

FEDERAL FIREARMS FORFEITURE AND DOMESTIC VIOLENCE

The Bureau of Alcohol, Tobacco and Firearms (ATF), in conjunction with State and local authorities and the United States Attorney's Offices (USAO), may initiate Federal forfeiture action **under very limited circumstances** against firearms seized from domestic violence offenders. Generally, ATF will consider the adoption of a particular seizure made by a State and local law enforcement agency only where:

- Seizure and forfeiture action is appropriate under the Gun Control Act (GCA), 18 U.S.C. § 924, and Civil Asset Forfeiture Reform Act (CAFRA), 18 U.S.C. § 981 *et seq.*;
- The subject firearm was seized from a person with a qualifying conviction for a misdemeanor crime of domestic violence (MCDV) under 18 U.S.C. § 922(g)(9);¹
- **State or local law does not authorize firearms forfeiture in the particular case;**
- The Federal forfeiture action meets stringent statutory deadline and notice requirements as well as USAO prosecutorial guidelines; and,
- Any additional limitations on adoption of a particular seizure apply.

The following discussion will explain the specific limitations of Federal firearms forfeiture, particularly in the context of domestic violence offenders. It will also detail the mechanics of Federal forfeiture actions and identify specific measures that State and local authorities may take in assisting these actions.

Misdemeanor Crimes of Domestic Violence

State and local officials at the scene of a domestic incident may seize firearms from a person subject to a qualifying conviction for a misdemeanor crime of domestic violence. Where these officials lack authority for State or local forfeiture action, they may refer investigations to ATF or the USAO. ATF and the USAO will assess investigations on a case-by-case basis to determine if there is probable cause that a person: (1) knew that the person possessed a firearm or ammunition, and (2) is prohibited from possessing a firearm or ammunition due to a conviction for a qualifying MCDV. If so, the firearm used or involved in the offense may be subject to criminal forfeiture, administrative/civil judicial forfeiture, and/or abandonment.

In the case of criminal forfeiture, the USAO may seek in Federal district court an indictment or information charging violation of 18 U.S.C. § 922(g)(9), punishable by up to ten years imprisonment under section 924(a)(2). The USAO also may charge that the firearm be forfeited, specifying the property the United States seeks under section 924(d) and 28 U.S.C. § 2461(c). The forfeiture charge is treated as part of the underlying offense, although must be proven only by a preponderance of the evidence.

Typically, ATF initiates a parallel administrative/civil judicial forfeiture action. Unlike the criminal case, administrative and civil judicial forfeiture is governed by stringent statutory deadline and notice requirements. As a result, **State and local authorities must request the**

¹ For a discussion of section 922(g)(8) and qualifying protection orders, see below. Other persons may be prohibited from possessing firearms under sections 922(g)(1)-(7). For example, convicted felons are prohibited under section 922(g)(1).

Federal adoption by completing an application and submitting it to ATF within thirty (30) days of the initial seizure of the firearm. State and local authorities also must provide ATF with the current mailing address of the person from whom the firearm was seized; any other person known to have a financial interest in the firearm; and, any known counsel retained by these persons. The address of the detention facility of an incarcerated individual also should be provided. Further, a statement indicating that forfeiture is not authorized under State and local law should be provided.

Any interested party upon receipt of timely and proper notice may file with ATF a claim asserting some ownership interest in the seized weapon. The party must file the claim with ATF within thirty-five (35) days of the date appearing on the notice letter, or within thirty (30) days of the last published notice. If no claim is timely filed, ATF may enter a Declaration of Forfeiture and title to the property passes to the United States. However, if a timely and proper claim is filed, ATF is divested of its authority to forfeit the firearm. At that time, ATF counsel refers the claim to the USAO, which must initiate a civil forfeiture proceeding in Federal district court within ninety (90) days after the filing of the claim with ATF. If the United States fails to initiate timely judicial forfeiture action, the firearm may not be forfeited in a civil proceeding.

Note that Federal forfeiture may not be available where an offense fails to satisfy the applicable USAO prosecution guidelines for qualifying MCDVs, or where the USAO criminal prosecution and forfeiture proceedings fail altogether. In either case, the seizing authorities should appropriately dispose of the firearm. Questions and legal issues concerning the administrative forfeiture process, including options for disposition of a seized firearm, should be coordinated with the appropriate ATF Assistant or Division Counsel's office.

Finally, ATF pursues voluntary abandonment simultaneously with most forfeiture proceedings. Even where a person has abandoned a firearm to ATF, however, the agency generally initiates an administrative forfeiture action against the firearm. Doing so extinguishes any potential third party interests and clearly establishes ATF's legal authority to destroy the firearm.

Protection Orders

State and local officials at the scene of a domestic incident also may seize weapons from a person subject to a protection order. Generally, a person subject to a qualifying protection order is prohibited under Federal law from possessing firearms or ammunition until lapse of or court termination of the court order. 18 U.S.C. §§ 922(g)(8), 924(d). However, the United States cannot initiate Federal forfeiture action against a firearm found in possession of a person subject to a qualifying protection order. Rather, firearms seized from that person may be withheld only until the order lapses or is terminated. At that time, the seized firearms must be returned to the owner or possessor, or to a person delegated by that owner or possessor, unless the return of the firearm would place the individual or his delegate in violation of law. The United States will not adopt the seizure or initiate any kind of forfeiture proceedings in these circumstances.

**FOR FURTHER INFORMATION ABOUT FEDERAL FIREARMS FORFEITURE, CONTACT
YOUR LOCAL FIELD DIVISION OF THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
BY CALLING (800) 800-3855**