

WHAT EVERY LAWYER NEEDS TO KNOW ABOUT

NEVADA GUN LAWS

BY STEPHEN F. SMITH, ESQ.

If you think Nevada does not have laws that restrict the carrying of guns, think again. Nevada has a confusing, and sometimes contradictory, set of rules and laws that can be a trap for the unwary. State laws, with respect to firearms, can be generally found in NRS 202.253 through 202.369. If you thought Nevada was pretty lenient on handguns, you would be mistaken. In fact, Nevada is the 22nd most-restrictive state, according to a recent survey ranking the “most gun friendly states.” For example, the same survey rated Nevada’s neighbor to the south, Arizona, second. An eastern state, Vermont was rated first, or least restrictive. Nevada’s neighbor to the west, California, ranked 47th, or almost last, as the most restrictive. For the full survey, visit <http://weapons.about.com>.

Here are the 10 top things lawyers should know about Nevada’s gun laws:

1. Nevada has its own Second Amendment

In 1982, the Nevada Constitution was amended (Article 1, Section 11), to state “Every citizen has the right to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes.” The argument in support of the passage of the amendment stated that it “would prohibit the state legislature from enacting restrictive gun control laws.” Despite this amendment to the state Constitution, Nevada is quite restrictive, particularly when it comes to handguns. Nevada is not a “constitutional carry state,” which allows residents to carry concealed handguns without a permit.

2. It is a felony to carry a handgun concealed without a permit

Ironically, as a state often viewed as the “Wild Wild West,” where television shows like “Bonanza” and many movie Westerns were filmed, Nevada makes it a felony to carry a concealed handgun, while open carry (subject to restrictions as to location) is permissible. In 1959, the legislature added NRS 202.350 (1)(d), which made it a Class D felony to carry on one’s person a pistol, revolver, other firearm, or any other dangerous or deadly weapon. Then in 2003, the legislature increased the penalty for carrying a concealed handgun without a permit to a Class C felony. By contrast, Arizona has eliminated its requirement to obtain a permit for a concealed weapon.



How and why did it become a felony to carry a concealed firearm while open carry is permissible? There is no easily ascertainable answer to this question. In 1959, Senator Floyd Lamb, related to Ralph Lamb who later became Clark County Sheriff, introduced Senate Bill No. 93, which made it a felony to carry a concealed weapon without a permit. The sheriff in each county was then authorized to issue a permit for concealed firearms. No legislative history or minutes exist for any of the bills from this time period. Thus, there is nothing definitive, but some historians have suggested that it was done to prohibit certain undesirables, who were coming to Nevada, from carrying concealed handguns. Prior to 1959, concealed weapons or concealed carry was presumably permissible, because it was not prohibited.

Nevada obtained its first firearms law back in 1925, with Senate Bill No. 35 prohibiting felons and non-citizens from possessing firearms. These were the first set of criminal statutes dealing with prohibited weapons. The bill also prohibited certain other weapons, like blackjacks and switchblades.

What does “carry concealed upon his or her person” mean? The Attorney General’s Office rendered Opinion No. 93-14, which determined that concealed weapons that are actually on the person include a container also carried by the person. Thus, the term “concealed upon his or her person” includes a pouch, briefcase, bag or handbag, such as a purse. Presumably the handgun has to be held or be in close proximity to the person.

3. Nevada is a shall-issue state for concealed weapons permits

Prior to 1995, there was enormous disparity in the way each county sheriff issued concealed weapons permits. In 1959, the legislature authorized each county sheriff to issue permits allowing concealed carry. There was a hodgepodge system wherein each county utilized different procedures. On July 7, 1995, Senate Bill 299 was signed into law, authorizing a standardized and state-wide procedure for the issuance of concealed weapons permits (CCW). The legislative history on SB 299 is extensive and quite interesting. There was a swell of support in favor of the bill’s passage, with 12,489 signatures collected on petitions. The bill was codified in NRS 202.3657 and provides that a person shall receive a permit to carry a concealed weapon upon successfully completing a CCW course and completing forms, fingerprint sets and photographs. However, a concealed carry permit may be denied on 10 separate grounds, from outstanding warrants to crimes of stalking and violence. NRS 202.3657.

4. Open carry is completely permissible, subject to restrictions (see below)

Generally speaking, “open carry” is permissible because Nevada law does not prohibit carrying a firearm openly. A gun in a holster that is readily discernable is permissible. This is why Nevada is considered an open-carry state. A partially visible weapon or handgun may be considered concealed, so it is best to have it completely out in the open in a holster, rather than sticking out of a pocket or purse.

