

Colorado FFL Digest of Legal Changes June 2021

This is the legislative update for FFL holders in Colorado for June 2021. This information is not legal advice, and cannot be considered advice to any particular client. This is provided as an informational service only; you should contact your lawyer for further information and legal advice. This digest should not be disseminated or copied without permission of the author.

The legislative update for 2021 includes the following:

I. Expanded Firearm Transfer Background Check

https://leg.colorado.gov/sites/default/files/2021a_1298_signed.pdf

- a. With the passing of [HB 1298](#), a state requirement was established for licensed gun dealers to obtain approval for a firearm transfer from the Colorado Bureau of Investigation before transferring it.
- b. Under federal law, a licensed gun dealer can transfer a firearm to another person before receiving the results of a required background check, as long as three days have passed since the dealer started the check, according to the bill. State law doesn't generally require a background check prior to transfers.
- c. This bill prohibits the CBI from approving firearm transfers until the CBI determines its investigation is complete, and prohibits transfer to a person who has been convicted of specified misdemeanor offenses. The bill created a 60-day deadline for the CBI to complete its check.
- d. CBI can now deny the application for Colorado-only violations or convictions after the effective date of this law (June 19 2021) ; so the federal definition used by most agencies and law enforcement are now expanded in Colorado to preclude gun ownership for the following convictions within five years of the requested transfer:
 - i. (I) ASSAULT IN THE THIRD DEGREE, AS DESCRIBED IN SECTION 18-3-204; (II) SEXUAL ASSAULT, AS DESCRIBED IN SECTION 18-3-402 (1)(e); (III) UNLAWFUL SEXUAL CONTACT, AS DESCRIBED IN SECTION 18-3-404; (IV) CHILD ABUSE, AS DESCRIBED IN SECTION 18-6-401; (V) VIOLATION OF A PROTECTION ORDER, AS DESCRIBED IN SECTION 18-6-803.5 (1)(a) AND (1)(c)(I); (VI) A CRIME AGAINST AN AT-RISK PERSON, AS DESCRIBED IN SECTION 18-6.5-103; (VII) HARASSMENT, AS DESCRIBED IN SECTION 18-9-111 (1)(a); (VIII) A BIAS-MOTIVATED CRIME, AS DESCRIBED IN SECTION

18-9-121; (IX) CRUELTY TO ANIMALS, AS DESCRIBED IN SECTION 18-9-202 (1)(a) AND (1.5); (X) POSSESSION OF AN ILLEGAL WEAPON, AS DESCRIBED IN SECTION 18-12-102 (4); OR (XI) UNLAWFULLY PROVIDING A FIREARM OTHER THAN A HANDGUN TO A JUVENILE, AS DESCRIBED IN SECTION 18-12-108.7 (3).

a. Analysis:

This bill may have the broadest impact among the bills passed this session. This creates a series of crimes that will forbid gun possession; and these crimes are not uniform across other states, creating conflicts with other laws and CCW permits. The provisions are particularly onerous because something as simple as the harassment charge (strike shove or kick with intent to annoy) or cruelty to animals can prevent a firearms sale.

II. Safe Storage Firearms:

https://leg.colorado.gov/sites/default/files/2021a_1106_signed.pdf

- a) State law now requires firearm owners to responsibly and securely store their firearms when they're not in use, with the passing of [HB 21-1106](#). This lawful requirement was put in place to prevent access by unauthorized users or unsupervised juveniles from accessing firearms.
- b) Now, if a person stores a firearm that juveniles can access without permission, or a resident of the premises is ineligible to own a firearm by law, they face a class 2 misdemeanor charge, according to the bill text.
- c) But the bill doesn't stop with charges. Under the new law (located at 18-12-506), **licensed gun dealers** must provide a locking device capable of securing the firearm at the time of a sale. This creates a new substantive crime if you fail to provide the locking device. There is also a posting requirement, on premises, regarding safe storage under CRS 25-1-131(2). See the linked language of the law for further information. If a person transfers a firearm without a lock device, they face a fine of \$500.

