IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
Case No. 5:14-cv-00369-BO

FELICITY M. TODD VEASEY and SECOND AMENDMENT FOUNDATION, INC.,	)	
Plaintiffs,	)	**MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS**
BRINDELL B. WILKINS, JR., in his official Capacity as Sheriff of Granville County, North Carolina,	)	
Defendant.	)	

Plaintiffs Felicity M. Todd Veasey and Second Amendment Foundation, Inc. (collectively "Plaintiffs"), by and through counsel and pursuant to Local Rule 7.1(e), file this response in opposition to Defendant's Motion to Dismiss.

INTRODUCTION AND STATEMENT OF THE CASE

Plaintiffs filed suit under 42 U.S.C. § 1983 against the Defendant in his official capacity as Sheriff of Granville County ("Sheriff"), because the Sheriff denies lawful permanent resident aliens the right to apply for and obtain a Concealed Carry Permit ("CCP"). This is a clear violation of the Equal Protection Clause and the Second Amendment. Because of these plain constitutional violations, Plaintiffs seek injunctive relief requiring the Sheriff to follow the United States Constitution and allow Ms. Veasey and similarly-situated members of Plaintiff Second Amendment Foundation, Inc. ("SAF") to apply for and receive a CCP.

In response, the Sheriff argues that he simply enforces state law, and therefore Plaintiffs have no claims against him. Instead, the Sheriff contends, Plaintiffs should look to the State of North Carolina for relief, despite the fact that the Sheriff has adopted a local policy that

discriminates on the basis of citizenship and despite the fact that it is the Sheriff who has violated Plaintiffs' constitutional rights. In seeking dismissal of the Complaint, the Sheriff does not dispute Plaintiffs' core argument, that North Carolina law bars lawful permanent resident aliens from obtaining CCPs and therefore violates the Equal Protection Clause. Instead, the Sheriff contends that his application of state law means that the State of North Carolina should answer for constitutional violations committed by his department. As discussed below, the Sheriff's position is not supported by the law, and he is indeed a "person" liable under 42 U.S.C. § 1983.

Importantly, Plaintiffs do not seek damages and instead seek injunctive relief against continued refusal to issue CCPs to lawful permanent resident aliens. (Compl. pp. 9-10, Prayer for Relief). The Sheriff, through this motion to dismiss, asks that the Court deny Plaintiffs this relief, which would allow the Sheriff to knowingly continue to violate the United States Constitution.

STATEMENT OF FACTS

Ms. Veasey is 38 years old, is a citizen of Australia residing with her family in Butner, North Carolina, and has lived in Butner since 2004. (Compl. ¶ 8). She lived in Durham County, North Carolina from 2001 through 2004. (*Id.*) Ms. Veasey received her permanent resident visa (a/k/a "green card") in 2001. (*Id*). Previously, Ms. Veasey was in the United States on a work visa, which she had while she worked at the Australian Embassy in Washington, D.C., and she was also briefly in the United States on a tourist visa. (*Id.*). Ms. Veasey has been employed in information technology and telecommunications for the same company in North Carolina since 2001. (*Id.*)

Ms. Veasey wants to apply for and obtain a CCP. However, Sheriff Wilkins has adopted a local policy that states that a CCP "Applicant must be: A citizen of the United States of

America." (See Exhibit A, attached hereto, which is a true and accurate copy of the Sheriff's policy as it appears on his website.[1]) Importantly, this policy was promulgated by the Sheriff's department, separately and independently of any action by the State of North Carolina.

The Sheriff has enforced this local policy by denying Ms. Veasey an opportunity to obtain a CCP. Specifically, in October, 2012, Ms. Veasey asked the Sheriff's department about applying for a CCP, and she was told that she was ineligible for a permit because she is not a citizen. (Compl. ¶12). She was also told not to bother applying because her application would be denied on the basis of citizenship and the money for the application fee would be wasted. (*Id.*)

The Sheriff, who is sued in his official capacity, is responsible for enforcing and administering North Carolina statutes governing CCPs, N.C. Gen. Stat. § 14-415.10 et seq. Under these statutes, the Sheriff is charged with processing and issuing CCP applications in Granville County, North Carolina. The Sheriff is the sole government actor, and his department is the sole government agency, that enforces these statutes in Granville County.

But for the Sheriff's denial of a CCP to Ms. Veasey, she would carry a loaded and functional concealed handgun in public for self-defense. She refrains from doing so because she fears arrest, prosecution, fine, and imprisonment because she understands it is unlawful for a non-citizen to carry a concealed handgun in North Carolina.

[1] The Sheriff's webpage that speaks to CCPs is located at: http://www.granvillenc.govoffice2.com/index.asp?Type=B_BASIC&SEC=%7bA8FFA03A-C573-455A-8957-DFD28944126C%7d&DE=%7b406CC9E4-9BF8-426B-AD8C-E23F9BAB2A57%7d

ARGUMENT

I. The Sheriff's denial of a CCP to lawful permanent resident aliens is a plain violation of the United States Constitution.

Plaintiffs' core complaint in this civil action is the unconstitutionality of denying her a CCP simply because she is not a United States citizen. The Sheriff does not dispute this core principle.[2] Instead, the Sheriff contends that he simply administers and enforces the North Carolina statutes as written and cannot be legally responsible for such conduct, despite his department's plain violation of Plaintiffs' constitutional rights. The Sheriff further contends that the proper party to be sued is the State of North Carolina.

