

FAMILY ABUSE PERMANENT PROTECTIVE ORDER RESOURCE GUIDE

COMMONWEALTH OF VIRGINIA

April 2017

§ 18.2-308.1:4. Purchase or transportation of firearm by persons subject to protective orders; penalties.

- A. It is unlawful for any person who is subject to (i) a protective order entered pursuant to § 16.1-253.1, 16.1-253.4, 16.1-278.2, 16.1-279.1, 19.2-152.8, 19.2-152.9, or 19.2-152.10; (ii) an order issued pursuant to subsection B of § 20-103; (iii) an order entered pursuant to subsection E of § 18.2-60.3; (iv) a preliminary protective order entered pursuant to subsection F of § 16.1-253 where a petition alleging abuse or neglect has been filed; or (v) an order issued by a tribunal of another state, the United States or any of its territories, possessions, or commonwealths, or the District of Columbia pursuant to a statute that is substantially similar to those cited in clauses (i), (ii), (iii), or (iv) to purchase or transport any firearm while the order is in effect. Any person with a concealed handgun permit shall be prohibited from carrying any concealed firearm, and shall surrender his permit to the court entering the order, for the duration of any protective order referred to herein. A violation of this subsection is a Class 1 misdemeanor.
- B. In addition to the prohibition set forth in subsection A, it is unlawful for any person who is subject to a protective order entered pursuant to § 16.1-279.1 or an order issued by a tribunal of another state, the United States or any of its territories, possessions, or commonwealths, or the District of Columbia pursuant to a statute that is substantially similar to § 16.1-279.1 to knowingly possess any firearm while the order is in effect, provided that for a period of 24 hours after being served with a protective order in accordance with subsection C of § 16.1-279.1 such person may continue to possess and, notwithstanding the provisions of subsection A, transport any firearm possessed by such person at the time of service for the purposes of selling or transferring any such firearm to any person who is not otherwise prohibited by law from possessing such firearm. A violation of this subsection is a Class 6 felony.

1994, c. 907; 1996, c. 866; 1998, c. 569; 2001, c. 357; 2002, cc. 783, 865; 2004, c. 995; 2011, cc. 373, 402; 2013, c. 759; 2016, cc. 48, 49.



On July 1, 2016, a new law became effective that prohibits a person who is subject to a family abuse protective order (“respondent” or “subject”) from possessing a firearm. A violation of this law is a Class 6 Felony, punishable by up to five years in prison as well as the loss of certain civil rights, including the right to possess a firearm. The law provides that, after being served with the protective order, the respondent may lawfully possess the firearm for up to 24 hours solely for the purpose of transferring or selling the firearm to another person who is legally allowed to possess it.

The law only applies to subjects of Family Abuse Protective Orders issued pursuant to *Virginia Code* Section 16.1-279.1. It does not apply to individuals subject to emergency, temporary or other protective orders.

This resource guide is intended to help communities implement the law and encourage the safe transfer of firearms from subjects of Family Abuse Protective Orders to third-parties. It can be used to facilitate a community-oriented process of ensuring firearms are out of the hands of abusers, thereby further protecting citizens and potential victims. Stakeholders are encouraged to work together to build a unified, system-wide approach to the implementation of this law. Understanding the roles and responsibilities each stakeholder has in the criminal justice system will help identify opportunities to work together.



VICTIMS

Victims of domestic violence or people at-risk of victimization can play a key role in their own safety by providing important information about the presence of firearms to advocates and law enforcement when Family Abuse Protective Orders are issued. Victims often have firsthand knowledge if firearms are present and whether the respondent is likely to comply with the new law. Sharing this information can allow victim advocates and law enforcement to assess the risk of harm at the hands of the respondent and provide services to the victim, such as safety planning, emergency housing, and court advocacy, that can enhance his/her protection.

