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TO: All County Prosecutors
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FROM: Derek Necekas, Interim Director, Division of Criminal Justice

DATE: June 29, 2023

SUBJECT: Guidelines Regarding Prohibited Conduct Relating to Firearms Not Imprinted with a Serial Number Pursuant to N.J.S.A. 2C:39-3(n) and N.J.S.A. 2C:39-9(n).

I. Introduction

Effective July 16, 2019, amendments to Chapter 39 of the New Jersey Code of Criminal Justice prohibit the knowing possession, transportation, shipment, sale, or other disposition of “a firearm manufactured or otherwise assembled using a firearm frame or firearm receiver as defined in subsection k. of N.J.S.2C:39-9 which is not imprinted with a serial number registered with a federally licensed manufacturer including, but not limited to, a firearm manufactured or otherwise assembled from parts purchased or otherwise obtained in violation of subsection k. of N.J.S.2C:39-9.” L. 2019, c. 165, §§ 2, 3. Specifically, N.J.S.A. 2C:39-3(n) was established to prohibit the knowing possession of such a firearm, L. 2019, c. 165, § 2, and N.J.S.A. 2C:39-9(n) was established to prohibit the transportation, shipment, sale, or disposition of such a firearm. L. 2019, c. 165, § 3.

There has been some question as to (1) the meaning of “a firearm manufactured or otherwise assembled using a firearm frame or firearm receiver . . . which is not imprinted with a serial number registered with a federally licensed manufacturer,” as used in N.J.S.A. 2C:39-3(n) and N.J.S.A. 2C:39-9(n), and (2) whether it may be read as extending to various categories of firearms that are not required by federal law to bear a registered serial number, including:

- Firearms that use air, carbon dioxide, or springs to expel a projectile, such as pellet or “BB” guns;
- Antique firearms; and



- Firearms manufactured before 1968, when federal law first began requiring that firearms be imprinted with individual serial numbers.

Given this ambiguity, there is a concern that the law could be inconsistently applied with regard to the possession, transportation, shipment, sale, or other disposition of those firearms. To address this concern, it is appropriate for the Division of Criminal Justice to provide guidance to ensure that the law is administered uniformly and effectively throughout the State. N.J.S.A. 52:17B-98. A copy of these guidelines may be provided to any member of the public who requests information regarding firearms that are not imprinted with a serial number registered with a federally licensed manufacturer.

II. Guidelines

Consistent with the underlying purpose of N.J.S.A. 2C:39-3(n) and N.J.S.A. 2C:39-9(n) to prevent the proliferation of unregistered and untraceable firearms (“ghost guns”), these subsections prohibit the knowing possession, transportation, shipment, sale, or other disposition of a firearm that is not imprinted with a serial number registered with a federally licensed manufacturer. These prohibitions on conduct involving firearms that do not bear a serial number must be “construed according to the fair import of their terms but when the language is susceptible of differing constructions it shall be interpreted to further the general purposes stated in this section and the special purposes of the particular provision involved.” N.J.S.A. 2C:1-2(c). In this case, implicit in the prohibitions in N.J.S.A. 2C:39-3(n) and N.J.S.A. 2C:39-9(n) is the requirement that the firearm—more specifically, its frame or receiver—is required to be imprinted with a serial number in accordance with federal law.

Pursuant to federal law, 18 U.S.C. § 923(i), “[l]icensed importers and licensed manufacturers shall identify, by means of a serial number engraved or cast on the receiver or frame of the weapon, in such manner as the Attorney General shall by regulations prescribe, each firearm imported or manufactured by such importer or manufacturer.” 18 U.S.C. § 923(i). With limited exceptions, federal regulation requires “licensed manufacturers and licensed importers of firearms [to] legibly identify each firearm they manufacture or import” with an individual serial number. 27 C.F.R. § 478.92.¹ Significantly, the definition of a “firearm” is more limited under federal law than it is under New Jersey law, and includes only

(A) 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; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

¹ For purposes of this guidance, consistent with the cited federal law and regulation, the reference to “federally licensed manufacturer” in N.J.S.A. 2C:39-3(n) and N.J.S.A. 2C:39-9(n) shall be deemed to include federally licensed importers.

[18 U.S.C. § 921(a)(3); accord 27 C.F.R. § 478.11.]

Accordingly, federal law does not require firearms that use air, carbon dioxide, or springs to expel a projectile; antique firearms; and firearms manufactured prior to the effective date of 18 U.S.C. § 923(i) to be imprinted with an individual serial number. N.J.S.A. 2C:39-3(n) and N.J.S.A. 2C:39-9(n) shall be enforced likewise.

III. Purpose and Effect of these Guidelines

In enforcing N.J.S.A. 2C:39-3(n) and N.J.S.A. 2C:39-9(n), prosecutors and police should remember that a violation of these subsections requires, respectively, that the defendant knowingly possessed or transported, shipped, sold, or otherwise disposed of a firearm manufactured or otherwise assembled using a firearm frame or firearm receiver that is not imprinted with a serial number registered with a federally licensed manufacturer or importer of firearms despite being legally required to bear one.

These guidelines shall be followed by all county prosecutors and all law enforcement officers in this State.