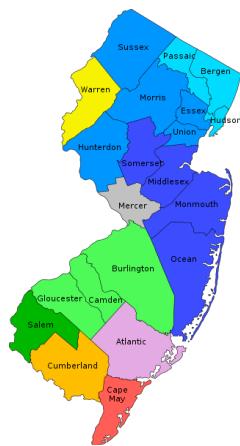


Garden State CLE presents:



In



Lesson Plan

## **Table of Contents**

**Introduction – Gun Law in New Jersey – In general**

**Governor's signing press release**

**1. Public Policy – “Violence is a public health crisis” - Study Commission on Violence**

**2. Motor Vehicle Impoundment**

**3. *THE ANTI-GUN TRAFFICKING ACT OF 2013***

**4. Upgrades penalty for unlawfully transferring a firearm to an underage person; permits transfer for instruction and training.**

**5. Open Public Records: Purchase & Firearms ID Cards**

**6. *Graves Act* – Penalty Upgrades**

**7. Terrorism Watch-list**

**8. Requires submission of certain mental health records to National Instant Criminal Background Check System.**

**9. Open Public Records Act**

**10. Provides a 180-day window to dispose of unlawfully possessed firearms.**

## Introduction – Gun Law in New Jersey – In general

No equivalent to the Second Amendment in either the 1844 or 1947 Constitutions.

**In General – Burton v. Sills, 53 N.J. 86 (1968)**

**Crespo v. Crespo, 201 N.J. 207, 209-210 (2010)**

To the extent defendant raised whether the Second Amendment's right to bear arms, *U.S. Const. amend. II*, applies to the states, we note that the issue of “[w]hether the Second Amendment right to keep and bear arms is incorporated as against the States by the Fourteenth Amendment's Privileges or Immunities or Due Process Clauses” presently is pending before the Supreme Court of the United States.. We need not reach that point because the right to possess firearms clearly may be subject to reasonable limitations (holding that “[l]ike most rights, the right secured by the Second Amendment is not unlimited” and endorsing “longstanding prohibitions on the possession of firearms”).

**The Federal View:**

**United States v. Miller, 307 U.S. 174 (1939)**

**District of Columbia v. Heller, 128 S. Ct. 2783 (2008)**

**McDonald v. City of Chicago, 130 S. Ct. 3020 (2010)**

## Governor's Signing Press Release

Thursday, August 08, 2013

Trenton, NJ – Responsibly addressing gun violence in a comprehensive manner, Governor Christie today signed into law 10 pieces of gun violence and firearm-related legislation recently passed by the Legislature. These bills build on the plan Governor Christie introduced in April, as well as New Jersey's already strict gun laws, currently the second toughest in the nation.

"These commonsense measures will both strengthen New Jersey's already tough gun laws and upgrade penalties for those who commit gun crimes and violate gun trafficking laws," said Governor Christie. "As elected leaders, our first duty is to maintain public safety, and these new laws will help reduce gun violence and keep our streets and communities safer."

Governor Christie included a signing statement with Assembly Bill No. 3687, which prevents individuals on the federal Terrorist Watch-list from obtaining a firearms identification card or permit to purchase handgun. The Governor noted that the bill represents his "commitment to keeping the citizens of New Jersey safe," but also noted the federal government's obligation to protect law-abiding citizens against "improper scrutiny." In carrying out that balance, Governor Christie said, "the government must be circumspect in its application of the law. There is little room for mistakes since they may harm the innocent and law abiding."

## **1. Public Policy – “Violence is a public health crisis” - Study Commission on Violence**

**AN ACT** declaring violence a public health crisis, establishing the “Study Commission on Violence” and supplementing Title 52 of the Revised Statutes.

**BE IT ENACTED** by the *Senate and General Assembly of the State of New Jersey:*

1. The Legislature finds and declares that:
  - a. On December 14, 2012, a heavily armed man, dressed in black fatigues and a military vest, walked into a Newtown, Connecticut elementary school and opened fire, horrifically killing 26 people before killing himself. Twenty of the victims were young children, who were six and seven years old;
  - b. On August 31, 2012 at a Pathmark in Old Bridge, New Jersey an employee armed with an assault rifle and automatic pistol entered the store and killed two workers before taking his own life;
  - c. In July 2012, at a crowded midnight screening of “The Dark Knight Rises” in Aurora, Colorado, a man wearing body armor and a gas mask entered the theater armed with an assault rifle, shotgun, and .40-caliber handgun and opened fire into the crowd. Twelve people were killed and 59 others were wounded as a result. The youngest victim was six years old;
  - d. On January 8, 2011 in Tucson, Arizona, Congresswoman Gabrielle Giffords and 18 others were shot during a public meeting held in a supermarket parking lot. Six of those people were killed;
  - e. On November 5, 2009 there was an attack at Fort Hood, Texas where an Army psychiatrist was charged with killing 13 soldiers and civilians and wounding more than two dozen others;
  - f. In Colorado, the movie theater shooting described above was the deadliest shooting since the Columbine High School massacre on April 20, 1999, when two students opened fire in the Denver suburb of Littleton, killing 12 classmates and a teacher and wounding 26 others before killing themselves;
  - g. Assault weapons were used in the Tuscon, Arizona shooting, the Fort Hood shooting, and the Columbine High School shooting described above;