Safety planning is the process of creating a plan for keeping you, your children, and/or pets safe while preparing to leave, leaving, and after leaving an abuser. A victim's safety is most at risk during episodes of domestic violence and when attempting to leave an abuser. This makes it especially important to prepare ahead of time in order to be as safe as possible. Victim advocates are available to assist in developing a plan that may include:

- Opening savings and credit card accounts in your name only.
- Leaving money, extra keys, copies of important documents, extra medicine and clothes with someone you trust so you can leave quickly.
- Determining safe people with whom you can stay or who could loan you money.
- Keeping hotline phone numbers and a safety cell phone on you at all times for emergencies.
- Reviewing and rehearsing your safety plan.
- Keeping a copy of your protective order on you at all times, and giving a copy to a trusted neighbor, friend or family member.
- Calling the police if the respondent violates the protective order.
- Thinking of alternative ways to keep safe if the police are not able to respond right away.
- Informing family, friends, neighbors and health care providers that you have a protective order in effect.

Victim advocates are available to assist and provide services for victims. Community-based advocates provide confidential services such as safety planning, emergency shelter, counseling, and advocacy, and can provide help whether or not the victim's abuser has been charged with a crime. Local victim-witness programs assist victims through the criminal justice process. They can explain the victim's rights, provide court tours, arrange meetings with the prosecutor, or provide court accompaniment and advocacy. These resources can be an important part of the victim's support system and help ensure that the victim understands and has a voice in the protective order and/or criminal justice process.

Many victims of domestic violence that seek a Family Abuse Protective Order begin this process through a magistrate. However, the Office of the Executive Secretary has a free online system known as I-CAN! Virginia that can assist in filling out the forms that are needed to ask the court for a protective order. The I-CAN! Virginia system will also print instructions to provide guidance on filing the forms with the court and how the court process works. The I-CAN! Virginia system is also available in Spanish.

Petitioners for Family Abuse Protective Orders can do several things to increase their safety and stay informed, such as:

- Request notification when the protective order has expired and when firearms are released to the respondent (if the firearms had been surrendered to law enforcement).
- Make sure that law enforcement has up-to-date contact information, including any address or phone number changes.
- Report any violations of the protective order to law enforcement immediately.
- Attend all scheduled hearings.
- Carry a copy of the protective order at all times.
- Avoid deliberate contact with the respondent.

Role of the Victim Advocate

Advocates play an important role in informing victims and petitioners about Family Abuse Permanent Protective Orders. Victims may have already engaged in the criminal justice system prior to obtaining a permanent order. Advocates can help explain the new law and how it may impact victims.

Victims should be informed that the court has issued a permanent protective order and the respondent should receive notice of the order before he/she is prohibited from possessing firearms. Advocates should also advise victims that the respondent has 24 hours to lawfully transfer the firearm to a third-party; however, respondents are typically not monitored on a regular basis for compliance. Advocates should also inform petitioners that respondents can resume lawful possession of firearms when an order expires. Advocates should encourage petitioners to ask law enforcement agencies that have agreed to accept firearms to notify them if/when the firearms have been returned to the respondents.

Victim advocates can be a bridge between the victim and the criminal justice system. Advocates should encourage victims to notify law enforcement of any contact or attempted contact by the abuser and if they suspect that the respondent still possesses a firearm. With the written consent of the victim, advocates can share the victim's concerns with law enforcement or the courts as they relate to past threats, the respondent's likelihood of complying with the court order, and/or any suspicions that the respondent may still have firearms.

It is imperative that advocates maintain the confidentiality of the victims they serve. It is important not to use identifying information in client files and the files should be kept in a secure location where unauthorized persons cannot access them. In addition, all staff members should be trained on the agency's confidentiality policy and sign a certification to follow agency procedures before releasing client information.

Before releasing any information to another person or agency, advocates should ensure that written consent for the release has been secured. Most domestic violence programs receive federal funding allocated through the Violence Against Women Act and the Family Violence Prevention and Services Act, and are required to follow confidentiality protections.

