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Welcome to the North Carolina Firearms Laws Training



Moore County Local Government Conference
for Attorneys and Paralegals

North Carolina Sheriffs' Association
Proudly Serving the Sheriffs and Citizens of North Carolina since 1922



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Constitutional Overview

- District of Columbia v. Heller, 554 U.S. 570 (2008)
- State v Dawson, 272 N.C. 535 (1968)
- State v. Britt, 363 N.C. 546 (2009)
- State v. Whitaker, 364 N.C. 404 (2010)

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On February 28, 1994, the Brady Handgun
Violence Prevention Act became law.

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- On November 30, 1998, the permanent provisions of the Brady Law took effect.
- The permanent provisions of the Brady Law provide for the Establishment of a National Instant Criminal Background Check System (NICS). Federally licensed firearms dealers must contact NICS before transferring any firearm.



The handgun permitting scheme in North Carolina complies with the exceptions provided in the Brady law. North Carolina's handgun purchase permits and concealed carry permits are NICS alternatives.



NICS

- Unless an alternative is recognized, a licensed dealer must contact the FBI's NICS Operations Center.



NICS

- The NICS databases includes:
 - Illegal/Unlawful Alien Files
 - Controlled Substance Abuse Files
 - Dishonorable Discharge Files
 - Citizenship Renunciant Files
 - Mental Commitment Files
 - Wanted Persons Files
 - Domestic Violence Protection Order Files
 - Criminal History Files



NICS

- Within 48 hours of receipt, the clerk of superior court sends commitment and other disqualifying orders to NICS.



- Prior to the sale taking place, the dealer will complete BATF Form 4473, Firearms Transactions Record.
- The dealer will identify the purchaser by examining a government issued photo identification card.



- NICS will respond with either a “proceed,” “denied,” or “delayed” response.



Denied or Delayed

- If a “denied” response, the dealer will provide the person their appellate rights.
- If a “delayed” response and no additional response, the sale can take place after three business days.



North Carolina law allows for the purchase of a single handgun with a single pistol purchase permit.



Multiple long guns may be purchased with a single pistol purchase permit; however, they must be purchased in a single transaction.



A valid North Carolina Concealed Handgun Permit is an alternative to a NICS check. Multiple long guns may be purchased if they are purchased in a single transaction.



• If a pistol purchase permit is used, the dealer will retain the original permit.



• If a concealed handgun permit is used to buy a long gun, the dealer will either make a copy of the permit and attach it to the Form 4473, or record the permit number, issuance date and expiration date on the form.



Transfers of firearms to law enforcement officials are exempt from Brady. The purchaser must provide a certification on agency letterhead, signed by a person in authority stating that the officer will use the firearm in official duties, and a records check reveals no convictions for misdemeanor crimes of domestic violence.



North Carolina Requirements



When a person purchases a handgun from a dealer, the person needs to comply solely with North Carolina's pistol permit laws and present a valid permit to purchase a handgun or valid North Carolina-issued concealed carry permit.



NOTE: Even if a NICS inquiry by a dealer was performed, it does not do away with the necessity for a pistol purchase permit.



Any transfer between private individuals is also governed by North Carolina's pistol permit laws.



State law requires that a pistol purchase permit be obtained when a person inherits a pistol.



A violation of this law is a Class 2 Misdemeanor.



Exempted from this permit requirement is the transfer of antique firearms or historic-edged weapons.



Antique Firearms

- An "antique firearm" is one that was manufactured on or before 1898 and includes any firearm with a matchlock, flintlock, percussion cap, or similar ignition system.
- It also includes a replica thereof, if the replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition.
- It also includes any muzzle loading weapon which is designed to use black powder substitute, and which cannot use fixed ammunition.



The fee for pistol purchase permits is set by statute and is \$5.00 per permit requested.



Federal Law Requirements: Ineligible Persons



The following categories of persons are ineligible to receive or possess a firearm under federal law.



