

NEVADA FIREARM LAWS

BY JOHN CALVERT, ESQ.

Historical Background

Firearms are regulated in Nevada by both state and federal statutes and their respective constitutions. The right to keep and bear arms was established in the Bill of Rights within the Second Amendment.¹ Anti-federalists were opposed to the original federal constitution's ratification because they thought it gave too much power to the government. They reached a compromise by adding amendments to the original draft, which established certain individual freedoms, limited certain government powers, and gave additional powers to the states and to the public. The successfully ratified amendments, including the Second Amendment, were adopted on December 15, 1791.²

The meaning of the right "to keep and bear arms" has been hotly debated since its inception. By way of background, in *United States v. Cruikshank*, 92 U.S. 542, 553, 23 L. Ed. 588 (1875), the court interpreted the Second Amendment as not protecting an individual right to bear arms under federal law, and left the regulation of any individual's use and possession of firearms to the states. In *United States v. Miller*, 307 U.S. 174, 59 S. Ct. 816, 83 L. Ed. 1206 (1939), the court addressed the federal indictment of two men for transporting a shotgun in violation of the National Firearms Act of 1934. The court reversed the District Court's quashing of the indictment and



held that the Second Amendment limited the individual right to bear arms to weapons commonly used by militia, as defined by various state laws, which apparently did not include "a double barrel[,] 12-gauge[,] Stevens shotgun[,] having a barrel less than 18 inches in length." *Id.* at 175.

However, in the federal system, the individual right to keep and bear arms was solidified recently in *District of Columbia v. Heller*, 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008). In *Heller*, the court dealt with the District of Columbia's ban on the possession of an unregistered firearm and the prohibition against registration of any handgun. In addition, D. C. residents were required to keep all lawfully possessed firearms unloaded and disassembled or bound by a trigger lock. The court found that the D.C. ban essentially forced residents to keep their arms in an unusable condition for purposes of self-defense and completely eliminated the handgun, which the court determined was the traditional firearm used for personal self-defense. The court held that the District of Columbia's ban was unconstitutional because the Second Amendment protects an individual's right to possess a firearm unconnected with service in a militia, and to use that firearm for traditionally lawful purposes, such as self-defense within the home. Two years later, the court applied the *Heller* holding to the states in *McDonald v. City of Chicago*, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010), where the court held that self-defense is a basic individual right, and therefore, the Second Amendment applied to the states through the due process clause of the Fourteenth Amendment.



In Nevada, the right to keep and bear arms is found in the Nevada Constitution, Nev. Const. art. I, § 11(1), and it states:

“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.”

As can be seen, in Nevada, there is no equivocation concerning the individual right to keep and bear arms and no confusion that the right is separate and distinct from those of any militia.

Gun Regulation In Nevada

In 1989, the Nevada Legislature preempted local jurisdictions from making firearm regulations with the exception of cities and towns within counties of 700,000 or more in population.³ As a result of state preemption, there are a limited number of regulations affecting firearms. No permit is required to purchase a rifle, shotgun or handgun. Excepting certain cities in Clark County, there is no registration of an individual’s rifle, shotgun or handgun. There is no licensing of owners of rifles, shotguns or handguns. No permit is required to carry a rifle, shotgun or handgun unless such firearm is concealed⁴ on the person.⁵ It is unlawful to have a rifle or shotgun loaded with a round in the firing chamber within your vehicle.⁶ There is no prohibition for having a loaded handgun in a vehicle. There are regulations with

regard to use and possession of a firearm by children under the age of 18.⁷ Even the emergency powers of the state are limited as to confiscation or further restricting an individual’s possession or use of a firearm.⁸

Carrying a concealed firearm in Nevada is regulated. Nevada is a “shall issue” state, making it mandatory for the county sheriff to issue a permit to carry a concealed firearm if the applicant meets the requirements set forth in NRS 202.3657(3) and is not disqualified by the events set forth in Section 4 or the information received pursuant to Sections 5 or 6. The Attorney General has opined that carrying a concealed firearm means carrying it on the person or in a container held by the person.⁹ Carrying a concealed firearm without a permit is a felony.¹⁰