In General:

- Your program has a legal responsibility to protect the victim's personally identifiable information.
- Your program should not release any information about the victim unless you have the clearly informed, written and signed, reasonably time-limited consent of the client. The victim gets to choose when, how, and what personal information will be shared or not shared, and with whom.
- Programs may only share the specific information the client allows in the release.
- Even when state law or court mandates require the program to disclose or release information about the client, the program may only share the minimum information necessary to meet the statutory requirement or court mandate.
- The program is required to make an effort to notify the victim of any disclosure and to continue taking steps to protect the victim's safety and privacy.
- If your program is unsure how laws apply to a certain situation, you should consult with an attorney or other expert. Confidentiality and privilege laws vary by jurisdiction, as do other laws that may affect an agency or individual staff person's response. Furthermore, a particular situation may require a closer analysis of the ways federal, state/territorial/tribal, and local law apply, which may require localized legal advice.

Victim advocacy programs should put policies and procedures in place that increase victim safety, adequately address trauma, and assess for risk. For example, the intake process should include asking about past and current abuse, past and current threats of harm, the respondent's access to firearms and his/her likelihood of complying with the protective order and the firearm prohibition. In addition, safety planning with victims is an essential part of advocacy, particularly for victims whose abusers have access to firearms. Though the Family Abuse Protective Order can be a powerful tool to enhance victim safety, it is important that advocacy programs provide education, support, and systems advocacy to create wraparound services that assist victims in navigating the criminal justice system.



LAW ENFORCEMENT

Law enforcement agencies will be affected by the new law. Not only does it create a new prohibition for officers to enforce, but agencies may also serve copies of the orders on respondents, and they may decide to voluntarily accept firearms from them. This law also presents opportunities for law enforcement officers to engage with and educate subjects of orders, victims, and witnesses about the impact of the law.

If agencies do not have policies in place that address the implementation of this law, they should consider establishing them. Policies should address the service of orders, the surrender and storage of firearms, disposal/return of firearms and enforcement. Agencies are encouraged to engage their county or city attorneys to assist them with developing policies that comport with local practices and priorities, help reduce liability, and comply with legal requirements. Attorneys can help identify measures that will reduce risk and exposure, such as the use of waiver forms.

When drafting or editing policies, there are several topics that agencies should consider:

1. Serving Family Abuse Protective Orders

When officers serve these orders, it is a prime opportunity for them to advise respondents about the legal consequences of violating Family Abuse Protective Orders and violating *Virginia Code* § 18.2-308.1:4(B). Subjects of these orders, if convicted, may face incarceration and the permanent loss of their right to possess firearms.

Officers serving these orders should inform the subjects of the following:

- What the order requires of the subject.
- That violation of the law is a felony offense punishable by up to five years imprisonment and permanent loss of right to possess firearms (as a convicted felon).
- That after being served with the order, he/she has 24 hours in which possession of a firearm is lawful as long as it is being transported or sold.
- Whether the agency will accept firearms from him/her.
- Whether other agencies are willing to accept firearms.

Once service is executed, officers should enter the date and time of the service into Virginia Criminal Information Network. This will assist other officers who later interact with the respondent and need to know that he/she is subject to the Family Abuse Protective Order and whether the 24-hour time frame has expired. Agencies may also want their officers to educate anyone who may be present during the service of the order, such as friends or family of the subject, about the firearms prohibition. This opportunity to educate parties may help the respondent comply with the protective order and the law. Officers should also warn friends or family if they agree to hold a firearm for the subject of the protective order, they should verify that the order has expired and that the subject is lawfully permitted to once again possess firearms. Failure to ensure that the respondent can legally possess guns may subject the friend or family member to criminal prosecution.

2. Surrender of Firearms

All agencies, regardless of whether they decide to proactively accept firearms, should be prepared for individuals who may try to surrender firearms to them for safekeeping. Agencies that do not already have a policy in place should determine ahead of time how they will handle such requests and consider:

- How and when will the agency receive firearms?
- From whom will the agency accept firearms? Respondents? Friends and family of the respondents?
Local residents only?
- How will people “safely” surrender weapons?

- Does the agency want people walking into the station with a firearm? Or would it prefer a pre-arranged time and location?
- Must the gun be in a locked car, a locked case, etc. when presented?
- What types of firearms is the agency willing to accept?
- How many firearms is the agency willing to accept from each person?
- How long is the agency willing to store firearms?

