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CONTROL OF FIREARMS

I. INTRODUCTION

An increasing crime rate, highlighted by recent political assassinations, has produced an intense debate concerning the proper control of private firearms. All states have firearm restrictions; the majority of these regulations apply only to the machine gun and the handgun. Generally, purchase, sale, and possession of shotguns and rifles remain unrestricted by state legislation. A recent Gallup Poll indicated that sixty-one per cent of the people polled approved stricter laws regulating rifles and shotguns.¹ The same survey showed that seventy per cent of the persons polled approved stricter legislation concerning handguns.² Sixty per cent of gun-owners support a requirement that a person secure a police permit before he can purchase a firearm.³ On the other hand, shooting groups believe that the way to reduce crime is to punish the criminal; not to impose unreasonable restrictions upon the use and possession of firearms by law-abiding citizens. These shooting groups suspect that the confiscation of all private firearms will be the ultimate result of firearms legislation.

It is the purpose of this comment to summarize the firearm laws of Missouri against a background of gun legislation in other jurisdictions. A basic question to be discussed is: to what extent can a person own and carry firearms in Missouri without violating the criminal law?

II. THE RIGHT TO BEAR ARMS

As a fundamental starting point, it should be noted that the so-called "constitutional right to keep and bear arms" is largely illusory. The second amendment to the United States Constitution has been interpreted to impose limitations only on the national government,⁴ and then only to the extent of assuring the states the collective right to maintain armed militia-like organizations.⁵

Thirty-five states,⁶ however, have constitutional provisions patterned generally

1. Poll conducted for the National Broadcasting Company, January, 1967. Reprinted in *Hearings on the Federal Firearms Act Before the Subcomm. to Investigate Juvenile Delinquency of the Senate Comm. on the Judiciary*, 90th Cong., 1st Sess., at 519 (1967) [Hereinafter cited as *Judiciary Hearings*, 90th Cong.].

2. *Id.* at 518.

3. Gallup Poll, Public Would Favor Police Permit for Gun, Institute of Public Opinion (1965). Reprinted in *Judiciary Hearings*, 90th Cong., at 524.

4. *United States v. Cruikshank*, 92 U.S. 542 (1875).

5. *United States v. Miller*, 307 U.S. 174 (1938); *Cases v. United States*, 131 F.2d 916 (1st Cir. 1942). The second amendment has been extensively discussed in the law reviews. For a sampling of this literature, see Sprecher, *The Lost Amendment*, 51 A.B.A.J. 554 and 665 (1965); McKenna, *The Right To Keep and Bear Arms*, 12 MARQ. L. REV. 138 (1928); Emery, *The Constitutional Right To Keep and Bear Arms*, 28 HARV. L. REV. 473 (1915).

6. Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Mississippi, Missouri, Montana, New Mexico, North Carolina,

after the second amendment. For example, article I, section 23, of the Missouri Constitution states:

That the right of every citizen to keep and bear arms in defense of his home, person and property, or when lawfully summoned in aid of the civil power, shall not be questioned; but this shall not justify the wearing of concealed weapons.

Under this section, concealed weapons statutes are expressly permitted; however, this does not mean that other reasonable firearm regulations are invalid.⁷ On the contrary, there can be no doubt of the constitutionality of such legislation.⁸ Although the "constitutional right to keep and bear arms" is still occasionally discussed, the existence of firearm control legislation in all states would seem to make the question, at best, an academic one.⁹

III. MACHINE GUN LEGISLATION

During prohibition and the Dillinger era, the sub-machine gun became the badge of the American gangster. The popularity of this automatic weapon may be attributed to a coalescence of devastating firepower, concealability, and mobility.¹⁰ In response to the threat of law enforcement created by the sub-machine gun, most states enacted special laws to control the possession and use of this weapon.¹¹ Thus, in Missouri, as in many states, it is a felony to sell, deliver, transport, or possess a sub-machine gun.¹² A sub-machine gun is a weapon

Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, Wyoming. In addition, New York has a statute similar to these constitutional provisions.

7. *State v. Keet*, 269 Mo. 206, 190 S.W. 573 (1916); *State v. Shelby*, 90 Mo. 302, 2 S.W. 468 (1886); *State v. Wilforth*, 74 Mo. 528, 41 Am. Rep. 330 (1881).

8. At one time, firearm legislation encountered some constitutional obstacles. *Bliss v. Commonwealth*, 2 Litt. 90 (Ky. 1822), invalidated a concealed weapons statute enacted in Kentucky in 1813. The Kentucky Constitution was later amended, and a similar statute upheld, *Hopkins v. Commonwealth*, 3 Bush 480 (Ky. 1868). However, the clear weight of authority upholds firearm legislation against state constitutional arguments. *Mason v. State*, 39 Ala. App. 1, 103 So.2d 337 (1956); *Davis v. State*, 146 So.2d 892 (Fla. 1962); *Matthews v. State*, 237 Ind. 677, 148 N.E.2d 334 (1958); *State v. Nieto*, 101 Ohio St. 409, 130 N.E. 663 (Sup. Ct. 1920).

9. The National Rifle Association cautions shooter-sportsmen not to rely entirely on the second amendment for protection against all firearm legislation. "The simple fact is that the second amendment has not prevented firearms regulation on either the national or state levels." National Rifle Association, *The Gun Law Problem* 3.

10. Howe, *Problems Of The Submachine Gun In Post-War Crime*, 35 J. CRIM. L.C. & P.S. 69 (1944).

11. See, e.g., GA. CODE ANN. § 26-5101A-07A (Supp. 1968); HAWAII REV. LAWS §§ 157-8 (1955); IND. ANN. STAT. §§ 10-4712-14 (1956); IOWA CODE ANN. §§ 696.1-11 (1946).

12. § 564.590, RSMo 1959. It should be noted that the machine gun of the prohibition era did not lend itself to effective criminal use. These older machine guns were bulky, difficult to transport, and required too much ammunition. Note, 98 U. PA. L. REV. 905, 915 (1950). These statutes actually were directed against the sub-machine gun.

capable of discharging automatically and continuously loaded ammunition of any caliber in which the ammunition is fed to such gun from or by means of clips, disks, drums, belts or other separable mechanical device.¹³

In Missouri, peace officers and military personnel can possess a sub-machine gun.¹⁴ Other states provide a broader spectrum of exemptions.¹⁵ Commonly, unserviceable automatic weapons can be owned as relics, museum pieces, or war trophies.¹⁶ Other states permit the ownership of licensed machine guns.¹⁷

The most comprehensive machine gun legislation, the Uniform Machine Gun Act, has been adopted in several jurisdictions.¹⁸ This Act makes it a crime to possess or use an automatic weapon for aggressive purposes. An aggressive purpose will be presumed: (1) when the machine gun is found in the possession of a person who is not on his premises or at his place of business, (2) when a machine gun is found in the possession of an alien or a person convicted of a crime of violence, (3) when the weapon is not registered, or (4) when shells susceptible of use in a machine gun are found in the immediate vicinity thereof.¹⁹ If a machine gun is found in a person's room, his boat, or his vehicle, the weapon is presumed to belong to this person.²⁰

It should be noted that the state machine gun laws are in addition to the registration requirements and a tax prescribed by the National Firearms Act.²¹ The combination of federal and strong state laws have practically eliminated the private use and possession of the sub-machine gun. Since there are few, if any, legitimate purposes for these weapons, a policy of strict regulation seems to be justified.

IV. CARRYING A CONCEALED DEADLY WEAPON

In 1813, Kentucky enacted a statute that made it a crime for a person to carry a concealed handgun.²² Since then, almost every state,²³ including Missouri in 1874, has adopted a similar regulation. The courts have described the purposes of the concealed weapons statutes as the prevention of lawlessness,²⁴ the reduction

13. § 564.600, RSMo 1959.

14. § 564.590, RSMo 1959.

15. *E.g.*, IND. ANN. STAT. § 10-4714 (1956); LA. REV. STAT. ANN. § 40:1752 (1965).

16. *E.g.*, IOWA CODE ANN. § 691.6 (1946); KAN. GEN. STAT. ANN. § 21-2601 (1949).

