
THE BASICS OF OHIO FIREARMS LAWS

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To put it mildly, 2020 was interesting. The confluence of an election year, a pandemic, and extensive civil unrest and divisiveness have combined to impact almost every aspect of our economy and social interactions. One result has been a substantial increase in the demand for firearms, ammunition, and firearms training. According to Statista,¹ firearms sales for June 2020 were up 145.3% over the same period in 2019, and handgun sales alone were up 177.5%. According to an article posted by CNN in August 2020, the number of National Instant Criminal Background Check System (NICS) checks performed by the FBI for the sale, transfer, or permitting of firearms set an all-time record in June 2020 with more than 3.9 million NICS checks, followed closely by March and July with 3.7 and 3.6 million checks, respectively. This is a significant increase over July 2019, when the FBI conducted just over 2 million checks. In Ohio, applications for permits to carry concealed handguns are also up substantially, causing long delays in some counties. According to various news reports, the pace has continued throughout fall 2020.²

Whether you are interested in buying or selling firearms – or you are simply a citizen concerned about what people are permitted to do with their firearms – this article serves as a practical primer on firearms law in Ohio. Before we get to Ohio law, it is worth reviewing a few pertinent federal laws.

FEDERAL LAW

U.S. CONSTITUTION

In an election year, the Second Amendment to the U.S. Constitution is usually the subject of a “spirited debate.” Yet, despite all the threats and promises, this provision has remained unchanged for 244 years. The Second Amendment states:

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

A full discussion of the Second Amendment is beyond the scope of this article. Suffice it to say that the Supreme Court of the United States has upheld the Second Amendment on many occasions. One of the more prominent and recent Supreme Court decisions is *District of Columbia v. Heller*, 554 U.S. 570 (2008), which struck down a Washington, D.C. ordinance banning handguns and requiring other weapons to be rendered nonfunctional when kept at home. The majority and dissenting opinions are worth reading for anyone interested in a contemporary discussion of the Second Amendment.

¹ <https://www.statista.com/>

² https://www.guns.com/news/2020/11/02/oct-2020-nics-gun-numbers-jump-60-top-17m-for-year?fbclid=IwAR1Vb7-9828lW_tdOjBBJtclG5L7onY9i-jblJARbBy4fInU9d8PJsUiSiQ

Congress has passed several laws governing the sale and interstate transportation of firearms. The agency responsible for enforcing those laws is the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).³

NATIONAL FIREARMS ACT (NFA)

The first major federal firearms law was enacted in 1934 – the National Firearms Act (26 USC § 5801, *et seq.*). Supplemented and amended many times since its enactment, the NFA now contains, for example, the ban on the sale to private citizens of fully automatic weapons – the ones often seen on television or in movies – which, by simply depressing and holding the trigger, the gun fires continuously. It is unlawful to possess or sell “machineguns” unless, among other requirements, the firearm was manufactured and registered prior to 1986, the purchaser/owner of the firearm undergoes a more stringent federal background check, purchases a federal tax stamp, and obtains local law enforcement approval. *See*, generally, 18 USC § 922(o)(1), 26 USC § 5845(a)(6), 26 USC § 5845(b), and 26 USC § 5861(d).⁴ Furthermore, fully automatic firearms are banned for hunting use and at the State of Ohio’s public gun ranges.⁵ Similar federal requirements apply to the purchase and ownership of suppressors (i.e., so-called “silencers”).

GUN CONTROL ACT

Federal law also established a licensing system for firearms dealers, but there is no nationwide firearms registration system for private citizens or their firearms. The Gun Control Act of 1968 (18 USC § 921 *et seq.*) provides for the licensing of firearms dealers. (*See* 18 USC § 923.) An average citizen who seeks to purchase a firearm from a licensed dealer is required to complete a Form 4473. Beyond that, the purchase is generally governed by state law. Form 4473 is not a registration system; the form requires the purchaser to provide personal information and is kept by the dealer for at least 20 years in the event ATF or another law enforcement agency conducts an audit or an investigation of the dealer. If a person purchases a firearm from a private individual who is not a licensed dealer, the purchaser is not required in most states (including Ohio) to complete a Form 4473.

STATE LAW

OHIO CONSTITUTION

The Ohio Constitution is the original source of gun law in Ohio. There are two sections that apply to the right to own or bear arms. The first is more detailed than the Second Amendment to the U.S. Constitution. Ohio Constitution Article I, Section 4, states:

The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be kept up; and the military shall be in strict subordination to the civil power.

