

Firearms Law: Myths and Misconceptions¹

WARNING: This is an academic presentation – **this not legal advice.**

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Definitions, as used herein:

- **DEADLY WEAPON:** any firearm, loaded or unloaded, or any weapon from which a shot, readily capable of producing death or serious physical injury, may be discharged, or a switchblade knife, dagger, billy club, blackjack or metal knuckles;²
- **FIREARM:** Refers to any ‘ordinary’ firearm or the kind of handgun, shotgun, or rifle you can ordinarily walk into a local gun store, purchase, and take home the same day.
- **FFL:** A Federal Firearms Licensee - a gun store. The requirement for this license was established to implement the Federal Firearms Act of 1938. FFLs range in type from Type 1 to Type 11.³
- **GCA:** The Gun Control Act of 1968 was signed into law on October 22, 1968. It focused on regulating interstate commerce in firearms by generally prohibiting interstate firearms transfers except among licensed manufacturers, dealers and importers. (No, you can’t buy a gun on the internet without a background check.)
- **NFA:** The National Firearms Act was enacted in 1934. The Act imposes a tax on the making and transfer of firearms defined by the Act, as ‘NFA’ firearms. The law also required the registration of all NFA firearms with the Secretary of the Treasury. In 1986, this Act was amended to prohibit the transfer or possession of machineguns. Exceptions were made for machineguns made before the prohibition (May 19, 1986).⁴
- **NFA FIREARM:** A firearm which may be lawfully possessed *only* after acquiring a permit from the ATF. These include fully automatic firearms (‘machineguns’) short-barreled rifles, short barreled shotguns, suppressors (‘silencers’), destructive devices, and a random assortment of unusual weapons cleverly referred to as AOWs (Any Other Weapon.)
- **NICS CHECK:** The background check mandated by the Brady Handgun Violence Prevention Act (Brady Act) of 1993, Public Law 103-159. ATF form 4473 is used to perform this background check.
- **4473:** The form a buyer must complete for the NICS / background check at the time of purchase. Some, *not all*, of the information on the 4473 is transmitted to the FBI in order to complete the NICS check.⁵
- **PERSON:** When I say ‘*a person may*’ (lawfully) do something, I am referring to someone who is *not otherwise prohibited* because of past convictions, mental condition, dishonorable discharge, etc.
- **PROHIBITED PERSON:** A person is prohibited from possessing a firearm if he has been convicted a crime punishable by a term exceeding one year, is a fugitive from justice, an unlawful user of any controlled substance, has been adjudicated a mental defective, is an illegal alien, has received a dishonorable discharge, renounced his U.S. citizenship, is subject to a court order or protection, or has been convicted of any crime of domestic violence. See: 18 U.S.C. 922(g) and (n); and 27 CFR 478.32.
- **Extended Permits.** RSMo 571.205. Missouri’s 10-year, 20-year, or lifetime CCW permit. *Don’t use one.*

MYTHS and MISCONCEPTIONS:

1. Are firearms in Missouri registered?
 - a. **NO.** There is no gun registry in Missouri.
 - i. Some historical records, such as the old Sheriff’s permits, might still exist if retained.
 - ii. Otherwise, the only weapons required to be registered in Missouri are NFA firearms.
2. If the police have the serial number from a firearm, can they run a trace themselves?
 - a. **NO.** A law enforcement agency can check their database to see if it was reported stolen.
 - b. Otherwise, they must file ATF form 3321.1 to initiate a trace. Then, the firearm can be traced by the ATF’s National Tracing Center as follows.
 - i. ATF must go the manufacturer and ask “*What distributor / wholesaler did you sell it to?*”
 - ii. ATF then goes to that distributor/wholesaler and asks “*What retailer did you sell it to?*”

¹ This has not been updated since December 6, 2022. And **this not legal advice.** Consult with an attorney about your situation!

