



American Judges Association

**Punishment Beyond the Sentence: The Collateral
Consequences of Criminal Conviction, Domestic
Violence, and Firearms Possession**



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Lake County, Ohio, Common Pleas Court

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Presentation Contents

- Collateral consequences of criminal conviction, domestic violence, and especially those impacting the right to bear arms
- The right to keep and bear arms and related firearms laws
- Firearms disabilities and related laws
- Special offenders
- Restoration of firearms rights
- Practice pointers for judges

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Introduction

- Thirteen million people in the U.S. have a felony conviction.
- We want these people to pay their debt to society and take up productive and law-abiding lives in the community.
- At the same time, we deprive them of the tools for doing so by excluding them sometimes permanently from many opportunities and benefits, consigning them to a legal status that has aptly been called “internal exile.”
- Once someone has been labeled a criminal in this country, it is almost impossible to get rid of the stigma attached to that status.
- This phenomenon is hardly new; what is new is the **scale** of the problem.

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Direct Consequences of Conviction

- Jail or prison
- Fine
- Community control or probation, period & terms, consequences for violations
- Post-release control or parole, mandatory or discretionary, duration, terms, consequences for violations
- Restitution

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All of this is expected ...

... but an offender is not done paying his debt to society when he is done with his sentence and he is released from incarceration and is “off paper.”

He must then deal with the indirect or collateral consequences of his criminal conviction.

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Collateral Consequences

- They exist at both the state and federal levels
- Some are mandatory, while others are discretionary
- Some are permanent, while others are for a specific or temporary duration
- Some attach to all criminal convictions, while others accompany all felony convictions, or convictions for violent felonies, or all drugs convictions of any criminal degree, or misdemeanor domestic violence convictions
- Many flow without prior warning and are not a part of the plea colloquy precipitating the conviction; many in the criminal justice system are totally unaware of their existence – they are outside the criminal code
- They are numerous and varied, and outlast the direct sentences imposed on defendants

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Collateral Consequences (Numbers by Selected Jurisdiction)

• Federal	1,194	• Wyoming	535
• California (1)	1,818	• Dist. of Columbia	632
• Texas (3)	1,586	• Vermont	347
• New York (5)	1,298	• North Dakota	531
• Florida	1,166	• Alaska	599
• Illinois (4)	1,465	• South Dakota	455
• Pennsylvania	902	• Delaware	792
• Ohio (2)	1,687	• Montana	569
• Michigan	789	• Rhode Island	722
• Georgia	894	• New Hampshire	1,115
• North Carolina	1,011	• Maine	684

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Categories of Collateral Consequences and a Few Examples

Business license and other property rights

- property **forfeitures**
- **disclosure** of convictions
- ineligibility to be/revoke **Medicaid provider**,
- deny/revoke **highway** bidding/contracting,
- suspension of rights to engage in a **public contract**,
- ineligibility to be a party to a federally insured depository institution for certain crimes
- ineligibility/loss of position as investment advisor, broker, dealer with SEC for certain offenses
- disability to engage in positions within **labor organizations** for certain convictions
- ineligible to fundraise for or operate bingo games
- ineligibility for employment in **law enforcement** or fire service

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Employment

- ineligibility/ deny/suspend/revoke service as peace officer, jail, bailiff, canine, or **firearm training commander or instructor**
- discharge from **public service employment**, agency on aging, school, child program, preschool, post-secondary institution, or teacher, aide, substitute, professional educator, administrator, pupil services, transportation, school treasurer or business manager
- ineligibility for employment at child care agency, door-to-door marketing, driving instructor, construction contractor, alcohol/drug addiction or driver intervention program
- ineligibility for employment at detention facility
- ineligibility for **civil service** employment
- ineligibility for **back pay** during pre-conviction suspension
- suspend/expel attorney from practice before board of immigration appeals/courts
- ineligibility for employment by/dismissal from any federal office for certain crimes
- ineligibility to enlist in the **armed forces**
- forfeiture of accrued and future gratuitous veterans benefits for certain crimes
- bar or loss of a **professional license** upon conviction of a drug offense

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Political and civic participation

- **denial of ability to vote/be an elector (voting is state law issue)**
- **ineligibility to serve as a juror, state or federal, grand or petit**
- **disqualification to hold position of public office, honor, trust, or profit**
- ineligible to circulate or serve as a witness for the signing of any declaration of candidacy and petition, voter registration application, or nominating, initiative, referendum, or recall petition
- removal from public office or employment
- ineligibility to be a **foster care giver**
- suspend/removal/impeachment from judicial office
- ineligibility to serve as **guardian ad litem**
- ineligibility to serve as process server
- ineligibility for reappointment as notary public
- ineligibility for election as **sheriff** or employment as deputy sheriff
- ineligibility to serve as election officer
- deny entrance into **casino** facilities
- removal from the national guard or state military reserve or naval militia

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Occupational and professional license and certification

- Ineligibility/deny/suspend/revoke employment in many fields:

real estate appraiser license/certification, elevator inspector certificate, **real estate** license, wild animal control license, **health care** imaging technologist, motor vehicle inspector, hazardous waste, lottery, gaming, or racing commission license, **CPA**, insurance agent/broker, investment advisor, architect, **barber & cosmetologist**, dentist & hygienist, funeral director/embalmer, dialysis technician, nurse, attorney – including suspension/denial for child support arrearages, **peace officer**, optometry license, optician, pharmacy/drug distributor & technician, **physician**, chiropractor, aesthetician, podiatrist, physician assistant, psychologist, **engineer**/surveyor, acupuncturist, veterinarian, hearing aide dealer/fitter, speech pathologist & **audiologist**, physical or occupational therapist, counselor or social worker, dietetics, EMS, firefighter, EMT & **paramedic**, orthotics/prosthetics license, manufactured homes dealer/inspector/installer, in-home aid, ambulette driver/attendant

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Registration, notification, and residency restrictions

- **registration** as sex offender for up to life
- **notification** of sex offender conviction – the public, schools, and child care facilities
- **restrictions** on, residence, employment, education institution of sex offender
- **publish** convictions of scrap metal dealers
- notification of court of adoption of conviction of adoptive parent prior to finalization
- **ineligibility** to reside with foster care giver
- publish conviction for scholarship fraud on Department of Education website

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Government loans and grants

- ineligibility for **DOD** bond guarantee
- **notification** of criminal conviction
- impose **accelerated repayment** of educational federal loans
- **forfeit** grant forgiveness

Motor vehicle licensure & operation

- suspend/revoke/limit/restricted motor vehicle **operating privileges**
- display distinctive license **plates**
- **revoke** disabled driver placard or license plates
- commercial driver license suspension or revocation

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Government benefits

- **terminate** disability benefits
- termination of medical/dental/vision care coverage
- ineligibility to receive state teacher, school employee, police & fire, public employees, state highway patrol **retirement benefits**
- requirement to obtain prescription drugs through coordinated services program
- ineligibility for works first or welfare program benefits
- ineligibility for **passport**
- ineligibility for Title IV-E adoption assistance
- ineligibility for or increase in, food assistance benefit allotment
- ineligibility to participate in **food stamp** program
- ineligibility for **tax credits** for education expenses

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Education

- ineligibility to enroll in peace officer training course
- ineligibility for student **financial assistance**
- ineligibility to participate in teaching fellows program
- ineligibility for federal **student loans**, grants, or assistance
- deny enrollment in **Job Corps**
- ineligibility for appointment to military academies
- ineligibility for Title IV HEA program assistance

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Government contracting and program participation

- ineligibility for inclusion in works first program
- ineligibility for contract to invest Bureau of Workers Compensation funds
- ineligibility to bid on, or for consideration for, **government contract awards**
- deny/revoke vendors license on governmental facilities
- revoke/suspend **foster care program** participation
- disbar attorney from **practicing** before Bureau of Alcohol Tobacco Firearms & Explosives
- ineligibility to participate in any contract with the Department of Defense for certain convictions
- exclusions from participation in federal **health care programs** for certain convictions
- **debarment** from participating in contracts with HUD for certain convictions

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Family/domestic rights

- grounds for **divorce**
- ineligibility to reside in family care home
- **attachments** for child or spousal support arrearages
- ineligibility for best efforts requirement to return child to home
- ineligibility to serve as substitute caregiver
- termination of **parental rights**
- ineligibility for recommendation to adopt
- ineligibility to reside in a residence seeking recommendation to adopt or the residence of an adoptive parent
- ineligibility to **adopt**

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Recreational license, including firearms

- ineligibility/denial/suspend/revoke hunting, fishing, and trapping **license**
- denial/suspension/revocation of **concealed** handgun license
- ineligibility to possess **weapons**
- ineligibility for weapons license as armored car company employee
- deny/revoke/suspend federal fish/game permit
- ineligibility to sell/ship/transport/receive **firearm** in interstate commerce
- ineligibility to purchase firearms/ammunition
- “Firearms” includes both long guns (rifles and shotguns) and handguns 18 USC 921(a)(3)

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Judicial Rights

- **enhanced degree** of offense or penalty on future offenses
- **deportation**/removal/exclusion from admission to the United States/or denial of naturalization pursuant to the laws of the United States,
- **impeaching** witness credibility
- past criminal conviction as **element of crime** or enhanced penalty
- ineligibility to serve as guardian ad litem
- **civil liability** for conviction or imposed civil liability
- ineligibility for indemnification
- ineligibility to receive **death benefits**
- ineligibility for tort claim recovery

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Judicial Rights (continued)

- ineligibility for **punitive damage limitations**
- ineligibility for reparations award
- admission to rebut character evidence
- subject to **warrantless searches**
- denial of availability of **mediation** in certain types of actions
- denial of notice of other parent's intent to **relocate**
- disclosure of criminal record of witness to criminal defendant
- ineligibility for pretrial diversion or intervention in lieu of conviction
- denial of power of attorney
- deny caretaker authorization
- ineligibility for juvenile court
- ineligibility to discharge debt in **bankruptcy** or dismissal of bankruptcy filing

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Judicial Rights (continued)

- ineligibility to **exempt property interest** for enumerated property in bankruptcy proceedings
- civil recoupment of losses
- ineligibility for safe harbor for forward-looking securities statements
- civil penalty/**collateral estoppel**
- ineligibility for limitation on liability for teachers
- ineligibility for relief from suspension without pay
- **forfeit** inheritance/property rights of Indian tribe member
- ineligibility to **deduct treble damages** award in civil antitrust suits after conviction for antitrust violation
- deny criminal proceedings before U.S. magistrate judge

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Judicial Rights (continued)

- **forfeit** pension plan inalienability with regard to judgments for crimes involving the plan
- ineligibility for award under False Claims Act
- ineligibility for **conscientious objector** status
- forfeit profits under government contract
- issue and claim **preclusion**
- collateral estoppel/res judicata
- ineligibility for limitations on liability
- ineligibility for immunity
- ineligibility for **de micromis** (less than de minimus) exception to liability
- waiver of reasonable efforts requirement in child protection proceedings
- ineligibility to **exclude evidence** of prior conviction as hearsay

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Efforts to Mitigate Collateral Consequences

- Created or expanded expungement and sealing remedies
- Certificates of recovery, relief from disabilities, or qualification for employment
- Offense downgrades from felony to misdemeanor
- Deferred prosecution or adjudication programs or intervention in lieu of conviction
- Improved access to information regarding collateral consequences
- Mitigated specific collateral consequences, restrictions on housing, public benefits, or family matters

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Firearms Rights

Constitutional Provisions

- U.S. Const. Amendment II. Right To Bear Arms
 - **“A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”**
 - This right has been incorporated against the states
 - Described as a fundamental and individual right that will necessarily be subject to strict scrutiny by the courts. See *McDonald v. City of Chicago* (2010)
 - Self Defense is described as "the central component" of the Second Amendment in *McDonald, supra.*, and upheld *District of Columbia v. Heller* (2008)

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STATE CONSTITUTIONAL RIGHTS TO KEEP AND BEAR ARMS

- **44** states have state constitutional rights to bear arms. Most are written quite differently from the Second Amendment. Nearly all secure (at least in part) an individual right to keep some kinds of guns for self-defense. Some date back to the Framing; some have been enacted in the last four decades.
- In **22** states (AL, AZ, CO, CT, DE, KY, MI, MS, MO, MT, NE, NV, NH, NM, ND, OK, TX, UT, WA, WV, WI, and WY), an individual self-defense right is expressly secured, though keeping and bearing arms for other purposes may also be protected.
- In **four** states (AK, IL, LA, and ME), an individual right is expressly secured, and court decisions treat the right as aimed at least in part at self-defense.

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STATE CONSTITUTIONAL RIGHTS TO KEEP AND BEAR ARMS (cont'd.)

- In **14** states (AR, FL, GA, ID, IN, NC, OH, OR, PA, RI, SC, SD, TN, and VT), court decisions treat the right as individual and aimed at least in part at self-defense.
- In **two** states (HI and VA), the right is not expressly characterized as individual, and courts have not passed on the question.
- In **two** states (KS and MA), courts have treated the right as collective.
- In **six** states (CA, IA, MD, MN, NJ, and NY), no state constitutional right-to-bear-arms provision exists.
- Federal & state constitutional provisions are attached

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HandgunLaw.us : CCW Map

Permit Honored
Permit Not Honored

Colorado, Florida, Michigan, New Hampshire, South Carolina & Maine only honor permits from residents of the States they honor

Build CCW Map You Selected: OH

<input type="checkbox"/> Alabama	<input type="checkbox"/> Maine	<input type="checkbox"/> Oregon
<input type="checkbox"/> Alaska	<input type="checkbox"/> Maryland	<input type="checkbox"/> Pennsylvania
<input type="checkbox"/> Arizona	<input type="checkbox"/> Massachusetts	<input type="checkbox"/> Rhode Island
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		<input type="checkbox"/> Puerto Rico
		<input type="checkbox"/> Virgin Islands

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Law Enforcement Officers Safety Act of 2004 (LEOSA)

- LEOSA allows qualified active and retired law enforcement officers to carry concealed firearms anywhere in the country “notwithstanding any other provision of the law of any State or any political subdivision thereof.”
- LEOSA creates an affirmative defense to criminal prosecutions for alleged violations of state and local statutes and ordinances prohibiting the carrying of concealed weapons.
- To carry a concealed weapon under LEOSA, the retired law enforcement officer must, among other things, (1) be eligible to possess firearms under federal law, (2) meet the active duty standards for qualification in firearms training as established by the agency to carry a firearm of the same type as the concealed firearm, and (3) be carrying the identification required by the federal law.
- 18 USC 926B & 926C are attached

Qualified Law Enforcement Officer (LEOSA)

- In general, an individual who is employed by a **governmental** agency
- as a **law enforcement** officer
- with **powers of arrest**,
- and is **authorized to carry** a firearm on duty,
- and meets firearm **qualification standards**,
- and is not the subject of any **disciplinary** action, is not under the **influence**, and not prohibited by **federal** law from having a firearm
- and is carrying his/her agency **photo I.D.**

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Qualified Retired Law Enforcement Officer (LEOSA)

- In general, an individual who separated in **good standing**
- from service of at least an aggregate of **10 years**
- from **public employment**
- as a **law enforcement officer**
- with **powers of arrest**, and
- within the last 12 months **qualified with the firearm type** he/she carries to the standard of active duty law enforcement officers in that jurisdiction
- and is not under the **influence**, or disqualified on **mental health** grounds, and not prohibited by **federal** law from having a firearm
- and is carrying his/her retired **photo I.D.** and a card certifying his/her firearm **qualification**

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Relationship Between Federal & State Firearms Laws

- Both sets of laws are independent, and in full force and applicable according to most state criminal domestic violence and state protection order cases
- No pre-emption or Supremacy Clause issues; federal restrictions apply in addition to the state laws banning possession of a firearm while under a disability
- State judge cannot waive, override, grant immunity from, negate, or determine the applicability of the federal firearm laws
- Violation of protection order issued by the state may also result in federal charges under VAWA

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Relationship Between Federal & State Firearms Laws (cont'd.)

