

Approved: 4-26-95
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Senator Lana Oleen at 11:05 a.m. on March 27, 1995 in Room 254-E of the Capitol.

All members were present.

Committee staff present: Mary Galligan, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
Kim Perkins, Committee Secretary

Conferees appearing before the committee:

Mark Tallman, KASB
Craig Grant, KNEA
Mike Stewart, Topeka
Phil Journey, Wichita
James Kaup, City of Topeka
Don Moler, League of Kansas Municipalities
Doug Moshier, City of Wichita
Gerry Ray, City of Overland Park
Loren Youngers, Kansas Peace Officers
Rick Stone, Represents Chiefs of Police

Others attending: See attached list

Sen. Oleen announced that the committee would begin the hearing on **HB 2541**, an act relating to preemption of local laws and standardization by the state in firearms regulation, and announced that the committee would hear alternating testimony between proponents and opponents.

Sen. Oleen announced that the committee had written testimony on **HB 2541** from the office of the attorney general (Attachment 1).

Sen. Oleen introduced Rep. Greg Packer, primary sponsor of **HB 2541**, to speak as a proponent to the bill. Rep. Packer stated that he does not believe that the constitution allows for local control over firearms regulations. Rep. Packer continued to say that he believed that the firearms regulations needed to be consistent throughout the state. Rep. Packer cited several examples on inconsistencies. Rep. Packer provided the committee with a political cartoon to illustrate his position (Attachment 2). Sen. Papay clarified that the proposed bill would not effect firearms regulations for juveniles.

Sen. Oleen introduced James Kaup, City of Topeka, as an opponent to **HB 2541** (Attachment 3) and Mark Tallman, Kansas Association of School Boards, who offered testimony in a neutral position (Attachment 4). Craig Grant, Kansas National Education Association, stated that he also supported the testimony of Mark Tallman. Sen. Jones asked Mark Tallman if citizens are currently prohibited from carrying weapons into school board meetings and Mark Tallman answered that the law does not speak specifically to school board meetings.

Sen. Oleen introduced Mike Stewart to speak as a proponent to **HB 2541**. Mike Stewart stated that he is a hunter who travels throughout the state to hunt. He continued to say that there are too many inconsistencies in the firearms regulations and therefore he often may be in violation of a city ordinance without even knowing that the law can vary from one community to another.

Sen. Oleen introduced Don Moler, League of Kansas Municipalities, to speak as an opponent and Phil Journey, Wichita, to speak as a proponent (Attachments 5 & 6). Sen. Jones asked Phil Journey why he had attempted to video-tape the committee meeting and Phil Journey answered that he had a television show in Wichita on which he like to show clips. Sen. Jones asked Phil Journey if he had received permission to tape

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS, Room 254-E
Statehouse, at 11:00 a.m. on March 27, 1995.

the meeting from the chairperson. Phil Journey stated that he had not had the chance to talk to the chairperson before the meeting. Sen. Gooch asked Phil Journey if he would support more restrictions on gun control and Phil Journey stated that he would fight any further restrictions.

With no other proponents to the bill, Sen. Oleen then called on Loren Youngers, Kansas Peace Officers; Gerry Ray, City of Overland Park; Rick Stone, Representing Chiefs of Police; and Doug Moshier, City of Wichita to speak as opponents (Attachments 7, 8, 9, & 10).

Sen. Oleen announced that Greg Ferris, City Council Member of Wichita; and Charles Zimmerman, City Attorney of Junction City; provided the committee with written testimony in opposition to **HB 2541** (Attachments 11 & 12).

Sen. Oleen called for further discussion, and seeing none, the meeting was adjourned at 12:29 p.m.

The next meeting is scheduled for March 29, 1995.

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
GUEST LIST

DATE: Monday, March 27, 1995

NAME	REPRESENTING
Beatrice Adams	Wichita
Craig Grant	KNEA
JOHN C. BOTTENBERG	BOTTENBERG Assoc
Bill SWEED	STC
Diane Gjerstad	U.S.D 259
ALAN COBB	City of Wichita
Greg Hill	Sen. Moran's office
Jim Kauf	City of Topeka
Greg Packer	Representative 51 st dist
Duan Waterworth	Division of the Budget
Gene Johnson	Ks Alliance on Alcohol & Drugs
Anne Spiess	Ks Assoc. of Counties
Mark Tallman	Ks Assoc. of School Boards
L. Punchard	CT
N. Martin	Selywick Co.
Nancy Lindberg	AG
Jim Clarke	KCDA
Don Moler	League of KS Muni.
Mike Stewart	myself



State of Kansas

Office of the Attorney General

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

March 27, 1995

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
FAX: 296-6296

The Hon. Lana Oleen, Chairperson
Committee on Federal and State Affairs
Room 136-N, State Capitol
Topeka, KS 66612

Re: House Bill 2541

Dear Senator Oleen and Members of the Committee:

I am writing to indicate my general support of House Bill 2541. Most generally, I support local control versus state control on a myriad of issues. However, there are clearly areas in which centralized control is of benefit. The criminal code is one clear example. Another example is the issue addressed in House Bill 2541. I believe that with the mobility of our society and the ease of transportation between various communities, there is benefit to having the state set the standards to be followed in regulating firearms.

Thank you for your interest in my comments.

Very truly yours,

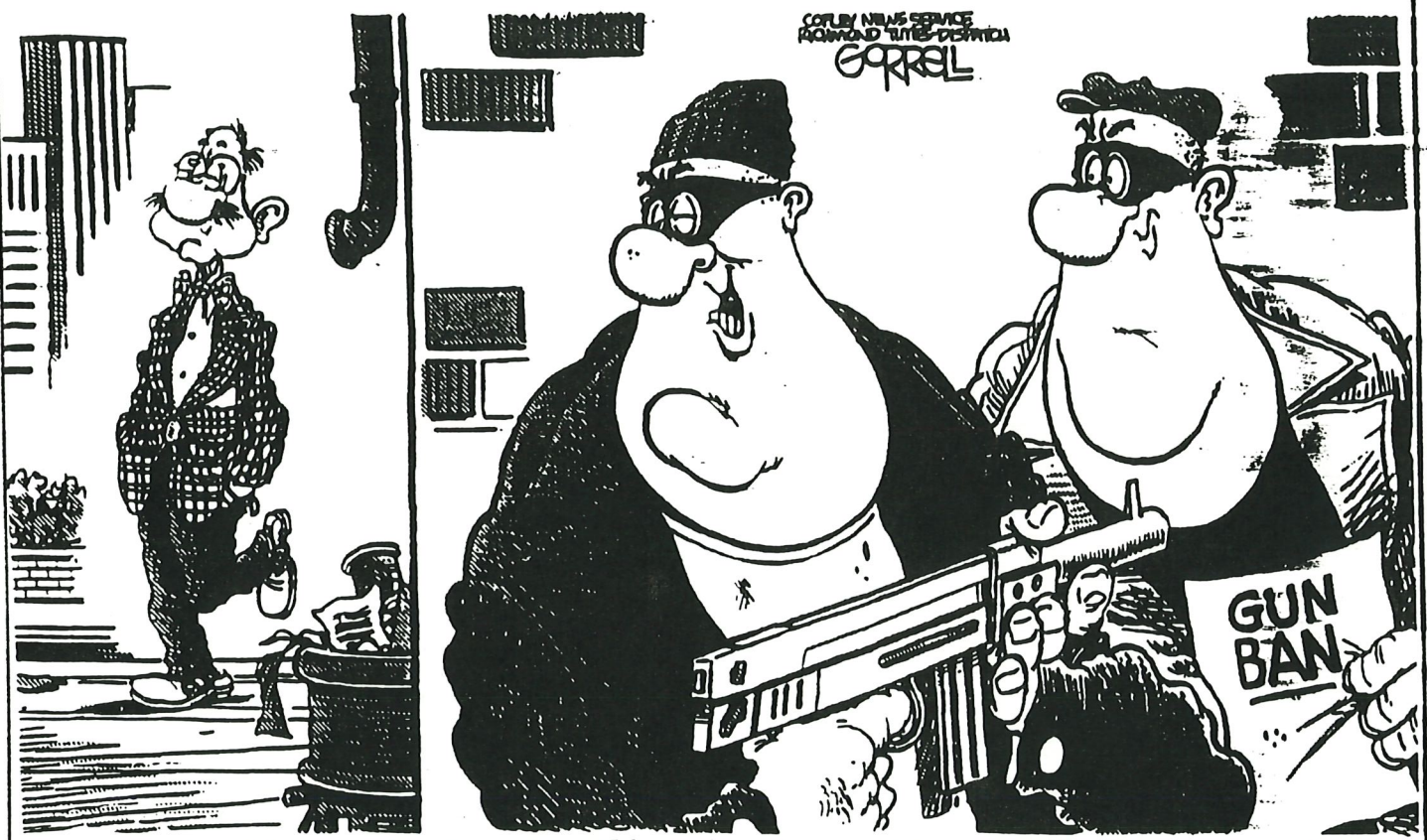
Carla J. Stovall
Carla J. Stovall
Attorney General
by bls

CJS:bls

Sen Fed & State
3-27-95
(Attachment 1)

+

CORBIS NEWS SERVICE
FORWARD TIMES-TRIBUNE
CORRELL



"HERE COMES ANOTHER INNOCENT, LAW-ABIDING CITIZEN . . . I SURE FEEL A LOT SAFER KNOWING HE CAN'T CARRY A DANGEROUS ASSAULT WEAPON!"

Shylocke #57

San Fed & State
3-27-95
(Attachment 2)



CITY OF TOPEKA

City Council
215 E. 7th Street Room 255
Topeka, Kansas 66603
Phone 913-295-3710

LEGISLATIVE TESTIMONY CITY OF TOPEKA HOUSE BILL 2541

TO: Chairperson Oleen and Members, Senate Committee on Federal and State Affairs

FROM: Jim Kaup, City of Topeka

RE: **HB 2541; State Preemption of Local Government Regulatory Authority Over Firearms**

DATE: March 27, 1995

The City of Topeka appears today in opposition to HB 2541. The radical change in law proposed by this bill is harmful to the City's powers of local self-government, and thereby harmful to the City's ability to protect the safety of Topekans.

The City objects strongly to HB 2541 because it prevents local lawmaking regarding firearms. It is ironic that in the midst of a legislative session filled with speeches about getting the State off the backs of Kansas local governments, speeches about letting local government take care of local problems, that we have to debate a bill such as HB 2541. Make no mistake about it - this bill is anti-local government, anti-Home Rule.

A. Home Rule.

Topeka is a staunch defender of Constitutional Home Rule. We advocate the fullest utilization of our power of local self-government. We believe Home Rule has been responsibly, and necessarily, used with respect to firearm regulation.

Home rule is predicated on the assumption that matters of local affairs and government should be open to local solution and experimentation to meet local needs. Different communities will perceive a problem, such as firearm use, differently and therefore adopt different measures to

Sen Fed & State
3-27-95
(Attachment 3)

address the problem. Those local solutions should remain free from interference by those who disagree with the particular approach chosen by the people of a particular community.

This Committee should also recommend that the Kansas Home Rule Constitutional Amendment does not prohibit the legislature from enacting laws relating to local affairs and government. The State of Kansas and the City of Topeka may both legislate on the same subject. In the event of conflict between local law and state law, the state law prevails.

B. Powers of Kansas Cities to Regulate Firearms -- A Tradition of Joint State-Local Lawmaking That Predates Home Rule.

Municipal regulation of firearms is well-recognized as a lawful exercise of the general police power, justified as protective of the general welfare. Such local regulation has been long-recognized as lawful in Kansas, preceding Home Rule by many years. For example, an 1887 decision of the Kansas Supreme Court, City of Cottonwood Falls v. Smith (36 Kan. 401) was one of the first cases upholding the power of cities to enact ordinances prohibiting the discharge of firearms within city limits.

