SOURCES: Gun Control Act of 1968; Title 18, United States Code (U.S.C.), Sections 921 and 922; Title 27 Code of Federal Regulations (C.F.R.) 478.11.

SECTION 922(g)(1) - PERSONS WHO HAVE BEEN CONVICTED IN ANY COURT OF A CRIME PUNISHABLE BY IMPRISONMENT FOR 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.

SECTION 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 he or she has an outstanding civil traffic citation.

SECTION 922(g)(3) - PERSONS WHO ARE UNLAWFUL USERS OF OR ADDICTED TO ANY CONTROLLED SUBSTANCE

(1) A person who uses a controlled substance and has lost the power of self-control with reference to the use of the controlled substance.

(2) A person who is a current user of a controlled substance in a manner other than as prescribed by a licensed physician.

NOTES:

- Unlawful use is NOT limited to the use of drugs on a particular day, or within a matter of days or weeks before receiving a firearm; rather, the unlawful use only needs to have occurred recently enough 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 a firearm or receives or possesses a firearm.

- An inference of current use may be drawn from evidence or a recent use or possession of a controlled substance or a pattern of use or possession that reasonably covers the present time. For example:

  - A conviction for use or possession of a controlled substance within the past year; <u>or</u>
  - Multiple arrests for use or possession of a controlled substance within the past five years if the most recent arrest occurred within the past year; <u>or</u>
  - A person found through a drug test to use a controlled substance unlawfully, provided the test was administered within the past year.

- For a current or former member of the Armed Forces, an inference of current use may be drawn from recent disciplinary or other administrative action based on confirmed drug use (e.g., court-martial conviction, nonjudicial punishment, or an administrative discharge based on drug use or drug rehabilitation failure).

- As defined in 21 U.S.C. 802 and 21 C.F.R. Part 1308, the term "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, or tobacco (as those terms are defined or used in Subtitle E of the Internal Revenue Code of 1986, as amended).

SECTION 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 <u>or</u> 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.

- 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.

SECTION 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 United States.

(2) Except as provided in 18 U.S.C. § 922(y)(2), an alien who has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101[a][26]).

NOTES:

- Permanent resident aliens are not prohibited under this section.
- Aliens who are unlawfully in the United States are not in valid immigrant, nonimmigrant, or parole status. The term includes:
  - An alien who unlawfully entered the United States without inspection and authorization by an immigration officer and who has not been paroled into the United States under Sec. 212(d)(5) of the Immigration and Nationality Act (INA);
  - An alien who is a nonimmigrant and whose authorized period of stay has expired or who has violated the terms of the nonimmigrant category in which he or she was admitted;
  - An alien who was paroled under INA Sec. 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 United States voluntarily, whether or not he or she has left the United States.
- Examples of Persons who are in the United States in nonimmigrant status
  - An alien who is traveling temporarily in the United States for business or pleasure.
  - An alien who studies in the United States and who maintains a residence abroad.
  - An alien who is a temporary foreign worker.
- Exceptions for Nonimmigrant Aliens (18 U.S.C. 922[y][2])
  - An alien who has been admitted to the United States for lawful hunting or sporting purposes

- An alien who is in possession of a hunting license or permit lawfully issued in tl United States.

- An official representative of a foreign government who is:
  1) Accredited to the United States Government or the Government's mission to an international organization having its headquarters in the United States; or
  2) En route to or 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 Department of State.

- A foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business.

- An alien who has received a waiver from the Attorney General.

SECTION 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:

- This term does not include any separation from the U.S. Armed Forces resulting from any other discharge - for example, a bad conduct discharge.

SECTION 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 United States 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 United States is in a state of war pursuant to 8 U.S.C. 1481(a)(6).

NOTES:

- This term does not include any renunciation of citizenship that has been reversed as a result of administrative or judicial appeal.

SECTION 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 a 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:

- The term 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.

SECTION 922(g)(9) - PERSONS CONVICTED IN ANY COURT OF A MISDEMEANOR CRIME OF DOMESTIC VIOLENCE

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

(1) Is a misdemeanor under state or federal law, <u>or</u> in states 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 state 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:

- A person is NOT considered to have been convicted of a misdemeanor crime of domestic violence if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the jurisdiction in which the proceedings were held provides for the loss of civil rights upon conviction for 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 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.

SECTION 922(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:

- An information is a formal accusation of a crime, which differs from an indictment because it is made by a prosecuting attorney rather than a grand jury.