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Domestic Violence and Firearms

Background

Firearms pose a particular threat to victims of domestic violence. Nationally, firearms were used to kill more than two-thirds of spouse and ex-spouse homicide victims between 1990 and 2005.¹ Studies reveal that the presence of firearms significantly increases the lethality of domestic violence incidents. According to one study, domestic violence assaults involving a firearm are 23 times more likely to result in death than those involving other weapons or bodily force.² Another study found that abused women are five times more likely to be killed by their abuser if the abuser owns a firearm.³

The impact of firearms in domestic violence situations is not limited to homicides. A recent survey of female domestic violence shelter residents in California found that more than one third (36.7%) reported having been threatened or harmed with a firearm.⁴ Over 79% of the respondents with firearms at home said the firearms made them feel less safe. In nearly two thirds (64.5%) of the households that contained a firearm, the intimate partner had used the firearm against the victim, usually threatening to shoot or kill her.⁵

Laws that prohibit the purchase of a firearm by a person subject to a domestic violence restraining order are associated with a reduction in the number of intimate partner homicides.⁶ However, as discussed below, there are a number of other policies that may also reduce the risks associated with the acquisition or possession of firearms by domestic abusers.⁷

Summary of Federal Law

Federal law prohibits purchase and possession of firearms and ammunition by persons who have been convicted in any court of a "misdemeanor crime of domestic violence" and/or who are subject to certain domestic violence protective orders.⁸

¹ Bureau of Justice Statistics, U.S. Dep't of Justice, *Homicide Trends in the U.S.: Intimate Homicide* (July 2007), at <http://www.ojp.usdoj.gov/bjs/homicide/intimates.htm>.

² Linda E. Saltzman, et al., *Weapon Involvement and Injury Outcomes in Family and Intimate Assaults*, 267 JAMA, 3043-3047 (1992).

³ Jacquelyn C. Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study*, 93 Am. J. Pub. Health 1089, 1092 (July 2003).

⁴ Susan B. Sorenson et al., *Weapons in the Lives of Battered Women*, 94 Am. J. Pub. Health 1412, 1413 (2004).

⁵ *Id.* at 1414.

⁶ Elizabeth R. Vigdor et al., *Do Laws Restricting Access to Firearms by Domestic Violence Offenders Prevent Intimate Partner Homicide?*, 30 Evaluation Rev. 313, 332 (June 2006).

⁷ For more information about the role firearms play in domestic violence incidents, see Violence Policy Center, *When Men Murder Women*, (1998) at <http://www.vpc.org/studies/dvreal.htm>.

⁸ 18 U.S.C. § 922(g)(8), (9).

Federal law defines a “misdemeanor crime of domestic violence” as an offense that is a federal, state or tribal law misdemeanor and has the use or attempted use of physical force or threatened use of a deadly weapon as an element.⁹ In addition, the offender must:

- be a current or former spouse, parent, or guardian of the victim;
- share a child in common with the victim;
- be a current or former cohabitant with the victim as a spouse, parent or guardian;
or
- be similarly situated to a spouse, parent or guardian of the victim.¹⁰

The federal law prohibiting subjects of protective orders from purchasing or possessing firearms and ammunition applies only if the protective order was issued after notice to the abuser and a hearing, and only if the order protects an “intimate partner” of the abuser or a child of the abuser or intimate partner.¹¹ An “intimate partner” includes a current or former spouse, a parent of a child in common with the abuser, or an individual with whom the abuser does or has cohabitated.¹²

These federal prohibitions have significant limitations. First, domestic violence affects persons in relationships that fall outside the protections of federal law. For example, dating partners are not within the federal prohibitions unless the partners are/were cohabitating as spouses and/or have a child in common. The risk of domestic violence being committed by a dating partner is well-documented. Between 1990 and 2005, individuals killed by current dating partners made up almost half of all spouse and current dating partner homicides.¹³ In a recent study of applicants for domestic violence restraining orders in Los Angeles, the most common relationship between the victim and abuser was a dating relationship, and applications for protective orders were more likely to mention firearms when the parties had not lived together and were not married.¹⁴ Many states have addressed this gap in federal law by enacting laws that expand the relationships subject to firearm purchaser prohibitions for domestic abusers.

Moreover, effective enforcement of the federal prohibitions on firearm possession by domestic abusers depends largely on state and local law enforcement. Background checks at the point of transfer can prevent the purchase of firearms by domestic abusers, but cannot facilitate the removal of firearms that are already in possession of an abuser.¹⁵

⁹ 18 U.S.C. § 921(a)(33).

¹⁰ *Id.* Also note that a conviction requires that the offender was represented by counsel or waived the right to counsel and was tried by a jury or waived the right to a jury, if the offense entitled the offender to a jury trial.

¹¹ 18 U.S.C. § 922(g)(8).

¹² 18 U.S.C. § 921(a)(32). The order must also contain a finding that the person presents a credible threat to the victim and must restrain him or her from certain specified conduct. 18 U.S.C. § 922(g)(8). Most state laws require these elements for the issuance of a protective order.

¹³ *Homicide Trends in the U.S.*, *supra* note 1.

¹⁴ Katherine A. Vittes et al., *Are Temporary Restraining Orders More Likely to be Issued When Application Mention Firearms?*, 30 *Evaluation Rev.* 266, 271, 275 (2006).

¹⁵ In addition, background checks conducted by federally licensed firearms dealers at the time of transfer of a firearm rely on state and local authorities collecting and submitting to state and federal databases

State laws requiring removal of firearms directly from abusers can help ensure that abusers will not have continued access to firearms to threaten or harm their victims.

