

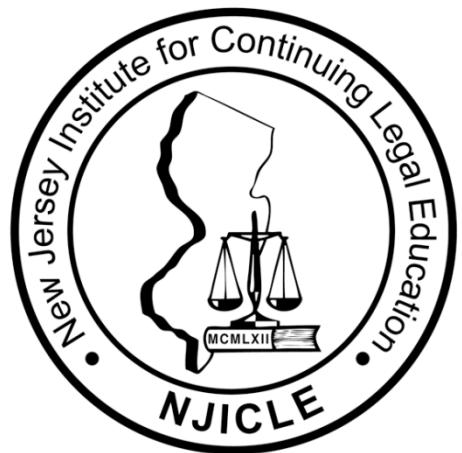
NEW JERSEY GUN LAW: PERMITTING ISSUES AND UNLAWFUL POSSESSSION CHARGES

2017 Seminar Material

S0252.17

New Jersey Institute for
Continuing Legal Education

A Division of the State Bar Association
NJICLE.com



NEW JERSEY GUN LAW: PERMITTING ISSUES AND UNLAWFUL POSSESSION CHARGES

Featuring

Michael Brett Roberts, Esq.
Roberts & Teeter LLC
(Somerset)

Cindy P. Glaser, Esq.
Middlesex County Prosecutor's Office
(New Brunswick)

In cooperation with the New Jersey State Bar Association **Senior Lawyers
Special Committee** S0252.17



© 2017 New Jersey State Bar Association. All rights reserved. Any copying of material herein, in whole or in part, and by any means without written permission is prohibited. Requests for such permission should be sent to NJICLE, a Division of the New Jersey State Bar Association, New Jersey Law Center, One Constitution Square, New Brunswick, New Jersey 08901-1520.

Table of Contents

	<u>Page</u>
New Jersey Firearms Law PowerPoint Presentation Cindy P. Glaser	1
How to Handle the Unlawful Possession of a Firearm Charge PowerPoint Presentation Michael Brett Roberts	55
About the Panelists...	91

NEW JERSEY FIREARMS LAW

**ASSISTANT PROSECUTOR CINDY P. GLASER
MIDDLESEX COUNTY PROSECUTOR'S OFFICE**

NEW JERSEY FIREARMS PERMITS

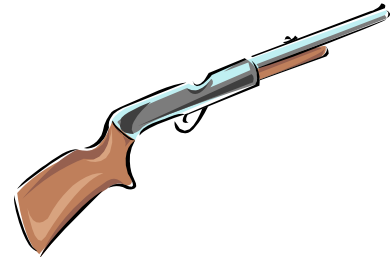
**FIREARMS IDENTIFICATION CARD
HANDGUN PURCHASE PERMIT
HANDGUN CARRY PERMIT
RETIRED OFFICER CARRY PERMIT
ASSAULT WEAPONS PERMIT
MACHINE GUN PERMIT**

WHERE CAN LAWS AND REGULATIONS THAT GOVERN GUN OWNERSHIP BE FOUND?

<u>N.J.S.A.</u> 2C:58 et seq	REGULATORY PROVISIONS
<u>N.J.S.A.</u> 2C:39 et seq	CRIMINAL PROVISIONS
<u>N.J.S.A.</u> 2C:25 et seq	DOMESTIC VIOLENCE
<u>N.J.A.C.</u> 13:54 et seq	ADMINISTRATIVE
<u>U.S.C.</u> 18: 922 et seq	FEDERAL (INTERSTATE COMMERCE)

FIREARMS IDENTIFICATION CARD

- RIFLES AND SHOTGUNS
- UNLIMITED
- AGE 18
- IN HOME, AT RANGE, HUNTING
- VALID FOR LIFE OR UNTIL
“DISABLED”



HANDGUN PURCHASE PERMIT

- HANDGUNS
- ONE / PERMIT
- AGE 21
- IN HOME, AT RANGE, HUNTING
- VALID FOR 90 DAYS, RENEWABLE FOR 90 DAYS (GOOD CAUSE)
- ONE PURCHASE EVERY 30 DAYS (13/YEAR)



N.J.S.A. 2C:58-3

NO PERSON OF GOOD CHARACTER
AND GOOD REPUTE IN THE
COMMUNITY IN WHICH HE LIVES,
AND WHO IS NOT SUBJECT TO ANY
OF THE DISABILITIES SET FORTH
...SHALL BE DENIED A PERMIT TO
PURCHASE A HANDGUN OR
FIREARMS IDENTIFICATION CARD.

WHERE TO APPLY

**LOCAL POLICE DEPARTMENT
NJSP**

**WHERE TO OBTAIN
APPLICATIONS**

WWW.NJSP.ORG

N.J.S.A. 2C:58-3 ***DISABILITIES***

- FID AGE 18, PURCHASE PERMIT AGE 21
- A CONVICTION FOR ANY CRIME OR A DISORDERLY PERSONS OFFENSE OF DOMESTIC VIOLENCE WHETHER OR NOT ARMED WITH A WEAPON
- ANY DRUG DEPENDENT PERSON
- ANY PERSON WHO IS CONFINED TO A MENTAL INSTITUTION OR SANITARIUM
- HABITUAL DRUNKARD

N.J.S.A. 2C:58-3
DISABILITIES

- PHYSICAL DISEASE OR DEFECT WHICH WOULD MAKE IT UNSAFE FOR HIM TO HANDLE FIREARMS
- EVER BEEN CONFINED FOR A MENTAL DISORDER OR ANY ALCOHOLIC UNLESS PRODUCES A CERTIFICATE OF A MD OR PSYCHIATRIST (OR OTHER SATISFACTORY PROOF) ...WOULD NOT HANDICAP HIM IN THE HANDLING OF FIREARMS
- KNOWING FALSIFICATION OF APPLICATION (3RD DEGREE OFFENSE)

N.J.S.A. 2C:58-3
DISABILITIES

- SUBJECT TO A DV RESTRAINING ORDER (*2 YEAR)
- WEAPON SEIZED PURSUANT TO DV AND NOT RETURNED
- JUVENILE CONVICTION FOR AN OFFENCE INVOLVING USE OR POSSESSION OF A WEAPON, EXPLOSIVE DEVICE OR AN 85% CHARGE
- PUBLIC HEALTH SAFETY AND WELFARE
- ALSO INCLUDES OTHER PERSONS IN THE HOME. IN RE APPLICATION OF CLARK 257 NJS 152 (LAW DIV 1992)

DEFINITION OF PRIOR CONVICTION

**A CONVICTION IN ANOTHER STATE
SHALL CONSTITUTE A PRIOR
CONVICTION OF A CRIME IS A
SENTENCE OR IMPRISONMENT IN
EXCESS OF SIX MONTHS WAS
AUTHORIZED UNDER THE LAW OF
THE OTHER JURISDICTION**

NJS 2C: 44 - 4

**IN THE MATTER OF DENIAL
OF APPLICATION
BY GEORGE WINSTON
FOR A
FIREARMS IDENTIFICATION
CARD**

438 NJS 1

10/31/14

A NEW YORK CERTIFICATE OF RELIEF FROM DISABILITIES DID NOT ERADICATE OR EXPUNGE THE UNDERLYING CONVICTION, AND INSTEAD, IT MERELY REMOVED CERTAIN DISABILITIES ANDS BARS TO EMPLOYMENT NORMALLY ATTENDANT TO THE CONVICTION UNDER NEW YORK LAW

IS THERE A LIMIT TO THE
NUMBER OF GUNS THAT
CAN BE PURCHASED??

