

# Removing Firearms From Those Prohibited From Possession by Domestic Violence Restraining Orders: A Survey and Analysis of State Laws

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## Abstract

Under federal and many state laws, persons under domestic violence restraining orders (DVROs) are prohibited from possession of firearms. Using multiple sources and a Lexis Nexis search, we developed a list of state laws pertaining to the relinquishment or removal of firearms from persons prohibited from possession by DVROs. After downloading the text of each law, we conducted a legal analysis to enumerate provisions of the laws specifying implementation. We found 49 laws in 29 states and Washington, DC. The laws were conceptualized as instructions to the court, the respondent, and law enforcement. We detail the content of each state's law, including such elements as whether it applies to ex parte DVROs; whether certain criteria must be met, such as previous use of a firearm in domestic violence or lack of an employment exemption, before the law can be applied; and whether the application of the law is mandatory. We also detail instructions to the respondent regarding to whom firearms may be relinquished, whether the respondent must seek permission to transfer the firearm to a third party, and the time by which dispossession must occur. Finally, whether law enforcement bears the responsibility for removing the firearm or whether the law gives the court the authority to order a search and seizure for the firearms is discussed. The purpose of the research is to provide an overview of these state laws that can be used by key stakeholders in legislative, judicial, advocacy, or research roles. Implications are discussed.

## Keywords

domestic violence, legal intervention, cultural contexts, intervention/treatment

Every year in the United States, roughly seven million women are raped, physically assaulted, and/or stalked by their intimate partners (Black et al., 2011). For some, the abusive tactics used by their partners include brandishing (Azrael & Hemenway, 2000) or threatening them with firearms (Lynch & Logan, 2015; Sorenson & Wiebe, 2004). In a minority of cases, domestic violence results in death. When a homicide occurs, a firearm is most often used (Cooper & Smith, 2011). Indeed, one of the main predictors of intimate partner homicide is a violent intimate partner's access to a firearm (Campbell et al., 2003).

Domestic violence restraining orders (DVROs) are one tool available to domestic violence victims to reduce the likelihood of future abuse. Under federal law and the laws of some states, respondents to certain DVROs may not possess firearms. When possession is prohibited, unless there is a policy or mechanism in place to enforce relinquishment of firearms already possessed, prohibited persons may simply keep their firearms. Some states, therefore, have enacted laws regarding the relinquishment or recovery of firearms from those prohibited from their possession by DVROs. In this research, we elucidate these laws and discuss them in terms of a continuum that reflects elements of such laws' enforceability.

## Firearms and Domestic Violence

The intersection of firearms and domestic violence remains an underresearched topic. Despite this, there is ample evidence of the dangers firearms pose when violent intimate partners have access to them. Victims report that violent intimate partners use firearms in the course of the violence, often to intimidate or make threats (Azrael & Hemenway, 2000; Capaldi et al., 2009; Joshi & Sorenson, 2010; Lynch & Logan, 2015; Sorenson & Wiebe, 2004). In a study of roughly 8,500 male batterers who were enrolled in a batterer intervention program in Massachusetts, slightly less than 3% reported using guns or making gun threats against their

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partners, with 1% of batterers actually shooting at their partners (Rothman, Hemenway, Miller, & Azrael, 2005). Not surprisingly, significantly more batterers who had owned guns in the 3 years prior to the study period reported using or threatening use of a gun than those who did not own guns (Rothman et al., 2005).

The literature suggests that violent intimate partners who have access to firearms engage in more severe domestic violence than those who do not. This may only in part be due to firearm use; it is possible that those who are willing to commit more severe violence are also more likely to own firearms (Sorenson & Weibe, 2004; Zeoli, Malinski, & Turchan, 2016). For example, in a study of police-reported domestic violence events in Canada, it was found that those offenders who had access to firearms committed more severe assaults, despite few of them actually using firearms in their violence (Folkes, Hilton, & Harris, 2013). Additionally, a study of women in battered women's shelters found that offenders who used firearms against their partners also used significantly more types of other weapons, such as knives, against their partners than those who did not use firearms (Sorenson & Wiebe, 2004). Researchers have also studied use or threatened use of a gun against same-sex intimate partners as a predictor of future violence, finding it to be associated with threatened or actual physical or sexual violence at a 1-month follow-up (Glass, Perrin, et al., 2008).

It is not only physical assaults that may be more severe when committed by domestic violence offenders who have access to firearms. A study of a population-based sample of partner-victimized women in urban areas in the United States found a significant association between offenders engaging in at least one controlling behavior against their partners and firearm access (Frye, Manganello, Campbell, Walton-Moss, & Wilt, 2006). Additionally, a study of pregnant women found that a violent intimate partner's access to guns was predictive of severity of abuse on multiple validated scales (McFarlane et al., 1998).

Finally, research suggests that when a gun is in the home, or a violent intimate partner has access to a gun, the risk of homicide for women is greatly increased (Bailey et al., 1997; Campbell et al., 2003). These intimate partner homicides are often preceded by gun threats (Smith, Moracco, & Butts, 1998). Much of the risk of homicide is due to the use of firearms during an assault, simply because firearms are more lethal than other weapons (Zimring, 1968). One study of all police-reported family and intimate assaults in Atlanta, GA, over the period of 1 year found that firearm use in the assaults was 3 times more likely to result in a fatal assault than knife use and 23 times more likely to result in a fatal assault than other weapons or bodily force use (Saltzman, Mercy, O'Carroll, Rosenberg, & Rhodes, 1992). Despite these demonstrable risks, in a focus group study of partner-victimized women, women reported that criminal justice system actors ignored their concerns about firearm-related violence (Lynch & Logan, 2015).

