

## Restraining Orders and Gun Possession

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### Issue

Describe recent changes in Connecticut's restraining order laws that relate to gun possession.

### Summary

[PA 16-34](#), which became effective October 1, 2016, made changes in various laws that relate to restraining and civil protection orders (see sidebar) and firearms and ammunition possession.

The act revised the civil restraining order application form to allow the applicant to indicate whether the respondent (accused) has a firearm eligibility or ammunition certificate. It reduced, from five to three, the number of days before a hearing date that process must be served.

It also extends certain firearms and ammunition prohibitions to people subject to a civil restraining or protection ex parte order issued in a case involving physical force. (An ex parte order is one issued without a hearing.)

### *Orders of Protection*

**Civil Restraining Order.** A family or household member may apply for a civil restraining order for relief from physical abuse, stalking, or a pattern of threatening from another family or household member ([CGS § 46b-15](#)).

**Civil Protection Order.** A victim of sexual abuse, sexual assault, or stalking may apply for a civil protection order if he or she is not eligible for the restraining order described above ([CGS § 46b-16a](#)).

**Criminal Protective Orders.** Courts may independently issue, on behalf of a victim, a (1) protective order after a person is arrested for certain crimes or (2) standing criminal protective order after a person is convicted of certain crimes ([CGS §§ 54-1k](#) and [53a-40e](#)).

**Foreign Order of Protection.** A foreign order of protection is an injunctive or other court order issued by another state in response to a complaint filed by or on behalf of a person seeking protection from (1) violence, threatening acts, or harassment or (2) contact, communication with, or physical proximity to, another person ([CGS § 46b-15a](#)).

The act expressly prohibits the Department of Emergency Services and Public Protection (DESPP) commissioner from issuing a gun permit or firearms eligibility certificate to anyone subject to such an order. The act makes a person ineligible to possess firearms or ammunition on receiving legal notice that he or she is subject to an ex parte order and makes it a class C felony for such a person to violate firearms or ammunition transfer, delivery, or surrender requirements, as is already the case for anyone subject to any other order of protection. A class C felony is punishable by up to 10 years in prison, a fine up to \$10,000, or both.

The act also requires the commissioner, at the request of a person who was subject to such an order and on verification of the order's expiration, to reinstate any gun or ammunition credential revoked as a result of the order, if the person is otherwise eligible for the credential.

The act also shortens, from two business days to 24 hours, the deadline by which a person who becomes subject to any type of order of protection in a case involving physical force must transfer, deliver, or surrender his or her firearms and ammunition. It imposes the same 24-hour deadline on such transfers by people subject to an ex parte order. It (1) gives people required to surrender their firearms or ammunition to law enforcement the option to surrender them to a municipal police department, instead of just the DESPP commissioner; (2) requires the DESPP commissioner to update the protocol to allow for such a surrender; (3) requires DESPP and law enforcement agencies, in certain circumstances, to return firearms and ammunition when an ex parte order expires; and (4) provides for the request and return of firearms and ammunition when an order expires or is rescinded.

## **Eligibility to Possess Firearms and Ammunition**

Under the law, a person is ineligible to possess firearms and ammunition when the court issues a civil restraining or protection order against him or her after notice and a hearing in a case involving the use, attempted use, or threatened use of physical force against another person ([CGS § 29-36k](#)).

Under the act, in the same type of case, the respondent becomes ineligible upon receipt of notice of an ex parte order ([PA 16-34](#), § 7).

# **Transfer, Delivery, or Surrender of Firearms and Ammunition**

## ***Time Frames***

The act shortens the deadline by which a person must transfer, deliver, or surrender his or her firearms and ammunition if he or she becomes ineligible to possess them after becoming subject to a civil restraining order, civil protection order, criminal protective order, or foreign order of protection involving force. Under prior law, the deadline was within two business days after the person became ineligible; under the act, the deadline is within 24 hours of becoming ineligible.

