

Garden State CLE Presents:

**Advising Your Clients on
New Jersey Open Carry Laws**



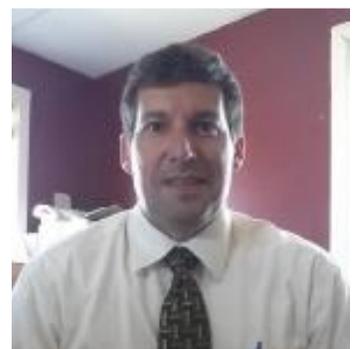
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Lesson Plan

Introduction

The United States Supreme Court decision in New York Rifle and Pistol Association vs. 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.”

As a result of this opinion, New Jersey police agencies and the Superior Courts are currently being flooded with open carry permit applications. More than 300,000 applications have been filed since the Bruen decision.

The follow information is intended to allow you to provide your clients with information about the application process, the limitations of open carry in New Jersey and what additional restrictions are likely to come in the future.

Part I

Qualifications and the Application Process

N.J.S.A. 2C:58-4 describes the process:

- 1) Time limits - Permits to carry are valid for 2-years and then must be renewed.
- 2) Application required information - All applications for permits to carry handguns, and all applications for renewal of permits, shall be made on the forms prescribed by the superintendent. Each application shall set forth the full name, date of birth, sex, residence, occupation, place of business or employment, and physical description of the applicant, and any other information the superintendent may prescribe for the determination of the applicant's eligibility for a permit and for the proper enforcement of this chapter. The application shall be signed by the applicant under oath and shall be indorsed by three reputable persons who have known the applicant for at least three years preceding the date of application, and who shall certify thereon that the applicant is a person of good moral character and behavior. The act of making a false statement in the application is a crime of the third degree – N.J.S.A. 2C:39:10(c).
- 3) Review by chief of police - Initial completed application is submitted to the local chief of police or the superintendent of the New Jersey State Police in municipalities where there is no police department.
- 4) Fingerprint submission - Fingerprints must be provided to the police so that they can conduct a background check.
- 5) Elements for police approval - Initial approval by the police is dependent upon a showing by the applicant that he is not subject to any statutory disqualifications (N.J.S.A. 2C:58-3) and that he is thoroughly familiar with the safe handling and use of handguns. There is no longer any requirement that the applicant show he has a justifiable need to carry a handgun.
- 6) No timely action by police chief - If the application is not approved by the chief police officer or the superintendent within 60 days of filing, it shall be deemed to have been approved, unless the applicant agrees to an extension of time in writing.
- 7) Submission to Superior Court - The approved application is next presented to the Superior Court in the county where he resides.

The Superior Court judge will issue the permit if, it is satisfied that the applicant is a person of good character who is not subject to any statutory disabilities that he is thoroughly familiar with the safe handling and use of handguns. There is a \$20 issuance fee payable to the Clerk of the Superior Court.

8) Judicial restrictions on the permit - The court may, in its discretion, issue a limited-type permit which would restrict the applicant as to the types of handguns he may carry and where and for what purposes the handguns may be carried.

Part II
Disqualifications – N.J.S.A. 2C:58-3(c)

- 1) To any person who has been convicted of any crime, or a disorderly persons offense involving an act of domestic violence as defined in section 3 of P.L.1991, c. 261 (C.2C:25-19), whether or not armed with or possessing a weapon at the time of the offense;
- 2) To any drug-dependent person as defined in section 2 of P.L.1970, c. 226 (C.24:21-2), to any person who is confined for a mental disorder to a hospital, mental institution or sanitarium, or to any person who is presently an habitual drunkard;
- 3) To any person who suffers from a physical defect or disease which would make it unsafe for him to handle firearms, to any person who has ever been confined for a mental disorder, or to any alcoholic unless any of the foregoing persons produces a certificate of a medical doctor or psychiatrist licensed in New Jersey, or other satisfactory proof, that he is no longer suffering from that particular disability in a manner that would interfere with or handicap him in the handling of firearms; to any person who knowingly falsifies any information on the application form for a handgun purchase permit or firearms purchaser identification card;
- 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;
- 5) To any person where the issuance would not be in the interest of the public health, safety or welfare;
- 6) To any person who is subject to a restraining order issued pursuant to the “Prevention of Domestic Violence Act of 1991”, P.L.1991, c. 261 (C.2C:25-17 et seq.) prohibiting the person from possessing any firearm;
- 7) To any person who as a juvenile was adjudicated delinquent for an offense which, if committed by an adult, would constitute a crime and the offense involved the unlawful use or possession of a weapon, explosive or destructive device or is enumerated in subsection d. of section 2 of P.L.1997, c. 117 (C.2C:43-7.2);

