

- 1. Going armed
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- 8. Status of NIAA compliance

## Legislative Services Agency CLE – Weapons Law October 8, 2015 Presenter: Ross Loder

### Dangerous weapons (702.7)

- Offensive weapon
- Firearm
- Dagger, razor, stiletto, switchblade knife
- Knife w/ blade exceeding 5"
- Stun gun maybe...
  - "any portable device or weapon directing an electric current, impulse, wave, or beam that produces a high-voltage pulse designed to immobilize a person"
  - See *Iowa v. Howse*, IA Court of Appeals, March 11, 2015)
- Other device designed for use in inflicting death/injury upon human/animal...capable of inflicting death
- Anything actually used to inflict death/serious injury
- Does NOT include bow/arrow when lawfully used



### Permit is required for:

- Going armed with a dangerous weapon concealed
- Within the limits of any city, going armed with
  - a pistol or revolver, or
  - any loaded firearm of any kind, whether concealed or not
- A person who knowingly carries or transports in a vehicle a pistol or revolver
- What about carrying handgun in a holster while walking outside city limits?
- What about carrying unloaded long gun in city limits?
- What about open carry of a stun gun anywhere?
- What about open carry of a long bladed knife in a city?





# Can a person without a permit openly carry a Bat'Leth?



### Permit is NOT required for:

- Going armed in own dwelling, place of business, or land
- Peace officer, when duties require
- Member of the armed forces or national guard when weapons carried in connection with duties
- DOC correctional officer when duties require
- Person lawfully engaged in target practice
- While engaged in lawful hunting
- Carrying a knife while engaged in lawful hunting or fishing
- Law enforcement officer from another state when duties require the officer to carry for certain purposes



### (cont'd) Permit is NOT required for:

- Person engaged in prisoner transport under contract with local, state, or federal agency
- Carrying unloaded handgun or other dangerous weapon inside a closed/fastened container or securely wrapped package too large to be concealed
- Carrying unloaded handgun in a vehicle:
  - inside a closed/fastened container or securely wrapped package too large to be concealed, or
  - inside a cargo or luggage compartment where the pistol or revolver will not be readily accessible to any person



### Valid statewide, except...

- Intoxication Permit invalid 321J.2(1) ref.
  - A person commits the offense of operating while intoxicated if the person operates a motor vehicle ... in any of the following conditions:
    - While under the influence of an alcoholic beverage or other drug or a combination of such substances.
    - While having an alcohol concentration of .08 or more.
    - While any amount of a controlled substance is present in the person, as measured in the person's blood or urine.
- School grounds
  - There are exceptions
- State universities (UI, ISU, UNI)
- State licensed casinos



### (cont'd) Valid statewide, except...

- Members of the public in Capitol complex buildings
- State fairgrounds
- State parks and preserves (use prohibited, not carrying)
- State game refuge
- While riding ATV
  - Exceptions Unloaded and cased, or nonambulatory person
- While riding snowmobile
  - Exceptions Unloaded and cased, or nonambulatory person



- Handguns cannot be possessed while bowhunting
  - Exception person has valid deer hunting license and an unfilled handgun deer tag
- Any firearm prohibited while spotlighting animals
  - Exception ok if dogs are being used to tree raccoons and other fur-bearing animals
- "Weapons free zones" (1,000 feet around schools/in parks)
  - carrying (with permit) legal



#### Duty to carry permit on person...

- 724.4(4)(i). Carrying weapons is Agg. Misd.
  - ....but not for person with permit in possession & displays to peace officer on demand...
  - ...but...if person holds permit...but not on person...if the person produces at the person's trial a permit to carry which was valid at the time...person shall not be convicted.

