

FIREARM CHECKLIST FOR PROSECUTORS

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.

Protection Orders

The federal law prohibits anyone who is subject to a “qualifying” protection order from purchasing or possessing firearms and ammunition. Only certain protection orders trigger the federal prohibition. Emergency or ex parte orders do not qualify under the federal law, however, a state prohibition may apply.

- Be aware that only certain relationships will trigger federal law.
- There is an “official use exemption” for law enforcement or military personnel for “duty” weapons.
- This firearm disability applies during the duration of the protection order.
- A procedure for the transfer or return of firearms is advisable.

Misdemeanor Crimes of Domestic Violence

The federal law prohibits anyone who has been convicted of a “qualifying” misdemeanor crime of domestic violence (MCDV) from purchasing or possessing firearms or ammunition.

- The crime must be a misdemeanor crime under state, tribal or federal law.
- The crime must have as an element the use or attempted use of physical force or the crime must have as an element the threatened use of a deadly weapon.
- Review whether there is an extant qualifying conviction. Things to consider are whether the offender:
 - Has had their conviction vacated?
 - Has been pardoned or had the conviction expunged or set aside?
 - Has had their civil rights restored? Pursuant to the misdemeanor conviction, the convicting jurisdiction removed civil rights (i.e., the right to vote, right to sit on a jury and the right to hold public office). If these rights (or any one of the three) were not removed, they cannot be restored.
 - Has the convicting jurisdiction placed any lingering firearm restrictions on the misdemeanant, such as restrictions on the ability to obtain a concealed weapons permit, the ability to possess a machine gun, possess a handgun outside the home or business, possess a firearm for purposes other than hunting, etc.?

Note: This firearm disability is long lasting and there is no exemption for government employees.

Federal Law Applies to Certain Relationships Only

For protection orders, a qualified relationship includes a person:

- To whom the abuser is married or was married at the time the order issued.
- With whom the abuser lived at the time the order was issued or previously.
- With whom the abuser had a child at the time the order was issued.
- Who was the abuser’s child at the time the order was issued.
- Note: Other relationships, such as dating partners, people who did not live together or have a child together, such as grandparents, siblings, neighbors, etc., will not trigger the federal firearm prohibition. These relationships may trigger state firearm prohibitions.

For MCDVs, an offender must be a person who at the time of the offense:

- Was married or formerly married to the victim.
- Was the parent or guardian of the victim.
- Had a child together with the victim.
- Lived or formerly lived with the victim.
- Was a person “similarly situated” to a spouse, parent or guardian of the victim.

Considerations for Prosecutors

- Know your state and local laws and determine which state firearm prohibitions may be applicable to your case.
- Provide complete information regarding the relationship between the victim and the defendant in the charging documents and to the court.
- Be specific with your charging documents. It is important that the charge is clearly indicated on the charging documents.
- If your jurisdiction has a multi-prong statute, it is important to clearly identify the prong(s) under which the defendant is being charged.
- Be prepared to argue for surrender of the defendant's firearms during pretrial and sentencing hearings.
- Conduct thorough interviews with domestic violence, sexual assault, stalking and dating violence victims that include questions regarding the presence or use of weapons.
- After consulting with the victim, charge the defendant with the appropriate firearm related offenses.
- In plea bargains, fully document the final convicting statute, subsection or prong the defendant is pleading to, and include an agreed upon statement of facts supporting the elements of the convicting statute.

Coordinate Community Efforts to Successful Prosecutors

- Participate in your local jurisdiction's firearm working group or task force to help facilitate enforcement of firearm laws. If necessary, train the group members on the applicable laws that relate to the domestic violence firearm prohibitions.
- Be a leader in your jurisdiction by training law enforcement officers and advocates on the firearm prohibitions in your jurisdiction, laws regarding search and seizure of weapons and the applicability of the federal law.
- Create relationships with your federal partners prior to referring a case for federal prosecution. Familiarize yourself with your local FBI, ATF and the Assistant United States Attorney who play a key role in the prosecution of firearm crimes in your district.
- Determine what your jurisdiction is doing to comply with the judicial notification provisions of VAWA 2005 and work with the court to ensure that the proper information is being given to all domestic violence offenders as is required by the statute. (To receive STOP funds from OVW, a state, territory or local unit of government must certify that local courts have policies and practices to provide notification to domestic violence offenders regarding laws that restrict possession of firearms.)

For additional information on what notification language should be included, please contact the National Center on Protection Orders and Full Faith & Credit.



National Center on Protection Orders and Full Faith & Credit

(800) 903-1110, prompt 2 ● NCFCC@bwjp.org ● www.fullfaithandcredit.org ●



This project was supported by Grant No. 2011-TA-AX-K080 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this program are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.