



Federal Domestic Violence Statutes and Elements for Prosecution

Possession of Firearm While Subject to Order of Protection—18 U.S.C. §922(g)(8)

It is illegal for a person to possess a firearm while subject to a court order restraining such person from harassing, stalking, or threatening an intimate partner or the child of an intimate partner or from engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child. The protection order must have been issued following a hearing as to which the defendant had actual notice and an opportunity to participate. The protection order must also include a specific finding that the defendant represents a credible threat to the physical safety of the victim, or must include an explicit prohibition against the use of force that would reasonably be expected to cause injury.

Transfer of Firearm to Person Subject to Order of Protection, 18 U.S.C. §922(d)(8)

It is also illegal to transfer a firearm to a person knowing or having reasonable cause to believe that such person is subject to a court order that restrains him/her from harassing, stalking, or threatening an intimate partner or the child of an intimate partner. A violation of Section 922(d)(8) must be knowing. Proof concerning knowledge on the part of the supplier may be difficult to establish unless the purchaser acknowledges in the firearm application that he/she is a prohibited person.

Possession of Firearm After Conviction of Misdemeanor Crime of Domestic Violence, 18 U.S.C. §922(g)(9)

It is illegal to possess a firearm after conviction of a misdemeanor crime of domestic violence. This prohibition applies to persons convicted of such misdemeanors at any time, even if the conviction occurred prior to the law's 1996 effective date. A qualifying misdemeanor domestic violence crime must have as an element the use or attempted use of physical force, or the threatened use of a deadly weapon. For example, a conviction for a misdemeanor violation of a protection order will not qualify, even if the violation was committed by a violent act, since the statute does not require the use or attempted use of physical force or the threatened use of a deadly weapon.

In addition, the statute contains due process requirements regarding the defendant's right to counsel and the defendant's right to a jury trial, if applicable. Absent compliance with these due process requirements, the misdemeanor conviction will not qualify as a domestic violence conviction for purposes of Section 922(g)(9). Moreover, a person may be able to possess a firearm if the conviction has been expunged or set aside.

**Transfer of Firearm to Person Convicted of a Misdemeanor, Crime of Domestic Violence,
18 U.S.C. §922(d)(9)**

It is also illegal to transfer a firearm to a person knowing or have reasonable cause to believe that such a person has been convicted of a misdemeanor crime of domestic violence. A violation of Section 922(d)(9) must be knowing. Proof concerning knowledge on the part of the supplier may be difficult to establish unless the purchaser acknowledges in the firearm application that he/she is a prohibited person.

Official Use Exemption, 18 U.S.C. §925(a)(1)

The official use exemption does not apply to Sections 922(d)(9) and 922(g)(9). This means that law enforcement officers or military personnel who have been convicted of a qualifying domestic violence misdemeanor *will not be able* to possess or receive firearms for any purpose, including the performance of official duties. Additional questions about this statute should be referred to our Office.

Penalties

The maximum term of imprisonment for a violation of Sections 922(d)(8), 922(g)(8), 922(d)(9), or 922(g)(9), is 10 years.

Referrals and Resources

The law is on your side, and the U.S. Attorney’s Office for the District of New Mexico stands ready to help. For case referrals, questions or information about victim assistance, contact our office at:

Albuquerque Office
(505) 346-7274

Las Cruces Branch Office
(505) 522-2304

Victim-Witness Unit
Toll Free (800) 388-6541

Domestic Violence and Victim Resources in New Mexico:

New Mexico Coalition Against
Domestic Violence
2340 Alamo Ave. SE, Suite 120
Albuquerque, NM 87106
Phone: 505-246-9240
Website: www.nmcadv.org

Coalition to Stop Violence
Against Native Women
4600 Montgomery Blvd. NE,
#202B
Albuquerque, NM 87107
Phone: 505-243-9199
Website: www.csvanw.org

New Mexico Coalition of Sexual
Assault Programs, Inc.
3909 Juan Tabo NE, Suite 6
Albuquerque, NM 87111
Phone: 505-883-8020
Website: www.nmcsap.org

**The National Domestic Violence Hotline aids victim of domestic violence 24/7. Get help now by calling:
1-800-799-SAFE (7233) or
TTY 1-800-787-3224**