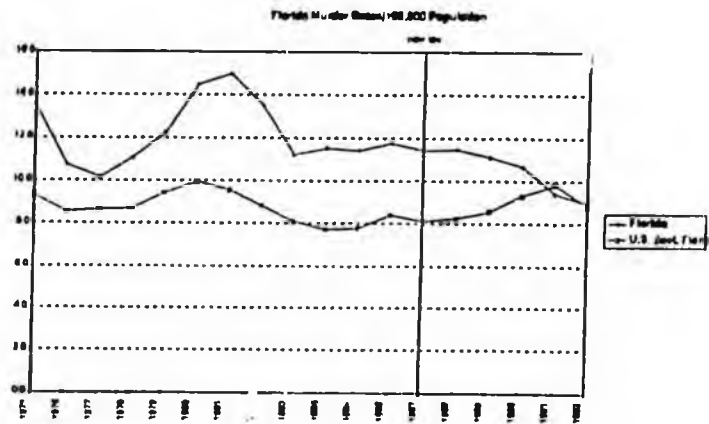
GRAPH 2



GRAPH 3

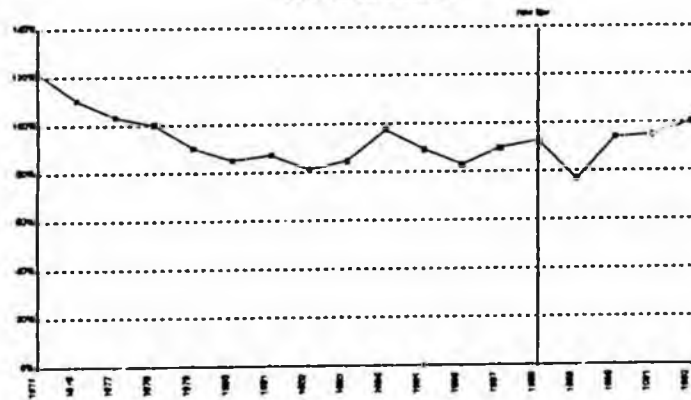


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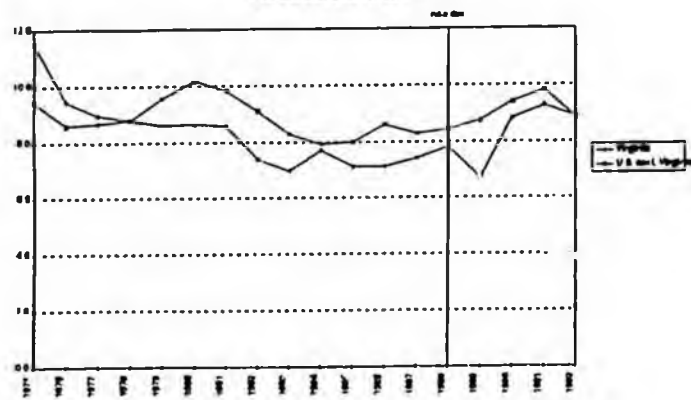
GRAPH 5

Virginia Murder Rate Percentage



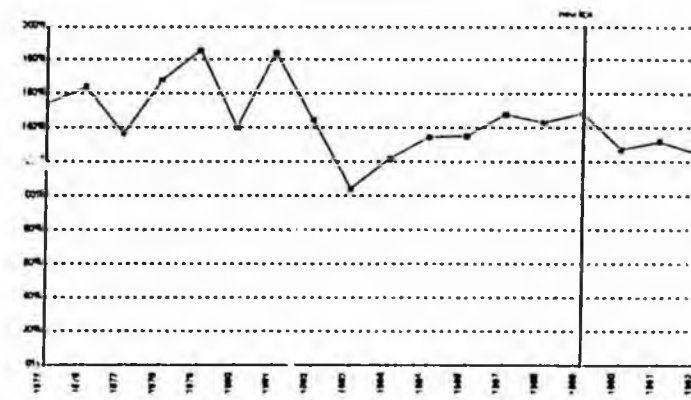
GRAPH 6

Virginia Murder Rate (per 100,000 Population)



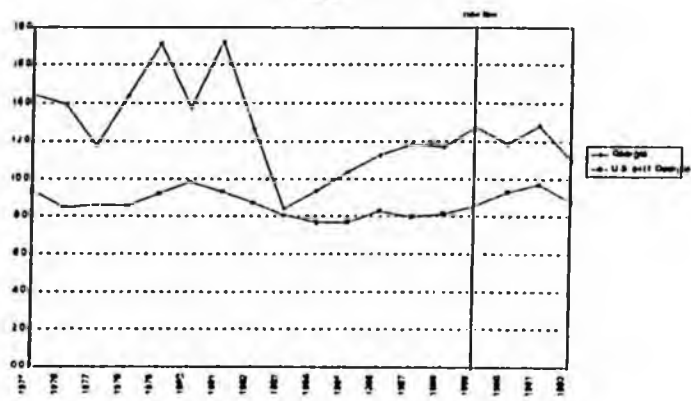
GRAPH 7

Georgia Murder Rate Percentage



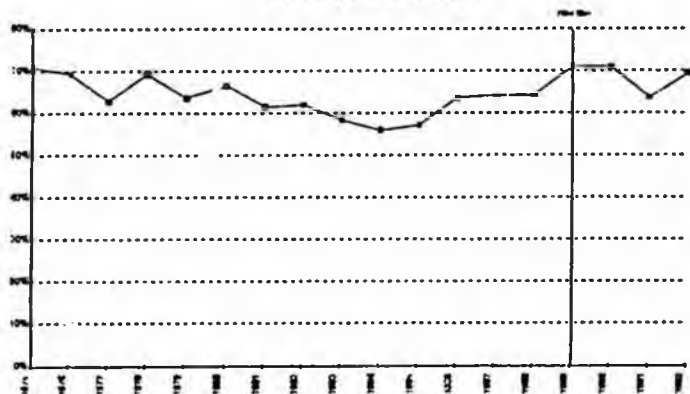
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Georgia Murder Rate (per 100,000 Population)



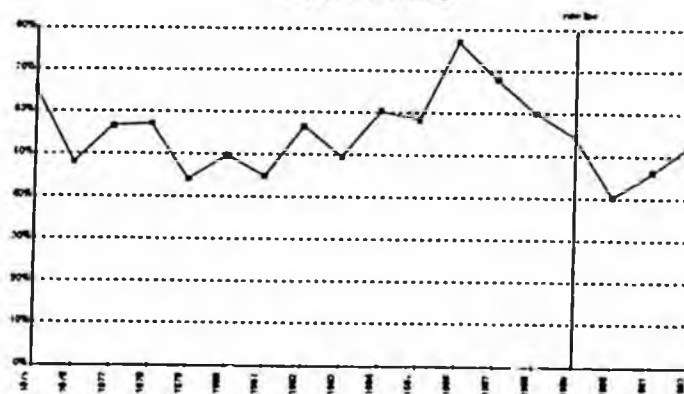
GRAPH 9

Pennsylvania Murder Rate Percentage



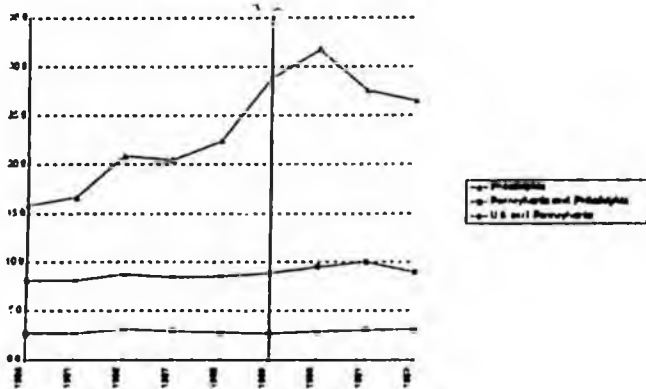
GRAPH 11

Oregon Murder Rate Percentage



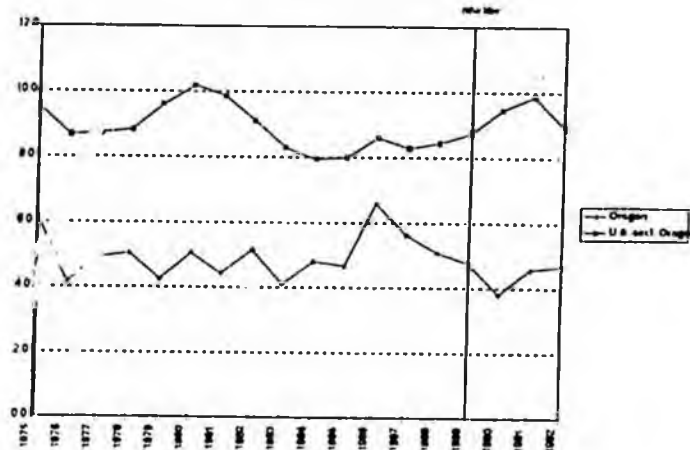
GRAPH 10

Pennsylvania & Philadelphia (100,000 Population, 1980-1995)

