

# 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) (see exceptions - T.C.A. 37-17-1307 (g)(1-3) & (f)(2&3)).

**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).

**Pursuant to T.C.A. § 39-17-1307(f)(1) and 18 U.S.C. § 922(g), it is a state and federal offense for a person convicted of a misdemeanor crime of domestic violence, who is still subject to the disabilities of such conviction, to possess or purchase a firearm as defined in T.C.A. § 39-11-106(a).**

**A person commits an offense who possesses a firearm as defined in T.C.A. § 39-11-106(a) and:**

- Has been 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;
- Is, at the time of the possession, subject to an order of protection that fully complies with 18 U.S.C. § 922(g)(8); or
- Is prohibited from possessing a firearm under any other state or federal law.
- Has been 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; or
- Has been convicted of a felony drug offense.

**A person commits an offense who carries, with the intent to go armed, a firearm and:**

- Has been convicted of stalking as prohibited by § 39-17-315;
- Has been convicted of the offense of driving under the influence of an intoxicant in this or any other state two (2) or more times within the prior ten (10) years or one (1) time within the prior five (5) years;
- Has been adjudicated as a mental defective, judicially committed to or hospitalized in a mental institution pursuant to title 33, or had a court appoint a conservator for the person by reason of a mental defect; or
- Is otherwise prohibited from possessing a firearm by 18 U.S.C. 922(g) as it existed on January 1, 2021.

An offense under subdivision Tenn. Code Ann. § 39-17-1307 (h)(1) is a Class B misdemeanor.

**EXCEPTIONS: A person commits an offense who possesses a handgun and has been convicted of a felony unless** (T.C.A. § 39-17-1307 (c)(1)(A-C):

- (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.

**NOTE: UNDER T.C.A. 40-32-101(g)(1)(B)(iii), A MISDEMEANOR DOMESTIC ASSAULT CONVICTION (T.C.A. § 39-13-111) IS INELIGIBLE FOR EXPUNGMENT.**

## II. MISDEMEANOR CRIMES OF DOMESTIC VIOLENCE

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) which bans 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, T.C.A. § 39-13-111 are prohibited from purchasing or possessing a firearm.

If a defendant pleads guilty or is found guilty of a domestic violence offense, the judge shall immediately order the defendant to:

- Terminate physical possessions of all firearms within 48 hours of the conviction by any lawful means, such as transferring possession to a third party who is not prohibited from possessing firearms; and
- Complete an affidavit of firearms dispossession form and return it to the court of conviction when all firearms have been lawfully dispossessed.

### III. ORDERS OF PROTECTION - FIREARMS DISPOSSESSION

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:**

- That a hearing was held of which the 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; and
- 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.

### Firearms Dispossession

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.

### IV. EXEMPTIONS AND EXCEPTIONS

#### Law Enforcement and Military Personnel

State law does **not** have an exemption to the firearm prohibition for: (1) military or law enforcement personnel who are under a qualifying order of protection; or (2) 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.**

#### Types of Firearms

In Tennessee, a firearms prohibition applies to possession of most types of firearms. T.C.A. 39-11-106(a)