

Author's note

This research was to answer my question “When did each state ban open and concealed carry?” The intent was to allow me to better research the history of what drove the bans. So I collected the legislation. Then about the time I was finished and working on the conclusions/introductions so it wasn't just a book of old laws, the *Bruen* decision came out and every Second Amendment lawyer on both sides suddenly had an interest in collecting and citing the old statutes.

Only 13 states had open carry bans prior to 1900, 3 of which were repealed before 1900, and 2 more shortly thereafter. Mainly it was in the South where all forms of carry were banned before the 20th century. You'll notice from reading these that there is often an evolutionary process and the legislators were basically guessing on what might make violence stop.

After the 20th century, immigration pressures and increasing urbanization seem to have spurred the adoption of greater handgun regulation. Before this, the history shows concealed weapon laws were an attempt at crime control; "If they can't carry guns, then they won't shoot each other!" Well, we know that experiment failed.

My research is incomplete and stops around the 1920s-1930s due to the limitations of online databases. I've also stopped at the early modern era, going up to the late 1910s and 1920s "Model Pistol Acts" that were the predecessors and inspiration for the National Firearms Act.

You'll notice that western states repealed their bans, as did other states. The "why" is what remains to research. In some cases they just wrote the new laws to either exclude (or include, in those cases) open carry. Idaho's supreme court threw out the open carry ban, as did Georgia's, except the latter went ahead and reinstated it later anyway.

Some of these laws may be debatable: South Carolina's 1901 restriction made it so that basically any practical handgun was unable to be carried; I suppose AR pistols would have been kosher. A Tennessee court decision that would do today's 9th Circuit proud allowed one to openly carry a pistol in the hand, i.e. as one would use while chasing a burglar or defending himself (sorta like California today!), although no one in their right mind would just walk around normally with a pistol in their hand.

Arizona

Constitution

1864

The right of the people to keep and bear arms for their own defense and that of the government shall not be infringed.¹

1912

The right of the individual citizen to bear arms in defense of himself or the state shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain, or employ an armed body of men.²

Statutory History

Predecessor laws

“An act prohibiting the carrying a certain class of arms, within the settlements and balls,” *Laws of the Territory of New Mexico*, 1852, pp. 67-69 [Hathi Trust](#)

SEC. 1. That each and every person is prohibited from carrying short arms, such as pistols, daggers, knives, and other deadly weapons, about their persons concealed, within the settlements, and any person who violates the provisions of this act, shall be fined in a sum not exceeding ten dollars, nor less than two dollars, or shall be imprisoned for a term not exceeding fifteen days nor less than five days.

[see New Mexico chapter for rest of section]

Note: New Mexico’s statutes would have carried over after Arizona Territory’s establishment on February 24, 1863, per Arizona’s Organic Act:

¹ *Territorial Bill of Rights*

² Jerod Tufte asserts that this article was adopted (as were many sections) from the Washington constitution verbatim. Jerod E. Tufte. “Some Explicitly Guaranteed Rights Are More Fundamental Than Others: The Right to Bear Arms in Arizona.” *Arizona State Law Journal*. Vol. 33:341. 2001.
https://www.azcdl.org/Tufte_RKBAInAZ.pdf Accessed 5/27/2020 pp. 346, 348

"...all legislative enactments of the Territory of New Mexico not inconsistent with the provisions of this act, are hereby extended to and continued in force in the said Territory of Arizona until repealed or amended by future legislation..."³

New Mexico laws, including the 1860 law, remained in effect (*de jure*, even though it likely was not enforced) until the new Arizona code took effect April 20, 1865.⁴ No CCW provision was present in the Arizona code at that time.

1887

First Arizona law, concealed carry, cities and towns

Title XI—Of Crime Against the Public Peace, *Revised Statues of Arizona*, 1887, p. 726 [Hathi Trust](#)

662. (Sec. 662.) Any person in this territory **having or carrying concealed** any dirk, dirk-knife, bowie-knife, slung-shot, brass-knuckles, or pistol, or other weapon **within any city, village or town in this territory**, shall be fined in any sum not more than three hundred dollars, or be imprisoned in the county jail not more than six months, or be punished by both such fine and imprisonment. [emphasis added]

1889

Cities and towns, open or concealed carry

“An act defining and punishing certain offenses against the public peace,” No. 13, *Acts, Resolutions and Memorials...of the Territory of Arizona*, 1889, pp. 30-31 [Hathi Trust](#)

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. [emphasis added]

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

³ §2, “The Organic Act of Arizona,” 37th Congress, Session III, Ch. 56, February 24, 1863. <http://www.loc.gov/law/help/statutes-at-large/37th-congress/session-3/c37s3ch56.pdf>

⁴ *The Howell Code*, 1865, p. xiii [Hathi Trust](#)

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.

Sec. 3. If any person shall go into any church or religious assembly, any school room, or other place where persons are assembled for amusement or for educational or scientific purposes, or into any circus, show or public exhibition of any kind, or into a hall room, social party or social gathering, or to any election precinct on the day or days of any election, where any portion of the people of this Territory are collected to vote at any election, or to any other place where people may be assembled to muster or to perform any other public duty, or to any other public assembly, and shall have or carry about his person a pistol or other firearm, dirk, dagger, slung shot, sword-cane, spear, brass knuckles, bowie knife, or any other kind of a knife manufactured and sold for the purposes of offense or defense, he shall be punished by a fine not less than fifty nor more than five hundred dollars, and shall forfeit to the County the weapon or weapons so found on his person.

[Section 4, excluded peace officers; omitted]

[Section 5, arrest procedures; omitted]

Sec. 6. Persons traveling may be permitted to carry arms within settlements or towns of the Territory for one-half hour after arriving in such settlements or town, and while going out of such towns or settlements; and Sheriffs and Constables of the various Counties of this Territory and their lawfully appointed deputies may carry weapons in the legal discharge of the duties of their respective offices.

Sec. 7. It shall be the duty of the keeper of each and every hotel, boarding house and drinking saloon, to keep posted up in a conspicuous place in his bar room, or reception room if there be no bar in the house, a plain notice to travelers to divest themselves of their weapons in accordance with Section 9 of this Act, and the Sheriffs of the various Counties shall notify the keepers of hotels, boarding houses and drinking saloons in their respective Counties of their duties under this law, and if after such notification any keeper of a hotel, boarding house or drinking saloon, shall fail to keep notices posted as required by this Act, he shall, on conviction thereof before a Justice of the Peace, be fined in the sum of five dollars to go to the County Treasury.

Note: This was a much broader ban which evidently draws much from New Mexican law. Section 1 applied the city/town ban to both open and concealed carry of any weapon. It is very reminiscent of Arkansas 1875 law, which had the same fine.

Section 2 allowed various exceptions to the law, most notably to travelers and “imminent danger” exceptions. Section 3 increased penalties for carrying in “sensitive” places and was also borrowed law from Texas 1870 statute. Section 6 allowed travelers outside of towns to carry weapons and allowance for entering leaving towns. Section 7 placed duties on certain businesses to post notices regarding the law.

1893

Universal concealed weapons

“An act to regulate and prohibit the carrying of deadly weapons concealed,” No. 2, *Acts, Resolutions and Memorials, [...] of the Territory of Arizona*, 1893, p. 13 [Hathi Trust](#)

SECTION 1. It shall be unlawful for any person (except a peace officer in actual service and discharge of his duty) **to have or carry concealed** on or about his person any pistol or other firearm, dirk, dagger, slung-shot, sword cane, spear, brass knuckles, or other knuckles of metal, bowie knife or any kind of knife or weapon except a pocket-knife not manufactured and used for the purpose of offense and defense. [emphasis added]

SEC. 2. Any person violating any of the provisions of Section 2 of this Act, shall be guilty of a misdemeanor, and may be arrested with or without a warrant either in the day-time or night-time, and taken before the nearest Justice of the Peace for trial; and any peace officer who shall fail, neglect or refuse to arrest any such person on his own knowledge of the violation of said Section, or upon the information from some credible person, or who shall appoint any person a deputy not intended to be used in regular service, but as a mere pretext for the purpose of carrying a concealed weapon, shall be guilty of a misdemeanor.

SEC. 3. Any person found guilty of violating any of the provisions of Sections 1 and 2 of this Act, shall be punished by a fine of not less than fifty nor more than three hundred dollars.

[Sec. 4 and 5, repeal and effect; omitted]

Note: This 1889 law was repealed and replaced by a less restrictive ban that applied only to concealed carry, but like the 1889 law, was universal in application. Fines were increased. Based on the 1901 code compilation, it appears the 1893 act was interpreted by the compiler to only have created a territory-wide concealed weapon ban (in unincorporated areas) without repealing the provisions applying to all forms of carry in cities and towns. The statute also banned pretextual deputization in order to allow someone to carry concealed weapons (no permits were allowed), which was a problem in cities in particular.

1901

Penal Code, Title 11, *The Revised Statutes of Arizona*, 1901, pp. 1251-1252 [Hathi Trust](#)

[381, unsafe discharge; omitted]

“382. It shall be unlawful for any person (except a peace officer in actual service and discharge of his duty), to **have or carry concealed** on or about his person, any pistol or other firearm, dirk, dagger, slung-shot, sword-cane, spear, brass knuckles, or other knuckles of metal, bowie-knife or any kind of knife or weapon, except a pocket-knife, not manufactured and used for the purpose of offense and defense.” [emphasis added]

[383, arrest procedure and pretextual deputization; omitted]

“384. Any person found guilty of violating any of the provisions of the two proceeding sections shall be punished by a fine of not less than five nor more than three hundred dollars, and shall forfeit to the county, such weapon or weapons.”

“385. If any person **within any settlement, town, village, or city** within this territory **shall carry on or about his person, saddle, or in 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.” [emphasis added]

“387. If any person shall go into church or religious assembly [sic], any school room, or other place where persons are assembled for amusement or for educational or scientific purposes, or into any circus, show or public exhibition of any kind, or into a ball room, social party or social gathering, or to any election precinct, on the day or days of any election, where any portion of the people of this territory are collected to vote at any election, or to any other place where people may be assembled to minister or to perform any other public duty, or to any other public assembly, and shall have or carry about his person a pistol or other firearm, dirk, dagger, slung-shot, sword-cane, spear, brass knuckles, bowie knife or any other kind of a knife manufactured and sold for the purposes of offense or defense, he shall be punished by a fine not less than fifty nor more than five hundred dollars, and shall forfeit to the county the weapon or weapons so found on his person.”

389. Any persons violating any of the provisions of section 382 and 385 may be arrested without warrant by any peace officer and carried before the nearest justice of the peace for trial; and any peace officer who shall fail or refuse to arrest such person on his own knowledge, or upon information from some credible person, shall be punished by a fine not exceeding three hundred dollars.

390. Persons traveling may be permitted to carry arms within settlements or towns of the territory, for one-half hour after arriving in such settlement or towns, and while going out of such towns or settlements; and sheriffs and constables of the various counties of this territory and their lawfully appointed deputies may carry weapons in the legal discharge of the duties of their respective offices.

391. It shall be the duty of the keeper of each and every hotel, boarding house and drinking saloon, to keep posted up in a conspicuous place in his bar room, or reception room if there be no bar in the house, a plain notice to travelers to divest themselves of their weapons in accordance with section 382, and the sheriffs of the various counties shall notify the keepers of a hotel, boarding house and drinking saloon in their respective counties of their duties under this law, and if after such notification any keeper of a hotel, boarding house or drinking saloon, shall fail to keep notices posted as required by this act, he shall, on conviction thereof before a justice of the peace, be fined in the sum of five dollars to go to the county treasury.

Note: The 1901 compilation seems to recapitulate both the 1889 and 1893 acts with little in the way of reconciliation.

Two bans seem to be in place: concealed carry everywhere and both open and concealed carry in populated places. Note the low minimum fine for concealed carry; just five dollars (\$300 maximum), whereas carrying either openly or concealed in a populated place started at \$25 but went up to \$100. This reflects both the wide discretion allowed for fines in this era but shows that a carry violation in a populated place was taken more seriously than say carrying a concealed weapon in rural or uninhabited areas.

Concealed carry (§382) was considered immoral and dishonest, but no real harm would be done by a law-abiding person carrying out in the desert, so a judge could issue a nominal five dollar fine, like a judge in a town might hand down a \$25 minimum fine for someone harmlessly toting a gun in town.

Since §385 prohibited all carry but showed that the legislators were more concerned about guns around numbers of people, a higher fine was specified, but the fine capped at \$100, presumably because the statute was aimed primarily at open carry (the underlying offense being packing heat in a populated place, not concealing a gun), which was not looked down upon. §385 wouldn't prohibit a prosecution for concealed carry in a city/town under §382 so a higher fine could always be brought under that section.

1913

Penal Code, *The Revised Statutes of the State of Arizona*, 1913, pp. 90-91

426. It shall be unlawful for any person (except a peace officer in actual service and discharge of his duty), to have or carry concealed on or about his person, any pistol or other firearm, dirk, dagger, slung-shot, sword-cane, spear, brass knuckles, or other knuckles of metal, bowie-knife or any kind of knife or weapon, except a pocket knife, not manufactured and used for the purpose of offense and defense.

427. Any person violating any of the provisions of the preceding section shall be guilty of a misdemeanor, and may be arrested with or without a warrant, either in the day-time or night-time, and taken before the nearest justice of the peace for

trial; and any peace officer who shall fail, neglect or refuse to arrest any such person on his own knowledge of the violation of said section, or upon the information from some credible person, or who shall appoint any person a deputy, not intended to be used in regular service, but as a mere pretext for the purpose of carrying a concealed weapon, shall be guilty of a misdemeanor.

428. Any person found guilty of violating any of the provisions of the two preceding sections shall be punished by a fine of not less than twenty nor more than three hundred dollars and shall be imprisoned in the county jail for not less than ten nor more than thirty days.

429. If any person shall go into church or religious assembly [sic], any school room or other place where persons are assembled for amusement or for educational or scientific purposes, or into any circus, show, or public exhibition of any kind, or into a ball room or social party or social gathering, or to any election precinct, on the day or days of any election, where any portion of the people of this state are collected to vote at an election, or to any other place where people may be assembled to minister or to perform any other public duty, or to any other public assembly, and shall have or carry about his person a pistol or other firearm, dirk, dagger, sword-cane, brass knuckles, bowie knife or any other kind of a knife manufactured and sold for the purpose of offense or defense, he shall be punished by a fine not less than fifty nor more than five hundred dollars, and shall forfeit to the county the weapon or weapons so found on his person.

430. The preceding sections shall not apply to peace officers or other persons authorized or permitted by law to carry arms at the places therein designated.

431. Persons traveling may be permitted to carry arms within settlements or towns of the state, for one-half hour after arriving in such settlements or towns, and while going out of such towns or settlements; and sheriffs and constables of the various counties of this state and their lawfully appointed deputies may carry weapons in the legal discharge of the duties of their respective offices.

Note: A new revision of the codes was prepared in 1913. This revision of the penal code saw section §383 (the ban on all carry in cities/towns) and §391 (hotel/barkeeper signage duty) dropped from the code. Apparently, the state no longer had any need to have business owners inform their customers of the law. The higher fine range for concealed carry was carried over from the 1901 law and a jail sentence was added. Open carry was now permitted in populated places.

Florida

Note: Florida’s digitalization of its legislative record is extremely spotty. I was able to find most of the session laws from the late 1820s to 1864. There were a few digitized records in the years between 1864 and 1909 and a gap between 1923-1929.⁵ The remaining laws were taken from the Revised Statutes, various compilations, and newspaper reports of legislation.

Constitution

1838

That the free white men of this State shall have the right to keep and to bear arms, for their common defense.

1868

The people shall have the right to bear arms in defence of themselves and of the lawful authority of the State.

1885

The right of the people to bear arms in defence of themselves and the lawful authority of the State, shall not be infringed, but the Legislature may prescribe the manner in which they may be borne.

Statutory History

1835

Concealed carry

“An act to prevent any person in this Territory from carrying arms secretly,” Ch. 860, *Acts of the Governor and Legislative Council of the Territory of Florida*, 1835, p. 318 [Hathi Trust](#)

⁵ The years I was able to survey session laws for were: 1827-1864, 1870, 1875, 1889, 1909-1923, 1929-1937

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That from and after the passage of this Act, it shall not be lawful for any person in this Territory, to carry arms of any kind whatsoever secretly, on or about their persons, and if any dirk, pistol, or other arm, or weapon, except a common pocket knife shall be seen, or known to be secreted upon the person of any one in this Territory, such person so offending, shall on conviction, be fined not exceeding five hundred dollars, and not less than fifty dollars, or imprisoned not more than six months, and not less than one month, at the discretion of the jury; Provided however, that this law shall not be so construed as to prevent any person from carrying arms openly, outside of all their clothes; and it shall be the duty of judges of the superior courts in this Territory to give the matter contained in this act in special charge to the grand juries in the several Counties in this Territory, at every session of the Courts.

1868

Open carry (handgun) criminalized

Allen H. Bush, (comp.), Chapter XLIX, *A Digest of the Statute Law of Florida...* (1872), pp. 252-253 [Hathi Trust](#)

11. Whoever, when arrested upon a warrant of a magistrate issued against him for an alleged offence against the laws of this State, and whoever, when arrested by a sheriff, deputy sheriff, constable, police officer, or watchman, while committing a criminal offence against the laws of this State, or a breach or disturbance of the public peace, is armed with, or has on his person, slung shot, metallic knuckles, billies or other dangerous weapon, shall be punished by fine [sic] not exceeding fifty dollars, and by imprisonment in the county jail not exceeding one year.

12. Whoever manufactures, or causes to be manufactured, or sells, or exposes for sale, any instrument or weapon of the kind usually known as slung shot or, metallic knuckles, shall be punished by fine [sic] not less than fifty dollars, or by imprisonment in the county jail not exceeding six months.

15. Whoever shall carry arms of any kind whatever secretly, on or about their person, or whoever shall have about or on their person any dirk, pistol, or other arm or weapon, except a common pocket knife, upon conviction thereof shall be fined in a sum not exceeding one hundred dollars or imprisonment in the county jail not exceeding six months.

Note: Section 11 imposed a penalty for persons who were armed when arrested upon a *warrant*. Section 15 criminalized carrying pistols and concealed weapons generally as well as criminalizing openly carrying a handgun. The fines here were dramatically reduced from the 1835 act's \$50-500.

1885

Original legislation not found. Source: “Carrying Concealed Weapons,” *Florida Agriculturist*, April 29, 1885, p. 916 [LOC](#)

Section 1. Whoever shall carry arms of any kind whatever secretly on or about their persons, or whoever shall have concealed on or about their person any dirk, pistol or other arm or weapon, except a common pocket knife, shall be deemed guilty of misdemeanor [sic], and upon conviction thereof shall be fined not exceeding one hundred dollars or imprisoned in the county jail not exceeding six months.

SEC. 2. That the Circuit Courts of this State shall have exclusive original jurisdiction to try and determine all cases of violation of this act, and it shall be the duty of the Circuit Judge of the several circuits to charge the grand juries specially upon the crime of carrying concealed weapons and the State Attorney, of the several circuits shall receive a fee of ten dollars for each and every conviction under this act, to be paid as other conviction fees.

SEC. 3. It shall be the duty of the Sheriff or either officer making the arrest under this act, to take possession of any arms found upon the person arrested under this act and retain the same until after the trial of such person, and if he be convicted, then the said arm or arms shall be forfeited, and the Sheriff shall sell them at public sale and account for and pay over the proceeds of this sale the same as in fines collected; but if such person be acquitted, then the said arm or arms shall be returned to him.

1893

Licenses to openly carry repeating (Winchester) rifles

No text of the 1893 law was found and is not presented here. Additionally, I am unable to retroactively parse the 1901 law because I do not have a record of what was added or amended in that year. The 1901 statute references both “Winchester” repeating rifles and pistol licenses, without distinguishing which came about when, however, it appears that repeating rifles were first licensed in 1893, followed by pistols in 1901.

