

**HB**

**346**

Committees:

Resources  
Co-Chair

Transportation

World Trade and  
State & Federal Relations

# Alaska State Legislature



Representative Beverly Masek

During Interim: (June-Dec.)  
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## Sponsor Statement

### **HB346: An Act relating to concealed handgun permittees**

A statutory revision is needed to further clarify the recognition of concealed handgun permits from other states. The 21<sup>st</sup> legislature passed Senator Taylor's SB 294, which provides for the recognition of permits: (1) from the states with permit requirements similar to Alaska; and (2) from states which recognize Alaska's permits. SB 294 also directed the Department of Public Safety to determine which states and political subdivisions grant reciprocity to Alaska permit holders and distribute the list to each law enforcement agency in this state. The department has yet to fully implement this statutory requirement, some sixteen months later.

This legislation will simplify the process by plainly recognizing all permits issued by other states. In so doing, the burden on the department of having to evaluate all the other state's laws to determine which ones recognize Alaska's permits and the subjectivity on the part of the department in determining which other states' statutes are similar to Alaska law will be removed. House Bill 346 will better serve the public and permit holders.

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HB 346  
 (H) Publish Date: 2/22/02

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Public Safety  
 Title Concealed Handgun Permittees BRU AST-Detachments  
 Component AST-Detachments  
 Sponsor Representative Masek  
 Requester House State Affairs Committee Component No. 2325

**Expenditures/Revenues (Thousands of Dollars)**

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2002) cost: 0.0  
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This bill will have no fiscal impact for the Department of Public Safety.

Prepared by: Lt. Julia Grimes Phone 269-4532  
 Division: Division of Alaska State Troopers Date/Time 2/4/02 4:15 PM  
 Approved by: Commissioner Glenn Godfrey Date 2/4/2002  
 Agency: Department of Public Safety

**Date:** 25 February, 2001  
**To:** Senator Randy Phillips  
**From:** Jennifer Yuhas,  
Legislative Aide to Representative Beverly Masek  
**Re:** Concealed Handgun Permittees

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I have researched your question pertaining to which states allow concealed handgun permitting, but do not require fingerprinting as part of the background check to obtain a permit.

Lt. Julia Grimes at the Department of Public Safety has told me that the department lists five states which do not require fingerprinting.

Those states are:

- Delaware
- Maine
- South Dakota
- Virginia
- Washington

This list was compiled using answers from the individual states to a questionnaire the department issued last Fall.

I have further researched the laws in these states, and I believe it is important to point out that:

- Delaware is a limited issue state, meaning that very few permits are issued, and there is an extensive qualification requirement in that state for a permit.
- Virginia state law delegates authority to require fingerprints for issuance of a permit to individual counties.
- Washington does in fact require two sets of fingerprints be submitted at application for an original permit under WS 941.070.

I have attached a brief description of the background check requirements for both Maine and South Dakota. Both states are requiring background checks, and are registering their permittees. I hope this information is useful to you. Please have your staff contact me if there is anything further I may research for you on this subject.

jy

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COPIES

Hudson Replaced by Lt. Grin



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October 9, 2001

Captain David Hudson  
Alaska Department of Public Safety  
5700 E. Tudor Road  
Anchorage, AK 99507

Dear Captain Hudson,

On behalf of the more than 24,000 National Rifle Association members who reside in the State of Alaska, I would like to express appreciation for the opportunity to provide comments on the proposed regulations intended to implement the statutory changes brought about by Senate Bill 294 from the 2000 Legislative Session. As you are aware, NRA members are particularly interested in this issue and, as such, I was intimately involved, on their behalf, in the process leading to the passage of this legislation.

Upon reviewing the proposed regulations, I find them to generally be a very appropriate reflection of the changes intended by SB 294. There are only two subjects on which the NRA wishes to submit substantive comments on behalf of our members: Reciprocity (13 AAC 30.150) and Confidentiality (13 AAC 30.800).

*Reciprocity*

Prior to the passage of SB 294, Alaska law (AS §18.65.748) provided that concealed weapon permit holders from other states would be recognized in Alaska if the other state had "permit requirements at least as strict" as those in the Alaska statute. In March of 1998, based on this statute, the Department of Public Safety released a Memorandum listing seventeen states from which permits would be recognized. At some point in time between March 1998 and May 1999, DPS changed its position and issued a directive that no other states' permits were recognized. In November 1999, I was personally informed by the DPS Permits and Licensing Unit that individual permit holders could, on an individual case-by-case basis, attempt to secure approval of their permit. It was, in large part, this particular issue that led NRA to push for statutory changes which resulted in the introduction of SB 294.

In order to remove the subjectivity which apparently led to the changing DPS policy, it was a major goal of that bill to specifically clarify what issuance criteria other states' permits must be subject to in order to be recognized by the State of Alaska. As introduced, SB 294 offered a list of four specific criteria to be applied to other states so a clear and simple determination could be made by DPS. In the House State Affairs Committee hearing on April 15, 2000, SB 294 was amended and a second criterion for recognition by Alaska was added. The new language provided that Alaska would, additionally, recognize permits from other states or political subdivisions which honor Alaska permits. The amendatory language also required DPS to determine which states grant reciprocity to Alaska and distribute a list of such states to law enforcement agencies in Alaska.

The National Rifle Association offers the following two comments with respect to 13 AAC 30.150:

1) The proposed regulation states that DPS will post on its website the status of reciprocity with other states. The NRA is not certain that this will meet the requirements of AS §18.65.748 which directs DPS to ensure that each law enforcement agency in the state receives a copy of the listing. Has DPS confirmed that every law enforcement agency in Alaska has Internet access? While the NRA applauds DPS for posting the information on its website so the public-at-large is privy to the same information on which Alaska law enforcement will be basing its enforcement actions, we want to ensure that all Alaska law enforcement personnel have accurate and up-to-date information.

2) SB 294, and the resulting statute, neglected to require DPS to determine which states are recognized by Alaska based on the first criterion and, in turn, notify law enforcement. The NRA respectfully suggests that good government practices and full implementation in the "spirit of the law" would lead DPS to list not only those states granting reciprocity but also those states recognized by Alaska based on their issuance criteria meeting the standards set forth in AS §18.65.748 (1).

Further, up until very recently, the DPS website only listed states with which Alaska had a formal reciprocity agreement. The statute does not require that there be an agreement between Alaska and other states and, thus, there are many other states whose permits are valid in Alaska. I was encouraged to see the recent addition of Michigan (based, I assume, on criterion (1)) to the list of recognized states provided on the DPS website and I am hopeful that the complete and accurate listing of all states will be forthcoming soon. NRA research indicates that, in addition to the states listed on the DPS website as of today, Louisiana, Nevada, New Mexico and Oregon all have "similar" issuance criteria and are, thus, valid in Alaska and should be added based on AS §18.65.748 (1). Idaho, Indiana, Kentucky and Montana all recognize Alaska permits and are, thus, valid in Alaska and should be added based on AS §18.65.748 (2).

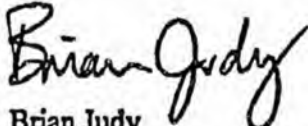
The DPS website also lists "possible" reciprocity states. Among those listed are Arkansas, Georgia, Mississippi and Tennessee, all of which are actively entering into reciprocity agreements and would most assuredly respond favorably to contact by your department. New Hampshire is also in the process of entering into reciprocity agreements, but, it appears, not as aggressively as the aforementioned states.

*Confidentiality*

The original concealed handgun permit law was passed in 1994 and included specific language in AS §18.65.770 to limit access to the information regarding permit holders compiled by DPS. The regulations promulgated in response to the new law appropriately included 13 AAC 30.800 to accurately reflect legislative intent. Because Senate Bill 294 made no change to §18.65.770, the NRA believes there should be no change to the corresponding regulation. The confidentiality of private information, particularly relating to firearm ownership, is one of the absolute foremost concerns of NRA members and all law-abiding firearm owners. It is the nature of regulations that they are somewhat redundant as they mirror the statutes which they serve to implement. Therefore, regardless of the fact that there may be confidentiality provisions which "already exist in statute," as stated in the DPS notice, NRA is opposed to the repeal of 13 AAC 30.800.

The National Rifle Association, on behalf of the membership, would like to thank the Department of Public Safety, in advance, for its consideration of these comments. If we can be of assistance in providing information or helping in any way to bring the DPS website up to date with regard to the recognition of other states' permits, please don't hesitate to contact me.

