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Concealed Carry: The Criminal's Companion

Florida's Concealed Weapons Law—A Model for the Nation?



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The Violence Policy Center is a national non-profit educational foundation that conducts research on violence in America and works to develop violence-reduction policies and proposals. The Center examines the role of firearms in America, conducts research on firearms violence, and explores new ways to decrease firearm-related death and injury.

Previous studies released by the Center include: September 1995's *Cop Killers: Assault Weapon Attacks on America's Police*; December 1994's *Use the Schools: How Federal Tax Dollars are Spent to Market Guns to Kids and Female Persuasion: A Study of How the Firearms Industry Markets to Women and the Reality of Women and Guns*; November 1994's *Firearms Production in America*; July 1994's *Deadly Odds: An Analysis of Handgun Justifiable Homicides Committed by Women in 1992*; February 1994's *Cease Fire: A Comprehensive Strategy to Reduce Firearms Violence*; and, December 1992's *More Gun Dealers Than Gas Stations: A Study of Federally Licensed Firearms Dealers in America*.

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Introduction

In its nationwide campaign to loosen states' laws regarding the carrying of concealed handguns,¹ the National Rifle Association of America (NRA) has held up the state of Florida's 1987 concealed weapons law as proof of the effectiveness of such legislation and as a model to be emulated by other states. This study examines how the Florida law actually functions and arrives at an inescapable conclusion: Florida's concealed weapons law puts guns into the hands of criminals.

Prior to 1987, Florida, like most states, had a discretionary system for issuing concealed carry licenses, commonly referred to as "may-issue" licensing. Under such systems, legal authorities such as a county sheriff, judge, or local police official may grant licenses to citizens who may or may not need to show a compelling need. In 1987, as the result of a campaign by the National Rifle Association and its Florida affiliate, the Unified Sportsmen of Florida, the Florida legislature enacted legislation creating a non-discretionary system under which state authorities *must* provide a concealed carry license to any applicant who meets specific criteria. Such systems are commonly known as "shall-issue" licensing. With the removal of local discretion to deny licenses, a shall-issue system inevitably increases the number of persons with licenses to carry a weapon, almost always a firearm. Advocates of shall-issue licensing promise that increasing the number of citizens carrying handguns will decrease crime.

The criteria to obtain a license under Florida's concealed weapons law are minimal. The state is required to grant a concealed weapons license within 90

¹ Such laws are often referred to as CCW laws for Carrying a Concealed Weapon.

days to any qualified adult who has taken a firearms safety or training course and does not possess a disqualifying trait. Such traits include: a history of drug or alcohol abuse; any felony conviction; adjudication withheld on a felony charge; some misdemeanor convictions involving violence; state commitment for mental illness; or physical inability to use a gun. In addition to firearms training documentation,² the following is required for first-time applicants: a fingerprint check, photograph, \$117 fee, review of Florida statutes relating to weapons and firearms, and a completed application. Unless a violation occurs, the license is valid for three years.

Florida's concealed weapons law determines eligibility for applicants with a criminal record based on the crime committed and its disposition. Individuals who have been convicted of a felony are ineligible to receive a concealed carry license unless their civil rights and firearm authority have been restored by the Florida Office of Executive Clemency. Individuals who have had adjudication withheld on a felony charge,³ and some persons convicted of one or more violent misdemeanors, are ineligible to receive a concealed carry license unless three years have elapsed since completion of any conditions set by the court or their record has been sealed or expunged. In addition, individuals guilty of crimes related to controlled substances or who have chronically and habitually abused alcoholic beverages or other substances within three years of their application are ineligible.

² According to Florida's concealed carry law s. 790.06(1), "concealed weapons or concealed firearms are defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie, but the term does not include a machine gun as defined in s. 790.001(9)." Regardless of which weapon the applicant chooses to carry, the law requires all applicants to show proof of competence with a firearm.

³ According to legal counsel for the Florida Department of State, Division of Licensing, adjudication withheld means that judgment by the court was withheld on a charge and there was no conviction. The court may withhold adjudication in cases where the defendant pleads guilty to the crime charged, in plea-bargained cases, or for first-time offenders. Adjudication may be withheld for both felony and misdemeanor charges. For example, rather than going through a trial, a defendant may agree to plead guilty to a charge. In exchange, the court may agree to withhold judgment on that charge. The defendant is still sentenced and must serve all conditions of the court, however there is no conviction on the defendant's record.

Since 1987, more than 206,400 Floridians have applied for new concealed carry licenses. As of July 31, 1995, 200,241 have received them.

For the NRA, one rationale for relaxing concealed carry laws is the large number of citizens who have already chosen to carry handguns illegally. In the September 1985 *American Rifleman*, then-NRA lobbyist David Conover argued that "...laws that deny gun owners the ability to defend themselves create technical 'criminals' out of otherwise law-abiding and responsible individuals." In a 1994 brochure, "Ten Myths About Gun Control," the NRA notes:

It is easy to see circumstances in which an otherwise law-abiding person would run afoul of this [may-issue concealed carry] law: fear of crime, arbitrary denial of authorization, red-tape delay in obtaining official permission to carry a firearm, or misunderstanding of the numerous and vague laws governing the transportation of firearms.

However, the NRA's greatest success in lobbying for looser concealed weapons laws has been through framing the issue as one of self-defense against crime. In a February 1995 press release hailing passage of a shall-issue law in Utah, Tanya Metaksa, executive director of the Institute for Legislative Action (ILA), the NRA's lobbying arm, declared:

[concealed carry] is a national movement. All across the country, law-abiding citizens are demanding the right to protect themselves and their families from violent predators....The whole debate over the crime issue has shifted and it's shifted to the issue of how a sole law-abiding citizen can protect him or her self from criminal attack. It has nothing to do with government or politics. It has everything to do with the right of someone to save their life and the lives of their families. And that's the bottom line of the right-to-carry issue.

The NRA has not been able to offer much in the way of hard evidence to support its assertion that armed citizens make for a safer society. The organization rests its self-defense argument on a single—and strongly contested—source: University of Florida professor Gary Kleck's claim that guns are used 2.4 million times a year in self-defense. Kleck's critics point to his practice of basing his conclusions on limited polling data, as well as a tendency to extrapolate broadly.

Among those who have questioned his methodology are the National Research Council of the National Academy of Sciences and virtually all other researchers who have looked at the topic.⁴

Nonetheless, as it fights to relax concealed weapons laws across the nation, the NRA has not hesitated to credit criminals' supposed fear of armed citizens with decreases in some Florida crime rates. Yet recent research suggests that contrary to the NRA's claims, concealed carry laws in Florida and other states are not a crime control panacea. According to *Crime in the United States*, published by the Federal Bureau of Investigation's Uniform Crime Reports Division, in 1993 Florida had the highest violent crime rate of any state in the nation. More recently, in their January 1995 report "Easing Concealed Firearm Laws: Effects on Homicide in Three States," University of Maryland Violence Research Group criminologist David McDowall et al. examined the monthly frequency of homicides in the major urban areas of Florida, Mississippi, and Oregon before and after each state liberalized its concealed carry law. The study found that, on average, firearm homicides went up *26 percent* in the areas studied while homicides by other means remained steady. The authors concluded, "We find no support for the idea that the laws reduced homicides; instead, we find evidence of an increase in firearm murders."

⁴ Research from the Justice Department reveals that Americans rarely use guns to kill criminals or stop crimes. The April 1994 Justice Department study *Guns and Crime* revealed that from 1987 to 1992 the annual average of all victims of violence who claimed to have used a firearm of *any* type (handgun, shotgun, or rifle) to defend themselves was only about one percent (62,200 instances). Another 20,300 claimed to have used a firearm to defend their property during a theft, household burglary, or motor vehicle theft. A 1987 to 1990 review of these categories of self-defense incidents estimated that approximately 20 percent were police uses. Also, it is not even known whether in each instance the gun was used successfully to stop the crime. In comparison, *Guns and Crime* reported that offenders armed with *handguns alone* committed a record 930,700 violent crimes in 1992.

The NRA has also repeatedly referred to National Crime Victimization Survey (NCVS) data to claim that people who use firearms in self-defense in robbery and assault incidents are much less likely to be injured than those using any other form of resistance or no resistance at all. While the NCVS statistics do show a lower rate of *nonfatal* injury among respondents, the survey does not count *fatal* injury. Centers for Disease Control researchers Linda Saltzman, PhD and James Mercy, PhD et al. have found that violent altercations involving firearms will result in *death* more frequently than altercations without firearms simply because, all other things being equal, firearms are more deadly than other weapons. Overall, family and intimate assaults that involved firearms were 12 times more likely to result in death than family and intimate assaults involving all other types of weapons or bodily force alone combined.

Marion Hammer, executive director of the Unified Sportsmen of Florida and first vice president of the NRA, steered passage of Florida's concealed weapons law and sees virtually no downside to it. In a Summer 1995 article in the NRA's new magazine *American Guardian*,⁵ Ms. Hammer states:

Since taking effect on Oct. 1, 1987, over 266,700 licenses [including renewals] have been issued under Florida's Right to Carry law and only 19—(7/1,000ths of 1%)—have been revoked for a firearms-related incident....Florida's law is heralded as a model for similar proposals in other states, and well it should be. Since 1987, 13 other states have adopted similar laws or amended existing laws based on the Florida model....Only criminals need to fear concealed carry laws....

The source for Hammer's statistics is the report *Concealed Weapons/Firearms License Statistical Report for Period 10/01/87—01/31/95*, issued by the Florida Department of State, Division of Licensing. Yet Ms. Hammer is selective in her citations. For those who have applied for and received licenses, she cites *only the number of crimes committed with a firearm and only since licensure*, ignoring all other crimes.⁶

Recent numbers from Dade County, Florida offer a less comforting picture.

⁵ *American Guardian* debuted at the May 1995 National Rifle Association annual meeting. Designed for women and other non-traditional NRA members, the magazine features such articles as: "Because I was Armed," "College Bound Cautions," and "Doc's Side: A Pediatrician's Point of View." The summer 1995 cover headlines a "Guide to Home Survival," with a picture of a ski-masked man breaking into a woman's home as she stands behind a door, armed with a handgun and poised to defend herself.

⁶ The NRA claims that Florida's homicide rate fell by 21 percent when comparing 1987 to 1992. University of Maryland criminologists David McDowall et al. examined the effects of shall-issue licensing on crime in their study "Easing Concealed Firearm Laws: Effects on Homicide in Three States." The researchers found that the NRA's comparison suffers from several weaknesses. First, the comparison relies on two single rates (1987 versus 1992), rather than examining rates for each of the years in between to look for a consistent trend. Second, the comparison does not consider rates before the law was passed. Crime increases and decreases over time due to many factors. Short-term analyses, the researchers found, are highly susceptible "to the influence of chance events that briefly push homicides above or below average levels."

Also, the comparison examines total homicide rates for the entire state. If some areas respond differently to the laws than do others, a statewide analysis may miss important effects. McDowall et al. note, for example, that the influence of shall-issue laws may be greatest in urban areas, where crime is most prevalent, and that including rural areas may make it more difficult to detect changes in firearms violence. Also, the researchers warned that "combining firearm and other weapon homicides might mask effects unique to one type of weapon."

