

MISDEMEANOR CRIME OF DOMESTIC VIOLENCE

QUESTIONS AND ANSWERS

As of April 28, 1997

1. What is a misdemeanor crime of domestic violence?

As defined in the Gun Control Act of 1968, a "misdemeanor crime of domestic violence" means an offense that:

- (1) is a misdemeanor under Federal or State law;
- (2) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon; and
- (3) was 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 cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim. However, a person is not considered to have been convicted of a misdemeanor crime of domestic violence unless:

- (1) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and
- (2) in the case of a prosecution for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either--
 - (a) the case was tried by a jury, or
 - (b) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

In addition, a conviction would not be disabling if it 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 jurisdiction in which the proceedings were held provides for the loss of civil rights upon conviction for such an offense) unless the pardon, expunction, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms, and the person is not otherwise prohibited by the law of the jurisdiction in which the proceedings were held from receiving or possessing firearms.

2. What is the effective date of this disability?

The law was effective September 30, 1996. However, the prohibition applies to persons convicted of such misdemeanors at any time, even if the conviction occurred prior to the new law's effective date.

3. Does the new disability apply to law enforcement officers?

Yes. The Gun Control Act of 1968 was amended so that employees of Government agencies convicted of qualifying misdemeanors would not be exempt from this new disability with respect to their receipt or possession of firearms or ammunition. Thus, law enforcement officers and other Government officials who have been convicted of a disqualifying misdemeanor may not lawfully possess or receive firearms or ammunition for any purpose, including performance of their official duties. This disability applies to firearms and ammunition issued by Government agencies, firearms and ammunition

purchased by Government employees for use in performing their official duties, and personal firearms and ammunition possessed by such employees.

4. Is this provision of the law being applied retroactively in violation of constitutional rights?

No. This provision is not being applied retroactively or in violation of the ex post facto clause of the Constitution. This is because the law does not impose additional punishment upon persons convicted prior to the effective date, but merely regulates the future possession of firearms on or after the effective date. The provision is not retroactive merely because the person's conviction occurred prior to the effective date.

5. What is the penalty for violating this offense?

Any individual who knowingly violates this provision of the law is subject to a fine of \$250,000, imprisonment of up to 10 years, or both.

6. Does the law impose any additional duties on dealers in firearms and ammunition?

Yes. Until the Form 4473 and Brady forms have been revised to include the new offense, licensees should inquire of their customers whether they have been convicted of a disqualifying domestic violence misdemeanor and avoid transferring any firearms or ammunition to such persons. ATF is in the process of revising the forms and will provide them to licensees as soon as possible.

7. What should a licensee do if he has been convicted of a misdemeanor crime of domestic violence?

Federal firearms licensees should verify that they are disabled under the new prohibition. A licensee convicted of a disqualifying misdemeanor may not lawfully possess firearms or ammunition. In addition, a licensee who incurs firearms disabilities during the term of a license may not continue operations under the license for more than 30 days after incurring the disability unless the licensee applies for relief from Federal firearms disabilities.

8. What should a person do if he has been convicted of a misdemeanor crime of domestic violence?

Individuals subject to this disability should immediately lawfully dispose of their firearms and ammunition. ATF recommends that such persons transfer their firearms and ammunition to a third party, such as their attorney, to their local police agency, or a Federal firearms dealer. The continued possession of firearms or ammunition by persons under this disability is a violation of law and may subject the possessor to criminal penalties. In addition, such firearms and ammunition are subject to seizure and forfeiture.

9. X was convicted of misdemeanor assault on October 10, 1996. The crime of assault does not make specific mention of domestic violence, but the criminal complaint reflects that X assaulted his wife. May X still possess firearms or ammunition?

No. X may no longer possess firearms or ammunition.

10. X was convicted of the same crime on September 20, 1996, 10 days before the effective date of the new statute. He possesses a firearm on October 10, 1996. May X lawfully possess firearms?

No. If a person was convicted of a crime at any time, he or she may not lawfully possess firearms or ammunition on or after September 30, 1996.

11. What State and local offenses are "misdemeanors" for purposes of 18 U.S.C. secs. 922(d)(9) and (g)(9)?

"Misdemeanor" as used in 18 U.S.C. secs. 922(d)(9) and (g)(9) includes any offense under State law or local ordinance punishable by imprisonment, other than a "crime punishable by imprisonment for a term exceeding one year" as defined in 18 U.S.C. sec. 921(a)(20). Whether the State uses the word "misdemeanor" to describe the offense is immaterial.

12. In determining whether a conviction in a State court is a "conviction" of a misdemeanor crime of domestic violence, does Federal or State law apply?

State law applies. If a conviction for a qualifying misdemeanor does not occur under State law, the person has not been "convicted" of a misdemeanor crime of domestic violence. The law states that a person must be convicted of a State misdemeanor to be under firearms disabilities. Therefore, if the State does not consider the person to be convicted, the person would not have Federal firearms disabilities.

13. Is a person who received "probation before judgment" or some other type of deferred adjudication subject to this disability?

What is a conviction is determined by the law of the jurisdiction in which the proceedings were held. If the State law where the proceedings were held does not consider probation before judgement or deferred adjudication to be a conviction, the person would not be subject to Federal firearms disabilities.

14. Are local criminal ordinances "misdemeanors under State law" for purposes of sections 922(d)(9) and (g)(9)?

Yes, assuming a violation of the ordinance meets the definition of "misdemeanor crime of domestic violence" in all other respects.

15. X was convicted of misdemeanor assault on October 10, 1996. The crime of assault does not make specific mention of domestic violence but the criminal complaint reflects that he assaulted his wife. May X still possess firearms or ammunition

No. X may no longer possess firearms or ammunition.

16. X was convicted of the same crime on September 20, 1996, 10 days before the effective date of the new statute. He possesses a firearm on October 10, 1996. May X lawfully possess firearms?

No. If a person was convicted of the crime at any time, he or she may not lawfully possess firearms or ammunition on or after September 30, 1996.

17. Officer C was charged with felony assault on her child in 1989. She pled guilty to a misdemeanor and the felony charge was dismissed. She was suspended from the police force and ordered to undergo counseling. After successful completion of the counseling, she was reinstated. May Officer C lawfully possess firearms or ammunition?

No. Officer C may no longer lawfully possess firearms or ammunition either on or off duty.

18. Are Convictions for misdemeanor crimes of domestic violence entered by an Indian tribal court disqualifying under 18 U.S.C. 922 (d) (9) and (g) (9)?

Convictions for misdemeanor crimes of domestic violence entered by "tribal courts" are not disqualifying under 18 U.S.C. 922 (d) and (g) (9) since the statute expressly refers to federal and state court convictions, but does not reference tribal court convictions.

However, Courts of Indian Offenses operated by the Bureau of Indian Affairs under 25 C.F.R. Part 11 are federal instrumentalities. Therefore, convictions for purposes of 18 U.S.C. 922 (d) and (g) (9).

Note: For one who has been convicted of a misdemeanor crime of domestic violence, the prohibition on the possession of firearms and ammunition DOES not apply if the individual has received a pardon for the crime, the conviction has been expunged or set-aside, or the person has had civil rights restored (if there was a loss of civil rights) AND the person is not otherwise prohibited from possessing firearms or ammunition.

This file was last modified on September 18, 1997.