



Virginia Sexual & Domestic Violence Action Alliance

# BEST PRACTICES

## FIREARMS RESTRICTIONS & PROTECTIVE ORDERS

THE ROLE OF LAW ENFORCEMENT  
IN ACHIEVING VICTIM SAFETY

# 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 implementation of these new remedies.

Virginia State Law prohibits 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.



# INTRODUCTION

The uniform practices for notifying respondents of the firearm restrictions that they are subject to and enforcing such restrictions in the courtroom and in the community include:

- **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;
- **Service of Protective Orders** to Respondents;
- **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;
- **Application of a penalty** (contempt of court) for any respondent's willful failure to comply with the certification requirements set forth by the court;
- **Consistent and effective enforcement** of the provisions of a Protective Order.

Law Enforcement can play an important role in supporting safety and accountability in the community. Understanding state and federal firearm restrictions as well as best practices in service of orders and community implementation of the law can be crucial to preventing gun violence and intimate partner homicide. This tool 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 Virginia Department of Criminal Justice Services or the Virginia Sexual & Domestic Violence Action Alliance.





# STRATEGIES TO ENHANCE VICTIM SAFETY AND ENSURE RESPONDENT COMPLIANCE

Service of protective orders, at both the temporary/ex parte stage and upon issuance of the final order after a hearing, presents an important opportunity for officers to learn about respondent access to firearms, notify respondents about any prohibitions on possession and/or orders to surrender, and to obtain surrender of firearms from respondents.

At the same time, the service stage may present significant danger to victims and others, including officers. Local Law Enforcement Agencies should consider the following strategies to protect victims and the broader community from lethal backlash and to enhance the systems response to domestic violence:

## **Work with local Domestic Violence Advocacy Programs to:**

- Support safety planning with the victim prior to service of the order
- Notify the victim (and the court) promptly after an order has been served
- Obtain information that can facilitate safe service and recovery of firearms (where authorized)
- Join or establish a Coordinated Community Response (CCR) for your locality
- Receive training regarding the lethal intersection of domestic violence and firearms access for officers tasked with serving protective orders

## **Work with local Courts & Judges to:**

- Adopt a formal policy or protocol governing law enforcement's responsibilities during service of a protective order and with respect to firearms surrender and seizure
- Adopt use of a respondent education sheet that can be provided to the respondent upon service of the order as well as in court for the final hearing and compliance monitoring.
- Notify victims about the result of the service process, including whether firearms have been surrendered
- Ensure robust communication with respondents on their options for complying with the firearm restrictions set forth in state and federal law.



# STRATEGIES TO ENHANCE VICTIM SAFETY AND ENSURE RESPONDENT COMPLIANCE

## Work with Respondents in Protective Order cases to:

- Ensure a clear understanding of the provisions of a protective order, including firearms restrictions and when, where, and how to safely surrender firearms and comply with the law.
- Ensure a clear understanding of the local practices regarding storage of firearms and restoration of rights after dissolution or expiration of an order or a prohibition.

## Work within your local Law Enforcement Agency to:

- Establish protocol requiring a criminal background check on respondents to determine whether there have any outstanding warrants, other protective orders, or pending charges or past convictions, and whether respondents are on probation or parole.
- Ensure that serving officers inquire about firearms access/possession and, consistent with Virginia law and local practices, seize or seek voluntary surrender of firearms, including taking firearms for safekeeping purposes, where appropriate.
- Ensure that serving officers explain any firearm restrictions to the respondent and relay the local process for surrendering firearms to comply with such restrictions; in addition, officers can provide written information regarding federal and state law to which a respondent may be subject.
- Consider an agency policy or an internal practice that prioritizes service of protective orders to armed respondents and/or to those respondents who have been found to exhibit high risk/lethal behaviors. For more information on what these behaviors are, see Lethality Assessment Program (LAP) from the Virginia Office of the Attorney General: <https://www.oag.state.va.us/programs-initiatives/lethality-assessment-program>.
- Ensure the adoption of policies that require the immediate entry of protection orders and relevant service information into VCIN.

