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Firearms Regulations

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NOTES

Firearms Regulations

SINCE THE ASSASSINATION of President Kennedy in 1963, there has been much public pressure on legislative bodies for increased firearms regulation. While there appears to be a definite need for more effective regulations controlling the sale and use of firearms, it is submitted that very few persons are acquainted with even existing federal regulations, let alone those of their own state and municipality. Some feel that the registration of firearms will halt crime or will prevent accidents arising from the improper use of firearms.¹ It is the purpose of this Note to discuss existing regulations of firearms by the federal government, states, and certain municipalities and to discuss the different forms of firearm regulation, the theories behind them, and, to the extent possible, their effectiveness.

I. THE NATURE OF THE PROBLEM

There are two motivating factors in the drive for increased firearms regulation: the prevention of crime and the prevention of accidents. The emphasis, lately, has been on the latter.² Many believe, however, that accidents with firearms can be prevented by education.³ The number of accidents involving firearms, although declining, is substantial; nevertheless, it is far below drownings, railroad mishaps, and accidents involving motor vehicles, falls, and

¹ For example: On November 18, 1964, Councilman Leo Jackson of Cleveland, Ohio submitted Proposed Ordinance No. 889-62 requiring the registration of all firearms in the City of Cleveland less than thirty inches in length. Ohio Representative William M. Feighan introduced in the Ohio House of Representatives, House Bill 909, which would require a license for the ownership, possession, transportation, custody, or use of a handgun, and a license for engaging in the business of gunsmith or dealer in firearms. This proposal would require a \$15 license fee plus one dollar for each additional weapon, \$75 for gunsmiths, and \$1.50 for dealers; all licenses would be revocable at any time by the licensing authority. Rhode Island Senator Pat Nero introduced before the Rhode Island Senate Bill 612 which would require the registration of all firearms with the local police and establish a central firearms registry.

² For instance, of 55 bills reported introduced in May, 1965, in federal and state legislatures, 20 were intended to prevent crime in some way while only 12 were intended to prevent accidents. *The American Rifleman*, June, 1965, pp. 41-43.

³ California, for example, provides that before a minor under eighteen years of age may be issued a hunting license he must pass an approved firearms safety course. CAL. FISH & GAME CODE § 3032. A similar proposal was made recently in Colorado, House Bill 1356 (1965), and in Florida, Senate Bill 479 and House Bill 829 (1965).

fires.⁴ Also, the number of homicides and suicides involving firearms has decreased.⁵ The issue in any discussion of this subject is whether a meaningful program of regulation can effectively control the illegitimate use of firearms while ensuring to citizens the unhampered use of firearms. Why is the unhampered use of firearms important to many Americans? There are a number of different reasons. For many, hunting and target shooting are relaxing and wholesome recreations; for others, gun collecting is just as rewarding, although their relics are never fired. But for other gun owners, the possession of a firearm is desirable simply because of the security resulting from having a firearm around the house. Furthermore, the rifle over the fireplace is a traditional expression of American independence. It is a symbol of freedom, for it is well known that an oppressive government quickly disarms the people.⁶

II. THE FEDERAL LEVEL

A. *The Second Amendment*

The Second Amendment to the Constitution of the United States provides: "A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed."⁷ Examination of judicial interpretation of this provision will reveal that the so-called "constitutional right to bear arms" is extremely limited.

As presently interpreted, the second amendment does not restrict state action; it operates only against the federal government. This was specifically stated in *United States v. Cruikshank*,⁸ where it was held that the second amendment means no more than that the right to keep and bear arms shall not be restricted by Congress. The amendment places no limitation upon the exercise of the state police power.⁹ Moreover, when Congress entered the field of firearms regulation, the "constitutional right to bear arms" was further

⁴ Despite a 50% increase in the number of hunters and shooters since 1950, the number of hunting and shooting accidents has decreased 13%. Cleveland Plain Dealer, Sept. 11, 1965, p. 41, col. 7; NATIONAL RIFLE ASSOCIATION LEGISLATIVE SERVICE, STATISTICAL STUDY OF FIREARMS IN ACCIDENTS AND CRIME 1 (1964) [hereinafter cited as NRA STUDY].

⁵ From 1940 to 1960 the percentage of homicides involving firearms decreased 25.7%, while the percentage of suicides involving firearms decreased 9% over the same period. NRA STUDY 8.

⁶ A recent example is Cuba; see Time, Sept. 3, 1965, p. 41.

⁷ U.S. CONST. amend. II.

⁸ 92 U.S. 542 (1876).

⁹ Presser v. Illinois, 116 U.S. 252 (1886).

narrowed by the United States Supreme Court. In upholding the National Firearms Act,¹⁰ the Court held that the right to keep and bear arms does not apply to private citizens, but that the intention of the framers of the amendment was to allow the states to keep militias, this being the only right guaranteed by the second amendment.¹¹ Thus, as far as the private citizen is concerned, the second amendment is of doubtful value in insuring his privilege to own firearms for his personal use.

B. Existing Federal Regulations

Federal regulation of firearms is covered by the National Firearms Act of 1934, the Federal Firearms Act of 1938, and various postal regulations. The National Firearms Act provides for the registration and taxation of certain types of firearms. The Federal Firearms Act requires the licensing of any manufacturer or dealer who ships firearms or ammunition in interstate or foreign commerce. It also imposes certain requirements as to the destination of such articles. Both laws are enforced by the Alcohol and Tobacco Tax Division of the Internal Revenue Service of the Treasury Department.