Sincerely,



Brian Judy  
Alaska State Liaison

cc: Senator Robin Taylor  
Senator Rick Halford  
Senator Lyda Green  
Representative Jeannette James  
Wayne Anthony Ross, Attorney-at-Law and NRA Director  
Alaska Outdoor Council

## Texas Concealed Handgun Carriers Are Law-Abiding...

by H. Sterling Burnett

In 1994, Texas citizens approved a nonbinding resolution asking the state to grant Texans the right to carry concealed weapons. Gov. Ann Richards had vetoed such a bill prior to the vote and vowed that no such bill would pass while she was governor. By contrast, her opponent in the race for governor--George W. Bush--said that if elected he would sign an appropriately structured "right-to-carry" law. Bush won the election and on May 26, 1995, signed a law granting Texans the right to carry concealed firearms. When he did so, Texas joined 30 other states that have made it legal to carry concealed weapons.

Because of its large geographic size and population and electoral importance, Texas' experience with concealed carry has come under sustained attack. Before passage, opponents predicted a decline in public safety, with minor incidents escalating into killings as the concealed carry law placed more guns in irresponsible hands. Further, critics claimed that criminals would be undeterred by an increase in armed citizens. Both predictions were wrong.

In 1998 and again in 1999, the Violence Policy Center, a research organization opposed to concealed carry (Editor's note: VPC seeks a total ban on handgun ownership), released reports highlighting the numbers of Texas' concealed carry licensees who have been arrested since the law went into effect. Using Texas Department of Public Safety records, the center pointed out that Texas licensees had been arrested for nearly two crimes a day through 1998--with more than one arrest each month for a violent crime.

In isolation, these numbers paint a troubling picture. However, the reports are misleading for several reasons. First, they do not separate crimes that involve concealed weapons from those that don't. In addition, they ignore the fact that more than 55 percent of licensees arrested for violent crimes are cleared of the crimes for which they are arrested. Most tellingly, when the arrest rates of Texas' concealed carry holders are compared with those of the general population, licensees are found to be more law-abiding than the average person.

In an unpublished report, engineering statistician William Sturdevant found that concealed carry licensees had arrest rates far lower than the general population for every category of crime. For instance:

\*\* Licensees were 5.7 times less likely to be arrested for violent offenses than the general public--127 per 100,000 population versus 730 per

100,000.

\*\* Licensees were 13.5 times less likely to be arrested for nonviolent offenses than the general public--386 per 100,000 population versus 5,212 per 100,000.

\*\* Further, the general public is 1.4 times more likely to be arrested for murder than licensees, and no licensee had been arrested for negligent manslaughter.

"All the horror stories  
I thought would come  
to pass didn't happen. . . .  
I think it's worked out well,  
and that says good things  
about the citizens who have permits.  
I'm a convert."  
--Glenn White, president  
of the Dallas Police Ass'n

This is unsurprising, since the standards for getting a concealed carry license in Texas are the strictest in the nation. One must be at least 21 years of age, submit a photo and fingerprints for a background check, pay a \$140 fee and take more than eight hours of course work. In addition, applicants must pass both a written test covering laws pertaining to deadly force and gun safety and a shooting accuracy test. Even with all of these hurdles, more than 200,000 Texans have received concealed carry permits.

Shootings involving licensees are rare. However, most permit holders who have wounded or killed purported assailants have not been arrested because the authorities have determined that the shootings were justified. For instance:

\*\* Licensee Jim Eichelberg ended James Turner's brief crime spree when, in an exchange of gunfire, he shot Turner as Turner tried to carjack Eichelberg at gunpoint. Earlier, Turner had robbed another driver.

\*\* In 1996, licensee Becky Shelton shot and killed a man who was attempting to rob and shoot her husband in their Richardson jewelry store.

Of the concealed carry licensees who have been arrested for a murder, several have been no-billed by grand juries that determined the killings were lawful. Gordon Hale, III, was the first Texas licensee to kill an assailant using his concealed firearm--and the first licensee arrested. Hale had

been involved in a minor noninjury traffic accident that turned into an assault when the other driver, Kenny Tavai, punched Hale repeatedly in the face and then attempted to drag him out of his car through the window. Hale fired his weapon in response, killing Tavai. The Dallas district attorney's office charged Hale with murder for using what it considered excessive force in defending against Tavai. The grand jury believed that Hale justifiably feared for his life and refused to indict him. Of the six licensees who were arrested for murder or nonnegligent manslaughter and brought to trial, twice as many (four) were found to have acted in self-defense as were found guilty of murder (two).

When criminals suspect that the costs of committing a crime will be too high, they are less likely to commit it. The possibility of a concealed weapon tilts the odds in favor of the potential victim. Studies have shown that rape victims who resist with a gun are only half as likely to be injured as those who do not resist.

In *More Guns, Less Crime* (1998), the University of Chicago's John Lott examined the impact of concealed carry permits. Using data from all 3,054 U.S. counties between 1977 and 1992, he found that after controlling for other factors:

**\*\*Concealed handgun laws reduce murder by 8.5 percent, rape by 5 percent and severe assault by 7 percent.**

**\*\* Passage of nondiscretionary carry laws in states that did not have them in 1992 would have reduced murders in that year by 1,839; rapes by 3,727 and aggravated assaults by 10,990; robberies by 61,064 and burglaries by 112,665. The total value of this reduction in crime in 1992 dollars would have been \$7.6 billion, Lott says.**

These reductions are beyond the general decline in crime rates that the U.S. has experienced during the past eight years.

In the early 1990s, Texas' serious crime rate was 38 percent above the national average. Since then serious crime in Texas has dropped 50 percent faster than for the nation as a whole. For example, during the 1990s Texas' murder rate dropped 52 percent compared to 33 percent nationally, and the rape rate fell by 22 percent compared to 16 percent nationally. In light of Lott's research, it is likely that Texas' concealed carry law has contributed to the declining crime rates.

Both John B. Holmes, Harris County district attorney, and Glenn White, president of the Dallas Police Ass'n, initially opposed concealed carry in Texas but have subsequently embraced it. Holmes said, "I ... (felt) that such legislation ... present(ed) a clear and present danger to lawabiding citizens by placing more handguns on our streets. Boy was I wrong. Our experience in Harris County, and indeed statewide, has proven my initial fears absolutely groundless." And White said, "All the horror stories I thought would come to pass didn't happen. ... I think it's worked out well, and that says good things about the citizens who have permits. I'm a convert." The evidence indicates that concealed carry is a vital tool in the fight against violent crime.

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#### About The Author

H. Sterling Burnett is a Senior Policy Analyst with the National Center for Policy Analysis, a nonpartisan, non-profit research and education institute headquartered in Dallas. For more information go to [www.ncpa.org](http://www.ncpa.org). This article first appeared in the August 2000 American Rifleman.

Posted: 8/21/2000



# FACT SHEET



## Right to Carry 2001

**New Mexico is the 33rd Right to Carry state!** On April 3, Governor Gary Johnson signed legislation making his state the 33rd to have a law respecting the right of people to carry firearms for protection against criminals -- the 30th to adopt a "shall issue" firearm-carry permit system. In January, Gov. John Engler signed RTC into law in Michigan. Today, 54% percent of Americans, including 64% of handgun owners, live in RTC states.



*Click on map for larger graphic.*

- **The right to self-defense is a fundamental right** to which the right to arms is inextricably linked. RTC laws respect the right to self-defense by allowing individual citizens to carry firearms for protection against criminals.
- **RTC laws reduce crime.** In their landmark study, John R. Lott, Jr. and David B. Mustard found, "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." ("Crime, Deterrence, and Right To Carry Concealed Handguns," 1996.)
- **RTC opponents' false predictions** -- "Concerns that permit holders would lose their tempers in traffic accidents have been unfounded. Worries about risks to police officers have also proved unfounded. . . . National surveys of

police show they support concealed handgun laws by a 3-1 margin....There is also not a single academic study that claims Right to Carry laws have increased state crime rates. The debate among academics has been over how large the benefits have been." ("Should Michigan keep new concealed weapon law? Don't believe gun foe scare tactics," *Detroit News*, 1/14/01.) "Whenever a state legislature first considers a concealed-carry bill, opponents typically warn of horrible consequences. . . . But within a year of passage, the issue usually drops off the news media's radar screen, while gun-control advocates in the legislature conclude that the law wasn't so bad after all." (David Kopel, "The Untold Triumph of Concealed-Carry Permits," *Policy Review*, July-Aug. 1996, p. 9.)

