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## In Some States, Gun Rights Trump Orders of Protection



Rajah Bose for The New York Times

Stephanie Holten of Washington State says she is still seeing a counselor to work through trauma from when her ex-husband, Corey Holten, held her at gunpoint in her home last year.

By **MICHAEL LUO**

Early last year, after a series of frightening encounters with her former husband, Stephanie Holten went to court in Spokane, Wash., to obtain a temporary order for protection.

Her former husband, Corey Holten, threatened to put a gun in her mouth and pull the trigger, she wrote in her petition. He also said he would “put a cap” in her if her new boyfriend “gets near my kids.” In neat block letters she wrote, “**He owns guns, I am scared.**”

The judge’s order prohibited Mr. Holten from going within two blocks of his former wife’s home and imposed a number of other restrictions. What it did not require him to do was surrender his guns.

About 12 hours after he was served with the order, Mr. Holten was lying in wait when his former wife returned home from a date with their two children in tow. Armed with a small semiautomatic rifle bought several months before, he stepped out of his car and thrust the muzzle into her chest. He directed her inside the house, yelling that he was going to kill her.

“I remember thinking, ‘Cops, I need the cops,’” she later wrote in a statement to the police. “He’s going to kill me in my own house. I’m going to die!”

Ms. Holten, however, managed to dial 911 on her cellphone and slip it under a blanket on the couch. [The dispatcher heard Ms. Holten begging for her life](#) and quickly directed officers to the scene. As they mounted the stairs with their guns drawn, Mr. Holten surrendered. They found Ms. Holten cowering, hysterical, on the floor.

For all its rage and terror, the episode might well have been prevented. Had Mr. Holten lived in one of a handful of states, the protection order would have forced him to relinquish his firearms. But that is not the case in Washington and most of the country, in large part because of the influence of the [National Rifle Association](#) and its allies.

Advocates for domestic violence victims have long called for stricter laws governing firearms and protective orders. Their argument is rooted in a grim statistic: when women die at the hand of an intimate partner, that hand is more often than not holding a gun.

In these most volatile of human dramas, they contend, the right to bear arms must give ground to the need to protect a woman's life.

In statehouses across the country, though, the N.R.A. and other gun-rights groups have beaten back legislation mandating the surrender of firearms in domestic violence situations. They argue that gun ownership, as a fundamental constitutional right, should not be stripped away for anything less serious than a felony conviction — and certainly not, as an N.R.A. lobbyist in Washington State put it to legislators, for the “mere issuance of court orders.”

That resistance is being tested anew in the wake of the massacre in Newtown, Conn., as proposals on the mandatory surrender of firearms are included in gun control legislation being debated in several states.

Among them is Washington, where current law gives judges issuing civil protection orders the discretion to require the surrender of firearms if, for example, they find a “serious and imminent threat” to public health. But records and interviews show that they rarely do so, making the state a useful laboratory for examining the consequences, as well as the politics, of this standoff over the limits of Second Amendment rights.

By analyzing a number of Washington databases, The New York Times identified scores of gun-related crimes committed by people subject to recently issued civil protection orders, including murder, attempted murder and kidnapping. In at least five instances over the last decade, women were shot to death less than a month after obtaining protection orders. In at least a half-dozen other killings, the victim was not the person being protected but someone else. There were dozens of gun-related assaults like the one Ms. Holten endured.

The analysis — which crosschecked protective orders against arrest and conviction data, along with fatality lists compiled by the [Washington State Coalition Against Domestic Violence](#) — represents at best a partial accounting of such situations because of limitations in the data. The databases were missing some orders that have expired or been terminated. They also did not flag the use of firearms in specific crimes, so identifying cases required combing through court records.

Washington's criminal statutes, however, contain a number of gun-specific charges, like unlawful possession of a firearm and aiming or discharging one, offering another window into the problem. Last year, The Times found, more than 50 people facing protection orders issued since 2011 were arrested on one of these gun charges.

In some instances, of course, laws mandating the surrender of firearms might have done nothing to prevent an attack. Sometimes the gun used was not the one cited in the petition. In other cases, no mention of guns was ever made. But in many cases, upon close scrutiny, stricter laws governing protective orders and firearms might very well have made a difference.

The Times also looked at several other states without surrender laws. In Minnesota, more than 30 people facing active protection orders were convicted of some type of assault with a dangerous weapon over the last three years, court records show.