(1) *The National Firearms Act of 1934.*¹²—The first significant federal regulation of firearms was the National Firearms Act of 1934. Briefly, this is a registration and tax statute designed to curtail certain "gangster type" weapons — weapons which generally have extremely limited value for sporting use¹³ but which may be of value to the gun collector. The act does not apply to firearms which are not capable of firing fixed ammunition,¹⁴ and thus some types of antique weapons are exempted.¹⁵

¹⁰ INT. REV. CODE OF 1954, §§ 5801-62 [hereinafter cited as CODE §].

¹¹ *United States v. Miller*, 307 U.S. 174 (1939); *Cases v. United States*, 131 F.2d 916 (1st Cir. 1942); *United States v. Tot*, 131 F.2d 261 (3d Cir. 1942), *rev'd on other grounds*, 319 U.S. 463 (1943). In *Cases* it was held that the second amendment was intended to foster a well-regulated militia as necessary to the security of a free state.

¹² CODE §§ 5801-62.

¹³ CODE § 5848. This category includes all fully automatic firearms, rifles with barrels shorter than 16 inches, shotguns with barrels shorter than 18 inches, all rifles and shotguns with an overall length of less than 26 inches, all pistols with shoulder stocks whose barrels are shorter than 16 inches, all combination rifle-shotguns with barrels shorter than 12 inches, and all mufflers and silencers.

¹⁴ CODE § 5848, standard metallic cartridges or shotgun shells.

¹⁵ Also included in the act is what is termed "any other weapon" which is defined as "any weapon or device capable of being concealed on the person from which a shot can be discharged through the energy of an explosive, but such term shall not include pistols or revolvers or weapons designed, made or intended to be fired from the shoulder and

The covered weapons must be registered with the Alcohol and Tobacco Tax Division of the Internal Revenue Service of the Treasury Department.¹⁶ If a person possesses one of these firearms and has not acquired it pursuant to the act, obtaining an application for transfer, he must register the weapon, report his name, address, and place of business, and the place where the firearm is usually kept.¹⁷ When application for transfer is made, a form must be filled out for approval by the Treasury Department. The applicant must furnish his fingerprints and photograph in addition to all identifying marks of the firearm and his reason for desiring such a firearm.¹⁸

Unserviceable weapons are not subject to the 200 dollar transfer tax; however, their exemption must be registered in the normal manner.¹⁹ This provision allows collectors to display machine guns and other firearms of this type for trophies.

The sportsman or person who wishes to own a firearm for defense is rarely affected by the National Firearms Act. There is little need for the law-abiding citizen to use a machine gun, a sawed-off shotgun, or a weapon with a silencer. There has been a demonstrated popular interest in shot pistols²⁰ and a change in the regulations, reducing the transfer tax on such weapons from 200 dollars to five dollars,²¹ was obtained by sporting interests.

(2) *The Federal Firearms Act of 1938.*²²—The most important federal regulation of firearms is the Federal Firearms Act of 1938. This act has two main parts — a licensing provision for dealers and manufacturers and a section prohibiting the interstate shipment of firearms or ammunition to fugitives from justice, convicted felons, persons under indictment, and other persons not authorized to own

not capable of being fired with fixed ammunition." CODE § 5848(5). This would include certain tear gas devices and blank guns, which can actually be loaded with regular ammunition and are thus lethal, and certain collectors' oddities. The transfer tax on "any other weapon" is \$5, but the manufacture tax is \$200, the same amount as the transfer and manufacture tax on other firearms covered by the act. CODE §§ 5811, 5821.

¹⁶ CODE §§ 5841-43.

¹⁷ CODE § 5841.

¹⁸ CODE § 5814.

¹⁹ CODE § 5812(a) (3), (b).

²⁰ Conventional pistols or revolvers altered to fire a specially made load of small shot rather than standard lead bullets, suitable only for rats, snakes, and other small vermin.

²¹ CODE §§ 5848(5), 5811(a).

²² 52 Stat. 1250, as amended, 15 U.S.C. §§ 901-09 (1964).

such firearms under local law.²³ Manufacturers of firearms or ammunition must pay a twenty-five dollar licensing fee while dealers must pay a fee of one dollar; both must keep records of each firearm received or shipped in interstate and foreign commerce.²⁴ The shipper is required to receive evidence that the person to whom the firearm or ammunition is to be shipped is authorized under local law to receive such items.²⁵ Generally, however, the only regulation which the dealer observes is to require the prospective purchaser to sign a statement that he does not fall within the prohibited class. The firearm or ammunition is then shipped with no additional questions asked.²⁶

(3) *Postal Regulations.*²⁷—Concealable firearms are classified as nonmailable by the postal department. This means that such weapons may not be shipped in the mails except to members of the armed forces, law enforcement officers, and watchmen, for use in their official duty, and to manufacturers and dealers.

The federal regulations are quite inclusive; for example, under the Federal Firearms Act it is unlawful both for the dealer to ship a firearm to one of the prohibited persons²⁸ and for that person to receive the firearm.²⁹ These two sections, properly enforced, seem to give the federal government enough authority to severely curtail the shipping of firearms to criminals and other undesirables. Thus, this illegal traffic could be halted without additional legislation.

III. THE STATE LEVEL

A. *State Constitutions*

Thirty-five states have constitutional provisions guaranteeing the right to keep and bear arms which were patterned after, or at

²³ The act does not regulate the shipment of shotgun shells, ammunition suitable for use only in rifles, or any .22 caliber rimfire ammunition. 52 Stat. 1250 (1938), as amended, 15 U.S.C. § 901 (7) (1964).

²⁴ 52 Stat. 1250 (1938), as amended, 15 U.S.C. § 903 (a), (d) (1964).

²⁵ 52 Stat. 1250 (1938), as amended, 15 U.S.C. § 902 (1964).