FID – UNLIMITED RIFLES AND SHOTGUNS
NO RECORDS KEPT

PURCHASE PERMITS – ONE GUN / PERMIT
UNLIMITED NUMBER OF PERMITS
ONE PURCHASE EVERY 30 DAYS
(13/YEAR)

COLLECTOR EXCEPTION
NJS 2C:58 – 3.4

GRANTED BY NJSP

ONE OF THE FOLLOWING:

TO PURCHASE MULTIPLE HANDGUNS FROM
SOMEONE WHO RECEIVED THE HANDGUNS
THRU INHERITANCE

APPLICANT IS A COLLECTOR AND HAS A
“NEED TO PURCHASE”

APPLICANT IS A COMPETITOR

STATE OF NEW JERSEY
Application for Firearms Purchaser Identification Card and/or Handgun Purchase Permit

This form is prescribed by the Superintendent for use by applicants for Firearms Purchaser I.D. Cards & Handgun Purchase Permits. Any alteration to this form is expressly forbidden.

Check Appropriate Block(s)

Initial Firearms Purchaser Identification Card Change of name on Identification Card
 Lost or Stolen Identification Card Mutilated Identification Card
 Change of Address on Identification Card Application to Purchase a Handgun Quantity of Permits: _____
 Change of Sex on Identification Card Application to Purchase a Handgun List former name and attach copy of marriage license or court order

(1) NAME: Last (if female, include maiden) _____ First _____ Middle _____ (2) SOCIAL SECURITY NUMBER _____

(3) RESIDENCE ADDRESS: Number & Street _____ City _____ State _____ Zip _____ (4) HOME TELEPHONE (_____) _____

(5) DATE OF BIRTH ____/____/____ (6) AGE ____ (7) PLACE OF BIRTH: City, State, Country _____ (8) DRIVER'S LICENSE NUMBER & STATE _____

(9) SEX: _____ RACE: _____ HEIGHT: _____ WEIGHT: _____ HAIR: _____ EYES: _____ (10) DIST. PHYSICAL CHARACTERISTICS: _____ (11) U.S. CITIZEN: Yes No

(12) NAME OF EMPLOYER: _____ EMPLOYER'S ADDRESS & TELEPHONE: _____ (13) OCCUPATION: _____

(14) ADDRESS APPEARING ON FORMER FIREARMS IDENTIFICATION CARD (if Applicable): _____ (15) N.J. FIREARMS ID CARD/SBI NUMBER: _____

(16) Have you ever been convicted of any domestic violence offense in any jurisdiction which involved the elements of (1) striking, kicking, shoving, or (2) purposely or attempting to or knowingly or recklessly causing bodily injury, or (3) negligently causing bodily injury to another with a deadly weapon? If yes, explain. Yes No

(17) Are you subject to any court order issued pursuant to Domestic Violence? If yes, explain. Yes No

(18) Have you ever been adjudged a juvenile delinquent? If yes, list date(s), place(s), and offense(s). Yes No

(19) Have you ever been convicted of a disorderly persons offense in New Jersey or any criminal offense in another jurisdiction where you could have been sentenced up to six months in jail that has not been expunged or sealed? If yes, list date(s), place(s) and offense(s). Yes No

(20) Have you ever been convicted of a crime in New Jersey or a criminal offense in another jurisdiction where you could have been sentenced to more than six months in jail that has not been expunged or sealed? If yes, list date(s), place(s) and offense(s). Yes No

(21) Do you suffer from a physical defect or disease? Yes No (22) If answer to question 21 is yes, does this make it unsafe for you to handle firearms? If not, explain. Yes No

(23) Are you an alcoholic? Yes No (24) Have you ever been confined or committed to a mental institution or hospital for treatment or observation of a mental or psychiatric condition on a temporary, interim, or permanent basis? If yes, give the name and location of the institution or hospital and the date(s) of such confinement or commitment. Yes No

(25) Are you dependent? Yes No (26) Have you ever been arrested, treated or observed by any doctor or psychiatrist or at any hospital or mental institution on an inpatient or outpatient basis for any mental or psychiatric condition? If yes, give the name and location of the doctor, psychiatrist, hospital or institution and the date(s) of such occurrence. Yes No

(27) Have you ever had a firearms purchaser identification card, permit to purchase a handgun, permit to carry a handgun or any other firearms license or application refused or revoked in New Jersey or any other state? If yes, explain. Yes No

(28) Are you presently, or have you ever been a member of any organization which advocates or approves the commission of acts of force and violence, either to overthrow the Government of the United States or of this State, or which seeks to deny others their rights under the Constitution of either the United States or the State of New Jersey? If yes, list name and address of organization(s). Yes No

(29) Names, Addresses and Telephone Numbers of two reputable persons who are presently acquainted with the applicant, other than relatives:
A. _____
B. _____

APPLICANT: DO NOT WRITE BELOW THIS SPACE

A non-refundable fee of \$5.00 for a Firearms Purchaser Identification Card (plus a Firearms Purchaser ID card only and/or \$2.00 for each Permit to Purchase a Handgun, payable to the Superintendent of State Police or the Chief of Police in the municipality in which you reside, must accompany this application.

I hereby certify that the answers given on this application are complete, true and correct in every particular. I realize that if any of the foregoing answers made by me are false, I am subject to punishment. Falsification of this form is a crime of the third degree as provided in N.J.S. 2C:18-10c.

(30) Signature of Applicant _____ Date of Application _____
(The disclosure of my social security number is voluntary. Without this number, the processing of my application may be delayed. This number is considered confidential.)

APPROVED IDENTIFICATION CARD/PERMIT NUMBER(S) _____

DISAPPROVED Reason for Disapproval: A. CRIMINAL RECORD B. PUBLIC HEALTH SAFETY AND WELFARE C. MEDICAL, MENTAL OR ALCOHOLIC BACKGROUND D. NARCOTICS/ DANGEROUS DRUG OFFENSE E. FALSIFICATION OF APPLICATION F. DOMESTIC VIOLENCE G. OTHER (SPECIFY) _____

GRANTED OR APPEAL _____

This _____ Day of _____, 20____

Signature _____ Title _____
Department of Police _____ Municipal Code # _____

S.T.S. 033 (rev. 9/04)

FID AND HANDGUN PERMIT

STATE OF NEW JERSEY
APPLICATION FOR PERMIT TO CARRY A HANDGUN

This form is prescribed by the Superintendent for use by applicants for a Permit to Carry a Handgun. Any alteration to this form is expressly forbidden.

NEW RENEWAL Municipal Code

Application must be delivered, in triplicate, to the Chief of Police of the municipality wherein you reside, or to the Superintendent of State Police in all other cases. A money order in the amount of \$20.00 payable to the State of New Jersey must accompany this application.
 Answer all questions. If more space is needed, attach bond paper. Page two must be completed. Four photographs of the applicant, one and one-half inch square, head and shoulders, no hat, light background, taken within the last 30 days must accompany this application.

Each person applying for a Permit to Carry and Handgun must supply a letter of need, specific in content, as to why they have a need to carry a firearm in the State of New Jersey. If this application is employment-related, then your employer must supply this letter. List the reason for this application.

(1) Last Name (if female, include maiden) First Middle (2) Resident Address (Number - Street - City - State - Zip)

(3) Date of Birth (4) Age (Place of Birth - City - State or Country) (5) U.S. Citizen (6) Social Security Number
 Yes No

(7) Sex Height Weight Eyes Race Hair Complexion (8) Distinguishing Physical Characteristics

(9) Name of Employer (10) Employer's Address (Number - Street - City - State - Zip)

(11) Occupation (12) Home Telephone (13) Business Telephone

(14) Driver's License Number & State (15) If you possess a N.J. Firearms Purchaser ID Card, list the number

(16) Have you ever been adjudged a juvenile delinquent? Yes No If Yes, List Date(s) Place(s) Offense(s)

(17) Have you ever been convicted of a felony offense, or a crime that has not been expunged or sealed? Yes No If Yes, List Date(s) Place(s) Offense(s)

(18) Have you ever been convicted of a criminal offense, that has not been expunged or sealed? Yes No If Yes, List Date(s) Place(s) Offense(s)

(19) Have you ever had a firearms purchaser identification card, permit to purchase a handgun, or permit to carry a handgun, refused or revoked? Yes No If Yes, By Whom? When? Where Why?

