



# COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II  
Attorney General

July 1, 2011

900 East Main Street  
Richmond, Virginia 23219  
804-786-2071  
FAX 804-786-1991  
Virginia Relay Services  
800-828-1120  
7-1-1

The Honorable Emmett W. Hanger, Jr.  
Member, Senate of Virginia  
Post Office Box 2  
Mount Solon, VA 22843

Dear Senator Hanger:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

## Issue Presented

You ask whether a policy of the University of Virginia prohibiting the possession of firearms and ammunition by visitors inside University buildings and hospitals without prior written consent of the University's Chief of Police is legal.

## Response

It is my opinion that, under the present state of the law, the University lawfully may promulgate a policy that prohibits persons from openly carrying a firearm in the buildings that are subject to the policy. It is further my opinion that with respect to persons who have a concealed carry permit, because the University adopted a policy rather than a regulation, it has not "otherwise prohibited by law" persons with a concealed carry permit from possessing a handgun, and, therefore, the policies may not be used to prohibit persons with such a permit from carrying a concealed firearm into the buildings covered by the policy.

## Background

The University of Virginia has adopted two policies regulating the possession, storage and use of firearms in University buildings and in hospital buildings. Policy SEC-030,<sup>1</sup> among other things, provides with respect to visitors that

The possession, storage or use of any firearm, weapon, ammunition, or explosives on any University property or within any University facility by anyone, except a law enforcement officer, without the prior written permission of the University's Chief of Police or his designee is prohibited.

---

<sup>1</sup> The policy can be found at <https://policy.itc.virginia.edu/policy/policydisplay?id=SEC-030>.

This policy further states that

For purposes of this policy, University facilities include, but are not limited to, any academic, administration, residential, research, medical, entertainment or sports venues including any amphitheater, arena, classroom, clinic, dormitory or other residential facility, gymnasium, laboratory, office, stadium, theater and the Medical Center.

An additional definition provides that “University Facility” includes “[a]ny defined space of the University, including a room, lab, series of labs, building or controlled outdoor area.”

The Medical Center at the University of Virginia also has adopted a policy governing firearms. Policy Number 0174<sup>2</sup> provides in relevant part that

Patients and visitors to the Medical Center (with the exception of law enforcement officers) are prohibited from possessing, storing or using any firearm, weapon, ammunition, or explosives within any University facility, without the prior written permission of the University’s Chief of Police or his designee.

This policy defines “University Facility” as “[a]ny defined space at the University (including all Medical Center facilities), including a room, lab, series of labs, building or controlled outdoor area.”

#### **Applicable Law and Discussion**

The right to bear arms is protected by the Constitutions of Virginia<sup>3</sup> and of the United States.<sup>4</sup> The United States Supreme Court has recognized that the Second Amendment of the United States protects an individual right to bear arms<sup>5</sup> and, further, that this right operates as a restriction on the States as well as the federal government.<sup>6</sup> The protections afforded by the Virginia Constitution in this area are co-extensive with those of the Second Amendment.<sup>7</sup>

The law is not settled at this time with respect to how strictly courts will evaluate restrictions on the use and possession of firearms. The United States Supreme Court has stated that the right to bear arms is “not unlimited, just as the First Amendment’s right of free speech [is] not.”<sup>8</sup> In addition, the Court has noted that the government may enact “laws forbidding the carrying of firearms in sensitive places such as schools and government buildings.”<sup>9</sup>

With respect to carrying firearms inside university buildings, the Supreme Court of Virginia recently decided *DiGiacinto v. Rector and Visitors of George Mason University*. In that case, the Court held that a regulation promulgated by George Mason University was lawful and satisfied both the Second

---

<sup>2</sup> I was unable to locate this policy in the sections of the University’s website that are open to the public. It is attached to this opinion.

<sup>3</sup> “[T]he right of the people to keep and bear arms shall not be infringed[.]” VA. CONST. art. I, § 13.

<sup>4</sup> “[T]he right of the people to keep and bear Arms, shall not be infringed.” U.S. CONST. amend. II.

<sup>5</sup> *District of Columbia v. Heller*, 554 U.S. 570, 606 (2008).

<sup>6</sup> *McDonald v. City of Chicago*, 130 S. Ct. 3020, 3050 (2010).

<sup>7</sup> *DiGiacinto v. Rector & Visitors of George Mason Univ.*, 281 Va. 127, 133-34, 704 S.E.2d 365, 368-69 (2011).

<sup>8</sup> *Heller*, 554 U.S. at 595.

