

West Virginia Citizens Defense League

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2010 Legislative Candidate Survey Background Information

Dear Legislative Candidate:

The following background information is presented to help you understand the questions presented in WVCDL's 2010 West Virginia Legislative Candidate Survey. By completing the survey, you have acknowledged reading and understanding the information presented below.

Question 1

Under West Virginia Code § 61-7-6a(d)(2), West Virginia may only establish a concealed handgun license reciprocity agreement with another state only if “[t]his state's law-enforcement officers have continuous access to data bases on the criminal information network, twenty-four hours per day, seven days per week, to verify the continued validity of any license or permit to carry a concealed handgun that has been granted by the issuing state[.]”

Many states do not have centralized computer databases for verifying their licenses, which are required by West Virginia's reciprocity law. This requirement is preventing West Virginia from establishing reciprocity with many states that are willing to establish reciprocity with us, including Alabama, Colorado, Georgia, Maine, and New Hampshire. Furthermore, this requirement is preventing West Virginia from reciprocating with Idaho and Indiana, which unilaterally honor all other states' licenses.

In most other states, the issue of actually verifying an individual license on-the-spot has proven to be a nonissue among law enforcement. West Virginia is one of only three states that have this restriction in their respective reciprocity laws, while the other 34 states that have reciprocity laws, do not have such a requirement.

Question 2

Under West Virginia Code § 61-7-6a(a)(4), West Virginia will honor another state's concealed handgun licenses only if that state has entered into a formal, written reciprocity agreement with our Attorney General. West Virginia is one of only two states that require this level of formality for the establishment of reciprocity with another state. The 35 other states with reciprocity laws have less formal requirements that either unilaterally honor all other states' licenses; automatically grant reciprocity with reciprocating states as a matter of law without requiring a specific, official act to effect reciprocity; or otherwise provide some method of recognizing other states' licenses and/or establishing reciprocity in a less formal, more efficient manner.

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Although Kansas, Montana, Nebraska, and Nevada currently meet the other requirements of West Virginia's current reciprocity law and honor West Virginia licenses, the appropriate state officials in those states have not entered into the required reciprocity agreements with our Attorney General to permit their states' licenses to be recognized in West Virginia. Furthermore, even if the license verification database requirement described in Question 1 is repealed, WVCDL's research shows that Colorado and Indiana do not enter into written reciprocity agreements but instead rely upon "statutory reciprocity" processes as their respective methods of securing recognition of their licenses in other states.

Question 3

An increasing number of states are unilaterally recognizing all other states' concealed handgun licenses or adding a simple provision to their laws under which they will recognize the licenses of any state that grants reciprocal recognition to their licenses. These states have not experienced any problems due to their unilateral recognition of other states' licenses or "automatic reciprocity" without additional conditions.

However, current West Virginia law provides very restrictive conditions for the establishment of reciprocity with other states that disqualify most states from establishing reciprocity with us. If West Virginia recognizes more states' licenses, more states will recognize West Virginia's licenses, resulting in West Virginia concealed handgun licensees being able to legally carry in more states (click here to see reciprocity maps).

During the 2008 regular legislative session, two bills, Senate Bill 228 and House Bill 4683, both introduced at WVCDL's request, would have extended recognition to all other states' concealed handgun licenses, as long as the individual licensee is at least 21 years old, not prohibited by state or federal law from possessing a firearm, and (with limited exceptions for new residents on a temporary basis and members of the military stationed in other states) not a West Virginia resident.

Question 4

In West Virginia, all records concerning individuals who have concealed handgun licenses, including the names and home addresses of licensees, are public records under the Freedom of Information Act and are open to unfettered public access. Nearly 83,000 West Virginians currently have concealed handgun licenses. Many newspapers regularly print lists of individuals who are issued licenses, including former police and corrections officers, victims of domestic violence, and other ordinary citizens who merely want to be able to defend themselves from crime.

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In 2007, a tremendous public uproar ensued after the Roanoke Times published on the Internet a searchable database of all concealed handgun permits issued in Virginia, which showed permittees' full home street addresses to anyone who had Internet access. Although the Roanoke Times quickly removed this database, many retired police officers reported being visited at their homes by people they had arrested in the past and victims of domestic violence who were hiding from their abusive former spouses or partners reported similar home visits. Furthermore, allowing public access to license lists provides potential burglars veritable shopping lists of homes where they are most likely to find not just one but several guns to steal; theft is a leading source of guns for criminals who cannot legally possess firearms.

