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Victory in Ohio

The non-discretionary concealed weapon permit law express keeps coming! This month, I am pleased to report a hard-won victory in Ohio. As with a number of the recently passed non-discretionary concealed weapon permit laws, Ohio's law is less than perfect—but far better than the law previously on the books. We can also expect, based on the experience of other states that have adopted less than perfect concealed weapon permit laws, that future sessions will correct the irritating and stupid provisions.

Ohio has been among the bigger struggles. Unlike many other states, Ohio had *no* provision for issuing concealed weapon permits. If you were charged with carrying a concealed weapon, the law allowed you to assert “an affirmative defense” to have a gun with you while engaged in a lawful business “such as would justify a prudent person in going armed” or for protection of yourself or family “such as would justify a prudent person in going armed.”¹ This was a difficult case to make in court, and it put an honest Ohioan in the uncomfortable position of having to prove that he was being “prudent” in being armed—and then, only after having been arrested and booked.

We had some hopes that the Ohio Supreme Court would strike down the state's ban on concealed carry because of a lawsuit challenging the constitutionality of the law.² While our side won at the trial court, and the Ohio Court of Appeals, we lost in the Ohio

¹ Ohio Revised Code § 2923.12, available at <http://onlinedocs.andersonpublishing.com/revisedcode/>.

² *Klein v. Leis*, 2002-Ohio-1634, para. 5, available at <http://www.sconet.state.oh.us/rod/documents/1/2002/2002-ohio-1634.doc>, last accessed January 19, 2004.

Supreme Court. They ruled that the right to keep and bear arms did not include a right to carry them concealed.³

Pro-gun activists in Ohio have been trying to get a concealed weapon permit law through the Ohio legislature for at least nine years. I know, because NRA flew me out to Ohio to testify in favor of such a law back in 1995.⁴ The stumbling block was not the state legislature, where support for a concealed weapon permit law was strong; the problem was Governor Taft, who repeatedly threatened to veto the law if it did not satisfy “law enforcement” (by which Taft meant the highly political officials at the top of the Ohio Highway Patrol and the Buckeye Sheriffs Association). The full details of the struggle are complex and too long for this article—as well as mind numbingly boring—but by adding enough provisions to the bill, Governor Taft dropped his opposition, and signed the bill into law.⁵

One detail of the struggle that was *not* boring were the open carry marches. Ohio law does not prohibit open carry. While the Ohio Supreme Court’s recent decision did not explicitly recognize that open carry was a right, they did recognize that the Ohio Constitution’s right to keep and bear arms provision was an individual right. If concealed carry could be prohibited, what was left of the right to keep and bear arms?

As a result, in a number of cities, Ohioans marched with openly carried firearms, as a way of reminding public officials that if they would not pass a concealed weapon permit laws, Ohioans might just start carrying openly. News coverage of these events

³ *Klein v. Leis*, 99 Ohio St.3d 537, 2003-Ohio-4779 (2003), available at <http://www.sconet.state.oh.us/rod/documents/0/2003/2003-ohio-4779.doc>, last accessed January 19, 2004.

⁴ Clayton E. Cramer, “Statement of Clayton Cramer To The Ohio State Senate Judiciary Committee, March 22, 1995,” available at <http://www.claytoncramer.com/ohio2.htm>.

was surprisingly fair, emphasizing the restraint of the marchers when harassed and insulted by gun control advocates.⁶

What are the provisions of the new law? Most are similar to those of other states: You must be a resident of Ohio for at least 45 days, and a resident of the county where you apply for at least 30 days. You must be at least 21 years old, not a fugitive from justice, not under indictment for a felony, violent misdemeanor, or any drug offense. You may not have been convicted of a felony, ever, or of a violent misdemeanor in the last three years. There are also a number of complex provisions dealing with “delinquent juveniles” convicted of violent misdemeanors in the last ten years. Applicants who are mentally defective, incompetent, or involuntarily hospitalized for mental illness are also ineligible. You are also ineligible if you are subject to what Ohio calls a “protection order” (which I gather is the same as a restraining order in most other states).⁷ The sheriff must issue a permit with 45 days of receiving the completed application. The license is good for four years.⁸

Applicants must demonstrate firearms competency by either taking an NRA “firearms safety, training, or requalification or firearms safety instructor course, class, or program,” any of a number of other firearms training classes, being active or reserve military, or having an honorable discharge within the last six years.⁹ Ohio is a bit more restrictive on exactly what these courses must teach than other states, but less restrictive

⁵ Nate Cline, “Ohio Passes Right-To-Carry Concealed Weapons Law,” *WTOV9.com*, January 8, 2004, available at <http://www.wtov9.com/news/2752296/detail.html>, last accessed January 19, 2004.