- **Violent crime has decreased every year since 1991**, while 18 states adopted RTC and 13 states improved their RTC laws. No state made its carry law more restrictive. **RTC states have lower violent crime rates**, on average, 24% lower total violent crime, 26% lower homicide, 3% lower rape, 39% lower robbery, and 19% lower aggravated assault, compared to other states and D.C. (FBI, 1999, most recent data.) Eight of the 10 states with the lowest violent crime rates are RTC states. Of the five major U.S. cities with the highest homicide rates (1999, most recent year available), two (Baltimore and Detroit) severely restrict carrying (as noted, Michigan adopted RTC in 2001); two (D.C. and Chicago) have *banned* handguns.

### State RTC Permit Statistics

Fla: (10/1/87-12/31/00) 736,355 issued, 130 (0.02%) revoked due to firearm crimes by licensees. (Dept.

of State, <http://licgweb.dos.state.fl.us/stats/index.html>)

Ky.: As of 2/5/01, 57,923 valid permits. From 10/1/96-12/31/99, 165 revoked for any reason. (State Police)

La.: (11/1/96-2/1/01) 13,645 issued, 56 (0.4%) revoked for any reason. (State Police)

Okla.: Through Feb. 2, 2001, 33,386 issued, 17 (0.05%) revoked for any reason. (SBI)

N.C.: (12/1/95-7/5/00) 42,682 issued, 182 (0.4%) revoked for any reason. (SBI, (<http://sbi2.jus.state.nc.us/crp/public/other/conceal/chp072000.pdf>))

S.C.: (8/96-1/29/01) 29,124 issued, 121 (0.4%) revoked for any reason. (SLED)

Tex.: (1/1/96-1/1/01) 215,446 issued, 1,553 (0.7%) revoked for any reason. (DPS, [www.txdps.state.tx.us/administration/crime\\_records/chl/chlsindex.htm](http://www.txdps.state.tx.us/administration/crime_records/chl/chlsindex.htm))

Then-DPS Director James Wilson: "it has impressed me how remarkably responsible the permit

holders have been." (Bruce Tomaso, "Gun law's record impresses official," *Dallas Morning News*, 6/11/96.)

Tenn.: (12/96-12/31/99) 90,939 issued, 1,176 (1%) revoked for any reason. (DPS, [www.state.tn.us/safety/handguns.html](http://www.state.tn.us/safety/handguns.html))

Ut.: 22,401 issued, 215 (1%) revoked for any reason.

Va.: (7/95-12/98) 156,788 issued. In 2000, 12,302 issued, 74 (0.6%) revoked for any reason. (State Police)  
Wyo.: (10/1/94-1/11/99) 5,288 issued, 10 (0.2%) revoked for any reason. (Dept. of Criminal Investigation)

### The RTC Success Story

Before 1987, only Georgia, Indiana, Maine, New Hampshire, N. Dakota, S. Dakota and Washington had "shall issue" laws, requiring law enforcement officials or courts to issue firearm carrying permits to applicants who meet fair, statewide standards established by the legislature. Under long-standing laws, officials in Alabama and Connecticut fairly exercised their discretion over issuing permits; Vermont respected the right to carry a firearm without a permit. In other states, law enforcement officials' discretion over permits regularly resulted in permits being arbitrarily denied to eligible applicants, or carrying a firearm was prohibited and no permits were available.

In 1987, Florida enacted a "shall issue" RTC law that serves as the framework for RTC laws more recently adopted in other states. The law was supported by the Florida Dept. of Law Enforcement, Florida Sheriffs Assn., Florida Police Chiefs Assn., and other police groups. Opponents waged a fear-based campaign, claiming crime would increase if people carried guns. Anti-gun politicians predicted Florida would become the "GUNshine State." The news media forecast vigilante justice and "Wild West" shootouts on every corner. One newspaper said "(A) pistol-packing citizenry will mean itchier trigger fingers....South Florida's climate of smoldering fear would flash like napalm when every stranger totes a piece, and every mental snap in traffic could lead to the crack of gunfire." The predictions were proven false. From the inception of Florida's RTC law through 1992, Florida's homicide rate decreased 23%, while the U.S. rate rose 9%. Thereafter, homicide decreased both nationally and in Florida.

As shown, only about 0.02% of Florida carry licenses are revoked because of firearm crimes by license holders. Then-Florida Licensing Division Director, John Russi, said, "When you compare that to the number of licenses that were issued, that's very small." Russi noted there had been "no record of any accidents or incidents from a lack of training" and that "Florida's concealed weapon law has been very successful. All major law enforcement groups supported the original legislation and in the eight years the program has been in place, none of these groups has requested any changes....(S)ome of the opponents of concealed weapon legislation in 1987 now admit the program has not created the problems many predicted." (Testimony before the Michigan House of Representatives Judiciary Committee, 12/5/95.) In a 3/15/95 official correspondence to the governor and other state officials, Dep't. of Law Enforcement Commissioner James T. Moore wrote, "From a law enforcement perspective, the licensing process has not resulted in problems in the community from people arming themselves with concealed weapons. The strict provisions of 790.06, Florida Statutes, preclude the licensing of convicted felons, etc., thus allowing the permitting of law abiding citizens who do not routinely commit crimes

or otherwise violate the law."

Anti-gun activists claim that Florida's three-day waiting period caused the state's homicide rate to decrease. However, according to anti-gun researcher David McDowell, "waiting periods have no influence on either gun homicides or gun suicides." ("Preventative Effects of Firearm Regulations on Injury Mortality," 1993.) In 1975, California increased its five-day waiting period to 15 days; by 1980, its homicide rate was up 53%. States subject to the Brady Act's now-expired "waiting period" experienced worse violent crime trends than Brady-exempt states. Anti-gun activists claim that Florida's high total violent crime rate proves that RTC doesn't work. But firearms are involved in only 24% of violent crimes (homicides, rapes, robberies, aggravated assaults); 93% of violent crimes are aggravated assaults and robberies, and firearms are used in only 19% of aggravated assaults and in 38% of robberies. Also, Florida's violent crime rate was significantly higher than the national rate for decades *before* Florida's law took effect. And since the law took effect, Florida's violent crime rate has decreased 9%; the U.S. rate has decreased 8%. (Data, FBI.)

Since Florida (1987), 23 states have adopted "shall issue" laws (having previously had a discretionary-issue permit system or a law prohibiting carrying) or re-affirmed "shall issue" through judicial ruling. 1989--Ore., Pa. and W. Va. (new); Ga. (judicial ruling); 1990--Id. and Miss. (both new); 1991--Mont. (new); 1994--Alas., Ariz., Tenn., and Wyo. (all new); 1995--Ark., N.C., Okla. and Tex. (all new); Nev., Ut. and Va. (all prev. discretionary); 1996--Ky., La., and S.C. (all prev. discretionary); W. Va. (reaffirmed legislatively, after state Supreme Ct. ruled permit issuance by circuit court judges unconstitutional); 2001--Mich. (prev. discretionary); N.M. (new). Also, RTC states periodically improve existing "shall issue" laws: 1991--Id., 1995--Fla., Id., Pa. (brought Phila. under state law); 1996--Ga., Id., Okla., Tenn.; 1997--Ark., Ga., Miss., N.D., Okla., Tenn., Tex., Ut., Va.; 1998--Alas.

**Citizens can defend themselves** -- Analyzing National Crime Victimization Survey data, criminologist Gary Kleck found, "robbery and assault victims who used a gun to resist were less likely to be attacked or to suffer an injury than those who used any other methods of self-protection or those who did not resist at all." (*Point Blank: Guns and Violence in America*, 1991, p. 124.) Kleck's research has also shown that firearms are used for self-protection about 2.5 million times annually. (Kleck and Marc Gertz, "Armed Resistance to Crime: The Prevalence and Nature of Self-Defense With a Gun," *Journal of Criminal Law and Criminology*, Fall 1995, pp. 150-187.) The late criminologist Marvin E. Wolfgang, self-described as "as strong a gun-control advocate as can be found among the criminologists in this country" who would "eliminate all guns from the civilian population and maybe even from the police," said, "it is hard to challenge the data collected. We do not have contrary evidence....(T)he methodological soundness of the current Kleck and Gertz study is clear. I cannot further debate it....I do not like their conclusions that having a gun can be useful, but I cannot fault their methodology. They have tried earnestly to meet all objections in advance and have done exceedingly well." ("A Tribute to a View That I Have Opposed," *Journal of Crininal Law and Criminology*, Fall 1995, pp.

