



OFFICE OF THE DIRECTOR OF POLICE
THE UNIVERSITY OF TEXAS SYSTEM
TRAINING BULLETIN 004
FIREARMS AND FAMILY VIOLENCE
AUGUST 4, 2014



I. Purpose

The purpose of this training bulletin is to provide guidance to University of Texas System Police officers regarding the Texas laws that permit peace officers to seize firearms from perpetrators of family violence.

II. Definitions

Note: Definitions and statutes presented below may be paraphrased or a partial version of the legal definition.

Dating Violence —means an act by an individual that is against another individual with whom that person has or has had a dating relationship and that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the individual in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defense measures to protect oneself. (FC §71.0021)

Family—includes individuals related by consanguinity or affinity, individuals who are former spouses of each other, individuals who are the parents of the same child, without regard to marriage, and a foster child and foster parent, without regard to whether those individuals reside together.(FC §71.003)

Family Violence —an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself; includes dating violence. (FC §71.004)

Firearm—means any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use. (PC §46.01)

Household—means a unit composed of persons living together in the same dwelling, without regard to whether they are related to each other. (FC §71.005)

Peace officer—means a person elected, employed, or appointed as a peace officer under Article 2.12, Code of Criminal Procedure, Section 51.212 or 51.214, Education Code, or other law.

Protective Order—A civil order to protect domestic violence, sexual assault and stalking victims. In family violence situations, the order can prohibit an abuser from possessing firearms.

III. State Law

There are a number of statutes that may have relevance when encountering family violence perpetrators that own or have immediate access to firearms. Officers should understand the elements of each statute and use good judgment in their application. Note: The information presented below represents a paraphrased or partial version of the referenced statute.

A. Penal Code Statutes

1. **UNLAWFUL POSSESSION OF FIREARM (PC §46.04)**

a) A person who has been convicted of a felony commits an offense if he possesses a firearm after conviction and before the fifth anniversary of the person's release from confinement following conviction of the felony or the person's release from supervision under community supervision, parole, or mandatory supervision, whichever date is later.

b) A person who has been convicted of an offense under §22.01 (Assault) punishable as a Class A misdemeanor and involving a member of the person's family or household, commits an offense if the person possesses a firearm before the fifth anniversary of the later of:

- 1) the date of the person's release from confinement following conviction of the misdemeanor; or
- 2) the date of the person's release from community supervision following conviction of the misdemeanor

2. **VIOLATION OF PROTECTIVE ORDER OR MAGISTRATE'S ORDER (PC §25.07)**

a) A person commits an offense if, in violation of an order issued under §6.504 (Protective Orders) or Chapter 85 (Issuance of Protective Order) Family Code, under Article 17.292 (Magistrate's Order for Emergency Protection) Code of Criminal Procedure, or by another jurisdiction as provided in Chapter 88, Family Code (Uniform Interstate Enforcement of Protective Orders Act), the person knowingly or intentionally possesses a firearm.

b) A peace officer investigating conduct that may constitute an offense under this section may *not* arrest a person protected by that order for a violation of that order.

B. **Requirements of Order Applying to Person Who Committed Family Violence Texas Family Code §85.022**

1. In a protective order, the court may prohibit the person found to have committed family violence from possessing a firearm, unless the person is a peace officer as defined by PC §1.07, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.

2. In a protective order, the court may suspend a license to carry a concealed handgun issued under §411.177, Government Code, that is held by a person found to have committed family violence.

C. **Texas Government Code Statutes on Concealed Handguns**

1. **Eligibility (§411.172)**

a) A person is NOT eligible for a license to carry a concealed handgun if the person:

- (1) has been convicted of a felony;
- (2) has been charged with the commission of a Class A or Class B misdemeanor;
- (3) is under an information or indictment for a felony;
- (4) is currently restricted under a court protective order or subject to a restraining order affecting the spousal relationship, other than a restraining order solely affecting property interests;

2. **Revocation** (§411.186)
 - a) The department shall revoke a license under this section if the license holder subsequently becomes ineligible for a license under §411.172, unless the sole basis for the ineligibility is that the license holder is charged with the commission of a Class A or Class B misdemeanor or equivalent offense, or of an offense under PC §42.01 (Disorderly Conduct) or equivalent offense, or of a felony under an information or indictment.
3. **Suspension of License** (§411.187)
 - a) The department shall suspend a license under this section if the license holder:
 - (1) is charged with the commission of a Class A or B misdemeanor or equivalent offense, or of an offense under PC §42.01 or equivalent offense, or of a felony under an information or indictment;
 - (2) commits an act of family violence and is the subject of an active protective order rendered under Title 4, Family Code, or
 - (3) is arrested for an offense involving family violence or an offense under PC §42.072 (Stalking) and is the subject of an order for emergency protection issued under Article 17.292 of the Code of Criminal Procedure.

IV. Additional Considerations

Search warrants - As stated previously, under PC §25.07 a person is prohibited from possessing a firearm while under an active protective order. Officers are strongly encouraged, whenever appropriate, to obtain search warrants to seize firearms as part of all reasonable efforts to prevent further domestic violence.



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