No. 12-17808

IN THE

United States Court of Appeals for the Ninth Circuit

GEORGE K. YOUNG, JR.,

Plaintiff-Appellant,

v.

STATE OF HAWAII, ET AL.,

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Hawaii, No. 1:12-cv-00336-HG-BMK
District Judge Helen Gillmor

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INTRODUCTION

For centuries, laws requiring individuals to have good cause before publicly carrying firearms have been part of our legal tradition. The English enacted the first law restricting public carry of firearms in 1328, and continued to enforce it through the 1689 Declaration of Rights and afterwards. The colonists brought those laws with them to America, where they were incorporated into the common law and statutes of many States. In the first decades of the nineteenth century, numerous States—recognizing that openly carrying firearms in public without justification would cause fear among ordinary citizens and risk provoking deadly confrontations—enacted criminal prohibitions on carrying weapons without "reasonable cause to fear an assault or injury." And by the beginning of the twentieth century, more than 30 States had enacted similar prohibitions, which were upheld by every court to consider their constitutionality.

Under the Second Amendment, this history matters. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the Second Amendment codified "a *pre-existing* right," whose contours must be determined based on a "historical understanding of the scope of the right." *Id.* at 592, 625. The Court also emphasized that the Second Amendment does not "cast doubt on longstanding prohibitions on the possession" and carrying of firearms. *Id.* at 626-627. Seven centuries of continuous regulation—affirmed time and again by

legislatures, courts, and treatises—suffice to establish that carrying weapons in public without good cause has never been part of the "right to keep and bear Arms."

Hawaii's good-cause restriction on the open carrying of firearms falls comfortably within that historical tradition. Like the good-cause laws long in force in many other States, Hawaii's law provides that individuals may obtain a license to carry loaded handguns openly if they show "the urgency or the need" for a gun to protect "life and property," and that individuals may obtain a concealed carry license when they show "reason to fear injury to [their] person or property." Haw. Rev. Stat. § 134-9(a). This law does not burden any right protected by the Second Amendment. At a minimum—and as the First, Second, Third, and Fourth Circuits held when evaluating similar laws—it is a vital public safety measure that satisfies intermediate scrutiny. It should be upheld.

A divided panel of this Court lacked a valid justification for holding otherwise. It mischaracterized Hawaii's law as "an effective ban on the public carry of firearms" by anyone other than a "security guard"; then, it declared the law "void" on the ground that it "amounts to a destruction" of the right to bear arms. Add. 51-54.[1] But nothing in Hawaii's law limits public carry to security guards, and the Attorney General and every county in the State have expressly

[1] All references to "Add." are to the Addendum to Defendants-Appellees' Petition for Rehearing En Banc. *See* Dkt. 155.

stated that they do not read the law so narrowly. It follows that the panel's bottom-line conclusion was also wrong. The panel identified no credible historical evidence suggesting that good-cause laws are unconstitutional, and a wealth of historical evidence points the other way.

The panel erred by striking down Hawaii's law, and thereby depriving Hawaii and other States throughout the Ninth Circuit of a vital and longstanding means of protecting citizens from gun violence. The District Court's judgment dismissing this suit should be affirmed.

BACKGROUND

A. Statutory Background

For over 150 years, Hawaii has regulated the public carry of firearms. In 1852, the Hawaii Legislative Council made it a criminal offense for "[a]ny person not authorized by law" to "carry, or be found armed with, any . . . pistol . . . or other deadly weapon . . . unless good cause be shown for having such dangerous weapons." Act of May 25, 1852, § 1, 1852 Haw. Sess. Laws 19, 19. That law remained in force after the U.S. Constitution was extended in full to the territory of Hawaii in 1898. *See* Haw. Rev. Laws, ch. 209, § 3089 (1905); *Territory of Hawaii v. Mankichi*, 190 U.S. 197, 209-211 (1903). In 1927, the territorial legislature updated the law to bar individuals from carrying a "pistol or revolver" unless they obtained a license upon showing "good reason to fear an injury to [their] person or

property" or "other proper reason for carrying" a firearm. Act 206, §§ 5, 7, 1927 Haw. Sess. Laws 209, 209-211. In 1934 and 1961, Hawaii revised its firearms statute to substantially its present form. *See* Act 26, § 8, 1933-1934 Haw. Sess. Laws Spec. Sess. 35, 39; Act 163, § 1, 1961 Haw. Sess. Laws 215, 215-216.

Today, Hawaii law allows individuals to carry firearms in a variety of circumstances. Any person who lawfully possesses a firearm may carry it at her residence, workplace, place of sojourn, or a target range. Haw. Rev. Stat. §§ 134-5(a), 134-23(a). Individuals may carry firearms between those locations, as well as to and from repair shops, firearms dealers, gun shows, and police stations, provided the gun is unloaded and placed in an enclosed container. *Id.* §§ 134-5(a), 134-23(a). Residents may also carry firearms while hunting, and to and from a place of hunting, after completing a hunter education course and paying a nominal fee. *Id.* § 134-5(a), (c); *see id.* §§ 183D-22, 183D-28. And various government officials may carry firearms in connection with their job duties. *Id.* § 134-11.

Individuals may also obtain licenses to carry handguns in a broader set of circumstances if they show reason to fear injury or a need for defense. Section 134-9 provides that, "[i]n an exceptional case," the chiefs of police in each of Hawaii's four counties may issue a license to carry a *concealed* handgun to an individual who "shows reason to fear injury to the applicant's person or property." *Id.* § 134-9(a). Chiefs may issue a license to carry an *unconcealed* handgun where

"the urgency or the need has been sufficiently indicated" and the applicant is "engaged in the protection of life and property." *Id.* Carrying a handgun without a license or statutory authorization is a criminal offense. *Id.* §§ 134-9(c), 134-23(b).

B. Factual and Procedural History

In 2011, George Young twice applied for carry licenses from the County of Hawaii. Supp. ER 13. Each time, he failed to identify any particularized need to carry a handgun; he stated only that he wished to carry a firearm for "the purpose [of] personal security, self-preservation and defense, and protection of personal family members and property." *Id.* The chief of police denied the applications because Young had not identified "an exceptional case or demonstrated urgency," as Section 134-9 requires. *Id.* (emphasis omitted).[2]

Young sued the County, the State, and numerous state and local officials. *Id.* at 1-4. Among other claims, he asserted that the requirements in Section 134-9 for issuance of a carry license violate the Second Amendment. *Id.* at 30-51.

The District Court dismissed the complaint. *Young v. Hawaii*, 911 F. Supp. 2d 972 (D. Haw. 2012). It explained that the Second Amendment "does not include the right 'to carry any weapon whatsoever in any manner whatsoever and for whatever purpose.' " *Id.* at 990 (quoting *Heller*, 554 U.S. at 626). Because

[2] In 2007 and 2008, Young filed three separate applications for carry licenses, all on identical grounds; those applications were likewise denied. *See Young v. Hawaii*, 548 F. Supp. 2d 1151, 1158-59 (D. Haw. 2008); *Young v. Hawaii*, No. 08-00540 DAE KSC, 2009 WL 1955749, at *1 (D. Haw. July 2, 2009).

Hawaii's law "allow[s] firearms to be carried in public between specified locations or with a showing of special need," it "does not implicate activity protected by the Second Amendment." *Id.* But "[e]ven if" it did, Section 134-9 would pass intermediate scrutiny. *Id.* at 990-991.

A divided panel of this Court reversed. Add. 59. Writing for the majority, Judge O'Scannlain asserted that "[S]ection 134-9 limits the open carry of firearms" to individuals, such as "security guard[s]," who wish to carry handguns "when in the actual course of their duties." Add. 51. The panel identified no textual basis for this limitation. Instead, it gleaned its interpretation from a regulation issued by *the County's* police department, Add. 7, and a statement by the County's attorney that he was unaware of instances in which *the County* had issued open-carry licenses to persons other than security guards, Add. 51.

The panel held that, so construed, Section 134-9 " 'amounts to a destruction' of a core right" protected by the Second Amendment. Add. 52-53. It noted that a single nineteenth-century legal scholar wrote that Congress could not "pass a law *prohibiting* any person from bearing arms," Add. 17 (emphasis added; citation omitted), and that several nineteenth-century cases held or assumed that legislatures could not "*destroy* the right to carry firearms in public *altogether*," Add. 23 (emphases added). The panel concluded from this that the Constitution "must guarantee *some* right to self-defense in public," and that Hawaii's law

"eviscerate[d]" that right by imposing "an effective ban" on public carry. Add. 45-46, 53-54.

The panel refused to "analyze section 134-9 as a 'good cause' requirement." Add. 53. Still, it dismissed the historical evidence supporting good-cause laws, including centuries of English laws restricting open carry, Add. 37-39, numerous nineteenth-century statutes barring carry absent "reasonable cause," Add. 32-33, and the many cases upholding those and similar restrictions, Add. 24-28. The panel stated that this extensive history did "not add much to [its] analysis." Add. 35.

Judge Clifton dissented. He explained that Section 134-9 "is the same type of 'good cause' public carry regulation that the Second, Third, and Fourth Circuits upheld." Add. 62 (Clifton, J., dissenting). Given that similar laws trace back to the fourteenth century and have "existed throughout United States history," Judge Clifton would have upheld Section 134-9 as a "longstanding, presumptively lawful regulation." Add. 62-69. Alternatively, he would have held that this law survives intermediate scrutiny. Add. 70-75.

This Court granted rehearing en banc.

ARGUMENT

The panel erred in concluding that Hawaii's open-carry law violates the Second Amendment. The panel rested that conclusion on the premise that

Hawaii's law is a complete ban on open carry. It is not; Section 134-9 authorizes the issuance of both open-carry and concealed-carry permits on a showing of good cause. And once the law is properly understood, it readily passes constitutional muster. As centuries of history demonstrate, laws requiring good cause to publicly carry firearms do not impinge on the Second Amendment right to "bear Arms" as originally understood, and are "longstanding prohibitions" that are "presumptively lawful" under *Heller*. 554 U.S. at 626-627 & n.26. Alternatively, even if Hawaii's law burdens conduct protected by the Second Amendment, it survives intermediate scrutiny.

I. HAWAII LAW AUTHORIZES ISSUANCE OF AN OPEN-CARRY LICENSE ON A SHOWING OF GOOD CAUSE.

The panel's errors began with its premise: that Section 134-9 "limits the open carry of firearms" to "security guard[s]" and others who seek to carry weapons "in the actual course of their duties." Add. 51. The panel failed to identify any textual basis in Section 134-9 for this supposed limit. Instead, the panel grounded it in a regulation issued by the County of Hawaii in 1997. Add. 7, 51. But a *regulation* issued by one of Hawaii's four *counties* has no bearing on the meaning of *statute* enacted by the *State* decades earlier. In Hawaii, as elsewhere, the meaning of a state statute is determined by its text, not by how a local

government supposedly applies it. *See Del Monte Fresh Produce (Hawaii), Inc. v. Int'l Longshore & Warehouse Union*, 146 P.3d 1066, 1076 (Haw. 2006).[3]

Nor is there any plausible textual basis for the panel's reading. Section 134-9 authorizes the issuance of open-carry permits to any otherwise-qualified person who demonstrates "the urgency or the need" to openly carry a handgun and who "is engaged in the protection of life and property." Haw. Rev. Stat. § 134-9(a). A private individual, no less than a security guard, may have "the urgency or the need" to carry a gun—for instance, when a stalker has issued credible threats of bodily harm. State of Haw., Dep't of the Att'y Gen., Opinion Letter No. 18-1, Availability of Unconcealed-Carry Licenses, at 8-9 (Sept. 11, 2018) ("AG Opinion"), Add. 84-85. And a private individual may be "engaged in the protection of life and property," even when it is not part of her job—for example, when she is protecting herself, her loved ones, or her home from a violent domestic abuser. *Id.*; *see* Merriam-Webster Dictionary (online ed. 2020) (defining "engage in" to mean, simply, "to do" or "take part in"); *cf.* Haw. Rev. Stat. § 134-5(a), (c) (individuals may "carry and use" a firearm "while actually *engaged in* hunting or target shooting" (emphasis added)). The Legislature could have limited carry to persons "while in the performance of their respective duties," as it did elsewhere.

[3] In fact, the County's attorney informed the panel that its regulation does not limit open-carry licenses to security guards, Oral Arg. Recording at 16:22-17:01, and the County has since reiterated that understanding, *see* Rehearing Pet. Reply 3.

E.g., Haw. Rev. Stat. § 134-11(a)(2) (authorizing carry by "members of the armed forces . . . and mail carriers while in the performance of their respective duties"). But the Legislature omitted such language from Section 134-9. A federal court has no authority to blue-pencil it in.

To the extent the law's text leaves any doubt, the Hawaii Attorney General has resolved it. In response to the panel's decision, the Attorney General published a formal opinion clarifying that "section 134-9 does not limit unconcealed-carry licenses to persons whose job entails the protection of life and property." AG Opinion at 1-2. Like good-cause requirements in other States, the Attorney General explained, Section 134-9 allows issuance of a license if an applicant demonstrates "a need to carry a firearm for protection that substantially exceeds the need possessed by ordinary law-abiding citizens." *Id.* at 7-8.

Under Hawaii law, the Attorney General's opinion is "highly instructive" in ascertaining the statute's meaning. *Kepoʻo v. Watson*, 952 P.2d 379, 387 n.9 (Haw. 1998). Furthermore, all four of the State's counties have expressly stated that they enforce the law in a manner consistent with that opinion. *See* Amicus Br. of County of Honolulu et al., at 2-6, Dkt. 157. Basic principles of federalism and constitutional avoidance instruct that the Court should accept that straightforward interpretation of the statute's text, rather than importing an atextual limit into the statute and relying on it to declare the law "void" in its entirety. Add. 51-53; *see*

Washington State Grange v. Washington State Republican Party, 552 U.S. 442, 449 (2008) (a statute is facially invalid only if "the law is unconstitutional in all of its applications").[4]

Once the panel's erroneous understanding of Hawaii law is corrected, very little remains of its constitutional analysis. The panel concluded that States may not enact an "effective ban" on open carry. Add. 52-54; *see* Add. 14-32. But Hawaii's law does not impose such a ban. It permits the issuance of open-carry licenses on a showing of good cause to fear injury. And as Judge Clifton recognized in his panel dissent, Hawaii law also provides for the issuance of concealed-carry licenses on a showing of good cause. Add. 72-73 & n.4; *see* Haw. Rev. Stat. § 134-9. For the reasons that follow, that law comports with the Second Amendment.

II. HAWAII'S OPEN-CARRY LAW COMPORTS WITH THE SECOND AMENDMENT.

The Second Amendment 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." U.S. Const. amend. II. In *Heller*, the Supreme Court held that the Second Amendment "confer[s] an individual right to keep and

[4] If the Court is uncertain about the scope of Section 134-9, it may certify the question to the Hawaii Supreme Court. *See, e.g.*, *Hancock v. Kulana Partners, LLC*, 692 F. App'x 329 (9th Cir. 2017).

bear arms." 554 U.S. at 595. The Court stressed, however, that this right is "not unlimited." *Id.* at 595, 626; *see McDonald v. City of Chicago*, 561 U.S. 742, 786 (2010). The Second Amendment "codified a *pre-existing* right," and so incorporated the "limitations upon the individual right" that were "inherited from our English ancestors." *Heller*, 554 U.S. at 592, 595, 599 (citation omitted). Furthermore, *Heller* "did not cast doubt on such longstanding regulatory measures as 'prohibitions on the possession of firearms by felons and the mentally ill' " and " 'laws forbidding the carrying of firearms in sensitive places.' " *McDonald*, 561 U.S. at 786 (quoting *Heller*, 554 U.S. at 626-627). Those laws, and others supported by a comparable "historical tradition," remain "presumptively lawful." *Heller*, 554 U.S. at 626-627 & n.26.

Following *Heller*, this Circuit, like others, has adopted a two-step framework for analyzing Second Amendment claims. *See Silvester v. Harris*, 843 F.3d 816, 820-821 (9th Cir. 2016); *Jackson v. City & County of San Francisco*, 746 F.3d 953, 960 (9th Cir. 2014). At the first step, the Court "asks if the challenged law burdens conduct protected by the Second Amendment, based on 'a historical understanding of the scope of the right.' " *Silvester*, 843 F.3d at 821 (quoting *Heller*, 554 U.S. at 625). As *Heller* made clear, this "historical understanding" comes in two forms.

In one form, "[l]aws restricting conduct that can be traced to the founding era and are historically understood to fall outside of the Second Amendment's scope may be upheld without further analysis." *Id.* In *Peruta v. County of San Diego*, 824 F.3d 919 (9th Cir. 2016) (en banc), for instance, this Court upheld a law restricting concealed carry against Second Amendment challenge. The Court noted that laws "specifically prohibit[ing]" concealed carry date back to sixteenth-century England. *Id.* at 939. It also focused on how "the adopters of the Fourteenth Amendment" understood the right, emphasizing that such laws were "nearly universally" upheld by state courts that considered them in the nineteenth century. *Id.* at 933, 939.

