

Illinois and Federal Firearm Laws and Issues

Statute	Summary/Context of Law	Issues Raised
<p>750 ILCS 60/214 (b) (14.5) – Illinois Domestic Violence Act/ Order of Protection 14.5 Remedy (Civil)</p> <p>(a) When a complaint is made under a request for an order of protection, that the respondent has threatened or is likely to use firearms illegally against the petitioner, and the respondent is present in court, or has failed to appear after receiving actual notice, the court shall examine on oath the petitioner, and any witnesses who may be produced. If the court is satisfied that there is any danger of the illegal use of firearms, it shall <u>issue an order</u> that any firearms in the possession of the respondent, except as provided in subsection (b), be turned over to the local law enforcement agency for safekeeping. If the respondent <u>has failed to appear</u>, the court shall issue a warrant for seizure of any firearm in the possession of the respondent. The period of safekeeping shall be for a stated period of time not to exceed 2 years. The firearm or firearms shall be returned to the respondent at the end of the stated period or at expiration of the order of protection, whichever is sooner.</p> <p>(b) If the respondent is a peace officer as defined in Section 2-13 of the Criminal Code of 1961, the court shall order that any firearms used by the respondent in the performance of his or her duties as a peace officer be surrendered to the chief law enforcement executive of the agency in which the respondent is employed, who shall retain the firearms for safekeeping for the stated period not to exceed 2 years as set forth in the court order.</p>	<p>A victim may request Remedy 14.5 in a Petition for an Order of Protection filed in either civil or criminal court.</p> <p>The victim must request 14.5 on the OP Petition form, and state to the Court that the respondent has threatened or is likely to use firearms against the victim.</p> <p>If the respondent is present in Court, or has failed to appear after receiving actual notice of the OP, and the Court is satisfied that there is any danger of the use of firearms, the court shall order the 14.5 remedy requiring that any firearms in the possession of the respondent be turned over to the local law enforcement agency.</p> <p>If the respondent has failed to appear, the court shall issue a warrant for seizure of any firearm in the possession of the respondent. Note: the criminal statute next listed also includes the refusal or failure to surrender his or her firearms.</p> <p>If the respondent is a peace officer, the court shall order that any firearms used by the respondent in the performance of the officer’s duties be surrendered to the respondent’s chief law enforcement executive. Under this law, the firearms can be retained for safekeeping for the period stated in the court order, not to exceed 2 years. Firearms should be returned to respondent when this remedy is no longer in effect.</p>	<p><i>Professional education.</i> The need to educate both the civil & criminal court system about the availability of the firearm prohibition and the process for using it in an OP (judges, prosecuting attorneys, law enforcement, etc.).</p> <p><i>Requirements for search warrant.</i> Clarification of the warrant process that the court can use to seize firearms under this OP prohibition when respondents do not comply (<i>is there a need for a specific warrant form?</i>).</p> <p><i>Law enforcement agency policies and procedures</i> regarding:</p> <ul style="list-style-type: none"> ▪ The secure storage of relinquished/seized weapons; ▪ The return of firearms to respondents after an OP expires; ▪ Officers subject to OPs when 14.5 is granted. <p><i>Ensure respondent compliance.</i> The need to create a compliance review process to ensure respondents complies with the OP.</p> <p><i>Ensure petitioner awareness of 14.5.</i> The need to educate petitioners regarding the availability of 14.5, how to indicate the information on the Order of Protection form, and the importance of disclosing knowledge regarding respondent’s weapons.</p> <p><i>Judicial role in fact-finding regarding firearms.</i> How to ensure that judges ask petitioners and respondents about respondent access to/possession of firearms.</p> <p><i>Choice of law enforcement agency.</i> How to determine which law enforcement agency will take possession of the prohibited firearm(s).</p> <p>What type of order the court should issue for the seizure of weapons, which court will offer remedies, and how?</p>

