



# Guide to Firearms Return in Domestic Violence Cases

*This Guide to Firearms Return in Domestic Violence Cases was prepared by the Domestic Violence Program in collaboration with its Advisory Committee on Domestic Violence as a service to Ohio's courts. The Guide to Firearms Return is not a comprehensive statement of firearms laws. It is intended to highlight prominent federal and state laws. Users of the Guide to Firearms Return should not exclusively rely on the information herein provided and are advised to consult with an attorney or other legal expert when considering specific firearms return issues in domestic violence cases. The points of view in the Guide to Firearms Return are those of the authors and may not represent the official policies or positions of the Supreme Court of Ohio.*

Absent a specific firearms disability or public policy consideration, a court may authorize the return of firearms and ammunition in law enforcement's protective custody upon the expiration of a protection order. To determine whether the person is otherwise firearms disqualified, the court may begin its analysis by considering the salient laws noted in this Guide.

## Temporary Firearms Disability

### A.1: Qualifying Protection Orders

- A person subject to a qualifying protection order is firearms disqualified during the pendency of the order. Elements of a qualifying protection order [18 U.S.C. 922(g)(8)]:
- The person subject to the order was given due process – notice of hearing AND opportunity to be heard.
- The terms of the protection order prohibit the person subject to the order from harassing, stalking, or threatening the protected party OR engaging in conduct that would place the protected party in reasonable fear of bodily injury.
- The protection order makes a finding that the person subject to the order poses a credible threat to the physical safety of the protected party OR contains an explicit prohibition against the use, attempted use, or threatened use of physical force.

- The protected party is an intimate partner of [18 U.S.C. 921(a)(32)] or has a qualifying relationship with [18 U.S.C. 922(g)(8)(B)] the person subject to the order:
  - Spouse or former spouse
  - Cohabits or has cohabitated with the person subject to the order
  - Shares a child in common with the person subject to the order
  - Child of the person subject to the order
- A person subject to a Domestic Violence Civil Protection Order or Consent Agreement [R.C. 3113.31] and Domestic Violence Temporary Protection Order [R.C. 2919.26] is firearms disqualified.

### A.2: Possible Exception

Although Ohio's protection orders are enforceable and given full faith and credit [18 U.S.C. 2265], not all full hearing protection orders result in a firearms disqualification.

- A Civil Stalking or Sexually Oriented Offense Protection Order [R.C. 2903.214] does not create a firearms disability, unless the protected party is an intimate partner of or has a qualifying relationship with the respondent.
  - Notwithstanding, an Ohio court may impose firearms restrictions if such terms are "necessary for the safety and protection of the person to be protected by the order." [R.C. 2903.214(D)(1)]

- A person subject to a Criminal Protection Order [R.C. 2903.213] is not firearms disqualified, because the protected party is not an intimate partner.
  - Notwithstanding, an Ohio court may impose firearms restrictions if such terms are “designed to ensure the safety and protection of the complainant or the alleged victim.” [R.C. 2903.213(C)(1)]

### A.3: Pending Charge

A person is firearms disqualified during the pendency of the criminal proceeding, if any of the following apply:

- A person, who is under indictment or information for a crime punishable by imprisonment for more than one year, is prohibited from transporting or receiving firearms. [18 U.S.C. 922(n)] Although this prohibition does not extend to possession of firearms, the court may impose other limitations.
- The person is under indictment for any felony offense of violence under state law. [R.C. 2923.13(A)(2)]
- The person is under indictment for any felony offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse under state law. [R.C. 2923.13(A)(3)]

### A.4: Probation, Community Control, Post-release Control or Supervised Release

Persons convicted of a crime may be prohibited from possessing a firearm as a condition of probation, community control, post-release control, or supervised release.

- Such a condition would be in addition to any other firearms disability to which the person may be subject.
- Discretionary condition of probation or supervised release may prohibit possessing a firearm. [18 U.S.C. 3563(b)(8) and 18 U.S.C. 3583(d)]

### A.5: Official Use Exception

A person subject to a qualifying protection order may transport, ship, receive, and possess firearms and ammunitions while on duty if the firearms and ammunition are issued for official governmental purposes. [18 U.S.C. 925(a)]

- This exception applies to law enforcement officers and members of the U.S. Armed Forces.
- This exception does not apply to a person who has a conviction for a misdemeanor crime of domestic violence.

## Permanent Firearms Disability

### B.1: Firearms Disability Disqualifying Conditions

A person subject to a disqualifying condition is prohibited from knowingly possessing, shipping, or transporting any firearm or ammunition [18 U.S.C. 921(a)] or knowingly acquiring, having, carrying, or using any firearms or dangerous ordnance [R.C. 2923.13]. The firearms disqualification is permanent unless the condition is lifted AND civil rights are fully restored.

