

# FIREARMS LAW UPDATE

A NEWSLETTER FOR THE MASSACHUSETTS GUN OWNER

## LEGAL SERVICES WHICH ATTORNEY COHEN PROVIDES:

- Legal Services for Ranges & Dealers
- Thorough Preparation of Firearms License Application Packages, to maximize your chance of success and avoid the subtle but serious "traps" in the application process
- Skilled Negotiation and Advocacy on your behalf with the licensing authority (police department)
- Petitions for Judicial Review & Appeals of Firearms License Denials
- Criminal Defense
- Emergency Legal Services
- Defense in Use of Force cases
- Legal Advice & Consultation regarding State & Federal Firearms Laws
- Representation before the Firearms License Review Board
- Sealing & Expungement of Criminal Records
- Pardons & other Post Conviction Relief

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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.

## Answers to Frequently Asked Questions



### I have a conviction for first offense OUI. Can I still qualify for a license to carry?

That depends on when the offense took place. Under the current law, a first offense OUI maximum punishment exceeds 2 years which disqualifies those with convictions from ever possessing a license to carry. Previous to 1994, the maximum punishment for OUI first offense was 2 years. Therefore those with convictions before May, 1994 are not statutorily disqualified. They may however be found unsuitable by the licensing authority.

### Can a Sealed Juvenile Record be used to Disqualify an Applicant for a License to Carry Firearms?

**NO.** G.L. c. 276 § 100B provides in relevant part that...[n]otwithstanding any other provision to the contrary, the commissioner shall report such sealed delinquency record to inquiring police and court agencies only as "sealed delinquency record over three years old and to other authorized persons who may inquire as "no record." The statute further provides that "[t]he information contained in said sealed delinquency record shall be made available to a judge or probation officer who affirms that such person, whose record has been sealed, has been adjudicated a delinquent or has pleaded guilty or has been found guilty of and is awaiting sentence for a crime committed subsequent to sealing of such record. **Said information shall be used only for the purpose of consideration in imposing sentence.**" The statute also provides that **sealed juvenile records are generally inadmissible in Court.** Licensing Authorities may be able to use sealed adult records & information obtained from independent sources.



## OWNERSHIP OF “DANGEROUS WEAPONS.”



**Can I legally own items such as switchblades, double edged knives, or brass knuckles?**

Answer: **YES.**

G.L. c. 269 § 10 provides, in relevant part, as follows:

Whoever, except as provided by law, **carries on his person, or carries on his person or under his control in a vehicle**, any stiletto, dagger or a device or case which enables a knife with a locking blade to be drawn at a locked position, any ballistic knife, or any knife with a detachable blade capable of being propelled by any mechanism, dirk knife, any knife having a double-edged blade, or a switch knife, or any knife having an automatic spring release device by which the blade is released from the handle, having a blade of over one and one-half inches, or a slung shot, blowgun, blackjack, metallic knuckles or knuckles of any substance which could be put to the same use with the same or similar effect as metallic

knuckles, nunchaku, zoobow, also known as klackers or kung fu sticks, or any similar weapon consisting of two sticks of wood, plastic or metal connected at one end by a length of rope, chain, wire or leather, a shuriken or any similar pointed starlike object intended to injure a person when thrown, or any armband, made with leather which has metallic spikes, points or studs or any similar device made from any other substance or a cestus or similar material weighted with metal or other substance and worn on the hand, or a manrikigusari or similar length of chain having weighted ends; **or whoever, when arrested upon a warrant for an alleged crime, or when arrested while committing a breach or disturbance of the public peace**, is armed with or has on his person, or has on his person or under his control in a vehicle, a billy or other dangerous weapon... other than those herein mentioned and those mentioned in paragraph (a)...

There is a common misperception that the items listed above are per se illegal. It’s true that most of these items are illegal to carry or have under one’s control in a

vehicle. However they are not illegal to possess. It is perfectly legal to possess a switchblade, blackjack, or other “dangerous weapon” in your home or elsewhere.



**Can I carry an ASP baton?**

The collapsible baton is not explicitly referenced in the statute. As such it may qualify as a billy or other dangerous weapon. Therefore, it may be lawful to possess and carry as long as one is not arrested on a warrant or committing a breach of the peace. It would seem as though it is legal to possess, carry and have in one’s control in a vehicle a collapsible baton

Attorney Cohen can assist you with the preparation of your License to Carry Firearms Application Package to maximize your chances of approval.

**Can I legally own items such as switchblades, double edged knives, or brass knuckles?**

**Answer: YES.**

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.

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## Appeals Court Strikes Down Washington, D.C. Handgun Ban

WASHINGTON —

A federal appeals court on Friday overturned the District of Columbia's longstanding handgun **ban**, issuing a decision that will allow the city's citizens to have working firearms in their homes.

In the ruling, the **U.S. Court of Appeals for the District of Columbia** rejected city officials' arguments that the Second Amendment right to bear arms only applied to state militias.

