



# License to Kill

How Lax Concealed Carry Laws Can Combine with Stand Your Ground Laws to Produce Deadly Results

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By Arkadi Gerney and Chelsea Parsons    September 2013

Center for American Progress



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# Preface

In 2005, a young man and his friend went to a bar near the University of Central Florida. After his friend was arrested on suspicion of underage drinking, the man reacted violently, reportedly pushing a police officer who was attempting to escort him from the scene. He was also arrested and initially charged with resisting an officer with violence and battery against a law enforcement officer, two felonies that could have landed him in prison for up to five years<sup>1</sup> and permanently barred him from lawfully owning a gun. As is common in cases involving first-time offenders, however, the charges were reduced to one misdemeanor and were ultimately waived when he completed a court-ordered alcohol-education program that included anger-management classes.<sup>2</sup>

One month after this run-in with police, his then-fiancée sought a domestic violence restraining order against him, alleging that he had pushed and slapped her during disputes.<sup>3</sup> In turn, he sought a restraining order against her, and a Florida court ordered both parties to stay away from each other for one year.<sup>4</sup>

In spite of these violent incidents, the young man—George Zimmerman—applied for and received a permit to carry a concealed, loaded firearm in the state of Florida. By virtue of possessing this license, Zimmerman felt empowered to patrol the streets of his neighborhood with a gun by his side. And on February 26, 2012, he used that gun to shoot and kill an unarmed teenager: Trayvon Martin.

# Introduction and summary

The shooting death of Trayvon Martin and George Zimmerman's subsequent acquittal have focused the nation's attention on expansive self-defense laws—so-called Stand Your Ground laws—that enable an individual to use deadly force even in situations in which lesser force would suffice or in which the individual could safely retreat to avoid further danger. Leaders from around the country, including President Barack Obama<sup>5</sup> and U.S. Attorney General Eric Holder,<sup>6</sup> have questioned how Florida's law—which is similar to laws enacted in 21 other states—may have contributed to the circumstances that led to Martin's death.

Yet the Martin case also implicates another set of laws: the state laws governing who may carry concealed firearms—the laws that put a gun in Zimmerman's hands in the first place. Under Florida law, even individuals such as Zimmerman, who have a criminal history and a record of domestic abuse, are generally entitled to a concealed carry permit, as long as they are not barred from gun possession under federal law and as long as their offense does not meet a very narrow range of additional exclusions under state law.<sup>7</sup> If Zimmerman had applied for a permit in one of the many states with stronger permit requirements, his history of violence and domestic abuse would likely have disqualified him from obtaining a concealed carry permit. This case might then have had a very different outcome.

These bodies of law—Stand Your Ground and concealed carry permitting—concern issues that are traditionally left to the states. In many ways, these issues are appropriately decided at the state level; the self-defense and concealed carry laws of New Jersey should not be imposed on Montana and vice versa. But there is an appropriate federal role. The federal government should ensure that states do not enact laws that have racially disparate impacts or significantly jeopardize public safety.

Additionally, in recent years, the issue of concealed carry permitting has become a federal one. The National Rifle Association, or NRA, has encouraged Congress to enact legislation that would create a national concealed carry mandate superseding individual state permitting laws. The NRA has described such national “concealed carry reciprocity” as its “top priority,”<sup>8</sup> and since 2009, NRA backers in Congress have repeatedly introduced legislation and amendments that would override existing state-law standards and create national concealed carry with standards of the lowest common denominator.<sup>9</sup>

In the pages that follow, we consider the intersection of Stand Your Ground laws and weak state permitting laws that allow potentially dangerous individuals to carry concealed, loaded weapons in public with little law enforcement oversight or discretion. This report begins with a review of Stand Your Ground laws, examining the net effect on public safety and the disparate racial impact of these laws. We then examine how weak concealed carry laws compound those dangers. In conclusion, we offer recommendations for how the states, the Obama administration, and Congress can work together to ensure that these laws enhance—rather than jeopardize—public safety.

As the states, Congress, and the administration confront the challenges created by the variety of state approaches to self-defense and concealed carry laws, they should seek to balance competing interests. On the one hand, there is a legitimate state interest in tailoring laws to the particular needs and circumstances of its citizens; on the other, there is a federal interest in ensuring that such laws are applied equitably and do not jeopardize public safety. Likewise, it is important to respect the rights of responsible, law-abiding gun owners while protecting the public safety of all citizens. Achieving this balance will require an enhanced role by the Department of Justice in evaluating Stand Your Ground laws, congressional scrutiny of efforts to undermine states’ strong concealed carry laws, and more careful state-level reviews of the benefits and risks of these two bodies of law and how they intersect.

