

ORDERS OF PROTECTION AND FIREARMS

Frequently Asked Questions

DISCLAIMER: This information is not legal advice. It is for informational purposes only. You should consult a lawyer for legal advice specific to your situation as each case is different.

1. When can a person lose the right to possess a firearm?

An abuser can lose his/her right for possessing a firearm if the person falls within one of the following categories:

- A person convicted of a felony;
- A person convicted of a misdemeanor crime of domestic violence (a crime involving domestic violence, i.e., domestic assault)
- A person convicted of stalking;
- A person under a qualifying order of protection;
- A person who is prohibited from possessing a firearm under any other provision of state or federal law.

2. Does my abuser lose his right to possess a firearm if I get an order of protection against him or her?

Yes. Your abuser can lose his right to possess a firearm if the order of protection you get is a qualifying order of protection. (T.C.A. § 36-3-606)

3. What is a “qualifying” order of protection?

If you and the abuser are spouses, former spouses, have a child in common, or have ever lived together, then the order of protection is probably a qualifying order of protection. Other provisions also apply to a qualifying order of protection:

- The abuser must have received notice of the hearing, and had an opportunity to be heard. The order can still be a qualifying order even if the abuser does not show up to court after receiving notice.
- The order of protection prohibits the abuser from harassing, stalking, or threatening you or the abuser’s children or your children; OR the order prohibits the abuser from engaging in other behaviors that would put you or the children in fear of bodily injury.

- The judge finds that the abuser is a credible threat to your physical safety or the children’s safety; OR the language of the order prohibits the use, attempted use, or threatened use of physical force against you or the children that would reasonably be expected to cause bodily injury.

4. Is every order of protection in Tennessee a “qualifying” order of protection?

No. There are instances when the relationship requirements for the qualifying order of protection would not be met, such as a dating relationship where you have never lived with the abuser, had a sexual relationship with the abuser, or have a child in common with the abuser.

5.. When the order of protection is issued, how does my abuser know that he or she cannot possess a firearm?

The court will order the abuser to terminate physical possession of firearms by any lawful means within 48 hours of granting a qualifying order of protection. The order of protection will also put the abuser on notice that he or she is not allowed to possess a firearm. You will receive a copy of this order.

6. What does “lawful means” mean?

An example of a “lawful means” is transferring possession of the firearms to a third party who is not prohibited from possessing firearms. If the abuser possesses firearms as business inventory or firearms that are registered under the National Firearms Act, there are additional statutory provisions which may apply.

7. How does the court know whether my abuser complied with the surrender?

The abuser must obtain and complete an Affidavit of Firearm Dispossession form attesting that he or she surrendered the firearm according to the law. Most judges will put a definite date on the order of protection for the filing of the Affidavit of Firearm Dispossession form. Failure to comply with the filing may result in criminal penalties against the abuser.

8. Where can you obtain an Affidavit of Firearm Dispossession?

You can locate the Affidavit of Firearm Dispossession on the website of the Administrative Office of the Courts (www.tncourts.gov). It is the abuser’s responsibility to obtain and file this form. Clerks and other court personnel may have them as well.

9. What happens if my abuser continues to possess firearms while under a qualifying order of protection?

The abuser could be found guilty of violating three state laws: failure to comply with the surrender (T.C.A. § 36-3-625), unlawful possession of a firearm (T.C.A. § 39-17-1307), and violation of an order of protection (T.C.A. § 39-13-113). The abuser may also be guilty of violating federal law.

10. Can the abuser regain possession of his or her firearms?

Yes. The abuser can regain possession of his or her firearms when the order of protection or any successive order is no longer in effect. This can be done without action by the court. If you feel that you will no longer be safe once the order expires, you can go to court and ask to have the order of protection extended so that it doesn't expire.

11. Does this firearm prohibition apply if my abuser is a member of law enforcement or military personnel?

Yes. It would apply. Tennessee law, unlike the federal law, does not have an exception for law enforcement or military personnel.

12. Does this firearm prohibition apply to all types of firearms?

Yes. Tennessee law, unlike federal law, has no exceptions for specific types of firearms. Federal law makes exceptions for firearms made before 1989 and powder/muzzle loaders.