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Alaska Adopts Vermont Carry

Every once in a while, a state legislature adopts a gun control law that utterly shocks me—that leaves me saying, “Where did *that* come from?” This time, it’s Alaska.

What is “Vermont Carry”? For the last ten years that I have been researching and writing about concealed weapon regulation, I have had always had to explain one strange exception in American law: Vermont doesn’t regulate concealed carry of a handgun. It does not now have a law prohibiting or licensing concealed carry. I am not aware that it has ever had such a law.

Back in 1903, the Vermont Supreme Court heard an appeal from an Andrew Rosenthal. Rosenthal had been convicted of violating a Rutland city ordinance “prohibiting a person from carrying within the city any brass knuckles, pistol, slung shot, or weapon of similar character, or any weapon concealed on his person, without permission of the mayor or chief of police....” The Vermont Supreme Court struck down the ordinance based on the Vermont Constitution’s “art. 16, [which] declares that the people have a right to bear arms for the defense of themselves and the state,” and that the ordinance in question “so far as it relates to the carrying of a pistol under any circumstances without such consent, is repugnant to the Constitution, and to that extent void.”

While Vermont’s law at the time had a provision that prohibited the carrying of arms, “with the intent or avowed purpose of injuring a fellow man” and regulated students carrying weapons on school grounds, there was no statewide law on the subject. As the Vermont Supreme Court explained, in striking down Rosenthal’s conviction:

“Under the general laws, therefore, a person not a member of a school may carry a dangerous or deadly weapon, openly or concealed, unless he does it with the intent or avowed purpose of injuring another; and a person who is a member of a school, but not in attendance upon it, is at liberty, in a similar way, to carry such weapons.” The Court pointed out that the Rutland ordinance banned any carrying of a weapon concealed, whether a criminal intent was present or not, and was therefore contrary to the “Constitution and the general laws of the state.”¹

I must confess that I am not impressed with the reasoning of the Vermont Supreme Court in this decision, but they probably reached the correct conclusion, by the wrong method. Both the Vermont Constitution of 1777 and of 1786 proclaimed: “That the people have a right to bear arms for the defence of themselves and the State...”² Unlike some of the later constitutions of other states, which explicitly gave authority to the state legislature to regulate *concealed* carrying of deadly weapons,³ Vermont’s Constitution is silent on the matter of concealed weapons—and when Vermont’s 1777 and 1786 Constitutions were adopted, concealed carrying of handguns was lawful.

Some gun rights activists have been insisting that “Vermont Carry” is the way to go—to the point where some have opposed passage of non-discretionary concealed weapon permit laws, because they assert, “The Second Amendment is my permit.” While I agree with them that the Founding Fathers would have been startled by concealed

¹ *State v. Rosenthal*, 75 Vt. 295, 55 Atl. 610, 611 (1903).

² Francis Newton Thorpe, ed., *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies*, (Washington: Government Printing Office, 1909), 5:3083, 6:3753-4, 6:3741.

³ Discussed in *State v. Wilforth*, 74 Mo. 528, 531 (1881); *Ex Parte Thomas*, 21 Okl. 770, 1 Okl. Cr. 210, 97 Pac. 260, 261 (1908); *People v. Zerillo*, 219 Mich. 635, 189 N.W. 927, 928 (1922); *People v. Nakamura*, 99 Colo. 262, 62 P.2d 246, 247 (1936); *State v. Nickerson*, 126 Mont. 157, 166 (1952); *City of Las Vegas v. Moberg*, 82 N.M. 626, 627, 628, 485 P.2d 737 (App. 1971), and many others!

weapon permits—and almost certainly intended all forms of carrying to be protected—trying to sell the idea of “Vermont Carry” to legislators is a struggle. Even those who are pro-gun often cringe a little at the idea of *no regulation*!

Strictly speaking, “Vermont Carry” does not mean “no regulation.” It is unlawful, if you are a convicted felon, to possess a gun in Vermont. What “Vermont Carry” really means is that if you are a law-abiding adult, not a mental patient, or otherwise restricted from possessing a gun, you can carry a gun, openly or concealed.

It’s hard for me to argue too strongly in favor of “Vermont Carry,” simply because a permit system simplifies the job for police officers. If they stop someone, and discover that he has a gun, a concealed weapon permit is a fast way for the officer to verify that this person isn’t breaking the law by carrying a gun. I also suspect that a permit system probably discourages at least a small percentage of people who can’t lawfully carry a gun, and probably shouldn’t. Nonetheless, if my only choice was California-style, or “Vermont Carry,” I would not hesitate at all in supporting “Vermont Carry.”

