No. 12-57049

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DOROTHY MCKAY et al.,

Plaintiffs-Appellants,

v.

SHERIFF SANDRA HUTCHENS, et al.,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
(SACV 12-1458JVS)

NOTICE OF POTENTIAL CLAIM OF UNCONSTITUTIONALITY

C. D. Michel (S.B.N. 144258)
Glenn S. McRoberts (S.B.N. 144852)
Sean A. Brady (S.B.N. 262007)
Anna M. Barvir (S.B.N. 268728)
MICHEL & ASSOCIATES, P.C.
180 East Ocean Blvd., Suite 200
Long Beach, CA 908502
Tel. No. (562) 216-4444
Fax No: (562) 216-4445
e-mail: cmichel@michellawyers.com

Counsel for Plaintiffs-Appellants

To the Clerk of the United States Court of Appeals for the Ninth Circuit:

Plaintiffs-Appellants Dorothy McKay, Diana Kilgore, Phillip Willms, Fred Kogen, David Weiss, and the CRPA Foundation (hereinafter "Plaintiffs"), by and through their counsel of record, hereby provide notice that the above-entitled action may potentially draw into question the constitutionality of California Penal Code section 26150(a)(2).

You are further notified that neither the State of California, nor any agency, official, or employee of the State of California, is a party to this action.

You are, therefore, requested to certify the foregoing facts to the Attorney General of the State of California pursuant to 28 U.S.C. § 2403(b) and Rule 44(b) of the Federal Rules of Appellate Procedure.

DISCUSSION

Pursuant to Rule 44(b) of the Federal Rules of Appellate Procedure and 28 U.S.C. § 2403(b), and in an abundance of caution, Plaintiffs hereby provide notice that they have filed a complaint against Orange County Sheriff Sandra Hutchens and the Orange County Sheriff-Coroner Department ("Sheriff Hutchens"). Plaintiffs' action potentially questions the constitutionality of California Penal Code section 26150(a)(2), which delegates to local law enforcement the authority to issue a license to publicly carry a handgun ("Carry License") if the applicant

establishes, among other things, that he or she has the requisite "good cause." Pls. First Am. Compl., No. 12-1458 (C.D. Cal. Sept. 7, 2012), ECF No. 4 (attached as Ex. A); Appellants' Opening Br., No. 12-57049 (9th Cir. Nov. 29, 2012), ECF No. 6 (attached as Ex. B).[1]

Plaintiffs contend that Sheriff Hutchens' exercise of that authority, through her official policy and practice of denying Carry Licenses unless the applicant can show some special need to publicly carry a handgun, violates their Second Amendment right to bear arms for self-defense purposes. They also claim the Sheriff's policy violates the Equal Protection Clause of the Fourteenth Amendment. Plaintiffs' primary claims are narrowly focused on Sheriff Hutchens' implementation of Penal Code section 26150(a)(2)'s "good cause" provision, not the State's provision itself. Specifically, Plaintiffs challenge and seek relief from the Sheriff's policy of rejecting general self-defense as good cause.

[1] The First Amended Complaint and Appellants' Opening Brief are the papers that could potentially question the constitutionality of California Penal Code section 26150(a)(2). *Cf.* Fed. R. Civ. P. 5.1 (a notice of constitutional question is to identify the paper(s) raising the constitutional challenge).

Alternatively, however, Plaintiffs argue the court should find Penal Code section 26150(a)(2) to be a facially unconstitutional precondition on the right to armed self-defense if the court deems it necessary or desirable to address the State provision directly. Plaintiffs' alternative claims were left unaddressed by the district court in its Order Denying Plaintiffs' Motion for Preliminary Injunction, the subject of this appeal.

Because Plaintiffs primarily attack the constitutionality of the Sheriff's policy and practices for issuing licenses to carry firearms – rather than Penal Code section 26150(a)(2) itself – Plaintiffs do not believe the state of California is a necessary party to this suit. Plaintiffs believe Sheriff Hutchens likely is a state actor in her capacity as a Carry License Issuance Authority.

In any event, as the Attorney General has recognized, the source of a constitutional deprivation in Carry License challenges is not the state statute, but rather the issuing sheriff's discretion, and the Attorney General is not a proper defendant in challenges to Carry License issuance practices. In a recent challenge to a sheriff's Carry License issuance policy in California on Second Amendment grounds the Attorney General sought to be dismissed because "*the Attorney General has no statutory authority to grant, deny, or revoke CCW licenses*." Defs.

Cross-Mot. Summ. J., at 11:20-26, *Pizzo v. San Francisco*, No. 09-04493 (N.D. Cal. July 2, 2012), ECF 81 (emphasis in original).

For these reasons, Plaintiffs in the lower court proceedings initially did not file – and the district court presumably felt the need not to certify – a question of constitutionality with the California Attorney General pursuant to 28 U.S.C. § 2403(b) and Federal Rule of Civil Procedure 5.1.

While Plaintiffs maintain that they are under no duty to notify the state Attorney General because this case does not primarily challenge state law, but rather the official policy of a local officer and/or a specific exercise of delegated power and that, in any event, Plaintiffs have sued a state actor (i.e. the Sheriff), they file this notice in response to the Ninth Circuit's muted interest in this issue in the related cases of *Peruta v. County of San Diego*, No. 10-56971, and *Richards v. Prieto*, No. 11-16255.

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Accordingly, Plaintiffs request the Clerk of the United States Court of Appeals for the Ninth Circuit certify the foregoing facts to the Attorney General of the State of California pursuant to 28 U.S.C. § 2403(b) and Federal Rule of Appellate Procedure 44(b).[2]

Date: December 10, 2012

MICHEL & ASSOCIATES, P.C.

s/ C. D. Michel
C. D. Michel
Attorney for Plaintiffs/Appellants

[2] *See Connecticut v. Doehr*, 501 U.S. 1, 7 n.3 (1991) (noting without disapproval – in a case where the attorney general did not receive notice of a constitutional challenge to a state statute at any time during the district court proceedings – that 28 U.S.C. § 2403(b) was still complied with because the state attorney general was permitted to intervene upon invitation from the Court of Appeals *after* oral argument had occurred).

CERTIFICATE OF SERVICE

I hereby certify that on December 10, 2012, an electronic PDF of Notice of Potential Claim of Unconstitutionality was uploaded to the Court's CM/ECF system, which will automatically generate and send by electronic mail a Notice of Docket Activity to all registered attorneys participating in the case. Such notice constitutes service on those registered attorneys.

I hereby further certify that on December 10, 2012, a hard copy of Notice of Potential Claim of Unconstitutionality is being served via U.S. Certified Mail on the following: Kamala D. Harris, California Attorney General, Office of the Attorney General, 1300 "I" Street, Sacramento, CA 95814.

Date: December 10, 2012

MICHEL & ASSOCIATES, P.C.

s/ C. D. Michel
C. D. Michel
Attorney for Plaintiffs-Appellants

McKay, et al. v. Sheriff Hutchens, et al.
Case No.: 12-57049
EXHIBIT "A"

C. D. Michel – SBN 144258
Glenn S. McRoberts – SBN 144852
Sean A. Brady - SBN 262007
cmichel@michellawyers.com
MICHEL & ASSOCIATES, P.C.
180 E. Ocean Blvd., Suite 200
Long Beach, CA 90802
Telephone: (562) 216-4444
Facsimile: (562) 216-4445
www.michellawyers.com

Attorneys for Plaintiffs / Petitioners

IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

DOROTHY McKAY, DIANA KILGORE, PHILLIP WILLMS, FRED KOGEN, DAVID WEISS, and THE CRPA FOUNDATION, Plaintiffs, v. SHERIFF SANDRA HUTCHENS, individually and in her official capacity as Sheriff of Orange County, California, ORANGE COUNTY SHERIFF-CORONER DEPARTMENT, COUNTY OF ORANGE, and DOES 1-10, Defendants.	**CASE NO: SACV 12-1458JVS (JPrx)** **FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** **42 U.S.C. §§ 1983, 1988**

NOW COME Plaintiffs Dorothy McKay, Diana Kilgore, Phillip Willms, Fred Kogen, David Weiss, and The CRPA Foundaton (collectively "Plaintiffs"), by and through the above counsel, and allege against Defendants Sheriff Sandra Hutchens, the Orange County Sheriff-Coroner Department, and the County of Orange, California (collectively hereafter "Sheriff Hutchens" or "the Sheriff") as follows:

INTRODUCTION

1. Plaintiffs bring this action to challenge the validity of, and enjoin the enforcement of, Sheriff Hutchens' official written policy and practice of denying licenses that California requires to generally carry handguns in public ("Carry Licenses") to most law-abiding, competent adult applicants, including Plaintiffs, who seek such licenses for the purpose of self-defense, unless the applicant can show "good cause" for the license; which Defendant essentially defines as a special or contemporaneous "need" to defend oneself – something *more* than "general concerns about personal safety."

2. Sheriff Hutchens' official written policy and its implementation abuses her discretion and violates Plaintiffs' right to keep and bear arms under the Second Amendment to the United States Constitution and, in particular, their right "to possess and carry firearms in case of confrontation" for self-defense purposes, as described by the Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008).

3. Sheriff Hutchens' official written policy also violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution by creating a classification of law-abiding individuals, which includes Plaintiffs, who are denied the fundamental right to bear arms for constitutionally irrelevant reasons while others are not so denied.

4. Accordingly, Plaintiffs hereby seek declaratory and injunctive relief from Sheriff Hutchens' unconstitutional policy and practice, as outlined below.

PARTIES

PLAINTIFFS

5. All individual Plaintiffs are natural persons, citizens of the United States, and current residents of Orange County, California.

6. All individual Plaintiffs are eligible to possess firearms under state and federal law and currently own a handgun.

7. On October 25, 2011, Plaintiff Dorothy McKay – a public school teacher and National Rifle Association-certified Firearms Instructor / Range Safety Officer – applied to Sheriff Hutchens for a Carry License, asserting a general desire for self-defense as her "good cause" due to her traveling alone in remote areas, sometimes with valuables, both for her paid and volunteer work.

8. On December 28, 2011, Plaintiff McKay's application for a Carry License was denied for lack of "good cause" by Sheriff Hutchens.

9. On November 1, 2011, Plaintiff Phillip Willms – an Orange County business owner and competitive shooter who has Carry Licenses issued from Arizona and Nevada – applied to Sheriff Hutchens for a Carry License, asserting a general desire for self-defense as his "good cause" due to his business activities and hobbies requiring him to have valuable possessions on his person.

10. On January 24, 2012, Plaintiff Willms' application for a Carry License was denied for lack of "good cause." He requested reconsideration of his denial, and on March 21, 2012, his denial was confirmed.

11. Plaintiff Fred Kogen – a medical doctor who travels performing infant circumcisions, a procedure that some consider controversial and for which some have threatened those doctors, including Plaintiff Kogen, who perform it – applied to Sheriff Hutchens for a Carry License, asserting a general desire for self-defense as his "good cause" due to his concern about specific and general threats he has received as a result of his performing infant circumcisions.

12. On July 10, 2012, Plaintiff Kogen's application for a Carry License was denied for lack of "good cause" by Sheriff Hutchens.

13. Plaintiff David Weiss – a pastor who travels around Orange County to meet with his parishioners in need and who travels all over California to meet with parishioners in need from other churches, and who has Carry Licenses issued by Arizona and New Hampshire – applied to Sheriff Hutchens for a Carry License, asserting a general desire for self-defense as his "good cause" due to frequenting

unknown areas to sometimes meet unknown people in often times emotionally charged situations.

14. On March 21, 2012, Plaintiff Weiss' application for a Carry License was denied for lack of "good cause" by Sheriff Hutchens

15. Plaintiff Diana Kilgore has refrained from applying for a Carry License with Sheriff Hutchens because doing so would be futile and a waste of her time and money, because she does not meet the Sheriff's "good cause" standard articulated in the Sheriff's official written policy for issuing Carry Licenses.

16. Plaintiff The CRPA Foundation is a 501 (c)(3) charitable corporation. The CRPA Foundation's primary place of business is in Fullerton, California.

17. The CRPA Foundation is an association that utilizes financial resources to educate the public about firearms laws, the shooting sports, and safe practices. It conducts firearms safety advocacy and advocates in court through litigation brought to benefit the California Rifle and Pistol Assoication ("CRPA") and the CRPA's approximately 35,000 dues-paying members, as well as tens of thousands of additional donors and supporters, and California firearm owners in general. Such judicial advocacy generally regards firearms laws and rights. The CRPA Foundation uses its financial and human resources to counsel firearms owners about their rights and duties with regard to carrying firearms for self-defense, and to support efforts, including litigation, that promotes that right.

18. Sheriff Hutchens' denial of Carry Licenses for general self-defense purposes frustrates The CRPA Foundation's mission to promote the fundamental, individual right to armed self-defense. In response to Sheriff Hutchens' unlawful acts, The CRPA Foundation has been required to devote financial and human resources to commence litigation to adjudicate other Plaintiffs' rights with regard to the unlawful activities challenged herein. As a result of using these resources to identify and counsel Plaintiffs and to fund this litigation, The CRPA Foundation has had to divert resources it would use for promoting its other organizational

missions, such as firearm-safety education.

19. Many CRPA members and The CRPA Foundation contributors in Orange County, including Plaintiff Kilgore, wish to obtain a Carry License but refrain from applying because it is futile since they do not meet Sheriff Hutchens' official "good cause" standard, and they do not wish to waste their time and money applying.

DEFENDANTS

20. Defendant Sandra Hutchens is the elected Sheriff of Orange County, California. As such, she is responsible for formulating, executing and administering the laws, customs and practices that Plaintiffs challenge herein, and she is in fact presently enforcing the challenged laws, customs, and practices against Plaintiffs (and, in the case of The CRPA Foundation, those whose interests they represent). Defendant Sheriff Hutchens is sued in her individual capacity and in her official capacity as Sheriff of Orange County.

21. Defendant Orange County Sheriff-Coroner Department ("OCSD") is a law enforcement agency and a Department within the County of Orange. OCSD acts by and through Defendant Sandra Hutchens who serves as the head executive of the Department. As a Department within the governmental structure of the County of Orange, OCSD acts with the express authority and approval of Defendant County of Orange and its Board of Supervisors. Plaintiffs are informed and believe and based thereon allege that Defendant Orange County Sheriff-Coroner Department may be officially titled Orange County Sheriff's Department.

22. Defendant County of Orange is a municipal entity organized under the Constitution and laws of the State of California. Defendant County of Orange, by and through its Board of Supervisors, exercises statutorily required administrative and budget oversight with respect to Defendant Sandra Hutchens and Defendant Orange County Sheriff-Coroner Department.

23. Plaintiffs are informed and believe and based thereon allege that Does

1-10, and each of them, are in some manner responsible for establishing, implementing, or administering Sheriff Hutchens' policy for issuing Carry Licenses or are otherwise responsible for denying the natural person Plaintiffs' applications for a Carry License.

JURISDICTION AND VENUE

24. Jurisdiction of this action is founded on 28 U.S.C. § 1331 in that this action arises under the Constitution and laws of the United States, and under 28 U.S.C. § 1343(a)(3) in that this action seeks to redress the deprivation, under color of the laws, statutes, ordinances, regulations, customs and usages of the State of California and political subdivisions thereof, of rights, privileges or immunities secured by the United States Constitution and by Acts of Congress.

25. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201-2202.

26. Venue in this judicial district is proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this district.

REGULATORY SCHEME

[California Law - Carry Licenses]

27. With very few and very limited exceptions, California has banned the unlicensed carrying of handguns in most public places whether loaded (Cal. Penal Code §§ 25850, 26100 and exceptions at Cal. Penal Code §§ 25900-26060, 26300) or unloaded (Cal. Penal Code § 26350 and exceptions at Cal. Penal Code §§ 26361-26389), and whether carried concealed[1] (Cal. Penal Code § 25400 and

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[1] There is an exception to the general prohibition on carrying concealed when transporting an unloaded handgun in a locked container while in a vehicle, or going directly to or coming directly from a vehicle for "any lawful purpose," or going directly to or from certain locations or activities for "any lawful purpose." (Cal. Penal Code §§ 25505, 25610).

exceptions at Cal. Penal Code §§ 25450-25700, 26300) or exposed (Cal. Penal Code § 26350 and exceptions at Cal. Penal Code §§ 26361-26389).[2]

28. Carrying a handgun in public without a Carry License or without meeting one of the limited exceptions to the general prohibition on publicly carrying handguns can be penalized as a misdemeanor or a felony. (Cal. Penal Code §§ 25400, 25850, 26350).

29. California authorizes city police chiefs and county sheriffs ("Issuing Authorities") to issue Carry Licenses to their residents, allowing those residents who qualify to go about in most public places carrying a loaded handgun.

30. To be eligible for a Carry License, a resident must submit a written application to the respective Issuing Authority, showing that the resident meets certain statutorily required criteria. Cal. Penal Code §§ 26150-26155.

31. Before a Carry License can issue, an applicant must pass a criminal background check (Cal. Penal Code § 26185), and is required to successfully complete a handgun training course covering handgun safety and California firearm laws. (Cal. Penal Code § 26165).

32. Even if an applicant successfully completes the background check and a suitable handgun training course, under the law a Carry License may only be issued if the applicant is additionally proven to be of "good moral character" and establishes "good cause" for getting a license to carry a loaded firearm in public. (Cal. Penal Code §§ 26150(a)(1) and 26150(a)(2), respectively).

33. Issuing Authorities currently exercise discretion in deciding whether an applicant has "good cause" to be issued a Carry License. Some Issuing Authorities

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[2] It is currently not prohibited to carry an unloaded long-gun (rifle or shotgun) in public outside of a locked container as long as it is not an "assault weapon" (*see* Cal. Penal Code § 30600(a)), of illegal measurements (*see* Cal. Penal Code § 33210), or in a "Gun Free School Zone" under federal law. (18 U.S.C. §§ 921(a)(25)-(26)).

choose to rarely issue Carry Licenses. Others issue them to virtually all law-abiding, competent adult applicants who seek a Carry License for self-defense and who otherwise meet the requirements for such a license.

34. In counties with populations under 200,000, Issuing Authorities may issue licenses to carry a loaded handgun in an exposed, open manner (e.g., in a hip holster), while in more populated counties, like Orange County, only a license to carry a handgun in a concealed manner may be issued. (Cal. Penal Code § 26150(b)(2), 26155(b)(2)).

35. A license to carry openly is only valid within the county it was issued. (*Id.*) A license to carry concealed is valid statewide, unless the Issuing Authority expressly restricts its validity to only within the county. (*See* Cal. Penal Code § 26200).

36. Because California law generally prohibits the unlicensed carrying of handguns in most public places, whether loaded or unloaded, and whether in a concealed or exposed manner, a Carry License is the only means by which an individual can lawfully go about armed for self-defense in "non-sensitive" public places within California.

[Second and Fourteenth Amendments]

37. The Second Amendment to the United States Constitution provides: "A well regulated Militia being necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed." U.S. Const amend. II.

38. The Supreme Court has held that the Second Amendment right to keep and bear arms is a fundamental, individual right that includes at its core the right of law-abiding, competent adults to "possess and carry weapons in case of confrontation." *Heller*, 554 U.S. at 592.

39. The Supreme Court also held that the Second Amendment right to keep and bear arms, by way of its incorporation into the Fourteenth Amendment, applies equally to prohibit infringement of that right by state and local governments.

McDonald v. City of Chicago, 130 S. Ct. 3020, 3026 (2010).

40. The Fourteenth Amendment to the United States Constitution provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

41. The Equal Protection Clause puts the burden on the government to justify classifications of people which restrain the exercise of the classified persons' fundamental rights.

GENERAL ALLEGATIONS

42. The Second Amendment guarantees the right of law-abiding, competent adult residents of Orange County, including Plaintiffs, some lawful manner to carry a handgun for self-defense purposes in case of confrontation, at least in "non-sensitive" public places.

43. Denial of a Carry License sought for self-defense purposes is an abuse of discretion and a denial of the fundamental right to carry a handgun in "non-sensitive" public places for self-defense in case of confrontation.

44. It is the government's burden to justify any restriction on the Second Amendment right of law-abiding, competent adults to carry a handgun for self-defense purposes in case of confrontation in "non-sensitive" public places.

45. All law-abiding, competent adults are similarly situated in that they are equally entitled to exercise the constitutional right to bear arms – without having to first demonstrate special circumstances or needs to do so – and are therefore equally entitled to be issued a Carry License for self-defense purposes.

[Sheriff Hutchens' Issuance Policy]

46. According to her official written policy and the denials of Plaintiffs' applications for Carry Licenses, Sheriff Hutchens refuses to issue Carry Licenses where an applicant asserts "general concerns about personal safety" as the "good cause" for a Carry License, even if the applicant is a law-abiding, competent Orange County resident who satisfies all other statutory requirements for a license.

47. To even *potentially* satisfy Sheriff Hutchens' "good cause" standard, applicants must demonstrate that at least they are the target of a specific threat or that they engage in business that subjects them to much more danger than the general public.

48. Sheriff Hutchens has chosen to adopt an official written policy that rejects applicants' general desire for self-defense - which the Supreme Court has deemed the core of the Second Amendment - as sufficient "good cause" to exercise the fundamental, Second Amendment right to bear arms in public.

49. Sheriff Hutchens' "good cause" policy also creates a classification of individuals – those who have no evidence of a specific threat or involvement in a business the Sheriff considers risky – which abrogates the class members' fundamental right to bear arms.

50. Under the Second and Fourteenth Amendments to the United States Constitution, Sheriff Hutchens' policy and practice of prohibiting individuals who cannot show they have more than "general concerns about personal safety" from exercising their right to keep and bear arms is an abuse of discretion and an unconstitutional application of California's "good cause" criterion. The need for a handgun in non-sensitive public places for general self-defense in case of confrontation is itself "good cause."

[Plaintiffs' Carry License Denials]

51. Each of the individual Plaintiffs (except Plaintiff Kilgore) has applied to Sheriff Hutchens for a Carry License asserting general self-defense as their "good cause" for the license.

52. By reason of the Second and the Fourteenth Amendments, each of the Plaintiffs has "good cause" for a Carry License.

53. Sheriff Hutchens has not found that any of the Plaintiffs fails to satisfy any other statutory criterion in California Penal Code section 26150 for issuance of a Carry License.

54. Sheriff Hutchens denied each Plaintiff's application for lack of "good cause" alone.

55. Sheriff Hutchens' policy choice regarding how to apply California Penal Code section 26150(a)(2)'s criterion has resulted in the denial of Carry Licenses to Plaintiffs, which is tantamount to a denial of their right to bear arms because a Carry License is the only lawful manner in which one can generally carry arms for self-defense purposes in case of confrontation within the state.

56. But for the lack of a Carry License, Plaintiffs (and in the case of The CRPA Foundation, those they represent) would carry a handgun in non-sensitive public places for self-defense as they deem appropriate.

[California's "Good Cause" Standard]

57. While Plaintiffs believe it is Sheriff Hutchens' application of California Penal Code section 26150(a)(2)'s "good cause" provision that causes their injury, and not the provision itself, in the alternative, the "good cause" provision itself places a precondition on the right of competent, law-abiding adults to carry arms in public for general self-defense purposes in case of confrontation, without any textual or historical justification for doing so.

58. In the alternative, California Penal Code section 26150(a)(2)'s "good cause" provision is an unconstitutional precondition because it requires competent, law-abiding adults like Plaintiffs to prove they have a good reason for a Carry License, which, because such license are the only lawful means to generally carry a handgun for self-defense in most public places in California, is effectively requiring competent, law-abiding adults to prove they have a good reason to exercise a fundamental right. Such a precondition violates the Second and Fourteenth Amendments.

59. In the alternative, California Penal Code section 26150(a)(2)'s "good cause" provision unconstitutionally allows Issuing Authorities like Sheriff Hutchens to exercise unbridled discretion in determining who has "good cause" for

a Carry License, and thus "good cause" to exercise the fundamental right to bear arms.

60. In the alternative, California Penal Code section 26150(a)(2)'s "good cause" provision necessarily creates a classification of Orange County residents, including Plaintiffs, who can be denied a Carry License for self-defense purposes, regardless of whether they are competent and law-abiding, while other classes of competent, law-abiding Orange County residents are not so denied, thereby violating the Equal Protection Clause of the Fourteenth Amendment.

DECLARATORY RELIEF

61. Plaintiffs hereby re-allege and incorporate by reference the allegations set forth in the foregoing paragraphs as if set forth herein in full.

62. There is an actual and present controversy between the parties in that Plaintiffs contend Sheriff Hutchens' official written policy for implementing California Penal Code section 26150(a)(2)'s "good cause" criterion for the issuance of Carry Licenses is unconstitutional on its face and as applied to Plaintiffs because it does not, and in the case of Plaintiffs did not, recognize the fundamental right to armed self-defense as "good cause" for a Carry License. Defendants deny and dispute this contention. Plaintiffs desire a judicial declaration of their rights and Sheriff Hutchens' duties in this matter.

63. Plaintiffs specifically desire a Decree from this Court that the Second Amendment commands Sheriff Hutchens to recognize a desire for general self-defense as "good cause" for an otherwise qualified applicant to be issued a Carry License. Alternatively, Plaintiffs desire a Decree from this Court that Sheriff Hutchens' enforcement of California Penal Code section 26150(a)(2)'s "good cause" provision in any manner whatsoever violates the Second and Fourteenth Amendments to the United States Constitution.

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FIRST CLAIM FOR RELIEF
SECOND AND FOURTEENTH AMENDMENTS
RIGHT TO BEAR ARMS
42 U.S.C. § 1983
AGAINST ALL DEFENDANTS

64. Plaintiffs hereby re-allege and incorporate by reference the allegations set forth in the foregoing paragraphs as if set forth herein in full.

65. By choosing to adopt and adhere to an official written policy that does not recognize a desire for general self-defense as "good cause" for issuance of a Carry License under California Penal Code section 26150(a)(2), Sheriff Hutchens is propagating customs, policies, and practices that deprive Orange County residents, including Plaintiffs, of their right to generally carry a handgun for self-defense in non-sensitive public places as guaranteed by the Second and Fourteenth Amendments.

66. Sheriff Hutchens cannot satisfy her burden of justifying these customs, policies, and practices that preclude Plaintiffs from exercising their rights protected under the Second and Fourteenth Amendments.

67. Sheriff Hutchens' official written "good cause" policy is therefore unconstitutional on its face because it expressly does not, and in the case of Plaintiffs did not, recognize a desire for general self-defense as "good cause" for issuance of a Carry License.

68. Sheriff Hutchens' official written "good cause" policy is therefore unconstitutional as applied to Plaintiffs because its implementation precluded them from being issued a Carry License which, in turn, prevents them from exercising their fundamental right to bear arms in non-sensitive public places for general self-defense purposes in the only manner allowed under state law.

69. Plaintiffs are entitled to declaratory and preliminary and permanent injunctive relief against such unconstitutional customs, policies, and practices.

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SECOND CLAIM FOR RELIEF
FOURTEENTH AMENDMENT - EQUAL PROTECTION
42 U.S.C. § 1983
AGAINST ALL DEFENDANTS

70. Plaintiffs hereby re-allege and incorporate by reference the allegations set forth in the foregoing paragraphs as if set forth herein in full.

71. In adopting and adhering to an official written policy that does not recognize a desire for general self-defense as "good cause" for issuance of a Carry License under California Penal Code section 26150(a)(2), Sheriff Hutchens is creating a classification of Orange County residents, which includes Plaintiffs, whose Second Amendment right to generally bear arms for self-defense in public is abrogated because they cannot meet the Sheriff's "good cause" standard for a Carry License, regardless of whether they are competent and law-abiding, while the rights of other classes of competent, law-abiding Orange County residents are not so infringed.

72. Sheriff Hutchens cannot satisfy her burden of justifying such a classification that unequally deprives Plaintiffs of their right to bear arms, and she is therefore propagating customs, policies, and practices that deprive Orange County residents, including Plaintiffs, of their right to equal protection under the law as guaranteed by the Fourteenth Amendment.

73. Sheriff Hutchens' official written "good cause" policy is therefore unconstitutional on its face because it expressly classifies those individuals who cannot show the additional special circumstances required for issuance of a Carry License described therein as not qualified for issuance of a Carry License, while others who can make such a constitutionally irrelevant showing may be issued a Carry License.

74. Sheriff Hutchens' official written "good cause" policy is therefore unconstitutional as applied to Plaintiffs because its implementation put them in a classification of adults who are precluded from being issued a Carry License, solely

for the constitutionally irrelevant reason that they cannot demonstrate a special need for wanting to exercise the right to bear arms.

75. Plaintiffs are entitled to declaratory and preliminary and permanent injunctive relief against such unconstitutional customs, policies, and practices.

THIRD CLAIM FOR RELIEF – IN THE ALTERNATIVE
SECOND AND FOURTEENTH AMENDMENTS - RIGHT TO BEAR ARMS
42 U.S.C. § 1983
AGAINST ALL DEFENDANTS

76. Plaintiffs hereby re-allege and incorporate by reference the allegations set forth in the foregoing paragraphs as if set forth herein in full.

77. California Penal Code section 26150(a)(2)'s "good cause" provision violates the Second and Fourteenth Amendments because it imposes preconditions on the individual, fundamental right of competent, law-abiding adults to carry arms in public for general self-defense purposes in case of confrontation, without any textual or historical justification for doing so.

78. Local Issuing Authorities like Sheriff Hutchens cannot require, under California Penal Code section 26150(a)(2) or any other state provision, law-abiding, competent adults to prove they have "good cause" before they are allowed to exercise a fundamental constitutional right; or, at least, they cannot constitutionally exercise unbridled discretion in determining who has "good cause" to do so, as California Penal Code section 26150(a)(2) permits. The right to keep and bear arms is a right, not a privilege. Plaintiffs are constitutionally entitled to exercise that right, unless somehow disqualified for constitutionally acceptable reasons.

79. Sheriff Hutchens cannot satisfy her burden of justifying her enforcement of California Penal Code section 26150(a)(2)'s "good cause" provision, which precludes Plaintiffs, and most competent, law-abiding Orange County adults, from exercising their rights protected under the Second and Fourteenth Amendments.

80. Therefore, California Penal Code section 26150(a)(2)'s "good cause"

provision, is a facially unconstitutional precondition on Plaintiffs' rights protected under the Second and Fourteenth Amendments.

81. Therefore, Plaintiffs are entitled to declaratory relief declaring California Penal Code section 26150(a)(2)'s "good cause" provision to be an unconstitutional precondition on the People's right to bear arms, and to preliminary and permanent injunctive relief enjoining Sheriff Hutchens' from implementing *any* such "good cause" precondition on the right to keep and bear arms.

FOURTH CLAIM FOR RELIEF – IN THE ALTERNATIVE
FOURTEENTH AMENDMENT - EQUAL PROTECTION
42 U.S.C. § 1983
AGAINST ALL DEFENDANTS

82. Plaintiffs hereby re-allege and incorporate by reference the allegations set forth in the foregoing paragraphs as if set forth herein in full.

83. California Penal Code section 26150(a)(2)'s "good cause" provision violates the Equal Protection Clause of the Fourteenth Amendment because it necessarily creates a classification of competent and law-abiding adults whose Second Amendment right to bear arms generally in non-sensitive public places is abrogated because they do not have "good cause" for a Carry License, while those rights of other classes of competent, law-abiding adults are not so infringed.

84. Sheriff Hutchens cannot satisfy her burden of justifying her enforcement of a standard that precludes competent, law-abiding adults like Plaintiffs from exercising their rights protected under the Second and Fourteenth Amendments, while allowing others to exercise them, simply because they have what the Sheriff considers "good cause" to do so.

85. Therefore, California Penal Code section 26150(a)(2)'s "good cause" provision is unconstitutional on its face.

86. Therefore, Plaintiffs are entitled to declaratory relief declaring California Penal Code section 26150(a)(2)'s "good cause" provision as creating unconstitutional classifications of people in the enjoyment of their fundamental

right to bear arms, and to preliminary and permanent injunctive relief enjoining Sheriff Hutchens' from implementing *any* such "good cause" precondition on that right.

PRAYER

WHEREFORE, Plaintiffs request that judgment be entered in their favor and against Sheriff Hutchens as follows:

87. Declaratory relief that Sheriff Hutchens' policy implementing California Penal Code section 26150(a)(2)'s "good cause" criterion for the issuance of Carry Licenses is unconstitutional on its face and as applied to Plaintiffs because it rejects "general concerns about personal safety" and a desire to exercise one's fundamental right to bear arms for self-defense in case of confrontation as "good cause" for a Carry License and, instead, requires applicants to at least demonstrate they are the target of a specific threat or engage in business that subjects them to far more danger than the general public to qualify for a Carry License;

88. Declaratory relief that Sheriff Hutchens' policy implementing California Penal Code section 26150(a)(2)'s "good cause" criterion for the issuance of Carry Licenses is unconstitutional on its face and as applied to Plaintiffs because it creates an impermissible classification of competent, law-abiding adults, which includes Plaintiffs, who are categorically and improperly denied their Second Amendment right to bear arms generally in public in case of confrontation;

89. An order permanently enjoining Sheriff Hutchens, her officers, agents, servants, employees, and all persons in active concert or participation with her, from enforcing Sheriff Hutchens' policy implementing California Penal Code section 26150(a)(2)'s "good cause" criterion for the issuance of Carry Licenses in any manner that does not recognize a general desire for self-defense as satisfying that criterion;

90. Alternatively, Plaintiffs seek declaratory relief that California Penal Code section 26150(a)(2)'s "good cause" criterion itself is unconstitutional on its

face under the Second and Fourteenth Amendments, in that any requirement that law-abiding, competent adults prove they have a "good cause" to exercise a fundamental constitutional right before they may do so cannot pass muster under any applicable standard of review;

91. Alternatively, Plaintiffs seek declaratory relief that California Penal Code section 26150(a)(2)'s "good cause" criterion itself is unconstitutional on its face under the Equal Protection Clause of the Fourteenth Amendment because it creates an impermissible classification of competent, law-abiding adults who are categorically and improperly denied their Second Amendment right to bear arms generally in public in case of confrontation;

92. Alternatively, Plaintiffs seek an order permanently enjoining Sheriff Hutchens, her officers, agents, servants, employees, and all persons in active concert or participation with her, from enforcing California Penal Code section 26150(a)(2)'s "good cause" criterion in any manner;

93. Costs of suit, including attorney fees and costs pursuant to 42 U.S.C. § 1988 and California law; and

94. Any further or alternative relief as the Court deems just and proper.

Respectfully Submitted,

Date: September 7, 2012

MICHEL & ASSOCIATES, P.C.

C.D. Michel
E-mail:cmichel@michellawyers.com
Counsel for Plaintiffs

McKay, et al. v. Sheriff Hutchens, et al.
Case No.: 12-57049
EXHIBIT "B"

No. 12-57049

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DOROTHY McKAY, et. al.,

Plaintiffs Appellants,

v.

SHERIFF SANDRA HUTCHENS, et. al.,

Defendants Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
(SACV 12-1458JVS)

APPELLANTS' OPENING BRIEF

C. D. Michel (S.B.N. 144258)
Glenn S. McRoberts (S.B.N. 144852)
Sean A. Brady (S.B.N. 262007)
Anna M. Barvir (S.B.N. 268728)
MICHEL & ASSOCIATES, P.C.
180 East Ocean Blvd., Suite 200
Long Beach, CA 90802
Tel. No. (562) 216-4444
Fax No: (562) 216-4445
e-mail: cmichel@michellawyers.com

Counsel for Plaintiffs-Appellants

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, counsel for Plaintiffs-Appellants certify the following:

CRPA Foundation

The CRPA Foundation is not a publicly-held corporation, it does not have a parent corporation, and no publicly-held corporation owns 10 percent or more of its stock.

Date: November 29, 2012

MICHEL & ASSOCIATES, P.C.

s/ C. D. Michel
C. D. Michel
Attorney for Plaintiffs-Appellants

TABLE OF CONTENTS

PAGE(S)

TABLE OF CONTENTS (CONT.)

PAGE(S)

TABLE OF CONTENTS (CONT.)

PAGE(S)

TABLE OF CONTENTS (CONT.)

PAGE(S)

TABLE OF AUTHORITIES

PAGE(S)

FEDERAL CASES

TABLE OF AUTHORITIES (CONT.)

PAGE(S)

FEDERAL CASES (CONT.)

TABLE OF AUTHORITIES (CONT.)

PAGE(S)

FEDERAL CASES (CONT.)

TABLE OF AUTHORITIES (CONT.)

PAGE(S)

FEDERAL CASES (CONT.)

TABLE OF AUTHORITIES (CONT.)

PAGE(S)

FEDERAL CASES (CONT.)

TABLE OF AUTHORITIES (CONT.)

PAGE(S)

FEDERAL CASES (CONT.)

STATE CASES

TABLE OF AUTHORITIES (CONT.)

PAGE(S)

STATE CASES (CONT.)

STATUTES, RULES, & REGULATIONS

TABLE OF AUTHORITIES (CONT.)

PAGE(S)

STATUTES, RULES, & REGULATIONS (CONT.)

TABLE OF AUTHORITIES (CONT.)

PAGE(S)

STATUTES, RULES, & REGULATIONS (CONT.)