SUMMARY OF STATE LAWS REGARDING DOMESTIC VIOLENCE AND FIREARMS¹⁶

State Laws that Exceed Federal Law in Prohibiting Domestic Violence Misdemeanants From Purchasing or Possessing Firearms and/or Ammunition

Arizona	Ariz. Rev. Stat. §§ 13-3101(A)(6), 13-3102(A)(4), 13-3601
California	Cal. Penal Code §§ 136.2(a)(7)(B), (d), (e)
Colorado	Colo. Rev. Stat. §§ 18-1-1001(3)(c), 18-12-108(6)(c)(I)
Delaware	Del. Code Ann. tit. 10, § 901(12); tit. 11, § 1448(a)(7), (9)(d)
Illinois	430 Ill. Comp. Stat. 65/2(a)(1), (2), 65/8(l), (m); 720 Ill. Comp. Stat. 5/12-3.2; 725 Ill. Comp. Stat. 5/112A-3
Iowa	Iowa Code §§ 236.2, 708.1, 708.2A, 708.11, 724.15(1)
Minnesota	Minn. Stat. §§ 518B.01, 609.749, subd. 8, 609.2242, 624.713, subd. 1(i)
Montana	Mont. Code Ann. § 45-5-206
New Jersey	N.J. Stat. Ann. §§ 2C:25-19(a), (d), 2C:25-26(a), 2C:39-7(b)(1), 2C:58-3(c)(1)
New York	N.Y. Crim. Proc. Law §§ 530.12(1), 530.14(1)(b)
Texas	Tex. Fam. Code Ann. § 71.001 <i>et seq.</i> ; Tex. Penal Code Ann. § 46.04(b); Texas Code Crim. Proc. Ann. art. 17.292
Virginia	Va. Code Ann. §§ 16.1-279.1, 18.2-308.1:4
Washington	Wash. Rev. Code Ann. §§ 9.41.010(17), 9.41.040(2)(i), 10.99.020(3)
West Virginia	W. Va. Code § 61-7-7(a)(8)

complete records on misdemeanor convictions and protective orders. For a discussion of the lack of participation by some states in entering domestic violence protective order information into the National Crime Information Center database *see, e.g.*, Julissa Jose, *Disarming Domestic Violence Abusers* 3 (2003) at <http://www.endabuse.org/programs/publicpolicy/files/BradyReport.pdf>.

¹⁶ This section lists only state laws that exceed federal law governing prohibitions on firearm purchase and possession by domestic abusers.

State Laws that Exceed Federal Law in Prohibiting Subjects of Certain Domestic Violence Protective Orders From Purchasing or Possessing Firearms and/or Ammunition

Alaska	Alaska Stat. §§ 18.66.100(c)(6), 18.66.990(5)
Arizona	Ariz. Rev. Stat. §§ 13-3601, 13-3602(G)(4), 13-3624(D)(4)
California	Cal. Penal Code §§ 136.2, 12021(g), 12316(b); Cal. Fam. Code §§ 6211, 6218, 6320-6322, 6389; Cal. Civ. Proc. Code § 527.6(k)
Connecticut	Conn. Gen. Stat. §§ 29-36f(b), 46b-15, 46b-38a, 53a-217, 53a-217c
Delaware	Del. Code Ann. tit. 10, §§ 1041(2), 1043(e), 1045(a)(8); tit. 11, § 1448(a)(6)
Florida	Fla. Stat. Ann. §§ 741.28(3), 741.30(1)(e), (6)(g), 741.31(4)(b)(1), 790.233(1)
Hawaii	Haw. Rev. Stat. §§ 134-7(f), 586-1, 586-3
Illinois	430 Ill. Comp. Stat. 65/2(a)(1), (2), 65/8(j); 725 Ill. Comp. Stat. 5/112A-3(3), 5/112A-14(b)(14.5); 750 Ill. Comp. Stat. 60/201(b), 60/214(b)(14.5)
Indiana	Ind. Code Ann. §§ 31-9-2-42, 31-9-2-44.5, 34-26-5-2, 34-26-5-9(c)(4), (f)
Maryland	Md. Code Ann., Fam. Law §§ 4-501, 4-506; Pub. Safety § 5-133(b)(8)
Massachusetts	Mass. Gen. Laws ch. 140, §§ 129B(1)(viii), 129C, 131(d)(vi); ch. 209A
Michigan	Mich. Comp. Laws §§ 28.422(3)(a)(iii), 600.2950(1)(e), (12)
Montana	Mont. Code Ann. §§ 40-15-102, 40-15-201, 45-5-206
Nevada	2007 Nev. Stat. 318, § 2; Nev. Rev. Stat. §§ 33.018, 33.020
New Hampshire	N.H. Rev. Stat. Ann. §§ 173-B:1, 173-B:4, 173-B:5
New Jersey	N.J. Stat. Ann. §§ 2C:25-19(d), 2C:25-28(f), (j), 2C:25-29(b), 2C:39-7(b)(3), 2C:58-3(c)(6)
New York	N.Y. Fam. Ct. Act §§ 822, 828(3), 842-a; N.Y. Penal Code § 400.00
North Carolina	N.C. Gen. Stat. § 50B-1, 50B-3(11), 50B-3.1
North Dakota	N.D. Cent. Code §§ 14-07.1-01, 14-07.1-02, 14-07.1-03
Pennsylvania	18 Pa. Cons. Stat. § 6105; 23 Pa. Cons. Stat. §§ 6102, 6107(b)(3), 6108(a)(7)
Rhode Island	R.I. Gen. Laws §§ 15-15-1, 15-15-3
Texas	Tex. Penal Code Ann. §§ 46.04; Tex. Fam. Code Ann. §§ 71.001 <i>et seq.</i> , 85.022(b)(6), (d)

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State Laws that Exceed Federal Law in Prohibiting Subjects of Certain Domestic Violence Protective Orders From Purchasing or Possessing Firearms and/or Ammunition *(continued from previous page)*

Utah	Utah Code Ann. §§ 30-6-1(2)(c)(f), 30-6-4.2(2)(d), 30-6-4.3(2)
Virginia	Va. Code Ann. §§ 16.1-228, 16.1-253.1, 16.1-253.4, 18.2-308.1:4, 18.2-308.2:2
Washington	Wash. Rev. Code Ann. §§ 9.41.800, 10.99.040, 26.50.010, 26.50.070
West Virginia	W. Va. Code §§ 48-27-204, 48-27-305, 48-27-403(a), 48-27-502(b), 61-7-7(a)(7)
Wisconsin	Wis. Stat. §§ 813.12(1)(am), (b), (c), 941.29(1)(f), (g), (2)(d), (e)