According to information first reported in *U.S. News & World Report*, the Metro-Dade Police Department tracked 63 incidents involving license holders in a five-year period (1987 to 1992) after the law went into effect; 25 incidents involved arrests. The 25 arrest incidents included such crimes as: aggravated assault with a firearm, aggravated battery with a firearm, reckless display and discharging a firearm in public, armed trespass, and cocaine possession. Despite the arrests, in at least 12 of the 25 cases the arrestee was able to retain his concealed carry license—including one incident in which an armed license holder was arrested for misdemeanor battery on his spouse. The remaining 38 non-arrest incidents included: four accidental shootings (resulting in two injuries); three cases in which the license holder's gun was stolen; two cases of unauthorized carrying in restricted areas; and, six disputes that escalated to the point where a gun was pulled.

A review of the Dade County information reveals that in a broad sense 16 of the 63 incidents could be classified as attempts at defense of person or property, or efforts to intercede during the commission of a crime. And while there do appear to be legitimate self-defense uses detailed by the Metro-Dade police, in many of the 16 incidents the actual threat is unclear, possession of a concealed carry license may not have been necessary (because the license holder did not leave his or her home), or it is unclear whether the license holder was legally justified in brandishing or firing the weapon. (Please see *Appendix One* for a complete list of the Dade County incidents.)

Not surprisingly, some members of Florida's law enforcement community prefer to steer a middle course when it comes to making correlations between the 1987 law and changes in crime rates. On March 15, 1995 James T. Moore, Commissioner of the Florida Department of Law Enforcement, sent a memorandum to the offices of the Governor and Attorney General stating, "No formula exists which is capable of establishing a link between the existence of Florida's

Concealed Weapons Program to any increases or decreases in crime in the state. We will not speculate regarding various perceptions which suggest the law is directly tied to any upturn or downturn in crime."

The NRA's dogged pursuit of relaxed concealed carry laws, despite little to no evidence that they work as promised, is not surprising. With its pro-active agenda faltering on the federal level, the NRA's state-by-state concealed carry campaign is a natural default agenda by which the organization can take advantage of its overwhelming superiority in organization and money over gun control organizations.

Usually left unstated, although well understood by both the NRA and the firearms industry, is that relaxed concealed carry legislation offers financial benefits to all members of the gun lobby.

The gun industry has responded to the concealed carry campaign by aggressively advertising its customized wares—from palm-sized handguns to thigh holsters.⁷ New concealed weapons laws may be a driving factor behind the

⁷ In a niche marketing campaign to women, the industry has developed a wide range of handgun "accessories" such as specialized purses, waist bags (fanny packs), holsters, and belts designed for concealed carry. In their advertising, safety is presented as solely a personal obligation. To reject this obligation, it is argued, is tantamount to inviting victimization. The primary marketing tactic to enforce this message is fear of victimization by strangers. Hidden Holster of Alpine, California asks women, "Are noises in the night a threat? If they are, how accessible is your handgun? Do you have to make a sudden move that could trigger a violent reaction from intruders?" Ansen Enterprises Inc. of Torrance, California suggests its product, Hide-A-Gun, "When a locked gun is unsafe!" Beneath the headline lies a shadow of a man lurking outside a window. The question as to whether these products are only being sold to women who are legally carrying handguns was answered in a 1994 *Women & Guns* magazine reader survey. The survey reported that 91 percent of the magazine's readers agreed that, even if doing so were illegal, they would carry a handgun if they felt threatened.

Despite the gun industry's marketing tactics that stranger attack is the greatest threat to women, the reality of violence against women reveals a different picture. In cases of rape, robbery, and assault, the National Crime Victimization Survey reports that between 1973 and 1991 nearly two in three female victims of violence were related to or knew their attacker. Women are also more likely to be *killed* by someone known to them than by a stranger—between 1976 and 1987 FBI data reveals that women were killed by strangers in less than 10 percent of all cases. Also, when women kill in self-defense the attacker is far more likely to be someone known to them. In 1992, of the 26 handgun self-defense killings by women reported to the FBI 18 (69 percent) involved attackers known to the women. In a 1992 study of gender differences in FBI data on homicide, public health researchers Arthur Kellermann, MD, MPH and James Mercy, PhD, concluded, "Since women are most likely to kill or be killed by a close personal acquaintance, nonlethal efforts to recognize and break the cycle of domestic violence will probably have a far more favorable impact on rates of violence, serious injury, and homicide than promotion of firearms for self-defense."

introduction of new, compact pistols by such manufacturers as Smith & Wesson and Glock. In the April 1995 issue of the industry newsletter *Firearms Business*, Gene Lumsden, Interarms, Inc. marketing vice president, "called the increased number of states considering carry laws the 'most important star on the horizon. Both in terms of sales and our freedoms....'" Lumsden stated that an Interarms survey of dealers around the country found that over 80 percent were selling more concealable firearms. Lumsden added, "This is a good sign, certainly for dealers who stocked up on concealable, low cost carry guns last year."

Sharing Lumsden's enthusiasm, the lead article in the June 15, 1995 *Firearms Business* announced, "CCW bills positive direction for industry":

There are now 23 states with right-to-carry laws, including the recently passed legislation in Texas and Oklahoma, and dealers in states with new laws are finding that the legislation is turning into an economic windfall in both gun sales and in classes required to obtain CCW permits.

The marketing benefits offered by relaxed concealed carry laws have increased in importance as a result of the current slump in overall firearm sales, estimated at 20 to 45 percent for the first half of 1995 compared to 1994.

In addition to financial benefits for the industry, training requirements for license holders present NRA-approved firearm instructors with a new pool of students (and increased recruitment opportunities for the organization).⁸ The NRA's self-interest is reflected in the very language of the Florida law, which specifically cites NRA courses and instructors as one of the sanctioned means for fulfilling the instruction/safety criteria for a license to carry. (The NRA is the only non-governmental organization so named in the law.) The NRA receives similar preferential status in the concealed weapons laws of other states.

⁸ Ironically, in Conover's 1985 *American Rifleman* article on concealed carry, the National Rifle Association rejected mandatory firearms training requirements for permit holders as "...just another ruse to restrict the average citizen's right to self-defense."

And there *is* money to be made. In the June 15, 1995 *Firearms Business* a spokesperson for Shooting Sports of Orlando noted that Florida's relaxed concealed carry law resulted in increases in firearms class attendance, range use, and handgun sales that had only recently begun to moderate. The spokesperson estimated that 50 percent of the company's firearm sales were related to Florida's shall-issue law. Also in the newsletter Bill Carter, owner of a chain of outdoor stores in the Houston, Texas area, stated that Texas' new shall-issue law has prompted the "'strongest response [for gun sales] I've seen...Most of the interest is in training, and an awful lot of inquiries are from ladies and elderly people.'" In the same article, Dan Moseley, an NRA-approved instructor, quoted an estimate done for the Texas Governor's office predicting 150,000 applications for concealed carry licenses in the Houston area alone. Moseley estimated that the numbers will be higher, adding that requests at gun ranges for classes were already up 50 to 75 percent—prompting the need for waiting lists. Whether or not such statements are entirely accurate, they effectively illustrate the hopes the industry has for concealed carry legislation.

Considering the benefits concealed carry legislation offers the NRA and its industry partners, it is no surprise that this campaign has taken centerstage on the organization's agenda. The NRA vigorously touts relaxed concealed weapons laws as a mechanism to arm law-abiding citizens against predatory criminals. And in each state where it battles to "reform" concealed carry laws, the organization points to Florida as proof that such laws work. The NRA rests its arguments in favor of relaxed concealed weapons laws on three articles of faith:

- o Criminals do not apply for concealed carry licenses.
- o Criminals do not receive concealed carry licenses.
- o Concealed carry license holders do not commit crimes.

In state legislatures across the nation these arguments have been accepted at face value. The Violence Policy Center's analysis of recent data from Florida reveals, however, that such statements are—at best—wishful thinking. The body of this study is divided into five sections.

Section I: Criminals Do Apply for Concealed Carry Licenses reveals that since the Florida law was enacted hundreds of criminals—convicted of crimes ranging from homicide to firearm violations—have in fact applied for concealed carry licenses.

Section II: Criminals Do Receive Concealed Carry Licenses details both the legal and illegitimate routes convicted criminals take to receive concealed carry licenses in Florida.

Section III: Concealed Carry License Holders Do Commit Crimes details cases of concealed carry license holders in Florida who have had their licenses revoked or suspended for various violations of the law.

Section IV: When is a Criminal Not a Criminal? explains the various means by which the state of Florida allows individuals with lengthy criminal histories to obtain concealed carry licenses. The section also explains how the Florida system offers distinct advantages to criminals who have plea-bargained their cases.

Section V: Conclusion offers a set of recommendations based on the study's findings.

The study also contains two appendices. *Appendix One* details the 63 incidents involving license holders reported by Dade County, Florida's Metro-Dade Police Department from 1987 to 1992. *Appendix Two* contains the text of Florida's concealed weapons law.

Section I: Criminals Do Apply for Concealed Carry Licenses

[E]xperience shows that only honest citizens are willing to submit to the permitting process, the background check, and the training requirements to receive a permit.

National Rifle Association Institute for Legislative Action

The National Rifle Association asserts that only "law-abiding" citizens will apply for concealed carry licenses. This assumption is a critical rationale for the NRA's insistence that only minimal time constraints be placed on license issuance. While the Florida issuance window is 90 days, the NRA has successfully pushed for even shorter mandatory issuance periods in states with new shall-issue laws. Idaho's mandatory issuance period is 60 days. Virginia's mandatory issuance period is only 45 days.

Despite assurances that criminals will not so much as dare fill out a license application, Florida's experience shows the reality to be quite different. Between October 1, 1987 and July 31, 1995, 691 applicants were denied licensure due to a prior criminal history. In an effort to obtain information on the nature of these crimes, the Violence Policy Center (VPC) was able to review 22 of the 675 denials filed between October 1, 1987 and May 31, 1995. Documents were available only for the 22 denials which led to public hearings;⁹ access to the remaining 653 cases was denied. Nonetheless, the available cases offer a sampling of the proscribed individuals who apply for the license and the types of offenses that would prompt a denial of the license.¹⁰

⁹ Persons denied licenses are allowed to request a hearing on their case.

¹⁰ The VPC requested files on application denials from the Florida Department of State, Division of Licensing for the period October 1987 to May 1995. Criminal history information was unavailable on almost all of the files as a result of the User Agreement with the Florida Department of Law Enforcement and 28 CFR §20.