# Stand Your Ground laws

There is a longstanding right to self-defense in this country that has developed through hundreds of years of common law. One basic premise of this right is that an individual can only use deadly force in self-defense if they have no other option and cannot safely retreat from the situation.<sup>10</sup> One traditional exception to this duty to retreat is when an intruder threatens an individual in his or her home. In that case, the individual is not obligated to retreat and is justified in using deadly force to defend the home from an attacker. This exception is commonly known as the “castle doctrine.”<sup>11</sup>

In 2005, at the urging of the American Legislative Exchange Council, or ALEC, and the NRA, states began to pass new laws expanding the castle doctrine beyond the walls of the home. These laws, which are commonly referred to as “Stand Your Ground” or “Shoot First” laws, empower an individual to use lethal force in self-defense outside the home, even if the individual could safely retreat or use lesser force and avoid any harm. This privilege may be invoked any time an individual has a “reasonable belief” that they are facing death or serious injury. Additionally, in some states, the Stand Your Ground law goes even further than justifying the use of deadly force by immunizing the individual from criminal prosecution and civil lawsuits in connection with the incident.<sup>12</sup>

In 2005, Florida became the first state to enact a Stand Your Ground law, and to date, 22 states have enacted Stand Your Ground laws.<sup>13</sup>

## Stand Your Ground and the prosecution of George Zimmerman

Around 7:00 p.m. on February 26, 2012, in Sanford, Florida, Trayvon Martin, a 17-year-old unarmed African American teenager, was walking through his father's gated community after a trip to a convenience store to buy snacks. George Zimmerman, a 28-year-old neighborhood-watch volunteer, was driving through the neighborhood and saw Martin, whom he thought looked suspicious. Zimmerman followed Martin, called 911 to report a suspicious individual in the neighborhood, and then engaged Martin in a confrontation. Zimmerman shot Martin in the chest point blank and killed him.<sup>14</sup>

In the immediate aftermath of the shooting, Sanford police declined to arrest Zimmerman or charge him with Martin's death, and as a result, Florida's Stand Your Ground law first made the news. City officials explained that Zimmerman claimed to have shot Martin in self-defense and that "[b]y Florida Statute, law enforcement was PROHIBITED from making an arrest based on the facts and circumstances they had at the time." (emphasis in original)<sup>15</sup> After widespread protests over the local police and prosecutor's handling of the investigation, the Sanford police chief's resignation, and the governor's appointment of a special prosecutor, Zimmerman was charged with second-degree murder—more than six weeks after fatally shooting Martin.<sup>16</sup>

Prior to his trial, Zimmerman chose to not formally invoke Florida's Stand Your Ground law and request a pretrial hearing to determine whether the shooting was justified on that basis—a hearing that, if the judge ruled in his favor, would have resulted in the dismissal of all charges.<sup>17</sup> Instead, Zimmerman chose to pursue a traditional self-defense strategy during the trial. He argued to the jury that Martin at-

tacked him and that he fired his gun as his only means of protecting himself.<sup>18</sup> But despite Stand Your Ground's absence from the trial, it was included in the judge's instructions to the jury, making it relevant during deliberations.

The Stand Your Ground provision of Florida's self-defense law cannot be severed from the other elements of that body of law; it has become part of the overall conception of what constitutes justifiable use of force in that state. Stand Your Ground expands upon the traditional concept of self-defense by allowing the use of deadly force in self-defense, even when lesser means of force would suffice or safe escape is possible. All the elements of Florida's expansive body of self-defense law come into play when a person claims their use of deadly force was justified, even if the defendant does not seek to use Stand Your Ground to avoid arrest or prosecution or directly invoke it as part of their formal defense.

The Zimmerman trial provides an example of this. Although Zimmerman did not seek a Stand Your Ground hearing and his attorneys did not directly invoke this law as part of the formal defense, the expanded notion of one's right to use lethal force in self-defense was part of the judge's instructions to the jury. The judge instructed the Zimmerman jury on all aspects of the state's expansive self-defense laws, which include a person's right to use deadly force even when safe retreat is an option.<sup>19</sup> It is in the context of this entire body of law that the jury was asked to evaluate Zimmerman's conduct and ultimately found his conduct to be justified. In fact, both of the jurors who have spoken out since the trial indicated that the Stand Your Ground law played a role in their deliberations.<sup>20</sup>



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## Impact of Stand Your Ground laws

Since the shooting death of Trayvon Martin, Stand Your Ground laws have come under scrutiny for two principal reasons. First, available research suggests that these laws lead to an increase in fatal violence in states that have enacted them. Second, these laws appear to operate in a racially biased manner. There is still more research to be done on these issues, and a number of in-depth studies are currently underway, including comprehensive studies by the U.S. Commission on Civil Rights<sup>21</sup> and the American Bar Association.<sup>22</sup> But available research demonstrates that on both of these fronts, the risks associated with Stand Your Ground laws outweigh any evidence of benefits. In light of these results, these laws should be reconsidered.

### Benefits of Stand Your Ground?

Advocates of Stand Your Ground laws argue the laws are necessary to ensure that individuals have the full freedom of self-defense in situations in which they are attacked outside the home. They argue that requiring victims to retreat from an attack places them in further jeopardy and potentially turns the victim into a criminal if they use force in self-defense and police or prosecutors later determine that safe retreat was possible.<sup>23</sup> Despite these arguments, there is little credible evidence that traditional self-defense laws requiring an individual to forgo the use of deadly force in self-defense if—and only if—they can safely retreat from the encounter led to victims being put in increased danger or criminally prosecuted. Instead, it appears that Stand Your Ground laws were enacted as a solution in search of a problem.

