

# **Domestic Violence and Firearms Guide for Law Enforcement Officers**

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 procedures, tips and considerations for the role of law enforcement in the implementation and enforcement of firearms and domestic violence related laws.**

## **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 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 any felony charge would potentially carry a term of imprisonment which would exceed one year*
6. Unlawful users of a controlled substance

Other Possible Factors:

7. Mental Defectives<sup>1</sup>
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 or conviction had as an element the use, or attempted use of physical force, or the threatened use of 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 danger<sup>2</sup>

Other Possible Factors:

9. Mental health admission (within the last 5 years)
10. Mentally retarded<sup>3</sup>
11. Adjudicated delinquent minor<sup>4</sup>
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 for which such person received actual notice, and at which such 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.**

*\* 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 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.

## **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, 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 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, a division of the Illinois State Police, is notified of criminal convictions of domestic battery and violations of orders of protection nightly through the Criminal History Record Information (CHRI).

- If there is an order of protection or clear and present danger 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 Firearms Information and Resources Bureau 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.

## Role of Law Enforcement

### Responding to a Domestic Violence Related Call—Assessing Risk

Responding to domestic violence related calls are some of the most dangerous and difficult. Officer and victim safety are of the utmost importance. Domestic violence is a pattern, not a single incident. Therefore, attempting to get a broad picture about the possible dangerousness of an individual is key to maintaining safety.

When assessing risk it is important to obtain the following information:

- Does the abuser own firearms?  
*If yes, does the abuser have a valid FOID card?*
- Does the abuser have access to firearms?
- Has the abuser used a firearm against his/her partner, children or pets?
- Has the abuser threatened to use a firearm against his/her partner, children or pets?
- Has the abuser used a firearm against another person?
- Has the abuser threatened to purchase a firearm?
- Would the abuser use firearms against law enforcement?
- Has the abuser been convicted of crimes involving a firearm?

- ❑ Does the abuser have a criminal record that includes assaults against others or crimes of violence?
- ❑ Does the abuser have a mental illness?
- ❑ Is the abuse increasing in frequency and/or severity?

### **Seizing Firearms at Domestic Scenes**

- 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.
- If a firearm(s) is used in the commission of an 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 an offense, or is possessed illegally, officers should attempt to obtain consent or obtain a warrant.
- *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 (**Georgia v. Randolph**).*
- If questions arise, officers should consult their State's Attorneys Office for advice and guidance.
- 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 to law enforcement for safekeeping.**

### **Domestic Violence Incident Report**

To ensure a successful criminal case, include all information regarding firearms in the police report including:

- Officer observations
- Describe any injury
- Photograph any injury
- Was medical treatment required? If so, where? Obtain a signed Medical Information Release
- Relationship of victim to offender\*\*
- Information obtained during the Risk Assessment
  - Type of firearm used
  - Access to firearms by the abuser

- How many and the types of firearms in the residence
- History of firearms used
- FOID status\*\*
- Obtain witness statements (written/audio)
- Obtain victim statement (written/audio)
- Determine primary aggressor
- Document prior DV History\*
- Provide IDVA Form\*
- Were children present or are they at risk? If yes, obtain names and ages and contact DCFS
- Alcohol and/or drugs involved?\*\*\*
- Review and place copy of 9-1-1 call into evidence
- If no arrest made explain why\*

\*Required by Statute

\*\*Key information for FOID—ISP may use police reports to determine FOID eligibility

### **Retrieval of Firearms**

When serving an Order of Protection with Remedy 14.5 the officer can ask for firearms to be turned over at that time.

If a respondent on an order of protection claims to have given any or all of their firearms to a 3<sup>rd</sup> party, officers should ask to see proof of transfer and inquire if the party receiving the firearms has a valid FOID card. When transferring firearms to another person, the original owner must keep a record as to whom he/she gave the firearm and a description of the firearm for 10 years (430 ILCS 65/3 9(b)). Violation is a misdemeanor offense with a penalty of up to 364 days in jail, a fine up to \$2500 and up to 24 months probation.

