Most Common Firearms Laws Questions

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Contents

1. For purposes of a concealed handgun permit, what is a disqualifying mental illness?

Under our concealed handgun laws, there are three considerations when evaluating an applicant's mental issues:

1. First, an applicant "must not suffer from a physical or mental infirmity that prevents the safe handling of a handgun." G.S. § 14-415.12(a)(3).

   There is no definition of this phrase provided in our statutes nor is there any case law interpreting it. Consequently, sheriffs must evaluate an individual's mental records to determine if a particular diagnosis or symptoms would reasonably affect their ability to safely handle a handgun. For example, an individual may have been seen by a psychologist for exhibiting symptoms of being paranoid, afraid and distrustful of others. If extreme enough, these criteria may convince a sheriff that the individual is not able to safely carry a concealed firearm. In such a circumstance, this provision of law will justify the denial of the concealed handgun permit.

2. Second, a concealed handgun permit application must be denied if an applicant "is currently, or has previously been adjudicated by a court, or administratively determined by a governmental agency whose decisions are subject to judicial review, to be lacking mental capacity or mentally ill. Receipt of previous consultative services or outpatient treatment alone shall not disqualify an applicant." G.S. § 14-415.12(b)(6).

   This provision is directed to those applicants who have previously received a diagnosis for a mental infirmity and have been found by some governmental agency to be mentally ill. For example, if an individual has been discharged from employment by a unit of local or State government for reasons of mental illness, this may provide sufficient grounds to deny an application.

   The last sentence in this statute concerning outpatient treatment is important to note. Merely because an individual has previously sought consultative services or outpatient treatment would not by itself disqualify an applicant. It is not uncommon for an applicant to have sought psychological counseling in the past and this would not necessarily bar him or her from receiving a concealed handgun permit. For example, individuals who have suffered a loss in the family or an emotional breakup with a loved one may have sought psychological services to help them overcome this traumatic event in their lives. This type of isolated counseling event would not be a bar to a concealed handgun permit.

3. Lastly, a concealed handgun permit must also be denied if the individual is ineligible to own, possess or receive a firearm under federal or State law. G.S. § 14-415.12 (b)(1).

   18 U.S.C. § 922 (g)(4) bars a person from possessing firearms if the person has been "adjudicated as a mental defective" or "committed to a mental institution."

The term “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 sub-normal 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 was found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to the Uniform Code of Military Justice. 27 C.F.R. § 478.11.

Our concealed handgun permit law would therefore require the denial of a concealed handgun permit if the individual has previously been found by a court to be: mentally incompetent; incapable of standing trial; or not guilty by reason of insanity.

The phrase “committed to any mental institution” requires a formal involuntary commitment of a person to a mental institution by lawful authority for reasons such as mental defectiveness, mental illness, drug abuse or alcohol abuse. 27 C.F.R. § 478.11.

In North Carolina, the mere fact that an individual has been taken into custody by law enforcement under an involuntary commitment order and treated at a 24-hour facility is not sufficient to invoke this federal prohibition. Rather, there must be a determination by a judge that the individual was mentally ill and a danger to himself or others. The judge must also have ordered the person to undergo either in-patient treatment or out-patient treatment.

A voluntary commitment is not an automatic bar to possessing firearms. However, the person’s underlying diagnosis may be considered when deciding on the person’s eligibility for a concealed handgun permit.

2. Is a sheriff <u>required</u> to revoke a concealed handgun permit when a permittee is charged with a disqualifying crime but the charge has not yet been adjudicated (resolved)?

No. The sheriff <u>may</u> revoke a concealed handgun permit, subsequent to a hearing, for any of the following reasons:

1. fraud or intentional and material misrepresentation in obtaining a permit;

2. misuse of a permit, including lending or giving a permit or a duplicate permit to another person, materially altering a permit, or using a permit with the intent to unlawfully cause harm to a person or property (Note: It is not misuse to give a duplicate of the permit to a vendor for record keeping purposes);

3. the doing of an act or existence of a condition which would have been grounds for the denial of the permit by the sheriff;

4. violation of any terms governing the carrying of concealed handguns.