- 18 USC 922(g)(8) does not rely upon state law definitions or standards to determine whether a person is prohibited from possessing a firearm -- the question of whether a protection order issued by a state court triggers the section 922(g)(8) prohibition is determined solely by reference to the specific requirements of the federal statute
- Judges, by their actions (findings of fact, prohibitory language, compliance with due process, detailed orders), can facilitate enforcement & promote deterrent effect of federal laws
- State court order that purports to allow an individual to possess a firearm despite the existence of a valid protection order will not prevent prosecution if federal restrictions apply

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Relationship Between Federal & State Firearms Laws (cont'd.)

- Federal firearms restrictions are no substitute for state court orders banning weapons possession without which victims will be limited to federal enforcement
- Criminal defendants can lose gun rights even when the misdemeanor crime is not titled “domestic violence” – federal law looks at the underlying facts to determine whether the crime was any misdemeanor that has as an element, the **use or attempted use of physical force**, or the **threatened use of a deadly weapon**, committed by a **current or former spouse, parent, guardian** of the victim, or by a person with whom the victim **shares a child in common**, or 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

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Federal Firearm Disabilities

Gun rights are not absolute and may be reasonably regulated by prohibiting arms to persons under disability:

- (1) Felony indictment/conviction
- (2) Fugitive
- (3) Drug addict/user
- (4) Mental defective
- (5) Alien
- (6) Military dishonorable discharge
- (7) Renounced U.S. citizenship
- (8) Subject to court order of domestic protection
- (9) Misdemeanor conviction of domestic violence

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Federal Convictions Resulting in Firearms Disability

- A person convicted of a “crime of punishable by imprisonment for a term exceeding one year” may not ship or transport a firearm or ammunition in interstate or foreign commerce, possess a firearm or ammunition in or affecting commerce, or receive any firearm or ammunition that has been shipped or transported in interstate or foreign commerce. 18 U.S.C. 921 (a)(3) and 922(g)(1)
- Moreover, a person who has been convicted of a “misdemeanor crime of domestic violence” is also prohibited from possessing firearms or ammunition. 18 U.S.C. 922(g)(9)
- 18 USC 921, 922, and 925 are attached

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Crime Punishable By Imprisonment For A Term Exceeding One Year

- Does **not** include--
- (A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of **business practices**, or
- (B) any State offense classified by the laws of the State as a **misdemeanor** and punishable by a term of imprisonment of two years or less.
- What constitutes a conviction of such a crime shall be determined in accordance with the **law of the jurisdiction** in which the proceedings were held.
- Any conviction which has been **expunged**, or **set aside** or for which a person has been **pardoned** or has **had civil rights restored** shall not be considered a conviction for purposes of this chapter, **unless** such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

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Misdemeanor Crime of Domestic Violence

- Misdemeanor under Federal, State, or Tribal law; and
- Has, as an element,
 - the use or attempted use of physical force, or the threatened use of a deadly weapon,
 - 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.

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Misdemeanor Crime of Domestic Violence

- A person shall **not** be considered to have been convicted of such an offense for purposes of this chapter, unless--
 - The person was represented by **counsel** in the case, or knowingly and intelligently waived the right to counsel in the case; and
 - In the case of a prosecution for an offense described in this paragraph for which a person was entitled to a **jury** trial in the jurisdiction in which the case was tried, either
 - The case was tried by a jury, or
 - The person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

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Felony (Loop) Hole, Ohio Example

- 18 USC 922(g)(1) defines a **felony for federal** purposes as a crime where the sentence **exceeds one year** imprisonment, which leads to a firearms disability under federal law.

18 U.S.C.A. 922(g) It shall be unlawful for any person-- (1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year; . . . to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

- Ohio's 5th degree felony carries a maximum sentence of 12 months (**not exceeding one year** imprisonment) per 2929.14(A)(5).

R.C. 2929.14(A)(5) For a felony of the fifth degree, the prison term shall be six, seven, eight, nine, ten, eleven, or twelve months.

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Felony (Loop) Hole, Ohio Example (cont'd.)

- Ohio's firearm disability applies only to indictments or convictions of **felony offenses of violence** or **felony drug** indictments or convictions per 2923.13.

2923.13(A) Unless relieved from disability under operation of law or legal process, no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordnance, if any of the following apply: ... (2) The person is under indictment for or has been convicted of any felony offense of violence ... (3) The person is under indictment for or has been convicted of any felony offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse ...

- Therefore, one who is convicted under Ohio law of a **non-violent, non-drug fifth degree felony** offense is NOT under federal firearms disability. Nor is he under disability under Ohio law. Unless it is misdemeanor domestic violence.

[Offenses of violence are defined by statute, so there is no need to guess or interpret.]

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Brady Act

- 1993 law to prevent prohibited persons from purchasing firearms from dealers
- Brady Handgun Violence Prevention Act (Brady Act), codified at 18 U.S.C. sections 921, et seq.
- Requires all federally licensed gun dealers to obtain a criminal background check of all purchasers before completing a sale
- The required background check is to be made using the National Instant Criminal Background Check System, or “NICS,” which comprises several computer databases managed by the Federal Bureau of Investigation
- Brady Act allows the FBI only 3 business days to determine disqualification – a court should act accurately and quickly in its hearings, orders, and administration, and responses to law enforcement inquiries

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The Violence Against Women Act

- 1994 law requires the interjurisdictional enforcement of protection orders
- Codified at 18 U.S.C. sections 2261 et seq., these “full faith and credit” provisions of VAWA require states and Indian tribes to enforce protection orders issued in other jurisdictions as if they had been issued by the enforcing state or tribe, provided certain jurisdictional and due process requirements are met
- Penalties: death of victim – up to life; permanent disfigurement or life threatening bodily injury – up to 20 years; serious bodily injury or dangerous weapon used – up to 10 years; any other case – up to 5 years
- 18 USC 2261-2266 are attached

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Special Offenders

Police & Military

- There is no exemption for law enforcement officials or members of the armed services. These persons, if they have been convicted of even minor misdemeanors against their spouses, will have to be disarmed and fired.
- 1996 “Lautenberg Amendment” applies to misdemeanor domestic violence **convictions** and there is no official-use exemption for law enforcement and military personnel – cannot possess even official-duty weapons while on duty
- Service weapons used in the line of duty are exempt from the federal felony conviction restrictions, but are not exempt from the federal misdemeanor domestic violence restrictions
- Service weapons used in the line of duty are exempt from the federal protection order restrictions, unless the order specifically prohibits the officer from possessing a firearm, in which case federal law does not protect the officer from being bound by that restriction
- Personal weapons are not exempt from federal laws prohibiting firearms after criminal convictions or protection order entry

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Special Offenders, Police & Military (cont’d.)

- Applies to convictions that occurred prior to the 1996 enactment
- Despite several challenges (constitutionality, 2nd Amendment, vagueness, ex post facto, equal protection), it remains good law
- Delayed adjudication, diversion, pardon, expungement remove the otherwise lifetime ban
- Firearm restrictions will likely result in termination and discharge of the law enforcement officer or military personnel
- Despite several challenges (constitutionality, 2nd Amendment, vagueness, ex post facto, equal protection), it remains good law
- Delayed adjudication, diversion, pardon, expungement remove the otherwise lifetime ban
- Firearm restrictions will result in termination and discharge of the law enforcement or military personnel

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Special Offenders (cont'd.)

Battered Women

- There is no exemption for battered women who received minor misdemeanor convictions after they used force to defend themselves against their battering spouses. There are many battered women who fall into this category. They will now be unable to use firearms to protect themselves against their abusive and threatening husbands, even if they feel that their lives are endangered.

Juveniles

- As with adults, juveniles often confront an array of collateral consequences that very much impact their ability to reenter their communities productively.
- There are ethical and logistical issues unique to the juvenile justice process that present difficulties in conveying information about CCCC.
- Questions regarding the extent to which juveniles can be expected to understand the long-term effects of the collateral consequences of their adjudications
- Questions as the extent to which the juveniles' families should be involved in assessing plea bargains and other strategies in light of these consequences.

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Restoration of Civil Rights

- Pardon, reprieve, clemency, commutation of sentence
- Seal or expunge records
- Restoration of rights upon final release
- Remove firearms disability
- Intervention in lieu of conviction
- Prosecutor's diversion program
- Relief from firearms disability
- Relief from firearms prohibitions
- Set aside juvenile convictions
- Deferred adjudication and expungement for drug possession

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Relief from Firearms Disability

- Pardon or expungement
 - Unless disability is for specified term
- Application for relief from disability
 - After completion of sentence or specified term
- No firearms privileges lost after conviction under VT state law
- Long guns or black powder guns may only be restored, after specified term
- Complete/partial restoration may occur after specified term
- Restoration could be only on individual's residential premises
- There is a distinction between rights forfeited upon conviction (restored only as provided by law – vote, juror, public office, firearms) and rights lost upon commitment (restored automatically upon release – free association, sexual relations, palatable food, liberty)

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Caveat on Relief

- Assuming no federal felony/drug/D.V. conviction is involved
- A state's complete restoration of rights will result in federal restoration
- But it must be complete: **all** three core civil rights (vote, act as a juror, hold position of public honor or trust – governed by state law), **plus full** firearms rights (handguns & long guns)
- This will preclude state felony conviction from being used as a predicate offense for the federal crime of being a felon in possession of a firearm or ammunition

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Plea Colloquy | Protection Order

- Court rules do not require a trial judge to explain the collateral consequences to the defendant entering a plea of guilty
- Lawyer does not have a duty to tell her client about many serious but “collateral” consequences of a guilty plea
- Lawyer will run afoul of her duties if she affirmatively misrepresents a collateral consequence
- Leads to a perverse incentive structure that signals to defense lawyers (as well as prosecutors and the judge) that it is safest to say nothing at all about “collateral” matters

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Plea Colloquy | Protection Order (cont’d.)

- If the law requires the court to determine, impose, or advise about the consequence – the judge’s plea colloquy must be accurate in its advice or the plea will not be entered knowingly, voluntarily, and intelligently (e.g. post-release control, deportation, sex offender registration, firearms, forfeitures, restitution)
- Seems it should be harmless error to advise that a consequence is more onerous than in reality, as it does not render plea unknowing, involuntary, or unintelligent
- Document in the order the jurisdiction of the court and that the respondent was given reasonable notice and an opportunity to be heard, to trigger the prohibition under 18 USC 922(g)(8) and the full faith and credit application of 18 USC 2265

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Plea Colloquy | Protection Order (cont'd.)

- In a criminal case, be sure to document in the order that the person was represented by counsel or knowingly, voluntarily, and intelligently waived the right to counsel, and that the case was tried to a jury or the person knowingly, voluntarily, and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise
- Document in this order that the protection order restrains the person from harassing, stalking, or threatening an intimate partner or child of such intimate partner, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child
- Include in the order a finding that such person represents a credible threat to the safety of such intimate partner or child, or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily harm

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Warnings must be clear to protection order respondent

- Violating the protection order is a crime, punishable by imprisonment and/or fine, and may cause bond to be revoked and/or may result in contempt of court charge
- This order is enforceable in all 50 states, D.C., tribal lands, and U.S. territories, and a violation may also result in federal charges and punishment per 18 USC 2265
- Only the court may change this order; the protected party cannot give legal permission to violate this order; if you disregard this warning, you act at your own risk
- It may be unlawful to possess or purchase a firearm pursuant to federal law 18 USC 922(g)(8); the exception for official use of government-issued firearms 18 USC 925(a)(1) may apply, but not if you have been convicted of violence against a family or household member

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How to accomplish surrender, return, or denial of firearms

- Judges in most states in their protection orders can deny respondents access to firearms
- In many states, judges can remove firearms in domestic violence cases as part of arraignment, bail, conviction, & probation
- Sometimes removal of firearms is mandatory; it may be discretionary with the judge
- If judge determines not to order surrender of weapons, articulate why weapons possession does not jeopardize the security of protected persons and the public
- Ask the defendant, under oath, if he possesses or has access to weapons; list them in detail, including the location
- Ask the plaintiff, petitioner, or victim if the defendant or respondent possesses or has access to weapons
- Conduct a colloquy from the bench to determine risk factors with the respondent and the presence of or access to weapons – use a dangerousness checklist to assess propensity to future violence (attached)

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How to accomplish surrender, return, or denial of firearms (cont'd.)

- Enter an order which removes weapons from the offender; consider issuing a search warrant (contraband, instrumentality of an offense); consider a bench warrant for any failure to comply with the court's order; consider a surrender of any concealed carry permit (some states exempt CCP holders from NICS or other background checks)
- Strictly enforce that order; document compliance
- If state law prohibits removal of firearms, the judge should notify the defendant of federal law and his responsibility to dispossess himself of firearms
- Be wary of a claimed "sale" of firearms or constructive possession, or access to another's weapons (e.g. a new residential situation)
- Address others in the courtroom present on behalf of the defendant regarding firearms and the federal prohibitions against them giving the defendant/respondent access to firearms 18USC 922(d)

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How to accomplish surrender, return, or denial of firearms (cont'd.)

- Report known violations to local and federal law enforcement authorities
- Obtain the respondent's specific identifying information required by the federal database, including the respondent's numeric identifier, which may be, among other things, a date of birth, Social Security number, or driver's license number and expiration date; this will greatly facilitate entry of appropriate orders into the state and federal registries.
- Act quickly in removing firearms and accurately journalizing domestic violence convictions and protection orders and transmitting those orders to the clerk or law enforcement to enter into NCIC and register the order in the Protection Order File (not necessary for enforcement, but needed to come up on a NICS check and ease of interstate enforcement)
- Determine precisely how weapons are removed from the offender and retained by authorities

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How to accomplish surrender, return, or denial of firearms (cont'd.)

- Implement any changes necessary to ensure that weapons are promptly seized under appropriate circumstances and released only upon court order
- Be certain to document the VAWA 18 USC 922(g)(8) and Brady information
- Facilitate revocation of any concealed carry permit by entering the order in the statewide registry
- Before returning firearms, conduct a hearing with notice to the victim, prosecutor, and law enforcement, and verify that the party requesting the return is not under a federal firearms disability or otherwise prohibited under any state or federal law from possessing firearms

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Attachments

- The Right to Keep and Bear Arms – Federal & State Constitutional Provisions
- Law Enforcement Officers Safety Act of 2004
- 18 U.S.C.A. 921, 922, 925
- 18 U.S.C.A. 2261, 2261A, 2262, 2263, 2264, 2265, 2265A, 2266
- Checklist for Recognizing Dangerousness in Domestic Violence Cases

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Reference Materials

- Michael Pinard & Anthony C. Thompson, Offender Reentry & the Collateral Consequences of Criminal Convictions: An Introduction, 30 N.Y.U. Rev. L. & Soc. Change 585 (2006)
- U.S. Department of Justice (Nov. 13, 2006), Federal Statutes Imposing Collateral Consequences Upon Conviction, Retrieved from https://www.justice.gov/sites/default/files/pardon/legacy/2006/11/13/collateral_consequences.pdf (last accessed February 29, 2016)
- Alec C. Ewald, Marnie Smith, Collateral Consequences of Criminal Convictions in American Courts: The View from the State Bench, Justice System Journal, Vol. 29, Iss. 2, 2008
- Chin, Race, the War on Drugs, & the Collateral Consequences of Criminal Conviction, 6 J. Gender Race & Just. 253, 254-55 (2002)
- Margaret Colgate Love (Dec. 16, 2005), Relief From The Collateral Consequences of A Criminal Conviction: A State-By-State Resource Guide, prepared with support from an Open Society Institute Fellowship, October 2005
<http://blogs.law.columbia.edu/4cs/files/2008/11/statebystaterelieffromcccc.pdf> (last accessed February 29, 2016); See also <https://www.nacdl.org/ResourceCenter.aspx?id=25277> (last accessed February 29, 2016)
- Marlaina Freisthler & Mark A. Godsey, Going Home to Stay: A Rev. of Collateral Consequences of Conviction, Post-Incarceration Emp., & Recidivism in Ohio, 36 U. Tol. L. Rev. 525 (2005)

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Reference Materials (cont'd.)