⁶ “Concealed gun ban protested,” *Cincinnati Post*, September 29, 2003, available at <http://www.cincypost.com/2003/09/29/guns092903.html>, last accessed January 19, 2004.

⁷ Ohio Revised Code § 2923.125(D) in HB 12, available at http://www.legislature.state.oh.us/bills.cfm?ID=125_HB_0012, last accessed January 19, 2004.

⁸ Ohio Revised Code § 2923.125(D) in HB 12.

⁹ Ohio Revised Code § 2923.125(B)(3) in HB 12.

than others. The course must include twelve hours of instruction, including at least ten hours of instruction on safe handling and storage of firearms and ammunition, “ability to demonstrate the knowledge, skills, and attitude necessary to shoot a handgun in a safe manner,” and two hours of live-fire training.¹⁰

There are a number of places that you can’t carry, and most of them will be no surprise: police stations, prisons, airport terminals. Child care centers are also prohibited, and all governmental buildings, even if they are only leased by the government. Houses of worship are also off-limits—but with an interesting twist: “unless the church, synagogue, mosque, or other place of worship posts or permits otherwise.”¹¹ Unlike some states that have made houses of worship completely off-limits, or have allowed churches to post signs prohibiting concealed carry, Ohio requires a religious institution to explicitly make itself a gun-friendly zone.

Property owners can put up a sign telling you that you may not carry a gun there, and you are obligated to obey that rule.¹² The law *does* have a provision that encourages property owners to allow permit holders to carry. It specifies that private employers are immune from suit for allowing a permit holder to carry on private property. This immunity applies to private colleges and universities as well.¹³ An employer has nothing to fear from allowing concealed carry—and perhaps some potential benefit, if a permit holder stops a crime.

¹⁰ Ohio Revised Code § 2923.125(G) in HB 12.

¹¹ Ohio Revised Code § 2923.126(B) in HB 12.

¹² Ohio Revised Code § 2911.21 in HB 12.

¹³ Ohio Revised Code § 2923.126(C)(2) in HB 12.

You may not carry in certain establishments licensed to “dispense” alcohol, or “or in an open air arena for which a permit of that nature has been issued.”¹⁴ (My guess is that this means that if they are serving beer at the baseball game, you can’t carry.)

Courthouses, and buildings in which a courtroom is located, are also off-limits to permit holders—but the law now provides that a permit holder may check her handgun with the “officer or officer's designee who has charge of the courthouse or building.” However, it appears that the judge in charge of a particular courthouse may prohibit permit holders from bringing a gun into the building by simply not offering this service.¹⁵

Colleges, both public and private, are off-limits for carrying a gun—but with one very nice exemption: if the gun is locked in a car, or if you are transferring your concealed handgun into a locked car, you are not breaking any law. You can’t carry onto the campus, but you can at least leave your gun in your car in the parking lot.¹⁶

Like many other states, the Ohio law seems intended to keep guns out of schools, even if you have a carry permit. The existing law that prohibits possession of a gun within “a school safety zone” does not apply to permit holders if “The person does not enter into a school building or onto school premises and is not at a school activity.”¹⁷

The Ohio Attorney-General is supposed to enter into reciprocity agreements with other states whose eligibility requirements are substantially the same as Ohio, and are willing to recognize Ohio permits.¹⁸ As I read these requirements, I expect several other states to have such reciprocity agreements shortly after the new law takes effect in April.

¹⁴ Ohio Revised Code § 2923.121(A) in HB 12.

¹⁵ Ohio Revised Code § 2923.123(C)(6) in HB 12.

