



**STATE OF IDAHO**  
OFFICE OF THE ATTORNEY GENERAL  
LAWRENCE G. WASDEN

December 20, 2019

Representative Melissa Wintrow  
Idaho House of Representatives  
Capitol Building,  
Boise Idaho 83720

Via Email: [mwintrow@house.idaho.gov](mailto:mwintrow@house.idaho.gov)

Re: Proposed Legislation Establishing Sexual Assault as Grounds to Obtain a  
Civil Protection Order

Dear Representative Wintrow,

This letter is in response to your recent inquiry as to whether potential legislation allowing the issuance of a civil protection order based on a sexual assault would impact an individual's right to possess a firearm under federal law.

**QUESTION PRESENTED**

How would this legislation impact, if at all, a respondent's right to possess a firearm?

**BRIEF ANSWER**

The proposed legislation would not impact an individual's right to possess a firearm under federal law. The Lautenberg Amendment to the Gun Control Act, adopted in 1996, prohibited the possession of a firearm by

individuals falling into certain categories. One of those categories are individuals who have been convicted of crimes of domestic violence involving intimate partners or children of intimate partners. The proposed legislation allows issuance of a protection order based on a sexual assault. The sexual assault need not involve intimate partners or children of such partners. If the legislation was adopted, and a civil protection order was issued based solely on a sexual assault that did not involve an intimate partner or a child of an intimate partner, the order would not impact or otherwise affect the individual's right to possess a firearm under federal law.

### ANALYSIS

18 United States Code § 922(g) provides:

It shall be unlawful for any person--

...

(8) who is subject to a court order that--

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly 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; or

...

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

18 U.S.C.A. § 922(g). The federal statute identifies multiple circumstances when an individual is prohibited from possessing a firearm. One of those conditions involves the issuance of a protection order that restrains the individual from certain actions involving

intimate partners and children of an intimate partner. The term “intimate partner” is defined “[as] 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 cohabitates or has cohabited with the person.” 18 U.S.C. § 921(a)(32). No federal cases appear to address the circumstances implicated by the proposed legislation – a protection order entered between individuals who are not intimate partners. The lack of federal case law is likely due to the fact that the federal criminal statute does not apply to court orders issued in the absence of the intimate relationship.

### CONCLUSION

The proposed amendments to Idaho Code §§ 39-6301, 3603, 6304 and 6306 do not implicate the application of the federal Gun Control Act, specifically the prohibition contained in 18 U.S.C. § 922(g)(8) because the federal statute does not apply in instances involving sexual assault among unrelated persons.<sup>1</sup>

I hope this information is helpful. Please feel free to contact us with any questions or concerns you may have.

Sincerely,



COLLEEN ZAHN  
Deputy Attorney General  
Chief, Criminal Law Division

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<sup>1</sup> Please note that Idaho Code § 39-6304 currently allows a court to enter a protection order based on an allegation of sexual abuse against a family or household member or between persons involved in a dating relationship. As such, an order entered because a court finds an allegation of sexual abuse between family or household members already implicates the prohibitions set forth in 18 U.S.C. § 922(g)(8) so long as the petitioner and respondent meet the definition of “intimate partner.”