Ch. 4147, Acts 1893 (text not available) seems to have added a requirement for permits to carry a pistol or a “Winchester” or other repeating rifle.⁶ The reference to the Acts of 1893 is taken from the marginalia of the compilations listed below for 1901. The first mention I found of Winchester licenses was in November of 1893 in the *Florida Agriculturist*.⁷ Bonds were approved for two men to carry Winchester rifles in Marion County in October of 1894.⁸ This was a common mention in papers beginning this year.

In the early 1890s, there were a few mentions of incidents and killings that involved Winchester rifles, but I was unable to find any evidence that any of these were the inspiration for

⁶ Winchester was the most prolific manufacturer of repeating (usually lever or slide action) rifles and the name became a common sobriquet for those kinds of rifles at the time.

⁷ “Floridiana,” *Florida Agriculturist*, November 1, 1893, p. 703

⁸ “Marion’s Commissioners,” *Ocala Banner*, October 12, 1894, p. 4

the law. One editorial opined: “Many of the latter class in the labor camps and sometimes on the streets carry Winchesters openly (allowed by law) and as this law is enforced against the weaker class, ere long I fear hundreds of men will be armed with these deadly weapons.”⁹ The editorial supports this statement as to origin of the statute. Clayton Cramer¹⁰ cites Justice Buford’s concurring opinion in *Watson v. Stone*¹¹:

"I know something of the history of this legislation. The original Act of 1893 was passed when there was a great influx of negro laborers in this State drawn here for the purpose of working in turpentine and lumber camps. The same condition existed when the Act was amended in 1901 and the Act was passed for the purpose of disarming the negro laborers and to thereby reduce the unlawful homicides that were prevalent in turpentine and saw-mill camps and to give the white citizens in sparsely settled areas a better feeling of security. The statute was never intended to be applied to the white population and in practice has never been so applied."

The specter of racism raises its head here and this quote shows the intricate and inexorable way racism was intertwined with the realities of crime and gun control.

Based on newspaper searches, it seems to me that only permits to carry Winchester or repeating rifles were allowed to be issued in 1893. The footnotes/marginalia of the complications directly reference the Acts of 1893, i.e. “(Ch. 4147, Acts 1893, § 1, as amended by ch. 4928, Acts 1901, § 1.)”¹² I was unable to find references to pistol or revolver licenses/permits being issued before 1901 with a number issued regularly thereafter.

1901

Open (carry) licenses for pistols

Crimes and Criminal Procedures, Ch. III, Article 5, Deadly Weapons, *The Compiled Laws 1914 of the State of Florida* (1915), pp. 1672-1675 [Hathi Trust](#)

3262. Carrying concealed weapons.—Whoever shall secretly carry arms of any kind on or about his person, or whoever shall have concealed on or about his person any dirk, pistol, metallic knuckles, slung shot, billie or other weapon, except a common pocketknife, shall be punished by imprisonment of not less than three months nor exceeding six months, or by fine of not less than one hundred dollars nor exceeding five hundred dollars: Provided, That nothing in this section shall be considered as applying to sheriffs, deputy sheriffs, city or town marshals, policemen, constables or United States marshals or their deputies.

⁹ “Alliance Department,” *Ocala Banner*, April 3, 1891, p. 3

¹⁰ Clayton E. Cramer, "The Racist Roots of Gun Control," 1995, <http://www.claytoncramer.com/scholarly/racistroots.htm> [accessed 3/22/2021]; originally published in the *Kansas Journal of Law and Public Policy*, Winter 1995).

¹¹ *Watson v. Stone*, 4 So.2d 700 (Fla. 1941) 148 Fla. 516

¹² Crimes and Criminal Procedures, Ch. III, Article 5, Deadly Weapons, *The Compiled Laws 1914 of the State of Florida* (1915), pp. 1674 [Hathi Trust](#)

3263. Officer to arrest without warrant.—The carrying of concealed weapons is hereby declared a breach of peace, and any officer authorized to make arrests under the laws of this State is hereby authorized to make arrests without warrant of persons violating the provisions of the preceding section.

3264. Grand jury may indict.—The several grand juries, in their respective counties, may return indictments, and the several State attorneys, in their respective circuits, may file informations against parties for carrying any pistol, razor or dirk or other deadly weapon, except a common pocketknife, secretly on or about their person.

3265. Indictments, where tried.—All such indictments or information shall be by the clerk of the circuit court transmitted and certified to the county judge for trial, except in counties where criminal courts of record and county courts have been established. In such counties all such indictments and information shall be transmitted and certified to criminal courts of record or to the county court for trial.

3266. Conviction fees in certain courts.—Every person convicted in any court in this State of carrying concealed weapons, said court having a regular or special prosecuting officer, shall pay a conviction fee of ten dollars, which shall be taxed as costs in addition to the other costs and fines imposed: Provided, however, Where the party convicted is insolvent and unable to pay the costs and conviction fee that no liability shall attach to or be incurred by the respective counties for such conviction fee herein provided for.

3267. Penalty for carrying pistol or repeating rifle without first obtaining license.—Whoever shall carry around with him, or have in his manual possession, in any county in this State, any pistol, Winchester rifle or other repeating rifle, without having a license from the county commissioners of the respective counties of, this State, shall, upon conviction thereof, be punished by fine [sic] not exceeding one hundred dollars, or imprisonment in the county jail not exceeding thirty days: Provided, This section shall not apply to sheriffs, deputy sheriffs, city or town marshals, policemen, constables or United States marshals or their deputies as to the carrying of concealed weapons. (Ch. 4147, Acts 1893, § 1, as amended by ch. 4928, Acts 1901, § 1.)

3268. How license procured.—The county commissioners of the respective counties of this State may at any regular or special meeting grant a license to carry a pistol, Winchester or other repeating rifle, only to such persons as are over the age of twenty-one years and of good moral character, for a period of two years, upon such person giving a bond payable to the Governor of the State of Florida in the sum of one hundred dollars, conditioned for the proper and legitimate use of said weapons, with sureties to be approved by the said county commissioners. And the said commissioners shall keep a record of the names of

the persons taking out such a license, the name of the maker of the firearm so licensed to be carried, and the caliber and number of the same. (Ch. 4147, Acts 1893, § 2, as amended by Acts 1903, § 1.) Cited. *State v. Parker*, 49 So. 124, 57 Fla. 170.

3270. (2424.) Officer to take possession of arms.—The officer making any arrest under the preceding sections shall take possession of any arms or weapons found upon the person arrested, and shall retain the same until after the trial of such person, and if he be convicted, said arms or weapons shall be forfeited, and the sheriff shall sell the same at public sale and account for and pay over the proceeds thereof as in the case of fines collected; but if such person be acquitted, the said arms or weapons shall be returned to him. (Ch. 3620, Acts 1885, § 3.) See *Barnes v. State*, 46 Fla. 96, 35 So. 227.

Note: I believe that in 1901, the Florida legislature allowed permits to carry pistols to be issued. Prior to this, all carry of a pistol, open or concealed, was totally banned. Only the licensed open carry of repeating rifles was permitted from 1893.

This is based on newspaper searches that revealed “Winchester licenses” to carry repeating rifles between 1893 without mention of pistol/revolver licenses/permits. The latter did not begin to appear until late 1901 and then thereafter when both were often mentioned in reviews of county politics. Also, the compilations mentioning pistol permits do not reference any statutes earlier than 1901.

Text of the 1901 chaptered laws

Taken from: “Pistol Toting Laws,” *Weekly Tallahasseean*, July 4, 1901, p. 1 and “Laws in Regard to Pistol Toting,” *Florida Star*, July 12, 1901, p. 4

Chapter 4927, No. 43, “An act Allowing All Sheriffs. Deputy Sheriffs, Constables and Police Officers to Have and Carry Weapons upon Their Persons, Concealed or Otherwise, Without Giving Bond.”

Be it enacted by the Legislature of the State of Florida:

Section 1. That from and after the passage of this act, all sheriffs, deputy sheriffs, constables and police officers are allowed to have and carry upon their persons, concealed or otherwise, without giving bond, any deadly weapon.

Sec. 2. All laws and parts of laws in conflict with this act are hereby repealed.

Sec. 3. This act shall take effect immediately upon its passage and approval by the Governor.

Approved May 30, 1901.

Chapter 4928, No. 44, “An act to Amend Section 1 of Chapter 4147 of the Laws of the State of Florida Entitled an Act to Regulate the Carrying of Fire-Arms Approved June 2, 1893.”

Be it enacted by the Legislature of the State of Florida:

Section 1. That Section 1 of Chapter 4147, of the Laws of the State of Florida, being an act entitled an act to regulate the carrying of firearms, be amended so as to read as follows: That 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 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.

Approved May 9, 1901.

Chapter 4949, No. 45, "An act to Prohibit the Carrying of Concealed Weapons in This State, and to Provide a penalty Therefor."

Be it enacted by the Legislature of the State of Florida:

Section 1. That whoever shall secretly carry arms of any kind on or about his person, or whoever shall have concealed on or about his person, any dirk, pistol, metallic knuckles, slung shot, billie or other weapon, except a common pocket knife, shall, upon conviction, be punished by imprisonment of not less than three months nor exceeding six months or by fine of not less than one hundred dollars nor exceeding five hundred dollars, or by both a fine and imprisonment: Provided That nothing in this act shall be considered as applying to sheriffs, deputy sheriffs, city or town marshals, policemen, constables or United States marshals or their deputies.

The carrying of concealed weapon is hereby declared a breach of the peace, and any officer authorized to make arrests under the laws of this State is hereby authorized to make arrests, without warrant, of persons violating the provisions of this act.

Sec. 2. That all laws or parts of laws in conflict with this act be and the same are hereby repealed.

Approved May 31, 1901.

Chapter 4926, No. 42, "An act to Provide for the Effectual and Vigorous Prosecution of the Offense of Carrying Arms Secretly,"

Be it enacted by the Legislature of the State of Florida:

Section 1. That from and after the passage of this act, the several grand juries in their respective counties may return indictments and the several State attorneys in their respective circuits may file information against parties for carrying any pistol, razor, dirk or other deadly weapon, except a common pocket knife, secretly on or about their person.

Sec. 2. That all such indictments or information shall be by the Clerk of the Circuit Court transmitted and certified to the County Judge for trial, except in counties where Criminal Courts or Record and County Courts have been established. In such counties all such indictments and Information shall be

transmitted and certified to the Criminal Courts of Record or to the County Court for trial.

Sec. 3. Every person convicted in any court in this State, said court having a regular or special prosecuting officer, shall pay a conviction fee of ten dollars which shall be taxed as costs in addition to the other costs and fines imposed: Provided, however, Where the party convicted is insolvent and unable to pay the costs and conviction fee, that no liability shall attached or be incurred by the respective counties for such conviction fee herein provided for.

Approved May 31, 1901.

Note: It is important to note that the only unlicensed carry permitted was the open carry of shotguns or non-repeating rifles. Carry licenses were *not* for concealed carry, even if this fact may have been ignored by local authorities, as the *Palatka News* and the *Gainesville Daily Sun* commented.

“The law gives the county commissioners authority to grant certain persons a permit to carry pistols, but not concealed pistols. Very many persons to whom these permits are issued do not seem to understand this.”¹³

“Mr. Holt has a license to own and carry a pistol, but, like many others who hold licenses, has a misconception of the same. The law does not permit the carrying of a weapon concealed, but it must be carried in full view, and on the front of the body or person.”¹⁴

There were two distinct violations: carrying concealed and carrying a pistol/repeating rifle without a license. 3262, carrying concealed weapons, or Chapter 4949, No. 45, was the penalty for a *concealed* weapon, punishable by 3-6 months and/or a \$100-500 fine. Openly carrying a pistol or a repeating rifle without a license, 3267, Chapter 4928, No. 44, was a separate violation, punishable by up to a \$100 fine or 30 days in jail.

¹³ “Concealed Weapons,” *Palatka News and Advertiser*, September 9, 1904, p. 2

¹⁴ “For Concealed Weapons,” *Gainesville Daily Sun*, August 13, 1905, p. 5 [LOC](#)

Georgia

Constitution

1861

The right of the people to keep and bear arms shall not be infringed.

1865

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.

1868

A well regulated Militia being necessary to the security of a free people, the right of the people to keep and bear arms shall not be infringed; but the General Assembly shall have power to prescribe by law the manner in which arms may be borne.

1877-present

The right of the people to keep and bear arms shall, not be infringed, but the General Assembly shall have power to prescribe the manner in which arms may be borne.

Statutory History

1837

First law, open and concealed & pistol sale ban

"AN ACT to guard and protect the citizens of this State, against the unwarrantable and too prevalent use of deadly weapons," No. 74, *Acts of the General Assembly of the State of Georgia*, 1837, pp. 90-91 [Link](#)

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Georgia, in General Assembly met, and it is hereby enacted by the*

authority of the same, That from and after the passage of this act, it shall not be lawful for any merchant, or vender of wares or merchandize in this State, or any other person or persons whatsoever, to sell, or offer to sell, or to keep, or have about their person or elsewhere, any of the hereinafter described weapons, to wit: Bowie, or any other kind of knives, manufactured and sold for the purpose of wearing, or carrying the same as arms of offence or defence, pistols, dirks, sword canes, spears, &c., shall also be contemplated in this act, save such pistols as are known and used, as horseman's pistols, &c.

Sec. 2. *And be it further enacted by the authority aforesaid*, That any person or persons within the limits of this State, violating the provisions of this act, except as hereafter excepted, shall, for each and every such offence, be deemed guilty of a high misdemeanor, and upon trial and conviction thereof, shall be fined, in a sum not exceeding five hundred dollars for the first offence, nor less than one hundred dollars at the direction of the Court; and upon a second conviction, and every after conviction of a like offence, in a sum not to exceed one thousand dollars, nor less than five hundred dollars, at the discretion of the Court.

Sec. 3. *And be it further enacted by the authority aforesaid*, That it shall be the duty of all civil officers, to be vigilant in carrying the provisions of this act into full effect, as well also as Grand Jurors, to make presentments of each and every offence under this act, which shall come under their knowledge.

Sec. 4. *And be it further enacted by the authority aforesaid*, That all fines and forfeitures arising under this act, shall be paid into the county Treasury, to be appropriated to county purposes: Provided, nevertheless, that the provisions of this act shall not extend to Sheriffs, Deputy Sheriffs, Marshals, Constables, Overseers or Patrols, in actual discharge of their respective duties, but not otherwise: Provided, also, that no person or persons, shall be found guilty of violating the before recited act, who shall openly wear, externally, Bowie Knives, Dirks, Tooth Picks, Spears, and which shall be exposed plainly to view: And provided, nevertheless, that the provisions of this act shall not extend to prevent venders, or any other persons who now own and have for sale, any of the aforesaid weapons, before the first day of March next.

[Sec. 5; omitted]

Note: This statute was invalidated in 1845 as unconstitutional by *Nunn v. State*¹⁵, which found that prohibiting open carry was improper. The court also challenged the pistol sale/possession ban and the language of the statute.

1852

Concealed carry only

¹⁵ *Nunn v. State*, 1 Ga. (1 Kel.) 243 (1846)

"An Act to prohibit the sale of deadly weapons, and to prescribe the manner of carrying the same...," No. 165, *Acts of the General Assembly of the State of Georgia*, 1851-'2, Vol 1, p. 269 [Link](#)

SECTION I. *Be it enacted by the Senate and House of Representatives of the State of Georgia in General Assembly met, and it is hereby enacted by the authority of the same*, That from and after the passage of this Act, it shall not be lawful for any person or persons whatever, to have or carry about their persons, any pistol (except horseman pistols,) dirk, sword in a cane, spear, [Illegible Text] knife, or any other kind of knives manufactured and sold for the purpose of offence and defence, save and except in the manner hereinafter mentioned.

SEC. II. No person or persons shall have or carry about their persons, any one or more of the weapons [Illegible Text] and embraced in the first section of this Act, except such person or persons shall have or carry such weapon or weapons in an open manner and fully exposed to view.

SEC. III. Any person or persons violating any of the provisions of this Act shall be guilty of a misdemeanor, and on conviction shall be punished by fine or imprisonment, or both, at the discretion of the Court.

SEC. IV. An Act entitled an Act to guard and protect the [Illegible Text] of this State against the unwarrantable and too prevalent use of deadly weapons, assented to December 25th, 1837, be and the same is hereby repealed, and all laws and parts of laws militating against this Act, be and the same are hereby repealed.

Note: *Stockdale v. State*¹⁶ in 1861 upheld this statute and *Nunn* in stating that a partially concealed handgun (pistol barrel down the pants below the belt) was openly carried and within the requirements of Section II.

1870

Sensitive places

"An Act to preserve the peace and harmony of the people of this State, and for other purposes," *Acts and Resolutions of the General Assembly of the State of Georgia*, 1870, Vol. 1, p. 421 [Link](#)

Section 1. Be it enacted, etc., That, from and immediately after the passage of this act, no person in said State of Georgia be permitted or allowed to carry about his or her person any dirk, bowie knife, pistol or revolver, or any kind of deadly weapon, to any court of justice, or any election ground or precinct, or any place of public worship, or any other public gathering in this State, except militia muster-grounds.

Sec. 2. Be it further enacted, That if any person or persons shall violate any portion of the above recited section of this act, he, she or they shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less

¹⁶ *Stockdale v. State*, 32 Ga. 225 (1861)

than twenty nor more than fifty dollars for each and every such offense, or imprisonment in the common jail of the county not less than ten nor more than twenty days, or both, at the discretion of the court.

[Sec. 3 omitted]

Note: This was upheld by *Hill v. State*¹⁷ in 1874. The act was amended in 1883 to strike out the words "except horseman's pistol." Horseman's pistols were large pistols too difficult to conceal and would have fallen out of common use at this time.¹⁸

1910

Open and concealed carry, may issue licenses

"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..., "No. 77/432, *Acts and Resolutions of the General Assembly of the State of Georgia*, 1910, pp. 134-135

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 firearm to be carried, and the caliber and number of the same.

¹⁷ *Hill v. State*, 53 Ga. 472 (1874)

¹⁸ "An Act to amend section 4527 of the Code of 1882 in reference to carrying concealed weapons...etc.," No. 93, *Acts and Resolutions of the General Assembly of the State of Georgia*, 1882-83, pp. 48-49

SEC. 3. The person making such application and to whom such license is granted shall pay to the Ordinary for granting said license the sum of fifty cents, which license shall cover a period of three years from date of granting same.

SEC. 4. Be it further enacted, That any person violating any of the provisions of the above Act shall be punished as for a misdemeanor, as prescribed in Section 1039 of the Penal Code of 1895, and amendments thereto.

[Sec. 5 omitted]

Note: *Nunn* was overruled in 1911 by *Strickland v. State*¹⁹ which found that the license requirement was not unconstitutional. The court decided that the application of the Second Amendment to the state in *Nunn* was incorrect and invalidates it using new reasoning of its own. The dissent criticized the majority's interpretation as well the impracticality of the law to certain situations as taking a pistol home from a gun shop. To this latter point, a conviction for a man who took a pistol to a pawn shop to sell it was upheld four years later in *Usry v. State*²⁰.

¹⁹ 137 Ga. 1 (1911)

²⁰ 17 Ga. App. 268 (1915)

Hawaii

Historical background

Europeans first arrived in Hawaii with the landing of Captain James Cook in 1778. Hawaii remained as an independent kingdom until January 17, 1893, when the monarchy was overthrown by a group composed mostly of Americans who favored the annexation of the archipelago by the United States. In 1894, the Provisional Government was replaced by the Republic of Hawaii. The United States annexed Hawaii as a territory on August 12, 1898.

Statutory history

1852

First law, open or concealed

"An act to prevent the carrying of deadly weapons," *Constitution and Laws of His Majesty Kamehameha III*, 1852, p. 19²¹

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.

[Sections 2 and 3 omitted]

Note: This law seems to have originated due to the behavior of sailors on shore leave. While not an American law, for the purposes of historicity and continuity it is included.

²¹ Also present as Ch. 54 "Criminal Procedure," §688, compiled by Sidney Miller Ballou, *The Penal Laws of the Hawaiian Islands*, 1897, pp. 251

1896

Gun licensing

Ch. 54, “Carrying Deadly Weapons,” §688-689 reiterated verbatim the 1852 statute regarding carrying deadly weapons. It is not reprinted here for the sake of brevity.²² The law was amended that year to provide for licenses to carry deadly weapons by amending what were previously hunting regulations.

