

Garden State CLE presents:

New AG Gun Regs for 2016: What you and your clients need to know now!



Lesson Plan

Part I.

Justifiable Need

a. Analysis begins with the Gun Control Act of 1966, NJSA 2A: 151-33, et seq. The Act was sustained in *Burton v. Sills*, 53 NJ 86 (1968).

There is no constitutional right to keep and bare arms under New Jersey law.



b.) Siccardi v. State, 59 NJ 545, 558-59 (1971)



In general, carry permits may be issued under this standard to those who can establish an urgent necessity for self-protection one whose life is in real danger, as evidenced by serious threats or earlier attacks. (at 557)

Coming now to Siccardi's application, we are entirely satisfied that the County Judge's denial was proper and should be sustained. We are not concerned with Siccardi's theater or his home but only with his trips between the theater, the night depository and his home. So far as the protection of his property is concerned, he admittedly has suitable alternatives. So far as the suggested threats to his life are concerned, we accept the view of the local Chief of Police that they were not serious in nature and did not call for any police action. It is noteworthy that he has never been subjected to a street assault or attack and that, indeed, no member of his family which has operated the theater for over thirty-five years has ever thus been assaulted or attacked. The grant of a permit to him to carry a concealed handgun on his person or in his automobile would, as all of the expert testimony indicates, afford hardly any measure of self-protection and would involve him in the known and serious dangers of misuse and accidental use. And, finally, it may be noted that if the law is applied fairly and impartially as it must be, the grant of a carrying permit to him would call for permits to other theater managers as well as to the innumerable men in business who are obliged to carry funds and whose psychologically felt needs are no less than his. Surely such widespread handgun possession in the streets, somewhat reminiscent of frontier days, would not be at all in the public interest.

c.) Adoption of NJSA 2C:58-4 (enacted in 1979 - last amended in 1981)



c. 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.

d.) In re Preis, 118 NJ 564 (1990)

The statutory standard calls for a permit to be issued only to those who can establish an urgent necessity for protection of self or others — as for example, in the case of one whose life is in danger as evidenced by serious threats or earlier attacks.

The Legislature has designated the judiciary as the issuing authority for gun permits. The Legislature has not expressed a preference that employees of private-detective agencies or private-security agencies should have a blanket authorization to carry guns. Given the dangers inherent in carrying handguns and the urgent necessity for their regulation, as evidenced by the selection of the judiciary as legislative agent, we do not consider it within the legislative intent to delegate that authority to private-security companies or private-detective agencies. The Law Division will remain open to consider whether applicants establish "justifiable need" to carry handguns on a case-by-case basis. Before granting such a permit, the court must determine (1) that the applicant, in the course of performing statutorily-authorized duties, is subject to a substantial threat of serious bodily harm; and (2) that carrying a handgun is necessary to reduce the threat of unjustifiable serious bodily harm to any person.



e.) The Carol Bowne Murder (2015)

No one helped her': NJ woman murdered by ex while awaiting gun permit



By **Perry Chiaramonte**

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Carol Bowne knew her best shot at defending herself from a violent ex was a gun, and not a piece of paper. And it was paperwork that left her unprotected when Michael Eitel showed up at her New Jersey home last week and stabbed her to death, say Second Amendment advocates, who charge local police routinely sit on firearms applications they are supposed to rule on within 30 days.

Bowne, 39, had a restraining order against Eitel when he killed her in her driveway last Wednesday, but she was still waiting for Berlin Township Police Chief Leonard Check to approve the gun permit she had applied for on April 21. Tragically, she had gone to the township police department just two days before her death to check on the status of her languishing application. In another indication of her fear of Eitel, Bowne had recently installed surveillance cameras around her home, and the equipment recorded the 45-year-old ex-con attacking her as she arrived home and got out of her car.

“She should have been granted that permit in a timely matter, especially given her status as a domestic violence victim,” said Evan Nappen, a New Jersey-based attorney who specializes in Second Amendment cases.



New Jersey's gun laws are among the nation's strictest, but law-abiding citizens are eligible to purchase and possess handguns after filling out forms available at their local police stations, submitting to a background check on any possible criminal history or mental health issues, giving fingerprints and paying a fee. Once those steps are taken, local police conduct a 14-point investigation and the chief is supposed to approve or deny for cause within 30 days.

