

Carry Concealed Weapon Licenses

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Legal Issues

- Does the Second Amendment to the U.S. Constitution permit limits on carrying concealed weapons?
- What is the extent of the Sheriff's discretion to issue CCW's? What is "good cause?"
- May the Sheriff revoke CCW's issued by her predecessor? If so, on what basis?
- Does a County Board of Supervisors have any jurisdiction to direct the Sheriff in how to issue CCW's?

Does the Second Amendment to the U.S. Constitution permit limits on carrying concealed weapons?

- Justice Scalia, writing in *District of Columbia v. Heller*: “We hold that the District’s ban on handgun possession in the home violates the Second Amendment, as does its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense ... the District must permit him to register his handgun and must issue him a license to ***carry it in the home.***”
- Justice Scalia also wrote in that opinion, “Like most rights, ***the right secured by the Second Amendment is not unlimited*** ... Commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose ... ***For example, the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment.***”

What is the extent of the Sheriff's discretion to issue CCW's?

- Penal Code Section 12050 sets forth the requirements for issuance of a concealed weapon license: good moral character; good cause; residency or business within the County; completion of a course of training. In the event an applicant meets these requirements, the Sheriff “**may** issue to that person a license to carry” a concealed weapon.
- The Court of Appeal in *Gifford v. City of Los Angeles* held that, “Section 12050 gives ‘extremely broad discretion’ to the sheriff concerning the issuance of concealed weapons licenses.”

What is “Good Cause?”

- The California Attorney General, in a 1977 letter Opinion, stated that a determination of good cause included “whether the threat to the applicant is as real as the applicant asserts. In determining this ..., the Sheriff should inquire ***whether there is a clear and present danger to the applicant, spouse, family, or employees***. Finally, even if the danger or threat is manifest, the Sheriff should determine whether the danger or threat could be significantly alleviated by alternative means of security ...”
- The *Gifford* Court also held that the burden of showing good cause is with the applicant.
- The Sheriff’s policy contains specific criteria that closely follow the letter Opinion, and gives six specific examples of adequate good cause.
- Similar criteria were upheld on October 28, 2008 by the Federal District Court in *McCloud v. City of Santa Maria*.

Can the Sheriff Revoke CCW's?

- In *Nichols v. County of Santa Clara*, the Court of Appeal held that “a county sheriff has discretion to revoke a license to carry a concealed firearm issued pursuant to [Penal Code section 12050](#). The sheriff is not required to hold a ‘due process hearing,’ because the licensee has no constitutionally protected ‘property’ or other interest in such a license.”
- “Just as [Penal Code section 12050](#) contains no meaningful restrictions on the sheriff's discretion to deny a license, it contains no express restrictions on the sheriff's discretion to revoke a license.”
- Section 12050(f)(4)(B), by stating that a CCW “may not be revoked **solely** because the licensee moves to another county,” suggests that it can be revoked for failure to demonstrate good cause.
- As noted by the Court of Appeal in *Nichols*, “The power to license ... implies the power to revoke.”

On What Basis Can the Sheriff Revoke CCW's?

- There have been public disclosures of information suggesting that, in the prior Sheriff's Administration, CCW permits may have been issued to persons who did not meet the statutory qualifications in exchange for contributions. This suggests that there may have been no articulated good cause standard being followed in issuing CCW's. Therefore, it is consistent with the execution of the Sheriff's official duties to investigate whether the CCW permits issued by her predecessor were in fact issued for legal "good cause."
- Revocation reviews enable the Sheriff to treat all persons—those holding CCW's from the prior administration and those seeking renewal or a new license—equally.
- There is a potential for litigation if persons who hold wrongfully issued CCW's cause harm. However, if a CCW was issued negligently, rather than intentionally wrongfully, the Sheriff and County are immune from liability under Govt. Code Sections 818.2 and 818.4.

Does a County Board of Supervisors have any jurisdiction to direct the Sheriff in how to issue CCW's?

- The Board of Supervisors has ***no direct or indirect control*** over the Sheriff's CCW policy.
- California Constitution, Article V, Section 13, provides that, "The Attorney General shall have direct supervision over every district attorney and sheriff and over such other law enforcement officers as may be designated by law, *in all matters pertaining to the duties of their respective offices ...*" Government Code Section 12560 is similar.
- Government Code Section 25303 provides, "This section shall not be construed to affect the independent and constitutionally and statutorily designated investigative ... functions of the sheriff ... of a county. The board of supervisors shall not obstruct the investigative function of the sheriff ..."