h. The above examples represent a fraction of the violence that occurs nationally and in this State every year. According to the most recent data available, in this State alone, there are 372 murders per year, meaning there is one murder every 23 hours and 33 minutes in New Jersey;

i. Nationwide, there have been more than 70 mass shootings since the January 8, 2011 shooting of Arizona Congresswoman Gabrielle Giffords described above;

j. The Centers for Disease Control and Prevention has recognized violence as a serious public health problem in the United States and has reported homicide as the second leading cause of death among persons 15 to 24 years old. The Centers for Disease Control and Prevention has found that in addition to the many violent deaths that occur in this country each year, there are many more individuals who survive violence and are left with permanent physical and emotional scars and that this violence erodes communities by reducing productivity, decreasing property values, and disrupting social services;

k. In this State alone, there are 74,244 domestic violence offenses reported by the police each year, with children being involved or present during 31 percent of these offenses, according to the most recent data available;

l. Nationwide, the equivalent of 10,000 busloads of children end up in emergency rooms for violence-related injuries every year and more than 5,500 children are murdered every year;

m. A study conducted by the World Health Organization stated that communities with high numbers of violent children also have higher health care costs, reduced productivity, and decreased property values;

n. A 2001 Surgeon General report found that programs that focused on classroom attendance, academic progress, and school behavior helped reduce violence among children;

o. Although New Jersey has strict gun control laws, these laws are easily circumvented because of the lack of similar federal laws. In order to provide more safety for New Jersey residents, the federal government must reinstate its ban on assault weapons which expired on September 13, 1994 and must expand background check requirements for gun purchases to include all sales and transfers;

p. The Centers for Disease Control and Prevention and other scientific agencies have been barred by Congress from using federal funds to advocate or promote gun control, which appears to ban scientific agencies, including the Centers for Disease Control and Prevention from using federal funding to conduct research on the causes of gun violence. Congress should remove this ban and allow these scientific agencies to use federal funding to conduct this critical public health research; and

q. Based upon the foregoing findings regarding these recent horrific incidents illustrating the alarming prevalence of violence and the detrimental effects that unrelenting violence has for the good citizens of this nation and State, the Legislature declares violence to be a grave public health crisis. The Legislature finds that it is, therefore, in the public interest for the State to establish a commission to study violence in order to help raise awareness about one of this country's most significant public health crises.

2. a. There is established a Study Commission on Violence to study the issue of violence. The commission shall consist of nine members. To the greatest extent practical, the public members shall have a background or education in mental health or criminology. One member of the commission shall be the Attorney General or a designee, who shall serve ex-officio. One member of the commission shall be the Commissioner of Health or a designee, who shall serve ex-officio. One member of the commission shall be the Administrative Director of the Courts or a designee, who shall serve ex-officio. One member of the commission shall be the Commissioner of Human Services or a designee, who shall serve ex-officio. One member of the commission shall be the President of the County Prosecutor's Association of New Jersey or a designee, who shall serve ex-officio. Two public members of the commission shall be appointed by the Governor. One member appointed by the Governor shall be a person who has a background or education in mental health, and the other member appointed by the Governor shall be a person who has a background or education in the study or treatment of domestic violence. One public member of the commission shall be appointed by the President of the Senate. One public member of the commission shall be appointed by the Speaker of the General<sup>1</sup> Assembly.

Vacancies in the membership of the commission shall be filled in the same manner as the original appointments were made.

b. The members of the commission shall be appointed within 30 days of the effective date of P.L. , c. (C. )(pending before the Legislature as this bill)<sup>1</sup> and shall hold their initial organizational meeting as soon as practicable, but no later than 30 days following the appointment of the commission's members. The members shall select a chairperson from among the members. The chairperson shall appoint a secretary who need not be a member of the commission.

c. Members of the commission shall serve without compensation, but shall be reimbursed for necessary expenses incurred in the performance of their duties as members of the commission, within the limits of funds appropriated or otherwise made available to the commission for its purpose.

d. The Department of Law and Public Safety shall provide support staff to the commission, as necessary.

e. The commission shall further be entitled to call to its assistance and avail itself of the services of the employees of any State, county or municipal department, board, bureau, commission, or agency as it may require and as may be available to it for its purposes.

