Developments in Missouri Gun Laws

2016-2017
Significant changes to Missouri gun laws took effect in 2016 and 2017

Summary
Missouri firearms laws changed on September 14, 2016, October 14, 2016, and again on January 1, 2017. These changes resulted from actions of the Missouri General Assembly in September 2016, when legislators voted to pass Senate Bill 656 into law by overriding then-Governor Jay Nixon’s veto of that firearms legislation. This change in state law allows Missourians to carry concealed weapons without permits, background checks or training. The enactment of this law effectively made immaterial the concealed weapons permit process, the only Missouri law that placed restrictions on gun ownership by convicted domestic violence misdemeanor offenders and respondents to Full Orders of Protection.

Even though permits are no longer required in Missouri to carry a concealed weapon, Missouri law still allows for such permits to be granted. Sheriffs may issue permits to qualified Missourians and extend the time for those permits to be in effect for five years, 10 years, 25 years, or for the permit-holder’s lifetime. Those convicted of domestic violence misdemeanors or who are respondents to a Full Order of Protection are disallowed from being granted these extended or lifetime permits for concealed weapons, but, again, such permits are not needed to legally carry a concealed weapon in Missouri.

Further changes to gun laws in 2016 expanded the ability of individuals to use deadly force through a “stand your ground” law and amended the “Castle Doctrine” law to allow those with permission to be on another’s property to use deadly force if they believe they are threatened by another individual.

Changes to Missouri gun laws passed in 2016 as Senate Bill 656

OFFENSE OF UNLAWFUL POSSESSION OF A WEAPON CHANGED TO ALLOW “CONSTITUTIONAL CARRY” (Section 571.030 RSMo) Effective date: January 1, 2017
The criminal offense of unlawful possession of a weapon was changed to omit the element of the crime that a person was found to be in possession of a concealed weapon without a permit. This is the basis in law that makes it legal in Missouri to carry a concealed weapon without a permit effective January 1, 2017 (Section 571.030.1(1) RSMo). Supporters of this provision call it a “constitutional carry” firearm law because it allows the lawful possession of concealed weapons without a permit in Missouri.

In this section of law, the offense of unlawful use of a weapon is committed if a person carries a concealed weapon in certain areas where such weapons are restricted and prohibited. These weapons include a firearm, knife, blackjack or another weapon readily capable of lethal use. However, the criminal penalties for unlawful use of a weapon do not apply when a person carries a concealed weapon onto private property where it is posted as off-limits for such weapons. In those instances, the person may be fined and/or escorted from the property (Sections 571.030.8(2) and 571.107.2 RSMo).

The elements of the offense of unlawful possession of a weapon that are retained in Missouri law include actions such as shooting a firearm into a house or motor vehicle, displaying a lethal weapon in an angry or threatening manner, possessing a firearm while intoxicated, and possessing a firearm while also in possession of a felony-level amount of a controlled substance.
EXTENDED AND LIFETIME CONCEALED CARRY PERMITS ESTABLISHED: DV OFFENDERS INELIGIBLE
(Sections 571.205 and 571.210 RSMo) Effective date: October 14, 2016

Missouri law, as changed in 2016 and 2017, does not require a concealed weapons permit for a person to legally carry a concealed weapon. However, the legal process was retained that allows sheriffs to issue concealed weapons permits to Missourians who are 19 or older and who meet the statutory requirements to obtain those permits. Even though a permit is no longer required to legally carry a concealed weapon, some Missouri gun owners might seek a permit if an employer requires one or to allow themselves, as permit-holders, to carry a firearm across state lines.

The period of time for these permits was extended in 2016 from the previous and ongoing five-year permits (Section 571.101 RSMo) to ones that can be granted for 10 years, 25 years, or for the lifetime of the permit applicant (Section 571.205.1 RSMo). Despite the extended timelines, these permits must be renewed every five years.

Applicants for five-year, extended or lifetime concealed weapons permits must go through background checks. Those with domestic violence misdemeanor convictions and those who are respondents to Full Orders of Protection cannot be granted five-year, extended, or lifetime concealed weapons permits by sheriffs (Sections 571.101 and 571.205.3(10)-(11) RSMo).