OTHER AUTHORITY

TABLE OF AUTHORITIES (CONT.)

PAGE(S)

OTHER AUTHORITY (CONT.)

STATEMENT OF JURISDICTION

This is a 42 U.S.C. § 1983 action. The district court had jurisdiction pursuant to 28 U.S.C. § 1343. Because this suit arises under the United States Constitution, the district court also had jurisdiction pursuant to 28 U.S.C. § 1331 and, to the extent that state law issues were involved, 28 U.S.C. § 1367.

On November 1, 2012, a clerk's judgment was entered denying Plaintiffs-Appellants' Motion for Preliminary Injunction. Excerpts of Record, volume II ["E.R. II"] 288. The Court of Appeals has jurisdiction over interlocutory appeals of district court orders refusing to issue a preliminary injunction. 28 U.S.C. § 1292(a)(1).

Plaintiffs filed a timely notice of appeal on November 9, 2012, in accordance with Federal Rules of Appellate Procedure 3 and 4 and Ninth Circuit Rules 3-1, 3-2, and 3-4. E.R II 289.

STATEMENT OF THE ISSUES PRESENTED

1. Does the Second Amendment's "right of the people to keep and bear arms" include the general right of law-abiding, competent adults to bear arms in public in *some* manner for lawful self-defense?

2. If so, does a government official violate the Second Amendment's guarantee that the right "shall not be infringed" by enforcing a policy that, in

effect and by design, denies otherwise qualified adults the only manner available under California law to carry arms generally in public unless they can prove a special need to do so?

3. Alternatively, does a statute violate the Second Amendment's guarantee that the right "shall not be infringed" by requiring otherwise qualified adults to demonstrate a "good cause" before they can exercise the right, and where a government official has plenary discretion to determine what constitutes such "good cause"?

4. Even if the Second Amendment does not guarantee the right to bear arms in public for self-defense, once the government affords that right to some people, does the Equal Protection Clause require that any government classification that denies that same right to others meet strict scrutiny?

5. If so, does a policy requiring otherwise-qualified adults to demonstrate a special need for self-defense to qualify as a member of the class that may publicly exercise the right to bear arms pass strict scrutiny, i.e., is such a policy necessary to further a compelling governmental interest?

STATEMENT REGARDING ADDENDUM

Pursuant to Rule 28(f) of the Federal Rules and Circuit Rule 28-2.7, an addendum of relevant constitutional, statutory, and regulatory provisions is bound

together with this brief.

STATEMENT REGARDING ORAL ARGUMENT

Pursuant to Rules 32(a)(7)(B)(iii) and 34(a)(1) of the Federal Rules, Plaintiffs request the opportunity to present oral argument. Oral argument is necessary because this is a case of first impression in this Circuit, and it involves numerous constitutional issues that once clarified will determine the scope of the Second Amendment's protections of the right to bear arms.

STATEMENT OF THE CASE

This case involves a narrow challenge to a single aspect of the "good cause" policy and practices of Defendants-Appellees Orange County Sheriff Sandra Hutchens and the Orange County Sheriff-Coroner Department ("Sheriff Hutchens" or "the Sheriff") in issuing the licenses required to generally carry a loaded firearm in public, specifically, the Sheriff's rejection of "self-defense" as "good cause." Each of the Plaintiffs-Appellants ("Plaintiffs") has sought or wishes to seek such a license from Sheriff Hutchens for self-defense purposes, but is barred from qualifying for one under the Sheriff's official issuance policy, which requires proof of specific threats of violence and considers "[n]on-specific, general concerns about personal safety" such as Plaintiffs' to be "insufficient" for a license. E.R. II 182-83; Addend. 098-99. Plaintiffs contend Sheriff Hutchens'

policy and practices violate their Second Amendment right to bear arms and their Fourteenth Amendment right to equal protection under the law.

Plaintiffs filed their initial Complaint on September 5, 2012. E.R. II 286. On September 7, 2012, Plaintiffs filed the First Amended Complaint, which is the operative complaint for purposes of this appeal. E.R. II 268-86.

On September 11, 2011, Plaintiffs filed a Motion for Preliminary Injunction regarding the enforcement of the Sheriff's policy. E.R. II 233-35, 286-87. On October 9, 2012, Sheriff Hutchens filed her opposition. E.R. II 077-112, 288. And Plaintiffs filed their reply on October 16, 2012. E.R. II 016-42, 288.

Sheriff Hutchens filed her answer on October 25, 2012. E.R. II 254-67, 288.[1]

Plaintiffs' Motion for Preliminary Injunction was heard on October 29, 2012. E.R. II 288. The court adopted its tentative order denying Plaintiffs' motion that same day. E.R. I 001-005; E.R. II 288. A clerk's judgment was entered on November 1, 2012. E.R. II 288. Plaintiffs filed a timely notice of appeal of that order on November 9, 2012. E.R. II 289.

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[1] Initially, the County of Orange was a named defendant. The parties stipulated to dismiss the county on October 24, 2012. E.R. II 288.

STATEMENT OF FACTS

I. STATE REGULATORY SCHEME

Plaintiffs claim that Sheriff Hutchens' policy for issuing licenses to publicly carry a handgun, in conjunction with State law, precludes Plaintiffs from bearing arms at all, i.e., they cannot generally possess a firearm on their person, in a purse or briefcase, or in a vehicle to have ready in a self-defense situation. To put this claim into context, it is first necessary to understand California's overall legal scheme for possessing firearms in public.

With few and very limited exceptions, California bans the possession of loaded firearms (whether long-guns or handguns) in most public places. Cal. Penal Code § 25850 (Addend. 030-31). With narrow exceptions on certain private property,[2] this means that outside of unincorporated territory where it is lawful to discharge a firearm, it is never legal to generally possess a loaded firearm (long-gun or handgun) in public.[3] And even *unloaded* handguns are prohibited in most

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[2] Persons operating a businesses from a location considered legally a "public place" may have a loaded firearm there, as may their authorized agents or employees. Cal. Penal Code § 26035 (Addend. 106). The same applies to persons on their other privately owned or possessed property. Cal. Penal Code §§ 25605(a), 26035.

[3] *See* Cal. Penal Code §§ 25850(a) (Addend. 030) (generally prohibiting loaded firearms in public within incorporated areas and unincorporated "prohibited areas"); *id.* § 17030 (defining "prohibited area" as used in 25850(a) as

public places unless being transported directly to or from specific, authorized locations, and even then they must be kept in a locked container at all times.[4]

California does, however, provide *one* lawful manner for its residents to generally carry loaded firearms, i.e., bear arms in public.[5] The state authorizes local sheriffs or police chiefs (in this case, Sheriff Hutchens) to issue licenses to generally carry a loaded handgun in most public places ("Carry Licenses"). *Id.* § 26150 (Addend. 033). To obtain a Carry License from a sheriff, one must first submit a written application showing the applicant is an adult that either resides or spends substantial time at their business or principal place of employment in the sheriff's county. *Id.* § 26150(a)(3) (Addend. 033).

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a "place where it is unlawful to discharge a weapon" thereby exempting areas where it *is* legal to discharge firearms from 25850(a)'s general prohibition).

[4] *Id.* § 26350(a) (Addend. 038) (prohibiting openly carrying handguns in public generally); *id.* § 25400 (Addend. 002-04) (prohibiting the carrying of concealed handguns generally); *see generally id.* § 25610 (Addend. 027-28), §§ 25505-25595 (Addend. 005-023,105) (providing exceptions to the prohibition on concealed handguns in public if they are unloaded, in a locked container, and being transported within a vehicle or directly to or from certain locations).

[5] Throughout this brief, references to "bearing" or "carrying" arms refers to the right of law-abiding, competent adults to generally carry arms in public places for self-defense purposes, subject to lawful regulatory limitations. This case does not address what other limitations on the right might be valid, e.g., restrictions on carry by felons, or in sensitive places, or for unlawful purposes – only that a limitation based on the lack of some "special need" for self-defense cannot be one of them.

The applicant must also successfully complete a handgun training course of up to 16 hours covering handgun safety and California firearm laws, and must pass a criminal background check. *Id.* §§ 26165, 26185 (Addend. 035-36). And, even if an applicant successfully completes the background check and a suitable handgun training course, a Carry License may only be issued if the applicant is additionally found in the discretion of the sheriff to be of "good moral character" and to have "good cause" for carrying a loaded handgun in public. *Id.* § 26150(a) (Addend. 033).

Except in a few sparsely populated counties where one may obtain a license to carry a loaded handgun openly, California law requires that licenses issued in more populous counties like Orange County allow the license holders to carry their handguns in a concealed manner only. *Id.* § 26150(b)(2) (Addend. 033).

Therefore, the only option for Orange County residents to bear firearms in public is to carry a handgun in a concealed manner pursuant to a Carry License issued by Sheriff Hutchens.[6]

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[6] As discussed infra, California law provides an affirmative defense for violations of the prohibition on carrying loaded firearms in public if the person "reasonably believe[d]" any person or his or her property was in "immediate, grave danger." *Id*. § 26045(a). But that provision is not, itself, a "license to carry." Rather, it is a defense to criminal charges for carrying without a license.

II. SHERIFF HUTCHENS' CARRY LICENSE ISSUANCE POLICIES AND PRACTICES

California law requires that each Carry License issuing authority publish an official written policy articulating, among other things, what the authority has chosen to consider "good cause" for issuance of a Carry License. Cal. Penal Code §§ 26160, 26202 (Addend. 034, 037). Issuing authorities currently exercise discretion in deciding whether an applicant has "good cause" to be issued a license. While most issue such licenses to virtually all law-abiding, competent adult applicants seeking one for self-defense who meet the other criteria, some choose to rarely issue them.[7]

Under Sheriff Hutchens' written policy, applicants' "[n]on-specific, general concerns about personal safety" are "insufficient." Addend. 098-99. To meet Sheriff Hutchens' "good cause" standard, applicants must at minimum prove to the Sheriff's satisfaction that they have some special need for a license, such as being specifically threatened or engaging in a business that subjects them to "far greater risk than the general population." Addend. 098-99, 100; E.R. II 046-47, 177-79.

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[7] *See* Kelsey M. Swanson, *The Right to Know: An Approach to Gun Licenses and Public Access to Government Records*, 56 UCLA L. Rev. 1579, 1591-92 (2009); *see also* California Department of Justice, Bureau of Firearms - Statistics, Carry Concealed Weapons Licenses Report 1987-2007, http://ag.ca.gov/firearms/forms/pdf/ccwissuances2007.pdf (last visited Nov. 26, 2012).

By requiring Carry License applicants to *prove* they have some "special need" for a license before one is issued, Sheriff Hutchens' policy assumes as its default position that no one has a right to bear arms in public. And because, under California law, the only option for Orange County residents to bear firearms in public is a Carry License issued by Sheriff Hutchens, the Sheriff's policy leaves those who are unable to prove such a special need no way to legally bear arms in public.

III. PLAINTIFFS-APPELLANTS

Plaintiffs are individuals who were either denied a Carry License by Sheriff Hutchens or opted not to apply, believing they could not meet her requirements for a Carry License, and an organization – CRPA Foundation – representing thousands of individuals in California, many of whom are residents of Orange County and in the same predicament as the individual Plaintiffs. E.R. II 210, 269-72. All Plaintiffs who applied for a license asserted a general desire for self-defense as their "good cause" but were denied for not documenting a specific threat against them. E.R. II 237-38, 240-41, 246-47, 249-50, 277-78. None were denied for lack of "good moral character." E.R. II 179-81.

All individual Plaintiffs are residents of Orange County. No Plaintiff is prohibited under state or federal law from possessing firearms. E.R. II 269.

Plaintiffs assert that as law-abiding, competent residents of Orange County, the Second Amendment precludes Sheriff Hutchens from denying them a Carry License – the only lawful means to publicly bear arms for self-defense in California – merely for failing to assert a special need for self-defense. E.R. II 209, 275. But for being prevented from obtaining a Carry License, each Plaintiff would publicly bear arms for self-defense purposes as they deemed necessary, but none does so for fear of prosecution and other penalties. E.R. II 276-78.

IV. SHERIFF HUTCHENS' RATIONALE FOR HER POLICY OF PRECLUDING MOST RESIDENTS FROM OBTAINING CARRY LICENSES

Sheriff Hutchens contends that reducing the number of "concealed firearms" in public – even those lawfully carried pursuant to a license – somehow furthers an interest in public safety. The Sheriff's logic is that her policy limiting Carry License candidates to only those subjected to specific threats will reduce the number of "concealed firearms" in public, thereby furthering that supposed interest. E.R. II 101-04.

To support her contention, the Sheriff provided two declarations – one from law professor Franklin E. Zimring and another from Commander Donald Barnes of the Orange County Sheriff-Coroner Department. E.R. II 113-26, 170-74.[8] Both

[8] Zimring's declaration focuses on the issue of concealed handguns generally, E.R. II 114-25, while Barnes' declaration covers the concerns of law

declarations rely heavily upon statistics about firearm related crime. *See, e.g.*, E.R. II 115-19, 173. And both advocate restricting Carry Licenses from a public policy standpoint based on studies of general firearm crime and purported safety issues. *See, e.g.*, E.R. II 119-25, 173-74. Neither declaration provides any evidence of a connection between Carry License holders and the criminal or safety issues Sheriff Hutchens raises, nor do they explain how limiting licenses to only those with specific threats against them reduces the risk of crime or better serves public safety. *See generally* E.R. II 113-26, 170-74.

V. THE DISTRICT COURT'S RULING

In addressing the initial factor of the preliminary injunction test, the district court found "there is a substantial question as to whether Plaintiffs have a likelihood of prevailing on the merits." E.R. I 004. The "substantial question" stems from uncertainty over whether the right to arms extends beyond the home – a question the district court does not, itself, examine. This can be seen in the court's reliance upon three district court cases that rejected claims similar to Plaintiffs,' and one Fourth Circuit appellate case that also declined to rule on whether the right to bear arms extends beyond the home. E.R. I 004. The court then concluded that "at this stage, . . . this factor [likelihood of prevailing] heavily

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enforcement regarding concealed handguns, E.R. II 171-174.

weighs against a preliminary injunction." E.R. I 004.

Similarly, uncertainty about "the extent of the Second Amendment right as recognized in *Heller*" led the court to conclude that there was not a "likelihood of a real, immediate, and non-conjectural violation of a constitutional right," and thus no presumption of irreparable harm. E.R. I 004. Also, in addressing irreparable harm, the court found that while the Sheriff's policy precludes Plaintiffs from obtaining the license required under California law to bear arms in public, any resulting burden "is mitigated by the provisions [of California's statutory scheme] . . . that expressly permit loaded open carry for immediate self-defense." E.R. I 005 (quoting *Peruta v. County of San Diego*, 758 F. Supp. 2d 1106, 1114-15 (S.D. Cal. 2010)).

Notably, the provisions the court references are those that merely provide an *affirmative defense* to individuals who violate California's general prohibition on carrying loaded firearms in public *if* the person "reasonably believes that any person or the property of any person is in immediate, grave danger and that the carrying of the weapon is necessary for the preservation of that person or property." Cal. Penal Code § 26045(a) (Addend. 032). "Immediate" means "the brief interval before and after the local law enforcement agency, when reasonably possible, has been notified of the danger and before the arrival of its assistance."

Id. § 26045(a), (c) (Addend. 032). While this exception can be used as a defense to criminal prosecution, it does not affirmatively allow one to generally carry a firearm in public to be ready for self-defense. Of course, one can still be prosecuted for doing so if the trier of fact in a criminal proceeding does not believe the person was "reasonable" in fearing immediate danger or had the firearm before the "immediate danger" arose, i.e., if the affirmative defense is found not to apply. Cal. Penal Code § 26045(c) (Addend. 32).

The district court once again invoked its uncertainty about the nature of the Second Amendment in holding that the public interest is not served by an injunction because the risks of making an error when a regulation of public firearm carriage is involved is "too great." E.R. I 005. Likewise, the court held that because its uncertainty about the applicable legal standard precluded it from finding that the Plaintiffs are irreparably harmed, it would not presume the balance of equities tips in Plaintiffs' favor. E.R. I 005.

Additionally, the district court failed to address, and thereby implicitly rejected, Plaintiffs' Equal Protection claim. *See generally* E.R. I 001-05.

SUMMARY OF ARGUMENT AND INTRODUCTION

As a preliminary matter, Plaintiffs primary challenge is to Sheriff Hutchens' policy and practices *in implementing* California's "good cause" criterion for

issuance of Carry Licenses, not to the State's provision itself. Specifically, Plaintiffs challenge and seek relief from the Sheriff's explicit policy and practice of rejecting general "self-defense" as "good cause" for a Carry License. Plaintiffs' challenge to the State's provision is made only in the alternative, as discussed in Part VI, below. Moreover, this case is *not* about a constitutional right to carry firearms in a concealed manner, or in any particular manner at all. Rather, it concerns the right to bear arms in *some* public places in *some* manner. As discussed in the Statement of Facts, California law provides only one option for carrying arms in public, and that is pursuant to a Carry License issued by local authorities. In this case, that authority is Sheriff Hutchens.

By denying Plaintiffs a Carry License, the Sheriff's policy prohibits them from exercising their right to bear arms. Refusing to acknowledge this, the district court improperly found against Plaintiffs on each of the four preliminary injunction elements. The court's errors stem from its "uncertainty regarding if and when the Second Amendment rights should apply outside the home," i.e., from its failure to recognize and apply the substantive Second Amendment law established by the Supreme Court in its landmark Second Amendment decisions, *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010). For, while *Heller* and *McDonald* dealt with in-home

restrictions of the right to arms, the Court's thorough examination of the text and history of the Second Amendment and the resulting findings leave little doubt that the Second Amendment secures an individual, fundamental right to keep and bear arms for self-defense, both in private and in public. Neither the text of the amendment nor the Supreme Court's interpretation of it support a right to bear arms that is limited to the home. Nor is there *any* history to suggest that those who enacted the amendment, or the Fourteenth Amendment that extended the Second Amendment's reach to state and local government action, ever contemplated a home-bound right to keep and bear arms. History, in fact, shows just the opposite. Thus, the first "question presented" above is the threshold question – and one that is in dire need of resolution. As discussed in Part II, the question, while of great importance, is not difficult, for it has been answered already in *Heller*, and again in *McDonald*.

In Part IV, Plaintiffs examine the Sheriff's "good cause" policy and practice, showing how it effectively precludes the vast majority of law-abiding, competent Orange County residents, including Plaintiffs, from obtaining a Carry License and how, in conjunction with California's general prohibition on possession of any loaded firearms in public, the policy results in such people being barred from exercising their constitutional right to bear arms in public for self-

defense purposes.

Once the Court recognizes a right to keep and bear arms outside the home, the Sheriff's "good cause" policy barring most law-abiding, competent adults from exercising that right necessarily violates the Second Amendment, on its face and as applied to Plaintiffs. As seen in Part V, the policy also discriminates between two categories of law-abiding, competent adults, in violation of the Fourteenth Amendment's Equal Protection Clause, with one group entitled to exercise the constitutional right to bear arms in public and one prevented from doing so.

The district court's failure to apply the correct substantive law as recognized in *Heller* and *McDonald* was an abuse of discretion and constitutes reversible error. *L.A. Mem'l Coliseum Comm'n v. Nat'l Football League*, 634 F.2d 1197, 1200 (9th Cir. 1980). The least intrusive and disruptive way to remedy this situation is not to invalidate significant portions of the State's regulatory scheme but rather to enjoin Sheriff Hutchens from denying Carry Licenses to otherwise qualified applicants who seek one for general self-defense purposes, but who cannot satisfy the "special need" element of the Sheriff's current "good cause" policy. In short, "self-defense" must be considered "good cause" for a Carry License.

Finally, as suggested in Part VIII, this court should exercise its discretion to

reach the merits of this case and resolve it on appeal. The issues are straightforward, purely legal, and concern constitutional matters of great import. There is little if anything to be gained by remanding the case and having it return to this court on appeal from a subsequent dispositive motion that repeats purely legal arguments already made. All the issues and most recent cases and secondary authorities addressing them will be before this Court on this appeal, along with several expected amicus briefs to assist the Court in answering the questions presented.

ARGUMENT

I. STANDARD OF REVIEW FOR APPEAL OF PRELIMINARY INJUNCTION ORDER

As noted by the district court, Plaintiffs seeking a preliminary injunction must establish: (1) they are likely to succeed on the merits; (2) they are likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in their favor; and (4) an injunction is in the public interest. *Am. Trucking Ass'ns v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009). Plaintiffs satisfied their showing under each prong, and a preliminary injunction should have been issued.

The Court ordinarily reviews orders denying a preliminary injunction for

abuse of discretion. *Gilman v. Schwarzenegger*, 638 F.3d 1101, 1105 (9th Cir. 2011). The district court's preliminary injunction decision is an abuse of discretion if based on the application of an erroneous legal standard or on clearly erroneous findings of fact. *Alliance for Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).

The Court first "determine[s] de novo whether the trial court identified the *correct* legal rule to apply to the relief requested." *United States v. Hinkson*, 585 F.3d 1247, 1251, 1261-62 (9th Cir. 2009) (en banc) (emphasis added). No deference is afforded to a lower court's legal determination. *Yokoyama v. Midland Nat'l Life Ins. Co.*, 594 F.3d 1087, 1091 (9th Cir. 2010). If the district court failed to apply the proper legal standard, it abused its discretion. *Hinkson*, 585 F.3d at 1262. That is the case here.

The Court then looks to "whether the trial court's application of the correct legal standard was (1) illogical, (2) implausible, or (3) without support in the inferences that may be drawn from the facts in the record." *Id*. The district court abused its discretion if its factual findings are clearly erroneous. *Id.* at 1261-62. Here, no facts are at issue.

Plaintiffs assert that, while the district court applied the correct standard for evaluating preliminary injunctions generally, E.R. I 003, it abused its discretion in

failing to apply the proper substantive law to the underlying legal questions that Plaintiffs raised below, *see* E.R. I 004; E.R. II 037-24, 211-229. The court denied Plaintiffs' motion because it harbored a "substantial question" about the nature of the Second Amendment right – a question that it did not attempt to answer, but allowed to permeate and misinform its analysis of each prong of the test. E.R. I 001-05. As such, the district court's "substantial question" of law is all that stands between Plaintiffs and the relief they seek. The Court should review that legal question de novo, answer it expressly, and rule on Plaintiffs' narrow claims regarding the Sheriff's "good cause" policy. Once the Court recognizes that the right was never intended to be a "home bound" right, i.e., that it extends outside the home, the Sheriff's policy generally denying that right must fall.

II. THE SUPREME COURT HAS ESTABLISHED THAT THE RIGHT TO CARRY ARMS FOR SELF-DEFENSE, WHETHER IN PRIVATE OR PUBLIC, IS CORE ACTIVITY PROTECTED BY THE SECOND AMENDMENT

The foundational error underlying the district court's decision to deny Plaintiffs' motion was its failure to recognize that the Second Amendment protects, generally, a fundamental right to bear arms outside the home for self-defense. *See* E.R. I 004 (citing its "substantial question" regarding the nature of the Second Amendment right). As discussed immediately below, both *Heller* and *McDonald* expressly, implicitly, and repeatedly confirm such a right is central to

the Second Amendment – even the dissent in *Heller* concedes it.

A. *Heller* and *McDonald* Establish that Carrying Arms for Self-Defense Purposes Is Core Second Amendment Conduct

At the end of its detailed parsing of the Second Amendment's operative clause in *Heller*, the Supreme Court concluded that "[p]utting all of these textual elements together, we find that they guarantee the individual right to possess *and carry* weapons in case of confrontation." 554 U.S. at 592 (emphasis added). In defining what it means to "bear" arms, the Court adopted Justice Ginsburg's definition from an earlier case, finding the "most familiar meaning" is to "wear, bear, or *carry* . . . upon the person or in the clothing or in a pocket, for the purpose . . . of being armed and ready for offensive or defensive action in a case of conflict with another person." *Id.* at 584 (emphasis added) (citation omitted).

The Court in *McDonald* subsequently found that: "Self-defense is a basic right, recognized by many legal systems from ancient times to the present day, and in *Heller*, we held that individual self-defense is 'the *central component*' of the Second Amendment right." *McDonald*,130 S. Ct. at 3036 (quoting *Heller*, 554 U.S. at 628). In short, the Court found the individual right to carry arms for self-defense to be "core conduct" protected by the Second Amendment, and did so as part of its holding, not as mere dictum.

B. The Fundamental Right to Carry Firearms by Law-Abiding Citizens for Self-Defense Extends Outside the Home

Having established the right to "bear" arms means the right to "carry" them for self-defense purposes, the next question is whether the scope of that right extends beyond the threshold of one's home.[9] Because the Second Amendment's text does not expressly limit its reach to in-home self-defense – if anything, its reference to "militia" activity suggests the opposite – this Court must, as the Supreme Court did in *Heller*, look to history and tradition to determine the scope of the right. *See, e.g.*, *Heller*, 554 U.S. at 595. Doing so reveals that the Second Amendment undoubtedly protects a right to generally bear arms outside the home for self-defense purposes.

Historically, the carrying of firearms for self-defense has been ubiquitous in American public life. *See Judy v. Lashley*, 50 W.Va. 628, 41 S.E. 197, 200 (1902) (citing 5 David S. Garland & Lucius P. McGehee, *The American & English Encyclopedia of Law* 729 (2d ed. 1896) ("So remote from a breach of the peace is the carrying of weapons, that at common law it was not an indictable offense, nor

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[9] As noted later in this section, Plaintiffs contend that this question was answered by findings in support of the holding in *Heller* and, e.g., by dicta about presumptively lawful restrictions on publicly carrying arms in "sensitive places." Plaintiffs revisit this issue only because it was raised by Sheriff Hutchens and entertained by the lower court in its ruling.

any offense at all.”)). As the *Heller* Court noted, “the right [to arms] secured in 1689 as a result of the Stuarts’ abuses was by the time of the founding understood to be an individual right protecting against both *public* and private violence.” 554 U.S. at 594 (emphasis added). Our Founding Fathers certainly seem to have been of this understanding.[10] As were those who wrote and ratified the Fourteenth Amendment.

For example, a Senator remarking on the Freedmen’s Bureau Act in 1866 proclaimed “the founding generation ‘were for every man bearing his arms about him *and* keeping them in his house, his castle, for his own defense.’ ” *Heller*, 554 U.S. at 616 (quoting Cong. Globe, 39th Cong., 1st Sess., 362, 371 (1866) (emphasis added); *see also id.* at 614-15 (citing Stephen P. Halbrook, *Freedmen, the Fourteenth Amendment, and the Right to Bear Arms, 1866 1876*, at 19 (1998)). That same year, a report to Congress from the Freedman’s Bureau declared: “There must be ‘no distinction of color’ in the right to carry arms, any more than in any other right.” H.R. Exec. Doc. No. 70, 39th Cong., 1st Sess., 297 (1866).

Carrying arms for personal defense was widely understood as a right

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[10] Thomas Jefferson wrote a nephew, “Let your gun therefore be the constant companion of your walks.” Thomas Jefferson, *Writings* 816-17 (Merrill D. Peterson ed., 1984). John Adams publicly carried arms, Anne H. Burleigh, *John Adams* 8-9 (1969), as did George Washington, Benjamin O. Tayloe, *Our Neighbors on LaFayette Square: Anecdotes and Reminiscences* 47 (1872).

enjoyed by all free people. A Mississippi court struck down a state ban on carrying a firearm without a license, finding "[w]hile, therefore, the citizens of the State and other white persons are allowed to carry arms, the freedmen can have no adequate protection against acts of violence unless they are allowed the same privilege." Halbrook, *supra*, at 57-58 (quoting *State v. Wash Lowe*, reprinted in N.Y. Times, Oct. 26, 1866, at 2).

Further, numerous state court cases interpreting constitutional right to arms provisions provide compelling evidence that a right to publicly carry arms for self-defense has been historically recognized. As one legal scholar noted, "the type of right-to-arms recognized in *Heller* has been commonplace in state constitutions for more than two centuries. *A large body of relevant precedent affirms that the right to bear arms extends outside the home*. Thus, courts already have many of the resources they need to resolve the carry rights cases." Michael P. O'Shea, *Modeling the Second Amendment Right to Carry Arms (I): Judicial Tradition and the Scope of "Bearing Arms" for Self Defense*, 61 Am. U. L. Rev. 585, 622 (2012) (emphasis added). "Courts . . . have routinely concluded that the right [recognized in *Heller* and *McDonald*] protects the ability to carry handguns for self-defense outside the home. Decisions confining the right to the home have been unusual outliers." *Id*. at 673-74.

Despite the historical record, some district courts have limited the Second Amendment's protections to the home or, to the extent they concede the right extends beyond the home, they afford it very little protection. *See, e.g.*, Civil Minutes - General, *Thomson v. Torrance Police Dept.* 7-10, No. 11-06154 (C.D. Cal. July 2, 2012), ECF No. 70; Order Re: Plaintiff's and Defendants' Motions for Summary Judgment 5-7, *Birdt v. Beck*, No. 10-08377 (C.D. Cal. Jan. 13, 2012), ECF No. 96; *Richards v. County of Yolo*, 821 F. Supp. 2d 1169, 1174-75 (E.D. Cal. 2011); *Peruta*, 758 F. Supp. 2d at 1116-17. But confining the Second Amendment, or at least its core, to the home based on *Heller*'s specific facts, not only ignores the historical record, but also *Heller*'s detailed analysis and findings on the right's scope.

For example, in noting the right – like all rights – is not unlimited, *Heller* cited two nineteenth century state court cases that upheld *concealed* carry prohibitions. 554 U.S. at 626 (citing *State v. Chandler*, 5 La. Ann. 489, 489-90 (1850); *Nunn v. State*, 1 Ga. 243, 251 (1846).) But both cases involved prohibitions where the right to bear arms was still readily available by way of *open* carry. *Chandler*, 5 La. Ann. at 490 (noting the prohibition on carrying concealed weapons "interfered with no man's right to carry arms . . . 'in full open view,' which places men upon an equality"); *Nunn*, 1 Ga. at 251 ("[S]o far as the act . . .

seeks to suppress the practice of carrying certain weapons *secretly*, that it is valid, inasmuch as it does not deprive the citizen of his *natural* right of self-defence, or of his constitutional right to keep and bear arms. But that so much of it, as contains a prohibition against bearing arms *openly*, is in conflict with the Constitution, and *void* . . ..")

Thus, both cases acknowledge a right to public carry in some manner. *Heller*'s discussion of two other state supreme court opinions holding open carry prohibitions invalid likewise supports the view that some manner of public carry must be made available. *See* 554 U.S. at 629 (citing *Andrews v. State*, 50 Tenn. 165, 187 (1871); *State v. Reid*, 1 Ala. 612, 616-17 (1840)).

> In *Andrews v. State*, the Tennessee Supreme Court likewise held that a statute that forbade openly carrying a pistol "publicly or privately, without regard to time or place, or circumstances," violated the state constitutional provision (which the court equated with the Second Amendment). That was so even though the statute did not restrict the carrying of long guns. See also *State v. Reid,* ("A statute which, under the pretence of regulating, amounts to a destruction of the right, or which requires arms to be so borne as to render them wholly useless for the purpose of defence, would be clearly unconstitutional").

Id. (internal citations omitted).

Further support for the right to public carry in some manner, either open or concealed, appears in legal treatises cited by *Heller*. *See*, *e.g.*, 554 U.S. at 626 (citing William Blackstone, *The American Students' Blackstone* 84 n.11 (G. Chase

ed. 1884) ("[I]t is generally held that statutes prohibiting the carrying of *concealed* weapons are not in conflict with these constitutional provisions, since they merely forbid the carrying of arms *in a particular manner* . . . .") (emphasis added)).

Finally, in noting that "laws forbidding the carrying of firearms in sensitive places such as schools and government buildings" would be "presumptively lawful," *Heller* reaffirms a right to publicly bear arms exists today. 554 U.S. at 627 n.26. It implies that forbidding the carrying of firearms in "non-sensitive" places is *not* "presumptively lawful" and that even in "sensitive places" the "presumption" may be overcome. If the right were limited to the home, this "sensitive places" qualifier to public carry would be superfluous.

Even Justice Stevens concedes that the *Heller* majority's view of the Second Amendment includes a right of law-abiding adults to carry arms in public for self-defense purposes and that laws broadly denying that right are likely to fall: "Given the presumption that most citizens are law abiding, and the reality that the need to defend oneself may suddenly arise in a host of locations outside the home, I fear that the District's policy choice may well be just the first of an unknown number of dominoes to be knocked off the table." *Heller*, 554 U.S. at 679-80 (Stevens, J., dissenting).

Recognizing *Heller*'s observations correctly, several district courts have

definitively confirmed the right of law-abiding adults to publicly bear arms.[11] *See e.g.*, *Bateman v. Perdue*, No. 10-265, 2012 WL 3068580, at *4 (E.D. N.C. Mar. 29, 2012) (the right to bear arms "is not strictly limited to the home environment but extends in some form to wherever [militia] activities or [self-defense or hunting] needs occur") (citations omitted); *United States v. Weaver*, No. 09-00222, 2012 WL 727488, at *4 n.7 (S.D. W. Va. Mar. 6, 2012); *Woollard v. Sheridan*, 863 F. Supp. 2d 462, 471 (D. Md. 2012) ("the right to bear arms is not limited to the home."). The court in *Weaver* put it bluntly:

> The fact that courts may be reluctant to recognize the protection of the Second Amendment outside the home says more about the courts than the Second Amendment. Limiting this fundamental right to the home would be akin to limiting the protection of First Amendment freedom of speech to political speech or college campuses.

2012 WL 727488, at *4 n.7.

And so, while some courts have gone astray by limiting the right to the home, *Heller* and *McDonald*, as well as text, history, and tradition, are clear that the right of law-abiding citizens to carry arms for self-defense extends beyond the

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[11] Plaintiffs cite district court cases from other jurisdictions because, due to its nascent state, Second Amendment jurisprudence offers little by way of binding precedent beyond *Heller* and *McDonald*. And Plaintiffs wish to provide this Court with cases showing the California district courts to have ruled on this issue conflict with a growing consensus that there is a right to armed self-defense in public.

home. Recognition of that fundamental right compels a finding that a broad ban on it – like the one effectuated by Sheriff Hutchens' Carry License policy – is necessarily unconstitutional, and does so without resort to any means-ends test. So, while this case presents a critical issue in the evolution of Second Amendment jurisprudence, it is not a difficult one. Once the court confirms that the Second Amendment protects conduct outside one's home, the court need not go beyond the narrow issue presented in this case, i.e., whether a desire to carry arms for general "self-defense" purposes constitutes "good cause" for issuance of the Carry License required to exercise the right.

III. STANDARDS FOR REVIEWING SECOND AMENDMENT CHALLENGES

Having determined that the right to bear arms exists outside the home, at least in some manner, the next question presented is whether the Sheriff's policy impinging upon that right can withstand judicial review. The proper test – indeed, the only test approved by the Supreme Court – for analyzing broad-based prohibitions on the exercise of Second Amendment rights is the historical, scope-based test applied in *Heller* and *McDonald*. So this Court need not wade into the "levels of scrutiny quagmire," but if it does, strict scrutiny or at minimum intermediate scrutiny must apply. *See United States v. Skoien*, 614 F.3d 638, 642 (7th Cir. 2010).

Whatever standard ultimately applies, the burden is on Sheriff Hutchens to prove her policy survives some form of heightened judicial review. And that she cannot do.

A. *Heller* and *McDonald* Endorse a Scope-Based Analysis for Second Amendment Challenges

The Supreme Court, while not articulating a comprehensive framework for reviewing all Second Amendment challenges, has left little doubt that courts are to assess gun laws based on "both text and history," *Heller*, 554 U.S. at 595, and not by resorting to interest-balancing tests. *Heller* advances an analytical approach that first focuses on "examination of a variety of legal and other sources to determine *the public understanding* of [the] legal text," *id.* at 605, with particular focus on "the founding period," *id*. at 604, to determine whether the restricted activity falls within the scope of the Second Amendment. If it does, the court again turns to "text and history" to determine whether the particular restriction is nevertheless permissible because it is similar or analogous to restrictions historically understood as permissible limits on the right to bear arms, i.e., whether there is "historical justification for those regulations." *Id*. at 635.

In short, if sufficient historical justification exists for a restriction on Second Amendment activity, the restriction is valid; if not, it is invalid. *See id.* at

634-35. The presumption, of course, is that activity falling within the scope of the right to arms "shall not be infringed," with the burden on the government to justify the challenged restriction, *based on text, history, and tradition*. *See id.* at 634-36.

The *Heller* Court ultimately found that handguns are arms protected by the Second Amendment, *id.* at 629, and that keeping and bearing arms for self-defense is *core conduct*, "central" to the Second Amendment right, *id.* at 635. Because the D.C. handgun ban and locked-storage requirement precluded protected conduct, and because there was no historical antecedent for such restrictions, the laws were deemed unconstitutional per se. *Id.* at 628-30.