## DVROs

DVROs are available through civil and criminal courts; however, it is civil DVROs that are the focus of this article. We

focus on civil DVROs because they are initiated by the person seeking protection and are therefore a tool that a person can choose to access to help safeguard against partner abuse. Criminal DVROs, on the other hand, are generally issued as part of an ongoing criminal court case and are therefore not readily available to many victims of partner abuse. Civil DVROs allow judges to order respondents to restrict their movement and behaviors in ways that may include limiting their physical proximity to the petitioner; specifying access to their children; and instructing the respondent to not harass, stalk, physically assault, or threaten the petitioner. Many women who apply for DVROs specifically mention the use of firearms in the violence. In a study of DVRO applications in California, 16% of sampled applications had narratives about the abuse that included firearms (Vittes & Sorenson, 2006). Those applicants who mentioned firearms were also more likely to mention that their abuser threatened to kill them, threatened others, or threatened suicide (Vittes & Sorenson, 2006), highlighting the importance of removing firearms from this group. Additionally, in a sample of DVRO petitioners in North Carolina, 23% of DVRO respondents had used firearms against the petitioners in the 12 months before the petition (Moracco, Clark, Espersen, & Bowling, 2006).

Research suggests that DVROs are effective in reducing domestic violence (Logan & Walker, 2010). However, not all domestic violence offenders follow the conditions of their DVROs and, in some circumstances, violations may result in death. This is evidenced by studies of intimate partner homicides that found that a minority of victims were killed despite having restraining orders out against their partners (Smith et al., 1998; Vittes & Sorenson, 2008). In a study of female intimate partner homicide victims in California, nearly half of those who had restraining orders against their assailants were killed with firearms (Vittes & Sorenson, 2008).

Firearms, therefore, pose a clear risk to partner-victimized women, and the justice system mechanism of a DVRO provides a unique opportunity to reduce that risk. Lawmakers have recognized this and acted accordingly. Under federal law, final DVROs, which are issued after a hearing about which the respondent was notified and had an opportunity to attend, must include firearm prohibitions under federal law if the respondent is a current or former spouse of, had a child with, or lives or lived with the petitioner (18 United States Code § 922(g)(8)).

In addition to the enactment of the 1994 federal law prohibiting those under final DVROs from firearm possession, 35 states plus the District of Columbia also authorize courts to prohibit firearm possession by those under final DVROs. Many states extend that prohibition to those under *ex parte* DVROs. *Ex parte* DVROs, often called temporary or emergency DVROs, are issued when a judge deems the petitioner immediately in need of the protection that a DVRO provides. It is therefore issued soon after the DVRO petition is filed and is effective until a full hearing in which the respondent has the opportunity to be present can be held. When someone who possesses firearms becomes prohibited from possession, it is reasonable to assume that the newly prohibited person

will be required to relinquish their firearms in some manner. Because federal law applies nationally, the question of how a newly prohibited person is dispossessed of firearms is highly relevant even for those states without state-level DVRO firearm prohibitions. However, many states have failed to legislate on the issue of dispossession, and those that have often leave important gaps in the laws that may limit the enforcement of the prohibition.

Indeed, research findings call into question whether these laws are being fully enforced. In a recent focus group study, few of the partner-victimized women who had DVROs reported that their assailant's firearm had been removed, but many thought that such an act would be helpful; it is important to note that some also believed that firearm removal could lead to retaliation by the assailant (Lynch & Logan, 2015). Additionally, a study of female DVRO recipients in Los Angeles and New York found that only 12% of those women whose abusers possessed guns had relinquished those guns or had them removed (Webster et al., 2010).

Still there is evidence that state laws that prohibit those under DVROs from purchasing and possessing firearms are associated with reductions in intimate partner homicide rates (Vigdor & Mercy, 2006; Zeoli & Webster, 2010). However, this association may be limited to states that specifically prohibit DVRO respondents from firearm purchase, instead of those states whose statutes are written in a way that focuses solely on possession restrictions (Vigdor & Mercy, 2006). Vigdor and Mercy (2006) suggest that this may be because possession restrictions are not as easily enforced as purchase restrictions, which can be implemented in part through ensuring that disqualifying records make it into the background check system that is queried when someone initiates a firearm sale through a federally licensed firearm dealer.

The extent to which state laws authorize removal of guns from DVRO respondents, or provide instructions as to how dispossession should occur, likely affects implementation of the law and enforcement practices. A 2006 article reviewed state domestic violence and gun laws and recommended efforts to strengthen statutory language to better support implementation and enforcement of respondent prohibitions on gun purchase and possession (Frattaroli & Vernick, 2006). In recent years, gun violence prevention advocacy groups, such as the Educational Fund to Stop Gun Violence, the Law Center to Prevent Gun Violence, Everytown for Gun Safety, and Americans for Responsible Solutions, have identified domestic violence as a viable area for gun policy reforms. Additionally, legislators have introduced bills in several states to establish new laws to restrict DVRO respondents' access to guns and to further strengthen existing laws.