- Budeiri, Collateral Consequences of Guilty Pleas in the Fed. Criminal Justice Sys., 16 Harv. C.R.-C.L.L. Rev. 157, 202 (1981)
- Logan, Informal Collateral Consequences, 88 Wash. L. Rev. 1103 (2013)
- Darren Mitchell and Susan B. Carbon, Firearms and Domestic Violence: A Primer for Judges, Court Review, Summer 2002, Retrieved from <http://aja.ncsc.dni.us/publications/courtrv/cr39-2/CR39-2MitchellCarbon.pdf> (last accessed February 29, 2016)
- American Bar Association, National Inventory of the Collateral Consequences of Conviction, <http://www.abacollateralconsequences.org/> (last accessed February 29, 2016)
- Justice.gov, Federal Statutes Imposing Collateral Consequences Upon Conviction, https://www.justice.gov/sites/default/files/pardon/legacy/2006/11/13/collateral_consequences.pdf (last accessed February 29, 2016)
- *United States v. Leuschen*, 395 F.3d 155 (3d Cir. 2005)
- *United States v. Ward*, 2014 WL 6627493, (Nov. 21, 2014), U.S. Dist. Ct., Delaware Dist., Crim. Action 13-40-GMS
- <http://www.handgunlaw.us/LicMaps/ccwmap.php> (last accessed February 29, 2016)
- https://upload.wikimedia.org/wikipedia/en/0/0b/CCW_Recognition.jpg (last accessed February 29, 2016)

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THE RIGHT TO KEEP AND BEAR ARMS – THE CONSTITUTIONAL VIEWS

FEDERAL CONSTITUTIONAL RIGHT TO KEEP AND BEAR ARMS

Amendment II. Right To Bear Arms

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

U.S. Constitution, Amendment II

This right has been incorporated against the states. The Second Amendment has been described as a fundamental and individual right that will necessarily be subject to strict scrutiny by the courts. See *McDonald v. City of Chicago* (2010). Self Defense is described as "the central component" of the Second Amendment in *McDonald, supra.*, and upheld *District of Columbia v. Heller* 554 U.S (2008), concluding the Fourteenth Amendment incorporates the Second Amendment right, recognized in *Heller*, to keep and bear arms for the purpose of self-defense. The 14th Amendment makes the 2nd Amendment right to keep and bear arms fully applicable to the States, see, *McDonald vs. City of Chicago* (2010). "The right to keep and bear arms must be regarded as a substantive guarantee, not a prohibition that could be ignored as long as the States legislated in an evenhanded manner," *McDonald, supra.*

STATE CONSTITUTIONAL RIGHTS TO KEEP AND BEAR ARMS

Debates rage about the meaning of the Second Amendment; but observers often miss that there are forty-five right-to-bear-arms provisions in American constitutional law, not just one. Forty-four states have state constitutional rights to bear arms. Most are written quite differently from the Second Amendment. Nearly all secure (at least in part) an individual right to keep some kinds of guns for self-defense. Some date back to the Framing; some have been enacted in the last four decades. These provisions have been researched and summarized by Prof. Eugene Volokh of the UCLA Law School, in his article entitled and published, "State Constitutional Rights to Keep and Bear Arms," 11 *Texas Rev. of Law & Politics* 191 (2006).

In 22 states (AL, AZ, CO, CT, DE, KY, MI, MS, MO, MT, NE, NV, NH, NM, ND, OK, TX, UT, WA, WV, WI, and WY), an individual self-defense right is expressly secured, though keeping and bearing arms for other purposes may also be protected.

In four states (AK, IL, LA, and ME), an individual right is expressly secured, and court decisions treat the right as aimed at least in part at self-defense.

In 14 states (AR, FL, GA, ID, IN, NC, OH, OR, PA, RI, SC, SD, TN, and VT), court decisions treat the right as individual and aimed at least in part at self-defense.

In two states (HI and VA), the right is not expressly characterized as individual, and courts have not passed on the question.

In two states (KS and MA), courts have treated the right as collective.

In six states (CA, IA, MD, MN, NJ, and NY), no state constitutional right-to-bear-arms provision exists.

After each provision, the author indicates in brackets whether it now protects an individual right aimed at least partly as self-defense, which he abbreviate as "self-defense right"; the shorthand "self-defense right explicitly protected" refers to provisions that specifically say "in defense of himself" or some such. The author generally cites only one case, simply for the sake of being terse, unless there's some uncertainty in the case law.

Alabama

That every citizen has a right to bear arms in defense of himself and the state.

Art. I, §26 (enacted 1819, art. I, § 23, with "defence" in place of "defense," spelling changed 1901).

[Self-defense right explicitly protected.]

Alaska

A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed. The individual right to keep and bear arms shall not be denied or infringed by the State or a political subdivision of the State.

Art. I, § 19 (first sentence enacted 1959, second sentence added 1994).

[Individual right explicitly protected; provision enacted in 1994, when the individual right to bear arms was generally understood as aimed at protecting self-defense.]

Arizona

The right of the individual citizen to bear arms in defense of himself or the state shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain, or employ an armed body of men.

Art. II, § 26 (enacted 1912).

[Self-defense right explicitly protected.]

Arkansas

The citizens of this State shall have the right to keep and bear arms for their common defense.

Art. II, § 5 (enacted 1868, art. I, § 5).

1836: "That the free white men of this State shall have a right to keep and to bear arms for their common defence." Art. II, § 21. [Self-defense right protected, Arkansas Game and Fish Com'n v. Murders, 327 Ark. 426 (1997); Wilson v. State, 33 Ark. 557 (1878).]

California

No provision

Colorado

The right of no person to keep and bear arms in defense of his home, person and property, or in aid of the civil power when thereto legally summoned, shall be called in question; but nothing herein contained shall be construed to justify the practice of carrying concealed weapons.

Art. II, § 13 (enacted 1876, art. II, § 13).

[Self-defense right explicitly protected.]

Connecticut

Every citizen has a right to bear arms in defense of himself and the state.

Art. I, §15 (enacted 1818, art. I, § 17). The original 1818 text came from the Mississippi Constitution of 1817.

[Self-defense right explicitly protected.]

Delaware

A person has the right to keep and bear arms for the defense of self, family, home and State, and for hunting and recreational use.

Art. I, § 20 (enacted 1987).

[Self-defense right explicitly protected.]

Florida

(a) The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law. (b) There shall be a mandatory period of three days, excluding weekends and legal holidays, between the purchase and delivery at retail of any handgun. For the purposes of this section, "purchase" means the transfer of money or other valuable consideration to the retailer, and "handgun" means a firearm capable of being carried and used by one hand, such as a pistol or revolver. Holders of a concealed weapon permit as prescribed in Florida law shall not be subject to the provisions of this paragraph. (c) The legislature shall enact legislation implementing subsection (b) of this section, effective no later than December 31, 1991, which shall provide that anyone violating the provisions of subsection (b) shall be guilty of a felony.

(d) This restriction shall not apply to a trade in of another handgun.

Art. I, § 8 (sections (b)-(d) added in 1990).

1838: "That the free white men of this State shall have a right to keep and to bear arms for their common defence." Art. I, § 21.

1865: Clause omitted.

1868: "The people shall have the right to bear arms in defence of themselves and of the lawful authority of the State." Art. I, § 22.

1885: "The right of the people to bear arms in defence of themselves and the lawful authority of the State, shall not be infringed, but the Legislature may prescribe the manner in which they may be borne." Art. I, § 20.

1968: "The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law." Art. I, § 8.

[Self-defense right protected, Alexander v. State, 450 So.2d 1212 (Fla. App. 1984).]

Georgia

The right of the people to keep and bear arms shall not be infringed, but the General Assembly shall have power to prescribe the manner in which arms may be borne.

Art. I, § 1, ¶VIII (enacted 1877, art. I, § XXII).

1865: "A well-regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed." Art. I, § 4.

1868: "A well-regulated militia being necessary to the security of a free people, the right of the people to keep and bear arms shall not be infringed; but the general assembly shall have power to prescribe by law the manner in which arms may be borne." Art. I, § 14.

[Self-defense right protected, McCoy v. State, 157 Ga. 767 (1924).]

Hawaii

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

Art. I, § 17 (enacted 1959).

[No decision about whether self-defense right right is protected.]

Idaho

The people have the right to keep and bear arms, which right shall not be abridged; but this provision shall not prevent the passage of laws to govern the carrying of weapons concealed on the person nor prevent passage of legislation providing minimum sentences for crimes committed while in possession of a firearm, nor prevent the passage of legislation providing penalties for the possession of firearms by a convicted felon, nor prevent the passage of any legislation punishing the use of a firearm. No law shall impose

licensure, registration or special taxation on the ownership or possession of firearms or ammunition. Nor shall any law permit the confiscation of firearms, except those actually used in the commission of a felony.
Art. I, § 11 (enacted 1978).

1889: "The people have the right to bear arms for their security and defense; but the Legislature shall regulate the exercise of this right by law." Art. I, § 11.

[Self-defense right protected, *In re Brickey*, 70 P. 609 (Idaho 1902).]

Illinois

Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed. Art. I, § 22 (enacted 1970).

[Self-defense right protected, *Kalodimos v. Village of Morton Grove*, 470 N.E.2d 266, 273 (Ill. 1984).]

Indiana

The people shall have a right to bear arms, for the defense of themselves and the State.

Art. I, § 32 (enacted 1851, art. I, § 32).

1816: That the people have a right to bear arms for the defense of themselves and the State, and that the military shall be kept in strict subordination to the civil power. Art. I, § 20.

[Self-defense right protected, *Kellogg v. City of Gary*, 562 N.E.2d 685, 694 (Ind. 1990).]

Iowa

No provision

Kansas

The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be tolerated, and the military shall be in strict subordination to the civil power.

Bill of Rights, § 4 (enacted 1859, art. I, § 4).

[Interpreted as collective right only, *City of Salina v. Blaksley*, 83 P. 619 (Kan. 1905), adhered to by *City of Junction City v. Lee*, 532 P.2d 1292 (Kan. 1975). But see *City of Junction City v. Mevis*, 601 P.2d 1145,

1151 (Kan. 1979) (striking down a gun control law, challenged by an individual citizen, on the grounds that it was "unconstitutionally overbroad," and thus implicitly concluding that the right to bear arms did indeed belong to individual citizens).]

Kentucky

All men are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned: ...

Seventh: The right to bear arms in defense of themselves and of the State, subject to the power of the General Assembly to enact laws to prevent persons from carrying concealed weapons.

§ 1 (enacted 1891).

1792: "That the right of the citizens to bear arms in defense of themselves and the State shall not be questioned." Art. XII, § 23.

1799: "That the rights of the citizens to bear arms in defense of themselves and the State shall not be questioned." Art. X, § 23.

1850: "That the rights of the citizens to bear arms in defense of themselves and the State shall not be questioned; but the General Assembly may pass laws to prevent persons from carrying concealed arms." Art. XIII, § 25.

Louisiana

The right of each citizen to keep and bear arms shall not be abridged, but this provision shall not prevent the passage of laws to prohibit the carrying of weapons concealed on the person.

Art. I, § 11 (enacted 1974).

1879: "A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be abridged. This shall not prevent the passage of laws to punish those who carry weapons concealed." Art. 3.

[Self-defense right protected, *State v. Chaisson*, 457 So.2d 1257, 1259 (La. App. 1984).]

Maine

Every citizen has a right to keep and bear arms and this right shall never be questioned.

Art. I, § 16 (enacted 1987, after a collective-rights interpretation of the original provision).

1819: "Every citizen has a right to keep and bear arms for the common defence; and this right shall never be questioned." Art. I, § 16.

[Self-defense right protected, *State v. Brown*, 571 A.2d 816 (Me. 1990).]

Maryland

No provision

Massachusetts

The people have a right to keep and to bear arms for the common defence. And as, in time of peace, armies are dangerous to liberty, they ought not to be maintained without the consent of the legislature; and the military power shall always be held in an exact subordination to the civil authority, and be governed by it.

Pt. 1, art. 17 (enacted 1780).

[Interpreted as collective right only, *Commonwealth v. Davis*, 343 N.E.2d 847 (Mass. 1976).]

Michigan

Every person has a right to keep and bear arms for the defense of himself and the state.

Art. I, § 6 (enacted 1963).

1835: "Every person has a right to bear arms for the defence of himself and the State." Art. I, § 13.

1850: "Every person has a right to bear arms for the defense of himself and the state." Art. XVIII, § 7.
[Self-defense right explicitly protected.]

Minnesota

No provision

Mississippi

The right of every citizen to keep and bear arms in defense of his home, person, or property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but the legislature may regulate or forbid carrying concealed weapons.

Art. III, § 12 (enacted 1890, art. 3, § 12).

1817: "Every citizen has a right to bear arms, in defence of himself and the State." Art. I, § 23.

1832: "Every citizen has a right to bear arms in defence of himself and of the State." Art. I, § 23.

1868: "All persons shall have a right to keep and bear arms for their defence." Art. I, § 15.

[Self-defense right explicitly protected.]

Missouri

That the right of every citizen to keep and bear arms in defense of his home, person and property, or when lawfully summoned in aid of the civil power, shall not be questioned; but this shall not justify the wearing of concealed weapons.

Art. I, § 23 (enacted 1945).

1820: "That the people have the right peaceably to assemble for their common good, and to apply to those vested with the powers of government for redress of grievances by petition or remonstrance; and that their right to bear arms in defence of themselves and of the State cannot be questioned." Art. XIII, § 3.

1865: Same as above, but with "the lawful authority of the State" instead of "the State." Art. I, § 8.

1875: "That the right of no citizen to keep and bear arms in defense of his home, person and property, or in aid of the civil power, when thereto legally summoned, shall be called into question; but nothing herein contained is intended to justify the practice of wearing concealed weapons." Art. II, § 17.

[Self-defense right explicitly protected.]

Montana

The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons.

Art. II, § 12 (enacted 1889).

[Self-defense right explicitly protected.]

Nebraska

All persons are by nature free and independent, and have certain inherent and inalienable rights; among these are life, liberty, the pursuit of happiness, and the right to keep and bear arms for security or defense of self, family, home, and others, and for lawful common defense, hunting, recreational use, and all other lawful purposes, and such rights shall not be denied or infringed by the state or any subdivision thereof.

Art. I, § 1 (right to keep and bear arms enacted 1988).

[Self-defense right explicitly protected.]

Nevada

Every citizen has the right to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes.

Art. I, § 11(1) (enacted 1982).

[Self-defense right explicitly protected.]

New Hampshire

All persons have the right to keep and bear arms in defense of themselves, their families, their property and the state.

Pt. 1, art. 2-a (enacted 1982).

[Self-defense right explicitly protected.]

New Jersey

No provision

New Mexico

No law shall abridge the right of the citizen to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes, but nothing herein shall be held to permit the carrying of concealed weapons. No municipality or county shall regulate, in any way, an incident of the right to keep and bear arms.

Art. II, § 6 (first sentence enacted in 1971, second sentence added 1986).

1912: "The people have the right to bear arms for their security and defense, but nothing herein shall be held to permit the carrying of concealed weapons." Art. II, § 6.

[Self-defense right explicitly protected.]

New York

No provision

North Carolina

A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed; and, as standing armies in time of peace are dangerous to liberty, they shall not be maintained, and the military shall be kept under strict subordination to, and governed by, the civil power. Nothing herein shall justify the practice of carrying concealed weapons, or prevent the General Assembly from enacting penal statutes against that practice.

