

Garden State CLE presents:

What to Advise Your Clients about Guns in NJ



Lesson Plan

1. What is a firearm under New Jersey Law? NJSA 2C:39-1(f)

“Firearm” means any handgun, rifle, shotgun, machine gun, automatic or semi-automatic rifle, or any gun, device or instrument in the nature of a weapon from which may be fired or ejected any solid projectable ball, slug, pellet, missile or bullet, or any gas, vapor or other noxious thing, by means of a cartridge or shell or by the action of an explosive or the igniting of flammable or explosive substances. It shall also include, without limitation, any firearm which 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.



Hand gun is defined under NJSA 2C:39-1k.

2. What about an "Airsoft" gun?

The law is not clear on this issue. Although they are sold at major retailers and can be purchased at sporting goods stores without a permit, arguably they may still meet the definition of firearm. The diameter of the projectile or the force of the projection may be one possible defense.

One solution is to solicit a written opinion from the county prosecutor. In the event of a subsequent arrest, this action will enable you to claim the defense of mistake of law under NJSA 2C: 2-4(c).



2C:2-4. Ignorance or mistake



a. Ignorance or mistake as to a matter of fact or law is a defense if the defendant reasonably arrived at the conclusion underlying the mistake and:

(1) It negatives the culpable mental state required to establish the offense; or

(2) The law provides that the state of mind established by such ignorance or mistake constitutes a defense.

c. A belief that conduct does not legally constitute an offense is a defense to a prosecution for that offense based upon such conduct when:

(2) The actor acts in reasonable reliance upon an official statement of the law, afterward determined to be invalid or erroneous, contained in (a) a statute, (b) judicial decision, opinion, judgment, or rule, (c) an administrative order or grant of permission, or (d) an official interpretation of the public officer or body charged by law with responsibility for the interpretation, administration or enforcement of the law defining the offense; or

(3) The actor otherwise diligently pursues all means available to ascertain the meaning and application of the offense to his conduct and honestly and in good faith concludes his conduct is not an offense in circumstances in which a law-abiding and prudent person would also so conclude.

What are the penalties for illegally possessing a firearm?

NJSA 2C:39-5

- **Machine gun - 2nd degree**
- **Hand gun w/o permit to carry - 2nd degree**
- **Air/spring pistol - 3rd degree**
- **Rifle/shotgun (w/o FPID) - 3rd degree**
- **Loaded shotgun or rifle - 3rd degree**
- **Any other weapon under circumstances not manifestly appropriate for such lawful uses as it may have is guilty of a crime of the fourth degree.**



What is the Graves Act?

NJSA 2C:43-6(c)

Any person convicted of the unlawful possession of a firearm, (See [N.J.S.A. 2C:39-5\(b\)](#)), “shall be sentenced to a term of imprisonment...” The Graves Act further requires that “[t]he term of imprisonment shall include the imposition of a minimum term[,] ... fixed at, or between, one-third and one-half of the sentence imposed by the court or three years, whichever is greater ... during which the defendant shall be ineligible for parole

[Since 2013, the minimum term on second degree crime is 42 months - [NJSA. 2C:39-5\(b\)](#), [NJSA 2C:43-6\(c\)](#).]



What is the Graves Act "Escape Valve"?

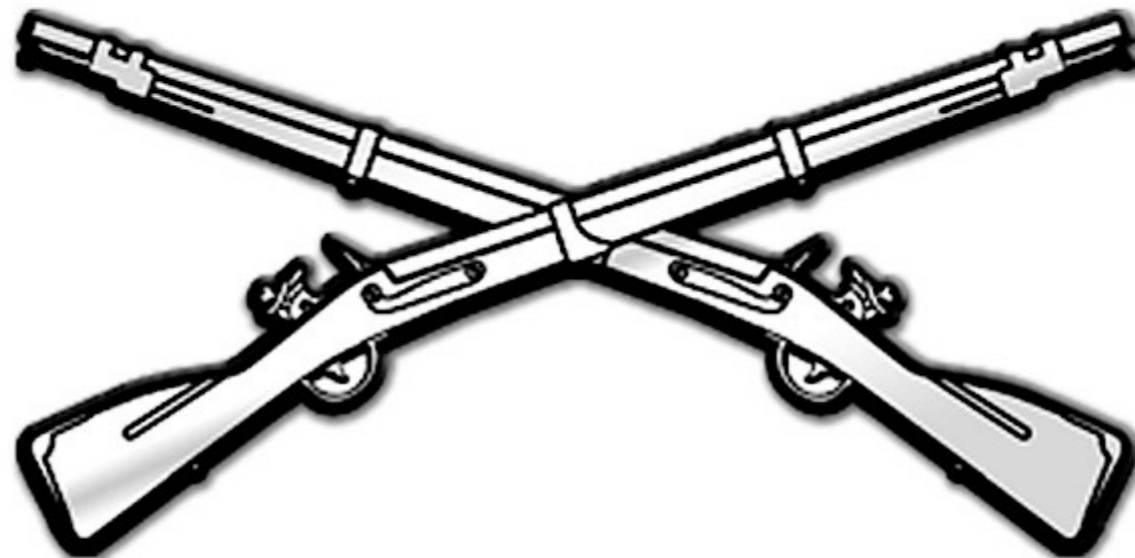
NJSA 2C:43-6.2 (enacted in 1989)

