

# Advocates hope new laws could help close gun loophole

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The man had repeatedly knocked on the woman's door and peered through her windows in violation of a restraining order.

It was unknown whether he had a gun.

Under state law, he was ordered to give up his guns as part of a domestic violence protective order, but he had failed to sign a gun dispossession affidavit. Later, while in custody for violating the restraining order, he refused to leave his jail cell for a mandatory court appearance.

The woman, fearing for her safety, dabbed her eyes as she pleaded for a Davidson County Circuit Court judge in a recent hearing this month to extend the protective order for another year.

Hearing the case, Special Master Dana Ballinger agreed.

"Well we know where to find him to serve him," she said.

The court could do little more under Tennessee's current gun dispossession laws.

But gun control advocates hope a new push for reform in the wake of the Covenant School mass shooting this year will help to close what they say is a dangerous loophole in domestic violence cases that allows offenders to keep their guns.

Tennessee is one of several states that require accused domestic abusers to temporarily surrender their guns under a protective order. But while some states require the guns to be surrendered to law enforcement, Tennessee, along with other states like Texas and Florida, allow what is known as

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## Loophole

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third party dispossession, meaning the person can transfer ownership to a friend or family member.

Advocates say that's where the problems start.

Tennessee is the only state that doesn't require any information from the third party or even the name of the friend or family member, making it impossible for authorities to verify whether the handoff actually happened.

Defendants are also required to file an affidavit stating that they have surrendered their firearms, but with a lack of resources and limited enforcement, most courts rarely follow up if the person fails to sign one.

Linda McFadyen-Ketchum, who volunteers with the gun control advocacy group Moms Demand Action Tennessee, said the law equates to an honor system for domestic violence offenders.

"There's no follow up or enforcement to make sure they actually gave up their guns, we just believe their word," she said. "Nobody is watching."

McFadyen-Ketchum and other activists have been working to close this loophole for several years, with little success.

But this year could be different.

Gov. Bill Lee has said he plans to push forward in an August special session a proposal that would expand existing state law on gun dispossession to include people who have been found by a judge to be a threat to themselves or others.

The action is typically known as a "red flag" law but the governor has avoided that term due to the political connotations. He insists his proposal is different than laws in other states where the term is used.

His framework includes some language that would strengthen the state's third party dispossession laws, but it's unclear what will happen in this summer's special session as the proposal faces strong opposition from Republican lawmakers.

Still, the effort is promising, said McFadyen-Ketchum.

"We're closer than we've ever been to any kind of gun reform and I have a tiny bit of hope," she said. "But we know it will be a challenge. People are very attached to their firearms."

In the meantime, the Davidson County Court system just in recent months has started working to better enforce gun dispossession in domestic violence cases, with stronger oversight and a special "firearms docket" with compliance hearings to ensure people are following the law.

While judges have said it's a step in the right direction, their power under the current law is limited.

### A dangerous loophole

This isn't the first time advocates in Tennessee have pushed to close loopholes in gun dispossession in the wake of a tragedy.

The issue came to the forefront in 2018 when a gunman killed four people at a Waffle House in Antioch. The shooter, who had a history of erratic behavior, had been ordered to give up his firearms due to prior offenses.

The guns were given to his father in Illinois under the state's third party dispossession law, but the father later gave back a gun to his son, and that weapon, an assault-style rifle, was used in the shooting. The father was later convicted and sentenced to 18 months in prison for illegally giving his son the gun.

Becky Bullard with the Nashville Metro Office of Family Safety, which supports domestic violence victims, said the agency in 2019 supported a bill that would have strengthened the state's gun dispossession laws, but it failed to get enough votes.

Bullard for the past seven years had been pushing for stronger enforcement in the Davidson County court system but was told there weren't enough resources.

Finally, after a February 2020 meeting with judges and administrators, the court agreed to begin holding compliance hearings for people who failed to file affidavits of gun dispossession, but the pandemic threw a wrench in the process, Bullard said.

The courts this past year have now started to hold the hearings, which Bullard calls "baby steps in the right direction."

### Courts stepping up

When a domestic violence order of protection is granted, a respondent is required to surrender their guns within 48 hours and then file a sworn affidavit

with the court stating that they have given up their guns. But judges have said a "significant number" of people fail to comply.

In December, Davidson County Circuit Courts started a special "firearms declaration" docket where each Thursday defendants who have failed to file an affidavit are ordered to appear in court and tell a judge whether they still have guns.

Since December, the Circuit Courts have filed 197 compliance orders for people to come to court. For the no-shows, a judge can issue a body attachment order, which acts as a warrant for the person to be arrested and brought to court.

Judge Stanley Kweller, one of three judges who oversee such cases, said he's seen better compliance since the firearms docket started.

"There was a level of frustration that we weren't doing as much as we could and we wanted to do more," he said.

While Davidson County is taking additional steps, most other courts in Tennessee fail to follow up on people who are not in compliance due to lack of resources and vagueness in the laws, Bullard said.

But Bullard said she knows of one small county taking action.

In East Tennessee along the Kentucky border, Scott County has focused on firearms compliance since it started its domestic court in 2019, said Christy Harness, head of the Scott County Family Justice Center.

Harness said the court secured state funding for the project and has a proactive judge who coordinates with staff and closely monitors cases with protective orders.

"We have one judge who deals with all of it," she said. "It's made a huge difference."

Back in Davidson County, Judge Allegra Walker, who oversees domestic violence cases in General Sessions Court, has also been holding compliance hearings over the past year.

While it does add some level of safety, she said, the hearings don't address the larger issue of third party dispossession.

With no clear law in place, Walker said she has no way to follow up with a third party to ensure a respondent has actually transferred ownership of their guns. She's also limited since the proceedings are civil instead of criminal.

Walker said she's had victims in court pleading for help, and saying their abuser still has their guns despite being ordered to give them up.

"The way the law is written, it doesn't give me much power," she said. "It's frustrating and concerning with respect to the safety of the victims of domestic violence."

### Hope for change

Now, in the aftermath of the March 27 Covenant School shooting that left six victims dead, including three children, the Republican governor is making a rare push for stronger gun control. And his plan would add teeth to current gun dispossession laws.

His framework for a mental health extreme risk protection order still allows people to transfer ownership to a third party, but courts would be required to hold a hearing if the respondent fails to file an affidavit.

The law would also make it a felony for a person to give, sell or lend someone a gun when they know the receiver is under a temporary mental health order of protection.

While it's unclear whether Republican lawmakers will consider the governor's proposal this summer, Democratic lawmakers in the meantime are ramping up with their own bills.

Sen. Heidi Campbell, D-Nashville, has more than a dozen gun control bills, including two that would address third party dispossession. While Democrats have had little success in the past, Campbell said she's hopeful more Republicans will be on board this year after the Covenant shooting.

"We're past the point of needing common sense gun legislation," she said. "Now that we have just a tiny bit of interest from the controlling party in this state, I'm cautiously optimistic."

For Bullard with the Office of Family Safety, she hopes any new legislation will help protect women. She noted that Tennessee is among the top states for domestic gun violence.

"This is such a huge and very deadly gap that we are continuing to struggle to close," she said. "If we could close this gap I think we would see a huge shift in the epidemic in Tennessee of violence against women."

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