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THE UNIFORM PISTOL ACT*

SAM B. WARNER†

Restrictions on the use of pistols are nothing new. The first state to pass a statute prohibiting the carrying of concealed pistols was Kentucky in 1813.¹ Though Indiana followed in 1820² and Arkansas and Georgia in 1837,³ such statutes did not become common⁴ until after the passage of the New York Sullivan Law in 1911.⁵

* I am indebted to Mrs. Marion D. Frankfurter for reading the manuscript and making many valuable suggestions and to Mr. Robert Greenfield for assistance on the notes.

¹ Ky. Acts 1812-13, c. 89 prohibits carrying concealed pistols except when travelling. Declared unconstitutional in *Bliss v. Commonwealth*, 2 Litt. 90 (1822). Constitution was amended in 1850 to permit prohibitions on carrying concealed weapons. See Ky. Constitution of 1850, art. 13, §25. An act to prohibit the carrying of concealed weapons was passed in 1854. See Ky. Rev. Stat. (Stanton, 1860) vol I, p. 414. Statute approved in *Hopkins v. Commonwealth*, 3 Bush. 480 at 482 (1868). Self defense clause in statute was eliminated in 1878. See Ky. Laws 1878, c. 283. For present statute see Ky. Stat. Ann. (Carroll, 1936) §1309.

² Ind. Laws 1819, c. 23 prohibits all persons except travellers from carrying concealed pistols. See also Rev. Laws (1831), c. 26, §53 and Ind. Laws 1859, c. 78. Held constitutional in *State v. Mitchell*, 3 Blackford 229 (1833). Ind Stat. Ann. (Burns, Supp. 1937) §10-4706 forbids all carrying of pistols without a license.

³ Ark. Rev. Stat. (1837) c. 44, div. 8, art. I, §13 prohibits carrying concealed pistols except upon a journey. Held constitutional in *State v. Buzzard*, 4 Ark. 18 (1842). Ark. Acts 1874-5, p. 155 prohibited both open and concealed carrying. Held unconstitutional as applied to "war arms" in *Wilson v. State*, 33 Ark. 557 (1878). See also *Fife v. State*, 31 Ark. 455 (1876). Ark. Acts 1881, no. 96 prohibits all varieties of carrying except upon a journey, but army and navy pistols may be carried uncovered and in the hand. Sale of all but army and navy pistols was prohibited. These provisions are now included in Ark. Dig. Stat. (Pope, 1937) §§3508-9. Prohibition on sale of pistols held constitutional in *Dabbs v. State*, 39 Ark. 353, 43 Am. Rep. 275 (1882). Georgia Laws 1837, p. 90 prohibits sale, possession and all manner of carrying of pistols, except horseman's pistols. Held constitutional as to concealed weapons but otherwise void, in *Nunn v. State*, 1 Ga. 243 (1846). See also *Hill v. State*, 53 Ga. 473 (1874). Present Georgia statutes prohibit the carrying of pistols concealed and require a license for carrying them openly. See Ga. Code Ann. (Park, Skillman & Strozier, 1936) tit. 26, §§5101-3.

⁴ Some other early pistol acts are *Alabama* Laws 1838-9, no. 71, p. 67 prohibits carrying concealed. Held constitutional in *State v. Reid*, 1 Ala. 612 (1840). For present statute see Ala. Code Ann. (Michie, 2d Supp. 1936) §4047 (1)-(19). *Idaho* Laws 1889, p. 27 prohibits carrying pistols in cities and towns. Held unconstitutional in *Re Brickey*, 8 Ida. 597, 70 Pac. 609 (1902). Present statute requires a license to carry concealed pistols in any city or town or on the highways. See Idaho Code Ann. (1932) §17-3102. *Kansas* Laws 1872, c. 100, §62 authorized the council of cities of the second class to prohibit the carrying of firearms, concealed or otherwise. Held constitutional in *Salina v. Blakesley*, 72 Kan. 230, 83 Pac. 619 (1905). Laws 1903, c. 216, §1, now Kan. Gen. Stat. Ann. (Corrick, 1935) §21-2411 prohibits carrying concealed pistols. *Louisiana* Acts 1855, no. 120, §115

Today the carrying of concealed pistols is either prohibited absolutely or permitted only with a license in every state but two.⁶ Restrictions on the sale of pistols exist in a considerable number of states,⁷ but only in New York is a license needed to possess a pistol in one's home or place of business.⁸

There was no federal pistol statute until 1927, when an act

prohibits carrying concealed weapons. See also Acts 1898, no. 112, p. 158 and Acts 1902, no. 107, §9. For present statute see La. Code Crim. Proc. Ann. (Dart, 1932) §1274. Mississippi Acts 1878, p. 175 prohibits carrying pistols concealed. Held constitutional in *Wilson v. State*, 81 Miss. 404, 33 So. 111 (1902). For present statute see Miss. Code Ann. (1930) §853. Missouri Laws 1874, p. 43 prohibits carrying in certain places. Rev. Stat. 1879, §1274 prohibits carrying pistols concealed. Present statute, 4 Mo. Stat. Ann. (1932) c. 30, §4029 prohibits all carrying concealed and open carrying in certain places. Held constitutional in *State v. Keet*, 269 Mo. 206, 190 S. W. 573. North Carolina Acts 1879, c. 127 prohibits carrying pistols concealed; now N. C. Code Ann. (Michie, 1935) §4410. *State v. Huntly*, 3 Ire. Law 418, 40 Am. D. 416 (1843) held that it was a common law offense to go armed with a firearm to the terror of the people. For early statutes against slaves and negroes having firearms, see *State v. Hannibal and Ned*, 6 Jones Law 57 (1858) and *State v. Newsom*, 5 Ire. Law 250 (1844). Pennsylvania Laws 1850, No. 390, §22 added to the liability of persons having pistols at riots in Philadelphia. Laws 1864, No. 717 made it a crime to carry a pistol in Schuylkill County with the intent to do injury. This prohibition was made state-wide by Acts 1875, No. 38, now Pa. Stat. Ann. (Purdon, 1930) tit. 18, §401. Laws 1873, No. 810 forbade carrying pistols in Harrisburg. In 1931 Pennsylvania adopted the Uniform Firearms Act. See Pa. Stat. Ann. (Purdon, Supp. 1937) tit. 18, §§1585a-1585u. Tennessee Acts 1870, c. 13 prohibits carrying pocket pistols, concealed or otherwise. *Andrews v. State*, 3 Heisk 165 (1871) held that the legislature could prohibit the carrying of all but military arms. Tenn. Code Ann. (Williams, 1934) §11007 prohibits all carrying of pistols, "except the army or navy pistol which shall be carried openly in the hand." Texas Laws, 1871, c. 34 prohibits all varieties of weapon carrying, except by travellers and certain others. For present statute see Tex. Stat. (Vernon, 1930) Penal Code, art. 483-4. Held constitutional in *English v. State*, 35 Tex. 473 (1871-2), *State v. Duke*, 42 Tex. 455 (1875) and *Jennings v. State*, 5 Tex. App. 298 (1878). See also *Caswell v. State*, 148 S. W. 1159 (Texas Ct. Civ. Appeals, 1912).

⁵ New York Laws 1911, c. 195, p. 442. Earlier New York statutes were Laws 1883, c. 375 which prohibited possession of pistols by persons under 18 without license from mayor; Laws 1905, c. 92, §2 which required a license to carry concealed weapons upon the person.

⁶ Minnesota and Vermont. The Minnesota statute provides: "every person who shall . . . attempt to use against another, or with intent so to use, shall carry, conceal or possess . . . any pistol, or other dangerous weapon, shall be guilty of a gross misdemeanor. The possession by any person, other than a public officer, of any such weapon concealed or furtively carried on the person shall be presumptive evidence of carrying, concealing or possessing with intent to use the same." Minn. Stat. (Mason, 1927) §10255.

⁷ Alabama, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Illinois, Indiana, Iowa, Maine, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Washington, West Virginia, Wyoming.

See notes *infra* on regulating the sale of pistols.

⁸ Penal Law §§1897 (4), 1897 (8).

In Michigan all persons possessing pistols are required to submit them for inspection, but no license is required for mere possession. Mich. Stat. Ann. (Henderson, 1935) §28.97.

was passed to protect states having laws requiring a license to purchase a pistol from mail order houses in other states.⁹ Unfortunately this statute applied only to shipments by mail so that it was still possible for a person who could not legally buy a pistol in his own state, to secure one legally by ordering it by mail from a dealer in another state, and having it delivered by express. This loophole was not closed until 1938.¹⁰

The various state pistol statutes have usually been held constitutional in spite of the second amendment to the Constitution of the United States which guarantees the right to bear arms, and somewhat similar provisions in the constitutions of most states.¹¹ The acts most universally upheld are those prohibiting or regulating the carrying of concealed pistols. Of more doubtful constitutionality are prohibitions on carrying pistols openly, especially those of the type used by the United States army.