On a motion by the prosecutor made to the [A]ssignment [J]udge that the imposition of a mandatory minimum term of imprisonment under [the Graves Act] for a defendant who has not previously been convicted of an offense under that subsection ... does not serve the interest of justice, the [A]ssignment [J]udge shall place the defendant on probation ... 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 [A]ssignment [J]udge, 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.



The Assignment Judge has the ultimate sentencing responsibility, and has been given a choice of sentences that can be imposed for first-time Graves Act offenders. The Assignment Judge can impose a probationary sentence pursuant to [N.J.S.A. 2C:43-2\(b\)\(2\)](#) or impose a custodial sentence within the authorized range for the offense with a mandatory ineligibility term of one year. However, the Assignment Judge cannot consider either of these alternatives or options without the prosecutor's consent.

See [State v. Alvarez, 246 N.J.Super. 137, 145 \(App.Div.1991\)](#).



What about PTI for firearms offenses?

NJSA 2C:43-12(e)

See State v. Waters, 439 NJ Super. 215, 236-37 (App. Div. 2015)

In light of the Legislature's recent policy decision to significantly upgrade the seriousness of firearm offenses, it is expected that prosecutors will consent to a defendant's admission to PTI only in rare cases involving extraordinary and compelling circumstances that fall outside the heartland of the legislative policy to deter unauthorized gun possession (e.g., the defendant has no prior involvement with the criminal justice system, he or she lawfully acquired and possessed the firearm in a different state and the defendant's presence in New Jersey was incident to lawful travel.)

The Attorney General *2008 Directive* does not itself state that a prosecutor is compelled to consent to PTI. Rather, it “authorizes” prosecutors to consent “only in rare cases involving extraordinary and compelling circumstances.” It precludes consent absent approval by the County Prosecutor or the Director of the Division of Criminal Justice, which in turn must be supported by a statement of reasons provided to the Attorney General. By contrast, it allows a prosecutor to follow the presumption of ineligibility and object to PTI without notice or approval. Nothing in the *2008 Directive* states that it creates a right to PTI. Rather, it proclaims its purpose to ensure “strict enforcement of the presumption of ineligibility for pre-trial intervention in Graves Act cases.”

For 2008 Atty Gen. Directive, link to: <http://www.nj.gov/oag/dcj/agguide/directives/Graves-Act-clarification-2014.pdf>

Crossing the Delaware River as a crime: What about PTI for people possessing firearms who are simply traveling through New Jersey?





Recent events have focused public attention on how prosecutors exercise discretion in cases where a resident of another state brings into New Jersey a firearm that had been acquired lawfully and that could be carried lawfully by that visitor in the visitor's home jurisdiction. Under current New Jersey law, these otherwise law-abiding persons are subject not only to arrest, prosecution, and conviction for unlawful possession of a firearm, but also to enhanced punishment – a mandatory minimum State Prison sentence – under the “Graves Act.”

For the reasons explained below, in most of these cases, imprisonment is neither necessary nor appropriate to serve the interests of justice and protect public safety. Accordingly, and consistent with the manner in which the vast majority of these cases have been handled throughout the State, this memorandum provides that in the absence of case-specific aggravating circumstances, these defendants should not be sentenced to incarceration. Prosecutors can promote this outcome in either of two ways. First, depending on the specific circumstances, it may be appropriate for the prosecutor to allow a defendant to avoid the consequences of a criminal conviction by consenting to his or her application for pretrial intervention (PTI), subject to review and approval by the trial court judge. In making that decision, the prosecutor should consider not only the general aggravating and mitigating factors and PTI criteria set forth in the New Jersey Code of Criminal Justice, but also special facts and circumstances set forth in Section 3 of this memorandum that are particularly relevant to these unusual situations involving otherwise law-abiding persons who inadvertently violate New Jersey's gun laws.