Here we identify the states that have legislated the relinquishment or removal of firearms from civil DVRO respondents and enumerate provisions of the laws specifying implementation. The purpose is to provide an overview of these state laws that can be used by (1) those working in domestic violence prevention to determine how states compare on this legal provision and how best to assure enforcement, (2)

legislators interested in strengthening state and federal laws to better assure implementation and enforcement of the prohibition on firearm possession, (3) those in law enforcement with the authority to enforce existing law, (4) judges and other court officials who oversee DVRO processes, and (5) researchers who may use the data on relinquishment and removal laws for DVROs, including implementation dates, to conduct research. In order to document the current state of these laws and assess the guidance they provide with regard to firearm dispossession, we reviewed all state DVRO firearm laws and analyzed their content. State dispossession laws are presented conceptually in this analysis as laws that provide instructions to the court to order or ensure dispossession and laws that provide instructions to the respondent or for law enforcement to facilitate relinquishment or removal. Here we present the findings from that analysis and consider the policy implications of these findings.

## Method

To be included in this analysis, a state's law must specify that a civil DVRO respondent may or must be ordered to relinquish his or her firearms or that the court has the authority to remove firearms from persons prohibited from possession by DVROs. Because domestic violence firearm prohibitions are of great interest and importance, multiple compilations of relevant statutes exist. We began our investigation by combining the list of DVRO firearm surrender laws compiled by Frattaroli (2009) and the lists of DVRO firearm dispossession and notification of firearm prohibition laws compiled by the Law Center to Prevent Gun Violence. Noting few differences between the two sources, we used this as an initial master list for our review. The first author then used LexisNexis to locate each state's code governing DVROs and firearm prohibitions resulting from DVROs and downloaded the text of each statute.

All four authors reviewed each of the statutes with careful attention to provisions for firearm dispossession. We considered any state statute that explicitly authorized the court to order the DVRO respondent to relinquish his firearms to be a dispossession law, regardless of the level of instructions provided to facilitate dispossession. Similarly, we considered any state statute that explicitly authorized the court to remove firearms from the DVRO respondent's possession to have a removal law. After our initial identification of the laws, we examined whether specific instructions for dispossession were contained in each state's laws and developed categories representing common features of the laws. The fourth author examined and initially coded the statutes based on the features we had identified. Using LexisNexis and, less often, state legislative websites, we downloaded each statute's session laws to determine the year state legislation on firearm dispossession went into effect. The first and second authors divided the states and reanalyzed the content of each state statute based on the priorities of the analysis. The authors verified or altered the coding of statutory elements and effective dates and developed tables to easily convey the information. As a final check, the third author (an attorney) reviewed the tables against the

statutes of each state, and also consulted an attorney at Everytown for Gun Safety, and made changes where necessary.

Based on the content of the provisions, the laws for the dispossession of firearms from people prohibited by DVROs were conceptualized as instructions to the court, the respondent, and the law enforcement. We considered instructions to the court to include elements of the law on which the court was specifically mandated or had the discretion to act, including to whom the law could be applied, criteria for ordering dispossession when someone was under a DVRO, and whom the court was required to notify about the relinquishment or removal of the firearm. We considered instructions to the DVRO respondent to be provisions of the law the respondent must act on, such as instructions regarding to whom firearms may be relinquished or transferred and whether there is a specified time limit for dispossession.

Finally, instructions to law enforcement officers were conceptualized to be those that specified how firearms were to be removed from the DVRO respondent, for example, by taking firearms into custody at the time of DVRO service or by lawfully seizing firearms not relinquished. We also looked at instructions that specified the process by which dispossession is to occur, including any paperwork that must be processed or whether law enforcement must notify the court of whether firearms were recovered.

After the initial conceptualization of these laws in terms of instructions to the court, the respondent, and the law enforcement, we organized the provisions of the laws onto a continuum representing the likelihood of the law to lead to dispossession. This continuum is presented below.

## Results

### *Instructions for the Court*

Table 1 lists the state laws that include instructions for the court for the dispossession of firearms from prohibited DVRO respondents. It is important to note that Table 1 details dispossession laws, which are treated here as distinct from firearm restriction laws. As of February 2016, 28 states and Washington, DC, had legislated on this issue. The year of implementation listed in the table is the year the dispossession law went into effect. For information on the implementation dates of later amendments, please contact the authors.

In 16 of the 28 states, the law specifies that judges may or shall require the dispossession of firearms from both full and ex parte DVRO respondents. In the remaining 12 states and Washington, DC, judges may or shall require dispossession for those prohibited by full DVROs only. For 11 of the 28 states with firearm dispossession laws and Washington, DC, the judge has the discretion to decide against ordering the dispossession of firearms. In an additional two states, Maryland and New Hampshire, judges' discretion applies only to ex parte DVROs, while they must order dispossession for those under full DVROs. Federal law does not prohibit purchase or possession of firearms by the subjects of ex parte DVROs, and this distinction is replicated

in many states. Those states, therefore, do not specifically extend judges the authority to require those under ex parte orders to relinquish their firearms.

Fifteen states require that certain conditions be met for the court to order a DVRO respondent be dispossessed of his or her firearms. These conditions generally fall into one of the two categories: *previous acts* or *future risk*. Previous acts include the respondent's use of a firearm during previous domestic violence or that the respondent previously injured the petitioner or a child. The second category of conditions, future risk, requires the respondent pose a risk of using a firearm in future violence or of physical harm. For four states, the criteria for ordering relinquishment or removal must be met only for ex parte orders, whereas full orders have no additional criteria to meet.

The fifth column of Table 1 refers to additional instructions the statute may provide to the court regarding dispossession. For example, five states have provisions providing additional instruction on how the court is to facilitate dispossession. Among these, North Carolina requires judges to inquire at both ex parte and full hearings about whether DVRO respondents possess firearms and, if they do, obtain "identifying information regarding the description, number, and location of firearms." Additionally, both New York and Pennsylvania specify that the restraining order shall describe the firearms to be relinquished.