A second argument is that these laws provide a deterrent benefit, because criminals will fear victims who are willing to use deadly force to protect themselves.<sup>24</sup> As we discuss below, however, the available data suggests that these laws actually increase homicides. Additionally, researchers found that these laws had no deterrent effect on other crimes, such as burglary, robbery, or aggravated assault.<sup>25</sup>

## Increase in murder rate

Researchers at Texas A&M University found that enacting Stand Your Ground laws increased homicides in those states by 8 percent—or an additional 600 homicides across states—and concluded that by “lowering the expected costs associated with using lethal force, [Stand Your Ground] laws induce more of it.”<sup>26</sup> Looking at a different set of data, researchers from the University of Georgia came to a similar conclusion: Stand Your Ground laws led to an increase in homicides in states that enacted them, particularly homicides of white males.<sup>27</sup>

Experts have offered a number of theories for the increase in homicides following the passage of Stand Your Ground laws. One theory offered by the laws’ supporters is that the increase in homicides reflects justifiable acts of self-defense.<sup>28</sup> But the Texas A&M and University of Georgia researchers considered this hypothesis and found that it was not supported by the data, as police did not report an increase in justifiable homicides after the enactment of Stand Your Ground laws.<sup>29</sup>

A more enduring theory is that Stand Your Ground laws encourage escalation of otherwise nonfatal altercations by virtue of removing potential legal consequences of using deadly force. One of the Texas A&M researchers explained that, “One possibility for the increase in homicides is that perhaps [in cases where] there would have been a fistfight ... now, because of stand your ground laws, it’s possible that those escalate into something much more violent and lethal.”<sup>30</sup> U.S. Attorney General Holder expressed this concern about Stand Your Ground laws: “By allowing—and perhaps encouraging—violent situations to escalate in public—such laws undermine public safety.”<sup>31</sup>

TEXAS A&M STUDY:

**8% increase**  
in homicides in states with  
Stand Your Ground laws.

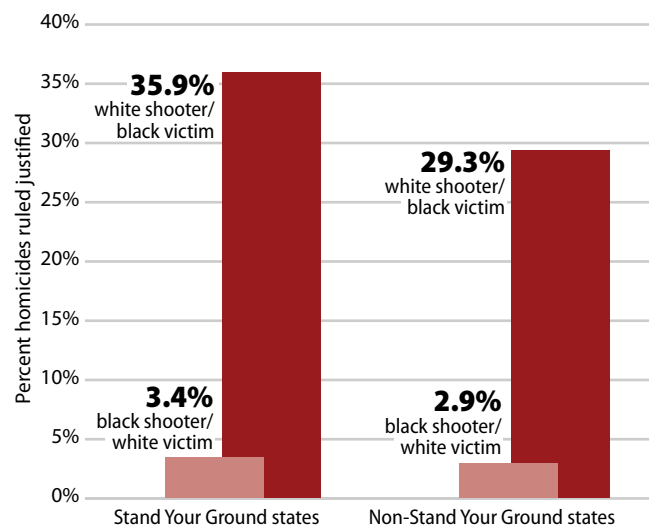
## Racially disparate impact

Early research also suggests that Stand Your Ground laws have a racially disparate impact. An analysis of homicide data found that a Stand Your Ground defense was more likely to be successful when the shooter was white and the victim was black. This study, conducted by John Roman of the Urban Institute’s Justice Policy Center, found that in states with Stand Your Ground laws, 35.9 percent of shootings involving a white shooter and black victim are found to be justified, while only 3.4 percent of cases involving a black shooter and white victim are deemed

justifiable self-defense.<sup>32</sup> To be sure, a racial disparity in self-defense claims is also apparent in states that do not have Stand Your Ground laws, but to a somewhat lesser extent: 29.3 percent of shootings involving a white shooter and black victim were deemed justified in non-Stand Your Ground states, while 2.9 percent of shootings involving a black shooter and white victim have the same result.<sup>33</sup> An analysis by the *Tampa Bay Times* of nearly 200 Stand Your Ground cases in Florida yielded similar results: 73 percent of shooters who killed a black victim were found to be justified in doing so, while only 59 percent of those who shot a white victim were relieved of criminal liability.<sup>34</sup>

This research suggests that Stand Your Ground laws exacerbate existing racial disparities in the criminal justice system. In summarizing his research, Roman opined, “The criminal justice system is rife with racial disparities. ... The chasm in justifiable homicide rulings, however, is vastly larger than other disparities and deserves intense scrutiny.”<sup>35</sup>

**FIGURE 1**  
**Disparate impact of Stand Your Ground laws**



Source: Richard Florida, “It’s Not Just Zimmerman: Race Matters a Lot in ‘Stand Your Ground’ Verdicts,” *The Atlantic Cities*, July 15, 2013, available at <http://www.theatlanticcities.com/politics/2013/07/its-not-just-zimmerman-race-matters-lot-stand-your-ground-verdicts/6195/>.

# Concealed carry laws

While Stand Your Ground laws have garnered a great deal of recent attention, a related body of law that makes Stand Your Ground laws more dangerous has not been widely discussed: laws that govern who may carry concealed, loaded guns in public. The dangers posed by expansive self-defense laws are exacerbated by weak laws that allow dangerous people to carry guns in the first place.

