

MAINE STATE LEGISLATURE

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**Report to the Joint Standing Committee on Criminal Justice
and Public Safety Regarding Concealed Weapons and
Reciprocity**

February 2008

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John Elias Baldacci
Governor

STATE OF MAINE
Department of Public Safety
104 State House Station
Augusta, Maine
04333-0104



Anne H. Jordan
Commissioner

MEMORANDUM

TO: THE JOINT STANDING COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY
FROM: ANNE JORDAN, COMMISSIONER, MELISSA REYNOLDS O'DEA, AAG
SUBJECT: CONCEALED WEAPONS PERMITS AND RECIPROCITY
DATE: FEBRUARY 20, 2008
CC: GOV. JOHN E. BALDACCI

Per this Committee's Resolve, set out below are the results of the research concerning all 50 states' laws concerning concealed weapon permits. For each State, we have set out the current status of whether or not reciprocity can occur, if it can't occur why not, and the list of states that may possibly be amenable to reciprocity with Maine.

The Committee should be reminded of some of the basic facts of the current concealed weapons permit process in Maine:

A. Permits can be issued by the Colonel of the Maine State Police, the local Chief of Police or the local municipal officers.

B. A fingerprint supported criminal records check is not required to verify a person's criminal history. If fingerprints are taken, the use of such prints is limited to verification of identity.

C. By State law, no photograph is required to be on the permit. Individual issuing agencies may require a photograph as part of their permit.

D. While Maine's application asks if the individual has ever been admitted to a mental hospital or institution or has ever been involuntarily committed, current Maine law does not, generally, make these records, except in the case of a court ruling of not guilty by reason of insanity or mental disease or defect, public. The law does provide that records from State Institutions, ie: Riverview and Dorothea Dix Psychiatric Centers, must be made available to the issuing authorities for the purposes of determining good moral character and compliance with other provisions of the permitting process.

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E. Maine does not maintain any centralized records or data base concerning who has been issued, or who has been denied a concealed weapons permit. Maine does not maintain a centralized data base of those permits that have been rescinded, revoked or are expired.

F. Maine does not require that a concealed weapons permit be noted on a Maine driver's license.

G. All applications for a permit to carry concealed firearms and documents made a part of the application, refusals and any information of record collected by the issuing agency during the process of ascertaining whether an applicant is of good moral character and meets the additional requirements of the law, are confidential and may not be made available for public inspection or copying. The applicant may waive this confidentiality by written notice to the issuing authority. All proceedings relating to the issuance, refusal or revocation of a permit to carry a concealed weapon are not public proceedings unless otherwise requested by the applicant.

H. The issuing authority shall make a permanent record of each permit to carry concealed firearms in a suitable book or file kept for that purpose. The record shall include the information contained in the permit itself and shall be available for public inspection.

1. STATES WITH AUTOMATIC ONE-WAY RECOGNITION OF MAINE PERMITS:

These States already recognize Maine issued concealed weapons permits without any action from the State of Maine or its permit holders:

Alaska - Alaska Stat. § 18.65.748 – Per Alaska law, anyone can carry without a permit.

Arizona - A.R.S. § 13-3112 - Automatic recognition is granted to out-of-state permits, except for permits issued to persons under 21 and convicted felons. However, see below as this state's laws are less strict than Maine. Therefore, Maine would be precluded from entering into a reciprocity agreement with them.

Florida - Fla. Stat. § 790.015 – Automatic recognition is granted to out-of-state permits, except for permits issued to persons under 21. However, see below as this state's laws are less strict than Maine. Therefore, Maine would be precluded from entering into a reciprocity agreement with them.

Idaho - Idaho Code § 18-3302(12)(g) – Automatic recognition of Maine permits. However, see below as this state's laws are less strict than Maine. Therefore, Maine would be precluded from entering into a reciprocity agreement with them.