³ In January 2003, the Homeland Security Act of 2002 split the Bureau of Alcohol, Tobacco and Firearms (ATF) into two organizations with different functions. The Act transferred ATF and its law enforcement functions from the Department of the Treasury to the Department of Justice. ATF’s other functions remained within the Treasury Department. They became part of a new bureau called the Alcohol and Tobacco Tax and Trade Bureau (TTB). It regulates and collects taxes on trade and imports of alcohol, tobacco, and firearms within the United States.

⁴ One cannot own or use fully automatic weapons under Ohio law either, unless one has the required federal permit, and even then only consistent with other Ohio law. *See* ORC §§ 2923.17(A) and 2923.11(E) and (K)(1).

⁵ *See*, e.g., OAC 1501:31-9-03.

Article I, Section 1, is the inalienable rights section of the Ohio Constitution. It is also pertinent here:

All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.

The Ohio Constitution is clearly and strongly in favor of not only owning firearms, but also bearing them.

HOME RULE VERSUS PRE-EMPTION

Several sections of the Ohio Revised Code involve firearms, most of which fall within the Criminal Code. Before addressing the statutes themselves, it is important to know which government entities within the state can regulate firearms. It has been a difficult political struggle but, for the time being, the law is clear.

Most local governments long believed they had the legal right to regulate the purchase, ownership, and possession of firearms. They held that belief because of the “home rule” section of the Ohio Constitution, Article XVIII, Section 3. Larger cities, in which gun violence is typically more prevalent, wanted to regulate firearms more strictly to suit local conditions and, unlike most rural areas, have the political “will” to do so; however, that ability does not exist today.

In 2007, Ohio enacted ORC § 9.68. Commonly called the state pre-emption law, it is specific to firearm regulation. In essence, it precludes local governments from passing laws that conflict with firearms statutes passed by the state legislature. It includes a short prelude discussing the history of the “fundamental” right to keep and bear arms, then goes on to explain the rationale for making gun laws uniform. It even provides a cause of action against a political subdivision that attempts to enforce gun laws more restrictive than, and in conflict with, those contained in the Ohio Revised Code. Over the years there have been various challenges to the statute, but it has been upheld as constitutional. *See, e.g., Cleveland v. State*, 128 Ohio St. 3d 135 (2010).

PURCHASING AND CARRYING

For regulatory purposes, firearms are broken into different categories. For purposes of this article, a distinction is made between “handguns” and “long guns.” The technical definition of a handgun is contained in ORC § 2923.11(C), but, in short, handguns are capable of being fired with one hand (revolvers and pistols), whereas long guns are intended to be fired from the shoulder with both hands, such as traditional hunting firearms (rifles and shotguns).

Both handguns and long guns can be designed to function in various ways, including single shot, lever action, bolt action, pump action, revolver, and semi-automatic. The term “semi-automatic weapons” is often erroneously associated with “assault weapons” or fully automatic weapons. In fact, “semi-automatic” simply describes the manner in which some firearms operate – which can apply to handguns or long guns – and means that the gun ejects the spent cartridge and automatically reloads a round into the chamber with each pull of the trigger. Semi-automatic firearms are legal in Ohio.

To purchase a long gun in Ohio, the purchaser must be at least 18 years old and undergo an NICS check. To purchase a handgun in Ohio, the purchaser must be at least 21 years old and undergo the background check.⁶ There are no “waiting periods” in Ohio. The dealer simply calls an NICS phone

⁶ ORC § 2923.211 is the age limit statute, but in Ohio it is legal to possess weapons under the ages required to purchase them, and it also is legal to purchase ammunition.

number and relays information from the Form 4473 completed by the purchaser. Assuming there are no contrary records on file with NICS, purchase approval is immediately given.

Ohio does not require citizens to have a permit or license to purchase or own one or more handguns or long guns, and they need not be registered.

GUN SHOWS

No discussion of purchasing firearms would be complete without discussing gun shows. Buying a gun at an Ohio gun show is reputedly the most prevalent form of gun transaction in the state. Many sellers at Ohio gun shows face little regulation, but it is important to distinguish between private sellers and vendors with federal firearms licenses. Vendors with federal firearms licenses are still obligated to follow the same process they would complete for a sale at their own shop, including background checks and ATF-mandated forms. Otherwise, they risk prosecution under federal law. Beyond that, there is not much regulation.

At gun shows, unless one is a federally licensed firearms dealer, no separate state license is required to sell; record keeping is not mandatory; private sellers are not required to perform background checks; and no communication is required with the state or ATF. This more lenient process is probably not a serious problem if a well-meaning gun owner wants to sell a few guns out of a family collection. They could do that, legally, outside the setting of a gun show. The gun show simply provides a better opportunity for sellers because of the concentrated number of potential buyers. Online gun auction sites serve essentially the same purpose as a gun show, but with federal licensure and the requirements that come with it – background checks and the Form 4473.

