

FIREARMS LAW UPDATE

A NEWSLETTER FOR THE MASSACHUSETTS GUN OWNER

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This free monthly publication is designed to educate and inform law abiding Firearms owners and enthusiasts about the complex firearms laws of the Commonwealth of Massachusetts.

If you have a firearms-related legal story or topic which you would like us to include in future issues, please e-mail Attorney Cohen.

Carrying a firearm while "under the influence."



Carrying a Firearm while Under the Influence of Drugs or Liquor is Prohibited by G.L. c. 269 § 10H, which provides as follows:

Whoever, having in effect a license to carry firearms issued under § section 131 or 131F of chapter 140, carries on his person, or has under his control in a vehicle, a loaded firearm, as defined in



§ 121 of said chapter 140, while under the influence of intoxicating liquor or marijuana, narcotic drugs, depressants or stimulant substances, all as defined in § 1 of chapter 94C, or the vapors of glue shall be punished by a fine of not more than \$5,000 or by imprisonment in the house of correction for not more than two and one-half years, or by both such fine and imprisonment.



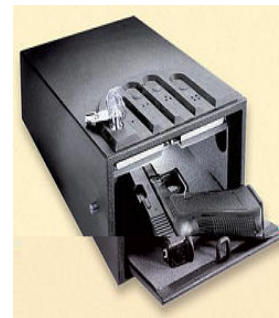


CARRYING UNDER THE INFLUENCE & OTHER LEGAL ISSUES

Is “under the influence” defined by caselaw in a firearms context?

There is no definition of “intoxicated” in any known case law on point. One interpretation could apply the same standards and sobriety tests as driving while intoxicated. Another interpretation could define even a sip of an alcoholic beverage to be “intoxicated” for firearms law purposes. As there is no settled interpretation, the prudent choice would be to abstain from all intoxicating substances while possessing a firearm. There is also a related statute with less serious consequences.

the influence of intoxicating liquor or of drugs shall not hunt or carry a firearm, bow and arrow or other weapon while engaged in hunting or target shooting.



A person, while under the influence of intoxicating liquor or of drugs shall not hunt or carry a firearm, bow and arrow or other weapon while engaged in hunting or target shooting. (G.L. c. 131 § 62)



Can I keep my guns loaded in my safe?

Yes. There is no statute or known case which forbids it.

Is it Illegal to Carry Firearms in a Bar?

No, but it could be forbidden by the establishment. Also, it could set you up for a carrying while intoxicated charge regardless of whether you were drinking.

The information contained in this document is offered for informational purposes only and is not legal advice. This information is not intended to create, and receipt of it does not constitute, an attorney-client relationship. Readers should not act upon this information without seeking professional counsel.



Hunting & Target Shooting While Intoxicated

Massachusetts General Law, Chapter 131 § 62 provides as follows:

A person, while under

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House passes major gun control bill

By JIM ABRAMS
THE ASSOCIATED PRESS

WASHINGTON - The House Wednesday passed what could become the first major federal gun control law in over a decade, spurred by the Virginia Tech campus killings and buttressed by National Rifle Association help.

The bill, which was passed on a voice vote, would improve state reporting to the National Instant Criminal Background Check System to stop gun purchases by people, including criminals and those adjudicated as mentally ill, who are prohibited from possessing firearms.

Seung-Hui Cho, who in April killed 32 students and faculty at Virginia Tech before taking his own life, had been ordered to undergo outpatient mental health treatment and should have been barred from buying two guns he used in the rampage. But the state of Virginia had never forwarded this information to the national background check system.

If it moves through the Senate and is signed into law by the president, the bill would be the most important gun control act since Congress banned some assault weapons in 1994, the last year Democrats controlled the House. In 1996, Congress added people convicted of domestic violence to the list of those banned from purchasing firearms.

Sen. Charles Schumer, D-N.Y. a proponent of gun control legislation, said the chances of Senate passage were "very strong." He said, "When the NRA and I agree on legislation, you know that it's going to get through, become law and do some good."

The bill was the outcome of weeks of negotiations between Rep. John Dingell, D-Mich., the most senior member of the House and a strong supporter of gun rights, and the NRA, and in turn, with Rep. Carolyn McCarthy, D-N.Y., a leading gun-control advocate.

"This is good policy that will save lives," McCarthy said.

The NRA insisted that it was not a "gun control" bill because it does not disqualify anyone currently able to legally purchase a firearm.

The NRA has always supported the NICS, said the organization's executive vice president, Wayne LaPierre. "We've always been vigilant about protecting the rights of law-abiding citizens to purchase guns, and equally vigilant about keeping the guns out of the hands of criminals and the mentally defective and people who shouldn't have them."

Under a gun control act that passed in 1968, the year Robert F. Kennedy and Martin Luther King Jr. were killed, people barred from buying guns include those convicted of a crime punishable by more than one year in prison, illegal drug users, those courts find to be mentally disabled, and illegal immigrants.

