22-03 - Firearms Possession Cases with a Prior Domestic Violence Conviction

Los Angeles County Sheriff's Department

NEWSLETTER

Field Operations Support Services

FIREARMS POSSESSION CASES WITH A PRIOR DOMESTIC VIOLENCE CONVICTION (FEDERAL FILING CRITERIA / PROCEDURES)

PURPOSE

The purpose of this newsletter is to inform Department personnel of the procedures to submit certain cases to the Assistant United States Attorney (AUSA), which involve gun or ammunition possession and the defendant has a prior domestic violence, family violence or is the restrained person of a current domestic violence restraining order.

BACKGROUND

As part of the Bureau of Alcohol Tobacco Firearms and Explosives (ATF) and the United States Attorney's Office's Domestic Violence Initiative, ATF has expressed a willingness to accept case filings involving defendants in possession of a firearm or ammunition, and who have a prior domestic/family violence conviction or are currently a restrained person listed in a domestic violence restraining order.

If convicted, these cases can receive Federal prison sentences, of which eighty percent must be served prior to the inmate's release. In addition, the sentence is served out of state.

PROCEDURE

There are four elements needed to submit a case to the AUSA's office via the ATF:

- The defendant knowingly possessed a firearm or ammunition;
- The firearm or ammunition traveled in interstate commerce (the firearm or ammunition was manufactured outside of California);
- The defendant was previously convicted of a domestic violence crime, family violence crime, or is the restrained person in a domestic violence restraining order; and
- The defendant knew they had a prior domestic violence or family violence conviction or is the subject of a domestic violence restraining order.

Knowingly Possessed a Firearm or Ammunition

This element can be proven by the defendant's admission, photographs or videos depicting the defendant in possession, the defendant's fingerprints recovered from the firearm or ammunition, and/or the defendant's DNA being recovered from the firearm or ammunition. There are additional ways to prove a defendant knowingly possessed a firearm; however, the above-listed methods are preferred by the AUSA's office.

Firearm or Ammunition Traveled in Interstate Commerce

This element can be met by noting the manufacturer's make and model stamp on the firearm. If the manufacturer's stamp shows the firearm was manufactured outside of California, the requirements for this element are met. If a firearm serial number was obliterated but the manufacturers stamp is present, it still meets this element.

Ammunition's origin of manufacture will be determined by including high-quality, close- up pictures of the ammunition in the report. The ATF has interstate nexus experts who will examine the firearm/ammunition evidence and make the final determination as to where the firearm/ammunition was manufactured and if it moved in interstate commerce.

A "ghost gun" won't have a manufacturer's stamp. Generally, the AUSA and ATF do not accept cases with "ghost guns" due to the difficulty of proving it traveled in or affected interstate commerce. However, if the ghost gun was loaded with ammunition, the defendant can be charged with possession of the ammunition that traveled in interstate commerce.

Defendant Previously Convicted of Domestic/Family Violence, or is a Restrained Person of a Domestic Violence Restraining Order

The following convictions meet the criteria for this element:

- Any domestic violence conviction (misdemeanor or felony);
- Spousal rape or sexual battery;
- Any child abuse conviction where the convicted person was a parent or guardian; or
- Any child sexual assault where the convicted person was a parent or guardian.

Note: Does not include elder/dependent adult abuse cases.

In all cases, the victim must be either the defendant's current or former spouse, shares a child with the defendant, or cohabitates with the defendant.

Note: Dating relationships without cohabitation or children in common do not qualify.

A defendant may also qualify for this element if:

- They are the current restrained person of a Domestic Violence Restraining Order (DV-130); or
- They have a previous violation of a Domestic Violence Restraining Order (DV-130)/Criminal Protective Order – Domestic Violence (CR-160).

Note: Temporary or Civil Restraining orders with no domestic or family violence nexus do not qualify.

Knowledge of a prior domestic violence crime, family violence crime conviction, restrained person of a domestic violence restraining order, or has a prior conviction for a violation of a domestic violence restraining order.

- The defendant's statements, court minutes, proof of service and criminal record showing a conviction can qualify for this element.

When the above criteria have been met, the case may be submitted to the ATF for preliminary screening via e-mail to LADVreferrals@atf.gov. The following items shall be provided:

- All reports including supplemental reports and copies of search warrants if applicable;
- The defendant's criminal history;
- The minute orders of the qualifying prior convictions;
- The name and phone number of the handling deputy district attorney; and
- Any pending court dates.

REFERENCES

18 USC 922(g)(8) Possession of a Firearm by a defendant subject to a Domestic Violence Restraining Order

18 USC 922(g)(9) Possession of a Firearm by defendant who was convicted of a Domestic Violence Misdemeanor