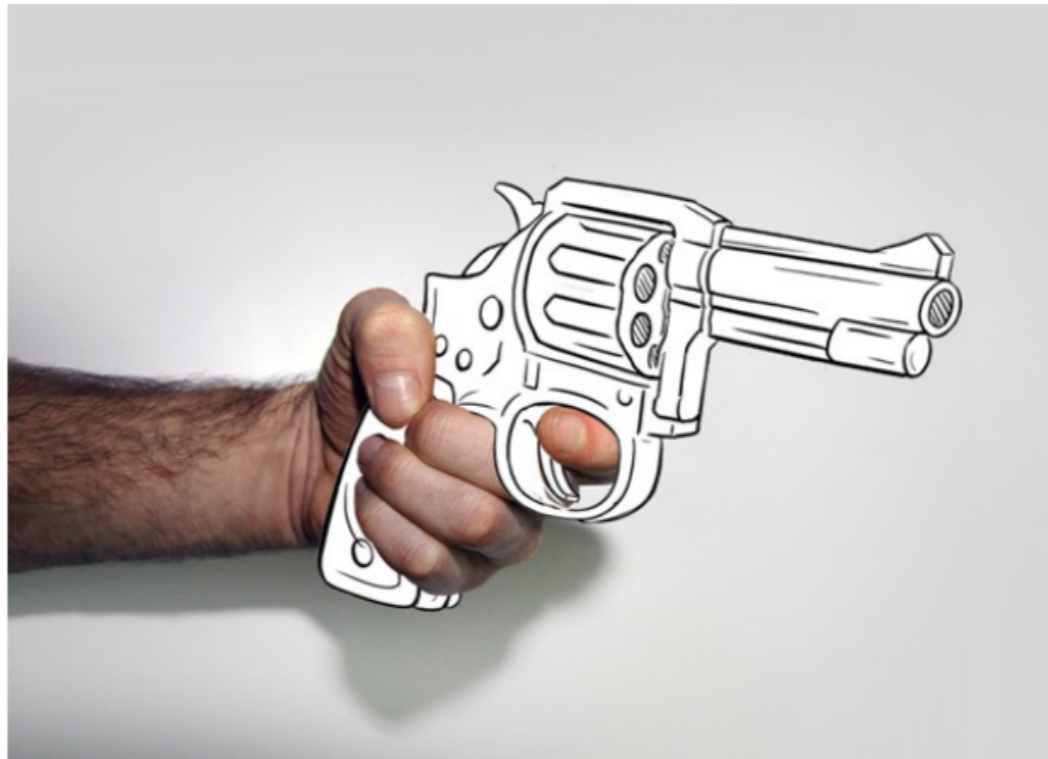
In cases where the prosecutor determines that PTI is not appropriate, this memorandum establishes a rebuttable presumption that the prosecutor will tender an initial plea offer that authorizes the court upon conviction to impose a non-custodial probationary sentence.

Attorney General Clarification memo of September 24, 2014, link to:
<http://www.nj.gov/oag/dcj/agguide/directives/Graves-Act-clarification-2014.pdf>

Where can my NJ client lawfully possess and carry a firearm?

NJSA 2C:39-6(e). Permit to carry is not required:

- In your client's place of business;**
- Client's Residence;**
- Client's Premises;**
- Land owned or possessed by the client.**



Other exemptions exist for hunting, fishing or a place of target practice

Can firearms in a NJ residence or workplace be lawfully transported? NJSA 2C:39-6(e)

- From place of purchase to residence;**
- From place of purchase to place of a fix-location business;**
- From residence to workplace;**
- From workplace to residence;**
- From one residence or workplace to another when moving;**
- From residence or workplace to shop for purpose of repairs.**



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NJSA 2C:39-6(e)

e. Nothing in subsections b., c. and d. of [N.J.S.2C:39-5](#) shall be construed to prevent a person keeping or carrying about his place of business, residence, premises or other land owned or possessed by him, any firearm, or from carrying the same, in the manner specified in subsection g. of this section, from any place of purchase to his residence or place of business, between his dwelling and his place of business, between one place of business or residence and another when moving, or between his dwelling or place of business and place where such firearms are repaired, for the purpose of repair. For the purposes of this section, a place of business shall be deemed to be a fixed location.