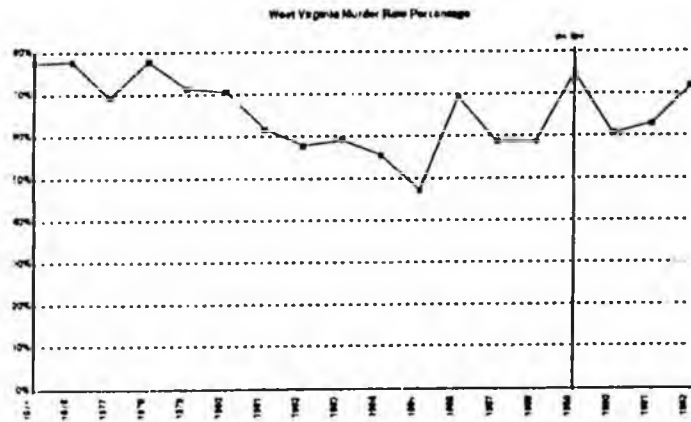


GRAPH 12

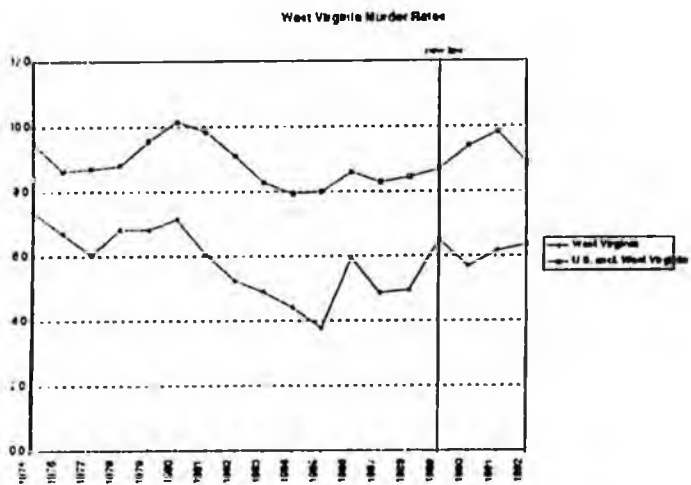
Oregon Murder Rates/100,000 Population



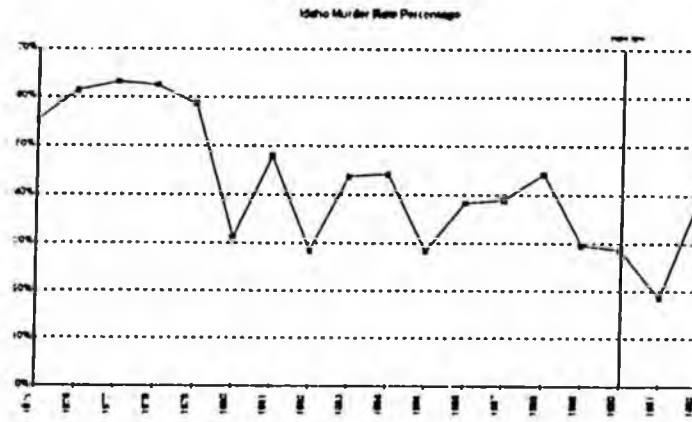
GRAPH 13



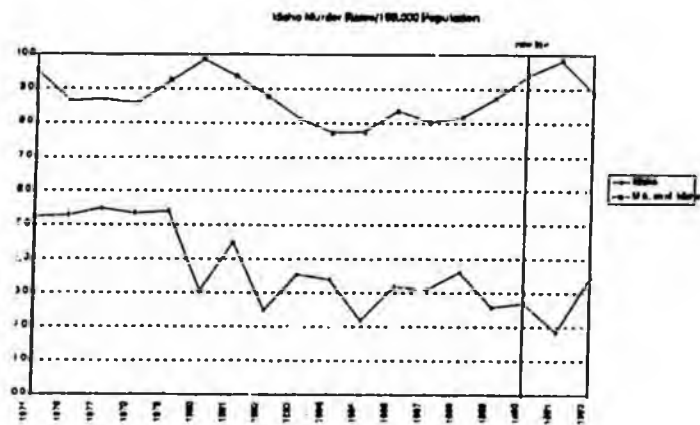
GRAPH 14



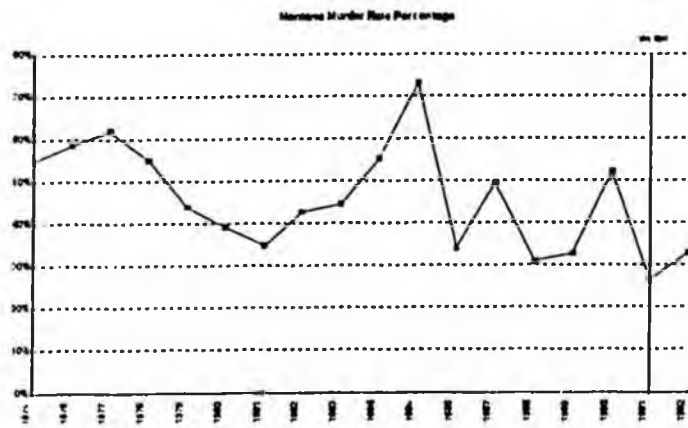
GRAPH 15



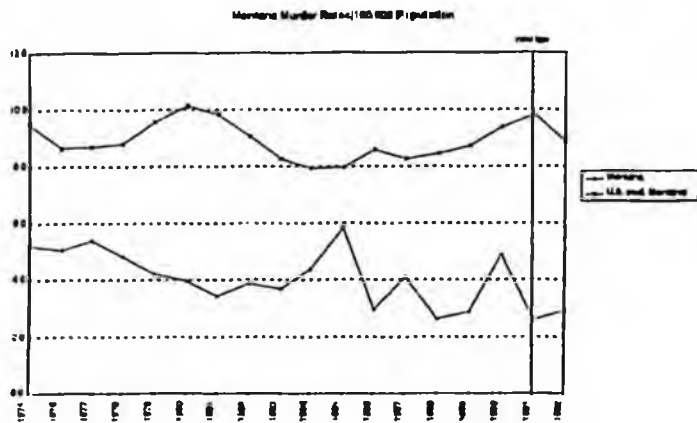
GRAPH 16



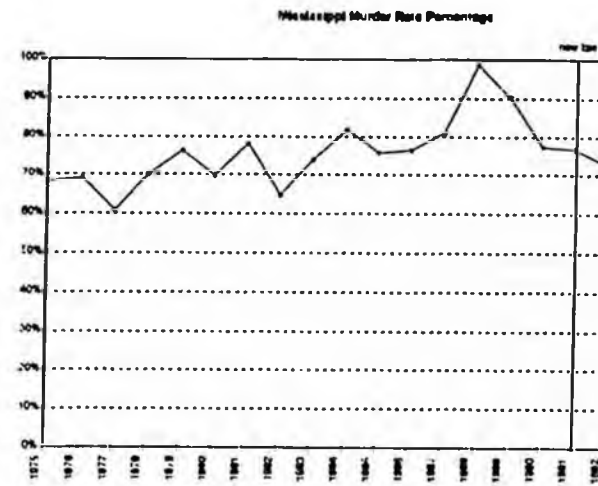
GRAPH 17



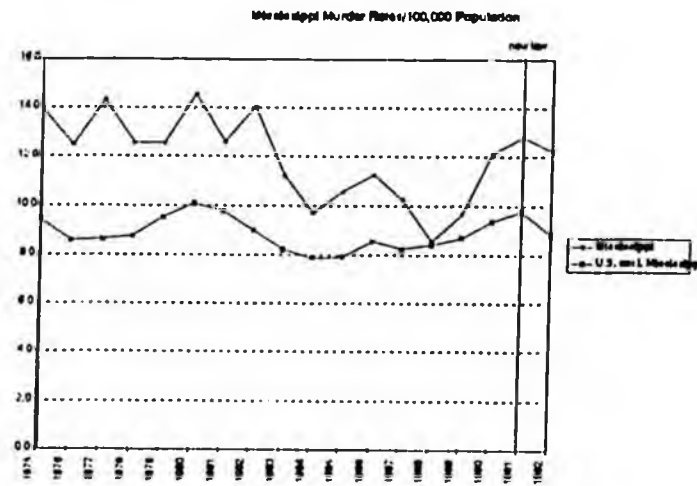
GRAPH 18



GRAPH 19



GRAPH 20



27

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

RECEIVED
1/15/89
10:00 AM
ASD

TO: ALL HOLDERS OF ADMINISTRATIVE BULLETIN SETS:

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

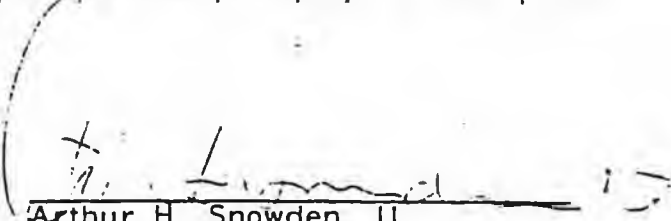
SUBJECT: Firearms

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
Effective Date: January 15, 1989


Arthur H. Snowden, II
Administrative Director

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. Owsichuk 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).

MEMORANDUM

State of Alaska
Department of Law

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
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. Guane 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 trespass¹ 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.

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 your 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

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

⁴ We note that the Alaska Constitution was recently 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

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

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"). *Janson 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.

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

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

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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APR 28 1997

April 16, 1997

Senators Bert Sharp & Drue Pearce, Co-Chairs
Senate Finance Committee
c/o Rm. 518, State Capitol
Juneau, Alaska 99801-1182

Dear Senators:

Please consider the following to be testimony before April 18, Senate Finance Committee Hearing on Senate Bill-141.

Senate Bill 141 was introduced in recognition of the dependability of Alaskans who have secured concealed handgun carry permits and to streamline Alaska Law as it applied to carrying handguns under permits.

A principle feature of the bill is that it corrects the inconsistency that permit holders who have submitted to training, fingerprinting, and background checks may not legally carry concealed in places, such as financial institutions, where any legal handgun owner can carry openly.

Additionally it reduces the cost to Alaskans in securing and renewing a permit to the cost incurred in processing concealed handgun carry applications. There should be no additional costs to the State of Alaska.

I urge passing SB-141 out of the Senate Finance Committee.

Sincerely,



Robert H. Parkerson Ph: (907) 745-4358
HC 02, Box 7630-A1
Palmer, Alaska 99645.

SB 141 "Concealed Handgun Permit Revisions" Index:

Revised 3/25/97
1. Sponsor Statement.

COPIES IN MEMBER FILES

2. Sectional Summary of SB 141.

3. Leg. Legal: Persons Prohibited from Possessing Firearms under Federal and State.

4. Alaska Statute. 18.65.70 - 18.65.790.

5. Right to Carry Fact Sheet.

AVAILABLE FROM FINANCE

6. Firearms Fact Card.

COMMITTEE

7. Gun-Free School Zones Act of 1996.

SECRETARY

8. USA Today Article, Study: Weapons Laws Deter Crime and other articles.

9. Letter from Governor Knowles to Senator Pearce. Re: Notice of Veto of CS SB 177.

10. Letter from Governor Knowles to Robert H. Parkerson, PH.D.

11. Leg. Legal, July 29, 1996 Memo from Jack Chenoweth to Senator Lyda Green. Possession of Concealed Weapons.

MAKE AVAILABLE

12. Leg. Legal August 1, 1996 Memo from Jack Chenoweth to Senator Lyda Green. Concealed Handguns.

TO MEMBERS &

13. Alaska State Firearms Laws.

14. The Founding Fathers: On the Individual Right to Keep and Bear Arms.

STAFF UPON

15. Armed Citizens and Police Officers.

REQUEST

16. "Gun Control isn't About Guns, It's About Control" by Mark E. Howerter.

17. "Ten Myths about Gun Control".

(ORIGINALS)

18. FBI National Press Office. Statistics About Crime and Victims.

19. Selections from Preventing Violence Against Women and Children. Ronald B. Taylor.

20. 1997 Articles on SB 141.

21. Letters of Support and Opposition concerning SB 141.

22. Alaska Statute and Regulation Re: Prohibition in Bars.

23. Legislative Legal: When and where can concealed weapons, particularly handguns, may be carried under Alaska law without a concealed handgun permit.

24. Alaska Statute 11.56.370 - 11.56.510.

25. United States Code 922. Federal Aid Restrictions.

26. Tennessee Law Review.

27. Alaska Court System. Office of the Administrative Director. Administrative Bulletin No. 30

28. Alaska Constitution. Article IV, Section 15. Court Rule-Making Power.

29. Memorandum from Dean J. Guaneli and Margot O. Knuth to Ronald L. Otto. Subject: Enforcement of criminal trespass statutes in connection with concealed handguns.

(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	Section
700. Permit to carry a concealed handgun	750. Possession and display of permit
705. Qualifications to obtain a permit	755. Places where permittee may not possess a concealed handgun
710. Application for permit to carry a concealed handgun	760. Misuse of a permit
715. Demonstration of competence with handguns	765. Responsibilities of the permittee
720. Fees	770. Access to list of permittees by peace officers
725. Permit renewal	775. Regulations
730. Replacement of permit	778. Municipal preemption
735. Suspension of permit	780. Prohibition of possession of concealed handguns
740. Revocation of permit; appeal	785. Procedure for local option elections
745. No liability for issuance of permit or for training	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;
- (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 a 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. 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)

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

Section

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



Fact Sheet



National Rifle Association of America • Institute for Legislative Action • Research & Information Division
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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 disillusioned 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)

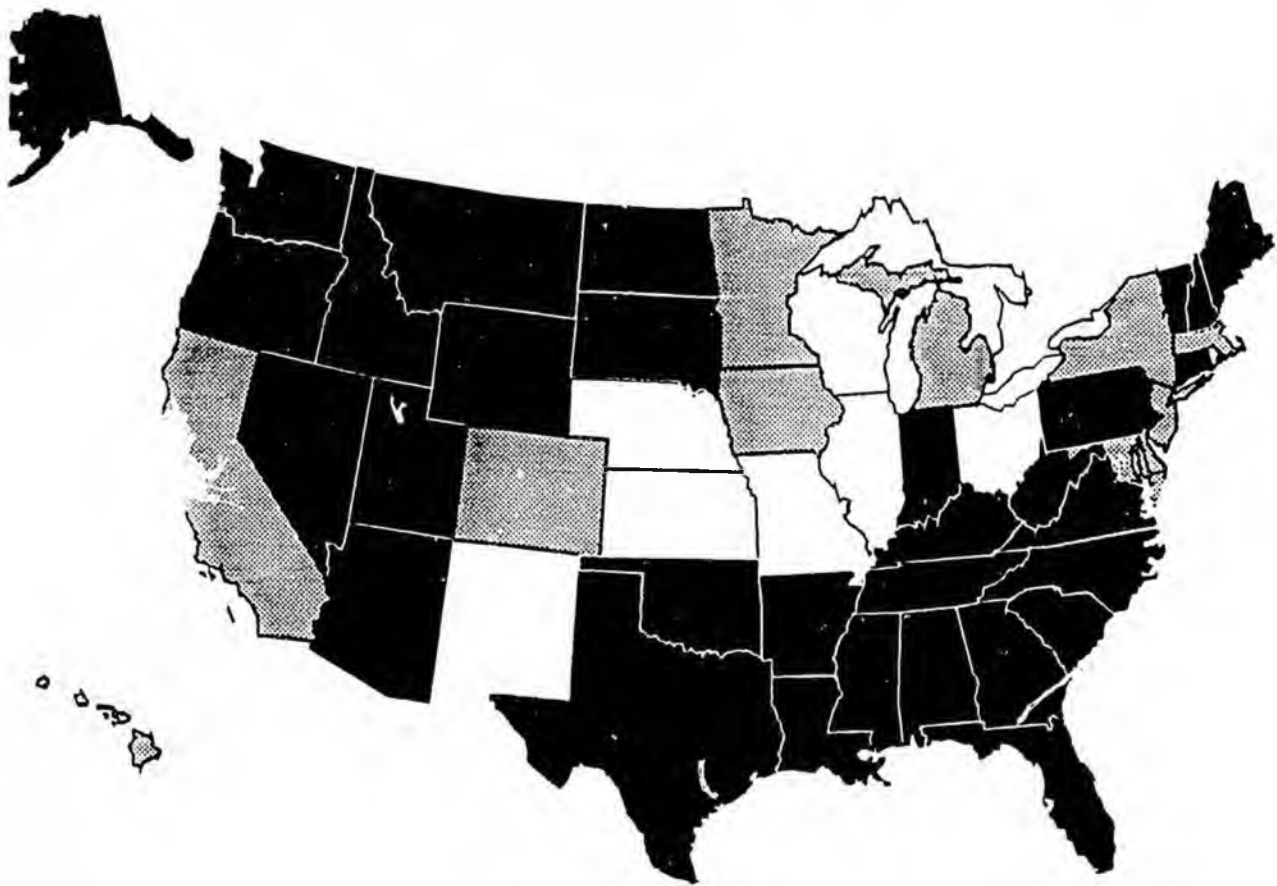
The University of Maryland "study" -- using your money to fund anti-gun "research"

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%, 13% 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%, Hollywood - 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.

