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Victory in Missouri

Three months ago, I wrote what I thought would be the wrap-up article for the year about concealed weapon permit laws: Alaska went “Vermont-carry,” and Oklahoma recognized permits from all other states. Two months ago, I expressed my amazement that I had another set of victories to report: North Carolina recognized permits from states that recognized North Carolina permits, or allowed North Carolinians to get a non-resident permit, and Delaware recognized permits from other states. But this frenzied pace of progress couldn’t continue this year. Right?

Wrong! We have achieved a most amazing victory, with a bit of Hollywood drama: a governor’s veto; a state legislator flying in from Cuba (yes, you read that right); and a victory in one of the most hard-fought of these battlegrounds: Missouri. Missouri gun owners have been struggling for non-discretionary concealed handgun permits for at least twelve years now—and we have won!

Missouri was one of the few states with no provision for concealed weapon permits. The earliest Missouri law that I have found regulating carrying concealed weapons was passed in 1875, and this was a general ban on carrying deadly weapons, openly or concealed, into “any church or place where people have assembled for religious worship.” The Missouri Supreme Court upheld this law, acknowledging that while open carry was protected by the Missouri Constitution’s right to keep and bear arms provision, concealed carry was not.¹ In 1883, perhaps in response to this decision, Missouri passed a general ban on “the carrying of concealed, dangerous, and deadly weapons upon the

¹ *State v. Wilforth*, 74 Mo. 528, 531 (1881).

person, and the exhibition of the same, and the carrying of deadly weapons when intoxicated...” The Missouri Supreme Court upheld this law in 1886,² and again in 1916.³

Unlike most other states, which replaced complete bans on concealed carry with discretionary permit systems between 1870 and 1935, Missouri seems never to have modernized its complete ban concealed carry. This may actually have worked in our favor; the absence of any permit system at all—and the reluctance of law enforcement officials to admit that this needed to be fixed—created an absurd situation. Almost everyone, even many antigun sorts, can see that there are *some* people who clearly have a legitimate need to carry a gun concealed; to claim otherwise makes even an antigunner look a bit crazy, or dishonest.

This struggle has been underway for twelve years, with the Missouri political establishment fiercely resisting any sort of change. Missourian Against Crime forced a referendum on the question in 1999. They lost, 52-48.⁴ Of course, it helped that the two U.S. Attorneys in Missouri used federal tax money to oppose the referendum—sending out letters to law enforcement officials, telling them to oppose the measure, and using a federal government 800 phone number to distribute anti-Proposition B literature.⁵ This was a clear violation of law, but then again, we all know how the Clinton Administration felt about obeying laws.

² *State v. Shelby*, 90 Mo. 302, 304, 305, 306, 2 S.W. 460 (1886).

³ *State v. Keet*, 269 Mo. 206, 213, 214, 190 S.W. 573 (1916).

⁴ Terry Ganey, “Missouri will allow hidden weapons,” *St. Louis Post-Dispatch*, September 11, 2003, available at <http://www.stltoday.com/stltoday/news/stories.nsf/News/7DCA906AD79B633786256D9F001A57B4>. Last accessed September 13, 2003.

⁵ Clayton Bellamy, “US Attorney’s office confirms use of federal funds to campaign on prop B,” *Missouri Digital News*, March 24, 1999, <http://www.mdn.org/1999/STORIES/ATTORNEY.HTM>, last accessed September 13, 2003; Michael Becker, “Law enforcement officials defend anti-Prop B mailing,”

Missouri gun owners didn't give up. They continued to lobby the Missouri legislature for a concealed weapon permit law, and finally, they managed to get a bill through both houses, and onto the governor's desk. Governor Holden vetoed it.

Instead of giving up, Missouri gun owners fought hard, and persuaded both houses of the legislature to override his veto. This, by itself, is historic: since 1945, the Missouri legislature has only overridden a veto three times. Adding to the drama, in the State Senate, we needed 23 votes—and the 23rd vote came from Senator Jon Dolan—a National Guard member on active duty in Guantanamo Bay, Cuba, who obtained leave to return home to vote on this matter.⁶

The law that Missourians now have isn't quite the law that they would have liked, but it's a good first step. It combines provisions from four different bills: HB 349, 120, 136 and 328. Some of the provisions actually benefit law enforcement officers, not just civilians. For example, all Missouri peace officers "whether such officers are within or outside their jurisdictions or on or off duty," are now allowed to carry concealed. It appears that before this change, a St. Louis cop who was off-duty, or on vacation elsewhere in the state, couldn't lawfully carry concealed. "Any coroner, deputy coroner, medical examiner, or assistant medical examiner" may now carry concealed. Since people in these positions are often investigating crimes, this makes a lot of sense.

Another interesting provision of the law says that if you are 21 or older, and you are otherwise lawfully in possession of the gun, you may have the gun concealed in the

Business Journal, April 5, 1999, <http://www.bizjournals.com/kansascity/stories/1999/04/05/story6.html>, last accessed September 13, 2003.

⁶ Terry Ganey, "Missouri will allow hidden weapons," *St. Louis Post-Dispatch*, September 11, 2003, available at

passenger compartment of your vehicle, or on your person. This means that if you are traveling through Missouri, and have a loaded gun in your glove compartment, you aren't breaking any laws.

