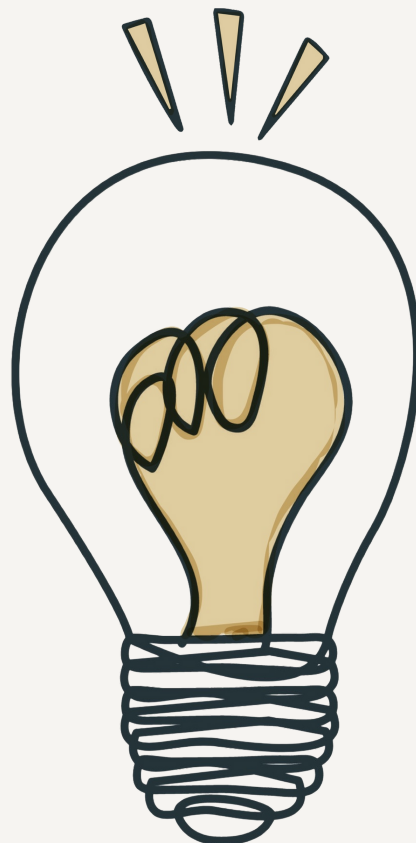


FIREARMS RESTRICTIONS AND PROTECTIVE ORDERS IN VIRGINIA

What Advocates Need to Know



This resource was developed in partnership with the Virginia Domestic Violence & Firearms Workgroup. A project of the Virginia Sexual & Domestic Violence Action Alliance

BACKGROUND & INTRODUCTION

Firearms restrictions and protective order laws have been rapidly changing in Virginia!

In recent years, the Virginia General Assembly has recognized the incredible risk that firearms pose to survivors of sexual and domestic violence by enacting laws that prohibit the purchase, transport, and possession of firearms by those who commit violence as well as those who exhibit significant risk factors for violence against themselves or others in the community. As Virginia's leading voice on sexual and domestic violence, the Action Alliance supports policies to remove firearms from these dangerous and potentially lethal situations while giving advocates, systems partners, and courts the additional tools needed in order to effectively enforce these measures and ensure safety for survivors, their families, and the broader community.

Many of the recent changes to Virginia code **substantially impact the lives and safety of survivors of sexual and intimate partner violence**. In order to effectively assist survivors in making decisions regarding petitioning for protective orders and with safety planning, **it is essential that advocates are knowledgeable** about both the legal remedies (as they pertain to firearms) and the processes and procedures in their communities for implementation of these new remedies.

This tool is intended to serve as a foundational resource for sexual and domestic violence advocates - in their work with survivors and communities - to maximize safety and to ensure compliance with Virginia law. For more information on how to best use this tool and/or for technical assistance and training to support implementation in your community, please contact the Virginia Sexual & Domestic Violence Action Alliance. For more information on the intersections of sexual and domestic violence and firearms access, see our [Guns and Domestic Violence: A Lethal Combination Fact Sheet](#) and [Guns and Domestic Violence Infographic](#).

If you are an advocate or survivor in need of safety planning, support, or legal assistance, please contact our [Statewide Hotline](#) toll-free (24 hours a day, 7 days a week, 365 days a year) by telephone at 1.800.838.8238, by text at 804.793.9999, or by chat at <https://www.vadata.org/chat/>

RECENT CHANGES TO VIRGINIA LAW

Family Abuse & Acts of Violence Protective Orders

In 2016, the Virginia General Assembly passed landmark [bipartisan legislation](#) recognizing the lethal intersection of domestic violence and firearms access, making it a Class 6 felony for any person who is subject to a final 2-year protective order for family abuse (Va.Code Ann. [§16.1-279.1](#)) to possess a firearm while the order is in effect.

In 2020, Virginia State Law, was [further updated](#) to reflect the [Federal Gun Control Act](#), prohibiting any person subject to final 2-year protective orders (Family Abuse, Va.Code Ann. [§16.1-279.1](#) and Acts of Violence, Va.Code Ann. [§19.2-157.10](#)) from knowingly **purchasing**, possessing, or transporting firearms, including concealed handgun permits and ammunition while the order is in effect. A violation of this law is a class 6 felony in Virginia (Va.Code Ann. [§18.2-308.1:4](#)).

The 2020 law included clarifying language outlining a process for the surrender of firearms as well as a clear and consistent process for Virginia courts to certify that respondents have disposed of their firearms when a final 2-year Protective Order is issued.

Assault and Battery of a Family or Household Member

In 2021, the Virginia General Assembly [passed legislation](#) bringing Virginia law into closer alignment with federal law by prohibiting individuals who have been convicted of assaulting a family or household member from purchasing, possessing, or transporting a firearm for three years following their conviction date. A violation of this law is a class 1 misdemeanor in Virginia.

An important distinction for advocates to be aware of is that this law applies a slightly different definition of "family or household member" - excluding dating and non-married partners.

From Va. Code Ann. [§18.2-308.1:8](#) Section B: For the purposes of this section, "family or household member" means (i) the person's spouse, whether or not he resides in the same home with the person; (ii) the person's former spouse, whether or not he resides in the same home with the person; or (iii) any individual who has a child in common with the person, whether or not the person and that individual have been married or have resided together at any time."

