

Survey to Chief APOs

Issue: Confiscated Firearms

Question (from Snyder County):

I am running into an issue regarding prohibited persons possessing firearms under federal law. As I interpret the law, one of the prohibited criteria states the following:

- convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

My understanding is that state misdemeanors which carry two or less years do not prohibit someone, however our M1's and higher do.

Could you ask the chiefs how they are handling this when they run into this situation? I am accumulating several long rifles, shotguns, and pistols that neither local, state, or sheriff will take possession of. We do go over firearms disqualifying information at time of sentencing and advise the defendant to transfer the firearms to someone outside the home within 60 days of the conviction. I am looking at drawing up an affidavit for defendants to go through a FFL Dealer to do the transfer and sale with proceeds going first to the transfer fees then to the court costs. Any suggestions would be greatly appreciated.

Crawford County

Crawford County notifies all offenders at their time of sentence the prohibition of firearms for M1 and Felony convictions. They sign and acknowledge the notice. When a firearm is confiscated for PV purposes, our office obtains authority via Court Order to dispose of the firearms at an FFL Dealer. Our office will transport the firearm to the FFL, and have them (FFL Dealer) sign the receipt for property. (Receipt for Property is always given to an offender after confiscation and before logging into our evidence repository) Before arriving, the offender must decide if they wish to have a 3rd party present to have the firearm transferred to, or if they wish to sell it to the dealer. The FFL Dealer, as being the person who took possession, then is responsible for any PSP PICS checks for the subsequent transfer.

We benefit from having a few options for local FFL Dealers in close proximity to our office willing to assist in this process, and we give the offender "options" if it works for our schedule. The 3rd party to receive the firearm pays the dealer for the transfer just like any other firearm purchase, and if the offender is "selling" directly to the dealer there would not be any fees incurred.

I contacted the ATF years ago and the above FFL Dealer process was the "best practice" they recommended. Obviously, they stressed to never directly return a firearm to a 3rd party due to liability and background check requirements.

Lancaster County

In Lancaster County, we have relied on two different statutes [42 Pa.C.S. §9754 (c) (7), 18 Pa.C.S. §6105] to prohibit our convicted clients from possessing firearms while on supervision.

Below is a response from the individual in our department who is responsible for this stuff. I've also attached our policy & procedures related to firearms seizure, storage, and return.

I'm not sure exactly how Snyder County is doing it, but it sounds like they allow offenders to keep firearms as long as they don't meet the State and Federal prohibitions. If so, it's a little different for Lancaster County.

That being said, I have attached our policies and procedures for the firearms we confiscate:

- Contraband Seizure Protocol (giving special attention to sections VI, VII and VIII).
- Disposition of Seized Firearms Protocol
- § 6105 of Title 18 (PA Crimes Code) Persons not to possess, use, manufacture, control, sell or transfer firearms
- Letter from the US Dept. of Justice (US Attorney) in regards to the federal prohibition on the possession of firearms
- PSP Firearms Division PICS Background Check Request (form SP 4-380)
- PICS Challenge Form that we forward to individuals that are denied (if they want to appeal the decision)

(See Appendices)

Pennsylvania Sheriffs' Association

Long term storage of weapons is one of the reasons they are declining to take them

COURT OF COMMON PLEAS OF LANCASTER COUNTY

Adult Probation and Parole Services



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Search and Seizure Policy: Contraband Seizure Protocol

Nothing in this statement of policy shall be construed to contradict the law as set forth in the provisions of Section 9912 of Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes.

I. Purpose

To provide Adult Probation and Parole Services (APPS) staff with consistent protocol for seizing, inventorying, storing, and disposing (transferring, returning, selling, or destroying) of seized contraband.

II. Seizing Contraband

All seizure of contraband shall be in accordance with the APPS Policy for *Search and Seizure by Lancaster County Probation Officers*. A Search Report, Detention Report, or any other report approved by a supervisor, must be completed for any contraband seizure.

III. Inventorying Contraband

Subsequent to any contraband seizure, the officer seizing the contraband will return to APPS to secure all contraband prior to the end of the business day.

A. Securing Contraband

The officer seizing the contraband is responsible for the following:

1. At the time any contraband is returned to APPS, it will be placed in a secure location (locked office or evidence storage room) and a *Contraband Seizure Chain of Custody Report* will be prepared.
2. The contraband will be inventoried in the secure location.
3. After the contraband is inventoried, it will remain in a secure location and the APPS representative assigned by the Chief Probation Officer will be notified.

B. Inventorying Contraband

The officer seizing the contraband is responsible for the following:

1. Recording all contraband on the *Contraband Inventory* form.
2. Photographing all contraband. APPS staff are to photograph all contraband with an agency issued phone or camera.

C. Documenting

The officer seizing the contraband is responsible for all documentation. Documentation includes a search report, detention report, SIU assignment report, or any other report approved by a supervisor. Documentation must specifically include the location where the contraband was found and by which officer(s). The completed report and the *Contraband Inventory* forms are to be saved in UCM. A Secondary Alert of *Offender Property* will be placed on the offender's record in UCM.

- D.** After the seizing officer has secured, inventoried, and documented all of the seized contraband, he or she will send, via email, the report, *Contraband Inventory* form, and all photographs to the APPS representative (assigned by the Chief Probation Officer) responsible for the management of the APPS

evidence room. The *Contraband Seizure Chain of Custody Report* will remain with the contraband.

IV. Storing Contraband

All seized contraband will be stored in the APPS evidence storage room and will be managed by the APPS representative assigned by the Chief Probation Officer.

- A. An evidence number (E#) will be assigned to the offender's contraband each time contraband is seized (assigned to the lot, not each individual piece of contraband). The evidence room representative will assign this number.
- B. The contraband will be stored in a manner deemed appropriate by the evidence room representative (boxed, bagged, tagged, etc.).
- C. An electronic file containing all documents referenced in III, B, C, & D will be kept by the APPS representative assigned by the Chief Probation Officer. A hard file containing all documents referenced in III, B, C, & D will be kept in the evidence storage room each time contraband is seized from an offender.
- D. At no time will seized explosives, fireworks, black powder/Pyrodex (or any similar chemical explosives) be stored by APPS.