How can firearms in a NJ residence or workplace lawfully transported? NJSA 2C:39-6(g)

- Carried unloaded;**
- Contained in a closed & fastened case/gun box;
or locked in the trunk of a car;**
- and during course of travel avoid deviations**

All weapons being transported under paragraph (2) of subsection b., subsection e., or paragraph (1) or (3) of subsection f. of this section shall be carried unloaded and contained in a closed and fastened case, gun box, securely tied package, or locked in the trunk of the automobile in which it is being transported, and in the course of travel shall include only such deviations as are reasonably necessary under the circumstances.



Can firearms be lawfully transported between states under federal law? See [18 U.S.C.A. § 926A](#)

A person is only permitted to transport a firearm for any lawful purpose from any place where he may lawfully possess and carry such firearm to any other place where he may lawfully possess and carry such firearm if, during such transportation the firearm is unloaded, and neither the firearm nor any ammunition being transported is readily accessible or is directly accessible from the passenger compartment of such transporting vehicle: *Provided*, That in the case of a vehicle without a compartment separate from the driver's compartment the firearm or ammunition shall be contained in a locked container other than the glove compartment or console.



**How can my client lawfully acquire his first gun in New Jersey?
NJSA 2C:58-3.**

Hand guns - Your client must first obtain a Hand Gun Purchaser Permit for each hand gun the client wishes to obtain. [NJSA 2C:58-3(a).] Permit is valid for only 90 days. Limit purchase of one hand gun every 30-days. [See NJSA 2C:58-3(i).]

Rifles & Shot Guns - Your client must first obtain a New Jersey Firearms Identification Card. [NJSA 2C:58-3(b).] The card is good for life and permits the purchase of an unlimited number of rifles and shot guns.

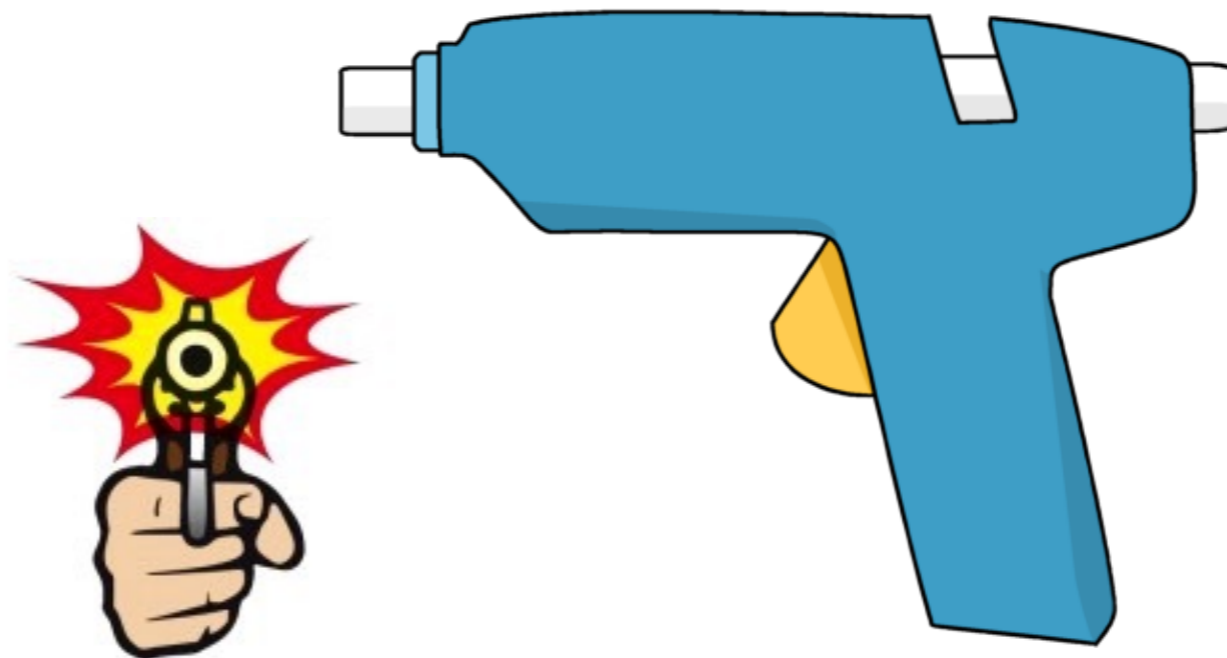


The chief of police (or nearest State Police unit) in town of residence is responsible for issuing gun permits and ID cards.