Concealed Carry License Denials Disputed at Public Hearings

Name	Apparent Crime and Date of Conviction
James Nicholas Ansay	Convicted of a felony—Aggravated Battery With a Deadly Firearm (July 25, 1993)
James Vincent Balestire	May have been convicted of a felony—Attempted Rape, Endangering the Welfare of a Child and Assault (May 9, 1974)
Theodore Geza Barath	Petitioner may have been convicted of a felony—Possession of Marijuana (August 4, 1979)
Michael Boscarino	Convicted of a felony—Carrying a Concealed Firearm and Possession of Marijuana (November 21, 1992)
Lenon Raymond Butler, Jr.	Convicted of a felony—Use of Motor Vehicle Without Owner's Permission, also served an extra year for parole violation in connection with the motor vehicle charge (April 3, 1963)
Jose Richard Dominguez	Adjudication withheld on a felony charge—Cocaine-Attempted Purchase, Controlled Substance Cocaine (August 25, 1989)
David Clair Faust	Convicted of a felony—Conspiracy (on or about Feb 9, 1961), Uttering Worthless Checks (on or about March 10, 1961)
Alan Phillip Garrett	Convicted of a felony—Violation of Controlled Substance Drug Dev and Cosm Act (Jan 27, 1978)
Wilson Laverne Gunn	Convicted of a felony—Breaking and Entering an Automobile (June 29, 1963)
Hasnain Mehdi Hanif	Convicted of a felony—Passport Fraud (on or about November 24, 1988)
William A. Kaeding	Convicted of a felony—Unemployment Fraud (November 7, 1980)
Jake Lamor	Convicted of a felony—Storehouse Breaking Personal Property (November 11, 1971)
Michael Raymond Mila	Adjudication withheld on a felony charge—Hit and Run With Injuries (March 26, 1993)
David Wayne Morrison	Convicted of a felony—Theft of Motor Vehicle, Entering (February 5, 1980)
Monroe Mattox Neveils	Adjudication withheld on a felony charge—Conservation-Environment Commercial Dumping/ Health Safety Nuisance Inj (October 16, 1990)
Henry Leonard Robinson, Jr.	Adjudication withheld on a felony charge—Carrying a Concealed Firearm (February 23, 1992)
Robert Lee Simpson	Convicted of a felony—Breaking and Entering (December 20, 1968)
Nicholas Arthur Ventola	Convicted of a felony—Kidnapping and Aggravated Rape (September 30, 1982)
Samuel Walker, Jr.	Convicted of a felony—Aggravated Assault With A Deadly Weapon (May 31, 1971)
Rnhert D. Watson	Adjudication withheld on a felony charge—Aggravated Assault (February 17, 1992)
Cecil Franklin Wilhite	Convicted of a felony—Grand Larceny and Buying Receiving or Concealing Stolen Etc. (May 24, 1949)
Diane A. Wilson	Adjudication withheld on a felony charge—Carrying a Concealed Weapon/ Firearm (October 19, 1990)

The following is a more detailed narrative regarding the criminal records of four of the individuals cited in the previous chart:

- o William Kaeding was denied a concealed carry license in August 1994. Criminal history information received by the Division of Licensing indicated that Mr. Kaeding had been convicted of a felony, unemployment fraud, in November 1980. According to information from Somerset County, New Jersey, Mr. Kaeding was sentenced in New Jersey to one to two years in state prison, suspended, three years probation, and \$1,798 in restitution. Information on Mr. Kaeding also revealed that he was arrested in Florida for fleeing as an escaped fugitive in July 1977, aggravated assault and battery on his spouse in December 1977, and sexual battery in August 1981.
- o Henry Robinson, Jr. was denied a concealed carry license in October 1994. Criminal history information received by the Division of Licensing indicated that Mr. Robinson had adjudication withheld on a felony charge: carrying a concealed firearm in February 1992. According to information from Dade county, Mr. Robinson was made to forfeit his weapon, serve two days jail time, and pay a fine. Mr. Robinson had previously been charged with aggravated assault in 1990. Mr. Robinson's license application was denied because a period of three years had not elapsed since probation or any other conditions of the court had been fulfilled. Assuming that two days jail time was the only condition set by the court for his firearms charge, Mr. Robinson has been eligible to apply for a concealed carry license since March 1995.
- o Nicholas Ventola was denied a concealed carry license in February 1994. [A detailed record of Mr. Ventola's criminal history appears on the next two pages.] Criminal history information received by the Division of Licensing indicated that Mr. Ventola had been convicted of a felony: kidnapping and aggravated rape in September 1982. According to information from the state of Massachusetts, Mr. Ventola was sentenced for three to five years in state prison. A personal letter from Mr. Ventola to the Florida Department of State indicates that Mr. Ventola served two years of his sentence and was paroled for another three years. Mr. Ventola's criminal history dates back to 1974 beginning with a compulsory insurance violation and a six-month suspended sentence for assault and battery charges; in 1978 and again in 1980 he was charged with knowingly receiving stolen property and possession to distribute; in 1981 he was charged with aggravated rape and kidnapping; and in 1989 and 1990 he was charged with operating under a suspended license.
- o Robert Watson was denied a concealed carry license in August 1994. Criminal history information received by the Division of Licensing revealed that Mr. Watson had adjudication withheld on a felony charge of aggravated assault in February 1992. On his application Mr. Watson denied having had adjudication withheld or any conviction on a felony charge. According to information from Pinellas county, Mr. Watson was given two years probation. The recommended order of the Division of Licensing noted that Mr. Watson pleaded no contest to the assault charge as part of a negotiated settlement to avoid the possibility of mandatory prison time should the defendant have been found guilty of using a firearm in the commission of a crime. Mr. Watson's license application was denied because a period of three years had not elapsed since probation or any other conditions of the court had been fulfilled. Assuming that two years probation was the only condition set by the court, Mr. Watson will be eligible to apply for a concealed carry license in early 1997.

Criminal History of Nicholas Ventola

*
* ***** WARNING ***** WARNING ***** *
* THIS INFORMATION IS CORI. IT IS NOT SUPPORTED BY FINGERPRINTS. *
*

***** COMMONWEALTH OF MASSACHUSETTS *****
CRIMINAL HISTORY SYSTEMS BOARD

*** PERSONS COURT SUMMARY ***

NAM: VENTOLA, NICHOLAS A FORMAL-NAM: NICHOLAS PCF: 00001038982
DOB: 05/25/55 SEX: M RAC: POB: CHELSEA SSN: 000000000
MOTHER: RITA BUONOPANE FATHER: ARTHUR
ADDRESS: 60 ALDERBROOK RD TOPSFIELD MASS

***** DISPOSITIONS *****

ARRAIGNMENT: (001)
ARG-DATE: 04/25/90 COURT: CHELSEA DISTRICT DOCKET#: 9014CR1092A
OFFENSE: OPERATING AFTER SUSPEND LIC 114B-SUS
DISPOSITION: DF 8/29/90 D/R C 11/26/90 PROB 5/24/91 TERM

ARRAIGNMENT: (002)
ARG-DATE: 06/22/89 COURT: CHELSEA DISTRICT DOCKET#: 8914CR2967A
OFFENSE: OPERATING AFTER SUSPEND LIC 114B-SUS
DISPOSITION: DF D/R C 7/12/90 DF 8/29/90 D/R C 11/26/90 G \$100
FINE C 12/28/90 DF 1/25/91 D/R PD

ARRAIGNMENT: (003)
ARG-DATE: 09/30/82 COURT: SUFFOLK SUPERIOR DOCKET#: 739402ZZ
OFFENSE: KIDNAPPING KDNP
DISPOSITION: G 3-5YR CMTD

ARRAIGNMENT: (004)
ARG-DATE: 09/30/82 COURT: SUFFOLK SUPERIOR DOCKET#: 739403ZZ
OFFENSE: RAPE AGGRAVATED RAPE
DISPOSITION: G 3-5YR CMTD

ARRAIGNMENT: (005)
ARG-DATE: 03/19/81 COURT: ROXBURY DISTRICT DOCKET#: 739396ZZ
OFFENSE: KIDNAPPING KONP
DISPOSITION: BO

ARRAIGNMENT: (006)
ARG-DATE: 03/19/81 COURT: ROXBURY DISTRICT DOCKET#: 739397ZZ
OFFENSE: RAPE AGGRAVATED RAPE
DISPOSITION: BO

ARRAIGNMENT: (007)
ARG-DATE: 01/28/80 COURT: SUFFOLK SUPERIOR DOCKET#: 739382ZZ
OFFENSE: KNOWINGLY REC STOLEN PROP RSG
DISPOSITION: DISM

ARRAIGNMENT: (008)
ARG-DATE: 01/28/80 COURT: SUFFOLK SUPERIOR DOCKET#: 739383ZZ
OFFENSE: POSS TO DISTRIBUTE CLASS D CSA POSS DIST D

Criminal History of Nicholas Ventola

DISPOSITION: DISM

ARRAIGNMENT: (009)
ARG-DATE: 01/24/80 COURT: SUFFOLK SUPERIOR
OFFENSE: POSS TO DISTRIBUTE CLASS E
DISPOSITION: DISM

DOCKET#: 7393842Z
CSA POSS DIST E

ARRAIGNMENT: (010)
ARG-DATE: 01/28/80 COURT: SUFFOLK SUPERIOR
OFFENSE: POSS TO DISTRIBUTE CLASS C
DISPOSITION: DISM

DOCKET#: 7393852Z
CSA POSS DIST C

ARRAIGNMENT: (011)
ARG-DATE: 01/28/80 COURT: SUFFOLK SUPERIOR
OFFENSE: POSS TO DISTRIBUTE CLASS B
DISPOSITION: DISM

DOCKET#: 7393952Z
CSA POSS DIST B

ARRAIGNMENT: (012)
ARG-DATE: 12/19/73 COURT: CHELSEA DISTRICT
OFFENSE: KNOWINGLY REC STOLEN PROP
DISPOSITION: FJ (3 COUNTS)

DOCKET#: 739367ZZ
RSG

ARRAIGNMENT: (013)
ARG-DATE: 12/19/73 COURT: CHELSEA DISTRICT
OFFENSE: POSS TO DISTRIBUTE CLASS E
DISPOSITION: FJ

DOCKET#: 739371ZZ
CSA POSS DIST E

ARRAIGNMENT: (014)
ARG-DATE: 12/19/73 COURT: CHELSEA DISTRICT
OFFENSE: POSS TO DISTRIBUTE CLASS D
DISPOSITION: FJ

DOCKET#: 739372ZZ
CSA POSS DIST D

ARRAIGNMENT: (015)
ARG-DATE: 12/19/73 COURT: CHELSEA DISTRICT
OFFENSE: POSS TO DISTRIBUTE CLASS C
DISPOSITION: FJ

DOCKET#: 739373ZZ
CSA POSS DIST C

ARRAIGNMENT: (016)
ARG-DATE: 12/19/73 COURT: CHELSEA DISTRICT
OFFENSE: POSS TO DISTRIBUTE CLASS B
DISPOSITION: FJ

DOCKET#: 739381ZZ
CSA POSS DIST B

ARRAIGNMENT: (017)
ARG-DATE: 07/12/74 COURT: CHELSEA DISTRICT
OFFENSE: ASSAULT AND BATTERY
DISPOSITION: 6M SS PROB 7/31/75 TERM

DOCKET#: 739366ZZ
A8B

ARRAIGNMENT: (018)
ARG-DATE: 05/21/74 COURT: CHELSEA DISTRICT
OFFENSE: COMPULSORY INSURANCE VIOLATION
DISPOSITION: \$100 FINE DF 6/24/74 D/R PD

DOCKET#: 739365ZZ
118A

***** END OF DISPOSITIONS *****

REQUESTED BY:
COMPLETED BY:
AGENCY:

This information confirms that felons and other ineligible individuals *do* try to acquire concealed carry licenses through the application process. While hundreds of ineligible applicants have been winnowed out, closer examination reveals that under Florida's system a large number of ineligible applicants have in fact been granted licenses—some for an inordinate number of months.¹¹

¹¹ The difference between an applicant who is denied licensure due to a criminal history and a license holder whose license is later revoked due to a prior criminal history may merely be a function of where the crime was committed. The Division of Licensing has easier access to disposition information in some states compared to others. Until July 1995, mandatory issuance *required* the division to grant a license within 90 days—even if background information on an applicant was not complete. Applicants who committed crimes in states with a slow response to disposition requests had a better chance of receiving a license.