Art. 1, § 30 (enacted 1971).

1776: "That the people have a right to bear arms, for the defence of the State; and, as standing armies, in time of peace, are dangerous to liberty, they ought not to be kept up; and that the military should be kept under strict subordination to, and governed by, the civil power." Bill of Rights, § XVII.

1868: "A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed; and, as standing armies, in time of peace, are dangerous to liberty, they ought not to be kept up, and the military should be kept under strict subordination to, and governed by, the civil power." Art. I, § 24.

1875: Same as 1868, but added "Nothing herein contained shall justify the practice of carrying concealed weapons, or prevent the Legislature from enacting penal statutes against said practice."

[Self-defense right protected, *State v. Kerner*, 107 S.E. 222, 225 (N.C. 1921).]

North Dakota

All individuals are by nature equally free and independent and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property and reputation; pursuing and obtaining safety and happiness; and to keep and bear arms for the defense of their person, family, property, and the state, and for lawful hunting, recreational, and other lawful purposes, which shall not be infringed.

Art. I, § 1 (right to keep and bear arms enacted 1984).

[Self-defense right explicitly protected.]

Ohio

The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be kept up; and the military shall be in strict subordination to the civil power.

Art. I, § 4 (enacted 1851).

1802: "That the people have a right to bear arms for the defence of themselves and the State; and as standing armies, in time of peace, are dangerous to liberty, they shall not be kept up, and that the military shall be kept under strict subordination to the civil power." Art. VIII, § 20.

[Self-defense right protected, *Arnold v. Cleveland*, 616 N.E.2d 163, 169 (Ohio 1993).]

Oklahoma

The right of a citizen to keep and bear arms in defense of his home, person, or property, or in aid of the civil power, when thereunto legally summoned, shall never be prohibited; but nothing herein contained shall prevent the Legislature from regulating the carrying of weapons.

Art. II, § 26 (enacted 1907).

[Self-defense right explicitly protected.]

Oregon

The people shall have the right to bear arms for the defence of themselves, and the State, but the Military shall be kept in strict subordination to the civil power[.]

Art. I, § 27 (enacted 1857, art. I, § 28).

[Self-defense right protected, *State v. Hirsch*, 114 P.3d 1104, 1110 (Ore. 2005).]

Pennsylvania

The right of the citizens to bear arms in defence of themselves and the State shall not be questioned.

Art. 1, § 21 (enacted 1790, art. IX, § 21).

1776: That the people have a right to bear arms for the defence of themselves and the state; and as standing armies in the time of peace are dangerous to liberty, they ought not to be kept up; And that the military should be kept under strict subordination, to, and governed by, the civil power. Declaration of Rights, cl. XIII.

[Self-defense right protected, *Sayres v. Commonwealth*, 88 Pa. 291 (1879).]

Rhode Island

The right of the people to keep and bear arms shall not be infringed.

Art. I, § 22 (enacted 1842).

[Self-defense right protected, *Mosby v. Devine*, 851 A.2d 1031, 1043 (R.I. 2004).]

South Carolina

A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed. As, in times of peace, armies are dangerous to liberty, they shall not be maintained without the consent of the General Assembly. The military power of the State shall always be held in subordination to the civil authority and be governed by it.

Art. 1, § 20 (enacted 1895).

1868: "The people have a right to keep and bear arms for the common defence. As, in times of peace . . ." Art. I, § 28.

[Right treated as an individual right, apparently aimed at least partly at self-defense, *State v. Johnson*, 16 S.C. 187 (1881).]

South Dakota

The right of the citizens to bear arms in defense of themselves and the state shall not be denied. Art. VI, § 24 (enacted 1889).

[Self-defense right protected, *Conaty v. Solem*, 422 N.W.2d 102, 104 (S.D. 1988).]

Tennessee

That the citizens of this State have a right to keep and to bear arms for their common defense; but the Legislature shall have power, by law, to regulate the wearing of arms with a view to prevent crime. Art. I, § 26 (enacted 1870).

1796: "That the freemen of this State have a right to keep and to bear arms for their common defence." Art. XI, § 26.

1834: "That the free white men of this State have a right to keep and to bear arms for their common defence." Art. I, § 26.

[Self-defense right protected, *State v. Foutch*, 34 S.W. 1, 1 (Tenn. 1896).]

Texas

Every citizen shall have the right to keep and bear arms in the lawful defense of himself or the State; but the Legislature shall have power, by law, to regulate the wearing of arms, with a view to prevent crime.

Art. I, § 23 (enacted 1876).

1836: "Every citizen shall have the right to bear arms in defence of himself and the republic. The military shall at all times and in all cases be subordinate to the civil power." Declaration of Rights, cl. 14.

1845: "Every citizen shall have the right to keep and bear arms in lawful defence of himself or the State." Art. I, § 13.

1868: "Every person shall have the right to keep and bear arms in the lawful defence of himself or the State, under such regulations as the legislature may prescribe." Art. I, § 13.

[Self-defense right explicitly protected.]

Utah

The individual right of the people to keep and bear arms for security and defense of self, family, others, property, or the state, as well as for other lawful purposes shall not be infringed; but nothing herein shall prevent the legislature from defining the lawful use of arms.

Art. I, § 6 (enacted 1984).

1896: "The people have the right to bear arms for their security and defense, but the legislature may regulate the exercise of this right by law."

[Self-defense right explicitly protected.]

Vermont

That the people have a right to bear arms for the defence of themselves and the State -- and as standing armies in time of peace are dangerous to liberty, they ought not to be kept up; and that the military should be kept under strict subordination to and governed by the civil power.

Ch. I, art. 16 (enacted 1777, ch. I, art. 15).

[Self-defense right protected, *State v. Rosenthal*, 55 A. 610 (Vt. 1903).]

Virginia

That a well regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defense of a free state, therefore, the right of the people to keep and bear arms shall not be infringed; that standing armies, in time of peace, should be avoided as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power.

Art. I, § 13 (enacted 1776 without explicit right to keep and bear arms; "therefore, the right to keep and bear arms shall not be infringed" added in 1971).

[No decision about whether self-defense right is protected. Compare 1993 Va. Op. Atty. Gen. 13 (construing the right as collective) with 2006 WL 304006 (Va. Op. Atty. Gen.) (construing the right as individual).]

Washington

The right of the individual citizen to bear arms in defense of himself, or the state, shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain or employ an armed body of men. Art. I, § 24 (enacted 1889).

[Self-defense right explicitly protected.]

West Virginia

A person has the right to keep and bear arms for the defense of self, family, home and state, and for lawful hunting and recreational use.

Art. III, § 22 (enacted 1986).

[Self-defense right explicitly protected.]

Wisconsin

The people have the right to keep and bear arms for security, defense, hunting, recreation or any other lawful purpose.

Art. I, § 25 (enacted 1998).

[Self-defense right protected, *State v. Fisher*, 714 N.W.2d 495 (Wisc. 2006).]

Wyoming

The right of citizens to bear arms in defense of themselves and of the state shall not be denied.

Art. I, § 24 (enacted 1889).

[Self-defense right protected, *State v. McAdams*, 714 P.2d 1236, 1238 (Wyo. 1986).]

Law Enforcement Officers Safety Act of 2004 (as amended in 2010 and 2013) -- LEOSA

This Act may be cited as the "Law Enforcement Officers Safety Act of 2004".

Sec. 926B. Carrying of concealed firearms by qualified law enforcement officers

- (a) Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).
- (b) This section shall not be construed to supersede or limit the laws of any State that—
 - (1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or
 - (2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.
- (c) As used in this section, the term "qualified law enforcement officer" means an employee of a governmental agency who—
 - (1) is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest or apprehension under section 807(b) of title 10, United States Code (article 7(b) of the Uniform Code of Military Justice);
 - (2) is authorized by the agency to carry a firearm;
 - (3) is not the subject of any disciplinary action by the agency which could result in suspension or loss of police powers;
 - (4) meets standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm;
 - (5) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
 - (6) is not prohibited by Federal law from receiving a firearm.
- (d) The identification required by this subsection is the photographic identification issued by the governmental agency for which the individual is employed that identifies the employee as a police officer or law enforcement officer of the agency.
- (e) As used in this section, the term "firearm"—
 - (1) except as provided in this subsection, has the same meaning as in section 921 of this title;
 - (2) includes ammunition not expressly prohibited by Federal law or subject to the provisions of the National Firearms Act; and
 - (3) does not include—
 - (A) any machinegun (as defined in section 5845 of the National Firearms Act);
 - (B) any firearm silencer (as defined in section 921 of this title); and
 - (C) any destructive device (as defined in section 921 of this title).
- (f) For the purposes of this section, a law enforcement officer of the Amtrak Police Department, a law enforcement officer of the Federal Reserve, or a law enforcement or police officer of the executive branch of the Federal Government qualifies as an employee of a governmental agency who is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest or apprehension under section 807(b) of title 10, United States Code (article 7(b) of the Uniform Code of Military Justice).

Sec. 926C. Carrying of concealed firearms by qualified retired law enforcement officers

- (a) Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified retired law enforcement officer and who is carrying the identification required by subsection

(d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).

(b) This section shall not be construed to supersede or limit the laws of any State that—

- (1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or
- (2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.

(c) As used in this section, the term 'qualified retired law enforcement officer' means an individual who—

- (1) separated from service in good standing from service with a public agency as a law enforcement officer;
- (2) before such separation, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest or apprehension under section 807(b) of title 10, United States Code (article 7(b) of the Uniform Code of Military Justice);
- (3)(A) before such separation, served as a law enforcement officer for an aggregate of 10 years or more; or
(B) separated from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;
- (4) during the most recent 12-month period, has met, at the expense of the individual, the standards for qualification in firearms training for active law enforcement officers, as determined by the former agency of the individual, the State in which the individual resides or, if the State has not established such standards, either a law enforcement agency within the State in which the individual resides or the standards used by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that State;
- (5)(A) has not been officially found by a qualified medical professional employed by the agency to be unqualified for reasons relating to mental health and as a result of this finding will not be issued the photographic identification as described in subsection (d)(1); or
(B) has not entered into an agreement with the agency from which the individual is separating from service in which that individual acknowledges he or she is not qualified under this section for reasons relating to mental health and for those reasons will not receive or accept the photographic identification as described in subsection (d)(1);
- (6) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
- (7) is not prohibited by Federal law from receiving a firearm.

(d) The identification required by this subsection is—

- (1) a photographic identification issued by the agency from which the individual separated from service as a law enforcement officer that identifies the person as having been employed as a police officer or law enforcement officer and indicates that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the agency to meet the active duty standards for qualification in firearms training as established by the agency to carry a firearm of the same type as the concealed firearm;
- (2)(A) a photographic identification issued by the agency from which the individual separated from service as a law enforcement officer that identifies the person as having been employed as a police officer or law enforcement officer; and
(B) a certification issued by the State in which the individual resides or by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that State that indicates that the individual has, not less than 1 year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the State or a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that State to have met—
 - (I) the active duty standards for qualification in firearms training, as established by the State, to carry a firearm of the same type as the concealed firearm; or
 - (II) if the State has not established such standards, standards set by any law enforcement agency within that State to carry a firearm of the same type as the concealed firearm.

- (e) As used in this section—
- (1) the term `firearm'—
- (A) except as provided in this paragraph, has the same meaning as in section 921 of this title;
- (B) includes ammunition not expressly prohibited by Federal law or subject to the provisions of the National Firearms Act; and
- (C) does not include—
- (i) any machinegun (as defined in section 5845 of the National Firearms Act);
- (ii) any firearm silencer (as defined in section 921 of this title); and
- (iii) any destructive device (as defined in section 921 of this title); and
- (2) the term `service with a public agency as a law enforcement officer' includes service as a law enforcement officer of the Amtrak Police Department, service as a law enforcement officer of the Federal Reserve, or service as a law enforcement or police officer of the executive branch of the Federal Government.

Law Enforcement Officers Safety Act of 2004, H.R. 218, Public Law No: 108-277 (07/22/2004), Page 118 Stat. 865, to amend title 18, United States Code, to exempt qualified current and former law enforcement officers from State laws prohibiting the carrying of concealed handguns;

as modified by the

Law Enforcement Officers Safety Act Improvements Act of 2010, Public Law 111-272 (10/12/2010), Page 124 Stat. 2855, to amend title 18, United States Code, to improve the provisions relating to the carrying of concealed weapons by law enforcement officers, and for other purposes;

and as further modified by the

National Defense Authorization Act for Fiscal Year 2013, Public Law 112-239 (01/02/2013), Page 126 Stat. 1632, Sec. 1089, amendments to law enforcement officer safety provisions of title 18.

18 U.S.C.A. § 921
§ 921. Definitions
Effective: January 5, 2006

(a) As used in this chapter--

(1) The term "person" and the term "whoever" include any individual, corporation, company, association, firm, partnership, society, or joint stock company.

(2) The term "interstate or foreign commerce" includes commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia, but such term does not include commerce between places within the same State but through any place outside of that State. The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).

(3) The term "firearm" means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

(4) The term "destructive device" means--

(A) any explosive, incendiary, or poison gas--

(i) bomb,

(ii) grenade,

(iii) rocket having a propellant charge of more than four ounces,

(iv) missile having an explosive or incendiary charge of more than one-quarter ounce,

(v) mine, or

(vi) device similar to any of the devices described in the preceding clauses;

(B) any type of weapon (other than a shotgun or a shotgun shell which the Attorney General finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and

(C) any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraph (A) or (B) and from which a destructive device may be readily assembled.

The term "destructive device" shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of title 10; or any other device which the Attorney General finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting, recreational or cultural purposes.

(5) The term "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

(6) The term "short-barreled shotgun" means a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun (whether by alteration, modification or otherwise) if such a weapon as modified has an overall length of less than twenty-six inches.

(7) The term "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire only a single projectile through a rifled bore for each single pull of the trigger.

(8) The term "short-barreled rifle" means a rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon, as modified, has an overall length of less than twenty-six inches.

(9) The term "importer" means any person engaged in the business of importing or bringing firearms or ammunition into the United States for purposes of sale or distribution; and the term "licensed importer" means any such person licensed under the provisions of this chapter.