State Laws Authorizing Law Enforcement to Remove Firearms and/or Ammunition at the Scene of a Domestic Violence Incident

Alaska	Alaska Stat. § 18.65.515(b)
Arizona	Ariz. Rev. Stat. § 13-3601
California	Cal. Penal Code §§ 12021.3, 12028.5(b)
Connecticut	Conn. Gen. Stat. § 46b-38b
Hawaii	Haw. Rev. Stat. §§ 134-7.5, 709-906
Illinois	725 Ill. Comp. Stat. 5/112A-30, 750 Ill. Comp. Stat. 60/304(2)
Indiana	Ind. Code Ann. § 35-33-1-1.5
Maryland	Md. Code Ann., Fam. Law § 4-511
Montana	Mont. Code Ann. § 46-6-603
Nebraska	Neb. Rev. Stat. § 29-440
New Hampshire	N.H. Rev. Stat. Ann. § 173-B:10
New Jersey	N.J. Stat. Ann. § 2C:25-21(d)
Ohio	Ohio Rev. Code Ann. §§ 2935.03(B)(3)(h), 2981.12(A)(2)
Oklahoma	Okla. Stat. tit. 22, § 60.8
Pennsylvania	18 Pa. Cons. Stat. § 2711
Tennessee	Tenn. Code Ann. §§ 36-3-620, 39-17-1317
Utah	Utah Code Ann. § 77-36-2.1(1)(b)
West Virginia	W. Va. Code § 48-27-1002

State Laws Requiring or Authorizing Removal or Surrender of Firearms and/or Ammunition When a Protective Order Is Issued¹⁷

Alaska	Alaska Stat. § 18.66.100(c)(7)
Arizona	Ariz. Rev. Stat. § 13-3602(G)(4)
California	Cal. Penal Code §§ 136.2, 12021(g)(3); Cal. Fam. Code § 6389(c)(1); Cal. Civ. Proc. Code §§ 527.6(k), 527.9
Delaware	Del. Code Ann. tit. 10, §§ 1043(e), 1045(a)(8)
Florida	Fla. Stat. Ann. § 741.31(4)(a)(8)
Hawaii	Haw. Rev. Stat. § 134-7(f)
Illinois	725 Ill. Comp. Stat. 5/112A-14(b)(14.5), 750 Ill. Comp. Stat. 60/214(b)(14.5)
Indiana	Ind. Code Ann. §§ 34-26-5-2, 34-26-5-9(c)(4), (f)
Maryland	Md. Code Ann., Fam. Law §§ 4-501, 4-506(d)(12)
Massachusetts	Mass. Gen. Laws ch. 209A, §§ 3B, 3C
Nevada	2007 Nev. Stat. 318, § 2-3, 5; Nev. Rev. Stat. § 33.020
New Hampshire	N.H. Rev. Stat. Ann. §§ 173-B:4, 173-B:5
New Jersey	N.J. Stat. Ann. §§ 2C:25-28(j), 2C:25- 29(b)(16)
New York	N.Y. Crim. Proc. Law §§ 530.11, 530.12, 530.14; N.Y. Fam. Ct. Act §§ 822, 828(3), 842-a
North Carolina	N.C. Gen. Stat. § 50B-3.1
North Dakota	N.D. Cent. Code §§ 14-07.1-02, 14-07.1-13
Pennsylvania	23 Pa. Cons. Stat. §§ 6107, 6108 – 6108.3
Rhode Island	R.I. Gen. Laws § 15-15-3
South Dakota	S.D. Codified Laws § 25-10-24
Wisconsin	Wis. Stat. § 813.12(4m)

Description of State Laws Regarding Domestic Violence and Firearms

1. *State Laws Prohibiting Domestic Violence Misdemeanants from Purchasing or Possessing Firearms and/or Ammunition¹⁸*

Federal law prohibits purchase and possession of firearms and ammunition by persons convicted of a “misdemeanor crime of domestic violence,” but federal law defines that term narrowly. Many states go beyond federal law and prohibit purchase or possession

¹⁷ This list only includes statutes related to domestic violence protective orders. States may authorize judges to order the removal of firearms in other situations. *See, e.g.*, Colo. Rev. Stat. § 18-12-110 (allowing a judge to order the forfeiture of firearms used in a criminal episode for which the defendant has been convicted).

¹⁸ Note that federal law does not require background checks on ammunition purchasers. For more information on laws governing the transfer of ammunition, see section on [Ammunition Regulation](#).

of firearms and/or ammunition by persons with misdemeanor convictions involving a broader class of victims.¹⁹

a. *Firearms:* Ten states (Arizona, Delaware, Illinois,²⁰ Iowa, Minnesota,²¹ Montana, New Jersey, Texas,²² Washington,²³ and West Virginia) prohibit firearm purchase or possession by persons convicted of misdemeanor domestic violence offenses that go beyond federal law.

- *Dating Partners:* Illinois, Minnesota, New Jersey, Texas, and Washington prohibit purchase or possession of a firearm by anyone found guilty of a domestic violence misdemeanor against a former or current dating partner or someone with whom the offender has had a romantic relationship.²⁴

- *Cohabitants:* Illinois, Minnesota, New Jersey, Texas, Washington and West Virginia prohibit purchase or possession of a firearm by anyone found guilty of a domestic violence misdemeanor against any present or former household member or cohabitant, regardless of their relationship to the offender. In addition, Delaware prohibits purchase or possession of a firearm by anyone found guilty of a misdemeanor against someone who resided with the offender at the time of the offense, but does not prohibit firearm purchase or possession by a misdemeanant who no longer resided with the victim at the time of the offense.²⁵ Iowa also prohibits anyone convicted of domestic abuse against a person who has been a household member within the past year or who was a household member at the time of the abuse from obtaining a permit to acquire a handgun.