The first model pistol act was drafted for the United States Revolver Association between 1919 and 1922. This act became law in several states and served as the basis for the uniform act approved by the National Conference of Commissioners on Uniform State Laws in 1926.¹² The Commissioners called their act the Uniform Firearms Act, though it deals only with pistols, including in that term revolvers. This act has been approved by the American Bar Association and enacted wholly or partly in a number of states.¹³

The Uniform Firearms Act contains five main provisions. (1) It adds to the maximum punishment of persons committing crimes of violence when armed with a pistol; (2) prohibits the possession of pistols by persons convicted of crimes of violence; (3) licenses the carrying of concealed pistols; (4) requires pistol dealers to be licensed, aims to check the sale of pistols to criminals and to secure a record of the sale of all pistols; and (5) creates a presumption

⁹ 44 Stat. (Feb. 8, 1927) 1059, c. 75, §1.

¹⁰ Pub. Laws No. 785, 75th Cong., 3d Sess. (June 30, 1938).

¹¹ See D. J. McKenna: *The Right to Keep and Bear Arms*, 12 *Marquette L. R.* 138-149 (1928).

¹² The model act of the United States Revolver Association has been adopted in New Hampshire and North Dakota. Many of its provisions were enacted also in California, Indiana, Michigan, Oregon and West Virginia, but these states have since then materially changed their firearms statutes.

¹³ The Uniform Firearms Act has been adopted with slight modification in Alabama, Indiana, Pennsylvania, South Dakota, Washington and the District of Columbia. It has also influenced the law in a number of other states. See subsequent notes and *Handbook of the National Conference of Commissioners on Uniform State Laws* (1930) p. 532.

of the intent to commit a crime of violence from the illegal carrying of a pistol. There are also sections forbidding pawnbrokers to deal in pistols and making it a crime to alter the numbers on pistols.

The Uniform Firearms Act was well thought out and skilfully drawn, but developments since it was drafted have thrown new light on several of the problems with which it deals. For example, experience has demonstrated the futility of further increases in the maximum sentence of persons convicted of crimes of violence. The various studies of the lives of criminals have shown that those already convicted of crimes of violence are not the only potential gunmen. Further, recent federal statutes forbidding the purchase of pistols from mail order houses in other states have made state acts regulating their sale much more efficacious than formerly.

The trend of pistol legislation in the last ten to fifteen years has been toward stricter regulation. More and more it has been recognized that the possession of a pistol that can easily be concealed in the pocket furnishes a temptation which many young hoodlums are impotent to resist. Thus the relation of strict control over the purchase and carrying of pistols to the problem of reducing crimes of violence has become clear. On the other hand, the last decade has seen a great increase in target shooting with both pistols and rifles. If this development is to continue, it is important that pistol statutes take into consideration the needs of target-shooters and do not make it difficult for them to secure and carry pistols legally.

Such considerations led the Interstate Commission on Crime, at its meeting in Cleveland last July to recommend a number of amendments to the Uniform Firearms Act proposed by the writer. Both because the model act as amended deals solely with pistols, including in that term revolvers, and to distinguish its recommendations from those of the Commissioners on Uniform State Laws, the Interstate Commission on Crime called its act the Uniform Pistol Act.

The object of this article is to discuss the reasons for these amendments to the Uniform Firearms Act. The most important differences between the two acts will be discussed under seven headings: (1) Increasing the penalties for crimes of violence when armed with a pistol; (2) prohibiting criminals from possessing pistols; (3) licensing the carrying of pistols; (4) encouraging target shooting; (5) regulating the sale of pistols; (6) creating pre-

sumptions to aid in the conviction of criminals carrying pistols, and (7) providing appropriate penalties for all violations of the act.

1. *Increasing the Penalties for Crimes of Violence When Armed With a Pistol.*

Section 2 of the Uniform Firearms Act provides: "If any person shall commit or attempt to commit a crime of violence when armed with a pistol, he may, in addition to the punishment provided for the crime, be punished also as provided by this act."¹⁴ The additional penalty is not specified, but is to be fixed in each state in which the act is passed "according to the needs and usages of the particular state." However, as section 17 provides the same penalty for all violations of the act, it will readily be seen that the penalty cannot be large since it must cover minor as well as major infractions.

No importance need be attached to this fact, however, since the maximum punishments provided by the various state statutes for committing crimes of violence while armed are already heavy. It is obvious that the addition of a few months or years to the statutory maximum sentences for murder and manslaughter would be futile. The following table gives the punishments in the various states for each of the other important crimes of violence.

TABLE I.

NUMBER OF STATES PUNISHING EACH CRIME BY A MAXIMUM SENTENCE OF DEATH, LIFE IMPRISONMENT, 25 YEARS, ETC.

Crimes	Maximum Sentence in Years						Life	Death
	3-4	5-9	10-14	15-19	20-24	25 & Over		
Kidnapping ..0	0	0	1	0	5	6	13	23
Robbery0	0	0	0	1	8	12	19	8
Burglary0	2	4	4	10	10	7	11	4
Mayhem1	8	20	3	10	4	2	0	
Felonious								
Assault ...2	2	17	3	13	3	4	4	

¹⁴ This section has been adopted substantially unchanged as a part of the Uniform Firearms Act in Alabama, Ala. Code Ann. (Michie, 2d Supp. 1936) §4047 (2); Indiana, Ind. Stat. Ann. (Burns, Supp. 1937) §10-4735; Pennsylvania, Pa. Stat. Ann. (Purdon, Supp. 1937) tit. 18, §1585b; South Dakota, S. D. Sess. Laws 1935, c. 208, §2; Washington, Wash. Rev. Stat. Ann. (Remington, Supp. 1937) §2516-2.

Laws providing additional maximum penalties but no minimum penalties for commission of crimes of violence when armed are also in effect in District of Columbia, D. C. Code (Supp. 1937) tit. 6, §116b; New Hampshire, N. H. Pub. Laws 1926, c. 149, §2; New Jersey, N. J. Rev. Stat. (1937) tit. 2, §176-5; North Dakota, N. D. Comp. Laws Ann. (Supp. 1925) §9803a2; Rhode Island, R. I. Pub. Laws 1927-28, c. 1052, §2.

Kidnapping carries the highest penalties because of the number of statutes increasing the punishment for that offense passed since the Lindbergh kidnapping case. In 36 states the penalty is either life imprisonment or execution. Only in one state, Utah, is the maximum punishment under 20 years' imprisonment. Doubtless cases might arise which merited a longer term of imprisonment than the 10 year maximum allowed in Utah. If the kidnapers carried pistols, as they probably would in such cases, the need could be supplied by providing additional punishment for kidnapping when armed with a pistol. If such kidnapers had been twice before sentenced to three years' imprisonment as might well be the case, they could be sentenced for life under the Utah habitual offender act.¹⁵

The second offense on the list is robbery. The maximum punishment possible is death or life imprisonment in 27 states and less than 20 years' imprisonment only in New Jersey. New Jersey and Arkansas have the shortest maximum penalty for burglary, 7 years' imprisonment. A higher maximum is not needed in either state: in New Jersey because of its habitual offender act,¹⁶ and in Arkansas because of its peculiar provisions that a burglar may be prosecuted both for the burglary and for any crime he commits after entering.

The four states having statutory maximum punishments for burglary of between 10 and 15 years are Colorado, Pennsylvania, Texas and Wyoming. All of these states have habitual offender acts¹⁷ which make it unnecessary to provide longer maximum penalties than existing statutes permit.

The statutory maximum penalties for mayhem and felonious assault are not as high as those for kidnapping, robbery and burglary, though habitual offender acts often make them much higher for repeaters than the periods given in Table I. Hence if section 2 of the Uniform Firearms Act were generally enacted, and provided for adding five years to the maximum penalty when the crime was committed by a person armed with a pistol, it would be useful only in exceptional cases in the few states which both have low maximum penalties for mayhem and felonious assault and no habitual offender acts.

¹⁵ Utah Rev. Stat. Ann. (1933) §103-1-18.

¹⁶ N. J. Rev. Stat. (1937) tit. 2, §§103-7 to 103-10.

¹⁷ Colo. Stat. Ann. 1935, c. 48, §553; Pa. Stat. Ann. (Purdon, 1936) tit. 19, §922; Texas Stat. (Vernon, 1936) Penal Code tit. 2, art. 63; Wyoming Laws 1937, c. 68.

