RESOLUTION

RESOLVED, That the American Bar Association supports federal, state, territorial and local laws that give law enforcement or other appropriate authorities broad discretion, in accordance with specified state standards and subject to judicial review, to determine whether a permit or license to engage in concealed carry should be issued in jurisdictions that allow the carrying of concealed weapons, and opposes laws that limit such discretion by mandating the issuance of a concealed carry permit or license to persons simply because they satisfy minimum prescribed requirements.

FURTHER RESOLVED, That the American Bar Association opposes federal legislation that would force states to recognize permits or licenses to carry concealed weapons issued in other states.
REPORT

Gun violence continues at epidemic levels in the United States. In 2007, the most recent year for which statistics are available, over 31,000 Americans died from firearm-related injuries – an average of more than 85 deaths each day\(^1\) – and nearly 70,000 others were treated for non-fatal gunshot wounds.\(^2\) Guns were used to commit over 385,000 crimes in the U.S. in 2007, and nearly 70% of all murders that year were committed with a firearm.\(^3\)

The carrying of loaded, concealed firearms in public increases the risk of gun-related deaths and injuries. The danger posed by criminals who engage in this conduct is obvious. However, public safety is threatened even where persons carry concealed guns pursuant to a state permit or license. Such carrying increases the chance that everyday disputes will escalate into deadly encounters, and the risk that accidental shootings will occur where large numbers of people are gathered. The concealed carrying of firearms also places law enforcement officers at heightened risk of gun violence.

States have long recognized the dangers associated with the carrying of hidden, loaded weapons. State legislatures first began to adopt laws prohibiting concealed carry in the early 1800s.\(^4\) Then, in the first few decades of the 20\(^{th}\) Century, states began enacting laws granting law enforcement broad discretion to issue permits to carry concealed weapons (CCW permits).\(^5\) These “may issue” laws allow the issuing official to grant or deny a permit application based on various statutory factors, such as whether the applicant has a justifiable need to carry a concealed firearm.

Beginning in the late 1980s, however, state legislatures began to weaken concealed carry laws by removing law enforcement discretion from the permitting process. These “shall issue” laws force law enforcement to issue permits to anyone who meets minimal statutory requirements (e.g., that the applicant is over the age of twenty-one and has not been convicted of a felony), making permits dangerously easy to acquire.

Legislatures nationwide continue to adopt lax concealed carry laws, despite evidence demonstrating that they have been associated with increases in violent crime.\(^6\) One public opinion survey showed that 57% of Americans feel less safe knowing people can carry loaded,

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5 In 1911, for example, New York enacted a law requiring an individual to acquire a permit in order to possess or carry a handgun. See People ex rel. Darling v. Warden of City Prison, 139 N.Y.S. 277, 280 (N.Y. App. Div. 1913) (discussing the statutory changes implemented by the 1911 law).
concealed guns in public and an almost identical majority (56%) opposes allowing concealed carry at all.7

I. Federal and State Laws Governing the Carrying of Concealed Firearms

Current federal and state laws make it dangerously easy for people to carry or possess loaded, hidden firearm in public. Federal law is nearly silent on the issue,8 and state laws vary tremendously. Two states (Illinois and Wisconsin) and the District of Columbia prohibit the carrying of concealed firearms entirely, while four states (Alaska, Arizona, Wyoming and Vermont) allow the carrying of concealed firearms without a permit.9

Ten states are “may issue” states, granting law enforcement officials discretion in the permitting process, and thirty-four states are “shall issue” states, depriving law enforcement officials of such discretion.10

II. Law Enforcement Should Be Given Discretion Regarding the Issuance of Concealed Carry Permits

To minimize the threat to public safety created by the carrying of loaded, concealed firearms in public (in those states that allow concealed carry) law enforcement should be allowed broad discretion to decide whether CCW permits should be issued. Local law enforcement agencies are in the best position to make determinations regarding applications for permits because they understand the potential impact the issuance of such permits could have on the community. They are also the most likely to be familiar with the applicant’s history and reputation and therefore to know, for example, whether the applicant has been the focus of