For an excellent discussion of the procedure:

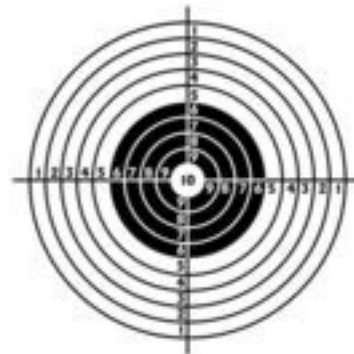
Weston v. State, 60 NJ 36, 43-44 (1972);

In re Dubov, 410 NJ Super. 19 (App. Div. 2009)



What are the qualifications in New Jersey? NJSA 2C:58-3(c) and (d).

The chief of police of an organized full-time police department of the municipality where the applicant resides or the superintendent, in all other cases, shall upon application, issue to any person qualified under the provisions of subsection c. of this section a permit to purchase a handgun or a firearms purchaser identification card.



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 in this section or other sections of this chapter, shall be denied a permit to purchase a handgun or a firearms purchaser identification card, except as hereinafter set forth. No handgun purchase permit or firearms purchaser identification card shall be issued:

(1) To any person who has been convicted of any crime, or a disorderly persons offense involving an act of domestic violence as defined in ([2C:25-19](#)), whether or not armed with or possessing a weapon at the time of such offense;

(2) To any drug dependent person as defined [NJSA 24:21-2](#), to any person who is confined for a mental disorder to a hospital, mental institution or sanitarium, or to any person who is presently an habitual drunkard;

(3) To any person who suffers from a physical defect or disease which would make it unsafe for him to handle firearms, to any person who has ever been confined for a mental disorder, or to any alcoholic unless any of the foregoing persons produces a certificate of a medical doctor or psychiatrist licensed in New Jersey, or other satisfactory proof, that he is no longer suffering from that particular disability in such a manner that would interfere with or handicap him in the handling of firearms; to any person who knowingly falsifies any information on the application form for a handgun purchase permit or firearms purchaser identification card;

- (4) To any person under the age of 18 years for a firearms purchaser identification card and to any person under the age of 21 years for a permit to purchase a handgun;**
- (5) To any person where the issuance would not be in the interest of the public health, safety or welfare;**
- (6) To any person who is subject to a restraining order issued pursuant to the “Prevention of Domestic Violence Act of 1991,” ([NJSA .2C:25-17 et seq.](#)) prohibiting the person from possessing any firearm;**
- (7) To any person who as a juvenile was adjudicated delinquent for an offense which, if committed by an adult, would constitute a crime and the offense involved the unlawful use or possession of a weapon, explosive or destructive device or is enumerated in ([NJSA 2C:43-7.2\(d\)](#));**
- (8) To any person whose firearm is seized pursuant to the “Prevention of Domestic Violence Act of 1991,” ([NJSA 2C:25-17 et seq.](#)) and whose firearm has not been returned; or**
- (9) To any person named on the consolidated Terrorist Watchlist maintained by Terrorist Screening Center administered by the Federal Bureau of Investigation.**

What is the application process in New Jersey? NJSA 2C:58-3(e)

The chief police officer or the superintendent shall obtain the fingerprints of the applicant and shall have them compared with any and all records of fingerprints in the municipality and county in which the applicant resides and also the records of the State Bureau of Identification and the Federal Bureau of Investigation, provided that an applicant for a handgun purchase permit who possesses a valid firearms purchaser identification card, or who has previously obtained a handgun purchase permit from the same licensing authority for which he was previously fingerprinted, and who provides other reasonably satisfactory proof of his identity, need not be fingerprinted again; however, the chief police officer or the superintendent shall proceed to investigate the application to determine whether or not the applicant has become subject to any of the disabilities set forth in this chapter.

Note that the 30-day time limit in NJSA 2C:58-3(f) for police review will not happen in most instances.



What about leaving firearms in a will? NJSA 2C:58-3(j)

Firearms passing to heirs or legatees. Notwithstanding any other provision of this section concerning the transfer, receipt or acquisition of a firearm, a permit to purchase or a firearms purchaser identification card shall not be required for the passing of a firearm upon the death of an owner thereof to his heir or legatee, whether the same be by testamentary bequest or by the laws of intestacy. The person who shall so receive, or acquire said firearm shall, however, be subject to all other provisions of this chapter. If the heir or legatee of such firearm does not qualify to possess or carry it, he may retain ownership of the firearm for the purpose of sale for a period not exceeding 180 days, or for such further limited period as may be approved by the chief law enforcement officer of the municipality in which the heir or legatee resides or the superintendent, provided that such firearm is in the custody of the chief law enforcement officer of the municipality or the superintendent during such period.