V. Transferring Contraband

Prior to the expiration of the offender's sentence, seized contraband may be transferred to another law enforcement agency if requested and approved by the APPS Chief or his or her designee. Seized contraband may also be transferred to an individual not residing with the offender from whom it was seized, if approved by the APPS Chief or his or her designee.

- A. All contraband approved for transfer will be signed out by the APPS representative assigned to manage the evidence room, or, in his or her absence, another staff member assigned by the APPS Chief or his/her designee, and recorded on the *Contraband Seizure Chain of Custody Report* located in the offender's file in the evidence room.
- B. The APPS representative transferring the contraband will make a record in UCM.

VI. Returning Contraband

Any seized contraband in the possession of APPS that does not meet the definition in the Pennsylvania Crimes Code Title 18, Crimes and Offenses, Section 907 (Possessing Instruments of Crime); Section 908 (Prohibited Offensive Weapons); Section 908.1 (Use or Possession of Electric or Electronic Incapacitation Device); Section 6105 (Persons Not to Possess, Use, Manufacture, Control, Sell, or Transfer Firearms); and/or any sections of the Pennsylvania Crimes Code Title 35, Health and Safety, Chapter 6 (The Controlled Substance, Drug, Device and Cosmetic Act) may be returned to the offender from whom it was seized, at the expiration of the maximum sentence date.

- A. The officer assigned to the offender's case will provide notice to the offender, in the form of a letter (*Contraband Retrieval Notice*), no less than 30 days prior to the expiration of the sentence.
- B. The officer assigned to the offender's case will be responsible for notifying the APPS representative assigned to manage the evidence room at the time of the expiration date of sentence.
- C. The APPS representative will be responsible for returning any seized contraband being stored and to make a record in UCM.
- D. Any firearm(s) return will be done in accordance with the APPS *Disposition of Seized Firearms Protocol*.
- E. Section VIII of this policy is to be followed if the offender fails to respond or retake possession of the contraband.

VII. Destroying Contraband

A court order is required for the destruction of seized contraband that is not required to be destroyed by law.

- A. Any seized contraband in the possession of APPS **that meets** the definition in the Pennsylvania Crimes

Code Title 18, Crimes and Offenses, Section 907 (Possessing Instruments of Crime); Section 908 (Prohibited Offensive Weapons); Section 908.1 (Use or Possession of Electric or Electronic Incapacitation Device); any sections of the Pennsylvania Crimes Code Title 35, Health and Safety, Chapter 6 (The Controlled Substance, Drug, Device and Cosmetic Act) shall be destroyed.

1. If the seized contraband is used as a basis for a violation, the supervising PO will ask the Court, at the violation hearing sentencing, to order the destruction of the contraband.
 2. If the seized contraband is not used as a basis for a violation, the supervising PO will prepare a petition and order asking for the destruction of the seized contraband.
 3. If no court order is issued for the destruction of the seized contraband (omission by the Court), the officer assigned to the offender's case will be responsible for preparing a petition and order asking for the destruction of the seized contraband.
 4. Any firearm(s) destruction will be done in accordance with the APPS *Disposition of Seized Firearms Protocol and Section VIII of this policy*.
- B. Any seized contraband in the possession of APPS that **does not meet** the definition in the Pennsylvania Crimes Code Title 18, Crimes and Offenses, Section 907 (Possessing Instruments of Crime); Section 908 (Prohibited Offensive Weapons); Section 908.1 (Use or Possession of Electric or Electronic Incapacitation Device); Section 6105 (Persons Not to Possess, Use, Manufacture, Control, Sell, or Transfer Firearms); and/or any sections of the Pennsylvania Crimes Code Title 35, Health and Safety, Chapter 6 (The Controlled Substance, Drug, Device and Cosmetic Act) shall not be immediately destroyed, but instead, the APPS *Disposition of Seized Firearms Protocol (firearms only) and Section VIII of this policy* will be followed.

VIII. Abandoned and Unclaimed Contraband

Senate Bill 533 amends Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidate Statutes, further providing for supervisory relationship to offenders, to address the uniform procedure for the disposition of contraband seized from a probationer or parolee and left in the possession of a probation or parole agency. Property that is seized from an offender is deemed to be in the custody of the county probation and parole department (CPPD). The bill provides for the circumstances under which seized contraband will be considered abandoned property, which includes a hearing and appeals process in cases where an individual wants to make a claim on the property. Once the hearing process has been exhausted and after the expiration of the holding time periods, CPPD must give the state Treasury Department an itemized list of the property. If an item is accepted by the state Treasury, it will be treated in the same manner as other escheated property. Property refused by the state Treasury remains with the CCPD which can keep it for official use, destroy it, donate it to a non-profit or government agency, sell it, or dispose of it if it is of de minimis value. Each county treasurer must establish a community corrections forfeiture fund to hold any proceeds from the sale of such CCPD property. The county treasurer can disburse money from this fund only at the discretion of the president judge of the court of common pleas. Cash or proceeds generated by the sale of any abandoned contraband must first be made available to satisfy any restitution owed by the offender to crime victims who are known by the Pennsylvania Commission on Crime and Delinquency's Office of Victim Services or by the courts of the Commonwealth where the offender was sentenced. Section 9912 of Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes will be followed by this agency in its entirety. Title 42 is amended by adding a subsection that allows for the following:

- A. Establishes a general rule that all contraband seized from an offender shall be considered abandoned and unclaimed, and no property right exists in it, if certain criteria have been met.
- B. Mandates the county adult probation and parole department to tag and secure the contraband at a place designated by it for such time as necessary to secure its use as evidence in a violation, revocation or criminal proceeding.
- C. Mandates that the county adult probation and parole department provide notice to the offender that abandonment will be sought if the offender does not claim the seized contraband within two years after sentence completion.