There is, however, another angle to this question and a very important one. If the discussion of punishments for crime of violence were stopped at this point, the impression might be gained that the long maximum sentences set forth in Table I were commonly meted out to the perpetrators of crimes of violence and served by them. Such is far from the truth. For the purpose of determining what sentences were in fact passed and served, an examination was made of the sentences of convicted robbers shown in the reports of the United States Bureau of the Census. The census figures do not distinguish between armed and unarmed robbery and so Tables II and III deal with both varieties. But since probably about two-thirds of all persons convicted of robbery carried a pistol,¹⁸ the tables give a rough approximation of the punishments for robbery armed with a pistol.

TABLE II.

MAXIMUM SENTENCES FOR ROBBERY IN PER CENT.¹⁹

<i>Fines, Costs, Etc.</i>	<i>Proba- tion</i>	<i>Local Jails Etc.</i>	<i>Juven- ile Inst.</i>	<i>State —5</i>	<i>and 5</i>	<i>Federal 6-9</i>	<i>Prisons 10</i>	<i>and 11-14</i>	<i>Reformatories 15-19</i>	<i>20</i>	<i>Life</i>
1	15	24	1	3	6	4	6	2	7	17	14

Table II shows that 69% of all persons convicted of armed and unarmed robbery received sentences of less than 20 years, or less than the statutory maxima. Hence over two-thirds of all convicted robbers would not be affected by a provision giving the courts discretion to inflict longer penalties. Neither would many of the remaining one-third. Table III shows that only 2% of the convicted robbers actually serve as many as ten years in prison,

¹⁸ A check made by the writer of 2200 consecutive discharges from the state penal institutions of Illinois, Massachusetts and New Jersey of men convicted of robbery showed that 1508 (68.5%) used pistols in committing the robbery for which they were sentenced, 3 used machine guns, 2 rifles, 14 shotguns and 102 miscellaneous weapons; 499 had no weapon and concerning 72 no information was available.

¹⁹ The lengths of the different sentences to state and federal prisons and reformatories are taken from the federal censuses of 1934 and 1935 of prisoners admitted to such institutions and cover the entire United States. The data relating to the other sentences comes from the federal censuses of trial courts in 28 states for the same two years. The two sets of information are combined on the assumption that the same proportion of persons convicted of robbery are sentenced to state and federal prisons and reformatories in the entire country as in these 28 states. The possibilities of error arising from this assumption are extremely small. See U. S. Bureau of the Census: Prisoners in State and Federal Prisons and Reformatories for 1934 and 1935, table 20 and Judicial Criminal Statistics, 1934 issue, p. 82, table 48; 1935 issue, p. 76, table 33.

which means of course that only a small fraction of 1% serve the maximum periods now provided by law.

TABLE III.

TIME ACTUALLY SERVED FOR ROBBERY BY PER CENT.²⁰

<i>Fines, Costs, Etc.</i>	<i>Proba- tion</i>	<i>Local Jails Etc.</i>	<i>Juven- ile Inst.</i>	<i>State</i>	<i>and</i>	<i>Federal</i>	<i>Prisons</i>	<i>and</i>	<i>Reformatories</i>		
				-1	1	2	3	4	5	6-9	10
1	15	24	1	4	12	12	10	6	6	7	2

Since a large proportion of the persons sentenced for robbery carried pistols, it is obvious that even if all those receiving short sentences were unarmed and all those receiving long sentences were armed with pistols, the latter must have received much shorter sentences than the maxima allowed by law. Nor would an increase in the permissible maximum sentence be more effective in the case of other crimes of violence. It is clear, therefore, that section 2 of the Uniform Firearms Act does not accomplish its purpose.

Section 2 of the Uniform Pistol Law should prove much more effective. It does not apply to first offenders, but provides that if a man who has been convicted of any of the more serious offenses is later convicted of committing a crime of violence while armed with a pistol, he shall not be placed on probation but shall be sentenced to prison for at least two and a half years. Furthermore, he is not to be eligible for release on parole until he has spent two and a half years in prison.²¹

Just what proportion of men convicted of robbery and other crimes of violence would be affected by this provision is not known.

²⁰ Table 3 is a hybrid. The percentages of defendants fined, placed on probation and sentenced to jails and juvenile institutions are taken from table 2. The periods spent in prisons and reformatories by the remaining 59% are calculated from U. S. Bureau of the Census: Prisoners in State and Federal Prisons and Reformatories, for 1934, table 49 and for 1935 table 45.

²¹ Statutes provide a minimum penalty for the commission of crimes of violence while armed with a pistol in California, Cal. Gen. Laws (Deering, 1937) Act 1970, §§3, 4; Indiana, Ind. Stat. Ann. (Burns, Supp. 1937) §10-4709; New York, Penal Law, §1944; Oregon, Ore. Code Ann. (1930) §72-203; Vermont, Vt. Pub. Laws 1933, §8411; Washington, Wash. Rev. Stat. Ann. (Remington, Supp. 1937) §10249-2 (this section is distinct from section 2 of the Uniform Firearms Law, which is also in force in Washington).

In California, New York, Oregon and Washington there are also limitations either on the power of the trial judge to suspend sentence or release on probation in such cases, or that of the parole board to grant parole.

In Massachusetts there is a statutory provision for a minimum penalty for the commission of a felony while armed with a pistol with identification marks defaced. Mass. Ann. Laws (Supp. 1937) c. 269 §11B.

Table III shows that 57% of all persons convicted of robbery serve less than two years in prison and 69% less than three years. An investigation of convicted robbers in Illinois, Massachusetts and New Jersey indicates that prior criminal record plays little part in determining the time served and that about half of the persons sentenced for armed robbery have formerly done time.²² On this basis the statute should affect over a quarter of all persons convicted of robbery with a pistol. Indirectly it might also help to establish the practice of punishing severely all persons convicted of committing crimes of violence when armed with a pistol.

Of course, a statutory enactment ought not be necessary to establish such a practice. Prosecutors, judges and parole boards should realize that armed robbery, for example, is a very serious offense, not only in itself, but as indicative of a character lacking in regard for human life. But attempts to force severe punishments have often been made in the past and have nearly always failed. We think, however, that since the increase provided by the Uniform Pistol Act does not apply to first offenders and is not very great, it should not encounter the opposition which has so largely nullified in most states the effect of repeated offender acts.

2. *Prohibiting Criminals From Possessing Pistols.*

Section 4 of the Uniform Firearms Act provides: "No person who has been convicted in this state or elsewhere of a crime of violence, shall own a pistol or have one in his possession or under his control."²³

A provision such as this is very valuable in a state having no licensing law and allowing anybody to carry a pistol unconcealed or in any manner. It is also useful in states requiring licenses to carry pistols, because such laws do not cover possession in one's "place of abode or fixed place of business."

²² The results of the investigation on which these statements are based have not yet been published. Of 1506 convicts sentenced for robbery with a pistol, a former sentence had been served by 56% in Massachusetts, 52% in New Jersey and 37% in Illinois. The low percentage in Illinois is probably due to difficulties in securing the information.

²³ This section has been adopted substantially unchanged as a part of the Uniform Firearms Act in Alabama, Ala. Code Ann. (Michie, 2nd Supp. 1936) §4047 (4); Pennsylvania, Pa. Stat. Ann. (Purdon, Supp. 1937) tit. 18, §1585d; South Dakota, S. D. Sess. Laws 1935, c. 208, §4; Washington, Wash. Rev. Stat. Ann. (Remington, Supp. 1937) §2516-4.

There are similar provisions in effect in District of Columbia, D. C. Code (Supp. 1937) tit. 6, §116c; New Jersey, N. J. Rev. Stat. (1937) tit. 2, §176-8; Rhode Island, R. I. Pub. Laws 1927-28, c. 1052, §3.

The justification for the section is the protection afforded by prohibiting the possession of pistols to men who are liable to use them in a way dangerous to society. Experience has shown that crimes of violence are much more likely to be committed by men who have previously been convicted of such offenses. Therefore, it clearly should be illegal for men to possess pistols who have been convicted of murder, manslaughter, robbery, rape, felonious assault, kidnapping or burglary.

The only offense in the list of crimes of violence in section 2 of the Uniform Firearms Act that does not involve danger to the person is larceny. Nevertheless this crime is undoubtedly properly included in the list. Robbery and other crimes of violence are occasionally committed by young men without prior criminal records, but not usually. Ordinarily a young criminal cuts his teeth on larceny and other minor offenses. Only after he has had a few convictions and "done time," does he graduate into robbery. The transition may be intentional, but often it is due to chance and the presence of a pistol. He has the pistol and the opportunity for easy money seems Heaven sent. Hence a strenuous effort should be made to keep pistols out of the hands of boys and young men whose prior conduct shows them to belong to the class from which gunmen spring.