As fully discussed in Plaintiffs' Brief in Support of Motion for Preliminary Injunction, the question of whether lawful permanent resident aliens enjoy Second and Fourteenth Amendment rights is an easy one, because the Supreme Court has ruled that they do. (Mem. Supp. Points and Authorities Pls' Mot. Prelim. Inj. [D.E. 21] pp. 12-20). This case therefore does not turn on whether Plaintiffs' constitutional rights have been violated. They have been. Instead, the issue is whether the Sheriff, in his official capacity, must answer for such violations when his department adopted a policy discriminating on the basis of citizenship and actually refuses to issue CCPs to lawful permanent resident aliens.

II. The Sheriff's defense that he simply applies North Carolina statutes as written does not absolve the Sheriff of Section 1983 liability.

Notwithstanding the Sheriff's position that he simply administers and enforces North Carolina law, he is still liable under 42 U.S.C. § 1983 for violating Plaintiffs' constitutional rights. In the first instance, the Sheriff's reliance on cases such as *Monell v. Dep't of Social Services*, 436 U.S. 658 (1978) and *Bockes v. Fields*, 999 F.2d 788 (4th Cir. 1993) is misplaced

[2] The Sheriff's only argument regarding constitutionality addresses the Second Amendment issue, not the Equal Protection issue. (Mem. Supp. Mot. to Dismiss [D.E. 15], pp. 12-13).

and does not absolve the Sheriff of Section 1983 liability. For example, *Monell* dealt with the twin issues of whether municipalities and local governing boards are "persons" within the meaning of 42 U.S.C. § 1983, and, if so, whether those same entities could be held vicariously liable for the unlawful conduct of their employees. *Id.* at 690-693. In holding that liability could be imposed only where unconstitutional conduct occurred as a result of the implementation or execution of a local policy or custom, the Court emphasized that liability cannot exist "*solely* because [the governing board] employs a tortfeasor—or, in other words, a [governing board] cannot be held liable under § 1983 on a *respondeat superior* theory." *Id.* at 691 (emphasis in original). Therefore, *Monell* addressed only vicarious liability, not a county sheriff's implementation of a formal local policy, as in the present case.

The Supreme Court reiterated the limited basis of the "official policy requirement" in *Pembaur v. City of Cincinnati*, 475 U.S. 469 (1986), stating:

> [T]he "official policy" requirement was intended to distinguish acts of the *municipality* from acts of *employees* of the municipality, and thereby make clear that municipal liability is limited to action[s] for which the municipality is actually responsible. *Monell* reasoned that recovery from a municipality is limited to acts that are, properly speaking, acts "of the municipality"—that is, acts which the municipality has officially sanctioned or ordered.

Id. at 479-80. (emphasis in original).

Therefore, both *Monell* and *Pembaur* make clear that the "official policy requirement" doctrine should remain limited to cases involving vicariously liability. And, in any event, the present case is indeed a circumstance that involves "acts which the municipality has officially sanctioned or ordered." *Pembaur,* 475 U.S. at 480.

The Sheriff's reliance on *Bockes* is likewise misplaced, albeit for a different reason. In *Bockes*, the Fourth Circuit addressed Eleventh Amendment immunity for a local board where the state paid liability insurance on behalf of that board. *Bockes*, 999 F.2d at 789-90. Moreover, as

the Fourth Circuit later noted in *Wolf v. Fauquier Cnty. Bd. of Supervisors*, 555 F.3d 311, 321-22 (4th Cir. 2009), the "local" board that enjoyed Eleventh Amendment immunity in *Bockes* was subject to complete control by the state. *Id.* ("Beyond this limited appointment power, municipalities have no control over the operations of local social services boards or departments.") Therefore, when the *Bockes* Court spoke of the local board being constrained by state law and therefore not liable under 1983, it was applying that principle to a state-controlled entity. This is plainly not the same as a North Carolina's sheriff's department, which is entirely separate from the state, adopting and applying a formal local policy. *Bockes* therefore has no bearing on the present case.

Moreover, *Vives v. The City of New York*, 524 F.3d 346 (2d Cir. 2008), cited by the Sheriff, demonstrates that an issue of fact arises as to whether Sheriff Wilkins has truly done nothing more than apply state statutes, and a Rule 12 dismissal is therefore not appropriate. In *Vives*, the Second Circuit reversed a summary judgment ruling and specifically noted questions of fact that would have to be addressed on remand. Therefore, if Sheriff Wilkins maintains his position that he was simply applying North Carolina statutes as written, then Plaintiffs in discovery must delve into whether the Sheriff had a "meaningful choice" regarding enforcement of the state statutes, whether his department adopted a discrete policy enforcing those statutes, and whether the Sheriff has the authority to instruct his department not to enforce portions of the state statutes. *See Vives*, 524 F.3d at 353-54.

Vives is also instructive in light of Sheriff Wilkins' official policy that a CCP "Applicant must be: A citizen of the United States of America." In *Vives*, local law enforcement officers enforced state law by arresting the plaintiff and citing him for violation of state law. The municipality had not adopted any official policy touching on the constitutional violations of

which the plaintiff complained. By contrast, Sheriff Wilkins has indeed adopted a formal local policy, as stated plainly on his website (See Exhibit A, attached hereto).