State statutes often include language stating that the court *shall notify* the DVRO respondent of firearm restrictions, but few states specify how that notification is to occur. It may be assumed that those DVRO respondents who take part in a full hearing learn of their restriction at the hearing. However, not all respondents attend the hearing and some states allow firearm restrictions on an ex parte DVRO, which goes into effect before a full hearing occurs. Therefore, formal mechanisms for notification are needed. For the seven states that provide instructions on notification, the DVRO must include a statement explaining the firearm prohibition, dispossession requirements, and, less commonly, criminal penalties associated with lack of compliance with the law. Violation of the provisions of a DVRO could result in being charged with a Class A or Class 1 misdemeanor, as in Alaska, Arizona, and California. Additionally, states may consider the violation to be illegal possession of a firearm by a prohibited person, which also tend to be high-level misdemeanor crimes.

Eight dispossession laws also include employment exemptions. The exemption is generally for active duty military members or law enforcement officers, although in California, Nevada, and Rhode Island, the exemption also applies to those who must carry firearms as part of their employment. Hawaiian law also specifies that employment requirements alone are not sufficient to warrant an exemption and that the safety of the DVRO petitioner must also be taken into account. Nevada, New Jersey, North Carolina, and Rhode Island's exemptions only apply while the DVRO respondent is on duty; however, Wisconsin's law specifically states that law enforcement may not be required to surrender their firearms whether on duty or not.

**Table 1.** Instructions to the Court Regarding Dispossession for Respondents Prohibited From Possessing Guns.\*

State	Year	May/Shall Prohibition	Criteria for Ordering Dispossession	Additional Instructions
AK	1996	Full: may Ex parte: N/A	May order if respondent possessed or used guns during domestic violence	None specified
AZ	1996	Full: shall Ex parte: N/A	Shall order if respondent is prohibited from possessing due to a credible threat of physical harm to petitioner or other person	Facilitation of dispossession <sup>a</sup>
CA	1995	Full: shall Ex parte: shall	None specified	Information on order <sup>b</sup> Employment exemptions <sup>c</sup>
CO	2013	Full: shall Ex parte: N/A	None specified	Relinquishment of permits/licenses <sup>d</sup>
CT	2002	Full: shall Ex parte: N/A	None specified	None specified
DE	1993	Full: may Ex parte: may	None specified	Search and seizure provision <sup>e</sup>
DC	2009	Full: may Ex parte: N/A	None specified	None specified
HI	1993	Full: shall Ex parte: shall	<i>Ex parte:</i> Shall order if there is a finding that respondent owns or intends to own a firearm and that the firearm may be used to threaten or harm someone	Information on order <sup>b</sup> Employment exemptions <sup>c</sup>
IL	1996	Full: shall Ex parte: shall	Shall order if the order restrains certain behaviors against an intimate partner and respondent is a credible threat to the safety of the petitioner or a minor child. <i>Ex parte:</i> same as full order, and showing that “the harm which that remedy is intended to prevent would be likely to occur if the respondent were given any prior notice, or greater notice than was actually given, of the petitioner’s efforts to obtain judicial relief[.]”	Relinquishment of permits/licenses <sup>d</sup> Search and seizure provision <sup>e</sup>
IN	2002	Full: may Ex parte: may	None specified	None specified
IA	2010	Full: shall Ex parte: N/A	Shall order if the respondent possesses a firearm	Facilitation of dispossession <sup>a</sup> Information on order <sup>b</sup> Employment exemptions <sup>c</sup>
ME	2003	Full: shall Ex parte: shall	<i>Ex parte:</i> Shall order dispossession if abuse prohibited from possession due to abuse that involved a firearm or other dangerous weapon, a heightened risk of immediate abuse to the petitioner or a minor	Search and seizure provision <sup>e</sup>
MD	1996	Full: shall Ex parte: may	<i>Ex parte:</i> May order if abuse involved a firearm or threatened the use of a firearm or there is serious or threatened bodily harm	None specified
MA	1994	Full: shall Ex parte: shall	<i>Ex parte:</i> Shall order if there is a substantial likelihood of immediate abuse	Information on order <sup>b</sup> Relinquishment of permits/licenses <sup>d</sup>
MN	2014	Full: shall, Ex parte: N/A	Shall order if the order restrains respondent from conduct that would lead petitioner to reasonably fear bodily injury and finds the respondent is a credible threat	None specified
NV	2007	Full: may, Ex parte: N/A	May order but must consider documented history of abuse, threatened or used firearm in abuse, and whether respondent has used a firearm in a crime	Employment exemptions <sup>c</sup> Search and seizure provision <sup>e</sup>
NH	2000	Full: shall Ex parte: may	None specified	Search and seizure provision <sup>e</sup>
NJ	1994	Full: may Ex parte: may	None specified	Employment exemptions <sup>c</sup> Relinquishment of permits/licenses <sup>d</sup>
NY	1996	Full: shall Ex parte: shall	<i>Full and ex parte:</i> Shall order if respondent may use or threaten to use a gun. <i>Full:</i> Shall order if the abuse involved physical injury, use or threatened use of a deadly weapon, or behavior constituting any felony offense, or respondent has a prior conviction for stalking. <i>Ex parte:</i> Shall order if respondent is a felon; previously violated an order by inflicting injury, use or threatened use of deadly weapon, or behavior constituting felony; previous conviction for stalking	Search and seizure provision <sup>e</sup> Facilitation of dispossession <sup>a</sup> Relinquishment of permits/licenses <sup>d</sup>

(continued)

