

A CONCISE SUMMARY OF MISSISSIPPI WEAPON LAWS

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Nature and Source of the Right

The Mississippi Constitution,² like the United States Constitution,³ acknowledges every citizen's right to keep and bear arms. "Arms" is commonly accepted to mean firearms (which is the primary weapon discussed in this paper), but the actual definition would include most any implement capable of inflicting serious bodily injury.⁴ Unlike the United States Constitution, the Mississippi Constitution expressly reserves in the legislature the right to "regulate or forbid" the carrying of concealed weapons.⁵

Registration, Background Checks, Licensing, Locks, and Buy-Backs

Mississippi has no owner gun registration requirements⁶ ~~except—for silencers/suppressors.~~⁷ It is a state crime for any person to solicit, persuade, encourage, or entice a licensed dealer or private individual to transfer a firearm or ammunition in violation of state or federal law.⁸ It is also a crime to provide false information.⁹ Counties and municipalities are prohibited from participating in gun buy-back programs unless the weapons are sold to a FFL (not destroyed).¹⁰

Subject to federal background checks from licensed firearm dealers, no records are required to be kept regarding any transactions by private individuals. This is not to say that such information should not be kept,¹¹ only that it is not required. Mississippi has no licensing requirements but does provide for a license to carry a concealed pistol (discussed more

thoroughly *infra*). No license is required to purchase or own a firearm.¹² Mississippi has no requirement that owners employ gun locks.

Waiting Period

Mississippi has no waiting periods on the purchase of firearms. Firearms purchased from a licensed dealer must first be approved under the federal National Instant Criminal Background Check System required by Brady Handgun Violence Prevention Act of 1993.¹³

Age Requirements

It is unlawful to sell, give or loan a “deadly weapon” to a person under the age of eighteen.¹⁴ Additionally, a parent who allows a child under eighteen to own or carry concealed a deadly weapon may be charged with a misdemeanor.¹⁵ Likewise, it is generally illegal for a person under eighteen to have a “handgun” in his possession.¹⁶ A number of exceptions apply. It is not a violation if the minor is: (1) attending hunter or firearm safety courses; (2) practicing or target shooting; (3) competing or practicing for a non-profit organization’s performance; (4) hunting with a valid license;¹⁷ (5) traveling with an unloaded handgun for an approved activity;¹⁸ (6) on land which is under the control of an adult who gives the youth permission to have the handgun;¹⁹ or (7) using the firearm in lawful self-defense.²⁰ Attention is drawn to the distinction between “deadly weapons” and “handgun” as used in these two statutes. The term “deadly weapon” is discussed in depth in the section on unlicensed carry of a firearm.

In The Workplace

While there seems to be no statutory limitation on a business owner’s right to prohibit possession of weapons within the business’ building unless possession is limited by other law,²¹ an employer (public or private) may not prevent employees from bringing firearms in locked, privately-owned²² vehicles in the parking lot,²³ unless general public access to the lot is limited by a gate, security station or other means.²⁴ An employer is immune from civil liability for damages which result from firearms permitted by this law.²⁵

Educational Property

“Educational property” is precisely defined and includes almost all public or private primary and secondary schools, including colleges.²⁶ Generally, it is felony for any person to possess or carry firearms or explosives on educational property,²⁷ or to encourage anyone under eighteen to do so.²⁸ It is a misdemeanor to carry an air rifle, knife or other “sharp-pointed or edged instrument” except for unaltered nail files, food utensils or tools used for food preparation, instruction or maintenance,²⁹ or to encourage anyone under eighteen to do so.³⁰

It is legal under Mississippi law for a non-student to possess a firearm on educational property so long as the firearm remains in a motor vehicle and is not displayed in a threatening manner.³¹ However, it is illegal under federal law, the Gun-Free School Zones Act (18 U.S.C. § 922(q)), unless the possessor has a Mississippi enhanced concealed carry license.³² The state law prohibitions mentioned here do not apply to ceremonial or school programs, armed forces

personnel and law enforcement, home schools, shooting event competitors, guards, mail carriers, or weapons not prohibited by § 97-37-1 (deadly weapons statute, discussed *infra*) in a parent's motor vehicle.³³ Schools are required to post a copy of this Code section in public view.³⁴ See *infra* about "campus carry" with an enhanced concealed carry license.

The Natchez Trace

Weapon regulations on the Trace defer to state law in many, but not all, respects. The basic rule is that "Any Firearm that is legal to possess under state law may be carried in your personal vehicle while traveling the Natchez Trace Parkway. Effective July 1, 2010 in Mississippi, the possession of a handgun permit is required when in possession of a concealed handgun outside your vehicle."³⁵ This means that no license is needed for carrying a firearm in your vehicle but a license (either "regular" or "training endorsement") is required to take a concealed weapon out of the vehicle. Open carry is not addressed but since it is allowed under Mississippi law open carry should be permissible except in federal buildings. Proceed at your own risk. Note that other federal law applies to certain facilities and visitors should heed all postings.

Crimes Employed Using A Firearm; Felons

Anyone using a firearm, including just displaying the firearm, during the commission of a crime shall be sentenced to an additional five (5) years in prison, without the possibility for reduction or suspension.³⁶ If such person is a convicted felon, the sentence is an additional ten (10) years.³⁷

Unless pardoned, expunged, or relieved from disability, a felon may not possess a firearm or other designated weapon.³⁸ While Mississippi offers a procedure whereby a convict's right to own a firearm may be restored by obtaining a "certificate of rehabilitation,"³⁹ it would appear there is no such relief from federal restrictions unless the person receives a full and complete pardon, an expungement of the conviction, or restoration of his civil rights from the Governor.⁴⁰ This is because although a state conviction may be "rehabilitated," the federal prohibition would still apply in the absence of a full restoration of a person's civil rights, expungment of the conviction, or a pardon.⁴¹

It is, of course, illegal to knowingly or intentionally possess, receive, sell or dispose of a stolen firearm.⁴²

Exhibition of a Weapon

Unless being used in necessary self-defense, no one may display a deadly weapon in a threatening manner in the presence of another person, or use a weapon unlawfully in a fight.⁴³

Silencers

Mississippi has a stated prohibition on the possession, manufacture or sale of “silencers” (a/k/a suppressors) but allows possession of devices “authorized under federal law.”⁴⁴ Thus, with the proper federal tax stamp, suppressors are legal in Mississippi.

