

Approved: March 10, 1997  
Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Garry Boston at 1:30 p.m. on February 19, 1997 in Room 313-S of the Capitol.

All members were present except: Representative Peggy Long, Excused  
Representative Bonnie Sharp, Excused

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

Conferees appearing before the committee: James S. Brady  
Jim Kaup, City of Topeka  
Jim Clark, Kansas County & District Attorney's Association  
Major Steve Culp, representing the Mayor of Kansas City  
Steve Cox, Chief of Police, Leawood  
John Ellis, Secretary of Private Investigators  
Layne Ryno, Emporia Police Department  
Jim McCart, Kansas Police Officers

The Chairperson opened the continuation of hearings on HB 2159.

HB 2159 - Licensure to Carry Concealed Weapons.

James S. Brady, testified the gun lobby wants more guns on our streets -- and allowing virtually unrestricted carrying of loaded, concealed weapons would do just that. This is NOT "anti-crime" -- but it is "anti-common-sense". More concealed weapons on the streets means more violent crime, not less. There is no need to put more guns on our streets if it is just to please the special interest gun lobby and those who profit from making guns. A chief gun lobbyist was recently quoted in the "Wall Street Journal" saying that gun makers should send her a basket of fruit for creating a new market for concealable guns through these CCW laws. If the point of these laws is to create new markets for gun manufacturers, then proponents should be honest about that. It appears gun makers are the real beneficiaries.

Logic tells us that if guns made us safer, America would be the safest place on earth. For years, opponents of reasonable restrictions of firearms focused their wrath on New York City claiming it as the poster city for gun laws not working. Now, through a combination of community policing and federal, state and local gun laws, New York has seen a dramatic decrease in violent crimes, especially those committed with guns. You will not hear anyone claim that the decrease in New York is because of more guns on the streets. You will hear the decrease in crime is because there are fewer guns on the street.

Law enforcement needs support so they can do their job of preventing crime. Passing these loose concealed gun laws contradicts the advice of law enforcement -- the men and women in blue across Kansas -- the ones on the front lines -- who strongly oppose this dangerous measure. (Attachment 1)

Jim Kaup, City of Topeka, stated the City of Topeka is in strong opposition to HB 2159. This legislation is a threat to public safety and to the safety of law enforcement officers, and as an unjustified and harmful intrusion by the State upon a subject local governments have historically regulated. While the threat it poses to public safety is by itself adequate reason to oppose HB 2159, the City's strongest objection to this bill relates to Section 15, which is state preemption of local lawmaking regarding carrying a concealed weapon. Topeka's 1997 State Legislative Policy Statement provides: "The City opposes any legislative efforts to restrict or preempt local home rule authority to regulate ownership, possession or use of firearms." The city is a staunch defender of Constitutional Home Rule. City Home Rule meets local needs. The state can establish a state license to carry a concealed weapon without preempting local authority to regulate the same subject as HB 2159 does by Section 15 and recommend that preemption language is removed. (Attachment 2)

James W. Clark, Kansas County and District Attorneys Association, testified opposing HB 2159, as it is their belief that, unlike Texas, passage of a concealed handgun bill in Kansas will increase the number of such weapons, just as legalized gambling has increased the number of gamblers. the result is to increase the

CONTINUATION SHEET

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likelihood of serious injuries or deaths in our state. The bill purports to engender a better quality of life for citizens of our state by emphasizing protection of the individual and the family. But in the examples most often given by its proponents, rapes on interstate highways and attacks on people in their homes, the bill does not offer any more protection than is already available to Kansas citizens. (Attachment 3)

Major Steve Culp, representing the Mayor of Kansas City, Kansas, testified there is more and more violence and do not need more guns on the streets. Kansas City, Kansas has concerns about any proposed initiative which would change or expand the current state's concealed weapons law. Any legislation that preempts local home rule authority to regulate firearms, including the possession or discharge of firearms in public places is opposed. Strongly oppose any preemption that would give the cities the ability to regulate firearms. Research conducted by the Kansas League of Municipalities shows the cities in Kansas have regulated firearms one way or another since 1861. (Attachment 4)

J. Stephen Cox, Chief of Police, Leawood, Kansas, testified in opposition to **HB 2159**, stating violence, particularly that committed with firearms, is epidemic in this country. Further, this violence is not always accompanied by what we traditionally review as criminal intent to commit murder, robbery, and the like. People in general are angry - at government, at their employers, at their families at other motorists, at strangers - and this anger is often accompanied by violence. Making firearms more readily available would not make the problem go away; in fact, it seems ludicrous to assert that arming more people would reduce the incidence of violence. If this legislation isn't defeated, at least require that the issue of concealed weapons and preemption be placed before all the voters of Kansas. (Attachment 5)

John Ellis, Secretary, Chairman of Legislative Committee, Kansas Association of Private Investigators, Overland Park, Kansas, testified the Association is a non-profit Kansas Corporation which was formed to establish and maintain high ethical standards and professionalism in the Private Detective business. The Kansas Association of Private Investigators assumes a neutral stance on the passage of this measure due to both the non-profit status and the membership's desires. The Association recommends amendments. (Attachment 6)

Sgt. Lane K. Ryno, Emporia Police Department, KPOA Legislative Committee, testified opposing **HB 2159**. The KPOA does not question the Constitution of the United States nor does it question the issue of The Right to Bare Arms. The KPOA does question the need for people to carry concealed weapons. The view of the KPOA is that these two issues are not the same issue and should not be referred to as the same issue as some people have done. The carry concealed issue is attached to a protection of anti-violent crime issue, maybe this should be addressed through legislation to actually punish the offender for his actions. From a law enforcement viewpoint, the passage of this bill would do no more than put more guns on the street. It does nothing to address the issue of accountability or the responsibility of those who choose to carry a gun concealed.

The KPOA also opposed the idea of preemption. Different parts of the state have certain problems that may not exist in other parts of the state. Certain cities in the state have different problems than other cities in the state. Preemption would not allow certain areas or cities to address the problems they may have in reference to this bill. On the other hand preemption could unduly restrict people in some areas for no reason. It seems preemption in general in relation to this bill would be a mistake (Attachment 7).

O. J. McCart, Kansas Peace Officer's Association, opposing **HB 2159**, stated the Association expresses deep concern for the concealed carry bill. Kansas already has a bill in place that allows citizens to carry a firearm, as long as it is in plain view for all to see. It is believed that most criminals do not want to kill their victims, but when that criminal believes that the person might be carrying a concealed weapon, the chance for survival is greatly diminished. It is disturbing to send this type of message to our children. More guns and guns under every jacket, in every purse is not the lesson our children needs to be hearing. They need to be taught other ways to deal with societies, pressures and changes, with confidence and ability, not reacting in a paranoid manner, as if every knock on the door is a criminal encounter, to be handled in a shoot-out or be shot mentality. (Attachment 8)

Representative Boston moved and Representative Gilbert seconded to accept two bills for introduction: (1) Property tax concerning exemption therefrom for housing for the elderly and (2) enacting consumer insurance sales act. The motion carried.

Scott G. Hattrup distributed rebuttal testimony on **HB 2159**, rebutting the myth that Kansas allows open carry of firearms for self-protection. It does not. The representative from the League of Kansas Municipalities stated last week that Kansas was not in the "gun control business." However, it was not stated that some of the cities in Kansas were in the "gun control business." Mr. Hattrup supported **HB 2159** in its current form as it supports the concept of family and self-protection. (Attachment 9)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE FEDERAL AND STATE AFFAIRS, Room 313-S  
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The Chairperson closed the hearing on **HB 2159.**

Representative Mays moved and Representative Ruff seconded to accept three bills for introduction: (1) members of boards of education; relating the commencement thereof, (2) a proposition to amend article 14 of the constitution of the state of Kansas by adding a new section, relating to amendment of the constitution by propositions initiated by registered voters of the state and (3) a proposition to amend article 2 of the constitution of the state of Kansas by adding a new section thereto, authorizing initiation and enactment of laws by the registered voters of the state. The motion carried.

The meeting adjourned at 3:15 p.m.

The next meeting is scheduled for February 20, 1997.

FEDERAL & STATE AFFAIRS COMMITTEE

DATE: 2/19/97

NAME	REPRESENTING
Kenneth C. Cummings MD	Self; proponent of concealed carry leg.
Rosemary N. Cummings	myself; I support CCW legislation
Andrea C. Elliott	Legislative Workshop / Washburn School of Law
Janet L. Burkana - Sgr	Inten. - Rep. Carl Holmes
Linda Booth	Self
Patricia A. Lane	Self
C.W. & June Melkoff	ourselves + ordinary citizens
Tom Hayselden	Kansas Police Chiefs Ass'n
Steve Cox	" " " "
LANE RYNO	KPOA
Sally Trickey	Self - K.U. Student
Pat Lehatt	Legis. Sec.
Marilyn McMill	Leg. Sec.
Mr. L. Bingham	SWARM
Jim & Betty Chappell	People of Kansas
Doc Hunk	Doc Clinic - KU Law School
Sandra Peterson	Marion County
Jaye Mabevec	Marion Co.
Noreen Weems	Marion Co.
Jack Bruner	Marion Co.
Jeanine Boteman	Marion Co.
Max Zayen	Marion Co.
Margaret Krogman	Kansas State Nurses Assoc.
John Cowsett	Kansas State Nurses Association
Oeta Renyer	R to L of Itz.
Brandon Claassen	Maize High School
Cory Codron	Maize High School
DELBERT SHAFFER	BUTLER COUNTY

**Statement of James S. Brady**  
**Kansas House of Representatives**  
**Federal and State Affairs Committee**  
**February 19, 1997**

Thank you Representative Boston and members of the Federal and State Affairs Committee for allowing me the opportunity to speak before you today.

It's great to be in Topeka. I am here today because I want everyone in Kansas to know that what the gun lobby is trying to do here in the State House with concealed weapons is a crime.

The gun lobby wants more guns on our streets -- and allowing virtually unrestricted carrying of loaded, concealed weapons will do just that. This is NOT "anti-crime" -- but it is "anti-common-sense". More concealed weapons on our streets means more violent crime, not less.

I heard John Lott was here the other day touting his study on this subject. Last December, The Center to Prevent Handgun Violence invited Dr. Lott to present his case along with other researchers who had serious problems with his work. Let me just read to you two quotes from the other members of the panel. Georgetown University Professor Jens Ludwig stated "There is no credible evidence to support the idea that permissive concealed-carry laws reduce violent crime." Daniel Nagin, from Carnegie Mellon said of the Lott study, "The results are simply too fragile to make policy on." I'm no academic, I'm an advocate and I admit it. It seems to me that John Lott has shifted from being an academic to being an advocate.

There is no need to put more guns on our streets if it is just to please the special interest gun lobby and those who profit from making guns. A chief gun lobbyist was recently quoted in the **Wall Street Journal** saying that gun makers should send her a basket of fruit for creating a new market for concealable guns through these CCW laws. If the point of these laws is to create new markets for gun manufacturers, then proponents should be honest about that. It looks to me like gun makers are the real beneficiaries.

Logic tells us that if guns made us safer, America would be the safest place on earth. For years, opponents of reasonable restrictions on firearms focused their wrath on New York City claiming it as the poster city for gun laws not working. Now, through a combination of community policing and federal, state and local gun laws, New York has seen a dramatic decrease in violent crimes, especially those committed with guns. You will not hear anyone claim that the decrease in New York is because of more guns on the streets. You will hear the decrease in crime is because there are fewer guns on the street.

People across the country are realizing that with the support from both elected officials and the public, law enforcement officers can do the job of preventing crime. And law enforcement needs our support. Passing these loose concealed gun laws contradicts the advice of law enforcement -- the men and women in blue across Kansas -- the ones on the front lines -- who strongly oppose this dangerous measure. It is truly rewarding for me to work with these fine men and women who risk their lives for

us every single day. I'm proud to be on the same side as your dedicated law enforcement professionals here in Kansas.

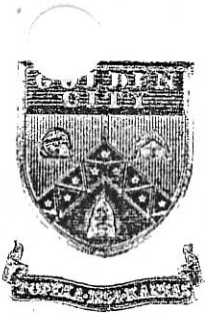
I can tell you from personal experience that carrying a gun does not guarantee safety. My former boss, President Ronald Reagan, two dedicated law enforcement professionals and I were shot by a gunman with a concealable weapon. At the time, the President and I were surrounded by the most highly trained law enforcement professionals in the world. Their whole job was to prevent just that kind of incident from occurring, but it happened. So it really scares me to think of thousands and thousands of citizens walking around armed to the teeth -- looking to shoot at any perceived danger and more importantly, somehow thinking they are safe because of their gun. Is this the kind of Kansas you really want -- or need? I don't think so, your police don't think so. Only the special interest gun lobby thinks so. And I don't think anyone truly believes they're looking out for our best interests.

I have one final point before I conclude. I reject the mantra from the gun lobby that "An armed society is a polite society." Frankly, I think we are a far better society than that. But what really scares me about that mentality and these concealed gun laws is what this says about our society and what kind of message we are sending to our children. What are our kids supposed to think when their elected officials buy into the notion that only by packing a gun can one be safe in our society? Already far too many children have access to and use firearms.

It's bad enough that we lose 16 kids a day to gun violence and that many, many more are wounded. We don't ~~need~~ want them to believe that guns provide solutions to every problem. The concealed guns campaign only reinforces the notion that one needs to pack a piece to be safe in our society. The evidence shows that firearms are the most lethal form of injury -- especially for children. When a firearm is involved, it is more likely that there will be a death. Elected officials at all levels, local, state and federal, have to do everything they can to keep guns out of the hands of our kids.