- D. Transfers title to contraband declared abandoned to the county adult probation and parole department and entitles the department to dispose of contraband, refused to be accepted by the Treasury Department, in certain ways.
- E. Mandates the county adult probation and parole department to itemize all such abandoned contraband within its custodial care in a report to the Treasury Department.
- F. Mandates county treasurers to establish and administer a community correction forfeiture fund consisting of all cash or proceeds obtained under this legislation and allows for disbursement of such funds at the discretion of the president judge of the court of common pleas.
- G. Mandates that all cash or proceeds generated by the sale of any abandoned contraband shall first be made available to satisfy any restitution owed by the offender.
- H. Provides immunity from liability to county adult probation and parole departments and its employees for good faith conduct under this legislation.
- I. Provides that the Pennsylvania Board of Probation and Parole may enact regulations that are necessary to implement this legislation on a uniform basis throughout Pennsylvania.
- J. Provides an appeal procedure for an abandonment determination through the court of common pleas.
- K. Mandates county adult probation and parole departments to annually post a report specifying the abandoned property or proceeds of the abandoned property.

Updated: December 2016

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Search and Seizure Policy: Disposition of Seized Firearms Protocol

I. Purpose

To provide Adult Probation and Parole Services (APPS) staff with consistent protocol for the disposition of seized firearms.

II. Procedure

The procedure for the disposition of any seized firearms will be completed by the APPS representative assigned to manage the evidence room, or, in his or her absence, another staff member assigned by the APPS Chief or his/her designee.

A. Approved: At the expiration of the offender's sentence the *PSP Firearms Division PICS Background Check Request* (Form SP 4-380) is completed and faxed.

1. If the PSP approves the firearms return a PICS Approval Number will be sent to APPS.
2. The offender will be contacted by phone to advise. If contact is made, coordinate a date and time for the offender to report to APPS to retrieve the firearms.
3. If no contact is made, or no return call from the offender, a notice letter is to be mailed to the last known address. If the offender responds, coordinate a date and time for the offender to report to APPS to retrieve the firearms. If no response, follow the APPS *Search and Seizure Policy: Contraband Seizure Protocol*, until such time that the firearms are returned or considered abandoned.

B. Denied: At the expiration of the offender's sentence the *PSP Firearms Division PICS Background Check Request* (Form SP 4-380) is completed and faxed.

1. If the PSP Denies the request, do not return the firearms.
2. The offender will be contacted by phone to advise. If contact is made, the offender will be notified of PSP's decision and that the PSP Firearms Division has an appeal process.
3. If no contact is made, or no return call from the offender, a notice letter is to be mailed to the last known address. If contact is made the offender will be notified of PSP's decision and that the PSP Firearms Division has an appeal process. If no response, follow the APPS *Search and Seizure Policy: Contraband Seizure Protocol*, until such time that the firearms are transferred (ownership), sold, or considered abandoned.
4. The offender wishes value for the firearms: make arrangements through a licensed

gun dealer to sell the firearms to the dealer or other eligible recipient to be deemed not prohibited as per a PSP Firearms Division PICS Background Check Request (Form SP 4-380).

5. The offender wishes to transfer ownership: proposed recipient is to be deemed not prohibited as per a PSP Firearms Division PICS Background Check Request (Form SP 4-380). Make arrangements through a licensed gun dealer to transfer the firearms to the proposed recipient.

December 2016

§ 6105. Persons not to possess, use, manufacture, control, sell or transfer firearms.

6105. Persons not to possess, use, manufacture, control, sell or transfer firearms.

(a) Offense defined.--

(1) A person who has been convicted of an offense enumerated in subsection (b), within or without this Commonwealth, regardless of the length of sentence or whose conduct meets the criteria in subsection (c) shall not possess, use, control, sell, transfer or manufacture or obtain a license to possess, use, control, sell, transfer or manufacture a firearm in this Commonwealth.

(2) (i) A person who is prohibited from possessing, using, controlling, selling, transferring or manufacturing a firearm under paragraph (1) or subsection (b) or (c) shall have a reasonable period of time, not to exceed 60 days from the date of the imposition of the disability under this subsection, in which to sell or transfer that person's firearms to another eligible person who is not a member of the prohibited person's household.

(ii) This paragraph shall not apply to any person whose disability is imposed pursuant to subsection (c) (6).

(a.1) Penalty.--

(1) Except as provided under paragraph (1.1), a person convicted of a felony enumerated under subsection (b) or a felony under the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, or any equivalent Federal statute or equivalent statute of any other state, who violates subsection (a) commits a felony of the second degree.

(1.1) The following shall apply:

(i) A person convicted of a felony enumerated under subsection (b) or a felony under The Controlled Substance, Drug, Device and Cosmetic Act, or any equivalent Federal statute or equivalent statute of any other state, who violates subsection (a) commits a felony of the first degree if:

(A) at the time of the commission of a violation of subsection (a), the person has previously been convicted of an offense under subsection (a); or

(B) at the time of the commission of a violation of subsection (a), the person was in physical possession or control of a firearm, whether visible, concealed about the person or within the person's reach.

(ii) The Pennsylvania Commission on Sentencing, under 42 Pa.C.S. § 2154 (relating to adoption of guidelines for sentencing), shall provide for a sentencing enhancement for a sentence imposed pursuant to this paragraph.

(2) A person who is the subject of an active protection from abuse order issued pursuant to 23 Pa.C.S. § 6108 (relating to relief), which order provided for the relinquishment of firearms, other weapons or ammunition during the period of time the order is in effect, commits a misdemeanor of the first degree if he intentionally or knowingly fails to relinquish a firearm, other weapon or ammunition to the sheriff as required by the order unless, in lieu of relinquishment, he provides an affidavit which lists the firearms, other weapons or ammunition to the sheriff in accordance with either 23 Pa.C.S. § 6108(a)(7)(i)(B), 6108.2 (relating to relinquishment for consignment sale, lawful transfer or safekeeping) or 6108.3 (relating to relinquishment to third party for safekeeping).