(20) Have you ever had an Employee of Firearms Dealer License refused or revoked? Yes No If Yes, By Whom? When? Where Why?

(21) Are you an Alcoholic? Yes No (22) Have you ever been confined or committed to a mental institution or hospital for treatment or observation of a mental or psychiatric condition on a temporary, interim or permanent basis? If Yes, give the name and location of the institution or hospital and the date(s) of such confinement or commitment. Yes No

(23) Are you dependent upon the use of any narcotic or other controlled dangerous substance? Yes No

(24) Are you now being treated for a drug abuse problem? Yes No (25) Have you ever been attended, treated or observed by any doctor or psychiatrist or at any hospital or mental institution on an inpatient or outpatient basis for any mental or psychiatric conditions? If Yes, give the name & location of the doctor, psychiatrist, hospital or institution and the date(s) of such occurrence. Yes No

(26) Do you suffer from a physical defect or sickness? Yes No (27) If answer to question 26 is yes, does this make it unsafe for you to handle firearms? If not, explain. Yes No (28) Are you subject to any court order issued pursuant to Domestic Violence? If yes, explain. Yes No

(29) Have you ever been convicted of any domestic violence in any jurisdiction which involved the elements of (1) striking, kicking, shoving, or (2) purposely or recklessly causing bodily injury, or (3) recklessly causing bodily injury to another with a weapon? If Yes, explain. Yes No

(30) Are you presently, or have you ever been a member of any organization which advocates or approves the commission of acts of violence, either to overthrow the government of the United States or of this State, or to deny others of their rights under the Constitution of either the United States or the State of New Jersey? If Yes, list name and address of organization(s). Yes No

APPLICANT: DO NOT WRITE BELOW THIS SPACE

To the Judge of the Superior Court of _____ County, I have investigated or caused to be investigated the applicant, and from the results of such investigation, the applicant is: (Attach investigation Report when submitting to Superior Court.)

APPROVED This _____ Day of _____, 20____
 Signature _____ Title _____
 Department of Police


REASON FOR DISAPPROVAL
 A. CRIMINAL RECORD
 B. PUBLIC HEALTH SAFETY AND WELFARE
 C. MEDICAL, MENTAL OR ALCOHOLIC BACKGROUND
 D. NARCOTICS, DANGEROUS DRUG OFFENSE
 E. FALSIFICATION OF APPLICATION
 F. DOMESTIC VIOLENCE
 G. LACK OF JUSTIFIABLE NEED
 H. OTHER (SPECIFY) _____

The foregoing application, having been presented to me, and the determination made of the sufficiency thereof, and the need of the applicant to carry a handgun, I hereby: **GRANT** a permit, pursuant to Section 2C:58-4 of the New Jersey Statutes.
 This _____ Day of _____, 20____
 Deny _____
 Judge of the Superior Court County NJ

GRANTED ON APPEAL SBI Number _____
 Permit Number _____
 Restrictors Yes (List on Page 2) No

S.P. 642 (Rev. 02/09) Page One of Two Pages

NOTE: If Internet form, print Page 1, return to printer and print Page 2 on reverse side.



CONSENT FOR MENTAL HEALTH RECORDS SEARCH

This consent MUST be completed by the firearm applicant.
Failure to consent requires denial or disapproval of the application.

N.J.S.A. 30-4-24.3 provides that all records of any individual's commitment to a non-correctional institution for mental health reasons shall be confidential and shall not be disclosed except in limited circumstances or with the consent of the individual.

PART ONE (To be completed by the applicant)

Name: (Last, Maiden, First, MI) _____ Date of Birth: (Month, Day, Year) _____ Social Security Number: _____

Address: (Number & Street) _____ (Municipality) _____ (County) _____ (State) _____

List Prior Addresses for past 10 years: NOT APPLICABLE

ADDRESS 1: Dates Resided From: _____ To: _____
(Number & Street) _____ (Municipality) _____ (County) _____ (State) _____

ADDRESS 2: Dates Resided From: _____ To: _____
(Number & Street) _____ (Municipality) _____ (County) _____ (State) _____

I, _____ am aware of my rights under N.J.S.A. 30-4-24.3, and the Health Insurance Portability and Insurance Accountability Act (HIPAA), 45 C.F.R. 164.50, and consent to the disclosure of my mental health records to the Chief of Police and the Superintendent of State Police, or their designees, for the purpose of verifying my firearms permit application and my fitness to own a firearm under N.J.S.A. 2C:58-3. I understand that copies of this authorization shall be considered sufficient authorization for the release of records.

Investigating Police Department _____ Witness _____

X Signature of Applicant _____ Date _____
(The disclosure of my Social Security Number in substance, without 4th number, and irreversibility of my application may be denied. This number is considered confidential.)

PART TWO (To be completed by County Adjuster's Office, Mental Health Institution and/or Doctor)

	Record of Admission Commitment or Treatment	Date of Check	Signature of Authorized Official or Doctor
County Adjuster's Office _____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____	_____
Institution or Doctor _____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____	_____

PART THREE (To be completed by authorized official or doctor only if applicant has record of admission, commitment, or treatment at a hospital, mental institution or sanitarium for a mental disorder)

NAME OF HOSPITAL, MENTAL INSTITUTION OR SANITARIUM	ADMISSION (mo./day/yr)	DISCHARGE (mo./day/yr)	SIGNATURE OF AUTHORIZED OFFICIAL OR DOCTOR
_____	_____ to _____	_____	_____
_____	_____ to _____	_____	_____

S.P. 66 (Rev. 11/07) Additional forms may be obtained through the New Jersey State Police, Firearms Investigation Unit, P.O. Box 7068, West Trenton, NJ 08628-0068, or via the internet at www.njsp.org/info/forms.htm

Initial Evaluation

Patient Name: [REDACTED]

Id: [REDACTED] CWS Episode: 2

Personal History: CLIENT GRADUATED HIGH SCHOOL WHERE HE REPORTS BEING PICKED ON "BECAUSE I WAS FAT" AND HAD A FEW FRIENDS. CLT ALSO REPORTS HX OF ANGER AS TEENAGER AND SAW A THERAPIST THEN BUT WAS NEVER ON MEDICATIONS. HE CURRENTLY ATTENDS MIDDLESEX COMMUNITY COLLEGE PART-TIME BUT WILL BE DROPPING OUT AS HE "DOESNT CARE AS MUCH, MY GRADES ARE FALLING". WORKS PART-TIME AT WAL-MART ELECTRONICS DEPT.

History of Physical/Sexual Abuse or Neglect: Denied
Assessment of Abuse or Neglect: Denied

If Yes and Client <18, Notification: Specific Details on Notification:

Family History:

Biological Mother: Living Cause of Death & When:
Biological Father: Living Cause of Death & When:

Family Constellation and Current Home Environment: LIVES AT HOME WITH MOTHER, FATHER AND TWO BROTHERS. FAMILY IS VERY SUPPORTIVE.

Psych illness in Bio Family: Yes If Yes What? FATHER - HX OF OUTPT PSYCH TX IN TEENS
MOTHER - HX OF MILD DEPRESSION
BROTHER - HX OF SCHIZOPHRENIA, HX OF PSYCH ADMISSION, HX OF SUICIDE ATTEMPT
MATERNAL GRANDFATHER - HX OF PSYCH ADMISSIONS - "INSTITUTIONALIZED IN PAST"

Issues in the Family: &Other&

Describe Areas Checked, Comments on the Family: BROTHER HAS DX OF SCHIZOPHRENIA AND HAS PSYCH HX WITH HX OF SUICIDE ATTEMPTS.