At least 31 of the 40 states that have nondiscretionary, "shall-issue" concealed weapon licensing laws have closed public access to records containing the names, addresses, or other personally-identifying information of any applicant or licensee; access to these records is limited to law-enforcement agencies, an individual licensee who wishes to inspect his or her own license record, and when required by a court order. In 2007, the House of Delegates passed a bill to close public access to these records in West Virginia but the bill failed to pass the Senate; in 2008, the same bill passed the House Judiciary Committee with only one dissenting vote but died after being removed from the House Special Calendar by the House leadership.

Question 5

Under current West Virginia law, an applicant for a concealed handgun license must pay a total of \$90 in fees for either a new license or to renew an existing, expiring license. Licenses must be renewed once every 5 years. Four of our surrounding states have similar, nondiscretionary "shall-issue" licensing laws and all four also issue licenses for 5-year terms (Maryland is the only surrounding state that does not have a shall-issue law). The fees charged per license in our surrounding states are \$60 in Kentucky, \$67 for new licenses and \$50 for renewals in Ohio, \$50 maximum in Virginia (each county and city may charge less and many charge as little as \$15), and only \$25 in Pennsylvania (this fee will drop to \$20 next year). In 2008, at WVCDL's request, a bill (Senate Bill 230) was introduced to reduce West Virginia's license fee from \$90 to \$50.

Question 6

Current West Virginia law is silent on whether an applicant for a concealed handgun license is required to submit an application for a license in person at the sheriff's office at the county courthouse. The law requires all applications to be notarized (notary publics are required by law to either personally know the affiant or verify an affiant's identity through photo identification). Current law also requires all applicants to prove their identity and residency by providing a copy of either a West Virginia driver's license or nondriver ID card issued by the DMV. All background checks are conducted using an applicant's name, date of birth, and other identifying information contained in the application; West Virginia does not fingerprint applicants. Current law is also silent on the manner in which a license is to be delivered to a licensee upon being issued. In many cases, this results in applicants, both initial and renewal, having to make two trips to the courthouse. For many West Virginians, even one trip involves a significant amount of time and money, especially with current gas prices.

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Question 7

Current West Virginia law provides that upon submission of an application for a concealed handgun license, a sheriff “shall conduct an investigation which shall verify that the information [submitted by the applicant is] true and correct.” The law does not further specify how this is to be accomplished. In general, sheriffs check the State Police criminal records database and the Federal Bureau of Investigation’s Interstate Identification Index to determine whether the applicant may be disqualified from licensure under the statutory licensing criteria.

WVCDL supports inserting a provision requiring sheriffs to examine the III, the National Crime Information Center (NCIC) database, and the National Instant Criminal Background Check System (NICS). This change would not burden sheriffs or applicants. However, it would benefit licensees by qualifying West Virginia for reciprocity with several states that have refused to establish reciprocity with us because of their concerns about the vagueness of our background check requirements. It would also give licensees another major benefit by qualifying all licenses issued on or after the effective date of this change as fulfilling the background check requirements under federal law to purchase a gun from a licensed dealer without a redundant NICS check at the time of the transaction. Many individuals repeatedly suffer from needless delays caused by mistakes of identity and inaccurate records. Presently, 18 states (including Kentucky) have qualified for this exemption for their licensees (for a complete list of states that issue NICS exempt licenses, see http://www.atf.gov/firearms/bradylaw/permit_chart.htm).

Question 8

Current West Virginia law requires an applicant for a concealed handgun license to show proof of training and specifies how this requirement may be fulfilled. The only specific requirement common to all the alternatives through which this requirement may be fulfilled is that the class must involve the handling and firing of a handgun; there are no requirements pertaining to the types of information that must be contained in a course, the number of hours of instruction that a course must provide, or specific standards for proficiency in live fire exercises. Nevertheless, most instructors who teach qualifying classes provide extensive instruction on the care and use of firearms, marksmanship, gun safety, and use of force laws.