The sheriff must conduct a name-based criminal background check on extended and lifetime permit holders once every five years (Section 571.210.8 RSMo). The lifetime and extended concealed carry permits are valid only in Missouri (Section 571.205 RSMo).

The lifetime and extended concealed weapons permits can be suspended or revoked if the permit holder, after getting the permit, is subject to a Full Order of Protection, an arrest warrant, or is convicted of a crime, including domestic violence misdemeanors (Section 571.210 RSMo).

CARRYING CONCEALED WEAPONS ONTO PROPERTY POSTED WITH ‘NO CONCEALED FIREARMS’ SIGNS
(Section 571.030.8(2) RSMo) Effective date: January 1, 2017
(Section 571.215.2 RSMo) Effective date: October 14, 2016

Two sections of law decriminalize the act of carrying a concealed weapon onto private property whose owner has posted the premises as being off-limits to concealed firearms. In Section 571.030.8(2) RSMo, the law provides that a person who does carry a concealed weapon onto posted property may be removed from the premises by law enforcement officers and fined, as provided in Section 571.107 RSMo, but not charged with a crime unless an additional illegal act is committed on the private property.

This provision to decriminalize the carrying of a concealed weapon onto property posted as being off-limits to those with firearms also is in Section 571.215.2 RSMo for those with extended or lifetime concealed weapons permits. The penalty in that section is a citation for a fine of $100 for a first offense, $200 for a second offense within six months and $500 for a third offense. Second- and third-time offenders can have their concealed weapons permits revoked or permanently denied.
DIMENSIONS OF SIGNS REQUIRED FOR POSTING PREMISES AS OFF-LIMITS TO CONCEALED WEAPONS
(Section 571.030.8(2) RSMo) Effective date January 1, 2017
This section of Missouri law restates previous law that established the required dimensions of signs posted by an owner of private property that the premises are “off-limits to concealed firearms.” The law requires the sign(s) to be “displayed in a conspicuous place of a minimum size of 11 inches by 14 inches with the writing thereon in letters of not less than one inch.”

SELF-DEFENSE LAWS BROADENED TO INCLUDE ‘STAND YOUR GROUND’ WITHOUT DUTY TO RETREAT
(Section 563.031.1-3 RSMo) Effective October 14, 2016
This Missouri law provides that a person does not have a duty to retreat prior to using deadly force against another person if he or she reasonably believes an imminent threat of “death, serious physical injury, or any forcible felony” is present (Section 563.031.1-2 RSMo). This is known as a “stand your ground” law. It applies to any person who is not engaged in an unlawful activity, in any place that person has a legal right to be, and allows for the use of deadly force without a duty to retreat by individuals who reasonably believe deadly force is necessary to protect themselves or a third party, including an unborn child (Section 563.031.2(1) RSMo).

Missouri law does not list all of the locations where a “person has the legal right to be,” but does specify that there is no duty to retreat prior to the use of deadly force if a person is in a “dwelling, residence, or vehicle where the person is not unlawfully entering or unlawfully remaining;” or “from private property that is owned or leased by such individual;” or “if the person is in any other location such person has the right to be” (Section 573.031.3(1)-(3) RSMo).

Previous to 2016, Missouri law provided that individuals, to the extent possible, were required to retreat (“withdraw from the encounter”) prior to the use of deadly force against another person who threatens them with unlawful use of force.

“CASTLE DOCTRINE” EXPANDED TO ADD LAWFUL USE OF DEADLY FORCE ON ANOTHER’S PROPERTY
(Section 563.031.3(3) RSMo) Effective date: October 14, 2016
This provision in Missouri law, known as “the Castle Doctrine,” allows a person who occupies private property, with the permission of the property owner, to use deadly force in self-defense or defense of others against a person who unlawfully enters or attempts to unlawfully enter the property. Prior to changes in 2016 to Section 563.031 RSMo, this right to use deadly force was limited to a person who owns or leases the private property onto which another person unlawfully entered or attempted to enter.