#### However...

- 724.5 Person armed with a revolver, pistol, or pocket billy <u>concealed</u>
  - must have permit in "immediate possession;" and
  - must produce permit for peace officer
    - Penalty simple misdemeanor



- Iowa law provides "universal recognition"
  - Only for nonresidents
- No declaration requirement
- No law addressing private property owner authority to restrict carrying
- Valid for concealed or open carry
- Valid for all dangerous weapons\*
  - \* Non-firearm dangerous weapons may be restricted by local ordinance



Permit to Carry Weapons recognized as Permit to Acquire

# 2. Permit issuance, denial, suspension, and revocation

#### Resident nonprofessional PCW (broad authority)

- 5 years, issued by sheriffs
- Valid statewide, except where carrying/possession prohibited by state or federal law

#### Professional PCW (narrower authority)

- Resident issued by sheriffs
  - Except state employees issued by DPS
- Nonresident issued by DPS
- Both resident and nonresident:
  - 1 year (or less...expires on separation)
  - Valid statewide while working + commuting

#### Peace Officer PCW (broadest authority)

- non-expiring (expires upon separation)
- Valid anywhere in the state at all times (if <u>certified</u> PO)
- Valid in-lieu-of NICS check for five years
- Issued by Sheriff of officer's county of residence
  - Except state employee peace officers
- Reserve Peace Officer PCW
- Correctional Officer PCW



# Permit issuance, denial, suspension, and revocation

- One application for all PCW types
- Issuing officer has 30 days to issue or deny
- Issuing officer must run NICS check for ALL applicants also, IAQ run for non-citizens
- Issuing officer may suspend
  - arrest for a <u>disqualifying</u> offense
  - subject of proceedings that could lead to the person's <u>ineligibility</u> for such permit
  - Issuing officer must revoke
    - conviction for a <u>disqualifying</u> offense
    - proceedings result in <u>disqualifying</u> finding
- Suspension/revocation may be served in person or by certified mail



# Permit issuance, denial, suspension, and revocation

## Appeals

- Denial, suspension, revocation person can appeal to ALJ in DIA
- Filing fee is \$10
- Costs assigned to issuing officer, win or lose
- 30 days to file, ALJ has 45 days to rule
- Standard of review Clear and convincing evidence that there was probable cause to deny, suspend, or revoke – See Lebeck v. Marion Co. Sheriff, Iowa Court of Appeals, June 10, 2015



Denial, suspension, revocation based solely on NICS check – appeal must go to FBI

# 3. Common permit issues

#### Moves in state and/or name changes

- No duty to report name/address change permit remains valid
- Move/name change in county can be handled as duplicate
- Move/name change out of county must be new permit

#### Moves out of state

- No provision invalidating permit upon move
- ... but eligibility does require residency
- Records retention/public records
  - No provision of weapons law establishes retention requirements
  - Clark v. Banks, 1994, 515 N.W.2d 5 Application does not need to be retained
  - Ch. 22 generally applies to records, DL and NICS check confidential under federal law
  - DPS has recommended retention guidelines



#### Residency

- Eligibility and recognition hinge on residency, but there is no definition – "snowbird" ambiguity
  - Ch. 321 residency definition what about others?
  - Gun Control Act definition? "The State in which an individual resides. An
    individual resides in a State if he or she is present in a State with the
    intention of making a home in that State. If an individual is on active duty as
    a member of the Armed Forces, the individual's State of residence is the
    State in which his or her permanent duty station is located."



#### Permits – New v. Renewal

#### Training required to obtain a new permit

- No provision addressing timeframe for training
- Re-training OR qualification required to renew
  - Re-training OR qualification must occur within 12 months prior to the expiration of the current permit
  - Renewal application must be submitted AT LEAST 30 days prior to expiration of the current permit
  - This leaves an 11 month renewal window
  - An application submitted 29 or fewer days before expiration, or after expiration, is a new application Why? Ramifications?



