

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 679
PROPOSED COMMITTEE SUBSTITUTE S679-PCS95097-RK-86

Short Title: Castle Doctrine/Amend Firearms Laws.

(Public)

Sponsors:

Referred to:

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CASTLE DOCTRINE, TO ALLOW PERSONS WITH CONCEALED HANDGUN PERMITS TO CARRY A HANDGUN IN A PARK, AND TO AUTHORIZE DISTRICT ATTORNEYS, ASSISTANT DISTRICT ATTORNEYS, OR THEIR INVESTIGATORS WHO HAVE A VALID CONCEALED HANDGUN PERMIT TO CARRY A CONCEALED WEAPON ON CERTAIN PREMISES OR IN CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 14 of Chapter 14 of the General Statutes is amended by adding the following new sections to read:

"§ 14-51.2. Home, workplace, and motor vehicle protection; presumption of fear of death or serious bodily harm.

(a) The following definitions apply in this section:

(1) Home. – A building or conveyance of any kind, to include its curtilage, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed as a temporary or permanent residence.

(2) Law enforcement officer. – Any person employed or appointed as a full-time, part-time, or auxiliary law enforcement officer, correctional officer, probation officer, post-release supervision officer, or parole officer.

(3) Motor vehicle. – As defined in G.S. 20-4.01(23).

(4) Workplace. – A building or conveyance of any kind, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, which is being used for commercial purposes.

(b) The lawful occupant of a home, motor vehicle, or workplace is presumed to have held a reasonable fear of imminent death or serious bodily harm to himself or herself or another when using defensive force that is intended or likely to cause death or serious bodily harm to another if both of the following apply:

(1) The person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a home, motor vehicle, or workplace, or if that person had removed or was attempting to remove another against that person's will from the home, motor vehicle, or workplace.



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1 (2) The person who uses defensive force knew or had reason to believe that an
2 unlawful and forcible entry or unlawful and forcible act was occurring or
3 had occurred.

4 (c) The presumption set forth in subsection (b) of this section shall be rebuttable and
5 does not apply in any of the following circumstances:

6 (1) The person against whom the defensive force is used has the right to be in or
7 is a lawful resident of the home, motor vehicle, or workplace, such as an
8 owner or lessee, and there is not an injunction for protection from domestic
9 violence or a written pretrial supervision order of no contact against that
10 person.

11 (2) The person sought to be removed from the home, motor vehicle, or
12 workplace is a child or grandchild or is otherwise in the lawful custody or
13 under the lawful guardianship of the person against whom the defensive
14 force is used.

15 (3) The person who uses defensive force is engaged in, attempting to escape
16 from, or using the home, motor vehicle, or workplace to further any criminal
17 offense that involves the use or threat of physical force or violence against
18 any individual.

19 (4) The person against whom the defensive force is used is a law enforcement
20 officer who enters or attempts to enter a home, motor vehicle, or workplace
21 in the lawful performance of his or her official duties, and the officer
22 identified himself or herself in accordance with any applicable law or the
23 person using force knew or reasonably should have known that the person
24 entering or attempting to enter was a law enforcement officer in the lawful
25 performance of his or her official duties.

26 (5) The person against whom the defensive force is used (i) has discontinued all
27 efforts to unlawfully and forcefully enter the home, motor vehicle, or
28 workplace and (ii) has exited the home, motor vehicle, or workplace.

29 (d) A person who unlawfully and by force enters or attempts to enter a person's home,
30 motor vehicle, or workplace is presumed to be doing so with the intent to commit an unlawful
31 act involving force or violence.

32 (e) A person who uses force as permitted by this section is justified in using such force
33 and is immune from civil or criminal liability for the use of such force, unless the person
34 against whom force was used is a law enforcement officer who was lawfully acting in the
35 performance of his or her official duties and the officer identified himself or herself in
36 accordance with any applicable law or the person using force knew or reasonably should have
37 known that the person was a law enforcement officer in the lawful performance of his or her
38 official duties.

39 (f) A lawful occupant within his or her home, motor vehicle, or workplace does not
40 have a duty to retreat from an intruder in the circumstances described in this section.

41 (g) This section is not intended to repeal or limit any other defense that may exist under
42 the common law.

43 **"§ 14-51.3. Use of force in defense of person; relief from criminal or civil liability.**

44 (a) A person is justified in using force, except deadly force, against another when and to
45 the extent that the person reasonably believes that the conduct is necessary to defend himself or
46 herself or another against the other's imminent use of unlawful force. However, a person is
47 justified in the use of deadly force and does not have a duty to retreat in any place he or she has
48 the lawful right to be if either of the following applies:

49 (1) He or she reasonably believes that such force is necessary to prevent
50 imminent death or great bodily harm to himself or herself or another.

51 (2) Under the circumstances permitted pursuant to G.S. 14-51.2.

