

**FREQUENTLY ASKED QUESTIONS**  
**PERTAINING TO NEW HAMPSHIRE STATE LAW (AND THE**  
**CORRESPONDING FEDERAL LAW) REGARDING THE USE AND CARRYING**  
**OF FIREARMS-PENNY S. DEAN, ESQ. FOR GO-NH, INC.**

**LEGAL ADVICE DISCLAIMER**

Legal information is not the same as legal advice -- the application of law to an individual's specific circumstances. Although I go to great lengths to make sure this information is accurate and useful, I recommend you consult a lawyer if you want professional assurance that this information, and your interpretation of it, is appropriate, accurate and complete with respect to your particular situation.

This information has been prepared for informational purposes only with no warranty as to accuracy or applicability to a particular set of circumstances. The questions and answers are not intended, and should not be considered to be legal advice and their availability on this site does not create an attorney-client relationship with any reader of the information. Readers should not act upon any content on this site without obtaining legal advice from competent, independent, legal counsel in the relevant jurisdiction.

Although I have provided questions and answers, your situation may differ in important respects from these questions, perhaps in ways that are not apparent, and in some instances the differences could make the difference between a lawful act and an unlawful one. In closing, I am providing legal information NOT legal advice.

- Do I need a “permit” to buy a gun (long or hand) in New Hampshire? No, as long as you are legally able to own firearms, and for handgun purchases (under federal law) you are a New Hampshire resident and 21 years of age.
- There is no state mandated ‘waiting period’ before a New Hampshire resident can purchase a handgun or long gun.
- Can I buy more than one gun at a time? Yes, you can, however I would not recommend purchasing more than one handgun during a period of five consecutive business days as that triggers a separate federal report (Form 3310.4) by the FFL be sent to several state and federal agencies.<sup>1</sup>
- What about possession of a firearm in my home, do I need any special permission to possess a firearm in my home in New Hampshire? NO!

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<sup>1</sup> <http://www.atf.gov/forms/pdfs/f33104.pdf> 27 C.F.R. § 478.126a “licensee shall forward two copies of Form 3310.4 to the ATF office specified thereon and one copy to the State police or to the local law enforcement agency in which the sale or other disposition took place. Where the State or local law enforcement officials have notified the licensee that a particular official has been designated to receive Forms 3310.4, the licensee shall forward such forms to that designated official. The licensee shall retain one copy of Form 3310.4 and attach it to the firearms transaction record, Form 4473, executed upon delivery of the pistols or revolvers. See also 18 U.S.C. § 923 (g)(3)

- If you intend to carry a loaded, concealed handgun anywhere other than your home (dwelling house) or place of business<sup>2</sup> you must make application<sup>3</sup> to the licensing entity where you live<sup>4</sup> to a license to carry a loaded pistol or revolver.
- I have a New Hampshire Pistol/Revolver License issued by the city of Concord, and I have just moved to Manchester, my license has not expired, do I need to apply for a new license from Manchester Police Department? No, however, pursuant to New Hampshire R.S.A. 159:6-b Suspension or Revocation of License, II (whooda thunk to look here??!!) “When the licensee hereunder ceases to be a resident of the community in which the license was issued he shall notify in writing the issuing authority at his new place of residence that he has a current license. Such license shall remain in effect until it expires pursuant to RSA 159:6.”**Source.** 1979, 355:2, eff. Aug. 22, 1979. My advice is to mail this notification via certified mail, return receipt requested, and simply state that “Pursuant to RSA 159:6-b II I, Penny Dean, formerly of 59 Warren Street, Concord, NH 03301 have moved to 1 Freedom Lane, Manchester, NH 03101. I am enclosing a copy of my current LTC (license to carry) from Concord.

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<sup>2</sup> New Hampshire R.S.A. 159:4 Carrying Without License. – No person shall carry a loaded pistol or revolver in any vehicle or concealed upon his person, except in his dwelling, house or place of business, without a valid license therefor as hereinafter provided. A loaded pistol or revolver shall include any pistol or revolver with a magazine, cylinder, chamber or clip in which there are loaded cartridges. Whoever violates the provisions of this section shall, for the first such offense, be guilty of a misdemeanor. For the second and for each subsequent violation of the provisions of this section, such person shall be guilty of a class B felony, provided such second or subsequent violation has occurred within 7 years of the previous conviction. Source. 1923, 118:4. PL 149:4. RL 179:4. 1951, 151:1. RSA 159:4. 1967, 220:3. 1973, 528:84. 1994, 48:1, eff. Jan. 1, 1995.

<sup>3</sup> <http://www.nh.gov/safety/divisions/nhsp/documents/dssp85.pdf>

<sup>4</sup> New Hampshire R.S.A. 159:6 License to Carry. –

I. The selectmen of a town or the mayor or chief of police of a city or some full-time police officer designated by them respectively, upon application of any resident of such town or city, or the director of state police, or some person designated by such director, upon application of a nonresident, shall issue a license to such applicant authorizing the applicant to carry a loaded pistol or revolver in this state for not less than 4 years from the date of issue, if it appears that the applicant has good reason to fear injury to the applicant's person or property or has any proper purpose, and that the applicant is a suitable person to be licensed. Hunting, target shooting, or self-defense shall be considered a proper purpose. The license shall be valid for all allowable purposes regardless of the purpose for which it was originally issued. The license shall be in duplicate and shall bear the name, address, description, and signature of the licensee. The original shall be delivered to the licensee and the duplicate shall be preserved by the people issuing the same for 4 years. When required, license renewal shall take place within the month of the fourth anniversary of the license holder's date of birth following the date of issuance. The license shall be issued within 14 days after application, and, if such application is denied, the reason for such denial shall be stated in writing, the original of which such writing shall be delivered to the applicant, and a copy kept in the office of the person to whom the application was made. The fee for licenses issued to residents of the state shall be \$10, which fee shall be for the use of the law enforcement department of the town granting said licenses; the fee for licenses granted to out-of-state residents shall be \$20, which fee shall be for the use of the state. The director of state police is hereby authorized and directed to prepare forms for the licenses required under this chapter and forms for the application for such licenses and to supply the same to officials of the cities and towns authorized to issue the licenses. No other forms shall be used by officials of cities and towns. The cost of the forms shall be paid out of the fees received from nonresident licenses.

II. No photograph or fingerprint shall be required or used as a basis to grant, deny, or renew a license to carry for a resident or nonresident, unless requested by the applicant. Source. 1923, 118:6. PL 149:6. 1941, 172:1. RL 179:6. 1951, 151:3. RSA 159:6. 1959, 100:1. 1967, 220:4. 1977, 563:76. 1979, 355:1. 1993, 27:1; 203:1. 1994, 257:1; 257:2. 1996, 167:2, eff. Aug. 2, 1996. 2003, 90:1, eff. July 29, 2003.

- But how long do you have to notify your new place of residence that you have a current license and have moved to their town/city? The law does not provide a timeline, but I suggest you do this immediately upon moving to the new place of residence.
- Speaking of possession, what does it MEAN, especially when it comes to machineguns and silencers? Possession can be either actual or “constructive” and at least one court has said that even leasing a warehouse for a business, when part of that warehouse contains unregistered (didn’t pay the \$200 tax) firearms that should have been registered is “possession” thus subjecting one to a felony conviction for possession of unregistered machineguns.<sup>5</sup> In short, if you or someone else can physically touch a firearm (meaning it is not in a safe that you do not have the combination to, or locked in an area you do not have a key to access) you arguably have “access” to the item.
- Why do I have to pay a \$200 tax upon the making and transfer of a machinegun as well as certain other items? The National Firearms Act of 1934 (NFA).<sup>6</sup>
- Which cities and towns have “the worst” gun laws in New Hampshire? None of them! New Hampshire has statewide preemption which means that no city or town can enact laws or regulations pertaining to firearm, only the state can (zoning excepted).<sup>7</sup>
- Can I have a 50 round magazine for my AR-15? Yes. There is no limit to the size or capacity of a magazine in New Hampshire, the only limitation is engineering and your physical strength, can you carry a 5,000 round magazine?!
- What about the “fun stuff” i.e. full autos and silencers? We in the free state can legally own ‘em all, as long as the ubiquitous federal Form 4 or other required *federal* paperwork is in order and the dealer has a ‘Class III’ license. The most important part is registration in the National

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<sup>5</sup> U.S. v. LaGue, 472 F.2d 151 (9<sup>th</sup> Cir. 1973).

<sup>6</sup> 26 U.S.C. § 5801 et. seq.

<sup>7</sup> New Hampshire R.S.A. 159:26 Firearms and Ammunition; Authority of the State. –

I. To the extent consistent with federal law, the state of New Hampshire shall have authority and jurisdiction over the sale, purchase, ownership, use, possession, transportation, licensing, permitting, taxation, or other matter pertaining to firearms, firearms components, ammunition, or firearms supplies in the state. Except as otherwise specifically provided by statute, no ordinance or regulation of a political subdivision may regulate the sale, purchase, ownership, use, possession, transportation, licensing, permitting, taxation, or other matter pertaining to firearms, firearms components, ammunition, or firearms supplies in the state. Nothing in this section shall be construed as affecting a political subdivision's right to adopt zoning ordinances for the purpose of regulating firearms businesses in the same manner as other businesses or to take any action allowed under RSA 207:59.

II. Upon the effective date of this section, all municipal ordinances and regulations not authorized under paragraph I relative to the sale, purchase, ownership, use, possession, transportation, licensing, permitting, taxation, or other matter pertaining to firearms, firearm components, ammunition, or firearms supplies shall be null and void. Source. 2003, 283:2, eff. July 18, 2003.

Firearms Registration and Transfer Record, and payment of a \$200.00 tax prior to the transfer<sup>8</sup> or possession of the firearm.<sup>9</sup>

- There are all sorts of laws pertaining to the who/what/where/why/when of National Firearms Act firearms. Start with 26 U.S.C. § 5861.<sup>10</sup>
- What about short barreled rifles (barrels under 16”) and short barreled shotguns (barrels under 18”), handguns with shoulder stocks and AOW (any other weapons)? You can have ‘em all PROVIDING you comply with federal law. Under the NFA (National Firearms Act) “firearm” is

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<sup>8</sup> 28 U.S.C. § 5845 (j) Transfer. The term 'transfer' and the various derivatives of such word, shall include selling, assigning, pledging, leasing, loaning, giving away, or otherwise disposing of.

<sup>9</sup> See 26 U.S.C. §§5812, 5861 (d) and 5871.