The holding in *Davis v. City of Camden*, 657 F. Supp. 396 (D.N.J. 1987), is therefore more instructive than any cases upon which the Sheriff relies. In *Davis*, the Court held a municipality liable for enforcing an unconstitutional state statute because the municipality had adopted a policy in accordance with state law. Specifically, the municipality adopted and enforced a strip search policy that was mandated by a state regulation. *Id.* at 398. That state regulation was later declared unconstitutional, and the municipality attempted to escape liability by arguing that "because this policy was mandated by a state regulation the policy was not a 'county policy' as contemplated by *Monell* and its progeny, but a *state* policy that county officials merely enforced; and that accordingly, the County cannot be held liable under § 1983 for plaintiff's damages." *Id.* at 402. (emphasis in original). The Court flatly rejected this argument. Discussing *Monell* and cases that have applied its holding, the *Davis* Court concluded that Section 1983 liability arises when a municipality "officially adopts a policy that subsequently is declared unconstitutional, notwithstanding the fact that the policy was mandated by state law." *Id*.

In the present case, Sheriff Wilkins has expressly adopted a policy that prohibits anyone but US citizens from obtaining a CCP. And, while the Sheriff points to the State of North Carolina to absolve his department of liability, the fact remains that the Sheriff's department has adopted, implemented, and enforces an official policy that unconstitutionally discriminates against lawful permanent resident aliens. Blaming the state for such a policy simply does not absolve the Sheriff's department of liability.

Finally, the premise of Sheriff Wilkins' core argument—essentially that his department is "just following orders" when it adopts and enforces a policy known to violate the Constitution—should be rejected. Federal courts have repeatedly addressed this premise in the context of personal liability for Section 1983 violations, and the courts have rejected this premise where, as here, the constitutional violation is clear. For example, in *Davis*, the Court noted:

> Finally, the argument that municipal liability should not attach when municipal officials effectuate a state mandated policy because the officials had no choice but to implement the policy can be met with the observation that not only do these officials have such a choice, but they may be obliged not to implement the state law if they wish to avoid personal liability under § 1983. Municipal officials cannot blindly implement state laws; they are required to independently assess the constitutionality of the laws and, although they will be protected if their assessment, albeit incorrect, was objectively reasonable, they will be held personally liable if they should have known that the law was unconstitutional.

Davis, 657 F. Supp. at 404.

Likewise, in *Snider v. Peters*, 928 F. Supp. 2d 1113 (E.D. Mo. 2013), the plaintiff sued, received a declaration and injunction against state law, and received an award of damages against a local police officer. The plaintiff sought fees against the officer under 42 U.S.C. § 1988, who argued that he should not be liable for fees because he was just enforcing a state statute. *Id.* at 1119. The Court rejected this argument, stating "governmental officials are not bound to follow state law when that law is itself unconstitutional. Quite the contrary: in such a case, they are bound not to follow state law." *Id.* (quoting *Carhart v. Steinberg*, 192 F.3d 1142, 1152 (8th Cir. 1999)). *See also O'Rourke v. Hayes*, 378 F.3d 1201, 1210 n.5 (11th Cir. 2004).

While *Davis* and *Snider* addressed the "just following orders" defense in the context of personal liability, and while Sheriff Wilkins is sued only in his official capacity, the principle applied in *Davis* and *Snider* holds true in this case. The Sheriff simply cannot avoid liability for his department when his department actually has violated Plaintiffs' constitutional rights, and

this is especially true because the Sheriff's department has a formal local policy of discriminating against lawful permanent resident aliens. The Sheriff's defense therefore must be rejected, and his motion should be denied.

III. The Sheriff's 12(b)(7) motion should be denied because he cites no authority for the premise that the State is a necessary party, and the State is otherwise not a necessary party in an action where the Sheriff's policy resulted in the constitutional violation.

The Sheriff's argument for dismissal due to the absence of a necessary party is limited to a generic discussion of the principles of Federal Rules of Civil Procedure 12(b)(7) and 19, with a brief mention of the inability to join a state as a party due to Eleventh Amendment immunity. However, the Sheriff does not, and indeed cannot, cite any case that was dismissed simply because a local government blames a state government for implementation of policy by that local government.

The Sheriff cannot escape the undisputed fact that he adopted a local policy that discriminates against lawful permanent resident aliens. The Sheriff may blame state law as the reason for this policy, but ultimately his Department's policies and actions are at issue. Moreover, the statutes governing CCPs, N.C. Gen. Stat. §§ 14-415.11 through 14-415.27, make clear that a county sheriff is the only government actor that implements and enforces the CCP statutes. *See* N.C. Gen. Stat. § 14-415.11(b). Because Sheriff Wilkins is the designated government official who enforces the discriminatory and unconstitutional statute at issue, and no actor of the State of North Carolina is involved, the Court should reject the Sheriff's argument pursuant to *Ex Parte Young*, 209 U.S. 123 (1908) that Plaintiffs should (or even could) have filed suit against a State official in federal court. Plaintiffs have complied with the applicable rule and given the State notice of this action, and it is now presumably up to the State's officials whether

to insert themselves into this matter. Accordingly, joinder of the State is entirely unnecessary, and the Rule 12(b)(7) motion should be denied.

IV. Any alleged violation of Fed. R. Civ. P. 5.1 is not a basis for dismissal of this action, and Rule 5.1 is irrelevant where the Sheriff's policy resulted in the constitutional violation.

