

# The Law of Guns in Pennsylvania

Pennsylvania Bar Institute

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# Why Are We Talking About This?

If laws are just and clear, and if lawyers can help people understand the law, law abiding people are more likely to comply with the law and law makers are more likely to write laws with which people are willing to comply.

Before We Begin  
Test Case Life of the  
Righteous  
vs.  
Obscure Life of the  
Unsure

# Considerations for Firearms Scenarios

- Legal Issues
- Moral Issues
- Tactical Issues

# Topics for Discussion

- Obtaining, Transferring and Alienating a Firearm
- Possession and Transportation of a Firearm
- Prohibited Persons and Relief
- Regulatory Issues for Licensed Dealers and the Licensed Dealer's Perspective
- Use of Deadly Force
- Legal Aftermath of Deadly Force
- Obtaining Additional Legal Information

# Obtaining a Handgun: Federal Laws

- National Firearms Act of 1934
- Gun Control Act of 1968
- BATFE Form 4473
- Brady Law
- Lautenberg Amendment to GCA of 1968 – domestic violence misdemeanors
- District of Columbia v. Heller, 554 U.S. 570 (2008)
- McDonald v. Chicago, 561 U.S. 742 (2010)

# Let's Look at the Form 4473

# Obtaining a Handgun: Pennsylvania's Constitution Protects Gun Ownership

“The right of the citizens to bear arms in defense of themselves and the State shall not be questioned.” Article 1, Section 21.



# Obtaining a Handgun: Pennsylvania's Handgun Laws Generally

- Permit to purchase
- Prohibitions of particular classes of firearms
- Magazine capacity restrictions
- Roster of state-approved firearms
- Waiting period
- Background check – what about the gun show loophole?
- Registration of firearms
- Fees

# Transferring a Handgun: Taking Possession of a Handgun in Pennsylvania

- What's a "handgun" in Pennsylvania?
- "Firearm." Any pistol or revolver with a barrel length less than 15 inches, any shotgun with a barrel length less than 18 inches or any rifle with a barrel length less than 16 inches, or any pistol, revolver, rifle or shotgun with an overall length of less than 26 inches. The barrel length of a firearm shall be determined by measuring from the muzzle of the barrel to the face of the closed action, bolt or cylinder, whichever is applicable.
- When purchasing a **handgun** from a **dealer**, everyone (other than licensed collectors of curios or relics, that is firearms more than 50 years old, or a LEO purchasing a duty weapon) must undergo a background check, including police officers and individuals with a License to Carry Firearms.
- Handgun transfers between private individuals require a background check unless the exchange is between family members such as parent and child, grandparent and grandchild, or spouses.

# Transferring a Handgun: Various Scenarios

- Transferring title to another individual as a gift under PA law – parent/spouse/child/grandparent vs. **sibling**
- Receiving a firearm through an estate
- Bequeathing a firearm through a will
- Selling a handgun to:
  - An individual
  - A federally licensed dealer
- Lending a handgun to another person – let's discuss in detail...

# Transferring a Handgun: Lending Firearms Is Prohibited

- Except a person:
  - Who receives the handgun and has a license to carry or, who;
  - Is engaged in a Pennsylvania Game Commission or NRA hunter safety, firearm training, or competition program or, who;
  - Is engaged in hunting or trapping\* or, who;
  - Will remain within the transferor's dwelling or place of business or, who;
  - Receives a transfer to carry out a bequest or intestate succession or, who;
  - Is under 18 but is under the direct supervision of a responsible person at least 21 years old.

# Handgun Possession: Age Restrictions on Purchasing and Possessing Firearms

- Federal law – The Gun Control Act – 18 USC 922(b) provides that federally licensed dealers may not sell or transfer a long gun to an individual under the age of 18. In addition, a handgun shall not be transferred **by a dealer** to an individual under the age of 21.
- Question: Can a person under 21 own a firearm? If so, how?
- Pennsylvania law - It is unlawful for a person under 18 to possess a handgun. This does not apply to a minor who is under the supervision of a parent, grandparent, legal guardian or adult acting with the consent of the minor's custodial parent or legal guardian, **when** the minor is engaged in lawful activity including training, target shooting or competition, or the firearm is unloaded and the minor is transporting it for lawful purpose or a person under the age of 18 who is lawfully hunting or trapping in accordance with the Pennsylvania Game Code.

Now Let's Hear From....

Bradford A. Richman, Esq.

# Handgun Possession and Transportation Generally

- Home
- Curtilage
- Place of Business
- Temporary Housing
- Airports
- LTCF – A Household Affair
  - Concealed Carry – Statewide License – More Later
  - Philadelphia vs. Pennsylvania – Open Carry – More Later
  - Traffic Stops – Show license per 18 Pa.C.S.A. § 6122
- Vehicles – let's talk in a minute
- Let's look at some exceptions...

# Handgun Possession: Problematic Locations

- Federal property – Amtrak, post offices, federal buildings, etc.
- Pennsylvania court houses
- Schools - OK to carry a gun on school property “for other lawful purpose[s]” (18 P.S. 912) as long as that purpose is related to a school activity and with school permission per Commonwealth V. Goslin, 2017 PA Super 38, February 16, 2017.
- Regulation by Agencies:
  - Child day care centers (55 Pa. Code § 3270.79)
  - Group child day care homes located in buildings that are not residences (55 Pa. Code § 3280.79(a))
  - Child residential and day treatment facilities (55 Pa. Code § 3800.101)
  - Community homes for individuals with mental retardation (55 Pa. Code § 6400.86)
  - Firearms are also generally prohibited in facilities licensed by the Gaming Control Board. (58 Pa. Code § 465.14)
- Ostensibly solved by 18 Pa. C.S. 6109(m.3)(2) “Nothing in this section shall be construed to...(2) Authorize any Commonwealth agency to regulate the possession of firearms in any manner inconsistent with the provisions of this title.”



# Vehicles

- What's a vehicle?
- Firearms laws are silent, where do we look?
- First Choice:
  - 18 Pa.C.S. 501: "Vehicle." A conveyance of any kind, whether or not motorized, that is designed to transport people or property.
- Second Choice: PA Vehicle Code - 75 Pa. Cons. Stat. § 102
  - "Vehicle." Every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except devices used exclusively upon rails or tracks. The term does not include a self-propelled wheelchair or an electrical mobility device operated by and designed for the exclusive use of a person with a mobility-related disability.
  - "Highway." The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel. The term includes a roadway open to the use of the public for vehicular travel on grounds of a college or university or public or private school or public or historical park.
- Mass Transit – busses versus trains – best to use Vehicle Code definition
- Interstate transportation in a vehicle – story time on the next slide...