- (10) The term “manufacturer” means any person engaged in the business of manufacturing firearms or ammunition for purposes of sale or distribution; and the term “licensed manufacturer” means any such person licensed under the provisions of this chapter.
- (11) The term “dealer” means (A) any person engaged in the business of selling firearms at wholesale or retail, (B) any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms, or (C) any person who is a pawnbroker. The term “licensed dealer” means any dealer who is licensed under the provisions of this chapter.
- (12) The term “pawnbroker” means any person whose business or occupation includes the taking or receiving, by way of pledge or pawn, of any firearm as security for the payment or repayment of money.
- (13) The term “collector” means any person who acquires, holds, or disposes of firearms as curios or relics, as the Attorney General shall by regulation define, and the term “licensed collector” means any such person licensed under the provisions of this chapter.
- (14) The term “indictment” includes an indictment or information in any court under which a crime punishable by imprisonment for a term exceeding one year may be prosecuted.
- (15) The term “fugitive from justice” means any person who has fled from any State to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding.
- (16) The term “antique firearm” means--
- (A) any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; or
 - (B) any replica of any firearm described in subparagraph (A) if such replica--
 - (i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or
 - (ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; or
 - (C) any muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol, which is designed to use black powder, or a black powder substitute, and which cannot use fixed ammunition. For purposes of this subparagraph, the term “antique firearm” shall not include any weapon which incorporates a firearm frame or receiver, any firearm which is converted into a muzzle loading weapon, or any muzzle loading weapon which can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof.
- (17) (A) The term “ammunition” means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.
- (B) The term “armor piercing ammunition” means--
- (i) a projectile or projectile core which may be used in a handgun and which is constructed entirely (excluding the presence of traces of other substances) from one or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium; or
 - (ii) a full jacketed projectile larger than .22 caliber designed and intended for use in a handgun and whose jacket has a weight of more than 25 percent of the total weight of the projectile.
- (C) The term “armor piercing ammunition” does not include shotgun shot required by Federal or State environmental or game regulations for hunting purposes, a frangible projectile designed for target shooting, a projectile which the Attorney General finds is primarily intended to be used for sporting purposes, or any other projectile or projectile core which the Attorney General finds is intended to be used for industrial purposes, including a charge used in an oil and gas well perforating device.
- (18) The term “Attorney General” means the Attorney General of the United States¹
- (19) The term “published ordinance” means a published law of any political subdivision of a State which the Attorney General determines to be relevant to the enforcement of this chapter and which is contained on a list compiled by the Attorney General, which list shall be published in the Federal Register, revised annually, and furnished to each licensee under this chapter.
- (20) The term “crime punishable by imprisonment for a term exceeding one year” does not include--
- (A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or

(B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

(21) The term "engaged in the business" means--

(A) as applied to a manufacturer of firearms, a person who devotes time, attention, and labor to manufacturing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms manufactured;

(B) as applied to a manufacturer of ammunition, a person who devotes time, attention, and labor to manufacturing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition manufactured;

(C) as applied to a dealer in firearms, as defined in section 921(a)(11)(A), a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, but such term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms;

(D) as applied to a dealer in firearms, as defined in section 921(a)(11)(B), a person who devotes time, attention, and labor to engaging in such activity as a regular course of trade or business with the principal objective of livelihood and profit, but such term shall not include a person who makes occasional repairs of firearms, or who occasionally fits special barrels, stocks, or trigger mechanisms to firearms;

(E) as applied to an importer of firearms, a person who devotes time, attention, and labor to importing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms imported; and

(F) as applied to an importer of ammunition, a person who devotes time, attention, and labor to importing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition imported.

(22) The term "with the principal objective of livelihood and profit" means that the intent underlying the sale or disposition of firearms is predominantly one of obtaining livelihood and pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms collection: Provided, That proof of profit shall not be required as to a person who engages in the regular and repetitive purchase and disposition of firearms for criminal purposes or terrorism. For purposes of this paragraph, the term "terrorism" means activity, directed against United States persons, which--

(A) is committed by an individual who is not a national or permanent resident alien of the United States;

(B) involves violent acts or acts dangerous to human life which would be a criminal violation if committed within the jurisdiction of the United States; and

(C) is intended--

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by assassination or kidnapping.

(23) The term "machinegun" has the meaning given such term in section 5845(b) of the National Firearms Act (26 U.S.C. 5845(b)).

(24) The terms "firearm silencer" and "firearm muffler" mean any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.

(25) The term "school zone" means--

(A) in, or on the grounds of, a public, parochial or private school; or

(B) within a distance of 1,000 feet from the grounds of a public, parochial or private school.

(26) The term "school" means a school which provides elementary or secondary education, as determined under State law.

(27) The term "motor vehicle" has the meaning given such term in section 13102 of title 49, United States Code.

(28) The term "semiautomatic rifle" means any repeating rifle which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.

(29) The term "handgun" means--

(A) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and

(B) any combination of parts from which a firearm described in subparagraph (A) can be assembled.

[(30), (31) Repealed. Pub.L. 103-322, Title XI, § 110105(2), Sept. 13, 1994, 108 Stat. 2000.]

(32) The term "intimate partner" means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.

(33) (A) Except as provided in subparagraph (C),² the term "misdemeanor crime of domestic violence" means an offense that--

(i) is a misdemeanor under Federal, State, or Tribal³ law; and

(ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, 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.

(B) (i) A person shall not be considered to have been convicted of such an offense for purposes of this chapter, unless--

(I) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and

(II) in the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either

(aa) the case was tried by a jury, or

(bb) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

(ii) A person shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction 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 applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

(34) The term "secure gun storage or safety device" means--

(A) a device that, when installed on a firearm, is designed to prevent the firearm from being operated without first deactivating the device;

(B) a device incorporated into the design of the firearm that is designed to prevent the operation of the firearm by anyone not having access to the device; or

(C) a safe, gun safe, gun case, lock box, or other device that is designed to be or can be used to store a firearm and that is designed to be unlocked only by means of a key, a combination, or other similar means.

(35) The term "body armor" means any product sold or offered for sale, in interstate or foreign commerce, as personal protective body covering intended to protect against gunfire, regardless of whether the product is to be worn alone or is sold as a complement to another product or garment.

(b) For the purposes of this chapter, a member of the Armed Forces on active duty is a resident of the State in which his permanent duty station is located.

CREDIT(S)

(Added Pub.L. 90-351, Title IV, § 902, June 19, 1968, 82 Stat. 226; amended Pub.L. 90-618, Title I, § 102, Oct. 22, 1968, 82 Stat. 1214; Pub.L. 93-639, § 102, Jan. 4, 1975, 88 Stat. 2217; Pub.L. 99-308, § 101, May 19, 1986, 100 Stat. 449; Pub.L. 99-360, § 1(b), July 8, 1986, 100 Stat. 766; Pub.L. 99-408, § 1, Aug. 28, 1986, 100 Stat. 920; Pub.L. 101-647, Title XVII, § 1702(b)(2), Title XXII, § 2204(a), Nov. 29, 1990, 104 Stat. 4845, 4857; Pub.L. 103-159, Title I, § 102(a)(2), Nov. 30, 1993, 107 Stat. 1539; Pub.L. 103-322, Title XI, §§ 110102(b), 110103(b), 110105(2), 110401(a), 110519, Title XXXIII, § 330021(1), Sept. 13, 1994, 108 Stat. 1997, 1999, 2000, 2014, 2020, 2150; Pub.L. 104-88, Title III, § 303(1), Dec. 29, 1995, 109 Stat. 943; Pub.L. 104-208, Div. A, Title I, § 101(f) [Title VI, § 658(a)], Sept. 30, 1996, 110 Stat. 3009-371; Pub.L. 105-277, Div. A, § 101(b) [Title I, § 119(a)], (h) [Title I, § 115], Oct. 21, 1998, 112 Stat. 2681-69, 2681-490; Pub.L. 107-273, Div. C, Title I, § 11009(e)(1), Nov. 2, 2002, 116 Stat. 1821; Pub.L. 107-296, Title XI, § 1112(f)(1) to (3), (6), Nov. 25, 2002, 116 Stat. 2276; Pub.L. 109-162, Title IX, § 908(a), Jan. 5, 2006, 119 Stat. 3083.)

18 U.S.C.A. § 922
§ 922. Unlawful acts

(a) It shall be unlawful--

(1) for any person--

(A) except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce; or

(B) except a licensed importer or licensed manufacturer, to engage in the business of importing or manufacturing ammunition, or in the course of such business, to ship, transport, or receive any ammunition in interstate or foreign commerce;

(2) for any importer, manufacturer, dealer, or collector licensed under the provisions of this chapter to ship or transport in interstate or foreign commerce any firearm to any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, except that--

(A) this paragraph and subsection (b)(3) shall not be held to preclude a licensed importer, licensed manufacturer, licensed dealer, or licensed collector from returning a firearm or replacement firearm of the same kind and type to a person from whom it was received; and this paragraph shall not be held to preclude an individual from mailing a firearm owned in compliance with Federal, State, and local law to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector;

(B) this paragraph shall not be held to preclude a licensed importer, licensed manufacturer, or licensed dealer from depositing a firearm for conveyance in the mails to any officer, employee, agent, or watchman who, pursuant to the provisions of section 1715 of this title, is eligible to receive through the mails pistols, revolvers, and other firearms capable of being concealed on the person, for use in connection with his official duty; and

(C) nothing in this paragraph shall be construed as applying in any manner in the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States differently than it would apply if the District of Columbia, the Commonwealth of Puerto Rico, or the possession were in fact a State of the United States;

(3) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector to transport into or receive in the State where he resides (or if the person is a corporation or other business entity, the State where it maintains a place of business) any firearm purchased or otherwise obtained by such person outside that State, except that this paragraph (A) shall not preclude any person who lawfully acquires a firearm by bequest or intestate succession in a State other than his State of residence from transporting the firearm into or receiving it in that State, if it is lawful for such person to purchase or possess such firearm in that State, (B) shall not apply to the transportation or receipt of a firearm obtained in conformity with subsection (b)(3) of this section, and (C) shall not apply to the transportation of any firearm acquired in any State prior to the effective date of this chapter;

(4) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, to transport in interstate or foreign commerce any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1986), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Attorney General consistent with public safety and necessity;

(5) for any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) to transfer, sell, trade, give, transport, or deliver any firearm to any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) who the transferor knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the transferor resides; except that this paragraph shall not apply to (A) the transfer, transportation, or delivery of a firearm made to carry out a bequest of a firearm to, or an acquisition by intestate succession of a firearm by, a person who is permitted to acquire or possess a firearm under the laws of the State of his residence, and (B) the loan or rental of a firearm to any person for temporary use for lawful sporting purposes;

(6) for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter;

(7) for any person to manufacture or import armor piercing ammunition, unless--

(A) the manufacture of such ammunition is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

(B) the manufacture of such ammunition is for the purpose of exportation; or

(C) the manufacture or importation of such ammunition is for the purpose of testing or experimentation and has been authorized by the Attorney General;

(8) for any manufacturer or importer to sell or deliver armor piercing ammunition, unless such sale or delivery--

(A) is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

(B) is for the purpose of exportation; or

(C) is for the purpose of testing or experimentation and has been authorized by the Attorney General;1

(9) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, who does not reside in any State to receive any firearms unless such receipt is for lawful sporting purposes.

(b) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver--

(1) any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than eighteen years of age, and, if the firearm, or ammunition is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age;

(2) any firearm to any person in any State where the purchase or possession by such person of such firearm would be in violation of any State law or any published ordinance applicable at the place of sale, delivery or other disposition, unless the licensee knows or has reasonable cause to believe that the purchase or possession would not be in violation of such State law or such published ordinance;

(3) any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the licensee's place of business is located, except that this paragraph (A) shall not apply to the sale or delivery of any rifle or shotgun to a resident of a State other than a State in which the licensee's place of business is located if the transferee meets in person with the transferor to accomplish the transfer, and the sale, delivery, and receipt fully comply with the legal conditions of sale in both such States (and any licensed manufacturer, importer or dealer shall be presumed, for purposes of this subparagraph, in the absence of evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both States), and (B) shall not apply to the loan or rental of a firearm to any person for temporary use for lawful sporting purposes;

(4) to any person any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1986), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Attorney General consistent with public safety and necessity; and

(5) any firearm or armor-piercing ammunition to any person unless the licensee notes in his records, required to be kept pursuant to section 923 of this chapter, the name, age, and place of residence of such person if the person is an individual, or the identity and principal and local places of business of such person if the person is a corporation or other business entity.

Paragraphs (1), (2), (3), and (4) of this subsection shall not apply to transactions between licensed importers, licensed manufacturers, licensed dealers, and licensed collectors. Paragraph (4) of this subsection shall not apply to a sale or delivery to any research organization designated by the Attorney General.

(c) In any case not otherwise prohibited by this chapter, a licensed importer, licensed manufacturer, or licensed dealer may sell a firearm to a person who does not appear in person at the licensee's business premises (other than another licensed importer, manufacturer, or dealer) only if--

(1) the transferee submits to the transferor a sworn statement in the following form:

"Subject to penalties provided by law, I swear that, in the case of any firearm other than a shotgun or a rifle, I am twenty-one years or more of age, or that, in the case of a shotgun or a rifle, I am eighteen years or more of age; that I am not

prohibited by the provisions of chapter 44 of title 18, United States Code, from receiving a firearm in interstate or foreign commerce; and that my receipt of this firearm will not be in violation of any statute of the State and published ordinance applicable to the locality in which I reside. Further, the true title, name, and address of the principal law enforcement officer of the locality to which the firearm will be delivered are

Signature Date"

and containing blank spaces for the attachment of a true copy of any permit or other information required pursuant to such statute or published ordinance;

(2) the transferor has, prior to the shipment or delivery of the firearm, forwarded by registered or certified mail (return receipt requested) a copy of the sworn statement, together with a description of the firearm, in a form prescribed by the Attorney General, to the chief law enforcement officer of the transferee's place of residence, and has received a return receipt evidencing delivery of the statement or has had the statement returned due to the refusal of the named addressee to accept such letter in accordance with United States Post Office Department regulations; and

(3) the transferor has delayed shipment or delivery for a period of at least seven days following receipt of the notification of the acceptance or refusal of delivery of the statement.

A copy of the sworn statement and a copy of the notification to the local law enforcement officer, together with evidence of receipt or rejection of that notification shall be retained by the licensee as a part of the records required to be kept under section 923(g).

(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person--

(1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) is a fugitive from justice;

(3) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) has been adjudicated as a mental defective or has been committed to any mental institution;

(5) who, being an alien--

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(6) who has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that--

(A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

(B) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) has been convicted in any court of a misdemeanor crime of domestic violence.

This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 of this chapter is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925 of this chapter.

(e) It shall be unlawful for any person knowingly to deliver or cause to be delivered to any common or contract carrier for transportation or shipment in interstate or foreign commerce, to persons other than licensed importers, licensed manufacturers, licensed dealers, or licensed collectors, any package or other container in which there is any firearm or ammunition without written

notice to the carrier that such firearm or ammunition is being transported or shipped; except that any passenger who owns or legally possesses a firearm or ammunition being transported aboard any common or contract carrier for movement with the passenger in interstate or foreign commerce may deliver said firearm or ammunition into the custody of the pilot, captain, conductor or operator of such common or contract carrier for the duration of the trip without violating any of the provisions of this chapter. No common or contract carrier shall require or cause any label, tag, or other written notice to be placed on the outside of any package, luggage, or other container that such package, luggage, or other container contains a firearm.

(f) (1) It shall be unlawful for any common or contract carrier to transport or deliver in interstate or foreign commerce any firearm or ammunition with knowledge or reasonable cause to believe that the shipment, transportation, or receipt thereof would be in violation of the provisions of this chapter.

(2) It shall be unlawful for any common or contract carrier to deliver in interstate or foreign commerce any firearm without obtaining written acknowledgement of receipt from the recipient of the package or other container in which there is a firearm.

(g) It shall be unlawful for any person--

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) who, being an alien--

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(6) who has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) who is subject to a court order that--

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence,

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(h) It shall be unlawful for any individual, who to that individual's knowledge and while being employed for any person described in any paragraph of subsection (g) of this section, in the course of such employment--

(1) to receive, possess, or transport any firearm or ammunition in or affecting interstate or foreign commerce; or

(2) to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(i) It shall be unlawful for any person to transport or ship in interstate or foreign commerce, any stolen firearm or stolen ammunition, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(j) It shall be unlawful for any person to receive, possess, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammunition, or pledge or accept as security for a loan any stolen firearm or stolen ammunition, which is moving as, which is a part of, which constitutes, or which has been shipped or transported in, interstate

or foreign commerce, either before or after it was stolen, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(k) It shall be unlawful for any person knowingly to transport, ship, or receive, in interstate or foreign commerce, any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered or to possess or receive any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered and has, at any time, been shipped or transported in interstate or foreign commerce.

(l) Except as provided in section 925(d) of this chapter, it shall be unlawful for any person knowingly to import or bring into the United States or any possession thereof any firearm or ammunition; and it shall be unlawful for any person knowingly to receive any firearm or ammunition which has been imported or brought into the United States or any possession thereof in violation of the provisions of this chapter.

(m) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector knowingly to make any false entry in, to fail to make appropriate entry in, or to fail to properly maintain, any record which he is required to keep pursuant to section 923 of this chapter or regulations promulgated thereunder.