Representatives, you know that the people of Kansas are watching you. You have seen the polls. From my years in politics I can tell you that 73% of the public rarely agrees on the same thing. Those people deserve to be represented in this state house. Please stand with your law enforcement officers -- the men and women in uniform -- and the people of Kansas. It's truly a matter of life or death.

Thank you.



# CITY OF TOPEKA

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

## LEGISLATIVE TESTIMONY CITY OF TOPEKA HOUSE BILL 2159

**TO:** Chairman Boston and Members, House Committee on Federal and State Affairs

**FROM:** Jim Kaup, City of Topeka

**DATE:** February 10, 1997

**RE:** HB 2159 -- Carrying Concealed Weapons

The City of Topeka appears in strong opposition to HB 2159. For many years now the City has appeared before this Committee in opposition to legislation similar to HB 2159, seeing it as a threat to public safety and to the safety of law enforcement officers, and as an unjustified and harmful intrusion by the State upon a subject local governments have historically regulated.

### I. STATE LICENSE TO CARRY CONCEALED WEAPONS

HB 2159 proposes to create a statutory right to carry concealed handguns and other weapons. This right would be held by any Kansan licensed by the State to carry that weapon. The KBI would be required to issue a license to any adult Kansan who "desires a legal means to carry a concealed weapon for lawful self-defense" (Sec. 4 (a) (6)) if that Kansan can pass basic screening related to prior criminal convictions, alcohol or drug use, mental and physical condition and proof of completion of a firearm safety and training course (Sec.4).

Topeka, like a large number of cities in Kansans, has an ordinance which parallels the state law crime of criminal use of weapons, K.S.A. 21-4201 (Topeka Ord. No. 16664). That statute and

the Topeka ordinance generally make the carrying of a concealed weapon a crime. HB 2159 proposes to (1) create a large exception to the state law to allow, upon licensure, most Kansans to carry concealed weapons into most places in this state, and (2) invalidate the laws of Topeka and those of many other cities which conflict with the exercise of this new statutory right.

The City does not offer testimony today regarding how many of the more than 67,000,000 handguns in this country are owned by Kansans. We do not know how many Kansans would exercise this new right to carry their handgun, concealed on their person. Nonetheless, it is entirely reasonable to believe HB 2159 would put more guns on the streets than there are now. Representatives of law enforcement have in the past provided this Committee with testimony that, upon passage of concealed carry, their police officers will know that more of the drivers they pull over for traffic offenses will have handguns concealed on their person. Shopkeepers will know that more of the people coming through their doors will be armed.

HB 2159 prohibits carrying a concealed weapon onto a few specified areas (e.g. a courtroom or elementary school) (Sec. 10). Is it reasonable to believe the licensee will understand it is lawful to carry a concealed handgun into a package liquor store but unlawful to take it into a tavern, okay to carry it into a fast-food restaurant but not into a restaurant with a CMB or liquor license, lawful to take it into a day-care center, nursing home or hospital but not into a polling place, okay to take it to a city park or playground but not into the city council meeting room?

This Committee will undoubtedly hear again this year the objections law enforcement officers have to this liberalizing of the firearms laws. The City will defer to those officers for a description of the real-world consequences for law enforcement of a state policy promoting carrying concealed weapons. We would remind you, however, that it is local government which will feel the effects of HB 2159. It is local governments which provide the vast majority of law enforcement. Topeka alone has over 270 law enforcement officers -- by comparison the Kansans Highway Patrol has approximately 600 sworn officers. Kansans cities have many more times the number of law enforcement officers than the State of Kansas has. This is no surprise, as it is a fundamental purpose of local governments to protect the public's safety. Local government law enforcement officers are the ones who will primarily feel the consequences of this bill if it is passed. Cities, and their police departments, believe any proposal which would result in more guns being carried into public places is a dangerous threat to the public's safety. The good logic behind that belief speaks for itself.

## II. STATE PREEMPTION OF LOCAL AUTHORITY

While the threat it poses to public safety is by itself adequate reason to oppose HB 2159, the City's strongest objection to this bill relates to Section 15, which is state preemption of local lawmaking regarding carrying a concealed weapon. Topeka's 1997 State Legislative Policy Statement provides: "The City opposes any legislative efforts to restrict or preempt local home rule authority to regulate ownership, possession or use of firearms." The City is a staunch defender of Constitutional Home Rule. We advocate the effective, lawful use of that power of self-government. Home Rule has been responsibly, and necessarily, used with respect to firearm regulation.



## A. Home Rule in General.

The essence of City Home Rule -- as adopted by the voters in 1960 -- is 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 gun control, differently and therefore adopt different measures to 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 remember 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 for many years have both legislated on this subject. In the event of conflict between local law and state law, the rule is that the state law prevails. **The State can establish a state license to carry a concealed weapon without preempting local authority to regulate the same subject, as HB 2159 does by Section 15.**

## B. Home Rule Powers of Kansas Cities to Regulate Firearms.

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 Kansas Supreme Court's most detailed examinations of the Home Rule Constitutional Amendment 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 importance of Home Rule -- the need for the people, through their local governments, to be able to respond to local conditions and circumstances that demand local solutions. The Court said:

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.

### III. CONSTITUTIONAL RIGHT TO BEAR ARMS FOR SELF-DEFENSE

Section 15 of HB 2159 refers to what this bill's supporters must believe to be an individual's constitutional right to bear arms for purposes of self-defense. The City object to placing such language in the Kansas statutes when the "right" referenced to is not recognized under either the Kansas Constitution or the United States Constitution. The recently-issued opinion of Attorney General Stovall is only the most recent pronouncement on this legal question.

If the Kansas legislature wishes to see such a right established in the Kansas Constitution it may initiate that by passage of a current resolution. However merely stating in a statute that such a right exists does not make it so. Attachment A to this testimony summarizes how the courts have interpreted the relevant provisions of the state and federal constitutions on this point. The bottom line is clear: *Neither the Second Amendment to the Constitution of the United States nor Section 4 of the Kansas Bill of Rights guarantees any individual's right to bear arms.*

### IV. COMMITTEE ACTION REQUESTED ON HB 2159

**A. The City opposes HB 2159 and requests Committee action to kill the bill.** We ask you to be respectful of the 100 year-plus tradition of joint state-local regulation of firearms. Understand that by preempting local lawmaking authority and adopting a single statewide rule you are guaranteeing that the legislature will face requests each year for new laws necessary to address local situations and concerns -- local problems which today are handled by Home Rule.

**B.** If the Committee believes HB 2159 should be passed notwithstanding the risks to the public safety which we expect to result from placing more firearms on the streets, **we request extensive amendments to HB 2159** to address the same problems the City pointed out to this Committee last year in the almost-identical HB 2885. These amendments would give the City of Topeka some means to lessen the threat this legislation poses to our citizens.

**1. Recognize the liberal construction clause of the Kansas Constitution favoring the exercise of Home Rule in matters of local affairs:**

Revise Section 3 to delete " throughout the state" ( line 26, page 1) and delete Section 15 (a) to preserve the tradition of joint local-state regulatory authority with respect to firearms. (Delete language in lines 13:22 of page 8.)

**2. Premises Where Concealed Weapons Would Remain Banned:**

HB 2159 does select a few locations where it apparently is felt that the "right" of "honest, law-abiding" persons to provide for their self-defense by carrying concealed guns is outweighed by the risk created by those guns for judges, jailers and legislators. It is presumptuous for the legislature to say that it knows better than 627 elected city governing bodies, and 105 elected boards of county commissioners, all those local premises into which

a person should not be allowed to carry a concealed weapon.

Therefore we request Section 10 be amended to add a subsection "(n) any other premises, property or structure when so designated by ordinance of a city or resolution of a county."

In the alternative the Committee should add the following places which are not now on the Section 10 list:

- places of worship
- funeral establishments
- city halls
- hospitals, clinic, blood banks and other medical facilities
- mental health facilities and mental retardation/developmental disabilities facilities, including state hospitals, community centers, group homes, crisis homes
- day-care, pre-school or similar facilities
- publicly-owned or operated cultural or recreational facilities such as city parks and playgrounds, Topeka Performing Arts Center, Expocentre, Heartland Park Raceway
- safe houses for victims of domestic violence or child abuse, whether publicly or privately owned or operated
- any business premises, open to the public, when the premises are posted so as to inform the public that concealed weapons are forbidden upon such premises
- any workplace, public or private, where the employer has adopted rules or regulations prohibiting employee possession of weapons at the workplace

These last two items address glaring omissions to the list in HB 2159: (1) business places open to the public -- why should not a store owner be able to forbid persons from carrying guns onto his or her private property? (2) workplaces -- many employers, private and public, have adopted personnel rules and regulations which prohibit bringing guns onto the workplace. HB 2159 appears to invalidate such employment contracts.

### **3. Licensure and License Revocation Requirements:**

Either expressly authorize local governments to adopt qualifications for licensure and license revocation in addition to those set out in Section 4 or, in the alternative, add the following disqualifications for licensure, or grounds for license revocation or suspension, to those set out in Section 4:

- conviction of any non-felony crime involving the use of a firearm e.g. any violation of K.S.A. 21-4201
- conviction of assault or battery in connection with domestic violence per K.S.A. 21-3408 or K.S.A. 21-3412 or comparable law of another jurisdiction
- conviction of child abuse, per K.S.A. 21-3609 or comparable law of another jurisdiction

- also, section 11 covers situations where a licensee is DUI. This should be a felony level offense, not the proposed misdemeanor and Section 11 should expressly state that DUI conviction or diversion will result in a loss of the license.

**4. Public Costs:**

To ensure that those who enjoy the statutory privilege which would be created by HB 2159 do not exercise it totally at the expense of the taxpayers:

- authorize local governments to require licensed persons to carry personal liability insurance to provide a source of compensation to members of the public who may be injured or killed by the discharge of a concealed gun
- authorize local governments to impose a concealed weapons annual permit fee
- authorize local governments to enact laws requiring a holder of a state concealed weapons license to identify himself or herself to the appropriate law enforcement agency upon entering the local jurisdiction

**5. Public Records:**

Amend Section 6 to expressly provide that lists of licenseholders, whether created by the state or a political subdivision of the state, are open to public inspection under K.S.A. 45-215 et seq.

**6. Discrimination in Licensure Qualifications:**

Section 4 lists categories of people who apparently do not merit a "right" to have concealed weapons for self-defense, or who suffer from a label that makes them something less than "honest, law-abiding" persons (Sec. 15 (a)). In creating these categories HB 2159 discriminates against persons with disabilities. On its face HB 2159 is violative of the Kansas Acts Against Discrimination, K.S.A. 44-1001 et seq., and Title II of the Americans with Disabilities Act, 42 U.S.C. 1201 et seq.

- e.g.
- page 2, line 1: "...does not suffer from a physical infirmity..."
  - page 2, lines 8:9: "...mentally ill person or involuntary patient..."
  - page 2, lines 9:11: "...an alcoholic ... a drug abuser..."
  - page 2, lines 16:17: "... committed for the abuse of alcohol..."
  - page 2, lines 25:29: "...has not been adjudged a disabled person"

**7. "Constitutional Right to Bear Arms for Self-Defense":**

The City urges this Committee not to approve language for the statute books which is clearly erroneous as to the existence of a constitutionally-based right of individuals to "bear arms".

Whether one believes such a constitutional right should exist or not, saying it does by statute serves only to confuse Kansans and reflects poorly upon the lawmaking process. (Delete Section 15 (c), (lines 31:34 of page 8).

## ATTACHMENT

### FEDERAL AND STATE CONSTITUTIONAL RESTRICTIONS ON FIREARMS REGULATION

- A. **The SECOND AMENDMENT to the federal constitution, according to the intent of the Founding Fathers and interpretations of the U.S. Supreme Court, guarantees the states the right to maintain a well-armed militia. It does not guarantee individuals the right to bear arms.**

The Second Amendment states: "A well regulated Militia, being necessary to the security of a free State, the right of people to keep and bear Arms, shall not be infringed."

The intent of the framers of the Second Amendment was to establish a collective right of the people to bear arms so that the states, through their militia, could check the national standing army. In interpreting the Second Amendment, the U.S. Supreme Court has consistently held that the Second Amendment was intended to protect members of a state militia from being disarmed by the federal government. In Presser v. Illinois, 116 U.S. 252 (1886), the U.S. Supreme Court ruled that an Illinois law prohibiting fraternal military groups drilling with firearms did not violate the Second Amendment. The Court held that the Second Amendment limited only federal firearm regulations, not state regulations. Unlike other Bill of Rights provisions, the Second Amendment to the constitution has not been interpreted as applying to the states through the Fourteenth Amendment due process clause. See Adamson v. California, 332 U.S. 46 (1947). In United States v. Miller, 307 U.S. 174 (1939), the Supreme Court again reaffirmed that the purpose of the Second Amendment was to assure a continuation of state militia.

- B. **SECTION 4 OF THE KANSAS BILL OF RIGHTS does not limit the legislature's power to enact laws prohibiting the carrying of arms or other deadly weapons. Similar to the U.S. Constitution, there is no guarantee of an individual's "right" to bear arms to be found in the Kansas Constitution.**

Section 4 of the Kansas Bill of Rights states: "The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be tolerated, and the military shall be in strict subordination to the civil power."

In its first interpretation of Section 4, the Kansas Supreme Court in 1905 upheld a municipal conviction of a person carrying a pistol while intoxicated. Salina v. Balksley, 72 Kan. 230 (1905). The Court noted that: "That provision in Section 4 of the bill of rights that the people have the right to bear arms for their defense and security refers to the people as a collective body. It was the safety and security of society that were being

considered when this provision was put into our constitution. It is followed immediately by the declaration that standing armies in time of peace are dangerous to liberty and should not be tolerated, and that 'the military shall be in strict subordination to the civil power.' It deals exclusively with the military; individual rights are not considered in this section." 72 Kan. 231-232. (Emphasis added)

In City of Junction City v. Lee, 216 Kan. 495 (1975), the Supreme Court rejected the argument that Section 4 of the Bill of Rights is worded sufficiently differently from the Second Amendment to the U.S. Constitution to create the right of an individual to carry a gun under the Kansas Constitution. Noting that the Court had long since laid the matter to rest, the Court reaffirmed the interpretation that Section 4 of the Kansas Bill of Rights refers to the people as a collective body, not as individuals.

