

FIREARM CHECKLIST FOR ADVOCATES

The federal Gun Control Act prohibits 10 particular classes of individuals from purchasing, possessing and/or receiving firearms and ammunition. People who are subject to certain orders of protection and those who have been convicted of misdemeanor crimes against select individuals may fall under two of these prohibitions.

Facilitating the Firearm Discussion

- Discuss federal, tribal, state and local firearm prohibitions with the survivor.
- Elicit the survivor's concerns and experience about the use, possession and ownership of firearms by the abuser.
- Advise the survivor of the provisions in their jurisdiction for search and seizure, removal, transfer, retention, return and destruction of firearms owned or possessed by their abuser.
- Work with your client to devise a survivor-centered strategy (based on safety planning and the laws) using tools such as the S.A.F.E TOOL - Strategic Assessment of Firearms Enforcement (available from NCPOFFC).

Firearm Removal During Issuance of Protection Orders

- If the survivor is filing for a protection order and wants firearms removed from the abuser:
 - Suggest that the survivor request a prohibition against firearm possession and ownership in the order if state law authorizes firearm prohibitions.
 - If removal of a firearm under state law is discretionary, inform the survivor of the circumstances in which the court is likely to issue a firearm prohibition. The survivor should be prepared to describe the need for such a prohibition.
- Assist the survivor in obtaining a qualifying protection order, consistent with 18 U.S.C. § 922(g)(8), that prohibits possession of firearms and ammunition for the duration of the order by ensuring that the court:
 - explicitly describes the relationship between the petitioner and respondent (or victim and offender in a criminal protection order);
 - recites that the order was entered after a hearing in which the respondent had notice and an opportunity to be heard;
 - restrains the respondent from either harassing, stalking or threatening an intimate partner of the respondent, or a child of the respondent or the intimate partner, OR from engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
 - includes either a finding that respondent represents a credible threat to the physical safety of an intimate partner or child, OR the order explicitly prohibits the use, attempted use, or threatened use of physical force against an intimate partner or child that would reasonably be expected to cause bodily injury.
- Recommend that the survivor ask the court to articulate a compliance mechanism for surrender of the firearm(s) (i.e., specify the place where the firearm(s) should be surrendered, the date and time the surrender should be completed, and a description of the firearm(s) to the extent possible).
- Suggest that the survivor ask the court to give clear notice to the respondent that purchase or possession of a firearm may violate provisions of the federal Gun Control Act 18 U.S.C. § 922(g)(8) and (9) and/or state or local law.
- Discuss the concept of "constructive possession" with the survivor. Inquire if the abuser has ready access to firearms from friends/family members even if the court orders surrender or law enforcement seizes personal firearms. If so, request the court advise the abuser that possession is broader than "ownership" and that he may not borrow, rent or have ready access to another's firearms if he is prohibited or ordered not to possess firearms.

Enforcement of Firearm Prohibitions

- Explain enforcement procedures if the abuser violates the firearm prohibition. Describe how the survivor can initiate enforcement.
- Inform the survivor that the firearm prohibitions in the protection order are entitled to enforcement in other jurisdictions. Advise that the methods of enforcement may be different from those in the issuing jurisdiction.
- Work with the court and the survivor to ensure the order includes required data elements for entry into National Criminal Information Protection Order File (NCIC POF), including at least one numeric identifier - such as the respondent's birth date, social security number or driver's license number.
- If the abuser has been convicted of a misdemeanor crime of domestic violence, assist the survivor in contacting ATF to determine if the conviction would qualify as a firearm prohibition under 18 U.S.C. § 922(g)(9).
ATF contact: _____ . Note: The survivor may find ATF more responsive to the inquiry if made by local law enforcement or prosecutors.

Transfer/Return of Firearms

- Assist the survivor in preventing their abuser from illegally obtaining or transferring firearms or ammunition to a person prohibited by state or federal law as follows:
 - Anticipating that the respondent may ask the judge at a protection order hearing to permit transfer of firearms or ammunition to a third party, inform the survivor that they may request that the court evaluate the third party's eligibility for transfer and require that both the respondent and the third party sign a form that acknowledges that firearms may not be transferred to a prohibited party. Signing should be witnessed by court staff. *See Third Party Acknowledgement Form* (available from NCPOFFC).
 - Suggest that the survivor ask the court to determine whether or not the abuser retains access to and/or control over a firearm despite a purported transfer to a friend or relative.
 - Advocate that the court establish victim notification procedures that provide victims with notice and/or the opportunity to be heard prior to the return of firearms to the abuser.
 - Inform the survivor that, upon expiration of a protection order, the firearm prohibition will terminate unless state or federal law otherwise prohibit possession or ownership. Remind the survivor that the protection order must be current to enforce any firearm prohibition in the order or pursuant to 18 U.S.C. §922(g)(8).

Establish a relationship with federal, tribal, state, local and community actors involved in the enforcement and prosecution of firearm laws in your jurisdiction.



National Center on Protection Orders and Full Faith & Credit

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