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Legal Research Digest 29

IMPACT OF FIREARMS LAWS ON AIRPORTS

This report was prepared under ACRP Project 11-01, Topic 07-01, "Legal Aspects of Airport Programs," for which the Transportation Research Board (TRB) is the agency coordinating the research. The report was prepared by Larry W. Thomas, The Thomas Law Firm, Washington, DC.

Background

There are over 4,000 airports in the country and most of these airports are owned by governments. A 2003 survey conducted by Airports Council International–North America concluded that city ownership accounts for 38 percent, followed by regional airports at 25 percent, single county at 17 percent, and multi-jurisdictional at 9 percent. Primary legal services to these airports are, in most cases, provided by municipal, county, and state attorneys.

Reports and summaries produced by the Airport Continuing Legal Studies Project and published as ACRP Legal Research Digests are developed to assist these attorneys seeking to deal with the myriad of legal problems encountered during airport development and operations. Such substantive areas as eminent domain, environmental concerns, leasing, contracting, security, insurance, civil rights, and tort liability present cutting-edge legal issues where research is useful and indeed needed. Airport legal research, when conducted through the TRB's legal studies process, either collects primary data that usually are not available elsewhere or performs analysis of existing literature.

Foreword

The right to carry guns at airports is subject to the U.S. Constitution, federal and state legislation, and judicial decisions. Some state laws allow guns to be carried openly

in public places. Most state laws regulate how guns are to be carried in a vehicle or left in a public or an employer's parking lot. These and other state laws also have ramifications for commercial airports in the United States.

The Second Amendment to the Constitution generally provides the parameters of the constitutionally protected right to bear arms. A number of U.S. Supreme Court cases delineate the scope of this constitutional protection. But there also have been federal district and appellate court decisions demonstrating that there is a lack of consensus among the courts on the limits of the constitutional protection of firearms.

All 50 states have enacted statutes that relate to the carriage of guns within their borders. Some states have relaxed their restrictions, particularly on the open carrying of firearms. Other states have increased their restrictions on both the open and concealed carrying of guns. Some states ban the carrying of a firearm anywhere in an airport, whereas many states prohibit localities from enacting laws that regulate the possession of firearms in a manner inconsistent with state law.

The digest analyzes recent court cases on federal and state laws that have been challenged for restricting or prohibiting the carrying of firearms in public and other places. The digest also includes a compendium of federal and state laws that are relevant to the carrying of guns at airports and elsewhere.

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IMPACT OF FIREARMS LAWS ON AIRPORTS

By Larry W. Thomas, The Thomas Law Firm, Washington, DC

INTRODUCTION

There have been several reported instances of a private individual carrying a firearm in an airport terminal or on other airport property.¹ In May 2015, a man carried an AR-15 rifle into the Hartsfield–Jackson Atlanta International Airport when he and his wife took his daughter to the airport. Although questioned by police officers, the individual was not detained, but he was followed by police after he left the terminal and while he was in the airport parking lot.²

In November 2013, there was a deadly incident in California. A 23-year-old man entered a passenger terminal at Los Angeles International Airport (LAX), removed a firearm from his bag, and opened fire on passengers and Transportation Security Administration (TSA) officers.³ The terminal and two others were evacuated, and flights were both delayed and diverted from LAX for the next 6 hours.⁴ After the incident, LAX officials debated whether to increase the number of officers at busy airport checkpoints and whether TSA agents should be armed.⁵

¹ Although state statutes have their own definitions of a firearm, unless otherwise noted, a firearm has the same meaning as in 18 U.S.C. § 921(a)(3) (2015): “(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device.” As discussed herein, some state statutes apply to pistols or handguns, whereas other statutes apply to long guns such as rifles.

² Michael King, *Man Says He Was Harassed While Carrying Gun at Airport*, WXIA-TV ATLANTA (June 3, 2015, 7:13 p.m.), <http://www.11alive.com/story/news/local/2015/06/01/man-says-he-was-harassed-while-carrying-gun-at-airport/28337871>. See also Allison Rodriguez, *Phoenix Police Monitor Man, Child Carrying Rifle, Handgun at Sky Harbor*, ABC 15 ARIZ. (Nov. 4, 2013, 1:47 p.m.), <http://www.abc15.com/news/region-phoenix-metro/central-phoenix/phoenix-police-monitor-man-child-carrying-rifle-handgun-at-sky-harbor>.

³ Dan Weikel et al., *LAX Shooting: Gunman Targeted TSA Officers, Wrote Anti-Government Note*, L.A. TIMES, Nov. 1, 2013, <http://articles.latimes.com/2013/nov/01/local/la-me-ln-lax-shooting-multiple-tsa-agents-shot-by-gunman-with-rifle-20131101>.

⁴ *Id.*

⁵ Kate Mather & Dan Weikel, *LAX Shooting Hearing Focuses on Increasing Armed Patrols*, L.A. TIMES, Mar. 28, 2014, <http://articles.latimes.com/2014/mar/28/local/la-me-ln-by-lax-shooting-hearing-20140328>.

This digest refers to the area subject to the jurisdiction of TSA where passengers and property are screened and where firearms and other weapons and explosive devices are prohibited as the sterile area of an airport.⁶ Nevertheless, in 2014 TSA discovered and confiscated at screening checkpoints 2,212 guns (of which 1,835 were loaded) in carry-on bags, a 22 percent increase from 2013.⁷ Of 224 airports subject to TSA screening, the airports with the largest number of confiscated firearms were Dallas Fort Worth International Airport (120 firearms) and Hartsfield–Jackson Atlanta International Airport (109 firearms).⁸

The digest refers to the area of an airport where firearms may or may not be prohibited by state law or airport regulations as the nonsterile area. The nonsterile part of an airport normally includes areas such as ticketing and baggage claim that are open to unscreened passengers or visitors to the airport.⁹ This digest discusses state laws that apply to an individual who is carrying a firearm from the time the individual departs for an airport until the individual arrives at a security screening check-point at the entry to the sterile area of an airport terminal. If a reader wants to proceed directly to the discussion of state firearms laws that prohibit firearms anywhere in airports, however, the laws are discussed in Section VI.

State firearms laws apply statewide, including airports.¹⁰ As the Dallas Fort Worth International Airport stated in its response to the survey, its state’s laws are not specific to airports, but the laws cover

⁶ See *infra* § XIII.A for a discussion of the sterile area of an airport. See also Andrew Hessick, *The Federalization of Airport Security: Privacy Implications*, 24 WHITTIER L. REV. 43, 51–52 (2002).

⁷ Bob Burns, *TSA 2014 Year In Review*, THE TSA BLOG (Jan. 23, 2015, 7:42 a.m.), <http://blog.tsa.gov/2015/01/tsa-2014-year-in-review.html>. The number of firearms seized in 2014 compares with 1,813 in 2013, 1,556 in 2012, 1,320 in 2011, and 1,123 in 2010. *Id.*

⁸ *Id.*

⁹ See, e.g., GA. CODE ANN. § 16-11-130.2(a) (LexisNexis 2015); WASH. REV. CODE ANN. § 9.41.300(1)(e) (LexisNexis 2015).

¹⁰ Response of Minneapolis–St. Paul International/World–Chamberlain Airport (noting that MINN. STAT. § 624.714 (2015) that regulates the granting of permits to carry a firearm applies to the entire state).

airports.¹¹ It has been asserted that 44 states allow firearms to be carried openly, including in the common and baggage claim areas of airports not subject to passenger screening, and that 40 states do not make it a crime for “lawful carry” in the nonsterile areas of the airport.¹² With some exceptions, however, state statutes are silent on whether firearms may be carried in the nonsterile area of an airport terminal or on other airport property; state statutes typically state where firearms may not be carried. As a consequence, it is necessary to discuss state laws that apply to the carrying of firearms in public, whether openly or concealed, as well as state statutes that apply specifically to the carrying of firearms in airports.

A survey conducted for the digest asked the largest or principal airport or airport authority (airport hereafter) in each state to provide information regarding whether it is lawful in its state for private individuals to carry a firearm in the nonsterile area of an airport or on other airport property.¹³ A copy of the survey, a list of the airports that responded to the survey, and a summary of the airport responses are available on the digest summary Web page as Appendices A, B, and C, respectively, which can be found by searching for ACRP *Legal Research Digest 29* at www.TRB.org. A compendium of relevant state and federal laws for all states, as well as the District of Columbia (although it has no commercial service airport), is available at www.TRB.org as ACRP WOD 29: *Compendium of State and Federal Laws Affecting the Possession of Firearms at Airports*. It is important for anyone using the digest or the appendices to check for amendments to statutes taking effect after 2015. One may now access virtually all state codes, as well as pending bills and legislative reports, without having to subscribe to a legal research service.¹⁴

¹¹ Response of Dallas/Fort–Worth International Airport (citing 95 Tex. Att’y Gen. Op. No. DM-363 (Aug. 30, 1995); 105 Tex. Att’y Gen. Op. No. 95-058 (Sept. 15, 1995); 6 Tex. Att’y Gen. Op. No. JC-0325 (Jan. 5, 2001)).

¹² Mitch Seabaugh, *Pro & Con: Should Congress Trump Georgia’s New Gun Law?*, ATLANTA JOURNAL–CONSTITUTION (June 9, 2010, 8:41 p.m.), <http://www.ajc.com/news/news/opinion/pro-con-should-congress-trump-georgias-new-gun-law/nQgiP>. See also FLORIDA CARRY, *Airport Carry is Legal in 44 States, but Florida will Put You in Jail*, <https://www.floridacarry.org/issues/concealed-and-unconcealed-carry/40-airport-carry-is-legal-in-44-states-but-florida-will-put-you-in-jail> (last visited Dec. 23, 2015).

¹³ The purpose of the survey was to request information from airports. The survey was not meant to be an empirical study.

¹⁴ See, e.g., CALIFORNIA LEGISLATIVE INFORMATION, *available at* <http://leginfo.legislature.ca.gov/faces/codes.xhtml>; ILLINOIS COMPILED STATUTES, *available at* <http://www.ilga.gov/legislation/ilcs/ilcs.asp>; FLORIDA STATUTES, *available at* <http://www.leg.state.fl.us/STATUTES/>.

Section I synthesizes and summarizes the key points and trends based on the research conducted for the digest.

Section II discusses whether there is a constitutional right to carry a firearm, including in an airport, and analyzes recent federal and state cases that have ruled on constitutional challenges to statutes that restrict or prohibit the carrying of firearms in public and other places.

Sections III through V analyze various issues that may arise when an individual, including one who is licensed to carry a firearm or a concealed firearm, carries a firearm to an airport. The digest discusses whether such an individual would be violating state law when carrying a firearm on a public street, sidewalk, highway, or in a motor vehicle; when leaving a firearm in a publicly owned or leased parking facility, including one at an airport; or when carrying a firearm in a government-owned or -leased building.

In addition to discussing laws that prohibit firearms in the sterile area of an airport, Section VI discusses state laws that prohibit individuals from carrying a firearm in the nonsterile area of an airport. The digest analyzes state laws, as well as airport rules and regulations, that ban firearms in airport terminals and in some instances on other airport property, such as parking lots. Section VI also addresses the question of whether a person having a license to carry a concealed firearm may carry a concealed firearm in the nonsterile area of an airport.

Section VII discusses state laws that affect the possession of firearms everywhere, including airports, such as laws that prohibit the possession of a firearm by a person convicted of a felony or other category of serious crimes, by persons under the age of 21 (or 18 in some states), and by persons who are under the influence of alcohol or drugs. Some states prohibit the possession of certain types of firearms.

As discussed in Sections VIII and IX, in most states private businesses of the type that lease space in airports lawfully may prohibit firearms on their premises. Moreover, most states prohibit anyone from carrying a firearm in a bar or restaurant (as defined by statute) that serves alcoholic beverages for consumption on the premises.

Section X analyzes state laws on whether the carrying of a firearm in an airport is a disturbance of the peace or a public nuisance or violates other state laws.

Section XI discusses licenses to carry a firearm, including carrying it openly or in a concealed manner. State laws generally require a current licensee to be in compliance at all times with all conditions required for the issuance of a license. In some states, a violation of a condition results in an automatic revocation of a license. Section XI also explains that numerous states recognize firearms licenses from

other states or permit a designated official such as the state attorney general to enter into reciprocity agreements with other states. Section XII examines the issue of whether state statutes preempt the regulation of firearms by local governments.

Section XIII discusses how law enforcement officers may be able to respond to persons carrying a firearm in an airport.

Section XIV reviews federal statutes that apply to the possession of firearms at airports, including federal laws that prohibit firearms at screening checkpoints and in the sterile area of an airport; TSA's procedures for assessing a civil monetary penalty in an amount up to \$10,000 for each violation; the Federal Flight Deck Officer Program that allows participating pilots to have a firearm in a locked cockpit; the interstate transportation of firearms; and the Undetectable Firearms Act.

Finally, Section XV of the digest discusses whether airports have immunity from a claim for damages that arises out of state laws or airport policies that prohibit a person from carrying a firearm in an airport or on airport property, as well as the potential for a *Bivens* claim or a claim under 42 United States Code (U.S.C.) § 1983 for a violation of an individual's civil rights.

I. SYNTHESIS AND SUMMARY OF KEY POINTS AND TRENDS

There is presently considerable controversy in the United States regarding the meaning of the Second Amendment to the United States Constitution and an individual's right to carry a firearm in public. The tension that exists generally between the advocates of firearms rights and firearms control exists also with regard to airports. There is an absolute necessity to maintain security in air travel and in the nation's airports. Some jurisdictions in the United States lean more toward the right to bear arms, however, while others lean more toward restricting the right to bear arms in certain locations, such as airports.

As explained in Section II of the digest, the United States Constitution, decisions made primarily by the United States Supreme Court, but also by other courts and principally state statutory law, provide a national boundary defining where firearms may or may not be regulated or prohibited. Nevertheless, state legislatures are the ones that may address the many areas that have been left open when deciding whether to prohibit or restrict the possession of firearms. Although what an airport may do legally varies from state to state, there are actions that states may take that are fairly universal, subject to any restrictions grounded in the Second Amendment. Most regulation of firearms, in fact, occurs at the

state level. Notwithstanding a wide variance in state firearms laws, there are some recognizable trends, as well as areas of the law that currently are reasonably well-established.

The issue of whether there is a right to carry a firearm in the nonsterile area of an airport presumably arises because in at least 31 states a person, who otherwise is entitled to possess a firearm legally, may carry a handgun openly without a license or permit. Although the digest provides more details, five states and the District of Columbia ban the open carrying of a handgun, and six states ban the open carrying of long guns as defined by state law. Fifteen states require that a person have a license to carry a firearm openly. Unless restricted by statute, state firearms laws apply statewide, including at airports. Most states ban the possession of firearms by certain persons, such as those who are underage, usually under the age of 21, or those who have been convicted of a felony. Several states ban certain kinds of firearms, such as machine guns or high-capacity magazines. Virtually every state allows a person who meets the conditions imposed by a state licensing statute to obtain a license to carry a concealed weapon. Many states have established procedures for the recognition of out-of-state firearms licenses or permits.

As for what airports and airport authorities may do legally to prohibit or restrict the possession of firearms in airports, the Supreme Court has not provided much guidance. The Court has held that there is a right to have an accessible, operable firearm in the home, but the Court has left many other questions unanswered. One unanswered question is whether an airport is a "sensitive place" where firearms may be restricted or even prohibited entirely. The digest discusses two lower court decisions in which the courts stated that an airport is a sensitive place.

For airports wanting to prevent the carrying of firearms in their airport, their first line of defense may to cooperate closely with local law enforcement authorities to enforce state laws that apply to the many ways that travelers and visitors arrive at an airport. In some states, individuals carrying a firearm when arriving at an airport on a particular mode of transportation (e.g., public transportation) may be violating state law. When a motorist transports a firearm by motor vehicle to an airport or airport parking lot, the manner in which the firearm is being transported may violate the law of some states. For example, an individual may violate state law by removing a firearm from a motor vehicle in an airport parking lot (or other public or private parking lot) or by displaying or brandishing the firearm. In some states, firearms are banned in publicly owned parking lots. Under many states' statutes,

owners or operators of publicly owned or privately owned parking lots may post a conspicuous sign banning firearms in motor vehicles in a parking lot. Thus, airports and law enforcement agencies may prevent or discourage individuals from carrying a firearm in an airport unless it is encased for shipment by enforcing existing state laws that prohibit or restrict the carrying of firearms on public ways, on public transportation, or in motor vehicles.

Insofar as airport terminals are concerned, federal laws and regulations and some state statutes prohibit the possession of firearms by private individuals or other unauthorized persons in the sterile area of an airport. No federal or state court has held, however, that a state legislature may not prohibit individuals from possessing firearms in airports. Indeed, at least 11 states already prohibit the possession of firearms anywhere in airport terminals, including areas reserved for ticketing and baggage claim. A few states extend the prohibition to other airport property. Some states ban the possession of concealed firearms in airports. At least one airport in 12 states has adopted a policy or rule banning firearms in the airport. Although one court rejected a challenge to an airport's gun-free zone policy, the court's decision was based on statutory interpretation rather than the Second Amendment. It is suggested that an airport authority or operator consult legal counsel prior to adopting a policy or rule banning firearms in the airport.

Also of interest to airports is that some states prohibit firearms in publicly owned or leased buildings or permit municipalities or other government entities to post signs prohibiting firearms in public buildings. Some airports that responded to the survey for this digest stated that they had acted in accordance with their state's statute when they posted a notice banning firearms in their airports. In some states, a person having a license to carry a concealed firearm may be prohibited from carrying a concealed firearm in a public building, whereas in other states a license may be required to possess a firearm in a public building.

Other laws of interest to airports with regard to the possession of firearms are even more widespread. State laws generally prohibit certain persons from possessing a firearm anywhere, such as individuals who have been convicted of a felony or other serious crime, persons who are underage, and persons who are under the influence of illegal drugs or alcohol.

It is particularly noteworthy that most states permit private establishments of the type that lease space in airports to post conspicuous signage prohibiting firearms on their premises. As discussed in the digest, one jurist on the United States Court of

Appeals for the Seventh Circuit has suggested that laws banning the carrying of firearms in public would be less important if more private establishments and institutions were to ban firearms on their premises. Moreover, state laws generally prohibit the possession of firearms in bars and restaurants, as may be defined under some states' statutes, where alcohol is consumed on the premises.

Airports may want to examine their state's law that prohibits a disturbance of the peace or review similar laws that exist in their state. Breach of the peace laws vary widely from state to state. For example, although one person carrying a firearm into an airport terminal may not be violating state law, possibly there would be a violation of state law if two or more persons were to do so, thereby causing travelers and other airport visitors to become alarmed about their safety. Another example is that in some states if a person removes a firearm from a motor vehicle in an airport parking lot and displays or brandishes the firearm, the person's action may violate state law. Moreover, if an individual displays a firearm in a threatening manner anywhere, the display likely violates state law. Whether there is a violation of a breach of the peace law depends on the language and meaning of the state statute and the attendant circumstances when a violation allegedly occurred.

As for state-issued licenses to carry a firearm openly or in a concealed manner, licensing statutes impose conditions that must be met for the granting of a license. In some states, the conditions are quite numerous. Airports will want to be aware that a licensee must be in compliance with all conditions on which a state granted an individual a license to carry a firearm openly or in a concealed manner. In a few states, a violation of a condition on which a person's license was issued results in an immediate revocation of the license.

As for the regulation of firearms by localities, local regulation usually is preempted by state legislation. Thus, in most states, localities may not enact firearms laws that conflict with state law. As discussed in the digest, however, there are exceptions in some states.

It appears to be well settled that federal law may prohibit firearms at security screening checkpoints in airports and in the sterile area of airports. As for whether an airport would be liable under 42 U.S.C. § 1983 for prohibiting a person from possessing a firearm in the nonsterile area of the airport, a § 1983 action against an airport likely would be unsuccessful for several reasons. Most important, however, is that the Supreme Court has not held that a person has a constitutional right to carry a firearm anywhere in an airport. Liability under § 1983 is improbable when an

airport's decision to prohibit the possession of firearms in the airport does not contravene a clearly established constitutional right.

II. FEDERAL CONSTITUTIONAL RIGHT TO BEAR ARMS AND RECENT CASES

A. The United States Supreme Court's Decision in *District of Columbia v. Heller*

An analysis of the states' authority to restrict or prohibit an individual's possession of a firearm in an airport must begin with the nonairport-related decision in 2008 by the United States Supreme Court in *District of Columbia v. Heller*.¹⁵ In *Heller*, the Court invalidated District of Columbia gun control laws on the ground that they violated the Second Amendment to the United States Constitution.¹⁶

1. A New but Limited Constitutional Right?

In *Heller*, although there were some exceptions to the District of Columbia laws at issue, the laws completely prohibited the carrying of handguns in the District. Although the chief of police could issue a license for 1-year periods, the laws criminalized the carrying of a handgun without a license. Residents had to keep their lawfully owned firearms, such as registered long guns, "unloaded and disassembled or bound by a trigger lock or similar device" unless they were located in a place of business or in use for lawful recreational activities.¹⁷

In a 5–4 decision, the Court held that the District's laws violated the Second Amendment because the District had banned handgun possession in the home completely and, moreover, required that any lawful firearm in the home had to be disassembled or bound by a trigger lock at all times, thereby rendering it inoperable.¹⁸ The Court held that the Constitution protects an individual's right to keep and bear arms in the home for self-defense; thus, the District of Columbia had to permit Heller to register

¹⁵ 554 U.S. 570, 628 (2008).

¹⁶ D.C. CODE §§ 7-2501.01(12), 7-2502.01(a), 7-2502.02(a) (4) (LexisNexis 2001). No one could carry a handgun without a license, but the chief of police could issue licenses for 1-year periods. D.C. CODE §§ 22-4504(a), 22-4506 (LexisNexis 2001).

¹⁷ D.C. CODE § 7-2507.02(a) (LexisNexis 2001). See George A. Nation, *The New Constitutional Right to Guns: Exploring the Illegitimate Birth and Acceptable Limitations of this New Right*, 40 RUTGERS L.J. 353, 355 (2009) (footnotes omitted).

¹⁸ Brian Shupak, *Annual New York State Constitutional Issue: Second Amendment: Supreme Court of New York Appellate Division, Third Department*, 26 Touro L. Rev. 787, 789 (2010) (citing *Heller*, 554 U.S. at 635–36).

his handgun and to issue a license to him to carry it in his home.¹⁹

Although there is precedent that "the Second Amendment...was intended to address the distribution of military power in society, not the need to have guns for self-defense or other private purposes,"²⁰ the *Heller* Court's interpretation of the Second Amendment "is not limited to a military context."²¹ In contrast, in 1939, a unanimous Court in *United States v. Miller*²² held "that the 'obvious purpose' of the guarantee of the people's right to 'keep and bear Arms' was 'to assure the continuation and render possible the effectiveness' of state militia forces[] and that the Amendment 'must be interpreted and applied with that end in view.'"²³

It has been argued that by eliminating any military nexus in the Second Amendment to firearm possession, the *Heller* Court created "a new Constitutional right to be armed";²⁴ more specifically, "a constitutional right to have and use a gun for self-defense, at least in the home."²⁵ In *McDonald v. Chicago* in 2010,²⁶ the Court held that its decision in *Heller* applies to the states.

2. Confrontation Outside the Home and the Right To Be Armed

As held in *Heller*, there is a constitutional right to have a gun in the home because one may confront someone with the intent to do harm and need a firearm for self-defense. Since the *Heller* decision, there is still an issue of whether and the extent to which one has a right to carry a firearm in various places outside the home where there could be a confrontation that possibly necessitates a firearm for self-defense.²⁷ In *Heller*, writing for a majority of the Court, Justice Scalia stated that

¹⁹ *Heller*, 554 U.S. at 635. See Matthew Bridge, *Exit, Pursued by a "Bear"? New York City's Handgun Laws in the Wake of Heller and McDonald*, 46 COLUM. J.L. & SOC. PROBS. 145, 148 (2012) (footnote omitted).

²⁰ Dennis A. Henigan, *The Second Amendment and the Right to Bear Arms After D.C. v. Heller: The Heller Paradox*, 56 UCLA L. REV. 1171, 1173 (2009) (citations omitted).

²¹ Nation, *supra* note 17, at 358 (footnote omitted).

²² 307 U.S. 174 (1939).

²³ Henigan, *supra* note 20, at 1173 (quoting *Miller*, 307 U.S. at 178).

²⁴ *Id.* at 1175.

²⁵ Nation, *supra* note 17, at 399.

²⁶ 561 U.S. 742, 791 (2010) (striking down bans on the possession of handguns by Chicago and Oak Park, Illinois).

²⁷ Henigan, *supra* note 20, at 1198 (arguing that the *Heller* case could be construed to mean that an individual has a constitutional right to carry a weapon to be ready for a confrontation in any situation).

[a]lthough we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.²⁸

Justice Scalia’s discussion of gun control laws and their continued viability supports the view that a majority of the justices deciding the *Heller* case believed that “the right to possess handguns in the home is materially different” than in other places.²⁹ Although the Second Amendment now means that an individual has a right to a firearm “in defense of hearth and home,” the opinion in *Heller* provides “little guidance on restrictions regarding the possession of handguns outside the home, or on the types of firearms (other than handguns) that are constitutionally protected.”³⁰

B. Whether Gun Control Laws Are Presumptively Constitutional

Based on Justice Scalia’s discussion of the Second Amendment and gun control laws, it appears that such laws presently are “presumptively lawful.”³¹ The Court in *Heller* neither states that there is a right to keep and carry any weapon in any manner for any purpose, nor “read[s] the Second Amendment to protect the right of citizens to carry arms for any sort of confrontation.”³²

Another reason that laws regulating the ownership and possession of firearms may withstand constitutional challenges is that the opinion in *Heller* did not apply a standard of strict scrutiny to the District of Columbia laws under review or imply that the standard of strict scrutiny applies to other gun control laws that the opinion noted.³³ If the judicial test of strict scrutiny were to be applied, it would be more difficult for a gun control law or regulation to survive a Second Amendment challenge: “The strict scrutiny test traditionally requires that laws infringing upon certain core rights be justified by a ‘compelling’ government interest that is furthered by ‘narrowly tailored’ means—*i.e.*, means that are no more restrictive than necessary to achieve the

²⁸ *D.C. v. Heller*, 554 U.S. 570, 627 (2008) (footnote omitted) (emphasis added).

²⁹ Henigan, *supra* note 20, at 1177 (citing *Heller*, 554 U.S. at 577–78); *Id.* at 1198.

³⁰ Bridge, *supra* note 19, at 149 (citation omitted) (internal quotation marks omitted).

³¹ Henigan, *supra* note 20, at 1195 (quoting *Heller*, 554 U.S. at 626).

³² Nation, *supra* note 17, at 406 (footnotes omitted).

³³ *Id.* at 403 (footnote omitted).

government interest.”³⁴ Likewise, state supreme courts when deciding cases requiring a constitutional analysis of laws regulating firearms “have consistently applied a ‘reasonable regulation’ standard that...is deferential to the government.”³⁵

A decision in June 2015 by the Ninth Circuit in *Jackson v. City of San Francisco*,³⁶ however, created, in the words of Justice Thomas, a certain “tension” with the Court’s opinion in *Heller*. In *Jackson*, the Ninth Circuit affirmed a district court’s denial of a preliminary injunction in a case in which six San Francisco residents who keep handguns in their homes challenged Section 4512 of the San Francisco Police Code.³⁷ Section 4512 states:

No person shall keep a handgun within a residence owned or controlled by that person unless...the handgun is stored in a locked container or disabled with a trigger lock that has been approved by the California Department of Justice... [and] [t]he handgun is carried on the person of an individual over the age of 18 [or] under the control of a person who is a peace officer under [California law].³⁸

The Ninth Circuit held that the San Francisco law served “a significant government interest by reducing the number of gun-related injuries and deaths from having an unlocked handgun in the home” and was “substantially related” to that interest.³⁹

The Supreme Court’s denial of a petition for a writ of certiorari prompted Justice Thomas to write a dissent in which he was joined by Justice Scalia. Justice Thomas stated that the Ninth Circuit in *Jackson* “readily acknowledged that § 4512 ‘burdens the core of the Second Amendment right’” because “[h]aving to retrieve handguns from locked containers or removing trigger locks makes it more difficult ‘for citizens to use them for the core lawful purpose of self-defense’ in the home.”⁴⁰ The Justice argued that the Court should have granted the petition because the Ninth Circuit’s decision was “in serious tension with *Heller*.”⁴¹ Justice Thomas further argued that the law burdens the petitioners’ right to self-defense when they are the most vulnerable, such as “when they are sleeping, bathing, changing clothes, or otherwise indisposed.”⁴² Although

³⁴ Adam Winkler, *Scrutinizing the Second Amendment*, 105 MICH. L. REV. 683, 691 (2007).

³⁵ Nation, *supra* note 17, at 404 (citing Winkler, *supra* note 34, at 717–18).

³⁶ 135 S. Ct. 2799, 2800 (2015) (Thomas, J., dissenting).

³⁷ See *Jackson v. City of S.F.*, 746 F.3d 953 (9th Cir. 2014), *cert. denied*, 135 S. Ct. 2799 (2015).

³⁸ S.F. POLICE CODE, art. 45, §§ 4512(a), (c) (2015).

³⁹ *Jackson*, 746 F.3d at 966.

⁴⁰ *Jackson*, 135 S. Ct. at 2800 (Thomas, J., dissenting) (quoting *Jackson*, 746 F.3d at 953).

⁴¹ *Id.* at 2800 (Thomas, J., dissenting).

⁴² *Id.*

not stating that the Ninth Circuit should have applied a standard of review other than the one of intermediate scrutiny, Justice Thomas wrote that “when a law burdens a constitutionally protected right, we have generally required a higher showing than the Court of Appeals demanded here.”⁴³

Justice Thomas, joined by Justice Scalia, dissented again when on December 7, 2015, the Court denied a petition for a writ of certiorari in *Friedman v. City of Highland Park*.⁴⁴ In *Friedman*, the Seventh Circuit “upheld categorical bans” by the City on assault weapons, as defined in the Highland Park city ordinance at issue, and on large capacity magazines that held more than 10 rounds of ammunition.⁴⁵ The Seventh Circuit observed that two circuit courts of appeals “have applied a version of ‘intermediate scrutiny’ and sustained limits on assault weapons and large capacity magazines.”⁴⁶ The appeals court stated that the Supreme Court in the *Heller* and *McDonald* cases had set limits on the regulation of firearms, but that within those limits the Court had left “matters open.”⁴⁷ Thus, in a 2–1 decision the Seventh Circuit upheld the constitutionality of the ordinance, because “when there is no definitive constitutional rule, matters are left to the legislative process.”⁴⁸

C. Recent Cases Deciding the Constitutionality of Firearms Laws

The gun control laws that are likely to pass constitutional muster appear to include laws that impose conditions for or restrictions on the commercial sale of firearms; prohibitions on the possession of guns by felons and the mentally ill; prohibitions on the carrying of concealed weapons; bans on dangerous and unusual weapons, such as machine guns and assault weapons; and laws forbidding the carrying of firearms in sensitive places, such as schools and government buildings.⁴⁹ If so, “the ultimate effect” of the *Heller* case may be limited.⁵⁰ Indeed, although there are some exceptions as discussed in Subsection D, other post-*Heller* decisions reviewed for the digest have upheld gun control laws that

were challenged. In addition to the Ninth Circuit’s decision in *Jackson*, other federal circuit courts of appeals, including the First, Second, Fourth, and Seventh Circuits, as well as federal district courts in California, Connecticut, Illinois, Maryland, Massachusetts, and Pennsylvania, have upheld federal or state gun control laws. Several state courts similarly have upheld state gun control laws against constitutional challenges.

In 2009, the First Circuit held that 18 U.S.C. § 922(a)(2)(A), which bans the possession of handguns by juveniles, was not unconstitutional based on the Court’s decision in *Heller*.⁵¹ The court held that the law is consistent with the Second Amendment and cited the longstanding government tradition of prohibiting the possession of handguns by minors.⁵² A year later, the Supreme Court of Washington upheld a Washington state law that limits when minors may possess a firearm.⁵³

In a case affirmed by the First Circuit, a federal district court in Massachusetts held that a Massachusetts law that requires individuals to have a firearm identification card and a license to carry does not violate the Second Amendment.⁵⁴ Similarly, although located in another federal circuit, a federal district court in Illinois held that an Illinois statute that requires gun owners to register their firearms is constitutional.⁵⁵ The court held that the government has a legitimate interest in having information about individuals who possess firearms in its jurisdiction.⁵⁶

The Second Circuit held that a New York City law requiring individuals to pay \$340 for a handgun license does not violate the Second Amendment.⁵⁷ The court stated that the fee is intended to reduce the administrative costs associated with obtaining a license and is not prohibitively expensive.⁵⁸ In another case decided by the Second Circuit, the court held that a New York statute requiring applicants to demonstrate “proper cause” for a license for a concealed weapon does not violate the Second Amendment as interpreted by the

⁵¹ *United States v. Rene E.*, 583 F.3d 8, 12 (1st Cir. 2009).

⁵² *Id.* at 16.

⁵³ *State v. Sieyes*, 225 P.3d 995, 1003, 1005 (Wash. 2010). The court also held that the Second Amendment applies to the states through the due process clause of the Fourteenth Amendment. *Id.*

⁵⁴ *Powell v. Tompkins*, 926 F. Supp. 2d 367, 380 (D. Mass. 2013), *aff’d*, 783 F.3d 332 (1st Cir. 2015). The defendant did not allege that the licensing statute was arbitrary or capricious. *Id.* at 379.

⁵⁵ *Justice v. Town of Cicero*, 827 F. Supp. 2d 835, 846 (N.D. Ill. 2011).

⁵⁶ *Id.*

⁵⁷ *Kwong v. Bloomberg*, 723 F.3d 160, 165 (2d Cir. 2013).

⁵⁸ *Id.* at 166–69.

⁴³ *Id.* (citations omitted).

⁴⁴ 136 S. Ct. 447 (2015).

⁴⁵ See *Friedman v. City of Highland Park*, 784 F.3d 406 (7th Cir. 2015), *cert. denied*, 136 S. Ct. 447 (2015).

⁴⁶ See *id.* at 410. The ordinance defined the term “assault weapon” to be any semi-automatic weapon that can accept a large capacity magazine and that has one of five other features. *Id.* at 407.

⁴⁷ *Id.* at 412.

⁴⁸ *Id.* at 412 (citation omitted) (Manion, J., dissenting).

⁴⁹ Henigan, *supra* note 20, at 1195 (quoting *Heller*, 554 U.S. at 626–27) (internal quotation marks omitted).

⁵⁰ Nation, *supra* note 17, at 417.

Heller Court.⁵⁹ The Fourth Circuit in *United States v. Carpio-Leon*⁶⁰ upheld the constitutionality of 18 U.S.C. § 922(g)(5), which bans the possession of a firearm by an illegal alien.⁶¹ The court held that the Second Amendment does not protect individuals who are in the United States unlawfully because they are not law-abiding members of the community, and prohibiting illegal aliens' possession of firearms is rationally related to the congressional interest in public safety.⁶²

The Seventh Circuit in *Friedman* upheld a city ordinance banning assault weapons and high capacity magazines.⁶³

The courts in several other cases have upheld laws prohibiting the possession of certain weapons. In 2009, a federal district court in Connecticut held that a Connecticut law banning individuals from owning certain semiautomatic firearms is constitutional.⁶⁴ The court found that Connecticut's ban on the ownership of certain firearms is substantially related to Connecticut's objectives of crime prevention and public safety.⁶⁵ In addition, in 2009 a federal district court in Pennsylvania held that 18 U.S.C. § 922(k), which criminalizes the knowing possession of a firearm with an obliterated serial number, does not violate the Second Amendment.⁶⁶ The court stated that nothing in the *Heller* opinion compelled the court to find the statute unconstitutional and that the statutory restriction only burdens those who have an interest in owning a firearm that cannot be traced.⁶⁷

In 2014, a California appellate court held that a California statute banning the possession of a short-barreled shotgun did not violate the Constitution.⁶⁸ The court stated that short-barreled shotguns have been used historically for criminal purposes in California; therefore, firearms of that type are not entitled to Second Amendment protection.⁶⁹ In addition, in 2014 a federal district court in Maryland upheld the constitutionality of a Maryland law that restricts

the possession of certain assault weapons and large-capacity magazines.⁷⁰ The court explained that Maryland has important interests in public safety and crime prevention that are reasonably related to the statute.⁷¹

In other cases, lower courts have dismissed cases challenging gun control laws banning firearms that come within the "list of *Heller*-endorsed exceptions," such as schools (e.g., the Gun Free School Zone Act), post offices, and "sensitive places" as discussed in Section II.E.⁷²

There are cases in which firearms laws were held to be unconstitutional. In *Fletcher v. Haas*,⁷³ the issue was whether lawful permanent resident aliens come within the ambit of the Second Amendment's right of "the people." Under Massachusetts law, anyone in the state wanting to own, possess, or purchase a firearm, rifle, or shotgun must obtain a permit.⁷⁴ The permit card may be in the form of a firearms identification card that allows a licensee to own and possess "non-large capacity" shotguns and rifles. The identification card may also take the form of a license to carry that "permits ownership and possession of a broader selection of weapons, including certain firearms."⁷⁵ Lawfully admitted aliens residing in Massachusetts were treated differently. They could obtain a permit allowing them to own or possess a rifle or shotgun, but not a firearm such as a pistol or revolver.⁷⁶ The plaintiffs applied for but were denied a license to possess a firearm in their home for "immediate self-defense purposes."⁷⁷

As the court framed the issue, "[t]he crux of this case is whether the Massachusetts firearms regulatory regime, as applied to the plaintiffs Fletcher and Pryal, violates the Second Amendment or the Equal Protection [C]ause of the Fourteenth Amendment."⁷⁸ The court observed that several courts have held in cases arising under 18 U.S.C. § 923(g)(5), described by the court as "part of the federal equivalent to the Massachusetts firearms regulatory regime," that illegal aliens are embraced by the Second Amendment.⁷⁹ Although illegal aliens are not part of "the people" under the Second Amendment, the court

⁵⁹ *Kachalsky v. Cnty. of Westchester*, 701 F.3d 81, 93–94 (2d Cir. 2012).

⁶⁰ 701 F.3d 974 (4th Cir. 2012).

⁶¹ *Id.* at 982.

⁶² *Id.* at 981–82.

⁶³ *Friedman v. City of Highland Park*, 784 F.3d 406, 412 (7th Cir. 2015).

⁶⁴ *Shew v. Malloy*, 994 F. Supp. 2d 234, 250 (D. Conn. 2014).

⁶⁵ *Id.*

⁶⁶ *United States v. Marzarella*, 595 F. Supp. 2d 596 (W.D. Penn. 2009).

⁶⁷ *Id.* at 606.

⁶⁸ *People v. Brown*, 173 Cal. Rptr. 3d 812, 825 (Cal. App. 4th 2014).

⁶⁹ *Id.* at 823–25.

⁷⁰ *Kolbe v. O'Malley*, 42 F. Supp. 3d 768 (D. Md. 2014).

⁷¹ *Id.* at 797.

⁷² Caroline L. Moran, Note, *Under the Gun: Will States' One Gun-Per-Month Laws Pass Constitutional Muster After Heller and McDonald?*, 38 SETON HALL LEGIS. J. 163, 175 (2013).

⁷³ F851 F. Supp. 2d 287 (D. Mass. 2012).

⁷⁴ *Id.* at 289–90.

⁷⁵ *Id.* at 289.

⁷⁶ *Id.* at 289 & n.2.

⁷⁷ *Id.* at 290.

⁷⁸ *Id.* at 291.

⁷⁹ *Id.* at 300 & n.18.

held that there was no basis for concluding that the Second Amendment did not “extend...to lawful permanent residents.”⁸⁰ One reason for the inclusion of lawful permanent resident aliens is that denying Second Amendment rights to them “would present state equal protection problems subject to strict scrutiny.”⁸¹ Although the court held that the Second Amendment applies to lawful permanent resident aliens, the court did not decide whether the Second Amendment applies to all lawfully admitted aliens.⁸²

In deciding whether the Massachusetts firearms law at issue violated the Second Amendment, the court held, first, that the test of intermediate scrutiny is the one that applies.⁸³ Nevertheless, there is at least one situation in which the test of strict scrutiny applies: “any law that would burden the ‘fundamental,’ core right of self-defense in the home by a law-abiding citizen....”⁸⁴ The court explained that

[u]nder intermediate scrutiny, defendants must show that the Massachusetts firearms regime is supported by some form of strong showing, necessitating a substantial relationship between the restriction and an important governmental objective.... And strict scrutiny is even more demanding, requiring evidence that the law furthers a compelling interest and is narrowly tailored to achieve that interest....⁸⁵

The court held, however, that “[t]he Massachusetts firearms regulatory regime, as applied to Fletcher and Pryal, does not pass constitutional muster regardless of whether intermediate scrutiny or strict scrutiny applies.”⁸⁶ Finally, the court ruled that 18 U.S.C. § 927 did not preempt the Massachusetts firearms laws.

⁸⁰ *Id.* at 301.

⁸¹ *Id.* (citation omitted).

⁸² *Id.* at 301–02.

