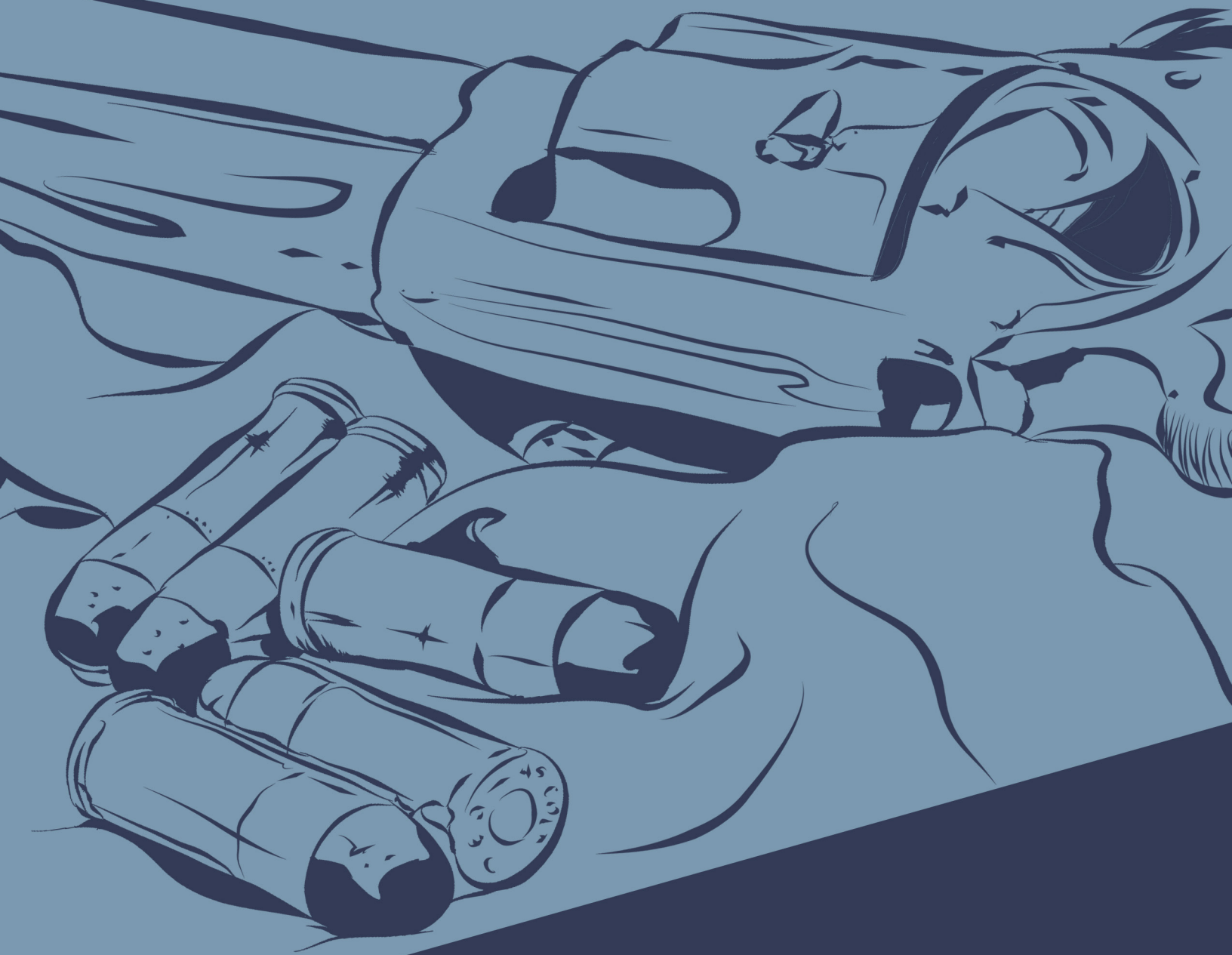


THE RIGHT TO BE ARMED

GUN LAW FACTS EVERY PATRIOT SHOULD KNOW



THE RIGHT TO BE ARMED

A Look at the Formation and Changes to the United States
Firearms Laws and How They Affect Citizens Today

I. GUN CONTROL THROUGH THE YEARS

II. THE REACTIVE FORMATION OF THE GUN LAWS TODAY

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GUN CONTROL THROUGH THE YEARS

The Wild West and Self-Defense

Back in the day, when it was common and unregulated to openly carry a firearm there were many situations that led to their use for good and bad. American frontiersman Daniel Boone sought to protect the small Kentucky town of Boonesborough, where his daughter was among the wounded, from the unprovoked attack of a hiding sniper.

