

# COLORADO'S VAGUE CONNECTION

*Guns And Domestic Violence*

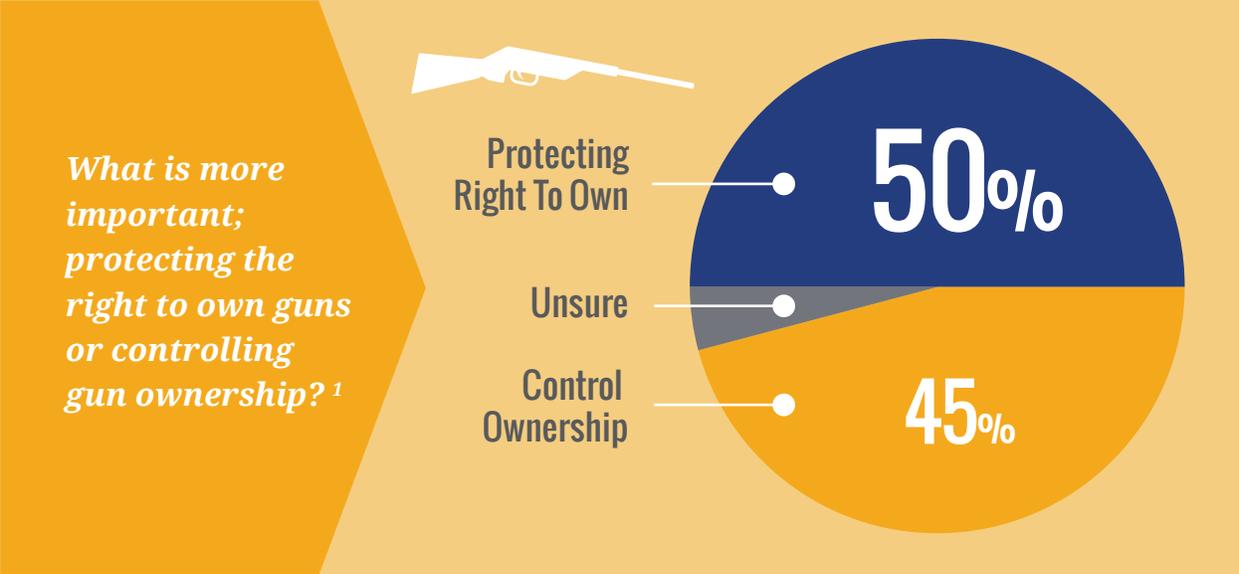


A White Paper Presented By

THE FOLEY LAW FIRM

# COLORADO'S VAGUE CONNECTION: **Guns And Domestic Violence**

*According to a Denver Post Survey, 50 percent of Coloradans think protecting gun rights is more important than controlling gun ownership.*



Nevertheless, if you are a gun owner in Colorado, you need to understand the risks posed to your liberties by Colorado's new domestic violence gun laws.

In 2013, Colorado Governor Hickenlooper signed into law SB-197. While on the face this bill appears appears to be straightforward, the bill in fact creates a law that is so vague

that it threatens the rights of gun owners throughout the state, even if you have not broken the law.

That's right. You read that correctly. This law could result in you spending time in jail even if you are innocent, and even if you have not actually been involved in domestic violence, the very problem that the bill is supposed to be preventing.

Hunters should realize that this bill could mean they will never hunt again if they face domestic violence charges. Soldiers should realize that this bill could mean the end of their military careers. Everyday citizens should realize that this bill will render them incapable of defending themselves through the exercise of their Second Amendment rights.

*23% of Americans own a gun for purpose of self-defense, according to Gallup.<sup>2</sup>*



**23%**



For that reason, our law firm provides this white paper addressing the problems with the new law so you can better understand the issues at hand and take action to correct them in your legislature as soon as possible.

## A KEY POINT: Domestic Violence Is A Technical Rule, Not A Criminal Charge.

We first address here a foundational point that few people understand: domestic violence itself is not technically a criminal charge. It is, instead, a technical legal rule known as a sentence-enhancer.

*What does that mean?  
That means that under certain circumstances, domestic violence can be attached as a label to any crime at all in order to increase the penalties you face.*

The domestic violence label results in you being subject to a set of consequences that would normally not have been involved in your case, consequences you did not expect.

If you are facing seemingly simple charges for mischief or theft, for instance, you can also have the

domestic violence label attached to your case. Once that happens, you become subject to Colorado's newly enacted domestic violence gun laws.



