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Firearms and Domestic Violence Bench Resource for Judges

MAY 2025



PROTECTION ORDERS

NATIONAL CENTER ON PROTECTION
ORDERS AND FULL FAITH & CREDIT

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Firearms and Protection Orders - 18 U.S.C. § 922(g)(8)

This federal law prohibits persons subject to a “qualifying” protection order from possessing any firearm or ammunition in or affecting commerce (or shipping or transporting firearms and/or ammunition).¹ A qualifying court order may be issued by a criminal or civil court (such as family court, magistrate, or general jurisdiction court, or divorce court). **Penalties:** Violation of this prohibition is a federal offense punishable by up to 15 years imprisonment.²

The following list enumerates the four criteria that define a qualifying protection under 18 U.S.C. § 922(g)(8). *Generally (except for the hearing requirement), a defendant/respondent subject to a protection order that includes one element from each section listed below is subject to the federal firearms prohibition.*

Hearing⁵:

The order was issued after a hearing of which the respondent/defendant received actual notice⁶ and an opportunity to participate;

Restrains Future Conduct:

The order must restrain the respondent/defendant from *either* harassing, stalking, or threatening an intimate partner or a child of the respondent/defendant or the intimate partner;

or

The order must restrain the respondent/defendant from engaging in other conduct that would place the intimate partner in reasonable fear of bodily injury to the partner or child; *and*

Finding of Credible Threat or Prohibits Physical Force:

The order must *either* include a finding that the respondent/defendant represents a credible threat to the physical safety of an intimate partner or child;

or

The order must prohibit the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury.

Relationship Requirement

The protected person³ must be:

- An intimate partner (as defined below)⁴:
 - A spouse or former spouse of the respondent/defendant;
 - A parent of a child in common with the respondent/defendant; or
 - A person who cohabits or has cohabited with respondent/defendant (in a sexual/romantic relationship); or
- A child of the respondent/defendant; or
- A child of the intimate partner.

Examples of relationships not included under section 922(g)(8): Dating without cohabitation, guardianship, pregnancy (child must be born), parent as a protected person, and siblings.

Understanding the Nuances of the Prohibition:

- Ex parte, temporary, or emergency orders generally are not considered “qualifying” orders because the respondent/defendant has not yet received notice and has not had an opportunity to participate in the hearing.⁷
- If the respondent is served with the order and fails to appear, consents, agrees, or stipulates to the entrance of the final order, the prohibition will attach.
- Automatically ripening ex parte orders that turn into a final protection order unless the respondent requests a hearing do not trigger the firearm prohibition.

Checklist for Issuing and Enforcing Firearm Prohibitions in Protection Orders

ISSUING PROTECTION ORDERS

- Indicate the relationship of the parties on the order.
- Specify any prohibitions related to the firearms on the order (e.g., directives against the purchase, sale, possession, or control of firearms, ammunition, or permits).
- Issue all relief allowable under the protection order statute. Use the “catch-all” provision in the state protection order statute that permits the court to issue additional relief to enhance the protection of the petitioner and any other protected party including minor children.
- Ensure the order states that the protection order is entitled to full faith and credit and is enforceable in all States, tribes, and U.S. territories under [18 U.S.C. § 2265](#) including the firearm prohibition.
- Provide [judicial notification](#) to the respondent.

SURRENDER: PROTECTION ORDERS

- Require the surrender of all firearms upon issuance of the protection order.
- Establish a compliance mechanism for the surrender of a firearm (i.e., specify the place where the firearm should be surrendered, the date and time when the surrender should be completed, and a description of the firearm to the extent possible).
- Direct law enforcement or other appropriate agency to destroy any surrendered firearm absent proof of lawful ownership (if authorized under state law).
- Schedule a compliance review hearing when the respondent/defendant has failed to turn over firearms.

