

## BETHLEHEM POLICE DEPARTMENT GENERAL ORDERS

**SUBJECT: Illegal Firearms Purchases and Attempts**

**Date: 9/2007**

**Review Date:9/2009**

**Statutory References:** RSA 159:3-11; RSA-159-C:10;RSA 159-D:3

NOTE: This written directive is for the internal governance of this law enforcement agency only, and other than as contraindicated here does not create or enlarge this department's, governmental entity's, or any of its officers' or employees' civil, criminal, or other accountability in any way. It is not to be construed as the creation of a greater standard of care in any civil or criminal action with respect to any complaint, demand for settlement, litigation or other action (RSA 516:36). Deviations from this directive if substantiated can only form the basis of intra-departmental administrative and disciplinary actions.

### I. DEFINITIONS:

- A. Attempted illegal purchase: Intentionally making a false oral or written statement or intentionally furnishing or exhibiting any false identification, which is intended or likely to deceive a firearms merchant (RSA 159-C:10,II).
- B. Brady check: A check made by a licensed gun dealer on the eligibility of a prospective buyer of a handgun or long gun (Title 18, US Code, Section 922). The NH State Police does Brady checks on handguns for dealers on the spot by telephone, and the Federal Bureau of Investigation does Brady checks on long guns.

These checks take approximately one minute for FBI checks and 3 - 5 minutes for State Police checks, 7 days a week (except for Thanksgiving and Christmas) between 8:00 a.m. and 10:00 p.m.

- C. Handgun: Any firearm that has a short stock and is designed to be held and fired by use in a single hand, including any combination of parts from which such a firearm can be assembled (Title 27, Code of Federal Regulations, Part 178, 11(B)).
- D. Prohibited person: Someone who is prohibited by federal law from purchasing a firearm, including:
  - 1. convicted felons or those under felony indictments
  - 2. people who unlawfully use drugs
  - 3. people who have been adjudicated as mentally ill or committed to mental institutions

4. dishonorable discharges from the armed services
5. illegal aliens
6. non-United States citizens
7. those under restraining orders for stalking, harassing or threatening an intimate partner or child of that partner
8. those with misdemeanor convictions for domestic violence

## II. PURPOSE

- A. The purpose of this policy is to set forth the policy of this agency regarding the receipt of complaints of attempted or actual purchases of firearms by persons who are subject to protective orders, have felony convictions, or are otherwise prohibited by law from the purchase or possession of firearms.
- B. Compliance with this policy will help protect the public by keeping firearms out of the hands of prohibited persons and thereby reduce the incidence of gun violence, protect police officers from the dangers associated with felons and domestic violence defendants who possess firearms, and encourage the continued cooperation of gun dealers in the enforcement of the gun laws, as well as increasing public confidence that the department enforces the gun laws.

## III. POLICY

- A. It is the policy of this agency that investigations and arrests shall be promptly made and prosecutions instituted whenever there is probable cause to believe that a person has violated the laws pertaining to the purchase of firearms.

## IV. PROCEDURES

- A. Officers shall familiarize themselves with the relevant statutes governing the illegal purchase or possession of firearms by prohibited persons, including:
  1. It is a Class B felony for a person who has been convicted of a felony against the person or property of another, or a controlled drug felony in a state or federal court to own, control or possess a firearm (RSA 159:3).
  2. It is a misdemeanor for a first offense and a Class B felony for a second offense, for any person to give false information or offer false evidence of their identity in purchasing or otherwise securing delivery of a firearm (RSA 159:11).
  3. It is a misdemeanor for a first offense and a Class B felony for a second offense for any person to complete and sign an application for purchase of a firearm who knows that such purchase is illegal because he or she is subject to a protective order (RSA 159-D:3, effective 1/1/2001).

4. An attempt to commit a crime carries the same penalty as for the crime that was attempted, and consists of, with a purpose that a crime be committed, doing or omitting to do anything which, under the circumstances as the person believed them to be, is an act or omission constituting a substantial step toward the commission of the crime (RSA 629:1).

The fact that a prohibited person was unable to complete the crime due to a Brady check has no impact on the culpability of the individual. The question is simply whether the person's behavior was of such a nature that a reasonable observer viewing it in context could conclude beyond a reasonable doubt that the behavior was undertaken in accordance with a design to violate the statute and constituted a substantial step toward the commission of the crime.