And in Oklahoma, The Times found the case of Barbara Diane Dye.

Ms. Dye, 40, obtained an emergency order of protection in July 2010, on the same day she filed for divorce from her husband, Raymond Dye, a firefighter. Ms. Dye, who worked as a personal trainer at a gym the couple owned, explained in her petition that since telling her husband she wanted a divorce because of his infidelity, he had repeatedly threatened to kill her. She wrote that she feared he would "have a violent reaction when he receives divorce papers."

When asked if there were weapons on the premises, she wrote, "Yes." In fact, Mr. Dye possessed an arsenal of weapons, which Ms. Dye and her family would later beg the local police to help them deal with, to no avail.

After obtaining the court order, which was good until a hearing about a lengthier order three weeks later, Ms. Dye went into hiding in Texas but returned to Oklahoma to attend divorce proceedings. Two weeks after obtaining the initial order, she was in a bank parking lot in the city of Elgin when [her husband pulled up](#) in his truck, blocking her in.

Witnesses later told the police that Mr. Dye, 42, tried to drag her into his truck. When she fought back, Mr. Dye brandished a .357 revolver and shot her in the leg. She fell to the ground. Mr. Dye fired several more shots into her, saying, "I love you, I love you," according to the police report. He then shot himself in the chest with a different gun, a .45-caliber semiautomatic pistol, and collapsed, dead, onto his wife.

["We kept telling them, 'He's got all of these weapons,' "](#) said Ms. Dye's mother, Barbara Burk, a local official who has fought unsuccessfully in Oklahoma for a measure that would give judges issuing protective orders the power to order sheriffs to confiscate weapons and hold them for a "cooling off" period. "Is there nothing you can do?"

## **Legislative Landscape**

Intimate partner homicides account for nearly half the women killed every year, according to federal statistics. More than half of these women are killed with a firearm. And a significant percentage were likely to have obtained protection orders against their eventual killers. (A [2001](#)

study, published in *Criminal Justice Review*, of women slain by intimate partners in 10 cities put that number at one in five.)

It was in recognition of these converging realities that Congress included a provision in the [1994 crime bill](#), over the objections of the N.R.A., that barred most people subject to full protective orders filed by intimate partners from purchasing or possessing firearms. In a nod to the concerns of the gun lobby, the statute excluded most people under temporary orders, on the ground that they had not yet had the opportunity to contest the accusations in court.

The statute, though, is rarely enforced. In 2012, prosecutors nationwide filed fewer than 50 such cases, according to a Times analysis of records from the [Transactional Records Access Clearinghouse](#), a research center at Syracuse University that collects federal government data.

It has, therefore, largely fallen to a state-by-state patchwork of laws to regulate this issue — or not.

A handful of states have enacted laws requiring that judges order the surrender of firearms when issuing even temporary protection orders. The strictest states, like California, Hawaii and Massachusetts, make it mandatory for essentially all domestic violence orders; others, like New York and North Carolina, set out certain circumstances when surrender is required. In a few other states, like Maryland and Wisconsin, surrender is mandatory only with a full injunction, granted after the opposing party has had the opportunity to participate in a court hearing. Several other states, like Connecticut and Florida, do not have surrender laws but do prohibit gun possession by certain people subject to protective orders.

Although enforcement remains an issue, researchers say these laws have made a difference. [One study](#), published in 2010 in the journal *Injury Prevention*, found a 19 percent reduction in intimate partner homicides.

Washington State has seen several efforts to enact firearm surrender laws. In 2004, Representative Ruth Kagi, a Democrat, introduced a bill mandating the surrender of firearms with temporary protective orders. But after strong opposition from the N.R.A., the bill failed to make it out of committee. The N.R.A.'s lobbyist in the state, Brian Judy, testified that the measure granted “extraordinarily broad authority to strip firearms rights.”

Gun-rights groups stress that the subjects of temporary orders have not even had the chance to be heard in court, and that many temporary orders do not become full injunctions. Advocates for domestic violence victims counter that the most dangerous moment is when such orders are first issued, and that the surrender of weapons at this stage may be only temporary.

Nevertheless, in 2010, they decided to lower their ambitions and backed a proposal in the Washington Legislature requiring surrender only after a full protective order was issued, restraining threatening conduct against family members or children of family members. The measure also would have made it a felony to possess a firearm while subject to such an order.