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## Kansas County & District Attorneys Association

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EXECUTIVE DIRECTOR, JAMES W. CLARK, CAE • CLE ADMINISTRATOR, DIANA C. STAFFORD

### TESTIMONY IN OPPOSITION TO HOUSE BILL NO. 2159

The Kansas County and District Attorneys Association opposes HB 2159, as is also opposes Senate Bill 21.

It is our belief that, unlike Texas, passage of a concealed handgun bill in Kansas will increase the number of such weapons, just as legalized gambling has increased the number of gamblers. The result is to increase the likelihood of serious injuries or deaths in our state.

Passage of the bill also sends a message that our state is no longer safe, that law enforcement protection is no longer valid, and the rule of law has been usurped by private enforcement measures.

The bill purports to engender a better quality of life for citizens of our state by emphasizing protection of the individual and the family. But in the examples most often given by its proponents, rapes on interstate highways and attacks on people in their homes, the bill does not offer any more protection than is already available to Kansas citizens.

The bill purports to reduce the threat of crime by allowing concealed handguns, yet it either recognizes the increased danger of concealed weapons by exempting selected locations from its applicability, or makes an even greater leap of logic by determining that the exempted locations require less protection for Kansas citizens. By exempting bars, schools, and government meeting places, is the Legislature making a determination that such places are safer? Or is it merely recognizing that concealed weapons pose an increased danger in such locations, and giving them greater protection than enjoyed by less important locations.

The bill purports to give greater protection to families, yet seems to ignore important areas of family life: children's activities, thus exposing them to a higher risk. For example, the bill give special protection from concealed weapons to a special class of activities, such as government, courts, schools (especially athletic events) and bars. Yet does not protect churches, day care centers, community recreational activities such as soccer and little league games, shopping malls, 4-H fairs or public swimming pools. Nor does it punish licensees who allow children access to these weapons, such as handguns in purses.

The bill also suffers from more practical, enforcement-related problems. For example:

- 1) its stringent licensure provisions ignore diversions, with the exception of DUI, and expungements;
- 2) the licensing procedures pose a greater burden on the KBI, already struggling with the increased demands for criminal histories required by sentencing guidelines;
- 3) it sends a mixed message regarding the unlicensed carrying of an unconcealed handgun;
- 4) it does not increase penalties for violations by unlicensed carriers; and
- 5) it does not provide increased or additional penalties for violations by licensed carriers.

Feds State  
2-19-97  
Atch #3





# City of Kansas City, Kansas

Carol Marinovich, Mayor



Kansas City, Kansas 66101  
Phone (913) 573-5010

Executive Chamber  
One McDowell Plaza

February 11, 1997

Representative Garry Boston  
Chairperson of House Federal and State Affairs Committee  
300 SW 10th Avenue Room #519-S  
Topeka, Kansas 66612-1504

**RE: *Opposition to any legislation changing current concealed-weapons laws***

Dear Representative Boston  
and members of the House Federal and State Affairs Committee:

The City of Kansas City, Kansas has a very strong concern about any proposed initiative which would change or expand the current state's concealed weapons laws.

The City Council and I strongly oppose any legislative efforts to restrict or preempt local home rule authority to regulate firearms, including the possession or discharge of firearms in public places within cities. As a matter of public safety, we also oppose any modification of state statute which would allow ordinary citizens to carry concealed weapons in public places.

Furthermore, we strongly oppose any preemption of the ability of cities in Kansas to regulate firearms. Research conducted by the Kansas League of Municipalities indicates that cities in Kansas have regulated firearms in one way or another since at least 1861. Preemption of all local gun control laws, it has been argued, would allow that gun control could be managed as a uniform matter by the Kansas Legislature. Unfortunately, there is virtually no gun control of any substantive nature contained in state statute. We believe preemption of local control over weapons would have a significant negative impact on constitutional home rule in Kansas, and would require a "one-size fits all" mentality for gun control.

If this initiative for preemption of local control over guns is successful, we can expect in the foreseeable future numerous large jurisdictions going to the legislature asking for legislation to allow them to solve a specific problem in their community. Unfortunately, any statute that would be enacted after that point would be applicable to all jurisdictions in Kansas -- both large and small, urban or rural.

We fully support the expert opinions expressed to you by Wyandotte County District Attorney Nick Tomasic and Kansas City, Kansas Police Chief Jim Swafford. Mr. Tomasic and Chief Swafford strongly oppose concealed carry and preemption of local control over guns. They are convinced without a shadow of a doubt that any change in state laws on concealed weapons would not deter criminal activity. Furthermore, it is their belief that any change could place significant liability on Kansas communities statewide.

Sincerely,

Carol Marinovich  
Mayor

Fede State  
2-19-97  
Atch #4



## OFFICERS

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Shawnee Police Dept.

REX TAYLOR  
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Newton Police Dept.

RON GOULD  
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KLETC

JAMES DENNEY  
Immediate  
Past President  
K U Lawrence

## REGIONAL REPRESENTATIVES

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Region I  
Johnson Co. Comm. College

SAM BUDREAU  
Region II  
Chanute Police Dept.

ROBERT RODRIGUEZ  
Region III  
Emporia Police Dept.

DICK HEITSCHMIDT  
Region IV  
Hutchinson Police Dept.

LYNN MENAGH  
Region V  
Norton Police Dept.

DOUGLAS MURPHY  
Region VI  
Kinsley Police Dept.

February, 1997

## TESTIMONY IN OPPOSITION TO PROPOSED CONCEALED WEAPONS AND PREEMPTION LAWS

Violence, particularly that committed with firearms, is epidemic in this country. Further, this violence is not always accompanied by what we traditionally view as criminal intent to commit murder, robbery, and the like. For whatever reason, people in general are angry - at government, at their employers, at their families, at other motorists, at strangers - and this anger is often accompanied by violence. Making firearms more readily available will not make the problem go away; in fact, it seems ludicrous to assert that arming more people will reduce the incidence of violence.

### Effect in Reducing Crime

In my opinion, the theory behind concealed weapons laws is flawed. The assumption that armed citizens will be able to stem the tide of crime is spurious, at best. Proponents offer the argument that crime has been reduced in states with concealed weapons laws. Is there a cause and effect? This is far from proven. Violent crime numbers are down all over the country, in states with and without concealed carry laws. Reputable researchers and institutions dispute methodologies and findings of the most widely cited study. The number of homicides in Kansas City, Missouri dropped significantly between 1994 and 1995, but citizens there have no right to carry concealed weapons.

Crime is a social phenomenon, and crime statistics fluctuate widely from year to year. To my knowledge, no one factor has ever been identified to cause such variations. It could just as easily be argued that the widespread implementation of the community policing philosophy or tightening of domestic violence laws has been responsible for the often-quoted reduction of violent crime in Florida.

## **Background Checks/Licensing**

All concealed weapons laws are predicated on background checks which will weed out those unsuitable to be issued permits. This assumption is erroneous, as it assumes anyone without a known record of certain disqualifiers (felony convictions, mental illness, drug abuse, etc.) is suitable for a carry permit. Much of this information is not documented in police or any other public records; for example, mental illness is treated as a medical condition, and medical records are generally not subject to disclosure. Drug and alcohol abuse may never come to police attention in the form of arrests. Violent criminals may have no felony convictions due to plea bargaining. Arrest and conviction records are not centralized in Kansas, making searches time-consuming and haphazard at best. I have serious doubts whether the in-depth investigation demanded by this legislation can be accomplished within the time and funding allotted.

## **Training in the Use of Firearms**

Proper firearm use is a function of three different elements: accuracy, reaction, and judgment. Most people can be taught to shoot accurately, but conditions on a range do not equate to those encountered in the stress of an armed confrontation. Average reaction will also suffice in most situations, but reaction is adversely affected by fatigue, medication, alcohol, and any number of other factors. The most critical component, however, is that of judgment. Is this a situation in which the use of deadly force is appropriate? Is it safe to shoot? Do I have a clear field of fire? Judgment is also clouded by anger, stress, fatigue, medication, and chemicals.

Law enforcement officers train regularly with their weapons, in general at least four times per year. Failure to qualify results in the loss of the officer's commission until such time as he or she can demonstrate the required level of skill. However, this "hands on" training is insufficient; it must be continually supplemented through policy, training, supervision, and updated legal information. Constant reinforcement of knowledge, skill, and judgment is the only means law enforcement administrators have to insure officers react properly when faced with a potential deadly force situation. Are we certain the average citizen has the time, resources, or even concern to insure that he or she keeps current with all of these vital factors?

Shooting is not a simple physical exercise; merely being able to fire a weapon and handle it safely is not sufficient.

## **Legal Considerations**

It has been my observation throughout my 25-year law enforcement career that the average citizen believes that he or she has much more latitude to use deadly force than the law truly allows. How many times have we heard the "folklore" that if you shoot an intruder outside your home you should drag the body inside, because it's okay to kill someone in your house? Such a belief is nonsense; the law in Kansas doesn't condone killing a person simply because he has entered your house. It also assumes that the police are so inept we'll never be able to figure out what really happened. So what is the law? When can you use force? How much force can you use?

How many average citizens can discuss Tennessee vs. Garner? If they want to carry weapons they ought to be familiar with this case. Does Kansas law give a citizen more authority to use deadly force than it gives the police? People need to understand the restrictions. I will never forget the sight of a resident holding three pre-teens at the point of a high-powered rifle because they had broken a single pane of glass out of his gas yard lamp. Vandalism is not a capital offense, and the "protection" of \$5 worth of glass does not justify even the threat of deadly force.

Are citizens aware of the civil liability implications of using or misusing deadly force? Most police agencies are somewhat shielded because of constant reinforcement through training and policy. Agencies still get sued, and when they make mistakes they pay dearly, but prevention is the key to protection. What kind of legal and financial liability will licensees and instructors incur?

The law relating to the use of deadly force is very specific, yet it is subject to interpretation and as such, it is regularly modified by the courts. There are vast differences between criminal and civil sanctions for improperly using deadly force, and anyone who wants to carry a weapon should be fully versed in all the legal considerations. I question whether the training envisioned will be adequate in its content and frequency to meet legal requirements, and many people who arm themselves may find out in court that their training failed them.

### **Aggressive Driving**

Motorists are unquestionably becoming more aggressive. Have you ever experienced the anger of other drivers who were speeding, tailgating, changing lanes without warning or signals, and otherwise frustrated with their inability to get wherever they were going in the biggest possible hurry and found you and everyone else on the road an obstacle? Did you ever make a simple mistake in judgment and start to pull out in front of someone when there was not enough room to do so safely? Did the offended driver lay on the horn, flash rude gestures, scream at you? This lack of courtesy and civility has dangerous consequences because emotion impairs judgment. NHTSA, the National Highway Traffic Safety Administration, has labeled aggressive driving a serious traffic hazard in the same manner as impaired driving; the American Automobile Association has said that traffic deaths directly attributable to aggressive driving have increased by more than 50 percent in the last five years.

I ask you to consider the consequences of adding the ready availability of firearms to this situation. Will the next offended driver take out his anger at your simple mistake by shooting at you instead of flipping you the bird? Some will, without question, do just that. Unfortunately, it happens all the time. One such shooting and one threat by brandishing a gun were reported in Johnson County in just the last week.

## **Personal Considerations**

I doubt that many people have any concept of the personal ramifications of using deadly force. It's very easy to say we could "blow someone away" if it was warranted; it's another matter altogether to deal with the consequences of such an action. Recognize it or not, we are products of a society with an ethical and moral code which teaches us "thou shalt not kill." Even police officers who correctly and justifiably use deadly force can suffer feelings of guilt and remorse, and they sometimes require psychological assistance to deal with these feelings.

As an alternative to concealed firearms, why not allow or even encourage people concerned about self-defense to carry pepper mace? It is easy to carry, requires little or no special training, can be more immediately disabling than a gunshot wound, demands no more critical accuracy than a firearm, and carries few or none of the deadly force implications.

## **Public Policy Considerations**

Although the issue of carrying concealed weapons is frequently presented as an idea with widespread public support, that position is not necessarily fact. Three studies with which I am familiar paint a much different picture.

In both Michigan and Illinois, statistically valid random polls showed that the public was not in favor of concealed weapons laws. The Illinois study demonstrated that nearly 75% of the population believed that such a law was not desirable. Interestingly, even owners of handguns generally disfavored the idea. Information on these studies is attached.

A Kansas State University poll last year showed very much the same results here. It should also be noted that Kansas and Illinois are similar in many respects - a few widely scattered urban areas with a predominantly rural, agricultural base in the majority of the state.

If a concealed weapons law is to be considered, it seems appropriate for the voters of the state to tell us that they favor such a law before one is adopted. If the citizens of Kansas clearly favor this legislation, law enforcement will live with the results. The only argument I've ever heard against a public vote is that we shouldn't have to vote in order to exercise a basic constitutional right. I would counter that no constitutional right is without restrictions - even freedom of speech has limits and boundaries.

Another public policy consideration involved in this type of legislation is that of preemption. I feel very strongly that preemption of local regulation is unwise and counter to the public interest. Kansas law recognizes the diversity of the state in granting many home rule powers to local communities. What works in rural southwestern Kansas does not automatically fit in Johnson County and vice versa simply because both locales are in the same state. Local authorities should have the right to control the carrying and use of weapons in a manner appropriate to local needs, conditions, and traditions. Motorists are faced with inconsistencies in traffic laws when

traveling from city to city and state to state. Persons carrying weapons should also reasonably expect local differences.

