



## A Concise Summary of Mississippi Weapon Laws By M. Reed Martz<sup>1</sup>

### Nature and Source of Right

The Mississippi Constitution,<sup>2</sup> like the United States Constitution,<sup>3</sup> acknowledges every citizen's right to keep and bear arms. "Arms" is commonly accepted to mean firearms (which is the primary weapon discussed in this paper), but the actual definition would include most any implement capable of inflicting serious bodily injury.<sup>4</sup> Unlike the United States Constitution, the Mississippi Constitution expressly reserves in the legislature the right to "regulate or forbid" the carrying of concealed weapons.<sup>5</sup>

### Registration, Licensing and Locks

Mississippi has no owner gun registration requirements,<sup>6</sup> except for silencers and armor piercing ammunition.<sup>7</sup> Dealers are required to keep a record of all pistol, bowie knife, brass knuckle, etc. sales.<sup>8</sup> The list is open for public inspection.<sup>9</sup> Subject to federal background checks from licensed firearm dealers, no records are required to be kept regarding any transactions by private individuals. This is not to say that such information should not be kept,<sup>10</sup>

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<sup>1</sup> M. Reed Martz is an attorney and member of the firm Freeland Shull, PLLC. Reed is an affiliated attorney with the Armed Citizens' Legal Defense Network, LLC (<http://www.armedcitizensnetwork.org/>), the United States Concealed Carry Association (<https://www.usconcealedcarry.com/>) and the American Knife & Tool Institute (<http://www.akti.org/>). Reed has received extensive education and training in the justifiable use of deadly force and weapons-related issues. He is admitted to practice in Mississippi and Alabama.

<sup>2</sup> Mississippi Constitution, Section 12. "The right of every citizen to keep and bear arms in defense of his home, person, or property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but the legislature may regulate or forbid carrying concealed weapons."

<sup>3</sup> The Second Amendment to the United States Constitutions reads: "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."

<sup>4</sup> Black's Law Dictionary, 6<sup>th</sup> ed., defines "arms" as "Anything that a man wears for his defense, or takes in his hands as a weapon."

<sup>5</sup> See footnote 2.

<sup>6</sup> The concealed weapon license statute, § 45-9-101, provides at subsection (18): "Nothing in this section shall be construed to require or allow the registration, documentation or providing of serial numbers with regard to any stun gun or firearm."

<sup>7</sup> § 97-37-31 ("All such instruments or devices shall be registered with the Department of Public Safety.")

<sup>8</sup> § 97-37-11 ("Every merchant or dealer or pawnbroker . . . shall keep a record of all sales of such weapons sold, showing the description of the weapons, the name of the purchaser, and the description of weapons and date of sale.")

<sup>9</sup> *Ibid.* ("This record to be opened to public inspection at any time to persons desiring to see it.")

<sup>10</sup> Mississippi law prohibits the transfer of deadly weapons to persons under the age of eighteen (§ 97-37-13) and federal law prohibits transfer to some out-of-state residents (18 U.S.C. § 922(a)(5)). This author suggests that in sales, the seller "trade paper" with the buyer, essentially requiring the buyer to show proof of residence and age as well as sign a certification that the buyer is not prohibited from purchasing or owning the firearm. The seller would also be well advised to retain a record of the date of the transaction, purchase price, firearm make, model and serial number, and the name of the buyer. The seller has no duty to perform an independent investigation of the buyer's representations. In trades, both parties should "trade paper" of this sort.

only that it is not required. Mississippi has no licensing requirements but does provide for a license to carry a concealed pistol (discussed more thoroughly infra). No license is required to purchase or own a firearm.<sup>11</sup> Mississippi has no requirement that owners employ gun locks.

## **Waiting Period**

Mississippi has no waiting periods on the purchase of firearms. Firearms purchased from a dealer must first be approved under the federal National Instant Criminal Background Check System required by Brady Handgun Violence Prevention Act of 1993.<sup>12</sup>

## **Age Requirements**

It is unlawful to sell, give or loan a “deadly weapon” to a person under the age of eighteen.<sup>13</sup> Additionally, a parent who allows a child under eighteen to own or carry concealed a deadly weapon may be charged with a misdemeanor.<sup>14</sup> Likewise, it is generally illegal for a person under eighteen to have a “handgun” in his possession.<sup>15</sup> A number of exceptions apply. It is not a violation if the minor is: (1) attending hunter or firearm safety courses; (2) practicing or target shooting; (3) competing or practicing for a non-profit organization’s performance; (4) hunting with a valid license;<sup>16</sup> (5) traveling with an unloaded handgun for an approved activity;<sup>17</sup> (6) on land which is under the control of an adult who gives the youth permission to have the handgun;<sup>18</sup> or (7) using the firearm in lawful self-defense.<sup>19</sup> Attention is drawn to the distinction between “deadly weapons” and “handgun” as used in these two statutes. The term “deadly weapon” is discussed in depth in the section on unlicensed carry of a firearm.

## **In The Workplace**

While there seems to be no statutory limitation on a business owner’s right to prohibit possession of weapons within the business’ building, unless possession is limited by other law,<sup>20</sup> an employer (public or private) may not prevent employees from bringing firearms in locked,

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<sup>11</sup> Additional restrictions apply to Class III weapons such as silencers and short barreled guns which are regulated under federal law.

<sup>12</sup> Public Law 103-159. See <http://www.fbi.gov/hq/cjisd/nics/nicsindex.htm> for further information. Those persons holding a valid Mississippi concealed carry license do not have to complete the instant background check. See <http://www.atf.gov/firearms/brady-law/permit-chart.html>.

<sup>13</sup> § 97-37-13.