17. *E.g.*, OHIO REV. CODE ANN. § 2923.04 (Page 1967).

18. Arkansas, Connecticut, Maryland, Montana, South Dakota, Virginia, Wisconsin.

19. UNIFORM MACHINE GUN ACT § 4.

20. UNIFORM MACHINE GUN ACT § 5; Note, 98 U.P.A.L.REV. 905, 915 (1950).

21. INT. REV. CODE OF 1954, §§ 5801-5862; Note, 17 W. RES. L. REV. 569, 575 (1965).

22. In 1822, this statute was declared unconstitutional. See text, note 8 *supra*.

23. *E.g.*, ARIZ. REV. STAT. ANN. § 13-911 (1956); IND. ANN. STAT. § 10-4706 (1956); KY. REV. STAT. § 435.230 (Supp. 1962); MD. ANN. CODE art. 27, § 36 (1957).

24. State v. Shelby, 90 Mo. 302, 2 S.W. 468 (1886).

of the murder rate,²⁵ and the promotion of personal security.²⁶ In the light of these purposes a basic question can be framed: would not these purposes be more successfully achieved by also prohibiting the open carrying of handguns? A few states do forbid the open carrying of handguns,²⁷ but most do not. It is suggested that this differentiation between carrying a handgun openly or concealed reflects a balancing of the interests of law-abiding citizens in carrying handguns, against the dangers arising from the misuse of such firearms.²⁸ It is arguable that a person will be less likely to provoke an altercation with an individual who is openly carrying a handgun.²⁹ Since most people prefer to carry a handgun concealed, it is hoped that if such carrying is prohibited the populace will choose not to carry handguns at all rather than carrying handguns in an open manner.³⁰

The initial concealed weapons statute, that of Kentucky, only regulated the carrying of the handgun. At the present time, the coverage of such statutes has been expanded to encompass other deadly weapons including non-firearms. The Missouri statute designates certain weapons as per se deadly, including: "any kind of firearms, bowie knife, springback knife, razor, metal knucks, bully, sword, cane, dirk, dagger, sling shot."³¹ This list is not exhaustive, and other types of instruments can be deadly weapons.³² Whether an instrument not included within the enumerated category can be considered a deadly weapon rests upon the use made of the instrument in light of the surrounding circumstances.³³ The court, not the jury, determines if the instrument involved is a deadly weapon.³⁴ However, in the overwhelming majority of cases, the concealed weapon is a handgun.

Since the existence of a concealed weapon may often not be revealed until the weapon has been used, law enforcement officers find it difficult to arrest a

25. *State v. Seal*, 47 Mo. App. 603 (St. L. Ct. App. 1892).

26. *State v. Keet*, 269 Mo. 206, 190 S.W. 573 (1916); *State v. Shelby*, 90 Mo. 302, 2 S.W. 468 (1886).

27. ARK. STAT. ANN. § 41-4501 (1947), as a weapon; TENN. CODE ANN. § 39-4901 (1955), with intent to go armed; VT. STAT. ANN. tit. 13 § 4003 (1959), with intent to injure.

28. Cf. *State v. Keet*, 269 Mo. 206, 214, 190 S.W. 573, 576 (1916), where the court stated: "Less than a century ago the arms of the pioneer were carried openly, his rifle on his shoulder, his hunting knife on his belt. Since then deadly weapons have been devised small enough to be carried effectively concealed in the ordinary pocket."

29. Note, 43 Ky. L.J. 23, 534 (1955). Cf. *State v. Gibson*, 322 Mo. 369, 376, 15 S.W.2d 760, 762 (En Banc 1929), where the court noted that the defendant would be better protected by a weapon carried openly, not concealed.

30. Note, 43 Ky. L.J. 523, 524 (1955).

31. § 564.610, RSMo 1967 Supp. Most of the state statutes provide a list of deadly weapons, *E.g.*, GA. CODE ANN. § 26-5101 (1953); IND. ANN. STAT. § 10-4706 (1956). However, some statutes only use the term "deadly weapon." KY. REV. STAT. § 435.230 (Supp. 1962).

32. § 564.610, RSMo 1967 Supp.

33. *State v. Garner*, 360 Mo. 50, 226 S.W.2d 604 (1950); *State v. Sebastian*, 81 Mo. 514 (1884). An unloaded, *State v. Baumann*, 311 Mo. 443, 278 S.W. 974 (1925), or defective, *State v. Morris*, 263 Mo. 339, 172 S.W. 603 (1915), handgun can be a deadly weapon.

34. *State v. Hall*, 20 Mo. App. 397 (K.C. Ct. App. 1886).

person for this crime. In many states, including Missouri, these concealed weapons statutes represent the most trenchant regulation of the carrying of firearms. Thus, the judicial interpretation of the concealed weapons statutes is of importance. In order to convict a person for this offense, it must be shown that the defendant "carried" a "deadly weapon" "concealed" "upon or about his person."³⁵ "Carrying" has been interpreted to mean "bearing"; there is no requirement that the weapon itself be moved.³⁶ As noted above, the "deadly weapon" is most often a handgun, but other firearms and even non-firearms can be classified as this type of weapon.³⁷ The existence of the elements "concealed" and "upon or about the person" are often disputed; thus these two elements require a further analysis.

A. Concealment

The Missouri courts have stated repeatedly that the test of concealment is "whether the weapon is so carried as not to be discernable by ordinary observation."³⁸ This test is in accord with the general rule.³⁹ If a weapon cannot be observed from one direction, but is otherwise visible, then the weapon is not concealed.⁴⁰ Nor is a partially visible weapon concealed, at least not if the portion visible reveals that the instrument is a weapon.⁴¹ The essence of concealment is the covering of the weapon, and not whether people in the vicinity know of the existence and location of the weapon.⁴² A proper jury charge on the issue of concealment should be phrased in the following language:

[i]n order to be concealed, it [the weapon] must have been so placed as to escape the ordinary observation of persons coming near enough to defendant to see the weapon if carried openly. . . .⁴³

In one fact situation, the observation test of concealment has presented a special problem. An example of this problem is found in the recent case of *State v. Tate*.⁴⁴ There, Tate had been convicted by a jury of carrying a concealed

35. *State v. Scanlan*, 308 Mo. 683, 273 S.W. 1062 (1925); *State v. Smith*, 24 Mo. App. 413 (St. L. Ct. App. 1887). The offense is a felony. *State v. Brown*, 306 Mo. 532, 267 S.W. 864 (1924).

36. *State v. Nieto*, 101 Ohio St. 409, 130 N.E. 663 (Sup. Ct. 1920). For a more complete discussion, see Note, 38 Ky. L.J. 275 (1950). Since "carry" has been interpreted to mean "bear," this element of the offense is seldom a matter of contention. However, a proper instruction must include this element of the crime, and may be phrased in the following language: "did unlawfully carry, concealed upon, and about, his person, a certain dangerous and deadly weapon. . . ." *State v. Smith*, 24 Mo. App. 413, 413-414 (St. L. Ct. App. 1887).

37. *State v. Garner*, 360 Mo. 50, 226 S.W.2d 604 (1950), automobile; *State v. Miller*, 264 Mo. 395, 175 S.W. 187 (1915), rock; *State v. Sebastian*, 81 Mo. 514 (1884), hatchet.

38. *State v. Crone*, 399 S.W.2d 19 (Mo. 1966); *State v. Bordeaux*, 337 S.W.2d 47 (Mo. 1960); *State v. Scanlan*, 308 Mo. 683, 273 S.W. 1062 (1925).

39. Annot., 43 A.L.R.2d 492 (1955).

40. *Reid v. Commonwealth*, 298 Ky. 800, 184 S.W.2d 101 (1944).

41. *Orrick v. Akers*, 109 Mo. App. 662, 83 S.W. 549 (K.C. Ct. App. 1904).

42. *Cf. State v. Carter*, 259 Mo. 349, 168 S.W. 679 (1914).

43. *State v. Scanlan*, 308 Mo. 683, 693, 273 S.W. 1062, 1065 (1925).