# License to Carry Firearms (LTCF)

- License to Carry Firearms (a/k/a Permit/Concealed Carry Permit)
- Issuance/Denial
- Revocations
- Open Carry
- Act 235
- Reciprocity

# 18 Pa.C.S. §6109 Licensing

- Allows carry
  - Concealed on or about one's person
  - OR in a vehicle
- Valid throughout the Commonwealth
- Valid for 5 years unless sooner revoked

# 18 Pa.C.S. §6109 (cont'd)

- Must be 21 years or older
- Apply in County of Residence
- Apply to Sheriff (Police Commissioner in Philadelphia)
- Standard application available online
- Fee is \$20.00

# Standard for Issuance

- Standard is found at 18 Pa.C.S. §6109(e)
- SHALL be issued if no good cause exists to deny
- License SHALL NOT be issued if character and reputation likely to be danger to public safety

# Philadelphia Differences

- § 6108 - Open Carry
- Police Commissioner is the issuing authority
- Two-tier Due Process Review

## § 6108. Carrying firearms on public streets or public property in Philadelphia.

No person shall carry a firearm, rifle or shotgun at any time upon the public streets or upon any public property in a city of the first class unless:

(1) such person is licensed to carry a firearm; **or**

(2) such person is exempt from licensing under section 6106(b) of this title (relating to firearms not to be carried without a license).

# LTCF Not Needed to:

- Purchase a firearm
- Own a firearm
- Keep a firearm in home or fixed place of business
- Transport unloaded to range or repair shop



Act 235



LTCF

- Carry pursuant to an LTCF is not the same as carry pursuant to an Act 235 permit
- Act 235 - Lethal Weapons Training Act
- Commonwealth v Jason Anderson - 169 A3d 1092 (2017)

# Revocations

- Authority found at 18 Pa.C.S. §6109(i)
- MAY be revoked for good cause
- SHALL be revoked for any reason in (e)(1)
- Notice in writing
- Permit must be surrendered within 5 days or summary offense
- Revoked licensee may appeal revocation to Common Pleas Court
- Philadelphia appeals go to Licensing Board first

# Judicial Review of Revocations

- 18 Pa.C.S. § 6114.
- “The action of the chief of police, sheriff, county treasurer or other officer under this subchapter shall be subject to judicial review in the manner and within the time provided by 2 Pa.C.S. Ch. 7 Subch. B (relating to judicial review of local agency action).”
- “A judgment sustaining a refusal to grant a license shall not bar, after one year, a new application; nor shall a judgment in favor of the petitioner prevent the defendant from thereafter revoking or refusing to renew such license for any proper cause which may thereafter occur. The court shall have full power to dispose of all costs.”

# Standard of Review

- Statutory Appeal
- Under State Agency Law
- Substantial Evidence

# Reciprocity

# Carry Laws Vary by State

- Compliance with local laws is required in each jurisdiction
- In some states no license is required to carry at all
- In some states no license is required in vehicles
- In some states the PA license is recognized
- Some states have reciprocity, but require adherence to local laws
- Some states have non-uniform laws across their state

# Reciprocity Governed by Statute

## §6109 (k) Reciprocity.—

- (1) The Attorney General shall have the power and duty to enter into reciprocity agreements with other states providing for the mutual recognition of a license to carry a firearm issued by the Commonwealth and a license or permit to carry a firearm issued by the other state. To carry out this duty, the Attorney General is authorized to negotiate reciprocity agreements and grant recognition of a license or permit to carry a firearm issued by another state.
- (2) The Attorney General shall report to the General Assembly within 180 days of the effective date of this paragraph and annually thereafter concerning the agreements which have been consummated under this subsection.

# The (Former) Florida “Loophole”\*



# Pennsylvania Attorney General's Website

<https://www.attorneygeneral.gov>

For other states, go to the websites of their State Police or Attorneys General for the carry laws of that state.

# Interstate Transportation in Vehicle - The Rule

- Interstate transportation in a vehicle is protected by 18 U.S.C.A. § 926A:
- "In essence, [18 U.S.C.A.] § 926A allows a person to transport a firearm and ammunition from one state through a second state to a third state, without regard to the second state's gun laws, provided that the traveler is licensed to carry a firearm in both the state of origin and the state of destination and that the firearm is not readily accessible during the transportation."  
-Revell v. Port Authority of New York & New Jersey, 598 F.3d 128 (3d Cir. 2010).
- Before hearing how the the 3<sup>rd</sup> Circuit interprets this statute, let's talk about Gregg Revell's trip through Newark Airport...

# Interstate Transportation - The Hope That Officers Will Not Compound

- “Although we conclude that Revell fell outside of § 926A's protection during his stay in New Jersey, we recognize that he had been placed in a difficult predicament through no fault of his own. However, Section 926 clearly requires the traveler to part ways with his weapon and ammunition during travel; it does not address this type of interrupted journey or what the traveler is to do in this situation. **Stranded gun owners like Revell have the option of going to law enforcement representatives at an airport or to airport personnel before they retrieve their luggage. The careful owner will do so and explain his situation, requesting that his firearm and ammunition be held for him overnight.**<sup>18</sup> While this no doubt adds to the inconvenience imposed upon the unfortunate traveler when his transportation plans go awry, it offers a reasonable means for a responsible gun owner to maintain the protection of Section 926 and prevent unexpected exposure to state and local gun regulations.
- **<sup>18</sup>Of course, this suggestion leaves unanswered the question of what the gun owner should do if the law enforcement officers decline to assist him. It may be hoped, however, that officers will not compound a blameless owner's problems in that way.”**

Now Let's Hear From....

Jonathan S. Goldstein, Esq.

# Who Can't Possess a Firearm in Pennsylvania?

- Pennsylvania Law
  1. An individual who has been convicted of any one of 35 enumerated offenses, or
  2. is a fugitive from justice; or
  3. has been convicted of an offense under the Controlled Substance, Drug, Device and Cosmetic Act (PL 233, No. 64) punishable by imprisonment exceeding two years; or
  4. has been convicted of driving under the influence of alcohol or controlled substance (75 Pa. C.S. § 3731) on three or more separate occasions within a five-year period (**prohibition on new purchases only**); or
  5. has been adjudicated as an incompetent or who has been involuntarily committed to a mental institution for treatment under § 302, 303, or 304 under the Mental Health Procedures Act (PL 817, No. 143); or
  6. is an alien, is illegally or unlawfully in the United States; or
  7. is the subject of an active protection from abuse order issued pursuant to 23 Pa. C. S. § 6108, relating to relief; or
  8. was adjudicated delinquent (with conditions specified in the UFA). With the exception of crimes committed under sections 2502, 2503, 2702, 2704, 2901, 3121, 3123, 3301, 3502, 3701, and 3923, this prohibition may terminate 15 years after the last applicable delinquent adjudication, or upon the person reaching the age of 30, whichever is earlier.
  
- Federal Law
  - Under indictment for, or conviction of a misdemeanor offense for which the maximum prison term may exceed two years, or a felony, if the maximum prison term exceeds one year. Federal law, under the Lautenberg Amendment, applies prohibitions of misdemeanor convictions, if the offense involves domestic violence.