"An act to amend, add to and consolidate the laws relating to certain licenses...etc.," Act 64, *Laws of the Republic of Hawaii*, 1896, pp. 224-226²³ [Hathi Trust](#)

[Repealed] Chapter 61 of the Laws of 1886, relating to licenses for carrying Fire-Arms.

Section 59. Except as hereinafter otherwise provided, the annual fee for a license to possess, carry, or use a pistol, rifle, shotgun or other fire-arm, shall be one dollar for each such fire-arm.

Section 60. Except hereinafter provided, no fire-arm shall be possessed, carried or used in the Republic without a license issued under this Act.

Section 61. Each such license shall enumerate:

1. The name of the licensee, his nationality and residence, whether or not he is a member of the Police, Citizen’s Guard or any military organization, and if so, what organization, giving the company or squad.
2. The character of the fire-arm licensed.
3. The name of the maker.
4. The maker’s number.
5. The calibre of the fire-arm.

[Sections 62-64 omitted]

Section 65. The existence of any unlicensed fire-arm in the room, building, or upon the premises of any person, shall be prima facie evidence that such fire-arm is in the possession of the person owning, renting, leasing or occupying the room, building or premises in or upon which such fire-arm is found.

Section 66. Any person who shall possess, carry, or use any fire-arm, without a license to do so under this Act, shall be fined not less than Five nor more than One Hundred Dollars for each unlicensed fire-arm possessed, carried or used by him, and such or any unlicensed fire-arm shall be forfeited to the Government.

Note: This primarily dealt with hunting on Oahu, but broader application was drawn in Section 60. The 1896 laws originated in an 1870 act, intended to curb “the indiscriminate use of Fire-arms” to kill birds and regulated carrying firearms for sporting purposes.²⁴ An 1886 act, “to License the Carrying of Firearms for Hunting Purposes,” which was substantially similar to the

²² [Hathi Trust](#)

²³ Also present as Ch. 55 “Licenses”, §746-755, compiled by Sidney Miller Ballou, *The Penal Laws of the Hawaiian Islands*, 1897, pp. 265-266 [Hathi Trust](#)

²⁴ “An Act to License the Carrying of Fowling Pieces and Other Fire-arms,” Chapter 20, *Laws of his Majesty Kamehameha V...*, 1870, p. 26 [Google Books](#)

1896 version, except carrying weapons for hunting purposes was regulated, not all forms of carry.²⁵

Republic v. Clark, (10 Hawaii 585)

Charles Clark was arrested for a misdemeanor and a search revealed he was carrying a loaded revolver on his person. Clark was issued a license by the Interior Department to carry a .38 caliber Smith & Wesson revolver (specifically serial number 91,743) that was valid from November 2, 1896 for one year. The court found that the license was sufficient to satisfy the "authorized by law" exemption clause in the carrying deadly weapon statute.

1905

First American law, open and concealed

Chapter 209, Carrying Deadly Weapons, *Revised Laws of Hawaii*, 1905, pp. 1122-1123 [Hathi Trust](#)

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.

Note: The Hawaiian Organic Act of 1900 continued the 1898 Ballou compilation of the Republic's laws (see Ch. 1 §1). But Section 7 repealed the hunting license section.²⁶ In 1905, the first revised code was created. Note the below section is the re-codification of the existing 1852 deadly weapons statute with an updated penalty.

<https://twitter.com/MorosKostas/status/1631495778412957696/photo/1>

1913

“An act to amend Section 3089 of the Revised Laws of Hawaii,” Act 22, *Laws of the Territory of Hawaii Passed*, 1913 p. 25 [Hathi Trust](#)

²⁵ “An Act to License the Carrying of Firearms for Hunting Purposes,” Chapter 56, *Laws of His Majesty Kalakaua I...* 1886, pp. 111-112 [Google Books](#)

²⁶ “That the constitution of the Republic of Hawaii and of the laws of Hawaii, as set forth in the following acts, chapters, and sections of the civil laws, penal laws, and session laws, and relating to the following subjects, are hereby repealed: Penal laws: [...] sections seven hundred and forty-eight to seven hundred and fifty-five, inclusive, Firearms [...]”

Section 1. Section 3089 [...] is hereby amended so as to read as follows: [...]

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 Two Hundred and Fifty Dollars, and not less than Ten Dollars, or in default of payment of such fine, to imprisonment for a term not exceeding one year, nor less than three months, 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.

Note: The punishment was increased to \$10-250 maximum and the jail term set at three months to a year.

1927

Uniform Firearms Act

An Act Regulating the Sale, Transfer and Possession of Certain Firearms and Ammunitions...etc.," Act 206 (Small Arms Act), *Laws of the Territory of Hawaii*, 1927, pp. 209-217 [Source](#)

[some sections omitted]

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. [underlining added]

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. [underlining added]

SECTION 26. Section 2146 of the Revised Laws of Hawaii 1925, is hereby amended to read as follows: "Section 2146. Penalties. Any person who shall be found in the possession of any firearm or firearms or any ammunition without having complied with the provisions of this chapter, or who shall fail to give, file or forward required information, reports or statements, or who shall otherwise violate the provisions of this chapter in matters not covered by Section 2142 hereof, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined by the court of appropriate jurisdiction in a sum of not more than five hundred dollars (\$500.00).

Note: Hawaii adopted the Uniform Firearms Act nearly verbatim.

1933

Ch.81, "Firearms and Ammunition," §2540-2557, *Revised Laws of Hawaii, 1935*, pp. 431-434
[Hathi Trust](#)

Sec. 2543. Possession by licensed hunters. Any person who has procured a hunting license under the provisions of sections of 2463-2468, inclusive, shall while actually engaged in hunting or while going to and from the place of hunting, be authorized to carry and use any lawfully acquired rifle or shotgun and suitable ammunition therefor.

Sec. 2544. Place to keep firearms. The possession of all firearms and ammunition shall be confined to the possessor's place of business, residence, or sojourn, or to carriage as merchandise in a wrapper from the place of purchase to the purchaser's home, place of business or place of sojourn, or between [those places].

Sec. 2547. Permits to carry.

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, 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 within 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. All licenses to carry concealed weapons heretofore issued shall expire at midnight on January 9, 1934. **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.** [emphasis added]

For each such license there shall be charged a fee of ten dollars, 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 or by imprisonment for not more than one year, or by both.

Note: The 1933 codification²⁷ (*Revised Laws*) is an outlier that seems totally at odds with the rest of the statutes. The Forward to the 1935 compilation states that a Compilation Commission was appointed by a legislative act mainly to update the statutes because of the practice "of amending the laws with general references than with reenactments of sections in toto as amended." The members of the committee had authority to make changes with some leeway.

Arguably, Sec. 2544 could prohibit open carry, by requiring the firearms at the place of business, but this depends on how broadly or narrowly "place of sojourn" was construed. In context, it does not seem likely that such "sojourn" would be interpreted to include travels about one's regular, daily business.

Speaking strictly from a perspective of admiration for clear regulations, the 1933 "Firearms and Ammunition" statutes was inferior to the much better 1927 adaptation of the Uniform Firearms Act. It seems that the 1935 statutes (in my opinion) were a more poorly written adaptation of prior Hawaiian legislation. Even so, many of the same elements relating to carrying that were present in 1927 were present in 1935.

²⁷ See also: Act 120, "An Act to Amend Act 206 of the Session Laws of 1927..." *Laws of the Territory of Hawaii...*, 1933, p. 117 [Source](#). This act made small, non-substantive changes.

Idaho

Constitution

1889

The people have the right to bear arms for their security and defense; but the legislature shall regulate the exercise of this right by law.

Statutory History

1889

First law; both open and concealed carry banned in cities & towns

“An act regulating the use and carrying of deadly weapons in Idaho Territory,” *General Laws of the Territory of Idaho*, 1889, p. 23 [Hathi Trust](#)

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 by nor more than fifty days, or by both such fine and imprisonment.

Note: In 1902, the Idaho Supreme Court in *In re Brickey* found that the statute’s ban of open carry was unconstitutional. The decision is covered in detail below.

I was unable to find evidence that this act was ever actually repealed to conform with the decision. A senate bill No. 48, authored by Mr. O’Neill, sought to make it illegal for anyone except peace officers to make arrests for CCW²⁸ (and presumably re-criminalize concealed carry). During interim when the state statute was voided as unconstitutional, it appears that

²⁸ “Doings of the Legislature,” *The Lewiston Teller*, February 24, 1903, p. 1

several communities passed their own local CCW ordinances. Shoshone passed an ordinance in 1904²⁹ and Grangeville passed one again in 1908.³⁰

With limited access to records, it is not possible to tell what all communities passed ordinances during the interim. Municipal ordinances were passed earlier than this: Lewiston passed one in 1879, Pocatello had one in 1898³¹, and Granville may have passed its first such ordinance in 1899, setting a maximum \$100 fine or 15 days in jail³². Bonner's Ferry passed an ordinance after the new statute in 1912³³ and it is not inconceivable that more local laws were passed after 1909.

1909

“An act to regulate the use and carrying of concealed deadly weapons...etc.,” HB 62, *General Laws of the State of Idaho*, 1909, p. 6 [Hathi Trust](#)

SECTION 1. If any person (excepting officials of a county, officials of the State of Idaho, officials of the United States, peace officers, guards of any jail, any officer of any express company on duty), shall carry concealed upon or about his person any dirk, dirk knife, bowie knife, dagger slung shot, pistol, revolver, gun or any other deadly or dangerous weapon, within the limits or confines of any city, town, or village, or in any public assembly, or in any mining, lumbering, logging, railroad, or other construction camp within the State of Idaho, or shall, in the presence of one or more persons, exhibit any deadly or dangerous weapon in a rude, angry, or threatening manner, or shall have or carry any such weapon upon or about his person when intoxicated, or under the influence of intoxicating drinks, or shall, directly or indirectly, sell or deliver, loan or barter to any minor under the age of sixteen (16) years any such weapon, without the consent of the parent or guardian of such minor, he shall upon conviction, be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than two hundred dollars (\$200.00), or by imprisonment in the county jail for a period of not less than twenty (20) nor more than sixty (60) days, or by both such fine and imprisonment: *Provided, however,* that it shall be a good defense to the charge of carrying such concealed weapons if the defendant shall show that he has been threatened with great bodily harm, or had good reason to carry the same in the necessary defense of his person, family, home or property.

Note: This section re-criminalized concealed carry, without criminalizing open carry, the *Brickey* decision found that the constitution permitted regulating concealed carry, but not open carry.

This act incorporated multiple offenses beyond CCW, including brandishing, carrying while intoxicated, and selling weapons to minors. The minimum fine was

²⁹ “Ordinance No. 23,” *Shoshone Journal*, February 12, 1904, p. 5 [LOC](#)

³⁰ “Ordinance No. 67,” *Idaho County Free Press*, April 23, 1908, p. 3 [LOC](#)

³¹ *The Caldwell Tribune*, January 15, 1898, p. 5

³² “Ordinance No. 46,” *Idaho County Free Press*, May 19, 1899, p. 6 [LOC](#)

³³ “Chapter XIII,” *Bonnors Ferry Herald*, January 27, 1912, p. 8 [LOC](#)

lowered to \$25, with a new max of \$200, from 1889's \$50-200 and a jail term of 60 (from 50) days.

1917

Permits

“An act to amend an act [1909 act]...etc.,” Ch. 146 (HB 190), *General Laws of the State of Idaho*, 1917, pp. 461-462 [Hathi Trust](#)

Section 1. If any person (excepting officials of a county, officials of the State of Idaho, officials of the United States, peace officers, guards of any jail, any officer of any express company on duty) shall carry concealed upon or about his person, any dirk, dirk-knife, bowie-knife, dagger, sling-shot, pistol, revolver, gun or any other deadly or dangerous weapon within the limits or confines of any city, town or village, or in any public assembly, or in any mining, lumbering, logging, railroad or other construction camp, public conveyances or on public highways within the State of Idaho, or shall, in the presence of one or more persons, exhibit any deadly or dangerous weapon in a rude, angry or threatening manner, or shall have or carry such weapons upon or about his person when intoxicated or under the influence of intoxicating drinks, or shall, directly or indirectly, sell or deliver, loan or barter to any minor under the age of sixteen (16) years any such weapon without the consent of the parent or guardian of such minor, he shall, upon conviction, be punished by a fine of not less than Twenty-five Dollars (\$25.00), nor more than Two Hundred Dollars (\$200.00) and by imprisonment in the county jail for a period of not less than twenty (20) days nor more than ninety (90) days: *Provided, however*, That any person shall be allowed to carry any of the above weapons in the places mentioned above on securing a permit from the sheriff of the county after satisfying the sheriff of the necessity therefor.

Note: While the defense of being threatened with bodily harm was removed, the act allowed sheriffs to issue permits to carry concealed. The maximum jail sentence was also raised to 90 days from 60 days.

In re Brickey

In 1902, the Idaho Supreme Court found *In re Brickey*³⁴ that the statute's ban of open carry was unconstitutional and in doing so voided the entire statute. The opinion is provided in full below.

In re Brickey, Supreme Court of Idaho. Nov. 15, 1902.

³⁴Heard: Nov. 15, 1902. Citation: *In re Brickey*, 8 Idaho 597, 70 P. 609, 101 Am. St. Rep. 215, 1 Ann. Cas. 55 (1902), [In re Brickey](#)

1. *The act of the territorial legislature approved February 4, 1889, which prohibits private persons from carrying deadly weapons within the limits or confines of any city, town, or village in Idaho, contravenes the provisions of the second amendment to the federal constitution and the provisions of section 11, art. 1, of the constitution of Idaho, and is void.*

2. *While it is undoubtedly within the power of the legislature to prohibit the carrying of concealed deadly weapons, and such regulation is a proper exercise of police power, yet the legislature does not possess the power to prohibit the carrying of firearms, as the right to do so is guaranteed to the citizen both by our federal and state constitutions.*

Application of L. D. Brickey for a writ of habeas corpus. Writ granted, and petitioner discharged.

S. S. Denning, for petitioner. Miles S. Johnson, Co. Atty., for the State.

QUARLES, C. J. The petitioner applies to this court for a writ of habeas corpus, and in the petition sets forth and shows that he is unlawfully imprisoned, confined, and restrained of his liberty by A. W. Kroutingier, sheriff of Nez Perce county, at the county jail in the county of Nez Perce; in the state of Idaho; that he is so imprisoned under a commitment which issued out of the justice's court of West Lewiston precinct, in the county of Nez Perce, in a criminal action wherein petitioner was convicted upon the charge of carrying a deadly weapon, to wit, a loaded revolver, within the limits and confines of the city of Lewiston, contrary to the provisions of the act of the territory of Idaho approved February 4, 1889 (Sess. Laws 1889, p. 27); and, in accordance with the prayer of said petition, the writ was issued, and return thereto duly made by the said sheriff.

From the petition and return it appears that the only offense charged against the petitioner, of which he has been convicted, and is now restrained of his liberty, is that he carried a deadly weapon within the limits of the city of Lewiston, in contravention of the said act of February 4, 1889.

The second amendment to the federal constitution is in the following language: "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." The language of section 11, art. 1, Const. Idaho, is as follows: "The people have the right to bear arms for their security and defense, but the legislature shall regulate the exercise of this right by law." Under these constitutional provisions, the legislature has no power to prohibit a citizen from bearing arms in any portion of the state of Idaho, whether within or without the corporate limits of cities, towns, and villages.

The legislature may, as expressly provided in our state constitution, regulate the exercise of this right, but may not prohibit it. A statute prohibiting the carrying of concealed deadly weapons would be a proper exercise of the police power of the state. But the statute in question does not prohibit the carrying of

weapons concealed, which is of itself a pernicious practice, but prohibits the carrying of them in any manner in cities, towns, and villages.

We are compelled to hold this statute void. The statute being void, the said justice's court had no jurisdiction of the subject-matter of the action, and the said judgment of conviction, and the commitment which issued thereon, and the detention of the petitioner under said commitment and judgment of conviction, are illegal and void. [indentations added]

The said judgment being void, habeas corpus will lie, and the prisoner should be discharged from custody, and it is so ordered.

SULLIVAN and STOCKS LAGER, JJ., concur.

Kansas

Constitution

1859

The people have a right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be tolerated, and the military shall be in strict subordination to the civil power.

Statutory History

1867

First law, open and concealed carry

“An act to prevent the carrying of deadly weapons,” *The Laws of the State of Kansas*, 1867, Ch. XII, p. 25 [Hathi Trust](#)

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.

SEC. 2. Justices of the Peace shall have original jurisdiction of all cases arising under this Act, and on complaint being made, shall proceed to hear and determine the same in a summary manner, and shall have full authority to enforce both fine and imprisonment as provided in this Act, *Provided*, that nothing in this Act shall conflict with the ordinance of any incorporated city of the State.

SEC. 3. In all cases arising under this Act, the accused shall be entitled to a jury of six men, possessing the qualifications of electors, who, if they find the defendant guilty, shall assess the fine to be paid by him, and fix the term of his imprisonment; and if convicted, may appear to the District Court of the proper county as in other cases provided by law.

[Sec. 4 omitted]

Note: There seems to have been some debate on whether or not this was a full-fledged carry ban. The question, I suppose, would revolve around what exactly constitutes “legitimate business.” Several papers reported on the eve of the passage of the 1903 law that, “Contrary to the general impression there is now no state law against carrying concealed weapons. The house of representatives in committee of the whole has recommended for passage a bill making the carrying of concealed weapons a misdemeanor.”³⁵

Interestingly, Confederate soldiers were disenfranchised from carrying handguns. Given Kansas’ bloody history of partisan and guerilla warfare, before, during and after the Civil War, such a provision is not surprising.

1903

Concealed carry only

“An act in relation to the carrying of concealed weapons,” Ch. 216, *State of Kansas Session Laws*, 1903, p. 371 [Hathi Trust](#)

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

SECTION 1. That any person who is not an officer of the law, or a deputy to such officer, who shall be found within the limits of this state carrying on his person in a concealed manner any pistol, bowie-knife, dirk, sling-shot, knucks or any other deadly weapon shall be guilty of a misdemeanor, and on conviction be fined in a sum not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding three months, or both such fine and imprisonment, at the discretion of the court.

SEC. 2. All acts and parts of acts in conflict herewith are hereby repealed.

SEC. 3. This act shall be in force and effect from and after its publication in the statute-book.

Note: This section removed all ambiguity from the earlier statute, applied only to concealed carry, and retained the same penalties as before. “Sling-shot,” probably meaning “slung shot,” is original.

³⁵ "Concealed Weapons," *Chanute Times*, February 13, 1903, p. 8

New Mexico

Constitution

1889

Proposed

The right of the people to keep and bear arms shall not be infringed.³⁶

1911

The people have the right to bear arms for their security and defense, but nothing herein shall be held to permit the carrying of concealed weapons.

Statutory History

1852

First law, cities and towns, concealed

“An act prohibiting the carrying a certain class of arms, within the settlements and balls,” *Laws of the Territory of New Mexico*, 1852, pp. 67-69 [Hathi Trust](#)

SEC. 1. That each and every person is prohibited from carrying short arms, such as pistols, daggers, knives, and other deadly weapons, about their persons concealed, within the settlements, and any person who violates the provisions of this act, shall be fined in a sum not exceeding ten dollars, nor less than two dollars, or shall be imprisoned for a term not exceeding fifteen days nor less than five days.

SEC. 2. That the Sheriffs of the different counties, and Constables of the different precincts, are hereby required to enforce the observance and compliance of the provisions of the preceding section, having power to take with them, two or more armed persons, when they are on patrol at night, in order to make themselves respected while on such duty, and it is hereby made the duty of the

³⁶ Sec. 12, Article II, *The Constitution of the State of New Mexico Adopted by the Constitutional Convention Held at Santa Fe, NM, Sept. 3-21, 1889*, (New Mexican Printing Co., Santa Fe), p. 2 [Hathi Trust](#)

Probate Judges and Justices of the Peace to aid and assist said officers in the prompt discharge of their duties.