G.S. § 14-415.18(a).

Therefore, if a permittee has been charged with a crime (e.g., driving while impaired) which would have been grounds to deny a permit under G.S. § 14-415.12(b), then the sheriff may revoke a concealed handgun permit based on that charge alone without waiting for the court to resolve the outstanding charge.

If a sheriff chooses to exercise this discretion, the sheriff must first hold a hearing which should center on whether or not the permittee was in fact charged with a prohibiting crime. If the sheriff revokes the permit, and this revocation is not overturned on appeal by a district court judge, then the individual's permit cannot be "reinstated." If the individual's criminal charge is subsequently resolved in his favor but his concealed handgun permit has already been revoked, then the individual would have to reapply for a new concealed handgun permit.

Either the sheriff of the county where the permit was issued or the sheriff of the county where the person currently resides must revoke a permit for any individual who is adjudicated guilty of or receives a prayer for judgment continued for a crime that would have disqualified the person from initially receiving a permit. This revocation is mandatory for a sheriff and the revocation occurs without having a hearing first. If a permittee appeals this revocation, a district court judge is limited to only deciding if in fact the individual received a prayer for judgment continued or was adjudicated guilty of the disqualifying crime. The revocation of the permit is not stayed pending that appeal. G.S. § 14-415.18(a1).

3. What constitutes a lack of good moral character for purposes of a pistol purchase permit?

G.S. § 14-404 requires the sheriff to determine an applicant's "good moral character" when the person is applying for a pistol purchase permit. The sheriff is only able to consider an applicant's conduct and criminal history for the five-year period immediately preceding the date of the application for purposes of determining an applicant's good moral character to receive a permit. This five-year period only applies to a sheriff's evaluation of an applicant's good moral character. If a crime or condition occurs outside this five-year period, the sheriff may consider it if the crime or condition is independently a disqualifier for a pistol purchase permit (for example, a felony conviction or involuntary commitment).

The term "good moral character" is not defined in our statutes nor is there a case specifically on point as to what constitutes good moral character for purposes of a pistol purchase permit. However, there are a number of appellate court cases in North Carolina that discuss an individual's good moral character for purposes of receiving some other type of permit or license. The Supreme Court of North Carolina has said "that 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):

A lack of good moral character can be shown when surrounding facts or circumstances, viewed as a whole, reveal "a pattern of conduct that permeates the applicant's character and could seriously

undermine public confidence…" *In re Legg*, 325 N.C. 658, 674 (1989). However, a person's good moral character can also be focused or defined by one or more instances if appropriately egregious. *In re Rogers*, 297 N.C. 48 (1979).

As applied to a pistol purchase permit, sheriffs should look at a pattern of conduct or a significant event occurring in the preceding five years which is representative of the person's current character and has a relationship to the individual's inability to possess firearms in a safe and responsible manner. For example, an individual with multiple charges involving the use of alcohol and the unlawful discharge of or carrying of a firearm may fit these criteria.

4. How do I determine a person's residency for a pistol purchase permit or a concealed handgun permit?

G.S. § 14-404 requires that an applicant for a pistol purchase permit (with the exception of a collector) apply for a permit with the sheriff of the county in which he or she resides. Similarly, G.S. § 14-415.13 requires an applicant for a concealed handgun permit to apply with the sheriff of the county in which they reside.

The term "residence" is not defined in our firearms statutes. Consequently, the sheriff should develop reasonable guidelines in order to make that determination. As for the length of time necessary to become a resident of the county, sheriffs may consider adopting the same time standards utilized by their county tax departments.