Section II: Criminals Do Receive Concealed Carry Licenses

Florida's system trusts the people, and Florida citizens have proven themselves responsible and worthy of that trust.

NRA First Vice President Marion Hammer

Concealed carry laws, says the National Rifle Association, are only for the law-abiding. However, in Florida criminals not only apply for licenses, they obtain them—both through illegitimate and legal avenues.

How Criminals Illegitimately Obtain Concealed Carry Licenses

Criminals illegitimately obtain licenses by denying criminal histories on license applications. Of the 549 revocation records filed by the Florida Division of Licensing between October 1, 1987 and May 31, 1995, 167 were against individuals who had committed crimes prior to licensure which should have rendered them ineligible. For these 167 cases, the Violence Policy Center obtained the records for the 63 revocations where public hearings were conducted. Examination of this latter group revealed that it could take as long as 25 months after licensure for the Division of Licensing to uncover the criminal history of a license holder and file a complaint for revocation. A key factor that inhibits the effectiveness of Florida's background check and allows ineligible persons to illegally obtain the state's permission to go about armed is the time constraint imposed by the law's 90-day mandatory issuance provision.¹²

¹² Problems with mandatory issuance are not limited to Florida. Major Arthur Mabry, Director of the Fairfax County Criminal Justice Academy in Fairfax, Virginia noted that Virginia's new concealed carry law requires the state to issue the license automatically after 45 days unless there is a certified reason for disqualification. He noted, "If we have to send background record requests to Ohio, then we're at the mercy of Ohio. If it takes six months to receive their information we have to wait. That's the problem with the 45-day mandatory issue."

Concealed Carry License Revocations of License Holders Who Committed Crimes Prior to License Issuance¹³

Original Conviction	Total Number of Cases	Duration of License in Months ¹⁴
Assault/Battery	12	1-12
Burglary/Larceny	10	1-13
Drugs	12	
Possession	8	1-9
Sale or Distribution	4	4-5
Embezzlement	1	3
Firearms/Weapons	5	
Carrying Concealed Weapon	2	5-7
Illegal Possession of Firearm	1	4
Illegal Possession and Illegal Exportation of Firearm	1	6
Shooting with Intent to Wound	1	3
Forgery/Falsification	2	1-6
Homicide and Attempted Homicide	4	
Assault with Intent to Murder	1	13
Hit and Run Resulting in Death	1	5
Manslaughter	2	4-13
Kidnapping/Attempted Kidnapping	1	4
Miscellaneous ¹⁵	3	3-25
Robbery	4	3-10
Theft	9	1-18

¹³ The Violence Policy Center requested revocation files from the Florida Department of State, Division of Licensing for the period October 1987 to May 1995. Criminal history information was removed on almost all the files to comply with the User Agreement with the Florida Department of Law Enforcement and 28 CFR§20. The 63 cases analyzed in this chart are those cases which involved public hearings.

¹⁴ This classification quantifies the time in number of months between the date the license was issued to the date an administrative complaint was sent by the Division of Licensing to revoke the license. In order to calculate the "Duration of License in Months" the following standard was established. If a person received the license before the 15th day of the month a full month was counted. Also, if an administrative complaint was sent to revoke a license on or after the 15th day of the month a full month was counted. For conviction categories in which there was more than one case, a range from the shortest duration of license to the longest duration of license was noted.

¹⁵ Miscellaneous crimes include: Attempted Bribe Receiving, Criminal Contempt, and Willful Destruction of Property.

Once a complaint for revocation is filed, respondents are given 21 days to either request a hearing or return the license. If a hearing is requested, the respondent's license remains active until the final outcome of the hearing process.¹⁶ These procedures have allowed ineligible persons to possess a concealed carry license for as long as 25 months.

The following are detailed examples of individuals who obtained a concealed carry license despite a criminal record and subsequently had the license revoked:

- o Ralph Carballo was issued a concealed carry license in June 1992. After one year with the license, Mr. Carballo was sent an administrative complaint by the Division of Licensing notifying him that his license would be revoked. The administrative complaint against him revealed that Mr. Carballo was a twice convicted felon: once for carnal abuse on a girl in 1959, and a second time for criminal possession of state property and possession of burglary tools in 1970. Mr. Carballo's license was revoked because he did not respond to the state's request for disposition information.
- o James Lampe was issued a concealed carry license in March 1994. In July 1994, Mr. Lampe was sent an administrative complaint by the Division of Licensing to revoke his license. The administrative complaint against him revealed that Mr. Lampe had adjudication withheld on a felony charge of kidnapping and attempted kidnapping in December 1993. Mr. Lampe's license was revoked because three years had not elapsed since probation or other conditions set by the court had been fulfilled. Mr. Lampe will become eligible to apply for a license once three years have elapsed.

¹⁶ According to legal counsel for the Florida Department of State, Division of Licensing, there are two types of hearings a respondent may request—informal and formal. Each process differs in length. An informal hearing is requested if the respondent does not dispute the facts, but wants to offer compelling reasons to keep the license. If an informal hearing is requested by the respondent the license remains active for approximately one or two months or until the final outcome of the hearing. After the hearing, the hearing officer will issue a recommended order within 30 days after which the parties have 20 days to submit any objections or exceptions to the recommended order. Once the exceptions are received the Department of State then has 90 days from the date of the original hearing to issue a final order.

A formal hearing is requested when the respondent wishes to dispute the facts. During this process, the respondent's concealed carry license is not suspended and remains active for the period (often several months) until the final outcome of the hearing. After a formal hearing, both sides have at least 10 days to submit proposed recommended orders to the hearing officer. The hearing officer then issues a recommended order within at least 30 days, after which both parties have 20 days to submit any objections or exceptions to the recommended order. Once the exceptions are received, the Department of State issues a final order within no later than 90 days after the hearing officer's recommended order. In addition, if the respondent disagrees with the final order, appellate rights allow the respondent to bring the case to district court.

- o Anthony O'Bier was issued a concealed carry license in March 1992. One month later, Mr. O'Bier was sent an administrative complaint by the Division of Licensing to revoke his license. The administrative complaint revealed that Mr. O'Bier had adjudication withheld and was placed on probation for one year and six months on a charge of aggravated battery on a police officer in May 1990. Mr. O'Bier's license was revoked because at the time of the administrative complaint, three years had not elapsed since his probation. However, assuming that probation was the only condition set by the court, Mr. O'Bier has been eligible to apply for a concealed carry license since November 1994.
- o Dave Romero was issued a concealed carry license in April 1991. After 13 months with the license, Mr. Romero was sent an administrative complaint by the Division of Licensing to revoke his license. The administrative complaint against him revealed that Mr. Romero had been convicted three separate times on felony charges of burglary and once on felony charges of assault with intent to murder and burglary between 1969 and 1979. Mr. Romero's license was revoked because he had not had his civil rights restored in the state of Florida.

License revocation, however, is not the end of the road for some licensees with criminal records. Some criminals illegitimately obtain licenses either because they neglect to include relevant criminal history information on their applications or perhaps as the result of bureaucratic oversight. Their licenses are then revoked when the criminal history information eventually comes to the attention of the licensing authority—but they nevertheless later go on to *legally acquire a license*.

For example:

- o Kevin J. McKenzie was issued a concealed carry license in March 1991. One year later the Division of Licensing sent Mr. McKenzie an administrative complaint to revoke his license. Criminal history information received by the division revealed that Mr. McKenzie had been convicted of a felony, breaking and entering/larceny in April 1971. On December 7, 1993 Mr. McKenzie was granted the authority to own, possess, or use firearms by the Office of Executive Clemency in the state of Florida. He has subsequently reapplied and received a new license to carry a concealed weapon.
- o Thomas J. Thompson was issued a concealed carry license in October 1992. Three months later the Division of Licensing sent Mr. Thompson an administrative complaint to revoke his license. Criminal history information received by the division revealed that Mr. Thompson had been convicted of a felony, burglary-conspiracy in July 1978. On March 15, 1995 Mr. Thompson was granted the authority to own, possess, or use firearms by the Office of Executive Clemency in the state of Florida. He has subsequently reapplied and received a new license to carry a concealed weapon.

This revolving door aspect of the licensing system is complicated by the fact that although the application includes an affidavit warning of criminal prosecution for providing false or misrepresented information, the Division of Licensing acknowledges that the law is not enforced.

Despite the avowed intentions of the framers of the 1987 Florida concealed weapons legislation, ineligible persons do apply for, and sometimes receive, concealed carry licenses. These cases reinforce the importance of allowing licensing authorities enough time to perform background checks that will completely screen out those with criminal records. Florida's 90 day shall-issue system undercuts this process.¹⁷

How Criminals Legally Obtain Concealed Carry Licenses

In Florida convicted felons are generally prohibited from possessing a firearm. Yet they may legally apply to have their firearm privileges restored—and subsequently legally obtain a license to carry a concealed weapon.

According to the Florida Office of Executive Clemency,¹⁸ each year approximately 300 felons apply for the specific authority to own, possess, or use firearms. From March 1994 to March 1995, 117 felons were granted the specific authority to own, possess, and use firearms, while an additional 66 convicted

¹⁷ Because of the problems associated with the mandatory 90-day issuance period, Florida's Division of Licensing requested an amendment to its concealed weapons and firearms statute. As of July 1, 1995, the new law suspends the time limit in cases where the department receives criminal history information with no final outcome on a crime which may disqualify the applicant. The 90-day time limitation may be suspended until receipt of the final outcome of the case or proof of restoration of civil rights and firearm privileges.

¹⁸ The governor and members of the cabinet collectively are the Clemency Board. The Clemency Board denies or grants the following forms of clemency: full pardon (includes the ability to own, possess, or use firearms); pardon without firearm authority; commutation of sentence; remission of fines and forfeitures; specific authority to own, possess, or use firearms; restoration of civil rights in Florida (except the specific authority to own, possess, or use firearms); and restoration of alien status under Florida law.

<p align="center">Felony Crime Convictions of Individuals Who Were Granted Restoration of Firearm Privileges During the Period March 1994 to March 1995</p>
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Felony Crime ¹⁹	Number of Convictions
Assault	7
Burglary	40
Drugs	82
Import	3
Possession	48
Sale or Distribution	31
Embezzlement	2
Escape	6
Firearms/Weapons	11
Attempted Criminal Possession of a Weapon	1
Carrying a Concealed Weapon/Firearm	1
Carrying a Loaded Firearm in Public Place	1
Conspiracy to Transfer Unregistered Machine Guns	1
Illegal Transfer of Machine Gun	1
Possession of 22 Caliber Silencer Not Registered to Possessor	1
Possession of 22 Caliber Silencer Which Did Not Bear a Serial Registration Number	1
Possession of a Firearm by a Convicted Felon	1
Possession of Sawed-Off Shotgun	1
Possession Unregistered Machine Gun	1
Unlawful Possession of a Pistol	1
Forgery/Falsification	40
Homicide and Attempted Homicide	5
Attempted Manslaughter	1
Second Degree Murder	2
Solicitation to Commit Murder in the First Degree	1
Vehicular Homicide	1
Larceny	11
Miscellaneous ²⁰	17
Robbery	24
Theft	20

¹⁹ In cases where felons were convicted of more than one crime, all convictions are noted.