SEC 3. Any person desiring to give a Ball or Fandango, they shall apply to the probate Judge or a Justice of the Peace for a License for the same—who, after having granted such license, shall inform the applicant, that he must maintain good order, and for this purpose he shall swear him to faithfully discharge his duties as [a] police officer and perform said duties during such Ball or Fandango, possessing the powers of a Sheriff, and that he will not permit any person to enter said Ball or room adjoining said ball where Liquors are sold, or to remain in said balls or Fandangos with fire arms or other deadly weapons, whether they be shown or concealed upon theft persons and if any person or persons shall enter said Balls or Fandangos or ante-chamber, with deadly weapons upon their person, upon conviction for such offence before any Probate Judge or Justice of the Peace, they shall suffer the punishment prescribed in the first section of this Law.

Provided, that, in case any person desires a license for a ball or fandango, who shall not be competent, the Probate Judge or Justice of the Peace as the case may be, shall require him to present a competent person, who shall discharge the duties of a Police Officer, and shall swear him as prescribed in the foregoing section.

SEC. 4. That any person or persons giving Balls or Fandangos shall be liable to the punishments prescribed in the foregoing sections of this Law—if they permit any person or persons armed to remain in said Balls or Fandangos, they shall also be subject to the same penalties of the Police Officers who fail to discharge their duties or violate the provisions of this Law.

SEC. 5. That all fines collected by the provisions of this Law shall be applied to the use of the respective counties.

Note: Two problems the New Mexico legislators identified stand out; law enforcement not being respected when enforcing weapon bans and guns at large gatherings.

Sec. 2 indicates that resistance to law enforcement must have been a problem: "having power to take with them, two or more armed persons, when they are on patrol at night, in order to make themselves respected while on such duty."

Anyone throwing a ball or fandango (a large party) had to enforce the firearm prohibition as a peace officer, with the powers of a sheriff. This would be somewhat similar to large events or gatherings having security present with metal detectors, something concert and nightclub goers would not be unfamiliar with.

1860

Open and concealed, universal

“An act prohibiting the carrying of weapons, concealed or otherwise,” *Laws of the Territory of New Mexico*, 1859-60, pp. 94-98 [Hathi Trust](#)

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. 3. Be it further enacted: That if any person shall discharge or draw any deadly weapon, of the class or description set forth in the first section of this act, in any baile [Spanish for “dance”] or fandango, or in any other public assembly whatever, the person who shall so offend, on conviction thereof, which shall be by indictment in the district court, shall be fined in any sum not less than one hundred dollars, nor more than three hundred, at the discretion of the court trying the cause, or imprisoned in the county jail for a term not less than three months nor more than one year.

SEC. 4. Be it further enacted: That if any person in any baile or fandango, or in any public assembly of whatever class or description it may be, shall fire off or discharge any firearm of the class mentioned in the first section of this act, or shall cut or wound any person with any description of deadly weapon mentioned in the first section of this act, in any baile or fandango, or in any other public assembly, and any death shall result from said cut or wound so given, the person who shall so wound or cut, on conviction, shall be considered guilty of murder in the first degree, and shall suffer the penalty of death in the said first degree.

SEC. 5. Be it further enacted: That it shall be the duty of the sheriffs, their deputies, or constables, to arrest and take all persons who shall be found with deadly weapons of the class and description mentioned in the first section of this act, and present them to some justice of the peace, or other authority, to be examined and it shall also be the duty of the judges of the district courts to cause, at the first term to be held in each county, the sheriffs and their deputies to take an oath that they will truly and faithfully comply with the provisions of this act, and that they will arrest at all times every person who shall violate any of the provisions of this act.

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.

SEC. 7. Be it further enacted: That it shall be the duty of the several judges of the district court to give this act specially in their charges to the grand juries at each term of the court and further, it shall be the duty of the grand juries, at each term of the court, to make a special report whether there has been any violation of the provisions of this act in their counties since the last term of the court.

SEC. 8. That all laws or parts of laws in conflict with this act are hereby repealed, and this act shall be in force and take effect from and after its passage.

SEC. 9. That the Secretary of the Territory of New Mexico be required to have this law published in the Santa Fé Gazette, as soon as possible, for six successive weeks, for the information of the people.

Note: The duties of the ball or fandango giver to act as a peace officer were repealed, or at least not recapitulated here. It is unclear why this was; it could be that the duty was unpopular and was ignored by the responsible party or that the population grew enough for local officers to police the events. Carrying deadly weapons at these events was given a higher penalty than otherwise in public, indicating how much authorities sought to discourage carrying there.

Sec. 4 declared that if someone died from a wound inflicted at a *baile* or fandango, it was murder. The act of bringing a weapon to an event where it was specifically prohibited constituted the element of premeditation.

Sec. 5 is interesting because sheriffs and deputies were required to take an oath to promise to enforce the deadly weapon law, signifying there may have been a problem with officials enforcing the prohibition. Sec. 7, in specially charging juries, is a continuation of a theme and quite common across the states as a way to remind juries to not disregard the law and acquit.

Sec. 9 indicates that the legislators wanted the law well-publicized.

This act was essentially re-codified in 1865.³⁷

1869

In settlements

“An act prohibiting the carrying of deadly weapons, either concealed or in any other way, repealing all other laws on the same subject...etc.,” *Laws of the Territory of New Mexico*, 1868-1869, Ch. 32, pp. 72-77 [Hathi Trust](#)

SECTION 1. From and after the passage of this act it shall be unlawful for any person to carry deadly weapons, either concealed or otherwise, on or about their persons within any of the settlements of this Territory, except it be in the lawful defence of themselves, their families or their property, and the same being then and there threatened with danger, or by order of legal authority, or on their own landed property, or in the execution of an order of court.

³⁷ “An act prohibiting the carrying of weapons, concealed or otherwise,” *Laws of the Territory of New Mexico*, 1865, pp. 406-410 [Hathi Trust](#)

Sec. 2. Deadly weapons, in the meaning of this act, shall be construed to mean all kinds and classes of pistols whether the same be a revolver, repeater, derringer, or any other kind or class of Pistol; any and all kinds of bowie knives, daggers, poniards, butcher knives, dirk knives, and all such weapons with which cuts can be given, or by which wounds can be inflicted by thrusting, including sword canes and such sharp pointed canes with which deadly thrusts can be given, and all kinds of slung shots, and any other kinds of deadly weapon, by whatever name it may be called, by which a dangerous wound can be inflicted.

Sec. 3. The penalty for the violation of the preceding sections of this act shall not be less than ten dollars nor more than fifty dollars for each offence, or not less than ten days imprisonment nor more than fifty days imprisonment in the county jail, or both, such fine and imprisonment in the discretion of the jury trying the case.

Sec. 4. Any person who shall draw a deadly weapon on another, or who shall handle a deadly weapon in a threatening manner at or towards another, in any part of this Territory, except in the lawful defence of himself, his family or his property, or by order of legal authority, upon conviction thereof before the proper tribunal, shall for each offence be fined in a sum not less than twenty-five dollars nor more than seventy-five dollars, or by imprisonment in the county jail for a term of not less than twenty days nor more than sixty days, or be punished by both such fine and imprisonment, in the discretion of the jury trying the cause.

Sec. 5. Any person who shall draw or use any deadly weapon in any ball, dance or other public gathering of the people, or near where any election authorized by law is being held, in any part of the Territory, except it be in the lawful defence of himself, his family or his property, or in obedience to legal authority, shall, upon conviction before the proper tribunal, be punished by a fine not less than fifty dollars nor more than one hundred dollars for each offence, or by imprisonment in the county jail for a term of not less than one month nor more than three months for each offence, or by both such fine and imprisonment, in the discretion of the jury trying the cause.

Sec. 6. Justices of the peace as well as the district court shall have jurisdiction of all offences under the preceding sections of this act, and all causes under this act shall be tried by a jury, and if the person accused of the crime pleads "guilty" to the charge the jury shall proceed to hear all the evidence in the cause in order to fix the penalty.

Sec. 7. A conviction of any portion under this act shall not be a bar to a prosecution and conviction of the same person for an assault and battery, aggravated assault, assault with a deadly weapon, assault with intent to kill, or murder, manslaughter, or other crime, and where the words "weapons" or "deadly weapons" are used in this act, such word or words shall be construed to mean the weapons described in section two of this act.

Sec. 8. It shall not be necessary in the trial of any cause arising under the provisions of this act to prove that the person charged was not in the lawful defence of himself, his family or his property; but the accused must prove to the satisfaction of the jury that the act charged was done in the lawful defence of himself, his family or his property, before the jury can acquit.

Sec. 9. Any lawful voter of this territory may without a warrant arrest parties who may violate the preceding sections of this act, and take such persons before a justice of the peace of the county in which the offence was committed, for complaint and trial, and such trial shall be had as soon as possible, giving due time for summoning witnesses.

Sec. 10. All fines collected by virtue of the preceding sections of this act shall go one-third to the Territory, one-third to the county in which the offence was committed, and one-third to the person or attorney who, on the part of the Territory, procured the conviction.

Sec. 11. Persons traveling may be permitted to carry arms within settlements or towns of this Territory, for one hour after arriving in such settlements or town, and while going out of such towns or settlements; and sheriffs and constables of the various counties of this Territory and their lawfully appointed deputies may carry weapons in the legal discharge of the duties of their respective office, when the same may be necessary, but it shall be for the jury to decide from the evidence whether such carrying of weapons was necessary or not, and for an improper carrying or using deadly weapons by any officer mentioned in this section, he shall be punished as other persons are punished for a violation of the preceding sections of this act.

Sec. 12. It shall be the duty of the keeper of each and every hotel, boarding house and drinking saloon, to keep posted up in a conspicuous place in his bar room or reception room, if there be no bar kept in the house, a plain notice in Spanish as also in English, to travelers to divest themselves of their weapons in accordance with section eleven of this act and the sheriffs of the various counties shall notify the keepers of hotels, boarding houses and drinking saloons in their respective counties of their duties under this law, and if after such notification any keeper of a hotel, boarding house or drinking saloon shall fail to keep notices posted as required by this act, he shall on conviction thereof before a justice of the peace be fined in the sum of five dollars to go to the county treasury.

Sec. 13. Sheriffs and their deputies and constables, shall be sworn to rigidly enforce this act, and any one of such officers who may neglect or fail to enforce this act, shall be fined in a sum not less than fifty dollars nor more than one hundred dollars for each offence, to be recovered by indictment in the district court of the proper county, and one-third of such fine shall go to the Territory, one third to the county, and one third to the acting district attorney, and such conviction and fine shall not be a bar to any other prosecution and conviction of such officer under other laws of this Territory.

Sec. 14. Any and every person who receives a license to give a ball, dance or fandango, shall, at the time of taking out such license, be sworn to preserve good order and enforce this law at and during such ball, dance or fandango on and about his premises, and during such time such person shall have and exercise all the powers of a sheriff in maintaining good order on and about his premises, and if the officer who issues such license does not believe the applicant to be a proper person to preserve good order, then such officer shall refuse to grant such license until such applicant shall present a proper person who shall be sworn as above mentioned, and have the power and duties as above mentioned, and persons

arrested by the sworn person mentioned in this section may be confined for the time being in any house or place as well as the jail, or in any secure manner that is not inhuman.

Sec. 15. If any person shall give a ball, dance or fandango where a license is required, without first being himself sworn, or having some other person sworn to preserve good order and enforce this act, he shall be fined in the sum of twenty-five dollars to be collected before any justice of the peace in the county, and one-half of said fine to go to the county and one-half to the person or attorney securing the conviction; provided, that if the applicant secure the attendance at his ball, dance or fandango, of a sheriff or his deputy or of a constable of the county, to preserve good order and enforce this law, then he shall not be fined for not being sworn, nor shall the officer issuing the license in such case require him to be sworn, nor to present a person to be sworn in his or her place; provided, that the Secretary of the Territory is required, after the passage of this act, to forward a copy to each of the probate judges of the different counties of this Territory.

Sec. 16. [repeal, omitted]

Note: This act changed the application from the whole territory to just within the settlements (cities, towns, villages, etc.); presumably wherever there was enough people for the law to be practically enforced. Enforcement would be nearly impossible in the wilderness and travelers were excused anyhow.

The reduced fines and jail sentences for a carry violation was likely due to the inability to get convictions (as juries wouldn't convict people only to see them harshly punished) or that judges were giving sentences lighter than what the statute called for. Also more serious acts were specified separately.

Sec. 9 allowed any voting citizen to make a private person's arrest of violators. Under common law, they already should already have had that ability, but this section makes that power clear and is de facto encouragement of the legislators for citizens to do just that. Sec. 10 giving a third of the fines to the arresting citizen or the prosecuting attorney (and in Sec. 13, for fines against officers who failed to enforce the law) acted as rewards for those turning in violators. All are further evidence of how much the legislators wanted the CCW prohibition enforced.

Sec. 11 addresses the problem of just when a traveler can be armed. A common problem was that offenders claimed to be traveling, even though at the time they were not ending or beginning their journey but staying in town. A notable example of this is the Gunfight at the OK Corral (Arizona) where Frank McLaury and Billy Clanton were to be disarmed as they were allegedly taking advantage of the traveler's exemption. The same section allowed juries to decide if peace officers were carrying as part of their duties or merely using their powers as an excuse to carry when otherwise prohibited, but it appears the goal was to have officer go unarmed as much as possible.

Sec. 12 is another indication that the legislators wanted the law well-publicized; the most common gathering places (and a frequent place of violence) were saloons. Boarding houses and hotels posting the law would inform travelers and serve as a reminder to single men, who almost entirely were the ones that carried weapons illegally and the primary occupants of those establishments.

Sec. 14 re-instated the duties and powers of the ball or fandango giver to enforce the law.

1887

“An act to prohibit the unlawful carrying and use of deadly weapons,” Ch. 30, *Acts of the Legislative Assembly of the Territory of New Mexico*, 1887, pp. 55-58 [Hathi Trust](#)

SECTION 1. That any person who shall hereafter carry a deadly weapon, either concealed or otherwise, on or about the settlements of this territory, except it be in his or her residence, or on his or her landed estate, and in the lawful defense of his or her person, family or property, the same being then and there threatened with danger, or except such carrying be done by legal authority, upon conviction thereof shall be punished by a fine of not less than fifty dollars, nor more than three hundred, or by imprisonment not less than sixty days, nor more than six months, or by both such fine and imprisonment, in the discretion of the court or jury trying the same.

SEC. 2. Any person who shall draw a deadly weapon on another, or who shall handle a deadly weapon in a threatening manner, at or towards another, in any part of this territory, except it be in the lawful defense of himself, his family or his property, or under legal authority, upon conviction thereof, shall be fined in any sum not less than one hundred dollars, nor more than five hundred dollars, or by imprisonment at hard labor in the county jail or territorial penitentiary not less than three months nor more than eighteen months, or by both such fine and imprisonment, in the discretion of the court or jury trying the same.

SEC. 3. Any person who shall unlawfully assault or strike at another with a deadly weapon, upon conviction thereof shall be punished by a fine not exceeding one thousand dollars, or by imprisonment at hard labor in the county jail or territorial penitentiary, not exceeding three years, in the discretion of the court or jury trying the same.

SEC. 4. Any person who shall unlawfully draw, flourish or discharge a rifle, gun or pistol within the limits of any settlement in this territory, or within any saloon, store, public hall, dance hall or hotel, in this territory, except the same be done by lawful authority, or in the lawful defense of himself, his family or his property, upon conviction thereof shall be punished by a fine of not more than one thousand dollars, or by imprisonment for a term of not more than three years, or by both such fine and imprisonment, in the discretion of the court or jury trying the same. The word "settlement," as used in this act, shall be construed to mean any point within three hundred yards of any inhabited house, in the territory of New Mexico.

SEC. 5. Any person being armed with a deadly weapon, who shall, by words, or in any other manner, insult or assault another, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars, nor more than three hundred dollars, or by imprisonment at hard labor in the county jail or territorial penitentiary for not less than three months, nor more than one year, or by both such fine and imprisonment, in the discretion of the court or jury trying the same.

SEC. 6. Justices of the peace, as well as the district courts shall have concurrent jurisdiction of all offenses committed under the first section of this act;

but of offenses committed under the remaining sections hereof, justices of the peace shall not have jurisdiction except as committing magistrates, and it is made the duty of the justices of the peace of the several counties of the territory before whom, any person is brought or arraigned for the violation of any of the above sections, other than section one of this act, if reasonable grounds exist to believe such person guilty, to bind such person over in a good and sufficient bond to the district court of such county, and in default of such bond to commit to jail as in other felonies.

SEC. 7. It shall not be necessary, in the trial of any cause arising under the provisions of this act to prove that the person charged was not, at the time of violating the said provisions, in the lawful defense of himself, his family or property, or acting by lawful authority, but the accused must prove that he was, at such time, within the exception claimed.

SEC. 8. Deadly weapons, within the meaning of this act, shall be construed to mean all kinds and classes of pistols, whether the same be a revolver, repeater, derringer, or any kind or class of pistol or gun; any and all kinds of daggers, bowie knives, poniards, gun; knives, dirk knives, and all such weapons with which dangerous cuts can be given, or with which dangerous thrusts can be inflicted, including sword canes, and any kind of sharp pointed canes; as also slung shots, bludgeons or any other deadly weapons with which dangerous wounds can be inflicted.

SEC. 9. Persons traveling may carry arms for their own protection while actually prosecuting their journey and may pass through settlements on their road without disarming; but if such travelers shall stop at any settlement for a longer time than fifteen minutes they shall remove all arms from their person or persons, and not resume the same until upon eve of departure.

SEC. 10. Sheriffs and constables of the various counties, and marshals and police of cities and towns, in this territory, and their lawfully appointed deputies, may carry weapons, in the legal discharge of the duties of their respective offices, when the same may be necessary, but it shall be for the court or the jury to decide from the evidence whether such carrying of weapons was necessary or not, and for an improper carrying or using deadly weapons by an officer, he shall be punished as other persons are punished, for the violation of the preceding sections of this act.

SEC. 11. Every keeper of hotel, boarding house, bar room, drinking saloon or place where liquor is sold, or dance hall, in this territory, shall keep conspicuously posted up a copy of this act, in both the English and Spanish languages, and it is hereby made the duty of every such keeper of a hotel, boarding house, bar room, drinking saloon or place where liquor is sold, or dance hall, or the person in charge of the same, who shall become cognizant of any violations of the provisions of this act, in, upon or about their premises, to immediately and at once direct the attention of such violator to the provisions of this act, and upon a failure of such keeper of a hotel, boarding house, bar room, drinking saloon, or place where liquor is sold, or dance hall, or the person in charge thereof, to so do, he or they shall be liable to pay a fine of not less than \$5, nor more than \$50.

SEC. 12. It shall be the duty of the judges of the several district courts of this territory, at the charging of the grand jury of the several counties, to direct the attention of the said grand juries to the provisions of this act, and require that they make diligent inquiry as to any violation of the same.

SEC. 13. The boards of county commissioners of the several counties of this territory are hereby directed and required to have printed in both English and Spanish a sufficient number of copies of this act for the use of and to be furnished to all persons applying for the same; and it is made the duty of the several sheriffs and collectors of said counties to furnish to each person with a license a copy of this act, in both English and Spanish.

SEC. 14. All fines and penalties accruing from the violation of the provisions of this act shall be paid into the county treasury of the county in which such violation occurs to the credit and for the benefit of the school fund of said county.

SEC. 15. This act shall have full force and effect from and after the first day of March, 1887.

Note: In contrast to the substantially similar 1869 law, there were changes to the penalties, most notably for carrying and drawing deadly weapons. Sec. 1 increased the punishment from \$10-50 and/or 10-50 days to \$50-300 and/or 60 days to six months for a basic carry violation. Sec. 2 increased the penalty for drawing a deadly weapon from \$25-75 and/or 20-60 days in jail to \$100-300 and three to 18 months in jail or prison (essentially either a felony or misdemeanor).