One of the most detailed examinations of the Constitutional Home Rule Amendment by the Kansas Supreme Court dealt with this issue of city laws regulating firearms. The decision in that case, Junction City v. Lee, 216 Kan. 495 (1975), stands not only as controlling law on the scope and use of Constitutional Home Rule in Kansas, it also reveals the Court's sensitivity to the need for the people, through their local governments, to be able to respond to local conditions and circumstances that demand local solutions:

The governing bodies of some cities may conclude they are sufficiently protected by the state statutes on weapons control but that is their business. Evaluation of the wisdom or necessity of the Junction City enactment of a weapons control ordinance more rigid than statutory law is not within our province, although the city fathers undoubtedly were aware of the fact that in situations where passions or tempers suddenly flare easy accessibility of weapons, whether carried openly or concealed, may contribute to an increased number of fatalities, and further that their own problem is rendered more acute by the presence of an adjoining military reservation from whence combat troops trained in the use of handguns and knives sometimes repair to the city during off-duty hours.

By its direct assault upon Home Rule, HB 2541 proposes an even broader and more serious threat than did HB 2420, the concealed weapon bill rejected by the Senate last Thursday. In one stroke, HB 2541 would wipe out all local laws relating to "... sale, purchase, purchase delay, transfer, ownership, use, possession, storage in home or business, bearing, transportation, licensing, permitting, registration, taxation, or any other matter pertaining to firearms, components, ammunition or supplies." By contrast, HB 2420 would only have preempted local

authority to regulate the carrying of concealed weapons by persons holding a state license to do so.

While Topeka's Home Rule-based policy arguments are our principle arguments against HB 2541, the City also desires to offer some examples of the immediate and adverse consequences of HB 2541. Set out below are some of our more serious concerns regarding HB 2541:

1. State Preemption vs. Joint State - Local Lawmaking Authority. In years past, the legislature has heard from some proponents for state preemption of weapons regulations that state regulation somehow necessitated the preemption of local lawmaking authority and the invalidation of all local laws presently on the books. The State's enactment of laws regarding sales or possession, etc. of firearms, does not require the State to simultaneously wipe out all existing local laws or to preempt future local lawmaking.

The tradition in Kansas with regards to firearm regulation is one of joint state-local lawmaking authority. This tradition has survived for well over 100 years.

Not only is this joint regulatory authority the tradition, the City of Topeka suggests that the present system of joint regulation works. Where and how has it failed? If there are failings, how would the public be better served by the wholesale invalidation of laws passed by locally-elected governing bodies?

2. Invalidation of Existing Local Laws. HB 2541 invalidates all existing city and county laws regarding the regulation of "firearms, components, ammunition and supplies" other than those local laws which are identical to state laws. This Committee must recognize that one of the immediate consequences of enactment of HB 2541 will be a reduction in the number of, and nature of, firearm regulations across Kansas. While a great many local laws regarding firearms parallel provisions now in the Kansas statutes, other local laws have no comparable state law.

For example, the Topeka City Code (54-103) provides "[i]t shall be unlawful for any person, not a police officer in the execution of duty, to draw a pistol, revolver, knife, or any other deadly weapon upon another person." Brandishing a firearm has no state law counterpart. The Code also makes unlawful the carrying of any loaded firearm "on or about public property or a public place" (54-101). This local law covers unconcealed weapons and is the only law which prohibits someone from carrying a rifle into a restaurant, or wearing a revolver in a hip holster into a church, or a hospital or a city council meeting. Carry unconcealed weapons into public places has no state law equivalent.

The City also has laws regarding licensure and regulation of private security guards (30-401) which would be invalidated by HB 2541.

3. **State Preemption Could Result in Greater Regulation of Firearms.** Topeka is alarmed at the prospect of losing its Home Rule power to pass laws in the future which would be necessary to protect public health, safety and welfare. However, we note that HB 2541 could, ironically, lead to more governmental regulation of firearms than now exists, and even more regulation than is necessary to protect the public.

Preemption by the State results in one standard of governmental regulation for all the people of Kansas -- regardless of their local needs and conditions -- i.e. regardless of whether they want it or not. State law today -- with our system of shared authority with local governments -- is a floor set by the Kansas legislature. Local governments can raise that floor, as needed in the community. Under HB 2541, state law becomes a ceiling that ultimately must be high enough to protect all Kansas -- regardless of local needs.

Again, under the current system of state-local shared lawmaking authority, locally-elected governing bodies can fine-tune the appropriate level of regulation needed for their community, while operating within a general framework of State law. Under HB 2541, if the people of the City of Topeka want a mandatory waiting period for the purchase of handguns, they would have to successfully lobby the Kansas legislature for such a law, rather than their city council. If successful in appealing to the legislature, residents in every city of the State would have to live with the results -- regardless of whether such a law makes sense anywhere outside Topeka. In short, the state preemption called for in HB 2541 may well result in more governmental regulation than would ever occur under our current system and tradition of shared state-local regulatory authority.

For another example, if the people in a city wanted a law prohibiting people from carrying shotguns into restaurants or movie theaters or hospitals the only way such a law could take effect would be through the Kansas legislature -- the enactment of a uniformly applicable state law prohibiting the carrying of shotguns into theaters, restaurants and hospitals in any city in the State.

For yet another example, should a single city in the State desire a law which creates the crime of the possession of a firearm within 100 feet of an alcoholic liquor establishment, that city would have to successfully lobby the legislature for such a uniformly applicable state law -- one which would apply even in communities which have never had a weapons "problem," whether in the proximity of such establishments or anywhere else.

4. **Fiscal Note.** HB 2541 appears to have fiscal consequences. The prohibition against "taxation" in line 24 indicates exemption of "firearms, components, ammunition and supplies" from local sales taxation and property taxation. Is the City correct in its understanding that sales of firearms, ammunition, gun oil, holsters, reloading equipment, etc. would all be sales and property tax-exempt?

Action: The City of Topeka respectfully asks for Committee action to kill HB 2541.

**ARTICLE IV. OFFENSES AGAINST
PUBLIC SAFETY***

DIVISION 1. GENERALLY

Secs. 54-88–54-100. Reserved.

DIVISION 2. WEAPONS

Sec. 54-101. Carrying of deadly weapons.

(a) It shall be unlawful for any person who is not an officer of the law, or a deputy to such officer:

- (1) To be found within the city limits carrying upon his person a concealed deadly weapon. A deadly weapon includes, by way of illustration, but not limitation: pistols, knives, not including an ordinary pocket knife with a blade not more than four inches in length, dirks, slingshots, knucks or replicas;
- (2) To carry on his person or have within the immediate control of his person on or about public property or a public place within the city limits, any loaded firearm or automatic firearm with the magazine loaded, detached or attached, which when used is likely to cause death or great bodily harm; or
- (3) To allow a minor, either through negligence of the owner or an intentional act by the owner, to have access to or gain possession of a firearm, loaded or unloaded except as provided in K.S.A. 32-920. This subsection shall not apply if the minor obtains the firearm as a result of unlawful entry by any person.

(b) This section shall not apply to those persons exempt under the provisions of K.S.A. 21-4201 or amendments thereto, or to those persons licensed under the provisions of chapter 30, article XI.

(c) For any violation of this section, the municipal judge shall, upon conviction, order any such weapons to be confiscated and the weapon shall, whenever it is no longer needed for evidentiary purposes in the discretion of the trial court, be

*State law reference—Crimes against the public safety, K.S.A. 21-4201 et seq.

destroyed. Unless otherwise provided by law, all other property shall be disposed of in such manner as the court in its sound discretion may direct. (Code 1981, § 15-91; Ord. No. 16664, § 1, 12-2-93; Ord. No. 16707, § 1, 5-10-94)

State law reference—Unlawful use of weapons, K.S.A. 21-4201.

Sec. 54-102. Discharging of firearms.

It shall be unlawful for any person, other than a peace officer in the performance of duty, to discharge any cannon, gun, pistol, rifle or other firearm, or to discharge or use any air gun, spring gun or slingshot within the corporate limits of this city.

(Code 1981, § 15-92)

State law reference—Unlawful discharge of firearm, K.S.A. 21-4217.

Sec. 54-103. Drawing a weapon upon another.

(a) It shall be unlawful for any person, not a peace officer in the execution of duty, to draw a pistol, revolver, knife or any other deadly weapon upon another person.

(b) The provisions of subsection (a) do not apply to:

- (1) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;
- (2) Wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority;
- (3) Members of the armed services or reserve forces of the United States or the state national guard while in the performance of their official duty; or
- (4) A person engaged in defense of his person against an aggressor when and to the extent it appears to him and he reasonably believes that such conduct is necessary to defend himself or another against such ag-

gressor's imminent use of unlawful force, or in defense of his dwelling when and to the extent that it appears to him and he reasonably believes that such conduct is necessary to prevent or terminate such other's unlawful entry into or attack upon his dwelling. The preceding exceptions in this subsection (b)(4) are not available to a person who:

- a. Is attempting to commit, is committing, or is escaping from the commission of, a forcible felony;
- b. Initially provokes the use of force against himself or another, with intent to use such force as an excuse to inflict bodily harm upon the assailant; or
- c. Otherwise initially provokes the use of force against himself or another, unless:
 - 1. The person has reasonable grounds to believe that he is in imminent danger of death or great bodily harm, and he has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or great bodily harm to the assailant; or
 - 2. In good faith, the person withdraws from physical contact with the assailant and indicates clearly to the assailant that he desires to withdraw and terminate the use of force, but the assailant continues or resumes the use of force.

(Code 1981, § 15-93)

Sec. 54-104. Replica or facsimile firearms.

(a) Definitions. As used in this section:

Replica or facsimile means "imitation firearm," as defined in K.S.A. 12-16,115, and means a replica of a firearm which is so substantially similar in physical properties to an existing firearm as to lead a reasonable person to conclude that the replica is a firearm. The term "imitation firearm" does not include:

- (1) A nonfiring collector's replica of an antique firearm which was designed prior to 1898,

is historically significant and is offered for sale in conjunction with a wall plaque or presentation case;

- (2) A nonfiring collector's replica of a firearm which was designed after 1898, is historically significant, was issued as a commemorative by a nonprofit organization and is offered for sale in conjunction with a wall plaque or presentation case; or
- (3) A pneumatic, spring, spring-air or compressed-gas powered nonpowdered gun that is commonly called an air gun and is designed to discharge BBs, pellets or paint balls.

(b) It shall be unlawful for any person to draw, exhibit or brandish a replica or facsimile of a firearm in a rude, insolent, threatening or angry manner with the intent to frighten, vex, harass or annoy any other person.

(c) It shall be unlawful for any person to draw, exhibit or brandish a replica or facsimile of a firearm in the presence of a law enforcement officer, firefighter, emergency technician or paramedic engaged in the performance of his duties.

(d) Any replica or facsimile of a firearm used by any person in a rude, insolent, threatening or angry manner shall be seized and forfeited to the city.

(e) Any person convicted of violating this section shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than \$150.00. (Code 1981, § 15-93.1)

Sec. 54-105. Furnishing weapons to minors.

It shall be unlawful for any person to sell, give, loan or otherwise furnish any pistol or revolver by which a cartridge may be exploded, or any dirk, Bowie knife, knucks, slingshot or other dangerous weapons to any minor.

(Code 1981, § 15-94)

State law reference—Unlawful disposal of firearms, K.S.A. 21-4203.

Sec. 54-106. Unlawful use of stun guns, tear gas, mace.

It shall be unlawful for any person not a police officer in the execution of duty, to discharge items

commonly known as stun guns, tear gas, mace or any other chemical substance against any individual within the corporate limits of the city, except in defense of his person against an aggressor when and to the extent it appears to him and he reasonably believes that such conduct is necessary to defend himself or another against such aggressor's imminent use of unlawful force, or in defense of his dwelling when and to the extent that it appears to him and he reasonably believes that such conduct is necessary to prevent or terminate such other's unlawful entry into or attack upon his dwelling. The preceding exceptions are not available to a person who:

- (1) Is attempting to commit, is committing, or is escaping from the commission of, a forcible felony;
- (2) Initially provokes the use of force against himself or another, with intent to use such force as an excuse to inflict bodily harm upon the assailant; or
- (3) Otherwise initially provokes the use of force against himself or another, unless:
 - a. The person has reasonable grounds to believe that he is in imminent danger of death or great bodily harm, and he has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or great bodily harm to the assailant; or
 - b. In good faith, the person withdraws from physical contact with the assailant and indicates clearly to the assailant that he desires to withdraw and terminate the use of force, but the assailant continues or resumes the use of force.