On this basis, the possession of pistols ought to be forbidden to people who have been convicted of any serious offense likely to be committed by incipient gunmen. The corresponding section of the Uniform Pistol Act does this, for it includes anybody who has been convicted of "committing or attempting to commit any felony, or of making or possessing burglar's instruments, of buying or receiving stolen property, of aiding escape from prison or of unlawfully possessing or distributing cannabis sativa, commonly known as marijuana, or habit-forming narcotic drugs."²⁴

²⁴ Laws containing similarly broad provisions are in effect in California, Cal. Gen. Laws (Deering, 1937) act 1970, §2 (persons convicted of felony and drug addicts); New Hampshire, Pub. Laws 1926, c. 149, §3 (persons convicted of felony); New York, Penal Law, §§1897 (4), 1897 (9-b) (persons having any previous criminal record on file in the state central bureau of criminal identification); North Dakota, N. D. Comp. Laws Ann. (Supp. 1925) §9803a5 (persons convicted of felony); Oregon, Ore. Code Ann. (Supp. 1935) §72-202 (persons convicted of felony).

The laws of Massachusetts and Michigan do not prohibit the possession of pistols by persons convicted of felony, but they do make it difficult for convicted felons to get pistols. Licenses are required for all purchases of pistols and it is provided that a license to purchase may not be issued to any person convicted of felony. Mass. Ann. Laws (1933) c. 140, §131A; Mich. Stat. Ann. (Henderson, 1935) §28.92. The Michigan statute also provides that no one may have firearms

3. *Licensing the Carrying of Pistols.*

Though every state in the Union except Minnesota and Vermont restricts the right of citizens to carry pistols concealed on the person, only twenty-seven of these forty-six do so by requiring a license²⁵ Although there are northern, eastern, southern and western states in both groups, generally speaking the agricultural states do not have provision for licenses and the industrial states do. Exceptions to the latter statement are Illinois and Ohio.

Statutes prohibiting the carrying of pistols always contain an exception in favor of policemen and other law-enforcement officers, often also watchmen, travellers, persons who have been threatened and various others. In addition, they usually apply only to the carrying of concealed weapons, though occasionally all carrying of pistols is prohibited.²⁶ Such provisions have a number of advan-

while under the influence of liquor or drugs. Mich. Stat. Ann. (Henderson, 1935) §28.434.

²⁵ A license to carry a concealed pistol except in the home or place of business is required in eighteen states and the District of Columbia: Alabama, Ala. Code Ann. (Michie, 2nd Supp. 1936) §4047 (5); California, Cal. Gen. Laws (Deering, 1937) act. 1970, §5; Colorado, 2 Colo. Stat. Ann. 1935, c. 48, §245; Delaware, Dela. Rev. Code (1935) §§5286, 236; District of Columbia, D. C. Code (Supp. 1937) tit. 6 §116d; Iowa, Code of 1935, §12936; Maine, Me. Rev. Stat. (1930) c. 142, §13; Michigan, Mich. Comp. Laws (Supp. 1935) §17115-227; Montana, Mont. Rev. Code of 1935, §§11302-6; New Hampshire, Pub. Laws (1926) c. 149, §4; New Jersey, N. J. Laws 1933-4, p. 197; North Dakota, N. D. Comp. Laws (Supp. 1925) §9803-a6; Oregon, Ore. Code Ann. (Supp. 1935) §72-205; Pennsylvania, Pa. Stat. Ann. (Purdon, Supp. 1937) tit. 18, §1585e; Rhode Island, R. I. Acts 1927, c. 1052, §4; South Dakota, S. D. Laws 1935, c. 208, §5; Utah, Utah Rev. Stat. (1933) §103-21-4; Virginia, Va. Code (1936) §4534; Washington, Wash. Rev. Stat. (Remington, Supp. 1937) §2516 (5). In six states a license is required regardless of whether the pistol is carried openly or concealed: Connecticut, Conn. Gen. Stat. (1930) §2671; Florida, 4 Fla. Comp. Gen. Laws (1927) §7202; Indiana, Ind. Stat. Ann. (Burns, Supp. 1938) §10-4736; Massachusetts, Mass. Gen. Laws 1932, c. 269, §10; New York, Penal Law, §1897 (4); West Virginia, W. Va. Code (1937) §6043 (1). Georgia prohibits carrying pistols concealed and requires a license to carry them openly; Georgia Code Ann. (1936) tit. 26, §5101-3; Idaho and Nevada require a license to carry a concealed pistol in a town; Idaho Code (1932) Off. Ed., §17-3102; Nevada Comp. Laws (1929) §10251.

²⁶ The carrying of concealed pistols is prohibited with certain exceptions in twelve states: Arizona, Ariz. Rev. Code (1928) §4724; Illinois, Ill. Ann. Stat. (Smith-Hurd, 1934) c. 38, §155; Kansas, Kan. Gen. Stat. (1935) §21-2411; Kentucky, Ky. Rev. Stat. (Baldwin, 1936) §1309; Louisiana, La. Code Crim. Proc. (Dart, 1932) §1274; Maryland, Md. Ann. Code (1924), art. 27, §42; Mississippi, Miss. Code Ann. (1930) §853; Nebraska, Neb. Comp. Stat. (1929) §28-1001; North Carolina, N. C. Code (Michie, 1935), §4410; Ohio, Ohio Code (1936) §12819; Wisconsin, Wis. Stat. (1935) §340.69; Wyoming, Wyo. Rev. Stat. (1931) §32-408. Oklahoma, South Carolina and Texas prohibit all carrying of pistols whether openly or concealed: 21 Okla. Ann. Stat. (1937) c. 53, §1272; S. C. Code (1932) §1255; Texas Penal Code (1936), art. 483-4. Arkansas and Tennessee prohibit the carrying in any manner of all pistols except army and navy pistols and these must be carried openly; Arkansas, 1 Dig. of Stat. (1937) §3508-9; Tenn. Code Ann. (Williams, 1934) §11007. New Mexico, N. Mex. Stat. (1929) §35-3401 prohibits all carrying in settlements

tages. They are definite. Who may legally carry a pistol depends on the statute, not the permission of some official. They are cheap to operate, for there are no pictures to be taken, criminal records to be checked, sponsors to be interviewed or records to be kept. They cause no inconvenience to anybody in the excepted classes. A watchman, for example, may carry his pistol without bothering to secure a license. They do away with the danger that through negligence or corruption criminals may secure licenses to carry pistols concealed on their persons or in their automobiles.

There are also disadvantages inherent in any scheme prohibiting all but men in certain occupations and situations from carrying pistols. There is, first of all, the difficulty of covering, in any list of excepted groups, all the people who might have a legitimate reason for desiring to carry a pistol without including some who should not have that privilege. Licensing makes it easy to take care of the exceptional case. Another difficulty with the prohibitory statute is that a policeman who sees a man with a pistol has to determine whether he may legally arrest him. Is the suspect a watchman, a member of a pistol club, a traveller, a man justified in carrying a pistol because his life has been threatened, or a burglar carrying a pistol illegally but bluffing skillfully? Where licenses are required, there are usually so few people with the right to carry a concealed pistol without a license, that the officer may safely arrest anybody who does not produce his license. An officer may not safely do this in a state which adopts the Uniform Firearms Act. Though the act requires a license to carry a pistol, through an oversight it fails to provide that the licensee must carry his license with him. This omission is remedied in the Uniform Pistol Act.²⁷

Another objection to nearly all the prohibitory statutes is that they fail to prohibit carrying pistols in automobiles.²⁸ It does not interfere with the suppression of armed crime to allow men to carry pistols openly on their persons.²⁹ In the wide open spaces of the

and Missouri, 4 Mo. Stat. Ann. (1932) c. 30, §4029, prohibits all carrying concealed and the open carrying in certain places.

²⁷ The Uniform Pistol Act, §6. Similar provisions exist in Iowa, Code of 1935, §12947; Michigan, Ann. Stat. 1938, §28.93; and New York, Penal Law, §1897 (10-a).

²⁸ The only prohibitory statute which refers to carrying pistols in automobiles is that in Illinois. It prohibits the carrying of firearms in an automobile within ten years of a conviction for a crime of violence. Ill. Ann. Stat. (Smith-Hurd, 1934) c. 38, §155a.

²⁹ The Uniform Firearms Act requires a license to carry a pistol concealed on the person and for all carrying in automobiles. The Uniform Pistol Act

west, law-abiding citizens may carry pistols in holsters strapped around their waists, but in a city this practice would make them too conspicuous. On the other hand, police often catch criminals carrying pistols openly in their automobiles. Perhaps they dropped their guns on the floor of the car when they saw the police coming. Or it may be, they were actually carrying them that way. Of course, a pistol lying openly on the floor of an automobile is in fact ordinarily invisible to all but the occupants of the car.

Thus licensing seems the preferable solution. The possibility of illegal issuance of licenses can be overcome by placing their issuance in more responsible hands and requiring a more careful examination of each applicant.

