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Frequently Asked Questions (FAQs) for HB 1178

This FAQ document is provided by the Department of Justice as guidance for state and local law enforcement officers on the legal impact of HB 1178, *An act prohibiting the state from enforcing any federal statute, regulation, or Presidential Executive Order that restricts or regulates the right of the people to keep and bear arms.*

This document may be updated from time to time with clarifications or answers to additional questions that arise as law enforcement officers work with the new law.

Attorney General Opinion No. 2022-01 outlines the Attorney General's official interpretation of the legal impact of HB 1178, and may be of additional use to state and local law enforcement officers who have questions regarding the legal impact of HB 1178. The Opinion can be accessed at www.doj.nh.gov/public-documents/opinions.htm.

FAQs

What conduct does HB 1178 prohibit?

The bill commonly referred to as HB 1178 (2022) enacts RSA Chapter 159-E. This law prohibits state and local officials from directly enforcing or administering federal law or cooperating with federal officials with respect to federal firearms laws, unless the conduct is consistent with or authorized by a state law. An exception to this rule is that law enforcement officers may cooperate with or render aid or assistance to federal officials as long as the criminal investigation is not solely one concerning violations of federal firearms law.

For law enforcement, this means that state and local officers are barred from charging individuals in federal court solely with federal firearms violations unless authorized by both state and federal laws.

The prohibition on "cooperating" in HB 1178 does not prohibit law enforcement officers from sharing or reporting information with federal law enforcement authorities.

Can local or state law enforcement officers be deputized by the F.B.I., the U.S. Marshal Service, or the A.T.F. solely to investigate or enforce federal firearms violations?

No, unless authorized to do so by state law. Note that law enforcement officers may, however, be deputized by federal agencies to cooperate with non-firearms related investigations.

Additionally, any such officer who has reasonable suspicion that a state or federal criminal code violation has occurred and, during the course of an investigation (or after an arrest has been made), subsequently or simultaneously discovers that the person may also have violated a federal firearms law, then the law enforcement officer may “cooperate with” or “render aid” to federal authorities in that instance.

Does RSA 159-E prohibit anyone from reporting a potential violation of federal law?

No. The plain language of RSA 159-E:1 does not prohibit any state or local official, or member of the public, from reporting a potential federal or state crime or from dialing 911. This law does not restrict the dissemination or communication of facts or the mere sharing of information or reports by members of the public or by state and local officials.

The principle of “see something, say something” remains a critical component of protecting public safety in our communities. If any individual feels threatened or believes that a crime has occurred or is about to occur, with or without a firearm, that person should immediately contact law enforcement by dialing 911 or otherwise notify a law enforcement officer.

Are state and local law enforcement agencies prohibited from sharing information or records with federal authorities?

No. The plain language of RSA 159-E:1 does not prohibit any state or local official from reporting a potential federal crime, sharing information with federal officials, or rendering aid or assistance with federal officials.

Are state or local law enforcement officers prohibited from participating in federal programs combatting drugs or the opioid crisis?

No. RSA 159-E:1 only applies to laws that solely regulate firearms. State and local officials are not barred from enforcing, administering, or cooperating with federal programs that involve the investigation of non-firearm related offenses such as violations of controlled drug laws. RSA 318-B:23 authorizes “all peace officers within the state, and [] all county attorneys, to enforce all provisions of [the Controlled Drug Act] and to cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to controlled drugs.” Therefore, state and local law enforcement agencies are expressly authorized to assist federal authorities investigating drug-related crimes and any associated firearms offenses. RSA 159-E:2.

Does HB 1178 prohibit state and local law enforcement officers from assisting with federal search or arrest warrants where the sole basis is a violation of a federal firearms law?

No. State and local officials are barred from executing a federal search or arrest warrant that is solely related to the enforcement of federal firearms laws. However, state and local officials may provide back-up or render aid or assistance to the federal government provided such state and/or local law enforcement officers are performing a generalized public safety function to prevent or respond to a potential non-firearm related threat or traffic control functions. Providing such assistance or aid is not considered “cooperating” with federal authorities. Compare RSA 159-E:1 with RSA 159-E:2 (“rendering aid or assistance” are not prohibited acts under RSA 159-E:1, and appear as authorized actions under RSA 159-E:2 as distinct from “cooperating”).

What should a law enforcement officer do if he or she has reason to believe that a federal firearms violation has occurred during a routine traffic stop?

If a traffic stop is made based on reasonable suspicion that a motor vehicle law (or any other state criminal law) has been violated, and the officer subsequently has reason to believe that a federal firearms law has also been violated, the officer is authorized by RSA 159-E:2 to cooperate with and render aid to federal officials in any manner the officer deems prudent under the circumstances, including, but not limited to, taking any action authorized by state law and/or notifying and exchanging information with federal law enforcement officers.

