

**FINAL REPORT OF THE  
NEW JERSEY STATE ASSEMBLY  
SPECIAL SUBCOMMITTEE ON FIREARM LAWS**

**CHAIRMAN GARY STUHLTRAGER  
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**INTRODUCTION**

On September 15 and 22, 1987, a special subcommittee on New Jersey state firearm laws met to hear testimony from witnesses regarding the effectiveness of the law.

Over fourteen hours of testimony was heard from forty-one witnesses ranging from our own citizens to out-of-state residents to the Superintendent of State Police and a representative of the Attorney General's Office.

This report will divide the substance of the testimony heard into three categories: applications and licensing; possessory offenses and civil rights issues.

This approach allows a more concise understanding of the contradictions which currently exist in law, and the remedies needed to provide a fair balance between the concerns of a portion of the law enforcement community and those of the average gun owner in New Jersey.

This subcommittee must admit to starting with a certain skepticism about the allegations of citizen abuse under present law. No such skepticism now exists. The abuses are very real. Most result from a law that is arbitrary and puts the burden on the citizens to prove their innocence, while at the same time, making the legal system virtually inaccessible to the average person. These problems are easily correctable through relatively simple and minor revisions of the law.

More disturbing to this subcommittee are those abuses which seem to result from the attitude that firearm owners, and those who wish to own firearms, are second class citizens to be denied basic civil rights such as the rights to legal counsel and to due process under the law. This subcommittee believes that the attitude which creates this type of abuse is relatively isolated. Yet, the very fact that this attitude does in fact exist, is a threat which extends well beyond the firearm laws of this state and to the very core of the civil liberties of our free society.

## **APPLICATIONS AND LICENSING**

The current law relating to the application and licensing of firearms (2C: 58 - 3) is bifurcated into two separate permit systems: one for rifles or shotguns (firearm purchaser identification card) and one for handguns (handgun purchase permit). The criteria for these two systems is virtually identical with the exception that the Firearm Purchaser Identification Card (FPIC) is a lifetime entitlement to purchase rifles or shotguns and the Handgun Purchase Permit (HPP) is only valid for the purchase of one handgun in a ninety day period following issuance.

A person is ineligible to obtain the FPIC or HPP if he or she is: a convicted felon; a drug dependent person as defined in law or has been confined for a mental disorder to a hospital, mental institution or sanitarium or is a habitual drunkard or suffers from a physical defect or handicap which would make the handling of firearms unsafe unless that individual produces a certificate of proof from a New Jersey licensed physician or psychiatrist or other satisfactory proof that he is no longer suffering from the disability; is less than 18 years of age; or where the issuance is not in the "interest of public health, safety or welfare".

The applicant waives all rights of confidentiality to allow a complete mental history check, as well as a criminal background check, through the State Bureau of Investigation and the Federal Bureau of Investigation, with the FPIC or HPP to be issued to residents of the state within thirty days and to nonresidents within forty-five days.

The statutes clearly delineate the contents of the application form and specifically disallow any additional "conditions or requirements to be added to the form or content of the application, or of a permit or identification card, other than those that are specifically set forth in this chapter." [Section 2C: 58 - (f)]

A procedure for revocation of a FPIC or HPP is included in the section whereby "the county prosecutor of any county, the chief police officer of any municipality or any citizen may apply to such [Superior] court at any time for the revocation of such card." Only the Superior Court can revoke a FPIC or HPP.

Finally, whole groups of people are exempt from the requirements of having a FPIC or HPP: heirs or legatees of firearms; current New Jersey residents who purchased their firearms while legal residents of another state; and persons who purchased their firearms prior to enactment of the FPIC or HPP requirements. These individuals while being exempt from the permit requirement, must not be an ineligible person as defined above.

At first glance, the application and licensing standard set up in law seem relatively straightforward; however, the system has become a maze of contradictions based on the interpretations given the law by some issuing authorities.

