



FEDERAL LAW: FIREARMS & AMMUNITION PROHIBITIONS

The Violence Against Women Act of 2005 (VAWA) and the 1997 Omnibus Consolidated Appropriations Act include federal firearm laws related domestic violence. VAWA (2005), which updated the Violence Against Women Act of 1994, makes it a crime for a person who has a domestic abuse restraining order in force against him/her to transport, receive or possess firearms or ammunition that have crossed state or federal borders. Law enforcement officers and other governmental officials are exempt from the VAWA ban on firearm possession if the firearm is government issued. The 1997 Omnibus Consolidated Appropriations Act, which updated the Federal Gun Control Act of 1968, prohibits the possession or distribution of firearms and ammunition by or to persons convicted of state or federal misdemeanor crimes of domestic violence. Law enforcement officers and other governmental officials are not exempt from the Omnibus Consolidated Appropriations Act. **As of September 30, 1996, any person convicted of a domestic violence misdemeanor may no longer possess a firearm or ammunition, even if the conviction took place before September, 30, 1996.** This technical support packet includes information on these two federal laws.

For further information or assistance, please contact the Battered Women's Legal Advocacy Project or your local Bureau of Alcohol, Tobacco, and Firearms (ATF) office.

Attached: 18 U.S.C. § 921(a)(32), 18 U.S.C. § 922(g)(8), 18 U.S.C. § 922(g)(9), 18 U.S.C. § 925(a)(1), worksheet on federal distribution and possession of firearms, and a Chart of VAWA prohibitions on gun control.

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There are two separate federal firearms laws that relate to domestic violence. These are the Violence Against Women Act of 2005 (VAWA), which amends the Violence Against Women Act of 1994, and the Omnibus Consolidated Appropriations Act of 1997, which amends the Federal Gun Control Act of 1968.

RESTRAINING ORDERS

The Violence Against Women Act of 2005 includes a section that forbids a person with a qualifying domestic abuse restraining order in place against him/her (a respondent) from possessing firearms and ammunition. Under the statute (18 U.S.C. §922(g)(8)), a qualifying order must have all of these three factors:

1. Issued after a hearing where the respondent received actual notice of the hearing and had an opportunity to participate in the hearing. The respondent does not need to actually attend the hearing for the ban to apply. The respondent just needs to receive actual notice of the scheduled hearing and be given the opportunity to participate. The respondent cannot avoid the firearm ban simply by not attending the hearing.

NOTE: This factor applies to all *ex parte* orders and harassment orders that do not require a hearing. An individual who is the subject of an Order for Protection (OFP) where he/she was not notified of a scheduled hearing that both parties can attend would not meet this factor and would not be prohibited from possessing firearms or ammunition. Therefore, an individual who is the subject of an OFP issued without a hearing under Minn. Stat. § 518B.01, subd. 5 would not be prohibited from possessing firearms or ammunition.

2. Restrains the respondent from harassing, stalking, or threatening an intimate partner of the respondent or child of the intimate partner or child of the respondent, or engaging in other conduct that would place the respondent's intimate partner in reasonable fear of bodily injury to the partner or the child;
 - Intimate partners include spouses, former spouses, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person. See 18 U.S.C. § 921(a)(32);
3. Includes a finding the respondent represents a credible threat to the physical safety of the intimate partner or child; or by its terms explicitly prohibits 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.

If a respondent possesses any firearms or ammunition, they have committed a federal crime. The ban on possession of firearms or ammunition lasts only as long as the OFP. This means the individual may again possess firearms if the OFP expires or is dismissed.

There is an exception for law enforcement and military personnel when carrying a department or government issued firearm, under the statute 18 U.S.C. §925(a)(1). Therefore, if a police officer

is the respondent in a qualifying OFP the officer would still be able to possess his/her service revolver, even when off-duty, but could not possess other firearms.

A respondent does not have to be told about the ban on possession of firearms and ammunition and does not need to be specifically ordered not to possess firearms and ammunition.¹ The penalty for violation of this federal firearm statute is a maximum of ten years in prison and/or a \$250,000 fine. 18 U.S.C. § 924(a)(2).

MISDEMEANOR CRIMES OF DOMESTIC VIOLENCE

The Omnibus Consolidated Appropriations Act of 1997 updated the Federal Gun Control Act. Under statute 18 U.S.C. §922(g)(9), it is unlawful for an individual convicted in any court (federal, state or tribunal) of a “misdemeanor crime of domestic violence” to “ship, transport, possess or receive firearms or ammunition.”

Under statute 18 U.S.C. §921(a)(33)(a), a “misdemeanor crime of domestic violence” means the person was convicted of a crime that has an element that he/she:

1. Used or attempted to use physical force, or
2. Threatened to use a deadly weapon.

The individual who committed the “misdemeanor crime of domestic violence” must be either a:

1. Current or former spouse,
2. Parent or guardian of the victim,
3. Person with whom the victim shares a child in common,
4. Person who is cohabitating with or has cohabitated with the victim as a spouse, parent or guardian, or
5. Person similarly situated as a spouse, parent or guardian of the victim.