The Sheriff argues that Plaintiffs' alleged failure to comply with Fed. R. Civ. P. 5.1 is grounds for dismissal. However, the rule itself is clear: "A party's failure to file and serve the notice…does not forfeit a constitutional claim or defense that is otherwise timely asserted." Fed. R. Civ. P. 5.1(d).

Moreover, Plaintiffs indeed notified the North Carolina Attorney General of their challenge to the state statutes. On July 30, 2014, shortly after filing suit, undersigned counsel sent to the North Carolina Attorney General a letter stating that Plaintiffs were challenging the constitutionality of a state statute. (See Notice of Constitutional Challenge of Statute [D.E. 22]). This letter was sent by certified mail to the address designated by the Attorney General for service of process. (*Id.*). Enclosed with this letter were copies of the Complaint and Summons, and the Complaint makes clear the statute being challenged and the basis for the constitutional challenge to the statute. (*Id*.). Over three months have passed, and the State has not responded.

The purpose of a Rule 5.1 notice is to provide the Attorney General the time and opportunity to assert his position on the challenged statute. *See, e.g., Oklahoma ex rel. Edmondson v. Pope*, 516 F.3d 1214, 1216 (10th Cir. 2008). Moreover, the sole effect of any defect in a Rule 5.1 notice is to prevent the Court from entering a judgment declaring a statute unconstitutional until 60 days after proper notice is given. Fed. R. Civ. P. 5.1(c). Under these

circumstances, and considering the Sheriff's motion is brought pursuant to Rule 12(b), any alleged defect in the notice to the Attorney General should be disregarded.[3]

V. The Sheriff's argument regarding an inability to settle this case and the "unfairness" of Granville County paying attorney fees is entirely irrelevant to a Rule 12 motion.

The Sheriff also argues, in support of a 12(b)(6) motion, that he cannot settle this case and it would be unfair for Granville County to pay Plaintiffs' attorney fees. These issues are entirely irrelevant to the determination of whether Plaintiffs have stated a claim against the Sheriff. And, indeed, an argument addressing "fairness" issues on 12(b)(6) reflects the reality that the Sheriff cannot offer a valid basis to avoid liability in this case.

Nonetheless, if the Court were inclined to consider the Sheriff's circumstance and "fairness", Plaintiffs respectfully suggest that the Court consider that the Sheriff has failed for nearly 20 years to address a glaring violation of constitutional rights embodied in his local policy. North Carolina's statutes governing CCPs were enacted in 1995, with the original act containing the challenged restriction regarding US citizenship. N.C. Sess. Laws 1995, c. 398, s.1 (see Exhibit B, attached hereto). Over a century ago, the Supreme Court held that discrimination against lawful permanent resident aliens was unconstitutional. *See, e.g., Graham v. Richardson*, 403 U.S. 365, 371 (1971) (*citing Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) and *Truax v. Raich*, 239 U.S. 33, 39 (1915)). In 2008, the Supreme Court settled the issue of whether the right to keep and bear arms was a fundamental constitutional right, *District of Columbia v. Heller*, 554 U.S. 570 (2008), and in 2010, the Supreme Court held that state and local governments were obliged to honor this constitutional right. *McDonald v. City of Chicago*, 561 U.S. 3025 (2010). Despite the plain constitutional violation embodied in the Sheriff's local policy that discriminates

[3] Because the Sheriff raised issues regarding Plaintiffs' Rule 5.1 notice, undersigned counsel filed a Notice of Constitutional Challenge [D.E. 22], and undersigned counsel is causing that Notice to be served on the Attorney General.

against lawful permanent resident aliens, it is apparent that the Sheriff has done nothing to address this violation, other than to suggest that the State of North Carolina should answer for his department's policy.

With the Sheriff placing "fairness" considerations before the Court, the Court must ask why the Sheriff has never taken any action to address the blatant unconstitutionality of his local policy and why he should therefore escape liability. The Sheriff seems to suggest that he is merely a victim of circumstance, and the policy that he chose to adopt, to publicize on his website, and to enforce against Ms. Veasey is nothing more than his execution of the law. The Sheriff asks the Court to excuse a plain violation of Plaintiffs' constitutional rights, merely because state law is the origin of the Sheriff's local policy. And, by implication, the Sheriff asks the Court to excuse these constitutional violations by dismissing this case, thereby allowing him to continue to violate the constitutional rights of the residents of Granville County knowing that he is doing so. This certainly is not a "fair" result, regardless of the Sheriff's position on settlement and attorney fees.

VI. If the Court believes that the State of North Carolina must be involved in this action, the proper course is amendment of the Complaint, not dismissal.

Finally, should the Court entertain the Sheriff's suggestion that the State of North Carolina be involved in this civil action, the proper course is to allow amendment of the Complaint to add the State or persons acting on behalf of the State as parties. As demonstrated above, Sheriff Wilkins' local policy is at issue, and the Sheriff is the sole government actor that implements and enforces his policy, regardless of the law that is the basis of the policy. However, there are simply no grounds to dismiss the Complaint, and any involvement of the State or its employees should be accomplished by amending the Complaint to add parties.

CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that the Court deny Defendant's motion to dismiss in its entirety.

Respectfully submitted this 10th day of November, 2014.

WILLIAMS MULLEN

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CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2014, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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THE COUNTY OF Granville NORTH CAROLINA

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EXHIBIT A tabbies

Services

Public Fingerprinting Services

The Granville County Sheriff's Office offers non-criminal fingerprinting as a service to the citizens of Granville County for EMS, foster/adoptive parents, child care, employment, etc.