<sup>10</sup> 26 U.S.C. § 5861. Prohibited acts. It shall be unlawful for any person--

- (a) to engage in business as a manufacturer or importer of, or dealer in, firearms without having paid the special (occupational) tax required by section 5801 [26 USCS § 5801] for his business or having registered as required by section 5802 [26 USCS § 5802]; or
- (b) to receive or possess a firearm transferred to him in violation of the provisions of this chapter [26 USCS §§ 5801 et seq.]; or
- (c) to receive or possess a firearm made in violation of the provisions of this chapter [26 USCS §§ 5801 et seq.]; or
- (d) to receive or possess a firearm which is not registered to him in the National Firearms Registration and Transfer Record; or
- (e) to transfer a firearm in violation of the provisions of this chapter [26 USCS §§ 5801 et seq.]; or
- (f) to make a firearm in violation of the provisions of this chapter [26 USCS §§ 5801 et seq.]; or
- (g) to obliterate, remove, change, or alter the serial number or other identification of a firearm required by this chapter [26 USCS §§ 5801 et seq.]; or
- (h) to receive or possess a firearm having the serial number or other identification required by this chapter [26 USCS §§ 5801 et seq.] obliterated, removed, changed, or altered; or
- (i) to receive or possess a firearm which is not identified by a serial number as required by this chapter [26 USCS §§ 5801 et seq.]; or
- (j) to transport, deliver, or receive any firearm in interstate commerce which has not been registered as required by this chapter [26 USCS §§ 5801 et seq.]; or
- (k) to receive or possess a firearm which has been imported or brought into the United States in violation of section 5844 [26 USCS § 5844]; or
- (l) to make, or cause the making of, a false entry on any application, return, or record required by this chapter [26 USCS §§ 5801 et seq.], knowing such entry to be false. History: (Added Oct. 22, 1968, P.L. 90-618, Title II, § 201, 82 Stat. 1234.)

a term of art, and includes the above as well as destructive devices (you guessed it more definitions<sup>11</sup>), and machineguns.<sup>12</sup>

- Does that mean I can go to the local gun store and buy a fully automatic firearm? Assuming you can lawfully own guns, well, sorta, first you gotta have LOTS of money, as they're not cheap and federal law must be complied with (be prepared to wait for the required federal approval(s)) and Form 4's <http://www.atf.gov/forms/pdfs/f53204.pdf>. You must submit two full sets of fingerprints, a recent full color passport sized photograph, and a signature from the "Chief law enforcement official in your jurisdiction" for each 'Class III' item you are purchasing. So, if you are purchasing 3 suppressors at one time, that will be six full sets of fingerprints to be taken only by a law enforcement official! Ridiculous, yes, the law, yes.
- Can I take my full autos anywhere I want? Yes, but... Although state law does not restrict you (to be developed further), **federal law does (See ATF Form 5330.20)**. Currently, you must obtain written permission from the BATFE (Bureau of Alcohol Tobacco Firearms and Explosives) **PRIOR TO** moving (read transporting) fully automatic firearms across state lines.<sup>13</sup> The owner must indicate on the form whether the move is temporary or permanent. This applies to short barreled rifles, short barreled shotguns, machine guns and destructive devices. This requirement does not apply to silencers or AOW (any other weapon). For further specifics, consult an attorney knowledgeable in the specific state and/or town before you go, as this is not a question that can be answered fully within the space constraints of this publication.
- But if receive prior permission from the BATFE on ATF from 5320.20 I'm all set, right?? NOT! Some states do not allow ANY PERSON to possess items of certain design, period! (think Streetsweeper) Also some towns, cities and municipalities have enacted ordinances and laws pertaining to NFA items, and some states require registration immediately (or within 24 hours) of entering their jurisdiction with an NFA item. KNOW BEFORE YOU GO.

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<sup>11</sup> 28 U.S.C. § 5845 (f) Destructive device. The term 'destructive device' means (1) any explosive, incendiary, or poison gas (A) bomb, (B) grenade, (C) rocket having a propellant charge of more than four ounces, (D) missile having an explosive or incendiary charge of more than one-quarter ounce, (E) mine, or (F) similar device; (2) any type of weapon by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore of more than one-half inch in diameter, except a shotgun or shotgun shell which the Secretary finds is generally recognized as particularly suitable for sporting purposes; and (3) any combination of parts either designed or intended for use in converting any device into a destructive device as defined in subparagraphs (1) and (2) and from which a destructive device may be readily assembled. The term 'destructive device' shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of title 10 of the United States Code; or any other device which the Secretary finds is not likely to be used as a weapon, or is an antique or is a rifle which the owner intends to use solely for sporting purposes.

<sup>12</sup> 28 U.S.C. § 5845 (b) Machinegun. The term 'machinegun' means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.

<sup>13</sup> 18 U.S.C. §922 (a)(4); 27 C.F.R. 478.28; ATF form 5320.20 <http://www.atf.gov/forms/pdfs/f532020.pdf>

- Remember the NFA item owner must maintain dominion and control over the item at all times. This includes your spouse and kids! So, if you store your NFA items in the family gun safe, you need two safes if you own your NFA items as an individual, as arguably, your spouse and/or kids could have “control” over the NFA item in your absence.
- But see RSA 207:3-9<sup>14</sup> (use) and RSA 644:13 (use).<sup>15</sup>
- What makes something ‘Title III’? Well, in short, \*(pun intended) if it is a short barreled rifle (barrel less than 16 inches long), a shotgun with a barrel of less than 18 inches, fully automatic or ‘select fire’, a handgun with a shoulder stock, a suppressor, or a myriad of other atypical or unusual item that falls into the category of AOW (any other weapon), then special rules apply and you must pay for and obtain a \$200 tax stamp prior to taking possession of the item.<sup>16</sup>

<sup>14</sup> New Hampshire R.S.A. 207:3-c Use of Firearms, Bow, or Crossbow in or Across Highway Prohibited. –

I. No person shall discharge a firearm, bow and arrow, or crossbow and bolt from within 15 feet of the traveled portion of or across any class I through V highway of the state. This section shall not apply to those persons holding a special permit pursuant to RSA 207:7-a.

II. No person shall discharge a firearm, bow and arrow, or crossbow and bolt from or across the following public highways of the state including the rights of way thereof:

(a) Route 93 from the New Hampshire/Massachusetts state line in the town of Salem to the New Hampshire/Vermont state line in the town of Littleton;

(b) Route 89 from the intersection with Route 93 in the town of Bow to the New Hampshire/Vermont state line in the town of Lebanon;

(c) Route 95 from the New Hampshire/Massachusetts state line in the town of Seabrook to the New Hampshire/Maine state line in the town of Portsmouth;

(d) Route 293 from the intersection with Route 93 in the city of Manchester to the intersection with Route 93 in the town of Hooksett;

(e) Route 393 from the intersection with North Main Street in the city of Concord to the Concord/Chichester town line;

(f) Route 202/9 from the intersection with Route 114 in the town of Henniker to the junction with Route 31 in the town of Hillsborough;

(g) Route 16, commonly known as the Spaulding Turnpike, from the intersection with Route 95 in the town of Portsmouth to the Milton/Middletown town line;

(h) Route 3, commonly known as the F.E. Everett Turnpike, from the New Hampshire/Massachusetts state line in the city of Nashua to the intersection with Route 101 in the town of Bedford;

(i) Route 101 from the intersection with Route 114 in the town of Bedford to the intersection with Route 1 in the town of Hampton.

III. Any person convicted of discharging a firearm, bow and arrow, or crossbow and bolt prohibited under the provisions of this section shall be guilty of a violation. Source. 1979, 37:1, eff. June 10, 1979. 2004, 40:2, eff. Jan. 1, 2005.

<sup>15</sup> New Hampshire R.S.A. 644:13 Unauthorized Use of Firearms and Firecrackers. –

I. A person is guilty of a violation if, within the compact part of a town or city, such person fires or discharges any cannon, gun, pistol, or other firearm, except by written permission of the chief of police or governing body.

II. For the purposes of this section, ""compact part" means the territory within a town or city comprised of the following:

(a) Any nonresidential, commercial building, including, but not limited to, industrial, educational, or medical buildings, plus a perimeter 300 feet wide around all such buildings without permission of the owner.

(b) Any park, playground, or other outdoor public gathering place designated by the legislative body of the city or town.

(c) Any contiguous area containing 6 or more buildings which are used as either part-time or permanent dwellings and the spaces between them where each such building is within 300 feet of at least one of the others, plus a perimeter 300 feet wide around all the buildings in such area.

Source. 1971, 518:1. 1991, 164:1, eff. Jan. 1, 1992. 1996, 161:1, 2, eff. Aug. 2, 1996.

<sup>16</sup> 26 U.S.C. § 5801 *et seq.*

- A person possessing a machinegun must keep “Proof of registration- A person possessing a firearm registered as required by this section shall retain proof of registration which shall be made available to the Secretary upon request.<sup>17</sup> “A person possessing a firearm registered to him shall retain proof of registration which shall be made available to any ATF officer upon request.”<sup>18</sup>
- Why does it matter if a machinegun is confiscated? Because there is a finite supply of machineguns. As of November 2006 the national registry of machineguns contained registrations for 391,532 machineguns.<sup>19</sup> Any machinegun that is involved in a violation of the NFA is subject to seizure and forfeiture. If a machinegun is forfeited, it cannot be sold, and may be destroyed or transferred among federal, state and local government agencies<sup>20</sup>, thus diminishing the supply of legal machineguns, and increasing the price.
- I simply own and collect NFA items, do I have to notify the BATFE in writing if I move to a new house? At the present time, there is no legal requirement that you notify the BATFE of a move, however, I strongly recommend that because your NFA items are likely to be “stored” where you live, that you notify the BATFE in writing at the local ATF branch, via certified mail, return receipt requested of your move.
- What if my NFA item is lost or stolen? You must report it immediately to the Director (currently NFA Branch in Martinsburg, WV).<sup>21</sup>
- Why can’t I buy a NEW machinegun? As of May 19, 1986<sup>22</sup>, it is no longer legal to manufacture or import machineguns in the United States (with certain law enforcement exceptions).<sup>23</sup>
- Can I carry a concealed pistol or revolver in New Hampshire? Yes, if you first obtain a license to do so. See R.S.A. 159:6. The application for a Resident Pistol/Revolver License is mandated by

<sup>17</sup> 26 U.S.C. § 5801(e)

<sup>18</sup> 27 C.F.R. 479.101 (e)

<sup>19</sup> Office of the Inspector General, U.S. Department of Justice, The Bureau of Alcohol, Tobacco, Firearms and Explosives’ National Firearms Registration and Transfer Record, Evaluation and Inspections Report I-2007-006, June 2007 available at: <http://www.usdoj.gov/oig/reports/ATF/e0706/back.htm>

<sup>20</sup> 26 U.S.C. § 5871-72; 27 C.F.R. 479.182

<sup>21</sup> 27 C.F.R. § 479.141 Whenever any registered firearm is stolen or lost, the person losing possession thereof will, immediately upon discovery of such theft or loss, make a report to the Director showing the following:

(a) Name and address of the person in whose name the firearm is registered, (b) kind of firearm, (c) serial number, (d) model, (e) caliber, (f) manufacturer of the firearm, (g) date and place of theft or loss, and (h) complete statement of facts and circumstances surrounding such theft or loss.