## Training

- Any NRA handgun safety training course
- Any course utilizing NRA certified instructor
- Any course utilizing ILEA certified instructor (or comparable)
- Law enforcement handgun safety training course offered for security guards, investigators, special deputies, or any division or subdivision of a law enforcement or security enforcement agency – if approved by DPS
- Small arms training while serving with the US armed forces
  - honorable discharge
  - general discharge honorable conditions
- Completion of firearms training that qualifies a peace officer to carry



#### Permit issued 01/03/2011, expires 01/03/2016

- renewal window = 01/03/2015 to 12/04/2015
- Permit holder has not re-trained or qualified, but has old certificate from Dec. 2010.
- Can this be renewed today?
- How about a <u>renewal</u> application submitted on 12/15/2015?
- How about a <u>new</u> application with old certificate submitted on 12/15/2015?

#### Permit issued 11/01/2011, expires 11/01/2016

- Permit holder completed new training course (retrained) on 10/01/2015.
- Can this be renewed today?
- Can this be renewed on 11/15/2015?
- What about DD-214 honorable/general under honorable cond.?



# 4. Firearm possession and permit prohibitors – Felony

## Prohibited

- Conviction for crime punishable by term exceeding one year
  - Does <u>not</u> include crime classified as misdemeanor punishable by two years or less
  - Does include crime classified as misdemeanor punishable by more than two years
    - 8 states have/had misdemeanors punishable by more than two years (MA, MD, ME, NE, NJ, OH, PA, SC)
  - Crime classified as felony NOT punishable by more than one year – not a prohibitor!



### Conviction determined based on laws of jurisdiction

Example – Felony, Guilty SIS (Missouri)

# Firearm possession and permit prohibitors – Juvenile adjudication

## Prohibited

Juvenile adjudication for felony (not sealed)

## Not prohibited

- Consent decree (this is a retainable dispo)
- Informal (not a retainable dispo)
- No disposition (not a retainable dispo)
- Juvenile adjudication sealed by juvenile court (not a retainable dispo)



Firearm possession and permit prohibitors – Fugitive

#### Prohibited for permit application purposes

- Felony warrant
- Misdemeanor warrant
- Bench warrant

Possession question is applied differently



# Firearm possession and permit prohibitors – Unlawful drug user

## Prohibited

- <u>Conviction</u> for drug offense within 1 year
- <u>Conviction</u> for drug paraphernalia offense IF tested positive (1yr)
- Documented admission of illegal use/possession within 1 year
- Evidence of use or possession within 1 year
  - Positive blood test, urine test, field test, or test of material/substance
- Multiple <u>arrests</u> for drug offenses in last 5 years, if most recent in last 1 year
  - Includes arrests resulting in dismissal of charges (but these are purged from CCH)



## Not Prohibited

- Deferred judgment (open or complete) or pretrial diversion (e.g. drug court) (but can pursue for prohibiting information)
- Officer's opinion of drug use or drug dog indication
- Glue sniffers and paint huffers substances not controlled

# Firearm possession and permit prohibitors – Committed/incompetent

## Prohibited

- Adjudicated as a mental defective
  - Person found incompetent to contract, manage their affairs
- Committed to a mental institution
  - Commitment to a mental institution involuntarily;
    - For mental defectiveness or mental illness; or
    - For other reasons, such as for drug use.
      - Alcohol committal Lack of case law

## Not Prohibited

- Emergency/evaluation committal
- Voluntary committal or treatment
- Doctor's opinion of danger/risk



Firearm possession and permit prohibitors – Aliens

## Non-US Citizen

## Prohibited

- Unlawful/illegal alien
  - Includes unlawful alien in DACA status
  - Includes unlawful alien in DAPA status
- Nonimmigrant alien admitted under visa
  - Unless they meet exception...hold hunting license
  - e.g. student visa, temporary worker visa

#### Not prohibited

- Immigrant alien (e.g. lawful perm. res.)
- Nonimmigrant alien (admitted without visa)
  - e.g. visitor from Canada
- IAQ run for non-citizens



# Firearm possession and permit prohibitors – Dishonorable discharge

## Prohibited

- Dishonorable discharge
- Dismissal adjudged by general court martial

## Not prohibited

- General discharge
- Other than honorable discharge
- Bad conduct discharge



Firearm possession and permit prohibitors – Renounced citizenship

### Prohibited

- Person who has formally renounced citizenship
- All renounced citizenship info provided to NICS Index by US Dept. of State

### Rare



Usually related to ownership of real property or US tax avoidance

# Firearm possession and permit prohibitors – Domestic protection order

#### HEARING

Respondent received actual notice and had an opportunity to participate.

