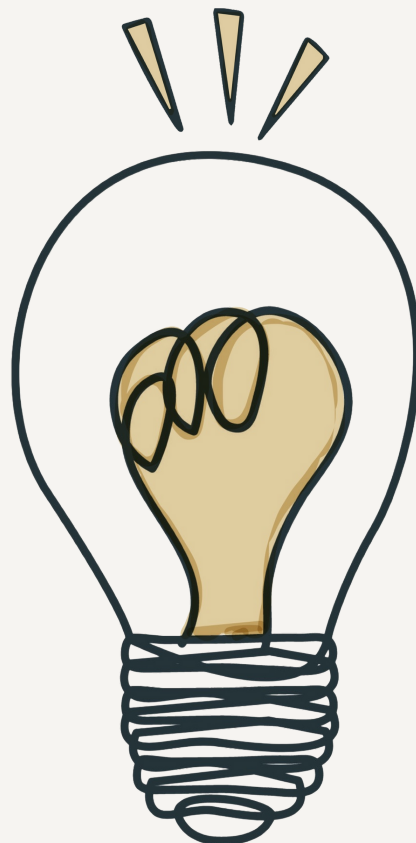


FIREARMS RESTRICTIONS AND PROTECTIVE ORDERS IN VIRGINIA

A Bench Guide for Judges



Virginia Sexual and Domestic Violence
ACTIONALLIANCE

INTRODUCTION

Recent changes in Virginia code pertaining to firearms, firearm restrictions, surrender of firearms, and new Substantial Risk Orders can substantially impact the lives and safety of survivors of family and intimate partner violence. It is essential that courts, advocates, local law enforcement agencies, and systems partners are knowledgeable about both the legal remedies as they pertain to firearms and the processes and procedures in their communities for the implementation of these new remedies.

As a judge, understanding how to effectively elicit information on firearms possession or access and how to educate respondents on firearm restrictions required by law is a critical step in supporting safety and accountability. This bench guide is intended to serve as a resource to maximize public 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 locality or courtroom, please contact the Office of the Executive Secretary of the Supreme Court of Virginia or the Virginia Sexual & Domestic Violence Action Alliance.

Virginia State Law, as well as the Federal Gun Control Act, prohibit people who are subject to final Family Abuse and Act of Violence Protective Orders (Va. Code Ann. §[16.1-279.1](#) and [19.2-152.10](#)) and Substantial Risk Orders (Va. Code Ann. § [19.2-152.14](#).) from knowingly purchasing, possessing, transporting, and/or receiving firearms, including concealed handgun permits and ammunition while the order is in effect. Violation of these firearm restrictions for final Family Abuse and Act of Violence Protective Orders is a Class 6 felony. Violation of these firearm restrictions for a Substantial Risk Order is a Class 1 misdemeanor.

Va. Code Ann. §[18.2-308.1:8](#) also outlines that any person who knowingly and intentionally purchases, possesses, or transports any firearm following a misdemeanor conviction for assault and battery of a family or household member is guilty of a Class 1 misdemeanor. These firearm restrictions are effective for three years following the date of conviction.

These recent changes to Virginia law also require courts and law enforcement agencies to adopt uniform practices for notifying respondents of the firearm restrictions that they are subject to as well as certifying and enforcing these restrictions in the courtroom and in the community. This includes:

- ☆ **Notifying respondents** of the firearm restrictions that they are subject to and for how long;
- ☆ **Advising respondents** on ways to safely surrender their firearms, including information on locations for surrender and the time limit in which they are required to do so;
- ☆ **Communicating the consequences** of failure to comply with this law and the firearms certification process set forth by the court;
- ☆ **Use of a certification form** ([DC-649](#) provided by the Office of the Executive Secretary) for respondents to file with the clerk of the court certifying that they have surrendered access to firearms for the duration of the order; and
- ☆ **Application of a penalty** (contempt of court) for any respondent's willful failure to comply with the certification requirements set forth by the court.

EDUCATION AND ENFORCEMENT IN THE COURTROOM

The courtroom can be a critical place to facilitate education and understanding - for both petitioners and respondents - on what the law is and ensuring that it is effectively and easily followed. Making some small changes to courtroom practices can support this process and can have lasting impacts on individual and community safety after an order has been issued by the court. Here's what we recommend:

1) During the final hearing, **specify firearm prohibitions included in the protective order**, i.e., directives against the purchase, sale, transportation, or possession or control of firearms, ammunition, and concealed handgun permits as required by Va. Code Ann. §§ 18.2-308.1:4 and 18.2-308.2:1.