²⁶ Over a three year period, two Los Angeles firms sent 4,069 firearms to buyers in Chicago; 25% of the recipients had criminal records with the Chicago police. CUYAHOGA COUNTY (OHIO) GRAND JURY, SPECIAL REPORT ON THE PROBLEM OF CONCEALABLE WEAPONS 3, March 5, 1965.

²⁷ 62 Stat. 781 (1948), as amended, 18 U.S.C. § 1715 (1964).

²⁸ 52 Stat. 1250 (1938), as amended, 15 U.S.C. § 902 (1964).

²⁹ 52 Stat. 1250 (1938), as amended, 15 U.S.C. § 905 (1964).

least inspired by, the second amendment.³⁰ Most of these states have interpreted their constitutional provisions as permitting reasonable regulations for the general welfare and public safety.

Article I, Section 4 of the Ohio Constitution provides: "The people have the right to bear arms for their defense and security . . ." This has been interpreted by the courts of Ohio as permissive of reasonable regulations in the interest of public safety.³¹ But there is dicta to the effect that an absolute prohibition of private ownership of firearms would be unconstitutional.³²

B. *State Firearms Regulations*

The problem of firearms regulation is that a maximum degree of control over the criminal use of firearms must be provided without destroying the practical availability of firearms to the hunter, sportsman, farmer, or person in need of protection. As a general rule, the answer to this conflict has been to allow standard-sized rifles and shotguns, but to restrict in some way easily concealed weapons such as handguns.³³

(1) *Ohio Regulations*.—Ohio, like most states, requires a permit for a private citizen to possess a machine gun.³⁴ A machine gun is defined as follows:

any firearm which shoots, or is designed to shoot, automatically, or any firearm with a bore and chamber greater than .22 caliber which shoots or is capable of shooting, more than eighteen shots semiautomatically without reloading.³⁵

Generally, such permits are extremely difficult to obtain and a

³⁰ The following states have no such constitutional provision: California, Delaware, Illinois, Iowa, Maryland, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Virginia, West Virginia, and Wisconsin. New York, however, has a statutory provision similar to the second amendment.

³¹ See, e.g., *State v. Nieto*, 101 Ohio St. 409, 130 N.E. 663 (1920) (upholding state prohibition against carrying a concealed weapon).

³² *Akron v. Williams*, 172 N.E.2d 28 (Ohio C.P. 1960), *rev'd on other grounds*, 113 Ohio App. 293, 177 N.E.2d 802, *dismissed for lack of debate*, 172 Ohio St. 287, 175 N.E.2d 174 (1961).

³³ West Virginia is the only state regulating the ownership of rifles. W. VA. CODE ANN. § 6050 (1961) (high-power rifles).

³⁴ OHIO REV. CODE §§ 2923.03-.05.

³⁵ OHIO REV. CODE § 2923.03 (A). The code also provides that "automatically" means that class of firearms "which, by a single function of the trigger on the firearm, continues to fire successive shots and delivers sustained fire for relatively long periods." OHIO REV. CODE § 2923.03 (B) (1). "Semiautomatically" means that class of firearms "which, by a single function of the trigger, discharges one shot only, no manual reloading being necessary between successive shots." OHIO REV. CODE § 2923.03 (B) (2).

bond of 5,000 dollars is required for the private citizen.³⁶ An exception is made for unservicable war trophies kept for museum purposes.³⁷ It is important to realize that these provisions are in addition to the permit requirements, and heavy tax imposed by the National Firearms Act.³⁸

For reasons of public safety, the discharge of firearms is prohibited within 400 feet of a building or propagation pen, from, on, or across a road on a public hunting area, near public highways, in some state parks and recreation areas, and other places where it would be obviously unsafe.³⁹

Ohio also forbids the selling or giving of air guns, firearms, or ammunition to a minor under seventeen years of age. However, this provision does not apply to minors while they are hunting, provided a minor under sixteen years of age is accompanied by an adult.⁴⁰ However, a minor may possess and use a rifle "or other suitable firearm" at a range under the supervision and control of a competent adult instructor, provided that the training and instruction have been approved by the State Adjutant General, or that the instructor is the parent of the minor receiving the instruction.⁴¹ These provisions have been upheld as within the legitimate police power of the state.⁴²

Ohio explicitly prohibits the carrying of a concealed weapon on or about the person, with a general exception made for law enforcement officials; however, deputy sheriffs and specially appointed police officers must provide a 1,000 dollar bond.⁴³ It is not necessary for the weapon to be actually on the person; "about the person" means "in such proximity to the person as to be convenient of access and within reach."⁴⁴ Further, the firearm does not have to be loaded to come within the statutory prohibition.⁴⁵ Also, this prohibition applies even to firearms in the home.⁴⁶ Thus, a person who keeps an unloaded revolver in a nightstand drawer next to his

³⁶ OHIO REV. CODE § 2923.04.

³⁷ OHIO REV. CODE § 2923.06.

³⁸ CODE §§ 5801-62.

³⁹ See, *e.g.*, OHIO REV. CODE §§ 1541.19, 3741.16, 3773.02, 3773.03, 3773.05, 3773.06, 3773.21, 3773.211.

⁴⁰ OHIO REV. CODE §§ 1533.13, 2903.06.

⁴¹ OHIO REV. CODE § 2903.07.

⁴² *Black v. State*, 103 Ohio St. 434, 133 N.E. 795 (1921).

⁴³ The offense is a felony. OHIO REV. CODE § 2923.01.

⁴⁴ *Porello v. State*, 121 Ohio St. 280, 286-87, 168 N.E. 135, 137 (1929).

⁴⁵ *Lamb v. State*, 7 Ohio N.P. 224 (C.P. 1900).