44. 416 S.W.2d 103 (Mo. 1967).

weapon. The evidence indicated that at about midnight the defendant fired a handgun. From approximately forty feet away, a police officer observed the defendant's head in the "flash of fire" from the handgun. However, because of the darkness, the police officer could not see the defendant's hands, nor the handgun itself. The Missouri Supreme Court reversed the conviction. The court recognized the discernable by ordinary observation test,⁴⁵ but in the instant case, reasoned that there was not sufficient evidence of concealment about the person. The court approved an earlier case⁴⁶ involving a similar fact situation, where it had been stated that:

It amounts to nothing more than a showing that appellant had an opportunity to carry the weapon concealed. Whether or not he did carry the weapon concealed is left to mere conjecture. . . .⁴⁷

It would seem that a reversal in *Tate* would be justifiable on the theory that the defendant did not have the intent to conceal the weapon.⁴⁸ Yet, in view of the "discernable by ordinary observation" test, it would seem difficult to accept the position that a weapon cannot be concealed by darkness.⁴⁹ However, if a weapon could be concealed solely by darkness, a possibility of absurd results would exist. For example, the honest citizen carrying a handgun in an open manner during daylight, would, after sunset, be in violation of the concealed weapons statute.

B. Upon or About the Person

In order to secure a conviction under the concealed weapons statute, there must be proof of a physical proximity between the accused and the weapon. In most states,⁵⁰ as in Missouri,⁵¹ the concealed weapon must be "upon or about" the person. In a few statutes, a narrower standard (that the concealed weapon must be "on" the person) is enumerated.⁵² Occasionally, it has been argued that the general rule should require that the concealed weapon be "on" the person. This would require that the weapon be in contact with the person, or at least carried in his clothing.⁵³ A few cases have accepted this argument with the effect

45. *Id.* at 105.

46. *State v. Duggins*, 284 Mo. 633, 225 S.W. 987 (1920).

47. *Id.* at 636, 225 S.W. at 988.

48. "The intent at which the Legislature aimed the statute was the intent to do the act prohibited by the statute, namely, carrying a concealed weapon. . . ." *State v. Hovis*, 135 Mo. App. 544, 546-47, 116 S.W. 6, 7 (St. L. Ct. App. 1909).

49. There is some indication that darkness may be a factor in the concealment of a deadly weapon. *State v. Renard*, 273 S.W. 1058 (Mo. 1925). In that case, a loaded revolver was found on the floor of an automobile. The automobile body, defendant's feet, and darkness concealed the revolver. The court affirmed the conviction.

50. *See Note*, 26 N.Y.U.L. REV. 210 (1951).

51. § 564.610, RSMo 1967 Supp.

52. PA. STAT. ANN. tit. 18, § 4416 (1963); COLO. REV. STAT. ANN. § 40-11-1 (1963); UTAH CODE ANN. § 76-23-4 (1953).

53. *Commonwealth v. Lanzetti*, 97 Pa. Super. 126 (1929).

of needlessly limiting the effectiveness of the concealed weapons statutes.⁵⁴ Like most other courts, the Missouri Supreme Court, in *State v. Conley*,⁵⁵ has rejected the above argument. There the court disapproved the defendant's instruction that had read:

[i]f you find and believe from all the evidence that the defendant had the revolving pistol in the seat of his wagon at the time in question, and so carried it, and did not have the pistol concealed on or about his person, then you must find the defendant not guilty.⁵⁶

Furthermore, the court made it clear that such a construction would unduly restrict the scope of the "upon or about" standard.⁵⁷ In a more recent case,⁵⁸ the court reiterated its view in the following language: "The word 'about' includes everything included in the word 'upon' and, of course, may include much more. The greater includes the lesser."⁵⁹

Once it is decided that the words "upon" and "about" are not synonyms, the more difficult problem of establishing boundaries for "about" the person must be faced. Generally, the rule is that the weapon is "about" the person when it is easily accessible to him.⁶⁰ The Missouri Supreme Court has stated the majority rule that the weapon must be placed in respect to the person so as "to be within his easy reach and convenient control."⁶¹ The standard seems to be a broad one, but such an interpretation would appear to be necessary if the concealed weapons statute is to be effective. However, in the abstract, it is unclear what is meant by "easy reach and convenient control." Insofar as this test is concerned, the most numerous and most difficult cases have involved the carrying of concealed weapons in automobiles. An analysis of these cases will illustrate the manner in which the "easy reach and convenient control" test is applied.

It should be recalled that some jurisdictions require that the concealed weapon be carried "on" the person.⁶² In these states, the automobile provides a very convenient location in which to transport a concealed weapon. An example is the Pennsylvania case of *Commonwealth v. Lanzetti*.⁶³ There the defendants secreted two handguns beneath the seat in an automobile. The court decided that this action did not violate the concealed weapons statute. The weapons, although concealed, were beneath, not "on" the person.⁶⁴ Under statutes using the word

54. *State v. Brunson*, 162 La. 902, 111 So. 321 (1927); *State v. Weston*, 108 S.C. 383, 94 S.E. 871 (1918); Note, 12 St. L. U. L. Rev. 221 (1927).

55. 280 Mo. 21, 217 S.W. 29 (1919).

56. *State v. Conley*, 280 Mo. 21, 23, 217 S.W. 29, 29 (1919).

57. *Id.* at 24, 217 S.W. at 30.

58. *State v. Scanlan*, 308 Mo. 683, 273 S.W. 1062 (1925).

59. *Id.* at 695, 273 S.W. at 1065.

60. *People v. Niemoth*, 322 Ill. 51, 152 N.E. 537 (1926); *Hampton v. Commonwealth*, 257 Ky. 626, 78 S.W.2d 748 (1934); *State v. McManus*, 89 N.C. 555 (1883).

61. *State v. Scanlan*, 308 Mo. 683, 693, 273 S.W. 1062, 1065 (1925); *State v. Bordeaux*, 337 S.W.2d 47 (Mo. 1960); *State v. Simon*, 57 S.W.2d 1062 (Mo. 1933); *State v. Gibson*, 322 Mo. 369, 15 S.W.2d 760 (En Banc 1929).

62. See text supported by notes 52-54 *supra*.

63. 97 Pa. Super. 126 (1929).

64. *Commonwealth v. Lanzetti*, 97 Pa. Super. 126 (1929).

"about," a strict and technical application of the "easy reach and convenient control" test can cause a result similar to that of *Lanzetti*. For instance, in *People v. Liss*,⁶⁵ the presence of a handgun six inches beneath the front seat of an automobile did not violate the concealed weapons statute. The handgun was apparently within reach of the defendant; however, the court said that the person must be able to reach the handgun without making an "appreciable change" in position. Since this could not be shown, the court reversed the conviction. In some states, the carrying of weapons in vehicles has been recognized as a special problem, and statutes expressly prohibit this practice.⁶⁶

In Missouri, no such special statutes exist. Thus, the courts must decide these automobile concealed weapons cases by the application of the "easy reach and convenient control" test. In *State v. Scanlan*,⁶⁷ the court sustained a concealed weapon conviction when the evidence indicated that three handguns were located on the floor of an automobile. Furthermore, a handgun found behind the body of the defendant, on the automobile seat, is concealed.⁶⁸ As long as evidence of the accessibility of the weapon is present, there is no requirement that the exact location of the weapon be established. In *State v. Bordeaux*,⁶⁹ a police officer testified that he observed the defendant's right hand release its grip on the steering wheel and disappear from sight. A moment later, the police officer again perceived the right hand of the defendant. At this time however, the hand grasped a handgun, and not the steering wheel. The Missouri Supreme Court affirmed the conviction reasoning "that the weapon was either upon the defendant's person or in the automobile within easy reach."⁷⁰ In these automobile cases, it may be difficult for the courts to establish where the line should be drawn.⁷¹ For example, is a handgun concealed in a glove compartment "about" the person? In Kentucky, the answer is no.⁷² Yet, there would seem to be only a slight time and effort differentiation between securing a handgun concealed "upon" the person, or in the glove compartment.⁷³ Although there appears to be no Missouri case on this point, it is suggested that in view of the "easy reach" language of *State v. Bordeaux*,⁷⁴ and

65. *People v. Liss*, 406 Ill. 419, 94 N.E.2d 320 (1950); 1951 U. ILL. L.F. 480.