² RSMo 556.061(22). <https://revisor.mo.gov/main/OneSection.aspx?section=556.061>

³ <https://www.atf.gov/firearms/listing-federal-firearms-licensees-ffls-2017>

⁴ <https://www.atf.gov/rules-and-regulations/national-firearms-act>

⁵ <https://www.fbi.gov/services/cjis/nics/about-nics>

- iii. ATF then goes to that retailer and asks “*Who was the purchaser?*”⁶
 - iv. ATF then goes to the original purchaser. If the purchaser no longer has the gun there is no legal requirement to keep a record of where it went. (But you should!)
3. May I sell my firearm in my in a garage sale, the newspaper, etc.?
- a. **YES**, *technically* this might be permissible.⁷ (*But don’t do it!*) For a private sale you may check Casenet, do a bill of sale, and get copy of driver’s license. (It is a violation of federal law for an individual to attempt to use the NICS system to do a background check of their own sale.⁸)
 - b. Or, protect yourself, do the transfer at Target Masters and pay them to do the background check.
4. May I give/transfer firearms in my will?
- a. **YES**. You may dispose of ordinary firearms pursuant to your will.⁹
 - b. You may also dispose of NFA Weapons through your will. As explained at §9.5.3 of the National Firearms Act Handbook, you may leave an NFA weapon to someone in your will and, assuming they may lawfully possess an NFA weapon, they will not have to pay the transfer fee.¹⁰
5. Is it *illegal* to be under the influence and in the possession of a firearm?
- a. **NO**. It was formerly a crime to be ‘under the influence of drugs or alcohol’ and in the possession of a loaded firearm (felony) or an unloaded firearm (misdemeanor.) There were no exceptions. The legislature changed this in 2010. (H.B. 1692, 1209, 1405, 1499, 1535, & 181, *Senator Clemmons, et al.*)
 - b. Missouri law now states it is only an offense (“unlawful use of weapon”) if you knowingly have a firearm on you *while you are intoxicated, and you handle it in a negligent or unlawful manner* or discharge it - unless you were doing so in self-defense.¹¹
- However*, it could be an A misdemeanor to sell, lease, loan, give away or deliver a firearm or ammunition to a person who is intoxicated. See: 571.060. Unlawful transfer of weapons, penalty.
6. Is it *illegal* for an 18-year-old to possess a handgun?
- a. **NO**. There is nothing in state or federal law that prohibits an 18-year-old from possessing a handgun.¹²
 - b. Under federal law you must be 21 to purchase a handgun or handgun ammunition *from an FFL* but an 18-year-old may lawfully possess a handgun.¹³ A parent or guardian may give a handgun and ammunition to an 18-year-old. In fact, the ATF clearly states: “An individual between 18 and 21 years of age may acquire a handgun from an unlicensed individual who resides in the same state, provided the person acquiring the handgun is not otherwise prohibited from receiving or possessing firearms under federal law.” See: 18 U.S.C. 922(b)(1)¹⁴
 - c. Younger than 18 may possess a handgun with the written permission of a parent 18 U.S.C. 922(x).¹⁵

⁶ Licensees shall retain each ATF Form 4473 for a period of not less than 20 years after the date of sale or disposition. 18 U.S.C. 923(g)(1)(A); 27 CFR 478.129(b) <https://www.atf.gov/firearms/qa/how-long-are-licensees-required-maintain-atf-forms-4473>

⁷ <https://www.atf.gov/file/110076/download>

⁸ https://www.nicsezcheckfbi.gov/help/ENG/ffl_acknowledgement.pdf

⁹ RSMo 474.333 <https://revisor.mo.gov/main/OneSection.aspx?section=474.333>

¹⁰ <https://www.atf.gov/firearms/docs/guide/atf-national-firearms-act-handbook-atf-p-53208/download>

¹¹ See: 571.030. Unlawful use of weapons--exceptions—penalties. <https://revisor.mo.gov/main/OneSection.aspx?section=571.030>

¹² The Gun Control Act, 18 USC 922(x), generally prohibits persons under 18 from possessing handguns or handgun ammunition. Federal Law *allows* juveniles (under 18) to possess a handgun for employment, target practice, education, and to use while defending the home of the juvenile or a home in which they are an invited guest.