Physical Health Status:

Allergies / Adverse Reactions to Medication: Denied Specific details:

Most Recent Physical Exam: Within 1 Year Primary Care Physician, Name, Phone #: NEEDS

Significant Medical or Surgical History: &Hypertension&Other&

Pain Present: Denied If Yes, Details:

Special Nutritional Needs and Problems: &None&

Other, Details on Medical, Surgical, Nutritional History:

Functional Assessment - Base on Most Recent 3 Months:

Personal Appearance - grooming, hygiene: Independent
Household Maintenance - as age appropriate: Independent
Transportation / Telephone - as age appropriate: Independent
Finances - as age appropriate: Independent
Safety and Prevention: Independent

Comments on Functional Assessment:

Summaries: Formulation and Recommendations:

Client's Level of Knowledge/Understanding of Condition: Fair

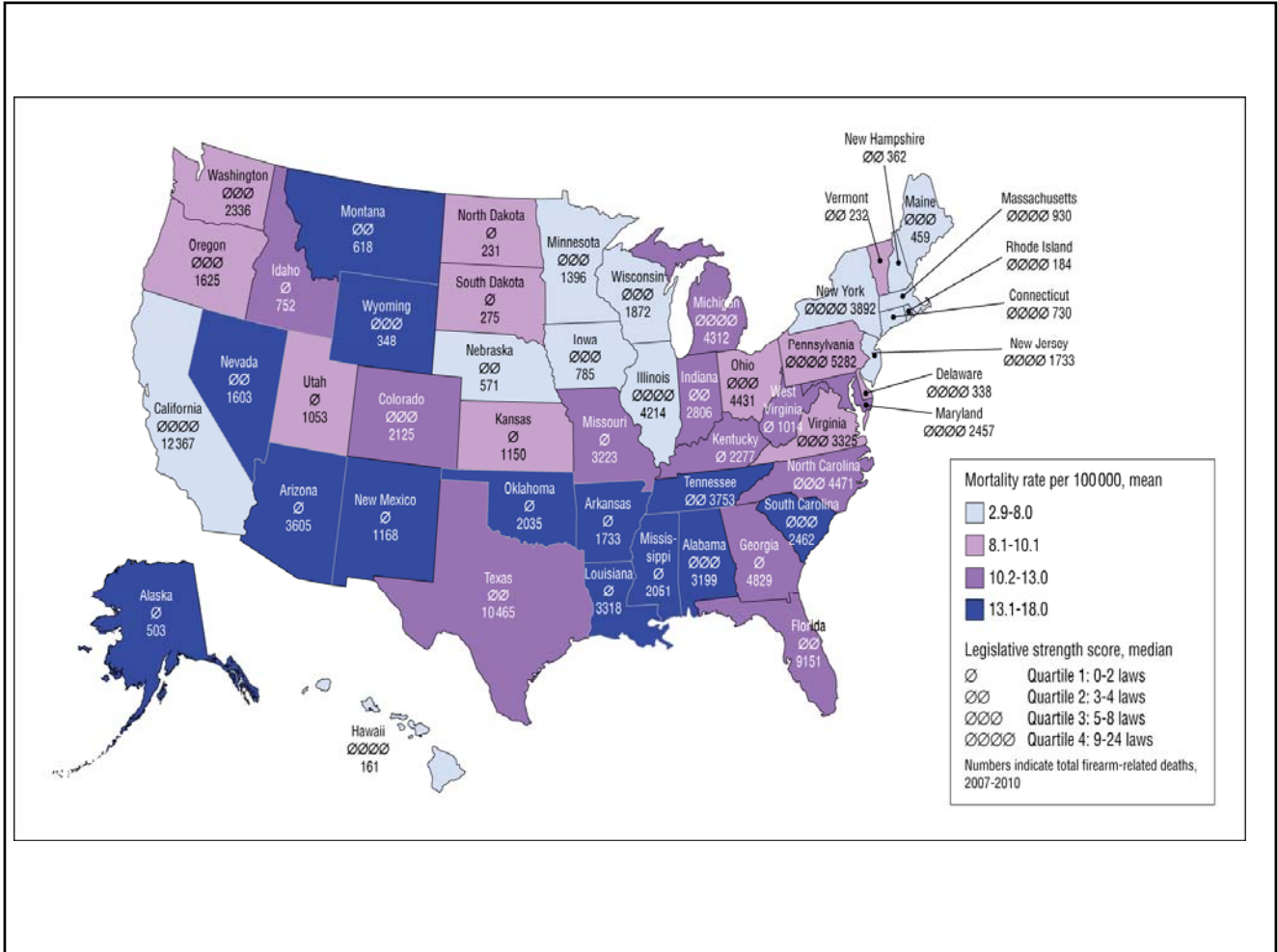


Table 2. State Legislative Strength Scores and Firearm Fatality Rates per 100 000 Individuals per Year, 2007-2010^a

Rank	State	Legislative Strength Score, Median (Range) ^b	Firearm Fatalities, Mean (SD)		
			Overall	Suicide	Homicide
1	Massachusetts	22.5 (22-24)	3.4 (0.42)	1.7 (0.31)	1.7 (0.18)
2	California	22 (22-23)	8.0 (0.45)	4.0 (0.06)	4.0 (0.45)
	New Jersey	22 (22-24)	4.9 (0.19)	1.9 (0.04)	3.0 (0.27)
4	Connecticut	20 (19-20)	5.1 (0.75)	2.6 (0.40)	2.5 (0.39)
5	New York	19 (19-19)	4.8 (0.18)	2.1 (0.10)	2.7 (0.06)
6	Hawaii	16 (15-16)	2.9 (0.44)	2.3 (0.39)	0.7 (0.08)
	Maryland	16 (15-17)	10.5 (1.20)	4.1 (0.35)	6.3 (1.00)
8	Rhode Island	14 (13-14)	4.1 (0.61)	2.6 (0.70)	1.5 (0.25)
9	Illinois	11.5 (11-12)	7.9 (0.18)	3.3 (0.15)	4.7 (0.22)
10	Michigan	11 (10-11)	10.6 (0.05)	5.6 (0.22)	5.1 (0.22)
11	Delaware	9 (8-9)	9.5 (1.10)	4.6 (0.34)	4.8 (1.20)
12	Pennsylvania	8.5 (8-9)	10.1 (0.24)	5.7 (0.25)	4.3 (0.27)
13	Alabama	8 (8-8)	16.3 (0.73)	9.0 (0.64)	7.2 (0.99)
	North Carolina	8 (7-8)	11.7 (0.44)	7.0 (0.27)	4.6 (0.56)
	Virginia	8 (8-8)	10.1 (0.29)	6.5 (0.33)	3.4 (0.30)
	Washington	8 (8-9)	8.4 (0.12)	6.6 (0.29)	1.8 (0.10)
17	Iowa	7 (3-7)	6.2 (0.87)	5.2 (0.72)	0.9 (0.30)
18	Minnesota	6 (5-6)	6.4 (0.33)	5.2 (0.18)	1.2 (0.22)
	Oregon	6 (6-6)	9.9 (0.64)	8.5 (0.51)	1.3 (0.19)
20	Colorado	5 (5-5)	10.3 (0.54)	8.3 (0.47)	2.1 (0.16)
	Maine	5 (5-5)	8.0 (0.44)	6.8 (0.58)	1.1 (0.09)
	Ohio	5 (4-5)	9.1 (0.70)	5.5 (0.51)	3.6 (0.19)
	South Carolina	5 (5-6)	13.0 (0.24)	7.5 (0.64)	5.4 (0.29)
	Wisconsin	5 (4-5)	8.0 (0.45)	6.0 (0.24)	1.9 (0.34)
	Wyoming	5 (4-5)	15.5 (1.80)	14.6 (1.50)	1.3 (0.004)
26	Georgia	4 (4-5)	12.2 (0.37)	7.2 (0.56)	5.1 (0.58)
	Nebraska	4 (3-4)	7.6 (0.56)	5.2 (0.28)	2.3 (0.40)
	New Hampshire ^c	4 (3-4)	6.4 (0.51)	6.0 (0.86)	NA
	Tennessee	4 (4-4)	14.3 (0.54)	8.9 (0.34)	5.3 (0.44)
	Vermont ^c	4 (4-4)	8.7 (0.75)	7.8 (1.50)	NA
31	Florida	3 (3-4)	11.8 (0.45)	6.9 (0.33)	4.8 (0.48)
	Indiana	3 (2-3)	10.5 (0.36)	6.7 (0.40)	3.8 (0.21)
	Mississippi	3 (3-3)	16.8 (1.10)	9.3 (0.55)	7.4 (0.68)
	Nevada	3 (3-3)	14.9 (0.73)	10.9 (0.35)	3.9 (0.78)
36	Texas	3 (3-3)	10.5 (0.21)	6.6 (0.33)	3.9 (0.28)
	Montana	2.5 (2-3)	14.8 (0.48)	12.8 (0.72)	1.8 (0.41)
37	Arkansas	2 (2-2)	14.5 (0.78)	9.1 (0.52)	5.3 (0.44)
	Kansas	2 (2-4)	9.9 (0.58)	7.0 (0.47)	2.8 (0.41)
	Missouri	2 (2-2)	13.0 (0.55)	7.4 (0.43)	5.5 (0.67)
	North Dakota ^c	2 (2-2)	8.4 (0.16)	7.9 (0.48)	NA
	New Mexico	2 (2-2)	13.8 (0.22)	9.6 (0.26)	4.2 (0.33)
	South Dakota	2 (2-2)	8.2 (1.50)	7.3 (1.50)	0.9 (0.02)
	West Virginia	2 (2-2)	12.7 (1.30)	9.9 (0.88)	2.7 (0.45)
44	Arizona	1.5 (1-2)	13.6 (0.68)	8.9 (0.57)	4.8 (0.89)
	Idaho	1.5 (1-2)	11.8 (0.85)	10.8 (1.00)	1.1 (0.62)
46	Alaska	1 (1-1)	17.5 (2.80)	14.4 (2.70)	3.2 (0.67)
	Kentucky	1 (1-1)	12.6 (0.71)	9.2 (0.36)	3.3 (0.41)
	Louisiana	1 (1-2)	18.0 (0.85)	7.8 (0.54)	10.1 (0.73)
	Oklahoma	1 (1-1)	13.4 (0.41)	9.4 (0.58)	4.0 (0.33)
50	Utah	0.5 (0-1)	9.8 (1.30)	8.8 (1.30)	1.1 (0.19)

