

Domestic Violence and Firearms

An Advocates Guide

The probability for a domestic incident to become fatal increases when there is the presence of firearms. Advocates have the ability to provide information and support to victims regarding the options for firearm removal and Firearm Owner's Identification (FOID) denial and revocation. Gaining an understanding of the current federal and state laws that pertain to domestic violence and firearms will help to ensure that victims are aware of the remedies available to them, which in turn will allow them to make the best decision regarding the safety of themselves and their dependents.

Lethality

Access to firearms increases the risk of intimate partner homicide more than five times, more than in instances where there are no weapons, according to a recent study. In addition, abusers who possess guns tend to inflict the most severe abuse on their partners.

- Women who are killed by their intimate partners in the United States are more likely to be killed with a gun than by all other methods combined (Durose et al. 2005; Fox and Zawitz 2001)
- When guns are used during domestic or family violence incidents, victims are 12 times more likely to die than during incidents when batterers have no guns (Salzman et al. 1992)

This guide provides an overview of Illinois and Federal laws and remedies that address FOID revocation and firearm possession, the revocation process and things to consider regarding your role as domestic violence advocates.

Overview

Both Illinois and federal law govern firearms possession related to domestic violence abusers. While in some areas, the laws overlap in other areas there is a gap between federal and state laws. Below is a guide to help define and understand the process of the legal/illegal possession of firearms for respondents and defendants in domestic violence related cases.

In November 1993, the Brady Handgun Violence Prevention Act of 1993 (Brady Act), Public Law 103-159, was signed into law requiring Federal Firearms Licensees (FFLs) to request background checks on individuals attempting to purchase a firearm. ***In Illinois, to purchase, possess and buy any firearm and/or ammunition a Firearm Owner's Identification (FOID) card is required.*** FOID cards are distributed, monitored and revoked by the Illinois State Police Firearms Information Resources Bureau (FIRB) (See addendum for data sources that are available to determine if a person is disqualified from possessing a valid FOID card).

What federal and Illinois laws prohibit the possession of firearms and cause loss of a FOID card?

Under federal and Illinois law, any of the following criteria will disqualify a person from carrying a valid FOID card:

Federal Law (18 U.S.C. 922) Prohibitions that Disqualify an Individual from Possessing, Purchasing, or Receiving a Firearm

Most Commonly Seen in Conjunction with Domestic Violence Incidents:

1. Misdemeanor convictions of domestic violence*
2. Qualifying court orders that have been served (order of protection, restraining orders)
3. Felonies and misdemeanors (misdemeanors with possible sentence of more than 2 years confinement) **In Illinois there are no misdemeanors that carry a sentence of more than 1 year of confinement*
4. Fugitives from justice
5. Under indictment/information for a crime punishable by imprisonment for a term exceeding 1 year **In Illinois all felony charges would apply*
6. Unlawful users of a controlled substance

Other Possible Factors:

7. Mental Defectives¹
8. Illegal or Unlawful Aliens
9. Dishonorable discharges from the military
10. Renunciation of citizenship

*Misdemeanor conviction in which the victim was a federally defined family or household member and for which the offense of conviction had as an element the use, or attempted use of physical force, or the threatened use of a deadly weapon.

Illinois Law (430 ILCS 65/8) Firearm Owners Identification Card Act that Disqualifies an Individual from Possessing, Purchasing, or Receiving a Firearm

Most Commonly Seen in Conjunction with Domestic Violence Incidents:

1. Felony convictions
2. Order of protection prohibiting firearm possession
3. Valid court order prohibiting firearm possession
4. Use or possession of a firearm in the commission of certain crimes (Battery, assault, aggravated assault, violation of OP or substantially similar offense within the last 5 years)
5. Domestic battery conviction
6. Condition of bond
7. Condition of probation or conditional discharge
8. Clear and present danger²

Other Possible Factors:

9. Mental health admission (within the last 5 years)
10. Mentally retarded³
11. Adjudicated delinquent minor⁴
12. Minors with misdemeanor criminal convictions

1. Adjudicated as a mental defective Title 27 CFR 478.11.

(a) A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetence, condition, or disease:

(1) Is a danger to himself or to others; or (2) Lacks the mental capacity to contract or manage his own affairs.