188-192.) A 1986 study for the Dept. of Justice found that 34% of felons had been "scared off, shot at, wounded or captured by an armed victim," and 40% of felons have not committed crimes, fearing potential victims were armed. (J. Wright and P. Rossi, *Armed and Considered Dangerous: A Survey of Felons and Their Firearms*, 1991, p. 155.)

**The right to self-defense has been recognized for centuries --** The great Roman philosopher, senator, and lawyer, Cicero, argued 2,000 years ago that "There exists a law, not written down anywhere but inborn in our hearts; a law which comes to us not by training or custom or reading but by derivation and absorption and adoption from nature itself; a law which has come to us not from theory but from practice, not by instruction but by natural intuition. I refer to the law which lays it down that, if our lives are endangered by plots or violence or armed robbers or enemies, any and every method of protecting ourselves is morally right. When weapons reduce them to silence, the laws no longer expect one to await their pronouncements. For people who decide to wait for these will have to wait for justice, too and meanwhile they must suffer injustice first." (Stephen P. Halbrook, *That Every Man Be Armed: The Evolution of a Constitutional Right*, Albuquerque: Univ. of New Mexico Press, 1984, p. 17.)

Centuries later, English jurist Sir William Blackstone observed that the English Bill of Rights signified that Englishmen possessed "the right of having and using arms for self-preservation and defense" and that "having arms suitable for their defence" was one of the five auxiliary rights people possessed "to protect and maintain inviolate the three great and primary rights," the first of which is "personal security." (Halbrook, pp. 45, 54.) Sir Michael Foster, judge of the Court of King's Bench, wrote in the late 18th century, "The right of self-defense . . . is founded in the law of nature, and is not, nor can be, superseded by any law of society." (Robert Dowlut and Janet Knoop, "State Constitutions and The Right to Keep and Bear Arms," *Okla. City Univ. Law Review*, 1982, p. 183.)

The Supreme Court, in *U.S. v. Cruikshank* (92 U.S. 542, 1876), recognized that the right to arms preexisted the Constitution and is thus an individual right, stating that it "is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence." In *Beard v. United States* (158 U.S. 550, 1895), the Court approved the common-law rule that a person "may repel force by force" in self-defense, and concluded that when attacked a person "was entitled to stand his ground and meet any attack made upon him with a deadly weapon, in such a way and with such force" as needed to prevent "great bodily injury or death." The laws of all 50 states and the constitutions of most states recognize the right to use armed force in self-defense. In the Gun Control Act (1968) and the Firearms Owners' Protection Act (1986), Congress reaffirmed the right of citizens to possess firearms for protection, stating that the law was not intended to "place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trapshooting, target shooting, personal protection, or any other lawful activity...." (Public Laws 90-618 and 99-308., 18 U.S.C. Chap. 44.)

**The police are not required to protect individual citizens** -- In *Warren v. District of Columbia* (444 A.2d 1, 1981), the D.C. Court of Appeals ruled, "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* (686 F. 2d 616, 1982), the Seventh Circuit Court of Appeals ruled, "(T)here is no constitutional right to be protected by the state against being murdered by criminals or madmen."

**Rep. Stearns' RTC reciprocity bill** -- On Jan. 31, Rep. Cliff Stearns (R-Fla.) and 15 co-sponsors introduced H.R. 382, the Right to Safety and Personal Protection Act. (In the 106th and 105th Congresses, H.R. 492 and H.R. 339, respectively.) Rep. Stearns said the bill will "greatly expand the security individuals enjoy in their own states when they travel or simply cross state lines." H.R. 382 proposes to allow any person with a valid firearm carrying permit or license, issued by a state, to carry a firearm in any other state, as follows: In states that issue carry permits, each state's laws governing where 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. People who live in states that do not issue permits would be allowed to carry in any state, under either the state or federal law, if they possess a carry permit issued by another state.

### **Gun Control Activists On Self-Defense and RTC**

Of the many kinds of pro-firearm rights legislation and laws at the state level during the last dozen years (Instant Check, state preemption of local restrictions on firearms, Shooting Range Protection, Hunter Protection, etc.) none has been so strenuously opposed by anti-gun groups and their followers as RTC. That is because in adopting RTC laws, states recognize a fact that overrides virtually any argument those activists can conceive against private ownership of firearms, one also recognized in most state constitutions and in the Second Amendment to the U.S. Constitution: individuals have a right to defend themselves and a corresponding right to possess the means with which to defend themselves. Also, RTC laws have worked well in every state that has adopted them, proving false the anti-gun activists' claim, "more guns means more crime."

**Brady Campaign (prev. Handgun Control, Inc.)** -- According to the group's chair, Sarah Brady, "the only reason for guns in civilian hands is for sporting purposes." (Tom Jackson, "Keeping the battle alive," *Tampa Tribune*, 10/21/93.) Then-HCI Chair, the late Pete Shields, who advocated a complete prohibition on handgun ownership, advised, "(If attacked) put up no defense - give them what

they want." (*Guns Don't Die - People Do*, N.Y.: Arbor House, 1981.) According to Dennis Henigan, director of the Brady Center Legal Action Project, self-defense is "not a federally guaranteed constitutional right." (*USA Today*, 11/20/91.)

In Jan. 1999, HCI claimed that between 1992-1997 violent crime rates declined less in RTC states than in other states. It was noteworthy as the first time that HCI admitted that RTC does not cause crime to rise. But HCI's comparison of state crime trends had severe flaws. In comparing violent crime trends of RTC states versus other states, HCI categorized states according to whether they had RTC in 1997, but calculated their crime trends from 1992-1997. The error: Of the 31 states that had RTC in 1997, only 17 had it in 1992. Since the benefits of RTC accrue over time, HCI should have taken into account the short period of time that some previously high-crime states (La, S.C.) had had RTC. Also, HCI classified Alabama and Connecticut as "restrictive" states, even though permits are issued fairly in both states, generally. Probably, HCI classified them as restrictive because each had large decreases in violent crime, and their inclusion in the restrictive states group exaggerated its decrease. HCI's 1992 starting point also inevitably under represented the impact of RTC laws on violent crime. By 1992, many states had had RTC for many years and had already experienced significant decreases in crime.

HCI also erred by crediting restrictive carry laws with the decrease in crime in states that have such laws. Every state that has a restrictive carrying law has had it for many years. However, crime did not begin to decline in those states until the 1990s, due to a variety of factors. New York City, which accounts for a significant portion of the nation's crime, began a massive city-wide crackdown on a broad range of crimes. Texas built prisons and achieved its lowest homicide rate in 30 years. Other states also significantly increased incarceration rates. The violent aspect of the drug trade subsided, with the aging of drug gang members. The economy improved.

HCI failed to mention that violent crime is lower in RTC states. In 1991, the last year before crime began to decline nationally, the then-17 RTC states had a 20% lower violent crime rate overall, compared to other states. The seven states with the lowest violent crime rates were RTC states. Fifteen of the 17 RTC states had violent crime rates below the national rate. Ten of the 12 states with violent crime rates above the national rate were restrictive states, as was D.C., the jurisdiction which had the highest violent crime rate. As noted, RTC states still have lower violent crime rates, on average. Eight of the 10 states with the lowest violent crime rates are RTC states. (The average gun law "grade" HCI gives to the 10 states with the lowest violent crime rates is "D+".)

**The "Univ. of Md. study"** -- In March 1995, David McDowell et al. released a "study" paid for with taxpayers' money by the Centers for Disease Control and Prevention. ("Easing Concealed Firearm Laws: Effects on Homicide in Three States.") Congress thereafter passed legislation to curtail this misuse of funds. The "study" claimed gun homicide rates increased in Miami, Jacksonville and Tampa after Florida's RTC law took effect. Florida Dept. of Law Enforcement Commissioner James T. Moore expressed doubts about the accuracy of the figures. (David van Biema,

"Gun Control: License to conceal," *Time*, 3/27/95, p. 27-29.) For good reason: homicide rates fell 10%, 18% and 20%, respectively, in those metropolitan areas, from 1987 until 1993, the latest available data at the time.

McDowell, et al., calculated Jacksonville and Tampa homicide trends from the early 1970s, when homicide rates were lower than in 1993, to suggest that Florida's 1987 carry law caused homicide to rise. Then they calculated Miami's trend from 1983, since homicide rates before 1983 were higher and their inclusion in the comparison would have shown that the city's homicide rate had decreased. In fact, none of the homicides studied was committed by a license holder, 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 previously claimed that D.C.'s homicide rate decreased after its 1977 handgun ban. In reality, D.C.'s homicide rate tripled after the ban.)