Ineligible Persons

- Persons under indictment or information in any court for a crime punishable by imprisonment for a term exceeding one year.



- A "crime punishable by imprisonment for a term exceeding one year," is defined in federal law so as to exclude most misdemeanors in North Carolina. Domestic violence misdemeanors are disqualifying misdemeanors under federal law. 18 U.S.C. § 922(d).



Ineligible Persons

- Persons convicted in any court of a crime punishable by imprisonment for a term exceeding one year.
- A person **would not be** ineligible if pardoned or conviction has been expunged or set aside, or civil rights restored.



Ineligible Persons

- The person is a fugitive from justice.



Fugitives from Justice

- 27 C.F.R. 478.11
- Person has fled from any state to avoid prosecution for a felony or misdemeanor; or
- Who leaves the state to avoid giving testimony in any criminal proceeding.



Ineligible Persons

- The person is an unlawful user of, or addicted to, marijuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance.



Unlawful Use of a Controlled Substance

- ATF Regulation 27 C.F.R. 478.11 specifically defines an unlawful user of or addicted to any controlled substance as “A person who has lost the power of self-control with reference to the use of a controlled substance; and any person who is a current user of a controlled substance in a manner other than prescribed by a licensed physician. The unlawful use has occurred recently enough to indicate that the individual is actively engaged in such conduct.”



Ineligible Persons

- The person has been adjudicated mentally defective or has been committed to a mental institution.



Ineligible Persons

- 18 U.S.C. § 922 (g)(4) bars a person from possession of firearms if the person has been **adjudicated as mentally defective** or been **committed to any mental institution.**
- These terms are defined as follows:



Mental Infirmities 18 USC 922

- **“Adjudicated as a mental defective”** is a determination by a court, board, commission or other lawful authority that a person, as a result of a marked subnormal intelligence, mental illness, incompetency, condition, or disease is a danger to himself or others; or lacks the mental capacity to contract or manage his own affairs; or a person who is found to be insane by a court in a criminal case; or a person who is found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to the UCMJ.



Mental Infirmities 18 USC 922

- **“Committed to any mental institution”** requires a formal involuntary commitment of a person to a mental institution by a lawful authority, including involuntary commitments for reasons such as mental defectiveness, mental illness, drug abuse, or alcohol abuse.



Ineligible Persons

- The person has been discharged from the U.S. armed forces under dishonorable conditions.



Military Discharges

- Entry Level Separation (ELS)
- Honorable
- General (under honorable conditions)
- Under Other Than Honorable Conditions (UOTHC) – aka Undesirable
- Bad Conduct Discharge (BCD)
- Dishonorable Discharge (DD)
- Dismissal



Ineligible Persons

- The person is illegally in the United States.



Prohibitions Applicable to Certain Aliens

- 18 U.S.C. 922 (y)(2).
- Use Supplemental Questionnaire.
- Perform IAQ query.



Firearm Possession Citizenship Status

- **Category 1:** Citizen of the United States.
- **Category 2:** Permanent Resident Alien.
- **Category 3:** Nonimmigrant Alien with a Visa.
- **Category 4:** Nonimmigrant Alien without a Visa (e.g. Visa Waiver Program).
- **Category 5:** Illegal Alien or Persons Unlawfully in the United States.



Category 1: Citizen of the United States

- Generally, a citizen of the United States may receive and possess firearms and/or ammunition, assuming they are otherwise qualified.
- A citizen may be either born in the United States or naturalized.



Category 2: Permanent Resident Alien

- A permanent resident alien is legally accorded the privilege of residing permanently in the United States. These persons are issued a Permanent Resident Card, otherwise referred to as a "Green Card," as proof of their legal status in the United States.
- Generally, these persons may purchase or own a firearm, as long as there are no State or local restrictions to the contrary.