<sup>22</sup> 18 U.S.C. § 922(o)

<sup>23</sup> 26 U.S.C. § 5845

law (DSSP 85 (Rev. 08/04) and can be found at <http://www.nh.gov/safety/divisions/nhsp/documents/dssp85.pdf>

- What about carrying a firearm in a United States Post Office. 18 U.S.C. 930 (d) (3) provides for an exemption for lawful carrying of a firearm<sup>24</sup> and a pocketknife with a blade of less than 2 ½ inches. Note that 39 C.F.R. § 232.1 (l) provides, “Weapons and explosives. No person while on

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<sup>24</sup> [www.gpoaccess.gov] [Laws in effect as of January 3, 2007] 18 U.S.C. § 930. Possession of firearms and dangerous weapons in Federal facilities

(a) Except as provided in subsection (d), whoever knowingly possesses or causes to be present a firearm or other dangerous weapon in a Federal facility (other than a Federal court facility), or attempts to do so, shall be fined under this title or imprisoned not more than 1 year, or both.

(b) Whoever, with intent that a firearm or other dangerous weapon be used in the commission of a crime, knowingly possesses or causes to be present such firearm or dangerous weapon in a Federal facility, or attempts to do so, shall be fined under this title or imprisoned not more than 5 years, or both.

(c) A person who kills any person in the course of a violation of subsection (a) or (b), or in the course of an attack on a Federal facility involving the use of a firearm or other dangerous weapon, or attempts or conspires to do such an act, shall be punished as provided in sections 1111, 1112, 1113, and 1117.

(d) Subsection (a) shall not apply to--

(1) the lawful performance of official duties by an officer, agent, or employee of the United States, a State, or a political subdivision thereof, who is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of law;

(2) the possession of a firearm or other dangerous weapon by a Federal official or a member of the Armed Forces if such possession is authorized by law; or

(3) the lawful carrying of firearms or other dangerous weapons in a Federal facility incident to hunting or other lawful purposes.

(e)(1) Except as provided in paragraph (2), whoever knowingly possesses or causes to be present a firearm in a Federal court facility, or attempts to do so, shall be fined under this title, imprisoned not more than 2 years, or both.

(2) Paragraph (1) shall not apply to conduct which is described in paragraph (1) or (2) of subsection (d).

(f) Nothing in this section limits the power of a court of the United States to punish for contempt or to promulgate rules or orders regulating, restricting, or prohibiting the possession of weapons within any building housing such court or any of its proceedings, or upon any grounds appurtenant to such building.

(g) As used in this section:

(1) The term “Federal facility” means a building or part thereof owned or leased by the Federal Government, where Federal employees are regularly present for the purpose of performing their official duties.

(2) The term “dangerous weapon” means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2½ inches in length.

(3) The term “Federal court facility” means the courtroom, judges' chambers, witness rooms, jury deliberation rooms, attorney conference rooms, prisoner holding cells, offices of the court clerks, the United States attorney, and the United States marshal, probation and parole offices, and adjoining corridors of any court of the United States.

(h) Notice of the provisions of subsections (a) and (b) shall be posted conspicuously at each public entrance to each Federal facility, and notice of subsection (e) shall be posted conspicuously at each public entrance to each Federal court facility, and no person shall be convicted of an offense under subsection (a) or (e) with respect to a Federal facility if such notice is not so posted at such facility, unless such person had actual notice of subsection (a) or (e), as the case may be. Effective Date of 1990 Amendment Section 2205(b) of Pub. L. 101-647 provided that: “The amendments made by subsection (a) [amending this section] shall apply to conduct engaged in after the date of the enactment of this Act [Nov. 29, 1990].”

postal property may carry firearms, other dangerous or deadly weapons, or explosives, either openly or concealed, or store the same on postal property, except for official purposes.” There does not appear to be a definition of what an official purpose is. I have been unable to locate a case whereby an individual was criminally prosecuted for carrying a firearm in a United States Postal Service UNLESS the prosecution was in conjunction with charges for other criminal acts. 39 C.F.R. § 232.1 (p) (2) provides that “Whoever shall be found guilty of violating the rules and regulations in this section while on property under the charge and control of the Postal Service is subject to fine of not more than \$50 or imprisonment of not more than 30 days, or both. Nothing contained in these rules and regulations shall be construed to abrogate any other Federal laws or regulations of any State and local laws and regulations applicable to any area in which the property is situated.”

- You should always keep a copy of any license application, and mail it via the United States Postal Service certified, return receipt requested (cost: approximately \$5.00). This way, you will always have a copy of what was sent, and know when it was received and who received it, as it must be signed for.
- Is it legal to carry a loaded rifle or shotgun in my vehicle? No.<sup>25</sup> New Hampshire Fish and Game rules prohibit it, and a New Hampshire License to Carry a Pistol/Revolver pursuant to RSA 159:6 is just that, for a handgun. For those of us who ride motorcycles they are ‘vehicles’ pursuant to this statute.
- Non-residents must apply to the Director of the New Hampshire State police for a license. \*\*\*Please note that the procedure(s) and timelines for challenge of a denial of an application are VERY different for residents and non-residents. Resident’s challenge procedures are found in R.S.A. 159, non-residents procedures are currently found in New Hampshire administrative regulations, SAF-C. <http://gencourt.state.nh.us/rules/saf-c.html>
- Where can I carry a pistol or revolver in New Hampshire? Alternatively, Where CAN’T I carry my firearm under New Hampshire STATE law? Essentially state courtrooms and areas pertaining to courts, jury assembly rooms, deliberation rooms, conference and interview rooms, judge’s chambers, court staff facilities, holding facilities and other areas “used by a court”.<sup>26</sup>

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<sup>25</sup> New Hampshire R.S.A. 207:7 Hunting From Motor Vehicle, OHRV, Snowmobile, Boat, or Aircraft. –

I. No person shall take or attempt to take wild birds or wild animals from a motor vehicle, OHRV, snowmobile as defined in RSA 215-C:1, boat, aircraft or other craft propelled by mechanical power.

II. No person shall have or carry, in or on a motor vehicle, OHRV, snowmobile, or aircraft, whether moving or stationary, a cocked crossbow, a loaded rifle or loaded shotgun, or a rifle or shotgun with a cartridge in a magazine or clip attached to the gun.

III. No person shall have in or on a boat or other craft while being propelled by mechanical power, or in a boat or other craft being towed by a boat or other craft propelled by mechanical power, a cocked crossbow, a loaded rifle or loaded shotgun, or a rifle or shotgun with a cartridge in a magazine or clip attached to the gun.

IV. The provisions of this section shall not apply to law enforcement officers carrying guns in the line of duty. Source. 1935, 124:1. 1937, 188:4. RL 241:6. 1947, 47:1. 1949, 16:1. RSA 207:7. 1969, 11:1. 1971, 308:1. 1983, 449:19, eff. July 1, 1983. 2003, 35:3, eff. July 1, 2003. 2005, 210:6, eff. July 1, 2006.

<sup>26</sup> New Hampshire R.S.A. 159:19 Courthouse Security. –

I. No person shall knowingly carry a loaded or unloaded pistol, revolver, or firearm or any other deadly weapon as defined in RSA 625:11, V, whether open or concealed or whether licensed or unlicensed, upon the person or within any of the

- Can I carry my loaded and concealed firearm (assuming I have a license to do so) in a New Hampshire business (public place) such as Costco that has a NO FIREARMS sign posted? **NO**, private property rights prevail. If you are caught carrying a firearm in a business that is properly posted prohibiting firearms (i.e. the sign was of a sufficient size-there is no law precisely defining the “prescribed manner of posting” i.e. what size and type the sign must be-however some guidance may be found in New Hampshire R.S.A. 635:4 Prescribed manner of Posting<sup>27</sup>) and posted at the entrance where you entered (thus you had notice) you may be asked to leave (only someone with “authority” can ask you to leave, typically a store manager or even an employee of the store may be deemed to have “authority”) and you could be prosecuted under New Hampshire R.S.A. 635:2.<sup>28</sup> See State v. Gaffney, 147 N.H. 550 (2002). (When defendant

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person's possessions owned or within the person's control in a courtroom or area used by a court. Whoever violates the provisions of this paragraph shall be guilty of a class B felony.

II. Firearms may be secured at the entrance to a courthouse by courthouse security personnel.

III. For purposes of paragraph I, ""area used by a court" means:

(a) In a building dedicated exclusively to court use, the entire building exclusive of the area between the entrance and the courthouse security.

(b) In any other building which includes a court facility, courtrooms, jury assembly rooms, deliberation rooms, conference and interview rooms, the judge's chambers, other court staff facilities, holding facilities, and corridors, stairways, waiting areas, and elevators directly connecting these rooms and facilities.

IV. The provisions of this section shall not apply to marshals, sheriffs, deputy sheriffs, police or other duly appointed or elected law enforcement officers, bailiffs and court security officers, or persons with prior authorization of the court for the purpose of introducing weapons into evidence and as otherwise provided for in RSA 159:5.

V. It shall be an affirmative defense to any prosecution under paragraph I that there was no notice of the provisions of paragraph I posted in a conspicuous place at each public entrance to the court building.

Source. 1985, 258:2. 2000, 175:1, eff. Jan. 1, 2001.

<sup>27</sup> New Hampshire R.S.A. 635:4 Prescribed Manner of Posting. – A person may post his land to prohibit criminal trespass and physical activities by posting signs of durable material with any words describing the physical activity prohibited, such as ""No Hunting or Trespassing", printed with block letters no less than 2 inches in height, and with the name and address of the owner or lessee of such land. Such signs shall be posted not more than 100 yards apart on all sides and shall also be posted at gates, bars and commonly used entrances. This section shall not prevent any owner from adding to the language required by this section.

Source. 1977, 284:1, eff. Aug. 21, 1977.

