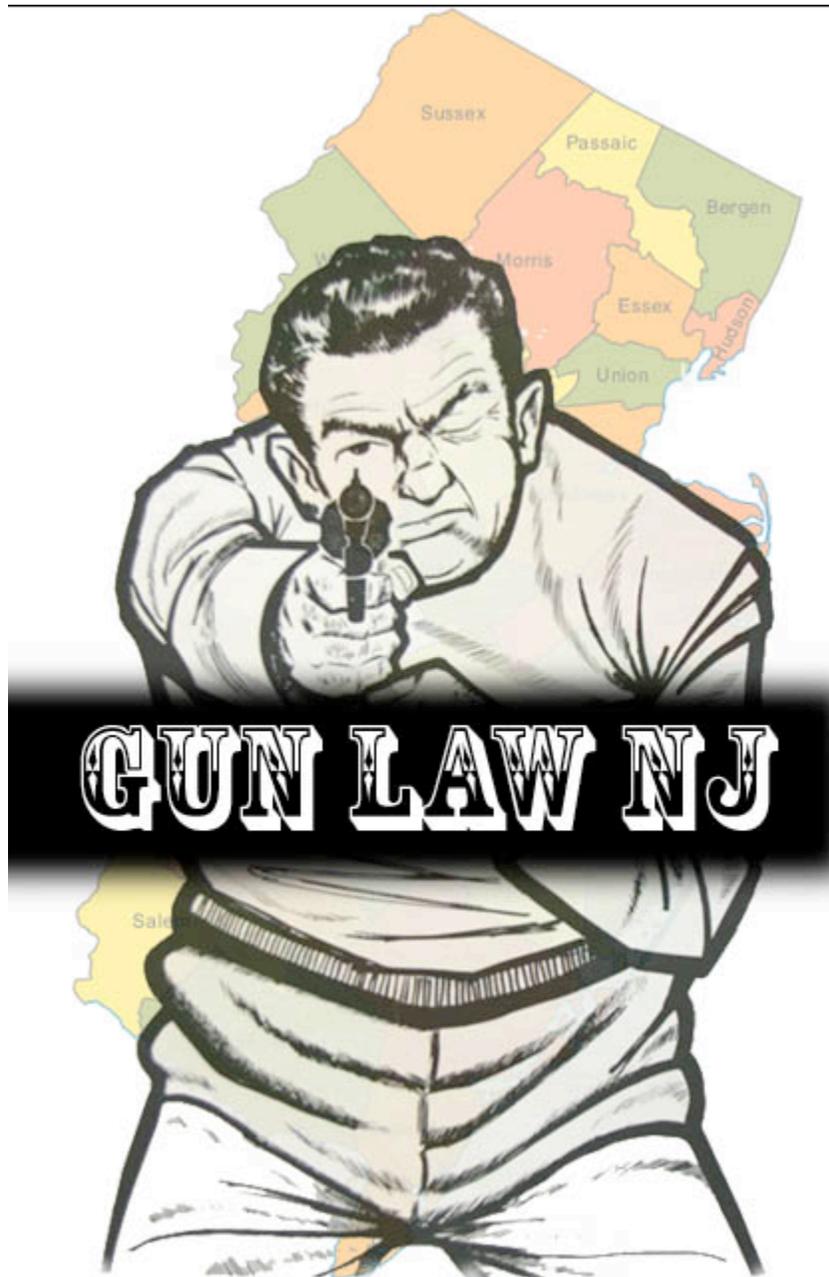


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Part I - Constitutional Issues

a. The New Jersey View

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Review in the County Court of the Police Chief's action should follow a pattern consistent with the direction of the Legislature as to the right of the citizen to receive a firearms purchaser identification card unless good cause appears for the denial thereof within the reasons specified for disqualification under [N.J.S.A. 2A:151-33](#). Accordingly, in our view, the existence of good cause for the denial must represent a burden to be carried by the Police Chief, and to be established by a fair preponderance of the evidence. Of course, in evaluating the facts presented by the Chief, and the reasons given for rejection of the application, the court should give appropriate consideration to the Chief's investigative experience and to any expertise he appears to have developed in administering the statute.

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C. In re Dubov, 410 N.J. Super. 190 (App. Div. 2009)

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Part V – Expanded Category of Graves Act Offenses

Prior to the enactment of P.L. 2007, c. 341, on January 13, 2008, the Graves Act required that the sentencing judge impose a minimum period of parole ineligibility where the State established that a firearm was used to facilitate one the following predicate crimes: 1) murder, 2) manslaughter (aggravated and reckless), 3) aggravated assault, 4) kidnapping, 5) sexual assault, 6) aggravated sexual contact, 7) robbery, and 8) escape. The Graves Act also applied to the second crime of possession of a firearm for an unlawful purpose but only where the intent for use against a person.

Note that all but two of the crimes enumerated above – aggravated sexual contact and possession of a firearm for an unlawful purpose -- also trigger enhanced punishment under the No Early Release Act, N.J.S.A. 2C:43-7.2, regardless of whether a weapon was possessed or used during the commission of the crime. The No Early Release Act requires the imposition of a mandatory period of parole ineligibility equivalent to 85 percent of the base term of imprisonment.

The Graves Act now applies to the following additional crimes committed on or after January 13, 2008:

1. Unlawful possession of a sawed-off shotgun, a crime of the third degree. N.J.S.A. 2C:39-3b.

2. Possession of a defaced firearm, a crime of the fourth degree – N.J.S.A. 2C:39-3d. This offense subjects to criminal liability any person who knowingly has in his possession any firearm, which has been defaced, except an antique firearm.

