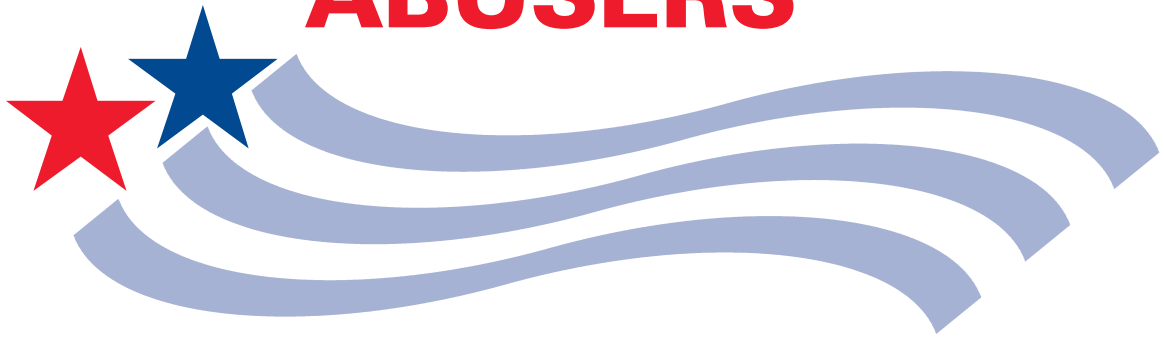
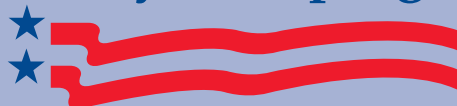


DISARMING DOMESTIC VIOLENCE ABUSERS



**States Should Close Legislative Loopholes
That Enable Domestic Abusers to
Purchase and Possess Firearms**

Brady Campaign



To Prevent Gun Violence
Leading the Fight for a Safer America
United With the Million Mom March

Julissa José
Brady Campaign To Prevent Gun Violence
United With the Million Mom March
Senior Associate Director, State Legislation
10951 Pico Blvd., Suite 100
Los Angeles, CA 90064
(310) 446-0056

www.bradycampaign.org
www.millionmommarch.org

SEPTEMBER 2003

As the nation's largest non-partisan, grassroots organization leading the fight to prevent gun violence, the Brady Campaign to Prevent Gun Violence united with the Million Mom March is dedicated to creating an America free from gun violence, where all Americans are safe at home, at school at work, and in their communities

DISARMING DOMESTIC VIOLENCE ABUSERS

**States Should Close Legislative Loopholes
That Enable Domestic Abusers to
Purchase and Possess Firearms**

Brady Campaign



To Prevent Gun Violence
Leading the Fight for a Safer America

United With the Million Mom March

CONTENTS

EXECUTIVE SUMMARY	1
I. Federal Firearm Laws: Loopholes Allow Abusers To Have Guns	2
II. State Legislation: Action Needed to Protect Women And Children	5
III. Conclusion and Recommendations	10
APPENDIX A	12
Matrix of Existing State Laws to Disarm Domestic Abusers	
APPENDIX B	16
2003 Legislative Efforts to Disarm Domestic Violence Abusers	
APPENDIX C	20
Sample State Statues: Legislation from Across the Nation	

EXECUTIVE SUMMARY

Domestic violence and guns are a deadly combination. According to the FBI, thirty-three percent of women who are murdered with firearms are killed by an intimate partner.¹ Households with guns are eight times more likely to have a firearm homicide at the hands of a family member or intimate acquaintance than homes without guns, and the risk of gun-related domestic homicide is much higher if there is a history of domestic violence.²

Domestic Violence: A pattern of ongoing hurtful, manipulative or controlling activities – including physical, sexual, psychological, emotional and verbal abuse – perpetrated by a family member, co-habitant or intimate partner. Many perpetrators of domestic violence use firearms to intimidate, threaten, injure and murder their intimate partners. Most victims of domestic violence are women and children.

After years of effort, advocates for victims of domestic violence succeeded in passing important federal legislation to prevent domestic abusers from purchasing or possessing firearms. But without complementary and enforcing legislation at the state level, the laws will remain incomplete, leaving vast chasms in the safety net through which hundreds of domestic violence victims fall each year as abusers continue to acquire and use firearms.

The Brady Campaign to Prevent Gun Violence united with the Million Mom March has launched a campaign to highlight steps that states should take to complement the federal laws and prevent domestic abusers from purchasing or possessing firearms. Several states have enacted effective legislation that can serve as a model for the rest of the country.

There are several immediate legislative steps that states need to take to reduce domestic violence assaults with firearms: 1) Restraining orders must clearly prohibit gun possession and be added to state and national databases used to conduct background checks on gun sales; 2) Abusers found guilty of domestic violence misdemeanors must be prohibited from possessing firearms and added to state and national databases used to conduct background checks on gun sales; 3) Police must remove firearms from the scenes of domestic violence; 4) Judges and state authorities must be granted authority, and use it, to identify and disarm abusers who already possess firearms; 5) Abusers must be stopped from buying additional guns by ensuring that background checks are done on every firearms transfer, including gun shows and other venues; and 6) Funding and adequate resources must be provided for strong enforcement of these efforts to safeguard victims and their families from abusers with firearms.

To protect women and children from domestic gun violence, state legislators need to enact and enforce effective laws that prevent domestic abusers from purchasing firearms and disarm abusers who already have firearms. Unless states act promptly, violent domestic abusers will continue to terrorize and kill women and children.

A DEADLY COMBINATION

Domestic Violence and Guns

Domestic abusers use guns to kill women and children. Women are far more likely to be killed by a spouse, intimate acquaintance, or family member than to be murdered by a stranger, and firearms are the most common weapons used by males to murder females.³ Not surprisingly, abusers who kill their intimate partners often injure or kill third parties. One study found that in 38 percent of homicides involving intimate partners, the perpetrator kills more than one person; other victims include children, mediators, and bystanders.⁴ Survivors of domestic firearm assaults often suffer brutal, life-altering injury.⁵ Preventing domestic abusers from purchasing or possessing guns will save the lives of women and children.

According to the FBI's Supplementary Homicide Report, 3,076 women were murdered in 2000

- Fifty-eight percent (1,795) of female homicide victims were killed with firearms.
- Thirty-three percent of women killed with a firearm were murdered by a husband or boyfriend.

(FBI: Uniform Crimes Reporting Program "Crime in the United States: Supplementary Homicide Report, 2000")

I. FEDERAL FIREARM LAWS: Loopholes Allow Abusers to Have Guns

DOMESTIC VIOLENCE organizations have succeeded in enacting important federal laws that provide a framework for preventing domestic violence abusers from purchasing or possessing firearms. But the federal laws cannot be fully enforced, and will not be completely effective in disarming abusers, without complementary and implementing legislation from the states. While some states have made great strides in ensuring that abusers do not have firearms, other states have failed to enact legislation on domestic violence and guns, undermining the entire national system.

Without state action, the federal laws will continue to include dangerous loopholes that leave women and children at risk. To protect women and families from abusers with guns, state legislatures must enact laws to complement and enforce federal laws and ensure that domestic abusers are disarmed.

The major federal laws preventing abusers from purchasing or possessing firearms, which are summarized below, include the Brady Handgun

Violence Prevention Act of 1993, the Violent Crime Control and Law Enforcement Act of 1994, the Lautenberg Amendment of 1996 and the Violence Against Women Act which was passed in 1994 and strengthened in 2000.

The Brady Handgun Violence Prevention Act

The Brady Handgun Violence Prevention Act, enacted in 1993, is designed to stop abusers from buying guns by requiring a background check before a federally licensed gun dealer sells or otherwise transfers a firearm (*18 U.S.C. § 922(t)*). The background checks are generally conducted through the National Instant Criminal Background Check System (NICS) and some states conduct an additional state-based background check.

But the Brady Law only applies to sales by federally-licensed gun dealers. "Private" sales by people who are not licensed dealers — as

commonly occur at gun shows, swap meets, and through newspaper ads — are not subject to the background check. This loophole makes it easy for abusers who are prohibited from buying guns to evade the background check. To ensure that abusers do not purchase firearms, states must enact laws that require a background check on all gun transfers, including those at gun shows.

A federal NICS background check provides an automated search of criminal and non-criminal records, from state and national databases, to determine a person's eligibility to purchase a firearm. A NICS check queries three information sources: (1) the National Crime Information Center, which provides access to fugitive arrest warrants and protective orders; (2) the Interstate Identification Index, which provides access to state criminal history records and FBI criminal history databases; and (3) the NICS Index, which maintains records about other persons ineligible to possess firearms, including the mental ill, unlawful aliens, and persons dishonorably discharged from the military.⁶

The National Crime Information Center database (NCIC), which is a part of the NICS background check, provides law enforcement agencies with a quick verification tool for enforcement of protective orders, including prohibitions on the purchase or possession of firearms.⁷ But the system is badly compromised because many states do not fully participate, preventing the NICS background check from blocking gun sales to abusers and making it difficult for other states to enforce protective orders prohibiting firearms. Currently, 43 states have begun to enter their protective orders into the system, but some states are barely participating with as few as 5 entries in the system. In June 2003, the NCIC registry of protective orders contained only 781,574 entries⁸ (many of which are not domestic violence related), which is estimated to be less than 50 percent of the over 2 million orders believed to qualify for entry.⁷

Violent Crime Control and Law Enforcement Act of 1994

In 1994, Congress expanded the Brady Law to prohibit abusers under restraining order from purchasing and possessing firearms. This federal restriction applies to restraining orders in which the alleged abuser was given notice and opportunity to appear at a hearing. State restraining orders that do not conform to the federal standard for notice and hearing cannot be included in federal databases used to stop gun sales to prohibited buyers, so it is critical that states enact such provisions as part of their restraining order process.

Restraining Orders: To deter violent, abusive and intimidating acts, civil and criminal courts have the authority to restrain improper conduct. Referred to as “restraining orders,” “injunctions,” or “protective orders,” these orders restrict or prohibit one individual's behavior to protect another individual. Restraining orders generally include provisions restricting contact, prohibiting abuse, intimidation, or harassment and prohibit the possession of firearms. (*Office for the Prevention of Domestic Violence, New York 1999*)

Although federal law prohibits abusers under a restraining orders from purchasing firearms, the NICS background check system often fails to identify and prevent abusers under a restraining order from purchasing or possessing firearms because many states fail to provide appropriate details to the federal background check databases. NICS will fail to stop abusers from buying guns unless states enact legislation authorizing and funding the inclusion of all appropriate restraining orders in state and federal databases.⁹

Lautenberg Amendment on Domestic Violence Misdemeanors

In 1996, Congress expanded the Brady Law to prohibit anyone convicted of domestic violence misdemeanors from purchasing or possessing a firearm. To qualify under the federal definition of domestic violence misdemeanors, the perpetrator must have either used or attempted to use physical force or threatened the use of a deadly weapon. (19 U.S.C. § 921 (A)(33))

As with the federal prohibition on abusers under restraining orders, the Lautenberg Amendment's ban on domestic violence misdemeanants having guns cannot be enforced unless states provide detailed information on domestic misdemeanor convictions to the federal NICS database used in background checks on gun buyers.