#### INTIMATE PARTNER

- Protected party is
  - spouse of subject
  - former spouse of subject
  - parent of a child of subject, or child of subject
  - an individual who cohabitates or has cohabited with subject in intimate relationship

#### **RESTRAINS FUTURE CONDUCT**

- The order restrains from harassing, stalking, or threatening; or
- The order restrains from engaging in other conduct that would place the intimate partner in reasonable fear of bodily injury

#### **CREDIBLE THREAT OR PHYSICAL FORCE**

- The order includes a finding of credible threat to physical safety; or
- The order, by its terms, explicitly prohibits the use, attempted use, or threatened use of physical force



# Firearm possession and permit prohibitors – Domestic protection order

Form 4.1 - Temporary Protective Order (§236.3 Petition)	Not prohibiting
<b>Form 4.2</b> - Final Domestic Abuse Protective Order (§236.3 Petition)	Prohibiting if intimate partner
<b>Form 4.3</b> - Protective Order by Consent Agreement (§236.3 Petition)	Prohibiting if intimate partner
<b>Form 4.5</b> - Temporary Protective Order (Ex Parte) (Ch. 598)	Not prohibiting
Form 4.6 - Temporary Protective Order (Ch. 598)	Always prohibiting
Form 4.7 - Domestic Abuse Protective Order (Ch. 598)	Always prohibiting
Form 4.8 - Domestic Abuse Protective Order (Ch. 598)	Always prohibiting
Form 4.11 - No Contact Order	Prohibiting if intimate partner
Form 4.13 - No Contact Order	Prohibiting if intimate partner
Form 4.15 - Sentencing No Contact Order (Any Public Offense § 664A.5)	Prohibiting if intimate partner

### Four criteria to establish MCDV

- Represented by counsel/waived counsel, tried by jury or waived jury trial
- 2. Classified as a misdemeanor
- 3. Qualifying relationship
- 4. Force element



### Qualifying relationship – Offender is:

- spouse of the victim
- former spouse of the victim
- parent of the victim
- guardian of the victim
- person who shares a child in common with the victim
- person who is cohabiting with the victim as a spouse, parent or guardian
- person who has cohabited with the victim as a spouse, parent or guardian



- person who is similarly situated to a spouse, parent or guardian (e.g., two persons who are residing at the same location in an intimate relationship with the intent to make that place their home; stepparents; etc.)
  - Note: Son, step-son, daughter, step-daughter or foster child of the victim does not meet this definition

## Qualifying relationship

- Can use
  - Incident report/police report
  - Any part of the court record

#### Should not use

- Initial charge of "domestic abuse assault."
  - But it's a good indicator...



# Prohibitor Details: MCDV force element

#### What is force element?

- Use of force
- Attempted use of force
- Threatened use of a deadly weapon

#### Determine if statute of conviction has force element

- Some crimes <u>always</u> have force element
- Some crimes <u>never</u> have force element
- Some crimes <u>sometimes</u> have force element



### Always has force element

e.g. 708.1(2)(a) – "...Any act which is intended to cause pain or injury to, or which is intended to result in physical contact which will be insulting or offensive to another..."