1891

“An act to amend an act entitled ‘An act to prohibit the unlawful carrying and use of deadly weapons...etc.’” *Acts of the Legislative Assembly of the Territory of New Mexico*, Ch. 63, pp. 117-119 [Hathi Trust](#)

SECTION 1. That section 5 (five) of said act be and the same is hereby amended to read as follows:

"Section 5. Any person being armed with a deadly weapon who shall by words or in any other manner insult or assault another without sufficient provocation, upon conviction thereof shall be punished by a fine of not less than one hundred dollars or more than three hundred dollars, or by imprisonment at hard labor in the county jail or Territorial Penitentiary, for not less than three months nor more than one year, or by both such fine and imprisonment, in the discretion of the court or jury trying the same."

SEC. 2. That section 7 (seven) of said act be and the same is hereby repealed in all its parts and provisions.

SEC. 3. That section 10 (ten) of said act be and the same is hereby amended to read as follows, viz:

"Section 10. Sheriffs and constables of the various counties and marshals and police of the cities and towns in this Territory and their lawfully appointed deputies, may carry weapons when in actual charge or pursuit of or search of a

person charged with any offense against the laws of this Territory, in the legal discharge of the duties of their respective offices, or when such carrying may be necessary for the public safety, but not otherwise, and it shall be for the court or jury, to decide whether such carrying of weapons was necessary or not; and for an improper carrying or using of deadly weapons by an officer he shall be punished as other persons are punished for the violation of any of the provisions of the preceding sections of this act."

SEC. 4. Hereafter in all counties not having more than fifteen precincts the sheriff shall only be allowed to appoint and keep five deputies, and in counties having more than fifteen precincts the sheriff shall be authorized to appoint one additional deputy for each additional four precincts over and above fifteen, said additional deputy to be only appointed on the consent of the district judge given therefor; but all sheriffs shall at all times be considered as in the discharge of their duties and be allowed to carry on their persons arms not concealed. On the appointment of any deputy sheriff it shall be the duty of the sheriff to file a notice of such appointment in the office of the clerk of the probate court of his county; also, in the office of the clerk of the district court, and each of such deputies shall also file his oath of office with the clerk of the probate court. Any sheriff is hereby authorized at any time, without consent of the district court, to appoint any competent, respectable and orderly person a special deputy to serve any particular process, writ or order, and it shall not be necessary to file or give any notice of such special appointment, and the person so appointed shall only be authorized to serve the process, writ or order which he shall be specially appointed to serve.

[Sec. 5, sheriff not to hold office consecutively more than once; omitted]

[Sec. 6, effect; omitted].

Note: This act amended Section 5 to allow a defense of "sufficient provocation" to assault or insult, presumably to protect self-defense. Section 7, addressing a defense on self-defense grounds, was repealed entirely. Section 4 interestingly limited the number of deputy sheriffs, almost certainly from the text of the act, to discourage sheriffs from deputizing anyone to evade the weapons carry prohibition. Section 5 was codified as §738 in the 1897 Compiled Laws,³⁸ which was amended in 1901³⁹ to remove the cap on special deputies.

1907

"An act to define and punish certain crimes, to amend and repeal certain provisions of the compiled laws of 1897 relating to crimes...etc.," *Acts of the Legislative Assembly of the Territory of New Mexico*, p. 44 [Hathi Trust](#)

Sec. 18. Any person who shall carry a deadly weapon, either concealed or otherwise in or about the settlements of this Territory, except it be in his or her residence or on his or her landed estate, if intoxicating liquors are not sold on any

³⁸ [Hathi Trust](#)

³⁹ "An act to amend section 738 of the compiled laws of 1897," Ch. 5 (HB 25), *Acts of the Legislative Assembly of the Territory of New Mexico*, 1901, p. 22 [Hathi Trust](#)

such premises, or in the lawful defense of his or her person, family or property, the same being then and there threatened with danger, or except such carrying be done by legal authority, upon conviction thereof shall be punished by a fine of not less than fifty dollars nor more than three hundred dollars or by imprisonment for a period of not less than sixty days nor more than six months, or both such fine and imprisonment in the discretion of the court; and any person violating the provisions of this section may be arrested without a warrant by any peace officer, and justices of the peace may try offenses defined in this section, and assess fines of not more than one hundred dollars or imprisonment of not more than three months in the county jail, or both, against the accused when convicted.

Note: This section prohibited persons who sold liquor on their premises from exercising the exemption to carry a weapon there.

Oklahoma and Indian Territory

Historical background

The current boundaries of Oklahoma were originally known as Indian Territory. It was created out of unorganized territory remaining from the Louisiana Purchase. The bulk of what would be Oklahoma was broken away from Arkansas Territory in 1824. Indian Territory within the area we are familiar with was created in 1854 by the Kansas-Nebraska Act.

This was a collection of the lands that the US Government specifically set aside from unorganized territory as part of the various Indian removals. The majority of the area was occupied by what was called the Five Civilized Tribes: Cherokee, Chickasaw, Choctaw, Muscogee/Creek, and the Seminole. Other tribes were relocated into smaller portions of the territory over time.

The tribes had limited sovereignty which included legislative powers. In this respect, among four of the five tribes I could document, they all adapted restrictions on carrying weapons in the same manner as other states and territories. This applied within each nation; there was not a uniform code across Indian Territory as there was no superior legislative body for the territory. Note that the laws of the Seminole Nation were not recorded and enforced the Creek laws.⁴⁰ The minor tribes were not included in this research.

Oklahoma Territory was established in 1890 in what would be roughly today's western half of the state. It existed conterminously with Indian Territory until 1907. Both territories were admitted to the union in 1907 as one state, as the federal government did not want two new states (Oklahoma and Sequoyah).

Indian Territory—Statutory History

Cherokee

1867

Public places, open and concealed carry

“An Act to Prohibit the Carrying of Weapons,” *Laws of the Cherokee Nation 1839-1867* (St. Louis, MO, *Missouri Democrat* Print, 1868), pp. 30-31 [Hathi Trust](#)

Be it enacted by the National Council, That it shall not be lawful for any person to carry any gun, pistol, bowie knife, or dangerous weapon of any kind, to any election, or court during the term, or any place of trade, town, or public

⁴⁰ “Form of Government,” *Report on Indians Taxed and not Taxed; Eleventh Census 1890* (US GPO, 1894), p. 270

assemblage whatever; and any person convicted of a violation of this act, before the District Court of the district in which such offense may have been committed, shall be fined in a sum of not less than ten nor more than twenty-five dollars, one-half for the benefit of the informer, and the other half for the benefit of the orphan fund: *Provided*, that this act shall not apply to sheriffs and persons acting under their authority, in the discharge of duties required by law, or in the pursuit of fugitives from justice, nor to persons traveling on a journey; and it shall be the duty of the solicitors of the several districts to prosecute every violation of this act.

Be it further enacted, That this act shall not take effect until after the fifteenth day of February, 1867.

1875

Ch. XII, Article XVIII, Revised Code, *Constitution and Laws of the Cherokee Nation*, 1875, pp. 228-229 [Hathi Trust](#)

Sec. 88. Every person, a citizen of this Nation, who shall in any way carry arms of any kind whatever, or who shall have on or about his person any dirk, bowie knife, pistol, revolver, slung shot, metal knuckles or other dangerous arm or weapon, except a common pocket knife, unless for the purpose of hunting game, or upon a journey, or in pursuit of fugitives from justice, or in the discharge of duty by virtue of a legal summons, shall forfeit such arms or weapons to the Nation, and be fined in any sum not exceeding one hundred dollars, or be imprisoned not exceeding six months, or be both fined and imprisoned at the discretion of the court having jurisdiction.

Sec. 89. All officers required by law to act as conservators of the peace, and to enforce or serve legal processes, are exempted from this article. And it is hereby made the duty of every sheriff, town constable and their lawful deputies, to disarm all persons detected in violating the provisions of this act; to turn over quarterly to the treasurer all weapons or arms confiscated, and report the person so offending to the solicitor for indictment before the district court of the district wherein the offense was committed. The judgment of the court shall be final, and no property shall be exempt from execution and sale to satisfy such judgment, improvements excepted.

Sec. 90. One half of fines thus collected, shall be divided equally between the sheriff and solicitor, and the other half shall be paid into the treasury for the benefit of the orphans; provided, that, whenever a case is not sustained before the court trying the same, an order shall issue from the court for the restitution of the arms seized; and the treasurer or sheriff shall restore, the same accordingly. But in all other cases the arms shall be the property of the Nation, subject to the order of the National Council.

Sec. 91. Citizens of the United States, and foreigners under their protection, lawfully residing, or temporarily sojourning, in the Cherokee Nation, who shall willfully neglect, or refuse, to conform to the requirements of this act,

so far as it affects citizens of the Cherokee Nation, shall thereby forfeit the protection of Cherokee laws, and the right or privilege of continuing longer in the Cherokee Nation, and shall be disarmed, arrested and turned over with such arms to the lawful authority for removal beyond the limits of the Cherokee country; provided, that the provisions of the preceding sections shall not be so construed as to annul, impair, or in any manner abridge, or destroy, the ordinances and rights of town corporations as guaranteed by law.

Note: The penalty was increased from \$10-25 in 1867 to up to \$100 or six months in jail. Various interim amendments were made. See 1893 codification.

1893

Ch. 12, Article XX, *Compiled Laws of the Cherokee Nation* (Parsons, KS, The Foley Railway Printing Co., 1893), 1892, pp. 342-344

SECTION 680. Every person, a citizen of this Nation, who shall in any way carry arms of any kind whatever, or who shall have on or about his person any dirk, bowie knife, pistol, revolver, slung shot, metal knuckles or other dangerous arm or weapon, except a common pocket knife, unless for the purpose of hunting game, or upon a journey, or in pursuit of fugitives from justice, or in the discharge of duty by virtue of a legal summons, shall forfeit such arms or weapons to the Nation, and be fined in any sum not less than twenty-five dollars nor exceeding one hundred dollars, and, in default of payment, be imprisoned for any term not less than three months nor exceeding six months, or be both fined and imprisoned at the discretion of the court having jurisdiction.—(December 20, 1886.) The presiding judge shall likewise attach the cost of trial to the fine in every case of conviction.—(November 21, 1882.)

SEC. 681. Should any officer, charged with the execution of this act, fail to report any violation of the same coming to his knowledge, to the solicitor of the district, he shall be summarily removed from office, and any solicitor, failing to report the same to the Grand Jury, shall be removed from office likewise.—(December 20, 1886.)

SEC. 682. All officers required by law to act as conservators of the peace, and to enforce or serve legal processes are exempted from this article. And it is hereby made the duty of every sheriff, town constable, and their lawful deputies, to disarm all persons detected in violating the provisions of this act; to turn over quarterly to the treasurer all weapons or arms confiscated, and report the person so offending to the solicitor for indictment before the district court of the district wherein the offense was committed. The judgment of the court shall be final, and no property shall be exempt from execution and sale to satisfy such judgement, improvements excepted.

SEC. 683. One half of fines thus collected shall be divided equally between the sheriff and solicitor and the other half shall be paid into the treasury for the benefit of the orphans; provided, that, whenever a case is not sustained

before the court trying the same, an order shall issue from the court for the restitution of the arms seized; and the treasurer or sheriff shall restore the same accordingly. But in all other cases the arms shall be the property of the Nation subject to the order of the National Council.

SEC. 684. Citizens of the United States and foreigners under their protection, lawfully residing or temporarily sojourning in the Cherokee Nation, who shall willfully neglect, or refuse to conform to the requirements of this act as far as it affects citizens of the Cherokee Nation, shall thereby forfeit the protection of Cherokee laws, and the right or privilege of continuing longer in the Cherokee Nation, and shall be disarmed, arrested and turned over with such arms to the lawful authority, for removal beyond the limits of the Cherokee country; *provided*, that the provisions of the preceding sections shall not be construed as to annul, impair, or in any manner abridge, or destroy, the ordinances and rights of town corporations as guaranteed by law.

Note: In 1886, the penalty was given a \$25 minimum fine, up to \$100, and a jail term, if one could not pay, of three to six months, or both. This mirrors the fines of the Choctaw in 1880. That same year, officers were required to enforce the act under penalty of forfeiture of office.

Choctaw

1880

“An Act Preventing Carrying of Pistols in the Choctaw Nation,” Bill No. 10, *Acts and Resolutions...of the General Council of the Choctaw Nation*, 1880, pp. 7-8 [Hathi Trust](#)

Sec. 1. *Be it enacted by the General Council of the Choctaw Nation assembled*, That it shall not be lawful for any person to carry a pistol of any kind within the limits of the Choctaw Nation, except the Sheriffs and their deputies and light-horsemen.

Sec. 2. *Be it further enacted*, That for every violation of this act the offender shall be fined not less *than five, nor more than fifty dollars* by the county judge of the county wherein the offense was committed, and upon failure of said county judge to discharge his duty, as herein required, he shall be liable to indictment by the Grand Jury and be tried by the Circuit Court, and if found guilty to be fined not less than \$25, nor more than \$100.

Sec. 3. *Be it further enacted*, That it shall be the duty of sheriffs, their deputies and Lighthorsemen to arrest all violators of the first section of this act, without written process upon their own sight, or upon the information of any citizen of said Nation, and take them before the county judge to be fined in accordance with section 2nd of this act, and said sheriffs, their deputies and Lighthorsemen shall dispossess said violators of their pistols until their fines and usual costs are paid; but if said violators are unable to pay said fine and costs, then the county court shall issue executions against the pistols of said violators,

which pistols shall be sold by the sheriff of the county at public auction, to pay costs first, and the remainder to be devoted to the payment of the fines; provided however, that said county courts shall have power to issue executions against any property of an offender liable to execution, to pay the penalties imposed by this act.

Sec. 4. *Be it further enacted*, That if the information herein provided for shall be given by a private citizen of the Nation, one half of the amount of the fine collected shall be paid to said informant, and the other half paid into the county.

Sec. 5. *Be it further enacted*, That sheriffs, their deputies and Lighthorsemen, who shall fail to discharge their duties under this act, shall; upon information, be fined by the county court one hundred dollars each offense, and its collection shall be enforced in the same way as provided in Sec. 3 of this act against violators of Sec. 1 of this act; and a fines collected of sheriffs, their deputies and Lighthorsemen and county judges shall be paid into the county treasury for county purposes.

Sec. 6. *Be it further enacted*, That all citizens of the United States, or non-citizens, who shall be found violating the first section of this act shall be reported to the Principal Chief, who shall report the same to the United States Indian Agent, and demand their removal from the Choctaw Nation.

[Sections 7-8, copies of legislation and severability/repeal; omitted]

Note: Light horsemen were mounted police with broad powers and ranged over large parts of their nation that they were assigned to patrol.

1883

“An Act to Prevent the Carrying of Pistols and Fixing the Penalty Thereof,” Bill No. 45, *Laws of the Choctaw Nation*, 1883, pp. 34-35 [Hathi Trust](#)

Be it enacted by the General Council of the Choctaw Nation assembled: That it shall not be lawful for any person to carry a pistol of any kind within the limits of the Choctaw Nation, except the Sheriffs and their deputies and the Light-horsemen and Militia on duty.

SEC. 2. Be it further enacted: That the grand jury shall indict all violators of this act; and all citizens that are convicted for violating this act shall be fined in any sum not exceeding fifty dollars and not less than five dollars, at the discretion of the Circuit Court having jurisdiction.

SEC. 3. Be it further enacted: That it shall be the duty of the Sheriff and his deputies and Light-horsemen to arrest all violators of this act without written process, upon their own sight or upon the information of any citizen of said Nation, and require them or him to give bond to appear at the Circuit Court from day to day while said court is in session until discharged by due course of law.

SEC 4. Be it further enacted: That it shall be the duty of the Sheriffs of this Nation and their deputies, and the Light-horsemen, to dispossess all citizens and non-citizens residing in the Choctaw Nation under a permit, and freedmen that

formerly belonged to the Choctaws or Chickasaws, of any and all pistols they may be carrying in violation of this act, and hold the same until the fines and costs of the court are paid; but if the said offenders are unable to pistol pay said fine and costs, then the Circuit Court shall issue execution against the pistols of said offender, or offenders, which pistols shall be sold by the Sheriff of the county, at auction, to pay costs first, and the remainder to be devoted to the payment of the fines; provided, however, that the Circuit Court shall have power to issue execution against any property of the offender, or offenders, liable to execution, to pay the penalties imposed by this act.

SEC. 5. Be it further enacted: That if the information herein provided for shall be given by a private citizen of the Nation, one-half of the fine collected shall be paid to said informant, and the other half paid into the county treasury of the county wherein the offense was committed.

SEC. 6. Be it further enacted: That Sheriffs, their deputies and Light-horsemen, who refuse or neglect to discharge their duties under this act, shall, on information before the Circuit Court having jurisdiction, be fined one hundred dollars for each offense; and all fines collected of Sheriffs, their deputies or Light-horsemen, shall be turned into the county treasury of the county wherein the offense was committed, for county purposes.

SEC. 7. Be it further enacted: That no person, or persons, shall carry a gun of any kind to a religious meeting, school or gathering of any kind, except Sheriffs, their deputies and Light-horsemen, and militia on duty; any persons violating this section of this act, shall be fined in any sum of not exceeding fifty dollars, nor less than five dollars; and it shall be the duty of the Circuit Judges of this Nation to charge the Grand Jury to make inquiry for all violations of the provisions of this act.

SEC. 8. Be it further enacted: That this act take effect and be in force from and after its passage; and all acts or parts of acts heretofore coming in conflict with the provisions of this act, are hereby repealed.

Creek/Muskogee

1867

Public places

Ch. IV, Article XI, *Constitution and Laws of the Muskogee Nation*, 1880 p. 36 [Hathi Trust](#)

SECTION 1. No person, except District Solicitors, light horsemen and officers of the United States engaged in duty requiring them to carry weapons, shall be permitted to carry any deadly weapon of any kind, such as pistols, revolvers, bowie knives, dirks, or any other weapon, except a pocket knife, at any public gathering of citizens of this Nation, such as church meetings, or where persons are gathered for purpose of worship or the transaction of business,

elections, towns, dancing or ball grounds, trials, courts, councils, or any place where people are gathered for pleasure.

SEC. 2. Any person found guilty of violating the provisions of paragraph 1 of this Article, shall be dispossessed of the weapons by the light horse, and the light horse so dispossessing such person shall dispose of the weapon for his own benefit.

SEC. 3. This Article shall not be so construed as to prevent travelers from carrying weapons along the public highways.

Note: The actual prohibition extended to public assemblies and populated places. No express penalty was proscribed other than forfeiting the weapon to the arresting light horseman. In 1881, a \$10 fine would be added. This act applied only to public places.

1881

L. C. Perryman (comp)., “An Act to Amend an Act Relating to the Carrying of Deadly Weapons,” *Constitution and Laws of the Muskogee Nation* (Muskogee Terr., Phoenix Printing Co., 1890), November 2, 1881, pp. 107-108 [Hathi Trust](#)

Be it enacted by the National Council of the Muskogee Nation: That, after the passage of this bill, no person, excepting public officers engaged in the discharge of their duties, and persons traveling or hunting stock, shall be permitted to carry firearms within one-half mile of any town, political, religious or other gathering, for pleasure or profit; and any person found guilty of violating this provision, or of discharging firearms at random within one-half mile of any town or gathering, as above mentioned, shall be fined in the sum of ten (\$10) dollars, and shall be dispossessed of the weapon so used. The Light Horseman capturing such firearms shall be permitted to retain the same or dispose of them for his own profit; and the person giving information which shall lead to conviction shall receive one-half of the fine, the other half to be transmitted to the National Treasurer.

Be it further enacted: That any Light Horseman who shall fail in the duty specified in this bill shall, upon conviction, be fined in the sum of twenty-five dollars (\$25), and shall be expelled from office. The Prosecuting Attorney securing the conviction of such Light Horseman shall receive ten (\$10) dollars of the fine, ten dollars shall be transmitted to the National Treasurer, and the remaining five dollars shall be paid to the witnesses.

Be it further enacted: That no property of any kind shall be exempt from the payment of the above fine specified.

Be it further enacted: They any licensed merchant selling a pistol or revolver of any description, shall be fined fifty (\$50) dollars for each and every pistol or revolver so sold.

Be it further enacted: That all persons found carrying concealed weapons at any gathering, as above mentioned, shall be fined the sum of fifty (\$50) dollars for each such offense.