(Ord. No. 16547, § 1(15-95), 2-2-93)

Secs. 54-107-54-120. Reserved.

ARTICLE V. OFFENSES AGAINST PUBLIC PEACE AND ORDER*

DIVISION 1. GENERALLY

Sec. 54-121. Disorderly conduct.

(a) Disorderly conduct is, with knowledge or probable cause to believe that such acts will alarm, anger or disturb others or provoke an assault or other breach of the peace:

- (1) Engaging in brawling or fighting;
- (2) Disturbing an assembly, meeting or procession, not unlawful in its character; or
- (3) Using offensive, obscene or abusive language or engaging in noisy conduct tending reasonably to arouse, alarm, anger or resentment in others.

(b) Disorderly conduct is a misdemeanor.

(Code 1981, § 15-61)

State law reference—Similar provisions, K.S.A. 21-4101.

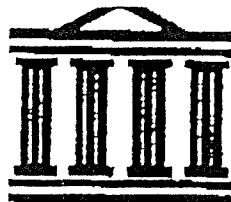
Sec. 54-122. Loitering for purpose of illegally using, possessing or selling controlled substance.

(a) As used in this section, public place means any place to which the public has access, including but not limited to a public street, road, thoroughfare, sidewalk, bridge, alley, plaza, park, recreation or shopping area, public transportation facility, vehicle used for public transportation, parking lot, public library or any other public building, structure or area.

(b) A person commits a disorderly persons offense if such person:

- (1) Wanders, remains or prowls in a public place with the purpose of unlawfully obtaining or distributing a controlled dangerous substance or controlled substance analog; and
- (2) Engages in conduct that, under the circumstances, manifests a purpose to obtain or distribute a controlled dangerous substance or controlled substance analog.

*State law reference—Crimes against the public peace, K.S.A. 21-4101 et seq.



POLICE EXECUTIVE
RESEARCH FORUM

CHUCK ER
EXECUTIVE DIRECTOR

MARCH 9, 1995
FOR IMMEDIATE RELEASE

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NEW STUDY HEIGHTENS
POLICE EXECUTIVE RESEARCH FORUM CONCERNS
ON CONCEALED WEAPONS LEGISLATION

The results of a new study by a trio of researchers at the University of Maryland, examining the liberalization of Carrying Concealed Weapons (CCW) laws are cause for concern, according to the Police Executive Research Forum (PERF). Researchers David McDowall, Colin Loftin and Brian Wiersema looked at the effect the relaxation of CCW laws has had on the rate of firearm-related murders in Florida, Oregon and Mississippi.

The researchers studied five metropolitan areas in those states: Miami, Jacksonville, Tampa, Portland, OR and Jackson, MS. In four out of the five municipalities, an increase in the number of firearm related homicides was reported. Jacksonville saw the greatest increase, with murders climbing 74%. Jackson followed with 43%, and Tampa with 22%.

In a preliminary review of the study, PERF Board Member and Buffalo Police Commissioner Gil Kerlikowske said many of his colleagues are concerned that the proliferation and easing of CCW laws have not resulted in increased public safety.

"Given the findings in this study, I am concerned that we may see an increase in violent crime without any benefit in personal safety," said Kerlikowske. "As a former police chief in the state of Florida, which several years ago weakened its CCW law, I am troubled that so many states are considering changing their CCW laws. It is vital that we understand what is at stake."

As a research organization, PERF hopes that legislators would be cautious about any concealed weapons legislation given the results of this study. PERF members believe that reasonable gun regulations can be enacted that will help stem violent crime without infringement on the rights of law-abiding citizens.

PERF is a national, DC-based organization of progressive police professionals who serve more than 40% of the country's population.

Easing Concealed Firearm Laws:
Effects on Homicide in Three States

David McDowall
Colin Loftin
Brian Wiersema

January 1995

Violence Research Group
Discussion Paper 15



*Department of Criminology & Criminal Justice
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Easing Concealed Firearm Laws: Effects on Homicide in Three States¹

I. INTRODUCTION

Restrictions on carrying concealed weapons are among the most common types of gun control policies.² These statutes limit the number of persons allowed to have deadly weapons--usually handguns--when they are outside their homes. By reducing access to guns in public, concealed weapon laws seek to make firearms less available for violence.

Areas vary greatly in the details of their concealed weapon laws, but most approaches fall into two categories. One of these is a discretionary system, sometimes called "may issue" licensing.³ Here legal authorities grant licenses only to citizens who can establish a compelling need for them.

The other approach is a non-discretionary, or "shall issue," system.⁴ Here the authorities must provide a license to any applicant who meets specified criteria. Because legal officials are often unwilling to allow concealed weapons, adopting a shall issue policy usually will increase the number of persons with permits to carry guns.⁵

In 1985 the National Rifle Association announced that it would lobby for shall issue laws.⁶ Several states, including Florida, Mississippi, and Oregon, have since changed from may issue to shall issue systems. Advocates of shall issue policies argue that they will prevent crime, and suggest that they have reduced homicides in areas that adopted them.⁷

¹ This research was supported by grant R49-CCR-306268 from the U.S. Public Health Service, Centers for Disease Control and Prevention.

² See James D. Wright Et. Al., *UNDER THE GUN: WEAPONS, CRIME, AND VIOLENCE IN AMERICA* 243-72 (1983); Gary Kleck & E. Britt Patterson, *The Impact of Gun Control and Gun Ownership Levels on Violence Rates*, 9 J. QUANTITATIVE CRIMINOLOGY 249-87 (1993).

³ Gary Kleck, *POINT BLANK: GUNS AND VIOLENCE IN AMERICA* 411-14 (1991).

⁴ *Id.*

⁵ Paul H. Blackman, *Carrying Handguns for Personal Protection: Issues of Research and Public Policy*, presented at the annual meeting of the American Society of Criminology, San Diego, November 1985.

⁶ *Id.* See also G. Ray Arnett, *Sincerely*, *GRA*, 133 AM. RIFLEMAN 7 (1985).

⁷ See, e.g., Wayne LaPierre, *GUNS, CRIME, AND FREEDOM* 29-39 (1994); David B. Kopel, *Hold Your Fire: Gun Control Won't Stop Rising Violence*, 63 *POLICY REV.* 58-65 (1993).

In this article we examine the frequency of homicides in major urban areas of Florida, Mississippi, and Oregon, before and after their shall issue laws began. We find no support for the idea that the laws reduced homicides; instead, we find evidence of an increase in firearm murders.

Part II of this article discusses concealed weapon laws in the three states. Part III considers possible effects of shall issue licensing on crime and describes the existing evidence. Part IV presents our research design, and Part V contains our findings. Part VI discusses the results and notes areas for future research.

II. THE LAWS

On October 1, 1987, Florida adopted a shall issue law that greatly expanded the number of persons allowed to carry concealed guns.⁸ The new statute required the state to grant a concealed weapon license to any qualified adult who had taken a firearm safety course. Disqualifying traits included nonresidence, a history of drug or alcohol abuse, a felony conviction, mental illness, and physical inability to use a gun.

Previously, county officials in Florida had set their own standards for concealed carrying. Throughout the state, about 17,000 persons held permits, including 1,300 in Dade county (Miami) and 25 in Hillsborough county (Tampa).⁹ The number of licenses rose steadily after the new law, reaching 141,000 in September 1994.¹⁰

Mississippi adopted a shall issue law on July 1, 1990.¹¹ Mississippi's law was largely identical with Florida's, except that it did not require firearm safety training. Mississippi's earlier law was highly restrictive, generally allowing only security guards to have concealed weapons.¹² By November 1992, the state had issued 5,136 of the new licenses.¹³

⁸ FLA. STAT. ch. 790.06 (1992). See also Richard Getchell, *Carrying Concealed Weapons in Self-Defense: Florida Adopts Uniform Regulations for the Issuance of Concealed Weapon Permits*, 15 FLORIDA STATE UNIV. LAW REV. 751-91 (1987).

⁹ Lisa Getter, *Accused Criminals Get Gun Permits*, May 15, 1989 MIAMI HERALD, at 1A; Stephen Koff & Bob Port, *Gun Permits Soar Through Loopholes*, Jan. 7, 1988 ST. PETERSBURG TIMES, at A1.

¹⁰ Florida Department of State, Division of Licensing, *Concealed Weapons / Firearm License Statistical Report for Period 10/01/87 - 09/30/94* (1994).

¹¹ MISS. CODE ANN. §45-9-101 (1991).

¹² David Snyder, *New Miss. Gun-Permit Law Raises Visions of Old West*, Aug. 13, 1990 (New Orleans) TIMES-PICAYUNE, at A1.

¹³ Grace Simmons, *Police Want Concealed Guns Banned From Cars*, Nov. 11, 1992 (Jackson) CLARION-LEDGER, at 1A.

Oregon adopted a shall issue law on January 1, 1990, in a compromise between supporters and opponents of stricter gun control measures.¹⁴ Oregon's new law required county sheriffs to provide a concealed handgun license to any qualified adult who had taken a firearm safety course. Disqualified were persons with outstanding arrest warrants or on pretrial release, persons with a history of mental illness, and persons with felony or recent misdemeanor convictions.

While it eased laws on concealed carrying, Oregon tightened requirements for buying a gun. Oregon's old law barred convicted felons from owning handguns. The new law extended the ban to all firearms and to most persons ineligible for a concealed handgun license. Oregon's new law also lengthened the waiting period for handgun purchases, and required more detailed background checks.

Before the law, Oregon's sheriffs issued concealed handgun licenses at their discretion. In 1989, there were fewer than 500 licensed carriers in Clackamas, Multnomah, and Washington counties, the core of the Portland metropolitan area.¹⁵ By October 1993, the number of licenses in these counties grew to 16,000.¹⁶

III. POSSIBLE EFFECTS OF SHALL ISSUE LICENSING ON CRIME

The shall issue policies clearly increased the number of persons licensed to carry concealed weapons in Florida, Mississippi, and Oregon. The effects of these laws on crime are less obvious. There are grounds to believe that crime might increase, decrease, or remain the same after a shall issue law begins.

Shall issue licensing might reduce crime by deterring criminal offenders. Criminals generally wish to avoid victims who may be carrying guns.¹⁷ Knowledge that many citizens have concealed weapons thus could discourage attempts at crime, especially crimes against strangers and in public areas.

On the other hand, shall issue licensing might raise levels of criminal violence. This is so because it increases the number of persons with easy access to firearms. Zimring and Cook argue that assaults are often impulsive acts involving the most readily

¹⁴ OREG. REV. STAT. §166.291 - §166.295 (1991). See also Rhonda Canby, *1989 Oregon Gun Control Legislation*, 26 WILLAMETTE LAW REV. 565-84 (1990).

¹⁵ Bill MacKenzie, *Packin' the Heat*, Nov. 4, 1993 (Portland) OREGONIAN, at A1.

¹⁶ *Id.*

¹⁷ See, e.g., James D. Wright & Peter H. Rossi, *ARMED AND CONSIDERED DANGEROUS* 141-159 (1986).

available weapons.¹⁸ Guns are especially deadly weapons, and higher numbers of firearm carriers could therefore result in more homicides.

Advocates of shall issue licensing often cite figures showing that few legal carriers misuse their guns.¹⁹ Yet greater tolerance for legal carrying may lead to higher levels of illegal carrying as well. For example, criminals have more reason to carry firearms--and to use them--when their victims might be armed.²⁰ Further, if permission to carry a concealed weapon is easy to obtain, citizens and law enforcement officials may be less apt to view illegal carrying as a serious offense.

