

<p>California Department of Justice</p> <p>OFFICE OF THE ATTORNEY GENERAL</p> 	<h1>Legal Alert</h1>	
<p><i>Subject:</i></p> <p>California's Public-Carry License Scheme and Public-Carry Criminal Laws Remain Constitutional After the U.S. Supreme Court's Decision in <i>New York State Rifle & Pistol Association v. Bruen</i></p>	<p><i>No.</i></p> <p>OAG-2022-03</p> <p><i>Date:</i></p> <p>August 17, 2022</p>	<p><i>Contact for information:</i></p> <p>CCWinfo@doj.ca.gov</p>

TO: All California District Attorneys, County Counsels, City Attorneys, Sheriffs, and Police Chiefs

On June 23, 2022, the United States Supreme Court issued its decision in *New York State Rifle & Pistol Association v. Bruen* (2022) 142 S.Ct. 2111 (*Bruen*).¹ The next day, the Attorney General issued Legal Alert No. OAG-2022-02, which concluded that the “good cause” requirements set forth in California Penal Code sections 26150(a)(2) and 26155(a)(2) were unconstitutional and unenforceable under *Bruen*.² That legal alert also made clear that “because the Court’s decision in *Bruen* does not affect the other statutory requirements governing public-carry licenses,” local officials should “continue to apply and enforce all other aspects of California law with respect to public-carry licenses and the carrying of firearms in public.”

As discussed in this Legal Alert, the *Bruen* decision expressly stated that it is constitutional for states to require a license to carry a firearm in public. *Bruen* invalidated only one of the enumerated requirements for obtaining a public-carry license in California—the “good cause” requirement—leaving in place the others. The “good cause” requirement is severable from the rest of the licensing scheme, which remains constitutional. And criminal statutes penalizing the unlicensed carrying of firearms in public remain valid and enforceable after *Bruen*. Finally, *Bruen* does not affect the validity of California’s other firearms safety laws.

California’s Public-Carry Licensing Regime Remains Constitutional Because *Bruen* Only Impacted the “Good Cause” Requirement

California law authorizes local law enforcement officials—sheriffs and chiefs of police—to issue licenses allowing license holders to “carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person.” Cal. Pen. Code §§ 26150, 26155. These licenses exempt the holder from many generally applicable restrictions on the carrying of firearms in public. *Id.* §§ 25655, 26010. The relevant statutes currently authorize local officials to issue such licenses “upon proof of all of the following”:

- “(1) The applicant is of good moral character.
- (2) Good cause exists for issuance of the license.
- (3) The applicant is a resident of the county or a city within the county, or the applicant’s principal place of employment or business is in the county or a city within the county and the

¹ The decision is available at https://www.supremecourt.gov/opinions/21pdf/20-843_7j80.pdf.

² Legal Alert No. OAG-2022-02 is available at <https://oag.ca.gov/system/files/media/legal-alert-oag-2022-02.pdf>.

applicant spends a substantial period of time in that place of employment or business.
(4) The applicant has completed a [firearms safety] course of training. . . .”

Id. § 26150(a); see also *id.* § 26155(a). An applicant must also pass a background check to confirm the applicant is not prohibited under state or federal law from possessing or owning a firearm. *Id.* §§ 26185(a), 26195(a).

Bruen considered the constitutionality of the State of New York’s “proper cause” requirement to obtain a public-carry license. *Bruen*, 142 S.Ct. at p. 2156. New York courts had interpreted “proper cause” to mean a “special need for self-protection distinguishable from that of the general community.” *Id.* at p. 2123. The United States Supreme Court concluded that the requirement was unconstitutional “in that it prevents law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms.” *Id.* at p. 2156. The Court also highlighted other states with “analogues” to the “proper cause” requirement, including California, and made clear that California’s similar “good cause” requirement is unconstitutional. *Id.* at p. 2124.