Board of Supervisors' Authority

- Since Penal Code Section 12050 sets out the discretion to grant, deny, or revoke a CCW license as a statutory duty of the Sheriff, only the Attorney General can supervise this aspect of the Sheriff's conduct of her office. The Board of Supervisors may not do so. ***This would be a violation of the separation of powers principle.***
- As noted in *Hicks v. Board of Supervisors*, “although the county board of supervisors has authority to supervise county officers in order to insure that they faithfully perform their duties, ***the board has no power to perform county officers' statutory duties for them or direct the manner in which duties are performed.***”
- For this reason, and further because the County is merely a political subdivision of the State with ***no powers beyond those granted to it by State law***, the Board has no power under the California Constitution to change County CCW policy to a “shall issue” policy in contravention of State law, which is a “may issue” policy in the absolute discretion of the Sheriff. Nor may it direct the Sheriff to grant, deny, or revoke CCW's in any particular manner.

The Pending Resolution Violates the Constitution and State Law

- By purporting to establish County policy regarding CCW's, the pending Resolution invades the exclusive jurisdiction of the Sheriff and violates the separation of powers principle.
- By calling for automatic renewals and no revocations absent misuse or commission of a crime, the pending Resolution directs that the Sheriff not exercise her discretion.
- If a Sheriff fails to exercise her discretion by independently investigating each application, renewal, or potential revocation, she violates the law and must conduct such an investigation. *Salute v. Pitchess*.
- Thus, the Sheriff cannot automatically renew or abstain from revoking a CCW permit without conducting an investigation into the sufficiency of the claimed good cause.

Evolved analysis of CCW Policy

Some constituents have taken the position that Sheriff Hutchens' Concealed Weapons Policy violates State law. In our view, the Sheriff's policy is consistent with State and Federal law.

Following is an analysis written by Supervisor Moorlach's Chief of Staff, Professor Mario Mainero, whose career has been in legal education as the former Associate Dean of Whittier Law School and as an Adjunct Professor at Chapman Law School. Prof. Mainero designed the bar preparation program at Whittier, and is doing the same at Chapman, and he teaches, among other subjects, Constitutional Law.

Second Amendment

The first issue is whether the Second Amendment is incorporated through the Fourteenth Amendment to apply to the states. Some constituents cite *Nordyke v. King*, a Federal 9th Circuit Court of Appeal decision, to support their view that the Second Amendment applies to the states through the incorporation doctrine. This case was decided originally in 2003. The 9th Circuit held that the Alameda County ordinance banning possession of loaded firearms on County property did not violate the Second Amendment because of its view that the Second Amendment protected only a collective right. Under the *Heller* decision, discussed below, that would not be correct, since in *Heller* the Supreme Court held the right is an individual right. *Nordyke* is now once again before the 9th Circuit, which has requested further briefing in light of *Heller*. However, as discussed below, that does not mean that laws limiting the possession of loaded concealed weapons are invalid.

First, there is some question as to whether the Second Amendment is indeed incorporated through the 14th Amendment to apply to the states, as opposed to just the Federal Government. The Supreme Court has held that only those rights enumerated in the Bill of Rights that are "essential to liberty" are incorporated to apply to the states. Three older U.S. Supreme Court cases held that the Second Amendment was not incorporated to apply to the states. The latest of these was *Miller v. Texas*, 153 U.S. 535 (1894). Whether this holding is still valid in light of the *Heller* holding that the Second Amendment referred to a pre-existing right of individuals to possess and carry weapons for self-defense and defense against tyranny is problematic.

In *District of Columbia v. Heller*, ___ U.S. ___, 128 S. Ct. 1467 (2008) (*Heller*), Justice Scalia, writing for the majority of the U.S. Supreme Court, stated that, "In sum, we hold that the District's ban on handgun possession in the home violates the Second Amendment, as does its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense. Assuming that *Heller* is not disqualified from the exercise of Second Amendment rights, the District must permit him to register his handgun and must issue him a license to carry it in the home." This is a fairly limited holding on the scope of the Second Amendment.