Finally, it should be noted that the League of Kansas Municipalities, the Kansas Association of Chiefs of Police, the Kansas Sheriffs Association, the Kansas Peace Officers Association, and the Kansas County and District Attorneys Association all oppose both concealed carry and preemption laws.

### **Officer Safety**

Last, but far from least, is the matter of officer safety. Law enforcement officers face enough risk coping with armed criminals; armed citizens, even with good intentions, pose additional hazards. Confrontations with criminals are rarely controlled and orderly. As a rule they are stressful and often chaotic. The addition of another distraction - an armed citizen - simply increases the risks for all involved. Who is this person running up carrying a gun? Is he another suspect, or is he a citizen trying to help? How can I tell? How much attention can I pay to him, drawing my focus away from the criminal? How is he going to react? Will he open fire in a crowded place in an effort to help?

Officers often have to deal with armed, terrified people who believe someone is trying to break into their homes. The officer in such a situation is much more at risk than any possible perpetrator. We find armed motorists who, right or wrong, feel threatened and are so paranoid that they may react violently to anything out of the ordinary such as a police officer in an unmarked car who stops them for a traffic violation.

I urge you to defeat this legislation, or to at least require that the issue of concealed weapons and preemption be placed before all the voters of Kansas so that you may see for yourselves whether these are truly matters of widespread public support. I believe you owe that much to all your constituents.

Thank you for your consideration.

Sincerely,

  
J. Stephen Cox  
Chief of Police  
Leawood, Kansas

Legislative Committee Chair  
Kansas Association of Chiefs of Police

# Illinois Statewide Survey on Public Attitudes toward Concealed Handguns

April 13, 1995

*conducted by*

The Illinois State Police

*and*

the Survey Research Office,  
Institute for Public Affairs,  
Sangamon State University

The Illinois Statewide Survey on Public Attitudes toward Concealed Handguns was conducted through telephone interviews with 1,403 randomly-selected citizens. Interviewing took place from April 8 through April 12, 1995.

Presented below are the survey sample numbers and sampling errors for selected groups, at the 95 percent confidence level. That is, 95 times out of 100, the actual population percentages will be within the error range of the percentage results in the survey.

<i>Population group</i> .....	<i>Number</i>	<i>Error</i>
Statewide .....	1,403	+/- 2.6%
Statewide males.....	563	+/- 4.1%
Statewide females .....	839	+/- 3.4%
Cook County .....	445	+/- 4.7%
Other counties in Chicago metro area .....	399	+/- 4.9%
Counties outside the Chicago metro area .....	558	+/- 4.2%
Households not owning handgun .....	1,061	+/- 3.0%
Households owning handguns.....	249	+/- 6.2%
Cook County		
Males .....	174	+/- 7.4%
Females .....	270	+/- 6.0%
Other counties in Chicago metro area		
Males .....	175	+/- 7.4%
Females .....	224	+/- 6.6%
Counties outside the Chicago metro area		
Males .....	213	+/- 6.7%
Females .....	345	+/- 5.3%

Results have been adjusted so that the survey sample is representative of the public in terms of the three regions and in terms of gender.

## Summary of Findings

*Whether citizens should be allowed to carry concealed handguns.* Nearly three-quarters (74%) of the statewide public believe that citizens should NOT be allowed to carry concealed handguns. This belief is held by vast majorities in every regional and gender group. Over 80 percent of females in the Chicago metropolitan area believe this. Half of the respondents in households which own a handgun also hold this belief.

*Whether would feel more safe or less safe if citizens could carry concealed handguns.* By a three-to-one margin, more statewide respondents feel they would be LESS SAFE rather than MORE SAFE if citizens could carry concealed handguns. For the question which asked about carrying concealed handguns *in cars and while walking around outside*, 65 percent said they would feel less safe while 22 percent said they would feel more safe. For the question which asked about carrying concealed handguns *into public places -- like stores and restaurants*, 62 percent said they would feel less safe while 18 percent said they would feel more safe.

Females in the Chicago suburbs outside of Cook County are particularly likely to believe that they would feel less safe rather than more safe (79% vs. 10% for the car/walking around question and 77% vs. 12% for the public places question). Nearly half of the respondents in households with a handgun said they would feel less safe rather than more safe for both questions.

*Consequences for crime.* By a margin of nearly three-to-one, more of the statewide public believe that crime will increase rather than decrease if citizens are allowed by carry concealed handguns (46% vs. 16%). About 30 percent think it will make no difference.

At least half of the following groups believe that crime will increase: females (53%), those in households without handguns (53%), and Cook County residents (50%). Nearly one-quarter (24%) of males believe that crime will decrease, but even more of them believe crime will increase (38%) and believe crime will remain the same (32%). Those respondents in households with a handgun are divided, with 36 percent believing crime will decrease, 52 percent believing there will be no difference in crime, and 29 percent believing there will be an increase in crime.

*Consequences for accidental shootings.* Just over 70 percent of the statewide public believe that accidental shootings will increase if citizens are allowed to carry concealed handguns. This belief is held by two-thirds to three-quarters of both males and females and by the public in each of the three regions. It is also held by nearly 60 percent of the respondents in households with a handgun. One-in-six (17%) believe that there will be no difference while one-in-twenty (6%) believe that there will be a decrease in accidental shootings.

*Attitudes toward two selected requirements if Illinois allows citizens to carry concealed handguns.* If Illinois allows citizens to carry concealed handguns, over 70 percent of the statewide public believe citizens should be required to show that they have a real need for protection before they are allowed to carry one. This belief is held by vast majorities of every regional and gender group as well as by 60 percent of the respondents in households with a handgun.

If Illinois allows concealed handguns, over 80 percent of the statewide public believe that citizens who carry concealed handguns should be required to have liability insurance. This finding holds for both males and females, for each of the three regions, and for those in households with and without handguns.



### Statistical Summary of Results

*Question 1: Do you think citizens should be allowed to carry concealed handguns?*

	<i>Yes</i>	<i>No</i>	<i>Neither/ DK/NA*</i>
Statewide Results .....	19.2%	73.8%	7.0%
Results by Gender: Male .....	26.2%	67.8%	6.0%
Female .....	12.8%	79.5%	7.7%
Results by Region**:			
Cook County .....	14.9%	77.1%	8.0%
Rest of Chicago Metro Area .....	21.2%	73.7%	5.1%
Rest of State.....	23.3%	70.1%	6.6%
Results by Household Handgun Ownership:			
Do Not Own Handgun .....	13.4%	82.3%	4.4%
Own Handgun .....	45.3%	50.9%	3.8%
For Cook County			
Male .....	20.1%	71.3%	8.6%
Female .....	10.4%	82.6%	7.0%
For Rest of Chicago Metro Area (Rest of MSA)			
Male .....	30.9%	63.4%	5.7%
Female .....	10.7%	84.8%	4.5%
For Rest of State			
Male .....	31.0%	66.7%	2.3%
Female .....	16.8%	73.0%	10.1%

\*In this table and others, "DK" refers to those who said they did not know, and "NA" refers to those who did not give a response to the question. "Neither" in the tables refers to those who would not give a "yes" or "no" response or who not choose between the responses given.

\*\*Counties outside of Cook County in the Chicago metropolitan area (in the Chicago MSA) were defined in this project as: Lake, DuPage, Kane, McHenry, Will, Kendall, Grundy, and DeKalb.

**Question 2: Which of the following two statements comes closer to your view ...**

**One: I would feel safer if I could carry a concealed handgun in my car and while walking around outside.**

**or**

**Two: I would feel less safe if I knew other citizens could carry concealed handguns in their cars and while walking around outside.**

*Concealed handguns in cars and while walking around outside*

	<i>One: Feel safer if I could carry concealed handgun</i>	<i>Two: Feel less safe if others could carry concealed handgun</i>	<i>Neither DK/ NA</i>
Statewide Results .....	22.4%	64.8%	12.9%
Results by Gender: Male .....	29.5%	57.8%	12.7%
Female .....	15.7%	71.2%	13.0%
Results by Region: Cook County .....	20.0%	64.2%	15.8%
Rest of Chicago MSA .....	20.4%	70.3%	9.3%
Rest of State .....	26.5%	62.5%	11.0%
Results by Household Handgun Ownership:			
Do Not Own Handgun .....	17.0%	72.5%	10.5%
Own Handgun .....	45.7%	47.6%	6.7%
For Cook County			
Male .....	24.1%	59.2%	16.7%
Female .....	15.9%	68.9%	15.2%
For Rest of Chicago Metro Area (Rest of MSA)			
Male .....	29.7%	62.3%	8.0%
Female .....	10.3%	79.0%	10.7%
For Rest of State			
Male .....	36.2%	53.5%	10.3%
Female .....	18.3%	70.1%	11.6%

*Question 3: Which of the following two statements comes closer to your view ...*

*One: I would feel less safe if I knew other citizens could carry concealed handguns into public places – like stores and restaurants.*

*or*

*One: I would feel safer if I could carry a concealed handgun into public places – like stores and restaurants.*

*Concealed handguns into public places – like stores and restaurants*

	<i>Two: Feel safer if I could carry concealed handgun</i>	<i>One: Feel less safe if others could carry concealed handgun</i>	<i>Neither DK/ NA</i>
Statewide Results .....	18.2%	62.0%	19.8%
Results by Gender: Male .....	25.1%	57.1%	17.8%
Female .....	11.9%	66.4%	21.7%
Results by Region: Cook County .....	16.3%	59.6%	24.1%
Rest of Chicago MSA .....	18.3%	69.0%	12.7%
Rest of State.....	20.5%	61.0%	18.6%
Results by Household Handgun Ownership:			
Do Not Own Handgun .....	14.5%	68.9%	16.6%
Own Handgun .....	36.4%	49.0%	14.6%
For Cook County			
Male .....	23.0%	55.2%	21.8%
Female .....	10.4%	63.3%	26.3%
For Rest of Chicago Metro Area (Rest of MSA)			
Male .....	24.6%	61.7%	13.7%
Female .....	11.6%	76.8%	11.6%
For Rest of State			
Male .....	28.2%	56.3%	15.5%
Female .....	13.9%	64.9%	21.2%

**Question 4: Do you think allowing citizens to carry concealed handguns will cause crime to decrease, increase, or not make much difference either way?**

	Decrease	Increase	No Diffrence	DK/NA
Statewide Results .....	16.4%	45.8%	30.2%	7.5%
Results by Gender: Male .....	24.0%	37.7%	32.0%	6.4%
Female.....	9.4%	53.2%	28.7%	8.7%
Results by Region: Cook County .....	15.6%	50.3%	26.8%	7.3%
Rest of Chicago MSA .....	17.7%	45.6%	29.3%	7.4%
Rest of State .....	16.6%	40.5%	35.0%	8.0%
Results by Household Handgun Ownership:				
Do Not Own Handgun.....	12.2%	53.2%	31.2%	3.4%
Own Handgun.....	36.4%	28.7%	32.3%	2.6%

**Question 5: Do you think that allowing citizens to carry concealed handguns will cause accidental shootings to decrease, increase, or not make much difference either way?**

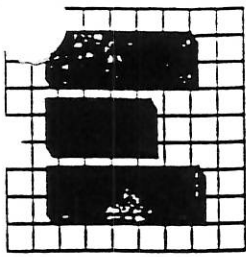
	Decrease	Increase	No Diffrence	DK/NA
Statewide Results .....	5.5%	71.3%	17.1%	6.2%
Results by Gender: Male .....	6.0%	67.1%	21.3%	5.6%
Female.....	4.8%	75.2%	13.2%	6.8%
Results by Region: Cook County .....	5.2%	74.0%	14.1%	6.7%
Rest of Chicago MSA .....	4.9%	75.1%	15.1%	4.9%
Rest of State .....	5.9%	66.0%	21.8%	6.3%
Results by Household Handgun Ownership:				
Do Not Own Handgun.....	5.7%	79.2%	13.8%	1.4%
Own Handgun.....	5.9%	59.3%	32.2%	2.6%

*Question 6: If Illinois allows citizens to carry concealed handguns, should citizens be required to show that they have a real need for protection before they are allowed to carry a concealed handgun?*

	Yes	No	DK/NA
Statewide Results .....	72.0%	17.4%	10.6%
Results by Gender: Male .....	65.9%	24.4%	9.7%
Female .....	77.6%	11.1%	11.4%
Results by Region: Cook County .....	72.3%	15.8%	11.9%
Rest of Chicago MSA .....	69.7%	20.4%	10.0%
Rest of State.....	73.0%	17.7%	9.3%
Results by Household Handgun Ownership:			
Do Not Own Handgun .....	80.0%	14.2%	5.8%
Own Handgun .....	60.7%	53.0%	6.4%

*Question 7: If Illinois allows citizens to carry concealed handguns, should those citizens who carry these handguns be required to have liability insurance? (PROMPT: that is, insurance to cover any injuries to innocent people they may cause)?*

	Yes	No	DK/NA
Statewide Results .....	82.9%	8.3%	8.8%
Results by Gender: Male .....	82.0%	10.0%	8.0%
Female .....	83.6%	6.8%	9.6%
Results by Region: Cook County .....	82.3%	8.6%	9.1%
Rest of Chicago MSA .....	84.0%	8.0%	8.1%
Rest of State.....	83.0%	8.1%	9.0%
Results by Household Handgun Ownership:			
Do Not Own Handgun .....	88.8%	6.8%	4.4%
Own Handgun .....	81.0%	16.1%	2.9%



EPIC ■ MRA

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# Survey Questions about Concealed Weapons and CCW Permits

A STATEWIDE SURVEY  
OF VOTER OPINIONS

*EXECUTIVE SUMMARY, ANALYSIS,  
AND CROSS TABULATIONS*

*conducted for*

*The Law Enforcement Coalition for Officer Safety  
and Responsible Concealed Weapon Laws*

- Educational
- Political
- Industrial
- Consumer
  
- Market
- Research
- Analysis

Tuesday, September 12, 1995

D-48

## METHODOLOGY

EPIC ■ MRA designed and administered this telephone survey that was conducted by professional interviewers. The survey reached 600 adults, 18 years or older, who are registered to vote in Michigan. The survey was conducted between August 23-28, 1995. Several questions were commissioned by the Law Enforcement Coalition for Officer Safety and Responsible Concealed Weapons Laws to test public opinion on concealed weapons issues and legislation that would ease restrictions on obtaining concealed weapons permits.

