



PROTECTION ORDERS

NATIONAL CENTER ON PROTECTION
ORDERS AND FULL FAITH & CREDIT



FIREARMS CHECKLIST FOR LAW ENFORCEMENT:

SEIZURE AND RETURN OF FIREARMS TO
ENHANCE COMMUNITY SAFETY AND
IMPROVE DOMESTIC VIOLENCE OFFENDER
ACCOUNTABILITY

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Firearms Checklist for Law Enforcement: Seizure and Return of Firearms to Enhance Community Safety and Improve Domestic Violence Offender Accountability

The [federal Gun Control Act \(GCA\)](#) prohibits nine particular classes of persons from purchasing, possessing and/or receiving firearms and ammunition. Two of these prohibitions are related to domestic violence.

Under federal law, people who are subject to certain qualifying orders of protection and those who have been convicted of qualifying misdemeanor crimes against individuals with whom they have certain relationships may fall under these two prohibitions. Law enforcement should follow department protocols and local laws when seizing firearms from persons who are prohibited from possessing them. The following are suggested steps for law enforcement to consider in seizing and returning firearms to enhance community safety and strengthen accountability in domestic violence cases.

Step 1: Determine Whether the Offender Is Restricted from Firearm Possession

Protection Orders and Firearms Restrictions

Persons subject to a qualifying¹ protection order are prohibited under federal law from possessing any firearm or ammunition in or affecting commerce (as well as shipping or transporting any firearm or ammunition in interstate or in foreign commerce, or receiving any such firearm or ammunition, i.e., making such a purchase). Penalties: Violation of this prohibition is a federal offense punishable by up to fifteen years imprisonment.² For information on 18 U.S.C. § 922(g)(8), please see the ATF's [Protection Orders and Federal Firearm Prohibitions](#). Similarly, many jurisdictions have prohibitions on persons subject to domestic violence protection orders possessing firearms.

Use the following checklist when determining whether to remove firearms when a protection order is in effect:

- Is the person subject to a civil or criminal qualifying order which makes possession or control of firearms or ammunition illegal under federal law? If yes, follow state laws for seizure, and report possible federal violations to ATF. For information on reporting federal violations to ATF, see Working With Federal Partners below and [Promising Practices: Federal-State-Local Coordinated Justice Systems Responses to Domestic Violence and Firearms](#).
- Is the person subject to a qualifying criminal protection order that would preclude possession of a firearm? Law enforcement should run a criminal history check to determine out-of-jurisdiction arrests or convictions. If yes, follow the procedures for state law violations and refer possible federal violations to ATF.
- Does the protection order address the possession of firearms? If the protection order itself prohibits firearm possession by the restricted party, subsequent possession is a protection order violation. Follow state laws for seizure and violations of protection orders.

Does an out-of-state protection order prohibit the use or possession of firearms? Under the full faith and credit provision, [18 U.S.C. § 2265](#), law enforcement must enforce valid protection orders from other states, tribes, and territories including firearm prohibitions issues as part of the order. Follow your own state law for seizure and violations of protection orders. Please see, [Protecting Victims of Domestic Violence: Law Enforcement Guide to Full Faith and Credit](#) and

Official Use Exception

[Law Enforcement Pocket Guide.](#)

Under the GCA, persons subject to certain qualifying protection orders are prohibited from possessing or receiving firearms and/or ammunition 18 U.S.C. § 922(g)(8). However, (g)(8) does not apply if they are possessing a firearm on behalf of a government entity (e.g., as part of one's government employment) pursuant to 18 U.S.C. § 925(a)(1). As a result, employees of a federal, state, or local department or agency, such as law enforcement officers and members of the military, are not prohibited from receiving or possessing firearms for official use under 18 U.S.C. § 922(g)(8).

