



A GUIDE TO UNDERSTANDING THE LAWS OF AMERICA REGARDING KNIVES

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BACKGROUND

The ability to produce and use tools is what has enabled humans to rise from a very primitive existence and adapt to almost every climate or situation existing on this earth. Granted, we have superior intellectual and reasoning ability. Wit alone, however, did not enable our long-ago ancestors to overcome the lack of fangs, claws, horns, antlers, size, speed, and/or strength possessed by other members of the animal kingdom whom they either preyed upon or competed with for food. Intelligence enabled them to fashion stones, bones, and other material into increasingly efficient tools. Knives, in the nascent form of naturally occurring sharp-edged stones, were undoubtedly among the first tools they ever used. We should consider that without these tools, the dietary and wardrobe options available to our ancestors would have been quite limited. Our "lifestyle" of today is built on this foundation.

Knives are indeed tools. Occasionally, knives are employed as weapons, both defensively and offensively. Unfortunately, knives are also occasionally used to commit crimes. It is the potential that knives can be used criminally and perhaps a misperception as to the frequency of criminal use that has given rise to laws regulating knives in essentially every state.

Our Federal government became involved in firearms regulation in the early part of this century and continues to assume an increasing level of control as to firearms. Given the relatively long period of Federal involvement, the doctrine of Federal preemption, and the fact that firearms laws are for the most part based on purely objective factors, such as barrel length or action type, there is a greater degree of consistency among the laws of the various states as to firearms.

Such is not the case with knives. Laws regarding knives are a hodgepodge of legislative action, some of which dates back to the 1800's.

A handgun "legal" in a given state would in all probability be "legal" in the vast majority of states. The law regarding what a person may or may not do with a legal handgun, for example, would vary considerably from state to state. The situation is slightly more complex in the case of knives. What constitutes a legal knife varies greatly from state to state and may depend upon objective standards, such as blade length, or more subjective standards, such as the shape or style of the blade or handle. As is the case with firearms, the law of the different states regarding what one may do with a legal knife varies.

THE CONSEQUENCES

Criminal prosecutions based exclusively on the simple possession of an "illegal" knife are rare. At least the cases that become reported seem to involve coalescent criminal activity. As a practical matter, the constitutional prohibition against unreasonable

searches and seizures protects the otherwise law-abiding citizen who happens to be walking down the street with a pocketknife having a blade one-eighth of an inch over the limit.

This may give rise to a false sense of security based upon the "it can't happen to me . . . I'm not a criminal" mentality.

There is also a perception that a violation of some knife law is in all probability a relatively minor infraction, with the downside being a small fine or the proverbial "slap on the wrist."

However, a knife law violation is generally considered to be a "weapon" violation, which can lead to all sorts of disqualifications, ranging from acquiring or owning firearms to military service, as well as public and/or private sector employment. As an example, in Pennsylvania, it is a misdemeanor to possess any knife or cutting instrument on school property. There is also a law in Pennsylvania which disqualifies persons convicted of any one of a long list of crimes, from possessing, using, manufacturing, controlling, etc. any firearms. Persons convicted of any of the listed crimes who own or possess firearms must sell or transfer any and all firearms in his or her possession within a period of sixty (60) days. The list of crimes runs the gamut from murder, rape, kidnapping, arson, robbery that also includes the misdemeanor of possessing a weapon, meaning any knife, on school property. Pennsylvania is not unique in this regard. Similar legislation exists in many other states.

Attend a PTA meeting or a high school football game with a small folding knife in your pocket or handbag, or even a tiny knife on your key chain, and you are subject to the same legal disqualifications meted out to murderers and rapists. If there is even a small knife in your pocket or car when you drive your child to school, or perhaps exercise your right to vote (many jurisdictions' polls are located in school buildings), various rights which you may have thought to be "inalienable" may be in jeopardy.

By the way, if you read the entire text of the Pennsylvania law regarding weapons on school property, it merely advises that a breach of the law is a misdemeanor and makes no mention of the other law listed somewhere else which sets forth these additional and somewhat harsh disqualifications. It should also be observed that in many instances, several different laws of any given state that might apply to the possession of a knife were enacted decades apart. This would have happened quite likely without a full appreciation by the legislators or their constituents (that's us) as to the implications. Remember that adage about making laws and making sausages are two activities that should not be observed by the consumers or the electorate.

FINDING THE LAW

Knife laws vary from state to state, as discussed above. Laws are also changed or amended from time to time. This often occurs in a "knee-jerk" reaction to some problem or event. Also, courts, in the form of opinions addressing a given case or dispute, interpret these laws. Each "interpretation" introduces another change or perhaps refinement to the law. Accordingly, it would be an ongoing task to maintain an up-to-date reference of all American jurisdictions as specifically related to knives.