Check did not return requests for comment, but gun rights advocates say it is not unusual for Garden State police chiefs to take several months to approve handgun permits for qualified applicants.

“The gun law’s intention is to be as difficult and cumbersome as possible,” Alexander Roubian, president of the New Jersey Second Amendment Society, told FoxNews.com. “They need to be repealed.

“The system is so outdated,” Roubian continued. “In most states, you go to the store, get a background check, and purchase a weapon. A police chief should have no part of the process. This woman had a legitimate issue and no one helped her.”

A manhunt for Eitel, who had done time on a kidnapping conviction and had repeatedly threatened Bowne, began shortly after the murder and ended Saturday, when he was found dead of a self-inflicted gunshot in another ex-girlfriend's garage.



Bowne's case prompted state senators Dawn Addiego, Diane Allen and Jennifer Beck to announce plans to introduce a bill that will fast-track the handgun permit process for applicants who have obtained a restraining order.

“The tragic murder of Carol Bowne shows that there are sensible changes we should make to public safety laws to help people protect themselves,” said Addiego, a Republican whose district is in southern New Jersey. “This legislation will make sure that those who need protection the most are given priority when it comes to the lengthy process of applying for a firearms permit.”

However, Nappen said even if Bowne had obtained her permit and used a gun to protect herself, she could theoretically be facing charges today because she would not have been allowed to legally carry the gun outside with her.

“New Jersey does not allow law-abiding citizens to get a carry license,” Nappen said.

Perry Chiaramonte is a reporter for FoxNews.com. Follow him on Twitter at [@perrych](https://twitter.com/perrych)



f.) The Political Reaction (4/7/16)

Trenton, NJ – Acting on Governor Chris Christie’s commitment to ensure fair and consistent application of the state’s gun laws that respects individual’s Second Amendment rights and protects public safety, the Office of Attorney General announced a directive and guideline issued by Acting Attorney General Robert Lougy, and a regulatory change to align the regulations governing the issuance of a carry permit with New Jersey Supreme Court precedent interpreting the statutory standard of justifiable need. Taken together, the changes will help ensure all applicants receive efficient and uniform consideration in the processing of firearm permit applications.

“The terrible tragedy involving Berlin resident Carol Bowne last summer was a jarring example of a permitting system that had failed and needed to be reexamined and fixed. Likewise, I have seen far too many instances in my time as governor of otherwise lawful gun owners facing severe criminal penalties when they have no intent to violate the law in the routine transport of their lawfully owned firearms,” said Governor Christie.

“Building on the work of the Study Commission, my Administration is taking important, concrete steps today to address those loopholes and inequities and deliver relief and assurance to New Jerseyans exercising their Second Amendment rights that their constitutional rights will be protected and respected in New Jersey.”



“We are always looking for ways to improve the permitting process and to provide uniformity across the state,” said Acting Attorney General Robert Lougy. “And our guideline on reasonably necessary deviation in transporting a firearm provides additional clarity to police, prosecutors, and law abiding gun owners.”

Last year, Governor Christie signed Executive Order No. 180, calling for expedited treatment of applications in cases of domestic violence and creating the New Jersey Firearm Purchase and Permitting Study Commission, following the tragic murder of Carol Bowne, a Camden County resident. Bowne had secured a restraining order against her ex-boyfriend and filed an application for a firearm permit in April 2015. Less than two months later, and with her application delayed beyond the 30-day statutory deadline for its processing, she was stabbed to death in her front yard by her ex-boyfriend.