If a respondent indicated that he or she had voted in 1992, 1994 or both, or was too young to vote in either, the interview was continued. Respondents for the interviews were selected utilizing an interval method of randomly selected records from a computerized file for Michigan. The sample was geographically stratified so that each county represents in the sample the proportion of expected vote in the 1996 general election for President. The results of these questions are confidential and will not be published or released without the authorization of the Law Enforcement Coalition for Officer Safety and Responsible Concealed Weapons Laws.

In interpreting survey results, all surveys are subject to error; that is the results may differ from those which would have been obtained if the entire population was interviewed. For example, if 50 percent of all 600 respondents expresses support or opposition to a question, as indicated in the chart on the next page, this percentage would have a sampling error of plus or minus 4 percent. That means that with repeated sampling, it is very likely (95 times out of every 100), that the percentage for the entire population would fall between 46.0 percent and 54.0 percent, hence 50 percent  $\pm$  4 percent.

The size of the sampling error depends on the total number of respondents to a particular question. The table which follows on the next page represents the estimated sampling error for different percentage distributions of responses based on sample size.

**Statewide Poll - EPIC/MRA - August 23-28, 1995**

*Frequency Report of Survey Responses - 600 Sample - ± 4%*

20. Do you think citizens in Michigan should be allowed to carry concealed handguns?

24% - Yes

69% - No

7% - Undecided/Don't know

21. Which of the following two statements comes closer to your view?

Statement 1: I would feel safer if I could carry a concealed handgun in my car and while walking around outside.

Statement 2: I would feel less safe if I knew others citizens could carry concealed handguns in their cars and while walking around outside.

21% - Statement 1: I would feel safer carrying a concealed handgun.

71% - Statement 2: I would feel less safe with other citizens carrying a concealed handgun.

8% - Undecided/Don't know

22. Which of the following two statements comes closer to your view?

Statement 1: I would feel less safe if I knew other citizens could carry concealed handguns into public places - like stores and restaurants.

Statement 2: I would feel safer if I could carry a concealed handgun into public places - like stores and restaurants.

70% - Statement 1: I would feel less safe if other citizens could carry concealed handguns into public places.

19% - Statement 2: I would feel safe if I could carry a concealed handgun into public places.

11% - Undecided/Don't know

23. Do you think that allowing citizens to carry concealed handguns will cause crime to decrease, increase, or not make much difference either way?

18% - Crime will decrease.

45% - Crime will increase.

32% - Won't make much difference either way.

5% - Undecided/Don't know.



24. Do you think that allowing citizens to carry concealed handguns will cause accidental shootings to decrease, increase, or not make much difference either way?

7% - Accidental shootings will decrease.  
72% - Accidental shootings will increase.  
20% - Won't make a difference.  
1% - Undecided/Don't know

25. If Michigan allows citizens to carry concealed handguns, should citizens be required to show they have a real need for protection before they are allowed to carry a concealed handgun?

78% - Yes.  
16% - No.  
6% - Undecided/Don't know

26. If Michigan allows citizens to carry concealed handguns, should those citizens who carry these handguns be required to have liability insurance -- that is, insurance to cover any injuries to innocent people they may cause?

81% - Yes.  
12% - No.  
7% - Undecided/Don't know

27. Current Michigan law prohibits citizens from carrying a gun unless they have a legitimate reason to carry one and can obtain a concealed weapons license, called a CCW permit. Proposed legislation under consideration in the Michigan Legislature would change the law to allow any person to get a permit to carry a concealed handgun without having to provide a reason why they need to carry a gun, and a permit would be granted unless the person applying for the permit has a record of mental problems or a criminal record. Based on what you know about this issue, would you approve or disapprove of this proposed legislation? [IF APPROVE/DISAPPROVE] Would that be strongly APPROVE/DISAPPROVE] or somewhat [APPROVE/DISAPPROVE]?

13% - Strongly approve.  
11% - Somewhat approve. 24% TOTAL APPROVE  
14% - Somewhat disapprove.  
57% - Strongly disapprove. 71% TOTAL DISAPPROVE  
5% - Undecided/Don't know.

## The Johns Hopkins Center for Gun Policy and Research

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### **The Claims that Right-to-Carry Laws Reduce Violent Crime are Unsubstantiated**

Daniel W. Webster, Sc.D., M.P.H.

#### **Introduction**

Many states have recently passed laws making it easier for citizens to obtain permits to carry concealed guns. John R. Lott, Jr. and David B. Mustard recently publicized the results of their study from which they conclude that so-called "shall-issue" laws have been responsible for significant reductions in violent crime.<sup>1</sup> The Johns Hopkins Center for Gun Policy and Research and its affiliated experts have reviewed this study and find its conclusions unsubstantiated. The study's methodology has several important flaws and its conclusions are inadequately supported by the data. Recent studies by researchers at Carnegie Mellon University (Black and Nagin)<sup>2</sup> and Georgetown University (Ludwig)<sup>3</sup> also examine the validity of Lott and Mustard's study. Both of these independent studies confirm that the statistical models used by Lott and Mustard are inappropriate. When these problems are corrected, neither study finds convincing evidence that shall-issue laws reduce violent crime. Some of the most important problems with Lott and Mustard's study are outlined below.

#### **Omitted Variables and Failure to Control for Crime Cycles**

Crime rates tend to be cyclical with somewhat predictable declines following several years of increases. These cycles are caused, in part, by factors inadequately accounted for in Lott and Mustard's analyses, such as changes in levels of poverty and adaptations by the criminal justice system to rising crime.<sup>3,4</sup> Shall-issue laws, as well as a number of other measures intended to reduce crime, tend to be enacted during periods of rising crime. Therefore, the reductions in violent crime which Lott and Mustard

attribute to the implementation of shall-issue laws may be due to the variety of other crime-fighting measures, or to a commonly-observed downward drift in crime levels toward some long-term average.

A reanalysis of Lott and Mustard's data by Dan Black and Daniel Nagin at Carnegie Mellon University clearly demonstrated that: (1) crime rates in states adopting shall-issue laws commonly deviated from national trends during the five years prior to enactment of the laws; and (2) Lott and Mustard did not adequately control for these out-of-the norm crime trends.<sup>2</sup> Jens Ludwig (Georgetown University) found that shall-issue laws had no significant effect on states' murder rates after controlling for changes in poverty and crime cycles.<sup>3</sup>

### **Errors in Lott and Mustard's Statistical Models**

*Erroneous Assumptions.* The results of quasi-experimental studies such as Lott and Mustard's are often dependent upon the appropriateness of the statistical techniques being used. There are several problems with the statistical models used by Lott and Mustard. Their statistical models assumed: (1) an immediate and constant effect of shall-issue laws; and (2) similar law effects across different states and counties. Black and Nagin's reanalysis of Lott and Mustard's data demonstrated that neither of these assumptions held. These errors in Lott and Mustard's models obscure any true relationship between the adoption of shall-issue laws and crime rates.

*Errors in Characterizing Shall-Issue Laws.* To accurately estimate the effects of shall-issue laws, it is, of course, essential to correctly differentiate states according to their concealed carry laws and to correctly identify when the laws were implemented. Lott and Mustard categorize states as either having shall-issue or "may-issue" gun-carrying permit regulations, but state concealed carry laws cannot be divided neatly into two groups.<sup>4</sup> The authors mistakenly categorize some states as shall-issue even though the law requires applicants to be of "good moral character"<sup>5</sup> or provides

authorities with discretion to restrict permits to applicants deemed to be "suitable."<sup>6</sup>

Lott and Mustard also use incorrect dates of shall-issue law implementation in their analyses. For example, they claim that Virginia adopted its shall-issue law in 1988. But the law continued to give authorities considerable discretion over when to issue a concealed carry permit. Some populous counties in Virginia continued to issue very few permits until 1995 (after the study period) when the state eliminated this discretion.<sup>7</sup> Lott and Mustard identify 1985 as the year in which Maine liberalized its concealed carry policy. It is unclear why they chose 1985 as the year of policy intervention because the state changed its concealed carry law in 1981, 1983, 1985, 1989, and 1991.<sup>5</sup>

*Inclusion of Inappropriate Variables in the Analyses.* Lott and Mustard use arrest ratios (arrests per crime committed in a given year) in their statistical models for predicting changes in crime rates. A National Academy of Sciences panel of experts determined nearly two decades ago that arrest ratios and crime rates can not be sufficiently disentangled from one another to permit analyses such as those used by Lott and Mustard.<sup>8</sup>

### **Lott and Mustard's Findings Depart from Well-Established Facts About Crime**

Shall-issue laws were adopted principally to deter predatory street crime, the most common example of which is robbery by a stranger. But Lott and Mustard's results indicate that shall-issue laws had little or no effect on robbery rates.<sup>1</sup> Instead, the strongest deterrent effects estimated were for rape, aggravated assault, and murder. But most rapes are committed in homes by someone known to the victim.<sup>9</sup> Aggravated assaults also usually involve people who know each other,<sup>11</sup> and only 15% of murders for which the circumstances are known are the result of predatory crimes such as robbery.<sup>10</sup> Thus, the strongest shall-issue law effects in Lott and Mustard's study were for crimes in which a victim carrying a gun in public would usually not be relevant.

Lott and Mustard argue that criminals, in response to shall-issue laws, substitute property crime for crimes likely to involve contact with victims. But their theory and findings do not comport with any credible criminologic theory because theft is the motive for only a small fraction of the violent crimes for which Lott and Mustard find shall-issue law effects. It is difficult to rationalize why a criminal would, for example, steal a car because he felt deterred from raping or assaulting someone.

### **Subsequent Research Disproves Lott and Mustard's Conclusions About the Effects of Shall-Issue Laws**

As mentioned above, Ludwig and Black and Nagin conducted independent studies on the effects of shall-issue laws. Ludwig assessed the effects of shall-issue laws on state murder rates. He found that, after the effects of crime cycles were controlled for in the analyses, there was essentially no association between shall-issue laws and murder rates. He also found that the only hint of a decrease in murder rates associated with shall-issue laws was for murders involving victims less than 21 years of age.<sup>3</sup> But individuals less than 21 years of age are not allowed to obtain gun carrying permits in any state, so how could they be protected by shall-issue laws? The obvious answer is that the change in these laws coincided with other changes in laws or circumstances. (See discussion of the problem of omitted variables and inadequate controls for crime cycles above.)

Black and Nagin reanalyzed Lott and Mustard's data to examine the validity of the original study's findings. As indicated above, Black and Nagin found strong evidence of errors in Lott and Mustard's statistical models. When Black and Nagin compared crime rate trends two to three years after shall-issue laws were enacted with rates two to three years prior to enactment, they found no clear pattern in the results indicating that shall-issue laws reduced violent crime. In some states violent crime decreased after these laws were enacted, while in other states shall-issue laws were followed by *increases* in violent crime. When state shall-issue laws were examined separately, the laws had no

consistent effect on any category of crime.<sup>2</sup>

In states which did experience reductions in violent crime, one cannot confidently attribute the reductions to shall-issue laws. For example, Oregon's shall-issue law was associated with lower violent crime, but the legislation which eased restrictions on concealed gun carrying also extended waiting periods and strengthened background checks for handgun purchases. The reduction in crime could be just as easily attributable to the new restrictions on handgun purchases as to the eased restrictions on carrying permits. Florida's 1987 shall-issue law was also associated with crime reductions, but, in the case of homicides, significant reductions did not occur until after a 1991 law requiring a waiting period and background check for handgun purchases was implemented.<sup>11</sup> There may be other plausible explanations for Florida's drop in homicides in the early 1990's, but it seems unlikely that it would take four or five years for shall-issue law effects to materialize.

### Conclusion

In summary, we and others find numerous errors in Lott and Mustard's study which bias their findings, and little support for their conclusions that shall-issue laws reduce violent crime. Previous research suggests that shall-issue laws may *increase* homicide rates.<sup>11,12</sup> Thus, the available research on shall-issue laws suggests that states should proceed with caution when considering easing restrictions on carrying concealed guns in public.

November 1996

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Established in 1995 with funding from The Joyce Foundation of Chicago, The Johns Hopkins Center for Gun Policy and Research is dedicated to reducing gun violence. The center provides accurate information on firearm injuries and gun policy; develops, analyzes, and evaluates strategies to prevent firearm injuries; and conducts public health and legal research to identify gun policy needs. For more information, contact: The Johns Hopkins Center for Gun Policy and Research, School of Public Health, 624 N. Broadway, Baltimore, MD 21205-1996, 410/955-3995.

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**KANSAS ASSOCIATION OF PRIVATE INVESTIGATORS**

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SERVICEMARK,  
KAP.I. O.P., KS 1996

February 10, 1997

***Federal and State Affairs Committee***

**Background.** The Kansas Association of Private Investigators is a non-profit Kansas Corporation which was formed to establish and maintain high ethical standards and professionalism in the Private Detective business. At the beginning of the year, the association had approximately 60 members, most of whom are either Kansas residents or Private Detectives or both. The members range in experience from less than one to more than fifty years in the profession and from one-man-independent operations to corporate-structured businesses employing more than eighty people. Their educational background ranges from G.E.D. certificates to Masters Degrees. Many have extensive law enforcement or military backgrounds while some have neither background. They are from every area of the state, and three other states as well. The services provided by our members as a whole cover virtually every facet of the Private Security industry. We are drawn together by the common interest of providing quality service to the public through ethical, professional response. We monitor the state legislative and regulatory actions affecting our industry.