3. Possession of a firearm while committing a drug offense, a crime of the second degree – N.J.S.A. 2C:39-4.1a: This offense applies where the person is found in possession of a firearm while committing, or attempting to commit, or conspiring to commit, being the leader of a narcotics trafficking network, distributing CDS or possession with intent to distribute CDS, maintaining or operating a CDS production facility, employing a juvenile in a drug distribution scheme, distributing CDS within 1,000 feet of school property or within 500 feet of public property, distribution or possession with intent to distribute imitation CDS, or bias intimidation [sic].

4. Unlawful possession of a machine gun, a crime of the third degree – N.J.S.A. 2C:39-5a

5. Unlawful possession of a handgun, a crime of the second degree - N.J.S.A. 2C:39-5b. This provision makes it a crime to knowingly carry a handgun (other than an air gun, spring gun, BB or pellet gun) without a permit.

Important: Be advised that on January 13, 2008, the Governor signed into law P.L. 2007, c. 284, which upgraded this crime from third to second degree. In addition, this amendment makes those convicted of unlawful possession of a machine gun, handgun or assault firearm ineligible for participation in ISP, and subjects defendants to a mandatory term of imprisonment, including a five-year period of parole ineligibility where the court finds a substantial likelihood that the defendant is involved in organized criminal activity.

6. Unlawful Possession of a Rifles and Shotguns Obtained Without a Firearms Purchaser Identification Card, a crime of the third degree – N.J.S.A. 2C:39-5c. Note that this provision subjects to criminal liability any person who knowingly has in his possession any rifle or shotgun without having first obtained a firearms purchaser identification card and any person who knowingly has in his possession any loaded rifle or shotgun whether or not the person has obtained a firearms purchaser identification card.

7. Certain Persons Not to Have Weapons, a crime of the fourth degree, N.J.S.A. 2C:39-7a. Applies to those persons previously convicted of aggravated assault, arson, burglary, escape, extortion, homicide, kidnapping, robbery, aggravated sexual assault, sexual assault, bias intimidation, endangering the welfare of a child, stalking, a crime involving domestic violence, possession of a weapon for an unlawful purpose, possession of a prohibited device, and the manufacture, transport, disposition, or defacement of dangerous weapons. Note that this provision encompasses weapons other than firearms.

8. Certain Persons Not to Have Weapons, a crime of the third degree – N.J.S.A. 2C:39-7b(2). Applies to any person that has been convicted in New Jersey or elsewhere of a disorderly persons offense involving domestic violence who is in possession of a firearm.

9. Certain Persons Not Have Weapons, a crime of the third degree – N.J.S.A. 2C:39-7b(3). Applies to any person whose firearm is seized pursuant to The Prevention of Domestic Violence Act and whose firearm has not been returned or who is subject to a court order prohibiting the possession of firearms issued pursuant to The Prevention of Domestic Violence Act, who subsequently purchases, owns, possesses or controls a firearm.

10. The Manufacture, Transport, Disposition and Defacement of Machine Guns, a crime of the third degree – N.J.S.A. 2C:39-9a. Provides that any person who manufactures, causes to be manufactured, transports, ships, sells or disposes of any machine

gun without being registered or licensed to do so is guilty of this offense.

11. The Manufacture, Transport, Disposition and Defacement of a Sawed-off Shotgun, a crime of the third degree – N.J.S.A. 2C:39-9b.

12. The Defacement of Firearms, a crime of the third degree – N.J.S.A. 2C:39-9e. Applies to any person who defaces a firearm or who knowingly buys, receives, disposes of, or controls a defaced firearm except an antique.

13. The Manufacture, Transport, Disposition and Defacement of Assault Firearms, a crime of the third degree – N.J.S.A. 2C:39-9g.

14. Possession of a Firearm for An Unlawful Purpose, a crime of the second degree – N.J.S.A. 2C:39-4a. Prior to the 2008 amendment, the Graves Act applied to this crime only if the defendant's intent was to use the firearm against a person. The Graves Act now applies whether defendant's intent was to use the firearm against a person or property of another.

Observations: Notably, the crimes enumerated above differ markedly in several key respects from the predicate crimes in the original Graves Act. To begin, many are strictly possessory in nature – the convictions themselves will justify imposition of a mandatory parole ineligibility period without resort to the extrinsic fact-finding that typified prior sentencing practice under the Graves Act. Second, eleven out of fourteen of the above-referenced crimes are third or fourth degree offenses. Therefore, the presumption for non- incarceration is now inoperative for those first-time offenders convicted of those eleven crimes. As will be discussed, probation as a possible disposition is also greatly curtailed. Third, it seems clear that the Legislature is, for the first time, broadening the Graves Act to encompass criminal conduct involving weapons other than firearms.

Also bear in mind that where a defendant incurs a conviction for any of the above crimes (again, if committed on or after January 13, 2008) and has previously been convicted of a Graves Act offense, he or she must receive a mandatory extended term of imprisonment in accordance with N.J.S.A. 2C:43-6f.

Finally, waiver of the required period of parole ineligibility can only be effectuated through N.J.S.A. 2C:43-6.2, which requires the prosecutor to move before the Assignment Judge for a sentence of probation or a one-year term of imprisonment. No other disposition is permitted. Also, the provision may only be relied upon where the defendant is a first-time firearms offender and where the "interests of justice" are served.

Part VI – Domestic Violence

A. Domestic Violence Seizure of Weapons

B. Special Domestic Violence Rules for Police Officers

NJSA 2C:25-21

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.

Appendix

**Attorney General: Seizure of
Weapons**

Attorney General: Less Lethal

Attorney General: TASERS !!!

This memo discusses the Legislature's recent and significant amendment of The so-called Graves Act, set forth in N.J.S.A. 2C:43-6c of the New Jersey Code of Criminal Justice.