THIRD-PARTY TRANSFER

- Determine whether or not the third party is prohibited from possessing firearms under state or federal law.
- Hold a hearing to determine whether the respondent/defendant would retain access (constructive possession) to the firearm(s).
- Require the respondent to initially surrender their firearm(s) to a law enforcement agency, which subsequently could, in response to a court order, transfer the firearm(s) to the third party after conducting a background check to confirm eligibility.
- Have both the respondent/defendant and the transferee file affidavits with the court that acknowledge that the respondent is a prohibited person and that it is a criminal violation to permit the respondent to access a firearm knowingly.
- Inform the respondent/defendant and the transferee that they may be subject to federal prosecution if they knowingly transfer or return any firearms to a prohibited person.⁸

RETURN OF FIREARMS

- Establish a procedure for the return of firearms.
- Conduct a hearing prior to returning firearms to determine the respondent/defendant's eligibility to possess under state and federal law.
- Provide the victim with the opportunity to be heard in all proceedings related to the return of firearms and ammunition to the respondent/defendant and notify the victim if the firearms are returned.

The Role of State Courts in Enforcing Violations of Federal Law and Working with Federal Authorities

The determination of whether a protection order or a misdemeanor crime of domestic violence conviction qualifies as a federal predicate is made by federal authorities. A state judge cannot “override” the federal firearm prohibition under 18 U.S.C. § 922(g)(8). Moreover, state authorities do not enforce such laws, except in those states where there is clear authority to do so or if state law enforcement is part of a federal task force.

While the U.S. Attorneys' Offices, FBI, and ATF enforce federal laws, the judiciary's role is equally critical. A commitment to ensuring that orders are not just issued but properly implemented and enforced is vital to the success of the court system. Courts can collaborate with federal agencies in numerous ways, including ensuring proper information is reflected on protection orders and as part of final convictions. Both civil and criminal no-contact orders should be entered into the relevant state or local database systems and uploaded into the national federal registry. For more information on working with federal agencies, please visit [Working with Federal Partners](#).

Promising Practice

COMPLIANCE REVIEW HEARINGS

Many judges across jurisdictions have begun using compliance review hearings to ensure that firearms provisions are being followed and to address any violations. In fact, some courts are now scheduling review hearings for every protection order case involving firearms surrender provisions. If a respondent can demonstrate compliance with surrender orders by filing the required paperwork, such as an affidavit and receipt from law enforcement, the review hearing can be canceled. These compliance review hearings play a crucial role in showing everyone present in the courtroom that the court takes its orders seriously and will not tolerate non-compliance. Additionally, they offer clear instructions to respondents who may be struggling to understand their responsibilities or the process. For more information, please see, [Spotlight on Promising Practice for Civil Protection Orders: DeKalb County Compliance Review Docket](#).⁹

Monitoring Compliance of Firearm Removal in Protection Order Proceedings

- Use forms/affidavits for respondents to declare the status of firearms.
- Create a process for documenting receipt of firearms and notification to court.
- Establish a process to follow up with prohibited persons on firearms removal.
- Hold compliance review hearings and provide victim notification for input.
- Implement appropriate procedures for the transfer and return of firearms.

OFFICIAL USE EXCEPTION:

How Does it Apply in Firearm Cases?

The federal Gun Control Act (GCA) prohibits persons subject to certain qualifying protection orders from possessing or receiving firearms and/or ammunition.¹⁰ However, [18 U.S.C. § 925\(a\)\(1\)](#) excepts the United States, states, and political subdivisions of states from most provisions of the GCA, including the firearm prohibitions contained in §§ 922(g), (d) and (n), except the prohibitions imposed for persons convicted of a misdemeanor crime of domestic violence (18 U.S.C. § 922(d)(9) and (g)(9)). As a result, employees of a federal, state, or local department or agency, such as law enforcement officers and members of the military, are prohibited from receiving and possessing firearms and ammunition, even on behalf of the government entity, if the employee has been convicted of a misdemeanor crime of domestic violence. For more information see the [Official Use Exception Bulletin](#).

