

from THE NATIONAL CENTER FOR STATE COURTS



# Guns in court

*States are easing restrictions on firearms in courthouses and courtrooms*

THE LAST SEVERAL YEARS HAVE SEEN A REEXAMINATION OF LAWS THAT PERMIT FIREARMS IN COURTHOUSES, BUT THE DEBATE IS HARDLY NEW. For example, when New Hampshire judges began banning law enforcement from carrying weapons into courtrooms in the 1970s, the state's legislature attempted to mandate that judges allow the weapons (RSA 490:4-a). The state's supreme court later struck down the law, finding in *State v. LaFrance*, 124 N.H. 171 (1983) that the statute violated the separation of powers doctrine in the state's constitution and violated the trial judge's inherent authority (subject to the state's supreme court review) in these matters.

The recent uptick in interest can be traced back to two items: the U.S. Supreme Court decision in *Heller* holding that the Second Amendment included an individual right to keep and bear arms, coupled with several high-profile courthouse shootings. These events have prompted efforts to redefine who can carry a firearm in a courthouse and where firearm bans may be imposed. For the most part, such efforts have been designed to expand the ability of individuals to carry guns into courthouses and, in some instances, directly into courtrooms.

## Location

Federal law bans firearms in federal buildings except courthouses; under 18 U.S. Code § 930, judges have the authority to decide whether and in what cases firearms may be permitted in court facilities. As a general rule, most states have some form of a "courthouse carry" ban in the form of either a criminal statute that

prohibits carrying a gun in a courthouse or a provision in a gun-permit statute that indicates the permit does not allow for courthouse carry. Beyond this general precept, there are a litany of variations, of which five appear most often:

- **"Courthouse" bans:** The broadest limitation, this covers not only courthouses that are used exclusively by the courts but multiuse, multibranch courthouses as well.
- **"Exclusive use" bans:** Essentially defining "courthouse" to mean a building that is "solely occupied" or "occupied only by the . . . court system."
- **"Court use area" bans:** For multiuse buildings, the areas used by the court or judiciary. This includes courtrooms and chambers, jury and other waiting rooms, court offices, and those spaces immediately adjacent to these rooms.
- **Courtroom bans:** The strictest limitation, this essentially limits the court's ability to prohibit weapons only up to the courtroom door; it does not include areas adjacent to the courtroom.
- **Conditional location bans:** Regardless of which of the four location-specific bans listed above are in place, some states have allowed the ban to be enforced only if the judiciary or local governing body provides metal detectors or similar entrance screening as well as gun lockers.

## Person/Official

Even with location-specific bans, there are exceptions for certain individuals seeking to carry a firearm into the otherwise prohibited location.

## Law enforcement or peace officers in general:

Often sheriffs and municipal police are allowed to carry firearms when inside a courthouse, whether they are assigned to courthouse security or not. However, the law may require that the officer be on duty or operating in their official capacity. An on-duty deputy coming to testify in a case may be allowed to carry; an off-duty officer coming to court for her own personal small claims case may not.

## Law enforcement assigned to court security:

A limitation to the above, this allows for courthouse carry only if the law enforcement official is assigned to secure the courthouse or courtroom.

## Judges:

Active or in some instances retired judges may be allowed to carry a firearm "anywhere" in the state, including into a courthouse; some versions of this statute limit this practice to the courthouse where the judge is serving or assigned.

**Other officials and their staff:** Elected officials may be permitted to carry a firearm into the courthouse(s) they serve. This may be limited to specific elected officials such as prosecutors and clerks of court.

**Permit holders/general public:** Particularly in states that have "court use area" or courtroom-only bans, handgun permit holders may enter the courthouse armed.

## Recent state activity

**Arizona.** Prior to 2013, law enforcement officials generally were not permitted to carry a firearm into a courthouse without court permission unless they provided court security or were responding to an ▶

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emergency. Under HB 2516 of 2013, law enforcement acting in their official capacity may now carry guns in a courthouse, but the presiding judge is permitted to adopt rules and policies consistent with the 2013 law "for the protection of the court."

**Arkansas.** State law provides for two separate firearms bans, for the courthouse and the courtroom. Under SB 159 of 2015, the courthouse ban was partially lifted to allow a county's elected officials and their staff to carry if they had a concealed-carry permit.