8 Federal law provides that certain law enforcement officers and retired law enforcement officers must be allowed to carry concealed firearms without a permit. 18 U.S.C. §§ 926B, 926C.
9 720 Ill. Comp. Stat. 5/24-1(a)(4); Wis. Stat. § 941.23; D.C. Code § 22-4504. Section 22-4504 prohibits the carrying of pistols without a license. Although former Section 22-4506 provided a procedure for the issuance of licenses, that law was repealed in 2009. Alaska Stat. § 11.61.220. While a permit is no longer required to carry a concealed weapon in Alaska, the state retains its “shall issue” permitting system. Alaska Stat. § 18.65.700. Similarly, on April 16, 2010, Arizona’s governor signed into law a bill that allows any individual age 21 or over to carry a firearm concealed on his or her person in public without a license or permit. Ariz. Rev. Stat. § 13-3102. Arizona’s permitting system remains in place, and a permit is required to carry a firearm into a bar or restaurant that serves alcohol. Section 4-229. Most recently, Wyoming’s governor signed a bill into law allowing any person who meets the requirements for a concealed weapons permit to carry a concealed firearm without a permit. S. 47, 2011 61st Leg., Gen. Sess. (Wyo. 2011). The law takes effect July 1, 2011. As in Arizona and Alaska, Wyoming’s “may issue” permitting system remains in place.

10 See Legal Community Against Violence, Regulating Guns in America: An Evaluation and Comparative Analysis of Federal, State and Selected Local Gun Laws – Carrying Concealed Weapons, 203-208 (Feb. 2008) at http://www.lcav.org/content/carrying_concealed_weapons.pdf (listing “shall issue” and “may issue” states); Legal Community Against Violence, Recent Developments in Federal & State Law (by Firearms Policy), at http://www.lcav.org/content/recent_developments_policies.asp#CarryingFirearms (updating this information).
domestic violence complaints or convicted of misdemeanors that would not disqualify him or her from possession of a gun under federal or state law.

Law enforcement officers have a unique interest in seeking to limit the carrying of loaded, hidden guns in public, since they are at particular risk for being victimized by concealed firearms. Law enforcement agencies should not be forced to issue CCW permits to persons who have not been carefully and individually evaluated.

The horrific mass shooting in Tucson on January 8 of this year, in which six were slain and thirteen wounded, including Rep. Gabrielle Giffords (D-Ariz.), illustrates the importance of law enforcement discretion in evaluating those who wish to carry concealed weapons. Some years ago, Arizona enacted a “shall issue” concealed weapons law, and more recently the state eliminated all permitting requirements for carrying concealed. This meant that Jared Loughner, the suspect in the Tucson shooting, was, according to Arizona law, a legal carrier of a concealed weapon until the moment he pulled the trigger and began his rampage. Even if Tucson police had become aware of Loughner’s previous threatening behavior, which was sufficient to cause him to be expelled from a local community college, the police would have been powerless under Arizona law to prevent him from carrying a concealed weapon.

III. The Second Amendment Does Not Encompass a Right to Carry a Loaded, Concealed Firearm in Public

Opponents of strong concealed carry laws argue that the Second Amendment guarantees a right to carry hidden, loaded guns in public. This argument has no legal basis.

In District of Columbia v. Heller, 128 S. Ct. 2783 (U.S. 2008), the United States Supreme Court held that the Second Amendment guarantees law-abiding, responsible citizens the right to possess a handgun in the home for self-defense. The Court emphasized that the right protected is “not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” After observing that the majority of 19th century courts to consider the question held that prohibitions on carrying concealed weapons were lawful, the Court identified a non-exhaustive list of presumptively valid laws, including those prohibiting firearm possession by convicted felons and by others in “sensitive places,” such as schools and government buildings.