<sup>28</sup> New Hampshire R.S.A. 635:2 Criminal Trespass. –

I. A person is guilty of criminal trespass if, knowing that he is not licensed or privileged to do so, he enters or remains in any place.

II. Criminal trespass is a misdemeanor for the first offense and a class B felony for any subsequent offense if the person knowingly or recklessly causes damage in excess of \$1,000 to the value of the property of another.

III. Criminal trespass is a misdemeanor if:

(a) The trespass takes place in an occupied structure as defined in RSA 635:1, III; or

(b) The person knowingly enters or remains:

(1) In any secured premises;

(2) In any place in defiance of an order to leave or not to enter which was personally communicated to him by the owner or other authorized person; or

(3) In any place in defiance of any court order restraining him from entering such place so long as he has been properly notified of such order.

IV. All other criminal trespass is a violation.

V. In this section, ""secured premises" means any place which is posted in a manner prescribed by law or in a manner reasonably likely to come to the attention of intruders, or which is fenced or otherwise enclosed in a manner designed to exclude intruders.

refused to leave the police station after being asked to do so, there was sufficient evidence to convict defendant of criminal trespass under former R.S.A. 635:2, II (b) (now R.S.A. 635:2 III(b) because defendant received strong warnings to leave the station or risk being arrested.) You can be asked to leave even IF you do not have a firearm and even if you believe you are not doing anything wrong, as a business, even Wal-Mart is private property and has a right to control who is allowed on the premises (assuming they are not violating federal law, by, for example posting a “NO X race allowed” or keeping a federally protected category of individuals from entering).

- What about the anti-gun store manager that posts a “no guns” sign just because he hates all of those “red-necked gun owners” can you tear the sign down? No.<sup>29</sup> Your only lawful option is to persuade the store owner or other person with lawful authority to remove the sign or to choose to spend your money elsewhere (and tell your friends and family to do the same).
  
- What about federal law, does it restrict where I can carry a firearm in New Hampshire? **Yes, it does**, you cannot lawfully carry a firearm in federal courthouses, national parks (on December 10, 2008 the Department of the Interior promulgated a final rule that allows person to possess concealed loaded and operative firearms in National Parks and wildlife refuges in accordance with the laws of the state in which the National Park or wildlife refuge is located.<sup>30</sup>). The law allowing carrying a firearm in national parks has since been put on hold when the Brady Campaign to Prevent Gun Violence challenged the law by suing the National Parks Conservation Association, et. al. On March 19, 2009 the United States District Court for the District of Colombia in a Memorandum Opinion issued a Preliminary Injunction enjoining the National Parks Conservation Association from implementing or enforcing the rule allowing persons to possess, carry and transport concealed loaded and operable firearms within a national park or national wildlife refuge.<sup>31</sup> Federal law also arguably prohibits carrying a firearm in federal buildings and potentially New Hampshire **school zones which is defined as elementary<sup>32</sup>, junior high, and high schools**<sup>33</sup> (simply because of the language in R.S.A. 159:6, which

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VI. In this section, ""property," ""property of another," and ""value" shall be as defined in RSA 637:2, I, IV, and V, respectively. Source. 1971, 518:1. 1979, 377:7, eff. Aug. 22, 1979. 2005, 125:1, eff. Jan. 1, 2006.

<sup>29</sup>New Hampshire R.S.A. 635:5 Penalty. – Any person who is found removing, defacing or destroying any sign, poster or property of another shall be guilty of a class B misdemeanor. Source. 1977, 284:1. 1992, 269:13, eff. July 1, 1992.

<sup>30</sup> 73 Fed. Reg. 74,966 74,972(December 10, 2008), amending 36 C.F.R. § 2.4, 50 C.F.R. § 27.42

<sup>31</sup> [http://www.nra.org/media/PDFs/nationalparks\\_MemoOpiniononintervention.PDF](http://www.nra.org/media/PDFs/nationalparks_MemoOpiniononintervention.PDF)

<sup>32</sup> New Hampshire R.S.A. 189:25 Elementary School. – An elementary school is any school approved by the state board of education in which the subjects taught are those prescribed by the state board for the grades kindergarten through 8 of the public schools. However, a separate organization consisting of grades 7 through 9, or any grouping of these grades, may be recognized as a junior high school and so approved by the board. Also a separate organization consisting of grades 4 through 8 or any grouping of these grades may be recognized as a middle school and so approved by the state board. Any elementary school may include a kindergarten program which, if it is provided, shall precede the other elementary grades. Source. 1919, 106:25. 1921, 85, II:12. PL 117:21. RL 135:25. RSA 189:25. 1963, 288:1. 1971, 178:1. 2007, 71:2, eff. Aug. 10, 2007.

<sup>33</sup> See 18 U.S.C. § 922 (q)(1) The Congress finds and declares that--

(A) crime, particularly crime involving drugs and guns, is a pervasive, nationwide problem;

(B) crime at the local level is exacerbated by the interstate movement of drugs, guns, and criminal gangs;

arguably does not “require” a New Hampshire licensee to make sure the applicant is “qualified

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(C) firearms and ammunition move easily in interstate commerce and have been found in increasing numbers in and around schools, as documented in numerous hearings in both the Committee on the Judiciary \3\ the House of Representatives and the Committee on the Judiciary of the Senate;

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\3\ So in original. Probably should be followed by ``of".  
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(D) in fact, even before the sale of a firearm, the gun, its component parts, ammunition, and the raw materials from which they are made have considerably moved in interstate commerce;

(E) while criminals freely move from State to State, ordinary citizens and foreign visitors may fear to travel to or through certain parts of the country due to concern about violent crime and gun violence, and parents may decline to send their children to school for the same reason;

(F) the occurrence of violent crime in school zones has resulted in a decline in the quality of education in our country;

(G) this decline in the quality of education has an adverse impact on interstate commerce and the foreign commerce of the United States;

(H) States, localities, and school systems find it almost impossible to handle gun-related crime by themselves--even States, localities, and school systems that have made strong efforts to prevent, detect, and punish gun-related crime find their efforts unavailing due in part to the failure or inability of other States or localities to take strong measures; and

(I) the Congress has the power, under the interstate commerce clause and other provisions of the Constitution, to enact measures to ensure the integrity and safety of the Nation's schools by enactment of this subsection.

(2)(A) It shall be unlawful for any individual knowingly to possess a firearm that has moved in or that otherwise affects interstate or foreign **commerce at a place that the individual knows, or has reasonable cause to believe, is a school zone.**

(B) Subparagraph (A) does not apply to the possession of a firearm--

(i) on private property not part of school grounds;

(ii) if the individual possessing the firearm is licensed to do so by the State in which the school zone is located or a political subdivision of the State, and the law of the State or political subdivision requires that, before an individual obtains such a license, the law enforcement authorities of the State or political subdivision verify that the individual is qualified under law to receive the license;

(iii) that is--

(I) not loaded; and

(II) in a locked container, or a locked firearms rack that is on a motor vehicle;

(iv) by an individual for use in a program approved by a school in the school zone;

(v) by an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;

(vi) by a law enforcement officer acting in his or her official capacity; or

(vii) that is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on school premises is authorized by school authorities.

(3)(A) Except as provided in subparagraph (B), it shall be unlawful for any person, knowingly or with reckless disregard for the safety of another, to discharge or attempt to discharge a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the person knows is a school zone.

(B) Subparagraph (A) does not apply to the discharge of a firearm--

(i) on private property not part of school grounds;

(ii) as part of a program approved by a school in the school zone, by an individual who is participating in the program;

(iii) by an individual in accordance with a contract entered into between a school in a school zone and the individual or an employer of the individual; or

(iv) by a law enforcement officer acting in his or her official capacity.

(4) Nothing in this subsection shall be construed as preempting or preventing a State or local government from enacting a statute establishing gun free school zones as provided in this subsection.

under law to receive a New Hampshire license”. No New Hampshire licensee has been challenged on this point yet, don’t be the test case!).

- For the purposes of “school zone” federal law defines a “school zone” as (18 U.S.C. 921 (a) (25)
  - (A) in, or on the grounds of, a public, parochial or private school; or
  - (B) within a distance of 1,000 feet from the grounds of a public, parochial or private school.

The term “school” means a school which provides elementary or secondary education, as determined under State law. 18 U.S.C. 921 (a) (26). New Hampshire defines elementary and secondary schools in several places<sup>34</sup>, all of which are from kindergarten through 12<sup>th</sup> grade.<sup>35</sup>

18 U.S.C. 921 (a) (27) The term “motor vehicle” has the meaning given such term in section 13102 of title 49, United States Code.

- Also, possession of a firearm on school property (including private schools), school parking lots, and up to a 1000’ from the school may subject you to expulsion from school, arrest and criminal prosecution!
- There are also other federal and state laws pertaining to “juveniles” and firearms.
- What about a BB gun? Is there any limit on where a BB gun can be carried? Yes, one cannot carry a BB gun in school<sup>36</sup> and can be expelled for it as well as other potential penalties.<sup>37</sup>

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<sup>34</sup>New Hampshire R.S.A. 195-A: 1 Definitions. – The terms used in this chapter shall be construed as follows, unless a different meaning is clearly apparent from the language or context:

I. “School district” shall mean a town school district, a special school district, a cooperative school district, an incorporated school district operating within a city, and a city operating a dependent school department.

II. “Elementary school” shall mean a program comprising all grades from the kindergarten or grade one through grade 6, or kindergarten or grade one through grade 8.

III. “Secondary school” shall mean a program comprising all grades from grade 7 through grade 12, or grade 9 through grade 12 and may include a junior high school program comprising grades 7 and 8 or 7, 8 and 9 as well as a high school program.

IV. “Area school” shall mean an authorized regional enrollment area school, which may be elementary or secondary, and which when approved as hereinafter provided, shall be the assigned school for all the resident elementary or secondary pupils of the school districts or portions thereof within the region which it is established to serve.

<sup>35</sup> New Hampshire R.S.A. 195:1 Definitions. – The terms used in this chapter shall be construed as follows, unless a different meaning is clearly apparent from the language or context:

I. “Cooperative school district” means a district composed of 2 or more school districts of the state associated together under the provisions of this chapter and may include either the elementary schools, the secondary schools, or both.

II. “Elementary school” shall mean all grades from the kindergarten or grade one through grade 6, or kindergarten or grade one through grade 8.

III. “Secondary school” shall mean all grades from grade 7 through grade 12, or grade 9 through grade 12.

<sup>36</sup> New Hampshire R.S.A. 193-D:1 II. “Safe school zone” means an area inclusive of any school property or school buses.

