

FEDERAL PROHIBITOR RESEARCH STRATEGIES

1

922(g)(1) Persons who have been convicted in any court of a crime punishable by imprisonment for a term exceeding one year

A person convicted (including by a general court martial) of any offense punishable by imprisonment for a term exceeding one year, whether or not such term of imprisonment was imposed.

Notes:

- The term crime punishable by imprisonment for a term exceeding one year does not include (a) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or (b) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.
- What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside, or for which a person has been pardoned or has had civil rights restored, shall not be considered a conviction, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms and the person is not otherwise prohibited by the law of the jurisdiction in which the proceedings were held from receiving or possessing any firearms.

Criteria:	- Must have conviction - Not the sentence received, but the <i>potential</i> under the convicting statute
Classification Level:	Level of conviction/statute
Restoration:	Do they meet the requirements?
Misdemeanor:	NC has 1 disqualifying misd. (Aggravated Level One DWI (NCGS 20-179)
IFFS:	Is there a flag on the criminal history record?
Check:	III, NCIC, CCH, AOC
LEEP:	- Information regarding other states. - Definitions and Terminology

2

922(g)(2) Persons who are fugitives from justice

- (1) A person who has fled from any State to avoid prosecution for a felony or a misdemeanor.
- (2) A person who leaves the state to avoid giving testimony in any criminal proceeding.
- (3) A person who knows that misdemeanor or felony charges are pending against such person and who leaves the state of prosecution.

Notes:

- Fugitives from justice do NOT include persons who are charged with crimes and there is no evidence that they left the state.
- A person is NOT a fugitive from justice merely because s/he has an outstanding CIVIL traffic citation.

Criteria:	• Criminal warrant must be active • Left the state ○ Gun purchase state is different than warrant issuing state ○ Residence state is different than warrant issuing state ○ Subject has arrest from another state AFTER date or warrant issuance • Intent ○ Personal notice, citations, probation order, bond release ○ Signed documentation of criminal obligation to pay fines, appear, etc. and they failed to comply
Confirm:	• Always verify NCIC warrant is active
Check:	• III, NCIC, CCH, Warrant summaries
LEEP:	• Information regarding other states.

3

922(g)(3) Persons who are unlawful users of or addicted to any controlled substance

- (1) A person who uses a controlled substance and demonstrates a pattern of compulsive use of the controlled substance, characterized by impaired control over use, is addicted to a controlled substance.
- (2) A person who regularly uses a controlled substance over an extended period of time continuing into the present, without a lawful prescription or in a manner substantially different from that prescribed by a licensed physician, is an unlawful user of a controlled substance.

Notes:

- Unlawful use requires evidence that the person has unlawfully used the substance with sufficient regularity and recency to indicate that the individual is actively engaged in such conduct. A person may be an unlawful current user of a controlled substance even though the substance is not being used at the precise time the person seeks to acquire, ship, transport, receive, or possess the firearm
- A person is not an unlawful user of a controlled substance if the person has ceased regularly unlawfully using the substance, or if the person's unlawful use is isolated or sporadic or does not otherwise demonstrate a pattern of ongoing use. A person is also not an unlawful user if the person, while using a lawfully prescribed controlled substance, deviates slightly or immaterially from the instructions of the prescribing physician.
- "Controlled substance" includes but is not limited to marijuana, depressants, stimulants, and narcotic drugs. The term "controlled substance" does not include distilled spirits, wine, malt beverages, tobacco, or inhalants (aerosols and glues).

Criteria:	• The records show a person regularly using or possessing controlled substances, over an extended period including the present.
Consider:	• Consulting your agency's legal counsel for guidance. • DUI (may involve drugs) • Probation drug test results
Check:	• III, NCIC, CCH, AOC, Arrest/Probation reports
LEEP:	• Information regarding other states.

922(g)(4) Persons who have been adjudicated as mental defectives or have been committed to a mental institution

- (1) A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease:
 - Is a danger to himself or others; or
 - Lacks the mental capacity to contract or manage his own affairs.
- (2) A person found to be insane by a court in a criminal case.
- (3) A person found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to articles 50a and 72b of the Uniform Code of Military Justice, 10 U.S.C. §850a, §876b.
- (4) A person *formally* committed to a mental institution by a court, board, commission, or other lawful authority (including commitment involuntarily, commitment for mental defectiveness or mental illness, or a commitment for other reasons, such as for drug use).