Be it further enacted: That in case the Light Horseman is unable to keep peace by being overpowered by armed men, he shall have power to call on other citizens of this Nation to aid him in carrying the above law into effect; and in case of the refusal to obey the summons by Light Horse-men, without good reasons for such refusal, such citizens shall each be fined in the sum of five dollars. This law shall take effect from and after December 1st, 1881.

Note: In addition to adding a \$10 fine, the prohibited area was expanded from just the prohibited to place to within a half-mile of those places. A concealed weapon at a prohibited place was a new offense, punished by a \$50 fine.

Chickasaw

1884

Davis A. Homer (comp.), “An Act to Prohibit the Carrying of Pistols Within the Limits of the Chickasaw Nation,” *Constitution, Treaties, and Laws of the Chickasaw Nation*, (Parsons, KS, Foley Railway Publishing Co., 1890), p. 164 [Hathi Trust](#)

SECTION 1. Be it enacted by the Legislature of the Chickasaw Nation, That from and after the passage of this Act, it shall be unlawful for any person, citizen, non-citizen or freedman, to carry any revolver or pocket pistol of any kind within the limits of this Nation, and any person violating this Act, shall upon conviction before the County Court, where the crime may have been committed, be compelled to pay a fine of not less than twenty-five dollars nor more than one hundred dollars at the discretion of the Court.

SEC. 2. Be it further enacted, That persons legally summoned by any of the officers to assist in executing the Laws of this Nation, or any person or persons in pursuit of horse thieves or fugitives from justice, shall be exempt from the provisions of this Act while on such duty.

SEC. 3. Be it further enacted, That the fines collected under the provisions of this Act, shall one-half go to the informer and the other half to be placed in the hands of the Sheriff for county purposes.

SEC. 4. Be it further enacted, That any person or persons convicted under the provisions of this Act, not being able to pay their fines shall be lodged in the National Jail for not less than one month nor more than three months, with or without hard labor, at the discretion of the Court.

SEC. 5. Be it further enacted, That the National Secretary be, and is hereby directed to furnish the United States Indian Agent with a certified copy of this Act immediately after the Governor's approval, and ask for his assistance in removing all non-citizens beyond the limits of the Chickasaw Nation, that fail to comply with this Act.

Oklahoma

Constitution

1907

The right of a citizen to keep and bear arms in defense of his home, person, or property, or in aid of the civil power, when thereunto legally summoned, shall never be prohibited; but nothing herein contained shall prevent the Legislature from regulating the carrying of weapons.

Statutory History

Historical note

Oklahoma Territory's statutes existed alongside those in its neighbor Indian Territory. In 1907, at statehood, the Oklahoma statutes superseded those of the Indian nations' as far as what would become state law, and not just Indian laws (which would be unenforceable against non-Indians).

1890

Will T. Little, L. G. Pitman, and R. J. Barker (comps.), Article 47, Concealed Weapons, *The Statutes of Oklahoma* (Oklahoma City, State Capitol Printing Co., 1891), 1890, pp. 495-496
[Hathi Trust](#)

(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.

(2434) §3. [minors; omitted]

(2435) §4. Public officers while in the discharge of their duties or while going from their homes to their place of duty, or returning therefrom, shall be permitted to carry arms, but at no other time and under no other circumstances: *Provided*, however, That if any public officer be found carrying such arms while under the influence of intoxicating drinks, he shall be deemed guilty of a violation of this article as though he were a private person.

(2436) §5. Persons shall be permitted to carry shot-guns or rifles for the purpose of hunting, having them repaired, or for killing animals, or for the purpose of using the same in public muster or military drills, or while travelling or removing from one place to another, and not otherwise.

(2437) §6. Any person violating the provisions of any one of the foregoing sections, shall on the first conviction be adjudged guilty of a misdemeanor and be punished by a fine of not less than twenty-five dollars nor more than fifty dollars, or by imprisonment in the county jail not to exceed thirty days or both at the discretion of the court. On the second and every subsequent conviction, the party offending shall on conviction be fined not less than fifty dollars no more than two hundred and fifty dollars or be imprisoned in the county jail not less than thirty days nor more than three months or both, at the discretion of the court.

(2438) § 7. It shall be unlawful for any person, except a peace officer, to carry into any church or religious assembly, any school room or other place where persons are assembled for public worship, for amusement, or for educational or scientific purposes, or into any circus, show or public exhibition of any kind, or into any ball room, or to any social party or social gathering, or to any election, or to any place where intoxicating liquors are sold, or to any political convention, or to any other public assembly, any of the weapons designated in sections one and two of this article.

(2439) § 8. It shall be unlawful for any person in this Territory to carry or wear any deadly weapons or dangerous instrument whatsoever, openly or secretly, with the intent or for the avowed purpose of injuring his fellow man.

(2440) § 9. It shall be unlawful for any person to point any pistol or any other deadly weapon whether loaded or not, at any other person or persons either in anger or otherwise.

(2441) § 10. Any person violating the provisions of section seven, eight or nine of this article; shall on conviction, be punished by a fine of not less than fifty dollars, nor more than five hundred and shall be imprisoned in the county jail for not less than three not more than twelve months.

Note: Section 1 applied to concealed carry and Section 2 to open carry. It is unknown why the author chose to separate the offenses instead of combining them. The major influences in the legislation appear to be Texas and the Indian nations' laws.

Concealing weapons

Will T. Little, L. G. Pitman, and R. J. Barker, comps., Article 38, Of Crimes Against the Public Health and Safety, *The Statutes of Oklahoma* (State Capitol Printing Co., 1891), 1890, p. 476
[Hathi Trust](#)

§20 Concealing weapons—Whoever carries concealed about his person any description of firearms, being loaded or unloaded or partly loaded, or any sharp or dangerous weapon, such as is usually employed in attack or defense of the person, is guilty of a misdemeanor.

Note: This section was essentially a duplicate offense to the Article 47, Section 1 concealed weapon offense. It is unknown why both laws were on the books.

South Carolina

Constitution

1868

The people have a right to keep and bear arms for the common defense.

1895

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.

Statutory History

1870

Statute of Northampton

“An act to define the criminal jurisdiction of trial justices,” No. 288, *Acts and Joint Resolutions...of South Carolina*, 1870, pp. 402-403 [Hathi Trust](#)

SEC. 4. They [Trial Justices] may cause to be arrested all affrayers, rioters, disturbers and breakers of the peace, and all who go armed offensively, to the terror of the people, and such utter menaces or threatening speeches, or otherwise dangerous and disorderly persons.

Note: I consider this to be among the surety laws; it is the behavior connected with those who are armed that is subject to judicial action, not a prohibition on going armed.

1880

First law, concealed carry

“An act to provide a punishment for carrying any deadly weapon,” No. 362, *Acts and Joint Resolutions...of South Carolina*, 1880, pp. 447-448 [Hathi Trust](#)

SECTION 1. *Be it enacted* by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and by the authority of the same, That any person carrying a pistol, dirk, dagger, slung shot, metal knuckles, razors, or other similar deadly weapon usually used for the infliction of personal injury, concealed about his person, shall be guilty of a misdemeanor, and, upon conviction thereof, before a Court of competent jurisdiction, shall forfeit to the County the weapon so carried concealed and be fined in a sum not more than two hundred dollars, or imprisoned for not more than twelve months, or both, in the discretion of the Court.

SEC. 2. It shall be the duty of every Trial Justice, Sheriff, Constable, or other peace officer, to cause all persons violating this Act to be prosecuted therefor whenever they shall discover a violation hereof.

SEC. 3. In all convictions hereunder, the fine imposed shall, if collected, be paid into the treasury of the County wherein the prosecution is located.

SEC. 4. Nothing herein contained shall be construed to apply to peace officers while in the actual discharge of their duties as such officers, nor to persons carrying concealed weapons while upon their own premises.

SEC. 5. That if any person be convicted of assault, assault and battery, assault [sic], or assault and battery with intent to kill, or of manslaughter, and it shall appear upon the trial that the assault, assault and battery, assault, assault and battery with intent to kill, or manslaughter, shall have been committed with a deadly weapon of the character specified in Section one (1) of this Act, carried concealed upon the person of the defendant so convicted, the presiding Judge shall, in addition to the punishment provided by law for such assault, assault and battery, assault, or assault and battery with intent to kill, or manslaughter, inflict further punishment upon the person so convicted of confinement in the Penitentiary for not less than three months nor more than twelve months, with or without hard labor, or fined in a sum of not less than two hundred dollars, or both fined and imprisoned, at the discretion of the said Judge.

SEC. 6. That this Act shall go into effect on the first day of January, A. D. 1881.

1890

Pistol dealer licensing

“An act to provide for a license for the sale of pistols or pistol cartridges within the limits of this state,” No. 438, *Acts and Joint Resolutions...of South Carolina*, 1890, p. 653 [Hathi Trust](#)

SECTION 1. *Be it enacted* by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and by the authority of the same, That hereafter no person or corporation within the limits of this State shall sell or offer for sale any pistol or pistol cartridge without first obtaining a license from the County in which such person or corporation is doing business so to do.

SEC. 2. That the County Commissioners of the several Counties of the State be, and they are hereby, authorized to issue licenses in their respective Counties for the sale of pistols and pistol cartridges upon the payment to County Treasurer by the person or corporation so applying for said license of the sum of two hundred dollars⁴¹, annually.

SEC. 3. That any person that shall sell or offer for sale any pistol or pistol cartridge without having obtained the license provided for in this Act shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine not exceeding five hundred dollars or be imprisoned not exceeding one year, or both, at the discretion of the Court.

SEC. 4. That this Act shall not take effect until the expiration of six months after its approval.

Note: This act is included because of South Carolina's unique approach in 1901 to its concealed weapon problem.

An 1891 act⁴² amended this to include any cartridge less than "45 calibre" (almost certainly meaning .45 inches). Why .45? Perhaps because pistols in calibers larger than that were far and few in between or perhaps the legislature wanted to protect the .45 caliber military pistols to service the militia purpose of the right to keep and bear arms, similar to Tennessee allowing ownership of only army or navy pistols. The Army would not adopt .38 caliber revolvers until the 1892 Colt New Model Army.

1892

"An act to limit the punishment of persons convicted of the following misdemeanors, namely: carrying concealed weapons...etc.," No. 43, *Acts and Joint Resolutions...of South Carolina*, 1892, pp. 93-94 [Hathi Trust](#)

The text of the statute was omitted for brevity. In 1892, the penalty for carrying a concealed weapon was reduced to a max \$100 fine or 30 days in jail, down from up to \$200 or twelve months in jail.⁴³ In 1897, the fine became \$20-100, and a discretionary jail sentence was given a minimum of 10 days, as well adjusting the section for aggravated offenses involving a concealed

⁴¹ In 1893, the \$200 fee was reduced to \$25. See: "An act to amend an act entitled 'An act to provide for a license for the sale of pistols or pistol cartridges within the limits of this state,'" No. 309, *Acts and Joint Resolutions of the General Assembly of the State of South Carolina*, 1893, pp. 426-427 [Hathi Trust](#)

⁴² "An act to amend an act entitled 'An act to provide for a license for the sale of pistols or pistol cartridges within the limits of this state,' by inserting rifle cartridges and metal knuckles, and to limit the calibre prohibited," No. 703, *Acts and Joint Resolutions of the General Assembly of the State of South Carolina*, 1891, pp. 1101-1102 [Hathi Trust](#)

⁴³ "An act to limit the punishment of persons convicted of the following misdemeanors, namely: carrying concealed weapons...etc.," No. 43, *Acts and Joint Resolutions of the General Assembly of the State of South Carolina*, 1892, pp. 93-94 [Hathi Trust](#)

weapon.⁴⁴ A 1900 act added an exemption for peace officers; "or peace officers in the actual discharge of their duties as peace officers."⁴⁵

1901

Effective pistol ban; open and concealed carry

“An act to regulate the carrying, manufacture and sale of pistols and to make a violation of the same a misdemeanor,” No. 435, *Acts and Joint Resolutions...of South Carolina*, 1901, pp. 748-749 [Hathi Trust](#)

SECTION 1. *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 less 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. 2. That the fines and forfeitures above provided for, when collected, shall go to the school fund of the County where the violation occurred.

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.

SEC. 4. That all Acts and parts of Acts inconsistent with this Act are hereby repealed.

Note: This act effectively banned carrying pistols, either openly or concealed as such oversized pistols effectively didn't exist. Even the very large Colt Walker revolver weighed four and a half pounds but was only 15 inches long. Such a law today would be like banning all handguns that weren't the size of an AR-15 style pistol. Clearly the purpose was to discourage handgun carry entirely by banning any practically sized handgun with a rather ridiculous scheme. This act was finally repealed in 1965⁴⁶ and replaced with a pistol licensing scheme that, with modifications, exists today.

⁴⁴ “An act prohibiting the carrying of concealed weapons, providing a penalty therefor...etc.,” No. 251, *Acts and Joint Resolutions of the General Assembly of the State of South Carolina*, 1897, pp. 423-424 [Hathi Trust](#)

⁴⁵ “An act to amend Section 2 of [1897 act]...so as to except peace officers...etc.,” No. 251, *Acts and Joint Resolutions of the General Assembly of the State of South Carolina*, 1900, pp. 446-447 [Hathi Trust](#)

⁴⁶ See Act of May 27, 1965, No. 330, § 16-145-1.

In 1902, the act's language was changed to "to the carrying or keeping of pistols by persons while on their own premises."⁴⁷ In 1903, the statute was amended to read "and it shall be unlawful for any person, firm or corporation to manufacture, sell or offer for sale, lease, rent, barter, exchange, handle" or transport for sale or into this State, any pistol of less length and weight."⁴⁸ In 1910, fines were set at \$100 or 30 days in jail.⁴⁹

⁴⁷ "An act to amend [1901 act]...etc.," *Acts and Joint Resolutions of the General Assembly of the State of South Carolina*, 1902, No. 590, p. 1093 [Hathi Trust](#)

⁴⁸ "An act to amend [1902 act]...etc.," No. 86, *Acts and Joint Resolutions of the General Assembly of the State of South Carolina*, 1903, pp. 127-128 [Hathi Trust](#)

⁴⁹ "An act to regulate the sale and carrying of pistols," No. 386, *Acts and Joint Resolutions of the General Assembly of the State of South Carolina*, 1910, p. 718 [Hathi Trust](#)

Tennessee

Constitution

1796

That the freemen of this State have a right to Keep and to bear Arms for their common defence.

1835

That the free white men of this State have a right to keep and to bear arms for their common defence.

1870

That the citizens of this State have a right to keep and to bear arms for their common defense; but the Legislature shall have power, by law, to regulate the wearing of arms with a view to prevent crime.

Statutory History

1801

Northampton/surety

§6, Ch. 22, Acts 1801 in: John Haywood and Robert L Cobbs (comps.), *The Statute Laws of the State of Tennessee*, (Knoxville, F. S. Heiskell, 1831), Vol. 1, p. 10 [Hathi Trust](#)

If any person or persons shall publicly ride, or go armed to the terror of the people or privately carry any dirk, large knife, pistol or any other dangerous weapon, to the fear or terror of any person, it shall be the duty of any judge or justice on his own view, or upon the information of any other person on oath, to bind such person or persons to their good behaviour, and if he or they fail to find securities, commit him or them to jail; and if such person or persons shall continue so to offend, he or they shall not only forfeit their recognizance, but be liable to an indictment, and be punished as for a breach of the peace, or riot at common law.

Note: This law contained elements of the Statue of Northampton and obviously contained surety elements. I am not considering this the first concealed weapon law because it does not prohibit any act. Rather, it authorizes judges to restrain the anti-social behavior of anyone terrorizing or intimidating another (or presumably creating a reasonable fear of harm). Failure to obey the direction of the court by continuing to go armed would be the offense.

1821

First law, open and concealed

Ch. 13, Acts 1821 in: John Haywood and Robert L Cobbs (comps.), *The Statute Laws of the State of Tennessee*, (Knoxville, F. S. Heiskell, 1831), Vol. 1, p. 10 [Hathi Trust](#)

Each and every person so degrading himself by carrying a dirk, sword-cane, 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 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 effect any person that may be on a journey to any place out of his county or state.

1825

Ch. 19, Acts 1825 in: in: John Haywood and Robert L Cobbs (comps.), *The Statute Laws of the State of Tennessee*, (Knoxville, F. S. Heiskell, 1831), Vol. 1, pp. 10-11 [Hathi Trust](#)

§ 1. When any sheriff, coroner or constable, shall know, of his own knowledge, or upon the representation of any person, or if he or they shall have good reason to suspect any person of being armed with the intention of committing a riot or affray, or of wounding or killing any person, it shall be the duty of all such officers, immediately to arrest all such persons, so suspected, and return them before some justice of the peace, whose duty it shall be, upon proof being made that there was reasonable ground to suspect such person or persons for being armed, with intent to disturb or commit a breach of the peace, to bind such person or persons in a bond, with two or more good and sufficient securities, in a sum of not less than two hundred and fifty dollars and not exceeding two thousand dollars, conditioned for his or their good behaviour and peaceable deportment for the term of twelve months thereafter.

§ 2. If any justice of the peace shall know of his own knowledge, or have reasonable cause to suspect any person or persons of being armed, with intent to commit a breach of the peace, it shall be the duty of such justice of the peace, to

cause such offender or offenders to be arrested and immediately brought before him or some other justice for examination, and upon its being satisfactorily made to appear that such person or persons was armed, or about to be armed, with intent to commit a breach of the peace, such justice shall bind such offender or offenders in bond and security, as specified in the first section of this act.

§ 3. The bonds by this act required to be given, shall be made payable to the chairman of the county court of the county in which the same shall be executed, and his successors in office, and shall be filed in the office of the clerk of said court, and it shall be the duty of the solicitor for the state, when he shall believe such bond to be forfeited, to issue *sciore facias* thereon against such offender and his securities, and the amount collected shall be, by the sheriff, paid to the county trustee for county purposes.

§ 4. Any justice of the peace, sheriff, coroner or constable, when acting under the provisions of this act, shall have power and authority to summon as many persons as they may think proper, to assist in arresting and securing any such offender, and any person so summoned and shall fail or refuse to assist such officer for the purposes aforesaid, shall forfeit and pay the sum of ten dollars and cost, to be recovered before any justice of the peace, for the use of the county; and it shall be the duty of such officer, when he may have summoned any person to assist as aforesaid, and such person shall fail or refuse to obey such summons, to prosecute such defaulter before some justice of the peace, for the above penalty, and give evidence of such summons and default.

§ 5. When any person shall be brought before any justice of the peace as required by the first and second sections of this act, and shall fail or refuse to give the security required, it shall be the duty of such justice to commit such offender to the nearest sufficient jail, for safe keeping, until such security is given or he shall be discharged by due course of law.

§ 6. If any sheriff, coroner or constable, shall knowingly fail or refuse to perform any of the duties required by this act, it shall be deemed a misdemeanor in office, and upon conviction thereof, shall be fined, at the discretion of the court, in a sum not exceeding fifty nor less than ten dollars, and shall furthermore be removed from office and be disqualified from holding the same office for five years.

Note: This act required that officers actively enforce the law against carrying weapons and keep the peace. It indicates that they didn't hold the weapon law in the same esteem as the legislators did, so the legislature attempted to force the officers to enforce the law. If this were merely a 19th century version of "red flag" law, the punitive provisions against officers in Sec. 6 would not be present.

1838

Knives

"An act to suppress the sale and use of bowie knives and Arkansas tooth picks in this state," Ch. 137, *Acts...of the State of Tennessee*, 1837-8, pp. 25-26 [Hathi Trust](#)

SEC. 1. [Sale of bowie knives or Arkansas toothpicks prohibited; text omitted]

SEC. 2. That if any person shall wear any Bowie knife, Arkansas tooth pick, or other knife or weapon that form, shape or size resemble a Bowie knife or Arkansas tooth pick under his clothes, or keep the same concealed about his person, such person shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than two hundred dollars, nor more than five hundred dollars, and shall be imprisoned in the county jail not less than three months and not more than six months.”

SEC. 3. [Drawing knife from concealment to assault, sentence enhancement; text omitted]

SEC. 4. [Same as above, but resulting in cutting or stabbing; text omitted]

SEC. 5. [Force and effect; text omitted].