<sup>14</sup> § 97-37-15.

<sup>15</sup> § 97-37-14(1). See also § 97-37-17(3) (“It shall be a felony for any person to cause, encourage or aid a minor who is less than eighteen (18) years old to possess or carry, whether openly or concealed, any gun, rifle, pistol or other firearm of any kind, or any dynamite cartridge, bomb, grenade, mine or powerful explosive on educational property.”) No offense involving the use or possession of a firearm by a child who has reached his fifteenth birthday which would otherwise be a felony may be transferred to youth court. § 43-21-159(7).

<sup>16</sup> No hunting license is required for children under the age of sixteen. MISS. OUTDOOR DIGEST page 6 (2009-2010 ed.).

<sup>17</sup> § 97-37-14(2).

<sup>18</sup> § 97-37-14(2)(b).

<sup>19</sup> § 97-37-14(3).

<sup>20</sup> § 45-9-55(4) (“This section does not authorize a person to transport or store a firearm on any premises where the possession of a firearm is prohibited by state or federal law.”)

privately-owned<sup>21</sup> vehicles in the parking lot,<sup>22</sup> unless general public access to the lot is limited by a gate, security station or other means.<sup>23</sup> An employer is immune from civil liability for damages which result from firearms permitted by this law.<sup>24</sup>

## **Educational Property**

“Educational property” is precisely defined and includes almost all public or private primary and secondary schools, including colleges.<sup>25</sup> Generally, it is felony for any person to possess or carry firearms or explosives on educational property,<sup>26</sup> or to encourage anyone under eighteen to do so.<sup>27</sup> It is a misdemeanor to carry an air rifle, knife or other “sharp-pointed or edged instrument” except for unaltered nail files, food utensils or tools used for food preparation, instruction or maintenance,<sup>28</sup> or to encourage anyone under eighteen to do so.<sup>29</sup>

It is legal for a non-student to possess a firearm on educational property so long as the firearm remains in a motor vehicle and is not displayed in a threatening manner.<sup>30</sup> The prohibitions mentioned here do not apply to ceremonial or school programs, armed forces personnel and law enforcement, home schools, shooting event competitors, guards, mail carriers, or weapons not prohibited by § 97-37-1 (deadly weapons statute, discussed *infra*) in a parent’s motor vehicle.<sup>31</sup> Schools are required to post a copy of this Code section in public view.<sup>32</sup> See *infra* the discussion about “campus carry” with a firearm’s license endorsement.

## **Crimes Employed Using A Firearm; Felons**

Anyone using a firearm, including just displaying the firearm, during the commission of a crime shall be sentenced to an additional five (5) years in prison, without the possibility for

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<sup>21</sup> § 45-9-55(3). Employers may prohibit firearms in company vehicles.

<sup>22</sup> § 45-9-55(1).

<sup>23</sup> § 45-9-55(2).

<sup>24</sup> § 45-9-55(5) (“A public or private employer shall not be liable in a civil action for damages resulting from or arising out of an occurrence involving the transportation, storage, possession or use of a firearm covered by this section.”)

<sup>25</sup> § 97-37-17(1)(a) (“any public or private school building or bus, public or private school campus, grounds, recreational area, athletic field, or other property owned, used or operated by any local school board, school, college or university board of trustees, or directors for the administration of any public or private educational institution or during a school-related activity” and Oakley Youth Development Center, operated by the Department of Human Services, but excluding “sixteenth section school land or lieu land on which is not located a school building, school campus, recreational area or athletic field”)

<sup>26</sup> § 97-37-17(2).

<sup>27</sup> § 97-37-17(3).

<sup>28</sup> § 97-37-17(4).

<sup>29</sup> § 97-37-17(5).

<sup>30</sup> § 97-37-17(6). This exception does not apply to students. See OP. ATT’Y GEN., Dock 1997-0251 (05/02/1997) (“it is the opinion of this office that a student may not possess a weapon in a motor vehicle on educational property.”) *All three* criteria (non-student, within motor vehicle, no exhibition in threatening manner) must be met. SEE OP. ATT’Y GEN., 2011 WL 1500842 (03/21/2011).

<sup>31</sup> § 97-37-17(7).

<sup>32</sup> § 97-37-17(8).

reduction or suspension.<sup>33</sup> If such person is a convicted felon, the sentence is an additional ten (10) years.<sup>34</sup>

Unless pardoned, expunged, or relieved from disability, a felon, whether convicted in Mississippi or elsewhere, may not possess a firearm or other designated weapon.<sup>35</sup> While Mississippi offers a procedure whereby a convict's right to own a firearm may be restored by obtaining a "certificate of rehabilitation",<sup>36</sup> it would appear there is no such relief from federal restrictions unless the person receives a full and complete pardon, an expungement of the conviction, or restoration of his civil rights from the Governor.<sup>37</sup> This is because although a state

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<sup>33</sup> § 97-37-37(1).

<sup>34</sup> § 97-37-37(2).

<sup>35</sup> § 97-37-5(1) ("It shall be unlawful for any person who has been convicted of a felony under the laws of this state, any other state, or of the United States to possess any firearm or any bowie knife, dirk knife, butcher knife, switchblade knife, metallic knuckles, blackjack, or any muffler or silencer for any firearm . . ."); 18 USC § 922(g)(1).

<sup>36</sup> § 97-37-5(3) ("A person who has been convicted of a felony under the laws of this state may apply to the court in which he was convicted for a certificate of rehabilitation. The court may grant such certificate in its discretion upon a showing to the satisfaction of the court that the applicant has been rehabilitated and has led a useful, productive and law-abiding life since the completion of his sentence and upon the finding of the court that he will not be likely to act in a manner dangerous to public safety.")