Notes:

- This term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.
- Mental institution includes mental health facilities, mental hospitals, sanitariums, psychiatric facilities, and other facilities that provide diagnoses by licensed professionals of mental retardation or mental illness, including a psychiatric ward in a general hospital.
- In some circumstances, the process by which an agency designates an alternate payee for benefits will meet the criteria for this prohibitor.
- This term does *not* include a person who has been granted relief from the disability through a qualifying federal or state relief from disability program as authorized by the NICS Improvement Amendments Act of 2007.
- This term also does *not* include a person whose adjudication or commitment was imposed by a *Federal* department or agency, and:
 - the adjudication or commitment was set aside or expunged;
 - the person was fully released from mandatory treatment, supervision or monitoring;
 - the person was found to no longer suffer from the disabling mental health condition;
 - the person has otherwise been found to be rehabilitated; or
 - the adjudication or commitment was based solely on a medical finding without opportunity for a hearing.

Criteria:	• Adjudicated by a lawful authority as mental defective, insane in a criminal case, incompetent to stand trial, found not guilty by lack of mental responsibility, or court ordered to a mental institution. Age of occurrence is not a factor.
NOT included:	• Voluntarily seeking treatment, voluntary commitments, commitments for evaluation/observation • Adjudications based solely on a medical finding of incompetency to handle <i>household</i> affairs
Check:	• III, NICS, Court records
LEEP:	• Information regarding other states.

922(g)(5) Persons who are aliens and are illegally or unlawfully in the United States

- (1) An alien who is illegally or unlawfully in the U.S.
- (2) Alien who has been admitted to the U.S. under a non-immigrant visa without one of the noted exceptions below.

Notes:

- Prohibited - Aliens who are unlawfully in the U.S. are not in valid immigrant, nonimmigrant, or parole status. The term includes:
 - An alien who unlawfully entered the U.S. without inspection and authorization by an immigration officer and who has not been paroled into the U.S.;
 - An alien who is a nonimmigrant and whose authorized period of stay has expired or who has violated the terms of the non-immigrant category in which he or she was admitted;
 - An alien who was paroled under INA Section 212 (d)(5) and whose authorized period of parole has expired, or whose parole status has been terminated;
 - An alien who is under an order of deportation, exclusion, or removal, or under an order to depart the U.S. voluntarily, whether or not he or she has left the U.S.
- **NOT Prohibited**
 - Permanent resident aliens. Must carry evidence of status (AR# or USCIS#).
 - Non-immigrant aliens (I-94#) with one of the following required exceptions:
 - Admitted to U.S. for lawful hunting or sporting purposes, in possession of hunting license or permit lawfully issued in U.S.
 - An official representative of foreign government who is
 - Accredited to the U.S. government or their government's mission to an international organization that has headquarters in U.S.; or
 - En route to/from another country to which that alien is accredited
 - An official of a foreign government or a distinguished foreign visitor who has been so designated by the Dept. of State.
 - A foreign law enforcement officer of a friendly foreign government entering the U.S. on official law enforcement business
 - Waiver from the U.S. Attorney General

Consider:	• Foreign POB does not automatically identify a non-U.S. citizen • Alien status provided by ICE LESC, not local ICE office
Check:	• IAQ response (a spin off of NICS check in DCI) • ICE discrepancy? Report via document in Omnixx Links-NICS Info
Do NOT	• Run multiple IAQs for same subject • Run IAQ on subject of a NICS Indices hit • Run IAQ on a U.S. citizen

6

922(g)(6) Persons who have been discharged from the U.S. Armed Forces under dishonorable conditions

A person whose separation from the U.S. Armed Forces resulted from:

- (1) A dishonorable discharge; or
- (2) A dismissal adjudged by a general court-martial.

Notes:

- Dishonorable Discharge (DD) – enlisted or warrant officers not commissioned
- Dismissal – officer, commissioned warrant officers, cadets, midshipman
- Must be 'executed' on DD-214
- **NOT Prohibited** (unless it meets criteria for another prohibitor)
 - Bad conduct
 - Discharged
 - Other than Honorable Discharge

Check:	• III, NICS
LEEP:	• Military information available.
Note:	• Sheriff cannot require DD-214. Disqualifying discharge information will be returned with NICS check.
Contact:	• Always use the R-84 for military record requests. ○ Can also be found in Omnixx Links > NICS Info • Army/National Guard ○ usarmy.belvoir.hqda-usacid.mbx.cjis@army.mil • Navy/NCIS ○ bradybills@NCIS.NAVY.MIL • Marines/CID ○ usmccid@ncis.navy.mil • Air Force ○ daf.cjic@us.af.mil • Coast Guard ○ USCG-CJIS-Systems-Officer@uscg.mil • National Personnel Records Center: Military Records Center ○ ONLY contact when advised by military branches ○ SL-RECORD-CENTER-STAFF@fbi.gov

7

922(g)(7) Persons who, having been citizens of the United States, have renounced their U.S. citizenship

A person who, having been a U.S. citizen, has renounced U.S. citizenship either:

- (1) Before a diplomatic or consular officer of the U.S. in a foreign state pursuant to 8 U.S.C. §1481 (a)(5); or
- (2) Before an officer designated by the Attorney General when the U.S. is in a state of war pursuant to 8 U.S.C. §1481(a)(6).