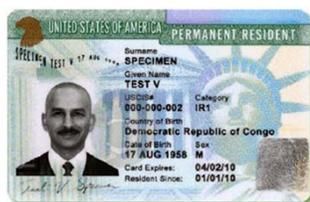


Category 2: Permanent Alien Resident

- North Carolina restrictions:
 - North Carolina only allows a person who is a citizen of the United States and a resident of North Carolina for at least 30 days to apply for a concealed carry permit.
 - However, North Carolina recognizes valid concealed handgun permits issued by another state. Certain states may allow a permanent alien resident to obtain a concealed carry permit.



Permanent Resident Card Example:



Category 3: Nonimmigrant Alien with a Visa

- Generally, non-immigrant aliens with a visa are prohibited from possessing or receiving firearms in the United States.



Category 3: Nonimmigrant Alien with a Visa

- Exceptions to this prohibition include:
 - An alien admitted to the United States for lawful hunting or sporting purposes;
 - An alien in possession of a hunting license or permit lawfully issued in the United States;
 - A foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business;
 - An alien who has received a waiver from the prohibition from the Attorney General of the United States;



Category 3: Nonimmigrant Alien with a Visa Continued

- Exceptions to this prohibition also include:
 - An official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State;
 - An official representative of a foreign government who is accredited to the United States Government or the Government's mission to an international organization having its headquarters in the United States;
 - An official representative of a foreign government who is en route to or from another country in which that alien is accredited.



Category 4: Nonimmigrant Alien without a Visa (e.g. Visa Waiver Program)

- A nonimmigrant alien who is lawfully admitted to the United States without a visa (e.g. Visa Waiver Program), may acquire or possess a firearm in the United States, provided that he or she is not prohibited from shipping, transporting, receiving, or possessing firearms or ammunition in the United States.
- The Visa Waiver Program allows nationals from participating countries to travel to the United States for tourism or business purposes. These persons may only stay in the United States for 90 days or less.



Ineligible Persons

- The person, having been a citizen of the United States, has renounced his or her citizenship.



Effective September 30, 1996, the "Lautenburg Amendment" came into existence.



Lautenburg Amendment

- It prohibits the possession of firearms by anyone convicted of a misdemeanor under federal or state law which has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with, or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent or guardian of the victim.



Lautenberg Amendment

- A person is not considered convicted unless represented by counsel or waived the right to counsel and if the person was entitled to a jury trial or waived their right to such trial.



Lautenberg Amendment

- The person is not considered convicted if the conviction is expunged or set aside, or is an offense for which the person has been pardoned or has had their civil rights restored.



North Carolina Requirements for Pistol Purchase Permit



The sheriff is authorized to issue a permit to receive or purchase a handgun to a resident of their county. The sole exception is for collecting.



The sheriff must fully satisfy himself by affidavits, oral evidence, or otherwise, that the applicant is of **good moral character**. This review is limited to the 5 year period prior to the date of the application.



Good Moral Character

- “[T]hat good moral character is honesty, fairness, and respect for the rights of others and for the laws of the State and nation.”
– In re Willis, 288 N.C. 1, 10 (1975).



Good Moral Character

- A lack of good moral character can be shown when the findings viewed as a whole reveal a pattern of conduct “that permeates the applicants’ character and could seriously undermine public confidence...” – In re Legg, 325 N.C. 658, 674, 386 S.E.2d 174, 183 (1989).



Good Moral Character

- A person’s good moral character can also be focused or defined by one or two instances if appropriately egregious. – In re Rogers, 297 N.C. 48 (1979).



N.C. Requirements

- Permit Must Be For:
 - The protection of home, business, person, family, or property; or
 - Target shooting; or
 - Collection; or
 - Hunting.



N.C. Requirements

- The sheriff must verify by a criminal history investigation that it is not a violation of State or federal law for the applicant to possess a handgun.



N.C. Requirements

- The sheriff shall access criminal records of the State and Federal Bureaus of Investigation, by conducting a national criminal history records check, and by conducting a criminal history check through the Administrative Office of the Courts.