Statute	Summary/Context of Law	Issues Raised
<p>725 ILCS 5/112A-14 (b) (14.5) -- Prohibition of Firearm Possession (Illinois Domestic Violence Act/ Order of Protection 14.5 Remedy (Criminal)</p> <p>a) When a complaint is made under a request for an order of protection, that the respondent has threatened or is likely to use firearms illegally against the petitioner, and the respondent is present in court, or has failed to appear after receiving actual notice, the court shall examine on oath the petitioner, and any witnesses who may be produced. If the court is satisfied that there is any danger of the illegal use of firearms, it shall <u>include in the order of protection the requirement</u> that any firearms in the possession of the respondent, except as provided in subsection (b), be turned over to the local law enforcement agency for safekeeping. If the respondent <u>fails to appear, or refuses or fails to surrender his or her firearms</u>, the court shall issue a warrant for seizure of any firearm in the possession of the respondent. The period of safekeeping shall be for a stated period of time not to exceed 2 years. The firearm or firearms shall be returned to the respondent at the end of the stated period or at expiration of the order of protection, whichever is sooner.</p> <p>(b) If the respondent is a peace officer as defined in Section 2-13 of the Criminal Code of 1961, the court shall order that any firearms used by the respondent in the performance of his or her duties as a peace officer be surrendered to the chief law enforcement executive of the agency in which the respondent is employed, who shall retain the firearms for safekeeping for the stated period not to exceed 2 years as set forth in the court order.</p>	<p>A victim may request Remedy 14.5 in a Petition for an Order of Protection filed in either civil or criminal court.</p> <p>The victim must request 14.5 on the OP Petition form, and state to the Court that the respondent has threatened or is likely to use firearms against the victim.</p> <p>If the respondent is present in Court, or has failed to appear after receiving actual notice of the OP, and the Court is satisfied that there is any danger of the use of firearms, the court shall order the 14.5 remedy requiring that any firearms in the possession of the respondent be turned over to the local law enforcement agency.</p> <p>If the respondent has failed to appear or refuses or fails to surrender his or her firearms, the court shall issue a warrant for seizure of any firearm in the possession of the respondent.</p> <p>If the respondent is a peace officer, the court shall order that any firearms used by the respondent in the performance of the officer's duties be surrendered to the respondent's chief law enforcement executive. Under this law, the firearms can be retained for safekeeping for the period stated in the court order, not to exceed 2 years. Firearms should be returned to respondent when this remedy is no longer in effect.</p>	<p><i>Professional education.</i> The need to educate both the civil & criminal court system about the availability of the firearm prohibition and the process for using it in an OP (judges, prosecuting attorneys, law enforcement, etc).</p> <p><i>Requirements for search warrant.</i> Clarification of the warrant process that the court can use to seize firearms under this OP prohibition when respondents do not comply (<i>is there a need for a specific warrant form?</i>).</p> <p><i>Law enforcement agency policies and procedures</i> regarding:</p> <ul style="list-style-type: none"> ▪ The secure storage of relinquished/seized weapons; ▪ The return of firearms to respondents after an OP expires; ▪ Officers subject to OPs when 14.5 is granted. <p><i>Ensure respondent compliance.</i> The need to create a compliance review process to ensure respondents complies with the OP.</p> <p><i>Ensure petitioner awareness of 14.5.</i> The need to educate petitioners regarding the availability of 14.5, how to indicate the information on the Order of Protection form, and the importance of disclosing knowledge regarding respondent's weapons.</p> <p><i>Judicial role in fact-finding regarding firearms.</i> How to ensure that judges ask petitioners and respondents about respondent access to/possession of firearms.</p> <p><i>Choice of law enforcement agency.</i> How to determine which law enforcement agency will take possession of the prohibited firearm(s).</p> <p>What type of order the court should issue for the seizure of weapons, which court will offer remedies, and how?</p>

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<p>750 ILCS 60/304 – <i>Assistance by law enforcement officers</i> (Civil)</p> <p>(a) Whenever a law enforcement officer has reason to believe that a person has been abused, neglected, or exploited by a family or household member, the officer shall immediately use all reasonable means to prevent further abuse, neglect, or exploitation, including:</p> <ol style="list-style-type: none"> (1) Arresting the abusing, neglecting and exploiting party, where appropriate; (2) If there is probable cause to believe that particular weapons were used to commit the incident of abuse, subject to constitutional limitations, seizing and taking inventory of the weapons. 	<p>When a police officer is called to an incident of abuse, neglect, or exploitation, and there is probable cause to believe weapons were used in the incident, the officer shall seize and take inventory of the weapons, subject to constitutional limitations.</p>	<p><i>Law enforcement documentation.</i> Training for law enforcement detailing the obtaining of victim statements so that they may that ascertain whether use of firearms against the victim occurred during the incident (i.e., threats to injury or harass victim/family with the firearm by the respondent).</p> <p><i>Storage time.</i> Clarification on how long the firearm can be kept by law enforcement.</p> <p><i>Procedures for return of firearms.</i> Establish law enforcement procedures to return the firearm to respondent. (i.e. checking past criminal record, current firearm prohibitions, FOID status, etc.)</p> <p><i>Search and seizure law.</i> Training regarding state constitutional and U.S. constitutional law regarding search and seizure.</p>
<p>725 ILCS 5/112A-30 – <i>Assistance by law enforcement officers</i> (Criminal)</p> <p>(a) Whenever a law enforcement officer has reason to believe that a person has been abused by a family or household member, the officer shall immediately use all reasonable means to prevent further abuse, including:</p> <ol style="list-style-type: none"> (1) Arresting the abusing party, where appropriate; (2) If there is probable cause to believe that particular weapons were used to commit the incident of abuse, subject to constitutional limitations, seizing and taking inventory of the weapons. 	<p>When a police officer is called to an abuse incident, and there is probable cause to believe weapons were used in the incident, the officer shall seize and take inventory of the weapons, subject to constitutional limitations.</p>	<p><i>Law enforcement documentation.</i> Training for law enforcement detailing the obtaining of victim statements so that they may that ascertain whether use of firearms against the victim occurred during the incident (i.e., threats to injury or harass victim/family with the firearm by the respondent).</p> <p><i>Storage time.</i> Clarification on how long the firearm can be kept by law enforcement.</p> <p><i>Procedures for return of firearms.</i> Establish law enforcement procedures to return the firearm to respondent. (i.e. checking past criminal record, current firearm prohibitions, FOID status, etc.)</p> <p><i>Search and seizure law.</i> Training regarding state constitutional and U.S. constitutional law regarding search and seizure.</p>
<p>430 ILCS 65/0.01 et seq. – <i>Firearm Owner’s Identification Card Act</i></p> <p>Sec. 2(a)(1) No person may acquire or possess any firearm, stun gun, or taser within this State without having in his or her possession a Firearm Owner’s Identification Card previously issued in his or her name</p>	<p>Section 2: Under the Firearm Owner’s Identification Card Act, no person may possess a firearm or firearm ammunition without a valid FOID card.</p> <p>“Firearm” is defined as a device designed to expel a projectile by means of an explosion, or the expansion or escape of gas. The definition excludes certain</p>	<p>Section 8: Should additional offenses be added to the list of grounds for the State Police to withhold or revoke a FOID card?</p> <p>Should the “look back” time frames for certain grounds be extended?</p>

