



Firearm Removal/Retrieval in Cases of Domestic Violence

IDENTIFY – NOTIFY – REMOVE – STORE

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Co-Authors & Acknowledgments

Prosecutors Against Gun Violence

Prosecutors Against Gun Violence (PAGV) is an independent, non-partisan coalition working toward prosecutorial and policy solutions to the national public health and safety crisis of gun violence. Our growing membership includes 37 prosecutors from diverse jurisdictions throughout the United States.

Consortium for Risk-Based Firearm Policy

The Consortium for Risk-Based Firearm Policy includes the nation's leading researchers, practitioners, and advocates in gun violence prevention and mental health. The Consortium offers policy recommendations informed by the best available research that are meaningful for the victims and families affected by gun violence, and respectful of individuals with mental illness and their care providers.

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Note on the Text

For the purpose of this report, when not referring to a specific state statute, we will refer to all processes by which prohibited persons are separated from firearms and, in some cases, other weapons and ammunition as removal/retrieval.

State statutes and practices referred to herein are meant to provide examples of different statutes and practices. The report does not attempt to explain removal/retrieval processes used in every state.

States refer variously to protective orders, orders of protection, protection from abuse orders, restraining orders, and injunctions. When not referring to a specific state statute, we will use the term “protective order” to represent all such orders. States refer to attorneys who prosecute crimes on behalf of the jurisdiction variously as prosecutors, district attorneys, solicitors general, etc. For the purpose of this report, we will use the term “prosecutors” to represent all such persons.

The report will discuss cases in which an individual petitions the court for a civil protective order. In those cases, we use the term “petitioner” and “respondent.” The report also discusses cases in which a criminal protective order is issued after charges are filed. In those cases, we typically refer to the parties as “victim” and “defendant.”

Executive Summary

The purpose of this report is to recommend risk-based firearm policies and practices to diminish gun violence perpetrated by domestic abusers.

Guns and domestic violence are a lethal combination. When an abusive partner has access to a firearm, the risk the other partner (usually a woman) will be killed increases more than five-fold. Often before these tragedies occur, law enforcement has already been involved: One study found that approximately half of women killed by their intimate partner had contact with the criminal justice system, related to the abuse, within the year prior to being murdered.¹ Those contacts provide critical windows of opportunity that can prevent an eventual death.

Restricting abusers' access to firearms is an effective policy, reducing domestic violence homicides by as much as 25%. Studies show that "would-be killers do not replace guns with other weapons to effect the same number of killings."²

While federal law prohibits purchase and possession of firearms by persons subject to domestic violence protective orders,³ it does not prohibit purchase or possession of firearms by those subject to *temporary* domestic violence restraining orders. Those temporary orders are often the first step in the domestic violence protective order process, reflecting the immediate danger the victim faces. Many states have closed this gap by prohibiting individuals who are subject to temporary domestic violence protective orders from purchasing or possessing firearms. Federal law should be changed to prohibit purchase and possession of firearms by persons subject to temporary domestic violence protective orders as well, to ensure that victims are provided safety throughout the entire process.

In addition to making this overarching recommendation, this report reviews the processes that jurisdictions across the nation have in place to ensure that individuals subject to protective orders for domestic abuse actually abide by the firearm restrictions. We also analyze logistical, monetary, and political considerations, obstacles to implementation, and data needs at each step of the process.

Further, this report provides examples of current promising practices for the removal/retrieval of firearms from these individuals. For purposes of this analysis, we break down the removal process into six components: authority to remove/retrieve, identifying respondents with firearms, notifying prohibited possessors, removal/retrieval of the firearm(s), storage or sale of firearms, and return of firearms.

¹ The Consortium for Risk-Based Firearm Policy. (2013). *Guns, Public Health, and Mental Illness: An Evidence-Based Approach for Federal Policy*. Retrieved November 23, 2015, from <http://www.efsgv.org/wp-content/uploads/2014/10/Final-Federal-Report.pdf>

² *Id.*

³ 18 U.S.C. § 922(g)(8).

Authority to Remove/Retrieve

States provide judges with two types of authority to remove/retrieve firearms from persons subject to criminal and civil protective orders; explicit and implicit. Explicit authority is further divided into states that *require* judges to order respondents to have firearms removed/retrieved and states that *authorize* judges to order respondents have firearms to be removed/retrieved. In California, for example, the court, upon issuance of a civil protective order, is required to “order the respondent to relinquish any firearm in the respondent’s immediate possession or control or subject to the respondent’s immediate possession or control.”⁴ In contrast, Delaware law authorizes, but does not require, a judge to “[o]rder the respondent to temporarily relinquish to the sheriff, constable or to a police officer the respondent’s firearms and ammunition and to refrain from purchasing or receiving additional firearms for the duration of the order,” or “[i]ssue an order directing any law-enforcement agency to forthwith search for and seize firearms of the respondent.”⁵

In implicit authority states, catch-all provisions typically allow judges to order any other relief necessary for the protection of a petitioner. In Virginia, for example, when a judge issues a preliminary protective order or protective order in cases of family abuse, the statute authorizes the judge to include “[a]ny other relief necessary for the protection of the petitioner and family or household members of the petitioner ...”⁶

We recommend prosecutors, law enforcement and domestic violence service providers work with the judiciary to assure judges have clear guidance on their authority to remove/retrieve firearms from domestic abusers, and possess the empirical data underscoring why removing/retrieving firearms from domestic abusers is so important. In states with implicit authority, we recommend stakeholders enter into formal or informal agreements to work together to ensure that firearms are removed/retrieved from respondents/defendants.

Identifying Respondents & Defendants Possessing Firearms

In order for a firearm removal and retrieval policy to be effective, it is important to identify those respondents and defendants who possess a firearm. This information cannot be acquired through just one source. Even in states that maintain a database of firearms sales and transfers, not every firearm has been lawfully acquired or registered.⁷

We recommend prosecutors, law enforcement, domestic violence victim advocates and the judiciary identify and use all available, reliable sources of data to identify respondents and defendants in possession of firearms.