The Study Commission was charged with the specific task of reviewing the state’s laws, regulations and procedures pertaining to the ownership and possession of firearms and make recommendations to enhance the lawful exercise of New Jerseyans’ Second Amendment rights. The Study Commission issued its report in December, noting multiple complaints from firearm permit applicants that statutory permitting requirements were being applied unevenly across the state, specifically, that there were unnecessary delays in processing applications and the imposition of unauthorized requirements for permit applications, in violation of state law.



g.) Amendment to NJAC March 16, 2016

NJAC 13:54-2.4 Application for a permit to carry a handgun

(d) Each application form shall also be accompanied by a written certification of justifiable need to carry a handgun, which shall be under oath and which:

1. In the case of a private citizen shall specify in detail the urgent necessity for self-protection, as evidenced by serious threats, specific threats, or previous attacks, which demonstrate a special danger to the applicant's life that cannot be avoided by reasonable means other than by issuance of a permit to carry a handgun. Where possible the applicant shall corroborate the existence of any specific threats or previous attacks by reference to reports of such incidents to the appropriate law enforcement agencies; or

48 N.J.R. 377(a)



h.) Attorney General Commentary

The proposed amendment to N.J.A.C. 13:54-2.4(d) adds "serious threats" to the circumstances that could demonstrate a special danger to the applicant's life that a private citizen may specify in a written certification of justifiable need, which would be submitted with an application for a permit to carry a handgun under N.J.S.A. 2C:58-4.

The proposed amendment also clarifies that the issuance of a permit to carry a handgun can be based on a special danger to the applicant's life that cannot be avoided by other "reasonable" (as opposed to unreasonable or conceivable) means.

The proposed amendment to N.J.A.C. 13:54-2.4 harmonizes the regulatory definition of "justifiable need" with the Supreme Court of New Jersey's construction of that standard. The Court first defined the concept in *Siccardi v. State*, 59 N.J. 545 (1971). In *Siccardi*, the Court observed that "carry permits may be issued under this standard to those who can establish an urgent necessity for self-protection ... [o]ne whose life is in real danger, as evidenced by serious threats or earlier attacks[.]" *Id.* at 557.

The Court also recognized, in determining whether an applicant for a permit to carry a handgun satisfied the legislative standard of demonstrating "need," that "need is a flexible term which must be read and applied in light of the particular circumstances and the times." *Id.* at 555.

Revisiting the issue in *In re Preis*, 118 N.J. 564 (1990), the Supreme Court of New Jersey cited the *Siccardi* case for setting forth "the most relevant definition of 'justifiable need,'" while characterizing the requirement to be "of specific threats or previous attacks demonstrating a special danger to the applicant's life that cannot be avoided by other means." *Id.* at 571.

The proposed amendment incorporates both the *Siccardi* and *Preis* standards by specifying that an applicant may demonstrate an urgent necessity for self-protection by evidence of serious threats, specific threats, or previous attacks that demonstrate a special danger to the applicant's life. Thus, the amendment more closely and fully aligns the regulatory definition to the Supreme Court's construction of the "justifiable need" standard. In practical application, this change will allow the chief of police or the Superintendent, as the case may be, to consider evidence of serious threats that are not directed specifically at an individual and that establish more than mere generalized fears or concerns.

That is, there may be circumstances that pose a sufficiently concrete threat to warrant the issuance of a permit (establishing the requisite urgent necessity for self-protection) but that do not yet involve a specific threat directed at a particular individual. For example, one such situation could be a taxi driver who works nights in a particular precinct where armed assailants recently and on multiple occasions had flagged down cabs at night and robbed and shot the drivers. Another example of a serious but not specific threat may be where the applicant is an eyewitness to a murder committed by the member of a street gang.

Part II.

Reasonable Deviations in the Course of Travel

a.) 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.



1.) Keep and carry in:

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



2.) Carry while traveling (in the manner specified under section g) -

- 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.**

3.) Other transportation (in the manner specified under section g)

Directly to hunting or fishing areas (with valid license)

Directly to target range for practice or competition



(3) A person transporting any firearm or knife while traveling:

(a) Directly to or from any place for the purpose of hunting or fishing, provided the person has in his possession a valid hunting or fishing license; or

(b) Directly to or from any target range, or other authorized place for the purpose of practice, match, target, trap or skeet shooting exhibitions, provided in all cases that during the course of the travel all firearms are carried in the manner specified in subsection g. of this section and the person has complied with all the provisions and requirements of Title 23 of the Revised Statutes and any amendments thereto and all rules and regulations promulgated



4.) Firearm Packing for Travel and Reasonable Deviations NJSA 2C:39-6(g).