**Concern: *House Bill 2159 The Personal and Family Protection Act.*** The Kansas Association of Private Investigators assumes a neutral stance on the passage of this measure due to both our non-profit status and our membership's desires. Having reviewed the provisions of the act, K.A.P.I. offers the following amendment designed to clarify the impact of this bill on those people in the state who already carry firearms for occupational purposes.

**Proposed Amendment:** At Page 6, Line 1, after "New Sec.10" add "(a)" and then redesignate existing subparagraphs "(a)" through "(m)" as "(1)" through "(12)". At Page 6, Line 23 add the following after the word "law":

"(b) No license issued pursuant to this section shall authorize the licensee to carry a concealed weapon while performing law enforcement, military, or private detective or similar private security duties when or where existing federal codes, state statutes, municipal ordinances or applicable administrative regulations impose other requirements upon those duties. This does not prohibit law enforcement officers, military personnel, and private detectives or other private security officers from becoming licensed under this section to carry a concealed weapon when in an off-duty status."

Additionally, the Committee may wish to consider striking the phrase "while actually engaged in the performance of the duties of their employment" at Page 10, Line 10. This would remove the necessity for a properly licensed private detective with a valid state firearm permit to seek an additional license to carry the same firearm while off-duty. This would reduce the cost for both the state and the individual involved while incurring no additional risk to the public.

John W. Ellis  
Secretary

Chairman of Legislative Committee

*Establishing high ethical standards to provide excellent professional service to the public.*

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FEDERAL AND STATE AFFAIRS COMMITTEE

IN REFERENCE TO HB 2159

The Kansas Peace Officer's Association would oppose the passage of this bill.

The KPOA does not question the Constitution of the United States nor does it question the issue of The Right to Bare Arms. The KPOA does question the need for people to Carry Concealed Weapons. The view of the KPOA is that these two issues are not the same issue and should not be referred to as the same issue as some people have done. If the Carry Concealed Issue is attached to a protection or Anti-Violent Crime Issue, maybe this should be addressed through legislation to actually punish the offender for his actions. From a Law Enforcement view point the passage of this bill will do no more than put more guns on the street. It does nothing to address the issue of accountability or the responsibility of those who choose to carry a gun concealed.

In looking at this particular bill there seem to be several expectations of the KBI. I am sure they would attempt to fulfill these expectations to the best of their ability, but I don't understand how they will be able to this and not suffer financially. The amount allotted in the application fee would not begin to cover their expenses.

Further more this bill appears to be somewhat ambiguous. Part of the bill requires the applicant to be scrutinized as to their history or past behavior. I assume this is an attempt to make sure anyone issued a permit to carry a concealed weapon would be law abiding and of the highest moral standard. Another part of this bill would prohibit these people from carrying the concealed weapon into certain places. I guess the question is, if this is such a good bill, why can't the people who have passed the qualifications to carry their concealed weapon carry it where ever they want to? Or is this just an appeasement in the effort to pass a bad bill?

Another thing that seems to be absent from this bill is the fact there is no provision or condition for any type of liability insurance. Every one else in the state who is currently authorized to carry a concealed weapon is covered by liability insurance. All Private Investigators who are licensed are required to have it, and all commissioned Law Enforcement Officers are covered by their employers. The state of Kansas requires a licensed driver of a motor vehicle to have liability insurance, but wouldn't require someone who is licensed to carry a concealed weapon to have any. There appears to be no logic behind this.

The KPOA also opposed the idea of pre-emption. Different parts of the state have certain problems that may not exist in other parts of the state. Certain cities in the state have different problems than other cities in the state. Pre-emption would not allow certain areas or cities to address the problems they may have in reference to this bill. On the other hand pre-emption could

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unduly restrict people in some areas for no reason. It seems pre-emption in general in relation to this bill would be a mistake.

The KPOA would support SCR1606. The KPOA would support any vote by the people of the State of Kansas on this issue.

Lane K. Ryno (Sergeant)

A handwritten signature in cursive script that reads "Lane K. Ryno".

Emporia Police Department  
KPOA Legislative Committee

I appear before you today representing the 3600+ law enforcement personnel that are members of the Kansas Peace Officer's Association to express our deep concern for the Concealed Carry bill coming before you. I have been a Police Officer for twenty+ years and a DARE teacher for three years. We, Kansans, already have a law in place that allows citizens to carry a firearm, as long as it is in plain view for all to see. I fail to understand the rationale of passing a law that further encumbers access to the weapon by hiding it under clothing, or in a purse or satchel.

As a former Swat Team member and Homicide Detective, I am well acquainted with firearms and the results of their use. I had two fellow officers who were friends of mine who were well trained, armed and came up against an armed adversary, who got the drop on them. They did not survive. I do not believe most private citizens, even with the required training would survive.

I do not believe that most criminals want to kill their victims, but when that criminal believes that the person might be carrying a concealed weapon, the chance for survival is greatly diminished. Instead of the Rob & Run, we may be replacing it with the Shoot, Rob & Run.

As I mentioned, I am also a DARE teacher, and the message that we are sending our children with this type of Legislation disturbs me. More guns, and guns under every jacket, in every purse is not the lesson I think that our children need to be hearing. We need to be teaching them ways to deal with societies, pressures and changes, with confidence and ability, not reacting in a paranoid manner, as if every knock on the door is a criminal encounter, to be handled in a shoot or be shot mentality.

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Rebuttal Testimony before the Kansas House &  
Senate Federal and State Affairs Committees  
in support of HB 2159 and SB21, February 19, 1997

**Scott G. Hatstrup** (*Univ. of Kansas*: B.G.S., 1989; J.D., 1995) is an attorney practicing in Overland Park, Kansas. He co-authored *A Tale of Three Cities: The Right to Bear Arms in State Supreme Courts*, which appeared in the annual state constitutionalism issue of the *Temple Law Review*, volume 68, page 1177, in fall 1995. This article was republished in volume 8, fall 1996, of the *Journal on Firearms and Public Policy*, an annual review of important articles regarding the right to bear arms published by the Second Amendment Foundation. Mr. Hatstrup has testified before the Kansas House Federal and State Affairs Committee during the 1995 and 1996 legislative sessions.

HB 2159 in its current form supports the concept of family and self-protection, and I therefore **support** it. SB 21, with an amendment to preempt cities and counties from exempting themselves after enactment, would also support these concepts. I **support** SB21 with such an amendment.

My testimony today is solely to rebut the myth that Kansas allows open carry of firearms for self-protection. It does not. The representative from the League of Kansas Municipalities stated last week that Kansas is not in the "gun control business." He left unstated, however, that some of the cities in Kansas are in the "gun control business."

In my research through a few city codes following the testimony last week, I discovered that some of the cities which sent representatives to testify against this bill last week misstated their own city's prohibition on carrying firearms.

For example, Kansas City, Kansas, in which District Attorney Tomasic stated one could carry a handgun openly for self-protection, actually prohibits that practice. Kansas City, Kansas Code § 22-106(a)(4) reads: "(a)Unlawful use of weapons is knowingly: (4) Carrying or possessing any pistol, revolver, . . . or other firearm on the person or in any land, water or air vehicle, loaded or unloaded, except when on the person's own land or in the person's own abode, fixed place of business or office." Notice the absence of the word "concealed" from this ordinance, which results in a blanket prohibition on firearms carry. This same ordinance does make an exception for transporting between one's place of business and home, or for repair, but requires that the firearm be unloaded, and locked away from access by the driver or passengers. KCK Code § 22-106(c)(4). A copy of this ordinance is attached for reference.

As another example, Leawood, Kansas, of which Police Chief Stephen Cox made similar statements regarding that city's policy towards firearms carried for self-protection, also prohibits open carry. Leawood City Code § 11-103 (a)(4) reads in pertinent part: "Unlawful use of weapons is knowingly: (4) Carrying any pistol, revolver or other firearm: (ii) openly or visibly on the person at any place open to public view; (iii) within any vehicle in transport unless the weapon is unloaded and in a case." The ordinance makes no transportation exceptions, as does the Kansas City, Kansas, ordinance. A copy of the Leawood ordinance is attached.

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These ordinances are reminiscent of the Junction City, Kansas, ordinance found unconstitutionally overbroad, unreasonable and oppressive, which was struck down by the Kansas Supreme Court in *Junction City v. Mevis*, 226 Kan. 526 (1979). These ordinances present almost identical situations and would probably also be struck down on similar grounds.

Other cities prohibiting open carry of firearms include Lenexa, Shawnee, and Wichita, Kansas.

Lenexa Code § 3-9I-1 (A)(4) reads: “(A) Unlawful use of weapons is knowingly: (4) Carrying any pistol, revolver or other firearm on the person except when the person is on his land, in his dwelling or in his fixed place of business, or unless such pistol, revolver or other firearm is unloaded and in a case.” A copy of the ordinance is attached for reference.

Shawnee Code § 9.02.010(A)(4) reads in pertinent part: “(A) Carrying any pistol, revolver or other firearm on the person or in an occupied motor vehicle when an occupant of said vehicle has access to any such . . . firearm . . . except when the person is on their (sic) land or in their (sic) dwelling or fixed place of business.” This ordinance makes self-defense and target shooting exceptions, but only as to the prohibition on discharge of a firearm. Carrying a firearm within the city is still prohibited generally. A copy of the ordinance is attached for reference.

Wichita Code § 5.88.010(e) & (f) read: “(1) Unlawful use of a weapon is knowingly: (e) Carrying on one’s person any unconcealed, loaded firearm, except when on one’s land or in one’s abode or fixed place of business; (f) Carrying in any vehicle under one’s immediate control, any loaded firearm, except when on one’s land or in one’s abode or fixed place of business.” A copy of the ordinance is attached for reference.

Lenexa prohibits open carry of firearms, whether loaded or unloaded. Wichita, on the other hand, is gracious enough to allow its citizens the ability to carry openly, provided the firearm is unloaded.

These five examples are some of the various firearms restrictions that Kansans face when considering self-protection options. Kansas is not the panacea for gun owners that the opponents of these bills purport. Open carry, whether for self-protection, or just for target practice can be prohibited by cities on a whim. HB 2159 and SB 21 with a preemption amendment will go a long way towards remedying this situation. I would urge your support for both HB 2159 and SB 21.

(b) Creating a hazard is a Class B violation.  
(Code 1964, § 23-01; Ord. No. 48744, § 1, 5-14-70; Ord. No. 65498, § 38, 1-4-90)

**State law reference**—Similar provisions, K.S.A. 21-4212.

**Sec. 22-92. Throwing stones, bricks, wood, etc., generally.**

(a) It shall be unlawful for any person to intentionally throw, pitch or otherwise cast any rock, stone, or other object, matter or thing in or across any street, avenue or alley or within any public place or at or against any house, building, vehicle or person within the city.

(b) A person convicted of throwing stones, bricks, wood, etc., is guilty of an unclassified violation unless an injury occurs during the act. If an injury occurs during the act, the person is guilty of a Class A violation.

(Code 1964, 23-52; Ord. No. 65498, § 39, 1-4-90; Ord. No. 65883, § 15, 3-10-94)

**Sec. 22-93. Throwing objects from bridge or overpass.**

(a) Any person who intentionally throws, pushes, pitches or otherwise casts any rock, stone or other object, matter or thing from a bridge or overpass onto a street, road, highway, railroad, railroad right-of-way, or upon any vehicle, engine or car thereon, is guilty of a Class B violation.

(b) Any person violating subsection (a) who damages any vehicle, engine or car lawfully on the street, highway or railroad right-of-way by the thrown or cast rock, stone or other object is guilty of a Class A violation.

(Ord. No. 65498, § 40, 1-4-90; Ord. No. 65883, § 16, 3-10-94)

**State law reference**—Similar provisions, K.S.A. 21-3742.

**Secs. 22-94–22-105. Reserved.**

DIVISION 2. WEAPONS

*Part A. General Provisions*

**Sec. 22-106. Unlawful use of weapons.**

(a) Unlawful use of weapons is knowingly:

- (1) Selling, manufacturing, purchasing, carrying or possessing any bludgeon, sword, cane, loaded cane, sandclub, metal knuckles, any knife, commonly referred to as a switch-blade, which has a blade that opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife or any knife having a blade that opens or falls or is ejected into position by the force of gravity or by an outward, downward or centrifugal thrust or movement, a mailed fist, spiked knuckles, metal fist covers or any leather apparatus or device worn on the arms, legs, hands, feet and that contain metal spikes, studs or other metal attachments, sap gloves containing granulated metal or other ingredients designed to add weight to the gloves, or other dangerous or deadly weapon or instrument of like character.

(2) Carrying or possessing on one's person or in any land, water or air vehicle a sword, dagger, dirk, billy, blackjack, slingshot, dangerous knife, straight-edge razor, a lock-blade knife, belt or pocket pistol, fountain pistol or pen-like tear gas or powder charge projection weapon, stiletto or any other dangerous or deadly weapon or instrument of like character; provided, an ordinary pocket knife with a blade less than three and one-half (3½) inches in length shall not be construed to be a dangerous knife or a dangerous or deadly weapon or instrument.

(3) Carrying or possessing on one's person or in any land, water or air vehicle, with intent to use the same unlawfully, a tear gas or smoke bomb or projector or any object containing a noxious liquid, gas or substance.