For those of us who don't live in Missouri, the good news is that the law prohibiting concealed carry "shall not apply to any person who has... a valid permit or endorsement to carry concealed firearms issued by another state or political subdivision of another state." Hurray! It does not appear that you have to be a resident of that other state, so if you are a Californian, and can't get a concealed carry permit, but you have a permit from Washington State or Florida, this is good enough for Missouri. It even appears that Missourians could carry in Missouri on an out of state permit—but I don't think I would try to push the issue. I don't think that was the intent of the law.⁷

Unlike many states that issue a concealed handgun license as a separate document, Missouri requires you to have, or acquire, either a driver's license, or a state ID card, to which they will add a "concealed carry endorsement." In some ways, this is how it should have been done by every state, just to reduce the amount of junk you have to carry in your wallet. (I just received my Maine permit—I can now carry concealed in thirty states—and my wallet is beginning to get pretty thick.)

The concealed carry endorsement to your driver's license is good for three years. To get it, you must be twenty-**three** years of age, not twenty-one, have resided in Missouri for at least six months, or be a member of the armed forces stationed there (or spouse).

The usual sorts of restrictions about criminal history apply: felony convictions or “no contest” pleas disqualify you for life. Any misdemeanor convictions for violent crimes in the previous five years disqualifies you. *Two* or more misdemeanor convictions for drunk driving, controlled substance possession, or controlled substance abuse, in the previous five years, disqualifies you. Fugitives from justice need not apply (unless you want to get arrested, of course), and a dishonorable discharge from the military will also prevent you from getting the concealed carry endorsement. If someone has a restraining order against you, you aren’t eligible, either.

Like Oregon and Pennsylvania, the new Missouri law has provisions to handle the problem of the crazy or violent person who the police know is a problem, but who hasn’t yet been convicted of anything. The sheriff may refuse a concealed carry endorsement to anyone whose has engaged “in a pattern of behavior, documented in public records, that causes the sheriff to have a reasonable belief that the applicant presents a danger to himself or others....” This means that the sheriff can’t just arbitrarily decide to refuse to issue. It does mean that you have a history of wandering the streets yelling threats to people that the rest of us can’t see, or you confide in a police officer that you line your hat with tinfoil to keep out “the voices,” the sheriff can refuse to issue. Anyone judged mentally incompetent or hospitalized against their will in the previous five years is also ineligible.

The application fee is \$50. The usual sorts of firearms training requirements apply, with firearms safety courses by any law enforcement agency, or at least eight hours of instruction by a qualified firearms safety instructor meeting the requirement.

⁷ RSMo § 571.030, available at <http://www.house.state.mo.us/bills03/biltxt/truly/HB0349T.HTM>,

However, a “qualified firearms safety instructor” has a fairly detailed list of requirements for the training class, including live fire at a standard target, with a certain number of rounds fired.

There are, of course, some places that your concealed carry endorsement—or an out of state concealed carry permit—won’t work. Police stations, jails, and prisons, of course, are off-limits. Polling places on election day are not okay. (Leave your gun in the car before you go to vote—that’s no problem.) Courthouses are off-limits—although I am pleased to see that it’s okay to leave the gun in your car in the parking lot of the courthouse.

The state legislature, as well as county and city governments, are free to prohibit concealed carry in their buildings, but they have to give you clear notice of this. Even on this provision, the law is quite reasonable; it is not a criminal offense to carry concealed, but you can be refused entrance, or required to leave the building.

Bars are off-limits (but the definition of “establishment licensed to dispense intoxicating liquor or nonintoxicating beer for consumption on the premises” is sufficiently confusing that it might include some places that look like a restaurant). Carrying concealed while intoxicated, sensibly enough, is not lawful.

Airports (duh!), “Any place where the carrying of a firearm is prohibited by federal law,” amusement parks, sports arenas seating 5,000 people or more, hospitals, child care centers without permission of the manager, and houses of worship without consent of the clergyman in charge are also prohibited. A Missouri peculiarity is that riverboat gambling establishments may prohibit concealed carry.

Like Texas, and a few other states, Missouri allows businesses to prohibit concealed carry by posting a sign, but there is no criminal penalty for failing to obey. However, if you refuse to leave when asked, and the police come out to remove you, there is a \$100 fine for the first violation. A second violation within six months gets you a \$200 fine. A third violation within a year of the first violation gets you a \$300 fine—and revocation of your concealed carry endorsement. For the life of me, I can't imagine why you would want to do business with someone that wants all their customers defenseless, so I am hoping that there are very few violations of this part of the law!⁸

The next big struggle looks to be Wisconsin, which like Missouri, had a complete ban on concealed carry. The Wisconsin Supreme Court's recent decisions concerning the meaning of the state constitution's right to keep and bear arms provision have been seen as an encouragement to the legislature to adopt some sort of concealed weapon permit law. The opening testimony in favor of the change was powerful, and given more than fair treatment by the antigun *Milwaukee Journal-Sentinel*:

"Nothing speaks louder than a barrel of a gun pointed at you." Teresa Sweet, a rape victim who testified in favor of a concealed-carry law.

"Had I had a gun in my purse or on my person, the moment I moved across that room and saw him coming, trust me, he would have heard me say 'no,' " Sweet told legislators. "Nothing speaks louder than a barrel of a gun pointed at you."⁹

⁸ RSMo § 571.094, available at <http://www.house.state.mo.us/bills03/biltxt/truly/HB0349T.HTM>, last accessed September 13, 2003.

⁹ Dennis Chaptman, "Concealed weapons testimony divided," *Milwaukee Journal-Sentinel*, September 9, 2003, <http://www.jsonline.com/news/state/sep03/168590.asp>, last accessed September 13, 2003.

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