

Domestic Violence and Your Right to Bear Arms

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Domestic violence is a fact of life in today's society. Numerous laws and regulations exist not only to try to protect the victim, but also to punish the guilty. Unfortunately, the unscrupulous family member or significant other to deprive an innocent party of his or her right to keep and bear arms can also use these laws. Any time a claim of domestic violence is raised, firearms rights are jeopardized.

Firearms disqualifiers exist under both the state and federal laws that may prohibit a person from possessing firearms. Under the Ohio Revised Code § 2923.13 there are five circumstances in which a person may be disqualified from owning firearms, none of which, by themselves, involve domestic violence. One of the federal disqualifiers, however, (18 U.S.C. § 922(g)) states that no person shall possess any firearm if they have been *convicted* of a misdemeanor crime of domestic violence in any court. This provision, also known as the Lautenberg Amendment, has created a great deal of litigation

A Difficult Situation

A gun enthusiast who is facing a wrongful accusation of domestic violence may have many options at his or her disposal. Most importantly, however, the individual must consult with a competent attorney immediately and before making any statements or signing any paperwork. During the initial consultation, the accused must let the attorney know that he or she is a gun owner, and that keeping his or her Second Amendment rights is one of the client's goals.

Many times, domestic violence charges can be thrown out for lack of evidence. More often, though, prosecutors will not dismiss even questionable claims out of a desire not to appear unsympathetic to the victims. If dismissal is not an option, the defense attorney will examine the facts to find weaknesses in the State's case. If the State's case is vulnerable, the attorney might recommend trying the case and hoping for a verdict of "not guilty. If there are minor defects in the State's case, but there is a genuine possibility of conviction, the attorney might (with the permission of the Defendant) negotiate with the prosecutor for a guilty plea to a lesser charge – perhaps one that does not jeopardize the Defendant's second amendment rights.

On occasion, the attorney may also recommend that the Defendant plead "no contest" to the charge. A no contest plea is not an admission of guilt, and, unlike a "guilty" plea, it can not be used against the Defendant in a subsequent civil suit – such as a divorce. A no contest plea is an admission of the facts as described in the complaint or indictment. If the facts do support a conviction then the court will convict the Defendant of the charge. *See State v. Baker*, 119 Ohio St.3d 197, 893 N.E.2d 163. If the court accepts a plea of no contest, and a conviction is entered, a person will be disqualified under 18 U.S.C. § 922(g) from possessing firearms.

In some counties, a no contest plea, combined with successful completion of a diversion program can result in the charges being dropped altogether – although this option does not exist in every county or for every domestic violence Defendant.

Rights Restoration and Sealing Records

A firearms rights restoration under Ohio Revised Code § 2923.14 is inapplicable to domestic violence disqualifiers, since the disqualification arises exclusively under federal law. But federal law also provides for restoration of firearms rights. Under 18 U.S.C. § 925(b)(c) a person disqualified under federal law may petition the United States Attorney General to have their rights restored. Currently, the Attorney General has delegated the authority to hear these petitions to the Bureau of Alcohol Tobacco Firearms and Explosives (“BATFE”). Furthermore, Congress has repeatedly refused to grant the BATFE the funding necessary to hear and decide these petitions. Therefore, the BATFE does not currently accept restoration petitions. In *U.S. v. Bean*, 537 U.S. 71 (2002) the Supreme Court of the United States held that the failure of Congress to fund the BATFE to hear these petitions was not a “denial” of the petition, which would enable the aggrieved party to appeal the “denial” to the United States District Court.

A final option is sealing the record of the conviction. A domestic violence charge that falls under R.C. § 2919.25 (A) or (B) is a misdemeanor in the first degree. A domestic violence conviction that is a first degree misdemeanor is not sealable. If, however, a domestic violence conviction is a fourth degree misdemeanor, as provided under R.C. § 2919.25(D)(2), sealing the record is a viable option. Once sealed, a person regains all of their rights and privileges to possess firearms.

Conclusion

A person wrongfully accused of domestic violence faces an uphill battle to protect his or her firearms rights. This is why it is imperative that the accused makes his or her concern over their right to possess firearms very clear to the defense attorney as soon as possible. Doing so will help the attorney to prioritize the client’s needs and goals.

Disclaimer

This article is for educational purposes only. The contents represent my own personal opinions, and should not be taken as legal advice. You can find further information on issues such as this in the Handbook of Ohio Firearms Law available at the Ohioans for Concealed Carry online store or by calling (614) 306 – 4082 to request a mail order form.