²⁰ Miscellaneous crimes include: Attempted Arson, Desertion, Malicious Destruction of Property, and Violation of Probation.

felons were granted a full pardon,²¹ which includes the ability to own, possess, and use firearms. In total, 183 convicted felons had their firearm privileges restored between March 1994 and March 1995.

Examples of individuals who were granted clemency including the specific authority to own, possess, or use firearms include:

- o James Perry Davis was convicted in March 1984 for the federal crimes of possession with intent to distribute cocaine and distribution of a controlled substance (cocaine). He was sentenced to serve five years in a federal penitentiary on the first count, with a special parole term, and five years on the second count, to run concurrently. In November 1984 Mr. Davis was convicted for solicitation to commit murder in the first degree and trafficking in cocaine. He was sentenced to serve eight years in a state prison for solicitation and eight years for trafficking to run concurrently with all sentences being served. He was granted restoration of his civil rights in the state of Florida, except the authority to own, possess, or use firearms in May 1991. On September 14, 1994 James Perry Davis was granted a full pardon with the ability to own, possess, and use firearms.
- o James Morris Land, Sr. was convicted in August 1982 for U.S. federal violations involving possession of a 22 caliber silencer not registered to him and possession of a 22 caliber silencer which did not bear a serial number. He was sentenced to serve five years in a federal penitentiary, sentence suspended, fined \$2,000 and placed on probation for five years. He was granted restoration of his civil rights in the state of Florida, except the ability to own, possess, or use firearms, in January 1986. On March 9, 1994 James Morris Land, Sr. was granted clemency for the specific authority to own, possess, and use firearms.²²
- o Tommy Joseph Neet, Sr. was convicted in May 1971 for felonious escape. He was sentenced to serve two years in state prison, with credit for three months served in county jail. In September 1977 he was convicted of possession of marijuana, more than one ounce, and sentenced to serve one year in state prison and pay a fine of \$750. He was discharged from the remainder of his sentence in February 1978. In November 1982 Mr.

²¹ According to the brochure, *State of Florida: Rules of Executive Clemency*, "A Full Pardon unconditionally releases a person from punishment and forgives guilt. It entitles an applicant to all of the rights of citizenship enjoyed by the person before his or her conviction, including the right to own, possess or use firearms." A person may apply for a full pardon when all conditions of the court have been met and a period of at least 10 years has subsequently elapsed. A person applying for a full pardon must also be a legal resident of Florida at the time of application.

²² In May 1994, the Supreme Court issued a decision clarifying the authority of states to restore civil rights for federal felony convictions. In *Beecham v. United States*, 4 S.Ct. 1669, 128 L.Ed. 383, the Court ruled that a felon must have his rights restored by the jurisdiction of conviction. In practice, this means that persons convicted of federal felonies can only have their firearm privileges restored by federal authorities. Therefore, Florida may no longer restore firearm privileges to individuals convicted of federal crimes. Currently there is no federal mechanism available to restore the firearm privileges of federal felons. The federal "relief from disability" provision that allowed felons to apply for restoration of the ability to possess firearms was zero-funded in fiscal 1993. (The NRA attempted unsuccessfully to revive the program for fiscal 1996.) Consequently, even though Mr. Davis and Mr. Land had their firearm privileges restored under Florida's state program, their federal conviction prohibits them from even possessing firearms, let alone carrying a concealed firearm. (For more information on the federal "relief from disability" program see the Violence Policy Center's 1992 study, *Putting Guns Back into Criminals' Hands*.)

Neet, Sr. was convicted of possession of a firearm by a convicted felon and placed on probation for one year, with condition to pay \$25 per month to a fine and forfeiture fund. In May 1984 he was granted restoration of civil rights in the state of Florida except the ability to own, possess, or use firearms. On March 15, 1995 Tommy Joseph Neet, Sr. was granted a full pardon with firearm privileges.

A concealed carry license denial or revocation does not necessarily stop criminals from ultimately obtaining concealed carry licenses—often at taxpayers' expense. Although the concealed carry licensing process *is* self-financed, the program's existence may encourage more felons to resort to the executive clemency procedure—which is *not* self-financed and *is* funded through state revenue. The Florida Office of Executive Clemency, which administers the program to restore firearm privileges to felons, notes that the average clemency investigation case costs the state between \$400 and \$500.

Of the 183 convicted felons who had their firearm privileges restored between March 1994 and March 1995, 29 felons went on to obtain concealed carry licenses. As of September 1995 another six have applications pending. The majority (23) of those who obtained licenses did so by first applying for restoration of their civil rights and then *went back* to apply for the specific authority to own, possess, or use firearms. For example:

- o Ronald Gene Dubs was convicted in November 1984 of attempted criminal possession of a weapon, third degree. He was placed on probation for five years. On April 28, 1994 Mr. Dubs was granted restoration of his civil rights in the state of Florida, except the ability to own, possess, or use firearms. Less than one year later, on March 15, 1995, Ronald Gene Dubs was granted the specific authority to own, possess, and use firearms by the state of Florida's Office of Executive Clemency. Mr. Dubs has subsequently applied for, and obtained, a license to carry a concealed firearm.
- o Charles Wesley Parrot was convicted in September 1958 of assault and battery of a high and aggravated nature. He was sentenced to serve three years in a state penitentiary. His sentence was suspended after 18 months and he was placed on three years probation. In March 1983 Mr. Parrot was convicted of unlawful possession of a pistol. He was sentenced to serve two years in the state penitentiary. After nine months his sentence was suspended and he was placed on probation for 18 months and fined \$512.25. He was granted a full pardon in the state of South Carolina in January 1989. On March 15, 1995

Charles Wesley Parrot was granted the specific authority to own, possess, and use firearms by the state of Florida's Office of Executive Clemency. Mr. Parrot has subsequently applied for, and obtained, a license to carry a concealed firearm.

And as noted earlier, even individuals who had their concealed carry licenses revoked for failing to reveal a criminal record have used the executive clemency procedure to once again obtain a license.

Section III: Concealed Carry License Holders Do Commit Crimes

Law-abiding citizens who pay the fee, undergo background checks, take the training classes or prove their proficiency—decent folks who believe they have the fundamental right to protect themselves and their loved ones from deadly attack—these citizens don't commit violent crimes.

NRA Institute for Legislative Action Executive Director Tanya Metaksa

The final theme in the National Rifle Association's concealed carry campaign is that only law-abiding citizens will obtain concealed carry licenses and therefore license holders pose no threat to public safety. Contrary to the NRA's claims, concealed carry license holders do not always live up to these high standards.

In Florida, if a license holder or applicant is arrested for any disqualifying charge (which includes a felony, adjudication withheld on a felony, violent misdemeanor, charges related to controlled substances, or a third instance of driving under the influence), the license or application is suspended until a final outcome of the case is determined.²³ Between January 1990²⁴ and July 31, 1995 the Division of Licensing suspended the licenses of 324 individuals who had been arrested for crimes subsequent to licensure. If the licensee or applicant is *convicted* of any disqualifying charge the department will send a complaint to revoke the license or stop the application process. It is unknown how many concealed carry license holders receive license suspensions, but are later reinstated because adjudication was withheld on a violent misdemeanor charge. Also, if a licensee or applicant commits a crime in another state, the Florida Department of State will not necessarily be informed of the arrest or formal charge.

²³ According to Florida statute 790.06 section (3), "The department shall, upon notification by a law enforcement agency, a court, or the Florida Department of Law Enforcement and subsequent written verification, suspend a license or the processing of an application for a license if the licensee or applicant is arrested or formally charged with a crime which would disqualify such person from having a license under this section, until final disposition of the case."

²⁴ Statistics on suspensions were not maintained prior to January 1990.

More than a few individuals go on to commit crimes after obtaining a license. According to the Florida's *Concealed Weapons/Firearms Licensing Statistical Report Period 10/01/87–07/31/95*, during the period of the survey the Division of Licensing revoked the licenses of 292 individuals who committed a crime after licensure. For these 292 cases, the Violence Policy Center obtained the records for the 14 revocations where public hearings were conducted.

**Concealed Carry License Revocations of License Holders Who
Committed Crimes After License Issuance²⁵**

Original Conviction	Total Number of Cases
Assault/Battery	2
Burglary	2
Drugs	3
Possession	2
Sale or Distribution	1
Firearms	5
Aggravated Assault/Concealed Firearm	1
Aggravated Assault with Deadly Weapon	2
Aggravated Assault with Firearm	1
Shooting at within or into Occupied Vehicle	1
Theft	2

²⁵ The Violence Policy Center requested revocation files from the Florida Department of State, Division of Licensing for the period October 1987 to May 1995. Criminal history information was removed on almost all of the files to comply with the User Agreement with the Florida Department of Law Enforcement and Section 28 CFR§20 (Federal Code). Criminal history utilized at public hearings was included. The 14 cases analyzed in this chart are those cases which involved public hearings.

Examples of individuals who committed crimes after issuance of a concealed carry license follow:

- o Angel Fernandez was issued a concealed carry license in July 1993. Five months later in December 1993, Mr. Fernandez was charged and had adjudication withheld on a felony charge of aggravated assault with a firearm. After another 10 months with the license, Mr. Fernandez was sent an administrative complaint by the Division of Licensing to revoke his license. Mr. Fernandez's license was revoked because three years had not elapsed since probation or other conditions of the court had been met. Once Mr. Fernandez serves the conditions set by the court and three years elapse, he may once again apply for a concealed carry license.
- o Dale Garza was issued a concealed carry license in September 1992. Three months later in December 1992, Mr. Garza was found guilty of simple battery (domestic), a misdemeanor crime of violence. After another 22 months with the license, Mr. Garza was sent an administrative complaint by the Division of Licensing to revoke his license. Mr. Garza's license was revoked because three years had not elapsed since probation or other conditions of the court had been met. Once Mr. Garza serves the conditions set by the court and three years elapse, he may once again apply for a concealed carry license.
- o Michael D. Storo was issued a concealed carry license in November 1987. In December 1990 Mr. Storo was issued a renewal license for another three years. Seven months later the Division of Licensing sent Mr. Storo an administrative complaint to revoke his license. Criminal history information received by the division revealed that Mr. Storo had adjudication withheld on felony charges of burglary, false imprisonment in April 1990. Mr. Storo's license was revoked because three years had not elapsed since probation or any other conditions of the court. After waiting the requisite three years, Mr. Storo reapplied for a concealed carry license. He once again possesses a license to carry a concealed firearm.

Section IV: When Is A Criminal Not A Criminal?