(n) It shall be unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce any firearm or ammunition or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(o) (1) Except as provided in paragraph (2), it shall be unlawful for any person to transfer or possess a machinegun.

(2) This subsection does not apply with respect to--

(A) a transfer to or by, or possession by or under the authority of, the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof; or

(B) any lawful transfer or lawful possession of a machinegun that was lawfully possessed before the date this subsection takes effect.

(p) (1) It shall be unlawful for any person to manufacture, import, sell, ship, deliver, possess, transfer, or receive any firearm--

(A) that, after removal of grips, stocks, and magazines, is not as detectable as the Security Exemplar, by walk-through metal detectors calibrated and operated to detect the Security Exemplar; or

(B) any major component of which, when subjected to inspection by the types of x-ray machines commonly used at airports, does not generate an image that accurately depicts the shape of the component. Barium sulfate or other compounds may be used in the fabrication of the component.

(2) For purposes of this subsection--

(A) the term "firearm" does not include the frame or receiver of any such weapon;

(B) the term "major component" means, with respect to a firearm, the barrel, the slide or cylinder, or the frame or receiver of the firearm; and

(C) the term "Security Exemplar" means an object, to be fabricated at the direction of the Attorney General, that is--

(i) constructed of, during the 12-month period beginning on the date of the enactment of this subsection, 3.7 ounces of material type 17-4 PH stainless steel in a shape resembling a handgun; and

(ii) suitable for testing and calibrating metal detectors:

Provided, however, That at the close of such 12-month period, and at appropriate times thereafter the Attorney General shall promulgate regulations to permit the manufacture, importation, sale, shipment, delivery, possession, transfer, or receipt of firearms previously prohibited under this subparagraph that are as detectable as a "Security Exemplar" which contains 3.7 ounces of material type 17-4 PH stainless steel, in a shape resembling a handgun, or such lesser amount as is detectable in view of advances in state-of-the-art developments in weapons detection technology.

(3) Under such rules and regulations as the Attorney General shall prescribe, this subsection shall not apply to the manufacture, possession, transfer, receipt, shipment, or delivery of a firearm by a licensed manufacturer or any person acting pursuant to a contract with a licensed manufacturer, for the purpose of examining and testing such firearm to determine whether paragraph (1) applies to such firearm. The Attorney General shall ensure that rules and regulations adopted pursuant to this paragraph do not impair the manufacture of prototype firearms or the development of new technology.

(4) The Attorney General shall permit the conditional importation of a firearm by a licensed importer or licensed manufacturer, for examination and testing to determine whether or not the unconditional importation of such firearm would violate this subsection.

(5) This subsection shall not apply to any firearm which--

(A) has been certified by the Secretary of Defense or the Director of Central Intelligence, after consultation with the Attorney General and the Administrator of the Federal Aviation Administration, as necessary for military or intelligence applications; and

(B) is manufactured for and sold exclusively to military or intelligence agencies of the United States.

(6) This subsection shall not apply with respect to any firearm manufactured in, imported into, or possessed in the United States before the date of the enactment of the Undetectable Firearms Act of 1988.

(q) (1) The Congress finds and declares that--

(A) crime, particularly crime involving drugs and guns, is a pervasive, nationwide problem;

(B) crime at the local level is exacerbated by the interstate movement of drugs, guns, and criminal gangs;

(C) firearms and ammunition move easily in interstate commerce and have been found in increasing numbers in and around schools, as documented in numerous hearings in both the Committee on the Judiciary the3 House of Representatives and the Committee on the Judiciary of the Senate;

(D) in fact, even before the sale of a firearm, the gun, its component parts, ammunition, and the raw materials from which they are made have considerably moved in interstate commerce;

(E) while criminals freely move from State to State, ordinary citizens and foreign visitors may fear to travel to or through certain parts of the country due to concern about violent crime and gun violence, and parents may decline to send their children to school for the same reason;

(F) the occurrence of violent crime in school zones has resulted in a decline in the quality of education in our country;

(G) this decline in the quality of education has an adverse impact on interstate commerce and the foreign commerce of the United States;

(H) States, localities, and school systems find it almost impossible to handle gun-related crime by themselves-- even States, localities, and school systems that have made strong efforts to prevent, detect, and punish gun-related crime find their efforts unavailing due in part to the failure or inability of other States or localities to take strong measures; and

(I) the Congress has the power, under the interstate commerce clause and other provisions of the Constitution, to enact measures to ensure the integrity and safety of the Nation's schools by enactment of this subsection.

(2) (A) It shall be unlawful for any individual knowingly to possess a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the individual knows, or has reasonable cause to believe, is a school zone.

(B) Subparagraph (A) does not apply to the possession of a firearm--

(i) on private property not part of school grounds;

(ii) if the individual possessing the firearm is licensed to do so by the State in which the school zone is located or a political subdivision of the State, and the law of the State or political subdivision requires that, before an individual obtains such a license, the law enforcement authorities of the State or political subdivision verify that the individual is qualified under law to receive the license;

(iii) that is--

(I) not loaded; and

(II) in a locked container, or a locked firearms rack that is on a motor vehicle;

(iv) by an individual for use in a program approved by a school in the school zone;

(v) by an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;

(vi) by a law enforcement officer acting in his or her official capacity; or

(vii) that is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on school premises is authorized by school authorities.

(3) (A) Except as provided in subparagraph (B), it shall be unlawful for any person, knowingly or with reckless disregard for the safety of another, to discharge or attempt to discharge a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the person knows is a school zone.

(B) Subparagraph (A) does not apply to the discharge of a firearm--

(i) on private property not part of school grounds;

(ii) as part of a program approved by a school in the school zone, by an individual who is participating in the program;

(iii) by an individual in accordance with a contract entered into between a school in a school zone and the individual or an employer of the individual; or

(iv) by a law enforcement officer acting in his or her official capacity.

(4) Nothing in this subsection shall be construed as preempting or preventing a State or local government from enacting a statute establishing gun free school zones as provided in this subsection.

(r) It shall be unlawful for any person to assemble from imported parts any semiautomatic rifle or any shotgun which is identical to any rifle or shotgun prohibited from importation under section 925(d)(3) of this chapter as not being particularly suitable for or readily adaptable to sporting purposes except that this subsection shall not apply to--

(1) the assembly of any such rifle or shotgun for sale or distribution by a licensed manufacturer to the United States or any department or agency thereof or to any State or any department, agency, or political subdivision thereof; or

(2) the assembly of any such rifle or shotgun for the purposes of testing or experimentation authorized by the Attorney General.

(s) (1) Beginning on the date that is 90 days after the date of enactment of this subsection and ending on the day before the date that is 60 months after such date of enactment, it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer a handgun (other than the return of a handgun to the person from whom it was received) to an individual who is not licensed under section 923, unless--

(A) after the most recent proposal of such transfer by the transferee--

(i) the transferor has--

(I) received from the transferee a statement of the transferee containing the information described in paragraph (3);

(II) verified the identity of the transferee by examining the identification document presented;

(III) within 1 day after the transferee furnishes the statement, provided notice of the contents of the statement to the chief law enforcement officer of the place of residence of the transferee; and

(IV) within 1 day after the transferee furnishes the statement, transmitted a copy of the statement to the chief law enforcement officer of the place of residence of the transferee; and

(ii) (I) 5 business days (meaning days on which State offices are open) have elapsed from the date the transferor furnished notice of the contents of the statement to the chief law enforcement officer, during which period the transferor has not received information from the chief law enforcement officer that receipt or possession of the handgun by the transferee would be in violation of Federal, State, or local law; or

(II) the transferor has received notice from the chief law enforcement officer that the officer has no information indicating that receipt or possession of the handgun by the transferee would violate Federal, State, or local law;

(B) the transferee has presented to the transferor a written statement, issued by the chief law enforcement officer of the place of residence of the transferee during the 10-day period ending on the date of the most recent

proposal of such transfer by the transferee, stating that the transferee requires access to a handgun because of a threat to the life of the transferee or of any member of the household of the transferee;

(C) (i) the transferee has presented to the transferor a permit that--

(I) allows the transferee to possess or acquire a handgun; and

(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of the law;

(D) the law of the State requires that, before any licensed importer, licensed manufacturer, or licensed dealer completes the transfer of a handgun to an individual who is not licensed under section 923, an authorized government official verify that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law;

(E) the Attorney General has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or

(F) on application of the transferor, the Attorney General has certified that compliance with subparagraph (A)(i)(III) is impracticable because--

(i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

(ii) the business premises of the transferor at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer; and

(iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

(2) A chief law enforcement officer to whom a transferor has provided notice pursuant to paragraph (1)(A)(i)(III) shall make a reasonable effort to ascertain within 5 business days whether receipt or possession would be in violation of the law, including research in whatever State and local recordkeeping systems are available and in a national system designated by the Attorney General.

(3) The statement referred to in paragraph (1)(A)(i)(I) shall contain only--

(A) the name, address, and date of birth appearing on a valid identification document (as defined in section 1028(d)(1)) of the transferee containing a photograph of the transferee and a description of the identification used;

(B) a statement that the transferee--

(i) is not under indictment for, and has not been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year, and has not been convicted in any court of a misdemeanor crime of domestic violence;

(ii) is not a fugitive from justice;

(iii) is not an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act);

(iv) has not been adjudicated as a mental defective or been committed to a mental institution;

(v) is not an alien who--

(I) is illegally or unlawfully in the United States; or

(II) subject to subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(vi) has not been discharged from the Armed Forces under dishonorable conditions; and

(vii) is not a person who, having been a citizen of the United States, has renounced such citizenship;

(C) the date the statement is made; and

(D) notice that the transferee intends to obtain a handgun from the transferor.

(4) Any transferor of a handgun who, after such transfer, receives a report from a chief law enforcement officer containing information that receipt or possession of the handgun by the transferee violates Federal, State, or local law shall, within 1 business day after receipt of such request, communicate any information related to the transfer that the transferor has about the transfer and the transferee to--

(A) the chief law enforcement officer of the place of business of the transferor; and

(B) the chief law enforcement officer of the place of residence of the transferee.

(5) Any transferor who receives information, not otherwise available to the public, in a report under this subsection shall not disclose such information except to the transferee, to law enforcement authorities, or pursuant to the direction of a court of law.

(6) (A) Any transferor who sells, delivers, or otherwise transfers a handgun to a transferee shall retain the copy of the statement of the transferee with respect to the handgun transaction, and shall retain evidence that the transferor has complied with subclauses (III) and (IV) of paragraph (1)(A)(i) with respect to the statement.

(B) Unless the chief law enforcement officer to whom a statement is transmitted under paragraph (1)(A)(i)(IV) determines that a transaction would violate Federal, State, or local law--

(i) the officer shall, within 20 business days after the date the transferee made the statement on the basis of which the notice was provided, destroy the statement, any record containing information derived from the statement, and any record created as a result of the notice required by paragraph (1)(A)(i)(III);

(ii) the information contained in the statement shall not be conveyed to any person except a person who has a need to know in order to carry out this subsection; and

(iii) the information contained in the statement shall not be used for any purpose other than to carry out this subsection.

(C) If a chief law enforcement officer determines that an individual is ineligible to receive a handgun and the individual requests the officer to provide the reason for such determination, the officer shall provide such reasons to the individual in writing within 20 business days after receipt of the request.

(7) A chief law enforcement officer or other person responsible for providing criminal history background information pursuant to this subsection shall not be liable in an action at law for damages--

(A) for failure to prevent the sale or transfer of a handgun to a person whose receipt or possession of the handgun is unlawful under this section; or

(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a handgun.

(8) For purposes of this subsection, the term "chief law enforcement officer" means the chief of police, the sheriff, or an equivalent officer or the designee of any such individual.

(9) The Attorney General shall take necessary actions to ensure that the provisions of this subsection are published and disseminated to licensed dealers, law enforcement officials, and the public.

(t) (1) Beginning on the date that is 30 days after the Attorney General notifies licensees under section 103(d) of the Brady Handgun Violence Prevention Act that the national instant criminal background check system is established, a licensed importer, licensed manufacturer, or licensed dealer shall not transfer a firearm to any other person who is not licensed under this chapter, unless--

(A) before the completion of the transfer, the licensee contacts the national instant criminal background check system established under section 103 of that Act;

(B) (i) the system provides the licensee with a unique identification number; or

(ii) 3 business days (meaning a day on which State offices are open) have elapsed since the licensee contacted the system, and the system has not notified the licensee that the receipt of a firearm by such other person would violate subsection (g) or (n) of this section; and

(C) the transferor has verified the identity of the transferee by examining a valid identification document (as defined in section 1028(d) of this title) of the transferee containing a photograph of the transferee.

- (2) If receipt of a firearm would not violate subsection (g) or (n) or State law, the system shall--
- (A) assign a unique identification number to the transfer;
 - (B) provide the licensee with the number; and
 - (C) destroy all records of the system with respect to the call (other than the identifying number and the date the number was assigned) and all records of the system relating to the person or the transfer.
- (3) Paragraph (1) shall not apply to a firearm transfer between a licensee and another person if--
- (A)
 - (i) such other person has presented to the licensee a permit that--
 - (I) allows such other person to possess or acquire a firearm; and
 - (II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and
 - (ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by such other person would be in violation of law;
 - (B) the Attorney General has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or
 - (C) on application of the transferor, the Attorney General has certified that compliance with paragraph (1)(A) is impracticable because--
 - (i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;
 - (ii) the business premises of the licensee at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer (as defined in subsection (s)(8)); and
 - (iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.
- (4) If the national instant criminal background check system notifies the licensee that the information available to the system does not demonstrate that the receipt of a firearm by such other person would violate subsection (g) or (n) or State law, and the licensee transfers a firearm to such other person, the licensee shall include in the record of the transfer the unique identification number provided by the system with respect to the transfer.
- (5) If the licensee knowingly transfers a firearm to such other person and knowingly fails to comply with paragraph (1) of this subsection with respect to the transfer and, at the time such other person most recently proposed the transfer, the national instant criminal background check system was operating and information was available to the system demonstrating that receipt of a firearm by such other person would violate subsection (g) or (n) of this section or State law, the Attorney General may, after notice and opportunity for a hearing, suspend for not more than 6 months or revoke any license issued to the licensee under section 923, and may impose on the licensee a civil fine of not more than \$5,000.
- (6) Neither a local government nor an employee of the Federal Government or of any State or local government, responsible for providing information to the national instant criminal background check system shall be liable in an action at law for damages--
- (A) for failure to prevent the sale or transfer of a firearm to a person whose receipt or possession of the firearm is unlawful under this section; or
 - (B) for preventing such a sale or transfer to a person who may lawfully receive or possess a firearm.
- (u) It shall be unlawful for a person to steal or unlawfully take or carry away from the person or the premises of a person who is licensed to engage in the business of importing, manufacturing, or dealing in firearms, any firearm in the licensee's business inventory that has been shipped or transported in interstate or foreign commerce.
- [(v), (w) Repealed. Pub.L. 103-322, Title XI, § 110105(2), Sept. 13, 1994, 108 Stat. 2000.]
- (x) (1) It shall be unlawful for a person to sell, deliver, or otherwise transfer to a person who the transferor knows or has reasonable cause to believe is a juvenile--
- (A) a handgun; or
 - (B) ammunition that is suitable for use only in a handgun.

(2) It shall be unlawful for any person who is a juvenile to knowingly possess--

(A) a handgun; or

(B) ammunition that is suitable for use only in a handgun.