The act also extends its gun-related surrender requirements to people subject to an ex parte order ([CGS § 29-36k](#), as amended by [PA 16-34](#), § 7).

## ***Delivery or Surrender to Police Department***

The act gives people who must surrender their firearms or ammunition the option of surrendering them to a municipal police department on the DESPP commissioner's behalf, instead of just to the commissioner. It requires the police department to exercise due care when receiving and holding weapons, just as the commissioner must do under existing law.

The act removes prior law's option that allowed anyone subject to an order of protection to transfer ammunition to another person eligible to possess it.

By law, a person or his or her legal representative may, up to one year after delivering or surrendering firearms or ammunition to DESPP, ask the commissioner to transfer them to an eligible person. The commissioner must transfer them within 10 days of receiving the request (except in a case involving a protection order, in which case weapons may only be transferred to a federally licensed dealer pursuant to a sale). The act makes a conforming change allowing the person or legal representative to request the police department to make such a transfer.

By law, the commissioner must destroy any firearms or ammunition not transferred after one year. Under the act, this also applies to police departments to which weapons are delivered or surrendered ([CGS § 29-36k](#), as amended by [PA 16-34](#), §7).

## ***Return of Firearms and Ammunition***

Under the act, a person subject to a restraining order, protective order, foreign order of protection, or civil protection order who has delivered or surrendered any pistol, revolver, or other firearm or ammunition to the DESPP commissioner or a local police department, may request the return of the firearm or ammunition when such an order expires or is rescinded. The person making the request must provide notification of the order's expiration or rescission to the commissioner or department.

The act requires the commissioner or department to review the request within five business days after receiving the request. They must make any firearm or ammunition available for retrieval if they confirm that the order expired or was rescinded and that the requestor (1) is not otherwise disqualified from possessing the firearm or ammunition and (2) was legally entitled to possess the firearm or ammunition when it was delivered or surrendered ([CGS § 29-36k](#), as amended by [PA 16-34](#), § 7).

## ***Violations***

By law, a person subject to an order of protection who violates the firearms and ammunition transfer, delivery, or surrender requirement is guilty of criminal possession of a firearm or ammunition, as applicable. The act extends these penalties to people who commit such violations while subject to an ex parte order ([CGS §§ 29-36k](#), [53a-217](#), [53a-217c](#), as amended by [PA 16-34](#), §§ 7, 15 & 16).

By law, criminal possession of a firearm or ammunition is a class C felony, punishable by up to 10 years in prison with a two-year mandatory minimum ([CGS §§ 53a-217](#) & [53a-217c](#)).

## **Issuing, Revoking, and Reinstating Gun and Ammunition Credentials**

The act expressly states that the DESPP commissioner must not issue a gun permit, handgun eligibility certificate, or long gun eligibility certificate to anyone subject to an ex parte order issued in a case involving the use, attempted use, or threatened use of physical force against another person. By law, the commissioner may revoke a permit or certificate on any grounds that would have disqualified the holder from being issued such a credential.

Under the act, DESPP must reinstate a gun or ammunition credential it revoked based on an ex parte order if the order expires and the respondent, who is not otherwise disqualified, notifies DESPP and DESPP verifies the expiration ([CGS §§ 29-28](#), [29-32](#), [29-36f](#), [29-37p](#), [29-37s](#), & [29-38p](#), as amended by [PA 16-34](#), §§ 8-14).

## **Protocol for Gun and Ammunition Transfer, Delivery, or Surrender**

By law, the DESPP commissioner, in conjunction with the chief state's attorney and the Connecticut Police Chiefs Association, must develop a protocol to ensure that people who become ineligible to possess firearms transfer, deliver, or surrender them, as appropriate. The act requires the commissioner to update the protocol to apply its provisions ([CGS § 29-36n](#), as amended by [PA 16-34](#), § 17).

### **Additional Information:**

OLR Report [2016-R-0332](#): *Service of Civil Orders of Protection*

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