National Rifle Association 1996 Firearms Fact Card



Second Amendment To The U.S. Constitution

"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."

Like all rights protected by the Bill of Rights, the right to keep and bear arms is possessed by each American individually. Gun prohibitionists' 20th-century "collective right" Second Amendment interpretation is a fraud. The Framers understood that all people are individually "endowed by their Creator" with rights and that states only possess such "powers" as the people allow.

The Supreme Court has ruled in few cases addressing Second Amendment-related issues. The Court recognized that the right to arms is an individual right in *U.S. v. Cruikshank* (1876), *Presser v. Illinois* (1886), *Miller v. Texas* (1894), *U.S. v. Miller* (1939) and *U.S. v. Verdugo-Urquidez* (1990). Lower federal court decisions have been divided on the rights question, though those finding against the individual right are contrary to the *Verdugo-Urquidez* decision, in which the Court observed that the term "the people" has the same meaning in the Second Amendment as it does in the First, Fourth, Ninth and Tenth. "The people," the Court said, refers to all persons in our national community. These decisions support the generations-old understanding of the right to bear arms as one of our most important individual liberties.

Second Amendment revisionists claim the National Guard, rather than the general citizenry, is the Militia referred to in the Constitution. For more than 400 years, however, the term "well regulated militia" has meant the people, with privately owned weapons, led by officers chosen by themselves. The Militia of the U.S. is defined under federal law to include all able-bodied males of age and some other males and females (10 U.S.C., §311; 32 U.S.C., §313), with the Guard established as only its "organized" element. The Guard, however, is subject to absolute federal control (Supreme Court, *Perpich v. Dept. of Defense*, 1990) and thus is not the militia envisioned by the Framers.

Right-To-Carry

States with right-to-carry laws have lower overall violent crime rates than other states. The homicide rate is 28% lower and the firearm homicide rate is 33% lower and the handgun homicide rate is 38% lower. Since 1987, when Florida enacted right-to-carry, its homicide rate has dropped 27%, its firearm homicide rate has dropped 34% and its handgun homicide rate has dropped 38% while the U.S. rates rose 8%, 28% and 43%, respectively. (FBI) Only .017% of Florida carry licenses have been revoked because of firearm crimes after licensure. (Florida Dept. of State)

Survey research by criminologist Gary Kleck indicates at least 2.5 million protective uses of firearms each year in the U.S., more than four times the reported number of violent crimes committed with firearms. Most protective uses do not involve discharge of a firearm. In only 0.1% of protective gun uses are criminals killed, and in only 1% are criminals wounded. A survey for the Dept. of Justice found that 40% of felons had chosen not to commit at least some crimes for fear their victims were armed, and 34% admitted being scared off or shot at by armed victims. (J. Wright, P. Rossi, *Armed and Considered Dangerous*, 1987)

U.S. Dept. of Justice victimization surveys show that the protective use of a firearm lessens the chance that a rape, robbery or assault attempt will be successfully completed and also reduces the

chance of injury to the intended victim.

Clinton Gun Ban

More than 85% of the firearms banned as "assault weapons" by the Clinton crime bill are rifles. However, rifles are the type of firearm least often used in crime. Rifle use in homicide has dropped 36% since 1980. In 1994 rifles *of any type* were used in only 3% of homicides, far less than knives (13%), bare hands (5%) and clubs (4%).

Since the first days of the "assault weapon" issue, reports from state and local law enforcement agencies have consistently shown that military-looking semi-automatic rifles and similarly-styled handguns and shotguns have been used in only a small percentage of violent crimes, a fact begrudgingly admitted by the Senate author of the "assault weapons" law, Dianne Feinstein (D-Calif.) and the anti-gun *Washington Post*.

Gun-ban supporters ignore police reports, basing their claim that "assault weapons" are used in crime on BATF firearms tracing data. BATF reports, however, that it "does not always know if a firearm being traced has been used in a crime." The Congressional Research Service reports that the BATF tracing system "was not designed to collect statistics. . . . Firearms selected for tracing do not constitute a random sample. . . . data from the tracing system may not be appropriate for drawing inferences such as which makes or models of firearms are used for illicit purposes. . . . A law enforcement officer may initiate a trace request for any reason. No crime need be involved. No screening policy ensures or requires that only guns known or suspected to have been used in crimes are traced. . . . It is possible that traces may be requested for a variety of reasons not necessarily related to criminal instances."

"Gun control" lobbyists deliberately blur the differences between semi-automatic and fully-automatic firearms, one boasting that "anything that looks like a machinegun is presumed to be a machinegun" by a misinformed public. The fact is, so-called "assault weapons" function precisely like all other semi-automatic firearms, firing only one shot at a time. Because "assault weapons" use commonplace calibers of ammunition, they are well-suited for target shooting, hunting and/or defensive use. Semi-automatic firearms were invented more than 100 years ago, and constitute 15% of privately owned firearms in America.

Contrary to President Clinton's claims, the greatest threat to police officers comes not from "assault weapons," but from criminals and the justice system that fails to punish them -- 73% of law enforcement officers' killers have prior arrests, 56% have prior convictions, and 23% are on probation or parole when they take officers' lives. According to the FBI's "Law Enforcement Officers Killed and Assaulted" reports, of firearms used to murder police officers during the past decade only 2-3% were "assault weapons."

Clinton Ammo Ban

President Clinton claims new kinds of ammunition are being used to defeat bullet resistant vests and kill law enforcement officers, requiring an expansion of the federal "armor piercing ammunition" statute. No new armor piercing ammunition exists, however, and legislation introduced in Congress at the president's urging would outlaw most calibers of rifle ammunition, and many calibers of handgun ammunition, none of which is designed to defeat protective vests. According to the FBI, of officers fatally shot during the last decade, 70% were not wearing vests. Of those who wore vests, 95% were shot in unprotected areas. No law enforcement officer has ever been killed because an armor piercing bullet defeated a protective vest.

Brady Act Failures

"Gun control" supporters claim the federal 5-day waiting period prevents thousands of felons from buying handguns. In fact, most of these supposed "felons" are honest citizens whose applications are temporarily non-approved because background checks initially reveal incomplete or erroneous information. Most of these people are later approved. Brady should not be praised because it delays

honest citizens' handgun purchases.

Instead, Brady should be judged for its failure to impact on crime. Waiting periods do not stop felons from obtaining guns illegally. Since 1968 it has been illegal under federal law for felons to possess firearms (and violent crime has more than doubled). Furthermore, 93% of career armed criminals get their guns from sources other than gun stores (where waiting periods apply), mostly by theft or black market deals. (*J. Wright, P. Rossi, Armed and Considered Dangerous, 1987*)
BATF, "Protecting America," 1992)

"Gun control" advocates speciously claim that violent crime has decreased in America because of the Brady Act. In fact, crime has decreased more in Brady-free states, such as those having an instant check system.

Firearm Safety

Many television and newspaper reporters would have the public believe that fatal firearms accidents are an "epidemic," though such accidents are at an all-time low.

Education, rather than restrictions on gun owners, has helped reduce the fatal firearms accident rate to 0.6 per 100,000 citizens, down 82% since the all-time high recorded in 1904. The fatal firearms accident rate pales in comparison to rates for motor vehicle accidents (16.5), home accidents (10.2), other public accidents (7.6), and work-related accidents (1.9). (*Natl. Safety Council*)

Annual fatal firearms accident numbers are down 56% since the all-time high in 1930. This decline occurred as the population doubled, and the number of firearms owned quadrupled, proving that responsible gun ownership poses no inherent threat to safety. (*Natl. Center for Health Statistics, Natl. Safety Council, Census Bureau, BATF*)

To promote more restrictive gun laws, some claim that car registration and driver licensing laws caused fatal motor vehicle accidents to decline 1968-1991, and assume that similar laws against guns and gun owners would reduce gun accidents. However, those car laws were imposed (most before WWII) for reasons other than safety, and the fatal motor vehicle accident rate did not begin to decrease until 30 years later. Moreover, the fatal firearm accident rate dropped 50% 1968-1991, the greatest decline among major accident types. By comparison, the motor vehicle rate dropped the least, 37%. (*Natl. Safety Council*)

Gun Law Failures

In 1976, Washington, D.C., enacted a virtual ban on handguns. By 1991, D.C.'s homicide rate had tripled, while the U.S. rate rose 12%. New York City, Chicago, Los Angeles and D.C. -- with very restrictive gun laws -- make up only 5% of the U.S. population, yet account for 16% of U.S. murders.

California imposed a 15-day waiting period on handgun sales in 1975, and banned "assault weapons" in 1989 -- yet its homicide rate today is 38% higher than the rest of the country's. In 1975, South Carolina limited handgun sales to individuals to one per month. Since then, South Carolina's violent crime rate has risen more than 100%.

Some have claimed D.C.'s homicide rate declined due to Virginia's 1993 law limiting handgun purchases to one per month. That belief is based on the illogical notion that D.C. murderers would obey a Virginia state law while violating a multitude of much harsher federal and D.C. gun laws.

The Real Causes Of Crime And real Solutions

From 1960-1980, the number of prison inmates per 1,000 violent crimes dropped from 738 to 227, and the crime rate tripled. Each year more than 60,000 felons convicted are not sent to prison. Only 29% of convicts are in prison: 71% are on parole or probation, free on the streets.

Imprisoned criminals serve only one third of their sentences, on average: for murder, 7.7 years; rape, 4.6 years; robbery 3.3 years; and aggravated assault, 1.9 years. Every day in America there are 14 murders, 48 rapes and 578 robberies by convicted criminals on parole or early release from prison. The average career criminal commits more than 180 crimes a year (*Rand Corp.*), contributing significantly to the 14 million violent and property crimes last year. (*FBI*) The answer to this problem is expanded prison capacity and truth-in-sentencing laws which require prisoners to serve at least 85% of their sentences.

Juvenile arrests for violent crime increased more than 30% from 1990 to 1993. Arrests for murder alone increased 28.5%. Gang related homicide, just 0.8% of all homicides in 1980, accounted for 3.6% of all such crimes by 1992. The addition of more than 500,000 men in the crime-active age 14-17 male population by the year 2000 will send juvenile crime skyrocketing, according to experts. Violent juvenile criminals who do "adult crime" should serve "adult time."

Crime victims or their survivors are often unfairly barred from participating in the criminal justice process in any way, a problem that can be corrected by victims' rights legislation.

For more information, contact CrimeStrike at 1-800-TOUGH-11.

Firearms Facts

Guns in the U.S.:	230 million, including 75-80 million handguns (BATF)
Gun owners in U.S.:	60-65 million, of whom, 30-35 million own handguns
Owners who have used guns for self-defense:	11% of firearms owners 13% of handgun owners
Annual criminal gun use:	Less than 0.2% of firearms, Less than 0.4% of handguns

About 99.8% of firearms and more than 99.4% of handguns will not be used to commit violent crimes in any given year.



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GUN-FREE SCHOOL ZONES ACT OF 1996

• The Gun-Free School Zones Act was initially signed into law as part of the Crime Control Act of 1990 (Pub. L. 101-647), taking effect on January 29, 1991. On April 26, 1995, the Supreme Court handed down a 5-4 decision striking down the law as unconstitutional. The Court's opinion stated that Congress had overstepped its constitutional powers to regulate interstate commerce when it passed a law banning gun possession within 1,000 feet of a school (*United States v. Lopez*). The decision turned on whether Congress had the authority to pass the law based on the Commerce Clause of the Constitution which specifically grants Congress the power to regulate interstate commerce.