<sup>9</sup> *Id.* at 625-26.

Amendment of the United States Constitution and Article I, § 13 of the Constitution of Virginia.<sup>10</sup> The regulation at issue in *DiGiacinto* provides as follows:

Possession or carrying of any weapon by any person, except a police officer, is prohibited on university property in academic buildings, administrative office buildings, student residence buildings, dining facilities, or while attending sporting, entertainment or educational events. Entry upon the aforementioned university property is expressly forbidden.<sup>[11]</sup>

The Court reasoned that the University

has 30,000 students enrolled ranging from age 16 to senior citizens, and that over 350 members of the incoming freshman class would be under the age of 18. Also approximately 50,000 elementary and high school students attend summer camps at GMU and approximately 130 children attend the child study center preschool there. All of these individuals use GMU's buildings and attend events on campus. The fact that GMU is a school and that its buildings are owned by the government indicates that GMU is a "sensitive place."<sup>[12]</sup>

The Court found it significant that the regulation promulgated by George Mason University "does not impose a total ban of weapons on campus."<sup>13</sup> Instead, "the regulation is tailored, restricting weapons only in those places where people congregate and are most vulnerable – inside campus buildings and at campus events."<sup>14</sup> Importantly, "[i]ndividuals may still carry or possess weapons on the open grounds of GMU and in other places on campus not enumerated in the regulation."<sup>15</sup>

Although *DiGiacinto* specifically addressed a regulation of firearms in university buildings rather than medical buildings, the logic of the decision applies with equal force to the policy adopted by the Medical Center. Applying the Court's reasoning to the hospital context, hospitals harbor large numbers of vulnerable patients, including children, the elderly and patients with mental illnesses.

There are two significant differences, however, between the policies at issue here and the regulation at issue in *DiGiacinto*. First, the policies adopted by the University of Virginia and the Medical Center are broader than the regulation at issue in *DiGiacinto*. For example, the Medical Center policy includes within the ban a "controlled outdoor area" and both policies include virtually all University buildings and property. The Court in *DiGiacinto* noted as a consideration in favor of the constitutionality of George Mason University's regulation the fact that the regulation was "tailored" and

---

<sup>10</sup> *DiGiacinto*, 281 Va. at 127, 704 S.E.2d at 365.

<sup>11</sup> *Id.* at 130-31, 704 S.E.2d 365, 367 (quoting 8 VA. ADMIN. CODE § 35-60-20).

<sup>12</sup> *Id.* at 135-36, 704 S.E.2d at 370. Like the Board of Visitors of George Mason University, the Board of Visitors at the University of Virginia is tasked with the "care and preservation of the property belonging to the University." VA. CODE ANN. § 23-76 (2006).

<sup>13</sup> *Id.* at 136, 704 S.E.2d at 370.

<sup>14</sup> *Id.*

<sup>15</sup> The conclusion of the Supreme Court of Virginia generally is consistent with a prior opinion from this Office, which concluded that "[t]he universal prohibition of firearms by properly permitted persons other than students, faculty, administration, or employees . . . is not allowed under the law." 2006 Op. Va. Att'y Gen. 116, 118. Nevertheless, a university may impose certain regulations or prohibitions concerning firearms to ensure - in its view - the safe operation of the campus. *Id.*

allowed individuals to “carry or possess weapons on the open grounds of GMU, and in other places on campus not enumerated in the regulation.”<sup>16</sup> Bans that are broader than the one expressly approved by the Supreme Court of Virginia in *DiGiacinto*, while likely facially constitutional, are vulnerable to “as applied” challenges with respect to particular places.

Second, a regulation has the force of law, whereas a policy does not.<sup>17</sup> *DiGiacinto* establishes that a University has the authority to promulgate regulations restricting firearms inside certain buildings. As with regulations, the authority conferred by the General Assembly upon the Board of Visitors of the University includes the authority to create *policies* governing buildings at the University.<sup>18</sup> Unless a policy collides with a law or regulation, a policy may be enforced by the University.

With respect to the general right of “open carry,” the University may develop a policy that restricts the right of open carry within certain buildings. Prior opinions of this office have recognized the right, tied to the Second Amendment, to openly carry a firearm.<sup>19</sup> This right to openly carry, like the Second Amendment right generally, may be limited in “sensitive places” like “schools and government buildings.”<sup>20</sup> In other words, the right to bear arms does not include an unqualified right to openly carry a firearm in a sensitive place or certain government buildings. No statute or regulation specifically addresses the right to openly carry a firearm. Therefore, the University, which is vested with the authority to promulgate and enforce policies governing its buildings, may enforce this policy. University officials may request that persons who openly carry in buildings covered by the policy abide by the policy. If these persons refuse to follow it, and also refuse to leave, they may be charged with trespass.