**Table 1.** (continued)

State	Year	May/Shall Prohibition	Criteria for Ordering Dispossession	Additional Instructions
NC	2003	Full: shall Ex parte: shall	<i>Full and ex parte:</i> Shall order if abuse involved use or threat with deadly weapon, threat to seriously injure or kill petitioner or minor, suicide threat, or inflicted serious injury on petitioner or minor	Facilitation of dispossession <sup>a</sup> Information on order <sup>b</sup> Employment exemptions <sup>c</sup> Relinquishment of permits/licenses <sup>d</sup>
ND	1997	Full: may Ex parte: may	May order if there is probable cause that respondent will use gun in further acts of violence.	None specified
PA	1991	Full: may Ex parte: may	<i>Full:</i> All firearms included if surrender ordered. <i>Ex parte:</i> May order if abuse involved gun or other weapon; or there is immediate and present danger of abuse	Facilitation of dispossession <sup>a</sup> Relinquishment of permits/licenses <sup>d</sup>
RI	2005	Full: may Ex parte: N/A	None specified	Employment exemptions <sup>c</sup>
SD	1989	Full: may Ex Parte: May	None specified	None specified
TN	2009	Full: shall Ex parte: N/A	None specified	Information on order <sup>b</sup>
VT	2013	Full: may Ex parte: N/A	None specified	None specified
VA	2016	Full: shall Ex parte: N/A	None specified	None specified
WA	1994	Full: shall and may Ex parte: shall and may	Shall order if there is clear and convincing evidence of use, display, threat with gun, or dangerous weapon in a felony; previous gun restrictions; or where the order meets the federal prohibition. May order if there is a preponderance of evidence of use, display, threat with gun, or dangerous weapon in a felony or previous gun restrictions. Court may order temporary surrender without notice to other party if irreparable injury could result if not issued	Relinquishment of permits/licenses <sup>d</sup>
WI	1996	Full: shall Ex parte: N/A	None specified	Information on order <sup>b</sup> Employment exemptions <sup>c</sup>

Note. N/A = not applicable.

\*The law citations are available in the references section.

<sup>a</sup>Provisions that instruct the court on how to act to facilitate dispossession of firearms by newly prohibited respondents. <sup>b</sup>Order issued by the court must include information about firearm dispossession. <sup>c</sup>Includes exemptions for firearm dispossession based on employment. <sup>d</sup>Dispossession includes firearm purchase permits and/or carry permits/licenses. <sup>e</sup>Provisions specifying the courts authority to order search and seizure to enforce dispossession requirement.

### Instructions to the Respondent or Law Enforcement

Twenty-eight states (and the District of Columbia) have statutory language specifying how respondents are to dispossess themselves of firearms (see Table 2). The most common of these instructions, included in the statutes of 24 states, specify to whom the respondent is to relinquish or transfer firearms. Only two of those states do not specifically state that DVRO respondents are required or allowed to relinquish firearms to law enforcement. Fourteen states also allow transfer or sale of firearms to a licensed firearm dealer or any person eligible to possess firearms. In these cases, the DVRO respondent may decide to whom to relinquish their firearms.

Fourteen states provide respondents with time limits by which dispossession must occur. These ranges from immediately if at court with the firearm or immediately upon service with the DVRO to 24–72 hr of being served with the DVRO. In Iowa, the law directs the court to include a time limit. New York law states that the DVRO will specify the date by which firearms shall be relinquished but leaves no guidance on a time limit.

Eleven states require the prohibited person to file proof of sale or transfer in the form of a receipt or affidavit with the court if firearms are not relinquished to law enforcement. For example, in Connecticut, the disqualified person must obtain an authorization number to make the transfer and then submit a transfer form to law enforcement. Pennsylvania's law is quite detailed in comparison with other states and bears discussion. The respondent has the discretion to inform the court whether he will relinquish guns to law enforcement, a licensed firearms dealer, or an eligible third party. If the respondent chooses to transfer or sell to a licensed firearm dealer, he must obtain an affidavit of transfer from the licensed dealer and provide that affidavit to law enforcement. If the respondent chooses to transfer to a third party, he must first report the name of the individual to law enforcement, who will determine the third party's eligibility to possess firearms. If approved, affidavits will be executed regarding the transfer and the third party will be issued a "safekeeping permit" by the sheriff. The third party will then sign a receipt when she or he receives the firearm and the respondent will submit that receipt to law enforcement. There are numerous

