

Knife Owners' Protection Act FAQ

Read the House Knife Owners' Protection Act of 2017 (H.R. 84) at: www.KnifeRights.org/KOPA2017.pdf

Read the Senate Knife Owners' Protection Act of 2018 (S. 3264) at: www.KnifeRights.org/KOPA2018.pdf

(The text of both bills is identical.)

- **Why do those traveling with knives need the protection of KOPA?**
 - Those who travel across the country with knives for work, recreation and self defense are presently subject to arrest and prosecution under a confusing patchwork of inconsistent state and local laws and regulations. What is perfectly legal in one place may be a serious crime in another, carrying significant penalties including jail time. Enforcement is not uniform even within jurisdictions and is subject to the vagaries of political expediency at times. Sportsmen and workmen who travel are particularly vulnerable.
- **Are people really being arrested for traveling with a knife?**
 - This not a theoretical problem, but a real one. By way of example, one of the most frequently travelled places in the U.S., New York City, has in the past few years targeted possession of the most common types of folding knives, arresting and prosecuting what is conservatively estimated to be 70,000 law-abiding knife owners for possession of one-hand opening folding knives representing in excess of 80% of the pocket knives sold in the U.S. today. In some instances they were simply driving in their cars, stopped for a traffic violation and a knife found in the glovebox or trunk. Many are from outside NYC. Each has been booked into jail and undergone the considerable expense (upwards of \$10,000, in some cases even more) and travails of defending themselves. Many have been convicted for nothing more than carrying a common tool in their pocket.

Recently, in an action that has disturbing familiarity for sportsmen, an individual traveling via Kennedy Airport in New York changing planes en route to an overseas destination, with a number of very expensive custom knives in checked baggage was arrested and the knives seized by Port of NY/NJ law enforcement. The knives were perfectly legal at their point of departure and at the destination, as is often the case with sportsmen traveling overseas to hunt with their firearms. At best, this will cost the unfortunate victim thousands of dollars to defend, to say nothing of the value of the knives seized, approximately \$15,000.

The persecution of honest, law-abiding citizens for carrying common knives is not just a localized occurrence in New York. Similar arrests and prosecutions have occurred in Colorado, Michigan, New Jersey, New Mexico and Texas, to name a few. Anyone travelling through jurisdictions that have knife bans or restrictions may be subject to arrest and prosecution. The peril is real, and depending upon the political environment at any particular time and place, can occur without warning, notwithstanding Knife Rights' successful efforts to repeal such bans and restrictions in many states.

- **Why now?**
 - It is an unfortunate fact that knives are starting to attract the attention of the same organizations and public officials who have been unsuccessful in recent years in their efforts to restrict gun rights. Knives make an easy target, since millions of Americans carry a knife daily. In the past few years, there has been

a notable uptick in proposed anti-knife legislation, including in Maryland, Massachusetts, Nevada, New Jersey, New York and Washington states. The more complex and diverse knife laws become, the greater the peril will be to those who travel with knives.

- **Are knife laws really that confusing?**

- To illustrate how confusing and complex travel with knives can be, consider that 44 states allow civilian possession of switchblades (automatic knives) to varying degrees, with no restrictions whatsoever in 29 states and with some limitations they are legal to open carry in 40, but in many other states possession is a serious crime. In a number of states automatic knives are legal for use while hunting or fishing, but are otherwise restricted, while neighboring states forbid their possession entirely.

Just four states have laws similar to the fifth exemption to the Federal Switchblade Act passed by Congress in 2009 to protect one-hand opening and assisting opening pocket knives; in many other states the legality of one-hand-opening and assisted-opening knives is subject to widely varying interpretation, as we have witnessed in New York City and in Baltimore where Freddy Grey was arrested for possession of a knife that was undoubtedly legal in most of Maryland and arguably in Baltimore as well.