**Violence Policy Center "studies"** -- In 1995, this fringe anti-gun group, which advocates that private ownership of handguns be prohibited, claimed that Florida's carry law "puts guns into the hands of criminals." ("Concealed Carry: The Criminal's Companion.") The claim was preposterous, since the law permits a person to carry a firearm lawfully possessed, not to acquire a firearm. VPC claimed "criminals do apply for concealed carry licenses," without mentioning that such applications are rejected, just as banks reject loan applications from people with bad credit. Contradicting itself, VPC pointed out that criminals, after their applications were rejected, wanted the rejections reconsidered. Florida Secretary of State, Sandra B. Mortham, blamed the allegations on VPC's "zeal to attack the National Rifle Association." To "set the record straight," Mortham said, "As of November 30, 1995, the Department had denied 723 applications due to criminal history. The fact that these 723 individuals did not receive a license clearly indicates that the process is working." She added, "the statistics show the majority of concealed weapon or firearm licensees are honest, law-abiding citizens exercising their right to be armed for the purpose of lawful self-defense." (Letter, *St. Petersburg Times*, 1/11/96.)

VPC periodically releases claims that it hopes will grab headlines. In 1997, it attacked NRA's Eddie Eagle Gun Safety Program and was lambasted in newspapers normally supportive of "gun control." In 1998, the group attacked Texas' firearm carrying law and was rebuked by state officials. In 1999, the group attacked target rifles as "sniper rifles" and complained that action-type pistol competitions reinforce the legitimacy of the private ownership and use of firearms for protective purposes. (Contradicting itself again, it complained that the only legitimate forms of target shooting are the "bullseye" sort in which both the shooter and target are stationary -- a form of target shooting in which so-called "assault" rifles -- which VPC believes no private citizen should own -- are the most commonly center-fire rifles used. See [www.nrahq.org/shooting/compete/highpower.asp](http://www.nrahq.org/shooting/compete/highpower.asp) and [www.odcmp.com/Services/Competitions/Competitions.htm](http://www.odcmp.com/Services/Competitions/Competitions.htm))

In 2001, VPC released a "study" based upon a flaw previously found in a long-discredited study by Arthur Kellermann. (See next paragraph.) VPC's "A Deadly

Myth: Women, Handguns, and Self-Defense" concludes that handguns result in more harm than good, because there are more women murdered with handguns than there are criminals who are killed by women in self-defense. One problem with the comparison is that the value of handguns for self-defense should not be measured by the number of criminals killed, but by the number of women who use handguns to prevent themselves from becoming crime victims. Simply put, the purpose of self-defense is not to rack up a high body count of outlaws, but is instead (as the term implies) to protect yourself. Also, VPC's number of criminals killed in self-defense is undercounted, being based on only police reports, which exclude homicides the courts find to be justifiable and those determined through further investigation to have not been criminal.

**Other "gun control" supporters on self-defense --** Researchers George D. Newton and Franklin E. Zimring have written, "women generally are less capable of self-defense and less knowledgeable about firearms." (*Firearms and Violence in American Life, National Commission On The Causes and Prevention Of Violence*, n.d., p. 64.)

A small study of King's County (Seattle), Washington, often serves as the basis for the claim that a gun in the home is "43 times more likely" to be used to kill a family member than to kill in self-defense. (Arthur L. Kellermann, "Protection or Peril?: An Analysis of Firearm-Related Deaths in the Home," *New England Journal of Medicine*, 314:1557-1560, 1986.) To reach that ratio, however, 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. Additionally, suicides were counted as family member killings, increasing the death count more than 500%.

Posted: 4/10/2001



# FACT SHEET



## Texas RTC Under Attack -- Bush Presidential Bid Real Target

Usually, anti-gun activists oppose Right to Carry laws because those laws focus the public's attention upon the right of self-defense and the benefits of firearms ownership by law-abiding citizens. But now the laws are being attacked in hopes of generating unfounded public fear and boosting Al Gore's election chances against Texas Gov. George W. Bush.

The *Los Angeles Times* chose October 3, the date of the first Bush-Gore presidential debate, to publish a 5,000-word harangue against Texas' carry law--none of the other 30 "shall issue" Right to Carry states or 12 "discretionary-issue" states were attacked. Far beneath the "Felons Get Concealed Gun Licenses Under Bush's 'Tough Law,'" headline was the admission that upon receiving out-of-state criminal record information, Texas revoked the permits of the previously-convicted individuals (not one recipient committed a violent crime while having a permit). Buried too was the fact that records upgrades now allow thorough applicant checks to be conducted within 24 hours. The *Times* also ignored the following:

**After 4 years under the Texas law, 99.5% of permittees remain in good standing.** Texas' carry law took effect Jan. 1, 1996, and as of Sept. 1, 2000, there were 215,003 active firearm carrying permits in Texas. Only 0.5% of permits have been revoked for any reason, and Texas revokes permits for a variety of reasons including misdemeanor violations that have nothing to do with firearm possession or use. Two permittees have been convicted of murder, but there is no evidence that permits played a role in the crimes.

(See [Texas Crime Records Service Concealed Handgun Licensing Section](#))

**George W. Bush has made Texas "safer."** Gov. Bush vowed that Texas' Right to Carry law would make the state a "safer place," and statistics prove he was right. Texas' homicide rate has declined to its lowest point since the 1950s and has decreased a startling 60% from the high under his predecessor. Murder rates in Texas fell by 25% between 1995 and 1997, much faster than the 16% decline in states without "shall-issue" laws. Overall, Texas' total violent crime rate has dropped 20% under Gov. Bush and is lower than at any time since 1974.

**"Gun crime means hard time. No probation. No parole."** That's the motto of Texas Exile, a year-old program under which nearly 1,000 convicted criminals have been charged for illegal gun possession. Texas Exile was established under a grant approved by Gov. Bush.

**Al Gore lies about Texas Right to Carry law,** claiming "Bush signed . . . legislation that made it easier to carry these weapons in churches. . . ."

The truth is that permit holders are forbidden to carry guns in churches. The 1997 law Gov. Bush signed created a uniform, clearly-identifiable warning sign requirement for permit holders for all public-access buildings.

After Texas' carry law took effect in 1996, owners of public buildings had the right to post signs stating that concealed handguns were not allowed on their property. Churches were exempt from this warning requirement, because concealed handguns were never permitted in churches.

Recognizing that it is not always obvious which buildings are church property, the 1997 law explicitly made the rule the same for all public buildings. In debating the 1997 modification, the Texas Legislature considered two additional issues--fairly warning permittees before they enter buildings where guns were prohibited and simplifying prosecution of anyone who knowingly violated the law.

**America's police groups endorse Gov. Bush for President.** In September, Gov. Bush received the endorsement of the 290,000-member Fraternal Order of Police (FOP). The FOP stated that Gov. Bush "has demonstrated integrity, sincerity, and a genuine commitment to the rule of law. . . . In Texas, Governor Bush has made combating crime a top priority. He pushed through tough criminal justice reforms and, as a result, overall crime in Texas decreased 14%, violent crime decreased 20%, and juvenile crime is down 17%--the first decline in over a decade. Violent juvenile crime is down 44%! . . . The Fraternal Order of Police strongly believes that Governor Bush's genuine commitment to law enforcement and his crime-fighting record in Texas make him the best candidate for America's police officers."  
(See BUSH WINS F.O.P. ENDORSEMENT)

Gov. Bush has also been endorsed by the 65,000-member Law Enforcement Alliance of America. "Like the FOP membership, our organization chose to ignore the false promises of the Gore campaign in support of Bush because cops know that actions speak louder than words and Gov. Bush has a proven track record of standing up for law enforcement and supporting tough on crime legislation," said LEAA President John Chapman.

**The 31 states with "shall issue" carry laws have lower average violent crime rates** than states that severely restrict or prohibit the carrying of firearms by law-abiding citizens. Professor John R. Lott, Jr.'s exhaustive study of crime trends in every county in the country demonstrates that Right to Carry laws cause violent crime to decrease.

In all states with Right to Carry laws, people who are issued carry permits are statistically more law-abiding than the general public. As a result, Right to Carry laws are widely supported by lawmakers and law enforcement groups in those states.

The law enforcement view is expressed well by Glenn White, president of the Dallas Police Association. White originally opposed Right To Carry in Texas, but he changed his mind once evidence of the law's success became available. "All the horror stories I thought would come to pass didn't happen. . . . I think it's worked out well, and that says good things about the citizens who have permits. I'm a convert." It also says good things about leaders such as George W. Bush.