#### Never has force element

e.g. 708.1(2)(b) – "…Any act which is intended to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive, etc…"

### Sometimes has force element



e.g. 708.2(2) – "...A person who commits an assault, as defined in section 708.1, and who causes bodily injury or mental illness…"

- If crime "sometimes" has force Use court record, not including pre-adjudication phase, to establish force element.
  - Cannot use
    - Incident report
    - Complaint and Affidavit
    - Trial information, minutes of testimony, minutes of evidence
  - Can use
    - Judgment of conviction and sentencing order
    - Written guilty plea
    - Recordings or transcripts of proceedings (rarely available)
    - Incident report, complaint, trial info, if referenced/incorporated in court ruling



Firearm possession and permit prohibitors – Felony charge

## Prohibited from receiving firearm

- Person facing felony charges
  - Indictment (grand jury)
  - Information (complaint, trial information)

## Same definition as 922(g)(1)

- Crime punishable by more than 1 year
  - Does not include crime classified as misdemeanor punishable by two years or less
  - Does include crime classified as misdemeanor punishable by more than two years



- Only prohibits "receiving" not "possession"
- Does not include charges for MCDV

Firearm possession and permit prohibitors – AGMS w/firearm

#### Prohibited (under state law)

- Conviction for <u>any</u> misdemeanor punishable by more than one year involving firearm or explosive
  - Iowa Aggravated Misdemeanor
  - Other states Various terms/labels
- Most common is 724.4 carrying weapons
  - IF offense involved firearm



Firearm possession and permit prohibitors – Alcohol addiction

- PCW prohibitor only
- Does not necessarily require conviction for criminal offense
- DPS definition applies only to DPS issued permits



- DPS definition is not binding on Sheriff's
  - Sheriff's should be consistent and have written definition/policy
  - Most or all use DPS definition

Firearm possession and permit prohibitors – Ser/Agg under 708

- PCW prohibitor only
- Ch. 708 (assault, harassment, stalking, etc...)
  - Serious Misdemeanor, or
  - Aggravated Misdemeanor
  - NOT involving firearm/explosive
  - Ineligible for three years from conviction



- Gap Serious misdemeanor involving firearm/explosive
  - Not a prohibitor at all

# Firearm possession and permit prohibitors – Summary table

		Federal	Federal	State	State	State
		Prohibitor -				
SIMPLIFIED		Receiving	Possessing	Possessing	Permit to	Permit to
REFERENCE	CATEGORY	Firearm	Firearm	Firearm	Acquire	Carry
18 USC 922(g)(1)	(felony) Crime punishable by >1 year, excl. misd. punishable by 2 yrs or less	Х	Х	Х	Х	Х
IC 724.26	Juvenile adjudication for a felony			Х	Х	Х
18 USC 922(g)(2)	Fugitive (felony or misdemeanor warrant)	Х	Х		Х	Х
18 USC 922(g)(3)	Unlawful drug user/addict – 1 year	Х	Х		Х	Х
18 USC 922(g)(4)	Mental defective	Х	Х		Х	Х
18 USC 922(g)(5)	Unlawful alien/certain nonimmigrant aliens	Х	Х		Х	Х
18 USC 922(g)(6)	Dishonorable discharge	Х	Х		Х	Х
18 USC 922(g)(7)	Renounced US citizenship	Х	Х		Х	Х
18 USC 922(g)(8)	Domestic protection order	Х	Х	Х	Х	Х
18 USC 922(g)(9)	Misdemeanor crime of domestic violence	Х	Х	Х	Х	Х
18 USC 922(n)	Under indictment for a felony	Х			Х	Х
IC 724.26 & 724.25	Agg. Misd. involving a firearm/explosive			Х	Х	Х
IC 724.8(2)	Alcohol addiction					Х
IC 724.8(3)	Probable cause – likely to use weapon unlawfully/endanger any person					Х
IC 724.8(5)	Serious or aggravated misdemeanor under Ch. 708 (not involving firearm/explosive) within last 3 years					х
IC 907.1(1) & State v. Tong	Open deferred judgment for prohibiting offense	Х	Х	Х	Х	Х
IC 907.1(1)	Completed def. judg. for prohibiting offense					
IC 907.1(2)	Deferred sentence for prohibiting offense	Х	Х	Х	Х	Х

