Firearms background check

Number: INFORMAL

Date: January 05, 2018

Mr. Richard McNally
Acting Deputy General Counsel
Investigative & Administrative Law Branch
Office of the General Counsel
Federal Bureau of Investigation
United States Department of Justice
Washington, D.C. 20535

Dear Mr. McNally:

You have asked whether there is a statute or case law in Florida that prohibits anyone with an open arrest warrant from receiving a firearm or firearm-related permit.

As you state in your letter, the Brady Handgun Violence Prevention Act of 1993 prohibits a transfer of firearms to a person who is a "fugitive from justice."[1] The National Instant Criminal Background Check System (NICS), used by Federal Firearms Licensees to determine a potential buyer's eligibility to receive a firearms transfer, has long considered a person who is the subject of an outstanding arrest warrant to be a fugitive from justice. The Department of Justice, however, recently concluded that the statutory definition of "fugitive from justice" instead requires a showing that a person who is subject to criminal prosecution or the obligation to testify has fled the state to avoid prosecution or testifying.[2] The Department of Justice has accordingly updated its policy for denial on this basis.

The FBI is now seeking to determine whether there are state statutes or case law that prohibit a person with an open arrest warrant from receiving a firearms transfer, for the purpose of including such information in the NICS database.

Under Florida statutes and case law, while there is no express prohibition against firearms transfer to a person because he or she is the subject of an outstanding arrest warrant, there are two categories leading to nonapproval that may implicate the existence of an active arrest warrant. Section 790.065(2)(c)1., Florida Statutes (2017), requires the Florida Department of Law Enforcement to issue a "conditional nonapproval number" when a potential buyer or transferee:

- has been indicted or had an information filed against him or her for an offense that is a felony under either state or federal law, or
- has been arrested for one of the felony offenses specified in the statute.

In point of fact, an arrest warrant is generally issued following an indictment or information.

Subparagraph 790.065(2)(c)8. provides: "During the time that disposition of the indictment,

information, or arrest is pending and until the department is notified by the potential buyer that there has been a final disposition of the indictment, information, or arrest, the conditional nonapproval number shall remain in effect." The Florida Department of Law Enforcement is thus required to monitor the status of the indictment, information, or arrest and ultimately determine whether the transfer should be approved or disapproved.

I trust that this information is sufficient to answer your inquiry.

Sincerely,

Ellen B. Gwynn
Senior Assistant Attorney General

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[1] 18 U.S.C. §922(g)(2).

[2] 18 U.S.C. §921(a)(15).