Firearms Prohibition, Relinquishment & Compliance Bench Card:

*A summary of relevant statutes and case law**

Federal Statutes

- 18 U.S.C. § 922(g)(8) (The Gun Control Act): Prohibits possession of a firearm by any person subject to a civil protection order that:
  - Was issued after a hearing for which the respondent received actual notice and had an opportunity to participate;
  - Restrains the respondent from harassing, stalking, or threatening an intimate partner of the respondent or child of the intimate partner or respondent or engaging in other conduct that would place the intimate partner in reasonable fear of bodily injury to the partner or child; *and*
  - Includes a finding that the respondent represents a credible threat to the physical safety of the intimate partner or child *or* explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury.

Washington Statutes

- RCW 9.41.040(2)(a)(ii) (Unlawful possession of firearms): A person cannot own; access; have in their custody, control, or possession; or receive any firearm during any period of time that the person is subject to a protection order, no-contact order, or restraining order that:
  - Was issued after a hearing for which the person received actual notice and had an opportunity to participate, whether the court then issues a full order or reissues a temporary order;
  - Restrains the person from harassing, stalking, or threatening the protected person or child of the person or protected person, or engaging in other conduct that would place the protected person in reasonable fear or bodily injury to the protected person or child; *and*
  - Includes a finding that the person represents a credible threat to the physical safety of the protected person or child, *or* explicitly prohibits the use, attempted use, or threatened use of physical force against the protected person or child that would reasonably be expected to cause bodily injury; *or* includes an order under RCW 9.41.800 requiring the person to surrender all firearms and prohibiting the person from accessing, having in his or her custody or control, possessing, purchasing, receiving, or attempting to purchase or receive, firearms.

NOTE: If a Washington Court grants a protection order that meets the criteria in 18 U.S.C. § 922(g)(8) or RCW 9.41.040(2)(a)(ii), even if a judicial officer writes on the order that the firearm prohibition does not apply, law enforcement shall enter the respondent as prohibited in their databases when they enter the order pursuant to RCW 7.105.325(2) because the order meets all of the legal criteria for firearm prohibitions.

Washington Statutes, cont.

- RCW 9.41.800 (Surrender of weapons or licenses):

RCW	An OTSW shall or may be issued if one of the following	Ex Parte	Full Order
9.41.800(1)	Preponderance of the evidence that Respondent: Used a weapon in a felony, **or** Is ineligible under RCW 9.41.040 (unlawful possession law)	Mandatory (shall be issued)	Mandatory (shall be issued)
9.41.800(2)	Protection order*, or no contact order or restraining order (issued under certain statutes), was issued (after a hearing for which Respondent had notice) that restrains Respondent from harassing, stalking, or threatening Petitioner or Petitioner's child or engaging in other conduct that would place them in reasonable fear of bodily injury; **and** (i) Includes a finding that Respondent represents a credible threat to the physical safety of Petitioner or Petitioner's child; **or** (ii) Explicitly prohibits the use, attempted use, or threatened use of physical force.	N/A	Mandatory (shall be issued)
9.41.800(3)	Preponderance of evidence that irreparable injury could result if OTSW not issued.	Discretionary (may be issued)	N/A
9.41.800(4)	Preponderance of evidence that serious and imminent threat to public health or safety or to health or safety of any individual will occur if OTSW not issued.	Discretionary (may be issued)	Discretionary (may be issued)

*Applies to all types of civil protection orders other than ERPOs (which already prohibit firearms): Domestic Violence, Sexual Assault, Stalking, Anti-Harassment, and Vulnerable Adult

- RCW 7.105.310(m): Consider RCW 9.41.800 re: an OTSW as relief for temporary and full protection orders.
  - *See also* ***Hudon Obo HP & SP v. Piffath***, 577 P.3d 944 (2025): If a renewed protection order satisfies the elements of the weapons surrender statute, it is reversable error to fail to enter an OTSW upon granting renewal, even if no OTSW was granted with the initial protection order.

- RCW 7.105.362: If OTSW is entered at ex parte, but the court later denies the full protection order, the court must extend the OTSW to keep it in effect until the period for a petitioner to file a motion for reconsideration or revision has passed. This does not apply if allowing the OTSW to be in effect would be manifestly unjust (e.g., the temporary protection order was entirely without merit or the petitioner was engaged in abusive use of litigation or exerting coercive control over the respondent).

Washington Statutes, cont.