The Supreme Court has made it clear that the Second Amendment provides an individual right for law-abiding, responsible Americans to possess a handgun in their homes.<sup>36</sup> In articulating the scope of this right, the Court made it clear that this right is not unlimited and that it is well within constitutional bounds for states or the federal government to prohibit certain dangerous individuals, such as “felons and the mentally ill,” from gun possession.<sup>37</sup> What is less clear, however, is the scope of the Second Amendment right to carry firearms outside the home. So far, the Supreme Court has not indicated that there is any Second Amendment right to carry guns outside the home, and federal circuit courts that have reviewed this question have concluded that the scope of any constitutional right to carry a gun outside the home is more limited—and subject to even greater regulation—than the right to possess a gun in the home.<sup>38</sup>

If the past decade has been characterized by an expansion of Stand Your Ground laws, the preceding decades saw a national expansion of gun-carry laws. Three decades ago, a handful of states did not permit any carrying of concealed firearms; this year, Illinois became the 50th state to offer concealed carry licenses.<sup>39</sup>

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## Concealed carry permitting

While every state now allows concealed carry, states vary widely in how the permit system is administered. At the most lax end of the spectrum, four states—Alaska, Arizona, Vermont, and Wyoming—do not require any permit to carry a concealed gun in public.<sup>40</sup> Any lawful gun owner in those states may carry concealed, loaded

firearms in public without any oversight from local law enforcement to determine whether the individual has had appropriate firearms training or whether there is anything in their criminal or personal history to indicate they may pose a risk to public safety. In these four states, the legal ability of a citizen to carry a concealed gun is co-extensive with their basic capacity to possess a gun under federal law. This approach is unusual, however, and in most states, carrying a concealed gun requires a special license. Obtaining that license typically requires some degree of training or education and is subject to additional exclusions and law enforcement review beyond the basic federal gun-possession standards.

The 46 states that require concealed carry permits take a variety of approaches to the permit process. A baseline for eligibility is the federal prohibitions on gun possession by felons, domestic abusers, the mentally ill, and other dangerous individuals,<sup>41</sup> but most states have gone further to ensure that other potentially dangerous people are not permitted to carry guns in the community. One approach some states have taken is to ban additional categories of dangerous people from possessing and/or carrying guns, such as violent misdemeanants or people with demonstrated alcohol- or substance-abuse problems. Additionally, a vast majority of states require that individuals seeking a carry permit participate in a minimum level of safety training or firearms education prior to filing an application.<sup>42</sup> Some states have gone even further by granting local law enforcement discretion to deny applications for permits to carry based on the totality of a person's history, including arrests, incidents of violence, and other patterns of questionable behavior.

## Who can carry a concealed gun?

### STEP 1:

**Are you excluded from possessing a gun under federal law?** Federal law prohibits nine categories of people from gun possession, including convicted felons, domestic abusers, and the mentally ill.

### STEP 2:

**Are you excluded from possessing or carrying a gun under your state's law?** Most states impose additional requirements for carrying concealed guns. Thirty-seven states, for example, prohibit people convicted—or recently convicted—of certain violent misdemeanor crimes from possessing guns or obtaining concealed carry permits.

### STEP 3:

**Does your state give law enforcement the discretion to deny a permit application based on other factors?** Twenty-five states give the permitting authority at least limited discretion to conduct a case-by-case review of each carry-permit application to determine if anything in the applicant's criminal history indicates the individual may pose a risk to public safety.

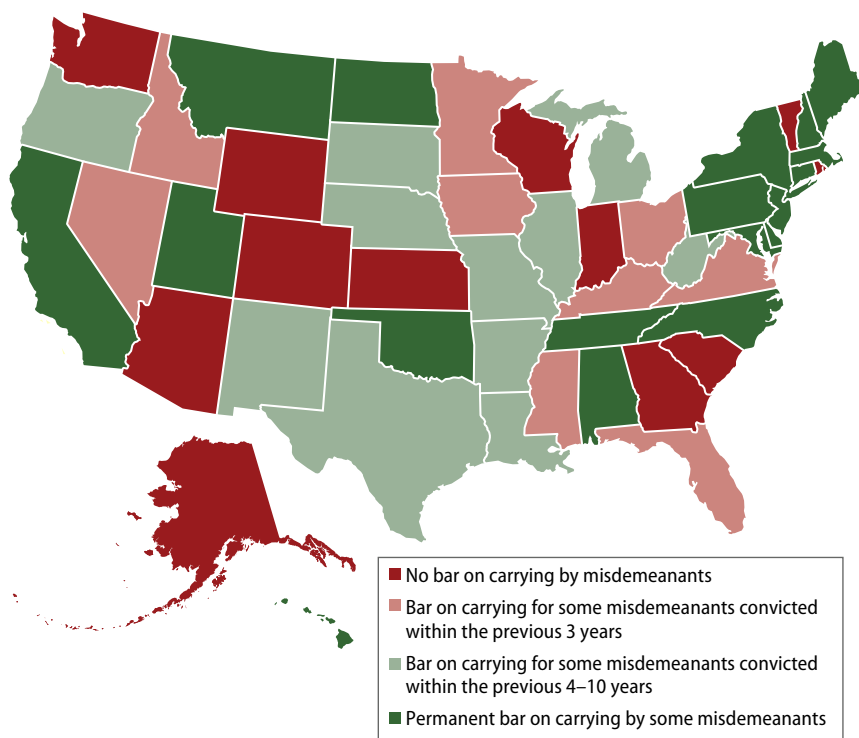
## Categorical denials of permits

One way that states attempt to prevent potentially dangerous individuals from carrying guns is to prohibit certain categories of individuals from possessing or carrying guns. Of course, there is disagreement over who qualifies as a “dangerous” person, but at a minimum, the categories of individuals disqualified from firearm possession under federal law provide a baseline for making this determination.<sup>43</sup> There are other individuals, however, who are not prohibited under federal law but who have a criminal history that may indicate they pose a potential risk to public safety if they are permitted to carry concealed, loaded guns in public. A number of states, for example, prohibit individuals with alcohol- or substance-abuse problems from carrying guns, as well as a broad category of individuals with mental illness.

