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FBI Criminal Justice Information Services (CJIS) Division
National Instant Criminal Background Check System (NICS) Section
GUIDANCE DOCUMENT



Dating Misdemeanor Crimes of Domestic Violence (DMCDV)

The “Bipartisan Safer Communities Act of 2022,” Public Law 117-159 (herein after “the Act”) was signed into law on June 25, 2022. Among other changes, the Act expands the type of relationships which qualify for consideration under the “misdemeanor crime of domestic violence” (MCDV) federal firearm prohibition. See, Title 18, United States Code (U.S.C.), section 922(g)(9). The MCDV prohibition is defined at 18 U.S.C. § 921(a)(33). Specifically, the Act amended 18 U.S.C. § 921(a)(33)(A)(ii) to include relationships where the aggressor was “a person who has a current or recent former dating relationship with the victim.” The new “dating relationship” criteria are also further set out under 18 U.S.C. § 921(a)(33)(C) and (a)(37). NOTE: *This new prohibition, however, does not apply to underlying misdemeanor convictions if they occurred before June 25, 2022. See 18 U.S.C. § 921(a)(33)(C).*

The FBI CJIS Division’s NICS Section, in collaboration with the FBI’s Office of the General Counsel, and Department of Justice components including the Bureau of Alcohol, Tobacco, Firearms and Explosives, evaluated relevant provisions of the Act. The following information is provided to assist NICS users to identify and implement MCDV prohibitions pertaining to dating relationships (*dating* MCDVs, hereinafter DMCDVs):

- A “dating relationship” is defined by the Act as being between “individuals who have or have recently had a continuing serious relationship of a romantic or intimate nature.” See 18 U.S.C. § 921(a)(37)(A).
- Further, whether a relationship qualifies as a “dating relationship,” shall be determined by consideration of: “(i) the length of the relationship; (ii) the nature of the relationship; and (iii) the frequency and type of interaction between the individuals involved in the relationship.” See 18 U.S.C. § 921(a)(37)(B).
- A casual acquaintanceship or ordinary fraternization in a business or social context does not constitute a “dating relationship.” See 18 U.S.C. § 921(a)(37)(C).
- “Dating relationship” would include descriptions such as boyfriend, girlfriend, fiancé, etc., to include same-sex relationships which otherwise meet the criteria under 18 U.S.C. § 921(a)(37).
- As with any other MCDV relationships, information establishing a “dating relationship” may be established through incident reports, officer narratives, witness statements, court documents, etc.
- All other criteria, under 18 U.S.C. § 921(a)(33)(A) and (B), needed to establish an MCDV prohibition still apply:
 - misdemeanor conviction;
 - conviction for an offense containing, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon; and
 - qualified relationship.



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In addition to the retroactivity provision noted above, the Act provides that DMCDVs will also differ from other MCDVs under 18 U.S.C. § 922(g)(9) as the firearm prohibition for a DMCDV is, potentially, subject to automatic restoration after five years. The five years is calculated from date of judgement or end of sentence, whichever is later. However, the law provides the five-year prohibition is voided if the person is convicted of another DMCDV or is otherwise prohibited “under this chapter” [e.g., 18 U.S.C. § 922(g) or (n)] on the date the five-year waiting period expires. Example: Subject with one DMCDV conviction in 2026 has another DMCDV conviction in 2028—or they are otherwise a prohibited person under 18 U.S.C. § 922(g)(1) at the five-year mark; the five-year limitation for the initial DMCDV in 2026 would not apply and the subject continues to be a prohibited person (unless they can otherwise comply with all post-conviction remedies that are required by law). See 18 U.S.C. § 921(a)(20) and (a)(33).

The Act provides that, after five years, a conviction for any of the following will annul the automatic restoration:

- Another DMCDV;
- Any other offense that would disqualify the person under § 922(g), specifically, [e.g., a “crime punishable by imprisonment for term exceeding one year” for purposes of 18 U.S.C. § 922(g)(1)—or another MCDV under 18 U.S.C. § 922(g)(9)]; or
- Any other misdemeanor offense under federal, state, local, or tribal law which has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, regardless of the relationship to victim.

Similar to other MCDVs, NICS Indices entries may be made to identify individuals prohibited due to DMCDV convictions by using the relationship to victim (RTV) code “22—*Current or former dating relationship (can be same sex).*”

To assist in making timely firearm eligibility determinations, the NICS Section requests the following from law enforcement and judicial agencies:

- ✓ Provide detailed information regarding subject/victim relationships in incident reports and share relationship information to state record repositories.
- ✓ Respond to all NICS-related inquiries in a timely manner.
- ✓ Extend retention periods for incident reports and court documentation—if permitted by agency or state policies.