Stun Guns

An astute reader will notice that the statute authorizing one to carry a concealed pistol or revolver⁴⁵ also includes “stun gun” on the list. This is curious as there appears to be no law prohibiting one from carrying a stun gun without a license.⁴⁶

Pepper/OC Spray

Mississippi has no statute prohibiting or requiring any licensure for the carrying of “pepper” or oleoresin capsicum (OC) spray, sometimes referred to as “Mace.” Nor does Mississippi limit the size of the container which may be employed.

Pocket Knives

Mississippi law does not limit the length of a knife blade, nor address “assisted opening” devices. Rather, the only type of edged weapons which are expressly prohibited from being carrying concealed are dirks,⁴⁷ bowie knives, butcher knives and switchblades.⁴⁸ This prohibition is also set out again in a separate section pertaining to convicted felons.⁴⁹ Note that there are special provisions for educational property, as discussed in the section entitled “Educational Property.” In no statute is the carrying of a traditional pocket knife, i.e. not a bowie or dirk knife, prohibited. This means that a pocketknife is not per se a “deadly weapon” whose concealed possession is prohibited. However, caution is suggested since “the fact that a weapon is not specifically mentioned in the [deadly weapon] statute does not automatically exclude it as a deadly weapon.”⁵⁰

There appear to be no cases in Mississippi addressing whether “assisted opening” knives are switchblades. Many other states have found such devices are not “switchblades” since manual activation of the blade, not a button located on the handle, is what initiates the opening process.⁵¹ However, Mississippi has defined a switchblade as “a knife containing a blade or blades which open automatically by the release of a spring or a similar contrivance.”⁵² No reference to the location of the button is mentioned. Arguably, assisted opening knives would not fall into this classification since most employ torsion bars and not a traditional “spring;” the ambiguity is whether a torsion bar is a “similar contrivance.”

Although no exhaustive search has been conducted, it is known that certain jurisdictions have restrictions on the blade length which can lawfully be concealed.⁵³

Carry of a Deadly Weapon

A. Unlicensed Carry/Deadly Weapon Defined

The law on carrying a deadly weapon differs depending on whether the weapon is carried openly or concealed.⁵⁴ “Concealed” is defined as “hidden or obscured from common

observation.”⁵⁵ A firearm or other deadly weapon listed in § 97-37-1(1) carried on the person in a sheath, holster, or scabbard which is “wholly or partially visible” is not “concealed.”

Mississippi permits a person over the age of eighteen to carry, concealed or in plain view, a firearm or other “deadly weapon” in their home (including public housing),⁵⁶ place of business, and vehicle,⁵⁷ or while participating in or traveling to a “legitimate weapon-related sports activity” without a license.⁵⁸ A person may also carry, open or concealed, a deadly weapon in other locations without a license. However, they cannot carry on educational property, posted private property, sensitive government locations,⁵⁹ or the prohibited places for a “regular” license. See the table below for a specific list.

The term “deadly weapon” is not defined in the statute and may differ from the list of items that are otherwise prohibited from being carried concealed.⁶⁰ A “deadly weapon” is widely accepted “as any object, article or means which, when used as a weapon under the existing circumstances is reasonably capable of producing or likely to produce death or serious bodily harm to a human being upon whom the object, article or means is used.”⁶¹

Whether a stun gun is a deadly weapon seems to be unanswered.⁶²

Upon arrest for carrying a concealed weapon, the weapon may be seized and upon conviction, forfeited.⁶³

The Mississippi Code provides a number of affirmative defenses⁶⁴ for a person charged with carrying a concealed deadly weapon. Perhaps the most important defense is that the accused was threatened and had a good reason to fear an attack was imminent.⁶⁵ Additionally, a person may show he “was traveling and was not a tramp.”⁶⁶ The “travel” intended by this section is “travel of such distance as to take one beyond the circle of his friends and acquaintances.”⁶⁷ Other defenses are that the person was a law enforcement agent or mail carrier in the discharge of his duties, was in lawful pursuit of a felon, or was engaged in legitimate sports.⁶⁸

B. Licensed Carry

Mississippi is a “shall issue” state, meaning that an applicant who meets all statutory criteria must be issued a license to carry a concealed pistol or revolver or stun gun.⁶⁹ Licenses are good for a period of five years and may be renewed through the mail every other renewal period.⁷⁰ The cost is \$80 plus an additional \$32 for fingerprinting.⁷¹ Renewals cost \$40 plus fingerprint charges.⁷² A license may be suspended upon arrest or formal charge of a crime which would disqualify such person from having a license until the case is resolved,⁷³ and will be revoked if the licensee becomes disqualified under this or another provision.⁷⁴

The basic criteria for issuance of concealed weapon license are: at least twelve months residency (subject to exceptions); at least twenty-one years of age (military members and veterans are eligible at eighteen);⁷⁵ no physical infirmity which prevents the safe handling of a stun gun, pistol or revolver; no felony convictions; not a chronic or habitual user of controlled substances or alcoholic beverages to the extent that his normal faculties are impaired; desire for

legal means to carry concealed weapon in defense;⁷⁶ not mentally incompetent; no adjudication of guilt withheld or imposition of sentence suspended on any felony in the preceding three years; not a fugitive; and not disqualified from possession of weapon under federal law.⁷⁷

Licenses must carry the license at all times as the weapon, and apparently also an additional form of identification.⁷⁸ Licensees must notify the Department of Public Safety, in writing, within thirty days of any change in permanent address or loss of the license.⁷⁹ Licensees’ name, home address, telephone number, and other private information are exempt from disclosure under the Mississippi Public Records Act except upon court order.⁸⁰

