

The Federal Gun Free School Zones Act; How It Conflicts with the Laws of Forty-Nine States and Turns Millions of American Gun Owners Into Everyday Federal Criminals

I wish to express my concerns about Title 18 U.S.C §922(q) known as "The Federal Gun Free School Zones Act." This federal law makes it generally unlawful for any person to knowingly possess a functional firearm, within one thousand(1000)feet of the **property line** of any public or private elementary, middle, or high school in our nation. As the law is currently enacted, it effectively voids, in developed areas, the concealed carry reciprocity agreements which have been entered into by most of the forty-nine(49) states that issue permits. The law also fails to recognize unlicensed carry in the states that allow this practice. Although The Gun Free School Zones Act contains two exceptions which are applicable to armed citizens, they do not adequately protect these individuals while exercising their Second Amendment rights. The original 1990 version of this law was ruled unconstitutional by the United States Supreme Court in 1995, and was it was reenacted in 1996 with the very minor changes necessary to comply with the Supreme Court's ruling.

The first exception in the Gun Free School Zones Act is that it does not apply to private property. Although this exception protects gun owners living within 1000 feet of a school, it does not provide armed citizens any protection while they are traveling on public property, such as sidewalks, roads, and highways. The attached maps illustrate how the large number of schools in developed areas make it nearly impossible for someone to travel armed without being in violation.

The second exception is if a person has a concealed carry permit physically issued by the state in which the school is located. Although this exception allows permit holders to legally travel armed in their home state, it does not protect them if they wish to visit other states which recognize their permit through reciprocity agreements. This is further explained by the attached letter from the Federal Bureau of Alcohol, Tobacco, and Firearms. For obvious reasons, our laws do not require an automobile driver to get a separate driver's license from every state they wish to drive in. Accordingly, the Federal Gun Free School Zones Act should not require a permit holder to obtain separate state permits to qualify for the federal exemption. In addition, most states allow for some form of legal, but unlicensed carry. This may be open carry, automobile carry, or concealed carry without requiring a permit. These activities are highly regulated in the states which allow them, but they are not recognized by The Federal Gun Free School Zones Act. It is also important to note that the federal law does not allow armed citizens to legally discharge their firearms under any circumstances. Title 18 USC §922(q) should be amended to allow discharging a firearm in accordance with state law.

Importantly, the current law is different than the original version which was passed in 1990, and struck down by the United States Supreme Court in the 1995 case of United States v Lopez. The US Supreme Court ruled the original law was invalid because Congress had not included the required jurisdictional element which is used in other federal laws. Following the Lopez ruling, Congress reenacted the law, with the necessary jurisdictional element, requiring that the prosecuting attorney prove that a firearm or its part have at some point in time, moved in or otherwise effected interstate commerce. Although the current law has not been reviewed by the US Supreme Court, it has been reviewed and upheld by Federal Appellate Courts for the First, Third, Sixth, Eighth, Ninth, and Tenth Circuits. All of these circuits have ruled that the presence of a jurisdictional element in the current law, corrects the issue that caused the original 1990 law to be struck down in United States v Lopez.

In conclusion, by making it generally unlawful for an individual to travel armed on public sidewalks, roads, and highways that pass within one thousand feet of a school's property, Title 18 U.S.C. §922(q) criminalizes activity which is legal and highly regulated under state law. It is important that The Federal Gun Free School Zones Act of 1995 be amended to recognize the laws of the forty-nine states which allow citizens without criminal convictions to legally carry a firearm.



DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, DC 20226

APR 17 2002

CC-57,493 FE:MCH

Mr. [REDACTED]
[REDACTED]
[REDACTED]

Dear Mr. [REDACTED]

This is in response to your letter regarding the Gun-Free School Zones Act. You are a Virginia resident, and you have a Virginia concealed weapons permit. You also have nonresident concealed weapons permits issued by several other States. Your letter asked about an exception to the general ban on possession of firearms in school zones. Specifically, you inquire, "if the State honors another state permit by legal agreement, is that considered the same as issuing it themselves for the purposes of the GFSZA?"

As you know, the Bureau of Alcohol, Tobacco and Firearms enforces the provisions of the Gun Control Act of 1968, including the Gun-Free School Zones Act, 18 U.S.C. § 922(q). The Gun-Free School Zones Act provides that it is unlawful for any individual to knowingly possess or discharge a firearm in a place that the individual knows or has reasonable cause to believe is a school zone, if the firearm has moved in or otherwise affects interstate or foreign commerce. A school zone is defined to include any place in, or on the grounds of, a public, parochial, or private elementary or secondary school, or within 1,000 feet of the school grounds.