Prior to the enactment of P.L. 2007, c. 341, on January 13, 2008, the Graves Act required that the sentencing judge impose a minimum period of parole ineligibility where the State established that a firearm was used to facilitate one the following predicate crimes: 1) murder, 2) manslaughter (aggravated and reckless), 3) aggravated assault, 4) kidnapping, 5) sexual assault, 6) aggravated sexual contact, 7) robbery, and 8) escape. The Graves Act also applied to the second crime of possession of a firearm for an unlawful purpose but only where the intent for use against a person.

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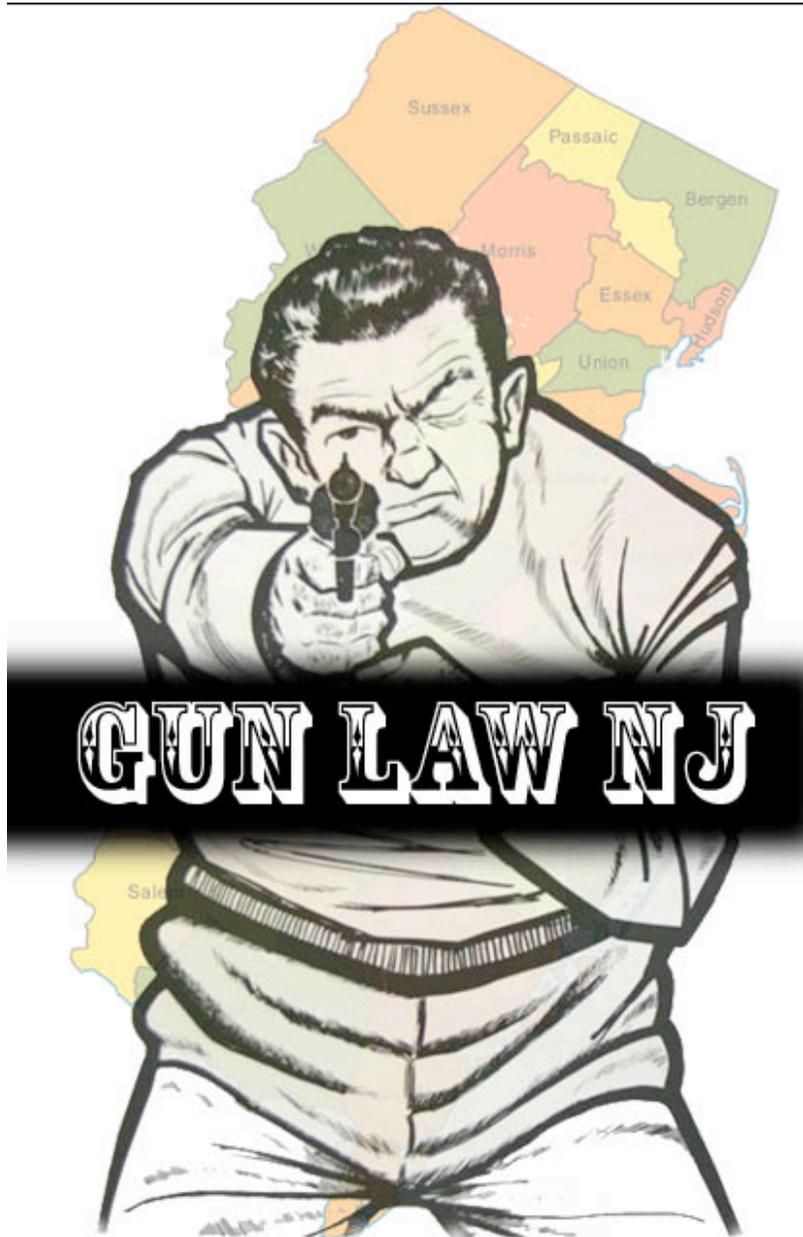
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At the outset of the County Court hearing, therefore, orderly and logical procedure calls for introduction through the testimony of the applicant of his application for the identification card, the rejection thereof and the reasons given by the Chief, if any. At this point he may be subjected to cross-examination by counsel for the Chief. Thereafter, the Chief should proceed with the evidence on which his denial was predicated. Ordinarily, this would include presentation of his own testimony, that of the members of the police department who made the investigation and furnished reports to the Chief, any available lay or professional persons who furnished information which influenced the action taken by the Chief, and any admissible documentary evidence which played a part in the adverse decision. Upon completion of the Chief's proof, the applicant may offer relevant rebuttal testimony.

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Firearms Law in New Jersey

I. Overall Structure of New Jersey Firearms Law

A. Definitions

Firearm under New Jersey law: 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 any 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 injure¹ a person. N.J.S. 2C:39-1 f.

Practical result: This definition includes all conventional firearms, plus muzzle-loaders, BB guns, flare guns, tear gas guns, but arguably not Airsoft guns.

Firearm under Federal law: Any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon ... Such term does not include an antique firearm.²

¹ An "injury" can include something as meager as the stinging sensation from a slap in the face. State v. Downey, 242 N.J. Super. 367 (Law Div. 1988).

² The term "antique firearm" means (A) any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; or (B) any replica of any firearm described in subparagraph (A) if such replica (i) is not designed or redesigned for using rimfire

Practical Result: Firearms do not include BB guns or antique, or modern black powder firearms, as long as they cannot fire fixed ammunition.³

Main Differences:

BB gun

Black Powder

- Significance:**
- 1. Whether an item meets the definition determines potential criminal liability.**
 - 2. An item which is not a firearm under Federal law may be a firearm under state law.**

or conventional centerfire fixed ammunition, or (ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade. (C) any muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol, which is designed to use black powder, or a black powder substitute, and which cannot use fixed ammunition. For purposes of this subparagraph, the term "antique firearm" shall not include any weapon which incorporates a firearm frame or receiver, any firearm which is converted into a muzzle loading weapon, or any muzzle loading weapon which can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof. 18 U.S.C. 921.

