

DOMESTIC VIOLENCE & FIREARMS JUDICIAL BENCHCARD

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I. TENNESSEE FIREARMS PROHIBITIONS

A person commits an offense who carries, with the intent to go armed, a firearm or a club. T.C.A. § 39-17-1307(a)(1)

A person commits an offense who carries, with the intent to go armed, a handgun at a place open to the public where one or more persons are present. T.C.A. § 39-17-1307(a)(2)(C).

A person commits an offense who possesses a handgun and has been convicted of a felony unless:

- (A) the person has been pardoned for the offense;
- (B) the felony conviction has been expunged; or
- (C) the person's civil rights have been restored pursuant to title 40, chapter 29, and the restoration order does not specifically prohibit the person from possessing firearms.

T.C.A. § 39-17-1307 (c)(1)(A-C)

The following persons are guilty of a violation of T.C.A. § 39-17-1307 if found in possession of a firearm defined in T.C.A. §39-11-106(a):

- A person convicted of a felony "crime of violence," as defined in T.C.A. § 39-17-1301, an attempt to commit a felony "crime of violence" or a felony involving use of a deadly weapon;
- A person convicted of a felony drug offense;
- A person convicted of a misdemeanor crime of domestic violence as defined in 18 U.S.C. § 921 and is still subject to the disabilities of such a conviction;
- A person under a qualifying order of protection as defined in 18 U.S.C. § 922(g)(8); or
- A person who is prohibited from possessing a firearm under any other provision of state or federal law.

****Note:** The U.S. Supreme Court has held, "...a state weapons limitation activates the uniform federal ban on possessing any firearms at all. Even if a State permitted an offender to have the guns he possessed, federal law uses the State's determination that the offender is more dangerous than law-abiding citizens to impose its own broader stricture." See *Caron v. United States*, 524 U.S. 308, 308, 118 S. Ct. 2007, 2008-09, 141 L. Ed. 2d 303 (1998).

II. ORDERS OF PROTECTION

A defendant/respondent who is under a qualifying order of protection may not possess a firearm according to federal and Tennessee law. 18 U.S.C. § 922(g)(8); T.C.A. § 36-3-625(a)(1).

A qualifying order of protection pursuant to 18 U.S.C. § 922(g)(8) requires the Petitioner be an intimate partner of the Respondent. An intimate partner (18 U.S.C. § 921(a)(32)) is a person who falls within the following relationships::

- a spouse of the respondent;
- a former spouse of the respondent;
- an individual who is a parent of a child of respondent;
- or an individual who lives or has lived with the respondent.

• **Note:** Petitioner can also be a child of an intimate partner. (T.C.A. § 36-3-602)

A qualifying order of protection also requires:

- Respondent received actual notice and had an opportunity to be heard. This means that the respondent received proper service under T.C.A. § 36-3-605(c). For this reason, an ex parte order would not qualify.
- The order restrains the respondent from harassing, stalking, or threatening an intimate partner, child of an intimate partner OR the order restrains respondent from engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child.
- The order contains a finding that such person represents a credible threat to the physical safety of such intimate partner or child OR the order, 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.



Judges should follow the relationship requirements listed in T.C.A. § 36-3-601(5) when deciding whether or not to issue an order of protection. Not all orders of protection issued under Tennessee law will fall under the firearms prohibition.

Firearms Disposition



The court must order the respondent to terminate physical possession of firearms by any lawful means within 48 hours of the issuance of an order of protection that complies with 18 U.S.C. § 922(g)(8). T.C.A. § 36-3-625.

An example of a "lawful means" is transferring possession of

the firearms to a third party not prohibited from possessing weapons.

If the respondent possesses firearms as business inventory or firearms that are registered under the National Firearms Act, there are additional statutory provisions which may apply. T.C.A. § 36-3-625.

Affidavit of Dispossession

The respondent must obtain and complete an “Affidavit of Firearm Dispossession” form and return it to the court. The form can be found on the AOC’s website (www.tncourts.gov).

Penalties



There is no definite time for filing the affidavit, but judges should put a date certain in the order because failure of the respondent to turn in the affidavit of dispossession may result in criminal charges against the respondent.

A violation of T.C.A. § 36-3-625 is a Class A misdemeanor, and each violation shall constitute a separate offense.

The violation can also constitute an offense under T.C.A. § 39-13-113(h) and T.C.A. § 39-17-1307(f). The respondent may be charged and convicted under any or all sections as separate offenses.

Regain Possession

When the order of protection or any successive Order is no longer in effect, the respondent may lawfully regain possession of the firearm without action by the court. T.C.A. § 36-3-625.

III. MISDEMEANOR CRIMES OF DOMESTIC VIOLENCE (MCDV)

Tennessee has adopted the federal definition of the misdemeanor crime of domestic violence (MCDV), and it has the following elements (T.C.A. § 39-17-1351; 18 U.S.C. § 921(33)):

- is a misdemeanor under Federal, State or Tribal law;
- includes the use or attempted use of physical force, or the threatened use of a deadly weapon; and
- was committed by a current or former spouse, parent, or guardian of the victim;
- by a person with whom the victim shares a child in common;
- by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian;
- or by a person similarly situated to a spouse, parent, or guardian of the victim.

The misdemeanor crime of domestic violence (MCDV) that can cause a ban on firearms possession, does not have to have as one of its elements that the defendant and the victim are in one of the qualifying relationships set out in 18 U.S.C. § 921(a)(33), 27 CFR 478.11. *United States vs. Hayes*, 555 U.S. 415(2009). Example: the predicate MCDV offense could have been a battery that did not require a domestic relationship between the victim and offender.

Firearms Prohibition

Persons who have been convicted in any court of a qualifying MCDV generally are prohibited under federal and state law from possessing a firearm or ammunition. 18 U.S.C. § 922(g)(9); T.C.A. § 39-17-1307.

Domestic Assault

In general, a domestic assault is considered to be a misdemeanor crime of domestic violence. Be aware, however, that NOT EVERY domestic assault is a MCDV. There are some relationships that fall within the definition of domestic assault, but fall outside the relationships required by the misdemeanor crime of domestic violence, i.e., dating relationships.

However, those convicted under Tennessee’s Domestic Assault statute are prohibited from possessing firearms due to the language in T.C.A. § 39-13-111(c)(6).

Penalties

A person convicted of a felony involving the use or attempted use of force, violence, or a deadly weapon, or who has been convicted of a felony drug offense who possesses a firearm, may be convicted of a violation of T.C.A. § 39-17-1307.

The handgun carry permit of a person convicted of domestic assault is required to be revoked. T.C.A. § 39-17-1352.

IV. EXEMPTIONS AND EXCEPTIONS

A. Law Enforcement and Military Personnel

State law does **not** have an exemption to the firearm prohibition for:

- military or law enforcement personnel who are under a qualifying order of protection; or
- military or law enforcement personnel who have been convicted of domestic assault or another misdemeanor crime of domestic violence.

This means it is an offense for a law enforcement officer to carry a service firearm even when on duty while under a qualifying order of protection or after having been convicted of domestic assault.

B. Types of Firearms

In Tennessee, a firearms prohibition applies to possession of most types of firearms. Please note that a new definition of firearms excepts “antique firearms” as defined in T.C.A. § 39-11-106(a) [2019 Public Chapter 279]