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April 22, 2019

ATTORNEY GENERAL OPINION NO. 2019- 4

Charles W. Klebe
Director and Assistant Attorney General, CCLU
120 SW 10th Ave., 2nd Floor
Topeka, KS 66612

Re: Crimes and Punishments—Kansas Criminal Code—Crimes against the Public Safety; Criminal Use of Weapons

State Departments—Public Officers and Employees—Firearms; Concealed Firearms; Personal and Family Protection Act; License to Carry Concealed Handgun; Issuance; Disqualifications; Denial

Crimes and Criminal Procedure—Crimes—Firearms; Definitions; Unlawful Acts

Synopsis: The Attorney General may deny a concealed carry handgun license to an applicant for only the reasons stated in the Personal and Family Protection Act. The Act authorizes the Attorney General to deny a license to an individual who is prohibited from shipping, transporting, possessing or receiving a firearm or ammunition pursuant to 18 U.S.C. § 922(g). The Act does not permit the Attorney General to deny a license to an individual who has been convicted of criminal possession of a firearm pursuant to K.S.A. 2018 Supp. 21-6301(a)(15) through (18). Because 18 U.S.C. § 922(g)(2), (5), (8), and (9) and K.S.A. 2018 Supp. 21-6301(a)(15) through (18) do not criminalize the same conduct, there are situations in which an individual might have been convicted under K.S.A. 2018 Supp. 21-6301(a)(15) through (18) and qualify for a concealed carry handgun license. Cited herein: K.S.A. 2018 Supp. 21-5111; 21-6301; 75-7c01; 75-7c03; 75-7c04; 75-7c07; 18 U.S.C. § 921; 18 U.S.C. § 922.

* * *

Dear Mr. Klebe:

As the Director of the Concealed Carry Licensing Unit ("CCLU"), you ask whether there could be circumstances in which the Attorney General would be obligated by statute to issue a concealed carry handgun license ("CCHL") to a person who cannot legally possess a firearm under K.S.A. 2018 Supp. 21-6301. More precisely, you wish to know whether there are scenarios in which an individual may violate K.S.A. 2018 Supp. 21-6301(a)(15) through (18) and still be entitled to a CCHL. In short, we conclude the answer is yes.

Resolution of your question necessitates the interpretation of various state and federal statutes. As with all questions of statutory interpretation, we first review the statute's text, giving words their ordinary, everyday meanings.[1] Only when the language is unclear or ambiguous is it appropriate to use tools of statutory interpretation, such as canons of construction and legislative history.[2]

In 2006, the Kansas Legislature passed the Kansas Personal and Family Protection Act ("Act"),[3] which is administered by the Attorney General. The Act states that the Attorney General "shall issue licenses to carry concealed handguns to persons who comply with the application and training requirements of this act and who are not disqualified under K.S.A. 75-7c04, and amendments thereto."[4] K.S.A. 2018 Supp. 75-7c04 provides:

> (a) The attorney general shall not issue a license pursuant to this act if the applicant:
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> (1) Is not a resident of the county where application for licensure is made or is not a resident of the state;
>
> (2) is prohibited from shipping, transporting, possessing or receiving a firearm or ammunition under 18 U.S.C. § 922(g) or (n), and amendments thereto, or K.S.A. 21-4204, prior to its repeal, or K.S.A. 21-6301(a)(10) through (a)(13) or K.S.A. 21-6304(a)(1) through (a)(3), and amendments thereto; or
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> (3) is less than 21 years of age.

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[1] *State v. Brosseit*, 308 Kan. 743, 749 (2018); *See* Scalia & Garner, Reading Law: The Interpretation of Legal Texts, 69 ("Words are to be understood in their ordinary, everyday meanings—unless the context indicates that they bear a technical sense.").
[2] *Patterson v. Cowley County*, 307 Kan. 616, 622-23 (2018).
[3] K.S.A. 75-7c01 *et seq.*
[4] K.S.A. 2018 Supp. 75-7c03(a).

The predicate question that must be answered is whether the Attorney General has the discretion to deny a CCHL for reasons other than the ones stated in K.S.A. 2018 Supp. 75-7c04. If the Attorney General has this discretion, he could conceivably deny a license to an individual convicted of K.S.A. 2018 Supp. 21-6301(a)(15) through (18) despite their absence from K.S.A. 2018 Supp. 75-7c04.

