

The Federal Firearm Laws and Their Effect on Possession of Rifles and Shotguns for Use For Lawful Sporting and Hunting Purposes.

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One of the most frequently asked questions that I receive concerns what effect a past conviction has upon an individual's right to possess rifles and/or shotguns solely for hunting or lawful sporting purposes. As you can imagine, the number of questions along this line of inquiry increases dramatically in the fall of the year as deer hunting season approaches. The answer is somewhat complicated, but simply put, the federal firearm statutes do prohibit an individual with certain types of prior criminal convictions from possessing firearms or ammunition for any purpose. In order for such an individual to legally possess firearms or ammunition, under federal law, such an individual must have had his right to possess firearms restored.

The applicable federal statute is fairly straightforward. Title 18, United States Code, Section 922 (g) (1) states in its relevant part:

(g) It shall be unlawful for any person-(1) who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year..

to... possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

This is commonly known as the "felon in possession" statute. Of note is the fact that the federal law, unlike the state, makes possession of firearms and ammunition by a felon a criminal offense. This statute has three elements:

1. The weapon must be a firearm as defined under federal law or ammunition as defined under federal law.

Initially, it is important to note the difference between the definition of the term "firearm" under New York State law as opposed to federal criminal statutes. Under New York State law the term "firearm" refers only to handguns, that is, revolvers or pistols, illegally shortened rifles or shotguns, and semiautomatic assault rifles. More to the point, rifles and shotguns are not considered firearms under New York State law.

Federal law, however, defines "firearms" to be "any weapon"... which will or is designed to or may readily be converted to expel a projectile by the action of an explosive" (18 USC § 921 (a) (3) (A)). As such, the federal definition of "firearm" is broader than the state definition. Simply put, federal firearm statutes cover and include not only handguns, but also rifles and shotguns. For the purposes of this article, the only weapons that would not be covered by the federal firearm statutes would be either antique firearms, manufactured before 1898 or a muzzle loading rifle, shotgun or pistol, designed to use black powder or a black powder substitute and which could not use fixed ammunition.

Ammunition, under federal law, is defined as "ammunition or cartridge cases, primer, bullets or propellant powder, designed for use in any firearm." (18 USC § 921 (a) (17) (A)). Thus, any one of the components of ammunition is enough to qualify as "ammunition" under federal law.

2. The weapon or ammunition must have traveled in interstate or foreign commerce.

The second element requires that the firearm or ammunition must have traveled in interstate or foreign commerce. This simply requires that the firearm or ammunition must have crossed a state line or international border at sometime prior to its possession by the individual. This element is usually satisfied when the firearm or ammunition has been manufactured outside of New York State.

However, firearms manufactured within New York State, for example, Remington or Ithaca rifles or shotguns, that are sold to large federal firearms dealers who store them outside of New York State, only to later ship them to the individual stores within New York State, would also satisfy this element as they have crossed a state line. For example, Wal-Mart usually stores all of the firearms purchased for its corporation in the State of Arkansas. Thus, most firearms purchased from Wal-Mart stores, even if originally manufactured in the State of New York, have probably been stored in the state of Arkansas and then brought back into New York State, thereby satisfying the second element of this offense.

It is important to note that it is not necessary that the individual possessing the firearm was aware that it had crossed a state or international border. Nor is it necessary that the individual possessing the firearm actually carried or transported the firearm across such a border. The statute is satisfied if at any time prior to their possession by an individual either the firearm or the ammunition had crossed a state or international border. Furthermore, even if the firearm itself had been manufactured in New York and never traveled outside the state, if the ammunition or any component of the ammunition with which the weapon was loaded had been manufactured outside of New York State, the federal laws would apply.

3. The "prohibited" individual must have previously been convicted in any court of the crime punishable by imprisonment for a term exceeding one year.

The third requirement for prosecution under this statute is that the individual in question had previously been convicted in any court of a crime punishable by imprisonment for a term exceeding one year. It is not necessary that the individual actually received a sentence of imprisonment for a term greater than one year. It is sufficient if the crime for which he/she was convicted could have resulted in a sentence of imprisonment greater than one year. In New York State, crimes punishable by a term of imprisonment greater than one year are considered felonies. Therefore, an individual convicted of a New York State felony, even if he/she received only a sentence of probation, would still be subject to this federal statute and would be prohibited from possessing any firearms (including rifles and shotguns) or ammunition.

Moreover, the term "in any court" means exactly what it says. Any such conviction in any state

court or foreign court would qualify under this statute and subject the individual to prohibition from possessing any firearm or ammunition. The age or date of such conviction is irrelevant. Any such conviction whether it occurred thirty days or thirty years ago would subject the individual to this statute.

There exists however, several means and remedies to restore a prohibited person's right to possess firearms and ammunition. These means and remedies vary from state to state, and indeed from country to country. I shall confirm the present discussion to only those remedies available in New York State.

What constitutes a crime that will trigger the prohibition of 18 U.S.C. § 922 (g) (1) is determined by "the law of the jurisdiction in which the proceedings were held" (18 U.S.C. § 921 (a) (20)). Therefore, the law of the country or state where the conviction occurred will control whether or not an individual is prohibited from possessing firearms or whether an individual has had his/her rights to possess firearms restored. For purposes of this discussion, simply put, if New York has restored an individual's "full right" to possess all types of firearms, then he/she is no longer prohibited by federal statutes from possessing firearms and ammunition. I emphasize the term "full right" to possess all types of firearms in New York State, I mean the right to possess both long guns, rifles and shotguns in New York and the right to apply for a New York State permit to possess had guns.