**Table 2.** Instructions for Law Enforcement and Domestic Violence Respondents for Dispossession of Firearms.\*

State	Year	Dispossess to Whom	Time Limit for Dispossession	Additional Instructions for Respondent	Instructions for Law Enforcement
AK	1996	Unspecified	None specified	None specified	None specified
AZ	1996	LE	Immediately or within 24 hr of service	None specified	None specified
CA	1995	LE, FFL	Immediately upon LE request or within 24 hr of service	File receipt of transfer within 48 hr of service. Noncompliance penalties	LE may charge a storage fee. LE officer shall request firearms be surrendered upon service. LE agencies should develop and implement policies for requesting immediate dispossession
CO	2013	LE, FFL, eligible third party	Within 24 hr if served in court, 48 hr if served out of court, or 72 hr	File receipt of transfer within 3 business days of service. Noncompliance penalties	Law enforcement may charge a storage fee
CT	2002	LE, FFL	Within 2 business days of service	Submit gun transfer form. Noncompliance penalties	None specified
DE	1993	LE	None specified	None specified	None specified
DC	2009	Unspecified	None specified	Noncompliance penalties	None specified
FL	2003	Unspecified	None specified	Noncompliance penalties	None specified
HI	1993	LE, FFL	None specified	Noncompliance penalties	During service, LE may remove firearms. If LE cannot find them, LE shall apply for a search warrant. If firearms not surrendered within 30 days, LE may seize firearms
IL	1996	LE	None specified	Noncompliance penalties.	None specified
IN	2002	LE	None specified	None specified	None specified
IA	2010	Eligible third party, LE <sup>a</sup>	Specified by the court.	If respondent violates prohibition, court shall identify an eligible third party to receive the firearm	Court may assess storage fees if LE is identified to store guns
MD	1996	LE	None specified	Respondent may transfer firearm to LE under specified circumstances	LE must provide information about retaking firearm; LE must transport and store firearms in a way to prevent damage
ME	2003	LE, eligible third party	Within 24 hr of service	If transferred to a third party, respondent must file a receipt within 24 hr with the name and address of the third party and a description of the weapons	If there is probable cause to believe that firearms have not been surrendered, court may issue a search warrant
MA	1994	LE <sup>b</sup>	LE shall take possession upon service	Violation: maximum US\$5,000 fine, 2.5 years imprisonment, or both	None specified
MN	2014	LE, FFL, eligible third party	Within 3 business days of service unless respondent poses an imminent risk then LE shall take immediate possession.	Respondent shall file proof of transfer of firearms	LE may charge reasonable fees to store firearms
NV	2007	LE, FFL, eligible third party <sup>c</sup>	Within 24 hr of service.	File receipt of transfer within 72 hr of service or 1 business day—whichever is later	LE provides a receipt for guns received. LE may charge a fee for collecting and storing guns
NH	2000	LE	None specified	None specified	LE may request a search warrant.
NJ	1994	LE	None specified	Noncompliance penalties.	None specified
NY	1996	LE	None specified	Noncompliance penalties.	None specified

(continued)

**Table 2.** (continued)

State	Year	Dispossess to Whom	Time Limit for Dispossession	Additional Instructions for Respondent	Instructions for Law Enforcement
NC	2003	LE	Immediately upon service or within 24 hr.	Noncompliance penalties. Surrender will include all purchase and carry permits.	LE shall store firearms or contract with an FFL. LE may charge a fee for storing firearms and ammunition
ND	1997	LE	None specified	None specified	None specified
PA	1991	Sheriff, FFL (full orders only), eligible third party	Sheriff: Within 24 hr of service or end of next business day unless court specifies a time. FFL and third party: time specified on the order	<i>Full order:</i> Respondent specifies dispossession plan. <i>Ex parte order:</i> If respondent cannot access guns, must provide sheriff with list of firearms and locations. If transfer to FFL or third party, sheriff will issue permit. Respondent file receipt within 24 hr	None specified
RI	2005	LE, FFL, eligible third party (not family)	Within 24 hr if respondent present at hearing; 48 hr of service	File receipt of transfer within 72 hr of service.	None specified
SD	1989	LE	None specified	None specified	None specified
TN	2009	By any lawful means, including eligible third party <sup>c</sup>	Within 48 hr of service	Complete affidavit and return it to court	None specified
VT	2013	LE, FFL, eligible third party <sup>c</sup>	Immediately upon service	None specified	LE may charge a storage fee
VA	2016	Any person not prohibited by law from possessing	24 hr from time of service	Noncompliance penalties specified	None specified
WA	1994	LE, legal counsel, eligible third party <sup>c</sup>	Must file receipt within 5 business days	File receipt of transfer or a declaration of nonsurrender	None specified
WI	1996	LE, eligible third party <sup>c</sup>	48 hr from the issuance of the injunction or within 48 hr of surrender hearing	When surrendered to a sheriff, file receipt of transfer within 48 hr of service	Sheriff may use a public warehouse keeper to store firearms. Respondent shall pay the associated costs. Sheriff may charge respondent for disposal

Note. LE = Law Enforcement; FFL = Federal Firearms Licensee.

\*The law citations are available in the references section.

<sup>a</sup>Eligibility determined by the court or law enforcement. If an eligible third party cannot be found, firearms are to be transferred to law enforcement. <sup>b</sup>Respondent has the right, up to 1 year after surrender, to have the firearm transferred to FFL or other person legally permitted to purchase or take possession of firearms (Massachusetts General Laws Annotated ch. 209A, § 3B; ch. 140, §129D). <sup>c</sup>Eligibility determined by the court.