Yet shall issue licensing also may be irrelevant to crime. Even in areas with shall issue policies, only small fractions of adults have licenses to carry guns. Many citizens keep guns in their homes, and police officers often carry guns when off-duty and in plain clothes. The increase in available firearms due to shall issue policies may be of little consequence.

Most empirical discussions of shall issue licensing compare homicides in Florida before and after the beginning of its law. Homicide is the most accurately recorded crime, reducing the influence of measurement error on the comparison. Florida adopted its law earlier than did the other states, providing more time to study the effects.

The results of the existing comparisons differ with the period that they examine. However, all comparisons find that Florida homicides decreased after the state's shall issue law began. The National Rifle Association, for example, notes that Florida's homicide rate fell by 21 percent when comparing 1987 with 1992.²¹

Although the Florida experience appears to support a deterrent effect, the existing comparisons suffer from several weaknesses. First, these studies all use Uniform Crime Report data compiled by the Federal Bureau of Investigation (FBI). In 1988, the FBI did not publish crime counts for Florida. Evaluations based on the FBI data thus must ignore 1988 or use estimates of the 1988 total. This is important, because 1988 was the first full year after the law.

¹⁸ Franklin Zimring, *Is Gun Control Likely to Reduce Violent Killings?* 35 U. CHICAGO LAW. REV. 721-37 (1968); Philip J. Cook, *The Technology of Personal Violence*, in 14 CRIME AND JUSTICE: AN ANNUAL REVIEW OF RESEARCH, 1 (Michael Tonry ed., 1991).

¹⁹ See, e.g., LaPierre, *supra* note 6, at 36-8; Jeffrey R. Snyder, *A Nation of Cowards*, 113 THE PUBLIC INTEREST 40-55 (1993). See also Florida Department of State, *supra* note 9.

²⁰ In a survey of prison inmates, Wright & Rossi, *supra* note 16, at 150 found that a majority of gun-carrying criminals cited armed victims as an important motivation for their actions.

²¹ National Rifle Association, Institute for Legislative Action, *Fact Sheet: Carrying Concealed Firearms (CCW) Statistics* (1994). See also LaPierre, *supra* note 6, at 33; Kopel, *supra* note 6, at 63; George F. Will, *Are We 'A Nation of Cowards'?* Nov. 15, 1993 NEWSWEEK, at 92-3.

Second, the existing evaluations use short time series of annual data. Even in Florida, there are few annual observations after the law began, and most comparisons also include only a few years before the law. Crime increases and decreases over time due to the operation of many factors. Comparisons using short time series thus are highly prone to the influence of chance events that briefly push homicides above or below their average levels.

Third, the existing comparisons examine total homicide rates for the entire state. If some areas respond differently to the laws than do others, a statewide analysis may miss important effects. For example, the influence of the shall issue laws may be greatest in urban settings, where crime is most prevalent. Including rural areas in an analysis would then make it more difficult to detect changes in violence. Similarly, combining firearm and other weapon homicides might mask effects unique to one type of murder.

In short, current evaluations leave much room for doubt about the effects of the Florida law. These evaluations also neglect the outcomes of the shall issue laws in Mississippi and Oregon. A more detailed analysis using data from all three states would allow stronger inferences about the impact of the policies.

IV. RESEARCH DESIGN

A. STUDY DESIGN AND DATA

Similar to existing evaluations of shall issue licensing, we used an interrupted time series design to study average homicide levels before and after shall issue policies began.²² In contrast to other work, we analyzed monthly homicide counts, and we examined several urban areas within Florida, Mississippi, and Oregon. To find if the laws differently influenced gun deaths, we separately studied firearm homicides and homicides by other means.

We conducted analyses for Dade (Miami), Duval (Jacksonville), and Hillsborough (Tampa) counties in Florida, and for Hinds (Jackson) county in Mississippi. Because there were relatively few homicides in Multnomah county (Portland), we combined data for Clackamas, Multnomah, and Washington counties in Oregon.

For each area, we used death certificate data compiled by the National Center for Health Statistics (NCHS) to count monthly homicides through December 1990.²³ Health departments in Florida, Mississippi, and Oregon provided additional cases from January 1991, to December 1992.

²² See Thomas D. Cook & Donald T. Campbell, *QUASI-EXPERIMENTATION: DESIGN AND ANALYSIS ISSUES FOR FIELD SETTINGS* 207-22 (1979).

²³ Department of Health and Human Services, National Center for Health Statistics [producer], Inter-university Consortium for Political and Social Research [distributor], *Mortality Detail Files, 1968 to 1990* [computer files] (1993).

Except in Miami, we studied the period between January 1973 and December 1992 (240 months). Miami homicides increased sharply in May 1980, following an influx of refugees from Cuba. Miami's monthly homicide totals appeared to stabilize by late 1982, and we thus analyzed the period from January 1983 through December 1992 (120 months).²⁴

In total, there were 177 observations before the law in Jacksonville and Tampa, and 57 observations before the law in Miami. For all three Florida cities there were 63 observations after the law. In Mississippi there were 210 pre-law months and 30 post-law months. In Oregon there were 204 pre-law months and 36 post-law months.

To remove the effects of systematic variation from each time series, we developed autoregressive integrated moving average (ARIMA) noise models.²⁵ The noise models allow for variables such as poverty or age structure that influence homicides both before and after the legal changes. If not controlled, these variables may operate to bias inferences about the laws.

After developing suitable noise models, we added intervention models to measure changes in homicides following the laws.²⁶ We considered three intervention models: an abrupt permanent change model, a gradual permanent change model, and an abrupt temporary change model.²⁷ For each series, the abrupt permanent change model provided the best fit to the data.²⁸

Our analysis avoids the major problems of previous comparisons. The NCHS data collection system is independent of the FBI, allowing us to use 1988 Florida homicide counts.²⁹ The long monthly time series provide more stable estimates of homicide patterns before and after the shall issue laws began. By studying firearm and other weapon murders separately in several areas, we can more precisely isolate any effects.

²⁴ Still, we reached similar conclusions when we analyzed all 240 months of Miami data.

²⁵ George E. P. Box Et Al., *TIME SERIES ANALYSIS: FORECASTING AND CONTROL*, Third Edition (1994).

²⁶ *Id.* at 462-69.

²⁷ See David McDowall Et Al., *INTERRUPTED TIME SERIES ANALYSIS* (1980) for details.

²⁸ *Id.* at 83-85 discusses criteria for selecting the best-fitting model.

²⁹ For a description of the FBI and NCHS data collection systems, see Marc Riedel, *Nationwide Homicide Data Sets: An Evaluation of the Uniform Crime Reports and the National Center for Health Statistics Data*, in *MEASURING CRIME: LARGE-SCALE, LONG-RANGE EFFORTS* 175 (Doris Layton MacKenzie et al. eds., 1990).

B. THREATS TO VALIDITY AND SUPPLEMENTARY ANALYSES

Interrupted time series studies are among the strongest non-experimental research designs.³⁰ Still, as is true with any design, time series studies do not eliminate all threats to valid inference.

Perhaps the most important threat to the design's validity is what Cook and Campbell call history.³¹ This refers to the possibility that a permanent change in another variable produced an observed effect. For example, suppose that each area adopted other policies that influenced crime when they began their shall issue laws. These policies would then be confounded with the laws, and they would be historical threats to validity.

The major method that we use to avoid historical threats is to replicate the analysis in five areas. An unnoticed historical event may have increased or decreased homicides in any single area after its shall issue law began. Yet if similar outcomes occur in several areas after the laws, historical events become a less plausible explanation of the change.³²

In the face of a consistent pattern of results, historical explanations would require permanent changes in other variables in each area at about the time its law began. Further, these changes would have to operate in the same way in each area, always increasing or decreasing homicides.

The areas in our study are geographically separated and demographically diverse, and they adopted their laws at three different times. While the replications cannot entirely rule out history, a constant set of results would greatly narrow the range of events that could account for an effect. On the other hand, a varied pattern of results, with large increases or decreases in only one or two areas, would be consistent with history.

Beyond replication, we used two additional methods to evaluate historical threats. First, we searched for other legal changes, especially changes in firearm laws, which might affect homicides. The most important laws that we identified regulated handgun sales in Florida. The state adopted background checks of potential handgun buyers in February 1991, and it began a waiting period for purchases in October 1991.³³

Florida's waiting period and background check laws began more than three years after shall issue licensing, and one might expect them to have little influence on the results. Still, we included these laws in a supplementary analysis to verify that their effects

³⁰ See Donald T. Campbell & Julian C. Stanley, EXPERIMENTAL AND QUASI-EXPERIMENTAL DESIGNS FOR RESEARCH 37-43 (1963).

³¹ Cook & Campbell, *supra* note 21, at 211.

³² Campbell & Stanley, *supra* note 29, at 42 point out that the natural sciences heavily rely on time series designs, using replications to rule out rival hypotheses.

³³ FLA. STAT. ch. 790.065 (1992); FLA. STAT. ch. 790.0655 (1992).

were not confounded with the licensing policy. Because the waiting period followed the background checks closely in time, we considered them as a single law that began in February 1991.

As a second check on historical threats, we estimated models that included homicide counts for the entire United States as an additional independent variable. This analysis studied whether homicide changes in the five areas simply mirrored national patterns. If this were true, the shall issue laws would not affect homicides net of the national counts.

We could obtain national homicide counts only through the end of 1991.³⁴ This limits the amount of data after the laws, especially in Mississippi and Oregon. Still, the national analysis provides an idea of whether broad historical events can explain any observed local effects.

Besides examining historical threats, we also conducted an analysis of homicide rates. The population of all five areas grew over the study period, especially in the Florida cities. Homicide levels thus may have changed after the laws in part because of changes in the populations at risk.

To remove the influence of population, we estimated models for homicide rates per 100,000 persons. Only annual population figures were available, so we aggregated the data by year.³⁵ For this analysis we assumed that the shall issue laws began in 1988 in Florida, in 1990 in Oregon, and in 1991 in Mississippi.³⁶

Because the annual data provided few cases to study changes in rates, we pooled all five areas using a fixed effects analysis of variance model.³⁷ This yielded 70 observations before the laws, and 20 after them. We then estimated separate equations for firearm homicides and for homicides by other methods.

In the pooled equations we first removed the mean homicide rates for each area and year. This controls for constant rate differences between the areas, and for events

³⁴ Department of Health and Human Services, National Center for Health Statistics [producer], Inter-university Consortium for Political and Social Research [distributor], Mortality Detail Files, 1968 to 1991 [computer files] (1994).

³⁵ For 1973-1978 we used county-level population estimates from U.S. Department of Commerce, Bureau of the Census, STATISTICAL ABSTRACT OF THE UNITED STATES (various years). For 1980-1992 we used unpublished Census Bureau estimates. The Census Bureau did not estimate county populations in 1979, and we interpolated values for that year.

³⁶ Assumptions about the starting dates were necessary because the Florida and Mississippi laws began in the middle of the year. The start dates that we used are the first full year after enactment. Oregon's law began in January, so the date choice was obvious.

³⁷ See Cheng Hsiao, ANALYSIS OF PANEL DATA (1986).

that similarly influenced rates across all areas in a given year.³⁸ We then included intervention variables to measure the effects of the shall issue and (for the Florida cities) background check and waiting period laws.

V. RESULTS

Estimates of the effects of the shall issue laws on the monthly homicide counts appear in Table 1. To simplify the presentation, we report only the means before the laws and the changes in homicides after the laws began.³⁹

The results in Table 1 show that firearm homicides increased in four of the five areas in the post-law period. Except the increase in Miami and the decrease in Portland, these changes were statistically significant ($p < .05$). Expressed as percentages, the changes varied from a decrease of 12 percent (Portland) to an increase of 74 percent (Jacksonville).

Considering each area as a replication of the same experiment, gun homicides increased by an average of 26 percent. An inverse normal combined test of statistical significance easily rejected the null hypothesis of zero overall change.⁴⁰

In contrast to gun homicides, homicides by other means did not show a consistent pattern of variation. Homicides without firearms increased in Tampa and Jacksonville, but they fell in the other three areas. Across all five areas, the average change in homicides without guns was than 1 percent. In combination, this change was statistically insignificant.