Indiana - Ind. Code Ann. § 35-47-2-21 – Automatic recognition of Maine permits. Indiana has a good moral character provision, and can deny if an applicant has a propensity for violence. Ind. Code Ann. § 35-47-2-3. However, Indiana has no authority to enter into reciprocity agreements.

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Kentucky - K.R.S. 237.110(20)(a) – Automatic recognition of Maine permits. However, see below as this state’s laws are less strict than Maine. In addition, Kentucky has no statutory authority to enter into reciprocity agreements. Therefore, Maine would not be able to enter into a reciprocity agreement with them.

Michigan - M.C.L. § 28.432 - Automatic recognition of Maine permits. Michigan can deny if granting the permit would be “detrimental to the safety of the applicant or to any other individual.” M.C.L. § 28.425b(7)(n). However, Michigan has no authority to enter into reciprocity agreements.

Missouri - § 571.030 R. S. Mo. - Automatic recognition of Maine permits. Missouri can deny if public records show the applicant is “engaged in a pattern of behavior that causes the sheriff to have a reasonable believe that the applicant presents a danger to himself or others.” § 571.101.2(6) R.S. Mo. However, Missouri has no authority to enter into reciprocity agreements.

Oklahoma - 21 Okl. State. § 1290.26 - Automatic recognition of Maine permits. However, see below as this state’s laws are less strict than Maine. Therefore, Maine would be precluded from entering into a reciprocity agreement with them.

South Dakota - S.D. Codified Laws § 23-7-7.4 - Automatic recognition of Maine permits. South Dakota can deny if the applicant has a history of violence. S.D. Codified Laws § 23-7-7.1. South Dakota has authority to enter into reciprocity agreements. S.D. Codified Laws § 23-7-7.3.

Tennessee - Tenn. Code Ann. § 39-17-1351(r)(1) - Automatic recognition of Maine permits. However, see below as this state’s laws are less strict than Maine. Therefore, Maine would be precluded from entering into a reciprocity agreement with them.

Utah - Utah Code Ann. § 76-10-523(2)(b) - Automatic recognition of Maine permits. Utah has a good moral character provision, and also can deny if the applicant has a past pattern of behavior involving unlawful violence or threats of unlawful violence. Utah Code Ann. § 53-5-704. However, Utah has no authority to enter into reciprocity agreements.

Vermont - 13 V.S.A. § 4003 – Per Vermont law anyone can carry without a permit.

2. NON-RECIPROCITY STATES:

A. None of the following states have the legal authority to enter into reciprocity agreements:

California - No authority to enter reciprocity agreements; see generally Cal. Pen. Code § 12050, *et seq.*

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Connecticut - Connecticut does not grant reciprocity; a non-resident with a permit from another state must apply directly to Connecticut for a non-resident permit; Conn. Gen. Stat. § 29-28(f)

Hawaii - No authority to enter reciprocity agreements; see generally HRS § 134-9

Indiana - No authority to enter reciprocity agreements; see generally Ind. Code Ann. § 35-47-2-1, *et seq.*

Iowa - No authority to enter reciprocity agreements; see generally Iowa Code 724-11

Maryland - No authority to enter reciprocity agreements; see generally Md. Public Safety Code § 5-301, *et seq.*

Massachusetts - No authority to enter reciprocity agreements; see generally MGL c. 140, §§ 121, *et seq.*

Michigan - No authority to enter reciprocity agreements; see generally M.C.L. 28.421, *et seq.*

Missouri - No authority to enter reciprocity agreements; see generally § 571.101 R.S.Mo., *et seq.*

Nebraska - No authority to enter reciprocity agreements; see generally R.R.S. Neb. § 69-2427, *et seq.*

New Jersey - No authority to enter reciprocity agreements; see generally N.J. Stat. § 2C:58-4)

New York - No authority to enter reciprocity agreements; see generally NY CLS Penal § 400.00, *et seq.*

Oregon - No authority to enter reciprocity agreements; see generally O.R.S. § 166.291, *et seq.*

Rhode Island - Rhode Island does not grant reciprocity; however, a non-resident with a permit from another state must apply directly to Rhode Island for a non-resident permit; R.I. Gen. Laws § 11-47-11(a).