3. a. It shall be the duty of the commission to study the trends of violence, the source of violence, and the impact of violence on the community, to develop a method to address the epidemic of violence at the federal and State levels, and to make recommendations for State and Congressional action.

b. The commission shall seek out funding and grants for the implementation of programs to reduce violence from sources including, but not limited to, the Centers for Disease Control and Prevention and any other funding sources.

c. The commission shall study the issue of insufficient access to mental health treatment and violence.

d. The commission shall study and make recommendations regarding whether the Special Offenders Unit created by the Union County Prosecutor's Office to address the increase in criminal prosecutions against individuals with mental illness should be expanded to other counties.

e. The commission shall study and recommend whether the community-based mental health treatment system, through which there are involuntary outpatient commitments under a court order supervised by a case manager, should be expanded to all counties in this State and how to adequately fund the program in all counties.

4. a. The commission shall conduct public hearings in furtherance of its general purposes at such place or places as it shall designate, at which it may request the appearance of officials of any federal, State or interstate department, board, bureau, commission, agency, or authority and solicit the testimony of interested groups and the general public.

b. The commission shall issue the first report to the Governor and to the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), no later than the first day of the seventh month following its organization and shall issue annual reports thereafter, containing its findings and recommendations, including any recommendations for legislation and recommendations for Congressional action that it deems appropriate

5. This act shall take effect immediately.

## **2. Motor Vehicle Impoundment**

**AN ACT** concerning impoundment of certain motor vehicles and supplementing Title 2C of the New Jersey Statutes.

**BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:**

1. a. Any law enforcement agency is authorized to impound:
  - (1) a motor vehicle in which a violation of subsection a., d., or f. of N.J.S.2C:39-5 was committed;
  - (2) **a motor vehicle in which possession of a handgun, rifle, or shotgun for an unlawful purpose in violation of N.J.S.2C:39-4 was committed;**
  - (3) **a motor vehicle in which a violation of subsections b. or c. of N.J.S.2C:39-5 was committed in addition to the motor vehicle being used to commit a separate crime of the first, second, third or fourth degree under Title 2C of the New Jersey Statutes;**
  - (4) a motor vehicle which was used in the commission of any offense under subsection b. of N.J.S.2C:34-1; and
  - (5) a motor vehicle which was used in the commission of an offense under subsection a. of N.J.S.2C:35-10 or subsection a. of N.J.S.2C:35-5.
- b. A law enforcement agency impounding a vehicle pursuant to this section is authorized to charge a reasonable administrative fee in addition to the fees charged for the towing and storage of the impounded vehicle. The law enforcement agency is further authorized to retain custody of the vehicle until the fees are paid. All administrative fees and towing and storage fees shall be imposed on the registered owner of the motor vehicle. The registered owner shall be entitled to a hearing, upon request.
- The administrative fees shall be collected by and paid to the municipality imposing the fees. The towing and storage fees shall be collected by and paid to the person or entity that tows and stores the impounded vehicle.
- c. The registered owner of the vehicle shall be provided notice of the impoundment and of the right to request a hearing.

d. If the owner-lessor **or registered owner** of an impounded vehicle fails to claim the impounded vehicle by midnight of the **90th** day following the day on which the vehicle was impounded, that vehicle may be sold at auction ; **provided however, a vehicle shall not be sold until the lessee or registered owner has been convicted of the offense, or offenses pursuant to paragraph (3) of subsection a., for which the vehicle was impounded under subsection a. of this section.** **Property impounded under this section shall not be sold if the owner of the property establishes by a preponderance of the evidence that the owner was not involved in or aware of the unlawful activity and that the owner had done all that could reasonably be expected to prevent the proscribed use of the property by an agent.** **A person who uses or possesses property with the consent or knowledge of the owner is deemed to be the agent of the owner for purposes of this subsection.**

Notice of the sale shall be given by the impounding entity by certified mail to the owner of the vehicle, if the owner's name and address are known, and to the lienholder, if the lienholder's name and address are known, and by publication in a form prescribed by the chief administrator by one insertion, at least five days before the date of the sale, in one or more newspapers published in this State and circulating in the municipality in which the vehicle is impounded.

At any time prior to the sale of an impounded vehicle, the owner or other person entitled to the vehicle may reclaim possession upon showing proof of registration and insurance and paying all costs associated with the impoundment, and reasonable towing and storage fees and administrative fees.

The owner-lessor of an impounded vehicle shall be entitled to reclaim possession without payment or proof of insurance and the lessee shall be liable for all outstanding costs associated with the impoundment, towing, and storage of the vehicle and the administrative fees.

e. Any proceeds obtained from the sale of a vehicle at public auction pursuant to subsection d. of this section in excess of the amount owed for the administrative fees, towing and storage fees and any other costs associated with the impoundment of the vehicle shall be returned to the owner of that vehicle, if his name and address are known.

