

STOP Newsletter

Services and Training for Officers and Prosecutors

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Firearms Background Check Case Updates

By Jill M. Swiontek, Staff Attorney, PCADV

Firearms continue to play a large role in violent crimes, including crimes involving domestic violence. Having a gun in the home increases the risk that incidents of domestic violence will result in homicide. Family and intimate assaults involving firearms were 12 times more likely to result in death than non-firearm-related assaults. In 2006, there were 129 deaths in Pennsylvania resulting from domestic violence; 50 of those deaths were caused by a firearm.

Because firearms present a danger to domestic violence victims, state and federal law preclude certain domestic violence perpetrators from possessing firearms. Those perpetrators who are convicted of misdemeanor crimes involving domestic violence are prohibited, as are certain perpetrators who are subject to PFA orders. The federal law disqualifies domestic violence perpetrators who are subject to protection orders. Pennsylvania law

disqualifies domestic violence perpetrators who are subject to a PFA order directing the relinquishment of firearms.

In Pennsylvania, there are systems intended to ensure that domestic violence perpetrators and others with firearms disabilities will not be able to purchase firearms. The Pennsylvania State Police (PSP) is the entity responsible for conducting background checks through the Pennsylvania Instant Check System (PICS) to determine whether an applicant has a firearm disability that prohibits that individual from obtaining a firearm or a license to carry a firearm. In 2006, PICS conducted 539,735 transactions for background checks in which the overall approval rate for firearms purchase was 96%.

One way to have a firearm disability is to be convicted of a misdemeanor crime of domestic violence. What evi-

1. Bloomberg School of Public Health, Center For Gun Policy Research, Factsheet: Firearms And Intimate Partner Violence (rev. October 2003), available at http://www.jhsph.edu/gunpolicy/IPV_firearms2.pdf, citing Jacqueline Campbell et al., *Risk Factors for Femicide Within Physically Abusive Intimate Relationships: Results from a Multi-site Case Control Study*, 93 *Am. J. Pub. Health*, 1089-97 (2003).

2. Id.

3. Pennsylvania Coalition Against Domestic Violence, 2006 Domestic Violence Fatality Report, 3 (2006).

Firearms Background Check Case Updates

dence is sufficient to prove an intimate partner relationship in a misdemeanor crime of domestic violence under the Federal Gun Control Act? In *D'Alessandro v. PSP*, the Pennsylvania Supreme Court recently decided that the following provided sufficient evidence: the police report's description of the victim as defendant's "live in girlfriend"; the report's listing of the victim and defendant having the same address; and the admission at trial by the defendant of a sexual relationship. *D'Alessandro v. PSP*, 937 A.2d 404 (Pa. 2007). Because it was determined that the intimate relationship existed in this case, the defendant's simple assault conviction was considered a misdemeanor crime of domestic violence making the defendant ineligible for a license to carry a firearm. A conviction for disorderly conduct has also been considered a misdemeanor crime of domestic violence because of the intimate partner relationship. *Wolak v. PSP*, 898 A.2d 1176 (Pa. Super. 2006).

How can a prohibited person remove a firearm disability? One way is to have the criminal record, or in some cases, the mental health record expunged. In *Commw. v. Charnik*, the defendant sought to expunge his indirect criminal contempt (ICC) convictions and PFA record because, after his ICC convictions, his wife withdrew her PFA order against him. *Commw. v. Charnik*, 921 A.2d 1214 (Pa. Super. 2007). The Pennsylvania Superior Court found that the defendant was not entitled to expungement of the ICCs because he did not meet the requirements. Additionally, the court held that a defendant is not entitled to expungement of a PFA record where a final PFA order has been entered following a hearing in which abuse was proven by a preponderance of the evidence.

Removal of a state disability does not automatically lead to removal of the federal disability. In *Pennsylvania State Police v. Paulshock*, 575 Pa. 378 (Pa. 2003), the Pennsylvania Supreme Court held that relief from Pennsylvania firearms disability does not relieve a federal



disability. Paulshock requested relief from the firearms disability under 18 Pa. C.S. § 6105. The trial court granted relief but the PSP denied the request when Paulshock attempted to purchase a firearm. Paulshock appealed the denial and the Pennsylvania Supreme Court held that a common pleas court could not remove a federal firearms disability pursuant to 18 Pa. C.S. § 6105. Under this statute, the only relief that can be given is from the firearms disability imposed pursuant to state law.

Pennsylvania state courts are generally without authority to remove federal firearms disabilities for convicted individuals. Only when a convicted individual obtains a governor's pardon or expungement may the federal disability be lifted. For a living person, expungement is available when that person is 70 years old or older, is out of prison and has been free of arrest or prosecution for ten years. (18 Pa. C.S. § 9122.)