The Supreme Court's reliance upon text and history rather than judicial balancing is also reflected in what *Heller* did *not* examine. Notably absent from its analysis is any reference to "compelling interests," "narrowly tailored" laws, or any other means-ends scrutiny jargon. Nor was there talk of "legislative findings" purporting to justify the District's restrictions.[12] Instead, *Heller* focused on whether the challenged laws restricted the right to arms as it was understood by those who drafted and enacted the Second and Fourteenth Amendments. *Id.* at

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[12] And the District of Columbia in *Heller*, like Sheriff Hutchens, filed several declarations referencing multiple studies about gun violence and crime statistics, none of which the Supreme Court addressed, evidently finding them irrelevant. *See, e.g.,* Brief for Petitioners at 49-55, *Heller*, 554 U.S. 570 (No. 07-290).

626-34.

The Court gleaned its understanding from an extensive examination of the textual and historical narrative of the right to arms, *id*. at 605-19, emphasizing that "[c]onstitutional rights are enshrined with the scope they were understood to have when the people adopted them, whether or not future legislatures or (yes) even future judges think that scope too broad." *Id.* at 634-35.

The Court's later decision in *McDonald* further underscored the notion that history and tradition, rather than burdens and benefits, should guide analyses of the Second Amendment's scope. Like *Heller*, *McDonald* did not resort to balancing tests, and it expressly rejected judicial assessment of "the costs and benefits of firearms restrictions," stating that courts should not make "difficult empirical judgments" about the efficacy of particular gun regulations. 130 S. Ct. at 3050. This language is compelling. Means-ends tests, like strict or intermediate scrutiny, necessarily require courts to engage in both. Accordingly, those tests are inappropriate here.

The Court should instead apply the historical, scope-based approach applied in *Heller* and *McDonald* – the only test endorsed by the Supreme Court.

B. Alternatively, if the Court Adopts a Means-Ends Test, Strict Scrutiny Must Apply

As described above, means-end tests provide an inappropriate framework under which to evaluate many Second Amendment claims. This is especially true in cases like this where the challenged government action is an outright ban on the right to bear arms, rather than a mere regulation. Should this Court, however, find means-end scrutiny appropriate, strict scrutiny is required.

"[S]trict scrutiny [is] applied when government action impinges upon a fundamental right protected by the Constitution." *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 54 (1983). *McDonald* laid to rest any doubt about the fundamental nature of the right to bear arms, declaring the right to be "fundamental to the newly formed system of government." 130 S. Ct. at 3037; *accord id.* at 3042. And the Supreme Court is clear that the Second Amendment is to be afforded the same status as other fundamental rights. *See id.* at 3043 (plurality op.) ("[W]hat [respondents] must mean is that the Second Amendment should be singled out for special – and specially unfavorable – treatment. We reject that suggestion."); *see also id.* at 3044 (rejecting plea to "treat the right recognized in *Heller* as a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees"). In short, the "default" standard

of review for restrictions on fundamental rights is strict scrutiny. The right to bear arms is no exception.

Even before *McDonald* confirmed the right to arms as fundamental, the inadequacy of intermediate scrutiny was clear from *Heller* itself. *Heller* explicitly rejected not only rational basis review, but also Justice Breyer's "interest-balancing" approach. 544 U.S. at 628 n.27; *see also McDonald*, 130 S. Ct. at 3050 (plurality op.) ("while [Justice Breyer's] opinion in *Heller* recommended an interest-balancing test, the Court specifically rejected that suggestion"). Justice Breyer's approach assumes the government's interest in regulating firearms – some version of protecting public safety – would always be compelling. Thus, in his view, whether the level of scrutiny were strict (requiring a compelling government interest) or intermediate (requiring only an important one), the government interest would always qualify, and the analysis would really turn on a search for the appropriate degree of fit, which Justice Breyer described as interest-balancing. *See Heller*, 554 U.S. at 687-90 (Breyer, J., dissenting).

Terminology aside, however, Justice Breyer's approach in substance is simply intermediate scrutiny. Justice Breyer relied on cases such as *Turner Broadcasting Systems, Inc. v. FCC*, 520 U.S. 180 (1997), and *Thompson v. Western States Medical Center*, 535 U.S. 357 (2002), which explicitly apply

intermediate scrutiny. *See Heller*, 554 U.S. at 687-90 (Breyer, J., dissenting). Even more revealingly, Justice Breyer invoked *Burdick v. Takushi*, 504 U.S. 428 (1992), the case on which the United States principally relied in advocating that the Court adopt intermediate scrutiny. *Heller*, 554 U.S. at 690 (Breyer, J., dissenting); Brief for United States as Amicus Curiae at 8, 24, 28, *Heller*, 554 U.S. 570 (No. 07-290). Because Justice Breyer's interest-balancing amounted to intermediate scrutiny and the Court rejected it in both *Heller* and *McDonald*, it would be inappropriate for this Court to adopt intermediate scrutiny as the standard for judging Sheriff Hutchens' policy.

C. Tests Preconditioning Heightened Scrutiny on the Challenger First Establishing a "Substantial" Burden Are Improper

As with other fundamental rights, the explicit nature of the right to arms precludes application of rational-basis review. *See McDonald*, 130 S. Ct. at 3036-42. Whatever else *Heller* left for future courts to decide, it is clear on at least this point. 554 U.S. at 628 n.27. As such, a law that makes it more difficult to use or possess arms for self-defense (and especially one like Sheriff Hutchens' policy that effectively bans that right) burdens the Second Amendment right and *requires* some form of heightened scrutiny. *See, e.g.*, *Ezell v. City of Chicago*, 651 F.3d 684, 701 (7th Cir. 2011); *United States v. Marzzarella*, 614 F.3d 85, 89 (3d Cir.

2010). Meaningful judicial review cannot be avoided simply by calling the restriction a minor inconvenience – or not quite "substantial" enough.

In light of *Heller*'s clear direction on this point, the great majority of circuits to have decided the issue apply some form of heightened scrutiny to all regulations burdening activity within the scope of the Second Amendment, regardless of the severity of that burden. *See, e.g.*,*GeorgiaCarry.org. v. Georgia*, 687 F.3d 1244, 1260 n.34 (11th Cir. 2012); *Heller v. District of Columbia*, 670 F.3d 1244, 1252 (D.C. Cir. 2011) ("*Heller II*"); *Ezell*, 651 F.3d at 706; *United States v. Chester*, 628 F.3d 673, 680 (4th Cir. 2010); *United States v. Masciandaro*, 638 F.3d 458, 469, 471 (4th Cir. 2011); *United States v. Reese*, 627 F.3d 792, 800-01 (10th Cir. 2010); *Marzzarella*, 614 F.3d at 94-95. Under this approach, the only threshold question is whether the challenged restriction burdens activity that falls within the scope of the right – a question that is answered by resort to text, history, and tradition. *See, e.g.*, *Ezell*, 651 F.3d at 701-03. Moreover, the burden of proving the activity is not historically protected falls on the government. *Id.* at 703. If the regulation targets Second Amendment conduct, then heightened scrutiny must apply. *Id.*

Despite this developing consensus, some courts have applied mere rational basis in cases challenging restrictions on Second Amendment conduct, holding

that "heightened scrutiny is appropriate *only* as to those regulations that *substantially burden*" the right. *United States v. DeCastro*, 682 F.3d 160, 164 (2d Cir. 2012) (emphasis added); *see also Nordyke v. King*, 644 F.3d 776, 786 (9th Cir. 2011), *vacated following rehearing en banc*, 681 F.3d 1041 (9th Cir. 2012)). While it is unclear what constitutes a "substantial burden" under this test, *DeCastro* and *Nordyke* analogize it to the "undue burden" test applied in the abortion context, citing cases like *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) and *Gonzalez v. Carhart*, 550 U.S. 124 (2007), and ask whether the "restriction leaves reasonable alternative means" for the exercise of the right. *Nordyke*, 644 F.3d at 787; *see also DeCastro*, 682 F.3d at 168. To the extent the "substantial burden" analysis requires more than a de minimis burden on the right to keep and bear arms before any form of heightened scrutiny is triggered, it is improperly applied to Second Amendment challenges. *See DeCastro*, 682 F.3d at 164; *Nordyke*, 644 F.3d at 786; *but see Heller II*, 670 F.3d at 1255-56 (recognizing that *Heller* clearly rejects rational basis in Second Amendment challenges, but suggesting that a de minimis burden on the right might not warrant heightened scrutiny); *Marzzarella*, 614 F.3d at 94-95 (same).

Under the "substantial burden" test, rational basis review is the default standard, disregarded only if the challenger can establish that the law imposes a

sufficiently serious burden on protected conduct. *DeCastro*, 682 F.3d at 164; *Nordyke*, 644 F.3d at 786. This introduces a threshold requirement that appears nowhere in either *Heller* or *McDonald*, which relied entirely on history, text, and tradition to determine the scope of conduct protected by the Second Amendment, and then explicitly rejected rational basis review as insufficient to justify laws regulating conduct protected by the Second Amendment. 554 U.S. at 628 n.27, 634-35. *Heller* simply does not authorize an approach that invokes heightened review only if the right-holder can first prove that a substantial burden on the right is present.

The Court should thus decline any approach requiring Plaintiffs to establish a "substantial" burden before heightened scrutiny can be applied. The right to arms is a fundamental, enumerated right. Any burden that is not de minimis warrants some form of heightened scrutiny, placing the burden of justification on the regulatory authority. *See Ezell*, 651 F.3d at 703.

In sum, *Heller* eschewed levels of scrutiny in favor of the scope-based, historical approach outlined above. *Heller* nonetheless points clearly to strict scrutiny as the standard that *would* be required in a levels-of-scrutiny framework, if ever appropriate. *McDonald*'s confirming the fundamental nature of the right to arms eliminated any doubt on that score. So, while *Heller* and *McDonald might*

leave open a debate between strict scrutiny and the sui generis historical approach they applied, they foreclose any debate between strict scrutiny and some lesser standard, at least where core conduct, such as "self-defense," is at issue.

IV. SHERIFF HUTCHENS' CARRY LICENSE ISSUANCE POLICY VIOLATES THE SECOND AMENDMENT REGARDLESS OF THE APPLICABLE STANDARD OF REVIEW

Because Sheriff Hutchens' policy directly denies law-abiding, competent adults like Plaintiffs their right to bear arms for self-defense outside the home, this Court need not adopt any particular standard of review or venture beyond the scope-based analysis applied in *Heller* to conclude Plaintiffs prevail on the merits. Under any standard, the Sheriff's policy is unconstitutional.

A. Sheriff Hutchens' Policy Cannot Survive the *Heller* Scope-Based Analysis

Having established above that Second Amendment text, history, and tradition confirm that the right of law-abiding citizens to carry arms for self-defense purposes extends outside the home, the next inquiry becomes whether Sheriff Hutchens' policy has sufficient historical justification. *Heller*, 554 U.S. at 635. By denying licenses to those who cannot cite a "good cause" that the Sheriff subjectively finds acceptable, Sheriff Hutchens' policy effectively bars most persons, including Plaintiffs, from legally bearing arms outside their homes for

self-defense. For such a policy to be valid, the Sheriff holds the burden of proving that limiting the right to bear arms to only those who can prove they have some special need to exercise it is commonplace in the history and traditions of this country. She cannot make such a showing.

Typical regulations of arms-bearing during the founding era were narrowly tailored for specific purposes, such as laws prohibiting slaves from bearing arms[13] or, the most prevalent, laws codifying the common-law offense of carrying unusual arms to the terror of the people.[14] The latter limitation on the right to bear arms was narrow, not applying "unless such [firearm] wearing be accompanied with such circumstances as are apt to terrify the people; consequently the wearing of common weapons, or having the usual number of attendants, merely for ornament or defence, where it is customary to make use of them, will not subject a person to the penalties of this act." William W. Hening, *The New Virginia Justice*,

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[13] *See, e.g.*, *An Act for the Better Ordering and Governing Negroes and Other Slaves in this Province, and to Prevent the Inveigling or Carrying Away Slaves from Their Masters or Employers* (Ga. 1765), *in Statutes Enacted by the Royal Legislature of Georgia* 668 (1910) (making it generally unlawful for "any slave, unless in the presence of some white person, to carry and make use of firearms").

[14] *See An Act Forbidding and Punishing Affrays* (Va. 1786), *in A Collection of All Such Acts of the General Assembly of Virginia* 33 (Augustine Davis ed., 1794).

in The Commonwealth of Virginia 50 (2d ed. 1810). Thus, although "going armed with dangerous or unusual weapons, is a crime against the public peace, by terrifying the people of the land . . . it should be remembered, that in this country the constitution guaranties to all persons the right to bear arms; then it can only be a crime to exercise this right in such a manner as to terrify the people unnecessarily." Charles Humphreys, *A Compendium of the Common Law in Force in Kentucky* 482 (1822).[15]

While the widely accepted ban on carrying arms with the purpose to terrify confirms some limitations on the right to publicly bear arms were – and still are – tolerated by the Second Amendment, its prevalence militates against the validity of policies like Sheriff Hutchens' that broadly prohibit law-abiding citizens from peaceably carrying firearms in *any* manner in public for their self-protection.

The *McDonald* Court embraced this view when it cited as an example of laws that would be nullified by the Fourteenth Amendment, a statute providing "no freedman, free negro or mulatto, not in the military service of the United States government, and not licensed so to do by the board of police of his or her

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[15] *See also State v. Huntly*, 25 N.C. 418, 422-23 (1843) ("[I]t is to be remembered that the carrying of a gun *per se* constitutes no offence. For any lawful purpose . . . the citizen is at perfect liberty to carry his gun. It is the wicked purpose – and the mischievous result – which essentially constitute the crime.")

county, shall keep *or carry* fire-arms of any kind." 130 S. Ct. at 3038 (internal quotation omitted) (emphasis added). And when it likewise condemned "Regulations for Freedman in Louisiana" which stated no freedman "shall be allowed to carry firearms, or any kind of weapons, within the parish, without the written special permission of his employers, approved and indorsed by the nearest and most convenient chief of patrol." *Id.* (citing 1 Walter L. Fleming, *Documentary of History of Reconstruction* 279-80 (1950)).

In light of the dearth of historical analogues to Sheriff Hutchens' policy contrasted with the wealth of historical support for the equal enjoyment of the right to bear arms among the law-abiding, this Court should find that, while the government may regulate the carrying of arms, the Second Amendment as historically recognized requires allowing law-abiding, competent adults *some* manner to generally be "armed and ready" for self-defense "in case of confrontation" while in public. *Heller*, 554 U.S. at 584, *McDonald*, 130 S. Ct. at 3042. In California, that manner is a Carry License. As such, Sheriff Hutchens' policy of denying most law-abiding, competent adult Orange County residents, including Plaintiffs, from obtaining a Carry License violates the Second Amendment.

B. Alternatively, Sheriff Hutchens' Policy Cannot Survive Any Heightened Standard of Review Because It Is Not Tailored to Serve, Nor Does It Serve, a Legitimate Government Interest

1. The Sheriff's Policy Prohibits Almost All Residents from Exercising Their Right to Carry Arms in Public for Self-Defense; It Is Not Tailored to Serve *Any* Interest

Under heightened scrutiny, whether intermediate or strict, the presumption of validity is reversed, with the challenged law presumed unconstitutional. *See R.A.V. v. City of St. Paul*, 505 U.S. 377, 382 (1992) (content-based speech regulations are presumptively invalid). As the party with the burden of proof, Sheriff Hutchens must establish "beyond controversy" that her policy satisfies each element of the applicable heightened scrutiny test to pass constitutional muster. *See S. Cal. Gas Co. v. City of Santa Ana*, 336 F.3d 885, 888 (9th Cir. 2003); *Chester*, 628 F.3d at 680 ("[U]nless the conduct at issue is not protected by the Second Amendment at all, the Government bears the burden of justifying the constitutional validity of the law.").

To prevail under strict scrutiny, Sheriff Hutchens must prove that her policy of denying Carry Licenses to responsible, law-abiding people like Plaintiffs – unless they demonstrate a special need for one – is "narrowly tailored to serve a compelling state interest." *Reno v. Flores*, 507 U.S. 292, 302 (1993). Under this standard, the Sheriff is not unbound in asserting her compelling interest. Courts do

not generally allow legislative fact-finding to undermine a fundamental right. *See Landmark Commc'ns v. Virginia*, 435 U.S. 829, 843 (1978).

Under intermediate scrutiny, Sheriff Hutchens must prove her policy "is substantially related to achievement of an important governmental purpose." *Stop H 3 Ass'n v. Dole,* 870 F.2d 1419, 1429 n.20 (9th Cir. 1989). Although the means she chooses to advance her goal need not be the *least* restrictive alternative, they must nevertheless be "narrowly tailored" to the state's goal. *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). To be valid, a regulation must "directly advance[] the governmental interest asserted, and . . . not [be] more extensive than is necessary to serve that interest." *Cent. Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of N.Y.*, 447 U.S. 557, 566 (1980).

Even this relatively relaxed standard does not tolerate "categorical exclusion . . . in total disregard of . . . individual merit." *United States v. Virginia*, 518 U.S. 515, 546 (1996). Sheriff Hutchens' policy denies Carry Licenses to most people, even if they (i) are trained, (ii) are law-abiding, (iii) pass a criminal background check, and (iv) are found to be of "good moral character," merely because they cannot prove they have been targeted for violence recently. That last condition – the only thing standing between Plaintiffs and a Carry License – sweeps far too broadly to be considered "narrowly tailored" – or tailored at all –

under intermediate or strict scrutiny.

In sum, even if Sheriff Hutchens were able to show her policy furthers some compelling government interest, she would be unable to show that it is tailored to that end. The policy effectively bans public carry for most residents, including Plaintiffs. Additionally, if the goal is to reduce accidental or unlawful shootings, then there are less restrictive means of doing so including, e.g., requiring applicants to pass handgun training courses that focus on safety and lawful use of handguns. *See*, *e.g.*, Cal. Penal Code § 26150 (Addend. 033). In short, the Sheriff's policy is not "tailored" to serve any purpose.

2. Sheriff Hutchens' Policy Does Not Actually Serve Any Legitimate Governmental Interest

The Supreme Court has emphasized that, even under intermediate scrutiny, government cannot "get away with shoddy data or reasoning" and "evidence must fairly support [its] rationale for its ordinance." *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425, 438 (2002). Mere "lawyers' talk" unsupported by evidence is insufficient. *Annex Books, Inc. v. City of Indianapolis*, 581 F.3d 460, 463 (7th Cir. 2009). The government "must demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way." *Turner Broad. Sys., Inc. v. FCC*, 512 U.S.

622, 664 (1994).

Sheriff Hutchens thus cannot simply assert that the compelling interest of public safety is furthered by her policy. She must prove it. If this Court holds the Sheriff to that burden of proof, she cannot meet it. There simply is no evidence her policy furthers public safety. The only purported "evidence" the Sheriff provided that denying qualified people Carry Licenses furthers the interest of public safety were the declarations of Professor Zimring and Commander Barnes, both of which merely recite statistics about the misuse of firearms *by unlicensed criminals* or general concerns about the dangers of firearms being present. E.R. II 114-19, 122-25, 173-74. Neither declaration provided any evidence that people *with Carry Licenses* threaten public safety. They merely conclude fewer Carry Licenses equals less crime, as if granting licenses to virtuous citizens will transform them into criminals, or denying them licenses will somehow discourage criminals from illegally carrying arms. *See generally* E.R. II 113-26, 170-74. That is the epitome of "shoddy reasoning."

In any event, what the declarations of Professor Zimring and Commander Barnes amount to is mere advocacy for a particular public policy that they believe would improve public safety. Whether they are correct or not is irrelevant. The Supreme Court has made clear that "the enshrinement of constitutional rights

necessarily takes certain policy choices off the table." *Heller*, 554 U.S. at 636. The question is not whether they are good or bad policy choices, but whether they are constitutional. The above mentioned declarations provide no guidance on that point and should be disregarded by this Court.

Finally, the Sheriff's policy is illegitimate because it directly conflicts with the right to arms. The constitutional "default position" is – and must be – that "the right of the people to keep and bear arms shall not be infringed." That is, that law-abiding, competent citizens have a right to carry arms for self-defense, subject to some regulations tailored to a specific government interest – regulations that still allow such citizens *some* manner in which to exercise their fundamental right to arms. The Supreme Court assumes this "default position" when it mentions some presumptively lawful regulations on public carry in *Heller*, e.g., regulations prohibiting public carry in "sensitive places." 554 U.S. at 626-27 n.26.

Sheriff Hutchens' policy gets things backward. It assumes all residents are prohibited from carrying arms and then grants exceptions to a narrow subset of citizens who meet her subjective "good cause" standard, citizens who can show an extraordinary need to exercise the right to bear arms. And the express intent of the policy, at least in part, is to reduce the number of handguns borne in public, by anyone. In short, the Second Amendment protects an individual's right to bear

arms, while the Sheriff's policy negates that same right for most individuals in her county. The two are irreconcilable.

3. Even if the Court Adopts a "Substantial Burden" Test, Sheriff Hutchens' Policy Barring Plaintiffs from Bearing Arms for Self-Defense in Public is Invalid

Even if this Court were to adopt a "substantial burden" test, the Sheriff's policy cannot pass muster. In a now vacated opinion, a panel of this Court ruled that the standard for Second Amendment challenges is a "substantial burden" test, finding that only "regulations which substantially burden the right to keep and to bear arms trigger heightened scrutiny under the Second Amendment." *Nordyke*, 644 F.3d at 786. As explained above, the panel drew on the doctrines generated in the contexts of abortion and content-neutral speech restrictions for guidance, explaining, "we should ask whether the restriction leaves law-abiding citizens with reasonable alternative means for obtaining firearms sufficient for self-defense purposes." *Id.* at 787.

Sheriff Hutchens' policy places preconditions on the right to bear arms in public that most otherwise qualified law-abiding adults, including Plaintiffs, cannot meet. As such, the policy does not merely substantially burden Plaintiffs' right, it *denies* them the right altogether. And it does so leaving no "reasonable alternative means" by which to exercise the right. Indeed, as explained above,

without a Carry License there is no lawful way to generally possess a firearm in public – so there is *no alternative*. *See supra* pp. 6-8.

The district court's reliance on an "affirmative defense"as an alternative means (or mitigating factor) is misplaced. E.R. I 005. Allowing one to assert an affirmative defense when prosecuted for publicly carrying a loaded firearm without a license – a defense available only *after* one is faced with grave and immediate danger – provides no reasonable alternative to the *right* to be "*armed and ready* for offensive or defensive action in a case of conflict with another person," *Heller*, 554 U.S. at 584. This is especially the case when there is generally no way to legally have a firearm present in public for when danger presents itself. As such, the affirmative defense relied upon by the district court as an "alternative" or substitute for a Carry License is of little or no use.

V. SHERIFF HUTCHENS' POLICY VIOLATES EQUAL PROTECTION BY ALLOWING SOME TO PUBLICLY EXERCISE THE FUNDAMENTAL RIGHT TO BEAR ARMS WHILE DENYING THE RIGHT TO OTHERS

The premise of Plaintiffs' Equal Protection claim is that even if the Second Amendment tolerates prohibiting *all* people from publicly exercising the "right to possess and carry weapons in case of confrontation," a policy like Sheriff Hutchens' that allows some people to do so (by issuing them a Carry License) while denying that right to others, still violates the Equal Protection Clause unless

the classifications denying the right meet strict scrutiny. While the district court did not expressly address Plaintiffs' Equal Protection claim, the court implicitly and improperly rejected it – without applying any scrutiny. The court abused its discretion by failing to apply the appropriate legal standard. *See* E.R. I 002-05. Had it done so, the Sheriff's policy would have been found invalid.

The Equal Protection Clause "is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (citation omitted). "Where fundamental rights and liberties are asserted under the Equal Protection Clause, classifications which might invade or restrain them must be closely scrutinized." *Hussey v. City of Portland*, 64 F.3d 1260, 1265 (9th Cir. 1995) (quoting *Harper v. Va. Bd. of Elections*, 383 U.S. 663, 670 (1966), and citing *Kramer v. Union Free School Dist.*, 395 U.S. 621, 633 (1969)). In short, classifications that "impinge on personal rights protected by the Constitution" "will be sustained only if they are suitably tailored to serve a compelling state interest," i.e., strict scrutiny. *Cleburne*, 473 U.S. at 440 (citations omitted). And even where the government is not required to permit exercise of the right in a specific context, once that right is afforded to some, it cannot be denied to others unless it meets strict scrutiny. *See Kramer*, 395 U.S. at 628-29, 631.

In *Kramer*, for instance, the Supreme Court struck down a law limiting eligible voters in school district elections to property owners and parents of school children. 395 U.S. at 622. The Court held that, although school districts are not required to select their members via elections, "once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment." *Id.* at 629. Because the right to vote is fundamental, once it is afforded, any classification made that bars certain people from exercising that right violates Equal Protection, unless it can survive strict scrutiny. *Id.* at 626-27.

Similarly, because carrying arms for self-defense is a fundamental right, *Heller*, 554 U.S. at 595, even if exercise of that right can be generally prohibited in public, once some are allowed to publicly exercise that right, government classifications of people who may not do so must meet strict scrutiny.

Here, Sheriff Hutchens' policy distinguishes people who *can* publicly exercise the right from those who *cannot* based on their ability to prove a "specific threat" against them. Because the policy grants the right to those who can show a "specific threat," but denies it to others, the reason for the disparate treatment of the two classes must satisfy strict scrutiny. Sheriff Hutchens' policy cannot meet that heavy burden – indeed, for the reasons explained above in Part IV.B.1-2, it

could not even survive the more deferential intermediate scrutiny.

Where fundamental rights are concerned, the issue is not whether the legislative judgment and resulting classification had some basis, but whether the distinctions "do in fact sufficiently further a compelling state interest to justify denying the [right] to" members of the restricted class. *Kramer*, 395 U.S. at 633. As explained in Part IV.B.1-2 above, Sheriff Hutchens claims her policy serves a compelling interest in public safety, but she provides no evidence showing public safety is enhanced by treating law-abiding, competent persons differently based on whether they currently have a demonstrable "need" to exercise the fundamental right to bear arms for self-defense. Absent such a connection, Sheriff Hutchens' policy requiring such a showing before a Carry License will issue cannot pass muster. Certainly, no court would tolerate a restriction on the First Amendment's right to free speech based on whether the speaker could demonstrate a "special need" to speak or that he or she had something particularly important to say.

Thus, even if this Court finds Sheriff Hutchens' policy valid under the Second Amendment, it nonetheless offends and is invalid under the Equal Protection Clause of the Fourteenth Amendment.

VI. ALTERNATIVELY, CALIFORNIA'S "GOOD CAUSE" PROVISION ITSELF FACIALLY VIOLATES THE SECOND AMENDMENT

Plaintiffs primary claims are narrowly focused on Sheriff Hutchens' implementation of Penal Code section 26150(a)(2)'s "good cause" provision, not the State's provision itself. Specifically, Plaintiffs challenge and seek relief from the Sheriff's policy and practice of rejecting general self-defense as good cause for a Carry License. That is all. If the Court, however, finds it necessary or desirable to address the State provision directly, it should find section 26150(a)(2) to be a facially unconstitutional precondition on the right to armed self-defense for the same reasons provided against Sheriff Hutchens' policy, above. For, requiring "good cause" to exercise the right of self-defense is anathema to the nature of a right; it transforms the right into a privilege granted at the behest of the Sheriff.

Heller indicated that government officials, like Sheriff Hutchens, charged with licensing the means of exercising the right to arms have little, if any, discretion to deny such licenses. The Court did so when it directed the District of Columbia to issue a license that would satisfy Mr. Heller's prayer for relief, stating:

> Assuming that Heller is not disqualified from the exercise of Second Amendment rights, the District *must* permit him to register his handgun and *must* issue him a license to carry it in the home.

Heller, 554 U.S. at 635 (emphasis added).

The judicial treatment of state "right to bear arms" provisions supports this view. For example, the Supreme Court of Rhode Island opined:

> One does not need to be an expert in American history to understand the fault inherent in a gun-permitting system that would allow a licensing body *carte blanche* authority to decide who is worthy of carrying a concealed weapon. The constitutional right to bear arms would be illusory, of course, if it could be abrogated entirely on the basis of an unreviewable unrestricted licensing scheme.

Mosby v. Devine, 851 A.2d 1031, 1050 (R.I. 2004); *see also Schubert v. DeBard*, 398 N.E.2d 1339, 1341 (Ind. App. 1980) (holding law enforcement lacks the "power and duty to subjectively evaluate an assignment of 'self-defense' as a reason for desiring a license and the ability to grant or deny the license upon the basis of whether the applicant 'needed' to defend himself. Such an approach contravenes the essential nature of the constitutional guarantee."); *People v. Zerillo*, 189 N.W. 927, 928 (Mich. 1922) ("The exercise of a right guaranteed by the Constitution cannot be made subject to the will of the sheriff.")

Moreover, drawing on First Amendment jurisprudence, construing section 26150(a)(2) as conferring unfettered discretion on Sheriff Hutchens in determining whether an applicant has "good cause" for self-defense creates the equivalent of an unlawful prior restraint. A permissible prior restraint must not place "unbridled discretion in the hands of a government official or agency" and

must not allow "a permit or license [to] be granted or withheld in the discretion of such official." *See FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 225-26 (1990); *see also Staub v. City of Baxley*, 355 U.S. 313, 322 (1958).

VII. THE OTHER PRELIMINARY INJUNCTION FACTORS FAVOR PLAINTIFFS

Having established a likelihood of success on the merits and that Sheriff Hutchens' policy, or alternatively, California's "good cause" requirement, violates Plaintiffs' rights under the Second and Fourteenth Amendments, the remaining preliminary injunction factors necessarily weigh sharply in Plaintiffs' favor.

A. Irreparable Harm Should Be Presumed Because Sheriff Hutchens' Policy Violates Plaintiffs' Rights Under the Second and Fourteenth Amendments

Generally, once a plaintiff shows a likelihood of success on the merits for a constitutional claim, irreparable harm is presumed. 11A Charles Alan Wright et al., *Federal Practice and Procedure* § 2948.1 (2d ed. 1995) ("When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary."). Federal courts have routinely imported the First Amendment's "irreparable-if-only-for-a-minute" concept to cases involving other constitutional rights and, in doing so, have held a deprivation of these rights constitutes irreparable harm, per se. *Monterey Mech. Co. v. Wilson*, 125 F.3d 702, 715 (9th Cir. 1997) (citing *Associated Gen.*

Contractors v. Coal. for Econ. Equity, 950 F.2d 1401, 1412 (9th Cir. 1991)). Further, the Supreme Court has made clear the Second Amendment should be treated no differently. *See McDonald*, 130 S. Ct. at 3043, 3044; *see also Ezell*, 651 F.3d at 700 (holding deprivations of Second Amendment rights "irreparable and having no adequate remedy at law.")

Here, Plaintiffs established a likelihood of success on the merits of both of their constitutional claims, and irreparable harm should have been presumed.[16] But because the district court refused to answer the "substantial question" about the merits of Plaintiffs' Second Amendment claim, it gave no weight to the inherent harm inflicted when a person is denied the exercise of a constitutional right. E.R. I 004. Further, the court ignored the *deadly* harm that can occur when one's ability to act in self-defense is restricted. E.R. I 004-05. Instead, it assumed that any burden on Plaintiffs' rights is mitigated by the availability of California's affirmative defense to violations of its loaded firearms prohibition without considering whether that is a reasonable alternative to a Carry License for

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[16] The Court did not even consider Plaintiffs' Equal Protection claim, and it came to no conclusion as to whether Plaintiffs suffer irreparable harm by the violation of their rights under the Fourteenth Amendment. *See generally* E.R. I 001-05; *but see* E.R. I 036-37, E.R. II 106-08, 227-28, 279, 281-84 (Plaintiffs' Equal Protection claims are alleged in the First Amendment Complaint, and the parties briefed the issue extensively in Plaintiffs' Motion for Preliminary Injunction.).

exercising the right to arms. E.R. I 005. As described in Part IV.B.3, above, it is not.

Because Plaintiffs have here established a likelihood of success on the merits of their constitutional claims, they have necessarily established irreparable harm. The district court erred in holding otherwise.

B. The Harms to Plaintiffs and the Public Are Great if Relief Is Denied, and the Risks to the Public Assumed by the District Court Are Unfounded

When plaintiffs challenge government action that affects the general public seeking to exercise constitutional rights, as Plaintiffs do here for all law-abiding, competent Orange County residents seeking a Carry License, "[t]he balance of equities and the public interest thus tip sharply in favor of enjoining the ordinance." *Klein v. City of San Clemente*, 584 F.3d 1196, 1208 (9th Cir. 2009). And, the Sheriff "cannot reasonably assert that [she] is harmed in any legally cognizable sense by being enjoined from constitutional violations." *Haynes v. Office of the Attorney General Phill Kline*, 298 F. Supp. 2d 1154, 1160 (D. Kan. Oct. 26, 2004) (citations omitted).

Moreover, as explained above, no valid interest is actually furthered by Sheriff Hutchens' policy because there is no evidence that restricting issuance of Carry Licenses to law-abiding, competent adults actually increases public safety.

And little burden is imposed on the Sheriff by the relief Plaintiffs seek. She would merely be precluded from denying self-defense as "good cause" for a Carry License. It would *not* require her to begin issuing licenses to every applicant regardless of their training, criminal background, or other valid disqualifying factors.

The district court's claims of risks to the public and hardships to the Sheriff if Plaintiffs are granted the relief they seek are unconvincing. *See* E.R. I 005. As pointed out in Plaintiffs' motion, the majority of states, and even California sheriffs, issue Carry Licenses in a manner consistent with the relief Plaintiffs seek. Addend. 041-97; E.R. II 231. And, in those jurisdictions, the prediction that liberal Carry License issuance would be detrimental to public safety has not materialized. *See, e.g.*, *State of Wisconsin v. Schultz*, No. 10-138, slip op. at 5 (Wis. Cir. Oct. 12, 2010) (in commenting on such predictions "there have been no shootouts in town squares, no mass vigilante shootings or other violent outbreaks attributable to allowed concealed carry.")

Moreover, such risks or hardships are irrelevant to a constitutional analysis. The Framers of the Second Amendment already weighed the risks and benefits associated with allowing the People to bear arms when they enshrined the right in our Constitution. The Supreme Court recognized this in proclaiming:

> The very enumeration of the right [to Arms] takes out of the hands of government--even the Third Branch of Government--the power to decide on a case-by-case basis whether the right is *really worth* insisting upon. A constitutional guarantee subject to future judges' assessments of its usefulness is no constitutional guarantee at all.

Heller, 554 U.S. at 634-35.

In sum, the district court engaged in precisely the sort of analysis rejected in *Heller*, finding the alleged "risk" of permitting Plaintiffs to exercise their Second Amendment rights too great. E.R. 005. And it decided the right to bear arms was not "*really worth* insisting upon" in this case. The district court's analyses of the balance of equities and the public interest are not supported by any evidence, only by conjecture.

The lower court erred in failing to place the burden on Sheriff Hutchens to explain – and produce evidence supporting – why adopting the policy applied in most California counties and states across the country, Addend. 41-97, E.R. 231; *see also* John R. Lott, *What a Balancing Test Will Show for Right to Carry Laws*, 71 Md. L. Rev. 1205, 1208, n.16, would put Orange County residents at risk to such a degree that it justifies denying Plaintiffs and other law-abiding, competent adults their right to bear arms.

VIII. THE COURT SHOULD DECIDE THIS CASE ON THE MERITS

Because the issues on appeal are straightforward, purely legal, and concern

constitutional matters of great importance, this case is ripe for resolution by this Court. *See Glick v. McKay*, 937 F.2d 434, 436 (9th Cir. 1991), *rev'd on other grounds*, *Lambert v. Wicklund*, 520 U.S. 436 (1997) ([A]lthough this appeal arises from a ruling on a motion for preliminary injunction, important constitutional issues are at stake and the customary discretion afforded to a district court's ruling on a preliminary injunction yields to our plenary scope of review as to the applicable law.")

Here, a trial would be a waste of judicial resources and would provide no guidance to this Court in its review of the questions of constitutional law at issue, as there are no material facts in dispute. Likewise, any additional dispositive motion would simply rehash legal arguments raised in Plaintiffs' preliminary injunction motion and expanded on in this brief.

The district court implicitly rejected both Plaintiffs' Second Amendment and Equal Protection claims by holding that regardless of whether the Second Amendment protects a right to bear arms in public, California's alternatives to Carry Licenses (i.e., its affirmative defenses) mitigate the burden on Plaintiffs' rights. E.R. I 005. Given that holding, there is nothing left for that court to do in this matter at this stage of litigation.

Accordingly, Plaintiffs respectfully ask that this Court review de novo the

district court's "substantial question" about whether the Second Amendment applies outside the home, answer it on appeal, and then rule on Plaintiffs' narrow claims.

CONCLUSION

Plaintiffs respectfully request that this Court declare that Plaintiffs' Second Amendment and Fourteenth Amendment rights have been violated, reverse the order below, and remand the case with instructions to enter a permanent injunction consistent with Plaintiffs' prayer for relief.