**f. Nothing in this section shall be construed to in any way limit or abridge the authority provided by N.J.S.2C:64-1 et seq. or any other law regarding forfeiture.**

2. This act shall take effect immediately.

### **3. THE ANTI-GUN TRAFFICKING ACT OF 2013**

AN ACT concerning penalties for certain firearms offenses, designated as  
**The Anti-Gun Trafficking Act of 2013**, and amending  
N.J.S.2C:39-9, N.J.S.2C:39-10, and P.L.1997, c.117.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

1. N.J.S.2C:39-9 is amended to read as follows:

i. Transporting firearms into this State for an unlawful sale or transfer. Any person who knowingly transports, ships or otherwise brings into this State any firearm for the purpose of unlawfully selling, transferring, giving, assigning or otherwise disposing of that firearm to another individual is guilty of a crime of the second degree. Any motor vehicle used by a person to transport, ship, or otherwise bring a firearm into this State for unlawful sale or transfer shall be subject to forfeiture in accordance with the provisions of N.J.S.2C:64-1 et seq.; provided however, this forfeiture provision shall not apply to innocent owners, nor shall it affect the rights of a holder of a valid lien.

The temporary transfer of a firearm shall not constitute a violation of this subsection if that firearm is transferred:

- (1) while hunting or target shooting in accordance with the provisions of section 1 of P.L.1992, c.74 (C.2C:58-3.1);
- (2) for shooting competitions sponsored by a licensed dealer, law enforcement agency, legally recognized military organization, or a rifle or pistol club which has filed a copy of its charter with the superintendent in accordance with the provisions of section 1 of P.L.1992, c.74 (C.2C:58-3.1) or

**(3) for participation in a training course conducted by a certified instructor in accordance with the provisions of section 1 of P.L.1997, c.375 (C.2C:58-3.2).**

**The** transfer of any firearm that uses air or carbon dioxide to expel a projectile ; or the transfer of an antique firearm shall not constitute a violation of this subsection.  
(cf: P.L.2007, c.298, s.1)

2. N.J.S.2C:39-10 is amended to read as follows:

2C:39-10. Violation of the regulatory provisions relating to firearms; false representation in applications.

a. (1) Except as otherwise provided in paragraph (2) **and paragraph (4)** of this subsection, any person who knowingly violates the regulatory provisions relating to manufacturing or wholesaling of firearms N.J.S.2C:58-1 , retailing of firearms N.J.S.2C:58-2, permits to purchase certain firearms N.J.S.2C:58-3 , permits to carry certain firearms N.J.S.2C:58-4, licenses to procure machine guns or assault firearms N.J.S.2C:58-5, or incendiary or tracer ammunition N.J.S.2C:58-10, except acts which are punishable under section N.J.S.2C:58-<sup>1</sup> or section N.J.S.2C:58-2, is guilty of a crime of the fourth degree.

(2) A licensed dealer who knowingly violates the provisions of subparagraph (d) of paragraph (5) of subsection a. of N.J.S.2C:58-2 is a disorderly person.

**(3) If, upon review, a law enforcement agency determines that a licensed dealer has sold, transferred, assigned, or otherwise disposed of an inordinate number of firearms and that licensed dealer knew, or should have known, that the firearms would be used in the commission of a crime or would be transferred to a person in order for the firearms to be used for an unlawful purpose, that dealer's license shall, after a hearing, be permanently revoked .**

(4) A licensed dealer who sells or transfers a firearm to a person knowing that person intends to sell, transfer, assign, or otherwise dispose of that firearm to a person who is disqualified from possessing a firearm under State or federal law is guilty of a crime of the second degree.  
Notwithstanding any other provisions of law to the contrary, the sentence imposed for a conviction under this subsection shall include a mandatory minimum term of imprisonment of 18 months, during which the defendant shall be ineligible for parole; provided however, if the firearm was used in the commission of a crime, the sentence imposed under this subsection shall include a mandatory minimum term of imprisonment of three years, during which the defendant shall be ineligible for parole. Further, a person convicted under this subsection shall be permanently disqualified from holding a retail license under N.J.S.2C:58-2.

## **4. Upgrades penalty for unlawfully transferring a firearm to an underage person; permits transfer for instruction and training.**

**AN ACT** concerning firearms and amending N.J.S.2C:39-10<sup>1</sup>and P.L.1979, c.179<sup>1</sup>.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

1. N.J.S.2C:39-10 is amended to read as follows:

2C:39-10. Violation of the regulatory provisions relating to firearms; false representation in applications.

e. Any person who knowingly sells, gives, transfers, assigns or otherwise disposes of a firearm to a person who is under the age of 18 years, except as permitted in section 14 of P.L.1979, c.179 (C.2C:58-6.1), is guilty of a crime of the **second** degree. Notwithstanding any other provision of law to the contrary, the sentence imposed for a conviction under this subsection shall include a mandatory minimum **five**-year term of imprisonment, during which the defendant shall be ineligible for parole.

f. Unless the recipient is authorized to possess the handgun in connection with the performance of official duties under the provisions of N.J.S.2C:39-6, any person who knowingly sells, gives, transfers, assigns or otherwise disposes of a handgun to a person who is under the age of 21 years, except as permitted in section 14 of P.L.1979, c.179 (C.2C:58-6.1), is guilty of a crime of the third degree.

g. Any person who knowingly gives or causes to be given any false information or knowingly engages in any other fraudulent conduct in applying for an exemption to purchase more than one handgun in a 30-day period in violation of the provisions of section 4 of P.L.2009, c.186 (C.2C:58-3.4) shall be guilty of a crime of the third degree. The presumption of non-imprisonment set forth in N.J.S.2C:44-1 shall not apply to persons convicted under the provisions of this subsection.