Posted: 10/9/2000

The following material relates to Wagner v. Alaska and  
the mental health issue.

NOTICE

Memorandum decisions of this court do not create legal precedent. See Alaska Appellate Rule 214(d) and Paragraph 7 of the Guidelines for Publication of Court of Appeals Decisions (Court of Appeals Order No. 3). Accordingly, this memorandum decision may not be cited for any proposition of law, nor as an example of the proper resolution of any issue.

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

TIMOTHY WAGNER,            )  
                                  ) Court of Appeals No. A-7498  
Appellant, ) Trial Court No. 3AN-S98-10261 CR  
                                  )  
v.            )        MEMORANDUM OPINION  
                                  )  
STATE OF ALASKA,         )        AND JUDGMENT  
                                  )  
Appellee. ) [No. 4485 November 7, 2001]  
                                  )

Appeal from the District Court, Third Judicial  
District, Anchorage, Natalie K. Finn, Judge.

Appearances: Judy M. Scherger, Assistant  
Public Defender, and Barbara K. Brink, Public Defender, Anchorage,  
for Appellant. Michelle Meshke, Assistant District Attorney, and  
Susan Parkes, District Attorney, Anchorage, and Bruce M. Botelho,  
Attorney General, Juneau, for Appellee.

Before: Mannheimer and Stewart, Judges, and  
Andrews, Superior Court Judge. [Coats, Chief Judge, not  
participating.]

STEWART, Judge.

Under AS 18.65.750(b), whenever the holder of a concealed handgun permit is contacted by a peace officer for an official purpose, the permit holder must "immediately inform the peace officer [if the permit holder] is carrying a concealed handgun under the permit." Timothy Wagner was convicted of violating this statute because, during a contact with a police officer, he failed to disclose his possession of a concealed handgun until after the officer specifically asked him if he was armed.

Wagner contends that he did not violate this statute because he was not "carrying" the handgun at the time the officer contacted him. However, Wagner had the gun in a soft-sided briefcase; he was carrying this briefcase, or had it within arm's reach, during his encounter with the officer. Based on our decision in *De Nardo v. State*, [Fn. 1] we conclude that Wagner was "carrying" the weapon when the officer contacted him, and we therefore affirm Wagner's conviction.

Wagner also challenges a provision of his sentence. Wagner argues that the district court exceeded its sentencing authority when it ordered forfeiture of his concealed handgun permit. We agree, and we therefore strike this provision of Wagner's sentence.

#### Wagner's attack on his conviction

At about 5:30 p.m. on October 7, 1998, Wagner entered Alaska Mining and Diving, a store in Anchorage. Kenneth Hupton, an employee at the store, noticed that Wagner was dripping wet. Hupton asked Wagner why he was so wet, and if he needed any help. Wagner replied that he needed to soak out the chemicals that had been injected into him, or else the chemicals were going to "kill him." Wagner also told Hupton that a computer chip had been implanted in his head. Another employee who overheard this conversation called the police.

Anchorage Police Officer Duane Jones responded to the dispatch; he arrived at Alaska Mining and Diving approximately fifteen minutes later. As Jones approached the store, he saw Wagner

outside. Wagner was carrying a soft-sided briefcase. Jones watched as Wagner set the briefcase into the carrier basket that was on Wagner's bicycle. Unbeknownst to Jones, Wagner's briefcase contained a loaded handgun.

Jones spoke to Wagner, asking him why he was wet. Wagner again stated that he had been injected with toxins and that he was soaking his body and clothing to leech the toxins out. Jones and Wagner conversed for several minutes. During this time, they were standing next to Wagner's bicycle, and Wagner's briefcase was within arm's reach. Wagner furnished identification to Jones, but he did not tell Jones about the handgun.

A short time later, two other police officers arrived at the scene. Jones left Wagner with his fellow officers and went inside Alaska Mining and Diving to interview the store personnel. He also ran a computer check on Wagner. From this check, Jones learned that Wagner had a permit to carry a concealed handgun. Jones went back outside and asked Wagner if he had a gun. Wagner admitted that he did, and he pointed to his briefcase. Jones reached inside the briefcase and found the loaded handgun.

Wagner gave a slightly different version of the encounter. He indicated that he had not engaged in lengthy conversation with Jones. Rather, Jones's first act upon contacting Wagner was to ask for his identification. When Wagner furnished identification, Jones walked away with it.

At the conclusion of this evidence, District Court Judge Natalie Finn (sitting as the trier of fact) found that Wagner had been holding the briefcase containing the loaded weapon when he walked to his bicycle. She further found that the briefcase was in Wagner's hand immediately before Jones contacted Wagner and spoke with him. Although Wagner set the briefcase in the bicycle basket when he conversed with Jones, the briefcase remained within Wagner's easy reach.

In *De Nardo v. State*, we held that Alaska's concealed weapons law prohibits a person from carrying a weapon concealed in a briefcase, purse, or other hand-carried container. [Fn. 2] If Wagner had not owned a concealed handgun permit, he would have been guilty of carrying a concealed weapon under AS 11.61.220(a)(1). As

it was, Wagner's permit authorized him to carry the handgun in his briefcase, but he was obliged to immediately disclose this fact when Officer Jones contacted him.

Wagner argues that Judge Finn erred when she found that Wagner had failed to immediately inform the police that he was carrying a concealed handgun under the authority of his permit. But Judge Finn found that the testimony of the police officers and the store employees was more credible than Wagner's testimony on this point. In particular, the judge found that Wagner and the officers engaged in a lengthy discussion before Wagner mentioned his possession of the handgun. Judge Finn further found that Wagner knew, or reasonably should have known, that the officers were speaking to him for an official purpose. The record supports these findings. Based on these findings, we uphold Judge Finn's verdict that Wagner violated AS 18.65.750(b) by failing to immediately disclose that he was a concealed handgun permit holder and that, under the authority of his permit, he was carrying a concealed weapon.

Wagner's attack on his sentence

As part of Wagner's sentence, Judge Finn ordered forfeiture of Wagner's concealed handgun permit until his mental illness was "either cured or improved." Wagner maintains that Judge Finn did not have the authority to do this. We agree.

Alaska Statute 12.55.015(c) declares that sentencing judges "may invoke any authority conferred by law to order a forfeiture of property, suspend or revoke a license, remove a person from office, or impose any other civil penalty." But AS 12.55.015(c) does not grant sentencing judges an independent power to forfeit property and licenses. Rather, it only reiterates the authority granted by other statutes. [Fn. 3]

The State defends Judge Finn's action by relying on a superseded version of 13 AAC 30.130(b). Under that former administrative regulation, the Department of Public Safety could reject an application for a concealed handgun permit or could deny a permit renewal if the department had reason to believe that the applicant suffered from a mental illness. However, this provision

of the Administrative Code was amended in 1998 to eliminate mental illness as a factor that the department can consider when processing concealed handgun permits. [Fn. 4]

If this was removed as factor from the application process when the department set its regulations, this still would not exempt an owner from:

Becoming "disqualified to receive and hold a permit under AS 18.65.705", which reads that; 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 handgun under the laws of this state and under **federal law**

Moreover, even if the Administrative Code gave the Department of Public Safety the authority to deny a concealed handgun permit based on the applicant's mental illness, this would not be sufficient to justify the sentencing court's order of forfeiture.

I think this is inaccurate, I think if the dept. became aware of a documented Hx of mental illness without their asking, they would have been made aware of an incidence where a licensee did not qualify for possession under federal law, and would be within their jurisdiction to revoke his permit. Rep. Kerttula currently has a case where DoT has revoked a man's driver's lisc. Because another person called the dept. to alert them that the man had had epileptic seizures, and they knew this disqualified him from holding a permit to drive. When the dept. ordered a medical eval, a Hx of epileptic seizures was found, and his lisc was revoked. Granted, DoT allows that the state ask him this question, and DoPS does not ask about Hx of mental illness - but both are expressed disqualifications for licensure. I think it is applicable.

As already explained, AS 12.55.015(c) requires explicit "authority conferred by law to order a forfeiture ... revo[cation of] a license."

Which is provided by AS 18.65.740

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**

**AS 18.65.705:** 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 handgun under the laws of this state and under **federal law**

Even assuming that the Department of Public Safety had the authority to deny a permit application, because of the applicant's mental illness, the State's argument about Judge Finn's sentencing authority would still rest on analogy, not statute or regulation.

