

STATE OF MARYLAND

DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

SECRETARY'S DIRECTIVE: 06-98

DATE: February 19, 1998

SUBJECT: Federal Omnibus Consolidated Appropriations Act of 1997

I. PURPOSE

This Secretary's Directive requires all agencies of the Department to comply with the Federal Omnibus Consolidated Appropriations Act of 1997 which prohibits an employee from carrying or possessing a gun or ammunition, either while on or off duty, if the employee has ever been convicted of a misdemeanor crime of domestic violence.

II. SCOPE

This Secretary's Directive applies to all Department employees who may be required to receive a gun or ammunition while performing their duties.

III. DEFINITION

As defined in the federal law, a misdemeanor crime of domestic violence means an offense that:

- A. Is a misdemeanor under federal or state law;
- B. Involved the use or attempted use of physical force, or the threatened use of a deadly weapon;
- C. Is or was committed by a:
 - (1) Current or former spouse, parent, or guardian of the victim;
 - (2) Person with whom the victim shares a child in common;
 - (3) Person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or;
 - (4) Person similarly situated to a spouse, parent, or guardian of the victim.

This is true whether or not the state statute specifically defines the offense as a domestic violence misdemeanor.

A person shall not be considered to have been convicted of such an offense under the law if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned.

IV. POLICY

The Department shall comply with the Omnibus Consolidated Appropriations Act of 1997 through a program of self-reporting.

V. PROCEDURE

- A. All employees required to receive a firearm shall be given a letter which explains the federal law (see Appendix A) and a Qualification Inquiry Form (see Appendix B).
- B. Employees shall complete and return the Qualification Inquiry, using the accompanying pre-addressed envelope, to their personnel office within five days of receipt.
- C. Agency management shall review all Qualification Inquiries to determine if individuals have been involved in a crime of domestic violence.
- D. A notification letter (see Appendix C) shall be forwarded to identified employees requiring them to provide satisfactory evidence that their possession of a departmentally-issued firearm is not a violation of federal law.
- E. The agency shall take appropriate administrative action, up to and including dismissal, against employees who have been convicted of a crime of domestic violence or who have not truthfully completed the Qualification Inquiry Form.
- F. Employees are responsible for reporting any arrests for domestic violence subsequent to completing the Qualification Inquiry in accordance with DPSCS Standards of Conduct.

By Order of the Secretary

March 5, 1998
Date

Stuart O. Simms
Stuart O. Simms
Secretary

Effective Date: This Order shall be effective on the date of publication.

Distribution: Senior Advisor - DPSCS
Deputy Secretary - DPSCS
Assistant Secretary - DPSCS
Agency Heads - DPSCS
Division Directors - DPSCS
Wardens - DPSCS

Appendix A: Letter of Explanation

Appendix B: Qualification Inquiry Form

Appendix C: Notification

NOTIFICATION TO ALL EMPLOYEES WHO ARE ASSIGNED OR COULD BE ASSIGNED TO A POSITION REQUIRING USE OF A FIREARM

You are hereby notified of the enactment of the Omnibus Consolidated Appropriations Act of 1997 (H.R. 4278) which amends the Gun Control Act of 1968, effective September 30, 1996. This amendment makes it unlawful for any person convicted of a crime of domestic violence to ship, transport, possess, or receive firearms or ammunition. The amendment also makes it unlawful for any person to sell or otherwise dispose of a firearm or ammunition to any person knowing or having reasonable cause to believe that the recipient has been convicted of such a crime.

There is no exemption for public safety and correctional personnel and it is retroactive. Therefore, federal law now prohibits an employee from carrying or possessing a weapon either while on or off duty if he or she has ever been convicted of a domestic violence offense.

The Department of Public Safety and Correctional Services has an obligation to ensure that all employees of this agency are in compliance with the federal Gun Control Act. Appropriate personnel action will be taken against any member who violates Federal or State law.

Additionally, if you have ever been found guilty of or plead guilty to a misdemeanor or felony crime of domestic violence in this or any other State, even if you were sentenced to only probation, you are hereby ordered to report that information to your personnel office within five days of receipt of this notice. Failure to report this information shall be treated as a violation of this department's rules and regulations.

A crime of domestic violence is one in which physical force was used or attempted or there was the threatened use of a deadly weapon, committed against a current or former spouse, parent or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

This definition includes all misdemeanors that involve the use or attempted use of physical force (e.g., simple assault, assault and battery) if the offense is committed against one of the defined parties. This is true whether or not the State statute or local ordinance specifically defines the offense as a domestic violence misdemeanor.

If you have any questions regarding the foregoing, please contact your personnel office.

QUALIFICATION INQUIRY

Within five (5) days of receipt, you are required to complete this Qualification Inquiry, seal it in the pre-addressed envelope provided, and submit it to your personnel office. In completing this form, you are advised:

- (a) The purpose is to obtain information which will assist in the determination of whether personnel reassignment and/or administrative action are warranted.
- (b) You have a duty to complete this form. Departmental disciplinary action, including dismissal, may be undertaken if you refuse to answer or if you fail to reply fully and truthfully.
- (c) Neither your answers nor any information or evidence gained by reason of your answers can be used against you in any criminal prosecution for a violation of Title 18, United State Code, §922(g)(9). However, the answers you furnish and any information or evidence resulting therefrom may be used against you in the course of departmental administrative proceedings.

1. Have you ever been convicted of a crime of domestic violence within the meaning of the statute (attached)?

Yes ___ No ___ Initials ___

2. Have you ever received probation for a misdemeanor crime of domestic violence within the meaning of the statute?

Yes ___ No ___ Initials ___

3. If you answered YES to either of the above questions, please provide the following information:

Court/Jurisdiction: _____

Docket/Case Number: _____

Statute/Charge: _____

Date Sentenced/probation received: _____

I hereby certify that, to the best of my information and belief, all of the information provided by me is true, correct, complete, and made in good faith. I understand that false or fraudulent information provided herein may be grounds for adverse action, up to and including dismissal.

Name and Title: (print or type) _____

Assignment: _____

Date

Signature

NOTIFICATION

The _____ has received information that indicates you have been convicted of an offense which may constitute a violation of the Federal Gun Control Act, as amended, effective September 30, 1996. Specifically, the information received has revealed that you were convicted of _____ in 19 ____ . If this conviction involved domestic violence as defined by Federal law, it is illegal for you to possess a firearm and/or ammunition.

Effective immediately you are on leave with pay up to a maximum of five working days. If you are unable to lawfully possess a firearm or ammunition due to this Federal law, you are subject to termination of your employment with the Department.

You have five working days from receipt of this notice to provide satisfactory evidence to your personnel office that your possession of Departmentally-issued weapons or any other firearm is not a violation of Federal law.

If you take action and the conviction is set aside or pardoned, you should notify your Personnel Officer immediately.