Abbreviations: CDC, Centers for Disease Control and Prevention; NA, not available.

^aData are from the WISQARS (Web-based Injury Statistics Query and Reporting System)¹ and the legislative strength score.^bLegislative strength score is the median of the annual scores for 2007 through 2010. The highest legislative strength score received the lowest rank. States with the same legislative strength score are listed in alphabetical order within that score.^cState with a low number of annual deaths (<20) from homicide. Mean rate was not available from CDC.

**IN THE MATTER OF
APPLICATION OF JD TO
APPEAL DENIAL OF FID
AND PERMIT TO PURCHASE**

**407 NJS 317 2009
LAW DIV – CAMDEN COUNTY**

**APPLICANT WAS REQUIRED TO
WAIVE PRIVILEGE OF EXPUNGEMENT
OF MENTAL HEALTH COMMITMENT
RECORDS IN THE EVENT HE WISHED
TO REAPPLY FOR A PERMIT**

**PHYSICAL DESTRUCTION OF
HOSPITAL RECORDS OF COMMITTED
PERSON IS NOT AUTHORIZED BY THE
STATUTE**

11/13/08 APPLICANT APPLIED FOR AN ID CARD
AND PURCHASE PERMIT
ANSWERS "NO" TO QUESTIONS ABOUT
MENTAL/PSYCH
INVESTIGATION REVEALED PRIOR
INVOLUNTARY COMMITMENT AT ANN
KLEIN/TRENTON PSYCH AND ANCORA
(9/12/83 – 10/19/83)

12/11/08 VOORHEES POLICE DISAPPROVED
APPLICATION FOR FALSIFICATION MENTAL
HEALTH
APPLICANT APPEALED CITING EXPUNGEMENT
OF MENTAL HEALTH RECORDS IN 4/85

THE EXPUNGEMENT REMEDY APPEARS TO BE IN DIRECT CONFLICT WITH NJSA 2C:58 – 1 – 19, OUR STATE STATUTE RELATING TO FIREARMS OWNERSHIP. GENERALLY SPEAKING, THIS “STRICT REGULATORY SCHEME” DEMONSTRATES “NEW JERSEY’S COMMITMENT TO FIREARMS SAFETY (AS) UNRIVALED ANYWHERE IN THE NATION...”

NJSA2C:58 – 2.2.

DID THE APPLICANT FALSIFY HIS APPLICATION? UNDER THE CIRCUMSTANCES OF THIS CASE. HE RELIED UPON A PRIVILEGE TO WHICH HE WAS ENTITLED JUST AS HE HAS RELIED UPON IT IN THE PAST WITHOUT REPERCUSSION.

THE MAIN ISSUE HOWEVER IS WHETHER A COURT AFTER BECOMING AWARE THAT AN APPLICANT HAS A PRIOR PYSCH DIAGNOSIS AND COMMITMENT THAT HAS BEEN EXPUNGED, MAY INQUIRE INTO WHETHER THE APPLICANT HAS OVERCOME THE PSYCH DISABILITY THAT WOULD ORDINARILY ACCOMPANY THE DIAGNOSIS.

THE PRIVILEGE OF EXPUNGEMENT IS NOT ABSOLUTE. IF THE APPLICANT WISHES TO PROCEED WITH HIS APPLICATION THEN HE MUST WAIVE THE PRIVILEGE BECAUSE GOVERNMENT HAS THE A DUTY TO DETERMINE IF WHETHER THE APPLICANT QUALIFIES LAWFULLY TO OWN A HANDGUN

THE APPLICANT PUT HIS PSYCH HISTORY IN
ISSUE WHEN HE APPLIED FOR THE GUN
PERMIT

IF APPLICANT RE-APPLIES HE MUST WAIVE
THE PRIVILEGE OF EXPUNGEMENT

APPLICANT WILL BE REQUIRED TO SUBMIT
BOTH A NEW APPLICATION AND A
CERTIFICATE FROM A MEDICAL DOCTOR
OR PSYCHIATRIST LICENSED IN NJ THAT HE
IS NO LONGER SUFFERING FROM THE
DISABILITY.

NJS 30:4-24.3a
EFFECTIVE 8/7/13

REQUIRES SUBMISSION OF MENTAL HEALTH
RECORDS

STATE POLICE AND AOC MUST COLLECT
DATA TO DETERMINE WHETHER A PERSON
IS DISQUALIFIED FROM POSSESSION OF A
FIREARM

DATA TO BE TRANSMITTED TO NICS

AFTER DENIAL OF A
PERMIT

APPEAL IS TO THE SUPERIOR
COURT
MUST APPEAL WITHIN 30 DAYS

PROPER TRANSPORTATION OF A FIREARM

**UNLOADED AND CONTAINED IN A CLOSED
OR FASTENED CASE/GUN BOX/SECURELY
TIED PACKAGE OR LOCKED IN THE
TRUNK OF THE CAR IN WHICH IT IS BEING
TRANSPORTED.**

**IN THE COURSE OF TRAVEL ONLY SUCH
DEVIATIONS AS ARE REASONABLY
NECESSARY UNDER THE CIRCUMSTANCES**

NJS 2C 39 – 6H

**CAN A CIVILIAN CARRY A
LOADED HANDGUN
ON THE STREET?**

**NEW JERSEY REQUIRES A
PERMIT TO
CARRY A HANDGUN
NOTE: THERE IS NO “CARRY
PERMIT” FOR LONG ARMS**

**WHAT ARE THE
REQUIREMENTS FOR
A PERMIT TO CARRY?**

**EMPLOYMENT
JUSTIFIABLE NEED/
URGENT NECESSITY FOR
SELF PROTECTION**

**RIFLE
VS.
SHOTGUN**

**2ND DEGREE
VS.
3RD DEGREE FIREARMS**



WHAT IS A PAINT BALL GUN?