<sup>37</sup> 18 USC § 922(g)(1) prohibits anyone who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce. A "crime punishable by imprisonment for a term exceeding one year" is defined in 18 USC 921(20). 18 USC 921(20) further provides: "Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms."

"Civil rights" is widely accepted as the rights to vote, to hold office, and to serve on juries. *U.S. v. Chenowith*, 459 F.3d 635, 638 (5th Cir. 2006); *Buchmeier v. United States*, 581 F.3d 561, 564 (7th Cir. 2009), citing *United States v. Williams*, 128 F.3d 1128, 1134 (7th Cir.1997). If these three rights are restored, "then a conviction does not carry federal fire-arms disabilities." *Buchmeier*, 581 F.3d at 564.

Those convicted of a federal offense must seek federal restoration. While 18 U.S.C. § 925(c) does pay lip service to removal of the disability, the Attorney General has delegated the duty to the Bureau of Alcohol, Tobacco, Firearms and Explosive (BATFE). 27 C.F.R. § 478.144. Congress has steadfastly refused to fund this restoration program, thus effectively (and intentionally) denying it any effectiveness. Public Law 103-329 (1994) ("none of the funds appropriated herein shall be available to investigate and act upon applications for the relief from Federal firearms disabilities under 18 U.S.C. 925 (c)"). The Courts have refused to take up administration of the program. See *U.S. v. McGill*, 74 F.3d 64 (5<sup>th</sup> Cir. 1996) ("The court concludes "that relief from federal firearms disabilities for individuals under Sec. 925(c) is suspended by the last three appropriations acts" and that "Congress has suspended the relief provided in Sec. 925(c) for individuals.") What effect *District of Columbia v. Heller*, 554 U.S. 290 (2008) (recognizing 2<sup>nd</sup> Amend. an individual right) and *McDonald v. Chicago*, 561 U.S. \_\_\_\_ (2010) (incorporating 2<sup>nd</sup> Amend. to states) may have on this restoration program has yet to be seen. Cf. *Supreme Court Decision May Permit Felons To Own Guns*, <http://www.nysun.com/national/supreme-court-decision-may-permit-felons-to-own/80870> (last visited August 7, 2010).

The author did not find any cases addressing whether Mississippi's "certificate of rehabilitation" is the functional equivalent of a restoration of a person's civil rights. It does not follow that a federal law designed to allow convicts to regain their right to own firearms if permitted by state law would nevertheless prohibit it unless other rights unrelated to the one at issue are also restored. Yet, that appears to be exactly the case. In *United States v. Thomas*, 991 F.2d 206, 214-15 (5th Cir. 1993), the court said "In the absence of the restoration of essentially all civil rights of the convicted felon as defined for purposes of § 921(a)(20), the felon's isolated right to possess a firearm is of no import whatsoever. . . . **The isolated right to possess firearms, in the absence of restoration of**

conviction may be “rehabilitated”, the federal prohibition would still apply in the absence of a full restoration of a person’s civil rights, expungement of the conviction, or a pardon.<sup>38</sup>

It is, of course, illegal to knowingly or intentionally possess, receive, sell or dispose of a stolen firearm.<sup>39</sup>

### **Exhibition of a Weapon**

Unless being used in necessary self-defense, no one may display a deadly weapon in a threatening manner in the presence of three or more persons, or use a weapon unlawfully in a fight.<sup>40</sup>

### **Silencers and Armor Piercing Ammunition**

Mississippi has a stated prohibition on the possession, manufacture or sale of “silencers” (a/k/a suppressors) and armor piercing ammunition.<sup>41</sup> There is a notable exception, however, in that possession is permitted for such devices “authorized under federal law.”<sup>42</sup> Thus, with the proper federal tax stamp, suppressors and short barreled rifles and shotguns are legal.

### **Stun Guns**

An astute reader will notice that the statute authorizing one to carry a concealed pistol or revolver<sup>43</sup> also includes “stun gun” on the list. This is curious as there appears to be no law prohibiting one from carrying a stun gun without a permit.<sup>44</sup>

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**such core civil rights as well, does not immunize convicted felons from § 922(g) guilt.** If the felon has not ‘had civil rights restored,’ it simply does not matter what the state law provides concerning possession of firearms.”

Not all felony convictions in Mississippi deprive a person of his right to vote. MISS. CODE ANN. § 23-15-19 states that a person convicted “of any crime listed in Section 241, Mississippi Constitution of 1890, shall not be registered” to vote. Section 241 lists the following disqualifying crimes: “murder, rape, bribery, theft, arson, obtaining money or goods under false pretense, perjury, forgery, embezzlement or bigamy.” However, it seems that any felony conviction prevents a person from serving as a juror, MISS. CODE ANN. § 13-5-1 (disqualifying anyone convicted of an “infamous crime”, a term which has been found to mean a felony).

While it is possible for a convict to regain his right to vote one of three ways (by pardon from the Governor, executive order restoring civil rights from the Governor, or a bill of suffrage passed by the Legislature with a two-thirds majority (section 253 of Mississippi Constitution)), it would seem only the pardon or executive order would be sufficient to restore all the “civil rights” necessary under federal law. This is because there is no equivalent process by which a person can be relieved of the disability related to jury service or holding of public office.

Expungement of a felony conviction is available in a limited number of circumstances. See <http://expungement.uslegal.com/expungement-of-criminal-records/mississippi-expungement-law/> (last visited August 15, 2010).

<sup>38</sup> See preceding footnote. As discussed, a state felony conviction, even where the convict is “rehabilitated”, still prevents firearm ownership or possession under federal law 18 USC § 922(g)(1).

<sup>39</sup> § 97-37-35.

