



The New Misdemeanor Dating Violence Federal Firearms Prohibition

AN FAQ FOR VICTIM ADVOCATES

The National Resource Center on
Domestic Violence and Firearms

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VICTIM ADVOCATES KNOW TOO WELL THAT DATING VIOLENCE AND FIREARMS CAN BE A DEADLY COMBINATION.

Federal law prohibits certain domestic abusers from accessing firearms: those subject to a domestic violence protection order and those convicted of a misdemeanor crime of domestic violence. Until recently, the federal misdemeanor crime of domestic violence firearms prohibitor—which forbids persons convicted of certain misdemeanor crimes of domestic violence from possessing or purchasing firearms and ammunition—did not cover dating relationships. That gap, sometimes referred to as the “boyfriend loophole,” was closed by Congress in 2022 in the Bipartisan Safer Communities Act (BSCA).

WHAT IS THE NEW FEDERAL LAW THAT FORBIDS PERSONS CONVICTED OF MISDEMEANOR CRIMES OF DATING VIOLENCE FROM POSSESSING FIREARMS OR AMMUNITION?

BSCA amended an existing law (originally passed in 1996) which prohibits persons convicted of a misdemeanor crime of domestic violence from possessing or purchasing firearms or ammunition. This original law is commonly referred to as the “misdemeanor crime of domestic violence (MCDV) prohibitor” or the “Lautenberg Amendment.” It did not cover dating violence.

As a result of the new language created in the BSCA, a person convicted of a misdemeanor crime of domestic violence in a dating relationship (MCDV(DR)) may also be prohibited from possessing or buying firearms or ammunition under federal law. If that convicted person tries to buy a firearm or ammunition, they may be in violation of federal law, just as they would if they had been convicted of an MCDV involving other relationships.

WHAT RELATIONSHIPS DID THE FEDERAL FIREARMS LAW RECOGNIZE BEFORE THE PASSAGE OF BSCA?

Until BSCA passed in 2022, federal firearms law limited qualifying relationships under the MCDV prohibitor to persons who are or were spouses, parents, or guardians of the victim; persons who are or were cohabitating as a spouse, parent, or guardian of the victim, parties having a child in common, or persons similarly situated to spouses, parents or guardians of the victim. It did not cover dating relationships.

WHY IS THE RELATIONSHIP STATUS SO IMPORTANT?

The language of the federal MCDV prohibitor makes it clear that the only misdemeanor convictions that invoke the federal firearms prohibitor are misdemeanor convictions for crimes committed against someone with whom the convicted person has a qualifying relationship. For the federal MCDV prohibition to apply to convicted offenders, there has to be explicit information included in the state, tribal or local court conviction record that a qualifying relationship existed between the offender and the victim. BSCA added “dating partner” to the list of relationships covered by the federal law.

HOW DOES THE FEDERAL LAW DEFINE A “DATING RELATIONSHIP”?

The law defines a “dating relationship” as a relationship between individuals who have or have recently had a “continuing serious relationship of a romantic, intimate nature.”

The existence of a dating relationship is based on:

- (1) The length of the relationship,
- (2) The nature of the relationship, and
- (3) The frequency and type of interaction between individuals involved in the relationship.

HOW DOES THE FEDERAL GOVERNMENT KNOW THAT THE OFFENDER AND VICTIM WERE IN A DATING RELATIONSHIP?

If your jurisdiction has a separate named crime of dating violence, it is easy for federal authorities like the ATF, the U.S. Attorneys offices or the FBI (using the National Instant Criminal Background Check System (NICS)) to determine that a dating relationship existed, just by looking at the name of the crime. For example, Louisiana’s crime of “battery of a dating partner”¹ would alert federal authorities on its face that the conviction was for a crime involving violence against a dating partner.

If the offender is convicted of a more generic crime, such as assault or battery, then federal authorities will look in the court record to find evidence of the type of relationship. For example, New York’s criminal assault law² applies to assault conduct regardless of the relationship between the offender and the victim. Evidence supporting that the offense was committed against a dating partner could be found in the testimony of witnesses or noted in a police report or the charging documents. In this case, it is important that evidence is included within the court record that the victim was in a dating relationship with the offender, such as testimony relating to the relationship or a statement of the relationship in the court records relating to the case.

WHY DOES IT MATTER THAT FEDERAL AUTHORITIES ARE AWARE THAT AN INTIMATE PARTNER RELATIONSHIP EXISTED BETWEEN THE CONVICTED PERSON AND VICTIM RELATED TO THE QUALIFYING CONVICTION?