While some states have permissive or relatively permissive knife laws, only 10 states have a Knife Preemption Law so far (Alaska, Arizona, Georgia, Kansas, New Hampshire, Oklahoma, Tennessee, Texas, Utah and Wisconsin, all passed at the request and support of Knife Rights since 2010), so even where state law is permissive, local governments within those states without preemption can still enact their own strict regulations, and many do.

The national patchwork of knife laws is complex, confusing, and in constant flux, and law-abiding travelers with knives are presently at their mercy. It is virtually impossible for any citizen to be fully cognizant of the knife laws everywhere they travel.

- **Is there precedent for such a law?**

- This solution is not novel, but based on exiting legislative precedent. The current situation with knives is similar to the circumstances with guns that existed prior to the passage of the Firearm Owners' Protection Act, 18 USC 926A ("FOPA") in 1986, when Congress acted to protect law-abiding gun owners from a similar inconsistent patchwork of laws by insulating their travels if firearms possession was lawful at both the origination and destination points of travel. Unfortunately, FOPA provides no protections whatsoever to knife owners, so they are completely unprotected from the same perils. A sportsman travelling with both firearms and knives who follows FOPA's requirements to the letter and also locks up his knives in an abundance of caution, could be insulated against prosecution for firearms possession, yet be arrested and prosecuted for knife possession. In fact, we have seen that occur.

- **Haven't there been efforts to circumvent FOPA, upon which KOPA is based?**

- Yes. In enacting protections for knife owners, KOPA addresses known vulnerabilities in FOPA which have been used by courts to circumvent Congress' intent and unjustly subject travelers to local laws in some jurisdictions. KOPA has been crafted to prevent similar circumvention.

- **Won't authorities in anti-knife jurisdictions just ignore KOPA, like some ignore FOPA?**
 - A private cause of action under 42 U.S.C 1983 is not guaranteed, particularly in the case of those jurisdictions most likely to abuse the law, including New York and New Jersey. In New Jersey, knife law violations are felonies! The U.S. Court of Appeals for the Second Circuit held in a binding decision, *Torraco v. Port Authority*, that FOPA, the law which KOPA mirrors in many respects, does not give rise to a private cause of action under 42 U.S.C 1983. Given these courts' animus towards weapons and freedom in general, there's no reason to expect them to treat knives any differently.
 - Unlike FOPA, KOPA has a private Right of Action to defend those who travel under its protection, providing for penalties for law enforcement, prosecutors and others who ignore the protections provided. Similar to the protections and penalties generally provided in USC 1983 to those whose civil rights are violated, a falsely arrested citizen can be compensated for the expense of defending themselves from an unwarranted violation of the rights Congress has protected in KOPA.
 - Without a Right of Action, there is no true deterrent against rogue states and localities who disregard the intent of Congress to protect these travels. Acting with impunity, without fear of any meaningful recourse from victims, these jurisdictions will further persecute citizens who attempt to defend themselves from illegal, and unjust or misguided enforcement actions.
 - Should a lawful traveler have to risk bankruptcy to defend against an illegal arrest and prosecution? How many citizens will be forced to simply capitulate or take an unwarranted plea deal given the extraordinary expense involved in mounting a defense? In some cases these miscarriages of justice will have lasting adverse impact on their lives and the lives of their family. The Right of Action in KOPA is essential. Without it, the new law would not be worth the paper it was printed on.
 - Were there no Right of Action, it would actually put many knife owners at greater risk of prosecution, financial jeopardy or ruin and loss of civil rights because they would believe themselves protected, when they were actually not. This is particularly the case in states and cities with very restrictive knife laws where they are currently wary of breaking the law. A lack of Right of Action would provide knife owners an unjustified false sense of security that could trap the unwary.
 - It should be noted that a number of bills in Congress this session address the vulnerabilities in FOPA and include Right of Action language similar in most respects to that in KOPA that address these same issues.
- **Is this a problem for many Americans?**
 - In the absence of Congressional action, law-abiding travelers will be increasingly subject to arrest, prosecution, and imprisonment merely for possessing a common tool, a knife. A large number of Americans are impacted by this problem, including truckers, tradesmen, hunters, anglers, campers, and other sportsmen, many of whom travel with knives. Knifemakers, collectors and knife dealers are also impacted as they travel to and from knife shows.
- **Is this appropriate for Congress to address?**
 - A citizen's right to travel from one place to another with a legal product should be protected, and preventing Americans from being wrongfully targeted is a reasonable activity for Congress to undertake. Americans have a right to know that they will be safe from prosecution when they are simply travelling within the U.S.