# Adjudicated Incompetent & Involuntarily Committed

- Generally people who have been committed under § 302, 303, or 304 under the Mental Health Procedures Act (50 P.S. § 7301, et. seq.)
- Doe v. Blocker (Case No. 2:16-cv-6039)
- 170,000 people in the last 7 years have had their rights extinguished with no due process. What due process?
- Rogin v. Bensalem Twp., 616 F.2d 680, 694 (3d Cir. 1980): (1) notice of the basis of the governmental action; (2) a neutral arbiter; (3) an opportunity to make an oral presentation; (4) a means of presenting evidence; (5) an opportunity to cross-examine witnesses or to respond to written evidence; (6) the right to be represented by counsel; and (7) a decision based on the record with a statement of reasons for the result. Whether all or any one of these safeguards are required in a particular situation depends on the outcome of the balancing test mentioned above [in Mathews, 424 U.S. at 333].

## Recovering Firearms Rights after Incompetency or Commitment

- Three Inadequate Post-Deprivation Remedies:
- 18 Pa.C.S. § 6111.1(g)(2) – Common Pleas “review the sufficiency of the evidence upon which the involuntary commitment was based.”
  - Review of the record below.
  - What record?! No neutral. No written record.
  - No new evidence, no new witnesses.
- 18 Pa.C.S. § 6105(f)(1) – Common Pleas restoration of rights.
  - PSP reports commitment to NICS.
  - Common Pleas restores PA rights but **not federal, ergo, still barred.**
- 18 Pa.C.S. §6111.1(e)
  - only affords relief where the underlying medical records are deemed to be inaccurate and not reflective of the physician’s decision at the time of the Section 302 commitment
  - PSP now arguing latches on this...and winning.
  - IN RE: PETITION OF K.M.C.v. PSP (No. 1274 WDA 2017) Superior Court of Pennsylvania, September 21, 2018, non-precedential.

# Domestic Violence Statutes: Where to Look

- Uniform Firearms Act
- Title 23 Pa.C.S.A. – Domestic Relations
  - Part VII. Abuse of Family
    - Chapter 61. Protection from Abuse -  
Protection From Abuse Act - 23  
Pa.C.S.A. § 6101, et. seq.



# Domestic Violence in PA:

## 23 Pa.C.S.A. § 6102

**"Abuse."** The occurrence of one or more of the following acts between family or household members, sexual or intimate partners or persons who share biological parenthood:

(1) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury, serious bodily injury, rape, involuntary deviate sexual intercourse, sexual assault, statutory sexual assault, aggravated indecent assault, indecent assault or incest with or without a deadly weapon.

- (2) Placing another in reasonable fear of imminent serious bodily injury.
- (3) The infliction of false imprisonment pursuant to 18 Pa.C.S. § 2903 (relating to false imprisonment).
- (4) Physically or sexually abusing minor children, including such terms as defined in Chapter 63 (relating to child protective services).
- (5) Knowingly engaging in a course of conduct or repeatedly committing acts toward another person, including following the person, without proper authority, under circumstances which place the person in reasonable fear of bodily injury. The definition of this paragraph applies only to proceedings commenced under this title and is inapplicable to any criminal prosecutions commenced under Title 18 (relating to crimes and offenses).

# How is Domestic Violence Charged and Why Does It Matter for Firearms Cases?

- As a Crime with a Criminal Standard of Proof:
  - Charging by a District Attorney or the Attorney General
  - Conviction after Trial
  - Guilty Plea
- In a Civil Proceeding with a Preponderance Standard
  - Ex parte emergency (temporary) PFA order
  - Regular PFA order

# Facts About PFA Orders

- PFA's are now taken very, very seriously by law enforcement - mandatory reporting and mandatory notice provisions. - 23 Pa.C.S.A. § 6105
- At the commencement of a request for a PFA one of the first things the statute requires is notification of a firearms related occupation. - 23 Pa.C.S.A. § 6106
- The ability of a plaintiff to receive a PFA is not influenced by the accused abuser's willingness to leave the residence. - 23 Pa.C.S.A. § 6103
- PFA's can be granted as long as personal jurisdiction can be obtained over the party subject to the order. - 23 Pa.C.S.A. § 6103
- PFA's issued in other states are subject to full faith and credit under certain terms and conditions. - 23 Pa.C.S.A. § 6104
- Hearings are required within 10 business days of a petition to receive a PFA being filed. - 23 Pa.C.S.A. § 6107
- Minor judiciary can grant PFA orders under certain circumstances when courts are otherwise unavailable. - 23 Pa.C.S.A. § 6110

# PFA's Against Law Enforcement Professionals

- 18 USC § 925(a)(1): The provisions of this chapter, except for sections 922 (d)(9) and 922 (g)(9) and provisions relating to firearms subject to the prohibitions of section 922 (p), shall not apply with respect to the transportation, shipment, receipt, possession, or importation of any firearm or ammunition imported for, sold or shipped to, or issued for the use of, the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof.
- So what?
- While subject to a PFA, LEOs can carry firearms while on official duty or when off duty if required by their agencies, but not after a conviction for a misdemeanor crime of domestic violence.

# Proper Venue for PFA

- **Rule 1901.1. Venue.**
- (a) Except as provided in subdivision (b), an action for protection from abuse may be brought in a county in which
  - (1) the plaintiff resides, either temporarily or permanently, or is employed, or
  - (2) the defendant may be served, or
  - (3) the abuse occurred.
- (b) If the relief sought includes possession of the residence or household to the exclusion of the defendant, the action shall be brought only in the county in which the residence or household is located.
- (c) An action for indirect criminal contempt may be filed in, and heard by, the court in the county in which the order was issued or where the violation occurred.

# Temporary PFA Orders: 23 Pa.C.S.A. § 6107(b)

## 23 Pa.C.S.A. § 6107 (b) Temporary orders.--

- (1) If a plaintiff petitions for temporary order for protection from abuse and alleges immediate and present danger of abuse to the plaintiff or minor children, the court shall conduct an ex parte proceeding.
- (2) The court may enter such a temporary order as it deems necessary to protect the plaintiff or minor children when it finds they are in immediate and present danger of abuse. The order shall remain in effect until modified or terminated by the court after notice and hearing.
  - (3) In addition to any other relief, the court may, pursuant to section 6108 (relating to relief), direct that the defendant temporarily relinquish to the sheriff any firearms, other weapons or ammunition for the duration of the temporary order if the petition demonstrates any of the following:
    - (i) Abuse which involves a firearm or other weapon.
    - (ii) An immediate and present danger of abuse. In determining whether an immediate and present danger of abuse exists, the court shall consider a number of factors, including, but not limited to:
      - FACTORS TO WEIGH IN DETERMINING DANGER OF ABUSE
  - (4) If the court orders the defendant to temporarily relinquish any firearm, other weapon or ammunition pursuant to paragraph (3), the defendant shall decide in what manner the defendant is going to relinquish any firearm, other weapon or ammunition listed in the order. Relinquishment may be to the sheriff pursuant to section 6108(a)(7) or to a third party for safekeeping pursuant to section 6108.3 (relating to relinquishment to third party for safekeeping).