Because laws governing the carrying of concealed weapons do not affect an individual’s right to possess a handgun “in defense of hearth and home” – the only Second Amendment right announced in Heller – those laws do not conflict with the Second Amendment. Since Heller, a significant number of courts have held, in a variety of contexts that the Second Amendment right does not extend beyond the home. Several courts have specifically rejected Second Amendment challenges to discretionary concealed carrying systems, including:

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12 Id. at 2816-17, 2817 n.26.
13 Id. at 2821.
14 People v. Williams, 940 N.E. 2d 95 (Ill. App. Ct. 2010) (“[B]oth Heller and McDonald made clear that
Williams v. State, 2011 Md. LEXIS 1 (Jan. 5, 2011). The Maryland Court of Appeals (the state’s highest court) upheld the state’s discretionary permitting scheme, rejecting the defendant’s argument that the Second Amendment establishes a general “right of persons to keep and bear arms for lawful purposes.” The court stated that “Heller and McDonald emphasize that the Second Amendment is applicable to statutory prohibitions against home possession.”

Young v. Hawaii, 2009 U.S. Dist. LEXIS 28387, *13 (D. Haw. Apr. 1, 2009), reconsideration denied by Young v. Hawaii, 2009 U.S. Dist. LEXIS 62707 (D. Haw. July 2, 2009). The court determined that Heller was inapplicable to the plaintiff’s suit because Hawaii’s discretionary permitting statute “pertains only to the carrying of weapons on one’s person and does not constitute a complete ban to the carrying of weapons or pertain to possessing weapons in one’s home.”

Matter of Bastiani, 881 N.Y.S.2d 591, 593-94 (N.Y. Cty. Ct. 2008). The court denied petitioner’s request to expand her firearms permit to allow carrying outside of the home, stating that, “In New York State the burden of establishing proper cause for the issuance of a full carry permit, as noted above, is upon the applicant to establish ‘a special need for self-protection distinguishable from that of the general community or persons engaged in the same profession.’ Such is not inconsistent with the holding of Heller.”

Dorr v. Weber, 2010 U.S. Dist. LEXIS 48950, *24 (N.D. Iowa May 18, 2010). The court held that “there was no violation of the Second Amendment” in the denial of plaintiffs’ applications for concealed carry permits and that Heller did not establish a right to carry a concealed weapon.

In sum, the Second Amendment is not an obstacle to laws vesting law enforcement with discretion regarding the issuance of permits regulating the carrying of concealed, loaded firearms.

IV. No Evidence Supports the Claim that “Shall Issue” Laws Deter Crime

Proponents of “shall issue” laws argue that such laws lead to decreases in crime. These claims are based on the controversial and widely-discredited research of economist John Lott, summarized in Lott’s 1998 book More Guns, Less Crime, which compared crime rates in 10
states that had adopted “shall issue” laws with those that had not. Lott’s research purportedly showed that “shall issue” laws were associated with a substantial decrease in certain types of violent crime.

Lott’s claims have been extensively criticized by more than a dozen reputable researchers. In addition to pointing out serious flaws in Lott’s statistical models, researchers have observed that even if Lott’s study found a superficial correlation between the enactment of permissive carrying laws and downward trends in crime, the study fails to show that these laws caused decreases in crime. Numerous variables could have an impact on a state’s crime rate, such as poverty, drug and alcohol use, gang activity and law enforcement resources. Lott’s research failed to take any of these variables into account.

The National Research Council of the National Academies undertook an in-depth analysis of Lott’s claims, and of subsequent research refuting those claims, in Firearms and Violence: A Critical Review (2005). That report concluded that “[Lott’s] initial model specification, when extended to new data, does not show evidence that passage of right-to-carry laws reduce crime.” Other studies examining the effects of “shall issue” laws in more states than examined by Lott, and over more years, have found that such laws are associated with increases, rather than decreases, in crime.