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<p>by the Department of State Police under the provisions of this Act.</p> <p>Section 8 The Department of State Police has authority to deny an application for or to revoke and seize a Firearm Owner's Identification Card previously issued under this Act only if the Department finds that the applicant or the person to whom such card was issued is or was at the time of issuance:</p> <p>...</p> <p>(c) A person who has been convicted of a felony under the laws of this or any other jurisdiction;</p> <p>...</p> <p>(j) A person who is subject to an existing order of protection prohibiting him or her from possessing a firearm;</p> <p>(k) A person who has been convicted within the past 5 years of battery, assault, aggravated assault, violation of an order of protection, or a substantially similar offense in another jurisdiction, in which a firearm was used or possessed;</p> <p>(l) A person who has been convicted of domestic battery or a substantially similar offense in another jurisdiction committed on or after January 1, 1998;</p> <p>(m) A person who has been convicted within the past 5 years of domestic battery or a substantially similar offense in another jurisdiction committed before January 1, 1998;</p> <p>...</p> <p>Section 13.3 ...every municipality must submit to the Department of State Police a copy of every ordinance adopted by the municipality that regulates the acquisition, possession, sale, or transfer of firearms within the municipality...</p>	<p>antique firearms, pneumatic (air) guns, BB guns, paint ball guns, flare of signal guns (but only if recommended by certain federal transportation agencies), and nail guns (as used in construction).</p> <p>There are currently approximately 1.2 million FOID cards. The annual applications (for new or renewed cards) total 210,000 to 220,000. In 2002, 4642 cards were denied and 6926 cards were revoked (source: Illinois State Police).</p> <p>Section 8: The Firearm Owner's Identification Card Act provides a number of grounds for the withholding or revocation of the FOID card. These include person subject to a current order of protection that prohibits the possession of firearms. It also includes persons convicted of the violation of an order of protection within the past five years if a firearm was part of the violation, and past convictions of domestic battery offenses.</p> <p>The grounds for withholding or revoking a FOID card also includes convicted felons, current or former mental patients, and drug addicts.</p> <p>Section 13.3: The following communities have filed their local ordinances involving firearms with the Illinois State Police (www.isp.state.il.us): Ashmore, Aurora, Beecher, Bolingbrook, Calumet Park, Carbondale, Carol Stream, Casey, Channahon, Cicero, Crest Hill, Elgin, Flossmoore, Grayslake, Hazel Crest, Loves Park, McHenry, New Lenox, Northbrook, Oak Park, Peoria, Posen, Riverdale, Schaumburg, Shorewood, Skokie, Sleepy Hollow, Wheaton, Wilmette, and Woodridge.</p>	
<p>720 ILCS 5/24-1.6 -- Aggravated Unlawful Use of a Weapon</p> <p>(a) A person commits the offense of aggravated unlawful use of a weapon when he or she knowingly:</p> <p>(1) Carries on or about his or her person or in any vehicle or concealed on or about his or her person except when on his or her land or in his or her abode or</p>	<p>Essentially this statute gives law enforcement and prosecutors another tool for holding abusers who have been subject to orders of protections accountable for carrying or possessing firearms. Sections (a)(3)(C) and (a)(3)(G) are most relevant to the issue of firearms and orders of protection. Under Section (a)(3)(C) a person not owning a valid FOID card and otherwise qualifying under the statute can be charged with aggravated unlawful use of a weapon. Arguably, this section</p>	<p><i>Charging prior to revocation of FOID.</i> Pursuant to Section (a)(3)(C) of the statute (assuming all other conditions of statute satisfied), may a respondent be charged under this section if the FOID card has not yet been revoked?</p> <p><i>Expired orders of protection.</i> Does Section (a)(3)(G) of the statute apply to a person who has had an order of protection issued against him/her in the last two years</p>

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<p>fixed place of business any pistol, revolver, stun gun or taser or other firearm; or</p> <p>(2) Carries or possesses on or about his or her person, upon any public street, alley, or other public lands within the corporate limits of a city, village or incorporated town, except when an invitee thereon or therein, for the purpose of the display of such weapon or the lawful commerce in weapons. or except when on his or her own land or in his or her own abode or fixed place of business, any pistol, revolver, stun gun or taser or other firearm; and</p> <p>(3) One of the following factors is present:</p> <p>(A) the firearm possessed was uncased, loaded and immediately accessible at the time of the offense; or</p> <p>(B) the firearm possessed was uncased, unloaded and the ammunition for the weapon was immediately accessible at the time of the offense; or</p> <p>(C) the person possessing the firearm has not been issued a currently valid Firearm Owner's Identification Card; or</p> <p>(D) the person possessing the weapon was previously adjudicated a delinquent minor under the Juvenile Court Act of 1987 (705 ILCS 405/1-1 et. seq.) for an act that if committed by an adult would be a felony; or</p> <p>(E) the person possessing the weapon was engaged in a misdemeanor violation of the Cannabis Control Act (720 ILCS 550/1 et seq.), in a misdemeanor violation of the Illinois Controlled Substance Act (720 ILCS 570/100 et. seq.), or in a misdemeanor violation of the Methamphetamine Control and Community Protection Act; or</p> <p>(F) the person possessing the weapon is a member of a street gang or is engaged in street</p>	<p>would apply to someone who has had his/her FOID card revoked due to being subject to an Order of Protection. Under Section (a)(3)(G), a person who otherwise qualifies under the statute and has had an order of protection against him within the previous 2 years could be charged with aggravated unlawful use of a weapon.</p>	<p>but which is now expired?</p> <p><i>Search and seizure law.</i> Training regarding state constitutional and U.S. constitutional law regarding search and seizure.</p>