Colorado law defines domestic violence vaguely enough that it can apply to a number of situations you might not normally think of as domestic violence. For instance, perhaps you decide to steal your CDs back from your wife while you live separately. Unbeknownst to you, those CDs in Colorado are what is called joint property, meaning your wife also owns them. If domestic violence is attached to the theft of those CDs, you become subject to Colorado's new gun laws.

## NOT EVEN COURTS UNDERSTAND COLORADO'S GUN LAWS Related To Domestic Violence

Even when stated in its most straightforward fashion, the law raises a number of red flags for you as a gun owner: if your case involves allegations of domestic violence, you must surrender your weapons. Perhaps you would think the law would be made clear once you read it in detail.

Unfortunately, that is not the case. Upon closer examination, the law only poses more unsettling questions when it comes to your Second Amendment rights.

As mentioned above, allegations of domestic violence in a case mean that a gun owner must remove all guns from his or her possession; the individual may not access any guns at all. But what is the process for doing so? The law is not always

clear as to the exact steps in this process. The lack of clarity on this point alone should cause you grave concern as a gun owner.



It should not surprise you, therefore, that this lack of clarity has resulted in the uneven and inconsistent application of the law throughout different parts of Colorado. Even within a single jurisdiction, in fact, authorities may be applying the law differently. This erratic application of *justice*, of course, is one of the precise motivations for protecting oneself through the exercise of Second Amendment rights in the first place.

Even if you attempt to comply with the law, the law itself may thwart your efforts. While the law allows you to be released on bond, it requires in exchange that you forfeit all your weapons. Unless you are willing to surrender your weapons, you will remain in jail even though you are not guilty of anything. More on that in a moment.

Even if you do part with your guns, the person receiving your guns for safe-keeping must go through a federal firearm transfer background check. Aside from the embarrassment to you and the alarming Second Amendment issues, people will not gladly submit to such an intrusion into their lives.

This particular point merits your close scrutiny. Why? Because here, believe it or not, is where you could spend time in jail even though you are innocent.

Let us explain how.

Assume you have been arrested in relation to a domestic violence call. You wish to be released on bond, so you agree to release your weapons, for sake of discussion, to your cousin. Your cousin agrees, but, unfortunately, does not pass the federal firearms transfer background check. At that point, if you can't transfer your guns to anyone, you cannot be let out of jail even if you are assumed to be innocent until proven guilty.

From a legal perspective, it is difficult for us to overstate the absurdness of that result.

*Given the fundamental American commitment to this most basic principle, innocent till proven guilty, it is baffling how this law was even introduced as a bill, let alone enacted.*

## **SOME REASONS** Why The Law Poses Such Practical Difficulties

Domestic violence matters are a tragically complicated area for law enforcement. Colorado's new gun laws only serve to highlight how difficult domestic violence situations truly are.

By way of example, it is not an uncommon situation for a marital spat to get heated and for a neighbor to misunderstand. When that neighbor calls the police, he or she sets in motion a multi-part legal machine.

Police who respond to a domestic violence call do not want to leave without making an arrest. Why not? Because they do not want to leave the scene and then have to be held accountable if the situation were indeed to escalate. Unfortunately, merely by covering their own bases, the police have left you in a

precarious position with respect to your Second Amendment rights.

The situation becomes much more grave and the vagueness of the law even more apparent if you consider how such a situation can affect you if you are in law enforcement or in the military. Particularly here in the Colorado Springs area, five military bases make the military an essential part of our community.

Under Colorado's new gun laws, should soldiers be involved in domestic violence matters, they can lose their weapons, their identities as soldiers. Such a situation can end a promising military career.

Another common scenario further highlights the problems with this new gun law. Consider the situation in which a spouse decides to manipulate the law to gain an unfair advantage in a divorce involving children. Colorado's new domestic violence gun law offers that spouse another tool.

Should that spouse so wish, he or she could threaten to call the police and claim that a domestic violence situation exists, even if it does not. It has been estimated that as many as 75percent of domestic violence-related protection orders may arise out of false claims.

*According to Charles E. Corry of the Equal Justice Foundation claims, the percentage of protection orders in domestic violence cases based on false claims may be as high as 75%.*



Not only would the other spouse potentially lose his or her children to a restraining order, now but he or she may also face the loss of their Second Amendment rights and liberty while he or she sits in jail without having done anything illegal.