Moreover, Justice Scalia also wrote in that opinion, "For example, the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues. See, e.g., *State v. Chandler*, 5 La. Ann., at 489-490; *Nunn v. State*, 1 Ga., at 251; see generally 2 Kent *340, n. 2; The American Students' Blackstone 84, n. 11 (G. Chase ed. 1884). Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms."

In *State v. Chandler*, the Louisiana Supreme Court reversed a defendant's conviction for manslaughter and remanded the matter for retrial because the trial court improperly refused to give the jury a self-defense instruction to which defendant was entitled. However, the Supreme Court also upheld the constitutionality of a Louisiana law making it a misdemeanor to carry a concealed weapon (which included a pistol, as well as a dagger, knife, or other deadly weapon). The Court held that the law was "absolutely necessary to counteract a vicious state of society, growing out of the habit of carrying concealed weapons, and to prevent bloodshed and assassinations committed upon unsuspecting persons. It interfered with no man's right to carry arms (to use its words) 'in full open view,' which places men upon an equality. This is the right guaranteed by the Constitution of the United States, and which is calculated to incite men to a manly and noble defence of themselves, if necessary, and of their country, without any tendency to secret advantages and unmanly assassinations."

This language in no way conditions the constitutionality of concealed weapons limitations or bans on the existence of statutes permitting unrestricted open carrying of loaded weapons, but explains the potential societal harm in allowing concealed weapons. If anything, it is a strong argument for the Sheriff's view, and the constitutionality of Penal Code Section 12050, by setting out a compelling governmental purpose (if one were needed) in limiting concealed weapons.

In *Nunn v. State*, the Georgia Supreme Court reversed the conviction of defendant on a charge of keeping a pistol, in violation of a law entitled, "An Act to guard and protect the citizens of [Georgia] against the unwarrantable and too prevalent use of deadly weapons." This Act made any sale or possession of a number of weapons (including weaponized knives, pistols, sword-canes, and spears, but not horseman's pistols) illegal—in other words, a complete ban on the sale or ownership of such weapons. As the Court noted, this case had nothing to do with concealed weapons ("It is not pretended that he carried his weapon secretly"). It did note that, while the Kentucky courts held that any regulation of weapons was unconstitutional, other courts, such as the Supreme Courts of Alabama and Indiana, noted a difference between banning the bearing of arms completely, and regulating the manner in which they are borne, such as through concealed weapons limitations. Accordingly, the Georgia Supreme Court concluded, "so far as the act of 1837 seeks to suppress the practice of carrying certain weapons *secretly*, that it is valid, inasmuch as it does not deprive the citizen of his *natural* right of self-defence, or of his constitutional right to keep and bear arms." In doing so, it in no way conditioned this conclusion on the existence of an open carry law.

Similarly, but more recently, in *Klein v. Leis*, 99 Ohio St. 3d 537 (2003), the Supreme Court of Ohio in fact noted that the statute prohibiting the carrying of concealed weapons was originally upheld in 1920, and at no time during two state constitutional conventions was the language regarding the right to bear arms changed to reverse the holding of the earlier decision. The Supreme Court then concluded that the statute regulated the manner of carrying arms, and was reasonable, and thus was constitutional. In doing so, it reversed the lower courts that had found the concealed weapon ban unconstitutional. At no time did the Court condition its holding on the existence of an open carry law. It never stated, anywhere in its opinion, that "since" the state had an open carry law, the concealed weapon ban was constitutional.

These cases in fact support the proposition that, if concealed weapons bans are constitutional, granting discretion to a local government's law enforcement authority to decide whether or not, based on articulated standards, a concealed weapon permit should be granted, denied or revoked, is certainly constitutional. As the Ohio court stated, and as California courts have stated, "there is no constitutional right to bear concealed weapons."

The Fourteenth Amendment Privileges and Immunities Clause is inapplicable.

The *Slaughterhouse Cases*, 83 U.S. 36 (1873) held that the fundamental rights protected against federal abuse in the Bill of Rights are not privileges and immunities of national citizenship within the meaning of the Fourteenth Amendment. Thus, the guarantees of the Bill of Rights are only protected from state infringement to the extent those rights are incorporated to apply to the states through the equal protection and due process clauses of the Fourteenth Amendment.