• In September of 1996, Senator Herb Kohl (D-WI) offered a slightly modified version of the original Gun-Free School Zones Act in the form of an amendment to the Treasury, Postal Appropriations bill. The Kohl Amendment passed and was included in the Omnibus Appropriations bill for fiscal year 1997 (FY97). In an attempt to satisfy the Court's concerns, the Kohl Amendment specified that the law would apply only to those firearms that have "moved in or that otherwise affects interstate or foreign commerce". Virtually all firearms have crossed state lines and would thereby be covered by the new language, however it is still unclear whether or not this new element would allow the law to pass constitutional muster should the Court consider the issue again.

• In 1990, NRA-ILA urged the Congress to include exceptions in the Gun-Free School Zones Act to ensure that certain generally recognized lawful activities would not cause otherwise law-abiding gun owners to be unwittingly covered by the Act, thereby leaving them open to a possible federal felony charge. These exceptions remain in the Kohl Amendment as enacted as part of the Omnibus Appropriations bill for FY97, and are as follows:

• "School" means a school which provides elementary or secondary education, and "school zone" means the grounds of a public, parochial, or private school, or within a distance of 1,000 feet from such grounds.

• The prohibition would not apply to:

- Firearms on private property (this would include a situation where a private home is used for purposes of "home schooling");
- Firearms which are unloaded and are in a locked container or locked firearms rack on a motor vehicle;
- Unloaded firearms possessed by an individual traversing school grounds for the purpose of gaining access to lands open for hunting if the entry is authorized by the school;
- Persons licensed by state or local authorities, individuals using a firearm in a school program, or law enforcement officers acting in their official capacity.

• The prohibition would also apply to the discharge of a firearm within the school zone, but would not apply to:

- The discharge of a firearm on private property;
- Discharging a firearm as part of a school program;
- Discharge of a firearm by an individual in accordance with a contract between the school and the individual;
- Discharge of a firearm by a law enforcement official acting in his or her official capacity.

• The law specifies that the Federal government, upon enactment of the Gun-Free School Zones Act, does not intend to occupy this field of law. Therefore, individual states and localities may enact their own Gun-Free School Zones Acts which are equally or more severe than the federal law. As of June of 1995, only six states did not already have their own Gun Free School Zones Act: Hawaii, Kentucky, Massachusetts, Nebraska, New Hampshire and Wyoming.



THE NATION

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 1988, 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 3,034 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."

FORUM / LETTERS

Concealed-gun laws appear to cut crime rates

By DAVID KOPEL

A quiet revolution in gun policy is spreading throughout America. Ten years ago, only a half-dozen states routinely issued permits for trained citizens to carry concealed handguns for personal protection. Today, however, 31 states comprising more than half the nation's population grant concealed-carry permits to law-abiding citizens. In the long run, this movement will prove far more significant than either the Brady Bill waiting period or the ban on certain semiautomatics.

In 1987, Florida Gov. Bob Martinez signed a bill entitling any citizen who clears a fingerprint-based background check and passes gun-safety classes to receive a permit to carry a concealed handgun for protection. Since then, a steady progression of states has adopted concealed-carry laws modeled on Florida's. Has this movement made America safer or more dangerous?

In research conducted for an article in the Tennessee Law Review, historian Clayton Cramer and I found that in Florida, following adoption of its concealed-carry law, the murder rate started an immediate, steady decline. Before the law, Floridians were about 38 percent more likely to be murdered than other Americans; after a few years, the Florida rate was equal to or slightly less than the national

rate. As for other violent crimes, Florida was the worst state in the nation both before and after the new law. Florida's overall violent-crime rate, however, rose much more slowly after 1987 than did the national violent-crime rate.

When we examined violent-crime data in California, where permit policies vary widely by county, we found that counties that issue concealed-carry permits liberally had lower violent-crime rates than counties with restrictive policies; restrictive counties had lower rates than counties with prohibitive policies.

A comprehensive study by University of Chicago law professor John Lott and graduate student David Mustard examining crime data for 3,054 counties found that while concealed-carry reform had little effect in rural counties, in urban counties it was followed by a substantial reduction in homicide and other violent crimes such as robbery. At the same time, there was a statistically significant rise in non-confrontational property crimes, such as larceny and car theft. Apparently many criminals concluded that the risks of encountering a victim who could fight back had become too high.

Lott and Mustard estimate that if all states that did not have concealed-carry laws in 1992 adopted such laws, there would

Lott and Mustard estimate that if all states that did not have concealed-carry laws in 1992 adopted such laws, there would be approximately 1,800 fewer murders and 3,000 fewer rapes annually. Thus the adoption or improvement of concealed-carry laws in more than a dozen states since 1992 may be one reason for the current decline in murder rates.

be approximately 1,800 fewer murders and 3,000 fewer rapes annually. Thus the adoption or improvement of concealed-carry laws in more than a dozen states since 1992 may be one reason for the current decline in murder rates.

In some respects, the concealed-carry movement has become a women's issue. In fact, about a quarter of those who apply for and receive concealed-carry permits are women. When Alaska Gov. Walter Hickel signed concealed-carry legislation in 1993, he explained that the constituents he found most compelling were "the women who called and said they worked late and had to cross dark parking lots, and asked why

couldn't they carry a concealed gun?" Leading advocates for concealed-carry laws include female victims of crime such as Suzanna Gretia Hupp, whose parents were murdered five years ago in a mass killing in Killeen, Texas; Rebecca John Wyatt, the founder of Safety for Women and Responsible Motherhood; and Marion Hammer, the new president of the National Rifle Association and an activist in the Florida concealed-carry debate. Hammer once brandished her handgun to ward off a gang of would-be robbers.

Typically, when state legislatures first consider concealed-carry bills, opponents warn of horrible consequences: Permit holders will slaughter each other in traf-

fic disputes, while would-be Rambos shoot bystanders in incompetent attempts to thwart crime. But within a year of passage, the issue usually drops off the media radar screen, while pro-gun-control lawmakers conclude that the law wasn't so bad after all.

Why? Because everyone is a potential beneficiary of concealed-carry reform. Since criminals don't know which of their potential victims may be armed, even persons without concealed-carry permits would enjoy increased safety from any deterrent effect. Moreover, a Psychology Today study of "good Samaritans" who came to the aid of violent-crime victims found that 81 percent were gun owners, and many of them carried guns in their cars or on their persons.

Concealed-carry permits are no panacea for high crime rates. But they will be an important component of an anti-crime strategy based on the right and duty of good citizens to take responsibility for public safety.

□ David Kopel is research director of the Independence Institute, Golden, Colo. This piece is adapted from his article in the July/August issue of the Heritage Foundation's magazine, *Policy Review: The Journal of American Citizenship*. Readers may write to him in care of The Heritage Foundation, 214 Massachusetts Ave. NE, Washington, D.C. 20002.

Concealed-carry revision gets bum rap

By PAUL JENKINS

State government is a constant wonder. Here, we have a governor who says he wants peace with lawmakers so that Alaska's myriad problems can be addressed. But at the same time, we have thin-skinned petty functionaries in this administration going out of their way to say some very ugly things about those same lawmakers.

Take this deal with Gov. Tony Knowles' communications director, David Ramsey, and Sen. Lyda Green, for instance.

The Wasilla Republican offered a bill to modify Alaska's 18-month-old concealed-carry law. Knowles vetoed it. Green wrote an opinion piece published in the *Frontiersman* that said he was a lunkhead for doing so. That should have been it. Business as usual. But then, Ramsey waded in with a letter to the editor in the July 24 edition of the *Frontiersman*.

It was a beaut. Ramsey accused the elected official of wrapping herself in the Constitution and continuing to "defy common sense."

He distorted what Green's bill was about. He opined that she was just whining about the



Jenkins

veto of "extremist legislation pushed by the self-styled 'terminator caucus,' which many Alaskans have now dubbed 'the gang that couldn't shoot straight.'"

If he had let it go at that — just a basic cheap shot — it would have been bad enough, but he did not. Referring to the original legislation that put the concealed-carry law on the books, he said, "That bill passed with the support of law enforcement . . ."

That, ladies and gents, is a crock, a revisionist's view of recent history. It shows why those who support the Second Amendment must be wary of government. Those who fear guns, and the people who have them, have a tendency to make things up or leave things out.

What happened to Green's bill is a great recent example. Among other things, Ramsey and others have howled about a provision that would have allowed a person carrying a concealed gun to go into a bar or restaurant that serves alcohol. Unfortunately, neither Ramsey nor the news media mention that the bill



specifically would have barred that person from drinking in the establishment — or that Alaska already has a law prohibiting possession of a weapon by an intoxicated person.

The truth about Alaska's concealed-carry law is this: Two years ago law enforcement administrators — not the cops on the street — fought the original legislation tooth and nail. You saw some of them recently in news accounts. They were standing with the governor at the sappy, image-driven ceremony at the Law Enforcement Memorial to veto Green's legislation.

And the lapdog media helped them in their initial efforts to block concealed carry — and their efforts to kill Green's bill.

A few years ago, there were scare stories suggesting crazed gun freaks would shoot each other over minor fender-benders at intersections. Then it was bad for kids. Then, dangerous for women. People would shoot themselves. It would put police officers in danger.

Many top cops — and Anchorage's sadly led the way — lobbied their fannies off. Regular folks should not be walking the streets with guns, they seemed to say, because they are too stupid and vicious to be trusted.

They slapped together a so-called White Paper packed with half-truths and deceptions in an effort to sway legislators. They twisted arms in the House. They twisted arms in the Senate. They twisted former Gov. Wally Hickel's arm in an effort to keep him from signing the bill. The incoming administration — the same administration that could barely

wait to begin chopping up guns in state storage — even asked that Hickel not sign the bill until it could review its provisions. Hickel, God bless him, signed it anyway.

And did people line up to shoot each other? Nope. In Alaska, just like in every other state with concealed-carry statutes, law-abiding citizens have obeyed the law. There have been no wild gunfights, no bar shootouts. The top cops — who spent time and money working against the public — were dead wrong.

Apparently, Ramsey now would have us believe that the cops who worked to kill Green's bill have always adored the idea of concealed carry, but worked against her bill to save us. What nonsense. Many of them did not want Alaska to have concealed-carry laws in the first place. As one told me after the law went into effect: "I guess we'll have to live with it." Nothing has changed. They certainly don't want the law expanded. And if we ever go to sleep, you can bet they'll work to have the existing law repealed.

And now, Ramsey's version of history and what Green's bill was all about are being sent out to people who write the governor's office asking about the veto. That's too bad. That's the kind of thing that widens the war with the Legislature, makes intelligent people nervous about government and serves neither the governor nor the people of Alaska.

State government, indeed, is a constant wonder.

Paul Jenkins is an editor of The Anchorage Times.



Alaska State Legislature

Session:
State Capitol
Juneau AK 99801-1182

Senate State Affairs

Interim:
716 W 4th Avenue
Anchorage AK 99501-2133

Crunch these gun numbers

While Bill Clinton runs the railroad, the engine that pulls the guns-as-public-health-menace train is the Federal Centers for Disease Control and Prevention. Their goal is to "revolutionize" society's view of guns until they are considered "dirty," deadly — and banned.

People in our community and the article "NRA aims to kill gun research," (July 11), would have you believe that by the year 2001, gun injuries are expected to surpass motor vehicle injuries as the nation's leading cause of fatal injuries.

So let's look at this information from "Statistical Abstract of the United State 1995," by the Bureau of the Census.

In 1980, firearms accounted for 33,780 deaths; in 1985, 31,566 deaths; in 1990, 37,155 deaths; in 1991, 38,317 deaths; and in 1992, 37,776 deaths.

In 1970, motor vehicle accidents caused 108,126 deaths; in 1980, 106,102 deaths; in 1990, 92,641 deaths; in 1991, 86,157 deaths; and in 1992, 80,967 deaths.

Major cardiovascular disease accounted for one million deaths in 1970. That number dropped to 988,000 in 1980; 916,000 in 1990; 915,000 in 1992, and rose again in 1993 to 944,000 deaths.

The number of deaths from influenza and pneumonia was 62,000 in 1970; 54,000 in 1980; 79,000 in 1990; 76,000 in 1992 and 81,000 in 1993.

Gee, by the year 2001, I'll have a better chance of dying from a heart attack, pneumonia or a motor vehicle accident than from a firearm.

— Mickey Sexton
Anchorage

ADW 7/18/96

Personal rights gun bill takes hit from Knowles

Revisions to Alaska's Concealed Handgun Permit Program contained in Senate Bill 177 would not have granted new or increased rights. Rather, the revisions would have protected our civil right to keep and bear arms — a right and freedom guaranteed in our state and federal constitutions.