*does not have to be concealed*

(4) Carrying or possessing any pistol, revolver, shotgun, rifle or other firearm on the person or in any land, water or air vehicle, loaded or unloaded, except when on the person's own land or in the person's own abode, fixed place of business or office.

(5) Setting a spring gun.

(6) Possessing or transporting any incendiary or explosive material, liquid, solid or mixture, equipped with a fuse, wick or any other detonating device, commonly known as a molotov cocktail or a pipe bomb.

(7) Carrying on one's person or in any land, air or water vehicle any martial arts weapon, including but not limited to a shuriken or throwing star, karate sticks, nunchaku, Chinese fighting sticks, throwing spikes, metal coverings for fist or foot, or any other dangerous weapon or instrument of like character, except a student currently enrolled in a formal martial arts class or a formal instructor of martial arts employed in a licensed martial arts studio or business while carrying with them their training uniform while going to or from their place of formal training.

(8) Drawing, using, or demonstrating or threatening to draw, use or demonstrate any object in a hostile manner.

(9) Carrying any object in any manner with the intent to go armed, except when on the person's own land or in the person's own abode, fixed place of business or office.

(10) Discharging or firing any air rifle, pellet gun or BB gun within the city limits while on the streets, alleys or public places.

(11) Discharging any gun, revolver, pistol, or firearm of any description within the city.

(b) Subsections (a)(1), (2), (3), (4), (8) and (9) shall not apply to or affect any of the following:

(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 officers.

(2) Wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crimes.

*9-4*

- (3) Members of the armed services or reserve forces of the United States or the Kansas national guard while in the performance of their official duty.
- (4) Manufacture of, transportation to, or sale of weapons to persons authorized under paragraphs (1) through (3) of this subsection to possess such weapons.
- (c) Subsections (a)(4) and (9) of this section shall not apply to or affect the following:
- (1) Licensed hunters or fishermen while engaged in hunting or fishing and traveling to and from places to hunt and fish; those engaged in camping, scouting, trap, skeet or target shooting and instruction and training in safety and skillful use of weapons and traveling to and from places to engage in such activities.
- (2) Persons licensed as private detectives by the state and detectives or special agents regularly employed by railroad companies or other corporations to perform full-time security or investigative service.
- (3) The state fire marshal, the state fire marshal's deputies or any member of a fire department authorized to carry a firearm pursuant to K.S.A. 31-157, while engaged in an investigation in which such fire marshal, deputy or member is authorized to carry a firearm pursuant to K.S.A. 31-157.
- (4) All persons carrying or transporting a pistol, revolver, rifle or other firearm to or from a place of business after purchase or for repair or between a person's abode or land and such person's place of business or office, provided that when transporting the same in any land, air or water vehicle, such firearm shall be unloaded and either stored or carried in that portion of the vehicle not accessible to the driver or passengers of the vehicle or when in a vehicle not containing a locked portion not accessible to the driver or the passengers then carried in a case or scabbard and behind or underneath an available seat, in a storage cabinet or closet or underneath the floorboard or carpeting; provided further that private detectives properly licensed pursuant to Kansas statutory requirement may carry their firearms on their persons or in an accessible portion of any land, air or water vehicle only while actually engaged in the performance of their duties and not when in transit to and from their jobs.
- (d) Subsection (a)(1) shall not apply to any person who sells, purchases, possesses or carries a firearm, device or attachment which has been rendered unserviceable by steel weld in the chamber and marriage weld of the barrel to the receiver and which has been registered in the national firearms registration and transfer record in compliance with 26 U.S.C. 5841 et seq., in the name of such person, and, if such person transfers such firearm, device or attachment to another person, it has been so registered in the transferee's name by the transferor.
- (e) Subsection (a)(11) shall not apply to the discharge of firearms in any licensed shooting gallery, or by a gunsmith in carrying on his or her trade, or by any officer of the law in the discharge of his or her official duties.
- (f) The holder of a private security officer firearm permit shall carry a firearm while actually engaged in the performance of transporting an employer or their agent directly to and



from a financial institute or as allowed by section 19-216. The holder of a private security officer permit shall be allowed to carry only those intermediate weapons approved for use by law enforcement officers with the city police department.

(g) It shall be a defense that the defendant is within an exemption.

(h) No person shall unlawfully use weapons as defined herein. Any person unlawfully using weapons as defined herein shall, upon conviction thereof, be deemed guilty of a Class A violation. In addition to the penalty for the violation of this section, it shall be the duty of the municipal judge to order such weapon to be forfeited to the city. The same shall be destroyed, retained for use by the police department or sold by the chief of police whenever the weapon is no longer needed for evidence.

(Code 1964, § 39-3; Ord. No. 64772, §§ 1-6, 12-27-84; Ord. No. 65357, § 1, 10-6-88; Ord. No. 65498, § 41, 1-4-90; Ord. No. 65883, § 17, 3-10-94; Ord. No. 65924, § 1, 7-21-94)

**State law reference**—Similar provisions, K.S.A. 21-4201.

#### **Sec. 22-107. Defacing identification marks of a firearm.**

(a) Defacing identification marks of a firearm is the intentional changing, altering, removing or obliterating the name of the maker, model, manufacturer's number or other mark of identification of any firearm.

(b) Possession of any firearm upon which any such mark shall have been intentionally changed, altered, removed or obliterated shall be prima facie evidence that the possessor has changed, altered, or obliterated the same.

(c) Defacing identification marks of a firearm is a Class B violation.  
(Code 1964, § 39-7; Ord. No. 65498, § 42, 1-4-90)

**State law reference**—Similar provisions, K.S.A. 21-4205.

#### **Sec. 22-108. Record of sales and purchases.**

No wholesale or retail dealer in firearms shall possess for the purpose of sale or sell any handgun unless such person keeps a full and complete record of the name of the maker, the model, the manufacturer's number, or other mark of identification of the firearm; the name and address of the person from whom purchased and to whom sold; and the date of such purchase or sale. Such record shall be open to inspection at all times to any police officer or other peace officer of the state.

(Code 1964, § 39-8; Ord. No. 65498, § 43, 1-4-90)

#### **Sec. 22-109. Unlawful disposal of firearms.**

(a) Unlawful disposal of firearms is knowingly:

- (1) Selling, giving or otherwise transferring any firearm with a barrel less than twelve (12) inches long to any person under eighteen (18) years of age;
- (2) Selling, giving or otherwise transferring any firearms to any person who is both addicted to and an unlawful user of a controlled substance;

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restricted matter in the United States mail, addressed to the person to be given notice at such person's address as it appears on such check, draft or order.

(c) It shall be a defense to a prosecution under this section that the check, draft or order upon which such prosecution is based:

(1) Was postdated, or

(2) Was given to a payee who had knowledge or had been informed, when the payee accepted such check, draft or order, that the maker did not have sufficient funds in the hands of the drawee to pay such check, draft or order upon presentation. (K.S.A. Supp. 21-3707, as amended)

Giving a worthless check is a Class A violation if the check, draft or order is drawn for less than \$500 except when the person has, within five years immediately preceding commission of the offense, been convicted of giving a worthless check two or more times, in which case it is a felony under state statute. (Ord. 1430C; 9-19-94)

11-103.

SAME. Section 10.1 of the Uniform Code incorporated in Section 11-101 above is hereby amended to read as follows:

## 10.1. UNLAWFUL USE OF WEAPONS.

(a) Unlawful use of weapons is knowingly:

(1) Selling, manufacturing, purchasing, possessing or carrying any bludgeon, sandclub, metal knuckles or throwing star, or any knife, commonly referred to as a switchblade, which has a blade that opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife, or any knife having a blade that opens or falls or is ejected into position by the force of gravity or by an outward, downward, or centrifugal thrust or movement;

(2) Carrying concealed on one's person, or possessing with intent to use the same unlawfully against another, a dagger, dirk, billy, blackjack, slingshot, dangerous knife, straight-edged razor, stiletto or any other dangerous or deadly weapon or instrument of like character, except that an ordinary pocket knife with no blade more than four inches in length shall not be construed to be a dangerous knife, or a dangerous or deadly weapon or instrument;

(3) Carrying on one's person or in any land, water or air vehicle, with intent to use the same unlawfully, a tear gas or smoke bomb or projector or any object containing a noxious liquid, gas or substance;

(4) Carrying any pistol, revolver or other firearm:

(i) concealed on one's person except when on the person's land or in the person's abode or fixed place of business;

(ii) openly or visibly on the person at any place open to public view;

(iii) within any vehicle in transport unless the weapon is unloaded and in a case;

(5) Setting a spring gun;

(6) Possessing any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm.

(b) Subsections (a) (1), (2), (3) and (4) shall not apply to or

affect any of the following:

(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 Kansas National Guard while in the performance of their official duty; or

(4) Manufacture of, transportation to, or sale of weapons to a person authorized under (b) (1) through (b) (3) of this section to possess such weapons.

(c) Subsection (a) (4) does not apply to or affect the following:

(1) Watchmen, while actually engaged in the performance of the duties of their employment;

(2) Licensed hunters while engaged in hunting;

(3) Private detectives licensed by the state to carry the firearm involved, while actually engaged in the duties of their employment;

(4) Detectives or special agents regularly employed by railroad companies or other corporations to perform full-time security or investigative service, while actually engaged in the duties of their employment; or

(5) The state fire marshal, the state fire marshal's deputies or member of a fire department authorized to carry a firearm pursuant to K.S.A. Supp. 31-157 and amendments thereto, while engaged in an investigation in which such fire marshal, deputy or member is authorized to carry a firearm pursuant to K.S.A. 31-157 and amendments thereto.

(d) Subsections (a) (1) and (6) shall not apply to any person who sells, purchases, possesses or carries a firearm, device or attachment which has been rendered unserviceable by steel weld in the chamber and marriage weld of the barrel to the receiver and which has been registered in the national firearms registration and transfer record in compliance with 26 U.S.C. 5841 et seq. in the name of such person and, if such person transfers such firearm, device or attachment to another person, has been so registered in the transferee's name by the transferor.

(e) It shall be a defense that the defendant is within an exemption. (K.S.A. 21-4201)

Violation of this section is a Class B violation. (Ord. 1430C; 9-19-94)

11-104. SAME. Section 10.5 of the Uniform Code incorporated in Section 11-101 above shall be amended to read as follows:

10.5. UNLAWFUL DISCHARGE OF FIREARMS.

Unlawful discharge of firearms is the discharging or firing of any gun, rifle, pistol, revolver or other firearm within the city. This section shall not be construed to apply:

## ARTICLE I - OFFENSES INVOLVING EXPLOSIVES AND WEAPONS

<b>Sections:</b>	3-9I-1	Unlawful Use of Weapons
	3-9I-2	Unlawful Discharge of a Firearm
	3-9I-3	Defacing Identification Marks of a Firearm
	3-9I-4	Unlawful Use of Air Gun, Air Rifle, Bow and Arrow, Slingshot, BB Gun or Projectiles
	3-9I-5	Carrying Concealed Explosives
	3-9I-6	Molotov Cocktails

### 3-9I-1 UNLAWFUL USE OF WEAPONS.

#### A. Unlawful use of weapons is knowingly:

1. Selling, manufacturing, purchasing, possessing or carrying any bludgeon, sandclub, metal knuckles or throwing star or any knife, commonly referred to as a switchblade, which has a blade that opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife or any knife having a blade that opens or falls or is ejected into position by the force of gravity or by an outward, downward or centrifugal thrust or movement.
2. Carrying concealed on one's person or possessing with intent to use the same unlawfully against another a dagger, dirk, billy, blackjack, slingshot, dangerous knife, straight-edged razor stiletto or any other dangerous or deadly weapon or instrument of like character; except, that an ordinary pocket knife with no blade more than four inches (4") in length shall not be construed to be a dangerous knife or a dangerous or deadly weapon or instrument.
3. Carrying on one's person or in any land, water or air vehicle, with intent to use the same unlawfully, a tear gas or smoke bomb or projector or any object containing a noxious liquid, gas or substance.

- A) 4. Carrying any pistol, revolver or other firearm on the person except when the person is on his land, in his dwelling or in his fixed place of business, or unless such pistol, revolver or other firearm is unloaded and in a case.
5. Transporting any pistol, revolver, or other firearm with a barrel less than eighteen inches (18") in length in an occupied motor vehicle, unless such firearm is secured.
6. Setting a spring gun.
7. Possessing any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm.
- B. Subsections A1, A2, A3 and A4 of this Section shall not apply to or affect any of the following:
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 Kansas National Guard while in the performance of their official duty; or
4. Manufacture of, transportation to or sale of weapons to a person authorized under subsections B1 thru B3 above to possess such weapons.
- C. Subsection A4 and A5 of this Section shall not apply to or affect the following:
1. Watchmen, while actually engaged in the performance of the duties of their employment;

- C) 2. Discharge of a weapon while on a lawfully operated gun club or National Guard Armory range;
3. Private detectives licensed by the State to carry the firearm involved, while actually engaged in the duties of their employment;
4. Detectives or special agents regularly employed by railroad companies or other corporations to perform full-time security or investigative service, while actually engaged in the duties of their employment; or
5. The State Fire Marshal, the State Fire Marshal's deputies or any member of a fire department authorized to carry a firearm pursuant to K.S.A. 31-157, and amendments thereto, while engaged in an investigation in which such Fire Marshal, Deputy or member is authorized to carry a firearm pursuant to K.S.A. 31-157, and amendments thereto.
- D. Subsections A1 and A6 of this Section shall not apply to any person who sells, purchases, possesses or carries a firearm, device or attachment which has been rendered unserviceable by steel weld in the chamber and marriage weld of the barrel to the receiver and which has been registered in the National Firearms Registration and Transfer Record in compliance with 26 U.S.C. 5841 et seq., in the name of such person. If such person transfers such firearm, device or attachment to another person, it should be so registered in the transferee's name by the transferor.
- E. It shall be a defense that the defendant is within an exemption.<sup>1</sup>

Violation of this Section shall constitute a public offense and punishable as set forth in Article 9J of this Chapter. (Ord. 3954, 8-17-95)

## 3-9I-2

**UNLAWFUL DISCHARGE OF A FIREARM.**

- A. Unlawful discharge of a firearm is the firing or discharging of a pistol, rifle or shotgun within the City limits; except, it shall not

Chapter 9.02AMENDMENTS TO ARTICLE 10 OF THE UNIFORM PUBLIC  
OFFENSE CODE, OFFENSES AGAINST PUBLIC SAFETYSections:

- 9.02.010 Unlawful use of weapons.
- 9.02.020 Custody of seized weapons.
- 9.02.030 Hunting prohibited.