A major loophole in the Florida law is the way it defines a "criminal" for the purpose of denying a concealed carry license. The statute sets up a hierarchy of offenses, each of which is treated differently. The end result is a system that judges eligibility for a license based not on the severity of the crime committed, but rather on the technical disposition of the charge. Moreover, no matter what crime an applicant may have committed, or what punishment is meted out by the criminal justice system, there is an avenue available to virtually every applicant who attempts to obtain a concealed carry license. The system operates as a revolving door, allowing even those whose licenses are revoked to later become eligible to reapply. The following is a list of the disparate treatment afforded different types of crimes and dispositions and the remedies available to those seeking concealed carry licenses:

- o Persons *convicted of a felony*. These persons are ineligible to receive a concealed carry license. However, most felons convicted under state law may apply through the Florida Office of Executive Clemency for restoration of their firearm privileges. As discussed in *Section II*, many individuals convicted of serious felonies have used the executive clemency process to obtain a concealed carry license.
- o Persons with *adjudication withheld on a felony*. According to legal counsel for the Florida Department of State, Division of Licensing, adjudication withheld means that judgment by the court was withheld on a charge and there was no conviction. The court may withhold adjudication in cases where the defendant pleads guilty to the crime charged, in plea bargained cases, or for first time offenders. Defendants are still sentenced and must serve all conditions of the court, however there is no conviction on record. These individuals are eligible to apply for a concealed carry license once three years have elapsed since probation or any other conditions set by the court have been met.
- o Persons *convicted of a violent misdemeanor*. The Florida licensing authority is granted the discretion to deny licenses to applicants with a violent misdemeanor conviction, and its policy is to do so. However, like individuals

who have had adjudication withheld on a felony, these individuals are eligible to apply for a concealed carry license once three years have elapsed since probation or any other conditions set by the court have been met.

- o Persons with *adjudication withheld on a violent misdemeanor*. These individuals are eligible to receive concealed carry licenses through the normal licensing process.
- o Persons *convicted of, or who have had adjudication withheld on, a non-violent misdemeanor*. These individuals are eligible to receive concealed carry licenses through the normal licensing process.

This legislative scheme makes keeping licenses out of the hands of criminals virtually impossible. For example, as noted earlier, felons convicted of a state crime may apply for a concealed carry license once firearm privileges have been restored by the Florida Office of Executive Clemency. The Office of Executive Clemency allows felons to apply for the specific authority to own, possess, or use a firearm eight years after completion of probation or any other conditions of the court. Once firearm privileges have been restored, *the felon is treated just like any other concealed carry license applicant*, and—unless he belongs to another restricted class—will be issued a license. Conveniently, the address and telephone number of the Office of Executive Clemency is listed on the concealed carry license application.

The structure of the statute in its treatment of misdemeanors also complicates the administration of the licensing system. For instance, the law does not adequately define "violent misdemeanor," nor does it offer a comprehensive list of specific offenses to which this provision is intended to apply.²⁶ According to legal counsel, the department denies or revokes an applicant convicted of a violent misdemeanor on a case-by-case basis. The problems with such an approach have been summed up by the Attorney General of Idaho in comments addressing the

²⁶ According to the concealed carry application, "Crimes of violence constituting a misdemeanor include, but are not limited to, battery, assault, abuse of children, spouse or the disabled or aged, or an attempt or conspiracy to commit any of the foregoing offenses."

similar lack of specificity about the definition of "violent" in Idaho's concealed carry law:

Subsection (1)(h) of this section states that a license may be denied where a person has been prosecuted for a misdemeanor 'crime of violence' within three years of the application, and the term 'violence' has been defined as strength or energy actively displayed or exerted, vehement or forcible action, or an unjust exercise of force; while such misdemeanors as assault and battery clearly meet this definition, it is entirely unclear whether the legislature intended to include such crimes as resisting arrest, disturbing the peace (which includes such acts as quarreling and fighting), false imprisonment, discharge of an aimed firearm, injuring another by the careless use of a firearm, riotous conduct near an election place, negligent vehicular manslaughter, or any other 'nonproperty crime' misdemeanor.

The confusion over what the term "violent" means makes it difficult to categorize some serious misdemeanors. For example, in Florida, discharging a firearm in a public place and inciting prisoners to revolt or escape are classified as misdemeanors, but it is not clear whether they are considered "violent" under the concealed carry statute.

In addition, by prohibiting access to concealed carry licenses only to individuals who have been convicted of "violent" misdemeanors, the Florida law fails to exclude applicants with records of misdemeanors not likely to be judged "violent" but who may still present a serious danger to public safety. For example, Florida's anti-militia law prohibiting drilling or parading in public as part of an unauthorized military organization is a misdemeanor that could well fall into this category.²⁷

²⁷ Another problematic aspect of Florida's failure to define the term "violent misdemeanor" is that it opens up the statute to constitutional challenge for vagueness. The comments of the Idaho Attorney General with respect to that state's concealed carry law are again relevant: "A statute that forbids or requires the doing of an act in terms so vague that persons must necessarily differ as to its application violates the first essential of due process of law. In the final analysis, this section produces this result in areas such as who may apply for a license, who may be denied a license, who is exempt from licensure, how a license may be revoked, and whether a license may be revoked. When these vague portions of the statute are severed from the rest, what remains is a meaningless series of exceptions and subparts having no independent value."

The National Rifle Association's "model" concealed carry legislation creates incentives for individuals to plea bargain and rewards those who do so. This is an ironic aspect of the law in light of the fact that the NRA has repeatedly and vehemently condemned plea bargaining. In April 1989 James Jay Baker, former executive director of the NRA Institute for Legislative Action, testified before a subcommittee of the U.S. House of Representatives Committee on the Judiciary on the "Semiautomatic Assault Weapons Act of 1989." Baker's testimony is typical of the NRA's attacks on plea bargaining. Baker cited the practice as the true villain in Patrick Purdy's 1989 fatal assault-weapon attack on a playground-full of schoolchildren in Stockton, California, stating that Purdy:

had been arrested for the crimes of drug possession, solicitation of sex, illegal possession of dangerous weapons, receipt of stolen property, attempted robbery, criminal conspiracy, firing a pistol in a national forest, and resisting arrest. His plea bargains on some of these charges resulted in misdemeanor convictions only, not the felonies with which he was charged and should have been prosecuted. His last contact with the criminal justice system resulted in probation, even though his own probation report described him as a danger to himself and others. Because of the repeated failures of the criminal justice system, Purdy's lack of a felony record meant he could and did comply with and pass the 15-day waiting period and police background check required under California law to purchase five pistols. It was criminal justice that failed those five schoolchildren, and resulted in the tragic incident in Stockton, California.

As noted by Baker, Purdy had never been convicted of a felony. Under the NRA's "model" law in Florida, Patrick Purdy's criminal history would not have prevented him from eventually obtaining a concealed carry license.

A key failing of Florida's concealed weapons law is that it judges a person's fitness to receive a concealed carry license less on the crime committed than on the punishment received. There is significant disparity of treatment for those convicted of a felony or violent misdemeanor versus those with adjudication withheld for the same crime.

Section V: Conclusion

Since 1987 the National Rifle Association has successfully conducted a state-by-state campaign to loosen concealed carry requirements, holding up Florida's concealed weapons law as *the* model of how such statutes work. However, the Violence Policy Center's research reveals substantial problems with the Florida law, not the least of which is the disturbing statistic that as of July 31, 1995, 469 license holders have been identified as having committed a wide range of crimes—including assault with intent to murder, kidnapping/attempted kidnapping, aggravated assault with a firearm, and shooting with intent to wound—prior or subsequent to receiving their license. Florida's concealed weapons law is in fact an example—one *not* to be followed.

Although this study evaluates the regulatory framework of Florida's concealed weapons law, the problems identified—that criminals apply for concealed carry licenses, a significant number of criminals succeed in obtaining licenses, and that some license holders commit crimes—are likely to be present in any shall-issue system. In addition, many states have in place mechanisms similar to Florida's clemency program. Such programs allow individuals with serious criminal records, which would otherwise disqualify them from eligibility, access to concealed carry licenses.

Careful evaluation of the Florida concealed weapons law demonstrates that such statutes increase the availability of guns to individuals with criminal records and do not result in any significant benefit to society. Also, although the Florida system is designed to be self-financed, it produces ancillary costs that burden the state's budget as well as those of other states. In light of these findings, the Violence Policy Center recommends strongly against the adoption of shall-issue licensing in any additional states and urges that states that currently have shall-

issue licensing repeal such laws. Short of this, the Violence Policy Center offers the following recommendations to address the loopholes in the Florida statute or similar laws.

- o The list of disqualifying crimes should be comprehensive enough to capture all potentially dangerous applicants. At a minimum, all felonies and clearly defined violent misdemeanors should be automatic disqualifiers.
- o The licensing authority must be granted sufficient time to perform an adequate background check based on the actual time it takes a state to respond to requests for information on an applicant's criminal record. The law should also stipulate a suspension of that time limit in cases where the department receives criminal history information with no final disposition on a crime.
- o Applicants who misrepresent their criminal histories or any other material facts should be prosecuted and prohibited from reapplying for a concealed carry license.
- o States with clemency programs similar to Florida's should eliminate the ability of felons to regain their firearm privileges. Clemency should not be employed as a mechanism for felons to obtain a concealed carry license.
- o A criminal record attributable to a plea bargain or "adjudication withheld" should not be distinguished for licensing purposes from a conviction and should provide grounds for disqualification from licensure.
- o The process for revoking licenses of persons found to have criminal records and of those who commit crimes subsequent to licensure should be streamlined.
- o License fees should be set at a level that ensures that applicants bear all costs of license issuance including background checks performed by out-of-state law enforcement agencies.
- o An evaluation mechanism must be established to closely examine the effects of the licensing system. The mechanism would identify and track all denials, revocations, and suspensions. In addition, a system for identifying all uses of licensed weapons should be established. Such a mechanism is essential in evaluating the effect of concealed carry laws on public and personal safety.

APPENDICES

Appendix One: Incidents Involving Concealed Carry License Holders Reported to Metro-Dade Police, 1987 to 1992

The law as to what constitutes the legal and justifiable use of a weapon for self-defense varies from state to state. Florida law states that deadly force is justified when resisting an attempt to murder or other felonious attack, or when resisting a felonious attack upon or in one's home. From 1987 to 1992 the Metro-Dade Police Department tabulated 63 known incidents involving concealed carry license holders. As noted in the introduction of this study, the total number of weapon misuses vastly outweighs the number of possible self-defense uses. Yet even for those incidents that could be labeled self-defense, questions remain. In a broad sense, 16 of the Dade County incidents could be classified as attempts at defense of person or property, or efforts to intercede during the commission of a crime. However, closer examination reveals:

- o many of the incidents may not qualify as a legitimate use of force under Florida law;
- o in some of the incidents a concealed carry license was not essential for the self-defense use;
- o in some of the incidents the weapon was not used successfully to stop a crime.

For example:

- o In four of the incidents questions arise as to whether the license holder was legally justified in firing his weapon, including a witness to a robbery who fired two shots at the subject's fleeing vehicle.
- o Four of the incidents appear to have occurred in the homes of license holders during instances where possession of a concealed carry license may not have been relevant (since such licenses are not required to keep a firearm in

the home). One incident involved a man who fired warning shots after a rock was thrown through his window.

- o In four of the incidents the firearm was ineffective in stopping the crime, including an incident where the victim was approached by the subject, who demanded and received her purse, and who then fled as the victim shot at his get-away vehicle.
- o One incident involved an attack by an animal.

In only four instances is it clear that the victim successfully defended his or herself and that the concealed carry license was essential to the self-defense use. Left unstated by the National Rifle Association is that the privilege of being allowed to carry a concealed handgun does not grant the license holder the indiscriminate right to use the weapon. License holders may not realize, for example, that firing a gun—even as a warning shot—in response to an offense is by definition the use of deadly force. Individuals who brandish a weapon, fire warning shots, or shoot at fleeing suspects are often placing *themselves* at risk (i.e. criminal penalties or civil litigation) by possibly having to justify the use of the weapon.