In passing legislation to enact Alaska's Concealed Handgun Program (CHP) in 1994, and SB 177 revising the program this year, the Legislature upheld and worked to restore Alaskan's civil rights. By vetoing this legislation, the governor once again chose to exert governmental control over individual choice.

I sponsored SB 177 after many Alaskan permit holders, non-permit holders, firearms instructors and gun rights advocacy groups told me that the concealed handgun program is too expensive and too restrictive. CHP permit holders have taken the personal responsibility for self-protection and protection of their loved ones. To inhibit their ability to do so through over burdensome regulation is not right.

To receive a CHP permit, an applicant must meet rigorous program criteria. Applicants are required to provide fingerprints, submit to background checks, receive professional training on the use of firearms, the laws relating to firearms and the use of deadly force, and qualify with their handgun. CHP permit holders are among our most responsible and law abiding citizens.

Provisions of SB 177 would reduce the permit fee, provide for reciprocity with other states and remove some restrictions on where a permit holder is allowed to carry.

These provisions were thoroughly discussed throughout the committee process, examined by the Legislature, and passed by both houses with bipartisan support.

In numerous committee meetings, the administration's spokesperson stated, "In a chocolate-covered world, we would leave the program as is."

Consistent with his policy of

SPECTRUM

Sen. Lyda Green

destroying confiscated weapons and his veto of SB 274 (protecting the operation of sport shooting ranges), the governor's veto rhetoric for Senate Bill 177 relies on fear and distortion to lend validity to his liberal ideology — promoting a paternalistic government and repressing individual freedoms.

While the governor cited the provisions expanding where a permit holder can carry as dangerous, he overlooked the legitimate concerns of the license holder. He said carrying concealed in banks would create a dangerous situation. Protection while carrying deposits to the bank is one of the primary reasons that business owners get a permit.

No one else is providing protection for them on the way to and from the bank. Is it right to force them to leave their handgun unattended in their car? Is it safer there than in the possession and direct supervision of a trained, licensed, law-abiding citizen?

This bill does not advocate the mixing of guns and alcohol. It is illegal to use or possess any weapon, concealed or not, while impaired by alcohol, and rightfully so.

SB 177 would have allowed permittees to carry concealed weapons into places that have beverage dispensary licenses providing the permittee consume no alcohol. At no time in the process did anyone argue for the right to use a firearm, in any circumstance, while drinking.

In his veto message the governor chose to ignore certain provisions of this bill: one would have allowed a private property owner the right to deny firearms by posting a sign and another that would provide the tool for excluding carry on public property by statute.

These important provisions protect private property rights

and ensure adequate review of public property policy decisions that could infringe on second amendment rights.

As a legislator, I take the responsibility of defending the constitutional rights of my constituents very seriously and I am deeply concerned with the continuing anti-firearms policy of this administration.

With over 5,000 permits issued and not one case of weapon misconduct, Alaska's Concealed Handgun Permit program has proven to be a good program.

I, and the majority of my colleagues, believe that the revisions contained in Senate Bill 177 make it better. I join the many Alaska gun owners in disappointment over the governor's veto. It's not a "chocolate-covered world" out there and no qualified citizen should be denied the opportunity for personal protection.

Sen. Lyda Green, a Republican, lives in Wasilla.

ADN 7/1/90

Armed society is polite society

Well, I see that "Slick Willie's" agenda on personal liberties and Second Amendment rights took another hit in Juneau when Gov. Tony Knowles vetoed the concealed carry amendments bill recently.

A few facts.

A person with a carry permit cannot carry a weapon concealed in any area that a non-permitee can carry one openly.

If I am with my wife in an unsafe area frequented by gangs or other lowlife and decide to go into a pizza place or a food establishment that serves beer/wine, even if we don't drink, I am in violation of the law.

If I go to the bank to cash a check or draw out money for a "cash only" purchase and have my weapon, I am in violation.

I know several law enforcement people who are very much in favor of all aspects of personal protection weapons — very unlike the staged TV presentation with our governor and some of our officials.

The amendment proposal only makes the concealed carry law more workable and realistic and gives us "good guys" an even playing field with the bad guys.

Remember, an armed society is a polite society.

If all you worried people carrying a weapon illegally to protect yourself would take the time to get a legal carry permit, join the NRA and vote, we would not be in danger of having our Constitutional rights trampled by "Big Brother."

Remember Waco and Ruby Ridge — it can happen to you too.

— John C. Woolery
Girdwood

TONY KNOWLES
GOVERNOR



P.O. Box 110001
Juneau, Alaska 99811-0001
(907) 465 3500
Fax (907) 465-3532

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

June 19, 1996

The Honorable Drue Pearce
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

96-06-29A09:20 0070

Dear President Pearce:

Under the authority of Art. II, sec. 15 of the Alaska Constitution, I have vetoed the following bill:

House CS for CSSB 177(FIN) am H

"An Act relating to permits to carry concealed handguns;
and relating to possession of firearms on state ferries."

I believe this bill would seriously undermine the safeguards in Alaska's concealed weapons law and would jeopardize the public and law enforcement officials. The bill would remove many of the places where concealed weapons are prohibited under current law and would permit the carrying of concealed weapons by out-of-state persons who may not meet Alaska's statutory requirements.

The current concealed handgun program has been in place for only 18 months. The experience to date has not demonstrated that the law is "broken," or that the types of amendments contained in this bill are warranted or necessary.

A specific objection to this bill comes from a basic premise, founded on hundreds of years of experience, that guns and alcohol don't mix. This bill would allow concealed handguns in bars. This scenario invites tragedy.

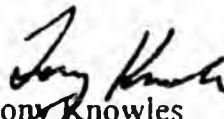
Post-It® Fax Note	7671	Date	6/20	# of pages	2
To	Senator, Juneau	From	Senate Secretary		
Cor/Dept.		Co.			
Phone #	376-3157	Phone #			
Fax #		Fax #			

I also question the wisdom of allowing concealed guns in banks and government offices as proposed in this bill. There is good reason for these locations to be protected. We should not jeopardize their security by allowing concealed handguns on the premises.

Finally, the manner in which this bill would offer reciprocity for concealed handgun permit holders from other states is especially troubling. Reciprocity would be offered to any out-of-state permittee regardless of the requirements to obtain a permit in another state, even if those requirements are less stringent than in Alaska. Moreover, an out-of-state permit holder would not be subject to the same restrictions that apply to Alaska permit holders. While this may not have been the intent of the legislature, it is unacceptable to allow activities by out-of-state residents which are prohibited by Alaska residents under our laws.

Many municipalities and law enforcement organizations have voiced strong opposition to this legislation including the Alaska Peace Officers Association, the Alaska Association of Chiefs of Police, the Public Safety Employees Association, the Municipality of Anchorage, and the Cities of Palmer and Wasilla. I acknowledge their experience and professionalism in this area and find a veto of this legislation necessary in the interest of public safety.

Sincerely,



Tony Knowles
Governor

TONY KNOWLES
GOVERNOR



P.O. Box 110001
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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

July 22, 1996

RECEIVED
REC'D
JUL 29 1996
Ans'd.....
Ans'd.....

Robert H. Parkerson, Ph.D.
HC 02, Box 7630-A1
Palmer, AK 99645

Dear Dr. Parkerson:

Thank you for your letter expressing interest in Senate Bill 177, which would have expanded Alaska's concealed handgun law by permitting concealed weapons in bars, government offices, and banks, and allow out-of-state permit holders to carry concealed guns in Alaska.

On June 19, I vetoed this bill. I believe it would have seriously undermined the safeguards in Alaska's current concealed weapons law and would have jeopardized both the public and law enforcement officials. The current concealed handgun program has been in place for only 18 months. The experience to date has not demonstrated the law is "broken," or the types of amendments contained in this bill are warranted or necessary. The existing program was the result of a carefully crafted compromise struck two years ago and passed with the support of law enforcement, so I believe we should give it more time to work.

Also, the idea of allowing guns in bars defies common sense. Hundreds of years of experience has shown guns and alcohol don't mix. Allowing guns in bars simply invites tragedy, a major concern of Alaska's police officers who lined up strongly against this bill.

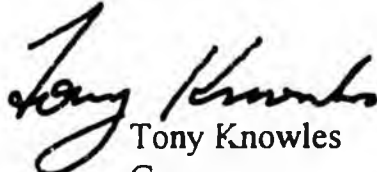
Finally, the bill offered reciprocity for concealed handgun permit holders from other states--meaning people who have permits from other states, regardless of the restrictions on those permits, would be allowed to carry concealed guns in Alaska. That would remove the control of concealed weapons permits from our hands, which is unacceptable.

Robert H. Parkerson, Ph.D.
July 22, 1996
Page 2

I realize this issue is one that strikes to the heart of many people who believe their basic right to bear arms is being violated under current restrictions on concealed guns. But it is my responsibility, and the responsibility of our law enforcement officers, to protect the safety of all Alaskans. I don't believe this bill served that purpose and, in fact, had the potential of doing just the opposite.

Again, thanks for taking time to consider this legislation and contact me with your views.

Sincerely,


Tony Knowles
Governor

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

RECEIVED

JUL 29 1996

130 Seward Street, Suite 409
Juneau, Alaska 99801-2006

COPY

MEMORANDUM

July 29, 1996

SUBJECT: Possession of concealed weapons illegal in buildings housing state offices: extension to other venues (Work Order No. 20-LS0026(A))

TO: Senator Lyda Green
ATTN: Brett Huber

FROM: Jack Chenoweth
Legislative Counsel

Your inquiry about the soundness of the guidance provided in the July 19 memo of Deputy Director Stan Ridgeway to employees of the Division of Vocational Rehabilitation has been directed to me for preparation of a response.

On the basis of my understanding of the applicable statutes, I would have hesitated to provide the guidance reported by Mr. Ridgeway.

AS 18.65.755(a)(4) and (5) provide the statutory authority supporting the conclusion that possession of a concealed handgun within a building housing state offices (or in an office of a state agency) is illegal. However, extension of the proscription to cover "parking lots and visits to clients either at . . . home or in a mutual meeting place" stretches that statute beyond legislative reasoning and the interpretation of the statute by the Department of Public Safety, the agency that is directed to implement the concealed handgun permit program.

To the suggestion that the proscription applies to "parking lots" serving buildings that house state offices, I would contend, first, that nowhere in the concealed handgun permit provisions, AS 18.65.700 - 18.65.790, is it stated or reasonably implied that proscriptions to possession of concealed handguns necessarily extend outside the confines of the specific premises identified. Where the legislature wanted to make clear that possession of concealed weapons was prohibited on grounds adjacent to a particular structure, it specifically said so, as, for example, with respect to its handling of "school grounds." Second, in implementing AS 18.65.700 - 18.65.790, the Department of Public Safety's regulations, 13 AAC 30, considered the terms and phrases of the statute and the contingencies in which they would apply and determined that, in some circumstances, the statute should be interpreted to include adjacent grounds, as, for example, in 13 AAC 30.900(b)(9), added to clarify ambiguity in the reference to "passenger loading or unloading area of an airline terminal," wherein the term was defined to include "any . . . airport area that is immediately adjacent

Senator Lyda Green

July 29, 1996

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to [an airline terminal] building that is used for ground transportation or pedestrian traffic" In summary, the statutory authorization for concealed handgun permits and the regulations interpreting those statutes do not give the proscriptive language an expansive reading so as to cover "parking lots" and similar grounds in conjunction with state office facilities. The interpretation reportedly provided by the attorney general's office seems to me to be at variance with the direction of the legislation and the interpretation that is supplied by the agency regulations implementing the program.

To the suggestion that the proscription should apply also "to clients . . . at their home," I would respond by noting that the concealed handgun permit provisions explicitly give the authority as to whether a concealed weapon may be brought into private premises occupied as a residence to the resident, AS 18.65.755(a)(9). The interpretation reported by Mr. Ridgeway is at variance in that it presumes to tell the division representative that he or she may not carry a concealed weapon into a private residence even when the resident or person having the possession of the premises has not interposed objection to having concealed handguns on premises in the manner permitted by law.

To the suggestion that the proscription should apply also "to clients . . . [meeting with division personnel] in a mutual meeting place," I suggest that, to the extent that the mutual meeting place is not a building or premises described in AS 18.65.755(a)(4) and (5), the concealed handgun permit provisions explicitly give the final authority as to whether a concealed weapon may be brought into a business meeting to the participants who are involved at the specific meeting. AS 18.65.755(a)(10); see, especially, 13 AAC 30.900(b)(8), extending the coverage of the phrase "meeting of a business, charitable, or other organization or entity" to discussions that include at least one representative of a government entity. Again, the reported interpretation presumes to tell the division representative that he or she may not carry a concealed weapon into a meeting. That is a decision that, under the statute and the regulation as framed by the Department of Public Safety, is left to each government employee who participates in the meeting to decide as to whether or not to interpose objection to having concealed handguns at the meeting.