WHAT IS A SOFT AIR PISTOL?

IS A PERMIT REQUIRED?









**YOU HAVE A GUN AND DO
NOT WANT TO KEEP IT.
WHAT DO YOU DO?**

**PRIVATE SALE
CONSIGNMENT SALE
SURRENDER TO POLICE**

WHAT IS A SOURCE STATE?

**WHERE DO PEOPLE GO TO
BUY ILLEGAL GUNS?**

**WEIRD GLITCHES
HIDDEN STATUTES
AND GIANT HOLES**

EXCEPTIONS TO THE PERMIT REQUIREMENT

**NJ IS A VOLUNTARY
REGISTRATION STATE
INHERITANCE**

**NOTE: NJ REQUIRES EITHER A FID OR A
PURCHASE PERMIT TO OBTAIN
AMMUNITION**

AMMUNITION

1. NJSA 2C:58-3.3. MUST HAVE A PURCHASE PERMIT OR FID TO BUY AMMUNITION
2. NOTE: PERMIT AND TYPE OF AMMUNITION. DO NOT HAVE TO MATCH
3. HOLLOW POINTS – EXCEPTION TO 2C:39-3(F) NJS2C:39-3(G) - ALLOWS INDIVIDUALS TO KEEP SUCH AMMUNITION AT HOME OR OTHER PROPERTY OWNED.

N.J.S.A 2C:39 – 5

**UNLAWFUL POSSESSION OF A HANDGUN
WITHOUT A CARRY PERMIT – DOES NOT
APPLY TO HANDGUNS IN HOME**

**REMEMBER NJ IS A VOLUNTARY
REGISTRATION STATE – AN UNREGISTERED
GUN IN THE HOME MAY NOT BE A
CHARGEABLE OFFENSE.**

N.J.S.A. 2C:39 – 7

**PREVIOUSLY CONVICTED FELON: BE
SURE TO CHECK THE CCH – ONLY
SOME PRIOR CONVICTIONS APPLY**

**39 –7 A AND 39 – 7 B HAVE DIFFERENT
PREDICATE OFFENSES.**

N.J.S.A. 2C:39 – 12

VOLUNTARY SURRENDER –
IMMUNITY FOR POSSESSION
ONLY IF PRIOR
ARRANGEMENTS ARE MADE.

N.J.S.A 2C:39 – 10

VIOLATION OF REGULATORY
PROVISIONS - FAILURE TO OBTAIN
PROPER PERMITS / FALSIFICATION /
TRANSFER TO UNDERAGE

NOTE: IT IS ILLEGAL UNDER
FEDERAL LAW TO CROSS STATE
LINE TO PURCHASE A HANDGUN

GRAVES ACT
N.J.S.A. 2C:43 – 6 (C) (D)

MANDATORY MINIMUM OF $\frac{1}{2}$ THE TOP NUMBER
– AT LEAST 42 MONTHS OR 18 MONTHS IN THE
CASE OF 4TH DEGREE OFFENSE.

SHALL NOT APPLY TO A 3RD DEGREE FIREARM
FIREARM MUST BE LOADED

2ND TIME OFFENDER – MANDATORY EXTENDED
TERM

AMMUNITION
N.J.S.A. 2C: 58 – 3.3(B)

4TH DEGREE OFFENSE TO DISPOSE
OF/RECEIVE/PURCHASE/OR
OTHERWISE ACQUIRE/HANDGUN
AMMUNITION TO ANY PERSON WHO
DOES NOT POSSESS A FID/PURCHASE
OR CARRY PERMIT

AMMUNITION
N.J.S.A. 2C: 58 – 3.3(C)

**NO PERSON SHALL
SELL/GIVE/TRANSFER OR
OTHERWISE DISPOSE OF HANDGUN
AMMUNITION TO A PERSON UNDER
THE AGE OF 21.**

HIGH CAPACITY MAGAZINES

NJS 2C:39 – Y

DEFINITION: MORE THAN 15 ROUNDS
(AS MANUFACTURED)

NJS 39 – 3J – 4TH DEGREE OFFENSE

MAGAZINES MARKED “LAW
ENFORCEMENT USE ONLY”

CAETANO V. MASS
USSC 3/16

STATES CANNOT BAN TASERS
CONCEDED BY NJ ATTORNEY
GENERAL IN OCTOBER 2016
AWAITING REGULATIONS

PRESUMPTIONS

NJS 2C:39 – 2

IF A WEAPON IS FOUND IN A VEHICLE IT IS PRESUMED TO BE IN THE POSSESSION OF THE PASSENGERS EXCEPT:

ON THE PERSON OF ONE OF THE OCCUPANTS IF THE VEHICLE IS NOT STOLEN AND THE WEAPON IS OUT OF SIGHT IT SHALL BE PRESUMED TO BELONG TO THE INDIVIDUAL IN CONTROL OF THE VEHICLE

TAXI – PRESUMED TO BELONG TO ALL THE PASSENGERS IF THERE ARE ANY AND IF NOT TO THE DRIVER

STATE V GANTT
101 NJ 573 (1986)

**THE DEFINITION OF A FIREARM IS
BASED UPON ORIGINAL DESIGN NOT
OPERABILITY
UNLESS
IT HAS BEEN SO ALTERED AS TO HAVE
COMPLETELY LOST THE CHARACTER
OF A REAL GUN**

STATE V AUSTIN
335 NJS 486
(APP DIV 2000)

BB GUN IS A FIREARM
INOPERABLE BB GUN IS A
FIREARM
IN TRIAL REFER TO IT AS A .177
CALIBER



New Jersey Gun Law

How to Handle the Unlawful Possession of a
Firearm Charge

Michael B. Roberts, Esq. September 2017

The Statute: 2C:39

Outline:

2C:39-1 Definitions

2C:39-2 Presumptions at Trial

2C:39-3 Prohibited Weapons and Devices

2C:39-4 Possession of Weapons for Unlawful Purposes

2C:39-4.1 Weapons, Controlled Dangerous Substances and Other Offenses, Penalties

2C:39-5 Unlawful Possession of Weapons

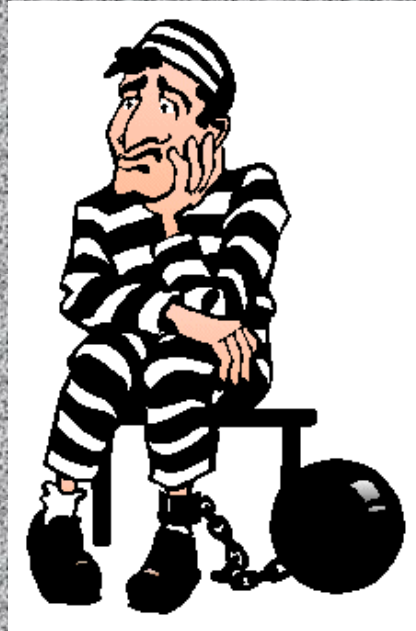
2C:39-6 Exemptions

2C:39-7 Certain Persons Not to Have Weapons

2C:39-8 through 16

2C:39-5 Unlawful Possession of Weapons

a. Machine guns. Any person who knowingly has in his possession a machine gun or any instrument or device adaptable for use as a machine gun, without being licensed to do so as provided in N.J.S.2C:58-5, is guilty of a crime of the second degree.



b. Handguns. Any person who knowingly has in his possession any handgun, including any antique handgun, without first having obtained a permit to carry the same as provided in N.J.S.2C:58-4, is guilty of a crime of the third degree if the handgun is in the nature of an air gun, spring gun or pistol or other weapon of a similar nature in which the propelling force is a spring, elastic band, carbon dioxide, compressed or other gas or vapor, air or compressed air, or is ignited by compressed air, and ejecting a bullet or missile smaller than three-eighths of an inch in diameter, with sufficient force to injure a person.

