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CONCEALED-CARRY PERMIT GUIDANCE

AG 2022-01

TO: Rhode Island's Concealed-Carry Permit Holders and Prospective Applicants
FROM: Peter F. Neronha, Attorney General *PN*
DATE: July 19, 2022
SUBJECT: **Rhode Island's concealed-carry permitting scheme is constitutional and unimpacted by the Supreme Court's *Bruen* decision**

The Rhode Island Attorney General issues the following guidance to concealed-carry permit holders, prospective applicants, and the public regarding their concealed-carry permit options following the Supreme Court's recent decision in *Bruen*.

Guidance

Rhode Island's concealed-carry permitting scheme is unique relative to those in other states across the country. Our State offers two avenues for obtaining a permit to carry a firearm:

- R.I.G.L. § 11-47-11 allows Rhode Islanders to apply for a concealed carry permit from **local licensing authorities** (frequently these are your local police departments) and provides that these municipal licensing authorities “**shall** issue” a permit to qualified, suitable applicants who are at least 21 years old and either reside or have their place of business in the city or town, or reside within the United States and have a license or permit issued by any other state or subdivision within the United States. Under this statute, and case law interpreting it, local law enforcement cannot require a showing of need as part of the application to obtain a permit. *See Gadomski v. Tavares*, 113 A.3d 387, 392 (R.I. 2015).
- R.I.G.L. § 11-47-18(a), by contrast, allows Rhode Islanders to apply for a concealed or open carry permit from the **Attorney General** and provides that the Attorney General “**may** issue” a permit to a qualified applicant who is at least 21 years old “upon a proper showing of need.” In addition, R.I.G.L. § 11-47-18(b) provides an avenue for discretionary issuance of permits to **retired law enforcement officers** through the Attorney General permitting process.

Both provisions require payment of a fee and require the applicant to demonstrate a certain level of proficiency in the firearm they intend to carry. R.I.G.L. §§ 11-47-12, 11-47-15, 11-47-16.

In its recent opinion in *New York State Rifle and Pistol Association v. Bruen*, No. 20 – 843 (U.S. June 23, 2022) (hereinafter “*Bruen*”), the U.S. Supreme Court held that New York’s requirement that applicants who apply for a permit to carry a concealed weapon outside the home must show a special need was inconsistent with the Second and Fourteenth Amendments. The Supreme Court also noted that six states and the District of Columbia have permit schemes the same as or similar to New York’s and suffer, or likely suffer, from the same constitutional infirmity. Rhode Island was not one of those jurisdictions. Rather, in *Bruen*, the Supreme Court specifically and explicitly observed that Rhode Islanders are afforded access to a licensing process that does not require any showing of need. *Id.* slip op. at 4-5 (n. 1).

Accordingly, Rhode Island’s concealed-carry permitting scheme is constitutional, and both avenues remain fully available to Rhode Islanders and unimpacted by the *Bruen* decision.

A Short Summary of *New York State Rifle & Pistol Assn. v. Bruen*

In *Bruen*, the Supreme Court considered the constitutionality of New York’s licensing scheme which required individuals who applied for an unrestricted license to concealed-carry a pistol or revolver outside their home to satisfy a “proper cause” requirement. Under New York’s law, applicants could only meet that requirement if they could “demonstrate a special need for self-protection distinguishable from that of the general community.” *Bruen*, slip op. at 3. The Supreme Court held that this “special need” requirement violated the Second Amendment because it “prevent[ed] law abiding-citizens with ordinary self-defense needs from exercising their right to keep and bear arms.” *Id.* slip op. at 63.

Importantly, the Supreme Court in *Bruen* affirmed that states may impose licensing requirements for carrying a handgun for self-defense. *Id.*, slip op. 4-6 & 6 n.2. The concurring opinion issued by Justice Kavanaugh and Chief Justice Roberts confirms that “the Court’s decision does not affect the existing licensing regimes—known as ‘shall issue’ regimes—that are employed in 43 States.” *Id.* slip op. at 1 (Kavanaugh, J., concurring). Rhode Island is one of those states.

As the concurring opinion also makes clear, the “shall issue” regimes may continue to impose requirements such as fingerprinting, criminal background checks, mental health records checks, proficiency standards and training in firearms, familiarity with use of force laws, among other requirements to determine the suitability of the applicants to carry. *Id.*, slip op. 1-2. (Kavanaugh, J., concurring).

Additionally, the *Bruen* decision also makes clear that the Second Amendment right to bear arms in public is subject to “reasonable, well-defined restrictions.” *Id.* slip op. at 62 (citing *District of Columbia v. Heller*, 554 U.S. 570, 581 (2022)). “Those restrictions, for example, limit[] the intent for which one could carry arms, the manner by which one carried arms, or the exceptional circumstances under which one could not carry arms [.]” *Id.* States can continue to prohibit carrying of firearms “in sensitive places such as schools and government buildings,” prohibit felons and the mentally ill from carrying firearms and prohibit the carrying of “dangerous and unusual weapons,” among other limitations. *See Id.* slip op. at 3 (Kavanaugh, J., concurring) (quoting *Heller*, 554 U.S. at 626-627, and n. 26).