(b) The term shall include

(1) The finding of insanity by a court in a criminal case; and (2) Those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to article 50a and 72b of the Uniform Code of Military Justice, 10 U.S.C. 850a, 876b.

2. Clear and Present Danger 430 ILCS 65 / 8 (f)

A person whose mental condition is of such a nature that it poses a clear and present danger to the applicant, any other person or persons or the community; "mental condition" means a state of mind manifested by violent, suicidal, threatening or assaultive behavior.

3. **Mental Retardation 405 ILCS 5 / 1-116**

Significantly subaverage general intellectual functioning which exists concurrently with impairment in adaptive behavior and which originates before the age of 18 years.

4. **Adjudicated Delinquent Minor 705 ILCS 405 / 5-105 (3)**

"Delinquent minor" means any minor who prior to his or her 17th birthday has violated or attempted to violate, regardless of where the act occurred, any federal or State law, county or municipal ordinance.

How does an order of protection(OP) impact a respondent's ability to legally carry a FOID card/firearm?

While there are several criteria (both state and federal) that disqualify a person from carrying a valid FOID card, several apply specifically to orders of protection.

Orders of Protection Firearm Prohibitions

18 U.S.C 922(g)(8) defines the federal criteria for determining when a Respondent of an OP, or another qualifying order*, is prohibited from possessing/receiving firearms. *If a qualifying order, such as an OP, meets the following federal definition, the FOID revocation process will apply.* That section states it shall be unlawful for any person to ship, transport, possess or receive firearms if that person is subject to a court order that:

- was issued after a hearing for which such person received actual notice, and at which such a person had an opportunity to participate, (interim or plenary OPs) AND;
- restrains such a person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child (*Illinois Remedy 01 meets this criteria*). The following are the qualifying relationships for an "intimate partner"
 - Current or former spouse
 - Parent or guardian
 - Those who share/shared a child in common
 - Individual who cohabits or cohabitated with the victim as a spouse, parent or guardian
 - A person similarly situated to a spouse, parent or guardian of the victim
 - May be same sex
 - Relationship must be or have been romantic/sexual in nature
 - Not merely a roommate, AND**
- includes a finding that such person represents a credible threat to the physical safety or such intimate partner or child; OR
- 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.

* *Other orders that may potentially qualify include no contact orders and restraining orders.* If an order meets the criteria above, the order may be submitted to the FIRB for review, which may result in firearm/FOID prohibition/revocation.

** Under the Illinois Domestic Violence Act a roommate relationship would meet the criteria for a valid Order of Protection however, federal law requires that the relationship must be or has been romantic or sexual in nature to qualify.

The Illinois Domestic Violence Act (IDVA), (ILCS 60/214[b][14.5][a]), provides the Illinois criteria for determining when a Respondent to an Order of Protection is prohibited from possessing firearms.

If the following conditions are presented:

- A petition is filed requesting an order of protection which states that the Respondent has threatened or is likely to use firearms illegally against the petitioner,
- The respondent is present in court or has failed to appear after receiving actual notice AND,
- The court examines under oath the petitioner, and any witnesses who may be produced.

Then,

- If court is satisfied that there is any danger of the illegal use of firearms, it will be ordered that any firearms in the possession of the respondent be turned over to the local law enforcement agency.
- If the respondent has failed to appear, the court shall issue a warrant for seizure of any firearm in the possession of the respondent.

Once the firearms are seized:

- The period of safekeeping shall be for a stated period of time not to exceed 2 years.
- The firearm(s) shall be returned to the respondent at the end of the stated period or at expiration of the order of protection, whichever is sooner.

Note: Both federal and state law states that this revocation does not apply to law enforcement officers while “engaged in the operation of their official duties”. An officer can apply to receive an exception of FOID revocation with documentation from their department. This “Official Use Exception” applies to duty weapons only. All other weapons must be surrendered. Agencies must retain possession of a respondent officer’s duty weapon(s) when not on duty during the life of the protective order.

If the OP does not qualify for FOID revocation (for example, an Emergency Order of Protection), it will be monitored for change and the FOID card will be revoked if the status of the order changes.

What are the domestic violence related federal and state penalties regarding the loss of firearm/FOID privileges?