Note: This act is included because, although it does not deal with firearms, it is interesting because it specially separates large knives from other weapons. Sections 3 and 4 are omitted for the sake of brevity here, but they provided sentence enhancements for using these weapons in assaults and batteries beyond just carrying them. The legislature must have felt that as these knives gained popularity (Colt had just barely patented his revolver) a separate, stringent statute was needed as a greater deterrent.

1869

Sensitive places

“An act to amend the criminal laws of the state,” Ch. 22, *Public Acts...of the State of Tennessee*, 1869, pp. 23-24 [Hathi Trust](#)

SEC. 2. *Be it further enacted*, That it shall not be lawful for any qualified voter or other person attending any election in this State, or for any person attending any fair, race course, or other public assembly of the people, to carry about his person, concealed or otherwise, any pistol, dirk, bowie-knife, Arkansas tooth-pick, or weapon in form, shape or size, resembling a bowie-knife, or Arkansas tooth-pick or other deadly or dangerous weapon.

SEC. 3. *Be it further enacted*, That all persons convicted under the second section of this Act shall be punished by fine of not less than fifty dollars, and by imprisonment, or both, at the discretion of the Court.

Note: In the late 1860s, the Creek and Cherokee Tribes had roughly similar “sensitive places” weapon laws and Texas adopted one in 1870.

1870

“An act to preserve the peace and prevent homicide,” Ch, 13, *Acts...of the State of Tennessee*, 1869-70, pp. 28-29 [Hathi Trust](#)

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That it shall not be lawful for any person to publicly or privately carry a dirk, sword-cane, Spanish stiletto, belt or pocket pistol or revolver. Any person guilty of a violation of this section shall be subject to presentment or indictment, and on conviction, shall pay a fine of not less than ten nor more than fifty dollars, and be imprisoned at the discretion of the Court for a period of not less than thirty days nor more than six months, and shall give bond in a sum not exceeding one thousand dollars to keep the peace for the next six months after such conviction.

SEC. 2. *Be it further enacted*, That it shall be the duty of all peace officers in this State to see that the first section of this Act is strictly enforced, and if they know of its violation, it is hereby made their duty to report the same to the Grand Jury of their county at its next term after such violation, who shall proceed to make presentment without a prosecutor. All Sheriffs, Deputy Sheriffs, Coroners, Justices of the Peace and Constables shall be deemed peace officers under the provisions of this Act. If any of the aforesaid officers fail or refuse to perform the duties required of them by the provisions of this Act, they shall be liable to presentment or indictment, and on conviction shall be fined not less than ten nor more than fifty dollars, and shall be dismissed from office, and shall be disqualified from holding said office for the period of their unexpired term. It shall be the duty of the Grand Juries to send for witnesses in all cases where they have good reason to believe that the provisions of this Act have been violated, and upon satisfactory evidence of its violation, they shall make presentments of the same without a prosecutor. It shall be the duty of the Circuit and criminal Judges and all other Judges whose Courts have criminal jurisdiction, to give this Act specially in charge to the Grand Jury at each term of the Court.

SEC. 3. *Be it further enacted*, That the provisions of the first section of this act shall not apply to an officer or policeman while bona fide engaged in his official duties in the execution of process, or while searching for or engaged in the arrest of criminals; nor to any person who is bona fide aiding the officers of the law or others in the legal arrest of criminals, or in turning them over to the proper authorities after arrest; nor to any person who is not* on a journey out of their county or State.

SEC. 4. [effect; omitted]

Note: *The 1872 Code, §4757 and §4759a, read: "or on a journey to a place out of his county or State." §4759d has the following annotation: "The word 'not' in the last line of above section, which occurs in the original Act, is evidently a clerical error or misprint."⁵⁰ This language was not present in the 1884 Code as the 1879 act repealed this act.

See the section on case law below for further details about this and the 1871 act.

⁵⁰ Seymour D. Thompson and Thomas M. Steger (comps.), *A Compilation of the Statute Laws of the State of Tennessee*, (W. J. Gilbert, St. Louis, 1872), Vol. 3, pp. 90, 92

1871

“An act to preserve the peace and prevent homicide,” Ch. 90, *Acts...of the State of Tennessee*, 1871, pp. 81-82 [Hathi Trust](#)

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That it shall not be lawful for any person to publicly or privately carry a dirk, sword cane, Spanish stiletto, belt or pocket pistol or revolver other than an army pistol, or such as are commonly carried and used in the United States Army, and in no case shall it be lawful for any person to carry such army pistol publicly or privately about his person in any other manner than openly in his hands, and any person guilty of a violation of the provisions of this section, shall be guilty of a misdemeanor, and subject to presentment or indictment, and, on Conviction, shall pay a fine of not less than ten, nor more than fifty dollars, and may be imprisoned in the county jail not more than three months: *Provided, however*, the Court may commute the imprisonment altogether, and in lieu thereof, require the person convicted to give bond with approved security in not less than the sum of five hundred dollars, conditioned that he keep the peace for six months after such conviction.

SEC. 2. *Be it further enacted*, That it shall be the duty of all peace officers in the State, including Sheriffs, Deputy Sheriffs, Constables, Coroners, and Justices of the Peace, to see that the first section of this Act be strictly enforced, and it is hereby made their duty to report without delay any violation thereof, to the grand juries of their respective counties, and it shall be the duty of the grand juries to send for witnesses in all cases where they have good reason to believe there has been a violation thereof, and, upon satisfactory proof, to make presentment of the same without a prosecution.

SEC. 3. *Be it further enacted*, That the provisions of the first section of this Act shall not apply to any officer or policeman while engaged in the actual discharge of his official duties, nor to any person who is on a journey out of his county or State.

SEC. 4. *Be it further enacted*, That nothing in this Act shall be so construed as to operate as a pardon for any offense heretofore committed, but persons indicted or presented for carrying dangerous weapons under the laws now in force, shall be tried under said laws, and punished as therein required: *Provided*, the Courts shall have Discretionary powers in regard to the imprisonment for said offences.

[Sec. 5, effect, omitted]

Note: The 1871 act was passed as a remedy to the *Andrews* challenge (see “Case Law” below), exempting said pistols and allowing open carry, provided that the weapon was held in the hand, a most impractical method of carry except for exigencies. One can imagine hand open carry would discourage someone from carrying proactively because of the misunderstandings that would ensue upon the public and officers seeing a man with a gun in his hand. This case law, and more, created a doctrine of “going armed” where certain acts were permitted, such as

hunting with a pistol, while the idea of “wearing weapons” (carrying a gun for protection) was still illegal.⁵¹

That this act overlapped with the 1870 act; both were present in the 1872 code compilation with the annotations indicating that the sections representing the earlier act were only chargeable until the later act took effect.⁵² The overlap would be due to the court cases and the lack of a repeal clause in the 1871 act. Both acts were invalidated by the repealing clause of the 1879 act.

Various sources and scholars have argued this law and Arkansas’s adaptation (the army/navy pistol laws) were intended to disarm blacks by prohibiting the sale of smaller, inexpensive handguns. Based on the textual evidence of the 1870 statute, which banned *all* pistols, and the case law that lays a long foundation of “military use only,” and the legislation history, I do not hold to this view. The army/navy pistol exemption came about to satisfy the *Andrews* decision to keep the ban constitutional.

That blacks, tending to be at the lower end of the economic scale, were probably disenfranchised based on pistol cost, is obvious, however the law is colorblind. Poor whites would also be unable to afford exempted handguns. Claiming that the law was intended to be racist simply because it would have disproportionately affected newly freed blacks is disingenuous without being able to show ulterior motives. I will freely admit I have not conducted an extensive study of other contemporary materials, but the secondary sources I have seen asserting (or at least implying) an overtly racist motive to this law have failed to cite any conclusive evidence of the intent for this law to disenfranchise blacks from handgun ownership.

1879

Pistol sales banned

“An act to prevent the sale of pistols,” Ch. 96, *Acts...of the State of Tennessee*, 1879, pp. 137-136
[Hathi Trust](#)

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That it shall be a misdemeanor for any person to sell, or offer to sell, or to bring into the State for the purpose of selling, giving away, or otherwise disposing of belt or pocket pistols, or revolvers, or any other kind of pistols, except army or navy pistol; *Provided* that this Act shall not be enforced against any persons now having license to sell such articles until the expiration of such present license.

SEC. 2. *Be it further enacted*, That any person guilty of a violation of this Act, shall be subject to presentment or indictment, and on conviction, shall pay a fine of not less than twenty-five nor more than one hundred dollars, and be imprisoned at the discretion of the court.

⁵¹ For support, see annotation for §5536: Robert T. Shannon and William Alfred Milliken (comps.), *The Code of Tennessee (1884)*, (Marshall & Bruce, Nashville, 1884) p. 1061 [Hathi Trust](#)

⁵² Seymour D. Thompson and Thomas M. Steger (comps.), *A Compilation of the Statute Laws of the State of Tennessee*, (W. J. Gilbert, St. Louis, 1872), Vol. 3, p. 92

SEC. 3. *Be it further enacted*, That it shall be the duty of the Criminal and Circuit Judges, and other Judges whose courts have criminal jurisdiction, to give this Act specially in charge to the grand jury at each term of the court.

SEC. 4. *Be it further enacted*, That it shall be the duty of the grand juries to send for witnesses, in all cases where they have good reason to believe, that the provisions of this Act have been violated. And upon satisfactory evidence of its violation, they shall make presentments of the same without a prosecutor.

[Sec. 5, repeal, omitted; Sec. 6, effect, omitted]

Note: This was effectively a ban on pocket pistols and revolvers more suitable for concealed carry than service pistols were. The exemption for army/navy pistols was to conform with existing case law that specified military arms were expressly constitutional.

Weapons carry statute amended

“An act to amend the criminal laws of this state upon the subject of carrying concealed weapons, and amend Section 4759 of the Code,” Ch. 186, *Acts...of the State of Tennessee*, 1879, pp. 231-232 [Hathi Trust](#)

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the Act of 1871, Chapter 90, be and is hereby amended, that hereafter it shall not be lawful for any person to carry, publicly or privately, any dirk, razor concealed about his person, sword cane, Spanish stiletto, belt or pocket pistol, revolver, or any kind of pistol, except the army or navy pistol, usually used in warfare, which shall be carried openly in the hand, or loaded cane, slung-shot, brass knucks; and any person guilty of a violation of this Act shall be subject to presentment or indictment, and on conviction shall be fined fifty dollars, and imprisoned in the County jail of the County where the offense was committed, the imprisonment only in the discretion of the Court; *Provided*, the defendant shall give good and sufficient security for all the costs, fine, and any jail fees that may accrue by virtue of the imprisonment of the defendant.

SEC. 2. *Be it further enacted*, That nothing in this Act be so construed as to operate as a pardon for any offense heretofore committed, but persons indicted or presented for carrying dangerous weapons under the law now in force, shall be tried under said laws, and punished as therein required.

SEC. 3. *Be it further enacted*, That the provisions of this Act shall not apply to any person employed in the army, navy, or marine service of the United States, or to any officer or policeman while bona fide engaged in his official duties in the execution of process, or while searching for or engaged in arresting criminals, nor to persons who may have been summoned by such officers or policeman in the discharge of their said duties, and in arresting criminals and transporting and turning them over to the proper authorities; and, *Provided, further*, that said persons who may be employed in the army, navy or marine service, as aforesaid, shall only carry such pistols as are prescribed by the army and navy regulations.

SEC. 4. *Be it further enacted*, That all laws and parts of laws that come in conflict with the provisions of this Act be and the same are hereby repealed;

Provided, that any person convicted of an offense under this Act shall not be deprived of the right of voting or holding office.

Note: This act added “loaded” cane as a weapon and modified the penalty from the 1871 act to a mandatory \$50 fine and a discretionary indeterminate jail sentence, instead of three months.

1883

Sale of pistol cartridges banned

“A bill to be entitled an act to prevent the sale, loan or gift of pistol cartridges in this state,” Ch. 8, *Acts of Tennessee*, 1883, p. 17 [Hathi Trust](#)

Be it enacted by the General Assembly of the State of Tennessee, That it shall be unlawful for any person or persons to buy or sell or give away any pistol cartridges in this State. Be it further enacted, That any person or persons violating this Act, shall be guilty of a misdemeanor, and on conviction thereof shall be fined not less than twenty-five or more than one hundred dollars.

Be it further enacted, That this Act shall be given in charge by the judges of the Circuit and Criminal Courts of this State, to the grand juries at each term of the Court, and that the grand juries are hereby clothed with inquisitorial powers to send for witnesses, and prefer presentments against any persons guilty of a violation of this Act; provided, however, that nothing in this Act shall be construed to interfere with the sale of cartridges for rifle guns or shot guns, or cartridges for army or navy pistol.

Note: Obviously the intent was to make pistols already in the state, following the sale/import ban, useless by depriving owners of ammunition. Military issue weapons (“army or navy pistols,” were exempted so as to pay lip-service to the Second Amendment for militia use of such handguns).

Case Law

The case law out of Tennessee is unique in a way because it set the foundation for the unusual “army and navy pistol” legislation of that state and also found its way to Arkansas. The justices’ opinions shed light on the commonly held belief in Southern government at the time; it was appropriate to ban carrying weapons, even for innocent self-defense, if it was done to curb crime and violence. The entire idea of civilian handgun ownership was under threat and only justified under the idea of the “common defense,” that is the militia, something that the *Andrews* decision ridiculed as being anachronistic.

1833’s Tennessee Supreme Court decision *Simpson v. State*⁵³ supported the right to keep and bear arms. The court stated, “an express power is given and secured to all the free citizens of

⁵³ *Simpson v. State*, 13 Tenn. (5 Yer.) 356 (1833) [Opinion](#)

the state to keep and bear arms for their defence, without any qualification whatever as to their kind or nature,” but qualified the right did not go so far as to excuse the appellant’s armed affray. The framers, the opinion said, could not have meant the right included that to go armed and terrify people.

In inferring that the right had limitations was first articulated briefly in *Simpson*. The idea that while a right existed, the Legislature could regulate it for good cause, seems to have taken hold in the Tennessee judiciary. *Simpson*, while putatively upholding the right to keep and bear arms, also dwelt little upon it. Courts in future decisions did not take real note of *Simpson*’s almost afterthought regarding the existence of the constitutional right, calling it “incidental.”⁵⁴

The 1838 knife law seemed to conform to the idea that a man had the right to bear arms, but not concealed weapons. Indeed, in *Aymette v. State*⁵⁵ we see that concealed carry regulations were believed to be constitutional but goes further to suggest the right to keep and bear arms was for military (militia) purposes only, largely dismissing *Simpson* regarding the constitutional right.

In *Aymette* (1840), the appellant carried a concealed Bowie knife. The court rejected the idea that the state's right to keep and bear arms article:

"gives to every man the right to arm himself in any manner he may choose, however unusual or dangerous the weapons he may employ; and thus armed, to appear wherever he may think proper, without molestation or hindrance, and that any law regulating his social conduct, by restraining the use of any weapon or regulating the manner in which it shall be carried, is beyond the legislative competency to enact, and is void."

The opinion details various tyrannies by the English crown and argues that the right to keep and bear arms article was adopted in light of these abuses and as a remedy to them. To "bear arms" did not mean "wearing them about the person as part of the dress." The right was one of a "general and public nature" for the people as a whole for common defense, that is, as a militia.

Weapons carried for daily self-defense were outside the scope of the protected right, said the court because the various defensive weapons were unsuitable for military usage and “useless in war.” Weapons could be borne openly, because to disallow it would prevent weapons from being borne in the defense of the state, i.e. in war. Concealed weapon regulations didn’t impair the ability to use them in warfare.

The *Aymette* opinion found that the Legislature had the ability to prohibit carrying weapons for personal defense, and thus the statute was not unconstitutional. The right to keep and bear arms in Tennessee *did not* apply to ordinary self-defense. The arguments here regarding weapons of warfare being permissible, if carried openly, set the stage for a case 40 years later that would ultimately have ramifications upon legislation, producing 1871’s unique provision.

Andrews v. State,⁵⁶ also from Tennessee, is the case responsible for the 1871 act that permitted army/navy pistols in lieu of a “pocket pistol” or revolver. Andrews challenged a conviction of the 1870 statute on constitutional grounds.

The *Andrews* decision found the 1870 act to be constitutional. Specifically, The right to bear arms was for the "common defense," not to carry them for individual defense. It was right for the Legislature to prohibit carrying weapons for self-defense,

⁵⁴ *Andrews v. State*, 50 Tenn. (3 Heisk.) 165, 8 Am. Rep. 8 (1871) [Opinion](#)

⁵⁵ *Aymette v. State*, 21 Tenn. (2 Hump.) 154 (1840) [Opinion](#)

⁵⁶ *Andrews v. State*, *Ibid*.

because self-defense could be effected by other means. The intent of the law was to "banish" carrying handguns as a public good and called for the "mutual sacrifice of individual rights" as the goal was "the highest interest of every man in the land."

Yet the state could not dismiss the right entirely. The constitution allowed regulation of *wearing* pistols, and the court implied some examples of taking a gun out of the home (but not carrying habitually for self-defense) was appropriate and suggested that the Legislature enact a law remedying the deficiency.

As far as the Legislature, if their intent was not to totally disenfranchise the right to keep and bear arms for ordinary self-defense, they had the opportunity to re-write the 1871 statute as allowing openly carried handguns, as in most states. Unsurprisingly from a body that banned both forms just the year before, the Legislature only approved the bare minimum (army/navy pistols in the hand) that the Supreme Court would permit.

Thus, the 1871 act specified both hand carry, as the court said the Legislature could constitutionally prohibit "wearing," and exempted army and navy pistols, as those were weapons of modern warfare. This act was upheld by the state Supreme Court *State v. Welburne*⁵⁷ (1872). They found that the 1871 statute did "not infringe the right of the citizen to keep and bear arms for the common defense." The reasoning in *Andrews* was confirmed and the right to carry weapons for self-defense was not upheld.

⁵⁷ *State v. Welburne*, 7 Jere Baxter, 57 (1872) [Opinion](#)

Texas

Constitution

1836 (Republic)

Every citizen shall have the right to bear arms in defence of himself and the Republic. The military shall at all times and in all cases be subordinate to the civil power.

1845, 1861, 1866

Every citizen shall have the right to keep and bear arms in the lawful defence of himself of the State.

1869

Every person shall have the right to keep and bear arms, in the lawful defence of himself or the State, under such regulations as the Legislature may prescribe.

1876

Every citizen shall have the right to keep and bear arms in the lawful defense of himself or the State; but the Legislature shall have power by law to regulate the wearing of arms with a view to prevent crime.

Statutory History

1870

Sensitive places

“An act regulating the right to keep and bear arms,” Ch. 46, *General Laws of Texas*, 1870, p. 63
[link](#)

Section 1. Be it enacted by the Legislature of the State of Texas,

That if any person shall go into any church or religious assembly, any school room or other place where persons are assembled for educational, literary or scientific purposes, or into a ball room, social party or other social gathering composed of ladies and gentlemen, or to any election precinct on the day or days of any election, where any portion of the people of this State are collected to vote at any election, or to any other place where people may be assembled to muster or to perform any other public duty, or any other public assembly, and shall have about his person a bowie-knife, dirk or butcher-knife, or fire-arms, whether known as a six-shooter, gun or pistol of any kind, such person so offending shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not less than fifty or more than five hundred dollars, at the discretion of the court or jury trying the same; provided, that nothing contained in this section shall apply to locations subject to Indian depredations; and provided further, that this act shall not apply to any person or persons whose duty it is to bear arms on such occasions in discharge of duties imposed by law.

[Sec. 2, effect, omitted]

Note: A similar “sensitive places law,” with variations, was in effect in Indian Territory and Tennessee in the late 1860s. Each seem to be more or less original but working along the same theme.

Two schools of thought exist on the origin of this law. One, political violence, which is to either protect blacks and Republicans in their gatherings from violence, or to disarm them to make harassment easier. Two, a generic means of controlling violence and homicides that may occur at these kinds of gatherings for a variety of reasons.

