Police Seizure of Firearms at Scenes of Domestic Violence

When police are called to a domestic violence scene, some states allow or require police to confiscate firearms. Eighteen states have laws addressing the seizure of firearms at scenes of domestic violence. Eight require police to seize firearms at the scene that were used or threatened to be used in the assault, seven states allow police to remove firearms at their discretion, and three states that require the removal of guns used in a domestic violence incident also permitting the seizure of other present firearms depending on the circumstances. For example, West Virginia law enforcement “shall” remove firearms involved in the domestic violence incident and “may” remove other weapons in plain view or discovered pursuant to a consensual search, as necessary for protection. The details of the individual state laws further vary on a variety of issues: whether the seized guns must be in plain view (or discovered during a consensual search) or whether police can search for them; whether the removal of guns requires the arrest of the abuser; whether the removed firearms must pose a danger to someone, and whether ammunition must also be confiscated (see table below). Four states (AZ, CA, IN, MD) specify that only firearms in the “plain view” of the officer or discovered pursuant to a consensual search can be removed, eight states do not impose this condition, and six others impose it under certain circumstances or for certain weapons (for example, those not used in the domestic violence incident). Five state laws (AK, AZ, CA, HI, NJ) permit or require law enforcement to remove firearms only when they potentially expose the victim, officer, or others to danger.

Ten of the eighteen states (AK, AZ, CA, CT, HI, IL, MD, MT, NJ, OK) also specify how long guns must remain in law enforcement custody, with most imposing relatively brief time periods (7 days or less in several states) unless the firearm is need for evidence in a criminal prosecution or the abuser is deemed ineligible to possess firearms. The eight other states provide no time frame for the return of the seized firearms.

<table>
<thead>
<tr>
<th>Law Enforcement Authority to Confiscate Firearms at Domestic Violence Scene</th>
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<tbody>
<tr>
<td>Statute</td>
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<tr>
<td>ALASKA</td>
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<td>ARIZONA</td>
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<td>HAWAII</td>
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(4) Any police officer, with or without a warrant, may take the following course of action where the officer has reasonable grounds to believe that there was physical abuse or harm inflicted by one person upon a family or household member, regardless of whether the physical abuse or harm occurred in the officer’s presence: (f) The police officer may seize all firearms and ammunition that the police officer has reasonable grounds to believe were used or threatened to be used in the commission of an offense under this section.

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<thead>
<tr>
<th>STATE</th>
<th>STATUTE</th>
<th>TEXT</th>
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<tbody>
<tr>
<td>ILLINOIS</td>
<td>725 Ill. Comp. Stat. 5/112A-30(a)(2), 750 Ill. Comp. Stat. 60/304(a)(2)</td>
<td>Shall</td>
</tr>
<tr>
<td>ILLINOIS</td>
<td>725 Ill. Comp. Stat. 5/112A-30(a)(2): (a) Whenever a law enforcement officer has reason to believe that a person has been abused by a family or household member, the officer shall immediately use all reasonable means to prevent further abuse, including: (2) If there is probable cause to believe that particular weapons were used to commit the incident of abuse, subject to constitutional limitations, seizing and taking inventory of the weapons. 750 Ill. Comp. Stat. 60/304(a)(2): (a) Whenever a law enforcement officer has reason to believe that a person has been abused, neglected, or exploited by a family or household member, the officer shall immediately use all reasonable means to prevent further abuse, neglect, or exploitation, including: (2) If there is probable cause to believe that particular weapons were used to commit the incident of abuse, subject to constitutional limitations, seizing and taking inventory of the weapons.</td>
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<tr>
<td>INDIANA</td>
<td>Ind. Code Ann. § 35-33-1-1.5</td>
<td>May</td>
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<td>INDIANA</td>
<td>(b) A law enforcement officer may confiscate and remove a firearm, ammunition, or a deadly weapon from the scene if the law enforcement officer has: (1) probable cause to believe that a crime involving domestic or family violence has occurred; (2) a reasonable belief that the firearm, ammunition, or deadly weapon: (A) exposes the victim to an immediate risk of serious bodily injury; or (B) was an instrumentality of the crime involving domestic or family violence; and (3) observed the firearm, ammunition, or deadly weapon at the scene during the response.</td>
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<tr>
<td>MARYLAND</td>
<td>Md. Code Ann., Fam. Law § 4-511</td>
<td>May</td>
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<td>MARYLAND</td>
<td>(a) When responding to the scene of an alleged act of domestic violence, as described in this subtitle, a law enforcement officer may remove a firearm from the scene if: (1) the law enforcement officer has probable cause to believe that an act of domestic violence has occurred; and (2) the law enforcement officer has observed the firearm on the scene during the response.</td>
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<tr>
<td>MONTANA</td>
<td>Mont. Code Ann. § 46-6-603</td>
<td>Shall</td>
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<tr>
<td>MONTANA</td>
<td>(1) A peace officer who responds to a call relating to partner or family member assault shall seize the weapon used or threatened to be used in the alleged assault. (2) The responding officer may, as appropriate: (a) take reasonable action necessary to provide for the safety of a victim and any other member of the household;</td>
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</table>
A relationship is any of the following that is applicable: (a) \( 2702(a)(3), (4) \) and (5) (relating to aggravated assault), \( 2705 \) (relating to recklessly endangering another person), \( 2706 \) (relating to terroristic threats) or \( 2709.1 \) (relating to stalking an attack with a weapon or instrument).