⁴⁶ *State v. Nieto*, 101 Ohio St. 409, 130 N.E. 663 (1920).

bed could be found to be in violation of the concealed weapons law of Ohio.

While Ohio has no procedure for obtaining a license or permit to carry a concealed weapon, provision is made for circumstances in which it is justified. Section 2945.76 of the Revised Code provides that if it appears that (1) the defendant was at the time "engaged in a lawful business, calling, or employment," and (2) "that the circumstances in which he was placed justified a prudent man in carrying such a weapon for the defense of his person, property, or family," then the jury shall acquit him. While there have been very few cases reported construing this particular section, it is well settled that the burden of proving that such justifying circumstances exist is on the defendant.⁴⁷ In *State v. Johnson*,⁴⁸ the defendant was an ex-policy game worker who had testified for the state and had been threatened and shot at by his former associates. The trial court instructed the jury that for the justification to exist the threat must be connected with the defendant's lawful business. The reviewing court held this to be error, stating that the requirement is only that the defendant be engaged in a lawful business at the time he is carrying the concealed weapon.⁴⁹

In *Neff v. Palmer*,⁵⁰ plaintiff recovered a judgment for malicious prosecution following a concealed weapons prosecution instituted by defendant police officer. There, the justification for carrying the concealed weapon was that the accused was an interstate truck driver who generally carried large sums of cash in order to purchase cargoes and that he carried a revolver to protect his person and property.⁵¹ It is unfortunate that there is so little authority defining the justification for carrying a concealed weapon. It is submitted that a system for the issuance of licenses or permits to carry a concealed weapon in connection with one of the justifying circumstances would work much better than the haphazard system which exists today, requiring a jury trial of each case.

(2) *New York Regulations*.—Other states have more inclusive, and occasionally more restrictive, firearms regulations. The prime example of a strict attitude toward firearms is the Sullivan Law of

⁴⁷ *Fink v. State*, 40 Ohio App. 431, 178 N.E. 700 (1931); *Hart v. State*, 42 Ohio App. 501, 182 N.E. 584 (1932).

⁴⁸ 112 N.E.2d 62 (Ohio Ct. App. 1952).

⁴⁹ *Id.* at 64.

⁵⁰ 152 N.E.2d 719 (Ohio C.P. 1956).

⁵¹ *Id.* at 721.

New York State.⁵² This controversial statute became law in 1911, during a period in which labor organizers and racketeers were active in New York. The strict provisions of this act made it possible to arrest practically every person who owned a handgun; the statute was often used simply to detain undesirable persons. For example, in 1933, 1,003 persons were arrested for violating the Sullivan Law; in 1934, 154 of these persons were serving prison sentences for major crimes.⁵³ Many persons felt this to be the proper operation of the law; that is, that it should serve as a catchall public enemy statute because it provided a method for convicting an undesirable person when no other conviction could be obtained.⁵⁴

Despite the restrictive terms of the Sullivan Law, its application is limited to machine guns and concealable weapons. However, a license is required merely to possess a concealable weapon.⁵⁵ In order to obtain a license, the applicant must be of good moral character, must not have been convicted of a felony or criminal misdemeanor, and must not have a history of mental illness; in addition, there must be no good cause for denial of the license.⁵⁶ This last catchall requirement sometimes seems to have been designed to provide for the mood of the issuing officer. There are five types of licenses for concealable weapons issued in New York: (1) to possess and keep in a dwelling; (2) to possess and keep in a place of business; (3) to carry concealed while employed by a bank or express company; (4) to carry concealed while employed by a political subdivision of the state or correctional institution; and (5) to carry concealed without regard to employment or place of possession.⁵⁷ The statute also provides for elaborate investigatory procedures, including photographing, fingerprinting, and securing a history of the applicant from the Federal Bureau of Investigation.⁵⁸ The constitutionality of this statute has been upheld as a legitimate exercise of the state police power.⁵⁹

(3) *California Regulations.*—California also prohibits the un-

⁵² N.Y. PEN. CODE §§ 1896-1905.

⁵³ Brabner-Smith, *Firearm Regulation*, 1 LAW & CONTEMP. PROB. 400, 402 (1934).

⁵⁴ *Ibid.*

⁵⁵ N.Y. PEN. CODE § 1903.

⁵⁶ N.Y. PEN. CODE § 1903(1).

⁵⁷ N.Y. PEN. CODE § 1903(2).

⁵⁸ N.Y. PEN. CODE § 1903(4).

⁵⁹ See, e.g., *People v. Warden of City Prison*, 154 App. Div. 413, 139 N.Y. Supp. 277 (1913).

authorized carrying of concealed weapons.⁶⁰ Licenses are issued by local city or county police departments to persons with "good moral character" and who have "good cause" for carrying such a weapon.⁶¹

Applications for licenses to carry concealed weapons must contain the name, occupation, residence, business address, age, height, weight, and color of eyes and hair of the applicant, his reason for desiring such a license, and a complete description of the firearm.⁶² In addition, the applicant's fingerprints are sent to the State Bureau of Criminal Identification and Investigation, which must furnish the issuing agency a full report on the applicant.⁶³ Copies of all licenses issued are sent to the State Bureau of Criminal Identification and Investigation.⁶⁴ The fee for such a license is three dollars.⁶⁵

Aliens, narcotics addicts, and convicted felons are not permitted to own concealable weapons.⁶⁶ In addition, the commission of a felony while armed with a concealable firearm incurs a heavy penalty. For the first offense, the sentence shall not be less than five nor more than ten years; for the second, not less than ten nor more than fifteen years; for the third, not less than fifteen nor more than twenty-five years; and for the fourth conviction, and any subsequent ones, not less than twenty-five years. These additional sentences are not to run concurrently with those imposed for the commission of the felony.⁶⁷

A yearly license is required to engage in the business of selling concealable firearms. Such licenses are issued by the city or county licensing officials.⁶⁸ All sales of concealable firearms must be reported on state-furnished forms.⁶⁹

California requires all but members of law enforcement agencies⁷⁰ to obtain a permit for the possession of a machine gun.⁷¹ Until recently, a "machine gun" was defined to include the following:

all firearms known as machine rifles, machine guns, or submachine guns capable of discharging automatically and continuously loaded

⁶⁰ CAL. PEN. CODE § 12025.