(3) (i) A person commits a misdemeanor of the third degree if he intentionally or knowingly accepts possession of a firearm, other weapon or ammunition from a person he knows is the subject of an active protection from abuse order issued pursuant to 23 Pa.C.S. § 6108, which order provided for the relinquishment of the firearm, other weapon or ammunition during the period of time the order is in effect.

(ii) This paragraph shall not apply to:

(A) a third party who accepts possession of a firearm, other weapon or ammunition relinquished pursuant to 23 Pa.C.S. § 6108.3; or

(B) a dealer licensed pursuant to section 6113 (relating to licensing of dealers) or subsequent purchaser from a dealer licensed pursuant to section 6113, who accepts possession of a firearm, other weapon or ammunition relinquished pursuant to 23 Pa.C.S. § 6108.2.

(4) It shall be an affirmative defense to any prosecution under paragraph (3) that the person accepting possession of a firearm, other weapon or ammunition in violation of paragraph (3):

(i) notified the sheriff as soon as practicable that he has taken possession; and

(ii) relinquished possession of any firearm, other weapon or ammunition possessed in violation of paragraph (3) as directed by the sheriff.

(5) A person who has accepted possession of a firearm, other weapon or ammunition pursuant to 23 Pa.C.S. § 6108.3 commits a misdemeanor of the first degree if he intentionally or knowingly returns a firearm, other weapon or ammunition to a defendant or intentionally or knowingly allows a defendant to have access to the firearm, other weapon or ammunition prior to either of the following:

(i) The sheriff accepts return of the safekeeping permit issued to the party pursuant to 23 Pa.C.S. § 6108.3(d)(1)(i).

(ii) The issuance of a court order pursuant to subsection (f) (2) or 23 Pa.C.S. § 6108.1(b) (relating to return of relinquished firearms, other weapons and ammunition and additional relief) which modifies a valid protection from abuse order issued pursuant to 23 Pa.C.S. § 6108, which order provided for the relinquishment of the firearm, other weapon or ammunition by allowing the defendant to take possession of the firearm, other weapon or ammunition that had previously been ordered relinquished.

(b) Enumerated offenses.--The following offenses shall apply to subsection (a):

- Section 908 (relating to prohibited offensive weapons).
- Section 911 (relating to corrupt organizations).
- Section 912 (relating to possession of weapon on school property).
- Section 2502 (relating to murder).
- Section 2503 (relating to voluntary manslaughter).
- Section 2504 (relating to involuntary manslaughter) if the offense is based on the reckless use of a firearm.
- Section 2702 (relating to aggravated assault).
- Section 2703 (relating to assault by prisoner).
- Section 2704 (relating to assault by life prisoner).
- Section 2709.1 (relating to stalking).
- Section 2716 (relating to weapons of mass destruction).
- Section 2901 (relating to kidnapping).
- Section 2902 (relating to unlawful restraint).
- Section 2910 (relating to luring a child into a motor vehicle or structure).
- Section 3121 (relating to rape).
- Section 3123 (relating to involuntary deviate sexual intercourse).
- Section 3125 (relating to aggravated indecent assault).
- Section 3301 (relating to arson and related offenses).
- Section 3302 (relating to causing or risking catastrophe).
- Section 3502 (relating to burglary).
- Section 3503 (relating to criminal trespass) if the offense is graded a felony of the second degree or higher.
- Section 3701 (relating to robbery).
- Section 3702 (relating to robbery of motor vehicle).
- Section 3921 (relating to theft by unlawful taking or disposition) upon conviction of the second felony offense.
- Section 3923 (relating to theft by extortion) when the offense is accompanied by threats of violence.
- Section 3925 (relating to receiving stolen property) upon conviction of the second felony offense.

Section 4906 (relating to false reports to law enforcement authorities) if the fictitious report involved the theft of a firearm as provided in section 4906(c)(2).

Section 4912 (relating to impersonating a public servant) if the person is impersonating a law enforcement officer.

Section 4952 (relating to intimidation of witnesses or victims).

Section 4953 (relating to retaliation against witness, victim or party).

Section 5121 (relating to escape).

Section 5122 (relating to weapons or implements for escape).

Section 5501(3) (relating to riot).

Section 5515 (relating to prohibiting of paramilitary training).

Section 5516 (relating to facsimile weapons of mass destruction).

Section 6110.1 (relating to possession of firearm by minor).

Section 6301 (relating to corruption of minors).

Section 6302 (relating to sale or lease of weapons and explosives).

Any offense equivalent to any of the above-enumerated offenses under the prior laws of this Commonwealth or any offense equivalent to any of the above-enumerated offenses under the statutes of any other state or of the United States.

(c) Other persons.--In addition to any person who has been convicted of any offense listed under subsection (b), the following persons shall be subject to the prohibition of subsection (a):

(1) A person who is a fugitive from justice. This paragraph does not apply to an individual whose fugitive status is based upon a nonmoving or moving summary offense under Title 75 (relating to vehicles).

(2) A person who has been convicted of an offense under the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, or any equivalent Federal statute or equivalent statute of any other state, that may be punishable by a term of imprisonment exceeding two years.

(3) A person who has been convicted of driving under the influence of alcohol or controlled substance as provided in 75 Pa.C.S. § 3802 (relating to driving under influence of alcohol or controlled substance) or the former 75 Pa.C.S. § 3731, on three or more separate occasions within a five-year period. For the purposes of this paragraph only, the prohibition of subsection (a) shall only apply to transfers or purchases of firearms after the third conviction.

(4) A person who has been adjudicated as an incompetent or who has been involuntarily committed to a mental institution for

inpatient care and treatment under section 302, 303 or 304 of the provisions of the act of July 9, 1976 (P.L.817, No.143), known as the Mental Health Procedures Act. This paragraph shall not apply to any proceeding under section 302 of the Mental Health Procedures Act unless the examining physician has issued a certification that inpatient care was necessary or that the person was committable.

