



Illinois Family Violence Coordinating Councils Firearms and Domestic Violence Project

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Data Sources Available to Confirm an Individuals' Legal Ability to Possess and Purchase Firearms in Domestic Violence Related Cases

Illinois Databases

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The Firearms Owners Identification Database (FOID)

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Confiscating and Reporting Invalid FOID cards

Mail information to the following address:

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Data Sources Available to Confirm an Individuals’ Legal Ability to Possess and Purchase Firearms in Domestic Violence Related Cases

Both Illinois and federal law govern firearms possession related to domestic violence abusers. The purpose of this document is to identify the data sources used for these types of cases, show where Illinois and federal laws overlap, where there are gaps, and clarify the process of revocation, transfer and purchase of firearms.

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 issued, monitored and revoked by the Illinois State Police. Federal law as well as Illinois law can affect the ability to receive and maintain a valid FOID card.

The following data sources are available to provide the necessary information needed to determine if a person is disqualified from possessing a valid Firearm Owner’s Identification Card (FOID).

Illinois Databases

The Law Enforcement Agencies Data System (LEADS) is a statewide computerized information system maintained by the Illinois State Police (ISP), designed to provide the Illinois criminal justice community with access to justice related information at both the state and national level. LEADS provides access to the FBI’s National Crime Information Center (NCIC) and the National Law Enforcement Telecommunications System (NLETS) which provides access to other states’ criminal justice information.

The Firearms Owners Identification Database (FOID) computerized system maintained by the Illinois State Police (ISP) Firearms Information and Resources Bureau (FIRB) and contains certain data that is only accessible by ISP FOID Program personnel for administering the FOID Act. Such general data as the FOID applicant's name, date of birth, sex, address, physical description, card status and expiration date are available when criminal justice agencies generate a FOID number or name inquiry via LEADS.

Federal Databases

National Crime Information Center (NCIC) is a nationwide computerized information system established as a service to all criminal justice agencies; local, state and federal to assist in determining if an individual is a federal offender. The goal of NCIC is to assist the criminal justice community to perform it’s duties by providing and maintaining a computerized filing system of accurate and timely documented criminal justice information. Inquiries made through LEADS also check NCIC. Additionally, LEADS Orders of Protection entries are also sent to NCIC via the LEADS system.

The National Instant Background Check System (NICS) is a national system that checks available records in the FBI/NCIC, the Interstate Identification Index (III) and the NICS Index to determine if prospective purchasers are disqualified from receiving firearms. The NICS Index contains records provided by state and federal agencies about persons prohibited from receiving firearms under federal law. All records in the NICS Index are disqualifying records and will prohibit the sale of a firearm. Most records in the NICS Index are obtained from federal agencies. However, authorized local and state law enforcement agencies may voluntarily contribute records to the NICS Index.

Interstate Identification Index (III) Illinois criminal justice agencies may access criminal history records maintained by other states in the Interstate Identification Index (III). This system assists criminal justice agencies in determining if an individual has been an offender in another state(s). Access to and dissemination of information obtained from these records is restricted to criminal justice purposes only.

Access to and dissemination of data received via LEADS, NCIC or FBI/III shall not be disseminated to any individual or organization that is not legally authorized to have access to the information.

Illinois is one of only 13 states acting on behalf of NICS in a full Point-Of-Contact capacity (POC). POC states, which have agreed to implement and maintain their own Brady NICS Program, conduct firearm background checks for Federal Firearms Licensees' (FFLs) transactions in their respective states by electronically accessing the NICS. Upon completion of the required ATF Form 4473, the FFLs conducting business in the POC states contact a designated state agency to initiate a NICS background check in lieu of contacting the NICS Section. The designated agency in the state is the ISP FIRB.

Federal and Illinois Prohibitions to Possessing Firearms and a FOID Card

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

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

1. 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.*
2. Fugitives from justice
3. Under indictment/information for a crime punishable by imprisonment for a term exceeding 1 year **In Illinois all felony charges apply*
4. Unlawful users of a controlled substance
5. Mental Defectives¹
6. Illegal or Unlawful Aliens
7. Dishonorable discharges from the military
8. Renunciation of citizenship
9. Qualifying court orders (order of protection, restraining orders)

10. Misdemeanor convictions of domestic violence*

*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.

1. Felony convictions
2. Minors with misdemeanor criminal convictions
3. Mental health admission (within the last 5 years)
4. Mentally retarded²
5. Order of protection prohibiting firearm possession
6. 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)
7. Condition of bond
8. Condition of probation or conditional discharge
9. Valid court order prohibiting firearm possession
10. Domestic battery
11. Adjudicated delinquent minor³
12. Clear and present danger⁴

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. 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.

3. 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.

4. 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.

There are several criteria that disqualify a person from carrying a valid FOID card in the state of Illinois. Among those disqualifiers are those specific to orders of protection and other domestic violence related crimes.

Orders of Protection Firearm Prohibitions

18 U.S.C 922(g) (8) defines the *federal criteria* for determining when a Respondent on an OP, or another qualifying order*, is prohibited from possessing/receiving firearms. 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 victims 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 of 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 Firearms Information and Resources Bureau (FIRB) for review, which may result in firearm/FOID prohibition/revocation.

The 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.

The *Illinois Domestic Violence Act (IDVA)*, (ILCS 60/214[b] [14.5] [a]), provides the Illinois criteria for determining when a Respondent on 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: The 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.

Note: 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.

Domestic Violence Related Criminal Convictions Firearm Prohibitions

Federal

- Any person who has had a criminal conviction of domestic battery, assault, violation of an order of protection or a substantially similar offense that contains an element of violence
 - This gun ban is *permanent*, unless the conviction has been set aside.
 - **Law enforcement officers are not exempt from this provision.**

Illinois

- Any person who has had a criminal conviction of domestic battery or 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 set aside.

FOID Revocation and Notification Process: Orders of Protection

Once an order of protection is granted:

- The Order of Protection (OP) is entered into the LEADS system
- As the OP 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 of a valid OP by one of the following: Law Enforcement, States Attorney, Court System, Domestic Violence Advocate or the Petitioner.
- 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 mail the card to the ISP FIRB.

FOID Revocation and Notification Process: Criminal Convictions

The ISP FIRB is notified of criminal convictions of domestic battery and violations of orders of protection nightly through the Criminal History Record Information system (CHRI).

- 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.

FOID Revocation and Notification Process: Mental Health Facilities

Each evening the ISP FIRB sends the Illinois Department of Human Services (IDHS) a list of valid FOID card holders and DHS 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.

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 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 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.