On the issue of how to prove residency, referring to other statutes may be beneficial. For example, G.S. § 20-7(b4) cites the following items as examples of how to show residency for the Division of Motor Vehicles:

1. pay stub with the payee's address;
2. utility bills showing the applicant's address;
3. a contract for an apartment or house;
4. a receipt for personal property taxes paid;
5. a receipt for real property taxes paid; and/or
6. a monthly statement from a bank.

5. Who is exempt from having to take the firearms safety and training course in order to receive a concealed handgun permit?

North Carolina exempts the following persons from having to take the firearms safety and training course:

1. a North Carolina law enforcement officer from a local, State, or company police agency who has been retired for less than two years. (The retired officer must have either non-forfeitable rights under their respective retirement plan or have 20 years or more aggregate years of service);

2. a current North Carolina law enforcement officer who is authorized to carry a handgun in the course of his or her duties;

3. a person licensed or registered by the North Carolina Private Protective Services Board as an armed security guard and who has a firearms registration permit issued by the Board;

4. an individual retired as a North Carolina probation or parole officer or as a North Carolina State correctional officer so long as the officer has been retired for less than two years; and

5. a person qualified to carry a concealed firearm under the standards set by the North Carolina Criminal Justice Education and Training Standards Commission under the Law Enforcement Officer's Safety Act.

G.S. § 14-415.12A.

There is no exception in North Carolina for active duty or retired out-of-state officers, military members, or federal law enforcement officers.

6. Will a pardon allow a convicted felon to receive a pistol purchase permit or a concealed handgun permit?

Generally speaking, a convicted felon is unable to possess firearms in North Carolina. However, a recent change in North Carolina law provides this restriction does not apply to a person who, pursuant to the law of the jurisdiction in which the conviction occurred, has been pardoned and that pardon allows the felon to possess firearms. G.S. § 14-415.1.

Additionally, G.S. § 14-415.4 sets out a process where a convicted felon can have his or her firearms rights restored independent of receiving a pardon. In this restoration process, the felon must have gone 20 years after his or her release from imprisonment or probation without a subsequent conviction and then apply to a district court judge for a restoration of rights.

If an applicant for a pistol purchase permit has received an out-of-state pardon, it will require researching that state's law to determine if that pardon allows the individual to possess firearms.

A recent North Carolina case held that any North Carolina pardon (either a pardon of innocence or a pardon of forgiveness) is sufficient to allow convicted felons to possess firearms. *Booth v. State of North Carolina*, 227 N.C. App. 484, 742 S.E. 2d 637 (2013).

While a pardoned individual would be able to possess firearms, our concealed handgun statutes do not recognize a pardon. However, if an applicant for a concealed handgun permit has received a restoration of rights pursuant to G.S. § 14-415.4, the individual would be eligible for a concealed handgun perm.

7. What military discharges will prohibit a person from getting a pistol purchase permit or a concealed handgun permit?

Pursuant to G.S. § 14-404, an individual is disqualified from receiving a pistol purchase permit if they have received a dishonorable discharge from the military. More restrictive language is applied to an applicant for a concealed handgun permit. Pursuant to G.S. § 14-415.12(b)(7), an applicant for a concealed handgun permit is disqualified if they have received a discharge "under conditions other than honorable."

A military member who has served on active military duty in excess of six months will receive a DD Form 214 which documents his or her time on active military service. This form will also list the characterization of that person's service. A military member can receive any one of the following types of discharges:

1. Entry level separation;
2. honorable;
3. general (under honorable conditions);
4. under other than honorable conditions (UOTHC);
5. bad conduct discharge;
6. dishonorable discharge; or
7. dismissal.

Of these characterizations of service, only a dishonorable discharge or a dismissal will prevent a former military member from receiving a pistol purchase permit.

The more restrictive standard for a concealed handgun permit (under conditions other than honorable) would prohibit anyone who has received an "under other than honorable conditions" discharge, "bad conduct" discharge, "dishonorable" discharge, or "dismissal" from receiving a concealed handgun permit.

