

OFFICE OF CONSTITUTIONAL POLICING AND POLICY

NOTICE
1.14

September 21, 2018

TO: All Department Personnel

FROM: Director, Office of Constitutional Policing and Policy

SUBJECT: RESPONSIBILITIES OF DEPARTMENT EMPLOYEES WITH CRIMINAL CONVICTIONS INVOLVING DOMESTIC VIOLENCE – EMPLOYEE REMINDER

PURPOSE

The purpose of this Notice is to remind Department personnel of Title 18 of the United States Code (U.S.C.) Section 922(g)(9), (Title 18) which bans the possession of firearms by individuals convicted of a misdemeanor crime of domestic violence and to restate responsibilities of Department employees who have *ever* been convicted of a misdemeanor crime of domestic violence, or convicted of any misdemeanor crime with a factual basis of domestic violence.

EMPLOYEE RESPONSIBILITIES

A Department employee who has *ever* been convicted of a misdemeanor crime of domestic violence or any misdemeanor crime with a factual basis of domestic violence that meets the criteria within the firearm prohibition of Title 18 U.S.C., Section 922(g)(9) shall immediately notify his or her commanding officer and submit an Employee's report, Form 15.07.00, regardless of the penalty or sentence, if any, and regardless of whether: (1) the employee already reported the arrest which led to the conviction plea; (2) the matter is currently on appeal; (3) the employee entered a plea of nolo contendere or guilty; or, (4) the employee is seeking or has sought to have the conviction dismissed, set aside, expunged, and/or pardoned. The Employee's Report shall include:

- The date, time, location, agency that responded to the arrest, and actions taken by that agency;
- The approximate date of the filing of the criminal complaint or arrest, the original booking charge, and the arresting agency;
- The approximate date of conviction, the conviction charge, the court case number, and the disposition of the case (guilty, one-year summary probation, etc.); and
- Whether the employee has received a state or federal dismissal, set aside, expungement and/or pardon.

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Department employees are to refer to Department Manual Section 3/838.20 *Department Employees with a Criminal Conviction Involving Domestic Violence – Employee Notification* and Administrative Order No. 18, 2018, *Department Employees with a Criminal Conviction Involving Domestic Violence – Employee Notification – Revised*, for further reference.

If you have any questions regarding this Notice, please contact the Office of Constitutional Policing and Policy at (213) 486-8730.



ARIF ALIKHAN, Director
Office of Constitutional Policing and Policy

APPROVED:



BOB GREEN, Deputy Chief
Chief of Staff
Office of the Chief of Police

Attachments

DISTRIBUTION "B"

OFFICE OF THE CHIEF OF POLICE

ADMINISTRATIVE ORDER NO. 18

August 27, 2018

SUBJECT: DEPARTMENT EMPLOYEES WITH CRIMINAL CONVICTION INVOLVING DOMESTIC VIOLENCE – EMPLOYEE NOTIFICATION – REVISED; DEPARTMENT EMPLOYEES WITH A CRIMINAL CONVICTION INVOLVING DOMESTIC VIOLENCE – ADMINISTRATIVE INVESTIGATION – REVISED; EXPUNGEMENT OR SET-ASIDE HEARING TO RESTORE THE ABILITY TO CARRY A FIREARM – REVISED; AND, EMPLOYEE NOTIFICATION – PROHIBITION FROM POSSESSING, SHIPPING, TRANSPORTING OR RECEIVING A FIREARM AND/OR AMMUNITION, FORM 01.88.02 – RENAMED AND REVISED

BACKGROUND: In 2004, the Firearms Division, California Department of Justice, issued an Information Bulletin to all law enforcement agencies advising that the Bureau of Alcohol, Tobacco, Firearms and Explosives, within the United States Department of Justice, determined that the laws pursuant to California Penal Code Sections 1203.4 and/or 29855(a) for “Set aside/Dismissals” for a conviction of Misdemeanor Crime of Domestic Violence (MCDV), as defined under Title 18 of the United States Code (U.S.C.) Sections 921(a)(33)(A) and (B), no longer allow California peace officers to seek relief from the federal restriction of owning or possessing a firearm and/or ammunition. Title 18 of the U.S.C. Sections 922(g)(1) and 922(g)(9) apply to officers who have been convicted of a crime punishable by imprisonment for a term exceeding one year or who were convicted in any court of a misdemeanor crime of domestic violence, prohibiting anyone to possess, ship, transport, or receive any firearm and/or ammunition.

These provisions apply to all persons at anytime prior to or after the passage of the new law; there is no exemption for law enforcement officers or other government agents.