The fingerprinting service is available Monday through Friday 10:00 a.m. to 4:00 p.m. The fee for this service is $10.00.

Permit to Purchase a Handgun

It is unlawful for any person, firm, or corporation in this state to sell, give away, transfer, purchase or receive any handgun unless a permit has been obtained.

The purchaser or receiver of a handgun:

- Applicant must be a resident in the county where permit to purchase application is made. One can be downloaded here
- Must be at least 18 years of age to receive a purchase permit and 21 years of age to purchase a handgun from a federally licensed firearms dealers
- Must pass a criminal history background check

The office hours to file an application to obtain a handgun purchase permit are Monday through Friday 8:30 a.m. to 4:30 p.m. The fee is: $5.00.

Concealed Carry Weapon Permit

This permit allows approved NC residents to carry a concealed handgun, within limits, if they have received a concealed handgun permit from the Sheriff of their county of residence.

Applicant must be:

- A citizen of the United States of America
- A resident of Granville County and a resident of North Carolina for thirty (30) days
- Twenty-one (21) years of age
- Not suffer from any mental or physical condition which would prevent safe handgun handling and operation
- Successfully complete a firearms training and safety course that has been designed by the North Carolina Criminal Justice Standards Commission
- And, a criminal background check, must be performed before granting a permit. This takes approximately 90 days

Applicants must apply in person and have a verifiable training certificate and a valid picture ID in hand (*NC driver's license or other picture ID with current address provided by the state of North Carolina*).

A new Concealed Carry Weapon Permit requires a $98.00 non-refundable fee for new application (*which includes a $10.00 fingerprint fee).* A renewal application requires an $83.00 non-refundable fee.

Fees may be paid by cash or check made payable to Granville County Sheriff's Office.

NOTE: North Carolina correctional officers, federal correctional officers, military or out-of-state law enforcement officers (*living in NC)* are **NOT** exempt from firearms training.

The Conceal Carry Weapon Permit service is available for new applications, Monday through Friday 8:30

a.m. to 4:30 p.m.

Posted Land for Hunting or Discharging Firearms

Applicant must:

- Complete an application for registration of posted land.
- Provide a map of the land being posted *(provided from the mapping department if necessary).*
- Land posting is for a life time, unless modifications are being made.

The office hours to file an application for posted land are Monday through Friday 8:30 a.m. to 4:30 p.m. The fee is $13.00 (*including $3.00 notary fee*). Permit book provided at no charge.

Sex Offenders Registration

The Granville County Sheriff's Office Sex Offender Information and Notification System redirects you to the North Carolina Sex Offender and Public Protection Registry website www.ncfindoffender.com.

The purpose of the Sex Offender Registration file is to assist local law enforcement efforts to protect their communities by requiring sex offenders, sexually violent predators, recidivist, aggravated offenders and nonresident students or workers to register.

The NC SOR file provides for public access to information about offenders who are required to register and facilitates exchange of information between the public and law enforcement officials. The NCIC SOR files and Juvenile Sex Offender Registration records are restricted to law enforcement use.

Note:

- Unless an individual has been convicted of a sexual offense, they will not be registered.
- Registered sex offenders have met, or are meeting through probation, their legal obligations as ordered by the court.
- Not all sex offenders registered in Granville County have committed crimes against children.

Anyone interested in checking the registry may go to the links below, to search the databases.

North Carolina Sex Offender Site: http://sexoffender.ncdoj.gov

Virgina Sex Offender Site: http://www.sex-offender.vsp.virginia.gov/

Federal Sex Offender Site: http://www.nsopw.gov/

VINE

VINE *(Victim Information and Notification Everyday),* allows crime victims across the county to obtain timely and reliable information about criminal cases and the custody status of offenders, 24 hours a day, over the telephone, through the web, or by email.

The Granville County Sheriff's Office participates in the VINE system. All inmate bookings and releases are sent to the VINE computer every 15 minutes, which provides timely and important notification to victims upon the release of an inmate.

Victims may register with VINE by calling 1-800-770-0192.

For more information, follow this link to the VINE homepage www.appriss.com.

For more information contact:

Granville County Sheriff's Office

143 Williamsboro Street

Oxford, NC 27565

Office: 919-693-3213

Fax: 919-603-1315

Email: sheriff@granvillecounty.org

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GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 398
HOUSE BILL 90

AN ACT TO PROVIDE THAT A PERSON WHO MEETS SPECIFIED STATUTORY CRITERIA MAY CARRY A CONCEALED HANDGUN IF THE PERSON HAS OBTAINED A CONCEALED HANDGUN PERMIT, TO AUTHORIZE SHERIFFS TO ISSUE CONCEALED HANDGUN PERMITS, TO ESTABLISH THE CRITERIA THAT MUST BE SATISFIED TO RECEIVE THE PERMIT, TO ESTABLISH THE PROCEDURE FOR THE ISSUANCE OF A CONCEALED HANDGUN PERMIT, TO INCREASE THE PENALTY FOR CARRYING A CONCEALED HANDGUN WITHOUT A PERMIT, AND TO MAKE CONFORMING STATUTORY CHANGES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 14 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 54B.
"Concealed Handgun Permit.