I trust this is responsive to your inquiry.

JBC:lmb

96-121.lmb

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LEGAL SERVICES

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

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AUG 01 1996
Ans'd.....



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


MEMORANDUM

August 1, 1996

SUBJECT: Possession of concealed handguns: Assistant Attorney General Tom Dahl's July 26 memo (Work Order 20-LS0026A)

TO: Senator Lyda Green
ATTN: Brett Huber

FROM: Jack Chenoweth
Legislative Council



The subject at hand concerns the authority of the state, as an employer, to set limitations or regulations on the activities of its employees incidental to the employment relationship.

You have asked me to respond to the central point of Assistant Attorney General Tom Dahl's July 26 memo. That point, made in the last part of the third paragraph of his memo, asserts that

. . . the state or any management entity has the authority to set conditions of employment that may prohibit employees from doing things that are otherwise legal Such activities could subject the state to liability or otherwise detract from the mission of the agency or the image that the agency wishes to project when dealing with the public or with clients.

From that, Mr. Dahl concludes that a state agency, acting by departmental policy, could prohibit employees from carrying concealed firearms while on state business outside of state buildings.

The state may establish reasonable rules and regulations for its employees.

An employer may make reasonable rules and regulations for the conduct of the employer's business, and an employee has a legal duty to comply with those rules, orders and policies. Central Alaska Broadcasting v. Bracale, 637 P.2d 711, 713 (Alaska 1981). That general authority applies to state employees covered by collective bargaining agreements. Nothing in the collective bargaining agreements now in place sets aside the state's prerogative to exercise authority in this area. See, for example, article IV, "Management Rights," General Government Unit Employment Bargaining Agreement, affirming management's right to manage its affairs. As an employer, the state retains the right to define conduct on the part of its employees that has a reasonable relationship to the employer's interests.

Senator Lyda Green

August 1, 1996

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The feature of the general authority of a state agency to make reasonable rules and regulations in this instance is the question of whether the agency may prohibit its employees from taking actions that are otherwise legal, i.e., possessing a concealed handgun, under a valid permit, while the permittee is in the residence of a client who has not given notice that possession of a concealed handgun is prohibited.

I am prepared to concede that state authorities may do so.

The right to possess a concealed handgun is not a "fundamental" constitutional right:

Bear in mind that what the agency contemplates--issuing a departmental or divisional policy statement barring possession of concealed handguns in the course of the performance of employment duties--amounts to state action. When state action impairs a fundamental constitutional right, that action will be sustained only if the government can demonstrate that the intrusion is reasonably necessary for the achievement of a compelling government function and that the objective cannot be achieved by more reasonable means. Breese v. Smith, 501 P.2d 159, 171 (Alaska 1972); Ravin v. State, 537 P.2d 494, 497 (Alaska 1975).

A permittee's possession of a concealed handgun would almost certainly not be treated or regarded as a fundamental right.

First, under the state constitution, the right of an individual to keep and bear arms **may** be fundamental--there are simply no Alaska court cases construing the provision.^{1/} But that is not the central question. What is at issue in this inquiry is the regulation of a handgun that is concealed. Even in jurisdictions that have constitutional provisions on the right to keep and bear arms that are comparable to Alaska's, the right of authorities to regulate concealed weapons has generally been sustained.^{2/}

Consequently, it seems to me that there is little likelihood that a court would conclude that constraints on possession of a concealed handgun amounted to impairment of a "fundamental right" and is unlikely to apply "strict scrutiny" or "heightened scrutiny" analysis in any form. Rather, if called upon to do so, the court would simply ascertain or verify that the decision involved reasonable exercise of the agency's discretion under a "rational basis" analysis, requiring only that the state demonstrate that the limitation of handgun-ir-possession be supportable by a legitimate state interest.

^{1/} However, the weight of case law authority is to the contrary. See, for example, Robertson v. City and Cty. of Denver, 874 P.2d 325, 340 - 341 (Colo. 1994).

^{2/} The refusal to grant a license to carry a concealed weapon did not infringe on the constitutional right to keep and bear arms. Gardner v. Jenkins, 541 A.2d 406, 409 (Pa. Commonwealth 1988), app. den. 554 A.2d 511 (Pa. 1988).

Senator Lyda Green

August 1, 1996

Page 3

Second, I would not foresee an argument based on intrusion on the employees' "right of privacy" as being successful. "Right of privacy" arguments turn, in part, on the nature of the privacy interest involved. Matter of A.B., 791 P.2d 615, 621 (Alaska 1990). Despite a statute, AS 18.65.770, making concealed handgun "[a]pplications, permits, and renewals" confidential by determining these documents are not to be treated as public records, concealed weapon permittees probably only have, at best, a reduced privacy expectation, diminished due to the investigation undertaken by state law enforcement officials in conjunction with issuance of the concealed handgun permit.²⁷

In the absence of state action intruding on a fundamental constitutional right, the court would almost certainly sustain the agency's decision to bar employees from having possession of a concealed handgun during working hours as reasonable in that it is one rationally related to furthering the work of the vocational rehabilitation program toward its clients.

Mr. Dahl's memo concludes that proscribing division employees from exercising authority under the permits to carry concealed handguns while visiting or dealing with clients may "otherwise detract from the mission of the agency or the image that the agency wishes to project when dealing with the public or with clients." I think that his expression of purpose

²⁷ Arguably, it is not the disposition of the records of the investigation but the fact that an investigation is authorized that is a determining factor. A detailed investigation involved with processing a concealed handgun permit application or renewal may constitute an intrusion sufficient to reduce or eliminate privacy expectations by the person whose life is made the subject of inquiry. See, for example, AFGE, Local 1533 v. Cheney, 944 F.2d 503 (9th Cir. 1991) where, speaking to "the diminished privacy expectations of TSA clearance holders," the court indicated:

... To obtain and maintain TSA [top secret with access] clearances, these individuals [i.e. civilian employees engaged in work for the armed forces] are subjected to detailed investigations into their private lives which occur both as a condition for obtaining TSA clearances and periodically thereafter. ... Individuals who accept jobs that subject them to such close review of their personal lives cannot legitimately claim to have a high-expectation of job-related privacy.

AFGE, Local 1533 v. Cheney, at 507. More generally, in the context of Fourth Amendment search and seizure claims, the United States Supreme Court has observed that "background investigations, medical examinations, or other intrusions ... may be expected to diminish ... expectations of privacy" Nat'l. Treasury Employees Union v. Von Raab, 489 U.S. 656, 677 - 678, 109 S.Ct. 1384, 1397, 103 L.Ed.2d 685, 709 - 710 (1989).

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probably would be found sufficient to support the argument that the division's proscription serves an interest that is at least "important," that it relates to the employer's interests, and that it is, by definition, "reasonable."^{4/}

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^{4/} Though that is not necessarily so. See Texas State Employees Union v. Texas Department of Mental Health & Mental Retardation, 746 S.W.2d 203 (Texas 1987). where, in concluding that a department policy of requiring certain employees to take a mandatory polygraph test violated privacy rights protected by the state constitution, the court sustained a trial court's determination that the agency's interests, while "important," were not "compelling":

As justification for its polygraph policy, the Department asserts its interest in maintaining a safe environment for Department patients. This interest is in many respects compelling. The Department is not concerned solely with the smooth operation of its agency. It has been charged by the legislature with a unique responsibility towards its patients. It must provide them with "a humane environment that afford reasonable protection from harm" without undue limitation on their "rights, benefits, responsibilities and privileges guaranteed by the constitution and laws." In its efforts to achieve these goals, the Department must minimize incidents of employee misconduct. The polygraph testing was initiated to assist administrators in investigations of four types of situations: patient abuse or neglect; conduct endangering the health or safety of patients or other employees; theft or other criminal activity; use of drugs or alcohol.

These goals are admittedly important. . . .

After comparing the policy in question to a similar requirement imposed on public safety employees, the court concluded:

The trial court found, however, that the unique circumstances that may justify requiring police and fire personnel to take polygraph examinations do not exist with respect to [Department of Mental Health] employees. We agree. **The Department's objectives, important as they are, are not adequately compelling to warrant an intrusion into the privacy rights of the employees.**

746 S.W.2d at 205 - 206 (citations omitted; emphasis added).

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 mental 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 years or more has elapsed since the unconditional 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 concealed 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 under oath; 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 a physical 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 concerning 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 maximum 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; (11) 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.

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*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

James Madison, of Virginia:

The Constitution preserves "the advantage of being armed which Americans possess over the people of almost every other nation. . . (where) the governments are afraid to trust the people with arms." -- The Federalist, No. 46

Tench Coxe, of Pennsylvania:

"The militia, who are in fact the effective part of the people at large, will render many troops quite unnecessary. They will form a powerful check upon the regular troops, and will generally be sufficient to over-awe them." -- An American Citizen, Oct. 21, 1787

"Who are the militia? Are they not ourselves? Congress have no power to disarm the militia. Their swords and every other terrible implement of the soldier, are the birthright of an American. . . . The unlimited power of the sword is not in the hands of either the federal or state governments, but, where I trust in God it will ever remain, in the hands of the people." -- The Pennsylvania Gazette, Feb. 20, 1788

"As the military forces which must occasionally be raised to defend our country, might pervert their power to the injury of their fellow citizens, the people are confirmed by the next article (of amendment) in their right to keep and bear their private arms." -- Federal Gazette, June 18, 1789

Noah Webster, of Pennsylvania:

"Before a standing army can rule, the people must be disarmed; as they are in almost every kingdom in Europe. The supreme power in America cannot enforce unjust laws by the sword; because the whole body of the people are armed, and constitute a force superior to any band of regular troops that can be, on any pretence, raised in the United States. A military force, at the command of Congress, can execute no laws, but such as the people perceive to be just and constitutional; for they will possess the power." -- An Examination of The Leading Principles of the Federal Constitution, Philadelphia, 1787

Alexander Hamilton, of New York:

"[I]f circumstances should at any time oblige the government to form an army of any magnitude, that army can never be formidable to the liberties of the people while there is a large body of citizens, little if at all inferior to them in discipline and the use of arms, who stand ready to defend their rights and those of their fellow citizens." -- The Federalist, No. 29

Thomas Paine, of Pennsylvania:

"[A]rms discourage and keep the invader and plunderer in awe, and preserve order in the world as well as property. . . Horrid mischief would ensue were the law-abiding deprived of the use of them." -- Thoughts On Defensive War, 1775

Fisher Ames, of Massachusetts:

"The rights of conscience, of bearing arms, of changing the government, are declared to be inherent in the people." -- Letter to F.R. Minoe, June 12, 1789

Elbridge Gerry, of Massachusetts:

"What, sir, is the use of militia? It is to prevent the establishment of a standing army, the bane of liberty. . . Whenever Government means to invade the rights and

liberties of the people, they always attempt to destroy the militia, in order to raise a standing army upon its ruins." -- Debate, U.S. House of Representatives, August 17, 1789

Patrick Henry, of Virginia:

"Guard with jealous attention the public liberty. Suspect everyone who approaches that jewel." -- Virginia's U.S. Constitution ratification convention

For more information, see Halbrook, Stephen P., "The Right of the People or the Power of the State: Bearing Arms, Arming Militias, and the Second Amendment," Valparaiso Univ. Law Review, Vol. 26, No. 1, Fall, 1991; and "That Every Man Be Armed: The Evolution of a Constitutional Right," Univ. of N.M. Press, 1984

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ARMED CITIZENS AND POLICE OFFICERS:

It was way back in 1932 that the *American Rifleman*, official journal of the National Rifle Association of America, began publishing abridged newspaper accounts of law-abiding citizens who had used firearms to defend themselves and others and to protect property. The accounts were condensed from clippings sent in by NRA members and, of course, the magazine could cite only a tiny fraction of the "armed citizen" cases that occur each year in America. Indeed, award-winning criminologist Gary Kleck in his survey research places the number as high as 2.5 million.



There is an important--but sometimes overlooked--subset of these cases. Namely, those incidents in which civilians with firearms have come to the aid of law enforcement officers attempting to perform their often dangerous duties. As the following accounts from the *American Rifleman* illustrate, the armed citizen is the law officer's best friend.

Things had turned ugly for Oklahoma Highway Patrol Officer Rick Wallace. He had found marijuana on a speeder, but was overpowered by the man before he could cuff him. Passerby Adolph Krejsek witnessed the altercation and came to the rescue, using his own firearm to help the trooper control the suspect. After helping subdue the assailant, Krejsek used the injured trooper's radio to call for help.