With regard to the courts, the Nevada Supreme Court has had some effect on firearm law and regulation in Nevada. In *Harris v. State*, 83 Nev. 404, 406, 432 P.2d 929, 930 (1967), the court adopted the holding in *Cruikshank*, in that, (1) the Second Amendment only applies to the federal government and that the states are free to regulate firearms themselves; and (2) it also adopted the holding in *Miller*, that “[t]he right to bear arms does not apply to private citizens as an individual right.” The *Harris* court went on to hold that absent federal “restraints[,] authority of the states to regulate weapons comes from their police powers.” *Id.* However, years later, in *Pohlabel v. State*, 128 Nev. Adv. Op. 1, 268 P.3d 1264 (2012), the court discussed both *Heller* and *McDonald* and adopted their holdings that (1) the Second Amendment provides an individual right to bear arms for self-defense, but that right was only for law abiding citizens and not felons; and (2) that the Second Amendment’s right to bear arms applies to Nevada.

The fundamental basis for an individual’s right to keep and bear arms, as expressed in *Heller* and applied to the states in *McDonald*, is that an individual has a basic right to self-defense.

Use of a Firearm In Self-Defense

The fundamental basis for an individual’s right to keep and bear arms, as expressed in *Heller* and applied to the states in *McDonald*, is that an individual has a basic right to self-defense. In Nevada, an individual has the right to carry a firearm whether it is concealed or carried openly. Citizens may defend themselves or others with use of a firearm; however, the Nevada Supreme Court has established parameters for that use.

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The seminal Nevada case on the theory of self-defense is *Runion v. State*, 116 Nev. 1041, 13 P.3d 52 (2000). In *Runion*, the court drafted a stock self-defense instruction that includes all aspects of self-defense in Nevada and should be used, but tailored to the facts and circumstances of each case in which the defense theory is self-defense.

The *Runion* court took the then-current Nevada self-defense statutory framework and interpreted those statutes consistent with the common law. The court reiterated that not only is the theory supported by actual danger but also by apparent danger as well. The court stated that apparent danger is the appearance of imminent danger, and by defining it so, a person who reasonably believes they are facing bodily harm may use preemptive action. They do not have to retreat, and they do not have to wait to be attacked. As long as they act upon fear and the honest belief that they are at risk, they are acting in self-defense.

Claiming self-defense does not give immunity from prosecution. Although never adopted in Nevada, some jurisdictions have passed the so-called “Castle Doctrine,” whereby, to protect against invasion of their residence and in some cases their place of business or vehicle, a person may use deadly force. Some of these jurisdictions protect that person from prosecution unless evidence shows that the person did not act in accordance with the law. However, although the “Castle Doctrine” has not been adopted in Nevada, a prosecutor does have broad discretion to file or not file criminal charges. This allows for the prosecutor to decide that the facts of any particular case show that the person acted in self-defense and, based upon that circumstance, that they would not be able to prove their case beyond reasonable doubt.

So, in using self-defense, an individual must determine what is, or is not, reasonable under the circumstances, which can mean the difference between committing a crime or saving their life.

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Conclusion

Although not a definitive treatise on Nevada firearm laws, hopefully this article will give you a starting point from which to answer client questions. For more hands-on instruction on gun laws in Nevada, I suggest taking one of the approved courses on firearm safety, as required as part of an application for a concealed carry permit, or the hunter education course required by the Nevada Department of Wildlife prior to issuing a hunting license. ■

1. "A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed." U.S. Const. amend. II.
2. Roger A. Bruns, U.S. Nat'l Archives & Records Admin. A More Perfect Union: The Creation of the United States Constitution,(1986) available at http://www.archives.gov/exhibits/charters/constitution_history.html.
3. NRS 244.364 (Counties); NRS 268.418 (Cities); NRS 269.222 (Unincorporated Towns).
4. NRS 202.3653 – 202.369.
5. State law does not prohibit the open carry of a firearm.
6. NRS 503.165.
7. NRS 202.300.
8. NRS 414.155.
9. Op. Nev. Att'y Gen. No. 93-14 (June 21, 1993).
10. NRS 202.350(2)(b).



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