(5) A person who, being an alien, is illegally or unlawfully in the United States.

(6) A person who is the subject of an active protection from abuse order issued pursuant to 23 Pa.C.S. § 6108, which order provided for the relinquishment of firearms during the period of time the order is in effect. This prohibition shall terminate upon the expiration or vacation of an active protection from abuse order or portion thereof relating to the relinquishment of firearms.

(7) A person who was adjudicated delinquent by a court pursuant to 42 Pa.C.S. § 6341 (relating to adjudication) or under any equivalent Federal statute or statute of any other state as a result of conduct which if committed by an adult would constitute an offense under sections 2502, 2503, 2702, 2703 (relating to assault by prisoner), 2704, 2901, 3121, 3123, 3301, 3502, 3701 and 3923.

(8) A person who was adjudicated delinquent by a court pursuant to 42 Pa.C.S. § 6341 or under any equivalent Federal statute or statute of any other state as a result of conduct which if committed by an adult would constitute an offense enumerated in subsection (b) with the exception of those crimes set forth in paragraph (7). This prohibition shall terminate 15 years after the last applicable delinquent adjudication or upon the person reaching the age of 30, whichever is earlier.

(9) A person who is prohibited from possessing or acquiring a firearm under 18 U.S.C. § 922(g)(9) (relating to unlawful acts). If the offense which resulted in the prohibition under 18 U.S.C. § 922(g)(9) was committed, as provided in 18 U.S.C. § 921(a)(33)(A)(ii) (relating to definitions), by a person in any of the following relationships:

(i) the current or former spouse, parent or guardian of the victim;

(ii) a person with whom the victim shares a child in common;

(iii) a person who cohabits with or has cohabited with the victim as a spouse, parent or guardian; or

(iv) a person similarly situated to a spouse, parent or guardian of the victim;

then the relationship need not be an element of the offense to meet the requirements of this paragraph.

(d) Exemption.--A person who has been convicted of a crime specified in subsection (a) or (b) or a person whose conduct meets the criteria in subsection (c)(1), (2), (5), (7) or (9) may make application to the court of common pleas of the county where the principal residence of the applicant is situated for relief from the disability imposed by this section upon the possession, transfer or control of a firearm. The court shall grant such relief if it determines that any of the following apply:

(1) The conviction has been vacated under circumstances where all appeals have been exhausted or where the right to appeal has expired.

(2) The conviction has been the subject of a full pardon by the Governor.

(3) Each of the following conditions is met:

(i) The Secretary of the Treasury of the United States has relieved the applicant of an applicable disability imposed by Federal law upon the possession, ownership or control of a firearm as a result of the applicant's prior conviction, except that the court may waive this condition if the court determines that the Congress of the United States has not appropriated sufficient funds to enable the Secretary of the Treasury to grant relief to applicants eligible for the relief.

(ii) A period of ten years, not including any time spent in incarceration, has elapsed since the most recent conviction of the applicant of a crime enumerated in subsection (b), a felony violation of The Controlled Substance, Drug, Device and Cosmetic Act or the offense which resulted in the prohibition under 18 U.S.C. § 922(g)(9).

(e) Proceedings.--

(1) If a person convicted of an offense under subsection (a), (b) or (c)(1), (2), (5), (7) or (9) makes application to the court, a hearing shall be held in open court to determine whether the requirements of this section have been met. The commissioner and the district attorney of the county where the application is filed and any victim or survivor of a victim of the offense upon which the disability is based may be parties to the proceeding.

(2) Upon application to the court of common pleas pursuant to paragraph (1) by an applicant who is subject to the prohibition under subsection (c)(3), the court shall grant such relief if a period of ten years, not including any time spent in incarceration, has passed since the applicant's most recent conviction under subsection (c)(3).

(f) Other exemptions and proceedings.--

(1) Upon application to the court of common pleas under this subsection by an applicant subject to the prohibitions

under subsection (c)(4), the court may grant such relief as it deems appropriate if the court determines that the applicant may possess a firearm without risk to the applicant or any other person.

(2) If application is made under this subsection for relief from the disability imposed under subsection (c)(6), notice of such application shall be given to the person who had petitioned for the protection from abuse order, and such person shall be a party to the proceedings. Notice of any court order or amendment to a court order restoring firearms possession or control shall be given to the person who had petitioned for the protection from abuse order, to the sheriff and to the Pennsylvania State Police. The application and any proceedings on the application shall comply with 23 Pa.C.S. Ch. 61 (relating to protection from abuse).

(3) All hearings conducted under this subsection shall be closed unless otherwise requested to be open by the applicant.

(4) (i) The owner of any seized or confiscated firearms or of any firearms ordered relinquished under 23 Pa.C.S. § 6108 shall be provided with a signed and dated written receipt by the appropriate law enforcement agency. This receipt shall include, but not limited to, a detailed identifying description indicating the serial number and condition of the firearm. In addition, the appropriate law enforcement agency shall be liable to the lawful owner of said confiscated, seized or relinquished firearm for any loss, damage or substantial decrease in value of said firearm that is a direct result of a lack of reasonable care by the appropriate law enforcement agency.

(ii) Firearms shall not be engraved or permanently marked in any manner, including, but not limited to, engraving of evidence or other identification numbers. Unless reasonable suspicion exists to believe that a particular firearm has been used in the commission of a crime, no firearm shall be test fired. Any reduction in the value of a firearm due to test firing, engraving or permanently marking in violation of this paragraph shall be considered damage, and the law enforcement agency shall be liable to the lawful owner of the firearm for the reduction in value caused by the test firing, engraving or permanently marking.

(iii) For purposes of this paragraph, the term "firearm" shall include any scope, sight, bipod, sling, light, magazine, clip, ammunition or other firearm accessory attached to or seized, confiscated or relinquished with a firearm.

(g) Other restrictions.--Nothing in this section shall exempt a person from a disability in relation to the possession or control of a firearm which is imposed as a condition of

probation or parole or which is imposed pursuant to the provision of any law other than this section.