66. E.g., UTAH CODE ANN. § 76-23-8 (Supp. 1967); VA. CODE ANN. § 18 1-272 (Supp. 1968).

67. 308 Mo. 683, 273 S.W. 1062 (1925).

68. *State v. Mulconry*, 270 S.W. 375 (Mo. 1925).

69. 337 S.W.2d 47 (Mo. 1960).

70. *State v. Bordeaux*, 337 S.W.2d 47, 48 (Mo. 1960).

71. Cf. *State v. Holbert*, 416 S.W.2d 129 (Mo. 1967); *State v. Simon*, 57 S.W.2d 1062 (Mo. 1933); *State v. Renard*, 273 S.W. 1058 (Mo. 1925).

72. *Williams v. Commonwealth*, 261 S.W.2d 807 (Ky. 1953). The author of Comment, 43 Ky. L.J. 523, 531 (1955), suggested: "that the legislature has taken away the privilege of carrying a concealed weapon and the court has given it back, at least when a person is driving a car."

73. In any event, the accused must have the weapon within "easy reach and convenient control." *State v. Scanlan*, 308 Mo. 683, 273 S.W. 1062 (1925). Thus, if the weapon were located in the glove compartment, it is doubtful that a person in the back seat of the automobile could be convicted for carrying a concealed weapon.

74. 337 S.W.2d 47 (Mo. 1960). Although the "easy reach" language of the *Bordeaux* case suggests that a weapon in the glove compartment would be con-

other available cases, that a handgun in the glove compartment would be concealed "about" the person.

C. Exemptions

Although a complete prohibition against the carrying of concealed weapons would be constitutionally permissible,⁷⁵ such a policy would not be practical. In our society, there are groups that of necessity must be able to carry concealed weapons. Under most concealed weapons statutes, an exemption is enumerated for law enforcement officers, military personnel,⁷⁶ and sometimes for other occupations.⁷⁷ Some statutes exempt persons who only carry concealed weapons while upon their premises or place of business.⁷⁸ A few states permit a person to carry a concealed weapon in self-defense or in the defense of his property.⁷⁹ However, in these circumstances, the weapon must be carried for good cause, and in good faith.⁸⁰ Other jurisdictions create, in effect, a general exemption by providing that people may obtain a license to carry a concealed weapon.⁸¹

Under most concealed weapon statutes, the exemption provided for law enforcement personnel may be the most important exemption. The Missouri statute states in part:

[n]othing contained in this section shall apply to legally qualified sheriffs, police officers, and other persons whose bona fide duty is to execute process, civil or criminal, make arrests, or aid in conserving the public peace. . . .⁸²

The literal language of this section of the statute does not impose any limitations upon the scope of the exemption. Nevertheless, a series of cases have considered the question of what limitations, if any, should be placed upon the carrying of concealed weapons by law enforcement personnel. In an early case, *State v.*

cealed "about" the person, there is doubt whether such evidence would be admissible in view of the constitutional standards regarding an unreasonable search and seizure.

75. See text at notes 4-9 *supra*.

76. S.D. CODE § 21.0106 (1939).

77. KY. REV. STAT. § 435.230 (Supp. 1962); MD. ANN. CODE art. 27, § 36 (Supp. 1962).

78. ALA. CODE tit. 14, § 163 (1940); N.M. STAT. ANN. § 40A-7-2 (1953). The Missouri statute does not provide an exemption related to the place in which the weapon is carried. *State v. Venable*, 117 Mo. App. 501, 93 S.W. 356 (K. C. Ct. App. 1906), concealed weapon carried on own farm.

79. ALA. CODE tit. 14, § 163 (1940); FLA. STAT. ANN. § 790.25 (Supp. 1968).

80. Annot., 73 A.L.R. 839 (1931). In Missouri, a person could, at one time, carry a concealed weapon in self-defense or in the defense of his property. In 1909, this section of the concealed weapons statute was expressly repealed. *State v. Keet*, 269 Mo. 206, 190 S.W. 573 (1916). Since this time, the courts have rejected any defense based upon the defense of person or property. *State v. Gibson*, 322 Mo. 369, 15 S.W.2d 760 (En Banc 1929); *State v. Hogan*, 273 S.W. 1060 (Mo. 1925); *State v. Gentry*, 242 S.W. 398 (Mo. 1922).

81. E.g., ALA. CODE tit. 14, § 177 (1940); ORE. REV. STAT. § 166.47 (1965); S.D. CODE § 21.0109 (1939).

82. § 564.610, RSMo 1967 Supp.

Wisdom,⁸³ the Missouri Supreme Court concluded that this broad language did not give a police officer an unrestricted privilege to carry a concealed weapon. The court defined the scope of this exemption in the following language: "The right, when it exists, of an officer to carry a weapon, arises out of considerations relative to the discharge of his official duties."⁸⁴

The approach of *Wisdom* has not been followed in subsequent Missouri opinions. In *State v. Mosby*,⁸⁵ the court pointed out that "the statute could not apply to him [constable] whether he was at the time engaged in the proper performance of his duties or not."⁸⁶ The reason, said the court, was that "the exemption has no such qualification."⁸⁷ Since law enforcement officers may be called upon at any time to preserve the peace, this construction of the statute is sound.⁸⁸ However, one important limitation has been placed on the rule set forth in *Mosby*. A law enforcement officer, acting in a private capacity, outside of the geographical area of his jurisdiction, has no immunity from the prohibition of the concealed weapons statute.⁸⁹ The court, in *State v. Owen*, said that to hold otherwise

would clothe . . . [law enforcement officers] with license to go into any other county of the state upon purely personal matters and there to commit with impunity acts which if there committed by an ordinary citizen of such county would plainly violate this statute.⁹⁰

Another significant aspect of the exemption for law enforcement officers involves the judicial interpretation of the clause "and other person whose bona fide duty is to execute process, civil or criminal, make arrests, or aid in conserving the public peace. . . ."⁹¹ Quite clearly, parole officers,⁹² justices of the peace,⁹³ constables,⁹⁴ the director of the department of corrections,⁹⁵ and the warden of the penitentiary⁹⁶ are included within the exempted category; however, state deputy beverage inspectors,⁹⁷ aldermen,⁹⁸ members of a posse,⁹⁹ and post-

83. 84 Mo. 177 (1884).

84. *State v. Wisdom*, 84 Mo. 177, 190 (1884).

85. 81 Mo. App. 207 (K.C. Ct. App. 1899). In its brief, the State cited *State v. Wisdom*, 84 Mo. 177 (1884), for the proposition that the privilege only applied to an officer acting in an official capacity. Apparently, this case did not control.

86. *State v. Mosby*, 81 Mo. App. 207, 209 (K.C. Ct. App. 1899). Subsequent Missouri cases are in accord with this decision. See *State v. Owen*, 258 S.W.2d 662 (Mo. 1953); *State v. Whitehead*, 295 S.W. 746 (Mo. 1927).

87. *State v. Mosby*, 81 Mo. App. 207, 209 (K.C. Ct. App. 1899).

88. *State v. Whitehead*, 295 S.W. 746 (Mo. 1927).

89. *State v. Owen*, 258 S.W.2d 662 (Mo. 1953).

90. *Id.* at 665.

91. § 564.610, RSMo 1967 Supp.

92. Opinion of Attorney General of Missouri, June 28, 1966 (No. 288).

93. *State v. Davis*, 284 Mo. 695, 225 S.W. 707 (1920).

94. *State v. Mosby*, 81 Mo. App. 207 (K.C. Ct. App. 1899).

95. § 216.240, RSMo 1959.

96. *Ibid.*

97. *State v. Hogan*, 273 S.W. 1060 (Mo. 1925).