¹⁹ In addition, some states, such as California and Hawaii, prohibit firearm purchase or possession by other violent misdemeanants, without regard to the victim's relationship to the offender. California, Connecticut, Minnesota, New Jersey, New York, Pennsylvania, Tennessee and the District of Columbia prohibit purchase or possession of a firearm by anyone with a misdemeanor conviction for stalking. Iowa prohibits anyone convicted of stalking from obtaining a permit to acquire a handgun. Additional information on state laws prohibiting firearm purchase or possession by persons with misdemeanor convictions is contained in the section entitled "[Prohibited Purchasers.](#)"

²⁰ Illinois' prohibition applies to persons convicted of "domestic battery" committed on or after January 1, 1998.

²¹ Minnesota prohibits possession of a handgun by anyone convicted of an assault against a family or household member for three years following the conviction. Possession of other firearms is prohibited for at least three years as determined by the sentencing court if a firearm was used during the commission of the assault.

²² Texas prohibits firearm possession by domestic violence misdemeanants for five years following release from confinement or community supervision.

²³ Washington prohibits firearm possession by individuals who have committed certain domestic violence misdemeanors on or after July 1, 1993.

²⁴ In addition, in Montana, a court may prohibit an offender convicted of an assault of a dating partner from possessing or using the firearm used in the assault.

²⁵ Delaware only prohibits firearm purchase or possession by domestic violence misdemeanants for five years following conviction.

- *Family Members:* Arizona,²⁶ Delaware, Illinois, Minnesota, Texas and Washington prohibit purchase or possession of a firearm by anyone found guilty of a violent misdemeanor against specified family members, regardless of whether they reside with the offender.²⁷

b. Ammunition: Delaware and Illinois prohibit anyone convicted of a misdemeanor crime of domestic violence (as described above) from purchasing or possessing ammunition (in addition to firearms).

c. Persons Charged with a Domestic Violence Misdemeanor: Six states (California, Colorado, New Jersey, New York,²⁸ Texas, and Virginia) authorize courts to prohibit defendants from purchasing or possessing firearms in cases where the defendant is charged with (but not yet convicted of) a domestic violence misdemeanor.

2. *State Laws Prohibiting Subjects of Certain Domestic Violence Protective Orders From Purchasing or Possessing Firearms and/or Ammunition*

The federal law prohibiting subjects of protective orders from purchasing or possessing firearms and ammunition applies only if the protective order was issued after notice to the abuser and a hearing, and only if the order protects an “intimate partner” of the abuser, as federal law defines the term. Many states go beyond federal law by giving judges discretion to order injunctive relief in protective orders issued without notice to the abuser or a hearing (known as “ex parte” orders). In addition, some states exceed federal law by including a broader category of victims who may apply for a domestic violence protective order prohibiting firearms and/or ammunition.

a. Ex Parte Protective Orders: Seventeen states (Arizona, California, Delaware, Hawaii, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin) prohibit firearm purchase or possession by persons subject to ex parte domestic violence protective orders, or authorize judges to prohibit firearm purchase or possession in ex parte protective orders.

Six states (California, Massachusetts, Texas, Virginia, West Virginia, and Wisconsin) prohibit firearm purchase or possession by any person subject to any ex parte domestic violence protective order. Six additional states (Hawaii,²⁹ New York,³⁰ North Carolina,³¹

²⁶ Arizona’s prohibition on possession of firearms by domestic violence misdemeanants only applies while the person is on probation or parole, or under community supervision, work furlough, home arrest or other release in connection with the crime.

²⁷ In addition, Montana authorizes courts to prohibit an offender convicted of an assault of a family member from possessing or using the firearm used in the assault.

²⁸ New York’s law applies to handguns only.

²⁹ Hawaii requires an ex parte domestic violence protective order to prohibit the abuser from possessing a firearm if the statement that forms the basis for the order shows that the abuser owns, possesses or intends to obtain a firearm and the firearm may be used to threaten, injure or abuse any person.

³⁰ New York requires an ex parte domestic violence protective order to prohibit the possession of handguns if the abuser has been convicted of a violent felony or stalking or has willfully failed to obey a prior order

Pennsylvania,³² Utah,³³ and Washington³⁴) prohibit access to firearms by persons subject to ex parte domestic violence protective orders in certain circumstances.³⁵

Five states (Arizona, Delaware, Michigan, New Hampshire, and New Jersey)³⁶ give judges discretion to prohibit firearm purchase or possession when issuing ex parte domestic violence protective orders.³⁷

*b. Individuals Who May Seek a Protective Order:*³⁸ Many states exceed federal law by including a broader category of victims who may apply for a domestic violence protective order prohibiting firearms.

- *Dating Partners:* The following eighteen states exceed federal law by allowing victims to seek a domestic violence protective order prohibiting purchase or possession of firearms against a former or current dating partner or anyone with whom

of protection and the failure involved the infliction of serious physical injury, the use or threatened use of deadly weapons, or a violent felony. New York also allows an ex parte domestic violence protective order to prohibit handgun possession if there is a substantial risk that the abuser may use or threaten to use a firearm unlawfully against the victim.

³¹ North Carolina requires an ex parte domestic violence protective order to prohibit the purchase or possession of firearms and ammunition if the abuser: has used or threatened to use a deadly weapon against, has threatened to seriously injure or kill, or has seriously injured the aggrieved party or child; or has threatened to commit suicide.

³² Pennsylvania prohibits the acquisition or possession of firearms by the subject of an ex parte domestic violence protective order if the petition demonstrates prior abuse involving a weapon or an immediate and present danger of abuse.

³³ Utah allows a court to issue an ex parte domestic violence protective order prohibiting firearm purchase or possession upon a finding that the respondent's use or possession of a weapon may pose a serious threat of harm to the victim.

³⁴ Washington requires a court issuing an ex parte domestic violence protective order to prohibit the abuser from obtaining or possessing firearms if the abuser has used, displayed, or threatened to use a dangerous weapon in a felony.

³⁵ In addition, North Dakota allows a court issuing an ex parte domestic violence protective order to require the respondent to "surrender for safekeeping" any firearm in his or her possession so long as the court has probable cause to believe the respondent is likely to use, display, or threaten to use the firearm in further acts of violence.