However, the right to travel is a privilege and immunity of national citizenship not set out in the Bill of Rights, and thus the U.S. Supreme Court did hold that conduct which infringed on that right to travel, such as denying welfare rights to citizens who moved to California, did violate the Fourteenth Amendment Privileges and Immunities Clause. However, to the extent there is a right to bear arms, it is clearly set out in the Second Amendment, and thus part of the Bill of Rights. Under the holding in the *Slaughterhouse Cases*, the clause does not apply to rights enumerated in the Bill of Rights and thus does not apply to Second Amendment rights.

No case has held that CCW permits are only permissible in open carry states.

Some proponents of unlimited CCW licenses claim that each of seven cases noted in the *Heller* decision, plus a recent Ohio case, hold that “concealed carry bans are supportable ONLY so long as ‘open carry’ remains legal.” Footnote 9, containing those cases, does not footnote anything about concealed carry statutes. Rather, that footnote follows the observation that numerous states interpreted the right to bear arms as an individual right of self-defense of one’s person or house (as opposed to the view of the Supreme Court minority that the Second Amendment only represented a collective right).

When Justice Scalia does point out, in the context that “the right secured by the Second Amendment is not unlimited,” that “the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues,” he cites to only two cases: *State v. Chandler*, 5 La. Ann. 489,489-90 (1850), and *Nunn v. State*, 1 Ga. 243,251 (1846).

In *State v. Chandler*, the Louisiana Supreme Court reversed a defendant’s conviction for manslaughter and remanded the matter for retrial because the trial court improperly refused to give the jury a self-defense instruction to which defendant was entitled. However, the Supreme Court also upheld the constitutionality of a Louisiana law making it a misdemeanor to carry a concealed weapon (which included a pistol, as well as a dagger, knife, or other deadly weapon). The Court held that the law was “absolutely necessary to counteract a vicious state of society, growing out of the habit of carrying concealed weapons, and to prevent bloodshed and assassinations committed upon unsuspecting persons. It interfered with no man’s right to carry arms (to use its words) ‘in full open view,’ which places men upon an equality. This is the right guaranteed by the Constitution of the United States, and which is calculated to incite men to a manly and noble defence of themselves, if necessary, and of their country, without any tendency to secret advantages and unmanly assassinations.”

This language in no way conditions the constitutionality of concealed weapons limitations or bans on the existence of statutes permitting unrestricted open carrying of loaded weapons, but explains the potential societal harm in allowing concealed weapons. If anything, it is a strong argument for the Sheriff’s view, and the constitutionality of Penal Code Section 12050, by setting out a compelling governmental purpose (if one were needed) in limiting concealed weapons.

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Finally, CCW advocates cite *Klein v. Leis*, 99 Ohio St. 3d 537 (2003), again for the proposition that a concealed carry limitation is valid only if a state has an open carry law. The Supreme Court of Ohio in fact noted that the statute prohibiting the carrying of concealed weapons was originally upheld in 1920, and at no time during two state constitutional conventions was the language regarding the right to bear arms changed to reverse the holding of the earlier decision. The Supreme Court then concluded that the statute regulated the manner of carrying arms, and was reasonable, and thus was constitutional. In doing so, it reversed the lower courts that had found the concealed weapon ban unconstitutional. At no time did the Court condition its holding on the existence of an open carry law. It never stated, anywhere in its opinion, that “since” the state had an open carry law, the concealed weapon ban was constitutional.

These cases in fact support the proposition that, if concealed weapons bans are constitutional, granting discretion to a local government’s law enforcement authority to decide whether or not, based on articulated standards, a concealed weapon permit should be granted, denied or revoked, is certainly constitutional. As the Ohio court stated, and as California courts have stated, “there is no constitutional right to bear concealed weapons.”

Thus, it is clear that banning or limiting the carrying of a concealed weapon is consistent with the Second Amendment and thus does not violate the United States Constitution or Federal law.

California Law on Issuance of Concealed Weapons Licenses

Penal Code Sections 12050(a)(1)(A), 12050(a)(1)(D), and 12050(a)(1)(E) set forth the requirements for issuance of a concealed weapon license: good moral character; good cause; residency or business within the County; completion of a course of training. In the event an applicant meets these requirements, the Sheriff “may issue to that person a license to carry” a concealed weapon. Penal Code Section 12050(a)(1)(A)(i).