⁸³ *Id.* at 302 (citing *United States v. Staten*, 666 F.3d 154, 162–63 (4th Cir. 2011) (upholding 18 U.S.C. § 922(g)(9) under intermediate scrutiny), *United States v. Chester*, 628 F.3d 673, 683 (4th Cir. 2010) (applying intermediate scrutiny but holding that the government failed to carry its burden to establish a reasonable fit), and *United States v. Reese*, 627 F.3d 792, 802 (10th Cir. 2010) (applying intermediate scrutiny under Second Amendment to 18 U.S.C. § 922(g)(8)). The court in *Fletcher* noted that courts also have applied intermediate scrutiny to prohibitions on gun possession outside the home. *Fletcher*, 851 F. Supp. 2d at 302–03 (citing *United States v. Masciandaro*, 638 F.3d 458, 471 (4th Cir. 2011) (applying intermediate scrutiny to ban on gun possession in national parks), as well as to laws prohibiting possession of certain firearms), and *Marzzarella*, 614 F.3d at 97 (applying intermediate scrutiny to ban on possession of firearms with obliterated serial number)).

⁸⁴ *Fletcher*, 851 F. Supp. 2d at 303 (citation omitted) (some internal quotation marks omitted).

⁸⁵ *Id.* (citations omitted) (internal quotation marks omitted).

⁸⁶ *Id.*

Since the *Heller* decision, federal district courts in Maryland and California and the Fourth and Ninth Circuits have reached different conclusions on whether state statutes in California and Maryland imposed unconstitutional conditions on obtaining a permit to carry a concealed firearm.⁸⁷ There has also been a split in the state courts over whether stun guns are protected by the Second Amendment. In 2012 and 2014, two courts ruled that stun guns are protected,⁸⁸ but in 2015 the Supreme Judicial Court of Massachusetts held in *Commonwealth v. Caetano*⁸⁹ that stun guns are not protected by the Second Amendment.

Second Amendment challenges persist, however. Most recently, as discussed in Section II.F, the District of Columbia Circuit held that some of the District’s post-*Heller* revised firearms laws were constitutional, but that others could not be shown to be necessary for the advancement of public safety and, therefore, were unconstitutional under an intermediate level of scrutiny.

D. Whether It Is Constitutional to Ban the Open Carrying of Firearms

There are cases holding that an absolute ban on carrying a firearm outside the home violates the Second Amendment. In 2012, in *Moore v. Madigan*,⁹⁰ the Seventh Circuit in an opinion by Judge Richard Posner invalidated an Illinois law that forbid “a person, with exceptions mainly for police and other security personnel, hunters, and members of target shooting clubs...to carry a gun ready to use (loaded, immediately accessible—that is, easy to reach—and uncased).”⁹¹ The statute also prohibited the carrying of an “unloaded gun in public, if it’s uncased and immediately accessible... other than [by] police and other excepted persons, unless carried openly outside a vehicle in an

⁸⁷ See *Woollard v. Gallagher*, 712 F.3d 865 (4th Cir. 2013) (holding that the “good-and-substantial-reason requirement” for a handgun permit was constitutional under the Second Amendment as applied to *Woollard*); *Richards v. Prieto*, 560 F. App’x 681, 682 (9th Cir. 2012) (holding that Yolo County’s policy for issuing concealed carry permits impermissibly infringes on the Second Amendment right to bear arms in lawful self-defense).

⁸⁸ *State v. DeCiccio*, 105 A.3d 165 (Conn. 2014); *People v. Yanna*, 824 N.W.2d 241 (Mich. Ct. App. 2012).

⁸⁹ 470 Mass. 774, 26 N.E.3d 688 (Mass. 2015), *vacated per curiam*, No. 14-10078, 2016 U.S. LEXIS 1862 (2016).

⁹⁰ 702 F.3d 933 (7th Cir. 2012).

⁹¹ *Moore*, 702 F.3d at 934 (citing 720 ILL. COMP. STAT. ANN. 5/24-2 LexisNexis 2015). There are exceptions for a person in his or her own home (owned or rented), in his or her fixed place of business, or on the property of someone who has permitted him or her to be there with a ready-to-use gun. See *id.* (citing 720 ILL. COMP. STAT. ANN. 5/24-1(a) (4), (10), and 1.6(a) (LexisNexis 2015)).

unincorporated area and ammunition for the gun is not immediately accessible.”⁹²

In striking down the law largely on the basis of the Supreme Court’s decision in *Heller*, the appeals court stated that it could not “ignore the implication” in *Heller* “that the constitutional right of armed self-defense is broader than the right to have a gun in one’s home.”⁹³ On the other hand, the court stated that it is

not clear in what places public authorities may ban firearms altogether without shouldering the burdens of litigation. The notion that self-defense has to take place wherever [a] person happens to be[] appears to us to portend all sorts of litigation over schools, airports, parks, public thoroughfares, and various additional government facilities....⁹⁴

According to the court, although the need for self-defense may be most acute in the home, it may not be assumed that self-defense is not also acute outside the home.⁹⁵ The court stated that since *Heller*, the constitutionality of banning firearms in places other than the home is completely unresolved. Judge Posner quoted a Fourth Circuit opinion in which the court lamented that “there may or may not be a Second Amendment right in some places beyond the home, but we have no idea what those places are, what the criteria for selecting them should be, what sliding scales of scrutiny might apply to them, or any one of a number of questions.”⁹⁶ Judge Posner’s court was persuaded, however, by the fact that Illinois was “the only state that maintains a flat ban on carrying ready-to-use guns outside the home....”⁹⁷

In the context of the court’s statement that a proper balance is required, Judge Posner highlighted with approval the Second Circuit’s decision in *Kachalsky v. County of Westchester*,⁹⁸ in which the court “upheld a New York law that requires an applicant for a permit to carry a concealed handgun in public to demonstrate ‘proper cause’ to obtain a license.”⁹⁹ The proper cause requirement means that an applicant for a concealed carry license in New York “must demonstrate a need for self-defense

greater than that of the general public, such as being the target of personal threats....”¹⁰⁰

Unlike the approach of the District of Columbia Circuit in *Heller III*, discussed in Section II.F, in which the court allowed the consideration of expert testimony, the Seventh Circuit in *Moore* stated that the constitutionality of the Illinois law did not involve factual questions for determination. Only “legislative facts” were relevant;¹⁰¹ however, the key legislative facts that the state needed but failed to show were that the effects of the Illinois statute were positive.¹⁰²

Accordingly, the court held that the Illinois statute was unconstitutional, but stayed the decision for 180 days to allow the legislature “to craft a new gun law that will impose reasonable limitations, consistent with the public safety and the Second Amendment....”¹⁰³

A second case, one involving the constitutionality of a Florida statute banning the open carrying of firearms in public, is *Norman v. State*.¹⁰⁴ Norman was arrested and charged with carrying a firearm in its holster that was completely exposed to public view. Section 790.053 of the Florida Statutes prohibits the open carrying of loaded or unloaded handguns in most public areas.¹⁰⁵ Although the statute does not provide for the issuance of a permit to carry a firearm,¹⁰⁶ pursuant to Section 790.06(2) of the Florida Statutes, if an applicant meets the statutory conditions for a license, the designated state office is required to issue a license to carry a concealed weapon.¹⁰⁷

In *Norman*, the court stated that its determination of the law’s constitutionality depended on 1) how close the law comes to the core of the Second Amendment right of self-defense and 2) the severity of the law’s burden on the right.¹⁰⁸ A law is unconstitutional if it imposes such a severe restriction on the core right of self-defense that it amounts to a destruction of the Second Amendment right.¹⁰⁹ Therefore, clearly “a total ban on the public carrying of ready-to-use handguns outside the home cannot survive a constitutional challenge under any level of scrutiny.”¹¹⁰ The court stated, however, that the Second Amendment is subject to “traditional restrictions”

⁹² *Moore*, 702 F.3d at 934 (citation omitted).

⁹³ *Id.* at 935.

⁹⁴ *Id.* at 942 (citation omitted) (emphasis added) (internal quotation marks omitted). Although the court stayed its decision for 180 days to permit the legislature to “to craft a new gun law” with “reasonable limitations,” the court held that the Illinois statute at issue “imposed limits that went ‘too far.’” *Id.*

⁹⁵ *Id.* at 935.

⁹⁶ *Id.* at 942 (citation omitted).

⁹⁷ *Id.* at 940 (citations omitted).

⁹⁸ 701 F.3d 81 (2d Cir. 2012).

⁹⁹ *Moore*, 702 F.3d at 941.

¹⁰⁰ *Id.* (citation omitted).

¹⁰¹ *Id.* at 942.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ 159 So. 3d 205 (Fla. Dist. Ct. App. 2015).

¹⁰⁵ *Id.* at 215.

¹⁰⁶ *Id.* at 217.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 209 (citation omitted) (quotation marks omitted).

¹⁰⁹ *Id.* (citation omitted) (quotation marks omitted).

¹¹⁰ *Id.* at 212.

that reveal the scope of the right.¹¹¹ Based on the number of concealed carry licenses that Florida had issued, the court found that the Florida “licensing statute does not effectively act as an exclusionary bar to the right to bear arms in lawful self-defense outside the home.”¹¹² Thus, the state’s ban on open carry does not infringe on the “central component” of the right of self-defense.¹¹³

As for whether to apply a test of intermediate or strict scrutiny, the court analyzed other decisions and held that intermediate scrutiny is the proper standard.¹¹⁴ The state had demonstrated that its interest in public safety is a compelling reason for banning open carry and that there is a “reasonable fit” between the statute and the legislature’s objectives.¹¹⁵ As for the right to carry a firearm outside the home, the court stated that “no decision interpreting the Second Amendment can be cited for the proposition that a state must allow for one form of carry over another.”¹¹⁶

Thus, the court in *Norman*, although recognizing recent cases stating that “the right to bear arms does encompass the right to carry a gun outside the home,”¹¹⁷ upheld Section 790.053 of the Florida Statutes that generally prohibits the open carrying of firearms.¹¹⁸

In a third case, a federal district court struck down a ban on carrying a firearm in recreational areas in Idaho administered by the United States Army Corps of Engineers (Corps). In *Morris v. United States Army Corps of Engineers*,¹¹⁹ the plaintiff, who lived in western Idaho and used public lands administered by the Corps, challenged the Corps’ bans on carrying firearms in recreational sites and possessing firearms in a tent.¹²⁰ In reaching its decision, the district court relied on *Heller*¹²¹ and *Peruta v. County of San Diego*.¹²² In *Peruta*, the Ninth Circuit held that a San Diego County law that

banned the open and concealed carry of handguns for law-abiding citizens violated the Second Amendment. The Ninth Circuit held that although a state “may be able to ban the open or concealed carry of firearms, it may not ban *both*.”¹²³ (As of this publication, the Ninth Circuit has vacated the decision in *Peruta* and granted a rehearing en banc.)

As the court in *Morris* described the Corps’ regulations, at most the Corps “would allow a person to carry an unloaded firearm as long as he was not also carrying its ammunition.”¹²⁴ The court, observing that the *Heller* precedent is limited to facilities such as schools and government buildings,¹²⁵ stated that the parks administered by the Corps are not “sensitive places.”¹²⁶ Following the precedents set by *Heller* and *Peruta*, the court held that the Corps “imposes an outright ban” that is “unconstitutional under any level of scrutiny.”¹²⁷

E. Airports as a Sensitive Place Within the Meaning of *Heller*

In *Heller*, Justice Scalia stated that the government may regulate or even prohibit firearms in “sensitive places” without violating the Second Amendment.¹²⁸ Although the case did not involve airports, several courts have considered what qualifies as a sensitive place within the meaning of the *Heller* decision. Two federal courts have held, for example, that a public park where children play is a sensitive place,¹²⁹ and that the locations in national parks where vehicles travel are sensitive places.¹³⁰ The Supreme Court of Virginia has held that because George Mason University in Fairfax, Virginia, is a sensitive place, a statute banning weapons inside university buildings and at university events

¹²³ *Morris*, 60 F. Supp. 3d at 1122 (citation omitted) (emphasis in original).

¹²⁴ *Id.* at 1123.

¹²⁵ *See id.* at 1123–25.

¹²⁶ *Id.* at 1124.

¹²⁷ *Id.* at 1125.

¹²⁸ Justice Scalia’s opinion states that

“[w]e also recognize another important limitation on the right to keep and carry arms.... [A]s we have explained...the sorts of weapons protected were those ‘in common use at the time’ [of the Second Amendment]. We think that limitation is fairly supported by the historical tradition of prohibiting the carrying of ‘dangerous and unusual weapons.’”

Heller, 554 U.S. at 627 (quoting *United States v. Miller*, 307 U.S. 174, 179 (1939)). *See* Shupak, *supra* note 18, at 790 (quoting *Heller*, 128 S. Ct. at 2817).

¹²⁹ *Warden v. Nickels*, 697 F. Supp. 2d 1221, 1229 (W.D. Wash. 2010).

¹³⁰ *United States v. Masciandaro*, 648 F. Supp. 2d 779, 790 (E.D. Va. 2009).

¹¹¹ *Id.* at 213. The court also considered a provision of the Florida Constitution, although not a mirror image of the Second Amendment, that includes the right to bear arms in Florida subject to a proviso—“except that the manner of bearing of arms may be regulated by law.” *See Norman*, 159 So. 3d at 214 (quoting FLA. CONST. art. 1, § 8).

¹¹² *Norman*, 159 So. 3d at 219.

¹¹³ *Id.*

¹¹⁴ *Id.* at 222

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 225.

¹¹⁷ *Id.* at 212.

¹¹⁸ *Id.* at 209.

¹¹⁹ 60 F. Supp. 3d 1120 (D. Idaho 2014).

¹²⁰ *Id.* at 1121.

¹²¹ *D.C. v. Heller*, 554 U.S. 570 (2008).

¹²² 742 F.3d 1144 (9th Cir. 2014), vacated, 781 F.3d 1106 (9th Cir. 2015).

does not violate the Second Amendment.¹³¹ A federal district court in Delaware, although declining to decide whether a common area in an apartment complex is a sensitive place, did hold that the Wilmington Housing Authority's policy prohibiting firearms in common areas did not violate the Second Amendment.¹³²

Although some commentators have argued that airports are sensitive places, there is a dearth of judicial authority on whether an airport is a sensitive place where firearms may be regulated.¹³³ In *People v. Ferguson*,¹³⁴ in which the defendant was charged with possession of a firearm, as well as a knife, in a New York airport, a New York criminal court stated: “[T]he seriousness of having a firearm in an airport in a state in which defendant is not licensed to carry it[] strongly suggests that the interests of the public are best served by the continued prosecution of [the] defendant.”¹³⁵ The court held that the New York gun licensing statute did not violate the Second Amendment:

[A]t the time of his arrest, [the] defendant was not in his home, but was in an airport.... [T]he requirement that handguns be licensed in the State of New York is not tantamount to a total ban and, therefore, is not a “severe restriction” as was the case in *Heller*. Lastly, [in *Heller*] the Court identified certain presumptively lawful regulatory measures which would survive a constitutional challenge including the carrying of firearms in “sensitive places.” Licensing is an acceptable regulatory measure and an airport falls within the scope of a “sensitive place.”¹³⁶

Apparently, the only other case mentioning airports as a sensitive place is *United States v. Davis*.¹³⁷ The Ninth Circuit, in affirming the defendant's conviction for carrying a concealed weapon on an airplane by impersonating a federal customs agent, obliquely stated that there was nothing in the *Heller* opinion that “was intended to cast doubt on the prohibition of concealed weapons in sensitive places.”¹³⁸

¹³¹ *Digiacinto v. Rector & Visitors of George Mason Univ.*, 704 S.E.2d 365, 368 (Va. 2011).

¹³² *Doe v. Wilmington Hous. Auth.*, 880 F. Supp. 2d 513, 532–597 (D. Del. 2012), *certified question answered*, 88 A. 3d 654 (Del. 2014), *rev'd in part*, 568 F. App'x 128 (3d Cir. 2014).

¹³³ Megan Ruebsamen, *The Gun-Shy Commonwealth: Self-Defense and Concealed Carry in Post-Heller Massachusetts*, 18 SUFFOLK J. TRIAL & APP. ADVOC. 55 (2013) (citing Michael C. Dorf, *Does Heller Protect a Right to Carry Guns Outside the Home?*, 59 SYRACUSE L. REV. 225, 227–28 (2008) (suggesting that Justice Scalia intended to leave open the possibility that additional sensitive places could include airports)).

¹³⁴ 873 N.Y.S.2d 513 (N.Y. Crim. Ct., Queens Cnty. 2008).

¹³⁵ *Id.*

¹³⁶ *Id.* (emphasis added).

¹³⁷ 304 F. App'x 473 (9th Cir. 2008).

¹³⁸ *Id.* at 474.

One commentator argues that government may regulate the possession of firearms in the nonsterile areas of airports because the

[g]overnment has the ability to “preserve the property under its control for the use to which it is lawfully dedicated,” which implicitly includes the ability to deny access to persons whose intended activities do not pertain to that purpose. For example, the government can deny access to an airport to anyone who is not engaging in air travel.¹³⁹

Nevertheless, at present there is scant judicial precedent holding that an airport is a sensitive place within the meaning of *Heller*.

F. Recent Reliance on Expert Testimony in Determining the Constitutionality of Firearms Laws

In a case decided by the District of Columbia Circuit on September 18, 2015, *Heller v. District of Columbia*,¹⁴⁰ referred to by the court as *Heller III*, the court approved of the district court's use on remand of expert testimony to aid the court in deciding whether the District's revised firearms laws violated the Second Amendment.

After the Supreme Court's decision in *Heller*, the District's city council revised the District's firearms laws by enacting the Firearms Registration Amendment Act of 2008 (FRA). The FRA imposed various conditions on the registration of a firearm and limited the persons eligible to register a firearm.¹⁴¹ In a prior appeal, referred to by the court as *Heller II*, the court upheld the constitutionality of the FRA's “basic registration requirement” as it pertained to handguns.¹⁴² On some issues, however, the record was insufficient to permit the court to decide whether the laws were “narrowly tailored to serve an important governmental interest” under a standard of intermediate scrutiny.¹⁴³ After the court's remand to the district court, the District of Columbia City Council enacted the Firearms Amendment Act of 2012.

The district court entered a summary judgment for the District based in part on the deposition testimony and reports of expert witnesses.¹⁴⁴ On appeal, *Heller* challenged the district court's admission of the deposition testimony and related reports.¹⁴⁵ The District of Columbia Circuit held that the district court had not abused its discretion in admitting the

¹³⁹ Kenneth A. Klukowski, *Making Second Amendment Law with First Amendment Rules: The Five-Tier Free Speech Framework and Public Forum Doctrine in Second Amendment Jurisprudence*, 93 NEB. L. REV. 429, 492 (2014) (footnotes omitted).

¹⁴⁰ 801 F.3d 264, 264 (D.C. Cir. 2015).

¹⁴¹ *Id.* at 269.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 269–70.

¹⁴⁵ *Id.* at 270.

evidence. Based on the appeals court’s approach in *Heller II*, the District had to show that its firearms laws “promote[] a substantial governmental interest that would be achieved less effectively absent the regulation’ and that the ‘means chosen are not substantially broader than necessary to achieve that interest.’”¹⁴⁶

One issue on appeal was whether the District’s registration requirement for long guns was constitutional. In *Heller II*, as noted, the court had upheld the basic registration requirement as it applied to handguns.¹⁴⁷ On remand to the district court, “Heller offered no evidence distinguishing the basic requirement for registration as applied to long guns.”¹⁴⁸ The appeals court held that “[b]ecause the burden of the basic registration requirement as applied to long guns is *de minimis*, it does not implicate” the Second Amendment.¹⁴⁹

As for additional registration requirements imposed by the District, the court held that the requirements were not *de minimis*. In deciding the remaining issues, the court reviewed and considered the deposition testimony and other evidence presented to the district court. The appeals court held that the District government on remand “has pointed to substantial evidence that some of the requirements—but not others—will promote public safety.”¹⁵⁰ The court agreed, on the one hand, that the District government “adduced substantial evidence from which it reasonably could conclude that fingerprinting and photographing registrants will directly and materially advance public safety...”¹⁵¹ On the other hand, “the District has offered no evidence from which the court can infer [that the District] reasonably concluded that knowledge of gun laws, as shown by passing its test, will promote public safety....”¹⁵²

The District of Columbia Circuit in *Heller III* affirmed the district court’s order that the District’s firearms laws that required a registrant to be fingerprinted and photographed and to make a personal appearance to register a firearm, to pay the required registration fees, and to complete a firearms safety and training course were constitutional.¹⁵³ The District’s evidence, however, was insufficient for the court to uphold the laws’ requirements that a person had to bring the firearm when registering it, reregister every 3 years, pass a test on the District’s

firearms laws, and be limited in registering more than one pistol during any 30-day period.¹⁵⁴ Thus, some of the District’s firearms laws did not pass muster under an intermediate level of scrutiny.¹⁵⁵

In sum, notwithstanding the *Heller* decision, arguably “the vast majority of gun laws will ultimately survive” Second Amendment challenges.¹⁵⁶ As discussed, since *Heller*, the courts have upheld laws that prohibit the possession of firearms by minors; require individuals to have a firearm identification card and a license in some states to carry a firearm; require gun owners to register their firearms; impose a reasonable fee to obtain a firearms license; require an applicant to demonstrate having proper cause for a license for a concealed firearm; ban the possession of firearms by illegal aliens; ban certain semiautomatic firearms, short-barreled shot guns, assault weapons, and high-capacity magazines; and make it illegal to possess firearms with obliterated serial numbers. A few courts have held, however, that legislatures may not ban entirely the possession of a firearm outside the home or require that a lawful firearm be inaccessible (unloaded or inoperable, for example).

III. STATE LAWS PROHIBITING OR IMPOSING RESTRICTIONS ON THE POSSESSION OF FIREARMS ON PUBLIC STREETS AND HIGHWAYS, IN PUBLIC PLACES, AND IN MOTOR VEHICLES

A. Introduction

Persons may travel to an airport by any one or a combination of means of public and private transport and after arriving use other forms of transportation and roads and sidewalks on airport property. The question of whether an individual may carry a firearm lawfully in a public place or on a public street or highway varies from state to state. Depending on the state in which a person is traveling, when an individual carrying a firearm departs for an airport by motor vehicle or other means of private or public transportation, unless the individual is quite knowledgeable of the applicable state’s gun laws, he or she already may be violating state law. Regardless of whether a state generally permits a firearm to be openly carried or concealed, there likely are other state laws that “still have full force and effect” with implications for the legality of a person’s trip to an airport while possessing a firearm.¹⁵⁷

¹⁴⁶ *Id.* at 272 (citation omitted).

¹⁴⁷ *Id.* at 273.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at 274.

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at 277.

¹⁵² *Id.* at 279.

¹⁵³ *Id.* at 280.

¹⁵⁴ *Id.* at 281.

¹⁵⁵ *See id.* at 272.

¹⁵⁶ Henigan, *supra* note 20, at 1200.

¹⁵⁷ Ark. Att’y Gen. Op. No. 2015-064, at 2 (Aug. 28, 2015) (citing ARK. CODE ANN. § 5-39-203 (repealed 2013)), available at <http://ag.arkansas.gov/opinions/docs/2015-064.pdf>.

In some areas of the United States, a person may traverse the boundaries of two or more states when en route to an airport and thereby become subject to different laws on the same journey, as illustrated by two New Jersey cases, *Revell v. Port Authority of New York*,¹⁵⁸ discussed in Section XIV.D, and *New Jersey v. S.B.*¹⁵⁹ In *New Jersey v. S.B.*, at the time of his arrest at Newark Liberty International Airport, the defendant had a plane ticket to Amsterdam and possessed “a firearm at an airport within the borders of New Jersey, without having a permit to do so...”¹⁶⁰ The defendant identified his permanent address as his grandparents’ mobile home in Ohio, stated that he was supported by his mother in Mississippi, and resided with a friend in Philadelphia. The court held the defendant’s possession of a firearm violated New Jersey’s criminal code and that the State had the authority to prosecute the offense.¹⁶¹

B. Laws Applicable to Firearms on Public Streets and Highways or Public Transportation

1. States Where Firearms Are Prohibited

Unless permitted by another state statute, some state laws, such as in California and Utah,¹⁶² prohibit the carrying of a loaded firearm on a public street. California law prohibits a person from carrying a “loaded firearm on the person or in a vehicle while in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory.”¹⁶³

Another California statute applies to the carrying of an unloaded handgun in a public place or public street or in a prohibited area:

A person is guilty of openly carrying an unloaded handgun when that person carries upon his or her person an *exposed and unloaded handgun outside a vehicle* while in or on any of the following:

(A) A *public place or public street* in an incorporated city or city and county.

¹⁵⁸ 598 F.3d 128 (3d Cir. 2010).

¹⁵⁹ *New Jersey v. S.B.*, No. A-4487-07T4, 2009 N.J. Super. Unpub. LEXIS 2531, at *1 (Oct. 9, 2009).

¹⁶⁰ *Id.* at *13.

¹⁶¹ *Id.* at *13, *15 (stating that “Congress has not expressly prohibited states from ever enforcing their criminal weapons statutes at airports within their state borders”).

¹⁶² UTAH CODE ANN. § 76-10-505(1)(b) (LexisNexis 2015). See, however, UTAH CODE ANN. § 76-10-505(1)(a) (LexisNexis 2015) (stating that unless otherwise authorized by law, a person may not carry a loaded firearm in or on a vehicle unless the vehicle is in the person’s lawful possession or the person is carrying the loaded firearm in a vehicle with the consent of the person lawfully in possession of the vehicle).

¹⁶³ CAL. PENAL CODE § 25850(a) (Deering 2015) (emphasis added).

(B) A public street *in a prohibited area* of an unincorporated area of a county or city and county.

(C) A public place *in a prohibited area* of a county or city and county.¹⁶⁴

Subsection 2 provides that:

A person is guilty of openly carrying an unloaded handgun when that person carries an *exposed and unloaded handgun inside or on a vehicle*, whether or not on his or her person, while in or on any of the following:

(A) A *public place or public street* in an incorporated city or city and county.

(B) A public street *in a prohibited area* of an unincorporated area of a county or city and county.

(C) A public place *in a prohibited area* of a county or city and county.¹⁶⁵

Pennsylvania prohibits an unlicensed person from carrying a firearm, including a rifle or shotgun, on public streets or any property in a city of the first class.¹⁶⁶ It is unlawful in Rhode Island to have a loaded or partially loaded rifle or shotgun in a vehicle while on a public highway or road.¹⁶⁷

In Texas, a person having a license to carry a firearm

commits an offense if the license holder carries a handgun on or about the license holder’s person...and intentionally displays the handgun in plain view of another person in a public place. It is an exception to the application of this subsection that the handgun was partially or wholly visible but was carried in a shoulder or belt holster by the license holder.¹⁶⁸

An individual in Utah may not carry a loaded firearm while on a public street.¹⁶⁹

2. States Where Firearms Are Not Prohibited

In Alabama, a state statute that authorizes the issuance of a license to carry a concealed weapon is not to be “construed to limit or place any conditions upon a person’s right to carry a pistol that is not in a motor vehicle or not concealed.”¹⁷⁰

¹⁶⁴ CAL. PENAL CODE §§ 26350(a)(1)(A)-(C) (2015) (emphasis added).

¹⁶⁵ CAL. PENAL CODE §§ 26350(a)(2)(A)-(C) (2015) (emphasis added).

¹⁶⁶ 18 PA. CONS. STAT. § 6108(1) (2015). A city of the “first class” is one with “a population of one million or more...” 53 P. S. § 101 (2015).

¹⁶⁷ R.I. GEN. LAWS § 11-47-51 (2015).

¹⁶⁸ TEX. PENAL CODE ANN. § 46.035 (2016).

¹⁶⁹ UTAH CODE ANN. §§ 76-10-505(1)(a)-(b) (LexisNexis 2015). See also MINN. STAT. § 609.672 (2015) (presumption that the driver or person in control of an automobile is knowingly in possession of a firearm in the vehicle); See also UTAH CODE ANN. § 76-10-505(2) (LexisNexis 2015) (providing that a minor under the age of 18 may not carry a loaded firearm in a vehicle).

¹⁷⁰ ALA. CODE § 13A-11-75(g) (LexisNexis 2015).

In Arkansas, where open carry is legal, a person “may keep a handgun in his vehicle and [the] handgun may be concealed in his vehicle even without a concealed-carry license,”¹⁷¹ according to the state’s attorney general. A Charlotte, North Carolina, ordinance provides that the ordinance does not prohibit the lawful possession or carrying of dangerous weapons on public streets and sidewalks.¹⁷²

3. Public Transportation

Numerous states prohibit the possession of firearms on a means of public transportation.¹⁷³ An Illinois law provides that an individual having a license issued pursuant to the state’s Firearm Concealed Carry Act¹⁷⁴ “shall not knowingly carry a firearm on or into...[a]ny bus, train, or form of transportation paid for in whole or in part with public funds, and any building, real property, and parking area under the control of a public transportation facility paid for in whole or in part with public funds.”¹⁷⁵

Although not involving a person traveling to an airport, in *Bsharah v. United States*,¹⁷⁶ the District of Columbia Circuit affirmed the defendants’

¹⁷¹ Ark. Att’y Gen. Op. No. 2015-064, *supra* note 155, at 9, n.5.

¹⁷² CHARLOTTE, N.C. ORDINANCE § 15-14 (2015) (except as provided in § 15-18).

¹⁷³ COLO. REV. STAT. § 18-9-118 (2015) (“A person commits a class 6 felony if, without legal authority, he has any loaded firearm...in his possession in, or carries, brings, or causes to be carried or brought any of such items into, any facility of public transportation.”); 430 ILL. COMP. STAT. ANN. 66/65(a)(8) (LexisNexis 2015) (“A licensee under this act shall not knowingly carry a firearm on or into...[a]ny bus, train, or form of transportation paid for in whole or in part with public funds.”); MO. REV. STAT. § 578.305(4) (2015) (“Any passenger who boards a bus with a dangerous or deadly weapon or other means capable of inflicting serious bodily injury concealed upon his person or effects is guilty of the felony of ‘possession and concealment of a dangerous or deadly weapon’ upon a bus.”); MONT. CODE ANN. § 45-8-339 (2015):

[I]t is unlawful for a person not authorized to carry a weapon in the course of the person’s official duties to knowingly or purposely carry or transport firearms on a train in this state unless, prior to boarding, the person has delivered all firearms and ammunition, if any, to the operator of the train.

N.M. STAT. ANN. § 30-7-13 (LexisNexis 2015) (“It is unlawful for any person without prior approval from the company to board or attempt to board a bus while in possession of a firearm or other deadly weapon upon his person or effects and readily accessible to him while on the bus.”); S.C. CODE ANN. § 58-23-1830(a)(3) (2015) (stating that “[t]it is unlawful for any passenger to commit any of the following acts in a bus or any other public transportation vehicle...carry or possess any weapon...”).

¹⁷⁴ 430 ILL. COMP. STAT. 66/1–66/999 (LexisNexis 2015).

¹⁷⁵ 430 ILL. COMP. STAT. 66/65(a)(8) (LexisNexis 2015).

¹⁷⁶ 646 A.2d 993 (D.C. Cir. 1994).

convictions for carrying a pistol without a license onboard a subway train, as well as for other firearms offenses.¹⁷⁷ The district court held that the arresting officer had probable cause to arrest the defendants based on a radio report that there was a man with a gun on the subway.¹⁷⁸

A Georgia law states, however, that it is lawful for a person having a valid license to carry a weapon “on public transportation.”¹⁷⁹ A federal court in Georgia has held that the term “airport” does not come within the meaning of public transportation as the latter term is used in the Georgia statute. In *Georgia Carry.Org, Inc. v. City of Atlanta*,¹⁸⁰ the plaintiff unsuccessfully argued that Georgia House Bill (HB) 89 enabled “any person who possesses a valid Georgia firearms license (GFL) to carry a firearm in the non-sterile areas of the [Hartsfield–Jackson Atlanta International Airport],” contrary to the airport’s policy prohibiting firearms.¹⁸¹

The airport’s gun-free policy, discussed in Section VI.E, was based on Section 16-11-127(a) of the Georgia Code, which made it a misdemeanor to carry a firearm “while at a public gathering.” Georgia amended the public gathering law in 1976 to include “publicly owned or operated buildings.” The airport, which is owned and operated by the City of Atlanta, “falls within this definition.”¹⁸² Effective July 1, 2008, however, HB 89 amended the public gathering law by permitting, *inter alia*, the carrying of a firearm in public transportation. The court held that the amendment did not apply to the airport.

H.B. 89 authorizes GFL holders to carry firearms “in public transportation.” O.C.G.A. § 16-11-127(e). It does not mention airports, nor does it define “public transportation.” The ordinary signification of “public transportation” does not include airports. First, airports do not provide public transportation. Air carriers, unlike public transportation systems such as MARTA [Metropolitan Atlanta Rapid Transit Authority], are not owned or operated by any governmental entity. Second, airports provide transportation only to airline passengers, a category of persons to whom plaintiffs admit that H.B. 89 does not apply, because federal law prohibits airline passengers from carrying firearms. It would be incongruous, to say the least, if a law purporting to cover persons “in public transportation” applied only to persons who were not being “transported.” Therefore, giving the terms of the statute their ordinary signification, the Court concludes that the “public

¹⁷⁷ The defendants were convicted under D.C. CODE § 22-3204 (LexisNexis 1989) for carrying a pistol without a license after the police received a radio report concerning a man with a gun on a subway train.

¹⁷⁸ *Bsharah*, 646 A.2d at 996–97.

¹⁷⁹ GA. CODE ANN. § 16-11-126(g) (2015).

¹⁸⁰ 602 F. Supp. 2d 1281 (N.D. Ga. 2008).

¹⁸¹ *Id.* at 1282, *but see* O.C.G.A. § 16-11-130.2(a) (2015).

¹⁸² *Id.* at 1283.

transportation” provision of H.B. 89, as codified at O.C.G.A. § 16-11-127(e), does not apply to airports.¹⁸³

The court also rejected the plaintiffs’ attempt to construe the public gathering law based on another law enacted in 2002, which included definitions of the terms “transportation company” and “terminal,” as a way of supporting the claim that the Georgia legislature meant for the term “public transportation” to include airports.¹⁸⁴

4. Public Places

To the extent that a state statute prohibits firearms in or on public places, some of the statutes do not explain what is meant by the term “public place.” Thus, it should be noted that Alaska defines a public place to mean one where “the public or a substantial group of persons has access and includes highways [and] transportation facilities....”¹⁸⁵ Delaware defines a public place to include highways and transportation facilities.¹⁸⁶ In Oregon, the term “public place” means “a place to which the general public has access and includes, but is not limited to...highways, streets...[and] premises used in connection with public passenger transportation.”¹⁸⁷

C. Laws Applicable to the Possession of a Firearm in a Motor Vehicle

1. Loaded or Unloaded Firearms in Motor Vehicles

As noted by a Michigan court, “[t]ransporting or possessing a loaded firearm in a vehicle was not a crime at common law.”¹⁸⁸ Presently, however, the issue of whether one may carry a firearm in a motor vehicle, although the laws differ from state to state, usually depends on whether a firearm is loaded or unloaded; whether it is visible or concealed in the vehicle; whether the person carrying a firearm is also the owner of the vehicle or has the owner’s permission to carry the firearm in the vehicle; whether the firearm is a pistol or a long gun; or whether the person possessing the firearm has a license to carry a firearm or to carry a concealed firearm. In *United States v. Mancillas*,¹⁸⁹ a case not involving a license to carry a firearm or to carry a concealed firearm, the court held that a person is “carrying” a firearm when it is in a

vehicle, even if it is locked in a glove compartment or kept in the trunk.¹⁹⁰

In Alabama, an individual may carry a pistol in the person’s vehicle if the pistol is unloaded, locked, and out of reach of the driver or passenger; however, no person may carry a concealed pistol in a vehicle or on another person’s property without a permit to carry a concealed pistol.¹⁹¹

Under Arkansas law, as long as a person who is openly carrying a firearm does not have the intent to “attempt to unlawfully employ a handgun...as a weapon against [another],” the individual may possess a handgun on or about his or her person or in a vehicle occupied by the person or otherwise have the handgun available for use.¹⁹²

An individual in Idaho does not need a concealed weapons permit to transport a firearm, including a shotgun or a rifle, when the firearm is not loaded and is concealed in a motor vehicle or secured in a case.¹⁹³

In Illinois, a person commits the offense of unlawful use of a weapon if the person knowingly

[c]arries or possesses in any vehicle or concealed on or about his person except when on his land or in his own abode, legal dwelling, or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person’s permission, any pistol, revolver, stun gun or taser or other firearm....¹⁹⁴

The above section, however, does not apply to or affect the transportation of a firearm that is “broken down in a non-functioning state”; “not immediately accessible”; “unloaded and enclosed in a case, firearm carrying box, shipping box, or other container by a person who has been issued a currently valid Firearm Owner’s Identification Card”; and “carried or possessed in accordance with the Firearm Concealed Carry Act [430 Illinois Comp. Stat. 66/1, et seq.]....”¹⁹⁵

As for Michigan law, in *People v Quinn*,¹⁹⁶ the issue was whether knowledge that a firearm is loaded is an element of the offense of transporting or possessing a loaded firearm other than a pistol in or upon a vehicle. Under Section 750.227c of the Michigan Compiled Laws, a person may not transport a firearm, other than a pistol, that is loaded. The court held that the state did not have to

¹⁸³ *Id.* at 1284.

¹⁸⁴ *Id.*

¹⁸⁵ ALASKA STAT. § 11.81.900 (2015).

¹⁸⁶ DEL. CODE ANN. § 1460(b)(3) (LexisNexis 2015).

¹⁸⁷ OR. REV. STAT. § 161.015(10) (LexisNexis 2016).

¹⁸⁸ *People v. Quinn*, 487 N.W.2d 194, 200 (Mich. 1992).

¹⁸⁹ 183 F.3d 682 (7th Cir. 1999).

¹⁹⁰ *Id.* at 708. The issue was relevant to whether the defendant knowingly carried a firearm when committing a drug trafficking crime. *Id.* at 706.

¹⁹¹ ALA. CODE § 13A-11-73 (LexisNexis 2015).

¹⁹² Ark. Att’y Gen. Op. No. 2015-064, *supra* note 155, at 1 (citing ARK. CODE ANN. § 5-73-120(a) (2015) as amended by Act 746 of 2013).

¹⁹³ IDAHO CODE ANN. §§ 18-3302(4)(b)-(d) (2015).

¹⁹⁴ 720 ILL. COMP. STAT. 5/24-1(4) (LexisNexis 2015).

¹⁹⁵ *Id.*

¹⁹⁶ 487 N.W.2d 194 (Mich. 1992).

establish that the defendant knowingly transported a loaded firearm. Thus, similar to the Illinois statute, to transport a firearm in a vehicle in Michigan, other than a pistol, the firearm must be taken down, enclosed in a case, carried in the trunk of the vehicle, and be inaccessible from the interior of the vehicle.¹⁹⁷

In an Ohio case, *State v Henderson*,¹⁹⁸ the defendant, a resident of West Virginia, was arrested for the improper handling of a firearm in a motor vehicle in Ohio.¹⁹⁹ Henderson's concealed carry permit issued in West Virginia had expired. When he was stopped for a traffic violation, Henderson told the officer that he had a loaded handgun on the floorboard beneath his feet. Because Henderson did not have a valid Ohio license to carry a concealed handgun, he was not authorized under Ohio law to transport a loaded handgun in his motor vehicle.²⁰⁰ Henderson argued that Section 2923.16(B) of the Ohio Revised Code was unconstitutional because it prohibits transporting a loaded firearm in a motor vehicle if the firearm is accessible to the operator without leaving the vehicle.²⁰¹

In Ohio, prior to the enactment of the statute, "a loaded firearm was not permitted in the passenger compartment of a motor vehicle."²⁰² Since the enactment of Section 2923.16(E) of the Ohio Revised Code:

(E) No person who has been issued a license...to carry a concealed handgun under section 2923.125 or 2923.1213 of the Revised Code shall do any of the following:

(1) Knowingly transport or have a loaded handgun in a motor vehicle unless one of the following applies:

(a) The loaded handgun is in a holster on the person's person.

(b) The loaded handgun is in a closed case, bag, box, or other container that is in plain sight and that has a lid, a cover, or a closing mechanism with a zipper, snap, or buckle, which lid, cover, or closing mechanism must be opened for a person to gain access to the handgun.

(c) The loaded handgun is securely encased by being stored in a closed, locked glove compartment or vehicle console or in a case that is locked....²⁰³

Applying intermediate scrutiny, the court upheld the statute, because it is "substantially related to furthering public safety,"²⁰⁴ and because it is narrowly tailored:

R.C. 2923.16(B) does not prohibit possession of a loaded firearm outside motor vehicles, nor does this section

¹⁹⁷ 11 U.S.C. § 362.

¹⁹⁸ *Id.* § 362(b)(4).

¹⁹⁹ See *In re W.R. Grace & Co.*, 412 B.R. 657 (D. Del. 2009).

²⁰⁰ 11 U.S.C. § 365(a).

²⁰¹ *Id.* § 365(d)(4).

²⁰² *Id.* § 365(d)(1).

²⁰³ *Id.* at *9–11.