(h) License prohibition.--Any person who is prohibited from possessing, using, controlling, selling, purchasing, transferring or manufacturing any firearm under this section shall not be eligible for or permitted to obtain a license to carry a firearm under section 6109 (relating to licenses).

(i) Firearm.--As used in this section only, the term "firearm" shall include any weapons which are designed to or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of any such weapon.

(j) Copy of order to State Police.--If the court grants relief from the disabilities imposed under this section, a copy of the order shall be sent by the prothonotary within ten days of the entry of the order to the Pennsylvania State Police and shall include the name, date of birth and Social Security number of the individual.

(June 13, 1995, 1st Sp.Sess., P.L.1024, No.17, eff. 120 days; Nov. 22, 1995, P.L.621, No.66, eff. imd.; Apr. 22, 1997, P.L.73, No.5, eff. 60 days; June 18, 1998, P.L.503, No.70, eff. imd.; Dec. 3, 1998, P.L.933, No.121, eff. imd.; Dec. 15, 1999, P.L.915, No.59, eff. 60 days; June 28, 2002, P.L.481, No.82, eff. 60 days; Dec. 9, 2002, P.L.1759, No.218, eff. 60 days; Sept. 30, 2003, P.L.120, No.24, eff. Feb. 1, 2004; Nov. 10, 2005, P.L.335, No.66, eff. 180 days; Oct. 17, 2008, P.L.1628, No.131, eff. 60 days; Nov. 3, 2016, P.L.1052, No.134, eff. 60 days)

2016 Amendment. Act 134 amended subsec. (a.1)(1) and added subsec. (a.1)(1.1).

2008 Amendment. Act 131 amended subsec. (b).

2005 Amendment. Act 66 amended subsecs. (a), (a.1), (c)(6), (d), (e)(1) and (f)(2) and (4) and added subsec. (c)(9).

2003 Amendment. Act 24 amended subsec. (c)(3).

1999 Amendment. Act 59 amended subsec. (c)(2) and added subsec. (a.1).

1998 Amendments. Act 70 amended subsec. (c)(4) and added subsec. (j) and Act 121 amended subsec. (c)(1).

1997 Amendment. Act 5 amended subsec. (f).

1995 Amendment. Act 66 amended subsecs. (a), (b), (c), (d) and (f).

Cross References. Section 6105 is referred to in sections 908.1, 6103, 6104, 6105.1, 6109, 6110.2, 6111, 6111.1, 6115, 6117, 6118, 6123, 6301 of this title; sections 6102, 6108, 6108.3, 6119 of Title 23 (Domestic Relations); section 6308 of Title 42 (Judiciary and Judicial Procedure).



U.S. Department of Justice

United States Attorney
Western District of Pennsylvania

U.S. Post Office & Courthouse
700 Grant Street
Suite 4000
Pittsburgh, Pennsylvania 15219

412/644-3500

January 22, 2010

Dear Law Enforcement Colleague:

On January 13, 2010, an individual who had previously been convicted of the crime of stalking, a misdemeanor of the first degree under Pennsylvania law, used a firearm to murder a Pennsylvania State Police Trooper. Contrary to well established federal law, that individual was apparently advised that he was authorized to possess firearms for hunting and sporting purposes. News of this event, and of the apparent mistaken perception that this person was entitled to possess firearms contrary to federal law, has caused me to write this letter to you as a reminder about the prohibition of firearm possession by convicted felons. My desire is for each of your jurisdictions to be clear, under federal law, on the prohibition of firearm possession by persons convicted of crimes in the Commonwealth of Pennsylvania.

Pursuant to federal law it is unlawful for any person to possess a firearm who has been convicted of a crime punishable by imprisonment for a term exceeding one year. (18 U.S.C. §922(g)).¹ The term "crime punishable by imprisonment for a term exceeding one year" includes all State felony convictions as well as misdemeanor of the first degree convictions in the Commonwealth of Pennsylvania. (18 U.S.C. §921(a)(20)).

Although the prohibition on possession of firearms under the federal definition of "crime punishable by imprisonment for a term exceeding one year" does not include State offenses classified by a State as a misdemeanor and punishable by imprisonment of two years or less (such as, Commonwealth of Pennsylvania misdemeanors of the third degree and misdemeanors of the second degree) misdemeanors of the first degree meet the federal definition.

Accordingly, it is a violation of federal law for any person convicted of a misdemeanor of the first degree under the laws of the Commonwealth of Pennsylvania, to possess a firearm. There exists no authority to grant a person with a qualifying conviction an exemption from this prohibition, no authority to distinguish between the types of firearms that may be possessed, and no recognition of any hunting or sporting use exception for any person with a prohibiting conviction.

¹ The federal prohibition on firearm possession does include an interstate commerce requirement that must be satisfied prior to federal prosecution which is not relevant for purposes of this letter. Such a requirement is met if the firearm at anytime traveled in interstate commerce prior to it being possessed by the convicted felon.

January 22, 2010

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If you have any questions about the federal prohibition on the possession of firearms by convicted felons, please contact my office or our branch offices in Erie at (814)452-2906 and Johnstown at (814)533-4547.

Very truly yours,



ROBERT S. CESSAR
Acting U.S. Attorney

PENNSYLVANIA STATE POLICE PENNSYLVANIA INSTANT CHECK SYSTEM CHALLENGE

Any challenge to a decision made by the Pennsylvania Instant Check System (PICS) concerning a background check must be completed and submitted by mail (faxed copies will not be accepted), **within 30 days from the date of denial** to the Pennsylvania State Police, Firearms Division, PICS Challenge Section, 1800 Elmerton Avenue, Harrisburg, Pennsylvania 17110. Only background checks processed through PICS that were NOT approved will be processed by the Pennsylvania State Police, PICS Challenge Section.