Domestic Violence Misdemeanors: Federal law defines these crimes as those involving the use or attempted use of physical force or the threatened use of a deadly weapon by any of the following: a current or former spouse, parent, or guardian of the victim; a person with whom the victim shares a child in common; a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian; or a person similarly situated to a spouse, parent, or guardian of the victim.

Because states have divergent definitions of domestic violence, the NICS system was modified in May 2001 to include a “flag” (known as IFFS) that can be set in the automated criminal history field. IFFS assists federal authorities in identifying state domestic violence misdemeanor convictions (and other ineligible persons) that meet the federal standard to ensure that they are blocked from buying guns during the Brady Law background check. But only 19 states currently participate in the FBI's new IFFS flagging system.⁸ Due to financial and technical constraints, not all states

designated as participants regularly set the IFFS flags. The failure by many states to update the NICS database, combined with a failure by most states to participate in IFFS, leaves a gaping loophole in NICS and undermines the effectiveness of the federal systems designed to stop gun purchases by prohibited domestic violence abusers.

Violence Against Women Act & Full Faith and Credit

Passed by Congress in 1994 and reauthorized and strengthened in 2000, the Violence Against Women Act (VAWA) is a comprehensive effort to address domestic violence, sexual assault and stalking. VAWA includes provisions for the establishment and nationwide enforcement of civil and criminal protection orders in state and tribal courts throughout the country, known as “Full Faith and Credit.” States must honor out-of-state gun prohibitions in protective orders that are subject to Full Faith and Credit, but the statute does not prescribe the specific enforcement procedures that jurisdictions must adopt to comply with its mandate.⁹

Full Faith and Credit: A legal term that means orders issued by a court, such as restraining orders, will be honored and enforced in other states and jurisdictions.

Because the Full Faith and Credit provision is not self-executing, states must establish their own procedures for honoring out-of-state protective orders. There is considerable variation in implementing Full Faith and Credit.⁵ Most states have adopted legislation that makes it relatively easy for battered women to get their out-of-state protection orders enforced. But some states have established enforcement procedures for out-of-state orders that are cumbersome for battered women and may even expose them to risk or harm.⁹

II. State Legislation: Action Needed to Protect Women & Children

ALTHOUGH CONGRESS has established a framework for preventing domestic abusers from purchasing or possessing firearms, the federal system depends on active involvement by the states. Without effective legislative and regulatory action by state authorities, domestic abusers will continue to purchase and possess guns with devastating consequences to women and children. To stop firearm deaths of domestic violence victims, state legislatures, courts and law enforcement must work in tandem with federal authorities to enact and enforce state laws to identify domestic abusers and prevent them from having firearms.

Every state should close the loopholes that allow violent abusers to purchase or possess firearms. A comprehensive approach would ensure that anyone subject to a restraining order or convicted of domestic violence would be prohibited from acquiring or possessing a firearm and would ensure that the prohibitions were quickly and effectively enforced. Additionally, it would require police to temporarily remove firearms from the scenes of domestic violence to eliminate the immediate threat and provide an opportunity for a protective order to be granted. Several states have legislation in these areas that provide a model for the country. A matrix of state laws is attached, as well as an overview of pending state legislation.

Prohibit Possession of Firearms by Abusers Under Protective Order

Families that experience domestic violence often rely on the state court system for protection from their abusers. A majority of states have enacted legislation that provides the courts with authority to issue restraining orders against domestic abusers that include a prohibition against possessing or acquiring firearms. Some states also allow courts to issue orders demanding that abusers surrender or transfer any firearms that are already in their

possession. A recent study found that in states with laws restraining abusers from possessing firearms intimate partner homicide rates decreased by 9 to 12 percent. These laws were most effective when states crosschecked restraining orders with firearm purchases.¹⁰

In 2002, background checks noting domestic violence misdemeanor convictions and restraining orders kept 22,000 abusers from purchasing firearms. (Background Checks for Firearm Transfers, 2002, BOJS)

To stop abusers from using firearms for violent and intimidating acts against women and children, every state should provide both civil and criminal courts with the authority to prohibit abusers from purchasing or possessing firearms.

Unfortunately, even when provided with the authority to prohibit abusers from having firearms, some courts fail to use that authority – allowing abusers continued access to guns, which are then used against women and children. States should streamline procedures and enhance judicial training to encourage courts to disarm abusers. To be effective, a protective order prohibiting firearms must be clear and easily verifiable by police and immediately added to state and federal databases used to stop gun purchases by abusers. And law enforcement officials and the courts must take strong steps to remove firearms already in the abuser’s possession.

Twenty-nine states have failed to enact state laws to prohibit firearms purchase and possession by abusers under restraining order.¹⁰

The tragic consequence of loopholes in domestic violence and guns laws was chillingly demonstrated by the case of Simon Gonzales in Colorado. Because of his violent outbursts, Gonzales' ex-wife obtained a restraining order that prohibited him from buying a gun. But Colorado only listed the restraining order in the state's database while requiring that gun buyer background checks be performed only against the federal database. Since the restraining order was not forwarded to the federal database, Gonzales was able to purchase a gun and within hours he killed his three young daughters, Leslie, Kathryn and Rebecca. Colorado has now closed this loophole by requiring a check of both state and federal databases before a gun is sold.

Promptly Update Databases With Domestic Violence Restraining Orders

Federal law prohibits anyone subject to a domestic violence restraining order from purchasing a firearm and requires gun dealers to contact the federal NICS background check system, or state law enforcement officials, to conduct a background check on prospective gun buyers. But the federal law will not effectively identify abusers and prevent them from having guns unless states ensure that restraining orders are promptly forwarded to state and federal databases like NICS.

One state, California, has provided information on close to one quarter of a million restraining orders to the NICS system — between 85-92 percent of which are for domestic violence — demonstrating how powerful a tool this could be to prevent violent batterers from buying guns.¹¹ But too many states fail to provide prompt, accurate information on domestic violence restraining orders to NICS, allowing abusers to keep buying guns. This failure allows violent domestic abusers to evade the law and buy guns.

Thirteen states have failed to fully automate protective orders prohibiting firearms.¹²

Create Uniform Protective Orders that Clearly Prohibit Firearms

Since protective orders vary from state to state, it is often difficult for police to interpret and enforce protective orders issued by another state. Many protective orders are very lengthy — some are 28 pages long. Therefore, law enforcement officers, particularly with an out-of-state protective order, must spend precious time combing through the report to find vital information.¹³ Police and judges need to develop enforcement strategies that make paramount the safety of the victims of violence. Ideally, state and federal authorities would establish easily accessible databases for law enforcement that immediately indicate whether an abuser is under a restraining order and prohibited from possessing a firearm. Until such systems are in place, states should make sure that existing restraining orders — and related firearms prohibitions — are clear and easily verified.

One attempt at addressing this issue is Project Passport, which has been piloted in Kentucky, Ohio, Indiana, Missouri, Tennessee, West Virginia, and Washington, DC. Under Project Passport, all restraining orders have a similar first page, which makes it easier for police officers to quickly review and understand important sections, such as a prohibition against the abuser having a gun.¹³ A recognizable first page helps an officer at the chaotic scene of domestic violence who is handed a court order that he/she has never seen before. This first page immediately alerts the officer of the effective dates of the order, name of the restrained person and states that “*federal law provides penalties for possessing, transporting, shipping, or receiving any firearm or ammunition*” by the abuser.¹³

Forty states have not yet adopted a recognizable first page for protective orders, although some states are currently working towards its implementation.¹³

Define Domestic Violence Misdemeanors In State Law and Prohibit Firearms

While federal law prohibits people convicted of domestic violence from purchasing or possessing a firearm, the federal law will fail to stop many abusers without complementary state legislation. States must ensure that state domestic violence convictions are included in the federal databases used for background checks on gun buyers, and states must prohibit possession of firearms by domestic misdemeanants so that local law enforcement and judicial authorities can disarm abusers who already have firearms.

Enacting state laws to prohibit domestic violence misdemeanants from possessing or purchasing firearms serves two important purposes; 1) It creates authority for local law enforcement to disarm abusers and; 2) It facilitates the identification of prohibited abusers in NICS. While some states prohibit anyone convicted of a domestic violence misdemeanor from possessing or purchasing a firearm, many states have failed to enact such laws, preventing local police from disarming abusers. State laws can have a significant impact on the number of potential abusers prohibited from buying firearms. For example, in 1996, Illinois enacted a law prohibiting violent misdemeanants from purchasing a firearm. From 1996 to 2000, more than 28,000 Illinois domestic violence misdemeanants were added to the databases, preventing these dangerous people from acquiring more firearms.¹⁰

Even in states that have enacted laws to complement the federal prohibition on firearms possession by domestic violence misdemeanants, differences in the definition of domestic violence can prevent effective enforcement and allow abusers to continue buying guns. State misdemeanor convictions that should result in firearm prohibitions are categorized in a myriad of ways by different states, making it complicated and time consuming for federal agents to

determine if a potential gun buyer is ineligible to possess a firearm during the 3-day Brady Criminal Background Check.⁶ State misdemeanor criminal records also may be more difficult to track down than felony records, because they are not centrally stored by many states.

Thirty-one states have failed to enact state laws to prohibit firearms possession and purchase by domestic misdemeanants.¹⁰

Promptly Update Databases With Domestic Violence Misdemeanor Convictions

Federal law prohibits anyone convicted of domestic violence misdemeanors from purchasing a firearm and requires gun dealers to contact federal or state authorities to run a background check on potential gun buyers. But the FBI reports that the federal NICS background check system is undermined because many states have not automated their domestic violence convictions and do not promptly forward domestic misdemeanor conviction information to NICS or other databases.⁸

In 2001, only eleven percent of the 64 million state criminal history records were instantly accessible to NICS.¹⁴ This failure to automate state criminal histories allows convicted domestic violence abusers to continue buying guns because their names and conviction details are not in the NICS database.

Fourteen states have failed to automate domestic violence misdemeanor convictions.¹²

To ensure that state domestic violence misdemeanor convictions are quickly and accurately included in the federal NICS system to stop abusers from buying guns, states should participate in the FBI's Identification for Firearms Sales (IFFS) system, which flags state domestic violence misdemeanors with NICS to ensure that abusers are identified and blocked from buying guns. The IFFS system also assists police officers at

From November 1998 through September 2001, BATF received 10,945 requests from the FBI to retrieve firearms that had been improperly sold to people who were later found to be prohibited from having firearms — the NICS database had not had sufficient information to stop those gun sales within the 3-day period allowed under the Brady Law. Twenty-six percent (2,815) of the firearms retrievals were from gun buyers who had been convicted of a domestic violence misdemeanor. The number of guns sold to prohibited domestic violence abusers who are never identified and from whom the guns are not retrieved is unknown. (*GAO Report: Gun Control: Opportunities to Close Loopholes in National Instant Background Check System, 2002*)

the scene of domestic violence incidents by immediately highlighting abusers who are already prohibited from possessing a firearm.

Thirty-one states have failed to participate in IFPS “flag” system for identifying prohibited misdemeanants.¹⁵

Disarm Abusers Who Already Have Firearms

In addition to providing information on abusers to databases like NICS that block future gun purchases, states need to disarm abusers who already have firearms. While federal law prohibits abusers from possessing firearms, local police and courts are unable to disarm violent abusers without complementary state legislation. States should provide courts with the authority to issue search warrants to seize firearms from prohibited abusers. States also should require judges to make clear to domestic misdemeanants and abusers subject to restraining orders that it is illegal for them to possess or acquire firearms.