Perhaps the people who cause the most concern are those who have previously been convicted of violent misdemeanor crimes, such as assault, stalking, or firearms offenses. Thirty-seven states have enacted laws that prohibit or limit individuals convicted of certain misdemeanor violent crimes—crimes involving jail sentences of less than one year—from being eligible for a concealed carry permit, despite their continued eligibility to possess guns under federal law. In Nebraska and New Mexico, for example, an individual is ineligible for a concealed carry permit if they have been convicted of a misdemeanor crime of violence within the past 10 years.<sup>44</sup> In North Carolina and Montana, an individual is permanently barred from obtaining a carry permit by any conviction for certain violent misdemeanors, regardless of when that conviction occurred.<sup>45</sup>

FIGURE 2

### State laws barring violent misdemeanants from concealed carry



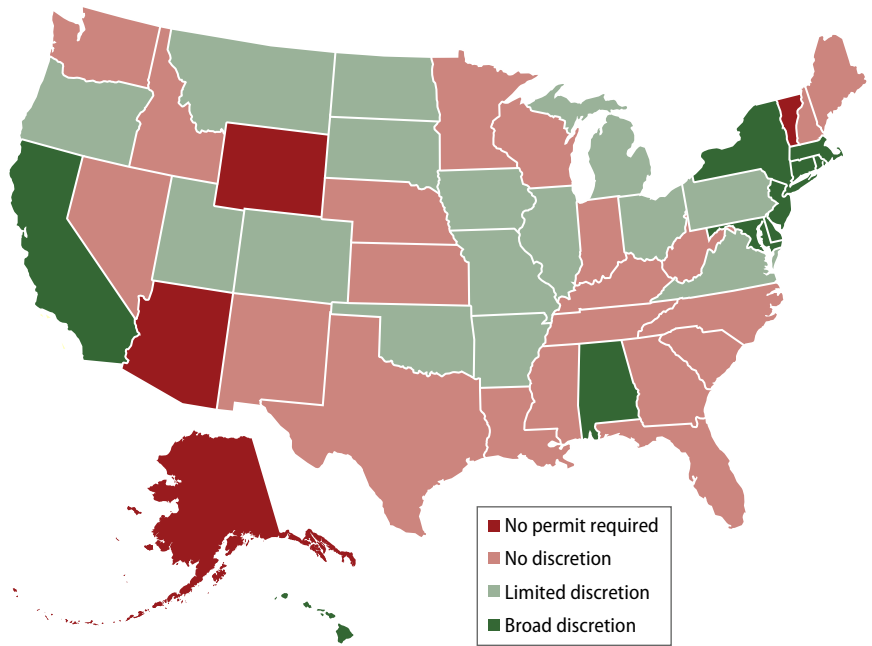
Source: Based on an analysis of state laws conducted by the authors.

## Discretion to the permitting authority

A second approach taken by some states to help ensure that dangerous people are not issued permits is to grant the licensing authority discretion to deny carry licenses based on a comprehensive review of an applicant’s history.<sup>46</sup> Twenty-one states have eliminated all discretion in the permitting process and require the permitting agency to issue a permit to any applicant who meets the minimum statutory requirements. In contrast, 15 states have granted the licensing authority limited discretion to deny an application by an individual who appears to be eligible when there is evidence of past behavior that creates a reasonable suspicion that the applicant may pose a risk to him or herself or others.<sup>47</sup> An additional 10 states have enacted even stronger laws that give the licensing authority—typically police agencies—very broad discretion to determine who is and who is not permitted to carry concealed, loaded guns in public.<sup>48</sup>

In these 10 states—often referred to as “may issue” states—local authorities consider not just the minimum eligibility requirements, such as age, criminal convictions, and mental fitness, but also look more deeply into whether the individual possesses the high level of moral character required to be entrusted with the responsibility of carrying and, in some states, whether they have a demonstrated need to carry a firearm.

**FIGURE 3**  
State laws providing discretion to the permitting authority



## Flaws in permitting systems

In addition to enacting strong laws regarding who is permitted to carry a concealed, loaded gun in public, states must also ensure that the permitting system itself functions properly and prevents disqualified individuals from erroneously obtaining permits—or retaining their permits if they later commit a disqualifying offense. Unfortunately, some states have fallen short in this regard.

For example, a 2007 investigation by the *Sun-Sentinel* found that in 2006, Florida granted carry permits to more than 1,400 people who had pleaded guilty or no contest to felonies, 216 people with outstanding warrants, and 128 people with active domestic violence restraining orders.<sup>49</sup> Under federal law, all of these people should have been prohibited from even touching a gun, let alone having a license to carry one concealed. A similar investigation of North Carolina’s carry-permit system by *The New York Times* found that more than 2,400 permit holders were convicted of felonies or misdemeanors over a five-year period, yet in about half of the felony convictions, authorities failed to revoke the individual’s carry permit. Additionally, “scores” of permit holders retained their permits in that state after becoming disqualified for a carry permit following a conviction for a violent misdemeanor.<sup>50</sup>

Additionally, states should ensure that a state or local law enforcement agency bears the responsibility for reviewing applications and issuing concealed carry permits. Some states, such as Florida, have entrusted this responsibility to civil regulatory agencies,<sup>51</sup> but such non law enforcement agencies do not have the specialized knowledge and experience required to accurately review criminal records for the purpose of determining eligibility and/or fitness for a concealed carry permit.

