

Garden State CLE Presents:

Bruen Update
Changes to New Jersey Gun Laws



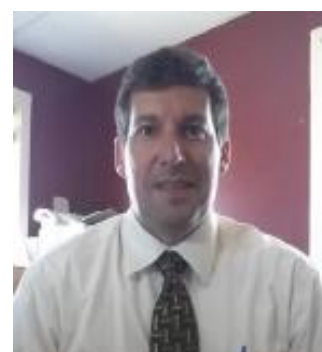
Instructors



Robert Ramsey



Chris Koutsouris



Kevin Quinlan

Lesson Plan

Introduction

The United States Supreme Court decision in New York Rifle and Pistol Association v. Bruen, 142 S.Ct. 2111(2022) has dramatically impacted New Jersey law on the issue of the ability of people to openly carry firearms. The opinion strikes down on Second Amendment grounds, the provision of N.J.S.A. 2C:58-4(c) that required an applicant to obtain the approval of a Superior Court judge to carry a firearm based upon “justifiable need.”

The Supreme Court in Bruen directed the federal courts to instead look to the text of the Second Amendment and “the Nation's historical tradition of firearms regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's unqualified command. Thus, because the Constitution presumptively protects [individual conduct] covered by the Second Amendment's plain text, the government must justify its regulation of that conduct by establishing not simply ... that the regulation promotes an important interest, but that the regulation is consistent with this Nation's historical tradition of firearm regulation.”

Under Bruen, the inquiry is whether the regulation is relevantly similar to regulations present at the founding. To make that determination, courts must employ analogical reasoning and compare how and why the regulations burden a law-abiding citizen's right to armed self-defense.” Importantly, this new analytical paradigm does not require the government to identify a historical twin. So even if a modern-day regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster.

The historical record shows that legislatures had broad discretion to prohibit those who had not respected the law from possessing firearms. Individuals who commit felonies and felony-equivalent offenses are not among the people whom the Second Amendment protects. So too, individuals who engage in repeated misconduct, even if not convicted of a felony-equivalent offense, are not protected by the Second Amendment. The expungement of records relating to the misconduct does not alter the analysis.

The Founders understood that not everyone possessed Second Amendment rights.

While the Supreme Court has not provided an “exhaustive historical analysis of the full scope of the Second Amendment, Heller, McDonald, and Bruen provide insights into the Court's view of the status-based disarmament of criminals, who fall outside the people protected by the Second Amendment. This trilogy recognizes that it is well-rooted in the nation's history and tradition of firearm regulation that persons convicted of crimes, regardless of whether their crimes involved violence, are not protected by the Second Amendment. Additionally, persons whose criminal records show disrespect for the law are not law-abiding citizens entitled to keep and bear arms.

The impact of this decision in New Jersey has been enormous. It has triggered statutory amendments, a Supreme Court directive and new Appellate Division case law. Here is what has been going on:

Part I

In re Application of M.U., ___ N.J.Super ___ (App.Div.2023) 2023 WL 2577324.

[Please note that this decision includes a comprehensive historical review of the development of N.J. gun law from colonial times, through the founding era until today.]

N.J.S.A. 2C:58-3 sets forth restrictions on the issuance of handgun purchase permits (HPP) and firearms purchaser identification cards. The applicant challenged the statute, arguing that the provision denying a permit would not be in the interest of the “public health, safety or welfare” is both vague and overbroad.

The Appellate Division ruled that:

- a) N.J.S.A. 2C:58-3 is neither unconstitutionally vague or overbroad;
- b) The State may access and consider expunged records in determining fitness to receive a permit;
- c) Despite the revocation of his permit, the applicant maintains the right to possess firearms in his home as the weapons forfeiture statute does not apply to him; and
- d) N.J.S.A. 2C:64-1(a)(2) provides for the forfeiture of “all property,” such as appellant's firearms, “which has been, or is intended to be, utilized in furtherance of an unlawful activity.” The State did not file a statutory forfeiture action under N.J.S.A. 2C:64-3. If it had, appellant would have been entitled to have that issue determined by a jury.