STATEMENT OF RELATED CASES

The following cases all challenge Carry Licence issuance policies and practices in California on Second Amendment grounds. They are therefore related to the instant case:

-*Peruta v. County of San Diego*, No. 10-56971
-*Richards v. Prieto*, No. 11-16255
Birdt v. Beck, No. 12-55115
Thomson v. Torrance Police Dept., No. 12-56236
Raulinaitis v. Los Angeles Sheriffs' Dept., No. 12-56508

The following case challenges Hawaii's scheme for issuing Carry Licenses on Second Amendment grounds and on twelve other factually specific grounds. To the extent it challenges a Carry License scheme on Second Amendment grounds, the case is related:

-*Baker v. Kealoha*, No. 12-16258

The following cases contain numerous questions presented for review that seem to be unrelated to the case at hand. But to the extent they challenge the denial of Carry Licenses for lack of self-defense being considered "good cause," the cases are related.

Mehl v. Lou Blanas, No. 08-15773
Rothery v. County of Sacramento, No. 09-16852

Date: November 29, 2012

MICHEL & ASSOCIATES, P.C.

s/ C. D. Michel
C. D. Michel
Attorney for Plaintiffs-Appellants

CERTIFICATE OF COMPLIANCE

I hereby certify that the attached opening brief complies with Rule 32(a)(7)(C) of the Federal Rules of Appellate Procedure. According to the word count feature of the word-processing system used to prepare the brief, it contains 13582 words, exclusive of those matters that may be omitted under Rule 32(a)(7)(B)(iii).

I further certify that the attached brief complies with the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6). It was prepared in a proportionately spaced typeface using 14-point Times New Roman font in WordPerfect X5.

Date: November 29, 2012

MICHEL & ASSOCIATES, P.C.

s/ C. D. Michel
C. D. Michel
Attorney for Plaintiffs-Appellants

CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2012, an electronic PDF of APPELLANTS' OPENING BRIEF was uploaded to the Court's CM/ECF system, which will automatically generate and send by electronic mail a Notice of Docket Activity to all registered attorneys participating in the case. Such notice constitutes service on those registered attorneys.

Date: November 29, 2012

MICHEL & ASSOCIATES, P.C.

s/ C. D. Michel
C. D. Michel
Attorney for Plaintiffs-Appellants

ADDENDUM

INDEX TO ADDENDUM

Page

INDEX TO ADDENDUM (CONT.)

Page

INDEX TO ADDENDUM (CONT.)

Page

INDEX TO ADDENDUM (CONT.)

Page

INDEX TO ADDENDUM (CONT.)

Page

United States Code Annotated
Constitution of the United States
Annotated
Amendment II. Right to Bear Arms

U.S.C.A. Const. Amend. II

Amendment II. Right To Bear Arms

Currentness

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Notes of Decisions (221)

U.S.C.A. Const. Amend. II, USCA CONST Amend. II
Current through P.L. 112-195 (excluding P.L. 112-140 and 112-141) approved 10-5-12

End of Document

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 6. Control of Deadly Weapons (Refs & Annos)
Title 4. Firearms (Refs & Annos)
Division 5. Carrying Firearms (Refs & Annos)
Chapter 2. Carrying a Concealed Firearm (Refs & Annos)
Article 1. Crime of Carrying a Concealed Firearm (Refs & Annos)

West's Ann.Cal.Penal Code § 25400

§ 25400. Carrying concealed firearm; punishment; minimum sentence

Effective: January 1, 2012
Currentness

(a) A person is guilty of carrying a concealed firearm when the person does any of the following:

(1) Carries concealed within any vehicle that is under the person's control or direction any pistol, revolver, or other firearm capable of being concealed upon the person.

(2) Carries concealed upon the person any pistol, revolver, or other firearm capable of being concealed upon the person.

(3) Causes to be carried concealed within any vehicle in which the person is an occupant any pistol, revolver, or other firearm capable of being concealed upon the person.

(b) A firearm carried openly in a belt holster is not concealed within the meaning of this section.

(c) Carrying a concealed firearm in violation of this section is punishable as follows:

(1) If the person previously has been convicted of any felony, or of any crime made punishable by a provision listed in Section 16580, as a felony.

(2) If the firearm is stolen and the person knew or had reasonable cause to believe that it was stolen, as a felony.

(3) If the person is an active participant in a criminal street gang, as defined in subdivision (a) of Section 186.22, under the Street Terrorism Enforcement and Prevention Act (Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1), as a felony.

(4) If the person is not in lawful possession of the firearm or the person is within a class of persons prohibited from possessing or acquiring a firearm pursuant to Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title, or Section 8100 or 8103 of the Welfare and Institutions Code, as a felony.

(5) If the person has been convicted of a crime against a person or property, or of a narcotics or dangerous drug violation, by imprisonment pursuant to subdivision (h) of Section 1170, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine.

(6) If both of the following conditions are met, by imprisonment pursuant to subdivision (h) of Section 1170, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that fine and imprisonment:

(A) The pistol, revolver, or other firearm capable of being concealed upon the person is loaded, or both it and the unexpended ammunition capable of being discharged from it are in the immediate possession of the person or readily accessible to that person.

(B) The person is not listed with the Department of Justice pursuant to paragraph (1) of subdivision (c) of Section 11106 as the registered owner of that pistol, revolver, or other firearm capable of being concealed upon the person.

(7) In all cases other than those specified in paragraphs (1) to (6), inclusive, by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine.

(d)(1) Every person convicted under this section who previously has been convicted of a misdemeanor offense enumerated in Section 23515 shall be punished by imprisonment in a county jail for at least three months and not exceeding six months, or, if granted probation, or if the execution or imposition of sentence is suspended, it shall be a condition thereof that the person be imprisoned in a county jail for at least three months.

(2) Every person convicted under this section who has previously been convicted of any felony, or of any crime made punishable by a provision listed in Section 16580, if probation is granted, or if the execution or imposition of sentence is suspended, it shall be a condition thereof that the person be imprisoned in a county jail for not less than three months.

(e) The court shall apply the three-month minimum sentence as specified in subdivision (d), except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the minimum imprisonment required in subdivision (d) or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in subdivision (d), in which case, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(f) A peace officer may arrest a person for a violation of paragraph (6) of subdivision (c) if the peace officer has probable cause to believe that the person is not listed with the Department of Justice pursuant to paragraph (1) of subdivision (c) of Section 11106 as the registered owner of the pistol, revolver, or other firearm capable of being concealed upon the person, and one or more of the conditions in subparagraph (A) of paragraph (6) of subdivision (c) is met.

Credits

(Added by Stats.2010, c. 711 (S.B.1080), § 6, operative Jan. 1, 2012. Amended by Stats.2011, c. 15 (A.B.109), § 543, eff. April 4, 2011, operative Jan. 1, 2012.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

2010 Addition

Subdivision (a) of Section 25400 continues former Section 12025(a) without substantive change.

Subdivision (b) continues former Section 12025(f) without substantive change.

Subdivision (c) continues former Section 12025(b) without substantive change. Subdivision (d) continues former Section 12025(d) without substantive change. For guidance in applying paragraphs (c)(1) and (d)(2), see Section 16015 (determining existence of prior conviction).

Subdivision (e) continues former Section 12025(e) without substantive change.

Subdivision (f) continues former Section 12025(c) without substantive change.

Former Section 12025(g) is continued in Section 16750 ("lawful possession of the firearm").

Former Section 12025(h) was repealed by its own terms on January 1, 2005, so it is not continued. See 1999 Cal. Stat. ch. 571, § 2.

See Sections 16520 ("firearm"), 16530 ("firearm capable of being concealed upon the person," "pistol," and "revolver"), 16750 ("lawful possession of the firearm"), 16840 ("loaded" and "loaded firearm"). [38 Cal.L.Rev.Comm. Reports 217 (2009)].

Notes of Decisions (129)

West's Ann. Cal. Penal Code § 25400, CA PENAL § 25400
Current with urgency legislation through Ch. 876 of 2012 Reg.Sess. and all propositions on 2012 ballots.

End of Document

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 6. Control of Deadly Weapons (Refs & Annos)
Title 4. Firearms (Refs & Annos)
Division 5. Carrying Firearms (Refs & Annos)
Chapter 2. Carrying a Concealed Firearm (Refs & Annos)
Article 3. Conditional Exemptions (Refs & Annos)

West's Ann.Cal.Penal Code § 25505

§ 25505. Transportation of unloaded firearm in locked container; course of travel

Effective: January 1, 2012
Currentness

In order for a firearm to be exempted under this article, while being transported to or from a place, the firearm shall be unloaded and kept in a locked container, and the course of travel shall include only those deviations between authorized locations as are reasonably necessary under the circumstances.

Credits
(Added by Stats.2010, c. 711 (S.B.1080), § 6, operative Jan. 1, 2012.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

2010 Addition

Section 25505 continues former Section 12026.2(b) without substantive change.

For another provision on transporting a firearm in a locked container, see Section 25610 (carrying firearm in locked container).

See Sections 16520 ("firearm"), 16850 ("locked container"). [38 Cal.L.Rev.Comm. Reports 217 (2009)].

West's Ann. Cal. Penal Code § 25505, CA PENAL § 25505
Current with urgency legislation through Ch. 876 of 2012 Reg.Sess. and all propositions on 2012 ballots.

End of Document

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 6. Control of Deadly Weapons (Refs & Annos)
Title 4. Firearms (Refs & Annos)
Division 5. Carrying Firearms (Refs & Annos)
Chapter 2. Carrying a Concealed Firearm (Refs & Annos)
Article 3. Conditional Exemptions (Refs & Annos)

West's Ann.Cal.Penal Code § 25515

§ 25515. Possession of firearm in locked container by member of organization or club that lawfully collects and displays firearms

Effective: January 1, 2012
Currentness

Section 25400 does not apply to, or affect, the possession of a firearm in a locked container by a member of any club or organization, organized for the purpose of lawfully collecting and lawfully displaying pistols, revolvers, or other firearms, while the member is at a meeting of the club or organization or while going directly to, and coming directly from, a meeting of the club or organization.

Credits
(Added by Stats.2010, c. 711 (S.B.1080), § 6, operative Jan. 1, 2012.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

2010 Addition

Section 25515 continues former Section 12026.2(a)(2) without substantive change.

For conditions on invoking this exemption, see Section 25505. For an exemption relating to transportation of a curio or relic brought into the state by licensed collector, see Section 25580. For a provision on the effect of this article, see Section 25595.

See Sections 16520 ("firearm"), 16530 ("firearm capable of being concealed upon the person," "pistol," and "revolver"), 16850 ("locked container"). [38 Cal.L.Rev.Comm. Reports 217 (2009)].

West's Ann. Cal. Penal Code § 25515, CA PENAL § 25515
Current with urgency legislation through Ch. 876 of 2012 Reg.Sess. and all propositions on 2012 ballots.

End of Document

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 6. Control of Deadly Weapons (Refs & Annos)
Title 4. Firearms (Refs & Annos)
Division 5. Carrying Firearms (Refs & Annos)
Chapter 2. Carrying a Concealed Firearm (Refs & Annos)
Article 3. Conditional Exemptions (Refs & Annos)

West's Ann.Cal.Penal Code § 25520

§ 25520. Transportation of firearm by participant in safety or hunter safety class, or recognized sporting event

Effective: January 1, 2012
Currentness

Section 25400 does not apply to, or affect, the transportation of a firearm by a participant when going directly to, or coming directly from, a recognized safety or hunter safety class, or a recognized sporting event involving that firearm.

Credits
(Added by Stats.2010, c. 711 (S.B.1080), § 6, operative Jan. 1, 2012.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

2010 Addition

Section 25520 continues former Section 12026.2(a)(3) without substantive change.

For conditions on invoking this exemption, see Section 25505. For another exemption relating to hunting, see Section 25640 (licensed hunters or fishermen). For a provision on the effect of this article, see Section 25595.

See Section 16520 ("firearm"). [38 Cal.L.Rev.Comm. Reports 217 (2009)].

West's Ann. Cal. Penal Code § 25520, CA PENAL § 25520
Current with urgency legislation through Ch. 876 of 2012 Reg.Sess. and all propositions on 2012 ballots.

End of Document

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 6. Control of Deadly Weapons (Refs & Annos)
Title 4. Firearms (Refs & Annos)
Division 5. Carrying Firearms (Refs & Annos)
Chapter 2. Carrying a Concealed Firearm (Refs & Annos)
Article 3. Conditional Exemptions (Refs & Annos)

West's Ann.Cal.Penal Code § 25525

§ 25525. Place of residence, place of business, and private property; authorized transportation of firearm

Effective: January 1, 2012
Currentness

(a) Section 25400 does not apply to, or affect, the transportation of a firearm by any citizen of the United States or legal resident over the age of 18 years who resides or is temporarily within this state, and who is not within the excepted classes prescribed by Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title, or Section 8100 or 8103 of the Welfare and Institutions Code, directly between any of the following places:

(1) The person's place of residence.

(2) The person's place of business.

(3) Private property owned or lawfully possessed by the person.

(b) Section 25400 does not apply to, or affect, the transportation of a firearm by a person listed in subdivision (a) when going directly from the place where that person lawfully received that firearm to that person's place of residence or place of business or to private property owned or lawfully possessed by that person.

Credits
(Added by Stats.2010, c. 711 (S.B.1080), § 6, operative Jan. 1, 2012.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

2010 Addition

Subdivision (a) of Section 25525 continues former Section 12026.2(a)(4) without substantive change. Former Section 12026.2(a)(4) referred to "a person listed in Section 12026" and "the places mentioned in Section 12026." To make subdivision (a) of Section 25525 readily understandable, those references have been replaced with the pertinent language from former Section 12026, which is continued in Section 25605.

Subdivision (b) continues former Section 12026.2(a)(6) without substantive change. Former Section 12026.2(a)(6) referred to "a person listed in Section 12026." To make subdivision (b) of Section 25525 readily understandable, that reference has been replaced with a reference to "a person listed in subdivision (a)." This is equivalent to the previous reference, because subdivision (a) includes the pertinent language from former Section 12026.

For conditions on invoking these exemptions, see Section 25505. For an exemption relating to carrying or possession of a firearm at one's place of residence, place of business, or other private property, see Section 25605. For a provision on the effect of this article, see Section 25595.

See Section 16520 ("firearm"). [38 Cal.L.Rev.Comm. Reports 217 (2009)].

West's Ann. Cal. Penal Code § 25525, CA PENAL § 25525
Current with urgency legislation through Ch. 876 of 2012 Reg.Sess. and all propositions on 2012 ballots.

End of Document

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 6. Control of Deadly Weapons (Refs & Annos)
Title 4. Firearms (Refs & Annos)
Division 5. Carrying Firearms (Refs & Annos)
Chapter 2. Carrying a Concealed Firearm (Refs & Annos)
Article 3. Conditional Exemptions (Refs & Annos)

West's Ann.Cal.Penal Code § 25530

§ 25530. Transportation related to lawful repair, sale, loan, or transfer of firearm

Effective: January 1, 2012
Currentness

Section 25400 does not apply to, or affect, the transportation of a firearm by a person when going directly to, or coming directly from, a fixed place of business or private residential property for the purpose of the lawful repair or the lawful sale, loan, or transfer of that firearm.

Credits
(Added by Stats.2010, c. 711 (S.B.1080), § 6, operative Jan. 1, 2012.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

2010 Addition

Section 25530 continues former Section 12026.2(a)(5) without substantive change.

For conditions on invoking this exemption, see Section 25505. For a provision on the effect of this article, see Section 25595.

See Section 16520 ("firearm"). [38 Cal.L.Rev.Comm. Reports 217 (2009)].

West's Ann. Cal. Penal Code § 25530, CA PENAL § 25530
Current with urgency legislation through Ch. 876 of 2012 Reg.Sess. and all propositions on 2012 ballots.

End of Document

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 6. Control of Deadly Weapons (Refs & Annos)
Title 4. Firearms (Refs & Annos)
Division 5. Carrying Firearms (Refs & Annos)
Chapter 2. Carrying a Concealed Firearm (Refs & Annos)
Article 3. Conditional Exemptions (Refs & Annos)

West's Ann.Cal.Penal Code § 25535

§ 25535. Gun show, swap meet, or similar event; authorized transportation of firearm

Effective: January 1, 2012
Currentness

Section 25400 does not apply to, or affect, any of the following:

(a) The transportation of a firearm by a person when going directly to, or coming directly from, a gun show, swap meet, or similar event to which the public is invited, for the purpose of displaying that firearm in a lawful manner.

(b) The transportation of a firearm by a person when going directly to, or coming directly from, a gun show or event, as defined in Section 478.100 of Title 27 of the Code of Federal Regulations, for the purpose of lawfully transferring, selling, or loaning that firearm in accordance with Section 27545.

Credits
(Added by Stats.2010, c. 711 (S.B.1080), § 6, operative Jan. 1, 2012.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

2010 Addition

Subdivision (a) of Section 25535 continues former Section 12026.2(a)(7) without substantive change.

Subdivision (b) continues former Section 12026.2(a)(14) without substantive change.

For conditions on invoking these exemptions, see Section 25505. For a provision on the effect of this article, see Section 25595.

See Section 16520 ("firearm"). [38 Cal.L.Rev.Comm. Reports 217 (2009)].

West's Ann. Cal. Penal Code § 25535, CA PENAL § 25535
Current with urgency legislation through Ch. 876 of 2012 Reg.Sess. and all propositions on 2012 ballots.

End of Document

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 6. Control of Deadly Weapons (Refs & Annos)
Title 4. Firearms (Refs & Annos)
Division 5. Carrying Firearms (Refs & Annos)
Chapter 2. Carrying a Concealed Firearm (Refs & Annos)
Article 3. Conditional Exemptions (Refs & Annos)

West's Ann.Cal.Penal Code § 25540

§ 25540. Transportation to or from target range

Effective: January 1, 2012
Currentness

Section 25400 does not apply to, or affect, the transportation of a firearm by a person when going directly to, or coming directly from, a target range, which holds a regulatory or business license, for the purposes of practicing shooting at targets with that firearm at that target range.

Credits
(Added by Stats.2010, c. 711 (S.B.1080), § 6, operative Jan. 1, 2012.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

2010 Addition

Section 25540 continues former Section 12026.2(a)(9) without substantive change.

For conditions on invoking this exemption, see Section 25505. For another exemption relating to practicing at a target range, see Section 25635 (member of club or organization for purpose of practicing at established target ranges). For a provision on the effect of this article, see Section 25595.

See Section 16520 ("firearm"). [38 Cal.L.Rev.Comm. Reports 217 (2009)].

West's Ann. Cal. Penal Code § 25540, CA PENAL § 25540
Current with urgency legislation through Ch. 876 of 2012 Reg.Sess. and all propositions on 2012 ballots.

End of Document

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 6. Control of Deadly Weapons (Refs & Annos)
Title 4. Firearms (Refs & Annos)
Division 5. Carrying Firearms (Refs & Annos)
Chapter 2. Carrying a Concealed Firearm (Refs & Annos)
Article 3. Conditional Exemptions (Refs & Annos)

West's Ann.Cal.Penal Code § 25545

§ 25545. Transportation of firearm to or from licensing agency

Effective: January 1, 2012
Currentness

Section 25400 does not apply to, or affect, the transportation of a firearm by a person when going directly to, or coming directly from, a place designated by a person authorized to issue licenses pursuant to Section 26150, 26155, 26170, or 26215, when done at the request of the issuing agency so that the issuing agency can determine whether or not a license should be issued to that person to carry that firearm.

Credits
(Added by Stats.2010, c. 711 (S.B.1080), § 6, operative Jan. 1, 2012.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

2010 Addition

Section 25545 continues former Section 12026.2(a)(10) without substantive change.

For conditions on invoking this exemption, see Section 25505. For an exemption relating to a person with a license to carry a concealed pistol, revolver, or other firearm capable of being concealed upon the person, see Section 25655. For a provision on the effect of this article, see Section 25595.

See Section 16520 ("firearm"). [38 Cal.L.Rev.Comm. Reports 217 (2009)].

West's Ann. Cal. Penal Code § 25545, CA PENAL § 25545
Current with urgency legislation through Ch. 876 of 2012 Reg.Sess. and all propositions on 2012 ballots.

End of Document

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 6. Control of Deadly Weapons (Refs & Annos)
Title 4. Firearms (Refs & Annos)
Division 5. Carrying Firearms (Refs & Annos)
Chapter 2. Carrying a Concealed Firearm (Refs & Annos)
Article 3. Conditional Exemptions (Refs & Annos)

West's Ann.Cal.Penal Code § 25550

§ 25550. Transportation of firearm to or from lawful camping activity; authority of Department of Parks and Recreation

Effective: January 1, 2012
Currentness

(a) Section 25400 does not apply to, or affect, the transportation of a firearm by a person when going directly to, or coming directly from, a lawful camping activity for the purpose of having that firearm available for lawful personal protection while at the lawful campsite.

(b) This section shall not be construed to override the statutory authority granted to the Department of Parks and Recreation or any other state or local governmental agencies to promulgate rules and regulations governing the administration of parks and campgrounds.

Credits
(Added by Stats.2010, c. 711 (S.B.1080), § 6, operative Jan. 1, 2012.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

2010 Addition

Section 25550 continues former Section 12026.2(a)(11) without substantive change.

For conditions on invoking this exemption, see Section 25505. For a provision on the effect of this article, see Section 25595.

See Section 16520 ("firearm"). [38 Cal.L.Rev.Comm. Reports 217 (2009)].

West's Ann. Cal. Penal Code § 25550, CA PENAL § 25550
Current with urgency legislation through Ch. 876 of 2012 Reg.Sess. and all propositions on 2012 ballots.

End of Document

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 6. Control of Deadly Weapons (Refs & Annos)
Title 4. Firearms (Refs & Annos)
Division 5. Carrying Firearms (Refs & Annos)
Chapter 2. Carrying a Concealed Firearm (Refs & Annos)
Article 3. Conditional Exemptions (Refs & Annos)

West's Ann.Cal.Penal Code § 25555

§ 25555. Transportation of firearm in order to comply with specified provisions

Effective: January 1, 2012
Currentness

Section 25400 does not apply to, or affect, the transportation of a firearm by a person in order to comply with Section 27870, 27875, 27915, 27920, or 27925, as it pertains to that firearm.

Credits
(Added by Stats.2010, c. 711 (S.B.1080), § 6, operative Jan. 1, 2012.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

2010 Addition

Section 25555 continues former Section 12026.2(a)(12) without substantive change.

For conditions on invoking this exemption, see Section 25505. For a provision on the effect of this article, see Section 25595.

See Section 16520 ("firearm"). [38 Cal.L.Rev.Comm. Reports 217 (2009)].

West's Ann. Cal. Penal Code § 25555, CA PENAL § 25555
Current with urgency legislation through Ch. 876 of 2012 Reg.Sess. and all propositions on 2012 ballots.

End of Document

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 6. Control of Deadly Weapons (Refs & Annos)
Title 4. Firearms (Refs & Annos)
Division 5. Carrying Firearms (Refs & Annos)
Chapter 2. Carrying a Concealed Firearm (Refs & Annos)
Article 3. Conditional Exemptions (Refs & Annos)

West's Ann.Cal.Penal Code § 25560

§ 25560. Transportation of firearm to utilize Section 28000

Effective: January 1, 2012
Currentness

Section 25400 does not apply to, or affect, the transportation of a firearm by a person in order to utilize Section 28000 as it pertains to that firearm.

Credits
(Added by Stats.2010, c. 711 (S.B.1080), § 6, operative Jan. 1, 2012.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

2010 Addition

Section 25560 continues former Section 12026.2(a)(13) without substantive change.

For conditions on invoking this exemption, see Section 25505. For a provision on the effect of this article, see Section 25595.

See Section 16520 ("firearm"). [38 Cal.L.Rev.Comm. Reports 217 (2009)].

West's Ann. Cal. Penal Code § 25560, CA PENAL § 25560
Current with urgency legislation through Ch. 876 of 2012 Reg.Sess. and all propositions on 2012 ballots.

End of Document

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 6. Control of Deadly Weapons (Refs & Annos)
Title 4. Firearms (Refs & Annos)
Division 5. Carrying Firearms (Refs & Annos)
Chapter 2. Carrying a Concealed Firearm (Refs & Annos)
Article 3. Conditional Exemptions (Refs & Annos)

West's Ann.Cal.Penal Code § 25565

§ 25565. Sale, delivery, or transfer of firearm to government representative; authorized transportation

Effective: January 1, 2012
Currentness

Section 25400 does not apply to, or affect, the transportation of a firearm by a person in order to sell, deliver, or transfer the firearm as specified in Section 27850 or 31725 to an authorized representative of a city, city and county, county, or state or federal government that is acquiring the weapon as part of an authorized, voluntary program in which the entity is buying or receiving weapons from private individuals.

Credits
(Added by Stats.2010, c. 711 (S.B.1080), § 6, operative Jan. 1, 2012.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

2010 Addition

Section 25565 continues former Section 12026.2(a)(15) without substantive change. Former Section 12026.2(a)(15) referred to "transportation of a firearm by a person in order to utilize paragraph (6) of subdivision (a) of Section 12078 as it pertains to that firearm." To make Section 25565 readily understandable, that reference has been replaced by pertinent language from former Section 12078(a)(6) and cross-references to Sections 27850 and 31725, which continue former Section 12078(a)(6).

For conditions on invoking this exemption, see Section 25505. For a provision on the effect of this article, see Section 25595.

See Section 16520 ("firearm"). [38 Cal.L.Rev.Comm. Reports 217 (2009)].

West's Ann. Cal. Penal Code § 25565, CA PENAL § 25565
Current with urgency legislation through Ch. 876 of 2012 Reg.Sess. and all propositions on 2012 ballots.

End of Document

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 6. Control of Deadly Weapons (Refs & Annos)
Title 4. Firearms (Refs & Annos)
Division 5. Carrying Firearms (Refs & Annos)
Chapter 2. Carrying a Concealed Firearm (Refs & Annos)
Article 3. Conditional Exemptions (Refs & Annos)

West's Ann.Cal.Penal Code § 25570

§ 25570. Transportation of found firearm to law enforcement agency

Effective: January 1, 2012
Currentness

Section 25400 does not apply to, or affect, any of the following:

(a) The transportation of a firearm by a person who finds the firearm, if the person is transporting the firearm in order to comply with Article 1 (commencing with Section 2080) of Chapter 4 of Division 3 of the Civil Code as it pertains to that firearm, and, if the person is transporting the firearm to a law enforcement agency, the person gives prior notice to the law enforcement agency that the person is transporting the firearm to the law enforcement agency.

(b) The transportation of a firearm by a person who finds the firearm and is transporting it to a law enforcement agency for disposition according to law, if the person gives prior notice to the law enforcement agency that the person is transporting the firearm to the law enforcement agency for disposition according to law.

Credits
(Added by Stats.2010, c. 711 (S.B.1080), § 6, operative Jan. 1, 2012.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

2010 Addition

Subdivision (a) of Section 25570 continues former Section 12026.2(a)(16) without substantive change.

Subdivision (b) continues former Section 12026.2(a)(18) without substantive change.

For conditions on invoking these exemptions, see Section 25505. For a provision on the effect of this article, see Section 25595.

See Section 16520 ("firearm"). [38 Cal.L.Rev.Comm. Reports 217 (2009)].

West's Ann. Cal. Penal Code § 25570, CA PENAL § 25570
Current with urgency legislation through Ch. 876 of 2012 Reg.Sess. and all propositions on 2012 ballots.

End of Document

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 6. Control of Deadly Weapons (Refs & Annos)
Title 4. Firearms (Refs & Annos)
Division 5. Carrying Firearms (Refs & Annos)
Chapter 2. Carrying a Concealed Firearm (Refs & Annos)
Article 3. Conditional Exemptions (Refs & Annos)

West's Ann.Cal.Penal Code § 25575

§ 25575. Transportation of firearm in order to comply with Section 27560

Effective: January 1, 2012
Currentness

Section 25400 does not apply to, or affect, the transportation of a firearm by a person in order to comply with Section 27560 as it pertains to that firearm.

Credits
(Added by Stats.2010, c. 711 (S.B.1080), § 6, operative Jan. 1, 2012.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

2010 Addition

Section 25575 continues former Section 12026.2(a)(17) without substantive change.

For conditions on invoking this exemption, see Section 25505. For an exemption relating to transportation of unloaded handguns by a licensed manufacturer, importer, wholesaler, repairer, or dealer, see Section 25615. For a provision on the effect of this article, see Section 25595.

See Section 16520 ("firearm"). [38 Cal.L.Rev.Comm. Reports 217 (2009)].

West's Ann. Cal. Penal Code § 25575, CA PENAL § 25575
Current with urgency legislation through Ch. 876 of 2012 Reg.Sess. and all propositions on 2012 ballots.

End of Document

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 6. Control of Deadly Weapons (Refs & Annos)
Title 4. Firearms (Refs & Annos)
Division 5. Carrying Firearms (Refs & Annos)
Chapter 2. Carrying a Concealed Firearm (Refs & Annos)
Article 3. Conditional Exemptions (Refs & Annos)

West's Ann.Cal.Penal Code § 25580

§ 25580. Firearm that is curio or relic; authorized transportation

Effective: January 1, 2012
Currentness

Section 25400 does not apply to, or affect, the transportation of a firearm that is a curio or relic, as defined in Section 478.11 of Title 27 of the Code of Federal Regulations, by a person in order to comply with Section 27565 as it pertains to that firearm.

Credits
(Added by Stats.2010, c. 711 (S.B.1080), § 6, operative Jan. 1, 2012.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

2010 Addition

Section 25580 continues former Section 12026.2(a)(19) without substantive change. Former Section 12026.2(a)(19) referred to "transportation of a firearm by a person in order to comply with paragraph (3) of subdivision (f) of Section 12072." To make Section 25580 readily understandable, that reference has been replaced by key language from former Section 12072(f)(3) and a cross-reference to Sections 27565, which continues former Section 12072(f)(3).

For conditions on invoking this exemption, see Section 25505. For an exemption relating to a club or organization for lawfully collecting and displaying firearms, see Section 25515. For a provision on the effect of this article, see Section 25595.

See Section 16520 ("firearm"). [38 Cal.L.Rev.Comm. Reports 217 (2009)].

West's Ann. Cal. Penal Code § 25580, CA PENAL § 25580
Current with urgency legislation through Ch. 876 of 2012 Reg.Sess. and all propositions on 2012 ballots.

End of Document

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 6. Control of Deadly Weapons (Refs & Annos)
Title 4. Firearms (Refs & Annos)
Division 5. Carrying Firearms (Refs & Annos)
Chapter 2. Carrying a Concealed Firearm (Refs & Annos)
Article 3. Conditional Exemptions (Refs & Annos)

West's Ann.Cal.Penal Code § 25585

§ 25585. Transportation of firearm to obtain identification number or mark

Effective: January 1, 2012
Currentness

Section 25400 does not apply to, or affect, the transportation of a firearm by a person for the purpose of obtaining an identification number or mark assigned to that firearm from the Department of Justice pursuant to Section 23910.

Credits
(Added by Stats.2010, c. 711 (S.B.1080), § 6, operative Jan. 1, 2012.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

2010 Addition

Section 25585 continues former Section 12026.2(a)(20) without substantive change.

For conditions on invoking this exemption, see Section 25505. For a provision on the effect of this article, see Section 25595.

See Section 16520 ("firearm"). [38 Cal.L.Rev.Comm. Reports 217 (2009)].

West's Ann. Cal. Penal Code § 25585, CA PENAL § 25585
Current with urgency legislation through Ch. 876 of 2012 Reg.Sess. and all propositions on 2012 ballots.

End of Document

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 6. Control of Deadly Weapons (Refs & Annos)
Title 4. Firearms (Refs & Annos)
Division 5. Carrying Firearms (Refs & Annos)
Chapter 2. Carrying a Concealed Firearm (Refs & Annos)
Article 3. Conditional Exemptions (Refs & Annos)

West's Ann.Cal.Penal Code § 25590

§ 25590. Transportation of firearm; application of Section 25400

Effective: January 1, 2012
Currentness

Section 25400 does not apply to, or affect, the transportation of a firearm by a person if done directly between any of the places set forth below:

(a) A place where the person may carry that firearm pursuant to an exemption from the prohibition set forth in subdivision (a) of Section 25400.

(b) A place where that person may carry that firearm pursuant to an exemption from the prohibition set forth in subdivision (a) of Section 25850, or a place where the prohibition set forth in subdivision (a) of Section 25850 does not apply.

(c) A place where that person may carry a firearm pursuant to an exemption from the prohibition set forth in subdivision (a) of Section 26350, or a place where the prohibition set forth in subdivision (a) of Section 26350 does not apply.

Credits
(Added by Stats.2011, c. 725 (A.B.144), § 11.)

West's Ann. Cal. Penal Code § 25590, CA PENAL § 25590
Current with urgency legislation through Ch. 876 of 2012 Reg.Sess. and all propositions on 2012 ballots.

End of Document

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 6. Control of Deadly Weapons (Refs & Annos)
Title 4. Firearms (Refs & Annos)
Division 5. Carrying Firearms (Refs & Annos)
Chapter 2. Carrying a Concealed Firearm (Refs & Annos)
Article 4. Other Exemptions (Refs & Annos)

West's Ann.Cal.Penal Code § 25600

§ 25600. Justifiable violation of Section 25400; reasonable belief of grave danger

Effective: January 1, 2012
Currentness

(a) A violation of Section 25400 is justifiable when a person who possesses a firearm reasonably believes that person is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person who has been found to pose a threat to the life or safety of the person who possesses the firearm. This section may not apply when the circumstances involve a mutual restraining order issued pursuant to Division 10 (commencing with Section 6200) of the Family Code absent a factual finding of a specific threat to the person's life or safety. It is not the intent of the Legislature to limit, restrict, or narrow the application of current statutory or judicial authority to apply this or other justifications to a defendant charged with violating Section 25400 or committing another similar offense.

(b) Upon trial for violating Section 25400, the trier of fact shall determine whether the defendant was acting out of a reasonable belief that the defendant was in grave danger.

Credits
(Added by Stats.2010, c. 711 (S.B.1080), § 6, operative Jan. 1, 2012.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

2010 Addition

Section 25600 continues former Section 12025.5 without substantive change.

See Section 16520 ("firearm"). [38 Cal.L.Rev.Comm. Reports 217 (2009)].

West's Ann. Cal. Penal Code § 25600, CA PENAL § 25600
Current with urgency legislation through Ch. 876 of 2012 Reg.Sess. and all propositions on 2012 ballots.

End of Document

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 6. Control of Deadly Weapons (Refs & Annos)
Title 4. Firearms (Refs & Annos)
Division 5. Carrying Firearms (Refs & Annos)
Chapter 2. Carrying a Concealed Firearm (Refs & Annos)
Article 4. Other Exemptions (Refs & Annos)

West's Ann.Cal.Penal Code § 25605

§ 25605. Persons exempt from Section 25400 and provisions relating to openly carrying unloaded handgun; carrying of handgun within place of residence, place of business, or on private property

Effective: January 1, 2012
Currentness

(a) Section 25400 and Chapter 6 (commencing with Section 26350) of Division 5 shall not apply to or affect any citizen of the United States or legal resident over the age of 18 years who resides or is temporarily within this state, and who is not within the excepted classes prescribed by Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title, or Section 8100 or 8103 of the Welfare and Institutions Code, who carries, either openly or concealed, anywhere within the citizen's or legal resident's place of residence, place of business, or on private property owned or lawfully possessed by the citizen or legal resident, any handgun.

(b) No permit or license to purchase, own, possess, keep, or carry, either openly or concealed, shall be required of any citizen of the United States or legal resident over the age of 18 years who resides or is temporarily within this state, and who is not within the excepted classes prescribed by Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title, or Section 8100 or 8103 of the Welfare and Institutions Code, to purchase, own, possess, keep, or carry, either openly or concealed, a handgun within the citizen's or legal resident's place of residence, place of business, or on private property owned or lawfully possessed by the citizen or legal resident.

(c) Nothing in this section shall be construed as affecting the application of Sections 25850 to 26055, inclusive.

Credits
(Added by Stats.2010, c. 711 (S.B.1080), § 6, operative Jan. 1, 2012. Amended by Stats.2011, c. 725 (A.B.144), § 13.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

2010 Addition

Section 25605 continues former Section 12026 without substantive change.

For an exemption relating to transportation of a firearm by the owner or a person in lawful possession of the firearm to that person's place of residence, place of business, or other private property, see Section 25525.

See Section 16530 ("firearm capable of being concealed upon the person," "pistol," and "revolver"). [38 Cal.L.Rev.Comm. Reports 217 (2009)].

Notes of Decisions (19)

West's Ann. Cal. Penal Code § 25605, CA PENAL § 25605
Current with urgency legislation through Ch. 876 of 2012 Reg.Sess. and all propositions on 2012 ballots.

End of Document

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 6. Control of Deadly Weapons (Refs & Annos)
Title 4. Firearms (Refs & Annos)
Division 5. Carrying Firearms (Refs & Annos)
Chapter 2. Carrying a Concealed Firearm (Refs & Annos)
Article 4. Other Exemptions (Refs & Annos)

West's Ann.Cal.Penal Code § 25610

§ 25610. Authority to transport or carry concealable firearms

Effective: January 1, 2012
Currentness

(a) Section 25400 shall not be construed to prohibit any citizen of the United States over the age of 18 years who resides or is temporarily within this state, and who is not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm, from transporting or carrying any pistol, revolver, or other firearm capable of being concealed upon the person, provided that the following applies to the firearm:

(1) The firearm is within a motor vehicle and it is locked in the vehicle's trunk or in a locked container in the vehicle.