(cf: P.L.2009, c.186, s.3)

<sup>1</sup>2. Section 14 of P.L.1979, c.179 (C.2C:58-6.1) is amended to read as follows:

14. a. No person under the age of 18 years shall purchase, barter or otherwise acquire a firearm and no person under the age of 21 years shall purchase, barter or otherwise acquire a handgun, unless the person is authorized to possess the handgun in connection with the performance of official duties under the provisions of N.J.S.2C:39-6.

b. No person under the age of 18 years shall possess, carry, fire or use a firearm except as provided under paragraphs (1), (2), (3) and (4) of this subsection; and, unless authorized in connection with the performance of official duties under the provisions of N.J.S.2C:39-6, no person under the age of 21 years shall possess, carry, fire or use a handgun except under the following circumstances:

- (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 [or] , 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.

c. A person who violates this section shall be guilty of a crime of the fourth degree. For purposes of this section the fact that the act would not constitute a crime if committed by an adult shall not be deemed to prohibit or require waiver of family court jurisdiction pursuant to N.J.S.2C:4-11 or to preclude a finding of delinquency under the "New Jersey Code of Juvenile Justice," P.L.1982, c.77 (C.2A:4A-20 et seq.), P.L.1982, c.79 (C.2A:4A-60 et seq.), P.L.1982, c.80 (C.2A:4A-76 et seq.) and P.L.1982, c.81 (C.2A:4A-70 et seq.).

(cf: P.L.2000, c.145, s.3)<sup>1</sup>

<sup>1</sup>[2.] 3.<sup>1</sup> This act shall take effect on the first day of the second month following enactment.

## **5. Open Public Records: Purchase & Firearms ID Cards**

**AN ACT** concerning firearms records and supplementing P.L.1963, c.73 (C.47:1A-1 et seq.).

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

**1. Notwithstanding the provisions of any other statute or regulation to the contrary, government record as defined in section 1 of P.L.1995, c.23 (C.47:1A-1.1) shall include aggregate information regarding the total number of permits to purchase a handgun and firearms purchaser identification cards, without any personal identifying information, that have been issued by the Superintendent of State Police or the Chief of Police of a municipal police department.**

**2. This act shall take effect immediately.**

### **STATEMENT**

This bill clarifies that certain firearms records are available under the State's open public records law.

The bill clarifies that the public has access to aggregate information concerning the total number of firearms purchaser identification cards or handgun purchase permits, without any personal identifying information, that have been issued by the Superintendent of State Police or the Chief of Police of a municipality.

At present, personal firearms records are confidential pursuant to administrative regulations of the Department of Law and Public Safety.

## **6. Graves Act – Penalty Upgrades**

### **STATEMENT**

This bill upgrades the crime of unlawful possession of a firearm to a first degree crime in certain circumstances and amends various penalty provisions under the Graves Act.

The provisions of the bill make it crime of the first degree for a person to unlawfully possess a machine gun, handgun, rifle or shotgun, or an assault firearm following a conviction for a crime enumerated in subsection d. of section 2 of of P.L.1997, c. 117 (C.2C:43-7.1) (the No Early Release Act.) Under current law violations of these provisions are either a second degree offense, in the case of machine guns, handguns and assault firearms, or a third degree offense, in the case of rifles and shotguns.

The bill also amends sentencing under the Graves Act, P.L.1981, c.31 (C.2C:43-6), which sets forth mandatory minimum terms of imprisonment for persons convicted of certain firearms related offenses or offenses where a person possessed or used a firearm during the commission of a crime.

The Graves Act provides that a person convicted of unlawful possession of a machine gun, handgun, rifle or shotgun, in violation of subsections a., b. and c., respectively, of N.J.S.2C:39-5 is subject to a mandatory minimum period of parole ineligibility. Under current law the minimum term of imprisonment is three years.

In addition, the bill adds the unlawful possession of an assault firearm to the list of crimes that are subject to Graves Act sentencing.

The bill also increases the mandatory minimum period of parole ineligibility under the Graves Act from three years to 42 months.

Finally, the bill clarifies that individuals convicted of the unlawful possession of a BB gun, air gun or spring gun, be it a handgun, rifle, shotgun, are not subject to the mandatory sentences imposed under the Graves Act. Similarly, individuals convicted of the unlawful possession of an unloaded rifle or shotgun are also exempt from the mandatory sentences imposed under the Graves Act.

