

# GUN RIGHTS AND DOMESTIC VIOLENCE

## Frequently Asked Questions

### Can my gun rights be taken away if I am convicted of a minor crime of domestic violence?

**Yes.** Most people know that it is a federal crime to possess a firearm if you have been convicted of a felony. However, it is also illegal to possess a firearm if you are convicted of a crime of domestic violence, even if it is only a misdemeanor. Further, you will not be able to purchase a gun if a criminal background check shows a misdemeanor domestic violence conviction.

### What is a "misdemeanor crime of domestic violence?"

A misdemeanor crime of domestic violence requires that the victim of the alleged crime be an "intimate partner" and the crime includes:

- (1) The use or attempted use of physical force; or
- (2) The use or threatened use of a deadly weapon.

### What is an "intimate relationship"?

Spouses, former spouses, past or present unmarried couples, or persons who are both parents of the same child.

### How long do I lose my gun rights?

Forever. Once they are gone, they are almost impossible to get back.



### What About a Deferred Judgment and Sentence ("DJ&S")?

Defendants in domestic violence misdemeanors sometimes are offered or seek a DJ&S. In this arrangement, the defendant agrees to plead guilty and perform a sentence with the understanding that the case will be dismissed based on future good behavior. Although the law is less than clear, the prevailing opinion among lawyers is that your gun rights are lost until you successfully complete the DJ&S period.

### What if I haven't been charged with anything, but my ex-spouse got a restraining order against me?

Restraining orders—now known as "protection" orders—can also deprive you of your right to possess firearms, even if you haven't been charged with a crime, or the crime you were charged with is not a crime of domestic violence. It is illegal to possess a firearm while you are subject to a restraining order which meets the following conditions:

- It was issued after you had notice, and an opportunity to be heard;
- It restrains you from harassing, stalking, or threatening an intimate partner; and
- It includes a judge's finding that you are a threat to the safety of or prohibits the use of force against an intimate partner.

In Colorado, protection orders that meet these criteria are automatically issued in domestic violence cases. Further, most civil protection orders will also meet this definition, even if no criminal charges were ever filed. If you have been served with a protection order of any kind, you need to refrain from possessing any firearm and consult with an attorney immediately.



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## Does this mean that any crime of domestic violence in Colorado will cost me my gun rights?

**Not necessarily.** Colorado's definition of domestic violence is broader than the federal definition. For example, it includes crimes against property when used as a method of coercion, control, punishment, intimidation, or revenge. So, it is possible to be guilty of a state domestic violence misdemeanor and not lose your right to possess or use firearms. Here are some examples:

- Smashing a beer bottle against a wall during an argument with your wife or slashing your husband's tire is criminal mischief.
- Yelling insulting things at your spouse in offensively coarse language is verbal harassment.
- Repeatedly calling your ex-girlfriend on the phone at all hours of the night just to make her angry is telephone harassment.

On the other hand, if you put your hands on your intimate partner during an argument you can be convicted of harassment "strike, shove, kick," a crime that would meet the federal definition. Simply pushing your girlfriend can make you lose your gun rights for eternity because it involves the use of force, even if you don't mean to hurt her. Likewise, you can meet the federal definition of domestic violence if you threaten to shoot them or otherwise use a deadly weapon, even if you don't touch them. It doesn't matter that you would never actually carry out your threat.



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## What can a lawyer do?

- Speak to the alleged victim right away, even when you are restrained from doing so.
- Ask a judge to modify your protection order so you can contact your children or partner and even move back into your home.
- Try to negotiate a plea bargain with the district attorney that allows you to keep and use your firearms.
- Try your case to a jury and demonstrate your innocence.
- Help you in sentencing, if you are convicted.
- If you are subject to a civil protection order, try to get the protection order modified or dismissed.
- If you have a history of domestic violence, help you find the help you need to stop the cycle of violence and take control of your life.

## The Law Needs to Change!

The Lautenberg Amendment is designed to keep guns away from domestic abusers. Although the intent of the law is good, the reality is often too harsh. Permanently depriving a person of their constitutional right to bear arms after a minor domestic dispute is overly broad. Moreover, neither Colorado nor federal law provides any meaningful procedure for restoring gun rights once a person has been rehabilitated and no longer presents a threat of domestic violence. Everyone deserves a second chance. If you agree, speak up about this issue and let your legislators know how you feel.

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