Federal

- Any person who has had a misdemeanor criminal conviction for which an element of the offense was the use, attempted use of physical force, or the threatened use of a weapon against a federally qualifying family or household member (including but not limited to: domestic battery, assault, violation of an order of protection).
 - This gun ban is *permanent*, unless the conviction has been set aside.
 - **Law enforcement officers are not exempt from this provision.**

State

- A person who, within the past 5 years, has had a criminal conviction of domestic battery, or a substantially similar offense that contains an element of violence.

- This gun ban is *permanent* for convictions after 8/18/97, unless the conviction has been removed from the defendant's permanent record.

What is the process for FOID revocation after an Order of Protection has been granted?

Once an order of protection is granted:

- The Order of Protection is entered into the LEADS system
- As the Order of Protection is entered into the LEADS system the LEADS operator will determine if the respondent has a valid FOID card. If so, the operator will forward the information to ISP FIRB. Relevant information is gathered and a determination is made if a firearm prohibitor exists.
- Additionally, ISP FIRB may be notified by one of the following: Law Enforcement, States Attorney, Court System, Partner Abuse Intervention Program, Domestic Violence Advocate or the Petitioner on the order.
- **If there is a firearm prohibitor related to an order of protection, action will be taken within 1 business day to revoke the existing FOID card.**
- A letter is sent to the cardholder to provide notification of the invalid status of the card with instructions to return the card to the ISP FIRB.

If the OP does not qualify (for example, an Emergency Order of Protection), it will be monitored for change and the FOID card will be revoked if the status of the order changes.

What is the process for FOID revocation after a conviction of domestic battery or violation of an order of protection occurs?

The Firearms Information and Resources Bureau, a division of the Illinois State Police, is notified of criminal convictions of domestic battery and violations of orders of protection nightly through the **CHRI** for Criminal History Record Information.

- If there is a firearm prohibitor action will be taken within approximately 1 business day to revoke the existing FOID card.
- A letter is sent to the cardholder to provide notification of the invalid status of the card with instructions to mail the card to the ISP FIRB.

What is the FOID revocation process for individuals who have been committed to a state hospital for mental health purposes?

Each evening the Firearms Information and Resources Bureau sends the Illinois Department of Human Services (IDHS) a list of valid FOID card holders and IDHS checks the list for any individuals who have been committed to a state hospital for mental health purposes. DHS then alerts the ISP FIRB of any FOID card holders that have been committed.

- If there is a firearm prohibitor action will be taken within approximately 1 business day to revoke the existing FOID card.

- A letter is sent to the cardholder to provide notification of the invalid status of the card with instructions to mail the card to the ISP FIRB.

What is the Process for Purchasing a Firearm?

When firearms are purchased through a licensed gun dealer or gun show, the **Firearm Transfer Inquiry Program (FTIP)** is used. FTIP is an automated system used by Federal Firearms Licensees (FFL's) to verify the status of a FOID card by generating a background check to determine if the purchaser is prohibited from possessing and purchasing firearms.

- When inquiring about a FOID card the FFL may receive an automatic denial, which would mean the FOID card has been revoked. The sale of the firearm is denied and the process is initiated to conduct a card seizure.
- During the FTIP process, if the Firearms Information and Resources Bureau (FIRB) discovers an OP of which they have not been notified, the FTIP operator will check that the OP is valid and information will be gathered to determine if there is a firearm prohibitor. If firearm prohibitors apply, the sale will be denied.

Note: The revocation of a FOID card can be appealed through the ISP FIRB.

What Can Advocates Do to Help Revoke a Respondent's FOID Card?

Although LEADS is required to check for a valid FOID card when entering Orders of Protection, advocates can take an active role to ensure revocation when applicable. To have a FOID card revoked or denied following the issuance of an Order of Protection or other qualifying court order:

- Provide the Respondent's name (including any aliases) and date of birth.
- While not required, it is helpful to provide an OP or case number.

By Phone or Fax:

Call the Illinois State Police FOID Enforcement Section at (217) 558-0025 or fax information to (217) 782-9139.

By Mail:

Mail information to the following address:

Illinois State Police
 Firearm Services Bureau
 801 South 7th St, Suite 400 M
 P.O. Box 19461
 Springfield, IL 62708-9461
 Attention: Enforcement Section

Once the FIRB receives your report the process of investigation and potential revocation will begin.

Note: You do not have to provide your name when reporting this information to the Illinois State Police.