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.

- 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**



5.) Attorney General Guideline (see appendix A for complete document)

http://www.nj.gov/oag/newsreleases16/Transporting-Firearms_Guidelines.pdf

The deviation must be both necessary – as opposed to merely optional – and reasonably so, from an objective rather than a subjective viewpoint. As the exception speaks to reasonably necessary deviations in the course of travel “under the circumstances,” whether particular deviations are covered by the exception must be determined on a case-by-case basis, based on the totality of the circumstances. Because the statute uses the term “in the course of travel” rather than the term “route,” it contemplates not only detours in the route from point of origin to the destination but also stops made in the course of traveling from one authorized location to another.

While not an exclusive list, some examples of purposes for stops or detours in the course of travel to or between two locations that would qualify as reasonably necessary include: collecting and discharging passengers; purchasing fuel, food and beverages, medication, or other needed supplies; using a restroom; or contending with an emergency situation.



Part III.

Permit to Purchase **Firearms Identification Card** **Permits to Carry**

Speed it up - Enforcement of time limitation in the application process - Attorney General Directive 2016-4

(see appendix for complete document)

http://www.nj.gov/oag/newsreleases16/Permits-to-Carry-Firearms_Directive.pdf



a.) Overview

The Study Commission's report noted complaints by firearm permit applicants about variations in the practices and procedures used by licensing authorities issuing Firearms Purchaser Identification Cards, Handgun Permits and Carry Permits, including processing delays well beyond the 30 days prescribed by law and the imposition by some licensing authorities of application requirements that exceed the state permitting statute.

- The Attorney General directive requires licensing authorities simply to follow the law by processing permit applications in a timely fashion and limiting application requirements to those prescribed by statute.**
- To increase transparency in the permitting process, the Directive requires licensing authorities to submit, annually, data on the number of ID cards and handgun purchase permit applications filed and processed per month over the year, and the length of time it took to process those applications. These statistics will be posted annually on the Division of State Police web site.**
- The directive also envisions a more efficient and consistent application process, requiring the State Police, within 9 months, to develop and disseminate to licensing authorities standard protocols promoting best practices for reviewing, investigating and acting on applications for firearms purchaser identification cards, purchase permits and handgun carry permits.**
- Finally, the Attorney General will consider how new technology might streamline the processing of permit applications by directing the Superintendent of State Police, within 45 days, to convene a study group and report its findings to the Attorney General within 180 days of the group's first meeting.**

b.) Directive 2016-4 states in part:

In sum, permit applications that meet all of the statutory and regulatory standards should be approved as expeditiously as practicable so that the applicants promptly can exercise their lawful rights under New Jersey law and regulations to acquire and/or carry a firearm. So too, applications that do not satisfy all of the statutory and regulatory requirements should be denied expeditiously so that those applicants promptly may exercise their right to initiate an appeal to the courts should they choose to do so.



In addition to timeliness, all police agencies must enforce State firearms statutes and regulations objectively and uniformly. State law prescribes the qualification standards for each type of permit application. Police agencies serving in the capacity of firearms licensing authorities are prohibited from applying different policies and standards reflecting local or personal views for the appropriate regulation of civilian firearms, and are prohibited from requiring the submission of forms or the provision of information that goes beyond the items of information authorized by N.J.S.A. 2C:58-3(e), the State Police application forms, or judicial authority interpreting the law. See, *ems.*, N.J.S.A. 2C:58-3(f) ("There shall be no conditions or requirements added to the form or content of the application, or required by the licensing authority for the issuance of a permit or identification card, other than those that are specifically set forth in this chapter.").

A law enforcement agency's decision whether to approve a permit application must be made on a case-by-case basis, considering the individualized circumstances pertaining to the applicant.

Appendix A

Attorney General Guideline

on Reasonable Deviations

http://www.nj.gov/oag/newsreleases16/Transporting-Firearms_Guidelines.pdf



Appendix B

Attorney General Directive 2016-4 on

Uniform Procedures for Issues Firearms Permits

http://www.nj.gov/oag/newsreleases16/Permits-to-Carry-Firearms_Directive.pdf



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