The difficulties the law presents are exemplified by the testimony of Deborah O'Hara, who was denied a Firearm Purchasers Identification Card by her local police department based on a telephone call she made to a hotline and her subsequent a one hour visit with a psychiatrist to discuss some family problems five years prior to her application.

Showing caution, the Danville Police Department asked for a clearance from the doctor in order to determine Ms. O'Hara's eligibility. Unfortunately, concerns over liability dramatically impeded Ms. O'Hara's efforts to provide this "clean bill of health". Eventually Ms. O'Hara was able to provide the necessary certification, at which time she was required to reapply (for the third time) and was subsequently denied without explanation. Apparently the "public health, safety and welfare" disqualification was the rationale for denial. Finally, a Firearm Purchasers Identification Card was ordered to be issued to Ms. O'Hara by the Superior Court, after which, Ms. O'Hara was forced to reapply for a fourth time and the FPIC was issued more than a month after the court order.

This case exemplifies the best intentions of the law going awry. We certainly want to ensure that the mentally ill are not legally arming themselves; and a minor revision in the law to exempt physicians, who certify a person's health in good faith, from liability, would go a long way to make it easier for people in Ms. O'Hara's position to provide documentation.

The denial for undefined purposes, after Ms. O'Hara had provided proof of a clean bill of health, concerns this subcommittee greatly. It seems manifestly clear that if a substantive reason for denying the FPIC existed, the Superior Court would not have ordered the issuance of the permit.

This case and others lead this subcommittee to question the wisdom of allowing broad discretion in the issuance of permits. Our research indicates that only the State of New Jersey establishes arbitrary permit to purchase issuance standards. From a practical governmental perspective, it is the state legislature's and Governor's responsibility to determine who should be ineligible to own a firearm. Current law highlights the necessity for objective criteria. For example, 2C: 58 - 3 (e) requires that the application ask if a person is "presently or ever has been a member of any organization which advocates or approves the commission of acts of force or violence to overthrow the Government of the United States...", yet being a terrorist does not make one automatically ineligible, it is left to the issuing authority to determine whether an avowed terrorist should be issued a FPIC or HPP.

This subcommittee recommends that objective criteria be placed in law which disqualifies individuals who reasonably should be disqualified from ownership of a firearm, and that all arbitrary and potentially discretionary language, particularly the "public health, safety and welfare" standard, be removed from the law pertaining to applications or licensing for the purposes of purchasing a firearm or handgun.

This recommendation would benefit law enforcement and citizens by providing clear guidelines for eligibility, and eliminate many of the disparities which exist today under present standards.

The O'Hara case also reveals the value of the appeal process. The legal process worked in Ms. O'Hara's case, but only because she had the money as well as the desire to hire an attorney to fight for her. However, this subcommittee can not help but wonder how many otherwise eligible citizens have not pursued their legal options due to attorney costs, and have, as a result, been denied their legal right to firearm ownership.

This subcommittee also heard from many witnesses who testified that the issuance of FPIC's or HPP's were delayed beyond, for some many months beyond, the thirty day limit which the law allows. This apparent direct contravention of law, demands the creation of a legal process to issuance under these circumstances.

A common reason given for these delays is that the Federal Bureau of Investigation is extraordinarily slow in completing background checks. While this subcommittee has had documents from the FBI read into the record which indicate that there is currently a 13-14 day turnaround of background checks, this subcommittee is aware that in the recent past the FBI stopped doing "nonessential" background checks in their entirety.

Fortunately, by utilizing the National Crime Information Computer and New Jersey State Police computer capability, the dependency on the FBI is dramatically lessened.

Finally, this subcommittee was struck by Borough of Elmer Police Chief William Osterman's comment regarding the duplicative nature of the Handgun Purchaser Permit system. There may indeed be valid reasons for maintaining the Handgun Purchaser Permit, however, it seems absurd to require an individual to repeatedly submit to the same procedures for each subsequent purchase. The effect of the permit is to notify law enforcement that the individual applicant wishes to own a handgun and allow for background checks. This purpose is already served by the initial Handgun Purchaser Permit. The requirement for a separate Handgun Purchaser Permit for each handgun purchase serves little valid additional purpose, and creates a quagmire of red tape for citizens. It also must be noted that a seven day "cooling off" period would still be in effect for all handgun purchasers.