In addition, studies of those who have obtained CCW licenses in states with “shall issue” laws support the common sense conclusion that more carrying of loaded firearms makes society less safe. A Los Angeles Times analysis of Texas CCW holders, for example, found that between 1995 and 2000, more than 400 criminals – including rapists and armed robbers – had been issued CCW licenses under the state’s “shall issue” law.

The South Florida Sun-Sentinel found that those licensed to carry guns in the first half of 2006 in Florida (another “shall issue” state) included more than 1,400 individuals who had pleaded guilty or no contest to felonies, 216 individuals with outstanding warrants, 128 people with active domestic violence injunctions against them, and six registered sex offenders. An

16 Lott’s conclusions are also contradictory and implausible. According to Lott, “shall issue” laws led to a decrease in homicides, rapes and aggravated assaults, but had no impact on robberies. Robbery, however, is the crime most likely to occur in public between strangers. If widespread carrying of guns really deterred crime, robberies should have decreased as well. Lott also found that “shall issue” laws led to an increase in property crimes such as auto theft and larceny. Lott’s far-fetched explanation for this finding was that criminals who are faced with “shall issue” laws (and the prospect that a potential victim could be armed), substitute property crimes for crimes involving physical contact with the victim.
20 Megan O'Matz, In Florida, It’s Easy to Get a License to Carry a Gun, South Florida Sun-Sentinel, Jan. 28, 2007, at 1A.
investigation by the Indianapolis Star regarding CCW permits in Indiana revealed similar problems with the state’s permitting system.21

The Los Angeles Times analysis of Texas CCW holders found that “largest category of problem licensees involve[d] those who committed crimes after getting their state” licenses.22 Thousands of the 215,000 license holders in Texas were arrested for criminal behavior or found to be mentally unstable during that time period.23 Another study found that Texas CCW permit holders were arrested for weapons-related crimes at a rate 81% higher than that of the state’s general adult population.24

More recent research found that “shall issue” CCW laws increase gun trafficking. A September 2010 report by Mayors Against Illegal Guns (a coalition of over 500 mayors that targets illegal guns nationwide) analyzed the impact of a variety of state laws on gun trafficking, concluding that guns flow from states with weak gun laws into states with stronger gun laws. With respect to concealed carry laws, the report found that states with laws that deprive law enforcement of discretion regarding the issuance of CCW permits are the source of crime guns recovered in other states at more than twice the rate of states that do grant law enforcement such discretion.25 The report noted that CCW permit holders in one state are often allowed, under reciprocity agreements with other states, to carry guns in those states, and are often exempt from laws designed to impede gun trafficking (such as one-gun-a-month laws, intended to prohibit individuals from buying guns in bulk and reselling them on the black market).26

V. Congress Should Not Force States to Recognize Licenses to Carry Concealed Weapons Issued in Other States

Paragraph 2 of the ABA Resolution on Concealed Carry of Weapons takes a position against federal legislation that would force states to recognize permits or licenses to carry concealed weapons issued in other states. The ABA opposes such “concealed carry reciprocity” legislation because it would adversely impact public safety by generally weakening state standards for concealed carry of weapons. It also would undermine the authority of individual states to set strict standards for concealed carry by allowing the concealed carry laws of one state to override the standards of other states.

Under current federal law, each state determines whether to allow the concealed carry of handguns and other dangerous weapons within its borders, and under what circumstances. As noted above, only two states, Illinois and Wisconsin (along with the District of Columbia), completely ban the concealed carry of weapons, and only three states (Alaska, Vermont and

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22 William C. Rempel & Richard A. Serrano, supra note 17.  
23 Id.  
26 Id.
Arizona) allow the concealed carry of weapons without a license. The remaining states have some form of permitting or licensing requirement for concealed carry, with widely varying standards for who can carry concealed, what training is required, and where concealed carry can legally occur.

