


Legal Liability for Returning Firearms to Suicidal Persons Who Voluntarily Surrender Them in 50 US States

Temporary transfers of firearms from suicidal persons is a strategy to reduce the incidence of suicide deaths. We discuss a barrier to the effective operation of voluntary temporary firearm transfer laws: the dearth of guidance on the liability for returning firearms to persons who voluntarily surrender them. We examine the laws of all 50 US states that regulate temporary surrenders of firearms and evaluate whether any provisions govern liability for returning temporarily surrendered firearms.

Although 14 states create background check exceptions to permit temporary transfers of firearms from an owner to family, friends, retailers, or law enforcement, no states prescribe procedures for returning those firearms.ability for returning the firearms to people who voluntarily surrendered them.

We recommend amending state laws to clarify the process and liability for returning temporarily surrendered firearms to the original owner. Such amendments would be intended to mitigate the potential chilling effect that lack of clarity and presumption of liability may impose on efficiently reducing firearm access to protect firearm owners at risk for suicide. (*Am J Public Health.* 2020;110:685–688. doi:10.2105/AJPH.2019.305545)

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 See also Fleegler and Madeira, p. 619.

Suicide, often by firearm, is a major public health problem. Suicides claimed 47 173 lives in the United States in 2017, and 50% used a firearm.¹ When comparing people in firearm-owning households to people not in firearm-owning households, there was no difference in terms of rates of mental illness or suicidal ideations.^{2,3} The risk of completed suicide is especially high for people in firearm-owning households because such individuals have immediate access to lethal means.² Numerous medical and injury-prevention organizations have highlighted lethal means restriction as an effective intervention to reduce suicides by firearms.⁴

Barber and Miller noted that a lethal means–restriction strategy to reduce suicides rests on four observations.⁵ First, suicidal crises tend to be short lived and quickly contemplated. Second, the means generally depend on availability and access. Third, the lethality of the method available during an attempt plays a pivotal role in whether the person survives. Fourth, a large percentage of those who survive a nonfatal suicide attempt generally do not proceed to die by suicide. Thus, “helping people survive periods of acute suicidal risk by reducing their access to highly lethal methods is likely to help many people survive in both the short and long term.”^{5(S265)}

Firearms are a means of suicide requiring minimal preparation and planning. Because of the lethality of firearms, there is no chance to turn back once someone pulls the trigger.⁵ When a lethal method of suicide is unavailable, a person may delay or abandon their attempt.^{5,6} Reducing access to lethal means, such as firearms, during periods of suicidal ideation can save lives.⁵ Laws facilitating temporary transfer of firearms from persons at risk for harming themselves is one policy approach for saving lives. McCourt et al. focused on temporary transfers of firearms from suicidal individuals to family and friends, law enforcement, and firearm retailers as a risk mitigation tool and the barriers that state laws requiring background checks may pose to temporary transfers.⁷

We focus on another important source of possible concern for key players implementing temporary transfer strategies: the rules and risks surrounding the

return of firearms that were temporarily surrendered by individuals at risk for suicide death (i.e., transfer-back). We examine the key questions regarding liability for returning firearms to persons who temporarily surrender them, discuss the few existing relevant laws, and propose key areas to address in legislation.

TEMPORARY TRANSFER-RELATED LAWS

Temporary transfer laws are an increasingly prevalent strategy to limit the availability of firearms to persons at risk for suicide, as are extreme risk protection orders (ERPOs). ERPOs involve involuntary relinquishment of firearms through a court order, whereas temporary transfer laws facilitate voluntary firearm transfers. Both strategies attempt to temporarily keep firearms away from an at-risk person. The advantage of temporary transfers

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is that the removal can be accomplished voluntarily and informally without the more onerous burden of a concerned family member or other petitioner having to go to court to obtain an order. We focus on barriers to the effective operation of temporary transfer laws.

McCourt et al. noted how background check requirements can pose obstacles to the temporary transfer of firearms for suicidal individuals.⁷ Background checks are used to identify persons potentially prohibited from owning a firearm.⁸ Appendix A (available as a supplement to the online version of this article at <http://www.ajph.org>) summarizes all 50 states' background check requirements and temporary transfer-related laws as of July 2019. Currently 20 states and the District of Columbia require background checks for a transfer between private parties.⁸ Twelve states and the District of Columbia require background checks at the time of transfer.⁸ The other eight states require the transferee to have a permit, meaning a background check was conducted before transfer.⁸ In these laws and throughout this commentary, "transferor" refers to the person transferring the firearm, and "transferee" refers to the individual or organization receiving the firearm.