³ AUTHOR'S NOTE: Fixed ammunition is a single unit which includes primer, powder and projectile in one cartridge, as opposed to having to pour loose powder down a barrel, and then put in a projectile, as with a muzzleloader.

B. Right to Keep and Bear Arms

New Jersey: None.⁴

Federal:

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Individual right vs. Collective right.

See United States v. Verdugo-Urquidez, 494 U.S. 259 (1990): United States v. Emerson,

270 F.3d 203 (5th Cir. 2001); United States v. Miller, 307 U.S. 174 (1939)

NOTE ESPECIALLY: - The Second Amendment does not likely apply to individual New Jersey residents.
- It only addresses actions by the Federal government. See Burton v. Sills, 53 N.J. 86 (1968).
- It does not necessarily address state action, due to "selective incorporation" doctrine of applying the Bill of Rights to the States.⁵

⁴ The closest thing in the New Jersey Constitution is Article 1, Paragraph 1, which states: All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness. (Emphasis added.)

⁵ The "selective incorporation" doctrine holds that the Federal Bill of Rights applies against state action only regarding "fundamental principles of liberty and justice which lie at the base of all of our civil and political institutions." The right sought to be protected must be fundamental to the "very essence of a scheme or ordered liberty." Palko v. Connecticut, 302 U.S. 319 (1937). As of this writing, the United States Supreme Court has not ruled on whether the Second Amendment meets the above criteria.

C. Unlawful Possession

All firearms are prohibited in New Jersey. N.J.S. 2C:39-5. Generally, a Third Degree crime (5 years max State Prison.)

However, one may possess them under certain circumstances (exemptions). N.J.S. 2C:39-6. These are affirmative defenses, which can only technically be presented at trial.

GUILTY UNTIL PROVEN INNOCENT: "When the legality of a persons conduct under this chapter depend on his possession of a license or permit .. it shall be presumed that he does NOT possess such a license or permit ... until he establishes the contrary." N.J.S. 2C:39-2b.
Exemptions are an affirmative defense!

"UNLAWFUL POSSESSION" VS. "POSSESSION FOR AN UNLAWFUL PURPOSE" UNDER N.J.S. 2C:39-4.

Possession of a firearm with a "purpose to use it unlawfully against the person or property of another is ... a crime of the second degree."

D. Often Utilized Exemptions:

N.J.S. 2C:39-6(e)&(f) allow for the possession of firearms under certain narrow circumstances, such as in the home, in one's place of business, while hunting and target shooting.

All transportation must be done in accordance with (IAW) N.J.S. 2C:39-6g, See Section IIE.

E. Licensing

To acquire

To carry

Voluntary Registration

No Permit "to possess" exists

Part IV – New Jersey Firearms Statutes – Private Persons

A. Firearm Ownership & Acquisition

B. Firearm Transfer

C. Firearm Possession

D. Hunting

E. Vehicle Transportation of Firearms

F. Firearm Self-Defense

G. Firearm Self-Defense of a Third Party

H. Firearm Defense of a Dwelling

M. Assault Weapons

II. New Jersey Firearm Statutes -- Private Persons

A. Firearm Ownership/Acquisition

(1) Ownership rights vs. Possessory rights: "Title" is not "Possession"

(2) Acquisition vs. Possession

Acquisition is N.J.S. 2C:58-3

Possession is N.J.S. 2C:39-5 and 6

Difference is important.

(3) Acquisition Methods

a) Inheritance:

- No NJ FID/NJ PPH required for passing of a firearm to an heir or legatee, whether by testamentary bequest or the laws of intestacy.

- This is consistent with Federal law which allows for Interstate acquisition by inheritance.

- HOWEVER, if the recipient does not qualify to possess the firearm, he/she must surrender the firearm to the local police chief, and has 180 days to arrange for its lawful sale.

b) Moving into State:

- No prohibitions against moving lawfully owned firearms into New Jersey with one's household goods, providing the firearms/magazines are not specifically prohibited under New Jersey law.⁶
- Transport in accordance with methods described in section IIe.

c) Grandfathering:

- The New Jersey licensing statutes did not criminalize prior lawful acquisitions of firearms.
- Anyone who lawfully acquired a firearm before the statute was enacted acquired it lawfully and no NJ FID/PPH was or is required.

d) Lawful acquisition in another jurisdiction:

- Interplay of Federal and State law.
- Lawful under Federal law to acquire long arms (rifles/shotguns), but not handguns from a licensed Federal dealer in other than one's state of residence.
- Not violative of New Jersey law to acquire a long arm out of state and return with it to New Jersey

⁶ Specifically prohibited items include machine guns, assault firearms, and large capacity ammunition magazines. See Section IIM.

e) Acquisition via licensing:

- New Jersey Firearms Purchaser's Identification Card (NJ FID):
 - Allows purchase of unlimited number of rifles/shotguns (long arms)
 - Valid until address changes (30 days to update⁷) or until holder becomes subject to a disability (listed below)
 - To purchase long arm, must complete Certificate of Eligibility (as well as Federal form 4473 with dealer)

- New Jersey Permit to Purchase a Handgun (NJ PPH)
 - One permit per handgun.
 - Valid for 90 days from date of issuance.
 - Applicant may obtain more than one permit at a time, and there is no official maximum number.
 - Copies are filed with purchaser, seller, New Jersey State Police, Chief of Police of municipality where buyer resides.
 - Same eligibility standards as NJ FID

⁷ Per N.J.A.C. 13:54-1.11(a), a NJ FID holder has 30 days to update the address on his card. Per In re Application of Bovadjian, 362 N.J. Super. 463 (App. Div. 2003), a complete new background check, with an independent determination by the new police chief, may be done.