The law provides certain exceptions to the general ban on possession of firearms in school zones. One exception is where the individual possessing the firearm "is licensed to do so by the State in which the school zone is located or a political subdivision of the State. . ." See 18 U.S.C. § 922(q)(2)(B)(ii). A license qualifies as an

Mr. [REDACTED]

exception only if the law of the State or political subdivision requires law enforcement authorities to verify that the individual is qualified under law to receive the license.

The law clearly provides that in order to qualify as an exception to the general prohibitions of the Gun-Free School Zones Act, the license must be issued by the State in which the school zone is located or a political subdivision of that State. A concealed weapons license or permit from any other State would not satisfy the criteria set forth in the law.

For purposes of the GFSZA, in order to fall within this limited exception, the permit must be issued by the State itself. Accordingly, your possession of a Virginia concealed weapons permit would not exempt you from the prohibitions of the Gun-Free School Zones Act in States that honor other State permits by legal agreement.

Please let me know if you have any further questions.

Sincerely yours,

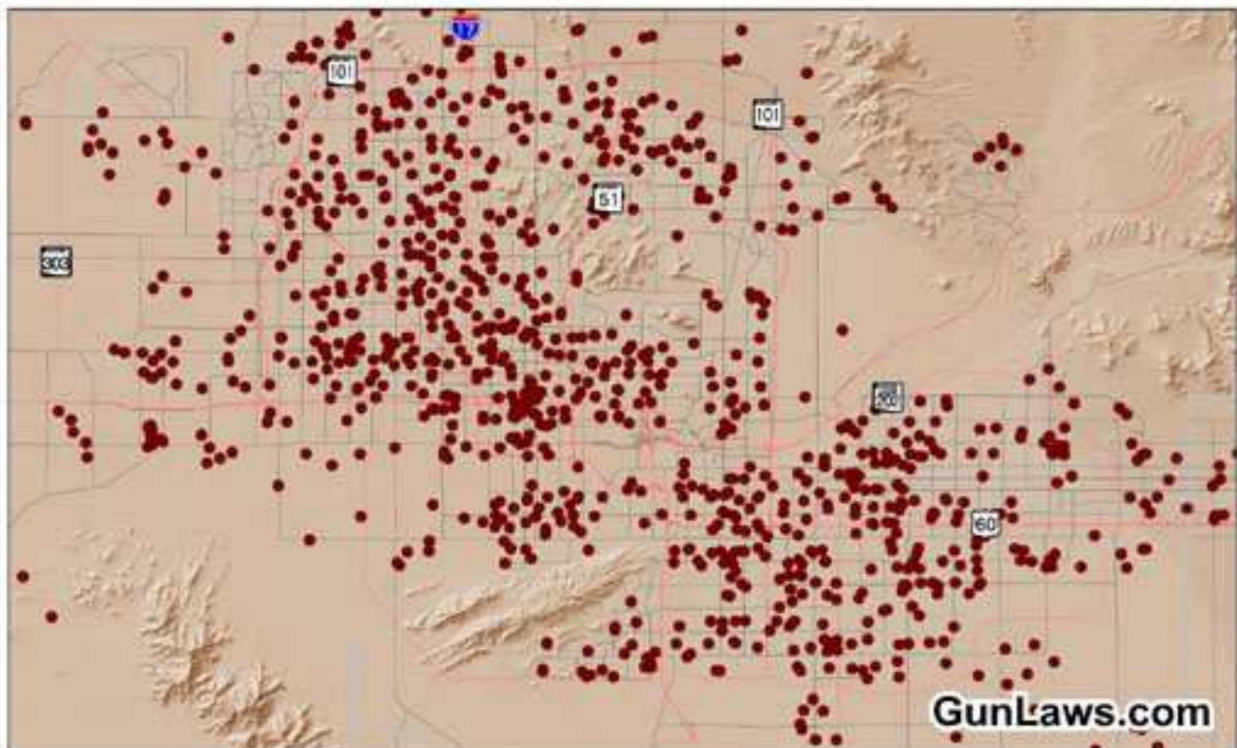


Gary L. Thomas
Chief, Firearms Programs Division

FEDERAL "GUN-FREE SCHOOL ZONES" CLEVELAND 2005
Travel thru any dot = 5 years in prison 18 USC §922(q)



FEDERAL "GUN-FREE SCHOOL ZONES" Phoenix Metro
Travel thru any dot = 5 years in prison 18 USC §922(q)



Letter Written to Congress by President William J. Clinton Regarding the Addition of a Jurisdictional Element to Satisfy US Supreme Court Ruling

To the Congress of the United States:

Today I am transmitting for your immediate consideration and passage the "Gun-Free School Zones Amendments Act of 1995." This Act will provide the jurisdictional element for the Gun-Free School Zones Act of 1990 required by the Supreme Court's recent decision in *United States v. Lopez*.