TIME EXTENSIONS FOR RENEWING CONCEALED CARRY PERMITS BY ACTIVE MILITARY MEMBERS
(Section 571.104 RSMo) Effective date: September 14, 2016
This section of law allows military or National Guard members on active duty whose concealed weapons permits expire during their active duty or recovery from service-related injuries to renew their permits within two months after their return to Missouri after discharge from duty or recovery from their injuries or related incapacitation.
Excerpt from Chapter 8

FEDERAL LAW ON DOMESTIC VIOLENCE AND FIREARMS
FEDERAL GUN CONTROL ACT PROHIBITS BATTERERS FROM POSSESSING FIREARMS

The likelihood of fatal injury to a survivor increases when abusers own and have access to weapons and have used them or threatened to use them in the past.\(^2\)

While domestic violence remains primarily a matter of state and local jurisdiction, both VAWA and the federal Gun Control Act provide increased protection for victims by making certain crimes subject to federal jurisdiction. The Federal Bureau of Investigation is the lead federal investigative agency for VAWA violations, and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is the lead investigative agency for Gun Control Act violations. Prosecution for crimes committed under these acts is initiated by the Office of the U.S. Attorney. A list of the telephone numbers of U.S. Department of Justice investigative agencies in Missouri is on page 225.

KEY ADVOCACY CONCEPT

**Federal law prohibits a person who is the subject of a Full Order of Protection from purchasing, receiving or possessing a firearm.**

**NO FIREARMS FOR RESPONDENTS TO ORDERS OF PROTECTION**

A 1997 amendment to the Gun Control Act of 1968 added individuals who are the subject of final, or full, protection orders to the list of persons prohibited from purchasing, receiving and possessing firearms (18 U.S.C. Section 922(g)(8)). The law prohibits anyone from selling or otherwise disposing of a firearm to persons who have civil protection orders issued against them.

These provisions apply to those with protection orders that restrain them from harassing, stalking, threatening or engaging in other conduct that would place “an intimate partner or the child of such intimate partner” in reasonable fear of bodily injury.

The person subject to the order, the respondent, must have received notice of the order and the opportunity to be heard by the court before the full order was issued. The protection order must include either:

- a specific finding that the respondent represents a credible threat to the physical safety of the intimate partner or child; or
- an explicit provision prohibiting such person from using, attempting to use or threatening to use physical force against the intimate partner or child that reasonably would be expected to cause bodily harm.

These restrictions do not apply to firearms issued by governmental agencies to law enforcement or military personnel when they are on duty (18 U.S.C. Section 925(a)(1) and Bureau of Alcohol, Tobacco, Firearms and Explosives interpretation).

However, personal firearms do not fall within this exemption. If prohibited under VAWA, law enforcement or military personnel cannot possess officially issued firearms when off duty.
FEDERAL GUN CONTROL ACT PROHIBITS BATTERERS FROM POSSESSING FIREARMS

NO FIREARMS FOR PEOPLE WITH “MISDEMEANOR CRIME OF DOMESTIC VIOLENCE” CONVICTIONS

The federal law further prohibits a person convicted of a “misdemeanor crime of domestic violence” from shipping, transporting, possessing or receiving firearms or ammunition, regardless of their profession. (18 U.S.C. Section 922(g)(9)).

A qualifying misdemeanor domestic violence crime is defined as an offense against an intimate partner that involves the use, or attempted use, of physical force or threatened use of a deadly weapon.

Law enforcement officers are not exempt from this federal prohibition. All law enforcement officers and government officials must relinquish their guns if they have been convicted of a domestic violence misdemeanor. This provision applies to firearms used by government agencies, firearms and ammunition purchased by officials for use in performing their official duties, and personal firearms and ammunition possessed by such officials.