(3) This subsection does not apply to--

(A) a temporary transfer of a handgun or ammunition to a juvenile or to the possession or use of a handgun or ammunition by a juvenile if the handgun and ammunition are possessed and used by the juvenile--

(i) in the course of employment, in the course of ranching or farming related to activities at the residence of the juvenile (or on property used for ranching or farming at which the juvenile, with the permission of the property owner or lessee, is performing activities related to the operation of the farm or ranch), target practice, hunting, or a course of instruction in the safe and lawful use of a handgun;

(ii) with the prior written consent of the juvenile's parent or guardian who is not prohibited by Federal, State, or local law from possessing a firearm, except--

(I) during transportation by the juvenile of an unloaded handgun in a locked container directly from the place of transfer to a place at which an activity described in clause (i) is to take place and transportation by the juvenile of that handgun, unloaded and in a locked container, directly from the place at which such an activity took place to the transferor; or

(II) with respect to ranching or farming activities as described in clause (i), a juvenile may possess and use a handgun or ammunition with the prior written approval of the juvenile's parent or legal guardian and at the direction of an adult who is not prohibited by Federal, State or local law from possessing a firearm;

(iii) the juvenile has the prior written consent in the juvenile's possession at all times when a handgun is in the possession of the juvenile; and

(iv) in accordance with State and local law;

(B) a juvenile who is a member of the Armed Forces of the United States or the National Guard who possesses or is armed with a handgun in the line of duty;

(C) a transfer by inheritance of title (but not possession) of a handgun or ammunition to a juvenile; or

(D) the possession of a handgun or ammunition by a juvenile taken in defense of the juvenile or other persons against an intruder into the residence of the juvenile or a residence in which the juvenile is an invited guest.

(4) A handgun or ammunition, the possession of which is transferred to a juvenile in circumstances in which the transferor is not in violation of this subsection shall not be subject to permanent confiscation by the Government if its possession by the juvenile subsequently becomes unlawful because of the conduct of the juvenile, but shall be returned to the lawful owner when such handgun or ammunition is no longer required by the Government for the purposes of investigation or prosecution.

(5) For purposes of this subsection, the term "juvenile" means a person who is less than 18 years of age.

(6) (A) In a prosecution of a violation of this subsection, the court shall require the presence of a juvenile defendant's parent or legal guardian at all proceedings.

(B) The court may use the contempt power to enforce subparagraph (A).

(C) The court may excuse attendance of a parent or legal guardian of a juvenile defendant at a proceeding in a prosecution of a violation of this subsection for good cause shown.

(y) Provisions relating to aliens admitted under nonimmigrant visas--

(1) Definitions.--In this subsection--

(A) the term "alien" has the same meaning as in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)); and

(B) the term "nonimmigrant visa" has the same meaning as in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)).

(2) Exceptions.--Subsections (d)(5)(B), (g)(5)(B), and (s)(3)(B)(v)(II) do not apply to any alien who has been lawfully admitted to the United States under a nonimmigrant visa, if that alien is--

(A) admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States;

(B) an official representative of a foreign government who is--

(i) accredited to the United States Government or the Government's mission to an international organization having its headquarters in the United States; or

(ii) en route to or from another country to which that alien is accredited;

(C) an official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State; or

(D) a foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business.

(3) Waiver--

(A) Conditions for waiver.--Any individual who has been admitted to the United States under a nonimmigrant visa may receive a waiver from the requirements of subsection (g)(5), if--

(i) the individual submits to the Attorney General a petition that meets the requirements of subparagraph (C); and

(ii) the Attorney General approves the petition.

(B) Petition.--Each petition under subparagraph (B) shall--

(i) demonstrate that the petitioner has resided in the United States for a continuous period of not less than 180 days before the date on which the petition is submitted under this paragraph; and

(ii) include a written statement from the embassy or consulate of the petitioner, authorizing the petitioner to acquire a firearm or ammunition and certifying that the alien would not, absent the application of subsection (g)(5)(B), otherwise be prohibited from such acquisition under subsection (g).

(C) Approval of petition.--The Attorney General shall approve a petition submitted in accordance with this paragraph, if the Attorney General determines that waiving the requirements of subsection (g)(5)(B) with respect to the petitioner--

(i) would be in the interests of justice; and

(ii) would not jeopardize the public safety.

(z) Secure gun storage or safety device.--

(1) In general.--Except as provided under paragraph (2), it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer any handgun to any person other than any person licensed under this chapter, unless the transferee is provided with a secure gun storage or safety device (as defined in section 921(a)(34)) for that handgun.

(2) Exceptions.--Paragraph (1) shall not apply to--

(A) (i) the manufacture for, transfer to, or possession by, the United States, a department or agency of the United States, a State, or a department, agency, or political subdivision of a State, of a handgun; or

(ii) the transfer to, or possession by, a law enforcement officer employed by an entity referred to in clause (i) of a handgun for law enforcement purposes (whether on or off duty); or

(B) the transfer to, or possession by, a rail police officer employed by a rail carrier and certified or commissioned as a police officer under the laws of a State of a handgun for purposes of law enforcement (whether on or off duty);

(C) the transfer to any person of a handgun listed as a curio or relic by the Secretary pursuant to section 921(a)(13); or

(D) the transfer to any person of a handgun for which a secure gun storage or safety device is temporarily unavailable for the reasons described in the exceptions stated in section 923(e), if the licensed manufacturer, licensed importer, or licensed dealer delivers to the transferee within 10 calendar days from the date of the delivery of the handgun to the transferee a secure gun storage or safety device for the handgun.

(3) Liability for use.--

(A) In general.--Notwithstanding any other provision of law, a person who has lawful possession and control of a handgun, and who uses a secure gun storage or safety device with the handgun, shall be entitled to immunity from a qualified civil liability action.

(B) Prospective actions.--A qualified civil liability action may not be brought in any Federal or State court.

(C) Defined term.--As used in this paragraph, the term "qualified civil liability action"--

(i) means a civil action brought by any person against a person described in subparagraph (A) for damages resulting from the criminal or unlawful misuse of the handgun by a third party, if--

(I) the handgun was accessed by another person who did not have the permission or authorization of the person having lawful possession and control of the handgun to have access to it; and

(II) at the time access was gained by the person not so authorized, the handgun had been made inoperable by use of a secure gun storage or safety device; and

(ii) shall not include an action brought against the person having lawful possession and control of the handgun for negligent entrustment or negligence per se.

[APPENDIX A Repealed. Pub.L. 103-322, Title XI, § 110105(2), Sept. 13, 1994, 108 Stat. 2000]

CREDIT(S)

(Added Pub.L. 90-351, Title IV, § 902, June 19, 1968, 82 Stat. 228; amended Pub.L. 90-618, Title I, § 102, Oct. 22, 1968, 82 Stat. 1216; Pub.L. 97-377, Title I, § 165(a), Dec. 21, 1982, 96 Stat. 1923; Pub.L. 99-308, § 102, May 19, 1986, 100 Stat. 451; Pub.L. 99-408, § 2, Aug. 28, 1986, 100 Stat. 920; Pub.L. 100-649, § 2(a), (f)(2)(A), Nov. 10, 1988, 102 Stat. 3816, 3818; Pub.L. 100-690, Title VII, § 7060(c), Nov. 18, 1988, 102 Stat. 4404; Pub.L. 101-647, Title XVII, § 1702(b)(1), Title XXII, §§ 2201, 2202, 2204(b), Title XXXV, § 3524, Nov. 29, 1990, 104 Stat. 4844, 4856, 4857, 4924; Pub.L. 103-159, Title I, § 102(a)(1), (b), Title III, § 302(a) to (c), Nov. 30, 1993, 107 Stat. 1536, 1539, 1545; Pub.L. 103-322, Title XI, §§ 110102(a), 110103(a), 110105(2), 110106, 110201(a), 110401(b), (c), 110511, 110514, Title XXXII, §§ 320904, 320927, Title XXXIII, § 330011(i), Sept. 13, 1994, 108 Stat. 1996, 1998, 2000, 2010, 2014, 2019, 2125, 2131, 2145; Pub.L. 104-208, Div. A, Title I, § 101(f) [Title VI, §§ 657, 658(b)], Sept. 30, 1996, 110 Stat. 3009-369, 3009-372; Pub.L. 104-294, Title VI, § 603(b), (c)(1), (d) to (f)(1), (g), Oct. 11, 1996, 110 Stat. 3503, 3504; Pub.L. 105-277, Div. A, § 101(b) [Title I, § 121], Oct. 21, 1998, 112 Stat. 2681-71; Pub.L. 107-273, Div. B, Title IV, § 4003(a)(1), Nov. 2, 2002, 116 Stat. 1811; Pub.L. 107-296, Title XI, § 1112(f)(4), (6), Nov. 25, 2002, 116 Stat. 2276; Pub.L. 109-92, §§ 5(c)(1), 6(a), Oct. 26, 2005, 119 Stat. 2099, 2101.)

18 U.S.C.A. § 925

§ 925. Exceptions: Relief from disabilities

Effective: December 9, 2003

(a) (1) The provisions of this chapter, except for sections 922(d)(9) and 922(g)(9) and provisions relating to firearms subject to the prohibitions of section 922(p), shall not apply with respect to the transportation, shipment, receipt, possession, or importation of any firearm or ammunition imported for, sold or shipped to, or issued for the use of, the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof.

(2) The provisions of this chapter, except for provisions relating to firearms subject to the prohibitions of section 922(p), shall not apply with respect to (A) the shipment or receipt of firearms or ammunition when sold or issued by the Secretary of the Army pursuant to section 4308 of title 10 before the repeal of such section by section 1624(a) of the Corporation for the Promotion of Rifle Practice and Firearms Safety Act, and (B) the transportation of any such firearm or ammunition carried out to enable a person, who lawfully received such firearm or ammunition from the Secretary of the Army, to engage in military training or in competitions.

(3) Unless otherwise prohibited by this chapter, except for provisions relating to firearms subject to the prohibitions of section 922(p), or any other Federal law, a licensed importer, licensed manufacturer, or licensed dealer may ship to a member of the United States Armed Forces on active duty outside the United States or to clubs, recognized by the Department of Defense, whose entire membership is composed of such members, and such members or clubs may receive a firearm or ammunition determined by the Attorney General to be generally recognized as particularly suitable for sporting purposes and intended for the personal use of such member or club.

(4) When established to the satisfaction of the Attorney General to be consistent with the provisions of this chapter, except for provisions relating to firearms subject to the prohibitions of section 922(p), and other applicable Federal and State laws

and published ordinances, the Attorney General may authorize the transportation, shipment, receipt, or importation into the United States to the place of residence of any member of the United States Armed Forces who is on active duty outside the United States (or who has been on active duty outside the United States within the sixty day period immediately preceding the transportation, shipment, receipt, or importation), of any firearm or ammunition which is (A) determined by the Attorney General to be generally recognized as particularly suitable for sporting purposes, or determined by the Department of Defense to be a type of firearm normally classified as a war souvenir, and (B) intended for the personal use of such member.

(5) For the purpose of paragraph (3) of this subsection, the term "United States" means each of the several States and the District of Columbia.

(b) A licensed importer, licensed manufacturer, licensed dealer, or licensed collector who is indicted for a crime punishable by imprisonment for a term exceeding one year, may, notwithstanding any other provision of this chapter, continue operation pursuant to his existing license (if prior to the expiration of the term of the existing license timely application is made for a new license) during the term of such indictment and until any conviction pursuant to the indictment becomes final.

(c) A person who is prohibited from possessing, shipping, transporting, or receiving firearms or ammunition may make application to the Attorney General for relief from the disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, transportation, or possession of firearms, and the Attorney General may grant such relief if it is established to his satisfaction that the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest. Any person whose application for relief from disabilities is denied by the Attorney General may file a petition with the United States district court for the district in which he resides for a judicial review of such denial. The court may in its discretion admit additional evidence where failure to do so would result in a miscarriage of justice. A licensed importer, licensed manufacturer, licensed dealer, or licensed collector conducting operations under this chapter, who makes application for relief from the disabilities incurred under this chapter, shall not be barred by such disability from further operations under his license pending final action on an application for relief filed pursuant to this section. Whenever the Attorney General grants relief to any person pursuant to this section he shall promptly publish in the Federal Register notice of such action, together with the reasons therefor.

(d) The Attorney General shall authorize a firearm or ammunition to be imported or brought into the United States or any possession thereof if the firearm or ammunition--

(1) is being imported or brought in for scientific or research purposes, or is for use in connection with competition or training pursuant to chapter 401 of title 10;

(2) is an unserviceable firearm, other than a machinegun as defined in section 5845(b) of the Internal Revenue Code of 1986 (not readily restorable to firing condition), imported or brought in as a curio or museum piece;

(3) is of a type that does not fall within the definition of a firearm as defined in section 5845(a) of the Internal Revenue Code of 1986 and is generally recognized as particularly suitable for or readily adaptable to sporting purposes, excluding surplus military firearms, except in any case where the Attorney General has not authorized the importation of the firearm pursuant to this paragraph, it shall be unlawful to import any frame, receiver, or barrel of such firearm which would be prohibited if assembled; or

(4) was previously taken out of the United States or a possession by the person who is bringing in the firearm or ammunition.

The Attorney General shall permit the conditional importation or bringing in of a firearm or ammunition for examination and testing in connection with the making of a determination as to whether the importation or bringing in of such firearm or ammunition will be allowed under this subsection.

(e) Notwithstanding any other provision of this title, the Attorney General shall authorize the importation of, by any licensed importer, the following:

(1) All rifles and shotguns listed as curios or relics by the Attorney General pursuant to section 921(a)(13), and

(2) All handguns, listed as curios or relics by the Attorney General pursuant to section 921(a)(13), provided that such handguns are generally recognized as particularly suitable for or readily adaptable to sporting purposes.

(f) The Attorney General shall not authorize, under subsection (d), the importation of any firearm the importation of which is prohibited by section 922(p).

CREDIT(S)

(Added Pub.L. 90-351, Title IV, § 902, June 19, 1968, 82 Stat. 233; amended Pub.L. 90-618, Title I, § 102, Oct. 22, 1968, 82 Stat. 1224; Pub.L. 98-573, Title II, § 233, Oct. 30, 1984, 98 Stat. 2991; Pub.L. 99-308, § 105, May 19, 1986, 100 Stat. 459; Pub.L. 100-649, § 2(c), (f)(2)(C), (E), Nov. 10, 1988, 102 Stat. 3817; Pub.L. 101-647, Title XXII, § 2203(b), (c), Nov. 29, 1990, 104 Stat. 4857; Pub.L. 104-106, Div. A, Title XVI, § 1624(b)(3), Feb. 10, 1996, 110 Stat. 522; Pub.L. 104-208, Div. A, Title I, § 101(f) [Title VI, § 658(c)], Sept. 30, 1996, 110 Stat. 3009-372; Pub.L. 104-294, Title VI, § 607(c), Oct. 11, 1996, 110 Stat. 3511; Pub.L. 107-296, Title XI, § 1112(f)(6), Nov. 25, 2002, 116 Stat. 2276.)

18 U.S.C.A. § 2261

§ 2261. Interstate domestic violence

Effective: October 1, 2013

(a) Offenses.--

(1) Travel or conduct of offender.--A person who travels in interstate or foreign commerce or enters or leaves Indian country or is present within the special maritime and territorial jurisdiction of the United States with the intent to kill, injure, harass, or intimidate a spouse, intimate partner, or dating partner, and who, in the course of or as a result of such travel or presence, commits or attempts to commit a crime of violence against that spouse, intimate partner, or dating partner, shall be punished as provided in subsection (b).

(2) Causing travel of victim.--A person who causes a spouse, intimate partner, or dating partner to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and who, in the course of, as a result of, or to facilitate such conduct or travel, commits or attempts to commit a crime of violence against that spouse, intimate partner, or dating partner, shall be punished as provided in subsection (b).

(b) Penalties.--A person who violates this section or section 2261A shall be fined under this title, imprisoned--

(1) for life or any term of years, if death of the victim results;

(2) for not more than 20 years if permanent disfigurement or life threatening bodily injury to the victim results;

(3) for not more than 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense;

(4) as provided for the applicable conduct under chapter 109A if the offense would constitute an offense under chapter 109A (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison); and

(5) for not more than 5 years, in any other case,

or both fined and imprisoned.