You can ensure that the **respondent understands (by eliciting verbal confirmation, during the hearing, if able) the firearm prohibitions** outlined by state and federal law and included in the final order.

2) Provide the respondent with specific information on local **options for surrendering firearms**, including:

- ☆ How to safely surrender firearms to the designated local law enforcement agency;
- ☆ How to sell or transfer firearms to a dealer as defined in Va. Code Ann. §[18.2-308.2:2](#);
- ☆ How to sell or transfer firearms to any person who is not otherwise prohibited by law from possessing a firearm.

You can ensure that the respondent **understands (by eliciting verbal confirmation, during the hearing, if able) the options available for safely surrendering their firearms**.

3) Provide the respondent with specific information on the timeframe within which to surrender any firearms and the timeframe and process for filing certification with the clerk of the court.

☆ **Within 24 hours** after being served with a protective order in accordance with subsection C of Va. Code Ann. § 16.1-279.1 or subsection C of Va. Code Ann. § 19.2-152.10 shall surrender, sell, or transfer any firearms possessed in accordance with the options for surrendering above.

☆ **Within 48 hours** after being served with a protective order in accordance with subsection C of § Va. Code Ann. 16.1-279.1 or subsection C of Va. Code Ann. § 19.2-152.10, the respondent shall certify in writing, on a form provided by the Office of the Executive Secretary of the Supreme Court, that they do not possess any firearms or that all firearms possessed by such person have been surrendered, sold, or transferred and file such certification with the clerk of the court that entered the protective order.

You can ensure that the respondent **understands (by eliciting verbal confirmation, during the hearing, if able) the timeframe** within which to surrender any firearms and the timeframe and process for filing this certification with the clerk of the court.

4) Provide the respondent with **information on penalties for noncompliance with the law.**

☆ *“Willful failure of any person to certify in writing in accordance with this section that all firearms possessed by such person have been surrendered, sold, or transferred or that such person does not possess any firearms shall constitute contempt of court.”*

You can ensure that the respondent has an **opportunity to ask any clarifying questions and/or seek information** from the court on how to best comply with the law.

SUPPORTING COMMUNITY AND PETITIONER SAFETY

It is important to understand the substantial and often elevated risk of lethality that survivors of family and intimate partner violence face during this time. The court can do several things to support accountability for respondents, survivor safety, and public safety.

- ☆ **Make sure that petitioners know about the firearm prohibitions** required of respondents when petitioning for an order and/or when final protective orders are issued.
 - 💡 Magistrates, Clerk Services Staff, and other Judicial officers can practice sharing this information with anyone who presents wishing to petition for a protective order. Survivors of violence often know best how their abusers will respond to particular interventions (legal or otherwise) and the likelihood of escalating and sometimes even lethal violence.
- ☆ **Consider the use of a respondent info-sheet** or educational resource that can be provided during the protective order process and prior to firearms surrender. This is a low-cost, easy practice to implement that can result in a smoother and safer firearms surrender process for everyone. For examples of these, see our [Supporting Respondent Education tool here](#).
- ☆ **Facilitate connections between the petitioner and your local sexual and domestic violence program or victim-witness advocate.** [Studies consistently show](#) that when victims of family and intimate partner violence are connected to an advocate, they have far more successful outcomes in seeking safety, justice, and healing.
- ☆ **Support the establishment, and routine assessment, of a process** by which a respondent in the case of a protective order, may safely and promptly surrender their firearms to the designated law enforcement agency.
- ☆ **Advocate that the court and/or law enforcement establish petitioner notification procedures** that provide petitioners with notice and/or the opportunity to be heard prior to the return of firearms to the respondent.
- ☆ **Inform the petitioner and respondent** that, upon expiration of a protection order, the firearm prohibition will terminate unless state or federal law otherwise prohibit possession or ownership. Remind the petitioner that the protection order must be current to enforce any firearm prohibition in the order or pursuant to 18 U.S.C. §922(g)(8).

This resource was developed in partnership with the Virginia Domestic Violence & Firearms Workgroup, a project of the Virginia Sexual & Domestic Violence Action Alliance, and is based on the work of [the National Center on Protection Orders and Full Faith & Credit](#).