(2) The firearm is carried by the person directly to or from any motor vehicle for any lawful purpose and, while carrying the firearm, the firearm is contained within a locked container.

(b) The provisions of this section do not prohibit or limit the otherwise lawful carrying or transportation of any pistol, revolver, or other firearm capable of being concealed upon the person in accordance with the provisions listed in Section 16580.

Credits
(Added by Stats.2010, c. 711 (S.B.1080), § 6, operative Jan. 1, 2012.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

2010 Addition

Subdivision (a) of Section 25610 continues former Section 12026.1(a) without substantive change, except for the last phrase of paragraph (a)(1) (other than the utility or glove compartment). That phrase and former Section 12026.1(c) are continued in Section 16850 ("locked container").

Subdivision (b) continues former Section 12026.1(b) without substantive change.

For another provision on transporting a firearm in a locked container, see Section 25505 (conditions for Article 3 exemptions to apply).

See Sections 16520 ("firearm"), 16530 ("firearm capable of being concealed upon the person," "pistol," and "revolver"), 16850 ("locked container"). [38 Cal.L.Rev.Comm. Reports 217 (2009)].

West's Ann. Cal. Penal Code § 25610, CA PENAL § 25610
Current with urgency legislation through Ch. 876 of 2012 Reg.Sess. and all propositions on 2012 ballots.

End of Document

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 6. Control of Deadly Weapons (Refs & Annos)
Title 4. Firearms (Refs & Annos)
Division 5. Carrying Firearms (Refs & Annos)
Chapter 2. Carrying a Concealed Firearm (Refs & Annos)
Article 4. Other Exemptions (Refs & Annos)

West's Ann.Cal.Penal Code § 25640

§ 25640. Licensed hunters or fishermen; application of Section 25400

Effective: January 1, 2012
Currentness

Section 25400 does not apply to, or affect, licensed hunters or fishermen carrying pistols, revolvers, or other firearms capable of being concealed upon the person while engaged in hunting or fishing, or transporting those firearms unloaded when going to or returning from the hunting or fishing expedition.

Credits
(Added by Stats.2010, c. 711 (S.B.1080), § 6, operative Jan. 1, 2012.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

2010 Addition

Section 25640 continues former Section 12027(g) without substantive change.

For another exemption relating to hunting, see Section 25520 (recognized sporting event or safety or hunter safety class).

See Section 16530 ("firearm capable of being concealed upon the person," "pistol," and "revolver"). [38 Cal.L.Rev.Comm. Reports 217 (2009)].

Notes of Decisions (1)

West's Ann. Cal. Penal Code § 25640, CA PENAL § 25640
Current with urgency legislation through Ch. 876 of 2012 Reg.Sess. and all propositions on 2012 ballots.

End of Document

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 6. Control of Deadly Weapons (Refs & Annos)
Title 4. Firearms (Refs & Annos)
Division 5. Carrying Firearms (Refs & Annos)
Chapter 3. Carrying a Loaded Firearm (Refs & Annos)
Article 2. Crime of Carrying a Loaded Firearm in Public (Refs & Annos)

West's Ann.Cal.Penal Code § 25850

§ 25850. Carrying a loaded firearm in public; examination of firearm by peace officer; punishment; arrest without warrant

Effective: January 1, 2012
Currentness

(a) A person is guilty of carrying a loaded firearm when the person carries a loaded firearm on the person or in a vehicle while in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory.

(b) In order to determine whether or not a firearm is loaded for the purpose of enforcing this section, peace officers are authorized to examine any firearm carried by anyone on the person or in a vehicle while in any public place or on any public street in an incorporated city or prohibited area of an unincorporated territory. Refusal to allow a peace officer to inspect a firearm pursuant to this section constitutes probable cause for arrest for violation of this section.

(c) Carrying a loaded firearm in violation of this section is punishable, as follows:

(1) Where the person previously has been convicted of any felony, or of any crime made punishable by a provision listed in Section 16580, as a felony.

(2) Where the firearm is stolen and the person knew or had reasonable cause to believe that it was stolen, as a felony.

(3) Where the person is an active participant in a criminal street gang, as defined in subdivision (a) of Section 186.22, under the Street Terrorism Enforcement and Prevention Act (Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1), as a felony.

(4) Where the person is not in lawful possession of the firearm, or is within a class of persons prohibited from possessing or acquiring a firearm pursuant to Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title, or Section 8100 or 8103 of the Welfare and Institutions Code, as a felony.

(5) Where the person has been convicted of a crime against a person or property, or of a narcotics or dangerous drug violation, by imprisonment pursuant to subdivision (h) of Section 1170, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine.

(6) Where the person is not listed with the Department of Justice pursuant to Section 11106 as the registered owner of the handgun, by imprisonment pursuant to subdivision (h) of Section 1170, or by imprisonment in a county jail not to exceed one year, or by a fine not to exceed one thousand dollars ($1,000), or both that fine and imprisonment.

(7) In all cases other than those specified in paragraphs (1) to (6), inclusive, as a misdemeanor, punishable by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine.

(d)(1) Every person convicted under this section who has previously been convicted of an offense enumerated in Section 23515, or of any crime made punishable under a provision listed in Section 16580, shall serve a term of at least three months in a county jail, or, if granted probation or if the execution or imposition of sentence is suspended, it shall be a condition thereof that the person be imprisoned for a period of at least three months.

(2) The court shall apply the three-month minimum sentence except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the minimum imprisonment required in this section or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in this section, in which case, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(e) A violation of this section that is punished by imprisonment in a county jail not exceeding one year shall not constitute a conviction of a crime punishable by imprisonment for a term exceeding one year for the purposes of determining federal firearms eligibility under Section 922(g)(1) of Title 18 of the United States Code.

(f) Nothing in this section, or in Article 3 (commencing with Section 25900) or Article 4 (commencing with Section 26000), shall preclude prosecution under Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title, Section 8100 or 8103 of the Welfare and Institutions Code, or any other law with a greater penalty than this section.

(g) Notwithstanding paragraphs (2) and (3) of subdivision (a) of Section 836, a peace officer may make an arrest without a warrant:

(1) When the person arrested has violated this section, although not in the officer's presence.

(2) Whenever the officer has reasonable cause to believe that the person to be arrested has violated this section, whether or not this section has, in fact, been violated.

(h) A peace officer may arrest a person for a violation of paragraph (6) of subdivision (c), if the peace officer has probable cause to believe that the person is carrying a handgun in violation of this section and that person is not listed with the Department of Justice pursuant to paragraph (1) of subdivision (c) of Section 11106 as the registered owner of that handgun.

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 6. Control of Deadly Weapons (Refs & Annos)
Title 4. Firearms (Refs & Annos)
Division 5. Carrying Firearms (Refs & Annos)
Chapter 3. Carrying a Loaded Firearm (Refs & Annos)
Article 4. Other Exemptions to the Crime of Carrying a Loaded Firearm in Public (Refs & Annos)

West's Ann.Cal.Penal Code § 26045

§ 26045. Carrying of weapon to protect person or property; persons under threat from subject of restraining order; exempt from application of Section 25850

Effective: January 1, 2012
Currentness

(a) Nothing in Section 25850 is intended to preclude the carrying of any loaded firearm, under circumstances where it would otherwise be lawful, by a person who reasonably believes that any person or the property of any person is in immediate, grave danger and that the carrying of the weapon is necessary for the preservation of that person or property.

(b) A violation of Section 25850 is justifiable when a person who possesses a firearm reasonably believes that person is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person who has been found to pose a threat to the life or safety of the person who possesses the firearm. This subdivision may not apply when the circumstances involve a mutual restraining order issued pursuant to Division 10 (commencing with Section 6200) of the Family Code absent a factual finding of a specific threat to the person's life or safety. It is not the intent of the Legislature to limit, restrict, or narrow the application of current statutory or judicial authority to apply this or other justifications to a defendant charged with violating Section 25400 or committing another similar offense. Upon trial for violating Section 25850, the trier of fact shall determine whether the defendant was acting out of a reasonable belief that the defendant was in grave danger.

(c) As used in this section, "immediate" means the brief interval before and after the local law enforcement agency, when reasonably possible, has been notified of the danger and before the arrival of its assistance.

Credits
(Added by Stats.2010, c. 711 (S.B.1080), § 6, operative Jan. 1, 2012.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

2010 Addition

Subdivision (a) of Section 26045 continues the first sentence of former Section 12031(j)(1) without substantive change.

Subdivision (b) continues former Section 12031(j)(2) without substantive change.

Subdivision (c) continues the second sentence of former Section 12031(j)(1) without substantive change.

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 6. Control of Deadly Weapons (Refs & Annos)
Title 4. Firearms (Refs & Annos)
Division 5. Carrying Firearms (Refs & Annos)
Chapter 4. License to Carry a Pistol, Revolver, or Other Firearm Capable of Being Concealed Upon the Person (Refs & Annos)

West's Ann.Cal.Penal Code § 26150

§ 26150. Application for license to carry concealed weapon; county sheriff responsibilities

Effective: January 1, 2012
Currentness

(a) When a person applies for a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person, the sheriff of a county may issue a license to that person upon proof of all of the following:

(1) The applicant is of good moral character.

(2) Good cause exists for issuance of the license.

(3) The applicant is a resident of the county or a city within the county, or the applicant's principal place of employment or business is in the county or a city within the county and the applicant spends a substantial period of time in that place of employment or business.

(4) The applicant has completed a course of training as described in Section 26165.

(b) The sheriff may issue a license under subdivision (a) in either of the following formats:

(1) A license to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person.

(2) Where the population of the county is less than 200,000 persons according to the most recent federal decennial census, a license to carry loaded and exposed in only that county a pistol, revolver, or other firearm capable of being concealed upon the person.

Credits
(Added by Stats.2010, c. 711 (S.B.1080), § 6, operative Jan. 1, 2012.)

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 6. Control of Deadly Weapons (Refs & Annos)
Title 4. Firearms (Refs & Annos)
Division 5. Carrying Firearms (Refs & Annos)
Chapter 4. License to Carry a Pistol, Revolver, or Other Firearm Capable of Being Concealed Upon the Person (Refs & Annos)

West's Ann.Cal.Penal Code § 26160

§ 26160. Written policy to be made available

Effective: January 1, 2012
Currentness

Each licensing authority shall publish and make available a written policy summarizing the provisions of Section 26150 and subdivisions (a) and (b) of Section 26155.

Credits
(Added by Stats.2010, c. 711 (S.B.1080), § 6, operative Jan. 1, 2012.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

2010 Addition

Section 26160 continues former Section 12050.2 without substantive change. [38 Cal.L.Rev.Comm. Reports 217 (2009)].

West's Ann. Cal. Penal Code § 26160, CA PENAL § 26160
Current with urgency legislation through Ch. 876 of 2012 Reg.Sess. and all propositions on 2012 ballots.

End of Document

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 6. Control of Deadly Weapons (Refs & Annos)
Title 4. Firearms (Refs & Annos)
Division 5. Carrying Firearms (Refs & Annos)
Chapter 4. License to Carry a Pistol, Revolver, or Other Firearm Capable of Being Concealed Upon the Person (Refs & Annos)

West's Ann.Cal.Penal Code § 26165

§ 26165. Course of training requirements for new and renewal license applicants

Effective: January 1, 2012
Currentness

(a) For new license applicants, the course of training for issuance of a license under Section 26150 or 26155 may be any course acceptable to the licensing authority, shall not exceed 16 hours, and shall include instruction on at least firearm safety and the law regarding the permissible use of a firearm.

(b) Notwithstanding subdivision (a), the licensing authority may require a community college course certified by the Commission on Peace Officer Standards and Training, up to a maximum of 24 hours, but only if required uniformly of all license applicants without exception.

(c) For license renewal applicants, the course of training may be any course acceptable to the licensing authority, shall be no less than four hours, and shall include instruction on at least firearm safety and the law regarding the permissible use of a firearm. No course of training shall be required for any person certified by the licensing authority as a trainer for purposes of this section, in order for that person to renew a license issued pursuant to this article.

(d) The applicant shall not be required to pay for any training courses prior to the determination of good cause being made pursuant to Section 26202.

Credits
(Added by Stats.2010, c. 711 (S.B.1080), § 6, operative Jan. 1, 2012. Amended by Stats.2011, c. 741 (S.B.610), § 1.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

2010 Addition

Section 26165 continues former Section 12050(a)(1)(E) without substantive change.

See Section 16520 ("firearm"). [38 Cal.L.Rev.Comm. Reports 217 (2009)].

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 6. Control of Deadly Weapons (Refs & Annos)
Title 4. Firearms (Refs & Annos)
Division 5. Carrying Firearms (Refs & Annos)
Chapter 4. License to Carry a Pistol, Revolver, or Other Firearm Capable of Being Concealed Upon the Person (Refs & Annos)

West's Ann.Cal.Penal Code § 26185

§ 26185. Fingerprint report

Effective: January 1, 2012
Currentness

(a)(1) The fingerprints of each applicant shall be taken and two copies on forms prescribed by the Department of Justice shall be forwarded to the department.

(2) Upon receipt of the fingerprints and the fee as prescribed in Section 26190, the department shall promptly furnish the forwarding licensing authority a report of all data and information pertaining to any applicant of which there is a record in its office, including information as to whether the person is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

(3) No license shall be issued by any licensing authority until after receipt of the report from the department.

(b) Notwithstanding subdivision (a), if the license applicant has previously applied to the same licensing authority for a license to carry firearms pursuant to this article and the applicant's fingerprints and fee have been previously forwarded to the Department of Justice, as provided by this section, the licensing authority shall note the previous identification numbers and other data that would provide positive identification in the files of the Department of Justice on the copy of any subsequent license submitted to the department in conformance with Section 26225 and no additional application form or fingerprints shall be required.

(c) If the license applicant has a license issued pursuant to this article and the applicant's fingerprints have been previously forwarded to the Department of Justice, as provided in this section, the licensing authority shall note the previous identification numbers and other data that would provide positive identification in the files of the Department of Justice on the copy of any subsequent license submitted to the department in conformance with Section 26225 and no additional fingerprints shall be required.

Credits
(Added by Stats.2010, c. 711 (S.B.1080), § 6, operative Jan. 1, 2012.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 6. Control of Deadly Weapons (Refs & Annos)
Title 4. Firearms (Refs & Annos)
Division 5. Carrying Firearms (Refs & Annos)
Chapter 4. License to Carry a Pistol, Revolver, or Other Firearm Capable of Being Concealed Upon the Person (Refs & Annos)

West's Ann.Cal.Penal Code § 26202

§ 26202. Determination of good cause; notification

Effective: January 1, 2012
Currentness

Upon making the determination of good cause pursuant to Section 26150 or 26155, the licensing authority shall give written notice to the applicant of the licensing authority's determination. If the licensing authority determines that good cause exists, the notice shall inform the applicants to proceed with the training requirements specified in Section 26165. If the licensing authority determines that good cause does not exist, the notice shall inform the applicant that the request for a license has been denied and shall state the reason from the department's published policy, described in Section 26160, as to why the determination was made.

Credits
(Added by Stats.2011, c. 741 (S.B.610), § 3.)

West's Ann. Cal. Penal Code § 26202, CA PENAL § 26202
Current with urgency legislation through Ch. 876 of 2012 Reg.Sess. and all propositions on 2012 ballots.

End of Document

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 6. Control of Deadly Weapons (Refs & Annos)
Title 4. Firearms (Refs & Annos)
Division 5. Carrying Firearms (Refs & Annos)
Chapter 6. Openly Carrying an Unloaded Handgun (Refs & Annos)
Article 1. Crime of Openly Carrying an Unloaded Handgun (Refs & Annos)

West's Ann.Cal.Penal Code § 26350

§ 26350. Openly carrying an unloaded handgun; penalties; definition

Effective: January 1, 2012
Currentness

(a)(1) A person is guilty of openly carrying an unloaded handgun when that person carries upon his or her person an exposed and unloaded handgun outside a vehicle while in or on any of the following:

(A) A public place or public street in an incorporated city or city and county.

(B) A public street in a prohibited area of an unincorporated area of a county or city and county.

(C) A public place in a prohibited area of a county or city and county.

(2) A person is guilty of openly carrying an unloaded handgun when that person carries an exposed and unloaded handgun inside or on a vehicle, whether or not on his or her person, while in or on any of the following:

(A) A public place or public street in an incorporated city or city and county.

(B) A public street in a prohibited area of an unincorporated area of a county or city and county.

(C) A public place in a prohibited area of a county or city and county.

(b)(1) Except as specified in paragraph (2), a violation of this section is a misdemeanor.

(2) A violation of subparagraph (A) of paragraph (1) of subdivision (a) is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed one thousand dollars ($1,000), or by both that fine and imprisonment, if both of the following conditions exist:

(A) The handgun and unexpended ammunition capable of being discharged from that handgun are in the immediate possession of that person.

(B) The person is not in lawful possession of that handgun.

(c)(1) Nothing in this section shall preclude prosecution under Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9, Section 8100 or 8103 of the Welfare and Institutions Code, or any other law with a penalty greater than is set forth in this section.

(2) The provisions of this section are cumulative and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of law shall not be punished under more than one provision.

(d) Notwithstanding the fact that the term "an unloaded handgun" is used in this section, each handgun shall constitute a distinct and separate offense under this section.

Credits
(Added by Stats.2011, c. 725 (A.B.144), § 14.)

West's Ann. Cal. Penal Code § 26350, CA PENAL § 26350
Current with urgency legislation through Ch. 876 of 2012 Reg.Sess. and all propositions on 2012 ballots.

End of Document

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 6. Control of Deadly Weapons (Refs & Annos)
Title 4. Firearms (Refs & Annos)
Division 5. Carrying Firearms (Refs & Annos)
Chapter 6. Openly Carrying an Unloaded Handgun (Refs & Annos)
Article 2. Exemptions (Refs & Annos)

West's Ann.Cal.Penal Code § 26366

§ 26366. Exemption for licensed hunter

Effective: January 1, 2012
Currentness

Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by a licensed hunter while engaged in hunting or while transporting that handgun when going to or returning from that hunting expedition.

Credits
(Added by Stats.2011, c. 725 (A.B.144), § 14.)

West's Ann. Cal. Penal Code § 26366, CA PENAL § 26366
Current with urgency legislation through Ch. 876 of 2012 Reg.Sess. and all propositions on 2012 ballots.

End of Document

West's Alaska Statutes Annotated
Title 18. Health, Safety, and Housing
Chapter 65. Police Protection
Article 10. Permit to Carry a Concealed Handgun (Refs & Annos)

AS § 18.65.700

§ 18.65.700. Permit to carry a concealed handgun
Currentness

(a) The department shall issue a permit to carry a concealed handgun to a person who

(1) applies in person at an office of the Alaska State Troopers;

(2) qualifies under AS 18.65.705;

(3) submits on an application form approved by the department the information required under AS 18.65.705 and 18.65.710; the department shall post on the department's website the state laws and regulations relating to concealed handguns, which must include a concise summary of where, when, and by whom a handgun can be carried under state and federal law and shall, on request, mail a copy of the regulations and summary to an applicant or permittee;

(4) submits one complete set of fingerprints in the format approved by the department that is of sufficient quality so that the fingerprints may be processed; the fingerprints must be taken by a person, group, or agency approved by the department; the department shall maintain a list of persons, groups, or agencies approved to take fingerprints and shall provide the list to the public upon request; the fingerprints shall be used to obtain a report of criminal justice information under AS 12.62 and a national criminal history record check under AS 12.62.400;

(5) submits evidence of successful completion of a handgun course as provided in AS 18.65.715;

(6) provides one frontal view color photograph of the person taken within the preceding 30 days that includes the head and shoulders of the person and is of a size specified by the department;

(7) shows a valid Alaska driver's license or identification card at the time of application;

(8) does not suffer a physical infirmity that prevents the safe handling of a handgun; and

(9) pays the application fee required by AS 18.65.720.

Arizona Revised Statutes Annotated
Title 13. Criminal Code (Refs & Annos)
Chapter 31. Weapons and Explosives (Refs & Annos)

A.R.S. § 13-3112

§ 13-3112. Concealed weapons; qualification; application; permit to carry; civil penalty; report; applicability
Currentness

A. The department of public safety shall issue a permit to carry a concealed weapon to a person who is qualified under this section. The person shall carry the permit at all times when the person is in actual possession of the concealed weapon and is required by § 4-229 or 4-244 to carry the permit. If the person is in actual possession of the concealed weapon and is required by § 4-229 or 4-244 to carry the permit, the person shall present the permit for inspection to any law enforcement officer on request.

B. The permit of a person who is arrested or indicted for an offense that would make the person unqualified under § 13-3101, subsection A, paragraph 7 or this section shall be immediately suspended and seized. The permit of a person who becomes unqualified on conviction of that offense shall be revoked. The permit shall be restored on presentation of documentation from the court if the permittee is found not guilty or the charges are dismissed. The permit shall be restored on presentation of documentation from the county attorney that the charges against the permittee were dropped or dismissed.

C. A permittee who carries a concealed weapon, who is required by § 4-229 or 4-244 to carry a permit and who fails to present the permit for inspection on the request of a law enforcement officer commits a violation of this subsection and is subject to a civil penalty of not more than three hundred dollars. The department of public safety shall be notified of all violations of this subsection and shall immediately suspend the permit. A permittee shall not be convicted of a violation of this subsection if the permittee produces to the court a legible permit that is issued to the permittee and that was valid at the time the permittee failed to present the permit for inspection.

D. A law enforcement officer shall not confiscate or forfeit a weapon that is otherwise lawfully possessed by a permittee whose permit is suspended pursuant to subsection C of this section, except that a law enforcement officer may take temporary custody of a firearm during an investigatory stop of the permittee.

E. The department of public safety shall issue a permit to an applicant who meets all of the following conditions:

1. Is a resident of this state or a United States citizen.

2. Is twenty-one years of age or older.

3. Is not under indictment for and has not been convicted in any jurisdiction of a felony unless that conviction has been expunged,

set aside or vacated or the applicant's rights have been restored and the applicant is currently not a prohibited possessor under state or federal law.

4. Does not suffer from mental illness and has not been adjudicated mentally incompetent or committed to a mental institution.

5. Is not unlawfully present in the United States.

6. Has ever demonstrated competence with a firearm as prescribed by subsection N of this section and provides adequate documentation that the person has satisfactorily completed a training program or demonstrated competence with a firearm in any state or political subdivision in the United States. For the purposes of this paragraph, "adequate documentation" means:

(a) A current or expired permit issued by the department of public safety pursuant to this section.

(b) An original or copy of a certificate, card or document that shows the applicant has ever completed any course or class prescribed by subsection N of this section or an affidavit from the instructor, school, club or organization that conducted or taught the course or class attesting to the applicant's completion of the course or class.

(c) An original or a copy of a United States department of defense form 214 (DD-214) indicating an honorable discharge or general discharge under honorable conditions, a certificate of completion of basic training or any other document demonstrating proof of the applicant's current or former service in the United States armed forces as prescribed by subsection N, paragraph 5 of this section.

(d) An original or a copy of a concealed weapon, firearm or handgun permit or a license as prescribed by subsection N, paragraph 6 of this section.

F. The application shall be completed on a form prescribed by the department of public safety. The form shall not require the applicant to disclose the type of firearm for which a permit is sought. The applicant shall attest under penalty of perjury that all of the statements made by the applicant are true, that the applicant has been furnished a copy of this chapter and chapter 4[1] of this title and that the applicant is knowledgeable about the provisions contained in those chapters. The applicant shall submit the application to the department with any documentation prescribed by subsection E of this section, two sets of fingerprints and a reasonable fee determined by the director of the department.

G. On receipt of a concealed weapon permit application, the department of public safety shall conduct a check of the applicant's criminal history record pursuant to § 41-1750. The department of public safety may exchange fingerprint card information with the federal bureau of investigation for federal criminal history record checks.

H. The department of public safety shall complete all of the required qualification checks within sixty days after receipt of the application and shall issue a permit within fifteen working days after completing the qualification checks if the applicant meets all of the conditions specified in subsection E of this section. If a permit is denied, the department of public safety shall notify the applicant in writing within fifteen working days after the completion of all of the required qualification checks and shall state the reasons why the application was denied. On receipt of the notification of the denial, the applicant has twenty days to submit any additional documentation to the department. On receipt of the additional documentation, the department shall reconsider its decision and inform the applicant within twenty days of the result of the reconsideration. If denied, the applicant shall be informed that the applicant may request a hearing pursuant to title 41, chapter 6, article 10.[2] For the purposes of this subsection,

West's Arkansas Code Annotated
Title 5. Criminal Offenses (Refs & Annos)
Subtitle 6. Offenses Against Public Health, Safety, or Welfare (Chapters 60 to 79)
Chapter 73. Weapons
Subchapter 3. Concealed Handguns (Refs & Annos)

A.C.A. § 5-73-309

§ 5-73-309. License--Requirements
Effective: July 31, 2007
Currentness

The Director of the Department of Arkansas State Police shall issue a license to carry a concealed handgun if the applicant:

(1) Is a citizen of the United States;

(2)(A) Is a resident of the state and has been a resident continuously for ninety (90) days or longer immediately preceding the filing of the application.

(B) However, subdivision (2)(A) of this section does not apply to any:

(i) Retired city, county, state, or federal law enforcement officer; or

(ii) Active duty military personnel who submit documentation of their active duty status;

(3) Is twenty-one (21) years of age or older;

(4) Does not suffer from a mental or physical infirmity that prevents the safe handling of a handgun and has not threatened or attempted suicide;

(5)(A) Has not been convicted of a felony in a court of this state, of any other state, or of the United States without having been pardoned for conviction and had firearms possession rights restored.

(B) A record of a conviction that has been sealed or expunged under Arkansas law does not render an applicant ineligible to receive a concealed handgun license if:

(i) The applicant was sentenced prior to March 13, 1995; or

(ii) The order sealing or expunging the applicant's record of conviction complies with § 16-90-605;

(6) Is not subject to any federal, state, or local law that makes it unlawful to receive, possess, or transport any firearm, and has had his or her background check successfully completed through the Department of Arkansas State Police and the Federal Bureau of Investigation's National Instant Check System;

(7)(A) Does not chronically or habitually abuse a controlled substance to the extent that his or her normal faculties are impaired.

(B) It is presumed that an applicant chronically and habitually uses a controlled substance to the extent that his or her faculties are impaired if the applicant has been voluntarily or involuntarily committed to a treatment facility for the abuse of a controlled substance or has been found guilty of a crime under the provisions of the Uniform Controlled Substances Act, § 5-64-101 et seq., or a similar law of any other state or the United States relating to a controlled substance within the three-year period immediately preceding the date on which the application is submitted;

(8)(A) Does not chronically or habitually use an alcoholic beverage to the extent that his or her normal faculties are impaired.

(B) It is presumed that an applicant chronically and habitually uses an alcoholic beverage to the extent that his or her normal faculties are impaired if the applicant has been voluntarily or involuntarily committed as an alcoholic to a treatment facility or has been convicted of two (2) or more offenses related to the use of alcohol under a law of this state or similar law of any other state or the United States within the three-year period immediately preceding the date on which the application is submitted;

(9) Desires a legal means to carry a concealed handgun to defend himself or herself;

(10) Has not been adjudicated mentally incompetent;

(11) Has not been voluntarily or involuntarily committed to a mental institution or mental health treatment facility;

(12) Is not a fugitive from justice or does not have an active warrant for his or her arrest;

(13) Has satisfactorily completed a training course as prescribed and approved by the director; and

(14) Signs a statement of allegiance to the United States Constitution and the Arkansas Constitution.

Credits

Acts of 1995, Act 411, § 2; Acts of 1995, Act 419, § 2; amended by Acts of 1997, Act 368, § 1, eff. March 6, 1997; Acts of 1997, Act 1239, § 10; Acts of 1999, Act 51, § 1, eff. Feb. 11, 1999; Acts of 2003, Act 545, §§ 1, 5, eff. July 16, 2003; Acts of 2007, Act 198, § 1, eff. July 31, 2007; Acts of 2007, Act 664, § 3, eff. July 31, 2007.

West's Colorado Revised Statutes Annotated
Title 18. Criminal Code (Refs & Annos)
Article 12. Offenses Relating to Firearms and Weapons (Refs & Annos)
Part 2. Permits to Carry Concealed Handguns (Refs & Annos)

C.R.S.A. § 18-12-203

§ 18-12-203. Criteria for obtaining a permit
Currentness

(1) Beginning May 17, 2003, except as otherwise provided in this section, a sheriff shall issue a permit to carry a concealed handgun to an applicant who:

(a) Is a legal resident of the state of Colorado. For purposes of this part 2, a person who is a member of the armed forces and is stationed pursuant to permanent duty station orders at a military installation in this state, and a member of the person's immediate family living in Colorado, shall be deemed to be a legal resident of the state of Colorado.

(b) Is twenty-one years of age or older;

(c) Is not ineligible to possess a firearm pursuant to section 18-12-108 or federal law;

(d) Has not been convicted of perjury under section 18-8-503, in relation to information provided or deliberately omitted on a permit application submitted pursuant to this part 2;

(e)(I) Does not chronically and habitually use alcoholic beverages to the extent that the applicant's normal faculties are impaired.

(II) The prohibition specified in this paragraph (e) shall not apply to an applicant who provides an affidavit, signed by a professional counselor or addiction counselor who is licensed pursuant to article 43 of title 12, C.R.S., and specializes in alcohol addiction, stating that the applicant has been evaluated by the counselor and has been determined to be a recovering alcoholic who has refrained from using alcohol for at least three years.

(f) Is not an unlawful user of or addicted to a controlled substance as defined in section 18-18-102(5). Whether an applicant is an unlawful user of or addicted to a controlled substance shall be determined as provided in federal law and regulations.

(g) Is not subject to:

West's Florida Statutes Annotated
Title XLVI. Crimes (Chapters 775-899)
Chapter 790. Weapons and Firearms (Refs & Annos)

West's F.S.A. § 790.06

790.06. License to carry concealed weapon or firearm
Effective: July 1, 2012
Currentness

(1) The Department of Agriculture and Consumer Services is authorized to issue licenses to carry concealed weapons or concealed firearms to persons qualified as provided in this section. Each such license must bear a color photograph of the licensee. For the purposes of this section, concealed weapons or concealed firearms are defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie, but the term does not include a machine gun as defined in s. 790.001(9). Such licenses shall be valid throughout the state for a period of 7 years from the date of issuance. Any person in compliance with the terms of such license may carry a concealed weapon or concealed firearm notwithstanding the provisions of s. 790.01. The licensee must carry the license, together with valid identification, at all times in which the licensee is in actual possession of a concealed weapon or firearm and must display both the license and proper identification upon demand by a law enforcement officer. Violations of the provisions of this subsection shall constitute a noncriminal violation with a penalty of $25, payable to the clerk of the court.

(2) The Department of Agriculture and Consumer Services shall issue a license if the applicant:

(a) Is a resident of the United States and a citizen of the United States or a permanent resident alien of the United States, as determined by the United States Bureau of Citizenship and Immigration Services, or is a consular security official of a foreign government that maintains diplomatic relations and treaties of commerce, friendship, and navigation with the United States and is certified as such by the foreign government and by the appropriate embassy in this country;

(b) Is 21 years of age or older;

(c) Does not suffer from a physical infirmity which prevents the safe handling of a weapon or firearm;

(d) Is not ineligible to possess a firearm pursuant to s. 790.23 by virtue of having been convicted of a felony;

(e) Has not been committed for the abuse of a controlled substance or been found guilty of a crime under the provisions of chapter 893 or similar laws of any other state relating to controlled substances within a 3-year period immediately preceding the date on which the application is submitted;

(f) Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired. It shall be presumed that an applicant chronically and habitually uses alcoholic beverages or other substances to the extent that his or her normal faculties are impaired if the applicant has been committed under chapter 397 or under the

provisions of former chapter 396 or has been convicted under s. 790.151 or has been deemed a habitual offender under s. 856.011(3), or has had two or more convictions under s. 316.193 or similar laws of any other state, within the 3-year period immediately preceding the date on which the application is submitted;

(g) Desires a legal means to carry a concealed weapon or firearm for lawful self-defense;

(h) Demonstrates competence with a firearm by any one of the following:

1. Completion of any hunter education or hunter safety course approved by the Fish and Wildlife Conservation Commission or a similar agency of another state;

2. Completion of any National Rifle Association firearms safety or training course;

3. Completion of any firearms safety or training course or class available to the general public offered by a law enforcement, junior college, college, or private or public institution or organization or firearms training school, utilizing instructors certified by the National Rifle Association, Criminal Justice Standards and Training Commission, or the Department of Agriculture and Consumer Services;

4. Completion of any law enforcement firearms safety or training course or class offered for security guards, investigators, special deputies, or any division or subdivision of law enforcement or security enforcement;

5. Presents evidence of equivalent experience with a firearm through participation in organized shooting competition or military service;

6. Is licensed or has been licensed to carry a firearm in this state or a county or municipality of this state, unless such license has been revoked for cause; or

7. Completion of any firearms training or safety course or class conducted by a state-certified or National Rifle Association certified firearms instructor;

A photocopy of a certificate of completion of any of the courses or classes; or an affidavit from the instructor, school, club, organization, or group that conducted or taught said course or class attesting to the completion of the course or class by the applicant; or a copy of any document which shows completion of the course or class or evidences participation in firearms competition shall constitute evidence of qualification under this paragraph; any person who conducts a course pursuant to subparagraph 2., subparagraph 3., or subparagraph 7., or who, as an instructor, attests to the completion of such courses, must maintain records certifying that he or she observed the student safely handle and discharge the firearm;

(i) Has not been adjudicated an incapacitated person under s. 744.331, or similar laws of any other state, unless 5 years have elapsed since the applicant's restoration to capacity by court order;

(j) Has not been committed to a mental institution under chapter 394, or similar laws of any other state, unless the applicant produces a certificate from a licensed psychiatrist that he or she has not suffered from disability for at least 5 years prior to the

West's Code of Georgia Annotated
Title 16. Crimes and Offenses (Refs & Annos)
Chapter 11. Offenses Against Public Order and Safety (Refs & Annos)
Article 4. Dangerous Instrumentalities and Practices (Refs & Annos)
Part 3. Carrying and Possession of Firearms (Refs & Annos)

Ga. Code Ann., § 16-11-129

§ 16-11-129. License to weapons carry
Effective: May 13, 2011
Currentness

(a) *Application for weapons carry license or renewal license; term.* The judge of the probate court of each county may, on application under oath and on payment of a fee of $30.00, issue a weapons carry license or renewal license valid for a period of five years to any person whose domicile is in that county or who is on active duty with the United States armed forces and who is not a domiciliary of this state but who either resides in that county or on a military reservation located in whole or in part in that county at the time of such application. Such license or renewal license shall authorize that person to carry any weapon in any county of this state notwithstanding any change in that person's county of residence or state of domicile. Applicants shall submit the application for a weapons carry license or renewal license to the judge of the probate court on forms prescribed and furnished free of charge to persons wishing to apply for the license or renewal license. An applicant who is not a United States citizen shall provide sufficient personal identifying data, including without limitation his or her place of birth and United States issued alien or admission number, as the Georgia Bureau of Investigation may prescribe by rule or regulation. An applicant who is in nonimmigrant status shall provide proof of his or her qualifications for an exception to the federal firearm prohibition pursuant to 18 U.S.C. Section 922(y). Forms shall be designed to elicit information from the applicant pertinent to his or her eligibility under this Code section, including citizenship, but shall not require data which is nonpertinent or irrelevant such as serial numbers or other identification capable of being used as a de facto registration of firearms owned by the applicant. The Department of Public Safety shall furnish application forms and license forms required by this Code section. The forms shall be furnished to each judge of each probate court within the state at no cost.

(b) *Licensing exceptions.*

(1) As used in this subsection, the term:

(A) "Controlled substance" means any drug, substance, or immediate precursor included in the definition of controlled substances in paragraph (4) of Code Section 16-13-21.

(B) "Convicted" means a plea of guilty or a finding of guilt by a court of competent jurisdiction or the acceptance of a plea of nolo contendere, irrespective of the pendency or availability of an appeal or an application for collateral relief.

(C) "Dangerous drug" means any drug defined as such in Code Section 16-13-71.