Table 2 contains the analysis for the Florida cities that includes the state's waiting period and background check laws. These results provide no evidence that the original estimates were due to confounding between the other laws and shall issue licensing. Adding the other laws slightly increased the coefficients for the shall issue policy, but it did not alter inferences about the effect in any city.

Although not central to our study, it is worth note that the levels of each Florida firearm series decreased after the waiting period and background checks began. Yet homicides without guns also fell in two cities, and the policies should influence only firearm crimes. The results thus do not point to any strong conclusions about the waiting period and background check laws.

³⁸ *Id.* at 138-40.

³⁹ An appendix that describes the analysis in more detail is available from the authors.

⁴⁰ See Larry V. Hedges & Ingram Olkin, *STATISTICAL METHODS FOR META-ANALYSIS* (1985) 39-40. The test assumes that the replications are independent. Because we include three cities from the same state in the analysis, this is probably only approximately correct.

Table 3 presents the analysis that adds national homicide counts as a covariate. In each area, there was a positive relationship between local homicide patterns and patterns in the nation. Still, including the national counts only modestly changed the estimates for shall issue licensing.

Finally, Table 4 reports the results for the annual homicide rates. Here the coefficient for the shall issue policies is the average effect across all five cities. Gun homicides increased on average by 4.5 per 100,000 persons, a value significantly different from zero. In contrast, murders without guns decreased insignificantly. Gun homicides fell insignificantly following Florida's waiting period and background check laws, while other weapon homicides increased.

VI. DISCUSSION

Across the five areas, firearm homicides increased in the aftermath of the shall issue laws. In contrast, homicides without guns remained steady. These findings were little altered when we considered other laws, controlled for variations in national homicide counts, and allowed for population changes.

The pattern of results leads us to two conclusions, one stronger than the other. The stronger conclusion is that shall issue laws do not reduce homicides, at least in large urban areas. If there were such a decrease, other events would have to push murders up strongly enough to mask it in all five areas that we studied. Such events are possible, of course, but we believe that they are extremely unlikely.

The weaker conclusion is that shall issue laws raise levels of firearm murders. Coupled with a lack of influence on murders by other means, the laws thus increase the frequency of homicide.

This interpretation agrees with other work showing that policies to discourage firearms in public may help prevent violence. For example, studies by Pierce and Bowers and by O'Carroll et al. found that laws providing mandatory sentences for illegal gun carrying reduced firearm crimes in Boston and Detroit.⁴¹ Similarly, Sherman et al. found that gun crimes fell during a Kansas City program that confiscated firearms from people who carried them outside their homes.⁴²

⁴¹ Glenn L. Pierce & William J. Bowers, *The Bartley-Fox Gun Law's Short-Term Impact on Crime in Boston*, 455 ANNALS AM. ACAD. POL. & SOC. SCI. 120-37 (1981); Patrick W. O'Carroll Et Al., *Preventing Homicide: An Evaluation of the Efficacy of a Detroit Gun Ordinance*, 81 AM. J. PUBLIC HEALTH 576-81 (1991).

⁴² Lawrence W. Sherman Et Al., *The Kansas City Gun Experiment*, NATIONAL INSTITUTE OF JUSTICE RESEARCH IN BRIEF (forthcoming). Sherman and associates note that about 20 percent of the seized firearms were legally carried.

Despite this evidence, we do not firmly conclude that shall issue licensing leads to more firearm homicides. This is so because the effects varied over the study areas. Firearm homicides significantly increased in only three areas, and one area witnessed an insignificant decrease. In combination, the increase in gun homicides was large and statistically significant. Yet we have only five replications, and two of these do not clearly fit the pattern.

The statistical significance of the combined results aside, the analysis implies that shall issue policies do not always raise levels of gun murder. Sometimes, at least, local conditions operate to blunt any effects. The areas without significant increases (Portland and Miami) may be unusual, but we lack the data to examine whether this is true.⁴³

Stated in another way, we cannot completely dismiss historical events as an explanation of the increases in firearm murders. One would need a complex theory to explain how history could mask a decrease in homicides after the laws. Historical accounts of the apparent increase might be much simpler.

A more definitive analysis should be possible in the future. Besides Mississippi and Oregon, six other states have adopted shall issue laws based on the Florida model. Four of these states--Alaska, Idaho, Montana, and Wyoming--have small populations and low levels of criminal violence.⁴⁴ As a result, it would be difficult to perform a statistically meaningful analysis of changes in homicides after their laws began.

Yet two more populous states, Arizona and Tennessee, enacted shall issue licensing in 1994.⁴⁵ Given several years of experience with the laws in these states, future research could provide more certain estimates of the effects on firearm violence.

The legislatures of other states, including Colorado, Louisiana, Missouri, and Texas, also have seriously considered shall issue statutes.⁴⁶ Given this level of interest, it is likely that shall issue licensing will continue to receive attention.

While our analysis does not allow a firm conclusion that shall issue licensing increases firearm homicides, it does suggest caution about these laws. Some observers consider strict limits on firearms outside the home to be among the most effective forms of

⁴³ As we noted earlier, Oregon paired shall issue licensing with stricter regulation of handgun sales. This may--or may not--account for the lack of increase in Portland firearm homicides.

⁴⁴ The laws are: ALASKA STAT. §18.65.700 - §18.65.720 (1994); IDAHO CODE §18-3302 (1993); MONT. CODE ANN. §45-8-321, §45-8-322 (1993); WYO. STAT. §6-8-104 (1994)

⁴⁵ ARIZ. REV. STAT. §13-3112 (1994); TENN. CODE ANN. § 39-17-1315 (1994).

⁴⁶ See, e.g., Associated Press, *Colorado May Relax Law on Concealed Guns*, Feb. 13, 1994 WASHINGTON POST, at A19; Associated Press, *Packin' A Pistol Allowed By Bill Passed By Senate*, May 14, 1992 (New Orleans) TIMES-PICAYUNE, at A1; Virginia Young, *NRA Led Blitz on Concealed Weapons*, Mar. 25, 1992 ST. LOUIS POST-DISPATCH, at A1; Laura E. Keeton, *Concealed Gun Bill Dies After Promise of Veto*, Apr. 29, 1993 HOUSTON CHRONICLE, at A1.

gun control.⁴⁷ Beyond any influence on violence, the policies are easy to enforce and they do not inconvenience most gun owners. When areas weaken limits on concealed weapons, they thus may be giving up a simple and effective method of preventing firearm deaths.

⁴⁷ See Mark H. Moore, *The Bird in Hand: A Feasible Strategy for Gun Control*, 2 J. POLICY ANALYSIS & MANAGEMENT 185-95 (1983); Samuel Walker, *SENSE AND NONSENSE ABOUT CRIME: A POLICY GUIDE*, Second Edition (1989).

Table 2. Mean Numbers of Homicides per Month in Florida Areas, By Jurisdiction and Method, Before and After Implementation of Shall Issue Licensing and Waiting Period and Background Check Laws

Type of Homicide and Location	Before the Laws	Change After the Shall Issue Law			Change After the Waiting Period and Background Check Laws		
	no./mo.	no./mo.	SE	t-Statistic	no./mo.	SE	t-Statistic
Firearm							
Miami	25.88	2.25	1.19	1.89	-3.99	1.51	-2.64
Jacksonville	6.22	6.10	0.61	10.00	-3.25	0.90	-3.61
Tampa	4.91	1.35	0.52	2.60	-0.68	0.77	-0.88
Other Methods							
Miami	9.60	0.11	0.53	0.21	-2.48	0.68	-3.65
Jacksonville	2.86	1.25	0.38	3.29	-0.60	0.56	-1.07
Tampa	2.72	0.52	0.44	1.18	0.07	0.65	0.11

*Difference between the mean number of homicides per month before implementation of the shall issue law and the mean number after its implementation, controlling for the waiting period and background check laws.

**Difference between the mean number of homicides per month before implementation of the waiting period and background check laws and the mean number after their implementation, controlling for the shall issue law.

3-22



TO: Senate Committee on Federal and State Affairs
FROM: Mark Tallman, Director of Governmental Relations
DATE: March 27, 1995

RE: **Testimony on H.B. 2541 - Preemption of Firearms Regulation**

Madam Chairman, Members of the Committee:

KASB appreciates the opportunity to appear today on H.B. 2541. Our concern is not with the general issue of state preemption of firearms regulation, but with whether the bill applies to school district policies, and whether school districts **should** come under a general preemption.

Because the bill voids any existing or future regulation of **any** political subdivision, it would appear to apply to school districts, which are political subdivisions of the state. However, school districts are not listed in subsection (b) as an example of political subdivisions. We would note that school districts are different from cities and counties in that they do not have the power to adopt regulations over the general population. In regulating firearms, school districts only have the authority to regulate persons on school grounds or at school activities for the purpose of maintaining a safe educational environment. We believe that local school boards should have the authority to adopt policies to meet local circumstances. This is the very essence of the idea of local control in education.

In fact, firearms are already heavily regulated at school. K.S.A. 21-4204 prohibits "possession of any firearm by any person other than a law enforcement officer in or on any school property or grounds upon which is located a building or structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extra-curricular activities of pupils enrolled in kindergarten or any of the grades 1 through 12 or at any regularly scheduled school sponsored activity or event." A limited list of exceptions is provided. S.B. 317, which has been signed by the Governor, requires a one year suspension of "any pupil determined to be in possession of a weapon at school, on school property, or at a school supervised activity." A one year suspension is the longest suspension allowed under state law. School districts have, therefore, very little discretion in firearms policies at the present time.

We are concerned, however, about H.B. 2541 eliminating any discretion at all by requiring "exact conformity" with state law. If the committee chooses to recommend this bill, we would request that school districts be removed from its application.

Thank you for your consideration.

Sen Fed & State
3-27-95
Attachment 4



**League
of Kansas
Municipalities**



LEGAL DEPARTMENT • 300 S.W. 8TH TOPEKA, KS 66603 • TELEPHONE (913) 354-9565 • FAX (913) 354-4186

LEGISLATIVE TESTIMONY

TO: Senate Committee on Federal and State Affairs
FROM: Don Moler, General Counsel
RE: Opposition to HB 2541
DATE: March 27, 1995

First of all the League would like to thank the Committee for allowing us to appear today in opposition to HB 2541. I cannot overstate how strongly the League of Kansas Municipalities, by and through its member cities, opposes the state preemption of firearm regulation and the elimination of local laws regulating the use of firearms in our state. This is a fundamental question which the legislature should not undertake lightly. League records indicate that cities in Kansas have had the power to regulate firearms within their communities since at least 1863. Over the 132 years which have elapsed since that time we believe that cities throughout the state have acted reasonably and rationally on behalf of their citizens to regulate firearms in a responsible manner. HB 2541 strikes at the very heart of home rule authority of cities in Kansas and is a complete contradiction and contravention of the historical nature of firearm control in Kansas. Proponents of this legislation disregard not only the home rule authority of cities and their responsiveness to their citizens, but disregard the illustrious history of the State of Kansas and the public policy decisions which have been made over the past 130 plus years to allow cities to regulate firearms within their geographical boundaries.

The League has a long standing policy against any state preemption of the authority of cities to prohibit cities to regulate firearms. Specifically in the **1994-1995 Statement of Municipal Policy**, which was adopted by the membership of the League of Kansas Municipalities at its annual convention in October 1994, Section G-7 entitled **Firearms Regulation** states as follows:

"We oppose any legislative efforts to restrict or preempt local home rule authority to regulate firearms, including the possession or discharge or firearms in public places within cities."

This direct statement essentially represents the entire history of gun control in Kansas. Cities have been protecting their citizens since the state was founded and are expected to do that today.