<sup>40</sup> § 97-37-19.

<sup>41</sup> § 97-37-31.

<sup>42</sup> Ibid.

<sup>43</sup> § 45-9-101.

<sup>44</sup> Cf. § 97-37-1 and § 97-37-5 (prohibiting felons from possessing “any firearm or any bowie knife, dirk knife, butcher knife, switchblade knife, metallic knuckles, blackjack, or any muffler or silencer for any firearm.”)

## Pepper/OC Spray

Mississippi has no statute prohibiting or requiring any licensure for the carrying of “pepper” or oleoresin capsicum (OC) spray, sometimes referred to as “Mace”, which is actually a brand name and not a type of product. Nor does Mississippi limit the size of the container which may be employed.

## Pocket Knives

Mississippi law does not limit the length of a knife blade, nor address “assisted opening” devices. Rather, the only type of edged weapons which are expressly prohibited from being carrying concealed, in whole or part, are dirks, bowie knives, butcher knives and switchblades.<sup>45</sup> This prohibition is also set out again in a separate section pertaining to convicted felons.<sup>46</sup> Note that there are special provisions for educational property, as discussed in the section entitled “Educational Property.” In no statute found by the author is the carrying of a traditional pocket knife, e.g. not a bowie or dirk, prohibited, meaning that a pocketknife is not per se a “deadly weapon” whose possession concealed in whole or in part is prohibited. However, caution is suggested since “the fact that a weapon is not specifically mentioned in the [deadly weapon] statute does not automatically exclude it as a deadly weapon.”<sup>47</sup>

There appear to be no cases in Mississippi addressing whether “assisted opening” knives are switchblades. Many other states have found such devices are not “switchblades” since manual activation of the blade, not a button located on the handle, is what initiates the opening process.<sup>48</sup> However, Mississippi has defined a switchblade as “a knife containing a blade or blades which open automatically by the release of a spring or a similar contrivance.”<sup>49</sup> No reference to the location of the button is mentioned. Arguably assisted opening knives would not

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<sup>45</sup> § 97-37-1(1).

<sup>46</sup> § 97-37-5(1).

<sup>47</sup> OP. ATT’Y GEN., Dock 1982-184 (07/13/1982), citing *Skate v. Sims*, 80 Miss. 381, 31 So. 907 (1902). The Opinion continues:

Thus, the deadliness for a weapon is determined by the facts of each case. On weapons not specifically mentioned in the statute, we cannot rule if carrying it concealed would be a crime. For example: A razor has been held not to be a deadly weapon within Section 97-3-71; *Brown v. State*, 105 Miss. 367, 62 So. 353 (1913). It does not matter under our statute if a knife is a fixed blade or capable of being folded or unfolded and locked; it is whether it falls within the description of deadly weapons in Section 97-3-71 that matters. There is no one definition of “deadly weapon.” Common sense would tell most of us that a straight razor is deadly, yet our courts have ruled it is not. Because of this case by case approach, we cannot render a definition of deadly weapons.

<sup>48</sup> See The Switchblade Knife Act of 1958, 15 U.S.C. Section 1241, defining a switchblade as any knife having a blade which opens automatically by hand pressure applied to a button or other device in the handle of the knife, or by operation of inertia, gravity, or both. California, Illinois, Michigan, and Texas, have all ruled one-hand opening knives are not switchblades because they do not possess the activating button or device on the handle of the knife. See also TEXAS PENAL CODE § 46.01(11) (“Switchblade knife” means any knife that has a blade that folds, closes, or retracts into the handle or sheath, and that: (A) opens automatically by pressure applied to a button or other device located on the handle; or (B) opens or releases a blade from the handle or sheath by the force of gravity or by the application of centrifugal force.)

<sup>49</sup> § 97-37-17(c) (pertaining to possession of weapons by students on educational property).

fall into this classification since most employ torsion bars and not a traditional “spring”; the ambiguity is whether a torsion bar is a “similar contrivance”.

Although no exhaustive search has been conducted, it is known that certain jurisdictions have restrictions on the blade length which can lawfully be concealed.<sup>50</sup>

## **Concealed Carry**

### **A. Unlicensed Carry/Deadly Weapon Defined**

Mississippi permits a person over the age of eighteen to carry, concealed or in plain view, a firearm or other “deadly weapon” in their home, place of business and vehicle,<sup>51</sup> or while participating in or traveling to a “legitimate weapon-related sports activity” without a permit.<sup>52</sup> The term “deadly weapon” is not defined in the statute and may differ from the list of items that are otherwise prohibited from being carried concealed in whole or in part.<sup>53</sup> A “deadly weapon” is widely accepted “as any object, article or means which, when used as a weapon under the existing circumstances is reasonably capable of producing or likely to produce death or serious bodily harm to a human being upon whom the object, article or means is used.”<sup>54</sup>

Whether a stun gun is a deadly weapon seems to be unanswered.<sup>55</sup>

Upon arrest for carrying a concealed weapon, the weapon may be seized and upon conviction, forfeited.<sup>56</sup>

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<sup>50</sup> See <http://www.handgunlaw.us/documents/USKnife.pdf> (Tupelo: 3.5 inches; Vicksburg: 4 inches) (last visited August 15, 2010). The author’s home, Oxford, has no length limitation.

<sup>51</sup> § 97-37-1(2) (“It shall not be a violation of this section for any person over the age of eighteen (18) years to carry a firearm or deadly weapon concealed in whole or in part within the confines of his own home or his place of business, or any real property associated with his home or business or within any motor vehicle.”)

<sup>52</sup> § 97-37-1(3) (“‘legitimate weapon-related sports activity’ means hunting, fishing, target shooting or any other legal sports activity which normally involves the use of a firearm or other weapon.”)