(2) No weapons carry license shall be issued to:

(A) Any person under 21 years of age;

(B) Any person who has been convicted of a felony by a court of this state or any other state; by a court of the United States including its territories, possessions, and dominions; or by a court of any foreign nation and has not been pardoned for such felony by the President of the United States, the State Board of Pardons and Paroles, or the person or agency empowered to grant pardons under the constitution or laws of such state or nation;

(C) Any person against whom proceedings are pending for any felony;

(D) Any person who is a fugitive from justice;

(E) Any person who is prohibited from possessing or shipping a firearm in interstate commerce pursuant to subsections (g) and (n) of 18 U.S.C. Section 922;

(F) Any person who has been convicted of an offense arising out of the unlawful manufacture or distribution of a controlled substance or other dangerous drug;

(G) Any person who has had his or her weapons carry license revoked pursuant to subsection (e) of this Code section;

(H) Any person who has been convicted of any of the following:

(i) Pointing a gun or a pistol at another in violation of Code Section 16-11-102;

(ii) Carrying a weapon without a weapons carry license in violation of Code Section 16-11-126; or

(iii) Carrying a weapon or long gun in an unauthorized location in violation of Code Section 16-11-127

and has not been free of all restraint or supervision in connection therewith and free of any other conviction for at least five years immediately preceding the date of the application;

(I) Any person who has been convicted of any misdemeanor involving the use or possession of a controlled substance and has not been free of all restraint or supervision in connection therewith or free of:

(i) A second conviction of any misdemeanor involving the use or possession of a controlled substance; or

(ii) Any conviction under subparagraphs (E) through (G) of this paragraph

for at least five years immediately preceding the date of the application; or

(J) Any person who has been hospitalized as an inpatient in any mental hospital or alcohol or drug treatment center within the five years immediately preceding the application. The judge of the probate court may require any applicant to sign a waiver authorizing any mental hospital or treatment center to inform the judge whether or not the applicant has been an inpatient in any such facility in the last five years and authorizing the superintendent of such facility to make to the judge a recommendation regarding whether the applicant is a threat to the safety of others and whether a license to carry a weapon should be issued. When such a waiver is required by the judge, the applicant shall pay a fee of $3.00 for reimbursement of the cost of making such a report by the mental health hospital, alcohol or drug treatment center, or the Department of Behavioral Health and Developmental Disabilities, which the judge shall remit to the hospital, center, or department. The judge shall keep any such hospitalization or treatment information confidential. It shall be at the discretion of the judge, considering the circumstances surrounding the hospitalization and the recommendation of the superintendent of the hospital or treatment center where the individual was a patient, to issue the weapons carry license or renewal license.

(3) If first offender treatment without adjudication of guilt for a conviction contained in subparagraph (F) or (I) of paragraph (2) of this subsection was entered and such sentence was successfully completed and such person has not had any other conviction since the completion of such sentence and for at least five years immediately preceding the date of the application, he or she shall be eligible for a weapons carry license provided that no other license exception applies.

(c) *Fingerprinting.*

Following completion of the application for a weapons carry license or the renewal of a license, the judge of the probate court shall require the applicant to proceed to an appropriate law enforcement agency in the county with the completed application. The appropriate local law enforcement agency in each county shall then capture the fingerprints of the applicant for a weapons carry license or renewal license and place the name of the applicant on the blank license form. The appropriate local law enforcement agency shall place the fingerprint on a blank license form which has been furnished to the law enforcement agency by the judge of the probate court if a fingerprint is required to be furnished by subsection (f) of this Code section. The law enforcement agency shall be entitled to a fee of $5. 00 from the applicant for its services in connection with the application.

(d) *Investigation of applicant; issuance of weapons carry license; renewal.*

(1) For both weapons carry license applications and requests for license renewals, the judge of the probate court shall within five days following the receipt of the application or request direct the law enforcement agency to request a fingerprint based criminal history records check from the Georgia Crime Information Center and Federal Bureau of Investigation for purposes of determining the suitability of the applicant and return an appropriate report to the judge of the probate court. Fingerprints shall be in such form and of such quality as prescribed by the Georgia Crime Information Center and under standards adopted by the Federal Bureau of Investigation. The Georgia Bureau of Investigation may charge such fee as is necessary to cover the cost of the records search.

(2) For both weapons carry license applications and requests for license renewals, the judge of the probate court shall within five days following the receipt of the application or request also direct the law enforcement agency to conduct a background check using the Federal Bureau of Investigation's National Instant Criminal Background Check System and return an appropriate report to the probate judge.

(3) When a person who is not a United States citizen applies for a weapons carry license or renewal of a license under this Code section, the judge of the probate court shall direct the law enforcement agency to conduct a search of the records maintained by United States Immigration and Customs Enforcement and return an appropriate report to the probate judge. As a condition to the issuance of a license or the renewal of a license, an applicant who is in nonimmigrant status shall provide proof of his or her qualifications for an exception to the federal firearm prohibition pursuant to 18 U.S.C. Section 922(y).

(4) The law enforcement agency shall report to the judge of the probate court within 30 days, by telephone and in writing, of any findings relating to the applicant which may bear on his or her eligibility for a weapons carry license or renewal license under the terms of this Code section. When no derogatory information is found on the applicant bearing on his or her eligibility to obtain a license or renewal license, a report shall not be required. The law enforcement agency shall return the application and the blank license form with the fingerprint thereon directly to the judge of the probate court within such time period. Not later than ten days after the judge of the probate court receives the report from the law enforcement agency concerning the suitability of the applicant for a license, the judge of the probate court shall issue such applicant a license or renewal license to carry any weapon unless facts establishing ineligibility have been reported or unless the judge determines such applicant has not met all the qualifications, is not of good moral character, or has failed to comply with any of the requirements contained in this Code section. The judge of the probate court shall date stamp the report from the law enforcement agency to show the date on which the report was received by the judge of the probate court.

(e) *Revocation, loss, or damage to license.* If, at any time during the period for which the weapons carry license was issued, the judge of the probate court of the county in which the license was issued shall learn or have brought to his or her attention in any manner any reasonable ground to believe the licensee is not eligible to retain the license, the judge may, after notice and hearing, revoke the license of the person upon a finding that such person is not eligible for a weapons carry license pursuant to subsection (b) of this Code section or an adjudication of falsification of application, mental incompetency, or chronic alcohol or narcotic usage. It shall be unlawful for any person to possess a license which has been revoked, and any person found in possession of any such revoked license, except in the performance of his or her official duties, shall be guilty of a misdemeanor. It shall be required that any license holder under this Code section have in his or her possession his or her valid license whenever he or she is carrying a weapon under the authority granted by this Code section, and his or her failure to do so shall be prima-facie evidence of a violation of Code Section 16-11-126. Loss of any license issued in accordance with this Code section or damage to the license in any manner which shall render it illegible shall be reported to the judge of the probate court of the county in which it was issued within 48 hours of the time the loss or damage becomes known to the license holder. The judge of the probate court shall thereupon issue a replacement for and shall take custody of and destroy a damaged license; and in any case in which a license has been lost, he or she shall issue a cancellation order and notify by telephone and in writing each of the law enforcement agencies whose records were checked before issuance of the original license. The judge shall charge the fee specified in subsection (k) of Code Section 15-9-60 for such services.

(f)(1) *Weapons carry license specifications.* Weapons carry licenses issued as prescribed in this Code section shall be printed on durable but lightweight card stock, and the completed card shall be laminated in plastic to improve its wearing qualities and to inhibit alterations. Measurements shall be 3 1/4 inches long and 2 1/4 inches wide. Each shall be serially numbered within the county of issuance and shall bear the full name, residential address, birth date, weight, height, color of eyes, and sex of the licensee. The license shall show the date of issuance, the expiration date, and the probate court in which issued and shall be signed by the licensee and bear the signature or facsimile thereof of the judge. The seal of the court shall be placed on the face before the license is laminated. Licenses issued on and before December 31, 2011, shall bear a clear print of the licensee's right index finger; however, if the right index fingerprint cannot be secured for any reason, the print of another finger may be used but such print shall be marked to identify the finger from which the print is taken.

(2)(A) On and after January 1, 2012, newly issued or renewal weapons carry licenses shall incorporate overt and covert security features which shall be blended with the personal data printed on the license to form a significant barrier to imitation, replication, and duplication. There shall be a minimum of three different ultraviolet colors used to enhance the security of the license

incorporating variable data, color shifting characteristics, and front edge only perimeter visibility. The weapons carry license shall have a color photograph viewable under ambient light on both the front and back of the license. The license shall incorporate custom optical variable devices featuring the great seal of the State of Georgia as well as matching demetalized optical variable devices viewable under ambient light from the front and back of the license incorporating microtext and unique alphanumeric serialization specific to the license holder. The license shall be of similar material, size, and thickness of a credit card and have a holographic laminate to secure and protect the license for the duration of the license period.

(B) Using the physical characteristics of the license set forth in subparagraph (A) of this paragraph, The Council of Probate Court Judges of Georgia shall create specifications for the probate courts so that all weapons carry licenses in this state shall be uniform and so that probate courts can petition the Department of Administrative Services to purchase the equipment and supplies necessary for producing such licenses. The department shall follow the competitive bidding procedure set forth in Code Section 50-5-102.

(g) *Alteration or counterfeiting of license; penalty.* A person who deliberately alters or counterfeits a weapons carry license or who possesses an altered or counterfeit weapons carry license with the intent to misrepresent any information contained in such license shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for a period of not less than one nor more than five years.

(h) *Licenses for former law enforcement officers.* Except as otherwise provided in Code Section 16-11-130, any person who has served as a law enforcement officer for at least ten of the 12 years immediately preceding the retirement of such person as a law enforcement officer shall be entitled to be issued a weapons carry license as provided for in this Code section without the payment of any of the fees provided for in this Code section. Such person shall comply with all the other provisions of this Code section relative to the issuance of such licenses. As used in this subsection, the term "law enforcement officer" means any peace officer who is employed by the United States government or by the State of Georgia or any political subdivision thereof and who is required by the terms of his or her employment, whether by election or appointment, to give his or her full time to the preservation of public order or the protection of life and property or the prevention of crime. Such term shall include conservation rangers.

(i) *Temporary renewal licenses.*

(1) Any person who holds a weapons carry license under this Code section may, at the time he or she applies for a renewal of the license, also apply for a temporary renewal license if less than 90 days remain before expiration of the license he or she then holds or if the previous license has expired within the last 30 days.

(2) Unless the judge of the probate court knows or is made aware of any fact which would make the applicant ineligible for a five-year renewal license, the judge shall at the time of application issue a temporary renewal license to the applicant.

(3) Such a temporary renewal license shall be in the form of a paper receipt indicating the date on which the court received the renewal application and shall show the name, address, sex, age, and race of the applicant and that the temporary renewal license expires 90 days from the date of issue.

(4) During its period of validity the temporary renewal permit, if carried on or about the holder's person together with the holder's previous license, shall be valid in the same manner and for the same purposes as a five-year license.

(5) A $1.00 fee shall be charged by the probate court for issuance of a temporary renewal license.

(6) A temporary renewal license may be revoked in the same manner as a five-year license.

(j) When an eligible applicant fails to receive a license, temporary permit, or renewal license within the time period required by this Code section and the application or request has been properly filed, the applicant may bring an action in mandamus or other legal proceeding in order to obtain a license, temporary license, or renewal license. If such applicant is the prevailing party, he or she shall be entitled to recover his or her costs in such action, including reasonable attorney's fees.

Credits

Laws 1910, p. 134, §§ 2, 3; Laws 1960, p. 938, § 1; Laws 1968, p. 1249, § 1; Laws 1976, p. 1430, § 4; Laws 1978, p. 1607, §§ 1, 2; Laws 1981, p. 946, § 1; Laws 1981, p. 1325, § 1; Laws 1983, p. 1431, § 1; Laws 1984, p. 935, § 1; Laws 1984, p. 1388, § 1; Laws 1986, p. 305, § 1; Laws 1986, p. 481, §§ 1, 2; Laws 1990, p. 138, § 1; Laws 1990, p. 2012, § 1; Laws 1992, p. 6, § 16; Laws 1994, p. 351, § 1; Laws 1996, p. 108, §§ 3-5; Laws 1997, p. 514, § 2; Laws 2002, p. 1011, § 2; Laws 2006, Act 534, § 1, eff. July 1, 2006; Laws 2008, Act 802, § 6, eff. July 1, 2008; Laws 2009, Act 102, § 3-2, eff. July 1, 2009; Laws 2010, Act 643, § 1-7, eff. June 4, 2010; Laws 2011, Act 245, § 16, eff. May 13, 2011.

Formerly Code 1933, §§ 26-5104, 26-5105; Code 1933, § 26-2904.

Notes of Decisions (27)

Ga. Code Ann., § 16-11-129, GA ST § 16-11-129
Current through the 2012 Regular Session

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West's Idaho Code Annotated
Title 18. Crimes and Punishments
Chapter 33. Firearms, Explosives and Other Deadly Weapons

I.C. § 18-3302

§ 18-3302. Issuance of licenses to carry concealed weapons
Currentness

(1) The sheriff of a county, on behalf of the state of Idaho, shall, within ninety (90) days after the filing of an application by any person who is not disqualified from possessing or receiving a firearm under state or federal law, issue a license to the person to carry a weapon concealed on his person within this state. For licenses issued before July 1, 2006, a license shall be valid for four (4) years from the date of issue. For licenses issued on or after July 1, 2006, a license shall be valid for five (5) years from the date of issue. The citizen's constitutional right to bear arms shall not be denied to him, unless one (1) of the following applies. He:

(a) Is ineligible to own, possess or receive a firearm under the provisions of state or federal law;

(b) Is formally charged with a crime punishable by imprisonment for a term exceeding one (1) year;

(c) Has been adjudicated guilty in any court of a crime punishable by imprisonment for a term exceeding one (1) year;

(d) Is a fugitive from justice;

(e) Is an unlawful user of, or addicted to, marijuana or any depressant, stimulant or narcotic drug, or any other controlled substance as defined in 21 U.S.C. 802;

(f) Is currently suffering or has been adjudicated as follows, based on substantial evidence:

(i) Lacking mental capacity as defined in section 18-210, Idaho Code;

(ii) Mentally ill as defined in section 66-317, Idaho Code;

(iii) Gravely disabled as defined in section 66-317, Idaho Code; or

(iv) An incapacitated person as defined in section 15-5-101(a), Idaho Code.

(g) Is or has been discharged from the armed forces under dishonorable conditions;

(h) Is or has been adjudicated guilty of or received a withheld judgment or suspended sentence for one (1) or more crimes of violence constituting a misdemeanor, unless three (3) years have elapsed since disposition or pardon has occurred prior to the date on which the application is submitted;

(i) Has had entry of a withheld judgment for a criminal offense which would disqualify him from obtaining a concealed weapon license;

(j) Is an alien illegally in the United States;

(k) Is a person who having been a citizen of the United States, has renounced his or her citizenship;

(l) Is under twenty-one (21) years of age;

(m) Is free on bond or personal recognizance pending trial, appeal or sentencing for a crime which would disqualify him from obtaining a concealed weapon license; or

(n) Is subject to a protection order issued under chapter 63, title 39, Idaho Code, that restrains the person from harassing, stalking or threatening an intimate partner of the person or child of the intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child.

The license application shall be in a form to be prescribed by the director of the Idaho state police, and shall ask the name, address, description and signature of the licensee, date of birth, place of birth, social security number, military status, citizenship and the driver's license number or state identification card number of the licensee if used for identification in applying for the license. The application shall indicate that provision of the social security number is optional. The license application shall contain a warning substantially as follows:

CAUTION: Federal law and state law on the possession of weapons and firearms differ. If you are prohibited by federal law from possessing a weapon or a firearm, you may be prosecuted in federal court. A state permit is not a defense to a federal prosecution.

The sheriff shall require any person who is applying for original issuance of a license to submit his fingerprints in addition to the other information required in this subsection. Within five (5) days after the filing of an application, the sheriff shall forward the application and fingerprints to the Idaho state police for a records check of state and national files. The Idaho state police shall conduct a national fingerprint-based records check and return the results to the sheriff within seventy-five (75) days. The sheriff shall not issue a license before receiving the results of the records check and must deny a license if the applicant is disqualified under any of the criteria listed in paragraphs (a) through (n) of this subsection.

The license will be in a form substantially similar to that of the Idaho driver's license. It will bear the signature, name, address, date of birth, picture of the licensee, expiration date and the driver's license number or state identification card number of the licensee if used for identification in applying for the license. Upon issuing a license under the provisions of this section, the

West's Annotated Indiana Code
Title 35. Criminal Law and Procedure
Article 47. Weapons and Instruments of Violence
Chapter 2. Regulation of Handguns

IC 35-47-2-3

35-47-2-3 Application for license to carry handgun; procedure
Effective: July 1, 2010
Currentness

Sec. 3. (a) A person desiring a license to carry a handgun shall apply:

(1) to the chief of police or corresponding law enforcement officer of the municipality in which the applicant resides;

(2) if that municipality has no such officer, or if the applicant does not reside in a municipality, to the sheriff of the county in which the applicant resides after the applicant has obtained an application form prescribed by the superintendent; or

(3) if the applicant is a resident of another state and has a regular place of business or employment in Indiana, to the sheriff of the county in which the applicant has a regular place of business or employment.

The superintendent and local law enforcement agencies shall allow an applicant desiring to obtain or renew a license to carry a handgun to submit an application electronically under this chapter if funds are available to establish and maintain an electronic application system.

(b) The law enforcement agency which accepts an application for a handgun license shall collect the following application fees:

(1) From a person applying for a four (4) year handgun license, a ten dollar ($10) application fee, five dollars ($5) of which shall be refunded if the license is not issued.

(2) From a person applying for a lifetime handgun license who does not currently possess a valid Indiana handgun license, a fifty dollar ($50) application fee, thirty dollars ($30) of which shall be refunded if the license is not issued.

(3) From a person applying for a lifetime handgun license who currently possesses a valid Indiana handgun license, a forty dollar ($40) application fee, thirty dollars ($30) of which shall be refunded if the license is not issued.

Except as provided in subsection (h), the fee shall be deposited into the law enforcement agency's firearms training fund or other appropriate training activities fund and used by the agency to train law enforcement officers in the proper use of firearms or in other law enforcement duties, or to purchase firearms, firearm related equipment, or body armor (as defined in IC 35-47-5-13(a)) for the law enforcement officers employed by the law enforcement agency. The state board of accounts shall establish rules for the proper accounting and expenditure of funds collected under this subsection.

(c) The officer to whom the application is made shall ascertain the applicant's name, full address, length of residence in the community, whether the applicant's residence is located within the limits of any city or town, the applicant's occupation, place of business or employment, criminal record, if any, and convictions (minor traffic offenses excepted), age, race, sex, nationality, date of birth, citizenship, height, weight, build, color of hair, color of eyes, scars and marks, whether the applicant has previously held an Indiana license to carry a handgun and, if so, the serial number of the license and year issued, whether the applicant's license has ever been suspended or revoked, and if so, the year and reason for the suspension or revocation, and the applicant's reason for desiring a license. The officer to whom the application is made shall conduct an investigation into the applicant's official records and verify thereby the applicant's character and reputation, and shall in addition verify for accuracy the information contained in the application, and shall forward this information together with the officer's recommendation for approval or disapproval and one (1) set of legible and classifiable fingerprints of the applicant to the superintendent.

(d) The superintendent may make whatever further investigation the superintendent deems necessary. Whenever disapproval is recommended, the officer to whom the application is made shall provide the superintendent and the applicant with the officer's complete and specific reasons, in writing, for the recommendation of disapproval.

(e) If it appears to the superintendent that the applicant:

(1) has a proper reason for carrying a handgun;

(2) is of good character and reputation;

(3) is a proper person to be licensed; and

(4) is:

(A) a citizen of the United States; or

(B) not a citizen of the United States but is allowed to carry a firearm in the United States under federal law;

the superintendent shall issue to the applicant a qualified or an unlimited license to carry any handgun lawfully possessed by the applicant. The original license shall be delivered to the licensee. A copy shall be delivered to the officer to whom the application for license was made. A copy shall be retained by the superintendent for at least four (4) years in the case of a four (4) year license. The superintendent may adopt guidelines to establish a records retention policy for a lifetime license. A four (4) year license shall be valid for a period of four (4) years from the date of issue. A lifetime license is valid for the life of the individual receiving the license. The license of police officers, sheriffs or their deputies, and law enforcement officers of the United States government who have been honorably retired by a lawfully created pension board or its equivalent after twenty (20) or more years of service, shall be valid for the life of these individuals. However, a lifetime license is automatically revoked if the license holder does not remain a proper person.

(f) At the time a license is issued and delivered to a licensee under subsection (e), the superintendent shall include with the license information concerning handgun safety rules that:

Iowa Code Annotated
Title XVI. Criminal Law and Procedure [Chs. 687-915] (Refs & Annos)
Subtitle 1. Crime Control and Criminal Acts [Chs. 687-747] (Refs & Annos)
Chapter 724. Weapons (Refs & Annos)

I.C.A. § 724.7

724.7. Nonprofessional permit to carry weapons
Effective: July 1, 2012
Currentness

<[Text subject to final changes by the Iowa Code Editor for Code 2013.]>

1. Any person who is not disqualified under section 724.8, who satisfies the training requirements of section 724.9, and who files an application in accordance with section 724.10 shall be issued a nonprofessional permit to carry weapons. Such permits shall be on a form prescribed and published by the commissioner of public safety, which shall be readily distinguishable from the professional permit, and shall identify the holder of the permit. Such permits shall not be issued for a particular weapon and shall not contain information about a particular weapon including the make, model, or serial number of the weapon or any ammunition used in that weapon. All permits so issued shall be for a period of five years and shall be valid throughout the state except where the possession or carrying of a firearm is prohibited by state or federal law.

2. The commissioner of public safety shall develop a process to allow service members deployed for military service to submit a renewal of a nonprofessional permit to carry weapons early and by mail. In addition, a permit issued to a service member who is deployed for military service, as defined in section 29A.1, subsection 3, 7A, or 11, that would otherwise expire during the period of deployment shall remain valid for ninety days after the end of the service member's deployment.

Credits

Added by Acts 1976 (66 G.A.) ch. 1245 (ch. 1), § 2406, eff. Jan. 1, 1978. Amended by Acts 2010 (83 G.A.) ch. 1170, S.F. 2297, § 6; Acts 2010 (83 G.A.) ch. 1178, S.F. 2379, § 5, eff. Jan. 1, 2011; Acts 2011 (84 G.A.) ch. 47, S.F. 194, § 12; Acts 2012 (84 G.A.) S.F. 2097, § 40.

Notes of Decisions (8)

I. C. A. § 724.7, IA ST § 724.7
Current with legislation from the 2012 Reg.Sess.

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West's Kansas Statutes Annotated Currentness

Chapter 75. State Departments; Public Officers and Employees
Article 7C. Firearms
Concealed Firearms

K.S.A. 75-7c03
75-7c03. License to carry concealed handgun; issuance; form; display on demand of law enforcement officer; reciprocity

(a) The attorney general shall issue licenses to carry concealed handguns to persons who comply with the application and training requirements of this act and who are not disqualified under K.S.A. 75-7c04, and amendments thereto. Such licenses shall be valid throughout the state for a period of four years from the date of issuance.

(b) The license shall be a separate card, in a form prescribed by the attorney general, that is approximately the size of a Kansas driver's license and shall bear the licensee's signature, name, address, date of birth and driver's license number or nondriver's identification card number except that the attorney general shall assign a unique number for military applicants or their dependents described in subsection (a)(1)(B) of K.S.A. 75-7c05, and amendments thereto. At all times when the licensee is in actual possession of a concealed handgun, the licensee shall carry the valid license to carry concealed handguns. On demand of a law enforcement officer, the licensee shall display the license to carry concealed handguns and proper identification. Verification by a law enforcement officer that a person holds a valid license to carry a concealed handgun may be accomplished by record check using the person's driver's license information or the person's concealed carry license number.

The license of any person who violates the provisions of this subsection shall be suspended for not less than 30 days upon the first violation and shall be revoked for not less than five years upon a second or subsequent violation. However, a violation of this subsection shall not constitute a violation of subsection (a)(4) of K.S.A. 21-4201, prior to its repeal, or subsection (a)(4) of K.S.A. 21-6302, and amendments thereto, if the licensee's license is valid.

(c) A valid license, issued by any other state or the District of Columbia, to carry a firearm shall be recognized as valid in this state, but only while the holder is not a resident of Kansas, if the attorney general determines that standards for issuance of such license or permit by such state or district are reasonably similar to or greater than the standards imposed by this act. The attorney general shall maintain and publish a list of such other jurisdictions which the attorney general determines have standards reasonably similar to or greater than the standards imposed by this act.

(d) A person who establishes residency in this state may carry concealed handguns under the terms of this act until the person's application for a license under this act is approved or denied, provided that the person has been issued and possesses a valid license or permit to carry a firearm from a jurisdiction recognized by the attorney general under subsection (c) and carries with that license or permit a receipt issued by the attorney general, which states the person's application for licensure under this act has been received. For purposes of such application, possession of the valid nonresident license or permit to carry a firearm shall satisfy the requirements of subsection (b)(2) of K.S.A. 75-7c04, and amendments thereto.

Credits

Laws 2006, ch. 32, § 3; Laws 2006, ch. 210, § 1; Laws 2009, ch. 101, § 1, eff. July 1, 2009; Laws 2010, ch. 140, § 3, eff. July

Baldwin's Kentucky Revised Statutes Annotated
Title XIX. Public Safety and Morals
Chapter 237. Firearms and Destructive Devices
Carrying Concealed Deadly Weapon

KRS § 237.110

237.110 License to carry concealed deadly weapon; criteria; training; application; issuance and denial of licenses; automated listing of license holders; suspension or revocation; renewal; prohibitions; reciprocity; reports; requirements for training classes
Currentness

(1) The Department of Kentucky State Police is authorized to issue and renew licenses to carry concealed firearms or other deadly weapons, or a combination thereof, to persons qualified as provided in this section.

(2) An original or renewal license issued pursuant to this section shall:

(a) Be valid throughout the Commonwealth and, except as provided in this section or other specific section of the Kentucky Revised Statutes or federal law, permit the holder of the license to carry firearms, ammunition, or other deadly weapons, or a combination thereof, at any location in the Commonwealth;

(b) Unless revoked as provided by law, be valid for a period of five (5) years from the date of issuance;

(c) Authorize the holder of the license to carry a concealed firearm or other deadly weapon, or a combination thereof, on or about his or her person; and

(d) Authorize the holder of the license to carry ammunition for a firearm on or about his or her person.

(3) Prior to the issuance of an original or renewal license to carry a concealed deadly weapon, the Department of Kentucky State Police shall conduct a background check to ascertain whether the applicant is eligible under 18 U.S.C. sec. 922(g) and (n), any other applicable federal law, and state law to purchase, receive, or possess a firearm or ammunition, or both. The background check shall include:

(a) A state records check covering the items specified in this subsection, together with any other requirements of this section;

(b) A federal records check, which shall include a National Instant Criminal Background Check System (NICS) check;

(c) A federal Immigration Alien Query if the person is an alien who has been lawfully admitted to the United States by the United States government or an agency thereof; and

(d) In addition to the Immigration Alien Query, if the applicant has not been lawfully admitted to the United States under permanent resident status, the Department of Kentucky State Police shall, if a doubt exists relating to an alien's eligibility to purchase a firearm, consult with the United States Department of Homeland Security, United States Department of Justice, United States Department of State, or other federal agency to confirm whether the alien is eligible to purchase a firearm in the United States, bring a firearm into the United States, or possess a firearm in the United States under federal law.

(4) The Department of Kentucky State Police shall issue an original or renewal license if the applicant:

(a) Is not prohibited from the purchase, receipt, or possession of firearms, ammunition, or both pursuant to 18 U.S.C. 922(g), 18 U.S.C. 922(n), or applicable federal or state law;

(b) 1. Is a citizen of the United States who is a resident of this Commonwealth and has been a resident for six (6) months or longer immediately preceding the filing of the application;

2. Is a citizen of the United States who is a member of the Armed Forces of the United States who is on active duty, who is at the time of application assigned to a military posting in Kentucky, and who has been assigned to a posting in the Commonwealth for six (6) months or longer immediately preceding the filing of the application;

3. Is lawfully admitted to the United States by the United States government or an agency thereof, is permitted by federal law to purchase a firearm, and has been a resident of this Commonwealth for six (6) months or longer immediately preceding the filing of the application; or

4. Is lawfully admitted to the United States by the United States government or an agency thereof, is permitted by federal law to purchase a firearm, is, at the time of the application, assigned to a military posting in Kentucky, and has been assigned to a posting in the Commonwealth for six (6) months or longer immediately preceding the filing of the application;

(c) Is twenty-one (21) years of age or older;

(d) Has not been committed to a state or federal facility for the abuse of a controlled substance or been convicted of a misdemeanor violation of KRS Chapter 218A or similar laws of any other state relating to controlled substances, within a three (3) year period immediately preceding the date on which the application is submitted;

(e) Does not chronically and habitually use alcoholic beverages as evidenced by the applicant having two (2) or more convictions for violating KRS 189A.010 within the three (3) years immediately preceding the date on which the application is submitted, or having been committed as an alcoholic pursuant to KRS Chapter 222 or similar laws of another state within the three (3) year period immediately preceding the date on which the application is submitted;

(f) Does not owe a child support arrearage which equals or exceeds the cumulative amount which would be owed after one (1) year of nonpayment, if the Department of Kentucky State Police has been notified of the arrearage by the Cabinet for Health and Family Services;

G. The chief law enforcement officer of a parish shall have the authority to issue a concealed handgun permit to an individual, which permit shall be valid only within the boundaries of the chief law enforcement officer's parish. Upon application, the officer shall personally perform a standard criminal record check. The officer who performed the standard criminal record check shall not be liable for acts committed by the permittee, unless the officer had actual personal knowledge at the time he issued the permit that the permittee was mentally unstable or disqualified by law from possessing a firearm. Notwithstanding the provisions of this Subsection, the issuance of a permit shall not be unreasonably withheld.

H. The deputy secretary of the Department of Public Safety shall have the authority to grant to an individual a concealed handgun permit from the office of state police. Before the individual applies to the deputy secretary for a permit, he must have been granted a concealed handgun permit by the chief law enforcement officer of the parish in which he is officially domiciled. Any individual who receives a concealed handgun permit from the office of state police must be bonded in the amount of five thousand dollars and must adhere to all restrictive stipulations as provided in the concealed handgun permit. Further, the deputy secretary shall have the authority to promulgate and adopt regulations providing with respect to the issuance and use of said permit.

I. The superintendent of state police or the chief law enforcement officer of a parish shall have the authority to revoke any concealed handgun permit, and is further empowered to require those holding handgun permits to furnish proof of their being bonded, and such other information as may be deemed necessary for determining suitability for holding a concealed handgun permit.

J. Special officer commissions shall be valid only for a period of one year from the date of their issuance. However, special officer commissions issued to employees of the department shall be valid until revoked by the superintendent. Special officer commissions issued to judges shall be valid for the length of their term of office.

K. For the purposes of this Section, "handgun' ' is defined as meaning any pistol or revolver originally designed to be fired by the use of a single hand and which is designed to fire or is capable of firing fixed cartridge ammunition.

L. No provision of this Section or of any regulation of the superintendent of state police shall be construed to require persons holding bona fide law enforcement officer commissions to possess a handgun permit.

M. Anyone in possession of a concealed handgun permit issued by the superintendent who uses a handgun in a task not directly related to the stipulations set forth in the permit shall be fined not more than five hundred dollars, or imprisoned for not more than six months, or both.

N. (1) Notwithstanding the provisions of Subsections A, B, C, and D of this Section, the deputy secretary of public safety services shall issue a special officer's commission to the sergeant at arms or assistant sergeants at arms of the Senate or the House of Representatives when directed to do so by the president of the Senate or the speaker of the House of Representatives. The deputy secretary shall not determine eligibility for a special officer's commission under this Subsection, which determination shall be made solely by the president of the Senate or the speaker of the House of Representatives.

(2) Commissions under this Subsection shall not exceed the term of the president of the Senate or the speaker of the House of Representatives, according to the length of the remaining term of the respective party.

Credits

Maine Revised Statutes Annotated
Title 25. Internal Security and Public Safety (Refs & Annos)
Part 5. Public Safety
Chapter 252. Permits to Carry Concealed Handguns (Refs & Annos)

25 M.R.S.A. § 2003

§ 2003. Permits to carry concealed handguns
Currentness

1. Criteria for issuing permit. The issuing authority shall, upon written application, issue a permit to carry concealed handguns to an applicant over whom it has issuing authority and who has demonstrated good moral character and who meets the following requirements:

A. Is 18 years of age or older;

B. Is not disqualified to possess a firearm pursuant to Title 15, section 393, is not disqualified as a permit holder under that same section and is not disqualified to possess a firearm based on federal law as a result of a criminal conviction;

C. Repealed. Laws 1993, c. 368, § 4.

D. Submits an application that contains the following:

(1) Full name;

(2) Full current address and addresses for the prior 5 years;

(3) The date and place of birth, height, weight, color of eyes, color of hair, sex and race;

(4) A record of previous issuances of, refusals to issue and revocations of a permit to carry concealed firearms, handguns or other concealed weapons by any issuing authority in the State or any other jurisdiction. The record of previous refusals alone does not constitute cause for refusal and the record of previous revocations alone constitutes cause for refusal only as provided in section 2005; and

(5) Answers to the following questions:

Michigan Compiled Laws Annotated
Chapter 28. Michigan State Police
Firearms (Refs & Annos)

M.C.L.A. 28.422

28.422. Purchase, possession, etc., of pistol; license requirement, qualifications; applications; issuance of license, disposition of copies; exemptions from section; pistol safety brochure; forgery, penalties; licensing authorities, hours

Currentness

Sec. 2. (1) Except as otherwise provided in this section, a person shall not purchase, carry, possess, or transport a pistol in this state without first having obtained a license for the pistol as prescribed in this section.

(2) A person who brings a pistol into this state who is on leave from active duty with the armed forces of the United States or who has been discharged from active duty with the armed forces of the United States shall obtain a license for the pistol within 30 days after his or her arrival in this state.

(3) The commissioner or chief of police of a city, township, or village police department that issues licenses to purchase, carry, possess, or transport pistols, or his or her duly authorized deputy, or the sheriff or his or her duly authorized deputy, in the parts of a county not included within a city, township, or village having an organized police department, in discharging the duty to issue licenses shall with due speed and diligence issue licenses to purchase, carry, possess, or transport pistols to qualified applicants residing within the city, village, township, or county, as applicable unless he or she has probable cause to believe that the applicant would be a threat to himself or herself or to other individuals, or would commit an offense with the pistol that would violate a law of this or another state or of the United States. An applicant is qualified if all of the following circumstances exist:

(a) The person is not subject to an order or disposition for which he or she has received notice and an opportunity for a hearing, and which was entered into the law enforcement information network pursuant to any of the following:

(*i*) Section 464a of the mental health code, 1974 PA 258, MCL 330.1464a.

(*ii*) Section 5107 of the estates and protected individuals code, 1998 PA 386, MCL 700.5107, or section 444a of former 1978 PA 642.

(*iii*) Section 2950 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950.

(*iv*) Section 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950a.

Minnesota Statutes Annotated
Crimes, Criminals (Ch. 609-624)
Chapter 624. Crimes, Other Provisions
Firearms

M.S.A. § 624.714

624.714. Carrying of weapons without permit; penalties
Currentness

Subdivision 1. Repealed by Laws 2003, c. 28, art. 2, § 35.

Subd. 1a. Permit required; penalty. A person, other than a peace officer, as defined in section 626.84, subdivision 1, who carries, holds, or possesses a pistol in a motor vehicle, snowmobile, or boat, or on or about the person's clothes or the person, or otherwise in possession or control in a public place, as defined in section 624.7181, subdivision 1, paragraph (c), without first having obtained a permit to carry the pistol is guilty of a gross misdemeanor. A person who is convicted a second or subsequent time is guilty of a felony.

Subd. 1b. Display of permit; penalty. (a) The holder of a permit to carry must have the permit card and a driver's license, state identification card, or other government-issued photo identification in immediate possession at all times when carrying a pistol and must display the permit card and identification document upon lawful demand by a peace officer, as defined in section 626.84, subdivision 1. A violation of this paragraph is a petty misdemeanor. The fine for a first offense must not exceed $25. Notwithstanding section 609.531, a firearm carried in violation of this paragraph is not subject to forfeiture.

(b) A citation issued for violating paragraph (a) must be dismissed if the person demonstrates, in court or in the office of the arresting officer, that the person was authorized to carry the pistol at the time of the alleged violation.

(c) Upon the request of a peace officer, a permit holder must write a sample signature in the officer's presence to aid in verifying the person's identity.

(d) Upon the request of a peace officer, a permit holder shall disclose to the officer whether or not the permit holder is currently carrying a firearm.

Subd. 2. Where application made; authority to issue permit; criteria; scope. (a) Applications by Minnesota residents for permits to carry shall be made to the county sheriff where the applicant resides. Nonresidents, as defined in section 171.01, subdivision 42, may apply to any sheriff.

(b) Unless a sheriff denies a permit under the exception set forth in subdivision 6, paragraph (a), clause (3), a sheriff must issue a permit to an applicant if the person:

(1) has training in the safe use of a pistol;

(2) is at least 21 years old and a citizen or a permanent resident of the United States;

(3) completes an application for a permit;

(4) is not prohibited from possessing a firearm under the following sections:

(i) 518B.01, subdivision 14;

(ii) 609.224, subdivision 3;

(iii) 609.2242, subdivision 3;

(iv) 609.749, subdivision 8;

(v) 624.713;

(vi) 624.719;

(vii) 629.715, subdivision 2;

(viii) 629.72, subdivision 2; or

(ix) any federal law; and

(5) is not listed in the criminal gang investigative data system under section 299C.091.

(c) A permit to carry a pistol issued or recognized under this section is a state permit and is effective throughout the state.

(d) A sheriff may contract with a police chief to process permit applications under this section. If a sheriff contracts with a police chief, the sheriff remains the issuing authority and the police chief acts as the sheriff's agent. If a sheriff contracts with a police chief, all of the provisions of this section will apply.