Alternatively, a law may be found constitutional at the first step if it is a "longstanding" regulatory measure. *Heller*, 554 U.S. at 626-627 & n.26. *Heller* made clear that "a regulation can be deemed 'longstanding' even if it cannot boast a precise founding-era analogue." *Fyock v. City of Sunnyvale*, 779 F.3d 991, 997 (9th Cir. 2015) (quoting *Nat'l Rifle Ass'n of Am. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F.3d 185, 196 (5th Cir. 2012)). Indeed, *Heller*'s leading examples of "longstanding" regulations, laws barring possession by felons and the mentally ill, *Heller*, 554 U.S. at 626, "are creatures of the twentieth—rather than the eighteenth—century," *United States v. McCane*, 573 F.3d 1037, 1048 (10th Cir. 2009) (Tymkovich, J., concurring); *see Silvester*, 843 F.3d at 831

(Thomas, C.J., concurring); *United States v. Skoien*, 614 F.3d 638, 640 (7th Cir. 2010) (en banc). Accordingly, even "early twentieth century regulations" may "demonstrate a history of longstanding regulation if their historical prevalence and significance [are] properly developed in the record." *Fyock*, 779 F.3d at 997; *see Pena v. Lindley*, 898 F.3d 969, 1003-04 (9th Cir. 2018) (Bybee, J., concurring in part and dissenting in part) ("'longstanding, accepted regulations' may come from the early-twentieth century and need not trace their roots back to the Founding"); *Silvester*, 843 F.3d at 830-832 (Thomas, C.J., concurring) (similar).

If the Court finds that a law does not burden conduct within the scope of the Second Amendment, its inquiry is at an end; the law is constitutional. *Jackson*, 746 F.3d at 960. Otherwise, the Court must proceed to the second step, and analyze "how close the challenged law comes to the core of the Second Amendment." *Silvester*, 843 F.3d at 821. It then applies "a sliding scale": If the law "destr[oys]" a core Second Amendment right, it is unconstitutional, *Heller*, 554 U.S. at 628-629; if it "severely burdens" a core right, it is subject to strict scrutiny, *Silvester*, 843 F.3d at 821; and if it does neither, the Court applies intermediate scrutiny, *id.* at 821-822.

Evaluated at either step of this inquiry, Hawaii's open-carry law is constitutional. It does not burden conduct protected by the Second Amendment.

And even if the law imposed some burden on Second Amendment rights, it survives intermediate scrutiny.

A. Hawaii's Open-Carry Law Does Not Burden Conduct Protected By The Second Amendment.

History makes clear that "the right to keep and bear Arms" does not protect the right to carry weapons openly without good cause. This Court may assume, without deciding, that the words "bear Arms" in the Second Amendment "impl[y] *some level* of public carry." Add. 15 (emphasis added). But as *Heller* explained, those words do not protect "a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." 554 U.S. at 626. To identify the limits of the right, this Court must consult the "historical understanding of [its] scope." 554 U.S. at 625; *see Peruta*, 824 F.3d at 929. And here, the "historical understanding" demonstrates that Hawaii's law does not "burden[] conduct protected by the Second Amendment." *Silvester*, 843 F.3d at 821.

1. English History

Although the panel majority began its historical analysis in the nineteenth century, Add. 19, we begin where *Heller* and *Peruta* did—with the scope of the "*pre-existing* right" to bear arms under English law. *Peruta*, 824 F.3d at 928 (quoting *Heller*, 554 U.S. at 592). Beginning in the early fourteenth century, English law barred persons from openly carrying firearms solely for precautionary

self-defense, and permitted open carry only in limited circumstances where there was a particularized need for it.

In 1326, "Edward II prohibited 'throughout [the King's] realm' 'any one going armed without [the King's] license.'" *Id.* (quoting 4 *Calendar of the Close Rolls, Edward II, 1323-1327*, at 560 (Apr. 28, 1326, Kenilworth) (H.C. Maxwell-Lyte ed., 1892)). Two years later, Parliament enacted the Statute of Northampton, "an expanded version of Edward II's earlier prohibition." *Id.* The law became "the foundation for firearms regulation in England for the next several centuries." *Id.* at 930. It provided that "no Man" may "go nor ride armed by night nor by day, in Fairs, Markets, nor in the presence of the Justices or other Ministers, nor in no part elsewhere." 2 Edw. 3, c. 3 (1328). It also carved out limited exceptions for "the King's Servants in his presence, and his Ministers in executing of the King's Precepts, or of their Office," and for "a cry made for arms to keep the peace." *Id.*

Peruta found that the Statute of Northampton's restrictions were "widely enforced." 824 F.3d at 929. Proclamations issued by the Crown in the centuries following the Statute's enactment required officers to enforce the Statute according to its "true intent and meaning," which "meant a prohibition on the 'car[r]ying and use of Gunnes.' " *Id.* at 931 (quoting *By the Quenne Elizabeth I: A Proclamation Prohibiting the Use And Cariage of Dagges, Birding Pieces, And Other Gunnes, Contrary To Law* 1 (London, Christopher Barker 1600)); *see id.* at 930-931

(collecting examples). That prohibition was expressly extended to open carry of firearms. A 1594 proclamation issued by Elizabeth I, for example, reinforced that the "open carrying" of weapons was unlawful, as it was "to the terrour of all people professing to travel and live peaceably." *Id.*; *By the Quenne Elizabeth I: A Proclamation Against the Carriage of Dags, and for Reformation of Some Other Great Disorders* 1 (London, Christopher Barker 1594).

Consistent with these proclamations, local constables and justices of the peace continued to enforce the Statute of Northampton throughout the seventeenth and eighteenth centuries. *See, e.g.*, *Middlesex Sessions: Justices' Working Documents* (Apr. 6, 1751) (reporting conviction); *Chune v. Piott*, 80 Eng. Rep. 1161, 1162 (K.B. 1615). In *Peruta*, this Court described one notable enforcement action, *Sir John Knight's Case*. "England's Attorney General charged John Knight" in 1686 "with violating the Statute of Northampton by 'walk[ing] about the streets armed with guns.'" *Peruta*, 824 F.3d at 931 (quoting 87 Eng. Rep. 75 (K.B. 1686)). The court "acquitted Knight, but only because, as a government official, he was exempt from the statute's prohibition." *Id.*; *see* Patrick J. Charles, *The Faces of the Second Amendment Outside the Home: History Versus Ahistorical Standards of Review*, 60 Clev. St. L. Rev. 1, 30 (2012).

To be sure, the prohibition on open carry was not without exceptions. William Lambarde, an influential commentator, identified exceptions for "the

Queenes servants and ministers in her precepts, or in executing her precepts"; "upon Hue and Crie made to keep the peace"; and for "places where acts against the Peace do happen." *The Duties of Constables, Borsholders, Tythingmen, and Such Other Low and Lay Ministers of the Peace* 13-14 (London, Thomas Wight 1602). These exceptions, however, were limited in scope. Aside from those exceptions, constables were directed to "stay and arrest all such persons as they shall find to carry Dags or Pistols." *Id.*; *see* Oxford English Dictionary (2d ed. 1989) (defining "dag" as a "heavy pistol or hand-gun"). And the Statute of Northampton prohibited open carry even by "persons [who] were so armed or weaponed for their defense upon any private quarrel." Michael Dalton, *The Country Justice: Containing the Practice of the Justices of the Peace Out of Their Sessions* 264 (London, W. Rawlins & S. Roycroft 1690) (1618).

It was against this backdrop that Parliament enacted the English Declaration of Rights in 1689, which has "long been understood to be the predecessor to our Second Amendment." *Heller*, 554 U.S. at 593. The Declaration provided that "the Subjects which are Protestants may have Arms for their Defence suitable to their Conditions and *as allowed by Law*." 1 W. & M., c. 2, § 7, in 3 Eng. Stat. at Large 441 (1689) (emphasis added). As *Peruta* explained, "the critical question is the meaning of the phrase 'as allowed by law.'" 824 F.3d at 932. And here, as in

Peruta, "[t]he history just recounted" demonstrates that, but for the limited exceptions noted, carrying firearms openly "was not 'allowed by law.'" *Id.*

The English commentators on whom the Founding generation relied shared a similar understanding. *See Heller*, 554 U.S. at 593-595 (citing English treatises as evidence of original public meaning). For instance, in 1694, Lord Coke—"widely recognized by the American colonists as the greatest authority of his time on the laws of England," *Payton v. New York*, 445 U.S. 573, 593-594 (1980) (internal quotation marks omitted)—"described the Statute of Northampton as providing that a man may neither 'goe nor ride armed by night nor by day . . . in any place whatsoever.'" *Peruta*, 824 F.3d at 931 (quoting Edward Coke, *The Third Part of the Institutes of the Laws of England* 160 (London, R. Brooke 1797)). He noted that the law contained several "speciall exceptions," and also permitted each citizen "to assemble force to defend his house." Coke at 161. But Coke added that the law did not allow public carry merely "for doubt of danger." *Id.* Other commentators agreed that there was no right to publicly carry weapons for the general purpose of precautionary self-defense. *See* 1 William Hawkins, *A Treatise of the Pleas of the Crown* 136 (1716); Richard Starke, *The Office and Authority of a Justice of the Peace Explained and Digested, Under Proper Titles* 6 (Williamsburg, Alexander Purdie & John Dixon 1774).

In the 1760s, William Blackstone similarly explained that the right to bear arms was only granted as "allowed by law." 1 William Blackstone, *Commentaries on the Laws of England* *139-141 (1765). Although the panel noted Blackstone's view that there was a "right of having and using arms for self-preservation and defence," Add. 18, the panel did not mention that Blackstone himself called the right a "public allowance, under due restrictions," 1 Blackstone at *139. According to Blackstone, one of these very "restrictions" was that "riding or going armed, with dangerous or unusual weapons, is a crime against the public peace, by terrifying the good people of the land; and is particularly prohibited by the Statute of Northampton." 4 Blackstone at *148-149. To illustrate the broad scope of the "dangerous or unusual weapons" covered by this prohibition, Blackstone likened it to "the laws of Solon," under which "every Athenian was finable who walked about the city in armour." *Id.*; *see* 1 John Potter, *The Antiquities of Greece* 170 (Oxford 1697) (laws of Solon punished any person "seen to walk the City-Streets with a Sword by his Side, or having about him other Armour, unless in case of Exigency.").

Despite the overwhelming weight of this historical evidence, the panel asserted that English law did not support any restrictions on the right to carry weapons openly. None of its arguments pass muster.

First, the panel claimed that English laws are relevant "only to the extent they inform the original public understanding of the Second Amendment." Add. 40. But *Heller* made clear that the Second Amendment "codified a *pre-existing* right," and examined English history to understand its scope. 554 U.S. at 592. Moreover, the sources on which the Founders relied understood English law to prohibit open carry for the general purpose of precautionary self-defense. *See supra* pp. 19-20.

Second, the panel read the English history as prohibiting open carry only in circumstances in which it would "terrorize the local townsfolk." Add. 39. But *Peruta* did not view the Statute of Northampton or its progeny so narrowly, and with good reason. As the panel conceded, "an untoward intent to terrorize the local townsfolk was not always needed to face arrest and imprisonment." *Id.*; *see Chune*, 80 Eng. Rep. at 1162 (defendant violated Statute of Northampton "notwithstanding he doth not break the peace"). Commentators recognized that the law prohibited people not only from going armed "in affray of their Majesties Subjects, and breach of the Peace," but also from "wear[ing] or carry[ing] any Daggers, Guns, or Pistols Charged." Robert Gardiner, *The Compleat Constable* 18 (London, Richard & Edward Adkins 1692). That was so, as Blackstone and others recognized, because openly carrying firearms would itself be likely to cause fear among the people. *See, e.g.*, 4 Blackstone at *148-149 ("riding or going armed" is

"a crime against the public peace, by terrifying the good people of the land"); Dalton at 264 (similar); Mark Anthony Frassetto, *To the Terror of the People: Public Disorder Crimes and the Original Public Understanding of the Second Amendment*, 43 S. Ill. U. L.J. 61, 76-81 (2018).[5]

2. Colonial History

"[N]othing in the historical record suggest[s] that the law in the American colonies . . . differed significantly from the law in England." *Peruta*, 824 F.3d at 933.

In 1686, New Jersey became the first colony to codify a version of the Statute of Northampton. Concerned that "persons carrying weapons in public" had "put in great fear" the "inhabitants of the Province," the Legislature enacted a law providing that "no planter shall ride or go armed with sword, pistol, or dagger." *Id.*; 1686 N.J. Laws 289-290, ch. 9; *see* Oxford English Dictionary (3d ed. 2006) (defining "planter" as "an early settler" or "a colonist").

Other colonies followed suit. New Hampshire in 1696 enacted a law authorizing "every Justice of the Peace within this Province" to arrest "any other

[5] The panel cited William Hawkins, who noted that "no wearing of Arms is within the meaning of this Statute, unless it be accompanied with such Circumstances as are apt to terrify the People." 1 Hawkins at 136. But Hawkins recognized that there was no general right to open carry "for the safety of his person from his assault." *Id.* And his observation about "terror" was relevant only insofar as it established an exception allowing for open carry by "Persons of Quality," who do not cause "the least suspicion of an intention to commit any act of violence or disturbance of the peace. *Id.*

that shall go Armed offensively." 1696 N.H. Laws 15; *see also* 1759 N.H. Laws 1 (allowing arrest of any person "who shall go armed offensively, or put his Majesty's subjects in fear"). North Carolina required justices of the peace to "arrest all such Persons as, in your Sight, shall ride or go armed offensively." 1741 N.C. Sess. Laws 131. Other colonies enacted laws that were near-facsimiles of the Statute of Northampton. *See* 1786 Va. Acts 33, ch. 21; *An Act for the Punishing of Criminal Offenders*, Mass. Prov. Laws ch. XI, § 6 (1692). And still others incorporated "the common law of England" and "English statutes" wholesale. Md. Declaration of Rights art. 3 (1776). As was true of English law, these colonial laws generally did not allow open carry merely for precautionary self-defense. *See, e.g.*, James Parker & Richard Burn, *Conductor Generalis: Or, the Office, Duty and Authority of Justices of the Peace* 12 (Woodbridge, NJ, James Parker 1764).

3. History After The Founding

a. Pre-Civil War Legislation. Prohibitions on open carry expanded in the years after the Founding. *See* Saul Cornell, *The Right to Carry Firearms Outside of the Home: Separating Historical Myths from Historical Realities*, 39 Fordham Urb. L.J. 1695, 1719-23 (2012). In 1821, Tennessee imposed a fine on "each and every person so degrading himself, by carrying . . . pocket pistols, *either public or private*," unless he was a traveler leaving his county or the State. 1821 Tenn. Pub. Acts 15-16, ch. XIII (emphasis added). In 1851, Pennsylvania made it a felony for

"any person" to "willfully and maliciously carry any pistol" or "gun" in the borough of York. 1851 Pa. Laws 382, § 4. In 1860, the territory of New Mexico prohibited carrying any deadly weapons, "concealed or otherwise," and made the offense punishable by up to three months' imprisonment. 1860 N.M. Laws 94-98, §§ 1-2, 6.

Other States provided that individuals who carried firearms "without reasonable cause" could be arrested and ordered to pay a penal bond or face imprisonment. A Massachusetts law enacted in 1836 was typical. It stated:

> If any person shall go armed with a dirk, dagger, sword, pistol, or other offensive and dangerous weapon, without reasonable cause to fear an assualt [*sic*] or other injury, or violence to his person, or to his family or property, he may, on complaint of any person having reasonable cause to fear an injury, or breach of the peace, be required to find sureties for keeping the peace, for a term not exceeding six months . . . .

Mass. Rev. Stat. ch. 134, § 16 (1836). Seven other States enacted virtually identical laws before the Civil War.[6] These laws followed a form of criminal law enforcement common in the early nineteenth century. Cornell at 1723 n.143. They provided that a person engaged in a "danger[ous]" or "threaten[ing]" act—here, carrying a firearm without reasonable cause—could be arrested and required to pay a surety (or "penal bond") that would be forfeited if a breach of the peace

[6] *See* 1860 Pa. Laws 432, § 6; Or. Stat. ch. 16, § 17 (1853); Minn. Rev. Stat. ch. 112, § 18 (1851); Wis. Rev. Stat. ch. 144, § 18 (1849); 1847 Va. Acts 129, 3 Va. Crim. Code ch. 14, § 16; Me. Rev. Stat. ch. 169, § 16 (1841); Mich. Rev. Stat. pt. 4, tit. II, ch. 1, § 16 (1838).

occurred. 2 The American and English Encyclopedia of Law 516-517 (1887); *see* 4 Blackstone at *251-252; Mass. Rev. Stat. ch. 134, §§ 3-4 (1836). If a person failed to pay a surety upon arrest, he could be "committed" to prison. 2 American and English Encyclopedia 517-518; *see* 4 Blackstone *252; Mass. Rev. Stat. ch. 134, § 6 (1836).

Both formally and in practical effect, these laws subjected persons to criminal process and criminal sanctions if they carried firearms without reasonable cause. *See, e.g.*, *Ex Parte Burford*, 7 U.S. (3 Cranch) 448, 451-453 (1806) (District of Columbia could not require a person to produce a surety without obtaining "a *conviction*" and granting constitutional protections required in "criminal prosecutions"); 2 American and English Encyclopedia 516 (describing surety laws as "part of . . . the administration of the criminal law"). It is true that the process could be triggered only by a complainant who reasonably feared "injury" or "breach of the peace." Add. 33-34. For centuries, however, the law had treated open carry without justification as itself a threat to the peace. *See supra* pp. 21-22; Frassetto at 81-82. Anyone seen carrying weapons without cause would thus likely have been subject to arrest. *See* Cornell at 1719-20 & nn.130-131.