ROLE OF THE ADVOCATE

Addressing Firearms When Working With a Victim: Helping Victims Safety Plan

It is important to address the issue of firearms with victims of domestic violence at each point of contact. *A victim staying at a shelter may decide not to petition for an order of protection, but they may still have concerns regarding firearms that should be explored.* Likewise, a victim staying at shelter may not be aware of the provisions available to them regarding firearm removal/prohibition. The victims may also want to petition for an order of protection but may feel safer if firearms are not addressed through this remedy. Requesting protection or exploring other legal options may allow the victim to feel safer at their home.

Listen to the concerns and experience of the victim while identifying the concerns regarding the abuser's firearms.

- Consider and identify the dangers that firearms may pose for the victim
- Assist the victim in making informed decisions about whether the guns or ammunition which they or their partner own or possess should be removed from the home or other places of easy access
- Assist the victim in examining the advantages and disadvantages of contacting law enforcement to share information about the location of prohibited firearms that the abuser may own or have access to
- Use the supplemental screening tool while completing lethality assessments and/or intakes

Options Available to the Victim

Illinois Domestic Violence Act: Remedy 14.5

The victim can petition the court for Remedy 14.5 that prohibits the respondent from possessing a firearm(s).

Prohibition against firearm possession (Remedy 14.5) **must** be ordered if:

- The petitioner has alleged in the petition that the respondent has threatened or is likely to use firearm illegally against the petitioner and,
- The court finds that there is any danger of illegal use of firearms

Remedy 14.5 orders that the respondent turn over any firearms in his or her possession to the respondents local law enforcement agency for a period of time up to two years.

Remedy 14.5 cannot be granted unless the respondent has appeared in court or failed to appear after receiving actual notice.

If the respondent is a peace officer, firearms privately owned by the officer are turned over to the employer. Department policy dictates procedures regarding duty weapons.

Firearms are released to the respondent when the order of protection expires or at a time specified in the order.

If the respondent has failed to appear, the **court shall** issue a **warrant for seizure** of any firearms in the possession of the respondent.

Tips for working with the victim:

- Discuss the possibility that a judge may order remedy 14.5 even if a petitioner has not specifically requested the remedy on the petition. This may influence what information a petitioner chooses to share, regarding firearms, in their written statement included in the petition for an order of protection.
- In order for law enforcement to obtain all firearms possessed by the respondent it is important to assist the victim to recall as many, and the types, of firearms as possible. In reality, if law enforcement is unaware of how many firearms the respondent actually possesses, all firearms may not be turned over.

Consent to Search and Turning Over Weapons for Safekeeping

If a firearm(s) is used in the commission of the offense and is in plain view law enforcement should confiscate the firearm(s).

When the firearm is not in plain view and was used in the commission of the offense, or is possessed illegally, officers should obtain a search warrant.

Officers should be cognizant of the laws relating to search and seizure. If questions arise, officers should consult their State's Attorneys Office for advice and guidance.

Law enforcement is encouraged to determine the presence of, or access to firearms, by all involved parties while at the scene of any domestic dispute. FOID inquiries should be made to determine eligibility to possess firearms. In the event that the investigation results in an arrest and firearms are lawfully present but NOT involved in the incident, officers should encourage the victim and/or other family members to surrender said weapons for safe keeping.

If the abuser is not present, a person having the lawful authority to permit a search of the premises can consent. If a person of equal lawful authority to permit a search is present on the scene and objects or refuses, the search can not be accomplished through consent, and if probable cause exists to seize a firearm(s), a warrant should be obtained.

If firearms have been surrendered for safekeeping:

The abuser can ask the court for the firearms to be returned. The abuser should have to show a valid FOID card in order to receive the surrendered firearms. Therefore, if the abuser does not have a valid FOID card the firearms may not be returned.

Safekeeping may be for a short time only, but can assist in increasing safety during one of the most dangerous times.

Special Considerations

Be aware of special considerations that the victim will need to take into account when planning for safety, and how these circumstances may affect the victim's overall safety.

- Are the firearms illegally possessed?
- Is the abuser a gang member or involved in other criminal activities?
- Does the abuser use a firearm in their line of work?
- How does your jurisdiction typically handle firearms issues?
- Does your abuser use a firearm to hunt?