Several states, including Virginia and Florida, have similar training requirements to West Virginia but, in addition to the choices allowed in West Virginia, also allow proof of current military service, an honorable discharge, or proof of participation in competitive shooting events to fulfill the training requirement. These states also provide that proof of having been previously licensed in the state fulfills this requirement for a former licensee who wishes to be licensed again. Under current West Virginia law, proof of training does not expire; the challenge for many individuals is keeping their training certificate and constantly renewing their licenses, as a renewal applicant (who has a current, valid license) is not required to show a training certificate but a licensee whose license has expired would be required to show the certificate to obtain a “new” license. These aspects of West Virginia law require members of the military, veterans, participants in competitive shooting events, and individuals who have lost their training certificates and whose licenses have expired to complete redundant classes, adding to the cost of a license for these individuals and reducing available slots in some classes.

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Question 9

Current West Virginia law requires a license to conceal a deadly weapon “on or about” one’s person, meaning within easy access or reach. Among those exempted from this requirement are property owners upon their own premises. Current law also requires no license to carry a weapon in an unconcealed manner.

At least 14 states (including Kentucky) generally extend the same right to carry without a license to a person in his or her own vehicle as for the person’s home or place of business. Although a few of these states limit this exception to a weapon in a glove box or center console, most provide a complete exemption for car carry. These figures do not include Alaska and Vermont, which respect the right to carry both openly and concealed, in a vehicle or on foot, without a license. Additionally, law-enforcement officers are trained to presume that everyone they encounter may be armed until proven otherwise.

Question 10

Currently, two states, Alaska and Vermont, recognize the right of an individual to carry a handgun or other weapon, either openly or concealed, without a license. Alaska issues an optional permit for Alaska residents who want to be able to legally carry in other states under reciprocity laws. Arizona has recently passed an Alaska-style carry law that also eliminates the requirement of having a permit to carry a concealed weapon but maintains a permitting system to enable Arizona residents to obtain an optional permit for the purpose of carrying in other states under reciprocity laws and purchasing firearms from licensed firearm dealers without separate background checks.

Separate from the current law requiring a license to carry concealed weapons (W.Va. Code § 61-7-3), West Virginia has another law (W.Va. Code § 61-7-7) that prohibits certain classes of individuals (e.g., convicted felons, fugitives from justice, drug addicts, the mentally incompetent, and domestic violence offenders) from possessing firearms. This year, House Bill 4325 proposed an Alaska/Arizona style carry law for West Virginia.

Question 11

West Virginia’s hunting laws contain several confusing and contradictory regulations on the carrying of firearms in vehicles and in wooded areas during the closed season (see West Virginia Code § 20-2-5(3), (8), (9), and (19)). Although these regulations are designed primarily to combat poaching, they have been abused and applied against individuals who were merely carrying a handgun for self-defense purposes. For nearly 20 years, the weapons laws contained in West Virginia’s criminal code have recognized an adult individual’s right to open carry without a license and provided a nondiscretionary, “shall-issue” system of issuing licenses for concealed carry.

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In 2002, the Legislature took a partial step toward protecting law-abiding gun owners from these abused by enacting West Virginia Code § 20-2-6a, which protects a person who is otherwise legally carrying a concealed handgun from a misapplication of these regulations. However, the law still leaves tremendous uncertainty over how these regulations apply to open carry, which is necessary for many visitors to West Virginia who do not reside in states that have concealed handgun license reciprocity with us because of our restrictive reciprocity law (see Question 1 above). Several bills, most recently 2010 House Bill 4280, have been introduced at WVCDL's request to revise the firearms regulations contained in the hunting laws to only apply to long guns.

Question 12

All but two states have laws preempting local firearm regulations. These laws vary in scope by state. Current West Virginia law generally preempts county and municipal gun control ordinances. However, these laws have a grandfather clause that allows municipal ordinances adopted prior to the enactment of the preemption law (June 1, 1999) to remain in effect. The City of Charleston has grandfathered ordinances (1) rationing handgun purchase to one gun per month, (2) requiring a 3-day waiting period to purchase a handgun, (3) registering all handgun sales, and (4) prohibiting anyone, including a person with a concealed handgun license who has completed the required training and background checks required for that license, from carrying a weapon in any city building or park. The cities of Dunbar and South Charleston have similar, grandfathered ordinances prohibiting firearms on city-owned property.

Question 13

West Virginia's preemption law applies only to county and municipal ordinances. Many states have more comprehensive preemption laws that extend to administrative actions and rules of both local and state agencies, which prevent executive branch agencies from usurping their legislature's power and imposing additional firearm regulations beyond those enacted by the legislature.