Bruen invalidated merely one statutory prerequisite—the “proper cause” or “good cause” requirement—to obtaining a public-carry license. But it did not invalidate all public-carry licensing schemes. The Court did not strike down other aspects of New York’s licensing scheme, such as its “good moral character” requirement. Under *Bruen*, states can still constitutionally enforce requirements for residents to obtain a public-carry license. The Court emphasized that licensing schemes that “require applicants to undergo a background check or pass a firearms safety course” were acceptable, because such requirements were “narrow, objective, and definite standards” designed to ensure that only “law-abiding, responsible citizens” could obtain a public-carry license. *Bruen*, 142 S.Ct. at p. 2138, fn. 9. Justice Kavanaugh’s concurring opinion explicitly acknowledged that states “may continue to require licenses for carrying handguns for self-defense so long as those States employ objective licensing requirements” that did not grant open-ended discretion to licensing officials. *Id.* at pp. 2161-2162 (conc. opn. of Kavanaugh, J.). Justice Kavanaugh specified that such objective requirements can include “fingerprinting, a background check, a mental health records check, and training in firearms handling and in laws regarding the use of force, among other possible requirements.” *Id.* Justice Alito’s concurring opinion highlighted that *Bruen* did not disturb the Court’s prior decree in *District of Columbia v. Heller* (2008) 554 U.S. 570 that “restrictions . . . may be imposed on the possession or carrying of guns.” *Bruen*, 142 S.Ct. at p. 2157 (conc. opn. of Alito, J.) (emphasis added). *Bruen* thus endorsed, rather than invalidated, various public-carry licensing requirements.

The “Good Cause” Requirement Is Severable From the Rest of the Public-Carry Licensing Regime

The “good cause” requirement is severable from the remaining requirements of California’s licensing scheme. A constitutionally invalid provision is severable if it is “grammatically, functionally, and volitionally separable” from the remainder of the statute. *Cal. Redevelopment Ass’n v. Matosantos* (2011) 53 Cal.4th 231, 271. The “good cause” requirement in Penal Code sections 26150(a) and 26155(a) meets all three criteria. For grammatical separability, removing the “good cause” requirement would not affect the coherence of the remaining prerequisites. See *id.* The “good cause” requirement is separated by paragraph and sentence from the good moral character, residency, and training course requirements listed in paragraphs (1), (3), and (4) of subdivision (a) of Penal Code sections 26150 and 26155; and, the background check requirement is contained in entirely different statutes (Cal. Penal Code §§ 26185(a), 26195(a)). See *Abbott Laboratories v. Franchise Tax Bd.* (2009) 175 Cal.App.4th 1346, 1358. Functional separability is satisfied because these remaining requirements are “capable of independent application” and can be easily applied by

a sheriff or police chief in accordance with the relevant statutes. *Id.* Volitional separability also exists because there is no question the Legislature would have preferred having some public-carry license prerequisites over none at all if it had known the “good cause” requirement was unconstitutional. See *Matosantos*, 53 Cal.4th at p. 273.

The Remaining Portions of California’s Public-Carry Licensing Regime Are Consistent with *Bruen*

In addition to the severability of the “good cause” requirement, the four enduring public-carry license requirements—background check, firearms safety course, residency, and good moral character—survive *Bruen*. The first two of these requirements were specifically endorsed by the Supreme Court. *Bruen*, 142 S.Ct. at p. 2138, fn. 9; *id.* at p. 2161 (conc. opn. of Kavanaugh, J.). The remaining requirements—the residency and good moral character requirements—meet the mandate that a licensing scheme’s prerequisites be objective and definite. Under *Bruen*, “good moral character” and “good cause” are not one and the same. See *Hooks v. United States* (D.C. 2018) 191 A.3d 1141, 1145-1146 (the constitutionality of a good-cause requirement is distinct from the constitutionality of a moral-character requirement; the rejection of the former does not entail the rejection of the latter). *Bruen* refers to 43 states as “shall issue” jurisdictions, which includes some jurisdictions that have a suitability or moral character requirement, and the Court explains that those states do not grant licensing officials unfettered discretion to deny licenses. *Bruen*, 142 S.Ct. at p. 2123, fn. 1. As to California’s “good moral character” requirement in particular, licensing authorities have developed objective and definite standards to avoid such unfettered discretion. See Legal Alert No. OAG-2022-02 at pp. 2-3 (discussing some examples of these standards). The evaluation of good moral character, which can involve the weighing of defined factors, is inherently different from the open-ended determination of “a special need for self-protection distinguishable from that of the general community” that was constitutionally problematic in New York’s “proper cause” requirement. *Bruen*, 142 S.Ct. at p. 2123. The good moral character requirement and the other remaining requirements in California’s public-carry license scheme thus remain constitutional post-*Bruen*.³

