

Survey to Chief APOs

Issue: Keeping firearms while under ARD supervision (6-22-2020)

Question (from Tioga County)

Over the years the Judge in Tioga County has made it part of the ARD order that an enrollee not possess a firearm during his or her ARD supervision. Recently some local attorneys have petitioned for this condition to be excluded from the standard ARD order. I would like to hear from other Counties their policy on possessing a firearm while under ARD.

Berks County

Berks County does not have that restriction for individuals on ARD.

Blair County

Currently Blair prohibits.

Bucks County

Bucks County does not allow anyone on supervision to be in possession of a firearm including ARD

Carbon County

Currently Carbon County does not have a condition prohibiting firearms while on ARD. I am in the process of requesting that the condition be added.

Centre County

Centre County is currently in the process of updating their conditions. The PJ just recently approved them and the No Firearms provision will be applied, including ARD cases.

Chester County

Chester County: No firearms while on ARD.

Clinton County

Clinton County does not have that restriction for individuals on ARD.

Delaware County

Delco does not prohibit as a rule. On occasions the judge may order it.

Erie County

All individuals on supervision are subject to the same conditions and are prohibited from possessing weapons.

Fayette County

Fayette Co does not have a firearm restriction as a condition of ARD.

Huntingdon County

Huntingdon County does not have a no firearms condition for ARD offenders

Juniata County

Juniata County does not have firearm restriction for individuals on ARD.

Lackawanna County

Lackawanna County prohibits weapon possession for ARD's

Lawrence County

All individuals on supervision in Lawrence County are subject to the same conditions and are prohibited from possessing weapons.

Lebanon County

All individuals on supervision in Lebanon County are subject to the same conditions and are prohibited from possessing weapons.

Lehigh County

Lehigh County restricts everyone on supervision from possessing a firearm while on supervision.

Luzerne County

Currently Luzerne County ARD rules do not contain firearm restrictions.

Lycoming County

Lycoming Co. prohibits weapon possession for ARD's.

Mifflin County

Mifflin County does not allow anyone on supervision to be in possession of a firearm including ARD

Montour County

Montour Co. prohibits weapon possession for ARD's.

Northampton County

Northampton County does not allow anyone on supervision to carry or maintain firearms.

Pike County

Pike is similar to Snyder.

Conditions of supervision are controlled by Administrative Order- "No possession of firearms on person, vehicle, or residence and all firearms must be removed".

Schuylkill County

Schuylkill County prohibits weapon possession for ARD's.

Snyder County

Snyder County prohibits pistols and revolvers for those under supervision... All other firearms are determined whether they are a prohibitive offender...

Our probation conditions are governed by a Judicial Administrative Order, therefore, only the Court can waive the prohibition.

I can say that no one has been excused including a former DA/Judge whom I supervised. We don't make exceptions.

Somerset County

We included all weapons as the large amount of "hunters" posed a unique scenario for us to deal with. (See addendum)

Wayne County

Wayne restricts all while under supervision per general conditions of supervision.

Westmoreland County

Westmoreland County does not have that restriction for individuals on ARD.

York County

York County does not supervise ARD.

Addendum: Somerset County Policy

Tools of Supervision

E. Hunting

1. Policy Memorandum 1-98

2. Motion to Amend Conditions of Probation/Parole/ARD

Please refer to the attached Policy Memorandum 1-98 (Form 1) for policy regarding the Use of Guns for Hunting while on probation/parole/IP/ARD. The Court will not amend conditions of probation/parole/IP/ARD unless offenders meet the criteria stated in the policy; have completed all their special conditions; and are in compliance with all standard conditions of supervision.

If an offender requests permission to hunt, the probation officer will carefully review the file to ensure the above-mentioned criteria have been met. If the criteria have been met, the offender is given the option to have counsel petition the Court to amend the conditions of supervision, or the defendant may petition the Court by him/herself. If the defendant chooses to petition the Court themselves, then the probation officer must provide them with a formatted copy of the Motion to Amend Conditions of Probation/Parole (Form 2) and provide some instruction to the offender on completion of the form. The form is to be returned to the probation officer for his or her concurrence and then forwarded to the District Attorney for concurrence. From the District Attorney's Office, the form is then submitted to the Court for consideration and Order.