NOTE: THERE IS A LEGISLATIVE PRESUMPTION IN FAVOR OF ISSUING NJ FID OR NJ PPH, and it is the State's burden to prove an applicant is disqualified.⁸

N.J.S. 2C:58-3 (Acquisition of NJ FID or NJ PPH)

Prohibits persons from obtaining a NJ FID or NJ PPH (to acquire):

1. Convicted of any crime⁹
2. Convicted of a DV DP¹⁰
3. Drug dependent
4. Currently confined for a mental disorder
5. Previously confined for a mental disorder¹¹
6. Habitual drunkard
7. Physical defect or disease that makes him unsafe¹²
8. Alcoholic¹³
9. Knowingly falsifies the application
10. Under 18 (long arms); under 21 (handguns)
11. Are subject to a DVRO which prohibits possession of firearms, OR

⁸ N.J.S.2C:58-3c; Weston v. State, 60 N.J. 36 (1972); In re Application of Bovadjian, 362 N.J. Super. 463 (App. Div. 2003).

⁹ This disability may be curable by an expungement.

¹⁰ This disability may be curable by an expungement.

¹¹ This disability may be curable by an expungement or by a note from an appropriate professional which indicates the person is "no longer suffering from that particular disability in such a manner that would interfere with or handicap him in the handling of firearms."

¹² This disability may be curable by a note from an appropriate professional which indicates the person is "no longer suffering from that particular disability in such a manner that would interfere with or handicap hi in the handling of firearms."

¹³ This disability may be curable by a note from an appropriate professional which indicates the person is "no longer suffering from that particular disability in such a manner that would interfere with or handicap hi in the handling of firearms"

have had a FRO issued, but subsequently removed, within the last two years (N.J.S. 2C:25-29b.)¹⁴

12. Juvenile delinquency adjudication that (1) would be a crime if committed by an adult, and (2) involved unlawful use/possession of a weapon/explosive/DD
13. Firearm seized under DV and not returned
14. Not in the "interest of the public health, safety or welfare"

NOTE: Possession of a valid NJ FID provides broader travel exemptions for cased and unloaded long arms.

B. Firearm Transfer

- (1) Permanent transfers are accomplished using the licenses NJ FID or NJ

PPH required above.

- Including Sale/Gift: No exceptions for relatives.

- Certificate of Eligibility is also is required for long gun transfers

- Licensed dealers require completion of the Federal Form 4473

- (2) Common private transfer mistakes and problems:

- Gifts among relatives

- Not using a Certificate of Eligibility

¹⁴ The issuance of a Final Restraining Order acts as a bar to firearms possession for a minimum of two years, or the life of the FRO, whichever is greater.

- A collector who buys, trades and sells, may be seen as an unlicensed arms dealer and charged accordingly.

For a private transfer, Always use an FFL!

(3) Temporary transfer: (N.J.S. 2C:58-3.1 and N.J.S. 2C:58-3.2)

a) At the Range:

Legal Owner (natural person or licensed dealer only)

Handgun, rifle or shotgun

Recipient over 18

8 hours or less

Purpose of target shooting

Direct supervision/actual presence required

Recipient need not have NJ FID

Transfer must take place at range!

b) In the Field:

Legal Owner (natural person-not business)

Rifle or shotgun which is suitable for hunting

Recipient over 18

8 hours or less

Purpose of hunting

Owner must remain in actual presence or vicinity

Recipient must have appropriate hunting permits

No fee may be charged

Transfer must take place in woods!

c) For training purposes:

Certified Instructor

may temporarily transfer a firearm

to a person participating in a training course

Course is for the use, handling and maintenance of firearms

Transfer made only during the course

Transfer made at range (or place of training)

8 hours or less

Recipient must be in actual presence and under direct supervision of instructor

No NJ FID/NJ PPH required for transfer, but transferee must not be ineligible to receive NJ FID/NJ PPH

C. Firearm Possession

N.J.S. 2C:39-6 is exemption from general firearms prohibition.

Allows for a person to keep and carry any firearm:

(1) In the Home: residence, premises, other land owned/possessed by him

(2) In the place of business:

Must be owner

Must be a fixed location

(3) At a rifle or pistol club, but the club must:

File its charter and annually submit a list of members to the
superintendent of state police

Be organized IAW the rules prescribed by the National Board for
the Promotion of Rifle Practice

(4) While Hunting:

Must have valid hunting license

Must be an appropriate firearm for hunting

Must be in compliance with ALL Fish and Game Laws:

In other words, a minor Fish and Game violation, (such as
not wearing enough orange), can eliminate the exemption
and lead to prosecution for unlawful possession of a
firearm!

(5) Transportation exemptions are narrow:

From place of purchase to residence or business

Between dwelling and business

Between residences/businesses while moving

Between dwelling/business and a gunsmith

Directly to/from hunting with valid hunting license

Directly to/from a target range

All transportation must be done IAW N.J.S. 2C:39-6g, as described in section IIE.

D. Hunting: See above

E. Vehicle Transportation of Firearms

(1) N.J.S. 2C:39-6g: New Jersey transportation requirements:

Unloaded

Closed and fastened case or

Securely tied package

In trunk of vehicle

[Author's Note: or as far away from driver as possible]

Only such deviations are as are reasonably necessary

[Author's Note: Ammo is best kept in trunk, in a separately locked
container]

[Author's Note: Keep magazines unloaded]

(2) 18 U.S.C. 926A: Federal transportation requirements:

Federal law designed to preempt States from charging otherwise lawful

travelers with unlawful possession of firearms¹⁵

Not well known at the state level

Must be qualified to possess firearms under Federal law

May transport from any place where it may be lawfully possessed

To any other place where it may be law fully possessed

If the firearm is unloaded

Neither firearm, nor ammunition is readily accessible from the passenger

¹⁵ The statute begins "Notwithstanding any other provision of any law or any rule or regulation of a State or any political subdivision thereof. . ." [Emphasis added.]

compartment of vehicle.