Once again, the N.R.A. and its allies strenuously objected. The group sent out a legislative alert to its members, who besieged legislators. A veteran gun-rights lobbyist flew in from Florida to meet with Representative Roger Goodman, a Democrat who had introduced the measure.

Mr. Judy, the state N.R.A. lobbyist, wrote in an e-mail to Mr. Goodman that his organization considered the current Washington law “already bad on this subject.” He added, “It is the N.R.A.’s position that any crime that is serious enough to cause an individual to lose a fundamental constitutional right should be classified as a felony.”

Ultimately, lawmakers stripped the gun measure out of a broader package of domestic violence legislation.

## **Lessons of History**

This year, the issue is pending once again in the Washington Legislature, part of a number of gun-related proposals introduced after the Newtown shooting. The proposed [legislation](#), further narrowed in an attempt to placate the N.R.A., seeks to mirror the language of the federal prohibition, which bars most people under full protective orders from buying or owning weapons. But in an e-mail to House Judiciary Committee members considering the measure, Mr. Judy wrote that the federal law “does not provide adequate protection” and argued that individual firearm rights were more broadly protected in Washington’s State Constitution than in the Second Amendment.

The bill seemed on the verge of being scuttled as the N.R.A. pushed to amend it in a way that supporters argued would render it meaningless, but House Democrats managed to close ranks and pass it. It faces a much steeper climb in the Republican-controlled State Senate, where the N.R.A. wields greater influence.

The issue has also gained traction in Colorado — a traditional power base for the gun lobby but also the state where 12 people were shot to death and 58 were wounded at a movie theater in July. A [measure](#) that would require the surrender of firearms in protection-order cases is part of a gun-control package passed by the State Senate last week, though not a single Republican voted for it.

And in Congress, Representative Lois Capps, Democrat of California, introduced a [bill](#) last week that would expand the federal prohibition to include temporary orders and current or former “dating partners.”

Even so, across the country, any suggestion of a broad shift must be tempered by history.

In the mid-1990s, Wisconsin became one of the first states to require the surrender of firearms with full protective orders. But in 2010, seeking to strengthen enforcement, advocates for domestic violence victims pushed for the statewide adoption of procedures that had been successful in a few counties. Among a host of provisions, people subject to protective orders would have been required to list their firearms and surrender them to the county sheriff or a third party within 48 hours.

The N.R.A. mobilized, calling the measure “a blatant violation of Americans’ Fifth Amendment rights” in an alert to its members. Jordan Austin, an N.R.A. lobbyist, expanded in his testimony on the bill before an Assembly committee: “Once a person has an injunction issued against him, he is already a prohibited person. He cannot, under the Fifth Amendment, be forced to disclose whether he is in possession of firearms, because that would be tantamount to forcing him to admit a crime.”

The bill died in the State Senate.

In Virginia, the gun lobby has repeatedly stymied efforts to make it illegal for people subject to court injunctions to possess firearms. (Currently, they are barred only from buying and transporting firearms.)

“There’s often recognition that firearms and domestic violence is a lethal combination, but it’s followed quickly with concerns about taking away an individual’s right to possess a firearm,” said Kristine Hall, the policy director for the [Virginia Sexual and Domestic Violence Action Alliance](#).

The lack of a state surrender law helps explain what happened when Deborah Wigg, a 39-year-old accountant in Virginia Beach, obtained a protective order in April 2011 against her husband, Robert Wigg, whom she was in the process of divorcing. In her petition, she described a violent encounter in which Mr. Wigg grabbed her by her hair, threw her down, ripped out a door and threw it at her. He was arrested and charged with assault. She also made clear in the petition that her husband owned a 9-millimeter semiautomatic handgun.

She eventually won a full protective order, but Mr. Wigg kept his gun, which he used in his business installing and servicing A.T.M.’s.

Ms. Wigg and her co-workers at an accounting firm openly fretted about the weapon. She agreed that every morning she would call Marty Ridout, a partner at the firm, so he could make sure she was safe.

On the morning of Nov. 8, 2011, Ms. Wigg left Mr. Ridout a voice mail message saying everything was fine.

Around 11 p.m. that night, however, Mr. Wigg, 43, [showed up](#) at his wife’s home and began ringing the doorbell and pounding on the door. Ms. Wigg called her parents. Her mother, Adele Brown, told her to hang up and call 911.