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## Impact of concealed carry laws

There is a longstanding debate about whether permitting widespread carrying of concealed firearms benefits public safety or reduces violent crime. Proponents of carrying argue that these laws reduce violent crime because criminals are deterred from committing such crimes out of fear that the chosen victim may be carrying a gun.<sup>52</sup> The primary proponent of this theory is John Lott, who has written numerous articles and books in support of this “more guns, less crime” theory. Lott examined crime data in states that had enacted expansive concealed carry laws



and concluded that where such laws had been adopted, homicide decreased by 8 percent, rape decreased by 5 percent, and aggravated assault decreased by 7 percent. Additionally, Lott found that nonviolent property crimes increased in those states and theorized that this was the result of criminals veering away from violent crimes during which they would potentially encounter armed victims.<sup>53</sup>

Lott's research has come under fire from a number of other academics, who question the validity of his methods and conclusions. One of his most prominent critics, John Donohue, has questioned the statistical model used by Lott, arguing that better models undermine the conclusion that expansive carry laws reduce violent crime. Donohue argues that there is in fact stronger evidence that these laws actually increase crime.<sup>54</sup> This dissention in the gun-violence research community led to the National Academy of Sciences convening a panel to study the issue. In 2004, after reviewing all of the competing research, the academy found that the evidence supporting both arguments is inconclusive: "There is no credible evidence that 'right-to-carry' laws, which allow qualified adults to carry concealed handguns, either decrease or increase violent crime."<sup>55</sup> The panel concluded that more comprehensive research was needed to properly inform the policy debate over concealed carry laws.

Even for those who disagree with the National Academy's conclusions and believe there is conclusive evidence for the more guns, less crime theory of arming law-abiding gun owners, there is substantial reason to be concerned about state gun-carry laws that put guns in the hands of known dangerous people. Researchers from the Violence Prevention Research Program at the University of California, Davis examined gun owners with prior misdemeanor convictions to determine whether such individuals posed a heightened risk for future violence. The study found that handgun purchasers with at least one prior misdemeanor conviction—including for nonviolent crimes—were more than seven times as likely as those with no prior criminal history to be charged with a new offense after purchasing their gun. The risk that such individuals would later commit a violent or gun-related crime was particularly high: Those with only one prior misdemeanor conviction were nearly five times as likely to be charged with a new crime involving violence or guns. This was true even of individuals whose prior misdemeanor conviction did not involve violence or firearms.<sup>56</sup>

A common misconception is that misdemeanor crimes are simply low-level, quality-of-life offenses that do not involve violence or a risk to public safety. But many violent crimes—such as assault, battery, stalking, and sexual assault—can be classified as misdemeanors, and the individuals who commit them are often as potentially dangerous as those who are convicted of felony-level offenses. Additionally, many people convicted of misdemeanor-level offenses were originally charged with more serious, felony-level crimes that were reduced to misdemeanors during the plea-bargaining process. People convicted of these violent misdemeanor crimes should not be granted licenses to carry concealed, loaded guns.

The case of Jason Kenneth Hamilton provides a stark example of the dangers of granting licenses to violent misdemeanants. In June 2006, Hamilton was convicted of misdemeanor battery and served a 90-day jail sentence for attempting to strangle a woman he was in an amorous relationship with during a separation from his wife. Despite this conviction for a particularly violent crime, Hamilton was able to maintain a permit to carry a concealed firearm from the state of Idaho. In May 2007, Hamilton violated the terms of his probation by failing to attend court-ordered counseling, and the judge gave him one month to comply with this order. The following week, Hamilton went on a shooting spree, first killing his wife in her home and then traveling to a courthouse, where he fired 125 shots, killing one police officer and wounding three other individuals. Hamilton then fled to a church across the street, where he fired an additional 60 to 80 shots, killing a church sexton. Hamilton then turned the gun on himself and committed suicide.<sup>57</sup>

Additionally, individuals with lengthy arrest records or a history of violent incidents that do not result in convictions may pose a risk to public safety if they are permitted to carry. For this reason, local licensing bodies should be granted some discretion to examine the totality of an applicant's history to determine if they are sufficiently responsible, law-abiding individuals who will not jeopardize the safety of the community. The lack of such discretion leads to individuals with violent histories such as George Zimmerman being granted permits to carry. If Zimmerman had lived in one of 25 states other than Florida, his prior arrest for assaulting a police officer and history of domestic violence could have resulted in the denial of his application for a carry permit. In states such as Arkansas, Montana, and Utah, the licensing authority could have denied Zimmerman's application because his "past patterns of behavior or participation in an incident involving unlawful violence" made it "reasonably likely" that he would pose a risk to the community if the application were granted.<sup>58</sup> In his home state of Florida, however—which has only limited categorical exclusions for convictions for violent crimes that occurred within three years of the permit application<sup>59</sup>—Zimmerman was entitled to a permit despite his history of violence.