³⁶ In addition, Montana allows the issuance of an ex parte domestic violence protective order if the court finds that harm may result if an order is not issued within 20 days, and allows an ex parte domestic violence protective order to prohibit the abuser from possessing or using the firearm that has already been used in the domestic violence incident.

³⁷ Many states authorize judges issuing protective orders to grant any appropriate injunctive relief, but do not specify whether a firearm prohibition is permissible. See D.C. Code Ann. § 16-1005; Haw Rev. Stat. Ann. §§ 586-5(b), 586-5.5(b); Iowa Code §§ 236.2(2), 236.2(4)(a), 236.4(2), 236.5; Ky. Rev. Stat. Ann. §§ 403.740(1)(f), 403.750(1)(h); La. Rev. Stat. Ann. §§ 46:2135, 46:2136; Me. Rev. Stat. Ann. tit. 15, § 321; Minn. Stat. § 518B.01, subds. 2(b), 6(a)(12), 7; Miss. Code Ann. § 93-21-15; Mo. Rev. Stat. §§ 455.045, 455.050; Neb. Rev. Stat. Ann. §§ 42-903, 42-924, 42-925; N.M. Stat. Ann. §§ 40-13-2(D), 40-13-5(7); N.C. Gen. Stat. § 50B-2; Ohio Rev. Code Ann. §§ 2919.26(C), 3113.31(A)(3), (C), (E)(1)(h); S.D. Codified Laws §§ 22-19A-11, 25-10-5; Tex. Fam. Code Ann. § 83.001; Vt. Stat. Ann. tit. 15, § 1103; Va. Code Ann. §§ 16.1-253.1, 16.1-279.1; Wash. Rev. Code Ann. §§ 26.50.060(1)(f), 26.50.130; Wyo. Stat. Ann. § 35-21-105.

³⁸ State laws may also prohibit firearm purchase or possession by persons subject to anti-stalking protective orders that do not depend on the relationship between the offender and the victim. These laws are not discussed here.

they have had a romantic relationship: Alaska,³⁹ California, Connecticut, Delaware, Hawaii, Illinois,⁴⁰ Indiana, Massachusetts, Michigan, Montana,⁴¹ Nevada, New Jersey, North Carolina,⁴² Rhode Island,⁴³ Texas, Washington, West Virginia, and Wisconsin. In addition, North Dakota allows an application for a protective order to be brought by any person “if the court determines that the relationship between that person and the alleged abusing person is sufficient to warrant the issuance of a domestic violence protection order.”⁴⁴

- *Cohabitants:* Twenty states allow individuals to seek a domestic violence protective order prohibiting purchase or possession of firearms against any person who is presently or has in the past resided with the victim: Alaska, Arizona, California, Connecticut, Hawaii, Illinois, Massachusetts, Michigan, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin.⁴⁵

- *Family Members:* The following twenty-three states allow individuals to seek a domestic violence protective order prohibiting purchase or possession of firearms against any family member, even if the abuser has never resided with the victim: Alaska, Arizona, California, Connecticut, Delaware, Hawaii, Illinois, Indiana, Maryland,⁴⁶ Massachusetts, Montana, Nevada, New Hampshire, New York, North Dakota, Pennsylvania, Rhode Island, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin.

c. *Ammunition:* Of the states listed above, seven (California, Delaware, Hawaii, Illinois, Indiana, Massachusetts and New Hampshire) also prohibit subjects of domestic violence protective orders from purchasing or possessing ammunition.

³⁹ Alaska allows a domestic violence protective order prohibiting possession or use of firearms only if the court finds the abuser was in actual possession of or used a weapon during the commission of domestic violence.

⁴⁰ Illinois allows anyone to seek a protective order prohibiting purchase or possession of firearms only if the abuser has threatened or is likely to use firearms illegally against the victim.

⁴¹ Montana allows a domestic violence protective order prohibiting possession only of a firearm already used in an assault, and only if the victim is in danger of harm if the court does not issue an order immediately.

⁴² North Carolina allows only current or former dating partners of the opposite sex to seek a domestic violence protective order.

⁴³ Rhode Island allows an application for a protective order by a dating partner only if the relationship was within the past one year and “at least one of the persons is a minor.”

⁴⁴ N.D. Cent. Code § 14-07.1-02. North Dakota allows a court issuing a domestic violence protective order to require the respondent to “surrender for safekeeping” any firearm in his or her possession so long as the court has probable cause to believe the respondent is likely to use, display, or threaten to use the firearm in further acts of violence.

⁴⁵ In addition, Maryland allows a “cohabitant” to seek a domestic violence protective order prohibiting possession of “regulated firearms” (handguns and assault weapons). However, “cohabitant” is defined as only a person who has had a sexual relationship with the abuser. Md. Code Ann., Fam. Law § 4-501.

⁴⁶ Maryland prohibits the subject of a domestic violence protective order from possessing “regulated firearms” only. “Regulated firearms” are defined as handguns and assault weapons.

3. *State Laws Providing Statutory Authority for Law Enforcement to Remove Firearms and/or Ammunition at the Scene of a Domestic Violence Incident*⁴⁷

a. *States Requiring or Authorizing the Removal of Firearms:* Twelve states require, rather than simply authorize, law enforcement to remove at least some firearms at the scene of a domestic violence incident: California, Illinois, Montana, Nebraska, New Hampshire, New Jersey, Ohio, Oklahoma, Pennsylvania, Tennessee, Utah, and West Virginia. Six states (Alaska, Arizona, Connecticut, Hawaii, Indiana, and Maryland) authorize, but do not require, law enforcement to remove firearms at the scene of a domestic violence incident.⁴⁸

b. *Firearms Subject to Removal:* The most comprehensive approach requires law enforcement to remove all firearms in the abuser's possession, ownership or control. Only New Hampshire allows law enforcement this broad authority, requiring removal of all firearms in the abuser's control, ownership, or possession at the time of a domestic violence incident. Other states allow the removal of only certain firearms, or allow the removal of firearms only if certain conditions are met.