Penal Code Section 12054, cited by some as a section that the policy allegedly violates, deals only with fees. However, subsection (c) provides, in part, “If psychological testing on the initial application is required by the licensing authority, the license applicant shall be referred to a licensed psychologist used by the licensing authority for the psychological testing of its own employees.”

None of the new requirements in any way violates either Penal Code section. Because the Sheriff “may” issue a concealed weapon permit on the meeting of all the requirements, she has discretion to either issue, or not issue, such permits. Moreover, by referencing psychological testing, Penal Code Section 12054 suggests that requiring various forms of testing is clearly within the Sheriff’s discretion as well.

Historically, most conservatives have argued for a “strict construction” of constitutional and statutory provisions. Generally, that means that words in a statute must be given their plain and ordinary meaning. Accordingly, the words, “good cause” must mean something beyond “being an ordinary, law-abiding citizen.” Otherwise, the CCW statute would simply have directed the issuance of a CCW to any such citizen who had no record and showed proficiency in the use of firearms. Since “good cause” must mean something beyond good citizenship, it must be given its ordinary meaning. In the context of carrying a concealed weapon, this must mean there is good cause to carry a concealed weapon. A weapon is concealed in order to offer personal protection against perceived threats to personal safety beyond the ordinary threats everyone faces in their day-to-day lives. Accordingly, some reasonably perceived threat to personal safety should be shown before a CCW permit should be issued.

“Good cause” is rarely defined. However, the courts have held that good cause is not satisfied merely by meeting the minimum statutory requirements, *see, Gifford v. County of Los Angeles, supra*, 88 Cal. App. 4th at 805, 106 Cal. Rptr. 2d at 167-68 (mere statement that all conditions under which a CCW had been previously issued remained the same was insufficient statement of good cause, and good cause is in addition to the other requirements under Penal Code Section 12050).

The California Attorney General, in published Opinion No. C.R. 77/30 I.L., stated, relying in part on *Salute v. Pitchess*, 61 Cal. App. 3d 557, 132 Cal. Rptr. 345 (1976), that a determination of “good cause” under Penal Code Section 12050 includes: (1) experience and training in the use of firearms, (2) the applicant’s physical and mental stability, (3) that danger to and from third parties would not be increased by the issuance of the permit, and (4) whether the threat to the applicant is as real as the applicant asserts. In determining this fourth factor, the Sheriff should inquire whether there is a clear and present danger to the applicant, spouse, family, or employees. Finally, even if the danger or threat is manifest, the Sheriff should determine whether the danger or threat could be significantly alleviated by alternative means of security, and whether the danger or threat could in fact be lawfully mitigated by the applicant obtaining the CCW.

More recently, the Federal Court in *McCloud v. City of Santa Maria* (CV 07-5895 SVW) held that similar standards to those used by Sheriff Hutchens in determining good cause were constitutional.

In *Salute*, the Court of Appeal held that the refusal to exercise discretion (in that case by refusing to issue permits except to judges) violates the law, and ordered the Sheriff to conduct an inquiry into the existence of good cause. *Id.*, 61 Cal. App. 3d at 560-61, 132 Cal. Rptr. at 347.

In *Gifford, supra*, the Court of Appeal upheld the police department denial of a license. It stated: “Section 12050 gives ‘extremely broad discretion’ to the sheriff concerning the issuance of concealed weapons licenses (*Nichols v. County of Santa Clara* (1990) 223 Cal. App. 3d 1236, 1241 [273 Cal. Rptr. 84]) and ‘explicitly grants discretion to the issuing officer to issue or not issue a license to applicants meeting the minimum statutory requirements.’ (*Erdelyi v. O'Brien*, 680 F.2d 61, 63 (9th Cir. 1982).) This discretion must be exercised in each individual case. ‘It is the duty of the sheriff to make such an investigation and determination, on an individual basis, on every application under section 12050.’” *Gifford v. City of Los Angeles, supra*, 88 Cal. App. 4th at 805, 106 Cal. Rptr. 2d at 167-68.

The Court further held that the burden of showing good cause is with the applicant, and that “courts may exercise a very limited review of a public agency’s action, and may merely determine whether the agency’s action was arbitrary, capricious, or entirely lacking in evidentiary support.” *Id.*, 88 Cal. App. 4th at 805, 106 Cal. Rptr. 2d at 168.