For example, in the Butte County and San Mateo County study cited throughout this report, law enforcement utilized the following sources of information to identify respondents in possession of firearms: (1) administrative databases and other relevant criminal justice sources; (2) copies of

⁴ Cal. Fam. Code § 6389(c)(1) (West).

⁵ Del. Code Ann. tit. 10, §§ 1045(a)(8), (11); 1043(c) (West).

⁶ VA Code Ann. §§ 16.1-253.1; 16.1-279.1 (West).

⁷ Wintemute, G.J., Frattaroli, S., Claire, B.E., Vittes, K.A., Webster, D.W. (2014) Identifying Armed Respondents to Domestic Violence Restraining Orders and Recovering Their Firearms: Process Evaluation of an Initiative in California. *American Journal of Public Health*. e113.

restraining orders to review the narrative of abuse submitted by petitioners; and in some cases (3) interviews with petitioners.

Notifying Prohibited Possessors

According to one study, the most common reason firearms are not recovered from a respondent is that the order was never served.⁸

We recommend the following in civil domestic violence protective order cases:

1. Prioritize service of protective orders to armed respondents.
2. Use trained law enforcement personnel to investigate and serve protective orders involving respondents with access to firearms.
3. Communicate to respondents their options for complying with the firearm prohibition.
4. Consider whether immediate surrender of firearms should be a standard practice for law enforcement agencies.
5. Ask whether respondents to protective orders have guns when serving protective orders.

We recommend the judiciary consider the following in criminal cases:

1. Verbally inform every offender that he or she is prohibited from purchasing or possessing a firearm, and that firearms he or she currently owns or possesses must be removed/retrieved.⁹
2. Provide offenders with a written statement warning them of the prohibition on the purchase and possession of firearms, the removal/retrieval process in his or her jurisdiction, and the penalties associated with illegal possession of a firearm.¹⁰
3. Ask offenders under oath whether they possess a firearm, and note the response. If the offender responds that he or she is in possession of a firearm, the court should provide such information to the relevant law enforcement agency.¹¹
4. Verbally inform every offender that possessing a firearm while prohibited may result in additional criminal charges.¹²

Removal/Retrieval of Firearms

States that authorize or require the removal/retrieval of firearms from individuals subject to domestic violence protective orders employ several different methods; surrender, search and seizure, or a hybrid of the two. Colorado, Illinois and California are good examples of each of these types of removal.

In Colorado, a judge issuing a civil protective order that qualifies as an order described in 18 U.S.C. § 922(d)(8) or (g)(8), shall order the person to “[r]elinquish, for the duration of the order, any firearm or

⁸ *Id.* at e115

⁹ Court Watch Montgomery: A Public Eye on Domestic Violence. (2015). *Abusers with Guns: The Critical Role of Maryland's Courts in Reducing Lethal Risks to Domestic Violence Victims*. Retrieved November 23, 2015, from <http://courtwatchmontgomery.org/wp-content/uploads/2015/11/Court-Watch-DV-gun-crime-report-11.5.15.pdf>

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

ammunition in the respondent's immediate possession or control or subject to the respondent's immediate possession or control ...”

In Illinois, a judge issuing an order of protection or an emergency order of protection¹³ “shall issue a warrant for seizure of any firearm in the possession of the respondent, to be kept by the local law enforcement agency for safekeeping.”¹⁴

In California, upon issuance of a civil domestic violence protective order, the court shall “order the respondent to relinquish any firearm in the respondent's immediate possession or control or subject to the respondent's immediate possession or control ...”¹⁵ A law enforcement officer serving a protective order that indicates that the respondent possesses weapons or ammunition shall request that the firearm be immediately surrendered.¹⁶ If the law enforcement officer makes no such request, the surrender shall occur within 24 hours of being served with the order.¹⁷ The law enforcement official or licensed gun dealer taking possession of any firearms or ammunition shall issue a receipt to the person surrendering the firearm at the time of surrender.¹⁸ The respondent shall file the original receipt with the court that issued the protective order and a copy of the receipt with the law enforcement agency that served the protective order within 48 hours of service of the order.¹⁹ If the respondent fails to relinquish the firearm within the aforementioned time period, California law authorizes the issuance of a search warrant.²⁰

States with removal processes allow respondents to surrender firearms to law enforcement or a combination of law enforcement, licensed dealers, or third parties.

Law enforcement in California and Maryland employ a non-confrontational approach to persuade respondents to surrender firearms. Officers familiarize themselves with the circumstances surrounding violence that led to the order; seek information about firearms possessed by the respondent; dress in plain clothes and drive unmarked cars; treat respondents with empathy and respect; and emphasize the temporariness of the prohibition. Law enforcement officers in California and Maryland also note that defense attorneys were sometimes helpful in facilitating the peaceful surrender of firearms by respondents.

Respondents have raised Fifth Amendment concerns regarding the surrender of firearms. California, for example, addresses this concern by offering immunity from gun possession charges to subjects of civil

¹³ 750 Ill. Comp. Stat. Ann. 60/217(a)(3)(i) (West) (If the petitioner can establish that “there is good cause to grant the remedy, regardless of prior service of process or of notice upon the respondent, because: ... the harm which that remedy is intended to prevent would be likely to occur if the respondent were given any prior notice, or greater notice than was actually given, of the petitioner's efforts to obtain judicial relief ...”).

¹⁴ 750 Ill. Comp. Stat. 60/214(b)(14.5) (West) (If the order: “(1) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate; (2) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and (3)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.”)

¹⁵ Cal. Fam. Code § 6389(c)(1) (West).

¹⁶ Cal. Fam. Code § 6389(c)(2) (West).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Cal. Fam. Code § 6389(c)(2)(A),(B) (West).

²⁰ Cal. Penal Code § 1524(a)(11) (West).

domestic violence protective orders who surrender firearms. In Wisconsin, which does not prohibit possession for temporary or ex parte orders, judges stay the final order and extend the temporary/ex parte order to allow respondents to surrender firearms.

We recommend the following:

1. Authorize law enforcement to remove guns from prohibited people, and if that removal is unsuccessful, allow the court to issue a search warrant to complete the removal.
2. Follow up to assure respondents are no longer in possession of their guns.
3. Establish qualifications and procedures for third-party surrender if allowed by law.
4. Adopt a non-confrontational approach for gun removal.
5. Explain the removal policy and process to defense attorneys.
6. Establish legal protections against self-incrimination for disclosing gun possession.

