

Firearms Research - August 16, 2016

Alaska

Alaska Stat. § 18.65.515(b)

<http://www.touchngo.com/lglcntr/akstats/Statutes/Title18/Chapter65/Section515.htm>

An officer may seize a deadly weapon in plain view or seize all deadly weapons owned, used, possessed, or in control of the alleged perpetrator if a deadly weapon was possessed or used during the domestic violence. Weapons that are not evidence in a criminal case can be picked up by the owner.

Arizona

Ariz. Rev. Stat. § 13-3601

<http://www.azleg.gov/ars/13/03601.htm>

A peace officer may question present people to determine if there is a firearm present. If a firearm is present, the peace officer may temporarily seize the firearm if it is in plain view or the party consents to a search and if the peace officer believes the firearm if it exposes a person to serious harm. A firearm owned/possessed by the victim shall not be seized unless there is probable cause that both parties committed domestic violence. Seized firearms shall be seized for at least 72 hours. If the firearm is seized, the victim shall be notified upon release. If there is reasonable cause to believe the return of the firearm will cause danger to a victim, the prosecutor can file a notice of intent to refrain from returning the firearm.

California

Cal. Penal Code §§ 18250-18500, 33850-33895

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pen&group=18001-19000&file=18250-18275>

A person shall take temporary custody of any firearm or deadly weapon in plain sight or discovered by lawful search as necessary for the protection of a peace officer or other people present. A receipt shall be given by an officer to the owner of a seized firearm, A peace officer who takes custody of a firearm or deadly weapon shall deliver it within 24 hours to the city police department or county sheriff's office. No firearm shall be taken into custody should be held for less than 48 hours. If the firearm had been stolen and used as evidence, it will be returned to its owner after its use as evidence has been served and there is a valid proof of ownership.

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pen&group=18001-19000&file=18400-18420>

If a law enforcement agency has reasonable cause that a returned firearm would endanger a victim or person who reported the assault, the agency shall advise the owner of the weapon, and within 60 days of the date of seizure, initiate a petition to a superior court to determine if the weapon should be returned.

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pen&group=18001-19000&file=18500>

The law enforcement agency, or the individual law enforcement officer, shall not be liable for any act in the good faith exercise of this division.

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pen&group=33001-34000&file=33850-33895>

A person who claims to have a firearm and is in custody/control of the court/law enforcement agency and wishes to have a firearm returned shall file an application for its return, judged by the Department of Justice. If the person does not want the weapon back, it shall be sold/transferred to a weapon dealer if the weapon is legal. A firearm may not be returned to an individual if the person is not legally eligible to own a firearm, if the firearm is stolen (tracked from the Automated Firearm System records)

Connecticut

Conn. Gen. Stat. § 46b-38b(a)

<http://law.justia.com/codes/connecticut/2012/title-46b/chapter-815e/section-46b-38b>

Whenever a peace officer determines that a family violence crime has been committed, such officer may seize any firearm or electronic defense weapon, as defined in section 53a-3, at the location where the crime is alleged to have been committed that is in the possession of any person arrested for the commission of such crime or suspected of its commission or that is in plain view. Not later than seven days after any such seizure, the law enforcement agency shall return such firearm or electronic defense weapon in its original condition to the rightful owner thereof unless such person is ineligible to possess such firearm or electronic defense weapon or unless otherwise ordered by the court.

Hawaii

Haw. Rev. Stat. §§ 134-7.5, 709-906

http://www.capitol.hawaii.gov/hrscurrent/vol03_ch0121-0200d/HRS0134/HRS_0134-0007_0005.htm

A police officer who has probable cause that a person assaulted/threatened to assault a family/household member may seize all firearms and ammunition that are in plain view of the officer or were discovered before a consensual search. They will be taken to the county police department. The officer shall give the lawful owner a receipt identifying the weapon/ammunition that can be recovered. Services shall be offered to victims/potential victims. The firearm shall be made available when it is not being used for evidence, they are not stolen, the court approves it, and there are no criminal charges of lawful possession.

http://www.capitol.hawaii.gov/hrscurrent/vol14_Ch0701-0853/HRS0709/HRS_0709-0906.HTM

The police officer shall seize all firearms and ammunition that the police officer has reasonable grounds to believe were used or threatened to be used in the commission of an offense under this section.