Given the holding of the courts that wide discretion is given to the Sheriff to both define and interpret “good cause,” it is not arbitrary, capricious, or lacking in evidentiary support to require

written evidence of health from a licensed physician, a polygraph test to explain discrepancies in the application or background investigation, and proof of ownership and registration of each weapon to be licensed. Each of these requirements is a reasonable subset of good cause. Someone whose medical condition prohibits them from safely using a concealed weapon, or whose mental condition would render them dangerous, cannot demonstrate good cause. Someone who is deceptive in the application, as shown by background checks, cannot show good cause, since those who are issued concealed weapon permits ought to have the highest standards of integrity. Finally, it is simple recordkeeping that would seem to require identification and proof of registration of any weapon sought to be concealed. If a weapon is not registered, why should it be licensed as a concealed weapon?

None of this information violates Penal Code Section 12051. Penal Code Section 12051(a)(1) provides, "The standard application form for licenses described in paragraph (3) shall require information from the applicant including, *but not limited to*, the name, occupation, residence and business address of the applicant, his or her age, height, weight, color of eyes and hair, and reason for desiring a license to carry the weapon. Applications for licenses shall be filed in writing, and signed by the applicant. Any license issued upon the application shall set forth the licensee's name, occupation, residence and business address, his or her age, height, weight, color of eyes and hair, the reason for desiring a license to carry the weapon, and shall, in addition, contain a description of the weapon or weapons authorized to be carried, giving the name of the manufacturer, the serial number, and the caliber." (*emphasis supplied*)

Penal Code Section 12051(a)(3)(A) provides, "Applications for amendments to licenses, applications for licenses, amendments to licenses, and licenses shall be uniform throughout the state, upon forms to be prescribed by the Attorney General." Penal Code Section 12051(a)(3)(C) provides, "An applicant shall not be required to complete any additional application or form for a license, or to provide any information other than that necessary to complete the standard application form described in subparagraph (A), except to clarify or interpret information provided by the applicant on the standard application form."

All of the additional information that the Sheriff **may** require (per her stated policy) is information that would be needed to clarify or interpret information provided on the standard application form. If such information or a background check suggests a physical or mental disability or deceptiveness, then both a physical examination and a polygraph examination may be needed to clarify or interpret the information on the application. Indeed, anyone who knowingly makes a false statement on the application is guilty of a felony, so the Sheriff must reasonably have access to information necessary to determine if an applicant has knowingly made a false statement on the application.

Revocation

Revocation is addressed in two places in Penal Code Section 12050. Under Section 12050(e), the Sheriff is **required** to revoke a licensee if: (1) the Department of Justice notifies the Sheriff that the licensee is either being treated for a mental disorder or has communicated a threat of physical violence against an identifiable victim; (2) the licensee has been adjudicated as a danger to others as a result of mental illness; (3) the licensee is a convicted felon; or (4) the licensee has been convicted of a violent crime.

Under Section 12050(f)(4)(B), a CCW “may not be revoked **solely** because the licensee moves to another county.”

Only one case has ever discussed the power to revoke a CCW. In *Nichols v. County of Santa Clara, supra*, the Court of Appeal held that “a county sheriff has discretion to revoke a license to carry a concealed firearm issued pursuant to Penal Code section 12050. In connection with such revocation, the sheriff is not required to hold a ‘due process hearing,’ because the licensee has no constitutionally protected “property” or other interest in such a license.” *Nichols, supra*, 223 Cal. App. 3d at 1239, 273 Cal. Rptr. at 85.

The Court reasoned that, “Just as Penal Code section 12050 contains no meaningful restrictions on the sheriff’s discretion to deny a license [*citations omitted*], it contains no express restrictions on the sheriff’s discretion to revoke a license.” *Id.* at 1244, 273 Cal. Rptr. at 89. While, as the Court noted, the statute as written at the time did not even address revocation (subsections (e) and (f) were added in a 1993 amendment), Section 12050(f)(4)(B), by stating that a CCW “may not be revoked **solely** because the licensee moves to another county,” suggests that it can be revoked, presumably for good cause. Thus, we believe that it is a reasonable, and appropriate, interpretation of the current law to state that the Sheriff has the broad discretion to review and revoke existing CCW permits for a lack of good cause. As noted by the Court of Appeal in *Nichols, supra*, 223 Cal. App. 3d at 1244, 273 Cal. Rptr. at 89, “The power to license ... implies the power to revoke.”