Such a discretionary power could only exist if "shall"—as used in K.S.A. 2018 Supp. 75-7c04—is directory rather than mandatory. "The word shall ordinarily connotes an obligatory meaning, although courts sometimes treat the word as directory when the context suggests as much."[5] The Kansas Supreme Court has outlined four factors to weigh when determining whether the Legislature's use of "shall" is mandatory or directory: "(1) legislative context and history; (2) substantive effect on a party's rights versus merely form or procedural effect; (3) the existence or nonexistence of consequences for noncompliance; and (4) the subject matter of the statutory provision, *e.g.*, elections or notice on charges for driving under the influence."[6]

The factors weigh decisively in favor of finding "shall" mandatory. Most tellingly, the two uses of the word in subsections (a) and (b) of K.S.A. 2018 Supp. 75-7c04 stand in sharp contrast to the use of "may" in subsection (c).[7] The juxtaposition of "shall" and "may" within the same statute reveals the Legislature intended "shall" to be mandatory.[8] A later statute bolsters this point, providing that "[i]n accordance with the provisions of the Kansas administrative procedure act, the attorney general *shall* deny a license to any applicant for license who is ineligible under K.S.A. 75-7c04, and amendments thereto. . . ."[9]

The Act's legislative history confirms this reading. According to the testimony of Assistant Attorney General Kevin Graham to the House Federal and State Affairs Committee on March 1, 2006, the Act was designed to deprive the Attorney General of discretion:

> SB 418 would enact a "shall issue" law for the lawful concealed carry of a weapon in Kansas. The distinction between a "shall issue" state and a "may issue state" in regards to concealed carry statutes is that in 'shall issue' states if the citizen applying for the permit has met each and every

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[5] *Walker v. Brizendine*, No. 114,776, 2016 WL 5012505 (Kan. App. 2016) (unpublished opinion) (citing *Ambrosier v. Brownback*, 304 Kan. 907, 912-15 [2016]; *Hawley v. Kansas Dept. of Agriculture*, 281 Kan. 603, 618 [2006]; Scalia and Garner, Reading Law: The Interpretation of Legal Texts, p. 112-15 [2012]).
[6] *State v. Raschke*, 289 Kan. 911, 921 (2009).
[7] K.S.A. 2018 Supp. 75-7c04 (the Attorney General "may: (1) Create a list of concealed carry handgun licenses or permits issued by other jurisdictions which the attorney general finds have training requirements that are equal to or greater than those of this state; and (2) review each application received pursuant to K.S.A. 75-7c05, and amendments thereto, to determine if the applicant's previous training qualifications were equal to or greater than those of this state.").
[8] *See Hill v. Kansas Dept. of Labor,* 292 Kan. 17, 21, (2011) ("If the civil penalty was intended to be mandatory, the legislature could have used directory language such as 'shall' or 'must' rather than the permissive word 'may.'"); *Dillon's Food Stores, Inc. v. Brosseau*, 17 Kan. App. 2d 657, 659, (1992) ("In 60-2610[a] . . . , the use of 'shall' indicates that courts are *required* to award treble damages to holders of worthless checks who have made a written demand for payment. This conclusion is particularly persuasive given the legislature's use of 'may' in the last paragraph of subsection [a].").
[9] K.S.A. 2018 Supp. 75-7c07(a) (emphasis added).

> one of the statutorily required qualifications for the permit then the state must issue the citizen the requested permit. In "shall issue" states the decision on whether or not a citizen may obtain a concealed carry permit is not left to the discretion of the government employee; the law determines who will be eligible for a permit[,] not an individual.

Although the remaining factors offer less guidance,[10] we are confident that shall, as used in K.S.A. 2018 Supp. 75-7c04(a), is mandatory rather than directory.