In 1915, the punishment would be changed to \$100-500 and/or one to twelve months in jail.⁵⁸

Elections

“An act to provide for the mode and manner of conducting elections...and for the protection and purity of the ballot-box,” Ch. 78, *General Laws of Texas*, 1870, p. 139

Sec. 55. That it shall be unlawful for any person to carry any gun, pistol, bowie-knife or other dangerous weapon, concealed or unconcealed, on any day of election, during the hours the polls are open, within a distance of one half mile of any place of election. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than one hundred dollars, and by imprisonment in the county jail for not less than one month; provided, that the provisions of this section shall not apply to any officer of the election, police officer or other person authorized to preserve the peace on the days of election.

⁵⁸ “An act to amend Article 477 (340) of the Penal Code of the State of Texas, 1911, relating to the carrying of arms, and prohibiting the carrying of arms into a church or other assembly...etc.,” Ch. 80 (HB 156), *General Laws of Texas*, 1915, p. 132 [Hathi Trust](#)

Note: In 1876 there would be a maximum fine set of \$500.⁵⁹

1871

First law, universal open and concealed

“An act to regulate the keeping and bearing [sic] of deadly weapons,” Ch. 34, *General Laws of Texas*, 1871 (first session), pp. 25-27 [Source](#)

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 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

Sec. 3. If any person shall go into any church or religious assembly, any school room, or other place where persons are assembled for amusement or for educational or scientific purposes, or into any circus, show, or public exhibition of any kind, or into a ball room, social party, or social gathering, or to any election precinct on the day or days of any election, where any portion of the people of

⁵⁹ “An act regulating elections,” Ch. 166, *General Laws of Texas*, 1876, p. 311 [Hathi Trust](#)

this State are collected to vote at any election, or to any other place where people may be assembled to muster, or to perform any other public duty, (except as may be required or permitted by law,) or to any other public assembly, and shall have or carry about his person a pistol or other firearm, dirk, dagger, slung shot, sword cane, spear, brass-knuckles, bowie-knife, or any other kind of knife manufactured and sold for the purposes of offense and defense, unless an officer of the peace, he shall be guilty of a misdemeanor, and, on conviction thereof, shall, for the first offense, be punished by fine of not less than fifty, nor more than five hundred dollars, and shall forfeit to the county the weapon or weapons so found on 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 more than ninety days.

Sec. 4. This act shall not apply to, nor be enforced in any county of the State, which may be designated, in a proclamation of the Governor, as a frontier county, and liable to incursions of hostile Indians.

Sec. 5. All fines collected under the provisions of this act shall be paid into the treasury of the county, and appropriated exclusively to the keeping in repair and maintenance of public roads, and all weapons forfeited to the county under the provisions of this act shall be sold as may be prescribed by the county court, and the proceeds appropriated to the same purpose.

Sec. 6. It shall be the duty of all sheriffs, constables, marshals, and their deputies, and all policemen and other peace officers, to arrest any person violating the first or third sections of this act, and to take such person immediately before a justice of the peace of the county where the offense is committed, or before a mayor or recorder of the town or city in which the offense is committed, who shall investigate and try the case without delay. On all such trials the accused shall have the right of a trial by jury, and of appeal to the district court: but, in case of appeal, the accused shall be required to give bond with two or more good and sufficient sureties in a sum of not less than one hundred nor more than two hundred dollars, if convicted under the first section and in a sum of not less than two hundred nor more than one thousand dollars, if convicted under the third section of this act; said bond to be payable to the State of Texas, and approved by the magistrate, and conditioned that the defendant will abide the judgment of the district court that may be rendered in the case; and in case of forfeiture the proceedings thereon shall be as is or may be prescribed by law in similar cases; and all moneys collected on any bond or judgment upon the same; shall be paid over and appropriated as provided in the fifth section of this act.

Sec. 7. Any officer named in the sixth section of this act who shall refuse or fail to arrest any person whom he is required to arrest by said section on his own information, or where knowledge is conveyed to him of any violation of the first or third sections of this act, shall be dismissed from his office on conviction in the district court, on indictment or information, or by such other proceedings or tribunal as may be, provided by law, and in addition, shall be fined in any sum not exceeding five hundred dollars, at the discretion of the court or jury.

Sec. 8. That the district courts shall have concurrent jurisdiction under this act, and it is hereby made the duty of the several judges of the district courts of

this State to give this act especially in charge to the grand juries of their respective counties.

Sec. 9. It is hereby made the duty of the Governor to publish this act throughout the State; and this act shall take effect and be in force from and after the expiration of sixty days after its passage.

Approved April 12, 1871.

Note: As has been occasionally stated previously, the background of this law was not disarming blacks, at least not explicitly. Racist firearm restrictions pre-dated this law. The 1870 and 1871 laws have their origin in Reconstruction violence. That minorities were disproportionately affected by this law is a sad fact of gun control laws that impacts minority communities to this day. Governor Davis called this law “a very partial remedy” to “instances of personal violence [that] occur almost daily.”⁶⁰

1887

“An act to amend Article 318, Chapter 4, Title 9, of the Penal Code of the state of Texas,” Ch. 9 (HB 51), *General Laws of Texas*, 1887, pp. 6-7 [Hathi Trust](#)

SECTION 1. *Be it enacted by the Legislature of the State of Texas:* That Article 318 of the Penal Code shall be amended as to hereafter read as follows:

Article 318. If any person in this State shall carry on or about his person, saddle, or in his saddlebags, any pistol, dirk, dagger, slung shot, sword cane, spear, or knuckles made of any metal or any hard substance, of offense or defense, he shall be punished by a fine of not less than twenty-five nor more than two hundred dollars, and shall be confined in the county jail not less than twenty not more than sixty days.

Note: This raised the maximum fine up to \$200 and added the jail sentence as an option for a first offense rather than only a second offense. In 1889, the Legislature modified the jail sentence to 10-30 days, down from 20-60, indicating that the higher jail sentence was not being utilized or was unpopular.⁶¹ In 1905, the minimum fine was raised to \$100, and the jail term increased to one to twelve months. Governor S. W. T. Lanham, a Democrat, did not sign the bill. Interestingly, the 29th Legislature was almost entirely Democrats.

1918

“An act to amend Articles 475 and 476 of the Penal Code of the State of Texas, prohibiting the carrying of [weapons]...etc.,” Ch. 91 (HB 27), *General Laws of Texas*, 1918, p. 194 [Hathi Trust](#)

⁶⁰ Mark Anthony Frassetto, “The Law and Politics of Firearms Regulation in Reconstruction Texas”, 4 Tex. A&M L. Rev. 95 (2016). pp. 103-104

⁶¹ “An act to amend an act entitled ‘an act to amend Article 318, Chapter 4, Title 9, of the Penal Code of the state of Texas,’ [1887 act]...etc.,” Ch. 37 (SB 3), *General Laws of Texas*, 1889, p. 33 [Hathi Trust](#)

Be it enacted by the Legislature of the State of Texas:

SECTION 1. That Articles 475 and 476 of the Penal Code of the State of Texas be, and the same are, hereby amended so that the same shall hereafter read as follows:

Article 475. If any person in this State shall carry on or about his person, saddle, or in his saddle bags any pistol, dirk, dagger, slung-shot, sword, cane, spear or knuckles made of any metal or any hard substance, bowie knife, or any other knife manufactured or sold for the purposes of offense or defense, he shall be punished by fine not less than \$100.00 nor more than \$500.00, or by confinement in the county jail for not less than one month nor more than one year.

Article 476. The preceding article shall not apply to a person in actual service as a militiaman, nor to any peace officer in the actual discharge of his official duty, nor to the carrying of arms on one's own premises or place of business, nor to persons travelling provided, this exception shall not apply to any deputy constable, or special policeman who does not receive a compensation of forty dollars or more per month for his services as such officer, and who is not appointed in conformity with the statutes of this State authorizing such appointment; provided, further, that this exception shall not apply to the Game, Fish and Oyster Commissioner, nor to any deputy, when not in the actual discharge of his duties as such, nor to any game warden, or local deputy Game, Fish and Oyster Commissioner except when in the actual discharge of his duties in the county of his residence, nor shall it apply to any game warden or deputy Game, Fish and Oyster Commissioner who does not actually receive from the State fees or compensation for his services.

SEC. 2. That all laws and parts of laws in conflict herewith are hereby repealed.

SEC. 3. The fact that the present law upon the subject of unlawfully carrying arms is ineffective and subject to abuses creates an emergency and an imperative public necessity, requiring the constitutional rule requiring bills to be read on three several days to be suspended, and such rule is so suspended, and that this Act take effect from and after its passage, and it is so enacted.

Note: Major changes in this act include granting a host of exemptions to officials.

West Virginia

Statutory History

Note: West Virginia became a state in 1863 when it split from West Virginia. Virginia's latest iteration of its concealed weapon law was last passed in 1849. See Virginia for more information.

1882

First post-statehood law; open and concealed carry

“An act amending and re-enacting section seven of chapter one hundred and forty-eight of the code of West Virginia...etc.,” Ch. 135, *Acts of the Legislature of West Virginia at its Adjourned Session*, 1882, pp. 421-422 [Hathi Trust](#)

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 of 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 each 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 his 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 from 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 of 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.

Note: This act added a prohibition of selling pistols to persons under 21 and added exemptions for carrying one's pistol at home, for repairs, or in actual self-defense. Virginia's act of the same year had a fine of \$15-50.

1909

May-issue licenses

“An act to amend and re-enact section seven of chapter one hundred and forty-eight of the code of West Virginia, relative to offenses against the peace,” Ch. 51 (SB 34), *Acts of the Legislature of West Virginia*, 1909, pp. 394-398 [Hathi Trust](#)

Be it enacted by the Legislature of West Virginia:

That section seven of chapter one hundred and forty-eight of the code be amended and re-enacted so as to read as follows:

Sec. 7. If any person, without a state license therefor, carry about his person any revolver or other pistol, dirk, bowie knife, slung shot, razor, billy, metallic or other false knuckles, or any other dangerous or deadly weapon of like kind and character, he shall be guilty of a misdemeanor, and upon conviction thereof be confined in the county jail for a period of not less than six nor more than twelve months for the first offense; but upon conviction of the same person for the second offense in this state, he shall be guilty of a felony and be confined in the penitentiary not less than one nor more than five years, and in either case fined not less than fifty nor more than two hundred dollars, at the discretion of the court; and it shall be the duty of the prosecuting attorney in all cases to ascertain whether or not the charge made by the grand jury is the first or second offense, and if it shall be the second 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 second offense, and shall not be permitted to use, his discretion in charging said second offense nor in introducing evidence to prove the same on the trial; *provided*, that boys under the age of eighteen years, upon the second conviction, may at the discretion of the court, be sent to the reform school of the state.

Any person may obtain a state license to carry any such weapon within any county in this state by publishing a notice in some newspaper published in the county in which he resides, setting forth his name, residence and occupation, and that on a certain day he will apply to the circuit court of his county for such state license, and after the publication of such notice for at least ten days before said application is made and at the time stated in said notice upon application to said circuit court, it may grant such person a license in the following manner, to-wit:

First. Such person must prove to said court that he is over twenty-one years of age; that he is a person of good moral character, of temperate habits, and is not addicted to intoxication, and has not been convicted of a felony nor of any

other offense involving the use on his part in an unlawful manner of any such weapon.

Second. He shall file with said court an application stating the purpose or purposes for which he desired to carry any such weapon, and shall show in such application, and prove to the court, good reason and cause for carrying such weapon. Thereupon, if such circuit court be satisfied from the proof that there is good reason and cause for such person to carry such weapon, and all of the other conditions of this act be complied with, said circuit court may grant said license; but before the said license shall be effective such person shall pay to the sheriff, and the court shall so certify in its order granting the license, the sum of ten dollars, and shall also file a bond with the clerk of said court, in the penalty of three thousand five hundred dollars, with good security, signed by a responsible person or persons, or by some surety company, authorized to do business in this state, conditioned that such applicant will not carry such weapon except in accordance with his said application and as authorized by the court, and that he will pay all costs and damages accruing to any one by the accidental discharge or improper, negligent or illegal discharge or use of said pistol.

Any such license shall be good for one year, unless sooner revoked, and be coextensive with the state, and all licenses collected hereunder shall be accounted for to the auditor and paid over by the sheriffs as other license taxes are collected and paid, and the state tax commissioner shall prepare all suitable forms for licenses and bonds and certificate showing that such license has been granted, and do anything else in the premises to protect the state and to see to the enforcement of this act.

Provided, that nothing herein shall prevent any person from carrying any such weapon, in good faith and not for a felonious purpose, upon his own premises, nor shall anything herein prevent a person from carrying any such weapon (and if it be a revolver or other pistol 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;

and, *provided, further,* that in cases of riot, public danger and emergency, a justice of the peace or other person issuing a warrant may authorize a special constable and his posse to carry weapons for the purpose of executing a process, and a sheriff in such cases may authorize a deputy or posse to carry weapons, but the justice shall write on his docket the causes and reasons for such authority and the person so authorized, and index the same, and the sheriff or other officer shall write out and file with the clerk of the county court the reasons and causes for such authority and the person so authorized, and the same shall always be open to public inspection, and such authority shall authorize such special constable, deputies and posses to carry weapons in good faith only for the specific purposes and times named in such authority, and upon the trial of every indictment the jury shall inquire into the good faith of the person attempting to defend any such indictment under the authority granted by any such justice, sheriff or other officer, and any such persons so authorized shall be personally liable for the injury caused any one by the negligent or unlawful use of any such weapon.

It shall be the duty of all ministerial officers, consisting of the justices of the peace, notaries public and other conservators of the peace of this state, to report to the prosecuting attorney of the county the names of all persons guilty of violating this section, and any person willfully failing so to do, shall be guilty of a misdemeanor and shall be fined not exceeding two hundred dollars, and shall, moreover, be liable to removal from office for such willful failure; and it shall likewise be the duty of every person having knowledge of the violation of this act, to report the same to the prosecuting attorney, and to freely and fully give evidence concerning the same, and any one failing so to do, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding one hundred dollars;

provided, further, that nothing herein contained shall be so construed as to prohibit regularly elected sheriffs, their regularly appointed deputies, who collect taxes in each county, and all regularly elected constables in their respective counties and districts, and all regularly appointed police officers of their respective cities, towns or villages, from carrying such weapons as they are now authorized by law to carry, who shall have given bond in the penalty of not less than thirty-five hundred dollars, conditioned for the faithful performance of their respective duties, which said officers shall be liable, upon their said official bond, for the damages done by the unlawful or careless use of any such weapon, whether such bond is so conditioned or not.

All other acts or parts of acts inconsistent with this act are hereby repealed.

[some indentations were added]

Note: This act added may issue licenses, made a second offense a felony, and authorized special peace officers in certain cases. The Virginia act of 1908 placed fines between \$20-100 and had no felony provisions. It also allowed for court permission to carry.

1933

"An act to amend and reenact section three, article seven; chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, relating to the carrying of dangerous or deadly weapons," Ch. 19 (SB 33), *Acts of the Legislature of West Virginia*, 1933, pp. 75-76

Be it enacted by the Legislature of West Virginia:

That section three, article seven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, be amended and reenacted so as to read as follows:

Section 3. Nothing in this article shall prevent any person from carrying any such weapon as is mentioned in the first section of this article, in good faith and not having felonious purposes, upon his own premises; nor shall anything herein prevent a person from carrying any such weapon, unloaded, from the place of purchase to his home or residence, or to a place of repair and back to his home or residence; nor shall anything herein prevent a bona fide member of the national

guard of West Virginia, or of the reserve officers component of the United States army, while in performance of his official duties as such or any properly organized target shooting club authorized by law to obtain firearms by purchase or requisition from this state or from the United States for the purpose of target practice, from carrying any revolver or pistol mentioned in this article, unloaded, from his home or place of residence to a place of target practice, and from any such place of target practice back to his home or residence, or using any such weapon at such place of target practice in training and improving his skill in the use of such weapons; but nothing herein shall be construed to authorize any employee of any person, firm or corporation doing business in this state to carry, on or about the premises of such employer, any such pistol, or other weapon mentioned in this article, for which a license is herein required, without having first obtained the license and given the bond as herein provided.

Note: This act added an exemption for military and target shooting, likely as part of the influence exerted from competitive pistol shooters (who were responsible for keeping handguns from being banned in the 1930s).

Wyoming

Constitution

The right of the citizens to bear arms in defense of themselves and the State shall not be denied.

Statutory History

1865

Pre-Wyoming (Dakota Territory)

“An act to establish a penal code,” Ch. 7, *General and Private Laws and Memorials and Resolutions of the Territory of Dakota*, 1864-1865, p. 128 [Hathi Trust](#)

Note: At this time, the area that would become Wyoming Territory in 1868 was part of Dakota Territory. A violation was a misdemeanor with a penalty not specified in the statute.

1869

Wyoming Territory was established in 1868 and per its organic act, the Dakota Territory laws remained in force until the legislature met and adopted its own laws.⁶² Presumably, once the Legislature met and adopted laws for Wyoming, the Dakota statute was inapplicable as per the Organic Act.

1875

First law, open and concealed, populated places

J. R. Whitehead (comp.), “An act to prevent the carrying of fire arms and other deadly weapons,” Ch. 52, *The Compiled Laws of Wyoming*, 1876, (Cheyenne, Leader Steam Book, 1876), p. 352 [Hathi Trust](#)

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

⁶² § 17, "An Act to Provide a Temporary Government for the Territory of Wyoming," 15 Statutes at Large 178, Ch. 235

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.

SEC. 2. That if any person not a resident of any town, city or village of Wyoming Territory, shall, after being notified of the existence of this act by a proper peace officer, continue to carry or bear upon his person any fire arm or other deadly weapon, he or she, shall be deemed to be guilty of a violation of the provisions of this act and shall be punished accordingly.

SEC. 3. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than five dollars nor more than fifty dollars, and, in the default of the payment of any fine which may be assessed against him, shall be imprisoned in the county jail for not less than five days nor more than twenty days.

[Sec. 4, effect, omitted]

Note: I was unable to find public domain sources for the session laws in the years: 1874-1877, 1881, 1885-1887. This was included, and codified as Sections 980 and 981, in the 1887 *Revised Statutes* (see 1887).

1876

Carry with Intent

J. R. Whitehead (Comp.), “An Act to Prevent the Carrying of Fire Arms and Other Deadly Weapons,” Ch. 35, *The Compiled Laws of Wyoming*, 1876, (Cheyenne, Leader Steam Book, 1876), p. 273 [Hathi Trust](#)

Sec. 127. If any person or persons shall have upon him any pistol, gun, knife, dirk, bludgeon or other offensive weapon, with intent to assault any person, every such person, on conviction, shall be fined in any sum not exceeding five hundred dollars, or imprisoned in the county jail not exceeding six months.

Note: A second crime, carrying with intent, was added to the law with a higher fine than merely carrying weapons. This section was cited: “C.L. 1876, ch. 35, §127 in the 1887 *Revised Statutes*, which tends to indicate the section was added by the compiler.⁶³

1890

Concealed carry, open carry with intent

“An act defining crimes, regulating criminal procedures and for other purposes,” Ch. 73, *Session Laws of the Wyoming Territory*, 1890, p. 140 [Hathi Trust](#)

⁶³ Blake, Van Devanter, and Caldwell (Comps.), §1027, *Revised Statutes of Wyoming*, 1887, p. 306 [Google Books](#)

[Carrying dangerous weapons]. SEC. 96. Every person, not being a traveler, who shall wear or carry any dirk, pistol, bowie-knife, dagger, sword-in-cane or any other dangerous or deadly weapon concealed, or who shall carry or wear any such weapon openly, with the intent or avowed purpose of injuring his fellow-man, shall be fined in any sum not exceeding one hundred dollars.

[Selling weapons to minors.] SEC. 97. It shall be unlawful for any person to sell, barter or give to any other person under the age of twenty-one years any pistol, dirk or bowie-knife, slung-shot, knucks or other deadly weapon that can be worn or carried concealed upon or about the person, or to sell, barter or give to any person under the age of sixteen years any cartridges manufactured and designed for use in a pistol; and any person who shall violate any of the provisions of this section shall be fined in any sum not more than fifty, dollars.

Note: §96 prohibited open carry only when it was done with intent to injure.