But as Ms. Brown and her husband, who lived about a half-mile away, were heading over, Mr. Wigg smashed through the door and into the house. The Browns arrived to find a neighbor bent over their daughter’s bleeding form, screaming, “Debbie, don’t leave me!”

“When we got to her, those beautiful blue eyes were already set,” Ms. Brown said.

Ms. Wigg died of a single shot to the head.

After shooting his wife, Mr. Wigg drove to the Browns’, apparently to kill them as well. He killed himself in their front yard.

“It astounds me,” Mr. Ridout said. “I cannot believe we have a society where a person has physically abused another person and been charged with assaulting her and that they don’t automatically take away his weapon.”

### **A System That’s Working**

One state with strict laws in this arena is California, where anyone served with a temporary protective order has 24 hours to turn over any weapons to local law enforcement or sell them to a licensed gun dealer.

Enforcement, however, has been inconsistent. So in 2006, the state set up pilot programs to increase enforcement in San Mateo County, just outside San Francisco, and Butte County, a largely rural area north of Sacramento. The programs’ money dried up in 2010 with the state’s fiscal woes, but San Mateo sought other financing because it believed that its program was saving lives.

“We have not had a firearm-related domestic violence homicide in the last three years,” said Sgt. Linda Gibbons, who oversees the program as the head of the major crimes unit in the county sheriff’s office.

Last year alone, the program took in 324 firearms through seizure or surrender from 81 people, out of more than 800 protective orders it reviewed.

Every morning, Detective John Kovach, who handles a range of domestic violence investigations, reviews a stack of protective orders filed the day before — generally 15 to 20 a day — looking for any mention of firearms.

Usually, a handful of orders a day will contain some reference to guns, which Detective Kovach follows up on. He sometimes contacts the person protected by the order to find out more. He also checks various law enforcement databases, including one available in California that tracks handgun purchases.

He goes out once or twice a week and serves the restraining orders himself. Usually, he says, he tries to collect firearms immediately, employing a well-honed sales pitch about helping the person comply with the law. If he believes beforehand that the person might not be cooperative, he will sometimes request a search warrant.

“My experience is the quicker you act, the more successful you’re going to be,” he said.

Notably, given the gun lobby’s objections to seizing guns after just a temporary order, Detective Kovach said he had handled only one or two restraining orders involving firearms in the last year that were eventually dropped after the court hearing.

In a typical case, a 19-year-old woman from Redwood City filed for a restraining order against her husband in December, explaining that he had become increasingly abusive and that she had recently moved out. She checked off a box on the form saying he had used firearms to

threaten her and, on a confidential “weapons possession data sheet” provided as a part of the San Mateo program, indicated that he owned an assault rifle and a handgun.

The detective picked up her order the following morning and, with a colleague, arranged to meet that day. She told them that after an argument a year earlier, her husband had threatened to kill himself, sending her in a text message a picture of himself holding an assault rifle to his head. More recently, he had warned that if she started dating, he would shoot the man, her and then himself.

Detective Kovach quickly secured a search warrant. He and several other detectives staked out the man’s home and served him with the protective order while he was walking his dog. In their search, they turned up seven guns, including two AR-15 assault rifles.

“Every murder, when you look at it, there are always points where law enforcement could have made a difference,” the detective said. “I don’t ever want to be that guy who goes to sleep knowing he hasn’t done everything to protect the public.”

### **Deadly Consequences**

In Washington State, The Times’s analysis highlighted danger at play when there is no broad mandatory firearm surrender law.

Under current law, judges issuing protective orders are required to order the surrender of firearms only in very specific situations, like a determination by “clear and convincing evidence” that the person has used the weapon in a felony or has committed another offense that by law would disqualify him from having a firearm. Otherwise, judges have the discretion to issue a surrender order under a variety of circumstances, including a finding that there is a threat of “irreparable injury.” (There is also a court form specifically requesting the surrender of firearms, but advocates say it is rarely used because few victims of domestic violence know about it.)

All five of the Washington cases identified by The Times in which the woman who obtained the protective order was later killed were murder-suicides. In three cases, the woman wrote in her petition that her husband or ex-boyfriend possessed firearms. In none of the cases did the judges issue surrender orders.

In fairness, it was not always clear that such an order would have prevented the deaths. Even so, those cases can show the existing system’s weakness in the face of obvious peril.

