RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal courts and legislatures to develop policies and protocols as to who may carry firearms in courthouses, courtrooms, and judicial centers that allow only those persons necessary to ensure security, including approved safety officers, judges, and court personnel, have weapons in the courthouse, courtroom, or judicial center, including common areas within the buildings as well as the grounds immediately adjacent to the justice complex, and that require training for those who are permitted to carry firearms.
Throughout the United States of America, the courthouses and justice centers are symbols of our constitutional system of justice. The judiciary has a compelling interest in ensuring the safety of the public as it avails itself of our courts, to seek redress from wrongs and resolve disputes.

Courtroom proceedings may sometimes become contentious and emotional, creating concerns for the safety of the litigants, as well as judges, lawyers, support staff, and law enforcement. Increasingly there have been occurrences where violence has erupted and firearms are used inside and outside of the courtroom. When the litigants and the court personnel “believe their courthouses and court facilities are not safe integrity of the entire judicial process is compromised and undermined.”\(^1\) “Beyond mere access [to courthouses], people require a safe and secure environment free from fear or intimidation. Judges, employees, and members of the general public need to feel safe if they are to conduct themselves impartially and decorously.”\(^2\)

In 2012, Timm Fautsko, Principal Staff, National Center for State Courts wrote:

The number of threats and violent incidents targeting the judiciary has increased dramatically in recent years. At the federal level, the U.S. Marshals Service’s Center for Judicial Security reports the number of judicial threat investigations has increased from 592 cases in fiscal year 2003 to 1,258 cases by the end of fiscal year 2011. At the state and local levels, the most informative data about state courts comes from studies conducted by the Center for Judicial and Executive Security (CJES). Their data shows that the numbers of violent incidents in state courthouses has gone up every decade since 1970.\(^3\)

All three branches of our governments should work together to promulgate, promote, and provide for responsible firearm regulations in courthouses, judicial centers, and court facilities. However, there is no uniformity among the state laws as to who may carry a firearm in a courtroom or a courthouse, nor to what extent or areas a judge may exercise discretion in limiting the possession of firearms. The National Center for State Courts did an exhaustive survey that examined the laws of all the states.\(^4\) While the majority of the states restrict firearm possession in the courtroom, only a small number restrict firearms in the courthouse. Additionally, most states allow so many exemptions as to make any ban of firearms useless.

\(^1\) In the Iowa Supreme Court, In the Matter of Courthouse Security, Supervisory Order. June 19, 2017.
\(^2\) Don Hardenbergh, Protecting America’s Courthouses, 44 No. 3 Judges’ J. 14 (Summer 2005).
William Raffert y of the National Center for State Courts notes that interest in allowing guns in the courtroom is nothing new.

“The recent uptick in interest can be traced back to two items: the U.S. Supreme Court decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008), holding that the Second Amendment included an individual right to keep and bear arms, coupled with several high-profile courthouse shootings. These events have prompted efforts to redefine who can carry a firearm in a courthouse and where firearm bans may be imposed. For the most part, such efforts have been designed to expand the ability of individuals to carry guns into courthouses and, in some instances, directly into courtrooms.”

In *Heller*, the Supreme Court held the Second Amendment protects “an individual right to keep and bear arms,” 554 U.S. at 595, but not a right “to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose,” id. at 626. More specifically, the Court held unconstitutional the District's “ban on handgun possession in the home,” as well as its “prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense,” id. at 635 (emphasis added), noting “the inherent right of self-defense [is] central to the Second Amendment right,” id. at 628.

In *McDonald v. City of Chicago*, 561 U.S. 742 (2010), the Supreme Court held that the second amendment right recognized in *Heller* is fully applicable to the states through the due process clause of the Fourteenth Amendment. In so holding, the Court reiterated that "the Second Amendment protects the right to keep and bear arms for the purpose of self-defense," id. at 750, and that "individual self-defense is the central component of the Second Amendment right," id. at 767.

Neither *Heller* nor *McDonald* would prohibit restrictions on carrying firearms in to buildings which house court facilities or the grounds immediately surrounding the courtroom facilities. The United States Supreme Court emphasized the narrowness of its holding by noting,

"[N]othing 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 side of arms." *Heller*, 554 U.S. at 626–27. (Emphasis added)

The 10th U.S. Circuit Court of Appeals in Denver ruled that the Second Amendment right to bear arms does not extend to federal buildings, finding a post office and its parking lot are considered one of those "sensitive places." It would not be unreasonable to extend the same prohibition to buildings that house courtrooms as well as the spaces and parking lots immediately adjacent to those court house complexes.