Otherwise it is a crime of the **second degree**.

c. Rifles and shotguns. (1) Any person who knowingly has in his possession any rifle or shotgun without having first obtained a firearms purchaser identification card in accordance with the provisions of N.J.S.2C:58-3, is guilty of a crime of the third degree.

(2) Unless otherwise permitted by law, any person who knowingly has in his possession any loaded rifle or shotgun is guilty of a crime of the third degree.

Rifle. 2C:39-1m – Any firearm designed to be fired from the shoulder using the energy of the explosive in a fixed metallic cartridge to fire a single projectile through a rifled bore for each single pull of the trigger.

Shotgun. 2C:39-1n – Any firearm designed to be fired from the shoulder and using the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of bore shots or a single projective for each pull of the trigger, or any firearm designed to be fired from the shoulder which does not fire fixed ammunition.

MORTAR?



Exemptions

*2C:39-5g. The temporary possession of a handgun, rifle, or shotgun by a person receiving, possessing, carrying or using the handgun, rifle, or shotgun under 2C:58-3.1 or 2C:58-3.2 shall not be considered unlawful possession.

- Firing range, pistol club, appropriate hunting ground with a license to hunt, or for training purposes by the Police, Division of Fish, Game and Wildlife, Military, etc.

Exemptions under 2C:39-6

- Members of Armed forces
- Federal law enforcement officers
- State police
- Sheriff, Assistant Prosecutor, DAG, inspector of ABCEB *
- Corrections Officers while in performance of their duties
- Regularly employed police detective
- Airport security officer
- Full-time arson investigator
- Nuclear power plant officer
- Licensed dealer in firearms and his registered employees during business hours
- Tax agents *
- Deputy conservation officers *
- Railway workers *
- Humane law enforcement officer *
- Public utilities worker *
- Trained campus police officer *
- Parole officer *
- Probation officer *
- Out of state Law enforcement officer while performing official duties

* Subject to authority granted by employer and other requirements set forth in statute.

2C:39-6e Exemptions

May keep, possess or carry a handgun, firearm, rifle, or other weapon:

- At your place of business if owner. Fixed location.
- Residence
- Premises or other land owned or possessed by him
- Or transporting between such authorized places in the manner specified in subsection g.

Transporting Firearms 2C:39-6g

- Unloaded and contained in a closed and fastened case, gunbox, securely tied package, or
- Locked in the trunk of the automobile and
- In the course of travel shall include only such deviations as are reasonably necessary under the circumstances.



Why Are Exemptions Important?



GRAVES ACT 2C:43-6

c. A person who has been convicted of 39-3, 39-4, 39-5 who while in the course of committing or attempting to commit the crime, including the immediate flight therefrom, used or was in possession of a firearm shall be sentenced to a term of imprisonment by the court. The term of imprisonment shall include the imposition of a minimum term. The minimum term shall be fixed at one-half of the sentence imposed by the court of 42 months, whichever is greater, or 18 months in the case of the fourth degree crime, during which the defendant shall be ineligible for parole.

Machine gun or assault firearm?

- 2C:43-6g. Mandatory minimum is 10 years.



Escape Valve – Graves Act Waiver

2C:43-6.2. On a motion by the prosecutor made to the assignment judge that the imposition of a mandatory minimum term of imprisonment under (a) subsection c. of N.J.S.2C:43-6 for a defendant who has not previously been convicted of an offense under that subsection, or (b) subsection e. of N.J.S.2C:39-10 for a defendant who has not previously been convicted of an offense under chapter 39 of Title 2C of the New Jersey Statutes, does not serve the interests of justice, the assignment judge shall place the defendant on probation pursuant to paragraph (2) of subsection b. of N.J.S.2C:43-2 or reduce to one year the mandatory minimum term of imprisonment during which the defendant will be ineligible for parole. The sentencing court may also refer a case of a defendant who has not previously been convicted of an offense under that subsection to the assignment judge, with the approval of the prosecutor, if the sentencing court believes that the interests of justice would not be served by the imposition of a mandatory minimum term.

Standard on Appeal

- Prosecutor's decision not to pursue or endorse an application under this section will not be disturbed on appeal unless arbitrary, capricious, or unduly discriminatory. State v. Mastapeter, 290 N.J. Super. 550 (Law. Div. 1991).

October 23, 2008 AG Directive to Ensure Uniform Enforcement of the Graves Act

- Available at <http://www.state.nj.us/lps/dcj/agguide/pdfs/Graves-Act-Oct23-2008.pdf>
- Section I. History. Address gun and gang problems. Deterrence. Prosecutor's encouraged to offer a plea through 2C:43-6.2 to 5 years, 1 without parole to encourage early pleas. PTI only in extraordinary and compelling circumstances. Probation only in those cases that "fall outside the heartland" of the policy to deter unlawful gun possession.

- Section 2. Charging, dismissals and charge bargaining.
 - If Graves act offenses can be charged then must be charged.
 - If defendant can be charged with possessing an assault firearm, he must be so charged.
 - Prosecutors shall not downgrade or dismiss unless:
 1. Prosecutor represents to the court there is insufficient evidence to warrant a conviction, or
 2. Defendant will be sentenced to prison for at least as long, or
 3. Cooperation

- Section 5. Strict enforcement of Presumption Against PTI. Requires defendant to demonstrate something extraordinary or unusual, something idiosyncratic in his or her background.
- Rare cases that fall outside the heartland.
- Examples include defendant who has no prior involvement with the criminal justice system. Defendant lawfully acquired and possessed the firearm in a different state and the defendant's presence in NJ was incident to lawful travel.
- Written notice to and explanation to AG. Fact specific and not vague.
- Objection by State. No notice to AG required.
- Granted by Court over the State's objection. Mandatory appeal by prosecutor.

- Section 6c. Standards for Exercising Waiver:
 - Consideration of aggravating and mitigating factors
 - Whether organized criminal activity applies, if so then no waiver.
 - Presumption against probation except for extraordinary and compelling cases outside the heartland including defendant has no prior involvement with CJS, unloaded, firearm posed no risk to officer or public safety, such that prison term would constitute a serious injustice that overrides the need to deter.
 - Initial plea offer is a reduction to 1 year without parole.
 - No waiver after conviction unless substantial cooperation.

2014 Changes



Shaneen Allen. Pennsylvania mother of two stopped for unsafe lane change. Told Trooper she had a firearm in the car which she carries lawfully in her home state.

September 24, 2014 AG Clarification of Graves Act 2008 Directive with Respect to Offenses Committed by Out-Of-State Visitors Form States Where Their Gun-Possession Conduct Would Have Been Lawful

- “In most of these cases imprisonment is neither necessary nor appropriate to serve the interests of justice and protect public safety.”
- In the absence of aggravating circumstances, these defendants should not be sentenced to incarceration.
- Either PTI when applicable or a rebuttable presumption in favor of non-custodial probation.

Limited Scope

- Only applies to:
 1. Out-of-state residents
 2. Who can prove the firearm had been lawfully acquired in another jurisdiction,
 3. Defendant's possession would have been lawful in their home state, AND
 4. Defendant was under the misimpression that such possession was lawful in New Jersey.

Consideration of “Special Facts”

- Minimal Exposure of the Firearm such as kept in a vehicle the whole time. Length of the visit. Number of stops. Loaded?
- Gun Possession Offense was Isolated and Aberrational. Prior arrest record? Any other offenses committed during the incident and the risk of that offense to the public of police.
- Volunteering Presence of Firearm to Police. Difference between admitting to questioning and volunteering. Denying is a significant aggravating circumstance weighing against a misimpression.
- Surrendering to hotel clerk for safekeeping.
- Circumstances concerning confusion including defendant’s familiarity with gun laws.

PTI Denied?