When someone purchases a firearm from a licensed dealer, a federal background check is performed to ensure the purchaser is not prohibited from having a firearm. For that reason, the federal authorities that perform background checks for firearm purchases must have access to information that may invoke the firearms ban. Because misdemeanor convictions for domestic violence and dating violence take place in state, local and tribal courts, federal authorities performing a background check need to be able to see from the state, local or tribal court record that a conviction qualifies as a crime of domestic/dating violence.

WHAT WILL ESTABLISH THE LENGTH OF THE RELATIONSHIP?

Context matters in determining the length of a relationship and the context can be impacted by many factors. For example, the age of the dating partners may create different expectations about how long a relationship must be to be “a continuing serious relationship.” A dating relationship involving teens that has lasted a few weeks may be enough to establish a “continuing serious relationship.” In this instance it may be helpful to show that the offender texted that this was the longest relationship they’d ever been in. A relationship between adults, however, may require more time to qualify as a “continuing serious relationship.” Yet there are also adults who have been in a relationship for a few weeks, but who have become engaged during that time. That may constitute a “continuing serious relationship.” Talking to the survivor and asking questions about the relationship may help unearth various ways to show the “continuing” and “serious” nature of the relationship.

Evidence establishing the length of the relationship can include records of communications between the dating partners: how long they have been texting, emailing, phoning, or how long they have been communicating in other ways—and whether they have described themselves as being in a relationship. Other evidence to establish the length of the relationship can include calendar notations of events like anniversaries or regularly scheduled dates over a period of time. Family members or friends may also be able to attest to the length of the relationship.

WHAT WILL ESTABLISH THE NATURE OF THE RELATIONSHIP?

The nature of the relationship is another required factor to be considered. If both partners describe their relationship as “exclusive,” that may help establish that they were in a “dating relationship.” But if the partners regularly date others, it may not be considered a “dating relationship.” While exclusivity is not required to establish a dating relationship, Congress’ intent was to exclude casual intimate partner relationships, such as “hook ups” from the definition of “dating relationship.” If both partners represent to others that they are “dating,” even though they are seeing others, theirs may be the primary “dating relationship.” Exclusivity can help in determining whether a “dating relationship” exists between two partners, but other situations may exist that are not exclusive (for example, an extramarital affair), in which case evidence is needed to show how the relationship is a “serious” one that is “intimate or romantic in nature.”

Evidence to establish the nature of the relationship will often rely on the testimony of one or more of the dating partners. Friends and family may also be able to speak to the nature of the relationship. For example, are the couple always invited together to family gatherings? It is important to establish both how the couple view their relationship, as well as how others view their relationship. Other evidence that may help in establishing the nature of the relationship could be texts, emails, notes, cards, and other communications that talk about dating or contain expressions of romantic or intimate feelings or perhaps photos of the partners at holidays, vacations, or social gatherings.

WHAT WILL ESTABLISH THE FREQUENCY AND TYPE OF INTERACTION BETWEEN THE VICTIM AND THE OFFENDER?

While it is easy to make the case for a “continuing, serious relationship of a romantic or intimate nature” by simply showing that the couple met regularly, there will be other relationships in which the couple will have longer intervals between meetings, like a month or two, but when they do meet, it will be for several days at a time. Certain contexts can explain the gaps in interactions—such as the couple living at long distances from each other, inhibiting their ability to meet more frequently. Regularity in meeting, even if there are gaps in time between meetings, can help establish that these less frequent meetings are nonetheless “serious” and “romantic or intimate.”

Evidence to establish frequency of interactions will address how often the couple meets: every day? once a week? once a month? For example, a couple in a long-distance relationship may see each other in person only once every six to eight weeks, but there may also be evidence that they frequently connect via video or phone calls in between. Evidence can also show that even though they don’t meet often or regularly, when they do meet, they spend significant time, like a week or a whole summer, together, particularly if they cohabit during those times.

CONCLUSION

State, Tribal and local courts and prosecutors have a great responsibility for establishing these relationship requirements. With this information clearly in the case record, victims of dating violence will have stronger protection from firearms violence under the new federal law. Advocates can play an important role in helping survivors preserve and provide evidence that establishes the nature of their relationship with the offender.

Endnotes

- 1 LA. REV. STAT. § 14:34.9
- 2 NY Penal Law § 120.00



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