As recounted by historian Stewart Edward White, a mixed force of 400 Shawnee, Cherokee and mercenary French Canadians beset the town and set up a sniper to terrorize the 135 residents with shots to men, women, children and cattle. Boone, a skilled marksman, took matters into his own hands and ascended the fort's tower patiently waiting for the sniper's next shot. Boone zoned in on the white plume from the sniper's rifle and set up his flintlock for the target. Basic technology in conjunction with the daily habit of hunting and self-protection with his weapon was all he needed to take down the threat. No special ammunition. No



telescopic sight. Just the mechanisms of his Kentucky long rifle: flint for spark, a half-inch lead ball and spiral grooves in the bore. His shot was victorious, striking the enemy sniper in the head from his location of over 200 yards away.

Life in the 19th century saw many changes in the ways of gun technology. The American Revolution heavily relied on the accuracy of the rifling (the spiral grooves in the bore that stabilized the bullet) and skilled use in the application of the muzzle-loaded long rifle (also known as a flintlock) as a reliable defense against British front-line officers and a vital weapon to gaining a victory at the Battle of Saratoga. Leading into the 1830's, the percussion cap ignition system was created and became superior over the flintlock system of the muzzle-loaders. In just another 20 years of research and development, the rifle construction changed dramatically as the modern breech-loading rifle proved to be a quicker and safer alternative. This was the first cartridge design of many innovations to the modern cartridge and marked the end of the muzzle-loading era that grew to be tedious and time-consuming.

By the late nineteenth century, the innovations in firearms were energized by the militaries in many countries and fuelled the common practice of the regular citizen acquiring small arms for protection from threatening wildlife and people alike. The impact of this wide spread use of firearms was significant to the American West where the consumer-grade firearms were spread

across land, especially in sparsely populated western towns. American manufacturers, such as Winchester and Colt, were the main suppliers to the civilian townsfolk, ranchers and cowboys. These common citizens played a big part in taming the Western prairies, specifically the ones that were bold and brazen in the face of a threat. Although these 'small arms' would only hold 6-10 rounds, reloading was significantly quicker than just a few decades before and would continue to develop into incomparable automation and stability.

The Rise and Fall of the Automatic

The skill and training needed to accurately operate a flintlock musket signified a true marksman in the 1820's. Loading and shooting two to three times in a minute was a success to be proud of and one had to dedicate a great amount of time to build the habit of an accurate shot. In the course of a century the automation of rifles grew to such a high rate of fire that meant no real skill was needed; just point and shoot and some ensuing damage would occur.

The year 1885 marked the first self-powered machine gun that changed the weapons game dramatically and lead to the first fully automatic rifle just a short 2 years later. Although America's military was initially poorly- equipped in the onslaught of World War 1, the global warfare fuelled the aggressive development of American light machine guns to properly equip soldiers in the trenches of France against German machine guns. The Thompson submachine

gun and the Browning automatic rifle (BAR) were the American counter parts to compete with the growing rifle development going on in many countries.

After World War 2, gun sales to the general public largely came from a massive stock of surrendered and captured weapons from various countries that were sold on the international open market. All types of automatic pistols, sniper rifles, British-made heavy machine guns, and even hand grenades, were available from suppliers all across the United States. The prices were steep at that time, but these wartime weapons easily found their way to Central and South America, Ireland, Asia and Europe into the hands of the revolutionaries of the time.