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III. "School" means any public or private elementary, secondary, or secondary vocational-technical school in New Hampshire. It shall not include home schools under RSA 193-A.

IV. "School employee" means any school administrator, teacher, or other employee of any public or private school, school district, school department, or school administrative unit, or any person providing or performing continuing contract services for any public or private school, school district, school department, or school administrative unit.

V. "School property" means all real property, physical plant and equipment used for school purposes, including but not limited to school playgrounds and buses, whether public or private.

VI. "School purposes" means school-sponsored programs, including but not limited to educational or extra-curricular activities. 1994, 355:3, eff. Sept. 1, 1994. 1995, 231:2, eff. Aug. 15, 1995. 2007, 139:1, eff. August 17, 2007.

<sup>37</sup> New Hampshire R.S.A. 193:13 Suspension and Expulsion of Pupils.

I. (a) The superintendent or chief administering officer, or a representative designated in writing by the superintendent, is authorized to suspend pupils from school for a period not to exceed 10 school days for gross misconduct or for neglect or refusal to conform to the reasonable rules of the school.

(b) The school board or a representative designated in writing of the school board is authorized, following a hearing, to continue the suspension of a pupil for a period in excess of 10 school days. The school board's designee may be the superintendent or any other individual, but may not be the individual who suspended the pupil for the first 10 days under subparagraph (a). Any suspension shall be valid throughout the school districts of the state, subject to modification by the superintendent of the school district in which the pupil seeks to enroll.

(c) Any suspension in excess of 10 school days imposed under subparagraph (b) by any person other than the school board is appealable to the school board, provided that the superintendent received such appeal in writing within 10 days after the issuance of the decision being appealed. The school board shall hold a hearing on the appeal, but shall have discretion to hear evidence or to rely upon the record of a hearing conducted under subparagraph (b). The suspension under subparagraph (b) shall be enforced while that appeal is pending, unless the school board stays the suspension while the appeal is pending.

II. Any pupil may be expelled from school by the local school board for gross misconduct, or for neglect or refusal to conform to the reasonable rules of the school, or for an act of theft, destruction, or violence as defined in RSA 193-D:1, or for possession of a pellet or BB gun, rifle, or paint ball gun, and the pupil shall not attend school until restored by the local board. Any expulsion shall be subject to review if requested prior to the start of each school year and further, any parent or guardian has the right to appeal any such expulsion by the local board to the state board of education. Any expulsion shall be valid throughout the school districts of the state.

III. Any pupil who brings or possesses a firearm as defined in section 921 of Title 18 of the United States Code in a safe school zone as defined in RSA 193-D:1 without written authorization from the superintendent or designee shall be expelled from school by the local school board for a period of not less than 12 months.

IV. The local school board shall adopt a policy which allows the superintendent or chief administering officer to modify the expulsion requirements set forth in paragraphs II and III on a case by case basis.

V. Any pupil expelled by a local school board under the provisions of the Gun-Free Schools Act of 1994 shall not be eligible to enroll in another school district in New Hampshire for the period of such expulsion. Nothing in this section shall be construed to prevent the local school district that expelled the student from providing educational services to such students in an alternative setting.

- What about lending a BB gun to my son’s friend who is less than 18 years of age? NO. It’s a violation to do so without the written consent of the parent or guardian.<sup>38</sup>
- Like many answers in law, this only leads to more questions. So then, you say, how *does* New Hampshire State law define elementary or secondary education? (see previous answers)
- But what about colleges and universities? They are considered post secondary schools under State of New Hampshire law, and Congress, who speaks specifically, did not include them in the exclusion of the gun free school zone.<sup>39</sup> However, be forewarned, some colleges and universities have Student Policy Manuals, and Academic Standards and other policies that allows them to expel you for having a firearm on school premises.
- Even in states where their licensing system clearly allows licensees to carry loaded concealed firearms in “school zones”, there still may be school restrictions on carrying firearms which may result in expulsion for students, and termination of employment for school employees.
- New Hampshire residents may apply to and have their license to carry a concealed pistol or revolver issued by the Chief of Police, mayor or from the Selectmen of their town or some full time police officer designated by them.<sup>40</sup>

VI. A pupil expelled from school in another state under the provisions of the Gun-Free Schools Act of 1994 shall not be eligible to enroll in a school district in New Hampshire for the period of such expulsion.

VII. For purposes of paragraphs I, II, and III, school board may be either the school board or a subcommittee of the board duly authorized by the school board.

<sup>38</sup> New Hampshire R.S.A. 644:14 Selling Air Rifles or Paint Ball Guns to Young Persons.

If any person shall **sell, barter, rent, lend, or give** an air rifle or paint ball gun to a person under the age of 18, without the written consent of the parent or guardian, as the case may be, such person shall be guilty of a violation. Air rifles and paint ball guns may be used in New Hampshire only in the home of the person under 18 under parental supervision or on an approved range under responsible adult supervision. Air rifles or paint ball guns may be possessed by a person under 18 only in his or her own home under parental supervision or on the way to or from an approved range that is under the supervision of a responsible adult such as an instructor in gun safety or marksmanship.(emphasis supplied) Classification of crimes, see RSA 625:9. Sentences, see RSA 651.

<sup>39</sup> See New Hampshire R.S.A. 167:85 IV (i) by implication, 188-D:2, 19, 37, 200-J:1, J:2 IV, IX, X, J:3, I-a, III, V, J:5-8, 279:22-aa, by implication R.S.A. 186 <http://www.nh.gov/postsecondary/> 292:8-c, h,

<sup>40</sup> New Hampshire R.S.A. 159:6 License to Carry. –

I. The selectmen of a town or the mayor or chief of police of a city or some full-time police officer designated by them respectively, upon application of any resident of such town or city, or the director of state police, or some person designated by such director, upon application of a nonresident, shall issue a license to such applicant authorizing the applicant to carry a loaded pistol or revolver in this state for not less than 4 years from the date of issue, if it appears that the applicant has good reason to fear injury to the applicant's person or property or has any proper purpose, and that the applicant is a suitable person to be licensed. Hunting, target shooting, or self-defense shall be considered a proper purpose. The license shall be valid for all allowable purposes regardless of the purpose for which it was originally issued. The license shall be in duplicate and shall bear the name, address, description, and signature of the licensee. The original shall be delivered to the licensee and the duplicate shall be preserved by the people issuing the same for 4 years. When required, license renewal shall take place

- It must appear that the applicant has good reason to fear injury to their person or property OR has any other proper purpose and that the applicant is a suitable person to be licensed. Hunting, target shooting or self-defense shall be considered a property purpose. The license is allowable for all proper purposes regardless of why/the one for which it was issued.
- Does New Hampshire have full faith and credit for licenses to carry concealed firearms from other states? Yes, with some caveats.<sup>41</sup> Currently, the New Hampshire Department of Safety, Division of State Police lists those states New Hampshire has reciprocity agreements with. Please know before you go, as this list may change.  
<http://www.nh.gov/safety/divisions/nhsp/ssb/permitslicensing/plupr.html>
- The definition of a loaded and concealed pistol or revolver<sup>42</sup> **MAY include** loaded clips or magazines. This matter has not been decided by the New Hampshire Supreme Court to the best of my knowledge, however, currently it is my understanding that at least one Superior Court has decided that an individual in possession of a new pistol and two loaded magazines was carrying a

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within the month of the fourth anniversary of the license holder's date of birth following the date of issuance. The license shall be issued within 14 days after application, and, if such application is denied, the reason for such denial shall be stated in writing, the original of which such writing shall be delivered to the applicant, and a copy kept in the office of the person to whom the application was made. The fee for licenses issued to residents of the state shall be \$10, which fee shall be for the use of the law enforcement department of the town granting said licenses; the fee for licenses granted to out-of-state residents shall be \$20, which fee shall be for the use of the state. The director of state police is hereby authorized and directed to prepare forms for the licenses required under this chapter and forms for the application for such licenses and to supply the same to officials of the cities and towns authorized to issue the licenses. No other forms shall be used by officials of cities and towns. The cost of the forms shall be paid out of the fees received from nonresident licenses.

II. No photograph or fingerprint shall be required or used as a basis to grant, deny, or renew a license to carry for a resident or nonresident, unless requested by the applicant. Source. 1923, 118:6. PL 149:6. 1941, 172:1. RL 179:6. 1951, 151:3. RSA 159:6. 1959, 100:1. 1967, 220:4. 1977, 563:76. 1979, 355:1. 1993, 27:1; 203:1. 1994, 257:1; 257:2. 1996, 167:2, eff. Aug. 2, 1996. 2003, 90:1, eff. July 29, 2003

<sup>41</sup> New Hampshire R.S.A. 159:6-d Full Faith and Credit for Licenses From Other States; Reciprocity. – Notwithstanding the provisions of RSA 159:6, no nonresident holding a current and valid license to carry a loaded pistol or revolver in the state in which he resides or who is a peace officer in the state in which he resides, shall be required to obtain a license to carry a loaded pistol or revolver within this state if:

- I. Such nonresident carries upon his person the license held from the state in which he resides; and
  - II. The state in which such person is a resident provides a reciprocal privilege for residents of this state.
- Source. 1993, 130:1, eff. Jan. 1, 1994.