Contemporaneous descriptions of these laws bear out this understanding. In Massachusetts, one year after the State enacted its surety law, a grand jury was instructed that "*no* person may go armed with a . . . pistol[ ] or other offensive and

dangerous weapon, without reasonable cause to apprehend an assault or violence to his person, family, or property." Peter Oxenbridge Thacher, *Two Charges to the Grand Jury of the County of Suffolk* 27 (1837) (emphasis added). And in 1872, the mayor of Richmond, Virginia, wrote that officers "may issue a warrant for the arrest of *any* party going armed with a deadly or dangerous weapon." Letter from A.M. Keiley, The Daily State Journal (Richmond, Va., Sept. 16, 1872) (emphasis added).[7]

In addition to these criminal prohibitions, many States retained strict restrictions on public carry that traced back to the Statute of Northampton. *See* Cornell at 1719; Charles at 36-41. In the early nineteenth century, it was "always an offence at common law" for a person to "arm[ ] himself with dangerous and unusual weapons, in such a manner as will naturally cause a terror to the people." Francis Wharton, *A Treatise on the Criminal Law of the United States* 932 (1857). Many States followed this common-law rule by judicial decision, and others enacted it into statute. *See, e.g.*, *State v. Huntly*, 25 N.C. 418, 420-423 (1843); *O'Neill v. State*, 16 Ala. 65 (1849); Del. Rev. Stat. tit. XV, ch. 97, § 13 (1852).

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[7] The panel also suggested that these laws could be disregarded because they imposed only "a small fine." Add. 35. That is incorrect. Persons who violated these laws could be arrested and imprisoned for several months, and sureties could be highly punitive. *See, e.g.*, *Burford*, 7 U.S. (3 Cranch) at 449-450 (discussing imposition of $4,000 surety).

Just as in England, that prohibition was understood broadly. In 1843, the North Carolina Supreme Court explained that "[a] gun is an 'unusual weapon' " at common law, because "[n]o man . . . carries it about with him, as one of his every day accoutrements." *Huntly*, 25 N.C. at 422. Furthermore, it explained that firearms were deemed to cause a terror whenever they were carried without "any lawful purpose." *Id.* at 422-423; *see* 2 Emlin McClain, *A Treatise on the Criminal Law* 204 (1897) (explaining that "the crime of carrying weapons without lawful occasion or excuse" was "part of the common law derived from England"). It was well-established that a general interest in precautionary self-defense was not a valid purpose. Wharton at 932 ("A man cannot excuse wearing such armour in public, by alleging that . . . he wears it for the safety of his person against his assault."); 1 William Oldnall Russell, *A Treatise on Crimes and Indictable Misdemeanors* 272 (2d ed. 1826) (same). Any person carrying a gun for generalized self-defense would accordingly have run afoul of the common law, even in States that lacked express statutory prohibitions. *See* Eric M. Ruben & Saul Cornell, *Firearm Regionalism and Public Carry: Placing Southern Antebellum Case Law in Context*, 125 Yale L.J. Forum 121, 129-130 (2015); Charles at 37-38.

b. Post-Civil War Legislation. The decades following the Civil War saw a rapid expansion in the number of States with criminal prohibitions on openly

carrying firearms without reasonable cause. In the first decade after the war—when the Nation experienced an "outpouring of discussion of the Second Amendment," *Heller*, 554 U.S. at 614—at least four States and territories enacted laws prohibiting open carry, either categorically or where a person lacked good cause. *See* 1875 Ark. Acts 156-157; 1871 Tex. Gen. Laws 25, §§ 1-2; 1867 Kan. Sess. Laws 25, § 1; 1876 Wyo. Comp. Laws 352, § 1; *see also* 1865/2 Ill. Priv. Laws 515, § 6. Five more States or States-to-be enacted similar prohibitions by the end of the nineteenth century.[8]

Another ten States enacted restrictions on openly carrying firearms over the first two decades of the twentieth century. South Carolina and Alabama barred anyone from carrying handguns absent good cause. *See* 1909 Ala. Gen. Laws 258, §§ 2, 4; 1901 S.C. Acts 748-749, §§ 1, 3. Six States barred open carry without a license, which could be obtained only upon demonstrating "suitab[ility]" or at the discretion of local officials.[9] And Maryland and North Carolina enacted licensing

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[8] *See* 1877 Mo. Laws 166, § 23 (authorizing cities to "prohibit and punish the carrying of firearms and other deadly weapons, concealed or otherwise"); 1895 N.J. Gen. Pub. Laws 235, 237, § 47 (similar); 1882 W. Va. Acts 421, sec. 1, § 7 (criminalizing carry of "deadly weapon[s]" absent "good cause"); 1889 Idaho Gen. Laws 23, § 1 (prohibiting carry in any city, town, or village); Okla. Stat. ch. 25, art. 47, §§ 2432-2433 (1890) (same); 1889 Ariz. Laws 30, §§ 1-2 (same, but exempting persons with "reasonable ground" to fear an imminent attack).

[9] *See* Fla. Stat. tit. IX, ch. 17, §§ 1062, 1064 (1902); 1909 N.H. Laws 451-452, §§ 1, 3; 1910 Ga. Laws 134-135, §§ 1-2; 1911 N.Y. Laws 442-443, §§ 1897, 1899;

requirements for specified localities. *See* 1910 Md. Laws 614-615; 1919 N.C. Pub. Local Laws 373-374, §§ 1-3.

c. Case law. Courts spoke with remarkable uniformity about the constitutionality of these good-cause laws. During the nineteenth and early twentieth centuries, at least nine state high courts evaluated good-cause restrictions on open carry under the Second Amendment or analogous state constitutional provisions. To our knowledge, every such court found those laws constitutional.

The Texas Supreme Court was among the first to address this question. In *English v. State*, 35 Tex. 473 (1871), the court observed—citing Blackstone and the Statute of Northampton—that English law had long prohibited persons from "riding or going around with dangerous or unusual weapons." *English*, 35 Tex. at 476. In contrast, the court noted, Texas' good-cause law "regulat[ed]" the right to carry "without taking it away," by "point[ing] out the place, the time and the manner in which certain deadly weapons may be carried as means of self-defense." *Id.* at 477-478. The court therefore found Texas's law constitutional under both the Second Amendment and the Texas Constitution. *Id.* at 477-478, 480; *see State v. Duke*, 42 Tex. 455, 458-459 (1874).

1917 Or. Gen. Laws 804, § 1; 1917 Conn. Pub. Acts 2314, ch. 129; *see also* 1906 Mass. Acts 150, ch. 172, § 1.

Three other high courts upheld their States' carry restrictions on similar grounds. In *State v. Workman*, 14 S.E. 9 (W. Va. 1891), the Supreme Court of Appeals of West Virginia held that the State could limit carry to circumstances in which a person had "sufficient ground . . . to fear death or harm" in part because "the common law" had long prohibited the carry of firearms. *Id.* at 11-12 (citation omitted). The Tennessee Supreme Court held that the legislature could prohibit a person from "carrying a pistol" in "self-defense," provided that it did not "prohibit such wearing, where it was clearly shown [the weapon was] worn *bona fide* to ward off or meet imminent and threatened danger . . . or great bodily harm." *Andrews v. State*, 50 Tenn. 165, 190-191 (1871). And the Arkansas Supreme Court concluded that the legislature could "regulate" the right to carry so long as it did not "nullify" that right, and that it could bar citizens from "going about with pistols in a belt, ready to be used on every outbreak of ungovernable passion." *Haile v. State*, 38 Ark. 564, 565-566 (1882); *see Fife v. State*, 31 Ark. 455, 461 (1876).[10]

[10] The Tennessee and Arkansas Supreme Courts held that these laws were unconstitutional in one limited respect: They "absolute[ly] prohibit[ted]" the keeping or carrying of army pistols. *Andrews*, 50 Tenn. at 186-187; *see Wilson v. State*, 33 Ark. 557, 559-560 (1878). Each State subsequently amended the statutes to permit persons to carry army pistols only in a "very inconvenient" manner—that is, openly and in one's hand at all times. *Haile*, 38 Ark. at 566; *see State v. Wilburn*, 66 Tenn. 57, 60, 61-62 (1872). Both courts then upheld those statutes, and reiterated that individuals did not have a right to carry weapons at all times for precautionary self-defense. *See Wilburn*, 66 Tenn. at 60; *Haile*, 38 Ark. at 566.

Five more state high courts—in Kansas, Oklahoma, New York, Georgia, and Alabama—joined the ranks in the early years of the twentieth century. *See City of Salina v. Blaksley*, 83 P. 619, 620-621 (Kan. 1905); *Ex parte Thomas*, 97 P. 260, 262-265 (Okla. 1908); *People v. Persce*, 97 N.E. 877, 879 (N.Y. 1912); *People ex rel. Darling v. Warden of City Prison*, 139 N.Y.S. 277, 285-286 (N.Y. App. Div. 1913); *Strickland v. State*, 72 S.E. 260, 264-265 (Ga. 1911); *Isaiah v. State*, 58 So. 53 (Ala. 1911).

In contrast, we are aware of no state high court that deemed a good-cause restriction on carry unconstitutional, and the panel identified none. It cited four cases that held or suggested that States could not *prohibit* open carry. Add. 20-23; *see Simpson v. State*, 13 Tenn. 356, 360 (1833); *State v. Reid*, 1 Ala. 612, 616-617 (1840); *Nunn v. State*, 1 Ga. 243 (1846); *State v. Chandler*, 5 La. Ann. 489, 490 (1850). But those cases did not indicate that States were precluded from *regulating* open carry. On the contrary, when three of those courts later considered challenges to laws limiting—but not flatly prohibiting—open carry, all three upheld them. *See Isaiah*, 58 So. at 54; *Wilburn*, 66 Tenn. at 60; *Strickland*, 72 S.E. at 263-264.

The panel cited one case that struck down a concealed-carry law on the theory that "*any* restraint on the right" to carry firearms, no matter "how small," violated the Kentucky constitution. *Bliss v. Commonwealth*, 12 Ky. 90, 92-93

(1822). But the people of Kentucky overturned that holding by constitutional amendment, *see Peruta*, 824 F.3d at 935-936, and other courts almost "uniform[ly]" rejected its reasoning, holding that "regulations" on open carry (in contrast with outright "prohibition[s]") are constitutional, *e.g.*, *Strickland*, 72 S.E. at 261-263; *Blaksley*, 83 P. at 620. *Bliss* was thus an outlier, a "short-lived exception" to an otherwise unanimous line of authority recognizing the validity of good-cause requirements. *Peruta*, 824 F.3d at 933.

d. Nineteenth-Century Commentators. Leading nineteenth-century legal commentators agreed that States had broad authority to regulate the carry of firearms, including by restricting carry to circumstances of particularized need. One such commentator, Benjamin Oliver, wrote that "[t]here are without doubt circumstances, which may justify a man for going armed; as, if he has valuable property in his custody; or, if he is traveling in a dangerous part of the country; or, if his life has been threatened." *The Rights of an American Citizen* 178 (1832). "But under other circumstances," he added, "it ought not to be tolerated or countenanced; because the presence of such weapons has frequently turned a quarrel into a bloody affray." *Id.*

Benjamin Abbott similarly explained that, under the Second Amendment, there is "[n]o doubt" that "a person whose residence or duties involve peculiar peril may keep a pistol for prudent self-defence." *Judge and Jury: A Popular*

Explanation of Leading Topics in the Law of the Land 333 (1880). By contrast, he noted that "keeping pistols for play-things" or "carrying them carelessly in the pocket . . . for defence" are "practices . . . which the law of the land is every year more explicitly discouraging." *Id.* at 333-334.

Other commentators discussed States' authority to regulate carry in similarly broad terms. William Rawle wrote that a State may make "even the carrying of arms abroad by a single individual" subject to surety or imprisonment, if there is "just reason to fear that he purposes to make an unlawful use of them." *A View of the Constitution of the United States of America* 126 (2d ed. 1829). John Pomeroy likewise stated that the Second Amendment "is certainly not violated by laws forbidding persons to carry dangerous . . . weapons." *An Introduction to the Constitutional Law of the United States* 152-153, § 239 (1868).

The panel focused on a single nineteenth-century commentator, St. George Tucker. Add. 17-18. But Tucker's only statement about the scope of the Second Amendment was about flat bans: He noted that Congress could not "pass a law *prohibiting any* person from bearing arms." 1 St. George Tucker, *Blackstone's Commentaries with Notes of Reference*, app. n.D at 289 (Lawbook Exchange, Ltd. ed. 2008) (1803) (emphasis added). Like the panel's cases, he said nothing about Congress's authority to *regulate* carry. The panel also cited Tucker's passing observation that "in many parts of the United States" individuals typically carry

"rifle[s] or musket[s]" when leaving their house. Tucker, app. n.B, at 19. That observation, however, may have reflected the fact that gun laws were not homogeneous, Ruben & Cornell at 128, and that the common law of the time permitted the open carry of firearms for a "lawful purpose," such as "business or amusement," *Huntly*, 25 N.C. at 423. It does not negate the numerous contemporaneous commentators who explained that precautionary generalized self-defense was not a valid justification for carry. *See* Wharton at 932; 1 Russell at 272; 1 Hawkins at 136; Starke at 6; Coke at 161.

4. Conclusion

In sum, the history is "remarkably consistent." *Peruta*, 824 F.3d at 939. Laws prohibiting open carry absent a particularized need trace back at least to 1328, and remained in place in England and the American colonies up through the Founding. In the decades after the Founding, numerous States enacted criminal prohibitions on carrying firearms without "reasonable cause." By the early twentieth century, more than 30 States had enacted similar laws, which were upheld by every court to consider their constitutionality. And legal commentators consistently took the view that such laws were permissible.

Hawaii's good-cause law is therefore constitutional on two separate grounds. *First*, it "does not impinge on the Second Amendment right as it was historically understood." *Silvester*, 843 F.3d at 821. Like laws prohibiting concealed carry,

laws restricting open carry by persons lacking any particularized need "can be traced to the founding era," and to centuries before that. *Id.*; *see Peruta*, 824 F.3d at 939. And whereas concealed-carry prohibitions were "*nearly* universally" upheld, good-cause laws were universally upheld—full stop. *Peruta*, 824 F.3d at 939 (emphasis added). The "right" to carry a firearm openly without any particularized need "is not, and never has been, protected by the Second Amendment." *Id.* at 929. Nor was it part of the right as "understood by the adopters of the Fourteenth Amendment." *Id.* at 933.

Second, Hawaii's good-cause law is a "longstanding prohibition" that is "presumptively lawful" under *Heller*. 554 U.S. at 626-627 n.26. Even putting aside the wealth of history dating to the fourteenth century, it is indisputable that good-cause laws were widespread by "the early twentieth century." *Fyock*, 779 F.3d at 997. That makes good-cause laws considerably more longstanding than laws dispossessing felons, which "were unknown before World War I," C. Kevin Marshall, *Why Can't Martha Stewart Have a Gun?*, 32 Harv. J.L. & Pub. Pol'y 695, 708 (2009); and laws barring possession by the mentally ill, which originated in the 1930s, Carlton F.W. Lawson, *Four Exceptions in Search of a Theory:* District of Columbia v. Heller *and Judicial Ipse Dixit*, 60 Hastings L.J. 1371, 1376-77 (2009); *see Silvester*, 843 F.3d at 831-832 (Thomas, C.J., concurring). It also makes them more longstanding than laws upheld by other circuits on the basis

of their longevity. *See Heller v. District of Columbia*, 670 F.3d 1244, 1253-55 (D.C. Cir. 2011) (deeming requirement longstanding where "states and localities *began*" to enact it in "the early 20th century"); *Nat'l Rifle Ass'n*, 700 F.3d at 202 (finding restriction longstanding where 22 States and the District of Columbia enacted it by 1923). For this reason, as well, Hawaii's good-cause law falls "outside the scope of the [Second] Amendment." *Silvester*, 843 F.3d at 821.

B. Even If Hawaii's Good-Cause Statute Burdened Conduct Protected By The Second Amendment, It Would Survive Intermediate Scrutiny.

Even if openly carrying firearms without a particularized need for protection were conduct covered by the Second Amendment, Hawaii's good-cause law would still be constitutional. Four other Circuits—all assuming without deciding that good-cause restrictions burden protected conduct—have applied intermediate scrutiny and upheld good-cause restrictions akin to Hawaii's. *Gould v. Morgan*, 907 F.3d 659, 670-676 (1st Cir. 2018); *Kachalsky v. County of Westchester*, 701 F.3d 81, 96-99 (2d Cir. 2012); *Drake v. Filko*, 724 F.3d 426, 431-432 (3d Cir. 2013); *Woollard v. Gallagher*, 712 F.3d 865, 880-882 (4th Cir. 2013). If this Court concludes that Hawaii's good-cause law burdens protected conduct, the same result should follow here.

1. Good-Cause Restrictions on Open Carry Do Not Implicate the "Core" of the Second Amendment.

The "core of the Second Amendment is 'the right of law-abiding, responsible citizens to use arms in defense of hearth and home.'" *United States v. Chovan*, 735 F.3d 1127, 1138 (9th Cir. 2013) (quoting *Heller*, 554 U.S. at 635); *see Mai v. United States*, 952 F.3d 1106, 1115 (9th Cir. 2020); Add. 70-71 (Clifton, J., dissenting). As *Heller* made clear, the right to bear arms "for defense of self, family, and property" is "most acute" inside the home, and the Second Amendment "elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home." 554 U.S. at 628, 635.

