

Knife Owners' Protection Act ("KOPA") FAQ

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- Knife Owners' Protection Act ("KOPA") Summary?
 - Knife Owners' Protection Act ("KOPA") would protect law-abiding knife owners traveling throughout the U.S. from the vagaries of restrictive state and local laws. If possession of the knife is legal where the journey starts and ends, and provided the knife is secured in accordance with KOPA, a knife owner would no longer be threatened with arrest simply for traveling from one place to another even if passing through a jurisdiction where the knife is illegal.
- Why do those traveling with knives need the protection of KOPA?
 - Those who travel across the U.S. 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. 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. Those who travel for work or recreation, such as camping, boating or hunting are particularly vulnerable.
- Are people really being arrested for traveling with a knife?
 - This is 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, had been for over a decade targeting possession of the most common types of folding knives. They arrested and prosecuted 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, stopped for a traffic violation and a knife found in the glovebox or trunk. Many were from outside NYC. Each was booked into jail and underwent the considerable expense (upwards of \$10,000, in some cases even more) and travails of defending themselves. Many were convicted for nothing more than carrying a common tool in their pocket.

Recently, in an action that has disturbing familiarity for sportsmen and women, an individual traveling via Kennedy Airport in New York changing planes en route to an overseas destination, with a number of expensive custom knives in checked baggage was arrested and the automatic knives he had 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 and women traveling overseas to hunt with their firearms. This 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, and New Mexico, to name a few. With knife law preemption only in nineteen states, anyone travelling through not just state, but also local jurisdictions that have knife bans or restrictions, may be subject to arrest and prosecution. The peril is real, simply crossing a city or county line is all it can take.

Worse, depending upon the political environment at any particular time and place, it 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. Even in Texas, we defeated an anti-knife bill in the last legislative session. 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 46 states allow civilian possession of switchblades (automatic knives) to varying degrees, with no restrictions whatsoever in 32 states and, with some limitations, they are legal to open carry in 38. However, 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 have no restrictions whatsoever.

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. In Baltimore, Freddy Grey was arrested, and then died in custody, 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 19 states have a Knife Preemption Law so far (Alaska, Arizona, Georgia, Idaho, Iowa, Kansas, Louisiana, Montana, Nebraska, New Hampshire, Ohio, Oklahoma, Tennessee, Texas, Utah, West Virginia and Wisconsin, all passed at the request and support of Knife Rights since 2010, plus New Mexico and Wyoming had existing preemption via their Constitution). So, even where state law is permissive, local governments within those states without preemption can still enact their own more 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 or woman 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. This is especially true in those jurisdictions presenting the biggest dangers to knife carriers. 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 from a FOPA violation, particularly in the case of those jurisdictions most likely to abuse the law, including New York and New Jersey. 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. Moreover, in New Jersey, alone among all the states, ALL state knife law violations are felonies!
- Unlike FOPA, KOPA includes 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 improperly arrested knife possessing person 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, unjust or misguided enforcement actions.
- Should a lawful traveler have to risk bankruptcy to defend against an illegal arrest and prosecution? 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 hardly be worth the paper it was printed on in the states where its protection is most needed.
- Were there no Right of Action included in KOPA, it could actually put many knife owners at greater risk of prosecution, financial jeopardy or ruin and loss of civil rights because they might well believe themselves protected, but without a Right of Action, they actually would not be in the real world. This is particularly the case in states and cities with very restrictive knife laws where they are currently wary of breaking the law, but may think they can now transport their knives safely. A lack of Right of Action would provide knife owners an unjustified false sense of security that could trap the unwary.

- **Is this a problem for many Americans?**

- In the absence of Congressional action, law-abiding travelers in some political jurisdictions 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. Custom knifemakers, collectors, manufacturers' reps 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.** 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. KOPA 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.
 - "Safe Harbor" is a provision in a statute that exempts certain conduct from the liability prescribed in that or other statutes.

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

- **No protections would be afforded to anyone involved in criminal activity.** 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. This ensures that this criminal 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?**

- **To take advantage of the protections in KOPA, the knife or knives must be in a locked container.**
- In the case of motor vehicles, the knife or knives cannot be immediately accessible from the passenger compartment. In other words, they need to be locked up in the trunk, or in the case of a motor vehicle without a compartment separate from the passenger compartment like most SUVs, the knife or knives must be contained in a locked container (such as a briefcase or tool box) or lockable 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 does NOT override TSA regulations or U.S. law regarding knife carry on airlines.** 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 a knife or knives in checked and locked baggage, or if they are inside a locked container inside the baggage, as currently allowed, would be protected by KOPA as they transit any location where those knives might not be legal. Use of a TSA lock would suffice to be protected under KOPA. Knives in unlocked baggage are not protected.
 - If so secured, KOPA protects an interrupted journey that requires a stay over where the knives may be illegal, as long as the journey is continuous. A multiday stop-over would not be covered unless the result of circumstances beyond the traveler's control. Removal of the knives from the locked container would void the protection under KOPA. The safest choice would be a separate locked container just for the knife or knives in checked baggage.
- **Why is there an exception for Emergency Knives?**
 - KOPA also protects the carry in any mode of transportation, except for travel in any aircraft where there is TSA passenger screening, 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.