



Police Seizure of Firearms at Scenes of Domestic Violence

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

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

Law Enforcement Authority to Confiscate Firearms at Domestic Violence Scene								
	Statute	May or Shall Authority	Authority to Remove Ammunition	Requires Arrest of Alleged Abuser	Requires that a Gun be Used or Threatened in the DV Incident	Eligible Guns: In Plain View or Pursuant to Consensual Search	Requires that Gun Expose Someone to Danger	Eligible Guns: Guns Used in DV Incident or All Guns
ALASKA	Alaska Stat. § 18.65.515(b)	May	No	No	No for guns in plain view. Yes for other guns.	Guns not used in the D.V. incident, but in plain view may be removed.	Yes	All guns.

						Guns use in the DV incident may be removed, but are not subject to the plain view requirement.		
	(b) If a peace officer investigating a crime involving domestic violence determines that it is necessary to protect the victim or the victim's family from domestic violence or to protect the officer or the public during the investigation, the officer may (1) seize a deadly weapon in plain view of the officer, and (2) if a deadly weapon was actually possessed during or used in the domestic violence, seize all deadly weapons owned, used, possessed, or within the control of the alleged perpetrator. If the weapon is not needed as evidence in a criminal case, the law enforcement agency having custody of the weapon, within 24 hours of making the determination that the weapon is not needed as evidence in a criminal case, shall make the weapon available for pickup by the owner of the weapon during regular business hours.							
ARIZONA	Ariz. Rev. Stat. § 13-3601(C)	May	No	No	No	Plain view or pursuant to a consensual search.	Yes	All guns.
	C. A peace officer may question the persons who are present to determine if a firearm is present on the premises. On learning or observing that a firearm is present on the premises, the peace officer may temporarily seize the firearm if the firearm is in plain view or was found pursuant to a consent to 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 that is 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.							
CALIFORNIA	Cal. Penal Code §12028.5(b)	Shall	No	No	No	Plain view or pursuant to a consensual search.	Yes	All guns.
	(b)A sheriff, undersheriff, deputy sheriff, marshal, deputy marshal, or police officer of a city, [...] a peace officer of the Department of the California Highway Patrol, [...] a member of the University of California Police Department, [...] an officer listed in Section 830.6 while acting in the course and scope of his or her employment as a peace officer, a member of a California State University Police Department, [...] a peace officer of the Department of Parks and Recreation, [...] a peace office, [...] who is at the scene of a domestic violence incident involving a threat to human life or a physical assault, shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or other lawful search as necessary for the protection of the peace officer or other persons present. [...]							
CONNECTICUT	Conn. Gen. Stat. § 46b-38b(a)	May	Yes.	Yes	No	Plain view or in alleged batterer's possession.	No	All guns.
	(a) Whenever a peace officer determines upon speedy information that a family violence crime has been committed within such officer's jurisdiction, such officer shall arrest the person or persons suspected of its commission and charge such person or persons with the appropriate crime. The decision to arrest and charge shall not (1) be dependent on the specific consent of the victim, (2) consider the relationship of the parties, or (3) be based solely on a request by the victim. 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, or ammunition 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, electronic defense weapon or ammunition in its original condition to the rightful owner thereof unless such person is ineligible to possess such firearm, electronic defense weapon or ammunition or unless otherwise ordered by the court.							
HAWAII	Haw. Rev. Stat. §§ 134-7.5, 709-906	May	Yes	No	No for guns in plain view or discovered pursuant to a consensual search. Yes for other guns.	Plain view or pursuant to a consensual search for guns not used in the DV incident.	Yes	All guns.