Having established that the Attorney General is limited to denying a CCHL for only the reasons provided in K.S.A. 2018 Supp. 75-7c04(a), we narrow our focus to those convictions that preclude the issuance of a CCHL. As previously stated, the Attorney General shall not issue a license to a person who "is prohibited from shipping, transporting, possessing or receiving a firearm or ammunition under 18 U.S.C. § 922(g) or (n), and amendments thereto, or K.S.A. 21-4204, prior to its repeal, or K.S.A. 2018 Supp. 21-6301(a)(10) through (a)(13) or K.S.A. 2018 Supp. 21-6304(a)(1) through (a)(3), and amendments thereto."[11]

Pursuant to 18 U.S.C. § 922(g), it is unlawful to possess a firearm or ammunition if the person:

> (1) . . . has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
>
> (2) . . . is a fugitive from justice;
>
> (3) . . . is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));
>
> (4) . . . has been adjudicated as a mental defective or who has been committed to a mental institution;
>
> (5) . . . being an alien—
>
> (A) is illegally or unlawfully in the United States; or
>
> (B) except as provided in subsection (y)(2), 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));

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[10] Another factor weighing in favor of a mandatory meaning is that the Act directly affects "the right of the people to keep and bear arms" under the Second Amendment to the United States Constitution. *See D'Alessandro v. Pennsylvania State Police*, 937 A.2d 404 (2007) (applying a heightened evidentiary standard in an administrative proceeding to determine if applicant was entitled to license to carry firearm because it implicated the applicant's rights under the Second Amendment); see also *State v. Raschke*, 289 Kan. 911, 916 (2009) ("[M]andatory provisions deal with substance and directory provisions with form.").

[11] K.S.A. 2018 Supp. 75-7c04(a)(2).

> (6) . . . has been discharged from the Armed Forces under dishonorable conditions;
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> (7) . . . having been a citizen of the United States, has renounced his citizenship;
>
> (8) . . . 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
>
> (9) . . . has been convicted in any court of a misdemeanor crime of domestic violence[.]"

Relevant for CCHL purposes, K.S.A. 2018 Supp. 21-6301 defines criminal use of weapons as knowingly:

> (10) possessing any firearm by a person who is both addicted to and an unlawful user of a controlled substance;
>
> (11) possessing any firearm by any person, other than a law enforcement officer, in or on any school property or grounds upon which is located a building or structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12 or at any regularly scheduled school sponsored activity or event whether the person knows or has reason to know that such person was in or on any such property or grounds;
>
> (12) refusing to surrender or immediately remove from school property or grounds or at any regularly scheduled school sponsored activity or event any firearm in the possession of any person, other than a law enforcement

> officer, when so requested or directed by any duly authorized school employee or any law enforcement officer;
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> (13) possessing any firearm by a person who is or has been a mentally ill person subject to involuntary commitment for care and treatment, as defined in K.S.A. 59-2946, and amendments thereto, or persons with an alcohol or substance abuse problem subject to involuntary commitment for care and treatment as defined in K.S.A. 59-29b46, and amendments thereto. . . .

Two of these provisions bear a striking resemblance to two provisions in 18 U.S.C. § 922(g).[12] In other words, there is some statutory overlap in disqualifying convictions for a CCHL.

In 2018, the Legislature added four definitions of criminal use of weapons to K.S.A. 2018 Supp. 21-6301(a):

> (15) possessing any firearm while a fugitive from justice;
>
> (16) possessing any firearm by a person who is an alien illegally or unlawfully in the United States;
>
> (17) possessing any firearm by a person while such person 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 a child of such person or such intimate partner, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or the 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

[12] *Compare* K.S.A. 2018 Supp. 21-6301(a)(10) ("possessing any firearm by a person who is both addicted to and an unlawful user of a controlled substance"), with 18 U.S.C. § 922(g)(3) ("who is an unlawful user of or addicted to any controlled substance"); *compare also* K.S.A. 2018 Supp. 21-6301(a)(13) ("possessing any firearm by a person who is or has been a mentally ill person subject to involuntary commitment for care and treatment, as defined in K.S.A. 59-2946, and amendments thereto, or persons with an alcohol or substance abuse problem subject to involuntary commitment for care and treatment as defined in K.S.A. 59-29b46, and amendments thereto"), with 18 U.S.C. § 922(g)(4) ("who has been adjudicated as a mental defective or who has been committed to a mental institution").