The conviction does not need to be labeled as a domestic assault to qualify as long as the above elements are met.² However, there have been many arguments as to what “the use or attempted use of physical force” means under § 921(a)(33)(a). A court faced with such an argument will look to the underlying statute (and not to the actual facts underlying the conviction) to determine whether it has as an element the use or attempted use of physical force.³ This approach has been

¹ See U.S. v. Bostic, 168 F.3d 718, 722-723 (4th Cir. 1999) (noting that when the defendant is aware of all circumstances surrounding the conviction, Due Process does not entitle him to notice that his conduct of possessing a firearm while subject to a domestic violence protective order is illegal); U.S. v. Kafka, 222 F.3d 1129, 1132-1133 (9th Cir. 2000) (holding that notice of restriction is not required because the restraining order itself should have put the defendant on notice that other conduct may be restricted). See also U.S. v. Napier, 233 F. 3d 394, 398-399 (6th Cir. 2000) (noting that status as an individual subject to a restraining order is enough to prevent the defendant from claiming a lack of “fair warning;” United States v. Beavers, 206 F.3d 706 (6th Cir. 2000) (defendant's conviction on a domestic violence offense sufficiently placed him on notice that the government might regulate his ability to own or possess a firearm)).

² U.S. v. Hayes, 129 S. Ct. 1079 (2009) (holding that the predicate offense does not need to have a domestic relationship as a defining element; however, the court must establish the domestic relationship).

³ See United States v. Griffith, 455 F.3d 1339 (11th Cir. 2006) *cer't denied* April 16, 2007 (Ga. Code Ann. § 16-5-23(a)(1) that required "physical contact of an insulting or provoking nature" did constitute the “force” necessary for

termed the categorical approach. If the court cannot make a determination using this approach they may move to the modified categorical approach. Under the modified categorical approach, the court can look to the record of conviction as well as the statute to make its determination, but still does not look at the underlying facts of the case.⁴ Thus it is often important to look at whether the defendant was charged under a specific statute, but later pled to a lesser charge under another statute which may not require force as an element.

Under the statute, 18 U.S.C. § 921(a)(33)(B), a person is not considered convicted unless:

- The person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and
- The case was tried by a jury or the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise if the person was entitled to a jury trial in the jurisdiction

But if the individual is not considered convicted, then the individual may possess or receive firearms. A person shall not be considered to have a conviction under this statute if the conviction:

- 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 applicable jurisdiction provides for the loss of civil rights under the offense)
- Unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

Law enforcement officers and governmental employees (such as security guards or military personnel) are **not exempt** from this law with respect to their receipt or possession of firearms or ammunition. 18 U.S.C. § 925(a)(1). Therefore, a law enforcement officer and other government employees who have been convicted of a “misdemeanor crime of domestic violence” will not be able to lawfully possess or receive firearms or ammunition for any purpose, including performing their official duties.⁵

It is also against the law for any person, including government agencies, to sell or otherwise issue firearms or ammunition to any person knowing or having reasonable cause to believe that the person has been convicted of a “misdemeanor crime of domestic violence.” 18 U.S.C. §922(h).

a misdemeanor crime of domestic violence because any physical contact requires the use of at least some amount of force to complete), *But see United States v. Belless*, 338 F.3d 1063, 1067-68 (9th Cir. 2003) (concluding that a statute criminalizing rude, angry or insolent “unlawful touching” does not require “physical force” sufficient to satisfy § 922(g)(9)).

⁴ *See United States v. Griffith*, 455 F.3d 1339 (11th Cir. 2006) *cer’t denied* April 16, 2007 (Ga. Code Ann. § 16-5-23(a)(1) that required “physical contact of an insulting or provoking nature” did constitute the “force” necessary for a misdemeanor crime of domestic violence because any physical contact requires the use of at least some amount of force to complete), *But see United States v. Belless*, 338 F.3d 1063, 1067-68 (9th Cir. 2003) (concluding that a statute criminalizing rude, angry or insolent “unlawful touching” does not require “physical force” sufficient to satisfy § 922(g)(9)).

⁵ *Gillespie v. City of Indianapolis*, 185 F.3d 693, 699 (7th Cir. 1999) (holding that the imposition of a firearms ban on people convicted of domestic violence is not irrational, even to the extent it reached a police officer).

This law went into effect on September 30, 1996. However, it applies to persons convicted of a “misdemeanor crime of domestic violence” at any time prior to September 30, 1996. That means any person who has ever been convicted of “misdemeanor crime of domestic violence” may no longer possess a firearm or ammunition.⁶

The federal law conflicts with Minnesota law. Under Minnesota law, a person convicted of domestic assault is prohibited from possessing a **pistol** for three years from the date of the conviction. What this means, is that a person in Minnesota who is convicted of domestic assault, under Minnesota law, never loses the right to possess a firearm that is not defined as a pistol, and once three years has elapsed from the date of the conviction, the person may possess a pistol again. However, because federal law prohibits this person from possessing a firearm, if the federal government catches the person in possession of any firearm, the person could be charged under federal law for possession of a firearm.