- *Firearms in the Abuser's Possession:* In New Hampshire, law enforcement must remove all firearms and ammunition in an abuser's control, ownership, or possession whenever law enforcement determines that a domestic violence crime has occurred. Connecticut authorizes, but does not require, the removal of all firearms in the possession of the suspect at the location where domestic violence is alleged to have been committed. In Alaska, law enforcement may remove all firearms owned, used, possessed, or within the control of the abuser if any deadly weapon was possessed during or used in the domestic violence incident and law enforcement determines it is necessary to protect the victim, the victim's family, the officer, or the public.

- *Firearms Used in the Incident:* Ten states (Hawaii, Illinois, Montana, Nebraska, Ohio, Oklahoma, Pennsylvania, Tennessee, Utah, and West Virginia) authorize or require the removal of firearms used in the domestic violence incident. In six of those states (Illinois, Montana, Ohio, Pennsylvania, Tennessee and Utah), law enforcement must seize these firearms. Three states (Nebraska, Oklahoma, and West Virginia) require law enforcement to remove these firearms only if the abuser is simultaneously arrested. In Hawaii, law enforcement is authorized, but not required, to remove firearms used in the domestic violence incident.

- *Firearms "Observed at the Scene" or "in Plain View":* Three states (Indiana, Maryland and New Jersey) authorize or require removal of firearms "observed at the scene" of a domestic violence incident. In Maryland, law enforcement may remove

⁴⁷ The following analysis draws from the research conducted by Shannon Frattaroli and Jon S. Vernick for their article *Separating Batterers and Guns: A Review and Analysis of Gun Removal Laws in 50 States*, 30 Evaluation Rev. 296 (June 2006).

⁴⁸ Some states authorize law enforcement to take any appropriate action at the scene of a domestic violence incident, but do not specify the removal of firearms. See, e.g., Ky. Rev. Stat. § 403.785; R.I. Gen. Laws § 15-15-5.

all firearms observed by law enforcement at the scene if the officer has probable cause to believe a crime of domestic violence has occurred. In New Jersey law enforcement must remove firearms observed at the scene if law enforcement has probable cause to believe domestic violence has occurred and these firearms expose the victim to danger. In Indiana, law enforcement is authorized, but not required, to remove firearms observed at the scene if they expose the victim to danger or there is reasonable belief that they were used in the domestic violence incident.

Another eight states (Alaska, Arizona, California, Connecticut, Hawaii, Nebraska, Tennessee and West Virginia) authorize or require removal of firearms “in plain view” at a domestic violence scene. In Connecticut, law enforcement may remove any firearms in plain view (in addition to any firearms in the abuser’s possession at the scene) whenever law enforcement determines that a domestic violence crime has occurred. Alaska, Arizona and Hawaii authorize law enforcement to remove any firearms in plain view at the scene if law enforcement believes these firearms expose someone to danger. California requires removal of firearms under this circumstance. In Nebraska, Tennessee and West Virginia, law enforcement may remove firearms in plain view only if the abuser is arrested and it is necessary to protect the victim, the officer or the public.

- *Firearms Found in a Consensual Search:* Seven states (Arizona, California, Hawaii, Nebraska, New Jersey, Tennessee and West Virginia) authorize or require removal of firearms found pursuant to a consensual search. In Arizona, law enforcement may remove firearms found pursuant to a consensual search if law enforcement believes these firearms would expose the victim or other household member to danger. In California, law enforcement must remove firearms found pursuant to a consensual or other lawful search if law enforcement believes these firearms expose someone to danger. In Hawaii, law enforcement may remove any firearms found during a search to which the abuser has consented, if necessary to protect the officer or any family or household member. In New Jersey, law enforcement is required to seize firearms found in a consensual search if law enforcement believes the firearms expose the victim to danger. In Nebraska, Tennessee and West Virginia, law enforcement may remove firearms found in a consensual search, if the abuser is simultaneously arrested and it is necessary to protect the victim, the officer or the public.

c. *States Authorizing the Removal of Ammunition:* Four states (Hawaii, Indiana, Nebraska, and New Hampshire) authorize law enforcement to remove firearm ammunition from the scene of a domestic violence incident, subject to the conditions noted above.

d. *Duration of the Removal:* State laws vary with respect to the duration of the removal of firearms from domestic abusers. Of the states that specify a duration,⁴⁹ Ohio law is the strictest, requiring firearms seized at the scene of a domestic violence incident to be given (permanently) to law enforcement, sold at public auction, or destroyed.

⁴⁹ New Hampshire, Pennsylvania, Utah, and West Virginia do not address the issue when firearms removed from a domestic violence scene must be returned.

Six states (Alaska, Illinois, Indiana, Maryland, Montana and Tennessee) direct that firearms be held so long as they are needed for evidence or until the proceedings against the abuser are concluded. Tennessee requires that a firearm used or threatened to be used to commit domestic violence be sold, destroyed, or used for legitimate law enforcement purposes after completion of legal proceedings involving the weapon; other firearms must be returned to the abuser upon disposition of the case.⁵⁰ In Alaska and Illinois, the firearm must be returned when no longer needed as evidence; in Indiana and Maryland, the firearm must be returned at the conclusion of the proceeding against the abuser. Montana prohibits return of the firearm until acquittal or the return is ordered by the court. Similarly, Nebraska law states that the disposition of firearms seized at a domestic violence scene must be determined by court order.

Six states (Arizona, California, Connecticut, Hawaii, New Jersey and Oklahoma) specify that firearms be returned within a specified time period. Arizona requires firearms seized at a domestic violence scene be held by law enforcement for at least 72 hours, and up to 6 months if a court finds that return of the firearm may endanger the victim. California requires that a firearm seized at a domestic violence scene be held for at least 48 hours, but it must be returned no later than 5 business days after the abuser has petitioned the Department of Justice and demonstrated eligibility to possess the firearm. New Jersey gives the prosecutor 45 days in which to petition for title of a firearm seized at a domestic violence scene; Oklahoma gives the district attorney 10 days. Connecticut requires the firearm to be returned within 7 days after removal unless a court orders otherwise. Hawaii requires the firearm to be returned within 7 working days unless it is retained for use as evidence or the abuser is ineligible to possess it.