⁶¹ CAL. PEN. CODE § 12050.

⁶² CAL. PEN. CODE § 12051.

⁶³ CAL. PEN. CODE § 12052.

⁶⁴ CAL. PEN. CODE § 12053.

⁶⁵ CAL. PEN. CODE § 12054.

⁶⁶ CAL. PEN. CODE § 12021.

⁶⁷ CAL. PEN. CODE § 12022.

⁶⁸ CAL. PEN. CODE §§ 12070, 12071.

⁶⁹ CAL. PEN. CODE §§ 12073-77.

⁷⁰ CAL. PEN. CODE § 12201.

⁷¹ CAL. PEN. CODE § 12220.

ammunition of any caliber in which the ammunition is fed to such gun or by means of clips, disks, drums, belts or other separable mechanical device and all firearms which are automatically fed after each discharge from or by means of clips, disks, drums, belts or other separable mechanical device having a capacity greater than 10 cartridges.⁷²

This definition has since been conformed with that in the National Firearms Act.⁷³

The sale and manufacture of tear gas devices is also licensed.⁷⁴ A license must also be issued for the possession of such a device.⁷⁵

(4) *Regulations in Other States.*—In other states, the provisions relating to concealable weapons are in hopeless confusion. Some states have licensing provisions for concealed weapons⁷⁶ but most do not. In Minnesota and Vermont, handguns may be carried openly or concealed so long as there is no intent to injure another.⁷⁷ But in Oklahoma and Texas, it is forbidden to carry handguns either openly or concealed.⁷⁸ This confusion seems to stem mainly from a failure of the states to keep their regulations up to date; many have not been changed for decades.

IV. THE LOCAL LEVEL

In most instances, if adequate state regulations were enacted, it would be unnecessary for municipalities to enact their own regulations. However, most cities do have their own firearms ordinances, perhaps attesting to the inadequacy of the existing state regulations.

An attempt has been made in Cleveland, Ohio, to deal with firearms by ordinances; unfortunately, these attempts have proved largely ineffective. The major portions of these ordinances have been borrowed from the Ohio Revised Code,⁷⁹ and additional provisions have been enacted making it extremely difficult to purchase or sell concealable weapons within the city.⁸⁰ The effect of these restric-

⁷² Cal. Stats. 1953, ch. 36, § 1.

⁷³ Compare Cal. Stats. 1965, ch. 33 § 1, with CODE § 5848(2).

⁷⁴ CAL. PEN. CODE §§ 12420-35.

⁷⁵ CAL. PEN. CODE § 12424.

⁷⁶ E.g., UTAH CODE ANN. § 76-23-4 (1953).

⁷⁷ MINN. STAT. § 609.66 (1963); VT. STAT. ANN. tit. 13, § 4003 (1958).

⁷⁸ OKLA. STAT. tit. 21, §§ 1272, 1275 (1951); TEX. PEN. CODE art. 483 (1952).

⁷⁹ CLEVELAND, OHIO, ORDINANCES §§ 11.2306, 11.2314 (1954).

⁸⁰ CLEVELAND, OHIO, ORDINANCES §§ 11.2301, 11.2302, 11.2303, 11.2305, 11.2307, 11.2309 (1951).

tions is to force such sales to be made in the surrounding suburbs. The sales are still made, but they no longer take place within the city limits.

Although the state of New York has the strictest regulation of firearms in the country, New York City has additional provisions. The attitude of the police department, which is charged with the issuance of firearms permits, is that a private citizen has no need for a handgun. If a permit is issued, it is for one weapon only; apparently the police cannot understand why any private citizen would want to own more than one handgun.⁸¹ In New York City, a handgun permit must be renewed each year thereby discouraging such renewals. Since there is no statutory command stating the grounds upon which a permit shall be issued, such procedure is largely one of discretion with the licensing official. While the constitutionality of these provisions has been upheld, they have never been attacked strictly on the issue of an abuse of discretion.⁸² Applicants who are fully qualified are frequently denied permits in a rather arbitrary fashion — the licensing official refusing for no apparent reason.⁸³ And, when officials are replaced, and the yearly license expires, the conscientious handgun owner who has previously complied with the law may be denied renewal and have his firearm confiscated.

V. DO STRICT FIREARMS REGULATIONS PREVENT CRIME?

The arguments for the widespread use of firearms for sport and defense seem quite convincing. Nonetheless, the need for public protection from crime presents overriding considerations, for it cannot be denied that firearms play a major role in crime. Since there is a wide divergence among the states in their methods of restricting the use of firearms, one should be able to examine the effects of these different forms of regulation and reach a reasonable conclusion as to which is best, keeping in mind, of course, the effect of differing local conditions.

It is generally accepted that since 1940 the percentage of homicides involving firearms has declined.⁸⁴ National statistics show that about 54 per cent of all homicides are committed with firearms.⁸⁵

⁸¹ FREDERICK, *PISTOL REGULATION* 25 (2d ed. 1964).

⁸² See, e.g., *People v. Warden of City Prison*, 154 App. Div. 413, 139 N.Y. Supp. 277 (1913).

⁸³ WELLER, *THE SULLIVAN LAW* 3 (1962).

