

WHAT IS 18 U.S.C. § 922(G)(8)?

This federal law prohibits persons subject to a “qualifying” protection order from possessing, receiving, shipping, or transporting firearms and/or ammunition. A qualifying court order may be issued by a criminal or civil court (such as family court, magistrate, or general, jurisdiction court or divorce court). Ex parte, temporary, or emergency orders generally are not considered “qualifying” orders because the respondent/defendant has not yet received notice and has not had an opportunity to participate. If the respondent is served with the order and fails to appear, consents, agrees, or stipulates to the entrance of the final order, the prohibition will attach.

The following list enumerates the criteria that define a qualifying protection under 18 U.S.C. § 922(g)(8). **Generally, a defendant/respondent subject to a protection order that includes one element from each section listed below is subject to the Federal firearms prohibition.**

Hearing: The order was issued after a hearing of which the respondent/defendant received **actual notice** and an **opportunity to participate**;

Restrains Future Conduct: The order must restrain the respondent/defendant from **either** harassing, stalking, or threatening an intimate partner of the person or a child of the person or the intimate partner; **or**

The order must restrain the respondent/defendant from engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; **and**

Finding of Credible Threat or Prohibits Physical Force: The order must **either** include a finding that the person subject to the order represents a credible threat to the physical safety of an intimate partner or child; **or**

The order **must** prohibit 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.

Relationship Requirement: The protected person must be:

- An intimate partner (18 U.S.C. §921(a)(32):
 - A spouse or former spouse of the respondent/defendant
 - A parent of a child in common with the respondent/defendant
 - An individual person who cohabits or has cohabited with respondent/defendant (in a sexual/romantic relationship)
- A child of the respondent/defendant
- A child of an intimate partner



JUDICIAL NOTIFICATION

As part of the 2005 amendments to the Violence Against Women Act, Congress required STOP Violence Against Women Formula Grant Program (STOP grant) recipients to certify that their “judicial administrative policies and practices include notification to domestic violence offenders” of applicable federal, state, or local firearms prohibitions (34 U.S.C. §10449(e)). This means courts must inform all domestic violence offenders that federal, state, or local laws may limit their ability to purchase or possess firearms and ammunition. Courts may provide notification either orally or in writing.



PERSON SUBJECT TO A PROTECTION ORDER

The following is suggested language for the above notification :

“As a result of this order, it may be unlawful for you to possess or purchase a firearm, including a rifle, pistol or revolver, or ammunition pursuant to federal law under 18 U.S.C. §922(g)(8) and/or state law. If you have any questions about whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney.”



ENTRY OF ORDERS INTO NATIONAL CRIME INFORMATION CENTER PROTECTION ORDER FILE (NCIC POF)

The NCIC POF is designed to:

- Enable civil and criminal courts to receive timely and accurate information on active as well as historical protection order records.
- Allow law enforcement agencies to access information regarding the existence and terms of an order entered into the system.
- Assist in the possible identification of persons prohibited from purchasing or possessing firearms as a result of federal, state, local, tribal or territorial law.

To ensure the System’s effectiveness agencies must timely enter complete and accurate data into the POF. The information is critical in assisting courts and law enforcement to track, serve, and enforce protection orders.

For further information about Section 922(g)(8) or Federal firearms prohibitions in general, contact your local Field Division of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) by call 1-800-800-3855, or Visit www.ATF.GOV/Field/. For further information and most recent changes, questions or additional assistance, agencies should contact their CSA or the FBI’s NCIC training staff at 1-877-324-6242.

FACILITATE COMPLIANCE OF FIREARM PROHIBITION IN THE COURT ORDER



ISSUING ORDER

- Indicate the relationship of the parties on the order.
- Specify any prohibitions related to the firearms on the order, (e.g., directives against purchase, sale, possession or control of firearms, ammunition or permits).
- Issues all relief allowable under the statute. Use the “catch all” provision in the state protection order statute that permits the court to issue additional relief to enhance protection of the petitioner and any other protected party including minor children.



SURRENDER

- Require the surrender of all firearms upon issuance of the order.
- Establish a compliance mechanism for surrender of a firearm (i.e., specify the place where the firearm should be surrendered, the date and time of the surrender should be completed, and a description of the firearm to the extent possible).
- Direct law enforcement or other appropriate agency to destroy any surrendered firearm absent proof lawful ownership (if authorize under state law).
- Schedule a compliance hearing when the respondent/defendant has failed to turn over firearms.
- If lawfully owned, a judge may approve a plan for sale/transfer of a firearm under certain circumstances.



THIRD-PARTY TRANSFER

- Provide the victim with the opportunity to be heard in all proceedings related to the return of firearms and ammunition to the respondent/defendant and notify the victim if the firearms are returned.
- Hold a hearing to determine whether the respondent/defendant would retain access (constructive possession) to the firearm(s).
- Have both the respondent/defendant and the transferee sign a form that acknowledges that firearms may not be transferred to a prohibited party. Signing should be witnessed by court staff or under penalty or perjury as a court order.
- Inform the respondent/defendant and the transferee that they may be subject to a federal prosecution if they knowingly transfer or return any firearms to a prohibited person. 18 U.S.C. §922 (d)(8).



RETURN

- Establish a procedure for return of firearms.
- Conduct a hearing prior to returning firearms to determine the respondent/defendant’s eligibility to possess under state law.

The Gun Control Act (GCA) prohibits persons subject to certain qualifying protection orders from possessing or receiving firearms and/or ammunition. 18 U.S.C. §§ 922(g)(8), However 18 U.S.C. §925(a)(1) exempts military and law enforcement personnel who are employees of the Federal, State, or local government agencies whose government is a political subdivision of the State from certain firearm prohibitions. These prohibitions include §922(g)(1)-(8), (d)(8) and (n) while on “official duty”.



ENFORCEMENT TIPS

- A state judge cannot override the federal firearm prohibition under 18 U.S.C. 922(g)(8).**
 - Firearm prohibitions issued in protection orders from other States, tribes and U.S. territories are entitled to enforcement under 18 U.S.C. 2265.**
 - The Gun Control Act does not require that the protection order contain any language regarding firearms. If the order meets the criteria of 18 U.S.C. § 922(g)(8) (which does not mention firearms or ammunition as language criteria), then the order qualifies.**
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OFFICIAL USE EXEMPTION AND STATE LAWS

State law can be far more strict than federal law.

While federal law for 18 U.S.C. § 925 (a) (1) would authorize law enforcement or military personnel to maintain/possess their duty weapon while on duty (even if on duty 24/7), federal law cannot supersede state law in this area. In other words, if there is no state law that would allow a state officer (including locals or military personnel) to retain a firearm while on duty (no state official use exemption), then that officer will be dispossessed under state law, even though he is not federally barred for the duration of that protection order. That order is entitled to full faith and credit and enforcement under the Armed Forces Domestic Security Act, 10 U.S.C. § 1561a. For more information on 18 U.S.C. § 925 (a) (1) please see the Official Use Exemption Technical Assistance Bulletin.