California’s Criminal Penalties for Carrying a Firearm in Public Without a License Remain Valid and Enforceable

California’s criminal penalties for carrying a firearm in public without a license, such as Penal Code sections 25400, 25850, 26350, 26400, also remain constitutional after *Bruen*. The Supreme Court made clear that restrictions on the carrying and possession of firearms are permissible under the Second Amendment, and implicitly endorsed “reasonable, well-defined” restrictions on the public carrying of firearms. *Bruen*, 142 S.Ct. at p. 2156. Penal Code section 25400, which specifically prohibits various forms of carrying a concealed firearm in public; section 25850, which prohibits various forms of carrying a loaded firearm in public; and sections 26350 and 26400, which prohibit various forms of carrying an unloaded firearm openly in public, fall within such a category of restrictions. Indeed, both section 25400 and 25850 previously survived constitutional challenges in which California Courts of Appeal determined that these laws were categorically different from the ones struck down in *Heller*. *People v. Yarbrough* (2008) 169 Cal.App.4th 303, 311-314 (rejecting a challenge to former Penal Code section 12025, the equivalent of today’s section 25400); *People v. Flores* (2008) 169 Cal.App.4th 568, 574-577 (rejecting a challenge to former Penal Code section 12031, the equivalent of today’s section 25850). Because *Bruen* built on—and did not detract from—*Heller*, and *Yarbrough* and *Flores* were decided after *Heller*, trial courts are bound by *Yarbrough* and *Flores*. See *Auto Equity Sales, Inc. v. Superior Court of Santa Clara County* (1962) 57 Cal.2d 450,

³ The Legislature of course may choose to amend Sections 26150 and 26155. Any such amendments encompassing “narrow, objective, and definitive standards” will pass constitutional muster. *Bruen*, 142 S.Ct. at p. 2138, fn.9.

455 (“Decisions of every division of the District Courts of Appeal are binding . . . upon all the superior courts of this state”).

Moreover, *Bruen* does not provide a basis for dismissing charges filed under Penal Code sections 25400, 25850, 26350, 26400, or other laws or regulations prohibiting the carrying of firearms in certain places. California’s licensing scheme has been entirely consistent with *Bruen* since the Attorney General announced that California would no longer enforce its good cause requirement in light of *Bruen* in the June 24, 2022 Legal Alert No. OAG-2022-02.

For individuals who violated these provisions before that date, *Bruen* does not provide a basis for dismissing charges for two reasons. First, in many parts of California, local issuing authorities defined good cause in a way that created no constitutional problem. As discussed above, in *Bruen* the Supreme Court did not cast doubt on state laws requiring individuals to secure a license as a condition of carrying a firearm in public. See *Bruen*, 142 S.Ct. at p. 2161 (conc. opn. of Kavanaugh, J.) (“the Court’s decision does not prohibit States from imposing licensing requirements for carrying a handgun for self-defense”). The problem with New York’s “proper cause” requirement was that it mandated that applicants demonstrate a “special need for self-protection distinguishable from that of the general community.” *Id.* at p. 2123. But issuing authorities in multiple California counties did not require applicants to show an atypical need for self-defense to secure a license. For example, the practice of the Sacramento County Sheriff’s Office was to “accept as good cause an applicant’s stated desire to obtain a license for self-defense or for the defense of his or her family.” California State Auditor, Concealed Carry Weapon Licenses 1 (Dec. 2017) <<https://www.auditor.ca.gov/pdfs/reports/2017-101.pdf>> [last visited Aug. 1, 2022]. These counties’ application of California’s good cause standard was consistent with *Bruen*, and that case therefore does not provide a basis for dismissing charges if the defendant was a resident of one of those counties or had their principal place of business or employment in one of those counties and the defendant spent a substantial amount of time there.