¹³ An individual between 18 and 21 years of age *may acquire a handgun from an unlicensed individual* who resides in the same State, provided the person acquiring the handgun is not otherwise prohibited from receiving or possessing firearms under Federal law. A Federal firearms licensee, however, may not sell or deliver a firearm other than a shotgun or rifle to a person the licensee knows or has reasonable cause to believe is under 21 years of age. 18 U.S.C. 922(b)(1)

¹⁴ <https://www.atf.gov/firearms/qa/may-individual-between-ages-18-and-21-years-age-acquire-handgun-unlicensed-individual>

¹⁵ <https://www.atf.gov/firearms/qa/may-parent-or-guardian-purchase-firearms-or-ammunition-gift-juvenile-less-18-years-age>

7. It is *illegal* to openly carry a firearm in the City of Columbia?
- NO.** The City of Columbia has no ordinance prohibiting the open carry of firearms. In fact, ‘open carry’ has been lawful throughout Missouri since 1821.
 - Missouri law requires that any jurisdiction that prohibits open carry of firearms must still allow anyone who has a CCW to open carry. But you must have the in your possession.¹⁶
8. May a person with *or without* a CCW license have a concealed firearm in their vehicle?
- YES.** The statute that defines “unlawful use of weapons” specifically states that its prohibitions *do not apply when* the actor is transporting a concealable firearm in the passenger compartment of a motor vehicle, *so long as such concealable firearm is otherwise lawfully possessed.*¹⁷
9. Is it *legal* to own a ‘machinegun’ or any NFA weapon in Missouri?
- YES.** Missouri follows the federal law and you may lawfully own a fully automatic firearm, suppressor, shot-barreled rifle/shotgun, etc., *if* you have a permit from the ATF.
 - The permit: After passing an exhaustive FBI background check (fingerprints, 12-month wait, etc.) and paying a fee of \$200, a Missouri citizen may receive a permit and lawfully possess an NFA weapon. You must possess the permit anytime you are carrying the NFA weapon.

10. Is it *illegal* to possess a firearm if you have a Medical Marijuana card?
- YES.** A person who uses Marijuana is an “unlawful user” of a controlled substance and is prohibited from possessing a firearm.¹⁸ Pursuant to the ATF’s Open Letter to All Federal Firearms Licensees, 21 Sep 2011, holders of state-issued medical marijuana cards are automatically “*prohibited people*”¹⁹ and possession of firearms or ammunition by a medical marijuana card holder is a federal offense.²⁰

11. Is it *illegal* to carry a firearm into a building posted with one of these signs?
- NO**, it is *not* illegal. (Unless it is a government building, jail, federal building, VA Hospital, Post Office, etc.) This is *the* most widely misunderstood CCW provision.
- The statute (571.107) does not say it is illegal nor does it say it is prohibited by law. It only says (in plain language) ‘just because you have a CCW - you are “not (automatically) authorized” to go anywhere you wish without being denied entry.
 - Moreover, 571.107.2 goes on to state if you have a 5-year concealed carry permit and you do carry a concealed firearm in a location specified in subdivisions (1) to (17) it “**shall not be a criminal act**” but they can still require you to leave their property.²¹



12. So, if I have a CCW license I can carry in those 17 locations? (Except government buildings, etc.)
- Yes**, you may and it is *not* a crime under Missouri statutes. But you must leave if asked to do so.
 - If you carry into one of those places *and* you are asked to leave, *and* you refuse, *and* they call the cops *and* the cops ask you to leave *and you still refuse* . . .
 - Then you “may” (might, *not shall*) receive a ticket (for your first offense.)
 - The ticket may not exceed \$100. for the first offense and “it is not a crime.” RSMo 571.107.2.
13. Are you telling me that if I have my CCW license I can lawfully carry in a school here in Missouri? Because those 17 places include schools. (See Gun Free School Zones Act.)
- Yes.** If you have a Missouri 5-year CCW, you may lawfully carry a firearm into any school in Missouri.