Storage/Sale of Firearms

Once firearms have been removed or retrieved from those subject to protective orders, the parties responsible for storing such firearms must address a host of issues including firearm storage, maintenance and safekeeping, liability for loss or damage, storage fees, and whether respondents should be allowed an opportunity to sell such firearms.

Storage policies vary among law enforcement agencies. Some, like Prince George's County, have expensive facilities for the storage of firearms that control for temperature and humidity; others allow for firearms to be stored with licensed dealers or third parties, charge fees for storage or simply provide law enforcement agencies with immunity from civil liability for damage to stored firearms.

In 2015, the Supreme Court held that 18 U.S.C. §922(g), which, among other things, prohibits felons from possessing firearms, does permit courts to transfer a felon's firearm to a third party who will not allow the felon to exert any influence over its use.²¹ Additionally, the Court held, courts may order the firearm to be turned over to a firearms dealer for sale on the open market.²²

We recommend the following:

1. Identify or build structures that prevent damage to stored firearms removed from prohibited people.
2. Provide law enforcement with immunity from civil liability.
3. Allow law enforcement agencies storing firearms to charge respondents a fee.
4. Allow respondents to sell firearms.

Returning Firearms

Once a protective order has expired, absent some other event prohibiting the individual's possession of a firearm, the respondent is allowed to re-take possession of the firearm that was removed/retrieved. There are several considerations in outlining a process for returning firearms; such as, automatic return or return

²¹ *Henderson v. United States*, 135 S. Ct. 1780, 1787, 191 L. Ed. 2d 874 (2015).

²² *Id.*

dependent upon a background check; notification to protected parties; and what can be done with a firearm that cannot be returned.

Many states require the respondent to petition for the return of a firearm and undergo a background check. Some states, such as Washington, require the law enforcement agency returning a firearm to a respondent to notify the petitioner of such return. Additionally, some states, such as Delaware, allow law enforcement agencies to destroy unclaimed firearms.

We recommend requiring a background check as a condition of returning firearms to a prohibited party, enacting a policy to allow unclaimed firearms to be sold or destroyed, and, in civil protective order cases, require law enforcement to notify petitioners or victims when firearms have been returned to the respondent/defendant.

Data Needs

Careful and timely evaluation of the effectiveness of the removal/retrieval process is essential to determine promising practices, and overcome some of the implementation obstacles we have identified.

We recommend that data at each stage of the process be collected as part of any firearm removal.

Promising Practices

This report offers an array of effective policy options at the national, state and local levels to keep guns out of the hands of domestic abusers. The Memorandum of Understanding entered into by the Multnomah County Circuit Court, the Multnomah County District Attorney's Office and the Portland Police Bureau and the firearm policy of the Los Angeles City Attorney's Office, provide a clear representation of the distinctions between removal/retrieval processes for civil and criminal domestic violence protective orders.

In Multnomah County, when a judge issues a civil domestic violence restraining order, the Sheriff serves the order upon the respondent. Respondents in possession of a firearm at the time of service must turn over the firearms to law enforcement immediately or surrender the firearms to law enforcement or a qualified relative within 48 hours of service of the order or, if the respondent is in jail, 48 hours after release. Within three court days of service of the order or, if the respondent is in jail, within three courts days of release, the respondent must file a firearms affidavit with the court showing that firearms have been surrendered to law enforcement or a third party. In order to ensure compliance with these procedures, the Multnomah County Circuit Court, Portland Police Bureau and Multnomah County District Attorney's Office (MCDA) entered into a Memorandum of Understanding which details their respective responsibilities. These responsibilities are summarized as follows:

- Multnomah County Circuit Court:
 - Track cases where a timely affidavit is not filed with the court.
 - At least once per month, forward a list of individuals who have failed to file their firearms affidavits to the Portland Police Bureau and MCDA.
- Portland Police Bureau:

- Upon receipt of court information referred to above, the police bureau will determine whether to assign an investigator to the individual.
- The investigator will confirm that the order is still in effect and follow-up with the individual and, if necessary, contact the MCDA to determine whether a contempt arrest warrant be issued.
- Multnomah County District Attorney:
 - Provide legal advice during police bureau investigation and execution of any warrants issued.
 - Review all completed investigations to determine whether contempt charges and arrest warrant should be filed with the court.
 - Prosecute any contempt charges filed.

In the City of Los Angeles, when a criminal protective order is issued, the defendant must surrender to local law enforcement, lawfully transfer, or sell to a licensed gun dealer any firearm owned or subject to his or her immediate possession or control within 24 hours of service of the order. Within 48 hours of service, the defendant must file a receipt with the court showing compliance with the order.

In order to ensure compliance with such orders, the Los Angeles City Attorney's Office adopted the following policy:

- At the time the criminal case is presented for filing, law enforcement provides the prosecutor with a copy of the defendant's firearm history (California maintains a database containing a record of all firearm sales and transfers).
- If the defendant owns or possesses a firearm, mandatory relinquishment procedures are triggered at the moment the defendant is served with a criminal protective order (which is usually done at arraignment).
- The defendant is required to relinquish his or her firearm within 24 hours of service of the criminal protective order.
- The defendant is then obligated to return to court in two days for a compliance review hearing to show proof the firearm has been relinquished.
- Failure to comply with the relinquishment laws will result in a bail review hearing and may subject the defendant to additional criminal charges for contempt of court and possession of a firearm by a prohibited person.

Conclusion

This report offers a comprehensive roadmap that can effectively reduce the number of guns that are available in volatile and dangerous domestic situations. In the days ahead we will work with our partners across the nation to implement our recommendations at the federal, state and local levels.

I. Introduction

Scope of Report

This report outlines the process by which respondents to civil or criminal domestic violence protective orders have their firearms removed/retrieved, as well as the logistical, monetary, and political considerations, obstacles to implementation, and data needs at each step of the process. Many of the components for a removal/retrieval process may be applied to many different types of removal/retrieval; such as, civil and criminal domestic violence protective orders, felony convictions, misdemeanor domestic violence convictions, as a condition of release or probation, at the scene of a domestic violence incident, for mental health-related reasons, or from dangerous persons.

