

If someone seeks a harassment protection order against me under Mass. Gen. Laws c. 258E and I lose, can they take my guns or my gun license?

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Answer: No, because that statute does not include that type of relief to be granted to a petitioner. But there are many reasons not to let your guard down because there are other threats to your gun rights to be prepared for that could be based on the same facts.

In a recent case a district court issued a harassment protection order and included as part of the relief that the defendant surrender his firearms. The defendant appealed and prevailed. J.C. v. J.H., 92 Mass. App. Ct. 224 (2017). The appeals court juxtaposed the harassment protection order statute (Mass. Gen. Laws c. 258) with the restraining order statute (Mass. Gen. Laws c. 209A). Id. at 230-31. It stated the obvious from the text: that chapter 258 does not have a component authorizing the surrender of firearms. Id. This was in contrast to chapter 209A that does permit the court to order a defendant to surrender his firearms. Id.

The *J.C. v. J.H.* court noted that although chapter 258E did not permit a judge to order the surrender of a defendant's firearms, chapter 140 section 129B and section 131 of the Massachusetts General Laws have provisions that permit an issuing authority to take action to threaten the revocation or suspension of a license to carry. Id. at 232.

There are more than a few lessons here. One is that trial courts make mistakes, and sometimes simple ones like the mistake the trial court made in *J.C. v. J.H.* of providing relief not legally authorized.

A related lesson is that you must be vigilant to pursue your rights and that includes sometimes appealing a decision, which I add, must be done in a timely manner. The defendant in *J.C. v. J.H.* pursued his rights in a timely manner, but many do not and forfeit their ability to prevail for simply not moving fast enough. Understand that court orders generally still have the force of law despite being incorrect. And very often people lose their right to appeal because they do not act in time. So, once you obtain an unfavorable decision, make a decision about whether to appeal very quickly.

Lastly, as the appeals court noted, another lesson is that just because a defendant is not legally at risk of losing his right to carry from having a harassment protection order issued against him, the facts found could serve as the basis for a separate and independent action to threaten his right to carry. This means there is the possibility of unexpected consequences and your gun rights could still ultimately be at issue despite the fact the harassment protection order statute does not provide that specific relief.

In the event you are pursuing or facing a harassment protection order, take it very seriously and obtain competent legal counsel.

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