Part II

Supreme Court Directive #14-22 - Criminal - Gun Permit Procedures (Supersedes Directive #06-19)

GLENN A. GRANT
Administrative Director of the Courts

Richard J. Hughes Justice Complex • P.O. Box 037 • Trenton, NJ 08625-0037

njcourts.gov • Tel: 609-376-3000 • Fax: 609-376-3002

**To: Assignment Judges
Trial Court Administrators**

SUPPLEMENT TO DIRECTIVE #14-22

From: Glenn A. Grant, Administrative Director



Questions or comments may be directed to the Criminal Practice Division at 609-815-2900 x55300

**Subj: Criminal – Gun Permit Procedures –
Requests to Amend Permits to Carry**

Date: April 3, 2023

On December 22, 2022, Governor Murphy signed A-4769 into law (L. 2022, c. 131), amending a number of New Jersey firearms statutes in response to the United States Supreme Court’s decision in N.Y. State Rifle & Pistol Association v. Bruen, 142 S. Ct. 2111 (2022). The legislation, in part, removed the courts from the initial decision-making process for applications for permits to carry handguns. [Directive #14-22](#) (“Criminal – Gun Permit Procedures”) was promulgated in conjunction with enactment of the new law to establish uniformity in the court’s handling of appeals from law enforcement’s denial of firearms purchaser identification cards, permits to purchase handguns, and permits to carry handguns. This Supplement to Directive #14-22 addresses the practice of the court amending permits to carry handguns and orders issuing permits to carry.

Effective immediately, courts will no longer issue amended carry permits or orders to issue amended carry permits other than to correct issuance errors (e.g., typographical errors, misprints). As of December 22, 2022, law enforcement alone receives, investigates, and makes decisions on all new requests regarding permit to carry applications. To that end, applicants requesting to add one or more handguns to a permit to carry that previously was issued by the courts should be directed instead to apply for a new permit through their local police agency. Applicants requesting to remove any restriction from a permit previously issued by the courts may choose to appeal to a higher court.



Questions or comments may be directed to Criminal Practice Division by email to the AOC Criminal Practice Division at aoccrimprac.mbx@njcourts.gov or by phone at 609-815-2900, x55300.

cc: Chief Justice Stuart Rabner
Criminal Presiding Judges
Criminal Division Judges
Steven D. Bonville, Chief of Staff
AOC Directors and Assistant Directors
Clerks of Court
Special Assistants to the Administrative Director
Criminal Division Managers and Assistants
Justin M. Patterson Moles, Chief

GLENN A. GRANT
Administrative Director of the Courts

Richard J. Hughes Justice Complex • P.O. Box 037 • Trenton, NJ 08625-0037

njcourts.gov • Tel: 609-376-3000 • Fax: 609-376-3002

**To: Assignment Judges
Trial Court Administrators**

From: Glenn A. Grant, Administrative Director

DIRECTIVE #14-22

[Supersedes Directive #06-19]

Subj: Criminal – Gun Permit Procedures

Date: December 22, 2022

New Legislation and Revised Court Responsibility

Governor Murphy today signed A-4769 into law (L. 2022, c. __), amending a number of New Jersey firearms statutes and addresses issues raised in the United States Supreme Court’s decision in N.Y. State Rifle & Pistol Association v. Bruen, 142 S. Ct. 2111 (2022). The enactment is effective immediately. In part, it removes the Judiciary from the initial decision-making process for applications for permits to carry a handgun. This Directive, which supersedes Directive #06-19, is intended to establish uniformity in how the vicinages handle appeals from law enforcement’s denial of firearms identification cards, handgun purchase permits, and permits to carry a handgun.

New Jersey law previously required applicants to submit a written certification of “justifiable need” to the reviewing law enforcement officer as part of their application for a permit to carry. If approved by law enforcement, the application would then be presented to the Superior Court for action by a judge. So long as the applicant demonstrated, among other things, a “justifiable need” to carry a handgun in accordance with the statute, the judge would approve the application and issue the permit. Although New Jersey was not a party in Bruen, the U.S. Supreme Court likened New Jersey’s requirements for permits to carry to those of New York, which the Court deemed to be unconstitutional.