In 2014, California enacted a law providing a unique process for the removal of firearms from dangerous persons, known as a gun violence restraining order.²³ Modeled after domestic violence protective orders and similar laws in Connecticut and Indiana, the gun violence restraining order gives families and law enforcement a tool to get guns out of the hands of people who pose a danger to themselves or others. More information on the gun violence restraining order can be found in Appendix N.

For the purpose of this report, however, we will focus exclusively on civil and criminal domestic violence protective orders, because it is the removal/retrieval process for which we have the most information, and it provides for a wide array of examples of different removal/retrieval processes.

Domestic Violence Homicide Data

Domestic and intimate partner violence is a pressing public health problem in the United States. While domestic and intimate partner violence is not limited to female victimization, females experience domestic violence at higher rates than males.²⁴ In 2013, there were 2,707 female homicide victims nationwide.²⁵ Domestic violence is of particular concern – in nearly half of these homicides, the victim was the wife, mother, daughter, sister, or girlfriend of the offender.²⁶

²³ Assembly Bill 1014. 2014 Reg. Sess. (C.A. 2014).

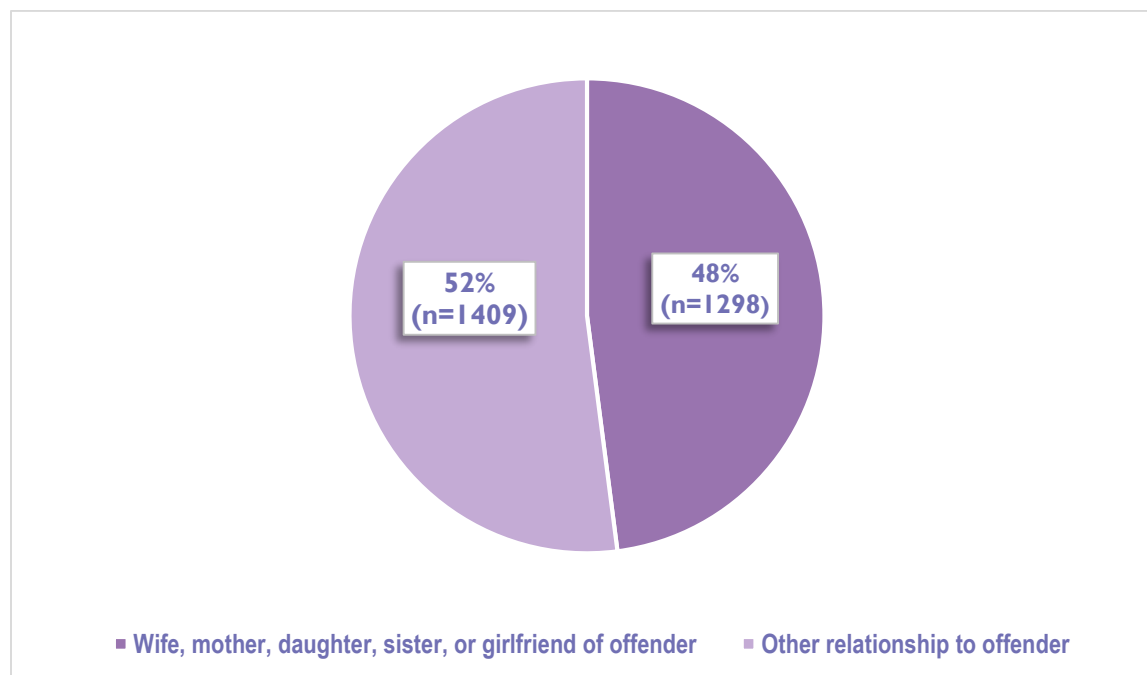
http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1014

²⁴ U.S. Department of Justice. (2013, November). *Intimate Partner Violence: Attributes of Victimization, 1993–2011*. Retrieved August 20, 2015, from Bureau of Justice Statistics: <http://www.bjs.gov/content/pub/pdf/ipvav9311.pdf>

²⁵ FBI. (2013). Expanded Homicide Data Table 1; Murder Victims by Race and Sex, 2013. *Uniform Crime Reports*. Retrieved August 20, 2015, from https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/offenses-known-to-law-enforcement/expanded-homicide/expanded_homicide_data_table_1_murder_victims_by_race_and_sex_2013.xls

²⁶ FBI. (2013). Expanded Homicide Data Table 10; Murder Circumstances by Relationship, 2013. *Uniform Crime Reports*. Retrieved August 20, 2015, from <https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/offenses->

Chart 1: Female Homicide Victims in the United States, 2013



The presence of a firearm can turn an already dangerous domestic violence situation into a lethal event. **When an intimate partner has access to a firearm, risk of homicide increases more than five-fold.**²⁷ Firearms are used more frequently than other weapons in these circumstances; a review of national FBI data from 2003-2012 showed that an average of 55% of intimate partner-related female homicides were by firearm.²⁸

In addition to intimate partner homicide, according to a 2014 survey conducted by the National Domestic Violence Hotline, “abusers invoke the mere presence of a firearm to control and terrorize their victims” and will threaten to use such firearm “to hurt the victim, their children, other family members, friends, household pets or to commit suicide.”²⁹ The following incidents are a sample of the responses from participants in the survey:

- The abuser used a firearm to kill the family cat. The abuser frequently held the firearm to the victim’s head and said that he would kill her. The abuser often threatened to kill the family and then himself.³⁰

known-to-law-enforcement/expanded-homicide/expanded_homicide_data_table_10_murder_circumstances_by_relationship_2013.xls

²⁷ Campbell, J. C., et al. (2003). Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study. *American Journal of Public Health*, 1089-1097. doi:10.2105/AJPH.93.7.1089

²⁸ Gerney, A., & Parsons, C. (2014, June). *Women Under the Gun*. Center for American Progress. Retrieved August 20, 2015, from <https://cdn.americanprogress.org/wp-content/uploads/2014/06/GunsDomesticViolencereport.pdf>

²⁹ *Voisine v. United States of America*, 2016 WL 344488 (U.S.), 15 (U.S.,2016)

³⁰ *Id.*

- The abuser has a concealed weapons permit and has put the gun on himself multiple times, and has threatened, “If you ever leave me, I’ll kill you.”³¹
- “[He] never fired the pistol, but he would sit on my chest and point it at my head. He would put it right next to my temple.”³²
- “He will wave a gun in the air when we’re in an argument and say ‘I will end you with this and put [you] out of your misery.’”³³
- “Today during an argument, he had two fully loaded clips on his belt. Later he went into his room and came back with the gun on his holster, which was not there before.”³⁴

Given that abusers use firearms to terrorize and control their victims and firearms increase the risk of fatality when domestic violence occurs, research addressing firearm removal in this context is of particular interest.

