

The Top Ten Things You Need to Know about Federal Gun Law

By Keith Williams, Greenville, North Carolina
Board Certified Specialist, Federal and State
Criminal Law



Intro: Why does this matter to you?


- Because our state clients are “sitting ducks” for federal gun prosecution, and we need to help them

- “In the past three years, federal gun prosecutions have increased by 68 percent.”
 - -John Ashcroft, December 11, 2003



The Top Ten (in no particular order)


- #10: No Guns for Felons
- #9: No Guns after Misdemeanor Domestic Violence (DV) Convictions
- #8: PJC's Are No Help
- #7: No Guns While Under Indictment
- #6: No Guns for Drug Users

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- #5: No Home or Business Exception
 - #4: No Exception for Long Guns
 - #3: No Guns AND No Ammo
 - #2: Ignorance of the Law is No Excuse
 - #1: No Realistic Chance of Regaining the Right to Own a Gun




#10: No Guns for Felons

- “Felon” means anyone “who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year”
- Even low level Class I felonies included, because they are “punishable” by more than one year imprisonment in Prior Record Level VI

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- Misdemeanors are not included in this category, even if they are punishable by more than one year imprisonment:
 - DWI's
 - General Misdemeanors under the old Fair Sentencing Act (pre-October 1, 1994)
 - BUT: some misdemeanors are subject to the federal gun ban in the next category . . .

#9: No Guns After Misdemeanor Domestic Violence (DV) Convictions

- Any misdemeanor that “has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.”


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- Two parts:
 - Conviction for a misdemeanor assault (simple assault, assault on a female, etc)
 - Victim is spouse, ex-spouse, significant other, child
 - Lifetime federal gun ban – just like felons
 - Also applies to communicating threats for threatening use of a deadly weapon

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- What about civil domestic violence protective orders (DVPO's)?
 - Federal gun ban applies while the DVPO is in effect, but not after
 - ***Practice Tip:*** agree to the entry of the DVPO in exchange for dismissal of the misdemeanor crime of domestic violence
 - Client gets guns back after DVPO expires



#8: PJC's Are No Help


- ❑ The argument would be: a PJC is not a “conviction” under state law; therefore, a PJC on a misdemeanor crime of DV or a PJC on a felony is not a “conviction” triggering the federal gun ban
- ❑ But for PJC's on DV misdemeanors: no room in the federal statutes to make this argument
- ❑ And for PJC's on felonies, state law ruins it for us:


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- Federal law does open the possibility of looking to state law to see whether a felony with a PJC counts as a conviction
 - But if the federal courts look to our state's law, they will see *State v. Friend*, --- N.C. App. ---, 609 S.E.2d 473 (March 15, 2005): NC Court of Appeals held that a PJC in a felony case qualifies as a “felony conviction” for purposes of the North Carolina felon in possession statute
 - If it's a conviction for the state gun statute, then it's almost certainly going to be a conviction for the federal gun statute



#7: No Guns While Under Indictment

- Anyone who is “under indictment for a crime punishable by imprisonment for a term exceeding one year” is not allowed “to ship or transport . . . any firearm or ammunition or receive any such firearm or ammunition.”
- Even if they have no prior felony convictions


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- Expressly bans “receiving” and “transporting” and “shipping”
 - So you cannot buy a new gun while under indictment – that would be “receiving”
 - What about old guns – the ones you owned before being indicted? Do you have to get rid of them?
 - Maybe not – no mention of merely “possessing” a gun

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- But – if you possess it in your car, you are probably “transporting” it
 - What if you have it in your pocket while you are walking down the street?
 - Would you like your client to be the test case in the Fourth Circuit?
 - I tell my clients not to have any guns at all while under indictment – old or new



#6: No Guns for Drug Users


- Anyone “who is an unlawful user of or addicted to any controlled substance”
- Case law:
 - “[T]he exact reach of the statute is not easy to define.”
 - Does not apply to “infrequent” drug users or to those who used drugs in the “distant past”

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- Applies to those whose drug use is “sufficiently consistent, ‘prolonged,’ and close in time to [their] gun possession to put [them] on notice that [they] qualified as an unlawful user of drugs under the statute”
 - If you have someone with a known drug problem, tell them to get rid of their guns
 - For close calls, advise them of the law and let them decide



#5: No “Home or Business” Exception

- Never under federal law
- And not any more under state law
 - Before December 1, 2004, state law permitted a felon to keep a gun “within in his own home or on his lawful place of business”
 - But that was eliminated effective December 1, 2004

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- And even when it was OK under state law, it was not OK under federal law
 - “[T]he fact that state law permitted [the defendant] to possess a firearm in his home despite his status as a convicted felon . . . [was] not sufficient to insulate him from federal prosecution.” *United States v. King*, 119 F.3d 290, 293 (4th Cir. 1997)



#4: No Exception for Long Guns


- Never under federal law
- And not anymore under state law
 - Prior to December 1, 2004, North Carolina's felon-in-possession statute prohibited only the possession of a “handgun or other firearm with a barrel length of less than 18 inches or an overall length of less than 26 inches.”
 - But that was eliminated effective December 1, 2004

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- And even when it was OK under state law, it was not OK under federal law



#3: No Guns AND No Ammo

- The federal ban forbids possession of any “firearm”
 - “Any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive.” Also includes the frame of a weapon and silencers.
- It also forbids possession of any “ammunition”
 - “Cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.”


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- So – could possession of a single bullet lead to federal prosecution?
 - YES – at least in Pitt County (Greenville)
 - Actual possession – bullet in shirt pocket
 - Nothing yet on constructive possession – let me know if you hear about that

#2: Ignorance of the Law is No Excuse

- Prosecutors in federal court are NOT required to prove that the defendant knew that he was subject to the federal firearms ban
- “The only knowledge the [G]overnment [is] required to prove . . . [is] knowledge of the possession [of the weapon or ammo]” *United States v. Mitchell*, 209 F.3d 319, 322-23 (4th Cir.), *cert. denied*, 531 U.S. 849 (2000)

#1: No Realistic Chance of Regaining the Right to Own a Gun


- Under state law:
 - Prior to December 1, 1995, a felon automatically regained the right to own a gun five years after finishing his felony sentence
 - As of December 1, 1995:
 - No more regaining that right
 - And if you regained it prior to December 1, 1995, you lost it again as of December 1, 1995 – applied to ALL felons, even those convicted before December 1, 1995



□ Wasn't that an *ex post facto* violation? Not according to *State v. Johnson*, --- N.C. App. ---, 2005 WL 756283 (April 5, 2005)

□ Under federal law:

- There is a statute that allows you to apply to ATF for special permission to own a gun
- But since October 1992, Congress has prohibited ATF from spending any money to process such applications

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- If you submit the application, ATF will return it saying “sorry, we can’t do anything with this”
 - Mr. Bean objected to this and sued in federal court – to no avail
 - *United States v. Bean*, 537 U.S. 71 (2002)
 - You can still apply for a pardon under federal or state law
 - Good luck



Conclusion

- “Hey, let’s be careful out there”