However, this exception does not apply to persons convicted of a misdemeanor crime of domestic violence under 18 U.S.C. § 922(g)(9).³ Such persons are prohibited from receiving and possessing firearms and ammunition, even on behalf of the government entity. For more information, please see NCDOFEC's [Official Use Exception Bulletin](#)

Misdemeanor Crimes of Domestic Violence (the Lautenberg Amendment)

Persons who have been convicted in any court of a qualifying misdemeanor crime of domestic violence (MCDV), including as it now applies to dating violence relationships, are prohibited under federal law from possessing any firearm or ammunition in or affecting commerce (as well as shipping or transporting any firearm or ammunition interstate or foreign commerce, or receiving any such firearm or ammunition, i.e., making such a purchase). Penalties: Violation of this prohibition is a federal offense punishable by up to fifteen years imprisonment.⁴ For more information on 18 U.S.C. § 922(g)(9) please see, [What is a Misdemeanor Crime of Domestic Violence?](#) and [The New Misdemeanor Dating Violence Federal Firearms Prohibition](#).

Review the following when considering removing firearms or ammunition from a person who has been convicted of a misdemeanor crime of domestic violence (MCDV).

- Does the person's probation or parole requirement address firearms? If yes, follow, procedures for state law violations and report possible federal violations to ATF (see Seizure procedures below).
- Has the person been convicted of a misdemeanor crime under federal, state, local or tribal law with an element of the use or attempted use of physical force or threatened use of a deadly weapon?
- Is the victim of that crime someone with whom the person is currently or formerly married; a current or former child or ward, or currently or formerly cohabiting; shares a child in common with; similarly situated to a spouse, child, or ward; or is now or recently has been in a dating relationship?⁵
- Contact ATF to determine the conviction's eligibility for firearm dispossession.
- Does the state have a prohibition against firearm possession when a person is convicted of a domestic violence-related misdemeanor?

Step 2: Take Appropriate Actions to Seize Firearms Safely

Seizure of firearms pursuant to federal laws:

Generally, state law enforcement officers cannot seize weapons based solely upon federal violations (unless specifically authorized by state law,⁶ or unless the officers are cross-deputized). If seized firearms are believed to have been possessed in violation of federal law, officers should contact the United States Attorney's Office (USAO) or ATF. There is a 30-day period from seizure in which to submit an application to the federal authorities for adoption of forfeiture.

Seizure of firearms or ammunition for violation of a federal prohibition can be accomplished under one of the following methods:

- The person agrees to relinquish the firearm. Consider using the "W.A.R.M Approach" to have the person voluntarily surrender the firearms.⁷

Refer situations to Federal Law Enforcement

- Contact your ATF Field Office promptly if you suspect a Gun Control Act violation or need additional information on the federal firearm prohibitions at 1.800.800.3855 or visit: <https://www.atf.gov/contact/local-atf-offices>.
- Provide detailed information on the protection order or record of conviction to the ATF counsel or Field Office representative.
- Turn over seized firearms within 30 days to federal law enforcement or pursuant to state law.
- Cooperate with any ongoing federal investigation. If there is a concurrent investigation promptly inform federal authorities.

Responding to Judicial and Federal Request for Information

Upon identifying a case in which it is suspected that there has been a violation of federal firearm laws, the responding officer should immediately notify his/her supervising officer (and law enforcement should notify the city/county/district/state's attorney's office of jurisdiction) of the suspected violation of federal law. Upon receiving notification from the responding officer, the supervising officer should immediately contact the appropriate federal agencies and notify the appropriate person of suspected violations of federal law.

The promptness with which you respond can save a life.

- Offer detailed information on any protection order or conviction for an MDCV or felony conviction.
- Provide information on the relationship between the victim and the abuser.
- Provide information on the possession, control or ownership of firearms and permits.
- Cooperate with requests for information from other law enforcement agencies, the FBI, and the ATF.

- A court order issued in the jurisdiction requiring the seizure of firearms incident to a lawful arrest.
- Where state law allows seizure as contraband in plain view.

Federal Firearms Forfeiture and MCDVs

Where law enforcement lack the authority for state or local forfeiture action, they may refer investigations to the ATF or the USAO.

ATF in conjunction with state and local authorities and the USAO may initiate federal forfeiture action under limited circumstances against firearms seized from domestic violence offenders. ATF will consider the adoption of a particular seizure made by a state and local authorities only where:

- Seizure and forfeiture action is appropriate under the GCA, 18 U.S.C. § 924 and the Civil Asset Forfeiture Reform Act (CAFRA), 18 U.S.C. § 981 et. seq.;
- The subject firearm was seized from a person with a qualifying conviction for a MCDV;
- The federal forfeiture action meets stringent statutory deadline and notice requirements as well as USAO prosecutorial guidelines; and
- Any additional limitations on the adoption of a particular seizure apply.

