



Michigan Supreme Court

State Court Administrative Office
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State Court Administrator

MEMORANDUM

DATE: February 14, 2008

TO: All Judges, Juvenile Referees, District Court Magistrates
cc: Circuit and District Court Administrators/Clerks
Family Division Administrators

FROM: Carl L. Gromek

RE: SCAO Administrative Memorandum 2008-02 (amended)
Judicial Notification of Firearms Requirements

Amendments to the Violence Against Women Act (VAWA) took effect January 5, 2008, requiring courts to provide notice of firearms requirements to domestic violence offenders as a condition of eligibility for federal STOP grant funding. 42 USC § 3796gg-4(e) states:

“a State or unit of local government shall not be entitled to funds under this part unless the State or unit of local government – (A) certifies that its judicial administrative policies and practices include notification to domestic violence offenders of the requirements delineated in section 922(g)(8) and (g)(9) of title 18, United State Code, and any applicable related Federal, State, or local laws; . . .”

18 USC § 922(g)(8)-(9) state:

“It shall be unlawful for any person -- . . .

(8) who is subject to a court order that –

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
(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
(C) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(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; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence,

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.”

Depending on whether the court issues an order that would fall under subsection (g)(8) or a defendant faces a conviction that would cause him/her to fall under subsection (g)(9), the court must provide some specific notice to the defendant/respondent regarding the federal limitations on his or her right to possess or purchase a firearm.

In order to meet the federal notification requirements of these amendments, the following forms have been revised and have been distributed to the courts under separate cover. They are also available from the SCAO website at <http://courts.michigan.gov/scao/courtforms/index.htm#revise>.

- CC 243a – Order of Probation
- CC 376 – Personal Protection Order (Domestic Relationship)
- CC 376M – Personal Protection Order Against a Minor (Domestic Relationship)
- DC 213 – Advice of Rights
- DC 243 – Order of Probation (Misdemeanor)
- MC 240 – Order for Pretrial Release/Custody
- MC 241 – Bond
- JC 70 – Judgment of Conviction (Designated Case)
- JC 74 – Order of Probation (Designated Case)

The probation orders contain, on the back of each page, the language that must be used when conditions are issued pursuant to 18 USC § 922(g)(8). This language should be inserted when appropriate.

Protective Orders – 18 USC 922(g)(8)

Subsection (g)(8) of 18 USC § 922 prohibits any person who is subject to an order of the court that meets the statutory criteria from possessing or purchasing ammunition or a firearm (including a rifle, pistol, or revolver) that has been shipped or transported in interstate or foreign commerce. Several types of court orders may meet the statutory criteria, including but not limited to, personal protection orders for domestic relationships, pretrial release orders, and probation orders.

The statutory criteria are as follows:

1. The court issues an order after a hearing, and
 - the restrained person received actual notice of the hearing, and
 - the restrained person had an opportunity to participate in the hearing; **and**
2. The order restrains the defendant/respondent from
 - harassing, stalking, or threatening an intimate partner, or the child of an intimate partner or of the defendant/respondent, or
 - engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; **and**
3. The order includes
 - a finding that the defendant/respondent represents a credible threat to the physical safety of the intimate partner or child; or
 - explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury.

“Intimate partner” is defined in 18 USC § 921(32) as follows:

“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.”

Please note that, unlike Michigan law, the federal statute does not include a dating relationship in the definition of intimate partner. See, for example, MCL 600.2950 and MCL 750.81(2).

If the court issues an order that meets all of the above requirements, the court should include the following language on those orders:

“As a result of this order, federal and/or state law may prohibit you from possessing or purchasing ammunition or a firearm, as those terms are defined under federal and state law.”

If a protective order issued in a criminal or personal protection action meets the federal statutory criteria above, the firearms restrictions imposed in subsection (g)(8) apply, whether or not the court order specifically imposes such restrictions. If the order is issued *ex parte*, the federal firearms restrictions will apply only **after** the restrained party has had notice and an opportunity to be heard; if the court wishes to impose firearms restrictions for the period of time before a hearing, these should be specified in the order. Similarly, the subsection (g)(8) restrictions will not apply in cases where the protected party has a dating relationship with the restrained party. In these cases, courts wishing to impose firearms restrictions must specifically provide for them in the order.

The firearms restrictions imposed by subsection (g)(8) may also apply in a limited number of delinquency or child protective cases when the court issues an order meeting all of the above-stated requirements, such as orders removing an abuser from a child’s home. Because the number

of such cases is very limited, SCAO's standard forms for delinquency and child protective proceedings have not been modified. Therefore, if the court issues an order that meets all of the subsection (g)(8) requirements in one of these cases, the court should include the following language on its orders:

“As a result of this order, federal and/or state law may prohibit you from possessing or purchasing ammunition or a firearm (including a rifle, pistol, or revolver).”

Domestic Violence Conviction

For individuals that come under 18 USC § 922(g)(9) (convicted of domestic violence misdemeanor crime), the court must provide the following notice:

“Federal law and/or state law may prohibit you from possessing or purchasing ammunition or a firearm, as those terms are defined under federal and state law, if you are convicted of a misdemeanor crime of domestic violence and you are a current or former spouse, parent, or guardian of the victim; you share a child in common with the victim; you are or were cohabitating with the victim as a spouse, parent, or guardian; or you are or were involved with the victim in another, similar relationship.”

The federal statute does not indicate when notice should be given to criminal offenders under 18 USC § 922(g)(9); however, the United States Department of Justice recommends that it be provided to all defendants charged in any crime against a person, at any stage in the criminal process. Therefore, language was added to the misdemeanor advice of rights form (DC 213) to ensure that notice is given as early as possible to any person who potentially should receive notification.

The provisions of 18 USC § 922(g)(9) apply to “convictions.” Only juveniles that are designated to be tried as adults in the family division are “convicted.” Therefore, the only standard SCAO form that applies to juvenile delinquency proceedings that has changed is a form for designated cases: JC 70, Judgment of Conviction.

If you have any questions about these requirements or the procedures associated with these particular cases, please contact the appropriate Trial Court Services analyst as follows: Circuit Court, Dawn Childress at 517-373-3756; Circuit Court Family Division, Jennifer Warner at 517-373-7454, and District Court, Jill Booth at 517-373-2173. General questions about the forms may also be directed to Amy L. Byrd at 517-373-4864.