Both the Uniform Firearms Act and the Uniform Pistol Act require a license to carry a pistol except in one's place of abode or fixed place of business, or, as provided by the Uniform Pistol Act only, on an established target range.³⁰ The main differences in the licensing provisions of the two acts relate to the licensing authority.

Section 7 of the Uniform Firearms Act provides: "The judge of a court of record, the chief of police of a municipality [or] the sheriff of a county, may upon the application of any person issue a license." . . .³¹

The power to issue licenses is thus entrusted to each of a large number of officials. The applicant may shop from one official to another without even limiting his search to the city or county in which he resides. The Act authorizes every judge of every court of record, the chief of police of every municipality and the sheriff of every county to issue a pistol license to any person regardless of where he may reside or how many times he has been refused by other judges, chiefs of police and sheriffs. Thus a criminal need not apply where he is known, but may search the state for a single negligent or corrupt licensor. Clearly a man should be allowed to apply only in the city or county where he resides or is

requires a license to carry a pistol concealed or openly either on the person or in an automobile. The provision in the latter act has the advantage of uniformity and of doing away with the possibility that the law may trap the unwary. The man carrying his pistol openly without a license is almost certain to want to get into an automobile and quite likely to do so without realizing that when he does, he is violating the Uniform Firearms Act.

³⁰Section 5 of both acts.

³¹This section has been adopted in Alabama, South Dakota and Washington. See Ala. Code Ann. (Michie, 2nd Supp. 1936) §4047 (7); S. D. Sess. Laws 1935, c. 208, §7; Wash. Rev. Stat. Ann. (Remington, Supp. 1937) §2516-7. In Utah any justice of the peace may license anybody. Rev. Stat. (1933) §103-21-4.

employed. If he has not been there long enough for the chief of police to have confidence that he is a suitable person to be licensed, he should not be able to secure a license. If one licensing official or board turns him down, there should be no other co-equal authority to which he can apply.

If we agree that only one person or board should have the authority to grant a license, the next question is whether that authority should be lodged in the judge, the chief of police or sheriff, or some other person or board. The lack, in pistol licensing acts, of a definite description of the persons to be licensed adds to the importance of the licensing power. From this it does not follow that the best plan is to confide the licensing authority to the appropriate judge; though this is often done and usually with success.³² Judges have the necessary temperament, but not the requisite interest or means of knowledge. If an applicant appeared before a judge with two witnesses who swore to his good character and the chief of police or the prosecutor said merely that he did not know the applicant or his witnesses, a judge would be too likely to grant a license.

What is needed is not testimony, especially that of unknown people, but a report of a search of the files for the applicant's prior criminal record and of interviews with his employers and neighbors. Investigations of this sort can be made most effectively by a police department. Hence the chief of police is made the licensing authority even more commonly than the judge.³³

Though most chiefs of police make good licensing authorities,

³² Judges have exclusive licensing authority in Delaware, Del. Rev. Code (1935) c. 6, §236; Georgia, Ga. Code Ann. (Park, Skillman & Strozier, 1936) tit. 26, §5104; Indiana, Ind. Stat. Ann. (Burns, Supp. 1937) §10-4738 (in adopting this section, the Indiana legislature rejected the broader provision in the Uniform Firearms Act); Montana, Mont. Rev. Codes Ann. (1935) §11306; New York, Penal Law, §1897 (8) (except in New York City); Virginia, Va. Code Ann. (1936) §4534; West Virginia, W. Va. Code Ann. (1937) §6044.

³³ Police chiefs in cities and towns and sheriffs in counties have exclusive licensing authority in California, Cal. Gen. Laws (Deering, 1937) act 1970, §8; Connecticut, Conn. Gen. Stat. (1930) §2665; District of Columbia, D. C. Code (Supp. 1937) tit. 6, §116f; Idaho, Idaho Code Ann. (1932) §17-3102; Iowa, Iowa Code (1935) §12938; Maine, Me. Rev. Stat. (1930) c. 142, §14; New York, Penal Law, §1897 (8) [in New York City only]; Oregon, Ore. Code Ann. (1930) §72-208; Pennsylvania, Pa. Stat. Ann. (Purdon, Supp. 1937) titl. 18, §1585g (in adopting this section, the Pennsylvania legislature rejected the broader provision in the Uniform Firearms Act); Rhode Island, R. I. Pub. Laws 1927-28, c. 1052, §1 and 6.

The chiefs of police and sheriffs share authority to license with mayors and selectmen in Colorado, Colo. Stat. Ann. (1935) c. 48, §245 and New Hampshire, N. H. Pub. Laws (1926) c. 149, §6.

The chiefs of police and sheriffs share authority to license with judges in North Dakota, N. D. Comp. Laws Ann. (Supp. 1925) §9803a8.

there are likely to be one or two in every state who issue licenses without proper examination because of friendship or for some other reason. The same danger exists when this authority is given to any large body of men. In Illinois it was the improper issuance of licenses by judges which caused the state to give up the system of licensing. Because of this danger, New Jersey has entrusted the licensing authority to a judge who may act only on applications already approved by the chief of police.³⁴

An excellent plan is that now used in Michigan. In each county there is a "Concealed Weapon Licensing Board," consisting of the prosecuting attorney, the sheriff and the commissioner of public safety or their deputies. It may issue licenses to any resident of the county who has been approved in writing by the chief of police.³⁵ Perhaps an even better plan is that set out in the Uniform Pistol Act,³⁶ which provides that all licenses are to be granted by a single state licensing authority, preferably the Commissioner of Public Safety, on applications approved by the chief police officer of the applicant's place of residence. This provides for investigation in the first instance by the chief of police or sheriff who is likely to know the applicant or have easy access to information about him. At the same time it gives the central police authority the right to investigate further or to reject applicants approved by chiefs of police thought to be careless. It also ensures a central file of applications and does away with the possibility that an applicant who has been refused a license in one county may secure one by moving into another where his record is not known.

4. *Encouraging Target Shooting.*

Both the Uniform Firearms Act and the Uniform Pistol Act seek to encourage target shooting with pistols. The provision in the former act is in section 6 and exempts from the requirement of a license to carry pistols "the regularly enrolled members of any organization duly authorized to purchase or receive such weapons from the United States or from this state, provided such members are at or are going to or from their places of assembly or target practice."³⁷ The only such organization at present au-

³⁴ N. J. Rev. Stat. (1937) tit. 2, §176-44.

³⁵ Mich. Stat. Ann. (Henderson, 1936) §28.93.

³⁶ *Supra*, Section 8.

³⁷ This provision has been adopted substantially unaltered as a part of the

thorized to purchase or receive pistols from the United States is the National Rifle Association. Thus the act discriminates against members of the United States Revolver Association. It is for this reason undesirable.³⁸ Further it enlarges too much the classes of persons who may legally carry pistols without a license. The object of requiring a license to carry a pistol is both to keep people with criminal tendencies from carrying pistols and to assist the police in sending back to prison ex-convicts caught carrying them. When a police officer discovers a stranger carrying a pistol, his proper course of conduct is clear if all legal carriers of pistols must be licensed. If a large number of people may legally carry pistols without a license, then an officer discovering an ex-convict with a pistol but no license may be bluffed into not arresting him.

The method of encouraging target shooting used in the Uniform Pistol Act is to create a special target shooters' license. Section 9 provides:

"(1) The chief of police of any municipality or the sheriff of any county in which there is a club formed for target practice and affiliated with a national association for the training of United States citizens in marksmanship may issue without charge a local target shooter's license to any member of that club who resides or has a regular place of business or employment and has resided or had a regular place of business or employment for over one year in that municipality or county and is recommended in writing by the secretary of the club as a suitable person to be so licensed.

(2) A local target shooter's license shall be good for one year and shall authorize its holder to carry within the municipality or county in which it is issued one or more 45 Service automatic pistols or target pistols with a barrel of at least six inches in length unloaded and in a bag, box or securely wrapped package, but not on his person.

(3) The Commissioner of Public Safety may upon the payment of fifty cents issue to the holder of any local target shooter's license a

Uniform Firearms Act in Alabama, Ala. Code Ann. (Michie, 2nd Supp. 1936) §4047 (6); Indiana, Ind. Stat. Ann. (Burns, Supp. 1937) §10-4737; South Dakota, S. D. Sess. Laws 1935, c. 208, §6.

There are similar provisions in effect in District of Columbia, D. C. Code (Supp. 1937) tit. 6, §116e; New Hampshire, N. H. Pub. Laws 1926, c. 149, §5; New Jersey, N. J. Rev. Stat. (1937) tit. 2, §176-43 (o); North Dakota, N. D. Comp. Laws Ann. (Supp. 1925) §9803a7; Rhode Island, R. I. Pub. Laws 1927-28, c. 1052, §5; West Virginia, W. Va. Code Ann. (Michie, 1937) §6045.