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<p>gang related activity, as defined in Section 10 of the Illinois Streetgang Terrorism Omnibus Prevention Act (740 ILCS 147/10 et seq.); or</p> <p>(G) the person possessing the weapon had a order of protection issued against him or her within the previous 2 years; or</p> <p>(H) the person possessing the weapon was engaged in the commission or attempted commission of a misdemeanor involving the use or threat of violence against the person or property of another; or</p> <p>(I) the person possessing the weapon was under 21 years of age and in possession of a handgun as defined in Section 24-3 (720 ILCS 5/24-3), unless the person under 21 is engaged in lawful activities under the Wildlife Code (520 ILCS 5/1.1 et seq.) or described in subsection 24-2(b)(1), (b)(3), or 24-2(f) (720 ILCS 5/24-2).</p> <p>(b) "Stun gun or taser" as used in this Section has the same definition given to it in Section 24-1 of this Code (720 ILCS 5/24-1).</p> <p>(c) This Section does not apply to or affect the transportation or possession of weapons that:</p> <p>(i) are broken down in a non-functioning state; or</p> <p>(ii) are not immediately accessible; or</p> <p>(iii) are unloaded and enclosed in a case, firearm carrying box, shipping box, or other container by a person who has been issued a currently valid Firearm Owner's Identification Card.</p> <p>(d) Sentence. Aggravated unlawful use of a weapon is a Class 4 felony; a second or subsequent offense is a Class 2 felony for which the person shall be sentenced to a term of imprisonment of not less than 3 years and not more than 7 years. Aggravated unlawful use of a weapon by a person who has been previously convicted of a felony in this State or another jurisdiction is a</p>		

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<p>Class 2 felony for which the person shall be sentenced to a term of imprisonment of not less than 3 years and not more than 7 years. Aggravated unlawful use of a weapon while wearing or in possession of body armor as defined in Section 33F-1 by a person who has been issued a valid Firearms Owner's Identification Card in accordance with Section 5 of the Firearm Owners Identification Card Act is a Class X felony. The possession of each firearm in violation of this Section constitutes a single and separate violation.</p>		

<p>725 ILCS 5/110-10 – Conditions of Bail Bond</p> <p>(a) If a person is released prior to conviction, either upon payment of bail security or on his or her own recognizance, the conditions of the bail bond shall be that he or she will:</p> <p>...</p> <p>(5) At a time and place designated by the court, surrender all firearms in his or her possession to a law enforcement officer designated by the court to take custody of and impound the firearms and physically surrender his or her Firearm Owner’s Identification Card to the clerk of the circuit court when the offense the person has been charged with is a forcible felony, stalking, aggravated stalking, domestic battery, any violation of either the Illinois Controlled Substances Act, the Methamphetamine Control and Community Protection Act, or the Cannabis Control Act that is classified as a Class 2 or greater felony, or any felony violation of Article 24 of the Criminal Code of 1961; the court may, however, forgo the imposition of this condition when the circumstances of the case clearly do not warrant it or when its imposition would be impractical; all legally possessed firearms shall be returned to the person upon the charges being dismissed, or if the person is found not guilty, unless the finding of not guilty is by reason of insanity.</p> <p>...</p> <p>(b) The court may impose other conditions, such as the following, if the court finds that such conditions are reasonably necessary to assure the defendant’s appearance in court, protect the public from the defendant, or prevent the defendant’s unlawful interference with the orderly administration of justice:</p> <p>...</p> <p>(2) Refrain from possessing a firearm or other dangerous weapon;</p> <p>...</p> <p>(15) Comply with the terms and conditions of an order of protection issued by the court under the Illinois Domestic Violence Act of 1986 or an order of protection issued by the court of another state, tribe, or United States territory;</p>	<p>This statute applies whenever a defendant is released prior to conviction, either upon payment of bail or upon his/her own recognizance. When the defendant is charged with a forcible felony, stalking, aggravated stalking, domestic battery, the court shall order the surrender of all firearms in the defendant’s possession to a law enforcement officer and the physical surrender of the defendant’s FOID card to the Circuit Clerk unless the Court determines that the case does not warrant this, or that its imposition would be impractical. The statute also provides that, in all cases, the court may include a condition of bond that the defendant refrain from possessing a firearm or other dangerous weapon. Finally, the statute requires the physical surrender of all firearms in the defendant’s possession and the defendant’s FOID card upon a finding of guilty for any felony offense.</p>	<p>Does the Circuit Clerk have a system for handling FOID card surrender?</p>
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<p>...</p> <p>(g) Upon a finding of guilty for any felony offense, the defendant shall physically surrender, at a time and place designated by the court, any and all firearms in his or her possession and his or her Firearm Owner's Identification Card as a condition of remaining on bond pending sentencing.</p>		
<p>730 ILCS 5/5-6-3) Sec. 5-6-3 – Conditions of Probation and of Conditional Discharge.</p> <p>(a) The conditions of probation and of conditional discharge shall be that the person:</p> <ul style="list-style-type: none"> (1) not violate any criminal statute of any jurisdiction; (2) report to or appear in person before such person or agency as directed by the court; (3) refrain from possessing a firearm or other dangerous weapon; <p>...</p> <p>(9) if convicted of a felony, physically surrender at a time and place designated by the court, his or her Firearm Owner's Identification Card and any and all firearms in his or her possession.</p> <p>(b) The Court may in addition to other reasonable conditions relating to the nature of the offense or the rehabilitation of the defendant as determined for each defendant in the proper discretion of the Court require that the person:</p> <p>...</p> <p>(11) comply with the terms and conditions of an order of protection issued by the court pursuant to the Illinois Domestic Violence Act of 1986, as now or hereafter amended, or an order of protection issued by the court of another state, tribe, or United States territory. A copy of the order of protection shall be transmitted to the probation officer or agency having responsibility for the case[.]</p>		