4. *State Laws Requiring or Authorizing Removal or Surrender of Firearms and/or Ammunition When a Protective Order Is Issued*⁵¹

To ensure that firearms are taken from the homes of abusers, some state laws authorize judges issuing protective orders to direct law enforcement to remove firearms from the abuser, or to require the abuser to surrender his firearms.

a. States Requiring or Authorizing Removal of Firearms and/or Ammunition by Law Enforcement from Abusers Subject to a Protective Order: Three states (Hawaii, Massachusetts and New Jersey) authorize or require removal of firearms and/or ammunition by law enforcement officers from abusers subject to domestic violence protective orders, including ex parte protective orders.

⁵⁰ Tennessee also allows law enforcement to petition the court for permission to dispose of a firearm used or threatened to be used to commit domestic violence that is not needed as evidence in an official proceeding.

⁵¹ Some states also authorize issuance of protective orders that require the abuser to surrender his or her firearms license or to direct law enforcement to remove a firearms license from the abuser. For example, New Jersey authorizes a judge issuing a protective order to direct law enforcement to search for and seize any firearms purchaser identification card or permit to purchase a handgun issued to the abuser. North Carolina requires a judge issuing a domestic violence protective order to direct the abuser to surrender all permits to purchase firearms and permits to carry concealed firearms if certain conditions exist.

In Massachusetts, when law enforcement serves a domestic violence protective order, law enforcement must immediately take possession of all firearms and ammunition in the abuser's possession, or under his or her ownership or control. In Hawaii, upon service of a domestic violence restraining order, the police officer may take custody of any firearms and ammunition in plain sight, discovered pursuant to a consensual search, or surrendered by the person. If the police officer is unable to locate firearms or ammunition registered to that person or known to the person granted protection by the court, the police officer must apply to the court for a search warrant for the purpose of seizing firearms and ammunition.

New Jersey authorizes a judge issuing a domestic violence protective order to order law enforcement to search for and seize any firearm in the abuser's possession.

b. States Requiring or Authorizing the Court to Order the Abuser to Surrender Firearms and/or Ammunition:

- *States Requiring Surrender of Firearms:* Seven states require certain domestic violence protective orders to include provisions requiring the abuser to surrender certain firearms: California, Illinois, Massachusetts, New Hampshire, New York, North Carolina, and Wisconsin.

California, New Hampshire, and Wisconsin require domestic violence protective orders to include provisions directing the abuser to surrender all firearms in his or her possession, regardless of the circumstances leading to the order. California's law also applies to ex parte orders. In New Hampshire, a provision for the surrender of firearms is authorized in ex parte orders but required in domestic violence protective orders issued with notice and a hearing. Wisconsin's law does not apply to ex parte orders.

In Hawaii, Illinois, Massachusetts, New York and North Carolina, domestic violence protective orders must direct the abuser to surrender firearms if certain conditions are met. In Hawaii, if a protective order (including an ex parte order) contains a prohibition on possession of firearms, the abuser must relinquish possession and control of any firearm owned by that person.⁵² Illinois requires a court issuing a domestic violence protective order after notice and a hearing to direct the abuser to surrender any firearms in his or her possession if the abuser has threatened or is likely to use firearms.⁵³

In Massachusetts, a domestic violence protective order (including an ex parte order) must require the abuser to surrender all firearms and ammunition in his or her possession if the plaintiff demonstrates a substantial likelihood of immediate danger of abuse. In New

⁵² Hawaii requires an ex parte domestic violence protective order to prohibit the possession of firearms, and requires the abuser to surrender firearms if the statement that forms the basis for the order shows that the abuser owns, possesses or intends to obtain a firearm and the firearm may be used to threaten, injure or abuse any person.

⁵³ In Illinois, if the subject of a domestic violence protective order fails to surrender his or her firearms as ordered, the court must issue a warrant for seizure of any firearms in his or her possession.

York, a domestic violence protective order must require the surrender of firearms if the conduct which resulted in the order involved the infliction of serious physical injury, the use or threatened use of a dangerous weapon, or behavior constituting a violent felony.⁵⁴ In addition, the judge has discretion to require the surrender of firearms in a protective order (including an ex parte order) if the court finds a substantial risk that the abuser may use or threaten to use a firearm unlawfully against a person protected by the order. In North Carolina, a domestic violence protective order (including an ex parte order) must require the abuser to surrender all firearms and ammunition in his or her possession if the abuser threatened to use a deadly weapon or to seriously injure or kill the aggrieved party or the parties' minor child, to commit suicide, or has inflicted serious injuries upon the aggrieved party or the parties' minor child.

- *States Authorizing Surrender of Firearms:* Twelve states⁵⁵ authorize (but do not require) courts to issue protective orders that direct the abuser to surrender all firearms in his or her possession: Alaska,⁵⁶ Arizona,⁵⁷ Delaware, Florida⁵⁸, Indiana, Maryland, Nevada, North Dakota,⁵⁹ Pennsylvania,⁶⁰ Rhode Island and South Dakota.

Seven states also authorize firearm surrender provisions in certain ex parte domestic violence protective orders: Arizona, Delaware, Florida, New Hampshire, North Dakota, Pennsylvania, and South Dakota.

- *States Specifying To Whom the Abuser Must Surrender Firearms:* Ten states direct persons subject to protective orders to surrender their firearms to law enforcement: Arizona, Delaware, Illinois, Indiana, Maryland, Massachusetts, New Hampshire, North Carolina, North Dakota, and South Dakota.

Two states (California and Hawaii) require the abuser either to surrender his or her firearms to law enforcement, or to sell those firearms to a licensed gun dealer.

⁵⁴ New York requires an ex parte domestic violence protective order to require the surrender of firearms if the abuser has been convicted of a violent felony or stalking or has willfully failed to obey a prior order of protection and the failure involved the infliction of serious physical injury, the use of deadly weapons, or a violent felony.

⁵⁵ Other states grant judges discretion to include any appropriate injunctive relief in protective orders, but do not specifically mention the surrender or removal of firearms. *See supra* note 37.