Why This Report Is Necessary

Prosecutors Against Gun Violence (PAGV) and the Consortium for Risk-Based Firearm Policy are publishing this report to provide prosecutors, judges, law enforcement, client service organizations, and legislators with concrete recommendations to address the increased risk associated with the presence of a gun in interpersonal violence. Many states have set up systems to remove/retrieve firearms from individuals who are prohibited from possessing them, but we are unaware of any documentation of how the states are implementing those processes. This report will provide prosecutors, judges, law enforcement officers, client service organizations, and state and local policy makers with examples of removal/retrieval processes and guidance regarding promising current practices.

³¹ *Id.*

³² *Id.* at 16.

³³ *Id.*

³⁴ *Id.* at 17.

II. Authority for Removal/Retrieval

Civil Protective Orders

There are two ways in which courts order firearm removal/retrieval from respondents to civil domestic violence protective orders; they are given explicit or implicit authority. This authority is an important component of a successful removal/retrieval process. California, Delaware, Kentucky, Oregon, and Virginia provide examples of each type of authority. These states are featured here to illustrate the broad variations of explicit and implicit authority provided to states. For a full discussion of authority across the fifty states, please see Appendix N.

Explicit Authority

States such as California, Delaware, and West Virginia exercise explicit authority to remove/retrieve firearms from civil domestic violence protective order respondents.

California

California law explicitly requires the court, upon issuance of a protective order, to “order the respondent to relinquish any firearm in the respondent’s immediate possession or control or subject to the respondent’s immediate possession or control.”³⁵

Delaware

In contrast, Delaware law authorizes, but does not require, a judge to “[o]rder the respondent to temporarily relinquish to the sheriff, constable or to a police officer the respondent’s firearms and ammunition and to refrain from purchasing or receiving additional firearms for the duration of the order,” or “[i]ssue an order directing any law-enforcement agency to forthwith search for and seize firearms of the respondent” provided the petitioner can show that the respondent is in possession of a firearm, the petitioner can describe, with sufficient particularity, the type and location of the firearm, and “[r]espondent has used or threatened to use a firearm against the petitioner, or the petitioner expresses a fear that the respondent may use a firearm against them.”³⁶

West Virginia

According to West Virginia State Court Rules, a petition for a civil domestic violence protective order “shall contain information regarding the use, possession and ownership of firearms by the respondent which shall include a description and location, if known by the petitioner, of each firearm owned and/or possessed by the respondent.”³⁷ If the petition provides such information about firearms, the “family court during the final hearing shall require the respondent to provide proof that he or she has surrendered or transferred any and all firearms and ammunition owned or possessed by the respondent. If the respondent is unable to provide the required proof of surrender or transfer of firearms and ammunition, the court, to protect the physical safety of the petitioner and other protected individuals, shall order the respondent to surrender any and all

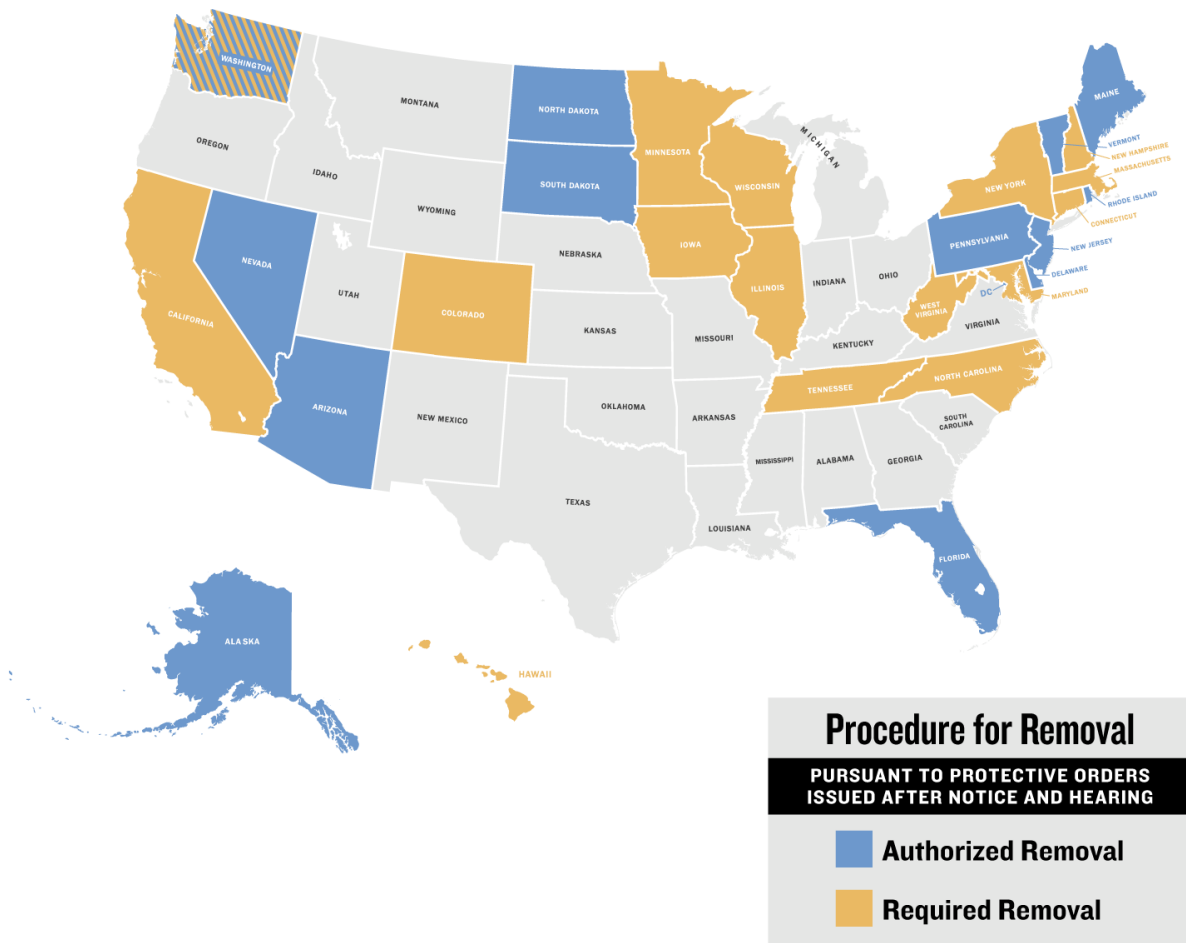
³⁵ Cal. Fam. Code § 6389(c)(1) (West).