In states that maintain records of prior gun purchases (either through gun sale records or firearms licensing), laws should be enacted authorizing and requiring law enforcement to compare the records of prohibited abusers with records of prior gun acquisition. Law enforcement should take action to disarm prohibited abusers who are identified as having previously acquired a firearm.

California enacted legislation that allows law enforcement to identify and act against people who purchased firearms legally in the past but are now prohibited from possessing guns — such as gun owners who become subject to a domestic violence restraining order. The California Department of Justice has begun establishing systems that will promptly identify abusers (and other prohibited persons) who are suspected of possessing firearms. Funding constraints have prevented full enforcement in California, but since July 2002, the California Department of Justice has seized firearms from more than 400 domestic violence abusers, eliminating the likelihood that those guns could be used to kill or injure women or children.¹⁶

Forty-four states have failed to enact state laws to empower either law enforcement or the courts to identify and disarm prohibited abusers who already have firearms.¹⁷

Remove Firearms From Scenes of Domestic Violence Threats

Too often, after women report domestic abuse, the abuser becomes even more violent. As the violence escalates the threat of the use of a deadly firearm also increases. Police officers should be trained and required to take temporary custody of any firearms at the scene of a domestic violence incident.

California has enacted legislation that requires police to temporarily remove guns from the scene of a domestic violence incident, allowing the victim to plan for her/his safety or seek a protective order. The firearms are returned after a brief period, unless a protective order makes it illegal for the abuser to possess firearms or unless police initiate court action to demonstrate that returning the firearm would create a serious threat to public safety. Prior to returning the firearm, law enforcement should be required to check whether the abuser is already prohibited from possessing firearms (i.e., has a prior conviction or has an active restraining order) by checking NICS and any state-based background check system.*

Thirty-six states have failed to enact state laws to temporarily remove firearms from scenes of domestic violence.¹⁷

Stop Abusers From Evading Background Check

While the federal Brady Law was designed to prevent domestic abusers (and other prohibited people) from buying firearms from federally licensed gun dealers, abusers can easily evade the law by buying guns through private, non-dealer, sources. Federal law does not require a background check on gun buyers — including domestic abusers — who purchase guns from “private”

sellers at gun shows, swap meets, garage sales or through newspaper ads. Unless states require all gun buyers to go through the a background check, domestic abusers will continue to evade the law and buy firearms from “private” sellers and those guns will be used in attacks on women and children.

Some states have enacted comprehensive background check laws to block abusers from buying guns by requiring a background check before any gun is transferred. But in most states abusers can purchase as many guns as they want, no questions asked, from “private” sellers at gun shows, swap meets or through newspaper ads. No record is even kept of these gun sales or the gun buyers.

Forty-four states have failed to enact state laws to require a background check on all gun transfers. Though, eleven of these states do require background checks on all handgun transfer and/or transfers at gun shows.

State Legislation On Domestic Violence and Firearms

Thanks to the efforts of domestic violence groups across the country, many states have taken aggressive steps to stop abusers from purchasing or possessing firearms. But too many loopholes remain, allowing dangerous abusers continued access to guns that are used against women and children. Each state needs to carefully examine its domestic violence and firearms laws to ensure that abusers are effectively blocked from purchasing or possessing firearms.

Attached is a detailed matrix of each state’s laws and loopholes as well as a chart of pending state legislation on domestic violence and firearms for 2003.

* U.S. Attorney General John Ashcroft has threatened legal action against California law enforcement authorities for their use of NICS to ensure that guns are not returned to prohibited domestic abusers. Ashcroft argues that NICS can only be checked for gun sales, not for the return of firearms. The California Attorney General is challenging Ashcroft’s narrow view of NICS.

CONCLUSION AND RECOMMENDATIONS

Domestic violence and guns is a deadly combination, putting many women and families at great risk. While federal laws provide a general framework to prevent abusers from purchasing or possessing firearms, the federal laws will not be effective in protecting women from armed abusers until every state enacts complementary and implementing legislation — with strong enforcement — to stop abusers from purchasing or possessing firearms. States must adopt a comprehensive approach to identify abusers, remove guns that they already possess and prevent them from acquiring more firearms.

To effectively protect women and children from domestic abusers with guns, states should enact and enforce the following laws to disarm abusers:

- Provide prompt and appropriate identifying information on prohibited abusers to state and federal criminal background check systems;
- Establish clear and effective protective orders that prohibit gun possession by abusers;
- Identify and disarm prohibited abusers who already have firearms;
- Remove guns from the scenes of domestic violence;
- Ensure that domestic abusers cannot evade background checks on gun purchases;
- Provide adequate funding and resources to enforce prohibitions against abusers having firearms.

Domestic violence can be made less lethal by the enactment and aggressive enforcement of sensible gun laws that disarm abusers. But without prompt and effective action by state legislatures, coordinated with state courts and law enforcement, guns in the hands of domestic violence abusers will continue to claim the lives of thousands of innocent women and children. The Brady Campaign to Prevent Gun Violence united with the Million Mom March will work with state legislatures and domestic violence organizations to strengthen state domestic violence and firearms laws and to increase their enforcement in order to protect women and children from abusers with guns.

- ¹ FBI: *Uniform Crimes Reporting Program*, “Crime in the United States: Supplementary Homicide Report, 2000”
- ² Kellermann AL, Rivara FP, Rushforth NB, Banton JG, Reay DT, Francisco JT, Locci AB, Prodzinski J, Hackman BB, Somes G. “Gun Ownership as a Risk Factor for Homicide in the Home.” *New England Journal of Medicine*. 1993 Oct 7;329(15):1084-91.
- ³ Kellermann AL, Mercy JA. “Men, Women, and Murder: Gender-specific Differences in Rates of Fatal Violence and Victimization,” *Journal of Trauma*. 1992 Jul;33(1):1-5.
- ⁴ Langford L., Isaac N, Kabat, S., Homicides Related to Intimate Partner Violence in Massachusetts. *Homicide Studies*, 1998;2: 353-377.
- ⁵ Mitchell, D. and Carbon, S. “*Firearms and Domestic Violence: A Primer for Judges, 2000*”
- ⁶ General Accounting Office. *Report to the Ranking Member, Committee on the Judiciary, House of Representatives. Gun Control: Opportunities to Close Loopholes in National Instant Background Check System, 2002*
- ⁷ U.S. DOJ, Office of Victims of Crimes, *Legal Series #4*. Jan. 2002
- ⁸ Conversation with FBI, NICS Section, May 1 and June 9, 2003
- ⁹ Minnesota Center Against Violence and Abuse, March, 2001, “*Progress Report on Full Faith and Credit Enabling Legislation*”
- ¹⁰ E. Vigdor and J. Mercy, “Disarming Batterers,” *Evaluating Gun Policy*, edited by J. Ludwig and P. Cook 2003;157-214
- ¹¹ Sorenson, S. B, Shen H. “*Restraining Orders in California: A Look at Statewide Data*,” Manuscript in preparation. July 2003
- ¹² American For Gun Safety Foundation, 2002, “*Broken Records: How America’s Faulty Background Check System Allows Criminals to Get Guns*.”
- ¹³ Beran, L “*Project Passport: Regional Implementation of the Full Faith and Credit for the Violence Against Women Act*” Kentucky Coalition Against Domestic Violence, 2002
- ¹⁴ U.S. DOJ, Bureau of Justice Statistics, “*Improving Criminal History Records for Background Checks*,” February, 2002
- ¹⁵ FBI, *Identification for Firearms Sales program*, “Map of Participating States,” May 1, 2002
- ¹⁶ Conversations with California Office of the Attorney General, Firearms Division, June, 2003
- ¹⁷ National Center on Full Faith and Credit, Pennsylvania Coalition Against Domestic Violence, 2002, “*Firearms and Domestic Violence: State and Territorial Statutes*.”

APPENDIX A: STATE DOMESTIC VIOLENCE AND FIREARMS LAWS

STATE	Prohibit Firearm Possession by Abusers Under Restraining Orders	Contribute D.V. Restraining Orders to Federal Databases	Prohibit Firearm Possession by Domestic Violence Misdemeanants	Contribute Domestic Violence Convictions to Federal Databases	"Flag" Domestic Violence Abusers in Federal Databases	Note Firearms Prohibition on First Page of Protective Orders	Disarm Abusers Who Bought Firearms Prior to Being Prohibited	Authorize Police to Remove Firearms From Domestic Violence Scenes	Require Background Check on Non-Dealer Firearms Transfer
Alabama		X			X	(In Progress)			
Alaska	X (Court Discretion) (Not Including TPO)	X		X	X			X (Plain View)	
Arizona	X (Court Discretion)	X (not Automated)						X (Plain View or Consensual Search)	
Arkansas		X		X	X				
California	X	X	X	X	X	X (not Proj. Passport)	X	X (Must Remove-Plain View or Consensual Search)	X
Colorado		X		X	X				X (Gun Shows Only)
Connecticut	X (Handguns Only)	X		X	X	References Appropriate Page		X (Plain View)	X (Handguns Only)
Delaware	X	X (Minimal Contribution)	X	X (State Only)					
District of Columbia		X	X	X	X	X			
Florida	X (Not Including TPO)	X	X (Purchase Only)	X					X (Counties may at Gun Shows)
Georgia		X (not Automated- Minimal Contribution)		X	X				
Hawaii	X		X	X (State Only)				X (Use of Gun or Threat of Use)	X
Idaho		X		X	X				

APPENDIX A: STATE DOMESTIC VIOLENCE AND FIREARMS LAWS

STATE	Prohibit Firearm Possession by Abusers Under Restraining Orders	Contribute D.V. Restraining Orders to Federal Databases	Prohibit Firearm Possession by Domestic Violence Misdemeanants	Contribute Domestic Violence Convictions to Federal Databases	"Flag" Domestic Violence Abusers in Federal Databases	Note Firearms Prohibition on First Page of Protective Orders	Disarm Abusers Who Bought Firearms Prior to Being Prohibited	Authorize Police to Remove Firearms From Domestic Violence Scenes	Require Background Check on Non-Dealer Firearms Transfer
Illinois	X (Court Discretion) (Not Including TPO)	X	X (Permit to Purchase)	X	X		X (Court Discretion)	X (Use of Gun)	X (License valid for 5 yrs.)
Indiana	X (Court Discretion) (Not Including TPO)	X (not Automated)	X (Handgun Permit to Purchase)			X			
Iowa	X (Court Discretion)	X		X		(In Progress)			X (Handguns Only)
Kansas		X (not Automated)		X		(In Progress)			
Kentucky	X (only CCW permits)	X	X			X			
Louisiana		X (not Automated)							
Maine	X	X (not Automated)							
Maryland	X (Handguns Only) (Not Including TPO)	X	X (Handgun Permit to Purchase)	X				X	X (Handguns & Assault Weapons Only)
Massachusetts	X	X	X (Permit to Purchase)	X					X
Michigan	X (Court Discretion) (Handguns Only)	X		X	X				X (Handguns Only)
Minnesota		X	X (If gun used- 3yrs)	X	X		X (If Convicted of Domestic Assault)		
Mississippi		X (not Automated)				X			
Missouri		X		X	X	X			X (Handguns Only)