Bruen thus eliminated New Jersey’s “justifiable need” requirement, which was a significant factor, but not the only factor, that New Jersey Courts considered in acting on applications for permits to carry a handgun. The amendments to N.J.S.A. 2C:58-4 adopted in L. 2022, c. __, both eliminate the “justifiable need” requirement and remove the court from the decision-making and issuance process for applications for permits to carry.

Pursuant to the new law, which, as noted, is effective immediately, determinations on applications for permits to carry a handgun will no longer be made by the court; law

enforcement alone will receive, investigate, and determine all permit to carry applications. Any applications for a permit to carry a handgun currently pending before the Superior Court as of today are to be decided and, if approved, issued by the court. The new law allows judges to rely on the prior approval by law enforcement as the basis for approving these pending applications. L. 2022, c. __. Judges must strive to act on those pending applications within 60 days and should not exceed that 60-day timeframe without good cause.

Any applications pending with law enforcement are to be decided by the appropriate chief police officer or superintendent. Effective today, any permit to carry application presented to the court will be returned to the law enforcement entity from which it was received.

The Superior Court will continue to hear appeals from law enforcement denials of applications for firearms purchaser identification cards, permits to purchase a handgun, and permits to carry a handgun. The new law provides that no formal pleading or filing fee is required for these appeals. N.J.S.A. 2C:58-3(d)(f); N.J.S.A. 2C:58-4(e); N.J.S.A. 2C:39-6(l)(5).

Filing of Gun Permit Appeals

Any applicant aggrieved by the denial of a permit by law enforcement who wishes to file an appeal with the court is encouraged to file electronically through the Judiciary Electronic Document Submission (JEDS) System. The aggrieved applicant must also serve copies of the request for a hearing on the New Jersey State Police Superintendent, the county prosecutor, and the chief police officer of the municipality where the applicant resides, if the applicant is a New Jersey resident.

Statewide System for Tracking Denials of Gun Permit and Carry Permit Appeals

In 2019, a universal numbering protocol for docketing and tracking appeals was implemented to maintain statewide consistency. This manual numbering convention will continue until an electronic filing and tracking system is completed.

Appeals from the law enforcement denial to issue firearms purchaser identification cards, permits to purchase a handgun, and permits to carry a handgun should use a similar numbering system. For example, the first gun permit appeal for Camden County in 2023 should be as follows:

GPA - CAM - 001 - 23 (Gun Permit Appeal - county abbreviation - number - year)

In addition, when the court receives an appeal from a gun permit denial, court staff must record, at a minimum, the following information:

- (1) the applicant's name;
- (2) the applicant's date of birth;
- (3) the applicant's SBI number;
- (4) whether the applicant is a retired law enforcement officer;

- (5) whether the applicant originally applied for a firearms purchase identification card, a permit to purchase a handgun, and/or a carry permit;
- (6) whether the appeal is for a new or a renewal permit;
- (7) if an appeal for a renewal permit, the expiration date of the old permit;
- (8) the law enforcement agency that denied the permit;
- (9) the date the application was submitted to law enforcement;
- (10) the date law enforcement denied the permit;
- (11) the date the appeal was received by the court;
- (12) if the applicant is requesting a notation on the permit for employment purposes, the type of employment (e.g. armored car, security);
- (13) the court's decision;
- (14) the date of the court's decision; and
- (15) the judge's name.

The information listed above will allow for easier tracking and reviewing of gun permit applications and appeals statewide. Counties may also track additional data.

Timeframe for Hearing Appeals

N.J.S.A. 2C:58-4(e) anticipates that the Superior Court will hold a hearing on an appeal from law enforcement's denial of an identification card, a purchase permit, or a carry permit within 60 days of the applicant's written request for such a hearing. The hearing on an appeal from the denial of a carry permit for a retired law enforcement officer must be held within 30 days of request pursuant to N.J.S.A. 2C:39-6(l)(5).