Please type or print clearly with blue or black ink. **ALL CHALLENGES SUBMITTED MUST BE LEGIBLE AND SIGNED AND DATED ON PAGE 4 BY THE APPLICANT OR THEY WILL BE RETURNED.** The Pennsylvania State Police will respond in writing within 5 business days of receipt of this form. You are encouraged to provide additional information for the purpose of review, such as information you may have regarding dispositions on old arrest records, etc., that may be helpful in expediting the processing of your file. Be advised that within 60 days of receipt of a valid challenge, a final decision will be provided to you by this Office. You may also file a separate appeal with the FBI, NICS Section.

PART I: REASON FOR CHALLENGE REQUEST- Check the appropriate box that indicates the type of background check:

Purchase/Transfer License to Carry Firearm Return RLEIA/LEOSA

PART II: DATE AND LOCATION OF BACKGROUND CHECK

Date of background check:
Location of Firearm Dealer/County Sheriff/Police Dept.:
If the address for the above is unknown or check was completed at a gun show, please provide the firearm dealer's name and the location of the gun show:

PART III: CHALLENGER'S INFORMATION

Name: (Last)	(First)	(Middle)
Maiden Name and/or Aliases:		

Address:	
City & State:	Zip Code:

Date of Birth:	Social Security No: - - (Optional, but will help prevent misidentification)	Place of Birth:
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Driver's License or Non-driver's ID Number:	State:
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Other Identification Type/Number:	State:
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Sex: M <input type="checkbox"/> F <input type="checkbox"/>	Race:	Height:	Weight:	Hair Color:	Eye Color:
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Scars/Marks/Tattoos:

Have you ever been arrested in Pennsylvania and/or another state? Yes No

Were you ever arrested while in the military? Yes No

If yes to any of the above, where?

Did this arrest(s) result in a conviction? Yes No

Were you ever adjudicated incompetent or involuntarily committed? Yes No

Are you the subject of a current protection from abuse order? Yes No

Telephone Numbers where you may be contacted:		
Home:	Work:	Cell:

CHALLENGE PROCESS INFORMATION

The Pennsylvania Instant Check System (PICS) is required to check state and federal databases in order to determine an individual's eligibility to acquire a firearm or license to carry a firearm. The following are prohibitions which at the time of the background check would disqualify an individual from acquiring a firearm or license to carry a firearm.

1. Conviction of a crime enumerated in 18 Pa. C.S. section 6105(b), or any of the conditions of section 6105(c), of the Uniform Firearms Act. (See page 3 for specific information.)
2. Charged with or convicted of a crime punishable by imprisonment for a term exceeding one year, not including offenses pertaining to antitrust, unfair trade practices, restraints of trade, or regulation of business; or state offenses classified as misdemeanors and punishable by a term of imprisonment not to exceed two years.
3. Under indictment or information in any court for a crime for which the judge could imprison you for more than one year. An information is a formal accusation of a crime made by a prosecuting attorney. An indictment is a formal accusation of a crime presented to the court by a grand jury.
4. Conviction of an offense under the act of April 14, 1972 (P.L. 233, No. 64), known as the Controlled Substance, Drug, Device and Cosmetic Act (CSDDCA). As provided in 18 Pa. C.S. § 6109(1)(ii), any Pennsylvania drug conviction under the CSDDCA is prohibiting for a license to carry a firearm.
5. Adjudicated delinquent, within the past ten years, for a crime enumerated in 18 Pa.C.S. section 6105 of the Uniform Firearms Act, or for an offense under the Controlled Substance, Drug, Device and Cosmetic Act.
6. Addicted to or an unlawful user of marijuana or a stimulant, depressant, or narcotic drug.
7. Involuntarily committed to a hospital/health care facility for a mental health condition or other treatment, or adjudicated incompetent/incapacitated.
8. An alien illegally or unlawfully in the United States.
9. Discharged from the Armed Forces of the United States under dishonorable conditions.
10. Renounced United States citizenship.
11. Subject of a court order restraining you from harassing, stalking, or threatening an intimate partner or child of such partner.
12. Convicted in any court of a misdemeanor crime of domestic violence. This includes any misdemeanor conviction involving the use or attempted use of physical force committed by a current or former spouse, parent or guardian of the victim, or by a person with a similar relationship to the victim.

Section 6105(a)(1), effective November 22, 1995:

A person who has been convicted of an offense enumerated in subsection (b), within or without this Commonwealth, regardless of the length of sentence or whose conduct meets the criteria in subsection (c) shall not possess, use, control, sell, transfer or manufacture or obtain a license to possess, use, control, sell, transfer or manufacture a firearm in this Commonwealth.

Section 6105(b)	
§908 Prohibited offensive weapons	§3921 Theft by unlawful taking or disposition, upon conviction of the second felony offense
§911 Corrupt organizations	§3923 Theft by extortion, when the offense is accompanied by threats of violence
§912 Possession of weapon on school property	§3925 Receiving stolen property, upon conviction of the second felony offense
§2502 Murder	§4906 False reports to law enforcement authorities, if the fictitious report involved the theft of a firearm as provided in 4906(c)(2)
§2503 Voluntary manslaughter	§4912 Impersonating a public servant, if the person is impersonating a law enforcement officer
§2504 Involuntary manslaughter, if the offense is based on the reckless use of a firearm	§4952 Intimidation of witnesses or victims
§2702 Aggravated assault	§4953 Retaliation against witness, victim or party
§2703 Assault by prisoner	§5121 Escape
§2704 Assault by life prisoner	§5122 Weapons or Implements for escape
§2709.1 Stalking	§5501(3) Riot
§2716 Weapons of mass destruction	§5515 Prohibiting of paramilitary training
§2901 Kidnapping	§5516 Facsimile weapons of mass destruction
§2902 Unlawful restraint	§6110.1 Possession of firearm by minor
§2910 Luring a child into a motor vehicle or structure	§6301 Corruption of minors
§3121 Rape	§6302 Sale or lease of weapons and explosives
§3123 Involuntary deviate sexual intercourse	
§3125 Aggravated indecent assault	
§3301 Arson and related offenses	
§3302 Causing or risking catastrophe	
§3502 Burglary	
§3503 Criminal trespass, if the offense is graded a felony of the second degree or higher	Any offense equivalent to any of the above-enumerated offenses under the prior laws of this Commonwealth, or any offense equivalent to any of the above-enumerated offenses under the statutes of any other state or of the United States.
§3701 Robbery	
§3702 Robbery of motor vehicle	

Section 6105(c):

Effective November 22, 1995, 18 Pa.C.S. § 6105(c) also prohibits the following persons from possessing, using, controlling, transferring, manufacturing, or obtaining a license to possess, use, control, transfer, or manufacture a firearm in the Commonwealth of Pennsylvania.