APPENDIX A: STATE DOMESTIC VIOLENCE AND FIREARMS LAWS

STATE	Prohibit Firearm Possession by Abusers Under Restraining Orders	Contribute D.V. Restraining Orders to Federal Databases	Prohibit Firearm Possession by Domestic Violence Misdemeanants	Contribute Domestic Violence Convictions to Federal Databases	"Flag" Domestic Violence Abusers in Federal Databases	Note Firearms Prohibition on First Page of Protective Orders	Disarm Abusers Who Bought Firearms Prior to Being Prohibited	Authorize Police to Remove Firearms From Domestic Violence Scenes	Require Background Check on Non-Dealer Firearms Transfer
Montana	X (Court Discretion-Specific Weapon)	X (not Automated)				(In Progress)		X (Use of Gun or Threat of Use)	
Nebraska		X (not Automated-Minimal Contribution)							X (Handguns, family exempted)
Nevada				X (State Only)					
New Hampshire	X (Court Discretion-Not Including TPO)	X	X	X		X	X	X (Must Remove-Use or Threat)	
New Jersey	X (Not Including TPO)		X (Permit to Purchase)	X (State Only)			X (Court Discretion only Final P.O.)	X (Police Discretion)	X
New Mexico		X (not Automated-Minimal Contribution)		X					X (Handguns Only)
New York	X	X	X	X			X		X (Handguns Only)
North Carolina	X (Handguns Only) (Not Including TPO)	X		X					X (Handguns Only)
North Dakota		X (not Automated-Minimal Contribution)	X			(In Progress)			
Ohio	X (Court Discretion)	X		X		X		X (Use of Gun)	
Oklahoma						(In Progress)			
Oregon									X (Gun Shows Only)
Pennsylvania	X (Court Discretion) (Not Including TPO)	X	X	X					X (Handguns Only)

APPENDIX A: STATE DOMESTIC VIOLENCE AND FIREARMS LAWS

STATE	Prohibit Firearm Possession by Abusers Under Restraining Orders	Contribute D.V. Restraining Orders to Federal Databases	Prohibit Firearm Possession by Domestic Violence Misdemeanants	Contribute Domestic Violence Convictions to Federal Databases	"Flag" Domestic Violence Abusers in Federal Databases	Note Firearms Prohibition on First Page of Protective Orders	Disarm Abusers Who Bought Firearms Prior to Being Prohibited	Authorize Police to Remove Firearms From Domestic Violence Scenes	Require Background Check on Non-Dealer Firearms Transfer
Rhode Island		X		X		(In Progress)			X
South Carolina		X		X	X				
South Dakota		X (not Automated-Minimal Contribution)							
Tennessee		X		X		X		X (Use of Gun or Threat of Use)	
Texas	X (Handguns Only)	X	X	X					
Utah	X (Court Discretion)	X		X				X (Use)	
Vermont		X		X					
Virginia	X (Purchase/ Transport Only)			X (State Only)	X				
Washington	X	X	X	X	X				
West Virginia	X		X			X		X (Use of Gun or Threat of Use)	
Wisconsin	X (Not Including TPO)	X	X (Court Discretion)	X					
Wyoming	X	X (not Automated-Minimal Contribution)			X				

TPO- Temporary/Emergency Protective Order

NOTE: This chart is intended to provide a general overview of state laws on domestic violence and firearms, and to identify loopholes in each state that may allow domestic abusers to acquire or possess firearms. The chart represents our best understanding of each state's laws, regulations and practices. It should be noted that there is considerable variation, within each category, in the comprehensiveness of state policies and the degree to which the policies are implemented, both of which are expected to effect the effectiveness of the policy.

Sources:

- "Survey of State Procedure Related to Firearms Sales, Midyear 2001" Bureau of Justice Statistics, U.S. DOJ
- "Firearms and Domestic Violence: State and Territorial Statutes- January 2002" National Center on Full Faith and Credit, Pennsylvania Coalition Against Domestic Violence Protection Orders in the NCIC System as of June 1, 2003- provided by the F.B.I. National Instant Criminal Background Check System Section
- "Disarming Batters," E. Vigdor and J. Mercy, Evaluating Gun Policy, 2003
- State Statutes- National Council of Juvenile and Family Court Judges (located at <http://www.ncjfcj.org/dept/fvrd/statutesfvrd/>)
- "Broken Records: How America's Faulty Background Check System Allows Criminals to Get Guns" Americans for Gun Safety Foundation, January 2002

APPENDIX B:

2003 State Legislative Efforts to Protect Women From Domestic Gun Violence (September 15, 2003)

ARIZONA H 2223	Creates a lifetime restraining order, which could permanently prohibit an abuser under a restraining order from possessing a firearm. Brady Campaign/Million Mom March Position: SUPPORT	Referred to House Judiciary Committee
CALIFORNIA SB 226	Makes it a crime to possess, receive or attempt to receive a firearm while under a restraining order for elder or dependent adult abuse. Includes procedures for relinquishment of firearms. Brady Campaign/Million Mom March Position: SUPPORT	Sent to Governor
CALIFORNIA AB 1290	Makes it a crime to possess, receive or attempt to receive a firearm while subject to an elder, dependent abuse or stalking protective order. Brady Campaign/Million Mom March Position: SUPPORT	Sent to Governor
CONNECTICUT H 6566	Provides for the recognition and enforcement of orders of protection issued outside of Connecticut. This bill would facilitate the enforcement of protective orders and thereby the possibility of firearm dispossession. Brady Campaign/Million Mom March Position: SUPPORT	Signed by Governor
FLORIDA S 108	Allows a person to petition for a protective injunction on the basis of a reasonable belief that he/ she may be in imminent danger of becoming a victim of violence, rather than in cases of repeat violence. Brady Campaign/Million Mom March Position: SUPPORT	Died in Committee
FLORIDA S 294	Includes misdemeanor convictions for repeat violence, dating violence and sexual violence as reasons to deny a firearms purchase. Brady Campaign/Million Mom March Position: SUPPORT	Second Reading in Senate
FLORIDA H 479	Creates the crime of cyber-stalking and establishes a gun prohibition for those individuals arrested or indicted for the crime. Brady Campaign/Million Mom March Position: SUPPORT	Signed by Governor
HAWAII H 385	Creates workplace-restraining orders, including a process for hearings. Prohibits subject from possessing, controlling, or using any firearm or ammunition while the restraining or injunctive order is in effect. Brady Campaign/Million Mom March Position: SUPPORT	Held in Conference Committee
ILLINOIS H 3212	Creates the Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act. Provides for enforcement of out-of-state protective orders. This bill would facilitate the enforcement of protective orders including firearms dispossession. Brady Campaign/Million Mom March Position: SUPPORT	House Rules Committee
ILLINOIS H 3173	Requires a person against whom an order of protection is issued to surrender all firearms in the person's possession for the entire period in which the order is in effect. Brady Campaign/Million Mom March Position: SUPPORT	House Rules Committee
INDIANA S 487	Prohibits a person under a restraining order from possessing a firearms license. Brady Campaign/Million Mom March Position: SUPPORT	Held in House Public Policy, Ethics & Veterans Affairs Committee
INDIANA H1816	Requires certain language to appear on a restraining order, no contact order, and workplace violence restraining order, including notice that it is illegal to possess any firearm or ammunition while the restraining order is in effect. Brady Campaign/Million Mom March Position: SUPPORT	Passed Assembly. Held in Senate Judiciary Committee

<p>INDIANA S 479</p>	<p>Creates classification of workplace restraining orders, similar to D.V. restraining orders. Includes provision for hearings and enjoins the respondent from possessing, controlling, or using any firearm or ammunition while the restraining is in effect. Brady Campaign/Million Mom March Position: SUPPORT</p>	<p>Signed by Governor Effective 07/01/03</p>
<p>INDIANA H 1849</p>	<p>Prohibits a person convicted of a crime of domestic violence from possessing a firearm, even after the person's right to vote or serve on a jury has been restored, for at least five years. Brady Campaign/Million Mom March Position: SUPPORT</p>	<p>Signed by Governor Effective 07/01/03</p>
<p>LOUISIANA H 849</p>	<p>Creates and defines the crime of domestic battery, an action which should facilitate the use of NICS and federal law as they pertain to domestic abusers and firearm prohibitions. Brady Campaign/Million Mom March Position: SUPPORT</p>	<p>Signed by Governor Effective 08/15/03</p>
<p>LOUISIANA H 1855</p>	<p>Prohibits any person convicted of a crime, which is defined as a sex offense to possess a firearm or to carry a concealed weapon. Brady Campaign/Million Mom March Position: SUPPORT</p>	<p>Signed by Governor Effective 08/15/03</p>
<p>LOUISIANA S 758</p>	<p>Creates and defines the crime of domestic battery, an action which should facilitate the use of NICS and federal law as they pertain to domestic abusers and firearm prohibitions. Same as H 849. Brady Campaign/Million Mom March Position: SUPPORT</p>	<p>Withdrawn</p>
<p>LOUISIANA S 304</p>	<p>Requires that domestic violence protective orders be immediately input into a statewide registry for abuse prevention orders, which assists law enforcement to identify abusers and therefore increases the possibility of firearm dispossession from prohibited abusers. Brady Campaign/Million Mom March Position: SUPPORT</p>	<p>Signed by Governor Effective 08/15/03</p>
<p>MAINE S 527</p>	<p>Allows the court to issue a temporary protective order that prohibits the abuser from possessing a firearm or other dangerous weapon. It further, requires a abuser to relinquish possession of firearms if he/she is prohibited from possession by either a temporary or permanent protection order. Brady Campaign/Million Mom March Position: SUPPORT</p>	<p>Signed by Governor</p>
<p>NORTH CAROLINA S 630</p>	<p>Allows renewal of protective orders that prohibit possession of firearms for good cause, no new offense is required. Brady Campaign/Million Mom March Position: SUPPORT</p>	<p>Signed by Governor</p>
<p>NORTH CAROLINA SB 919</p>	<p>Provides for the ineligibility and surrender of firearms and ammunition if court finds evidence of serious violence at issuance of ex parte or emergency restraining order hearing. Brady Campaign/Million Mom March Position: SUPPORT</p>	<p>Signed by Governor</p>
<p>NEW YORK A 7513</p>	<p>Allows for a judge in Family Court to suspend the ability to possess, carry or dispose of firearms in response to violations of orders of protection and temporary orders of protection. Brady Campaign/Million Mom March Position: SUPPORT</p>	<p>Assembly Codes Committee</p>
<p>NEW YORK A 8282</p>	<p>Creates an additional crime for possession of a firearm by a person prohibited due to a restraining order. Brady Campaign/Million Mom March Position: SUPPORT</p>	<p>Assembly Codes Committee</p>
<p>NEW YORK A 6820/ S 5298</p>	<p>Requires judges in criminal and Family Court proceedings to inquire about the ownership of firearms when issuing a restraining order. Brady Campaign/Million Mom March Position: SUPPORT</p>	<p>Passed Assembly. Senate Rule Committee</p>