What should law enforcement officers and/or prosecutors do if they become aware that someone is seeking the return of his or her firearms, and the officer believes that returning the firearms to the individual would constitute a federal crime, but not a state crime?

State and local officials must comply with federal criminal laws. RSA 159-E:1 does not bar state or local officials from complying or conforming with federal criminal laws, including ones related to firearms. A state or local official is not considered to be “enforcing” or “administering” federal law if, in some proceeding unrelated to the enforcement of federal firearms laws, a state or local official acts in a such a manner to avoid committing a violation of federal criminal laws. An officer and/or prosecutor resisting the return of a firearm in this manner is not enforcing federal law (i.e., the officer is not seeking to charge the individual with a federal crime), rather, he or she is merely enforcing the applicable criminal laws of New Hampshire and statutes that are incidental thereto, such as those relating to forfeiture (RSA Chapter 617) and/or the treatment of contraband (RSA 595-A:6).

Does HB 1178 allow federally disqualified individuals who have been convicted of a misdemeanor crime of domestic violence while in a “dating relationship” to purchase a firearm in New Hampshire?

No, such a person is disqualified from purchasing a firearm. In New Hampshire, a person may be convicted of a crime of domestic violence if he or she is either a “family or household

member” or an “intimate partner” of the victim. RSA 631:2-b, I. In pertinent part, an “intimate partner” under New Hampshire law means “a person with whom the actor is currently or was formerly involved in a romantic relationship, regardless of whether or not the relationship was sexually consummated.” RSA 631:2-b, III (b). To meet this definition, there is no requirement that the individual was either a current or former spouse nor a requirement that he or she cohabitated with the person. *Id.* Crimes of domestic violence are authorized to be reported to the Department of Safety, which is authorized “to become the point of contact for the federal government for the purposes of the National Instant Criminal Background Check System (NICS).” RSA 159-D:1.

Under federal law, a person is prohibited from possessing a firearm after having been convicted of “a misdemeanor crime of domestic violence.” 18 U.S.C. § 922 (d)(9); 18 U.S.C. § 922 (g)(9). Recently, a new federal law, known as the Bipartisan Safer Communities Act, amended the definition of the above term to include domestic violence crimes committed “by a person who has a current or recent former dating relationship with the victim.” 18 U.S.C. § 921 (a)(33)(A)(ii). The new term “dating relationship” means “a relationship between individuals who have or have recently had a continuing serious relationship of a romantic or intimate nature.” 18 U.S.C. § 921 (a)(37)(A). Note that, similar to the New Hampshire definition of “intimate partner” above, this determination does not turn on whether the victim was either a current or former spouse or whether the individuals cohabitated together. 18 U.S.C. § 921 (a)(37)(B).

The new federal term “dating relationship” is consistent with the state law term “intimate partner,” and therefore reporting such convictions as a federal firearm disqualifier to the Department of Safety (as the federal point of contact as authorized by RSA 159-D:1) is consistent with state law and is not barred by RSA 159-E:1.

Does HB 1178 prevent victims of domestic violence from seeking protective orders pursuant to RSA 173-B or limit their relief with respect to firearms?

No. Victims of domestic violence may continue to seek protective orders pursuant to RSA 173-B. Under the terms of RSA 173-B, a person subject to a protective order may be prohibited from purchasing and possessing firearms. The provisions of HB 1178 do not change the existing statutory process or relief available for victims of domestic violence.

There has been some confusion about the effect of the new federal law, known as the Bipartisan Safer Communities Act, with respect to disqualifying individuals from possessing or purchasing a firearm for those individuals in a “dating relationship.” The federal government has adopted a new disqualifier only for those convicted of a crime of domestic violence who are in a “dating relationship.” (18 U.S.C. § 922(d)(9); 18 U.S.C. § 921 (a)(33)(A)(ii). Under the new federal law, the “dating relationship” disqualifier for domestic violence convictions was not adopted for the purposes of the protective order disqualifier under 18 U.S.C. § 922(d)(8). Instead, the protective

order disqualifier under federal law still requires a showing that the person was an “intimate partner,” which under federal law means a “spouse,” “former spouse,” “a parent of a child,” or “a person who cohabitates or has cohabitated with the person.” 18 U.S.C. § 921(1)(32). This federal definition remains consistent with the term “family or household member” as defined in RSA 173-B:1, X. In other words, the domestic violence protective order provisions set forth in RSA 173-B remain consistent with federal law, and therefore HB 1178 does not change the ability of domestic violence victims to seek protective orders.

What is the effect of HB 1178 on school safety?

Reporting a potential or perceived threat to school safety does not violate the law. The principle of “see something, say something” remains a critical component of protecting public safety in our communities, especially in our New Hampshire schools.

Under New Hampshire law, students are not authorized to bring or possess firearms within a safe school zone without prior written authorization from the superintendent or designee. RSA 193:13, IV; RSA 193-D:1.

