Concealed Carry in Parks and on Playgrounds

Author : Jeff Welty

Categories : Crimes and Elements, Uncategorized

Tagged as : concealed carry, firearms, guns, parks, playgrounds, preemption, second amendment

Date : October 29, 2013

Can a concealed carry permit holder carry a concealed handgun in a park? On a playground? The legislature has changed the law in this area twice in recent years and I get lots of questions about it. This post summarizes the basics.

Concealed weapons generally are forbidden. Carrying a concealed weapon of any kind, including a gun, is generally against the law in North Carolina. G.S. 14-269 (making it "unlawful for any person willfully and intentionally to carry concealed about his person" a deadly weapon, including any "pistol or gun").

Concealed carry with a permit generally is allowed. If a person obtains a concealed handgun permit, the person may carry a concealed handgun "unless otherwise specifically prohibited by law." G.S. 14-415.11(a). In other words, having a concealed carry permit brings the permit holder outside the scope of the generic concealed weapons prohibition. G.S. 14-269(a1)(2).

When concealed carry with a permit isn't allowed. Even concealed carry permit holders can't carry everywhere. Concealed carry is prohibited in certain places, most of which are listed in G.S. 14-415.11(c). So, for example, even permit holders can't carry on school grounds, G.S. 14-269.2, in courthouses, G.S. 14-269.4, in a "law enforcement or correctional facility," G.S. 14-415.11(c)(5), or on any private premises where a notice prohibiting concealed handguns has been posted. There are other exceptions, too, and there are exceptions to some of the exceptions, but they don't concern parks so I won't get into them in this post.

Where do state parks fit in? Permit holders may carry concealed weapons in state parks under G.S. 14-415.11(c1).

Where do local parks fit in? Most of the questions I've had are about local parks. State law does not prohibit concealed carry in local parks, so any limitations on concealed carry in local parks would have to come from local government. Generally, however, local governments don't have the authority to regulate or restrict concealed carry. G.S. 14-415.23 (stating that "no political subdivisions . . . of the State nor any county [or] city . . . may enact ordinances . . . concerning legally carrying a concealed handgun," except as provided in that section). The apparent purpose of this preemption statute is to prevent the creation of a patchwork of local regulations that would make moving around the state with a concealed weapon impossibly complex. Most states have similar statutes.

There are exceptions to the preemption statue, and at one time, parks were among them. Before 2011, G.S. 14-415.23 provided that local governments could "adopt an ordinance to permit the posting of a prohibition against carrying a concealed handgun . . . on local government buildings, their appurtenant premises, and parks."

In 2011, though, the General Assembly amended this exception to the preemption statute, essentially replacing "parks" with the narrower phrase "municipal and county recreational facilities that are specifically identified by the unit of local government." Recreational facilities were defined to "include[] only the following: a playground, an athletic field, a swimming pool, and an athletic facility." S.L. 2011-268. I received many questions about the new law, like what constitutes a playground, whether an athletic field included the adjoining bleachers and bathrooms, and whether a greenway was an athletic facility. But before we got definite answers to those questions, the legislature changed the law again.

This blog post is published and posted online by the School of Government to address issues of interest to government officials. This blog post is for educational and informational Copyright © 2009 to present School of Government at the University of North Carolina. All rights reserved. use and may be used for those purposes without permission by providing acknowledgment of its source. Use of this blog post for commercial purposes is prohibited. To browse a complete catalog of School of Government publications, please visit the School's website at www.sog.unc.edu or contact the Bookstore, School of Government, CB# 3330 Knapp-Sanders Building, UNC Chapel Hill, Chapel Hill, NC 27599-3330; e-mail sales@sog.unc.edu; telephone 919-966-4119; or fax 919-962-2707.

This year, the General Assembly further amended G.S. 14-415.23, changing the definition of recreational facilities to include only:

- athletic fields, "including any appurtenant facilities such as restrooms," but only during scheduled, organized athletic events
- swimming pools, "including any appurtenant facilities used for dressing, storage of personal items, or other uses related to the swimming pool"
- "[a] facility used for athletic events, including, but not limited to, a gymnasium"

The law now specifies that greenways and "open areas" aren't recreational facilities. S.L. 2013-369. Playgrounds have been removed from the definition. I have been asked many times why the General Assembly chose to remove playgrounds. I don't know, and I'm not aware of any meaningful legislative history that would answer the question. If readers are aware of information on point, please let me know or post a comment.

Current law in a nutshell. As things stand now, local governments generally lack the authority to prohibit concealed carry in parks. They may prohibit concealed carry at the recreational facilities listed in the statute, which include neither playgrounds nor greenways.

Local governments retain the authority, under G.S. 14-415.23, to prohibit concealed carry in "local government buildings and their appurtenant premises." Therefore, if there are buildings in a park, concealed carry may be prohibited in the buildings and on related premises like adjoining parking lots. It isn't clear exactly what counts as an "appurtenant" premise with respect to G.S. 14-415.23, but in *Blackwelder v. Holyoke Mut. Fire Ins. Co.*, 10 N.C. App. 576 (1971), the court of appeals discussed the meaning of "appurtenant private structure" as used in a fire insurance policy. Generally, the court stated that "appurtenant" means connected in use to, or incidental to the use of, another location.

In order to prohibit concealed carry at a location where it has the power to do so, a local government must pass an ordinance and post conspicuous signs.

Constitutional right to carry? It might be possible to argue that there is a federal or state constitutional right to carry concealed weapons that is broader than state law currently protects, but that strikes me as an uphill battle. Existing law suggests that concealed carry may be completely prohibited, so North Carolina's system of allowing permit holders to carry concealed handguns in most places appears to be more permissive than is constitutionally required. *See District of Columbia v. Heller*, 554 U.S. 570 (2008) (interpreting the Second Amendment by examining founding-era cases and materials and noting 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"); N.C. Const., Art. I, Sec. 30 (providing the same general right to bear arms as the Second Amendment but also stating that "[n]othing herein shall justify the practice of carrying concealed weapons, or prevent the General Assembly from enacting penal statutes against that practice").

Open carry. I may do a future post on open carry in parks, which raises a different set of issues and on which the law is less clear.

This blog post is published and posted online by the School of Government to address issues of interest to government officials. This blog post is for educational and informational Copyright © 2009 to present School of Government at the University of North Carolina. All rights reserved. use and may be used for those purposes without permission by providing acknowledgment of its source. Use of this blog post for commercial purposes is prohibited. To browse a complete catalog of School of Government publications, please visit the School's website at www.sog.unc.edu or contact the Bookstore, School of Government, CB# 3330 Knapp-Sanders Building, UNC Chapel Hill, Chapel Hill, NC 27599-3330; e-mail sales@sog.unc.edu; telephone 919-966-4119; or fax 919-962-2707.