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## Forecast 2014: Gun Owners Worry About Enforcement Of Laws

RACHEL BAIRD

The Connecticut Law Tribune

2013-12-27 20:24:43.0

Although debate over the sale, possession and use of firearms came to the forefront in the wake of the Sandy Hook Elementary shootings, attorneys involved with firearms law know that there were troubling issues even before December 2012. And the rights of gun owners will likely face further attacks in 2014.

Here's one such problem: For years, State Police officers in the Special Licensing and Firearms Unit have issued notices threatening people who are the subject of ex parte restraining orders with arrest for felony criminal possession of firearms — unless they immediately surrendered or transferred their firearms. (Such restraining orders are imposed by the courts in cases where one person may pose a danger to another — often in divorce and domestic violence situations.)

The threat of arrest was baseless as a matter of law. State and federal laws, in accord with the due process clause of the Fourteenth Amendment, require notice and opportunity to be heard on restraining orders before criminal liability attaches to the continued possession of firearms. Until the Connecticut legislature enacted Public Act 13-3 on April 4, 2013, no one took notice of this abuse of authority because it was easy enough for owners to retrieve their firearms from federal firearms licensees when the ex parte order was dissolved and no restraining order was entered.

But the expansion of the types of firearms defined as assault weapons under PA 13-3, and the prohibition of their transfer after April 4, has left more than one owner unable to reclaim his or her firearms. An assault weapon, once transferred to a federal firearms licensee, cannot be transferred back in Connecticut. So when owners who received the threatening notice could not retrieve their firearms after April 4, the long-standing State Police practice of unjustly threatening certain firearms owners with criminal liability for continued firearms possession was exposed.

The chaos in the Firearms Unit will become even more apparent after Jan. 1, 2014, and doubtless be attributed by apologists to the burdens placed upon State Police in implementing complex new laws. But the new statutes have simply exposed what any attorney with a firearms practice in Connecticut has known for years: the Firearms Unit does not know the law, and holds local police departments, the legislature, courts, and ultimately firearms owners at its mercy because few have the courage and confidence in their own knowledge of the law to question State Police about firearms matters.

Put simply, a transfer of property executed under threat of unlawful arrest and prosecution by a sworn law enforcement officer is not a lawful transfer. If the property were anything other than firearms, the dispossession of private property by state-sponsored extortion simply would not be tolerated.

For now, the Firearms Unit has grudgingly modified its unlawful, misleading notice. The document now includes, as a basis for the threat of arrest, a check mark placed by the court on the ex parte order requiring the surrender or transfer of firearms.

But the Department of Emergency Services and Public Protection, which oversees the State Police, is still wrong. Under the law there is no such criminal liability for failure to surrender or transfer firearms under an ex parte order. The matter is civil. And so any

threat of arrest constitutes an abuse of authority. The courts participate in this abuse by using an ex parte order judicial form that allows judges to deprive firearms owners of property, sometimes permanently, with no notice or opportunity for hearing.

#### Assault Weapons Ban

One day a firearm is not an assault weapon, the next day it is. This past spring, firearms became assault weapons because they were specifically and arbitrarily named as such in state law or because they have certain characteristics. Whether by name or characteristics, if a firearm is defined as an assault weapon, it is subject to prohibitions on transfer and possession and must be registered before Jan. 1, 2014.

However, one portion of chapter 943 of the Connecticut General Statutes exempts a firearm that is not banned by name, but still has the characteristics of an assault weapon, from the prohibitions and registration requirements, as long as the firearm was manufactured prior to Sept. 13, 1994.

In an Oct. 11, 2013 letter to attorney David Clough, Reuben Bradford, who was commissioner of the Department of Emergency Services and Public Protection until he retired in late December, opined that every firearm which would otherwise qualify as an assault weapon is exempt from the prohibitions and registration requirements if the firearm was manufactured prior to Sept. 13, 1994.

But that's not correct. If the firearm is banned by name, then its manufacture date is immaterial. The Sept. 13, 1994 date applies only to exempt assault weapons banned *solely* because of their characteristics.

Firearms owners who have relied on Bradford and the Firearms Unit for direction in complying with the new gun laws risk mandatory jail time. On Dec. 22, a detective in the unit issued a partial retraction of the commissioner's opinion, and so the State Police may finally be on the right track.

Still, what the last two months have shown is that firearms owners cannot trust what the Department of Public Safety says and that courts will not care where private citizens got their information and why they didn't follow the law.

If the property were any other than firearms, the ambiguity in the law would inure to the benefit of the law-abiding individual. But because the property is firearms, the only sure thing is that if firearms owners are arrested it will mean a high bond and front-page news.

Criminal attorneys will need to familiarize themselves thoroughly with this issue.

#### Targets And Scapegoats

The stock market crash of 2008 was not the cause of the chaos in the financial sector. The chaos existed long before the crash. Bernie Madoff might have gone on profiting for years. But the market crashed. The quicksand on which his success was built became apparent, and Madoff was exposed.

Likewise, the Newtown shootings and the heavy-handed gun control legislation that followed did not cause the current chaos and confusion among the state's firearms owners. Rather, those developments have only served to expose enforcement problems that have been lingering for years.

The Firearms Unit has operated with impunity for years, acting as the expert in gun matters, ostensibly educating local police departments, elected officials, prosecutors, and the courts. Now the failure to interpret or follow the laws as written has been exposed. And as we proceed into 2014, the light cast on the Firearms Unit will burn brighter.

Here's one prediction for the coming year: law-abiding firearms owners will ultimately pay the price and serve as targets and scapegoats for a reactionary government caught in a quagmire of its own making.

When the registration records of assault weapons are tallied after Jan. 1, 2014, there will inevitably be differences between the list of assault weapons registered and the list that already exists in the state database of long-gun purchases voluntarily reported by retail gun stores prior to April 4, 2013.

When that happens, state and local police will come knocking on the doors of law-abiding citizens to interrogate, inspect, and threaten arrest if registration records do not match the purchase records. The problem is that reporting private sales of long guns prior to April 4, 2013, was not required. And so, for many firearms there is a record of purchase but no record of subsequent sale.

Just as the public safety commissioner and the Firearms Unit have got it wrong on other issues, state and local police will get it wrong when they presume that records of pre-April 4, 2013 purchases and post-Dec. 31, 2013 assault weapon ownership registrations will match. The next step on this slippery slope will be to require law-abiding citizens to prove a negative: that they do not own a particular firearm linked to them through a pre-April 4 sale reported voluntarily to the Firearms Unit.

That sort of conduct hacks away at the Fourth Amendment. Whenever a piece of the Fourth Amendment withers on an extremity fed by fear, the entire body suffers. Infringement of constitutional protections will not end with the search for unregistered assault weapons. Soon enough, the path cut through such protections will be trod for other reasons, unforeseeable but certain, and that should concern everyone, not just firearms owners.

Rachel Baird is a Torrington attorney whose practice includes representing owners of firearms.



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