8) To any person whose firearm is seized pursuant to the “Prevention of Domestic Violence Act of 1991”, P.L.1991, c. 261 (C.2C:25-17 et seq.) and whose firearm has not been returned; or

9) To any person named on the consolidated Terrorist Watch-list maintained by the Terrorist Screening Center administered by the Federal Bureau of Investigation;

10) To any person who is subject to a court order prohibiting the custody, control, ownership, purchase, possession, or receipt of a firearm or ammunition issued pursuant to the “Extreme Risk Protective Order Act of 2018”, P.L.2018, c. 35 (C.2C:58-20 et al.); or

11) To any person who is subject to a court order prohibiting the custody, control, ownership, purchase, possession, or receipt of a firearm or ammunition issued pursuant to P.L.2021, c. 327 (C.2C:12-14 et al.).

In order to obtain a permit to purchase a handgun or a firearms purchaser identification card, the applicant shall demonstrate that, within four years prior to the date of the application, the applicant satisfactorily completed a course of instruction approved by the superintendent in the lawful and safe handling and storage of firearms. The applicant shall be required to demonstrate completion of a course of instruction only once prior to obtaining either a firearms purchaser identification card or the applicant's first permit to purchase a handgun.

Part III
Current Law on Possessing and Carrying a Firearm
With or Without a Permit – N.J.S.A. 2C:39-6(e)

Appendix or AG Guidelines

https://www.nj.gov/oag/dcj/agguide/transporting-firearms_guide.pdf

1) Possession

- In the client's place of (a fixed location) business
- In the client's residence
- On the client's premises
- Land owned or possessed by the client
- Hunting/Fishing with a valid license for that activity
- Target practice at licensed range by a club member
- Repairs to firearm

2) Transport

- Place of purchase to residence
- Place of purchase to fixed-location business
- Residence to workplace
- Workplace to residence
- Residence/Workplace when moving
- Residence/Workplace to gun repair facility
- Carried unloaded
- Locked in a closed & fastened gun case or box; or
- Locked in trunk of car; and
- During transport, avoid unnecessary deviations.

3) Children – N.J.S.A. 2C:58-6.1

- (1) In the actual presence or under the direct supervision of his father, mother or guardian, or some other person who holds a permit to carry a handgun or a firearms purchaser identification card, as the case may be; or

(2) For the purpose of military drill under the auspices of a legally recognized military organization and under competent supervision; or

(3) For the purpose of competition, target practice, instruction, and training in and upon a firing range approved by the governing body of the municipality in which the range is located or the National Rifle Association and which is under competent supervision at the time of such supervision or target practice or instruction and training at any location; or

(4) For the purpose of hunting during the regularly designated hunting season, provided that he possesses a valid hunting license and has successfully completed a hunter's safety course taught by a qualified instructor or conservation police officer and possesses a certificate indicating the successful completion of such a course.

Part IV
Current Limitations on Places Where
Firearms Can Be Carried

1) N.J.S.A. 2C:58-3(c) Any person who knowingly has in his possession any firearm in or upon any part of the buildings or grounds of any school, college, university or other educational institution, without the written authorization of the governing officer of the institution, is guilty of a crime of the third degree, irrespective of whether he possesses a valid permit to carry the firearm or a valid firearms purchaser identification card.

2) N.J.A.C. 19:76-1.25 Firearms and weapons - No person, except those authorized by law, shall carry or transport any firearm or weapon at the Airport, except when such firearm or weapon is properly encased for shipment and not in the person's physical possession.