9.02.010 Unlawful use of weapons. Article 10, Section 10.1 of the Uniform Public Offense Code for Kansas Cities, Edition of 1995, Unlawful Use of Weapons, as amended:

A. Unlawful use of weapons is knowingly:

1. Selling, manufacturing, purchasing, possessing or carrying any bludgeon, sandclub, shotgun with a barrel less than eighteen inches in length, metal knuckles or any knife, commonly referred to as a switch-blade, which has a blade that opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife, or any knife having a blade that opens or falls or is ejected into position by the force of gravity or by an outward, downward or centrifugal thrust or movement; or

2. Carrying concealed on one's person, or possessing with intent to use the same unlawfully against another, a dagger, dirk, billy, blackjack, sling shot, dangerous knife, straight-edged razor, stiletto, or any other dangerous or deadly weapon or instrument of like character; provided, however, an ordinary pocketknife with no blade more than four inches in length shall not be construed to be a dangerous knife or dangerous or deadly weapon or instrument; or

3. Carrying on one's person or in any land, water or air vehicle, with intent to use the same unlawfully, a teargas or smoke bomb or projector or any object containing a noxious liquid, gas or substance;

4. Carrying any pistol, revolver or other firearm on the person or in an occupied motor vehicle when an occupant of said vehicle has access to any such pistol, revolver or other firearm with a barrel less than eighteen inches in length, except when the person is on their land or in their dwelling or fixed place of business; or

5. Setting a spring gun; or

6. Possessing any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; or

7. Shooting or discharging any gun, revolver, air rifle or air gun, pistol or firearm of any description, whether the same be loaded with powder and ball or shot,

loaded with "blank" cartridges, or with any kind of explosives whatsoever;

8. Shooting or discharging an arrow, or possession of any crossbow or bow and arrow device designed to be used to shoot or discharge arrows, with intent to use the same.

B. Exemptions:

1. Subdivisions 1, 2, 3 and 4 of subsection (A) of this section shall not apply to or affect any of the following:

a. Law enforcement officers, or any person summoned by any such officer to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

b. Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of a crime;

c. Members of the armed services or reserve forces of the United States of the Kansas National Guard while in the performance of their official duty;

d. Manufacturing of, transportation to, or sale of weapons to persons authorized under subdivisions (1)(a) through (c) of this subsection to possess such weapons.

2. Subdivision 4 of subsection (A) of this section shall not apply to or affect the following:

a. Uniformed watchmen while actually engaged in the performance of the duties of their employment;

b. Persons licensed as private detectives by the state; or

c. Detectives or special agents, regularly employed by railroad companies or other corporations to perform full-time security or investigative service, actually engaged in the performance of the duties of their employment.

3. Subdivision 7 of subsection (A) of this section shall not apply to or affect the following:

a. Those persons enumerated under subdivisions 1 and 2 of this subsection;

\* b. Persons engaged in the defense of person or property;

\* c. Persons engaged in target or practice shooting; provided, that this activity occurs at a reasonable hour in a building or outdoor location with a backstop or otherwise designed for the purpose on agriculturally zoned tracts of land of at least twenty acres, at a minimum distance of five hundred feet from any building or structure, and which does not disturb the peace and quiet of the surrounding area, is under the supervision of a responsible adult, and is limited to use of shotguns, pistols, air guns, or bows and arrows with bludgeoned tips;

d. To firing squads for ceremonials.



C. It shall be a defense that the defendant is within an exemption.

D. Violation of this section is a Class A offense. (Ord. 2237 §B(part), 1996: Ord. 2172 §B(part), 1994: Ord. 2045 §B(part), 1992)

9.02.020 Custody of seized weapons. Article 10, Section 10.4 of the Uniform Public Offense Code of Kansas Cities, Edition of 1995, Confiscation, Disposition of Weapons, as amended:

A. Upon conviction of a violation of Section 9.02.010 or 9.02.030 of the Shawnee Municipal Code or amendments thereto, or Section 10.2, 10.3, 10.3.1 or 10.10 of the Uniform Public Offense Code for Kansas Cities, Edition of 1995 or amendments thereto, any weapon seized as evidence in connection therewith shall remain in the custody of the Trial Court.

B. Any stolen weapon so seized and detained, when no longer needed for evidentiary purposes, shall be returned to the person entitled to possession, if known. All other confiscated weapons when no longer needed for evidentiary purposes, shall in the discretion of the Trial Court, be destroyed, preserved as city property, forfeited to the law enforcement agency seizing the weapon or sold and the proceeds of such sale shall be paid to the city general fund. All weapons forfeited to any law enforcement agency may be traded for materials for use by such law enforcement agency or sold and the proceeds thereof used for law enforcement purposes. (Ord. 2237 §B(part), 1996: Ord. 2172 §B(part), 1994: Ord. 2045 §B(part), 1992)

9.02.030 Hunting prohibited. A. It is unlawful for any person to hunt, pursue, seek or chase any animal within the city limits of the city, whether the animal is wild or domestic, by use of any weapon, to include, but not be limited to, all gauges of rifles, shotguns, pistols or bow/crossbow and arrow.

B. This section shall be of full force and effect upon all property, whether public or private, of any zoning classification or category, within the existing corporate city limits of the city, as the same now exists or may legally exist at the time of any perceived violation of this section. (Ord. 2237 §B(part), 1996: Ord. 2172 §B(part), 1994: Ord. 2045 §B(part), 1992)

## Chapter 5.88

## WEAPONS

## Sections:

- 5.88.010** Unlawful use of weapons.  
**5.88.015** Permit requirements and other restrictions upon the purchase and sale of firearms, handguns and assault weapons.  
**5.88.020** Unlawful discharge of a firearm, air rifles, pellet guns and BB guns.  
**5.88.030** Air rifles, pellet guns and BB guns—Carrying within the city.  
**5.88.035** Discharging firearms at dwellings, structures or vehicles.

**5.88.010** Unlawful use of weapons.(1) Unlawful use of a weapon is knowingly:

(a) Selling, manufacturing, purchasing, possessing or carrying any bludgeon, sandclub, metal knuckles or throwing star, or any knife, commonly referred to as a switch-blade, which, having the appearance of a pocket knife, also has a blade that opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife, or by other mechanical contrivance, or any knife having a blade that opens or falls or is ejected into position by the force of gravity or by an outward, downward or centrifugal thrust or movement;

(b) Carrying concealed on one's person, or possessing with intent to use the same unlawfully against another, a dagger, dirk, billy, blackjack, slingshot, nightstick, nunchucks, sap gloves, tomahawk, dangerous knife, straight-edged razor, stiletto or any other dangerous or deadly instrument of like character, except that an ordinary pocket knife with no blade more than four inches in length shall not be construed to be a dangerous knife or a dangerous or deadly weapon or instrument;

(c) Carrying unconcealed on one's person or in any vehicle under one's immediate control, with intent to use the same unlawfully against another, a dagger, dirk, billy, blackjack, slingshot, nightstick, nunchucks, sap gloves, tomahawk, dangerous knife, straight-edged razor, stiletto or any other dangerous or deadly instrument of like character, except that an ordinary pocket knife with no blade more than four inches in length shall not be construed to be a dangerous knife or a dangerous or deadly weapon or instrument;

(d) Carrying any pistol, revolver or other firearm concealed on one's person except when on one's land or in one's abode or fixed place of business;

(e) Carrying on one's person any unconcealed, loaded firearm, except when on one's land or in one's abode or fixed place of business;

(f) Carrying in any vehicle under one's immediate control, any loaded firearm, except when on one's land or in one's abode or fixed place of business;

(g) Possessing any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; or

(h) Drawing a pistol, revolver, knife or any other deadly weapon upon any person.

(2) Subsections (1)(a), (b), (c), (d), (e), (f) and (h) shall not apply to or affect any of the following:

(a) 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;

(b) 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;

(c) Members of the armed services or reserve forces of the United States or the Kansas National Guard while in the performance of their official duty; or

(d) Manufacture of, transportation to, or sale of weapons to a person authorized under (a) through (c) of this subsection to possess such weapons.

(3) Subsection (1)(d), (e) and (f) shall not apply to or affect the following:

(a) Watchmen, while actually engaged in the performance of the duties of their employment;

(b) Private detectives licensed by the state to carry the firearm involved while actually engaged in the duties of their employment;

(c) Detectives or special agents regularly employed by railroad companies or other corporations to perform full-time security or investigative service, while actually engaged in the duties of their employment; or

(d) The State Fire Marshal, the State Fire Marshal's deputies or any member of a fire department authorized to carry a firearm pursuant to K.S.A. 31-157 and amendments thereto, while engaged in an investigation in which such fire marshal, deputy or member is authorized to carry a firearm pursuant to K.S.A. 31-157 and amendments thereto.

(4) Subsection (1)(d), (e) and (h) shall not apply to or affect historical reenactors and actors when engaged in performances and demonstrations. Provided, however, this subsection shall only apply to those performances and demonstrations which have been approved in advance in writing by the city manager or his designee.

(5) Subsection (1)(a) shall not apply to any person who sells, purchases, possesses or carries a firearm, device or attachment which has been rendered unserviceable by steel weld in the chamber and marriage weld of the barrel to the receiver and which has been registered in the national firearms registration and transfer record in compliance with 26 U.S.C. 5841 et seq. in the name of such person and, if such person transfers such firearm, device or attachment to another person, has been so registered in the transferee's name by the transferor.

(6) It shall be an affirmative defense that the defendant is within an exemption.

(7) Any person who violates any of the provisions of this section within the corporate limits of the city shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed five hundred dollars or by imprisonment for not more than one year, or by both such fine and imprisonment.

(8) In addition to the penalty for violation of any of the provisions of this section, it shall be the duty of the municipal court judge:

(a) To order any weapon seized in connection with such violation which is not a firearm to be forfeited to the city and the same shall be destroyed or caused to be destroyed by the chief of police whenever the weapon is no longer needed for evidence;

(b) To order any weapon seized in connection with such violation which is a firearm to be destroyed or forfeited to the Wichita police department. Any weapon forfeited to the Wichita police department shall be utilized by the police department or sold or traded to a federally licensed wholesale gun dealer for materials to be used by the Wichita police department. Proceeds from any such sale shall be used for law enforcement purposes by the Wichita police department. All transactions involving weapons disposed of under this subsection must have the prior approval of the city manager. All sales of weapons are subject to review by the city council;

(c) Any stolen weapon confiscated in connection with any violation of this section other than subdivision (a) of this subsection shall be returned to the person entitled to possession, if known, when the same is no longer needed for evidence. All other weapons shall be disposed of as provided in subsection (7)(a) and (b) above. (Ord. No. 42-636 § 1)

**5.88.015 Permit requirements and other restrictions upon the purchase and sale of firearms, handguns and assault weapons.**

1. Definitions. As used in this section, the following

terms shall have the following meanings, unless the context clearly indicates a different meaning:

**Assault Weapon.** An "assault weapon" is: (a) any semiautomatic action, center fire rifle or carbine that accepts a detachable magazine with a capacity of twenty rounds or more; (b) any semiautomatic shotgun originally designed with a factory magazine capacity of more than seven rounds; (c) any semiautomatic handgun that is a modification of a semiautomatic action, center fire rifle or carbine that accepts a detachable magazine with a capacity of twenty rounds or more; (d) any semiautomatic handgun originally designed to accept a detachable magazine with a capacity of twenty rounds or more; (e) any semiautomatic handgun that is a modification of an automatic firearm; (f) any firearm from which two or more shots may be discharged by a single function of the firing device; (g) any firearm which may be restored to any operable weapon of a type described in clause (a), (b), (c), (d), (e) or (f), above; and, any part or combination of parts designed or intended to convert a firearm into any operable firearm of a type described in clause (a), (b), (c), (d), (e) or (f), above, or from which any such weapon may be readily assembled. However, the term "assault weapon" does not include any firearm that uses .22 caliber rimfire ammunition with a detachable magazine having a capacity of twenty rounds or less, any shotgun with a factory magazine capacity of seven rounds or less, or any weapon that has been modified to render it permanently inoperable or permanently inrestorable to any operable weapon of a type described in any of clauses (a), (b), (c), (d), (e) or (f), above.

"Business day" means any day on which both state offices and city offices are open.

"Dealer" or "firearms dealer" means any person, firm, limited liability company or corporation engaged in the business of selling firearms at wholesale or retail.

"Firearm" means any weapon designed to shoot bullets or other potentially lethal missiles by means of an explosive charge, including but not limited to handguns, rifles and shotguns, but excluding any weapon within the definition of "antique firearm" as set forth in U.S.C. Title 18 Section 921(a)(16). The definition of "firearm" also shall not include any weapon which has been rendered permanently inoperable.

"Handgun" means any firearm designed (originally or by modification) to be held and fired with one hand.

"Purchaser" means any person, other than a dealer, who orders, purchases, rents, or obtains a handgun or assault weapon (other than by devise, bequest, intestate succession or other transfer arising by operation of law) or who attempts to do so. Any transfer pursuant to a