	(4) Any police officer, with or without a warrant, may take the following course of action where the officer has reasonable grounds to believe that there was physical abuse or harm inflicted by one person upon a family or household member, regardless of whether the physical abuse or harm occurred in the officer's presence: (f) The police officer may seize all firearms and ammunition that the police officer has reasonable grounds to believe were used or threatened to be used in the commission of an offense under this section.							
ILLINOIS	725 Ill. Comp. Stat. 5/112A-30(a)(2), 750 Ill. Comp. Stat. 60/304(a)(2)	Shall	No	No	Yes	No	No	Guns used in the D.V. incident only.
	<p>725 Ill. Comp. Stat. 5/112A-30(a)(2): (a) Whenever a law enforcement officer has reason to believe that a person has been abused by a family or household member, the officer shall immediately use all reasonable means to prevent further abuse, including: (2) If there is probable cause to believe that particular weapons were used to commit the incident of abuse, subject to constitutional limitations, seizing and taking inventory of the weapons.</p> <p>750 Ill. Comp. Stat. 60/304(a)(2): (a) Whenever a law enforcement officer has reason to believe that a person has been abused, neglected, or exploited by a family or household member, the officer shall immediately use all reasonable means to prevent further abuse, neglect, or exploitation, including: (2) If there is probable cause to believe that particular weapons were used to commit the incident of abuse, subject to constitutional limitations, seizing and taking inventory of the weapons.</p>							
INDIANA	Ind. Code Ann. § 35-33-1-1.5	May	Yes	No	Gun used in D.V. incident or immediate risk to victim.	Plain view.	Gun used in DV incident or immediate risk to victim.	All guns.
	(b) A law enforcement officer may confiscate and remove a firearm, ammunition, or a deadly weapon from the scene if the law enforcement officer has: (1) probable cause to believe that a crime involving domestic or family violence has occurred; (2) a reasonable belief that the firearm, ammunition, or deadly weapon: (A) exposes the victim to an immediate risk of serious bodily injury; or (B) was an instrumentality of the crime involving domestic or family violence; and (3) observed the firearm, ammunition, or deadly weapon at the scene during the response							
MARYLAND	Md. Code Ann., Fam. Law § 4-511	May	No	No	No	Plain view.	No	All guns.
	(a) When responding to the scene of an alleged act of domestic violence, as described in this subtitle, a law enforcement officer may remove a firearm from the scene if: (1) the law enforcement officer has probable cause to believe that an act of domestic violence has occurred; and (2) the law enforcement officer has observed the firearm on the scene during the response.							
MONTANA	Mont. Code Ann. § 46-6-603	Shall	No	No	Yes	No.	No	Guns used in the D.V. incident only.
	(1) A peace officer who responds to a call relating to partner or family member assault shall seize the weapon used or threatened to be used in the alleged assault. (2) The responding officer may, as appropriate: (a) take reasonable action necessary to provide for the safety of a victim and any other member of the household;							
NEBRASKA	Neb. Rev. Stat. § 29-440	May & Shall	Yes for May Authority. No for Shall Authority.	Yes	No for May Authority. Yes for Shall Authority.	Yes for May Authority. No for Shall Authority.	Yes for May Authority. No for Shall Authority.	All guns for May Authority. Guns used in the D.V. incident only for Shall Authority.