3) Casinos [N.J. Admin. Code § 13:69D-1.13];

4) State parks [N.J. Admin. Code § 7:2-2.179(b)];

5) Wildlife Management Areas, state forests and national forests [NJ Admin. Code § 7:2-2.17(b)];

6) Statue Cruises ferry to Ellis Island & Liberty Island, and the Statue of Liberty Natl Monument [NPS Security Standards]; and

7) Any place where the carrying of firearms is prohibited by federal law or state law or regulation.

8) Please note:

There is no State statute prohibiting concealed carry in places of worship. However, since places of worship are private property, they may post signs prohibiting firearms.

New legislation will also address restrictions imposed by owners of private property.

Part V

Proposed Legislative Restrictions

- 1) It would prohibit guns in 25 categories of public areas, including government buildings, schools, casinos, sporting arenas, bars, childcare centers, parks, hospitals, beaches, and college campuses. It also would require gun owners to obtain insurance and complete safety training to carry a firearm.
- 2) It would require a 60-day vetting process to determine who can obtain concealed carry permits.
- 3) To apply for a permit, people would have to undergo an interview with the local chief of police and submit five non-family references. The bill would also expand the disqualifying criteria that would prohibit someone from owning a gun to include people who have violated restraining orders, have outstanding warrants, and are convicted of fourth-degree crimes. That list would also include people with mental disorders, alcoholics, and people who are “found to be lacking the essential character of temperament necessary to be entrusted with a firearm.”
- 4) The proposed legislation would require people with carry permits to have liability insurance to protect against loss from injury, death, or property damage. Proof of insurance would have to be carried with the permit to carry a handgun.
- 5) The New Jersey State Police would be required to develop a safety training course. Gun owners would be responsible for paying for any gun safety training, including classes online or in person and target practice at approved facilities.



State of New Jersey

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TO: All County Prosecutors
All County Sheriffs
All Police Chiefs
All Law Enforcement Chief Executives

FROM: Robert Lougy, Acting Attorney General 

DATE: April 8, 2016

SUBJECT: Guidelines Regarding Reasonably Necessary Deviations in the Course of Travel Exception for Transporting Firearms Pursuant to N.J.S.A. 2C:39-6g.

I. Introduction

While the provisions of N.J.S.A. 2C:39-5 prohibit unlawful possession of a firearm, the law contains numerous exceptions. N.J.S.A. 2C:39-6g authorizes the transportation of firearms while traveling between two locations at which New Jersey law expressly permits the possession of a firearm, provided that the firearms are carried unloaded and contained in a closed and fastened case, gunbox, securely tied package, or locked in the trunk of the automobile in which they are being transported. The enumerated circumstances in which a firearm may be transported under this exception include:

- a licensed firearms dealer and the dealer's registered employees may transport firearms during the course of their normal business while traveling to and from their place of business and other places for the purpose of demonstration, exhibition or delivery in connection with a sale;
- a person may transport a firearm from any place of purchase to his residence or place of business, between his dwelling and his place of business, between one place of business or residence and another when moving, or between his dwelling or place of business and place where such firearms are repaired, for the purpose of repair;

- a member of any rifle or pistol club organized in accordance with the rules prescribed by the National Board for the Promotion of Rifle Practice, in going to or from a place of target practice, may carry such firearms as are necessary for target practice, provided that the club has filed a copy of its charter with the superintendent and annually submits a list of its members to the superintendent and provided further that the firearms are carried in the manner specified in N.J.S.A. 2C:39-6g.; and
- a person may transport any firearm while traveling:
 - directly to or from any place for the purpose of hunting or fishing (provided the person has in his possession a valid hunting or fishing license); or
 - directly to or from any target range, or other authorized place for the purpose of practice, match, target, trap or skeet shooting exhibitions (provided the person has complied with all the provisions and requirements of Title 23 of the Revised Statutes, any amendments and all rules and regulations promulgated under that Title); or
 - directly to or from any exhibition or display of firearms which is sponsored by any law enforcement agency, any rifle or pistol club, or any firearms collectors club, for the purpose of displaying the firearms to the public or to the members of the organization or club (provided that the sponsoring organization or club gave notice of the exhibition or display to the Superintendent of the State Police not less than 30 days prior to the exhibition or display, and the sponsor complied with such reasonable safety regulations as the superintendent promulgates).