Notes:

- Does NOT include any renunciation that has been reversed due to administrative or judicial appeal.

Check:	• NICS (entered by Dept. of State)
Consider:	• Valid match is immediate denial; no additional research required
LEEP:	• Information regarding other states.

8

922(g)(8) Persons subject to a court order that restrains them from harassing, stalking, or threatening an intimate partner or child of such intimate partner, or from engaging in other conduct that would place the partner or child in reasonable fear of bodily injury

A person who is subject to a court order that:

- (1) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate; and
- (2) restrains the person from harassing, stalking or threatening an intimate partner of such person or child of such intimate partner or person, or from engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
- (3) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child or by its terms expressly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.

Notes:

- "Intimate partner" includes the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabits or has cohabited with the person.
- "Actual notice" includes, but is not limited to, service of process personally served on the party and service by mail, proof that notice was left at the party's dwelling house or usual place of abode with some person of suitable age and discretion residing therein or proof that the party signed a return receipt for a hearing notice which had been mailed to the party. The does not include notice published in a newspaper.

Criteria:	• Order issued after a hearing • Person received actual notice • Intimate partner • Restrains future conduct • Credible threat or physical force
Consider:	• Petitioner is not always protected person • Could be more than one protected person • Research all relationships • Brady status of "Y" is automatic denial for active order • PCO/07 indicates firearms restrictions, automatic denial for active order • Active ERPO is a disqualifier
Check:	• NCIC, NICS • Can request copy of order from issuing agency
LEEP:	• Information regarding other states.

9

922(g)(9) Persons convicted in any court of a misdemeanor crime of domestic violence (MCDV)

A person convicted of a local, state, tribal, or federal offense that meets **ALL** of the following criteria:

- (1) Is a misdemeanor under state, tribal, or federal law, or in jurisdictions which do not classify offenses as misdemeanors, is an offense which is punishable by imprisonment for a term of one year or less, and includes offenses that are punishable only by a fine. (This is true whether or not the statute specifically defines the offense as a "misdemeanor" or as a "misdemeanor crime of domestic violence,") and
- (2) Has, as an element, the use or attempted use of physical force (e.g., assault and battery), or the threatened use of a deadly weapon; and
- (3) Was 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.

Notes:

- Includes dating (DMCDV) – a person who has a current or recent former dating relationship with the victim. Only applies to convictions on or after 06/25/2022.
 - Temporary prohibition – 5 years from date of conviction or completion of sentence
 - Conviction of the following will annul the 5-year restoration and create full prohibition:
 - Another DMCDV; or
 - Any other offense that would disqualify the person; or
 - Any other misdemeanor offense that has a force element, regardless of relationship
- Does **NOT** apply if conviction is expunged or set aside.
- Does **NOT** apply if person is pardoned or has had civil rights restored, UNLESS order expressly prohibits receipt/possession of firearms.

Criteria:	• Misdemeanor conviction; AND • Qualifying relationship; AND • Element of force
Consider:	• Charges lowered to citation, ordinance, etc. will not meet • Conviction of N.C.G.S 14-32.5 is a federal prohibitor.
Check:	• NCIC, NICS, CCH, AOC, Incident reports, Court documentation, DVPO
Outreach:	• Courts, Attorney offices, law enforcement agencies, Legal counsel, NICS Legal Analysis Team NICS_legalresearch@fbi.gov
LEEP:	• Information regarding other states. ◦ Definitions and terminology

10

922(g)(n) Persons who are under indictment or information for a crime punishable by imprisonment for a term exceeding one year.

- (1) A person under indictment or information in any court under which a crime punishable by imprisonment for a term exceeding one year may be prosecuted.
- (2) A military service member charged with any offense punishable by imprisonment for a term exceeding one year which has been referred to a general court-martial.

Notes:

- Information = Formal accusation of a crime, which differs from an indictment because it is made by a prosecuting attorney rather than a grand jury.
- Research open felony or disqualifying misdemeanor arrests with no disposition.

Consider:	• Disposition terminology may equal indictment. • Valid NICS match is immediate denial; no additional research required
Check:	• III, NICS, CCH, AOC
Outreach:	• Courts, Attorney offices, etc.
LEEP:	• Information regarding other states.