98. Opinion of Attorney General of Missouri, October 19, 1967 (No. 404).

99. *State v. Julian*, 25 Mo. App. 133 (St. L. Ct. App. 1887).

masters¹⁰⁰ are not. An examination of the cases indicates that the courts have not permitted this exemption to erode the effectiveness of the concealed weapons statute. An example of the attitude of the courts is *State v. Julian*¹⁰¹ where a constable summoned a posse to pursue a fugitive described as a "bad, desperate, and dangerous man." In pursuit of this felon, the defendant, a posse member, attended a dance. Perhaps in order not to inhibit the festivity, the defendant carried his handgun in his hip pocket. The court rejected the defense that the handgun was only carried in order to perform a public duty. The court seemed to fear that to hold otherwise would emasculate the statute. It noted that:

Felon's are at large in all times and seasons, and no day passes upon which any person might not volunteer as a felon hunter, and wear concealed weapons with impunity.¹⁰²

Analogous reasoning supports the rule that the role as a law enforcement officer must be bona fide to enable a person to carry a concealed weapon.¹⁰³

It should be noted briefly that "persons traveling in a continuous journey peaceably through this state"¹⁰⁴ would appear to be able to carry concealed weapons. One of the more serious problems in the firearm control area is the burden upon interstate travelers resulting from the extreme diversity of state laws.¹⁰⁵ This provision should, perhaps, not be read too literally since the original purpose of such a provision in gun control laws was to give relief to a traveler passing through a state imposing strict licensing requirements upon the state's own residents. It is questionable whether the legislature intended to allow a tourist as opposed to a resident the right to carry a concealed weapon. Only two Missouri cases have involved this apparent exemption from the concealed weapons statute.¹⁰⁶ One case indicated that a person who cursed and threatened to shoot another person was not traveling peaceably through Missouri.¹⁰⁷ In the other case, *State v. Miles*,¹⁰⁸ the court affirmed the conviction of a person who had assaulted

100. *State v. Jackson*, 283 Mo. 18, 222 S.W. 746 (1920).

101. 25 Mo. App. 133 (St. L. Ct. App. 1887).

102. *State v. Julian*, 25 Mo. App. 133, 136 (St. L. Ct. App. 1887).

103. *State v. Jamerson*, 252 S.W. 682 (Mo. 1923). This case reversed a first degree murder conviction. In the trial court, there had been evidence presented that indicated that the victim had had authority to carry a concealed weapon by virtue of an appointment as a police officer. The Supreme Court of Missouri held that this was prejudicial, because it made it seem that the deceased was a law-abiding citizen. The court felt that since the victim had been a practicing physician that: "his alleged appointment as police officer was clearly a subterfuge to clothe him with apparent but unauthorized authority to carry said concealed weapon." *State v. Jamerson*, *supra*, at 686. Cf. *State v. Owen*, 258 S.W.2d 662 (Mo. 1953), prosecuting attorney appointed deputy sheriff.

104. § 564.610, RSMo 1967 Supp.; IND. ANN. STAT. § 10-4706 (1956); MISS. CODE ANN. § 2081 (1956), traveling and not a tramp.

105. Note, 18 VAND. L. REV. 1362, 1383 (1965).

106. *State v. Cousins*, 131 Mo. App. 617, 110 S.W. 607 (St. L. Ct. App. 1908); *State v. Miles*, 124 Mo. App. 283, 101 S.W. 671 (St. L. Ct. App. 1907).

107. *State v. Cousins*, *supra* note 106.

108. 124 Mo. App. 283, 101 S.W. 671 (St. L. Ct. App. 1907).

a train conductor in Arkansas, but who remained peaceable in Missouri. However, the evidence seemed to indicate some potential danger to the train conductor while he was in Missouri.

In most states, the only intent that must be shown is an intent to conceal the weapon.¹⁰⁹ The general rule in Missouri, as in most other jurisdictions, can be stated as follows: "the motive or purpose for which he carried it [weapon], either for pleasure, protection, or for any other reason, good or otherwise, is not germane."¹¹⁰ The requisite intent may be presumed from a demonstrated concealment.¹¹¹ Interestingly, a series of cases in Missouri have, in effect, created a judicial exception to the prohibition of the concealed weapons statute by requiring that the accused intend to use the concealed instrument as a weapon. Thus, in *State v. Larkin*,¹¹² the St. Louis Court of Appeals stated:

If . . . the defendant carried the pistol as a mere article of merchandise, without any intention, fairly inferable, that he intended to use it as a weapon prior to his arrest, he was entitled to a discharge.¹¹³

The subsequent cases of *State v. Roberts*¹¹⁴ and *State v. Murray*¹¹⁵ approved this language. In view of the fact situations in both *Larkin* and *Roberts*, the result reached in each case is understandable;¹¹⁶ yet, the intent requirement is inconsistent with the overwhelming majority of Missouri decisions. Therefore, in *State v. Hovis*,¹¹⁷ the rule of the above cases was confined to cases involving identical facts. The court emphasized that it was "not disposed to fritter this away by searching after the intent with which the party carried the weapon."¹¹⁸ Nevertheless, the above cases, especially *Larkin* and *Roberts*, suggest that there may be a convincing argument that the scope of the enumerated exemptions should be broadened.

109. Annot., 43 A.L.R.2d 492 (1955). Some states require a further intent. TENN. CODE ANN. § 39-4901 (1955), with intent to go armed; VT. STAT. ANN. tit. 13, § 4003 (1959), with intent to injure.

110. *State v. Whitman*, 248 S.W. 937, 939 (Mo. 1923). Numerous Missouri cases have reiterated this rule. *State v. Holbert*, 416 S.W.2d 129 (Mo. 1967); *State v. Crone*, 399 S.W.2d 19 (Mo. 1966); *State v. Baumann*, 311 Mo. 443, 278 S.W. 974 (1925); *State v. Mulconry*, 270 S.W. 375 (Mo. 1925); *State v. Jackson*, 283 Mo. 18, 222 S.W. 746 (1920); *State v. Carter*, 259 Mo. 349, 168 S.W. 679 (1914).

111. *State v. Holbert*, 416 S.W.2d 129 (Mo. 1967); *State v. Conley*, 280 Mo. 21, 217 S.W. 29 (1919).

112. 24 Mo. App. 410 (St. L. Ct. App. 1887).

113. *State v. Larkin*, 24 Mo. App. 410, 412 (St. L. Ct. App. 1887).

114. 39 Mo. App. 47 (St. L. Ct. App. 1890).

115. 39 Mo. App. 127 (St. L. Ct. App. 1890).

116. In *State v. Larkin*, 24 Mo. App. 410 (St. L. Ct. App. 1887), the handgun was being carried by the defendant in his overcoat pocket from the store at which the defendant purchased it. The defendant, in *State v. Roberts*, 39 Mo. App. 47 (St. L. Ct. App. 1890), was a messenger who was delivering the handgun to its owner.

117. 135 Mo. App. 544, 116 S.W. 6 (St. L. Ct. App. 1909).

118. *State v. Hovis*, 135 Mo. App. 544, 547, 116 S.W. 6, 7 (St. L. Ct. App. 1909).

V. PERMIT TO PURCHASE

A number of different regulatory techniques can be utilized to control firearms. Generally, laws can be enacted to regulate the acquisition, possession, manner of use, or transfer of firearms. In Missouri, the statutory scheme has concentrated upon the acquisition of the weapon, and the manner in which the weapon is used. The acquisition of a handgun in Missouri is restricted by the requirement that the prospective buyer first secure a permit to purchase.¹¹⁹ Although somewhat rare, there are similar permit or license requirements in several states.¹²⁰ A traditional reason for such a purchase permit requirement was to supplement the Federal Firearms Act.¹²¹ Recently, however, it has been suggested that a more comprehensive licensing system be established to prevent the ownership and possession of firearms by unfit persons.¹²² In view of this, it would seem desirable to examine the permit requirement in Missouri.

No person in Missouri shall sell, loan, or otherwise transfer a concealable firearm unless the transferee shall first obtain a permit. A transaction between a manufacturer or wholesaler and a dealer for the purposes of commerce is not within the scope of this requirement. The permit is issued by the sheriff in the county of the applicant's residence.¹²³ The sheriff does not issue the permit unless satisfied of the lawful age and good moral character of the applicant. The grant of the permit must not endanger the public safety. The permit shall recite the name and address of both the person receiving the permit and the person from whom the weapon was acquired, the type of transaction, and a description of the handgun. The person receiving the permit must sign it in the presence of the sheriff. The permit must not be secured by a false representation. The permit, once issued, cannot be used by another person. The fee is fifty cents, and this revenue must be remitted by the sheriff to the county treasurer. The permit expires thirty days from the date of issuance. If the permit is used, the person receiving the permit must note upon it the manner of disposition of the handgun. Also, the date of the transaction must be noted. Within thirty days after the expiration date, the used permit must be returned to the sheriff. The sheriff has the responsibility

119. § 564.630, RSMo 1967 Supp.