In contrast, current state statutes controlling firearms are typically very broad in scope and limited in application. They essentially make it unlawful to: carry concealed weapons; give or dispose of a firearm to a person addicted to a controlled substance or who is a felon; remove or deface the identification marks of a firearm, unlawfully discharging a firearm upon or across the land of another; and possession of a firearm within the state capitol building. Most substantive regulation of firearms in Kansas is done at the local level.

*Sen Fed & State
3-27-95
Attachment 5*

I suspect it would shock most Kansans that state law does not prohibit the carrying of an unconcealed weapon even today. Perhaps we are not as far away from Dodge City of the 1870's as we might like to think. We at the League believe cities have used their power reasonably, effectively and prudently in regulating guns within their boundaries. We would point out that if the citizens of a given city believe that a governing body has overstepped its bounds in the area of gun control, or any other area for that matter, they have the ability to remove that governing body from office at the ballot box and replace them with a governing body which will pass ordinances and other local regulations more to the citizenry's liking.

We believe that this legislation is simply an attempt by a few special interests to do away with effective gun control in Kansas. We should not deceive ourselves into believing that the State of Kansas is truly in the gun control business, it isn't. Most gun control regulation is and has been done at the local level since the beginning of statehood. We see no reason to change this long-standing policy which has served the state well for many, many years.

Finally, I would direct your attention to the handout which I have attached to my testimony which is taken from the 1866 Code of the City of Lawrence, Kansas, I have replicated the cover and pages 147 through 149. This is the general nuisance ordinance of the City of Lawrence which was approved on January 12, 1863. I thought that Sections 9 and 10 would be interesting and informative for the Committee today.

52.7
1-43

4-152

CHARTER,

OTHER POWERS,

ORDINANCES

CITY OF LAWRENCE,

COMPILED BY ORDER OF THE CITY COUNCIL.

SAMUEL KIMBALL, COUNCILMAN,
E. V. BANKS, CITY ATTORNEY, } COMPILING COMMITTEE

LAWRENCE:
KANSAS STATE JOURNAL STEAM POWER PRESS PRINT.
1886.

[No. 34.]

An Ordinance Relating to Nuisances.

- | | |
|-----------------------------|---------------------------------|
| 1. Deposit of dead animals. | 6. Removal of nuisances. |
| 2. Refusal to remove. | 7. Notice to abate. |
| 3. Privies. | 8. Bathing in the Kaw. |
| 4. Slaughter houses. | 9. Discharging firearms. |
| 5. Filth. | 10. Carrying concealed weapons. |

Be it ordained by the Mayor and Councilmen of the City of Lawrence :

SECTION 1. Any person who shall deposit, or cause to be deposited, any dead animal upon any ground within the limits of this city, shall be subject to a penalty of not less than five nor more than twenty-five dollars.

SEC. 2. Any person, the owner of any dead animal which shall be found lying upon any ground within the limits of this city, who shall neglect or refuse to remove the same within one day after notice to remove the same shall have been given by the marshal, shall be subject to a penalty of not less than five nor more than twenty-five dollars.

SEC. 3. The owner of any privy in this city, or the owner of any lot in this city, upon which any privy is or may be erected, which is or may become offensive to persons residing in the neighborhood, shall remove or cleanse, or cause the same to be removed or cleansed within five days after notice shall be served upon him by the city marshal to remove or cleanse the same; and any person who shall neglect or refuse to remove or cleanse any privy as aforesaid, shall be subject to a penalty of not less than five nor more than fifteen dollars.

SEC. 4. Any slaughter house which now is, or may hereafter be erected within the limits of this city, which is or shall become offensive to the inhabitants of the neighborhood, shall be removed out of the bounds of this city within ten days after notice shall be given to remove the same by the city marshal. Any person or persons, the owner or owners of any slaughter house, as above mentioned, who shall neglect or

refuse to remove the same within the time above specified, shall be subject to a penalty of not less than ten nor more than twenty-five dollars.

SEC. 5. Any person who shall deposit any excrement, or filth, or refuse, or any vegetable or animal matter, or any substance whatsoever, which is or may become offensive in any street or place within the limits of this city, shall be liable to a penalty of not less than two nor more than ten dollars; and all persons who shall or may have deposited any excrement or filth, or refuse, or any vegetable or animal matter, as aforesaid, are required to remove the same within one day after receiving notice to remove the same, from the city marshal, under a penalty of not less than two nor more than five dollars.

SEC. 6. It shall be the duty of the city marshal, in all cases of nuisance committed under the provisions of this ordinance, where the offending party is not known, or cannot be found, to remove and abate, or cause to be removed or abated, all nuisances so committed within a reasonable time, at the expense of the city; and in all cases where such offending party is known or can be found, but who neglected or refuses to obey the provisions of this ordinance, the city marshal shall remove and abate, or cause to be removed and abated, such nuisances, at the cost and expense of the party so neglecting or refusing to abate or remove the same.

SEC. 7. The city marshal shall have authority to notify persons to abate and remove nuisances as described in sections two, three, four and five of this ordinance, only upon written complaint made of the existence and continuance of such nuisance, by two residents of the city.

SEC. 8. It shall be unlawful for any person between the hours of five o'clock, A. M., (forenoon) and sun set, to bathe in a state of nudity in the Kaw river within the limits of this city. Any person offending against the provisions of this section shall be fined not less than one dollar.

SEC. 9. Whoever shall, within the city, discharge any fire-arms, except by permission of the mayor, or when mustered for drill or review, or otherwise acting under the command or by permission of some commissioned officer, or except when done in self-defense, or for the protection of gardens from destructive animals, shall be, upon conviction thereof, fined not less than five dollars.

SEC. 10. Any person who shall in this city have or carry concealed or partially concealed, upon his person, any pistol, bowie knife or other deadly weapon, shall, on conviction, be fined not less than one nor more than ten dollars: *Provided*, This section shall not apply to peace officers of the city or state. The carrying of a weapon in a holster, exposed to full view, shall not be deemed a concealed or partially concealed weapon under this section.

S. K. HUSON, Mayor.

Approved, January 12, 1863.

[No. 35.]

An Ordinance Amending "An Ordinance Relating to Nuisances."

Be it ordained by the Mayor and Councilmen of the City of Lawrence:

SECTION 1. That section seven of "An Ordinance relating to nuisances," approved, January 12, 1863, be and the same is hereby amended so as to read as follows: Section 7. The city marshal shall have authority and it shall be his duty to notify any and all persons whose duty it shall be so to do, to remove any nuisance or nuisances mentioned in said ordinance.

SEC. 2. That this ordinance shall be in force from its publication.

Approved, December 7, 1866.

Attest: W. H. B. LYKINS, Mayor.

H. O. SHOLES, City Clerk.

ISSUE PAPER
GUN CONTROL STANDARDIZATION ACT

Phillip B Journey



Forty-one states have standardized their gun control laws in one form or another. Thirty-six of those states have passed preemption by statute and five have mandated standardization by judicial decree.

Today in Kansas we have a crazy patchwork quilt of City Ordinances due to the latitude given municipal governments under Kansas Home Rule. In Kansas we have now a crazy patchwork quilt of City Ordinances that are impossible to comply with. They are not centrally codified, conduct which is legal in the majority of state of Kansas, may be illegal in small areas due to this inconsistent statutory structure.

While the principle of government that is closest to the people works in some situations, such as zoning ordinances which subject citizens of the state of Kansas to penalties of up to one year in jail and up a \$2,500.00 fine, should clearly be the exception.

Examples of some of the stranger patches in the quilt of City Ordinances across the state of Kansas come from Wichita. While the state of Kansas has a well written prohibition of the possession of hand guns by minors, the city of Wichita chose to expand this concept to include BB guns, placing children in jeopardy of being adjudicated a juvenile delinquent and parents in jeopardy of being placed in custody for up to one year for the simple act of giving their child a BB gun for Christmas. This occurs under Ordinance 5.89.010.

In Fed & State
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(Attachment 6)

In the vast majority of the area of the state of Kansas, it is legal, for example, for individuals traveling upon the highways and streets to transport loaded firearms in their motor vehicles. This is particularly important for those traveling alone in rural areas as law enforcement may be unavailable. But in the city of Wichita, driving through town with a firearm in your motor vehicle becomes a crime punishable by up to one year in jail and a \$2,500.00 fine, once you cross the city line. This occurs under Ordinance 5.88.015.

While Federal Law allows for this transportation of firearms in an unloaded condition locked in the trunk, there are no safe guards should an individual desire to have the firearm where it would be the most assessable for self defense purposes.

While the new Federal Law and the Crime Bill prohibits the manufacturer of firearm magazines or clips with the capacity in excess of ten rounds in Wichita, it is illegal to sell any magazine that has any capacity in excess of twenty rounds. While Federal Law does not make the possession of magazines or the sale of magazines manufactured prior to that date illegal, the city of Wichita does.

If one of your constituents ran an ad to sell a firearm in, for example, the Kansas City Star, the Emporia Gazette, or any other periodical newspaper or magazine distributed in the city of Wichita without paying Wichita a \$20.00 tax and fulfilling the requirement of supplying name, address, telephone number, and personal description to law enforcement officers in the city of Wichita and to the publication, which would require the publication

of their name and telephone number in the sales ad for the firearm. They would be subject to one year in jail and a \$2,500.00 fine under Ordinance section 5.88.015.

While Federal Law mandates the transition from the Brady Bill's waiting period to the instant check system for the state of Kansas, cities such as Lawrence and Wichita have their own personal waiting periods in place. While the Brady Bill allows for a waiver for the waiting period for the purchase of a hand gun by an individual who has been threatened with harm or great bodily death, the city of Wichita and the city of Lawrence have refused to put such waivers in waiting periods.

Individuals from jurisdictions outside the city of Wichita are prosecuted nearly daily in Wichita Municipal Court for infractions of Wichita Municipal Ordinances which they were not aware of regarding firearms. They are subject to substantial fines, Court costs, penalties in addition to forfeiture of the personal property.

Standardization is not only good for the community but also for law enforcement. In that way, law enforcement officers will understand what their duties are when entering other jurisdictions in the state of Kansas.

TO: SENATE, FEDERAL AND STATE AFFAIRS COMMITTEE

FROM: LOREN W. YOUNGERS, SHERIFF, MORTON COUNTY

REF: HOUSE BILL 2541

GREETINGS,

I AM HEAR TO TESTIFY TODAY IN OPPOSITION TO HOUSE BILL 2541. THIS BILL AS IT IS WRITTEN IS SETTING UP SOME MAJOR PROBLEMS IN RELATION TO THE DIVERSITY OF COMMUNITIES IN KANSAS.

AS A SHERIFF FROM A SMALL RURAL KANSAS COMMUNITY AN ORDINANCE AS IS PRESENT IN WICHITA AT THIS TIME WOULD IN NO WAY BE FEASIBLE FOR US. FIREARMS IN MORTON COUNTY AND ANY OTHER RURAL AREA IS A PART OF THE FARMER AND RANCHERS TOOLS AS IS HIS FENCE STRETCHER. FARMERS AND RANCHERS RELY ON THE FIREARM TO PROTECT LIVESTOCK FROM PREDATORS BOTH WILD AND DOMESTIC.

IF THE EXEMPTION BILL IS PASSED IT WILL FOR THE PRESENT FREE UP ALL ORDNANCES ACROSS THE STATE. BUT IT IS NOT GOING TO SOLVE THE PROBLEM IN WICHITA OR OTHER LARGE COMMUNITIES IN KANSAS. THESE COMMUNITIES ARE IN A CRISIS THAT THIS BILL IS NOT GOING TO HELP AT ALL. THIS CRISIS DOES NOT EXIST IN THE SMALL COMMUNITIES THUS WE HAVE A DIFFERENCE IN NEED.

IF THE STATE IS LEFT UP TO MAKE LAWS THAT WILL SOLVE THE PROBLEM WITH FIREARMS, THEY NAMELY THE STATE WILL MAKE LAWS THAT ARE INTENDED FOR THE LARGER COMMUNITIES BECAUSE IN LIES THE MAJOR PROBLEMS IN RELATION TO FIREARMS. THESE LAWS THEN BECOME STATE WIDE LEAVING THE SMALLER COMMUNITIES TO LIVE WITH SOMETHING THAT REALLY DOESN'T APPLY TO US.