"**§ 14-415.10. Definitions.**

The following definitions apply to this Article:

(1) Carry a concealed handgun. – The term includes possession of a concealed handgun.

(2) Handgun. – A firearm that has a short stock and is designed to be held and fired by the use of a single hand.

(3) Permit. – A concealed handgun permit issued in accordance with the provisions of this Article.

"**§ 14-415.11. Permit to carry concealed handgun; scope of permit.**

(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.

(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 three years from the date of issuance.

(c) A permit does not authorize a person to carry a concealed handgun in the areas prohibited by G.S. 14-269.2, 14-269.3, 14-269.4, and 14-277.2, in any area

prohibited by 18 U.S.C. § 922 or any other federal law, in a law enforcement or correctional facility, in a building housing only State or federal offices, in an office of the State or federal government that is not located in a building exclusively occupied by the State or federal government, a financial institution, or any other premises where notice that carrying a concealed handgun is prohibited by the posting of a conspicuous notice or statement by the person in legal possession or control of the premises. It shall be unlawful for a person, with or without a permit, to carry a concealed handgun while consuming alcohol or at any time while the person has remaining in his body any alcohol or in his blood a controlled substance previously consumed, but a person does not violate this condition if a controlled substance in his blood was lawfully obtained and taken in therapeutically appropriate amounts.

(d) A person who is issued a permit shall notify the sheriff who issued the permit of any change in the person's permanent address within 30 days after the change of address. If a permit is lost or destroyed, the person to whom the permit was issued shall notify the sheriff who issued the permit of the loss or destruction of the permit. A person may obtain a duplicate permit by submitting to the sheriff a notarized statement that the permit was lost or destroyed and paying the required duplicate permit fee.

"**§ 14-415.12. Criteria to qualify for the issuance of a permit.**

(a) The sheriff shall issue a permit to an applicant if the applicant qualifies under the following criteria:

(1) The applicant is a citizen of the United States and has been a resident of the State 30 days or longer immediately preceding the filing of the application.

(2) The applicant is 21 years of age or older.

(3) The applicant does not suffer from a physical or mental infirmity that prevents the safe handling of a handgun.

(4) The applicant has successfully completed an approved firearms safety and training course which involves the actual firing of handguns and instruction in the laws of this State governing the carrying of a concealed handgun and the use of deadly force. The North Carolina Criminal Justice Education and Training Standards Commission shall prepare and publish general guidelines for courses and qualifications of instructors which would satisfy the requirements of this subdivision. An approved course shall be any course which satisfies the requirements of this subdivision and is certified or sponsored by:

a. The North Carolina Criminal Justice Education and Training Standards Commission,

b. The National Rifle Association, or

c. A law enforcement agency, college, private or public institution or organization, or firearms training school, taught by instructors certified by the North Carolina Criminal Justice Education and Training Standards Commission or the National Rifle Association.

Every instructor of an approved course shall file a copy of the firearms course description, outline, and proof of certification annually, or upon modification of the course if more frequently, with the North Carolina Criminal Justice Education and Training Standards Commission.

(5) The applicant is not disqualified under subsection (b) of this section.

(b) The sheriff shall deny a permit to an applicant who:

(1) Is ineligible to own, possess, or receive a firearm under the provisions of State or federal law.

(2) Has formal charges pending for a crime punishable by imprisonment for a term exceeding sixty days.

(3) Has been adjudicated guilty in any court of a crime punishable by imprisonment for a term exceeding sixty days.

(4) Is a fugitive from justice.

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

(6) Is currently, or has been previously adjudicated or administratively determined to be, lacking mental capacity or mentally ill.

(7) Is or has been discharged from the armed forces under conditions other than honorable.

(8) Is or has been adjudicated guilty of or received a prayer for judgment continued or suspended sentence for one or more crimes of violence constituting a misdemeanor, including but not limited to, a violation of a misdemeanor under Article 8 of Chapter 14 of the General Statutes, or a violation of a misdemeanor under G.S. 14-225.2, 14-226.1, 14-258.1, 14-269.2, 14-269.3, 14-269.4, 14-269.6, 14-276.1, 14-277, 14-277.1, 14-277.2, 14-277.3, 14-281.1, 14-283, 14-288.2, 14-288.4(a)(1) or (2), 14-288.6, 14-288.9, 14-288.12, 14-288.13, 14-288.14, 14-318.2, or 14-415.19(a), unless five years has elapsed since disposition or pardon has occurred prior to the date on which the application is submitted.

(9) Has had entry of a prayer for judgment continued for a criminal offense which would disqualify the person from obtaining a concealed handgun permit.

(10) Is free on bond or personal recognizance pending trial, appeal, or sentencing for a crime which would disqualify him from obtaining a concealed handgun permit.

(11) Has been convicted of an impaired driving offense under G.S. 20-138.1, 20-138.2, or 20-138.3 within three years prior to the date on which the application is submitted.

"**§ 14-415.13. Application for a permit; fingerprints.**

(a) A person shall apply to the sheriff of the county in which the person resides to obtain a concealed handgun permit. The applicant shall submit to the sheriff all of the following:

(1) An application, completed under oath, on a form provided by the sheriff.

(2) A nonrefundable permit fee.

(3) A full set of fingerprints of the applicant administered by a law enforcement agency of this State.