²⁰⁴ *Id.* at *19.

prohibit having or transporting loaded firearms in motor vehicles as long as they are only accessible by leaving the vehicle. Rather, R.C. 2923.16(B) is limited only to those individuals, like appellant, who do not have concealed carry permits and who elect to have or transport a loaded firearm in a motor vehicle in such a way that they have access to it without leaving the vehicle.²⁰⁵

In Utah, except as otherwise authorized, an individual may not carry a loaded firearm in a vehicle unless the same individual is in lawful possession of the vehicle or has the consent of the person who is in lawful possession of the vehicle.²⁰⁶ Thus, an individual who is in possession of a loaded firearm who is en route to an airport in a motor vehicle that is owned by or is possessed by another person, who either has no knowledge of the firearm or who has not consented to the firearm being in the vehicle, would be violating the law of Utah and of other states with a similar statute. A person in Utah also may not possess a loaded rifle, shotgun, or muzzle-loading rifle in a vehicle.²⁰⁷

2. Unloaded and Secured Firearms in Motor Vehicles

It appears that in many states if an individual is en route to an airport while carrying a firearm in a motor vehicle, the firearm must be unloaded, out of view, and/or secured in the manner required by the state statute.²⁰⁸

States differ on how a firearm is to be secured in a motor vehicle. In Alabama, a firearm must be kept from ordinary observation and locked within a compartment in the vehicle or a container in the vehicle.²⁰⁹ When a person transports a pistol or revolver in a motor vehicle in Connecticut, the pistol or revolver must be unloaded and "not readily accessible or directly accessible from the passenger compartment of the vehicle...."²¹⁰ If the motor vehicle

²⁰⁵ *Id.* at *19–20.

²⁰⁶ UTAH CODE ANN. §§ 76-10-505(1)(a)–(b) (LexisNexis 2015).

²⁰⁷ UTAH CODE ANN. § 76-10-505(3) (LexisNexis 2015).

²⁰⁸ S.C. CODE ANN. § 16-23-20(9) (2015) (providing that it is unlawful to carry any handgun, whether concealed or not, except that a person may carry a handgun in a vehicle if secured in the manner authorized by the statute). See also ARIZ. REV. STAT. §§ 13-3102(B)(3)(a), (c) (LexisNexis 2015) (stating that a firearm is visible when carried so that any portion of the firearm or holster in which the firearm is carried is visible or is carried in a scabbard or case that is designed for a carrying weapon that is wholly or partially visible); VA. CODE ANN. §§ 18.2-308(a), (c)(10) (2015) (stating that a person with a valid concealed handgun permit may carry a handgun while in a personal, private motor vehicle or vessel and the handgun is secured in a container or compartment in the vehicle or vessel).

²⁰⁹ ALA. CODE § 13A-11-61.2 (LexisNexis 2015).

²¹⁰ CONN. GEN. STAT. § 29-25(a) (2015).

does not have a compartment separate from the passenger compartment, the firearm must be “contained in a locked container other than the glove compartment or console.”²¹¹

In 2008, Florida enacted the Preservation and Protection of the Right to Keep and Bear Arms in Motor Vehicles Act. The Act recites the legislature’s decision that “no citizen can or should be required to waive or abrogate his or her right to possess and securely keep firearms and ammunition *locked within his or her motor vehicle* by virtue of becoming a customer, employee, or invitee of any employer or business establishment within the state, unless specifically required by state or federal law.”²¹²

In Minnesota, even if a person has a permit to carry a firearm,²¹³ the permit holder may not transport a firearm unless it is unloaded and in a secured gun case or unloaded and in the closed trunk of a motor vehicle.²¹⁴ Virginia law permits the carrying of a handgun in one’s own motor vehicle when the handgun is secured in a container or in a compartment in the vehicle, but does not state whether a firearm has to be unloaded.²¹⁵

3. Effect of a License to Carry or to Carry a Concealed Firearm

In some states, whether a person may carry a firearm in a motor vehicle depends on whether the person has a license to carry a firearm or a license to carry a concealed firearm.²¹⁶ In Connecticut, “[a]ny person who knowingly has, in any vehicle owned, operated or occupied by such person, any weapon,

²¹¹ *Id.*

²¹² FLA. STAT. ANN. § 790.25(3) (LexisNexis 2015) (emphasis added).

²¹³ MINN. STAT. §§ 624.714(9)(5), 624.715 (2015) (regarding permits to carry).

²¹⁴ MINN. STAT. § 97B.045(1)(1), (2) (2015). *See also* MO. REV. STAT. § 571.030.1(3) (2015) (lawful to transport a weapon in a vehicle in a nonfunctioning state or when unloaded and ammunition is not readily accessible).

²¹⁵ VA. CODE ANN. § 18.2-308(c)(10) (2015).

²¹⁶ GA. CODE ANN. § 16-11-126(d) (2015) (person eligible for a weapons-carry license may transport a handgun or long gun in a private passenger motor vehicle); KAN. STAT. ANN. §§ 527.020(4), (8) (2015) (stating that “[n]o person or organization, public or private, shall prohibit a person licensed to carry a concealed weapon from possessing a firearm, ammunition, or both, or other deadly weapon in his or her vehicle...”); TENN. CODE ANN. § 39-17-1313(d) (2015) (not an offense when a handgun carry permit holder is observed while securing a firearm or ammunition in his or her motor vehicle); UTAH CODE ANN. § 76-10-505(3) (LexisNexis 2015) (providing that it is unlawful to possess a loaded rifle, shotgun, or muzzle-loading rifle in a vehicle *but see* § 76-10-523 (2) providing that §§ 76-10-504(1), 76-10-504(2), 76-10-505 are not applicable to a person having a permit to carry a concealed weapon).

any pistol or revolver for which a proper permit has not been issued as provided in section 29-28 [applicable to the issuance of a permit to carry a pistol or revolver]...shall be guilty of a class D felony....”²¹⁷ In Georgia, a person “who is eligible for a weapons carry license may transport a handgun or long gun in any private passenger motor vehicle....”²¹⁸ Likewise, a licensee in Illinois may carry a concealed firearm in a vehicle while on a public right-of-way if “in accordance with all other applicable provisions of law.”²¹⁹

New Mexico prohibits the carrying of a concealed, loaded firearm anywhere except by a person who is in possession of a “valid concealed handgun license,”²²⁰ or by a person who is carrying a handgun “in a private automobile or other private means of conveyance[] for lawful protection of the person’s or another person’s person or property.”²²¹ Although North Dakota prohibits an individual from having a loaded firearm in a vehicle, the prohibition does not apply to an individual who has a valid license to carry a concealed weapon.²²² Certain prohibitions that apply in Ohio to a person with a concealed handgun license do not apply to “[a] person’s transportation or storage of a firearm...in a motor vehicle for any lawful purpose if the firearm is not on the actor’s person....”²²³

Oregon’s statute declares that it is unlawful for an individual, even one having a concealed handgun license, to possess “a handgun that is concealed and *readily accessible* to the person within any vehicle.”²²⁴ A handgun is not readily accessible when it is stored in a closed and locked glove compartment, center console, or other container, and the key is not in the lock.²²⁵ A person is not subject to arrest for violating the statute, however, if the person has a valid license to carry a concealed firearm as provided in Sections 166.291 and 166.292 of the Oregon Revised Statutes.²²⁶

²¹⁷ CONN. GEN. STAT. § 29-38(a) (2015) (also prohibiting the carrying of any machine gun that has not been registered as required by CONN. GEN. STAT. § 53-202 (2015)).

²¹⁸ GA. CODE ANN. §§ 16-11-125.1, 16-11-126 (2015) (stating that the term “weapon” includes a handgun); *see also* GA. CODE ANN. § 16-11-129 (2015) (relating to applications for a weapons-carry license).

²¹⁹ 430 ILL. COMP. STAT. ANN. 66/65(c) (LexisNexis 2015).

²²⁰ N.M. STAT. ANN. § 30-7-2(A)(5) (LexisNexis 2015).

²²¹ N.M. STAT. ANN. § 30-7-2(A)(2) (LexisNexis 2015).

²²² N.D. CENT. CODE § 62.1-02-10(3) (2015). *See also* ALA. CODE § 13A-11-75(a)(1) (LexisNexis 2015) (authorizing a permit to carry a pistol in a vehicle or concealed on a person).

²²³ OHIO REV. CODE ANN. § 2923.15(C)(1)(c) (LexisNexis 2015).

²²⁴ OR. REV. STAT. § 116.250(1)(b) (2015) (emphasis added).

²²⁵ OR. REV. STAT. §§ 116.250(4)(b)(A), (B) (2015).

²²⁶ OR. REV. STAT. § 166.262(1) (2015).

It is a felony in Pennsylvania to carry “a firearm in a vehicle...without a valid and lawfully issued license....”²²⁷ In the state of Washington,

[a] person shall not carry or place a loaded pistol in any vehicle unless the person has a license to carry a concealed pistol and: (i) the pistol is on the licensee’s person, (ii) the licensee is within the vehicle at all times that the pistol is there, or (iii) the licensee is away from the vehicle and the pistol is locked within the vehicle and concealed from view from outside the vehicle.²²⁸

4. Licensee’s Obligation to Keep a Firearm Out of Sight and Secured

As discussed in the preceding section, in some states it is illegal to carry a loaded firearm in a motor vehicle. In most states, when transporting a firearm in a motor vehicle, a licensee must keep the firearm out of sight and secured. Section 25400 of the California Penal Code, which applies to the unlawful possession of a concealed weapon (which is lawful when a person is licensed to carry a concealed weapon), allows a person over the age of 18 to transport a firearm that is capable of being concealed when the “firearm is within a motor vehicle and it is locked in the vehicle’s trunk or in a locked container in the vehicle.”²²⁹

A person having a valid permit in Tennessee to carry a handgun may transport and store a firearm or ammunition in the permit holder’s vehicle as long as the firearm or ammunition is kept “from ordinary observation” or is secured in the vehicle in the manner required by the statute.²³⁰ It becomes unlawful for a permit holder in Tennessee to have a firearm in a motor vehicle if the vehicle is owned or leased by a government or private entity that has adopted a written policy prohibiting the possession of firearms or ammunition that are “not required for employment with such a motor vehicle.”²³¹

Finally, many states, as discussed in Section VII.D, prohibit the possession or transportation of specific kinds of firearms.²³²

In sum, when a traveler is carrying a firearm when en route to an airport, there are several ways that the

²²⁷ 18 PA. CONS. STAT. § 6106(a)(1) (2015). *See also* 18 PA. CONS. STAT. §§ 6106(b)(11)–(15) (stating exceptions).

²²⁸ WASH. REV. CODE ANN. § 9.41.050(2)(a) (LexisNexis 2015).

²²⁹ CAL. PENAL CODE § 25610(a)(1) (Deering 2015). *See also* CAL. PENAL CODE § 16850 (Deering 2015) (defining the term “locked container”).

²³⁰ TENN. CODE ANN. §§ 39-17-3113(a)(1), (2) (2015).

²³¹ TENN. CODE ANN. §§ 39-17-1307(e)(1), 39-17-1307(2)(B)(i), 39-17-1307(ii) (2015).

²³² MICH. COMP. LAWS SERV. §§ 750.227(1), 750.227(2), 750.227c(1)(a) (LexisNexis 2015); *see also* MICH. COMP. LAWS SERV. § 750.228(1) (LexisNexis 2015) (lawful transportation of a firearm greater than 26 in. in length).

person, knowingly or unknowingly, could be violating state law. It seems that there is a greater likelihood of an infraction of state law if an individual is carrying a firearm in a motor vehicle without a license to carry a firearm or to carry a concealed firearm; the firearm is loaded and not out of sight and is accessible to the individual carrying the firearm (e.g., is not locked in a separate compartment in the vehicle), or the motor vehicle is owned or controlled by a person, other than the one carrying the firearm, who has not consented to the presence of a firearm in the vehicle.

IV. STATE LAWS ON THE POSSESSION OF A FIREARM IN A MOTOR VEHICLE IN A PUBLIC OR PRIVATE PARKING FACILITY

A. Introduction

Although there are undoubtedly many options for parking at or near one of the nation’s airports, motorists may park their vehicle in parking facilities that airports own or operate or in parking facilities that airports lease to a private concessionaire. As an alternative, motorists may park in other privately or publicly owned facilities near an airport. As with the transportation of a firearm in a motor vehicle, state statutes vary on whether it is lawful to leave a firearm in a vehicle in a public or private parking facility. However, as long as a motorist or a passenger complies with the relevant state’s laws, it appears that most states allow an individual to leave a firearm in a motor vehicle in a parking lot owned by the state or a unit of local government, including at airports.

B. State Laws that Apply to the Possession of Firearms in Publicly Owned or Leased Parking Facilities

1. States Prohibiting Firearms in Publicly Owned or Leased Parking Facilities

A few states prohibit a firearm in a vehicle that is parked in a publicly owned or leased parking facility. In Oklahoma, it is not lawful to carry a handgun on property set aside by a government authority for parking.²³³ In West Virginia, a person may keep a lawful firearm in a motor vehicle in municipal public parking facilities as long as the vehicle is locked and the firearm is “out of view.”²³⁴ A municipality may, however, prohibit individuals having a license to carry a concealed handgun from possessing a firearm on municipally owned or operated property.²³⁵

²³³ OKLA. STAT. tit. 21, § 12277(B) (2015).

²³⁴ W. VA. CODE ANN. § 8-12-5a(b)(3) (LexisNexis 2015).

²³⁵ W. VA. CODE ANN. § 8-12-5a(b)(4) (LexisNexis 2015).

2. States Not Prohibiting Firearms in Publicly Owned or Leased Parking Facilities

As discussed in Section V, although it may not be lawful for a person to possess a firearm in a publicly owned or leased building, in many states it is lawful to have a firearm in a vehicle in a parking lot in or on the same premises as a publicly owned or leased building.²³⁶ Furthermore, if an owner of a vehicle has a permit to carry, it may be lawful for the owner of the vehicle to have a firearm in the vehicle when it is in a parking lot²³⁷ and/or if the firearm is out of view and secured as required by the applicable statute.²³⁸ For example, in Arkansas, although a private individual may not “knowingly carry or possess a loaded firearm in any publicly owned building,”²³⁹ it is permissible for a person with a license to carry a concealed handgun to leave a firearm in the licensee’s “locked and unattended motor vehicle in a publicly owned and maintained parking lot.”²⁴⁰

Although there are some exceptions noted in the following section, Florida law expressly forbids the

²³⁶ MICH. COMP. LAWS SERV. § 28.425o(4) (LexisNexis 2015) (stating that premises where licensees may not carry a concealed weapon do not include the premises’ parking areas); MINN. STAT. § 624.714(17)(c) (2015) (providing that the owner or operator of a private establishment may not prohibit the lawful carry or possession of firearms in a parking facility or parking area); TEX. PENAL CODE ANN. § 46.035 (2016) (defining, in a section applicable to a holder of a license to carry a handgun, that the term “premises” means a building but not “any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area”); WIS. STAT. § 943.13(1m)(c)(4) (2015) (authorizing possession of a firearm that is prohibited in a building, as provided in the statute, in a vehicle in any part of the building used as a parking facility).

²³⁷ GA. CODE ANN. § 16-11-127(d)(3) (2015) (person with a weapons-carry license not prohibited from having a weapon that is under the possessor’s control in a motor vehicle or that is in a locked compartment when the vehicle is in a parking facility); MINN. STAT. § 624.714(1)(b) (2015) (permit required to possess or carry a pistol including in a motor vehicle); WIS. STAT. § 175.60(16) (2015) (person having a license to carry a concealed weapon not prohibited from having a weapon in a vehicle driven or parked in certain parking facilities).

²³⁸ VA. CODE ANN. § 18.2-308(c)(10) (2015) (firearm permissible in a personal private vehicle as long as it is secured in a container or compartment).

²³⁹ ARK. CODE ANN. § 5-73-122(a)(1) (2015). There are two exceptions not relevant to the digest. *See* ARK. CODE ANN. § 5-73-322 (2015) (applicable to the carrying of a handgun in a university, college, or community college building); ARK. CODE ANN. § 5-73-306(5) (2015) (stating that a license to carry a concealed handgun does not authorize any person to carry a concealed handgun into any courthouse, courthouse annex, or other building owned, leased, or regularly used by a county for conducting court proceedings or housing a county office unless otherwise authorized in the statute).

²⁴⁰ ARK. CODE ANN. § 5-73-122(A)(3)(C)(I) (2015).

imposition of any restrictions on leaving a firearm locked in a motor vehicle in a parking lot:

(a) No public or private employer may prohibit *any customer, employee, or invitee* from possessing any legally owned firearm when such firearm is lawfully possessed and locked inside or locked to a private motor vehicle in a parking lot and when the customer, employee, or invitee is lawfully in such area....

(d) No public or private employer shall prohibit or attempt to prevent *any customer, employee, or invitee* from entering the parking lot of the employer’s place of business because the customer’s, employee’s, or invitee’s private motor vehicle contains a legal firearm being carried for lawful purposes, that is out of sight within the customer’s, employee’s, or invitee’s private motor vehicle.²⁴¹

Some of the exceptions to the above prohibitions are that they do not apply to “[p]roperty owned or leased by a public or private employer or the landlord of a public or private employer upon which are conducted substantial activities involving national defense, aerospace, or homeland security.”²⁴²

In North Carolina, it is unlawful to carry a concealed handgun without a concealed handgun permit. A person having a handgun permit, however, is not prohibited from keeping a handgun in a closed compartment or container within the person’s locked vehicle when the vehicle is in a parking area that is owned or leased by state government.²⁴³

C. State Laws that Apply to the Possession of a Firearm in a Motor Vehicle in Airport Parking Areas

In their responses to the survey, 22 airports reported that private individuals may carry firearms on other airport property such as parking areas,²⁴⁴ whereas 5 airports stated that firearms are

²⁴¹ FLA. STAT. ANN. §§ 790.251(4)(a),(d) (LexisNexis 2015) (Florida Preservation and Protection of the Right to Keep and Bear Arms in Motor Vehicles Act of 2008) (emphasis added). *See also* GA. CODE ANN. § 16-11-135(b) (2015) (unlawful to condition employment on the prohibition of the right of an employee to enter a parking lot with a firearm when the firearm “is locked out of sight”).

²⁴² FLA. STAT. ANN. § 790.251(7)(d) (LexisNexis 2015).

²⁴³ N.C. GEN. STAT. § 14-269(a)(a2) (2015).

²⁴⁴ Responses of Albuquerque International Sunport Airport, N.M.; Austin–Bergstrom International Airport, Tex.; Blue Grass Airport, Lexington, Ky.; Casper/Natrona County International Airport, Wyo.; Clinton National/Adams Field Airport, Little Rock, Ark. (citing ARK. CONST. art. 2, § 5 and ARK. CODE ANN. § 5-73-119(e)); Columbia Metropolitan Airport, S.C. (stating that firearms may be carried by one holding a concealed weapons permit); Dallas Fort Worth International Airport, Tex. (stating “only with a permit”); Eppley Airfield Airport (Omaha), Neb.; George Bush Intercontinental/Houston Airport, Tex.; Gerald R. Ford International Airport, Grand Rapids, Mich.; Grand Forks International Airport, N.D.; Huntsville International–Carl T. Jones Field, Ala.; Laguardia Airport, N.Y. Lincoln Airport–Lincoln

prohibited or that there are some restrictions on the possession of a firearm in parking areas.²⁴⁵

There are some state statutes that are specific to airports. Georgia law provides that

[n]o person shall enter the *restricted access area* of a commercial service airport, in or beyond the airport security screening checkpoint, knowingly possessing or knowingly having under his or her control a weapon or long gun. *Such area shall not include an airport drive, general parking area, walkway, or shops and areas of the terminal that are outside the screening checkpoint and that are normally open to unscreened passengers or visitors to the airport.*²⁴⁶

In Missouri, the possession of a firearm in a vehicle on airport premises is not a criminal offense as long as the firearm is not removed from the vehicle or “brandished while the vehicle is on the premises....”²⁴⁷ As in Georgia, in the State of Washington, the “restricted access areas of a commercial service airport” do “not include airport drives, general parking areas and walkways, and shops and areas of the terminal that are outside the screening checkpoints and that are normally open to unscreened passengers or visitors to the airport.”²⁴⁸

D. Possession of Firearms in Privately Owned or Leased Parking Facilities

It appears that state statutes generally allow the possession of a firearm in a motor vehicle in a private parking facility unless an owner of the facility is allowed under state law to prohibit firearms on private property as discussed in Section VIII.

In Alabama, although there are some exceptions, a person having a firearm on the premises of a private facility to which access is limited by the use of security measures must keep the firearm “from ordinary observation and locked within a compartment

Airport Authority, Neb.; Louisville International–Standiford Field, Ky.; Memphis International Airport, Tenn.; Minneapolis–St. Paul International/World–Chamberlain Airport, Minn.; Portsmouth International Airport, N.H.; Theodore Francis Green State Airport–Rhode Island Airport Corp. (citing R.I. GEN. LAWS § 11-47-11 (license or permit to carry concealed pistol or revolver)); Joe Foss Field, Sioux Falls, S.D.; Spokane International Airport, Wash.; Tucson International Airport–Tucson Airport Authority, Ariz.

²⁴⁵ Responses of Bangor International Airport, Me.; Bismarck Municipal Airport, N.D. (stating that the answer is no, unless the firearm comes within N.D. CENT. CODE § 6-08-02); General Mitchell International Airport, Milwaukee, Wisc.; Nashville International Airport, Tenn. (stating that a firearm may be kept in the trunk of a vehicle); Detroit Metropolitan Wayne County Airport, Mich.

²⁴⁶ GA. CODE ANN. § 16-11-130.2(a) (2015) (emphasis added), *but see* GA. CODE ANN. § 16-11-130.2(b) (2015).

²⁴⁷ MO. REV. STAT. § 571.107(1)(8) (2015).

²⁴⁸ WASH. REV. CODE ANN. § 9.41.300(1)(e) (LexisNexis 2015).

or in the interior of the person’s motor vehicle or in a component or container securely affixed to the motor vehicle.”²⁴⁹

In Illinois, although the owner of private real property may prohibit the carrying of concealed firearms on the owner’s property, one having a license to carry a concealed firearm is permitted in certain instances “to carry a concealed firearm on or about his or her person within a vehicle into the parking area and may store a firearm or ammunition concealed in a case within a locked vehicle or locked container out of plain view within the vehicle in the parking area.”²⁵⁰

Nebraska allows a permit holder to possess a concealed handgun in a parking area open to the public as long as “the handgun is locked inside the glove box, trunk, or other compartment of the vehicle, [or] a storage box securely attached to the vehicle....”²⁵¹

To summarize, state laws generally allow a person legally carrying a firearm to leave the firearm in a motor vehicle in a publicly or privately owned parking lot. There is a greater likelihood that a person carrying a firearm is in compliance with state law when a person has a license to carry a firearm; the person is in the parking lot lawfully; the firearm is not visible and/or is locked in the vehicle as otherwise required by statute (e.g., in a separate compartment or in the trunk); and the individual does not remove the firearm from the vehicle or otherwise brandish the firearm. In some states, a public authority such as a municipality may prohibit firearms in parking lots.

V. STATE LAWS THAT PROHIBIT FIREARMS IN PUBLICLY OWNED OR LEASED BUILDINGS

A. Introduction

All 552 commercial service airports in the United States are said to be “owned by public entities, municipalities, transportation districts or airport authorities.”²⁵² Notwithstanding other state laws, local ordinances, and airport policies, discussed in

²⁴⁹ ALA. CODE § 13A-11-61.2 (LexisNexis 2015).

²⁵⁰ 430 ILL. COMP. STAT. ANN. 66/65(b) (LexisNexis 2015).

²⁵¹ NEB. REV. STAT. ANN. § 69-2441(3) (LexisNexis 2015).

²⁵² Christine Negroni, *In Missouri, Investors Seek a Profit in Branson Airport*, N.Y. TIMES, Apr. 20, 2009, <http://www.nytimes.com/2009/04/21/business/21branson.html>. Branson Airport in Missouri is “the only privately financed commercial airport in America.” *Id.* Federal law defines a “commercial service airport” as “a public airport in a State that the Secretary [of Transportation] determines has at least 2,500 passenger boardings each year and is receiving scheduled passenger aircraft service.” 49 U.S.C. § 47102(7) (2015).

the next section of the digest, that prohibit firearms in airports, at least 16 states either ban the carrying of a firearm by private individuals in public buildings altogether or allow local governmental authorities to post signs banning firearms.

Some statutes specifically ban firearms in public places and public buildings.²⁵³ In construing state statutes applicable to public places and public buildings, the courts have assumed or held that an airport is a public place and that buildings owned by airports and airport authorities are public buildings.²⁵⁴ Arizona defines a public establishment to include a structure that is owned, leased, or operated by the State or a political subdivision of the State.²⁵⁵ Oregon law defines the term “public building” to include any portion of a building occupied by an agency of the State or a municipal corporation.²⁵⁶ Several airports that responded to the survey reported that they have banned firearms in the airport based on their state’s law that allows the banning of firearms in public buildings when the buildings have signs posted in accordance with the statute.²⁵⁷

B. State Laws that Prohibit Firearms in Publicly Owned or Leased Buildings

Several states have statutes that categorically prohibit firearms in publicly owned or leased buildings, or, alternatively, that allow governmental authorities to prohibit firearms in a building owned or leased by the state, a political subdivision of the

²⁵³ ALA. CODE §§ 13A-11-59(a)(4), (c) (LexisNexis 2015) (prohibiting the possession of a firearm or other weapon (e.g., rifle or shotgun) within a prescribed distance of or within a public place or building as further defined in the statute); OR. REV. STAT. § 166.173 (2015) (authorizing government authority to regulate, restrict, or prohibit possession of loaded firearms in public places); *see, however*, OR. REV. STAT. §§ 166.370(1), (3)(d) (2015) (unlawful to possess a loaded or unloaded firearm in a public building unless a person is licensed under OR. REV. CODE §§ 166.291, 166.292 (2015) to carry a concealed weapon). *See also* Int’l Soc’y for Krishna Consciousness, Inc. v. Lee, 505 U.S. 672 (1992) and *Mocek v. City of Albuquerque*, 3 F. Supp. 3d 1002 (D. N.M. 2014) (stating that public airports are public places but not public *fora* for purposes of the First Amendment, because the purpose of airports is to facilitate travel, not to promote free speech and ideas).

²⁵⁴ *Carricker v. City & Cnty. of Denver*, No. 12-cv-2365-WJM-KLM, 2013 U.S. Dist. LEXIS 75991, at *1 (D. Colo. May 30, 2013); *Tompkins v. Crown Corr, Inc.*, 726 F.3d 830, 838 (6th Cir. 2013).

²⁵⁵ ARIZ. REV. STAT. ANN. § 13-3102(N)(2) (2015).

²⁵⁶ OR. REV. STAT. § 166.360(4) (2015).

²⁵⁷ Responses of Lincoln Airport–Lincoln Airport Authority, Nebraska (citing NEB. REV. STAT. ANN. § 69-2441(2) (LexisNexis 2015) and General Mitchell International Airport, Milwaukee.

state, or a municipality, or in a public place, including concealed firearms.²⁵⁸

In Arkansas, a person other than a law enforcement officer or a security guard may not “knowingly carry or possess a loaded firearm in any publicly owned building....”²⁵⁹ Another subsection of the statute provides that a license to carry a concealed handgun does not authorize a person to carry a concealed handgun into “[a]ny place at the discretion of the person or entity exercising control over the physical location of the place” who posts a sign in the format required at each entrance advising that “carrying a handgun is prohibited.”²⁶⁰ If a person has a license to carry a concealed handgun, however, it is permissible to leave the firearm in the person’s “locked and unattended motor vehicle in a publicly owned and maintained parking lot.”²⁶¹

In Connecticut, a permit to carry a pistol or revolver does not authorize the possession of a pistol or revolver on any premises in which the person who owns or exercises control over the premises has prohibited firearms.²⁶² Illinois law simply states that an individual may not carry a firearm into “[a]ny building or portion of a building under the control of a unit of local government.”²⁶³

In North Carolina, a statute intended to achieve statewide uniformity provides:

Nothing contained in this section prohibits municipalities or counties from application of their authority under [other state laws], *including prohibiting the possession of firearms in public-owned buildings*, on the grounds or parking areas of those buildings, or in public parks or recreation areas, except nothing in this subsection shall prohibit a person from storing a firearm within a motor vehicle while the vehicle is on these grounds or areas.²⁶⁴

²⁵⁸ KAN. STAT. ANN. § 237.115(2) (2015) (stating that “[e]xcept as provided in KRS 527.020, the legislative body of a state, city, county, or urban-county government may, by statute, administrative regulation, or ordinance, prohibit or limit the carrying of concealed deadly weapons by licensees in that portion of a building owned, leased, or controlled by that unit of government”); MO. REV. STAT. § 571.107(1)(6) (2015) (government may prohibit or limit carrying of concealed firearms in portion of a “building owned, leased or controlled by that unit of government”); MONT. CODE ANN. § 45-8-328(1)(a) (2015) (prohibiting concealed weapons in “portions of a building used for state and local government offices and related areas”).

²⁵⁹ ARK. CODE ANN. § 5-73-122(a)(1) (2015). *See exceptions in ARK. CODE ANN. §§ 5-73-322, 5-73-306(5) (2015).*

²⁶⁰ ARK. CODE ANN. § 5-73-306(19)(A)(i) (2015).

²⁶¹ ARK. CODE ANN. § 5-73-122(a)(3)(C)(i) (2015).

²⁶² CONN. GEN. STAT. § 29-28(e) (2015) (applicable to a permit to carry a pistol or revolver).

²⁶³ 430 ILL. COMP. STAT. ANN. 66/65(a)(2)(5) (LexisNexis 2015).

²⁶⁴ N.C. GEN. STAT. § 14-409.40(f) (2015) (emphasis added).

Most of the statutes reviewed for this section of the digest do not clarify whether there is any distinction between a person carrying a firearm openly or a licensee carrying a concealed firearm. An Oklahoma statute, however, states that it is

unlawful for any person in possession of a valid handgun license issued pursuant to the provisions of the Oklahoma Self-Defense Act to carry *any concealed or unconcealed handgun* into any...structure, building, or office space which is owned or leased by a city, town, county, state, or federal governmental authority for the purpose of conducting business with the public...[or] [a]ny other place specifically prohibited by law.²⁶⁵

Oregon allows a city or county to adopt ordinances restricting or prohibiting the possession of loaded firearms in “public places.”²⁶⁶ Furthermore, unless a person is licensed to carry a concealed handgun, it is a Class C felony to intentionally carry a loaded or unloaded firearm in a public building.²⁶⁷ In Vermont, the Commissioner of Buildings and General Services is authorized to issue regulations governing “firearms and explosives...in State buildings under his or her jurisdiction or upon the grounds of these buildings[] and in...property leased to the State....”²⁶⁸

Although the statute is somewhat prolix, a Wisconsin law applicable to trespass to land appears to prohibit a person, including one having a license to carry a concealed firearm, from entering or remaining “in any part of a building that is owned, occupied, or controlled by the state or any local governmental unit...if the state or local governmental unit has notified the actor not to enter or remain in the building while carrying a firearm....”²⁶⁹ Another subsection of the statute that defines what constitutes a trespass to land that has similar language adds that the “subdivision does not apply...if the firearm is in a vehicle...[in] any part of the building used as a parking facility.”²⁷⁰

²⁶⁵ OKLA. STAT. tit. 21, §§ 1277 (A)(1), (6) (2013) (emphasis added); see E. Lee Thomson, *2015 State Airport Gun Laws*, AIRPORTS COUNCIL INTERNATIONAL (2015), http://www.aci-na.org/sites/default/files/e_lee_thomson_-_april_17.pdf (citing OKLA. STAT. tit. 21, § 21-1277).

²⁶⁶ OR. REV. STAT. § 166.173(1) (LexisNexis 2015).

²⁶⁷ OR. REV. STAT. §§ 166.370(1), (3)(d) (2015 & 2016).

²⁶⁸ VT. STAT. ANN. tit. 10, § 152(o)(14) (2015).

²⁶⁹ WIS. STAT. § 943.13(1m)(e)(4) (2015) (excluding any building or portion of a building under WIS. STAT. § 175.60(16)(a)).

²⁷⁰ WIS. STAT. § 943.13(c)(4) (2015) (excluding any building or portion of a building under § 175.60 (16)(a)). WIS. STAT. § 175.60(a), identified in § 943.13(c)(4), states that “[e]xcept as provided in par. (b) [applicable to certain parking areas], neither a licensee nor an out-of-state licensee may knowingly carry a concealed weapon, a weapon that is not concealed, or a firearm that is not a weapon in any of the following places....”.

A Utah case decided on the basis of preemption (see Section XII) held that the University of Utah may not prohibit the possession of firearms on its campus. In *University of Utah v. Shurtleff*,²⁷¹ the university sought a declaratory judgment that its policy prohibiting the possession of firearms on its campus did not violate Utah law.²⁷² Utah’s Supreme Court decided, however, that the University did not have the authority to enact policies that violate a Utah statute that precludes a state entity or local authority from prohibiting the possession or use of firearms on public or private property.²⁷³

Thus, some state statutes categorically prohibit firearms or alternatively allow government authorities to prohibit firearms in publicly owned or leased buildings, including concealed firearms in some states, notwithstanding a holder’s license to carry a concealed firearm.

C. State Laws Authorizing the Posting of Signs Prohibiting Firearms in Public Buildings

Several states allow governmental units to post conspicuous signs forbidding individuals to carry firearms in public buildings.²⁷⁴ For example, in Delaware, municipal governments may regulate the possession of firearms or ammunition in municipal buildings by conspicuous signage at the entrances to restricted areas; however, the ordinance must state “that any person who immediately foregoes entry or immediately exits such building due to the possession of a firearm, ammunition, components of firearms, or explosives shall not be guilty of violating the ordinance.”²⁷⁵

²⁷¹ 144 P.3d 1109 (Utah 2006).

²⁷² *Id.* at 1112.

²⁷³ *Id.* at 1121–22.

²⁷⁴ KAN. STAT. ANN. § 75-7c-24(a) (2015) (stating that when a building is posted conspicuously, it is unlawful to carry an unconcealed firearm into the building); KAN. STAT. ANN. § 75-7c-20(a) (2015) (stating that the “carrying of a concealed handgun shall not be prohibited in any state or municipal building unless such building has adequate security measures to ensure that no weapons are permitted to be carried into such building and the building is conspicuously posted in accordance with K.S.A. 2014 Supp. 75-7c10, and amendments thereto”); KAN. STAT. ANN. § 75-7c-20(m)(1) (2015) (defining adequate security measures); KAN. STAT. ANN. § 74-7c-20(m)(5)(A) (2015) (defining state or municipal building); KAN. STAT. ANN. §§ 21-6309(a)(4) (2015) (stating that it is “unlawful to possess, with no requirement of a culpable mental state, a firearm...within any other state-owned or leased building if the secretary of administration has so designated by rules and regulations and conspicuously placed signs clearly stating that firearms are prohibited within such building....”).

²⁷⁵ DEL. CODE ANN. tit. 22, § 111(b) (2015). See also DEL. CODE ANN. tit. 22, § 111(c) (2015) (defining the term “municipal building”).

In response to the survey, General Mitchell International Airport in Milwaukee and Lincoln Airport–Lincoln Airport Authority in Nebraska stated that they had posted signs banning firearms in the airport. The Lincoln Airport Authority, for example, explained that it did so in accordance with Section 69-2241(2) of the Nebraska Revised Statutes that allows “the prohibiting of concealed carry by the entity in control of the property.”²⁷⁶

In Tennessee, unless an exception applies, a business or a federal or state entity may prohibit the possession of weapons on property owned, operated, managed, or under the control of a business or government entity when signs are posted in accordance with the applicable statute.²⁷⁷

D. Whether a License to Carry a Firearm or a Concealed Firearm Allows Possession of a Firearm in a Public Building

There are at least three approaches to the issue of whether a licensee may carry a firearm in a public building: Possession is not permitted even if an individual carrying a firearm is a licensee; possession is permitted because the individual has a license; or possession is lawful because the state or local entity lacks the authority to post signs precluding licensees from carrying a firearm in a public building.

1. States in Which Licensees Not Permitted to Carry a Firearm in a Public Building

There are some states whose laws provide that licensees are or may be prohibited from carrying a firearm in a public building.²⁷⁸ Alabama law states

²⁷⁶ NEB. REV. STAT. § 69-2441(2) (2015) (emphasis added) states:

If a person, persons, entity, or entities in control of the property or an employer in control of the property prohibits a permitholder from carrying a concealed handgun into or onto the place or premises and such place or premises are open to the public, a permitholder does not violate this section unless the person, persons, entity, or entities in control of the property or employer in control of the property has posted conspicuous notice that carrying a concealed handgun is prohibited in or on the place or premises or has made a request, directly or through an authorized representative or management personnel, that the permitholder remove the concealed handgun from the place or premises.

²⁷⁷ TENN. CODE ANN. §§ 39-17-1359(a)(1), (b)(1) (2015) (applicable to “meetings”).

²⁷⁸ KAN. STAT. ANN. § 237.115(2) (2015), stating that

[e]xcept as provided in KRS 527.020, the legislative body of a state, city, county, or urban-county government may, by statute, administrative regulation, or ordinance, prohibit or limit the carrying of concealed deadly weapons by licensees in that portion of a building owned, leased, or controlled by that unit of government.

that a person, including a person with a permit to carry a concealed pistol,

may not, without the express permission of a person or entity with authority over the premises, knowingly possess or carry a firearm inside any building or facility to which access of unauthorized persons and prohibited articles is limited during normal hours of operation by the continuous posting of guards and the use of other security features....²⁷⁹

In Ohio, a person licensed to carry a concealed handgun is not authorized to carry a concealed handgun into

[a]ny building that is a government facility of this state or a political subdivision of this state and that is not a building that is used primarily as a shelter, restroom, parking facility for motor vehicles, or rest facility and is not a courthouse or other building or structure in which a courtroom is located that is subject to division (B)(3) of this section....²⁸⁰

In Oklahoma, even if a person has a valid handgun license, it is unlawful to carry a concealed or unconcealed handgun in “[a]ny structure...owned or leased by a city, town, county, state or federal governmental authority.”²⁸¹

2. States in Which a Valid License Is Required to Possess a Firearm in a Public Building

A person with a handgun may be allowed to enter a public building in some states as long as the person has a permit to carry a firearm or a concealed firearm.²⁸² For example, in California, unless a person has a “valid license to carry the firearm,” it is illegal to possess a firearm “within any state or local public

MO. REV. STAT. § 571.107(1)(6) (2015) (providing that government may prohibit or limit carrying of concealed firearms in portion of a “building owned, leased or controlled by that unit of government”); MONT. CODE ANN. § 45-8-328(1)(a) (prohibiting concealed weapons in “portions of a building used for state and local government offices and related areas”).

²⁷⁹ ALA. CODE § 13A-11-61.2 (LexisNexis 2015) (stating some exceptions not relevant to the digest).

²⁸⁰ OHIO REV. CODE ANN. § 2923.126(B)(9) (LexisNexis 2015).

²⁸¹ OKLA. STAT. tit. 21, § 1277(a)(1) (2015).

²⁸² GA. CODE ANN. § 16-11-127 (2015) (prohibiting a person not having a weapons-carry license from carrying a weapon or long gun while in a government building); NEV. REV. STAT. § 202.3673(1) (LexisNexis 2015) (stating that except as provided in subsections (2) and (3), a person licensed to carry a concealed weapon may carry a concealed weapon while on the premises of any public building); N.D. CENT. CODE § 62.1-02-05 (2015) (stating that the prohibition of possession of a firearm at a public gathering or in a publicly owned or operated building is not applicable to an individual possessing a valid license to carry a concealed weapon); MO. REV. STAT. § 571.030.1(8) (2015) (prohibiting the carrying of a firearm into any building owned or occupied by an agency of the federal government, state government, or political subdivision of the state without a valid concealed carry permit).

building....”²⁸³ In Wisconsin, unless a person has a license to carry a concealed weapon, it is unlawful for any person with a firearm to enter “any building owned or leased by the state or any political subdivision of the state,”²⁸⁴ but Wisconsin allows government authorities to post a notice that prohibits the carrying of firearms by licensees in public buildings.²⁸⁵

3. States in Which Governmental Units Lack Authority to Post Signs Prohibiting Licensees from Carrying a Firearm in a Public Building

Some legislatures have decreed that governmental units lack any authority to post signs prohibiting license holders from carrying a firearm in a public building. In Texas, a state agency or a political subdivision of the State may not prohibit a license holder by the use of a notice or a sign “from entering or remaining on a premises or other place owned or leased by the governmental entity unless license holders are prohibited from carrying a handgun on the premises or other place” by Section 46.03 of the Texas Penal Code (listing prohibited places including the sterile area of an airport) or Section 46.03 of the Texas Penal Code (applicable to “unlawful carrying of a handgun by a license holder”).²⁸⁶

To summarize Section V briefly, at least 12 states prohibit the carrying of firearms in public buildings²⁸⁷ and at least 4 more states permit local government authorities to post signs prohibiting firearms in public buildings.²⁸⁸ In some states (e.g., Alabama, Ohio, and Oklahoma), firearms may be prohibited regardless of whether they are carried openly or concealed.

