



Bureau of Alcohol, Tobacco, Firearms, and Explosives
Executive Office for United States Attorneys
Federal Bureau of Investigation
Office on Violence Against Women

Misdemeanor Crimes of Domestic Violence Prohibitions

Persons who have been convicted in any court of a **qualifying misdemeanor crime of domestic violence (MCDV)** are generally **prohibited under Federal law from receiving or possessing any firearm or ammunition** in or affecting commerce. The MCDV prohibition applies to federal, state, and local governmental employees in both their official and private capacities; unlike other firearm prohibitions under Federal law, no governmental exception applies to MCDV convictions. Violation of this prohibition is a federal offense punishable by up to 15 years imprisonment and/or a fine of up to \$250,000.

A qualifying MCDV is an offense that:

- ❖ Is a misdemeanor under Federal, State, Tribal, or local law;
- ❖ Has the element of the use or attempted use of physical force, or the threatened use of a deadly weapon; and,
- ❖ At the time the offense was committed, the defendant was:
 - A current or former spouse, parent, or guardian of the victim;
 - A person with whom the victim shared a child in common;
 - A person who was cohabiting with or had cohabited with the victim as a spouse, parent, or guardian;
 - A person who was similarly situated to a spouse, parent, or guardian of the victim; or
 - A person who was in a current or recent former dating relationship with the victim (applicable only to convictions on or after June 25, 2022).
 - A “dating relationship” is a relationship between individuals who have or have recently had a continuing serious relationship of a romantic or intimate nature. Factors for determining the existence of such a relationship are:
 - the length of the relationship;
 - the nature of the relationship; and
 - the frequency and type of interaction between the individuals involved in the relationship.
 - A casual acquaintanceship or ordinary fraternization in a business or social context does **not** constitute a dating relationship.

Note: A person does not need to be convicted of a crime called “domestic violence” for the federal prohibition to apply, provided the conviction meets the enumerated requirements in Title 18, United States Code, Sections 921(a)(33) and (37), to constitute a qualifying crime.

Statutory Exceptions – A person is not considered to have been convicted of a qualifying MCDV for the purposes of this federal firearms prohibition:

- ❖ **IF** the person was not represented by counsel in the case—unless the person knowingly and intelligently waived the right to counsel;
- ❖ **IF** the person was entitled to a jury trial AND the case was not tried by a jury—unless the person knowingly and intelligently waived the right to jury trial; or

- ❖ **IF** the conviction was set aside or expunged, the person was pardoned, or the person’s civil rights—the right to vote, sit on a jury, and hold elected office—were restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense).

BUT this exception does NOT lift the federal firearms prohibition if:

- The expungement, pardon, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms; or
- The person is otherwise prohibited by the law of the jurisdiction in which the proceedings were held from receiving or possessing any firearms.

Time limitation applicable only to “dating relationship” MCDV convictions:

- ❖ A conviction for an MCDV offense involving a “dating relationship” (as defined above) is no longer a qualifying MCDV, and the person’s right to possess firearms and ammunition will have been restored for the purposes of federal law, **IF**:
 - the person has only one MCDV conviction against an individual in a dating relationship;
 - five years have elapsed from the conviction or completion of custodial or supervisory sentence (whichever is later); and
 - the person is not otherwise prohibited from firearm possession under Title 18, United States Code, Section 922(g).
- ❖ **IF**, however, at any time either during or after the five year post-offense period, the person is convicted of: (1) another MCDV involving a dating relationship; (2) any other misdemeanor offense that includes as an element the use or attempted use of force, or the threatened use of a deadly weapon (regardless of relation to the victim); **or** (3) any other offense that would disqualify the person under section 922(g), then the restoration of rights provision will no longer apply.

Practice tip:

- ❖ Due to the restoration provision discussed above, the prohibition period for persons convicted of “dating relationship” MCDVs is potentially limited, while other domestic violence offenders are prohibited for life from possessing firearms and ammunition. Potential restoration of firearm rights after five years from the conviction is not available for a person who at the time the offense was committed was a current or former spouse, parent, or guardian of the victim; similarly situated to a spouse, parent, or guardian of the victim; was cohabiting with or had cohabited with the victim as a spouse, parent, or guardian; or shared a child in common with the victim. Therefore, consider whether any of these other relationships existed between the offender and the victim at the time of the offense, as such would potentially preclude restoration.

Applicable Statutes and Regulations: 18 U.S.C. §§ 922(g)(9), 921(a)(33) (definition of “misdemeanor crime of domestic violence”), 921(a)(37) (definition of “dating relationship”), 924(a)(2), and 925(a)(1); The Bipartisan Safer Communities Act, Section 12005, Public Law 117-159 (effective date of dating relationship provisions, June 25, 2022); 27 C.F.R. §§ 478.11, 478.32(a)(9).

VISIT ATF’S MISDEMEANOR CRIME OF DOMESTIC VIOLENCE FAQ AT www.atf.gov/qa-category/misdemeanor-crime-domestic-violence.

FOR FURTHER INFORMATION ABOUT SECTION 922(g)(9) OR FEDERAL FIREARMS PROHIBITIONS GENERALLY, CONTACT YOUR LOCAL FIELD DIVISION OF THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES BY CALLING 1-800-800-3855, OR VISIT <https://www.atf.gov/contact/atf-field-divisions>.

FOR FURTHER INFORMATION ABOUT DOMESTIC VIOLENCE, PLEASE CONTACT THE NATIONAL RESOURCE CENTER ON DOMESTIC VIOLENCE AND FIREARMS BY CALLING 1-800-903-0111, PROMPT 1; OR VISIT www.preventdvgunviolence.org.