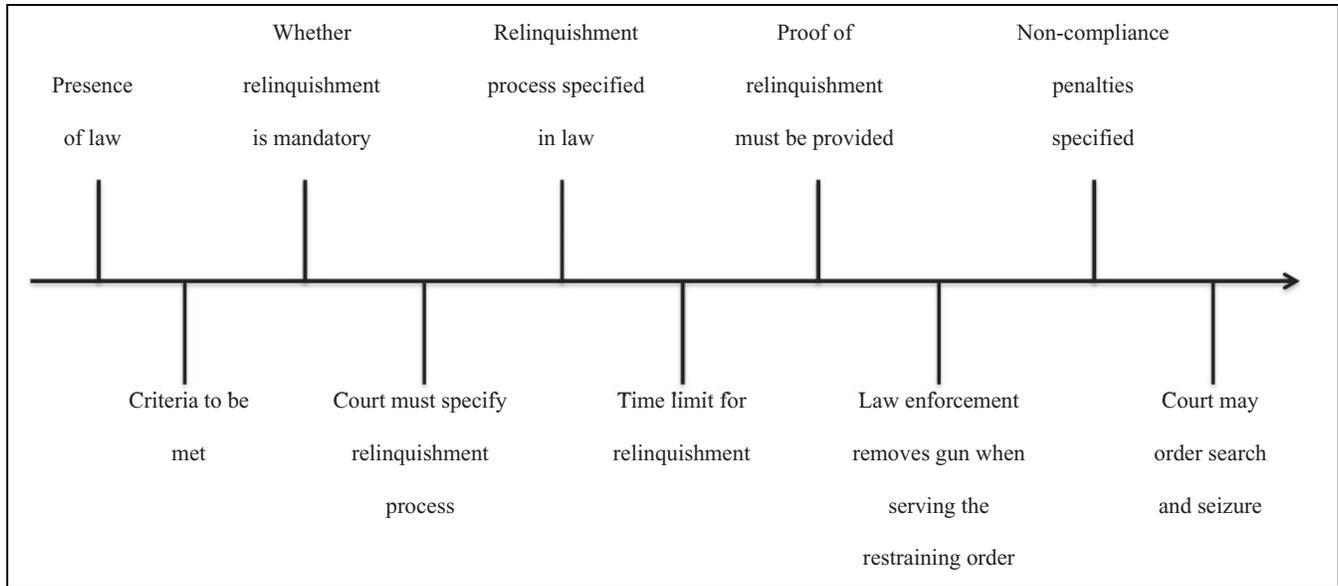
rules the third party must follow while safekeeping the firearm for the disqualified individual. All of these actions must occur within specified time limits.

Seven state statutes explicitly provide law enforcement the authority to seize firearms from disqualified DVRO respondents, either through instructions to the court to authorize a search warrant or through instructions to law enforcement to apply for a search warrant or seize firearms. Generally, law enforcement may recover firearms upon serving the respondent with the DVRO or if the respondent does not relinquish his firearms within the specified time frame. For example, in Hawaii, law enforcement officers may remove firearms when they serve a DVRO if the firearms are in plain sight, discovered pursuant to consensual search, or relinquished by the respondent. If a respondent has not relinquished a firearm within 30 days, Hawaii law specifies that law enforcement

apply for a search warrant to seize any firearms the respondent possesses. An additional responsibility of law enforcement, in some states, is to notify the court both when firearms are or are not recovered or proof of transfer is not received, by the specified time. Failure to relinquish firearms may result in compliance penalties, such as in Massachusetts where one may incur a fine of not more than US\$5,000 and/or imprisonment for not more than 2.5 years.

### The Continuum

Figure 1 represents the continuum of legal provisions used to compel dispossession. The provisions placed on the continuum represent a system of accountability in which the court, law enforcement, and the respondent are responsible for taking steps to ensure dispossession. The continuum begins at the left, with



**Figure 1.** Continuum of provisions that strengthen firearm dispossession laws.

the presence of a dispossession law, including whether it applies to ex parte DVROs and whether it includes carry permits, firearm owner identification card, or other documents as applicable by state. Moving right on the continuum, each subsequent provision arguably makes it more likely that dispossession will occur. Once a dispossession law is in place, there may be criteria that must be met, such as previous use of a firearm in domestic violence or lack of an employment exemption, before the law can be applied. If the law can be applied, the issue of whether the application of the law is mandatory or discretionary becomes relevant.

If the law is mandatory, or the judge orders dispossession, the process by which it occurs may be specified in the statute. This may include requiring the court to ask about firearms at a DVRO hearing, or that the court must direct the law enforcement agency receiving the firearm to notify the court when dispossession has occurred. The statute may also specify instructions to the respondent regarding to whom firearms must be relinquished, whether the respondent must seek permission from the court or law enforcement to transfer the firearm to a third party, and the time by which dispossession must occur. The statute may also require the respondent to prove transfer occurred by providing an affidavit or receipt to law enforcement or the court. Alternatively, law enforcement may bear the responsibility for removing the firearm from the DVRO respondent when serving the respondent with the DVRO. When firearms are not recovered or relinquished, some states may impose noncompliance penalties on the respondent, or the law may give the court the authority to order a search and seizure for the firearms.

**Discussion**

We compared state laws governing firearm dispossession from those prohibited from possessing firearms by DVROs and characterized the provisions of the laws by which actors (the courts, the respondents, or the law enforcement) are responsible

for carrying out the steps specified for dispossession. We then created a continuum representing provisions commonly found in the statutes, starting from whether a state has a surrender law and moving through to whether the court can order search and seizure, arguably the strongest mechanism the court has to disarm a prohibited person. Dispossession laws vary greatly from state to state on many provisions, including whether the court has discretion to choose whether to order dispossession, under what circumstances dispossession may be ordered, and to whom the DVRO respondent may relinquish the firearm.

The continuum represents a framework for thinking about the strength of dispossession laws that may be helpful for legislators and advocates. The provisions placed on the continuum represent a system of accountability, in which the court, law enforcement, or the respondent is responsible for taking steps to ensure dispossession. Among the dispossession laws in the United States, these provisions are variable in their presence or absence and in their content. However, we theorize that presence of these provisions in state laws strengthens the likelihood that dispossession will occur.

For example, a state in which dispossession is mandatory for ex parte and full DVROs would be expected to have a higher proportion of DVRO respondents who are ordered to relinquish their firearms than a state in which surrender is discretionary or not applicable to ex parte DVROs. Furthermore, a statute that specifies to whom a firearm is to be relinquished, and specifies a time limit by which proof of transfer must be provided to law enforcement or the court, helps respondents understand their responsibilities and clarifies when a respondent is in violation of the law. If a respondent is in noncompliance, a provision allowing the court and law enforcement to take steps to recover the firearm can ensure that the prohibition is enforced.

