

DAVID Y. IGE
GOVERNOR

HOLLY T. SHIKADA
ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
425 QUEEN STREET
HONOLULU, HAWAII 96813
(808) 586-1500

VALERIE M. KATO
FIRST DEPUTY ATTORNEY GENERAL

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The Honorable David Y. Ige
Governor, State of Hawai'i
Executive Chambers
State Capitol
Honolulu, Hawai'i 96813

RE: *Public Carry Licensing Under Hawai'i Law Following New York State Rifle & Pistol Association v. Bruen*

Dear Governor Ige:

This letter responds to your request for a formal legal opinion clarifying the requirements to obtain licenses to carry firearms under Hawaii's current statutory regime following the United States Supreme Court's decision in *New York State Rifle & Pistol Association v. Bruen*, No. 20-843.

In *Bruen*, the U.S. Supreme Court concluded that New York's requirement that applicants demonstrate "proper cause" to obtain a license to carry a concealed weapon violates the Second and Fourteenth Amendments. The Court identified Hawai'i as one of six states (seven jurisdictions including the District of Columbia), that have "may issue" licensing laws like New York's. See *Bruen*, slip op. at 4-6.

The interpretation of state law set forth in this opinion is based upon the structure and purposes of the relevant statutory framework, considered in light of our understanding of state policy and in light of federal constitutional requirements.

I. ISSUE PRESENTED AND SHORT ANSWER

What requirements apply to applications to carry a firearm in public under Hawaii's current statutory regime following the U.S. Supreme Court's decision in *New York State Rifle & Pistol Association v. Bruen*?

Short Answer: Following *Bruen*, the chiefs of police may not constitutionally restrict both concealed and unconcealed (open) carry licenses only to those who demonstrate a "special need." Following *Bruen*, the language in Hawai'i Revised Statutes ("HRS") § 134-9 requiring that an applicant "[i]n an exceptional case . . . show[] reason to fear injury to the applicant's person or property" in order to obtain a concealed carry license should no longer be enforced. All other statutory requirements for obtaining a concealed carry license are unaffected by *Bruen*, and (except for the citizenship requirement as applied to lawful permanent residents and U.S. nationals¹) remain in full force and effect.

Assuming this approach to concealed carry licenses, *Bruen* does not require any change to the requirements established under HRS § 134-9 to obtain an unconcealed carry license. An applicant for an unconcealed carry license must still "sufficiently indicate[]" that he or she has an "urgency" or "need" to carry a firearm and is "engaged in the protection of life and property," along with any other statutory requirements that must be satisfied under Hawai'i law to obtain an unconcealed carry license (except for the citizenship requirement as applied to lawful permanent residents and U.S. nationals²). The standards that the chiefs of police should apply in considering applications for unconcealed carry licenses are discussed in Attorney General Opinion No. 18-1.

II. DISCUSSION

Hawai'i law - in recognition of the potential risks to public safety - has imposed limits on the public carry of firearms for over 150 years. See, e.g., 1852 Haw. Sess. Laws

¹ See *infra* n.3.

² *Id.*

Act of May 25, 1852, § 1 at 19.

Current Hawai'i law permits individuals to lawfully carry a pistol or revolver within a county if they obtain a license from the county's chief of police. See HRS § 134-9. Two types of carry licenses may be issued: A chief of police may issue a *concealed* carry license "[i]n an exceptional case, when an applicant shows reason to fear injury to the applicant's person or property," and satisfies certain other statutory requirements. HRS § 134-9(a)-(b). A chief of police may issue an *unconcealed* carry license to an applicant "[w]here the urgency or the need has been sufficiently indicated," the applicant "is engaged in the protection of life and property," the applicant is "of good moral character," and certain other statutory requirements are satisfied. HRS § 134-9(a).³

A. Concealed Carry License Applications Following Bruen

Following *Bruen*, the requirement in HRS § 134-9(a) that an applicant "[i]n an exceptional case . . . show[] reason to fear injury to the applicant's person or property" to obtain a concealed carry license should no longer be enforced. The chiefs of police should not deny an application for a concealed carry license, or impose restrictions on a concealed carry license, because an applicant fails to demonstrate a special need or a sufficiently good reason to carry a firearm. All other statutory requirements for obtaining a concealed carry license - except the citizenship requirement as applied to lawful permanent residents and U.S. nationals - remain in full force and effect, and should continue to be enforced by the chiefs of police.

³ HRS § 134-9(a) states that applicants must be citizens of the United States to obtain either a concealed or unconcealed carry license (or as to concealed carry licenses, "a duly accredited official representative of a foreign nation"). The requirement in HRS § 134-9(a) that an applicant be a citizen of the United States may not be enforced as to lawful permanent residents or U.S. nationals. See *Fotoudis v. City & Cnty. of Honolulu*, 54 F. Supp. 3d 1136 (D. Haw. 2014); *Roberts v. Connors*, Civ. No. 19-165 DKW-WRP (D. Haw.) (Doc. 25, Stipulation to Dismiss Complaint for Declaratory and Injunctive Relief, Filed on April 2, 2019 With Prejudice, and Order); *Nickel v. Connors*, Civ. No. 20-00330 JMS-RT (D. Haw.) (Doc. 22, Stipulation and Order).