Due to this laxity, some people feel that Ohio gun shows are a serious problem in the distribution of criminal firearms, although actual data is scant. There is the potential for abuse by high-volume private sellers who could be selling stolen guns or selling numerous guns to one individual in numbers that, if sold through licensed dealers, the ATF might flag. Gun shows in Ohio are prevalent, providing plenty of opportunity for abuse. The statistics quoted at the beginning of this article do not account for these types of private sales.

OPEN CARRY

Once someone owns a firearm, what are the carry regulations? Ohio is known as an “open carry” state. Whether one owns a handgun or long gun, it is legal in Ohio to carry it on your person, loaded, as long as it is not concealed. That is why the COVID-19 anti-mask, anti-lockdown or other protesters have been allowed to stand on the grounds of the Ohio Statehouse with their weapons openly displayed. It is likely that state laws in Oregon and Wisconsin are similar, accounting for media images of conflicts in Portland and Kenosha. Restrictions in Ohio as to where one can carry, open or otherwise, are discussed below.

CONCEALED CARRY

The subject of permitting to carry a concealed handgun is broad enough for its own article. Further, the Ohio Attorney General devotes a specific portion of its website to this topic, which contains a link to an excellent, practical, 24-page summary of the law in Ohio on subjects such as obtaining a license, where one is prohibited from carrying a concealed weapon, and when people can use guns in self-defense.⁷ For the purpose of this article, we will discuss only the basics.

ORC § 2923.125 is formally known as the concealed handgun license law. While some, including, surprisingly, the Ohio Attorney General’s brochure, continue to call the practice “CCW” (concealed

⁷ <https://ohio.gov/wps/portal/gov/site/residents/resources/concealed-carry>

carry of a weapon), that term is a misnomer; the statute does not include long guns or other weapons, like knives. It applies only to handguns.

To obtain a permit to carry a concealed handgun in Ohio, one must:

- file an application with the county sheriff;
- provide proof of handgun competency (classroom and hands-on, all of which are spelled out in the law);
- pay a fee;
- undergo a background check through the NICS; and
- verify the absence of a number of disqualifying facts about licensure in other states, confirm that you are not a user of controlled substances (as defined under 21 USC § 802),⁸ certify that you have not been dishonorably discharged from the military, verify your immigration status, verify that you have not been convicted of various crimes, and if you are subject to a protective order or are mentally incompetent.

There are numerous exceptions to this rule for law enforcement or military members. The permit is good for five years.

Ohio law restricts where you can carry a handgun, concealed or not, with or without a permit. So far as public property is concerned, handguns are not permitted in law enforcement offices, jails, courthouses, universities, airports,⁹ facilities for the care of the mentally ill, places of worship, licensed class D liquor establishments (bars) *if you are drinking*, government facilities, or school safety zones. Yes, bar-going teetotalers can still carry.¹⁰

Private property owners and those who lease property from the government can restrict open or concealed carry by posting conspicuous signs, but residential landlords cannot prohibit tenants from carrying if the tenant is lawfully permitted to do so. Employers also can prohibit open or concealed carry, but generally cannot prohibit their employees from leaving a weapon in their personal vehicle while they are on the employer's premises, so long as the gun and ammunition are locked in the trunk or glove compartment. It is clear that carrying a firearm, open or concealed, requires constant awareness of the regulations applicable to your surroundings.

It should be noted that there is zero tolerance for any combination of guns and alcohol. Any alcohol in your system whatsoever prohibits you from carrying a firearm in any manner and removes the legal privileges of concealed carry under all circumstances, even if one is not legally impaired.

TRANSPORTATION

Using or training with firearms often requires the owner to transport their firearms to a firing range or other facility. In Ohio, the transportation of firearms is governed by ORC § 2923.16. Compliance is important; some violations are felonies.

Firearms cannot, with very few exceptions, be transported while they are loaded and “accessible.”¹¹ Any firearm can be transported unloaded if it is in: (1) a closed case or package; (2) a compartment that can be accessed only by leaving the vehicle; or (3) plain sight in a secured holder made for that purpose (e.g., a gun rack in a truck). Long guns can be transported outside a closed case,

⁸ This statute includes marijuana. *See* 21 USC § 802(16)(A).

⁹ The statute addresses just the portion beyond the security checkpoints. *See* ORC § 2923.126(B)(1).

¹⁰ *See*, generally, ORC §§ 2923.121(e), 2923.122, and 2923.123.