Openly carrying firearms outside the home for the general purpose of precautionary self-defense, by contrast, falls outside the core of the Second Amendment. The long history of restrictions on open carry, *see supra* pp. 15-34, "demonstrates that while the Second Amendment's core concerns are strongest inside hearth and home, States have long recognized a countervailing and competing set of concerns with regard to handgun ownership and use in public." *Kachalsky*, 701 F.3d at 96; *accord* Add. 70 (Clifton, J., dissenting).[11]

[11] "This sort of differentiation" between inside and outside the home, moreover, "is not unique to" the Second Amendment. *Gould*, 907 F.3d at 672. "Many constitutional rights are virtually unfettered inside the home but become subject to reasonable regulation outside the home." *Id.*; *see Kachalsky*, 701 F.3d at 93-94 (collecting examples from the First, Fourth, and Fifth Amendments).

The panel suggested that "much of *Heller*'s reasoning implied a core purpose of self-defense *not* limited to the home." Add. 48. That is incorrect. *Heller* indicated that the right to bear arms for the purpose of self-defense is more robust inside the home than outside it. *See* 554 U.S. at 629, 635. And on the only occasions where *Heller* addressed restrictions on carrying firearms outside the home, the Court emphasized that the scope of the right would depend on history and tradition, and that "longstanding" prohibitions on carrying firearms outside the home lie outside the "core" of the Amendment. *See id.* at 626-627. The central components of "*Heller*'s reasoning" therefore reinforce that carrying arms for the general purpose of precautionary self-defense is outside the "core" of the Second Amendment. Add. 48.

2. *Hawaii's Law Satisfies Intermediate Scrutiny.*

Because Young's claim does not implicate the "core" of the Second Amendment, intermediate scrutiny applies. Seven of the eleven Judges in *Peruta* concluded that California's restrictions on concealed carry would survive intermediate scrutiny. *See Peruta*, 824 F.3d at 942; *id.* at 942-945 (Graber, J., concurring). There is no basis for reaching a different conclusion here.

"[I]ntermediate scrutiny requires: '(1) the government's stated objective to be significant, substantial, or important; and (2) a reasonable fit between the challenged regulation and the asserted objective.'" *Fyock*, 779 F.3d at 1000

(quoting *Chovan*, 735 F.3d at 1139). Here, "[i]t is 'self-evident'" that the government's "interests in promoting public safety and reducing violent crime are substantial and important government interests." *Id.* (quoting *Chovan*, 735 F.3d at 1139). Indeed, neither the panel majority nor Young disputed that conclusion.

The key question, then, is whether there is a "reasonable fit" between the law and the State's objective. The State need not show that its policy "is the least restrictive means of achieving its interest." *Id.* Instead, it need only show that the policy "promotes a 'substantial government interest that would be achieved less effectively absent the regulation.'" *Id.* (quoting *Colacurcio v. City of Kent*, 163 F.3d 545, 553 (9th Cir. 1998)).

Hawaii's good-cause law easily clears that bar. The law furthers the State's interests in promoting public safety and reducing violent crime. Empirical studies demonstrate that States with more stringent public-carry restrictions "experience significantly lower rates of gun-related homicides and other violent crimes." *Gould*, 907 F.3d at 675; *see, e.g.*, Cassandra K. Crifasi et al., *Association Between Firearm Laws and Homicide in Urban Counties*, 95 J. Urb. Health 383 (2018); John J. Donahue et al., *Right-to-Carry Laws and Violent Crime: A Comprehensive Assessment Using Panel Data and a State-Level Synthetic Controls Analysis*, 16 J. Empirical Legal Stud. 198 (2019). Studies also indicate that "gun owners are more likely to be the victims of gun violence when they carry their weapons in public,"

Gould, 907 F.3d at 675; *see* Charles C. Branas et al., *Investigating the Link Between Gun Possession and Gun Assault*, 99 Am. J. Pub. Health 2034 (2009), and that "increased gun carrying among potential victims" may "cause[] criminals to carry guns more often themselves," with the "end result" being that "street crime becomes more lethal," *Peruta*, 824 F.3d at 944 (Graber, J., concurring) (quoting Philip Cook et al., *Gun Control After* Heller*: Threats and Sideshows from a Social Welfare Perspective*, 56 U.C.L.A. L. Rev. 1041, 1081 (2009)).

As the Fourth Circuit concluded based on the empirical evidence, "limiting the public carrying of handguns protects citizens and inhibits crime" by "[l]essening the likelihood that basic confrontations between individuals would turn deadly"; "[d]ecreasing the availability of handguns to criminals via theft"; and "[c]urtailing the presence of handguns during routine police-citizen encounters." *Woollard*, 712 F.3d at 879-880 (internal quotation marks omitted). Of course, the Hawaii legislature lacked much of that empirical evidence when it first enacted the State's open-carry law in 1852 and revised it in 1927, 1934, and 1961. But the legislature was permitted to make a predictive judgment that "given the obviously dangerous and deadly nature" of firearms, "requiring a showing of particularized need for a permit to carry one publicly serves the State's interests in public safety." *Drake*, 724 F.3d at 438 (citation omitted). Because that "common sense understanding" is supported by empirical evidence, *Silvester*, 843 F.3d at 828, and

because courts must "accord substantial deference" to the legislature's "predictive judgments" in any event, *Turner Broad. Sys., Inc. v. FCC*, 520 U.S. 180, 195 (1997) (citation omitted), Hawaii's law satisfies the "reasonable fit" requirement.

Hawaii's law also satisfies intermediate scrutiny because the State took a "measured approach" that "neither bans public handgun carrying nor allows public carrying by all firearm owners." *Drake*, 724 F.3d at 440. Like the laws upheld by other Circuits, Hawaii's law seeks "to accommodate certain particularized interests in self defense," *Kachalsky*, 701 F.3d at 99, by authorizing the issuance of both open-carry and concealed-carry licenses on a showing of sufficient need, Add. 72 (Clifton, J., dissenting). The panel asserted that Hawaii's law "burden[s] substantially more [protected conduct] than is necessary to further" the State's interest. Add. 55 (quoting *Turner*, 520 U.S. at 213-214). But it reached that conclusion only by incorrectly interpreting the law as an "effective ban on the public carry of firearms." Add. 54; *see supra* pp. 8-11.

Ultimately, Hawaii's good-cause law reflects the same measured judgment that States have made since before the Founding: that to prevent individuals from causing fear, provoking confrontations, and inflicting deadly violence, States may require a particularized need before persons may carry guns in public. That judgment accords with empirical evidence and the weight of history, and the Second Amendment does not prohibit Hawaii from making it.

CONCLUSION

The District Court's judgment should be affirmed.

Respectfully submitted,

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FOR THE NINTH CIRCUIT

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HAWAII LAWS

Act of May 25, 1852, 1852 Haw. Sess. Laws 19

AN ACT

TO PREVENT THE CARRYING OF DEADLY WEAPONS.

WHEREAS, the habit of carrying deadly weapons is dangerous to life, and the public peace,

Therefore—

BE IT ENACTED *by the Nobles and Representatives of the Hawaiian Islands in Legislative Council assembled:*

SECTION 1. Any person not authorized by law, who shall carry, or be found armed with, any bowie-knife, sword-cane, pistol, air-gun, slung-shot or other deadly weapon, shall be liable to a fine of no more than Thirty, and no less than Ten Dollars, or in default of payment of such fine, to imprisonment at hard labor, for a term not exceeding two months and no less than fifteen days, upon conviction of such offense before any District Magistrate, unless good cause be shown for having such dangerous weapons; and any such person may be immediately arrested without warrant by the Marshal or any Sheriff, Constable or other officer or person and be lodged in prison until he can be taken before such Magistrate.

SECTION 2. The following persons are hereby declared to be authorized to bear arms, viz:—All persons holding official, military or naval rank either under this government or that of any nation at peace with this Kingdom, when worn for legitimate purposes.

SECTION 3. This Act shall take effect and become a law on the day of its passage.

Approved this twenty-fifth day of May, A. D., 1852.

KAMEHAMEHA.

KEONI ANA.

Haw. Rev. Laws, ch. 209, § 3089 (1905)

CHAPTER 209.

CARRYING DEADLY WEAPONS.

Sec. 3089. Persons not authorized; punishment. Any person not authorized by law, who shall carry, or be found armed with, any bowie-knife, sword-cane, pistol, air-gun, slung-shot, or other deadly weapon shall be liable to a fine of not more than thirty, and not less than ten dollars, or in default of payment of such fine, to imprisonment at hard labor for a term not exceeding two months and not less than fifteen days, upon conviction of such offense, unless good cause be shown for having such dangerous weapons; and any such person may be immediately arrested without warrant by the high sheriff, or any sheriff, policeman, or other officer or person.

Act 206, §§ 5, 7, 1927 Haw. Sess. Laws 209, 209-211

ACT 206

AN ACT REGULATING THE SALE, TRANSFER AND POSSESSION OF CERTAIN FIREARMS AND AMMUNITIONS, AND AMENDING SECTIONS 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2146 AND 2147 OF THE REVISED LAWS OF HAWAII 1925.

Be it Enacted by the Legislature of the Territory of Hawaii:

* * *

SECTION 5. Carrying or keeping small arms by unlicensed persons. Except as otherwise provided in Sections 7 and 11 hereof in respect of certain licensees, no person shall carry, keep, possess or have under his control a pistol or revolver; provided, however, that any person who shall have lawfully acquired the ownership or possession of a pistol or revolver may, for purposes of protection and with or without a license, keep the same in the dwelling house or business office personally occupied by him, and, in case of an unlawful attack upon any person or property in said house or office, said pistol or revolver may be carried in any lawful, hot pursuit of the assailant.

* * *

SECTION 7. Issue of licenses to carry. The judge of a court of record or the sheriff of a county, or city and county, shall, upon the application of any person having a bona fide residence or place of business within the jurisdiction of said licensing authority, or of any person having a bona fide residence or place of business within the United States and a license to carry a pistol or revolver concealed upon his person or to carry one elsewhere than in his home or office, said license being issued by the authorities of any state or political subdivision of the United States, issue a license to such person to carry a pistol or revolver within this territory elsewhere than in his home or office, for not more than one year from date of issue, if it appears that the applicant has good reason to fear an injury to his person or property, or has any other proper reason for carrying a pistol or revolver, and that he is a suitable person to be so licensed. The license shall be in triplicate, in form to be prescribed by the treasurer of the territory, and shall bear the name, address, description and signature of the licensee and the reason given for desiring a license. The original thereof shall be delivered to the licensee; the duplicate shall,

within seven days, be sent by registered mail, to the treasurer of the territory and the triplicate shall be preserved for six years by the authority issuing said license.

* * *

Act 26, § 8, 1933-1934 Haw. Sess. Laws Spec. Sess. 35, 39

ACT 26

AN ACT REGULATING THE SALE, TRANSFER AND POSSESSION OF FIREARMS AND AMMUNITION AND REPEALING SECTIONS 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146 AND 2147, REVISED LAWS OF HAWAII 1925, ACT 206, SESSION LAWS OF HAWAII 1927, AND ACT 120, SESSION LAWS OF HAWAII 1933.

Be it Enacted by the Legislature of the Territory of Hawaii:

* * *

SECTION 8. In an exceptional case, when the applicant shows good reason to fear injury to his person or property, the chief of police of the city and county of Honolulu or the sheriff of a county, other than the city and county of Honolulu, may grant a license to a citizen of the United States or a duly accredited official representative of a foreign nation, of the age of twenty years or more, to carry concealed on his person within the city and county or the county in which such license is granted, a pistol or revolver and ammunition therefor. Unless renewed, such license shall automatically become void at the expiration of one year from date of issue. No such license shall issue unless it appears that the applicant is a suitable person to be so licensed, and in no event to a person who has been convicted of a felony, or adjudged insane, in the Territory or elsewhere. All licenses to carry concealed weapons heretofore issued shall expire at midnight on the effective date of this Act. No person shall carry concealed on his person a pistol or revolver or ammunition therefor without being licensed so to do under the provisions of this section.

For each such license there shall be charged a fee of ten dollars ($10.00), which shall be covered into the treasury of the city and county or the county in which such license is granted.

Any person violating this section shall be punished by a fine of not more than one thousand dollars ($1,000.00) or by imprisonment for not more than one year, or by both.

* * *

Act 163, 1961 Haw. Sess. Laws 215

ACT 163

An Act Relating to Permits to Carry Firearms.

Be it Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 157-9, Revised Laws of Hawaii 1955, is hereby amended to read as follows:

"Section 157-9. Permits to carry; penalty. In exceptional case, when the applicant shows good reason to fear injury to his person or property, the respective chiefs of police may grant a license to a citizen of the United States or a duly accredited official representative of a foreign nation, of the age of twenty years or more, to carry concealed on his person within the county within which such license is granted, a pistol or revolver and ammunition therefor; or where the urgency of the need has been sufficiently indicated to the respective chiefs of police, they may grant to an applicant of good moral character who is a citizen of the United States of the age of twenty years or more, who is engaged in the protection of life and property and not prohibited under the provisions of section 157-7 from the ownership or possession of a firearm, a license to carry unconcealed on his person within the county within which such license is granted, a pistol or revolver. Unless renewed, such license shall automatically become void at the expiration of one year from date of issue. No such license shall be issued unless it appears that the applicant is a suitable person to be so licensed, and in no event to a person who is prohibited under the provisions of section 157-7 from the ownership or possession of a firearm, or a person adjudged insane or appearing to be mentally deranged. No person shall carry concealed or unconcealed on his person a pistol or revolver without being licensed so to do under the provisions of this section or in compliance with the provisions of section 157-6, as amended.

For each such license there shall be charged a fee of $10, which shall be covered into the treasury of the county in which such license is granted.

Any person violating this section shall be fined not more than $1,000 or imprisoned not more than one year, or both."

SECTION 2. This Act shall take effect upon its approval.

Haw. Rev. Stat. § 134-5

§ 134-5. Possession by licensed hunters and minors; target shooting; game hunting

(a) Any person of the age of sixteen years, or over or any person under the age of sixteen years while accompanied by an adult, may carry and use any lawfully acquired rifle or shotgun and suitable ammunition while actually engaged in hunting or target shooting or while going to and from the place of hunting or target shooting; provided that the person has procured a hunting license under chapter 183D, part II. A hunting license shall not be required for persons engaged in target shooting.

(b) A permit shall not be required when any lawfully acquired firearm is lent to a person, including a minor, upon a target range or similar facility for purposes of target shooting; provided that the period of the loan does not exceed the time in which the person actually engages in target shooting upon the premises.

(c) A person may carry unconcealed and use a lawfully acquired pistol or revolver while actually engaged in hunting game mammals, if that pistol or revolver and its suitable ammunition are acceptable for hunting by rules adopted pursuant to section 183D-3 and if that person is licensed pursuant to part II of chapter 183D. The pistol or revolver may be transported in an enclosed container, as defined in section 134-25 in the course of going to and from the place of the hunt, notwithstanding section 134-26

Haw. Rev. Stat. 134-9

§ 134-9. Licenses to carry

(a) In an exceptional case, when an applicant shows reason to fear injury to the applicant's person or property, the chief of police of the appropriate county may grant a license to an applicant who is a citizen of the United States of the age of twenty-one years or more or to a duly accredited official representative of a foreign nation of the age of twenty-one years or more to carry a pistol or revolver and ammunition therefor concealed on the person within the county where the license is granted. Where the urgency or the need has been sufficiently indicated, the respective chief of police may grant to an applicant of good moral character who is a citizen of the United States of the age of twenty-one years or more, is engaged in the protection of life and property, and is not prohibited under section 134-7 from the ownership or possession of a firearm, a license to carry a pistol or revolver and ammunition therefor unconcealed on the person within the county where the license is granted. The chief of police of the appropriate county, or the chief's designated representative, shall perform an inquiry on an applicant by using the National Instant Criminal Background Check System, to include a check of the Immigration and Customs Enforcement databases where the applicant is not a citizen of the United States, before any determination to grant a license is made. Unless renewed, the license shall expire one year from the date of issue.

(b) The chief of police of each county shall adopt procedures to require that any person granted a license to carry a concealed weapon on the person shall:

(1) Be qualified to use the firearm in a safe manner;

(2) Appear to be a suitable person to be so licensed;

(3) Not be prohibited under section 134-7 from the ownership or possession of a firearm; and

(4) Not have been adjudged insane or not appear to be mentally deranged.

(c) No person shall carry concealed or unconcealed on the person a pistol or revolver without being licensed to do so under this section or in compliance with sections 134-5(c) or 134-25.

(d) A fee of $10 shall be charged for each license and shall be deposited in the treasury of the county in which the license is granted.