- RCW 9.41.801(6): Governs compliance review. Courts are required to develop procedures to verify timely and complete compliance with OTSWs, including compliance review hearings to be held as soon as possible upon receipt from law enforcement of proof of service.
  - *See* ***Dela Llana v. Holiwell***, No. 86474-2-I, 2025 WL 86348 (2025) (published): Trial courts have a statutory duty under RCW 9.41.801 to oversee compliance with OTSWs. A trial court cannot "abandon its duty" by effectively releasing a respondent from his legal obligations without credibly accounting for the location of weapons to be surrendered. Imposing a monetary contempt sanction that would be purged upon compliance with the order to surrender weapons was not sufficient and was an abuse of discretion.
  - *See* ***Braatz v. Braatz***, 2 Wn. App. 2d 889, 413 P.3d 612 (2018): The restrained person has the burden to prove by a preponderance of the evidence that they have surrendered their firearms and other dangerous weapons.
  - *See also* ***Sayson v. Espinoza***, No. 84168-8-I, 2023 WL 4560228 (2023) (unpublished): "it is... the court's burden to take appropriate action if the evidence demonstrates that the restrained party is not in compliance with the order to surrender firearms and dangerous weapons. Neither the protected party nor the State has any burden to act on the restrained party's noncompliance."

Constitutional Provisions – U.S. 2nd Amendment and WA State Article 1, Section 24

- ***District of Columbia v. Heller***, 554 U.S. 570, 128 S. Ct. 2783 (2008): The 2nd Amendment protects an individual right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home. But…"[l]ike most rights, the right secured by the 2nd Amendment is not unlimited" and "…nothing in the opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places …or laws imposing conditions and qualifications on the commercial sale of arms."
- ***New York State Rifle & Pistol Association, Inc. v. Bruen***, 597 U.S. 1, 142 S. Ct. 2111 (2022): A regulation affecting the right to bear arms must be rooted in the "historical tradition of firearm regulation" in the United States.
- ***United States v. Rahimi,*** 602 U.S. ____, 144 S. Ct. 1889 (2024): When an individual has been found by a court to pose a credible threat to the physical safety of another, that individual may be temporarily disarmed consistent with the 2nd Amendment. Refines *Bruen* test: modern firearm regulation should be "relevantly similar" to a historical firearm legal regime but need not be a "historical twin."
- Executive Order 14206 – Protecting Second Amendment Rights (February 7, 2025): Directed the Attorney General to review every position taken by the federal government in "all ongoing and potential litigation that affects or could affect the ability of Americans to exercise their Second Amendment rights[.]"
- ***In re Domestic Violence Prot. Ord. for Montesi***, 34 Wn. App. 2d 777, 572 P.3d 459 (2025), *review denied*, No. 104410-1: Division I held that Washington's weapons surrender statute does not violate the 2nd Amendment. For context, the trial court granted a Domestic Violence Protection Order against the appellant that required the surrender of weapons in his possession. The appellant failed to comply and was found in civil contempt. He subsequently appealed the constitutionality of the weapons surrender statute.

Constitutional Provisions – U.S. 4th & 5th Amendments and WA State Article 1, Sections 7 & 9

- ***In re Domestic Violence Prot. Ord. for Montesi***, 34 Wn. App. 2d 777, 572 P.3d 459 (2025), *review denied*, No. 104410-1: Division I held that the current weapons surrender statutory scheme does not violate the 4th or 5th Amendments and affirmed the trial court's finding of civil contempt for failing to comply with the weapons surrender requirements. Supreme Court review of this decision was denied on November 5, 2025.
    - *See also* ***In re Domestic Violence Prot. Ord. for Hernandez***, No. 40749-7-III, 2025 WL 2779176 (2025) (unpublished): Relying on *Montesi*, Division III held that ordering surrender of weapons is mandatory when the statutory requirements for surrender under RCW 9.41.800 are satisfied. This mandate violates neither the 4th Amendment nor Article 1, Section 7.
- ***State v. Flannery***, 24 Wn. App. 2d 466, 520 P.3d 517 (2022)*:* Division II affirmed the trial court's finding that the former 2019 weapons surrender statutory scheme violated the 4th and 5th Amendments to the U.S. Constitution, and the counterparts in the Washington Constitution. The issue came up in the context of a no-contact order issued in a criminal case. *Flannery* was not appealed.