VI. FEDERAL AND STATE LAWS ON THE POSSESSION OF A FIREARM IN AIRPORT TERMINALS

A. Federal and State Laws that Prohibit Firearms in the Sterile Area of an Airport

Under federal law, individuals, except those authorized by law, are prohibited from carrying

²⁸³ CAL. PENAL CODE §§ 171b(a)(1), (3) (Deering 2015). See CAL. PENAL CODE § 171b(c) (Deering 2015) (defining the term “state” or “local public building”).

²⁸⁴ WIS. STAT. §§ 941.235(1), (2)(e) (2015).

²⁸⁵ WIS. STAT. § 943.13(2)(am) (2015) (providing that a state or local government building may notify “an individual not to enter or remain in a part of the building while carrying a firearm or...a particular type of firearm” if the area is posted with a sign).

²⁸⁶ TEX. GOV'T CODE ANN. § 411.209(a) (2015).

²⁸⁷ Alabama, Arizona, Arkansas, Connecticut, Delaware, Nebraska, North Carolina, Ohio, Oklahoma, Oregon, Vermont, and Wisconsin.

²⁸⁸ Kansas, Missouri, Montana, and Wisconsin.

firearms and other weapons or explosive devices in what is defined as the sterile area of an airport:

Sterile area means a portion of an airport defined in the airport security program that provides passengers access to boarding aircraft and to which the access generally is controlled by TSA, or by an aircraft operator under part 1544 of this chapter or a foreign air carrier under part 1546 of this chapter, through the screening of persons and property.²⁸⁹

Some state statutes also describe the sterile area of an airport in a manner similar to or identical to the definition under federal law.²⁹⁰ For example, Idaho law prohibits any person from entering or attempting “to enter any sterile area of an airport, which is a holder of a certificate issued by the federal government or the state of Idaho, while knowingly carrying on or about his person, or in a bag, case, pouch or other container, a deadly or dangerous weapon, either concealed or unconcealed.”²⁹¹ Some state statutes use the terms “secure area” or “secured area” to describe the part of an airport where individuals, except those authorized by law,

²⁸⁹ 49 C.F.R. § 1540.5 (2015). Section 1540.5 also defines the term “secured area” to mean

a portion of an airport, specified in the airport security program, in which certain security measures specified in part 1542 of this chapter are carried out. This area is where aircraft operators and foreign air carriers that have a security program under part 1544 or 1546 of this chapter enplane and deplane passengers and sort and load baggage and any adjacent areas that are not separated by adequate security measures.

²⁹⁰ ARIZ. REV. STAT. § 13-3119(B)(4) (LexisNexis 2015) (but excluding general aviation areas); CAL. PENAL CODE §§ 171.5(b), (c)(1), (12) (Deering 2015) (“It is unlawful for any person to knowingly possess, within any sterile area of an airport or a passenger vessel terminal, any of the items listed in subdivision (c),” such as a firearm or ammunition); 740 MASS. CODE REGS. 30.04(2) (LexisNexis 2015) (stating that no person other than federal or state law enforcement officers and other designated personnel “shall possess either on the individual’s person or in her accessible Property within a Sterile Area of an Airport, any item or material prohibited by federal transportation security regulations....”); MICH. COMP. LAWS SERV. § 259.80(f)(1) (LexisNexis 2015) (“An individual shall not possess, carry, or attempt to possess or carry [a firearm or other dangerous weapons or devices] in a sterile area of a commercial airport.”); MO. REV. STAT. § 571.107(1)(8) (2015) (stating that “neither a licensee nor an out-of-state licensee may knowingly carry a concealed weapon, a weapon that is not concealed, or a firearm that is not a weapon in...[a] place beyond a security checkpoint in an airport”); OR. REV. STAT. § 164.885(2)(a) (2015); WIS. STAT. § 175.60(16)(a)(8) (2015) (stating that “[e]xcept as provided in par. (b), neither a licensee nor an out-of-state licensee may knowingly carry a concealed weapon, a weapon that is not concealed, or a firearm that is not a weapon...beyond a security checkpoint in an airport”).

²⁹¹ IDAHO CODE ANN. § 18-7503(1) (2015).

are prohibited from carrying firearms and other weapons or explosive devices.²⁹²

There are state statutes that specifically prohibit a person, including one having a license to carry a concealed weapon, from entering the sterile area of an airport.²⁹³ For example, a Missouri statute provides:

No concealed carry permit issued pursuant to [Mo. Rev. Stat. §§ 571.101 to 571.121, valid concealed carry endorsement issued prior to August 28, 2013, or a concealed carry endorsement or permit issued by another state or political subdivision of another state shall authorize any person to carry concealed firearms into...[a]ny area of an airport to which access is controlled by the inspection of persons and property....²⁹⁴

Of course individuals, nevertheless, may present themselves at airport screening checkpoints while possessing a firearm—for example, in a carry-on bag—but claim as a defense that they had forgotten about the firearm. The question has arisen as to whether to obtain a conviction, the State has to prove that the defendant knowingly or intentionally possessed a

²⁹² ARIZ. REV. STAT. § 13-3119(D)(2) (LexisNexis 2015) (defining “secured area” of an airport); ARK. CODE ANN. § 5-73-120(c)(4)(A) (2015) (unlawful for a person intentionally to carry or possess or exercise control “over a deadly weapon in a secured area of an airport”); TENN. CODE ANN. §§ 39-17-109(a), (b) (2015) (defining the term “secure area” to be “an area to which access is controlled by the inspection of persons and property in accordance with an approved security program”); TEX. PENAL CODE ANN. § 46.03(a)(5) (2015) (prohibiting the possession of a firearm in the secured area of an airport); TEX. PENAL CODE ANN. § 46.03(c)(2) (2015) (defining the term “secured area”); UTAH CODE ANN. §§ 76-10-528(1), (2)(a) (LexisNexis 2015) (defining the term “airport authority” and prohibiting the carrying of a concealed firearm, including by one licensed to carry a concealed firearm, within the secure area of an airport); UTAH CODE ANN. § 53-5-710 (LexisNexis 2015) (prohibiting a person with a permit to carry a concealed firearm “in any airport secure area”). See also Response of George Bush Intercontinental Airport (stating that TEX. PENAL CODE § 46.03 prohibits firearms in the “secured area” of an airport).

²⁹³ LA. REV. STAT. ANN. § 40:1379.3(N) (2015) (stating that a concealed handgun permit does not authorize a person to carry a handgun into any portion of an airport facility in which the carrying of firearms is prohibited by federal law); KY. REV. STAT. ANN. § 237.110(16)(g) (LexisNexis 2015) (“Except as provided in KRS 527.020, no license issued pursuant to this section shall authorize any person to carry a concealed firearm into...[a]n area of an airport to which access is controlled by the inspection of persons and property....”); UTAH CODE ANN. § 76-10529(2)(a) (LexisNexis 2015) (“Within a secure area of an airport established pursuant to this section, a person, including a person licensed to carry a concealed firearm under [the] Concealed Weapon Act, is guilty of...a class A misdemeanor if the person knowingly or intentionally possesses any dangerous weapon or firearm....”); WIS. STAT. § 175.60(a)(8) (2015) (licensee not authorized to carry firearm beyond security checkpoint in an airport).

²⁹⁴ MO. REV. STAT. § 571(1)(8) (2015). See also OR. REV. STAT. § 164.885(2)(a) (2015).

firearm in violation of a statute. Minnesota requires a permit to carry a handgun. Section 624.714, subdivision 1a, of the Minnesota Statutes provides in part that

[a] person, other than a peace officer, as defined in section 626.84, subdivision 1, who carries, holds, or possesses a pistol in a motor vehicle, snowmobile, or boat, or on or about the person’s clothes or the person, or otherwise in possession or control in a public place, as defined in section 624.7181, subdivision 1, paragraph (c), without first having obtained a permit to carry the pistol is guilty of a gross misdemeanor. A person who is convicted a second or subsequent time is guilty of a felony.

Although the case did not involve possession of a firearm at an airport screening checkpoint, in *State v. Ndikum*,²⁹⁵ the issue was whether the defendant’s knowledge or intent to possess a pistol in violation of Minnesota Statutes Section 624.714, subdivision 1a, was an element that the State had to prove to obtain a conviction for the defendant’s violation of the statute. The court noted that Section 624.714 includes several exceptions to the permit requirement for public gun possession, exceptions that “acknowledge that possessing guns in public is not strictly regulated.”²⁹⁶ The court held:

Our examination of section 624.714 leads us to conclude that the statute does not treat guns as highly dangerous devices and does not put gun owners on notice of stringent regulation. Section 624.714, subdivision 1a, is not a public welfare statute designed to strictly regulate a highly-dangerous device and, therefore, we conclude that mens rea was not dispensed with by the Legislature. ...Thus, to obtain a conviction, the State was required to prove that Ndikum knew he possessed the pistol.²⁹⁷

The *Ndikum* decision may be compared to cases involving Metropolitan Airports Commission (MAC) Ordinance Number 91. Section 6 of the ordinance states: “No [p]erson shall place a firearm, explosive device, knife or other FAA prohibited item that could be used as a weapon onto inspection equipment at a Security Screening Area without first declaring such item.” A conviction is punishable “within the parameters of the maximum penalty for misdemeanors set forth in section 609.03 of the Minnesota Statutes as amended.”²⁹⁸ A state court in Minnesota’s fourth judicial district has ruled that the State does not have to prove that a defendant knowingly or intentionally meant to enter the sterile area of an airport while possessing a firearm.

In *Minnesota v. Rostvold*,²⁹⁹ the defendant was charged with violating Section 6.5 of MAC Ordinance 91. In finding that the State did not have to

²⁹⁵ 815 N.W.2d 816 (Minn. 2012).

²⁹⁶ *Id.* at 821.

²⁹⁷ *Id.* at 822.

²⁹⁸ METRO. AIRPORTS COMM’N ORDINANCE 91, § 6.5.

²⁹⁹ No. 27-CR-12-14340 (Unpub.) (4th Jud. Dist. Ct., Hennepin Cnty., Oct. 1, 2012).

prove the defendant's knowledge or intent for a conviction, the district court distinguished the *Ndikum* case. The court held that Section 6.5 of MAC Ordinance 91 is a public welfare and safety ordinance that strictly prohibits all citizens, law-abiding or otherwise, from placing a handgun onto security inspection equipment "without first declaring such item."³⁰⁰ As a public safety and welfare regulation, the ordinance does not require proof of the defendant's *mens rea*; thus, the State was not required to prove the defendant's knowledge or intent to obtain a conviction for violating the ordinance.³⁰¹

As for general aviation terminals and facilities and secure areas, an Arkansas law excludes general aviation: "General aviation areas [are] not included in the security identification display area or sterile area as defined in the airport security program approved by the transportation security administration."³⁰² The rules of Portland International Airport in Oregon prohibit anyone other than authorized personnel "to possess any firearms or explosives within a Restricted Area"; however, the foregoing section "does not apply to persons lawfully transporting or carrying firearms or deadly weapons in the General Aviation Area."³⁰³

In contrast, the Massachusetts regulations provide that other than authorized, designated officials, "[n]o person...shall carry loaded or otherwise operational Firearms or explosives on the Airport," and that

[a]ll persons shall, promptly upon entering the passenger terminal or *General Aviation Terminal*, as the case may be, deliver any unloaded Firearms and ammunition, as they are carrying and licensed to carry under Massachusetts law to the appropriate Air Carrier agent for transport in the hold of the aircraft, in the case of commercial flights, or directly to the aircraft, in the case of general aviation aircraft.³⁰⁴

Possibly some individuals forget that they have a firearm when they arrive at an airport security checkpoint, or they are under the mistaken impression that a permit to carry a firearm or a permit to carry a concealed firearm allows them to carry a

³⁰⁰ METRO. AIRPORTS COMM'N ORDINANCE 91, § 6.5.

³⁰¹ Likewise, in *Minnesota v. Haskins*, No. 27-CR-12-15902 (Unpub.) (4th Jud. Dist. Ct., Hennepin Cnty., Oct. 1, 2012), the district court held that METRO. AIRPORTS COMM'N ORDINANCE 91, § 6.5, as a public welfare and safety regulation did not require proof of the defendant's knowledge or intent to obtain a conviction for the defendant's failure to declare a firearm at an airport screening area.

³⁰² ARK. CODE ANN. § 5-73-120(c)(4) (2015). See also ARIZ. REV. STAT. § 13-3119(B)(4) (LexisNexis 2015) (excluding general aviation areas).

³⁰³ Portland International Airport Rules 33, PORT OF PORTLAND (2015), http://www.portofportland.com/pdfpop/PDX_Rules.pdf.

³⁰⁴ 740 MASS. CODE REGS. § 30.04(1) (LexisNexis 2015) (emphasis added).

firearm into the sterile area of an airport. Some state legislatures have addressed the issue by statute. For example, Georgia has enacted a safe harbor provision that allows a person who arrives at a security screening checkpoint at the entry to the sterile area possessing a firearm to retrieve his or her firearm and leave the area without being charged with a criminal offense; however, the safe harbor provision only applies to a person who has a license to carry a firearm.³⁰⁵

In contrast to the Georgia statute, an amendment to Section 46.03 of the Texas Penal Code provides that it is unlawful for a person "intentionally, knowingly, or recklessly" to possess or go in or "into a secured area of an airport" with a firearm or other prohibited weapon.³⁰⁶ If a person violates the law, it will no longer be a defense to prosecution that the offender was licensed to carry a handgun.³⁰⁷

As discussed in Section XIV.B, TSA may take administrative action to assess a civil penalty against an individual who attempts to pass through security while possessing a firearm.

B. State Laws that Prohibit or Restrict the Open Carrying of a Firearm

State laws vary regarding whether firearms may be carried openly. Unless restricted by statute, the laws apply statewide, including to airports. It appears that 31 states permit a handgun to be carried openly without a license or permit; 5 states (California, Florida, Illinois, New York, and South Carolina) and the District of Columbia ban the open carrying of a handgun; and 6 states (California, Florida, Illinois, Massachusetts, Minnesota, and New Jersey) and the District of Columbia prohibit the open carrying of long guns.³⁰⁸ Fifteen states require a license or permit to carry a firearm openly: Connecticut, Georgia, Hawaii, Indiana, Iowa, Maryland, Massachusetts, Minnesota, Missouri, New Jersey, Oklahoma, Rhode Island, Tennessee, Texas, and Utah.³⁰⁹ Among the states that allow the open carrying of a firearm, there are exceptions for schools, state-owned businesses, places where alcohol is served, and public transportation.³¹⁰

³⁰⁵ GA. CODE ANN. § 16-11-130.2(a) (2015). See also GA. CODE ANN. § 16-12-127 (2015).

³⁰⁶ TEX. PENAL CODE ANN. § 46.03(a)(1)(B)(5) (2015). See also TEX. PENAL CODE ANN. § 46.03 (effective Aug. 1, 2016).

³⁰⁷ Compare TEX. PENAL CODE ANN. § 46.03(f) (2015), with TEX. PENAL CODE ANN. §§ 46.03(e), (e-1), (f) (2015).

³⁰⁸ *Open Carrying Policy Summary*, LAW CENTER TO PREVENT GUN VIOLENCE (Aug. 21, 2015), http://smartgunlaws.org/open-carrying-policy-summary/#footnote_49_5940.

³⁰⁹ *Id.*

³¹⁰ *Id.*

C. State Laws Specifically Prohibiting Firearms in Airport Terminals and on Other Airport Property

Several states by statute have prohibited the possession of firearms anywhere in airport terminals, including areas for ticketing and baggage claim, with some states also prohibiting them on other airport property.

In Alaska, although there is authority that Alaska prohibits firearms only in the sterile area of airports,³¹¹ there is a provision in the Alaska Administrative Code that applies directly to terminal buildings of airports:

(a) A person may not carry a firearm or prohibited weapon in a department-operated terminal building or restricted area except in compliance with any other applicable law and

- (1) as authorized by this section;
- (2) as necessary to fulfill a legal requirement; or
- (3) as specifically permitted by law.

(b) Before boarding an air carrier aircraft, a passenger transporting a firearm shall check the firearm, unloaded and encased in a closed container designed for transporting firearms, as or within luggage and notify the air carrier that the luggage contains a firearm.³¹²

In Arkansas, a license to carry a concealed handgun does not allow a person “to carry a concealed handgun...[i]nside the passenger terminal of any airport, except...if the firearm is encased for shipment for purposes of checking the firearm as baggage to be lawfully transported on any aircraft....”³¹³

An interesting statutory provision in Arkansas is that it is permissible for a person to carry a weapon if “[t]he person is...upon a journey, unless the journey is through a commercial airport....”³¹⁴ The Arkansas attorney general has issued an opinion stating that although the term “journey” is ambiguous, the statute applies when a person is in the process of traveling by vehicle outside his or her county; moreover, “the journey exception only applies while the handgun remains in the vehicle.”³¹⁵ If a person takes the handgun out of the vehicle, the “journey exception” no longer applies, meaning that the

³¹¹ Thomson, *supra* note 265 (citing ALASKA STAT. §§ 29.35.145, 29.35.145(a)(4), § 29.35.145(e)(2)).

³¹² ALASKA ADMIN. CODE tit. 17, § 42.065(a)(3) (2015) (emphasis added). *See also, id.*, § 42.005 (2015).

³¹³ ARK. CODE ANN. § 5-73-306(15) (2015).

³¹⁴ ARK. CODE ANN. §§ 5-73-120(a), (c)(4) (2015) (adding a proviso that possession is unlawful when a person is presenting a firearm at an airport security checkpoint or the firearm is in the person’s checked baggage “and is not a lawfully declared weapon”).

³¹⁵ Ark. Att’y Gen. Op. No. 2015-064, *supra* note 157, at 7.

person would be “committing the offense of ‘carrying a weapon’” in violation of Arkansas law.³¹⁶

Connecticut law states, as part of a statute applicable to a permit to carry a pistol or revolver, that a permit does not authorize anyone to carry a pistol or revolver on any premises where the person who owns or controls the premises has posted a sign prohibiting firearms at the prescribed distance from the entrance and in the form required by the statute.³¹⁷

In Florida, the statute is quite explicit that firearms are prohibited in airports, including by private individuals licensed to carry a firearm either openly or in a concealed manner:

A license issued under this section does not authorize any person to openly carry a handgun or carry a concealed weapon or firearm into...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....³¹⁸

In Iowa, notwithstanding state law that limits local regulation of firearms,³¹⁹ a local ordinance bans firearms and other weapons “on property under the jurisdiction of the [Des Moines Airport] Authority, including the parking garages and lots.”³²⁰ The state’s attorney general issued an opinion in 2003 stating that, notwithstanding the state preemption statute, there is a lawful basis for the local ordinance:

Iowa courts would likely construe the preemption provision contained in Iowa Code section 724.28 narrowly and would recognize the authority of a city to exercise its home rule power to place restrictions upon the possession of weapons which apply only to buildings owned or directly controlled by the city. Therefore, we believe that the City of West Burlington could enforce its ordinance against a person who is authorized by Iowa Code section 724.4 to carry a firearm and may prohibit a nonprofessional person from possessing a firearm within a municipal building, even though

³¹⁶ *Id.* *See also* John Thomas Shepherd, Comment, *Who is the Arkansas Traveler: Analyzing Arkansas’s “Journey” Exception to the Offense of Carrying a Weapon*, 66 ARK. L. REV. 463, 467 (2013) (“Because this statutory provision is ambiguous as to what journey means, determining the legislature’s intent through the plain language of the statute is not helpful.”)

³¹⁷ CONN. GEN. STAT. § 29-28(e) (2015).

³¹⁸ FLA. STAT. ANN. § 790.06(12)(a)(14) (LexisNexis 2015) (emphasis added).

³¹⁹ IOWA CODE § 724.28 (2015) (prohibiting political subdivision of the State from enacting an ordinance regulating the ownership, possession, legal transfer, lawful transportation, registration, or licensing of firearms when the ownership, possession, transfer, or transportation is otherwise lawful under the laws of the State of Iowa).

³²⁰ *Des Moines Airport Authority Rules & Regulations*, Rule 3-24, at 14 (June 9, 2015), <http://www.dsmaairport.com/webres/File/about-the-airport/employment/Rules%20and%20Regulations/Rules%20%20Regulations%2006092015%20FINAL.pdf>.

the person has a valid permit to carry the firearm and carries it in compliance both with Iowa Code section 724.4(4)(i) and with any limitations specified in the permit.³²¹

In Maine, the rules and regulations applicable to Augusta State Airport provide that “[n]o person, except those duly authorized by law, shall carry any weapon, firearm, or explosive on [an] airport, except encased sporting guns for air shipment.”³²² Maryland law provides that weapons are prohibited in airports, “except those that are properly packaged for shipment.”³²³ In Maryland, no weapons or explosives may be carried in or on the Baltimore/Washington International Thurgood Marshall Airport.³²⁴

Massachusetts allows an airport commission “to adopt rules and regulations for the use of municipal

³²¹ Iowa Att’y Gen. Op. No. 03-4-1, at 5 (unnumbered pages) (Apr. 7, 2003), available at http://www.handgunlaw.us/documents/agopinions/IAAGOp03_4_1.pdf.

³²² 49 C.F.R. § 1540.5 (2015). Section 1540.5 also defines the ME. CODE R., Department of Transportation, sub-agency 229, Rules and Regulations for the Use of the Augusta State Airport, § 400.08 (LexisNexis 2015). See also MD. CODE REGS. § 11.03.01.09.C(1) (2015) (stating that with certain exceptions “[w]eapons, except those properly packaged for shipment, are prohibited...”); 740 MASS. CODE REGS. § 30.04(1) (LexisNexis 2015) (providing in part that “[n]o person except federal or state law enforcement officers [and other designated agencies and personnel] who are authorized and validly licensed to carry Firearms, ammunition and explosives in Massachusetts, shall carry loaded or otherwise operational Firearms or explosives on the Airport”); N.Y. PENAL LAW § 265.01 (Consol. 2015) (“A person is guilty of criminal possession of a weapon in the fourth degree when... [h]e or she possesses any firearm...”). See ALLEGHENY COUNTY, PA., ORDINANCE § 705-39 (2015):

A. No person, except law enforcement officers, post office and custom officials, or members of the Armed Forces of the United States on active duty, shall carry any weapon, firearm, explosive or inflammable material on the airport premises except by specific direction of the Director, the Superintendent of Police or their designees.

B. No person shall transport any weapon or firearm except when it is properly enclosed for shipment and is not in the person’s manual possession.

See also METRO WASH. REGULATIONS § 8.4(1) (2015):

No person may possess a dangerous weapon within or bring any dangerous weapon into the Airports’ terminals or the airfields or any building that opens onto the airfield on which signs are posted so as to give reasonable notice to the public unless: (a) the person is a passenger of an airline and possesses the weapon in one of the Airports’ terminals for the sole purposes of (i) presenting such weapon to U.S. Customs agents in advance of an international flight, (ii) checking such weapon with his luggage, or (iii) retrieving such weapon from the baggage claim area....

³²³ MD. CODE REGS. §§ 11.03.01.09(B)(3), (C) (2015) (applicable to Baltimore Washington International Thurgood Marshall Airport), available at <http://www.dsd.state.md.us/COMAR/SubtitleSearch.aspx?search=11.03.01>.

³²⁴ 740 MASS. CODE REGS. §§ 30.04(1), 30.05 (2015).

airports or for the safety of the public upon or beyond the limits of airports under its control, whether such airport facilities are within or without the territorial limits of the city or town,” subject to the approval of the Massachusetts Aeronautics Commission.³²⁵ Massachusetts also has created a special security zone for Boston’s Logan Airport in which firearms, as well as other weapons and explosives, are prohibited.³²⁶ Anyone other than authorized personnel possessing a firearm at Logan Airport

shall, promptly upon entering the passenger terminal or General Aviation Terminal, as the case may be, deliver any unloaded Firearms and ammunition, as they are carrying and licensed to carry under Massachusetts law to the appropriate Air Carrier agent for transport in the hold of the aircraft, in the case of commercial flights, or directly to the aircraft, in the case of general aviation aircraft.³²⁷

Under Mississippi law, although a person may carry a legal firearm into an airport terminal if the firearm is encased for shipment for checking as baggage on an aircraft, “[n]o license issued pursuant to this section [a license to carry a concealed pistol or revolver] shall authorize any person to carry a stun gun, concealed pistol or revolver...inside the passenger terminal of any airport.”³²⁸ Nevada prohibits individuals who have a permit from carrying a concealed weapon “on the premises of a public building that is located on the property of a public airport.”³²⁹ A local ordinance in North Carolina makes it unlawful to carry a dangerous weapon in the Charlotte Douglas International Airport except to ship it “by air in compliance with federal and state laws and regulations.”³³⁰

An Ohio statute is somewhat opaque when read in its entirety, but it seems to authorize the board of trustees of a regional airport authority, chief administrative officer of an airport facility, or other person in charge of an airport facility to post a sign at a conspicuous location at each airport facility under that person’s control stating: “Unless otherwise authorized by law, pursuant to the Ohio Revised Code, no person shall knowingly possess, have under the person’s control, convey, or attempt to convey a deadly weapon or dangerous ordnance onto these premises.”³³¹ As noted in Section VI.E, the Columbus Regional Airport Authority in Ohio

³²⁵ MASS. ANN. LAWS ch. 90, § 51J (LexisNexis 2015).

³²⁶ MASS. ANN. LAWS ch. 90, §§ 61(a), (b) (LexisNexis 2015).

³²⁷ 740 MASS. CODE REGS. § 30.04(1) (LexisNexis 2015).

³²⁸ MISS. CODE ANN. § 45-9-101(13) (2015).

³²⁹ NEV. REV. STAT. ANN. § 202.3673(2) (LexisNexis 2015).

³³⁰ CHARLOTTE, N.C. ORDINANCE §§ 15-14 (b), (c)(3) (2003).

³³¹ OHIO REV. CODE ANN. § 2923.1212(A)(5) (LexisNexis 2015). See also OHIO REV. CODE ANN. § 2923.12(F) (LexisNexis 2015) (stating that the carrying of a concealed weapon aboard an aircraft is a felony of the third degree).

prohibits firearms anywhere in the terminal of three airports subject to its authority.

In Pennsylvania, an Allegheny County (Pittsburgh being the county seat) ordinance states that other than authorized, designated personnel, “[n]o person... shall carry any weapon, firearm, explosive or inflammable material on the airport premises,” except by those designated in the ordinance.³³²

A Virginia statute very clearly prohibits private individuals from carrying firearms in airports in Virginia. In Virginia, it is unlawful

for any person to possess or transport into *any air carrier airport terminal in the Commonwealth* any (i) gun or other weapon designed or intended to propel a missile or projectile of any kind, (ii) frame, receiver, muffler, silencer, missile, projectile or ammunition designed for use with a dangerous weapon, and (iii) any other dangerous weapon, including explosives, stun weapons as defined in § 18.2-308.1, and those weapons specified in subsection A of § 18.2-308.³³³

Passengers may transport a firearm “for the sole purposes...of (i) presenting such firearm, weapon, or ammunition to U.S. Customs agents in advance of an international flight[] in order to comply with federal law, (ii) checking such firearm, weapon, or ammunition with his luggage, or (iii) retrieving such firearm, weapon, or ammunition from the baggage claim area.”³³⁴

In 2014, the Metropolitan Washington Airports Authority that administers Ronald Reagan Washington National Airport and Washington Dulles International Airport, both located in Virginia, decided that travelers and other airport visitors may “carry guns, knives and other weapons as long as they keep them out of terminals and other buildings that access airfields.”³³⁵ As a result, parking lots at the airports are not off-limits to firearms as long

³³² ALLEGHENY COUNTY, PA., ORDINANCE § 705-39 (2015) (stating also that “[n]o person shall transport any weapon or firearm except when it is properly enclosed for shipment and is not in the person’s manual possession”). As for the Philadelphia International Airport, see *Philadelphia International Airport Rules and Regulations* § 2(D), at 2-1 (July 2014), available at <http://www.phl.org/Business/Pages/Airport-Rules-and-Regulations-.aspx>.

³³³ VA. CODE ANN. § 18.2-287.01 (2015) (emphasis added). The section further provides:

Any such weapon shall be subject to seizure by a law-enforcement officer. A violation of this section is punishable as a Class 1 misdemeanor. Any weapon possessed or transported in violation of this section shall be forfeited to the Commonwealth and disposed of as provided in § 19.2-386.28.

³³⁴ VA. CODE ANN. § 18.2-287.01 (2015).

³³⁵ Steven Ginsberg & Karin Brulliard, *Weapons Rules Eased at Dulles and National*, WASH. POST, Oct. 7, 2004, <http://www.washingtonpost.com/wp-dyn/articles/A13174-2004Oct6.html>.

as the person possessing or transporting a firearm complies with other Virginia laws.

D. Airport Responses on the Legality of Carrying Firearms in the Nonsterile Area of an Airport

Twenty airports responding to the survey reported that private individuals are allowed to carry firearms in the nonsterile area of the airport,³³⁶ whereas 10 airports stated that there are laws in their state that prohibit the open carrying of firearms in the nonsterile area of an airport terminal or on airport property.³³⁷

George Bush Intercontinental Airport in Houston reported that it is illegal to carry a handgun in public in Texas without a permit,³³⁸ but that state law prohibits the City of Houston from regulating “the transfer, private ownership, keeping, transportation, licensing, or registration of firearms, air guns, ammunition, or firearm or air gun supplies.”³³⁹ Furthermore, the City of Houston “cannot use the Texas criminal trespass statute to prevent a concealed handgun license holder from entering government property.”³⁴⁰ The Minneapolis–St. Paul International Airport’s

³³⁶ Responses of Albuquerque International Sunport Airport, N.M.; Austin–Bergstrom International Airport, Tex.; Blue Grass Airport, Lexington, Ky.; Casper/Natrona County International Airport, Wyo.; Clinton National/Adams Field Airport, Little Rock, Ark.; Dallas Fort Worth International Airport (stating only with a permit), Tex.; General Mitchell International Airport, Milwaukee, Wis.; George Bush Intercontinental/Houston Airport, Tex.; Gerald R. Ford International Airport, Grand Rapids, Mich.; Huntsville International–Carl T. Jones Field, Ala.; LaGuardia Airport, N.Y.; Lincoln Airport–Lincoln Airport Authority, Neb.; Louisville International–Standiford Field, Ky.; Memphis International Airport, Tenn.; Minneapolis–St. Paul International/World-Chamberlain Airport, Minn.; Portsmouth International Airport, N.H.; Theodore Francis Green State Airport–Rhode Island Airport Corp.; Joe Foss Field, Sioux Falls, S.D.; Spokane International Airport, Wash.; Tucson International Airport–Tucson Airport Authority, Ariz.

³³⁷ Albuquerque International Sunport Airport, N.M.; Bangor International Airport, Me.; Blue Grass Airport, Lexington, Ky. (citing KY. REV. STAT. ANN. § 183.8811); Dallas Fort Worth International Airport, Tex. (stating without a permit); Eppley Airfield Airport (Omaha), Neb. (citing NEB. REV. STAT. ANN. § 69-2441); Bismarck Municipal Airport, N.D.; George Bush Intercontinental/Houston Airport, Tex. (stating that the answer is yes until Jan. 1, 2016, then no); Grand Forks International Airport, N.D.; Nashville International Airport, Tenn. (citing TENN. CODE ANN. § 39-17-1359); Theodore Francis Green State Airport–Rhode Island Airport Corp.

³³⁸ Response of George Bush Intercontinental/Houston Airport, Tex. (citing TEX. PENAL CODE ANN. § 46.02). See also TEX. PENAL CODE ANN. § 46.02 (2016).

³³⁹ *Id.* (citing HOUSTON, TEX., LOCAL GOV’T CODE § 229.001(a)).

³⁴⁰ *Id.* (citing TEX. PENAL CODE ANN. § 30.06(e)).

response similarly noted that because Section 624.714, subdivision 23 of the Minnesota Statutes “has taken away the ability of Minnesota government agencies or units to regulate the carrying and permitting of pistols...only federal law prohibits where a pistol may be carried on airport property” in Minnesota.³⁴¹

E. Airport Rules and Regulations Prohibiting Firearms in Airport Terminals or on Other Airport Property

Twelve airports that responded to the survey reported that the airport or airport authority has rules regulating the possession of firearms by private individuals in the nonsterile area of an airport terminal or on airport property,³⁴² whereas 16 airports reported that they do not.³⁴³ Based on the survey responses and other research on selected airport rules, regulations, or ordinances, there is at least one airport in 16 states that prohibits firearms in the airport terminal and on other airport property.³⁴⁴

Blue Grass Airport in Lexington, Kentucky, cited Section 14 of the Lexington–Fayette Urban County Airport Board Rules and Regulations.³⁴⁵ Other than authorized, designated personnel no one

³⁴¹ Response of Minneapolis–St. Paul International Airport.

³⁴² Responses of Austin–Bergstrom International Airport, Tex.; Bangor International Airport, Me.; Bismarck Municipal Airport, N.D. (citing N.D. CENT. CODE § 62.1-02-05); Blue Grass Airport, Lexington, Ky.; Clinton National/Adams Field Airport, Little Rock, Ark.; Columbia Metropolitan Airport, S.C.; Detroit Metropolitan Wayne County Airport, Mich.; Eppley Airfield Airport (Omaha), Neb. (citing NEB. REV. STAT. ANN. § 69-2441); General Mitchell International Airport, Milwaukee, Wis.; Grand Forks International Airport, N.D.; Lincoln Airport–Lincoln Airport Authority, Neb.; Nashville International Airport, Tenn.

³⁴³ Responses of Albuquerque International Sunport Airport, N.M.; Casper/Natrona County International Airport, Wyo.; Dallas Fort Worth International Airport, Tex.; George Bush Intercontinental/Houston Airport, Tex.; Gerald R. Ford International Airport, Grand Rapids, Mich.; Huntsville International–Carl T. Jones Field, Ala.; LaGuardia Airport, N.Y.; Louisville International–Standiford Field, Ky.; Memphis International Airport, Tenn.; Minneapolis–St. Paul International/World–Chamberlain Airport, Minn.; Portsmouth International Airport, N.H.; Theodore Francis Green State Airport–Rhode Island Airport Corp.; San Francisco International Airport, Cal.; Joe Foss Field, Sioux Falls, S.D.; Spokane International Airport, Wash.; Tucson International Airport–Tucson Airport Authority, Ariz.

³⁴⁴ Arkansas, California, Georgia (Hartsfield–Jackson Atlanta International Airport), Kentucky, Maine (Augusta State Airport), Michigan, Nebraska, North Dakota, Ohio, Oregon, Pennsylvania, Port Authority of New York and New Jersey, North Dakota, South Carolina, Washington, and Wisconsin.

³⁴⁵ LEXINGTON–FAYETTE URBAN CNTY. AIRPORT BD. RULES AND REGULATIONS (Sept. 26, 2012), available at <https://www.bluegrassairport.com/documents/lfucabRulesandRegs-3.pdf>.

may carry, possess, use or store any Firearm, ammunition, explosive or destructive device or other deadly Weapons in any form inside the Passenger Terminal or on Airport property [except when] properly encased for shipment...as cargo or checked baggage and actually delivered to an airline before the Person approaches the security checkpoint.³⁴⁶

Clinton National/Adams Field Airport in Little Rock, Arkansas, cited Section 305 of its rules that prohibit firearms inside the terminal building “unless carried by sworn law enforcement officers or packaged for shipment via aircraft in compliance with federal regulations.”³⁴⁷ All persons not authorized to have a firearm in the terminal are directed to “surrender all such firearms, explosives or similar inflammable materials in their possession upon demand to the Airport Police or remove same from the Airport.”

Several airports that responded to the survey also advised that they have posted signs prohibiting firearms. Pursuant to Section 69-2441 of the Nebraska Revised Statutes, relating to a permit to carry a concealed handgun, and Section 3.9 of its rules and regulations, the Lincoln Airport Authority has posted signs banning the carrying of concealed weapons in the airport.³⁴⁸

In addition to the airports that responded to the survey, other airport rules and regulations prohibiting firearms were located for the digest. The rules of the Columbus Regional Airport Authority in Ohio, applicable to Port Columbus International Airport, Rickenbacker International Airport, and Bolton Field Airport, prohibit firearms anywhere in the terminal, except for authorized persons:

A. No person, except law enforcement officers with verifiable identification and such other persons authorized by the President & CEO, or designee, shall carry a firearm or weapon into or any terminal, unless the firearm or weapon is encased for shipment for the purpose of checking such firearm or weapon with an airline to be lawfully transported on an aircraft.

B. Other than as authorized by federal or state law, or as specified in Section 3.9(A) of these Rules, no person shall carry, bring or otherwise transport, a firearm, deadly weapon, dangerous ordnance or other weapon as defined in Sections 2923.11 to 2923.24, Ohio Revised Code, anywhere on Authority premises....³⁴⁹

³⁴⁶ *Id.* at 21.

³⁴⁷ Response of Clinton National/Adams Field Airport, Little Rock, Ark.

³⁴⁸ Responses of Lincoln Airport–Lincoln Airport Authority, Neb., and General Mitchell International Airport, Wis. (reporting that the airport has posted signs that comply with the state statute to prohibit weapons).

³⁴⁹ RULES OF THE COLUMBUS REG'L AIRPORT AUTH. § 3.9 (July 20, 2009), available at <http://columbusairports.com/files/doing-business/pdfs/craa-rules1.pdf>.

On July 1, 2008, the Hartsfield–Jackson Atlanta International Airport announced that the airport is a “gun-free zone.”³⁵⁰ The announcement was in response to Georgia’s enactment of House Bill 89 that allows Georgia citizens who have firearm licenses to bring a concealed weapon aboard public transportation, into restaurants that serve alcohol, and in other places.³⁵¹ The airport stated that, notwithstanding the new legislation, its legal position was that “the airport continues to fall under the *public gathering exception* found in the Georgia Code, Section 16-11-127. The airport is a publicly owned and operated building, and it is owned by the City of Atlanta. Therefore, firearms are prohibited on airport property.”³⁵² The airport warned that anyone arriving on MARTA “should be aware that once you exit the MARTA lobby and enter the terminal, you are on airport property and firearms are prohibited. Additionally, firearms are prohibited in the restaurant located in the public area of the airport.”³⁵³ The airport warned that violators would be charged with a misdemeanor offense.³⁵⁴

In *Georgiacarry.Org, Inc. v. City of Atlanta*,³⁵⁵ the plaintiffs challenged the airport’s policy. The plaintiffs argued that a Georgia law that “permits any person who possesses a valid Georgia firearms license (‘GFL’) to carry a firearm in the non-sterile areas of the Airport...overrides the City’s longstanding policy prohibiting visitors to the Airport from carrying firearms.”³⁵⁶ The court did not address the constitutional issue because the court held that the Georgia statute that authorized “GFL holders to carry firearms ‘in public transportation’...does not mention airports, nor does it define ‘public transportation.’”³⁵⁷ Moreover, there was no evidence that the legislature meant for the term “public transportation” to include airports.³⁵⁸ Thus, the court dismissed the complaint.

As for other states, the Port Authority of New York and New Jersey Airport Rules and Regulations state that, except for authorized personnel identified in the rules, “[n]o person shall carry any firearms, explosives, munitions, or pyrotechnics into the SIDA [Security Identification Display Area] or AOA

³⁵⁰ *General Manager Releases Statement Declaring Airport a Gun-Free Zone*, HARTSFIELD–JACKSON ATLANTA INT’L AIRPORT (July 1, 2008), http://www.atlanta-airport.com/Airport/NewsRoom/Press_Release_Article.aspx?id=572.

³⁵¹ *Id.*

³⁵² *Id.*

³⁵³ *Id.*

³⁵⁴ *Id.*

³⁵⁵ *Id.*, but see O.C.G.A. § 16-11-130.2(a) (2015).

³⁵⁶ *Id.* at 1282.

³⁵⁷ *Id.* at 1284 (citing GA. CODE ANN. § 16-11-127(e)).

³⁵⁸ *Id.* at 1285.

[Airport Operations Area]...”³⁵⁹ John F. Kennedy International Airport; LaGuardia Airport; Newark Liberty International Airport; Stewart International Airport (New Windsor, New York); and Teterboro Airport (New Jersey) are subject to the jurisdiction of the Port Authority of New York and New Jersey.³⁶⁰

A Wayne County Airport Authority (WCAA) ordinance that applies to the Detroit Metropolitan Airport bans dangerous weapons in any area of the airport, such as airport buildings, airport terminals, airfields, parking lots, aircraft, vehicles using the airport, and any building or gate that opens onto the airfield.³⁶¹ The WCAA has declared that “[t]he prohibition of dangerous weapons at the Airport...is necessary to fulfill the Airport Authority’s obligations under federal law to provide for the safety and security of persons and property on Aircraft operating in air transportation or intrastate air.”³⁶²

Consistent with the law of Virginia discussed in Section VI.C, the regulations of MWAA, applicable to Ronald Reagan Washington National Airport and Washington Dulles International Airport, both located in Virginia, prohibit any dangerous weapons in the airport terminals “or the airfields or any building that opens onto the airfield on which signs are posted” that give reasonable notice to the public that weapons are prohibited.³⁶³ The only weapon that MWAA allows is one that an individual will be presenting to a customs agent prior to an international flight; is checking in his or her luggage in the manner required; or is collecting in a baggage claim area.³⁶⁴ A weapon may be brought to the airport only if it is packaged for shipment.³⁶⁵ A weapon that is a firearm must be unloaded and locked in a container for which only the individual has the key.³⁶⁶

Other airports that have similar prohibitory firearms policies are Columbia Metropolitan Airport in South Carolina,³⁶⁷ Grand Forks International

³⁵⁹ PORT AUTH. OF N.Y. & N.J. AIRPORT RULES & REGULATIONS 4 (Aug. 4, 2009), available at http://www.panynj.gov/airports/pdf/rules_regs_revision_8_04_09.pdf.