West's Annotated Mississippi Code
Title 45. Public Safety and Good Order
Chapter 9. Weapons
License to Carry Concealed Pistol or Revolver

Miss. Code Ann. § 45-9-101

§ 45-9-101. Licensing generally
Currentness

(1)(a) The Department of Public Safety is authorized to issue licenses to carry stun guns, concealed pistols or revolvers to persons qualified as provided in this section. Such licenses shall be valid throughout the state for a period of five (5) years from the date of issuance. Any person possessing a valid license issued pursuant to this section may carry a stun gun, concealed pistol or concealed revolver.

(b) The licensee must carry the license, together with valid identification, at all times in which the licensee is carrying a stun gun, concealed pistol or revolver and must display both the license and proper identification upon demand by a law enforcement officer. A violation of the provisions of this paragraph (b) shall constitute a noncriminal violation with a penalty of Twenty-five Dollars ($25.00) and shall be enforceable by summons.

(2) The Department of Public Safety shall issue a license if the applicant:

(a) Is a resident of the state and has been a resident for twelve (12) months or longer immediately preceding the filing of the application. However, this residency requirement may be waived, provided the applicant possesses a valid permit from another state, is active military personnel stationed in Mississippi or is a retired law enforcement officer establishing residency in the state;

(b) Is twenty-one (21) years of age or older;

(c) Does not suffer from a physical infirmity which prevents the safe handling of a stun gun, pistol or revolver;

(d) Is not ineligible to possess a firearm by virtue of having been convicted of a felony in a court of this state, of any other state, or of the United States without having been pardoned for same;

(e) Does not chronically or habitually abuse controlled substances to the extent that his normal faculties are impaired. It shall be presumed that an applicant chronically and habitually uses controlled substances to the extent that his faculties are impaired if the applicant has been voluntarily or involuntarily committed to a treatment facility for the abuse of a controlled substance or been found guilty of a crime under the provisions of the Uniform Controlled Substances Law or similar laws of any other state

or the United States relating to controlled substances within a three-year period immediately preceding the date on which the application is submitted;

(f) Does not chronically and habitually use alcoholic beverages to the extent that his normal faculties are impaired. It shall be presumed that an applicant chronically and habitually uses alcoholic beverages to the extent that his normal faculties are impaired if the applicant has been voluntarily or involuntarily committed as an alcoholic to a treatment facility or has been convicted of two (2) or more offenses related to the use of alcohol under the laws of this state or similar laws of any other state or the United States within the three-year period immediately preceding the date on which the application is submitted;

(g) Desires a legal means to carry a stun gun, concealed pistol or revolver to defend himself;

(h) Has not been adjudicated mentally incompetent, or has waited five (5) years from the date of his restoration to capacity by court order;

(i) Has not been voluntarily or involuntarily committed to a mental institution or mental health treatment facility unless he possesses a certificate from a psychiatrist licensed in this state that he has not suffered from disability for a period of five (5) years;

(j) Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony unless three (3) years have elapsed since probation or any other conditions set by the court have been fulfilled;

(k) Is not a fugitive from justice; and

(l) Is not disqualified to possess or own a weapon based on federal law.

(3) The Department of Public Safety may deny a license if the applicant has been found guilty of one or more crimes of violence constituting a misdemeanor unless three (3) years have elapsed since probation or any other conditions set by the court have been fulfilled or expunction has occurred prior to the date on which the application is submitted, or may revoke a license if the licensee has been found guilty of one or more crimes of violence within the preceding three (3) years. The department shall, upon notification by a law enforcement agency or a court and subsequent written verification, suspend a license or the processing of an application for a license if the licensee or applicant is arrested or formally charged with a crime which would disqualify such person from having a license under this section, until final disposition of the case. The provisions of subsection (7) of this section shall apply to any suspension or revocation of a license pursuant to the provisions of this section.

(4) The application shall be completed, under oath, on a form promulgated by the Department of Public Safety and shall include only:

(a) The name, address, place and date of birth, race, sex and occupation of the applicant;

(b) The driver's license number or social security number of applicant;

(c) Any previous address of the applicant for the two (2) years preceding the date of the application;

Vernon's Annotated Missouri Statutes
Title XXXVIII. Crimes and Punishment; Peace Officers and Public Defenders
Chapter 571. Weapons Offenses (Refs & Annos)
Concealed Carry Endorsements

V.A.M.S. 571.101

571.101. Concealed carry endorsements, application requirements--approval procedures--issuance of certificates, when--record-keeping requirements--fees

Currentness

1. All applicants for concealed carry endorsements issued pursuant to subsection 7 of this section must satisfy the requirements of sections 571.101 to 571.121. If the said applicant can show qualification as provided by sections 571.101 to 571.121, the county or city sheriff shall issue a certificate of qualification for a concealed carry endorsement. Upon receipt of such certificate, the certificate holder shall apply for a driver's license or nondriver's license with the director of revenue in order to obtain a concealed carry endorsement. Any person who has been issued a concealed carry endorsement on a driver's license or nondriver's license and such endorsement or license has not been suspended, revoked, cancelled, or denied may carry concealed firearms on or about his or her person or within a vehicle. A concealed carry endorsement shall be valid for a period of three years from the date of issuance or renewal. The concealed carry endorsement is valid throughout this state.

2. A certificate of qualification for a concealed carry endorsement issued pursuant to subsection 7 of this section shall be issued by the sheriff or his or her designee of the county or city in which the applicant resides, if the applicant:

(1) Is at least twenty-one years of age, is a citizen of the United States and either:

(a) Has assumed residency in this state; or

(b) Is a member of the armed forces stationed in Missouri, or the spouse of such member of the military;

(2) Is at least twenty-one years of age, or is at least eighteen years of age and a member of the United States Armed Forces or honorably discharged from the United States Armed Forces, and is a citizen of the United States and either:

(a) Has assumed residency in this state;

(b) Is a member of the armed forces stationed in Missouri; or

(c) The spouse of such member of the military stationed in Missouri and twenty-one years of age;

(3) Has not pled guilty to or entered a plea of nolo contendere or been convicted of a crime punishable by imprisonment for a term exceeding one year under the laws of any state or of the United States other than a crime classified as a misdemeanor

West's Montana Code Annotated Currentness
Title 45. Crimes (Refs & Annos)
Chapter 8. Offenses Against Public Order
Part 3. Weapons (Refs & Annos)

MCA 45-8-321
45-8-321. Permit to carry concealed weapon

(1) A county sheriff shall, within 60 days after the filing of an application, issue a permit to carry a concealed weapon to the applicant. The permit is valid for 4 years from the date of issuance. An applicant must be a United States citizen who is 18 years of age or older and who holds a valid Montana driver's license or other form of identification issued by the state that has a picture of the person identified. An applicant must have been a resident of the state for at least 6 months. Except as provided in subsection (2), this privilege may not be denied an applicant unless the applicant:

(a) is ineligible under Montana or federal law to own, possess, or receive a firearm;

(b) has been charged and is awaiting judgment in any state of a state or federal crime that is punishable by incarceration for 1 year or more;

(c) subject to the provisions of subsection (6), has been convicted in any state or federal court of:

(i) a crime punishable by more than 1 year of incarceration; or

(ii) regardless of the sentence that may be imposed, a crime that includes as an element of the crime an act, attempted act, or threat of intentional homicide, serious bodily harm, unlawful restraint, sexual abuse, or sexual intercourse or contact without consent;

(d) has been convicted under 45-8-327 or 45-8-328, unless the applicant has been pardoned or 5 years have elapsed since the date of the conviction;

(e) has a warrant of any state or the federal government out for the applicant's arrest;

(f) has been adjudicated in a criminal or civil proceeding in any state or federal court to be an unlawful user of an intoxicating substance and is under a court order of imprisonment or other incarceration, probation, suspended or deferred imposition of sentence, treatment or education, or other conditions of release or is otherwise under state supervision;

(g) has been adjudicated in a criminal or civil proceeding in any state or federal court to be mentally ill, mentally defective, or mentally disabled and is still subject to a disposition order of that court; or

(h) was dishonorably discharged from the United States armed forces.

West's Revised Statutes of Nebraska Annotated Currentness
Chapter 69. Personal Property
Article 24. Guns
(c) Concealed Handgun Permit Act

Neb.Rev.St. § 69-2430

69-2430. Application; form; contents; prohibited acts; penalty; permit issuance; denial; appeal

(1) Application for a permit to carry a concealed handgun shall be made in person at any Nebraska State Patrol Troop Headquarters or office provided by the patrol for purposes of accepting such an application. The applicant shall present a current Nebraska motor vehicle operator's license, Nebraska-issued state identification card, or military identification card and shall submit two legible sets of fingerprints for a criminal history record information check pursuant to section 69-2431. The application shall be made on a form prescribed by the Superintendent of Law Enforcement and Public Safety. The application shall state the applicant's full name, motor vehicle operator's license number or state identification card number, address, and date of birth and contain the applicant's signature and shall include space for the applicant to affirm that he or she meets each and every one of the requirements set forth in section 69-2433. The applicant shall attach to the application proof of training and proof of vision as required in subdivision (3) of section 69-2433.

(2) A person applying for a permit to carry a concealed handgun who gives false information or offers false evidence of his or her identity is guilty of a Class IV felony.

(3)(a) Until January 1, 2010, the permit to carry a concealed handgun shall be issued by the Nebraska State Patrol within five business days after completion of the applicant's criminal history record information check, if the applicant has complied with this section and has met all the requirements of section 69-2433.

(b) Beginning January 1, 2010, the permit to carry a concealed handgun shall be issued by the Nebraska State Patrol within forty-five days after the date an application for the permit has been made by the applicant if the applicant has complied with this section and has met all the requirements of section 69-2433.

(4) An applicant denied a permit to carry a concealed handgun may appeal to the district court of the judicial district of the county in which he or she resides or the county in which he or she applied for the permit pursuant to the Administrative Procedure Act.

Credits
Laws 2006, LB 454, § 4; Laws 2009, LB 63, § 36, eff. May 28, 2009; Laws 2009, LB 430, § 10, eff. Aug. 30, 2009.

Neb. Rev. St. § 69-2430, NE ST § 69-2430

Current through the 102nd Legislature Second Regular Session (2012)

End of Document

West's Nevada Revised Statutes Annotated
Title 15. Crimes and Punishments (Chapters 193-207)
Chapter 202. Crimes Against Public Health and Safety (Refs & Annos)
Weapons
Concealed Firearms

N.R.S. 202.3657

202.3657. Application for permit; eligibility; denial or revocation of permit

Effective: October 1, 2011
Currentness

1. Any person who is a resident of this State may apply to the sheriff of the county in which he or she resides for a permit on a form prescribed by regulation of the Department. Any person who is not a resident of this State may apply to the sheriff of any county in this State for a permit on a form prescribed by regulation of the Department. Application forms for permits must be furnished by the sheriff of each county upon request.

2. A person applying for a permit may submit one application and obtain one permit to carry all revolvers and semiautomatic firearms owned by the person. The person must not be required to list and identify on the application each revolver or semiautomatic firearm owned by the person. A permit must list each category of firearm to which the permit pertains and is valid for any revolver or semiautomatic firearm which is owned or thereafter obtained by the person to whom the permit is issued.

3. Except as otherwise provided in this section, the sheriff shall issue a permit for revolvers, semiautomatic firearms or both, as applicable, to any person who is qualified to possess the firearms to which the application pertains under state and federal law, who submits an application in accordance with the provisions of this section and who:

(a) Is 21 years of age or older;

(b) Is not prohibited from possessing a firearm pursuant to NRS 202.360; and

(c) Demonstrates competence with revolvers, semiautomatic firearms or both, as applicable, by presenting a certificate or other documentation to the sheriff which shows that the applicant:

(1) Successfully completed a course in firearm safety approved by a sheriff in this State; or

(2) Successfully completed a course in firearm safety offered by a federal, state or local law enforcement agency, community college, university or national organization that certifies instructors in firearm safety.

Such a course must include instruction in the use of revolvers, semiautomatic firearms or both, as applicable, and in the laws of this State relating to the use of a firearm. A sheriff may not approve a course in firearm safety pursuant to subparagraph (1) unless the sheriff determines that the course meets any standards that are established by the Nevada Sheriffs' and Chiefs' Association or, if the Nevada Sheriffs' and Chiefs' Association ceases to exist, its legal successor.

Revised Statutes Annotated of the State of New Hampshire
Title XII. Public Safety and Welfare (Ch. 153 to 174) (Refs & Annos)
Chapter 159. Pistols and Revolvers (Refs & Annos)

N.H. Rev. Stat. § 159:6

159:6 License to Carry.

Currentness

I. (a) The selectmen of a town, the mayor or chief of police of a city or a full-time police officer designated by them respectively, the county sheriff for a resident of an unincorporated place, or the county sheriff if designated by the selectmen of a town that has no police chief, upon application of any resident of such town, city, or unincorporated place, or the director of state police, or some person designated by such director, upon application of a nonresident, shall issue a license to such applicant authorizing the applicant to carry a loaded pistol or revolver in this state for not less than 4 years from the date of issue, if it appears that the applicant has good reason to fear injury to the applicant's person or property or has any proper purpose, and that the applicant is a suitable person to be licensed. Hunting, target shooting, or self-defense shall be considered a proper purpose. The license shall be valid for all allowable purposes regardless of the purpose for which it was originally issued.

(b) The license shall be in duplicate and shall bear the name, address, description, and signature of the licensee. The original shall be delivered to the licensee and the duplicate shall be preserved by the people issuing the same for 4 years. When required, license renewal shall take place within the month of the fourth anniversary of the license holder's date of birth following the date of issuance. The license shall be issued within 14 days after application, and, if such application is denied, the reason for such denial shall be stated in writing, the original of which such writing shall be delivered to the applicant, and a copy kept in the office of the person to whom the application was made. The fee for licenses issued to residents of the state shall be $10, which fee shall be for the use of the law enforcement department of the town or city granting said licenses; the fee for licenses granted to out-of-state residents shall be $100, which fee shall be for the use of the state. The director of state police is hereby authorized and directed to prepare forms for the licenses required under this chapter and forms for the application for such licenses and to supply the same to officials of the cities and towns authorized to issue the licenses. No other forms shall be used by officials of cities and towns. The cost of the forms shall be paid out of the fees received from nonresident licenses.

II. No photograph or fingerprint shall be required or used as a basis to grant, deny, or renew a license to carry for a resident or nonresident, unless requested by the applicant.

Notes of Decisions (7)

N.H. Rev. Stat. § 159:6, NH ST § 159:6
Updated with laws current through Chapter 290 (End) of the 2012 Reg. Sess

End of Document

West's New Mexico Statutes Annotated
Chapter 29. Law Enforcement
Article 19. Concealed Handgun Carry Act

N. M. S. A. 1978, § 29-19-4

§ 29-19-4. Applicant qualifications

Currentness

A. The department shall issue a concealed handgun license to an applicant who:

(1) is a citizen of the United States;

(2) is a resident of New Mexico or is a member of the armed forces whose permanent duty station is located in New Mexico or is a dependent of such a member;

(3) is twenty-one years of age or older;

(4) is not a fugitive from justice;

(5) has not been convicted of a felony in New Mexico or any other state or pursuant to the laws of the United States or any other jurisdiction;

(6) is not currently under indictment for a felony criminal offense in New Mexico or any other state or pursuant to the laws of the United States or any other jurisdiction;

(7) is not otherwise prohibited by federal law or the law of any other jurisdiction from purchasing or possessing a firearm;

(8) has not been adjudicated mentally incompetent or committed to a mental institution;

(9) is not addicted to alcohol or controlled substances; and

(10) has satisfactorily completed a firearms training course approved by the department for the category and the largest caliber of handgun that the applicant wants to be licensed to carry as a concealed handgun.

B. The department shall deny a concealed handgun license to an applicant who has:

West's North Carolina General Statutes Annotated
Chapter 14. Criminal Law
Subchapter XI. General Police Regulations
Article 54B. Concealed Handgun Permit

N.C.G.S.A. § 14-415.11

§ 14-415.11. Permit to carry concealed handgun; scope of permit

Currentness

(a) Any person who has a concealed handgun permit may carry a concealed handgun unless otherwise specifically prohibited by law. The person shall carry the permit together with valid identification whenever the person is carrying a concealed handgun, shall disclose to any law enforcement officer that the person holds a valid permit and is carrying a concealed handgun when approached or addressed by the officer, and shall display both the permit and the proper identification upon the request of a law enforcement officer. In addition to these requirements, a military permittee whose permit has expired during deployment may carry a concealed handgun during the 90 days following the end of deployment and before the permit is renewed provided the permittee also displays proof of deployment to any law enforcement officer.

(b) The sheriff shall issue a permit to carry a concealed handgun to a person who qualifies for a permit under G.S. 14-415.12. The permit shall be valid throughout the State for a period of five years from the date of issuance.

(c) Except as provided in G.S. 14-415.27, a permit does not authorize a person to carry a concealed handgun in any of the following:

(1) Areas prohibited by G.S. 14-269.2, 14-269.3, and 14-277.2.

(2) Areas prohibited by G.S. 14-269.4, except as allowed under G.S. 14-269.4(6).

(3) In an area prohibited by rule adopted under G.S. 120-32.1.

(4) In any area prohibited by 18 U.S.C. § 922 or any other federal law.

(5) In a law enforcement or correctional facility.

(6) In a building housing only State or federal offices.

(7) In an office of the State or federal government that is not located in a building exclusively occupied by the State or federal government.

West's North Dakota Century Code Annotated
Title 62.1. Weapons
Chapter 62.1-04. Concealed Weapons

NDCC, 62.1-04-03

§ 62.1-04-03. License to carry a firearm or dangerous weapon concealed

Currentness

1. The director of the bureau of criminal investigation shall issue a license to carry a firearm or dangerous weapon concealed upon review of an application submitted to the director by a resident or nonresident citizen of the United States if the following criteria are met:

a. The applicant is at least twenty-one years of age for a class 1 license or at least eighteen years of age for a class 2 license.

b. The applicant has a valid reason for carrying the firearm or dangerous weapon concealed, including self-protection, protection of others, or work-related needs.

c. The applicant is not a person specified in section 62.1-02-01 and for a class 1 license the applicant:

(1) Has not been convicted of a felony;

(2) Has not been convicted of a crime of violence;

(3) Has not been convicted of an offense involving the use of alcohol;

(4) Has not been convicted of an offense involving the unlawful use of narcotics or other controlled substances;

(5) Has not been convicted of an offense involving moral turpitude;

(6) Has not been convicted of an offense involving domestic violence;

(7) Has not been adjudicated by a state or federal court as mentally incompetent, unless the adjudication has been withdrawn or reversed; and

(8) Is qualified to purchase and possess a firearm under federal law.

retired peace officer or federal law enforcement officer described in division (B)(1) of this section or a retired person described in division (B)(1)(b) of section 109.77 of the Revised Code and division (B)(1) of this section;

(ii) That, through participation in the military service or through the former employment described in division (B)(3)(d)(i) of this section, the applicant acquired experience with handling handguns or other firearms, and the experience so acquired was equivalent to training that the applicant could have acquired in a course, class, or program described in division (B)(3)(a), (b), or (c) of this section.

(e) A certificate or another similar document that evidences satisfactory completion of a firearms training, safety, or requalification or firearms safety instructor course, class, or program that is not otherwise described in division (B)(3)(a), (b), (c), or (d) of this section, that was conducted by an instructor who was certified by an official or entity of the government of this or another state or the United States or by the national rifle association, and that complies with the requirements set forth in division (G) of this section;

(f) An affidavit that attests to the applicant's satisfactory completion of a course, class, or program described in division (B)(3)(a), (b), (c), or (e) of this section and that is subscribed by the applicant's instructor or an authorized representative of the entity that offered the course, class, or program or under whose auspices the course, class, or program was offered.

(4) A certification by the applicant that the applicant has read the pamphlet prepared by the Ohio peace officer training commission pursuant to section 109.731 of the Revised Code that reviews firearms, dispute resolution, and use of deadly force matters.

(5) A set of fingerprints of the applicant provided as described in section 311.41 of the Revised Code through use of an electronic fingerprint reading device or, if the sheriff to whom the application is submitted does not possess and does not have ready access to the use of such a reading device, on a standard impression sheet prescribed pursuant to division (C)(2) of section 109.572 of the Revised Code.

(C) Upon receipt of an applicant's completed application form, supporting documentation, and, if not waived, license fee, a sheriff, in the manner specified in section 311.41 of the Revised Code, shall conduct or cause to be conducted the criminal records check and the incompetency records check described in section 311.41 of the Revised Code.

(D)(1) Except as provided in division (D)(3) or (4) of this section, within forty-five days after a sheriff's receipt of an applicant's completed application form for a license to carry a concealed handgun, the supporting documentation, and, if not waived, the license fee, the sheriff shall make available through the law enforcement automated data system in accordance with division (H) of this section the information described in that division and, upon making the information available through the system, shall issue to the applicant a license to carry a concealed handgun that shall expire as described in division (D)(2)(a) of this section if all of the following apply:

(a) The applicant is legally living in the United States, has been a resident of this state for at least forty-five days, and has been a resident of the county in which the person seeks the license or a county adjacent to the county in which the person seeks the license for at least thirty days. For purposes of division (D)(1)(a) of this section:

(2) If the Bureau finds no record on the JOLTS indicating the named person was adjudicated delinquent for an offense that would constitute a felony offense if committed by an adult within the last ten (10) years, or

(3) If the records suggest the applicant may have been adjudicated delinquent for an offense that would constitute a felony offense if committed by an adult but such record is inconclusive, the Bureau shall ask the applicant whether he or she was adjudicated a delinquent for an offense that would constitute a felony offense if committed by an adult within the last ten (10) years. If the applicant states under penalty of perjury that he or she was not adjudicated a delinquent within ten (10) years, the Bureau shall continue processing the application for a license;

12. If the background check set forth in paragraph 11 of this subsection reveals no records pertaining to the applicant, the Oklahoma State Bureau of Investigation shall either issue a handgun license or deny the application within sixty (60) days of the date of receipt of the applicant's completed application and the required information from the sheriff. In all other cases, the Oklahoma State Bureau of Investigation shall either issue a handgun license or deny the application within ninety (90) days of the date of the receipt of the applicant's completed application and the required information from the sheriff. The Bureau shall approve an applicant who appears to be in full compliance with the provisions of the Oklahoma Self-Defense Act, [1] if completion of the federal fingerprint search is the only reason for delay of the issuance of the handgun license to that applicant. Upon receipt of the federal fingerprint search information, if the Bureau receives information which precludes the person from having a handgun license, the Bureau shall revoke the handgun license previously issued to the applicant. The Bureau shall deny a license when the applicant fails to properly complete the application form or application process or is determined not to be eligible as specified by the provisions of Section 1290.9, 1290.10 or 1290.11 of this title. The Bureau shall approve an application in all other cases. If an application is denied, the Bureau shall notify the applicant in writing of its decision. The notification shall state the grounds for the denial and inform the applicant of the right to an appeal as may be provided by the provisions of the Administrative Procedures Act. All notices of denial shall be mailed by first class mail to the address of the applicant listed in the application. Within sixty (60) calendar days from the date of mailing a denial of application to an applicant, the applicant shall notify the Bureau in writing of the intent to appeal the decision of denial or the right of the applicant to appeal shall be deemed waived. Any administrative hearing on a denial which may be provided shall be conducted by a hearing examiner appointed by the Bureau. The decision of the hearing examiner shall be a final decision appealable to a district court in accordance with the Administrative Procedures Act. When an application is approved, the Bureau shall issue the license and shall mail the license by first-class mail to the address of the applicant listed in the application.

B. Nothing contained in any provision of the Oklahoma Self-Defense Act shall be construed to require or authorize the registration, documentation or providing of serial numbers with regard to any firearm. For purposes of the Oklahoma Self-Defense Act, the sheriff may designate a person to receive, fingerprint, photograph or otherwise process applications for handgun licenses.

Credits

Laws 1995, c. 272, § 12, eff. Sept. 1, 1995; Laws 1996, c. 191, § 14, emerg. eff. May 16, 1996; Laws 1998, c. 286, § 4, eff. July 1, 1998; Laws 1999, c. 415, § 3, eff. July 1, 1999; Laws 2000, c. 382, § 6, eff. July 1, 2000; Laws 2001, c. 396, § 8, eff. July 1, 2001; Laws 2004, c. 549, § 3, eff. July 1, 2004; Laws 2010, c. 162, § 1, eff. Nov. 1, 2010; Laws 2012, c. 259, § 32, eff. Nov. 1, 2012.

Footnotes

1 Title 75, § 250 et seq.

21 Okl. St. Ann. § 1290.12, OK ST T. 21 § 1290.12

West's Oregon Revised Statutes Annotated
Title 16. Crimes and Punishments
Chapter 166. Offenses Against Public Order; Firearms and Other Weapons; Racketeering (Refs & Annos)
Possession and Use of Weapons (Refs & Annos)

O.R.S. § 166.291

166.291. Concealed handgun license

Currentness

<Text of section operative until Jan. 2, 2016. See, also, section operative Jan. 2, 2016.>

(1) The sheriff of a county, upon a person's application for an Oregon concealed handgun license, upon receipt of the appropriate fees and after compliance with the procedures set out in this section, shall issue the person a concealed handgun license if the person:

(a)(A) Is a citizen of the United States; or

(B) Is a legal resident alien who can document continuous residency in the county for at least six months and has declared in writing to the United States Citizenship and Immigration Services the intent to acquire citizenship status and can present proof of the written declaration to the sheriff at the time of application for the license;

(b) Is at least 21 years of age;

(c) Is a resident of the county;

(d) Has no outstanding warrants for arrest;

(e) Is not free on any form of pretrial release;

(f) Demonstrates competence with a handgun by any one of the following:

(A) Completion of any hunter education or hunter safety course approved by the State Department of Fish and Wildlife or a similar agency of another state if handgun safety was a component of the course;

(B) Completion of any National Rifle Association firearms safety or training course if handgun safety was a component of the course;

(3) investigate whether the applicant's character and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety;

(4) investigate whether the applicant would be precluded from receiving a license under subsection (e)(1) or section 6105(h) (relating to persons not to possess, use, manufacture, control, sell or transfer firearms); and

(5) conduct a criminal background, juvenile delinquency and mental health check following the procedures set forth in section 6111 (relating to sale or transfer of firearms), receive a unique approval number for that inquiry and record the date and number on the application.

(e) **Issuance of license.--**

(1) A license to carry a firearm shall be for the purpose of carrying a firearm concealed on or about one's person or in a vehicle and shall be issued if, after an investigation not to exceed 45 days, it appears that the applicant is an individual concerning whom no good cause exists to deny the license. A license shall not be issued to any of the following:

(i) An individual whose character and reputation is such that the individual would be likely to act in a manner dangerous to public safety.

(ii) An individual who has been convicted of an offense under the act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act. [1]

(iii) An individual convicted of a crime enumerated in section 6105.

(iv) An individual who, within the past ten years, has been adjudicated delinquent for a crime enumerated in section 6105 or for an offense under The Controlled Substance, Drug, Device and Cosmetic Act.

(v) An individual who is not of sound mind or who has ever been committed to a mental institution.

(vi) An individual who is addicted to or is an unlawful user of marijuana or a stimulant, depressant or narcotic drug.

(vii) An individual who is a habitual drunkard.

(viii) An individual who is charged with or has been convicted of a crime punishable by imprisonment for a term exceeding one year except as provided for in section 6123 (relating to waiver of disability or pardons).

(ix) A resident of another state who does not possess a current license or permit or similar document to carry a firearm issued by that state if a license is provided for by the laws of that state, as published annually in the Federal Register by

the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury under 18 U.S.C. § 921(a)(19) (relating to definitions).

(x) An alien who is illegally in the United States.

(xi) An individual who has been discharged from the armed forces of the United States under dishonorable conditions.

(xii) An individual who is a fugitive from justice. This subparagraph does not apply to an individual whose fugitive status is based upon nonmoving or moving summary offense under Title 75 (relating to vehicles).

(xiii) An individual who is otherwise prohibited from possessing, using, manufacturing, controlling, purchasing, selling or transferring a firearm as provided by section 6105.

(xiv) An individual who is prohibited from possessing or acquiring a firearm under the statutes of the United States.

(2) Deleted by 1995, June 13, No. 17 (Spec. Sess. No. 1), § 2, effective in 120 days.

(3) The license to carry a firearm shall be designed to be uniform throughout this Commonwealth and shall be in a form prescribed by the Pennsylvania State Police. The license shall bear the following:

(i) The name, address, date of birth, race, sex, citizenship, height, weight, color of hair, color of eyes and signature of the licensee.

(ii) The signature of the sheriff issuing the license.

(iii) A license number of which the first two numbers shall be a county location code followed by numbers issued in numerical sequence.

(iv) The point-of-contact telephone number designated by the Pennsylvania State Police under subsection (*l*).

(v) The reason for issuance.

(vi) The period of validation.

(4) The sheriff shall require a photograph of the licensee on the license. The photograph shall be in a form compatible with the Commonwealth Photo Imaging Network.

(5) The original license shall be issued to the applicant. The first copy of the license shall be forwarded to the Pennsylvania State Police within seven days of the date of issue. The second copy shall be retained by the issuing authority for a period of seven years. Except pursuant to court order, both copies and the application shall, at the end of the seven-year period, be destroyed unless the license has been renewed within the seven-year period.

(f) Term of license.--

(1) A license to carry a firearm issued under subsection (e) shall be valid throughout this Commonwealth for a period of five years unless extended under paragraph (3) or sooner revoked.

(2) At least 60 days prior to the expiration of each license, the issuing sheriff shall send to the licensee an application for renewal of license. Failure to receive a renewal application shall not relieve a licensee from the responsibility to renew the license.

(3) Notwithstanding paragraph (1) or any other provision of law to the contrary, a license to carry a firearm that is held by a member of the United States Armed Forces or the Pennsylvania National Guard on Federal active duty and deployed overseas that is scheduled to expire during the period of deployment shall be extended until 90 days after the end of the deployment.

(4) Possession of a license, together with a copy of the person's military orders showing the dates of overseas deployment, including the date that the overseas deployment ends, shall constitute, during the extension period specified in paragraph (3), a defense to any charge filed pursuant to section 6106 (relating to firearms not to be carried without a license) or 6108 (relating to carrying firearms on public streets or public property in Philadelphia).

(g) Grant or denial of license.--Upon the receipt of an application for a license to carry a firearm, the sheriff shall, within 45 days, issue or refuse to issue a license on the basis of the investigation under subsection (d) and the accuracy of the information contained in the application. If the sheriff refuses to issue a license, the sheriff shall notify the applicant in writing of the refusal and the specific reasons. The notice shall be sent by certified mail to the applicant at the address set forth in the application.

(h) Fee.--

(1) In addition to fees described in paragraphs (2)(ii) and (3), the fee for a license to carry a firearm is $19. This includes all of the following:

(i) A renewal notice processing fee of $1.50.

(ii) An administrative fee of $5 under section 14(2) of the act of July 6, 1984 (P.L. 614, No. 127),[2] known as the Sheriff Fee Act.

(2) (i) The Pennsylvania Commission on Crime and Delinquency shall implement, within five years of the effective date of this paragraph, a system in conjunction with the Pennsylvania State Police and the Pennsylvania Sheriffs' Association

West's General Laws of Rhode Island Annotated
Title 11. Criminal Offenses
Chapter 47. Weapons

Gen.Laws 1956, § 11-47-11

§ 11-47-11. License or permit to carry concealed pistol or revolver

Currentness

(a) The licensing authorities of any city or town shall, upon application of any person twenty-one (21) years of age or over having a bona fide residence or place of business within the city or town, or of any person twenty-one (21) years of age or over having a bona fide residence within the United States and a license or permit to carry a pistol or revolver concealed upon his or her person issued by the authorities of any other state or subdivision of the United States, issue a license or permit to the person to carry concealed upon his or her person a pistol or revolver everywhere within this state for four (4) years from date of issue, if it appears that the applicant has good reason to fear an injury to his or her person or property or has any other proper reason for carrying a pistol or revolver, and that he or she is a suitable person to be so licensed. The license or permit shall be in triplicate in form to be prescribed by the attorney general and shall bear the fingerprint, photograph, name, address, description, and signature of the licensee and the reason given for desiring a license or permit and in no case shall it contain the serial number of any firearm. The original shall be delivered to the licensee. Any member of the licensing authority, its agents, servants, and employees shall be immune from suit in any action, civil or criminal, based upon any official act or decision, performed or made in good faith in issuing a license or permit under this chapter.

(b) Notwithstanding any other chapter or section of the general laws of the state of Rhode Island, the licensing authority of any city or town shall not provide or release to any individual, firm, association or corporation the name, address, or date of birth of any person who has held or currently holds a license or permit to carry a concealed pistol or revolver. This section shall not be construed to prohibit the release of any statistical data of a general nature relative to age, gender and racial or ethnic background nor shall it be construed to prevent the release of information to parties involved in any prosecution of § 11-47-8 or in response to a lawful subpoena in any criminal or civil action which the person is a party to that action.

Credits
P.L. 1927, ch. 1052, § 6; P.L. 1959, ch. 75, § 1; P.L. 1975, ch. 278, § 1; P.L. 1986, ch. 270, § 1; P.L. 1993, ch. 414, § 1; P.L. 1996, ch. 342, § 1; P.L. 1998, ch. 268, § 1.

Codifications: G.L. 1938, ch. 404, § 6; G.L. 1956, § 11-47-8.

Notes of Decisions (4)

Gen. Laws, 1956, § 11-47-11, RI ST § 11-47-11
Current with amendments through chapter 491 of the 2012 Regular Session. For research tips related to newly added material, see Scope.

End of Document

Code of Laws of South Carolina 1976 Annotated
Title 23. Law Enforcement and Public Safety
Chapter 31. Firearms
Article 4. Concealed Weapon Permits

Code 1976 § 23-31-215

§ 23-31-215. Issuance of permits.

Currentness

(A) Notwithstanding any other provision of law, except subject to subsection (B) of this section, SLED must issue a permit, which is no larger than three and one-half inches by three inches in size, to carry a concealable weapon to a resident or qualified nonresident who is at least twenty-one years of age and who is not prohibited by state law from possessing the weapon upon submission of:

(1) a completed application signed by the person;

(2) one current full face color photograph of the person, not smaller than one inch by one inch nor larger than three inches by five inches;

(3) proof of residence or if the person is a qualified nonresident, proof of ownership of real property in this State;

(4) proof of actual or corrected vision rated at $^{20}/_{40}$ within six months of the date of application or, in the case of a person licensed to operate a motor vehicle in this State, presentation of a valid driver's license;

(5) proof of training;

(6) payment of a fifty-dollar application fee. This fee must be waived for disabled veterans and retired law enforcement officers; and

(7) a complete set of fingerprints unless, because of a medical condition verified in writing by a licensed medical doctor, a complete set of fingerprints is impossible to submit. In lieu of the submission of fingerprints, the applicant must submit the written statement from a licensed medical doctor specifying the reason or reasons why the applicant's fingerprints may not be taken. If all other qualifications are met, the Chief of SLED may waive the fingerprint requirements of this item. The statement of medical limitation must be attached to the copy of the application retained by SLED. A law enforcement agency may charge a fee not to exceed five dollars for fingerprinting an applicant.

(B) Upon submission of the items required by subsection (A) of this section, SLED must conduct or facilitate a local, state, and federal fingerprint review of the applicant. SLED must also conduct a background check of the applicant through notification to and input from the sheriff of the county where the applicant resides or if the applicant is a qualified nonresident, where the applicant owns real property in this State. The sheriff within ten working days after notification by SLED, must submit a

South Dakota Codified Laws
Title 23. Law Enforcement (Refs & Annos)
Chapter 23-7. Firearms Control (Refs & Annos)

SDCL § 23-7-7

23-7-7. Permit to carry concealed pistol--Statewide validity--Background investigation

Currentness

A permit to carry a concealed pistol shall be issued to any person by the sheriff of the county in which the applicant resides. The permit shall be valid throughout the state and shall be issued pursuant to § 23-7-7.1. Prior to issuing the permit, the sheriff shall execute a background investigation, including a criminal history check, of every applicant for the purposes of verifying the qualifications of the applicant pursuant to the requirements of § 23-7-7.1. For the purposes of this section, a background investigation is defined as a computer check of available on-line records.

Credits
Source: SDC 1939, § 21.0107; SL 1972, ch 145, § 1; SL 1985, ch 190, § 8; SL 2002, ch 118, § 4.

Notes of Decisions (2)

S D C L § 23-7-7, SD ST § 23-7-7
Current through the 2012 Regular Session and Supreme Court Rule 12-10

End of Document

West's Tennessee Code Annotated
Title 39. Criminal Offenses
Chapter 17. Offenses Against Public Health, Safety and Welfare
Part 13. Weapons (Refs & Annos)

T. C. A. § 39-17-1351

§ 39-17-1351. Application for handgun carry permit; disclosures under oath; background investigations of applicants; completion of safety course; grounds for denial of permit; processing fees

Currentness

(a) The citizens of this state have a right to keep and bear arms for their common defense; but the general assembly has the power, by law, to regulate the wearing of arms with a view to prevent crime.