What about a permit to carry a hand gun? NJSA 2C:58-4

a. Scope and duration of authority. Any person who holds a valid permit to carry a handgun issued pursuant to this section shall be authorized to carry a handgun in all parts of this State, except as prohibited by section 2C:39-5e. One permit shall be sufficient for all handguns owned by the holder thereof, but the permit shall apply only to a handgun carried by the actual and legal holder of the permit.

All permits to carry handguns shall expire 2 years from the date of issuance or, in the case of an employee of an armored car company, upon termination of his employment by the company occurring prior thereto whichever is earlier in time, and they may thereafter be renewed every 2 years in the same manner and subject to the same conditions as in the case of original applications.



b. Application forms. All applications for permits to carry handguns, and all applications for renewal of such permits, shall be made on the forms prescribed by the superintendent. Each application shall set forth the full name, date of birth, sex, residence, occupation, place of business or employment, and physical description of the applicant, and such other information as the superintendent may prescribe for the determination of the applicant's eligibility for a permit and for the proper enforcement of this chapter. The application shall be signed by the applicant under oath, and shall be indorsed by three reputable persons who have known the applicant for at least 3 years preceding the date of application, and who shall certify thereon that the applicant is a person of good moral character and behavior.

c. Investigation and approval. Each application shall in the first instance be submitted to the chief police officer of the municipality in which the applicant resides, or to the superintendent, (1) if the applicant is an employee of an armored car company, or (2) if there is no chief police officer in the municipality where the applicant resides, or (3) if the applicant does not reside in this State. The chief police officer, or the superintendent, as the case may be, shall cause the fingerprints of the applicant to be taken and compared with any and all records maintained by the municipality, the county in which it is located, the State Bureau of Identification and the Federal Bureau of Identification. He shall also determine and record a complete description of each handgun the applicant intends to carry.



No application shall be approved by the chief police officer or the superintendent unless the applicant demonstrates that he is not subject to any of the disabilities set forth in 2C:58-3c., that he is thoroughly familiar with the safe handling and use of handguns, and that he has a justifiable need to carry a handgun. If the application is not approved by the chief police officer or the superintendent within 60 days of filing, it shall be deemed to have been approved, unless the applicant agrees to an extension of time in writing.

d. Issuance by Superior Court; fee. If the application has been approved by the chief police officer or the superintendent, as the case may be, the applicant shall forthwith present it to the Superior Court of the county in which the applicant resides, or to the Superior Court in any county where he intends to carry a handgun, in the case of a nonresident or employee of an armored car company. The court shall issue the permit to the applicant if, but only if, it is satisfied that the applicant is a person of good character who is not subject to any of the disabilities set forth in section 2C:58-3c., that he is thoroughly familiar with the safe handling and use of handguns, and that he has a justifiable need to carry a handgun. The court may at its discretion issue a limited-type permit which would restrict the applicant as to the types of handguns he may carry and where and for what purposes such handguns may be carried. At the time of issuance, the applicant shall pay to the county clerk of the county where the permit was issued a permit fee of \$20.00.