Any person having a concealed carry license issued under MISS. CODE ANN. § 45-9-101 “who has voluntarily completed an instructional course in the safe handling and use of firearms offered by an instructor certified by a nationally recognized organization that customarily offers firearms training, or by any other organization approved by the Department of Public Safety” or is a veteran who “completed law enforcement or combat training with pistols or other handguns” may obtain an endorsement to their license which significantly reduces the number of locations which are off limits, and even restricts the ability of public bodies to make public property under their control off limits.⁸¹

The following chart lists and compares the places a license holder is ***prohibited*** from carrying a concealed pistol or revolver:

| Prohibited locations based on license class | |
|--|---|
| “Regular” license⁸² and Unlicensed Carry | Training Endorsement license⁸³ |
| Any place of nuisance (§ 95-3-1: place where lewdness, assignation or prostitution is conducted; or upon which a controlled substance is unlawfully used) | Any place of nuisance (§ 95-3-1: place where lewdness, assignation or prostitution is conducted; or upon which a controlled substance is unlawfully used) |
| Any police, sheriff or highway patrol station | Any police, sheriff or highway patrol station |
| Any detention facility, prison or jail; | Any detention facility, prison or jail |
| Any courthouse | |
| Any courtroom unless permitted by judge ⁸⁴ | Courtrooms during a judicial proceeding ⁸⁵ |
| Any polling place | |
| Any meeting place of the governing body of any governmental entity | (carry allowed except into areas not open to the general public) ⁸⁶ |
| Any meeting of the Legislature or a committee thereof | |
| Any school, college or professional athletic event not related to firearms | See endnote ⁸⁷ |
| Any portion of an establishment, licensed to dispense alcoholic beverages for consumption on the premises, that is primarily devoted to dispensing alcoholic beverages | |
| Any portion of an establishment in which beer or light wine is consumed on the premises, that is primarily devoted to such purpose | |

| | |
|--|--|
| Any elementary or secondary school facility; any junior college, community college, college or university facility unless for the purpose of participating in any authorized firearms-related activity; | Educational property ⁸⁸ |
| Inside the passenger terminal of any airport, except that no person shall be prohibited from carrying any legal firearm into the terminal if the firearm is encased for shipment, for purposes of checking such firearm as baggage to be lawfully transported on any aircraft | (secured areas prohibited under federal law) ⁸⁹ |
| Any church or other place of worship | |
| Any place where the carrying of firearms is prohibited by federal law | (remains prohibited under federal law) |
| Any place in the discretion of the person or entity exercising control over the physical location of such place by the placing of a written notice clearly readable at a distance of not less than ten (10) feet that the "carrying of a pistol or revolver is prohibited." ⁹⁰ [This includes government property] ⁹¹ | (not a violation of the concealed weapon statute but may constitute trespassing) ⁹² |
| A parade or demonstration for which a permit is required to carry a stun gun, concealed pistol or revolver. | |

Mississippi both receives and offers reciprocity with a number of other states.⁹³

Concealed weapon licenses are also available for a variety of guards and private security services.⁹⁴ No license is required for a multitude of law enforcement related positions (e.g., investigators, judges, district attorneys, etc.) if the bearer has completed a weapons training course.⁹⁵ Full time out-of-state law enforcement officers need no license either.⁹⁶

Churches

In 2016 Mississippi passed the “Mississippi Church Protection Act”⁹⁷ which provides that the governing body of a church or place of worship can establish a “security program” authorizing members to carry a firearm for the protection of the congregation. Qualified members of the security team are immune from civil liability if acting in the reasonable exercise of and within the course and scope of the member's official duties. To qualify for immunity the team members must be enhanced licensees and be listed in the church’s minutes as part of the security team. A criminal defense is also extended for actions taken by a qualified team member engaged in the performance of the person's duties as a member of the program.

Justifiable Homicide

Mississippi has long set forth a number of circumstances in which a person is justified in using defensive force, including deadly defensive force. The enumerated situations are: public

officers and private citizens acting in furtherance of their job or a court order, i.e., executions, arrests, capture of felons; resisting an unlawful attempt to kill the defender or commit a felony upon him or any dwelling, occupied vehicle or place of employment; when lawfully defending himself or another in face of a plan to commit a felony or great personal injury against him; necessarily committed while trying to capture someone who committed a felony; or in suppression of a riot.⁹⁸

While not justified, homicide is excusable when committed by accident and misfortune in doing any lawful act by lawful means, with usual and ordinary caution, and without any unlawful intent; when committed by accident and misfortune, in the heat of passion, upon any sudden and sufficient provocation; or when committed upon any sudden combat, without undue advantage being taken, and without any dangerous weapon being used, and not done in a cruel or unusual manner.⁹⁹

Castle Doctrine and (No) Duty to Retreat

In 2006, Mississippi statutorily incorporated the so-called “Castle Doctrine.”¹⁰⁰ The law applies not only to a person’s home, but also his occupied vehicle or in or around the immediate premises of his business/place of employment. Basically, the “Castle Doctrine” provides that a person can presume a criminal who unlawfully and forcefully enters his premises intends to kill, cause great bodily harm or commit a felony upon the occupant.¹⁰¹ This is a rebuttable presumption, meaning that the prosecution may still obtain a conviction if it can be shown the ‘defender’ was not in actual fear for his safety. The presumption does not apply if the injured party had a right to be there or was a law enforcement agent, or if the ‘defender’ is engaged in illegal activity at the time of the incident. Contrary to some depictions by the media, the Castle Doctrine does not sanction vigilante justice. Rather, the Castle Doctrine tilts the scale in favor of the homeowner, essentially giving him the benefit of the doubt whenever a criminal is killed breaking into an occupied home, vehicle or business. The Castle Doctrine also provides that the occupant, as long as he is not the initial aggressor or engaged in unlawful activity, and in a place he has a right to be, has no duty to retreat.¹⁰² Finally, the statute provides that a person acting in justifiable self-defense shall have similar presumptions in civil cases, is entitled to attorneys fees and expenses if the criminal unsuccessfully sues the homeowner, and is immune from civil suit if found “not guilty” in criminal proceeding.¹⁰³