Utah - Utah has no authority to enter reciprocity agreements; see generally Utah Code Ann. § 53-5-701, *et seq.*

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3. PER STATE OR FEDERAL STATUTE, IT IS ILLEGAL FOR ANYONE TO CARRY A CONCEALED WEAPON AND THUS RECIPROCITY IS NOT ALLOWED IN THE FOLLOWING STATES:

Illinois - 720 ILCS 5/24-1

Wisconsin - Wis. State. § 941.23

District of Columbia - D.C. Code § 7-2502.01

4. PER STATE STATUTE OR RULE, THE FOLLOWING STATES WILL NOT GRANT RECIPROCITY TO A MAINE CONCEALED WEAPONS PERMIT HOLDER BECAUSE MAINE'S LAWS ARE NOT STRICT ENOUGH TO MEET THAT STATE'S STANDARDS FOR ISSUING A PERMIT:

Arkansas - Arkansas Code § 5-73-309. Arkansas law mandates that a notation that the person is a concealed weapons permit holder must be evidenced on permittee's driver's license.

Colorado- C.R.S. § 18-12-213. Colorado law prohibits the issuance of a concealed weapons permit to anyone under the age of 21.

Minnesota – Minn. Stat. § 624.714. Minnesota law requires that before they will consider reciprocity with another state, there must be available to their law enforcement a data base of the concealed weapons permits issued and that the data base is available to confirm validity of the permit 24/7. Minnesota has determined that Maine's laws are not substantially similar, and won't grant reciprocity for Maine permits. See <http://www.dps.state.mn.us/bca/CJIS/Documents/CarryPermit/States.html>

Montana - Mont. Code Anno. § 45-8-329. Montana law requires that before they will consider reciprocity, the other state must expressly require a criminal history records check. Maine requires applicants to answer questions concerning their criminal history but doesn't require verification of the information in a data base. Maine law states that verification is permitted "at the request of the issuing authority" but is not required.

Nevada- Nev. Rev. Stat. Ann. §§ 202.254, *et seq.*, as revised by Senate Bill 237. Effective October 2007, Nevada can only grant reciprocity to states with an electronic database which identifies each individual who holds a valid Maine permit and which a Nevada law enforcement officer can access 24/7.

New Mexico- N.M. State. Ann. § 29-19-12. New Mexico requires Maine to require a national criminal history records check and the ability for New Mexico to verify Maine permits within 3 business days.

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South Carolina- S.C. Code Ann. § 23-31-215. South Carolina law requires Maine law to be equal to or stricter than their law. Among other requirements, South Carolina requires a nationwide fingerprint based criminal background check. Maine's concealed weapons permit process does not mandate this type of check.

Texas- Texas GC § 411.153. Texas requires, by statute, a background check that must include a search of "the National Crime Information Center database and the Interstate Identification Index maintained by the FBI.". Maine does not require these checks.

Virginia - Va. Code Ann. § 18.2-308. By statute, Virginia requires the ability for their law enforcement officers to have instantaneous 24/7 access to the concealed weapons permit database to verify the validity of a permit. Maine does not have such a data base.

Washington - Rev. Code Wash. § 9.41.073. Washington's law does not permit issuance of a permit to an applicant who is under the age of 21. Their law also requires a fingerprint-based background check for criminal history and mental health admissions. Maine does not require persons admitted to mental health facilities to be fingerprinted nor does it require fingerprint supported criminal background checks.

West Virginia - W.Va. Code § 61-7-6. By statute, West Virginia requires the ability for their law enforcement officers to have 24/7 access to the concealed weapons permit database to verify the validity of a permit. Maine does not have such a data base.