The original copy is returned to the Probation Office and copies are made for distribution and docketing at the Clerk of Courts Office. Final distribution includes the District Attorney, defendant, attorney for the defendant and Probation Office. Probation's copy is filed on the right side of the file with the other Court Orders. An entry is recorded on the Probation Record Sheet and Field Sheet noting the change in conditions, if so granted, and effective date of change.

cc all Probation
Orig to REB

Adult

POLICY MEMORANDUM 1 - 98

SUBJECT: POSSESSION OR USE OF WEAPONS
WHILE ON PAROLE OR PROBATION

TO: PROBATION DEPARTMENT

DATE: DECEMBER 16, 1998

1. Persons being supervised by the Adult or Juvenile Probation Departments (including those convicted or placed on ARD or other adult supervision program and juveniles adjudicated delinquent or placed on consent decree or other supervision program) shall not be authorized to have a gun or other weapon in their possession for any reason, unless specifically authorized by the Court.

2. Under no circumstances shall a person being supervised by the Adult or Juvenile Probation Departments possess, transfer or operate a firearm, as that term is defined in Chapter 61 of the Pennsylvania Crimes Code, Subchapter A, Uniform Firearms Act, Section 6102, 18 Pa.C.S.A. § 6102.

3. A person not permitted to possess a gun or other weapon shall not be permitted to accompany or supervise any other person while hunting or proceeding to and from hunting, when said other person is in the possession of a gun or other weapon.

4. Persons convicted or placed on ARD, and juveniles adjudicated delinquent or placed on consent decree or informal adjustment, on the basis of a misdemeanor of the second degree or third degree, may be permitted to use an otherwise lawful gun or other weapon for the

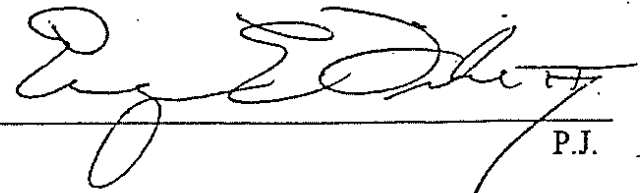
purpose of hunting, unless the offense involves violence, force, intimidation or threats of violence, force or intimidation, firearms or game law violations or involves special circumstances which warrant the withholding of such permission. Permission to possess a gun or other weapon will not be considered for a person ordered into drug, alcohol or mental health treatment until that person has successfully completed the treatment, and satisfactory evidence of successful discharge has been received by the Probation Department. In any event, before use of a gun or other weapon for hunting is permitted, such permission must be set forth specifically in the conditions of parole, probation or other supervision, as applicable.

5. Permission to use a gun or other weapon for hunting while on probation, parole or other supervision, does not relieve any person from compliance with applicable laws, ordinances, rules and regulations governing hunting, and use and possession of weapons.

6. Under no circumstances shall a Probation Officer grant permission to carry a gun or other weapon. Filing of a motion for permission to possess a gun or other weapon for the purpose of hunting is the responsibility of the person being supervised or that person's attorney. A motion for permission to carry a gun or other weapon shall first be submitted to the Probation Department, however, and then to the District Attorney's office for comment before presentation to the Court.

7. This Policy Memorandum supersedes Policy Memorandum 1 - 87, which is rescinded.

BY THE COURT:


P.J.

bore either a number of ball shot or a single projectile for each single pull of the trigger.

(6) The term "short-barreled shotgun" means a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun (whether by alteration, modification, or otherwise) if such weapon as modified has an overall length of less than twenty-six inches.

(7) The term "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(8) The term "short-barreled rifle" means a rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon, as modified, has an overall length of less than twenty-six inches.

(9) The term "Importer" means any person engaged in the business of importing or bringing firearms or ammunition into the United States for purposes of sale or distribution; and the term "licensed importer" means any such person licensed under the provisions of this chapter.

(10) The term "manufacturer" means any person engaged in the business of manufacturing firearms or ammunition for purposes of sale or distribution; and the term "licensed manufacturer" means any such person licensed under the provisions of this chapter.

(11) The term "dealer" means

(A) any person engaged in the business of selling firearms at wholesale or retail,

(B) any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms, or

(C) any person who is a pawnbroker.

The term "licensed dealer" means any dealer who is licensed under the provisions of this chapter.

(12) The term "pawnbroker" means any person whose business or occupation includes the taking or receiving, by way of pledge or pawn, of any firearm as security for the payment or repayment of money.