Current West Virginia law prohibits weapons in schools, courthouses, the State Capitol Complex, jails, prisons, juvenile facilities, and juvenile detention centers. West Virginia law does not prohibit state or local government agencies from imposing many restrictions on our right to keep and bear arms for self-defense purposes, including designating public buildings as "gun-free zones" where it would otherwise be legal for a person to carry a gun for personal protection. West Virginia law also does not prohibit the carrying or possession of firearms on college and university property. However, many colleges and universities have established policies prohibiting students and staff from possessing or carrying firearms on campus. Students risk expulsion and staff risk being fired if they violate these policies.

Unfortunately, these "gun-free zone" policies only disarm the law-abiding who are then unable to provide for their own defense, as seen in recent school massacres where such gun control was in effect.

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As the tragedy at Virginia Tech proved, the “I’m unarmed, please don’t hurt me” approach is not an effective means of self defense, especially when faced with a violent criminal determined to kill. Unfortunately, the police can’t be everywhere all the time and usually arrive after the crime to take a report from any survivors. So-called “gun-free zones” amount to little more than criminal protection zones that guarantee criminals protection from the possibility of confrontation by an armed, law-abiding citizen who could defend himself or herself, and instill a false sense of security in unsuspecting members of the public.

At WVCDL’s request, several bills have been introduced in the Legislature to eliminate these criminal protection zones on public property. These bills would not have affected the rights of private property owners, including private colleges—only public agencies owned & controlled by, and accountable to, the people of West Virginia. These bills were defeated, ensuring that murderers and other criminals will have the upper hand. The most recent bill is 2010 House Bill 4305, which proposed a consolidated preemption statute to cover both grandfathered local ordinances (discussed in Question 12) and state agencies (discussed in this question).

Question 14

In recent years, anti-gun New York City Mayor Mike Bloomberg employed an army of private detectives (who were not law-enforcement officers) to visit gun dealers throughout eastern states and attempt to perform “straw” firearm purchases, in which that private detective, being unable under federal law to purchase a firearm from that dealer because of federal laws restricting interstate gun purchases, employed another person to complete a gun purchase. Most of these private detectives also pretended to be unable to legally possess firearms for other reasons, including criminal convictions these private detectives pretended to have. These “straw” purchases are illegal and punishable as a felony under federal law. However, federal officials refused to prosecute anyone for this scheme.

Most of the targeted dealers complied with strict federal laws requiring extensive documentation of all firearm transfers, including the verification of the identity, state of residence, and background of the prospective purchaser. Nevertheless, New York City proceeded to sue dozens of gun dealers from Pennsylvania to Georgia, driving many of them out of business. In settlements with many of these dealers, New York City got access to all records maintained by the dealers that entered into settlements, allowing New York politicians to know every gun purchase ever made from the dealers who settled. Although no West Virginia gun dealers have apparently been targeted yet by this scheme, West Virginia is close enough to New York City for our gun dealers to be targeted by a similar scheme in the future.

In 2006, Virginia passed a law duplicating federal law on “straw” firearm purchases to give local prosecutors in Virginia the ability to criminally prosecute straw purchasers at the state level to protect law-abiding Virginia gun dealers from future straw purchase entrapment schemes; this legislation specifically excluded legitimate sting operations conducted by law-enforcement agencies acting within their official jurisdiction.

A bill to duplicate this Virginia law has been introduced annually since 2007 at WVCDL’s request. This year, the Legislature passed a modified version of this legislation (Senate Bill 515), but Governor Manchin vetoed it.

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Question 15

Current West Virginia law prohibits anyone other than a law-enforcement officer or a person authorized by the chief judge of the particular court to possess any deadly weapon “on any premises which houses a court of law.” Although the question has not been resolved in court, this statute is commonly interpreted to mean that the entire building is off limits to individuals when carrying.

Some states—including Kentucky, New Hampshire, Oregon, Tennessee, and Washington—have more narrowly defined courthouse carry bans that either apply only to the specific areas of a courthouse used by the courts and/or have some other legal mechanism for exempting areas used by nonjudicial offices.

Furthermore, several states—including Colorado, Pennsylvania, Utah, and Washington—require courthouses to provide on-site weapon storage by providing secure, self-service lockers in which individuals entering a courthouse may store & lock their gun while inside the courthouse (with a requirement that alternative storage be provided by courthouse security personnel in case of an overflow or an absence of the required lockers) and then retrieve it when leaving. These laws protect individuals from the potential danger they may face from assailants who would otherwise be able to attack someone going between his or her car and a courthouse because that person would be unarmed. These laws also prevent gun thefts by reducing the likelihood a criminal would be able to get a gun by burglarizing vehicles parked near courthouses—especially since current law allows public access to lists of individuals who have concealed handgun licenses.