³⁶⁰ *Id.* at III.

³⁶¹ WAYNE CNTY. AIRPORT AUTH. AIRPORT ORDINANCE 53 (effective Mar. 12, 2013), available at http://www.metroairport.com/Portals/0/PDF/WCAA_Airport_Ordinance_Mar2013.pdf.

³⁶² *Id.* § 11.3(iv) (citing 49 C.F.R. § 1542.101(a)(1)).

³⁶³ METRO. WASH. AIRPORTS AUTH. REGULATIONS § 8.4(1)(a) (July 2014), available at <http://www.mwaa.com/file/PDFregs.PDF>.

³⁶⁴ *Id.*

³⁶⁵ *Id.* Individuals who are authorized to carry weapons within the sterile area of an airport and law enforcement officers are exempt from the preceding regulation. *Id.* § 8.4(2).

³⁶⁶ *Id.* § 8.4(1)(b).

³⁶⁷ Response of Columbia Metropolitan Airport, S.C. (citing § 7-70 of its rules and regulations).

Airport in North Dakota,³⁶⁸ Portland International Airport in Oregon,³⁶⁹ LAX,³⁷⁰ and Seattle–Tacoma International Airport.³⁷¹

Thus, based on the statutes located for the digest, airport responses to the survey, and airport rules and regulations or policies, discussed respectively in Sections VI.C, VI.D, and VI.E, it appears that 11 states and at least 1 airport in 12 more states ban firearms in airport terminals: Alaska, Arkansas, California, Florida, Iowa, Maine (Augusta State Airport), Maryland, Massachusetts, Michigan (WCAA–Detroit Metropolitan Airport), Mississippi, Nebraska (Lincoln Airport Authority), the Port Authority of New York and New Jersey (five airports in the New York–New Jersey area), North Carolina (Charlotte), North Dakota (Bismarck and Grand Forks), Ohio, Oregon (Portland), Pennsylvania (Allegheny County (Pittsburgh) and Philadelphia), South Carolina (Columbia), Tennessee (Blue Grass), Virginia, and Washington (Seattle–Tacoma).³⁷²

³⁶⁸ Grand Forks International Airport, N.D., Rules and Regulations § 4.11 (Aug. 1, 1995), available at http://gfkairport.com/wp-content/uploads/pdf/rules_regs.pdf (stating in part that no person may bring any firearms “onto the airport” except as permitted in the circumstances described in the section).

³⁶⁹ PORTLAND INT’L AIRPORT RULES 33 (2015), available at https://www.portofportland.com/pdfpop/PDX_Rules.pdf, providing that

[n]o persons, except authorized law enforcement officers or members of the armed forces of the United States on official duty, shall possess any firearms or explosives within a Restricted Area without written permission of the ASC, unless under escort by a Port Police officer. This does not apply to persons lawfully transporting or carrying firearms or deadly weapons in the General Aviation Area.

³⁷⁰ LAX L.A. WORLD AIRPORTS, RULES & REGULATIONS §§ 2-1 (Mar. 2014), available at http://www.lawa.org/uploadedFiles/AirOps/pdf/rules/05_Section_02_General_201112.pdf (stating that “[n]o person, shall carry any firearms or explosives at the Airport without permission” and that “[a]ll persons other than those in the excepted classes shall, while at the Airport, surrender all such objects in their possession to the Airport Police Division”). Peace officers, post office and customs employees, or members of the armed forces of the United States on official duty” are exempt from the regulations. *Id.*

³⁷¹ SEATTLE-TACOMA INT’L AIRPORT, SCHEDULE OF RULES & REGULATIONS No. 5, at 2–3 (Feb. 2015), available at <https://www.portseattle.org/Business/Documents/Rulereg.pdf> (stating that “[n]o person may carry firearms on or about the Airport except as allowed by federal and state law”).

³⁷² Two more states that possibly may be included as states where firearms are or could be banned in airport terminals under state law are Illinois and New York. In Illinois, 720 ILL. COMP. STAT. ANN. 5/24-1(a)(10) (LexisNexis 2015) provides that a person is committing the offense of unlawful use of weapons when the person knowingly, with some exceptions not relevant to the digest, “[c]arries or possesses on or about his person, upon any public street, alley, or other public lands within the corporate limits of a city, village or incorporated town...any pistol, revolver, stun gun

F. State Laws Prohibiting Licensed Individuals from Carrying a Concealed Firearm in the Nonsterile Area of an Airport

Several statutes provide that a license to carry a concealed handgun does not authorize the licensed holder to carry a handgun into an airport except for shipment as further authorized by law.³⁷³ In response to the survey, 17 airports reported that under the laws of their state, a licensee may carry a concealed firearm in the nonsterile area of an airport or on airport property.³⁷⁴ Eight airports stated that concealed carry firearms could not be carried in the nonsterile area of an airport or on airport property.³⁷⁵ A review

or taser or other firearm....” Another subsection of the statute prohibits a person from carrying a firearm “while in a building occupied by a unit of government....” 720 ILL. COMP. STAT. ANN. 5/24-1(a)(13) (LexisNexis 2015). On the other hand, licensees possibly are excluded from the above prohibitions. See 430 ILL. COMP. STAT. ANN. 66/10(c)(1) (LexisNexis 2015) (authorizing the issuance of a license to carry a loaded or unloaded concealed firearm, fully concealed or partially concealed). In New York, a person commits the crime of criminal possession of a weapon in the second degree when the person “possesses any loaded firearm” except in the person’s home or place of business. N.Y. PENAL LAW § 265.03(3) (Consol. 2015). Moreover, N.Y. PENAL LAW § 400(2) (Consol. 2015), applicable to the issuance of licenses to carry firearms, to the extent relevant to the digest, does not appear to authorize unrestricted, open carry of firearms such as to permit a licensee to carry a firearm in an airport.

³⁷³ ARK. CODE ANN. § 5-73-306(15) (2015) (“No license to carry a concealed handgun issued pursuant to this subchapter authorizes any person to carry a concealed handgun...[i]nside the passenger terminal of any airport” except when a legal firearm “is encased” for lawful shipment.)

³⁷⁴ Responses of Albuquerque International Sunport Airport, N.M.; Austin–Bergstrom International Airport, Tex.; Bismarck Municipal Airport, N.D.; Blue Grass Airport, Lexington, Ky. (citing KY. REV. STAT. ANN. § 183.8811); Casper/Natrona County International Airport, Wyo.; Clinton National/Adams Field Airport, Little Rock, Ark. (citing ARK. CONST. art. 2, § 5, ARK. CODE ANN. § 5-73-119(e)); Dallas Fort Worth International Airport, Tex. (stating with a permit); Detroit Metropolitan Wayne County Airport, Mich.; George Bush Intercontinental/Houston Airport, Tex.; Huntsville International–Carl T. Jones Field, Ala.; General Mitchell International Airport, Milwaukee, Wisc. (citing WIS. STAT. §§ 175.60 (concealed carry), 941.23(2)(e) (permit)); Gerald R. Ford International Airport, Grand Rapids, Mich.; Louisville International–Standiford Field, Ky.; Memphis International Airport, Tenn. (citing TENN. CODE ANN. § 39-17-1359); Spokane International Airport, Wash. (citing WASH. REV. CODE ANN. § 9.41.300(1)(e)); Theodore Francis Green State Airport–Rhode Island Airport Corp. (citing R.I. GEN. LAWS § 11-47-11 (license or permit to carry concealed pistol or revolver)); Tucson International Airport–Tucson Airport Authority, Ariz. (citing ARIZ. REV. STAT. § 13-3102).

³⁷⁵ Responses of Bangor International Airport, Me.; Columbia Metropolitan Airport, S.C.; Eppley Airfield Airport (Omaha), Neb. (citing NEB. REV. STAT. ANN. § 69-2441); Grand Forks International Airport, N.D.; LaGuardia Airport, N.Y.; Lincoln Airport–Lincoln Airport Authority, Neb.; Nashville International Airport, Tenn.; and Joe Foss Field, Sioux Falls, S.D.

of state statutes disclosed that other states forbid the carrying of concealed firearms in airport terminals.

Alaska law prohibits a permittee from possessing a concealed handgun anywhere a person is prohibited from possessing a handgun under state or federal law.³⁷⁶ In Illinois, licensees are directed not to carry a firearm knowingly into any building or on any real property or parking areas that are under the control of an airport.³⁷⁷ There are other states with similar statutes.³⁷⁸

To conclude, based on state statutes and survey responses, there are at least 12 states (Alaska, Illinois, Mississippi, Nebraska, Nevada, New Jersey, New York, North Dakota, Ohio, South Carolina, South Dakota, and Tennessee) that prohibit concealed firearms in airports.

VII. STATE LAWS THAT PROHIBIT THE POSSESSION OF FIREARMS BY CERTAIN PERSONS OR THAT PROHIBIT CERTAIN TYPES OF FIREARMS

A. Individuals Convicted of a Felony or Other Serious Crime

As discussed in this section, when a law enforcement officer observes someone who is carrying or who reasonably is believed to be carrying a firearm in an airport, the officer typically may approach the individual and make inquiries. There are state and federal databases available that permit an officer to determine whether a person is disqualified from possessing a firearm for one or more of the reasons discussed in the following section.

Regardless of whether a person possesses a firearm in an airport or elsewhere, there is a substantial body of state law that prohibits certain persons from having a firearm. A person's conviction for a felony or other

³⁷⁶ ALASKA STAT. § 18.65.755(a)(2) (2015). *See* ALASKA ADMIN. CODE tit. 17, § 42.065(a)(3) (2015) (stating that “[a] person may not carry a firearm or prohibited weapon in a department-operated terminal building or restricted area except in compliance with any other applicable law....”).

³⁷⁷ 430 ILL. COMP. STAT. ANN. 66/65(a)(19) (LexisNexis 2015).

³⁷⁸ MISS. CODE ANN. § 45-9101(13) (2015) (stating that “[n]o license issued pursuant to this section shall authorize any person to carry a stun gun, concealed pistol or revolver...inside the passenger terminal of any airport, except that no person shall be prohibited from carrying any legal firearm into the terminal if the firearm is encased for shipment, for purposes of checking such firearm as baggage....”); NEV. REV. STAT. ANN. § 202.3673(2) (LexisNexis 2015) (stating that “[a] permittee shall not carry a concealed firearm while the permittee is on the premises of a public building that is located on the property of a public airport”); OHIO REV. CODE ANN. § 2923.126(B)(1) (LexisNexis 2015) (holder of a valid license to carry a concealed handgun not authorized to carry a concealed handgun into...an airport passenger terminal....”). *See also* Thomson, *supra* note 265 (stating that an airport must post a sign banning the possession of a deadly weapon at an airport) (citing OHIO REV. CODE ANN. § 2923.1212(A)(5)).

serious crime usually disqualifies the person from owning or possessing a firearm.³⁷⁹ Moreover, state law often makes it illegal to sell or transfer a handgun to an individual convicted of “a crime of violence.”³⁸⁰

The states have other grounds for disqualification. Utah has several categories of persons who are prohibited from possessing a firearm. In addition to those convicted of a felony, a person is disqualified who is an illegal alien or an unlawful user of a controlled substance or who was discharged dishonorably from the armed forces.³⁸¹

In the State of Washington, a person may not lawfully possess a firearm who has been restrained by a court order from “harassing, stalking, or threatening an intimate partner of the person or child of the intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child.”³⁸² In Washington, it is also unlawful for any adult or juvenile to possess a firearm who previously was convicted of a serious offense or found not guilty by reason of insanity as defined in the statute.³⁸³

It appears that records of violations that prohibit persons from possessing firearms are readily available to law enforcement agencies and officers.³⁸⁴

B. Unlawful Possession of a Firearm by Persons Under 21 Years of Age

In most states if an individual is under the age of 21 and carrying a firearm, either concealed or unconcealed, the individual is violating state law.³⁸⁵ A

³⁷⁹ ALASKA STAT. § 161.200 (2015) (unlawful to possess a firearm after having been convicted of a felony); TENN. CODE ANN. § 39-17-1307(c)(1) (2015) (stating that a person who has been convicted of a felony commits an offense when the person possesses a handgun).

³⁸⁰ S.C. CODE ANN. §§ 16-23-30(A)(1), (B) (2015); TENN. CODE ANN. § 39-17-1307(a)(1) (2015) (unlawful for anyone to possess a firearm anywhere in the state if the person has been convicted of certain offenses involving the use or attempted use of force, violence, or a deadly weapon, or of felony drug use).

³⁸¹ UTAH CODE ANN. §§ 76-10-53(1)(a), (1)(b), (d)(8) (LexisNexis 2015). *See also* WASH. REV. CODE ANN. § 9.41.171 (LexisNexis 2015) (stating that unless a person is a lawful permanent resident or has a valid alien firearm license under § 9.41.173, it is unlawful for a person who is not a United States citizen to carry or possess a firearm).

³⁸² WASH. REV. CODE ANN. § 9.41.040(2)(a)(ii) (LexisNexis 2015).

³⁸³ WASH. REV. CODE ANN. § 9.41.040(a) (LexisNexis 2015).

³⁸⁴ *Survey of State Criminal History Information Systems*, U.S. DOJ, at viii (Nov. 2011), <http://www.ncjrs.gov/pdffiles1/bjs/grants/237253.pdf> (stating in part that the state central repository is a database that maintains criminal history records on all state offenders).

³⁸⁵ CAL. PENAL CODE § 27505(a) (Deering 2015) (unlawful to transfer a firearm to a minor or sell one to an individual under the age of 21 except for one of the stated reasons not relevant to the digest); CONN. GEN. STAT. § 29-28(b)(10) (2015) (21 years of age for a permit to carry a pistol or revolver).

Tennessee statute states that “it is an offense for a juvenile to knowingly possess a handgun.”³⁸⁶ Usually an applicant for a license to carry a firearm³⁸⁷ or to carry a concealed firearm must be at least 21 years of age.³⁸⁸ In a few states, a person 18 years of age may be issued a license to carry a firearm or to carry a concealed firearm.³⁸⁹

C. Illegal Possession of a Firearm While Under the Influence of Alcohol or Drugs

It appears that in every state, regardless of whether a person is in an airport or elsewhere, a person’s possession of a firearm while under the

³⁸⁶ TENN. CODE ANN. § 39-17-1319 (2015).

³⁸⁷ CONN. GEN. STAT. § 29-35(a) (2015) (unlawful to carry a pistol or revolver without a permit to carry except on one of the stated grounds not relevant to the digest); MINN. STAT. § 624.714(2)(b) (2015) (21 years of age for issuance of a permit to carry a pistol); N.Y. PENAL LAW § 400.00(1) (Consol. 2015) (21 years or older for license to carry a firearm); GA. CODE ANN. § 16-11-129(b)(2)(A) (2015) (18 years or 21 years of age for issuance of a weapons-carry license as further provided in the statute); TENN. CODE ANN. § 39-17-1351(b) (2015) (21 years of age for a handgun carry permit).

³⁸⁸ ARIZ. REV. STAT. § 13-3102(A)(2) (LexisNexis 2015) (applicable to permit to carry a concealed weapon); CAL. PENAL CODE § 27505(a) (Deering 2015) (unlawful to sell, loan, or transfer a firearm to a minor or to sell a handgun to an individual under the age of 21); FLA. STAT. ANN. § 790.015(1)(a) (LexisNexis 2015) (stating that the minimum age for a license to carry a concealed weapon is 21); IDAHO CODE ANN. § 18-3302(11)(a) (2015) (21-year age limit for license to carry a concealed weapon); IDAHO CODE ANN. § 18-3302k(4)(a) (2015) (21-year age limit for an enhanced license to carry concealed weapons); KY. REV. STAT. ANN. § 237.110(4)(c) (LexisNexis 2015) (21 years of age); N.C. GEN. STAT. § 14-415.12(a) (2015) (21 years of age for a permit to carry a concealed handgun); OR. REV. STAT. § 166.291(b) (2015) (21 years of age for a concealed handgun license); 18 PA. CONS. STAT. § 6109(b) (2015) (person 21 years of age or older may apply for a license to carry a firearm concealed on his person or in a vehicle); S.C. CODE ANN. § 23-31-215(A) (2015) (21 years of age for permit to carry a concealable weapon); TEX. GOV’T CODE ANN. § 411.172(a)(2) (2015) (21 years of age for a license to carry a concealed handgun); UTAH CODE ANN. § 53-5-704(1)(a) (LexisNexis 2015) (21 years of age or older to apply for a concealed weapons permit); WASH. REV. CODE ANN. § 9.41.070(1)(c) (LexisNexis 2015) (21 years of age); W. VA. CODE ANN. § 61-7-4(a)(3) (LexisNexis 2015) (21 years of age for concealed weapons permit); WIS. STAT. § 175.60(3) (2015); WYO. STAT. ANN. § 6-8-104(b)(ii) (2015) (21 years of age for a concealed weapon permit).

³⁸⁹ HAW. REV. STAT. ANN. § 134-4(a) (LexisNexis 2015) (no transfer of rifle or shotgun as defined in the section to a person under the age of 18); MONT. CODE ANN. § 45-8-321(1) (2015) (18 years of age or older for a permit to carry a concealed weapon); OR. REV. STAT. § 166.250(1)(c)(A) (2015) (unlawful possession of a firearm under the age of 18); S.D. CODIFIED LAWS § 23-7-7.1(1) (2015) (18 years of age or older for permit to carry a concealed pistol).

influence of alcohol or illegal drugs is a violation of state law, as well as a violation of a person’s license to carry a firearm or to carry a concealed firearm.³⁹⁰

In Louisiana, a person’s concealed handgun permit is automatically suspended when the person is under the influence of alcohol or a controlled dangerous substance.³⁹¹ In Minnesota, if a person is carrying a pistol in a public place while under the influence of alcohol or a controlled substance, “[a] peace officer may arrest [the] person...without a warrant upon probable cause, without regard to whether the violation was committed in the officer’s presence.”³⁹²

Unlike state statutes that set a blood alcohol percentage for driving while under the influence, unless defined elsewhere in a state’s code, some state statutes applicable to the possession of a firearm appear to apply whenever there is any alcohol or unlawful controlled substance in a person’s blood.³⁹³ A

³⁹⁰ DEL. CODE ANN. tit. 11, § 1460(a) (2015) (affirmative defense if firearm inoperable or the person had no ammunition); MINN. STAT. § 624.7142(1) (2015) (unlawful to carry a pistol in a public place when under the influence of a controlled substance or alcohol); MO. REV. STAT. §§ 571.030.1(5), (11) (2015) (possession of firearm unlawful while in possession of a controlled substance); NEB. REV. STAT. ANN. § 69-2441(5) (LexisNexis 2015) (unlawful for a permit holder to carry a concealed handgun while consuming alcohol or when the permit holder has alcohol or any controlled substance in the permit holder’s body); N.C. GEN. STAT. § 14-415.11(c)(c2) (2015) (unlawful for a person with or without a permit to carry a concealed handgun while consuming alcohol or having any alcohol or controlled substance present in the person’s blood); R.I. GEN. LAWS § 11-47-52 (2015) (unlawful to carry or transport any firearm when under the influence of alcohol or narcotic drugs); TENN. CODE ANN. § 39-17-1321(a) (2015) (regardless of whether a person has a permit to carry a handgun, unlawful to possess a handgun while under the influence of alcohol or any controlled substance or “controlled substance analogue”); TEX. PENAL CODE ANN. § 46.035(d) (2016) (unlawful for a holder of license to carry a handgun while intoxicated “regardless of whether the handgun is concealed or carried in a shoulder or belt holster”); UTAH CODE ANN. § 76-10-528(1) (LexisNexis 2015) (unlawful to carry a dangerous weapon while under the influence of alcohol or a controlled substance); VA. CODE ANN. § 18.2-308.012 (2015) (prohibiting the carrying of concealed handgun while under the influence of alcohol or illegal drugs); WIS. STAT. § 941.20(1)(b) (2015).

³⁹¹ LA. REV. STAT. ANN. § 40.1379.3(I) (2015).

³⁹² MINN. STAT. § 624.7142(2) (2015).

³⁹³ See, e.g., N.C. GEN. STAT. § 14-415.11 (c2) (2015), stating that it is

unlawful for a person, with or without a permit, to carry a concealed handgun while consuming alcohol or at any time while the person has remaining in the person’s body any alcohol or in the person’s blood a controlled substance previously consumed, but a person does not violate this condition if a controlled substance in the person’s blood was lawfully obtained and taken in therapeutically appropriate amounts or if the person is on the person’s own property.

WIS. STAT. § 941.20 (1)(b), (bm) (2015) (operates or goes armed with a firearm while he or she is under the influence of an intoxicant or operates or goes armed with a firearm while he or she has a detectable amount of a restricted controlled substance in his or her blood).

Delaware statute, however, does define the percentage of “alcohol concentration” in a person’s blood that is required for a person to be guilty of unlawful possession of a firearm.³⁹⁴

D. Possession of a Firearm that Is Illegal Under State Law

There are state statutes that prohibit the possession of certain kinds of firearms,³⁹⁵ regardless of whether they are carried in an airport or elsewhere, including assault rifles or pistols,³⁹⁶ machine guns,³⁹⁷ short-barrel rifles, short-barrel shotguns, and silencers,³⁹⁸ as well as armor-piercing ammunition.³⁹⁹

California prohibits the possession of numerous assault weapons by model and number,⁴⁰⁰ as well as other firearms having the features described by statute.⁴⁰¹ Nevada prohibits the possession of a machine gun, which is defined as a firearm that is capable of shooting more than one shot without manual reloading by a simple function of the trigger.⁴⁰² With some

³⁹⁴ DEL. CODE ANN. tit. 11, § 1460(b)(4) (2015). *See also* LA. REV. STAT. ANN. § 40.1379.3(H)(3)(D)(1) (2015); MINN. STAT. § 624.7142(3) (2015); NEB. REV. STAT. ANN. § 69-2441(5) (LexisNexis 2015); OHIO REV. CODE ANN. § 2923.16 (D)(2) (LexisNexis 2015).

³⁹⁵ ALASKA STAT. § 1.61.200 (2015) (stating that prohibited weapons include a firearm capable of shooting more than one shot automatically without manual reloading by a single function of the trigger).

³⁹⁶ N.J. STAT. ANN. § 2C:39-5(f) (2015) (prohibiting assault firearms); HAW. REV. STAT. ANN. § 134-4(e) (LexisNexis 2015) (prohibiting assault pistols).

³⁹⁷ FLA. STAT. ANN. § 790.06(1) (LexisNexis 2015) (providing that a license to carry a concealed firearm does not include a machine gun); 720 ILL. COMP. STAT. ANN. 5/24-1 (LexisNexis 2015) (prohibiting machine gun and short-barrel rifles and shotguns); N.J. REV. STAT. § 2C:39-5(a) (2015) (prohibiting machine gun).

³⁹⁸ OR. REV. STAT. §§ 166.272(1), (2) (2015) (unlawful to possess a machine gun, short-barreled rifle or shotgun, or silencer), *but see* OR. REV. STAT. §§ 166.272(3), (4) (2015) (no charge or arrest if prohibited weapon holder is registered as required under federal law); R.I. GEN. LAWS §§ 11-47-8(a), (b) (2015) (prohibiting machine guns and sawed-off shotguns or sawed-off rifles); TENN. CODE ANN. §§ 39-17-1302(a)(3)-(5) (2015) (prohibiting possession of a machine gun, short-barrel rifle or shotgun, or firearm silencer); TEX. PENAL CODE ANN. §§ 46.05(a)(1)(A)-(D) (2015) (prohibiting an explosive weapon, machine gun, short-barreled forearm, or a firearm silencer); WIS. STAT. § 175.60(1)(bm) (2015) (license to carry concealed weapon excludes from definition of handgun a machine gun, short-barreled rifle, or short-barreled shotgun as defined in the section).

³⁹⁹ OR. REV. STAT. § 166.350(1) (2015) (unlawful to possess armor-piercing ammunition).

⁴⁰⁰ CAL. PENAL CODE § 30510 (Deering 2015).

⁴⁰¹ CAL. PENAL CODE § 30515 (Deering 2015); *see also* CAL. PENAL CODE § 30945 (Deering 2015).

⁴⁰² NEV. REV. STAT. ANN. §§ 202.450(1), (8)(c) (LexisNexis 2015).

exceptions, Minnesota prohibits the possession of a “BB gun, rifle, shotgun on or about a person in a public place that includes property owned, leased, or controlled by a governmental unit,” and further provides that it is a felony for a person to carry a “semiautomatic military-style assault weapon in a public place.”⁴⁰³ New York requires the state police superintendent to create and maintain an Internet Web site to educate the public on the semiautomatic rifles, shotguns, pistols, and other weapons that are illegal in New York.⁴⁰⁴ Oregon law prohibits machine guns as well as other weapons.⁴⁰⁵

Virginia prohibits the carrying of loaded semiautomatic rifles and pistols that are “equipped at the time of the offense with a magazine that will hold more than 20 rounds of ammunition” or of a “shotgun with a magazine that will hold more than seven rounds of the longest ammunition...” on any public street, road, alley, sidewalk, public right-of-way, or other public place in eight cities and five counties in the state.⁴⁰⁶

The Virginia statute, therefore, applies to Ronald Reagan Washington National Airport in Arlington County and to Washington Dulles International Airport located in Fairfax and Loudoun Counties, as well as to airports in Newport News, Norfolk, and Richmond.

In summary, there are state laws that are also applicable to firearms at an airport that prohibit the possession of firearms by persons convicted of a felony or other serious crime, persons under the age of 21 (or 18 in some states), persons under the influence of alcohol or illegal controlled substances, or persons carrying a firearm prohibited by state law.

VIII. STATE LAWS THAT ALLOW PRIVATE ESTABLISHMENTS TO PROHIBIT FIREARMS

A. Introduction

Numerous vendors of goods and services may be found in airports. As shown in this section of the digest, state law usually allows private businesses, including those who lease space for a business, to prohibit firearms on the business premises. Some hotel chains, for example, that are found on airport property or in close proximity to an airport have policies that prohibit firearms on the hotel premises unless secured in the manner required by hotel

⁴⁰³ MINN. STAT. §§ 624.7181(1)(c), (5) (2015) (with some exceptions).

⁴⁰⁴ N.Y. PENAL LAW § 400.00(16a), (b) (Consul. 2015).

⁴⁰⁵ OR. REV. STAT. § 166.272 (2015).

⁴⁰⁶ VA. CODE ANN. § 18.2-287.4 (2015).

policy.⁴⁰⁷ The courts have upheld the right of a property owner or employer to prohibit firearms on the premises.⁴⁰⁸ Judge Posner of the Seventh Circuit observed in his opinion in *Moore v. Madigan*⁴⁰⁹ that many states

[p]ermit private businesses and other private institutions (such as churches) to ban guns from their premises. If enough private institutions decided to do that, the right to carry a gun in public would have much less value and might rarely be exercised—in which event the invalidation of the Illinois law might have little effect....⁴¹⁰

The terms of airport leases with private parties for bars, hotels, restaurants, rental car agencies, and retail shops no doubt differ on what is allowed. The agreements between airports and private parties are leases of which there are four types, however: direct leasing, prime concessionaire, third-party developer, and leasing manager.⁴¹¹ With direct leasing agreements, the airport operator solicits, awards,

⁴⁰⁷ GRAND HYATT DALL, FORT-WORTH, <http://granddfw.hyatt.com/en/hotel/our-hotel/firearms-policy.html> (last visited Dec. 23, 2015) (stating that guests or visitors who lawfully are permitted to possess a firearm may carry a firearm on the hotel premises for “storage purposes only”; that a firearm must be unloaded, secured in a locked, hard-sided firearm container provided by the guest; that a firearm must be safeguarded at all times in a guest room (or personal vehicle) except when a guest or visitor is transporting the firearm into or out of the hotel; and that there are no exceptions even for “those licensed and permitted to carry a firearm, and/or where applicable, to conceal-carry a firearm”); HYATT PLACE SAN ANTONIO AIRPORT/QUARRY MARKET, <http://sanantonioairport.place.hyatt.com/en/hotel/our-hotel/firearms-policy.html> (last visited Dec. 23, 2015) (stating a similar policy); HOMEWOOD SUITES BY HILTON HOUSTON-KINGWOOD PARC-AIRPORT AREA, <http://homewoodsuites3.hilton.com/en/hotels/texas/homewood-suites-by-hilton-houston-kingwood-parc-airport-area-HOUKWHW/about/policies.html> (last visited Dec. 23, 2015) (stating that “[c]arrying a weapon on these premises is prohibited and violators may be subject to arrest for trespass under applicable law”).

⁴⁰⁸ *Stewart v. FedEx Express*, No. 11222-2013, 2014 Pa. Dist. & Cnty. Dec. LEXIS 68, at *1, *11 (Pa. Ct. Com. Pl. June 24, 2014) (holding that there is no statute that prohibits an employer from restricting an individual’s right to carry a firearm on the employer’s property), *aff’d*, 114 A.3d 424 (Pa. Super. Ct. 2015); *Hansen v. Am. Online, Inc.*, 96 P.3d 950, 951, 955 (Utah 2004) (holding in a wrongful termination case involving employees who were fired when they were recorded transferring their firearms to other vehicles in the employer’s parking lot in violation of the employer’s policy that the right to bear arms in Utah does not supersede an employer’s right to restrict firearms on its private property). *See also* *Murphy v. United States*, 293 A.2d 849, 849–850 (D.C. Cir. 1972) (upholding the defendant’s conviction for carrying a pistol without a license after the defendant was arrested for carrying a gun in a restaurant in the District of Columbia).

⁴⁰⁹ 702 F.3d 933 (7th Cir. 2012).

⁴¹⁰ *Id.* at 941.

⁴¹¹ *Resource Manual for Airport In-Terminal Concessions*, TRANSPORTATION RESEARCH BOARD 121 (2011), http://onlinepubs.trb.org/onlinepubs/acrp/acrp_rpt_054.pdf.

implements, and manages the agreements.⁴¹² When an airport uses the prime concessionaire approach, the airport leases all of the retail or dining space to one or two companies.⁴¹³ When using the third-party developer approach, the airport leases all locations in a terminal or terminals to a company that specializes in developing and managing concession programs.⁴¹⁴ Finally, similar to the third-party developer approach, an airport may engage a leasing manager that ordinarily does not operate any space in the airport but rather provides “expertise in commercial leasing and property management,” for which the leasing manager receives a fee.⁴¹⁵

B. State Statutes Permitting Private Establishments to Prohibit Firearms

There is statutory authority for private individuals or entities that own or lease property to prohibit the possession of firearms in their establishments.⁴¹⁶ In general, one who owns or controls an establishment and decides to ban firearms must post conspicuous signs informing members of the public that firearms are prohibited, including in many states those individuals who have a license to carry a firearm or to carry a concealed firearm.⁴¹⁷ Minnesota

⁴¹² *Id.* at 125.

⁴¹³ *Id.* at 122–23.

⁴¹⁴ *Id.* at 123–24.

⁴¹⁵ *Id.* at 125.

⁴¹⁶ GA. CODE ANN. § 16-11-135(k) (2015) (statute not intended to restrict rights of private property owners or persons in legal control of property to control access to property); IDAHO CODE ANN. § 18-3302(24) (2015); IND. CODE ANN. § 35-47-2-1(d) (LexisNexis 2015) (providing that a person owning, leasing, renting, or otherwise in control of private property is not prohibited from regulating or prohibiting the possession of firearms on the property).

⁴¹⁷ ALA. CODE § 13A-11-61.2(a) (LexisNexis 2015); GA. CODE ANN. § 16-11-127(c) (2015) (person holding weapons-carry license may be excluded from private property by owners or persons in legal control without risk of civil action for damages); 430 ILL. COMP. STAT. ANN. 66/65(a-10) (LexisNexis 2015) (providing that as long as signs are posted in accordance with the statute, an owner or one in control of private real property of any type may prohibit the carrying of concealed firearms, including a person licensed pursuant to the state’s Firearm Concealed Carry Act); KAN. REV. STAT. ANN. § 75-7c10(a) (LexisNexis 2015) (stating that “[t]he carrying of a concealed handgun shall not be prohibited in any building unless such building is conspicuously posted in accordance with rules and regulations adopted by the attorney general”); KY. REV. STAT. ANN. § 237.110(17) (LexisNexis 2015) (authorizing an owner, lessee, or manager of a private enterprise to prohibit licensees from carrying concealed weapons on the premises); NEB. REV. STAT. ANN. § 69-2441(a) (LexisNexis 2015) (permit holder not authorized to carry a concealed handgun on property when “the person, persons, entity, or entities in control of the property or employer in control of the property has prohibited permit holders from carrying

allows a business owner or operator to inform someone personally that firearms are prohibited.⁴¹⁸

State laws vary on how a license to carry a concealed firearm affects an owner's or occupant's right to ban firearms. In Alabama, a person may not carry a firearm on private property without a valid concealed weapons permit.⁴¹⁹ It appears that in many states, such as Arkansas, however, that a licensee may not carry a concealed handgun when "the person or entity exercising control over the physical location...[places] at each entrance...a written notice clearly readable at a distance of not less than ten feet (10') that 'carrying a handgun is prohibited.'"⁴²⁰

In Georgia, "private property owners or persons in legal control of private property through a lease, rental agreement, licensing agreement, contract, or any other agreement to control access to such

concealed handguns into or onto the place or premises...."; N.M. STAT. ANN. § 29-19-12(C) (LexisNexis 2015) (recognizing authority of private property owner to disallow the carrying of a concealed handgun onto the owner's property); S.C. CODE ANN. § 16-23-465(B)(2) (2015) (stating that an establishment selling alcoholic liquor, beer, or wine for consumption on premises may prohibit the carrying of concealable weapons by posting sign in compliance with the statute); TENN. CODE ANN. §§ 39-17-1359(a)(1), (2) (2015) (authorizing, except as provided in § 39-17-1313, an individual, corporation, business entity, or local, state, or federal government entity or agent thereof "to prohibit the possession of weapons by any person who is at a meeting conducted by, or on property owned, operated, or managed or under the control of the individual, corporation, business entity or government entity, including by any person who is authorized to carry a firearm by authority of § 39-17-1351"); UTAH CODE ANN. § 76-10-505(1)(c) (LexisNexis 2015) (stating that unless otherwise authorized by law, a person may not carry a loaded firearm in a posted, prohibited area).

⁴¹⁸ MINN. STAT. §§ 624.714(17)(a), (b)(1) (2015) (providing that the operator of a private, posted establishment also may personally inform a person that firearms are prohibited).

⁴¹⁹ ALA. CODE § 13A-11-52 (LexisNexis 2015), *but see* ALA. CODE § 13A-11-61.2(b) (LexisNexis 2015), which states:

[A] person, including a person with a permit issued under Section 13A-11-75(a)(1) or recognized under Section 13A-11-85, may not, without the express permission of a person or entity with authority over the premises, knowingly possess or carry a firearm inside any building or facility to which access of unauthorized persons and prohibited articles is limited during normal hours of operation by the continuous posting of guards and the use of other security features, including, but not limited to, magnetometers, key cards, biometric screening devices, or turnstiles or other physical barriers.

See also IDAHO CODE ANN. §§ 18-3302(3), (4) (2015).

⁴²⁰ ARK. CODE ANN. § 5-73-306(19)(A)(i) (2015). *See also* Ark. Att'y Gen. Op. Opinion No. 2015-064, *supra* note 157 (stating that under Arkansas law a private property owner or occupant "is entitled to keep handguns (and other firearms) off" the owner's or occupant's property) (citing ARK. CODE ANN. § 5-39-203 (Repl. 2013)).

private property...have the right to exclude or eject a person who is in possession of a weapon or long gun on their private property...."⁴²¹

In Missouri, any private property owner may post the premises as being off-limits to concealed firearms by means of one or more signs displayed in a conspicuous place.... The owner, business or commercial lessee, [or] manager of a private business enterprise...may prohibit persons holding a concealed carry permit or endorsement from carrying concealed firearms on the premises....⁴²²

Ohio has a similar statute that applies to persons having a license to carry a concealed handgun.⁴²³ West Virginia makes it clear in its law that "any owner, lessee or other person charged with the care, custody and control of real property may prohibit the carrying *openly or concealed* of any firearm or deadly weapon on property under his or her domain...."⁴²⁴

Businesses located in an airport serving the public are also employers. In South Carolina, a person having a permit to carry a "concealable weapon" may not enter a place clearly marked with a sign prohibiting the carrying of a concealable weapon in or on the premises.⁴²⁵ Furthermore, South Carolina law provides:

Nothing contained in this article shall in any way be construed to limit, diminish, or otherwise infringe upon:

⁴²¹ GA. CODE ANN. § 16-11-127(c) (2015) (also stating "in accordance with O.C.G.A § 16-7-21(3)(b) except as provided in § 16-11-135").

⁴²² MO. REV. STAT. § 571.107(1).(15) (2015) (providing further that "[i]f the building or the premises are open to the public, the employer of the business enterprise shall post signs on or about the premises if carrying a concealed firearm is prohibited..."). MO. REV. STAT. § 571.107(1).(15) (2015) also states that the

[p]ossession of a firearm in a vehicle on the premises shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises. An employer may prohibit employees or other persons holding a concealed carry permit or endorsement from carrying a concealed firearm in vehicles owned by the employer...

See also MO. REV. STAT. § 571.107(2) (2015) (providing that holder of concealed-carry permit or a concealed-carry endorsement is subject only to denial of access to or removal from the premises).

⁴²³ OHIO REV. CODE ANN. § 2923.126(c)(3)(a) (LexisNexis 2015) (stating that "the owner or person in control of private land or premises, and a private person or entity leasing land or premises owned by the state, the United States, or a political subdivision of the state or the United States, may post a sign in a conspicuous location on that land or on those premises prohibiting persons from carrying firearms or concealed firearms on or onto that land or those premises").

⁴²⁴ W. VA. CODE ANN. § 61-7-14 (LexisNexis 2015) (emphasis added).

⁴²⁵ S.C. CODE ANN. § 23-31-215 (M)(10) (2015).

(1) the right of a public or private employer to prohibit a person who is licensed under this article from carrying a concealable weapon upon the premises of the business or work place or while using any machinery, vehicle, or equipment owned or operated by the business; [or]

(2) the right of a private property owner or person in legal possession or control to allow or prohibit the carrying of a concealable weapon upon his premises.⁴²⁶

In Texas, if a license holder has received notice that entry on another's property with a concealed handgun is prohibited, it is a violation to carry a handgun on the property without the owner's "effective consent."⁴²⁷

Thus, there are at least 18 states, as well as the District of Columbia, discussed in this section of the digest in which persons licensed to carry a concealed firearm may be prohibited from carrying a concealed firearm on the property owner's or lessee's premises.⁴²⁸ In some states, business invitees and employees may be precluded from having a firearm in their vehicle.⁴²⁹

IX. STATE LAWS PROHIBITING AN INDIVIDUAL FROM POSSESSING A FIREARM IN A BAR OR RESTAURANT SERVING ALCOHOLIC BEVERAGES FOR CONSUMPTION ON THE PREMISES

Bars and restaurants that serve alcohol for consumption on the premises are found in virtually all commercial airports serving the public. Although there may be an exception for restaurants that derive more than a designated percentage of their business from

⁴²⁶ S.C. CODE ANN. §§ 23-31-220(1), (2) (2015). Subsection 2 also states:

The posting by the employer, owner, or person in legal possession or control of a sign stating "No Concealable Weapons Allowed" shall constitute notice to a person holding a permit issued pursuant to this article that the employer, owner, or person in legal possession or control requests that concealable weapons not be brought upon the premises or into the work place.

See also S.C. CODE ANN. § 23-31-235(A) (2015) (regarding the posting of signs).

⁴²⁷ TEX. PENAL CODE §§ 30.06(a)(1), (2)(A) (2015). See also TEX. PENAL CODE § 30.06 (2016).

⁴²⁸ Alabama, Arkansas, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Minnesota, Missouri, New Mexico, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Utah, West Virginia, and the District of Columbia.

