

California Department of Justice

OFFICE OF
THE ATTORNEY GENERAL



Legal Alert

Subject:

U.S. Supreme Court's Decision in *New York State Rifle & Pistol Association v. Bruen*, No. 20-843

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TO: All California District Attorneys, Police Chiefs, Sheriffs, County Counsels, and City Attorneys

On June 23, 2022, the United States Supreme Court issued its decision in *New York State Rifle & Pistol Association v. Bruen*, No. 20-843 (*Bruen*).¹ In that case, the Court concluded that the State of New York's requirement that "proper cause" be demonstrated in order to obtain a permit to carry a concealed weapon in most public places violates the Second and Fourteenth Amendments. Although *Bruen* concerns a New York law, the *Bruen* majority specifically identifies California as one of six States that has an analogue to New York's "proper cause" standard. *Bruen*, slip op. 5-6. Accordingly, it is the Attorney General's view that the Court's decision renders California's "good cause" standard to secure a permit to carry a concealed weapon in most public places unconstitutional. Permitting agencies may no longer require a demonstration of "good cause" in order to obtain a concealed carry permit. However, local officials can and should continue to apply and enforce all other aspects of California law with respect to issuing public-carry licenses. In particular, the requirement that a public-carry license applicant provide proof of "good moral character" remains constitutional. Law enforcement agencies that issue licenses to carry firearms in public should consult with their own counsel, carefully review the decision in *Bruen*, take the following guidance into account, and continue protecting public safety while complying with state law and the federal Constitution.

California law authorizes local law enforcement officials—sheriffs and chiefs of police—to issue licenses allowing license holders to "carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person." Cal. Pen. Code §§ 26150, 26155. In counties where the population is less than 200,000, local officials are also authorized to issue licenses permitting open carry in only that jurisdiction. *Id.* §§ 26150(b)(2); 26155(b)(2). These licenses, whether for concealed carry or open carry, exempt the holder from many generally applicable restrictions on the carrying of firearms in public. Local officials are only authorized to issue such licenses, however, upon proof that (1) "the applicant is of good moral character," (2) "[g]ood cause exists for issuance of the license," (3) the applicant is a resident of the relevant county or city (or has their principal place of business or employment in that county or city), and (4) the applicant has completed a course of training. *Id.* §§ 26150(a), 26155(a).

Although California law was not directly at issue in the *Bruen* decision, the decision makes clear that "good cause" requirements such as those in California Penal Code sections 26150(a)(2) and 26155(a)(2) are inconsistent with the Second and Fourteenth Amendments. Under the Supremacy

¹ The decision is available at https://www.supremecourt.gov/opinions/21pdf/20-843_7j80.pdf.

Clause of the United States Constitution, state and local officials must comply with clearly established federal law.

In accordance with *Bruen*, the Attorney General now considers the “good cause” requirements set forth in California Penal Code sections 26150(a)(2) and 26155(a)(2) to be unconstitutional and unenforceable. The immediate implications for law enforcement agencies that issue public-carry licenses (“issuing authorities”) are as follows:

First, effective immediately, issuing authorities should no longer require proof of good cause for the issuance of a public-carry license. Issuing authorities may still inquire into an applicant’s reasons for desiring a license to the extent those reasons are relevant to other lawful considerations, but denial of a license for lack of “good cause” now violates the Second and Fourteenth Amendments under the Supreme Court’s decision in *Bruen*.

Second, issuing authorities should continue to apply and enforce all other aspects of California law with respect to public-carry licenses and the carrying of firearms in public. Issuing authorities are still required to take an applicant’s fingerprints and to wait for the results of the background check that is run by the California Department of Justice (DOJ). Licenses “shall not be issued if the [DOJ] determines that the person is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.” Cal. Pen. Code § 26195(a). Moreover, because the Court’s decision in *Bruen* does not affect the other statutory requirements governing public-carry licenses, issuing authorities must still require proof that (1) “the applicant is of good moral character,” (2) the applicant is a resident of the relevant county or city (or has their principal place of business or employment in that county or city), and (3) the applicant has completed a course of training. *Id.* §§ 26150(a), 26155(a). Issuing authorities may also still require psychological testing. *Id.* § 26190(f).

Bruen recognizes that States may ensure that those carrying firearms in their jurisdiction are “law-abiding, responsible citizens.” *Bruen*, slip op. p. 30 n.9; see also *id.* slip op. p. 2 (Kavanaugh, J., concurring) (States may “require a license applicant to undergo a background check, a mental health records check, and training in firearms handling and in laws regarding the use of force, among other possible requirements”). Accordingly, in assessing whether an applicant has established “good moral character,” issuing authorities should recognize that *Bruen* does not eliminate the duty or authority of local officials to protect the communities that they know best by ensuring that licenses are only issued to individuals who—by virtue of their character and temperament—can be trusted to abide by the law and otherwise ensure the safety of themselves and others. The investigation into whether an applicant satisfies the “good moral character” requirement should go beyond the determination of whether any “firearms prohibiting categories” apply, such as a mental health prohibition or prior felony conviction. Those categories, which may be found to apply during the DOJ-conducted background check (including the many categories pertaining to an applicant’s criminal history), simply determine whether the applicant is even eligible to own or possess firearms under state and federal law. When it comes to evaluating an applicant’s moral character, however, the issue is not whether the applicant meets the minimum qualifications to own or possess firearms under other statutory criteria. “Good moral character” is a distinct question that requires an independent determination.

Existing public-carry policies of local law enforcement agencies across the state provide helpful examples of how to apply the “good moral character” requirement. The Sacramento County Sheriff’s Office, for example, currently identifies several potential reasons why a public-carry license may be denied (or revoked), which include “[a]ny arrest in the last 5 years, regardless of the disposition” or

"[a]ny conviction in the last 7 years."² It is reasonable to consider such factors in evaluating an applicant's proof of the requisite moral character to safely carry firearms in public. See, e.g., *Bruen*, slip op. p. 63 (referencing "law-abiding citizens"). Other jurisdictions list the personal characteristics one reasonably expects of candidates for a public-carry license who do not pose a danger to themselves or others. The Riverside County Sheriff's Department's policy, for example, currently provides as follows: "Legal judgments of good moral character can include consideration of honesty, trustworthiness, diligence, reliability, respect for the law, integrity, candor, discretion, observance of fiduciary duty, respect for the rights of others, absence of hatred and racism, fiscal stability, profession-specific criteria such as pledging to honor the constitution and uphold the law, and the absence of criminal conviction."³

As a starting point for purposes of investigating an applicant's moral character, many issuing authorities require personal references and/or reference letters. Investigators may personally interview applicants and use the opportunity to gain further insight into the applicant's character. And they may search publicly-available information, including social media accounts, in assessing the applicant's character. Finally, we note that it remains reasonable—and constitutional—to ask applicants why they are interested in carrying their firearms in public. Although applicants do not need to demonstrate good cause for the issuance of a license, an applicant's reasons for seeking a license may alert authorities to a need for psychological testing, be considered as part of the "good moral character" requirement, or provide information relevant to other statutory requirements.

² Sacramento County Sheriff's Office, *CCW Application/Permit Denials/Revocations*, <<https://www.sacsheriff.com/documents/ccw/REVO-DENIAL-REASONS.pdf>> [last visited June 23, 2022].)

³ Riverside County Sheriff's Department, *Riverside County Sheriff's Department Standards Manual (DSM)*, <<https://www.riversidesheriff.org/DocumentCenter/View/6791/Department-Standards-Manual-5222>> [last visited June 23, 2022].