(4) An original certificate of completion of an approved course, adopted and distributed by the North Carolina Criminal Justice Education and Training Standards Commission, signed by the certified instructor of the course attesting to the successful completion of the course by the applicant which shall verify that the applicant is competent with a handgun and knowledgeable about the laws governing the carrying of a concealed handgun and the use of deadly force.

(5) A release, in a form to be prescribed by the Administrative Office of the Courts, that authorizes and requires disclosure to the sheriff of any records concerning the mental health or capacity of the applicant.

(b) The sheriff shall submit the fingerprints to the State Bureau of Investigation for a records check of State and national databases. The State Bureau of Investigation shall submit the fingerprints to the Federal Bureau of Investigation as necessary. The cost of processing the set of fingerprints shall be charged to an applicant as provided by G.S. 14-415.19. The fingerprints of an applicant who is issued a permit shall be retained for future use in the event the permit is renewed, and shall be retained until any valid permit expires and is not renewed.

"**§ 14-415.14. Application form to be provided by sheriff; information to be included in application form.**

(a) The sheriff shall make permit applications readily available at the office of the sheriff or at other public offices in the sheriff's jurisdiction. The permit application shall be in triplicate, in a form to be prescribed by the Administrative Office of the Courts, and shall include the following information with regard to the applicant: name, address, physical description, signature, date of birth, social security number, military status, and the drivers license number or State identification card number of the applicant if used for identification in applying for the permit.

(b) The permit application shall also contain a warning substantially as follows:

'CAUTION: Federal law and State law on the possession of handguns and firearms differ. If you are prohibited by federal law from possessing a handgun or a firearm, you may be prosecuted in federal court. A State permit is not a defense to a federal prosecution.'

"**§ 14-415.15. Issuance or denial of permit.**

(a) Except as permitted under subsection (b) of this section, within 90 days after receipt of the items listed in G.S. 14-415.13 from an applicant, the sheriff shall either issue or deny the permit. The sheriff may conduct any investigation necessary to determine the qualification or competency of the person applying for the permit, including record checks.

(b) Upon presentment to the sheriff of the items required under G.S. 14-415.13(a)(1), (2), and (3), the sheriff may issue a temporary permit for a period not to

exceed 90 days to a person who the sheriff reasonably believes is in an emergency situation that may constitute a risk of safety to the person, the person's family or property. The temporary permit may not be renewed and may be revoked by the sheriff without a hearing.

(c) A person's application for a permit shall be denied only if the applicant fails to qualify under the criteria listed in this Article. If the sheriff denies the application for a permit, the sheriff shall, within 90 days, notify the applicant in writing, stating the grounds for denial. An applicant may appeal the denial, revocation, or nonrenewal of a permit by petitioning a district court judge of the district in which the application was filed. The determination by the court, on appeal, shall be upon the facts, the law, and the reasonableness of the sheriff's refusal. The determination by the court shall be final.

"**§ 14-415.16. Renewal of permit.**

The holder of a permit shall apply to renew the permit at least 30 days prior to its expiration date by filing with the sheriff of the county in which the person resides a renewal form provided by the sheriff's office, a notarized affidavit stating that the permittee remains qualified under the criteria provided in this Article, and a renewal fee. Upon receipt of the completed renewal application and appropriate payment of fees, the sheriff shall determine if the permittee remains qualified to hold a permit in accordance with the provisions of G.S. 14-415.12. The permittee's criminal history shall be updated, and the sheriff may waive the requirement of taking another firearms safety and training course. If the permittee applies for a renewal of the permit within 30 days of its expiration date and if the permittee remains qualified to have a permit under G.S. 14-415.12, the sheriff shall renew the permit.

"**§ 14-415.17. Permit; sheriff to retain and make available to law enforcement agencies a list of permittees.**

The permit shall be in a certificate form, as prescribed by the Administrative Office of the Courts, that is approximately the size of a North Carolina drivers license. It shall bear the signature, name, address, date of birth, and social security number of the permittee, and the drivers license identification number used in applying for the permit. The sheriff shall maintain a listing of those persons who are issued a permit and any pertinent information regarding the issued permit. The permit information shall be available upon request to all State and local law enforcement agencies.

Within five days of the date a permit is issued, the sheriff shall send a copy of the permit to the State Bureau of Investigation. The State Bureau of Investigation shall make this information available to law enforcement officers and clerks of court on a statewide system.

"**§ 14-415.18. Revocation or suspension of permit.**

(a) The sheriff of the county where the permit was issued or the sheriff of the county where the person resides may revoke a permit subsequent to a hearing for any of the following reasons:

(1) Fraud or intentional or material misrepresentation in the obtaining of a permit.

(2) Misuse of a permit, including lending or giving a permit to another person, duplicating a permit, or using a permit with the intent to unlawfully cause harm to a person or property.

(3) The doing of an act or existence of a condition which would have been grounds for the denial of the permit by the sheriff.

(4) The violation of any of the terms of this Article.

(5) The applicant is adjudicated guilty of or receives a prayer for judgment continued for a crime which would have disqualified the applicant from initially receiving a permit.

A permittee may appeal the revocation, or nonrenewal of a permit by petitioning a district court judge of the district in which the applicant resides. The determination by the court, on appeal, shall be upon the facts, the law, and the reasonableness of the sheriff's refusal.

(b) The court may suspend a permit as part of and for the duration of any orders permitted under Chapter 50B of the General Statutes.