⁸⁴ NRA STUDY 8.

⁸⁵ *Id.* at 5.

But what happens if firearms are severely restricted, as they are in New York City? In that city in the year 1963, the homicide rate rose 8.1 per cent.⁸⁶ However, only about 25 per cent of these homicides involved firearms,⁸⁷ compared with the national average of 54 per cent. Thus the effect seems to be that while firearms restriction has little effect on the overall number of homicides, it does result in a higher-than-usual number of homicides involving knives, blunt instruments, and physical force. Statistics are not available for the crime reports in the years before the enactment of the Sullivan Law. However, since that statute was enacted in 1911, such information would be outdated and of little value today.

The Federal Bureau of Investigation reported that in 1961, firearms were used in only 12.7 per cent of the reported cases of aggravated assault,⁸⁸ with cutting or stabbing instruments accounting for 44 per cent and blunt objects accounting for 24 per cent. It would seem that the importance of firearms in the most prevalent types of crimes has recently been much overrated. Also, a certain number of the police officers shot each year are shot with their own sidearms, a result which no amount of civilian firearms restriction could avoid. Strict regulation of firearms also will not prevent the common street crimes since the assailants in most cases are not armed.

VI. INDIVIDUALS USING FIREARMS IN CRIME AND THEIR SOURCES OF SUPPLY

From 1960 to 1962, of the 113 law enforcement officers killed in the line of duty, 109 were shot to death. Of the 142 persons arrested for these shootings, 75 per cent had at least one previous conviction, 56 per cent had been granted parole or probation, and 37 per cent were on parole or probation at the time of the shooting.⁸⁹ Supposedly, such persons presently are not allowed to receive firearms in interstate or foreign commerce⁹⁰ and in some states would not be allowed to purchase concealable firearms.⁹¹

The problem of "mail-order guns" is significant. As mentioned earlier,⁹² there are few restrictions enforced in this area. In 1963,

⁸⁶ FREDERICK, *op. cit. supra* note 81, at 25.

⁸⁷ *Ibid.*

⁸⁸ Assault with intent to kill or maim.

⁸⁹ NRA STUDY 5.

⁹⁰ 52 Stat. 1250 (1938), as amended, 15 U.S.C. §§ 901-09 (1964).

⁹¹ PA. STAT. ANN. tit. 18, § 4628(d) (1963).

⁹² See note 24 *supra* and accompanying text.

about 1 million dangerous weapons were sold by mail. Of the almost 5,000 murders committed during that year, about half were committed with various types of weapons sold by mail.⁹³ Twenty-five per cent of the recipients of mail order guns in Chicago and the District of Columbia had criminal records⁹⁴ and were thus receiving these weapons in violation of the Federal Firearms Act.⁹⁵ It is submitted that current restrictions on the shipment of firearms are not properly enforced, and that this leads to a very dangerous source of firearms for criminals.

VII. CONFLICTING INTERESTS IN THE FIREARMS QUESTION

While crime and accidents present compelling reasons for a strong firearms regulation policy, there are equally persuasive reasons to support the opposing point of view. There is considerable opposition to strict firearms regulation from shooters and hunters. The size and influence of this group is often underrated.⁹⁶ Hunting and target shooting are popular recreations, and are much safer than is popularly believed.⁹⁷ There are also economic benefits derived from hunting. In 1964, American hunters spent more than 1.5 billion dollars and most of this went into sections of the country where commerce is most needed, such as the distressed backwoods areas.⁹⁸ In addition, almost all of the funds collected from the sale of hunting licenses are spent on conservation and public recreation programs.

Also, the need for firearms for defense is still a basic reality in this country. Unfortunately, our society has not yet reached the stage where it is no longer necessary for the average citizen to defend himself, his family, or his property. The finest police force in the world cannot protect everyone, everywhere. In many metropolitan areas, it is frankly admitted that police protection is inadequate,⁹⁹ and firearms for defense still remain a legitimate need of

⁹³ Time, April 16, 1965, p. 25.

⁹⁴ CUYAHOGA COUNTY (OHIO) GRAND JURY, SPECIAL REPORT ON THE PROBLEM OF CONCEALABLE WEAPONS 3, March 5, 1965.

⁹⁵ 52 Stat. 1250 (1938), as amended, 15 U.S.C. §§ 901-09 (1963); see note 24 *supra* and accompanying text.

⁹⁶ For example, in 1962, according to the United States Division of Fish and Wildlife, there were almost fourteen million paid hunting license holders in the United States.

⁹⁷ According to the Travelers Insurance Company, hunting was 16th on its list of dangerous sports, below football, winter sports, swimming, golf, horseback riding, and other popular sports during the five-year period from 1955-1959. NRA STUDY 2.

⁹⁸ Cleveland Plain Dealer, April 4, 1965, p. 51, col. 1.

⁹⁹ See, e.g., CUYAHOGA COUNTY (OHIO) GRAND JURY, *op. cit. supra* note 94, at 2.

law-abiding citizens. It is also true that a citizenry which is at least familiar with firearms is a valuable asset to national defense. Experience has shown that it is extremely difficult to teach an individual to be even an adequate marksman in large instruction groups in a short period of time, when he has no familiarity with firearms whatever. For this reason, the Director of Civilian Marksmanship of the Army provides free rifles and ammunition to accredited clubs for instruction, in addition to making surplus service rifles available to private citizens at reduced cost.¹⁰⁰