If vehicle does not have a trunk, the firearm or ammunition shall be in a locked container other than the glove compartment or console

F. Firearm Self-Defense: See Mr. Curwin's information

G. Firearm Defense of Third Party: See Mr. Curwin's Information

H. Firearm Defense of Dwelling and Property: See Mr. Curwin's information

I. Firearm Disability Statutes

(1) N.J.S. 2C:39-7 prohibits any possession of firearms by:

1. Persons with enumerated criminal convictions (2d Degree)¹⁶

PENALTY FOR VIOLATION: Up to ten years State prison, minimum mandatory five years without parole.

2. Persons convicted of DV DPs (3rd Degree crime)

3. Persons with ROs or whose guns were seized per DV statute

(3rd Degree, but exemption for LEOs on duty)

4. Persons who had been committed, unless they have a

professional's note (Weapons) (4th Degree crime)

¹⁶ aggravated assault, arson, burglary, escape, extortion, homicide, kidnapping, robbery aggravated sexual assault, sexual assault, bias intimidation, endangering the welfare of a child, stalking, a crime involving domestic violence, N.J.S. 2C:35-3, 35-4, 35-5, 35-6, part of N.J.S. 2C:35-7, N.J.S. 2C:35-11, N.J.S. 2C:39-3, N.J.S. 2C:39-4, N.J.S. 2C:39-9.

sheriff/sheriff's officer

state or county corrections officer

park police officer

county prosecutor's detective or investigator

Federal law enforcement officer

M. Assault Firearms:

(1) New Jersey law prohibits the possession of certain semi-automatic²⁸ firearms, and classifies them as "assault firearms."²⁹

(2) N.J.S. 2C:39-1w lists certain specific firearms, and four general definitions of prohibited "assault firearms."

Algimec AGM1 type

Any shotgun with a revolving cylinder
such as the "Street Sweeper" or "Striker 12"

Armalite AR-180 type

Australian Automatic Arms SAR

Avtomat Kalashnikov type semi-automatic firearms

Beretta AR-70 and BM59 semi-automatic firearms

Bushmaster Assault Rifle

Calico M-900 Assault carbine and M-900

CETME G3

Chartered Industries of Singapore SR-88 type

Colt AR-15 and CAR-15 series

Daewoo K-1, K-2, Max 1 and Max 2, AR 100 types

Demro TAC-1 carbine type

Encom MP-9 and MP-45 carbine types

FAMAS MAS223 types

FN-FAL, FN-LAR, or FN-FNC type semi-automatic firearms

Franchi SPAS 12 and LAW 12 shotguns

²⁸ Semi-automatic means a firearm which fires a single projectile for each single pull of the trigger and is self-reloading or automatically chambers the next round, cartridge or bullet.

²⁹ In military parlance a true "assault firearm" must be capable of fully-automatic fire, but the list of "assault firearms" prohibited by New Jersey are all semi-automatic only.

G3SA type
Galil type Heckler and Koch HK91, HK93, HK94, MP5, PSG-1
Intratec TEC 9 and 22 semi-automatic firearms
M1 carbine type
M14S type
MAC 10, MAC 11, MAC 11-9mm carbine type firearms
PJK M-68 carbine type
Plainfield Machine Company Carbine
Ruger K-Mini-14/5F and Mini-14/5RF
SIG AMT, SIG 550SP, SIG 551SP, SIG PE-57 types
SKS with detachable magazine type
Spectre Auto carbine type
Springfield Armory BM59 and SAR-48 type
Sterling MK-6, MK-7 and SAR types
Steyr A.U.G. semi-automatic firearms
USAS 12 semi-automatic type shotgun
Uzi type semi-automatic firearms
Valmet M62, M71S, M76, or M78 type semi-automatic firearms
Weaver Arm Nighthawk.

- I. Any firearm manufactured under any designation which is substantially identical to any of the firearms listed above.
- II. A semi-automatic shotgun with either a magazine capacity exceeding six rounds, a pistol grip, or a folding stock.
- III. A semi-automatic rifle with a fixed magazine capacity exceeding 15 rounds.
- IV. A part or combination of parts designed or intended to convert a firearm into an assault firearm, or any combination of parts from which an assault firearm may be readily assembled if those parts are in the possession or under the control of the same person.

(3) Possession of an "assault firearm" is currently a third degree offense.

(4) Certain exemptions exist:

a) "Registered" assault firearm, under N.J.S. 2C:58-12:

- Owners had between May 1, 1990 and May 31, 1991 to register
- Firearm had to have been determined by the Attorney General to be suitable for legitimate target shooting purposes
- Owners had to complete a form, pay \$50.00, show NJ FID or NJ PPH, and show he/she was a member of an authorized rifle/pistol club.

b) "Inoperable" assault firearm, under N.J.S. 2C:58-13:

- Owners had between May 1, 1990 and May 31, 1991 to render inoperable
- Owner had to file a certification of inoperability with local chief of police. The filed certificate is necessary to prove this affirmative defense
- Inoperable includes removal of parts, such as firing pin, which prevent it from firing, but owner may not possess or have control over the removed parts.

c) "Licensed" assault firearm, under N.J.S. 2C:58-5

- Requirement include all requirements for a permit to carry a

handgun, see section III.

- "No license shall be issued unless the court finds that the public safety and welfare so require."

- Entitles holder to possess and carry the assault firearm

NOTE: Licensing, registration, and inoperability are affirmative defenses which must be proven at trial by the defendant.

(5) Large Capacity Ammunition Magazines are also prohibited.

Defined as: a box, drum, tube or other container which is capable of holding more than 15 rounds of ammunition to be fed continuously and directly therefrom into a semi-automatic firearm.

Possession is a Fourth Degree crime

NOTE: Only large capacity magazines capable of working in semi-automatic firearms are prohibited.