The bill adds unlawful possession of an assault firearm to the list of crimes for which Graves Act sentencing applies. Further, the provisions of the bill increase the mandatory minimum period of parole eligibility from three years to 42 months. The bill also provides that the mandatory minimum term will not apply to unlawful possession of a handgun, rifle or shotgun if the firearms are in the nature of an air gun, spring gun or pistol or other weapon of a similar nature, or to the unlawful possession of an unloaded rifle or shotgun.

It is the understanding of the sponsor that the bill would not preclude a defendant convicted of unlawful possession of an unloaded rifle or shotgun or a BB gun, air gun, or spring gun, from being eligible for participation in a pretrial intervention program.

**AN ACT** concerning unlawful possession of firearms and amending N.J.S.2C:39-5 and N.J.S.2C:43-6.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

1. N.J.S.2C:39-5 is amended to read as follows:

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. **(1)** 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 **second** degree. **(2) 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 it is a crime of the **third** 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.

d. Other weapons. Any person who knowingly has in his possession 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.

**j. A violation of subsections a., b., c. or f. of this section by a person who has a prior conviction of any of the crimes enumerated in subsection d. of section 2 of of P.L.1997, c.117 (C.2C:43-7.2) is a first degree crime.**

(c.f. P.L.2009, c.13, s.1)

2. N.J.S.2C:43-6 is amended to read as follows:

2C:43-6. a. Except as otherwise provided, a person who has been convicted of a crime may be sentenced to imprisonment, as follows:

- (1) In the case of a crime of the first degree, for a specific term of years which shall be fixed by the court and shall be between 10 years and 20 years;
- (2) In the case of a crime of the second degree, for a specific term of years which shall be fixed by the court and shall be between five years and 10 years;
- (3) In the case of a crime of the third degree, for a specific term of years which shall be fixed by the court and shall be between three years and five years;
- (4) In the case of a crime of the fourth degree, for a specific term which shall be fixed by the court and shall not exceed 18 months.

b. As part of a sentence for any crime, where the court is clearly convinced that the aggravating factors substantially outweigh the mitigating factors, as set forth in subsections a. and b. of 2C:44-1, or the court finds that the aggravating factor set forth in paragraph (5) of subsection a. of N.J.S.2C:44-1 applies, the court may fix a minimum term not to exceed one-half of the term set pursuant to subsection a., or one-half of the term set pursuant to a maximum period of incarceration for a crime set forth in any statute other than this code, during which the defendant shall not be eligible for parole; provided that no defendant shall be eligible for parole at a date earlier than otherwise provided by the law governing parole.

c. A person who has been convicted under subsection b. or d. of N.J.S.2C:39-3, subsection a. of N.J.S.2C:39-4, subsection a. of section 1 of P.L.1998, c.26 (C.2C:39-4.1), subsection a., b., [or] c.,or f. of N.J.S.2C:39-5, subsection a. or paragraph (2) or (3) of subsection b. of section 6 of P.L.1979, c.179 (C.2C:39-7), or subsection a., b., e. or g. of N.J.S.2C:39-9, or of a crime under any of the following sections: 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1, 2C:14-2a., 2C:14-3a., 2C:15-1, 2C:18-2, 2C:29-5, 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 as defined in 2C:39-1f., 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 or **42**

**months**, whichever is greater, or 18 months in the case of a fourth degree crime, during which the defendant shall be ineligible for parole.

The minimum terms established by this section shall not prevent the court from imposing presumptive terms of imprisonment pursuant to 2C:44-1f. (1) except in cases of crimes of the fourth degree.

A person who has been convicted of an offense enumerated by this subsection and who used or possessed a firearm during its commission, attempted commission or flight therefrom and who has been previously convicted of an offense involving the use or possession of a firearm as defined in 2C:44-3d., shall be sentenced by the court to an extended term as authorized by 2C:43-7c., notwithstanding that extended terms are ordinarily discretionary with the court.

d. (1) The court shall not impose a mandatory sentence pursuant to subsection c. of this section, 2C:43-7c. or 2C:44-3d., unless the ground therefor has been established at a hearing. At the hearing, which may occur at the time of sentencing, the prosecutor shall establish by a preponderance of the evidence that the weapon used or possessed was a firearm. In making its finding, the court shall take judicial notice of any evidence, testimony or information adduced at the trial, plea hearing, or other court proceedings and shall also consider the presentence report and any other relevant information.

(2) The court shall not impose a mandatory sentence pursuant to subsection c. of this section for a violation of paragraph (2) of subsection b. of N.J.S.2C:39-5; a violation of paragraph (2) of subsection c. of N.J.S.2C:39-5, if that rifle or shotgun 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 electing a bullet or missile smaller than three-eights of an inch in diameter, with sufficient force to injure a person; or a violation of paragraph (1) of subsection c. of N.J.S.2C:39-5.