The legislation approved Wednesday would require states to automate and share disqualifying records with the FBI's NICS database. The bill also provides \$250 million a year over the next three years to help states meet those goals and imposes penalties, including cuts in federal grants under an anti-crime law, to those states that fail to meet benchmarks for automating their systems and supplying information to the NICS.

House action came as a panel that President Bush ordered to investigate the Virginia Tech shootings prepared to make recommendations on ways the federal government can prevent such tragedies.

Also on Wednesday, Virginia Gov. Tim Kaine said that in ordering state executive branch agencies to upgrade background check reporting last month he had found that Virginia was one of only 22 states reporting any mental health information to the NICS. Kaine, a Democrat, said the House bill was "significant action to honor the memories of the victims who lost their lives at Virginia Tech."

The NRA did win some concessions in negotiating the final product.

It would automatically restore the purchasing rights of veterans who were diagnosed with mental problems as part of the process of obtaining disability benefits. LaPierre said the Clinton administration put about 80,000 such veterans into the background check system.

It also outlines an appeals process for those who feel they have been wrongfully included in the system and ensures that funds allocated to improve the NICS are not used for other gun control purposes.

Paul Helmke, president of the Brady Campaign to Prevent Gun Violence, said his group supported the legislation and he hoped Congress would go a step further and extend background checks to all gun sales, not just those licensed dealers covered by current law.

The only dissenting vote in the short House debate on the bill was voiced by GOP presidential aspirant Ron Paul of Texas. He described the bill as "a flagrantly unconstitutional expansion of restriction on the exercise of the right to bear arms."

NRA challenges gun-control Democrats

6/27/2007, 8:01 p.m. EDT

By ANDREW TAYLOR

The Associated Press

WASHINGTON (AP) — For the first time since taking control of Congress, gun-control Democrats are taking on the National Rifle Association. The NRA seems to be nipping the effort in the bud.

At issue is whether Congress should loosen restrictions on local law enforcement agencies' ability to gain access to gun-purchasing data to trace the movement of illegal guns around the nation.

The restrictions on such "trace data" began almost four years ago when Rep. Todd Tiahrt, R-Kan., succeeded in limiting the Bureau of Alcohol, Tobacco and Firearms, or ATF, from publicly revealing information from its gun trace database.

On Thursday, the battle shifts to the Senate Appropriations Committee, where Sens. Barbara Mikulski, D-Md., and Frank Lautenberg, D-N.J., are among those trying to repeal or weaken the gun data restrictions when the panel acts on the ATF's budget. Pro-gun rights stalwarts including Richard Shelby, R-Ala., and Ben Nelson, D-Neb., are pushing back hard and seem poised for victory.

The NRA says the data-sharing restrictions protect gun owners' privacy, but mayors around the country such as New York City Mayor Michael Bloomberg contend they hamper law enforcement authorities' ability to trace illegal guns and arrest weapons traffickers.

The mayors say gun trace data helps local police departments figure out where illegal guns are coming from, who buys them and how they get trafficked into their communities. Most guns used in crimes are sold by a small number of rogue gun dealers.

"The fight is between the nation's mayors and law enforcement leaders on one side, and the gun lobby on the other," said Paul Helmke, president of the Brady Campaign to Prevent Gun Violence. "The individuals who benefit most from the Tiahrt restrictions are corrupt gun dealers and illegal gun traffickers."

Bloomberg, who recently left the GOP amid speculation he may run for president, has sued numerous out-of-state gun dealers in an attempt to reduce the flow of illegal guns into

New York. The NRA-backed restrictions block cities from getting ATF data for such lawsuits.

The NRA says it would limit the release of the information to criminal investigators, and keep the information away from antigun activists, headline-hungry politicians and opportunistic trial lawyers.

Gun control advocates have had little success on Capitol Hill since a Democratic-controlled Congress muscled through an assault weapons ban in 1994. Many Democrats credited the ban for losses in rural seats as the party took a drubbing at the polls that year.

"A major contributing factor to the Democratic loss of the House in 1994 was the broad gun control measure that was passed in that year," said Rep. Rick Boucher, D-Va., an NRA ally. "I think that's widely acknowledged and the same mistakes are not going to be made again."

This year, Democrats owe their narrow majorities in the House and Senate to freshmen from rural and Republican-leaning areas. Such pro-gun members include Sens. Jim Webb, D-Va., and Jon Tester, D-Mont., and numerous moderate "Blue Dog" Democrats elected to the House last year.

The difficult route to overturn the gun trace data restrictions contrasts sharply with the smooth path through the House of legislation aimed at correcting flaws in the national gun background check system that allowed a Virginia Tech student who killed 32 others to buy guns despite his diagnosed mental health problems.

