

## Firearm Possession Prohibition

### U.S. PROBATION OFFICE - DISTRICT OF NEW HAMPSHIRE

Federal law (18 U.S.C. § 922[g][1-9]) prohibits certain individuals from possessing firearms, ammunition, or explosives. The penalty for violating this law is ten years imprisonment and/or a \$250,000 fine. The State of NH statute RSA 159:3 also makes it illegal for individuals who have been convicted of a crime against the person or property of another or for a drug offense from owning or having in his possession or under his control (emphasis added) a firearm or dangerous weapon as defined by NH law. While the NH statute is less restrictive in its prohibition, the more restrictive restrictions of 18 U.S.C. § 922(g)(1-9) take precedence and will be enforced by your U.S. Probation Officer. Further, 18 U.S.C. 3565(b)(2) (probation) and 3583(g)(2) (supervised release) makes it mandatory for the Court to revoke supervision for possession of a firearm.

Specifically, 18 U.S.C. § 922(g)(1-9) prohibits the following from possessing, shipping/transporting, or receiving any firearm or ammunition:

- (1) a person convicted of a crime punishable by imprisonment exceeding one year;
- (2) a person who is a fugitive from justice;
- (3) a person who is an unlawful user of or who is addicted to a controlled substance;
- (4) a person who has been adjudicated as a mental defective or who has been admitted to a mental institution;
- (5) an alien who is unlawfully in the United States or who has been admitted to the United States under a nonimmigrant visa;
- (6) a person who has been discharged from the Armed Forces under dishonorable conditions;
- (7) a person who, having been a citizen of the United States, renounces his citizenship;
- (8) a person subject to a court order that was issued after a hearing in which the person participated, which order restrains the person from harassing, stalking, or threatening an intimate partner or partner's child, and which order includes a finding that the person is a credible threat to such partner or partner's child, or by its terms prohibits the use, attempted use or threatened use of such force against such partner or partner's child;
- (9) a person who has been convicted of a misdemeanor crime of domestic violence.

Possession of a firearm may be either actual or constructive. The latter has been defined as follows: "Constructive possession exists when a person knowingly has the power and intention at a given time of exercising dominion and control over the object or over the area in which the object is locate...." (See U.S. v Booth, et.al. 111 F.3d 2 [1st Cir. September 1997]). If you know the firearm is present in your residence, vehicle, etc., and if it can be shown that you have the ability to access and exercise control over that firearm personally or through another individual, then you could be considered to have constructive possession of the firearm. You would then be subject to new criminal charges and/or revocation of supervision. For these reasons, all firearms are to be removed from your residence during the term of supervision.

REVIEWED: \_\_\_\_\_  
Date Defendant

BY: \_\_\_\_\_  
Date USPO