# Final PFA Orders: 23 Pa.C.S.A. § 6107

- If issued:
  - For fixed period up to three years. 23 Pa.C.S.A. § 6107(d)
  - Requires divestiture of all firearms and ammunition within 24 hours of the entry of the order (in contrast to receipt of order by defendant for temporary orders).
  - If defendant is a dealer, possible relinquishment of FFL and PA license pursuant to 23 Pa.C.S.A. § 6107(a)(7.1)
  - Entry of PFA into NICS within 24 hours of issue. 23 Pa.C.S.A. § 6105(e)(2)
  - Notification of local police in defendant's municipality
- Firearms divestiture can be required – but into whose care?
  - Sheriff
  - Dealer licensed pursuant to 18 Pa.C.S. § 6113
  - **Third party – as of 10/12/18 – attorneys or “commercial armories” only!**

# Relinquishment to Sheriff

- Most straightforward relinquishment
- Relinquishment within 24 hours of receipt of service (for temporary PFA orders) or within 24 hours of entry of final order (in the event of a hearing with notice and opportunity to be heard).
- Inventory of firearms and ammunition required to be performed by sheriff



# Relinquishment to Dealer

- Affidavit from dealer required (23 Pa.C.S.A. § 6108.2(b)) and **defendant** must transmit affidavit to sheriff (23 Pa.C.S.A. § 6108.2(c)). Affidavit must include:
  - (1) The caption of the case in which the protection from abuse order was issued.
  - (2) The name, address, date of birth and Social Security number of the defendant.
  - (3) A list of the firearms, other weapons or ammunition, including, if applicable, the manufacturer, model and serial number.
  - (4) The name and license number of the dealer licensed pursuant to 18 Pa.C.S. § 6113 and the address of the licensed premises.
  - (5) An acknowledgment that the firearms, other weapons or ammunition will not be returned to the defendant or sold or transferred to a person the dealer knows is a member of the defendant's household, while the defendant is the subject of an active protection from abuse order pursuant to section 6108, which order provides for the relinquishment of the firearm, other weapon or ammunition being returned, sold or transferred.
  - (6) An acknowledgment that the firearms, other weapons or ammunition, if sold or transferred, will be sold or lawfully transferred in compliance with 18 Pa.C.S. Ch. 61 (relating to firearms and other dangerous articles).

# Relinquishment to Third Party

- Used to be mind-numbingly complex.
- As of 10/12/2018, still can't be a member of the person's household.
- But must be either an attorney or...
- A commercial armory: "A for-profit entity which holds the appropriate federal and state licenses to possess and secure firearms of third persons."

# Relinquishment: On the Up Side

- Uniform form of affidavit required as designed by State Police. - 23 Pa.C.S.A. § 6108.2(d)
- Inventory is required.
- Law enforcement agencies and their employees, including police officers and sheriffs, are liable for damage to stored firearms, including decreases in value due to a “lack of reasonable care.” - 23 Pa.C.S.A. § 6119(b)
- Uniform procedures are required. Ideally, no more ad hoc rules from sheriffs.
- Lists of relinquished firearms not subject to Right to Know. Privacy of inventory is protected. - 23 Pa.C.S.A. § 6108.2(f)
- Except as provided in section 6113 (relating to arrest for violation of order), warrantless searches for firearms, other weapons or ammunition are not authorized. - 23 Pa.C.S.A. § 6121
- Firearms temporarily relinquished to sheriff can be sent to a dealer at defendant’s option and at sheriff’s expense when temporary order is made final. - 23 Pa.C.S.A. § 6108.2(e)
- Liquidation of firearms inventory is possible in the event of a final PFA order.

# Return of Firearms: 23 Pa.C.S.A. § 6108.1

- **(a) General rule.**--Any court order requiring the relinquishment of firearms, other weapons or ammunition shall provide for the return of the relinquished firearms, other weapons or ammunition to the defendant upon expiration of the order or dismissal of a petition for a protection from abuse order. The defendant may take custody of the firearms, other weapons and ammunition provided that the defendant is otherwise eligible to lawfully possess the relinquished items. **The defendant shall not be required to pay any fees, costs or charges associated with the returns, whether those fees, costs or charges are imposed by the Pennsylvania State Police, any local law enforcement agency or any other entity, including a licensed importer, licensed manufacturer or licensed dealer in order to secure return of the relinquished firearms, other weapons or ammunition.**
- Notwithstanding this provision, hiring a lawyer and obtaining a court order is almost universally required.

# HB 2060 Fixes as of 10/18/2018

- Service must be made by law enforcement – PTL!
- PFA deemed to come into effect when served, not issued.
- Law enforcement now obligated to accompany plaintiff to residence to retrieve personal effects while service is made.
- Person subject to a PFA gets notice of the right to present evidence, of the right to compel attendance of witnesses, of the method by which witnesses may be compelled.
- Person subject to a PFA is entitled to a continuance (and notice of that right) if he has less than three days notice of the 10 day hearing. No more PFA trials by ambush.
- New language for how to handle abandoned firearms - 18 Pa.C.S. § 6128.
- Permanent PFA's can now be sealed after 10 years if the defendant has no convictions for contempt.

# Expungement – Pre-November, 2016

- Expungement is found at 18 Pa.C.S. § 9122
- It is a civil proceeding after a criminal action
- Available under limited circumstances:
  - No disposition of a criminal action for 18 months, and;
  - A court orders the expungement.
  - Separately, also available to persons who are now adults for certain alcohol offenses committed while a juvenile.
  - Separately, for people over 70 who are not incarcerated and have been offense free for more than 10 years.
  - Separately, certain dead people.
- Most sex offenses can't be expunged
- Permanent PFAs can't be expunged (however, see prior slide)
- 7303 and 7304 mental health commitments cannot be expunged.
- 7302 expungements are no longer possible unless the 302 commitment was defective *ab initio* because of Keyes case.

# Expungement - Post-November, 2016

- New § 9122.1. Order for limited access
- “a person who has been free of arrest or prosecution following conviction or final release from confinement or supervision, whichever is later, for a period of 10 years, the court of common pleas in the jurisdiction where the conviction occurred may enter an order that criminal history record information maintained by any criminal justice agency pertaining to a conviction for a misdemeanor of the second degree, a misdemeanor of the third degree or an ungraded offense which carries a maximum penalty of no more than two years be disseminated only to a criminal justice agency or a government agency as provided in section 9121(b.1) and (b.2)”
- M2's and M3's don't trigger firearms disabilities so this was designed by Sen. Greenleaf to avoid helping firearms owners.
- Not likely to help with firearms cases because it doesn't reach M1's or felonies.