AS A LAW ENFORCEMENT OFFICER AND A CITIZEN OF KANSAS WITH A FAMILY TO RAISE I FEEL THAT I WOULD RATHER SEE THE LOCAL ENTITIES OF GOVERNMENT MAKE LOCAL LAWS THAT WILL BENEFIT THAT PARTICULAR AREA OF THE STATE. IT ONLY SEEMS FEASIBLE THAT THE LOCALS KNOW WHAT THE LOCALS NEED. THE STATE NEED ONLY TO MAKE IT POSSIBLE FOR THE LOCALS TO MAKE THE LAWS. THEN IN TURN THE STATE NEEDS TO STAND BEHIND THE COMMUNITIES TO ENFORCE PROSECUTE AND CONVICT THE VIOLATORS WITH SEVERE PENALTIES FOR COMMITTING CRIMES OF VIOLENCE ESPECIALLY WITH A FIRE ARM.

IN CLOSING A WOULD ASK THE LEGISLATURE TO ALLOW THE LAW TO FIT THE AREA IN NEED BY ALLOWING THOSE WHO KNOW THE NEED TO MAKE THE LAWS FOR THERE RESPECTIVE LOCAL COMMUNITIES. IF WICHITA CITIZENS DO NOT LIKE THE LAWS THEY PRESENTLY HAVE LET THE LOCAL CITIZENS PETITION THERE LOCAL ENTITIES FOR A CHANGE IN THE LAW. BUT DON'T FORCE SOMETHING ON A COMMUNITY THAT REALLY DOESN'T APPLY TO THEM.

THANK YOU FOR THE OPPORTUNITY TO ADDRESS THIS BODY ON HOUSE BILL 2541.

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Attachment 7



City Hall • 8500 Santa Fe Drive
Overland Park, Kansas 66212
913/381-5252 • FAX 913/381-9387

March 27, 1995

TO: Senate Federal and State Affairs Committee
FROM: Gerry Ray, City of Overland Park
SUBJ: Hearing on HB 2541

Madam Chairman, members of the Committee, my name is Gerry Ray, representing the City of Overland Park.

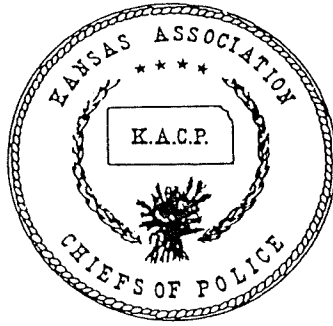
Overland Park strongly agrees with the position of the League of Municipalities opposing HB 2541. The City has had ordinances strictly regulating the use, possession and sale of firearms within the city limits for close to ten years.

The citizens of the city support such regulations as a means to sustain the type of environment they are accustomed to. On any given issue individual communities have their own standards that their people support. This is even more so when the issue involves weapons that can injure or kill.

If the State must set uniform standards for regulating firearms, that local governments are required to adhere to, than at least allowed them to have local ordinances that exceed that state standard.

The City of Overland Parks urges the Committee to approach this subject very carefully. Once the precedent of State preemption is established, it will be extremely difficult to ever reverse it. We would ask that HB 2541 not be recommended for passage.

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3-27-95
Attachment 8



OFFICERS

LEE DOEHRING
President
Leavenworth

JAMES DENNEY
Vice President
K. U. Lawrence

THOMAS HAYSELDEN
Sergeant At Arms
Shawnee

ALVIN JOHNSON
Treasurer
Riley County

DOYLE KING
Executive Director
Wichita

RONALD PICKMAN
Recording Secretary/
Parliamentarian
Atchinson

RONALD JACKSON
Immediate
Past President
Newton

**REGIONAL
REPRESENTATIVES**

PHILIP MAJOR
Region I
Olathe

ALLEN FLOWERS
Region II
Coffeyville

DEAN VINCENT
Region III
McPherson

RICK STONE
Region IV
Wichita

LYNN MENAGH
Region V
Norton

ROGER SCHROEDER
Region VI
Garden City

HONORABLE MEMBERS OF THE COMMITTEE,

Thank you for this opportunity to testify in opposition of House Bill 2541. My name is Rick Stone and I reside in Wichita. I am here today representing the Kansas Association of Chief's of Police (KACP), as the Legislative Committee Chairperson charged with the responsibility of sponsoring or reviewing legislation that may effect the public safety of the citizens of Kansas.

On behalf of the over two hundred Chief's of Police from all across our state, we are strongly opposed to this Bill which would make our state infamous all across America.

While I am also today authorized to represent The City of Wichita in their opposition to this legislation, this is an insane Bill that would destroy the peace and tranquillity of towns and cities, large and small all across Kansas. The picture of armed men and women openly hanging a six shooter, or more likely a 9mm Assault Pistol, from their hips as they go to the grocery store or church or a little league game, is as ludicrous as it is shocking that any rational person would propose it. How could we expect anyone to police that type of environment?

Law enforcement in Kansas is uniquely different between rural and urban settings. Due to our comparatively sparse population, it is even greatly different between city Police Officers and county Sheriff's Deputies. This has long been recognized and accepted in our state. Unless we are willing to impose needless restrictions on rural residents to bring them in compliance with laws that are absolutely necessary for survival in an urban environment, this law will be the death knell for many of our citizens and our brave law enforcement officers.

We implore you to prevent this tragic mistake.

Thank you.

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3-27-95
Attachment 9



DEPARTMENT OF LAW
OFFICE OF CITY ATTORNEY
CITY HALL — THIRTEENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202 - 1635
(316) 268-4681

March 24, 1995

Senator Lana Oleen, Chairperson
Senate Federal and State Affairs Committee
Room 254-E
State Capitol Building
Topeka, Kansas

Re: Testimony in Opposition to H.B. No. 2541

Dear Senator Oleen:

My name is Douglas J. Moshier and I am a senior assistant city attorney for the City of Wichita. I am here today on behalf of the City of Wichita to speak in opposition to H.B. No. 2541.

The City of Wichita's opposition to this bill is, first and foremost, directed against the bill's unprecedented attack on cities' home rule authority. The legislature has never, since the passage of the home rule amendment to the state constitution in 1961, attempted to preempt this authority by the mere fact of announcing its intention to do so. Certainly, this body has on numerous occasions in the last 24 years passed legislation which, by its terms and provisions, so occupies a field that it can be said to preempt that field. However, it has long been the law of this state that cities still had home rule authority in such instances. Cities could, in the face of such statutory preemption, adopt ordinances which did not conflict with state law. State law has also been long-settled that, in the area of police power regulation, cities could adopt enactments which were more restrictive than state law, even though such state law was uniform and of statewide concern. Such enactments are considered not to conflict with state law.

The provisions of H.B. 2541 would change this. First, the provisions of subsection (b) of the bill would mean that cities could pass no law affecting firearms (with the exception of zoning provisions and regulations pertaining to the discharge of firearms) until the state had acted to pass the same law. Second, cities could, in that case, only parrot the state law. They could make no changes which would make the city's law more restrictive than state law. This changes over twenty years of constitutional law and is contrary to the will of the people expressed when the home rule amendment was adopted in 1961. The provisions of that amendment provide that:

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(Attachments 10)*

Powers and authority granted cities pursuant to this section shall be liberally construed for the purpose of giving to cities the largest measure of self-government.

In addition to this significant dilution of cities home rule authority, adoption of this bill would also upset literally hundreds of ordinances, rules and regulations of cities throughout the state. Most of these are police power regulations which have little to do with what the proponents of this bill would consider "gun control". By way of example, in the City of Wichita the adoption of this bill would void existing regulations which:

1. Limit a person's ability to use the sidewalks to display and sell goods.
2. Require a license and payment of a business occupation fee for engaging in certain businesses and occupations.
3. Regulate shooting galleries.
4. Regulate advertising on the city streets by the use of PA systems and/or signs mounted on vehicles operating on the streets.
5. Define certain rules and regulations regarding conduct on the city's municipal airport properties.
6. Require licensing of private security personnel and restricts the circumstances under which they may carry firearms.
7. Regulate itinerant merchants.
8. Define certain rules and regulations regarding conduct in the city's parks.
9. Prohibit hunting in the city's parks.
10. Regulate miscellaneous sales, i.e. garage sales and estate sales.

None of these regulations are zoning ordinances and, therefore, under the bill they would not be excepted from the provisions of subsection (b). Thus, setting aside the administrative nightmare that instantaneous repeal of these and many more ordinances of the City of Wichita would wreak, the City of Wichita could reenact these regulations only if it took great care in each enactment to expressly except any activity which related to "sale, purchase, purchase delay, transfer, ownership, use, possession, storage in home or business, bearing, transportation, licensing, permitting, registration, taxation or any other matter pertaining to firearms, components, ammunition or supplies." This is extraordinarily broad language and the ability of the City of Wichita to constitutionally reenact many of these police power regulations would be, at the least, subject to challenge by those who would be regulated when others who had any slight connection to firearms would not be. A more complete list of the ordinances of the City of Wichita that would be voided by enactment of this statute is attached.

Senator Lana Oleen, Chairperson
March 24, 1995
Page 3

Finally, isn't it the basic concept of home rule and the recently popular concept of the right of the people to self-determination that police power regulation is best done at the local level. Shouldn't these matters that mean little to the people of the state as a whole and, quite possibly, very much to the people of individual cities be decided where people think it matters? This bill doesn't even represent a case in which the legislature regulates and announces in that regulation that it knows best and that its regulations are intended to occupy the field. This bill is merely an announcement that the legislature knows best. There is no regulation or even a promise of regulation in the areas where it is announcing that cities will be forever barred from determining their own affairs. This is not how city residents saw their destiny in 1961 when the state constitution was amended and they were promised the "largest measure of self-government."

Very truly yours,



Douglas J. Moshier
Senior Assistant City Attorney

DJM:cdh

LIST OF REPEALED ORDINANCES

1. Ord. No. 11-592

This ordinance contains numerous sections dealing with municipal misdemeanor violations. It is probably fair to say that this is the most recent comprehensive enactment of the City's criminal code. The sections dealing with weapons are more restrictive than the state law. The entire ordinance would be repealed. Many of the sections of this ordinance are still on the books in the municipal criminal code. Repeal would require significant and prompt rewrite of these sections to avoid a gap within which several criminal acts would not be criminal violations under municipal code.

2. Ord. No. 14-319

This ordinance prohibits and makes criminal the solicitation on the streets, sidewalks or in the doorways of buildings abutting the sidewalks for the purpose of selling any tangible personal property. This is more restrictive than state law and the ordinance would be repealed.

3. Ord. No. 15-606

This is the original business occupation tax and business licensing ordinance. The section relating to detectives has provisions regarding firearms which are more restrictive than the proposed ordinance. Provisions relating to certain sales (out of hotels, second hand dealers) and shooting galleries are also more restrictive than the provisions of the proposed ordinance. Repeal of this comprehensive ordinance would do away with much of the business regulation contained in Title 3 of the City Code.

4. Ord. No. 17-657

This ordinance amends part of the prior ordinance (15-606) and provides for regulation and payment of a fee for persons who advertise within the City by way of signs and/or radio and public address systems placed on vehicles operating on the streets. This would be repealed by the proposed statute as it relates to persons who might want to do this with respect to advertising the sale of or other matters related to firearms.

5. Ord. No. 21-492

This ordinance amends the provisions of 15-606 relating to shooting galleries. It would be repealed because it imposes a license fee on those persons engaged in operating shooting galleries.

6. Ord. No. 30-036

This is the ordinance which establishes the rules and regulations for the operation of the Wichita Municipal Airport. The regulations regarding firearms in the ordinance are more

restrictive than state law and, consequently, all of these rules and regulations would be repealed. [Section II (4), (11)] The reenactment of several of these rules and regulations in a manner which didn't infringe the restrictions of the proposed statute would create a real problem in that the rules and regulations contain several strict provisions about commercial activity (or the lack of it) and limiting access to parts of the airport would always be subject to the exception for persons wanting to sell, transport, carry or use firearms.