120. Hawaii, Illinois, Massachusetts, Michigan, New Jersey, New York, North Carolina.

121. Note, 18 VAND. L. REV. 1362, 1387 (1965); Warner, *Uniform Pistol Act*, 29 J. CRIM. L.C. & P.S. 529, 550 (1938). Under the Federal Firearms Act it was unlawful to ship firearms into a state which required a license until the license was shown to the shipper.

122. For suggested uniform state legislation, see the suggested act developed by the Council Of State Governments reprinted in *Hearings on Federal Firearms Legislation Before the Subcomm. to Investigate Juvenile Delinquency of the Senate Comm. in the Judiciary*, 90th Cong., 2nd Sess., at 787-796 (1968). Five important firearms manufacturers have suggested the adoption of a licensing act. Their suggested act is reprinted in *Judiciary Hearings*, *id.* at 903-909.

123. In spite of the Missouri requirements, until 1960 relatively few state permits were required in practice since much of the sale and purchase of firearms was carried on by federally licensed "dealers" who could obtain a license for one dollar. However, the cost of such licenses was increased in 1960 to ten dollars. INT. REV. CODE OF 1954 § 5801.

of maintaining a record of all applications for permits. The sheriff must also preserve all used permits.¹²⁴

Purchase requirements do not solve the problem of handguns that are already in the hands of unfit persons.¹²⁵ Such a requirement, however, may prevent a crime of passion by, in effect, imposing a "cooling off" period.¹²⁶ Moreover, it may be helpful in preventing undesirable individuals from legally obtaining firearms, although it would have no effect on a person who obtained his weapon by thievery.¹²⁷ In order to achieve even this limited effect, it must be required that the applicant for the permit meet certain specified standards in order to obtain the permit. In Missouri, however, the only explicit condition that must be met is the minimum age requirement.¹²⁸ Aside from this, the issuing authority exercises broad discretion under a "good moral character," "not endanger the public safety" standard.¹²⁹ Perhaps the justification for this lack of enumerated requirements rests upon a belief that the applicant will be known by the sheriff.¹³⁰ If so, this viewpoint may be difficult to maintain in the light of a rapid urban growth.

Shooting groups object to any permit or license requirement. One fear is that the issuing authority, most often a law enforcement agency, will arbitrarily deny permits in order to reduce the number of privately owned firearms, and thus reduce the danger to themselves.¹³¹ Another apprehension is that the issuing authority will issue permits very conservatively in order to prevent a person who might misuse a weapon from securing it with approval of the issuing authority.¹³² These arguments of the shooting groups have merit. The desirable solution would be to make it mandatory that a permit be issued if the applicant satisfied certain enumerated requirements.¹³³ On the other hand, it is suggested that a permit

124. § 564.630, RSMo 1967 Supp.

125. In reviewing the Philadelphia firearms ordinance, the author, Note, 114 U. PA. L. REV. 550, 555 (1966) suggests: "Drawing the line at acquisition suggests the untenable premise that individuals who possessed firearms prior to the ordinances' passage are less dangerous than those who subsequently acquired them."

126. E.g., ALA. CODE tit. 14, § 179 (1940), forty-eight hours; ORE. REV. STAT. § 166.47 (1965); S.D. CODE § 21.0109 (1939).

127. Nor would it have any effect on an illegally manufactured firearm such as the so-called "zip gun." For instance, a cap pistol may be converted into a dangerous weapon by inserting a piece of tubing for a barrel, and increasing the hammer blow by the use of rubber bands. Smith, *Unusual Handguns*, 6 J. FOR. SCI. 501, 503 (1961).

128. § 564.630, RSMo 1967 Supp.

129. *Ibid.*

130. Opinion of the Attorney General of Missouri, May 26, 1966 (No. 260). The question presented was whether a non-resident could secure a purchase permit in Missouri. The question was answered in the negative. Since the non-resident would not be known to the sheriff, there was no way of satisfying the sheriff of the character and reputation of the non-resident.

131. Note, 114 U. PA. L. REV. 550, 557 (1966).

132. National Rifle Association, *The Truth About Guns* 5.

133. Since 1911, the possession and use of handguns in New York State have been restricted by the Sullivan Law. Yet, in 1964, a study group discovered some confusion in respect to the requirement that an applicant for a handgun license be "of good moral character." The study group concluded that:

should be denied if the applicant is an unfit person such as a minor, criminal, mental incompetent, or narcotic addict.

In the past, the permit requirement in Missouri could be easily avoided. To evade the statute, a person had only to travel to a nearby state more hospitable to the easy handgun purchase.¹³⁴ The Gun Control Act of 1968 apparently seeks to eliminate this problem.¹³⁵ Under this Act, it is unlawful for a licensee to sell or deliver any handgun to a person who the licensee has reasonable cause to believe does not reside in the state in which the licensee's place of business is located.¹³⁶ This prohibition does not apply to the loan or rental of a firearm to a person for temporary use for a sporting purpose.¹³⁷ It is also important to note that a licensee cannot sell or deliver a rifle or ammunition to a minor who is less than eighteen; nor can a licensee sell or deliver a handgun to a person under twenty-one years of age.¹³⁸

VI. FELONY WHILE ARMED—INCREASED PENALTY

A consensus among shooting groups and law enforcement officers favors the adoption of increased penalties for persons committing felonies while armed.¹³⁹ The shooting groups believe that no firearm ever committed a crime by itself.¹⁴⁰ Also, it is felt that if the criminal cannot secure a firearm, he will use some other instrument or technique to accomplish his aim.¹⁴¹ This argument is often buttressed by noting that firearms are not generally considered to be a cause of crime.¹⁴² It is argued that while more restrictive firearms legislation might make it more difficult for a criminal to secure a firearm, nevertheless, the criminal will obtain a firearm by thievery.¹⁴³ But it is maintained that if a severe sanction is imposed for the

The result has been a serious lack of uniformity from county to county and in some cases among different authorities within the same county. A consequence of this confusion has been that approval or disapproval of an application will often turn on the subjective attitude and philosophy of the appropriate officials under whose jurisdiction an applicant's residence happened to place him.

Report By The New York State Temporary Commission Of Investigation Concerning Pistol Licensing Laws And Procedures In New York State at 24 (1964).

134. "Effective law enforcement in Michigan . . . has been seriously hampered by the unlawful possession and illegal use of firearms brought into the State of Michigan by residents who are able to purchase these firearms with scarcely any restrictions in the State of Ohio . . ." *Judiciary Hearings*, 90th Cong. 368.

135. Pub. L. No. 90-618 (Oct. 22, 1968).

136. *Ibid.*

137. *Ibid.*

138. *Ibid.*

139. *See* Uniform Firearms Act, § 2.

140. The National Rifle Association, *The Truth About Guns* 1.

141. It has been noted however that: "Knives or bludgeons will not kill men at fifty yards." Jacobs, *Firearms Control*, 42 ST. JOHNS L. REV. 353, 354 (1968).