# Pardon

- Pennsylvania Constitution, Article IV, Section 9(a):
  - In all criminal cases except impeachment, the Governor shall have power to remit fines and forfeitures, to grant reprieves, commutation of sentences and pardons; but no pardon shall be granted, nor sentence commuted, except on the recommendation in writing of a majority of the Board of Pardons, after full hearing in open session, upon due public notice. The recommendation, with the reasons therefor at length, shall be delivered to the Governor and a copy thereof shall be kept on file in the office of the Lieutenant Governor in a docket kept for that purpose.
- What is the effect of a pardon?
  - A pardon relieves an individual of the consequences, generally in the nature of legal disabilities, resulting from conviction for a crime.
  - A pardon constitutes total forgiveness by the state, makes the crime as if it never happened and allows a job applicant to deny he was ever convicted of the crime without worry of any sanction.



# Relief from Disability

- The governing case is called *Pennsylvania State Police v. Paulshock*, 836 A.2d 110 (2003):
  - Paulshock had a 1960 conviction for burglary, arson, larceny, and malicious mischief for which he served three years in prison.
  - Several people (among them Paulshock) received relief from their state-level Pennsylvania disabilities under 18 Pa.C.S. § 6105(a) by successfully applying to a Pennsylvania Court of Common Pleas for relief of disability.
  - PSP did not consider their disabilities lifted because a PA court could not lift the federal disability so the PSP appealed to the Commonwealth Court.
  - The Commonwealth Court affirmed the Common Pleas Court (789 A.2d at 313) holding that effectively, if a PA court says the right magic words (seemingly including some variation of “expunged” and “rights restored”), the federal disability is lifted because the PA disability is lifted.

# Relief from Disability - II

Question Presented by PSP  
To PA Supreme Court:

“Did the [Commonwealth Court] err as a matter of law when it held that a person who was convicted of a federal firearm disabling offense and applied for relief of Pennsylvania firearms disability, pursuant to 18 Pa. C.S. § 6105, could have his criminal record expunged, thereby relieving him of any federal firearms disability?”

# Relief from Disability - III

- The Supreme Court of Pennsylvania reversed the Commonwealth Court's grant of relief to both Reed and Paulshock holding that:
  - “Section 6105(d)(3)(i) did not grant the common pleas court the power to relieve a federal firearms disability. Therefore, we find that the only relief that could be granted pursuant to Section 6105(d) is from the state firearms disability imposed under Section 6105(a), and that a common pleas court order could not effectuate removal of a firearms disability imposed pursuant to the Federal Act.”
- Both Reed and Paulshock were held to still be disabled under federal law because their Pennsylvania disabilities were not relieved in a manner that triggered federal relief.
- Almost more important, however, is Justice Newman's concurrence and dissent...

# Relief from Disability - IV

836 A.2d 110, 120 (2003):

“Federal court decisions have concluded that, for federal law to recognize state restoration of rights, the state restoration must include: (1) the right to vote; (2) the right to seek and hold public office; and (3) the right to serve on a jury. See, e.g., Hampton v. United States, 191 F.3d 695 (6th Cir.1999). If the state restoration of rights includes the three aforementioned rights, federal law contains an additional clause that looks to state law to determine whether the state imposes any further restriction on the right of the convicted felon to possess a weapon.<sup>3</sup> If state law provides some added restriction, this federal clause is triggered to make the possession of firearms unlawful pursuant to federal law, notwithstanding the restoration of civil rights by the state.”

# Relief from Disability - V

- What are the two problems Paulshock faces?
- First Problem: 42 Pa.C.S. § 4502 prohibits persons convicted of crimes punishable for more than one year from sitting on a jury. The General Assembly has provided no statutory mechanism for relief from this abrogation of a civil right.
- Second Problem: Article II, Section 7 of the Pennsylvania Constitution provides: "No person hereafter convicted of embezzlement of public moneys, bribery, perjury or other infamous crime, shall be eligible to the General Assembly, or capable of holding any office of trust or profit in this Commonwealth." In *Commonwealth ex rel Baldwin v. Richard*, 561 Pa. 489, 751 A.2d 647 (2000), the Pennsylvania Supreme Court held that the term "infamous crimes" includes felonies.

# Relief from Disability - VI

- Therefore, if Newman is right, until Paushock is 70 and free of imprisonment for 10 years (and therefore eligible for expungement under 18 Pa. C.S.A. § 9122), he can never receive sufficient relief from a Pennsylvania court pursuant to 18 Pa. C.S. § 6105 to be eligible for relief under federal law.
- If the long ago offenses are non-violent, and an individual receives state relief, in the 3<sup>rd</sup> Circuit, he now can go into federal court and get as applied relief under *United States v. Barton*, 633 F.3d 168 (3d Cir. 2011) which deals with long ago, non-violent offenses, including long ago 302's.
- This is a fact intensive, expensive path fraught with many opportunities for courts to exercise discretion.
- Dollar for dollar, hour for hour, a pardon is the safest route.

Now Let's Hear From...

Johanna E. Reeves, Esq.

# What We'll Review

1. Federal Statutes and Regulations Governing Firearm Dealers
2. ATF Warrantless Inspections
3. ATF Guidance and Rulings
4. Recordkeeping
5. Violations



# Dealing in Firearms

STATUTE	REGULATIONS	SCOPE
<b>Gun Control Act of 1968</b> 18 U.S.C. Ch. 44	27 C.F.R. Pt. 478 (Commerce in Firearms and Ammunition)	Licensing, interstate transfers, and recordkeeping.
<b>National Firearms Act</b> 26 U.S.C. Ch. 53	27 C.F.R. Pt. 479	Tax, registration requirements, transfer controls for specified “firearms.”

# Meet the Regulator - ATF

- Bureau of Alcohol, Tobacco, Firearms and Explosives
- Principal law enforcement agency within the U.S. Department of Justice in charge of regulating the firearms industry under GCA and NFA.
- Homeland Security Act transferred ATF to DOJ from the Treasury Department on Jan. 24, 2003.

# Purpose of the GCA of 1968

- Assist states in enforcing their gun laws.
- Channel interstate and foreign commerce through licensees.
- Unlawful for any licensee to transfer a firearm to a non-licensee in another state.
- Unlawful for any FFL to transfer a firearm in violation of state law.
- FFLs must keep records so firearms can be traced if diverted into illicit channels.

# Overview of GCA – Section 921

## ■ Definitions\*

- Interstate or foreign commerce
- Firearm
- Dealer
- Engaged in the business
- With the principal objective of livelihood and profit

\*Not an exhaustive list.

# “Interstate or Foreign Commerce”

- Defined in 18 U.S.C. 921(a)(2).

*Commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia, but such term does not include commerce between places within the same State but through any place outside of that State. The term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).*

# “Firearm”

- Defined in 18 U.S.C. 921(a)(3).
  - Any weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosive.
  - Definition includes firearm frame or receiver, firearm muffler or silencer, and any destructive device.
  - Frame or receiver (ATF regulation):

*That part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel.*

# “Dealer”

- Defined in 18 U.S.C. § 921(a)(11).

*(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, or (C) any person who is a pawnbroker.*

# “Engaged in the Business”

- Defined in 18 U.S.C. § 921(a)(21).

As applied to a dealer in firearms:

*[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.*

Term does **NOT** include a person who makes occasional sales, exchanges or purchases to enhance a personal collection or for hobby, or who sells all or part of a personal collection.



# “With the Principal Objective of Livelihood and Profit”

- Defined in 18 U.S.C. 18 U.S.C. § 921(a)(22).

*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.*

Proof of profit not required for persons who engage in regular and repetitive purchase and disposition of firearms for criminal purposes or terrorism.

# GCA Section 922 - Unlawful Acts

- 922(a) - **Any person** violations
  - Engage in business without a license
  - Interstate controls
  - False statement to FFL
- 922(b) - **FFL** violations
  - Transfer of firearm to underage person
  - Transfer of firearm in violation of state law
  - Transfer of firearm to nonresident

# Unlawful Acts (Cont.)

- 922(d) and 922(g) – prohibited persons
- 922(o) – machinegun prohibitions
- 922(t) – Brady law

# GCA – Section 923 (Licensing)

- Licensing provisions – 923(a) and 923(d)
- 923(e) – revocation of licenses for willful violations
- 923(g) – record keeping and warrantless inspection

# GCA – Section 924

- Penalties
- Asset forfeiture for firearms and ammunition involved in any violation of GCA
- Crimes for stealing firearms

# GCA - Sections 925, 926 & 927

- 925(a) – Government exemption
- 925(d), (e) – Import provisions
- 926 – Rules and regulations
- 927 – Effect on State law

# GCA Transfers - Overview

- “Transfer” focuses on physical delivery and possession - not title
- Interstate transfers must be to another FFL
  - Exception: transfers to U.S., State & local government entities and law enforcement (conditions for individual sales)
  - Exception: repair/replacement returns (limitations)
  - Exception: in-person purchase of long guns at the FFL’s premises (even resident of a different State)
    - NICS check/Form 4473 required

# GCA Transfers (Cont.)

- Minimum age requirements for FFL transfers:
  - Rifle/shotgun: 18 years
  - Other firearms: 21 years
- Prohibited: Transfers to persons (any State) where purchase/possession in violation of State/local law
- Prohibited: Sale or other disposition to any person if it is known (or there is reasonable cause to believe) that the transferee is a felon or other prohibited person



# What is NICS?

- National Instant Criminal Background Check System
- Brady Handgun Violence Prevention Act
- Transfer direct to a NON-LICENSEE
- Repaired or replacement firearms not subject
- Transfers to U.S. Government/law enforcement officials for their official use are not subject
- NFA weapons (e.g. machineguns) not subject (but prior ATF approval required).

# GCA – Prohibited Persons

- Is under indictment or has been convicted of a crime punishable by imprisonment for more than 1 year
- Is a fugitive from justice
- Is an unlawful user of or addicted to any controlled substance
- Has been adjudicated mental defective or has been committed to any mental institution
- Is an illegal alien or a nonimmigrant alien (with exception to admission for hunting/sporting event, or has a hunting license issued in the U.S.)

# Prohibited Persons (Cont.)

- Has been dishonorably discharged from the Armed Forces
- Has renounced his/her citizenship
- Is subject to a domestic violence restraining order
- Has been convicted of a misdemeanor crime of domestic violence

# Sales/Transfers Between FFLs

- Verification of identity and licensed status of transferee prior to transfer
- Certified copy of transferee's FFL to transferor
- Once transferee furnishes copy of FFL, it does not have to provide another copy during the term of its current license; recommend FFL EZ check
- Certified copy of FFL not required for returns.

# Sales to Law Enforcement

- Form 4473 or NICS not required if following met:
  - Purchase for official use, not personal
  - Certification on agency letterhead
    - Signed by person in authority (other than the purchaser)
    - Officer will use firearm in official duties
    - Records check reveals no convictions for misdemeanor crime of domestic violence.
- Direct interstate transfers are permitted.
- Must record transfer in A&D record and retain certification letter in files.

## Removed, Obliterated, Altered SN

- No person shall knowingly transport, ship, or receive in interstate or foreign commerce any firearm which has had the manufacturer's serial number removed, obliterated, or altered.
- No person shall knowingly possess or receive any firearm which has had the manufacturer's serial number removed, obliterated, or altered and has, at any time, been shipped or transported in interstate or foreign commerce.

# GCA – Machine Gun Prohibition

- May 19, 1986
- Section 922(o) of GCA
- Unlawful to possess or transfer a machinegun
- Limited exceptions for qualified FFL/SOTs:
  - Transfer to or possession by U.S., state or local agencies
  - Transfer to FFL/SOT (dealer sales sample)
  - Lawfully possessed before effective date
  - Manufacture & stockpiling OK, but transfers requires prior ATF approval

# Federal and State Laws

- The GCA does not preempt State law; State law does not preempt federal law.
  - 18 U.S.C. 926A (transport of firearm interstate) – federal law allows interstate travel between states, as long as no violation of state law.



# National Firearms Act of 1934

- Imposes tax, registration and transfer controls of certain defined “Firearms”
- NFA-controlled “Firearms” (all defined by statute):
  - Machineguns (26 U.S.C. 5845 (b)) – ALSO SUBJECT TO RESTRICTIONS OF 18 U.S.C. 922(o)
  - Short-barrel rifles and shotguns, and weapons made from a rifle or a shotgun ((26 U.S.C. 5845 (a))
  - Destructive Devices (26 U.S.C. 5845 (f))
  - Silencers (18 U.S.C. 921)
  - Any Other Weapon (26 U.S.C. 5845 (e))
- Most NFA weapons also subject to the GCA.

# Registration of NFA Firearms

- Importer FFL/SOT must report and register each NFA firearm imported with ATF - Form 2 “Notice of Firearms Manufactured or Imported”.
- ATF’s receipt of the Form 2 registers the firearms listed on the Form – from the data provided on the Form 2, ATF creates a record in the **National Firearm Registration and Transfer Record** (“NFRTR”).
- 15 days from the date the firearm(s) were released from Customs custody (not received).
  - Include copy of endorsed 6A with the Form 2.

# NFA Transfers (Generally)

- Only previously registered firearms may be lawfully transferred
  - Exception for firearms manufactured for U.S.
  - National Firearms Registry and Transfer Record (“NFRTR”)
  - Registration can only occur upon lawful making, manufacture or importation (Form 2) or upon transfer of NFA firearms already registered (Forms 3, 4 or 5)

# NFA Transfers (Generally)

- Lawful transfer requires filing of appropriate form with ATF and approval/registration to transferee before transfer occurs
- Interstate transfers of NFA firearms direct to non-FFL/SOT not permitted (except U.S., state or local government)
- Machinegun transfers to non-FFL/SOTs (including government contractors not permitted (except government)).