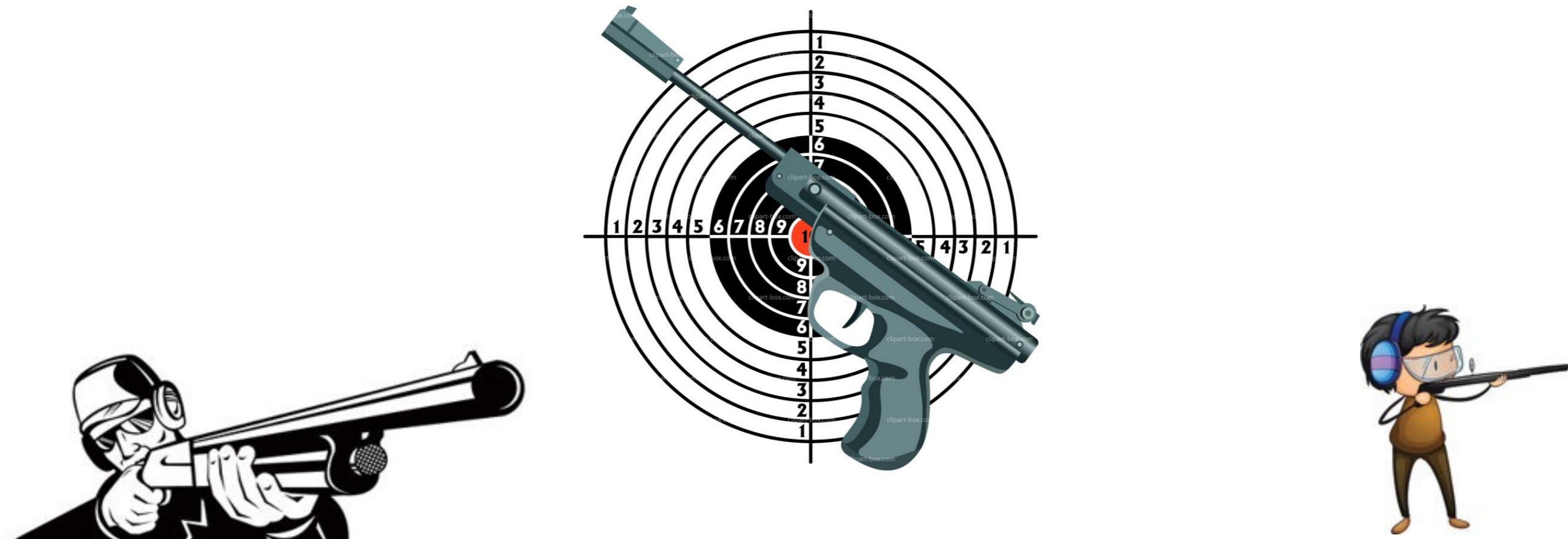
e. Appeals from denial of applications. Any person aggrieved by the denial by the chief police officer or the superintendent of approval for a permit to carry a handgun may request a hearing in the Superior Court of the county in which he resides or in any county in which he intends to carry a handgun, in the case of a nonresident, by filing a written request for such a hearing within 30 days of the denial. Copies of the request shall be served upon the superintendent, the county prosecutor and the chief police officer of the municipality where the applicant resides, if he is a resident of this State. The hearing shall be held within 30 days of the filing of the request, and no formal pleading or filing fee shall be required. Appeals from the determination at such a hearing shall be in accordance with law and the rules governing the courts of this State.

If the superintendent or chief police officer approves an application and the Superior Court denies the application and refuses to issue a permit, the applicant may appeal such denial in accordance with law and the rules governing the courts of this State.



f. Revocation of permits. Any permit issued under this section shall be void at such time as the holder thereof becomes subject to any of the disabilities set forth in section 2C:58-3c., and the holder of such a void permit shall immediately surrender the permit to the superintendent who shall give notice to the licensing authority.

Any permit may be revoked by the Superior Court, after hearing upon notice to the holder, if the court finds that the holder is no longer qualified for the issuance of such a permit. The county prosecutor of any county, the chief police officer of any municipality, the superintendent or any citizen may apply to the court at any time for the revocation of any permit issued pursuant to this section.



**What about voluntary surrender of firearms to the police? NJSA
2C:39-12.**

- Upon written notice to the police**
- Surrender to the police where the person resides;**
- Written confirmatory notice from the police.**

Immunity only applies to unlawful possession. Other crimes can be prosecuted using the weapons.



Can children ever lawfully possess firearms? NJSA 2C:58-6.1



(1) In the actual presence or under the direct supervision of his father, mother or guardian, or some other person who holds a permit to carry a handgun or a firearms purchaser identification card, as the case may be; or

(2) For the purpose of military drill under the auspices of a legally recognized military organization and under competent supervision; or

(3) For the purpose of competition , target practice, instruction, and training in and upon a firing range approved by the governing body of the municipality in which the range is located or the National Rifle Association and which is under competent supervision at the time of such supervision or target practice or instruction and training at any location; or

(4) For the purpose of hunting during the regularly designated hunting season, provided that he possesses a valid hunting license and has successfully completed a hunter's safety course taught by a qualified instructor or conservation officer and possesses a certificate indicating the successful completion of such a course.



Are there special rules related to storage of firearms to protect children? NJSA 2C:58-15



a. A person who knows or reasonably should know that a minor is likely to gain access to a loaded firearm at a premises under the person's control commits a disorderly persons offense if a minor gains access to the firearm, unless the person:

(1) Stores the firearm in a securely locked box or container;

(2) Stores the firearm in a location which a reasonable person would believe to be secure; or

(3) Secures the firearm with a trigger lock.

b. This section shall not apply:

(1) To activities authorized by section 14 of P.L.1979, c. 179 ([C. 2C:58-6.1](#)), concerning the lawful use of a firearm by a minor; or

(2) Under circumstances where a minor obtained a firearm as a result of an unlawful entry by any person.

c. As used in this act, “minor” means a person under the age of 16.