Preemption

Counties and municipalities are prohibited from passing “any ordinance that restricts or requires the possession, transportation, sale, transfer or ownership of firearms or ammunition or their components.”¹⁰⁴ However, this preemption is not absolute as counties and municipalities may still: (a) require, if authorized by other law, citizens to be armed “for personal or national defense, law enforcement, or another lawful purpose;”¹⁰⁵ (b) prohibit the discharge of certain types of firearms or bow and arrow within their jurisdictional boundaries, subject to a number of exceptions;¹⁰⁶ (c) enforce fire codes, zoning ordinances, or land-use regulations, so long as the regulations are not intended to be surreptitious gun laws;¹⁰⁷ (d) regulate firearms during insurrection, riots and natural disasters for the public health and safety, so long as there is no restriction on the citizen’s lawful possession of a firearm in his

home, place of business or in transit to and from the home or place of business;¹⁰⁸ (e) regulate more than twenty-five pounds of blackpowder or other explosives;¹⁰⁹ (f) regulate firearms at public parks, meetings, political rallies, on educational grounds or at professional athletic events;¹¹⁰ or (g) regulate the receipt of firearms at pawnshops.¹¹¹

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² Mississippi Constitution, Section 12. "The right of every citizen to keep and bear arms in defense of his home, person, or property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but the legislature may regulate or forbid carrying concealed weapons."

³ The Second Amendment to the United States Constitutions reads: "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."

⁴ Black's Law Dictionary, 6th ed., defines "arms" as "Anything that a man wears for his defense, or takes in his hands as a weapon."

⁵ See endnote 2.

⁶ The concealed weapon license statute, § 45-9-101, provides at subsection (18): "Nothing in this section shall be construed to require or allow the registration, documentation or providing of serial numbers with regard to any stun gun or firearm." § 97-37-11, which required a dealer to keep a record of weapons sold, was repealed by House Bill 455 (2012 Regular Session).

⁷ Effective April 5, 2016, Senate Bill 2313 (2016) removed the requirement to register suppressors with the Mississippi Department of Public Safety.

⁸ § 97-37-105(1).

⁹ § 97-37-105(2). An exemption is made for law enforcement related activities. § 97-37-105(4).

¹⁰ § 45-9-53(6).

¹¹ Mississippi law prohibits the transfer of deadly weapons to persons under the age of eighteen (§ 97-37-13) and federal law prohibits transfer to some out-of-state residents (18 U.S.C. § 922(a)(5)). I suggest that in sales the seller require the buyer to show proof of residence and age as well as sign a certification that the buyer is not prohibited from purchasing or owning the firearm. The seller would also be well advised to retain a record of the date of the transaction, purchase price, firearm make, model and serial number, and the name of the buyer. The seller has no duty to perform an independent investigation of the buyer's representations. In trades, both parties should "trade paper" of this sort.

¹² Additional restrictions apply to weapons such as silencers and short barreled guns which are regulated under federal law.

¹³ Public Law 103-159. See <https://www.fbi.gov/about-us/cjis/nics/general-information/fact-sheet> for further information. Those persons holding a valid Mississippi concealed carry license do not have to complete the instant background check. See <https://www.atf.gov/rules-and-regulations/permanent-brady-permit-chart>.

¹⁴ § 97-37-13.

¹⁵ § 97-37-15.

¹⁶ § 97-37-14(1). See also § 97-37-17(3) ("It shall be a felony for any person to cause, encourage or aid a minor who is less than eighteen (18) years old to possess or carry, whether openly or concealed, any gun,

rifle, pistol or other firearm of any kind, or any dynamite cartridge, bomb, grenade, mine or powerful explosive on educational property.”) No offense involving the use or possession of a firearm by a child who has reached his fifteenth birthday which would otherwise be a felony may be transferred to youth court. § 43-21-159(7).

¹⁷ No hunting license is required for children under the age of sixteen. MISS. OUTDOOR DIGEST page 6 (2009-2010 ed.).

¹⁸ § 97-37-14(2).

¹⁹ § 97-37-14(2)(b).

²⁰ § 97-37-14(3).

²¹ § 45-9-55(4) (“This section does not authorize a person to transport or store a firearm on any premises where the possession of a firearm is prohibited by state or federal law.”)

²² § 45-9-55(3). Employers may prohibit firearms in company vehicles.

²³ § 45-9-55(1). See also *Swindol v. Aurora Flight Sciences Corporation*, 2015-FC-01317-SCT (Miss. 2016), available at <http://courts.ms.gov/Images/Opinions/CO111640.pdf>.

²⁴ § 45-9-55(2).

²⁵ § 45-9-55(5) (“A public or private employer shall not be liable in a civil action for damages resulting from or arising out of an occurrence involving the transportation, storage, possession or use of a firearm covered by this section.”)

²⁶ § 97-37-17(1)(a) (“any public or private school building or bus, public or private school campus, grounds, recreational area, athletic field, or other property owned, used or operated by any local school board, school, college or university board of trustees, or directors for the administration of any public or private educational institution or during a school-related activity” and Oakley Youth Development Center, operated by the Department of Human Services, but excluding “sixteenth section school land or lieu land on which is not located a school building, school campus, recreational area or athletic field”)

²⁷ § 97-37-17(2).

²⁸ § 97-37-17(3).

²⁹ § 97-37-17(4).

³⁰ § 97-37-17(5).

³¹ § 97-37-17(6). This exception does not apply to students. See OP. ATT’Y GEN., Dock 1997-0251 (05/02/1997) (“it is the opinion of this office that a student may not possess a weapon in a motor vehicle on educational property.”) All three criteria (non-student, within motor vehicle, no exhibition in threatening manner) must be met. SEE OP. ATT’Y GEN., 2011 WL 1500842 (03/21/2011).

³² The Gun-Free School Zones Act (18 U.S.C. § 922(q)) generally prohibits carrying a firearm in a school zone. However, sub-section (q)(2)(B)(ii) says the prohibition does not apply “if the individual possessing the firearm is licensed to do so by the State in which the school zone is located or a political subdivision of the State, and the law of the State or political subdivision requires that, before an individual obtains such a license, the law enforcement authorities of the State or political subdivision verify that the individual is qualified under law to receive the license.”

The Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE) in a letter dated July 25, 2013, explained that “A license qualifies as an exception only if the law of the State or political subdivision requires law enforcement authorities to verify that the individual is qualified under law to receive the license.” <http://goo.gl/QAjXYn> Thus, the exception does not apply to licenses issued by a state other than the state in which the school is situated or to unlicensed carry.

³³ § 97-37-17(7).

³⁴ § 97-37-17(8).

³⁵ <http://www.nps.gov/natr/learn/management/firearms-policy.htm>

³⁶ § 97-37-37(1).

³⁷ § 97-37-37(2).

³⁸ § 97-37-5(1) (“It shall be unlawful for any person who has been convicted of a felony under the laws of this state, any other state, or of the United States to possess any firearm or any bowie knife, dirk knife, butcher knife, switchblade knife, metallic knuckles, blackjack, or any muffler or silencer for any firearm . . .”); 18 USC § 922(g)(1).

³⁹ § 97-37-5(3) (“A person who has been convicted of a felony under the laws of this state may apply to the court in which he was convicted for a certificate of rehabilitation. The court may grant such certificate in its discretion upon a showing to the satisfaction of the court that the applicant has been rehabilitated and has led a useful, productive and law-abiding life since the completion of his sentence and upon the finding of the court that he will not be likely to act in a manner dangerous to public safety.”)

⁴⁰ 18 USC § 922(g)(1) prohibits anyone who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce. A “crime punishable by imprisonment for a term exceeding one year” is defined in 18 USC 921(20). 18 USC 921(20) further provides: “Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.”

“Civil rights” is widely accepted as the rights to vote, to hold office, and to serve on juries. *U.S. v. Chenowith*, 459 F.3d 635, 638 (5th Cir. 2006); *Buchmeier v. United States*, 581 F.3d 561, 564 (7th Cir. 2009), citing *United States v. Williams*, 128 F.3d 1128, 1134 (7th Cir.1997). If these three rights are restored, “then a conviction does not carry federal fire-arms disabilities.” *Buchmeier*, 581 F.3d at 564.

Those convicted of a federal offense must seek federal restoration. While 18 U.S.C. § 925(c) does pay lip service to removal of the disability, the Attorney General has delegated the duty to the Bureau of Alcohol, Tobacco, Firearms and Explosive (BATFE). 27 C.F.R. § 478.144. Congress has steadfastly refused to fund this restoration program, thus effectively (and intentionally) denying it any effectiveness. Public Law 103-329 (1994) (“none of the funds appropriated herein shall be available to investigate and act upon applications for the relief from Federal firearms disabilities under 18 U.S.C. 925 (c)”). The Courts have refused to take up administration of the program. See *U.S. v. McGill*, 74 F.3d 64 (5th Cir. 1996) (“The court concludes “that relief from federal firearms disabilities for individuals under Sec. 925(c) is suspended by the last three appropriations acts” and that “Congress has suspended the relief provided in Sec. 925(c) for individuals.”)

What effect *District of Columbia v. Heller*, 554 U.S. 290 (2008) (recognizing 2nd Amend. an individual right) and *McDonald v. Chicago*, 561 U.S. ____ (2010) (incorporating 2nd Amend. to states) may have on this restoration program has yet to be seen. Cf. *Supreme Court Decision May Permit Felons To Own Guns*, <http://www.nysun.com/national/supreme-court-decision-may-permit-felons-to-own/80870> (last visited August 7, 2010).

For adult offenders expungement of a felony conviction is available for six different categories: (1) a bad check offense under Section 97-19-55 ; (2) possession of a controlled substance or paraphernalia under Section 41-29-139(c) or (d); (3) false pretense under Section 97-19-39 ; (4) larceny under Section 97-17-41; (5) malicious mischief under Section 97-17-67 ; or (6) shoplifting under Section 97-23-93. A person is eligible for only one felony expunction and it must be at least five years after the successful completion of all terms and conditions of the sentence. § 99-19-71(2)(a).

Anyone who was under the age of 18 at the time of committing the felony may have one felony conviction expunged five years after completing his sentence except for the crimes of: rape under Sections 97-3-65 and 97-3-71; sexual battery under Section 97-3-95; murder under Section 97-3-21; manslaughter

under Section 97-3-25; carjacking under Sections 97-3-113 through 97-3-117; burglary of a commercial establishment or occupied dwelling; cyberstalking under Section 97-45-15; exploitation of children by the use of computers or other means under Sections 97-5-31 through 97-5-37; armed robbery under Section 97-3-79; and any felony that, in the determination of the circuit court, is a violent crime or a felony that is related to the distribution of a controlled substance and in the court's discretion it should not be expunged. § 99-19-71(2)(b).

⁴¹ See endnote 40. As discussed, a state felony conviction, even where the convict is “rehabilitated,” still prevents firearm ownership or possession under federal law 18 USC § 922(g)(1) unless the conviction is expunged.

⁴² § 97-37-35.

⁴³ § 97-37-19.

⁴⁴ § 97-37-31.

⁴⁵ § 45-9-101.

⁴⁶ Cf. § 97-37-1 and § 97-37-5 (prohibiting felons from possessing “any firearm or any bowie knife, dirk knife, butcher knife, switchblade knife, metallic knuckles, blackjack, or any muffler or silencer for any firearm.”)

⁴⁷ In the case of *Summerall v. State*, 41 So.3d 729, ¶ 32 (Miss. Ct. App. 2010) the Supreme Court stated that a “dirk knife” “must: (1) have a blade with at least one sharpened edge which tapers to a point and (2) be designed primarily for use as a stabbing weapon.” The Court refused to extend the definition to “all fixed-blade knives of certain length as restraint dictates that broader application would require legislative action.”

⁴⁸ § 97-37-1(1).

⁴⁹ § 97-37-5(1).