Illinois

725 Ill. Comp. Stat. 5/112A-30(a)(2), 750 Ill. Comp. Stat. 60/304(a)(2)

<http://ilga.gov/legislation/ilcs/documents/072500050K112A-30.htm>

Whenever a law enforcement officer has reason to believe that a person has been abused by a family or household member, the officer shall immediately use all reasonable means to prevent further abuse, including, if there is probable cause to believe that particular weapons were used to commit the incident of abuse, subject to constitutional limitations, seizing and taking inventory of the weapons.

<http://ilga.gov/legislation/ilcs/documents/075000600K304.htm>

Whenever a law enforcement officer has reason to believe that a person has been abused, neglected, or exploited by a family or household member, the officer shall immediately use all reasonable means to prevent further abuse, neglect, or exploitation, including, if there is probable cause to believe that particular weapons were used to commit the incident of abuse, subject to constitutional limitations, seizing and taking inventory of the weapons.

Indiana

Ind. Code Ann. § 35-33-1-1.5

<http://codes.findlaw.com/in/title-35-criminal-law-and-procedure/in-code-sect-35-33-1-1-5.html>

A law enforcement officer responding to a scene of alleged domestic violence/family violence may confiscate and remove a firearm, ammunition, or a weapon if the officer has probable cause that domestic violence occurred, a belief that the weapon exposes the victim to risk, or it was used in the crime, and if the officer saw the weapon/ammunition during the response. If a firearm, ammunition, or deadly weapon is removed from a scene, the officer shall provide safe storage of it during the time of the proceeding related to the alleged act of domestic/family violence.

Maryland

Md. Code Ann., Fam. Law § 4-511

<http://law.justia.com/codes/maryland/2005/gfl/4-511.html>

When responding to a scene of alleged domestic violence, an officer may remove a firearm from the scene there is probable cause that domestic violence occurred if the weapon was observed during the response. If the firearm is removed, the officer shall give the owner information for reclaiming the firearm, provide for the storage of the firearm during the pendency of the proceeding related to domestic violence. The owner may reclaim the firearm unless ordered to surrender it otherwise.

Montana

Mont. Code Ann. § 46-6-603

<http://leg.mt.gov/bills/mca/46/6/46-6-603.htm>

An officer responding to alleged assault of a family member shall seize the weapon used/threatened to be used in the assault. A weapon seized may not be returned to the offender until acquittal or until the return is ordered by the court.

Nebraska

Neb. Rev. Stat. § 29-440.

<http://nebraskalegislature.gov/laws/statutes.php?statute=29-440&print=true>

An officer shall seize all weapons that are alleged to have been involved/threaten to be used and may seize any firearm/ammunition in plain view of the officer that is discovered pursuant to a search authorized/consented by the person being searched. The seized weapons shall be stored according to the policies implemented by the seizing law enforcement agency. Disposition of weapons shall be determined by court order.

New Hampshire

N.H. Rev. Stat. Ann. § 173-B:10

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

When a peace officer has probable cause that a person has been abused, the officer **shall** use reasonable means to prevent further abuse including seizing any weapons involved in the alleged domestic abuse and any firearms/ammunition in the defendant's ownership.

New Jersey

N.J. Stat. Ann. § 2C:25-21(d).

<http://law.justia.com/codes/new-jersey/2013/title-2c/section-2c-25-21/>

A law enforcement officer with probable cause that domestic violence took place shall question present person to determine whether there are weapons on the premises and seize any weapon that is believed to expose the victim to a risk of injury. The officer shall seize any firearm purchaser identification card or permit to permit a handgun issued to the person accused of domestic violence if any weapon is seized. Weapons shall be returned to the owner except upon order of the Superior Court. The prosecutor with possession of the seized weapons may (upon notice of the owner and within 45 days of the seizure) petition a judge to obtain a title to the seized weapons or to revoke any/all permits, licenses and for the use/possession/ownership of the weapon, or may object to the returns of the weapons on the grounds that the owner is unfit or poses a threat to the public or a person in general. A hearing shall be made within 45 days of the notice of objection of return, or the seized weapons shall be returned to the owner if the court determines the owner is seen fit, or if the court determines the domestic violence situation to no longer exist.