- **Does KOPA change state law?**

- **KOPA does not change state and local law**, but rather would allow travelers to navigate through the patchwork of inconsistent laws during the course of their travels without being in constant jeopardy of criminal prosecution. KOPA would simply provide safe harbor to someone travelling with knives where it is lawful for the knives to be possessed at both the points of origin and destination, so long as the knives are transported in accordance with specific requirements that keep them inaccessible during the intervening travel, just like FOPA.

- **Can a criminal use KOPA to avoid prosecution?**

- No protections would be afforded to anyone involved in criminal activity, and we have taken great pains to ensure that the proposed legislation cannot be misused to protect or insulate criminal conduct. It sets a definition of criminal conduct as a crime with a potential penalty of more than one year in jail, in common with numerous other statutes, to ensure that this exception for KOPA protection is not abused by authorities in the case of someone stopped for a minor offense, such as a traffic ticket or the like.

- **How must knives be "secured" under KOPA?**

- In the case of most motor vehicles, the knife or knives cannot be directly accessible from the passenger compartment. In other words they need to be locked up in the trunk. In the case of a motor vehicle without a compartment separate from the passenger compartment, the knife or knives shall be contained in a locked container (such as a brief case), glove compartment, or console.

In the case of transportation by other means (including any conveyance over land, on or through water, or through the air), the knife or knives must be in a locked container.

KOPA doesn't override TSA regulations. So, for travel in any aircraft where there is TSA passenger screening, you still cannot carry a knife on board, even if locked up. Passengers with knives in checked and locked luggage, or if they are inside a locked container in the luggage, as currently allowed, would be protected by KOPA as they transit any location where those knives might be illegal.

- **Why is there an exception for Emergency Knives?**

- KOPA also protects the carry in any mode of transportation, except on an airline flight where TSA prohibits all knives, of a commonly available emergency knife designed to enable the user to cut a seat belt or other entanglement in case of an accident or emergency. **This is restricted to knives with a blunt point or with a guarded blade.** Thus, drivers, pilots and boaters cannot be prosecuted for being responsible and ensuring that they and passengers can escape in case of an emergency that threatens their life.

- **Why do we need to repeal the Federal Switchblade Act?**

- The Federal Switchblade Act (FSA) only interferes with, and complicates, trade in automatic knives. Once an automatic knife is legally shipped into a state to a manufacturer's authorized dealer in conformity with the FSA's convoluted restrictions, or if it is manufactured within the state, then state law controls who is able to possess the knife. Contrary to what many believe, Switchblades are not illegal in the U.S. Currently 44 states allow civilian possession of Switchblades, the majority with no or minimal restrictions, 33 allowing everyday open carry. There was never any real reason for the FSA's existence and it serves no useful purpose. At this point it is simply a hindrance to lawful commerce.

Download a map of the states where switchblade possession is legal and illegal at:
www.KnifeRights.org/switchblade_states.pdf

- **What is the difference between a Switchblade and an Automatic knife?**

- There is no difference; they are just different names for the same type knife. "Switchblade" is the term used back in the day and the term used in the '50s when Switchblade bans were enacted. The cutlery industry in the 1970's moved to use the term "Automatic" in an effort to avoid the stigma some associated with "Switchblade." "Automatic," often shorted to "Auto," is the term used almost universally by the cutlery industry today. Since we deal with statutes and the statutes typically use "Switchblade," that's why we repeal "switchblade bans" and not "automatic knife bans."