RECENT CHANGES TO VIRGINIA LAW (CONT'D)

Substantial Risk Order

In 2020, the Virginia General Assembly passed legislation to create new **Substantial Risk Orders** (Va. Code Ann. [§19.2-152.13](#), Emergency Substantial Risk Orders and Va. Code Ann. [§19.2-152.14](#), Substantial Risk Orders) designed to remove firearms from individuals who pose an immediate threat to themselves or others.

CONSIDERATIONS FOR ADVOCATES

- ☆ **Early and ongoing conversations with survivors** regarding firearms and firearms access is vital to safety planning, whether they chose to petition for a protective order or not. The presence of firearms can greatly impact a survivor's decision making and safety.
- ☆ **All survivors should be educated** on the connections between Intimate Partner Violence and firearms access. As an advocate, it may help to become familiar with the Action Alliance's fact sheet [Guns & Domestic Violence: A Lethal Combination](#) and to be able to use data and trends in survivor experiences to not only validate a survivor, but also to help them understand lethality in these situations.
- ☆ **Be aware of how your community and the courts implement** notification and surrender procedures for respondents in protective order cases and be able to communicate that process to survivors/petitioners.
- ☆ **Inform the survivor about the process** by which the court/judge will notify the respondent of the firearms provisions and how compliance will be enforced including the requirements for the respondent to surrender firearms and the penalty for failure to surrender.
- ☆ **Utilize I-CAN! Virginia** (the online forms completion program for protective orders) to assist survivors in the preparation of court forms required to ask the court for a protective order: <https://vacourtformhelp.courts.state.va.us/>
- ☆ **Inform survivors about how to report violations** of protective orders and violations of firearm restrictions. Support them in their decision-making process regarding reporting violations and in making plans for their safety.
- ☆ Make sure you **have a clear understanding of the differences** between a Family Abuse or Acts of Violence Protective Order and a Substantial Risk Order and that you can inform survivors of the differences.
- ☆ Work in your community to ensure that processes are in place to implement these new laws.
- ☆ **For additional technical assistance and training** for your agency or community partners contact the Virginia Sexual and Domestic Violence Action Alliance at 804-377-0335 or on our website www.vsdvalliance.org
- ☆ For **Law Enforcement Training** contact the Virginia Department of Criminal Justice Services Substantial Risk Order Training Coordinator.

SAFETY PLANNING IS KEY

Regardless of whether a survivor is a good candidate for a protective order, their safety should be your highest priority. Safety planning will help ensure the survivor has options in any given situation of threats or abuse. Safety planning is useful whether a survivor is staying in an abusive relationship, leaving a relationship, or receiving threats from a person with whom they have no relationship. Safety planning helps survivors to think ahead to make sure that they have the resources they need in an abusive situation. There are no set rules for safety plans; they are individualized. A safety plan is about an advocate helping the survivor name the things that they are doing to keep themselves safe and to EXPAND upon those strategies and resources.

Effective safety planning should:

- Be specific to a given survivor's experience and barriers;
- Include crucial details like an abuser's access to firearms and weapons, threats and patterns of behavior, etc.; and
- Change as their situation and circumstances change.

Assessing the Need for a Protective Order

Not every survivor is a candidate for a protective order. Domestic and sexual violence happens when an abusive person wants to control the survivor. When a survivor gets a protective order, they are essentially standing up to that control. Some abusers may retaliate with violence. This means that it is particularly important to know if the abuser has access to firearms and if the abuser has a history of making threats against the survivor, family members, or themselves with those firearms.

Before speaking with the survivor about protective orders, divorce, custody, or anything else, you should ask them questions about the nature of the abuse. Specifically, you need to gain a sense of the abusive person's attitudes toward law enforcement and authority, and how violent and willing to take risks the abuser has become. Important questions include:

- Has the abusive person talked about homicide or suicide?
- Has the abusive person threatened homicide or suicide?
- Does the abusive person have access to firearms and/or weapons?
- Has the abusive person made threats involving those firearms and/or weapons?
- Has the abusive person committed arson in the past?
- Has the abusive person expressed a belief of ownership over the survivor—refusing to let anyone else 'have them,' or that they 'belong' to the abuser?
- Has the abusive person threatened to hurt or actually hurt the family pet?
- Has the abusive person made their relationship with the survivor the central focus of their life, and indicated that they cannot live without the survivor?

SAFETY PLANNING IS KEY(CONT'D)

- Has the abusive person engaged in any violence related to the possible separation with the victim?
- Is the abusive person suffering from depression and/or any other mental health issues?
- Does the abusive person have access to the survivor or the survivor's family members?
- Has the survivor contacted law enforcement to help stop violent disputes with the abusive person before?
- Has there been an escalation of risky behavior or violence on the part of the abusive person?
- Has the abusive person given an indication that they might take the victim or the survivor's family members hostage?

If the survivor believes that some of these factors are present, a protective order may only anger the abusive person, prompting them to lash out violently against the survivor or others. Under such circumstances, advocates should work with the survivor to develop a safety plan to help them get away from the abuser without a direct challenge to the abuser's sense of control (such as defying the abuser by filing for a protective order).