Melissa Batten, a 36-year-old software developer for Xbox, secured a temporary protective order in July 2008, describing a series of episodes in which her estranged husband harassed her and also broke into her workplace in Redmond. She said he also pointed a loaded gun at her in an argument and then put it to his head, threatening to kill himself.

It fell to a mutual friend, however, not the courts or law enforcement, to deal with the gun. He persuaded the husband, Robert Batten, to sell his .22-caliber handgun back to the dealer, according to a police report. But Mr. Batten later bought two more guns, a .357 Smith & Wesson revolver and a 9-millimeter Taurus semiautomatic, according to the police. It is not clear exactly

when he bought them, but the police found evidence that he went to a gun show a few days after being served with the protective order. (In some states, the existence of the order would have barred him from buying guns.)

Mr. Batten shot his wife eight times in the parking lot outside her home before shooting himself, killing them both.

Ms. Batten's case [made headlines](#). Then there are the more routine episodes that unfold outside the public eye.

Julie Lohrengel obtained a temporary order for protection against her estranged husband, Shawn Lohrengel, in August 2010, detailing several encounters, including one in which he had shaken her and grabbed her by the throat. She checked off the box in the petition that indicated he possessed firearms.

The court commissioner did not order Mr. Lohrengel to surrender his guns. Several weeks later, Ms. Lohrengel and a friend, with Ms. Lohrengel's two children in the back seat, drove up to her home in Centralia but stopped when they saw Mr. Lohrengel's truck parked outside the garage. As they started backing out of the driveway, between five and eight gunshots rang out, but no one was wounded. When the police arrived, Mr. Lohrengel ran out onto the front porch with a rifle, as if looking for someone, the police report said. He eventually pleaded guilty to aiming and discharging a firearm and reckless endangerment.

Sometimes, the person who takes out a protective order is not the one ultimately victimized.

James Anthony Mills, 17, pleaded guilty last year to second-degree murder for [firing two shots](#) that killed Adrian Wilson, 16, at a birthday barbecue in Auburn, Wash. Less than a year before, an ex-girlfriend of Mr. Mills's had obtained an order for protection against him. She explained in her petition that Mr. Mills had threatened her with a gun during an argument. Nothing was done about the weapon.

Even in cases where there was evidence that someone subject to a civil order for protection possessed a gun in violation of state and federal law, no move was made to remove it.

Dennis Pirone was arrested in Seattle in July 2009 and charged with harassing his ex-girlfriend Jody Mayes. A criminal no-contact order was issued, requiring him to surrender his firearms. He filled out a form declaring that he had none. He was arrested again a few weeks later for violating the no-contact order. Once again, after being ordered to surrender firearms, he declared that he did not have any.

That December, Ms. Mayes sought a protective order, writing in her petition that Mr. Pirone had bought a gun even though "he is a convicted felon and is not supposed to have it in his own words."

Two months later, Mr. Pirone flew into a rage at another woman, a roommate, after she refused his sexual advances. He came back with a small silver handgun, told the woman, "I will kill you,"

and pointed the gun at her before firing a shot into an old sofa, according to a Seattle police report. The police later found two .22-caliber semiautomatic handguns in the house.

More than a year after her ordeal in Spokane, Stephanie Holten still cannot understand why the judge did nothing about her former husband's guns.

"I do believe in the [Second Amendment](#)," she said, "but at the same time, public safety has to be paramount."

Ms. Holten, 39, who is still seeing a counselor about the episode, said her mind relentlessly replays the scene of her on her knees, looking down the barrel of a loaded gun. In the recording of her 911 call, she can be heard sobbing and begging Mr. Holten to leave. He can be heard responding, between expletives, that she is going to die.

Mr. Holten — who later pleaded guilty to attempted first-degree assault and was sentenced to more than six years in prison — ordered her upstairs to her bedroom, forcing her to show him that she still had their wedding photos and other mementos. He then offered her a deal: he would put the gun down if she promised to drop the protection order, give him custody of their son and not call the police. When she tearfully assented, Mr. Holten placed his 9-millimeter carbine — the same weapon Ms. Holten believes she saw at his home a month earlier and cited in her court petition — in a hallway closet. That was when they both heard a male voice say "Police Department."

Her legs buckled, and she crumpled to the ground.

"I wish in my case he had to surrender everything," she said. "If the cops had been able to take the firearms out of that household when they served him, I think it would have averted the entire thing."

*Griff Palmer contributed reporting. Kristen Millares Young and Jack Styczynski contributed research.*