⁴²⁹ KY. REV. STAT. ANN. § 237.110(17) (LexisNexis 2015) (stating that the "[p]ossession of weapons, or ammunition, or both in a vehicle on the premises shall not be a criminal offense so long as the weapons, or ammunition, or both are not removed from the vehicle or brandished while the vehicle is on the premises").

the sale of food,⁴³⁰ numerous state statutes prohibit a person, including in some states a person having a license to carry a concealed weapon,⁴³¹ from carrying a firearm into an establishment selling liquor, beer, or wine for consumption on the premises.⁴³²

⁴³⁰ 430 ILL. COMP. STAT. ANN. 66/65(a)(9) (LexisNexis 2015) (providing that a license holder under the Illinois Firearm Concealed Carry Act shall not knowingly carry a firearm on or into "[a]ny building, real property, and parking area under the control of an establishment that serves alcohol on its premises, if more than 50% of the establishment's gross receipts within the prior 3 months is from the sale of alcohol"); KY. REV. STAT. ANN. § 237.110(16)(e) (2015) (stating that "no license issued pursuant to this section shall authorize any person to carry a concealed firearm into...[a]ny portion of an establishment licensed to dispense beer or alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to that purpose"); MO. REV. STAT. § 571.107(1)(7) (2015) (prohibiting firearms without the consent of the owner or manager but including an exception for a restaurant with dining facilities for not less than 50 persons that derives at least 51% of annual gross revenue from sale of food); N.M. STAT. ANN. § 30-7-3(A)(4) (LexisNexis 2015) (permitting person licensed to carry a handgun to carry a handgun in a restaurant selling only beer and wine that derives no less than 60 percent of annual gross receipts from sale of food unless restaurant prohibits carrying of firearms on the premises); N.D. CENT. CODE § 62.1-02-04 (2015) (applicable to an individual in that part of the "establishment" for consumption of purchased alcoholic beverages); S.D. CODIFIED LAWS § 23-7-8.1 (2015) (holder of concealed carry permit may carry concealed pistol "anywhere in South Dakota except in any licensed on-site malt beverage or alcoholic beverage establishment that derives over one-half of its total income from the sale of malt or alcoholic beverages").

⁴³¹ MONT. CODE ANN. § 45-8-328(1)(c) (2015) (prohibiting firearms in a room where alcoholic beverages are sold and consumed); MONT. CODE ANN. § 45-8-328(2) (2015) (valid permit to carry a concealed weapon not a defense to a violation of § 45-8-328(1)(c)); NEB. REV. STAT. ANN. § 69-2441(a) (LexisNexis 2015) (holder of a permit to carry a concealed handgun not allowed to carry a concealed handgun into an "establishment having a license issued under the Nebraska Liquor Control Act that derives over one-half of its total income from the sale of alcoholic liquor...."); WYO. STAT. ANN. § 6-8-104(t)(vii) (2015) (permittee of concealed weapons permit prohibited from entering any portion of an establishment devoted to serving alcoholic liquor and malt beverages for consumption on the premises).

⁴³² MICH. COMP. LAWS SERV. § 28.4250(1)(d) (LexisNexis 2015) (providing that a license to carry a concealed firearm does not authorize a licensee to carry a firearm into a bar, tavern, or restaurant); S.C. CODE ANN. § 16-23-465(A) (2015) (additional penalty for carrying a firearm into a business that sells alcoholic liquor, beer, or wine for consumption on the premises); TENN. CODE ANN. §§ 39-17-1321(b)(1) and (2) (2015) (unlawful to consume alcoholic beverage while possessing a firearm within an establishment serving liquor, wine, or other alcoholic beverages on the premises); VA. CODE ANN. § 18.2-308.012 (2015) (prohibiting concealed handgun on the premises of any restaurant or club having a license to sell and serve alcoholic beverages for on-premises consumption).

In Arkansas, a license to carry a concealed handgun does not authorize a person to carry a concealed handgun in “[a]ny portion of an establishment, except a restaurant as defined in section 3-5-1202, licensed to dispense alcoholic beverages for consumption on the premises” or in “[a]ny portion of an establishment, except a restaurant as defined in section 3-5-1202, where beer or light wine is consumed on the premises....”⁴³³ It is unlawful in Illinois to carry a firearm or other deadly weapon in any place licensed to sell intoxicating beverages.⁴³⁴ Louisiana law prohibits the possession of a firearm while on the premises of a commercial establishment selling alcoholic beverages for consumption on the premises.⁴³⁵

The statutes reviewed for the digest are not always clear as to whether they apply to persons carrying a firearm openly, as well as to persons having a license to carry a concealed firearm. The Oklahoma and Texas statutes, however, explicitly address whether firearms may be carried openly or in a concealed manner in an establishment selling liquor, wine, or beer for consumption on the premises. In Oklahoma, although it is unlawful to possess a firearm in an establishment where “low-point beer” or alcoholic beverages are consumed, a person possessing a valid handgun license under the Oklahoma Self-Defense Act may carry a concealed or unconcealed handgun into an establishment when the sale of low-point beer or alcoholic beverages does not constitute the primary purpose of the business.⁴³⁶ In contrast, in Texas a license holder is prohibited from intentionally carrying a handgun, knowingly or recklessly,

*regardless of whether the handgun is concealed, on or about the license holder’s person...on the premises of a business that has a permit or license issued under [the]...Alcoholic Beverage Code, if the business derives 51 percent or more of its income from the sale or service of alcoholic beverages for on-premises consumption, as determined by the Texas Alcoholic Beverage Commission....*⁴³⁷

Washington’s statutory approach is somewhat different. The law prohibits a person from entering an establishment carrying a firearm that is “classified by the state liquor control board as off-limits to persons under twenty-one years of age.”⁴³⁸

⁴³³ ARK. CODE ANN. §§ 5-73-306(12), (13), (19)(A)(i) (2015). ARK. CODE ANN. § 3-5-1202 (2015) defines the term “restaurant” to mean any public or private place where complete meals are “actually and regularly served” and having a seating capacity for at least 50 people.

⁴³⁴ 720 ILL. COMP. STAT. ANN. 5/24-1(a)(8) (LexisNexis 2015).

⁴³⁵ LA. REV. STAT. ANN. §§ 14.95-5(A), (B) (2015).

⁴³⁶ OKLA. STAT. tit. 21, § 1272.1(A) (2105).

⁴³⁷ TEX. PENAL CODE ANN. § 46.035(b) (2015) (emphasis added).

⁴³⁸ WASH. REV. CODE ANN. § 9.41.300 (LexisNexis 2015).

X. WHETHER THE CARRYING OF A FIREARM IN AN AIRPORT IS A DISTURBANCE OF THE PEACE OR VIOLATES OTHER STATE OR LOCAL LAWS

Depending on a person’s conduct or demeanor or other circumstances when a person is carrying a firearm in an airport, the person could be in violation of a state statute or local ordinance prohibiting disorderly conduct⁴³⁹ or the creation of a public nuisance.⁴⁴⁰ Elsewhere the individual may be violating a state statute that proscribes aiming a firearm, whether loaded or unloaded, at another person,⁴⁴¹ brandishing a firearm;⁴⁴² creating a hazard to

⁴³⁹ GA. CODE ANN. §§ 16-11-39(a)(1), (c) (2015) (disorderly conduct); KAN. STAT. ANN. § 21-6203 (2015) (prohibiting disorderly conduct); MD. CODE ANN., CRIM. LAW §§ 10-201(a)(3) (ii)(11), (12) (LexisNexis 2015) (disturbing the peace and disorderly conduct applicable to a public place that includes an airport terminal and parking areas); MINN. STAT. §§ 609.72 (2015) (disorderly conduct to alarm or disturb others) and 609.705 (2015); NEB. REV. STAT. ANN. § 14-102(22) (LexisNexis 2015) (disorderly conduct); NEB. REV. STAT. ANN. § 16-227 (LexisNexis 2015); N.H. REV. STAT. ANN. § 644:2(II) (LexisNexis 2015) (applicable to the disruption of the “orderly conduct of business in any place or governmental facility...”); N.J. REV. STAT. § 2C:33-1(b) (2015) (applicable when there are five or more persons “participating in a course of disorderly conduct” as defined in § 2C:33-2(a)); N.Y. PENAL LAW § 240.20 (Consol. 2015) (disorderly conduct); VT. STAT. ANN. tit. 13, § 1026(a) (2015) (disorderly conduct); WIS. STAT. §§ 66.0409(2), (4), (6) (2015); WIS. STAT. § 947.01(1) (2015) (disorderly conduct); *see also* WIS. STAT. § 947.01(2) (2015) (stating in regard to alleged disorderly conduct that “[u]nless other facts and circumstances that indicate a criminal or malicious intent on the part of the person apply, a person is not in violation of, and may not be charged with a violation of, this section for loading, carrying, or going armed with a firearm, without regard to whether the firearm is loaded or is concealed or openly carried”).

⁴⁴⁰ MINN. STAT. § 609.74 (2015) (public nuisance to annoy or endanger “considerable number of members of the public”); VT. STAT. ANN. tit. 24, § 2291(14) (2015) (power of governmental entity to define what constitutes a public nuisance).

⁴⁴¹ W. VA. CODE ANN. § 61-6-19(a) (LexisNexis 2015) (unlawful to interrupt or molest the orderly and peaceful process of any unit of government or one of its political subdivisions).

⁴⁴² MICH. COMP. LAWS SERV. § 750.234(1) (LexisNexis 2015) (unlawful to “brandish” a firearm willfully and knowingly in public); MISS. CODE ANN. § 97-37-19 (2015) (unlawful to brandish deadly weapon in the presence of another); S.C. CODE ANN. § 16-420(B) (2015) (unlawful for a person to enter the premises of a publicly owned building and display, brandish, or threaten others with a firearm); S.C. CODE ANN. § 23-31-520 (2015) (allowing county, municipality, or political subdivision to regulate “public brandishment” of firearms); VA. CODE ANN. § 18.2-282 (2015) (unlawful for any person to “point, hold, or brandish any firearm...as to reasonably induce fear in the mind of another”); W. VA. CODE ANN. § 61-7-11 (LexisNexis 2015) (unlawful to “brandish” firearm).

others;⁴⁴³ creating a public annoyance;⁴⁴⁴ displaying a firearm in a threatening manner;⁴⁴⁵ doing a willful and wanton act endangering others;⁴⁴⁶ engaging in other action that purposely creates a risk of harm to others;⁴⁴⁷ interfering with a transportation facility or a public street or passage;⁴⁴⁸ interfering with the

⁴⁴³ N.H. REV. STAT. ANN. § 644:2(I) (LexisNexis 2015) (applicable when one “knowingly or purposely creates a condition which is hazardous to himself or another in a public place by any action which serves no legitimate purpose...”); N.J. STAT. ANN. § 2C:33-2(a)(2) (2015) (creating a hazardous or physically dangerous condition by any act that serves no legitimate purpose); S.C. CODE ANN. § 16-23-410 (2015) (unlawful to point loaded or unloaded firearm at a person); TENN. CODE ANN. § 39-17-305(a)(3) (2015) (disorderly conduct whenever a person in a public place with intent to cause public annoyance or harm “[c]reates a hazardous or physically offensive condition by any act that serves no legitimate purpose”).

⁴⁴⁴ W. VA. CODE ANN. § 8-12-5(13) (LexisNexis 2015) (stating that “every municipality and the governing body thereof shall have plenary power and authority therein...[t]o prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome...”).

⁴⁴⁵ CAL. PENAL CODE § 417(2) (Deering 2015) (prohibiting the drawing or exhibiting of any firearm, whether loaded or unloaded, in a rude, angry, or threatening manner); DEL. CODE ANN. tit. 11, § 1301(1)(a) (2015) (prohibiting certain threatening behavior); DEL. CODE ANN. tit. 11, § 1301(1)(f) (2015) (prohibiting the creating of a hazardous or physically offensive condition); FLA. STAT. ANN. § 7790.10 (LexisNexis 2015) (unlawful to exhibit a firearm or other weapon in the presence of one or more persons in a rude, angry, or threatening manner); IDAHO CODE ANN. § 18-3303 (2015) (unlawful to exhibit firearm in a threatening manner in presence of two or more persons); MICH. COMP. LAWS SERV. § 123.1103(d) (LexisNexis 2015) (applicable to the display of a pneumatic gun in a threatening manner); MO. REV. STAT. § 571.030.1(4) (2015) (exhibiting firearm in a threatening manner); MO. REV. STAT. § 79.450(2) (2015); NEV. REV. STAT. ANN. § 202.320(1) (LexisNexis 2015) (exhibiting deadly weapon in a threatening manner).

⁴⁴⁶ NEV. REV. STAT. ANN. § 202.595(1) (LexisNexis 2015) (performing any act in “willful or wanton disregard of the safety of persons...”) W. VA. CODE ANN. § 61-7-12 (LexisNexis 2015) (prohibiting any wanton act with a firearm creating a substantial risk of death or bodily injury).

⁴⁴⁷ IOWA CODE §§ 723.4(1), (2) (2015) (providing that “[a] person commits a simple misdemeanor when the person...[e]ngages in...violent behavior in any public place” or “[m]akes loud and raucous noise in the vicinity of any...public building which causes unreasonable distress to the occupants thereof”); N.H. REV. STAT. ANN. § 644:1(I) (LexisNexis 2015) (applicable when one “purposely or recklessly creates a substantial risk of causing public alarm” in presence of two or more other persons); TEX. PENAL CODE ANN. § 42.01(a)(8) (2015) (“stating that “[a] person commits an offense if he intentionally or knowingly...displays a firearm or other deadly weapon in a public place in a manner calculated to alarm...”).

⁴⁴⁸ ALA. CODE § 13A-11-7(a)(5) (LexisNexis 2015) (prohibiting the obstruction of a “transportation facility”); GA. CODE ANN. § 16-11-43 (2015) (obstructing streets or “public passage”); R.I. GEN. LAWS § 11-45-1(a)(1) (2015) (threatening behavior or obstructing highway, building entrance, and other areas “ordinarily used for the passage of persons, vehicles, or conveyances”).

free use of property;⁴⁴⁹ interrupting the peaceful process of any unit of government or a political subdivision;⁴⁵⁰ obstructing a building entrance;⁴⁵¹ possessing a firearm at a public demonstration;⁴⁵² or carrying a firearm at an unlawful assembly.⁴⁵³

Whether there is a violation of state law by a person carrying a firearm in the nonsterile area of an airport depends, of course, on the language of the applicable statute and the circumstances attendant to the person’s carrying or exhibiting a firearm. In some states, the mere possession of a firearm may not be a sufficient basis for a charge of disorderly conduct or other violation of state law. In Arkansas, in the opinion of the attorney general, unless a statute prohibits a loaded handgun, whether or not concealed, “unlawful intent may not be presumed simply because [a] person possesses a handgun.”⁴⁵⁴ Montana states that governments may not “prohibit the legitimate transportation of firearms through any jurisdiction, whether in airports or otherwise.”⁴⁵⁵ In Wisconsin, unless there are other facts and circumstances that indicate a person’s criminal or malicious intent, a person may not be “charged with a violation of, an ordinance of a political subdivision relating to disorderly conduct or other inappropriate behavior for loading, carrying, or going armed with a firearm, without regard to whether the firearm is loaded or is concealed or openly carried.”⁴⁵⁶

A law that may be of interest to airport authorities is Louisiana’s statute prohibiting the “negligent carrying of a concealed handgun.”

Negligent carrying of a concealed handgun is the intentional or criminally negligent carrying by any person, whether or not authorized or licensed to carry or possess a concealed handgun, under the following circumstances: When it is foreseeable that the handgun may discharge, or when others are placed in reasonable apprehension that the handgun may discharge. When the handgun is being

⁴⁴⁹ IDAHO CODE ANN. § 18-5901 (2015) (unlawful to obstruct the free use of property “by any considerable number of persons”).

⁴⁵⁰ WASH. REV. CODE ANN. § 9A.1.230 (LexisNexis 2015) (unlawful to aim any firearm, whether loaded or not, at another person).

⁴⁵¹ R.I. GEN. LAWS § 11-45-1(a)(1) (2015) (threatening behavior or obstructing highway, building entrance, and other areas “ordinarily used for the passage of persons, vehicles, or conveyances”).

⁴⁵² MD. CODE ANN., CRIM. LAW § 4-208 (LexisNexis 2015) (regulating possession of firearms at public demonstration).

⁴⁵³ KAN. STAT. ANN. § 21-6202 (2015) (prohibiting unlawful assembly); TENN. CODE ANN. § 39-17-314 (2015) (applicable to public disturbance involving acts of violence by an assemblage of two or more persons).

⁴⁵⁴ Ark. Att’y Gen. Op. No. 2015-064, *supra* note 157, at 3.

⁴⁵⁵ MONT. CODE ANN. §§ 45-8-351(1), (2)(b) (2015) (emphasis added).

⁴⁵⁶ WIS. STAT. § 66.0409(6) (2015).

carried, brandished, or displayed under circumstances that create a reasonable apprehension on the part of members of the public or a law enforcement official that a crime is being committed or is about to be committed.⁴⁵⁷

To summarize this section, the mere possession of a firearm may not necessarily constitute a violation of a statute that prohibits disorderly conduct; however, depending on the circumstances and a person's other conduct, the possession of a firearm could result in a violation of one of the statutes described in this section.

XI. STATE LAWS APPLICABLE TO INDIVIDUALS CARRYING A FIREARM IN VIOLATION OF THEIR LICENSE OR PERMIT

A. A Licensee's or Permittee's Continuing Obligation to Comply with the Conditions for a License or Permit

Virtually all states have statutes that authorize the granting of a license to carry a concealed firearm such as a pistol or revolver.⁴⁵⁸ At least 15 states have

⁴⁵⁷ LA. REV. STAT. ANN. §§ 40:1382(A), (B) (2015) (emphasis added).

⁴⁵⁸ ARK. CODE ANN. §§ 5-73-301, 5-73-302, 5-73-315 (2015) (applicable to a license to carry a concealed handgun); CAL. PENAL CODE § 26150 (Deering 2015) (applicable to license to carry a concealed firearm); CAL. PENAL CODE § 26155 (Deering 2015) (setting forth conditions for a license to carry a firearm "capable of being concealed" on a person); FLA. STAT. ANN. § 790.015(1) (LexisNexis 2015) (applicable to carrying a concealed weapon or firearm); FLA. STAT. ANN. § 790.06(1) (LexisNexis 2015) (applicable to a license to carry concealed weapon or firearm); GA. CODE ANN. § 16-11-126(h) (2015) (setting forth conditions for the issuance of a weapons-carry license); IDAHO CODE ANN. § 18-3302(2015); KAN. STAT. ANN. § 75-7c03 (2015); KY. REV. STAT. ANN. § 237.110(a) (LexisNexis 2015) (applicable to license to carry concealed firearms or other deadly weapons); LA. REV. STAT. ANN. § 40:1379.1.1 (2015); ME REV. STAT. tit. 25, § 2001-A(2) (2015); ME REV. STAT. tit. 25, § 2003 (2015); MICH. COMP. LAWS SERV. § 28.432a (LexisNexis 2015); MISS. CODE ANN. § 45-9-101(1)(a) (2015); MO. REV. STAT. § 571.030.1 (2015); MO. REV. STAT. § 571.037 (2015) (stating when open display of concealed firearm is permitted); MO. REV. STAT. §§ 571.030(1), (4) (2015) (concealed-carry permit); MO. REV. STAT. § 571.107 (2015); MONT. CODE ANN. § 45-8-316 (prohibiting concealed weapons); MONT. CODE ANN. § 45-8-321 (2015) (permit to carry concealed weapon); MONT. CODE ANN. § 45-8-328 (2015); NEB. REV. STAT. ANN. §§ 17-556, 14-102(6) (LexisNexis 2015) (cities of metropolitan class have power to punish carrying of concealed weapons except in regard to the carrying of a concealed handgun in compliance with the Concealed Handgun Permit Act); NEB. REV. STAT. ANN. § 28-1202(2) (LexisNexis 2015) (carrying of a concealed weapon not an offense if the person holds valid permit under Concealed Handgun Permit Act); NEB. REV. STAT. ANN. §§ 69-2428, 69-2429 (LexisNexis 2015) (permit to carry concealed handgun); NEB. REV. STAT. ANN. §§ 69-2435,

enacted statutes requiring an individual to have a license to carry a firearm openly.⁴⁵⁹

When an individual applies for a license, there is usually a long list of statutory conditions that the

69-2445 (LexisNexis 2015); NEV. REV. STAT. ANN. § 202.3657 (LexisNexis 2015) (application for permit to carry a concealed handgun); NEV. REV. STAT. ANN. § 202.3673 (LexisNexis 2015); N.H. REV. STAT. ANN. § 159:4 (LexisNexis 2015) (unlawful to carry a loaded pistol or revolver in any vehicle or concealed upon his person without a valid license); N.M. STAT. ANN. § 29-19-12 (LexisNexis 2015) (Concealed Handgun Carry Act); N.C. GEN. STAT. § 14-269(a1)(2) (unlawful to carry a concealed handgun without a permit); N.C. GEN. STAT. § 14-415.11(a) (2015) (authorizing an individual to carry concealed handgun with a permit); N.D. CENT. CODE § 62.1-03-01 (2015) (person with a license to carry a concealed handgun not subject to time-of-day restrictions when carrying a handgun); N.D. CENT. CODE §§ 62.1-04-01, 62.1-04-02 (2015) (requiring a license to carry a concealed weapon); OHIO REV. CODE ANN. §§ 2923.125, 2923.126 (LexisNexis 2015) (applicable to licenses to carry a concealed handgun); OR. REV. STAT. § 166.291(a) (2015) (applicable to license to carry a concealed handgun); OR. REV. STAT. §§ 166.250(1)(c)(A), (B)(i)-(ii) (2015) (unlawful possession by minors); OR. REV. STAT. § 166.291 (2015); 18 PA. CONS. STAT. ANN. § 6109 (2015); R.I. GEN. LAWS § 11-47-11(a) (2105) (regarding license to carry concealed pistol or revolver); S.C. CODE ANN. § 16-23-20(9)(b) (2015) (carrying of concealed weapon permissible if permit issued in accordance with Title 23, Chapter 31, Article 4); S.C. CODE ANN. §§ 16-23-460(B)(1), (c) (2015) (concealed weapon statute not applicable to person in compliance with Title 23, Chapter 31, Article 4 or to rifles or shotguns); S.C. CODE ANN. § 23-31-215(A) (2015) (regarding issuance of permit to carry a concealable weapon); S.D. CODIFIED LAWS §§ 22-14-9(1), (2) (2015) (unlawful to carry a pistol or revolver, loaded or unloaded, concealed on his person or while operating a vehicle without a permit as provided in Chapter 23-7); S.D. CODIFIED LAWS §§ 23-7-7, 23-7-7.1, 23-7-8, 23-7-8.1, 23-7-8.2, 23-7-8.6 (2015) (regarding permit to carry concealed pistol); UTAH CODE ANN. § 6-10-504 (LexisNexis 2015) (unlawful to carry concealed firearm except as provided in § 76-10-503); UTAH CODE ANN. § 76-10-504(1) (LexisNexis 2015) (prohibiting a person from carrying a concealed firearm except as provided in §§ 76-10-503(2), (3), and (4), including an unloaded firearm "or one that is readily accessible for immediate use"); UTAH CODE ANN. § 76-10-523(2) (2015) (stating that §§ 76-10-504(1) and (2) and 76-10-505 not applicable to a person having a permit to carry a concealed firearm); UTAH CODE ANN. § 53-5-704 (2015) (permit to carry concealed firearm); UTAH CODE ANN. § 53-5-705 (2015) (regarding issuance of temporary permit to carry concealed firearm); UTAH CODE ANN. § 53-5-507 (2015) (regarding permit to carry concealed firearm); VA. CODE ANN. § 18.2-308(A) (2015) (prohibiting concealed weapons); VA. CODE ANN. § 18.2-308.01(A) (carrying of a concealed weapon permitted when a person has a valid concealed handgun permit); W. VA. CODE ANN. § 61-7-4(a) (2015) (concealed weapons permits authorized only for pistols or revolvers); WASH. REV. CODE ANN. § 9.41.070 (LexisNexis 2015) (applicable to license to carry a concealed pistol); WIS. STAT. § 175.60 (2015) (license to carry concealed weapon); WYO. STAT. ANN. § 6-8-104 (2015) (concealed weapon permit).

⁴⁵⁹ See *Open Carrying Policy Summary*, LAW CENTER TO

applicant must meet to qualify for a license.⁴⁶⁰ After a license is issued, a licensee may become ineligible for the reason that he or she no longer meets one or more of the statutory conditions for a license.

When a law enforcement officer encounters someone in an airport carrying a firearm who has a license to carry a firearm or a concealed firearm, there are federal and state databases that enable an officer to verify the validity of a firearm license. There are other databases that may disclose whether a licensee no longer satisfies one or more of the conditions under which a license was issued, such as a conviction for a felony or other serious offense.

PREVENT GUN VIOLENCE, http://smartgunlaws.org/open-carrying-policy-summary/#identifier_13_5940 (last accessed Mar. 10, 2016) (naming Connecticut, Georgia, Hawaii, Indiana, Iowa, Maryland, Massachusetts, Minnesota, Missouri, New Jersey, Oklahoma, Rhode Island, Tennessee, Texas, and Utah) (citations omitted). *See also* CONN. GEN. STAT. § 29-35(a) (2015) (providing that only in a person's home or place of business may a person carry a pistol or revolver without a permit to carry); MINN. STAT. § 624.714 (2015) (concerning issuance of a permit to carry a pistol); N.J. REV. STAT. § 2C:39-5(b)(1) (2015) (unlawful to possess a handgun without having a permit to carry the same as provided in § 2C:58-4); N.J. REV. STAT. § 2C:39-5(c) (2015) (unlawful to possess rifle or shotgun without a firearms purchase identification card); OKLA. STAT. tit. 21, § 1272(A)(2) (2015) (unlawful to carry any pistol, revolver, shotgun, or rifle, loaded or unloaded, except as permitted by statute or Oklahoma Self-Defense Act); R.I. GEN. LAWS § 11-47-8(a) (2015) (unlawful with some exceptions to carry a pistol or revolver in a vehicle or on his or her person without a license or permit as provided in §§ 11-47-11, 11-47-12, and 11-47-18); R.I. GEN. LAWS § 11-47-11(a) (2015) (regarding issuance of a license to carry); TENN. CODE ANN. § 39-17-1315 (2015) (designating classes of persons authorized to carry handguns including “[a]ny other officer or person authorized to carry handguns by this[] or any other law of this state”); TENN. CODE ANN. §§ 39-17-308, 39-17-1351(b) (2015) (regarding issuance of a handgun carry permit); TEX. PENAL CODE ANN. §§ 46.02(a)(1), (2) (2015).

⁴⁶⁰ ALA. CODE § 13A-11-175(a)(1) (LexisNexis 2015) (regarding license to carry a concealed weapon); CONN. GEN. STAT. § 29-38 (2015) (regarding a permit to carry a pistol or revolver); GA. CODE ANN. §§ 16-11-129(b)(2)(A)–(L) (2015) (setting forth conditions an applicant must meet for issuance of weapons-carry license); IDAHO CODE ANN. §§ 18-3302(11)(a)–(m) (2015); LA. REV. STAT. ANN. §§ 40:1379.13(C)(1)–(19) (2015); MINN. STAT. § 624.714(2) (b) (2015) (setting forth conditions for issuance of permit to carry a pistol); MISS. CODE ANN. §§ 45-9-101(2)(b)–(l), 45-9-101(3) (2015); NEV. REV. STAT. ANN. §§ 202.3657(4)–(6) (LexisNexis 2015) (appears to apply to a permit to carry a concealed handgun); N.Y. PENAL LAW § 400.00(1) (Consol. 2015) (conditions for issuance of license to carry a firearm); S.D. CODIFIED LAWS § 23-7-7.1 (2015); UTAH CODE ANN. § 53-5-704(2)(a) (LexisNexis 2015) (stating grounds for denying, suspending, or revoking concealed firearm permit); W. VA. CODE ANN. § 61-7-4(a)(4) (LexisNexis 2015) (stating conditions for issuance of concealed weapons permit); WIS. STAT. §§ 175.60(3), (11) (2015); WYO. STAT. ANN. §§ 6-8-104(b)(v)–(vi) (2015).

In most states, when a person no longer qualifies, there is a prescribed procedure for the revocation of the license.⁴⁶¹ For example, in Idaho, the sheriff is empowered to revoke a license “subsequent to a hearing” for three reasons, including the licensee’s “doing of an act or [the] existence of a condition that would have been grounds for the denial of the license by the sheriff....”⁴⁶² The commissioner of the Kentucky State Police is directed to “revoke the license of any person who becomes permanently ineligible to be issued a license or have a license renewed under the criteria set forth in this section.”⁴⁶³

In some states, however, an individual’s later ineligibility serves automatically to invalidate or revoke the person’s license or permit. Under Minnesota law, a “permit to carry is void at the time that the holder becomes prohibited by law from possessing a firearm, in which event the holder must return the permit card to the issuing sheriff within five business days after the holder knows or should know that the holder is a prohibited person.”⁴⁶⁴ Furthermore, “[w]hen a permit holder is convicted of an offense that prohibits the permit holder from possessing a firearm, the court must take possession of the permit, if it is available, and send it to the issuing sheriff.”⁴⁶⁵

In Nebraska, a permittee must continue to meet the requirements of Section 69-2433 of the Nebraska Revised Statutes while holding a permit. Whenever

⁴⁶¹ FLA. STAT. ANN. § 790.06(2) (LexisNexis 2015) (stating the conditions for issuing a license to carry a concealed weapon); FLA. STAT. ANN. § 790.06(10) (LexisNexis 2015) (stating the circumstances under any one of which a license to carry a concealed firearm is to be suspended or revoked); KY. REV. STAT. ANN. § 237.110(4) (LexisNexis 2015) (stating the conditions for granting or renewing a license to carry a concealed firearm); OHIO REV. CODE ANN. § 2923.125(D) (LexisNexis 2015) (regarding license to carry a concealed handgun); 18 PA. CONS. STAT. §§ 6109(e)(1)(i)–(xiv) (2015) (stating conditions for issuance of concealed weapons permit); 18 PA. CONS. STAT. § 6109(i) (2015) (providing that a license to carry firearms may be revoked for good cause and shall be revoked “for any reason stated in subsection (e)(1)...”); WIS. STAT. § 175.60(14)(a), (am) (stating when license will be revoked or suspended); TEX. GOV’T CODE § 411.172 (2016) (stating conditions for a license to carry a handgun, with the term “concealed” having been deleted from the 2015 version of the statute).

⁴⁶² IDAHO CODE ANN. § 18-3302K(12) (2015) (applicable to enhanced licenses to carry concealed weapons).

⁴⁶³ KY. REV. STAT. ANN. §§ 237.110(13)(a), (b) (2015). *See also* WYO. STAT. ANN. § 6-8-104(q) (2015) (stating that a concealed weapon permit “shall be revoked” if the permittee becomes ineligible for a permit under the section).

⁴⁶⁴ MINN. STAT. § 624.714(8)(a) (2015) (emphasis added).

⁴⁶⁵ MINN. STAT. § 624.714(8)(b) (2015).

a permittee fails to meet one or more of the requirements, the permit holder must return his or her permit to the Nebraska State Patrol for revocation.⁴⁶⁶ In New York, if a licensee is convicted of a felony or other serious offense or for any other reason is no longer eligible for a license, the person's ineligibility "operate[s] as a revocation of the license."⁴⁶⁷ In South Carolina, a person's concealed weapons permit "must be surrendered...if the permit holder becomes a person prohibited under state law from possessing a weapon."⁴⁶⁸ In West Virginia, a sheriff is authorized to revoke an existing license for a concealed weapons permit if the holder has violated any of the requirements for the issuance of his or her permit.⁴⁶⁹

In summary, in some states whenever a licensee no longer meets the qualifications for his or her license, the licensee no longer has a legal right to carry a firearm, except possibly in those situations when the person may carry a firearm without a license. Depending on the condition that a licensee no longer satisfies (e.g., no felony conviction), an individual could, however, be prohibited from possessing a firearm in an airport or anywhere. As explained in the following section, states have numerous conditions that must be satisfied at all times that are relevant whenever there is a question as to whether a person is lawfully carrying a firearm in an airport or elsewhere.⁴⁷⁰

B. Statutory Eligibility Conditions for a License to Carry a Firearm or to Carry a Concealed Firearm

Tennessee has approximately 20 conditions for the issuance or renewal of a permit to carry a handgun. Tennessee requires that an applicant:

- Must not be prohibited from purchasing or possessing a firearm under Tennessee law, the law of another state, or federal law;
- Must not be presently indicted for or convicted of a felony or one of several disqualifying misdemeanors;
- Must not be subject presently to any "order of protection";
- Must not be a fugitive;
- Must not be an unlawful user of or addicted to alcohol or any controlled substance; must not have

⁴⁶⁶ NEB. REV. STAT. ANN. § 69-2435 (LexisNexis 2015) (except as provided in § 69-2433(4)).

⁴⁶⁷ N.Y. PENAL LAW § 400.00(11)(a) (Consol. 2015). *See also* ME. REV. STAT. tit. 25, §§ 2003(1)(D)(5)(a)-(ff) (2015).

⁴⁶⁸ S.C. CODE ANN. § 23-31-25(F)(2) (2015).

⁴⁶⁹ W. VA. CODE ANN. § 61-7-4(n) (LexisNexis 2015).

⁴⁷⁰ WIS. STAT. §§ 175.60(112)(b)(1)(a), (12g) (2015) (law enforcement officer is authorized to "confirm" whether license is valid).

been either a patient in a rehabilitation program pursuant to a court order or otherwise hospitalized for the abuse of or an addiction to alcohol or a controlled substance in the previous 10 years; and must not have been a voluntary patient in a rehabilitation program or voluntarily hospitalized for the abuse of or addiction to alcohol or a controlled substance in the previous 3 years;

- Must not have been convicted of the offense of driving under the influence of an intoxicant in Tennessee or any other state two or more times in the previous 10 years with no conviction having occurred in the previous 5 years;

- Must not have been adjudicated as mentally defective, judicially committed to or hospitalized in a mental institution, had a court appointed conservator by reason of a mental defect, judicially determined to be disabled by reason of a mental illness, developmental disability or other mental incapacity, and in the previous 7 years not found by a court to pose an immediate substantial likelihood of serious harm because of mental illness;

- Must not be an alien or be illegally in the United States;

- Must not have been discharged from the armed forces under dishonorable conditions;

- Must not have renounced his or her United States citizenship;

- Must not have been convicted of a misdemeanor or crime of domestic violence;

- Must not be receiving Social Security disability benefits because of alcohol dependence, drug dependence, or mental disability; and

- Must not have been convicted of stalking.⁴⁷¹

In Kentucky, an applicant cannot "owe a child support arrearage," as further elaborated in the statute, and must have "complied with any subpoena or warrant relating to child support or paternity proceedings."⁴⁷² One of the conditions in Oregon for the issuance of a license to carry a concealed handgun is that the applicant cannot be someone who is required to register as a sex offender in any state.⁴⁷³

As discussed in Section XIII, a law enforcement official has the authority when a licensee is carrying a firearm to verify the validity of the person's required license and quite possibly to determine preliminarily whether the licensee still meets the requirements for a license; for example, by

⁴⁷¹ TENN. CODE ANN. § 39-17-1351(b) (2015).

⁴⁷² KY. REV. STAT. ANN. §§ 237.110(4)(f), (g) (LexisNexis 2015).

⁴⁷³ OR. REV. STAT. § 166.291(1)(o) (2015).

consulting national and state databases that are available to law enforcement officials.⁴⁷⁴

C. Whether an Out-of-State License or Permit Is Valid in Another State

Airport authorities and law enforcement officers may be interested in whether a license issued in another state is valid in the state where an individual is carrying a firearm in an airport. Although there are differences from state to state, both in the procedures and in what each state recognizes, many states have a procedure for the recognition of licenses issued in other states to carry a firearm or to carry a concealed firearm.⁴⁷⁵ Some states recognize out-of-state licenses automatically;⁴⁷⁶ however, other states have requirements that must be met prior to recognizing an out-of-state license. The requirements in Michigan for a license to carry a concealed pistol do not apply to a licensed resident of another state.⁴⁷⁷ In Tennessee, a “facially valid handgun firearm[] permit” issued by another state is recognized but only for carrying a handgun.⁴⁷⁸ Rhode Island’s licensing requirements do not apply to the holder of a license issued by another state “provided the

⁴⁷⁴ WIS. STAT. §§ 175.60(112)(b)(1)(a), (12g) (2015) (authorizing a law enforcement officer to “confirm” whether a license is valid).

⁴⁷⁵ See, e.g., CONN. GEN. STAT. § 29-28(f) (2015) (holder of license from another state to carry a pistol or revolver may apply “directly” to the Commissioner of Emergency Services and Public Protection for a permit); KY. REV. STAT. ANN. §§ 237.110(20)(a), (b) (LexisNexis 2015); LA. REV. STAT. ANN. § 40.1379.3(T)(5) (2015); MISS. CODE ANN. § 45-9-101(19) (2015); MO. REV. STAT. § 571.107(1) (2015); N.M. STAT. ANN. § 29-19-12(E) (LexisNexis 2015); N.C. GEN. STAT. § 14-415.24(a) (2015) (state Department of Justice to determine whether other states allow North Carolina residents to carry concealed handgun in their state); N.D. CENT. CODE § 62.1-04-03.1 (2015); S.C. CODE ANN. § 23-31-215(N) (2015) (setting forth conditions for recognition of valid out-of-state permit to carry concealable weapons).

⁴⁷⁶ ALA. CODE § 13A-11-85 (LexisNexis 2015) (person licensed to carry a handgun in any state authorized to carry a handgun in Alabama); ME. REV. STAT. tit. 25, § 2001-A(2)(F) (2015); MINN. STAT. §§ 624.714(16)(a), (b) (2015) (regarding recognition of permits issued in other states but providing that a permit from another state is not valid “if the holder is or becomes prohibited by law from possessing a firearm”); UTAH CODE ANN. § 53-5-704(4)(a) (LexisNexis 2015); WASH. REV. CODE ANN. § 9.41.073(1) (a) (LexisNexis 2015) (setting forth two conditions for recognition of a license issued in another state to carry a pistol); W. VA. CODE ANN. §§ 61-7-6(a) (6), 61-7-6a (LexisNexis 2015) (stating requirements for recognition of out-of-state handgun permit).

⁴⁷⁷ MICH. COMP. LAWS SERV. § 28.432a(1)(h) (LexisNexis 2015).

⁴⁷⁸ TENN. CODE ANN. § 39-17-1351(R)(1) (2015).

person is merely transporting the firearm through the state.”⁴⁷⁹

In some states, the appropriate state official, often the state attorney general, is authorized to enter into reciprocity agreements with other states.⁴⁸⁰ Thus, in Idaho the attorney general contacts the “appropriate officials in other states for the purpose of establishing, to the extent possible, recognition and reciprocity of the enhanced license to carry a concealed weapon by other states, whether by formal agreement or otherwise.”⁴⁸¹

In Ohio,

[a] person who holds a valid concealed handgun license issued by another state that is recognized by the attorney general pursuant to a reciprocity agreement...has the same right to carry a concealed handgun in this state as a person who was issued a concealed handgun license...and is subject to the same restrictions that apply to a person who carries a license issued under that section.⁴⁸²

The attorney general in Pennsylvania is authorized “to enter into reciprocity agreements with other states providing for the mutual recognition of a license to carry a firearm issued by the Commonwealth and a license or permit to carry a firearm issued by the other state.”⁴⁸³ As of January 1, 2016, the governor of Texas is directed to negotiate agreements with other states that issue a license to carry a handgun so that a license issued by one state is recognized by the other state, as further provided in the statute.⁴⁸⁴

In brief, as discussed in this section, under state laws authorizing the issuance of a license to carry a firearm or a concealed firearm, licensees have a continuing obligation to comply with the conditions under which their license was issued. Many states have procedures for the recognition of out-of-state licenses; however, some states recognize out-of-state licenses automatically, whereas other states have requirements that must be met prior to the recognition of an out-of-state license. Some states authorize a state official, usually the state’s attorney general, to enter into reciprocity agreements with other states for the mutual recognition of licenses to carry a firearm.

⁴⁷⁹ R.I. GEN. LAWS § 11-47-8(a) (2015); see also R.I. GEN. LAWS § 11-47-11(a) (2015) (recognizing out-of-state license to carry concealed weapons).

⁴⁸⁰ TENN. CODE ANN. § 39-17-1351(r)(3)(A) (2015) (requiring commissioner of safety to enter into written reciprocity agreements); WIS. STAT. § 175.60(18) (2015) (relating to reciprocity agreements).

⁴⁸¹ IDAHO CODE ANN. § 18-3302k(14) (2015).

⁴⁸² OHIO REV. CODE ANN. § 2923.126(D) (LexisNexis 2015) (emphasis added).

⁴⁸³ 18 PA. CONS. STAT. § 6109(k)(1) (2015).

⁴⁸⁴ TEX. GOV’T CODE ANN. § 411.173 (2016).

XII. RELATIONSHIP OF STATE STATUTES AND LOCAL LAWS REGULATING FIREARMS AT AIRPORTS

A. State Preemption of Local Regulation of Firearms

Although a few states allow some local regulation of firearms,⁴⁸⁵ most states have constitutional and/or statutory provisions that preempt any local regulation of firearms that is contrary to or in conflict with state law.⁴⁸⁶

Municipal governments in Connecticut may not restrict, prohibit, or provide for the licensing of the ownership, transfer, possession, or transportation of

⁴⁸⁵ ALA. CODE § 13A-11-61.3 (LexisNexis 2015) (stating that the preemption provision does not affect an employer's right to regulate or prohibit an employee's possession of a firearm in the course of the employee's official duties); N.J. REV. STAT. § 40:48-1(18) (2015) (providing that the "governing body of every municipality may make, amend, repeal and enforce ordinances to...[r]egulate and prohibit the sale and use of guns, pistols, firearms, and fireworks of all descriptions"); S.C. CODE ANN. § 23-31-510 (2015); S.C. CODE ANN. § 23-31-520 (2015) (allowing county, municipality, or political subdivision to regulate "public brandishment" of firearms); UTAH CODE ANN. §§ 76-10-500(1)(a), (b) (LexisNexis 2015) (stating that the prohibition by a governmental unit of the possession of firearms by non-U.S. citizens or unlawful aliens is not preempted).