## **POSSESSORY OFFENSES**

The current law regarding possession of firearms can be broken down into two major categories: possession of weapons for unlawful purposes and knowing possession of weapons with evil intent.

§2C: 39 - 4 of the New Jersey code deals with the possession for unlawful purposes of: a) Firearms, b) Explosives, and c) Destructive Devices: all of which are crimes of the second degree. The final category in this section of code is entitled: d) Other Weapons; which is a crime of the third degree.

The knowing possession of firearms without a permit section (2C: 39 - 5) was perhaps the single most discussed section of law before this subcommittee. A number of witnesses came forward to instruct this subcommittee on how the law is currently being applied, and many of the difficulties experienced by these witnesses seemed to be a direct result of the confusion surrounding the laws.

The current laws regarding possession of rifles and shotguns require that a person must first have obtained a Firearm Purchaser Identification Card to legally possess a rifle or shotgun. The courts have held that all occupants of a vehicle are in constructive possession of a firearm in the vehicle, therefore effectively requiring that they all must have a Firearms Purchaser Identification Card. State v. Riley, 69 N.J. 217 (1976).

There are some specific methods in which an unloaded firearm may be possessed in a vehicle. Yet, according to some testimony heard, there is not a clear understanding of the legal means of possession specified in 2C: 39 - 6 g. This section allows unloaded firearms to be transported in a vehicle: in the trunk of an automobile; in a gunbox; in a closed and fastened case; or in a securely tied package, so long as the individual is going directly to or from a specified sport shooting event or other approved activity (2C: 39 - 6 e and f). A traveler through the state is not exempt unless travel is for a purpose specified in 2C: 39 - 6-e and f and the firearms are transported in accordance with 2C: 39 - 6 g.

The difficulties testified to in regard to this code are the result of two areas of the law: the presumption of guilt which is drafted into the law, and the criminal penalty which is attached to the mere possession of a firearm or handgun, even if unloaded.

A review of the testimony of Mr. William Tuff provides an example of the ramifications of the law.

Mr. Tuff was hunting with his brother, after which they were planning to go target shooting with a handgun. He removed his handgun from the trunk, wrapped it in his daughter's jacket and slid it under the front seat of his vehicle before he left to go hunting. Upon his return, Mr. Tuff discovered that his vehicle had been searched and was placed under arrest for unlawful possession of a handgun.

Upon seeing an attorney, Mr. Tuff was informed that, due to the criminal nature of the offense, the initial fee would be \$1,000 up front. As a result of this cost, Mr. Tuff decided to defend himself and eventually wound up going through the Pre-Trial Intervention Program, with the condition that Mr. Tuff surrender the firearm in order to enter the program.

In reviewing Mr. Tuff's statement, it appears that proper cause for search and seizure of the firearm may not have existed. However, Mr. Tuff, because of the threat of a criminal charge and the high cost of criminal defense, was forced to surrender his property.

This subcommittee highly recommends that the current practice of offering PTI be continued, but recommends further that the firearm be returned to its lawful owner upon conclusion of the case. The issue of attorney's fees in Mr. Tuff's case also concerns this subcommittee.

It is contrary to the basis of our judicial system that due process should be withheld based on the high cost of accessing the legal system. Mr. William Hornung testified regarding this difficulty, and his case was particularly poignant.

Mr. Hornung, a 77 year old retiree, was asleep at his home in Asbury Park when he was awakened at 4:00 a.m. by police officers at his door. The police, responding to a tip that Mr. Hornung was suicidal, arrived on the scene, and upon gaining entry to Mr. Hornung's apartment, confiscated all of his firearms as well as some tools and jewelry. No charges have been filed against Mr. Hornung in the eleven months since the confiscation and according to testimony, no medical or social service help was provided to Mr. Hornung. In his testimony, William Hornung declared that he has never been suicidal, and that the whole affair is nothing more than a giant mix-up.