Question 16

In 2002, as part of a broader bill providing for enhanced security measures at the State Capitol, the Legislature made it a crime for any person other than a law-enforcement officer to bring a deadly weapon onto State Capitol property. See W.Va. Code § 61-6-19(b). This statute is poorly-written and could even be interpreted to apply to a person who leaves his or her gun locked in a vehicle parked in one of the many public parking lots that surround the State Capitol.

Laws and policies on weapons at state capitols vary widely by state. For example, Pennsylvania prohibits weapons inside its State Capitol but provides storage lockers at one public entrance to allow anyone carrying a gun to securely store it while inside the building and be able to legally carry it while walking to and from their vehicle. Virginia, on the other hand, allows anyone with a concealed handgun permit to carry anywhere inside the Virginia State Capitol, despite mandatory metal detector screenings at the public entrance and substantial on-site security measures; visitors to the Virginia State Capitol who have a concealed handgun permit display it at the security station and are waved through the metal detector. The West Virginia State Capitol has neither on-site weapon storage nor mandatory metal detector screenings or other security measures to adequately protect legislators, staff, other public officials, or visitors from criminals who might exploit the State Capitol’s minimal security and well-known status as a gun-free criminal protection zone. At WVCDL’s request, several bills have been introduced in the Legislature to repeal the State Capitol weapons ban. The most recent bill was 2010 Senate Bill 164.

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Question 17

West Virginia law generally bans the carrying of guns in both public and private K-12 schools, except for the police. This ban infringes the rights of law-abiding West Virginians and makes it almost certain that children and school personnel would remain helpless in the face of a Columbine type of attack by a deranged student or stranger who will ignore the law against bringing a gun in the school. This ban also creates the unnecessary danger and inconvenience of having to frequently unload and then reload a gun before and after driving a vehicle onto school property, as the existing law allows *unloaded* firearms to be kept in vehicles driven or parked on school property.

This ban creates a confusing situation regarding the legality of carrying at churches that operate religious schools because of the uncertainty over what parts of a combined church and school are considered a school where weapons are banned and what parts are not a school and thus are not subject to the ban; likewise, the treatment of a parking lot and exterior grounds of a combined church/school is uncertain. Moreover, because schools are commonly used for community events, public meetings, political rallies and fundraisers, and a variety of other non-school-related activities, this ban significantly impairs the rights of many individuals to protect themselves while attending these events.

Any violation of this statute is punishable as a felony, which would result in a person becoming prohibited by both federal and state law from possessing a firearm for life.

Even the draconian federal Gun Free School Zone Act specifically exempts concealed handgun permit holders from its restrictions and allows permit holders to carry their firearms into classrooms. Moreover, the states of Alabama, California, Oregon, Rhode Island, and Utah specifically and completely exempt individuals with concealed weapon permits from their respective gun-free schools laws. Delaware law provides for an enhancement of penalties for weapons offenses occurring on school property but does not prohibit individuals with concealed weapon permits from carrying in schools. New Hampshire has no state law providing criminal penalties for possessing weapons on school property (like every other state, however, New Hampshire law provides for the expulsion of a student who brings a gun to school equally enforces on and off school property other laws such as the prohibition on carrying a concealed weapon without a license). In these 7 states, individuals who hold concealed weapon permits may legally carry anywhere on school property. Many other states have less generous, but favorable provisions for individuals licensed to carry concealed weapons that either reduce the penalty for a violation from a felony to a misdemeanor and/or allow the possession, carrying, and storage of a loaded firearm in a vehicle driven or parked on school property.

Question 18

This question does not require a response if you answered Yes to Question 17. However, if you answered No to Question 17, an answer to this question is requested. As indicated in the background information presented above for Question 17, schools are used for numerous public and private functions outside school hours—including but not limited to religious services, political rallies and fundraisers, public meetings, and polling places for primary, general, and special elections.

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WVCDL supports a full exemption from the school carry ban for all concealed handgun license holders. As an interim step, we are open to a more limited proposal that would continue to prohibit concealed handgun license holders from carrying in schools during school hours. However, this proposal to provide a more limited exception would eliminate the worst aspects of the current law by providing this more limited exception and reducing the penalty for a CHL holder who inadvertently violates the remaining restriction from a felony to a misdemeanor.