142. The National Rifle Association, *The Truth About Guns* 3.

143. Generally, the supporters of stricter firearms controls agree that, in the absence of a complete prohibition of firearms, criminals will secure pistols. Nevertheless, it is maintained that: "The more difficulties placed in the path of a

unlawful use of the firearm, then the criminal will be deterred from unlawful conduct. Although the effectiveness of these statutes has been questioned,¹⁴⁴ such laws have gained some acceptance.¹⁴⁵

For some time, Missouri has had an increased penalty statute.¹⁴⁶ It provides:

If any person shall be convicted of committing a felony, or attempting to commit a felony, while armed with a pistol or any deadly weapon the punishment elsewhere described for said offense . . . of which he is convicted shall be increased by the trial judge by imprisonment in the state penitentiary for two years. Upon a second conviction for a felony so committed such period of imprisonment shall be increased by ten years¹⁴⁷

For a third conviction, an additional fifteen year term is imposed; a fourth conviction will result in a life sentence.¹⁴⁸

The Gun Control Act of 1968 promulgates a mandatory sentence approach.¹⁴⁹ Under this Act, whoever uses a firearm to commit a felony, or who carries a firearm during the commission of any felony which may be prosecuted in a United States Court, shall be imprisoned for not less than one, nor more than ten years.¹⁵⁰ In the event of a subsequent conviction, a person shall receive a term of imprisonment for not less than five, nor more than twenty-five years. The court shall not grant a probationary or suspended sentence.¹⁵¹

VII. OTHER MISSOURI FIREARMS LAWS

To a limited extent, the carrying of deadly weapons in an open fashion is prohibited.¹⁵² An intoxicated person is forbidden to carry a deadly weapon.¹⁵³ A person, sober or intoxicated, cannot exhibit such a weapon in a rude, angry, or threatening manner.¹⁵⁴ Regardless of the condition of the person, or the manner

gangster, the greater the chance that he will make a false step and be caught." Warner, *Uniform Pistol Act*, 29 J. CRIM. L.C. & P.S. 529, 551 (1938).

144. Comment, 114 U. PA. L. REV. 550, 554 (1966); Note, 31 U. CHI. L. REV. 780, 790 (1964).

145. IND. ANN. STAT. § 10-4709 (1966); § 556.140, RSMo 1959.

146. § 556.140, RSMo 1959.

147. *Ibid.*

148. *Ibid.*

149. Pub. L. No. 90-618 (Oct. 22, 1968).

150. *Ibid.*

151. *Ibid.*

152. § 564.610, RSMo 1967 Supp. It should be noted that this limited regulation of the carrying of deadly weapons in an open manner is contained within the concealed weapons statute in Missouri. However, each of the offenses is separate and should be distinguished from the others. Nevertheless, the same exemptions and the same case law are applicable to all of the offenses, including that of carrying a concealed deadly weapon. See *State v. Seal*, 47 Mo. App. 603 (St. L. Ct. App. 1892).

153. § 564.610, RSMo 1967 Supp.; *State v. Riles*, 274 Mo. 618, 204 S.W. 1 (1918).

154. § 564.610, RSMo 1967 Supp.; *State v. Tompkins*, 312 S.W.2d 91 (Mo. 1958); *State v. Ready*, 251 S.W.2d 680 (Mo. 1952); *State v. Gibson*, 300 S.W. 1106 (Mo. 1927); *State v. Gentry*, 242 S.W. 398 (Mo. 1922); *State v. Duvenick*, 237 Mo. 185, 140 S.W. 897 (1911); *State v. Hefferman*, 124 Mo. App. 329, 101 S.W. 618 (St. L. Ct. App. 1907); *State v. Mosby*, 81 Mo. App. 207 (K.C. Ct. App. 1899).

in which the weapon is displayed, a person cannot take a deadly weapon into certain places.¹⁵⁵ Such locations include a schoolroom, an election precinct on election day, and generally any place where people are assembled for lawful purposes.¹⁵⁶ In addition, it is forbidden to approach within one hundred yards of a polling place on election day with a deadly weapon.¹⁵⁷

In the interest of public safety, the discharge of any firearm is prohibited within two hundred yards of a courthouse, church, school, or college.¹⁵⁸ Violation of this regulation is a misdemeanor.¹⁵⁹ However, this prohibition has no application to sheriffs or other law enforcement officers while in the discharge of their official duty.¹⁶⁰ Moreover, any person who willfully and maliciously shoots into a dwelling house, garage, barn, stable, aircraft, motor vehicle, railroad train, or streetcar has committed a crime.¹⁶¹ It is a misdemeanor to shoot at a mark, or at random, along or across a public highway.¹⁶² It should be noted that no member of the militia shall fire upon, or give an order to fire upon, a mob or assembly with blank cartridges.¹⁶³ The penalty for such an act is a dishonorable discharge.¹⁶⁴

Missouri forbids a firearms dealer to directly or indirectly expose to public view a handgun or any other deadly weapon.¹⁶⁵ If a handgun can be observed from outside of the premises of the dealer, it is exposed to the public view.¹⁶⁶ A dealer or wholesaler shall not sell an unstamped handgun¹⁶⁷—a handgun that does not bear the name or trademark of the manufacturer, the model or a serial number.¹⁶⁸ Furthermore, no person shall purchase, or in any manner obtain, either in Missouri or otherwise, an unstamped handgun.¹⁶⁹ However, these provisions do not prohibit a Missouri firearms manufacturer from shipping an unstamped handgun to another state.¹⁷⁰

VIII. FIREARMS LEGISLATION AND THE QUESTION OF POLICY

If no legitimate uses for firearms existed, then total prohibition of the private possession of firearms could be justified. Such an absolute prohibition would no doubt reduce the number of shootings, both accidental and purposeful, that

155. § 564.610, RSMo 1967 Supp.

156. § 564.610, RSMo 1967 Supp.; *State v. Pollack*, 49 Mo. App. 445 (K.C. Ct. App. 1892), courtroom; *State v. Hedrick*, 20 Mo. App. 629 (St. L. Ct. App. 1886), social gathering; *State v. Wilforth*, 74 Mo. 528, 41 Am. Rep. 330 (1881), assembly for literary purposes.

157. § 129.680, RSMo 1959.

158. § 562.080, RSMo 1959.

159. *Ibid.*

160. *Ibid.*

161. § 562.070, RSMo 1959.

162. § 564.520, RSMo 1959.

163. § 41.590, RSMo 1959.

164. *Ibid.*

165. § 562.060, RSMo 1959.

166. *Ibid.*

167. § 564.620, RSMo 1967 Supp.

168. *Ibid.*

169. § 564.640, RSMo 1959.

170. § 564.650, RSMo 1959.

frequently occur. However, there are numerous lawful and desirable uses for firearms. In most states, hunting is a common pastime.¹⁷¹ Hunters act as instruments of wildlife management and control. Usually the fees derived from the sale of hunting licenses support public recreation and conservation projects.¹⁷² Competitive target shooting is a popular hobby. Many persons find the collecting of firearms enjoyable, even though these weapons are never fired.¹⁷³ Furthermore, civilian firearms training may better prepare an individual to serve his country as a soldier.¹⁷⁴ Moreover, the desire for an instrument of self-protection seems justifiable.¹⁷⁵

It has been estimated that there are one hundred million privately owned firearms in the United States.¹⁷⁶ In the absence of a total prohibition upon the private ownership and use of such weapons, it is not possible to completely prevent the criminal uses of firearms. If a law-abiding citizen can obtain firearms, then the criminal can secure the same weapons by thievery.

In recent years, there has developed a nationwide debate concerning firearms regulation. Primarily, the subject matter of this argument has focused upon the desirability and need for more uniform, and more restrictive firearm controls. The enactment of the Gun Control Act of 1968 has alleviated the problem caused by the lack of uniformity in the area of state firearm laws.¹⁷⁷ In respect to the need and desirability for more stringent firearms controls, an extreme polarization of viewpoints has developed. Some people see few, if any, legitimate uses for firearms except in law enforcement. Thus, this group favors the regulation of all firearms, a licensing of the gun owner after a strict investigation including fingerprinting, and a substantial fee for both registration and licensing.¹⁷⁸ On the other hand, shooting groups, spearheaded by the National Rifle Association, profess to believe that no firearm legislation is really necessary.¹⁷⁹

The solution to the firearm control problem probably lies somewhere between these two extremes. In fact, the National Rifle Association, at least in its literature, supports this observation.¹⁸⁰ While not advocating, proposing, or suggesting

171. *Judiciary Hearings*, 90th Cong. 1108.

172. *Ibid.*

173. *Judiciary Hearings*, 90th Cong. 627-639.

174. *Judiciary Hearings*, 90th Cong. 484-487. *But see Judiciary Hearings*, 90th Cong. 744-745.