⁶ U.S. v. Denis, 297 F.3d 25, 32 (1st Cir. 2000) (upholding retroactive application of the Gun Control Act).

WORKSHEET: Federal Firearm & Ammunition Laws

1. Question: A police officer was charged with felony assault on his child in 1992. He pled guilty to a misdemeanor and the felony charge was dismissed. He was suspended from the police force and ordered to undergo counseling. After successful completion of counseling, he was reinstated. Can the police officer lawfully possess firearms and ammunition?

Answer: No. The officer may no longer lawfully possess firearms or ammunition either on or off duty. The conviction must have been expunged, pardoned, set aside, or his rights have been restored.

2. Question: John was convicted of misdemeanor assault against his spouse. The criminal complaint does not refer to domestic violence, but the complaint reflects that John assaulted his spouse. Will John have to dispose of his firearms and ammunition?

Answer: Yes. The definition of “misdemeanor crime of domestic violence” includes all misdemeanors that involve the use or attempted use of physical force (i.e. simple assault, assault and battery) if the offense is committed by one of the defined parties. This is true whether or not the State statute or local ordinance specifically defines the offense as a domestic violence misdemeanor.

3. Question: Mary received a notice to appear at a hearing regarding a domestic violence restraining order her partner had filed against her. Mary chose not to appear at the hearing. Subsequently, Mary received notice that a restraining order had been issued against her. Mary does not believe that she has to dispose of her firearm, since she did not participate in the hearing. Does she have to dispose of her firearm?

Answer: Yes. Mary did receive actual notice of the hearing, and she had an opportunity to participate. The law does not require actual participation if the defendant chooses otherwise. Therefore, the VAWA restraining order law would apply to her and she would have to dispose of her firearm.

4. Question: Sam was convicted of a domestic abuse misdemeanor in 1987. Does this law apply to such a person?

Answer: Yes. The new law is retroactive. The prohibition applies even if the conviction occurred prior to the new law’s effective date of September 30, 1996. As of the effective date, such persons may no longer possess a firearm or ammunition.

5. Question: A police officer was convicted of assault against his former wife in 1987, but he believes that his record has been expunged. Can he retain his firearms?

Answer: No. An employee’s belief that he may qualify for an exception to the prohibition is not enough. He has a duty to comply with the law pending departmental review. Therefore, he must turn in his firearms and ammunition until he provides his department with proof or information that supports his claim that his record was expunged.

Definitions

18 U.S.C. § 921

(a) As used in this chapter—

(32) The term “intimate partner” means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.

Firearm Prohibition

18 U.S.C. § 922

(g) It shall be unlawful for any person --

(8) who is subject to a court order that --

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C) i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

Exceptions

18 U.S.C. § 925

(a)(1) The provisions of this chapter, except for sections 922(d)(9) and 922(g)(9) and provisions relating to **firearms** subject to the prohibitions of section 922(p), shall not apply with respect to the transportation, shipment, receipt, possession, or importation of any firearm or ammunition imported for, sold or shipped to, or issued for the use of, the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof.

Federal Prohibitions on Firearm Ownership

	The individual is subject to a domestic violence restraining order.	The individual has been convicted of a state or federal “misdemeanor crime of domestic violence.”⁷
Length of Prohibition	The prohibition remains in effect until the restraining order is dismissed or expires.	The federal statute does not specify any point in time after conviction that such a restraint would be lifted.
Statutory Authority	18 U.S.C. § 922 (g)(8)	18 U.S.C. §§ 922(g)(9), 921 (a)(33),
Law Enforcement/ Military Exemptions	Police officers, military personnel, and some other government agents are partially exempt; they can have their service weapon, even off duty. They still cannot own or purchase any other weapon. See 18 U.S.C. §925 (a)(1).	There is no exemption for a police officer, soldier or other government agent who has been convicted of a “misdemeanor crime of domestic violence.” They may not legally possess a service weapon, even in the line of duty.
Other Possible Exceptions	An individual who is the subject of a restraining order issued without a hearing under the provisions of Minn. Stat. § 518B.01 would be exempt. This would include all <i>ex parte</i> orders, as well as some harassment orders that no longer require a hearing.	This law would not apply to a procedurally defective conviction, or a criminal offense that has been expunged, set aside, or pardoned. The statutory definition of “a misdemeanor crime of domestic violence” seems to indicate that disorderly conduct convictions would not fall under this law.

⁷ A “misdemeanor crime of domestic violence,” pursuant to 18 U.S.C. § 921 (a)(33), means an offense that has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, parent or guardian, or by person similarly situated to a spouse, parent, or guardian of the victim.