The most important question to be considered in any proposed regulation of firearms is whether it will effectively control the criminal misuse of firearms; if it will not, there is no justification for the burden it places on the law-abiding citizen who wishes to own firearms for sport or defense. In considering such regulations it is important to remember that it should be for the legislature to determine who shall have the right to possess firearms and for what purposes. It is undesirable for the final decision to be left to the licensing official — whether he be chief of police, sheriff, or town constable — with the only legislative guideline consisting of some vague clause, such as “for any suitable purpose” or “any good cause.” This is easily accomplished by providing, in the statute itself, what shall constitute a proper purpose.¹⁰¹

VIII. PROPOSALS AND SUGGESTIONS

A. *The Federal Level*

Firearms can be regulated in some respects by Congress, using its authority over interstate and foreign commerce. In this manner, mail-order guns could be effectively controlled.¹⁰² A bill was introduced in the Senate, on March 22, 1965, by Senator Dodd, purportedly designed to regulate mail-order guns.¹⁰³ However, the bill goes further than this; it would require every dealer who sold any firearms or ammunition, including .22 caliber ammunition, to purchase a one hundred dollar license, rather than pay the current one dollar fee. This provision alone would mean that many hardware and other stores would no longer carry ammunition, thus elimi-

¹⁰⁰ Time, April 16, 1965, p. 25.

¹⁰¹ Such a provision is set out in Indiana's adaptation of the Uniform Firearms Act which provides: “The desire to engage in target practice is a proper reason.” IND. ANN. STAT. § 10-4738 (1956).

¹⁰² See Note, *Federal Regulation of Firearms Sales*, 31 U. CHI. L. REV. 780 (1964).

¹⁰³ S. 1592, 89th Cong., 1st Sess. (1965).

nating a source relied upon by many sportsmen, particularly in rural areas. Dealers would not be allowed to sell handguns to persons from other states, and strict regulations, governing interstate transportation of firearms by individuals, could be imposed by the Secretary of the Treasury governing interstate transportation of firearms by individuals; in addition, the Secretary could make any other regulations deemed to be "in the public interest." It is submitted that this bill goes too far in restricting the sportsman-shooter. The requirements seem to do little to prevent crime other than to prohibit the interstate shipment of firearms and ammunition to individuals. Furthermore, the wide amount of discretion granted to administrative officials is undesirable. Enforcement would be difficult, since only law-abiding citizens would comply with the requirements. For example, the chances of a car being searched are small, and most criminals would prefer to assume this risk. It is also questionable whether any criminals will be thwarted because of the increased difficulty of obtaining .22 caliber ammunition.

Another approach is represented by a bill introduced by Congressman Casey which provides that:

whoever, during the commission of any robbery, assault, murder, rape, burglary, kidnapping, or homicide (other than involuntary manslaughter), uses or carries any firearm which has been transported across the boundary of a state, the District of Columbia, or a territory or possession of the United States shall be imprisoned for twenty-five years.¹⁰⁴

This proposal reflects the position that in order to prevent the use of firearms in crimes, it is not the firearm itself which should be regulated, but rather the use of the firearm. If a firearm is harder to obtain, the criminal may have to work harder to get it; but if he is able to obtain it, he will suffer no extra risk in using it. On the other hand, if the criminal knows that he will receive a very severe penalty for the illegal use of a firearm, it will be a more effective deterrent than merely making the firearm difficult to obtain.

Another potential problem, although seemingly not quite so important as that of concealable firearms, is that of foreign war surplus, heavy weaponry, such as bazookas and anti-tank rifles, which have recently become available to private citizens.¹⁰⁵ Such weapons are obviously much too powerful for ordinary sporting use; they are dangerous to fire, even without explosive ammunition, in all

¹⁰⁴ H.R. 5624, 89th Cong., 1st Sess. (1965); a similar bill was introduced in the Ohio House, Bill 593. *Cleveland Plain Dealer*, May 15, 1965, p. 14, cols. 1, 2.

¹⁰⁵ *Time*, April 16, 1965, p. 25.

but the most desolate regions, and have serious criminal potential. It seems that there is very little, if any, legitimate sporting need for such weapons, and there is no apparent reason why the sale of this type of weapon should not be severely restricted. One method would be to restrict sales of such weaponry in much the same manner as is done with machine guns; that is, collectors may have them for display purposes, but only after the guns have been rendered unservicable.

B. *The State Level*

From the foregoing discussion of state regulation of firearms, it is apparent that there is a need for some uniformity in this area. However, differing social and economic conditions among the states will render complete uniformity undesirable. Nevertheless, it is imperative that there be some degree of uniformity, at least on the major points, to avoid the complexities which might arise from such a simple act as driving through several states with a firearm in the car.

The problem of divergence in state firearms regulation was brought to the attention of the National Conference of Commissioners on Uniform State Laws, which promulgated its first Uniform Firearms Act in 1926, with the approval of the American Bar Association. Objections were made that the proposal was too lenient and the act was withdrawn, redrafted, and reissued in 1930.¹⁰⁶ The Uniform Firearms Act has been adopted in entirety in ten states¹⁰⁷ and the District of Columbia, often with minor changes to suit local needs. Other states have adopted various provisions of the act.

The Uniform Firearms Act regulates only the use of firearms with barrels shorter than twelve inches — concealable firearms.¹⁰⁸ The carrying of such a firearm concealed or in a vehicle, without a license, is forbidden, except for law enforcement officers, gunsmiths, dealers, and individuals on their way to target practice who are members of organizations authorized to purchase firearms from the state or national government.¹⁰⁹ The act does not require a license for the possession of a firearm not carried beyond the owner's dwelling place or place of business, or to and from stores and repair

¹⁰⁶ Legislation, *The Uniform Firearms Act*, 18 VA. L. REV. 904, 906 (1932).

¹⁰⁷ Alabama, Arkansas, Indiana, Maryland, Montana, Pennsylvania, South Dakota, Virginia, Washington, and Wisconsin.