Question 19

WVCDL strongly believes an individual's right to self-defense should extend to all public buildings owned or controlled by state and local government agencies and other publicly-owned property. These buildings and grounds are owned by all West Virginians. So-called "gun-free zones" amount to little more than criminal protection zones that guarantee criminals protection from the possibility of confrontation by an armed, law-abiding citizen acting in self-defense, and instill a false sense of security in unsuspecting members of the public.

WVCDL also recognizes that some public buildings (such as court facilities) have sensitive security considerations that may legitimately warrant the exclusion of weapons from the premises. However, without metal detectors, armed guards, and other meaningful, adequate security measures (similar to airports), attempting to prohibit carrying weapons is a futile task, as criminals will carry regardless of any signs or additional criminal charges.

For these reasons, WVCDL supports legislation to provide that individuals who are licensed to carry concealed handguns shall have the absolute right to carry a handgun anywhere in any state or local government building, unless that building or a portion of it is designated as a "secure restricted access area" that has adequate, airport-style security measures, including armed security personnel and metal detectors screenings of all persons entering the restricted area to ensure that no unauthorized weapons are carried in to the secure area, and provides free, secure weapon storage for individuals who must disarm while in the secure area. WVCDL's proposal would permit any state or local agency to establish a secure restricted access area in accordance with the above guidelines. This proposal would constitute an exemption from the preemption of state and local government agency gun restrictions proposed in Questions 12 and 13.

Question 20

Annually, a bill is introduced in the Legislature to ration firearms by prohibiting a person from purchasing more than one handgun in any 30-day period. Similar laws exist in only three other states. These laws have proven totally ineffective at reducing crime or trafficking in guns to individuals who are prohibited by law from possessing firearms and have to resort to illegal means of acquiring guns. Existing federal law requires licensed dealers who sell more than one handgun to any person in any 5-day period to file a multiple handgun transaction report with federal, state, and local law-enforcement agencies. "One-gun-per-month" and similar gun rationing laws also prevent crime victims from quickly replacing stolen guns and prevent collectors of firearms from acquiring certain sets of guns (such as a matched set of antique dueling pistols or some other gun collection that has particular value as a complete set). The first state to adopt a one-handgun-per-month gun rationing law has since repealed it.

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Question 21

Most firearms experts recognize that mechanical devices, such as trigger locks, create an extremely dangerous condition, whereby a gun can be fired accidentally. These dangerous “lock up your safety” devices may render a handgun ineffective when most needed and leave an individual or family defenseless and vulnerable to attack. Additionally, trigger locks create a false sense of security similar to that created when child safety caps were mandated which resulted in a significant increase in child poisonings when parents came to rely on the “safety” caps rather than education to protect their children.

Question 22

Most experts agree that “ballistic fingerprinting” is not a valid fingerprinting of firearms but rather just a snapshot in time because the markings on the shell and bullets change over time with use, parts replacement, and/or intentional modifications. Two studies done for the California Department of Justice concluded that ballistic fingerprinting is not a viable methodology. Most recently, a Maryland State Police report on Maryland’s ballistic fingerprinting program called it expensive and ineffective. In addition, the head of the Maryland State Police testified before a Maryland House of Delegates committee that Maryland’s mandate to collect ballistics information hasn’t helped solve any crimes.

Question 23

Gun control advocates have made a concerted effort to demonize gun shows as a place where criminals have ready access to firearms. However, according to a 2001 U.S. Department of Justice report, only 0.7% of criminals got their guns from gun shows.

Existing federal laws require all persons engaged in the business of dealing firearms to be licensed and closely monitored by the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). The ATF maintains strict control over all federally-licensed firearm dealers are required to ensure that all their firearm transfers are approved by the National Instant Criminal Background Check System whether the transfer is consummated at a gun show or at the dealer’s place of business.

The terms “gun show loophole” and “unlicensed gun dealer” have been fabricated to mislead the public into believing that gun shows permit gun transfers that would be forbidden anywhere else. There is nothing that can be done legally at a gun show that cannot also be done legally outside of a gun show. Closing the imaginary “gun show loophole” is just the first step in a campaign to criminalize all non-dealer private gun transfers.