A permit may not be issued to the following:

- An applicant who is under an indictment, or information for, or has been convicted in any state, or in any court of the United States, of a felony.



A permit may not be issued to the following:

- The applicant is a fugitive from justice.



A permit may not be issued to the following:

- The applicant is an unlawful user of or addicted to marijuana, any depressant, stimulant, or narcotic drug.



A permit may not be issued to the following:

- The applicant has been adjudicated incompetent or has been committed to any mental institution.



A permit may not be issued to the following:

- The applicant is an alien illegally or unlawfully in the United States.



A permit may not be issued to the following:

- The applicant has been discharged from the U.S. armed forces under dishonorable conditions.



A permit may not be issued to the following:

- The applicant, having been a citizen of the United States, has renounced their citizenship.



A permit may not be issued to the following:

The applicant is subject to a court order that:

- Was issued after notice, and applicant had an opportunity to participate;
- Restrains the person from harassing, stalking or threatening an intimate partner or child of the intimate partner or engaging in other conduct that would place an intimate partner in fear of bodily injury; and
- Includes a finding that the person represents a credible threat to the safety of the partner or child; prohibits the use, attempted use, or threatened use of force against the partner or child.



N.C. Requirements

- Sheriffs must make additional inquiries of applicants to determine their alien status.



N.C. Requirements

- The sheriff must first determine if the applicant is a citizen. If not, the sheriff must obtain his/her country of citizenship; place of birth; and alien or admission number.



The requirement for obtaining a permit does not apply to law enforcement officers of North Carolina.

The law enforcement officer must provide any of the following:

- o A letter signed by the officer's superior officer stating the officer is authorized to carry a firearm.
- o A current photographic identification card issued by the officer's employer.



The law enforcement officer must provide any of the following:

- o A current photographic identification card issued by a State agency that identifies the officer as State law enforcement.
- o A current identification card from the officer's employer and one other form of photographic identification.



NOTE: If the officer is purchasing or receiving a handgun from a federally licensed firearms' dealer, federal law may nonetheless require a NICS check to be conducted.



N.C. Requirements

- Each applicant must be informed within 14 days whether the permit will be granted or denied.



N.C. Requirements

- An applicant has a right to appeal a denial to the Superior Court for the district.



N.C. Requirements

- A permit is valid for five years. A sheriff is required to keep a list of all permits issued.



N.C. Requirements

- The sheriff must also keep a list of all permit denials.
- The denied applicant however cannot be identified.



N.C. Requirements

- The sheriff must revoke a permit if the permittee becomes disqualified.
- Must give notice to permittee who then has 48 hours to surrender permit.
- Failure to do so is a Class 2 misdemeanor.
- If an officer serves notice, he may take possession of permit.



N.C. Requirements

- Sheriff's book of permits must also include revocation information.
- Records are not public.
- Potential transferors may call and get permit status.



Temporary Transfers of Firearms



The transfer of a pawned firearm from a pawnbroker back to the owner is subject to the requirements of the Brady Law. A NICS inquiry, or an alternative, must be accomplished.



A consigned handgun which is not sold by the dealer and is subsequently returned is subject to the Brady Law.



A handgun which is delivered to a dealer for repair **is not** subject to the Brady Law.



If the firearm is loaned or rented on the licensee's premises, the transaction **is not** subject to the Brady Law.



If the firearm is loaned or rented for use off the premises, the licensee **is** subject to Brady.



Soliciting Unlawful Purchase



Any person who solicits, persuades, encourages, or entices a licensed dealer or private seller of firearms or ammunition to transfer a firearm or ammunition under circumstances that would violate the laws of this State or the United States is guilty of a Class F felony.



Any person who provides to a licensed dealer or private seller information that the person knows to be materially false information with the intent to deceive about the legality of a transfer of a firearm or ammunition is guilty of a Class F felony.



Any person who willfully procures another to engage in conduct prohibited by this section shall be held accountable as a principal to the crime.