(The Review Courier, Alva, OK, 1/8/95, (AR 6/95)

"It's more than fighting fires. If somebody is in trouble, we're going to show up," said Sipsey Valley volunteer firefighter James "Buddy" O'Hanlon. O'Hanlon was one of about 30 armed volunteer firefighters who responded within minutes to an emergency call from their chief, L.A. Marlowe, who had just been robbed and shot at outside of his Buhl, Ala., store. One suspect was spotted before he made it 100 yds. and was cornered in the woods by the army of firefighters, who apprehended him. Sheriff's deputies quickly arrested another robber who had been identified by the firefighters. A third suspect was later apprehended.

(The News, Tuscaloosa, AL, 1/12/95) (AR 4/95)

In the finest tradition of armed citizens who take on crime in their communities, Texan Travis Neel helped save a wounded Harris County deputy sheriff's life. Witnessing the shooting by one of a trio of Houston gang members after a traffic stop just west of Houston, Neel--who was on his way to his pistol range--pulled his gun and fired, driving the officer's assailants away. An off-duty sheriff's deputy also came on the scene and joined Neel in covering the deputy, whose life was saved by his body armor. The trio was captured after a manhunt.

(The Post, Houston, TX, 1/22/94) (AR 4/94)

While the situation ended without incident, armed citizen Michael Acree stood ready to lend a hand when a police officer stopped a carload of unruly teenagers outside his Salem, Connecticut, home. Noticing the youths scuffling with the officer, Acree retrieved his pistol and went out onto his lawn. When the youths saw Acree and his handgun, they calmed down and the situation ended peaceably. Acree earned the appreciation both of town officials and the officer.

(The Bulletin, Norwich, CT, 5/22/93) (AR 9/93)

Vincent McCarthy wasn't afraid to lend a hand when he noticed a police officer struggling with a man and woman at the side of the road. He tried to help subdue the man who was kicking the officer in the face. Despite McCarthy's warnings, the man pressed his assault, and the tour boat captain shot him once in the leg with a pistol he is licensed to carry and stopped the attack. Neither the officer nor McCarthy were seriously injured.

(The Daily Commercial, Leesburg, FL, 4/10/92) (AR 6/92)

Citizens of Ivor, Va., turned out in force when two men robbed the local bank. After their car crashed while fleeing from police, the duo fled into a wooded area. Local residents immediately armed themselves and, along with police, surrounded the woods. The pair surrendered to a volunteer and an officer the next morning. Said one local resident, "Here, the feeling is Hey, you've got my money."

(The Virginian-Pilot, Norfolk, VA, 10/20/91)(AR 3/92)

A North Myrtle Beach, N.C., citizen was credited by the city's public safety director with possibly saving the life of Police Officer Richard Jernick. Jernick had pulled over a suspected bank robber's car after a chase, when the suspect charged the cruiser and pointed a gun at the officer, who was still behind the wheel. At that point authorities said, the robbery suspect saw that James Beach, a semi-retired electrician who had joined the pursuit, had a pistol pointed at him. Startled, the robber ran for his car, and Officer Jernick was able to shoot and wound him.

(The Observer, Charlotte, NC, 7/4/91) (AR 9/91)

When Eric Stewart of Oxford, Iowa, heard that an Iowa state trooper had been killed in a plane crash while participating in the manhunt for a robbery suspect, he got his revolver, jumped in his car and joined the search. He passed a man on foot he thought might be the suspect. Stewart stopped at a local farm, and while he was talking to the owners, the man attempted to force his way into the home. Stewart captured and held him at gunpoint until police arrived.

(The Press-Citizen, Iowa City, IA, 10/15/90) (AR 1/91)

During a drug arrest in Webster Parish, La., a sheriff's deputy and a state trooper found themselves struggling with their two suspects. But four citizens observed the battle and, armed with shotguns, they came to the officers' aid, enabling them to make the arrests.

(The Press-Herald, Minden, LA, 5/23/89) (AR 11/89)

Dave Storton, a San Jose, Calif., police officer, was doing off-duty security work at an apartment complex when two burglars knocked him down and attempted to grab his revolver. During the struggle, one of the assailants bit off part of Storton's ear, but the two attackers were run off by an apartment resident who came to the rescue, armed with a shotgun.

(The Chronicle, San Francisco, CA, 5/12/88) (AR 10/88)

Miami, Okla., motel owner Oba Edwards witnessed two policemen struggling with a man they were attempting to arrest and saw the man wrest away one officer's revolver, shoot and kill him. Edwards armed himself and fired a shot that allowed the remaining officer to recover his partner's revolver and fatally wound the attacker. The dead man was on probation for assault of a Texas police officer.

(The Daily Oklahoman, Oklahoma City, OK, 6/7/88) (AR 9/88)

After a string of burglaries, a group of four Beaumont, Tex., neighbors, armed with shotguns, handguns and bats, pursued a burglary suspect to an overgrown field. Police and residents then joined forces to capture the suspect, who had set some dry grass on fire to elude pursuit. A police detective later commented, "In the rush, we didn't have time to get their names, but we really appreciated it."

(The Enterprise, Beaumont, TX, 11/12/87) (AR 3/88)

The robber made a clean getaway and had pulled into the Pelham, Ala., service station. He found the service rather rude, however, as manager Ed Milstead used a 12-ga. shotgun to hold him for police. Milstead had learned of the robbery from a police scanner.

(The News, Birmingham, AL, 2/1/86) (AR 5/86)

A teller in a bank in Indianapolis, Ind., called out to Joseph Ernst when a man claiming to have a pistol and a bomb was about to get away with a bagful of stolen money. Ernst, a uniformed sheriff's deputy, tackled the man. As they grappled on the floor, the robber tried to get to Ernst's sidearm. But Samuel Hatcher, who'd worked with the deputy years before, halted the struggle by drawing a licensed handgun and holding it to the robber's head.

(The Star, Indianapolis, IN) (AR 1/83)

A sheriff's deputy pursued an armed robbery suspect to a Salem, Oreg., supermarket and fired on the man after nearly being run down in the parking lot. From his adjacent residence, James Hicks was alerted to the disturbance and armed himself. When the fleeing suspect forced his way into the home, Hicks ordered him to drop his gun. Instead, he pointed it at the homeowner, but was shot and killed when Hicks fired first.

(The Statesman Journal, Salem, OR, 1/11/83) (AR 5/83)

Police officer Chris Haldeman entered a Chambersburg, Pa., gold and silver exchange to arrest a suspect in a stolen property case, but the man resisted and a struggle ensued. The 220-lb. suspect had Haldeman pinned to the ground and was choking him when storekeeper Ken Cummings pulled his pistol and shot the officer's attacker in the leg. The man, a known felon, managed to escape, and Det. Haldeman was treated at a local hospital and released.

(The Morning Herald, Hagerstown, MD, 10/27/83) (AR 1/84)

When a pair of youthful armed robbers hit a convenience store in tiny Carlotta, Calif., the residents formed a posse and gave chase. They called ahead to another nearby town, Swain's Flat, and asked for help. The Swain's Flat citizens called another town, Bridgeville, and alerted Loretta Scott and Gloria Falor. Scott and Falor raised a posse which waited at their end of Bridgeville Bridge. When the robbers' getaway car was halfway across the span, the Bridgeville citizens blocked their end with cars and trucks. Meanwhile, the pursuing Carlotta contingent blocked the other end. Several citizens armed themselves, but no gunfire was needed. Sheriff's deputies appeared and arrested the stranded criminals.

(The Times-Standard, Eureka, CA, 4/15/82) (AR 7/82)

Joseph Dean of Winchester, Calif., and Wendell Knighton of McGill, Nev., were stopped at a rest area near Jackpot, Nev., when they saw a man shoot a sheriff's deputy. As the criminal advanced on his car, Dean grabbed a pistol, rolled under the vehicle and exchanged shots with him. Knighton, sitting in his own car, opened up, too. In the fusillade, the criminal was killed with no injury to bystanders. Meanwhile, Knighton's wife and sister-in-law gave first aid to the fallen deputy, probably saving his life.

(The Daily Free Press, Elko, NV, 7/30/82) (AR 9/82)

When James Hill saw police and helicopters searching the area around his Norco, Calif., home, he suspected that there might have been an escape from the nearby California Rehabilitation Center. So he reached for a .357 Mag. revolver and a 12-ga. shotgun, summoned his dog and began to search his own property. His vigilance was soon rewarded as the dog located an escapee in a tack room behind the Hill home. Hill held the prisoner for sheriff's deputies.

(The Press-Enterprise, Riverside, CA, 3/13/82) (AR 8/82)

A stolen car bearing three escaped convicts was stopped on a Kansas highway by a state trooper. When the officer ordered the men from the vehicle, they sped away. With the trooper in pursuit, the escapees crashed in the town of Gorham; two were captured as they crawled free of the wreckage. The third convict attempted to flee on foot, only to be collared by several onlookers who had secured rifles from their pickups at the trooper's call for assistance.

(The Morning News, Dallas, TX, 12/5/82) (AR 3/83)

Four young hoodlums were beating off-duty Chicago policeman Russell Ryan in a parking lot when his wife, Carol, came to the rescue. Retrieving her husband's revolver from her purse, she fired warning shots which scattered the assailants.

(The Sun-Times, Chicago, IL, 1/26/81) (AR 4/81)

George Rayburn and his son were listening to a police scanner radio in their River Rouge, Mich., home when they heard that officers were chasing a trio of muggers toward their address. Rayburn grabbed a .357 Mag. revolver and leveled it at one of the lawbreakers, who was attempting to scale a wall into the Rayburn backyard. Only after police arrived and arrested the mugger, did Rayburn, a Marine combat veteran, reveal that he is almost blind.

(The News, Detroit, MI, 1/6/81) (AR 3/81)

Corbin, Ky., motel operator Ray Miracle came upon state trooper James Phelps attempting

to subdue two drunken occupants of a stopped auto and, carrying his revolver, went to the officer's aid. At that point, another car stopped and one of two men inside leveled a gun on Trooper Phelps. Seeing Miracle's drawn gun, however, they hastily drove off. Kentucky State Police rewarded Miracle with their highest civilian honor.

(The Times-Tribune, Corbin, KY) (AR 10/80)

When trooper Bill Brashears stopped a motorist for a traffic violation near Altus, Ark., the man pulled a gun and shot him in the jaw. Before falling, Brashears returned fire, wounding the gunman in the arm, but the assailant then jumped on Brashears and began choking him. A passing female motorist saw the struggle, stopped, and held the assailant at gunpoint until others arrived to summon police. She then rushed Brashears to a local hospital.

(The Arkansas Gazette, Little Rock, AR, 1/2/80) (AR 3/80)

DeKalb, Ga., policeman Tom Whittington was investigating a car accident when two men jumped him and began beating him. Several neighbors were unsuccessful in stopping the bloody assault until a man emerged from the crowd, fired several rifle shots over the heads of the attackers, and then shot one in the leg. Police arrived shortly and arrested the assailants.

(The Journal, Atlanta, GA, 10/12/80) (AR 12/80)

Bus driver Robert McCort was driving from Miami to Detroit when he saw two men and a woman holding a gun on a state trooper near Jacksonville, Fla. McCort stopped his bus and started running toward the scene. Several tractor-trailer trucks had stopped, too, and a woman in one of them handed McCort a .38 cal. revolver as he ran past. Fired upon, McCort, a member of the Jacksonville Police Reserve, responded with a volley of shots which drove the gun-wielding criminal away. The trooper was freed unharmed and the two accomplices arrested.

(The Florida Times-Union, Jacksonville, FL, 12/15/80) (AR 4/81)

Timothy Willard, a 22-year-old policeman in South Paris, Maine, was shot to death by a man inside a car parked in the lot of O.D.V. Inc. After gunning down the rookie policeman, the man fired wildly at company president, Robert Carroll. Carroll, an NRA Life member, drew his own gun and killed the man.

*(The Sunday Telegram, Portland, ME) (AR 3/79)**

Hearing the description of a robber's getaway car on the Houston, Tex., police radio, several wrecker drivers chased down the culprit and surrounded him in a service station. Driver Jim Penry leaped from his wrecker with a loaded shotgun in hand and held the bandit at gun point until the police arrived.

(The Reporter News, Abilene, TX) (AR 10/78)

An unidentified NRA member became famous throughout Texas as "The Hunter" when he and his son heard a distress call on their CB radio. Two college coeds saw a Waco man shoot Sammy Long, a Texas Department of Public Safety officer, and called for help. The hunter arrived on the scene too late to save Long's life, but killed the thug with a 6mm rifle. Upton County District Atty. Aubrey Edwards said the coeds and the hunter requested their names not be made public and said the hunter "deserved a medal" for his action.