Prosecutor Review of Applicant's Appeal from Denial of an Application for a Permit to Carry

N.J.S.A. 2C:58-4(e) requires aggrieved applicants appealing the law enforcement denial of a carry permit to serve the request for a hearing on the county prosecutor. County prosecutors are not required by law to provide input to the court regarding these appeals. If they wish to do so, however, county prosecutors must file their response to these appeals within 14 days of the filing of the appeal. If the prosecutor does not respond within 14 days, the court is to move forward with the appeal hearing.

Questions or comments may be directed to Criminal Practice Division by email to the AOC Criminal Practice Division at aoccrimprac.mbx@njcourts.gov or by phone at 609-815-2900, x55300.

cc: Chief Justice Stuart Rabner
Criminal Division Judges
Steven D. Bonville, Chief of Staff
AOC Directors and Assistant Directors
Clerks of Court
Special Assistants to the Administrative Director
Criminal Division Managers and Assistants
Justin M. Patterson Moles, Chief
Raschelle Demshock, Assistant Chief

Part III

N.J.S.A. 2C:58-4.2 – Sensitive Locations

This new statute has been challenged in Federal District Court in Siegel vs. Platkin, ___ F.Supp.3d ___ (D.N.J.2023) 2023 WL 1103676 (TRO granted in part) and Koons vs. Reynolds, ___ F.Supp.3d ___ (D.N.J.2023) 2023 WL 128882 (TRO granted.)

N.J.S.A. 2C:58-4.2. Legislative findings and declarations relating to the carrying of handguns.

Effective on July 1, 2023

The Legislature finds and declares that:

a) The decision of the United States Supreme Court in New York State Rifle & Pistol Association vs. Bruen holds significant implications for carrying a handgun in New Jersey and the law governing the issuance of permits to carry a handgun. The Bruen decision establishes that states cannot deny permits to carry a handgun to otherwise-qualified citizens who fail to show that they have the “proper cause” to carry a handgun. New Jersey law relies on a similar standard, considering whether an applicant has a “justifiable need,” in determining whether to issue a permit to carry a handgun.

b) In accordance with the precedent established in the Bruen decision, laws requiring showings of particularized need are no longer legally viable to determine whether a person may carry a handgun in public. The Bruen decision does make clear, however, that the Legislature can enact laws to protect our communities from threats to public health, safety, and welfare posed by gun violence, which take into account as appropriate the Supreme Court's Second Amendment ruling while continuing to promote and enhance public safety.

c) Statistics show that expanding handgun carrying creates safety risks, helping to fuel the epidemic of gun violence. For example, a study by researchers at the Johns Hopkins Bloomberg School of Public Health found that the estimated average rate of officer-involved shootings increased by 12.9 percent in 10 states that relaxed restrictions between 2014 and 2020 on civilians carrying concealed firearms in public. Accordingly, evidence demonstrates that more guns on the

streets can translate into more acts of gun violence. To mitigate the impact of having more people carrying guns in public places, steps must be taken to better ensure that those who exercise the right to carry are responsible, law-abiding, and appropriately trained individuals who would not pose undue safety risks if armed in public places.

d) In Bruen, the Supreme Court recognized that states may prohibit individuals who are not “law-abiding, responsible citizens” from carrying firearms in public, and endorsed the use of “licensing requirements for carrying a handgun for self-defense.” Although the Court did not provide a complete list of lawful requirements, it specifically cited a “background check, mental health check, training in firearms handling and in laws regarding the use of force, among other possible requirements” as permissible. The purpose of these checks, the Court explained, is to “ensure only that those bearing arms in the jurisdiction are in fact, law-abiding, responsible citizens.” It is thus important to bolster and improve the process in this State for ensuring that only such individuals possess and carry firearms. Toward that end, this act strengthens the criteria and background investigation requirements that are used to determine whether an applicant is qualified to carry a firearm in New Jersey.

