



CHANGING SYSTEMS
TRANSFORMING LIVES



STATE LAW DIFFERENCES

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State Law Differences

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 a limited number of days. However, the two or three 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 20 states explicitly address ex parte restraining orders and the temporary removal of firearms.

The 20 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.

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 the 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 dating partners, 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, such as Minnesota, New Jersey, and Pennsylvania, prohibit those convicted of misdemeanor stalking from possessing or purchasing firearms. There are, of course, variations in the application of the prohibition to stalkers; 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).

Almost 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. The strength of these laws varies from state to state, as some courts are required to order the surrender of firearms and other courts are simply given the power to order a perpetrator to surrender firearms should they so choose. Applying the prohibition of purchasing or possessing firearms to people subject to protective orders serves an important function in some states, as the required surrender of firearms when subject to a protective order may serve as the strongest form of state protection.

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.