

DEPARTMENT GENERAL ORDER 09-27

OFFICE of the CHIEF OF POLICE
REPLACES: Special Order 97-01

DATE: September 25, 2009

EMPLOYEE INVOLVEMENT IN DOMESTIC VIOLENCE

I. PURPOSE.

To establish internal guidelines to comply with the Violent Crime Control and Law Enforcement Act, duly amended in 1997, to address misdemeanor domestic violence acts involving law enforcement officers.

II. DEFINITIONS.

Domestic Violence – As defined under this act, the law stipulates a misdemeanor crime of domestic violence as an offense, under either state or federal law, where the crime has “as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by 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 the victim as a spouse, parent or guardian, or by a person similarly situated to a spouse, parent or guardian of the victim.”

III. FEDERAL REQUIREMENTS.

The applicable amendment to the federal law (18 U.S.C. Section 922 (g)(8) and Section 925) prohibits anyone who has been served with a domestic violence Order of Protection or who has been convicted of a misdemeanor crime of domestic violence from possessing a firearm or ammunition. ***THERE IS NO EXCEPTION FOR LAW ENFORCEMENT OFFICERS OR MEMBERS OF THE MILITARY.***

A. ORDER OF PROTECTION

For the purposes of the act, the protection order must have been issued following an evidentiary hearing in which the defendant had notice and an opportunity to appear. The protection order must also include a specific finding that the defendant represents a credible threat to the physical safety of the victim. By this

standard an Ex Parte Order of Protection does not fall within the scope of this act: a full Order of Protection must be in place.

The restrictions imposed in conjunction with a full Order of Protection do not apply to firearms issued by governmental agencies to a law enforcement officer or military personnel so long as the officer of military member is on duty. Personal firearms do not fall within this exemption nor may these personnel possess officially issued firearms when off duty.

B. CONVICTION FOR DOMESTIC VIOLENCE

In accordance with the provisions of the act, it is illegal to possess a firearm after conviction of a misdemeanor crime of domestic violence. This prohibition applies to persons convicted of such misdemeanors at any time, even if the conviction occurred prior to the law's effective date. A qualifying misdemeanor domestic violence crime must have as an element the use or attempted use of physical force or the threatened use of a deadly weapon.

It should be noted that a person may be able to possess a firearm if the conviction has been expunged or set aside.

The official use exemption does not apply to this section. This means that law enforcement officers or military personnel who have been convicted of a qualifying domestic violence misdemeanor will not be able to possess or receive firearms for any purpose, including the performance of official duties.

IV. PROCEDURES.

A. OFFICIAL NOTIFICATION PROCESS

When a sworn employee of the department is served with an Ex Parte Order of Protection, he/she will submit written notice through the chain of command to the Chief of Police as soon as practical. The memorandum will include the court of jurisdiction, date and time of the hearing and the circumstances leading to the Order of Protection.

Contingent upon the ruling of the court, the affected employee will then submit a written status report indicating the decision of the court to grant or deny the petitioner's request for a full Order of Protection. The notification requirement shall also apply to any appeal of the court's ruling.

1. If the petitioner's request for a full Order of Protection is denied, the employee may remain in their present assignment, without conditions. However, the Chief of Police may order an internal investigation to determine if the employee violated any department policy.

2. If the petitioner's request for a full Order of Protection is granted, the employee will be required to surrender their department-issued weapon and ammunition at the end of each tour of duty to their supervisor. These items will then be placed in the armory until the employee returns to work at which time they will be reissued.

Under these circumstances, the employee may not possess any privately owned firearms or ammunition.

In these cases, the Chief of Police will order an internal affairs investigation to determine if the employee violated any department policy.

When a sworn employee is arrested for a domestic violence offense, he/she will notify the Chief of police via the established chain of command prior to their next scheduled duty shift. The required memorandum will include all particulars relating to the case.

1. The employee will immediately be placed on administrative duty, surrendering their department issued weapon and ammunition to their supervisor.

Under these circumstances, the employee also may not possess privately owned weapons or ammunition.

2. The employee will keep the department apprised of the status of the case, reporting when formal charges are filed or prosecution is declined.

The Chief of Police will also order an internal affairs investigation to determine the employee violated any department policy.

B. QUALIFICATION FORM.

To comply with the provisions of the federal law, the Missouri Attorney General suggested that police departments require officers to sign a Qualification Form attesting to any misdemeanor convictions for domestic violence or to the absence thereof.

Therefore, all current and future commissioned Clayton police officers shall be required to complete and sign a departmental Qualification Form in the presence of a witness (a supervisor or commander). Completed forms will be forwarded to the commander of the Investigations and Support Bureau where they will be entered into each individual personnel file.

Failure to complete a Qualification Form as requested or providing false or fraudulent information will result in disciplinary action, up to and including dismissal.

BY ORDER OF:

THOMAS J. BYRNE
Chief of Police

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