Bill Hornung contacted an attorney who, upon discovery that Mr. Hornung is on a fixed income, lost interest in the case and failed to pursue the return of the property.

Beyond the issue of the apparent misapplication of state law regarding property forfeiture (2C: 64 - 3), this subcommittee sees a definite need to provide for the collection of attorney fees in cases of gross misconduct. It appears that without this ability, the Bill Hornungs of New Jersey are defenseless against overzealous enforcement of the laws.

An issue that became clear in the testimony of Deborah O'Hara (see "Application and Licensing") that could be resolved through minor statutory revisions is the issue of constructive possession of a firearm as it pertains to every passenger in the vehicle.

Ms. O'Hara testified that based on the theory of constructive possession (2C: 39 - 2), she was fearful of arrest for unlawful possession of a firearm when she rode with her father to the shooting range. Since she was not able to get a Firearms Purchaser Identification Card, Ms. O'Hara was committing a technical felony under the law. This situation becomes very contradictory when one considers that under 2C: 58 - 6.1 (b) a person under the age of 18 would be allowed to travel to the shooting range, and participate in competitive shooting activities without the need for a Firearms Purchaser Identification Card, or a Handgun Purchaser Permit.

This subcommittee recommends that the possession of a firearm in a vehicle be narrowed to eliminate any interpretation that current law requires every occupant to have a Firearm Purchaser Identification Card or a Handgun Purchasers Permit. In addition, in order to facilitate firearms safety training, the law should provide the same exemptions for possession of a firearm for adults as are currently provided for minors under 2C: 58-6.1 b.



### CIVIL RIGHTS ISSUES

This subcommittee was very concerned about the claims by witnesses of civil rights violations. A number of instances were presented to the subcommittee; however, the statements of Mr. William Hornung and Mr. Luke Shafer are illustrative of these charges. The testimony of State Police Superintendent Clinton Pagano, and Middlesex County Prosecutor Alan Rockoff, were also instructive about this problem.

Mr. Rockoff described to this subcommittee his policy of ordering police confiscation of all firearms in a household when a domestic violence dispute is reported.

To quote Mr. Rockoff, "...the law says you have a permit to have a weapon as long as you use that weapon lawfully. And in a situation where the legislature has spoken, and indicated that in a society where people are killed by their spouses and co-inhabitant, we, as you said before, as an obligation to health, safety and welfare to the community, must take that gun into custody and withhold it from that individual until the right time has come."

This answer to domestic violence situations seems rather strange to this subcommittee. In effect, this policy orders the police of Middlesex County to "take into custody", or arrest, any operable, legally owned firearms in the home. While this subcommittee is acutely concerned by domestic violence, it would seem to this subcommittee that a far more effective policy would be to remove the violator of the Domestic Violence Act from the home, and provide counseling to all parties involved. The policy of confiscation of legally owned property without due process, seems to be such a vast breach of civil rights and such an ineffectual response to the domestic violence problem, that this subcommittee strongly discourages the continuation of this policy.

Colonel Pagano's testimony regarding the confiscation of firearms raises an interesting civil rights issue. Colonel Pagano's statement... "Firearms illegally possessed or firearms illegally used, revert — there is no property right in New Jersey to a firearm. It reverts to the state and the state makes the decision what to do with it.", refers to New Jersey Statute 2C: 64 -1 et seq.

What concerns this subcommittee are the allegations that some agencies which confiscate firearms fail to provide the due process provided for in 2C: 64 - 1 et seq. Confiscation without the requisite forfeiture hearings is nothing more than putting law enforcement in the position of also being the judge and jury. This subcommittee must emphasize that illegally used firearms or firearms possessed by ineligible persons should be confiscated; however, these persons should not be denied their civil rights of due process.