¹⁶ See: 21.750(2) <https://revisor.mo.gov/main/OneSection.aspx?section=21.750>

¹⁷ RSMo 571.030.3, A.L. 2003 H.B. 349, et al. merged with S.B. 5, A.L. 2007 S.B. 62 & 41

¹⁸ 18 U.S.C. § 922(g)(1-9)

¹⁹ 18 U.S.C 922 (g)(3)

²⁰ <https://tinyurl.com/tocl6ku>

²¹ RSMo 571.107 <https://revisor.mo.gov/main/OneSection.aspx?section=571.107>

- a. Pursuant to 18 USC 922 q(2)(A) it is unlawful to possess a gun in a school zone.²²
- b. However, 18 USC 922 q(2)(B) goes on to provide that possession of a firearm in a school *is permitted* “if the individual possessing the firearm is licensed to do so by the state in which the school zone is located.”²³ Therefore, the Federal prohibition does not apply if the person with the firearm is licensed to carry by Missouri.

So, what about Missouri state law?

- c. Under Missouri law you are guilty of ‘unlawful use of a weapon’ if you carry a firearm (loaded or unloaded) into any school, onto a school bus, or onto the premises of any school-sanctioned activity.²⁴ However, section 4 of that statute goes on to say the prohibition on carry in schools shall not apply to any person *who has a valid concealed carry permit*. (But only a 5-year permit.)
- d. In other words, RSMo 571.030 states that **possession of a firearm in a school is not an offense** if the person carrying the firearm is a valid (5-year) CCW.

*Even our Sheriffs agree a CCW holder may carry in a school See: <http://morgancountymoso.org>.

Note: A school zone is defined as the grounds of a public, parochial, or private school, or within a distance of 1,000 feet from the grounds of a public, parochial or private school. Using the 1000-foot rule leads to large ‘Gun Free School Zones’ for anyone who does not have a Missouri CCW 5-year permit.²⁵

14. Well, is it *illegal* to carry on campus? (University of Missouri, etc.)²⁶

- a. **No.** That is another common misconception.
- b. Colleges and Universities are not covered by the Gun Free School Zones Act. See §921(a)(25).
- c. The University of Missouri, for example, has ‘regulation’ that prohibits faculty, staff, and students from carrying on campus²⁷ and they may be disciplined, expelled, fired, etc. Nevertheless, it is *not* ‘against the law’ to carry on campus. It is only a violation of their internal rules which only apply to their faculty, staff, and students.
- d. Note: Just as with any other property owner they may ask you to leave and you must do so.

15. Is it *illegal* to take a firearm onto an airplane? **Yes.**

- a. It is illegal to take a firearm *into the passenger compartment*, but it is not illegal to check a firearm in checked luggage.²⁸ It must be in a TSA approved locked container.²⁹
- b. It is not illegal for a private pilot to carry a firearm onto a private plane³⁰ and airline pilots may carry firearms onto the flight deck (cockpit) of a commercial airline.³¹

²² <http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title18-section922&num=0&edition=prelim> GFSZA applies to public and private elementary and high schools and to non-private property within 1,000 feet. § 921(a)(25).

²³ <http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title18-section922&num=0&edition=prelim>

²⁴ See RSMo 571.030.1.(10) <https://revisor.mo.gov/main/OneSection.aspx?section=571.030>

²⁵ The law applies to public, private, and parochial elementary schools and high schools, and to non-private property within 1,000 feet of them. It provides that states and their political subdivisions may issue licenses that exempt the licensed individuals from the prohibition. § 921(a)(25).

²⁶ University of Missouri rule, prohibiting an employee from having firearms not visible in the employee’s locked vehicle on state’s property while employee is conducting activities within scope of employment, conflicts with section and is void; however, other provisions of the rule are narrowly tailored to advance a compelling government interest and thus survive strict scrutiny. *State ex rel. Schmitt v. Choi*, 627 S.W.3d 1, 18 n.14 (Mo. App. W.D. 2021). (Mo. App.W.D.)

²⁷ Section 110.010.B.4(a) of the University’s Collected Rules and Regulations states that the “possession of and discharge of firearms, weapons and explosives on University property including University farms is prohibited except in regularly approved programs or by University agents or employees in the line of duty.