8. Can an 18-year-old receive a pistol purchase permit?

Yes, an 18-year-old can receive a pistol purchase permit. G.S. § 14-404 does not specify a minimum age for a person to receive a pistol purchase permit. North Carolina allows an individual who is 18 years of age or older to possess a handgun. G.S. § 14-315. A formal NC Attorney General's opinion found at 41 N.C.A.G. 465 therefore concludes a pistol purchase permit can be issued to persons 18 to 20 years of age.

Federal law, found at 18 U.S.C. § 922(b)(1), restricts a federally licensed firearms dealer from selling handguns to a person under the age of 21. However, an individual 18 to 20 years of age could lawfully purchase or receive a handgun from a source other than a federally licensed firearms dealer.

9. How can a person lawfully possess a suppressor in North Carolina?

A suppressor for a firearm is classified as a weapon of mass death and destruction under G.S. § 14-288.8. It is a felony to unlawfully possess this device. There are currently five categories of persons that may possess these devices lawfully. These categories are:

1. Persons identified in G.S. § 14-269(b) who need the device while carrying out their duties (for example, law enforcement officers fall in this category);

2. importers, manufacturers, dealers, and collectors of firearms, ammunition, or destructive devices validly licensed under the laws of the United States or the State of North Carolina, while lawfully engaged in activities authorized under their licenses;

3. persons under contract with the United States, the State of North Carolina, or any agency of either government, with respect to any activities lawfully engaged in under their contracts;

4. inventors, designers, ordinance consultants and researchers, chemists, physicists, and other persons lawfully engaged in pursuits designed to enlarge the knowledge of, or to facilitate the creation, development, or manufacture of weapons of mass death and destruction intended for use in a manner consistent with the laws of the United States and the State of North Carolina; or

5. persons who lawfully possess or own a weapon in compliance with 26 U.S.C. Chapter 53, §§ 5801-5871 (however, nothing limits the discretion of the sheriff to decide whether or not to sign the paperwork required by the Bureau of Alcohol, Tobacco, Firearms and Explosives for such a person to obtain the weapons).

The last category above allows an individual to lawfully possess a suppressor in North Carolina if the person has complied with federal tax laws and has been authorized by the Bureau of Alcohol, Tobacco, Firearms and explosives to receive the suppressor. However, if the particular process used by an applicant to receive the federal license to own a suppressor requires the sheriff's signature, the sheriff is authorized, but not required, to sign the paperwork.

Please be aware however of a provision of law recently enacted by House Bill 562, Amend Firearms Laws. Specifically, new G.S. § 14-409.41 (Session Law 2015-195, s.13), was enacted which requires a "chief law enforcement officer" (CLEO) to verify whether or not an applicant is eligible to possess certain weapons

and devices such as automatic weapons and suppressors. A sheriff falls under the definition of a CLEO. It appears this new requirement conflicts with G.S. § 14-288.8(b)(5) which gives sheriffs the discretion to sign certification paperwork for transfers of such weapons.

On behalf of all sheriffs as President of the North Carolina Sheriffs' Association, Sheriff Hubert Peterkin of Hoke County requested an opinion from the Attorney General's Office asking whether North Carolina sheriffs were required under new G.S. § 14-409.41 to verify on any required federal documents that a person could or could not possess weapons such as automatic weapons, short barreled rifles and shotguns, and suppressors.

In an advisory letter dated November 12, 2015, Special Deputy Attorney General Hal Askins says that the sheriff is not required to provide a certification on any required federal documents authorizing the transfer of firearms and devices such as automatic weapons, short barreled rifles and shotguns, and suppressors. In this letter it is the opinion of Special Deputy Attorney General Askins that North Carolina sheriffs retain their discretion and can decide whether or not to sign any required federal paperwork for the transfer of these weapons and devices.