License Holders Arrested by Metro-Dade Police, 1987 to 1992

Summary
Suspect had a Dade County permit when he pointed a gun at an off-duty MDPD detective during a traffic incident. His state permit was issued subsequent to this incident. He was acquitted at trial, and the state permit is valid.
Suspect was arrested upon entering the Metro Justice Building with a firearm. The case was "No Actioned," and the permit is valid.
Suspect arrested for DUI, a gun was found in his vehicle which was impounded for safekeeping. Permit is valid.
Suspect was given a "Promise To Appear" citation in reference to an improper exhibition of a firearm complaint. Permit was revoked because of changes in the statute restricting the issuance of permits to convicted felons.
Suspect, a bail bondsman, was armed with a handgun when arrested for possession of 10 plastic bags containing cocaine. Following trial the permit was revoked.
Suspect was arrested for possession of a firearm reported stolen from New York. Case was "No Actioned," permit is valid.
Same suspect was arrested for disorderly conduct (date unknown). Permit is valid.
Suspect was arrested for aggravated assault with a firearm. Following trial, the permit was revoked.
Suspect was armed with a firearm when arrested for misdemeanor battery on his spouse. Suspect received a withhold of adjudication, permit is valid.
Suspect was arrested for reckless display and discharging a firearm in public. Permit is valid.
Suspect was arrested for aggravated assault. His permit was revoked.
Suspect was arrested for aggravated battery with a firearm. The victim was shot once in the abdomen. Permit is suspended, court case is being tracked.
Suspect was arrested for aggravated assault with a firearm. Case was "No Actioned," permit is valid.
Suspect was arrested for aggravated battery with a firearm. His permit was revoked.
Suspect was arrested for reckless display of a firearm. Permit is valid.
Suspect was arrested for aggravated assault with a firearm. The case was "No Actioned," his permit is valid.
Suspect was arrested for aggravated assault with a firearm. A permit application was on file at the time of this incident. The application has now been denied.
Suspect was armed when arrested for L & P. He had a blue police dash light in his vehicle at the time of his arrest. Permit is valid.
Suspect arrested for a traffic warrant. Permit is valid.
Suspect was arrested for aggravated assault and armed trespass. Permit has been revoked.
Suspect was arrested for aggravated assault. Permit suspended pending outcome of trial.
Suspect arrested for aggravated assault. His permit, while still in his possession, had been revoked for previous conviction in 1989.
Subject was arrested for armed trespass of cultivated land.
Subject got into an argument with victim because he was sitting on his car. Subject pulled a gun and pointed it at victim. He drove away and was stopped and arrested.
Subject was arrested after shooting at victim while driving his car. Subject cut in front of victim's vehicle and after victim sounded his horn, subject took out a gun and pointed at victim and fired a couple of shots.

Non-Arrest Incidents of License Holders Tabulated by Metro-Dade Police, 1987 to 1992

Summary
Suspect entered a restricted area of Miami International Airport with a firearm in her purse. Following an interview, she was released.
Victim of a domestic related battery secured a firearm in his vehicle when he feared violence might occur. The gun was not produced or involved during the reported disturbance.
Suspect, a trailer park manager, was accused of pointing a firearm at the victim who was attempting to repossess a vehicle from a tenant in the park. No arrest was made due to conflicting statements.
Reporter, a bail bondsman, fired two shots at a fleeing suspect wanted for bond jumping in an armed robbery case.
Reporter accidentally shot himself in the leg.
Victim had his gun stolen from his vehicle. The firearm was later recovered and subjects arrested.
Reporter advised his vehicle had been vandalized, when he investigated unknown persons started shooting at him and he returned fire. Witnesses disputed his claim, saying the reporter started shooting for no apparent reason. No arrest was made.
During a routine traffic stop the motorist advised he had a permit and firearm in his possession. A records check revealed all documents to be in order.
A dispute over a traffic infraction resulted in conflicting statements regarding the exhibition of a firearm by the permit holder. No arrest was made.
Suspect denied pointing a firearm at a victim who alleged an aggravated assault following a traffic dispute. Victim declined to press charges.
Subject was armed when he went to his lawyer's office to discuss a pending case. No illegal action was alleged.
Reporter was armed with a firearm when involved in a verbal dispute with another. No illegal actions were alleged.
Subject, allegedly pointed a firearm at a co-worker. The incident was part of an ongoing dispute. No arrest was made due to conflicting statements and no witnesses.
Subject was observed at approximately 2:00 a.m. in a parked vehicle in the area of closed businesses. As officers approached, the subject began to drive off. Found in the subjects possession was a 17-shot Glock 9mm. Discovered in the vehicle was a 36-shot KG-9 9mm and a Ruger .357. No arrest was made.
Subject was contacted following a complaint of shots being fired. He advised that he had shot his weapon once into the canal. No arrest was made.
Suspect advised that he accidentally fired his weapon into the ground. There were no injuries and no arrest.
Victim was an armed employee at a junk yard when two subjects approached. Following a verbal dispute subject #1 slapped the victim and a struggle ensued, during which time the victim's gun fell to the ground. Subject #2 retrieved the firearm and both subjects fled on foot.
Subject and victim got into an argument over a CB transmission. Subject drew his weapon and placed it at his side pointing towards the ground and advised the victim to step back. No arrest was made due to conflicting statements.
Victim was cleaning his weapon when the 9 mm semi-auto discharged. The round struck the victim's left forearm.
Victim of an armed robbery had a firearm taken away from him during the robbery.
Subject became involved in a heated argument with victim and pulled a handgun and fired one shot into the ground. He then left and victim called police. No one arrested due to conflicting statements.
Subject went through an X-ray machine at airport with a gun in his briefcase.

Self-Defense Incidents Involving License Holders Tabulated by Metro-Dade Police, 1987 to 1992

Summary
Victim thwarted an armed robbery when he produced a firearm and the suspects fled.
Witness interceded in a robbery attempt at a rental car office.
Victim interrupted a burglary and captured a burglar at his home. He claims an accidental discharge of his firearm when the burglar resisted efforts to detain him for the police.
Victim was attacked by a pit bull; he then shot and killed the dog.
Victim was awakened by burglars forcing open his sliding glass door. He proceeded to the back yard and fired two shots into the ground to scare away the subjects.
Reporter located his previously reported stolen motor vehicle. As he approached, the occupants in the car fled. The reporter fired two shots at his vehicle in an attempt to stop the thieves. No one was hit, and the vehicle was not recovered.
Witness to a robbery fired two shots at the subject's fleeing vehicle.
Reporter prevented a burglary. He fired two shots at the fleeing subjects after he was struck in the head by one of the burglars.
Reporter, a warehouse manager, interrupted a burglary and detained a subject until police units arrived.
Victim thwarted a robbery. While at an intersection the subject approached her vehicle, produced a knife and demanded her money. The victim raised a 32 caliber handgun and stated, "Let's see which is fastest, the bullet or the knife," at which time the subject fled on foot.
Victim was approached by subject, armed with a knife, and demanded her purse. Suspect took purse and fled. Victim shot at the subject's get-away vehicle.
Victim was sleeping at her home when the subject, who rents a room at her house, tried to rape her. Victim pulled a handgun and called police. Subject was charged with sexual battery.
Victim was asleep when he was awakened by a rock breaking a bedroom window. He retrieved his handgun and fired a couple of shots into the ground to scare suspect. No arrests made.
Victim of an armed robbery chased the subjects on foot with his handgun. The subjects fired at him, however, he did not return fire.
Victim, a private investigator, stopped at a gas station to use the public phone. Victim was accosted by subject who demanded victim's money. He then proceeded to ransack victim's car. The victim retrieved a handgun and opened fire on the subject.
Victim was approached by suspect and told him to "give it to me." He proceeded to search the victim's car. Victim took out a gun and suspect ran into a getaway car.

Appendix Two: Florida Statute 790.6: License to carry a concealed weapon or firearm

(1) The Department of State is authorized to issue licenses to carry concealed weapons or concealed firearms to persons qualified as provided in this section. Each such license must bear a color photograph of the licensee. For the purposes of this section, concealed weapons or concealed firearms are defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie, but the term does not include a machine gun as defined in s. 790.001(9). Such licenses shall be valid throughout the state for a period of 3 years from the date of issuance. Any person in compliance with the terms of such license may carry a concealed weapon or concealed firearm notwithstanding the provisions of s. 790.01. The licensee must carry the license, together with valid identification, at all times in which the licensee is in actual possession of a concealed weapon or firearm and must display both the license and proper identification upon demand by a law enforcement officer. Violations of the provisions of this subsection shall constitute a noncriminal violation with a penalty of \$25, payable to the clerk of the court.

(2) The Department of State shall issue a license if the applicant:

- (a) Is a resident of the United States or is a consular security official of a foreign government that maintains diplomatic relations and treaties of commerce, friendship, and navigation with the United States and is certified as such by the foreign government and by the appropriate embassy in this country;
- (b) Is 21 years of age or older;
- (c) Does not suffer from a physical infirmity which prevents the safe handling of a weapon or firearm;
- (d) Is not ineligible to possess a firearm pursuant to s. 790.23 by virtue of having been convicted of a felony;
- (e) Has not been committed for the abuse of a controlled substance or been found guilty of a crime under the provisions of chapter 893 or similar laws of any other state relating to controlled substances within a 3-year period immediately preceding the date on which the application is submitted;
- (f) Does not chronically and habitually use alcoholic beverages or other substances to the extent that his normal faculties are impaired. It shall be presumed that an applicant chronically and habitually uses alcoholic beverages or other substances to the extent that his normal faculties are impaired if the applicant has been committed under chapter 397 or under the provisions of former chapter 396 or has been convicted under s. 790.151 or has been deemed a habitual offender under s. 856.011(3), or has had two or more convictions under s. 316.193 or similar laws of any other state, within the 3-year period immediately preceding the date on which the application is submitted;
- (g) Desires a legal means to carry a concealed weapon or firearm for lawful self-defense;
- (h) Demonstrates competence with a firearm by any one of the following:
 - 1. Completion of any hunter education or hunter safety course approved by the Game and Fresh Water Fish Commission or a similar agency of another state;
 - 2. Completion of any National Rifle Association firearms safety or training course;
 - 3. Completion of any firearms safety or training course or class available to the general public offered by a law enforcement, junior college, college, or private or public institution or organization of firearms training school, utilizing instructors certified by the National Rifle Association, Criminal Justice Standards and Training Commission, or the Department of State;
 - 4. Completion of any law enforcement firearms safety or training course or class offered for security guards, investigators, special deputies, or any division or subdivision of law enforcement or security enforcement;
 - 5. Presents evidence of equivalent experience with a firearm through participation in organized shooting competition or military service;
 - 6. Is licensed or has been licensed to carry a firearm in this state or a county or municipality of this state, unless such license has been revoked for cause; or
 - 7. Completion of any firearms training or safety course or class conducted by a state certified or National Rifle Association certified firearms instructor;
A photocopy of a certificate of completion of any of the courses or classes; or an affidavit from the instructor, school, club, organization, or group that conducted or taught said course or class attesting to the completion of the course or class by the applicant; or a copy of any document which shows completion of the course or class or evidences participation in firearms competition shall constitute evidence of qualification under this paragraph;
- (i) Has not been adjudicated an incapacitated person under s. 744.331, or similar laws of any other state, unless 5 years have elapsed since the applicant's restoration to capacity by court order;

- (j) Has not been committed to a mental institution under chapter 394, or similar laws of any other state, unless the applicant produces a certificate from a licensed psychiatrist that he has not suffered from disability for at least 5 years prior to the date of submission of the application; and
- (k) Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or the record has been sealed or expunged.