The possible threat to public safety posed by individuals with such a record of violence was unfortunately illustrated again on September 9, 2013, when police detained Zimmerman following a 911 call made by his estranged wife, Shellie, almost two months after his acquittal. Shellie, who had filed for divorce a few days earlier, told the operator that Zimmerman was threatening her and her father with a gun and had punched her father in the nose. Shellie told the operator, “He’s in his car and he continually has his hand on his gun and he keeps saying, ‘Step closer.’ He’s just threatening all of us with his firearm.” She continued, “I don’t know what he’s capable of. ... I’m really, really scared.” In the immediate aftermath of this incident, Shellie and her father chose not to press charges, and Zimmerman was not arrested.<sup>60</sup> Under Florida law, neither this new incident nor the totality of incidents—the Martin shooting, the 2005 police officer assault arrest, and the domestic violence restraining order—could allow the state to revoke Zimmerman’s permit.

Carrying a concealed firearm is a grave responsibility that should be reserved for responsible, law-abiding gun owners who recognize and respect that fact. The more guns, less crime theory can only work—if the theory is a valid one in the first place—if everyone who carries guns is, in fact, one of the “good guys” who will do more to protect public safety than jeopardize it.

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## Concealed carry permit reciprocity

Because states take widely different approaches to determining eligibility and fitness for gun-carry permits, issues can arise when an individual with a carry permit issued in one state wants to travel to another. Many states have voluntarily entered into reciprocity agreements to honor concealed carry permits issued by certain other states. While some states impose strict rules on reciprocity and only honor permits issued in states with equally strong requirements, other states honor permits issued by states with significantly weaker laws,<sup>61</sup> and some states choose not to recognize any out-of-state permits.

In recent years, the NRA has stepped into this jumble. The NRA’s proposal is simple: Nationalize the concealed carry permit system to require that every state accept every permit issued in every other state regardless of the issuance standards in each individual state.<sup>62</sup> If enacted, this new federal mandate would override individual state efforts to protect public safety by controlling who is authorized

to carry a concealed firearm. It would mean that people like George Zimmerman or Jason Kenneth Hamilton could carry their guns into any state—even though their criminal histories and records of violence would disqualify them for a permit in many states. Although the NRA and advocates for such a law like to compare concealed carry permits to driver’s licenses,<sup>63</sup> their proposal includes none of the protections built into the administration of driver’s-licensing programs that allow effective cross-state enforcement, such as some federally defined minimum-issuance standards for licenses<sup>64</sup> and the ability for local law enforcement in every state to quickly and accurately confirm the validity of licenses issued in other states.<sup>65</sup>

# Recommendations

In recent years, there has been a remarkable increase in the number of concealed carry permits issued across the country. A recent review by the Government Accountability Office estimated that, as of mid-2012, there were roughly 8 million permit holders across the country.<sup>66</sup> In Florida alone, the state had issued twice as many permits in 2012 as it did five years earlier.<sup>67</sup> In December 2012, the Florida Department of Agriculture announced—with great fanfare—that it was about to issue the one millionth permit.<sup>68</sup> Advocates of gun rights have heralded this revolution in state laws. They argue, correctly, that a large majority of concealed carry permit holders are responsible, law-abiding citizens. But while criminal misuse of a carry permit remains confined to a small portion of permit holders, the toll of deadly incidents caused by such individuals is rising, with a deadly incident happening almost every week.<sup>69</sup> Making it easy for people with known criminal records, a history of violence and domestic abuse, or substance-abuse problems to obtain gun-carry permits undermines public safety and imperils the rights of law-abiding gun owners. And when easy access to gun-carry permits is combined with Stand Your Ground laws, states risk giving dangerous people licenses to kill. In light of these circumstances, the states, the Obama administration, and Congress should consider the following actions.

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## State governments

States should examine both self-defense and concealed carry laws to evaluate what impact these laws have on public safety, particularly when considered together. We do not advocate a one-size-fits-all approach to state concealed carry permitting or self-defense laws. However, there should be some minimal protections incorporated into every state's body of law to ensure public safety and equal application of the law. At a minimum, states should:

- Prohibit any person with a violent misdemeanor conviction or who has been the subject of a domestic violence restraining order in the past 10 years from obtaining a permit to carry a gun, and consider a range of other prohibitions directed at potentially dangerous individuals
- Require at least 10 hours of safety training, including live-fire training, prior to issuing a concealed carry permit
- Provide at least limited discretion in the permitting process—as 25 states do—to allow law enforcement to consider all relevant parts of an applicant’s criminal and personal history. Such discretion should also include the ability to review the permit status of an individual who, like Zimmerman, has shot and killed a person but has been found not criminally liable for doing so.
- Ensure that the concealed carry permit system is administered by a law enforcement agency rather than a civil regulatory agency, such as the Florida Department of Agriculture. Such agencies are unfamiliar with examining criminal records and are therefore ill equipped to evaluate applications for concealed carry permits.
- Conduct a review of Stand Your Ground laws to determine whether such laws have led to an increase in homicides and whether they operate in a racially disparate manner. Following an initial review, states should continue to review these laws annually to evaluate their impact and inform a public dialogue about whether they should be amended or repealed.
- Reconsider the provisions in some Stand Your Ground laws that provide immunity from civil liability for people who successfully invoke the law. An acquittal for murder is not co-extensive with a conclusion that a person did not act negligently or recklessly, and the families of victims deserve the opportunity to pursue such claims in civil courts.