PURPOSE: This Order revises the procedures involving Department employees with a criminal conviction involving domestic violence, pursuant to the 2004 Information Bulletin issued by the California Department of Justice. A Department employee shall immediately notify his or her commanding officer when he or she is arrested, convicted, or charged with domestic violence. This Order also clarifies that an expungement or set-aside hearing under California law to restore the ability to carry a firearm no longer satisfies federal laws to acquire or possess firearms/ammunition after an officer is convicted of a qualifying misdemeanor crime of domestic violence.

PROCEDURE: Attached are the revised Department Manual Sections 3/838.20, *Department Employees with a Criminal Conviction Involving Domestic Violence – Employee Notification*; 3/838.30, *Department Employees with a Criminal Conviction Involving Domestic Violence – Administrative Investigation*; and, 3/838.50, *Expungement or Set-Aside Hearing to Restore the Ability to Carry a Firearm*, with the revisions indicated in italics. Additionally, the Employee Notification – Prohibition from Possessing, Shipping, Transporting or Receiving a Firearm and/or Ammunition, Form 01.88.02, has been revised and renamed as the Employee Notification – Prohibition from Possessing, Shipping,

Transporting or Receiving a Firearm, Ammunition, and/or Ammunition Loading Devices and is attached with the revisions indicated in italics. The use, completion, and distribution of this form remain unchanged.

FORM AVAILABILITY: The Employee Notification – Prohibition from Possessing, Shipping Transporting or Receiving a Firearm, Ammunition, and/or Ammunition Loading Devices form is available in E-Forms on the Department's Local Area Network (LAN) and is attached for immediate use and duplication. All other versions of this form shall be marked "obsolete" and placed into the divisional recycling bin.

AMENDMENTS: This Order amends Sections 3/838.20, 3/838.30, and 3/838.50 of the Department Manual. The "Form Use" link applicable to the Employee Notification – Prohibition from Possessing, Shipping, Transporting or Receiving a Firearm, Ammunition, and/or Ammunition Loading Devices form has been updated and is accessible in E-Forms on the Department's LAN.

AUDIT RESPONSIBILITY: The Commanding Officer, Audit Division, shall review this directive and determine whether an audit or inspection shall be conducted in accordance with Department Manual Section 0/080.30.



MICHEL R. MOORE
Chief of Police

Attachments

DISTRIBUTION "D"

**DEPARTMENT MANUAL
VOLUME III
Revised by Administrative Order No. 18, 2018**

3/838.20 DEPARTMENT EMPLOYEES WITH A CRIMINAL CONVICTION INVOLVING DOMESTIC VIOLENCE – EMPLOYEE NOTIFICATION.

Employee's Responsibilities. A Department employee who has been convicted of a misdemeanor crime of domestic violence or any misdemeanor crime with a factual basis of domestic violence *that meets the criteria within the firearm prohibition of Title 18 U.S.C., Section 922(g)(9) shall immediately notify his or her commanding officer and submit an Employee's Report, Form 15.07.00, regardless of the penalty or sentence, if any, and regardless of whether: (1) the employee already reported the arrest, which led to the conviction plea; (2) the matter is currently on appeal; (3) the employee entered a plea of nolo contendere or guilty; or, (4) the employee is seeking or has sought to have the conviction dismissed, set aside, expunged, and/or pardoned. The Employee's Report shall include:*

- *The date, time, location, agency that responded to the arrest, and actions taken by that agency;*
- *The approximate date of the filing of the criminal complaint or arrest, the original booking charge, and the arresting agency;*
- *The approximate date of conviction, the conviction charge, the court case number, and the disposition of the case (guilty, one-year summary probation, etc.); and,*
- *Whether the employee has received a state or federal dismissal, set aside, expungement and/or pardon.*

Note: The 1968 Gun Control Act, Title 18 of the United States Code (U.S.C.), Section 921, prohibits anyone convicted of a felony and anyone subject to a domestic violence protective order from possessing a firearm. In addition, Title 18 U.S.C., Section 922(g)(9) was added in 1996 to ban the possession of firearms by individuals convicted of a misdemeanor crime of domestic violence. There is no exception for law enforcement officers. A "misdemeanor crime of domestic violence" is defined in Title 18 U.S.C., Sections 921(a)(33)(A)(i) and (ii) as an offense that:

- *Is a misdemeanor under Federal, State, or Tribal law; and,*
- *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 cohabiting 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.*