⁵⁰ OP. ATT'Y GEN., Dock 1982-184 (07/13/1982), citing *Skate v. Sims*, 80 Miss. 381, 31 So. 907 (1902). The Opinion continues:

Thus, the deadliness for a weapon is determined by the facts of each case. On weapons not specifically mentioned in the statute, we cannot rule if carrying it concealed would be a crime. For example: A razor has been held not to be a deadly weapon within Section 97-3-71; *Brown v. State*, 105 Miss. 367, 62 So. 353 (1913). It does not matter under our statute if a knife is a fixed blade or capable of being folded or unfolded and locked; it is whether it falls within the description of deadly weapons in Section 97-3-71 that matters. There is no one definition of "deadly weapon." Common sense would tell most of us that a straight razor is deadly, yet our courts have ruled it is not. Because of this case by case approach, we cannot render a definition of deadly weapons.

⁵¹ See The Switchblade Knife Act of 1958, 15 U.S.C. Section 1241, defining a switchblade as any knife having a blade which opens automatically by hand pressure applied to a button or other device in the handle of the knife, or by operation of inertia, gravity, or both. California, Illinois, Michigan, and Texas, have all ruled one-hand opening knives are not switchblades because they do not possess the activating button or device on the handle of the knife.

See also TEXAS PENAL CODE § 46.01(11) (“Switchblade knife” means any knife that has a blade that folds, closes, or retracts into the handle or sheath, and that: (A) opens automatically by pressure applied to a button or other device located on the handle; or (B) opens or releases a blade from the handle or sheath by the force of gravity or by the application of centrifugal force.)

⁵² § 97-37-17(c) (pertaining to possession of weapons by students on educational property).

⁵³ See <http://www.handgunlaw.us/documents/USKnife.pdf> (Tupelo: 3.5 inches; Vicksburg: 4 inches) (last visited August 15, 2010). The author’s home, Oxford, has no length limitation.

⁵⁴ Cf. OP. ATT'Y GEN. (No. 2013-_____; 06/13/2013) (“At the outset it should be noted that since your questions specifically address the open carry provisions of this Bill, the following answers do not include a discussion of the carrying of a concealed weapon with a standard permit or enhanced permit.”)

⁵⁵ § 97-37-1(4).

⁵⁶ § 45-9-51(2) (“No public housing authority operating in this state may adopt any rule or regulation restricting a lessee or tenant of a dwelling owned and operated by such public housing authority from lawfully possessing firearms or ammunition or their components within individual dwelling units or the transportation of such firearms or ammunition or their components to and from such dwelling.”)

⁵⁷ § 97-37-1(2) (“It shall not be a violation of this section for any person over the age of eighteen (18) years to carry a firearm or deadly weapon concealed within the confines of his own home or his place of business, or any real property associated with his home or business or within any motor vehicle.”)

⁵⁸ § 97-37-1(3) (“‘legitimate weapon-related sports activity’ means hunting, fishing, target shooting or any other legal sports activity which normally involves the use of a firearm or other weapon.”)

⁵⁹ Cf. OP. ATT'Y GEN. (No. 2013-_____; 06/13/2013). See also OP. ATT'Y GEN. NO. 2013 - _____ (12/02/2013) at page 5 (stating that “we find no authority for a municipality to restrict the open carrying of firearms by use of signs or any means other than the express and limited authority given by Section 45-9-53.” § 45-9-53(f) allows a municipality to restrict open carry *only* at (i) a public park or at a public meeting of a county, municipality or other governmental body; (ii) a political rally, parade or official political meeting; or (iii) a nonfirearm-related school, college or professional athletic event.) See also Mike Lanford, Deputy Attorney General, Letter to Sheriff Brad Lance, *Re: House Bill 2*, June 13, 2013. In summary, the opinion states that: open carry does not require a license; open carry on educational property is prohibited; law enforcement is free to approach a citizen to ask for identification but cannot require production of information without grounds to submit the person to detainment; open carry applies equally to long guns such as shotguns and rifle as it does to handguns; private property owners can prohibit the carry of firearms and perhaps submit an open carrier to charges of trespass; and public property owners (such as courthouses and other public buildings) can under certain situations prohibit the open carry of firearms.

⁶⁰ Cf. § 97-37-1(1) (“any bowie knife, dirk knife, butcher knife, switchblade knife, metallic knuckles, blackjack, slingshot, pistol, revolver, or any rifle with a barrel of less than sixteen (16) inches in length, or any shotgun with a barrel of less than eighteen (18) inches in length, machine gun or any fully automatic firearm or deadly weapon, or any muffler or silencer for any firearm”; also included are imitation firearms if used against a person); § 97-3-117 (“any pistol or other firearm or imitation thereof or other dangerous or deadly weapon, including a sawed-off shotgun, shotgun, machine gun, rifle, dirk, bowie knife, butcher knife, switchblade, razor, blackjack, billy, or metallic or other false knuckles, or any object capable of inflicting death or serious bodily harm”); § 97-39-11 (“any rifle, shotgun, sword, sword-cane, pistol, dirk, bowie-knife, dirk-knife, or any other deadly weapon”); § 97-37-19 (“any dirk, dirk-knife, sword, sword-cane, or any deadly weapon, or other weapon the carrying of which concealed is prohibited”). Absent from the list of prohibited items are pocket knives, stun guns and oleoresin capsicum a/k/a pepper spray.

⁶¹ *Davis v. State*, 530 So. 2d 694, 700 (Miss. 1988). Whether an instrument is deadly is fact dependent, to be decided by a jury. *Shanklin v. State*, 290 So. 2d 625, 627 (Miss. 1974). Non-typical items may be weapons if employed in a harmful manner. See also endnote 48..

⁶² *Russell v. State*, 832 So.2d 551, 554 (Miss. Ct. App. 2002) (“even if the stun gun is not found to be a deadly weapon, whether or not the repeated use of a stun gun can cause serious bodily injury is an issue the jury can resolve”; error for trial judge to instruct jury stun gun was deadly weapon).

⁶³ § 97-37-3(a).

⁶⁴ *Powell v. State*, 184 So.2d 866, 868-69 (Miss. 1966) (“the burden of proving either of said defenses shall be on the accused.”)

⁶⁵ § 97-37-9(a).

⁶⁶ § 97-37-9(b).