However, in her sentencing remarks, Judge Finn recognized that she might not have the authority to order forfeiture of Wagner's concealed handgun permit.

Correct, because AS 18.65.740 (a) reads that "A permit to carry a concealed handgun shall be immediately revoked **by the department** when the permittee.....

She may, however, have the authority to order that the department revoke his permit.

Believing that Wagner was mentally ill, and with the goal of protecting the public, Judge Finn placed Wagner on probation for 3 years and ordered that, as a condition of probation, Wagner was not to have any weapons.

I believe this is where Judge Finn acted outside her jurisdiction to achieve a noble end. She has neither the authority nor the training to pronounce a medical diagnosis, and is in fact prohibited from doing so in statute unless she possesses a license to do so. She would have been within her bounds, however, to have ordered a psychological evaluation by a trained psychologist /psychoanalyst, entered that in to the court record, and required the department to revoke Mr. Wagner's permit.

We recently held in *Baum v. State*, [Fn. 5] that a sentencing judge can impose a condition of probation that forbids a defendant from engaging in a licensed activity during the entire term of probation even though the judge could not order a similar revocation of the defendant's license as a direct provision of the sentence. [Fn. 6] We reach a similar conclusion in Wagner's case. Even though Judge Finn had no authority to revoke or forfeit Wagner's concealed handgun permit, she was authorized to impose a condition of probation forbidding Wagner from possessing weapons even though this condition of probation effectively forbids Wagner from exercising the right granted by his concealed handgun permit.

Conclusion

For the reasons explained here, we AFFIRM Wagner's conviction. With regard to Wagner's sentence, we VACATE the provision that orders forfeiture of Wagner's concealed handgun permit, but we AFFIRM the condition of probation that forbids Wagner from possessing weapons during the 3 years of his probation.

**Which appears to produce a right end by a wrong means, unfortunately.  
What does this mean for appeals?  
If this stands as precedent, it leaves error on the books.**

#### FOOTNOTES

Footnote 1:

819 P.2d 903 (Alaska App. 1991).

Footnote 2:

Id. at 906-08.

Footnote 3:

See Benboe v. State, 738 P.2d 356, 361 (Alaska App. 1987).

Footnote 4:

See Administrative Code Register 148.

Footnote 5:

24 P.3d 577 (Alaska App. 2001).

Footnote 6:

Id. at 581-82.

# CHP notes

## ➤ Permit Application

### Section II question 2:

"Are you eligible to own or possess a firearm under the laws of this state and federal law?"

## ➤ Responsibilities of the Permittee:

### **AS 18.65.765 (a) 3:**

"shall immediately notify the department if the holder is no longer qualified to hold a permit under AS 18.65.705

### **AS 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 handgun under the laws of this state and under federal law;
- (3) is a resident of the state and has been for the 90 days immediately preceding the application for a permit;
- (4) has not been convicted of two or more class A misdemeanors of this state or similar laws of another jurisdiction within the six years immediately preceding the application;
- (5) is not now in and has not in the three years immediately preceding the application been ordered by a court to complete an alcohol or substance abuse treatment program; and
- (6) has successfully completed a handgun course as provided in AS 18.65.715.

The basic objectives of Title I of the Gun Control Act of 1968 were to ban mail-order sales of firearms and ammunition, confine the purchase of firearms to the buyer's state of residence, and prohibit certain classes of persons from purchasing, receiving or transporting firearms or ammunition in interstate commerce. Specifically, Title I prohibits dealers from selling any firearm or ammunition to any person who is:

- a. convicted of or under indictment for a felony
- b. a fugitive
- c. adjudicated as a mental defective or who has been committed to any mental institution.
- d. addicted to or an unlawful user of marijuana or a stimulant, depressant, or narcotic drug.
- e. less than eighteen years of age for the purchase of a shotgun or rifle
- f. less than twenty-one years of age for the purchase of a firearm that is other than a shotgun or rifle

### **AS 18.65.765 (b)**

Applies a \$100 fine for non-compliance.

➤ **Permit Revocation:**

**13 ACC 30.060 (f):**

"a permittee who becomes subject to suspension or revocation under a or c of this section shall immediately notify the department and surrender the permit to the nearest peace officer."

- (a) - [refers to AS 18.65.735]
- (c) - [refers to AS 18.765.740]

**13 ACC 30.060 (g):**

\*specifically covers revocation if the dept. becomes aware that the person is unqualified for possession due to a physical infirmity, this does not expressly exclude (f) from applying to a mental infirmity.

**13 AAC 30.130. QUALIFICATIONS REGARDING SAFE HANDLING OF A HANDGUN.**

(b) The department will notify a permittee that it intends to revoke a permit under 13 AAC 30.060(g) or (h) if, after investigation of a report from a criminal justice agency, physician or other medical provider, or member of the general public relating to the handling of a handgun by, or the physical condition of, a permittee, the department has reason to believe that a permittee

(1) suffers from a physical infirmity that may prevent the safe handling of a handgun, the department will use the procedures set out in 13 AAC 30.060(g) to revoke the permit;

(2) is not able to safely or competently handle a handgun, the department will use the procedures set out in 13 AAC 30.060(h) to revoke the permit.

- 13 AAC 30.060 (h) If, under 13 AAC 30.130(b), the department has reason to believe that a permittee is not able to safely or competently handle a handgun, the department will mail or deliver to the permittee a notice that the department intends to revoke the permittee's permit. After mailing or delivery of the notice, the following procedures apply:

[This appears to be a loop – but could feasibly cover federal disqualifications for mental instability as a reason the department would have reason to believe a person could not competently handle a handgun – it may be vague, but mental competency could apply]

**13 AAC 30.140. APPLICATION FORMS.**

(a) The department will provide application forms for persons to use in applying for a permit, certificate of approval, or other service under this chapter. An application form submitted under this chapter, and any document accompanying an application form, must be completed in ink.

(b) Along with an application form, the department will provide to an applicant for a permit

(1) a copy of the definitions of the following terms, as set out in 13 AAC 30.900:

- (A) alcohol treatment program;
- (B) convicted;
- (C) felony;
- (D) resident; and
- (F) substance abuse treatment program.

(2) a concise summary of where, when, and by whom a handgun can be carried under state and federal law; and

[If the department has failed to list the federal qualifications for firearm possession, including "mental defectiveness", the department is at fault for not meeting its requirements to inform the permit applicant. Such information is required by state law, and in essence we ARE asking the applicant about their mental health (see permit application sec II question 2), albeit not expressly, and we are not recording their answer. This is not "don't ask, don't tell", this is an inquiry that maintains the privacy of the individual.]

➤ Other

AS 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;

[Judge Finn may be using this as rationale to only include physical competence in the department's justifications for revocation. This definition, however, does not exempt the permittee from meeting federal compliance as a condition for state permitting.]

## GUN CONTROL ACT OF 1968

### SUMMARY

The basic objectives of Title I of the Gun Control Act of 1968 were to ban mail-order sales of firearms and ammunition, confine the purchase of firearms to the buyer's state of residence, and prohibit certain classes of persons from purchasing, receiving or transporting firearms or ammunition in interstate commerce. Specifically, Title I prohibits dealers from selling any firearm or ammunition to any person who is:

- a. convicted of or under indictment for a felony
- b.a fugitive
- c.adjudicated as a mental defective or who has been committed to any mental institution.

In the case that was published in the Saturday edition of the Anchorage Daily News, I believe the Judge overlooked the fact that she could order a psychological evaluation, and the Federal law would have still prevailed in separating this man from his firearm. Once there was any documentation in any medical chart citing that he was "mentally defective" (a term that will, no doubt, sooner or later assume a more politically correct descriptive – in fact the medically accepted term at present is "or has a documented history of mental illness") he would have been excluded from ownership under federal law. I know that even with a temporary restraining order against someone, they must remove their firearms - this seems very similar. The Judge accomplished her goal of public safety, by achieving the same ends – removing the firearm from this man. But I do think the write up treated the 1998 legislation unfairly, since I see other alternatives to the same end.

- d.addicted to or an unlawful user of marihuana or a stimulant, depressant, or narcotic drug.
- e.less than eighteen years of age for the purchase of a shotgun or rifle
- f.less than twenty-one years of age for the purchase of a firearm that is other than a shotgun or rifle

g. a non resident of the State in which the licensee's place of business is located

h. an alien illegally or unlawfully in the United States

i. dishonorably discharged from the armed forces

j. subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner

k. convicted in any court of a misdemeanor crime of domestic violence

Such persons correspondingly are prohibited from purchasing or otherwise acquiring any firearm or ammunition which has been shipped in interstate commerce, and also are prohibited from shipping or transporting any firearm or ammunition in interstate commerce.