Illegal Firearms: Gangs and Criminal Activities

Gang members, drug dealers and other criminals usually have easy access to illegally obtain firearms. Obviously, people who participate in illegal acts are less likely to adhere to the legal restrictions placed on them. Therefore, the typical remedies used by victims, whose abusers have FOID cards and legally purchase firearms, to increase safety will not be effective in these cases.

Some victims are even pressured into obtaining a FOID and purchasing firearms for their abuser.

In addition, there may also be concerns about the ways in which the gang member may use a third party to deliver threats and/or cause additional harm.

It is important that you assist the victim in determining which actions will help most with safety. Safety planning for these clients **may not** include turning over weapons for safe keeping, etc.

Law Enforcement Officers

Official use exemption for law enforcement officers apply to those officers subject to an order of protection. Officers are allowed to use their duty weapon "while in the operation of their official duties".

There is no official use exemption for an officer who has an Illinois state or federal criminal conviction of domestic battery, assault, violation of an order of protection or a substantially similar offense that contains an element of violence. The ban is permanent.

Some of the sanctions imposed on the officer will depend on specific policies carried out by the officers' department. While an officer may apply for and receive an exemption from having their firearms revoked, a department policy may require that the officer refrain from carrying a weapon for a specified or indeterminate amount of time. Things to consider:

- What would the ramification of remedy 14.5 or an Order of Protection be on the respondent's employment?
- What are local department policies?

- What would be the impact of a loss of income on the family?
- Would the victim be more safe or less safe if the victim petitions for an order of protection, or specifically remedy 14.5?

Hunting

Hunting plays an important role in the willingness of some jurisdictions to grant remedy 14.5 or convict a defendant of domestic battery. Some defense attorneys will attempt to prevent remedy 14.5 or change an order of protection to a no contact or restraining order in an attempt to allow the respondent to continue to hunt (see qualifying court orders). In addition, some plea agreements will include a conviction of battery rather than domestic battery because the defendant hopes to keep firearms privileges.

Often the victim is not aware that the OP will most likely trigger FOID revocation. Educate the victim if the abuser is an avid hunter or their livelihood is connected to hunting about the possibility of FOID revocation.

Prepare the victim for the response that may be typical for the jurisdiction as well as how the abuser might react when receiving a letter revoking his/her FOID card. Additional safety planning may be necessary.

Additional Firearms Related Topics:

Gun Safety

Having a firearm in the home, especially if it is not stored properly, can be a significant risk factor for injury and death in children. Firearm related injuries are a leading cause of death in children, and include deaths from unintentional or **accidental injuries, homicide and suicide**.

To keep children safe and prevent firearm related injuries, it is important to restrict access to guns by children and adolescents, either by not having a gun in the home or by storing it properly. **Proper storage** of a gun includes keeping the gun in a locked cabinet or drawer. The gun should also be stored **unloaded** with the bullets locked separately.

Firearm Storage:

- How are the firearms stored?
- Are there gun locks?
- Is ammunition stored separately?

Victim Access:

- Does the victim have access to the firearm?
- Would it be safer for the victim to move the firearm to a less accessible location?
- Would it be safer for the victim to request that police come to the residence to pick up the firearm?

Children:

- Are there children in the home?
- Help the victim talk about gun safety with her children
 - Stop!
 - Don't Touch

- Leave Area
- Tell An Adult

Threats or attempts of suicide

About 1,200 Americans die each year in murder-suicides.

Nearly all the killers are males who used guns, and three-fourths of the cases involved a romantic partner, such as a girlfriend, wife or former spouse.

In the vast majority of cases where women are killed, the perpetrator has first threatened her life or his own. A suicide threat should be taken very seriously. In many cases, men murder their partners and children, and then commit suicide. The more specific a threat, the more seriously it should be viewed.

Attempts/threats/fantasies of homicide or suicide are key indicators of a risk of possible serious or lethal assaults. When these factors are present alongside a number of others such as; availability/access to/willingness to use or history of using weapons, obsessiveness, isolation of the batterer and his degree of dependence on the battered woman, depression, drug and alcohol consumption and access to the battered woman, the risk is elevated.

For more information:

There are several data sources available to provide the necessary information needed to determine if a person is disqualified from possessing a valid Firearm Owner's Identification Card (FOID). For more information on these data sources review the document titled "Data Sources Available to Confirm an Individuals' Legal Ability to Possess and Purchase Firearms in Domestic Violence Related Cases"