Haw. Rev. Stat. § 134-11

§ 134-11. Exemptions

(a) Sections 134-7 to 134-9 and 134-21 to 134-27, except section 134-7(f), shall not apply:

(1) To state and county law enforcement officers; provided that such persons are not convicted of an offense involving abuse of a family or household member under section 709-906;

(2) To members of the armed forces of the State and of the United States and mail carriers while in the performance of their respective duties if those duties require them to be armed;

(3) To regularly enrolled members of any organization duly authorized to purchase or receive the weapons from the United States or from the State; provided the members are either at, or going to or from, their places of assembly or target practice;

(4) To persons employed by the State, or subdivisions thereof, or the United States while in the performance of their respective duties or while going to and from their respective places of duty if those duties require them to be armed;

(5) To aliens employed by the State, or subdivisions thereof, or the United States while in the performance of their respective duties or while going to and from their respective places of duty if those duties require them to be armed; and

(6) To police officers on official assignment in Hawaii from any state which by compact permits police officers from Hawaii while on official assignment in that state to carry firearms without registration. The governor of the State or the governor's duly authorized representative may enter into compacts with other states to carry out this paragraph.

(b) Sections 134-2 and 134-3 shall not apply to such firearms or ammunition that are a part of the official equipment of any federal agency.

(c) Sections 134-8, 134-9, and 134-21 to 134-27, shall not apply to the possession, transportation, or use, with blank cartridges, of any firearm or explosive solely as props for motion picture film or television program production when authorized by the chief of police of the appropriate county pursuant to section 134-2.5 and not in violation of federal law.

Haw. Rev. Stat. § 134-23

[§ 134-231]. Place to keep loaded firearms other than pistols and revolvers; penalty

(a) Except as provided in section 134-5, all firearms shall be confined to the possessor's place of business, residence, or sojourn; provided that it shall be lawful to carry unloaded firearms in an enclosed container from the place of purchase to the purchaser's place of business, residence, or sojourn, or between these places upon change of place of business, residence, or sojourn, or between these places and the following:

(1) A place of repair;

(2) A target range;

(3) A licensed dealer's place of business;

(4) An organized, scheduled firearms show or exhibit;

(5) A place of formal hunter or firearm use training or instruction; or

(6) A police station.

"Enclosed container" means a rigidly constructed receptacle, or a commercially manufactured gun case, or the equivalent thereof that completely encloses the firearm.

(b) Any person violating this section by carrying or possessing a loaded firearm other than a pistol or revolver shall be guilty of a class B felony.

Haw. Rev. Stat. § 183D-22

§ 183D-22. Application and issuance of licenses; fees

(a) A hunting license shall be issued to a person by an agent of the department upon:

(1) Written application in the form prescribed by the department;

(2) Payment of a hunting license fee or any other hunting related fee the board may require as provided in this chapter, except that payment of the fee shall be waived for any employee of the department who is required to have a license to carry out duties of the department; and

(3) Showing of a valid Hawaii hunter education certificate or written exemption issued under section 183D-28 or upon showing proof of completion of an approved hunter education course described in section 183D-28(b)(2).

The application shall require a statement under oath of the applicant's name, address, domicile or residence, length of residence in the State, age, race, height, weight, and color of hair and eyes.

(b) The hunting license fee shall be:

(1) $10 for any person who has resided in the State for one year or longer, or who is a member of the armed forced of the United States on active duty and the spouse and child thereof, or who elects to forgo the exemption provided in paragraph (4);

(2) $95 for all other persons;

(3) $50 for a three-day period and $95 for a seven-day period for hunting on a private and commercial shooting preserve for persons who do not meet the requirements of paragraph (1) or (4); and

(4) Free to all Hawaii residents sixty-five years of age or older and to all persons with Hansen's disease who are residents of Kalaupapa, Molokai.

(c) The department shall suspend, refuse to renew, reinstate, or restore, or deny any license if the department has received certification from the child support enforcement agency pursuant to section 576D-13 that the licensee or applicant is not in compliance with an order of support or has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding. The department shall

issue, renew, restore, or reinstate such a license only upon receipt of an authorization from the child support enforcement agency, the office of child support hearings, or the family court.

Haw. Rev. Stat. § 183D-28

§ 183D-28. Hunter education program

(a) The department shall establish a hunter education program to provide instruction in hunter safety, principles of conservation, and sportsmanship. Upon successful completion of the program, the department shall issue to the graduate a hunter education certificate which shall be valid for the life of the person. This certification shall be rescinded by judicial action upon the conviction of a wildlife and/or firearms violation. No person shall be eligible for a hunting license unless the person possesses a valid hunter education certificate or meets the requirements for exemption provided in subsection (b)(2), and is either:

(1) Born after December 31, 1971; or

(2) Born before January 1, 1972, and has never been issued a hunting license in the State.

(b) A person who meets the minimum age requirements adopted pursuant to subsection (c) shall be exempt from the requirements of subsection (a) if the person:

(1) Was born before January 1, 1972, and at one time possessed a hunting license issued by the State; provided that the person shows satisfactory proof to the department that the person had possessed the hunting license;

(2) Has successfully completed a course or program of hunter education and safety that is approved by the International Hunter Education Association and meets the requirements of Chapter 12 of the United States Fish and Wildlife Service Federal Aid Manual, as revised; provided that the person shows satisfactory proof in the form of a certificate, wallet card, or other document issued by a state, province, or country evidencing successful completion of the course or program; or

(3) Obtains a three-day or a seven-day hunting license pursuant to section 183D-22(b)(3) to hunt on a private and commercial shooting preserve, accompanied by a hunting guide licensed pursuant to section 183D-25.5; provided that:

(A) All hunting shall be conducted on a licensed private and commercial shooting preserve and under the direction of a hunting guide who has successfully completed a Hawaii hunter education certification course and meets the requirements of section 183D-25.5;

(B) Prior to licensing, a hunter safety class and field training session shall be provided to the licensee that includes hunter safety and hunting equipment use and safe discharge;

(C) While hunting under these provisions, a hunting guide shall guide not more than two unaccompanied clients at any time while hunting;

(D) All hunting guides and clients shall wear a hunter safety blaze-orange outer garment while hunting;

(E) The private and commercial shooting preserve operator, hunting guides, and clients agree to be subject to inspection while engaged in hunting activities by department representatives or authorized law enforcement officers; and

(F) The private and commercial shooting preserve owner and operator assume responsibility and liability for public and hunter safety while operating under these provisions and agree to report any injuries to the department.

Upon the application and satisfaction of the requirements of paragraph (1), the department shall issue a written exemption that shall be valid for the life of the person. The department shall develop and maintain a list of approved hunter education courses described in paragraph (2) for reference by the public and license agents.

(c) The department, by rules adopted pursuant to chapter 91, shall establish minimum age requirements for issuance of the hunter education certificate, or the exemption therefrom, required to obtain a hunting license pursuant to section 183D-22(a)(3).

(d) The department may establish a hunter education officer position to administer the program, outline all phases of instruction, conduct general supervision of individual programs, and distribute information on the program, or may contract the program to a qualified organization.

(e) The department may construct, operate, and maintain public outdoor and indoor target ranges for the program.

(f) The department shall prepare reports as may be necessary to seek approval under Public Law 91-503 for federal assistance in this program of hunter safety, conservation, and sportsmanship.

ENGLISH LAWS

4 *Calendar of the Close Rolls, Edward II, 1323-1327*, at 560 (Apr. 28, 1326, Kenilworth) (H.C. Maxwell-Lyte ed., 1892)

* * *

April 28. Kenilworth.

To the sheriff of Huntingdon. Whereas the king lately caused proclamation to be made throughout his realm prohibiting any one going armed without his licence, except the keepers of his peace, sheriffs, and other ministers, willing that any one doing the contrary should be taken by the sheriff or bailiffs or the keepers of his peace and delivered to the nearest gaols, to remain therein until the king ordered his will concerning them; the king now learns that Thomas de Eye, John Grubbe, and Richard le Orfreysier, who are not, it is said, keepers of his peace or other ministers of his, frequently go about armed with aketons, bacinets, and other arms by day and by night in towns, fairs, markets, and other public and private places, committing many evil deeds, contrary to the proclamation and inhibition aforesaid; for which a remedy is not applied by the sheriff or the keepers of peace, to the king's surprise; he therefore orders the sheriff to cause inquisition to be made concerning the premises, and to take and imprison until further orders all those found guilty of the premises and all those whom he shall find hereafter going about armed in such arms anywhere in his bailiwick, certifying the king without delay of his proceedings in this behalf under his seal, according to the form of the proclamation aforesaid. [Fædera.]

* * *

Statute of Northampton, 2 Edw. 3, c. 3 (1328)

ITEM, it is enacted, That no Man great nor small, of what Condition soever he be, except the King's Servants in his presence, and his Ministers in executing of the King's Precepts, or of their Office, and such as be in their Company assisting them, and also [upon a Cry made for Arms to keep the Peace, and the same in such places where such Acts happen,[3]] be so hardy to come before the King's Justices, or other of the King's Ministers doing their office, with force and arms, nor bring no force in affray of the peace, nor to go nor ride armed by night nor by day, in Fairs, Markets, nor in the presence of the Justices or other Ministers, nor in no part elsewhere, upon pain to forfeit their Armour to the King, and their Bodies to Prison at the King's pleasure. And that the King's Justices in their presence, Sheriffs, and other Ministers([4]) in their Bailiwicks, Lords of Franchises, and their Bailiffs in the same, and Mayors and Bailiffs of Cities and Boroughs, within the same Cities and Boroughs, and Borough-Holders, Constables, and Wardens of the Peace within their Wards, shall have Power to execute this Act. And that the Justices assigned, at their coming down into the Country, shall have Power to enquire how such Officers and Lords have exercised their Offices in this Case, and to punish them whom they find that have not done that which pertained to their Office.

[3] *upon a Proclamation of Deeds of Arms in time of Peace, and that in Places where such Deeds are to be done*,—See Lib. Rub.

[4] *of the King*

By the Quenne Elizabeth I: A Proclamation Against the Carriage of Dags, and for Reformation of Some Other Great Disorders (London, Christopher Barker, 1594)

The Queenes Majestie hearing by credible report, that there are great disorders lately growen in sundry partes of her Realme, and specially in and about her Citie of London, and in the usual high wayes towards the said citie, and to her Majesties Court, by common carrying of Dags, otherwise called Pistols, to the terrour of all people professing to travel and live peaceably, and which his most to her Majesties griefe, by the usage whereof, certaine persons have bene of late in sundry places slaine with such pieces: Hereupon hath called to her remembrance, that she hath by former proclamations published, straightly forbidden the carrying, not only of such Dagges, but also of other longer pieces, as Calivers asuch like, in places and times not allowable for service

* * *

By the Quenne Elizabeth I: A Proclamation Prohibiting the Use And Cariage of Dagges, Birding Pieces, And Other Gunnes, Contrary To Law (London, Christopher Barker, 1600)

Whereas divers good Lawes and Statutes have beene heretofore made and published, straightly prohibiting and forbidding the use of carying and shooting in Gunnes by common and ordinary persons, and in other sort and maner then by the sayd Lawes is permitted and prescribed, by reason that many great disorders, outrages, and hainous mischiefs were found to ensue and proceed of the sayd common abuse of carying of Gunnes, and shoting in them: Forasmuch as the Queenes most excellent Majesty hath bene truely informed by the complaint of sundry her good and loving Subjects, that (notwithstanding the aforesayd Lawes (& the penalties by the same imposed) great and manifolde disorders, insolencies, robberies, and murders have growen, and bene committed within this Realme and other her Majesties Dominions, by the common carying and use of Gunnes (contrary to the sayd Statutes) and especially of Pistols, Birding pieces, and other like short pieces and small shot

* * *

Her Majesty therefore greatly misliking the slacke execution of the Lawes aforesayd, and minding the amendment and preventing of such abuses and mischiefes, as have ensued, and may ensue heerafter upon neglect of the sayd Lawes, hath given order and commandement for the publishing and proclaiming of her will and pleasure in that behalf, and doeth heereby freightly charge and command all Justices of the Peace to take straight order for the due execution of the Lawes aforesayd, according to the true intent and meaning of the same, and for severe punishment (according to the sayd Lawes) of all offenders in that behalf

* * *

English Declaration of Rights, 1 W. & M., c. 2, § 7, in 3 Eng. Stat. at Large 441 (1689)

An Act declareing the Rights and Liberties of the Subject and Setleing the Succession of the Crowne

Whereas the Lords Spirituall and Temporall and Comons assembled at Westminster lawfully fully and freely representing all the Estates of the People of this Realme did upon the thirteenth day of February in the yeare of our Lord one thousand six hundred eighty eight present unto their Majesties then called and known by the Names and Stile of William and Mary Prince and Princesse of Orange being present in their proper Persons a certaine Declaration in Writeing made by the said Lords and Comons in the Words following viz

* * *

And thereupon the said Lords Spirituall and Temporall and Commons pursuant to their respective Letters and Elections being now assembled in a full and free Representative of this Nation takeing into their most serious Consideration the best meanes for attaining the Ends aforesaid Doe in the first place (as their Auncestors in like Case have usually done) for the Vindicating and Asserting their auntient Rights and Liberties, Declare

* * *

That the Subjects which are Protestants may have Arms for their Defence suitable to their Conditions and as allowed by Law.

* * *

COLONIAL LAWS

1686 N.J. Laws 289-290, ch. 9

Chap. IX.
An Act against wearing Swords, &c.

WHEREAS there hath been great complaint by the inhabitants of this Province, that several persons wearing swords, daggers, pistols, dirks, stilladoes, skeins, or any other unusual or unlawful weapons, by reason of which several persons in this Province, receive great abuses, and put in fear and quarrels, and challenges made, to the great abuse of the inhabitants of this Province. *Be it therefore enacted* by the Governor, and Council, and Deputies now met in General Assembly, and by authority of the same, that no person or persons within this Province, presume to send any challenge in writing, by word of mouth, or message, to any person to fight, upon pain of being imprisoned during the space of six months, without bail or mainprize, and forfeit ten pounds; and whosoever shall except of such challenge, and not discover the same to the Governor, or some publick officer of the peace, shall forfeit the sum of ten pounds; the one moiety of the said forfeiture to be paid unto the Treasurer for the time being, for the public use of the Province, and the other moiety to such person or persons as shall discover the same, and make proof thereof in any court of record within this Province, to be recovered by the usual action of debt, in any of the said courts. *And be it further enacted* by the authority aforesaid, that no person or persons after publication hereof, shall presume privately to wear any pocket pistol, skeines, stilladers, daggers or dirks, or other unusual or unlawful weapons within this Province, upon penalty for the first offence five pounds, and to be committed by any justice of the peace, his warrant before whom proof thereof shall be Made, who is hereby authorized to enquire of and proceed in the same, and keep in custody till he hath paid the said five pounds, one half to the public treasury for the use of this Province, and the other half to the informer: And if such person shall again offend against this law, he shall be in like manner committed (upon proof thereof before any justice of the peace) to the common gaol, there to remain till the next sessions, and upon conviction thereof by verdict of twelve men, shall receive judgment to be in prison six month, and pay ten pounds for the use aforesaid. *And be it further enacted* by the authority aforesaid, that no planter shall ride or go

armed with sword, pistol, or dagger, upon the penalty of five pounds, to be levied as aforesaid, excepting all officers, civil and military, and soldiers while in actual service, as also all strangers, travelling upon their lawful occasions thro' this Province, behaving themselves peaceably.

***An Act for the Punishing of Criminal Offenders*, Mass. Prov. Laws ch. XI, § 6 (1692)**

* * *

FURTHER it is Enacted by the Authority aforesaid, That every Justice of the Peace in the County where the Offence is committed, may cause to be said and arrested all Affrayers Rioters, Disturbers, or Breakers of the Peace, and such as shall ride or go armed Offensively before any of Their Majesties Justices, or other Their Officers or Ministers doing their Office, or elsewhere by Night or by Day, in Fear or Affray of Their Majesties Liege People ; and such others as shall utter any Menaces or Threatning Speeches ; and upon View of such Justice or Justices, Confession of the Party, or other legal Conviction of any such Offence, shall commit the Offender to Prison, until he find Sureties for the Peace and good Behaviour, and seize and take away his Armour or Weapons, and shall cause them to be apprized and answere to the King as forfeited : Any may further punish the Breach of the Peace, in any Person that shall smite or strike another, by Fine to the King, not exceeding Twenty Shillings, and require Bond with Sureties for the Peace, or bind the Offender over to answer it at the next Sessions of the Peace, as the Nature or Circumstance to the Offence may be ; and may make Enquiry of forcible Entry and Detainer, and cause the same to be removed, and make out Hue and Cries after Runaway Servants, Thieves and other Criminals.

* * *

1696 N.H. Laws 15

An Act for the Punishing Criminal Offenders

* * *

***Further it is Enacted by the Authority aforesaid*,** That every Justice of the Peace within this Province, may cause to be Stayed and Arrested all Affrayers, Rioters, Disturbers or Breakers of the Peace, or any other that shall go Armed offensively, to put His Majesty's Subjects in fear by threatning Speeches; and upon view of such Justice, confession of the Party, or legal proof of any such offence, the Justice may commit him to Prison, until he the offender find such Sureties as is required for his good behaviour, and cause his Arms or Weapons to be taken away, and apprized and answered to His Majesty, as forfeited: And may further punish the Breach of the Peace, in any person that shall smite or strike another by fine to the King, not exceeding *Twenty Shillings*, or require Bond for their good Behaviour, and to pay all just costs; As also may make out Hue and Cry after Run-away-Servants, Thieves, and other Criminals.

* * *

1741 N.C. Sess. Laws 131

CHAP. V.

An Act, to appoint Constables.