The first section prohibits those on the exemption list from purchasing a firearm from a dealer. This section extends that exemption from private purchases as well. This means that persons on the exemption list may legally not own or in any way acquire a firearm.

With certain exceptions-primarily, the purchase of rifles and shotguns-all over-the-counter purchases of firearms by persons other than dealers must be made within the buyer's state of residence. A private individual is prohibited from selling a firearm to any buyer whom he has reason to believe resides in another state. Title I also requires all persons engaged in the business of dealing in firearms to be federally licensed. Dealers must require from all firearms purchasers proof of identity and residence, and buyers must sign under penalty of statement certifying eligibility to purchase.

It shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer a firearm unless the federal firearms licensee

contacts the national instant criminal background check system via a chief law enforcement officer and receives notice from the chief law enforcement officer that the officer has no information indicating that receipt or possession of the firearm by the transferee would violate Federal, State, or local law.

Dealers are required to keep records of all firearms and are forbidden from selling handguns to persons under 21, or rifles and shotguns to persons under 18. Additionally, dealers are prohibited from making any sale of firearms or ammunition which would place the buyer in violation of state or local law.

I believe that if state law also covers exemptions for diminished mental capacity, then if a dealer / seller knowingly sold a firearm to someone exempted from ownership for that reason, that the dealer / seller, as well as the transferee would as well be in violation and could face penalties. --

Finally, Title I forbids the importation of some military surplus firearms, and permits importation only of firearms shown to be "particularly suitable for, or readily adaptable for sporting purposes."

Title II of the Gun Control Act of 1968 is a revision of the National Firearms Act of 1934, and pertains to machine guns, short or "sawed-off" shotguns and rifles, and so-called "destructive devices" (including grenades, mortars, rocket launchers, large projectiles, and other heavy ordnance). Acquisition of these weapons is subject to prior approval of the Secretary of the Treasury, and federal registration is required for possession. Generally, a \$200 tax is imposed upon each transfer or making of any Title II weapon.

A violation of most provisions of Title I, or the making of any false statement with respect to information required to be recorded for the acquisition or sale of firearms or ammunition, is punishable by imprisonment for up to five years and a \$5,000 fine.

I think this would pose yet another fine if the purchaser / transferee had provided false information on any written applications in acquiring his firearm, including Hx of mental illness.

Any person convicted of transporting or receiving firearms or ammunition in interstate commerce with intent to commit a felony therewith may be punished by imprisonment for up to ten years, and fined up to \$10,000.

In addition, any firearms "involved in or used or intended to be used in" any violation of Title I, or of any regulation promulgated thereunder, or of any violation of any federal criminal law, is subject to seizure and forfeiture. Any violation of, or *failure to comply with*, any provision of Title II is punishable by imprisonment for up to ten years and a \$10,000 fine. (Emphasis added.)

Administration and enforcement of the Gun Control Act are the responsibility of the Bureau of Alcohol, Tobacco and Firearms, of the U.S. Treasury Department.

## Opinion

*(Published: November 17, 2001)*

### **Gun law needs a fix In Alaska, mentally ill can carry concealed weapons**

In the fall of 1998, a clerk in an Anchorage store noticed a man who was completely soaked, with water dripping off him. The clerk asked if he needed help. Timothy Wagner replied that he needed to soak out the chemicals that had been injected into him, or else the chemicals were going to kill him. He also said a computer chip had been implanted in his head. What he didn't say was that he was carrying a concealed weapon in his briefcase.

Under Alaska law, the delusional Mr. Wagner had every right to be packing heat. He had a concealed weapons permit, and thanks to a law passed in early 1998, it is perfectly legal for mentally ill people to get and keep concealed weapons permits.

This dangerous aberration in state law was revealed last week in an Alaska Court of Appeals ruling. A judge had tried to revoke Mr. Wagner's concealed carry permit on grounds of mental illness. The 1998 law barred the judge from doing so. It was part of a rewrite of state laws liberalizing access to concealed weapons; the law went into effect after the Legislature overrode Gov. Tony Knowles' veto.

Thankfully, Mr. Wagner didn't hurt anyone during his armed encounter. But it's easy to imagine a different and more deadly outcome. Just eight blocks away from the store in question is Mountain View Elementary School -- the same school where a mentally imbalanced man slashed and nearly killed four students in May.

The judge found another way to keep Mr. Wagner from legally carrying his concealed weapon. She imposed a ban on possessing firearms as a condition of Mr. Wagner's probation on a related offense.

This is a no-brainer: Someone who is not in full possession of his mental faculties should not be in possession of a concealed weapon, with all the attendant risks of injury to himself or others. Imagine the public uproar if some mentally unstable individual should commit mayhem with a weapon permitted under this loophole in the law.

We're all for destigmatizing mental illness and reconsidering restrictions based on old prejudices. But that doesn't mean the state has to give mentally dysfunctional Alaskans the right to carry a gun. While we're all thinking a lot about homeland security, this is a question the Legislature should examine again -- soon.

ALASKA DEPARTMENT OF PUBLIC SAFETY Division of Alaska State Troopers	<b>APPLICATION FOR A NEW          CONCEALED HANDGUN          PERMIT</b>  Please type or print using <i>black</i> ink	Do not write in this space
This application will <u>not</u> be processed unless all applicable questions are answered and the required training certificate, photograph, fingerprint cards, and application fee accompany the application. <b>THE APPLICATION FEE IS NON-REFUNDABLE.</b>		

**Section I.**

ALASKA DRIVERS LICENSE OR IDENTIFICATION NUMBER	Department use only APSIN NUMBER	DATE OF BIRTH	PLACE OF BIRTH (CITY/STATE or CITY/COUNTRY)			
FIRST NAME		MIDDLE NAME <small>(NMN If no middle name or MIO If Initial only)</small>		LAST NAME		SUFFIX <small>(Jr, Sr, II, III)</small>
HEIGHT <small>FT.   IN.</small>	WEIGHT	HAIR COLOR	EYE COLOR	RACE	GENDER	DAYTIME TELEPHONE NUMBER <input type="checkbox"/> Home <input type="checkbox"/> Work <input type="checkbox"/> Cell
MAILING ADDRESS			CITY	STATE	ZIP CODE	
RESIDENCE ADDRESS (IF DIFFERENT THAN ABOVE)			CITY	STATE	ZIP CODE	
How long have you lived at your current address? From _____ to present. <span style="float: right;"><small>(Date)</small></span>						
Previous residences – Complete this section if you have <i>not</i> lived at your current address during the five years preceding the date of this application. Attach a separate page if necessary.						
CITY			STATE	DATE(S)		

Have you ever applied for or been issued an Alaska Concealed Handgun permit? If yes, provide information  Yes  No and if necessary, attach a signed statement with an explanation.

**Section II. Read each question carefully. If you make an error, cross out the incorrect choice and initial the change. If you answer "no" to questions 1-4, or "yes" to questions 5-14, attach court documents or a signed statement explaining your answers.**

1. Are you 21 years of age or older?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
2. Are you eligible to own or possess a firearm under the laws of this state and federal law?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
3. Are you a resident of Alaska and have you been a resident of the state for the 90 days immediately preceding this application?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
4. Have you demonstrated competence with handguns as provided in AS 18.65.715?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
5. Have you been convicted of two or more class A misdemeanors of this state or similar laws of another jurisdiction within the six years immediately preceding this application? See <i>General Information and Instructions</i> for definition of "conviction."	<input type="checkbox"/> Yes	<input type="checkbox"/> No
6. Are you now in, or have you been ordered by a court within the last three years to complete an alcohol or substance abuse treatment program?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
7. Are you under indictment or information for, or have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
8. Are you the subject of a domestic violence injunction under AS 18.66.100 that was issued after a hearing for which you received notice and had an opportunity to participate?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
9. Have you ever been convicted in any court of a misdemeanor crime of domestic violence?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
10. Are you a fugitive from justice?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
11. Are you an unlawful user of, or addicted to any controlled substances?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
12. Have you been adjudicated a mental defective or been committed to a mental institution?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
13. Are you an alien who is residing in the United States illegally or a former citizen of the United States who has renounced your citizenship?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
14. Have you been discharged from the armed forces under dishonorable conditions?	<input type="checkbox"/> Yes	<input type="checkbox"/> No