OREGON SB 300	Permits petitioner to request hearing after issuance of ex parte restraining order, thereby triggering federal statutes, which would allow for federal prosecution of firearms possession and firearm dispossession. Brady Campaign/Million Mom March Position: SUPPORT	Senate Judiciary Committee
OREGON SB 49	Prohibits person from possessing firearm if person is subject to restraining order under or if person has been convicted of assault in fourth degree that involves domestic violence. Brady Campaign/Million Mom March Position: SUPPORT	Senate Judiciary Committee
OREGON SB 303	Makes domestic violence a clearly defined crime, which will allow for inclusion in federal NICS database, which prohibits gun purchases. Brady Campaign/Million Mom March Position: SUPPORT	Signed by Governor
OREGON S 829	Creates penalties for parties under protective orders, including prohibited individuals from residing in home with unsecured firearms. Brady Campaign/Million Mom March Position: SUPPORT	Senate Judiciary Committee
OREGON H 2508	Makes it easier to identify which restraining orders trigger federal ban on gun possession. Requires court to include certificate of compliance relating to possession and use of firearms and ammunition. Brady Campaign/Million Mom March Position: SUPPORT	House Judiciary Committee
OREGON H 2734	Grants courts the authority to prohibit persons subject to domestic restraining orders from purchasing or possessing firearms. Brady Campaign/Million Mom March Position: SUPPORT	House Judiciary Committee
PENNSYLVANIA H 1844	Strengthens the requirement that abusers relinquish firearms to law enforcement. Prohibits firearms transfers to others. Brady Campaign/Million Mom March Position: SUPPORT	House Judiciary Committee
PENNSYLVANIA S 328	Prohibits the subject of an active protection from abuse order from acquiring or purchasing any firearm during the period of time the order is in effect. Brady Campaign/Million Mom March Position: SUPPORT	Senate Judiciary Committee
PENNSYLVANIA S 493	Creates sexual assault restraining orders that may prohibit possession or purchase of a firearm and require surrender of a firearms license. Brady Campaign/Million Mom March Position: SUPPORT	Senate Judiciary Committee
RHODE ISLAND H 6082	Allows District Court to require subjects of domestic violence abuse protective orders to relinquish all firearms to law enforcement. Brady Campaign/Million Mom March Position: SUPPORT	Held in House Judiciary Committee
RHODE ISLAND H 6081	Allows Family Court to require subjects of domestic violence abuse protective orders to relinquish all firearms to law enforcement. Brady Campaign/Million Mom March Position: SUPPORT	Held in House Judiciary Committee
RHODE ISLAND S 666/665	Requires the surrender of all firearms to police while under a restraining order. Brady Campaign/Million Mom March Position: SUPPORT	Held in Senate Judiciary Committee
S. CAROLINA H 3130	Prohibits a person subject to a protection order or convicted of a misdemeanor criminal domestic violence to transport, possess or receive a firearm or ammunition. Brady Campaign/Million Mom March Position: SUPPORT	Held in House Judiciary Committee
S. CAROLINA H 3253	Creates a felony if a person convicted of criminal domestic violence possesses a firearm; provides penalties. Brady Campaign/Million Mom March Position: SUPPORT	Recalled from House Committee on Education and Public Works

<p>TEXAS S 433</p>	<p>Allows court to prohibit subjects of sexual assault protective orders from possessing firearms and allows suspension of any concealed handgun (CCW) permit. Brady Campaign/Million Mom March Position: SUPPORT</p>	<p>Signed by Governor Effective 9/01/03</p>
<p>TEXAS S317</p>	<p>Creates an offense if a person violates a protective order or magistrate's order by possessing a firearm. Brady Campaign/Million Mom March Position: SUPPORT</p>	<p>Signed by Governor Effective 9/01/03</p>
<p>VIRGINIA H 2027</p>	<p>Prohibits, and punishes as misdemeanor, possession of a firearm by a person subject to a protective order. Prohibits concealed handgun (CCW) permit holders from carrying a concealed firearm and requires surrender of the permit to the court while the order is in effect. Brady Campaign/Million Mom March Position: SUPPORT</p>	<p>Passed by Indefinitely</p>
<p>WYOMING S 42</p>	<p>Provides for the restoration of firearms rights to abusers convicted of misdemeanor domestic violence by the State Parole Board. Brady Campaign/Million Mom March Position: OPPOSE</p>	<p>Died in Committee</p>
<p>UTAH S128</p>	<p>Provides for final and ex parte protective orders for children, which include the prohibition from purchase and possession of a firearm. Brady Campaign/Million Mom March Position: SUPPORT</p>	<p>Signed by Governor</p>

APPENDIX C:

SAMPLE STATUES: Models from Across the Nation

There are several immediate steps that states need to take to reduce domestic violence assaults with firearms: 1) Restraining orders must clearly prohibit gun possession and be added to state and national databases used to conduct background checks on gun sales; 2) Domestic violence misdemeanants must be prohibited from possessing firearms and added to state and national databases used to conduct background checks on gun sales; 3) Police must remove firearms from the scenes of domestic violence; 4) Judges and state authorities must be granted authority to identify and disarm abusers who already possess firearms; and 5) Abusers must be stopped from buying additional guns by ensuring that background checks are done on every firearms transfer, including gun shows and other venues.

Model statutes for each of the recommended state actions and a link to the full statute referenced are provided below.

I. Firearm Prohibition For Abusers Subject to a Restraining Order

CALIFORNIA

California Family Code § 6389

<http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=fam&codebody=6389&hits=20>

- (a) A person subject to a protective order, as defined in Section 6218, shall not own, possess, purchase, or receive a firearm while that protective order is in effect.
- (b) The Judicial Council shall provide a notice on all forms requesting a protective order that, at the hearing for a protective order, the respondent shall be ordered to relinquish possession or control of any firearms and not to purchase or receive or attempt to purchase or receive any firearms for a period not to exceed the duration of the restraining order.
- (c) If the respondent is present in court at a duly noticed hearing, the court shall order the respondent to relinquish any firearm in that person's immediate possession or control, or subject to that person's immediate possession or control, within 24 hours of the order, by either surrendering the firearm to the control of local law enforcement officials, or by selling the firearm to a licensed gun

dealer, as specified in Section 12071 of the Penal Code. If the respondent is not present at the hearing, the respondent shall relinquish the firearm within 48 hours after being served with the order. A person ordered to relinquish any firearm pursuant to this subdivision shall file with the court a receipt showing the firearm was surrendered to the local law enforcement agency or sold to a licensed gun dealer within 72 hours after receiving the order. In the event that it is necessary to continue the date of any hearing due to a request for a relinquishment order pursuant to this section, the court shall ensure that all applicable protective orders described in Section 6218 remain in effect or bifurcate the issues and grant the permanent restraining order pending the date of the hearing.

- (d) If the respondent declines to relinquish possession of any firearm based upon the assertion of the right against self-incrimination, as provided by the Fifth Amendment to the United States Constitution and Section 15 of Article I of the California Constitution, the court may grant use immunity for the act of relinquishing the firearm required under this section.

(e) A local law enforcement agency may charge the respondent a fee for the storage of any firearm pursuant to this section. This fee shall not exceed the actual cost incurred by the local law enforcement agency for the storage of the firearm. For purposes of this subdivision, “actual cost” means expenses directly related to taking possession of a firearm, storing the firearm, and surrendering possession of the firearm to a licensed dealer as defined in Section 12071 of the Penal Code or to the respondent.

(f) The restraining order requiring a person to relinquish a firearm pursuant to subdivision (c) shall state on its face that the respondent is prohibited from owning, possessing, purchasing, or receiving a firearm while the protective order is in effect and that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed with the court within a specified period of receipt of the order. The order shall also state on its face the expiration date for relinquishment. Nothing in this section shall limit a respondent’s right under existing law to petition the court at a later date for modification of the order.

(g) The restraining order requiring a person to relinquish a firearm pursuant to subdivision (c) shall prohibit the person from possessing or controlling any firearm for the duration of the order.

At the expiration of the order, the local law enforcement agency shall return possession of any surrendered firearm to the respondent, within five days after the expiration of the relinquishment order, unless the local law enforcement agency determines that (1) the firearm has been stolen, (2) the respondent is prohibited from possessing a firearm because the respondent is in any prohibited class for the possession of firearms, as defined in Sections 12021 and 12021.1 of the Penal Code and Sections 8100 and 8103 of the Welfare and Institutions Code, or (3) another successive restraining order is used against the respondent under this section. If the local law

enforcement agency determines that the respondent is the legal owner of any firearm deposited with the local law enforcement agency and is prohibited from possessing any firearm, the respondent shall be entitled to sell or transfer the firearm to a licensed dealer as defined in Section 12071 of the Penal Code. If the firearm has been stolen, the firearm shall be restored to the lawful owner upon his or her identification of the firearm and proof of ownership.

(h) The court may, as part of the relinquishment order, grant an exemption from the relinquishment requirements of this section for a particular firearm if the respondent can show that a particular firearm is necessary as a condition of continued employment and that the current employer is unable to reassign the respondent to another position where a firearm is unnecessary. If an exemption is granted pursuant to this subdivision, the order shall provide that the firearm shall be in the physical possession of the respondent only during scheduled work hours and during travel to and from his or her place of employment. In any case involving a peace officer who as a condition of employment and whose personal safety depends on the ability to carry a firearm, a court may allow the peace officer to continue to carry a firearm, either on duty or off duty, if the court finds by a preponderance of the evidence that the officer does not pose a threat of harm. Prior to making this finding, the court shall require a mandatory psychological evaluation of the peace officer and may require the peace officer to enter into counseling or other remedial treatment program to deal with any propensity for domestic violence.

(i) During the period of the relinquishment order, a respondent is entitled to make one sale of all firearms that are in the possession of a local law enforcement agency pursuant to this section. A licensed gun dealer, who presents a local law enforcement agency with a bill of sale indicating that all firearms owned by the respondent that are in the possession of the local law enforcement agency have been sold by the respondent to the licensed gun dealer, shall be given possession of

those firearms, at the location where a respondent's firearms are stored, within five days of presenting the local law enforcement agency with a bill of sale.

(l) If the respondent notifies the court that he or she owns a firearm that is not in his or her immediate possession, the court may limit the order to exclude that firearm if the judge is satisfied the respondent is unable to gain access to that firearm while the protective order is in effect.

HAWAII

Revised Statutes § 134-7 (1998).

http://www.capitol.hawaii.gov/hrscurrent/Vol03_Ch0121-200D/hrs0134/HRS_0134-0007.htm

Subsection (f) provides that “no person who has been restrained pursuant to an order of any court, including an ex parte order as provided for herein, from contacting, threatening, or physically abusing any person, shall possess or control any firearm or ammunition therefore, so long as the protective order or any extension thereof is in effect, unless the order, for good cause specifically permits the possession of a firearm and ammunition.” The order must specifically include a statement that possession or control of a firearm or ammunition by the person named in the order is prohibited. The person subject to the order must relinquish possession and control of any firearm and ammunition owned to the police department of the appropriate county for the duration of the order. In the case of an ex parte order, the affidavit or statement under oath that forms the basis for the order shall contain a statement of the facts that supports a finding that the person subject to the order “owns, intends to obtain, or possesses a firearm, and that the firearm may be used to threaten, injure or abuse any person.” At the time of service of a restraining order involving firearms and ammunition, the police officer may take custody of any/all firearms and ammunition in plain sight, those discovered pursuant to consensual search, and firearms that the respondent surrenders. If the person restrained is the registered owner of any firearms, knows the

location of the firearm but refuses to surrender it, the person is guilty of a misdemeanor. When a police officer is unable to locate the firearms and ammunition either registered or known to the protected person/petitioner, the police shall apply for a search warrant for the limited purpose of seizing the firearm or ammunition.