The law allows a limited degree of deviation in the course of travel when transporting a firearm between statutorily-enumerated locations, providing that “... the course of travel shall include only such deviations as are reasonably necessary under the circumstances.” To the extent there is a deviation in the point-to-point travel that is not reasonably necessary under the circumstances, the exception would not apply and the transportation of a firearm – even between two locations expressly authorized by the law – could violate N.J.S.A. 2C:39-5.

Concern has been raised that this formulation could result in inconsistent or disparate application and a chilling effect of the lawful transport of properly-stored firearms. To address this concern, it is appropriate for the Attorney General to provide guidance to the law enforcement officers and prosecutors in order to ensure that the law is administered uniformly throughout the State. N.J.S.A. 52:17B-98. This document also is intended to provide guidance to police and prosecutors on investigating circumstances relevant to the applicability of this potential affirmative defense. I am directing the prosecutors, as chief law enforcement officers of their respective counties, to share this guidance with local police departments, who in turn should provide copies to any member of the public who requests information on transporting firearms in statutorily-authorized point-to-point travel.

II. Guidelines

A. The “reasonably necessary” standard

Consistent with the underlying purpose of subsection g. of ensuring that firearms are transported in a safe, responsible manner only under certain prescribed circumstances, a “reasonably necessary” deviation constitutes an exception to the general rule under New Jersey law that, absent a carry permit or an applicable statutory authorization (such as the performance of official duties by a law enforcement officer), transportation of a firearm is prohibited. It should be understood at the outset that if a firearm is not carried unloaded and contained in a closed and fastened case, gunbox, securely tied package, or locked in the trunk of the automobile, this exception does not apply.

The concept of “reasonably necessary” deviation in the course of travel must be construed “according to the fair import of [its] terms but when the language is susceptible of differing constructions it shall be interpreted to further the general purposes stated in this section and the special purposes of the particular provision involved.” N.J.S.A. 2C:1-2c. In this case, the prohibition is intended to limit the time a firearm may be in transit between two specific locations where the firearm may be lawfully possessed, to reduce any opportunities for theft or other unauthorized disposition as well as the possibility that a person may unlawfully use or possess the firearm in a location where its use or possession is otherwise prohibited. This formulation – limiting deviations in the course of travel to only those that are reasonably necessary – also proscribes the ability of actors who travel with firearms in their vehicles under circumstances not enumerated in N.J.S.A. 2C:39-6g. from speciously relying on the transportation exception to provide them with a de facto carry permit for their vehicles.

The deviation must be both necessary – as opposed to merely optional – and reasonably so, from an objective rather than a subjective viewpoint. As the exception speaks to reasonably necessary deviations in the course of travel “under the circumstances,” whether particular deviations are covered by the exception must be determined on a case-by-case basis, based on the totality of the circumstances. Because the statute uses the term “in the course of travel” rather than the term “route,” it contemplates not only detours in the route from point of origin to the destination but also stops made in the course of traveling from one authorized location to another.

B. Relevant inquiries

A police officer stopping a vehicle with firearms carried unloaded and contained in a closed and fastened case, gunbox, securely tied package, or locked in the trunk, should request that the driver disclose the vehicle’s point of origin and destination, and also should ask about the route traveled, inquiring whether, for what purpose and for how long the vehicle made any deviations in the course of travel. A police officer also should inquire concerning any intermediate locations where, in the course of travel, the vehicle was parked, the distance of these locations from the intended destination point and route of travel, and the duration of any such stop. It should be noted that a citizen cannot be compelled by an officer to make a testimonial statement. If the person fails or refuses to respond to police questions seeking information relevant to

whether there was a deviation from direct travel and whether such deviation was reasonably necessary in the circumstances, the officer may in the exercise of his or her discretion proceed as if the exemption does not apply, and may leave ultimate resolution of the applicability of the exemption to the prosecutor and/or the court.