¹¹ Due to space constraints and focus, this article does not go into detail about the law enforcement or military exceptions, or any “agricultural” exceptions.

compartment, or holder if they are in plain sight and stripped or the action is open or, for long guns not easily stripped or when the action cannot remain open, if they are in plain sight. The objective is to make sure weapons cannot easily and quickly be accessed and loaded. The legally safest practice is to transport them as far from the front seat as possible and in a closed case, at the very least.

Transportation of ammunition is also regulated. ORC § 2923.16(K) defines “unloaded.” In essence, it means that there is nothing in the gun, including a magazine or speed loader. In addition, the gun and ammunition need to be inaccessible, as defined, and the ammunition needs to be in separate “compartment” from the firearm. It is sufficient if the gun(s) and ammunition are in separate portions of a multi-compartment package or case, and those separate portions have their own fasteners. Again, the legally safest thing to do is to transport all of the equipment as far away from the front seat as possible, in a case separated into compartments, each with its own fastening system.

If you intend to transport a gun across state lines, there is a slight but important difference. Under the applicable federal law, the Firearm Owners’ Protection Act (FOPA),¹² in addition to being inaccessible and separate, the firearm and ammunition must be transported in a closed, secured trunk or a locked container. FOPA is pre-emptive, and it is designed to protect owners from prosecution when passing through multiple states, which may have different gun laws.

Lacking from ORC § 2923.16 is a clear statement of what happens when there is more than one person in the vehicle. In vehicles without trunks, the area behind the second or third row of seats may be accessible to a passenger who crawls back there. The prudent course is to always comply with FOPA or consider partially disassembling the weapon(s).

For ordinary citizens in ordinary on-road vehicles, long guns can never be transported while loaded, whether accessible or not. For those with a concealed carry permit, it is legal to have a loaded and accessible handgun in a vehicle. Under ORC § 2923.125, if a permit holder is legally carrying a loaded handgun in a vehicle and is stopped by a law enforcement officer, the permit holder is required to stay in the vehicle; tell the officer promptly that he/she has a concealed handgun permit and is carrying; follow all of the officer’s commands; and keep his/her hands in plain sight at all times (and, of course, nowhere near the gun).

SELF-DEFENSE

Violent crime has existed as long as humankind. When one is under threat or attack, to spare themselves physical harm, one has three choices – retreat, defend oneself, or some combination of the two.¹³ It is easy to comply with many firearms regulations because there is time to contemplate events such as purchase, transportation, and whether to carry. Self-defense is one area, however, in which gun owners have very little time to make decisions. Not only is the time to decide short, it has to be made under stress. The only way to begin to prepare for a self-defense situation is proper training and practice. Currently, Ohio has modest training requirements to obtain a concealed carry permit, but there have been efforts to eliminate even that minimal training. For example, in 2019, the Ohio legislature proposed a bill to eliminate the concealed carry license and training requirements and to permit carrying concealed long guns. As with similar attempts over the last two decades, the bill failed to become law. For those who are interested, advanced training courses are readily available throughout Ohio. Similar to the demand for guns and permits discussed at the outset of this article, the demand for training is at record highs this year.

¹² 18 USC § 926(A).

¹³ Retreating to a place where retreat becomes no longer feasible is often referred to as retreating to “the wall.” The ultimate retreat to the wall is reaching or being inside one’s residence or, possibly in Ohio, one’s vehicle.

This section is not meant to be an exhaustive analysis of the law of self-defense; we are focusing on the use of guns, and they can be used only in self-defense under a narrow set of circumstances. That is because the use of a firearm offensively or defensively always constitutes “deadly force.”

The right to use deadly force in self-defense is not statutory, but it is well entrenched in the case law. Two often-mentioned cases are *Marts* and *Melchior*, not only because they were decided in completely different eras, but also for their evolution of the law.

In *Marts v. State*, 26 Ohio St. 162 (1875), the Ohio Supreme Court held that the use of deadly force is justifiable when a person has an honest, reasonably held belief, even if mistaken, that he is in imminent danger of death or great bodily harm, and that his only means of escape is taking the life of his assailant. The “only means of escape” portion of the decision is important, because although the *Marts* court did not explicitly mention a duty to retreat, there is a long-held legal duty to retreat, if feasible, from an attacker who is employing deadly force. (There is no duty to retreat from non-deadly force.)

Fast-forwarding more than a century from *Marts*, we have *State v. Melchior*, 56 Ohio St. 2d 15 (1978). Although there were certainly other cases between them, the Ohio Supreme Court again addressed the elements of self-defense and modified or clarified them. The *Melchior* court held that the accused who uses deadly force must show that: (1) he was not at fault in creating the situation giving rise to the affray; (2) he had a bona fide belief that he was in imminent danger of death or great bodily harm; (3) his only means of escape from such danger was the use of such force; and (4) he did not violate any duty to retreat to avoid the danger. While those core elements remain the law today, there have been key developments.