- **How did the Federal Switchblade Act come into existence?**

- Switchblade bans were passed as a result of hysterical reaction to Hollywood fiction of the 1950's portraying gangs' or delinquents' use of switchblades, demonizing the knife. There was never any evidence that there was a significant problem except in the imagination of the Hollywood writers and directors and a small minority that found a cause célèbre that garnered them lots of attention. It was seized upon by politicians of the day. Only 21 states enacted their own total switchblade bans, 14 of which have been repealed since 2010. Currently, only 79 states outright ban civilian possession of Switchblades.

Switchblade bans and the Federal Switchblade Act were not opposed by the cutlery industry back then, or in some cases were supported, since virtually all the patents for automatic knives were held by Shrade Cutlery, who did not "play well" with the rest of the industry (those patents have long since lapsed). So, the bans did no immediate harm to these companies who were unable to produce automatic knives anyway and a ban would hurt Shrade, which was just fine with their competitors.

The Federal Switchblade Act, which primarily restricts interstate commerce, was passed over the opposition of the Eisenhower administration which defended automatic knives as practical and useful tools and argued they were not a national problem. Congress, eager to be seen "doing something," passed it anyway and the Administration went along in the end.

Read the Federal Switchblade Act (annotated) at: <https://kniferights.org/resources/federal-switchblade-act/>

- **Does the Federal Switchblade Act prevent crime?**

- No. Despite there being millions of automatic knives in circulation in the U.S., many even in states where they are illegal, automatic knives are very rarely used in crimes. Even common folding (pocket) knives are rarely used in crimes. The most common knife, by far, used in a crime or assault in the U.S. is the readily available kitchen knife, universally found in every household.

- **Isn't a Switchblade more dangerous than any other knife because it opens automatically with just a button?**

- No. Automatic knives are no quicker to deploy than conventional legal one-hand opening knives, including assisted-opening knives, but are desirable as another option for one-hand deployment. Because the safety lock found on most models must be disengaged before they will open, they can often take longer to deploy. Folding knives in general, and automatic knives in particular, are certainly slower to deploy than a legal fixed blade knife.

Because of the safety lock, in some respects automatics with this feature are the very safest of all folding knife designs because they are locked closed.

- **What is the difference between a Switchblade and an Assisted-opening Knife?**

- Assisted-opening knives, also known as spring-assisted knives, were developed in the mid-1990s in order to circumvent Switchblade bans, including the FSA. Unlike a Switchblade which opens automatically when a button or device in the handle is manipulated, releasing the blade to open, an assisted-opening knife requires that the blade be manually opened part way open before a spring takes over, "assists," opening the blade the remainder of the way. In 2009 Congress passed a fifth exception to the FSA to explicitly clarify that these knives were not Switchblades. This came in response to an egregious attempt by the U.S. Customs to overreach and unilaterally classify all one-hand opening knives, including assisted-opening knives, as Switchblades, even though these one-hand opening knives represent over 80% of all folding knives sold in the U.S. and clearly do not meet the FSA's narrowly constrained definition.

- **What is status of Switchblades with regards to the Second Amendment?**

- Switchblade bans are undoubtedly unconstitutional under the Second Amendment. Knives as "arms" were referenced in both the Heller and McDonald U.S. Supreme Court decisions upholding the Second Amendment as an individual right subject to strict scrutiny. "Knives and the Second Amendment" by prominent Second Amendment scholars David B. Kopel, Clayton E. Cramer and Joseph Edward Olson provides independent legal arguments supporting the position that knives are "arms" protected by the Second Amendment, including the unconstitutionality of switchblade bans and the FSA. Published in the University of Michigan Journal of Law Reform (vol. 47, pages 167-215), the paper can be downloaded at:

www.KnifeRights.org/Knives-and-the-Second-Amendment.pdf