

Prohibited Possessors of Firearms: State & Federal Law Overview

Introduction:

Firearms are one of the single highest lethality factors for survivors of family violence. We offer this overview, and accompanying sample firearm sample policy, as a tool for your program to help promote survivor safety as they interact with your program. This document and the accompanying firearms sample policy draw from relevant federal laws also speak to Texas state code and the recent passage of laws related to permitless carry. While these documents offer guidance in developing or adapting your policies, we strongly advise that an attorney review all of your policies.

Overview:

The Texas Firearms Carry Act of 2021 (HB 1927, 87th Regular Texas Legislative Session) took effect on September 1, 2021. The law allows anyone who is 21 or older to carry a handgun in public without a permit or license, if they are legally allowed to possess a firearm under other state and federal laws. People who are not legally allowed to possess a firearm includes anyone who:

- has been convicted of a felony within the prior five years;¹
- has been convicted of a Class A misdemeanor assault for family violence within the prior five years;² and/or
- is a respondent to an active protective order, and has received notice that they are not allowed to possess a firearm.³

Additionally, a judge may order someone not to possess a firearm under other circumstances, such as through a condition of bond.⁴

It is important to note that someone who is convicted of a felony is completely prohibited from possessing a firearm within five years, and after five years, the prohibition still partially applies—the person may only possess a gun on the property where they live. This partial prohibition would prevent people convicted of a felony from carrying a firearm in public, according to the Texas Firearms Carry Act of 2021. The Act specifically says, “Persons who are

¹ Section 411.172(a)(3), Texas Government Code

² Section 411.172(a)(8), Texas Government Code

³ Section 411.172(a)(12), Texas Government Code

⁴ Article 17.15(5), Texas Code of Criminal Procedure

currently prohibited from possessing firearms under state and federal law will not gain the right to possess or carry a firearm under this legislation,” and a person with a felony on their record is still prohibited in these circumstances.

Also, under Texas law, judges shall prohibit a respondent in a family violence protective order⁵ or magistrates’ order for emergency protection,⁶ from possessing a firearm and may also prohibit firearm possession in sexual assault or abuse, stalking, and trafficking protective orders.⁷ When a judge orders the respondent not to possess a firearm, they must inform the respondent that they are not allowed to possess a firearm under Texas law. A person in possession of a firearm who was previously convicted of a Class A misdemeanor may be punished by up to one year in jail, a \$4,000 fine, or both.⁸ A person in possession of a firearm who was previously convicted of a felony may be punished with a minimum term of five years in jail.⁹ Protective order respondents in possession of a firearm may be punished similarly for their first offense and by two to ten years in prison, a \$10,000 fine, or both for subsequent offenses.¹⁰ Respondents who are law enforcement officers may still possess firearms while working in a law enforcement capacity, depending on the judge’s order.¹¹

The Texas Firearm Carry Act of 2021 enhances the penalty for unlawful possession of a firearm by those convicted of family violence misdemeanor offenses and protective order respondents to a felony of the third degree. The Act also enhances the penalty for those convicted of family violence felony offenses to a felony of the second degree. It will be important for family violence programs to be aware of, and utilize, their policies about persons illegally possessing firearms on property. Programs should work with the survivor on the safest way to use their policies to report any violations. If it is safe for the survivor to make a report, reports of illegal firearm ownership and possession under Texas law should be made to local or state law enforcement.

Federal Prohibitions

Federal law is also explicit about prohibited possessors and differs from Texas law in some respects. People convicted of a qualifying misdemeanor of domestic violence are not legally allowed under federal law to possess, ship, transport, or receive firearms or ammunition.¹²

This includes people convicted of **any** qualifying domestic violence misdemeanor, including

⁵ Section 85.022(d), Texas Family Code

⁶ Article 17.292(1), Texas Code of Criminal Procedure

⁷ Article 7B.005(2)(D), Texas Code of Criminal Procedure

⁸ Section 46.04(e), Texas Penal Code; Section 12.21, Texas Penal Code

⁹ Sec. 46.02(e)(1), Texas Penal Code

¹⁰ Section 25.07(g), Texas Penal Code; Section 12.34, Texas Penal Code

¹¹ Section 85.022(6), Texas Family Code; Article 7B.005(2)(D), Texas Code of Criminal Procedure

¹² 18 U.S.C. 922(g)(9)

Class C’s, which may be tickets issued at the scene. A qualifying domestic violence misdemeanor is any use or attempted use of physical violence or “force;” or the threatened use of a deadly weapon against a family or household member, including a current or former spouse, parent or guardian, or person who is like a spouse parent or guardian (regardless of whether the abuser and victim ever lived together.)¹³ Unlike Texas law, this is a lifetime prohibition.¹⁴ This is also the case for felony convictions.¹⁵ Respondents in final¹⁶ protective orders are prohibited from possessing, shipping, transporting or possessing firearms or ammunition during the pendency of the protective order.¹⁷ The penalty for violating these prohibitions is up to 10 years in federal prison, a \$250,000 fine, or both.¹⁸

It is also illegal to sell or otherwise dispose of a firearm or ammunition to a prohibited possessor, with a penalty the same as the underlying offense.¹⁹ This means that selling or giving a gun to a person not legally allowed to own or possess a gun under federal law is also a crime.²⁰ Reports of illegal firearm ownership and possession under federal law should be made to federal law enforcement, such as the Bureau of Alcohol, Tobacco, and Firearms (ATF).

Both Texas and federal laws apply at all times, and a person can be charged and convicted under Texas law (by Texas District Attorney), federal law (by a United States Attorney), or both. This information is merely an overview and does not constitute legal advice. We again encourage you to work with an attorney to review your policies and to contact TCFV at policy@tcfv.org for further information on family violence and firearms.

¹³ 18 USC § 921(a)(33)(A); see *Buster v. United States*, 447 F.3d 1130 (8th Cir. 2006) (for discussion of defining “as a spouse.”); “Federal Gun Laws,” WomensLaw.org (accessed 10 November 2021).

¹⁴ 18 U.S.C. 922(g)(9)

¹⁵ 18 U.S.C. 922(g)(1)

¹⁶ Prohibited possession only applies to orders that are granted after a hearing where the respondent knew of the hearing and includes any long-term order were any service, whether personal or substituted, was made.

¹⁷ 18 U.S.C. 922(g)(8)

¹⁸ 18 U.S. C. 922

¹⁹ 18 U.S.C. 922(D)

²⁰ *Id.*