### **Confiscating and Reporting Invalid FOID cards**

You have the authority to confiscate the FOID card if the person is still in possession of an invalid FOID card.

Mail information to the following address:  
 Illinois State Police  
 Firearms Information and Resources Bureau  
 801 S. Seventh St., Suite 400M  
 P.O. Box 19461  
 Springfield, IL 62794  
 Attention: Enforcement Section  
 Fax: (217) 782-9139

Any order prohibiting firearms, including conditions of bond, no contact orders or restraining orders, conditions of probation and conditional discharge orders can be faxed to the Firearms and Resources Information Bureau to begin the possible FOID revocation process. *See page 3 for qualifying court orders.*

**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.**

Periodically Illinois State Police will attempt to obtain FOID cards from revoked card holders.

### **Turning over Weapons to a Law Enforcement Department—Defendant/Respondent**

If a defendant or respondent is required to turn over illegally possessed weapons to a law enforcement department, each department should determine policy for accepting weapons as a way to increase officer and public safety.

Some departments prefer to pick up the firearms, while others prefer to have an appointment made to bring the weapons to the department. This decision should be reflected in agency policies. Regardless of preference, department policies should require that:

- Appointment must be made with the department
- All firearms should be turned over unloaded (and locked inside the vehicle (trunk if possible) if brought to the department)
- The defendant/respondent must provide a copy of the order
- A receipt should be provided to the defendant/respondent in order to provide proof to the court that firearms have been turned in
- Firearms(s) seized or voluntarily surrendered should be checked through available firearms databases such as FTIP, LEADS, NCIC and eTrace at the time of intake.
- Agencies should consider photographing firearms at point of intake and/or release in order to document the condition of the firearm(s).

***Please see Instructions to Have Firearms Picked up by Law Enforcement and Instructions to Turn in Firearms at the Law Enforcement Department in the attachments.***

### **Transfer of Firearms**

Although not encouraged, it is possible that the defendant/respondent 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 to whom they transferred the firearm(s) and a description of the firearm(s).

If the 3<sup>rd</sup> party transfer is occurring at the law enforcement department where the guns are stored the department should complete a thorough criminal background check on each person who wishes to obtain possession of a firearm in the department's custody for possible firearm disqualifiers. Law enforcement agencies and their employees are not exempt from determining that a firearm transfer is lawful and is permitted within state and federal law.

In addition, the department should warn the person taking possession of the firearms of the penalties of allowing the individual transferring the firearms to use or possess them. If convicted, the person can be sentenced to a term of imprisonment of one to three years under Illinois law and up to ten years under federal law.

*Please see sample Third Party Transfer Form in the attachments.*

## **Returning Firearms**

### *Orders of Protection*

Once an Order of Protection expires, is vacated or dropped the respondent is no longer prohibited from possessing firearms based on the OP. Prior to returning the firearms to the respondent:

- Require a copy of the expired OP
- Complete a background check to determine if there are any new prohibitions
- Determine if the person has a valid FOID card
- Provide a 72 hour waiting period to assure that all potential disqualifiers are accounted for in the system

### *Safekeeping*

As firearms are returned from safekeeping:

- Complete a background check to determine if there are any new or existing disqualifiers (for example: OPs, Conditions of Bond, Domestic Battery Convictions, or Felony Convictions)
- Require the defendant to show a valid FOID card
- Contact FOID if the person has what appears to be a valid FOID card, but prohibitions seem to exist

### *Per Court Order*

- Have the defendant provide a copy of the order and verify the order with the court
- Perform a FOID check to determine if they have a valid FOID card
- Provide a 72 hour waiting period to assure that all potential disqualifiers are accounted for in the system.

Provide a receipt on all returns and keep copy for your records.

**In all cases, the victim should be notified that firearms have been returned to the defendant/respondent.**

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