Firearm possession and permit prohibitors – NICS checks

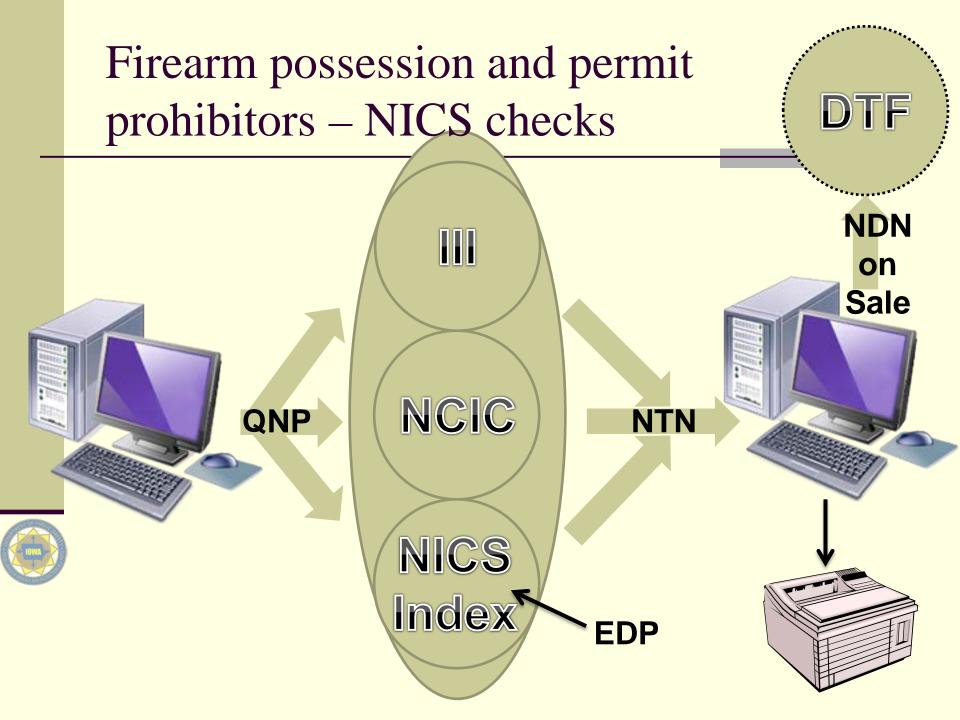
#### What is a NICS check?

- National Instant Criminal History Background Check
- Mandated by the Brady Handgun Violence Prevention Act of 1993
- Launched by the FBI on November 30, 1998

#### For what purposes can a NICS check be run?

- Transfer (dealer to buyer, checks by FBI)
- Firearm-related permit (Sheriffs and DPS)
- Explosives license (DPS)

- LE disposal/return of firearms
  - Must be transfer from LE Agency to person
  - Examples: Found, recovered, seized as evidence, temporary seizure for safety, court-ordered safekeeping, etc...



# **5. Firearms Transfers**

Type of Transfer			Federal Requirements	State Requirements
		Transfer between private parties residing in Iowa	Allowed** - No background check required	Allowed - No background check or permit required
	٦	Transfer between private parties residing in different states (regardless of familial relationship)	Prohibited	NA – Federally prohibited
	Long Gun	Transfer from federally licensed gun dealer in Iowa, buyer resides in Iowa	Allowed** – Background check required at point of sale (or Iowa acquire or carry permit can be used)	Allowed (background check federally required)
		Transfer from federally licensed gun dealer in another state, buyer resides in Iowa	Allowed** – Background check required at point of sale	Allowed (background check federally required)
		Transfer between private parties residing in Iowa	Allowed** – No background check required under federal law (but permit required under state law)	Allowed*** – Permit to Acquire (or Permit to Carry) required
	un	Transfer between private parties residing in different states (regardless of familial relationship)	Prohibited	NA – Federally prohibited
	Handgun	Transfer from federally licensed gun dealer in Iowa, buyer resides in Iowa	Allowed** – Background check required, but permit required under state law fulfills background check requirement	Allowed*** – Permit to Acquire (or Permit to Carry) required
		Transfer from federally licensed gun dealer in another state, buyer resides in Iowa	Prohibited	NA – Federally prohibited