Official Use Exception and State Laws

State law can be far more strict than federal law. While federal law 18 U.S.C. § 925(a)(1) would authorize law enforcement or military personnel to maintain and or possess their duty weapon while on duty (even if on duty 24/7), state law may be more restrictive. In other words, if there is a state law that prohibits firearm possession when subject to a protection order and if there is no state law that would allow a state officer (including local law enforcement or military personnel) to retain a firearm while on duty (i.e., there is no state official use exception), then that officer will be dispossessed under state law, even though they are not federally barred for the duration of that protection order. The order is entitled to full faith and credit and enforcement on military installations under the Armed Forces Domestic Security Act.¹¹

Importance of Entry into the National Crime Information Center Protection Order File

[The National Crime Information Center \(NCIC\)](#) is a database of criminal justice information available to law enforcement and other criminal justice agencies. The system currently contains 22 different data files that assist the criminal justice system in effectively executing their duties. One of the files established in NCIC is the protection order file (POF). The NCIC POF serves as the national registry for protection orders issued in state, tribal, and territorial courts. The NCIC POF is a voluntary system; however, some states, tribes, and territories may mandate entry into the system. The POF allows for the entry, storage, and retrieval of protection order records.

The NCIC POF is designed to:

- Enable civil and criminal courts to receive timely and accurate information on active as well as historical protection order records.
- Allow law enforcement agencies to access information regarding the existence and terms of an order entered in the system.
- Assist in the possible identification of persons prohibited from purchasing or possessing firearms as a result of federal, state, local, tribal, or territorial law.

To ensure the NCIC POF's effectiveness, agencies must timely enter complete and accurate data including all protection orders (e.g., criminal no contact, orders issued in divorce, custody and child support proceedings) into the POF. This information is critical in assisting courts and law enforcement to track, serve, and enforce protection orders.

Firearms and Misdemeanor Crimes of Domestic Violence - 18 U.S.C. § 922(g)(9) (Lautenberg Amendment)

Federal law prohibits anyone who has been convicted of a “qualifying” misdemeanor crime of domestic violence (MCDV) from purchasing or possessing firearms and ammunition in or affecting commerce (or shipping or transporting any firearm or ammunition in interstate or foreign commerce or receiving any such firearm or ammunition).¹² **Penalties:** Violation of this prohibition is a federal offense punishable by up to ten years imprisonment.¹³

Under [18 U.S.C. § 921\(a\)\(33\)](#) a “misdemeanor crime of domestic violence” is defined as:

A misdemeanor crime under state, local, tribal, or federal law.

The crime must contain of the following elements: the use or attempted use of physical force (e.g., assault, battery, offensive touching), or the threatened use of a deadly weapon.

Note: It is the elements of the underlying crime – and not the facts – that determine disqualification.

At the time the offense was committed the defendant must be:

- A current or former spouse, parent, or guardian of the victim;
- A person with whom the victim shared a child in common;
- A person who was cohabiting with or had cohabitated with the victim as a spouse, parent, or guardian;
- A person who was or is similarly situated to a spouse, parent, or guardian of the victim; or
- A person who has a current or recent former dating relationship with the victim.¹⁴

The term “dating relationship”¹⁵ means a relationship between individuals who have or have recently had a continuing serious relationship of a romantic or intimate nature.

Whether a relationship constitutes a “dating relationship” shall be determined based on consideration of:

- the length of the relationship;
- the nature of the relationship; and
- the frequency and type of interaction between the individuals involved in the relationship.

A casual acquaintanceship or ordinary fraternization in a business or social context does not constitute a “dating relationship.” For more information on the misdemeanor crime of dating violence prohibition (DMCDV) see, [The New Dating Violence Firearm Prohibition](#)

Affirmative Defenses:

The defendant is not considered convicted unless:

- The defendant was represented by counsel or knowingly and intelligently waived the right to counsel.
- In jurisdictions where the defendant was entitled to a jury trial, the case was tried by a jury or the defendant knowingly and intelligently waived the right to a jury trial by guilty plea or otherwise.

