

# FIREARM CHECKLIST FOR LAW ENFORCEMENT

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

Use the following checklist when considering removing firearms where protection orders are in effect:

- Is the person violating state law by possession, control over or ownership of a firearm or ammunition? If yes, follow procedure for state law violations and report possible federal violations to ATF (See *Contacting Federal Partners*).
- Is the person in question subject to a protection order, restraining order or injunction, including criminal orders such as bail, probation or witness intimidation restrictions?
- Is the protected party the spouse or ex-spouse of the person? Cohabiting or formerly cohabitated with the person?
- Does the protected party have a child in common with the person, or is the protected party a child of the person?
- Does the protection order address possession of firearms? (If the protection order itself prohibits firearm possession by the restricted party, subsequent possession is a protection order violation.)

## Misdemeanor Crimes of Domestic Violence

Use the following when considering removing firearms or ammunition from a person who may have been convicted of a misdemeanor crime of domestic violence (MCDV):

- Do the person's probation or parole requirements address firearms? If yes, follow procedure for state law violations and report possible federal violations to ATF (see below).
- Has the person been convicted of a misdemeanor crime with an element of the use or attempted use of physical force or threatened use of a deadly weapon?
- Was the perpetrator of the crime a spouse or former spouse of the victim, the parent or guardian of the victim or have a child in common with the victim? Did the offender cohabit with the victim as a spouse, parent or guardian of the victim or previously cohabit with the victim? Was the relationship of the offender to the victim similar to that of spouse, parent or guardian of the victim?

If you were able to check the previous two boxes, see *Seizure*.

## Seizure

Seizure of firearms or ammunition for violation of the federal prohibitions can be accomplished pursuant to one of the following:

- The person agrees to relinquish the firearms.
- A court order issued in your jurisdiction requires the seizure of firearms.
- Incident to a lawful arrest.
- The item is in plain view and is contraband.
- Cross-deputization as federal law enforcement with the authority under federal law to seize.

## Safe Return of Firearms

Use the following to assist in determining if it is appropriate to return a firearm to a previously prohibited person.

Note: The prohibition on people who have committed a MCDV is a lifetime prohibition.

- The firearm is eligible for return; AND
  - An NCIC/III check on the person reveals no prohibition. The person seeking return is not prohibited under law or rule of court limiting possession of firearms or ammunition.
  - The person has completed all local and state requirements to gain return of firearms.
  - Upon inquiry, the victim reports no legal reason that firearms should not be returned.

Before returning firearms or ammunition to a person, notify any victim of the person that return will occur, giving the date, time and description of firearms and/or ammunition to be returned.

## Protocol for Officer Involved Domestic Violence

There is a limited exemption from the firearm prohibition while subject to a qualifying protection order. The person must be:

- Certain federal, state or local government employee (seek ATF guidance as to who qualifies); or
- Member of the Armed Forces; or
- Law enforcement officer;

AND

- The firearm must be a duty weapon that is necessary for employment. (This exemption is for duty firearms only and is not applicable to any other firearms.); AND
- The prohibited person meets all local and employment-based requirements to maintain possession.

Note: The official use exemption is not available to tribal law enforcement officers subject to a qualifying protection order unless those officers are cross-deputized by a federal, state or local law enforcement agency and operating on behalf of that agency. There is no exemption for people who have been convicted of MCDVs, regardless of their employment.

## Responding to Judicial and Federal Requests for Information

The promptness with which you respond can save a life.

- Offer detailed information on any protection order or conviction for a MCDV or felony.
- 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.

## Refer Situation to Federal Law Enforcement

- Contact your ATF Field Office promptly if you suspect a Gun Control Act violation.
- Provide detailed information on the protection order or conviction.
- Provide the protection order or record of conviction to ATF counsel or Field Office representative.
- Turn over seized firearms within 30 days to federal law enforcement.
- Cooperate with any ongoing federal investigation.



**National Center on Protection Orders and Full Faith & Credit**

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



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