7. Ord. No. 30-832

This is the ordinance which makes it unlawful to remove or alter the manufacturer's ID number or marking on various items, including firearms. The provisions relating to firearms are more restrictive than the provisions of state law in this area and, therefore, the ordinance would be repealed.

8. Ord. No. 32-916

This is a criminal ordinance making it unlawful to use the sidewalks, streets, alleys or parks of the City for advertising purposes if they advertise by way of their dress, banner, posture or any other device (i.e., sandwich board). This would, of course, be more restrictive than existing state law regarding the sale of firearms and would require repeal of the ordinance.

9.. Ord. No. 33-059

This is the ordinance which regulates private police (i.e., security services, watchmen, etc.). Provisions in this ordinance relating to the requirement that such persons cannot carry firearms unless they have received training, be free of certain criminal convictions, and pay a permit fee are more restrictive than state law and the entire ordinance would be repealed. This repeal would do away with the City's authority to regulate these persons and any reenactment of regulations would have to avoid any limitations relating to firearms in the regulatory scheme.

10. Ord. No. 33-071

This ordinance requires the obtaining of a permit in order to display and/or sell goods on the sidewalks of the City. This is more restrictive than state law with respects to the display and/or sale of firearms and would be repealed.

11. Ord. No. 33-870

This ordinance regulates itinerant merchants. This would apply to such merchants who sell firearms and, as such, is more restrictive than state law. This ordinance would be repealed by the proposed statute.

12. Ord. No. 36-573

This ordinance regulates conduct in the City's parks. Provisions restricting sales or soliciting within the parks are more restrictive than state law and this ordinance would be repealed by the proposed statute. Rather simple regulations of this ordinance which allow park personnel to remove persons from the parks for certain activities would also be more restrictive on their face than state law when they were applied to a person who was carrying or trying to sell a firearm. Consequently, any reenactment of similar regulations would have to except their applicability to persons in this category to avoid running afoul of the restrictions in the proposed statute.

13. Ord. No. 37-119

This ordinance requires that a license be obtained before one can engage in a home occupation. This would be repealed under the proposed statute because state law does not restrict the sale of firearms from one's home. Consequently, requiring a person to obtain a license to do what the City cannot restrict them from doing would be violative of the proposed statute.

14. Ord. No. 37-645

This is the ordinance which establishes the regulatory and licensing provisions which apply to persons who engage in liquidation, close-out, fire, bankruptcy, etc. sales in the City. These provisions are more restrictive than state law with respect to any such sale involving firearms and, therefore, the ordinance would be repealed by the proposed statute.

15. Ord. No. 38-560

This is a criminal ordinance which makes it unlawful to escape from custody, help someone escape from custody or carry any item into a place of confinement which is used to facilitate an escape. To the extent that this ordinance would prevent a person from carrying a firearm into a place of confinement it is more restrictive than state law. This ordinance would be repealed by the proposed statute.

16. Ord. No. 39-250

This ordinance establishes license fees for several activities, including advertising, auction sales, miscellaneous sales and the sale of goods from stands on sidewalks. This ordinance is more restrictive of a persons rights to sell firearms than any provisions of state law and this ordinance would, therefore, be repealed by the proposed statute.

17. Ord. No. 39-267

This ordinance adopts rules and regulations governing the use of the City's parks. Certain of these rules restrict the use of the parks for advertising and commercial activity which would be more restrictive than state law with respect to the sale of firearms. The entire rules and regulations covering persons who use the City's parks would be repealed by the proposed statute.

18.. Ord. No. 39-908

This ordinance regulates miscellaneous sales. Its provisions are more restrictive of a person's rights to sell firearms than the provisions of state law in that area.

19. Ord. No. 41-137

This ordinance establishes new provisions regulating street and sidewalk vending in the City. It contains provisions which would restrict and regulate the sale of firearms on the streets and sidewalks (requires a license, limits such sales to certain areas of the City, etc.). These provisions are more restrictive of a person's rights to sell firearms than state laws.

20. Ord. No. 41-521

This ordinance makes it unlawful to obstruct the City's streets and sidewalks by placing any goods, wares or merchandise thereon. This is more restrictive of a person's right to sell, display and store firearms than the provisions of state law and this ordinance would be repealed by the proposed statute.

21. Ord. No. 41-780

This ordinance relates to the regulation of street and sidewalk vending. As stated above, these restrictions (license required, area restrictions, etc.) are greater than anything found in state law relating to the sale of firearms.

22. Ord. No. 41-824

This is the cruelty to animals ordinance. This makes it a crime to kill, maim, torture or disfigure an animal. To the extent that this makes it a crime to shoot an animal with a firearm it is more restrictive than state law and would be repealed.

23. Ord. No. 41-903

This ordinance amends provisions regarding miscellaneous sales. This ordinance contains restrictions on these sales which are more restrictive than state or federal law. Since a sale of six or more firearms originally purchased by the seller would fit within the definition of a miscellaneous sale, these regulations are more restrictive than state law and this ordinance would be repealed by the proposed statute.

24. Ord. No. 41-910

This is an ordinance which relates to several weapons related misdemeanors (carrying concealed and unconcealed, discharge within city limits). The provisions relating to carrying unconcealed firearms are more restrictive than state law and this ordinance would, therefore, be repealed by the proposed statute.

25. Ord. No. 41-918

This is the City's noise ordinance. To the extent that this would make it a crime to make a prohibited noise with a firearm, this is more restrictive than state law.

26. Ord. No. 41-967

This is the City's ordinance prohibiting the possession of a firearm by a minor unless accompanied by a parent, etc. This is more restrictive than the provisions of state law and would, therefore, be repealed.

27. Ord. No. 42-049

This ordinance makes it a crime to store a firearm negligently with respect to the ability of minors to obtain the stored firearm. This is more restrictive than state law and would be repealed.

28. Ord. No. 42--51

This ordinance places certain restrictions on fishing and hunting in the parks. This prohibits such hunting without a license and, as such, is more restrictive than the provisions of state law relating to the use of firearms.

29. Ord. No. 42-292

This ordinance establishes a fee to be paid to the City for persons who wish to sell firearms. This is more restrictive than state law and this ordinance would be repealed by the proposed statute..

30. Ord. No. 42-422

This is the City's "gun control" ordinance which the electorate voted, in a non-binding election in November 1994, to retain. This ordinance would be repealed by the proposed ordinance because it is more restrictive of a person's right to use, sell, store, and transport a firearm than state law.

31. Ord. No. 42-484

This is an ordinance amending provisions relating to miscellaneous sales. For the reasons stated above, the provisions of the City's miscellaneous sales regulations are more restrictive of a person's right to sell firearms than state law.

TO: FEDERAL AND STATE AFFAIRS COMMITTEE MEMBERS
RE: HOUSE BILL 2541
FROM: GREG FERRIS, CITY COUNCIL MEMBER, CITY OF WICHITA
DATE: MARCH 27, 1995

Today the Federal and State Affairs Committee is holding hearings on HB 2541, the local gun pre-emption bill. This bill causes me, and other members of our City Council, great distress and I would like to express my personal reason for opposition to this bill. First, and foremost, the problems of Wichita are quite different than problems in other parts of the state. It is impossible to think that a "blanket bill" that works in one community will also work in Wichita. That is, in fact, why the people of Kansas voted a Home Rule Amendment to the State Constitution.

The genesis of this pre-emption legislation is an ordinance that was passed last year by the Wichita City Council. I would have been more than happy to repeal this ordinance if a majority of the Council Members would have supported the repeal. Instead, we received an outcry to "put it on the ballot." While I am not in favor of many issues going on the ballot, I reluctantly agreed. Much to my surprise, 58% of Wichita supported the ordinance. This was during an election that had a 70% voter turnout. The people have spoken. They have used their democratic right to govern themselves. I would demonstrate utter arrogance if I rejected their decision. Why then, would the State Legislature get involved with such a local decision that was voted on by the citizens of a community.

I encourage you to look at the facts and reject the pressure. No matter what decision you make, you know someone will be unhappy. That is the nature of the job. That being the case, I request you do the right thing.

Some elected officials at the State level may feel that the Wichita City Council has taken unpopular positions on controversial issues. They may then determine that they need to try and "correct" those decisions through the state legislative process. Again, I believe local elected officials should have the ability to set policy that reflects the problems, needs or concerns the residents of the community are trying to address. The City Council policy that is enacted may not always be popular. As one council member, I have exercised my right to vote, and opposed issues when I felt they were not in this City's best interest.

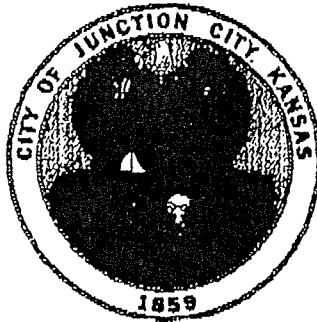
I urge you to think about this bill on its own merits. Please determine whether you, as State elected officials, believe that it is good public policy to enact legislation that is uniform across the State of Kansas. Please consider that local officials need to have available the needed "legislative tools" to address the problems facing their individuals communities.

If the decisions of the local elected officials are not those of the majority of the residents, voters will have the opportunity on April 4, 1995 to change their representation. Please oppose House Bill 2541.

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3-27-95
(Attachment 11)

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City Attorney



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OFFICE OF THE CITY ATTORNEY
March 27, 1995

Senator Lana Oleen
Kansas State Capitol
Room 136-N
Topeka, KS 66612

Dear Senator Oleen:

This letter concerns the Federal and State Affairs Committee's hearings scheduled for this date on House Bill 2541. As the City Attorney for the City of Junction City, Kansas, I strongly oppose House Bill 2541 for several reasons. First, any bill that takes away from a City its power and responsibility under Home Rule should be given great scrutiny and passed only if there is an overwhelming State interest in the subject. Locally elected officials are in the best position to judge whether, under the Kansas Constitution, certain matters should be dealt with differently because of local conditions.

Second, a bill that prohibits City government from determining what actions, with regard to firearms, should constitute a violation of law should not be acted upon favorably. The City Commission of Junction City understands the needs and requirements of this City with regard to firearms. While this is not a large city, it has unique needs and circumstances brought about by its location and population base. Our Commission knows best what variations, if any, should be made in the law concerning firearms for the citizens of Junction City. To prohibit our City Commission from carrying out the will of the citizens of Junction City is unnecessary given the Home Rule Amendment to the Kansas Constitution.

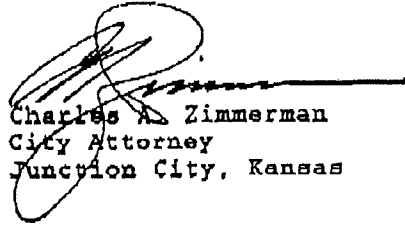
Post-It® Fax Note	7871	Date	3-27	# of pages	2
To	Senator Oleen	From	Charles Zimmerman		
Co./Dept	KS State Capitol	Co.	City Atty of Junction City		
Phone #		Phone #			
Fax #	913-296-6718	Fax #	223-5165		

Sen Fed & State
3-27-95
(Attachment 12)

Finally, the City of Junction City has for many years enacted and enforced an ordinance which makes it a violation of City law to carry a loaded firearm in a motor vehicle. Because of our unique circumstances and proximity to a large military base, this has been an especially effective and necessary local ordinance. Such an ordinance may well not be necessary in a smaller town or in other circumstances. However, the citizens of Junction City are frequently protected by this local ordinance. We find it difficult to justify carrying a loaded firearm in a motor vehicle in light of the clear danger it presents to both the occupants of the motor vehicle as well as to others.

I urge the committee to do all in its power to ensure that House Bill 2541 is not favorably considered by the Kansas Legislature. I appreciate this opportunity to present this information to the committee.

Very truly yours,



Charles A. Zimmerman
City Attorney
Junction City, Kansas

CAZ/smb