Second, even for defendants who did not reside or work in one of these counties, *Bruen* does not provide a basis for dismissing charges filed for violating California’s public-carry laws. A defendant cannot escape criminal liability merely because *Bruen* makes clear that *one* of California’s licensing requirements is unconstitutional. As discussed above, the other licensing requirements are plainly constitutional under *Bruen*. Courts across the country have already repeatedly rejected challenges to criminal charges based on *Bruen* for similar reasons. See, e.g., *People v. Rodriguez* (N.Y. Sup. Ct., July 15, 2022) __ N.Y.S. 3d __, 2022 WL 2797784, at pp. *1-*3 (allowing individuals to escape criminal prosecution for conduct that was unlawful before *Bruen* would turn New York “into the Wild West, placing its citizens at the mercy of criminals wielding unlicensed firearms, concealed from public view, in heavily populated areas”); *Fooks v. State* (Md. Ct. Spec. App., June 29, 2022) __ A.3d __, 2022 WL 2339412, at p. *1 (rejecting a challenge to a conviction for illegally possessing a firearm after a criminal contempt conviction); *United States v. Daniels* (S.D. Miss., July 8, 2022) __ F. Supp. 3d __, 2022 WL 2654232, at p. *1 (upholding a federal indictment for possessing a firearm while unlawfully using a controlled substance).

Bruen emphasized the Second Amendment is not a “regulatory straightjacket,” and that the newly announced constitutional right to “bear commonly used arms in public [is] subject to certain reasonable, well-defined restrictions.” *Bruen*, 142 S.Ct. at pp. 2133, 2156. California’s requirements to obtain a public-carry license, other than “good cause,” and its criminal restrictions on the unlicensed carrying of firearms in public, constitute such reasonable and well-defined restrictions.

Some district attorney and city attorney offices across California have raised similar arguments in response to efforts by defendants in criminal cases to dismiss charges for carrying a firearm in public without a license. To illustrate how local prosecutorial offices have defended the constitutionality of such criminal charges, here is a link to examples of briefs recently filed by the Sacramento County District Attorney's Office and the Los Angeles City Attorney's Office:

<https://oag.ca.gov/sites/default/files/combined-garcia-jimenez.pdf>.

Bruen Does Not Affect the Validity of Other Firearms Safety Laws

In *Bruen*, the Supreme Court held unconstitutional only New York's requirement that individuals show that they have proper cause as a condition of obtaining a license to carry a firearm in public. The Court did not cast doubt upon, and indeed did not address, other firearm safety laws, including restrictions on large-capacity magazines and assault weapons, restrictions that prevent felons and the dangerously mentally ill from possessing firearms, or other reasonable regulations. On the contrary, the Court reiterated *Heller's* statement that the Second Amendment is not a right to "keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Bruen*, 142 S. Ct. at p. 2128 (quoting *Heller*, 554 U.S. at p. 626). And in his concurrence, Justice Kavanaugh reiterated *Heller's* observation that "the Second Amendment allows a 'variety' of gun regulations." *Id.* at p. 2162 (quoting *Heller*, 554 U.S. at p. 636). In particular, he emphasized that the "presumptively lawful measures" that *Heller* identified—including "longstanding prohibitions on the possession of firearms by felons and the mentally ill," laws "forbidding the carrying of firearms in sensitive places," laws "imposing conditions and qualifications on the commercial sale of arms," and laws prohibiting the keeping and carrying of "dangerous and unusual weapons"—remained constitutional, and that this was not an "exhaustive" list. *Id.* at p. 2162 (quoting *Heller*, 554 U.S. at pp. 626-627, 627 fn. 26).