The individual interested in learning about the laws involving or pertaining to knives in a given state, or perhaps more importantly, in avoiding difficulty with the laws, should turn to the state statutes or legislative enactments, and in particular, those dealing with

crimes. You may find that for a given state this would be described or referred to as the Penal Code or Crimes Code. Within this Code, you will likely find laws regarding knives under any of the following headings:

Prohibited Weapons -- Typically there will be a statute defining listing various weapons which are prohibited. As to knives, there may be specific size/blade length limitations. Often times there will be prohibitions against "dirks or daggers." Switch-blades or other knives, the blade of which is exposed by gravity or mechanical action, are frequently prohibited.

Possessing Instruments of Crime -- This type of law deals with the possession of an instrument not otherwise illegal but possessed under circumstances indicating intent to employ the instrument for criminal purposes. For example, a 12-inch butcher knife would be commonplace and unquestionably legal in a butcher shop or meat packing plant, but might be questionable in the proverbial dark alley at 3:00 o'clock a.m. This type of law is sometimes found under the heading of "inchoate crimes."

Possession of a weapon in a prohibited area -- In most states, it is a crime to possess a knife on school grounds. In some instances, exceptions are made for small pocketknives. It is also a crime in many states to possess a weapon to include a knife in a court facility or some other government buildings.

Transactions B In many states, it is a crime to engage in certain transactions regarding knives and other prohibited weapons or to furnish such items to children or persons known to be incompetent or intemperate.

Many state statutes can be found on the Internet. One good site is www.findlaw.com. Click on "US State Resources" to find statutes and cases (if any) for your state. State laws can also be researched on the Internet. Check out the AKTI www.akti.org web site Legislative section, click on your state for a link to its web site.

If you are conducting your research outside of "cyberspace," meaning real books, you should note that there are typically supplements published in paperback format or as "pocket parts" inserted in the rear cover of the hardbound book which contain the current law. Once you locate an applicable code section, be sure to check the "pocket part" for the same section to be sure the law has not changed.

There are also some cities/municipalities that have their own ordinances pertaining to knives. The best place to obtain such information is to contact your local police department and inquire if there are any applicable ordinances regarding the use, possession, carrying, or sale of knives.

UNDERSTANDING THE LAW

We are all presumed to know the law. Generally, ignorance of the law is not a defense or excuse, notwithstanding the fact that lawyers and judges spend an enormous amount of time arguing about what a particular law means or what the legislature intended.

Typically, in your research of statutory or enacted law, you will find annotations or cross-references to cases where a particular law or section of the law was applied to the circumstances of an actual case. These case opinions or decisional law will contain a narrative by a judge, or perhaps a panel of appellate-level judges, describing in some summary fashion the facts which gave rise to the prosecution; the dispute about how the law should be applied and the decision. These resources will be helpful in developing an understanding as to the laws of a particular state and should be read together with the statutory law.

Some states have case law on line and others do not, in which case you will have to visit a law library and ask the librarian for assistance. Once you have located your state's case law "reporters" (books), look in the index (the last few volumes of the reporter) under "knives" or similar terms. In reading the statutes or written laws from a state on weapons or knives, it is helpful to keep in mind certain legal principles regarding interpretation and the application of law:

Ejusdem generis - Latin for "the same kind." It is a common technique in writing laws to specifically list various prohibited items followed by a general inclusive term. For instance, you may find a statute which prohibits "any dagger, dirk, switch-blade, gravity knife, cutting instrument the blade of which is exposed in an automatic way by switch, push-button, spring mechanism, or other such implement". Under the rule of *ejusdem generis*, "other such implement" could not legitimately be read to include for instance a drop point fixed blade hunting knife. In other words, the drop point fixed blade hunting knife is not of the same kind or class as the specifically listed items such as the dagger, dirk, switch-blade, etc. However, you must be careful. In construing a New York statute prohibiting the possession of a dagger, dirk, dangerous knife, razor, stiletto or any other dangerous weapon, an ice pick was found to be a "dangerous weapon" under the principle of *ejusdem generis*.

Burden of Proof - Generally, the prosecution must establish and prove every element of the offense. In researching knife laws, you may find an example, as follows:

"Knife means any dagger, dirk, knife, or stiletto with a blade over three and one-half inches in length, or any other dangerous instrument capable of inflicting cutting, stabbing, or tearing wounds, *but does not include a hunting or fishing knife carried for sports use. The issue that a knife is a hunting or fishing knife must be raised as an affirmative defense.*" California Revised Statutes, 18-12-101. In the above example, a hunting knife with a four and one-half inch blade would be prohibited, but not if it was carried for hunting or fishing use. In this example, the prosecution does not need to prove that a given knife was not being carried for hunting or fishing use. The portion which is in italics describes a condition, which if proved by the defendant, would be an exception to the prohibition. Another typical burden of proof example is the

“curio” exception, which is found in connection with many statutes prohibiting the possession of switch-blades. If you live in a state where such a law exists, it will describe a prohibition as to switch-blades, with the exception of such an item possessed as a “curio.” Where such a law obtains, the prosecution would establish its case by approving a mere possession of a switch-blade. It is then incumbent upon the defendant or “actor” to prove its curio status.