Out-of-State Purchase



A citizen of this State may purchase a firearm in another state if the citizen undergoes a background check that satisfies the law of the state of purchase and that includes an inquiry of NICS.



Carrying Concealed Weapons





It is unlawful, except when on his or her own premises, to carry concealed, either on or about his or her person, any "bowie knife, dirk, dagger, slungshot, loaded cane, metallic knuckles, razor, shurikin, stungun, or other deadly weapon of like kind."



Exempted are ordinary pocket knives carried in a closed position. A small knife, that is designed to be carried in a pocket or purse, which has its cutting edge and point entirely enclosed by its handle is exempt. The knife must not be capable of being opened by a throwing, explosive, or spring action.



The following categories of persons are exempt from this restriction:

- Officers and enlisted personnel of the armed forces of the United States when in the discharge of their official duties;
- Civil and law enforcement officers of the United States;
- Officers and soldiers of the Militia and the National Guard when called to actual service and certain National Guard authorized by the Adjutant General;



The following categories of persons are exempt from this restriction:

- 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;



The following categories of persons are exempt from this restriction:

- Any person who is a district attorney, an assistant district attorney, or an investigator employed by the office of a district attorney and who has a concealed handgun permit. Except for DA's the person shall not carry while in a courtroom. Nor may any of these people carry while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the person's body. The district attorney, assistant district attorney, or investigator must secure the weapon in a locked compartment when it is not carried on their person;



The following categories of persons are exempt from this restriction:

- Any person who is a qualified retired law enforcement officer as defined in G.S. 14-415.10 and meets **any one** of the following conditions:
 - Is the holder of a concealed handgun permit in accordance with Article 54B of this Chapter.
 - Is exempt from obtaining a permit.
 - Is certified by the North Carolina Criminal Justice Education and Training Standards Commission pursuant to G.S. 14-415.26.



The following categories of persons are exempt from this restriction:

- Detention personnel or correctional officers employed by the State or a unit of local government who park a vehicle in a space that is authorized for their use in the course of their duties may transport a firearm to the parking space and store that firearm in the vehicle parked in the parking space, provided that:
 - (i) The firearm is in a closed compartment or container within the locked vehicle; or
 - (ii) The firearm is in a locked container securely affixed to the vehicle.



The following categories of persons are exempt from this restriction:

- State probation or parole certified officers and State corrections officers, when off-duty, provided that an officer does not carry a concealed weapon while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the officer's body.



The following categories of persons are exempt from this restriction:

- Sworn law enforcement officers, when off duty, provided that an officer does not carry a concealed weapon while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the officer's body.



The following categories of persons are exempt from this restriction:

- North Carolina trial judges, Administrative Law Judges, and magistrates with concealed handgun permits.
- North Carolina clerks of court and register of deeds with concealed handgun permits.
- Concealed handgun permittees may secure a handgun in vehicle on State government parking areas.
- Certain designated DPS employees with concealed carry permits.



Law Enforcement Officers Safety Act of 2004



Out-of-state sworn law enforcement officers may carry concealed handguns in certain areas of North Carolina.



A **qualified officer** would be an employee of a governmental agency; is authorized to enforce criminal laws with powers of arrest; is authorized to carry firearms; regularly qualifies with their firearm; is not under the influence of alcohol or drugs; and is not prohibited by federal law from receiving a firearm. While carrying in North Carolina, the out-of-state officer may not carry in either public or private areas where the possession of firearms is prohibited.



Also, **qualified retired officers** may be eligible to carry concealed handguns in North Carolina.



A **qualified retired officer** is separated in good standing from a public agency as a law enforcement officer; had powers of arrest; had an aggregate of ten years or more service; qualified annually with their handgun; is not under the influence of alcohol or drugs; and is not prohibited by federal law from receiving a firearm.



Qualified Retired Officer

- The qualified retired officer may not carry in either public or private areas where the possession of firearms is prohibited.