Please contact ATF (1.800.800.3855 or visit atf.gov) for specific guidelines and limitations of federal

Seizure of firearms pursuant to state laws:

If, upon responding to the scene of a domestic violence incident, the responding officer learns that there is a protection order currently in effect that was issued either by a court in their jurisdiction or the court of another state/tribe/territory that prohibits possession or control of a firearm, the officer may seize any firearm prohibited by the protection order if it is:

- In a vehicle driven by the alleged perpetrator when they are apprehended, and the firearm is seized according to a valid search;
- In plain view at the scene of the incident;
- Found pursuant to a consent search at the scene of the incident;
- Found pursuant to a custodial search;
- Found pursuant to an inventory search of a vehicle, upon arrest of the alleged perpetrator; and/or
- Found pursuant to a lawfully issued search warrant.

Alternatively, if there is no protection order but the possession of the firearm is a violation of state law including state license to carry, confiscate the firearm from the alleged perpetrator if the firearms are found using the above means.

Step 3: Safe Return of Firearms

Use the following to assist in determining if it is appropriate to return a firearm to a previously prohibited person. Please note that the prohibition on people who have committed an MCDV is generally a long lasting prohibition, except if the victim and abuser were dating partners.⁸

- The firearm is eligible for return because it is not illegal (e.g., a machinegun, a short-barreled shotgun);
- The [National Crime Information Center \(NCIC\)/Interstate Identification Index \(III\)/ National Instant Criminal Background Check System](#) check on the person reveals no prohibition; and
- The person seeking return is not prohibited under law or court rule limiting possession of firearms or ammunition.

Victim Notification Enhances Victim Safety.

Before returning a firearm or ammunition to a person, notify any victim that return will occur, giving the date, time, and description of the firearm(s) and/or ammunition to be returned. Be sure to connect the victim to their local domestic violence agency or the National Domestic Violence Hotline to assist them in locating a victim advocacy agency.

Contact the National Center on Protection Orders and Full Faith and Credit at ncffc@bwjp.org or 1-800-903-0111 prompt 2, for guidance on how to use this checklist to better assist the victims in your community.

Endnotes

- 1 For guidance on what is considered a “qualifying” protection order, please reference the the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) [Protection Orders and Federal Firearm Prohibitions](#).
- 2 18 U.S.C. § 924(a)(8).
- 3 18 U.S.C. § 922(d)(9), (g)(9).
- 4 18 U.S.C. § 924(a)(8).
- 5 See [NATIONAL RESOURCE CENTER ON DOMESTIC VIOLENCE AND FIREARMS, A BRIEF HISTORY AND FRAMEWORK OF FEDERAL FIREARMS LAWS ADDRESSING INTIMATE PARTNER VIOLENCE](#) (2004), see also, [18 U.S.C. § 921\(a\)\(37\)](#).
- 6 [U.S. v. Haskin](#), 228. F.3d 151 (2d Cir. 2000).
- 7 “Detectives implementing the removal/retrieval process in Butte County employed the “WARM” approach – an acronym consisting of the first initials of the names of the four detectives most involved in the initiative. Detectives reviewed information about each case and gathered information about any firearms possessed by the respondents. To keep a low profile, the detectives dressed in plain clothes and drove unmarked cars. The detectives reported that respondents appreciated this approach, and that it proved advantageous when talking to people about giving up their firearms. The detectives emphasized the importance of being honest with respondents and following the letter of the law, while treating respondents with respect and empathy.” [Prosecutors Against Gun Violence & The Consortium For Risk-Based Firearm Policy, Firearms Removal/Retrieval In Cases Of Domestic Violence](#) (2016).
- 8 If the victim and the abuser were dating partners, and the misdemeanor conviction is the abuser’s first conviction for a misdemeanor crime of domestic violence, the prohibition generally lasts five years unless the person is otherwise prohibited, or the person has been convicted of another misdemeanor that has an element of the use or attempted use of physical force or the threatened use of deadly weapon, or any other offense that would trigger the prohibition under 18 U.S.C. § 922(g). 18 U.S.C. § 921(a)(33).

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