<sup>53</sup> *Cf.* § 97-37-1(1) (“any bowie knife, dirk knife, butcher knife, switchblade knife, metallic knuckles, blackjack, slingshot, pistol, revolver, or any rifle with a barrel of less than sixteen (16) inches in length, or any shotgun with a barrel of less than eighteen (18) inches in length, machine gun or any fully automatic firearm or deadly weapon, or any muffler or silencer for any firearm”; also included are imitation firearms if used against a person); § 97-3-117 (“any pistol or other firearm or imitation thereof or other dangerous or deadly weapon, including a sawed-off shotgun, shotgun, machine gun, rifle, dirk, bowie knife, butcher knife, switchblade, razor, blackjack, billy, or metallic or other false knuckles, or any object capable of inflicting death or serious bodily harm”); § 97-39-11 (“any rifle, shotgun, sword, sword-cane, pistol, dirk, bowie-knife, dirk-knife, or any other deadly weapon”); § 97-37-19 (“any dirk, dirk-knife, sword, sword-cane, or any deadly weapon, or other weapon the carrying of which concealed is prohibited”). Absent from the list of prohibited items are pocket knives, stun guns and oleoresin capsicum a/k/a pepper spray.

<sup>54</sup> *Davis v. State*, 530 So. 2d 694, 700 (Miss. 1988). Whether an instrument is deadly is fact dependent, to be decided by a jury. *Shanklin v. State*, 290 So. 2d 625, 627 (Miss. 1974). Non-typical items may be weapons if employed in a harmful manner. See also footnote 47.

<sup>55</sup> *Russell v. State*, 832 So.2d 551, 554 (Miss. Ct. App. 2002) (“even if the stun gun is not found to be a deadly weapon, whether or not the repeated use of a stun gun can cause serious bodily injury is an issue the jury can resolve”; error for trial judge to instruct jury stun gun was deadly weapon).

<sup>56</sup> § 97-37-3(a).

The Mississippi Code provides a number of affirmative defenses<sup>57</sup> for a person charged with carrying a concealed deadly weapon. Perhaps the most important defense is that the accused was threatened and had a good reason to fear an attack was imminent.<sup>58</sup> Additionally, a person may show he “was traveling and was not a tramp”.<sup>59</sup> The “travel” intended by this section is “travel of such distance as to take one beyond the circle of his friends and acquaintances.”<sup>60</sup> Other defenses are that the person was a law enforcement agent or mail carrier in the discharge of his duties, was in lawful pursuit of a felon, or was engaged in legitimate sports.<sup>61</sup>

Concealed weapon licenses are also available for a variety of guards, private security services.<sup>62</sup> No license is required for a multitude of law enforcement related positions (e.g., investigators, judges, district attorneys, etc.) if the bearer has completed a weapons training course.<sup>63</sup> Full time out-of-state law enforcement officers need no permit either.<sup>64</sup>

Mississippi case law provides that the language of “concealed in whole *or in part*” is taken literally.<sup>65</sup> Although only dicta in a concurring opinion, there is the suggestion that a weapon is partially concealed even when suspended by a nothing more than a thong around one’s neck.<sup>66</sup> Mississippi does not expressly recognize unlicensed “open carry” of weapons.<sup>67</sup>

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<sup>57</sup> *Powell v. State*, 184 So.2d 866, 868-69 (Miss. 1966) (“the burden of proving either of said defenses shall be on the accused”).

<sup>58</sup> § 97-37-9(a).

<sup>59</sup> § 97-37-9(b).

<sup>60</sup> *Morgan v. Town of Heidelberg*, 246 Miss. 481, 491, 150 So.2d 512, 516 (1963) (no jury instruction on defense appropriate where “Morgan was in his home community, only a few miles from his residence.”) In *Patterson v. State*, 251 Miss. 565, 572, 170 So.2d 635, 638 (1965) the defendant was acquitted because the evidence revealed he had “set out on a journey which did take him beyond the scope of his friends, and that his journey was a legitimate one in which he had a vital interest, related solely to his business, and he was not violating any statutes relating to the carrying of a concealed weapon.” Likewise, a business-related trip of eighty-five miles was sufficient travel. *Joseph v. State*, 299 So.2d 211, 213 (Miss.1974). However, *In re: L.M., S.T. & D.S. v. State*, 600 So.2d 967, 971 (Miss. 1992) held “*Patterson* and *Joseph* demonstrate that more is needed to establish the ‘traveling’ defense than merely leaving one county and entering another.” In a concurring opinion, then Chief Justice Noble seemed to disagree to some degree, stating “I note, without advocating an abrogation of the rule, that in these modern times when people reside in cities, with thousands of inhabitants, they frequently do not know their neighbors in the next block and certainly not in the next neighborhoods or across the city. Within two or three blocks, they are outside the circle of their friends.” *Id.* at 972.

<sup>61</sup> See § 97-37-9(c) - (i) for a complete list.

<sup>62</sup> § 97-37-7(1).

<sup>63</sup> § 97-37-7(2).

<sup>64</sup> § 97-37-7(3).

<sup>65</sup> *Clark v. City of Jackson*, 124 So. 807 (Miss. 1929) (concealed with defendant’s feet); *Daniels v. City of Gulfport*, 112 So. 686 (Miss. 1927) (pistol under arm but plainly apparent through employment of officer’s flashlight).