Until this issue is resolved by either the courts or the General Assembly sheriffs should consult with their agency legal counsel on any requests to sign federal paperwork for the transfer of automatic weapons, short barreled rifles and shotguns, and suppressors.

While North Carolina allows for an individual to hunt with a suppressor, the individual must first lawfully receive the device. Consequently, they must always comply with the rules set forth above.

10. Where may a city or county prohibit the carrying of firearms?

A city or county may regulate the transport, carrying, or possession of firearms by employees of the unit of local government in the course of their employment with that city or county.

G.S. § 14-415.23 prohibits any unit of local government from enacting ordinances concerning the general carrying of a concealed handgun. However, the unit of local government is allowed to adopt an ordinance against carrying a concealed handgun in local government buildings and their appurtenant premises.

Additionally, State law allows cities and counties to adopt an ordinance to restrict the carrying of a concealed handgun on municipal and county recreational facilities. Even if a local government adopts an ordinance with regards to recreational areas, a concealed handgun permittee may nonetheless secure his or her handgun in a locked vehicle in a parking lot of these facilities.

The term "recreational facilities" is very specifically defined to only include:

1. An athletic field, any appurtenant facilities such as restrooms, during an organized athletic event if the field has been scheduled for use with the city or county office responsible for operation of the park or recreational area;

2. a swimming pool, including any appurtenant facilities used for dressing, storage of personal items, or other uses related to the swimming pool; or

3. a facility used for athletic events, including, but not limited to, a gymnasium.

The term “recreational facilities" specifically does not include any greenway, designated biking or walking path, any area customarily used as a walking or bike path although not specifically designated for such use, and open areas or fields where athletic events may occur unless the area qualifies as an athletic field. The term “athletic field” is not further defined in the statute.

11. When can misdemeanor drug charges bar the issuance of a pistol purchase permit or a concealed handgun permit?

Pursuant to G.S. § 14-404(c)(3), an individual is disqualified from receiving a pistol purchase permit if the applicant is “an unlawful user of or addicted to marijuana or any depressant, stimulant, or narcotic drug.”

Similarly, the sheriff must deny a concealed handgun permit if the applicant is “an unlawful user of, or addicted to marijuana, alcohol, or any depressant, stimulant, or narcotic drug or any other controlled substance.” G.S. § 14-415.12(b)(5).

North Carolina law does not define when a firearms permit applicant is considered an unlawful user of or addicted to drugs. Guidance may be found, however, in federal law.

Federal law provides that a person is prohibited from possessing firearms if that person is an unlawful user of or addicted to any controlled substance. 18 U.S.C. § 922(g)(3). An unlawful user of, or a person addicted to, a controlled substance is defined as, “a person who uses a controlled substance and has lost the power of self-control with reference to the use of a controlled substance…” It includes any person who is a current user of a controlled substance in a manner other than prescribed by a licensed physician. The unlawful use must have occurred recently enough to indicate that the individual is actively engaged in such conduct. 27 C.F.R. § 478.11.

This federal regulation goes on to give examples of conduct that may support an inference of current unlawful use of a controlled substance. The regulation states that a conviction for the use or possession of controlled substances within the past year may be sufficient to show current unlawful use. Additionally, multiple arrests for the use or possession of controlled substances in the past five years with the most recent arrest occurring in the last year may be sufficient to indicate current unlawful use. Also, a positive drug test within the last year may be sufficient to satisfy this prohibitor. 27 C.F.R. § 478.11.

Therefore, a conviction for misdemeanor possession of marijuana may be sufficient to show current unlawful use if the conviction occurred within the prior year. Similarly, if an applicant for either a pistol purchase or concealed handgun permit has had multiple charges for drug use or possession within the previous five years with the last charge occurring in the previous year, he or she may be prohibited from obtaining a permit. Please note that these are only examples. Sheriffs should evaluate an applicant’s entire background for other indicators of current unlawful controlled substance use.