Exactly what constitutes a curio is somewhat subjective. A switch-blade in a glass case on a bookshelf in your home is likely to be considered a curio. However, if it is in your pocket, its “curio” status becomes much more questionable.

In pari materia - Latin for upon the same subject matter. Essentially, this principle requires that statutes on the same topic be construed together. If you find several statutes on the topic of knives, these should be read and considered together. The prohibition against any knife on school property, as mentioned above, is an example where a knife clearly permitted under a general statute becomes illegal under specific circumstances.

FEDERAL

The Federal government has cognizance over matters involving commerce among the states, Federal property and federally-regulated activities, such as aviation. This does not mean that if you drive from New York to California, Federal law governs the legality of a knife you may be carrying or your use of it along the way. The law of the individual states would prevail, although in many instances, there are exceptions for persons engaged in travel.

The Federal Crimes Code is set forth at Title 18 of the U.S. Code, and in particular, 18 U.S.C. '930. There you will find provisions dealing with dangerous weapons on Federal facilities, as well as definition of what constitutes a dangerous weapon. Interestingly, there is an exception for a pocketknife with a blade of less than two and one-half inches in length. However, you must also observe that there is a difference between a Federal facility where a small pocketknife would be tolerated and a Federal Court facility, where there is a policy of “zero tolerance” regarding tools such as knives.

Federal law also provides for a “civil penalty” for carrying a weapon on an aircraft. This “penalty” may not be more than \$10,000 for each violation. See 49 U.S.C. '46303. A similar prohibition occurs in related Federal Aviation Administration Regulations regarding airport security. In theory, the “dangerous weapon” definition from the Federal Crimes Code should apply, and a pocketknife with a blade of less than two and one-half inches would be acceptable or permissible. Remember, however, if you are engaged in air travel, you are not at all unlikely to find yourself in another state, which as pointed out above, may have a different standard as to what is a legal knife.

HELPFUL HINTS

The Label -- What a particular knife is called by its maker or manufacturer "may be used against you." For instance, a knife labeled and sold as a "fighting knife" or a "tactical knife" is quite likely to be presented as such by the prosecution to a Court or a jury.

A comparison can be drawn to the label of assault rifle that was applied by manufacturers to various semi-automatic rifles which were military-like in appearance, but otherwise functionally indistinguishable from semi-automatic sporting rifles in use since before the II World War.

Consider the fact that a knife labeled by its maker as a camping utility survival or hunting knife might be more acceptable in the eyes of the law than essentially the same instrument labeled as a "fighting" knife. If the packaging, care and usage instructions or warranty information that is provided with a new knife touts its sporting purpose, you may wish to retain that material.

Gimmicks/Disguised Knives -- Blades which are disguised as a cane, ballpoint pen, tire pressure gauge, belt buckle or other such innocuous objects are types of tools which should be evaluated very carefully. These items may suggest an intent on the part of the person possessing the item to deceive others.

Concealment -- Laws prohibiting the carrying of "concealed" weapons were developed during times when weapons were routinely and openly carried by a majority of the population. In those times, a person with a concealed weapon was thought to be falsely presenting himself as unarmed. Nowadays, there seems to be a preference that people carrying weapons do so discreetly. Many state statutes that establish licenses for carrying firearms require concealed carry. While you should read and abide by the law of a particular state, if there is any uncertainty, consider the circumstances and the activity that you might be engaged in. For instance, it is generally expected that someone engaged in hunting or fishing will have a knife. The same holds true, perhaps to a slightly lesser extent, for other activities, such as camping, hiking, farming, etc. There is probably no real purpose to be served by a hunter concealing his skinning knife.

Length -- When applying a law that specifies a length, assume the worst possible scenario. Include the choil or the unsharpened portion at the base of the blade when measuring. The prosecution will almost certainly do so. Similarly, be extremely careful about any knives that utilize stored energy, such as a compressed spring, to expose or move the blade, even if it's only a spring assist.

Set a good example -- If you must use your knife for some appropriate task in the view of others, do so without flourish and in a non-threatening manner. Avoid giving somebody any reason to complain or be anxious about the fact that you have a knife.

Attitude -- If you should find yourself detained by a police officer and your knife becomes an issue, it may be good to remember the adage that “Penitence is an avenue to grace.” By all means, avoid appearing to be combative or threatening.

FURTHER ASSISTANCE

Your own research efforts may very well satisfy your inquiry or curiosity as to the law of the state where you live, or perhaps the state or states where you intend to travel. You should seek advice from a lawyer if you have any question or if, for instance, your knife or possession of a knife would appear to be in any way questionable.

These guidelines have been prepared by Daniel C. Lawson, of the law firm of Meyer, Darragh, Buckler, Bebenek & Eck, P.L.L.C. These guidelines are not a substitute for appropriate legal advice and are not intended to express an opinion as to the legality of any particular type or style of knife or the application of any Federal or state law regarding knives or other weapons.

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