³⁶ Del. Code Ann. tit. 10, §§ 1045(a)(8), (11); 1043(c) (West).

³⁷ WV R DOM VIOL AND CIVIL P Rule 8(c).

firearms and ammunition.”³⁸ Similarly, if the petition provides information regarding firearm possession or ownership by the respondent, the magistrate court shall order the respondent to surrender any and all firearms and ammunition.³⁹

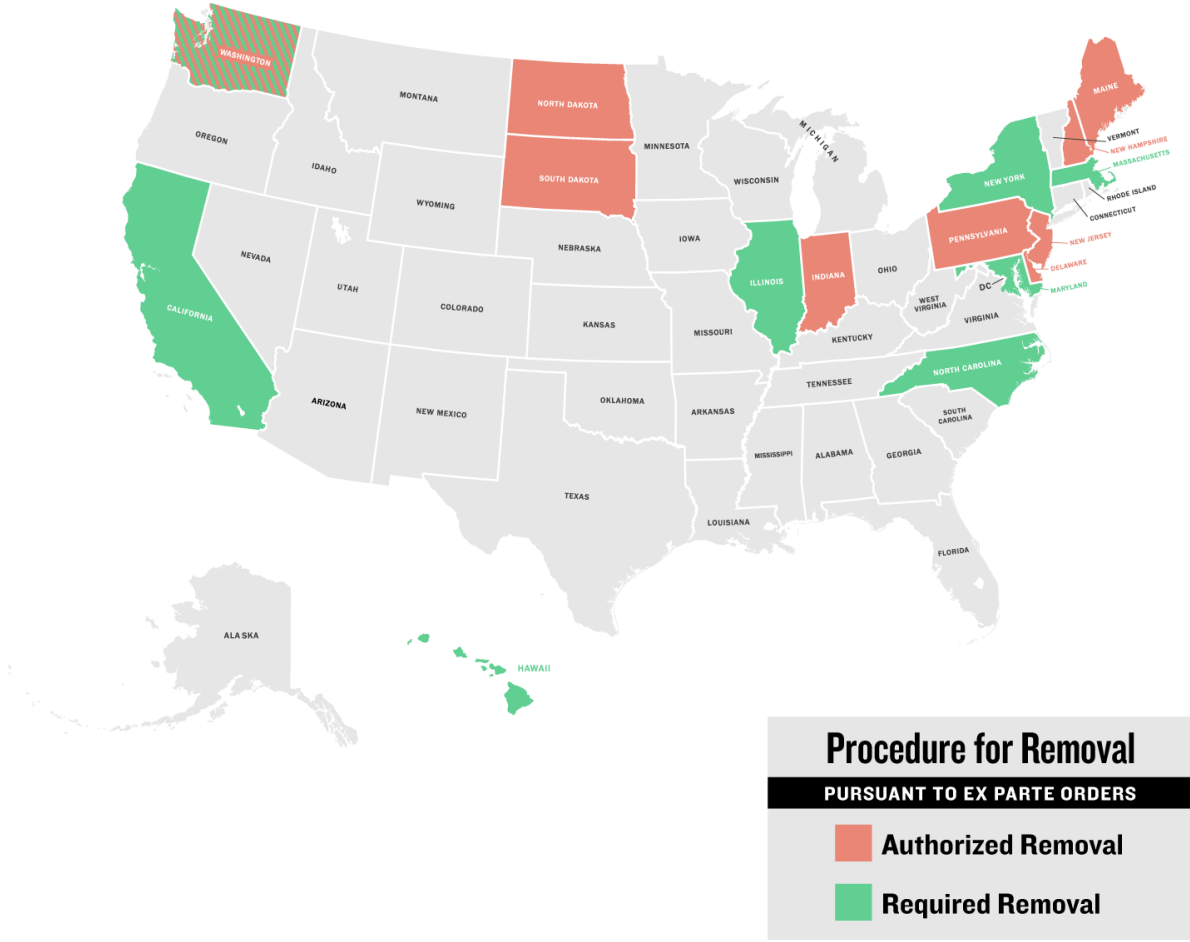
Figure 1: States With Explicit Laws for Removal of Firearms Pursuant to Protective Orders Issued After Notice and Hearing



³⁸ WV R DOM VIOL AND CIVIL P Rule 10b(2).

³⁹ WV R DOM VIOL AND CIVIL P Rule 10b(1).

Figure 2: States With Explicit Laws for Removal of Firearms Pursuant to Ex Parte Protective Orders



Implicit Authority

States such as Kentucky, Oregon, and Virginia exercise implicit authority to remove/retrieve firearms from respondents to civil domestic violence protective orders.

Kentucky

In Kentucky, a judge issuing an emergency protective order shall, in addition to other enumerated relief, “[e]nter other orders the court believes will be of assistance in eliminating future acts of domestic violence and abuse; or any combination thereof...”⁴⁰ Similarly, a Kentucky judge issuing a protective order after notice and hearing may, in addition to enumerated relief, “... enter other orders the court believes will be of assistance in eliminating future acts of domestic violence and abuse.”⁴¹

⁴⁰ KRS § 403.740(1)(h) (West).