<sup>42</sup> New Hampshire R.S.A. 159:1 Definition. – Pistol or revolver, as used herein, means any firearm with barrel less than 16 inches in length. It does not include antique pistols, gun canes, or revolvers. An antique pistol, gun cane, or revolver, for the purposes of this chapter, means any pistol, gun cane, or revolver utilizing an early type of ignition, including, but not limited to, flintlocks, wheel locks, matchlocks, percussions and pin-fire, but no pistol, gun cane, or revolver which utilizes readily available center fire or rim-fire cartridges which are in common, current use shall be deemed to be an antique pistol, gun cane, or revolver. Nothing in this section shall prevent antique pistols, gun canes, or revolvers from being owned or transferred by museums, antique or arms collectors, or licensed gun dealers at auctions, gun shows, or private premises provided such ownership or transfer does not conflict with federal statutes. Source. 1923, 118:1. PL 149:1. RL 179:1. RSA 159:1. 1967, 220:1. 1992, 273:1, eff. July 17, 1992.

concealed firearm without a license when he had the pistol and magazines on the seat of his car, and thus better safe than sorry, get a license! <sup>43</sup>

- With certain exceptions,<sup>44</sup> a License to carry is issued by town officials where you reside is required to carry a loaded pistol or revolver in a motor vehicle or to carry a concealed, loaded pistol or revolver on your person. See RSA 159:6, 159:4 <sup>45</sup>.
- Three references are required on the Application to Carry a Concealed pistol/revolver, what do the references have to say in their letter? They don't have to write a letter, you simply have to provide three references; the references do not have to write a letter, or do anything.
- Do I have to provide my fingerprints or photograph with my application? <sup>46</sup> No. This means that although you can be required to provide identification prior to picking up your license, they cannot photograph your drivers license in order to get around the no photograph required portion of the law.
- What does concealed mean? Well, if you have a sidearm on your belt, and your vest is covering part of the sidearm, it could well be considered concealed, so you best have a license! If your

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<sup>43</sup> New Hampshire R.S.A. 159:4 Carrying Without License. – No person shall carry a loaded pistol or revolver in any vehicle or concealed upon his person, except in his dwelling, house or place of business, without a valid license therefore as hereinafter provided. A loaded pistol or revolver shall include any pistol or revolver with a magazine, cylinder, chamber or clip in which there are loaded cartridges. Whoever violates the provisions of this section shall, for the first such offense, be guilty of a misdemeanor. For the second and for each subsequent violation of the provisions of this section, such person shall be guilty of a class B felony, provided such second or subsequent violation has occurred within 7 years of the previous conviction. Source. 1923, 118:4. PL 149:4. RL 179:4. 1951, 151:1. RSA 159:4. 1967, 220:3. 1973, 528:84. 1994, 48:1, eff. Jan. 1, 1995.

<sup>44</sup> New Hampshire R.S.A. 159:5 Exceptions. – The provisions of RSA 159:3 and 4 shall not apply to marshals, sheriffs, policemen or other duly appointed peace and other law enforcement officers, or bailiffs and court officers responsible for court security; nor to the regular and ordinary transportation of pistols or revolvers as merchandise, nor to members of the armed services of the United States when on duty; nor to the national guard when on duty; nor to organizations by law authorized to purchase or receive such weapons; nor to duly authorized military or civil organizations when parading, or the members thereof when at, or going to or from, their customary places of assembly. Source. 1923, 118:5. PL 149:5. RL 179:5. 1951, 151:2. RSA 159:5. 1985, 258:1, eff. Jan. 1, 1986.

<sup>45</sup> New Hampshire R.S.A. 159:4 Carrying Without License. – No person shall carry a loaded pistol or revolver in any vehicle or concealed upon his person, except in his dwelling, house or place of business, without a valid license therefore as hereinafter provided. A loaded pistol or revolver shall include any pistol or revolver with a magazine, cylinder, chamber or clip in which there are loaded cartridges. Whoever violates the provisions of this section shall, for the first such offense, be guilty of a misdemeanor. For the second and for each subsequent violation of the provisions of this section, such person shall be guilty of a class B felony, provided such second or subsequent violation has occurred within 7 years of the previous conviction. Source. 1923, 118:4. PL 149:4. RL 179:4. 1951, 151:1. RSA 159:4. 1967, 220:3. 1973, 528:84. 1994, 48:1, eff. Jan. 1, 1995.

<sup>46</sup> New Hampshire R.S.A. 159:6 License to Carry. –

II. No photograph or fingerprint shall be required or used as a basis to grant, deny, or renew a license to carry for a resident or nonresident, unless requested by the applicant. Source. 1923, 118:6. PL 149:6. 1941, 172:1. RL 179:6. 1951, 151:3. RSA 159:6. 1959, 100:1. 1967, 220:4. 1977, 563:76. 1979, 355:1. 1993, 27:1; 203:1. 1994, 257:1; 257:2. 1996, 167:2, eff. Aug. 2, 1996. 2003, 90:1, eff. July 29, 2003

firearm is in any way covered or concealed by your clothing, it may well be deemed to be “concealed” and thus a license is arguably required.

- What if my chief of police or selectman does not grant or deny my license application in writing within the required 14 day response time?<sup>47</sup>
- What are my remedies if the licensing entity does not follow the law? <sup>48</sup>
- Can you sell your gun to your neighbor? Yes, **IF** your neighbor is a New Hampshire resident, as are you, and is known to you, and has not been convicted of a felony that has not been annulled or expunged or sealed, depending on the state of conviction. <sup>49</sup> Although RSA 159:10 prohibits sale without a license, <sup>50</sup> RSA 159:14 provides an exemption “None of the provisions of this chapter shall prohibit an individual not licensed under the provisions thereof who is not engaged in the business of selling pistols or revolvers from selling a pistol or revolver to a person licensed under this chapter or to a person personally known to him.” **Source.** 1967, 220:9, eff. Aug. 21, 1967.

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<sup>47</sup> New Hampshire R.S.A. 159:6-e Violation. – Any person aggrieved by a violation of the licensing sections of this chapter by a licensing entity may petition the superior court of the county in which the alleged violation occurred for injunctive relief. The court shall give proceedings under this chapter priority on the court calendar. Such a petitioner may appear with or without counsel. The petition shall be deemed sufficient if it states facts constituting a violation of the licensing sections of this chapter by the licensing entity, and may be filed by the petitioner or the petitioner's counsel with the clerk of court or the justice. The clerk of court or any justice shall order service by copy of the petition on the licensing entity or a person employed by the entity. If the justice finds that time is of the essence, the justice may order notice by any reasonable means, and shall have authority to issue an order ex parte when the justice reasonably deems such an order necessary to insure compliance with the provisions of this chapter. **Source.** 1996, 122:1, eff. Jan. 1, 1997.

<sup>48</sup> New Hampshire R.S.A. 159:6-f Remedies. –

I. If any licensing entity or employee or member of the city council or board of selectmen, in violation of the provisions of this chapter, refuses to comply with this chapter, such entity or person shall be liable for reasonable attorney's fees and costs incurred in a lawsuit under this chapter to enforce the terms of this chapter, provided that the court finds that such lawsuit was necessary in order to obtain compliance with this chapter by the licensing authority. Fees shall not be awarded unless the court finds that the entity or person knew or should have known that the conduct engaged in was a violation of this chapter or when the parties, by agreement, provide that no such fees shall be paid. In any case in which fees are awarded under this chapter, upon a finding that an employee, or other official of a licensing entity has acted in bad faith in refusing to comply with this chapter, the court may award such fees personally against such employee or other official.

II. The court may invalidate an action of a licensing entity taken in violation of the provisions of this chapter, if the circumstances justify such invalidation, and may require the licensing entity to issue a license or otherwise comply with the provisions of this chapter.

III. In addition to any other relief awarded pursuant to this chapter, the court may issue an order to enjoin future violations of this chapter. **Source.** 1996, 122:1, eff. Jan. 1, 1997.

<sup>49</sup> New Hampshire R.S.A. 159:8 License to Sell. – . . .

III. No pistol, revolver, or other firearm shall be delivered to a purchaser not personally known to the seller or who does not present clear evidence of his identity; nor to a person who has been convicted of a felony. **Source.** 1923, 118:10. PL 149:8. RL 179:8. RSA 159:8. 1967, 220:5. 1979, 44:1. 1981, 553:6. 1991, 254:2. 1996, 167:1, eff. Aug. 2, 1996.

<sup>50</sup> Any person who, without being licensed as herein provided, sells, advertises or exposes for sale, or has in his possession with intent to sell, pistols or revolvers shall be guilty of a class B felony if a natural person, or guilty of a felony if any other person. **Source.** 1923, 118:9. PL 149:10. RL 179:10. RSA 159:10. 1967, 220:7. 1973, 528:86, eff. Oct. 31, 1973 at 11:59 p.m..

- Must all firearms have a serial number? YES. With certain exceptions for antique firearms<sup>51</sup>, all modern firearms MUST have as serial number. If the modern firearm you are thinking of purchasing does not have one, or it is obliterated, RUN don't walk away from it. It is illegal to receive or possess a firearm having the serial number or other identification obliterated, removed, changed or altered.<sup>52</sup>
- If you purchase a firearm from a Federal Firearms Licensee (FFL) then one must be at least 18 years old to purchase a rifle or shotgun, and at least 21 years old<sup>53</sup> to purchase a handgun.<sup>54</sup> However, federal law addresses sale and delivery of firearms by licensed importers, licensed manufactures, licensed dealers or licensed collectors<sup>55</sup> federal law does not address sales or transfers by nondealers or possession by minors, and there is no clear caselaw for guidance on the subject.
- What law says that a juvenile can't buy handguns?<sup>56</sup>

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<sup>51</sup> 26 U.S.C. § 5845 (g) Antique firearm. The term 'antique firearm' means any firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

<sup>52</sup> See 26 U.S.C. 5861 (g) (h) (i); 27 C.F.R. § 478.34

<sup>53</sup> 18 U.S.C. § 922 (b)(1)

<sup>54</sup> 18 U.S.C. § 921 (29) (a) (A) & (B)

<sup>55</sup> 18 U.S.C. § 922 (b)(1)

<sup>56</sup> 18 U.S.C. § 922 (x)(1) It shall be unlawful for a person to sell, deliver, or otherwise transfer to a person who the transferor knows or has reasonable cause to believe is a juvenile -

- (A) a handgun; or
- (B) ammunition that is suitable for use only in a handgun.

(2) It shall be unlawful for any person who is a juvenile to knowingly possess -

- (A) a handgun; or
- (B) ammunition that is suitable for use only in a handgun.

(3) This subsection does not apply to -

- (A) a temporary transfer of a handgun or ammunition to a juvenile or to the possession or use of a handgun or ammunition by a juvenile if the handgun and ammunition are possessed and used by the juvenile -
  - (i) in the course of employment, in the course of ranching or farming related to activities at the residence of the juvenile (or on property used for ranching or farming at which the juvenile, with the permission of the property owner or lessee, is performing activities related to the operation of the farm or ranch), **target practice, hunting, or a course of instruction in the safe and lawful use of a handgun;**
  - (ii) with the prior written consent of the juvenile's parent or guardian who is not prohibited by Federal, State, or local law from possessing a firearm, except -
    - (I) during transportation by the juvenile of an unloaded handgun in a locked container directly from the place of transfer to a place at which an activity described in clause

- What about furnishing cartridges or shotshells suitable for discharging in any rifle, pistol, revolver or shotgun to someone under the age of 16 years old, can I? No, with certain exceptions for fathers, mothers, grandparents or guardians of such children as well as certain other enumerated exceptions.<sup>57</sup>
- Misdemeanor crime of Domestic Violence, what is that?<sup>58</sup>

(i) is to take place and transportation by the juvenile of that handgun, unloaded and in a locked container, directly from the place at which such an activity took place to the transferor; or

(II) with respect to ranching or farming activities as described in clause (i), a juvenile may possess and use a handgun or ammunition with the prior written approval of the juvenile's parent or legal guardian and at the direction of an adult who is not prohibited by Federal, State or local law from possessing a firearm;

**(iii) the juvenile has the prior written consent in the juvenile's possession at all times when a handgun is in the possession of the juvenile; and**

**(iv) in accordance with State and local law;**

(B) a juvenile who is a member of the Armed Forces of the United States or the National Guard who possesses or is armed with a handgun in the line of duty;

(C) a transfer by inheritance of title (but not possession) of a handgun or ammunition to a juvenile; or

(D) the possession of a handgun or ammunition by a juvenile taken in defense of the juvenile or other persons against an intruder into the residence of the juvenile or a residence in which the juvenile is an invited guest.