⁵⁶ Alaska authorizes a protective order issued after notice and a hearing that requires the abuser to surrender firearms only if a firearm was used or threatened in a domestic violence incident.

⁵⁷ Arizona authorizes a protective order requiring the surrender of firearms only if the abuser is a credible threat to the physical safety of the plaintiff or other specifically designated persons. If a protective order prohibits the abuser from possessing firearms, it must also include a surrender requirement.

⁵⁸ Florida considers it a violation of a protective order to refuse to surrender firearms if ordered to do so.

⁵⁹ In North Dakota, a domestic violence protective order may require the abuser to surrender firearms in his or her possession only if the court has probable cause to believe the abuser is likely to threaten to use the firearm in further acts of violence.

⁶⁰ In Pennsylvania, a domestic violence protective order may require the abuser to relinquish all firearms and ammunition if the order was issued after notice and a hearing, or if the petition demonstrates prior abuse involving a weapon or an immediate and present danger of abuse.

In Nevada, the abuser must surrender his or her firearms to law enforcement or another person designated by the court, or may sell those firearms to a licensed dealer.

In New York, the abuser must surrender his or her firearms to an authority identified by the court, who must then notify the court of the surrender when it occurs.

Three states (Pennsylvania, Rhode Island and Wisconsin) permit the abuser to surrender his firearms to other designated third parties. In Pennsylvania, the abuser must surrender his or her firearms to law enforcement, to a licensed dealer, or to a third party; the latter two must sign an affidavit promising not to return the firearms to the abuser. In Rhode Island, the abuser may surrender his or her firearms to law enforcement, a licensed dealer, or to any individual not legally prohibited from possessing firearms who is not related to or dating the abuser. In Wisconsin, the abuser must surrender his or her firearms to law enforcement or a person designated by the abuser and approved by the court.

- *States Authorizing Surrender of Ammunition:* Six states (Hawaii, Indiana, Massachusetts, New Hampshire, North Carolina and Pennsylvania) authorize judges to issue protective orders that require the abuser to surrender ammunition as well as firearms.

SUMMARY OF SELECTED⁶¹ LOCAL LAWS REGARDING DOMESTIC VIOLENCE AND FIREARMS

Local Laws Regarding Domestic Violence and Firearms⁶²

New York City

**New York, N.Y., Rules tit. 38-A, § 5-02(b), (c);
New York, N.Y., Admin. Code § 10-303**

Omaha

Omaha, Neb., Code § 20-253

New York City: In New York City, no person with a prior conviction for a misdemeanor crime of domestic violence, as defined by federal law, may be granted a premises license allowing him or her to possess a handgun at a residence or business location, or a permit for the possession or purchase of rifles or shotguns. In addition, an applicant for a premises license must disclose whether he or she has ever been the subject or recipient of an order of protection.

⁶¹ This section is based on research and analysis of existing firearms laws in: Boston, Massachusetts; Chicago, Illinois; Hartford, Connecticut; Los Angeles, California; Newark, New Jersey; New York, New York; Omaha, Nebraska; and San Francisco, California. LCAV selected these cities because they are located in states that grant local jurisdictions broad authority to regulate firearms. It also includes existing laws in Cleveland and Columbus, Ohio. Note, however, that in 2006, the Ohio Legislature passed House Bill 347 (overriding the Governor's veto), which created Ohio Rev. Code Ann. § 9.68(A), a provision that purports to preempt all local authority to regulate firearms with few, limited exceptions. Legal challenges to the law are pending. Additional information about state laws governing local authority to regulate firearms is contained in the section of this report titled "[The Legal Background.](#)"

⁶² In addition, Columbus, Ohio prohibits issuance of a weapons transaction permit to anyone convicted of an "offense of violence" as defined by state law, without reference to the relationship between the offender and the victim. Columbus, Ohio, Code § 545.08(4).

Omaha: Omaha prohibits anyone convicted of any charge of domestic violence or anyone subject to an active protective order from registering a concealable firearm.

FEATURES OF COMPREHENSIVE LAW REGARDING DOMESTIC VIOLENCE AND FIREARMS

The features listed below are intended to provide a framework from which policy options may be considered and debated. LCAV has not attempted to include every provision or every creative approach identified in the analysis above, nor have we addressed appropriate exceptions so that the regulation does not produce unintended consequences. A jurisdiction considering modifying existing, or developing new legislation in this area should consult with counsel to ensure its legal sufficiency and compatibility with existing codes and statutes, as appropriate.

- In addition to persons prohibited by federal law, persons convicted of a violent misdemeanor against a former or current dating partner, cohabitant, or family member are prohibited from purchasing or possessing firearms (*Illinois, Minnesota, New Jersey, Texas, Washington*)
- Courts are authorized to prohibit persons charged with a domestic violence misdemeanor from purchasing or possessing firearms (*California, Colorado, New Jersey, New York, Texas, Virginia*)
- Persons convicted of a domestic violence misdemeanor are prohibited from purchasing or possessing ammunition (*Delaware, Illinois*)
- In addition to persons prohibited by federal law, former or current dating partners, cohabitants, or family members who are subject to a domestic violence protective order are prohibited from purchasing or possessing firearms (*Connecticut, California, Hawaii, Massachusetts, Nevada, Texas, West Virginia, Wisconsin*)
- Persons subject to a domestic violence protective order issued without notice or a hearing are prohibited from purchasing or possessing firearms (*California, Massachusetts, Texas, Virginia, West Virginia, Wisconsin*)
- Persons subject to a domestic violence protective order are prohibited from purchasing or possessing ammunition (*California, Delaware, Florida, Hawaii, Illinois, Indiana, Massachusetts, New Hampshire*)
- All domestic violence protective orders require law enforcement to seize all firearms and ammunition in the abuser's possession, or under his or her ownership or control (*Massachusetts*)
- Law enforcement responding to a domestic violence incident are required to remove all firearms and ammunition in the abuser's possession, or under his or her ownership or control (*New Hampshire*)
- Firearms seized at the scene of a domestic violence incident must be permanently given to law enforcement, sold at public auction, or destroyed (*Ohio*)