For the American arms makers Browning and Auto-Ordinance Company (who manufactured the Thompson submachine gun, now Karr Arms) sales to civilians was purely for business growth. They had invested a lot of research, time and money into development of wartime weapons and they needed to see that profit after the demand from the war subsided. As an example of the steep prices that consumers were paying: in those years a Ford Model T cost \$290 and a fully automatic M1921 tommy gun with a stick magazine cost \$200. A high price that many did not have a problem paying for.

And Then Came Prohibition

When the Prohibition act came into play in 1918 the weapon surplus from the war

created ample opportunity for increased criminal activity that would be the major instigator in the regular reform of American gun laws. Criminals could easily get their hands on many different weapons and their appeal to the rising illegal gun market created an increased atmosphere of danger for cities across the country.

Detroit was one of the major cities where the effects of prohibition, crime and guns were readily seen. Before prohibition in 1918, Detroit had 2,334 liquor-serving establishments that ballooned to a whopping 15,000 speakeasies (the term used to describe establishments that sold alcoholic beverages illegally, generally relevant to the Prohibition era.) Corruption was common within police forces, the court system and in the political arena. Whiskey running and bootlegging along the Detroit River was the norm and raids often went sour, especially when half the scheduled officers called in sick; the payoffs were widespread to look the other way. The times hold many stories of bloody gun battles to control criminal activity at different levels resulting in a string of massacres like the horrific St. Valentines Massacre.

A Crackdown on Crime

The authorities soon found themselves out-gunned and out-manned by organized criminals and the single offenders such as notorious bank robbers ‘Machine Gun’ Kelly, Bonny and Clyde Barrow, Jon Dillinger, and ‘Pretty Boy’ Floyd. The Justice department and the U.S. Congress were blatantly informed of the need to take action after an

incident in Kansas City, Montana on June 17, 1933. Three bad boys, Vernon Miller, Pretty Boy Floyd, and his sidekick Adam Richetti attempted to free Frank ‘Jelly’ Nash from the custody of FBI and local police. The submachine gun ambush outside a train station resulted in the death of Nash, two police officers and an FBI agent and leaving one FBI agent badly wounded. The response to this tragic event led to changes that effected FBI agents and gun control.

Congress made vital changes to the authority of the FBI. In 1934, they were allowed to acquire their first Thompson submachine guns. In fact, before this time the FBI didn’t carry guns at all or have the authority to make arrests. Congress also cracked down on the availability of “gangster weapons” which included machine guns, hand grenades, and sawed-off shotguns. The plan was to impose a high tax and hefty registration fees to legally possess these types of weapons, which would ultimately dry up the market and wither away the public supply—or so was the thinking behind it. The 1934 National Firearm Act (NFA) imposed a \$200 tax (which interestingly has not changed since 1934) on most NFA firearms, including firearm mufflers and silencers, machine guns, shot guns and rifles (with barrels less than 18 inches), and other firearms that would fall under the blanket term of “any other weapons”. The NFA required registration of all firearms with the Secretary of the Treasury, which

was generally acceptable in the eyes of most responsible gun owners.

A Second Amendment Interpretation

The complications to gun ownership started occurring soon after this. When gangster violence was seen as out of control, the laws needed to change to deter the overwhelming criminal activity involving guns. In 1939, the law was challenged in connection with the Second Amendment right to keep and bear arms in *Miller v. United States*. The matter at hand involved travelling across state lines with a sawed-off, 12-gauge, double barrel shotgun that was deemed unlawful under the NFA. The Supreme Court was unanimous in their decision that the NFA’s limitations on weapons did not violate the Second Amendment and the explained that a shortened shotgun did not present...

“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”

To add controversy to this issue, the fact that sawed-off shotguns had been in use by the U.S. military in the trenches of WWI was often brought up in defense of this right to bear arms.

THE REACTIVE FORMATION OF THE GUN LAWS TODAY

The laws that are in place today are mainly all based on the reaction of the unlawful use of firearms. Regulating the use of guns and mandating background checks and lifestyle requirements have been put in place to try and reduce the criminal behaviour involving weapons. The citizen's perspective on how firearm development has been the leading cause of additional violence from criminal actions also spurred some strict reactive laws. Many of the 'Acts' and 'Bans' contained useful laws to assist with keeping weapons out the hands of unstable or undependable people that may attempt to acquire a weapon legally.