District of Columbia Mayor Adrian Fenty told reporters Friday afternoon that the District will appeal the ruling.

In a 2-1 decision, the judges held that the activities protected by the **Second Amendment** "are not limited to militia service, nor is an individual's enjoyment of the right contingent upon his or her continued intermittent enrollment in the militia."

"This is a huge case," Alan Gura, the plaintiffs' lead lawyer, told FOXNews.com Friday afternoon. "It's simply about whether law-abiding citizens can maintain a functioning firearm, including a handgun, inside their house."

Gura said his six clients, all Washington residents, challenged three separate District of Columbia laws: A 31-year-old law that prevents handgun registration; a law that requires rifles and shotguns to be either disassembled or disabled when being stored; and a law that requires a permit to carry a gun in your own home.

Gura said the law does not affect law that governs concealed carry permits outside the home.

"I don't see this going into effect immediately, but certainly, you know, when it does go into effect, our clients, as well as everyone in Washington, will be able to have a handgun and maintain their home without having a permit to move it around in their home," Gura said.

The case began five years ago. In 2004, a lower court judge lower-court judge said the plaintiffs did not have a constitutional right to own handguns. The plaintiffs include residents of high-crime neighborhoods who wanted the guns for protection.

"The district's definition of the militia is just too narrow," Judge Laurence Silberman wrote for the majority on Friday. "There are too many instances of 'bear arms' indicating private use to conclude that the drafters intended only a military sense."

Judge Karen Henderson dissented, writing that the Second Amendment does not apply to the district because it is not a state.

The Bush administration has endorsed individual gun-ownership rights, but the **Supreme Court** has never settled the issue.

If the dispute makes it to the high court, it would be the first case in nearly 70 years to address the Second Amendment's scope.

Fenty said the city government will exercise petition for a rehearing, which will be an "en banc" review to

take place before all the court's judges instead of the three-judge panel that considered the case. Depending on the court's decision, the case can be appealed to the Supreme Court.

"We intend to do everything in our power to work to get this decision overturned, and in the meantime, we will vigorously enforce our handgun law," Fenty said.

He said the decision "flies in the face of laws that have helped decrease gun violence," noting that it was the first time a federal appeals court has struck down a gun law on the basis of the Second Amendment.

The Second Amendment of the U.S. Constitution, in its entirety, states: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed."

Gura predicted that the case, because of clear arguments, can now be used in other federal cases to support Second Amendment arguments that citizens have the "right to keep and bear arms."

"This case will have significant impact beyond the District of Columbia," Gura said. He did not know if any other cases would be affected immediately by the decision.

Silberman wrote that the Second Amendment is still "subject to the same sort of reasonable restrictions that have been recognized as limiting, for instance, the First Amendment."

Such restrictions might include gun registration to provide the government

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### **Appeals Court Strikes Down Washington, D.C. Handgun Ban**

with information about how many people would be armed if militia service was required, firearms testing to promote public safety or restrictions on gun ownership for criminals or those deemed mentally ill.

The decision is spurring action on Capitol Hill as well. Working with the National Rifle Association, Sen. **Kay Bailey Hutchison**, R-Texas, said she would reintroduce a piece of legislation aimed at keeping handguns legal in the District. The measure has previously passed in the House, but failed in the Senate.

"Not only is Washington, D.C.'s gun ban unconstitutional, but it also has been a public policy f

property or residence, or such person whose property or residence is under lawful search, and who is not exempt under this section, **shall on demand of a police officer or other law enforcement officer, exhibit his license to carry firearms, or his firearm identification card or receipt for fee paid for such card**, or, after January first, nineteen hundred and seventy, exhibit a valid hunting license issued to him which shall bear the number officially inscribed of such license to carry or card if any. Upon failure to do so such person may be required to surrender to such officer said firearm, rifle or shotgun which shall be taken into custody as under the provisions of section one hundred and twenty-nine D, except that such firearm, rifle or shotgun shall be returned forthwith upon presentation within thirty days of said license to carry firearms, firearm identification card or receipt for fee paid for such card or hunting license as hereinbefore described. Any person subject to the conditions of this paragraph may, even though no firearm, rifle or shotgun was surrendered, be required to produce within thirty days said license to carry firearms, firearm identification card or receipt for fee paid for such card, or said hunting license, failing which the conditions of section one hundred and twenty-nine D will apply. Nothing in this section shall prevent any person from being prosecuted for any violation of this chapter.

***Reminder: G.L. c. 140 § 131L requires that....Firearms, rifles, shotguns, and machine guns must be "secured in a locked container or equipped with a tamper-resistant mechanical lock, or other safety device, properly engaged so as to render the weapon inoperable by any person other than the owner or other lawfully authorized user."***

## 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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### REAL ESTATE

**The name you've come to trust for firearms legal services is also the name to trust for real estate brokerage.**

In his real estate business, Attorney Cohen represents both buyers and sellers. Given his background in firearms law, he is sensitive to the needs of gun owners. He will research the firearms licensing policies of prospective cities and towns before you buy.