<p>725 ILCS 165/0.01, et. seq. – Firearm Seizure Act</p> <p>(1) When a complaint is made to any circuit court that a person possessing a firearm or firearms has threatened to use a firearm illegally, the court shall examine on oath such complainant, and any witnesses which may be produced, reduce the complaint to writing and have it subscribed and sworn to by the complainant. If the court is satisfied that there is any danger of such illegal use of firearms, it shall issue a warrant requiring the apprehension of such person, hereafter referred to as the defendant, for appearance before the court. Such warrant shall also authorize the seizure of any firearm in the possession of the defendant.</p> <p>(2) When the defendant is brought before the court, if the charge is controverted the testimony produced on both sides shall be heard. When it appears to the court that the defendant has threatened to use any firearm illegally, and it appears to the court that the surrender of such firearm would serve to keep the peace, the court shall order any firearm taken from the defendant to be kept by the State for safekeeping during a stated period of time not to exceed one year. The firearm or firearms shall be returned to the defendant at the end of the stated period. If such firearm as not seized when the defendant was brought before the court, the defendant may be ordered by the court to produce such firearm for safekeeping as provided above, and upon failure to produce such weapon within a time period established by the court, the defendant may be punished by the court as a contempt.</p> <p>(3) If, however, it should appear to the court that the complaint is unfounded, the defendant shall be dismissed. When, in addition, the court is of the opinion that the proceeding was commenced maliciously without probable cause, it may enter judgment against the complainant for the costs of the prosecution.</p>		
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<p>(4) In lieu of requiring the surrender of any firearm, the court may require the defendant to give a recognizance as provided in Division V of “An Act to revise the law in relation to criminal jurisprudence.”</p> <p>(5) Any action brought under this Act is a civil action, governed by the Civil Practice Law as now or hereafter amended and by the Supreme Court Rules as now or hereafter adopted in relation to that Law. Appeals may be taken as in other civil cases.</p>		
<p>18 U.S.C. § 922(g)(8) – Protection Order Prohibition (Federal)</p> <p>“(g) It shall be unlawful for any person –</p> <p>“(8) who is subject to a court order that –</p> <p>(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;</p> <p>(B) restrains such 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; and</p> <p>(C) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or</p> <p>(ii) by its terms 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[.]</p> <p>“to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.”</p>	<p>Persons who are subject to qualifying orders of protection may not ship or transport in interstate or foreign commerce, or possess or purchase firearms or ammunition that have been shipped or transported in interstate or foreign commerce.</p> <p>This statute applies to <u>all</u> qualifying orders of protection, regardless of whether the protection order itself includes relief that prohibits the possession or purchase of a firearm.</p> <p>A qualifying order is one that meets all of the following criteria:</p> <ul style="list-style-type: none"> • <i>The order was issued after a hearing about which the respondent received notice and at which he/she had an opportunity to participate.</i> An evidentiary hearing is <u>not</u> necessary to meet this criterion. A default order meets this requirement provided the respondent was provided with notice and an opportunity to participate. • <i>The petitioner is an “intimate partner” of the respondent under the federal definition.</i> The petitioner in the protection order must be the current or former spouse, be a parent of a child in common with the respondent, or currently cohabitates or previously have cohabitated with the respondent. Protection orders in which the relationship is other than one of the above relationships (e.g., aunt/uncle-niece/nephew, grandparent-grandchild, dating relationship where there was no cohabitation) do not meet the 	<p><i>Ex parte orders.</i> 922(g)(8) does not apply to ex parte orders issued in Illinois, unless the respondent received notice of the ex parte hearing and had an opportunity to participate in it.</p> <p><i>Protection Orders without 14.5 finding trigger federal firearm prohibition.</i> If the plenary order is entered without this remedy, the federal firearm prohibition will still apply, making it illegal for the respondent to possess weapons or ammunition.</p> <p><i>No Illinois official use exemption.</i> Under Illinois law, there is no official use exemption if 14.5 is granted. “[I]f the respondent is a peace officer...the court shall order that any firearms used by the respondent in the performance of his or her duties as a peace officer be surrendered to the chief law enforcement executive of the agency in which the respondent is employed, who shall retain the firearms for safekeeping for the stated period not to exceed two years as set forth in the order.” (750 Ill. Comp. Stat. 60/214(b)(14.5)) If a judge grants the 14.5 remedy, a police officer is prohibited from carrying <i>any</i> firearm.</p> <p><i>Other types of orders.</i> Consent orders, default orders, and criminal protection orders will all qualify if they meet the due process and other requirements.</p> <p><i>State-Federal Partnerships.</i> Coordination between local/state law enforcement and/or prosecutors and the ATF/U.S. Attorney’s office is necessary for enforcement.</p>