³⁸ In adopting the Uniform Firearms Act, Washington prevented discrimination by adding "or to regularly enrolled members of clubs organized for the purpose of target shooting and affiliated with a national shooting organization." Wash. Rev. Stat. Ann. (Remington, Supp. 1937) §2516-6. Similar language was inserted in the Pennsylvania statute. Pa. Stat. Ann. (Purdon, Supp. 1937) tit. 18, §1585f.

There are similar provisions in California and Oregon. Cal. Gen. Laws (Deering, 1937) Act. 1970, §6; Ore. Code Ann. (1930) §72-206.

state target shooter's license good for one year. Such license shall authorize the holder thereof to carry the same variety of pistol or pistols and in the same manner as permitted by a local target shooter's license, but shall extend to all parts of the state. It shall also authorize its holder to carry loaded and upon his person a target pistol with a barrel of at least six inches in length in any place in the woods or fields or upon the waters of the state where he may lawfully go and shoot. The possession of a state target shooter's license shall not authorize its holder to shoot any bird, animal or fish which it would be unlawful for him to shoot if he did not possess such license.

(4) The Commissioner of Public Safety may issue a license to carry a pistol or a state target shooter's license to a resident of another state who holds a license to carry a pistol or a state target shooter's license in the state of his residence. The holder of a state target shooter's license in the state of his residence who is travelling through this state or who has entered this state for the purpose of competing in a pistol meet shall for a period not exceeding thirty days in any one year have the privileges of the holder of a state target shooter's license issued in this state."

This section is entirely new and unlike any law existing anywhere in the United States.³⁹ It is, therefore, impossible to be certain how it will work. The only assurance the writer has of the success of the plan is the enthusiasm for it of the vast majority of the chiefs of police, prosecutors and target shooters with whom he has talked. If a state should enact this section and for some reason it did not work satisfactorily, little harm would be done. All that would be necessary to make the statute inoperative is for the licensing officials to stop exercising their discretionary power to issue such licenses.

The section does not appear to offer any boon to gangsters and other criminals. Though criminals occasionally use any weapon they can steal, they always prefer pistols that can be concealed easily on the person. A target pistol with a six inch barrel has an overall length of about a foot and so is much too long to hide conveniently. A 45 Service automatic is only about nine inches, measured across the longest diagonal, but it is bulky and quite burdensome to carry. Though it is much more frequently stolen and used by criminals than target pistols, it also is not desirable from the criminals' point of view.

It is, of course, theoretically possible for criminals to parade

³⁹Massachusetts is the only state which expressly provides for licensing target shooters. The licensing authorities may issue licenses only to applicants who want them for a "proper purpose." Target practice is declared to be such a purpose. Mass. Ann. Laws (Supp. 1937) c. 140, §131.

as honest citizens and join gun clubs, or to form clubs of their own which would receive the approval of the national organization and the local chief of police. Nevertheless, it is extremely unlikely that any considerable number of criminals will employ this method of securing the right to carry pistols. All they would obtain for their efforts would be the right to carry an inconveniently large pistol unloaded and in a bag.

The provisions of the section which are annoying to criminals do not disturb target shooters. A target shooter wants a gun that shoots accurately and hence one with a long barrel. He wants to carry more than one pistol, for reasons similar to those leading a golfer to desire more than one club, and also ammunition and gun-cleaning material. Hence of necessity he wants to carry his pistol or pistols in a bag or some other container, rather than on his person. The possession of a target shooter's license permits its holder to carry a target shooter's pistol in a target shooter's way in other states, while the holder of an ordinary license cannot legally carry a pistol outside of the state issuing him the license. If a considerable number of states should pass the Uniform Pistol Act, this extraterritorial privilege may prove a considerable inducement to obtaining target shooters' licenses rather than ordinary licenses to carry pistols.

The principal advantage which it is believed a target shooter's license affords is the chance to secure a license cheaply and easily. The fear that criminals may secure licenses to carry pistols has led many chiefs of police to throw obstacles in the path of people desiring licenses. Even where this is not done, there is often considerable delay and inconvenience involved in securing an ordinary license to carry a pistol. Pictures, fingerprints, letters from sponsors and interviews with police officers are often necessary.⁴⁰ On

⁴⁰ In all licensing states, the licensing authority must be satisfied that the applicant is a suitable person to carry a pistol and that he has a proper reason for wanting a license. Further requirements must be satisfied to obtain a license in Delaware, Del. Rev. Code (1935) c. 6, §236 (letters from five reputable freeholders in the same county as the applicant, notice of application must be published); District of Columbia, D. C. Code (Supp. 1937) tit. 6, §116f (photograph of licensee must be affixed to the license); Florida, Fla. Comp. Gen. Laws Ann. (1927) §7203 (bond must be posted); Georgia, Ga. Code Ann. (1936) tit. 26, §5104 (bond must be posted); Iowa, Iowa Code (1935) §12939 (applicant must appear personally); Michigan, Mich. Stat. Ann. (Henderson, 1935) §28.93 (fingerprints); New Jersey, N. J. Rev. Stat. (1937) tit. 2, §176-44 (fingerprints, two applications—to chief of police, then to judge); New York, Penal Law, §1897 (10) (photograph and fingerprints); Rhode Island, R. I. Pub. Laws 1927-28, c. 1052, §6 (fingerprints and bond); West Virginia, W. Va. Code Ann. (Michie, 1937) §6044 (notice of application must be published).

the other hand, if a target shooters' club is in good odor with the police, a target shooter's license may be secured merely by filling out an application blank and handing it to the secretary of the club. Of course, if a target shooter wishes to obtain an ordinary license to carry a pistol, there is nothing in the Uniform Pistol Act to hinder him in any way.

5. *Regulating the Sale of Pistols.*

The principal provisions of the Uniform Firearms Act relating to the sale of pistols are:⁴¹

1. No seller shall deliver a pistol until forty-eight hours after the application to purchase it.

2. When delivered, the pistol shall be securely wrapped and unloaded.

3. The purchaser shall sign a statement identifying the pistol and giving his full name, address, occupation, color and place of birth. If the seller is a retail dealer in firearms the purchaser must be personally known to him or present clear evidence of his identity.

4. The purchaser shall sign a statement saying that he has never been convicted of a crime of violence.

5. Within six hours after the application is made the seller shall send by registered mail one copy of statements 3 and 4 to the chief of police of the purchaser's residence and the other to the state official in charge of such records.⁴²

The object of the requirement that no seller shall deliver a pistol until forty-eight hours after the application to purchase, is to prevent men in the heat of passion from buying a pistol. Since a considerable percentage of all murders and assaults are committed in the heat of passion, the requirement of forty-eight hours' delay in the purchase of pistols seems to be justified.⁴³

⁴¹ *Supra*, Section 9.

⁴² These provisions have been adopted substantially unchanged as a part of the Uniform Firearms Act in Alabama, Ala. Code Ann. (Michie, 2nd Supp. 1936) §4047 (9); Indiana, Ind. Stat. Ann. (Burns, Supp. 1937) §10-4740; Pennsylvania, Pa. Stat. Ann. (Purdon, Supp. 1937) tit. 18, §1585i; South Dakota, S. D. Sess. Laws 1935, c. 208, §9; Washington, Wash. Rev. Stat. Ann. (Remington, Supp. 1937) §2516-9. Similar provisions are in effect in the District of Columbia, together with the additional provision that dealers must keep complete records of all pistols in their possession. D. C. Code (Supp. 1937) tit. 6, §116j.

⁴³ In addition to the states which have adopted the Uniform Firearms Act pistols may not be delivered on the day the application is received in California, Cal. Gen. Laws (Deering, 1937) act 1970, §10; Connecticut, Conn. Gen. Stat. (1930) §2669; Massachusetts, Mass. Ann. Laws (1933) c. 140, §123; North Dakota, N. D.

But forty-eight hours is not long enough to investigate the applicant. In fact, the forty-eight hours might expire before the statements were even mailed. Suppose a gunman went into a store on a Saturday before a Monday holiday, just after the registered mail window of the local post office had closed. The clerk would be complying with the act if he had the gunman make out the necessary statements and took them to the post office within six hours after the registry window opened, that is on the following Tuesday afternoon. But by Tuesday morning the forty-eight hours would have elapsed, for there is nothing in the act to indicate that forty-eight business hours are meant, and the gunman could legally receive his gun.

The proper way for a purchaser to take home a pistol is of course unloaded and either in a bag or securely wrapped.⁴⁴ The provision in the act requiring sellers to deliver pistols only in this fashion forces them to set buyers a good example. No other reason for the requirement appears. There is nothing in the act to prevent the purchaser from tearing off the wrapping, loading the pistol and putting it in his pocket before he leaves the counter.