Of the jurisdictions that currently require background checks or permits, 14 states have exceptions that allow firearm owners to voluntarily transfer their firearm to another during a crisis. Persons who may temporarily hold the firearm for the at-risk person range from immediate family members to anyone at all. Some states allow transfers only to prevent "imminent death or serious physical injury."⁹ Maximum transfer times for temporary transfers vary from 1 to 30 days.^{10,11}

There is a lack of evidence directly analyzing the use and effectiveness of temporary transfer laws in reducing suicides. Data on the effectiveness of having suicidal individuals relinquish their firearms in periods of crisis do exist. Swanson et al. undertook a study to determine the effectiveness of Connecticut's ERPO laws in preventing suicides.¹² They determined that 21 individuals who had their firearms seized by an ERPO had later died from suicide, with 6 dying by gunshot. Based on fatality rates for different suicide methods, they extrapolated that these 21 deaths represented 142 suicide attempts. They determined that if firearms had been available to these individuals and used in more of the attempts, more ERPO individuals would have died by suicide. Their model estimated that approximately one suicide was averted for every 10 to 11 gun seizures.¹²

TEMPORARY TRANSFER CONCERNS AND CONFUSIONS

A large issue with most temporary transfer laws is that they do not clearly define what, if any, liability attaches to the transferee for transfer-back of firearms after the at-risk individual's crisis is over. This lack of clarity and the confusion surrounding liability is a potentially large obstacle to the willingness of key persons and entities to store firearms or aid in temporary transfers of firearms to prevent suicides. Although Congress has limited the liability of firearms manufacturers and dealers for harms committed with their products under the Protection of Lawful Commerce in Arms Act of 2005, there is no law limiting the liability of good Samaritans and

key entities that temporarily hold firearms for at-risk persons to reduce the risk of suicide.

Law enforcement and firearm retailers can be effective allies in reducing suicides by storing at-risk owners' firearms outside their home. Runyan et al. surveyed law enforcement officers and firearm retailers in eight Western states about their willingness to offer voluntary, temporary storage for suicidal individuals. They found that 77% of law enforcement officers and 67% of firearm retailers were willing to provide storage for firearm owners concerned about their own mental health.¹³

Pierpoint et al. investigated the barriers firearm retailers, in the same eight states, faced in providing firearm storage for suicidal individuals.¹⁴ They found that 58% of the firearm retailers surveyed cited federal laws as an obstacle to storing firearms for others, and 25% cited state laws. Around half of the retailers surveyed were not currently providing temporary storage, of whom 73% cited concerns of liability in returning the firearm, 78% cited liability in storing the firearm, and 81% cited concerns about determining the safety of returning firearms.¹⁴

Another study, by Brooks-Russell et al., surveyed law enforcement agencies in the same states about barriers to providing firearm storage.¹⁵ State or federal laws were not cited by most agencies as a barrier to storage.¹⁵ However, approximately one quarter of the agencies did not provide temporary storage: 71% cited legal liability concerns in storing the firearms, 74% cited concerns of legal liability in returning the firearms, and 69% cited concerns about determining the safety of returning the firearms.¹⁵

State laws facilitating temporary transfers of firearms from suicidal

individuals omit procedures for returning these firearms—and whether the person or entity temporarily holding the firearm incurs liability for returning the firearm to the person who surrendered it. State statutes are silent regarding liability for returning firearms to persons who temporarily surrendered them. Clarifying the process and legal liability surrounding the return of temporarily surrendered firearms is an essential step to addressing a potentially major impediment to temporary transfers as a tool to prevent suicide.

LAWS AND CASES ABOUT TRANSFER-BACK LIABILITY

To identify potentially relevant sources on the process of and potential liability for the return of temporarily transferred firearms to persons at risk for suicide, we conducted searches on the legal database Westlaw in July 2019 (see the box on page 687). Search terms are given in Appendix B (available as a supplement to the online version of this article at <http://www.ajph.org>).

Statutory Law

Many states' temporary transfer laws specify that the transfer can only be for a set amount of time. For example, Colorado's temporary transfer law allows loans of firearms for 72 hours or less.¹⁶ As McCourt et al. noted, it is not clear what occurs at the end of this 72-hour period, whether the period can be repeated, or whether the firearm must be returned automatically.⁷ Suicide attempts may occur anywhere from less than 10 minutes to weeks or months from the initial suicidal ideation.¹⁷ Thus, Colorado's statute may be problematic because a crisis may not resolve within the 72-hour

STATE SURVEY OF TEMPORARY TRANSFER LAWS AND TRANSFER-BACK LIABILITY

Type of Temporary Transfer Law	States With the Legal Provision
Background check requirement for private transfer	CA, CO, CT, DC, DE, HI, IA, IL, MA, MD, MI, NC, NE, NJ, NM, NY, OR, PA, RI, VT, WA
Temporary transfer exception	CA, CO, DE, HI, IA, IL, MD, NE, NM, NY, OR, PA, VT, WA
Specific provision on liability of firearm owner for temporary transfer	CO
Law addressing liability for returning firearm to a person who temporarily surrenders it	None

period, and returning the firearm could pose a risk.

Of the temporary transfer laws that exist, only Colorado specifically addresses liability during the temporary transfer period. CRS 18-12-112(6)(h) allows temporary transfers of firearms to any person for less than 72 hours.¹⁶ The provision further warns that “a person who transfers a firearm pursuant to paragraph (h) may be liable for damages proximately caused by the transferee’s subsequent unlawful use of the firearm.”¹⁶ This language refers to the liability of the person who decides to voluntarily surrender the firearm, rather than the person who receives and temporarily holds the firearm. The provision is silent on the process for returning the firearm and what liability attaches to the person providing temporary storage upon return of the firearm.