---

## **7. Terrorism “Watch-list”**

### **GOVERNOR'S STATEMENT UPON SIGNING ASSEMBLY BILL No. 3687 (Second Reprint)**

Assembly Bill No. 3687, which I have signed today, disqualifies "any person named on the consolidated Terrorist Watch list maintained by Terrorist Screening Center administered by the Federal Bureau of Investigation" from being issued a firearms identification card or handgun purchase permit. To the extent that this bill will keep guns out of the hands of known terrorists, or those who have taken active steps to support terrorist activities, my signature on this bill represents my commitment to keeping the citizens of New Jersey safe. Our diligence against terrorism must never fade.

The President and Congress have a duty to the law abiding citizens of this country to not only protect them against acts of terror but to protect them also against improper scrutiny by federal law enforcement.

As a former federal prosecutor, I understand the obligation of government to ensure the safety and security of its people. However, in carrying out that task, the government must be circumspect in its application of the law. There is little room for mistakes since they may harm the innocent and law abiding.

The federal government takes great effort to ensure the reliability and accuracy of data in their Terrorist Screening Database. Further, when positive matches are identified through background checks performed by the FBI, field agents from numerous groups coordinate and investigate those "hits" to determine their accuracy. Nevertheless, some have expressed concerns with this bill based on the reliability and accuracy of background check information provided to law enforcement officers by the Federal Bureau of Investigation. I believe that federal elected officials must continue to ensure that federal law enforcement and intelligence gathering entities constantly strive to improve the levels of accuracy and reliability in terrorist screening databases. Therefore, as I sign Assembly Bill No. 3687 into law, I urge Congress to take steps to ensure that law-abiding American citizens are never swept into these databases.

Date: August 8, 2013

/s/ Chris Christie

Governor

Attest:

/s/ Charles B. McKenna

Chief Counsel to the Governor

**AN ACT** concerning firearms and amending N.J.S.2C:58-3.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

1. N.J.S.2C:58-3 is amended to read as follows:

2C:58-3. a. Permit to purchase a handgun. No person shall sell, give, transfer, assign or otherwise dispose of, nor receive, purchase, or otherwise acquire a handgun unless the purchaser, assignee, donee, receiver or holder is licensed as a dealer under this chapter or has first secured a permit to purchase a handgun as provided by this section.

b. Firearms purchaser identification card. No person shall sell, give, transfer, assign or otherwise dispose of nor receive, purchase or otherwise acquire an antique cannon or a rifle or shotgun, other than an antique rifle or shotgun, unless the purchaser, assignee, donee, receiver or holder is licensed as a dealer under this chapter or possesses a valid firearms purchaser identification card, and first exhibits said card to the seller, donor, transferor or assignor, and unless the purchaser, assignee, donee, receiver or holder signs a written certification, on a form prescribed by the superintendent, which shall indicate that he presently complies with the requirements of subsection c. of this section and shall contain his name, address and firearms purchaser identification card number or dealer's registration number. The said certification shall be retained by the seller, as provided in paragraph (4) of subsection a. of N.J.S.2C:58-2, or, in the case of a person who is not a dealer, it may be filed with the chief of police of the municipality in which he resides or with the superintendent.

c. Who may obtain. 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 section 3 of P.L.1991, c.261 (C.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 in section 2 of P.L.1970, c.226 (C.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<sup>2</sup>

(6) To any person who is subject to a restraining order issued pursuant to the "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261 (C.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 subsection d. of section 2 of P.L.1997, c.117 (C.2C:43-7.2); [or]

(8) To any person whose firearm is seized pursuant to the "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261 (C.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.**

**8. Requires submission of certain mental health records to National Instant Criminal Background Check System.**

[Editor's note - Note: National Instant Criminal Background Check System - NICS:

Mandated by the Brady Handgun Violence Prevention Act of 1993 and launched by the FBI on November 30, 1998, the National Instant Criminal Background Check System (NICS) is used by [Federal Firearms Licensees](#) (FFLs) to instantly determine whether a prospective buyer is eligible to buy firearms or explosives. Before ringing up the sale, cashiers call in a check to the FBI or to other designated agencies to ensure that each customer does not have a criminal record or isn't otherwise ineligible to make a purchase.]

