



### Differences in State Laws

Many states have enacted differing laws that relate to domestic violence and the restriction of firearms and ammunition. As such, understanding the coverage and limitations offered by each state is vital to identifying the strengths and areas for improvement in state laws.

### Prohibiting Firearms at the Ex Parte (Temporary Order) Stage

An ex parte restraining order provides temporary relief to a victim who has applied for a civil restraining order in which the victim alleges an “immediate and present physical danger.” Following the issuance of an ex parte restraining order, the court orders a hearing to be held within 14 days. However, the two week span between applying for a restraining order and the hearing can present a great risk to the victim filing for protection, with studies indicating that the most dangerous time for a victim of domestic violence is when she or he leaves. As of 2014, at least twenty states explicitly address ex parte restraining orders and the temporary removal of firearms.

The twenty states - Arizona, California, Hawaii, Illinois, Maine, Massachusetts, Michigan, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Pennsylvania, Texas, Utah, Virginia, Washington, and West Virginia – vary in the strength of their prohibitions against domestic violence perpetrators. For example, in [Massachusetts](#), the court **must** order the immediate suspension and surrender of any license to carry firearms and order the respondent to surrender all firearms and ammunition to the appropriate law enforcement immediately upon the service of the order. In contrast, [New Hampshire](#) law states that a court **may** order a respondent to relinquish all firearms and ammunition in the respondents’ possession, control or ownership upon the applicant showing she is in immediate and present danger of abuse. These differences in rigidity (“must” versus “may,” leaving it to the court’s discretion whether or not to issue an order for the surrender of firearms in New Hampshire) and scope (“upon the service of the order” versus “immediate and present danger of abuse”) create differing coverage for victims of domestic violence state to state.

## **Period of Time in which Firearms must be Surrendered**

The time a respondent has to surrender his or her firearm varies greatly. Some states, like [California](#), require that upon being served with a domestic violence protective order, the respondent must relinquish his or her firearms immediately upon request of any law enforcement officer or within 24 hours if no request is made.

The language of some statutes remains vague regarding the exact time in which firearms must be relinquished. [Washington](#), for example, requires an individual to surrender any firearms or concealed carry licenses in his or her possession once a protective order that restrains the person from harassing, stalking or threatening an intimate partner or child of the intimate partner is issued, following a noticed hearing, and the individual represents a credible threat to the safety of the intimate partner or child. While the respondent must submit a proof of surrender with the court, the exact time in which this must occur is not dictated.

The time in which an individual must surrender his or her firearm may also depend on the type of protective order issued. For example, while California requires the immediate surrender of firearms upon an officer's request or within 24 hours for domestic violence protective orders, for protective orders related to stalking, the relinquishment time period is [specified in the order](#).

## **Required Court Review of Compliance**

Although a number of states require the surrender of firearms when an individual is convicted of a domestic violence misdemeanor or is the subject of a protective order, determining whether an individual has complied with the court's order to relinquish firearms can be a difficult task. Only a handful of states, such as California, Colorado, Delaware, Illinois, and Minnesota, require that proof of the surrender of firearms be submitted to the court; however, many states are working to close the gap that exists between when a court orders an individual to surrender his or her firearms and actual relinquishment to the appropriate party. [Wisconsin](#), for example, has made strides in ensuring compliance with court orders to surrender firearms by developing an explicit firearm surrender protocol.

When respondents have not complied with an order to surrender firearms in their possession, many states allow courts to enter a separate order compelling individuals to comply with the surrender of firearms within a designated time (typically 24 or 48 hours) and provide proof of relinquishment to the court.

## **Statutory Mandate or Permissive Statutory Language Regarding Surrender of Firearms**

Whether a court *must* or *may* direct a perpetrator to surrender firearms in his or her possession depends on the state. State statutes essentially fit into three categories: states that require or authorize domestic violence misdemeanants to surrender firearms; states that must or may direct law enforcement to remove firearms in a perpetrator's possession; and states in which a court must or may order a perpetrator to surrender firearms when a protective order is issued against him or her.

The most stringent states – California, Connecticut, Hawaii, New York, and Pennsylvania – prohibit domestic violent misdemeanants from possessing firearms and require the surrender of firearms by anyone who has become ineligible to possess them. Five additional states – Colorado, Illinois, Iowa, Minnesota, and Tennessee - require the surrender of firearms when an individual is convicted of a domestic violence misdemeanor.