(The Times, San Angelo, TX) (AR 2/77)

Ralph Festavan watched as a heroin peddler attacked a Shreveport, La., policeman and grabbed the officer's gun. Festavan ran to the patrol car parked nearby and got a shotgun with which he shot and killed the pusher.

(The Post, Houston, TX) (AR 11/77)

Cecil Collier, 15, was working with his father in a Wildwood, Fla., vegetable field when a state trooper rushed up and asked them to join a posse searching for three Ohio criminals. The trio had broken through a tollgate and evaded a roadblock formed by CB radio operators. Collier was given a 20-ga. shotgun, and he headed into a nearby thicket. There he found the hoodlums, ordered them to drop their guns, and held them for the rest of the posse.

(The Tribune, Tampa, FL) (AR 9/77)

Dennis Koch was putting storm windows on his fiancee's house when he observed a youth run

into nearby woods. He passed the information on to a police officer who stopped by minutes later and told Koch he was searching for a burglary suspect. He gave Koch permission to assist him. Carrying his pistol, for which he has a permit, Koch found the youth hiding and held him in custody until the officer could place him under arrest.
(*The Times-Union*, Rochester, NY) (AR 1/76)

A Missouri state trooper had been shot three times by two armed robbery suspects when armed citizen Robert Riley of Tiptonville, Tenn., rushed to his aid. Riley fired a small caliber pistol at the assailants until they surrendered. The law officer was then rushed to a hospital.
(*The Memphis Press-Scimitar*, Memphis, TN) (AR 11/75)

Driving into Huntsville, Tex., after sighting-in a deer rifle in the country, Tony Taylor and Jack Dwenger saw a police car swerve into a ditch. They parked and ran over to the vehicle where they subdued a man who was being transported to prison by a deputy sheriff. The deputy, who had been stabbed twice, credited the pair with saving his life.
(*The Huntsville Item*, Huntsville, TX) (AR 6/15)

Seeing a state trooper shot to death while checking occupants of a car near Crystal City, Fla., hunters Ralph Morris and Richard Starling jumped from their pickup truck with guns in hand and ordered the two occupants of the car to "freeze." Instead, one opened fire with a .22 handgun while the other stepped on the gas. Starling with a shotgun blast flattened a tire on the car. When one suspect ran, Morris with his semi-automatic rifle hit him in both feet. Starling then covered the men while Morris summoned police. Both men were charged with first-degree murder.
(*The Tampa Tribune*, Tampa, FL) (AR 5/74)

Wounded in a gun battle with a robber, a Texas policeman lay in the street attempting to reload his revolver. As the robber prepared to fire at him again, L.B. Jackson, Oak Cliff, Tex., covered the robber with a shotgun and forced him to surrender.
(*The Dallas Morning News*, Dallas, TX) (AR 2/72)

Ronald Royce, a pharmacist in Elgin, Ill., called police when he recognized in his store a man who previously had used a forged prescription to obtain drugs. When a policeman came, the suspect drew a gun and pointed it at the officer's head. Grabbing a gun from behind the counter, Royce fired and wounded the gunman. As the man ran, the policeman wounded him again and arrested him.
(*The Daily Courier-News*, Elgin, IL) (AR 1/72)

When Frank Carter, a Carnegie, Okla., farmer, saw three men beating a town marshal who had stopped them for drunk driving, he grabbed a rifle from his truck and ordered them to back off. The thugs fled, but were later captured in a state-patrol roadblock.
(*The Daily Oklahoman*, Oklahoma City, OK) (AR 7/71)

Hearing noises in his store, grocer Lyle Smith of Orillia, Iowa, called police and his son-in-law, Larry Adkins. Both Adkins and police arrived about the same time. Adkins, armed with a shotgun, stopped two intruders attempting to flee from the officers.
(*The Tribune*, Des Moines, IA) (AR 7/70)

Three men from Montrose, Colo., were on their way home from a hunting trip when they surprised four youths beating a state patrolman with rocks. The patrolman had stopped the youths for a traffic violation, and the four boys had jumped him. The hunters stopped the scuffle and held three of the youths at gunpoint: the other young man and a juvenile girl who was in the car escaped but were captured shortly afterward.
(*The Post*, Denver, CO) (AR 4/70)

A prisoner who escaped from the Federal Reformatory at Chillicothe, Ohio, while serving a stolen car sentence, was recaptured without firing a shot because, Deputy Sheriff Dwight Beery reports, farmer Wendell Bryant, who lives near Frankfort, Ohio, got his shotgun out and backed up the lone deputy who answered Bryant's call and helped to trace the prisoner. Deputy Earl Kuhn reported to Deputy Sheriff Dwight Beery, that the prisoner appeared ready to make a break at one point but did not do so "because of Mr. Bryant standing in an advantageous position. I couldn't

have asked for better assistance." The Ross County Law Enforcement Officers Ass'n honored Bryant at a special meeting.

(*The Gazette*, Chillicothe, OH) (AR 3/67)

As Fred Boulter approached a Malden, Mass., A&P store, he noticed a police cruiser pulled up and two policemen entering the store. Boulter drew abreast of the store window and saw one policeman lying on the floor and another staggering out of the front door. When three gunmen rushed out of the front door and fired shot after shot at the staggering policeman, Boulter pulled out a cal. .32 automatic and fired at the three men who were trying to get in a car parked across the street. One of the thugs took a bullet in the leg from Boulter's gun and fled with another bandit as Boulter crossed the street and kept a bead on the remaining man until police arrived.

(*The Globe*, Boston, MA) (AR 2/64)

In Indianapolis, Gerald Watson, 17, stood near a policeman who questioned a robbery suspect when the suspect's accomplice appeared on the scene and shot the officer down. Watson, who had taught marksmanship at the YMCA, grabbed the fallen policeman's service revolver and shot the felon dead.

(*Associated Press*) (AR 5/61)

In Saraland, Ala., the berserk husband of a woman charged with possession of illegal whisky killed one police officer and wounded another but, as he tried to make his escape, was shot dead by Carlos McDonald, the proprietor of a nearby shop.

(*United Press Int'l*) (AR 2/60)

A gas station bandit fired five shots at a pursuing motorcycle officer in a wild chase through Tampa streets, ran his getaway car in a ditch, and fled on foot. J.R. Vause, working on his house, saw the shooting and the motorcycle as it sped past. He ran inside for his shotgun, and set off in pursuit of the bandit. When the officer returned, the gunman, peppered with Vause's shotgun pellets, meekly surrendered.

(*The Tribune*, Tampa, FL) (AR 9/59)

Two gunmen kidnapped an Eclectic, Ala., town policeman and used him to get enter the home of banker Carl Ray Barker late at night. One gunman took Barker into town to open the bank's vault, while the other held Baker's wife, child and the policeman hostage. When the time-vault resisted opening, the gunman returned Barker to his house to await a second crack at the vault. While they waited, Barker put water on the stove to make coffee. Barker threw the scalding water into one gunman's face, subdue him, then was able to get a shotgun, fire and kill the other would-be bank robber.

(*United Press Int'l*) (AR 11/59)

* *The American Rifleman* did not begin listing date of original publication until the June 1979 issue.

Survey research indicates that firearms are used in the United States as frequently as 2.5 million times a year for personal protection, and that the presence of a firearm, without a shot being fired, prevents crime in many instances. Shooting usually can be justified only where crime constitutes an immediate, imminent threat to life, limb, or in some cases, property.

This is the electronic version of the "Armed Citizens and Police Officers: Partners in Fighting Crime" brochure distributed by NRA-ILA. To order additional copies of this brochure, please contact NRA Grassroots at 800/392-8683.

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cc:Mail for: Brett Huber

Subject: gun stuff
From: Jeff Logan 4/23/96 11:14 AM
To: Brett Huber
To: Walter Wilcox

I pulled this off the net, thought you might find it interesting, or maybe there's some stats you could use...

From: "Mark E. Howerter" <otherside@misslink.net>
Date: Sun, 14 Apr 1996 17:27:55 -0600
Subject: C-NEWS: Gun Control Article

"GUN CONTROL ISN'T ABOUT GUNS, IT'S ABOUT CONTROL"

My reasons for being against gun control are based on the statements of our Founding Fathers and what has happened historically once a government has been able to disarm the citizenry.

Start disarming the citizenry the least bit and you have let the camel get his nose under the tent. Soon you will have a tent full of camel. Adolf Hitler said, "The first thing you have to do is disarm the people. A disarmed public can't fight back"

Mahatma Gandhi was no fan of gun control. "Among the many misdeeds of the British rule in India, history will look upon the act of depriving a whole nation of arms as the blackest."

History has proven that every nation which has disarmed its citizenry has ended up with a dictator and a police state with countless and horrible atrocities. It is so true that we either learn from history or history will repeat itself.

What good does making laws banning guns do to prevent crime anyway? Criminals don't obey laws. Only law abiding citizens do. All you end up doing is disarming people who wouldn't use guns to commit crimes anyway. The bad guys already have tons of weapons and they aren't going to hand them in no matter what the law says.

Bad guys don't give a rat's rear end about gun control laws for themselves. Actually, they are just hoping more laws like that will pass so they don't have to worry as much about getting shot while they ply their criminal trade.

Guns in the hands of criminals facilitate crime, but in the hands of innocent victims, prevent it. A couple of cases in point are used by Stephen Chapman in a column in the Thursday, January 26, 1995, Chicago Tribune titled, "Make My Day." Chapman says, "Whoever killed Nicole Brown Simpson didn't need a gun: He was (or they were) strong enough to dispatch two healthy adults with only a knife. But if she had been carrying one, she might be alive today. Texas has an example that is less hypothetical: a woman who left her pistol in the car when she went into Luby's Cafeteria in Killeen, and then had to watch as an armed man killed 22 patrons, including her parents."

If just one person standing around waiting for the Long Island Rail Road Commuter Train that December day when Colin Ferguson shot all of those people would have had a concealed weapon, Ferguson might have shot two or three. He would not have been able to unload a full clip into people, reload, and do it all again, while the unarmed New Yorkers just cowered and hoped he'd run out of bullets.

Thomas Jefferson had strong feelings on the subject. "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."

Some statistics are in order here:

"Since Florida has enacted their concealed carry law, the Florida murder rate has dropped by 29%. Nationwide, the murder rate rose 11% over the same period..."--1994 FBI crime data from ABC News 3/12/95.

"Justice Department studies show that armed citizens are much less likely to suffer losses or personal injury from thieves"--Washington Post 1/7/92

Guns in the hands of law abiding citizens clearly prevent crime.

In Florida, where they have the most lenient conceal-and-carry law in existence, native criminals don't very often pick on motorists with Florida license plates. They know that any car they come upon with Florida plates might be driven by a fellow Floridian with a legally concealed weapon.

Criminals in Florida choose to pick on motorists driving rental cars away from airports. The reason is that they know the driver isn't carrying a concealed weapon. Guns can't be carried on airplanes and so out-of-towners leaving airports in rental cars are easy targets. (If you're planning on a trip to Florida, you might want to drive.)

The Clintons, Kennedys, and Bradys of this world really believe that

gun control laws are the answer to crime, but nothing could be further from the truth. Rep. Bill Brewster, D-Oklahoma, quoted in the January 31, 1995, "USA Today" article, "Gun Laws are No Answer" states the Washington DC statistic that since guns were banned there in 1976 the murder rate has risen 200%. And according to a CBS poll, 64% of Americans rightfully understand and don't believe gun control laws reduce crime anyway.

In the same article Brewster points out that, "More than 2 million times a year, citizens use lawfully owned firearms, including semiautomatic firearms, to defend themselves and their families from criminal attack, according to Florida State criminologist Gary Kleck."

George Washington certainly felt that guns prevented crime in his day. "The very atmosphere of firearms anywhere and everywhere restrains evil interference--they deserve a place of honor with all that's good"

Thomas Jefferson explained the greatest need for an armed citizenry was to insure freedom. "The strongest reason for the people to retain the right to keep and bear arms is, as a last resort, to protect themselves against tyranny in government."

Jefferson was actually quite prolific when it came to his feeling that common citizens needed to be armed. "When the government fears the People, that is Liberty. When the People fear the Government, that is tyranny." And, "The beauty of the second amendment is that it will not be needed until they try to take it." And, "The price of liberty is eternal vigilance...No free man shall ever be debarred the use of arms."

Jefferson certainly wasn't alone in believing such things either.

opinion on the net:<http://www.cris.com/~dhathaw/otherside/>

Originating from the rural cornfields of Monmouth, Illinois