	<p>intimate partner requirement.</p> <ul style="list-style-type: none"> • <i>Restrains the respondent from harassing, stalking, or threatening the petitioner or the child of the petitioner or respondent, or engaging in any conduct that would place the petitioner in reasonable fear of bodily injury to him-/herself or the child.</i> In the alternative, the order may include a finding that the respondent represents a “credible threat” to the physical safety of the petitioner or child; however, such a finding is not necessary if the relief granted in the order include a prohibition against harassment, stalking, or threats or any conduct that would place the petitioner in reasonable fear of bodily injury to him-/herself or the child. In general, an Illinois order of protection will meet this requirement if Remedy 1 is included as relief. 	<p><i>State authority to seize.</i> Under what circumstances (if any) may local and state authorities seize firearms pursuant to § 922(g)(8)?</p>
<p>18 U.S.C. § 922(d)(8) – Transfer of Firearm to Person Subject to Order of Protection (Federal)</p> <p>“(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person –</p> <p>“(8) is subject to a court order that restrains such 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, except that this paragraph shall only apply to a court order that—</p> <p>“(A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and</p> <p>“(B) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or</p> <p>(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would</p>	<p>A person may not sell or otherwise transfer a firearm or ammunition to an individual if they know or have reasonable cause to believe that the individual is subject to the prohibitions of 18 U.S.C. § 922(g)(8).</p>	<p><i>Liability of courts and law enforcement.</i> Whether a law enforcement agency or court that returns or orders the return of a firearm to a person subject to § 922(g)(8) is subject to the prohibitions of this section.</p> <p><i>Procedures for identifying prohibited persons.</i> What steps may law enforcement and courts take to ensure that firearms are not returned to prohibited persons (e.g., procedures for identifying individuals receiving weapons to ensure they are not prohibited under § 922(g)(8)).</p> <p><i>Storage facilities.</i> Where will relinquished/seized firearms be stored?</p>

reasonably be expected to cause bodily injury[.]”		
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<p>18 U.S.C. § 922(g)(9) – Misdemeanor Crime of Domestic Violence Prohibition (Federal)</p> <p>“(g) It shall be unlawful for any person –</p> <p>“(9) who has been convicted in any court of a misdemeanor crime of domestic violence,</p> <p>“to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.”</p>	<p>A person who has been convicted of misdemeanor crime of domestic violence may not ship or transport in interstate or foreign commerce, or possess or purchase firearms or ammunition that have been shipped or transported in interstate or foreign commerce.</p> <p>This prohibition applies to crimes committed before passage of this law (1996), and does not terminate, unless the conviction is expunged or set aside, is an offense for which the person has been pardoned or has had civil rights restored. <i>See</i> 18 U.S.C. § 921(a)(33)(B)(ii) in Federal Definitions section.</p>	<p><i>Relationship requirement.</i> The relationship requirement is slightly different than the “intimate partner” requirement for § 922(g)(8). For a conviction qualify under § 922(g)(9), the perpetrator must be the current or former spouse, parent or guardian of the victim, be a parent of a common child with the victim, currently cohabit or have previously cohabited with the victim, or be a person similarly situated to a spouse, parent, or guardian of the victim. In most cases, this means that a crime committed by a perpetrator who never lived with his/her victim, or where the perpetrator and victim did not hold themselves out to be in a marital relationship, will not meet the relationship required for a crime to qualify under § 922(g)(9).</p> <p><i>Type of crime.</i> The federal statute requires that the conviction be a misdemeanor under state law that has as an element the “use or attempted use of physical force or threatened use of a deadly weapon.” 18 U.S.C. § 921(33)(A)(ii). The federal law was not written to conform to what each state labels domestic violence. It was written in broader terms that proscribe certain types of crimes regardless of the statutory title. Therefore, pleading guilty or being found guilty of a misdemeanor that is not titled “domestic” in many cases will not circumvent the federal firearm prohibition.</p> <p><i>Representation by Counsel.</i> The accused must have been represented by counsel or made a knowing and intelligent waiver.</p> <p><i>Jury Trial.</i> If the accused was entitled to a jury trial, the case must have been tried by a jury, or the defendant must have made a knowing and intelligent waiver.</p> <p><i>Reduction of the charge.</i> Changing the charge from domestic battery to battery, for example, does not limit the applicability of the federal statute. What the federal law requires is that the relationship exists in fact, not that it is an element of the offense. Assuming that all</p>
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		<p>other criteria required by the federal statute (18 U.S. C 922(g)(9)) are met (e.g., the relationship requirement, right to counsel, and right to a jury trial) the battery count is a qualifying misdemeanor crime of domestic violence.</p> <p><i>Applies regardless of when conviction occurred.</i> The prohibition applies to qualifying convictions that occurred both before and after the statute’s effective date.</p> <p><i>No official use exemption.</i> There is no exemption for law enforcement and military personnel, even for duty weapons.</p> <p><i>Pretrial diversion.</i> Pretrial diversion does not trigger § 922(g)(9). The federal statute requires a conviction of a misdemeanor crime of domestic violence. Any type of deferred prosecution does not meet the definition of conviction.</p> <p><i>State-Federal Partnerships.</i> Coordination between local/state law enforcement and/or prosecutors and the ATF/U.S. Attorney’s office is necessary for enforcement, and to determine whether there will be a state or federal prosecution.</p> <p><i>State authority to seize.</i> Under what circumstances (if any) may local and state authorities seize firearms pursuant to § 922(g)(9)?</p> <p><i>Storage facilities.</i> Where will relinquished/seized firearms be stored?</p>
<p>18 U.S.C. § 922(d)(9) – Transfer of Firearm to Person Convicted of Misdemeanor Crime of Domestic Violence (Federal)</p> <p>“(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person –</p> <p>“(9) has been convicted in any court of a misdemeanor crime of domestic violence.”</p>	<p>A person may not sell or otherwise transfer a firearm or ammunition to an individual if they know or have reasonable cause to believe that the individual is subject to the prohibitions of 18 U.S.C. § 922(g)(9).</p>	<p><i>Liability of courts and law enforcement.</i> Whether a law enforcement agency or court that returns or orders the return of a firearm to a person subject to § 922(g)(9) is subject to the prohibitions of this section.</p> <p><i>Procedures for identifying prohibited persons.</i> What steps may law enforcement and courts take to ensure that firearms are not returned to prohibited persons (e.g., procedures for identifying individuals receiving weapons to ensure they are not prohibited under § 922(g)(8)).</p>