- B. If a State Police record indicates a person is ineligible to purchase a firearm, the gun dealer will be immediately notified. The State Police will then notify this department by letter or fax, along with the State Police Troop Station and the federal Bureau of Alcohol, Tobacco and Firearms, if the attempt to purchase was either made in our community or the prospective buyer resides in our community.

If the attempted purchaser is a domestic violence respondent or has an outstanding arrest warrant on file, the State Police will notify us immediately by phone, and fax a copy of the information to the County Attorney's office.

- C. Any employee of this agency receiving notice of the attempted purchase of a firearm by a prohibited person, shall immediately notify the officer in charge of the shift on duty or on call when the notice is received. Early response and investigation are important.
  1. The officer in charge or an investigator assigned by the officer in charge shall make appropriate inquiries to verify the identity and residence of the violator.
  2. The investigator shall determine if the purchaser or attempted purchaser violated the provisions of RSA 159:3, RSA 159:11, RSA 159-C:10, II, or RSA 159-D:3.
    - a. If there is probable cause to believe that one of the above statutes was violated and the violator resides within our jurisdiction, the officer in charge shall swear to a complaint and affidavit and obtain an arrest warrant from a Justice of the Peace or the Justice of a District or Superior Court and, to avoid duplication of effort, shall notify the Sheriff and the State Police Troop Station that we are investigating the case and will be obtaining a warrant.
    - b. If the attempted purchase occurred in our jurisdiction but the violator resides in another jurisdiction, the officer in charge shall contact the other jurisdiction and determine if they intend to obtain an arrest warrant for the violator. If they do not and if probable cause exists, the officer in charge

shall obtain such a warrant and forward it to the other jurisdiction or to the Sheriff or the State Police for service.

- c. A person who is prohibited by federal law from purchasing a firearm and who unsuccessfully attempts to do so by providing *false information* to a federally-licensed firearms dealer, is also guilty of a federal offense under Title 18, US Code, Section 922 (a)(6).

- 1) Officers of this department do not have the authority to make arrests for violations of federal law - this is the duty of federal officers.

- 2) If the person makes a false statement on a federal firearms Form 4473 and presents it to a dealer, they violate this federal statute.

- 3) The person filling out the form must be the actual purchaser, and “straw” purchases are prohibited, but legitimate gifts are not.

- 4) If the officer in charge or the investigating officer determines that a federal law has been violated and wishes to refer the matter for federal prosecution, he or she shall contact the Bureau of Alcohol, Tobacco and Firearms resident office in Concord at telephone 223-0071.

D. Once a warrant is obtained, it shall be served promptly. If the arrest is to be made in the home of a third party, both an arrest warrant and a search warrant will be required.

- 1. In serving such a warrant, officers shall take into consideration that the subject may in the interim have been successful in obtaining a firearm, or may already own or possess one or more firearms in violation of the statute.

- 2. Officers shall also be cognizant of whether the particular offense is a misdemeanor or a felony and the legal obligations and common-sense limitations of arrests for each.

E. If the illegal purchase or attempted purchase of a firearm was committed by a person subject to a protective order and the protectee is known to reside or work within our jurisdiction, the officer in charge shall immediately attempt to contact the protectee by telephone to inform them, shall dispatch an officer or officers to their home or workplace, and shall offer to stand by for long enough for the person to obtain enough clothing for overnight, and escort or transport the protectee and any family or household members to the police station, to another temporary place of safety, or to the city/town line.

F. If the subject of the warrant is arrested, the arresting or booking officer, as applicable, shall recommend to the Bail Commissioner that the individual not be released on bail or recognizance prior to arraignment.

The County Attorney shall be notified of the arrest.

- G. For information or verification of a State Police Brady check, the NH State Police License and Permit Unit may be contacted by telephone at 271-3575.

*NOTE:* This policy and procedure was developed by the NH Police Standards & Training Council as an example of one of several possible approaches to the topic of the policy. It is neither endorsed nor recommended by PSTC, and is merely submitted for consideration and review. An agency wishing to adopt such a policy and procedure should tailor it to its own needs, and have its own legal counsel review it before implementing it.