I. TO the End that Constables may be regularly appointed, throughout this Government;

II. WE pray that it may be Enacted, *And be it Enacted, by his Excellency* Gabriel Johnston, *Esq; Governor, by and with the Advice and Consent of his Majesty's Council, and the General Assembly of this Province, and it is hereby Enacted, by the Authority of the same*, That the Courts of the several Counties which now are, or hereafter shall be, within this Government, shall, at the Court to be holden for each respective County in this Government, next after the First Day of January, Yearly, and every Year, nominate and appoint as many Persons of their said County as they shall judge necessary, to be Constables within the same, for the then ensuing Year; which Constables so appointed, shall have the following Oath administered to them; that is to say,

YOU s*hall swear, That you will well and truly serve our Sovereign Lord the King, in the Office of a Constable; you shall see and cause his Majesty's Peace to be well and duly preserved and kept, according to your Power; you shall arrest all such Persons as; in your Sight, shall ride or go armed offensively, or shall commit or make any Riot, Affray, or other Breach of his Majesty's Peace; you shall do your best Endeavour, upon Complaint to you made, to apprehend all Fellons and Rioters, or Persons riotously assembled; and if any such Offenders shall make Resistance, with Force, you shall make Hue and Cry, and shall pursue them, according to Law*

* * *

1759 N.H. Laws 1

AN ACT FOR ESTABLISHING AND REGULATING COURTS OF PUBLIC JUSTICE WITHIN THIS PROVINCE. — PASS'D 11TH OF WM. 3. WITH ADDITIONAL PARAGRAPHS OF OTHER ACTS RELATIVE THERETO.

Whereas the establishing and regulating courts of justice, doth very much tend to the honour and dignity of the crown, and to the ease and benefit of the Subject:

Be it therefore Enacted by the Governor, Council, and Representatives, in General Assembly convened, and by the Authority of the same:

That every justice of the peace in this province, is hereby authorized and impower'd, to take cognizance of, hear, try, and determine, any criminal offence against any penal law not exceeding the sum of forty shillings, and to issue all necessary process, and award execution thereon with legal cost; as well as in all other cases where he is, or shall be so authorized by particular laws. But any person against whom such sentence shall be given, by one or more justices of the peace, out of the court of general sessions of the peace, may appeal from the same, to the next court of general sessions of the peace, to be held in and for said province; the appellant recognizing with sureties, in a reasonable sum, not exceeding five pounds, for his appearance at the court appealed to, and prosecuting his appeal there with effect, and for performing and abiding the order or sentence of said court thereon, which shall be final; and in the mean time to be of the good behaviour. The appellant in such cases is to observe the same rules in bringing forward the appeal, as is hereafter directed in civil cases, and to pay the same fee for entering such appeal; and to the jury, if it shall be tried by them, as is paid for cases so tried at the inferior court — *Provided* such liberty of appealing shall not be construed to extend to such cases as by the particular laws aforesaid, are otherwise order'd.

And every justice of the peace within this province, may cause to be stayed and arrested, all affrayers, rioters, disturbers or breakers of the peace, or any other who shall go armed offensively, or put his Majesty's subjects in fear, by menaces or threatning speeches: And upon view of such justice, confession of the offender, or legal proof of any such offence, the justice may commit the offender to prison,

until he or she find such sureties for the peace and good behaviour, as is required, according to the aggravations of the offence; and cause the arms or weapons so used by the offender, to be taken away, which shall be forfeited and sold for his Majesty's use. And may also punish the breach of the peace in any person, who shall smite, or strike another, by fine to the King, not exceeding twenty shillings; and require bond with sureties for the peace, till the next court of general sessions of the peace, or may bind the offender over to answer for said offence at said court, as the nature and circumstances of the offence may require.

* * *

1786 Va. Laws 33, ch. 21

CHAP. XXI.

An Act forbidding and punishing Affrays

[Passed the 27th of November, 1786]

BE *it enacted by the General Assembly*, That no man, great nor small, of what condition forever he be, except the Ministers of Justice in executing the precepts of the Courts of Justice, or in executing of their office, and such as be in their company assisting them, be so hardy to come before the Justices of any Court, or either of their Ministers of Justice, doing their office, with force and arms, on pain, to forfeit their armour to the Commonwealth, and their bodies to prison, at the pleasure of a Court; nor go nor ride armed by night nor by day, in fairs or markets, or in other places, in terror of the Country, upon pain of being arrested and committed to prison by any Justice on his own view, or proof by others, there to abide for so long a time as a Jury, to be sworn for that purpose by the said Justice, shall direct, and in like manner to forfeit his armour to the Commonwealth; but no person shall be imprisoned for such offence by a longer space of time than one month.

Md. Declaration of Rights art. 3 (1776)

A DECLARATION OF RIGHTS,
Agreed to by the DELEGATES of MARYLAND,
in free and full CONVENTION assembled.

The parliament of Great-Britain, by a declaratory act, having assumed a right to make laws to bind the colonies in all cases whatsoever, and in pursuance of such claim endeavoured by force of arms to subjugate the United Colonies to an unconditional submission to their will and power, and having at length constrained them to declare themselves independent states, and to assume government under the authority of the people, therefore, We, the delegates of Maryland, in free and full convention assembled, taking into our most serious consideration the best means of establishing a good constitution in this state, for the sure foundation and more permanent security thereof, declare,

* * *

3. That the inhabitants of Maryland are entitled to the common law of England, and the trial by jury, according to the course of that law, and to the benefit of such of the English statutes, as existed at the time of their first emigration, and which y experience have been found applicable to their local and other circumstances, and of such others as have been made in England, or Great Britain, and have been introduced, used, and practiced, by the courts of law or equity; and also to all acts of assembly in force on the first of June seventeen hundred and seventy four, except such as many have since expired, or have been, or may be altered by acts of Convention, or this Declaration of Rights, subject nevertheless to the revision of, and amendment or repeal by, the legislature of this state; and the inhabitants of Maryland are also entitled to all property derived to them from or under the charter ganted [sic] by his majesty Charles the first to Cæcilius Calvert baron of Baltimore.

* * *

PRE-CIVIL WAR LEGISLATION

1821 Tenn. Pub. Acts 15-16, ch. XIII

CHAPTER XIII.

An Act to prevent the wearing of dangerous and unlawful weapons.

Be it enacted by the General Assembly of the State of Tennessee, That from and after the passage of this act, each and every person so degrading himself, by carrying a dirk, sword cane, French knife, Spanish stiletto, belt or pocket pistols, either public or private, shall pay a fine of five dollars for every such offence, which may be recovered by warrant before any Justice of the Peace, in the name of the county and for its use, in which the offence may have been committed ; and it shall be the duty of a Justice to issue a warrant on the application on oath of any person applying ; and that it shall be the duty of every Judge, Justice of the Peace, Sheriff, Coroner and Constable within this state to see that this act shall have its full effect : *Provided nevertheless*, That nothing herein contained shall affect an person that may carry a knife or any size in a conspicuous manner on the strop of a shot pouch, or any person that may be on a journey to any place out of his county or state.

Mass. Rev. Stat. ch. 134, §§ 3-4, 6, 16 (1836)

CHAPTER 134.

OF PROCEEDINGS TO PREVENT THE COMMISSION OF CRIMES

* * *

SECT. 3. If, upon examination, it shall appear that there is just cause to fear that any such offence may be committed, the magistrate shall issue a warrant under his hand, reciting the substance of the complaint, and requiring the officer, to whom it may be directed, forthwith to apprehend the person complained of, and bring him before such magistrate, or some other magistrate or court having jurisdiction of the cause.

SECT. 4. When the party complained of is brought before the magistrate, he shall be heard in his defence, and he may be required to enter into a recognizance, with sufficient sureties, in such sum as the magistrate shall direct, to keep the peace towards all the people of this Commonwealth, and especially towards the person requiring such security, for such term as the magistrate may order, not exceeding six months, but shall not be bound over to the next court, unless he is also charged with some other offence, for which he ought to be held to answer at such court.

* * *

SECT. 6. If the person, so ordered to recognize, shall refuse or neglect to comply with such order, the magistrate shall commit him to the county jail, house of correction, or house of industry, during the period for which he was required to give security, or until he shall so recognize; stating, in the warrant, the cause of commitment, with the sum and the time for which security was required.

* * *

SECT. 16. If any person shall go armed with a dirk, dagger, sword, pistol, or other offensive dangerous weapon, without reasonable cause to fear an assault or other injury, or violence to his person, or to his family or property, he may, on complaint of any person having reasonable cause to fear an injury, or breach of the peace, be required to find sureties for keeping the peace, for a terms not exceeding six months, with the right of appealing as before provided.

* * *

Mich. Rev. Stat. pt. 4, tit. II, ch. 1, § 16 (1838)

CHAPTER 1.

OF PROCEEDINGS TO PREVENT THE COMMISSION OF CRIME.

* * *

SEC. 16. If any person shall go armed with a dirk, dagger, sword, pistol, or other offensive and dangerous weapon, without reasonable cause to fear an assault or other injury, or violence to his person, or to his family or property, he may, on complaint of any person having reasonable cause to fear an injury, or breach of the peace, be required to find sureties for keeping the peace, for a term not exceeding six months, with the right of appealing as before provided.

* * *

Me. Rev. Stat. ch. 169, § 16 (1841)

CHAPTER 169.

OF PROCEEDINGS FOR PREVENTION OF CRIMES.

* * *

SECT. 16. Any person, going armed with any dirk, dagger, sword, pistol, or other offensive and dangerous weapon, without a reasonable cause to fear an assault on himself, or any of his family or property, may, on the complaint of any person having cause to fear an injury or breach of the peace, be required to find sureties for keeping the peace for a term, not exceeding one year, with the right of appeal as before provided.

* * *

1847 Va. Acts 129, 3 Va. Crim. Code ch. 14, § 16

CHAP. XIV.

OF PROCEEDINGS TO PREVENT THE COMMISSION OF CRIMES.

* * *

16. If any person shall go armed with any offensive or dangerous weapon, without reasonable cause to fear an assault or other injury, or violence to his person, or to his family or property, be may be required to find sureties for keeping the pence for a term not exceeding twelve months, with the right of appealing as before provided.

* * *

Wis. Rev. Stat. ch. 144, § 18 (1849)

CHAPTER 144.

OF PROCEEDINGS TO PREVENT THE COMMISSION OF CRIMES.

* * *

SEC. 18. If any person shall go armed with a dirk, dagger, sword, pistol or pistols, or other offensive and dangerous weapon, without reasonable cause to fear an assault or other injury, or violence to his person, or to his family, or property, he may, on complaint of any other person having reasonable cause to fear an injury or breach of the peace, be required to find sureties for keeping the peace for a term not exceeding six months, with the right of appealing as before provided.

* * *

Minn. Rev. Stat. ch. 112, § 18 (1851)

CHAPTER 112.

OF PROCEEDINGS TO PREVENT THE COMMISSION OF CRIMES.

* * *

SEC. 18. If any person shall go armed with a dirk, dagger, sword, pistol or pistols, or other offensive and dangerous weapon, without reasonable cause to fear an assault or other injury or violence to his person, or to his family, or property, he may, on complaint of any other person having reasonable cause to fear an injury or breach of the peace, be required to find sureties for keeping the peace, for a term not exceeding six months, with the right of appealing as before provided.

* * *

1851 Pa. Laws 382, § 4

No. 239.

AN ACT

Authorizing Francis Patrick Kenrick, Bishop of Philadelphia, to convey certain real estate in the borough of York, and a supplement to the charter of the said borough.

* * *

SECTION 4. That any person who shall wilfully and maliciously carry any pistol, gun, dirk knife, slung shot, or deadly weapon in said borough of York, shall be deemed guilty of felony, and being thereof convicted shall be sentenced to undergo an imprisonment at hard labor for a term not less than six months nor more than one year, and shall give security for future good behavior for such sum and for such time as the court before whom such conviction shall take place may fix; and any person or persons who shall otherwise offend against the provisions of this section shall be fined in a sum not exceeding one hundred dollars, for the use of the borough of York, or be imprisoned for a term not exceeding one year, or both at the discretion of the court, or may be held to bail for future good behavior.

* * *

Del. Rev. Stat. tit. XV, ch. 97, § 13 (1852)

CHAPTER 97.

GENERAL POWERS, DUTIES AND JURISDICTION OF JUSTICES IN CRIMINAL CASES.

* * *

SECT. 13. Any justice of the peace may also cause to be arrested and bind to surety of the peace all affrayers, rioters, breakers and disturbers of the peace, and all who go armed offensively to the terror of the people, or are otherwise disorderly and dangerous.

* * *

Or. Stat. ch. 16, § 17 (1853)

CHAPTER XVI.

PROCEEDINGS TO PREVENT COMMISSION OF CRIMES.

* * *

SEC. 17. If any person shall go armed with a dirk, dagger, sword, pistol, or other offensive and dangerous weapon, without reasonable cause to fear an assault, injury, or other violence to his person, or to his family or property, he may, on complaint of any other person, having reasonable cause to fear an injury, or breach of the peace, be required to find sureties for keeping the peace for a term not exceeding six months, with the right of appealing as before provided.

* * *

1860 N.M. Laws 94-98, §§ 1-2, 6

An Act prohibiting the carrying of Weapons, concealed or otherwise.

Be it enacted by the Legislative Assembly of the Territory of New Mexico:

SECTION 1. That, from and after the passage of this act, it shall be unlawful for any person to carry concealed weapons on their persons, of any class of pistols whatever, bowie knife (cuchillo de cinto), Arkansas toothpick, Spanish dagger, slung-shot, or any other deadly weapon, of whatever class or description they may be, no matter by what name they may be known or called, under the penalties and punishment which shall hereinafter be described.

SEC. 2. Be it further enacted: That if any person shall carry about his person, either concealed or otherwise, any deadly weapon of the class and description mentioned in the preceding section, the person or persons who shall so offend, on conviction, which shall be by indictment in the district court, shall be fined in any sum not less than fifty dollars, nor more than one hundred dollars, at the discretion of the court trying the cause, on the first conviction under this act; and for the second conviction, the party convicted shall be imprisoned in the county jail for a term of not less than three months, nor for more than one year, also at the discretion of the court trying the cause.

* * *

SEC. 6. Be it further enacted: That none of the provisions of this act shall be applied to the sheriffs, their deputies, or constables, in the execution of any process of the courts, or to conductors of the mail, or to persons when actually on trips from one town to another in this Territory; *provided*, that nothing in this act shall be so construed as to permit the conductors of mails, or travellers, to carry any deadly weapons, as mentioned in the first section of this act, on their persons, after they shall have arrived at the town or settlement.

* * *

1860 Pa. Laws 432, § 6

Surety of the peace

If any person shall threaten the person of another to wound, kill or destroy him, or to do him any harm in person or estate, and the person threatened shall appear before a justice of the peace, and attest, on oath or affirmation, that he believes that, by such threatening, he is in danger of being hurt in body or estate, such person so threatening as aforesaid, shall be bound over, with one sufficient surety, to appear at the next sessions, according to law, and in the meantime to be of his good behavior, and keep the peace toward all citizens of this commonwealth. If any person, not being an officer on duty in the military or naval service of the state or of the United States, shall go armed with a dirk, dagger, sword or pistol, or other offensive or dangerous weapon, without reasonable cause to fear an assault or other injury or violence to his family, person or property, he may, on complaint of any person having reasonable cause to fear a breach of the peace therefrom, be required to find surety of the peace as aforesaid.

POST-CIVIL WAR LEGISLATION

1865/2 Ill. Priv. Laws 515, § 6

AN ACT to incorporate the town of Nashville.

* * *

§ 6. The board of trustees shall have power to appoint or provide for the election of all officers deemed necessary of trustees to conduct the business of the corporation; to fix and regulate the fees and salaries of all officers of the corporation; to levy and collect taxes upon all real and personal estate within the limits of the corporation, not exceeding one percent of the assessed value thereof, subject to taxation; to make regulations to secure the general health of the inhabitants of said town; to prevent and remove nuisances; to restrain cattle, horses, sheep, swine and dogs from running at large; to establish night watches, erect lamps in the streets and lighting the same; to erect and keep in repair bridges; to license and tax merchants, groceries, auctioneers, taverns, theatrical and other shows, beer houses, billiard tables and any other amusements; to restrain and prohibit gaming, gaming houses, bawdy houses and disorderly houses generally; to prevent the shooting of fire-arms and carrying deadly weapons within the limits of said corporation; to establish and erect markets and maintain the same; to open and keep in repair and clear of obstructions the streets, avenues, alleys, drains, sewers and side-walks of said town; to establish and regulate a fire department and provide for the extinguishment of fires in said town; to dig wells and erect pumps in the streets for the convenience of the inhabitants, or construct acqueducts to supply the town with water; to regulate the storage of gunpowder and other combustible materials; to regulate the police of the town generally; to establish and enforce quarantine laws; to receive, collect and appropriate any and all money that may arise from the granting of grocery or other licenses, fines and forfeitures, for breach of any ordinances of said town; to pass all such ordinances from time to time as may be necessary to carry into effect all the provisions and powers granted by this act, and impose such fines for the breach of any ordinance or ordinances passed by the board of trustees by virtue of this act: Provided, that all ordinances passed by said board of trustees shall be published by said board of trustees ten days before they shall take effect, such publication to be in some newspaper published in said town, or by posting up a written copy of such ordinance or ordinances in some public place in said town; to regulate the speed with which horses and other animals may be rode or driven within said town; to provide for the trial and punishment of persons engaged in assaults, assaults and batteries, affrays,

riots and disturbances of the peace within the limits of said town; to provide that such punishment may be inflicted for any offense against the ordinances and laws of the corporation as is or may be provided by law for the punishment of persons guilty of like offenses against the laws of the state: Provided, that no person shall be deprived of the right of trial by jury in any case when such person would be entitled to trial by jury for like offense against the law of the state; to enforce the payment of all fines assessed for any violation of the ordinances of said town in the same manner that fines are collected for violation of state laws for like offenses; to provide by ordinance for imprisonment in the jail of Washington county of any person against whom any fine may be assessed and judgment recovered therefor in favor of said corporation, or to provide that any person against whom any such judgment may be recovered, instead of being committed to jail, shall labor on the streets, roads, alleys or side-walks, under direction of the street commissioner, until the whole of such fine and cost are fully paid at the same rate per day as may be required as a forfeiture for a failure to perform street or road labor; to declare by a vote of the board of trustees the seat of any member of said board vacant upon the removal of such trustee from the limits of the corporation, or absence from the meetings of the board for six weeks at any one time, and to provide for filling such vacancy, and to declare the office of any town officer vacant and provide for filling such vacancy: Provided, no officer shall be removed from office except for inefficiency or neglect of duty; to do and perform all acts and enjoy all such powers as may be done and are enjoyed by towns incorporated under the general law of the state of Illinois, entitled "Cities and Towns," and where no special provisions are made in this act for proceedings to enforce powers granted under this clause, the proceedings to enforce rights conferred shall be the same provided for by said general law entitled "Cities and Towns."