Unlike open carry, there is an additional statutory overlay that addresses persons who have received a concealed carry permit. Section 18.2-308(O) provides that “[t]he granting of a concealed handgun permit shall not thereby authorize the possession of any handgun or other weapon on property or in places where such possession is otherwise prohibited by law[.]”<sup>21</sup> A prior opinion of this Office concluded that “[t]he clear intent of the General Assembly is to allow concealed handgun permit holders to carry handguns only in areas where it has not specifically prohibited the carrying of handguns.”<sup>22</sup> Where the possession of a handgun is *prohibited by law*, persons with a concealed carry weapon may not

---

<sup>16</sup> *Id.*

<sup>17</sup> See VA. CODE ANN. 2.2-4001 (2008) (defining a “regulation” under the Administrative Process Act as “any statement of general application, *having the force of law*, affecting the rights or conduct of any person, adopted by an agency in accordance with the authority conferred on it by applicable basic laws.” See also *Woods v. Commonwealth*, 26 Va. App. 450, 457, n. 3, 495 S.E.2d 505, 509 n. 3 (1998) (“a statement of policy does not have the force of law . . . .”) (quoting *Shenango Tshp. Bd. of Supvrs. v. Pa. Pub. Util. Comm’n*, 686 A.2d 910, 914 (Pa. Commw. Ct. 1996)).

<sup>18</sup> *DiGiacinto*, 281 Va. at 136, 704 S.E.2d at 370.

<sup>19</sup> 2008 Op. Va. Att’y Gen. 12, 13.

<sup>20</sup> *Heller*, 554 U.S. at 625-26.

<sup>21</sup> I further note that a wide range of persons are automatically disqualified from receiving a concealed carry permit. Persons who have been convicted of certain crimes, including stalking, assault and battery, and public drunkenness, persons who have been subject to restraining orders, who are addicted to controlled substances, persons found by a preponderance of the evidence to be likely to use a weapon unlawfully or negligently to endanger others, or who have had or had certain mental health issues are all ineligible to receive such a permit. See VA. CODE ANN. § 18.2-308(E)(1) through (20) (listing persons ineligible for a permit).

<sup>22</sup> 2000 Op. Va. Att’y Gen. 100, 101.

bring their weapons to such locations.<sup>23</sup> In *DiGiacinto*, George Mason University promulgated a regulation, which has the force of law, prohibiting a person from carrying a firearm in certain buildings. Therefore, persons with concealed carry permits could not bring them into the specified buildings because doing so under this regulation was “otherwise prohibited by law.” The University of Virginia’s *policy*, in contrast, is not a regulation and, therefore, does not have the force of law. Consequently, the policy does not fall within the terms of the exception contemplated in § 18.2-308(O). Under § 18.2-308(O), persons with valid concealed carry permits may not, through a policy, as opposed to a regulation, be prohibited from exercising their right to carry a concealed handgun. To prevent persons who have concealed carry permits from bringing them into University or Medical Center buildings, the University would need to promulgate a regulation tailored to that effect.

In reviewing the legality of the policies, I express no opinion about their wisdom. It certainly can be argued that such policies are ineffectual because persons who wish to perpetrate violence will ignore them, and that the net effect of such policies is to leave defenseless the law-abiding citizens who follow these policies. The task at hand, however, is not to evaluate the desirability of such policies. Instead, the role of the Office is to assess the lawfulness of these policies in light of the law as it presently exists in Virginia.

### Conclusion

Accordingly, I am compelled to conclude that under its policies, the University lawfully may prohibit persons from openly carrying a firearm in the buildings that are subject to the policy. It is further my opinion that with respect to persons who have a concealed carry permit, because the University adopted a policy rather than a regulation, it has not “otherwise prohibited by law” persons with a concealed carry permit from possessing a handgun, and, therefore, the policies may not be used to prohibit persons with such a permit from carrying a concealed firearm onto the buildings covered by the policy.

With kindest regards, I am

Very truly yours,

A handwritten signature in blue ink that reads "Ken C II". The signature is stylized and cursive.

Kenneth T. Cuccinelli, II  
Attorney General

---

<sup>23</sup> Examples include the prohibition on bringing weapons in courthouses, VA. CODE ANN. § 18.2-283.1 (2009), or in air carrier airport terminals, VA. CODE ANN. § 18.2-287.01 (2009).