Under current law, individual states can enter into “reciprocity agreements” with other states, allowing those with licenses from one state to carry concealed in the other state that is party to the agreement. However, such agreements involve two consenting states. No provision of federal law currently requires a state to recognize the validity of a concealed carry permit from another state.

Federal reciprocity legislation is objectionable for several reasons.

First, it would undermine the sovereign authority of each state to set strict standards for the concealed carry of weapons, an issue with a direct impact on public safety. Such legislation would undermine the laws of states that have chosen to enact and enforce strict standards limiting the concealed carry of deadly weapons by allowing persons licensed under less restrictive laws in other states to carry in derogation of the law in the state where the carrying occurs. For example, states like California and New York, which allow local police considerable discretion to deny concealed carry licenses even to persons without a serious criminal record if, for example, the applicant cannot demonstrate a sufficient need to carry concealed, would be forced to allow concealed carry within their borders by persons with licenses from states where the police have no such discretion.

Second, it would result in a general weakening of state standards for concealed carry, effectively reducing states to the “lowest common denominator” of the states with the weakest laws. As noted above, even under current state restrictions, concealed carry licenses have been issued to very dangerous individuals who have committed egregious crimes. The threat is exacerbated by laws in states like Florida allowing concealed carry permits to be granted to out-of-state residents, even though they have been denied carry licenses in their home states. For example, in 2010 a Pennsylvania man who had obtained a Florida carry permit after he was denied one by his home state, fatally shot an 18-year-old in Philadelphia.27

Third, federal reciprocity legislation would force states to give preferential treatment to out-of-state residents over in-state residents. Federal concealed carry reciprocity would mean that, in states with restrictive standards for concealed carry, residents of those states must conform to those standards, while out-of-state residents do not, as long as they have a concealed carry license from their home state. Congress should not be in the business of creating such inequities in the issuance of concealed carry licenses.

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For these reasons, the ABA opposes federal concealed carry reciprocity legislation.

Respectfully submitted,

Magistrate Judge Robert B. Collings, Chair
Standing Committee on Gun Violence
August 2011
GENERAL INFORMATION FORM

Submitting entity: Standing Committee on Gun Violence

Submitted by: Magistrate Judge Robert B. Collings, Chair, Standing Committee on Gun Violence

1. **Summary of Resolution.**

This resolution urges jurisdictions that allow the carrying of concealed weapons to grant broad discretion to law enforcement authorities to determine whether a permit or license should be issued and opposes legislation that would limit such discretion by requiring issuance of a license or permit to persons simply because they satisfy minimum prescribed requirements. The resolution also opposes federal legislation that would force states to recognize permits or licenses to carry concealed weapons issued in another state.

2. **Approval by Submitting Entity.**

The Standing Committee on Gun Violence approved the filing of this report with recommendation by email in April, 2011.

3. **Has this or a similar resolution been submitted to the House or Board previously?**

No

4. **What existing Association policies are relevant to this resolution and how would they be affected by its adoption?**

Since 1965, the ABA House of Delegates has considered and approved over a dozen policy recommendations aimed at preventing gun violence, including those to ban assault weapons, prohibit firearm possession by domestic abusers, regulate guns as consumer products and limit gun sales to minors.

The ABA has not, however, adopted a policy relating to laws regulating the carrying of concealed weapons. A new resolution is needed to for the Association to express its views on this critical issue of public safety. The proposed recommendation is consistent with and complimentary to existing Association policy regarding gun violence and federal and state firearms laws.