"**§ 14-415.19. Fees.**

(a) The permit fees assessed under this Article are payable to the sheriff. The sheriff shall transmit the proceeds of these fees to the county finance officer to be used to pay the costs of the criminal record checks and investigations required under this Article. The permit fees are as follows:

Application fee $50.00
Renewal fee $50.00
Duplicate permit fee $15.00

(b) An additional fee, not to exceed ten dollars ($10.00), shall be collected from an applicant for a permit to pay for the costs of processing the applicant's fingerprints. This fee shall be retained by the law enforcement office that processes the fingerprints.

"**§ 14-415.20. No liability of sheriff.**

A sheriff who issues or refuses to issue a permit to carry a concealed handgun under this Article shall not incur any civil or criminal liability as the result of the performance of the sheriff's duties under this Article.

"**§ 14-415.21. Violations of this Article punishable as an infraction and a Class 2 misdemeanor.**

(a) A person who has been issued a valid permit who is found to be carrying a concealed handgun without the permit in the person's possession or who fails to disclose to any law enforcement officer that the person holds a valid permit and is carrying a concealed handgun, as required by G.S. 14-415.11, shall be guilty of an infraction for the first offense and shall be punished in accordance with G.S. 14-3.1. In lieu of paying a fine for the first offense, the person may surrender the permit. Subsequent offenses for failing to carry a valid permit or for failing to make the necessary disclosures to a law enforcement officer as required by G.S. 14-415.11 shall be punished in accordance with subsection (b) of this section.

(b) A person who violates the provisions of this Article other than as set forth in subsection (a) of this section is guilty of a Class 2 misdemeanor.

"**§ 14-415.22. Construction of Article.**

This Article shall not be construed to require a person who may carry a concealed handgun under the provisions of G.S. 14-269(b) to obtain a concealed handgun permit.

"**§ 14-415.23. Statewide uniformity.**

It is the intent of the General Assembly to prescribe a uniform system for the regulation of legally carrying a concealed handgun. To insure uniformity, no political subdivisions, boards, or agencies of the State nor any county, city, municipality, municipal corporation, town, township, village, nor any department or agency thereof, may enact ordinances, rules, or regulations concerning legally carrying a concealed handgun. A unit of local government may adopt an ordinance to permit the posting of a prohibition against carrying a concealed handgun, in accordance with G.S. 14-415.11(c), on local government buildings, their appurtenant premises, and parks."

Sec. 2. G.S. 14-269 reads as rewritten:

"**§ 14-269. Carrying concealed weapons.**

(a) It shall be unlawful for any ~~person, except when on his own premises,~~ person willfully and intentionally to carry concealed about his person any bowie knife, dirk, dagger, slung shot, loaded cane, metallic knuckles, razor, shurikin, stun gun, ~~pistol, gun~~ or other deadly weapon of like ~~kind.~~ kind, except when the person is on the person's own premises. ~~This section does not apply to an ordinary pocket knife carried in a closed position. As used in this section, 'ordinary pocket knife' means a small knife, designed for carrying in a pocket or purse, which has its cutting edge and point entirely enclosed by its handle, and that may not be opened by a throwing, explosive or spring action.~~

(a1) It shall be unlawful for any person willfully and intentionally to carry concealed about his person any pistol or gun except in the following circumstances:

(1) The person is on the person's own premises.

(2) The deadly weapon is a handgun, and the person has a concealed handgun permit issued in accordance with Article 54B of this Chapter.

(b) This prohibition shall not apply to the following persons:

(1) Officers and enlisted personnel of the armed forces of the United States when in discharge of their official duties as such and acting under orders requiring them to carry arms and weapons;

(2) Civil officers of the United States while in the discharge of their official duties;

(3) Officers and soldiers of the militia and the national guard when called into actual service;

(4) Officers of the State, or of any county, city, or town, charged with the execution of the laws of the State, when acting in the discharge of their official duties;

(5) ~~Full-time sworn~~ Sworn law-enforcement officers, when ~~off-duty, in the jurisdiction where they are assigned,~~ off-duty, if:

a. Written regulations authorizing the carrying of concealed weapons have been filed with the clerk of court in the county where the law-enforcement unit is located by the sheriff or chief of police or other superior officer in charge; and

b. Such regulations specifically prohibit the carrying of concealed weapons while the officer is consuming or under the influence of alcoholic beverages.

(b1) It is a defense to a prosecution under this section that:

(1) The weapon was not a firearm;

(2) The defendant was engaged in, or on the way to or from, an activity in which he legitimately used the weapon;

(3) The defendant possessed the weapon for that legitimate use; and

(4) The defendant did not use or attempt to use the weapon for an illegal purpose.

The burden of proving this defense is on the defendant.

(c) Any person violating the provisions of ~~this section~~ subsection (a) of this section shall be guilty of a Class 2 misdemeanor. Any person violating the provisions of subsection (a1) of this section shall be guilty of a Class 2 misdemeanor for the first offense. A second or subsequent offense is punishable as a Class I felony.

(d) This section does not apply to an ordinary pocket knife carried in a closed position. As used in this section, 'ordinary pocket knife' means a small knife, designed for carrying in a pocket or purse, that has its cutting edge and point entirely enclosed by its handle, and that may not be opened by a throwing, explosive, or spring action."

Sec. 3. This act becomes effective December 1, 1995, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 10th day of July, 1995.

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Dennis A. Wicker
President of the Senate

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Harold J. Brubaker
Speaker of the House of Representatives