  NOTE: *Flannery* was decided before significant changes to the firearm surrender statutes, including added immunity provisions.
- Current pending appellate case:
    - Division II: Medlin v Miller (No. 601842)

  NOTE: There is no horizontal stare decisis in WA Court of Appeals. ***In re Arnold***, 190 Wn.2d 136, 410 P.3d 1133 (2018). Decisions may be persuasive but not binding on other divisions or panels at the Court of Appeals. If there is a split among Court of Appeals decisions, *Arnold* contemplates that the Washington Supreme Court should then grant review and resolve the split.
- Immunity Provisions (Current statutory scheme, effective 7/23/2023):
    - RCW 9.41.801(9)(a): The act of voluntarily surrendering firearms or weapons, providing testimony relating to the surrender of firearms or weapons, or complying with an order to surrender and prohibit weapons issued pursuant to RCW 9.41.800 or 10.99.100, and any information directly or indirectly derived from such act or testimony, may not be used against the person subject to the order in any criminal prosecution under this chapter, chapter 7.105 RCW, or RCW 9A.56.310, or in any criminal prosecution pursuant to which such order to surrender and prohibit weapons was issued, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.
    - RCW 9.41.801(9)(c): If the person subject to the order establishes such a realistic threat of self-incrimination regarding possible criminal prosecution that is not addressed by the immunity from prosecution set forth in (a) of this subsection, the court shall afford the relevant prosecuting attorney an opportunity to offer an immunity agreement tailored specifically to the firearms or weapons implicated by the potential self-incrimination. To achieve the purposes of this section, any immunity offered should be narrowly tailored to address any realistic threat of self-incrimination while ensuring that any other firearms not implicated are surrendered.
    - RCW 9.41.801(9)(d): Any immunity from prosecution beyond the immunity set forth in (a) of this subsection, may only be extended by the prosecuting attorney. If the prosecuting attorney declines to extend immunity such that the person subject to the order cannot fully comply with its surrender provision without facing a realistic threat of self-incrimination, the court's order must provide for the surrender of every firearm, dangerous weapon, and concealed pistol license that does not implicate a realistic threat of self-incrimination. The order's prohibitions regarding accessing, purchasing, receiving, or attempting to purchase or receive, any firearms or other dangerous weapons, or concealed pistol license, remain in effect.

Constitutional Provisions – 4th & 5th Amendments, cont.

- Immunity Provisions, cont.:
  - ***Kastigar v. United States***, 406 U.S. 441, 92 S. Ct. 1653 (1972): The immunity that a federal statute provided was "coextensive with the scope of the privilege against self-incrimination" and "sufficient to compel testimony over a claim of the privilege." The defendant therefore was compelled to testify.

    NOTE: The federal statutory language in *Kastigar* is similar to the immunity stated in RCW 9.41.801.

- Additional Evidence Production Cases
  - ***Baltimore City Dep't of Soc. Servs. v. Bouknight***, 493 U.S. 549, 555, 110 S. Ct. 900 (1990) (citing *United States v. Doe,* 465 U.S. 605 & n.10, 612 (1984)): "[A] person may not claim the [Fifth] Amendment's protections based upon the incrimination that may result from the contents or nature of the thing demanded." *Bouknight* held that the Fifth Amendment did not bar the government from requiring the petitioner to produce the person (or body) of her severely abused child or face sanctions for noncompliance.
  - ***Shapiro v. United States,*** 335 U.S. 1, 32, 69 S. Ct. 1375 (1948): The government may order the keeping and production of records that may be used in prosecuting statutory violations committed by the record-keeper "when there is a sufficient relation between the activity sought to be regulated and the public concern so that the government can constitutionally regulate or forbid the basic activity concerned."
  - ***In re Harris,*** 221 U.S. 274, 279, 31 S. Ct. 557 (1911): "The question is not of testimony, but of surrender, - not of compelling the bankrupt to be a witness against himself in a criminal case, present or future, but of compelling him to yield possession of property that he no longer is entitled to keep."

- Additional Immunity Case
  - ***In re Dependency of AM-S***, 196 Wn.2d 439, 474 P.3d 560 (2020): The court found that trial courts do not have the inherent authority to confer derivative use immunity on parents in dependency proceedings without statutory authority and over a prosecutor's objection.

- Additional 4th Amendment/Article 7 Cases
  - ***City of Pasco v. Shaw,*** 161 Wn.2d 450, 166 P.3d 1157 (2007): "Both the Fourth Amendment and article I, section 7 provide strict privacy protections where invasion of a person's home is involved. However, unless the person conducting the inspection is a state actor, no violation of these constitutional provisions occurs."
  - ***State v. Ramirez***, 49 Wn. App. 814, 49 P.2d 814 (1987): Exigent circumstances did not exist to justify warrantless entry by law enforcement into a hotel room, therefore, motion to suppress evidence obtained should have been granted.
  - ***State v. Clark***, 48 Wn. App. 850, 743 P.2d 822 (1987): "Whether state action has occurred depends on the circumstances of a given case.... Critical factors in determining whether a private person acts as a government agent include whether the government knew of and acquiesced in the intrusive conduct and whether the party performing the search intended to assist law enforcement efforts or to further his own ends."