If a convicted person requests that his/her record be expunged, who has standing to challenge the decision? The Pennsylvania Superior Court recently held that the PSP has standing to challenge an attempt to remove a firearms disability. In *Re: Expungements*, 938 A.2d 1075 (Pa. Super. 2007). The Court reasoned that the PSP has an interest in the proceedings because of its responsibilities and duties under the Uniform Firearms Act.

Please contact PCADV's Legal Department at 1-888-235-3425 with any questions you may have regarding firearms disabilities or other domestic violence issues.

⁴ Pennsylvania State Police, 2006 Ann. Rep. 119 (2006), http://www.psp.state.pa.us/psp/lib/psp/psp_2006_annual_report.pdf

Collaboration is the Key: A University Judicial Affairs Perspective

By Karen Feldbaum, Interim Co-Director of Judicial Affairs,
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Responding to Sexual Assault on College Campuses: Best Practice for Judicial Affairs Offices

The "Rape and Sexual Assault on Campus" article which appeared in last quarter's STOP newsletter discussed some of the challenges that can face a victim who is sexually assaulted on a college campus. As discussed in the previous article, some students choose to file a complaint with the campus judicial affairs office rather than pursue criminal charges.

Penn State University has a proactive judicial affairs office and works diligently ensure that victims of sexual assault are provided with adequate and appropriate support. The Judicial Affairs Office at Penn State University has generously provided an outline of "Best Practice" for addressing sexual assault on campus.

The Code of Conduct at Penn State includes a category covering Sexual Misconduct and Abuse. Any person who contacts an Office of Judicial Affairs designee to report a possible violation of this charge code category is offered an array of resources. Our first concern when meeting with a victim is her/his safety, and our first goal is to provide resources for support and assistance. Our approach is one of empowerment, with the intention to follow through only with processes the victim requests. Only in those occasions when there appears to be danger to a person or the community might we proceed without the support of the victim. Even in these rare instances, we are committed to allow for the anonymity of the victim. Judicial Affairs staff and designees are prepared to respond to victims through training provided by victim/witness advocates from both the University and local community agencies. In designing a training program, the Office of Judicial Affairs at University Park collaborated with Penn State's Center for Women Students and the Centre County Women's Resource Center in initiatives funded by a U.S. Department of Justice Violence Against Women grant. Through this collaboration, our team created a curriculum for judicial affairs staff entitled Working Toward Equitable Adjudication of Violence Against Women Cases. This curriculum continues to be utilized with Judicial

Affairs staff and designees throughout the Commonwealth.

Within the Judicial Affairs process, a designee's role is to be the unbiased party. As such, we depend on the ability to involve victim/witness advocates in our process at every step. A victim may be accompanied by an advocate whenever he/she is either meeting with our staff or, when necessary, participating in a formal hearing. We depend on advocates and believe that establishing and fostering relationships is essential in providing a process where a victim may feel supported.

The members of Penn State's University Hearing Boards also receive specific training on Rape Trauma Syndrome and what it means in terms of a hearing. They receive specific training on adjudicating sexual misconduct cases which addresses societal myths related to victims and perpetrators. Within the hearing, there is a defined role for a victim/ witness advocate in terms of support and assistance to the victim in the hearing and in writing an impact statement.

The judicial process at Penn State is a completely separate process from the criminal process. There would be no rationale from the University perspective to coerce a victim into any action, specifically forfeiting "their (sic) right to access the criminal system." There have been cases where University students accused of misconduct have received more severe sanctions through the campus discipline process than through the court process.



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There are also times when there are reasons why a victim would prefer to participate in a University process. In general, the process is more informal and often more comfortable than the proceedings in a courtroom. In addition, the victim has an opportunity to play a significant role in the process, which may allow for a greater sense of control. Finally, the University process is less likely to appear in the media in the same way it may occur in a criminal case.

Penn State has a close relationship with non-University police departments and may respond to off campus misconduct as well. Misconduct that occurs away from the immediate community is adjudicated if Penn State is informed of the incident and the behavior rises to the level of substantial University interest. Sexual misconduct

will most often fit this category. In this respect, prior criminal complaints/non-traffic violations are part of the sanctioning equation used by the University Hearing Board.

The concept of education in the prevention of sexual violence and alcohol/drug abuse is incredibly important. Focusing on new and innovative ways to educate and raise the awareness of the student body is an ongoing task. Opportunities for collaboration should be encouraged and strengthened. We welcome the opportunity to work closer with our partners in both law enforcement and victim advocacy. If you would like to discuss this further, please feel free to contact me at 814-863-0342, kxf6@psu.edu, or contact the Judicial Affairs designee in your local community. A list of all of our staff across the Commonwealth can be found at www.sa.psu.edu/ja.



Developed by the Pennsylvania Coalition Against Rape
and the Pennsylvania Coalition Against Domestic Violence.