Reaction Laws

THE GUN CONTROL ACT OF 1968

Made it illegal to sell rifles and shotguns through a mail order system. Mostly a reaction to the assassinations of John F. Kennedy, Robert F. Kennedy, Malcolm X, and Martin Luther King.

THE FIREARM OWNERS' PROTECTION ACT (FOPA) OF 1986

A revision of the 1934 NFA's ban on machine guns specifies transportation issues for gun owners and remedies the abuse to the

Bureau of Alcohol, Tobacco and Firearms that was created in 1972. The focus was to restrict access the drug gangs that were rampant during the crack epidemic of the mid-80's.

BRADY HANDGUN VIOLENCE PREVENTION ACT OF 1993

Named after James Brady, who was shot by John Hinckley Jr. in the attempted assassination of then President Ronald Reagan on March 30, 1981. The Brady Act instituted federal background checks through the FBI's National Instant Criminal Background Check System (NICS) on any purchasers of firearms in the United States.

VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994

(expired on September 13, 2004)

Of specific interest was the formation of the Federal Assault Weapons Ban that banned the manufacturing of 19 specific "assault weapons" (classified as semi-automatic firearms) "that are capable of accepting a detachable magazine, and which has two or more of the following features: telescoping or folding stock, pistol grip, grenade launcher, bayonet lug, and flash suppressor. This Act was in reaction to several events of violent crime such as the '101 California Street Shooting' that occurred on July 1, 1993

taking the lives of nine people, including the shooter, Gian Luigi Ferri, and injuring six others. The weapons involved a pair of Tech-9 pistols and a Chinese version of a colt M1911 in this savage murder-suicide.

DOMESTIC VIOLENCE OFFENDER GUN BAN OF 1997

Bans the ownership and use of guns to any person convicted of misdemeanour domestic violence or anyone that is under a restraining order connected to domestic abuse. This ban was partly brought about from the public outcry during the O.J. Simpson murder trial.

These laws are mostly well-meaning and created in an effort to protect civilians and police yet they have been constantly been faced with controversy and a definite divide on what really allows for protection. With most of these laws inspired to reduce violent crime we are still hearing about criminal activity involving weapons on a regular basis, which indicates that stricter laws may not be the answer to combat crimes with guns.

Criminals With Guns

There is no lack of stories that depict criminal acts centred around weapons. There is no debate that police, as well

as citizens, want to see weapons less accessible to criminals. Killing sprees have been a regular occurrence across the United States since 1984. Specifically between 1986 and 1997 there were over forty people shot at in just 20 occurrences of workplace rage. Police officers have also been in the front line of the illegal use of guns and have found themselves at a disadvantage when up against criminal firepower. These following stories are just a small example of the deliberate disregard for authority and a criminal element that doesn't seem to fear the consequences of breaking the law.

NORTH HOLLYWOOD SHOOTOUT IN 1997

Two bank robbers strapped themselves with body armour and carried modified, fully automatic assault rifles with ammunition capable of penetrating police armor when they robbed the North Hollywood Bank of America. Upon exiting the bank the shootout began involving over 300 LA Police Officers and eventually the SWAT who had the powerful enough rifles to penetrate the robbers' armor. The only fatalities were the two robbers, but eleven police officers and seven civilians were injured and there was a great deal of damage

from the nearly 2,000 rounds of ammunition that was fired during the lengthy shootout.

OAKLAND POLICE SHOOTINGS IN 2009

Convicted felon shot and killed two Oakland, California police officers during a traffic stop. He then ambushed two SWAT officers who attempted to apprehend him two hours later and killed them and injured one other. The felon was shot and killed in the exchange of gunfire. He used a 9mm semi-automatic handgun and SKS rifle.

ARKANSAS SPREE KILLERS IN 2011

Father and son shot down two police officers during a routine traffic stop in West Memphis, Arkansas using AK48s. The final shootout at a West Memphis parking lot resulted in the deaths of the shooters and injuries to the Crittenden County sheriff and his deputy.