(13) The term "collector" means any person who acquires, holds, or disposes of firearms as curios or relics, as the Secretary shall by regulation define, and the term "licensed collector" means any such person licensed under the provisions of this chapter.

(14) The term "indictment" includes an indictment or information in any court under which a crime punishable by imprisonment for a term exceeding one year may be prosecuted.

(15) The term "fugitive from justice" means any person who has fled from any State to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding.

(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; and

(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.

(17)(A) The term "ammunition" means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.

(B) The term "armor piercing ammunition" means a projectile or projectile core which may be used in a handgun and which is constructed entirely (excluding the presence of traces of other substances) from one or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium. Such term does not include shotgun shot required by Federal or State environmental or game regulations for hunting purposes, a frangible projectile designed for target shooting, a projectile which the Secretary finds is primarily intended to be used for sporting purposes, or any other projectile or projectile core which the Secretary finds is intended to be used for industrial purposes, including a charge used in an oil and gas well perforating device.

(18) The term "Secretary" or "Secretary of the Treasury" means the Secretary of the Treasury or his delegate.

(19) The term "published ordinance" means a published law of any political subdivision of a State which the Secretary determines to be relevant to the enforcement of this chapter and which is contained on a list compiled by the Secretary, which list shall be published in the Federal Register, revised annually, and furnished to each licensee under this chapter.

(20) The term "crime punishable by imprisonment for a term exceeding one year" does not include—

(A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or

(B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a

person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

(21) The term "engaged in the business" means—

(A) As applied to a manufacturer of firearms, a person who devotes time, attention, and labor to manufacturing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms manufactured;

(B) as applied to a manufacturer of ammunition, a person who devotes time, attention, and labor to manufacturing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition manufactured;

(C) as applied to a dealer in firearms, as defined in section 921(a)(11)(A), a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, but such term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms;

(D) as applied to a dealer in firearms, as defined in section 921(a)(11)(B), a person who devotes time, attention, and labor to engaging in such activity as a regular course of trade or business with the principal objective of livelihood and profit, but such term shall not include a person who makes occasional repairs of firearms, or who occasionally fits special barrels, stocks, or trigger mechanisms to firearms;

(E) as applied to an importer of firearms, a person who devotes time, attention, and labor to importing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms imported; and

(F) as applied to an importer of ammunition, a person who devotes time, attention, and labor to importing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition imported.

(22) The term "with the principal objective of livelihood and profit" means that the intent underlying the sale or disposition of firearms is predominantly one of obtaining livelihood and pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms collection.

Provided, That proof of profit shall not be required as to a person who engages in the regular and repetitive purchase and disposi-

(2) any firearm to any person in any State where the purchase or possession by such person of such firearm would be in violation of any State law or any published ordinance applicable at the place of sale, delivery or other disposition, unless the licensee knows or has reasonable cause to believe that the purchase or possession would not be in violation of such State law or such published ordinance;

(3) any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the licensee's place of business is located, except that this paragraph

(A) shall not apply to the sale or delivery of any rifle or shotgun to a resident of a State other than a State in which the licensee's place of business is located if the transferee meets in person with the transferor to accomplish the transfer, and the sale, delivery, and receipt fully comply with the legal conditions of sale in both such States (and any licensed manufacturer, importer or dealer shall be presumed, for purposes of this subparagraph, in the absence of evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both States), and

(B) shall not apply to the loan or rental of a firearm to any person for temporary use for lawful sporting purposes;

(4) to any person any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1954), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Secretary consistent with public safety and necessity; and

(5) any firearm or armor-piercing ammunition to any person unless the licensee notes in his records, required to be kept pursuant to section 923 of this chapter, the name, age, and place of residence of such person if the person is an individual, or the identity and principal and local places of business of such person if the person is a corporation or other business entity.

Paragraphs (1), (2), (3), and (4) of this subsection shall not apply to transactions between licensed importers, licensed manufacturers, licensed dealers, and licensed collectors. Paragraph (4) of this subsection shall not apply to a sale or delivery to any research organization designated by the Secretary.