NEW YORK

Temporary Protective Order NY Family Court. Act § 842-a

<http://assembly.state.ny.us/leg/?cl=42&a=76>

S 842-a. Suspension and revocation of a license to carry, possess, repair or dispose of a firearm or firearms pursuant to section 400.00 of the penal law and ineligibility for such a license; order to surrender firearms.

1. Mandatory and permissive suspension of firearms license and ineligibility for such a license upon the issuance of a temporary order of protection. Whenever a temporary order of protection is issued pursuant to section eight hundred twenty-eight of this article:

1(a) the court shall suspend any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender of any or all firearms owned or possessed where the court receives information that gives the court good cause to believe that: (i) the respondent has a prior conviction of any violent felony offense as defined in section 70.02 of the penal law; (ii) the respondent has previously been found to have willfully failed to obey a prior order of protection and such willful failure involved the infliction of serious physical injury, as defined in subdivision ten of section 10.00 of the penal law, the use or threatened use of a deadly weapon or dangerous instrument as those terms are defined in subdivisions twelve and thirteen of section 10.00 of the penal law, or (behavior constituting any violent felony offense as defined in section 70.02 of the penal law; or (iii) the respondent has a prior conviction for stalking in the first degree as

defined in section 120.60 of the penal law, stalking in the second degree as defined in section 120.55 of the penal law, stalking in the third degree as defined in section 120.50 of the penal law or stalking in the fourth degree as defined in section 120.45 of such law; and

1(b) the court may where the court finds a substantial risk that the respondent may use or threaten to use a firearm unlawfully against the person or persons for whose protection the temporary order of protection is issued, suspend any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender of any or all firearms owned or possessed.

2. Mandatory and permissive revocation or suspension of firearms license and ineligibility for such a license upon the issuance of an order of protection. Whenever an order of protection is issued pursuant to section eight hundred forty-one of this part:

2(a) the court shall revoke any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender of any or all firearms owned or possessed where the court finds that the conduct which resulted in the issuance of the order of protection involved (i) the infliction of serious physical injury, as defined in subdivision ten of section 10.00 of the penal law, (ii) the use or threatened use of a deadly weapon or dangerous instrument as those terms are defined in subdivisions twelve and thirteen of section 10.00 of the penal law, or (iii) behavior constituting any violent felony offense as defined in section 70.02 of the penal law; and

2(b) the court may, where the court finds a substantial risk that the respondent may use or threaten to use a firearm unlawfully against the person or persons for whose protection the order of protection is issued, (i) revoke any such existing license possessed by the respondent, order the respondent ineligible for such a license and order

the immediate surrender of any or all firearms owned or possessed or (ii) suspend or continue to suspend any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender of any or all firearms owned or possessed

3. Mandatory and permissive revocation or suspension of firearms license and ineligibility for such a license upon a finding of a willful failure to obey an order of protection. Whenever a respondent has been found, pursuant to section eight hundred forty-six-a of this part to have willfully failed to obey an order of protection issued by this court or an order of protection issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction, in addition to any other remedies available pursuant to section eight hundred forty-six-a of this part:

3(a) the court shall revoke any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender of any or all firearms owned or possessed where the willful failure to obey such order involves (i) the infliction of serious physical injury, as defined in subdivision ten of section 10.00 of the penal law, (ii) the use or threatened use of a deadly weapon or dangerous instrument as those terms are defined in subdivisions twelve and thirteen of section 10.00 of the penal law, or (iii) behavior constituting any violent felony offense as defined in section 70.02 of the penal law; or (iv) behavior constituting stalking in the first degree as defined in section 120.60 of the penal law, stalking in the second degree as defined in section 120.55 of the penal law, stalking in the third degree as defined in section 120.50 of the penal law or stalking in the fourth degree as defined in section 120.45 of such law; and

3(b) the court may where the court finds a substantial risk that the respondent may use or threaten to use a firearm unlawfully against the person or persons for whose protection the order of protection was issued, (i) revoke any such existing license possessed by the respondent, order

the respondent ineligible for such a license, whether or not the respondent possesses such a license, and order the immediate surrender of any or all firearms owned or possessed or (ii) suspend any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender of any or all firearms owned or possessed.

4. Suspension. Any suspension order issued pursuant to this section shall remain in effect for the duration of the temporary order of protection or order of protection, unless modified or vacated by the court

5. Surrender. (a) Where an order to surrender one or more firearms has been issued, the temporary order of protection or order of protection shall specify the place where such firearms shall be surrendered, shall specify a date and time by which the surrender shall be completed and, to the extent possible, shall describe such firearms to be surrendered and shall direct the authority receiving such surrendered firearms to immediately notify the court of such surrender.

5(b) The prompt surrender of one or more firearms pursuant to a court order issued pursuant this section shall be considered a voluntary surrender for purposes of subparagraph (f) of paragraph one of subdivision a of section 265.20 of the penal law. The disposition of any such firearms shall be in accordance with the provisions of subdivision six of section 400.05 of the penal law.

5(c) The provisions of this section shall not be deemed to limit, restrict or otherwise impair the authority of the court to order and direct the surrender of any or all pistols, revolvers, rifles, shotguns or other firearms owned or possessed by a respondent pursuant to this act.

6. Notice. (a) Where an order of revocation, suspension or ineligibility has been issued pursuant to this section, any temporary order of protection or order of protection issued shall state that such firearm license has been suspended or revoked or that the respondent is ineligible for such license, as the case may be.

6(b) The court revoking or suspending the license, ordering the respondent ineligible for such license, or ordering the surrender of any firearm shall immediately notify the statewide registry of orders of protection and the duly constituted police authorities of the locality of such action.

6 (c) The court revoking or suspending the license or ordering the defendant ineligible for such license shall give written notice thereof without unnecessary delay to the division of state police at its office in the city of Albany.

6(d) Where an order of revocation, suspension, ineligibility, or surrender is modified or vacated, the court shall immediately notify the statewide registry of orders of protection and the duly constituted police authorities of the locality concerning such action and shall give written notice thereof without unnecessary delay to the division of state police at its office in the city of Albany.

7. Hearing. The respondent shall have the right to a hearing before the court regarding any revocation, suspension, ineligibility or surrender order issued pursuant to this section, provided that nothing in this subdivision shall preclude the court from issuing any such order prior to a hearing. Where the court has issued such an order prior to a hearing, it shall commence such hearing within fourteen days of the date such order was issued.

8. Nothing in this section shall delay or otherwise interfere with the issuance of a temporary order of protection.

WISCONSIN

813.12 Domestic Violence

Injunctions,

<http://www.legis.state.wi.us/lrsb/stats.html>

1. The petitioner files a petition alleging the elements set forth under sub. (5) (a).
2. The petitioner serves upon the respondent a copy or summary of the petition and notice of the time for hearing on the issuance of the injunction, or the respondent serves upon the petitioner notice of the time for hearing on the issuance of the injunction.
3. After hearing, the judge or circuit court commissioner finds reasonable grounds to believe that the respondent has engaged in, or based upon prior conduct of the petitioner and the respondent may engage in, domestic abuse of the petitioner.

(aj) In determining whether to issue an injunction, the judge or circuit court commissioner shall consider the potential danger posed to the petitioner and the pattern of abusive conduct of the respondent but may not base his or her decision solely on the length of time since the last domestic abuse or the length of time since the relationship ended. The judge or circuit court commissioner may grant only the remedies requested by the petitioner. The judge or family [circuit] court commissioner may not dismiss or deny granting an injunction because of the existence of a pending action or of any other court order that bars contact between the parties, nor due to the necessity of verifying the terms of an existing court order.

(am) If the petitioner and the respondent are not married, the respondent owns the premises where the petitioner resides and the petitioner has no legal interest in the premises, in lieu of ordering the respondent to avoid the petitioner's residence under par. (a) the judge or circuit court commissioner may order the respondent to avoid the premises for a reasonable time until the

petitioner relocates and shall order the respondent to avoid the new residence for the duration of the order. (b) The judge or circuit court commissioner may enter an injunction only against the respondent named in the petition. No injunction may be issued under this subsection under the same case number against the person petitioning for the injunction. The judge or circuit court commissioner may not modify an order restraining the respondent based solely on the request of the respondent. (c) 1. An injunction under this subsection is effective according to its terms, for the period of time that the petitioner requests, but not more than 4 years. An injunction granted under this sub-section is not voided if the petitioner allows or initiates contact with the respondent or by the admittance of the respondent into a dwelling that the injunction directs him or her to avoid.

2. When an injunction granted for less than 4 years expires, the court shall extend the injunction if the petitioner states that an extension is necessary to protect him or her. This extension shall remain in effect until 4 years after the date the court first entered the injunction.

4. Notice need not be given to the respondent before extending an injunction under subd. 2. The petitioner shall notify the respondent after the court extends an injunction under subd. 2.

(4m) NOTICE OF RESTRICTION ON FIREARM POSSESSION; SURRENDER OF FIREARMS.

(a) An injunction issued under sub. (4) shall do all of the following:

1. Inform the respondent named in the petition of the requirements and penalties under s. 941.29.
2. Except as provided in par. (ag), require the respondent to surrender any firearms that he or she owns or has in his or her possession to the sheriff of the county in which the action under this section was commenced, to the sheriff of the county in which the respondent resides or to another person designated by the respondent and approved by the judge or circuit court

commissioner. The judge or circuit court commissioner shall approve the person designated by the respondent unless the judge or circuit court commissioner finds that the person is inappropriate and places the reasons for the finding on the record. If a firearm is surrendered to a person designated by the respondent and approved by the judge or circuit court commissioner, the judge or circuit court commissioner shall inform the person to whom the firearm is surrendered of the requirements and penalties under s. 941.29 (4).

(ag) If the respondent is a peace officer, an injunction issued under sub. (4) may not require the respondent to surrender a fire-arm that he or she is required, as a condition of employment, to possess whether or not he or she is on duty.

(am) 1. When a respondent surrenders a firearm under par. (a)2. to a sheriff, the sheriff who is receiving the firearm shall prepare a receipt for each firearm surrendered to him or her. The receipt shall include the manufacturer, model and serial number of the firearm surrendered to the sheriff and shall be signed by the respondent and by the sheriff to whom the firearm is surrendered.

2. The sheriff shall keep the original of a receipt prepared under subd. 1. and shall provide an exact copy of the receipt to the respondent. When the firearm covered by the receipt is returned to the respondent under par. (b), the sheriff shall surrender to the respondent the original receipt and all of his or her copies of the receipt.

3. A receipt prepared under subd. 1. is conclusive proof that the respondent owns the firearm for purposes of returning the fire-arm covered by the receipt to the respondent under par.

(b). 4. The sheriff may not enter any information contained on a receipt prepared under subd. 1. into any computerized or direct electronic data transfer system in order to store the information or disseminate or provide access to the information.

(aw) A sheriff may store a firearm surrendered to him or her under par. (a) 2. in a warehouse that is operated by a public warehouse keeper licensed under ch. 99. If a sheriff stores a firearm at a warehouse under this paragraph, the respondent shall pay the costs charged by the warehouse for storing that firearm. (b) A firearm surrendered under par. (a) 2. may not be returned to the respondent until a judge or circuit court commissioner determines all of the following:

1. That the injunction issued under sub. (4) has been vacated or has expired and not been extended.

2. That the person is not prohibited from possessing a firearm under any state or federal law or by the order of any federal court or state court, other than an order from which the judge or circuit court commissioner is competent to grant relief.