<p>18 U.S.C. § 925 – Exceptions: Relief From Disabilities (Federal)</p> <p>“(a) (1) The provisions of this chapter [18 USCS §§ 921 et seq.] except for sections 922(d)(9) and 922(g)(9) and provisions relating to firearms subject to the prohibitions of section 922(p), shall not apply with respect to the transportation, shipment, receipt, possession, or importation of any firearm or ammunition imported for, sold or shipped to, or issued for the use of, the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof.”</p> <p>“(c) A person who is prohibited from possessing, shipping, transporting, or receiving firearms or ammunition may make application to the Attorney General for relief from the disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, transportation, or possession of firearms, and the Attorney General may grant such relief if it is established to his satisfaction that the circumstances regarding the disability, and the applicant’s record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest. Any person whose application for relief from disabilities is denied by the Attorney General may file a petition with the United States district court for the district in which he resides for a judicial review of such denial. The court may in its discretion admit additional evidence where failure to do so would result in a miscarriage of justice. A licensed importer, licensed manufacturer, licensed dealer, or licensed collector conducting operations under this chapter [18 USCS §§ 921 et seq.], who makes application for relief from the disabilities incurred under this chapter [18 USCS §§ 921 et seq.], shall not be barred by such disability, from further operations under his license pending final action on an application for relief filed pursuant to this section. Whenever the Attorney General grants relief to any person pursuant to this section he shall promptly publish in the Federal Register notice of such action, together with the reasons therefore.</p>	<p><i>The official use exemption.</i> Pursuant to 18 U.S.C. § 925, § 922(g)(8) does not apply to firearms provided to law enforcement officers and members of the military for their official duties. It may still be unclear as to whether law enforcement/military personnel fall into the exemption if they possess/carry their duty weapons when off-duty, especially if they are mandated by agency policy or encouraged by their superiors to carry/possess their weapons when off-duty.</p>	<p><i>Duty weapons possessed off-duty.</i> Whether the official use exemption applies to duty weapons when they are in the possession of a person subject to § 922(g)(8) while off duty, especially when departmental policy requires, or management encourages, this practice. How to ensure that law enforcement agencies do not require or encourage off-duty possession of firearms by persons subject to 18 U.S.C. § 922(g)(8).</p> <p><i>No parallel state exemption for 14.5.</i> The official use exemption is not applicable to officers subject to an order of protection with a 14.5 prohibition.</p>
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<p>Fourth Amendment, U.S. Constitution</p> <p>The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.</p>	<p>Generally, the Fourth Amendment of the United States Constitution governs search and seizure procedure for both Illinois and Federal law enforcement. Pursuant to the Fourth Amendment, evidentiary searches and seizures must be reasonable. Reasonableness usually means that the police must have obtained a warrant before conducting the search or seizure. However, there are six circumstances where a warrant is not required.</p> <p>Exceptions to the Warrant Requirement:</p> <p><i>1. Search or Seizure Incident to a Lawful Arrest</i></p> <p>The police may conduct a search or a seizure incident to arrest whenever they arrest a person. The police need not actually fear for their safety or believe that they will find evidence of a crime as long as the suspect is placed under arrest. <u>United States v. Robinson</u>, 414 U.S. 218 (1973).</p> <p>Under this exception, police may search the defendant and any area into which he or she might reach to obtain a weapon or to destroy evidence (his or her “wingspan”). <u>Chimel v. California</u>, 395 U.S. 752 (1969).</p> <p>Scenario A: A police officer arrests a defendant for reckless driving. At the time of arrest, the police conduct a search of the passenger compartment of the car and find a gun on the floor. The police can seize the weapon as evidence at the time of arrest.</p> <p>Scenario B: A police officer responds to a violation of an order of protection call. The defendant is apprehended outside of the Plaintiff's home. The officer places the defendant under arrest for violating the order of protection. At the time of the arrest, the officer finds a concealed weapon on the defendant's person. The officer can seize the weapon as evidence at the time of arrest.</p> <p><i>2. "Automobile" Exception:</i></p>	<p><i>Authority to search/seize.</i> May police search the home of an order of protection respondent based on the petitioner's belief that weapons are in the home against the requirements of an order of protection?</p> <p><i>Law enforcement policies, procedures, and training.</i> The need for SOPs and agency policy to address search/seizure situations related to firearms prohibited by state and federal law. The need for training on such policies and procedures, and at the academy level.</p>
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	<p>If the police have probable cause to believe that a vehicle such as an automobile contains contraband or fruits, instrumentalities, or evidence of a crime, and that it is likely that the vehicle will be unavailable by the time a warrant is obtained, they may search the vehicle without a warrant. <u>Carroll v. United States</u>, 267 U.S. 132 (1925).</p> <p>Scenario C: Police dispatch gets a call from a woman claiming that she has an order of protection against the defendant and that the defendant came to her house and threatened to kill her with a gun. The defendant then fled in his car. The police find the respondent 5 miles from the plaintiff's home in his car. After confirming the existence of the order of protection, the police stop the defendant. Upon the stop, the police search the vehicle and find a gun in the glove compartment. The police seize the gun. <u>United States v. Ross</u>, 456 U.S. 798 (1982).</p> <p><i>3. Plain View Doctrine</i></p> <p>The police may make a warrantless seizure when they are legitimately on the premises and discover evidence, fruits or instrumentalities of a crime, or contraband in plain view and have probable cause to believe that the item is evidence, contraband, or a fruit or instrumentality of the crime. <u>Arizona v. Hicks</u>, 480 U.S. 321 (1987).</p> <p>Scenario D: Same facts as Scenario C but the police see the gun laying on the front passenger seat in plain view.</p> <p><i>4. Consent</i></p> <p>The police may conduct a valid warrantless search if they have a voluntary and intelligent consent to do so. Knowledge of the right to withhold consent is not a prerequisite to establishing a voluntary and intelligent consent, it is only a factor. <u>Schneckloth v. Bustamonte</u>, 412 U.S. 218 (1973).</p> <p>Consent can be given by any person who has equal</p>	
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right to use or occupy the property, and any evidence obtained may be used against the other owners or occupants. Frazier v. Cupp, 394 U.S. 731 (1969). In addition, consent given by a person whom the officer reasonably believes to have a right to occupy is also valid. State of Illinois v. Rodriguez, 497 U.S. 177 (1990).