Among the states with temporary transfer laws, no state has legal provisions explaining the liability of persons who temporarily store the firearm and who subsequently return the firearm. The laws focus on criteria for who may receive the firearms, rather than procedures and liability for their return. For example, Oregon law defines a “transferor” as someone who intends to deliver a firearm to a transferee and says that during a

temporary transfer, the transferor must have “no reason to believe the transferee is prohibited from possessing a firearm or intends to use the firearm in the commission of a crime.”⁹ In Washington State, the temporary transfer law requires that the firearm not be transferred to a prohibited person and requires the temporary storage provider to return the firearms once the suicidal crisis passes.¹⁸

Case Law

Case law also generally does not address transfer-back liability for temporarily transferred firearms. Most case law involves issues involving confiscated firearms pursuant to court orders or arrests and petitions for the return of those seized firearms. A few cases involve negligence lawsuits against persons or entities for insecurely storing their firearms or against a law enforcement employer for returning a service firearm following psychological evaluations.

Although no case specifically addressed transfer-back liability, there are interesting examples of situations involving return or transfer of weapons. For example, in *Cygan v. City of New York*, the wife of a police officer who died by suicide sued his employer for negligence in

returning his service revolver to him following a psychological evaluation.¹⁹ The court determined that the employer was not liable: the suicide occurred 18 months after the evaluation, the evaluation was prompted by paranoia rather than suicidal behavior, the surrendered weapon was returned after the employee was cleared, and the returned firearm was not the cause of the officer’s suicide.¹⁹

In *Com. v. Morelli* the court determined that a firearm owner seeking return of confiscated firearms must produce evidence of lawful entitlement to possess the firearms and no disqualifying factors such as a felony conviction.²⁰

In *Chow v. State* the court addressed a charge of illegally transferring a regulated firearm between two private parties.²¹ The court determined that temporary transfers were exempt from general transfer requirements. Further, the court interpreted the relevant law to mean that parties involved in a transfer could be convicted under the provision only if they knew that the person they were transferring the firearm to was prohibited from owning the firearm or that they were directly violating the transfer procedures.²¹

RECOMMENDATIONS FOR CLARIFYING LIABILITY

For temporary transfer laws to work as intended, legislatures should address uncertainties about the procedures for the return of temporarily surrendered firearms and the potential liability faced by persons or entities who temporarily store firearms and then return them.

No state temporary transfer law specifically defines the liability faced by persons for returning firearms to the at-risk individual after the crisis is over or after the statutory period has expired. Many states’ temporary transfer laws appear to hold transferors liable, and in violation of state law, if they transfer firearms to a prohibited person. But it is unclear whether the person or entity who temporarily holds the firearm for a suicidal person falls under the definition of “transferor” upon return of the firearm to the owner.

A model law for temporary transfers must explicitly state whether a person or entity who temporarily stores a firearm for a person at risk for suicide faces liability for returning the firearm and under what circumstances. Legal clarifications should specifically define the procedures governing the return of a temporarily surrendered firearm and provide a release of liability for the individual or entity temporarily holding the firearm if procedures are followed. Requiring a mental health evaluation or interview with law enforcement before returning a firearm may aid in decreasing suicide risk but could also discourage individuals from transferring their firearms for fear of not having them returned.

Model legislation should also address extensions of the temporary transfer period if the person temporarily providing

storage determines that owners are still a threat to themselves or have become prohibited persons. The law could provide that such a determination requires surrendering the firearm to the nearest law enforcement for a more extensive hearing process to address the risks and rights at stake.

CONCLUSIONS

There are widespread gaps and silences in laws regarding the liability associated with the return of firearms that were temporarily surrendered to reduce access to lethal means for persons at risk for suicide. Although nearly all would agree that temporarily holding a firearm for a potentially suicidal person should occur, regardless of specific legislation, the more difficult issue is if and when that firearm should be returned to the owner and the liability concerns surrounding that return. Surveys indicate that legal liability is a chilling factor for firearm retailers and law enforcement—key potential partners for temporarily holding firearms for persons at risk for suicide.^{14,15} Amending state laws to clarify the procedure and liability for returning temporarily surrendered firearms can help address a barrier to the effective operation of this legal strategy for saving lives. We call attention to a potentially important barrier to effective operation of temporary transfer laws. We note that substantially more empirical work is needed on other unanswered questions, such as how often temporary transfers occur, their effect on reducing suicides, and whether firearm owners would be more likely to turn to law enforcement or retailers for storage than family and friends. **AJPH**

CONTRIBUTORS

M. J. Gibbons had full access to all study data and takes responsibility for the integrity of the data and the accuracy of the data analysis; she drafted the article and provided administrative and material support. M. D. Fan, A. Rowhani-Rahbar, and F. P. Rivara supervised the study. All authors contributed to the concept and design of the study; data acquisition, analysis, or interpretation; and critical revision of the article.

CONFLICTS OF INTEREST

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