¹⁰⁸ UNIFORM FIREARMS ACT § 1.

¹⁰⁹ UNIFORM FIREARMS ACT §§ 5, 6.

shops, so long as the weapon is unloaded and securely wrapped.¹¹⁰ Delivery by dealers of concealable firearms to persons convicted of crimes of violence, drug addicts, habitual drunkards, incompetents, and minors, under the age of eighteen, is forbidden.¹¹¹ Crimes of violence committed with such firearms are punished more severely than if the perpetrator had not been so armed,¹¹² and the illegal carrying of a firearm by one charged with a crime of violence is prima facie evidence of an intention to commit the crime.¹¹³

Sales are regulated through licensing the dealer rather than by the issuance of a permit to purchase.¹¹⁴ A prospective purchaser must make application to a licensed dealer in order to purchase a firearm, signing a statement that he is qualified to receive the firearm under the act, and describing the firearm to be purchased. A copy of this application is sent to the local police, who must notify the dealer within forty-eight hours if they know of any reason why the sale should not be made. If forty-eight hours pass and no reason becomes known to the dealer why he should not deliver the firearm, he is free to complete the sale.¹¹⁵ An important aspect is that the police are not required to approve the sale; they are merely to notify the dealer if the applicant is not qualified to purchase the firearm under the act. Penalties are provided for false statements on the application.¹¹⁶ Also, the pawning of concealable firearms is forbidden, as is the removing of identifying marks.¹¹⁷ The possession of a firearm covered by the act whose identifying marks have been removed is prima facie evidence that the possessor has removed the marks himself.¹¹⁸ The act does not apply to unserviceable antiques kept as curiosities.¹¹⁹

In 1931, Pennsylvania adopted the Uniform Firearms Act with certain minor modifications.¹²⁰ One insertion made by the legislature was to exempt hunters, fishermen, and persons training dogs.¹²¹

¹¹⁰ UNIFORM FIREARMS ACT § 6.

¹¹¹ UNIFORM FIREARMS ACT § 8.

¹¹² UNIFORM FIREARMS ACT § 2.

¹¹³ UNIFORM FIREARMS ACT § 3.

¹¹⁴ UNIFORM FIREARMS ACT § 9.

¹¹⁵ *Ibid.*

¹¹⁶ UNIFORM FIREARMS ACT § 13.

¹¹⁷ UNIFORM FIREARMS ACT §§ 12, 14.

¹¹⁸ UNIFORM FIREARMS ACT § 14.

¹¹⁹ UNIFORM FIREARMS ACT § 16.

¹²⁰ PA. STAT. ANN. tit. 18, § 4628 (1963).

¹²¹ PA. STAT. ANN. tit 18, § 4628(e) (ix) (1963).

There is also a built-in appellate procedure for persons who have been denied licenses.¹²² In Pennsylvania, violation of the Uniform Firearms Act is punishable by a fine of not more than 3,000 dollars, or three years imprisonment, or both.¹²³

Enactment of at least the main points of the Uniform Firearms Act by the states is desirable for several reasons. The first is the need of some semblance of uniformity. More important, however, is the fact that in a great majority of the states, the firearms regulations have not been examined for decades and are hopelessly inadequate. While some states have updated their firearms laws, all too often the additions are piecemeal, confusing, and insufficient to meet the problem. A very strong reason in support of the Uniform Firearms Act is that it is the product of many years of study by the National Conference of Commissioners on Uniform State Laws and the American Bar Association, working in conjunction with law enforcement officials and sportsmen. The Uniform Firearms Act represents reasonable firearms regulation. It regulates purchases on a state-wide basis, provides a reasonable waiting period for investigation, makes the carrying of an unauthorized concealed weapon a serious crime, and increases the penalty for any crime committed with a gun. The act further provides that the private citizen who wishes to own a handgun for personal defense in his home or place of business, is exempt from any licensing provision, and sportsmen are subjected to only minimal inconvenience.

C. The Local Level

In most situations, if adequate state firearms legislation is enacted, further regulation in the form of identical municipal ordinances is undesirable. Any attempt by a city to regulate the sale of firearms is worthless, because purchases will be made outside the city limits. Occasionally, cities attempt to regulate the actual possession of firearms. It is argued that this is best controlled by firearms registration,¹²⁴ which will thus inform the police of the location of all the firearms in the city and narrow their list of possible suspects when a crime is committed with a firearm. However, firearms reg-

¹²² PA. STAT. ANN. tit. 18, § 4628(k) (1963).

¹²³ PA. STAT. ANN. tit. 18, § 4628(p) (1963).

¹²⁴ An example of this type of regulation is an ordinance proposed to the Cleveland, Ohio, City Council by Councilman Jackson on November 18, 1964. This proposal would require the registration of all firearms shorter than thirty inches. It is highly probable that if such a regulation were enacted the very great majority of the firearms which might be used in crime would never be registered.

istration will normally not have any noticeable effect on the criminal use of firearms. The simple reason is that criminals will not register their weapons. Most criminals will then operate with stolen firearms, just as they do with automobiles. Thus, generally speaking, any attempt by the municipalities to regulate firearms is ineffective in the prevention of crime.

IX. CONCLUSION

Serious consideration must be given to the use of firearms for defense and sport, before any firearms regulation is enacted. The restrictions must be effective in controlling the criminal misuse of firearms in order to justify any infringement upon the private citizen's privilege to own such weapons. Generally, mail-order sales of firearms must be subjected to more effective control. Also, heavy weaponry should be included in those "gangster-type" weapons now severely regulated. Finally, the states should attack the problem along those lines prescribed in the Uniform Firearms Act; a city-by-city approach is simply not effective.

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