If non-owners of firearms try to surrender a firearm, agencies are encouraged to find out where the gun came from and under what circumstances it is now being surrendered. If the firearm did in fact come from a subject of a Family Abuse Protective Order, the agency should verify the order and that the subject consented to give it to the third-party. Of course agencies maintain the discretion to not accept firearms if the circumstances are suspicious.

Agencies should develop forms to document the surrender process, whether the firearm is being surrendered by a respondent or a third-party. These forms should describe the terms and conditions under which firearms will be accepted, who may surrender and retrieve firearms, waivers of liability, that criminal history record checks will be conducted on any person retrieving a firearm, and any other necessary information. For example, relinquishment forms can describe what types of firearm(s) are being relinquished, by whom, for how long, and other transfer details. Agencies may want to include a waiver provision addressing lost or damaged firearms, as well as what will happen to the firearm if it is not retrieved by the owner, such as destruction of the firearm. If agencies utilize the National Integrated Ballistic Information Network on surrendered firearms, they should include that provision in any receipts or paperwork required to be signed by the persons surrendering the firearms. Any processing, inventory, tracking, and receipt processes that ensure the agency is adequately documenting the transfer is beneficial.

Agencies that do not have the resources to store firearms for an extended period of time may be interested in temporarily holding firearms to help facilitate the safe and lawful transfer to a third-party. This option will assist subjects of protective orders in complying with the law while not imposing any long term inconveniences on agencies. This practice should require similar documentation and waiver forms for the agency and parties to endorse. Agencies should explain the process to respondents and third-parties, to include the length of time the agency will 'hold' the firearms, the number and type of firearms the agency will temporarily accept, to whom the firearm may be transferred, that the third-party must agree to a criminal history background check, and how the agency will dispose of the firearm if the third-party fails to retrieve it.

3. Storage of Surrendered Firearms

Agencies will need to evaluate storage capacity before accepting firearms. Once they determine where the firearms will be stored, agencies should develop a process to accept and return firearms, noting the condition of the firearm, photographing the weapon, serial numbers, etc. This type of documentation will help protect the agencies from claims that the firearm(s) were not in the same condition when returned to their owners. Other factors agencies should contemplate:

- How many firearms can be accommodated?
- Where will they be stored? Will firearms be stored with criminal evidence or separated?
- How long will they be stored? Because family abuse final protective orders can last up to two years but are renewable, agencies may need to limit the length of storage if resources and space are an issue.
- Will the agency charge a storage fee? What about indigent persons who cannot afford to pay storage fees? What are the terms and conditions of storage that should be shared with the person surrendering the firearm?
- What type of contract or agreement with the person surrendering the weapon should be required? If the person surrendering the firearm is not the owner, what other documentation will the agency require?
- Who will manage the records of these transactions and how long will they be kept? Agencies should consult with record retention specialists or attorneys to determine how long to maintain records of surrendered firearms.

4. Disposal/Return of Firearm

Agencies that agree to accept and store firearms should determine how firearms will be disposed. If an agency decides to return firearms either to the respondent or a third-party, it should verify that the person can lawfully possess the firearm by conducting a criminal history record check and noting the results for recordkeeping. This will determine whether any state or federal convictions bar the person from possessing firearms. Agencies should also check to see whether the person is subject to any outstanding protective orders. If an agency decides to transfer the firearm back to the respondent or a third-party, it should create corresponding documentation to be signed by all parties.

If possible, the agency may want to consider notifying the victim or petitioner who obtained the protective order that firearms are being returned to the owner. While not necessarily feasible in every case, knowing that a firearm has been returned to the prior subject of an order could be important to the witness/victim for safety planning purposes.

Once an agency agrees to return a firearm, it should establish parameters for when, where and how the transfer will occur that are similar to the surrender conditions. Will the agency be available 24 hours a day, seven days a week to return firearms or will there be specific times and locations? Will firearms be returned in the office or will they be placed into an open trunk with a safety feature in place? Making detailed arrangements ahead of time with the recipient will ensure the safe transfer of firearms.