e) This act also designates places in which the carrying of a firearm or destructive device is prohibited. Previously, application of the justifiable need standard minimized the serious dangers of misuse and accidental use inherent in the carrying of handguns in a public place. Given the likelihood that a much greater number of individuals will now qualify to carry handguns in public, it is now both necessary and appropriate to clearly identify in the law those sensitive places where, due to heightened public safety concerns, carrying a dangerous, potentially lethal device or weapon, including a handgun, is not permissible. These prohibitions are based on common sense principles and historical analogues.

f) Notwithstanding its rejection of a particularized need standard, the Bruen decision recognizes that the carrying of firearms in sensitive places can “be prohibited consistent with the Second Amendment.” Indeed, the Court assumed it settled that “laws forbidding the carrying of firearms in sensitive places such as schools and government buildings,” as well as other places such as “legislative assemblies, polling places, and courthouses,” are “longstanding” and not subject to disputes regarding their constitutionality. The Court added that other “sensitive place” regulations may be permissible if “consistent with the Second Amendment’s text and historical understanding” -- that is, “relevantly similar” to historical analogues.

g) The sensitive-place prohibitions on dangerous weapons set forth in this act are rooted in history and tradition. They are analogous to historical laws that can be found from the Founding era to Reconstruction, which are also found in modern laws in many states. History and tradition support at least the following location-based restrictions on carrying firearms:

(1) Places that are the site of core constitutional activity, such as but not limited to the exercise of First Amendment rights, or that are otherwise vital to the functioning of democracy and our system of government. That includes prohibitions of firearms in facilities within the criminal justice system;

(2) Schools, universities, other educational institutions, where people assemble for educational purposes and for the purposes of teaching, learning, research, and the pursuit of knowledge;

(3) Parks and other recreation spaces, including locations where children congregate;

(4) Locations that protect vulnerable classes of people, such as the young and the frail;

(5) Places where intoxicating substances are sold, places where large groups of individuals congregate, and places where volatile conditions may pose a threat to public safety; and

(6) Various forms of transportation and public infrastructure, whose safety, security, and stability are critical to supporting social function.

h) The historical record also supports restriction of firearm possession on private property when the owner has not given their consent. Many states require a property owner's permission before another may enter private dwellings and private lands with a firearm or other weapons. Requiring consent from the property owner before carrying weapons onto private property is also in line with both the reasonable expectations and property rights of New Jersey property owners.

i) Additionally, the fees to obtain a firearms purchaser identification permit or a permit to purchase a handgun in New Jersey were initially set by statute over 50

years ago at \$5 and \$2, respectively, and in over a half century the law has never been changed to increase these fees, notwithstanding the impact of inflation, increasing costs of background checks and related investigations, and the investment made over the years to technologically upgrade the firearms application and registration system established and maintained by the New Jersey State Police.

j) Accordingly, the Legislature finds it is necessary and proper to revise this State's procedural and substantive laws related to firearms to update the process and the standards applicable to firearm purchase and possession as well as our handgun carry law, and to continue to promote public safety and reduce gun violence in a manner consistent with the Second Amendment principles articulated by the current Supreme Court jurisprudence. These revisions will focus on factors other than the need or purpose a person may assert as justification to carry a handgun, such as the person's background and qualifications, with the ultimate goal of keeping New Jersey streets and neighborhoods safe from gun violence.

Part IV

N.J.S.A. 2C:58-3(c)(4) – People Under Age 21

Worth vs. Harrington, ___ F.Supp.3d ___ (D.Mn.2023) 2023 WL 2745673

The Minnesota regulation that restricts handgun permits to people who are at least 21 years old was held to be unconstitutional.

New Jersey law is analogous:

N.J.S.A. 2C:58-3(c)(4) To any person under the age of 18 years for a firearms purchaser identification card and to any person under the age of 21 years for a permit to purchase a handgun;

N.J.S.A. 2C:58-6.1 No person under the age of 18 years shall purchase, barter or otherwise acquire a firearm and no person under the age of 21 years shall purchase, barter or otherwise acquire a handgun, unless the person is authorized to possess the handgun in connection with the performance of official duties under the provisions of N.J.S.A. 2C:39-6.