#### Conviction

- Convicted of a crime punishable by imprisonment for more than one year [18 U.S.C. 922(g)(1)]
  - Ohio’s 5th degree felony conviction does not meet federal criterion [18 U.S.C. 921(a)(20)]
- Convicted of any felony offense of violence [R.C. 2923.13(A)(2)]

#### Fugitive

- Fugitive from justice [18 U.S.C. 922(g)(2) and R.C. 2923.13(A)(1)]

#### Substance Abuse

- Unlawful user of or addicted to any controlled substance [18 U.S.C. 922(g)(3)]
- Convicted of a felony offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse [R.C. 2923.13(A)(3)]
- Drug dependent, in danger of drug dependence, or a chronic alcoholic [R.C. 2923.13(A)(4)]

#### Mental Illness

- Committed to a mental institution [18 U.S.C. 922(g)(4) and R.C. 2923.13(A)(5)]
- Adjudicated as a mental defective [18 U.S.C. 922(g)(4) and R.C. 2923.13(A)(5)]
- Adjudicated as mentally incompetent [R.C. 2923.13(A)(5)]
- Found by a court to be a mentally ill person subject to a court order [R.C. 2923.13(A)(5)]
- Involuntarily admitted to a mental health hospital or inpatient unit other than only for purposes of observation [R.C. 2923.13(A)(5)]

#### Immigration Status

- Alien who is illegally or unlawfully in the U.S. [18 U.S.C. 922(g)(5)]

## U.S. Armed Forces

- Dishonorably discharged from the U.S. Armed Forces [18 U.S.C. 922(g)(6)]

## Citizenship

- Renounced U.S. citizenship [18 U.S.C. 922(g)(7)]

## Domestic Violence Crime

- Convicted of a misdemeanor crime of domestic violence [18 U.S.C. 922(g)(9) and 18 U.S.C. 921(a)(33)(A)(i)-(ii)]
  - Element of the crime must include the use or attempted use of physical force OR threatened use of deadly weapon as set forth by state law [United States v. Castleman, 134 S. Ct. 1405, 188 L.Ed.2d 426 (2014)]
    - R.C. 2919.25(A) and (B) meet this criterion, but R.C. 2919.25(C) does not
    - R.C. 2917.11(A)(1) may meet this criterion [Voisine v. United States, 579 U.S.\_\_\_\_\_, 136 S.Ct. 2272, 195 L.Ed.2d 736 (2016); State v. Majka, 9th Dist. Summit No. 20587, 2002-Ohio-1378, 2002 Ohio App. LEXIS 1385, 2002 WL 462858 (Mar. 27, 2002)]
  - Predicate element of the crime need not be domestic violence, but the defendant must have a domestic relationship with the victim [United States v. Hayes, 555 U.S. 415, 129 S.Ct. 1079, 172 L.Ed.2d 816 (2009)]
    - Spouse or former spouse
    - A parent or guardian of the victim
    - A person who shares a child in common with the victim
    - A person who cohabits or has cohabited with the victim as a spouse, parent, or guardian
    - A person similarly situated to a spouse, parent, or guardian of the victim
  - Defendant was represented by counsel or waived right to counsel [18 U.S.C. 921(a)(33)(B)(i)(I)]
  - Defendant had a jury trial or waived the right to a jury trial [18 U.S.C. 921(a)(33)(B)(i)(II)(aa)-(bb)]

## B.2: Relief from Firearms Disability

Under limited circumstances, a permanent firearms disability may be lifted and may result in the return of firearms or ammunition to the person.

- Executive pardon [18 U.S.C. 921(a)(20) and 18 U.S.C. 921(a)(33)(B)(ii)]
- Expunged conviction [18 U.S.C. 921(a)(20), 18 U.S.C. 921(a)(33)(B)(ii), and R.C. 2953.33]

- Sealed records [R.C. 2923.13 and R.C. 2953.32]
- Restoration of civil rights [18 U.S.C. 921(a)(20) and 18 U.S.C. 921(a)(33)(B)(ii)]
  - Full restoration of civil rights (all-or-nothing approach) must be granted to relieve a person from a firearms disability. [Caron v. United States, 524 U.S. 308, 118 S.Ct. 2007, 141 L.Ed.2d 303 (1998)]
- Expungement, pardon, or restoration of civil rights must not include any limitation or exception to shipping, transporting, possessing, or receiving firearms. [18 U.S.C. 921(a)(20) and 18 U.S.C. 921(a)(33)(B)(ii)]
- A court of common pleas may grant relief from firearms disability if the person has been leading a lawful life, is not otherwise firearms disqualified, and
  - Has been fully discharged from imprisonment, community control, post-release control, and parole OR released on bail or recognizance, if disability due to an indictment. [R.C. 2923.14(D)(1)(a)]
  - If the disability was not based on an indictment, conviction, or adjudication, the condition that rendered the person firearms disqualified no longer exists. [R.C. 2923.14(D)(1)(b)]

## The Domestic Violence Program at The Supreme Court of Ohio

Recognizing the importance of effective and sound domestic violence practices from the judiciary, the Supreme Court of Ohio established the Domestic Violence Program within its Judicial & Court Services Division in 2007. The Supreme Court Domestic Violence Program:

- Promotes coordination and communication among courts that issue domestic violence protection orders and other relevant orders
- Supports standard domestic violence and stalking protection order forms and practices
- Disseminates cutting-edge domestic violence practices, policies and procedures
- Tracks trends in domestic violence and stalking cases
- Develops trainings and other educational opportunities to highlight current trends in the domestic violence field.

The Domestic Violence Program is supported by the Supreme Court Advisory Committee on Domestic Violence. For more information, contact the Supreme Court of Ohio Domestic Violence Program at:

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