**Georgia.** A plan (HB 512 of 2013) to allow courthouse carry unless the court or local government provided entrance screenings cleared the House. News reports indicated judges were caught unaware of the proposed change and expressed opposition once they found out, resulting in the provision being removed. Additionally, several laws (HB 60 of 2014 and SB 332 of 2016) have attempted to clarify which "state and federal judges" were allowed to courthouse carry by specifically naming types of judge (e.g., Justices of the Supreme Court).

**Kansas.** Under HB 2052 of 2013 as enacted, the chief judge of each judicial district may prohibit the carrying of a concealed handgun into courtrooms or ancillary courtrooms only if the public area has adequate security measures to ensure that no weapons enter the area and the no-carry ban is conspicuously posted. "Adequate security measures" is further defined as the use of electronic equipment and armed personnel at public entrances.

**Mississippi.** In 2011, Mississippi broadly expanded the locations where a person with a concealed-carry license could take their weapon (HB 506) to include courthouses and courtrooms during a judicial proceeding. It also specified that the new law would "in no way interfere with the right of a trial judge to restrict the carrying of firearms in the courtroom." By 2015, judges in at least one court had attempted to issue administrative orders expanding the no-carry policies up to 200 feet beyond the doors of their respective courtrooms. Legislation proposed in 2016 to ban such adminis-

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trative orders and define "courtroom" to specifically exclude "hallways [and] courtroom entrances" cleared the House but not the Senate.

**North Carolina.** Prior to 2015, state law allowed prosecutors to carry a handgun into a courthouse but expressly provided that they could not carry a concealed weapon at any time while in a courtroom. HB 562 of 2015 repealed this provision, allowing prosecutors to carry concealed weapons into courtrooms.

**North Dakota.** A 2015 plan (HB 1157) to allow courthouse carry except into a "secure court facility" failed in the House 45-47. Under the bill, firearms would have been permitted in a court facility unless the court or local government installed "equipment that detects weapons and is staffed by armed security personnel."

**Oklahoma.** State law provides that it is generally unlawful to carry a handgun into "public buildings" but specifically exempts judges of the state's main trial court (district) when they are carrying firearms into their own courthouses and have a handgun license. Several attempts have been made to allow for judges to courthouse carry without the need for a permit. Other proposals would allow elected county officials to carry firearms into their respective courtrooms; the most recent version of this legislation, HB 1104 of 2017, was approved by a House committee. During the committee process an amendment was added to specify that the expanded carry provision, if

enacted, "shall not allow the elected county official to carry the handgun into a courtroom."

**Oregon.** SB 385 of 2015 specifically dealt with "local court facilities" housing the state's lower courts (justice, municipal, probate, and juvenile). The law limited the court's power to ban firearms in "local court facilities" to only those areas where the court conducts business, and only during hours when the court is in operation. In those cases where several courts share the same facility, the municipal judge or justice of the peace may not enter an order concerning the possession of weapons that conflicts with an order entered by the presiding judge of the circuit court.

**Rhode Island.** Under a 2003 order from the state's chief justice, no weapons are permitted into courthouses in the state; peace officers and law enforcement must check their weapons at the door. That was later amended in 2005 to allow law enforcement to carry tasers. News reports indicate the state is considering whether to begin to allow deputies to carry firearms.

**Tennessee.** The Tennessee legislature enacted a law (HB 1520/SB 1955) in 2011 to allow judges to carry firearms into their own courthouses if they took an initial 16 hours of firearms training and another eight hours of training annually. The training requirements were later repealed (SB 1955/HB 1520, 2014).

**Wyoming.** As of 2012, the state law generally prohibited a concealed-carry permit holder from entering into any courtroom with a weapon but allowed courthouse carry; judges could both carry themselves and decide whether to allow anyone else to carry firearms in their courtrooms. It was unclear what criminal punishment was associated with a violation of the firearms ban. One judge in the state issued a local administrative order to expand the no-carry area to the entire courthouse. In response, the legislature enacted HB 216 in 2013 to explicitly limit the ban to the courtroom and to make a violation of the ban a felony.

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