Before returning firearms, an agency should:

- Verify the recipient may lawfully possess firearms.
- Is not subject to outstanding protective orders.
- Is not subject to qualifying domestic violence misdemeanor conviction (federal law).
- Is not an alien who has illegally or unlawfully entered the U.S.
- Is a U.S. citizen.
- Has not been adjudicated mentally defective or committed to mental institution.
- Has not been dishonorably discharged from the military.
- Is not an unlawful user of or addicted to any controlled substance.
- Has not been convicted of a felony.
- Is not under indictment for a felony.
- Require a subject of a protective order to show proof that the order has expired.

Another option agencies have is to treat surrendered firearms as abandoned property, provided that adequate notice is provided, or the person surrendering the firearms has signed a waiver. Normal operating procedures for the destruction of abandoned property would apply.

5. Waiver Examples

Agencies may want to develop a series of waiver forms that help protect against future litigation. Some examples include waiver provisions that:

- Require a person surrendering a firearm to verify he is the rightful owner of the firearm.
- Require a person surrendering firearm to acknowledge that the agency will only hold the firearm for a certain period of time.
- Notify the person surrendering the firearm that the agency will not be held liable for any damage or lost firearms.
- Notify the person surrendering the firearm that the firearm will be treated like abandoned property after a specified period of time if not retrieved.

- Notify the person surrendering the firearm that the firearm will be destroyed after a certain number of days.
- Notify the person surrendering the firearm that the firearm will be subject to National Integrated Ballistic Information Network check.
- Notify the person surrendering the firearm that the firearm will only be returned to certain named parties under certain conditions, including restrictions on the time, place and location of the surrender.
- Notify the person surrendering the firearm that the person retrieving the firearm will be required to have a criminal history record check performed.
- Notify the person surrendering the firearm that the agency may inform the petitioner of the original order that the firearms are being returned to the subject.

6. Enforcement of Law

Like any other crime, agencies investigating potential violations of protective orders should work with Commonwealth's Attorneys to determine what kind of evidence is needed. Officers should know the elements of the crime as they investigate potential violations. If an agency serves the original protective order, records should be kept of which officer served the order, when it was served, whether the officer informed the recipient that it was illegal to possess a firearm, and whether the recipient indicated he/she owned any firearms.



COURTS

The Juvenile and Domestic Relations (JDR) District and the Circuit Courts issue Family Abuse Permanent Protective Orders in Virginia. Orders are issued after hearings are conducted and both parties have an opportunity to be heard. During the hearings, judges may ask about the presence of firearms. Once a court issues a protective order, it is served on the respondent either in court or by a service processor. Language about this law and prohibition to possess firearms is standard on all orders.

Every state is required to provide judicial notification to domestic violence offenders and respondents of permanent protective orders about the federal and/or state firearm prohibition. This means that judges are required to advise defendants convicted of certain crimes that they may be subject to federal restrictions that make it a crime to possess, ship, transport or receive any firearm or ammunition. Some courts meet this requirement by printing the judicial notice on their warrants, some courts use a stamp to imprint the notice on the respondent's or offender's court papers, and other judges provide verbal notification. Some courts also have brochures readily available at the courthouse that outline the prohibitions. In addition, all protective order forms throughout the state contain both the state and federal prohibition to serve as a written notification for respondents of domestic violence.

After a Family Abuse Permanent Protective Order has been ordered, courts are tasked with adjudicating violations of the order and any firearms violations. Courts make the final decision about the appropriate sanctions to be imposed for violations.

Some respondents may be under the supervision of local or state probation officers. Probation officers help offenders comply with conditions set by the courts. Some probation offices have incorporated acknowledgment of this law into their practice of supervising offenders by having them sign forms verifying their notification and compliance.



COMMONWEALTH'S ATTORNEYS

As part of their responsibility to enforce criminal laws, Commonwealth's Attorneys enforce violations of § 18.2-308.1:4(B) as well as violations of domestic abuse laws. Enforcement includes speaking with victims and witnesses expected to testify for the Commonwealth at trial. Prosecutors will ask victims and witnesses what they saw and heard. There is likely to be a history of interaction between the respondent and petitioner which may play a role in the adjudicatory or sentencing phases of trial. Witnesses to these crimes may be in need of services and prosecutors should help direct such witnesses to victim/witness assistance programs or other resources.