- File notice of appeal within 10 days of denial from the State. R. 3:28
- Argue factors contained in R. 3:28 and factors from 2C:43-12(e)
- Standard on appeal by clear and convincing evidence, State committed a patent and gross abuse of discretion. *State v. Nwobu*, 139 N.J. 236 (1995).
- Argue a) rejection was not premised upon a consideration of all relevant factors, b) was based upon a consideration of irrelevant or inappropriate factors, or c) amounted to a clear error of judgment.
- Requires individualistic analysis of defendant, facts, and circumstances. *State v. Leonardis*, 71 N.J. 85 (1976)

- Argue factually similar unpublished persuasive cases.
- State v. Gundy. 2016 WL 1248668 (March 31, 2016, App. Div.)
 - Gundy stopped for using his cell phone when driving. Trooper smelled marijuana. Advised Trooper of presence of handgun in vehicle. Recovered with two bags of marijuana under 50 grams.
 - Weapon was legally purchased in Georgia.
 - Moving from Texas to NY but temporarily staying in NJ.
 - 30 year old school teacher with no prior criminal history.
 - Spent 30 days in jail before making bail.
 - Submitted 14 character letters.

- Criminal Division recommended admission. State opposed arguing the 2014 AG Clarification did not apply because Defendant was a resident of NJ at the time of his arrest and his possession of the firearm would have been illegal in Texas. Driving vehicle two hours after smoking marijuana.
- Judge Rivas admitted Defendant. State appealed. App. Div. affirmed citing to Court's written decision.
- Court found the State conflated factors 1 and 2, put an undue emphasis on the nature of the crime and failed to provide an individualistic analysis of the defendant.

Waiver Denied?

- Standard on review by trial court is patent and gross abuse of discretion. A defendant must make a showing that the prosecutor arbitrarily or unconstitutionally discriminated against a defendant in determining whether the interests of justice warranted reference to the assignment judge for sentencing under the escape valve. Alvarez hearing.
- A prosecutor must provide written reasons for withholding consent to a waiver of mandatory minimum sentence for Graves Act offense under “escape valve” provision to promote procedural fairness and to ensure meaningful judicial review. [State v. Benjamin, 442 N.J.Super. 258, 122 A.3d 341 \(A.D.2015\)](#), certification granted in part [224 N.J. 119, 129 A.3d 326](#)
 - Includes providing other waiver case files and what aggravating or mitigating factors were considered.*
- *Reversed by Supreme Court. 228 N.J. 358 defendants not entitled to written reasons by the state concerning other defendants to advance their claim. See Justice Albin dissent.

Waiver Granted?

- Who decides probation versus 1 year stip? The State, the assignment judge, or the sentencing judge?
- State v. Nance, 228 NJ 378 (2017).
 1. Mercer county 3rd possession of sawed off shotgun. Sentenced to 5 years, 1 PI.
 2. Monmouth County, 2nd degree possession of handgun, sentenced to 3 years, 1 PI.
 3. Union County, 2nd degree possession of handgun, sentenced to 3 years, 1 year PI.

Holdings Nance

1. Assignment judge and not the sentencing judge has authority to determine whether defendant as first offender should serve probation or 1 year stip, after prosecutor agrees to file waiver.
2. Assignment judge or designee (PJ) was not required to accept prosecutor's recommendation for stip time over probation.
3. On second degree conviction for unlawful possession, AJ or PJ determines whether to sentence to 1 year stip or probation and is not bound by State's recommendation.
4. Sentencing Court weighs agg & mit. factors and determines sentences on remaining charges. Court is not required to accept State's recommendation but cannot impose a waiver not specifically authorized by the AJ or PJ.

Post Nance Quiz

- Can AJ punt to the sentencing judge to determine whether to impose probation or 1 year stip?
- If the AJ authorized a 5 year sentence with a one year stip, can the sentencing judge sentence defendant to probation?
- Whether defendant who was denied by the AJ from the State's refusal to issue a waiver may receive any mercy from the App. Div after being sentenced to 5 years 42 months PI?

Trial Strategies

- Challenge Possession.
- Self Defense? State v. Kelly 118 N.J. 370 (1990).
- Do not argue inoperable. State v. Gantt, 103 N.J. 573 (1986) holding so long as the weapon was designed to be a firearm and is capable of being made operable, then it's a firearm for purposes of 2C:39
- Request a post conviction waiver.
- Appeal.

Practice Tips

1. Check to see if 2C:39-5 applies.
2. Check for exemptions under 2C:39-5g and 2C:39-6.
3. Gather character letters from your client.
4. Consider any fourth amendment issues. The stop, the search, the seizure.
5. Provide mitigating information to the Prosecutor early and often.
6. Do your own investigation.

7. Apply Defendant to PTI.
8. Appeal a PTI Denial.
9. Request a Graves Act Waiver
10. Appeal Denial from Waiver.
11. Ask the State and the Court to sentence one degree lower.
12. Move to Reconsider.
13. Appeal

7. Apply Defendant to PTI.
8. Appeal a PTI Denial.
9. Request a Graves Act Waiver
10. Appeal Denial from Waiver.
11. Ask the State and the Court to sentence one degree lower.
12. Move to Reconsider.
13. Appeal

Post Nance Answers

- No. State v. Spurlin, 2017 WL 2665965 (June 21, 2017, App. Div.)
- No. State v. Sweet, 2017 WL 3178838 (July 27, 2017, App. Div.)
- Yes. State v. Vicari, 2017 WL 2875401 (July 6, 2017, App. Div.) ordering a remand for the court to reconsider aggravating and mitigating factors to determine whether a reduction to 1 year parole ineligibility would be appropriate.

About the Panelists...

Cindy P. Glaser is an Assistant Prosecutor with the Middlesex County Prosecutor's Office in New Brunswick, New Jersey, and has served 31 years with the Office. Spending the majority of her career as a "zone prosecutor," she reviewed all new complaints and search warrants, and served as the departmental legal advisor. She is Co-Section Chief of Pretrial Operations and is a recognized expert in firearms law, having tried in excess of 400 firearms permit cases.

Ms. Glaser is admitted to practice in New Jersey and New York. She has been the primary legal training officer for Middlesex County for the past 25 years and has taught classes on topics including case law and statute updates, search and seizure, search warrants, courtroom testimony, use of force, domestic violence, conducted energy devices and firearms law.

Ms. Glaser received her B.A. from Cook College, Rutgers University, and her J.D. from Pace University School of Law. She served as a judicial clerk to the Honorable George Nicola, PJSC, Middlesex County.

Michael Brett Roberts is a Partner in Roberts & Teeter, LLC in Somerset, New Jersey, and concentrates his practice in criminal and municipal defense.

Admitted to practice in New Jersey and New York, and before the United States District Court for the District of New Jersey, Mr. Roberts is a Trustee of the Middlesex County Bar Foundation, a Trustee of the New Jersey State Bar Association's Criminal Law Section and served as Chair of the Somerset County Young Lawyers Division. He also volunteers his time as head coach of the Rutgers University Mock Trial Association.

Mr. Roberts is the author of "Social Media and its Effect on Criminal Law" (*Law Review CLE*, October 2011) and "The Jurisprudence of Bestiality" (Louis D. Brandeis School of Law, *Journal of Animal and Environmental Law*, Vol. 1., Ed.2.). He has been featured on local television, speaking on gun rights and firearm laws in the State of New Jersey, and has lectured at multiple CLE seminars. He is the recipient of the 2015 Middlesex County Young Lawyer of the Year Award and several other honors.

Mr. Roberts received his B.A., with honors, from Rutgers College and his J.D. from Rutgers University School of Law-Newark. While in law school, he interned with the Federal Public Defenders Office and devoted hours to the Urban Legal Clinic, where he represented criminal defendants in the Special Remand Court of Essex County. He served as a law clerk to the Honorable Edward M. Coleman, P.J.Cv, Presiding Judge, Superior Court, Civil Division, Somerset County.