ARE YOU A PERSON WHO:

1. is a fugitive from justice; or
2. has been convicted of an offense under the act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act, or any equivalent Federal statute or equivalent statute of any other state, that may be punishable by a term of imprisonment exceeding two years; or
3. has been convicted of driving under the influence of alcohol or controlled substance as provided in 75 Pa.C.S. § 3802 (relating to driving under influence of alcohol or controlled substance) or the former 75 Pa.C.S. § 3731, on three or more separate occasions within a five-year period. For the purposes of this paragraph only, the prohibition of Section 6105(a) shall only apply to transfers or purchases of firearms after the third conviction; or
4. has been adjudicated as an incompetent or who has been involuntarily committed to a mental institution for inpatient care and treatment under section 302, 303, or 304 of the provisions of the act of July 9, 1976 (P.L. 817, No. 143), known as the Mental Health Procedures Act; or
5. being an alien, is illegally or unlawfully in the United States; or
6. is the subject of an active protection from abuse order issued pursuant to 23 Pa.C.S. § 6108 (relating to relief), which order provides for the relinquishment of firearms during the period of time the order is in effect. This prohibition shall terminate upon the expiration or vacation of an active protection from abuse order or portion thereof relating to the relinquishment of firearms; or
7. was adjudicated delinquent by a court pursuant to 42 Pa.C.S. § 6341 (relating to adjudication) or under any equivalent Federal statute or statute of any other state as a result of conduct which if committed by an adult would constitute an offense under 18 Pa.C.S. sections 2502, 2503, 2702, 2703, 2704, 2901, 3121, 3123, 3301, 3502, 3701, and 3923; or
8. was adjudicated delinquent by a court pursuant to 42 Pa.C.S. § 6341 or under any equivalent Federal statute or statute of any other state as a result of conduct which if committed by an adult would constitute an offense enumerated in 18 Pa.C.S. § 6105(b) with the exception of those crimes set forth in paragraph 7. This prohibition shall terminate 15 years after the last applicable delinquent adjudication or upon the person reaching the age of 30, whichever is earlier.
9. is prohibited from possessing or acquiring a firearm under 18 U.S.C. § 922(g)(9) (relating to unlawful acts) who has been convicted in any court of a misdemeanor crime of domestic violence by a person in any of the following relationships: (i) the current or former spouse, parent or guardian of the victim; (ii) a person with whom the victim shares a child in common; (iii) a person who cohabits with or has cohabited with the victim as a spouse, parent or guardian; or (iv) a person similarly situated to a spouse, parent, or guardian of the victim; then the relationship need not be an element of the offense to meet the requirements of this paragraph.

PRIVACY ACT NOTICE

Solicitation of this information is authorized under Title 18 Pa.C.S. § 6111. Disclosure of your social security number is voluntary. Your social security number, if provided, may be used to verify your identity and prevent misidentification. All information supplied, including your social security number, is confidential and not subject to public disclosure.

The following information refers to situations most often misunderstood regarding denials.

1. Federal law prohibits a person who is under indictment for, or has been convicted of a crime that would be punishable by a term of imprisonment exceeding one year, or state misdemeanors punishable by a term of imprisonment exceeding two years (under current PA law, any offense graded as an M-1 or higher would be prohibiting). The key issue here is the maximum penalty you could have received for the crime, not the actual penalty that you did receive.
2. A conviction includes a finding of guilty or the entering of a plea of guilty or nolo contendere, whether or not judgment of sentence has been imposed, as determined by the law of the jurisdiction in which the prosecution was held. The term does not include a conviction which has been expunged or overturned or for which an individual has been pardoned unless the pardon expressly provides that the individual may not possess or transport firearms. State relief may still be required in order to fully restore firearm rights.
3. There are no time limits on old arrest records. If you have an old conviction for a charge that would be prohibiting, it will still prohibit you regardless of whether the record is 1 year old or 50 years old.
4. Many times an individual will hit on an old military record regarding AWOL or desertion. In most cases, all that is needed to clear this up is a copy of the individual's honorable discharge. Also, military records often do not contain offense disposition information. If a copy of the official case disposition and a copy of the honorable discharge are provided, this may expedite research of the challenge.

SELF CERTIFICATION

I hereby confirm that I have read all information contained in Form SP 4-197, Pennsylvania Instant Check System Challenge.

I understand that if I knowingly make any false statements herein, I am subject to penalties prescribed by law. This certification/acknowledgment is made subject to both the penalties of section 4904 of the Crimes Code (18 Pa. C.S. § 4904, relating to unsworn falsification to authorities), a misdemeanor of the third degree, subject to not more than one year of imprisonment and/or a fine not exceeding \$2,500; and the Uniform Firearms Act, which is a felony of the third degree, subject to not more than 7 years imprisonment and/or a fine not exceeding \$15,000.

I hereby authorize the Pennsylvania State Police to receive any documents, including mental health documents, as well as physician's determination relating to commitment, necessary to make a determination with regard to this challenge. I waive any rights to confidentiality in these documents by signing this certification.

SIGNATURE _____

DATE _____

NOTE: All challenges submitted must be signed, dated, and complete. Pages 1 through 4 must be submitted for a challenge to be considered complete. Any challenge received that is not filled out completely, signed, and dated will be returned.