# 6. Black powder firearms

- A black powder firearm can be possessed by a felon under <u>federal</u> law if it meets the definition of antique.
  - Antique If device <u>cannot</u> be readily converted by replacing the barrel, bolt, breechblock, or any combination therefore, then there is no problem with possession by a felon under federal law.
- No statutory definition of "firearm" under Iowa law
- Case law definition:
  - 2400.8 Firearm Definition. A "firearm" is any instrument which [will] [is designed to] discharge a [shot] [shell] [projectile][bullet] by the force of a chemical explosive such as gunpowder.
  - State v. Pinckney, 306 N.W.2d 726 (lowa 1981)
- This definition includes no exclusion for non-convertible black powder devices



# 7. National Firearms Act (NFA) of 1934 and Iowa "Offensive Weapons"

#### Offensive weapons (724.1 & 724.2)

- Fully automatic firearm
- Rifle w/ barrel < 16 inches</p>
- Shotgun w/ barrel < 18 inches</p>
- Cannon, pistol, revolver, musket, other weapon > .60 caliber
  - Excluding shotgun, muzzleloader, antique weapon
- Bomb, grenade, or mine; rocket > 4 ounce propellant; missile w/ charge > ¼ ounce; similar devices
- Ballistic knife
- Exploding/flaming bullets
- Suppressors (silencer, muffler, etc...)
- Excludes signaling device, line thrower, antiques, collectors items ... "collector's items" = federal curio and relic list

# Possession of offensive weapons is generally prohibited in lowa



National Firearms Act (NFA) of 1934 and Iowa "Offensive Weapons"

#### NFA enacted - 1934

- NFA was largely a response to prohibition era organized criminal activity
- Established excise tax and heavy regulation on NFA weapons
- NFA weapons and Iowa "Offensive Weapons" are almost identical
- Referred to as Title II of federal firearms laws
- Gun Control Act of 1968 is Title I



National Firearms Act (NFA) of 1934 and Iowa "Offensive Weapons"

### NFA Regulations

- A person does not need to be an FFL to gain approval to possess NFA weapon
- Special tax
- Transfers are tracked in NFA registry
- ATF Form 1 Make and Register
- ATF Form 4 Transfer and Register
- CLEO sign-off required by ATF
- Timeframe
- Approval requires compliance with state and federal law



# 8. Status of NIAA Compliance

- NIAA NICS Improvement Amendments Act of 2007 (federal)
  - Requires reporting of 922(g)(4) prohibitions
  - Requires creation of "Relief from Disabilities" program (see 724.31)
- Reporting ch. 229 committals since 1/1/11
- DPS applied for and received grant to fund retroactive reporting (committals prior to 1/1/11) project
- \$407,000+ awarded
- 125,000 cases identified to review
- Target for completion 9/30/2015



# Status of NIAA Compliance

DATE	Total number of 922(g)(4) entries in the FBI NICS index (from Iowa agencies)	Increase Over Prior Total	Duration of Period Since Prior Total
11/30/1998	* 0	n/a	n/a
12/31/2010	93	93	12 years, 1 month
12/31/2011	2,462	2,369	1 year
12/31/2012	2 4,957	2,495	1 year
12/31/2013	9,130	4,173	1 year
12/31/2014	12,366	3,236	1 year
4/30/2015	5 13,586	1,220	4 months
5/31/2015	5 17,467	3,881	1 month
6/30/2015	5 32,150	14,683	1 month
7/31/2015	5 34,994	2,844	1 month
8/31/2015	5 37,781	2,787	1 month
9/30/2015	5 N/A	N/A	1 month



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