Section 9 of the Uniform Firearms Act provides in excellent fashion for ascertaining and recording the identity of all pistols sold.⁴⁵ It does the same for the identity of the purchasers, provided the seller is a retail dealer in firearms. It thus may assist

Comp. Laws Ann. (Supp. 1925) §9803a10; Oregon, Ore. Code Ann. (1930) §§72-210, 72-211. In New Jersey there must be seven days delay. N. J. Rev. Stat. (1937) tit. 2, §176-24. In Texas a sale may not be made to a person known to be in the heat of passion. Tex. Stat. (Vernon, 1936) Penal Code, art. 489a.

⁴⁴In addition to the states which have adopted the Uniform Firearms Act, similar provisions are in effect in California, Cal. Gen. Laws (Deering, 1937) Act 1970, §10; Connecticut, Conn. Gen. Stat. (1930) §2669; Massachusetts, Mass. Ann. Laws (1933) c. 140, §123; New Jersey, N. J. Rev. Stat. (1937) tit. 2, §176-24; North Dakota, N. D. Comp. Laws Ann. (Supp. 1925) §9803a10; Oregon, Ore. Code Ann. (1930) §72-210.

⁴⁵In addition to the states which have adopted the Uniform Firearms Act, more or less similar provisions, designed to provide a record of pistols and owners, are in effect in California, Cal. Gen. Laws (Deering, 1937) act 1970, §9; Colorado, Colo. Stat. Ann. (Michie, 1935) c. 68, §3; Connecticut, Conn. Gen. Stat. (1930) §2667; Delaware, Del. Rev. Code (1935) §233; Illinois, Ill. Ann. Stat. (Smith-Hurd, 1934) c. 38, §153; Iowa Code (1935) §12953; Maine, Me. Rev. Stat. (1930) c. 49, §47; Massachusetts, Mass. Ann. Laws (1933) c. 140, §123; Michigan, Mich. Stat. Ann. (Henderson, 1938) §28.92; Mississippi, Miss. Code Ann. (1930) §856; Missouri, Mo. Stat. Ann. (1932) p. 3045, §4432; New Hampshire, Pub. Laws (1926) c. 149, §87, 9; New Jersey, N. J. Rev. Stat. (1937) tit. 2, §176-25, 176-28; New York, Penal Law, §1914; North Carolina, N. C. Code Ann. (Michie, 1935) §5110; North Dakota, N. D. Comp. Laws Ann. (Supp. 1925) §9803a10; Oregon, Ore. Code Ann. (1930) §72-209; Rhode Island, R. I. Pub. Laws 1929-30, c. 1421, §2; West Virginia, W. Va. Code Ann. (Michie, Supp. 1933) §6051; Wyoming, Wyo. Rev. Stat. Ann. (Courtright, Supp. 1934) §32-1301. The Missouri and West Virginia statutes require dealers to record all pistols that come into their possession.

the police in tracing a pistol found at the scene of a crime, through the name and address of its last owner. But if the seller is a "fence" or friend of criminals who does not make a business of selling pistols, it allows him to sell a pistol legally, provided he gets the purchaser to write down some name, address, etc., and it cannot be proved later that the seller knew the statements to be untrue.⁴⁶ The distinction between the obligations of retail dealers and other people in the sale of pistols doubtless was not intended by the drafters of the act, for no good purpose is served by permitting the casual seller of pistols to make sales to persons of whose identity he is not aware.

The fourth requirement of section 9 is that the purchaser sign a statement saying that he has never been convicted of a crime of violence. This provision may act as a deterrent in small frontier communities where everyone is known, but hardly in a great city. For it should be substituted the taking and checking of fingerprints.⁴⁷ The fifth provision in the section relates to the mailing and filing of the record of the purchase, which is desirable and adequate.⁴⁸

⁴⁶ In addition to the states which have adopted the Uniform Firearms Act, dealers are required to demand clear evidence of the identity of the buyer as a condition of sale in Connecticut, Conn. Gen. Stat. (1930) §2667; Delaware, Del. Rev. Code (1935) §233; New Hampshire, N. H. Pub. Laws (1926) c. 149, §8; New Jersey, N. J. Rev. Stat. (1937) tit. 2, §176-24; North Dakota, N. D. Comp. Laws Ann. (Supp. 1925) §9803a12; Oregon, Ore. Code Ann. (1930) §72-211. It is not clear whether the Connecticut statute also applies to sellers other than dealers. In New Jersey vendors other than dealers must notify the police before making any sale. N. J. Rev. Stat. (1937) tit. 2, §176-4. In New Hampshire, North Dakota and Oregon non-dealers are prohibited from selling pistols to persons not known to them personally. N. H. Pub. Laws (1926) c. 149, §7; N. D. Comp. Laws Ann. (Supp. 1925) §9803a10; Ore. Code Ann. (1930) §72-210.

California, North Dakota and Oregon forbid sales to any person who the vendor has cause to believe has been convicted of felony. Cal. Gen. Laws (Deering, 1937) Act 1970, §10; N. D. Comp. Laws Ann. (Supp. 1913-25) §9803a10; Oregon, Ore. Code Ann. (1930) §72-210.

⁴⁷ Fingerprinting of applicants to buy or carry pistols is required by statute in four states. In Michigan, New Jersey and New York, applicants for licenses to carry pistols must submit their fingerprints; Mich. Stat. Ann. (Henderson, 1938) §28.93; N. J. Rev. Stat. (1937) tit. 2, §176-44; N. Y. Penal Law, §1897 (10). In Rhode Island, the license to carry must bear the licensee's fingerprints. Pub. Laws 1927-28, c. 1052, §6.

⁴⁸ In addition to the states which have adopted the Uniform Firearms Act, provisions requiring sellers to send a copy of the record of each sale to police authorities are in effect in California, Cal. Gen. Laws (Deering, 1937) Act 1970, §9 (on day of purchase); Connecticut, Conn. Gen. Stat. (1930) §2669 (within 24 hours); Massachusetts, Mass. Ann. Laws (1933) c. 140, §123 (weekly); Michigan, Mich. Stat. Ann. (Henderson, 1935) §28.92 (within 48 hours); New Hampshire, N. H. Pub. Laws (1926) c. 149, §7 (within 7 days); New Jersey, N. J. Rev. Stat. (1937) tit. 2, §176-28 (on day of purchase); North Dakota, N. D. Comp. Laws Ann. (Supp. 1925) §9803a10 (within 7 days); Oregon, Ore. Code Ann. (1930)

Thus the provisions of the Uniform Firearms Act relating to the sale of pistols prevent purchases by persons in the heat of passion and assist in building up a list of pistols in the hands of the public together with the name and address of the lawful owner of each. The act does nothing to make it difficult for criminals to secure pistols. For this reason the Uniform Pistol Act⁴⁹ requires a license to purchase a pistol.

Statutes requiring a license to purchase a pistol are rare in the United States, existing only in Massachusetts, Michigan, Missouri, New Jersey, New York and North Carolina.⁵⁰ South Carolina prohibits absolutely the sale of pistols, and Arkansas and Tennessee the sale of all but army and navy pistols.⁵¹ Undoubtedly the reason such statutes are so rare is that until this year their efficiency was nullified by the absence of federal legislation preventing the sale of pistols across state borders. To evade them it was necessary only to write to a dealer or manufacturer in another state to have the pistol delivered by express. Thus the principal effect of such statutes has been to divert business to sellers in other states. On the last day of the last Congress an act was passed prohibiting such evasions of state licensing acts.⁵² Henceforth state acts requiring a license to purchase pistols have at last a chance of proving reasonably effective.

The efficacy of a statute which aims to prevent criminals from securing arms depends upon the kind of criminals to which one refers. A law which, like the Uniform Firearms Act, merely imposes a slight delay in the sale of pistols, may supply a cooling time for a disgruntled lover or a jealous husband. A law, which like the Uniform Pistol Act, requires a license to purchase a pistol

§72-209 (on day of purchase); West Virginia, W. Va. Code Ann. (Michie, Supp. 1933) §6051 (at once).

In Iowa, sellers are required to send a copy of the record of each sale to the county recorder within 24 hours. Iowa Code (1935) §12953.

In Missouri, sellers are required to send a copy of the record of each sale to the circuit clerk within 30 days, 4 Mo. Stat. Ann. (1932) p. 3045, §4433.

⁴⁹ *Supra*, Sections 11, 12.

⁵⁰ See Mass. Ann. Laws (1933) c. 140, §§123, 131A; Mich. Stat. Ann. (Henderson, 1938) §28.92; 4 Mo. Stat. Ann. (1932) p. 3045, §4433; N. J. Rev. Stat. (1937) tit. 2, §176-32; N. Y. Penal Law, §1897 (12) and N. C. Code Ann. (Michie, 1935) §5106.

⁵¹ See S. C. Code (1932) §1255; Ark. Dig. Stat. (Pope, 1937), §3509; and Tenn. Code Ann. (Williams, 1934) §11009.