> (18) possessing any firearm by a person who, within the preceding five years, has been convicted of a misdemeanor for a domestic violence offense, or a misdemeanor under a law of another jurisdiction which is substantially the same as such misdemeanor offense.[13]

Like before, these four provisions have corollaries in 18 U.S.C. § 922(g).[14] But unlike before, these four provisions were not incorporated into K.S.A. 2018 Supp. 75-7c04(a)(2). This begs the question that you have asked: Are there situations in which a person might violate one of these four state provisions but not their corollaries in 18 U.S.C. § 922(g)? If so, the Attorney General would be obligated to issue a CCHL to an individual who is not legally authorized to possess a weapon under Kansas law. Each statutory comparison is considered in turn.

Fugitive from Justice

First, K.S.A. 2018 Supp. 21-6301(a)(15) criminalizes "knowingly . . . possessing any firearm while a fugitive from justice." "Fugitive from justice" is defined as "any person having knowledge that a warrant for the commission of a felony has been issued for the apprehension of such person under K.S.A. 22-2713, and amendments thereto."[15] To date, no reported case has expounded on the meaning of fugitive from justice. And while the statute appears to create a general-intent crime,[16] it requires that the defendant knew a warrant for arrest had been issued.

Similarly, 18 U.S.C. § 922(g)(2) makes it a crime for a "fugitive from justice" "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." Fugitive from justice is defined as "any person who has fled from any State to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding."[17] Like the Kansas statute, "knowingly" is the requisite *mens rea*.[18] A number of federal circuit courts have observed that that in order to be a fugitive from justice, the defendant must have known that charges were pending.[19]

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[13] L. 2018, Ch. 61, Sec. 1, codified at K.S.A. 2018 Supp. 21-6301(a). All four of these offenses are severity 8, nonperson felonies. K.S.A. 2018 Supp. 21-6301(b)(4).
[14] *Compare* K.S.A. 2018 Supp. 21-6301(a)(15), with 18 U.S.C. 922(g)(2); *compare also* K.S.A. 2018 Supp. 21-6301(a)(16), with 18 U.S.C. § 922(g)(5)(A); *compare also* K.S.A. 2018 Supp. 21-6301(a)(17), with 18 U.S.C. § 922(g)(8); *compare also* K.S.A. 2018 Supp. 21-6301(a)(18), with 18 U.S.C. § 922(g)(18).
[15] K.S.A. 2018 Supp. 21-6301(m)(2).
[16] *See* K.S.A. 2018 Supp. 21-5202(i) ("All crimes defined in this code in which the mental culpability requirement is expressed as "knowingly," "known," or "with knowledge" are general intent crimes.").
[17] 18 U.S.C. § 921(a)(15); *see* 27 C.F.R. 478.11 (stating, "The term also includes any person who knows that misdemeanor or felony charges are pending against such person and who leaves the State of prosecution.").
[18] *See* 18 U.S.C. § 924(a)(2) ("Whoever knowingly violates subsection . . . [g] . . . of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both.").
[19] *United States v. Ballentine*, 4 F.3d 504, 506 (7th Cir. 1993); *United States v. Spillane*, 913 F.2d 1079, 1081-82 (4th Cir. 1990).

And it appears the Tenth Circuit Court of Appeals would hold the same.[20] As a result, the Kansas and federal definitions of fugitive from justice in this context appear to be in accord.

The salient distinction, therefore, is the added interstate element of 18 U.S.C. § 922(g)(2). Consequently, a person could possess a firearm while fleeing from authorities intrastate, and still receive a CCHL.[21]

Illegal Aliens and Court Orders

Next, K.S.A. 2018 Supp. 21-6301(a)(16) criminalizes the possession of "any firearm by a person who is an alien illegally or unlawfully in the United States." Federal law lists aliens who are "illegally or unlawfully in the United States."[22] And with limited exceptions, federal law also prohibits the possession of firearms by individuals who are present in the country under nonimmigrant visas.[23] "To establish that a defendant is illegally in the United States for purposes of [18 U.S.C.] § 922(g)(6), the government must prove that the alien was in the United States without authorization at the time the firearm was received."[24]

Likewise, K.S.A. 2018 Supp. 21-6301(a)(17) and 18 U.S.C. § 922(g)(8) are identical. And both federal and state law define "intimate partner" in the same manner.[25]