(3) The Department of State may deny a license if the applicant has been found guilty of one or more crimes of violence constituting a misdemeanor unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or the record has been sealed or expunged, or may revoke a license if the licensee has been found guilty of one or more crimes of violence within the preceding 3 years. The department shall, upon notification by a law enforcement agency, a court, or the Florida Department of Law Enforcement and subsequent written verification, suspend a license or the processing of an application for a license if the licensee or applicant is arrested or formally charged with a crime which would disqualify such person from having a license under this section, until final disposition of the case.

(4) The application shall be completed, under oath, on a form promulgated by the Department of State and shall include:

- (a) The name, address, place and date of birth, race, and occupation of the applicant;
- (b) A statement that the applicant is in compliance with criteria contained within subsections (2) and (3);
- (c) A statement that the applicant has been furnished a copy of this chapter and is knowledgeable of its provisions;
- (d) A conspicuous warning that the application is executed under oath and that a false answer to any question, or the submission of any false document by the applicant, subjects the applicant to criminal prosecution under s. 837.06; and
- (e) A statement that the applicant desires a concealed weapon or firearms license as a means of lawful self-defense.

(5) The applicant shall submit to the Department of State:

- (a) A completed application as described in subsection (4).
- (b) A nonrefundable license fee not to exceed \$85, if he has not previously been issued a statewide license, or a nonrefundable license fee not to exceed \$70 for renewal of a statewide license. Costs for processing the set of fingerprints as required in paragraph (c) shall be borne by the applicant. However, an individual holding an active certification from the Criminal Justice Standards and Training Commission as a "law enforcement officer," "correctional officer," or "correctional probation officer" as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9) is exempt from the licensing requirements of this section. If any individual holding an active certification from the Criminal Justice Standards and Training Commission as a "law enforcement officer," a "correctional officer," or a "correctional probation officer" as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9) wishes to receive a concealed weapons or firearms license, such person is exempt from the background investigation and all background investigation fees, but shall pay the current license fees regularly required to be paid by nonexempt applicants. Further, a law enforcement officer, a correctional officer, or a correctional probation officer as defined in s. 943.10(1), (2), or (3) is exempt from the required fees and background investigation for a period of 1 year subsequent to the date of retirement of said officer as a law enforcement officer, a correctional officer, or a correctional probation officer.
- (c) A full set of fingerprints of the applicant administered by a law enforcement agency.
- (d) A photocopy of a certificate or an affidavit or document as described in paragraph (2)(h).
- (e) A full frontal view color photograph of the applicant taken within the preceding 30 days, in which the head, including hair, measures 7/8 of an inch wide and 1 1/8 inches high.

(6)

- (a) The Department of State, upon receipt of the items listed in subsection (5), shall forward the full set of fingerprints of the applicant to the Department of Law Enforcement for state and federal processing, provided the federal service is available, to be processed for any criminal justice information as defined in s. 943.045. The cost of processing such fingerprints shall be payable to the Department of Law Enforcement by the Department of State.
- (b) The sheriff's office shall provide fingerprinting service if requested by the applicant and may charge a fee not to exceed \$5 for this service.

- (c) The Department of State shall, within 90 days after the date of receipt of the items listed in subsection (5):
1. Issue the license; or
 2. Deny the application based solely on the ground that the applicant fails to qualify under the criteria listed in subsection (2) or subsection (3). If the Department of State denies the application, it shall notify the applicant in writing, stating the ground for denial and informing the applicant of any right to a hearing pursuant to chapter 120.
 3. In the event the department receives criminal history information with no final disposition on a crime which may disqualify the applicant, the time limitation prescribed by paragraph (c) may be suspended until receipt of the final disposition or proof of restoration of civil and firearm rights.
- (d) In the event a legible set of fingerprints, as determined by the Department of State or the Federal Bureau of Investigation, cannot be obtained after two attempts, the Department of State shall determine eligibility based upon the name checks conducted by the Florida Department of Law Enforcement.
- (e) A consular security official of a foreign government that maintains diplomatic relations and treaties of commerce, friendship, and navigation with the United States and is certified as such by the foreign government and by the appropriate embassy in this country must be issued a license within 20 days after the date of the receipt of a completed application, certification document, color photograph as specified in paragraph (5)(e), and a nonrefundable license fee of \$300. Consular security official licenses shall be valid for 1 year and may be renewed upon completion of the application process as provided in this section.

(7) The Department of State shall maintain an automated listing of licenseholders and pertinent information, and such information shall be available on-line, upon request, at all times to all law enforcement agencies through the Florida Crime Information Center.

(8) Within 30 days after the changing of a permanent address, or within 30 days after having a license lost or destroyed, the licensee shall notify the Department of State of such change. Failure to notify the Department of State pursuant to the provisions of this subsection shall constitute a noncriminal violation with a penalty of \$25.

(9) In the event that a concealed weapon or firearm license is lost or destroyed, the license shall be automatically invalid, and the person to whom the same was issued may, upon payment of \$15 to the Department of State, obtain a duplicate, or substitute thereof, upon furnishing a notarized statement to the Department of State that such license has been lost or destroyed.

- (10) A License issued under this section shall be suspended or revoked pursuant to chapter 120 if the licensee:
- (a) Is found to be ineligible under the criteria set forth in subsection (2);
 - (b) Develops or sustains a physical infirmity which prevents the safe handling of a weapon or firearm;
 - (c) Is convicted of a felony which would make the licensee ineligible to possess a firearm pursuant to s. 790.23;
 - (d) Is found guilty of a crime under the provisions of chapter 893, or similar laws of any other state, relating to controlled substances;
 - (e) Is committed as a substance abuser under chapter 397, or is deemed a habitual offender under s. 856.011(3), or similar laws of any other state;
 - (f) Is convicted of a second violation of s. 316.193, or a similar of another state, within 3 years of a previous conviction of such section, or similar law of another state, even though the first violation may have occurred prior to the date on which the application was submitted;
 - (g) Is adjudicated an incapacitated person under s. 744.331, or similar laws of any other state; or
 - (h) Is committed to a mental institution under chapter 394, or similar laws of any other state.

(11) No less than 90 days prior to the expiration date of the license, the Department of State shall mail to each licensee a written notice of the expiration and a renewal form prescribed by the Department of State. The licensee must renew his license on or before the expiration date by filing with the Department of State the renewal form containing a notarized affidavit stating that the licensee remains qualified pursuant to the criteria specified in subsections (2) and (3), a color photograph as specified in paragraph (5)(e), and the required renewal fee. Out-of-state residents must also submit a completed fingerprint card and fingerprint processing fee. The license shall be renewed upon receipt of the completed renewal form, color photograph, appropriate payment of fees and, if applicable, a completed fingerprint card. Additionally, a

licensee who fails to file a renewal application on or before its expiration date must renew his license by paying a late fee of \$15. No license shall be renewed 6 months or more after its expiration date, and such license shall be deemed to be permanently expired. A person whose license has been permanently expired may reapply for licensure; however, an application for licensure and fees pursuant to subsection (5) must be submitted, and a background investigation shall be conducted pursuant to the provisions of this section. Persons who knowingly file false information pursuant to this subsection shall be subject to criminal prosecution under s. 837.06.

(12) No license issued pursuant to this section shall authorize any person to carry a concealed weapon or firearm into any place of nuisance as defined in s. 823.05; any police, sheriff, or highway patrol station; any detention facility, prison, or jail; any courthouse; any courtroom, except that nothing in this section would preclude a judge from carrying a concealed weapon or determining who will carry a concealed weapon in his courtroom; any polling place; any meeting of the governing body of a county, public school district, municipality, or special district; any meeting of the Legislature or a committee thereof; any school, college, or professional athletic event not related to firearms; any school administration building; any portion of an establishment licensed to dispense alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to such purpose; any elementary or secondary school facility; any area vocational/technical center; any college or university facility unless the licensee is a registered student, employee, or faculty member of such college or university and the weapon is a stun gun or nonlethal electric weapon or device designed solely for defensive purposes and the weapon does not fire a dart or projectile; inside the passenger terminal and sterile area of any airport, provided that no person shall be prohibited from carrying any legal firearm into the terminal, which firearm is encased for shipment for purposes of checking such firearm as baggage to be lawfully transported on any aircraft; or any place where the carrying of firearms is prohibited by federal law. Any person who willfully violates any provision of this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(13) All monies collected by the department pursuant to this section shall be deposited in the Division of Licensing Trust Fund, and the Legislature shall appropriate from the fund those amounts deemed necessary to administer the provisions of this section. All revenues collected, less those costs determined by the Department of State to be nonrecurring or one-time costs, shall be deferred over the 3-year licensure period. Notwithstanding the provisions of s. 493.6117, all [sic] moneys collected pursuant to this section shall not revert to the General Revenue Fund; however, this shall not abrogate the requirement for payment of the service charge imposed pursuant to chapter 215.

(14) All fund received by the sheriff pursuant to the provisions of this section shall be deposited into the general revenue fund of the county and shall be budgeted to the sheriff.

(15) The Legislature finds as a matter of public policy and fact that it is necessary to provide statewide uniform standards for issuing licenses to carry concealed weapons and firearms for self-defense and finds it necessary to occupy the field of regulation of the bearing of concealed weapons or firearms for self-defense to ensure that no honest, law-abiding person who qualifies under the provisions of this section is subjectively or arbitrarily denied his rights. The Department of State shall implement and administer the provisions of this section. The Legislature does not delegate to the Department of State the authority to regulate or restrict the issuing of licenses provided for in this section, beyond those provisions contained in this section. Subjective or arbitrary actions or rules which encumber the issuing process by placing burdens on the applicant beyond those sworn statements and specified documents detailed in this section or which create restrictions beyond those specified in this section are in conflict with the intent of this section and are prohibited. This section shall be liberally construed to carry out the constitutional right to bear arms for self-defense. This section is supplemental and additional to existing rights to bear arms, and nothing in this section shall impair or diminish such rights.

(16) By March 1 of each year, the Department of State shall submit a statistical report to the Governor, the President of the Senate, the Senate Republican Leader, the Speaker of the House of Representatives, and the House Minority Leader indicating the number of licenses issued, revoked, suspended, and denied.

(17) As amended by chapter 87-24, Laws of Florida, this section shall be known and may be cited as the "Jack Hagler Self Defense Act."

790.061 Judges and justices; exceptions from licensure provisions

A county court judge, circuit court judge, district court of appeal judge, justice of the supreme court, federal district court judge, or federal court of appeals judge serving in this state is not required to comply with the provisions of s. 790.06 in order to receive a license to carry a concealed weapon or firearm, except that any such justice or judge must comply with the provisions of s. 790.06(2)(h). The Department of State shall issue a license to carry a concealed weapon or firearm to any such justice or judge upon demonstration of competence of the justice or judge pursuant to s. 790.06(2)(h).