Note: A set aside or dismissal pursuant to California Penal Code Sections 1203.4/1203.4a of a conviction for a misdemeanor crime of domestic violence as defined under Title 18 U.S.C., Sections 921(a)(33)(A) and (B) does not provide the employee relief from the federal firearm prohibition contained in Title 18 U.S.C. Section 922(g)(9). California (CA) PC 1203.4/1203.4a does not restore an employee's ability to carry a firearm if convicted of a misdemeanor crime of domestic violence because dismissal pursuant to CA PC 1203.4/1203.4a specifically states it "does not permit a person to own, possess, or have in his or her custody or control any firearm." (See CA

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PC 1203.4(a)(2) and CA PC 1203.4a(c)(2)). A pardon, expungement, or set aside under the laws of another state, may, in certain circumstances, provide relief from federal firearm prohibitions. Any effort by an employee to restore his or her ability to carry a firearm by securing a state or federal dismissal, set aside, expungement and/or pardon shall be pursued solely with the employee's own resources and on the employee's own time.

Any employee whose criminal conviction restricts or prohibits that member from fully and properly performing his or her duties may be disciplined, including, but not limited to, being placed on administrative leave or reassignment, and/or termination.

Commanding Officer's Responsibilities. When it comes to the attention of the commanding officer that a Department employee has been convicted of a misdemeanor crime of domestic, or any misdemeanor crime with a factual basis of domestic violence, that meets the criteria within the firearm prohibition of Title 18 U.S.C., Section 921(g)(9), the commanding officer or the commanding officer's supervisor designee shall:

- *Immediately retrieve all City-owned firearm(s), Department-issued ammunition, and Department-issued ammunition magazines/loading devices in the employee's immediate possession and/or stored at a Department facility, and ensure that the employee is immediately ordered not to ship, transport, possess, or receive a firearm, ammunition and/or ammunition magazines/loading devices until further notice;*

Note: California Penal Code (PC) Section 16150 (b) provides: " 'ammunition' includes, but is not limited to, any bullet, cartridge, magazine, clip, speed loader, autoloader, or projectile capable of being fired from a firearm with a deadly consequence. 'Ammunition' does not include blanks."

- *Ensure that the employee immediately relinquishes and surrenders any City-owned firearm(s), Department-issued ammunition, and Department-issued ammunition magazines/loading devices not within immediate possession or stored at a Department facility;*

Note: In administering this policy, all reasonable efforts shall be made to avoid embarrassment or discomfort to the employee.

- *Complete the Employee Notification - Prohibition from Possessing, Shipping, Transporting or Receiving a Firearm, Ammunition, and/or Ammunition Loading Devices, Form 01.88.02;*
- *Present the Employee Notification – Prohibition from Possessing, Shipping, Transporting or Receiving a Firearm, Ammunition, and/or Ammunition Loading Devices form, to the employee for signature and provide the employee with a copy;*
- *Ensure that all City-owned firearm(s), Department-issued ammunition, and Department-issued ammunition magazines/loading devices are stored at the Davis Training Facility (DTF) armory;*

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- *Ensure that the City-owned firearm(s), Department-issued ammunition, and Department-issued ammunition magazines/loading devices are entered in the Firearms Inventory and Tracking System (FITS) by DTF armory staff;*
- *Immediately assign the employee to duties that would not require the receipt or possession of a firearm and/or ammunition, pending a formal decision regarding the employee's long-term employment with the Department;*
- *At the time of the retrieval of the City-owned firearm(s), Department-issued ammunition, and Department-issued ammunition magazines/loading devices, the employee shall be advised of the following:*
 - *All privately-owned firearm(s), ammunition, and ammunition magazines/loading devices in the employee's possession shall immediately be relinquished to a law enforcement agency or a third-party licensed firearms dealer; and,*
 - *Obtain written proof of compliance (e.g., Property Report, Form 10.01.00; or, Receipt For Property Taken Into Custody, Form 10.10.00) regarding the relinquishing of all privately-owned firearm(s), ammunition, and ammunition magazines/loading devices that must be provided to the concerned commanding officer within 72 hours after advising and serving the employee, in accordance with the Employee Notification - Prohibition from Possessing, Shipping, Transporting or Receiving a Firearm, Ammunition, and/or Ammunition Loading Devices form.*
- *Immediately forward a copy of all related documents via an Intradepartmental Correspondence, Form 15.02.00, to the Commanding Officer, Internal Affairs Group (IAG).*

Department Retirement Counselor, Personnel Division, Responsibilities. Upon receiving a petition by an "Honorably Retired Full-Time Officer" or an "Honorably Separated Reserve Officer" to carry a concealed firearm, the Department Retirement Counselor shall:

- *Follow the procedures listed in Department Manual Section 3/733.20, Approval to Carry Concealed Firearm; and,*
- *Ensure the Retired Officer Declaration is signed by the retired or separated officer and that he or she understands his or her obligation to promptly notify the Commanding Officer, Personnel Division, within ten calendar days after an occurrence wherein he or she is alleged to have committed an act of misconduct, violated any Department rules, state, or federal laws that, if violated by an officer on active duty, may result in the officer's arrest, suspension, or removal from the agency.*

838.30 DEPARTMENT EMPLOYEES WITH A CRIMINAL CONVICTION INVOLVING DOMESTIC VIOLENCE – ADMINISTRATIVE INVESTIGATION.

Commanding Officer, Internal Affairs Group – Responsibilities. When the Commanding Officer, Internal Affairs Group (IAG), has been notified that an employee may meet the criteria within the firearm prohibition Title 18 of the United States Code (U.S.C.), Section 922(g)(9), he or she shall:

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- *Conduct a complaint investigation to determine whether the employee meets the criteria within the firearm prohibition of Title 18 U.S.C., Section 922(g)(9); and,*
- *Forward the completed complaint investigation to the employee's commanding officer for adjudication or to provide directions.*

Commanding Officer's Responsibilities. *When a commanding officer receives the completed complaint investigation, he or she shall:*

- *Adjudicate the investigation and notify the employee per the procedures listed in Department Manual Section 3/820, Disciplinary Complaints, or take appropriate action as directed by the Commanding Officer, IAG;*
- *If notified by IAG that an employee does not meet the criteria within the firearms prohibition contained in Title 18 U.S.C., Section 922(g)(9), and there is no further disciplinary action that would warrant Department retention of City-owned firearm(s), obtain written approval from the concerned bureau commanding officer, prior to releasing City-owned firearm(s), Department-issued ammunition, and Department ammunition magazines/loading devices back to the concerned employee;*
- *Immediately forward a copy of all related documents with an Intradepartmental Correspondence to the Commanding Officer, Personnel Division, and direct the return of all City-owned firearm(s), Department-issued ammunition, and Department-issued ammunition magazines/loading devices that had been retrieved from the employee, back to the concerned employee;*
- *Notify the concerned employee's bureau commanding officer regarding the aforementioned actions; and,*
- *Obtain written approval from the concerned bureau commanding officer prior to releasing City-owned firearm(s) and Department-issued ammunition to the concerned employee.*

Bureau Commanding Officer's Responsibilities. *The bureau commanding officer shall:*

- *Confer with the involved entity (e.g., Professional Standards Bureau, Behavioral Science Services, Legal Affairs Division) prior to granting written approval to return City-owned firearm(s), Department-issued ammunition, and Department-issued ammunition magazines/loading devices back to the involved employee; and,*
- *Notify the involved employee's commanding officer if IAG has determined that the involved employee does not meet the criteria within the firearms prohibition contained in Title 18 U.S.C., Section 922(g)(9), and there is no further disciplinary action that would warrant Department retention of the involved employee's City-owned firearms.*

838.50 EXPUNGEMENT OR SET-ASIDE HEARING TO RESTORE THE ABILITY TO CARRY A FIREARM. *In the event that an employee petitions to restore his or her ability to carry a firearm via an expungement or set-aside hearing, the concerned bureau commanding officer, or his or her designee shall attend the expungement or set-aside hearing and shall be the only person authorized to state the Department's position.*

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Note: On September 30, 1996, Title 18 U.S.C., Section 922(g)(9), was added, prohibiting anyone who was convicted in any court of a misdemeanor crime of domestic violence to possess, ship, transport, or receive any firearm and/or ammunition. There is no exemption for peace officers from this prohibition.

A Department employee shall notify his or her commanding officer as soon as possible prior to giving testimony as a witness in an expungement or set-aside hearing. The notification shall be made on an Employee's Report, Form 15.07.00, and shall contain the following items if applicable:

- *Type of hearing;*
- *Names of the employee seeking an expungement or set-aside order;*
- *Court number of case;*
- *Location where the hearing is to be held (court division or street address); and,*
- *Date and time of appearance.*

Commanding officers, upon receipt of the notification, shall immediately notify the concerned bureau commanding officer.

Any Department employee asked to state the Department's position relative to restoring an employee's ability to carry a firearm shall not state a position but, shall refer the issue to the concerned bureau commanding officer or his/her designee.