⁴¹ KRS § 403.750(1)(j) (West).

Oregon

Under Oregon law, a judge issuing an ex parte protective order shall, if requested by the petitioner, order “[o]ther relief that the court considers necessary to: [p]rovide for the safety and welfare of the petitioner and the children in the custody of the petitioner.”⁴² In September 2014, the Multnomah County Circuit Court, the Multnomah County District Attorney’s Office and the Portland Police Bureau entered into a Memorandum of Understanding to exercise this implicit authority to remove/retrieve firearms from respondents to protective orders. This Memorandum of Understanding is attached as Appendix A. The responsibilities agreed to in the Memorandum of Understanding are summarized as follows:

- Multnomah County Circuit Court:
 - Track cases where a timely affidavit is not filed with the court.
 - At least once per month, forward a list of individuals who have failed to file their firearm affidavits to the Portland Police Bureau and MCDA.
- Portland Police Bureau:
 - Upon receipt of court information referred to above, the police bureau will determine whether to assign an investigator to individual.
 - The investigator will confirm that the order is still in effect and follow-up with the individual and, if necessary, contact the MCDA to determine whether a contempt arrest warrant will be issued.
- Multnomah County District Attorney’s Office:
 - Provide legal advice during police bureau investigation and execution of any warrants issued.
 - Review all completed investigations to determine whether contempt charges and arrest warrant will be filed with the court.
 - Prosecute in court any contempt charges filed.

The Multnomah County Circuit Court website provides the following helpful forms related to the removal of firearms pursuant to a protective order:

- Frequently Asked Questions form regarding the surrender and return of firearms in Family Abuse Prevention Act restraining order cases (attached as Appendix B).⁴³
- Firearms Surrender and Return Terms for Respondents under Restraining Orders (attached as Appendix C).⁴⁴
- Firearm Surrender, Transfer or Disclaimer Affidavit (attached as Appendix D).

⁴² O.R.S. § 107.718(1)(h) (West); see also Senate Bill 525, 2015 Reg. Sess. (Or. 2015)(An act which makes it unlawful for a person to knowingly possess a firearm or ammunition if the person is the subject of a court order that: (A) Was issued or continued after a hearing for which the person had actual notice and during the course of which the person had an opportunity to be heard; (B) Restrains the person from stalking, intimidating, molesting or menacing an intimate partner, a child of an intimate partner or a child of the person; and (C) Includes a finding that the person represents a credible threat to the physical safety of an intimate partner, a child of the intimate partner or a child of the person ...”).

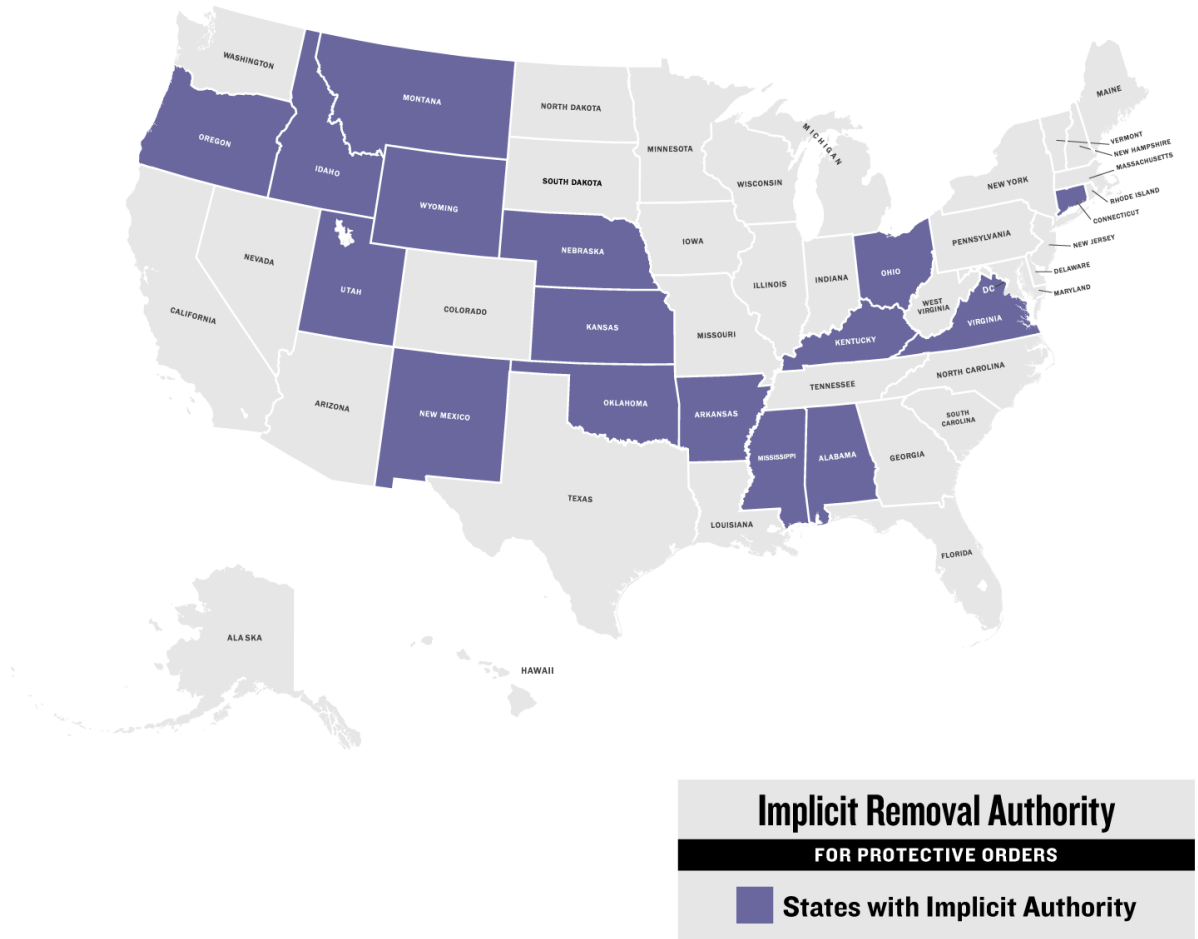
⁴³ http://courts.oregon.gov/Multnomah/docs/FamilyCourt/FirearmsInFAPARestrainingOrders_FirearmsFAQs.pdf