(c) If a respondent surrenders a firearm under par. (a) 2. that is owned by a person other than the respondent, the person who owns the firearm may apply for its return to the circuit court for the county in which the person to whom the firearm was surrendered is located. The court shall order such notice as it considers adequate to be given to all persons who have or may have an interest in the firearm and shall hold a hearing to hear all claims to its true ownership. If the right to possession is proved to the court's satisfaction, it shall order the firearm returned. If the court returns a firearm under this paragraph, the court shall inform the person to whom the firearm is returned of the requirements and penalties under s. 941.29 (4).

II. Firearm Prohibition For Domestic Violence Misdemeanants

DELAWARE

Delaware Criminal Code

§ 1448. Possession and purchase of deadly weapons by persons prohibited;

<http://www.delcode.state.de.us/title11/c005/sc07/index.htm>

(a) Except as otherwise provided herein, the following persons are prohibited from purchasing, owning, possessing or controlling a deadly weapon or ammunition for a firearm within the State:

(1) Any person having been convicted in this State or elsewhere of a felony or a crime of violence involving physical injury to another, whether or not armed with or having in possession any weapon during the commission of such felony or crime of violence;

(2) Any person who has ever been committed for a mental disorder to any hospital, mental institution or sanitarium, unless the person possesses a certificate of a medical doctor or psychiatrist licensed in this State that the person is no longer suffering from a mental disorder which interferes or handicaps the person from handling deadly weapons;

(3) Any person who has been convicted for the unlawful use, possession or sale of a narcotic, dangerous drug or central nervous system depressant or stimulant as those terms were defined prior to the effective date of the Uniform Controlled Substances Act in June 1973 or of a narcotic drug or controlled substance as defined in Chapter 47 of Title 16;

(4) Any person who, as a juvenile, has been adjudicated as delinquent for conduct which, if committed by an adult, would constitute a felony, unless and until that person has reached their 25th birthday;

(5) Any juvenile, if said deadly weapon is a handgun, unless said juvenile possesses said handgun for the purpose of engaging in lawful hunting, instruction, sporting or recreational

activity while under the direct or indirect supervision of an adult. For the purpose of this subsection, a handgun shall be defined as any pistol, revolver or other firearm designed to be readily capable of being fired when held in 1 hand;

(6) Any person who is subject to a Family Court protection from abuse order (other than an ex parte order), but only for so long as that order remains in effect or is not vacated or otherwise terminated, except that this paragraph shall not apply to a contested order issued solely upon § 1041(1)d., e., or h. of Title 10, or any combination thereof; or

(7) Any person who has been convicted in any court of any misdemeanor crime of domestic violence. For purposes of this paragraph, the term “misdemeanor crime of domestic violence” means any misdemeanor offense that:

a. Was committed by a member of the victim’s family, as “family” is defined in § 901(9) of Title 10 (regardless, however, of the state of residence of the parties); by a former spouse of the victim; by a person who co-habitated with the victim at the time of the offense; or by a person with a child in common with the victim.

TEXAS

Texas Penal Code Ann. § 46.04 (West 2001).

<http://www.capitol.state.tx.us/statutes/pe/pe0004600.html#pe008.46.06>

(a) A person who has been convicted of a felony commits an offense if he possesses a firearm:

(1) after conviction and before the fifth anniversary of the person’s release from confinement following conviction of the felony or the person’s release from supervision under community supervision, parole, or mandatory supervision, whichever date is later; or

(2) after the period described by Subdivision (1), at any location other than the premises at which the person lives.

(b) A person who has been convicted of an offense under Section 22.01, punishable as a Class A misdemeanor and involving a member of the person's family or household, commits an offense if the person possesses a firearm before the fifth anniversary of the later of:

(1) the date of the person's release from confinement following conviction of the misdemeanor; or (2) the date of the person's release from community supervision following conviction of the misdemeanor.

WEST VIRGINIA

W. Va. Code §61-7-7. Persons prohibited from possessing firearms; classifications; reinstatement of rights to possess; offenses; penalties.

<http://129.71.164.29/wvcode/61/masterfrm2frm.htm>

(a) Except as provided for in this section, no person shall possess a firearm as such is defined in section two of this article who:

(1) Has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

(7) Is subject to a domestic violence protective order that:

(A) Was issued after a hearing of which such person received actual notice and at which such person had an opportunity to participate;

(B) Restrains such person from harassing,

stalking or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

C) (i) Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) By its terms explicitly prohibits the use, attempted use or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(8) Has been convicted in any court of a misdemeanor crime of domestic violence.

Any person who violates the provisions of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars or confined in the county jail for not less than ninety days nor more than one year, or both.

III. Law Enforcement Confiscation of Weapons at Domestic Violence Scenes

NEW HAMPSHIRE TITLE XII Public Safety and Welfare Code, Chapter 173-B Protection of Persons From Domestic Violence

<http://www.gencourt.state.nh.us/rsa/html/xii/173-b/173-b-10.htm>

173-B:10 Protection by Peace Officers. –

I. 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.

II. Pursuant to RSA 594:10, an arrest for abuse may be made without a warrant upon probable cause, whether or not the abuse is committed in the presence of the peace officer. When the peace officer has probable cause to believe that the persons are committing or have committed abuse against each other, the officer need not arrest both persons, but should arrest the person the officer believes to be the primary physical aggressor. In determining who is the primary physical aggressor, an officer shall consider the intent of this chapter to protect the victims of domestic violence, the relative degree of injury or fear inflicted on the persons involved, and any history of domestic abuse between these persons if that history can reasonably be obtained by the officer.

NEW JERSEY Title 2C NJ Code of Criminal Justice 2C:25-21 Arrest of Alleged Attacker; Seizure of Weapons

<http://lis.njleg.state.nj.us/>

N.J. Rev. Stat. § 2C:25-21 (West 1999). Pursuant to subsection (a), when a person claims to be a victim of domestic violence, and where a law enforcement officer responding to the incident finds probable cause to believe that domestic violence has occurred, the law enforcement officer shall arrest the person who is alleged to be the person who subjected the victim to domestic violence and shall sign a criminal complaint if:

“(4) [t]here is probable cause to believe that a weapon as defined in N.J.H.S. 2C:39-1 has been involved in the commission of an act of domestic violence.” Pursuant to subsection (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 may:

(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.”

ARIZONA Arizona Criminal Code. Chapter 36: Family Offenses

<http://www.azleg.state.az.us/ars/13/03601.htm>

Ariz. Rev. Stat. Ann. § 13-3601 (2000). Subsection B.: in cases of domestic violence involving the “discharge, use or threatening exhibition of a deadly weapon or dangerous instrument, the peace officer shall arrest a person, with or without a warrant, if the officer has probable cause to believe that the offense has been

committed and the officer has probable cause to believe that the person to be arrested has committed the offense.” Pursuant to C., the officer may question the persons present to determine if a firearm is present on the premises. If so, the officer may temporarily seize the firearm if it is in plain view or was found pursuant to a consensual search and if the officer reasonably believes that the firearm would expose the victim or another person in the household to a risk of serious bodily injury or death. A firearm owned or possessed by the victim shall not be seized unless there is probable cause to believe that both parties independently have committed an act of domestic violence. Section D provides that if a firearm is seized pursuant to subsection C., the officer shall give the owner/possessor a receipt for each seized firearm. Each firearm must be held for at least 72 hours by the law enforcement agency that seized the firearm.

Under subsection E, if a firearm is seized pursuant to C., law enforcement shall notify the victim before the firearm is released from temporary custody

CALIFORNIA
Penal Code, Chapter 1. Firearms § 12028.5
Article 2. Unlawful Carrying and Possession of Weapons

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pen&group=12001-13000&file=12020-12040>

Pursuant to subsection (b), a law enforcement officer “who is at the scene of a family violence incident involving a threat to human life or a physical assault, may take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual search as necessary for the protection of the peace officer or other persons present.” No firearm or deadly weapon shall be held less than 24 hours. If the firearm/deadly weapon is not retained for use as evidence related to criminal charges brought as a result of the family violence incident or was not

illegally possessed, the firearm shall be made available to the owner/possessor 48 hours after the seizure (or as soon as possible thereafter, but no later than 72 hours after the seizure).

Any firearm or other deadly weapon taken into custody and held by law enforcement for more than 12 months and not recovered by the owner/possessor shall be considered a nuisance and sold or destroyed as provided in (c) of Section 12028. Firearms/deadly weapons not recovered within 12 months due to an extended hearing process are not subject to this section until the court issues a decision.

(f) provides that in those cases where law enforcement have reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or person reporting the assault or threat, the agency shall advise the owner of the firearm or other deadly weapon, and within 30 days of the seizure, initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned.

IV. Disarm Abusers Who Brought Firearms Prior to Being Prohibited

CALIFORNIA

Penal Code. ARTICLE 1.5. Prohibited Armed Persons File

<http://caag.state.ca.us/firearms/dwcl/12010.htm>

12010. (a) The Attorney General shall establish and maintain an online data base to be known as the Prohibited Armed Persons File. The purpose of the file is to cross-reference persons who have ownership or possession of a firearm on or after January 1, 1991, as indicated by a Dealers' Record of Sale recorded in the Automated Firearms System, and who, subsequent to the date of that ownership or possession of a firearm, fall within a class of persons who are prohibited from owning or possessing a firearm.

(b) The information contained in the Prohibited Armed Persons File shall only be available to those entities specified in, and pursuant to, subdivision (b) or (c) of Section 11105, through the California Law Enforcement Telecommunications System, for the purpose of determining if persons are armed and prohibited from possessing firearms.

12011. The Prohibited Armed Persons File database shall function as follows:

(a) Upon entry into the Automated Criminal History System of a disposition for a conviction of any felony, a conviction for any firearms-prohibiting charge specified in Section 12021, a conviction for an offense described in Section 12021.1, a firearms prohibition pursuant to Section 8100 or 8103 of the Welfare and Institutions Code, or any firearms possession prohibition identified by the federal National Instant Check System, the Department of Justice shall determine if the subject has an entry in the Automated Firearms System indicating possession or ownership of a firearm on or after January 1, 1991, or an assault weapon registration.

(b) Upon an entry into any department automated information system that is used for the identification of persons who are prohibited from

acquiring, owning, or possessing firearms, the department shall determine if the subject has an entry in the Automated Firearms System indicating ownership or possession of a firearm on or after January 1, 1991, or an assault weapon registration.

(c) If the department determines that, pursuant to subdivision (a) or (b), the subject has an entry in the Automated Firearms System indicating possession or ownership of a firearm on or after January 1, 1991, or an assault weapon registration, the following information shall be entered into the Prohibited Armed Persons File:

- (1) The subject's name.
- (2) The subject's date of birth.
- (3) The subject's physical description.
- (4) Any other identifying information regarding the subject that is deemed necessary by the Attorney General.
- (5) The basis of the firearms possession prohibition.
- (6) A description of all firearms owned or possessed by the subject, as reflected by the Automated Firearms System.

12012. The Attorney General shall provide investigative assistance to local law enforcement agencies to better ensure the investigation of individuals who are armed and prohibited from possessing a firearm.