⁶⁷ *Morgan v. Town of Heidelberg*, 246 Miss. 481, 491, 150 So.2d 512, 516 (1963) (no jury instruction on defense appropriate where “Morgan was in his home community, only a few miles from his residence.”) In *Patterson v. State*, 251 Miss. 565, 572, 170 So.2d 635, 638 (1965) the defendant was acquitted because the evidence revealed he had “set out on a journey which did take him beyond the scope of his friends, and that his journey was a legitimate one in which he had a vital interest, related solely to his business, and he was not violating any statutes relating to the carrying of a concealed weapon.” Likewise, a business-related trip of eighty-five miles was sufficient travel. *Joseph v. State*, 299 So.2d 211, 213 (Miss.1974). However, *In re: L.M., S.T. & D.S. v. State*, 600 So.2d 967, 971 (Miss. 1992) held “*Patterson* and *Joseph* demonstrate that more is needed to establish the ‘traveling’ defense than merely leaving one county and entering another.” In a concurring opinion, then Chief Justice Noble seemed to disagree to some degree, stating “I note, without advocating an abrogation of the rule, that in these modern times when people reside in cities, with thousands of inhabitants, they frequently do not know their neighbors in the next block and certainly not in the next neighborhoods or across the city. Within two or three blocks, they are outside the circle of their friends.” *Id.* at 972.

⁶⁸ See § 97-37-9(c) - (i) for a complete list.

⁶⁹ § 45-9-101(2) (“The Department of Public Safety *shall issue* a license if the applicant: . . .) (emphasis added). By contrast, California, Connecticut, Delaware, Hawaii, Maryland, Massachusetts, New Jersey, New York, and Rhode Island are “may” issue, meaning that issuance of a license is at least partially discretionary with the issuing agency. <http://goo.gl/ZiVoX5>. Some states require no license at all. <http://goo.gl/8LmPJR>.

⁷⁰ §§ 45-9-101(1)(a) and 45-9-101(12) (“The first renewal may be processed by mail and the subsequent renewal must be made in person. Thereafter every other renewal may be processed by mail to assure that the applicant must appear in person every ten (10) years for the purpose of obtaining a new photograph.”)

⁷¹ § 45-9-101(5)(c); <http://goo.gl/dfQNCv>.

⁷² § 45-9-101(12)(i); <http://goo.gl/OMNTkY>. The fees are waived for honorably retired law enforcement officers and reduced for persons over sixty-five years of age. § 45-9-101(12)(ii) and (iii).

⁷³ § 45-9-101(3).

⁷⁴ § 45-9-101(11). The Department of Public Safety “may deny a license if the applicant has been found guilty of one or more crimes of violence constituting a misdemeanor” and/or finished his sentence for such crime within the preceding three years, or is arrested for a disqualifying crime during the application process. § 45-9-101(3). Persons convicted of felonies are not allowed to own guns. See section entitled “Crimes Employed Using a Firearm; Felons.”

⁷⁵ § 45-9-101(2)(b).

⁷⁶ Mississippi being a “shall issue” state, the applicant’s need is presumed and no affirmative showing required.

⁷⁷ § 45-9-101(2)(a)-(l). This is only a general list. The actual statutory text should be reviewed for exceptions.

⁷⁸ § 45-9-101(1)(b) (“The licensee must carry the license, together with valid identification, at all times in which the licensee is carrying a stun gun, concealed pistol or revolver and must display both the license and proper identification upon demand by a law enforcement officer. A violation of the provisions of this paragraph (b) shall constitute a noncriminal violation with a penalty of Twenty-five Dollars (\$25.00) and shall be enforceable by summons.”)

⁷⁹ § 45-9-101(9). “Failure to notify the Department of Public Safety pursuant to the provisions of this subsection shall constitute a noncriminal violation with a penalty of Twenty-five Dollars (\$25.00) and shall be enforceable by a summons.” *Id.*

⁸⁰ § 25-61-11.1 and § 45-9-101(8).

⁸¹ § 97-37-7(2). *See also* House Bill 506, OP. ATT'Y GEN. (No. 2011-00295; 08/31/2011) (opining that county board of supervisors cannot invoke criminal penalties by posting written notice that county board of supervisors prohibits carrying of concealed pistol on county property such as county courthouse). *See also* [OP. ATT'Y GEN. NO. 2013 - _____](#) (12/02/2013) (stating that local governments cannot “prohibit enhanced permit holders from carrying in” (i) a public park or at a public meeting of a county, municipality or other governmental body; (ii) a political rally, parade or official political meeting; or (iii) a nonfirearm-related school, college or professional athletic event.)

⁸² § 45-9-101(13). Noticeably absent from this list is public parks. This restriction was removed in 2010 to accommodate a new federal regulation allowing licensees to carry in federal/national parks if allowed by the state in which the park is located.

⁸³ § 97-37-7(2).

⁸⁴ The Miss. Attorney General believes local governments “could restrict a regular permit holder from initial entry into the courthouse, as opposed to the courtroom, by posting a sign.” [OP. ATT'Y GEN. NO. 2013 - _____](#) (12/02/2013) at pages 4-5, point #13.

⁸⁵ While the courtroom remains off limits, an enhanced licensee could not be prevented from entering the courthouse. [OP. ATT'Y GEN. NO. 2013 - _____](#) (12/02/2013) at pages 4-5, point #13. This differs from a regular licensee. *See* endnote 84.

⁸⁶ [OP. ATT'Y GEN. NO. 2013 - _____](#) (12/02/2013) at page 3, point #2, citing [OP. ATT'Y GEN. \(No. 2013- _____](#) (10/01/2013).

⁸⁷ Firearms-related events which are posted against carry are prohibited. [OP. ATT'Y GEN. NO. 2013 - _____](#) (12/02/2013) at page 4, point #4. This results from an odd interaction between § 97-37-7(2) and § 45-9-101(13). § 97-37-7(2) expressly authorizes a person to carry to non-firearm related events but not to firearm-related events. Thus, where a location is posted against carry is hosting a firearm-related event a “double negative” results in a prohibition against carry. These situations are likely rare and may make sense from a safety standpoint since gun handling will always be present.