5. *Stop and Frisk*

A police officer may stop a person without probable cause for arrest if she has a reasonable suspicion of criminal activity. In such circumstances, if the officer also reasonably believes that the person may be armed and presently dangerous, she may conduct a protective frisk. Terry v. Ohio, 392 U.S. 1 (1968); United States v. Cortez, 449 U.S. 411 (1981).

The scope of the frisk is generally limited to a pat-down of the outer clothing for concealed instruments of assault. However, an officer may reach directly into an area of the suspect's clothing when she has specific information that a weapon is hidden there. Adams v. Williams, 407 U.S. 143 (1972).

An officer may conduct a warrantless search of the passenger compartment of an automobile when the occupant has been detained but not arrested provided the search is limited to those areas in which a weapon may be placed or hidden and the officers possess a reasonable belief that the occupant is dangerous. Michigan v. Long, 463 U.S. 1032 (1983).

6. *Hot Pursuit Exception*

Police officers in hot pursuit of a fleeing felon may make a warrantless search and seizure. Warden v. Hayden, 387 U.S. 294 (1967)

Scenario E: If the police have probable cause to believe a defendant has a gun in his possession and is subject to an Order of Protection, and the police try to stop him to question him and the suspect flees, the police can then do a warrantless search and seizure based on the hot pursuit exception

Federal Definitions

18 U.S.C. § 921

Ammunition:

“(17) (A) The term “ammunition” means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.”

Antique Firearm:

“(16) The term “antique firearm” means –

- (A) any firearm (including any firearm with a match lock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; or
- (B) any replica of any firearm described in subparagraph (A) if such replica –
 - (i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or
 - (ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; or
- (C) any muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol, which is designed to use black powder, or a black powder substitute and which cannot use fixed ammunition. For purposes of this subparagraph, the term ‘antique firearm’ shall not include any weapon which incorporates a firearm frame or receiver, any firearm which is converted to a muzzle loading weapon, or any muzzle loading weapon which can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof.”

Crime Punishable by Imprisonment for a Term Exceeding One Year:

“(20) the term “crime punishable by imprisonment for a term exceeding one year” does not include-

- (A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or
- (B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.”

Destructive Device:

“(4) The term “destructive device” means--

- (A) any explosive, incendiary, or poison gas--
 - (i) bomb
 - (ii) grenade
 - (iii) rocket having a propellant charge of more than four ounces,
 - (iv) missile having an explosive or incendiary charge or more than one quarter ounce,
 - (v) mine, or
 - (vi) device similar to any of the devices described in the preceding clauses.
- (B) any type of weapon (other than shotgun or a shotgun shell which the Attorney General finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of any explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and
- (C) any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraph (A) or (B) and from which a destructive device may be readily assembled.

The term “destructive device” shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordinance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of title 10; or any other device which the Attorney General finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting, recreational or cultural purposes.

Firearm:

“(3) The term “firearm” means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.”

Firearm Silencer/Muffler:

“(24) The terms “firearm silencer” and “firearm muffler” mean any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.”

Intimate Partner:

“(32) The term “intimate partner” means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.”

Misdemeanor Crime of Domestic Violence:

“(33) (A) Except as provided in subparagraph (C), the term “misdemeanor crime of domestic violence” means an offense that –

- (i) is a misdemeanor under Federal, State, or Tribal law; and
- (ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

(B) (i) A person shall not be considered to have been convicted of such offense for purposes of this chapter [18 USCS §§ 921 et seq.], unless,

- (I) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and
- (II) in the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either
 - (aa) the case was tried by a jury, or
 - (bb) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

(ii) A person shall not be considered to have been convicted of such an offense for purposes of this chapter [18 USCS §§ 921 et seq.] if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.”