

KNOW YOUR RIGHTS in ALASKA

UNDER PROTECTIVE ORDERS

If it will make you safer, you can ask a judge to stop an abuser from using or possessing a gun.

In Alaska, the protective order known as a regular Protective Order can prohibit an abuser from using or possessing a firearm if a judge finds that the abuser was “in actual possession of or used a firearm during the commission of domestic violence.”ⁱ

Therefore, during the hearing, tell the judge if the abuser has a gun or has threatened you with one, and ask the court to protect you and your family. Under state law, a regular Protective Order should include a written warning about the federal prohibition against firearms.

It is the responsibility of your local police department or the Alaska State Troopers to enforce the provisions in your protective order. Immediately report any violation of your protective order to the local police or Alaska State Troopers.

Federal law also states that anyone under a qualifying protective order may not possess a gun.ⁱⁱ Unlike state law, federal law does not require a finding that a firearm was possessed during the commission of domestic violence.

AFTER A CRIMINAL DOMESTIC VIOLENCE CONVICTION

Alaska state law does not specifically address the issue of guns after domestic violence convictions. However, federal law states that if your intimate partner is *convicted* of any felony or a qualifying misdemeanor crime of domestic violence, it may be illegal for him to obtain or possess a gun.ⁱⁱⁱ

For additional information please contact your local domestic violence/sexual assault program at:

Local Police number:

Call the National Domestic Violence Hotline at 800.799.7233 to find your local program.

⁽ⁱ⁾ALASKA STAT. § 18.66.100 // ⁽ⁱⁱ⁾18 U.S.C. § 922(g)(8). A “qualifying order” is issued after a hearing where your partner received notice and could participate. The qualifying order must also (1) restrain your partner from harassing, stalking, or threatening you or your child and/or engaging in conduct that causes fear of bodily injury; and (2) include a finding that your partner represents a credible threat to you or your child’s physical safety or prohibits the use, attempted use, or threatened use of physical force that would be reasonably expected to cause bodily injury to you or your child. ⁽ⁱⁱⁱ⁾18 U.S.C. § 922(g)(9). “Misdemeanor crime of domestic violence” is defined in 18 U.S.C. § 921(a)(33)(A) as any offense that is “(1) a misdemeanor under federal or state law and (2) has as an element the use of physical force or threatened use of a deadly weapon, and was 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, or 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.” The crime need not specifically fall under a domestic violence statute—any assault or battery against a domestic partner is enough. See *U.S. v. Ball*, 7 Fed. Appx. 210 (4th Cir. Apr. 4, 2001), cert. denied 122 S. Ct. 226(2002) and *U.S. v. Barnes*, 295 F.3d. 1354 (DC Cir. 2002).

Information accurate as of January 2005.

For additional brochures please call: (907) 586.5643

ANDVSA Legal Advocacy Project

DOMESTIC VIOLENCE & GUNS

**A Guide to the Laws That Can
Remove Guns from a
Dangerous Abuser**

ALASKA

Sponsored by the
Americans for Gun Safety Foundation

HOW THE LAW CAN HELP YOU BE SAFER

IN 6 STEPS

It is the responsibility of judges and police to enforce the law and to protect your safety.

1 STEP ONE

SAFETY PLANNING & ASSISTANCE

Your safety is the most important concern. A court order prohibiting an abuser from having a gun does not guarantee your safety and could create new dangers for you and your family. If you are in immediate danger, call 911. Before taking action, you may want to talk with your local domestic violence/sexual assault program to help you decide if a gun prohibition is in your best interest and to plan for your safety. You can contact your local domestic violence/sexual assault organization by calling the number on this brochure or the National Domestic Violence Hotline at: 1-800-799-SAFE (7233) or (1-800-787-3224 TTY for the deaf).

2 STEP TWO

IF YOU BELIEVE YOU MAY BE SAFER, YOU CAN SEEK A PROTECTIVE ORDER

A Protective Order is an order from a judge that imposes restrictions on what the person who is hurting or threatening you can do and what kind of contact that person can have with you. There are three types of Protective Orders in Alaska: *Emergency* (72 Hour), *Ex-Parte* (20 Day) and *Regular* (One Year). Under Alaska state law, a regular Protective Order is the only order which can impose a “no possession of guns” restriction. Gun possession restrictions are not automatically part of the protective order, but you can ask the judge to make it part of the order.

3 STEP THREE

YOU CAN FILL OUT A PROTECTIVE ORDER PETITION

To get a protective order you need to file a *protective order petition* with the court. While you do NOT need a lawyer to do this, it is a good idea to seek information and support from your local domestic violence/sexual assault program before beginning the protective order process.

You may seek a petition for two types of protective orders. One is an “*ex-parte*” or “*twenty-day*” order that will be effective immediately but will last only a short time or until you get another order. The other is a “*regular*” order that will last one year but requires that you attend a hearing before a judge. The abuser will also have the opportunity to attend the hearing.

4 STEP FOUR

THE COURT CAN ORDER THE ABUSER NOT TO HAVE A GUN

If the abuser used or was in possession of a gun during a domestic violence incident and you would be safer if the gun were taken away, it is important that you inform the judge and court officials that the abuser has a gun. It is also important to *write down* this information in your petition and to state that you want the court to take the gun away—do not wait until you are standing before the judge.

5 STEP FIVE

YOU MAY ASK THE COURT TO EXPLAIN WHAT HAPPENS TO THE GUN

If you have a regular Protective Order that stops the abuser from having a gun, you may want to ask the court to explain what should happen to the gun. If the court orders the abuser to surrender a gun, the court may require the abuser to turn the guns in to the police or grant a “writ of assistance” which allows the police to go to the abuser’s home and get the guns. It is important for the police to have a good description of the guns and their location in the home.

6 STEP SIX

YOU CAN SEEK ASSISTANCE IF YOUR RIGHTS ARE NOT ENFORCED

If you have a regular Protective Order, it is also *illegal* under federal law for your intimate partner to have a gun. If the abuser still has a gun, a federal law is being broken.

You should also know that federal law states that it is illegal for a person who has been convicted of a “qualifying” domestic violence misdemeanor in the past to possess a gun or ammunition. (*See other side of brochure for additional information on qualifying orders.*) If a person has ever been convicted of a felony, it is also illegal to have a gun.

If you believe the abuser is illegally in possession of a gun, call your local police department or Alaska State Trooper Post. You can also seek assistance and information from your local domestic violence/sexual assault program or the national hotline at: 800.799.SAFE (7233). (*If your partner is military personnel or in law enforcement, the laws may differ. Your local domestic violence/sexual assault program can help you to learn those differences.*)