### Pennsylvania

  - Shall
  - Yes
  - No
  - No
  - No
  - All guns.

  **NEW HAMPSHIRE**

  - Whenever any peace officer has probable cause to believe that a person has been abused, as defined in RSA 173-B:1, that officer shall use all means within reason to prevent further abuse including, but not limited to: (a) Confiscating any deadly weapons involved in the alleged domestic abuse and any firearms and ammunition in the defendant’s control, ownership, or possession.

  - May
  - No
  - No
  - No
  - Yes
  - All guns.

  **NEW JERSEY**

  - d. (1) In addition to a law enforcement officer’s authority to seize any weapon that is contraband, evidence or an instrumentality of crime, a law enforcement officer who has probable cause to believe that an act of domestic violence has been committed shall: (a) question persons present to determine whether there are weapons on the premises; and (b) upon observing or learning that a weapon is present on the premises, seize any weapon that the officer reasonably believes would expose the victim to a risk of serious bodily injury. If a law enforcement officer seizes any firearm pursuant to this paragraph, the officer shall also seize any firearm purchaser identification card or permit to purchase a handgun issued to the person accused of the act of domestic violence.

- **Ohio Rev. Code Ann. §§ 2935.03**
  - Shall
  - No
  - No
  - Yes
  - No
  - No
  - Guns used in the D.V. incident only.

  **OHIO**

  - (h) If a peace officer described in division (A) of this section responds to a report of an alleged incident of the offense of domestic violence or an alleged incident of the offense of violating a protection order and if the circumstances of the incident involved the use or threatened use of a deadly weapon or any person involved in the incident brandished a deadly weapon during or in relation to the incident, the deadly weapon that was used, threatened to be used, or brandished constitutes contraband, and, to the extent possible, the officer shall seize the deadly weapon as contraband pursuant to Chapter 2981 of the Revised Code. Upon the seizure of a deadly weapon pursuant to division (B)(3)(h) of this section, section 2981.12 of the Revised Code shall apply regarding the treatment and disposition of the deadly weapon. For purposes of that section, the "underlying criminal offense" that was the basis of the seizure of a deadly weapon under division (B)(3)(h) of this section and to which the deadly weapon had a relationship is any of the following that is applicable: (i) The alleged incident of the offense of domestic violence or the alleged incident of the offense of violating a protection order to which the officer who seized the deadly weapon responded; (ii) Any offense that arose out of the same facts and circumstances as the report of the alleged incident of the offense of domestic violence or the alleged incident of the offense of violating a protection order to which the officer who seized the deadly weapon responded.

- **Okla. Stat. tit. 22, § 60.8**
  - Shall
  - No
  - Yes
  - Yes
  - No
  - No
  - Guns used in the D.V. incident only.

  **OKLAHOMA**

  - A. Each peace officer of this state shall seize any weapon or instrument when such officer has probable cause to believe such weapon or instrument has been used to commit an act of domestic abuse as defined by Section 60.1 of this title, provided an arrest is made, if possible, at the same time.

- **18 Pa. Cons. Stat. § 2711**
  - Shall
  - No
  - Yes
  - Yes
  - No
  - No
  - Guns used in the D.V. incident only.

  **PENNSYLVANIA**

  - (a) General rule. -- A peace officer shall have the same right of arrest without a warrant as in a felony whenever he has probable cause to believe the defendant has violated section 2504 (relating to involuntary manslaughter), 2701 (relating to simple assault), 2702(a)(3), (4) and (5) (relating to aggravated assault), 2705 (relating to recklessly endangering another person), 2706 (relating to terroristic threats) or 2709.1 (relating to stalking) against a family or household member although the offense did not take place in the presence of the police officer. A peace officer may not arrest a person pursuant to this section without first observing recent physical injury to the victim or other corroborative evidence. For the purposes of this subsection, the term "family or household member" has the meaning given that term in 23 Pa.C.S. § 6102 (relating to definitions).

