



DOMESTIC VIOLENCE GUN LAWS

INDEX CODE: 1604
EFFECTIVE DATE: 07-01-07

Contents:

- I. Purpose
- II. Federal Gun Control Act
- III. Maryland Regulated Firearms Law
- IV. Maryland Code, Family Law
- V. Proponent Unit
- VI. Cancellation

I. PURPOSE

The purpose of this directive is to familiarize members of the department with three domestic violence gun laws.

II. FEDERAL GUN CONTROL ACT

An amendment to the Federal Gun Control Act of 1968 *took effect on September 30, 1996*, and made it unlawful for any person convicted of a “misdemeanor crime of domestic violence” to ship, transport, possess or receive firearms or ammunition [18 U.S.C., 922(d)(9)]. The law also makes it unlawful for a person “to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person has been convicted in any court of a misdemeanor crime of domestic violence.” [18 U.S.C., 922(g)(9)].

A. Definition

18 U.S.C., 921(a)(33)(A) of the Gun Control Act defines “misdemeanor crime of domestic violence” as an offense that:

- Is a misdemeanor under Federal or State law; and
- Has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, 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.

This definition includes all misdemeanors involving the use or attempted use of physical force, or the threatened use of a deadly weapon, if the offense is committed by one of the defined parties. For example, a person convicted of misdemeanor assault against his or her spouse would be prohibited from receiving or possessing firearms or ammunition.

B. Application

The prohibition applies regardless of when the conviction occurred (even if it occurred prior to the effective date of the law, which was September 30, 1996). A person who has been convicted of a misdemeanor crime of domestic violence *is prohibited from* possessing a firearm or ammunition.

The law does not exempt law enforcement personnel, civilian or sworn. Any member of the Department who has access to firearms or ammunition, and who has been convicted of a “misdemeanor crime of domestic violence,” as described above, or is uncertain as to applicability of the law, must immediately notify his or her commanding officer.

C. Exceptions

The law provides that a person shall not be considered to have been convicted of a misdemeanor crime of domestic violence if the conviction has been expunged or set aside, if the person has been pardoned or has had civil rights restored, or if the person was not afforded the right to counsel and, if applicable, the right to a jury trial.

D. Seizure of Firearms/Ammunition

Members of this Department can not charge violators under the Federal Gun Control Act. However, the Federal Bureau of Alcohol, Tobacco and Firearms (ATF) may pursue charges as outlined below. Firearms and/or ammunition may be seized by members of the Department under the Federal Gun Control Act (as described above), and the officer should then:

1. Advise the suspect of the violation and that ATF will be contacting them in reference to possible federal charges;
2. Submit an incident report titled "Violation Federal Gun Control Act"; and
3. Forward the incident report with the firearm to Property Management and follow the procedure outlined in Index Code 1201.2.

The commander of the Evidence Management Section, or designee, will notify ATF of the seizure (at 410-962-2327 or 410-962-0897) and make arrangements to transfer the property into their custody.

III. MARYLAND REGULATED FIREARMS LAW

Firearms seized under the Maryland Regulated Firearms Law [Article 27, 445 & 445B] should be processed like any other firearm seized as evidence (see Index Code 1201.2).

IV. REMOVING FIREARM FROM SCENE

The Maryland Family Law Article 4-511 allows officers at the scene of an alleged act of domestic violence to seize firearms when they have probable cause to believe that an act of domestic violence has occurred and the officer has observed the firearm on the scene during the response. *The law does not authorize or require officers to conduct a warrantless search of the scene to locate a firearm. Where an alleged act of domestic violence involves a member of this Department, refer to Index Code 1603.1.*

When an officer seizes a non-departmental firearm pursuant to the Family Law Article, the officer is required to:

- Provide the owner of the firearm information concerning the process for regaining possession of the item; and
- Provide for safe storage of the firearm during the pendency of any related domestic violence proceedings (see Index Code 1201.2).

V. PROPONENT UNIT: Training Academy.

VI. CANCELLATION: This directive cancels Index Code 1604, dated 05-01-97. Prior date: 05-29-98.