

# MISDEMEANOR CRIMES OF DOMESTIC VIOLENCE AND FEDERAL FIREARMS PROHIBITIONS

Persons who have been convicted in any court of a qualifying misdemeanor crime of domestic violence (MCDV) generally are prohibited under federal law from possessing any firearm or ammunition in or affecting commerce (or shipping or transporting any firearm or ammunition in interstate or foreign commerce, or receiving any such firearm or ammunition). This prohibition also applies to federal, state, and local governmental employees in both their official and private capacities. Violation of this prohibition is a federal offense punishable by up to ten years imprisonment. See 18 U.S.C. § 922(g)(9); see also 18 U.S.C. §§ 921(a)(33), 924(a)(2), 925(a)(1); 27 C.F.R. §§ 178.11, 178.32.

## ***A qualifying MCDV is an offense that:***

- ❖ Is a federal, state, or local offense that is a misdemeanor under federal or state law;
- ❖ Has as an element the use or attempted use of physical force, or the threatened use of a deadly weapon; and,
- ❖ At the time the MCDV 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; or,
  - ◆ A person who was or had been similarly situated to a spouse, parent, or guardian of the victim.

## ***EXCEPTIONS: A person has not been convicted of a qualifying MCDV:***

- ❖ IF the person was not represented by counsel — unless he or she 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, and 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.

FOR FURTHER INFORMATION ABOUT SECTION 922(g)(9) OR FEDERAL FIREARMS PROHIBITIONS GENERALLY, CONTACT YOUR LOCAL FIELD DIVISION OF THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS BY CALLING (800) 800-3855. FOR FURTHER INFORMATION ABOUT DOMESTIC VIOLENCE GENERALLY, CONTACT THE NATIONAL CENTER ON FULL FAITH AND CREDIT AT (800) 256-5883 EXT. 2.



U.S. Department of Justice

Federal Bureau of Investigation

Clarksburg, WV 26306

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*Question for new system*

Dear Court Officials:

The purpose of this correspondence is to advise you of a change in process for the National Instant Criminal Background Check System (NICS) and to request your support by asking that you share this important information with affected parties in your agency. The NICS is a computerized system designed to immediately determine if a person is eligible to receive or possess firearms by conducting a search of available records. The NICS was implemented on November 30, 1998, and is a coordinated effort between local, state, and federal agencies. Among other federal prohibitions, persons who have been convicted in any court of a qualifying Misdemeanor Crime of Domestic Violence (MCDV) are prohibited from possessing any firearm or ammunition.

A disqualifying MCDV is an offense that:

- Is a local, state, or federal offense that is a misdemeanor under state or federal law;
- Has as an element the use or attempted use of physical force, or the threatened use of a deadly weapon;
- The subject was pled to or was found guilty of the above; 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 cohabitated with the victim as a spouse, parent, or guardian or a person similarly situated to a spouse, parent, or guardian of the victim.

The FBI Criminal Justice Information Services (CJIS) Division's NICS Section and other state counterparts use police reports to establish a qualifying MCDV relationship. However, in order to determine if force was used or threatened as outlined above, the NICS Section will now be required to request the record of conviction. If this document is not explicit as to the conviction, the NICS will need to request copies of court transcripts or other court documentation.

Police reports will no longer be sufficient to establish if the force element is met. The NICS Section must rely on what the convicting court found, not the alleged conduct prior to the conviction. Therefore, if the potential firearm purchaser is convicted of an offense which possibly meets the criteria for MCDV, the NICS Section must determine what offense, statute, and subsection the subject pled to or was found guilty of by the court. We may ask that you provide the verbiage that the subject pled to or was found guilty of if the subsection is not listed, e.g., the subject was found guilty of or pled guilty to harassment by striking, shoving, kicking, or otherwise subjecting the victim to physical contact. The NICS Section will accept a completed Final Disposition Report (R-84) form containing the information outlined above or the applicable court documents (records of convictions, transcripts, etc.).

If you have any questions regarding the NICS Section's requests for records of conviction, please contact Barbara Ross, Legal Instruments Examiner, toll free at 1-877-444-6427, ext. 57308. If you have questions regarding the interpretation of state and federal laws, statutes, or regulations pertaining to the provisions of the Brady Handgun Violence Prevention Act of 1993, please contact the Legal Research and Analysis Team via e-mail at [statutes@leo.gov](mailto:statutes@leo.gov) or by telephone at 304-625-7828.

Sincerely yours,

Bobby P. Hamil, Jr.  
Section Chief  
NICS Section  
CJIS Division