For more information on safety planning and legal advocacy with survivors see here:

- [2019 Legal Advocacy in Virginia Manual](#)
- [Finding Safety Resources](#) for Survivors and advocates

If you are an advocate or professional who would like more information, training, or technical assistance on safety planning and legal advocacy with survivors, please contact the Virginia Sexual & Domestic Violence Action Alliance.

VIRGINIA'S FIREARM RESTRICTIONS

- ☆ **All Final 2-Year Protective Orders** (Family Abuse Protective Orders, Acts of Violence Protective Orders, and Substantial Risk Orders) prohibit the purchase, transport, and possession of firearms to anyone subject (the respondent) to the Protective Order. This prohibition is in effect for the duration of the Protective Order and courts are required to notify the respondent of these firearms restrictions verbally and in writing.
- ☆ **Emergency Protective Orders (EPO) and Preliminary Protective Orders (PPO)** prohibit the purchase and transport of firearms, but not possession.
- ☆ **Emergency Substantial Risk Orders (SRO)** require respondents to surrender concealed handgun permits and advises the person to "voluntarily relinquish any firearm within his custody to the law-enforcement agency that serves the order."
- ☆ **Substantial Risk Orders (SRO)** prohibit the purchase, transport, and possession of firearms and require that upon service of the order, the respondent surrender any firearms to law enforcement.
- ☆ Law enforcement may request a search warrant for firearms that are not relinquished.
- ☆ **Any person convicted of assault and battery of a family or household member** is prohibited from purchasing, possessing, or transporting a firearm. The prohibition expires three years after the date of conviction, at which point the person's firearms rights are restored, unless that person receives another disqualifying conviction.

PENALTIES FOR FAILURE TO COMPLY WITH FIREARMS RESTRICTIONS

- ☆ Violation of the purchase or transport restriction for someone who is subject to any **Emergency Protective Order (EPO) or a Preliminary Protective Order (PPO) is a Class 1 Misdemeanor.**
- ☆ Violation of the purchase, transport, or possess (knowingly possess) restriction for someone who is subject to a **Final 2-Year Family Abuse or Acts of Violence Protective Order is a Class 6 Felony**
- ☆ Violation of the purchase, transport, or possess restriction of a **Substantial Risk Order (SRO) is a Class 1 Misdemeanor.**
- ☆ **Willful failure to certify in writing** that a respondent's firearms have been surrendered, sold, or transferred and that they do not possess any firearms constitutes **contempt of court and should be acted on swiftly by the presiding judge.**
- ☆ Violation of the purchase, transport, or possess restriction for someone who has been **convicted of assault and battery of a family or household member is a Class 1 Misdemeanor.** The prohibition expires five years after the date of conviction, at which point the person's firearms rights are restored, unless that person receives another disqualifying conviction.

THE FIREARMS SURRENDER PROCESS

For **Family Abuse and Acts of Violence Final 2-Year Orders**, the respondent is required to surrender their firearms **within 24 hours of being served with the order**. The respondent must also surrender any concealed weapons permits to the court that issued the protective order for the duration of that order. The respondent **must also certify in writing** (via [form DC-649](#), provided by the court) that they have surrendered, transferred, or sold their firearms to an “appropriate entity” (a designated law-enforcement agency, licensed firearms dealer, or someone legally able to possess a firearm) **within 48 hours of service of the order** and file this certification with the clerk of the issuing court. Willful failure to comply with this process constitutes contempt of court and should be acted on swiftly by the presiding judge.

While the “appropriate entities” available to accept surrendered firearms are outlined in Va. Code Ann. [§18.2-308.1:4](#), it is important to note that these entities vary by locality or jurisdiction and advocates should be aware of who is accepting surrendered firearms in the community.



Surrendering to a Law Enforcement Agency

The respondent may surrender their firearms to a designated law enforcement agency. Virginia code requires that law enforcement from each county, city, and town in the Commonwealth (within each judicial circuit) coordinate with each other to designate and provide to the chief judges of all circuit and district courts within their judicial circuit, one or more local law-enforcement agencies to receive and store firearms. Any firearm surrendered to and held by a law-enforcement agency shall be returned upon confirmation of dissolution of the Protective Order and within 5 days of receiving a written request from the respondent for return of the firearm.



Transferring or Selling to a Licensed Firearms Dealer

The respondent may transfer or sell firearms in their possession to a dealer as defined in Va. Code Ann. [§ 18.2-308.2:2](#)



Transferring or Selling to a Third Party

The respondent may transfer or sell firearms in their possession to another individual who is legally able to possess a firearm.

In the case of a Substantial Risk Order (SRO), the issuing court is required to approve the transferee who will possess a respondent’s firearms for the duration of that order. See Va. Code Ann. [§19.2-152.14 subsection D](#) for more information on this process.

For more on this process, see our upcoming tool "How Do I Sell or Transfer My Firearms?", a resource for respondents to support compliance with firearm provisions in Virginia's Protective Order laws.