(4) A handgun or ammunition, the possession of which is transferred to a juvenile in circumstances in which the transferor is not in violation of this subsection shall not be subject to permanent confiscation by the Government if its possession by the juvenile subsequently becomes unlawful because of the conduct of

the juvenile, but shall be returned to the lawful owner when such handgun or ammunition is no longer required by the Government for the purposes of investigation or prosecution.

(5) For purposes of this subsection, the term "juvenile" means a person who is less than 18 years of age.

(6)(A) In a prosecution of a violation of this subsection, the court shall require the presence of a juvenile defendant's parent or legal guardian at all proceedings.

(B) The court may use the contempt power to enforce subparagraph (A).

(C) The court may excuse attendance of a parent or legal guardian of a juvenile defendant at a proceeding in a prosecution of a violation of this subsection for good cause shown.

<sup>57</sup> New Hampshire R.S.A. **644:15 Furnishing Arms to Persons Under 16.** –

I. Any person who shall sell, barter, hire, lend, or give to any person under the age of 16 years any cartridges or shotshells suitable for discharging in any rifle, pistol, revolver, or shotgun shall be guilty of a violation.

II. This section shall not apply to:

(a) Fathers, mothers, grandparents, or guardians of such children.

(b) Individuals instructing such children in the safe use of firearms during a supervised firearms training program, provided the child's parent or legal guardian has granted the child permission to participate in such program.

(c) Licensed hunters accompanying such children while lawfully taking wildlife.

(d) Individuals supervising such children using firearms during a lawful shooting event or activity. **Source.** 1971, 518:1. 2006, 73:3, eff. April 28, 2006.

<sup>58</sup> Defined at 27 C.F.R. § 478.11 and A "misdemeanor crime of domestic violence" means an offense that:

(1) is a misdemeanor under Federal or State law;

(2) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon; and

(3) was committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

- What if my girlfriend/boyfriend and I get in a fight and one of us calls the police? Well, if either of you used physical force or *even threatened to use physical force*, you could well end up losing your firearm rights (for life in some states). Don't do it, walk away, or talk it out, but if you love your guns DO NOT lose your temper if that means a physical response.
- So convicted felons can own guns? The short answer is no, however the term convicted felon is a term of art, and there are exceptions under both New Hampshire<sup>59</sup> and federal law.<sup>60</sup>
- When isn't a gun a gun? When it was made before January 1, 1899. This refers to the actual date of manufacture of the receiver/frame, not just model year or patent date marked. Just as muzzle loading rifles, shotguns and pistols are not firearms covered by federal law, neither are firearms

However, a person is not considered to have been convicted of a misdemeanor crime of domestic violence unless:

- (1) the person was represented by counsel in the case, or knowingly and intelligently waived the right of counsel in the case; and
- (2) in the case of a prosecution for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either -
  - (a) the case was tried by a jury, or
  - (b) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

In addition, a conviction would not be disabling if it has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the jurisdiction in which the proceedings were held provides for the loss of civil rights upon conviction for such an offense) unless the pardon, expunction, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms, and the person is not otherwise prohibited by the law of the jurisdiction in which the proceedings were held from receiving or possessing firearms.  
[18 U.S.C. 921(a)(33), 27 CFR 178.11]

<sup>59</sup> New Hampshire R.S.A. 159:3 Convicted Felons. –

- I. A person is guilty of a class B felony if he:
  - (a) Owns or has in his possession or under his control, a pistol, revolver, or other firearm, or slungshot, metallic knuckles, billies, stiletto, switchblade knife, sword cane, pistol cane, blackjack, dagger, dirk-knife, or other deadly weapon as defined in RSA 625:11, V; and
  - (b) Has been convicted in either a state or federal court in this or any other state, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States of:
    - (1) **A felony against the person or property of another**; or
    - (2) A felony under RSA 318-B; or
    - (3) A felony violation of the laws of any other state, the District of Columbia, the United States, the Commonwealth of Puerto Rico or any territory or possession of the United States relating to controlled drugs as defined in RSA 318-B.
- I-a. A person is guilty of a class B felony if such person completes and signs an application for purchase of a firearm and the person is a convicted felon under the provisions of paragraph I.
- II. The state shall confiscate to the use of the state the weapon or weapons of persons convicted under this section.
- III. It is an affirmative defense to a charge under this section that a felony of which a defendant has been convicted in another jurisdiction would not have constituted a felony in the state of New Hampshire at the time such felony was committed.

Source. 1923, 118:3. PL 149:3. RL 179:3. RSA 159:3. 1973, 405:1; 528:83. 1981, 553:4. 1993, 157:1. 2001, 189:1; 214:1, eff. Jan. 1, 2002

<sup>60</sup> 18 U.S.C. § 922(g)(1); 27 C.F.R. § 478.32

that use rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and which is not available in the ordinary channels of commercial trade.<sup>61</sup>

- So some felons can own guns. The only felonies that are not covered by the federal gun ban are those “pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices,” 18 U.S.C. § 921(a)(20)(A); and felony convictions from foreign countries (18 U.S.C. § 922 (g) (1)), per Small v. United States, 544 U.S. 385 (2005).
- Can you lend your gun to the teenager (person less than 18) next door? NO, with some exceptions.<sup>62</sup> Minors under 18 may receive and possess handguns ONLY with a parent or guardian’s written permission and under other circumstances. **BEWARE there is a case that says that NO ONE other than the parent (or potentially a close relative can) “lie” on the 4473 form and say they are the “purchaser” when they intend to provide the handgun to someone under 21 years of age.**<sup>63</sup> “18 U.S.C. § 922 (a) (6) makes it a federal offense for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensee importer, licensee manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictional oral or written statement or to furnish or exhibit any false, fictitious or misrepresent identification intended or likely to deceive such

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<sup>61</sup> 18 U.S.C. 921 (a)(16) 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 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; or  
(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.

<sup>62</sup> New Hampshire R.S.A. 159:12 Sale to Minors. –  
I. Any person who shall sell, barter, hire, **lend or give to any minor any pistol or revolver shall be guilty of a misdemeanor.**  
II. This section shall not apply to:  
(a) Fathers, mothers, grandparents, guardians, administrators or executors who give a revolver to their children or wards or to heirs to an estate.  
(b) Individuals instructing minors in the safe use of firearms during a supervised firearms training program, provided the minor's parent or legal guardian has granted the minor permission to participate in such program.  
(c) Licensed hunters accompanying a minor while lawfully taking wildlife.  
(d) Individuals supervising minors using firearms during a lawful shooting event or activity.  
Source. 1923, 118:7. PL 149:12. RL 179:12. RSA 159:12. 1973, 528:87, eff. Oct. 31, 1973 at 11:59 p.m. 2006, 73:2, eff. April 28, 2006.

<sup>63</sup> U.S. v. Moore, 109 F.3d 1456, 1466 (9<sup>th</sup> Cir. 1997) (*en banc*[when all members of an appellate court hear and argument rather than a select man])

importer, manufacturer, dealer, or collector with respect to any fact material”<sup>64</sup> So, even though the parents could lawfully consent to have a firearm transferred to a minor, as a practical matter, because of this very scary case, Perri v. Department of the Treasury, 637 F.2d 1332, 1336 (9th Cir.1981), a "sham or 'strawman' " purchases occur "when a lawful purchaser buys for an unlawful one." In short, I extreme caution is suggested here. The Moore case footnote #4 claims “No party has cited and the court has not found any reported case in which a straw purchaser has been prosecuted for buying a firearm for a juvenile where the straw purchaser is a parent or other close relative of the juvenile.” I would suggest that as the BATFE and federal and state prosecutors become more aggressive that the safest way to provide a handgun to your minor child is to choose one you already own, and gift THAT handgun to the minor in writing.<sup>65</sup>

- Although the Fifth Circuit has said<sup>66</sup> it is not a false statement to fill out a 4473 and purchase and transfer a firearm to one who may lawfully receive it (as long as the recipient may lawfully receive a firearm), I am a firm believe that Murphy resides everywhere. However, of great interest is a 2004 Michigan case, in which the court said,

“An understanding of certain aspects of federal and state law regarding the sale of firearms and ammunition is helpful to properly analyze this case. A firearms dealer licensed by the United States Treasury, Bureau of Alcohol, Tobacco, Firearms and Explosives, under 18 USC 923(d)(1)(A), may sell firearms or ammunition only to a person twenty-one years of age or older, except that the dealer may sell a rifle or shotgun to a person eighteen years of age. 18 USC 922(b)(1). Thus, a federally licensed firearms dealer may legally sell shotguns and rifles to persons eighteen years of age or older, but may sell a pistol only to a person twenty-one years of age or older.

Michigan requires a prospective purchaser of a pistol to first obtain a license from the purchaser's local law enforcement agency. MCL 28.422(3). An applicant is qualified to obtain a license to purchase a pistol if, among other things, he is at least eighteen. A purchaser must be at least twenty-one, however, for a federally licensed gun dealer to legally sell a pistol to that purchaser. MCL 28.422(3)(b).

Thus, under the federal and state statutory schemes, a licensed eighteen-year-old may legally purchase or receive as a gift a pistol from a private party, but may not purchase a gun from a federally licensed gun dealer.”<sup>67</sup>

- I have some cool knives, throwing stars and other marital arts weapons; can I lend them to the teenager next door? No, not unless you have written consent from their parent or guardian.<sup>68</sup>

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<sup>64</sup> U.S. v. Moore, 109 F.3d 1456, 1466 (9<sup>th</sup> Cir. 1997) (*en banc*[when all members of an appellate court hear and argument rather than a select man])

<sup>65</sup> The Gun Control Act has also been amended to make it illegal for a juvenile to possess a handgun without a parent's or guardian's written consent. 18 U.S.C. §§ 922(x)(1)(A) & 922(x)(3)(A)(iii) (1994).