IV. Federal Firearms Statutes

A. Firearms Possession, Transfer, etc.

- (1) Significantly less practical restrictions than New Jersey
- (2) Firearms are permitted in the first instance, but certain persons are prohibited.

B. Federal Firearms Licenses and Licensing

- (1) Not required for possession, purchase, or transportation
- (2) Licenses required to manufacture for sale, wholesale, or retail.
- (3) Specialty licenses

C&R

Machine gun

Silencer

Destructive Device (DD)

Not an exclusive list

C. Firearms Disability Statutes

- (1) 18 U.S.C. 921 definitions do not include black powder or BB guns.
- (2) 18 U.S.C. 922 prohibits the possession of firearms and/or ammunition:

Convicted felons (18 U.S.C. 922(g)(1))³⁰

Fugitives from justice (18 U.S.C. 922(g)(2))

Unlawful users or addicts of a controlled substance (18 U.S.C. 922(g)(3))

³⁰ A convicted felon is a person convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

Persons adjudicated as mental defective or have been committed to
a mental institution. (18 U.S.C. 922(g)(4))

Illegal aliens and certain aliens admitted under a nonimmigrant
visa (18 U.S.C. 922(g)(5))

Persons discharged from the armed forces under dishonorable
conditions (18 U.S.C. 922(g)(6))

Persons who were United States citizens but who have renounced
their citizenship (18 U.S.C. 922(g)(7))

Persons who have been convicted in any court of a misdemeanor
crime of domestic violence. (18 U.S.C. 922(g)(9))

Persons who are subject to certain domestic violence ROs³¹

NOTE: Violations, even for possession of a single bullet, are subject to up to 10
years in Federal prison, of which a person must usually serve 85%!

D. The Law Enforcement Officers' Safety Act of 2004, 18 U.S.C. 926C

(1) Federal law designed to preempt state laws and allow qualified retired
law enforcement officers (RLEO) to carry a handgun nationwide³²

³¹ The Federal prohibition requires that (1) the RO includes a finding that the person represents a credible threat to the physical safety of the victim, (2) the RO prohibits the use, attempted use, or threat of physical force against the victim, and (3) the RO was issued after a hearing of which the defendant had actual knowledge and an opportunity to participate. NOTE that this means only New Jersey Final Restraining Orders (not Temporary), create a Federal prohibition, because Temporary restraining Orders are issued ex parte.

³² The statute begins "Notwithstanding any other provision of the law of any state or any political subdivision thereof . . ."

(2) Qualifications required:

- (a) retired in good standing from service with a public agency as a law enforcement officer
- (b) Did not retire for mental instability reasons
- (c) Had statutory powers of arrest and was authorized to prevent/detect/investigate/prosecute violations of the law
- (d) was regularly employed as a law enforcement officer for 15 years or more aggregate or retired due to a service connected disability
- (e) has a non-forfeitable right to benefits under a retirement plan
- (f) has, during the past year, met, at his own expense, the state's standards for training and qualification for active law enforcement officers to carry firearms
- (g) is not under the influence of alcohol or another intoxicating or hallucinatory drug
- (h) is not prohibited by Federal law from receiving a firearm, per 18 U.S.C.922
- (i) Officer must carry the required identification card (see below)

(3) Exceptions to where RLEOs may carry a concealed firearm:

- (a) Where a State permits private persons to prohibit or restrict the possession of concealed firearms on their private property

(b) Where a State prohibits or restricts the possession of firearms on State or local government properties, buildings, bases or parks.

(4) The required identification card is a photographic identification card issued by the agency from which he has retired.

(a) It must indicate either

(i) he has, not more than one year prior, been "tested or otherwise found" to meet the same agency standards which active duty officers working for that agency must meet carry firearms, or

(ii) he has, not more than one year prior, been "tested or otherwise found" to meet the same State standards for which active duty officers in that State must meet to carry firearms.

NOTES: (1) Firearm must be of the same type as law enforcement officers are required to qualify with.

(2) Firearms carried by retired officers do not include machineguns, silencers, or destructive devices.

E. Interstate Firearms Transportation, 18 U.S.C. 926A:

Federal law designed to preempt States from charging otherwise
lawful
travelers with unlawful possession of firearms³³
Not well known at the state level
Must be qualified to possess firearms under Federal law
May transport from any place where it may be lawfully possessed
To any other place where it may be law fully possessed
If the firearm is unloaded
Neither firearm, nor ammunition is readily accessible from the passenger
compartment of vehicle.
If vehicle does not have a trunk, the firearm or ammunition shall be in a
locked container other than the glove compartment or console

³³ The statute begins "Notwithstanding any other provision of any law or any rule or regulation of a State or any political subdivision thereof. . ." [Emphasis added.]

Part V – Expanded Category of Graves Act Offenses

Prior to the enactment of P.L. 2007, c. 341, on January 13, 2008, the Graves Act required that the sentencing judge impose a minimum period of parole ineligibility where the State established that a firearm was used to facilitate one the following predicate crimes: 1) murder, 2) manslaughter (aggravated and reckless), 3) aggravated assault, 4) kidnapping, 5) sexual assault, 6) aggravated sexual contact, 7) robbery, and 8) escape. The Graves Act also applied to the second crime of possession of a firearm for an unlawful purpose but only where the intent for use against a person.

Note that all but two of the crimes enumerated above – aggravated sexual contact and possession of a firearm for an unlawful purpose -- also trigger enhanced punishment under the No Early Release Act, N.J.S.A. 2C:43-7.2, regardless of whether a weapon was possessed or used during the commission of the crime. The No Early Release Act requires the imposition of a mandatory period of parole ineligibility equivalent to 85 percent of the base term of imprisonment.