C. Application of the standard

As a threshold consideration, the vehicle transporting a firearm must be coming from, and traveling to, a location where possession of a firearm is authorized by N.J.S.A. 2C:39-6g., specifically the locations enumerated in N.J.S.A. 2C:39-6b.(2) (a firearms dealer's place of business and another place for the purpose of demonstration, exhibition of sales delivery, only if the person is a licensed firearms dealer or registered employee), N.J.S.A. 2C:39-6e. (from the place of purchase to a person's residence or place of business, between a person's dwelling and place of business, between one place or business or residence and another when a person is moving, or between a person's place of dwelling or business and a place where the firearm will be repaired), N.J.S.A. 2C:39-6f.(1)(to or from a place for target practice), or N.J.S.A. 2C:39-6f.(3) (to or from a place for hunting or fishing, to or from a target range or similar place, and to or from a sponsored firearms exhibition or display, rifle or pistol club, or firearm collectors club).

Police and prosecutors, in determining whether a deviation in the course of travel between two authorized points is reasonably necessary under the circumstances, should be guided by common sense and context, consistent with the statutory purpose. In making this determination, consideration should be given both to the purpose and extent of the deviation. Consideration of the extent of the deviation should take into account both the magnitude of the deviation from a direct route as well as the duration of any time in which the vehicle was not in transit.

(1) Purpose of the deviation

While not an exclusive list, some examples of purposes for stops or detours in the course of travel to or between two locations that would qualify as reasonably necessary include: collecting and discharging passengers; purchasing fuel, food and beverages, medication, or other needed supplies; using a restroom; or contending with an emergency situation.

(2) Extent of the deviation

The directness of the route may also be a factor; the more direct the route between the points of origin and destination, the more likely the exemption is to apply. An excessively circuitous route weighs against the applicability of the exemption, while a more direct route with only a minor deviation or two suggests that the exception applies (although not if the deviation were for a frivolous or unnecessary purpose). However, a substantial departure from the direct route might still fall under the exception if the deviation is justified under the circumstances, such as a detour of several miles to pick up a much-needed prescription at one's pharmacy or an alternate route taken to avoid an accident area or heavy traffic. In contrast, a roundabout route (taken, for example, simply to enjoy the drive) likely would not fall within the scope of the exemption.

Additionally, the permissible extent of the deviation may depend on the circumstances, as the route taken should be that which is reasonably sufficient to accomplish the necessary purpose for the deviation, and should not be unnecessarily excessive. For example, a reasonably necessary deviation to use a restroom would involve seeking a public restroom relatively close to the direct route, as opposed to a route that bypasses several available restroom facilities along the way.

Another relevant factor is the extent of time the vehicle is not actually in transit between the two authorized locations. A vehicle that in its course of travel goes through a drive-through at a fast food restaurant, pharmacy or bank, stops at a service station to get gasoline or inflate the tires, or makes a brief stop at a convenience store suggests consistency with the purpose of the exception. A stop of extended duration may suggest that the deviation was not reasonably necessary.

As evident for the above considerations, there is likely to be interplay between the factors of purpose, extent and duration, which should be taken into account in the ultimate determination of whether a deviation in the course of travel was reasonably necessary under the circumstances.

III. Purpose and Effect of these Guidelines

These guidelines should be followed by all county prosecutors and all law enforcement officers in this State so that the State's firearms transportation restrictions will be enforced uniformly throughout the State.

In enforcing this law, it should be borne in mind that the exemption from criminal liability under N.J.S.A. 2C:39-6g is a defense that, once asserted, must be disproved by the prosecution beyond a reasonable doubt. That is, to convict an actor of unlawful possession of a firearm, the prosecutor would have to prove beyond a reasonable doubt that travel between the statutorily-authorized points of origin and destination was not direct and that the deviation in the course of travel was not reasonably necessary under the circumstances. Consistent with the ethical obligations of a prosecutor or police officer, charges should be brought only if the evidence supports the conclusion that the deviation in the course of travel was not reasonably necessary.

Toward that end, in situations where a lawfully-owned firearm is otherwise properly carried in a vehicle (*i.e.*, the firearms are carried unloaded and contained in a closed and fastened case, gunbox, securely tied package, or locked in the trunk of the automobile in which they are being transported) and the actor's conduct involves solely a deviation that may not be reasonably necessary in the course of travel between two authorized locations, a police officer should not affect an arrest or file a complaint without prosecutorial approval.