175. "The finest police force in the world cannot protect everyone, everywhere." Note, 17 W. RES. L. REV. 569, 582 (1965) The AMERICAN RIFLEMEN magazine published monthly includes a column titled "The Armed Citizen." This column recounts instances in which the use or possession of a privately owned firearm has prevented personal injury or property damage.

176. Staff Of Senate Comm. On The Judiciary, 90th Cong. 1st Sess., *Report On Omnibus Crime Control And Safe Streets Act Of 1967*, 253 (Comm. Print 1968).

177. See text supported by notes 135-138 *supra*.

178. For example, see Jacobs, *Firearms Control*, 42 ST. JOHN L. REV. 353 (1968).

179. National Rifle Association, *The Gun Law Problem* 12.

180. *Id.* at 13-14. The author does not mean to imply either that the National Rifle Association approaches firearms legislation with a positive attitude, or that the organization maintains an objective viewpoint towards proposed legislation. For an article discussing this point, see *New Yorker*, April 20, 1968, at 56.

any firearms legislation, the National Rifle Association sets forth certain acceptable limits if such legislation is enacted, to wit: prohibition upon the possession of firearms by persons convicted of crimes of violence, fugitives from justice, mental incompetents, drug addicts, and habitual drunkards is acceptable. Furthermore, the type of statute that imposes severe additional penalties for the use of a firearm in the commission of a crime is also acceptable. The use of firearms in public by juveniles may be made subject to adequate supervision and the sale of firearms to juveniles may be made subject to parental consent. Reasonable legislation regulating the carrying of concealed handguns would not be disapproved; this may include a requirement of a "license to carry." However, the issuance of the license would have to be mandatory when the applicant fulfilled the required conditions. Moreover, the firearm itself could not be licensed.¹⁸¹

The National Rifle Association has approved the Uniform Firearms Act.¹⁸² This Act was originally proposed by the National Conference of Commissioners on Uniform State Laws in 1926. After meeting some criticism, the Uniform Firearms Act was restudied, redrafted, and issued for the second time in 1930.¹⁸³ Ten states have adopted the Act without substantial changes,¹⁸⁴ and other states have enacted various of its sections.¹⁸⁵ Recently, there has been some renewed support for the Uniform Firearms Act.¹⁸⁶ In view of this, the main provisions of the Act warrant further examination.

Initially, it should be noted that the title, Uniform Firearms Act, is a misnomer. The Act only pertains to handguns. It provides that no person shall carry a concealed weapon, on or about his person, in a vehicle, without a license. However, no license is required so long as the handgun is not carried beyond the residence or place of business of the possessor of the handgun. Licenses are issued by the chief of police or local court of record. Persons convicted of a crime of violence, minors under eighteen, drunkards, dope addicts, and other such incompetents cannot purchase handguns. Handguns are sold only through dealers

181. National Rifle Association, *The Gun Law Problem* 13-14; Note, 18 VAND. L. REV. 1362 (1965).

182. "This Act was a modern, forward-looking, original statute. . . ." National Rifle Association, *The Gun Law Problem* 7.

183. See generally Note, 18 VA. L. REV. 904 (1932); Imlay, *Uniform Firearms Act Reaffirmed*, 16 A.B.A.J. 799 (1930).

184. Alabama, Arkansas, Indiana, Maryland, Montana, Pennsylvania, South Dakota, Virginia, Washington, Wisconsin.

185. Note, 17 W. RES. L. REV. 569, 585 (1965).

186. Note, 17 W. RES. L. REV. 569 (1965). See Note, 98 U. PA. L. REV. 905 (1950). In 1938, the Interstate Commission on Crime drafted more severe model legislation than the Uniform Firearms Act. It was felt to be undesirable to have two competing acts covering essentially the same field. Thus, in 1940, the Uniform Pistol Act, which was an attempt to reconcile these competing acts, was approved. *Proceedings Of The National Conference Of Commissioners On Uniform State Laws* 334 (1940). The shooting groups adamantly opposed the Uniform Pistol Act. The main objections centered on the requirement of a license for target shooters, and that the barrel of a target pistol be at least six inches in length. National Rifle Association, *The Gun Law Problem* 8. The Uniform Pistol Act did not become the law in any state. In 1949, the Act was withdrawn. Note, 18 VAND. L. REV. 1362, 1386 (1965.)

licensed by the states. The prospective purchaser must deliver to the dealer a statement that identifies him. A copy of this application is sent to the local police. An objection to the transaction must be made within the forty-eight hour waiting period. Furthermore, the dealer must know the purchaser or have clear proof of his identity. The lending, pledging, or pawning of handguns is prohibited. However, the Uniform Firearms Act does not apply to antique firearms that are not suitable for use.¹⁸⁷

The Uniform Firearms Act uses a somewhat Victorian approach in the light of some recent state legislation, notably in New Jersey and Illinois. Both of these states now require an identification card to acquire a rifle or shotgun.¹⁸⁸ In Illinois, a person needs an identification card to even possess a rifle or shotgun,¹⁸⁹ while in New Jersey such license is only required if the rifle or shotgun is carried on his person or in his car.¹⁹⁰ In Illinois, the same identification card must be utilized to acquire or possess a handgun.¹⁹¹ New Jersey, however, retained its permit system with regard to the purchase of handguns.¹⁹² Illinois requires an identification card to purchase ammunition.¹⁹³ In both states, the applicant for the identification card or purchase permit must meet certain specified conditions.¹⁹⁴ As might be expected, the shooting groups have voiced criticism of this legislation.¹⁹⁵ While these laws have made the private ownership of firearms more burdensome, they may be justified if the number of shootings, both accidental and purposeful, are significantly reduced.¹⁹⁶

IX. CONCLUSION

So long as individuals can legally possess and use firearms, it is clear that firearms will be used for both lawful and unlawful purposes. Unless a complete prohibition on the possession and use of firearms is considered desirable, gun control legislation must continue to reflect a balance between the need to reduce the unlawful use of firearms while not unduly burdening those persons who seek

187. Uniform Firearms Act. For a more complete discussion of this Act see Note, 17 W. RES. L. REV. 569 (1965); *Proceedings Of The National Conference Of Commissioners On Uniform State Laws* 338-359 (1940).

188. ILL. ANN. STAT. ch. 38, §§ 83-1 to-15 (Smith-Hurd 1968); N.J. STAT. ANN. §§ 2A: 151-32 to-40 (1966).

189. ILL. ANN. STAT. ch. 38, § 83-2 (Smith-Hurd 1968).

190. N.J. STAT. ANN. § 2A: 151-41 (1966).

191. ILL. ANN. STAT. ch. 38, § 83-2 (Smith-Hurd 1968).

192. N.J. STAT. ANN. § 2A: 151-32 to -40 (1966).

193. ILL. ANN. STAT. ch. 38, § 83-2 (Smith-Hurd 1968).

194. ILL. ANN. STAT. ch. 38, § 83-4 (Smith-Hurd 1968); N.J. STAT. ANN. § 2A: 151-33 (1966).

195. Halsey, *A Special Report—Strangulation By Law in New Jersey*, AMERICAN RIFLEMAN, Dec., 1966. Reprinted *Judiciary Hearings*, 90th Cong., 471-73.

196. Statistics concerning the effectiveness of strict firearms legislation are limited, and somewhat ambiguous. Compare 3 S. TEX. L.J. 317 (1958), with *Judiciary Hearings*, 90th Cong. 727-733. There is a real need for objective studies concerning the relationship between firearms legislation and the homicide rate. For a recent discussion that marks a step in this direction, see Zimring, *Is Gun Control Likely To Reduce Violent Killings?*, 35 U. CHI. L. REV. 721 (1968).

to own and use firearms for legitimate purposes. Striking such a balance is not an easy task. In view of the recent enactment of more restrictive firearm legislation in other jurisdictions, one might well question whether the present Missouri law on gun control has struck the proper balance. At the present time, there is a real need for a broad empirical study to be made of the effects of firearm legislation. Until then, a statement as to the soundness of the Missouri scheme or an alternate scheme would be, for the most part, a matter of speculation. Therefore, a cautious approach should be taken in respect to any substantial modification of the present scheme of firearm legislation in Missouri.

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