	(1) Incident to an arrest under section 28-323, a peace officer: (a) Shall seize all weapons that are alleged to have been involved or threatened to be used; and (b) May seize any firearm and ammunition in the plain view of the officer or that is discovered pursuant to a search authorized or consented to by the person being searched or in charge of the premises being searched, as necessary for the protection of the officer or any other person.							
NEW HAMPSHIRE	N.H. Rev. Stat. Ann. § 173 B:9 and § 173 B:10	Shall	Yes	No	No	No	No	All guns.
	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.							
NEW JERSEY	N.J. Stat. Ann. § 2C:25-21(d)	May	No	No	No	No	Yes	All guns.
	d. (1) In addition to a law enforcement officer's authority to seize any weapon that is contraband, evidence or an instrumentality of crime, a law enforcement officer who has probable cause to believe that an act of domestic violence has been committed shall: (a) question persons present to determine whether there are weapons on the premises; and (b) upon observing or learning that a weapon is present on the premises, seize any weapon that the officer reasonably believes would expose the victim to a risk of serious bodily injury. If a law enforcement officer seizes any firearm pursuant to this paragraph, the officer shall also seize any firearm purchaser identification card or permit to purchase a handgun issued to the person accused of the act of domestic violence.							
OHIO	Ohio Rev. Code Ann. §§ 2935.03	Shall	No	No	Yes	No	No	Guns used in the D.V. incident only.
	(h) If a peace officer described in division (A) of this section responds to a report of an alleged incident of the offense of domestic violence or an alleged incident of the offense of violating a protection order and if the circumstances of the incident involved the use or threatened use of a deadly weapon or any person involved in the incident brandished a deadly weapon during or in relation to the incident, the deadly weapon that was used, threatened to be used, or brandished constitutes contraband, and, to the extent possible, the officer shall seize the deadly weapon as contraband pursuant to Chapter 2981. of the Revised Code. Upon the seizure of a deadly weapon pursuant to division (B)(3)(h) of this section, section 2981.12 of the Revised Code shall apply regarding the treatment and disposition of the deadly weapon. For purposes of that section, the "underlying criminal offense" that was the basis of the seizure of a deadly weapon under division (B)(3)(h) of this section and to which the deadly weapon had a relationship is any of the following that is applicable: (i) The alleged incident of the offense of domestic violence or the alleged incident of the offense of violating a protection order to which the officer who seized the deadly weapon responded; (ii) Any offense that arose out of the same facts and circumstances as the report of the alleged incident of the offense of domestic violence or the alleged incident of the offense of violating a protection order to which the officer who seized the deadly weapon responded.							
OKLAHOMA	Okla. Stat. tit. 22, § 60.8	Shall	No	Yes	Yes	No	No	Guns used in the D.V. incident only.
	A. Each peace officer of this state shall seize any weapon or instrument when such officer has probable cause to believe such weapon or instrument has been used to commit an act of domestic abuse as defined by Section 60.1 of this title, provided an arrest is made, if possible, at the same time.							
PENNSYLVANIA	18 Pa. Cons. Stat. § 2711	Shall	No	Yes	Yes	No	No	Guns used in the D.V. incident only.
	(a) General rule.--A police officer shall have the same right of arrest without a warrant as in a felony whenever he has probable cause to believe the defendant has violated section 2504 (relating to involuntary manslaughter), 2701 (relating to simple assault), 2702(a)(3), (4) and (5) (relating to aggravated assault), 2705 (relating to recklessly endangering another person), 2706 (relating to terroristic threats) or 2709.1 (relating to stalking) against a family or household member although the offense did not take place in the presence of the police officer. A police officer may not arrest a person pursuant to this section without first observing recent physical injury to the victim or other corroborative evidence. For the purposes of this subsection, the term "family or household member" has the meaning given that term in 23 Pa.C.S. § 6102 (relating to definitions). (b) Seizure of weapons.--The arresting police officer shall seize all weapons used by the defendant in the commission of the alleged offense.							

TENNESSEE	Tenn. Code Ann. §§ 36-3-620, 39-17-1317	May & Shall	No	Yes for May Authority No for Shall Authority	No for May Authority. Yes for Shall Authority.	Yes for May Authority. No for Shall Authority.	Yes for May Authority. No for Shall Authority.	All guns for May Authority. Guns used in the D.V. incident only for Shall Authority.
	(a) (1) If a law enforcement officer has probable cause to believe that a criminal offense involving domestic abuse against a victim, as defined in § 36-3-601, has occurred, the officer shall seize all weapons that are alleged to have been used by the abuser or threatened to be used by the abuser in the commission of a crime. (2) Incident to an arrest for a crime involving domestic abuse against a victim, as defined in § 36-3-601, a law enforcement officer may seize a weapon that is in plain view of the officer or discovered pursuant to a consensual search, if necessary for the protection of the officer or other persons; provided, that a law enforcement officer is not required to remove a weapon such officer believes is needed by the victim for self defense.							
UTAH	Utah Code Ann. § 77-36-2.1	Shall	No	No.	Yes	No.	No.	Guns used in the D.V. incident only.
	(1) A law enforcement officer who responds to an allegation of domestic violence shall use all reasonable means to protect the victim and prevent further violence, including: (b) confiscating the weapon or weapons involved in the alleged domestic violence;							
WEST VIRGINIA	W. Va. Code § 48-27-1002	May & Shall	No	Yes	No for May Authority. Yes for Shall Authority.	Yes for May Authority. No for Shall Authority.	Yes for May Authority. No for Shall Authority.	All guns for May Authority. Guns used in the D.V. incident only for Shall Authority.
	(e) Whenever any person is arrested pursuant to the provisions of this article or for a violation of an order issued pursuant to section five hundred nine or subsections (b) and (c), of section six hundred eight, article five of this chapter the arresting officer, subject to the requirements of the Constitutions of this state and of the United States: (1) Shall seize all weapons that are alleged to have been involved or threatened to be used in the commission of domestic violence; (2) May seize a weapon that is in plain view of the officer or was discovered pursuant to a consensual search, as necessary for the protection of the officer or other persons; and (3) May seize all weapons that are possessed in violation of a valid protective order.							

