



Criminal Justice Oversight Council

69th Montana Legislature

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September 19, 2025

Montana Congressional Delegation

The Honorable Steven R. Daines, U.S. Senator
320 Hart Senate Office Building
Washington, D.C. 20510-2604

The Honorable Ryan Zinke, Congressman
512 Cannon House Office Building
Washington, D.C. 20515-2601

The Honorable Tim Sheehy, U.S. Senator
G55 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Troy Downing, Congressman
1529 Longworth House Office Building
Washington, D.C. 20515

Dear Montana Senators and Congressmen:

You need to be aware of a recent and important issue that affects all law-abiding Montanans.

Recently, the 9th Circuit U.S. Court of Appeals issued a decision impacting the ability of the criminal justice system to protect domestic violence victims in Montana from their convicted abusers who possess firearms. In *U.S. v. DeFrance*, 124 F.4th 814 (decided December 30, 2024), the 9th Circuit dismissed an 18 U.S.C. § 922(g)(9) conviction for unlawful possession of firearms against a defendant, holding Montana's domestic violence statute does not constitute a predicate domestic violence conviction under the definition of a "misdemeanor crime of domestic violence" in 18 U.S.C. § 921(a)(33)(A)(ii).

Congress, aware of the deadly results of domestic strife combined with firearm use, enacted 18 U.S.C. § 922(g)(9) to keep firearms out of the hands of convicted domestic abusers. Until the *DeFrance* decision, the Montana criminal justice system was able to use the threat of federal prosecution under 18 U.S.C. § 922(g)(9) to prevent convicted violent domestic offenders from possessing firearms. The law was used judiciously, and according to the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the agency found the law was used in federal prosecutions in Montana fewer than 15 times in the last 10 years.

However, because of the *DeFrance* decision, Montana will be the only state in the nation where this federal prohibition is no longer valid due to the 9th Circuit's reliance on the "categorical approach" to analyze the predicate conviction. The categorical approach limited the court's analysis to the statutory language of the state conviction, preventing the court from examining the facts of the underlying conviction. The federal court believed Montana's definition of "bodily injury" was too broad. For that reason alone, it prevented Montana's domestic violence statute from serving as the predicate for a federal U.S.C. § 922 charge and conviction. This result cannot be what Congress intended when it carefully crafted U.S.C. § 922 protections.

Changing Montana's bodily injury definition to preserve those federal protections was considered, but it was determined to be an impractical approach that would lessen protections for Montana domestic violence victims and likely negatively impact other parts of Montana's criminal code. We ask you to address this baffling result by working with Congress to amend the federal definition of "misdemeanor crime of domestic violence" in 18 U.S.C. § 921(a)(33)(A)(ii) to include an examination of the offender's actual conduct. By including this language, a conviction would not be confined to a review of the legal elements of the underlying charge. This recommendation is not without precedent. The United States Supreme Court has been critical of the categorical approach and has recommended the court focus on the factual record to determine whether the underlying conviction constitutes a crime of violence.

We implore you to investigate this issue on behalf of all Montanans so domestic abuse victims and law-abiding citizens alike can enjoy the federal protections that were removed by this court decision.

We hope you can fix this issue before this Council is required to act in the coming months.



Sen. Barry Usher, Council Presiding Officer
Montana Senate District 19

Hon. Luke Berger
Council Vice Presiding Officer
Montana 5th Judicial District Court

Representative Amy Regier
Montana House District 6

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Representative of Crime Victims

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Board of Pardons and Parole Member

Amy Tenney
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Representative of Community Corrections Facilities

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Montana House District 100

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Yellowstone County Attorney

CC:
Kurt Alme, United States Attorney, District of Montana