# Warrantless Inspections - Generally

- Congress grants ATF the authority to enter a licensed premises **WITHOUT A WARRANT**:
  - Annual compliance inspections of Federal firearms licensees (FFLs)
  - Firearms tracing
  - Bona fide criminal investigations of persons other than the FFL
- U.S. v. Biswell, 406 U.S. 311 (1972)-Supreme Court upheld warrantless inspections as consistent with Fourth Amendment.

# Limits on Warrantless Inspection

- Business hours – as indicated on Form 7
  - U.S. v. Limatoc, 807 F.2d 792 (9<sup>th</sup> Cir. 1987)
- Consent required for inspection outside of business hours
  - Burden on government to prove free and voluntary consent
  - U.S. v. Hart, 359 F. Supp. 835 (D.Del. 1973) – License expired and ATF claimed consent. Court held not an intelligent, voluntary waiver of 4<sup>th</sup> Am. rights

# Limits (Cont.)

- Inspection at place of business ONLY
  - Places of storage included
  - If only part of a building is licensed, ATF cannot enter without a warrant
  - Inspection at in-state gun shows
- Records and inventory ONLY
  - No commercial records
  - Clients need to ensure they do not file other records with GCA required records
  - NFA records may be inspected – 26 U.S.C. 7606

# ATF Warrantless Inspection

- Must be limited to GCA compliance ONLY; ATF may not use authority to go on a fishing expedition for evidence of crimes committed by the FFL.
- **RED FLAGS-** 
  - Special Agent conducts “compliance” inspection
  - Industry Operations Investigators conduct inspection but request permission to view commercial records, customer lists, lists of suppliers, etc.
- May be in FFL’s interest to provide record
  - Open entry – provide commercial record



# ATF Rulings

- ATF publishes rulings to promote uniform application of the laws and regulations.
- Interpret requirements of laws and regulations and apply retroactively unless otherwise indicated.
- Do not have force and effect of regulations, but may be used as precedents.
- If applying published rulings, must take into consideration subsequent legislation, regulations, court decisions, and rulings.

# Other ATF Publications

- Open Letters: Published to assist licensees in understanding regulatory compliance responsibilities.
- Newsletters: published (ir)regularly to keep licensees informed of changing laws or regulations or important notifications/reminders.
- Guidance:
  - Firearms Tracing Guide (ATF P 3312.13) (March 2012)
  - ATF National Firearms Act Handbook (ATF P 5320.8) (April 2009)
  - State laws compilations
  - Do I need a license to buy or sell firearms? (ATF P 5310.2) (Jan. 2016)

# ATF Guidance on Licensing

- ATF Publication 5310.2, titled “Do I Need a License to Buy or Sell Firearms?” (Jan. 2016)
- List of factors considered by federal courts in determining unlicensed person is “engaged in the business,” including—
  - Repetitive buying and selling (no “magic number” given by ATF, but “large” numbers and frequent transactions relevant)
  - Representing oneself as a dealer (taking orders, offering to buy firearms to immediately resell)
  - Circumstances of sale (selling shortly after acquiring, selling in unopened/original packaging)
  - Buying and selling for profit

# RECORDKEEPING

22 C.F.R. Pt. 478, Subpart H

# Acquisitions

- Record acquisition no later than close of next business day after the date of acquisition:
  - Date of receipt
  - Name, date, address (non-licensee), or name and FFL from whom acquired
  - Name of manufacturer and importer (if any)
  - Model
  - Serial number
  - Type
  - Caliber
- Information should be taken from the firearm, NOT the box!

# Dispositions

- Form 4473 (Over-the-Counter firearm transfers)
  - Includes information on NICS Check.
- Record disposition no later than 7 days following transaction:
  - Date of sale or other disposition
  - Name, date, address (non-licensee), or name and FFL to whom firearm transferred or firearms transaction record #

# Format for A&D Record

<u>Firearm Description</u>					<u>Receipt</u>		<u>Disposition</u>		
Manuf. &/or importer	Model	Serial No.	Type	Caliber or gauge	Date	Name & address or name & FFL No.	Date	Name	Address or FFL No. or 4473 SN if forms filed numerically

# Records Retention

- Must be maintained on the FFL's licensed premises.
- Acquisitions of GCA-controlled firearms: permanent.
- Dispositions: 20 years



# VIOLATIONS

# GCA Penalties

- Criminal penalties - misdemeanor or felony, depending on violation.
  - Other GCA violations: 5 or 10-year felonies.
  - Administrative forfeitures of firearms, ammo involved in knowing violations of GCA.
- License revocation under section 923(e) for willful violations.
- NOTE: failure of FFL to comply with trace request constitutes willful violation of GCA and grounds for license revocation.

# Inspections – Adverse Actions

- Report of Violations
- Warning Letter
- Warning Conference
- Revocation

# GCA Penalties

- Voluntary compliance sought before more drastic measures taken
- Warning conference should be taken very seriously – last chance before revocation
- Less than 100 licenses revoked per year
- No authority to suspend licenses
- Pressure on FFLs to surrender license and sign agreement to discontinue business immediately to avoid criminal prosecution

# License Suspension

- GCA provides no authority for license suspension – only revocation
- ATF field divisions enter into settlement agreements with FFLs to revoke license and allow FFL to reapply for license within specified time, e.g., 90 days
- Results in de facto suspension

# NFA Penalties

- 26 U.S.C. 5871 – criminal penalties of 10 years imprisonment + fine of \$250,000
- Administrative/civil asset forfeiture of firearms involved in a violation of the NFA.
- NFA violations do not provide a basis for GCA license revocation.

Now Let's Hear From:

Steve Fairlie

# Application of Deadly Force

To use deadly force, you must have a reasonable belief in your attacker's imminent:

1. Ability
2. Opportunity
3. Intent

To cause harm to you or another.

What kind of harm?

“[N]ecessary to protect himself against death, serious bodily injury, kidnapping or sexual intercourse compelled by force or threat”

-18 Pa.C.S.A. § 505(b)(2)

It must also be the case that you are not the aggressor and that you did not violate your duty to (safely) retreat, if required.

Justification of deadly force is an **affirmative defense**...let's discuss.



# Justification – Affirmative Defense

“While there is **no burden on a defendant** to prove the claim, before the defense is properly at issue at trial, there **must be some evidence**, from whatever source, to justify a finding of self-defense.”

-Commonwealth v. Torres, 564 Pa. 219, 224, 766 A.2d 342, 345 (2001)

“The Commonwealth sustains [its burden to prove that self defense was not justified] if it establishes **at least one of the following**: 1) the accused did not reasonably believe that he was in danger of death or serious bodily injury; or 2) the accused provoked or continued the use of force; or 3) the accused had a duty to retreat and the retreat was possible with complete safety. It remains the province of the jury to determine whether the accused's belief was reasonable, whether he was free of provocation, and whether he had no duty to retreat.”