Although there are other means in New York State of restoring an individual's right to own and possess firearms (e.g., gubernatorial pardon, presidential pardon) the vast majority of such restorations occur when the prohibited individual receives a Certificate of Relief for Disabilities. Certificates of Relief from Disabilities in New York state are classified into three categories and are identified as type "A", Type "B", or Type "C."

A Type "A" Certificate of Relief from Disabilities can be issued by any competent court of the State of New York. Type "A" Certificates are issued by the court at the time of sentencing of an applicant/defendant. Type "A" Certificates immediately restore an applicant's /defendant's "full right" to possess firearms in New York State. A type "A" Certificate restores this right to the applicant at the time of its issuance by the sentencing court, that is, the day of sentencing of the applicant/defendant. Because a Type "A" Certificate restores the applicant's/defendant. Because a Type "A" Certificate restores the applicant's/defendant's "full right" to possess firearms in New York State, it also restores the individual's federal right to possess firearms and ammunition.

A Type "B" Certificate of Relief from disabilities is also issued by any court of New York State, but at some time after the applicant/defendant has been sentenced, usually after the sentence has been completed. A Type "B" certificate restores and applicant's/defendant's "full right" to possess firearms in New York State and therefor also restores his her federal right to possess firearms and ammunition.

A Type "C" Certificate of Relief from disabilities can be issued by any court of New York State and/or the New York State Board of Parole (a distinction that I shall discuss in a moment). A Type "C" Certificate differs from a Type "A" and "B" certificate in that a Type "

C" certificate requires the issuing entity to explicitly enumerate which disabilities are being removed and/or which rights are being restored. Simply put, if a Type "C" certificate does not explicitly list that an applicant's right to possess firearms in New York State is being restored, the recipient would not have such firearms privileges restored. In this instance, it would be unlawful for such an individual to possess firearms under New York State law. Additionally, it would be unlawful for such an individual to possess firearms or ammunition under federal law.

As mentioned above, the distinction between the New York State definition of firearms (handguns) and the federal definition of firearms (handguns and long guns) has given rise to one very important anomaly with respect to a Type "C" Certificate of Relief from Disabilities. While a Type "C" Certificate that restores the "full right" to possess all types of firearms in New York State to an applicant would also restore the applicant's federal right to possess firearms and ammunition, a Type "C" Certificate that restores only a partial right to possess certain specified types of firearms in New York state, does not restore such individual's federal right to possess firearms and ammunition.

For example, a Type "C" Certificate that restores an individual's New York state right to possess rifles and shotguns for hunting purposes does not restore that individual's "full right" to possess firearms in New York state and therefore does not restore that individual's federal right to possess firearms and ammunition. Put another way, even though such an individual could legally possess rifles and shotguns under New York State law, possession of said rifles and shotguns and ammunition would be in violation of and illegal under federal statutes.

In order for a Type "C" Certificate to restore an individual's federal firearm rights and privileges, the Certificate must not only specifically restore the applicant's right to possess rifles and shotguns under New York State law but must also restore the applicant's right to apply for a New York State permit to possess handguns. Absent the Type "C" Certificate's specific mention of the restoration of the applicant's right to apply for a New York State Pistol Permit, the applicant's federal right to possess firearms and ammunition is not restored.

As stated above, any court of New York state can issue Type "A", "B" or "C" Certificates of Relief from Disabilities. The New York State Board of Parole issues only Type "C" Certificates. New York State courts may issue Certificates of Relief from Disabilities for any applicant who, upon conviction of a felony, received a sentence of one year incarceration or less and if sentenced to a period of incarceration, served that period in a local institution, e.g., a county jail. Any applicant who was sentenced to a period of incarceration of greater than one year, or who served a period of incarceration in an institution under the jurisdiction of the State Department of Correctional Services (state time) can only receive a Certificate of relief from disabilities from the New York state Board of Parole. Such Certificate would be a Type "C" Certificate.

Finally, any individual who has been convicted more than one time of a felony offense is not eligible to receive a Certificate of Relief from disabilities under New York State law. In summary then:

Type "A" Certificates of Relief from disabilities:

Are issued by courts of New York State at the time of sentencing and,

Restores the "full right" to possess all types of firearms in New York State and therefore also restores the right to possess firearms and ammunition under federal law to the individual.

In Type "B" Certificates of Relief from Disabilities:

Are issued by New York State courts at some time after the sentencing of an applicant, and,

Restores the "full right" to possess all types of firearms in New York State and therefore also restores the right to possess firearms and ammunition under federal law to the individual.

Type "C" Certificates of Relief from Disabilities:

Are issued by New York State courts if the applicant did not serve a period of "state time" incarceration:

Are issued by the New York State Board of Parole if the applicant did serve a period of "state time" incarceration;

Must specify what privilege is being restored, and only restores the right to possess firearms and ammunition under federal law if it restores the "full right" to possess all types of firearms in New York State, that is, if it restores the applicant's privilege to possess long guns and to apply for a New York State Pistol Permit (the right to possess handguns in New York).

It is obvious that the restoration of federal firearm and ammunition privileges is a complex legal issue and procedure. While such Certificates of Relief from Disabilities are often granted to applicants, the process can be long and complicated and almost invariably requires the services of a competent attorney.

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