

Felon in Possession of a Firearm

If you have been convicted of a felony in Michigan, you will lose your right to use, possess, transport, sell, purchase, carry, ship, receive, or distribute a firearm under MCL 740.224f. You can eventually have this right restored. How long you have to wait and the procedure for re-establishing these rights depends on what type of felony you were convicted of.

If you are a convicted felon and you are in possession of a firearm, bad things are going to happen to you very rapidly. For instance, besides the felon in possession of a firearm charge, you will be charged with felony firearm meaning you used or possessed a firearm during the commission of a felony. That felony being a felon in possession of a firearm. If the firearm was concealed, you will get another felony charge for carrying a concealed weapon. That's right-- three felony charges from one incident. To make matters worse, the felony firearm charge carries a mandatory minimum sentence of two years that must be served consecutively (after the sentence on your other conviction is served) regardless of what your sentencing guidelines are. This is a very serious charge that can have a devastating impact on your life and future. Also, a lot of prosecutors will not plea bargain with charges that involve a weapon, or at least, they'll try to stick you with the felony firearm charge. Either way, if you plead out or lose at trial you're stuck with another felony and you're going to prison.

Since the consequences of this charge and other related charges are so severe, it is vital that you have a Michigan criminal defense attorney with experience in firearms crimes defending you. The first step is to see if there are any ways that the seizure of the weapon can be challenged. Always look to see if there are any Fourth or Fifth Amendment violations in relation to the police stop or investigation or the finding and seizing of the weapon. Did the police have a warrant or a valid warrant exception? Did the warrant meet the specificity requirements? Was there probable cause for the arrest. Was there reasonable suspicion for the pat down? All of these details must be carefully evaluated and meticulously scrutinized for any issues that could be used to get the evidence suppressed or to be used as leverage when negotiating with the prosecutor for a reduction or dismissal of the charges.

Definition of Firearm

MCL 750.222(d) defines a firearm as a weapon from which a dangerous projectile may be propelled by an explosive, or by gas or air. It does not include a smooth bore rifle or handgun designed and manufactured exclusively for propelling a spring, or by gas or air, BBs not exceeding .177 caliber.

Constructive Possession

Actual physical possession is not required to be found guilty of this offense.

Constructive possession will be enough. The focus is on the proximity to the firearm and the indicia of control. In other words, constructive possession considers whether the defendant knows the location of the firearm and is the firearm reasonably accessible to the defendant. Possession can also be demonstrated by joint possession, meaning that two or more defendants were acting in concert and thus everyone involved can be guilty of possession.

Operability of the Firearm

It is not a defense if the firearm was not operable. The prosecution does not need to prove that the firearm was operable or reasonably or readily operable. The statute only requires that the firearm be designed or intended to propel a dangerous projectile. Inoperability is not a defense.

Self Defense

If a convicted felon was in possession of or using a firearm for self-defense or in defense of others, it can be a valid defense to this crime. This heavily depends on the surrounding circumstances and whether it was proper to be in fear of death or imminent physical harm to either yourself or another.