Whether it's police, civilians or criminals, the death toll steadily rises in connection with criminals and guns, most of which are illegally acquired. Police can never be sure who is the law-abiding citizen and who is out to use a gun for harm so they are always looking to have the best possible defence when they are faced with criminal gun activity. They can call for backup

and be fairly sure they'll get it quickly and they usually have the constant support from a partner. Police officers actually have a less than 1% chance of attack with a firearm, which is quite low in such a high-risk profession.

THE NEED FOR SELF-DEFENSE

With the obvious existence of violent criminal activity it's in ones best interest to be able to defend themselves and the people around them in any way possible. Violent criminals don't often have a great value for human life (apart from the self-preservation instinct) and it's virtually impossible to be completely free from the risk of encountering a tragic situation.

No Liability to Protect

Unfortunately, even if the police are able to assist, it is not a line of protection that can be entirely relied on. The law has many unsettling examples of the lack of liability to protect individuals starting back in the 1800s. It may be surprising to hear that law enforcement in the United States is sworn to protect the peace, but not to protect an individual from harm. Many court cases have resulted in a ruling that reinforces this fact and releases officers of the law from consequences of negligible actions.

The Precedent Setting Case

June 1850 in Washington County, Maryland—Jonathan Pottle, a Boston banker, had arrived in Washington County to recover a debt from a defaulted mill owner, whom judgement was made against. Along with a sheriff's deputy, Pottle went to the mill to foreclose on it when he was taken hostage by the mill workers after he refused to pay them the wages that the mill owner had not. Although help was requested from the deputy and the sheriff, he was denied any assistance from the authorities. After being held prisoner for 4 days, Pottle agreed to pay them \$2,500 and was released. Claiming negligence on the part of the sheriff's department, Pottle took the matter to the Supreme Court where the final ruling made precedence in many more recent cases of alleged police negligence.

The ruling stated that:

“Law enforcement has the responsibility to protect the public peace, but not the liability to protect individuals from criminal actions directed against them.”

Warren v. District of Columbia (1981)

Claims of negligence due to:

- the dispatcher's failure to forward a call with proper urgency

- the responding officers' failure to check the rear entrance and properly investigate the house to ascertain if there was any activity inside, which is standard police procedure
- the dispatcher's failure to dispatch the second call for police assistance.

Warren and 2 other women were victims of a home invasion, rape, assault, and kidnapping that lasted fourteen hours. A 4-3 decision in the court stated that ***police personnel or the government employing them are not accountable for their failure to provide appropriate police protection unless a special relationship exists.***

Castle Rock v. Gonzales (2005)

Suit filed against Castle Rock, Colorado, its police department and three individual police officers for failing to enforce a restraining order and failing to respond properly to complaints of a restraining order violation. Jessica Gonzales obtained a restraining order against her husband during divorce proceedings, requiring him to remain at least 100 yards from her and their three daughters except during a specified visitation. Her husband took their three daughters illegally and Gonzales repeatedly tried to get police to take action to get her children back. Her

husband eventually appeared at the Castle Rock police station where he instigated a shootout that took his life. The dead bodies of his 3 children were later found in his car. The opinion of the court surmised that the enforcement of the restraining order is not mandatory under Colorado law.

Laws are not concrete and are often left up to interpretation. Even if police are ready, willing, and able to ‘serve and protect’ the peace and individuals—special relationship or not—many criminal activities happen quicker than an officer can respond in ideal circumstances. A complete ban on guns does not take many away from the people who are not obeying the law in the first place. The criminal types have little regard for the law. There also tends to be some grey area when it comes to the protection from the police, who can’t be everywhere at once anyway.

THE DIFFERING LINES OF THE LAW

The Making of the ‘Murder’ Capital

Back in 1976, Washington D.C. city council passed a Firearms Control Regulations Act that made it illegal for any city resident to own a firearm. From an administrative point of view this doesn’t sound like such a bad idea to dry up the supply of guns in the city. The act banned ownership of any type of firearm and grandfathered in prior ownership with restrictions for storage that rendered the

weapon useless, and imposed strict registration rules. As a result, Washington D.C. became the nations’ “murder capital” with 482 homicides in 1991—the highest murder rate in the country. D.C. also saw its crime rate soar up to a massive 200% above the national average.