Importance of Removal Laws and Obstacles to Effective Implementation

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

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

¹ Parker, G. F. (2015). Circumstances and outcomes of a firearm seizure law: Marion County, Indiana, 2006-2013. *Behav. Sci. Law*, 33, 308-322.

seizing or otherwise removing those firearms from abusive households.² Police departments may also be unfamiliar with their precise responsibilities under their state's laws, making them reluctant to confiscate firearms at a domestic violence scene for fear violating an individual's constitutional rights.³

Logistical barriers. In states that simply allow police to confiscate firearms, logistical hurdles may prevent them from seizing firearms. A lack of adequate space for the storage of a potentially large number of guns and concerns over accountability – police departments may fear being held liable if seized firearms end up lost or damaged – can deter police from confiscating firearms during domestic violence calls.⁴

State Examples

Maryland. In 2006, a study was conducted on the implementation of the court order and police removal provisions of the Maryland Gun Violence Act in select urban, suburban, and rural localities via interviews with individuals in positions that suggested some responsibility to implementing the two domestic violence provisions, such as judges, policy advocates, and law enforcement. They found that most interviewees expressed uncertainty about the extent of authority provided to officers through the police removal of firearms policy and stated that the law lacks the clarity officers need to apply it to the various domestic violence situations they encounter. The interviewees expressed that the law failed to be instructive in practice, as the “circumstances they encounter in the field are more complex than is accounted for by the law,” but noted that clarifying legislative or regulatory actions have been successful at addressing these issues and further officer training may help ease some of the frustration associated with interpreting this law and to promote uniform implementation.⁵

Indiana. In 2015, a study looked at the implementation and impact of firearm removal laws in Marion County, Indiana, from 2006 to 2013. Of the 404 firearm seizure cases heard in Marion Supreme Court, 115 of the firearm seizures, or 28.5%, had occurred in the context of a domestic disturbance.⁶ The study further found certain sub-groups to be particular prevalent in the 115 domestic disturbances: 39.1% of the domestic disturbances were due to arguments with significant others, 21.7% were due to the end of a relationship, 20% were due to threat to a family member or a significant other without a report of an argument, and 10.4% were due to arguments with family members.⁷

² Webster, D., Frattaroli, S., Vernick, J., O'Sullivan, C., Roehl, J., & Campbell, J. (2010). Women with protective orders report failure to remove firearms from their abusive partners: Results from an exploratory study. *Journal of Women's Health, 19*(1), 93-98. doi: 10.1089/jwh.2007.0530

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

⁴ <https://www.thetrace.org/2015/10/domestic-abuse-guns-boyfriend-loophole/>

⁵ Fattaroli, S. and Teret, S. (2006). Understanding and informing policy implementation: A case study of the domestic violence provision of the Maryland Gun Violence Act. *Evaluation Review, 30*, 347-360.

⁶ Parker, G. F. (2015). Circumstances and outcomes of a firearm seizure law: Marion County, Indiana, 2006-2013. *Behav. Sci. Law, 33*, 308-322.

⁷ Id.