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Two New Shall Issue States

After a burst of activity in the early and mid-1990s, there haven't been a lot of states that have changed their concealed weapon permit laws from "may issue" to "shall issue." Michigan (to my surprise) adopted a shall issue law, effectively July 1, 2001.¹ Michigan's first year report on permits issued and revoked is, as is typical for shall issue states, pretty good news. At the end of the first year, 53,000 permits had been issued statewide, with 9,072 still pending. Out of 53,000 permits, 55 permits have been revoked, and it appears that most of these were for non-firearms related offenses. There was *one* suicide by a licensee in the first six months of the program (the second six months worth of suicide data wasn't available yet).² The terrifying projections of the gun control advocates again turned out to be wrong.

Now, Colorado has passed a shall issue law. Colorado was a "may issue" state before, with sheriffs free to issue—or not issue—as seemed appropriate to them. A few sheriffs apparently issued fairly liberally. The El Paso County Sheriff's Department, if one is to believe their web site, would issue to residents of the county who had no criminal history.³

Other counties, especially urban counties, were quite a bit more restrictive. While sheriffs and police chiefs were apparently *allowed* to issue permits to any Colorado resident, most did not. I've been told that Stratton Police Department, in Kit Carson

¹ Mich. Compiled Laws § 428.5b (1991).

² Michigan State Police, "CONCEALED PISTOL LICENSURE ANNUAL REPORT 7/1/01-6/30/02," 2, available at http://www.michigan.gov/documents/CCWAnnualreportstats_45253_7.pdf. Last accessed March 22, 2003.

County, issued readily to any Colorado resident who passed the background, but that they were under great pressure from other agencies in the state to stop doing so. In addition, the backlog was so large that they had to stop accepting new applications.

So what does the new law do? It requires the sheriff to issue a permit to an applicant who is a legal resident of Colorado; is at least 21 years old; and has demonstrated competence with a handgun through several different methods (training classes, organized competition, or honorable discharge from the military).

The list of prohibited persons is quite typical of the other state concealed weapon permits laws that have been passed the last few years. You can't get a permit if you are prohibited from possessing a gun under state or federal law; have been convicted of perjury for false statements on an application form; if you "chronically and habitually use alcoholic beverages to the extent that the applicant's normal faculties are impaired"; if you a drug addict; or if you are subject to a restraining order.

There are two interesting oddities to the prohibited list, however. One is that if you are an alcoholic, but can provide a note from a licensed counselor that says that you have "been evaluated by the counselor and has been determined to be a recovering alcoholic who has refrained from using alcohol for at least three years" you are eligible for a permit.

Another slightly unusual provision—but one of which I very highly approve—says that, "if the sheriff has a reasonable belief that documented previous behavior by the applicant makes it likely the applicant will present a danger to self or others if the

³ El Paso County Sheriff's Department, "Concealed Handgun Permit: Information and Application," available at http://shr.elpasoco.com/PDF/handgun_permit_app.pdf. Last accessed March 22, 2003.

applicant receives a permit to carry a concealed handgun, the sheriff may deny the permit.”⁴

Permits are good for five years.⁵ The sheriff must process the application within 90 days.⁶ You are required to carry the permit and photo identification with you when carrying a gun, and to present both when asked by a police officer.⁷ You may not carry onto elementary, junior high, or high school grounds. However, if you are in your car, with your gun on you (as an example, dropping your kids off in the parking lot), or if the gun is locked up while you are out of your car, that’s okay.

You aren’t allowed to carry your gun into any public building with permanent metal detectors at the entrances (such as courthouses). Private property owners are also free to prohibit concealed carry on their property.⁸

One nice provision of the law specifies that you don’t need a permit to have a firearm in your possession in your own car. This sounds like it was designed to stop Denver police from arresting people who carried a gun in their car.

For those of us who don’t live in Colorado, the good news is that Colorado now recognizes permits issued by states that recognize Colorado’s permits.⁹ Since Idaho recognizes *every* state’s permits, Colorado is now state 25 on my list of places in which I am allowed to carry concealed.

⁴ Colorado Revised Statutes § 18-12-203, available at http://www.leg.state.co.us/2003a/inetcbill.nsf/fsbillcont/D6D2AD9E8974917C87256C6B005D4177?Open&file=024_01.pdf. Last accessed March 22, 2003.

⁵ CRS § 18-12-204.

⁶ CRS § 18-12-206.

⁷ CRS § 18-12-204.

⁸ CRS § 18-12-214.

⁹ CRS § 18-12-213.

I've received a bit of email about Colorado's new law—mostly from those who are upset that Colorado didn't adopt "Vermont-style" (no permit required) carry. To hear some of these complaints, it would have been better if Colorado had kept its old law!

I understand the desire that some people have for Vermont-style carry. Why should we have to pay a license fee and fill out forms for a right—the right to keep and bear arms—which our ancestors had in 1789? I agree that concealed weapon permit laws—even "shall issue" versions of such laws—are something of an infringement on our rights. I understand the grumbling, but there are some practical reasons for "shall issue" concealed weapon permit laws.

The most important practical reason is that a concealed weapon permit is a painless way for a police officer to figure out if someone he stops is prohibited from owning a gun. It's not perfect. You may not be a criminal, or a mental patient, but you still don't have a concealed weapon permit.

With Vermont-style carry, if a police officer stops and questions someone who is carrying a gun, it may take quite a while to find out if you are prohibited from owning a gun or not. The person he has stopped may have been convicted of a felony ten years ago in another state, or is prohibited from gun ownership because of mental problems. How long will it take to find that out? A concealed weapon permit provides an immediate answer: you passed a background check when you applied for your permit.

Another practical reason for the concealed weapon permit system is that there are individuals who should not carry a gun, but aren't career criminals, either. There are a lot of people out there with serious alcohol and drug problems, or short tempers that get them into minor fights, or mental illness problems. Unlike the career criminals, these

usually aren't evil people looking for victims. I think of them as "the messed-up ones." Most states don't prohibit "the messed-up ones" from *owning* a gun (even though it may not be a good idea for them to do so), but do draw the line about *carrying* a gun. These are people that are *much* more likely to misuse a gun than the rest of us.

Some of these "messed-up ones" will carry a gun, regardless of whether they can get a permit or not. Others will be afraid of arrest, jail, and fines if they get caught carrying without a permit. A concealed weapon permit law—like any other law—doesn't have to work 100% of the time to do some good. If even 20% of these "messed-up ones" that can't get a carry permit decide not to do so, this probably reduces the gun misuse rate.

Finally, there is the political reason for the permit process: it makes nervous sorts less nervous. In state after state, the only way that our side was able to get a "shall issue" permit law passed was by emphasizing that background checks would prevent issuance of permits to "the messed-up ones." In most states, this was a major political struggle, and requiring persuading politicians who were otherwise moderately pro-gun. Perhaps Vermont-style carry would work just fine outside of Vermont. I think it might—but I sure wouldn't want to have to sell that idea to the majority of politicians—at least, until we have a generation that has grown up watching "shall issue" laws work.

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