Several other major cities followed the same path of either banning or imposing greater restrictions on gun ownership with comparable success to Washington, achieving higher murder and crime numbers. The facts seems to show that taking responsible access to guns away really only effects the law-abiding citizens and gives the law-breakers more freedom to get away with their criminal acts.

Ruling on the Second Amendment

As a licensed special police officer for the District of Columbia, Dick Anthony Heller regularly carried a gun for his job, but was still not allowed to have a firearm in his home. After a five-year court case brought on by Heller and 5 others, the U.S. Supreme Court ruled on an interpretation of the Second Amendment in 2008. It was stated that *the right to bear arms is a right of an individual, intimately tied to the natural right of self-defence, and that while ‘bearing arms’ implies carrying a weapon ‘for the purpose ‘offensive or defensive action,’ it in no way connotes participation in a structured military organization.”*

Unfortunately this ruling only applied to the Federal district of Washington so a different case was needed for each state. Otis McDonald brought up his right to own a handgun for protection in a suit against the city of Chicago on Second Amendment grounds. His case was ruled on by the Supreme Court in 2010 in his favor with a statement that *“the right to keep and bear arms is enforceable against the states because it is a privilege of American citizenship recognized by Section 1 of the Fourteenth Amendment, which provides, inter alia: ‘No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States’”*

In time, these interpretations of the Second Amendment will override more state regulations, but for now the various adaptations of gun control taken on by each of the states makes the legality of carrying, owning or having certain types of firearms a confusing conundrum of facts.

Keeping Informed of the Details

Gregg Revell met all the requirements and took all the precautions needed to legally own and carry his gun. It wasn't until a trip from his home State of Utah to Pennsylvania that he realized he wasn't aware of the technicalities of travelling over state lines with a firearm. His trip started out fine; he properly declared his possession of an

unloaded firearm, had it properly locked up and signed the orange firearm declaration tag. Although he was booked on a connecting flight to Allentown, Pennsylvania, his first flight was delayed, which resulted in him missing the plane to Allentown. The airline chose to send the passengers on a bus instead of booking them on the next flight the following day at 8pm, but at the last minute Revell discovered his baggage was not on the bus with him and he felt the need to locate his baggage, specifically his firearm to ensure it was secure.

After he located his bags, he had missed the bus to Allentown so he settled for the flight on the following evening. Innocently, he boarded a shuttle bus to spend the night at a nearby hotel, with his baggage, and returned the next day to take his connecting flight.

As soon as he took possession of his firearm in New Jersey, he was unknowingly breaking the law.

New Jersey doesn't recognize permits from other states and doesn't allow for the possession of the hollow-point ammunition the Revell was carrying. Although the charges against Revell were eventually dropped, he incurred an arrest, 4 days in jail and time in court. Not even planning to stop in New Jersey, he hadn't checked on the details of their gun laws and he had thought that he would be under the FOPA

regulations since he was still on his initial trip and had not opened the cases. It can be difficult straightening out the tangled web of rights and laws that span the United States.

Making Sense of the Second Amendment Across State Lines

Over the past two hundred years the Second Amendment has been create and interpreted in various ways to support or abolish certain laws of gun ownership.

The weapon restrictions have often come with a disclaimer that warrants the tainted interpretation of ‘protecting the public.’

In the same era, the governing bodies have been protecting their own by limiting any liability of law enforcement to the degree that there is no guarantee of assistance for victims of criminal acts. These contradictory motives seem to be the standard for anything that involves the law making related to gun control and leaves the common self-sufficient citizen between a rock and a hard spot.