⁴⁸⁶ ALASKA STAT. § 18.65.800 (2015); ARIZ. REV. STAT. § 13-3118 (LexisNexis 2015); DEL. CODE ANN. tit. 22, § 111(a) (2015) (stating that "[t]he municipal governments shall enact no law, ordinance or regulation prohibiting, restricting or licensing the ownership, transfer, possession or transportation of firearms or components of firearms or ammunition except that the discharge of a firearm may be regulated..."); FLA. STAT. ANN. § 790.06(15) (LexisNexis 2015) (preemption provision protecting the state's uniform standards for issuing licenses to carry concealed weapons); GA. CODE ANN. § 16-11-130.2(d) (2015) (stating that "[a]ny ordinance, resolution, regulation, or policy of any county, municipality, or other political subdivision of this state which is in conflict with this Code section shall be null, void, and of no force and effect..."); IDAHO CONST. art. 1, § 11; IDAHO CODE ANN. § 18-3302(17) (2015); IDAHO CODE ANN. § 18-3302k(10) (2015); IDAHO CODE ANN. § 18-3302J(2) (2015) (providing that "no county, city, agency, board or any other political subdivision of this state may adopt or enforce any law, rule, regulation, or ordinance which regulates in any manner the sale, acquisition, transfer, ownership, possession, transportation, carrying or storage of firearms or any element relating to firearms and components thereof, including ammunition"); 430 ILL. COMP. STAT. ANN. 65/13.1(b) (LexisNexis 2015) (preempting any ordinances that impose greater restrictions or limitations on the acquisition, possession, or transfer of firearms); IND. CODE ANN. § 35-47-11.1-1 (LexisNexis 2015); IOWA CODE § 724.28 (2015); KAN. STAT. ANN. § 75-7c17 (2015) (no regulation permitted of persons licensed to carry a concealed handgun); KAN. STAT. ANN. § 12-16,124 (2015); KY. REV. STAT. ANN. § 65.870(1) (LexisNexis 2015) (preemption provision applicable to local governments); KY. REV. STAT. ANN. § 237.110(19) (LexisNexis 2015) (preemption provision in Kentucky applicable to

firearms or components of firearms or ammunition.⁴⁸⁷ In Utah, except as otherwise allowed by state law, a local authority or state entity may not:

- (a) prohibit an individual from owning, possessing, purchasing, selling, transferring, transporting, or keeping a firearm at the individual's place of residence, property, business, or

licenses to carry concealed weapons); LA. REV. STAT. ANN. § 40.1796(A) (2015); ME. REV. STAT. tit. 25, §§ 2011(1)-(3) (2015) (general preemption provision); MD. CODE ANN., CRIM. LAW § 4-209(a) (LexisNexis 2015) (regulation of weapons and ammunition by counties, municipalities, and other units of government preempted); MD. CODE ANN., PUB. SAFETY § 5-104 (LexisNexis 2015); MD. CODE ANN., PUB. SAFETY § 5-133(a) (LexisNexis 2015) (preempting right of any local jurisdiction to regulate possession of regulated firearms); MASS. CONST. art. II, §§ 1-9; MASS. ANN. LAWS ch. 43B, § 13 (LexisNexis 2015); MICH. COMP. LAWS SERV. §§ 123.1102—123.1104 (LexisNexis 2015); MINN. STAT. § 471.633 (2015); MINN. STAT. § 624.714(22) (2015) (law to be construed according to the compelling state interest test); MISS. CODE ANN. § 45-9-51(1) (2015); MISS. CODE ANN. §§ 45-9-53(c), (e), (f) (2015); MO. CONST. art. I, § 23 (2014 amendment) (general preemption provision); MO. REV. STAT. §§ 21.750(1), (2) (2015) (preempts firearms regulation by political subdivisions but allows political subdivisions to regulate the open carrying of firearms within the jurisdiction, but the open carrying of firearms shall not be prohibited when a person has a valid concealed carry endorsement); MO. REV. STAT. § 21.750(3)(2)(a) (2015); NEB. REV. STAT. ANN. § 15-255 (LexisNexis 2015) (permitting city of primary class to prohibit carrying of concealed weapons except the carrying of a concealed handgun in compliance with Concealed Handgun Permit Act); NEB. REV. STAT. ANN. § 18-1703 (LexisNexis 2015) (stating that cities and villages are not allowed to regulate the ownership, possession, or transportation of a concealed handgun); NEV. REV. STAT. ANN. §§ 244.364, 268.418, 269.222 (LexisNexis 2015); N.H. REV. STAT. ANN. § 159:26(1) (LexisNexis 2015) (preempting other state, municipal, county, or local authority's laws that regulate the "sale, purchase, ownership, use, possession, transportation, licensing, permitting, taxation or other matters pertaining to firearms..."); N.C. GEN. STAT. §§ 14-409.40(a), (b) (2015) (providing that state law preempts the entire field of the regulation of firearms); N.C. GEN. STAT. § 14.415.23(a) (2015) (preemption of any laws other than those made by the General Assembly concerning "the regulation of legally carrying of a concealed handgun"); N.D. CENT. CODE § 62.1-02-05(3) (2013) (authorizing a political subdivision to enact "an ordinance that is less restrictive [that state law] relating to the possession of firearms or dangerous weapons at a public gathering") (emphasis added); N.D. CENT. CODE § 6.1-01-03 (2015); OR. REV. STAT. §§ 166.170(1), (2) (2015) (preemption of any regulation of firearms by a city, county, or "district"); OR. REV. STAT. §§ 166.170—166.172 (2015) (authority to regulate discharge of firearms); 18 PA. CONS. STAT. §§ 2962(g), 6120 (2015); S.D. CODIFIED LAWS §§ 7-18A-36, 8-5-13, 9-19-20 (2015); R.I. GEN. LAWS § 11-47-58 (2015); TENN. CODE ANN. §§ 39-17-1314(a), (f) (2015); UTAH CODE ANN. § 78B-4-511(1) (LexisNexis 2015); VA. CODE ANN. §§ 15.2-915(A), (B) (2015) (stating that "[n]o locality shall adopt or enforce..."); VT. STAT. ANN. tit. 24, §§ 2291(8), 2295 (2015); W. VA. CODE ANN. § 8-12-5a(a) (LexisNexis 2015); W. VA. CODE ANN. § 7-1-3 (LexisNexis 2015); WYO. STAT. ANN. § 6-8-401(c) (2015).

⁴⁸⁷ DEL. CODE ANN. tit. 22, § 111(a) (2015).

in any vehicle lawfully in the individual's possession or lawfully under the individual's control; or

(b) require an individual to have a permit or license to purchase, own, possess, transport, or keep a firearm....⁴⁸⁸

Other states have similar preemption provisions.⁴⁸⁹

As for airports, a few state statutes specifically preempt any local regulation of firearms in airports or publicly owned or operated buildings.⁴⁹⁰ West Virginia preempts the authority of a municipality or its governing body to limit a person's right to possess firearms, but there are exceptions for municipally owned or operated buildings.⁴⁹¹

Not all states preclude all local regulation of firearms. In Delaware, if a municipal government adopts an ordinance regulating "the possession of firearms, ammunition, components of firearms, or explosives in police stations or municipal buildings," the municipal government must clearly identify any restricted areas "by a conspicuous sign posted at each entrance to the restricted areas[; however,] any person who immediately foregoes entry or immediately exits such building due to the possession of a firearm, ammunition, components of firearms, or explosives shall not be guilty of violating the ordinance."⁴⁹²

A city or county in Oregon may adopt ordinances to regulate, restrict, or prohibit the possession of loaded firearms in public places.⁴⁹³

B. Cases on Home Rule and Firearms Regulation

There has been litigation, however, in Colorado, Ohio, and Utah on whether state law preempted a municipal ordinance or a state university policy that

⁴⁸⁸ UTAH CODE ANN. §§ 53-5a-102(1), (2)(a)-(b), (5) (LexisNexis 2015). Subsection 5 states: "Unless specifically authorized by the Legislature by statute, a local authority or state entity may not enact, establish, or enforce any ordinance, regulation, rule, or policy pertaining to firearms that in any way inhibits or restricts the possession or use of firearms on either public or private property."

⁴⁸⁹ See *supra* note 485.

⁴⁹⁰ GA. CODE ANN. § 16-11-130.2(d) (2015) (prohibiting anything contrary to state law on the carrying of a weapon or long gun at a commercial service airport); MONT. CODE ANN. §§ 45-8-351(1), (2)(b) (2015) (stating that governments may not "prohibit the legitimate transportation of firearms through any jurisdiction, whether in airports or otherwise").

⁴⁹¹ W. VA. CODE ANN. §§ 8-12-5a(b), 8-12-5a(b)(2), 8-12-5a(b)(4) (LexisNexis 2015) (stating that "[a] municipality may enact and enforce an ordinance or ordinances that prohibit a person from carrying or possessing a firearm openly or that is not lawfully concealed in a municipally owned recreation facility," and that "a municipality may prohibit persons who do not have a valid concealed handgun license from carrying or possessing a firearm on municipally owned or operated property").

⁴⁹² DEL. CODE ANN. tit. 22, § 111(b) (2015).

⁴⁹³ OR. REV. STAT. § 166.173(1) (2015).

restricted or prohibited firearms. In Colorado, the state constitution provides that cities and towns "shall always have power to make, amend, add to or replace the charter of said city or town, which shall be its organic law and extend to all its local and municipal matters."⁴⁹⁴ Furthermore, applicable Colorado law "shall continue to apply to such cities and towns, except insofar as superseded by the charters of such cities and towns or by ordinance passed pursuant to such charters."⁴⁹⁵

Nonetheless, in 2003 the Colorado legislature established statewide standards for the issuance of permits to carry a concealed weapon and preempted all municipal ordinances that are more restrictive than state or federal laws. The state law restricted the authority of local governments to regulate where a permit holder could carry a concealed handgun and preempted any local firearms laws on "the sale, purchase or possession of a firearm that a person may lawfully sell, purchase or possess under state or federal law."⁴⁹⁶

A district court held that almost all of Denver's ordinances were matters exclusively of local concern under Section 6 of Article XX of the Colorado Constitution, including Denver's prohibitions against openly carrying a firearm in public and on airport property. The district court held, however, that the state law preempted Denver's ordinance that restricted the ability of Denver residents to carry firearms in private vehicles while driving within city limits.⁴⁹⁷ In a split-decision, the Supreme Court of Colorado affirmed the district court's rulings.⁴⁹⁸

In *City of Cleveland v. State*,⁴⁹⁹ the City of Cleveland had ordinances that regulated firearms more restrictively than Ohio state law.⁵⁰⁰ In 2006, the legislature enacted Section 9.68 of the Ohio Revised Code to provide uniform laws throughout the state on the regulation of the ownership and possession of firearms.⁵⁰¹ As in *City of Denver*, Cleveland brought an action against the State on the basis that the statute

⁴⁹⁴ COLO. CONST. art. XX, § 6.

⁴⁹⁵ COLO. CONST. art. XX, § 6.

⁴⁹⁶ S.B. 03-025, 64th Gen. Assemb., 1st Sess. (Colo. 2003).

⁴⁹⁷ Patricia K. Kelly, *Memo on Gun Legislation and Related Lawsuits*, OFFICE OF THE DENVER CITY ATTORNEY (Apr. 19, 2005), http://www.springsgov.com/units/council/050426/050425_d6.pdf.

⁴⁹⁸ *City of Denver v. State*, 139 P.3d 635 (Colo. 2006).

⁴⁹⁹ 128 Ohio St. 3d 135, 135-36 (Ohio 2010).

⁵⁰⁰ CLEVELAND, OHIO, CODE OF ORDINANCES §§ 627.08, 627.09, 627.10, 627A.02, 628.03, and 674.05 (2015). See *City of Cleveland*, 128 Ohio St. 3d at 135.

⁵⁰¹ *City of Cleveland*, 128 Ohio St. 3d at 135 (quoting OHIO REV. CODE ANN. 9.68(A), 151 Ohio Laws, pt. IV, 8138, 8139).

violated the City's right of home rule.⁵⁰² Although the trial court upheld the constitutionality of the statute,⁵⁰³ an Ohio appellate court reversed and remanded the case for the entry of a summary judgment in favor of the City.⁵⁰⁴ The appellate court held that the statute was not a general law but one that limited the City's power of home rule under Section 3 of Article XVIII of the Ohio Constitution and, thus, violated the doctrine of separation of powers.⁵⁰⁵

The Supreme Court of Ohio, however, upheld the constitutionality of the state statute on the basis that it was a general law for the purpose of home rule analysis and a necessary element of a three-part test used to evaluate conflicts between state statutes and local ordinances under the Ohio Home Rule Amendment.⁵⁰⁶ The court held that the statute dealt with a matter of statewide concern, was comprehensive and uniform in its application, and together with other Ohio statutes, established a clear legal framework to regulate the carrying of concealed handguns.⁵⁰⁷

In another case involving state preemption, *University of Utah v. Shurtloff*,⁵⁰⁸ the issue was whether a university policy that prohibited university students, faculty, and staff from possessing firearms on campus contravened a Utah statute.⁵⁰⁹ The Utah statute preempted any local authority or state entity from adopting ordinances, regulations, rules, or policies that restrict the possession or use of firearms on public or private property. The Supreme Court of Utah held, first, that the policy did not contravene Article I, Section 6, of the Utah Constitution, because the university policy was not legislative in nature but rather was part of a contract between the university and its students, faculty, and staff.⁵¹⁰ Second, however, the court held that because the legislature may supervise and control all university functions, the university lacked "the authority to enact firearms policies in contravention of Utah statutory law."⁵¹¹

⁵⁰² *Id.* at 135–36.

⁵⁰³ *Id.*

⁵⁰⁴ *City of Cleveland v. State*, No. 92663, 2011 Ohio App. LEXIS 790 (Ohio Ct. App. Cuyahoga County Mar. 3, 2011), *rev'd*, *City of Cleveland v. State*, 128 Ohio St. 3d 135 (Ohio 2010).

⁵⁰⁵ *Id.*

⁵⁰⁶ *City of Cleveland v. State*, 128 Ohio St. 3d at 135, 137 (citing *Mendenhall v. City of Akron*, 117 Ohio St. 3d 33 (Ohio 2008)).

⁵⁰⁷ *Id.* at 138–39.

⁵⁰⁸ 144 P.3d 1109 (Utah 2006).

⁵⁰⁹ UTAH CODE ANN. § 63-98-102(5) (LexisNexis 2015).

⁵¹⁰ *Shurtloff*, 144 P.3d at 1115, 1116.

⁵¹¹ *Id.*, 2006 UT 51 at P48, P56, 144 P.3d at 1121.

XIII. LAW ENFORCEMENT OFFICERS' RESPONSE TO PERSONS CARRYING A FIREARM IN AN AIRPORT

It appears that whenever a law enforcement officer observes an individual carrying a firearm in public, the officer may make inquiries of the person and examine the firearm. At least one state's interpretation of its law is that a law enforcement officer may stop and detain any person "reasonably suspected of violating" state law on the possession of handguns as may be "necessary to identify the person or determine the lawfulness of his or her conduct."⁵¹² In *United States v. Mancillas*,⁵¹³ a case in which a police officer responded to a radio dispatch that there was a man with a gun in his hand in a car at a nightclub in Indianapolis, the Seventh Circuit stated that "[r]easonable suspicion requires less than the quantum of proof constituting probable cause."⁵¹⁴ Furthermore, "when officers receive an anonymous tip accurately describing an individual and alleging that the individual is armed, even 'weak[] corroboration' entitles police to stop and search the individual for a gun."⁵¹⁵

Some airport rules and regulations that prohibit firearms in airports, such as those of Logan Airport in Massachusetts and LAX, also require private individuals carrying a firearm into the airport to "surrender" it to airport police.⁵¹⁶ State laws generally authorize officers to search, in addition to the usual criminal, fugitive, sex offender, and other databases available to law enforcement, a state database on individuals having a license or permit to carry a firearm or to carry a concealed firearm.⁵¹⁷

The question has arisen as to whether a person who is carrying a firearm may be questioned to

⁵¹² See Ark. Att'y Gen. Op. No. 2015-064, *supra* note 157, at 2. The opinion notes that various factors may give rise to a law enforcement officer's reasonable suspicion, including the person's demeanor, gait and manner; information received from third parties; and the person's "proximity to known criminal conduct." *Id.*

⁵¹³ 183 F.3d 682 (7th Cir. 1999).

⁵¹⁴ *Mancillas*, 183 F.3d at 695.

⁵¹⁵ *Id.* at 698 (citation omitted).

⁵¹⁶ LAX RULES AND REGULATIONS §§ 2-1, 2-2 (Mar. 2014), http://www.lawa.org/uploadedFiles/AirOps/pdf/rules/05_Section_02_General_201112.pdf.

⁵¹⁷ KY. REV. STAT. ANN. § 237.110(10) (LexisNexis 2015) (providing that an automated list of holders of a Kentucky license to carry a concealed firearm or other deadly weapon must be available to all law enforcement officers); MINN. STAT. § 624.714(15)(a) (2015) (automated database of persons authorized to carry pistols available only to law enforcement officials to verify validity of a permit); WYO. STAT. ANN. § 6-8-104(z)(bb) (2015).

ascertain whether the person has a license. In *United States v. Montague*,⁵¹⁸ decided by the Eleventh Circuit in 2011, the defendant, a convicted felon, appealed his conviction for unlawful possession of a firearm and ammunition.⁵¹⁹ Montague argued that because the “carrying of a concealed firearm with a permit is legal in Florida, the police officers did not have a reasonable suspicion that he was involved in illegal activity that violated Florida law because they did not know whether he had a permit.”⁵²⁰

Although the Eleventh Circuit’s opinion did not address whether the defendant’s license was invalid because of the felony conviction, the court rejected the defendant’s argument and affirmed his conviction. Relying on Florida cases, the court held that “probable cause existed to pat down and search a defendant where the officer observed the bulge of what appeared to be a concealed firearm....”⁵²¹ Furthermore, “[u]nder the facts of this case, the officers did not need to ascertain whether Montague had a permit before they conducted a *Terry* stop and search because they had a reasonable suspicion that he was carrying a concealed weapon based on a reliable informant’s tip....”⁵²²

State laws reviewed for the digest typically require a holder of a license or permit to display his or her license or permit when a law enforcement officer demands or requests to see it.⁵²³ State laws

⁵¹⁸ 437 F.App’x. 833 (11th Cir. 2011).

⁵¹⁹ 18 U.S.C. §§ 922(g)(1), 924(c)(1) (2015).

⁵²⁰ *Montague*, 437 F.App’x at 835.

⁵²¹ *Id.* at 836.

⁵²² *Id.* at 834.

⁵²³ FLA. STAT. ANN. § 790.06(1) (LexisNexis 2015) (requiring licensees to have a license to carry a concealed weapon or firearm with valid identification when carrying a concealed weapon or firearm and to display both upon demand by a law enforcement officer); MISS. CODE ANN. § 45-9-101(1)(b) (2015); N.C. GEN. STAT. § 14-415.11(a) (2015) (whenever one having a permit is carrying a concealed handgun, the permit holder “shall disclose to any law enforcement officer that the person holds a valid permit and is carrying a concealed handgun when approached or addressed by the officer[] and...display both the permit and the proper identification upon the request of a law enforcement officer”); N.D. CENT. CODE § 62.1-04-04 (2015); VA. CODE ANN. § 18.2-308.01 (2015) (shall display upon demand by a law enforcement officer); WIS. STAT. § 175.60(2g)(b) (2015) (requirement to display license “upon request” of a law enforcement officer); MINN. STAT. § 624.714(1b) (2015) (display permit “upon lawful demand by a peace officer”); N.Y. PENAL LAW § 400.00(5)(a) (Consol. 2015) (holder of a New York license to carry must identify the “firearms possessed by said license holder”); N.Y. PENAL LAW § 400.00(8) (Consol. 2015) (requiring holder to exhibit his or her license upon demand to any peace officer); TENN. CODE ANN. § 39-17-1351(n)(1) (2015) (handgun carry permit holder “shall display the permit on demand of a law enforcement officer”); WASH. REV. CODE ANN. § 9.41.050(1)(b) (LexisNexis 2015) (licensee to carry concealed pistol shall display his or her license “upon demand” to any police officer).

also require licensees and permittees to have their license or permit, as well as proof of identity, in their immediate possession whenever they are carrying a firearm or a concealed firearm.⁵²⁴

An individual in Arizona must answer a law enforcement officer and inform the officer when the individual is carrying a concealed weapon on “any means of transportation.”⁵²⁵ In California, peace officers are authorized to examine any firearm carried by anyone on his or her person or in a vehicle while in any public place or on any public street in an incorporated city or prohibited area of an unincorporated territory.⁵²⁶ Connecticut requires a person to have his or her permit to carry a pistol or revolver when the permittee is carrying a pistol or revolver and to “present his or her permit upon the request of a law enforcement officer who has reasonable suspicion of a crime for purposes of verification of the validity of the permit or identification of the holder....”⁵²⁷ An officer must have observed, however, the person carrying the pistol or revolver.⁵²⁸ In Georgia, a licensee is not subject to detention for the sole purpose of investigating whether the person has a weapons-carry license.⁵²⁹ When a law enforcement officer in Ohio stops and approaches a licensee, the licensee must “promptly inform” the officer that the licensee is carrying a concealed handgun.⁵³⁰ Under Oregon law, an officer may examine a firearm in someone’s possession

⁵²⁴ CONN. GEN. STAT. § 29-35(b) (2015) (requiring holder of a permit to carry a pistol or revolver to have the permit on him or her when carrying a pistol or revolver); FLA. STAT. ANN. § 790.015(1)(b) (LexisNexis 2015) (requiring one carrying a concealed weapon or firearm to have the license to carry in his or her immediate possession); ME. REV. STAT. tit. 25, § 2003(11) (2015) (regarding permit to carry concealed handgun); MISS. CODE ANN. § 45-9-101(1)(b) (2015); N.C. GEN. STAT. § 14-415.11(a) (2015) (requiring permit holder when carrying a concealed firearm to display the permit along with proper identification upon request to a law enforcement officer); N.D. CENT. CODE § 62.1-04-04 (2015); GA. CODE ANN. § 16-11-137(a) (2015) (applicable to weapons-carry licensee); S.C. CODE ANN. § 23-31-25(K) (2015) (requiring permit holder to have permit identification card in his or her possession whenever carrying a concealable weapon); TENN. CODE ANN. § 39-17-1351(n)(1) (2015) (holder required to have handgun carry permit in holder’s immediate possession); VA. CODE ANN. § 18.2-308.01(A) (2015) (stating that a licensee shall have permit on his person at all times when carrying a concealed handgun); WIS. STAT. § 175.60(2g)(b) (2015).

⁵²⁵ ARIZ. REV. STAT. §§ 13-3102(a)(1), (b)(12) (LexisNexis 2015).

⁵²⁶ CAL. PENAL CODE § 25850(b) (Deering 2015).

⁵²⁷ CONN. GEN. STAT. § 29-35(b) (2015).

⁵²⁸ *Id.*

⁵²⁹ GA. CODE ANN. § 16-11-137(b) (2015).

⁵³⁰ OHIO REV. CODE ANN. § 2923.12(B)(11) (LexisNexis 2015).

when the person is in a public building to ascertain whether the firearm is loaded.⁵³¹

Some states authorize a law enforcement officer to take other action. California authorizes a peace officer who is acting in his or her official capacity to disarm an individual when the officer reasonably believes it is necessary for the protection of the officer or another individual.⁵³² Unless an officer arrests an individual or seizes a firearm as evidence in the investigation of a crime, however, the officer must return the firearm before discharging the individual.⁵³³ Missouri law requires a person who is openly carrying a firearm to present his or her permit on the demand of a law enforcement officer.⁵³⁴ A person may be disarmed or physically restrained only if the person is under arrest.⁵³⁵ In Ohio, when a person is stopped “for any...law enforcement purpose” and the person has surrendered his or her firearm but is not charged or arrested for any offense, the officer must return the firearm at the termination of the stop unless there is another legal basis for not returning the firearm.⁵³⁶ A law enforcement officer in Tennessee may “disarm a permit holder at any time when the officer reasonably believes it is necessary for the protection of the permit holder, officer or other individual or individuals.”⁵³⁷

In brief, the research for the digest did not disclose any exceptions to the above rules for licensees who are carrying a firearm in an airport. Whenever a law enforcement officer observes someone carrying a firearm or suspects that someone is carrying a firearm, the officer may make reasonable inquiries, including verifying a person’s identity and his or her license to carry a firearm or a concealed firearm. Depending on the circumstances, an officer also may disarm an individual who is carrying a firearm.

⁵³¹ OR. REV. STAT. § 166.380(1) (2015).

⁵³² CAL. PENAL CODE § 8571.5 (Deering 2015).

⁵³³ *Id.*

⁵³⁴ MO. REV. STAT. § 21.750(3)(2)(b) (2015).

⁵³⁵ MO. REV. STAT. § 21.750(3)(2)(c) (2015).

⁵³⁶ OHIO REV. CODE ANN. § 2923.12(G) (LexisNexis 2015). See also S.C. CODE ANN. § 23-31-215(K) (2015) (requiring a permit holder who is carrying a concealable weapon to inform a police officer that the person is a permit holder and present his or her permit identification card when an officer identifies himself or herself as a police officer and “requests identification or a driver’s license” from the permit holder).

⁵³⁷ TENN. CODE ANN. § 39-17-1351(t) (2015).

XIV. FEDERAL STATUTES APPLICABLE TO THE POSSESSION OF FIREARMS IN AIRPORTS OR ON AIRPORT PROPERTY

A. Federal Regulations Prohibiting Firearms at a Screening Checkpoint and in the Sterile Area of an Airport

Under federal law, the Under Secretary of Transportation for Security is responsible “for the screening of all passengers and property, including United States mail, cargo, carry-on and checked baggage, and other articles, that will be carried aboard a passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation.”⁵³⁸ For flights and flight segments that originate in the United States, screening must take place before boarding and be carried out by a federal government employee.⁵³⁹

TSA’s regulations provide that an individual may not have a firearm or other weapon when an inspection of the individual or his or her accessible property has begun prior to entering the sterile area of an airport or prior to boarding an aircraft for which screening is conducted; when an individual is entering or is in the sterile airport area; or when an individual is attempting to board or is on board an aircraft.⁵⁴⁰

The interplay between federal and state law is illustrated by an Idaho case in which the court rejected the defendant’s argument that because the State had not introduced the “actual certification document,” there was no evidence at trial that the airport was “federally certified.”⁵⁴¹ The court held that there was other, sufficient evidence of federal certification and affirmed the defendant’s conviction for carrying a concealed weapon into the sterile area of Boise Airport.⁵⁴²

As for the nature and scope of searches, it has been held that they are administrative searches that

⁵³⁸ 49 U.S.C. § 44901(a) (2015).

⁵³⁹ *Id.* (stating that “except for identifying passengers and baggage for screening under the CAPPS and known shipper programs and conducting positive bag-match programs”). The term “federal government employee” is defined in 5 U.S.C. § 2105.

⁵⁴⁰ 49 C.F.R. § 1540.111(a)(1)-(3) (2015). The regulations do not apply to law enforcement officers and other individuals authorized to carry a firearm by TSA regulations. 49 C.F.R. § 1540.111(b) (2015).

⁵⁴¹ Idaho v. Howell, No. 41417, 2014 Ida. App. Unpub. LEXIS 470, at *5, *10 (Idaho Ct. App. Oct. 15, 2014).

⁵⁴² *Id.* at *7.

do not require a warrant under the Fourth Amendment.⁵⁴³ Furthermore, “when an airline passenger consents to a search of his or her effects at an airport security checkpoint, the scope of the search reasonably extends to those receptacles, the contents of which cannot be identified, contained in luggage.”⁵⁴⁴ There is also “implied consent” to an airport security search because of notices posted at an airport.⁵⁴⁵

B. Administrative Penalties Imposed by TSA for Firearm Possession at Security Checkpoints and in the Sterile Area of an Airport

Federal regulations prohibit an individual from carrying on his or her person or in his or her accessible property “a weapon, explosive, or incendiary... when performance has begun of the inspection of the individual’s person or accessible property before entering a sterile area, or before boarding an aircraft for which screening is conducted under this subchapter.”⁵⁴⁶ When an individual attempts to board an aircraft with a firearm or other weapon, the individual is liable for a civil penalty of not more than \$10,000 per violation.⁵⁴⁷

When an individual is charged with a violation, TSA provides a notice to the individual with a statement of the alleged facts; the statute, regulation, or order that the individual allegedly violated; the amount of the proposed civil penalty; and a certificate of service.⁵⁴⁸ If the individual who is charged

⁵⁴³ *Hawai‘i v. Hanson*, 34 P.3d 1, 7 (Haw. 2001).

⁵⁴⁴ *Id.* at 2.

⁵⁴⁵ *Id.* at 5. See also *Illinois v. Salgado*, 404 N.E.2d 432, 434 (Ill. Ct. App. 1980) (holding that Salgado had consented to a search of his luggage independent of the boarding aircraft statute).

⁵⁴⁶ 49 C.F.R. § 1540.111(a)(1) (2015).

⁵⁴⁷ 49 U.S.C. § 46303(a) (2015) (“An individual who, when on, or attempting to board, an aircraft in, or intended for operation in, air transportation or intrastate air transportation, has on or about the individual or the property of the individual a concealed dangerous weapon that is or would be accessible to the individual in flight is liable to the United States Government for a *civil penalty of not more than \$10,000 for each violation*”) (emphasis added). See Moira Bergin, Comment, *Packing Heat? Defining the Scope of the Transportation Security Administration’s Authority to Protect America’s Airports*, 59 CATH. U. L. REV. 201 (2009); Daniel S. Harawa, *The Post-TSA Airport: A Constitution Free Zone?*, 41 PEPP. L. REV. 1 (2013).

⁵⁴⁸ 49 C.F.R. §§ 1503.413(a)-(b) (2015). See 49 C.F.R. § 1503.401(c) (2015) (stating that if there is a violation of “46303, or a regulation prescribed or order issued under any of those provisions, TSA may impose a civil penalty in the following amounts...(1) \$10,000 per violation, up to a total of \$50,000 per civil penalty action, in the case of an individual....”).

fails to respond to the notice or to attend an informal conference that was requested by the individual, TSA issues a final notice. The final notice converts to an order that assesses a civil penalty when the person charged either pays the penalty or fails to respond to the final notice.⁵⁴⁹

TSA also may serve a notice of violation when a person presents a weapon, explosive, or incendiary for screening at an airport or in checked baggage, but the amount of the proposed civil penalty is less than \$5,000.⁵⁵⁰ In such a case, the individual who is charged may pay the penalty, submit information showing that the violation did not occur or request a reduction in the proposed civil penalty, or request a hearing before an administrative law judge.⁵⁵¹ TSA may issue a final notice and order if the individual fails to respond to a notice of violation, or fails to attend an informal conference that was requested by the individual, or if the parties did not reach an agreement during a conference.⁵⁵² The final notice and order will convert to an order assessing a civil penalty either when the individual pays the penalty or fails to respond to the final notice and order.⁵⁵³

C. Federal Flight Deck Officer Program

In 2002, Congress established the Federal Flight Deck Officer Program (FFDOP) in response to the terrorist attacks of September 11, 2001.⁵⁵⁴ Under the FFDOP, the Under Secretary of Transportation for Security is authorized to deputize pilots as federal law enforcement officers and “to provide the training, supervision, and equipment necessary for a pilot to be a Federal flight deck officer.”⁵⁵⁵ Federal flight deck officers are not charged for their training or compensated for their participation in the program. Air carriers are prohibited from retaliating against pilots who choose to participate in the program.⁵⁵⁶ The FFDOP permits deputized officers to carry authorized firearms aboard both domestic and

⁵⁴⁹ 49 C.F.R. §§ 1503.417, 1503.419 (2015).

⁵⁵⁰ 49 C.F.R. § 1503.421 (2015).

⁵⁵¹ 49 C.F.R. §§ 1503.421(c)(1)-(2) (2015).

⁵⁵² 49 C.F.R. §§ 1503.421(d)(1)-(3) (2015).

⁵⁵³ 49 C.F.R. § 1503.421(e) (2015).

⁵⁵⁴ 49 U.S.C. § 44921 (2015).

⁵⁵⁵ 49 U.S.C. §§ 44921(a), (c)(1) (2015).

⁵⁵⁶ 49 U.S.C. § 44921(j) (2015).

international flights,⁵⁵⁷ but a federal flight deck officer's firearm is not permitted to leave the cockpit under current law.⁵⁵⁸

Congress has limited the liability of both air carriers and federal flight deck officers for claims arising out of an officer's use or failure to use a firearm.⁵⁵⁹ Under 49 U.S.C. § 44921(h)(1), air carriers are not "liable for damages in any action brought in a Federal or State court arising out of a Federal flight deck officer's use of or failure to use a firearm." A federal flight deck officer is liable only for gross negligence or willful misconduct.⁵⁶⁰ If a federal flight deck officer is negligent in accidentally injuring or killing someone, the officer is no longer authorized to participate in the FFDOP.⁵⁶¹ For any claim made against the United States arising out of an officer's act or omission in defending the flight deck of an aircraft, 28 U.S.C. § 2671, which is applicable to tort claims against the United States, applies because a federal flight deck officer is "treated as an employee of the Federal Government...."⁵⁶²

The Arm All Pilots Act of 2015, if enacted, would have amended the FFDOP, *inter alia*, to permit federal flight deck officers to carry a firearm outside a locked container when the cockpit door is open.⁵⁶³

D. Interstate Transportation of Firearms

Eighteen U.S.C. § 926A permits individuals to transport a firearm by vehicle from a location where the person is authorized to possess a firearm to another location where the person is authorized to possess a firearm.⁵⁶⁴ The statute requires that the firearm be unloaded during transport and that "neither the firearm nor any ammunition being transported [be] readily accessible or... directly accessible from the passenger compartment of such transporting vehicle."⁵⁶⁵

⁵⁵⁷ 49 U.S.C. §§ 44921(f)(1)-(3) (2015).

⁵⁵⁸ 49 U.S.C. § 44921(b)(3)(G) (2015).

⁵⁵⁹ 49 U.S.C. § 44921(h) (2015).

⁵⁶⁰ 49 U.S.C. §§ 44921(h)(1)-(2) (2015).

⁵⁶¹ 49 U.S.C. § 44921(i)(1) (2015).

⁵⁶² 49 U.S.C. § 44921(h)(3) (2015).

⁵⁶³ Arm All Pilots Act of 2015, S.B. 1594, 114th Cong. § (3)(c)(1)(l) (2015), available at <http://thomas.loc.gov/cgi-bin/thomas>.

⁵⁶⁴ 18 U.S.C. § 926A (2015).

⁵⁶⁵ *Id.* See, e.g., *State v. Waters*, 107 A.3d 693, 701 (N.J. Super. Ct. 2015), in which the defendant was convicted of second-degree unlawful possession of a handgun after an officer stopped him and found a handgun under the front seat of the defendant's car. The defendant was from Georgia, but because his Georgia firearms license had expired he could not possess a firearm lawfully in Pennsylvania or New York, the two states to which he was traveling. In *People v. Selyukov*, 854 N.Y.S.2d 298, 299 (N.Y. J. Ct., Westchester Cnty. 2008), the defendant, who was traveling from Florida to Massachusetts, stopped in New York to meet with a client. Because the defendant could only possess a firearm lawfully in Florida and Massachusetts, the stop in New York was not protected by § 926A.

*Revell v. Port Authority of New York*⁵⁶⁶ demonstrates how an owner of a firearm may violate state law when traveling interstate by air with a firearm even when the firearm is properly encased for shipment. The civil case arose out of Revell's arrest in New Jersey for alleged violations of New Jersey's gun laws and for the seizure of his firearm and ammunition.⁵⁶⁷ Revell alleged that his arrest by the Port Authority of New York and New Jersey (Port Authority) and a Port Authority police officer was unlawful because he had complied with 18 U.S.C. § 926A.⁵⁶⁸

Revell, a resident of Utah who had a Utah permit to carry a concealed firearm, was traveling from Salt Lake City to Allentown, Pennsylvania, via Minneapolis–St. Paul and Newark, New Jersey. When checking in at Salt Lake City, Revell declared that he was carrying an unloaded firearm in a locked case and ammunition in a separate locked case. When his flight to Newark was delayed, Revell missed his connection to Allentown. He booked a flight for the next day, but the passengers were asked to board a bus for Allentown. Because Revell had to locate his missing luggage, he missed the bus. He took his luggage with him to an airport hotel in Newark but did not open the containers with the firearm and ammunition.

The next day Revell returned to the Newark Airport by airport shuttle. When he went to check his luggage, he declared that he was carrying a firearm and ammunition in separate locked containers. After TSA inspected his luggage, however, Revell was arrested for possession of a handgun without a New Jersey permit in violation of Section 2C:39-5(b) of the New Jersey Statutes and for possession of hollow-point ammunition in violation of Section 2C:39-3(f) of the New Jersey Statutes.⁵⁶⁹ Although the charges were dismissed for reasons not stated in the opinion, Revell's firearm, ammunition, holster, locks, and hard cases were not returned for more than 2 years.⁵⁷⁰

Revell's amended complaint alleged "that his arrest and the seizure of his property violated his Fourth Amendment rights because, pursuant to 18 U.S.C. § 926A, he was legally entitled to carry the firearm and ammunition in his luggage, notwithstanding New Jersey law."⁵⁷¹ In granting a summary judgment for the defendants, the District Court held that § 926A did not apply:

Revell's conduct fell outside § 926A since it is undisputed that Revell left the airport with his luggage for an overnight

⁵⁶⁶ 598 F.3d 128 (3d Cir. 2010).

⁵⁶⁷ *Id.* at 130.

⁵⁶⁸ *Id.*

⁵⁶⁹ *Id.* at 130–32.

⁵⁷⁰ *Id.* at 132.

⁵⁷¹ *Id.*

stay at a hotel in New Jersey, thus giving him ready access to the gun during that period. The Court also explained that “§ 926A does not address anything but vehicular travel; it does not encompass keeping the weapon—locked in a case or not—in an airport hotel overnight.”⁵⁷²

The Third Circuit affirmed because “a person transporting a firearm across state lines must ensure that the firearm and any ammunition being transported is not ‘readily accessible or... directly accessible from the passenger compartment of [the] transporting vehicle.’”⁵⁷³ Revell’s own complaint revealed that the firearm was accessible to him while he was in the hotel; thus, he was subject to arrest for violating New Jersey’s gun laws. Revell’s due process claim also failed because he had failed to take advantage of New Jersey procedures to recover wrongfully seized property⁵⁷⁴ or to show that New Jersey’s procedures were inadequate.⁵⁷⁵

An apparently unresolved issue is whether § 926A even applies to the transportation of a firearm by air. *Ass’n of New Jersey Rifle and Pistol Clubs v. Port Authority of New York and New Jersey*,⁵⁷⁶ decided after Revell, seems to hold that § 926A only applies to transport by vehicle.⁵⁷⁷ In *Ass’n of New Jersey Rifle and Pistol Clubs*, the plaintiff sought to enjoin the Port Authority from enforcing New Jersey statutes that prohibited the possession of a firearm and ammunition without a permit. The complaint alleged that the New Jersey statutes violated 18 U.S.C. § 926A.⁵⁷⁸ The Third Circuit held, however, that because § 926A did not apply under the circumstances of the case, § 926A did not create an enforceable right under 42 U.S.C. § 1983.⁵⁷⁹

In light of the plain meaning of the statute, fully corroborated by the legislative history, we hold that section 926A benefits only those who wish to transport firearms in vehicles—and not, therefore, any of the kinds of “transportation” that, by necessity, would be involved should a person like those represented by the Association wish to transport a firearm by foot through an airport terminal or Port Authority site.⁵⁸⁰

⁵⁷² *Id.* at 134 (citation omitted).

⁵⁷³ *Id.* at 135–36.

⁵⁷⁴ *Id.* at 139.

⁵⁷⁵ *Id.*

⁵⁷⁶ 730 F.3d 252 (3d Cir. 2013).

⁵⁷⁷ *Ass’n of N.J. Rifle & Pistol Clubs*, 730 F.3d at 253–55, 257 (3d Cir. 2013).

⁵⁷⁸ *Id.* at 253–54. Under 42 U.S.C. § 1983, a person may be held liable “who, under the color of the state law, deprives a person ‘of any rights, privileges, or immunities secured by the Constitution and laws’ of the United States.” *Id.* at 254.

⁵⁷⁹ *Id.* at 253–55, 257.

⁵⁸⁰ *Id.* at 257 (emphasis added).

Although the court held that § 926A applies to transportation of firearms in vehicles, the case may be distinguishable in that it did not involve transportation by air directly.