<sup>66</sup> *In re: L.M., S.T. & D.S. v. State*, 600 So.2d 967, 971 (Miss. 1992) (Noble, concurring) (“I discovered that carrying a concealed weapon in whole or in part even meant that a revolver carried in a holster on a man’s hip was a partially concealed weapon, riding a horse with a saddle holster and revolver under a person’s leg violated the statute; and that covering a weapon with feet, hands, or clothing meant that the weapon was concealed under the interpretation of the statute. Conceivably, carrying a revolver suspended from the neck by a leather thong could be partially concealing it.”)

<sup>67</sup> *Cf.* § 45-9-101(18) (“nothing in this section shall be construed to allow the open and unconcealed carrying of any stun gun or a deadly weapon as described in Section 97-37-1, Mississippi Code of 1972.”) For this reason, many have termed Mississippi a licensed open carry state. <http://www.opencarry.org/ms.html> (last visited August 18, 2010). Basically, the argument is that a holstered but visible handgun cannot be both concealed and unconcealed

Therefore, a citizen who desires to carry a stun gun,<sup>68</sup> pistol or revolver anywhere other than his home, car or workplace would be wise to obtain a concealed carry license<sup>69</sup> or risk being charged with carrying a concealed weapon, even one plainly visible and openly identifiable.

## B. Licensed Carry

Mississippi is a “shall issue” state, meaning that an applicant who meets all statutory criteria must be issued a license to carry a concealed pistol or revolver or stun gun.<sup>70</sup> Licenses are good for a period of five years and may be renewed through the mail every other renewal period.<sup>71</sup> The cost is \$100 plus an additional \$32 for fingerprinting.<sup>72</sup> Renewals cost \$50 plus fingerprint charges.<sup>73</sup> A license may be suspended upon arrest or formal charge of a crime which would disqualify such person from having a license until the case is resolved,<sup>74</sup> and will be revoked if the licensee becomes disqualified under this or another provision.<sup>75</sup>

The basic criteria for issuance of concealed weapon license are: at least twelve months residency (subject to exceptions); at least twenty-one years of age; no physical infirmity which prevents the safe handling of a stun gun, pistol or revolver; no felony convictions; not a chronic or habitual user of controlled substances or alcoholic beverages to the extent that his normal faculties are impaired; desire for legal means to carry concealed weapon in defense;<sup>76</sup> not mentally incompetent; no adjudication of guilt withheld or imposition of sentence suspended on any felony in the preceding three years; not a fugitive; and not disqualified from possession of weapon under federal law.<sup>77</sup> Licensees must carry the license at all times as the weapon, and

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simultaneously. If the dicta in the preceding paragraph is correct that a holstered gun is partially concealed, then a concealed weapon license permits its carry in that condition. If, on the other hand, a holstered handgun is not concealed in whole or in part, then its carry is prohibited by § 97-37-1. See <http://forum.opencarry.org/forums/showthread.php?60162-OCDO-Opinion-2007-1-%28Mississippi-open-carry%29> (last visited July 22, 2010). The reader is reminded that a person may carry, concealed in whole or in part, a firearm within the confines of his home, business or automobile. See § 97-37-1(2) and footnote 51.

<sup>68</sup> As discussed, there appears to be no statute criminalizing the carrying of a stun gun and thus no need to obtain a concealed carry license unless one so desires out of an abundance of caution. See footnotes 44 and 55.

<sup>69</sup> § 45-9-101.

<sup>70</sup> § 45-9-101(2) (“The Department of Public Safety *shall issue* a license if the applicant: . . .”) (emphasis added). By contrast, ten states are “may” issue, meaning that issuance of a license is at least partially discretionary with the issuing agency. [http://en.wikipedia.org/wiki/Concealed\\_carry\\_in\\_the\\_United\\_States#May-Issue](http://en.wikipedia.org/wiki/Concealed_carry_in_the_United_States#May-Issue) (last visited August 21, 2010). Alaska, Arizona and Vermont require no permit at all. *Id.*

<sup>71</sup> §§ 45-9-101(1)(a) and 45-9-101(12) (“The first renewal may be processed by mail and the subsequent renewal must be made in person. Thereafter every other renewal may be processed by mail to assure that the applicant must appear in person every ten (10) years for the purpose of obtaining a new photograph.”)

<sup>72</sup> § 45-9-101(5)(c); [http://www.dps.state.ms.us/dps/dps.nsf/webpages/firearms\\_individual?OpenDocument](http://www.dps.state.ms.us/dps/dps.nsf/webpages/firearms_individual?OpenDocument) (last visited August 15, 2010).

<sup>73</sup> § 45-9-101(12)(i). The fees are waived for honorably retired law enforcement officers and reduced for persons over sixty-five years of age. *Id.* at (ii) and (iii).

<sup>74</sup> § 45-9-101(3).

<sup>75</sup> § 45-9-101(11). The Department of Public Safety “may deny a license if the applicant has been found guilty of one or more crimes of violence constituting a misdemeanor” and/or finished his sentence for such crime within the preceding three years, or is arrested for a disqualifying crime during the application process. § 45-9-101(3). Persons convicted of felonies are not allowed to own guns. See section entitled “Crimes Employed Using a Firearm; Felons.”

<sup>76</sup> Mississippi being a “shall issue” state, the applicant’s need is presumed and no affirmative showing required.