¹⁶ Ohio Revised Code § 2923.126(B)(5) in HB 12.

¹⁷ Ohio Revised Code § 2923.122(D)(3)(a) in HB 12.

¹⁸ Ohio Revised Code § 109.69(A) in HB 12.

There are a few strange provisions of the new Ohio law that I expect will be amended in the future. One of the provisions requires any driver or occupant of a motor vehicle to inform a police officer that he has a permit, and is armed. This isn't surprising in itself; a few other states have similar requirements. The language of the statute, however, is very detailed as to what the permit holder may or may not do—almost as though the police believe that permit holders are likely to pull out a gun as a police officer walks up to the driver's window. Similarly, if a police officer approached a permit holder who is carrying concealed, the permit holder must inform the police officer of this.¹⁹

One of the most controversial provisions was also one of the last obstacles to persuading Governor Taft to sign the law. The records of who has been issued a permit are considered confidential—but the law allows journalists to obtain “the name, county of residence, and date of birth of each person to whom the sheriff has issued a license or replacement license to carry a concealed handgun....”²⁰ Why? At least part of the argument was that journalists should have some way to verify that the sheriffs were doing their job, and not issuing concealed weapon permits to felons, crazy people, or other prohibited persons. Of course, some journalists have now admitted that their goal is to publicly embarrass permit holders, by obtaining their names, and publishing them.²¹

I have received a fair amount of email from Ohioans who are upset about this provision. I agree that giving journalists a special status is not good. If there is a good

¹⁹ Ohio Revised Code § 2923.126(A).

²⁰ Ohio Revised Code § 2923.129(B)(2).

²¹ Connie Shultz, “We will reveal those who conceal,” *Cleveland Plain Dealer*, January 12, 2004, available at <http://www.cleveland.com/living/plaindealer/index.ssf?/base/living/1073907003299210.xml>, last accessed January 19, 2004.

reason for this information to be public record, then it should be open to the entire public. There is no reason why journalists should have special privileges that the rest of us do not enjoy.

In California, where I used to live, concealed weapon permits are very difficult to get in the counties where you most need them—and the process for obtaining a permit is often very corrupt. My friend Jim March has put a lot of energy into documenting this corruption, using California's law requiring that concealed weapon permit records be open.²² Of course, part of the corruption problem in California is because the sheriff or police chief has nearly unlimited discretion in issuing permits. I think you can make a good case that when the law takes away this discretion—as all of these newer non-discretionary permit issuance laws do—there is really no opportunity for corruption, and therefore, no need for these records to be open to the public.

Opponents of having these records open argue that if criminals can find out who is carrying, it takes away the advantage of having a concealed weapon. This is a very plausible argument—except that if someone knows who you are, and intends to kill you, it will not do you much good to have a concealed weapon. They will run you over with a car, or use a rifle or shotgun. Fortunately, these sort of carefully planned assassinations are pretty rare.

The vast majority of the crimes that you are going to prevent by carrying a concealed handgun are crimes of opportunity by criminals who do not plan that far ahead, and do not know you. They are looking for someone to rob or rape—and they run into you. These are not the criminals who are so organized as to go looking into public

records to find out whom to victimize. I would prefer that the Ohio concealed weapon permit information not be public record—but I don't see that it is a major problem. I believe that within a year or two, as it becomes apparent that Ohio's sheriffs are doing as good a job as those of other states, this special exemption for journalists will be quietly amended into oblivion.

There is a saying by Voltaire that “the perfect is the enemy of the good.” What this means is that insisting on perfection sometimes means that if we insist that something be perfect—whether it is a law, a gun, or a person—we may lose out on the opportunity to have something less than perfect—but better than what we have now. Ohio's new law is like that. It is not perfect—but it was as good a law as we could get right now. Insisting on the perfect law would have meant no change at all—and law-abiding Ohioans would have had no way to get a permit to carry concealed. It's not a perfect law—but it is better than what Ohioans had before. The history of other non-discretionary permit laws suggests that Ohio's legislators will improve it in later sessions.

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²² Jim March, “The CCW Expose Project,” <http://www.equalccw.com/expose.html>, last accessed January 19, 2004.