²⁸ 49 CFR 175.10 (a)(8) <https://www.tsa.gov/travel/transporting-firearms-and-ammunition>

²⁹ <https://www.tsa.gov/travel/transporting-firearms-and-ammunition>

³⁰ Requirements under 49 USC 46505 impose criminal penalty for carrying a gun in air transportation—common carrier only—*not* a private pilot in their own aircraft.

³¹ <https://www.congress.gov/bill/107th-congress/house-bill/4635>

16. Is it *illegal* to carry (conceal) a firearm (on your person) into an airport?
No, neither federal nor Missouri law prohibits carrying a firearm into the public area of an airport *if* you have a Missouri 5-year CCW permit. (But don't do it. Very few officers are aware of this.)
- “Federal law on firearms possession only applies to the so-called "sterile" area (the area beyond the metal detectors) of passenger terminals.” “Possession of firearms outside the “sterile” area (terminal public area and airport vehicle parking lot) is governed by state law.”³²
 - For Missouri Law see: John Doe v. St. Louis County Police Department, 505 S.W.3d 450, 2016. Writing for the Eastern District Court of Appeals, Judge Colleen Dolan wrote: “*Section 571.107.2 specifically states the “[c]arrying of a concealed firearm in a location specified in subdivisions (1) to (17) of subsection 1 of this section by any individual who holds a concealed carry permit issued pursuant to sections 571.101 to 571.121...shall not be a criminal act[.]”*. ... *There is no room for statutory construction when the words are unambiguous.*” (Emphasis added.)
17. Is it legal to travel cross-country with my firearm(s)? **Yes**, subject to certain restrictions. Interstate Transportation of Firearms was authorized by the Federal Safe Passage Act (a/k/a the ‘Peaceable Journey Exception.’)
- This allows anyone not otherwise prohibited to transport firearms *from* any place where they may lawfully possess such firearms *to* any other place where they may lawfully possess such firearms.
 - The firearm must be unloaded, in a locked container, and not readily accessible (in the trunk.) Some states allow exceptions to these restrictions. See: 18 U.S. Code § 926A.³³ This provision was enacted as a part of the Firearms Owners' Protection Act, Pub. L. No. 99-308, 100 Stat. 449 (1986), a.k.a. the McClure-Volkmer Act.³⁴

More information – excellent and reliable sites. (“Trust but verify.” Ron Reagan, 12/8/1987.)

Training (You **must** get expert training if you carry.) Tactical Specialties on Facebook or <https://tactical-specialties.com/>

State Law - Weapon Offenses: <https://revisor.mo.gov/main/OneChapter.aspx?chapter=571>

State Law - Defense of Justification (self-defense): <https://revisor.mo.gov/main/OneChapter.aspx?chapter=563>

The facts: <http://www.gunfacts.info/> (Facts from reliable sources - thoroughly documented.)

The landmark cases you really should listen to, read, and know. Audio available at these links.

- District of Columbia v. Heller, 554 US 570 (2008.) <https://www.oyez.org/cases/2007/07-290>

- McDonald v. Chicago 561 US 742 (2010.) <https://www.oyez.org/cases/2009/08-1521>

- N.Y. State Rifle & Pistol Ass’n. Inc. v. Bruen, 597 US _ (2022) <https://www.oyez.org/cases/2021/20-843>

Missouri Attorney General. <https://ago.mo.gov/criminal-division/public-safety/concealed-carry-reciprocity>

ATF Photo gallery: <https://www.atf.gov/firearms/firearms-photo-gallery>

ATF Rules and Regulations: <https://www.atf.gov/rules-and-regulations>

And finally, **contact me** at: MoGunLaw@gmail.com or www.MoGunLaw.com or Mogunlaw on Facebook.