<sup>77</sup> § 45-9-101(2)(a)-(l). This is only a general list. The actual statutory text should be reviewed for exceptions.

apparently also an additional form of identification.<sup>78</sup> Licensees must also notify the Department of Public Safety, in writing, within thirty days of any change in permanent address or loss of the license.<sup>79</sup>

Effective July 1, 2011, MISS. CODE ANN. § 97-37-7 has been amended to include a provision that any person having a concealed carry license issued under MISS. CODE ANN. § 45-9-101 “who has voluntarily completed an instructional course in the safe handling and use of firearms offered by an instructor certified by a nationally recognized organization that customarily offers firearms training, or by any other organization approved by the Department of Public Safety” may obtain an endorsement to their license which significantly reduces the number of locations which are off limits, and even restricts the ability of public bodies to make public property under their control off limits.<sup>80</sup>

The following chart lists and compares the places a license holder is ***prohibited*** from carrying a concealed pistol or revolver:

<b>“Regular” license<sup>81</sup></b>	<b>Training Endorsement license<sup>82</sup></b>
Any place of nuisance (§ 95-3-1: place where lewdness, assignation or prostitution is conducted; where alcohol is unlawfully used)	Any place of nuisance (§ 95-3-1: place where lewdness, assignation or prostitution is conducted; where alcohol is unlawfully used)
Any police, sheriff or highway patrol station	Any police, sheriff or highway patrol station
Any detention facility, prison or jail;	Any detention facility, prison or jail
Any courthouse	
Any courtroom unless permitted by judge	Courtrooms during a judicial proceeding
Any polling place	
Any meeting place of the governing body of any governmental entity	
Any meeting of the Legislature or a committee thereof	
Any school, college or professional athletic event not related to firearms	
Any portion of an establishment, licensed to dispense alcoholic beverages for consumption	

<sup>78</sup> § 45-9-101(1)(b) (“The licensee must carry the license, together with valid identification, at all times in which the licensee is carrying a stun gun, concealed pistol or revolver and must display both the license and proper identification upon demand by a law enforcement officer. A violation of the provisions of this paragraph (b) shall constitute a noncriminal violation with a penalty of Twenty-five Dollars (\$25.00) and shall be enforceable by summons.”)

<sup>79</sup> § 45-9-101(9). “Failure to notify the Department of Public Safety pursuant to the provisions of this subsection shall constitute a noncriminal violation with a penalty of Twenty-five Dollars (\$25.00) and shall be enforceable by a summons.” *Id.*

<sup>80</sup> House Bill 506 (2011 Legislative Session; Approved by Gov. Barbour March 11, 2011). *See also* House Bill 506, OP. ATT’Y GEN. (08/31/2011) (opining that county board of supervisors cannot invoke criminal penalties by posting written notice that county board of supervisors prohibits carrying of concealed pistol on county property such as county courthouse).

<sup>81</sup> § 45-9-101(13). Noticeably absent from this list is public parks. This restriction was removed in 2010 to accommodate a new federal regulation allowing licensees to carry in federal/national parks if allowed by the state in which the park is located.

<sup>82</sup> § 97-37-7(2) (effective from and after July 1, 2011).

on the premises, that is primarily devoted to dispensing alcoholic beverages	
Any portion of an establishment in which beer or light wine is consumed on the premises, that is primarily devoted to such purpose	
Any elementary or secondary school facility; any junior college, community college, college or university facility unless for the purpose of participating in any authorized firearms-related activity;	Educational property <sup>83</sup>
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 to be lawfully transported on any aircraft	
Any church or other place of worship	
Any place where the carrying of firearms is prohibited by federal law	(not prohibited under state law but remains prohibited under federal law)
Any place in the discretion of the person or entity exercising control over the physical location of such place by the placing of a written notice clearly readable at a distance of not less than ten (10) feet that the "carrying of a pistol or revolver is prohibited."	
A parade or demonstration for which a permit is required to carry a stun gun, concealed pistol or revolver.	

Mississippi both receives and offers reciprocity with a number of other states.<sup>84</sup>

<sup>83</sup> § 97-37-17(2) states that it is a felony for anyone to carry, open or concealed, a firearm on educational property. See footnote 25 for a list of what constitutes educational property. § 45-9-101(13) includes in its list of prohibited places "any school, college or professional athletic event not related to firearms; . . . [and] any elementary or secondary school facility; any junior college, community college, college or university facility unless for the purpose of participating in any authorized firearms-related activity". § 97-37-7(2) states that, with a few exceptions, a person with the endorsement may carry weapons in "any location listed in subsection (13) of Section 45-9-101". Thus, § 97-37-7(2) expressly authorizes a person to carry to a school athletic event and/or a school facility. This is in direct contrast to § 97-37-17(2) which makes the same behavior felonious. There is no authoritative answer as to whether school carry is allowed. However, the Mississippi Attorney General's office is of the opinion that so-called campus carry is permitted. See *Firearms and Permits on Campus*, OP. ATT'Y GEN. (01/05/2012) (opining that § 97-37-17 is not enforceable against an endorsement holder, that universities may not prevent carry by the posting of signage, and that universities may not require endorsement holders to check in with campus police upon arrival on school grounds); Errol Castens, *AG: Guns now legal on college campuses*, *Northeast Mississippi Daily Journal*, July 30, 2011, at A1. The author has been told that numerous university chiefs of police also believe campus carry is allowed. There being no controlling answer, the reader is advised to proceed at his own risk.

<sup>84</sup> § 45-9-101(19). A list of states recognizing a Mississippi permit are: Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Indiana, Kentucky, Louisiana, Michigan, Minnesota, Missouri, Montana, New Hampshire, North Carolina, Oklahoma, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, & Wyoming.  
[http://www.dps.state.ms.us/dps/dps.nsf/webpages/firearms\\_firearmspermitfaqs?OpenDocument](http://www.dps.state.ms.us/dps/dps.nsf/webpages/firearms_firearmspermitfaqs?OpenDocument) (last visited July 6, 2011).