In a 5-4 decision, the Court in *Lopez* held that the Congress had exceeded its authority under the Commerce Clause by enacting the Gun-Free School Zones Act of 1990, codified at 18 U.S.C. 922(q). The Court found that this Act did not contain the jurisdictional element that would ensure that the firearms possession in question has the requisite nexus with interstate commerce.

In the wake of that decision, I directed Attorney General Reno to present to me an analysis of *Lopez* and to recommend a legislative solution to the problem identified by that decision. Her legislative recommendation is presented in this proposal.

The legislative proposal would amend the Gun-Free School Zones Act by adding the requirement that the Government prove that the firearm has "moved in or the possession of such firearm otherwise affects interstate or foreign commerce."

The addition of this jurisdictional element would limit the Act's "reach to a discrete set of firearm possessions that additionally have an explicit connection with or effect on interstate commerce," as the Court stated in *Lopez*, and thereby bring it within the Congress' Commerce Clause authority.

The Attorney General reported to me that this proposal would have little, if any, impact on the ability of prosecutors to charge this offense, for the vast majority of firearms have "moved in . . . commerce" before reaching their eventual possessor.

Furthermore, by also including the possibility of proving the offense by showing that the possession of the firearm "otherwise affects interstate or foreign commerce," this proposal would leave open the possibility of showing, under the facts of a particular case, that although the firearm itself may not have "moved in . . . interstate or foreign commerce," its possession nonetheless has a sufficient nexus to commerce.

The Attorney General has advised that this proposal does not require the Government to prove that a defendant had knowledge that the firearm "has moved in or the possession of such firearm otherwise affects interstate or foreign commerce." The defendant must know only that he or she possesses the firearm.

I am committed to doing everything in my power to make schools places where young people can be secure, where they can learn, and where parents can be confident that discipline is enforced.

I pledge that the Administration will do our part to help make our schools safe and the neighborhoods around them safe. We are prepared to work immediately with the Congress to enact this legislation. I urge the prompt and favorable consideration of this legislative proposal by the Congress.

WILLIAM J. CLINTON

The White House,

May 10, 1995.

Desired Changes to the Federal GUN FREE SCHOOL ZONES ACT

Section 922 (q) of Title 18, United States Code
Relevant sections noted; no changes to other sections intended

Additions are in italics.

~~Deletions~~ are in strikethrough.

(2)

(A) It shall be unlawful for any individual knowingly to possess a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the individual knows, or has reasonable cause to believe, is a school zone.

(B) Subparagraph (A) does not apply to the possession of a firearm—

(i) on private property not part of school grounds;

(ii) if the individual possessing the firearm is ~~licensed to do so by~~ *in compliance with law of* the State in which the school zone is located or a political subdivision of the State, ~~and the law of the State or political subdivision requires that, before an individual obtains such a license, the law enforcement authorities of the State or political subdivision verify that the individual is qualified under law to receive the license;~~

(3)

(A) Except as provided in subparagraph (B), it shall be unlawful for any person, knowingly or with reckless disregard for the safety of another, to discharge or attempt to discharge a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the person knows is a school zone.

(B) Subparagraph (A) does not apply to the discharge of a firearm—

(i) on private property not part of school grounds;

(ii) as part of a program approved by a school in the school zone, by an individual who is participating in the program;

(iii) by an individual in accordance with a contract entered into between a school in a school zone and the individual or an employer of the individual; ~~or~~

(iv) by a law enforcement officer acting in his or her official capacity;

(v) *discharged in accordance with State law.*

Section 921 (a) of Title 18, United States Code
Relevant sections noted; no changes to other sections intended

Additions are in italics.

~~Deletions~~ are in strikethrough.

(a) As used in this chapter—

(25) The term “school zone” means—

~~(A)~~ in, or on the grounds of, a public, parochial or private school; ~~or~~.

~~(B) within a distance of 1,000 feet from the grounds of a public, parochial or private school.~~

(26) The term “school” means a school which provides elementary or secondary education, as determined under State law; *but does not include places of education in private homes, such as home schools.*

RATIONALE FOR CHANGES

- This law, enacted in 1996 after the Supreme Court decided the Lopez case, took effect when there were very few States with a permitting system, and even fewer with reciprocal agreements for recognition of other State permits.
- Currently, far more people are legally carrying handguns for protection in their home state and in other states that they are visiting than there were back when the GFSZA was enacted
- Most states allow some form of carrying firearms without any kind of permit – either openly or concealed
- If permit holders are trusted to carry a handgun by the State in which the school is located, then the Federal Code needs to be amended to show that same level of trust.
- The 1,000 foot arbitrary zone around a school is an unreasonably large area that can't be reasonably avoided by law abiding citizens – too many schools spread all over the map – in their daily travels.
- If an individual discharges a firearm in compliance with State law, then Federal law should not be more restrictive.