-Commonwealth v. Hammond, 953 A.2d 544, 559 (Pa. Super. 2008), appeal denied, 600 Pa. 743, 964 A.2d 894 (2009) (quoting McClendon, supra at 1230).

# Other Deadly Force Issues

- Castle Doctrine or “Stand Your Ground” – Home or Outside Home
  - Now, law-abiding citizens can use force, including deadly force, against an attacker in their home and any place outside of their home where they have a legal right to be, subject to the analysis on the prior slide.
  - Attacker against whom stand your ground is invoked must have a visible weapon.
  - PA does not have a disparity of force justification for deadly force.
  - Individuals using justified force are also protected from civil lawsuits by the attacker or the attacker’s family when justified force is used.
  - Otherwise, there’s still a duty to retreat if you can retreat in “absolute safety.” – Let’s discuss Salt Lake City Police Lt. Tueller’s famous drill
- Cessation of Threat – Justification ends when threat stops (however, see Chermansky case)
- Transferred Intent – “Intent follows the bullet”
- Brandishing/Warning Shots
- Insurance coverage – intentional acts

# Commonwealth v. Chermansky, 242 A.2d 237 (Pa. 1968)

A private person in fresh pursuit of one who has committed a felony may arrest without a warrant. Commonwealth v. Micuso, 273 Pa. 474, 117 A. 211 (1922); Commonwealth v. Long, 17 Pa.Super. 641 (1901); 2 Trickett, The Law of Crimes in Pennsylvania 683 (1908). And in Pennsylvania we have always followed the common law rule that if the felon flees and his arrest cannot be effected without killing him, the killing is justified. See Commonwealth v. Micuso, supra; 2 Trickett, supra. We hasten to note that before the use of deadly force is justified the private person must be in fresh pursuit of the felon and also must give notice of his purpose to arrest for the felony if the attending circumstances are themselves insufficient to warn the felon of the intention of the pursuing party to arrest him.

The common law principle that a killing necessary to prevent the escape of a felon is justifiable developed at a time when the distinction between felony and misdemeanor was very different than it is today. Statutory expansion of the class of felonies has made the common law rule manifestly inadequate for modern law. Hence, the need for a change or limitation in the rule is indicated. **We therefore hold that from this date forward the use of deadly force by a private person in order to prevent the escape of one who has committed a felony or has joined or assisted in the commission of a felony is justified only if** the felony committed is treason, murder, voluntary manslaughter, mayhem, arson, robbery, common law rape, common law burglary, kidnapping, assault with intent to murder, rape or rob, or a felony which normally causes or threatens death or great bodily harm. **We also note that for the use of deadly force to be justified it remains absolutely essential, as before, that one of the enumerated felonies has been committed and that the person against whom the force is used is the one who committed it or joined or assisted in committing it.** Commonwealth v. Duerr, 158 Pa.Super. 484, 45 A.2d 235 (1946). **If the private citizen acts on suspicion that such a felony has been committed, he acts at his own peril. For the homicide to be justifiable, it must be established that his suspicion was correct.**

# After Deadly Force: One View

After calling 911 to request EMS and police and directing them to any injured person, what do you say to the police or EMS when they arrive?

“I wish to invoke my right to remain silent. I will not answer any questions before speaking to an attorney.”

When pressed, repeat and say nothing else.

# After Deadly Force: A Second View

What do you do after  
a self defense shooting?

- Call 911 and request EMS and police.
- Inform the arriving officer(s) that you were attacked and that you are willing to sign a complaint against the attacker.
- Show the officer any relevant evidence on the scene.
- Point out any witnesses to the officer.
- Inform the officer that he will have your full cooperation after you see your attorney, and make sure he knows that you've requested to speak to an attorney. Remember: you must clearly state that you are now invoking your right to remain silent and will not answer any further questions.

**THEN SHUT UP.**

# Deadly Force: The Aftermath

Physical

Mental

Civil Actions

Continued Ownership of Firearms and  
Exercise of Firearms Rights

# Firearms Scenarios: Navigating the Ethical Minefields

# Can You Hang Onto This for Me?

- Client calls you for a consult and you meet him in person at your office.
- He's been charged with a crime and has been told no firearms while charges are pending as a condition of bail.
- He wants you to hold his firearms for him while the charges are pending.
- You then find out after the consult (or the second meeting, or the third meeting) that the one of the firearms he asked you to hold is the firearm he is accused of using as part of the crime he's accused of committing.
- What do you do with the firearm?



# Don't Ask, Don't Tell?

- A client calls you and tells you that he's coming up on a DUI checkpoint and he's armed.
- He wants you to tell him whether to tell the officers he's armed or not?
- He's a 22 year old black man being stopped in Kensington by a clearly white, young police force.
- Different advice if client is white? Suburban?
- Different advice if lawfully armed vs. unlawful?
- Different advice if contraband in the car?

# An Innocent Felony?

- Innocenta walks in to your office seeking your advice. She says she wants to purchase a firearm as a Christmas gift for her boyfriend, Felona.
- You represented Felona several years ago when he was charged with fighting with another guy.
- He pled guilty to something, but you don't recall what. Your file was destroyed in a flood in your basement.
- Innocenta insists on buying this gun for Felona to keep around the house for self defense.
- Felona leaves you a voicemail that he wants the gun and says he will never take it out of the house.
- Who is your client?
- What is the advice?

# Are We Selling This Gun or What?

- Your client owns and operates a legally licensed and properly zoned gun store and calls you with a question.
- A customer is in the store wishing to purchase a firearm. The purchaser cannot speak, and is confined to a wheelchair. He is accompanied by a caretaker who is doing the talking telling you what the wheelchair-bound prospective purchaser wants.
- Can you complete the sale?
- The caretaker has a tear drop tattooed under the corner of one eye.
- The purchaser cannot move his arms. He communicated with hand signals to the caretaker.
- The caretaker has cash to make the purchase.
- The purchaser brought a copy of the ADA for your client.

# Are You My Reference?

A long-time client and friend listed you as a reference on his application for a License to Carry Firearms.

Today, the local Sheriff's office left you a voicemail asking to speak to you regarding the application.

You are aware from your representation and from your personal interactions that your client/friend has early stages of dementia which has worsened over time.

You became aware of his dementia a few years ago when he consulted with you after his diagnosis, and asked you to prepare POA's and other directives for him.

You have not seen him since you drafted the documents a few years ago.

You saw the client's son recently in an airport, and he told you that his dad is mostly lucid in the morning hours, but as the day wears on, his dementia worsens. By evening, he acts extremely confused and has almost no short term memory.

What are your obligations and to whom?

# Obtaining Additional Information

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