That legislation would require states to automate their lists of convicted criminals and the mentally ill, who are prohibited under a 1968 law from buying firearms, and report those lists to the FBI's National Instant Criminal Background Check System

The difference is that the NRA endorsed the background check improvements, boosting its chances of becoming the first major national gun control law in more than a decade.

The House has yet to debate companion legislation. But West Virginia Democratic Rep. Alan Mollohan, chairman of the appropriations panel funding the ATF budget, has announced plans to stick with the current restrictions on ATF gun trace information

.357—Don't Leave Home Without It

By Allison Aldrich

I never doubted the value of my little bottle of pepper spray. As a Washington, D.C., intern last summer, I spent countless hours on the public subway system and walked to my car at the station late at night many times. I was aware it was a station where five attempted sexual assaults had previously occurred.

Each time I made that walk, I would discreetly grasp my pepper spray—a present from my parents—and hope that I wouldn't be making the trek to the parking garage with any of the degenerates I'd seen on the train. I didn't realize the worthlessness of that bottle until I thought I might actually have to use it. A suspicious-acting man driving an old, beat-up car followed me through the empty parking lot until I reached my own car. It was then that I realized my complete vulnerability, a feeling that was solidified for me after attending my first year at Virginia Tech.

The false sense of security that a college campus provides is what allows women to lower their guard, unwittingly putting themselves at greater risk. Sure, we hear the horrors caused by date-rape drugs and too much drinking, but who is on guard at the bus stop, on a mid-day jog around campus, or even just in the classroom?

Nobody was on guard that terrible morning in April at Virginia Tech, myself included. Most universities in Virginia, including Tech, require students to check their firearms with local police or campus security. This policy didn't stop the gunman. Nobody could defend themselves, and nobody was safe from his rampage. What's worse is that Virginia Tech administrators previously applauded the defeated efforts by the Virginia General Assembly to allow Tech students to carry concealed weapons on campus.

Following the most recent attempt to pass a bill in early 2006, Tech Spokesman Larry Hincker self-righteously responded in a January 31st article in the Roanoke Times that, "I'm sure the university community is appreciative of the General Assembly's actions because this will help parents, students, faculty and visitors feel safe on campus."

Although a tragedy of that magnitude will hopefully be avoided in the future, we should not overlook the fact that students, particularly young women, face daily risks on college campuses.

How should young women protect themselves? For that matter, how should any innocent citizen avoid being a victim? According to the Metropolitan Police Department, you should stay alert and "wear clothing and shoes that give you freedom of movement." Those are well-intentioned ideas, but for those of us not interning at Sports Authority, sneakers and running shorts are usually not included in our daily dress-code.

So assuming I can't run away fast enough in heels or move to a well-lit area (perhaps under one of the lamps in the deserted parking lot?), the options they provide during an attack include screaming and blowing a whistle. I am not surprised "call the police" doesn't show up on the list, as their eight-and-a-half minute response-rate would seem about as long as waiting for Christmas morning when you were little.

What if the assailant has a weapon? According to the police, you may then have no option but to submit. Well, may I suggest an addition to the list? Shoot him.

For years guns have been banned in both the District of Columbia and on many campuses nationwide. As a 20-year-old intern and student, I have never felt more marginalized. Whether it is walking to my car at the station, trekking across campus from the 24-hour library, or, in light of recent events, even going to class, the inability to protect myself is ever-present. To put a fine point on it, I am often in fear of my life.

Both of my parents work in law-enforcement, and I have spent countless hours at the shooting range and attending classes for a gun-carrying permit. It is unfortunate that the only place I have ever been allowed to carry a gun is at our mountain cabin—and that's only to protect myself from bears!

The ownership of a gun requires much responsibility. Numerous laws have been established to keep guns out of the hands of violent or otherwise unstable individuals. However, to outlaw guns for law-abiding citizens who have no other reasonable way to protect themselves is asking all of us to jeopardize our feelings of security, our safety, and, ultimately, our lives. That is not a gamble I'm willing to take.

Allison Aldrich is a junior political science and English major at Virginia Tech and a Summer 2007 intern at the Young America's Foundation headquarters in her hometown, Herndon, Virginia.

About Attorney Cohen & Associates

FIREARMS LITIGATION & ADVOCACY

Attorney Cohen and associate lawyers concentrate in the areas of firearms law, criminal defense, and civil litigation. Examples of their successes include:

- Obtaining Court Orders in District Court, ORDERING Chiefs of Police to issue Licenses to Carry
- Vacating offenses which are lifetime disqualifiers, so that clients can obtain LTCs
- Firearms Licensing Review Board Cases
- Preparing Convincing Application Packages resulting in the issuance of Class A Licenses to Carry Firearms for All Lawful Purposes
- Negotiating with Police Officials to obtain LTCs for clients without the need for hearings, even where the police department initially denied the client's application.



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