The Graves Act now applies to the following additional crimes committed on or after January 13, 2008:

1. Unlawful possession of a sawed-off shotgun, a crime of the third degree. N.J.S.A. 2C:39-3b.

2. Possession of a defaced firearm, a crime of the fourth degree – N.J.S.A. 2C:39-3d. This offense subjects to criminal liability any person who knowingly has in his possession any firearm, which has been defaced, except an antique firearm.

3. Possession of a firearm while committing a drug offense, a crime of the second degree – N.J.S.A. 2C:39-4.1a: This offense applies where the person is found in possession of a firearm while committing, or attempting to commit, or conspiring to commit, being the leader of a narcotics trafficking network, distributing CDS or possession with intent to distribute CDS, maintaining or operating a CDS production facility, employing a juvenile in a drug distribution scheme, distributing CDS within 1,000 feet of school property or within 500 feet of public property, distribution or possession with intent to distribute imitation CDS, or bias intimidation [sic].

4. Unlawful possession of a machine gun, a crime of the third degree – N.J.S.A. 2C:39-5a

5. Unlawful possession of a handgun, a crime of the second degree - N.J.S.A. 2C:39-5b. This provision makes it a crime to knowingly carry a handgun (other than an air gun, spring gun, BB or pellet gun) without a permit.

Important: Be advised that on January 13, 2008, the Governor signed into law P.L. 2007, c. 284, which upgraded this crime from third to second degree. In addition, this amendment makes those convicted of unlawful possession of a machine gun, handgun or assault firearm ineligible for participation in ISP, and subjects defendants to a mandatory term of imprisonment, including a five-year period of parole ineligibility where the court finds a substantial likelihood that the defendant is involved in organized criminal activity.

6. Unlawful Possession of a Rifles and Shotguns Obtained Without a Firearms Purchaser Identification Card, a crime of the third degree – N.J.S.A. 2C:39-5c. Note that this provision subjects to criminal liability any person who knowingly has in his possession any rifle or shotgun without having first obtained a firearms purchaser identification card and any person who knowingly has in his possession any loaded rifle or shotgun whether or not the person has obtained a firearms purchaser identification card.

7. Certain Persons Not to Have Weapons, a crime of the fourth degree, N.J.S.A. 2C:39-7a. Applies to those persons previously convicted of aggravated assault, arson, burglary, escape, extortion, homicide, kidnapping, robbery, aggravated sexual assault, sexual assault, bias intimidation, endangering the welfare of a child, stalking, a crime involving domestic violence, possession of a weapon for an unlawful purpose, possession of a prohibited device, and the manufacture, transport, disposition, or defacement of dangerous weapons. Note that this provision encompasses weapons other than firearms.

8. Certain Persons Not to Have Weapons, a crime of the third degree – N.J.S.A. 2C:39-7b(2). Applies to any person that has been convicted in New Jersey or elsewhere of a disorderly persons offense involving domestic violence who is in possession of a firearm.

9. Certain Persons Not Have Weapons, a crime of the third degree – N.J.S.A. 2C:39-7b(3). Applies to any person whose firearm is seized pursuant to The Prevention of Domestic Violence Act and whose firearm has not been returned or who is subject to a court order prohibiting the possession of firearms issued pursuant to The Prevention of Domestic Violence Act, who subsequently purchases, owns, possesses or controls a firearm.

10. The Manufacture, Transport, Disposition and Defacement of Machine Guns, a crime of the third degree – N.J.S.A. 2C:39-9a. Provides that any person who manufactures, causes to be manufactured, transports, ships, sells or disposes of any machine

gun without being registered or licensed to do so is guilty of this offense.

11. The Manufacture, Transport, Disposition and Defacement of a Sawed-off Shotgun, a crime of the third degree – N.J.S.A. 2C:39-9b.

12. The Defacement of Firearms, a crime of the third degree – N.J.S.A. 2C:39-9e. Applies to any person who defaces a firearm or who knowingly buys, receives, disposes of, or controls a defaced firearm except an antique.

13. The Manufacture, Transport, Disposition and Defacement of Assault Firearms, a crime of the third degree – N.J.S.A. 2C:39-9g.

14. Possession of a Firearm for An Unlawful Purpose, a crime of the second degree – N.J.S.A. 2C:39-4a. Prior to the 2008 amendment, the Graves Act applied to this crime only if the defendant's intent was to use the firearm against a person. The Graves Act now applies whether defendant's intent was to use the firearm against a person or property of another.

Observations: Notably, the crimes enumerated above differ markedly in several key respects from the predicate crimes in the original Graves Act. To begin, many are strictly possessory in nature – the convictions themselves will justify imposition of a mandatory parole ineligibility period without resort to the extrinsic fact-finding that typified prior sentencing practice under the Graves Act. Second, eleven out of fourteen of the above-referenced crimes are third or fourth degree offenses. Therefore, the presumption for non- incarceration is now inoperative for those first-time offenders convicted of those eleven crimes. As will be discussed, probation as a possible disposition is also greatly curtailed. Third, it seems clear that the Legislature is, for the first time, broadening the Graves Act to encompass criminal conduct involving weapons other than firearms.

Also bear in mind that where a defendant incurs a conviction for any of the above crimes (again, if committed on or after January 13, 2008) and has previously been convicted of a Graves Act offense, he or she must receive a mandatory extended term of imprisonment in accordance with N.J.S.A. 2C:43-6f.

Finally, waiver of the required period of parole ineligibility can only be effectuated through N.J.S.A. 2C:43-6.2, which requires the prosecutor to move before the Assignment Judge for a sentence of probation or a one-year term of imprisonment. No other disposition is permitted. Also, the provision may only be relied upon where the defendant is a first-time firearms offender and where the "interests of justice" are served.

Part VI – Domestic Violence

A. Domestic Violence Seizure of Weapons

B. Special Domestic Violence Rules for Police Officers

NJSA 2C:25-21

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.