1 (b) A person who uses force as permitted by this section is justified in using such force
2 and is immune from civil or criminal liability for the use of such force unless the person against
3 whom force was used is a law enforcement officer who was lawfully acting in the performance
4 of his or her official duties and the officer identified himself or herself in accordance with any
5 applicable law or the person using force knew or reasonably should have known that the person
6 was a law enforcement officer in the lawful performance of his or her official duties."

7 **SECTION 2.** G.S. 14-51.1 is repealed.

8 **SECTION 3.** G.S. 14-269 reads as rewritten:

9 "**§ 14-269. Carrying concealed weapons.**

10 (a) It shall be unlawful for any person willfully and intentionally to carry concealed
11 about his person any bowie knife, dirk, dagger, slung shot, loaded cane, metallic knuckles,
12 razor, shurikin, stun gun, or other deadly weapon of like kind, except when the person is on the
13 person's own premises.

14 (a1) It shall be unlawful for any person willfully and intentionally to carry concealed
15 about his person any pistol or gun except in the following circumstances:

16 (1) The person is on the person's own premises.

17 (2) The deadly weapon is a handgun, ~~and~~ the person has a concealed handgun
18 permit issued in accordance with Article 54B of this Chapter or considered
19 valid under ~~G.S. 14-415.24~~, G.S. 14-415.24, and the person is carrying the
20 concealed handgun in accordance with the scope of the concealed handgun
21 permit as set out in G.S. 14-415.11(c).

22 (3) The deadly weapon is a handgun and the person is a military permittee as
23 defined under G.S. 14-415.10(2a) who provides to the law enforcement
24 officer proof of deployment as required under G.S. 14-415.11(a).

25 (b) This prohibition shall not apply to the following persons:

26 (1) Officers and enlisted personnel of the armed forces of the United States
27 when in discharge of their official duties as such and acting under orders
28 requiring them to carry arms and weapons;

29 (2) Civil and law enforcement officers of the United States;

30 (3) Officers and soldiers of the militia and the National Guard when called into
31 actual service;

32 (4) Officers of the State, or of any county, city, town, or company police agency
33 charged with the execution of the laws of the State, when acting in the
34 discharge of their official duties;

35 (4a) Any person who is a district attorney, an assistant district attorney, or an
36 investigator employed by the office of a district attorney and who has a
37 concealed handgun permit issued in accordance with Article 54B of this
38 Chapter or considered valid under G.S. 14-415.24; provided that the person
39 shall not carry a concealed weapon at any time while in a courtroom or while
40 consuming alcohol or an unlawful controlled substance or while alcohol or
41 an unlawful controlled substance remains in the person's body. The district
42 attorney, assistant district attorney, or investigator shall secure the weapon in
43 a locked compartment when the weapon is not on the person of the district
44 attorney, assistant district attorney, or investigator;

45 (5) Sworn law-enforcement officers, when off-duty, provided that an officer
46 does not carry a concealed weapon while consuming alcohol or an unlawful
47 controlled substance or while alcohol or an unlawful controlled substance
48 remains in the officer's body.

49 (b1) It is a defense to a prosecution under this section that:

50 (1) The weapon was not a firearm;

- 1 (2) The defendant was engaged in, or on the way to or from, an activity in which
2 he legitimately used the weapon;
3 (3) The defendant possessed the weapon for that legitimate use; and
4 (4) The defendant did not use or attempt to use the weapon for an illegal
5 purpose.

6 The burden of proving this defense is on the defendant.

7 (b2) It is a defense to a prosecution under this section that:

- 8 (1) The deadly weapon is a handgun;
9 (2) The defendant is a military permittee as defined under G.S. 14-415.10(2a);
10 and
11 (3) The defendant provides to the court proof of deployment as defined under
12 G.S. 14-415.10(3a).

13 (c) Any person violating the provisions of subsection (a) of this section shall be guilty
14 of a Class 2 misdemeanor. Any person violating the provisions of subsection (a1) of this
15 section shall be guilty of a Class 2 misdemeanor for the first offense. A second or subsequent
16 offense is punishable as a Class I felony.

17 (d) This section does not apply to an ordinary pocket knife carried in a closed position.
18 As used in this section, "ordinary pocket knife" means a small knife, designed for carrying in a
19 pocket or purse, that has its cutting edge and point entirely enclosed by its handle, and that may
20 not be opened by a throwing, explosive, or spring action."