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6 Bonidy v. U.S. Postal Serv., 790 F.3d 1121 (10th Cir. 2015) cert denied, 136 S. Ct. 1406, 194 L. Ed. 2d 550 (2016)
Additionally, it is not especially surprising that research data indicates that more liberal rules regarding gun possession, such as right-to-carry (RTC) laws, do not reduce crime. “Supporters of the idea that such an effect occurs assume that the laws reduce crime because prospective criminal offenders are deterred by a greater perception of risk of confronting an armed victim, which supposedly results from either the enactment of RTC laws or the issuance of large numbers of carry permits to potential crime victims.”

Unfortunately, some state legislatures seek to expand the class which would be permitted to carry firearms not only in to the courthouse, but the courtroom as well. In April 2014, the Georgia legislature enacted, and the governor, signed The Safe Carry Protection Act, a new gun law that, among other things, will allow Georgians to legally carry firearms into churches, schools, airport common areas, bars, courtrooms, and government buildings.

When Iowa Chief Justice Mark Cady issued on June 19, 2017, a supervisory order directing “all weapons are prohibited from courtrooms, court-controlled spaces and public areas of courthouses,” the county supervisors, claimed that was an “over-reach” by the court and conflicted with the new gun law. A new supervisory order by the Iowa Supreme Court, issued on December 19, 2017, will enable individual counties to seek to allow weapons in public areas of floors of a courthouse that are not totally occupied by the court system.

On July 1, 2011, a Mississippi law that enhanced concealed carry permit holders “shall also be authorized to carry weapons in courthouses except in courtrooms during a judicial proceeding [.]” Miss. Code Ann. § 97-37-7(2) (Rev. 2014). On November 28, 2011, the chancellors of the Fourteenth District issued an order prohibiting those permit holders from carrying weapons within 200 feet of any door to any courtroom. On June 7, 2018 the Mississippi Supreme Court in a divided opinion ruled that local judges can't restrict conceal carrying at courthouses.

The chancellors may have good and noble intentions, and their concerns are well founded. However, their personal fears and opinions do not trump, and cannot negate, constitutional guarantees. The ultimate outcome of today’s issue is reserved for the Legislature, not to be commandeered by unilateral local judicial proclamations. Courts must give more than lip service to the rule of law; they must insist upon its lawful application. Judges cannot allow their sense of superior knowledge, perceptions, or understandings to justify open defiance of the very laws that they are called upon to uphold. Indeed, we have held repeatedly that courts are guardians.

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8 NO. 2016-M-01072-SCT  RICKY W. WARD v. DOROTHY WINSTON COLOM
of the Constitution, not guardians of the courthouse. Without question, the orders defy existing law and seek to exercise a power that plainly is reserved for the other branches of government. The orders contain no authority to suggest otherwise. The law of Mississippi is clear: enhanced-carry licensees are permitted to possess a firearm in courthouses. No matter how well-intentioned, judges are without the power to limit enhanced concealed-carry licensees’ right to carry a firearm beyond courtrooms in the State of Mississippi. The orders are vacated.

In a well-reasoned dissent, Justice Leslie D. King noted,

The judiciary, and access thereto, implicates numerous constitutional rights. The safety of those compelled to be at the courthouse is necessary for the fair administration of justice; keeping safe and free from threat those people necessary to the judicial process, such as parties, criminal defendants, witnesses, and jurors, is crucial for the administration of justice, the integrity of the judicial system, and the preservation of the constitutional rights implicated at the courthouse.

While most statutes and court decisions recognize the right of judges to restrict who may carry a firearm into the courtroom the reality is that the firearms in the courthouse and the immediate areas surrounding the court facility pose the greatest danger. Trained courtroom security provide protection for the court personnel and litigants while inside the courtroom. However, once in the hallways or elevators or parking lots, those who were constrained within the courtroom now are free to act out their hostilities. And if one is prohibited from carrying a firearm into the courtroom, the weapon must be stored somewhere in a safe place. If courthouse security does not include gun boxes, the owner is likely to give the weapon to another family member or friend who is not as well trained or security conscious as the owner.

The American Bar Association should urge state legislatures to follow the example of the federal government, which prohibits the possession of firearms or dangerous weapons by any person in either a federal facility or federal court facility except those engaged in “the lawful performance of official duties by an officer, agent, or employee of the United States, a State, or a political subdivision thereof, who is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of law.” The term “Federal facility” is defined as “a building or part thereof

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9 Many courts are housed within buildings with multiple functions. For example, many court buildings also house non-judicial government offices, including law enforcement offices. In such multi-function buildings, judges and other building occupants are encouraged to collaborate to develop firearm policies and gun safety protocols that appropriately reflect the unique circumstances of the building as a whole, including its security needs.