(6) Whoever commits the crime of stalking in violation of a temporary or permanent civil or criminal injunction, restraining order, no-contact order, or other order described in section 2266 of title 18, United States Code, shall be punished by imprisonment for not less than 1 year.

CREDIT(S)

(Added Pub.L. 103-322, Title IV, § 40221(a), Sept. 13, 1994, 108 Stat. 1926; amended Pub.L. 104-201, Div. A, Title X, § 1069(b)(1), (2), Sept. 23, 1996, 110 Stat. 2656; Pub.L. 106-386, Div. B, Title I, § 1107(a), Oct. 28, 2000, 114 Stat. 1497; Pub.L. 109-162, Title I, §§ 114(b), 116(a), 117(a), Jan. 5, 2006, 119 Stat. 2988, 2989; Pub.L. 113-4, Title I, § 107(a), Mar. 7, 2013, 127 Stat. 77.)

18 U.S.C.A. § 2261A

§ 2261A. Stalking 1

Effective: October 1, 2013

Whoever--

(1) travels in interstate or foreign commerce or is present within the special maritime and territorial jurisdiction of the United States, or enters or leaves Indian country, with the intent to kill, injure, harass, intimidate, or place under surveillance with intent to kill, injure, harass, or intimidate another person, and in the course of, or as a result of, such travel or presence engages in conduct that--

(A) places that person in reasonable fear of the death of, or serious bodily injury to--

(i) that person;

(ii) an immediate family member (as defined in section 115) of that person; or

(iii) a spouse or intimate partner of that person; or

(B) causes, attempts to cause, or would be reasonably expected to cause substantial emotional distress to a person described in clause (i), (ii), or (iii) of subparagraph (A); or

(2) with the intent to kill, injure, harass, intimidate, or place under surveillance with intent to kill, injure, harass, or intimidate another person, uses the mail, any interactive computer service or electronic communication service or electronic communication system of interstate commerce, or any other facility of interstate or foreign commerce to engage in a course of conduct that--

(A) places that person in reasonable fear of the death of or serious bodily injury to a person described in clause (i), (ii), or (iii) of paragraph (1)(A); or

(B) causes, attempts to cause, or would be reasonably expected to cause substantial emotional distress to a person described in clause (i), (ii), or (iii) of paragraph (1)(A),

shall be punished as provided in section 2261(b) of this title.

CREDIT(S)

(Added Pub.L. 104-201, Div. A, Title X, § 1069(a), Sept. 23, 1996, 110 Stat. 2655; amended Pub.L. 106-386, Div. B, Title I, § 1107(b)(1), Oct. 28, 2000, 114 Stat. 1498; Pub.L. 109-162, Title I, § 114(a), Jan. 5, 2006, 119 Stat. 2987; Pub.L. 113-4, Title I, § 107(b), Mar. 7, 2013, 127 Stat. 77.)

18 U.S.C.A. § 2262

§ 2262. Interstate violation of protection order

Effective: October 1, 2013

(a) Offenses.--

(1) Travel or conduct of offender.--A person who travels in interstate or foreign commerce, or enters or leaves Indian country or is present within the special maritime and territorial jurisdiction of the United States, with the intent to engage in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, and subsequently engages in such conduct, shall be punished as provided in subsection (b).

(2) Causing travel of victim.--A person who causes another person to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and in the course of, as a result of, or to facilitate such conduct or travel engages in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, shall be punished as provided in subsection (b).

(b) Penalties.--A person who violates this section shall be fined under this title, imprisoned--

(1) for life or any term of years, if death of the victim results;

(2) for not more than 20 years if permanent disfigurement or life threatening bodily injury to the victim results;

(3) for not more than 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense;

(4) as provided for the applicable conduct under chapter 109A if the offense would constitute an offense under chapter 109A (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison); and

(5) for not more than 5 years, in any other case,

or both fined and imprisoned.

CREDIT(S)

(Added Pub.L. 103-322, Title IV, § 40221(a), Sept. 13, 1994, 108 Stat. 1927; amended Pub.L. 104-201, Div. A, Title X, § 1069(b)(2), Sept. 23, 1996, 110 Stat. 2656; Pub.L. 104-294, Title VI, § 605(d), Oct. 11, 1996, 110 Stat. 3509; Pub.L. 106-386, Div. B, Title I, § 1107(c), Oct. 28, 2000, 114 Stat. 1498; Pub.L. 109-162, Title I, § 117(b), Jan. 5, 2006, 119 Stat. 2989; Pub.L. 113-4, Title I, § 107(c), Mar. 7, 2013, 127 Stat. 78.)

18 U.S.C.A. § 2263

§ 2263. Pretrial release of defendant

In any proceeding pursuant to section 3142 for the purpose of determining whether a defendant charged under this chapter shall be released pending trial, or for the purpose of determining conditions of such release, the alleged victim shall be given an opportunity to be heard regarding the danger posed by the defendant.

CREDIT(S)

(Added Pub.L. 103-322, Title IV, § 40221(a), Sept. 13, 1994, 108 Stat. 1928.)

18 U.S.C.A. § 2264
§ 2264. Restitution
Effective: April 24, 1996

(a) In general.--Notwithstanding section 3663 or 3663A, and in addition to any other civil or criminal penalty authorized by law, the court shall order restitution for any offense under this chapter.

(b) Scope and nature of order.--

(1) Directions.--The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court pursuant to paragraph (2).

(2) Enforcement.--An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.

(3) Definition.--For purposes of this subsection, the term "full amount of the victim's losses" includes any costs incurred by the victim for--

(A) medical services relating to physical, psychiatric, or psychological care;

(B) physical and occupational therapy or rehabilitation;

(C) necessary transportation, temporary housing, and child care expenses;

(D) lost income;

(E) attorneys' fees, plus any costs incurred in obtaining a civil protection order; and

(F) any other losses suffered by the victim as a proximate result of the offense.

(4) Order mandatory.—

(A) The issuance of a restitution order under this section is mandatory.

(B) A court may not decline to issue an order under this section because of--

(i) the economic circumstances of the defendant; or

(ii) the fact that a victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance or any other source.

(c) Victim defined.--For purposes of this section, the term "victim" means the individual harmed as a result of a commission of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such representative or guardian.

CREDIT(S)

(Added Pub.L. 103-322, Title IV, § 40221(a), Sept. 13, 1994, 108 Stat. 1928; amended Pub.L. 104-132, Title II, § 205(d), Apr. 24, 1996, 110 Stat. 1231.)

18 U.S.C.A. § 2265
§ 2265. Full faith and credit given to protection orders
Effective: March 7, 2013

(a) Full Faith and Credit.--Any protection order issued that is consistent with subsection (b) of this section by the court of one State, Indian tribe, or territory (the issuing State, Indian tribe, or territory) shall be accorded full faith and credit by the court of another State, Indian tribe, or territory (the enforcing State, Indian tribe, or territory) and enforced by the court and law enforcement personnel of the other State, Indian tribal government or Territory¹ as if it were the order of the enforcing State or tribe.

(b) Protection order.--A protection order issued by a State, tribal, or territorial court is consistent with this subsection if--

(1) such court has jurisdiction over the parties and matter under the law of such State, Indian tribe, or territory; and

(2) reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State, tribal, or territorial law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

(c) Cross or counter petition.--A protection order issued by a State, tribal, or territorial court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if--

- (1) no cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or
- (2) a cross or counter petition has been filed and the court did not make specific findings that each party was entitled to such an order.

(d) Notification and registration.--

(1) Notification.--A State, Indian tribe, or territory according full faith and credit to an order by a court of another State, Indian tribe, or territory shall not notify or require notification of the party against whom a protection order has been issued that the protection order has been registered or filed in that enforcing State, tribal, or territorial jurisdiction unless requested to do so by the party protected under such order.

(2) No prior registration or filing as prerequisite for enforcement.--Any protection order that is otherwise consistent with this section shall be accorded full faith and credit, notwithstanding failure to comply with any requirement that the order be registered or filed in the enforcing State, tribal, or territorial jurisdiction.

(3) Limits on Internet publication of registration information.--A State, Indian tribe, or territory shall not make available publicly on the Internet any information regarding the registration, filing of a petition for, or issuance of a protection order, restraining order or injunction, restraining order, or injunction² in either the issuing or enforcing State, tribal or territorial jurisdiction, if such publication would be likely to publicly reveal the identity or location of the party protected under such order. A State, Indian tribe, or territory may share court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes.

(e) Tribal court jurisdiction.--For purposes of this section, a court of an Indian tribe shall have full civil jurisdiction to issue and enforce protection orders involving any person, including the authority to enforce any orders through civil contempt proceedings, to exclude violators from Indian land, and to use other appropriate mechanisms, in matters arising anywhere in the Indian country of the Indian tribe (as defined in section 1151) or otherwise within the authority of the Indian tribe.

CREDIT(S)

(Added Pub.L. 103-322, Title IV, § 40221(a), Sept. 13, 1994, 108 Stat. 1930; amended Pub.L. 106-386, Div. B, Title I, § 1101(b)(4), Oct. 28, 2000, 114 Stat. 1493; Pub.L. 109-162, Title I, § 106(a) to (c), Jan. 5, 2006, 119 Stat. 2981, 2982; Pub.L. 109-271, § 2(n), Aug. 12, 2006, 120 Stat. 754; Pub.L. 113-4, Title IX, § 905, Mar. 7, 2013, 127 Stat. 124.)

18 U.S.C.A. § 2265A

§ 2265A. Repeat offenders¹

Effective: March 7, 2013

(a) Maximum term of imprisonment.--The maximum term of imprisonment for a violation of this chapter after a prior domestic violence or stalking offense shall be twice the term otherwise provided under this chapter.

(b) Definition.--For purposes of this section--

(1) the term "prior domestic violence or stalking offense" means a conviction for an offense--

(A) under section 2261, 2261A, or 2262 of this chapter; or

(B) under State or tribal law for an offense consisting of conduct that would have been an offense under a section referred to in subparagraph (A) if the conduct had occurred within the special maritime and territorial jurisdiction of the United States, or in interstate or foreign commerce; and

(2) the term "State" means a State of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States.

CREDIT(S)

(Added Pub.L. 109-162, Title I, § 115, Jan. 5, 2006, 119 Stat. 2988; amended Pub.L. 113-4, Title IX, § 906(c), Mar. 7, 2013, 127 Stat. 125.)

18 U.S.C.A. § 2266

§ 2266. Definitions

Effective: August 12, 2006

In this chapter:

(1) Bodily injury.--The term "bodily injury" means any act, except one done in self-defense, that results in physical injury or sexual abuse.

(2) Course of conduct.--The term "course of conduct" means a pattern of conduct composed of 2 or more acts, evidencing a continuity of purpose.

(3) Enter or leave Indian country.--The term "enter or leave Indian country" includes leaving the jurisdiction of 1 tribal government and entering the jurisdiction of another tribal government.

(4) Indian country.--The term "Indian country" has the meaning stated in section 1151 of this title.

(5) Protection order.--The term "protection order" includes--

(A) any injunction, restraining order, or any other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence, or contact or communication with or physical proximity to, another person, including any temporary or final order issued by a civil or criminal court whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection; and

(B) any support, child custody or visitation provisions, orders, remedies or relief issued as part of a protection order, restraining order, or injunction pursuant to State, tribal, territorial, or local law authorizing the issuance of protection orders, restraining orders, or injunctions for the protection of victims of domestic violence, sexual assault, dating violence, or stalking.

(6) Serious bodily injury.--The term "serious bodily injury" has the meaning stated in section 2119(2).

(7) Spouse or intimate partner.--The term "spouse or intimate partner" includes--

(A) for purposes of--

(i) sections other than 2261A--

(I) a spouse or former spouse of the abuser, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited as a spouse with the abuser; or

(II) a person who is or has been in a social relationship of a romantic or intimate nature with the abuser, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship; and

(ii) section 2261A--

(I) a spouse or former spouse of the target of the stalking, a person who shares a child in common with the target of the stalking, and a person who cohabits or has cohabited as a spouse with the target of the stalking; or

(II) a person who is or has been in a social relationship of a romantic or intimate nature with the target of the stalking, as determined by the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship.¹

(B) any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the State or tribal jurisdiction in which the injury occurred or where the victim resides.

(8) State.--The term "State" includes a State of the United States, the District of Columbia, and a commonwealth, territory, or possession of the United States.

(9) Travel in interstate or foreign commerce.--The term "travel in interstate or foreign commerce" does not include travel from 1 State to another by an individual who is a member of an Indian tribe and who remains at all times in the territory of the Indian tribe of which the individual is a member.

(10) Dating partner.--The term "dating partner" refers to a person who is or has been in a social relationship of a romantic or intimate nature with the abuser. The existence of such a relationship is based on a consideration of--

(A) the length of the relationship; and

(B) the type of relationship; and

(C) the frequency of interaction between the persons involved in the relationship.

CREDIT(S)

(Added Pub.L. 103-322, Title IV, § 40221(a), Sept. 13, 1994, 108 Stat. 1931; amended Pub.L. 106-386, Div. B, Title I, § 1107(d), Oct. 28, 2000, 114 Stat. 1499; Pub.L. 109-162, Title I, §§ 106(d), 116(b), Jan. 5, 2006, 119 Stat. 2982, 2988; Pub.L. 109-271, § 2(c), (i), Aug. 12, 2006, 120 Stat. 752.)

BENCH CHECKLIST FOR USE BY ALL JUDICIAL OFFICERS AT ALL STAGES OF JUDICIAL PROCEEDINGS INVOLVING ALLEGATIONS OF DOMESTIC VIOLENCE AND ORDERS OF PROTECTION IN CIVIL AND CRIMINAL DOMESTIC VIOLENCE CASES

Lethality Factors

Own, carry, or have access to any firearm?	Yes No		Use or threats with a lethal weapon?	Yes No
Familiarity with firearms?	Yes No		Beaten a woman who was pregnant?	Yes No
Abuse drugs?	Yes No		Threats kill the victim or the entire family?	Yes No
Alcoholic or problem drinker?	Yes No		Threats to harm the victim's children?	Yes No
Control freak?	Yes No		Attempt to choke/strangle the victim?	Yes No
Overly jealous?	Yes No		History of severe or frequent violence?	Yes No
Threaten suicide?	Yes No		Killed or violence to pets?	Yes No
Spying or stalking behavior?	Yes No		Forced the victim to have sex?	Yes No
Mental illness?	Yes No		Exhibited extreme behaviors?	Yes No
Stopped taking psychiatric medications?	Yes No		Has the victim left the perpetrator after they lived together?	Yes No
Familiarity of victim's residence, employment & routine?	Yes No		Does the victim have a child that is not the perpetrator's child?	Yes No
Depression?	Yes No		Has the victim taken steps to end the relationship?	Yes No
Unemployed?	Yes No		Ever violate a court order or protection order?	Yes No
No current relationships with friends or relatives?	Yes No		Ever violate probation/community control or parole/post-release control?	Yes No
Significant criminal history or history of violence or threats?	Yes No		Ever avoided being arrested for domestic violence?	Yes No
Recent increase in physical violence?	Yes No		Victim has a strong "gut" sense that the perpetrator could harm her?	Yes No
Use pornography heavily?	Yes No		Other:	Yes No

Adapted from: Lundy Bancroft -- Assessing Dangerousness in Men Who Abuse Women; Judge Amy Karan and Lauren Lazarus, The Florida Bar Journal, March 2004, Volume LXXVIII, No. 3; and Jacquelyn C. Campbell & Hon. Sharon A. Chatman, Bench Guide for Recognizing Dangerousness in Domestic Violence Cases.