5. STATES WITH LAWS CONTAINING LESS STRICT STANDARDS, THEREBY PRECLUDING MAINE FROM ENTERING INTO A RECIPROCITY AGREEMENT WITH THEM, PER 25 M.R.S.A. § 2001-A(2)(F).

Arizona - No discretion for anything short of a conviction, and thus does not meet Maine's good moral character clause.

Florida - No discretion for anything short of a conviction, and thus does not meet Maine's good moral character clause.

Georgia - No discretion for anything short of a conviction, and thus does not meet Maine's good moral character clause.

Idaho - No discretion for anything short of a conviction, and thus does not meet Maine's good moral character clause.

Mississippi - No discretion for anything short of a conviction, and thus does not meet Maine's good moral character clause.

Kentucky - No discretion for anything short of a conviction, and thus does not meet Maine's good moral character clause.

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New Hampshire - New Hampshire law does not define standards for the meaning of "suitable." In practice, New Hampshire doesn't consider anything short of a conviction. Therefore, since there is discretion for anything short of a conviction, New Hampshire law does not meet Maine's good moral character clause.

North Carolina - No discretion for anything short of a conviction, thus does not meet Maine's good moral character clause.

Ohio - No discretion for anything short of a conviction, thus does not meet Maine's good moral character clause.

Oklahoma - No discretion for anything short of a conviction, thus does not meet Maine's good moral character clause.

Tennessee - Tennessee can revoke a permit if a permittee poses a material likelihood of risk of harm to the public, but there is not a similar requirement for issuing a permit in the first instance. No discretion for anything short of a conviction, thus does not meet Maine's good moral character clause.

6. STATES TO CONSIDER APPROACHING ABOUT A POSSIBLE RECIPROCITY AGREEMENT:

Alabama - Code of Ala. § 13A-11-75. Applicant must be "suitable." Local sheriffs exercise this discretion to consider things short of convictions. This provision of their law is somewhat similar to Maine's good moral character clause.

Delaware - 11 Del. C. § 1441. Delaware requires that an applicant must be of good moral character. This provision of their law is somewhat similar to Maine's good moral character clause.

Kansas - K.S.A. § 75-7c04. Will recognize Maine permits upon request if they determine that our laws are equal to or greater than their law. Kansas does not have any discretion to deny for anything short of a conviction, but Kansas does not require Maine to grant reciprocity in return. Therefore, Maine could ask Kansas to recognize Maine permits without agreement to do the recognize Kansas permits.

Louisiana - La. R.S. § 40: 1379.3. Louisiana law allows their permitting officials to deny a permit to a person with a "history of violent behavior." There is a rebuttable presumption that such a history exists if the applicant was arrested for or charged with a violent crime 3 times in previous 10 years.

North Dakota - N.D.C.C. § 62.1-04-03. Applicants must pass a background investigation and have the consent of the sheriff. North Dakota's administrative rules say they will deny for any good and valid reason that has a direct bearing on the applicant's fitness to carry a concealed weapon, but in practice this provision is rarely used.

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Pennsylvania -18 Pa.C.S. § 6109. Pennsylvania can deny a permit if an applicant's character and reputation are such that he or she will be likely to act in a manner dangerous to public safety. This may or may not be stricter than Maine's standards depending upon how Pennsylvania defines "manner dangerous to public safety."

South Dakota - S.D. Codified Laws § 23-7-7.1 - South Dakota can deny if the applicant has a history of violence. A reciprocity agreement is not necessary, however, Maine permits are already recognized in South Dakota per South Dakota statute.

Wyoming - Wyo. Stat. § 6-8-104. Wyoming officials can deny an application for a concealed weapons permit if the sheriff has reasonable grounds to believe that the person is a danger to self or others, or to the community at large, as a result of the person's mental or psychological state as evidenced by past pattern of practice or behavior, or participation in incidents involving a controlled substance, alcohol abuse, violence or threats of violence.

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