When an MCDV is and is not considered a “qualifying” conviction for purposes of 18 U.S.C. § 922(g)(9) for purposes of 18 U.S.C. § 922(g)(9)

A MCDV is not considered a disqualifying conviction for purposes of 18 U.C.S. 922 (g)(9) if the MCDV has been expunged or set aside or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the jurisdiction in which the proceedings were held provides for the loss of civil rights upon conviction for such an offense). However, if the pardon, expunction, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms, even if the person is not otherwise prohibited by the law of the jurisdiction in which the proceedings were held from receiving or possessing firearms, still be disqualifying.¹⁶

When an DMCDV is and is not considered a “qualifying” conviction for purposes of 18 U.S.C. § 922(g)(9)

An MCDV is not considered disqualifying against an individual in a dating relationship if the conviction has been expunged or set aside or is an offense for which the person has been pardoned or has had firearms rights restored. However, if the expungement, pardon, or restoration of rights expressly provides that the person may not ship, transport, possess, or receive firearms, the MCDV involving dating partners is still considered disqualifying, and the person cannot possess firearms.¹⁷

When Restoration is available for a an MCDV involving dating partners

If the person has no more than one such conviction and is not otherwise prohibited, the person shall not be disqualified from shipping, transport, possession, receipt, or purchase of a firearm if five years have elapsed from the letter of the judgment of conviction or the completion of the person’s custodial or supervisory sentence, if any, and the person has not subsequently been convicted of another such offense, a misdemeanor under Federal, State, Tribal, or local law which has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, or any other offense that would disqualify the person. NICS shall be updated to reflect the status of the person.¹⁸

Five Year Restoration Provision Not Available for MCDVs

Restoration after five years, as described above, is not available for a current or former spouse, parent, or guardian of the victim, a person with whom the victim shares a child in common, a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or a person similarly situated to a spouse, parent, or guardian of the victim.

SURRENDER: MCDV

- Require the surrender of all firearms before the defendant is released from custody and upon conviction of a MCDV.
- Direct the sheriff or other appropriate agency to destroy any surrendered firearm absent proof of lawful ownership (if authorized under state law).
- If lawfully owned, a judge may approve a plan for sale/transfer of a firearm.

Judicial Notification

As part of the 2005 amendments to the Violence Against Women Act, Congress required [STOP Violence Against Women Formula Grant Program \(STOP grant\)](#) recipients to certify that their “judicial administrative policies and practices include notification to domestic violence offenders” of applicable federal, state, or local firearms prohibitions. All states receive STOP grant funding. This means courts must inform all domestic violence offenders that federal, state, or local laws may limit their ability to purchase or possess firearms and ammunition. Courts may provide notification either orally or in writing. It is also best practice to give [judicial notification](#) of firearms prohibitions as it puts the respondent/defendant on notice of what conduct could lead to criminal consequences and encourages the safe voluntary surrender of firearms. However, a failure to give such notification is not a defense to a future violation.

The following is suggested language for the above notification:

Person Subject to a Protection Order.

“As a result of this order, it may be unlawful for you to possess or purchase a firearm, including a rifle, pistol or revolver, or ammunition pursuant to federal law under 18 U.S.C. § 922(g)(8) and/or state law. If you have any questions about whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney.”

Person Convicted of MCDV.

“If you are convicted of a misdemeanor crime involving violence where you are or were a spouse, intimate partner, dating partner, parent, or guardian of the victim or are or were involved in another, similar relationship with the victim, it may be unlawful for you to possess or purchase a firearm, including a rifle, pistol or revolver, or ammunition, pursuant to federal law under 18 U.S.C. § 922(g)(9) and/or state law. If you have any questions about whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney.”