When interpreting federal and state statutes that contain the same or similar language, Kansas courts look to federal courts for guidance.[26] Since we are unable to locate a published opinion interpreting K.S.A. 2018 Supp. 21-6301(a)(16) or (a)(17), we presume at this time that Kansas courts would interpret them consistent with their federal counterparts. As a result, an individual convicted under K.S.A. 2018 Supp. 21-6301(a)(16) and (a)(17) would not likely be eligible for a CCHL by virtue of 18 U.S.C. § 922(g)(6) and (g)(8)'s inclusion in K.S.A. 2018 Supp. 75-7c04(a)(2).

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[20] *See United States v. Mindreci*, 163 F. App'x 690, 696 (10th Cir. 2006) (unpublished opinion) (finding sufficient evidence for a conviction under 18 U.S.C. § 922(g)(2) where defendant appeared for several hearings and a portion of the trial); *United States v. Rolle*, 19 F. App'x 812, 814 (10th Cir. 2001) (unpublished opinion) (finding sufficient evidence for conviction under 18 U.S.C. § 922(g)(2) where defendant told officer that he was aware of an outstanding warrant for his arrest).

[21] *See* 18 U.S.C. § 922(g); *see also* Sari Horwitz, *Tens of Thousands with Outstanding Warrants Purged from Background Check Database for Gun Purchases*, WASH. POST (Nov. 22, 2017), https://www.washingtonpost.com/world/national-security/tens-of-thousands-with-outstanding-warrants-purged-from-background-check-database-for-gun-purchases/2017/11/22/b890643c-ced1-11e7-9d3a-bcbe2af58c3a_story.html (explaining that the FBI and ATF now consider an individual as a fugitive from justice only if they cross state lines).

[22] 18 U.S.C. § 922(g)(5)(A).

[23] 18 U.S.C. § 922(g)(5)(B) ("except as provided in subsection [y][2], 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]").

[24] *United States v. Hernandez*, 913 F.2d 1506, 1513 (10th Cir. 1990).

[25] *Compare* K.S.A. 2018 Supp. 21-6301(m)(3), with 18 U.S.C. § 921(a)(32).

[26] See *Midwest Crane & Rigging, LLC v. Kansas Corp. Commission*, 306 Kan. 845, 848 (2017); *Sierra Club v. Moser*, 298 Kan. 22, 48 (2013).

Domestic Violence

Lastly, K.S.A. 2018 Supp. 21-6301(a)(18) prohibits the possession of "any firearm by a person who, within the preceding five years, has been convicted of a misdemeanor for a domestic violence offense, or a misdemeanor under a law of another jurisdiction which is substantially the same as such misdemeanor offense." Domestic violence means "the use or attempted use of physical force, or the threatened use of a deadly weapon, committed against a person with whom the offender is involved or has been involved in a dating relationship or is a family or household member."[27]

K.S.A. 2018 Supp. 21-6301 does not define "dating relationship" or "family or household member." For those definitions, you suggest that we look to K.S.A. 2018 Supp. 21-5111(i)(1) and (2). That statute, however, defines domestic violence differently than K.S.A. 2018 Supp. 21-6301(m)(1).[28] In addition, K.S.A. 2018 Supp. 21-5111(i) states that the sub-definitions of dating relationship and family or household member are limited to "the purposes of this definition [(of domestic violence)]." Based on the plain language of K.S.A. 2018 Supp. 21-5111(i), therefore, we doubt a court would necessarily transpose the definitions of dating relationship and family or household member to K.S.A. 2018 Supp. 21-6301(m)(1).