While we frame elements of firearm dispossession laws as a continuum, it must be noted that state laws do not move through the continuum linearly. For example, while New Jersey has a search and seizure provision, the strongest measure on the

continuum, it is at the court's discretion whether to order the DVRO respondent to relinquish firearms, "failing" one of the rightmost measures on the continuum. We are therefore unable to place states on the continuum or provide an objective ranking of each state in terms of strength of dispossession law.

There were vast differences among states in the amount and specificity of direction given to courts, law enforcement, and respondents regarding dispossession. For example, in Alaska, judges have the discretion to order dispossession for those under full DVROs if a firearm was possessed or used during domestic violence. Alaska law, however, provides no instructions about to whom the respondent is to relinquish the firearm, no time limit on when dispossession must occur by, and no mechanism for law enforcement to verify dispossession. Pennsylvania law, in contrast, provides relatively detailed instructions on each of those items.

Many states did not have a law specifying how DVRO firearm prohibitions are to be enforced. It is important to note, however, that even in states that have no explicit dispossession law, judges may still have the broad implicit authority to order dispossession as a stipulation of a DVRO to protect the safety of the petitioner and/or her children. There is evidence of this implicit authority in Florida law, which has legislated penalties for not obeying an order to relinquish firearms but has no law explicitly granting judges the authority to order dispossession. Explicitly codifying that authority and mandating dispossession may encourage dispossession by prohibited persons to a greater degree than relying on judges to utilize their implicit authority.

Of states that have dispossession laws, many only apply to full DVROs. However, it may be particularly critical to remove firearms from perpetrators of domestic violence at the point when an *ex parte* DVRO is issued. Many women who obtain DVROs do so after a severe violent event or stalking (Holt, Kernic, Wolf, & Rivara, 2003; Logan, Shannon, & Walker, 2005; Logan & Walker, 2010; Moracco et al., 2006; Sorenson & Shen, 2005) and in the context of separating from their partner (Logan, Walker, Shannon, & Cole, 2008). This is therefore a period of high risk for severe or fatal violence (Campbell, Glass, Sharps, Laughon, & Bloom, 2007), and one in which the abuser having access to a gun could pose a significant risk of homicide.

Frattaroli and Teret's (2006) research shows that lack of instructions on how firearm disqualifications are to be enforced can result in a lack of enforcement, possibly because courts and law enforcement are not clear on their roles in the process. More explicit detailing of the relinquishment, transfer, notification, and seizure mechanisms may encourage dispossession. As more states enact detailed dispossession laws, researchers should examine their impact.

While enacting legislation that specifies how firearm prohibitions are to be enforced is critical, so too is the implementation of those laws by local jurisdictions. A 2006 study of local law enforcement agencies in California found that few engaged in proactive enforcement of the firearm restrictions that had been in law since 1995 (Seave, 2006). However, a recent study of a pilot program designed to increase implementation of

DVRO firearm prohibitions in two counties in California showed that law enforcement successfully removed firearms when they served the DVRO on the respondent (Wintemute, Frattaroli, Claire, Vittes, & Webster, 2014). In a survey conducted with 17 DVRO petitioners' experiences in those counties, most petitioners reported that they wanted their abuser to be dispossessed of firearms, and six of the eight women who reported that this had occurred also reported that they felt safer as a result (Vittes, Webster, Frattaroli, Claire, & Wintemute, 2013). Promoting prosecutors' role in assuring these laws are implemented is a promising strategy, and guidance on how to legally disarm domestic violence offenders under differing legislative frameworks is now available for that stakeholder group (Prosecutors Against Gun Violence & Consortium for Risk-Based Firearm Policy, 2016).

While this analysis of laws has focused on firearm prohibitions resulting from DVROs, there are many other conditions under which a person can be prohibited from firearm possession. For example, domestic violence misdemeanor convictions, felony convictions, and, in some states, violent misdemeanor convictions all result in being disqualified from firearm purchase and possession. States may consider dispossession provisions that apply more broadly to prohibited persons to ensure that those who are no longer legally able to possess guns are dispossessed of their firearms.

States may also consider passing or strengthening dispossession laws. The continuum developed here acts as a list of recommendations of provisions policy makers may consider. It is important to note, however, that our treatment of the law provisions and judgments of which provisions may strengthen dispossession laws is subjective, based on our collective experience and knowledge. To our knowledge, no published research has examined variations in dispossession laws to investigate which, if any, increase the likelihood of firearm relinquishment of removal from prohibited persons. Indeed, one of our aims for this review is to provide researchers with data with which to conduct such studies.

Bills strengthening firearm restrictions are often controversial and contested. However, there is strong public support for removing firearms from domestic violence offenders (Barry, McGinty, Vernick, & Webster, 2013; Sorenson, 2006). The type of laws we present here do not extend firearm disqualifications but rather provide states with the legal tools and clarity needed to implement and enforce existing laws that prohibit DVRO respondents from possessing guns. It is important to note that many of the state laws presented in this article differ from their original forms, having been amended multiple times over the years. Amending legislation is both crucial and commonly done to clarify or change the law or improve its implementation. Attention to the implementation and enforcement needs of current law can assure the protections that lawmakers intended when they originally passed laws prohibiting DVRO respondents from possessing guns. Such assurances are in the best interest of the people who turn to the DVRO infrastructure for protection during the times when they are most in need of help.

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