* * *

1867 Kan. Sess. Laws 25, § 1

CHAPTER XII.

ARMS.—PREVENT CARRYING OF.

AN ACT to prevent the carrying of Deadly Weapons.

Be it enacted by the Legislature of the Stale of Kansas:

SECTION 1. Any person who is not engaged in any legitimate business, any person under the influence of intoxicating drink, and any person who has ever borne arms against the Government of the United States, who shall be found within the limits of this State, carrying on his person a pistol, bowie-knife, dirk or other deadly weapon, shall be subject to arrest upon charge of misdemeanor; and upon conviction shall be fined in a sum not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding three months, or both, at the discretion of the court.

* * *

1871 Tex. Gen. Laws 25, §§ 1-2

CHAPTER XXXIV.

AN ACT TO REGULATE THE KEEPING AND BEARING OF DEADLY WEAPONS.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That any person carrying on or about his person, saddle, or in his saddle bags, any pistol, dirk, dagger, slung-shot, sword-cane, spear, brass-knuckles, bowie-knife, or any other kind of knife manufactured or sold for the purposes of offense or defense, unless he has reasonable grounds for fearing an unlawful attack on his person, and that such ground of attack shall be immediate and pressing; or unless having or carrying the same on or about his person for the lawful defense of the State, as a militiaman in actual service, or as a peace officer or policeman, shall be guilty of a misdemeanor, and, on conviction thereof shall, for the first offense, be punished by fine of not less than twenty-five nor more than one hundred dollars, and shall forfeit to the county the weapon or weapons so found on or about his person; and for every subsequent offense may, in addition to such fine and forfeiture, be imprisoned in the county jail for a term not exceeding sixty days; and in every case of fine under this section the fines imposed and collected shall go into the treasury of the county in which they may have been imposed; *provided,* that this section shall not be so construed as to prohibit any person from keeping or bearing arms on his or her own premises, or at his or her own place of business, nor to prohibit sheriffs or other revenue officers, and other civil officers, from keeping or bearing arms while engaged in the discharge of their official duties, nor to prohibit persons traveling in the State from keeping or carrying arms with their baggage; *provided further,* that members of the Legislature shall not be included under the term "civil officers" as used in this act.

SEC. 2. Any person charged under the first section of this act, who may offer to prove, by way of defense, that he was in danger of an attack on his person, or unlawful interference with his property, shall be required to show that such danger was immediate and pressing, and was of such a nature as to alarm a person of ordinary courage; and that the weapon so carried was borne openly and not concealed beneath the clothing; and if it shall appear that this danger had its origin in a difficulty first commenced by the accused, it shall not be considered as a legal defense.

* * *

1875 Ark. Acts 156-157

AN ACT entitled an act to prohibit the carrying of side-arms, and other deadly weapon.

SECTION

1. Penalty for carrying weapons; exceptions to same.
2. Disposal of fines collected under this act.
3. Penalty of Justices of the Peace for non-observance of this act.
4. Penalty on other officers.
5. Conflicting laws repealed sad this act in force ninety days after passage.

Be it enacted by the General Assembly of the State of Arkansas:

SECTION 1. That any person who shall wear or carry any pistol of any kind whatever, or any dirk, butcher or bowie knife, or a sword or a spear in a cane, brass or metal knucke, or razor, as a weapon, shall be adjudged guilty of a misdemeanor, and upon conviction thereof, in the county in which said offense shall have been committed, shall be fined in any sum not less than twenty-five nor more than one hundred dollars, to be recovered by presentment or indictment in the Circuit Court, or before any Justice of the Peace of the county wherein such offense shall have been committed; *Provided,* That nothing herein contained shall be so construed as to prohibit any person wearing or carrying any weapon aforesaid on his own premises; or to prohibit persons traveling through the country, carrying such weapons while on a journey with their baggage, or to prohibit any officer of the law wearing or carrying such weapons when engaged in the discharge of his official duties, or any person summoned by any such officer to assist in the execution of any legal process, or any private person legally authorized to execute any legal process to him directed.

SEC. 2. That the fines collected by any officer, under and by virtue of this act, shall be immediately paid into the county treasury by the officer collecting the same, and he shall take from the Treasurer duplicate receipts therefor, one of which he shall file in the Clerk's office of his county; and the County Treasurer shall hold the fines collected and paid over as aforesaid as part and parcel of the school fund of his county, and shall be responsible on his official bond for the safe-keeping and disbursement of the same.

SEC. 3. That any Justice of the Peace in this State, who, from his own knowledge or from legal information received, knows, or has reasonable grounds to believe, any person guilty of the offense in section one, of this act described, and shall fail or refuse to proceed against such person, shall be adjudged guilty of a nonfeasance in office, and upon conviction thereof shall be fined in any sum not less than twenty-five nor more than three hundred dollars, to be recovered by

presentment or indictment in the Circuit Court of the county wherein such offense shall have been committed, and shall moreover be removed from office.

SEC. 4. That any Sheriff, Coroner, Constable, or any police officer, of any city in this State, who may have personal knowledge of the commission of the offense, in the first section of this act described, and shall fail or refuse to arrest such offender and bring him to trial, shall be adjudged guilty of a nonfeasance in office, and upon conviction thereof, shall be punished as provided for Justices of the Peace in the foregoing section of this act.

SEC. 5. That all laws and parts of laws in conflict with this act are hereby repealed, and that this act take effect and be in force ninety days after its passage.

1876 Wyo. Comp. Laws 352, § 1

AN ACT to Prevent the Carrying of Fire Arms and Other Deadly Weapons.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming:

SECTION. 1. That hereafter it shall be unlawful for any resident of any city, town or village, or for any one not a resident of any city, town or village, in said Territory, but a sojourner therein, to bear upon his person, concealed or openly, any fire arm or other deadly weapon, within the limits of any city, town or village.

* * *

1877 Mo. Laws 166, § 23

Be it enacted by the General Assembly of the State of Missouri, as follows:

* * *

ARTICLE II.

POWERS OF COUNCIL.

* * *

SEC. 23. The council may prohibit and punish the carrying of firearms and other deadly weapons, concealed or otherwise, and may arrest or imprison, fine or set to work all vagrants and persons found in said city without visible means of support or some legitimate business.

* * *

1882 W. Va. Acts 421, sec. 1, § 7

CHAPTER CXXXV.

AN ACT amending and re-enacting section seven of chapter one hundred and forty-eight of the code of West Virginia, and adding additional sections thereto for the punishment of unlawful combinations and conspiracies to injure persons or property.

Be it enacted by the Legislature of West Virginia:

1. That section seven of chapter one hundred and forty-eight of the code of West Virginia be, and the same is hereby, amended and re-enacted so as to read as follows:

7. If a person carry about his person any revolver or other pistol, dirk, bowie knife, razor, slung shot, billy, metallic or other false knuckles, or any other dangerous or deadly weapon or like kind or character, he shall be guilty of a misdemeanor, and fined not less than twenty-five nor more than two hundred dollars, and may at the discretion of the court, be confined in jail not less than one, nor more than twelve months; and if any person shall sell or furnish any such weapon as is hereinbefore mentioned to a person whom he knows, or has reason, from his appearance or otherwise, to believe to be under the age of twenty-one years, he shall be punished as hereinbefore provided; but nothing herein contained shall be so construed as to prevent any person from keeping or carrying about this dwelling house or premises any such revolver or other pistol, or from carrying the same from the place of purchase to his dwelling house, or form his dwelling house to any place where repairing is done, to have it repaired, and back again. And if upon the trial of an indictment for carrying any such pistol, dirk, razor or bowie knife, the defendant shall prove to the satisfaction of the jury that he is a quiet and peaceable citizen, of good character and standing in the community in which he lives, and at the time he was found with such pistol, dirk, razor or bowie knife, as charged in the indictment, he had good cause to believe and did believe that he was in danger of death or great bodily harm at the hands of another person, and that he was, in good faith, carrying such weapon for self defense and for no other purpose, the jury shall find him not guilty. But nothing in this section contained shall be so construed as to prevent any officer charged with the execution of the laws of the state from carrying a revolver or other pistol, dirk or bowie knife.

* * *

1889 Ariz. Laws 30, §§ 1-2

AN ACT

Defining and Punishing Certain Offenses Against the Public Peace.

Be it Enacted by the Legislative Assembly of the Territory of Arizona:

SECTION 1. If any person within any settlement, town, village or city within this Territory shall carry on or about his person, saddle, or in his saddlebags, any pistol, dirk, dagger, slung shot, sword-cane, spear, brass knuckles, bowie knife, or any other kind of knife manufactured or sold for purposes of offense or defense, he shall be punished by a fine of not less than twenty-five nor more than one hundred dollars; and in addition thereto, shall forfeit to the County in which he is convicted, the weapon or weapons so carried.

SEC. 2. The preceding article shall not apply to a person in actual service as a militiaman, nor as a peace officer or policeman, or person summoned to his aid, nor to a revenue or other civil officer engaged in the discharge of official duty, nor to the carrying of arms on ones own premises or place of business, nor to persons traveling, nor to one who has reasonable ground for fearing an unlawful attack upon his person, and the danger is so imminent and threatening as not to admit of the arrest of the party about to make such attack upon legal process.

* * *

1889 Idaho Gen. Laws 23, § 1

CARRYING DEADLY WEAPONS.

AN ACT

REGULATNG THE USE AND CARRYING OF DEADLY WEAPONS IN IDAHO TERRITORY.

Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:

SECTION 1. That it is unlawful for any person, except United States officials, officials of Idaho Territory, County officials, Peace officers, Guards of any jail, and officers or employees of any Express Company on duty, to carry, exhibit or flourish any dirk, dirk-knife, sword, sword-cane, pistol, gun or other-deadly weapons, within the limits or confines of any city, town or village or in any public assembly of Idaho Territory. Every person so doing is guilty of a misdemeanor and is punishable by fine not less than fifty dollars nor more than one hundred dollars, or by imprisonment in the county jail for a period of not less than twenty days nor more than fifty days, or by both such fine and imprisonment.

* * *

Okla. Stat. ch. 25, art. 47, §§ 2432-2433 (1890)

ARTICLE 47.—CONCEALED WEAPONS.

* * *

(2432) § 1. It shall be unlawful for any person in the Territory of Oklahoma to carry concealed on or about his person, saddle, or saddle bags, any pistol, revolver, bowie knife, dirk, dagger, slung-shot, sword cane, spear, metal knuckles, or any other kind of knife or instrument manufactured or sold for the purpose of defense except as in this article provided.

(2433) § 2. It shall be unlawful for any person in the Territory of Oklahoma, to carry upon or about his person any pistol, revolver, bowie knife, dirk knife, loaded cane, billy, metal knuckles, or any other offensive or defensive weapon, except as in this article provided.

* * *

1895 N.J. Gen. Pub. Laws 235, 237, § 47

CHAPTER CXIII.

An Act providing for the formation, establishment and government of towns.

* * *

47. *And be it enacted*, That the council may, by the title, "the council of the town of_________, in the county of ________, pass, adopt, alter, modify and repeal ordinances to take effect within the town for the following purposes:

To manage, regulate, protect and control the finances and property of the town; to make and adopt an assessment map or maps whereby to describe lands assessed for taxes or improvements; to ascertain and establish the boundaries of all streets, highways, public lanes and alleys in the town; to regulate, clean and keep in repair the streets, highways, lanes and alleys in the town, and to prevent and remove all encroachments, obstructions and incumbrances in and upon all streets, highways, lanes, and alleys, sewers, drains and water courses; to prescribe the manner in which corporations or individuals shall exercise any privilege granted to them in the use of any street, highway or alley or in digging up any street, highway or alley for any purpose whatsoever; to direct and regulate the planting, rearing, trimming and preserving of ornamental shade trees in the streets, parks and public places of the town, and to authorize or prohibit the removal or destruction of such shade trees, to name and number the streets, houses and lots in the town; to provide for and enforce the removal of snow and ice from the sidewalks and gutters of streets, by the owners of laud fronting thereon, and to provide that in case of neglect or refusal of or by the owner of any lot of land fronting on a public street or highway to remove snow or ice from the sidewalks and gutters in front of his lands, that the council may cause the same to be done at the expense of such owner, and that the cost and expense thereof, with interest thereon, shall be added to and shall form part of the taxes next to be levied and assessed upon such lands, and shall be and remain a lien upon such lands until paid; to regulate the use of streets, highways and public places by individuals, vehicles, railways and engines of every kind; to prevent and punish horse-racing and immoderate driving or riding in any street, and to regulate the speed and running of locomotives, engines and railroad cars through the town; to regulate and control the passage through the streets and public places of buildings and other large structures; to prevent animals of all kinds from running at large in the streets or public places of the town, and for the impounding, sale or destruction of the same, and to regulate and prevent the

driving of cattle or other animals in droves in or through any of the streets of the town; to prevent and prohibit any practice having a tendency to frighten animals or persons passing in the streets of the town; to regulate or prohibit all public performances and exhibitions for money; to prevent and suppress vice and immorality; to restrain or punish tramps, vagrants, mendicants and street beggars; to preserve the public peace; to prevent and quell riots, disturbances and disorderly assemblages; to restrain and suppress disorderly and gaming-houses and houses of ill-fame; to establish and regulate one or more public pounds, and to provide for the sale of animals impounded, and to fix the fees to be paid persons impounding animals, and the redemption fees to be paid; to regulate and prevent and to provide for the destruction of dogs running at large; to regulate or prohibit swimming or bathing in the waters of or bounding the town; to regulate the removal or destruction of buildings that are liable to fall, or buildings that are dangerous to life; to regulate or prohibit the carrying on of manufactures dangerous in causing or promoting fire; to regulate or prohibit the manufacture, sale, keeping, storage or use of fireworks, gunpowder, camphene, kerosene, burning fluid, nitro-glycerine, dynamite or other inflammable or explosive materials; to raze and and demolish any building or erection when necessary to prevent the extension of a conflagration, and to provide for the ascertainment and payment of just damages and compensation to owners of property destroyed in such cases; to regulate or prohibit the use of firearms and the carrying of weapons of any kind; to erect, provide, repair and control a town hall, police and station-houses, fire engines and such other buildings as may be necessary; to regulate, license or prohibit inns, taverns and restaurants, and the sale or transfer of spirituous, vinous, malt or other strong or intoxicating liquors; *provided*, *however*, that no such license shall be granted to any person who is not a citizen of the United States; and to fix and prescribe the terms and conditions upon which licenses for such purposes shall be granted, and to provide for the revoking and annulling of licenses for violations of such conditions; *provided, however*, that all such conditions shall be printed on the licenses; *and provided*, *further*, that no license shall be granted unless the applicant shall first pay to the town clerk such license fee as may be required by any general law of this state, and if there be no general law, such fee, not less than fifty dollars, as may be fixed by ordinance; and if the application is rejected, the deposit shall be returned; to provide that the penalty for a second conviction within six months of a violation of any such ordinance shall be a fine not exceeding one hundred dollars or imprisonment in the county jail not exceeding three months; to license and regulate cartmen, porters, hack, cab, omnibus, stage and truck owners and drivers, carriages and vehicles used for the transportation of passengers and merchandise, goods or articles of any kind, and to require the owners to mark vehicles in such manner as the council shall designate; and to license and regulate auctioneers,

common oilers, pawnbrokers, junk-shop keepers, sweeps and scavangers, and to prohibit unlicensed persons from acting in such capacities; to license and regulate peddlers, hawkers and hucksters, and to require the payment of a license fee of not exceeding five dollars in all cases, except as herein otherwise provided; and no license granted for any of the aforesaid purposes by any other authority shall be valid, except license granted by the governor to hawkers and peddlers; to fix the penalty where the same is not fixed or provided for by this act for the violation of any ordinance by this act authorized to be passed, which penalty shall be a fine not exceeding twenty dollars, and in case of non-payment thereof, imprisonment in the county jail not exceeding thirty days; to provide for, establish, regulate and control a fire department and to establish rules for the government thereof (whose members shall be exempt from military duty in time of peace, and from serving as jurors in courts, for the trial of small causes), and to provide engines and other fire apparatus, and to designate the manner of appointing and removing members of the fire department; to provide for the government of the fire department and the care and repair of the engines and other fire apparatus, and for the purchasing of necessary supplies by a board of fire commissioners, consisting of five members, to be appointed by the council, who shall hold office for one year and who shall receive no salary; and to further provide for the payment of the lawful debts contracted or incurred by such commissioners.