VICE PRESIDENT *and* CHIEF EXECUTIVE OFFICER  
*of the* MEDICAL CENTER

MEDICAL CENTER POLICY NO. 0174

- A. SUBJECT: Prohibition on Firearms, Weapons and Destructive Devices on University Property
- B. EFFECTIVE DATE: July 1, 2009 (R)
- C. POLICY:

The University of Virginia Medical Center adheres to the University of Virginia policy regarding "Firearms, Weapons and Destructive Devices" which states:

The safety of the University community is promoted by the reasonable regulation of firearms, weapons and destructive devices on University property and within University facilities.

For purposes of University policy and this Medical Center Policy 0174, University facilities include, but are not limited to, any academic, administration, residential, medical, entertainment or sports venues including any amphitheater, arena, classroom, clinic, dormitory or other residential facility, gymnasium, laboratory, office, theater, research facilities, stadium, and the Medical Center.

Medical Center staff, employees, vendors and contractors (with the exception of law enforcement officers) are prohibited from possessing, storing or using any firearm, weapon, ammunition, or explosives on any University property or within any University facility, without the prior written permission of the University's Chief of Police or his designee.

Patients and visitors to the Medical Center (with the exception of law enforcement officers) are prohibited from possessing, storing or using any firearm, weapon, ammunition, or explosives within any University facility, without the prior written permission of the University's Chief of Police or his designee.

In addition to other individuals authorized by Medical Center policy, University of Virginia police officers are lawfully in charge of University property and University facilities for purposes of forbidding any person from entering or remaining upon or within University property and facilities while possessing firearms, weapons or destructive devices in violation of this policy.

Except as provided in University policy on Fireworks Display, the possession, storage or use of any fireworks on University property or within any University facility is strictly prohibited.

(SUBJECT: Prohibition on Firearms, Weapons and Destructive Devices on University Property)

D. DEFINITIONS:

1. **Law Enforcement Officer:** Any sworn law enforcement officer who has the duty and obligation to enforce the penal or traffic laws of the Commonwealth of Virginia, or any portion thereof, as certified by his appointing authority and including, but not limited to, any person appointed pursuant to Code of Virginia sections 4.1-100, 9.1-101, 15.2-1609, 15.2-1700, 23-232, 29.1-200, 30-34.2:1, 52-1, 53.1-1, 53.1-143, 66-25.3; any attorney for the Commonwealth as provided in Code of Virginia section 18.2-308(B)(9); any conservator of the peace exempt from the Code of Virginia section 18.2-308(A) pursuant to section 18.2-308(C)(4); and any sworn federal law enforcement officers or agents and any law enforcement agents of the Armed Forces of the United States who are authorized to carry weapons by federal law.
2. **University Facility:** Any defined space at the University (including all Medical Center facilities), including a room, lab, series of labs, building or controlled outdoor area.
3. **University Property:** Land or buildings owned or leased by the University (including all Medical Center property) and under the direct control of the Board of Visitors.
4. **Weapon:** Any pistol, revolver, rifle, shotgun, air-pistol or other weapon designed or intended to propel a missile of any kind; or any dirk, bowie knife, switchblade knife, ballistic knife, razor slingshot, spring stick, metal or lexan knucks, blackjack; or any flailing instrument consisting of two or more rigid parts connected in such manner as to allow them to swing freely, which may be known as nun chahka, nun chuck, nunchaku, shuriken, or fighting chain; or any disc, of whatever configuration, having at least two points or pointed blades which is designed to be thrown or propelled and which may be known as throwing star or oriental dart.
5. **Fireworks:** A device consisting of a combination of explosives and combustibles, set off to generate colored lights, smoke and noise for amusement.

E. PROCEDURE:

1. An employee who sees or suspects that a patient, visitor or employee is in possession of a firearm or other weapon or destructive device on University property shall promptly report this information to his/her supervisor.
2. The supervisor shall immediately contact the University of Virginia Police by calling 911 and convey the information reported by the employee.
3. If the employee's supervisor is not available or if the employee believes there is no time to contact the supervisor, the employee should contact the University of Virginia Police by calling 911.
4. University of Virginia Police shall report immediately to the scene to assess the situation and take appropriate action.
5. A request for permission to possess, store or use a firearm, weapon or other device covered by this policy should be addressed in advance to the Chief of the University Police Department where it will be evaluated on a case-by-case basis in accordance with state and federal law,