The testimony of Mr. Luke Shafer was disturbing in the implication of potential ignorance of the meaning of Miranda v. Arizona.

Mr. Shafer was advised of his Miranda rights after questioning determined his ownership of a shotgun found at the scene of an accident. Repeatedly, Mr. Shafer requested that he be allowed contact with his attorney, but was denied access to legal counsel. While Mr. Shafer was not undergoing questioning, he was incarcerated and eventually spent five and one-half hours chained to a pipe before being presented to a magistrate.

This subcommittee, while not knowing all of the facts of this case, can not help but wonder what value Miranda holds for a citizen, if that citizen is denied the very protections that Miranda promises.

A nagging allegation that this subcommittee has subsequently heard, but can offer little proof of its validity, is the claim that the procedure of stopping drivers based on profiling exists. This procedure, which has been found to be unconstitutional, involves targeting drivers for stoppage based on appearances rather than actual motor vehicle code violations. Reports by travelers of coincidental multiple stoppings for "weaving" may indicate that this policy still exists in direct contravention of law.

Finally, this subcommittee can not help but come back to the testimony of William Hornung. A man charged with no crime, suspected of no crime, yet whose legally held private property has been confiscated for over eleven months, with no recourse offered for its return.

Hypothetically, if armed persons entered a household and used their authority to take private property from the individual in that household, this subcommittee would describe that action as armed robbery.

It is difficult to draw the distinction between Mr. Hornung's case and the hypothetical situation outlined above. It is for this reason that this subcommittee strongly encourages the allowance of attorney fee recovery to provide the Bill Hornungs of New Jersey, some form of defense against this type of activity.

## CONCLUSION

This subcommittee was formed to study New Jersey's state firearm laws and present our findings and recommendations to the General Assembly.

After hearing from forty-two witnesses over a two day period, it is clear that current law is in need of refinement in order for it to best accomplish its intended purpose ... to keep firearms out of the hands of criminals and mental incompetents, while still protecting the legitimate rights of law-abiding citizens.

It is questionable to this subcommittee if the law in its present form effectively accomplishes this purpose. There can be no doubt that many arrests are made as a result of current firearm laws. Many of these arrests appear to be on technical violations of the law. The utilization of law enforcement resources to arrest, process, and prosecute citizens who possess a firearm or ammunition in a manner which is unintentionally violative of the law seems a terrible waste of personnel and tax dollars.

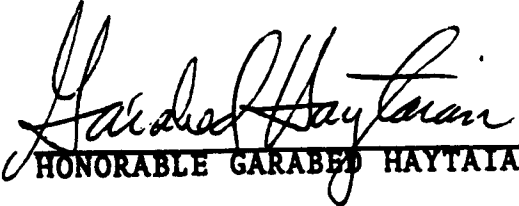
Creation of clear legal standards by the legislature would dramatically assist law enforcement.

The application and licensing system must be made to be nonarbitrary for it to be truly effective. This subcommittee can see no valid reason for a resident of Newark to be subjected to a different standard for firearm ownership than a resident of Camden or Glassboro. Furthermore, it is this subcommittee's opinion that the legislature's delegation of the responsibility for determining the "public health, safety and welfare" of the State of New Jersey to the police authority is an inappropriate and unfair delegation of power. It is this legislature's rightful governmental duty to determine objective standards for firearm ownership in this state.

Finally this subcommittee urges that these findings and the legislation which emanates from this report, receive prompt consideration and debate by the legislature. While this report certainly does not deal with every issue which needs to be addressed by the legislature, (such as regulations on firearm transport as it relates to firearm dealers), it is this subcommittee's opinion that the recommendations contained within will provide substantial relief to sportsmen without hampering law enforcement capabilities to keep firearms from criminals and mental incompetents.

**SUBCOMMITTEE REPORT**

**GARY W. STUHLTRAGER, CHAIRMAN**

  
**HONORABLE GARABED HAYTAIAN**

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