Shooter Kills Man Outside Mississippi Courthouse. USA Today August 3, 2015
Man Given Life Term for Shooting Lawyer. Los Angeles Times, March 18, 2006

owned or leased by the Federal Government, where Federal employees are regularly present for the purpose of performing their official duties.” The term “Federal court facility” means the courtroom, judges’ chambers, witness rooms, jury deliberation rooms, attorney conference rooms, prisoner holding cells, offices of the court clerks, the United States attorney, and the United States marshal, probation and parole offices, and adjoining corridors of any court of the United States.

In a society that has become increasing volatile and where civility has diminished, the time has come for firearms to be banned from the courtroom, courthouses and court facilities except for those persons properly trained and charged with providing security at these locations. Where permitted, only a limited number of exemptions should be allowed. The judges and the law enforcement agency charged with providing security in the courthouse or judicial center should collaborate and decide who should be permitted to carry a firearm.

Respectfully submitted,

Joshu Harris
Chair, Standing Committee on Gun Violence
August 2019

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12 1 Deputy Dead, 1 Critical After Being Shot Outside County Courthouse. Oklahoma’s News 4, June 15, 2018
1. **Summary of Resolution(s).**

Urges state, local, territorial, and tribal governments to enact statutes, rules, or regulations and judges promulgate policies to limit the possession of firearms in court houses and judicial centers, including common areas within the buildings as well as grounds immediately adjacent to the justice complex, to those charged with courtroom and judicial center security or active law enforcement officers, unless they are a party to the action pending before the court. All persons permitted to carry firearms in the courtroom, courthouse or judicial center, should be required to train in firearm safety.

2. **Approval by Submitting Entity.** Approved by the Standing Committee on Gun Violence by conference call on September 11, 2018.

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

   Resolution was originally submitted in January 2019 for Midyear, but was withdrawn.

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

   The ABA has approved a number of policies regarding state and federal regulation of firearms. These include: Gun Violence Restraining Orders (17A118B), Court adoption of protocols, guidelines, and policies to protect the safety of domestic violence victims and court employees (96A120). The ABA also has policy expressly supporting the right of employers and private property owners to exclude firearms from their places of business or other private property (7M107).

5. **If this is a late report, what urgency exists which requires action at this meeting of the House?** NA

6. **Status of Legislation.** (If applicable) NA

7. **Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.**

   If adopted this policy can be the basis of advocacy at the federal and state level and possible amicus brief applications. It will also be incorporated into trainings that the Gun Violence Committee offers.

8. **Cost to the Association.** (Both direct and indirect costs) None
9. Disclosure of Interest. (If applicable) none

10. Referrals.
    Commission on Domestic & Sexual Violence: co-sponsored
    Commission on Youth at Risk: supported
    Criminal Justice Section: co-sponsored
    Government & Public-Sector Lawyers Division
    Health Law Section
    Judicial Division: co-sponsored
    Section of Civil Rights and Social Justice: co-sponsored
    Section of Family Law
    Section of Litigation
    Section of State and Local Government Law
    Standing Committee on Pro Bono and Public Service
    Tort Trial & Insurance Practice Section
    Young Lawyers Division

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)
    Joshu Harris, Chair
    1239 Crease St
    Philadelphia, PA 19125-3901
    (646) 621-4164

12. Contact Name and Address Information. (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)
    TBD
EXECUTIVE SUMMARY

1. Summary of the Resolution

Urges state, local, territorial, and tribal governments to enact statutes, rules, or regulations and judges promulgate policies to limit the possession of firearms in court houses and judicial centers, including common areas within the buildings as well as grounds immediately adjacent to the justice complex, to those charged with courtroom and judicial center security or active law enforcement officers, unless they are a party to the action pending before the court. All persons permitted to carry firearms in the courtroom, courthouse or judicial center, should be required to train in firearm safety.

2. Summary of the Issue that the Resolution Addresses

Increasingly, there have been occurrences where violence has erupted and firearms are used inside and outside of the courtroom as well as areas in the surrounding justice complex. When parties and court personnel believe court facilities are not safe, the integrity of the entire judicial process is compromised and undermined. Courtrooms and the judicial complex should be perceived as safe and secure environments. Most restrictions on possession of firearms within the courthouse complexes provide so many exceptions as to make such constraints meaningless. Tragically firearms have been wrested away from personnel who are authorized to carry firearms while providing courtroom security.

3. Please Explain How the Proposed Policy Position Will Address the Issue

Limited exceptions to any ban as to who may possess firearms in the courtroom and expanding the area of the ban to the entire judicial complex will provide both for the immediate safety of persons attending court proceedings as well as a cooling off period before persons have access to their personal firearms. Courtroom personnel who are both proficient in firearm safety as well as firearm use, will reduce the incidences of firearms seized from lawfully armed individuals.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None.