Federal law prohibits possession of a firearm by anyone "who has been convicted in any court of a misdemeanor crime of domestic violence."[29] As used here, domestic violence means an offense that:

> (i) is a misdemeanor under Federal, State, or Tribal law; and
>
> (ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, 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.[30]

The Tenth Circuit Court of Appeals recently held that a defendant's misdemeanor conviction for domestic battery under Wichita's municipal code was not a misdemeanor under "State . . . law."[31] The court concluded:

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[27] K.S.A. 2018 Supp. 21-6301(m)(1).
[28] See K.S.A. 2018 Supp. 21-5111(i) ("'Domestic violence' means an act or threatened act of violence against a person with whom the offender is involved or has been involved in a dating relationship, or an act or threatened act of violence against a family or household member by a family or household member. Domestic violence also includes any other crime committed against a person or against property, or any municipal ordinance violation against a person or against property, when directed against a person with whom the offender is involved or has been involved in a dating relationship or when directed against a family or household member by a family or household member.").
[29] 18 U.S.C. § 922(g)(9).
[30] 18 U.S.C. § 921(a)(33).
[31] *United States v. Pauler*, 857 F.3d 1073, 1078 (10th Cir. 2017).

> We interpret "State" to have the same meaning in § 921(a)(33) that it has throughout the rest of §§ 921 and 922 and therefore conclude that "a misdemeanor under Federal, State, or Tribal law" does not include a violation of a municipal ordinance. In these sections, when Congress refers only to "State" law, it does not also include the laws of a state's political subdivisions. Accordingly, because Defendant's prior violation of a Wichita municipal ordinance was not a "misdemeanor crime of domestic violence" as defined by § 921(a)(33), the government has not demonstrated that he was prohibited from possessing a firearm under § 922(g)(9).[32]

The text of K.S.A. 2018 Supp. 21-6301(a)(18), on the other hand, does not limit itself to only convictions under state law. But because K.S.A. 2018 Supp. 21-6301(a)(18) has not been incorporated into K.S.A. 2018 Supp. 75-7c04, a municipal misdemeanor conviction of domestic violence does not bar an individual from receiving a CCHL.

Another key difference between federal and Kansas law is the relationship between the defendant and victim. Kansas law provides that the defendant and victim may be "a family or household member" or "involved in a dating relationship."[33] Federal law, however, does not encompass situations in which a child commits domestic violence against a parent.[34] For example, in *United States v. Skuban*,[35] a son moved to dismiss a criminal charge pursuant to 18 U.S.C. § 922(g)(9), because he had been previously convicted under Nevada law of misdemeanor domestic violence against his mother. Agreeing with the son, the federal district court observed:

> In this case, the statute is clear on its face. [18 U.S.C. § 922(g)(9)] contemplates specific relationships between perpetrator and victim. The relationship defendant had with his victim, *i.e.* child-aggressor and parent-victim, is not specified in the statute as one that meets the predicate requirements for a "misdemeanor crime of domestic violence."[36]

Under K.S.A. 2018 Supp. 21-6301(a)(18), we are left with the ordinary, everyday meaning of "family or household member."[37] Put simply, family includes both a parent and child alike, so the statute is broader than 18 U.S.C. § 922(g)(9).[38]

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[32] *Id.*
[33] K.S.A. 2018 Supp. 21-6301(m)(1).
[34] *See* 18 U.S.C. § 921(a)(33)(ii).
[35] 175 F. Supp. 2d 1253 (D. Nev. 2001).
[36] *Id.* at 1254-55.
[37] *See In re Estate of Gardiner*, 273 Kan. 191, 212 (2002) ("Words in common usage are to be given their natural and ordinary meaning.").
[38] *See* Black's Law Dictionary (10th Ed. 2014) ("A group consisting of parents and their children."). Even if a court were to use the definition of "family or household member" from K.S.A. 2018 Supp. 21-5111(i)(2), that definition encompasses both parents and children.

To reiterate, the Attorney General lacks discretion to deny a CCHL application for any reason other than those stated in the Act. We have identified three situations in which an individual may violate K.S.A. 2018 Supp. 21-6301(a)(15) through (18), but still receive a CCHL: (1) a person convicted of possessing a firearm while fleeing from authorities intrastate; (2) a person convicted of misdemeanor domestic violence under a municipal code; and (3) a person convicted of misdemeanor domestic violence by a child-aggressor against a parent-victim. Although there may be additional situations in which an applicant has violated these statutes but still be entitled to a CCHL, these examples serve to illustrate the gaps between 18 U.S.C. § 922 and K.S.A. 2018 Supp. 21-6103.

Sincerely,

Derek Schmidt
Kansas Attorney General

Kurtis Wiard
Assistant Attorney General

DS:AA:KW:sb