



Virginia Sexual & Domestic Violence Action Alliance



BEST PRACTICES

FIREARMS RESTRICTIONS & PROTECTIVE ORDERS

WHAT ADVOCATES NEED TO KNOW

BACKGROUND

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 to 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.**



INTRODUCTION

PURPOSE OF THE TOOLKIT

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 1.804.793.9999, 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. §19.2-152.10) 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

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 the 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/>



CONSIDERATIONS FOR ADVOCATES

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.



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