The U.S. Supreme Court upheld this law in March 2014 (United States v. Castleman) when it said it is a crime for people convicted of misdemeanor domestic violence offenses, however minor, to possess guns. The case concerned interpretation of what degree of physical force or violence was necessary to qualify as a conviction for a “misdemeanor crime of domestic violence.” In the ruling, Justice Sonya Sotomayor wrote, “‘[d]omestic violence’ is not merely a type of ‘violence’; it is a term of art encompassing acts that one might not characterize as ‘violent’ in a nondomestic context.” By issuing a broad interpretation of the term “misdemeanor crime of domestic violence,” the court confirmed that guns should not be in the hands of perpetrators of domestic violence.³

Questions about the enforcement of this section should be referred to the U.S. Attorney’s Office or Bureau of Alcohol, Tobacco, Firearms and Explosives office in your jurisdiction, which can be found at www.atf.gov/field.
A federal court decision in 2003 addressed the issue of whether the federal firearms prohibitions apply when a protection order has been issued by consent (U.S. v. Calor, 340 F.3d 428, 432 (6th Cir. 2004)).

The court decided in the Calor case that a respondent can be prohibited from possessing firearms even if a formal protection order hearing is not held so long as the respondent had notice and an opportunity to participate. Because there is not wide agreement among judges on this issue, advocates still might want to suggest the petitioner request a hearing rather than have a consent order issued.

Whether an Order of Protection is granted after a full hearing or by consent, advocates should be sure there is language in the order that follows the language required in the federal Gun Control Act. As stated previously, the order should include either:

- a finding that the respondent represents a credible threat to the physical safety of the intimate partner or child; or
- an explicit provision prohibiting such person from using, attempting to use, or threatening to use physical force against the intimate partner or child that would reasonably be expected to cause bodily injury.

The Full Order of Protection form issued by the Missouri Office of State Courts Administrator includes the necessary language to invoke the firearms prohibitions. However, the form indicates that the firearms prohibitions only apply if there is a hearing. If an advocate’s jurisdiction does not use these pre-printed forms, she or he should be sure to have the appropriate statements regarding the federal firearms provisions added to the Full Order of Protection.

In addition, the petitioner can request language in the order that specifically prohibits the possession or purchase of a firearm so local law enforcement officers clearly can enforce the firearms prohibition.

Firearm issues can be confusing. Judges are not consistent in the way they deal with firearm restrictions for perpetrators of domestic violence. Therefore, this is an ongoing challenge for advocates to educate law enforcement, prosecutors, judges and legislators on the dangers of abusers possessing firearms.
FEDERAL GUN CONTROL ACT PROHIBITS BATTERERS FROM POSsessING FIREARMS

ENFORCEMENT OF FIREARMS PROHIBITIONS

Important enforcement issues have arisen since the enactment of VAWA and related federal gun control legislation. These issues raise the following questions:

- How are the firearms prohibitions enforced?
- Who is responsible for removing the firearm?
- How do these laws apply to law enforcement officers and government agents with a history of domestic violence?

Several lawsuits by law enforcement officers have challenged the firearms provisions with respect to the ability of officers to carry weapons required in the performance of their duties. So far, courts have ruled that the provisions are valid.

Missouri still has no state law that parallels the federal law to prohibit domestic violence offenders from having firearms. Until Missouri passes such a law, advocates can continue to contact federal authorities for enforcement of the gun provisions of VAWA.

It is important to note that changes to Missouri law in 2011 allow judges to include any terms in an Order of Protection that the court reasonably deems necessary to ensure the petitioner’s safety. These terms could include a firearm restriction for the respondent.

If advocates think a gun control violation has occurred, they can contact the U.S. Attorney’s Office or the ATF for information needed to assist the victim involved.

PENALTIES FOR VIOLATIONS OF FIREARMS PROVISIONS

The maximum term of imprisonment for a violation of 18 U.S.C. Sections 922(g)(8) or 922(g)(9) is 10 years. The federal law is retroactive, which means that it applies to any misdemeanor conviction or guilty plea occurred prior to the domestic violence amendment of the Gun Control Act. However, the law does not apply to crimes that have been expunged or set aside, or if the person has been pardoned or had his or her civil rights restored.

KEY ADVOCACY CONCEPT

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FOOTNOTES


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