<sup>66</sup> U.S. v. Polk, 118 F.3d 286 (5<sup>th</sup> Cir. 1997)

<sup>67</sup> People v. Laney, 470 Mich. 267, 680 N.W.2d 888 (2004)

<sup>68</sup> New Hampshire R.S.A. 159:24 Sale of Martial Arts Weapons. –

- I have an old pistol (or revolver) with a serial number that is partially removed, is federal law the only law I should be concerned about? No, it's a misdemeanor under state law to possess such an item.<sup>69</sup>
- I have a business that sells firearms related items, where can I get a list of the concealed license holders in New Hampshire so I can do a targeted mailing? You can't.<sup>70</sup>
- Can I own or carry a stiletto, switch knife blackjack, dagger, dirk-knife, slung shot or metallic knuckles? No, with certain exceptions.<sup>71</sup>
- What about electronic defense weapons? Are there any age restrictions? Yes, you cannot sell such an item to someone under 18.<sup>72</sup>
- Applicants not prohibited under federal or NH law from possession of a firearm shall be deemed suitable persons and the license shall be issued unless the applicant is so prohibited from possessing a firearm. But see *Silverstein v. Town of Alexandria, Chief of Police (I and II 2004-0085 & 2004-0224.)*
- *The license shall be issued or denied within fourteen days of the date of the application (I recommend ALWAYS keeping a copy of your Application and mailing the application via the U.S. Postal service, certified, return receipt requested, the best \$5.00 you will ever spend).*

I. ""Martial arts weapon" means any kind of sword, knife, spear, throwing star, throwing dart, or nunchaku or any other object designed for use in the martial arts which is capable of being used as a lethal or dangerous weapon.

II. Any person who shall sell, deliver, or otherwise transfer any martial arts weapon to a person under the age of 18 without first obtaining the written consent of such person's parent or guardian shall be guilty of a misdemeanor.

III. Paragraph II shall not apply to fathers, mothers, guardians, administrators or executors who give a martial arts weapon to their children or wards or to heirs to an estate. Source. 1986, 222:3, eff. Jan. 1, 1987.

<sup>69</sup> New Hampshire R.S.A. 159:13 Changing Marks. – No person shall change, alter, remove or obliterate the name of the maker, model, manufacturer's number or other mark of identification on any pistol or revolver. Possession of any such firearms upon which the same shall have been changed, altered, removed or obliterated shall be presumptive evidence that such possessor has changed, altered, removed or obliterated the same. Any person who violates the provisions of this section shall be guilty of a misdemeanor. Source. 1923, 118:12. PL 149:13. RL 179:13. RSA 159:13. 1973, 528:88, eff. Oct. 31, 1973 at 11:59 p.m.

<sup>70</sup> New Hampshire R.S.A. 159:6-a Confidentiality of Licenses. – Notwithstanding the provisions of RSA 91-A:4 or any other provision of law to the contrary, all papers and records, including applications, pertaining to the issuance of licenses pursuant to RSA 159:6 and all licenses issued pursuant to said section are subject to inspection only by law enforcement officials of the state or any political subdivision thereof or of the federal government while in the performance of official duties or upon written consent, for good cause shown, of the superior court in the county where said license was issued. Source. 1979, 106:1, eff. July 10, 1979.

<sup>71</sup> New Hampshire R.S.A. 159:16 Carrying or Selling Weapons. – Whoever, except as provided by the laws of this state, sells, has in his possession with intent to sell, or carries on his person any stiletto, switch knife, blackjack, dagger, dirk-knife, slung shot or metallic knuckles shall be guilty of a misdemeanor; and such weapon or articles so carried by him shall be confiscated to the use of the state. Source. 1973, 370:16; 1992, 273:2, eff. July 17, 1992.

<sup>72</sup> New Hampshire R.S.A. 159:22 Restricted Sale. Any person who knowingly sells an electronic defense weapon to a person under 18 years of age shall be guilty of a violation. 1986, 46:1, eff. May 5, 1986.

- If the application for a license to carry a concealed firearm is denied by the licensing entity, the denial shall be in writing, stating with particularity the reason for the denial.<sup>73</sup>
- Where can I go to complain of violations of the licensing statute? Either New Hampshire state district court or superior court.<sup>74</sup>
- If the license application is denied, the burden is on the licensing entity to prove by clear and convincing proof that the applicant is so prohibited from possessing a firearm (some courts have found or otherwise unsuitable).<sup>75</sup>
- Lawsuits are expensive, can I get my attorney's fees if a licensing entity wrongfully denies or revokes my license? Maybe, See RSA 159:6-c, e, f, however courts have been unlikely to orders fees in only the most egregious cases.
- What is New Hampshire has statewide preemption? This means that cities and municipalities cannot regulate firearms, only the state can.<sup>76</sup>

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<sup>73</sup> New Hampshire R.S.A. 159:6 I.

<sup>74</sup> New Hampshire R.S.A. 159:6-c Appeal From Denial, Suspension, or Revocation. – Any person whose application for a license to carry a loaded pistol or revolver has been denied pursuant to RSA 159:6 or whose license to carry a loaded pistol or revolver has been suspended or revoked pursuant to RSA 159:6-b may within 30 days thereafter, petition the district or municipal court in the jurisdiction in which such person resides to determine whether the petitioner is entitled to a license. The court shall conduct a hearing within 14 days after receipt of the petition. During this hearing the burden shall be upon the issuing authority to demonstrate by clear and convincing proof why any denial, suspension, or revocation was justified, failing which the court shall enter an order directing the issuing authority to grant or reinstate the petitioner's license. The court shall issue its decision not later than 14 days after the hearing on whether the petitioner is entitled to a license. Source. 1979, 355:2. 1998, 380:2, eff. Jan. 1, 1999.

New Hampshire R.S.A. 159:6-e Violation. – Any person aggrieved by a violation of the licensing sections of this chapter by a licensing entity may petition the superior court of the county in which the alleged violation occurred for injunctive relief. The court shall give proceedings under this chapter priority on the court calendar. Such a petitioner may appear with or without counsel. The petition shall be deemed sufficient if it states facts constituting a violation of the licensing sections of this chapter by the licensing entity, and may be filed by the petitioner or the petitioner's counsel with the clerk of court or the justice. The clerk of court or any justice shall order service by copy of the petition on the licensing entity or a person employed by the entity. If the justice finds that time is of the essence, the justice may order notice by any reasonable means, and shall have authority to issue an order ex parte when the justice reasonably deems such an order necessary to insure compliance with the provisions of this chapter. Source. 1996, 122:1, eff. Jan. 1, 1997.

<sup>75</sup> New Hampshire R.S.A. 159:6-c Appeal From Denial, Suspension, or Revocation. – Any person whose application for a license to carry a loaded pistol or revolver has been denied pursuant to RSA 159:6 or whose license to carry a loaded pistol or revolver has been suspended or revoked pursuant to RSA 159:6-b may within 30 days thereafter, petition the district or municipal court in the jurisdiction in which such person resides to determine whether the petitioner is entitled to a license. The court shall conduct a hearing within 14 days after receipt of the petition. During this hearing the burden shall be upon the issuing authority to demonstrate by clear and convincing proof why any denial, suspension, or revocation was justified, failing which the court shall enter an order directing the issuing authority to grant or reinstate the petitioner's license. The court shall issue its decision not later than 14 days after the hearing on whether the petitioner is entitled to a license. Source. 1979, 355:2. 1998, 380:2, eff. Jan. 1, 1999.

<sup>76</sup> New Hampshire R.S.A. 159:26

- Well, now I know what I can and can't do, WHERE can I find a place to shoot? New Hampshire has lots of great places to shoot, and there is probably one close to you. New Hampshire Fish and Game Department maintains a list of shooting ranges in New Hampshire.  
[http://www.wildlife.state.nh.us/Links/fish\\_and\\_game\\_clubs.htm](http://www.wildlife.state.nh.us/Links/fish_and_game_clubs.htm)
- Before you shoot, Ability, opportunity, and jeopardy, the bad guy/gal must have 'em all.
- You have finally got up the courage to fly somewhere with your UNLOADED firearms<sup>77</sup>, they must be:

(c) In checked baggage. A passenger may not transport or offer for transport in checked baggage or in baggage carried in an inaccessible cargo hold under § 1562.23 of this chapter:

(1) Any loaded firearm(s).

(2) Any unloaded firearm(s) unless --

(i) The passenger declares to the aircraft operator, either orally or in writing, before checking the baggage, that the passenger has a firearm in his or her bag and that it is unloaded;

(ii) The firearm is unloaded;

(iii) The firearm is carried in a hard-sided container; and

(iv) The container in which it is carried is locked, and only the passenger retains the key or combination.

(3) Any unauthorized explosive or incendiary.

(d) Ammunition. This section does not prohibit the carriage of ammunition in checked baggage or in the same container as a firearm. Title 49 CFR part 175 provides additional requirements governing carriage of ammunition on aircraft.<sup>78</sup>

And you have a unexpected layover, diversion to another airport in the not so friendly place of New Jersey, Washington, D.C., New York City, etc. the TSA person says you cannot check in, too early, you cannot ...in short, told you must leave the airport (and necessarily take your firearms with you) DO NOT DO IT. SIT TIGHT. Let them arrest you there if they demand you leave with your firearms in tow (they have no basis) HOWEVER, if you leave the airport property to go to a hotel (or maybe even one AT the airport) you maybe/are in unlawful possession of your own firearm, and even while transporting them from terminal to terminal. Make them transport them from terminal to terminal as the firearms are arguably in transit and within airline control. DO NOT EVER be baited into leaving or taking your firearms elsewhere in a situation such as this. Sadly, as of this writing, TSA (Transportation Security Administration) may seek fines and civil penalties for a violation of regulations pertaining to the transportation of firearms and ammunition, and an ADMINISTRATIVE LAW JUDGE will preside over the hearing, NOT an Article III judge.<sup>79</sup> You could also be subject to charges for violation of federal law, and for that a federal judge/jury would be involved.

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<sup>77</sup> 49 C.F.R. § 1540.111 (a)

<sup>78</sup> 49 C.F.R. § 1540.111 (c)

<sup>79</sup> 49 U.S.C. § 46301 (d) (7)

- Lots more to come this is expected to be an ever expanding list based on the questions I am asked!
- List of useful websites. Between the devil and the deep blue sea, what to do? Well, here are some what ifs that have been faced by others. (this section is not yet complete, so is not included as of yet)
- <http://www.nfatca.org/> a NFA trade and collectors organization.