21 **SECTION 4.** G.S. 14-415.11 reads as rewritten:

22 **"§ 14-415.11. Permit to carry concealed handgun; scope of permit.**

23 (a) Any person who has a concealed handgun permit may carry a concealed handgun
24 unless otherwise specifically prohibited by law. The person shall carry the permit together with
25 valid identification whenever the person is carrying a concealed handgun, shall disclose to any
26 law enforcement officer that the person holds a valid permit and is carrying a concealed
27 handgun when approached or addressed by the officer, and shall display both the permit and the
28 proper identification upon the request of a law enforcement officer. In addition to these
29 requirements, a military permittee whose permit has expired during deployment may carry a
30 concealed handgun during the 90 days following the end of deployment and before the permit
31 is renewed provided the permittee also displays proof of deployment to any law enforcement
32 officer.

33 (b) The sheriff shall issue a permit to carry a concealed handgun to a person who
34 qualifies for a permit under G.S. 14-415.12. The permit shall be valid throughout the State for a
35 period of five years from the date of issuance.

36 (c) ~~A-Except as provided in G.S. 14-415.27, a~~ permit does not authorize a person to
37 carry a concealed handgun in the areas prohibited by G.S. 14-269.2, 14-269.3, 14-269.4, and
38 14-277.2, in an area prohibited by rule adopted under G.S. 120-32.1, in any area prohibited by
39 18 U.S.C. § 922 or any other federal law, in a law enforcement or correctional facility, in a
40 building housing only State or federal offices, in an office of the State or federal government
41 that is not located in a building exclusively occupied by the State or federal government, a
42 financial institution, or on any other premises, except state-owned rest areas or state-owned rest
43 stops along the highways, where notice that carrying a concealed handgun is prohibited by the
44 posting of a conspicuous notice or statement by the person in legal possession or control of the
45 premises.

46 (c1) Any person who has a concealed handgun permit may carry a concealed handgun on
47 the grounds or waters of a park within the State Parks System as defined in G.S. 113-44.9.

48 (c2) It shall be unlawful for a person, with or without a permit, to carry a concealed
49 handgun while consuming alcohol or at any time while the person has remaining in his body
50 any alcohol or in his blood a controlled substance previously consumed, but a person does not

1 violate this condition if a controlled substance in his blood was lawfully obtained and taken in
2 therapeutically appropriate amounts.

3 (d) A person who is issued a permit shall notify the sheriff who issued the permit of any
4 change in the person's permanent address within 30 days after the change of address. If a permit
5 is lost or destroyed, the person to whom the permit was issued shall notify the sheriff who
6 issued the permit of the loss or destruction of the permit. A person may obtain a duplicate
7 permit by submitting to the sheriff a notarized statement that the permit was lost or destroyed
8 and paying the required duplicate permit fee."

9 **SECTION 5.** G.S. 14-415.23 reads as rewritten:

10 **"§ 14-415.23. Statewide uniformity.**

11 It is the intent of the General Assembly to prescribe a uniform system for the regulation of
12 legally carrying a concealed handgun. To insure uniformity, no political subdivisions, boards,
13 or agencies of the State nor any county, city, municipality, municipal corporation, town,
14 township, village, nor any department or agency thereof, may enact ordinances, rules, or
15 regulations concerning legally carrying a concealed handgun. A unit of local government may
16 adopt an ordinance to permit the posting of a prohibition against carrying a concealed handgun,
17 in accordance with G.S. 14-415.11(c), on local government ~~buildings, their appurtenant~~
18 ~~premises, and parks.~~ buildings and their appurtenant premises. A unit of local government may
19 adopt an ordinance to prohibit, by posting, the carrying of a concealed handgun on municipal
20 and county recreational facilities that are specifically identified by the unit of local government.
21 If a unit of local government adopts such an ordinance with regard to recreational facilities,
22 then the concealed handgun permittee may, nevertheless, secure the handgun in a locked
23 vehicle within the trunk, glove box, or other enclosed compartment or area within or on the
24 motor vehicle. For purposes of this section, the term "recreational facilities" includes only the
25 following: a playground, an athletic field, a swimming pool, and an athletic facility."

26 **SECTION 6.** Article 54B of Chapter 14 of the General Statutes is amended by
27 adding a new section to read:

28 **"§ 14-415.27. Expanded permit scope for district attorneys, assistant district attorneys,**
29 **and investigators employed by office of the district attorney.**

30 Notwithstanding G.S. 14-415.11(c), any person who is a district attorney, an assistant
31 district attorney, or an investigator employed by the office of a district attorney and who has a
32 concealed handgun permit issued pursuant to this Article or that is considered valid under
33 G.S. 14-415.24 is not subject to the restrictions and prohibitions set out in G.S. 14-415.11(c)
34 and may carry a concealed handgun in the areas listed in G.S. 14-415.11(c) unless otherwise
35 prohibited by federal law."

36 **SECTION 7.** This act becomes effective December 1, 2011, and applies to
37 offenses committed on or after that date. Prosecutions for offenses committed before the
38 effective date of this act are not abated or affected by this act, and the statutes that would be
39 applicable but for this act remain applicable to those prosecutions.