**AN ACT** concerning submission of certain mental health records to the federal National Instant Criminal Background Check System and <sup>1</sup>[amending P.L.1965, c.59] supplementing Title 30 of the Revised Statutes<sup>1</sup>.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

**1. In compliance with the federal NICS Improvement Amendments Act of 2007, Pub.L. 110-180 and the Brady Handgun Violence Prevention Act of 1993, Pub. L. 103-159 , the Attorney General shall direct the Superintendent of the State Police to collect, in cooperation with the Administrative Office of the Courts, such data as may be required to make a determination as to whether a person is disqualified from possessing or receiving a firearm under 18 U.S.C. s.922 or applicable State law , and to transmit such data to the National Instant Criminal Background Check System administered by the Federal Bureau of Investigation.**

2. This act shall take effect immediately.

## **9. Open Public Records Act**

**AN ACT** concerning firearms records and amending <sup>2</sup>[P.L.1963, c.73]<sup>2</sup> P.L.1995, c.23 <sup>2</sup>[, c.23 and P.L.2001, c.404]<sup>2</sup>.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

<sup>2</sup>[1. Section 1 of P.L.1963, c.73 (C.47:1A-1) is amended to read as follows:

1. The Legislature finds and declares it to be the public policy of this State that:

government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, with certain exceptions, for the protection of the public interest, and any limitations on the right of access accorded by P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented, shall be construed in favor of the public's right of access;

all government records shall be subject to public access unless exempt from such access by: P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented; any other statute; resolution of either or both houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Executive Order of the Governor; Rules of Court; any federal law, federal regulation, or federal order;

a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy **and**

**to safeguard from public access information when disclosure thereof would jeopardize personal or public safety;** and [nothing contained in] P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented, shall not be construed as affecting in any way the common law right of access to any record, including but not limited to criminal investigatory records of a law enforcement agency , **unless otherwise expressly provided.**

Definitions:

<sup>2</sup>[2.] 1.<sup>2</sup> Section 1 of P.L.1995, c.23 (C.47:1A-1.1) is amended to read as follows:

1. As used in P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented:

A government record shall not include the following information which is deemed to be confidential for the purposes of P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented:

**personal firearms records, except for use by any person authorized by law to have access to these records or for use by any government agency, including any court or law enforcement agency, for purposes of the administration of justice;**

**personal identifying information received by the Division of Fish and Wildlife in the Department of Environmental Protection in connection with the issuance of any license authorizing hunting with a firearm. For the purposes of this paragraph, personal identifying information shall include, but not be limited to, identity, name, address, social security number, telephone number, fax number, driver's license number, email address, or social media address of any applicant or licensee;**

**“Personal firearms record” means any information contained in a background investigation conducted by the chief of police, the county prosecutor, or the Superintendent of State Police, of any applicant for a permit to purchase a handgun, firearms identification card license, or firearms registration; any application for a permit to purchase a handgun, firearms identification card license, or firearms registration; any document reflecting the issuance or denial of a permit to purchase a handgun, firearms identification card license, or firearms registration; and any permit to purchase a handgun, firearms identification card license, or any firearms license, certification, certificate, form of register, or registration statement. For the purposes of this paragraph, information contained in a background investigation shall include, but not be limited to, identity, name, address, social security number, phone number, fax number, driver’s license number, email address, social media address of any applicant, licensee, registrant or permit holder.**

## **10. Provides a 180-day window to dispose of unlawfully possessed firearms.**

**AN ACT** concerning the possession of certain firearms

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

1. Any person who has in his possession a handgun in violation of subsection b. of N.J.S.2C:39-5 or a rifle or shotgun in violation of subsection c. of N.J.S.2C:39-5 on the effective date of this act may retain possession of that handgun, rifle, **or** shotgun for a period of not more than **180** days after the effective date of this act.

During that time period, the possessor of that handgun, rifle, or shotgun shall:

- (1) transfer that firearm to any person lawfully entitled to own or possess it; or
- (2) voluntarily surrender that firearm pursuant to the provisions of N.J.S.2C:39-12.

2. a. Except as provided in subsection d. of this section, any person who has in his possession an assault firearm on the effective date of this act may retain possession of that firearm for a period of not more than **180** days after the effective date. During that time period, the possessor of the assault firearm shall:

- (1) transfer the assault firearm to any person lawfully entitled to own or possess such firearm;
- (2) render the assault firearm inoperable; or
- (3) voluntarily surrender the assault firearm pursuant to the provisions of N.J.S.2C:39-12.

b. If the person who possesses the assault firearm elects to render the firearm inoperable, the person shall file a certification on a form prescribed by the Superintendent of the State Police indicating the date on which the firearm was rendered inoperable. This certification shall be filed with either the chief law enforcement officer of the municipality in which the person resides, or in the case of a person who resides outside this State but stores or possesses an assault firearm in this State, with the Superintendent of the State Police.

c. As used in this section, "inoperable" means that the firearm is altered in such a manner that it cannot be immediately fired and that the person does not possess or have control over the parts necessary to make the firearm operable.

d. The provisions of this act shall not be applicable to any assault firearm possessed pursuant to N.J.S.2C:58-5 or registered pursuant to section 11 of P.L.1990, c.32 (C.2C:58-12).

3. This act shall take effect **immediately** and shall expire on the **181st** day after enactment.

---

Provides 180-day window for persons to dispose of certain unlawfully possessed firearms.