(b) Except as provided in subsection (r), any resident of Tennessee who is a United States citizen or permanent lawful resident, as defined by § 55-50-102, who has reached twenty-one (21) years of age, may apply to the department of safety for a handgun carry permit. If the applicant is not prohibited from purchasing or possessing a firearm in this state pursuant to § 39-17-1316 or § 39-17-1307(b), 18 U.S.C. § 922(g), or any other state or federal law, and the applicant otherwise meets all of the requirements of this section, the department shall issue a permit to the applicant.

(c) The application for a permit shall be on a standard form developed by the department. The application shall clearly state in bold face type directly above the signature line that an applicant who, with intent to deceive, makes any false statement on the application commits the felony offense of perjury pursuant to § 39-16-702. The following are eligibility requirements for obtaining a handgun carry permit and the application shall require the applicant to disclose and confirm compliance with, under oath, the following information concerning the applicant and the eligibility requirements:

(1) Full legal name and any aliases;

(2) Addresses for the last five (5) years;

(3) Date of birth;

(4) Social security number;

(5) Physical description (height, weight, race, sex, hair color and eye color);

(6) That the applicant has not been convicted of a criminal offense that is designated as a felony, or that is one of the disqualifying misdemeanors set out in subdivisions (c)(11), (c)(16), or (c)(18), with the exception of any federal or state offenses pertaining to antitrust violations, unfair trade practices, restraints of trade or other similar offenses relating to the regulations of business practices;

Vernon's Texas Statutes and Codes Annotated
Government Code (Refs & Annos)
Title 4. Executive Branch (Refs & Annos)
Subtitle B. Law Enforcement and Public Protection (Refs & Annos)
Chapter 411. Department of Public Safety of the State of Texas (Refs & Annos)
Subchapter H. License to Carry a Concealed Handgun

V.T.C.A., Government Code § 411.177

§ 411.177. Issuance or Denial of License

Effective: September 1, 2009
Currentness

(a) The department shall issue a license to carry a concealed handgun to an applicant if the applicant meets all the eligibility requirements and submits all the application materials. The department may issue a license to carry handguns only of the categories for which the applicant has demonstrated proficiency in the form and manner required by the department. The department shall administer the licensing procedures in good faith so that any applicant who meets all the eligibility requirements and submits all the application materials shall receive a license. The department may not deny an application on the basis of a capricious or arbitrary decision by the department.

(b) The department shall, not later than the 60th day after the date of the receipt by the director's designee of the completed application materials:

(1) issue the license;

(2) notify the applicant in writing that the application was denied:

(A) on the grounds that the applicant failed to qualify under the criteria listed in Section 411.172;

(B) based on the affidavit of the director's designee submitted to the department under Section 411.176(c); or

(C) based on the affidavit of the qualified handgun instructor submitted to the department under Section 411.188(k); or

(3) notify the applicant in writing that the department is unable to make a determination regarding the issuance or denial of a license to the applicant within the 60-day period prescribed by this subsection and include in that notification an explanation of the reason for the inability and an estimation of the amount of time the department will need to make the determination.

(c) Failure of the department to issue or deny a license for a period of more than 30 days after the department is required to act under Subsection (b) constitutes denial.

(d) A license issued under this subchapter is effective from the date of issuance.

West's Utah Code Annotated
Title 53. Public Safety Code
Chapter 5. Regulation of Firearms
Part 7. Concealed Firearm Act

U.C.A. 1953 § 53-5-704

§ 53-5-704. Bureau duties--Permit to carry concealed firearm--Certification for concealed firearms instructor--Requirements for issuance--Violation--Denial, suspension, or revocation--Appeal procedure

Currentness

(1)(a) The bureau shall issue a permit to carry a concealed firearm for lawful self defense to an applicant who is 21 years of age or older within 60 days after receiving an application, unless the bureau finds proof that the applicant does not meet the qualifications set forth in Subsection (2).

(b) The permit is valid throughout the state for five years, without restriction, except as otherwise provided by Section 53-5-710.

(c) The provisions of Subsections 76-10-504(1) and (2), and Section 76-10-505 do not apply to a person issued a permit under Subsection (1)(a).

(2)(a) The bureau may deny, suspend, or revoke a concealed firearm permit if the applicant or permit holder:

(i) has been or is convicted of a felony;

(ii) has been or is convicted of a crime of violence;

(iii) has been or is convicted of an offense involving the use of alcohol;

(iv) has been or is convicted of an offense involving the unlawful use of narcotics or other controlled substances;

(v) has been or is convicted of an offense involving moral turpitude;

(vi) has been or is convicted of an offense involving domestic violence;

(vii) has been or is adjudicated by a state or federal court as mentally incompetent, unless the adjudication has been withdrawn or reversed; and

(viii) is not qualified to purchase and possess a firearm pursuant to Section 76-10-503 and federal law.

West's Vermont Statutes Annotated
Title Thirteen. Crimes and Criminal Procedure (Refs & Annos)
Part 1. Crimes
Chapter 85. Weapons (Refs & Annos)

13 V.S.A. § 4003

§ 4003. Carrying dangerous weapons

Currentness

A person who carries a dangerous or deadly weapon, openly or concealed, with the intent or avowed purpose of injuring a fellow man, or who carries a dangerous or deadly weapon within any state institution or upon the grounds or lands owned or leased for the use of such institution, without the approval of the warden or superintendent of the institution, shall be imprisoned not more than two years or fined not more than $200.00, or both.

Credits
Formerly: V.S. 1947, § 8274; 1945, No. 181, § 1; P.L. 1933, § 8409; G.L. 1917, § 6841; P.S. 1906, § 5736; V.S. 1894, § 4922; 1892, No. 85, § 1.

Notes of Decisions (1)

13 V.S.A. § 4003, VT ST T. 13 § 4003
Current through the laws of the Adjourned Session of the 2011-2012 Vermont General Assembly (2012).

End of Document

5. Noncustodial employees of the Department of Corrections designated to carry weapons by the Director of the Department of Corrections pursuant to § 53.1-29; and

6. Harbormaster of the City of Hopewell.

D. Any person 21 years of age or older may apply in writing to the clerk of the circuit court of the county or city in which he resides, or if he is a member of the United States Armed Forces, the county or city in which he is domiciled, for a five-year permit to carry a concealed handgun. There shall be no requirement regarding the length of time an applicant has been a resident or domiciliary of the county or city. The application shall be made under oath before a notary or other person qualified to take oaths and shall be made only on a form prescribed by the Department of State Police, in consultation with the Supreme Court, requiring only that information necessary to determine eligibility for the permit. No information or documentation other than that which is allowed on the application in accordance with this subsection may be requested or required by the clerk or the court. The clerk shall enter on the application the date on which the application and all other information required to be submitted by the applicant is received. The court shall consult with either the sheriff or police department of the county or city and receive a report from the Central Criminal Records Exchange. The court shall issue the permit via United States mail and notify the State Police of the issuance of the permit within 45 days of receipt of the completed application unless it is determined that the applicant is disqualified. A court may authorize the clerk to issue concealed handgun permits, without judicial review, to applicants who have submitted complete applications, for whom the criminal history records check does not indicate a disqualification and, after consulting with either the sheriff or police department of the county or city, about which there are no outstanding questions or issues concerning the application. The court clerk shall be immune from suit arising from any acts or omissions relating to the issuance of concealed handgun permits without judicial review pursuant to this section unless the clerk was grossly negligent or engaged in willful misconduct. This subsection shall not be construed to limit, withdraw, or overturn any defense or immunity already existing in statutory or common law, or to affect any cause of action accruing prior to July 1, 2010. Upon denial of the application, the clerk shall provide the person with notice, in writing, of his right to an ore tenus hearing. Upon request of the applicant made within 21 days, the court shall place the matter on the docket for an ore tenus hearing. The applicant may be represented by counsel, but counsel shall not be appointed, and the rules of evidence shall apply. The final order of the court shall include the court's findings of fact and conclusions of law. Any order denying issuance of the permit shall state the basis for the denial of the permit and the applicant's right to and the requirements for perfecting an appeal of such order pursuant to subsection L. Only a circuit court judge may deny issuance of a permit. An application is deemed complete when all information required to be furnished by the applicant is delivered to and received by the clerk of court before or concomitant with the conduct of a state or national criminal history records check. If the court has not issued the permit or determined that the applicant is disqualified within 45 days of the date of receipt noted on the application, the clerk shall certify on the application that the 45-day period has expired, and mail or send via electronic mail a copy of the certified application to the applicant within five business days of the expiration of the 45-day period. The certified application shall serve as a de facto permit, which shall expire 90 days after issuance, and shall be recognized as a valid concealed handgun permit when presented with a valid government-issued photo identification pursuant to subsection H, until the court issues a five-year permit or finds the applicant to be disqualified. If the applicant is found to be disqualified after the de facto permit is issued, the applicant shall surrender the de facto permit to the court and the disqualification shall be deemed a denial of the permit and a revocation of the de facto permit. If the applicant is later found by the court to be disqualified after a five-year permit has been issued, the permit shall be revoked. The clerk of court may withhold from public disclosure the social security number contained in a permit application in response to a request to inspect or copy any such permit application, except that such social security number shall not be withheld from any law-enforcement officer acting in the performance of his official duties.

E. The following persons shall be deemed disqualified from obtaining a permit:

West's Revised Code of Washington Annotated
Title 9. Crimes and Punishments (Refs & Annos)
Chapter 9.41. Firearms and Dangerous Weapons (Refs & Annos)

West's RCWA 9.41.070

9.41.070. Concealed pistol license--Application--Fee--Renewal

Currentness

(1) The chief of police of a municipality or the sheriff of a county shall within thirty days after the filing of an application of any person, issue a license to such person to carry a pistol concealed on his or her person within this state for five years from date of issue, for the purposes of protection or while engaged in business, sport, or while traveling. However, if the applicant does not have a valid permanent Washington driver's license or Washington state identification card or has not been a resident of the state for the previous consecutive ninety days, the issuing authority shall have up to sixty days after the filing of the application to issue a license. The issuing authority shall not refuse to accept completed applications for concealed pistol licenses during regular business hours.

The applicant's constitutional right to bear arms shall not be denied, unless:

(a) He or she is ineligible to possess a firearm under the provisions of RCW 9.41.040 or 9.41.045, or is prohibited from possessing a firearm under federal law;

(b) The applicant's concealed pistol license is in a revoked status;

(c) He or she is under twenty-one years of age;

(d) He or she is subject to a court order or injunction regarding firearms pursuant to RCW 9A.46.080, 10.14.080, 10.99.040, 10.99.045, 26.09.050, 26.09.060, 26.10.040, 26.10.115, 26.26.130, 26.50.060, 26.50.070, or 26.26.590;

(e) He or she is free on bond or personal recognizance pending trial, appeal, or sentencing for a felony offense;

(f) He or she has an outstanding warrant for his or her arrest from any court of competent jurisdiction for a felony or misdemeanor; or

(g) He or she has been ordered to forfeit a firearm under RCW 9.41.098(1)(e) within one year before filing an application to carry a pistol concealed on his or her person.

No person convicted of a felony may have his or her right to possess firearms restored or his or her privilege to carry a concealed pistol restored, unless the person has been granted relief from disabilities by the attorney general under 18 U.S.C. Sec. 925(c), or RCW 9.41.040 (3) or (4) applies.

(2) Any handgun safety or training course or class available to the general public offered by an official law-enforcement organization, community college, junior college, college or private or public institution or organization or handgun training school utilizing instructors duly certified by the institution;

(3) Any handgun training or safety course or class conducted by a handgun instructor certified as such by the state or by the National Rifle Association;

(4) Any handgun training or safety course or class conducted by any branch of the United States Military, Reserve or National Guard.

A photocopy of a certificate of completion of any of the courses or classes or an affidavit from the instructor, school, club, organization or group that conducted or taught said course or class attesting to the successful completion of the course or class by the applicant or a copy of any document which shows successful completion of the course or class shall constitute evidence of qualification under this section.

(e) All concealed weapons license applications must be notarized by a notary public duly licensed under article four, chapter twenty-nine of this code. Falsification of any portion of the application constitutes false swearing and is punishable under the provisions of section two, article five, chapter sixty-one of this code.

(f) The sheriff shall issue a license unless he or she determines that the application is incomplete, that it contains statements that are materially false or incorrect or that applicant otherwise does not meet the requirements set forth in this section. The sheriff shall issue, reissue or deny the license within forty-five days after the application is filed if all required background checks authorized by this section are completed.

(g) Before any approved license shall be issued or become effective, the applicant shall pay to the sheriff a fee in the amount of $25 which the sheriff shall forward to the Superintendent of the West Virginia State Police within thirty days of receipt. The license shall be valid for five years throughout the state, unless sooner revoked.

(h) Each license shall contain the full name and address of the licensee and a space upon which the signature of the licensee shall be signed with pen and ink. The issuing sheriff shall sign and attach his or her seal to all license cards. The sheriff shall provide to each new licensee a duplicate license card, in size similar to other state identification cards and licenses, suitable for carrying in a wallet, and the license card is considered a license for the purposes of this section.

(i) The Superintendent of the West Virginia State Police shall prepare uniform applications for licenses and license cards showing that the license has been granted and shall do any other act required to be done to protect the state and see to the enforcement of this section.

(j) If an application is denied, the specific reasons for the denial shall be stated by the sheriff denying the application. Any person denied a license may file, in the circuit court of the county in which the application was made, a petition seeking review of the denial. The petition shall be filed within thirty days of the denial. The court shall then determine whether the applicant is entitled to the issuance of a license under the criteria set forth in this section. The applicant may be represented by counsel, but in no case may the court be required to appoint counsel for an applicant. The final order of the court shall include the court's

West's Wisconsin Statutes Annotated
Police Regulations (Ch. 163 to 177)
Chapter 175. Miscellaneous Police Provisions

W.S.A. 175.60

175.60. License to carry a concealed weapon

Currentness

(1) **Definitions.** In this section:

(ac) "Background check" means the searches the department conducts under sub. (9g) to determine a person's eligibility for a license to carry a concealed weapon.

(ag) "Carry" means to go armed with.

(b) "Department" means the department of justice.

(bm) "Handgun" means any weapon designed or redesigned, or made or remade, and intended to be fired while held in one hand and to use the energy of an explosive to expel a projectile through a smooth or rifled bore. "Handgun" does not include a machine gun, as defined in s. 941.27(1), a short-barreled rifle, as defined in s. 941.28(1)(b), or a short-barreled shotgun, as defined in s. 941.28(1)(c).

(bv) "Law enforcement agency" does not include the department.

(c) "Law enforcement officer" has the meaning given in s. 165.85(2)(c).

(d) "Licensee" means an individual holding a valid license to carry a concealed weapon issued under this section.

(e) "Motor vehicle" has the meaning given in s. 340.01(35).

(f) "Out-of-state license" means a valid permit, license, approval, or other authorization issued by another state if all of the following apply:

1. The permit, license, approval, or other authorization is for the carrying of a concealed weapon.

2. The state is listed in the rule promulgated by the department under s. 165.25(12m) and, if that state does not require a background search for the permit, license, approval, or authorization, the permit, license, approval, or authorization designates that the holder chose to submit to a background search.

(g) "Out-of-state licensee" means an individual who is 21 years of age or over, who is not a Wisconsin resident, and who has been issued an out-of-state license.

(h) "Photographic identification card" means one of the following:

1. An operator's license issued under ch. 343 or an identification card issued under s. 343.50.

2. A license or card issued by a state other than Wisconsin that is substantially equivalent to a license or card under subd. 1.

(i) "State identification card number" means the unique identifying driver number assigned to a person by the department of transportation under s. 343.17(3)(a)4. or, if the person has no driver number, the number assigned to the person on an identification card issued under s. 343.50.

(j) "Weapon" means a handgun, an electric weapon, as defined in s. 941.295(1c)(a), a knife other than a switchblade knife under s. 941.24, or a billy club.

(2) Issuance and scope of license. (a) The department shall issue a license to carry a concealed weapon to any individual who is not disqualified under sub. (3) and who completes the application process specified in sub. (7). A license to carry a concealed weapon issued under this section shall meet the requirements specified in sub. (2m).

(b) The department may not impose conditions, limitations, or requirements that are not expressly provided for in this section on the issuance, scope, effect, or content of a license.

(c) Unless expressly provided in this section, this section does not limit an individual's right to carry a firearm that is not concealed.

(d) For purposes of 18 USC 922(q)(2)(B)(ii), an out-of-state licensee is licensed by this state.

(2g) Carrying a concealed weapon; possession and display of license document or authorization. (a) A licensee or an out-of-state licensee may carry a concealed weapon anywhere in this state except as provided under subs. (15m) and (16) and ss. 943.13(1m)(c) and 948.605(2)(b)1r.

(b) Unless the licensee or out-of-state licensee is carrying a concealed weapon in a manner described under s. 941.23(2)(e), a licensee shall have with him or her his or her license document and photographic identification card and an out-of-state licensee shall have with him or her his or her out-of-state license and photographic identification card at all times during which he or she is carrying a concealed weapon.

(c) Unless the licensee or out-of-state licensee is carrying a concealed weapon in a manner described under s. 941.23(2)(e), a licensee who is carrying a concealed weapon shall display his or her license document and photographic identification card

and an out-of-state licensee who is carrying a concealed weapon shall display his or her out-of-state license and photographic identification card to a law enforcement officer upon the request of the law enforcement officer while the law enforcement officer is acting in an official capacity and with lawful authority.

(**2m**) **License document; content of license.** (a) Subject to pars. (b), (bm), (c), and (d), the department shall design a single license document for licenses issued and renewed under this section. The department shall complete the design of the license document no later than September 1, 2011.

(b) A license document for a license issued under this section shall contain all of the following on one side:

1. The full name, date of birth, and residence address of the licensee.

2. A physical description of the licensee, including sex, height, and eye color.

3. The date on which the license was issued.

4. The date on which the license expires.

5. The name of this state.

6. A unique identification number for each licensee.

(bm) The reverse side of a license document issued under this section shall contain the requirement under sub. (11)(b) that the licensee shall inform the department of any address change no later than 30 days after his or her address changes and the penalty for a violation of the requirement.

(c) The license document may not contain the licensee's social security number.

(d)1. The contents of the license document shall be included in the document in substantially the same way that the contents of an operator's license document issued under s. 343.17 are included in that document.

2. The license document issued under this section shall be tamper proof in substantially the same way that the operator's license is tamper proof under s. 343.17(2).

(e) The department of justice may contract with the department of transportation to produce and issue license documents under this section. Neither the department of transportation nor any employee of the department of transportation may store, maintain, or access the information provided by the department of justice for the production or issuance of license documents other than to the extent necessary to produce or issue the license documents.

West's Wyoming Statutes Annotated
Title 6. Crimes and Offenses
Chapter 8. Weapons
Article 1. Weapons Offenses (Refs & Annos)

W.S.1977 § 6-8-104

§ 6-8-104. Wearing or carrying concealed weapons; penalties; exceptions; permits

Currentness

(a) A person who wears or carries a concealed deadly weapon is guilty of a misdemeanor punishable by a fine of not more than seven hundred fifty dollars ($750.00), imprisonment in the county jail for not more than six (6) months, or both for a first offense, or a felony punishable by a fine of not more than two thousand dollars ($2,000.00), imprisonment for not more than two (2) years, or both, for a second or subsequent offense, unless:

(i) The person is a peace officer;

(ii) The person possesses a permit under this section;

(iii) The person holds a valid permit authorizing him to carry a concealed firearm authorized and issued by a governmental agency or entity in another state that recognizes Wyoming permits and is a valid statewide permit; or

(iv) The person does not possess a permit issued under this section, but otherwise meets the requirements specified in paragraphs (b)(i) through (vi), (viii) and (ix) of this section and possession of the firearm by the person is not otherwise unlawful.

(b) The attorney general is authorized to issue permits to carry a concealed firearm to persons qualified as provided by this subsection. The attorney general shall promulgate rules necessary to carry out this section no later than October 1, 1994. Applications for a permit to carry a concealed firearm shall be made available and distributed by the division of criminal investigation and local law enforcement agencies. The permit shall be valid throughout the state for a period of five (5) years from the date of issuance. The permittee shall carry the permit, together with valid identification at all times when the permittee is carrying a concealed firearm and shall display both the permit and proper identification upon request of any peace officer. The attorney general through the division shall issue a permit to any person who:

(i) Is a resident of the United States and has been a resident of Wyoming for not less than six (6) months prior to filing the application. The Wyoming residency requirements of this paragraph do not apply to any person who holds a valid permit authorizing him to carry a concealed firearm authorized and issued by a governmental agency or entity in another state that recognizes Wyoming permits and is a valid statewide permit;

(ii) Is at least twenty-one (21) years of age;

Carry Concealed Weapons License

218.1 PURPOSE AND SCOPE

The Sheriff is given the statutory discretion to issue a license to carry a concealed firearm to residents within the community. This policy will provide a written process for the application and issuance of such licenses. Pursuant to Penal Code § 12050.2, this policy shall be made accessible to the public.

218.1.1 APPLICATION OF POLICY

Nothing in this policy shall be construed to require the Sheriff to issue a Concealed Weapons License at any time. The issuance of any such license shall only be pursuant to the terms and conditions of this policy and applicable law.

Nothing in this policy shall preclude the Sheriff from entering into an agreement with any chief of police within the County for the Sheriff to process applications and licenses for the carrying of concealed weapons within that jurisdiction (Penal Code § 12050(g)).

218.2 QUALIFIED APPLICANTS

In order to qualify for a license to carry a concealed weapon, the applicant must meet the following requirements:

(a) Be a resident of the County of Orange.

(b) Be at least 21 years of age.

(c) Fully complete an application that will include substantial personal information. Much of the information in the application may be subject to public access under the Public Records Act.

(d) Be free from criminal convictions that would disqualify the applicant from carrying a concealed weapon. Fingerprints will be required and a complete criminal background check will be conducted.

(e) Be of good moral character.

(f) Show good cause for the issuance of the license.

- Criteria that may establish good cause include the following:
  - Specific evidence that there has been or is likely to be an attempt on the part of a second party to do great bodily harm to the applicant.
  - The nature of the business or occupation of the applicant is such that it is subject to high personal risk and / or criminal attack, far greater risk than the general population.
  - A task of the business or occupation of the applicant requires frequent transportation of large sums of money or other valuables and alternative protective measures or security cannot be employed.
  - When a business or occupation is of a high-risk nature and requires the applicant's presence in a dangerous environment.
  - The occupation or business of the applicant is such that no means of protection, security or risk avoidance can mitigate the risk other than the carrying of a concealed firearm.

– Personal protection is warranted to mitigate a threat to the applicant that the applicant is able to substantiate.

– Good cause could include, but not be limited to, documented instances of threats to the personal safety of the applicant, his / her family or employees. Threats to personal safety may be verbal or demonstrated through actual harm committed in the place of work, neighborhood or regular routes of travel for business. The applicant should articulate the threat as it applies personally to the applicant, his / her family or employees. Non-specific, general concerns about personal safety are insufficient.

– The finding of good cause should recognize that individuals may also face threats to their safety by virtue of their profession, business or status and by virtue of their ability to readily access materials that if forcibly taken would be a danger to society. Threats should be articulated by the applicant by virtue of his / her unique circumstances.

– **Note:** These examples are not intended to be all-inclusive they are provided merely for your reference. Also, state and local laws do not prohibit an adult from having a concealed weapon in their home or place of business.

(g) Pay all associated application fees. These fees are set by statute and may not be refunded if the application is denied.

(h) Provide proof of ownership and registration of any weapon to be licensed for concealment.

(i) In order to help establish the "good character" of the applicant, it is recommended that the applicant submit at least three reference letters from individuals in the community who are not members of the applicant's immediate family. Although this is not a requirement, it can assist in showing the applicant's good moral character.

(j) Be free from any medical and psychological conditions that might make the applicant unsuitable for carrying a concealed weapon

(k) Complete required training.

218.3 APPLICATION PROCESS

The application process for a license to carry a concealed weapon shall consist of two phases. Upon the successful completion of each phase, the applicant will advance to the next phase until the process is completed and the license is either issued or denied.

218.3.1 PHASE ONE (TO BE COMPLETED BY ALL APPLICANTS)

(a) Any individual applying for a license to carry a concealed weapon shall first fully complete a Concealed Weapons License Application to be signed under penalty of perjury. It is against the law to knowingly make any false statements on such an application (Penal Code § 12051 (b) & (c)).

1. In the event of any discrepancies in the application or background investigation, the applicant may be required to undergo a polygraph examination.

2. If an incomplete CCW Application package is received, the Sheriff or authorized designee may do any of the following:

   (a) Require the applicant to complete the package before any further processing.

(b) Advance the incomplete package to Phase Two for conditional processing pending completion of all mandatory conditions.

(c) Issue a denial if the materials submitted at the time demonstrate that the applicant would not qualify for a CCW license even if the package was completed (e.g., not a resident, disqualifying criminal conviction, absence of good cause).

(b) At the time of initial approval, the applicant shall submit a check made payable to the Orange County Sheriff's Department for the required Department of Justice application processing costs.

1. Full payment of the remainder of the County's feels will be required upon issuance of a license.
2. The County's fee does not include any additional fees required for training or psychological testing.
3. All fees paid are non refundable

(c) The applicant shall be required to submit Livescan fingerprints for a complete criminal background check. Photos are taken on site or a recent passport size photo (two inches by two inches) may be submitted for department use. Fingerprint fees will be collected in addition to the application fees. No person determined to fall within a prohibited class described in Penal Code §§ 12021 and 12021.1 or Welfare and Institutions Code §§ 8100 or 8103 may be issued a license to carry a concealed weapon.

(d) The applicant may, but is not required to, submit at least three signed letters of character reference from individuals other than relatives.Once the Sheriff or authorized designee has reviewed the completed application package and relevant background information, the application will either be advanced to phase two or denied.

In the event that an application is denied at the conclusion of or during phase one, the applicant shall be notified in writing within 90 days of the initial application or within 30 days after receipt of the applicant's criminal background check from the Department of Justice, whichever is later (Penal Code § 12052.5).

218.3.2 PHASE TWO

This phase is to be completed only by those applicants successfully completing phase one.

(a) Upon successful completion of phase one, the applicant shall be scheduled for a personal interview with the Sheriff or authorized designee. During this stage, there will be further discussion of the applicant's statement of good cause and any potential restrictions or conditions that might be placed on the license.

1. The determination of good cause should consider the totality of circumstances in each individual case.
2. Any denial for lack of good cause should be rational, articulable and not arbitrary in nature.

(b) The applicant may be required to provide written evidence from a licensed physician that the applicant is not currently suffering from any medical condition that would make the individual unsuitable for carrying a concealed weapon. All costs associated with this requirement shall be paid by the applicant. Failure to provide satisfactory

evidence of medical fitness shall result in removal of the applicant from further consideration.

(c) The Sheriff may require that the applicant be referred to an authorized psychologist used by the Department for psychological testing in order to determine the applicant's suitability for carrying a concealed weapon. The cost of such psychological testing (not to exceed $150) shall be paid by the applicant. This testing is not intended to certify the applicant is psychologically fit to carry a weapon. It is instead intended to determine whether an applicant has any outward indications or history of psychological problems that might render him/her unfit to carry a concealed weapon. If it is determined that the applicant is not a suitable candidate for carrying a concealed weapon, the applicant shall be removed from further consideration.

(d) The applicant shall submit any weapon to be considered for a license to the Sergeant or other departmentally authorized gunsmith for a full safety inspection. The Sheriff reserves the right to deny a license for any weapon from an unrecognized manufacturer or any weapon that has been altered from the manufacturer's specifications.

(e) The applicant shall successfully complete a firearms safety and proficiency examination with the weapon to be licensed, to be administered by the department Sergeant or provide proof of successful completion of another departmentally approved firearms safety and proficiency examination, including completion of all releases and other forms. The cost of any outside inspection/examination shall be the responsibility of the applicant.

Once the Sheriff or authorized designee has verified the successful completion of phase two, the license to carry a concealed weapon will either be granted or denied.

Whether an application is approved or denied at the conclusion of or during phase two, the applicant shall be notified in writing within 90 days of the initial application or within 30 days after receipt of the applicant's criminal background check from the Department of Justice, whichever is later. (Penal Code § 12052.5).

218.4 LIMITED BUSINESS LICENSE TO CARRY A CONCEALED WEAPON

The authority to issue a limited business license to carry a concealed weapon to a non-resident applicant is granted only to the Sheriff of the county in which the applicant works. A chief of a municipal police department may not issue limited licenses (Penal Code § 12050(a)(2)(ii)). Therefore, such applicants may be referred to the Sheriff for processing .

An individual who is not a resident of the County of Orange, but who otherwise successfully completes all portions of phases one and two above, may apply for and be issued a limited license subject to approval by the Sheriff and subject to the following:

(a) The applicant physically spends a substantial period of working hours in the applicant's principal place of employment or business within the County of Orange.

(b) Such a license will be valid for a period not to exceed 90 days from the date of issuance and will be valid only in the County of Orange.

(c) The applicant shall provide a copy of the license to the licensing authority of the city or county in which the applicant resides.

(d) Any application for renewal or re-issuance of such a license may be granted only upon concurrence of the original issuing authority and the licensing authority of the city or county in which the applicant resides.

218.5 ISSUED CONCEALED WEAPONS LICENSE

In the event a license to carry a concealed weapon is issued by the Sheriff, the following shall apply:

(a) The license will not be valid outside the State of California, unless recognized by another State.

(b) The license will be subject to any and all reasonable restrictions or conditions the Sheriff has deemed warranted, including restrictions as to the time, place, manner and circumstances under which the person may carry the concealed firearm.

1. All such restrictions or conditions shall be conspicuously noted on any license issued (Penal Code § 12050(c)).
2. The licensee will be required to sign a Terms of License Agreement. Any violation of any of the restrictions and conditions may result in the immediate revocation of the license.

(c) The license shall be laminated, bearing a photograph of the licensee with the expiration date, type of weapon, restrictions and other pertinent information clearly visible.

1. Each license shall be numbered and clearly identify the licensee.
2. All licenses shall be subjected to inspection by the Sheriff or any law enforcement officer.

(d) The license will be valid for a period not to exceed two years from the date of issuance.

1. A license issued to state or federal magistrate, commissioner or judge will be valid for a period not to exceed three years.
2. A license issued to any reserve peace officer as defined in Penal Code § 830.6(a) or (b), or a custodial officer employed by the Sheriff as provided in Penal Code § 831.5 will be valid for a period not to exceed four years, except that such license shall be invalid upon the individual's conclusion of service as a reserve officer or custodial officer.

(e) The licensee shall notify this department in writing within ten days of any change of place of residency. If the licensee moves out of the County of Orange, the license shall expire ninety (90) days after the licensee has moved.

218.5.1 LICENSE RESTRICTIONS

(a) The Sheriff may place special restrictions limiting time, place and circumstances under which any license shall be valid. In general, these restrictions will prohibit the licensee from any of the following:

1. Consuming any alcoholic beverage while armed
2. Falsely representing himself or herself as a peace officer
3. Unjustified or unreasonable displaying of a weapon
4. Committing any crime
5. Being under the influence of any medication or drug while armed
6. Interfering with any law enforcement officer's duties
7. Refusing to display his/her license or weapon for inspection upon demand of any peace officer

(b) The Sheriff reserves the right to inspect any license or licensed weapon at any time.

(c) The alteration of any previously approved weapon including, but not limited to adjusting trigger pull, adding laser sights or modifications shall void any license and serve as grounds for revocation.

218.5.2 MODIFICATIONS TO LICENSES

Any licensee may apply to modify a license at any time during the period of validity by completing and submitting a written Application for License Modification along with the current processing fee to the Department in order to accomplish one or more of the following:

(a) Add or delete authority to carry a firearm listed on the license

(b) Change restrictions or conditions previously placed on the license

(c) Change the address or other personal information of the licensee

In the event that any modification to a valid license is approved by the Sheriff, a new license will be issued reflecting the modification(s). A modification to any license will not serve to extend the original expiration date and an application for a modification will not constitute an application for renewal of the license.

218.5.3 REVOCATION OF LICENSES

Any license issued pursuant to this policy may be immediately revoked by the Sheriff for any reason, including but not limited to:

(a) If the licensee has violated any of the restrictions or conditions placed upon the license; or

(b) If the licensee becomes medically or psychologically unsuitable to carry a concealed weapon; or

(c) If the licensee is determined to be within a prohibited class described in Penal Code §§ 12021 or 12021.1 or Welfare and Institutions Code §§ 8100 or 8103; or

(d) If the licensee engages in any conduct which involves a lack of good moral character or might otherwise remove the good cause for the original issuance of the license.

The issuance of a license by the Sheriff shall not entitle the holder to either a property or liberty interest as the issuance, modification or revocation of such license remains exclusively within the discretion of the Sheriff as set forth herein.

If any license is revoked, the Department will immediately notify the licensee and the Department of Justice pursuant to Penal Code § 12053.

218.5.4 LICENSE RENEWAL

No later than 90 days prior to the expiration of any valid license to carry a concealed weapon, the licensee may apply to the Sheriff for a renewal by completing the following:

(a) Verifying all information submitted in the renewal application under penalty of perjury;

(b) The renewal applicant shall complete a 4 hour community college course certified by the Commission on Peace Officer Standards and Training (POST). The course will minimally include firearms safety and the laws regarding the permissible use of a firearm;

(c) Submitting any weapon to be considered for a license renewal to the department's armorer for a full safety inspection. The renewal applicant shall also successfully

complete a firearms safety and proficiency examination with the weapon to be licensed by the license renewal, to be administered by the armorer, including completion of all releases and other forms; and

(d) Payment of a non-refundable renewal application fee.

Once the Sheriff or authorized designee has verified the successful completion of the renewal process, the renewal of the license to carry a concealed weapon will either be granted or denied. Prior issuance of a license shall not entitle any licensee to any property or liberty right to renewal.

Whether an application for renewal is approved or denied, the applicant shall be notified in writing within 90 days of the renewal application or within 30 days after receipt of the applicant's criminal background check from DOJ, whichever is later (Penal Code § 12052.5).

218.6 DEPARTMENT REPORTING AND RECORDS

Pursuant to Penal Code § 12053, the Sheriff shall maintain a record of the following and immediately provide copies of each to the Department of Justice:

(a) The denial of a license

(b) The denial of a modification to a license

(c) The issuance of a license

(d) The modification of a license

(e) The revocation of a license

The Sheriff shall annually submit to the State Attorney General the total number of licenses to carry concealed weapons issued to reserve peace officers and judges.

218.7 CONFIDENTIAL RECORDS

The home address and telephone numbers of any peace officer, magistrate, commissioner or judge contained in any application or license shall not be considered public record (Government Code § 6254(u)(2)).

Any information in any application or license which tends to indicate when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of his/her family shall not be considered public record (Government Code § 6254(u)(1)).

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 6. Control of Deadly Weapons (Refs & Annos)
Title 4. Firearms (Refs & Annos)
Division 5. Carrying Firearms (Refs & Annos)
Chapter 2. Carrying a Concealed Firearm (Refs & Annos)
Article 3. Conditional Exemptions (Refs & Annos)

West's Ann.Cal.Penal Code § 25595

§ 25595. Otherwise lawful carrying or transportation of handgun; application of article

Effective: January 1, 2012
Currentness

This article does not prohibit or limit the otherwise lawful carrying or transportation of any handgun in accordance with the provisions listed in Section 16580.

Credits
(Added by Stats.2010, c. 711 (S.B.1080), § 6, operative Jan. 1, 2012. Amended by Stats.2011, c. 725 (A.B.144), § 12.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

2010 Addition

Section 25595 continues former Section 12026.2(c) without substantive change.

See Section 16530 ("firearm capable of being concealed upon the person," "pistol," and "revolver"). [38 Cal.L.Rev.Comm. Reports 217 (2009)].

West's Ann. Cal. Penal Code § 25595, CA PENAL § 25595
Current with all 2012 Reg.Sess. laws, Gov.Reorg.Plan No. 2 of 2011-2012, and all propositions on 2012 ballots.

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Title 4. Firearms (Refs & Annos)
Division 5. Carrying Firearms (Refs & Annos)
Chapter 3. Carrying a Loaded Firearm (Refs & Annos)
Article 4. Other Exemptions to the Crime of Carrying a Loaded Firearm in Public (Refs & Annos)

West's Ann.Cal.Penal Code § 26035

§ 26035. Carrying of loaded firearm at place of business, private property exempt from application of Section 25850

Effective: January 1, 2012
Currentness

Nothing in Section 25850 shall prevent any person engaged in any lawful business, including a nonprofit organization, or any officer, employee, or agent authorized by that person for lawful purposes connected with that business, from having a loaded firearm within the person's place of business, or any person in lawful possession of private property from having a loaded firearm on that property.

Credits
(Added by Stats.2010, c. 711 (S.B.1080), § 6, operative Jan. 1, 2012.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

2010 Addition

Section 26035 continues former Section 12031(h) without substantive change.

See Sections 16520 ("firearm"), 16840 ("loaded" and "loaded firearm"). [38 Cal.L.Rev.Comm. Reports 217 (2009)].

Notes of Decisions (4)

West's Ann. Cal. Penal Code § 26035, CA PENAL § 26035
Current with all 2012 Reg.Sess. laws, Gov.Reorg.Plan No. 2 of 2011-2012, and all propositions on 2012 ballots.

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