Some states also enable or mandate that a court issuing a protective order direct law enforcement to remove firearms from a perpetrator. Massachusetts and Illinois, for example, require that a court issue a warrant for the seizure of any firearms in the abuser's possession. Hawaii and New Jersey grant a judge issuing a domestic violence protective order the authority to instruct law enforcement to take possession of all firearms within a perpetrator's possession.

At the broadest levels of protection, about half the states require or authorize a court to order an abuser to surrender firearms and ammunition. Fifteen states require that abusers subject to a domestic violence protective order surrender specific firearms in their possession – California, Colorado, Connecticut, Hawaii, Illinois, Iowa, Maryland, Massachusetts, Minnesota, New Hampshire, New York, North Carolina, Tennessee, Washington, and Wisconsin – however, even the strength of these laws varies from state to state. In California, Illinois, Maryland, New Hampshire, Tennessee, and Wisconsin courts are required to order those subject to domestic violence protective orders to surrender firearms, regardless of the circumstances leading to the order, while other states may require that certain conditions – like a court determination that the abuser may use or threaten to use a firearm against the victim, as is required in New York - be met prior to ordering the surrender of firearms. Finally, twelve states – Alaska, Arizona, Delaware, Florida, Indiana, Nevada, New Jersey, North Dakota, Pennsylvania, Rhode Island, South Dakota, Vermont – and the District of Columbia state that courts may instruct abusers to surrender firearms upon the issuance of a protective order.

## **Relationship Status Covered by the Prohibition**

Federal law prohibits individuals convicted of a “misdemeanor crime of domestic violence” from purchasing and possessing firearms and ammunition; however, some types of relationships do not lend to finding a perpetrator of domestic violence as having committed a “misdemeanor crime of domestic violence.” For someone to be convicted of a “misdemeanor

crime of domestic violence,” the offender must fall into one of four categories: be a current or former spouse, parent, or guardian of the victim; share a child in common with the victim; currently or previously have cohabited with the victim as a spouse, parent, or guardian; or be similarly situated to a spouse, parent, or guardian of the victim.

In light of these limitations, some states have extended the coverage offered to victims of misdemeanor crimes of domestic violence by broadening the type of relationships included, with the strongest laws entirely ignoring the relationship status between the victim and offender (prohibiting an offender of a violent misdemeanor from purchasing or possessing firearms, regardless of the victim’s relationship with the perpetrator). Four states – California, Connecticut, Hawaii, and New York – prohibit the purchase and possession of firearms or ammunition by anyone convicted of assault, battery or stalking regardless of the victim’s relationship to the offender. Although the details of each law differs, Delaware, the District of Columbia, Illinois, New Jersey, Texas, Washington, and West Virginia extend the prohibition of possessing or purchasing firearms to a dating partner, although the definition of “dating partner” varies from state to state, with some states requiring that the individuals be “cohabitating dating partners” (DE). Some states also prohibit those convicted of misdemeanor stalking from possessing or purchasing firearms, such as Minnesota, New Jersey, Pennsylvania. There are, of course, variations in the application of the prohibition to stalkers as well; for example, [Tennessee](#) prohibits the sale of firearms to individuals convicted of stalking; [Washington](#) prohibits firearm purchase or possession by individuals convicted of stalking misdemeanors against a family or household member; and [Alabama](#) prohibits possession of a firearm by individuals who have been convicted of misdemeanor domestic violence offense or other specified violent offenses (including stalking, child abuse, and domestic violence crimes).

Essentially three-fourths of states and the District of Columbia also have laws that prohibit individuals subject to certain types of protective orders from purchasing or possessing firearms or ammunition. Of course, the strength of these laws varies from state to state, with some states requiring courts to order the surrender of firearms and others courts simply given the power to do so should they so choose. The scope of relationships covered by the protective order also varies. [Florida](#), for example, bars the possession of firearms by persons subject to restraining orders for domestic violence, stalking, or cyberstalking, despite not banning gun possession by individuals convicted of domestic violence misdemeanors or individuals convicted of stalking misdemeanors.