12028.7. (a) Except where a procedure is already provided by existing law, or other provisions of law apply, when a firearm is taken into custody by a law enforcement officer, the officer shall issue the person who possessed the firearm a receipt describing the firearm, and listing any serial number or other identification on the firearm.

(b) The receipt shall indicate where the firearm may be recovered, any applicable time limit for recovery,

and the date after which the owner or possessor may recover the firearm, provided however, that no firearm shall be held less than 48 hours, and no more than 5 business days. In any civil action or proceeding for the return of a firearm seized and not returned within 5 business days, pursuant to this section, the court shall award reasonable attorney's fees to the prevailing party.

(c) Nothing in this section is intended to displace any existing law regarding the seizure or return of firearms.

NEW JERSEY

N.J. Revised Statute

Criminal Justice Procedures § 2C:25-29 (West 1999).

http://lis.njleg.state.nj.us/cgi-in/om_isapi.dll?clientID=99231&depth=2&expandheadings=off&headingswithhits=on&infobase=statutes.nfo&softpage=TOC_Frame_Pg42

Pursuant to subsection b., in proceedings in which complaints for restraining orders have been filed, the court shall grant any relief necessary to prevent further abuse. At the hearing the judge of the Family Part of the Chancery Division of the Superior Court may issue an order granting relief including, “[a]n order prohibiting the defendant from possessing any firearm or other weapon enumerated in subsection r. of N.J.S. 2C:39-1 and ordering the search for and seizure of any such weapon at any location where the judge has reasonable cause to believe the weapon is located.” The order must state with specificity the reasons for and scope of the search and seizure.

N.J. Rev. Stat. § 2C:25-26 (West 2000). Pursuant to subsection (a), when a defendant charged with a crime or offense involving domestic violence is released from custody before trial on bail or personal recognizance, the court authorizing the release may as a condition of release issue an order prohibiting the defendant from possessing any firearm or other weapon enumerated in subsection r. of N.J.S. 2C:39-1 and ordering the search for and seizure of any such weapon at any location where the judge has reasonable cause to believe the

weapon is located. The judge shall state with specificity the reasons for and scope of the search and seizure authorized by the order.

NEW HAMPSHIRE

TITLE XII Public Safety and Welfare Code, Chapter 173-B:5

<http://www.gencourt.state.nh.us/rsa/html/XII/173-B/173-B-5.htm>

Relief. –

I. A finding of abuse shall mean the defendant represents a credible threat to the safety of the plaintiff. Upon a showing of abuse of the plaintiff by a preponderance of the evidence, the court shall grant such relief as is necessary to bring about a cessation of abuse. Such relief shall direct the defendant to relinquish to the peace officer any and all firearms and ammunition in the control, ownership, or possession of the defendant, or any other person on behalf of the defendant for the duration of the protective order...

II. The defendant shall be prohibited from purchasing, receiving, or possessing any deadly weapons and any and all firearms and ammunition for the duration of the order. The court may subsequently issue a search warrant authorizing a peace officer to seize any deadly weapons specified in the protective order and any and all firearms and ammunition, if there is probable cause to believe such firearms and ammunition and specified deadly weapons are kept on the premises or curtilage of the defendant....

IX. (a) A copy of each protective order issued under this chapter shall be transmitted to the administrative office of the courts by facsimile or computer. An emergency protective order issued telephonically shall be transmitted by telephone or facsimile to the department of safety.

(b) The administrative office of the courts shall enter information regarding the protective orders into the state database which shall be made available to police and sheriff departments statewide. The department of safety shall make available information regarding emergency

protective orders issued telephonically to police and sheriff departments statewide.

(c) The administrative office of the courts shall update the database upon expiration or termination of a protective order.

(d) Notwithstanding any other provision of law, the administrative office of the courts or the department of safety, its employees and agents, and law enforcement officials shall not be held

criminally or civilly liable for action taken under this chapter or RSA 458:16, provided they are acting in good faith and without gross negligence, and within the scope of their duties and authority.

IX-a. If a criminal records check conducted by the department of safety indicates that a potential buyer or transferee is prohibited from receipt or possession of a firearm pursuant to a protective order issued under this chapter, the department of safety shall notify the administrative office of the courts of the denial. The administrative office of the courts shall immediately notify the plaintiff that the defendant has attempted to purchase or obtain a firearm in violation of the protective order.

X. (a) Within 15 days prior to the expiration of the protective orders, the defendant may request, by motion to the court, the return of any and all firearms and ammunition and specified deadly weapons held by the law enforcement agency while the protective order was in effect.

Upon receipt of such a motion, the court shall schedule a hearing no later than 15 days after the expiration of the order. The court shall provide written notice to the plaintiff who shall have the right to appear and be heard, and to the law enforcement agency, which has control of the firearms, ammunition, and specified deadly weapons. The scope of the hearing shall be limited to:

(1) Establishing whether the defendant is subject to any state or federal law or court order that precludes the defendant from owning or possessing a firearm; and

(2) Under circumstances where the plaintiff has requested an extension of the protective order, whether the plaintiff has established by a preponderance of the evidence that the defendant continues to represent a credible threat to the safety of the plaintiff.

(b) If the court finds that the defendant is not subject to any state or federal law or court order precluding the ownership or possession of firearms, or if the court denies the plaintiff's request to extend the protective order, the court shall issue a written order directing the law enforcement agency to return the requested firearms, ammunition, or deadly weapon to the defendant.

(c) Law enforcement agencies shall not release firearms and ammunition and specified deadly weapons without a court order granting such release. The law enforcement agency may charge the defendant a reasonable fee for the storage of any firearms and ammunition and specified deadly weapons taken pursuant to a protective order. The fee shall not exceed the actual cost incurred by the law enforcement agency for the storage of the firearms and ammunition and specified deadly weapons. The defendant may make alternative arrangements with a federally licensed firearms dealer for the storage of firearms, at the defendant's own expense, upon approval of the court. Such firearms shall be turned over to the appropriate law enforcement agency for transfer to the storage facility. Retrieval of such firearms shall be through the law enforcement agency responsible for their transfer to the storage facility pursuant to a court order as prescribed in this paragraph.

(d) No law enforcement agency shall be held liable for alleged damage or deterioration due to storage or transportation to any firearms and ammunition and specified deadly weapons held by a law enforcement agency, so long as due care is used.

V. Background Checks Required on all Firearm Transfers

CALIFORNIA

Title 2. Penal Code

Article 4. Licenses To Sell Firearms

<http://caag.state.ca.us/firearms/dwcl/12070.htm>

(d) Where neither party to the transaction holds a dealer's license issued pursuant to Section 12071, the parties to the transaction shall complete the sale, loan, or transfer of that firearm through either of the following:

(1) A licensed firearms dealer pursuant to Section 12082.

(2) A law enforcement agency pursuant to Section 12084.

(g)(1) Except as provided in paragraph (2), (3), or (5), a violation of this section is a misdemeanor.

(3) If any of the following circumstances apply, a violation of this section shall be punished by imprisonment in a county jail not exceeding one year or in the state prison, or by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment:

(E) A violation of subdivision (d) involving a pistol, revolver, or other firearm capable of being concealed upon the person.

12082

(a) A person shall complete any sale, loan, or transfer of a firearm through a person licensed pursuant to Section 12071 in accordance with this section in order to comply with subdivision (d) of Section 12072. The seller or transferor or the person loaning the firearm shall deliver the firearm to the dealer who shall retain possession of that firearm. The dealer shall then deliver the firearm to the purchaser or transferee or the person being loaned the firearm, if it is not prohibited, in accordance with subdivision (c) of Section 12072. If the dealer cannot legally deliver the firearm to the purchaser or transferee or the person being loaned the firearm, the dealer shall forthwith, without waiting for the conclusion of the waiting

period described in Sections 12071 and 12072, return the firearm to the transferor or seller or the person loaning the firearm. The dealer shall not return the firearm to the seller or transferor or the person loaning the firearm when to do so would constitute a violation of subdivision (a) of Section 12072. If the dealer cannot legally return the firearm to the transferor or seller or the person loaning the firearm, then the dealer shall forthwith deliver the firearm to the sheriff of the county or the chief of police or other head of a municipal police department of any city or city and county who shall then dispose of the firearm in the manner provided by Sections 12028 and 12032. The purchaser or transferee or person being loaned the firearm may be required by the dealer to pay a fee not to exceed ten dollars (\$10) per firearm, plus the applicable fee that the Department of Justice may charge pursuant to Section 12076. Nothing in these provisions shall prevent a dealer from charging a smaller fee. The fee that the department may charge is the fee that would be applicable pursuant to Section 12076, if the dealer was selling, transferring, or delivering a firearm to a purchaser or transferee or person being loaned a firearm, without any other parties being involved in the transaction.

(b) The Attorney General shall adopt regulations under this section to do all of the following:

(1) Allow the seller or transferor of the person loaning the firearm, and the purchaser or transferee or the person being loaned the firearm, to complete a sale, loan, or transfer through a dealer, and to allow those persons and the dealer to comply with the requirements of this section and Sections 12071, 12072, 12076, and 12077 and to preserve the confidentiality of those records.

(2) Where a personal handgun importer is selling or transferring a pistol, revolver, or other firearm capable of being concealed upon the person to comply with clause (ii) of subparagraph (A) of paragraph (2) of subdivision (f) of Section 12072,

to allow a personal handgun importer's ownership of the pistol, revolver, or other firearm capable of being concealed upon the person being sold or transferred to be recorded in a manner that if the firearm is returned to that personal handgun importer because the sale or transfer cannot be completed, the Department of Justice will have sufficient information about that personal handgun importer so that a record of his or her ownership can be maintained in the registry provided by subdivision (c) of Section 11106.

(3) Ensure that the register or record of electronic or telephonic transfer shall state the name and address of the seller or transferor of the firearm or the person loaning the firearm and whether or not the person is a personal handgun importer in addition to any other information required by

Section 12077.

(c) Notwithstanding any other provision of law, a dealer who does not sell, transfer, or keep an inventory of handguns is not required to process private party transfers of handguns.

(d) A violation of this section by a dealer is a misdemeanor.

12084

(a) As used in this section, the following definitions apply:

(1) "Agency" means a sheriff's department in a county of less than 200,000 persons, according to the most recent federal decennial census that elects to process purchases, sales, loans, or transfers of firearms.

(2) "Seller" means the seller or transferor of a firearm or the person loaning the firearm.

(3) "Purchaser" means the purchaser or transferee of a firearm or the person being loaned a firearm.

(4) "Purchase" means the purchase, loan, sale, or transfer of a firearm.

(5) "Department" means the Department of Justice.

(6) "LEFT" means the Law Enforcement Firearms

Transfer Form consisting of the transfer form utilized to purchase a firearm in accordance with this section.

(b) As an alternative to completing the sale, transfer, or loan of a firearm through a licensed dealer pursuant to Section 12082, the parties to the purchase of a firearm may complete the transaction through an agency in accordance with this section in order to comply with subdivision (d) of Section 12072.

(c)(1) LEFTs shall be prepared by the State Printer and shall be furnished to agencies on application at a cost to be determined by the Department of General Services for each 100 leaves in quintuplicate, one original and four duplicates for the making of carbon copies. The original and duplicate copies shall differ in color, and shall be in the form provided by this section. The State Printer, upon issuing the LEFT, shall forward to the department the name and address of the agency together with the series and sheet numbers on the LEFT. The LEFT shall not be transferable.