Ohio

Ohio Rev. Code Ann. §§ 2935.03(B)(3)(h), 2981.12(A)(2)

<http://codes.ohio.gov/orc/2935>

If a peace officer responds to a report of an alleged incident of the offense of domestic violence or an alleged incident of the offense of violating a protection order and if the circumstances of the incident involved the use or threatened use of a deadly weapon or any person involved in the incident brandished a deadly weapon during or in relation to the incident, the deadly weapon that was used, threatened to be used, or brandished constitutes contraband, and, to the extent possible, the officer shall seize the deadly weapon as contraband.

<http://codes.ohio.gov/orc/2981.12>

Unclaimed/forfeited property in the custody of a law enforcement agency shall be disposed of by court order that has territorial jurisdiction. Firearms may be given to law enforcement agency. Firearms for sporting use/museum pieces/collectors' items may be sold for public auction. The agency may sell other firearms to a federally licensed dealer deemed proper by the court. The agency shall destroy firearms not given to a law enforcement agency or sold or shall send them to the bureau of criminal identification and investigation for the destruction by the bureau.

Oklahoma

Okla. Stat. tit. 22, § 60.8.

<http://law.justia.com/codes/oklahoma/2014/title-22/section-22-60.8/>

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

Pennsylvania

18 Pa. Cons. Stat. § 2711.

<http://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=18&div=0&chpt=27&sctn=11&subctn=0>

The arresting police officer shall seize all weapons used by the defendant in the commission of the alleged offense.

Tennessee

Tenn. Code Ann. §§ 36-3-620, 39-17-1317.

<http://law.justia.com/codes/tennessee/2010/title-36/chapter-3/part-6/36-3-620>

If a law enforcement officer has probable cause to believe that a criminal offense involving domestic abuse against a victim has occurred, the officer shall seize all weapons that are alleged to have been used by the abuser or threatened to be used by the abuser in the commission of a crime. Incident to an arrest for a crime involving domestic abuse against a victim, a law enforcement officer may seize a weapon that is in plain view of the officer or discovered pursuant to a consensual search, if necessary for the protection of the officer or other persons; provided, that a law enforcement officer is not required to remove a weapon such officer believes is needed by the victim for self defense.

<http://law.justia.com/codes/tennessee/2010/title-39/chapter-17/part-13/39-17-1317/>

Any weapon that is possessed, used or sold in violation of the law shall be confiscated by a law enforcement officer and declared to be contraband by a court of record exercising criminal jurisdiction. A weapon that may be evidence in an official proceeding shall be retained or otherwise preserved in accordance with the rules or practices regulating the preservation of evidence. The weapon shall be sold, destroyed or retained for legitimate law enforcement purposes not less than sixty (60) days nor more than one hundred eighty (180) days after the last legal proceeding involving the weapon. Any weapon that has been stolen or borrowed from its owner, and the owner was not involved in the offense for which the weapon was confiscated, shall be returned to the owner if permitted by law.

Utah

Utah Code Ann. § 77-36-2.1(1)(b)

<https://le.utah.gov/xcode/Title77/Chapter36/77-36-S2.1.html>

A law enforcement officer who responds to an allegation of domestic violence shall use reasonable means to protect the victim and further violence, including confiscating the weapon/weapons involved in the alleged domestic violence.

West Virginia

W. Va. Code § 48-27-1002.

<http://www.legis.state.wv.us/wvcode/ChapterEntire.cfm?chap=48&art=27§ion=1002>

Whenever any person is arrested pursuant to the provisions of this article or for a violation of an order issued, the arresting officer, subject to the requirements of the Constitutions of this state and of the United States, shall seize all weapons that are alleged to have been involved or threatened to be used in the commission of domestic violence, may seize a weapon that is in plain view of the officer or was discovered pursuant to a consensual search, as necessary for the protection of the officer or other persons, and may seize all weapons that are possessed in violation of a valid protective order.