As a side note, we believe that, in light of the public disclosures of evidence suggesting that, in the prior Sheriff’s Administration, CCW permits may have been issued to persons who did not meet the statutory qualifications in exchange for contributions, it was consistent with the carrying out of the Sheriff’s official duties to investigate whether the CCW permits issued by her predecessor were issued for legal “good cause.” If some CCW permits were given out to unqualified persons in exchange for campaign contributions or other favors, it suggests that the prior Sheriff’s Administration in fact had no consistent, coherent standard for good cause, and thus did not properly exercise their discretion. Accordingly, the current Sheriff is appropriately reviewing all permits issued under the prior administration to determine which applicants meet the standard for good cause set out by the Attorney General and which applicants do not.

Accordingly, as indicated above, the clear import of the statutory and case law is that Sheriff Hutchens’ concealed weapons policy is not only consistent with State and Federal law, including the United States Constitution, but is in furtherance of it.

Liability Issues and Immunity

State law has a Tort Claims Act that regulates who may sue the State, county, and other public entities (as defined in Government Code Section 811.2). Section 815.6 of the Government Code provides that, "Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty." However, there is no statute of which I am aware that imposes a mandatory duty with respect to issuance of concealed carry weapon licenses. It is quite clearly, by the use of the word "may" in Penal Code Section 12050, the exercise of a discretionary duty—as all the cases I have cited in my various missives confirm.

However, due to the existence of this Government Code Section, and in order to limit its scope, there are two more applicable provisions. Government Code Section 818.2 provides, "A public entity is not liable for an injury caused by adopting or failing to adopt an enactment or by failing to enforce any law." Further, Government Code Section 818.4 provides, "A public entity is not liable for an injury caused by the issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order, or similar authorization where the public entity or an employee of the public entity is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked." I believe that this section provides the County, and Sheriff Hutchens, immunity should she decide to merely make determinations regarding CCW licenses when people seek to renew the licenses, rather than revoking the licenses. Revoking licenses that do not comply with the thorough and complete definition of good cause she is using may well be good practice, but it is not required to shield the County from liability.

Board Authority over CCW Policy

Moreover, it is my view that the Board of Supervisors has no direct control over the Sheriff's CCW policy. California Constitution, Article V, Section 13, provides, *inter alia*, that, "The Attorney General shall have direct supervision over every district attorney and sheriff and over such other law enforcement officers as may be designated by law, *in all matters pertaining to the duties of their respective offices*, and may require any of said officers to make reports concerning the investigation, detection, prosecution, and punishment of crime in their respective jurisdictions as to the Attorney General may seem advisable." (*emphasis supplied*)

Similarly, Government Code Section 12560 provides, "The Attorney General has direct supervision over the sheriffs of the several counties of the State, and may require of them written reports concerning the investigation, detection and punishment of crime in their respective jurisdictions. Whenever he deems it necessary in the public interest he shall direct the activities of any sheriff relative to the investigation or detection of crime within the jurisdiction of the sheriff, and he may direct the service of subpoenas, warrants of arrest, or other processes of court in connection therewith."

Government Code Section 25303 provides, *inter alia*, that, "This section shall not be construed to affect the independent and constitutionally and statutorily designated investigative ... functions of the sheriff ... of a county. The board of supervisors shall not obstruct the investigative function of the sheriff of the county ..."

Furthermore, in *Hicks v. Board of Supervisors*, 69 Cal. App. 3d 228,242, 138 Cal. Rptr. 101,109 (1977), the Court held that "although the county board of supervisors has authority to supervise county officers in order to insure that they faithfully perform their duties, ***the board has no power to perform county officers' statutory duties for them or direct the manner in which duties are performed.***"

Since Penal Code Section 12050 sets out the discretion to grant, deny, or revoke a CCW license as a statutory duty of the Sheriff, only the Attorney General can supervise this aspect of the Sheriff's conduct of her office. The Board of Supervisors may not do so. For the same reason, and further because the County is merely a political subdivision of the State with no powers beyond those granted to it by State law, the Board has no power under the California Constitution to change County policy to a "shall issue" policy in contravention of State law.

Consequently, it is our view that it would be most beneficial for current CCW holders to assist our new Sheriff, in a respectful and professional manner, in developing an Orange County-specific definition of good cause that is consistent with the Attorney General opinion and is satisfactory to all parties.