(c) In any case not otherwise prohibited by this chapter, a licensed importer, licensed manufacturer, or licensed dealer may sell a firearm to a person who does not appear in person at the licensee's business premises (other than another licensed importer, manufacturer, or dealer) only if—

(1) the transferee submits to the transferor a sworn statement in the following form:

"Subject to penalties provided by law, I swear that, in the case of any firearm other than a shotgun or a rifle, I am twenty-one years or more of age, or

that, in the case of a shotgun or a rifle, I am eighteen years or more of age; that I am not prohibited by the provisions of chapter 44 of title 18, United States Code, from receiving a firearm in interstate or foreign commerce; and that my receipt of this firearm will not be in violation of any statute of the State and published ordinance applicable to the locality in which I reside. Further, the true title, name, and address of the principal law enforcement officer of the locality to which the firearm will be delivered are

Signature _____
Date _____

and containing blank spaces for the attachment of a true copy of any permit or other information required pursuant to such statute or published ordinance:

(2) the transferor has, prior to the shipment or delivery of the firearm, forwarded by registered or certified mail (return receipt requested) a copy of the sworn statement, together with a description of the firearm, in a form prescribed by the Secretary, to the chief law enforcement officer of the transferee's place of residence, and has received a return receipt evidencing delivery of the statement or has had the statement returned due to the refusal of the named addressee to accept such letter in accordance with United States Post Office Department regulations; and

(3) the transferor has delayed shipment or delivery for a period of at least seven days following receipt of the notification of the acceptance or refusal of delivery of the statement.

A copy of the sworn statement and a copy of the notification to the local law enforcement officer, together with evidence of receipt or rejection of that notification shall be retained by the licensee as a part of the records required to be kept under section 923(g).

(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person—

(1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) is a fugitive from justice;

(3) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) has been adjudicated as a mental defective or has been committed to any mental institution;

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

(6) who has been discharged from the Armed Forces under dishonorable conditions; or

(7) who, having been a citizen of the United States, has renounced his citizenship. This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 of this chapter is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925 of this chapter.

(e) It shall be unlawful for any person knowingly to deliver or cause to be delivered to any common or contract carrier for transportation or shipment in interstate or foreign commerce, to persons other than licensed importers, licensed manufacturers, licensed dealers, or licensed collectors, any package or other container in which there is any firearm or ammunition without written notice to the carrier that such firearm or ammunition is being transported or shipped; except that any passenger who owns or legally possesses a firearm or ammunition being transported aboard any common or contract carrier for movement with the passenger in interstate or foreign commerce may deliver said firearm or ammunition into the custody of the pilot, captain, conductor or operator of such common or contract carrier for the duration of the trip without violating any of the provisions of this chapter.

(f) It shall be unlawful for any common or contract carrier to transport or deliver in interstate or foreign commerce any firearm or ammunition with knowledge or reasonable cause to believe that the shipment, transportation, or receipt thereof would be in violation of the provisions of this chapter.

(g) It shall be unlawful for any person—

(1) who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) [who] is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

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

(6) who has been discharged from the Armed Forces under dishonorable conditions; or

(7) who, having been a citizen of the United States, has renounced his citizenship; to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(h) It shall be unlawful for any individual, who to that individual's knowledge and while being employed for any person described in any paragraph of subsection (g) of this section, in the course of such employment—

§ NO.

CRIMINAL

For the Commonwealth:

District Attorney

For the Defendant:

MOTION TO AMEND CONDITIONS OF

TO THE HONORABLE D. GREGORY GEARY, PJ OF SAID COURT.

This petition respectfully represents:

1. I am the defendant above named and was sentenced by Your Honor on and placed on the for a period of on the charge of
2. Condition Number 3 states I am not permitted to have a firearm or any other dangerous weapon in my possession.
3. A firearm was not involved in the commission of this crime.
4. I successfully completed

Wherefore, this petitioner respectfully requests this Honorable Court amend my conditions of so as to allow me to hunt during lawful hunting season and to carry a weapon for that purpose.

Respectfully submitted,

I do/do not concur:

District Attorney

I do concur:

Adult Probation Officer

COMMONWEALTH

§ IN THE COURT OF COMMON PLEAS OF
§ SOMERSET COUNTY, PENNSYLVANIA
§
§
§ CASE CRIMINAL

AND NOW, this _____ day of _____, upon consideration of
the foregoing Petition for Hunting Privileges, and there is no objection by the Probation
Officer or the District Attorney, it is hereby ordered and decreed that the conditions of
in the above captioned matter be amended so that the defendant is
permitted to possess a firearm to hunt during the lawful hunting season and to possess a
firearm at his residence.

BY THE COURT:

PJ