

Domestic Violence and Firearms Guide for Probation Officers

Probation plays a pivotal role in domestic violence cases involving firearms. Probation Officers can assist in ensuring that domestic abusers who have their Firearm Owner's Identification (FOID) and firearms privileges revoked turn over their FOID and/or firearms, and are in compliance with federal and state laws and procedures. Often probation officers are the most important and final link in the system to ensure accountability of the offender.

Batterers who report gun possession are a dangerous subgroup. They are “more likely than other batterers to report that they had attempted homicide; had problems with gambling, drugs, and alcohol; and had used firearms to threaten their partners.” (Rothman et al. 2006, pg. 291) Therefore, compliance with firearms and domestic violence laws are crucial to the safety of their victims.

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 the Illinois and Federal firearms related laws, the FOID revocation process and tips and considerations for the role of probation.

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 are gaps between the 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 issued, monitored and revoked by the Illinois State Police.

Federal and Illinois Prohibitions to Possessing Firearms and a FOID Card

Under federal and Illinois law, any of the 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

Most Commonly Seen in Conjunction with Domestic Violence Incidents:

1. Misdemeanor convictions of domestic violence *
2. Qualifying court orders (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 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

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
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.

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. *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 of 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(s) 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.

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 Exemption" 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.

* 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.

**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 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 Exemption” 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.

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 in to 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, Partner Abuse Intervention Program 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.

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.

FOID Revocation and Notification Process: Criminal Convictions

The Firearms Information and Resources Bureau 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 card to the ISP FIRB.

FOID Revocation and Notification Process: Mental Health Facilities

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.

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 for which they have not been notified of, 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.

The Role of Probation in the FOID Revocation and Firearm Removal Process

Intake/Lethality Process

During the intake process and/or lethality assessment, in-depth questions regarding firearms should be asked. These questions can help you assess the level of supervision and the potential dangerousness of the defendant.

If the probationer answers yes to the following two questions additional information should be gathered:

- Does the probationer own firearms?
- Does the probationer have access to firearms?

Additional questions to ask:

- Has the probationer used a firearm against his/her partner, children or pets?
- Has the probationer threatened to use a firearm against his/her partner, children or pets?
- Has the probationer used a firearm against another person?
- Has the probationer threatened to purchase a firearm?
- Has the probationer been convicted of crimes involving a firearm?
- Has the probationer threatened to commit suicide or harm themselves?

Look to the department's policies and procedures regarding victim notification after the assessment to determine if the victim should be notified of the potential dangerousness of the probationer.

Identifying FOID Possession and Revocation

- **Check all court orders regarding the case** including whether there is an Order of Protection.
- **Conduct a LEADS Check**
As per office procedures a LEADS check should include FOID inquiry.
To complete the LEADS check:
 - Go to FOID inquiry
 - Enter: Name, sex, DOB or FOID card number
 - Check to see if it has been revoked

If the probationer has a revoked FOID card:

- Ask if he or she has mailed in their card
- If no, the officer can ask for and take possession of the FOID and send it in to the Firearms Information and Resources Bureau (see directions below)

Note: *It is important to physically take possession of a revoked FOID card. When conducting private sales (those via a non Federal Firearm Licensed Dealer) or purchasing ammunition only what **appears** to be a valid FOID card is necessary for the transaction. These purchases are not*

required to be run through the FTIP system. Therefore, if the probationer still has the FOID card they will still be able to buy ammunition and complete private sales.

If the probationer has a valid FOID card:

- ❑ Contact the Firearms Information and Resources Bureau with the probationer's information (see contact information below) to advise them of the probationer's status. They will determine if revocation should occur. *You will want to include the conditions of probation order and any court orders.*

Note: If the probation department relies on an outside law enforcement department to run LEADS checks, it is important to specifically request the FOID check.

Confiscating and Reporting Invalid FOID cards

You have the authority to confiscate the FOID card if the probationer has it in their possession.

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

***Attach a copy of court order and probation conditions*

Any order prohibiting firearms, including conditions of probation and conditional discharge orders can be faxed to the Firearms and Resources Information Bureau to begin the possible FOID revocation process.

Fax a copy of the court order to (217)782-9139 to the attention of the Firearms and Resources Information Bureau.

Discuss firearm possession with the probationer

- ❑ What measures have you taken to remove firearms from your possession?
- ❑ Have you kept proper documentation of any firearm transfers?

Turning over Weapons to a Law Enforcement Department

If a probationer agrees to turn over illegally possessed weapons to a law enforcement department, contact the department to determine policy for turning over weapons. Some departments prefer to pick up the firearms, while others prefer to have an appointment made to bring the weapons, unloaded to the department.

**See sample instructions to turn over weapons in the attachments.*

Transfer of Firearms

It is possible that a probationer may choose to transfer firearms to a third party.

- Those receiving possession in a third party transfer become the legally responsible party for the firearm and are required to be in possession of a valid FOID card.
- If this person transfers the firearm to a prohibited person they will be in violation of firearm transfer laws and the FOID act (Illinois Compiled Statutes 430 ILCS 65/3 (a)) and may face felony prosecution and 1-3 years imprisonment.

It is also the responsibility of the person transferring the firearm to keep a record of such transfer for a period of **10 years** from the date of that transfer. **(430 ILCS 65/3)**

- Documentation must show whom they transferred the firearm(s) to and a description of the firearms.

*See sample Third Party Transfer Form in the attachments

Role of Partner Abuse Intervention Programs

It is important to discuss compliance with FOID revocation procedures and possession of firearms with the PAIP. They often will have insight based on their evaluation or discussion in group regarding a defendant's use and possession of firearms.

Rothman, E. Johnson, R. Hemenway, D. 2006. *Gun Possession Among Massachusetts Batterer Intervention Program Enrollees*. Evaluation Review, Vol. 30 No. 3: Sage Publications