* * *

1901 S.C. Acts 748-749, §§ 1, 3

No. 435.

AN ACT TO REGULATE THE CARRYING, MANUFACTURE AND SALE OF PISTOLS AND TO MAKE VIOLATION OF THE SAME A MISDEMEANOR.

SECTION I. *Be it enacted* by the General Assembly of the State of South Carolina: That from and after the first day of July 1902 it shall be unlawful for any one to carry about the person whether concealed or not any pistol Jess than 20 inches long and 3 pounds in weight. And it shall be unlawful for any person, firm or corporation to manufacture, sell or offer for sale, or transport for sale or use into this State, any pistol of less length and weight. Any violation of this Section shall be punished by a fine of not more than one hundred dollars, or imprisonment for not more than thirty days and in case of a violation by a firm or corporation it shall forfeit the sum of one hundred dollars to and for the use of the school fund of the County wherein the violation takes place to be recovered as other fines and forfeitures: *Provided,* this Act shall not apply to peace officers in the actual discharge of their duties, or to persons while on their own premises.

* * *

SEC. 3. In case it shall appear to the satisfaction of the presiding Judge or Magistrate before whom such offender is tried that the defendant had good reason to fear injury to the person or property and carried said weapon to protect himself or property he may in his discretion suspend sentence.

* * *

Fla. Stat. tit. IX, ch. 17, §§ 1062, 1064 (1902)

CHAPTER XVII.

LICENSE TO CARRY PISTOL, WINCHESTER OR REPEATING RIFLES.

1062. In each and every county in this State it shall be unlawful to carry a pistol, Winchester or other repeating rifle without first taking out a license from the county commissioners of the respective counties before such person shall be at liberty to carry around with him on his person and in his manual possession such pistol, Winchester rifle or other repeating rifle; *Provided*, That nothing in this act shall be construed to alter, affect or amend any laws now in force in this State or which may be hereafter enacted relative to carrying concealed weapons on or about one's person.

* * *

1064. The person taking out such license shall give a bond running to the governor of the State in the sum of one hundred dollars, conditioned on the proper and legitimate use of the gun with sureties to be approved by the county commissioners, and at the same time there shall be kept by the county commissioners granting the same a record of the name of the person taking out such license, the name of the maker of the firearm so licensed to be carried and the caliber and number of the same. For penalty for violation, see section 3643.

1906 Mass. Acts 150, ch. 172, § 1

CHAP. 172 AN ACT TO REGULATE BY LICENSE THE CARRYING OF CONCEALED WEAPONS.

Be it enacted, etc., as follows:

SECTION 1. The justice of a court, or trial justices, the board of police or mayor of a city, or the selectmen of a town, or persons authorized by them, respectively, may, upon the application of any person, issue a license to such person to carry a loaded pistol or revolver in this commonwealth, if it appears that the applicant has good reason to fear an injury to his person or property, and that he is a suitable person to be so licensed.

* * *

1909 Ala. Gen. Laws 258, §§ 2, 4

AN ACT

To regulate the right to carry a pistol in this State.

* * *

Section 2. It shall be unlawful for any person to carry a pistol about his person on premises not his own or under his control, provided this section shall not apply to any sheriff or his deputy or police officer of an incorporated town or city in the lawful discharge of the duties of his office or United States Marshal or their deputies, rural free delivery mail carriers in the discharge of their duties as such or bonded constable in the discharge of their duties as such.

* * *

Section 4. The defendant may give evidence that at the time of carrying the pistol he had good reason to apprehend an attack which the jury may consider in mitigation of the fine or justification of the offense.

* * *

1909 N.H. Laws 451-452, §§ 1, 3

CHAPTER 114.

AN ACT TO PROHIBIT CARRYING CONCEALED WEAPONS.

* * *

Be it enacted by the Senate and House of Representatives in General Court convened:

SECTION 1. Whoever, except as provided by the laws of this state, carries on his person a loaded pistol or revolver, or any stilletto, dagger, dirk-knife, slung-shot or metallic knuckles, shall upon conviction be punished by a fine not exceeding one hundred dollars or by imprisonment not exceeding one year or by both such fine and imprisonment; and any such weapon or article so carried by him shall be confiscated to the use of the state.

* * *

SECT. 3. The selectmen of towns or the mayor or the chief of police of cities may, upon the application of any person issue a license to such person to carry a loaded pistol or revolver in this state, if it appears that the applicant is a suitable person to be so, licensed.

* * *

1910 Ga. Laws 134-135, §§ 1-2

PISTOLS, CARRYING OF PROHIBITED.

An Act to prohibit any person from having or carrying about his person, in any county in the State of Georgia, any pistol or revolver without first having obtained a license from the Ordinary of the county of said State, in which the party resides, and to provide how said license may be obtained and a penalty prescribed for a violation of the same, and for other purposes.

SECTION 1. Be it enacted by the General Assembly of Georgia, and it is hereby enacted by authority of the same, That from and after passage of this Act it shall be unlawful for any person to have or carry about his person, in any county in the State of Georgia, any pistol or revolver without first taking out a license from the Ordinary of the respective counties in which the party resides, before such person shall be at liberty to carry around with him on his person, or to have in his manual possession outside of his own home or place of business, *provided* that nothing in this Act shall be construed to alter, affect or amend any laws now in force in this State relative to the carrying of concealed weapons on or about one's person, and *provided further,* that this shall not apply to sheriffs, deputy sheriffs, marshals, or other arresting officers of this State or United States, who are now allowed, by law, to carry revolvers; nor to any of the militia of said State while in service or upon duty; nor to any students of military colleges or schools when they are in the discharge of their duty at such colleges.

SEC. 2. Be it further enacted, That the Ordinary of the respective counties of this State in which the applicant resides may grant such license, either in term time or during vacation, upon the application of party or person desiring to apply for such license; provided applicant shall be at least eighteen years old or over, and shall give a bond payable to the Governor of the State in the sum of one hundred dollars, conditioned upon the proper and legitimate use of said weapon with a surety approved by the Ordinary of said county, and the Ordinary granting the license shall keep a record of the name of the person taking out such license, the name of the maker of the fire-arm to be carried, and the caliber and number of the same.

* * *

1910 Md. Laws 614-615

CHAPTER 669.

AN ACT to repeal Sections 761 and 762 of Article 4 of the Code of Public Local Laws of Maryland, entitled "City of Baltimore," subtitle "Police Commissioners," as amended and re-enacted by Chapter 123 of the Acts of 1898, and to re-enact the said sections with amendments, the said sections relating to the carrying of deadly weapons.

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That Sections 761 and 762 of Article 4 of the Code of Public Local Laws of Maryland, entitled "City of Baltimore," subtitle "Police Commissioners," as amended and re-enacted by Chapter 123 of the Acts of 1898, be and the same are hereby repealed and re-enacted with amendments so as to read as follows:

SEC. 761. The said Board of Police Commissioners may, upon application of any person, issue a license to such person to carry a pistol or revolver in the City of Baltimore upon the payment by such applicant of the license fee or charge as hereinafter provided, if it appears after investigation by said Board that the applicant has good reason to fear an injury to his person or property and that he is a suitable person to be so licensed. The license provided for in this section shall expire at midnight of December thirty-first in each and every year, but may be revoked at any time by the said Board of Police Commissioners; the fee or charge for the license provided for in this section shall be twelve dollars for the entire twelve months, and if the license is issued in any month after January one-twelfth shall be deducted from the charge above stated for each expired month not fraction of a month; the license fee or charge herein prescribed and so paid shall be by the said Board applied to the use and benefit of the fund in its charge created by law and known and accounted for as the Special Fund.

SEC. 762. Whoever carries on his person a pistol or revolver without authority or license as provided for in Section 761 of this subdivision of this Article, or whoever carries on his person any dirk knife, bowie knife, slingshot, billy, sandbag, metal knuckles, razor or any other dangerous or deadly weapon of any kind whatsoever (penknives excepted) shall upon conviction be punished by a fine of not less than ten dollars nor more than one hundred dollars, or be imprisoned in jail or in the House of Correction for a term not exceeding one year, or by both such fine and imprisonment and the confiscation of the weapon; provided, however, that this section shall not apply to those persons who as conservators of the peace are entitled or required to carry a pistol or other weapon as a part of their official equipment.

SEC. 2. *And be it further enacted,* That this Act shall take effect from the date of its passage.

1911 N.Y. Laws 442-443, §§ 1897, 1899

AN ACT to amend the penal law, in relation to the sale and carrying of dangerous weapons.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Sections eighteen hundred and ninety-six, eighteen hundred and ninety-seven and eighteen hundred and ninety-nine of chapter eighty-eight of the laws of nineteen hundred and nine, entitled "An act providing for the punishment of crime, constituting chapter forty of the consolidated laws," are hereby amended to read as follows:

* * *

§ 1897. Carrying and use of dangerous weapons. A person who attempts to use against another, or who carries, or possesses, any instrument or weapon of the kind commonly known as a blackjack,[1] slungshot, billy, sandclub, sandbag,[2] metal knuckles or bludgeon,[2] or who, with intent to use the same unlawfully[3] against another, carries or possesses a dagger, dirk, dangerous knife, razor, stiletto, or any other dangerous or deadly instrument or weapon,[4] is guilty of a felony.

Any person under the age of sixteen years, who shall have, carry, or have in his possession,[5] any of the articles named or described in the last section, which it is forbidden therein to offer, sell, loan, lease or give to him, shall be guilty of a misdemeanor.

[6]Any person over the age of sixteen years, who shall have in his possession in any city, village or town of this state, any pistol, revolver or other firearm of a size which may be concealed upon the person, without a written license therefor, issued to him by a police magistrate of such city or village, or by a justice of the peace of such town, or in such manner as may be *prescribel by ordinance in such city, village or town, shall be guilty of a misdemeanor.

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[1] Word “blackjack” new.
[2] Words “sandbag, bludgeon” new.
[3] Word “unlawfully” new.
[4] Words “razor, stiletto, or any other dangerous or deadly instrument or weapon,” new.
[5] Words “in any public place” omitted.
[6] Following sentence new.

Any person over the age of sixteen years, who shall have or carry concealed upon his person in any city, village, or town of this state, any pistol, revolver, or other firearm without a written license therefor, theretofore issued to him by a police magistrate of such city or village, or by a justice of the peace of such town, or in such manner as may be prescribed by ordinance of such city, village or town, shall be guilty of a felony.[7]

[8]Any person not a citizen of the United States, who shall have or carry firearms, or any dangerous or deadly weapons in any public place, at any time, shall be guilty of a felony. This section shall not apply to the regular and ordinary transportation of firearms as merchandise, nor to sheriffs, policemen, or to other duly appointed peace officers, nor to duly authorized military or civil organizations, when parading, nor to the members thereof when going to and from the places of meeting of their respective organizations.

§ 1899. Destruction of dangerous weapons. The unlawful[9] carrying of a pistol, revolver, or other firearm[10] or of an instrument or weapon of the kind usually known as blackjack, bludgeon[11] slungshot, billy, sandelub, sandbag,[12] metal knuckles, or of a dagger, dirk, dangerous knife, or any other dangerous or deadly weapon,[13] by any person save a peace officer, is a nuisance, and such weapons are hereby declared to be nuisances, and when any one or more of the above described instruments or weapons shall be taken from the possession of any person the same shall be surrendered to the sheriff of the county wherein the same shall be taken, except that in cities of the first class the same shall be surrendered to the head of the police force or department of said city. The officer to whom the same may be so surrendered shall, except upon certificate of a judge of a court of record, or of the district attorney, that the nondestruction thereof is necessary or proper in the ends of justice, proceed at such time or times as he deems proper, and at least once in each year, to destroy or cause to be destroyed any and all such weapons or instruments, in such manner and to such extent that the same shall be

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* So in original.
[7] Formerly "misdemeanor."
[8] Following sentence formerly read: "No person not a citizen of the United States, shall have or carry firearms or dangerous weapons in any public place at any time."
[9] Word "unlawful" new.
[10] Words "or other firearm" new.
[11] Words "blackjack, bludgeon" new.
[12] Word "sandbag" new.
[13] Words "or any other dangerous or deadly weapon," new. Words "with. out lawful permission, license or authority so to do," omitted.

and become wholly and entirely ineffective and useless for the purpose for which destined and harmless to human life or limb.

* * *

1917 Conn. Pub. Acts 2314, ch. 129

CHAPTER 129.

An Act amending an Act concerning Concealed Weapons.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section one of chapter 140 of the public acts of 1907 as amended by chapter 261 of the public acts of 1911 is amended to read as follows: Every person who shall carry upon his person any pistol, revolver, slung shot, black jack, sand bag, metal or glass knuckles, or stiletto, or any knife, the edged portion of the blade of which is four inches or over in length, or any other dangerous or deadly weapon or instrument, unless such person shall have been granted a written permit issued and signed by the mayor or chief of police of a city, warden of a borough, or the first selectman of a town, authorizing such person to carry such weapon or instrument within such city, borough or town, shall, upon conviction, be fined not more than five hundred dollars, or imprisoned not more than three years, or both. The provisions of this section shall not apply to any officer charged with the preservation of the public peace.

1917 Or. Gen. Laws 804, § 1

CHAPTER 377

AN ACT

Prohibiting the manufacture, sale, possession, carrying, or use of any blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, dirk, dagger or stiletto, and regulating the carrying and sale of certain firearms, and defining the duties of certain executive officers, and providing penalties for violation of the provisions of this Act.

Be It Enacted by the People of the State of Oregon:

Section 1. No person shall carry in any city, town or municipal corporation of this State any pistol, revolver or other firearm concealed upon his or her person, or of a size which may be concealed upon his or her person, without a license or permit therefor, issued to him or her by a chief of police or sheriff of such city, town or municipal corporation, or in such manner as may be prescribed by ordinance of such city, town or municipal corporation. This section, however, shall not apply to sheriffs and their deputies, constables, marshals, police officers or any other duly appointed peace officers, nor to any person or persons summoned by such officers to assist in making arrest or preserving the peace while said person or persons are engaged in assisting such officers; nor to duly authorized military organizations when parading, nor to members thereof when going to and from places of meeting of their respective organizations.

* * *

1919 N.C. Pub. Local Laws 373-374, §§ 1-3

CHAPTER 317

AN ACT TO REGULATE IN FORSYTH COUNTY THE CARRYING OF DEADLY WEAPONS.

The General Assembly of North Carolina do enact:

SECTION 1. If any one (except such person as may have a permit, as provided for in section two of this act), except when on his own premises, shall carry concealed about his person any pistol, bowie knife, dirk, dagger, slung-shot, loaded cane, brass, iron or metallic kuncks, or razor or other deadly weapon of like kind, he shall be guilty of a misdemeanor, and fined not less than two hundred dollars, or more than five hundred dollars, or imprisoned for not less than ninety days or more than two years for the first or second offenses, and for the third or subsequent offenses he shall be imprisoned for not less than four months or more than two years. It shall be the duty of the prosecuting attorney in all cases to ascertain whether or not the charge is the first, second, third or subsequent offense, and if it shall be the third or subsequent offense, it shall be so stated in the indictment returned and the prosecuting attorney shall introduce the record evidence before the trial court of said third or subsequent offense. This section shall not apply to the following persons: officers and soldiers of the United States army, civil officers of the United States while in the discharge of their official duties, officers and soldiers of the militia and the state guard when called into actual service, officers of the state or of any county, city or town, charged with the execution of the laws of the state, and acting in the discharge of their official duties: *Provided*, that nothing herein shall prevent a person from carrying any such weapon (and if it be a pistol or other firearms unloaded) from the place of purchase to his home, or place of residence, or a place of repair, and back to his home or residence.

SEC. 2. That when any person desires when off his own premises to carry a pistol or other weapon mentioned or referred to in section one hereof, for any lawful purpose, he shall make application to the Municipal Court of an incorporated city, if such person is a resident of the city where such Municipal Court is held, or to the Superior Court of the county, if such person is not a resident of such municipality, setting forth therein the time when said weapon shall be carried, the purpose thereof, and if the same is lawful the presiding judge shall grant a permit to said person, describing the weapon and giving the time and purpose when it may be carried off the premises of the applicant, upon the payment to the clerk of said court of the sum of five dollars, and upon the filing of a bond with the clerk of said

court in the penalty of five hundred dollars, conditioned that such applicant will not carry such weapon except in accordance with his said application, and as authorized by the court.

SEC. 3. If any person, except when on his own premises, shall carry any weapon set forth or referred to in section one of this act unconcealed, without a permit, as provided in section two of this act, he shall be guilty of a misdemeanor, and punished as provided in section one of this act for carrying a concealed weapon.

* * *

CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2020, I filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Neal Kumar Katyal
Neal Kumar Katyal