Prosecutors also work with law enforcement in the development of cases prior to or after arrest. Many times officers are faced with situations that require immediate assistance or counsel from a prosecutor. Prosecutors are able to explain the criminal justice system to victims and witnesses and explain how they can obtain protective orders against respondents.

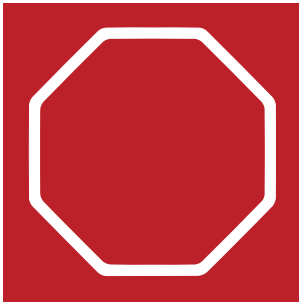


DEFENSE ATTORNEYS

Defense Attorneys represent clients who are charged with criminal offenses, such as violations of § 18.2-308.1:4(B), or who are subject to Family Abuse Protective Orders. The client-attorney relationship offers an opportunity for attorneys to advise their clients of the implications of being served with a Family Abuse Permanent Protective Order. Attorneys can suggest ways for clients to avoid violating the law. They can also advise clients on how to responsibly and safely transfer possession of firearms if they are served with a Family Abuse Permanent Protective Order. In

many instances, attorneys communicate with clients' family members, employers and friends. As long as no confidences are shared, attorneys could help explain the repercussions for the client if he/she is observed possessing a firearm in violation of § 18.2-308.1:4.

If clients are ultimately charged with violating § 18.2-308.1:4, defense attorneys should notify their clients that felony convictions will result in the loss of the right to possess firearms.



SUBJECTS OF FAMILY ABUSE PERMANENT PROTECTIVE ORDER

This legislation became effective July 1, 2016, and makes it a crime to possess firearms for those that are subject to a Family Abuse Permanent Protective Order. Violations of this law may result in incarceration and permanent loss of firearms rights. It is important to remember that this law does not apply to individuals subject to an emergency, temporary or other protective order.

For subjects of a Family Abuse Permanent Protective Order, it is unlawful to possess firearms unless it is within 24 hours of the protective order being served and the firearm is being transferred or sold to a lawful person. If transferring firearms to another individual, the subject must ensure that person is legally permitted to possess firearms. There is additional information about third-party transfers in the next section. It is important to note that living in a household where firearms are present could constitute possession and result in a violation of this law. It is critical to educate yourself, friends, and family about this law, and take the necessary steps to remove any firearms from your possession. When the protective order is no longer effective, it is important to obtain documentation to that effect from the court. This will assist in the retrieval of surrendered firearms and provide verification that possession of a firearm is now acceptable.



THIRD-PARTY TRANSFERS

Third-parties, including federally licensed firearms dealers and law enforcement agencies, may receive firearms. When considering storage at a firearms dealer, one should be aware that the dealer may impose limitations on the amount of time the firearm can be stored and there may be a fee associated with the storage.

When considering storage of the firearm at a local law enforcement agency, it is important to verify that the agency is available to store firearms. Not all departments may have the capacity to store weapons. Law enforcement agencies may also have different policies and procedures governing the collection, retention, and return of firearms. Third-parties should contact a local law enforcement agency prior to arriving with the firearm. This will save time and improve safety during the transfer. It may also be necessary to check surrounding law enforcement agencies, if the local agency is unable to provide storage.

Private citizens are permitted to accept and store firearms from respondents, as long as they are legally able to possess firearms. Citizens should consider many factors when deciding whether to assist with firearm storage. Does the citizen have a safe and secure place to store the firearm, and will it create a negative impact or increase the risk of harm to family members? Citizens should also consider the responsibility and liability of accepting and storing the firearm for respondents. Lastly, citizens should consider how to verify that respondents are no longer subject to protective orders. Returning the firearm to an individual who is not lawfully allowed to possess it could result in criminal prosecution. Please review the code and contact your local stakeholders with questions.