

# Guide to CPL 370.15 Firearm Removal

The purpose of this guide is to briefly summarize the requirements set forth in CPL § 370.15 concerning firearm purchases for defendants convicted of a domestic violence misdemeanor. The statute also requires the New York State Judiciary to notify the Division of Criminal Justice Services (DCJS) upon a defendant's conviction of a qualifying offense.

## STEP 1 - NOTICE

Pursuant to CPL § 370.15(1), if the People believe a case has a **qualifying charge** and a **qualifying relationship**, the People may serve notice on the defendant within 45 days of his/her arraignment of (1) the qualifying charge; (2) the qualifying relationship; and (3) the victim's name.

### CPL § 370.15 Qualifying Charges

- **Assault 3** [§ 120.00]
  - **Menacing 2** [§ 120.14]; **Menacing 3** [§ 120.15]
  - **Crime Obstruction Breathing/Blood Circ** [§ 121.11]
  - **Unlawful Imprisonment 2** [§ 135.05]
  - **Coercion 3** [§ 135.60 *as of Nov. 1, 2018*]
  - **Crim Trespass 3** [§ 140.10]; **Crim Trespass 2** [§ 140.15]
  - **Criminal Tampering 3** [§ 145.14]
  - **Arson 5** [§ 150.01]
  - **Criminal Contempt 2** [§ 215.50]
  - **Harassment 1** [§ 240.25]
  - **Aggravated Harassment 2** [§ 240.30]
- or any attempt of the above listed charges*

### CPL § 370.15 Qualifying Relationship

A **Qualifying Relationship**, depends upon whether the defendant and victim are in "the same household or family" as per the CPL § 530.11 criteria below:

- **Related** by consanguinity or affinity;
- **legally married; former spouses**
- persons with a **child in common**; *or*
- persons in or formerly in an "**intimate relationship**"

**If the People file a CPL § 370.15 notice, the court must follow Steps 2-6: (other side)**

## STEP 2

If the People file a notice pursuant to CPL § 370.15(1), and upon the defendant's conviction of a qualifying offense, the court must advise the defendant that he/she is entitled to a hearing on the **qualifying relationship** allegation contained in the notice and that DCJS will be notified of the outcome of the hearing.

## STEP 3

The defendant may admit to the alleged **qualifying relationship**.

If the defendant does not admit to the **qualifying relationship**, the court must hold a hearing on the issue. The court must grant the defendant an adjournment to prepare for the hearing, if one is requested.

## STEP 4

During the hearing, the People must prove that there was a **qualifying relationship** beyond a reasonable doubt.

Evidentiary rules for the hearing are found at CPL § 370.15.

## STEP 5

The court must issue a "specific written determination" as to whether there was a **qualifying relationship** (CPL § 370.15[3]).

The court must also send its findings to DCJS (CPL § 380.97).

## STEP 6

**Conviction of a domestic violence misdemeanor qualifies as a "serious offense" pursuant to Penal Law § 265(17), rendering the defendant ineligible to possess a firearm under New York law.**

At sentencing, for a felony or "serious offense," the court must follow the procedures set forth at CPL § 370.25 by:

- Inquiring whether the defendant owns or possesses any firearms, rifles, or shotguns;
- Ordering the immediate surrender of the weapons;
- Notifying local law enforcement and state police in Albany of any such order; and
- Directing the authority receiving the surrendered weapons to immediately notify the court when they have been surrendered.

*This project was supported by subgrant No. SV176652168 awarded by the state administering office for the STOP Formula Grant Program. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the state or the U.S. Department of Justice, Office on Violence Against Women.*



# Guide to CPL 370.15 Firearm Removal