One of the subtle distinctions the courts have addressed over time is whether the “belief of imminent bodily harm” test is objective or subjective. The “reasonableness” standard in *Marts*, for example, is absent from *Melchior*, indicating to some legal scholars that the test had shifted over time. In several cases, courts have referred to this as a subjective standard but continued to use the term “reasonable” belief of imminent harm. See, e.g., *State v. Williford*, 49 Ohio St. 3d 247 (1990). Courts have clarified that the test is subjective, but must be viewed from the perspective of the slayer, through a lens of what was reasonable to him or her under the circumstances. See, e.g., *State v. Koss*, 49 Ohio St. 3d 213, 215 (1990), in which the Ohio Supreme Court explicitly said the standard was a subjective one. See also, *State v. Reid*, 3d Ohio App 2d 215, 223 (1965). The burden of proof remains upon the defendant/slayer, with a key exception described below.¹⁴

Most people have heard of “stand your ground” laws. Those laws, highlighted in the Trayvon Martin case in Florida, give people in certain states the right to stand up to an imminent personal threat, no matter where it occurs, without the requirement to retreat. We need not linger on these laws because Ohio does not have such a statute. Given the Ohio legislature’s fixation on expanding gun rights, it may be just a matter of time, but that is a discussion for another day.

There are exceptions to the duty to retreat provided by ORC § 2901.09. This statute is Ohio’s version of the Castle Doctrine, so called because a person’s home is his “castle” and presumably the last place of retreat. The Castle Doctrine creates a rebuttable presumption that deadly force is justified in one’s home. In Ohio, vehicles also fall within the Castle Doctrine. The Castle Doctrine is not a license to kill,¹⁵ and using deadly force in defense of home or vehicle still requires the slayer to be in fear of imminent bodily harm. See, e.g., *State v. Brown*, 96 NE 3d 1128 (2017).

¹⁴ The Ohio jury charge on self-defense is 2 OJI CR 421.23.

¹⁵ *State v. Bundy*, 974 NE 2d 139 (2012).

The Castle Doctrine raises numerous practical questions for someone defending their home or vehicle. The codified doctrine does not require retreat, but the use of force varies depending upon the threat. The owner must immediately decide, under stress, whether an intruder intends only to steal a television, or whether they intend to harm the occupants. The lines are unclear, and the facts of each case will be different.

The Ohio legislature made an important change to the burden of proving self-defense under the Castle Doctrine. Under ORC § 2901.05, anyone using force to defend their home or vehicle is presumed innocent; the prosecutor is required to prove that one or more of the *Melchior* elements did not exist.

As it stands, one is presumed innocent when using proportionate force against someone who is unlawfully entering, or has entered, one's residence or vehicle. "Residence" refers to "a dwelling in which a person resides either temporarily or permanently or is visiting as a guest." Presumably, that could include a vacation rental, a hotel room, or even a tent on a camping trip.¹⁶ How one determines what is "proportionate" force under stress, possibly in the dark, is not simple. It could lead to tragedy if a drunken neighbor mistakenly enters the wrong apartment at 2:00 a.m. armed only with a box of doughnuts.

The definition of "vehicle" is broad: "a conveyance of any kind, whether or not motorized, that is designed to transport people or property." Because a vehicle need not be motorized, the term presumably could include a bicycle or any type of boat. The possibility of someone repelling an imminent assault from a bicycle or canoe will test the limits of what the statute means by "entering" a vehicle.

Defensive shootings often sound heroic and sometimes are, but the reality is that the aftermath can involve extensive civil and criminal litigation against the defensive shooter, and defensive shooters often suffer PTSD and other mental health issues. Instructor, police officer and author, Massad Ayoob, writes a highly regarded column for *American Handgunner* magazine about the circumstances surrounding defensive shootings.

CONCLUSION

A handful of topics should be avoided at company events, family dinners, and friendly gatherings, and gun ownership and use ranks high on that list. Whether based in law, personal experience, media slant, or otherwise, few topics are as capable of raising blood pressures as guns.

Regardless of the sensitivity of the topic, gun ownership is a reality in this country and has been since its very inception. If you choose to own a gun, you must do so within the purview of federal and state law.

In times of uncertainty and unrest, many people who have never owned a gun choose to become gun owners. It is our hope that all such people do so responsibly, safely, and within the boundaries of the law.

¹⁶ See *State v. Marsh*, 71 Ohio App. 3d 64 (1990).