



## HOQUIAM POLICE DEPARTMENT

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### Washington State Law Regarding the Issuance of Concealed Pistol Licenses Has Changed As of July 22, 2011:

Upon the passage of Washington State Substitute House Bill 1923 under Chapter 294, Laws of 2011, state law now requires the denial of a concealed pistol license application when the applicant is ineligible to possess a firearm under federal law.

Prior to July 22, 2011, Washington state law differed from federal law. The prior state law required the issuance of a state Concealed Pistol License so long as the misdemeanor domestic violence assault conviction was prior to 1993. This new statute removes this timeframe and thus moves state law into line with existing federal law (listed below).

New as well as prior Concealed Pistol License holders may now have their application denied based on this change. There is no "grandfather" provision under state law for renewal applicants. Applicants with domestic violence assault convictions (regardless of date) may no longer qualify for the issuance of a Concealed Pistol License under state law.

### Federal Law Restrictions on the Possession of Firearms by Individuals Convicted of a Misdemeanor Crime of Domestic Violence:

This information clarifies the passage of Title 18, United States Code, Section 922(g)(9) (the Lautenberg Amendment) in the fall of 1996. The 1996 provision amended the Federal Gun Control Act of 1968 by banning the possession of firearms by individuals convicted of a misdemeanor crime of domestic violence.

GUN BAN FOR INDIVIDUALS CONVICTED OF A MISDEMEANOR CRIME OF DOMESTIC VIOLENCE -- 18 U.S.C. § 922(g)(9)

The 1968 Gun Control Act and subsequent amendments codified at 18 U.S.C. § 921 *et seq.* prohibit anyone convicted of a felony and anyone subject to a domestic violence protective order from possessing a firearm. The intended effect of this new legislation is to extend the firearms ban to anyone convicted of a "misdemeanor crime of domestic violence."

This bill passed with almost unanimous support and represents Congress's recognition that "anyone who attempts or threatens violence against a loved one has demonstrated that he or she poses an unacceptable risk, and should be prohibited from possessing firearms." *Congressional Record*, p. S11878, September 30, 1996.

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*Qualifying Offenses:* As enacted the statute defines "misdemeanor crime of domestic violence" (MCDV) as any state or federal misdemeanor that:

"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 cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim."

This definition includes *all* misdemeanors that involve the use or attempted use of physical force (e.g., simple assault, assault and battery), if the offense is committed by one of the defined parties. This is true whether or not the statute specifically defines the offense as a domestic violence misdemeanor. For example, a person convicted of misdemeanor assault against his or her spouse would be prohibited from receiving or possessing firearms.

*Date of Previous Conviction:* The prohibition applies to persons convicted of such misdemeanors at any time, even if the conviction occurred prior to the new law's effective date, September 30, 1996. See *United States v. Brady*, 26 F.3d 282 (2d Cir.), cert. denied, 115 S.Ct. 246 (1994)(denying ex post facto challenge to a 922(g)(1) conviction) and *United States v. Waters*, 23 F.3d 29 (2d Cir. 1994)(ex post facto based challenge to a 922(g)(4) conviction).

*Limitations on Previous Convictions* -- 18 U.S.C. § 921(a)(33)(B). To qualify:(1) at the time of previous conviction, the defendant must have been represented by counsel, or knowingly and intelligently waived the right to counsel;(2) if the offense of previous conviction entitled the person to a jury trial in the jurisdiction in which the case was tried, either the case was tried by a jury, or the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise; and (3) the conviction can not have been expunged or set aside, or be an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms. The issue of restoration of civil rights must be carefully researched for each potential defendant. For example, in some states a person automatically loses his/her civil rights upon the execution of a sentence of imprisonment (felony or misdemeanor) only to have the rights restored upon the defendant's release from prison or sentence. However, in those states, a person who does not serve a sentence of imprisonment may not lose their civil rights and, therefore, this limitation may not be applicable. But, in *United States v. Indelicato*, 97 F.3d 627 (1st Cir. 1996), the Court held that in at least some instances if one group of felons may possess a firearm because their rights were automatically taken away and then restored then those who do not have their rights taken away may also possess a firearm.

*There is no law enforcement exception:* One of the provisions of this new statute removed the exemption that 18 U.S.C. § 925(a)(1) provided to police and military. Thus, as of the effective date, any member of the military or any police officer who has a qualifying misdemeanor conviction is no longer able to possess a firearm, even while on duty.