## **Justifiable Homicide**

Mississippi has long set forth a number of circumstances in which a person is justified in using defensive force, including deadly defensive force. The enumerated situations are: public officers and private citizens acting in furtherance of their job or a court order, i.e., executions, arrests, capture of felons; resisting an unlawful attempt to kill the defender or commit a felony upon him or any dwelling, occupied vehicle or place of employment; when lawfully defending himself or another in face of a plan to commit a felony or great personal injury against him; necessarily committed while trying to capture someone who committed a felony; or in suppression of a riot.<sup>85</sup>

While not justified, homicide is excusable when committed by accident and misfortune in doing any lawful act by lawful means, with usual and ordinary caution, and without any unlawful intent; when committed by accident and misfortune, in the heat of passion, upon any sudden and sufficient provocation; or when committed upon any sudden combat, without undue advantage being taken, and without any dangerous weapon being used, and not done in a cruel or unusual manner.<sup>86</sup>

## **Castle Doctrine and (No) Duty to Retreat**

In 2006, Mississippi statutorily incorporated the so-called “Castle Doctrine”.<sup>87</sup> The law applies not only to a person’s home, but also his occupied vehicle or in or around the immediate premises of his business/place of employment. Basically, the “Castle Doctrine” provides that a person can presume a criminal who unlawfully and forcefully enters his premises intends to kill, cause great bodily harm or commit a felony upon the occupant.<sup>88</sup> This is a rebuttable presumption, meaning that the prosecution may still obtain a conviction if it can be shown the ‘defender’ was not in actual fear for his safety. The presumption does not apply if the injured party had a right to be there or was a law enforcement agent, or if the ‘defender’ is engaged in illegal activity at the time of the incident. Contrary to some depictions by the media, the Castle Doctrine does not sanction vigilante justice. Rather, the Castle Doctrine tilts the scale in favor of the homeowner, essentially giving him the benefit of the doubt whenever a criminal is killed breaking into an occupied home, vehicle or business. The Castle Doctrine also provides that the occupant, as long as he is not the initial aggressor or engaged in unlawful activity, and in a place

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<sup>85</sup> § 97-3-15(1).

<sup>86</sup> § 97-3-17.

<sup>87</sup> § 97-3-15(3). Named after the saying that “A man’s home is his castle” and the belief that a person should be given particular leeway in protecting the integrity and peace of “his castle.”

<sup>88</sup> § 97-3-15(3) (“A person who uses defensive force shall be presumed to have reasonably feared imminent death or great bodily harm, or the commission of a felony upon him or another or upon his dwelling, or against a vehicle which he was occupying, or against his business or place of employment or the immediate premises of such business or place of employment, if the person against whom the defensive force was used, was in the process of unlawfully and forcibly entering, or had unlawfully and forcibly entered, a dwelling, occupied vehicle, business, place of employment or the immediate premises thereof ...”)

he has a right to be, has no duty to retreat.<sup>89</sup> Finally, the statute provides that a person acting in justifiable self-defense shall have similar presumptions in civil cases, is entitled to attorneys fees and expenses if the criminal unsuccessfully sues the homeowner, and is immune from civil suit if found “not guilty” in criminal proceeding.<sup>90</sup>

## Preemption

Counties and municipalities are prohibited from passing “any ordinance that restricts or requires the possession, transportation, sale, transfer or ownership of firearms or ammunition or their components.”<sup>91</sup> However, this preemption is not absolute as counties and municipalities may still: (a) require, if authorized by other law, citizens to be armed “for personal or national defense, law enforcement, or another lawful purpose”;<sup>92</sup> (b) prohibit the discharge of certain types of firearms or bow and arrow within their jurisdictional boundaries, subject to a number of exceptions;<sup>93</sup> (c) enforce fire codes, zoning ordinances, or land-use regulations, so long as the regulations are not intended to be surreptitious gun laws;<sup>94</sup> (d) regulate firearms during insurrection, riots and natural disasters for the public health and safety, so long as there is no restriction on the citizen’s lawful possession of a firearm in his home, place of business or in transit to and from the home or place of business;<sup>95</sup> (e) regulate more than twenty-five pounds of blackpowder or other explosives;<sup>96</sup> (f) regulate firearms at public parks, meetings, political rallies, on educational grounds or at professional athletic events;<sup>97</sup> or (g) regulate the receipt of firearms at pawnshops.<sup>98</sup>

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<sup>89</sup> § 97-3-15(4).

<sup>90</sup> § 97-3-15(5)(a)-(b).

<sup>91</sup> § 45-9-51.

<sup>92</sup> § 45-9-53(a).

<sup>93</sup> § 45-9-53(b). A person may nevertheless discharge a shotgun, air rifle or air pistol, BB gun or bow and arrow on property of more than ten acres more than 150 feet from a home or occupied building, or a center fire or rim fire rifle or pistol or a muzzle-loading rifle or pistol on more than fifty acres more than 300 feet from a home or occupied building. Any such discharges must not be reasonably expected to cause a projectile to cross the boundary of the tract. Additionally, while a county may regulate the discharge of any firearm or weapon (other than a BB gun) within any platted subdivision, a county may not prohibit the discharge if the firearm is discharged in a manner not reasonably expected to cause a projectile to travel across any property line without permission of the property owner. § 45-9-57 (effective July 1, 2010).

<sup>94</sup> § 45-9-53(c).

<sup>95</sup> § 45-9-53(d). This exception was added in 2006 following the patently illegal confiscation of firearms by the New Orleans Police Department and Mayor Ray Nagin in the aftermath of Hurricane Katrina.

<sup>96</sup> § 45-9-53(e).

<sup>97</sup> § 45-9-53(f). Counties and municipalities cannot regulate firearms-related activities on educational property or professional athletic events. Further, they cannot regulate the transportation of such firearms to or from related events. § 45-9-53(2).

<sup>98</sup> § 45-9-53(g).