State and local law enforcement officers are empowered to respond to, investigate, and take action with respect to any potential threat to schools pursuant to their authority under the New Hampshire Criminal Code. The passage of RSA 158-E (HB 1178) does not alter this.

If any individual feels threatened or believes that a crime has occurred or is about to occur on school property, with or without a firearm, that person should immediately contact law enforcement by dialing 911, immediately notifying a law enforcement officer, and/or activating their local emergency operations plan.

If school officials are unclear whether there is a public safety or criminal code violation, they should immediately seek assistance from law enforcement. As our Office has previously advised, although state and local officials generally do not possess the authority to enforce federal firearms laws, including the Gun Free Schools Act, that by itself does not control whether someone is violating state law with respect to the New Hampshire Criminal Code. Members of the public or school employees always have the ability to contact state or local law enforcement if they perceive a threat (regardless of whether that threat involves a firearm), and state and local law enforcement have always had and continue to have the authority to respond to such calls.

What is HB 1178’s effect on a police chief’s authority with respect to concealed carry license applications?

HB 1178 does not change the existing process with respect to concealed carry license applications. RSA 159:6, I (a) states that the “chief of police of a city or a full-time police officer [of a town] designated by [the selectboard]...upon application of any resident of such town, city... shall issue a license to such applicant authorizing the applicant to carry a loaded pistol or revolver in this state for not less than 5 years from the date of issue, if it appears that the applicant has good reason to fear injury to the applicant's person or property or has any proper

purpose, unless the applicant is prohibited by New Hampshire or federal statute from possessing a firearm.” (Emphasis added). Because RSA 159:6 expressly permits a police chief to deny a license application based on a federal disqualifier, HB 1178 does not prohibit such an action.

What should state and local law enforcement do if they encounter a situation where the only potential crime being committed is a violation of a federal firearms law?

Unless expressly delegated by a federal law enforcement agency, state and local law enforcement officers have never had the authority or jurisdiction to enforce or administer federal firearms violations or laws. HB 1178 has not changed this. Any state or local officer who has reasonable suspicion that an individual has committed or is about to commit only a federal firearms violation may not detain, arrest or charge that individual, but the officer may take any other action the officer deems prudent given the facts and circumstances of the situation, including, but not limited to, contacting federal officials.

What can a state or local law enforcement officer do if he or she arrests someone who was on probation or released pending trial or sentencing on a federal firearms violation?

If a person commits a state crime while on bail, probation, or parole for a violation of a federal firearms law, the state or local law enforcement officer may, pursuant to RSA 597:2, VIII, detain the person for up to 72 hours and may contact the appropriate federal law enforcement official for potential further enforcement action as provided by federal law. HB 1178 does not alter this existing procedure.

A firearm was seized pursuant to a search warrant or by some other authorized means and the person is requesting the return of his or her firearm, but returning it would violate federal firearms laws. Does HB 1178 require me to return the firearm?

No. RSA 595-A:6 provides that items lawfully seized may be held as long as necessary to permit them to be produced or used as evidence in a trial. The court, upon application of the prosecutor or defendant, may order the return of any property of evidentiary value except property which “constitutes contraband.” “‘Contraband’ materials are those which are prohibited or excluded by law or treaty” and includes that which is barred by federal law. State v. Cohen, 154 N.H. 89, 91 (2006).

Does HB 1178 affect the New Hampshire State Police’s authority to conduct background checks as the point of contact for handgun purchases?

No. The plain language of RSA 159-E:1 does not prohibit any state or local official from reporting a potential federal crime, sharing information with federal officials, or rendering aid or assistance with federal officials. Pursuant to RSA 159-D, the Department of Safety is designated as the point of contact for the federal government for the purposes of conducting federally required background checks using the NICS system for handgun purchases. By opting-in to this

system, the Department is authorized to enforce, administer, and cooperate with the federal government with respect to the regulation of firearm purchases, because such acts are consistent with state law and therefore are not barred by RSA 159-E:1.

The exemption in HB 1178 allows cooperation with the federal authorities if there exists reasonable suspicion that a non-firearm related crime has occurred. Who determines reasonable suspicion under this exemption?

HB 1178 does not change the current state of the law with respect to establishing reasonable suspicion. The determination of reasonable suspicion is made by the law enforcement officer conducting the investigation and must be based upon “specific, articulable facts taken together with rational inferences from those facts — that the particular person stopped has been, is, or is about to be, engaged in criminal activity.” State v. Francisco Perez, 173 N.H. 251, 259 (2020). Courts may subsequently review the officer’s basis for reasonable suspicion by assessing “the sufficiency of an officer’s suspicion, [by] consider[ing] the articulable facts in light of all surrounding circumstances, keeping in mind that a trained officer may make inferences and draw conclusions from conduct that may seem unremarkable to an untrained observer.” Id.

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