³² <https://www.aopa.org/training-and-safety/active-pilots/transporting-firearms-in-general-aviation-aircraft#:~:text=The%20federal%20safe%20passage%20provision&text=may%20transport%20firearms%20from%20any,possess%20and%20carry%20such%20firearms.>

³³ <https://www.law.cornell.edu/uscode/text/18/926A>, www.govinfo.gov/content/pkg/STATUTE-100/pdf/STATUTE-100-Pg449.pdf

³⁴ Yes, Harold Volkmer, D-9, Missouri, co-sponsored that legislation.

Carrying in these places *without* a **5-year** CCW is a criminal offense. (Extended permits don't count.)

“**P**” indicates it is lawful to leave a firearm in your vehicle on their parking lot.

Where can I lawfully carry a concealed firearm.	With a 5-year CCW	<u>Without</u> a 5-year CCW
Police, sheriff, highway patrol office or station (without consent of the chief officer in charge.) 571.107(1) P	YES, §571.107.2	NO. <i>B misdemeanor</i>
Within 25 feet of any polling place on election day. 571.107(2) P	NO. Federal Law	NO. <i>Federal offense.</i>
Any adult or juvenile detention/institution/ prison/jail. 571.107(3) P	YES, §571.107.2	NO. <i>B misdemeanor</i>
Any courthouse, including, offices, juvenile, courts, etc. 571.107(4) P	YES, §571.107.2	NO. <i>B Misdemeanor</i>
Any meeting of governing body of local government; any meeting of the general assembly or committee of the general assembly. 571.107(5) P	YES, §571.107.2	NO. <i>B Misdemeanor</i>
The general assembly, supreme court, county or municipality may by rule, regulation, or ordinance prohibit or limit the carrying of concealed firearms by permit or endorsement holders. The statute, rule or ordinance shall <u>not</u> specify any criminal penalty for its violation but may specify that persons may be denied entrance to the building or ordered to leave. 571.107(6). Building only. Does not apply to parking lots. (So, P .)	YES, §571.107.2 And 571.107.1(6) See local rule.	NO. <i>B Misdemeanor</i>
Any establishment licensed to dispense liquor for consumption on the premises, which portion is primarily devoted to that purpose, This does not apply to a restaurant that seats at least 50 <i>and</i> receives at least 52% of its gross annual income from the sale of food. 571.107(7) P	YES, §571.107.2	NO. <i>B misdemeanor</i>
Any area of an airport to which access is controlled by the inspection of persons and property. 571.107(8), <u>Doe v St. Louis</u> , 505 S.W.3d 450, 2016. P	YES, §571.107.2	NO. <i>B Misdemeanor</i>
Any place where the carrying of a firearm is prohibited by federal law; 571.107(9) <i>NO firearms on parking lot.</i>	NO. Federal Law	NO. <i>Federal Offense.</i>
Any higher education institution or elementary or secondary school facility (without the consent of the governing body.) 571.107(10) P	YES, §571.107.2	NO. <i>Federal offense.</i> Felony if loaded, misdemeanor if unloaded.
Any portion of a building used as a child care facility without the consent of the manager. 571.107(11) <i>NO firearms on parking lot.</i>	YES, §571.107.2	NO. <i>E felony if loaded.</i> <i>B misdemeanor if</i> <i>unloaded.</i>
Riverboat gambling operation open to the public (without consent pursuant to rules of the gaming Commission.) 571.107(12) P	YES, §571.107.2	NO. <i>B Misdemeanor</i>
Any gated area of an amusement park. 571.107(13) P	YES, §571.107.2	NO. <i>B Misdemeanor</i>
Any church/place of worship <i>without</i> consent. 571.107(14) P	YES, §571.107.2	NO. <i>B Misdemeanor</i>
Any private property posted as being off-limits to CCW by sign(s) displayed in a conspicuous place of a minimum size of 11” x 14” with letters of not less than 1 inch. 571.107(15) P	YES, §571.107.2	NO. <i>B Misdemeanor</i>
Any sports arena or stadium with a seating capacity of five thousand or more. 571.107(16) P	YES, §571.107.2	NO. <i>B Misdemeanor</i>
Any hospital accessible by the public. 571.107(17) P	YES, §571.107.2	NO. <i>B Misdemeanor</i>