The strongest reason, however, that I have never strongly promoted “Vermont Carry,” is that it didn’t seem politically feasible—right now. I did a radio talk show some years ago where I explained to a caller that after 20-30 years of states developing confidence with non-discretionary concealed weapon permit systems, I could see some states experimenting with “Vermont Carry.” I also explained that I suspected that it would probably work about as well as non-discretionary permit systems do now—but it would depend on what that state’s culture was about violence. There are states where this would probably work very well, and other states, such as California, where the

unwillingness to do anything about dangerous mental patients wandering the streets *might* make Vermont Carry a bit of a problem.

So, how did Alaska beat my expectations, and go from a non-discretionary permit law, to “Vermont Carry” in less than ten years? Alaska adopted a non-discretionary permit system in 1994,⁴ a bit more restrictive than many of the early adopters, but non-discretionary nonetheless. Alaska has always been an open carry state; the license plates used to say, “The Last Frontier,” and my friends who have lived there confirm that this isn’t false advertising. (My father worked there one summer in the late 1940s; a letter he wrote to his mother complained that Fairbanks had 248 bars, and no bookstores—he had counted both.)

It appears that the relatively demanding safety classes that were part of Alaska’s 1994 law—and the subsequent legislative attempts to deal with the shortage of qualified instructors—may have caused the change. According to “Rep. Eric Croft, D-Anchorage,... he sponsored the bill out of frustration with continually fine-tuning the state's gun laws.” According to Croft, handgun safety courses were not readily available in rural areas.

While you will no longer need a concealed weapon permit to carry a concealed handgun in Alaska, the state will continue to issue permits.⁵ If you are scratching your head and saying, “Why?” consider what happens to the Vermont resident who decides to visit Michigan, a state that recognizes concealed weapon permits from other states—as long as your permit was issued by your state of residence. If I visit Michigan, I can carry

⁴ Alaska Stats. § 18.65.700 (1994).

⁵ Mike Chambers, Associated Press, Anchorage *Daily News*, June 12, 2003, available at <http://www.adn.com/alaska/story/3280484p-3310005c.html>, last accessed June 13, 2003.

concealed, because I have a permit from my home state of Idaho. A Vermonter *can't* get a concealed weapon permit from his home state, because they don't exist. Therefore, the Vermonter can't carry concealed in Michigan. *That's* why Alaska is going to continue issuing concealed weapon permits—so that Alaskans can carry concealed in states like Michigan.

So—who's next? I think it would be prudent to see how Vermont Carry works out for Alaska before all the other states pile on. (Yeah, I wasn't expecting Vermont Carry to become legislatively fashionable next year, anyway.) I suspect that it is going to work out just fine. If it doesn't work out—if there is a sudden burst of stupid criminal misuses of concealed handguns by Alaskans who didn't qualify for a permit under the non-discretionary law, it would be good to have the damage, both in and political terms, confined to one state. If it turns out that Americans aren't as civilized as our ancestors were in 1789, the fallout could injure not just “Vermont Carry” but non-discretionary permit laws everywhere. If, in two or three years, the predicted disasters just aren't happening, a few other states should seriously consider adopting “Vermont Carry.” Perhaps it will turn out that entire notion of regulating the carrying of concealed weapons is just wasting everyone's time and energy.

I wasn't going to write about anything else—but this is such good news, and it *is* on topic: I just couldn't resist. Oklahoma used to have a reciprocal agreement law about concealed weapon permits; if another state had a similar concealed weapon permit law, and would recognize Oklahoma's permits, Oklahoma would recognize theirs. This was nice, but it meant that the permits of only a few other states were acceptable. Oklahoma

has just changed their law, so that they will now recognize all other state permits, effectively July 1, 2003; Oklahoma no longer requires reciprocity to recognize another state's permits.⁶ That makes Oklahoma the 27th state in which I can now lawfully carry concealed.

However: remember that different states have different provisions to their concealed weapon laws. In Oklahoma, even with a permit, carrying on school grounds is a *felony*. There are a couple of exceptions for parents dropping off or picking up kids (and even then, the gun has to stay in the car, and the car cannot be unattended).⁷ In addition, if you are in possession of a handgun and you are contacted by a police officer in Oklahoma, you are required to inform the officer of it.⁸ These differences are important; if you are going to visit Oklahoma and carry concealed, I strongly urge you to make sure that you know all of the little quirks of Oklahoma's laws. A good place to start is <http://www.packing.org>, which does its best to keep detailed information on all state concealed weapon permit laws.

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⁶ Enrolled Senate Bill 834, amending O.S. § 1290.26, available at http://www2.lsb.state.ok.us/2003-04SB/sb834_enr.rtf, last accessed June 13, 2003.

⁷ Enrolled Senate Bill 834, amending O.S. § 1280.1, available at http://www2.lsb.state.ok.us/2003-04SB/sb834_enr.rtf, last accessed June 13, 2003.

⁸ Enrolled Senate Bill 834, amending O.S. § 1290.8, available at http://www2.lsb.state.ok.us/2003-04SB/sb834_enr.rtf, last accessed June 13, 2003.