DEPARTMENT MANUAL
FORM USE LINK
Revised by Administrative Order No. 18, 2018

01.88.02 EMPLOYEE NOTIFICATION – PROHIBITION FROM POSSESSING, SHIPPING, TRANSPORTING OR RECEIVING A FIREARM, AMMUNITION, AND/OR AMMUNITION LOADING DEVICES, FORM 01.88.02

01.88.02-01 **Use of Form.** This form *shall be* used to serve notice to a Department employee of the temporary prohibition from possessing, shipping, transporting, or receiving a firearm, *ammunition*, and/or *ammunition loading devices* under *the authority of Title 18 United States Code Section 922 (g)*. This form shall become a permanent record in each concerned officer's *Department Personnel Package and Divisional Personnel Folder*.

01.88.02-10 **Completion.** This form shall be completed by the concerned commanding officer or supervisor *designee* who serves *this* notice to the employee. The concerned commanding officer or supervisor *designee* shall ensure *that* the employee signs *this* form and is provided a *copy of this form*.

Note: If it is determined that the concerned employee is not prohibited from possessing, shipping, transporting, or receiving a firearm, *ammunition*, and/or *ammunition loading devices* under *Title 18 United States Code Section 922 (g)*, the concerned commanding officer shall ensure that *the* Form 01.88.02 is removed from the employee's *Department Personnel Package* and *divisional personnel folder*. The Form 01.88.02 shall be filed indefinitely in the employee's *Department Personnel Package* maintained at Personnel Division.

01.88.02-80 Distribution.

- 1 - Original, Personnel Division.
- 1 - Copy, Internal Affairs Group.
- 1 - Copy, Concerned Employee's Divisional Personnel Folder.
- 1 - Copy, Concerned Employee.

4 - TOTAL

Los Angeles Police Department
Employee Notification -
Prohibition from Possessing, Shipping, Transporting or Receiving
a Firearm, Ammunition, and/or Ammunition Loading Devices

To: _____
Rank, Name (Last, First) and Serial No.

You are hereby notified that you are prohibited from possessing, shipping, transporting or receiving a firearm, ammunition, and/or ammunition loading devices pursuant to the provisions of Title 18 United States Code (USC) §922(g).

You are directed to relinquish your City-owned firearm(s), Department-issued ammunition, and/or Department-issued ammunition loading devices (e.g., clips, magazines) and are ordered not to possess, ship, transport, or receive a firearm, ammunition, and/or ammunition loading devices until further notice. Further, you are directed to immediately relinquish all other firearms, ammunition, and/or ammunition loading devices in your possession to a law enforcement agency or transfer them to a third-party licensed firearms dealer.

Additionally, you are ordered not to carry a firearm, ammunition, and/or ammunition loading devices at anytime. When confronted with an on-duty or off-duty situation where police action must be exercised without the use of a firearm, you should consider the seriousness of the crime, the risk to human life, and the potential for serious bodily injury. You should consider other reasonable alternatives, such as the use of other law enforcement personnel, prior to effecting an arrest or protecting the public.

Any current permits that authorize you to engage in outside employment, in which the nature of the permit requires you to carry or possess a firearm are hereby revoked. You are also exempt from Department firearms qualification requirements.

If it is subsequently determined that you are not prohibited from possessing, shipping, transporting or receiving a firearm, ammunition, and/or ammunition loading devices under Title 18 USC §922(g), all related documents shall be removed from your personnel folder and filed indefinitely in your Personnel Package at Personnel Division.

This order is in effect upon service of this notice to you. The restrictions in this notice shall remain in effect until you are notified otherwise, in writing, by your commanding officer.

Executed at (Area/division/or other address): _____ Date: _____

Commanding Officer or Supervisor Designee: _____
Rank, Name (Last, First), Serial No. and Signature

Acknowledgment:

I have read the above notification and understand that I have been given a direct order to surrender my City-owned firearm(s), Department-issued ammunition, and/or Department-issued ammunition loading devices and that I am not authorized to possess, ship, transport or receive a firearm, ammunition, and/or ammunition loading devices until further notice. I understand that I shall immediately relinquish all other firearms, ammunition, and/or ammunition loading devices in my possession to a law enforcement agency or transfer them to a third-party licensed firearms dealer. I understand that I am not authorized to carry a firearm, ammunition, and/or ammunition loading devices until I am returned to full active-duty status and notified in writing that this order has been rescinded. I understand that I shall not engage in any off-duty employment that would require me to carry or possess a firearm, ammunition, and/or ammunition loading devices. I further understand that failure to comply with this order shall be deemed as insubordination and may result in the discharge from my position as a police officer with the Los Angeles Police Department.

Employee's Signature: _____ Date: _____

Original: Personnel Division;
Copies: Employee;
Employee's Divisional Personnel Folder; and,
Internal Affairs Group.