



“OFFICIAL USE” EXEMPTION ALLOWING FIREARM POSSESSION BY LAW ENFORCEMENT AND MILITARY PERSONNEL

NATIONAL RESOURCES CENTER ON PROTECTION ORDERS AND FULL
FAITH & CREDIT TECHNICAL ASSISTANCE BULLETIN

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BACKGROUND

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 law enforcement and military 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 [\(n\)](#) prohibitions while on “official duty”. The “official use” exemption allows federal, state, and local officials to have firearms in their official capacity even if subject to a firearm disqualification. [18 U.S.C. § 925\(a\)\(1\)](#).

Application

For the exemption to apply, the personnel must be authorized or required to receive or possess a duty weapon to perform their official duties. The authorization must be pursuant to federal, state, or local statute, regulation, or official departmental policy. This does not apply to private security personnel, unless they are operating under the direction or supervision of a governmental agency (e.g., contract security personnel conducting security checks for a governmental agency, such as a court). Under this exemption, law enforcement and military personnel subject to qualifying protection orders are allowed to keep their official firearms (even if purchased privately) while on duty. To carry a privately owned firearm on duty, the officer must be authorized or required to purchase his or her own service weapon and the firearm possessed must be for use in performing official duties. If the privately owned weapons are not for use in performing official duties, personnel are not allowed to keep them so long as the qualifying protection order is in effect. If, under department policy, an officer is on duty 24/7 and never considered “off-duty”, the officer is allowed to keep official but not personal firearms. If, under department policy, there is an “end of shift,” then no firearms may be kept after the shift ends. In such cases, official firearms must be returned to a supervising officer until the officer who is under the prohibition returns to duty, at which point they can be signed out again.

Limitations of the Official Use Exemption

This exemption does NOT apply to law enforcement or military personnel convicted of a misdemeanor crime of domestic violence (MCDV) [18 U.S.C. § 922\(g\)\(9\)](#). The statute specifically provides that federal, state, and local law enforcement convicted of MCDVs cannot possess any firearms at any time – even official firearms while on duty. This means that federal law would be violated if a federal/state law enforcement or military personnel possessed a firearm at any time. This prohibition also applies to persons convicted of misdemeanor crimes of dating violence.

The “official use exemption” also does not apply to [18 U.S.C. § 922\(d\)\(9\)](#) – knowingly transferring a firearm and/or ammunition. Thus, government officials who knowingly provide firearms to persons convicted of a qualifying MCDV may be in violation of federal firearms law.

The federal “official use” exemption is only one restriction on firearm possession. State, local, and tribal laws may further restrict firearm possession. Moreover, individual law enforcement agencies may adopt more stringent restrictions. For example, a police departmental policy may prevent any officer subject to a protection order from possessing a firearm - either an official or a personal firearm - during the time the protection order is active.



Frequently Asked Questions

1. Can law enforcement or military personnel live in a house with firearms if convicted of an MCDV?

Answer: Under [18 U.S.C. § 922 \(g\)\(9\)](#), the officer is prevented from having actual possession of any firearms. In addition, an officer is prevented from having constructive possession, which is different from actual possession. “Constructive possession,” means that the person has power to exercise control over the weapon. For example, if another member of the household has a gun and locks it in a gun safe but gives the convicted individual the code to the safe, that would be considered constructive possession.

2. The respondent is an active-duty member of the armed forces. Can the respondent possess a firearm if he is subject to an active civilian protection order that prohibits the possession of firearms pursuant to state law?

Answer: No. State law can be far more strict than federal law. While federal law for [18 U.S.C. § 922 \(g\) \(8\)](#) 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](#).

3. Does the official use exemption apply to tribal law enforcement?

Answer: Tribal law enforcement officers are not included unless cross-deputized by the Bureau of Indian Affairs or another federal state or local government agency.

4. Can a judge allow a respondent to maintain his long arm gun for hunting even if prohibited by federal law?

Answer: No.

4. What is the role of state/tribal courts and law enforcement in enforcing violations of federal law?

Answer: The determination of whether a protection order or a misdemeanor conviction qualifies as a federal predicate is made by federal authorities and not state/tribal authorities. State/tribal judges do not determine whether a protection order qualifies under federal law and thus cannot “override” federal law.



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