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Question 24

Semi-automatic firearms (which discharge only one shot with each pull of the trigger) have been owned and used by law-abiding citizens for over a century. Fully-automatic firearms (which discharge more than one shot with each pull of the trigger), short-barreled rifles, short-barreled shotguns, silencers, and certain “destructive devices” are federally registered, taxed, and much more closely regulated than other types or classes of firearms. Pistol and rifle ammunition magazines are plastic or metal boxes containing a spring that feed ammunition cartridges into a semi-automatic firearm.

Gun control advocates have attempted to ban various classes of firearms based on their cosmetic appearance, prohibit various classes of firearms based on the caliber of bullet the gun is capable of firing, ban ammunition magazines capable of holding more than a certain number of ammunition cartridges (including many of the most common pistol magazines currently in widespread use), limit the types of metals that may be used in ammunition (such as banning lead in ammunition), which would dramatically increase expenses of law-enforcement agencies, competitive target shooters, hunters, and every other gun owner.

Question 25

The federal National Firearms Act (NFA) strictly regulates, taxes, and registers the possession of machine guns, short-barreled rifles, short-barreled shotguns, firearm silencers, and certain firearms described in the NFA as “any other weapons” (collectively “NFA weapons”) West Virginia law imposes no restrictions on the possession of NFA weapons.

One of the requirements imposed by the NFA for an individual to lawfully acquire an NFA weapon is to obtain the approval and certification of a local chief law-enforcement officer (e.g., a sheriff or municipal police chief). West Virginia law does not currently regulate this process. In some counties, gun dealers and prospective purchasers of NFA weapons have had extreme difficulty obtaining the required local approval and certification of NFA weapon transfers. Several states have passed laws providing uniform, nondiscretionary, “shall-issue” NFA transfer certifications for qualified applicants similar to the requirements for issuing concealed handgun licenses to qualified applicants. WVCDL supports similar legislation for West Virginia.

Question 26

Under the state constitution, the Legislature may override the Governor’s veto of a bill only if the bill is vetoed while the Legislature is in session. The modern, end-loaded legislative calendar has resulted in modern governors having an absolute veto because of the inability of the Legislature to override vetoes cast after adjournment of a regular or special session of the Legislature.

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Post-adjourment vetoes have repeatedly been used to block good, pro-gun legislation. When West Virginia's current preemption law was passed in the mid-1990s, it was twice vetoed by Governors Gaston Caperton in 1996 and Cecil Underwood in 1998, in both cases after the Legislature had adjourned. It became law in 1999 only after the Legislature finally took the step of expediting the bill and passing it early in the session to prevent a third post-adjourment veto that was not subject to a legislative override. This year, after the Legislature adjourned, Governor Manchin vetoed all pro-gun bills that were passed and the Legislature did not get the opportunity to amend and repass the bills to meet his objections or vote to override either veto. The only option is to begin anew next year the legislative process on these bills—which could again be subject to a future post-adjourment veto, as happened with preemption nearly 15 years ago.

Question 27

Every 10 years, as required by the state constitution, the Legislature reapportions districts for members of the House of Delegates and the Senate. This process will occur again next year. West Virginia is among a very small number of states that use the antiquated practice of multiple-member districts for either house of the Legislature. Among states that have legislative districts that elect more than 3 members, West Virginia is alone with New Hampshire (which has a 400-member state House of Representatives—the world's third-largest legislative body behind the British House of commons and the U.S. House of Representatives).

Multiple-member legislative districts and the political dynamics of winning elections in those districts makes virtually impossible the task of holding individual legislators accountable for their votes and other conduct in office. Furthermore, on gun rights issues, the current apportionment of the House of Delegates significantly frustrates efforts to strengthen preemption laws, as the City of Charleston (which has the most grandfathered local gun control ordinances of any city in the state) participates in the election of more than twice as many delegates under the current multi-member district system (8) as it would under a single-member district system (3).

If you have any additional questions about the questions presented in WVCDL's 2010 Legislative Candidate Survey, please contact WVCDL Legislative Director Jim Mullins at 304-929-3500 (weekdays during normal business hours) or 304-687-5492 or by e-mail at jmullins@wvcdl.org.

Please make and keep a copy of your survey for your records and return the original copy of your survey and any additional comments or supplemental materials via mail to:

Legislative Candidate Surveys
WVCDL
PO Box 11371
Charleston, WV 25339-1371

You need not return this background information supplement. WVCDL and its members appreciate your participation.