In the case of a soldier, even if that soldier's attorney gets the case against the soldier dismissed, that process could take months. Further, after the dismissal, that soldier is left with no recourse for saving his or her military career. As you can see just from these few basic examples, the vagueness of the law makes it ripe to be abused by the unscrupulous.

### **STEPS YOU CAN TAKE** If You Fall Victim To Colorado's New Domestic Violence Gun Laws

As you can see, confusion reigns in Colorado's legal system today when it comes to the enforcement of the new domestic violence gun laws.

So even if you think you know the law, that does not mean that the courts or the police will agree with you.

Therefore, while Second Amendment advocates are well-known for their knowledge of the law, many of them could use professional assistance in the application of that law to a set of unique circumstances. It is exactly the lawyer's job to provide clients with an understanding of how to successfully navigate such a confusing and unsettled legal terrain.



Particularly because of the seemingly jurisdiction-by-jurisdiction approach to the application of this new law, you will want to find an attorney who understands how the different jurisdictions are applying the law.

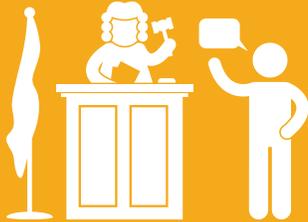
Often, an experienced attorney can explain to you how he or she will tailor any advice to you based on your geographic location.

An experienced attorney makes it his or her job to guide you through these difficult issues while also limiting any damage to your life and your career. Because an experienced attorney has often gone through the process you are facing many times, you do not have to take the risk of learning the pitfalls of this vague process by trying to serve as your own lawyer.



If you are involved in legal proceedings related to domestic violence and you are concerned about protecting your Second Amendment rights against Colorado's new domestic violence gun laws, you should avoid making a common mistake: thinking that you will resolve the issue by simply

walking into court and explaining to the judge what really happened.



*Many perfectly intelligent people think they will simply go to court and tell the judge exactly what happened.*

Many of those perfectly intelligent people do not succeed, not because they did something wrong, but because the rules and practices of the law are more complicated than that.

Because the law depends on a number of technical rules apart from *what really happened*, you leave yourself at the mercy of the prosecutor when you try to just tell it like it is. If you face an

overzealous prosecutor, you are attempting to protect yourself against someone who understands the rules of the game much better than you do. Even if you are right, you very well can lose.

Instead of leaving yourself at the mercy of a prosecutor, make sure you at least go in with a strategy informed by someone who understands how the system works. An attorney in that situation can often be your best bet.

*An old saying applies to those who decide to represent themselves without any legal training: A man who represents himself has a fool for a client.*

## CONCLUSION

Gun rights in Colorado enjoy a long history of support. They have also endured a number of misguided efforts to restrict them in the name of lowering crime. The results speak for themselves. For instance, even though the state allows guns on college campuses, the University of Colorado has long resisted these laws. Colorado State University, by contrast, has not. During that time, crime at the

University of Colorado has gone up whereas crime at Colorado State has gone down.

Ultimately, our Second Amendment rights will prevail only if we hold a clear understanding of the laws and the issues. By familiarizing yourself with the issues presented in this white paper, you will be well on your way to understanding why you need to be wary of Colorado's new domestic violence gun laws.

*The University of Colorado resisted the state's concealed-carry law and crime went up. Colorado State University complied with it and crime went down.*



**+35%**

Crime at  
The University of  
Colorado Is Up



Crime at  
Colorado State  
University Is  
Down

**-60%**

This decade of statistics makes a compelling case for gun ownership. If the gun controllers were right, Colorado State should have seen a surge in crime, while its gun-banning sister institution should have been an Eden of security and lawfulness. That's not what happened. As Clayton E. Cramer and David Burnett wrote in a paper for the Cato Institute, "crime at the University of Colorado has risen 35 percent since 2004, while crime at Colorado State University has dropped 60 percent in the same time frame."<sup>4</sup>

## SOURCES:

<sup>1</sup> [http://www.denverpost.com/breakingnews/ci\\_22411498/poll-gun-legislation-coloradans-views-change-since-september](http://www.denverpost.com/breakingnews/ci_22411498/poll-gun-legislation-coloradans-views-change-since-september)

<sup>2</sup> <http://www.gallup.com/poll/102418/How-Americans-Protect-Themselves-From-Crime.aspx>

<sup>3</sup> <http://www.dvmen.org/dv-16.htm>

<sup>4</sup> <http://www.bostonglobe.com/opinion/2012/03/20/safer-society-with-guns/YxP7AjrSUannxAckCpTJ/story.html>

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