The Independent States and their Independent Laws

Getting the laws straight in your own home state is easy enough with a bit of reading and asking questions. When it comes to travelling with a firearm, gun owners face a multitude of conflicting laws that can

be difficult to interpret (as Gregg Revell discovered) and cause for a rerouted road trip to avoid the dangers of getting caught with a firearm while driving through. One state may ban handguns completely, while another state may only allow the possession of a gun with a permit issued by them, and another state may be accepting of a number of state permits—the conditions and variances go on and it’s the law-abiding gun owner that has to analyze all these conflicting laws if they wish to continue their law-abiding nature and travel outside of their state.

Clarity For Your Travels

While it seems each State has reinvented the wheel when it comes to gun laws, there are a few similarities. While knowing what is required, in general, for interstate travel, you will want to investigate the actual laws for any state you are visiting or travelling through. The FOPA does cover some transportation issues and each state will be in accordance with that, but you need to be aware of the state, and perhaps county laws governing the possession of a gun. As an example, registering a firearm may be done through an unsuspecting agency, as is the case in Florida where their Department of Agriculture processes firearm permits, which means they do not use the NICS database

commonly used by other states to do a background check. You will also find a major divide between which states honor permits from other states and specifically which out-of-state permits are honoured. Some states accept permits from a number of other states, some just accept from one or two while some don't honor any other permits.

Following are some of the common requirements or stipulations that you can expect when applying for a concealed-carry permit from all the states across the U.S.

Require an NICS background check or have their own system

Have to be 21 years of age or older (some allow 18-year-olds and up if they have served in the army)

- No felony convictions
- No indications of mental illness
- No addiction to alcohol or drugs
- No convictions of any serious or aggravated misdemeanour within 3-5 years
- Not subject to a protection order or involved in domestic violence offences
- Provide proof of completion of a firearms safety or training course
- Must provide a state photo identification

- Must provide fingerprints for file
- Must pay the required fees (varies from state to state)

Four Varieties of Concealed-Carry

Across the United States there are four variations of concealed-carry permits:

- Unrestricted—the states that are the easiest to lawfully carry a gun in, no permit is required to carry a concealed handgun. Unrestricted right-to-carry laws: **Alaska, Arizona, Vermont, Wyoming**
- No-issue—having a complete ban on carrying a concealed firearm, which are almost extinct, as the federal courts have recently overturned the concealed weapons ban in **Illinois** on constitutional grounds. They will be required to draft a concealed carry law by May 2013 (although it may be appealed in the Supreme Court)
- May-issue—local or state authorities look at each permit request and have the discretion to approve or deny a request. The following states have permissive or restrictive policies, which involve a combination of may-issue and shall-issue within the state and allows for counties within the state to create their

own concealed carry rules: **Alabama, California, Connecticut, Hawaii, Maryland, Delaware, New Jersey, New York, Massachusetts, Rhode Island**

- Shall-issue—permit requests are granted when the pre-determined requirements are met. The issuing authority has no discretion in the issuance of permits and there is no requirement to show ‘good cause’ to carry a gun as it is with the may-issue jurisdictions. The majority of states are in this category. Whatever states are not listed in the three sections above are sole shall-issue states.

What the Future Holds for the Right To Carry

Laws are changing all the time, whether within a state or at the federal level. Keep watch for alterations, abolishment’s, and new creations in the ways of the law and definitely be well informed if you plan to

travel over state lines.

The Second Amendment right to bear arms and be equipped to defend oneself is becoming more recognized as the protection for the law-abiding citizen and not as an encouragement for the growth of crime. Hopefully, we can soon be witness to the shift in society that allows law-abiding and responsible people to properly manage the privilege to own and carry firearms freely across all states. A bill was brought to congress in March of 2012 to ***“amend title 18, United States Code, to provide a national standard in accordance with which non-residents of a State may carry concealed firearms in the State.”***

Although this bill, labelled the National Right-to-Carry Reciprocity Act of 2012, was not enacted, but referred to a committee, it is the beginning of a reform to the jumble of contradictory laws across the country.

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Published by:

Survival Life, LLC

4330 Gaines Ranch Loop, Suite 120

Austin, TX 78735

Website: <http://www.SurvivalLife.com>

E-Mail: support@survivallife.com