5. Carrying a loaded handgun, concealed or open, in a car is permissible

This is because it is not “on the person,” so a handgun under the seat, on the seat, in a glove box or on a console is permissible and not prohibited except in certain places, such as North Las Vegas (Code 9.32.080) and certain public parks. For open carry in a vehicle, the firearm must be clearly visible if upon the person. A handgun sitting under the seat, on top of the seat or in a glove box is not considered “on the person” and is permissible.

6. Preemption

Nevada has a series of preemption statutes that prohibit counties and cities from enacting new gun laws and that are more restrictive than state laws. But there are some places, including Clark County and the City of Las Vegas, which have laws that predate the preemption law or are “grandfathered.”

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These counties and cities argue that their local restrictions were in place and valid. NRS 244.364 grants limited authority to a county with a population of 700,000 or more (i.e. Clark County). NRS 268.418 permits a county to restrict the unsafe discharge of a weapon. A similar statute, NRS 269.222, permits limited authority to regulate firearms in a town in a county whose population exceeds 700,000. Handgun registration in Clark County is arguably considered to be “grandfathered.”

There is an Attorney General Opinion, dated August 13, 2010 (No. 2010-16), which states that the legislature has preempted the entire field of firearm regulation (with the exception of unlawful discharge ordinances), and grandfathered ordinances such as Clark County Code 19.060.04. According to this opinion, Clark County does not have the authority to adopt any new or local ordinances preempted by NRS 244.364 (1).

7. Registration

Clark County (but not Boulder City) requires registration of handguns only. Some folks believe that the concealed weapons law requiring a permit to carry a weapon concealed is a form of statewide gun registration. The Clark County Code, or ordinance 12.04.110 and 12.04.010, dates back to 1965 and 1960. Discharging a weapon, subject to exceptions for certain areas within certain limits or “city limits,” is prohibited and a misdemeanor. 12.04.230. The prohibition of guns in Clark County parks can be found at 19.04.060.

8. Places that are off-limits for carrying a firearm even with a valid CCW permit

Don't carry a firearm in any of the following locations:

- Federal buildings, post offices and buildings used by government offices;
- Child care facilities and property (NRS 202.265);
- Schools – public, private and higher education (NRS 202.265);
- Airports and buildings on property of a public airport (NRS 202.3673);
- County and city parks (where prohibited);
- Buildings with metal detectors at the entrance;
- Buildings used by the state or municipal governments with “no weapons” signs posted at the entrances (NRS 202.3673 and NRS 202.265);

- Any facility of a law enforcement agency;
- Any prison, county or city jail, or detention facility;
- Any courthouse or courtroom; and
- Buildings in national parks.

9. Minimum age for possessing or transporting handguns is 18, and prohibited persons

A prohibited person is a person convicted of a felony in any state (including Nevada, obviously) or U.S. jurisdiction, unless pardoned. The Nevada Supreme Court recently reiterated the rule that prohibits felons from possessing firearms in *Pohlman v. State*, 128 Nev. Adv. Op. 1, 268 P.3d 1264 (2012). Persons unlawfully in the U.S. may not possess firearms. NRS 202.360. Nevada does not prohibit persons convicted of domestic violence misdemeanors from purchasing or possessing firearms. NRS 202.360. However, under NRS 33.031, a court may, in an extended protection order, enter a condition prohibiting the adverse party from possessing firearms.

In addition to felons, unless pardoned, the following people may not possess firearms:

1. Fugitives from justice;
2. Unlawful users or addicts of controlled substances; and
3. Persons who are adjudicated mentally ill or have been committed to a mental health facility. NRS 202.360.

Minors under 18 may not possess firearms unless they are accompanied by a parent, guardian or other designee. NRS 202.300. Persons with a blood alcohol content over the .10 limit may not possess firearms. NRS 202.257. A violation is a misdemeanor.

10. Every legislative session has one or more gun bills

In recent times, every legislative session has seen at least one gun bill. This past legislative session (2013) saw a plethora of gun bills. SB 76, seeking to eliminate the need for a CCW permit, did not pass, and another provision that would have allowed CCW permit holders to carry concealed weapons on college campuses also failed. The provision to allow permit holders to qualify for their permit with any handgun became law.

SB 221 was vetoed by the governor. That bill garnered a lot of attention. One of its provisions required private transfers of firearms to go through a federal firearms licensee and required the person to whom the firearm was transferred to undergo a background check. The sponsors of the bill have vowed to reintroduce it in 2015. The bill attracted more than 100,000 callers, most of whom were opposed to its passage by a margin of three to one.

RESOURCES: Gun Laws By State, “Reciprocity and Gun Laws Quick Reference Guide,” by Bryan L. Ciyou, Esq. ■

The author's biography can be found on page 5.