5. **What urgency exists which requires action at this meeting of the House?**

A number of factors have focused renewed attention on gun violence and control. The Tucson shooting incident earlier this year captured public attention and posed such provocative issues as how could an individual, rejected for military service due to emotional and behavioral issues be able to legally purchase and carry a handgun. In 2008 and 2009 the US Supreme Court issued ground breaking Second Amendment opinions in
District of Columbia v Heller and McDonald v Chicago respectively. These opinions struck down laws which prohibited handgun possession in the home, but made clear that a wide variety of regulatory measures to reduce gun violence are permissible under the Second Amendment. The Supreme Court cases have led to renewed policy debate in states about the carrying of weapons in public, as well as increased efforts to allow carrying guns in public buildings, colleges, universities, and even churches. Since much of the gun control legislation is currently taking place at the state level, it is important and timely for the ABA to have policy related to carrying concealed weapons.

6. Status of Legislation. (If applicable)

State legislatures throughout the country are considering a variety of bills related to the carrying of firearms in public; including those pertaining to location limits and the extent to which concealed carrying should be governed by a state license or permit. There are currently nine bills pending in four states that would change the “may issue” to “shall issue.” The states are MA, ME, NJ, and NY. There are many other CCW-related bills pending nationwide.

Rep. Cliff Stearns (R. FL) has introduced H.R. 822, the "National Right-to-Carry Reciprocity Act of 2011". The bill would force states to recognize permits or licenses to carry concealed weapons issued in other states, thus undermining the authority of individual states to set their own standards for concealed carry. As of this writing it has been referred to the House Subcommittee on Crime, Terrorism, and Homeland Security.

7. Cost to the Association. (Both direct and indirect costs.)

There are no direct costs and indirect costs would be limited to staff, who are already responsible for this subject matter, addressing any follow up activities.

8. Disclosure of Interest. (If applicable)

There are no known conflicts of interest.

9. Referrals.

Given the universality of interest in gun violence and control, the Report with Resolution will be referred to all sections, divisions, and forums. Additionally, it will be sent to Committees and Commissions with particular interest in this subject matter, often because they address populations that are disproportionately affected by gun violence or address legal matters or issues often the subject of gun control debate, including:

Standing Committee on Substance Abuse
Commission on Domestic Violence
Commission on Mental and Physical Disability Law
Commission on Youth at Risk
10. **Contact**

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EXECUTIVE SUMMARY

1. Summary of the Resolution:

This resolution urges jurisdictions that allow the carrying of concealed weapons to grant broad discretion to law enforcement authorities to determine whether a permit or license should be issued and opposes legislation that would limit such discretion by requiring issuance of a license or permit to persons simply because they satisfy minimum prescribed requirements. The resolution also opposes federal legislation that would force states to recognize permits or licenses to carry concealed weapons issued in another state.

2. Summary of the issue which the resolution addresses:

The issue is whether law enforcement authorities should have the authority to reject an application for a permit or license to carry a concealed weapon by a person who poses a threat to society. Over the last 20 years, many states that allow the carrying of concealed weapons have shifted from a discretionary standard that gave law enforcement this authority, consistent with various statutory factors, to a more mandatory scheme. Under the latter approach, law enforcement authorities must issue permits to anyone who meets minimal statutory authority, making permits dangerously easy to acquire. Witness, for example, the Tucson shooting where the perpetrator was, under state law, a legal carrier of a concealed weapon notwithstanding his previous threatening behavior that caused him to be expelled from a local community college and be rejected for military service. This change from discretionary to mandatory issuance of permits poses a threat to public safety which is addressed by this resolution.

3. An explanation of how the proposed policy position will address the issue:

This Resolution is consistent with previous ABA polices related to gun control. It does not propose a ban on gun ownership and possession but focuses on reasonable regulations to promote public safety. Under the Resolution, the ABA is urging all jurisdictions that currently have, or are considering, carrying concealed weapon legislation to provide law enforcement discretion in issuance of permits or licenses. Similarly, the Resolution opposes any federal law that would force one jurisdiction to recognize a license or permit to carry a concealed weapon issued in another state. To do so would undermine an individual state’s authority to regulate the carrying of concealed weapons based upon its public safety concerns.

4. A summary of any minority views or opposition which have been identified:

No minority views or opposition have been identified.