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## Federal government

While Stand Your Ground and concealed carry laws are primarily state issues, the federal government can play a role in guiding and informing discussion and evaluation of these laws and should ensure that such laws are not having an unfair impact on communities of color. We recommend that the administration and Congress take the following steps:

- **The Department of Justice, or DOJ, should evaluate the effect of Stand Your Ground laws on public safety and how these laws disproportionately impact communities of color.** To this end, the DOJ should formally monitor the 22 states that have adopted these laws to track whether and to what extent homicide rates have increased, whether any increase in homicides can be explained by justifiable self-defense, and the degree to which the application of these laws has a racially disparate impact. In doing so, the DOJ should seek the cooperation of state officials in gathering consistent data on all shootings, capturing information from all stages of an investigation and prosecution, and providing detailed information about whether a shooting was deemed to be justified. If cooperation from states is not forthcoming, the DOJ should explore options for withholding discretionary Edward Byrne Memorial Justice Assistance Grant Program, or JAG, funding using its existing administrative and regulatory authority. Additionally, Congress should enact legislation allowing the DOJ to penalize states by withholding JAG formula-based grant funding to states that do not cooperate with this effort.<sup>70</sup>
- **Congress must be vigilant about attempts to impose mandatory national concealed carry reciprocity on the states.** While the desire of responsible, law-abiding gun owners to carry their guns across state lines is a reasonable one, Congress has already provided a mechanism for gun owners to travel through states with secured firearms.<sup>71</sup> In fact, the Manchin-Toomey background-check legislation the Senate considered earlier this year would have further clarified and expanded the law regarding permissible travel across state lines with firearms.<sup>72</sup> The national reciprocity legislation proposed thus far gravely undermines state efforts to protect public safety by preventing dangerous people from carrying concealed guns. Before such legislation can be seriously considered, it must impose minimum requirements on permit systems to ensure that dangerous people are not issued permits. Likewise, any federal reciprocity system must include documentation standards at or above the level of the driver's-license system. Eligible states must create an identification document that contains security features to prevent fraud, and states must make records of permit holders accessible in real time to out-of-state law enforcement so that police across the country can confirm the validity of a permit when confronted with an armed permit holder from another state.

# Conclusion

Should Americans have the right to defend themselves with deadly force in some circumstances?

Should responsible, trained Americans be able to obtain a permit to carry a concealed gun?

These questions have been conclusively answered in our country. To the former question, the answer is “yes”; for hundreds of years, common-law and state statutes have guaranteed the right to self-defense. Decades ago, the latter question was an open one, but today, its answer is also “yes,” as all 50 states currently offer some capacity for eligible citizens to carry concealed guns.

The questions that deserve attention today are how to construct and define these rights and privileges in a manner that protects public safety and ensures equal justice under the law. Too often, dangerous people are getting access to guns and licenses to carry them wherever they please. Too often, race defines who are the victims of abuses of self-defense laws and who can avail themselves of the protections those laws are supposed to provide. Too often, laws purportedly designed to deter violence contribute to more of it. Overwhelmingly, Americans—including gun-owning Americans—support the general proposition that greater safeguards are consistent with protecting gun rights<sup>73</sup> and support certain specific measures to keep guns away from felons, violent misdemeanants, and other dangerous people.<sup>74</sup> It’s time for states and the federal government to do more to act on the public’s well-considered will on these issues.



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- 65 There are a number of mechanisms in place to enable cross-state enforcement of driver's licenses. The National Driver Register, for example, is a database of driver's-license information from each state that is operated by the National Highway Traffic Safety Administration. See National Highway Traffic Safety Administration, "National Driver Register," available at [http://www.nhtsa.gov/Data/National+Driver+Register+\(NDR\)](http://www.nhtsa.gov/Data/National+Driver+Register+(NDR)) (last accessed September 2013). Additionally, most states have entered into the Interstate Driver License Compact, which also enables cross-state sharing of driver's-license information. See National Center for Interstate Compacts, "Driver License Compact," available at <http://apps.csg.org/ncic/Compact.aspx?id=56> (last accessed September 2013).
- 66 Jack Nicas and Ashby Jones, "Permits Soar to Allow More Concealed Guns," *The Wall Street Journal*, July 4, 2013, available at <http://online.wsj.com/article/SB10001424127887323689204578573763575086702.html>.
- 67 Ibid.
- 68 Michael Van Sickler, "Concealed weapon permits to hit 1 million next week in Florida," *Tampa Bay Times*, December 12, 2012, available at <http://www.tampabay.com/news/politics/gubernatorial/concealed-weapon-permits-to-hit-1-million-next-week-in-florida/1265900>.
- 69 Violence Policy Center, "Concealed Carry Killers," available at <http://www.vpc.org/ccwkillers.htm> (last accessed September 2013).
- 70 Congress took this step by enacting the NICS Improvement Amendments Act of 2007 to ensure that states are making all reasonable efforts to comply with the federal law requiring states to submit mental-health records to the National Instant Background Check System, or NICS. Congress should consider similar action to protect communities from the negative effects of Stand Your Ground laws.
- 71 18 U.S.C. § 926A.
- 72 Safe Communities, Safe Schools Act of 2013, 113th Cong. 1st sess., S. 649, Amdt 715.
- 73 See Margie Omero and others, "What the Public Really Thinks About Guns" (Washington: Center for American Progress, 2013), available at <http://www.americanprogress.org/issues/civil-liberties/report/2013/03/27/58092/what-the-public-really-thinks-about-guns/>. We are citing the 2012 Frank Luntz poll.
- 74 See Law Center to Prevent Gun Violence, "Polling on Concealed Weapons," September 9, 2012, available at <http://smartgunlaws.org/polling-on-carrying-concealed-weapons/>. We are citing a variety of polls.

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