E. Undetectable Firearms Act of 1988

Congress enacted the Undetectable Firearms Act of 1988 (UFA)⁵⁸¹ in 1988 and extended the UFA in December 2013 for another 10 years. The UFA was necessary because of the use by firearms manufacturers of plastic components in firearms and the removal of major components of firearms so that airport scanners would not detect a firearm.⁵⁸² It is unlawful for any person to manufacture, import, sell, ship, deliver, possess, transfer, or receive any firearm that does not actually appear as a firearm on an X-ray scanner.⁵⁸³

XV. LIABILITY FOR PROHIBITING THE CARRYING OF A FIREARM IN AN AIRPORT TERMINAL OR ON OTHER AIRPORT PROPERTY

A. Whether Airports and Airport Authorities Have Sovereign Immunity

Ten airports that participated in the survey reported that as government-owned entities, they are not liable under state law for a claim that prohibits the carrying of a firearm in an airport terminal or on other airport property because of sovereign immunity, a tort claims or governmental immunity act, or other legislation specific to airports or airport authorities.⁵⁸⁴ Twelve airports reported that they do

⁵⁸¹ 18 U.S.C. §§ 922(p)(1)(A), (B) (2015).

⁵⁸² Katie Curtis, *A Wiki Weapon Solution: Firearm Regulation for the Management of 3d Printing in the American Household*, 41 *RUTGERS COMPUTER & TECH. L.J.* 74, 85 (2015).

⁵⁸³ *Id.* at 85.

⁵⁸⁴ Responses of Albuquerque International Sunport Airport, N.M.; Casper/Natrona County International Airport, Wyo. (citing Wyoming Governmental Claims Act, WYO. STAT. ANN. § 1-39-101); Clinton National/Adams Field Airport, Little Rock, Ark. (citing ARK. CODE ANN. § 21-9-301); Dallas Fort Worth International Airport, Tex. (citing TEX. CIV. PRAC. & REM. CODE ANN. §§ 101.101-101.109); Eppley Airfield Airport (Omaha), Neb. (citing NEB. REV. STAT. ANN. § 13-901); General Mitchell International Airport, Milwaukee, Wisc.; George Bush Intercontinental/Houston Airport, Tex.; Huntsville International-Carl T. Jones Field, Ala. (citing ALA. CODE § 4-3-50 that provides “limited immunity”); Louisville International International-Standiford Field, Ky.; Memphis International Airport, Tenn. (citing Tennessee Governmental Tort Liability Act, TENN. CODE ANN. §§ 29-20-101 to 29-20-112.).

not have immunity.⁵⁸⁵ Six airports did not know whether they had immunity or did not respond to the question.⁵⁸⁶

Although a few airports reported a legal action against the airport in connection with an individual possessing a firearm in an airport, none indicated having been held liable for damages.⁵⁸⁷

George Bush Intercontinental Airport in Houston, Texas, stated that the City of Houston has immunity under the Texas Tort Claims Act.⁵⁸⁸ Clinton National Airport/Adams Field in Little Rock, Arkansas, cited Section 21-9-301 of the Arkansas Code, which provides:

(a) It is declared to be the public policy of the State of Arkansas that all counties, municipal corporations, school districts, special improvement districts, and all other political subdivisions of the state and any of their boards, commissions, agencies, authorities, or other governing bodies *shall be immune from liability* and from suit for damages except to the extent that they may be covered by liability insurance.

(b) *No tort action shall lie* against any such political subdivision because of the acts of its agents and employees.⁵⁸⁹

Minneapolis–St. Paul International Airport explained that “[t]he airport authority is established as a government entity with the same ability as other governmental entities to argue immunity for damages.” Portsmouth International Airport in New Hampshire stated that general sovereign immunity applied as there was “nothing specific to firearm use.”

Albuquerque International Sunport Airport’s answer was that “[t]he New Mexico Tort Claims Act, section 41-4-1 to section 41-4-30 of the New Mexico Statutes, waives immunity for airports generally[] but provides liability caps for bodily injury or death ranging from \$400,000 to \$1,050,000. The caps do

⁵⁸⁵ Responses of Bangor International Airport, Me.; Blue Grass Airport, Lexington, Ky.; Bismarck Municipal Airport, N.D. (stating, however, that political subdivisions have limited immunity by statute); Columbia Metropolitan Airport, S.C.; Detroit Metropolitan Wayne County Airport, Mich.; Gerald R. Ford International Airport, Grand Rapids, Mich.; LaGuardia Airport, N.Y.; Lincoln Airport–Lincoln Airport Authority, Neb.; Nashville International Airport, Tenn.; Theodore Francis Green State Airport–Rhode Island Airport Corp.; Tucson International Airport–Tucson Airport Authority, Ariz.

⁵⁸⁶ Responses of Austin-Bergstrom International Airport, Tex.; Grand Forks International Airport, N.D. (“unknown”); Minneapolis–St. Paul International/World-Chamberlain Airport, Minn.; Portsmouth International Airport, N.H.; San Francisco International Airport, Cal.; Joe Foss Field, Sioux Falls, S.D.

⁵⁸⁷ See Appendix C—Summary of Responses to the Survey by Airport and Airport Authorities.

⁵⁸⁸ TEX. CIV. PRAC. & REM. CODE § 101.021 (2015).

⁵⁸⁹ Emphasis added.

not apply to federal civil rights actions, which could arise from deprivation of constitutional rights.”

Although there are cases holding that some airports have sovereign immunity for tort actions, except for one case discussed in the next part of the digest, no cases against airports were located for the digest that arose out of an individual’s possession of a firearm in an airport terminal or on other airport property.⁵⁹⁰

B. State Laws Applicable to Whether an Airport Is Liable for Allowing or Prohibiting a Firearm in the Airport Terminal or on Other Airport Property

Some state statutes provide that airports or airport authorities are immune from claims by persons that arise out of the carrying (or for prohibiting the carrying) of firearms at airports or on other airport property, or from claims by ticketed individuals who refused to be searched prior to boarding and thus were not allowed to board a flight.⁵⁹¹

Regarding immunity for claims by persons carrying a firearm, a political subdivision in Ohio is “immune from liability in a civil action...for any injury, death, or loss to person or property that allegedly was caused by or related to a licensee bringing a handgun onto any premises or property owned, leased, or otherwise under the control of the political subdivision.”⁵⁹²

A Tennessee statute appears to be sufficiently broad to apply to an airport. The statute states that a business entity, public or private employer, or the owner, manager, or legal possessor of property may not be

held liable in any civil action for damages, injuries or death resulting from or arising out of another’s actions involving a

⁵⁹⁰ Carricker v. City of Denver, No. 12-cv-2365-WJM-KLM, 2013 U.S. Dist. Lexis 75991, at *7 (D. Colo. May 30, 2013) (holding in a tort action that under the facts of the case the Denver International Airport had immunity under the Colorado Premises Liability Act, COLO. REV. STAT. § 13-21-115); Tompkins v. Crown Corr, Inc., 726 F.3d 830, 838 (6th Cir. 2013) (holding in a tort action against the Wayne County Airport Authority (WCAA) that owns and administers the Detroit Metropolitan Airport that the WCAA had immunity under the Michigan Governmental Tort Liability Act, MICH. COMP. LAWS SERV. § 691.1406, because the nature of the claim “shielded” WCAA from liability).

⁵⁹¹ See KAN. STAT. ANN. § 75-7c10(c)(3) (2015) (stating in relation to concealed handguns on private property that “[n]othing in this act shall be deemed to increase the liability of any private entity where liability would have existed under the personal and family protection act prior to the effective date of this act”); WIS. STAT. § 175.60(21)(a) (2015) (immunity of Department of Transportation for any act or omission under this section that applies to the issuance of concealed weapons permits).

⁵⁹² OHIO REV. CODE ANN. § 2923.126(C)(2)(b) (LexisNexis 2015) (stating to the extent and in the manner provided in Chapter 2744 of the Code).

firearm or ammunition transported or stored by the holder of a valid handgun carry permit in the permit holder's motor vehicle unless the business entity, public or private employer, or the owner, manager, or legal possessor of the property commits an offense involving the use of the stored firearm or ammunition or intentionally solicits or procures the conduct resulting in the damage, injury or death.⁵⁹³

The statute further provides that “[n]othing in this section shall be construed to alter, reduce or eliminate any civil or criminal liability that a property owner or manager may have for injuries arising on their property.”⁵⁹⁴

As for the liability of private establishments for either allowing or prohibiting a firearm to be carried on the premises, an Ohio law immunizes a private employer

from liability in a civil action for any injury, death, or loss to person or property that allegedly was caused by or related to a licensee bringing a handgun onto the premises or property of the private employer, including motor vehicles owned by the private employer, unless the private employer acted with malicious purpose.⁵⁹⁵

In Wisconsin, when a private property owner or one who occupies private property does not prohibit the carrying of concealed weapons on the owner's or occupant's property, the owner or occupant is immune from liability arising out of the decision not to prohibit concealed weapons.⁵⁹⁶

In regard to claims against airline companies, in Idaho

[n]o action, either at law or equity, shall be brought against any commercial or charter airline company or airport operating in this state for the refusal of said company or airport to permit a person to board said aircraft where said person has refused to be searched as set out in subsections (5) and (6) of this section.⁵⁹⁷

In Illinois, by virtue of a person's purchase of a ticket to board a commercial or charter aircraft, the purchaser consents “to a search of his or her person or personal belongings by the company selling the ticket to him or her.”⁵⁹⁸ A commercial or charter airline company operating in Illinois, however, may not be sued for refusing to board a person who refused to submit to a search prior to boarding.⁵⁹⁹

⁵⁹³ TENN. CODE ANN. § 39-17-1313(b) (2015).

⁵⁹⁴ TENN. CODE ANN. § 39-17-1359(d) (2015).

⁵⁹⁵ OHIO REV. CODE ANN. § 2923.126(C)(2)(a) (LexisNexis 2015).

⁵⁹⁶ WIS. STAT. § 175.60(21)(b) (2015). The term “person” is not defined in the statute.

⁵⁹⁷ IDAHO CODE ANN. § 18-7503(18) (2015).

⁵⁹⁸ 720 ILL. COMP. STAT. ANN. 5/29D-35.1(a), (b) (LexisNexis 2015).

⁵⁹⁹ 720 ILL. COMP. STAT. ANN. 5/29D-35.1(e) (LexisNexis 2015).

In *Monzo v. American Airlines*,⁶⁰⁰ Monzo was arrested and charged for possessing a loaded firearm after he informed a security officer at a check-in point at LaGuardia Airport in New York City that he was carrying a loaded firearm. Monzo brought a claim against the Port Authority under 42 U.S.C. § 1983 for false imprisonment and/or malicious prosecution and also sued American Airlines for allegedly giving him false information. The court held that the Port Authority was not liable because there had been probable cause to arrest Monzo.⁶⁰¹ The court dismissed the claim against American Airlines because Monzo failed to demonstrate that the information the airline representative gave him was incorrect or that Monzo had a right to rely on any information that was provided to him.⁶⁰²

C. Whether There Is a *Bivens* or § 1983 Claim for Prohibiting an Individual from Carrying a Firearm in an Airport

1. Whether There Is an Implied Constitutional Claim Against a Federal Official

It may be more likely that an airport or airport authority or airport official or employee rather than a federal official or employee would be the subject of a claim for violating an individual's constitutional rights in an airport. The digest discusses first, however, implied constitutional claims against federal officials and employees and, second, claims under 42 U.S.C. § 1983 against state and local officials or employees for alleged violations of federal constitutional or statutory rights.

The question of whether there is an implied claim against a federal official for an alleged violation of an individual's Second Amendment right to carry a firearm in an airport must begin with a discussion of the United States Supreme Court's decision in 1971 in *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*.⁶⁰³ An implied constitutional claim under *Bivens* “is the ‘federal analog to suits brought against state officials under...42 U.S.C. § 1983.’”⁶⁰⁴

⁶⁰⁰ No. 81 Civ. 2320, 1984 U.S. Dist. LEXIS 19142, at *1 (S.D.N.Y. 1984).

⁶⁰¹ *Id.* *11–12.

⁶⁰² *Id.* *7.

⁶⁰³ 403 U.S. 388 (1971) (holding that the plaintiff was entitled to redress for his injuries caused by the federal agents' violation of his Fourth Amendment rights), *rev'd & remanded*, 456 F.2d 1339 (2d Cir. N.Y. 1972) (holding that the federal agents were not immune from damage suits based upon allegations of constitutional violations, but that the defenses of good faith and reasonable belief were available).

⁶⁰⁴ *Ashcroft v. Iqbal*, 556 U.S. 662, 675 (2009) (citation omitted).

In *Bivens*, the Court held that an implied cause of action exists for a violation of an individual's rights under the Fourth Amendment.⁶⁰⁵ Without a warrant for a search or for an arrest, Federal Bureau of Narcotics agents entered the petitioner's apartment, arrested him in front of his family, and searched the apartment for narcotics.⁶⁰⁶ The Supreme Court held that

the Fourth Amendment operates as a limitation upon the exercise of federal power regardless of whether the State in whose jurisdiction that power is exercised would prohibit or penalize the identical act if engaged in by a private citizen. It guarantees to citizens of the United States the absolute right to be free from unreasonable searches and seizures carried out by virtue of federal authority. And "where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief."⁶⁰⁷

The *Bivens* Court held that an implied cause of action exists under the Fourth Amendment when a petitioner "can demonstrate an injury consequent upon the violation by federal agents of his Fourth Amendment rights" and that the petitioner may "redress his injury...in the federal courts."⁶⁰⁸

The jurisprudence since *Bivens* on whether particular conduct supports a specific constitutional claim for which there is an implied right of action has been inconsistent with the courts recognizing some claims while dismissing others.⁶⁰⁹ A decision on whether to recognize a *Bivens* claim has depended in part on an evaluation of the particular constitutional claim and on whether there were "available alternative remedies."⁶¹⁰

Legislation enacted in 1974 and 1988 has affected potential *Bivens* claims. The Federal Tort Claims Act (FTCA) precludes claims for certain intentional torts against the United States under 28 U.S.C. § 1346(a)(2). In 1974, however, Congress amended the FTCA to allow claims for assault, battery, false

imprisonment, false arrest, abuse of process, or malicious prosecution caused by acts or omissions of United States investigative or law enforcement officers. The amendment, together with 28 U.S.C. § 2679(b)(2)(A), "specifically preserves and ratifies the *Bivens* remedy."⁶¹¹

The Federal Employees Liability Reform and Tort Compensation Act of 1988 (Westfall Act) has more relevance to the digest.⁶¹² In the Westfall Act, Congress "virtually" immunized federal government officials from liability under state common law by "substituting the government as a defendant under the FTCA for these claims," while "preserving the right of individuals to pursue *Bivens* actions for a violation of the Constitution of the United States."⁶¹³ Under 28 U.S.C. § 2679(d)(1), if the Attorney General certifies that a

defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a United States district court shall be deemed an action against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant.

Nevertheless, a "plaintiff must still allege and prove an actionable constitutional violation and overcome any qualified immunity defense."⁶¹⁴ In addition, the availability of alternative federal remedies could preclude a *Bivens* claim.⁶¹⁵

The prevailing view on the viability of *Bivens* claims is that, first, "the Westfall Act changed the nature of the *Bivens* question" by immunizing federal employees from private lawsuits based on acts performed within the scope of their employment and converting them into FTCA suits against the United States.⁶¹⁶ Second, "the Westfall Act...explicitly

⁶¹¹ *Id.* at 131.

⁶¹² Federal Employees Liability Reform and Tort Compensation Act of 1988 (Westfall Act), 28 U.S.C. § 2679 (2015).

⁶¹³ Pfander & Baltmanis, *supra* note 609, at 131. See also Henry Cohen & Vivian S. Chu, *Federal Tort Claims Act*, CONG. RESEARCH SERV. 16 (Apr. 27, 2009) (stating that the Westfall Act immunizes a federal employee from liability under state law, but that a federal employee may be sued for violating the Constitution or for violating a federal statute that authorizes suit against an individual).

⁶¹⁴ Pfander & Baltmanis, *supra* note 609, at 132.

⁶¹⁵ *Id.*

⁶¹⁶ Carlos M. Vazquez & Stephen I. Vladeck, *State Law, the Westfall Act, and the Nature of the Bivens Question*, 161 U. PA. L. REV. 509, 517 (2013) (citing 28 U.S.C. § 2679(b)); 28 U.S.C. § 2679(b) (2015) states:

(1) The remedy against the United States provided by sections 1346(b) and 2672 of this title for injury or loss of property, or personal injury or death arising or resulting from the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment is exclusive

⁶⁰⁵ *Bivens*, 403 U.S. at 389.

⁶⁰⁶ *Id.*

⁶⁰⁷ *Id.* at 392 (citation omitted).

⁶⁰⁸ *Id.* at 397. See *Yorinsk v. Imbert*, No. 13-cv-01029, 2014 U.S. Dist. LEXIS 108849, at *2 (D. Conn. 2014) (holding that constitutional tort claims brought pursuant to *Bivens* do not authorize injunctive relief); *Dorwart v. Caraway*, 58 P.3d 128, 136 (Mont. 2002) (holding that "the *Bivens* line of authority buttressed by § 874A of the *Restatement (Second) of Torts* are sound reasons for applying a cause of action for money damages for violations of those self-executing provisions of the Montana Constitution"). See also *Wood v. Moss*, 134 S. Ct. 2056, 2066 (2014) (holding that the "implied right of action for damages against federal officers" extends to First Amendment claims).

⁶⁰⁹ James E. Pfander & David Baltmanis, *Rethinking Bivens: Legitimacy and Constitutional Adjudication*, 98 GEO. L.J. 117, 118 (2009).

⁶¹⁰ *Id.* at 121, 126.

preserves actions ‘brought for a violation of the Constitution of the United States.’⁶¹⁷ At least one commentator argues that in 2012, the Supreme Court in *Minnecci v. Pollard*⁶¹⁸ “endorsed the prevailing reading of the Westfall Act as preempting state law remedies against federal officials, even for conduct that violates the Constitution.”⁶¹⁹ Thus, “[a] federal official who commits a constitutional tort is not subject to liability under state law (because of the Westfall Act), and no statute similar to § 1983 makes federal officials liable under federal law for violating another person’s constitutional rights.”⁶²⁰ The Westfall Act “leaves the federal *Bivens* action as the sole remedy against [a federal] official”;⁶²¹ however, “the Court has essentially abandoned the practice of recognizing implied rights of action to enforce federal statutory rights.”⁶²²

Another scholar writing on privacy law and post-*Bivens* cases who argues that the Supreme Court is unlikely to create new *Bivens* claims highlights several obstacles to a *Bivens* claim against a federal official.⁶²³ First, in 2009 in *Ashcraft v. Iqbal*,⁶²⁴ Justice Kennedy stated that “[b]ecause implied causes of action are disfavored, the Court has been reluctant to extend *Bivens* liability ‘to any new context or

of any other civil action or proceeding for money damages by reason of the same subject matter against the employee whose act or omission gave rise to the claim or against the estate of such employee. Any other civil action or proceeding for money damages arising out of or relating to the same subject matter against the employee or the employee’s estate is precluded without regard to when the act or omission occurred.

(2) Paragraph (1) does not extend or apply to a civil action against an employee of the Government—

(A) which is brought for a violation of the Constitution of the United States, or

(B) which is brought for a violation of a statute of the United States under which such action against an individual is otherwise authorized.

(Emphasis added).

⁶¹⁷ Vazquez & Vladeck, *supra* note 616, at 517 (quoting 28 U.S.C. § 2679(b)(2)(A), which is quoted in the preceding footnote).

⁶¹⁸ 132 S. Ct. 617 (2012).

⁶¹⁹ Vazquez & Vladeck, *supra* note 616, at 517 (citing *Minnecci*, 132 S. Ct. at 623).

⁶²⁰ Cohen & Chu, *supra* note 613, at 18.

⁶²¹ Vazquez & Vladeck, *supra* note 616, at 517. See also Pfander & Baltmanis, *supra* note 609, at 123 (stating that “[t]oday, *Bivens* provides the only generally available basis on which individuals can seek an award of damages for federal violations of constitutional rights”).

⁶²² Pfander & Baltmanis, *supra* note 609, at 126 (citing *Wilkie v. Robbins*, 551 U.S. 537 (2007)).

⁶²³ Michael A. Froomkin, *Symposium: Security Breach Notification Six Years Later: Government Data Breaches*, 24 BERKELEY TECH. L.J. 1019, 1055 (2009).

⁶²⁴ 556 U.S. 662 (2009).

new category of defendants.”⁶²⁵ A 2009 Government Accountability Office report concluded that even when *Bivens* claims have been allowed, the likelihood of an eventual monetary recovery in a *Bivens* case is quite rare.⁶²⁶

A second obstacle to *Bivens* claims is that “[g]overnment officials may not be held liable for the unconstitutional conduct of their subordinates under a theory of *respondeat superior*.”⁶²⁷ Because vicarious liability does not apply in a *Bivens* case (or in § 1983 actions), each government official who is a defendant in a *Bivens* case must be shown to have violated the Constitution; otherwise, a plaintiff does not have a legally cognizable claim against that defendant.⁶²⁸

Third, a particularly difficult obstacle to a *Bivens* claim is the defense of qualified immunity, discussed in the next subsection.⁶²⁹

Finally, a threshold, and likely dispositive issue that would preclude a *Bivens* claim, as well as a § 1983 claim, is that there is no case holding that prohibiting a person from possessing a firearm in an airport violates the Constitution.

2. Whether Airports and Airport Authorities Are Subject to § 1983 Actions

Section 1983 states in part that

[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or

⁶²⁵ *Id.* at 675 (citations omitted) (internal quotation marks omitted).

⁶²⁶ Cohen & Chu, *supra* note 613, at 21.

⁶²⁷ *Ashcroft*, 556 U.S. at 676 (citing *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 691 (1978) (finding no vicarious liability for a municipal “person” under 42 U.S.C. § 1983)); *Dunlop v. Munroe*, 11 U.S. 242 (1812) (A federal official’s liability “will only result from his own neglect in not properly superintending the discharge” of his subordinates’ duties.); *Robertson v. Sichel*, 127 U.S. 507, 515–516 (1888) (“A public officer or agent is not responsible for the misfeasances or positive wrongs, or for the nonfeasances, or negligences, or omissions of duty, of the sub-agents or servants or other persons properly employed by or under him, in the discharge of his official duties.”)).

⁶²⁸ *Ashcroft*, 556 U.S. at 676. The Court further stated that:

Absent vicarious liability, each Government official, his or her title notwithstanding, is only liable for his or her own misconduct. In the context of determining whether there is a violation of a clearly established right to overcome qualified immunity, purpose rather than knowledge is required to impose *Bivens* liability on the subordinate for unconstitutional discrimination; the same holds true for an official charged with violations arising from his or her superintendent responsibilities.

Id. at 677 (emphasis added).

⁶²⁹ Cohen & Chu, *supra* note 613, at 21.

immunities secured by the Constitution and laws, shall be liable to the party injured....⁶³⁰

As noted in Section V.A, there are 552 commercial service airports in the United States, all of which are owned by some form of governmental unit or organization.⁶³¹ Thus, airports and airport authorities are government-owned, either by a state, a state entity, a political subdivision of a state, or a municipal government. In *Monell v. Department of Social Services*,⁶³² the Supreme Court overruled prior precedent and held that “Congress did intend municipalities and other local government units to be included among those persons to whom § 1983 applies.”⁶³³

The *Monell* Court explained that:

Local governing bodies, therefore, can be sued directly under § 1983 for monetary, declaratory, or injunctive relief where, as here, *the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers*. Moreover, although the touchstone of the § 1983 action against a government body is an allegation that official policy is responsible for a deprivation of rights protected by the Constitution, local governments, like every other § 1983 “person,” by the very terms of the statute, may be sued for constitutional deprivations visited pursuant to governmental “custom” even though such a custom has not received formal approval through the body’s official decisionmaking channels.⁶³⁴

The Court further explained that “Congress did not intend municipalities to be held liable unless action pursuant to official municipal policy of some nature caused a constitutional tort.”⁶³⁵ A municipality, however, may not be held liable under a *respondeat superior* theory.⁶³⁶ Thus, “a local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents.”⁶³⁷ The Court did not address at that time whether local governments have qualified immunity.⁶³⁸

⁶³⁰ 42 U.S.C. § 1983 (2015).

⁶³¹ One scholar notes, however, that

[a]irports in the United States are among the most privatized in the world, despite [the] fact that all the major commercial airports are owned by government entities. Compared to airports elsewhere in the world, compared even to the airports in the countries that have recently privatized their airports, the major U.S. airports involve an extensive degree of private control over virtually all aspects of airport planning, design, finance, operations, pricing and access.

Richard de Neufville, *Airport Privatization Issues for the United States*, MIT 8 (1999), http://ardent.mit.edu/airports/ASP_papers/airport%20privatization%20issues%20for%20US.PDF.

⁶³² 436 U.S. 658 (1978).

⁶³³ *Id.* at 690.

⁶³⁴ *Id.* at 690–91 (footnote omitted) (emphasis supplied).

⁶³⁵ *Id.* at 691.

⁶³⁶ *Id.*

⁶³⁷ *Id.* at 694.

⁶³⁸ *Id.* at 701.

3. Whether There Is a § 1983 Claim for Prohibiting an Individual from Carrying a Firearm in an Airport

It does not appear that a complaint against an airport or airport authority, its officers, or employees would state a claim under § 1983 based on prohibiting an individual from carrying a firearm; for example, in the nonsterile area of an airport. As Justice Scalia stated in *Heller*, there are sensitive places where firearms may be regulated, even prohibited.

First, a State and state officials acting in their *official* capacities are not “persons” within the meaning of § 1983 actions for money damages,⁶³⁹ but they are considered persons for § 1983 purposes when they are sued for injunctive relief.⁶⁴⁰ Second, state officials may be held liable under § 1983 for damages when they are sued in their *individual* capacities.⁶⁴¹ When a state official is sued for an alleged violation of § 1983 but the defendant was following state policy rather than misjudging state policy, however, it has been held that such a claim is one substantially against the State and is barred by sovereign immunity.⁶⁴² Third, when state officials are sued in their individual capacities, the defense of qualified immunity will shield them from personal liability, unless it is shown that they have caused an injury by violating a known, clearly established federal constitutional or statutory right.⁶⁴³

Thus, in a § 1983 action, the “plaintiff must allege deprivation of a right secured by the Constitution and laws of the United States and must show that the deprivation was committed by a person acting under color of state law.”⁶⁴⁴ It is not enough that a general right exists, “otherwise ‘plaintiffs would be able to convert the rule of qualified immunity...into a rule of virtually unqualified liability simply by alleging violation of extremely abstract rights.’”⁶⁴⁵

In *Harlow v. Fitzgerald*,⁶⁴⁶ a § 1983 action, the Supreme Court held that government officials who

⁶³⁹ *Toomer v. Garrett*, 574 S.E.2d 76, 86 (N.C. Ct. App. 2002) (citation omitted).

⁶⁴⁰ *Id.* at 86.

⁶⁴¹ *Id.*

⁶⁴² See *Kraege v. Busalacchi*, 687 F. Supp. 2d 834, 835, 836 (W.D. Wis. 2009) in which the court held that the alleged claims were “substantially against the State of Wisconsin.” The defendants did not misread or misjudge a state policy but simply did not follow the policy. Thus, the crux of the plaintiff’s complaint had to do with the policy, not with the defendants’ choices.

⁶⁴³ *Toomer*, 574 S.E.2d at 86 (citing *Andrews v. Crump*, 547 S.E.2d 117, 122 (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982))).

⁶⁴⁴ *Kiminski v. Hunt*, No. 13-185, 2013 U.S. Dist. LEXIS 157829, at *1, *25 (D. Minn. 2013) (citing *West v. Atkins*, 487 U.S. 42, 48 (1988)).

⁶⁴⁵ *Borucki v. Ryan*, 827 F.2d 836, 838 (1st Cir. 1987) (citations omitted).

⁶⁴⁶ 457 U.S. 800, 814 (1982).

are acting within their discretionary authority, but who are sued in their individual capacities, have qualified immunity as long as “their conduct does not violate *clearly established statutory or constitutional rights* of which a reasonable person would have known.”⁶⁴⁷ For government officials, to have acted within the scope of their discretionary authority means that their “actions were (1) undertaken pursuant to the performance of [their official] duties and (2) within the scope of [their] authority.”⁶⁴⁸ In *Borucki v. Ryan*,⁶⁴⁹ the First Circuit stated that “when the law requires a balancing of competing interests, it may be unfair to charge an official with knowledge of the law in the absence of a previously decided case with *clearly analogous facts*.”⁶⁵⁰ For a § 1983 violation, a defendant must have had clear notice that he or she had violated a well-established federal constitutional or federal statutory right.⁶⁵¹

A § 1983 claim also may arise when there has been “arbitrary government action that is so egregious that it ‘shocks the conscience’ or offends a ‘sense of justice.’”⁶⁵² In such a case, the defendants must have “acted with a high level of culpability, including deliberate indifference, malice, willfulness, and retaliation. ‘While intentional conduct is that most likely to meet the test, that alone will not suffice; the conduct must be intended to injure in some way unjustifiable by any government interest.’”⁶⁵³

Such “[a]rbitrary acts that have an abusive purpose and lack legitimate justification violate due process.”⁶⁵⁴

In *Gibbs v. Lomas*,⁶⁵⁵ a § 1983 action, a citizen reported seeing an individual driving in Madison, Wisconsin, holding an unholstered gun in view of other drivers. The investigating officer found Gibbs and issued him a misdemeanor citation for disorderly conduct. When arrested, the handgun, actually a replica of a firearm, was visible in the vehicle. After the dismissal of the charge pursuant to an

⁶⁴⁷ *Id.* (citation omitted) (emphasis added).

⁶⁴⁸ *Lenz v. Winburn*, 51 F.3d 1540, 1545 (11th Cir. 1995) (citations omitted) (internal quotation marks omitted).

⁶⁴⁹ *Borucki*, 827 F.2d at 837 (citations omitted).

⁶⁵⁰ *Id.* at 848 (footnote omitted) (citations omitted) (emphasis added).

⁶⁵¹ *Id.* at 1312.

⁶⁵² *Toomer*, 574 S.E.2d at 84 (citing *United States v. Salerno*, 481 U.S. 739, 746 (1987); *Cnty. of Sacramento v. Lewis*, 523 U.S. 833 (1998); *State v. Guice*, 541 S.E.2d 474 (2000)).

⁶⁵³ *Toomer*, 574 S.E.2d at 84 (citation omitted) (some internal quotation marks omitted).

⁶⁵⁴ *Id.* at 84. Under the circumstances of the *Toomer* case, the intentional disclosure also stated a § 1983 claim for a violation of the Equal Protection Clause of the United States Constitution. *Id.* at 89.

⁶⁵⁵ 755 F.3d 529 (7th Cir. 2014).

agreement between Gibbs’s lawyer and the assistant district attorney, Gibbs brought a § 1983 action against Officer Lomas on the basis that there was neither probable cause for his arrest nor a warrant for the search of his car.

In Wisconsin, unless there are circumstances that indicate a criminal or malicious intent, “loading, carrying, or going armed with a firearm” is excluded under Wisconsin’s statute on disorderly conduct.⁶⁵⁶ The court discussed the basis for a § 1983 action and what must be shown for a defendant to have qualified immunity. First, § 1983 “allows citizens whose constitutional rights have been violated by public officials to sue those officials in their individual capacities.”⁶⁵⁷ Second, “[q]ualified immunity ‘protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.’”⁶⁵⁸ Third, the determination of “whether a defendant state officer is entitled to qualified immunity involves two inquiries: ‘(1) whether the facts, taken in the light most favorable to the plaintiff, make out a violation of a constitutional right, and (2) whether that constitutional right was clearly established at the time of the alleged violation.’”⁶⁵⁹

The question was whether under the amended disorderly conduct statute there was probable cause to arrest Gibbs. As for whether Gibbs had the right to go armed, the court held that “‘the alleged right at issue [was] not clearly established’ at the time Officer Lomas acted”; therefore, the doctrine of qualified immunity protects a public officer such as Lomas who must make a reasonable interpretation of an unclear statute that is open to interpretation.⁶⁶⁰

In sum, at present, if a plaintiff were to allege a violation of a constitutional right to carry a firearm in an airport, it appears that there is no clearly established federal constitutional (or statutory) right to carry a firearm in the nonsterile area of an airport. Thus, in the absence of such a clearly established federal constitutional or statutory right, a unit of local government or its officers or employees would appear to have qualified immunity.⁶⁶¹ A claim based on “mere negligence” for refusing to allow an individual to carry a firearm in an airport ordinarily would be insufficient because “under section 1983 there must be an intentional or

⁶⁵⁶ *Id.* at 535 (quoting WIS. STAT. § 947.01(2)).

⁶⁵⁷ *Id.* at 536 (citation omitted).

⁶⁵⁸ *Id.* (citation omitted).

⁶⁵⁹ *Id.* at 537 (citation omitted).

⁶⁶⁰ *Id.* at 540, 543 (citation omitted).

⁶⁶¹ *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982) (citation omitted).

deliberate deprivation of life, liberty, or property, or at least ‘deliberate indifference.’”⁶⁶²

Conclusion

Because state laws apply statewide, including to airports, the digest discusses state statutes that apply to an individual carrying a firearm from the time the individual departs for an airport by private or public transportation until the individual arrives at the screening checkpoint prior to entry to the sterile area of an airport terminal.

As discussed in Section II, although the Supreme Court’s decision in *Heller* recognizes a constitutional right under the Second Amendment to carry a firearm in the home, questions remain concerning the constitutionality of gun control laws that restrict or prohibit the carrying of firearms in places outside the home. Because the courts are applying a test of intermediate scrutiny, rather than strict scrutiny, it presently appears that most gun control laws are presumptively constitutional. Indeed, federal and state courts since *Heller* have upheld a wide variety of gun control laws.

On the other hand, in some recent cases the courts have held that a state may not completely ban the carrying of a firearm outside the home. Nevertheless, a court has not held that a state may not ban the possession of firearms in an airport. There is some commentary and two cases that support the proposition that an airport is a sensitive place within the meaning of *Heller* where firearms may be prohibited without violating the Second Amendment.

When a person departs for an airport by private or public transportation while possessing a firearm, unless the person is knowledgeable of state firearms laws that apply to the travel, which may be interstate, the person could be violating a state’s firearms laws. Whether the person is violating state law depends on a number of factors, such as whether the firearm is loaded, whether a person has a permit to carry a firearm or to carry a concealed firearm, or whether part of a trip is by public transportation, all of which are discussed in Section III.

As explained in Section IV, on arriving at an airport parking facility or other public or private parking facility, an individual may be in violation of state law if a firearm is left in the vehicle. Although there are states that prohibit firearms in publicly owned or leased parking facilities or in airport parking lots, it appears that in most states it is lawful to have a firearm in a vehicle in a public or private parking lot. Some states allow private owners or lessors of parking facilities to ban firearms. Although some airports reported that firearms are banned in their parking

lots, in some states (e.g., Georgia and Washington) a statute provides that firearms are not banned on an airport drive or in a general parking area. Assuming that firearms are not prohibited, a person carrying a firearm to an airport and leaving it in a parking lot is more likely to be violating state law if the person does not have a license to carry a firearm in those states that require a license to carry a firearm or to carry a concealed firearm, and if the firearm is loaded, not out of sight, and/or not secured in the vehicle in the precise manner required by state law.

Section V demonstrates that at least 16 states ban the carrying of a firearm by private individuals in public buildings altogether or allow local governmental authorities to post signs banning firearms. In some states, a person licensed to carry a firearm is prohibited from carrying a firearm in a public building. Two airports that responded to the survey reported that pursuant to their state’s statute, they had posted signs prohibiting firearms or concealed firearms in the airport.

As seen in Section VI, in regard to state laws that are specific to airports, numerous states have statutes prohibiting firearms in airport terminals and/or on other airport property. Eleven airports located in seven states reported that they prohibit the open carrying of firearms in the airport. Based on state statutes, airport responses to the survey, and airport rules and regulations, it appears that at least 11 states and at least one airport in 12 more states ban firearms in airport terminals. Moreover, at least 13 states prohibit the carrying of concealed firearms in airports.

Section VII discusses state laws that generally prohibit the possession of a firearm by individuals convicted of a felony or other serious crime, persons under the age of 21 (or under 18 in some states), anyone under the influence of alcohol or illegal drugs, or anyone possessing a firearm that is illegal under state law. Anyone coming within one of the foregoing categories and carrying a firearm in an airport or elsewhere obviously would be violating state law.

Section VIII discusses state laws that permit private establishments to post signs prohibiting firearms on the premises, including firearms carried by persons having a license to carry a concealed firearm. Judge Richard Posner expressed the view in *Moore v. Madigan* that there could be a salutary reduction in the carrying of firearms in public if more private entities prohibited the carrying of firearms on their premises.

Most commercial airports likely have bars and restaurants that serve alcohol for consumption on the premises. As discussed in Section IX, numerous state statutes prohibit a person, including in some states a

⁶⁶² Froomkin, *supra* note 623, at 1053 (citation omitted).

person having a license to carry a concealed weapon, from carrying a firearm into an establishment that sells liquor, beer, or wine for consumption on the premises. In some states, there may be an exception for restaurants that earn more than a designated percentage of their revenue from the sale of food.

Section X discusses a wide variety of state statutes that ban disorderly conduct or the creation of a public nuisance. When an individual is carrying a firearm in an airport or shows one in an airport parking lot, depending on the circumstances, the individual could be violating a state statute, such as one that prohibits brandishing a firearm, creating a hazard to others, interfering with a transportation facility, or violating another statute regulating public conduct. On the other hand, there is statutory authority and case precedent in some states that the mere possession of a firearm is insufficient for a charge of disorderly conduct.

As demonstrated in Section XI, when an individual applies for a state license to carry a firearm or to carry a concealed firearm, there are usually numerous conditions that an applicant must satisfy prior to the issuance of a license. After a license is issued, the licensee is obligated to remain in full compliance with all conditions on which the license was granted. If there is a violation of a condition, the statutes generally provide that a license will be revoked. In some states, however, as soon as an individual no longer satisfies one or more conditions for a license, the license is revoked automatically.

Also discussed in Section XI is that when a person holds a valid license to carry a firearm or to carry a concealed firearm in another state, in some states the out-of-state license is recognized automatically by the State in which an individual is traveling. Elsewhere, a state official, such as the state attorney general, is empowered to enter into reciprocity agreements with other states to enable licensees to carry a firearm in the states that are parties to the agreements.

As for state preemption, covered in Section XII, although the research did disclose a few exceptions, in most states the state laws that regulate firearms preempt any local regulation of firearms that is more restrictive than state law. A few state statutes are airport-specific and preempt any local regulation of firearms in airports, as well as publicly owned or operated buildings.

As discussed in Section XIII, when a law enforcement officer observes an individual carrying, or suspects that an individual is carrying, a firearm in an airport, in general an officer may make reasonable inquiries of the person, examine the firearm, and verify both the person's license to carry a

firearm or to carry a concealed firearm and the person's identity. A holder of a license is required to display his or her license, as well as identification, upon the request or demand of a law enforcement officer.

Section XIV covers federal statutes that apply to the possession of firearms in airports or on airport property and other issues of federal concern. Federal law prohibits firearms at a screening checkpoint and in the sterile area of an airport. TSA is authorized to impose an administrative penalty when an individual possesses a firearm at a security checkpoint or in the sterile area of an airport. The digest also discusses the FFDOP, the interstate transportation of firearms, whether 18 U.S.C. § 926A applies to the transportation of firearms by air or only by vehicle, and the Undetectable Firearms Act of 1988.

Section XV discusses whether airports could be the subject of a claim arising out of a person's possession of a firearm in an airport terminal or on other airport property based on a state statute or an airport rule banning the carrying of firearms. As for tort claims, some airports reported that as government-owned entities they have immunity to claims in their state under a tort claims act or similar legislation. Some state statutes provide that airports are immune from claims that arise out of a person's carrying of a firearm in an airport or for prohibiting the carrying of firearms in an airport or on other airport property. Airports and air carriers may be immune pursuant to a state statute to claims by ticketed individuals who refused to be searched prior to boarding and thus were not allowed to board a flight.

Finally, Section XV also discusses whether there are potential *Bivens* claims against federal officials or employees or § 1983 claims against state or local governments or their officials or employees based on an airport's prohibiting an individual from carrying a firearm in an airport. As for *Bivens* claims against federal officials and employees, even if the courts recognize a *Bivens* claim for a constitutional violation, such claims are likely to be treated as claims against the United States under the FTCA. There are several obstacles to *Bivens* and § 1983 claims, including the defense of qualified immunity. A threshold, likely dispositive issue presently, however, is that there is no case holding that prohibiting a person from carrying a firearm in an airport violates the Constitution. For example, it is not enough in a § 1983 action for a plaintiff to allege a violation of the plaintiff's constitutional rights—it must be shown that the constitutional right allegedly violated was clearly established at the time of the alleged violation.

APPENDICES

Appendix A, “Survey Questions”; Appendix B, “List of Airports and Airport Authorities Responding to the Survey”; Appendix C, “Summary of Responses by Airports and Airport Authorities to the Survey”; and Appendix E, “Airport Ordinances, Policies, and Rules and Regulations Provided by Airports Responding to the Survey,” are available on the digest summary Web page, which can be found by searching for *ACRP Legal Research Digest 29* at www.TRB.org.

Appendix D is published as *ACRP WOD 29: Compendium of State and Federal Laws Affecting the Possession of Firearms at Airports*. It can also be found on the digest summary Web page.

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