FREQUENTLY ASKED QUESTIONS

Q. Is a permit still required to carry a pistol or revolver in Rhode Island?

A. Yes. It remains unlawful to carry a handgun without a permit outside one's home or business in Rhode Island, whether visible or concealed. Certain exceptions apply for law enforcement agents and military personnel, travel to/from a gun range (provided the firearm is unloaded and either broken down or secured in a suitable container (see R.I.G.L. § 11-47-10), and for individuals who have a valid license or permit to carry from another state who are merely traveling through Rhode Island to another state. R.I.G.L. § 11-47-8.

Q. Will Rhode Island's process change with the Supreme Court's decision in Bruen?

A. No. As the Court in *Bruen* noted, Rhode Island's existing permitting laws adequately protect Second Amendment rights. Municipal concealed-carry weapons permits are available to qualified, suitable applicants without a showing of need. The Attorney General's need-based, discretionary permitting system is an additional available avenue.

Q. I would like to exercise my Second Amendment right to carry a pistol outside my home. Where should I apply?

A. You have two options.

You may apply to your local licensing authority. These municipal licensing authorities "shall issue" a concealed-carry permit to qualified, suitable applicants who are at least 21 years of age and either reside or have their place of business in the city or town or reside within the United States and have a license or permit issued by any other state or subdivision within the United States. R.I.G.L. § 11-47-11. Under this statute, and case law interpreting it, local licensing authorities cannot require a showing of need as part of the application to obtain a permit.

You may also apply for a permit from the Attorney General who "may" issue a permit, which includes permission to carry a pistol or revolver openly, upon a "proper showing of need."

Q. In what circumstances does the Attorney General generally issue pistol permits?

A. The legislature has specified that the Attorney General may issue pistol permits within the sound exercise of the Attorney General's discretion and upon a proper showing of need. R.I.G.L. § 11-47-18. More information regarding what may constitute a proper showing of need is available in the Attorney General's application materials, available on the Office's website at <https://www.riag.ri.gov/about-our-office/divisions-and-units/bureau-criminal-identification-bci/pistol-permits>.

Q. I already have a concealed carry weapons permit from a Rhode Island municipality. May I also get a pistol permit from the Attorney General?

A. It depends. To be clear, a Rhode Islander who already has a municipal permit for the concealed carry of a handgun in public does not need additional authorization to do so from the Attorney General. Applicants for an Attorney General pistol permit, which may also permit open carry, must also demonstrate a proper showing of need. More information regarding what may constitute a proper showing of need is available in the Attorney General's application materials,

available on the Office's website at <https://www.riag.ri.gov/about-our-office/divisions-and-units/bureau-criminal-identification-bci/pistol-permits>.

Q. I am a retired law enforcement officer. To whom should I direct my application?

A. You have two options. You may direct it to the Attorney General's process for retired law enforcement, or to your local authority. There is a specific application for retired law enforcement available on the Attorney General's website at <https://www.riag.ri.gov/about-our-office/divisions-and-units/bureau-criminal-identification-bci/pistol-permits>.

Q. What does it mean to be a suitable applicant?

A. Suitability means that you are not prohibited from possessing a firearm under state or federal law and there are no other specific reasons to deny you a permit for public safety reasons. Licensing authorities are permitted to take fingerprints, conduct mental health records checks, conduct background checks, require training in the use of force, require references, interview applicants, and take whatever additional steps they deem appropriate to determine suitability. See *Gadomski v. Tavares*, 113 A.3d 387, at 390 (R.I. 2015); *Mosby v. Devine*, 851 A.2d 1031, 1047-48 (R.I. 2004).

Q. Is there an application fee for a pistol permit?

A. There is a forty (\$40.00) fee for each license or permit to carry. This is the applicable fee whether you submit an application to a municipal licensing authority or the Attorney General. R.I.G.L. § 11-47-12.

Q. Do I have to renew my pistol permit?

A. All permits are valid for four (4) years from the date of issuance unless sooner revoked for just cause by the licensing authority. R.I.G.L. §§ 11-47-12, 11-47-13.

Q. Are there any other requirements to obtain a permit to carry?

A. Yes. All applicants must present the licensing authority with a certification form that they qualified with a pistol or revolver of a caliber equal to or larger than the one they intend to carry. Certification and qualification requirements are set forth in R.I.G.L. §§ 11-47-15 and 11-47-16.

Law enforcement officers have separate qualification requirements.