In New Hampshire aliens and persons convicted of felony may not purchase pistols without a permit. Pub. Laws (1926) c. 149, §7. In Texas no person may purchase a pistol without a certificate of good character issued by a judge in the county of his residence. Tex. Stat. (Vernon, 1936) Penal Code, art. 489a.

⁵² Pub. Laws No. 785, 75th Cong., 3rd Sess. (June 30, 1938).

would probably also prevent the insane and the feebleminded from securing pistols. If well administered, such a law might prevent otherwise law-abiding citizens who are addicted to alcohol or fits of temper from securing pistols to their detriment and that of others. It might even keep many a young hoodlum without underworld connections from embarking accidentally upon a criminal career.

On the other hand, it is probably beyond the capacity of any law, no matter how well administered, to prevent gangsters from securing pistols, but the attempt to do so is worth while. The more difficulties placed in the path of a gangster, the greater the chance that he will make a false step and be caught.

The provisions of the Uniform Act requiring a license to purchase are designed to harass the criminal, but not to annoy the citizen who has a license to carry a pistol. It is wasted effort to investigate such a person before granting him a license to purchase. Hence the act gives such people an absolute right, upon the payment of fifty cents, to secure a license to buy a pistol. Other people must take as much trouble to secure a license to purchase a pistol as is required to secure a general license to carry a pistol. The object of imposing this inconvenience is to encourage all persons wishing pistols to take out a general or a target shooter's license to carry a pistol. A person who has no license to carry a pistol usually has no opportunity to become familiar with its use and so will find it dangerous to himself and family as well as of small value in an emergency.

The absolute right to secure a license to purchase a pistol applies only to 45 Service automatics and to target pistols with a barrel at least six inches in length. A license to buy other varieties of pistols may be secured only in the discretion of the state licensing authority. The reason for the distinction is the belief that if the supply of pocket pistols can be reduced, many young hoodlums will go without pistols rather than either carry a cumbersome weapon or go to the trouble of cutting it down to pocket length.

6. *Creating Presumptions to Aid in Conviction of Criminals Carrying Pistols.*

Section 3 of the Uniform Firearms Act provides: "In the trial of a person for committing or attempting to commit a crime of violence, the fact that he was armed with a pistol and had no license

to carry the same shall be *prima facie* evidence of his intention to commit said crime of violence."⁵³

This section seems undesirable, because there is no logical connection between the absence of a license to carry a pistol and the intent with which the pistol was used. It has been held unconstitutional on this ground in California and Indiana, the only two states in which its constitutionality has been tested.⁵⁴ Further, the statute does not require that the defendant use the pistol in committing the crime as distinguished from being armed with it. Thus presumably a man might be convicted of assault with intent to kill on proof that he punched a man with his fist and had an unlicensed pistol in his back pocket.

It is not essential that any presumptions be included in a pistol act, but the three in the Uniform Pistol Act would prove helpful to the police.⁵⁵ The first of the three is modelled after N. Y. Penal Law c. 41, §1998a, and makes the presence of a pistol in an automobile presumptive evidence of its illegal possession by all persons in the car.⁵⁶ The object of the presumption is to permit a conviction where, when the police approach, the gunmen drop their pistols on the floor of the car and swear that they did not know they were there. Such a presumption skirts the border of unconstitutionality and was held unconstitutional in *People v. Lewis*,⁵⁷ by a three to two vote of the Third Department of the Appellate Division. It is believed that this presumption has a fair chance of being upheld by the New York Court of Appeals and by the supreme courts in most states.

The second presumption in the Uniform Pistol Act has been

⁵³ This section has been adopted as a part of the Uniform Firearms Act in Alabama, Ala. Code Ann. (Michie, 2nd Supp. 1936) §4047 (3); South Dakota, S. D. Sess. Laws 1935, c. 208, §3; Washington, Wash. Rev. Stat. Ann. (Remington, Supp. 1937) §2516-3. It has been adopted in Pennsylvania with the words "*prima facie*" in line 4 deleted. Pa. Stat. Ann. (Purdon, Supp. 1937) tit. 18, §1585c. It was omitted from the Act as adopted in Indiana and it was rejected by Congress in enacting a firearms statute for the District of Columbia patterned on the Uniform Firearms Act. See Ind. Stat. Ann. (Burns, Supp. 1937) §10-4734; D. C. Code (Supp. 1937) tit. 6, §116a.

There are similar provisions in effect in New Jersey, N. J. Rev. Stat. (1937) tit. 2, §176-6; North Dakota, N. D. Comp. Laws Ann. (Supp. 1925) §9803a4; Oregon, Ore. Code Ann. (1930) §72-203; Rhode Island, R. I. Pub. Laws 1927-28, c. 1052, §2.

⁵⁴ See *People v. Murguia*, 6 Cal. (2d) 190, 57 Pac. (2d) 115 (1936); *Everett v. State*, 208 Ind. 145, 195 N. E. 77 (1935) and *Powers v. State*, 204 Ind. 472, 184 N. E. 549 (1933).

⁵⁵ *Supra*, Section 3.

⁵⁶ For very similar provisions see Conn. Gen. Stat. (Supp. 1935) §1010c and N. J. Rev. Stat. (1937) tit. 2, §176-7.

⁵⁷ 249 App. Div. 464, 293 N. Y. Supp. 191 (1937).

enacted in a large number of states and is ably advocated by Professor John B. Waite of Michigan in 31 Mich. L. R. 749-67 (1933) and 32 Mich. L. R. 561 (1934). It is valuable only in states having the federal rule that evidence unlawfully obtained is not admissible. It seeks to legalize the policeman's discovery of the pistol by legalizing the arrest of all defendants caught carrying pistols unlawfully, regardless of whether the court considers reasonable the officer's grounds for believing the defendant had a pistol. As Professor Waite points out, in some cities a large proportion of the criminals caught carrying pistols escape conviction because their arrest and search are unlawful, if the arresting officer cannot persuade the judge that he had reasonable grounds for believing that they were carrying pistols illegally.

The third presumption is designed to be of further assistance to officers searching for pistols illegally carried. If an officer sees a suspicious looking young man with a bulging pocket loafing on the street corner at two in the morning, he may first place him under arrest for being a vagrant or a suspicious person and then feel the pocket to see if there is a pistol there. If he does this, the search is legal, but the officer must charge the young man with the offense even though the bulging pocket contains a Bible. The practice in a number of cities is for the officer to frisk the young man first, and arrest him only if a pistol is found. This is the preferable procedure, because it saves a needless arrest and charge. The third presumption in the Uniform Pistol Act should make admissible in evidence pistols so discovered.

7. Providing Appropriate Penalties for all Violations of the Act.

The Uniform Firearms Act provides the same penalties for violations of its provisions, but do not specify what these shall be. This was done, the Commissioners tell us, "so that these may be fixed according to the needs and usages of the particular state." It is to be regretted that the Commissioners on Uniform State Laws did not state their opinion as to what the penalties ought to be. Though variations between states in the penalties prescribed are not important, it is highly desirable that the same maximum penalties do not apply to all violations of the act. There is no justification for providing the same maximum punishment for the use of a pistol in a robbery, the carrying of a pistol by an ex-convict and the negligence of a clerk in a sporting-goods store in filling

out correctly a report of the sale of a pistol. A father who delivers a pistol to his seventeen year old son for target practice, thus violating the Uniform Firearms Act, should not be subject to the same penalty as an ex-convict who carries a pistol.

The penalty section of the Uniform Pistol Act provides for imprisonment, up to five years, of criminals who possess pistols, and of any person who gives false information in applying for a pistol license or alters the identification marks on a pistol. But the maximum punishment that may be inflicted on the holder of a license to carry a pistol who fails to exhibit it to an officer on demand is a \$10 fine. All other infractions of the act may be punished by imprisonment up to one year, or a fine of not more than \$500, or both.

The purpose of providing a maximum penalty of five years' imprisonment for criminals possessing pistols is to make it possible to send back to prison for a considerable period dangerous offenders whose conduct indicates that they are a menace to society.

The objection to a maximum penalty of five years' imprisonment for anyone carrying a pistol without a license is that it places the ordinary citizen who commits a comparatively trivial offense in the same class with thieves. If the judge exercises his discretion inadvisedly such a person may receive a longer sentence for carrying a pistol without a license than he would normally receive for committing theft, burglary or even robbery. Furthermore, the opportunities for blackmail created by such a statute are obvious.

Imprisonment for an appreciable period, of a person who has not committed any of the crimes listed in section 4, would not be justified under ordinary circumstances, but a maximum of less than one year has been provided in the Uniform Pistol Act, to take care of the exceptional case. If, for example, the offender, in addition to a pistol, were caught with a mask, "knock-out-drops" and the plan of a store, and had a long record of petty offenses, a year in jail would not be excessive.