See also NJSA 2C:58-16 regarding safe storage notice requirements



What are the rules related to domestic violence? NJSA 2C:25-21(d).

[Note relationship to the 2nd degree "Certain Persons" offense under NJSA 2C:39-7(b) for those convicted of a crime involving domestic violence.]



d. (1) In addition to a law enforcement officer's authority to seize any weapon that is contraband, evidence or an instrumentality of crime, a law enforcement officer who has probable cause to believe that an act of domestic violence has been committed shall:

(a) question persons present to determine whether there are weapons on the premises; and

(b) upon observing or learning that a weapon is present on the premises, seize any weapon that the officer reasonably believes would expose the victim to a risk of serious bodily injury. If a law enforcement officer seizes any firearm pursuant to this paragraph, the officer shall also seize any firearm purchaser identification card or permit to purchase a handgun issued to the person accused of the act of domestic violence.

(2) A law enforcement officer shall deliver all weapons , firearms purchaser identification cards and permits to purchase a handgun seized pursuant to this section to the county prosecutor and shall append an inventory of all seized items to the domestic violence report.



(3) Weapons seized in accordance with the “Prevention of Domestic Violence Act of 1991”, [P.L.1991, c. 261](#)(C.2C:25-17 et seq.) shall be returned to the owner except upon order of the Superior Court. The prosecutor who has possession of the seized weapons may, upon notice to the owner, petition a judge of the Family Part of the Superior Court, Chancery Division, within 45 days of seizure, to obtain title to the seized weapons, or to revoke any and all permits, licenses and other authorizations for the use, possession, or ownership of such weapons pursuant to the law governing such use, possession, or ownership, or may object to the return of the weapons on such grounds as are provided for the initial rejection or later revocation of the authorizations, or on the grounds that the owner is unfit or that the owner poses a threat to the public in general or a person or persons in particular.

A hearing shall be held and a record made thereof within 45 days of the notice provided above. No formal pleading and no filing fee shall be required as a preliminary to such hearing. The hearing shall be summary in nature. Appeals from the results of the hearing shall be to the Superior Court, Appellate Division, in accordance with the law.

If the prosecutor does not institute an action within 45 days of seizure, the seized weapons shall be returned to the owner.



After the hearing the court shall order the return of the firearms, weapons and any authorization papers relating to the seized weapons to the owner if the court determines the owner is not subject to any of the disabilities set forth in N.J.S.2C: 58-3c. and finds that the complaint has been dismissed at the request of the complainant and the prosecutor determines that there is insufficient probable cause to indict; or if the defendant is found not guilty of the charges; or if the court determines that the domestic violence situation no longer exists. Nothing in this act shall impair the right of the State to retain evidence pending a criminal prosecution. Nor shall any provision of this act be construed to limit the authority of the State or a law enforcement officer to seize, retain or forfeit property pursuant to chapter 64 of Title 2C of the New Jersey Statutes.

If, after the hearing, the court determines that the weapons are not to be returned to the owner, the court may:

- (a) With respect to weapons other than firearms, order the prosecutor to dispose of the weapons if the owner does not arrange for the transfer or sale of the weapons to an appropriate person within 60 days; or**



(b) Order the revocation of the owner's firearms purchaser identification card or any permit, license or authorization, in which case the court shall order the owner to surrender any firearm seized and all other firearms possessed to the prosecutor and shall order the prosecutor to dispose of the firearms if the owner does not arrange for the sale of the firearms to a registered dealer of the firearms within 60 days; or

(c) Order such other relief as it may deem appropriate. When the court orders the weapons forfeited to the State or the prosecutor is required to dispose of the weapons, the prosecutor shall dispose of the property as provided in [N.J.S.2C:64-6](#).

(4) A civil suit may be brought to enjoin a wrongful failure to return a seized firearm where the prosecutor refuses to return the weapon after receiving a written request to do so and notice of the owner's intent to bring a civil action pursuant to this section. Failure of the prosecutor to comply with the provisions of this act shall entitle the prevailing party in the civil suit to reasonable costs, including attorney's fees, provided that the court finds that the prosecutor failed to act in good faith in retaining the seized weapon.

(5) No law enforcement officer or agency shall be held liable in any civil action brought by any person for failing to learn of, locate or seize a weapon pursuant to this act, or for returning a seized weapon to its owner.



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