For further information about subsections 922(g)(8) and (g)(9) or federal firearms prohibitions in general, contact your local Field Division of ATF by calling 1-800-800-3855, or visit www.ATF.GOV/Field/. If you have questions or need training or technical assistance on protection order issuance or enforcement, please email NCPOFFC at ncffc@bwjp.org or 1-800-903-0111 prompt 2.

Endnotes

- 1 The Gun Control Act does not require that the protection order contain any language regarding firearms. If the order meets the criteria of 18 U.S.C. § 922(g)(8) (which does not mention firearms or ammunition as language criteria), then the order qualifies. For information about what makes a domestic violence protection order “qualifying,” see this ATF document: [Protection Orders and Firearm Prohibitions](#). The Prohibition is effective while the order is active. Note: A qualifying order does not include a military protection order which is generally issued by a Commanding Officer and does not meet the due process requirements.
- 2 [18 U.S.C. § 924\(a\)\(2\)](#).
- 3 Note: The petitioner is not always the protected party. A protection order may be filed on the behalf of a person. Always identify who is the protected party and does that person meet the relationship requirement for 18 U.S.C. § 922(g)(8). Document appropriately on the protection order form.
- 4 [18 U.S.C. § 921\(a\)\(32\)](#).
- 5 The term “hearing” is not defined in the Gun Control Act, however, the term is generally interpreted as “an opportunity to be heard, to present one’s side of the case, or to be generally known or appreciated.” [U.S. v. Wilson](#), 149 F.3d 280 (7th Cir. 1998).
- 6 The term “actual notice” includes, but is not limited to, service of process personally served on the party and service by mail, proof that notice was left at the party’s dwelling house or usual place of abode with some person of suitable age and discretion residing therein or proof that the party signed a return receipt for a hearing notice which had been mailed to the party. Actual notice does not include notice published in a newspaper or notice on social media.
- 7 See, [U.S. v. Wilson](#), 149 F.3d 280 (7th Cir. 1998). See, e.g., [U.S. v. Banks](#), 339 F.3d 267 (5th Cir. 2003); [U.S. v. Calor](#), 340 F.3d 428 (6th Cir. 2003), [U.S. v. Emerson](#), 270 F.3d 203 (5th Cir. 2001).
- 8 18 U.S.C. § 922(d)(8).
- 9 National Council on Juvenile and Family Court Judges, [Spotlight on Promising Practice for Civil Protection Orders: DeKalb County Compliance Review Docket: An Interview of Chief Judge Berryl Anderson, Dekalb County Magistrate Court](#).
- 10 18 U.S.C. § 922(g)(8).
- 11 [10 U.S.C. § 1561a](#).
- 12 [18 U.S.C. § 922\(g\)\(9\)](#). See also, [What is a Misdemeanor Crime of Domestic Violence?](#)
- 13 [18 U.S.C. § 924\(a\)\(2\)](#).
- 14 See [NATIONAL RESOURCE CENTER ON DOMESTIC VIOLENCE AND FIREARMS, A BRIEF HISTORY AND FRAMEWORK OF FEDERAL FIREARMS LAWS ADDRESSING INTIMATE PARTNER VIOLENCE \(2004\)](#).
- 15 See 18 U.S.C. § 921(a)(37).
- 16 The Gun Control Act requires both the restoration of three core civil rights (the right to vote, the right to sit on a jury, and the right to hold public office) and the restoration of state firearm rights. The Lautenberg Amendment has withstood equal protection challenges. See, e.g., [Logan v. United States](#), 128 S. Ct. 475 (Dec. 2007). See also, [Caron v. U.S.](#), 524 U.S. 308 (1998).
- 17 DMCDV includes only convictions that occurred after June 25, 2022.
- 18 For additional information see, [NATIONAL RESOURCE CENTER ON DOMESTIC VIOLENCE AND FIREARMS, A BRIEF HISTORY AND FRAMEWORK OF FEDERAL FIREARMS LAWS ADDRESSING INTIMATE PARTNER VIOLENCE \(2004\)](#).

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