III. SB 21-256, Local gun regulation; is now signed by the Governor.

https://leg.colorado.gov/sites/default/files/2021a_256_signed.pdf

- a) This law guts the prior state-wide regulation of firearms, and puts local control back into the hands of cities like Boulder, Denver, and Englewood. It eliminates the prior language about state wide consistency almost entirely. Any municipality or county can now create laws that are more restrictive than the prior state laws and orders. This is

the knee-jerk response to the invalidation of the rifle ban in Boulder District Court, just prior to the Alissa mass shooting.

- b) This in particular will be an issue for CCW permit holders; reading through the final version, the changes to the law are earth-shaking. One line in 18-12-201 states “OFFICIALS OF LOCAL GOVERNMENTS ARE UNIQUELY EQUIPPED TO MAKE DETERMINATIONS AS TO WHERE CONCEALED HANDGUNS CAN BE CARRIED IN THEIR LOCAL JURISDICTIONS;. . .” This is applied in particular to buildings and premises held by local governments and colleges.
- c) The only moderately good news is the statute limits penalties to fines only, and an order that the carrier of a CCW leave a premises. The criminal penalties are available upon a second offense, or failure to exit the premises.

IV. Civil protection orders, HB 21-1255.

https://leg.colorado.gov/sites/default/files/documents/2021A/bills/2021a_1255_enr.pdf

- a. This bill allows a defendant subject to a civil protection order to relinquish a firearm to an FFL dealer.
- b. HOWEVER the FFL holder must then complete the following:
 - i. A written receipt for the firearm,
 - ii. A special form or declaration developed by CBI to confirm the transfer.
 - iii. A criminal background check of the defendant.
 - iv. Each form must also be provided to the defendant.
 - v. The firearm cannot be returned to the defendant until CBI clears the defendant, and approval of the transfer back to the owner is received from CBI.

V. Lost or stolen firearms statute does NOT apply to FFL holders.

https://leg.colorado.gov/sites/default/files/2021a_078_signed.pdf

- a. Five day deadline to report a lost or stolen firearm; but this begins upon the discovery that the weapon is missing.
- b. This does NOT apply to licensed gun dealers; which means any person licensed under 18 USC 923.
- c. This likely does however apply to a personal firearm within the home of an FFL holder, given the language in the statute; or an attempt could be made to apply it to an FFL holder. It definitely applies to other members of the same household, who do not also hold an FFL.

VI. Office of Gun Violence Prevention: HB 21-1299

This appears to be mostly research oriented, and creates a small office under Colorado Department of Public Health to conduct research, apply for grants, coordinate policy efforts, and creating public service announcements and educational tools.

VII. Federal:

1. HR 8 <https://www.congress.gov/bill/117th-congress/house-bill/8/text> seeks to impose extended background checks on nearly all transfers of firearms, including private party transfers. This limits the ability of private parties to transfer firearms, unless gifted between family members, or through probate. Most firearms transfers would ultimately take place through an FFL, and the instant check system federally. This bill has not been brought up in the Senate, but passed the House.
2. HR 1446, Enhanced Background Checks Act. <https://www.congress.gov/bill/117th-congress/house-bill/1446/text> This extends the waiting period on background checks to ten days, instead of defaulting after a 72 hour period. The waiting period can be extended to twenty days if no result is received. A buyer can receive a firearm after ten days if they submit a petition of final determination, and no decision is rendered in ten days. The AG would develop the form used for the request to determine eligibility.
3. Neither bill appears likely to succeed in the Senate.

VIII. Issues to watch for:

- A. Federal hint at further gun risk measures in light of recent shootings.
- B. Senate votes on the two pending federal bills.
- C. Colorado reaction to recent shootings, including shooting of a police officer in Arvada.