⁸⁸ § 97-37-17(2) states that it is a felony for anyone to carry, open or concealed, a firearm on educational property. *See supra* for a list of what constitutes “educational property.” § 45-9-101(13) includes in its list of prohibited places “any school, college or professional athletic event not related to firearms; . . . [and] any elementary or secondary school facility; any junior college, community college, college or university facility unless for the purpose of participating in any authorized firearms-related activity”. § 97-37-7(2) states that, with a few exceptions, a person with the endorsement may carry weapons in “any location listed in subsection (13) of Section 45-9-101”. Thus, § 97-37-7(2) expressly authorizes a person to carry to a school athletic event and/or a school facility in direct contrast to § 97-37-17(2) which makes the same behavior felonious. There is no authoritative answer as to whether school carry is allowed. However, the Mississippi Attorney General's office is of the opinion that so-called campus carry is permitted. *See* [OP. ATT'Y GEN. \(No. 2013- _____](#) (10/01/2013) (“persons with enhanced carry licenses may enter onto school facilities without violating the concealed weapons statutes”); *Firearms and Permits on Campus*, OP. ATT'Y GEN. (No. 2011-00365; 01/05/2012) (opining that § 97-37-17 is not enforceable against an endorsement holder, that universities may not prevent carry by the posting of signage, and that universities may not require endorsement holders to check in with campus police upon arrival on school grounds). The Gun-Free School Zones Act (18 U.S.C. § 922(q)) is inapplicable because sub-section (q)(B)(ii) exempts persons with a Mississippi concealed carry license; persons with licenses from other states are prohibited from carrying school property (*see* <http://bit.ly/18L5TZR>). *See also* 20 U.S. Code § 7151 and endnote 32.

⁸⁹ *Cf.* [49 USC § 46303](#).

⁹⁰ The statute requires this precise language be used. According to the Attorney General it is possible that non-conforming signs could be effective notice yet for trespassing charges to be valid additional notice

may be required. OP. ATT'Y GEN. No. 2013-____ fn. 3 (10/01/2013) ("Posting of a differently worded sign could also be sufficient but actual notice might have to be proved.")

⁹¹ See [OP. ATT'Y GEN. NO. 2013 - _____](#) (12/02/2013) ("it is the opinion of this office that a municipality can prohibit regular permit holders from entry into *property owned or controlled by the municipality* by posting the signage set out in Section 45-9-101(13)").

⁹² § 97-37-7(2) states that, with a few exceptions, a person with the endorsement may carry weapons in "any location listed in subsection (13) of Section 45-9-101" which would include posted premises. While it is not a violation of the concealed weapons laws to carry in a posted premises it could exceed the scope of the license holder's invitation if s/he knowingly entered the premises in violation of the owner's instructions. The most appropriate charge would therefore be trespassing. See [OP. ATT'Y GEN. NO. 2013 - _____](#) (12/02/2013) at page 5, citing OP. ATT'Y GEN. (No. 2013-____ fn. 4 (10/01/2013) ("It is our opinion that posting the sign described in 45-9-101 (13) conclusively asserts the property owner's right to exclude persons with pistols or revolvers (with either a regular permit or enhanced permit) but does not trigger criminal penalties for concealed weapon under 97-37-1."). See also §§ 97-17-97 (trespass after warning) and 97-17-93 (entry without permission).

⁹³ § 45-9-101(19). A list of states recognizing a Mississippi license are: Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Indiana, Kentucky, Louisiana, Michigan, Missouri, Montana, North Carolina, New Hampshire, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Washington, Virginia, West Virginia, Wyoming. <http://goo.gl/iZ53zv>.

⁹⁴ § 97-37-7(1).

⁹⁵ § 97-37-7(2).

⁹⁶ § 97-37-7(3).

⁹⁷ House Bill 786 (2016) (uncodified in statute as of this writing).

⁹⁸ § 97-3-15(1).

⁹⁹ § 97-3-17.

¹⁰⁰ § 97-3-15(3). Named after the saying that "A man's home is his castle" and the belief that a person should be given particular leeway in protecting the integrity and peace of "his castle."

¹⁰¹ § 97-3-15(3) ("A person who uses defensive force shall be presumed to have reasonably feared imminent death or great bodily harm, or the commission of a felony upon him or another or upon his dwelling, or against a vehicle which he was occupying, or against his business or place of employment or the immediate premises of such business or place of employment, if the person against whom the defensive force was used, was in the process of unlawfully and forcibly entering, or had unlawfully and forcibly entered, a dwelling, occupied vehicle, business, place of employment or the immediate premises thereof ...")

¹⁰² § 97-3-15(4).

¹⁰³ § 97-3-15(5)(a)-(b).

¹⁰⁴ § 45-9-51.

¹⁰⁵ § 45-9-53(a).

¹⁰⁶ § 45-9-53(b). A person may nevertheless discharge a shotgun, air rifle or air pistol, BB gun or bow and arrow on property of more than ten acres more than 150 feet from a home or occupied building, or a center fire or rim fire rifle or pistol or a muzzle-loading rifle or pistol on more than fifty acres more than 300 feet from a home or occupied building. Any such discharges must not be reasonably expected to cause a projectile to cross the boundary of the tract. Additionally, while a county may regulate the discharge of any firearm or weapon (other than a BB gun) within any platted subdivision, a county may not prohibit the discharge if the firearm is discharged in a manner not reasonably expected to cause a projectile to travel across any property line without permission of the property owner. § 45-9-57 (effective July 1, 2010).

¹⁰⁷ § 45-9-53(c).

¹⁰⁸ § 45-9-53(d). This exception was added in 2006 following the patently illegal confiscation of firearms by the New Orleans Police Department and Mayor Ray Nagin in the aftermath of Hurricane Katrina. See also § 33-7-303(2) (martial law may not allow for confiscation of weapons) and § 45-9-53(3) (preemption exceptions do not allow for contravention of § 33-7-303). There is also a federal law, the Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5207.

¹⁰⁹ § 45-9-53(e).

¹¹⁰ § 45-9-53(f). Counties and municipalities cannot regulate firearms-related activities on educational property or professional athletic events. Further, they cannot regulate the transportation of such firearms to or from related events. § 45-9-53(2).

¹¹¹ § 45-9-53(g).