For example, the chiefs of police can and should still require that applicants for a concealed carry license "[b]e qualified to use the firearm in a safe manner," "[n]ot be prohibited under section 134-7 from the ownership or possession of a firearm," and "[n]ot have been adjudged insane or not appear to be mentally deranged." HRS § 134-9(b). The chiefs of police should also still require that applicants for a concealed carry license "[a]ppear to be a suitable person to be so licensed." *Id.*; see *Bruen*, slip op. at 5 n.1 (discussing a "suitable person" requirement which "precludes permits only to those 'individuals whose conduct has shown them to be lacking the essential character o[r] temperament necessary to be entrusted with a weapon'"); *id.* at 30 n.9 (recognizing that states may impose requirements "designed to ensure only that those bearing arms in the jurisdiction are . . . 'law-abiding, responsible citizens'").

Being "a suitable person" means that the applicant does not exhibit specific and articulable indicia that the applicant poses a heightened risk to public safety. The chiefs of police may consider the following factors when determining whether an applicant displays specific and articulable indicia that the applicant poses a heightened risk to public safety, such that the applicant is not "a suitable person to be so licensed":

1. Whether the applicant has been involved in recent incidents of alleged domestic violence;
2. Whether the applicant has been involved in recent incidents of careless handling or storage of a firearm;
3. Whether the applicant has been involved in recent incidents of alcohol or drug abuse;
4. Whether the applicant has been involved in other recent violent conduct.

In sum, the only portion of Hawaii's concealed carry law - other than the citizenship requirement as applied to lawful permanent residents and U.S. nationals - that should not be enforced following *Bruen* is the requirement that an applicant "[i]n an exceptional case . . . show[] reason to fear injury to the applicant's person or property" to obtain a concealed carry license. HRS § 134-9(a).

However, even though the chiefs of police should no longer enforce the requirement that an applicant “[i]n an exceptional case . . . show[] reason to fear injury to the applicant’s person or property” to obtain a concealed carry license, HRS § 134-9(a), the chiefs of police may still inquire about an applicant’s reasons for seeking a concealed carry license. The reasons an applicant provides should only be used in reviewing a concealed carry application to the extent relevant to other lawful requirements to obtain a concealed carry license, such as whether the applicant is a “suitable person.” An applicant’s reasons for seeking a concealed carry license should not be used to deny or restrict a license because the applicant purportedly lacks a sufficiently good reason to obtain a license.

B. Unconcealed Carry License Applications Following *Bruen*

Although *Bruen* recognized a right to public carry under the U.S. Constitution, it did not recognize a specific right to either concealed or unconcealed carry. See *Bruen*, slip op. at 44 (“[T]he history reveals a consensus that States could not ban public carry altogether.” (emphasis omitted)); *id.* at 41-42 (“[I]n the century leading up to the Second Amendment and in the first decade after its adoption, there is no historical basis for concluding that the pre-existing right enshrined in the Second Amendment permitted broad prohibitions on *all* forms of public carry.” (emphasis added)); *id.* at 46 (“[I]t was considered beyond the constitutional pale in antebellum America to altogether prohibit public carry.”). This leaves states with discretion to place good cause restrictions on one form of carry, where similar restrictions are not placed on the other form of carry. See *id.* at 44-45.

Although, as noted above, good cause should no longer be required for concealed carry licenses, the good cause requirement in HRS § 134-9(a) for unconcealed carry – that an applicant must “sufficiently indicate[]” an “urgency” or “need” to carry a firearm and that the applicant is “engaged in the protection of life and property” – should still be applied as to unconcealed carry applications. Any other statutory requirements that must be satisfied under Hawai‘i law to obtain an unconcealed carry license – except for the citizenship requirement as applied to lawful permanent residents and U.S. nationals – should likewise continue to be applied.

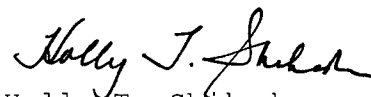
The standards that the chiefs of police should use in considering applications for unconcealed carry licenses are discussed in Attorney General Opinion No. 18-1, which remains valid and applicable.

III. CONCLUSION

We advise that as to applications for concealed carry licenses, the chiefs of police should no longer require that an applicant "[i]n an exceptional case . . . show[] reason to fear injury to the applicant's person or property" in order to obtain a concealed carry license. HRS § 134-9(a). The chiefs of police should continue to enforce all other statutory requirements for obtaining a concealed carry license, except for the citizenship requirement as applied to lawful permanent residents and U.S. nationals.

Furthermore, we advise that as to unconcealed carry licenses, the chiefs of police should continue to enforce all requirements for an unconcealed carry license that were applicable before *Bruen* (this excludes the citizenship requirement as applied to lawful permanent residents and U.S. nationals). An applicant must still, among other things, "sufficiently indicate[]" an "urgency" or "need" to carry a firearm, and that the applicant is "engaged in the protection of life and property." HRS § 134-9(a).

Very truly yours,



Holly T. Shikada
Attorney General