  - (b) Seizure of weapons. -- The arresting police officer shall seize all weapons used by the defendant in the commission of the alleged offense.
### TENNESSEE

<table>
<thead>
<tr>
<th>Tenn. Code Ann. §§ 36-3-620, 39-17-1317</th>
<th>May &amp; Shall</th>
<th>No</th>
<th>Yes for May Authority</th>
<th>No for Shall Authority</th>
<th>No for May Authority. Yes for Shall Authority.</th>
<th>Yes for May Authority. No for Shall Authority.</th>
<th>All guns for May Authority. Guns used in the D.V. incident only for Shall Authority.</th>
</tr>
</thead>
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(a) (1) If a law enforcement officer has probable cause to believe that a criminal offense involving domestic abuse against a victim, as defined in § 36-3-601, has occurred, the officer shall seize all weapons that are alleged to have been used by the abuser or threatened to be used by the abuser in the commission of a crime. (2) Incident to an arrest for a crime involving domestic abuse against a victim, as defined in § 36-3-601, a law enforcement officer may seize a weapon that is in plain view of the officer or discovered pursuant to a consensual search, if necessary for the protection of the officer or other persons; provided, that a law enforcement officer is not required to remove a weapon such officer believes is needed by the victim for self defense.

### UTAH

<table>
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<tr>
<th>Utah Code Ann. § 77-36-2.1</th>
<th>Shall</th>
<th>No</th>
<th>No.</th>
<th>Yes</th>
<th>No.</th>
<th>No.</th>
<th>Guns used in the D.V. incident only.</th>
</tr>
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(1) A law enforcement officer who responds to an allegation of domestic violence shall use all reasonable means to protect the victim and prevent further violence, including: (b) confiscating the weapon or weapons involved in the alleged domestic violence;

### WEST VIRGINIA

|---------------------------|-------------|----|-----|-----------------------------------------------|-----------------------------------------------|-----------------------------------------------|----------------------------------------------------------------------------------|

(e) Whenever any person is arrested pursuant to the provisions of this article or for a violation of an order issued pursuant to section five hundred nine or subsections (b) and (c), of section six hundred eight, article five of this chapter the arresting officer, subject to the requirements of the Constitutions of this state and of the United States: (1) Shall seize all weapons that are alleged to have been involved or threatened to be used in the commission of domestic violence; (2) May seize a weapon that is in plain view of the officer or was discovered pursuant to a consensual search, as necessary for the protection of the officer or other persons; and (3) May seize all weapons that are possessed in violation of a valid protective order.

### Importance of Removal Laws and Obstacles to Effective Implementation

Although a minority of states have enacted laws that grant law enforcement officials the authority to remove guns when responding to a domestic violence incident, these laws are crucial tools for actively engaging the criminal justice system in the removal of firearms from individuals who are violent toward their domestic partners. While the immediate removal of a firearm from a domestic violence scene offers obvious benefits, some studies have found that most individuals who had a firearm seized from them did not seek return of their weapons, effectively creating a longer cooling-off period for those who did not seek the return of their guns.\(^1\) Police gun removal laws are a significant complement to the federal law as it pertains to firearm removal and domestic violence, and have the potential to reduce the risks associated with armed batterers. These laws are an important step in disarming domestic violence perpetrators; however, a number of obstacles prevent these laws from being fully and effectively implemented.

**Lack of training and enforcement.** Police, for one, may be reluctant to seize firearms, even where possession of a firearm is banned by a protective order. One study found that even when a protective order banned possession of a firearm, law enforcement officials failed to take effective steps to enforce those orders by

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seizing or otherwise removing those firearms from abusive households. Police departments may also be unfamiliar with their precise responsibilities under their state’s laws, making them reluctant to confiscate firearms at a domestic violence scene for fear violating an individual’s constitutional rights.

Logistical barriers. In states that simply allow police to confiscate firearms, logistical hurdles may prevent them from seizing firearms. A lack of adequate space for the storage of a potentially large number of guns and concerns over accountability – police departments may fear being held liable if seized firearms end up lost or damaged – can deter police from confiscating firearms during domestic violence calls.

State Examples

Maryland. In 2006, a study was conducted on the implementation of the court order and police removal provisions of the Maryland Gun Violence Act in select urban, suburban, and rural localities via interviews with individuals in positions that suggested some responsibility to implementing the two domestic violence provisions, such as judges, policy advocates, and law enforcement. They found that most interviewees expressed uncertainty about the extent of authority provided to officers through the police removal of firearms policy and stated that the law lacks the clarity officers need to apply it to the various domestic violence situations they encounter. The interviewees expressed that the law failed to be instructive in practice, as the “circumstances they encounter in the field are more complex than is accounted for by the law,” but noted that clarifying legislative or regulatory actions have been successful at addressing these issues and further officer training may help ease some of the frustration associated with interpreting this law and to promote uniform implementation.

Indiana. In 2015, a study looked at the implementation and impact of firearm removal laws in Marion County, Indiana, from 2006 to 2013. Of the 404 firearm seizure cases heard in Marion Supreme Court, 115 of the firearm seizures, or 28.5%, had occurred in the context of a domestic disturbance. The study further found certain sub-groups to be particular prevalent in the 115 domestic disturbances: 39.1% of the domestic disturbances were due to arguments with significant others, 21.7% were due to the end of a relationship, 20% were due to threat to a family member or a significant other without a report of an argument, and 10.4% were due to arguments with family members.

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3 https://www.thetrace.org/2015/10/domestic-abuse-guns-boyfriend-loophole/
7 Id.