⁴⁴ <http://courts.oregon.gov/Multnomah/docs/FamilyCourt/FirearmsSurrenderAndReturnTerms.pdf>

Virginia

Under Virginia law, when a judge issues a preliminary protective order or protective order in cases of family abuse, the statute authorizes the judge to include “[a]ny other relief necessary for the protection of the petitioner and family or household members of the petitioner ...”⁴⁵

Figure 3: States With Implicit Statutory Authority to Order Removal of Firearms Pursuant to Protective Order⁴⁶



Criminal Protective Orders

Explicit or implicit authority also applies to how courts order firearm removal/retrieval from defendants served with a criminal protective order, or as an order upon a defendant’s release from jail or prison. Below

⁴⁵ VA Code Ann. §§ 16.1-253.1; 16.1-279.1 (West).

⁴⁶ Please note that there are some states that have neither explicit nor implicit authority to remove firearms pursuant to a protective order.

we will discuss California, Illinois, Hawaii and Virginia as examples. These states are featured here to illustrate the broad variations of explicit and implicit authority provided to states.

Explicit Authority

California

In California, a judge may issue a criminal protective order in a criminal case⁴⁷ and must issue a criminal protective order as a condition of probation for the perpetrator of a crime of domestic violence.⁴⁸ Any person who is subject to a criminal protective order shall surrender to local law enforcement, lawfully transfer, or sell to a licensed gun dealer, any firearm owned or subject to their immediate possession of control, within 24 hours after service of the order. The restrained person must file a receipt with the court, showing compliance with the order, within 48 hours of service. If the court finds good cause to believe that the defendant has a firearm within his or her immediate possession or control, the court shall set a review hearing to determine if the defendant has complied with the requirement to relinquish the firearm pursuant to Civil Procedure Code section 527.9.⁴⁹ The prosecution bears the burden of proving at the review hearing that the defendant has not complied with the requirement to relinquish firearms.⁵⁰

At the review hearing, if the court has issued a criminal protective order in a criminal case:

(A) If the court finds that the defendant has a firearm in or subject to his or her immediate possession or control, the court must consider whether bail, as set, or defendant's release on his or her own recognizance is appropriate.

(B) If the defendant does not appear at the hearing and the court revokes bail, the court should issue a bench warrant.⁵¹

If the court has issued a criminal protective order as a condition of probation, and the court finds at the review hearing that the defendant has a firearm in or subject to his or her immediate possession or control, the court shall terminate the defendant's participation in any domestic violence program and shall proceed with further sentencing.⁵²

In order to ensure compliance with the order, the Los Angeles City Attorney's Office has adopted the following policy (available in full as Appendix E):

- At the time the criminal case is presented for filing, law enforcement provides the prosecutor with a copy of the defendant's firearm history (California maintains a database containing a record of all firearm sales and transfers).
- If the defendant owns or possesses a firearm, mandatory relinquishment procedures are triggered at the moment the defendant is served with a criminal protective order (which is usually done at arraignment).

⁴⁷ Cal. Penal Code § 136.2 (West) ("Upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, a court with jurisdiction over a criminal matter may issue orders, including, but not limited to, the following: (A) An order issued pursuant to Section 6320 of the Family Code.")

⁴⁸ Cal. Penal Code § 1203.097 (West).

⁴⁹ Cal. Rules of Court 4.700(c)(2) (West); *see also* Cal. Civ. Proc. Code § 527.9 (West).

⁵⁰ Cal. Rules of Court 4.700(d)(3) (West);

⁵¹ Cal. Rules of Court 4.700(d)(1) (West);

⁵² Cal. Rules of Court 4.700(d)(2) (West); Cal. Penal Code § 1203.097(a)(12) (West).

- The defendant is required to lawfully relinquish his or her firearm within 24 hours of service of the criminal protective order. (CCP 527.9).
- The defendant is then obligated to return to court in two days for a compliance review hearing to show proof the firearm has been relinquished. (CRC 4.700).
- Failure to comply with the relinquishment laws will result in a bail review hearing and may subject the defendant to additional criminal charges for contempt of court and possession of a firearm by a prohibited possessor.

Illinois

In Illinois, an action for a criminal order of protection is commenced in conjunction with a delinquency petition or a criminal prosecution by filing a petition for an order under the same case number as the delinquency petition or the criminal prosecution “to be granted during pre-trial release of a defendant, with any dispositional order issued under Section 5-710 of the Juvenile Court Act of 1987, or as a condition of release, supervision, conditional discharge, probation, periodic imprisonment, parole, aftercare release, or mandatory supervised release, or in conjunction with imprisonment or a bond forfeiture warrant.”⁵³

Any person subject to a criminal order of protection, interim order of protection⁵⁴, emergency order of protection⁵⁵, or plenary order of protection⁵⁶ is prohibited from possessing firearms.⁵⁷ The court shall order the respondent to turn over any firearms in his or her possession to a person with a valid Firearm Owner's Identification Card for safekeeping.⁵⁸ Additionally, the court shall order the respondent to turn over his or her Firearm Owner's Identification Card to the local law enforcement agency, “which, in turn shall immediately mail the card to the Department of State Police Firearm Owner's Identification Card Office for safekeeping.”⁵⁹

Implicit Authority

Hawaii

In Hawaii, a court may enter an order, upon a defendant's release on bail, recognizance, or supervised release, “[p]rohibiting the defendant from possessing any dangerous weapon ...” and “[r]equiring the defendant to satisfy any other condition reasonably necessary to ... assure the safety of any other person or community.”⁶⁰

⁵³ 725 Ill. Comp. Stat. Ann. 5/112A-2(a) (West).

⁵⁴ 725 Ill. Comp. Stat. Ann. 5/112A-18(a) (West) (“For each remedy requested, petitioner must establish that: ... [a] general appearance was made or filed by or for respondent; or process was served on respondent in the manner required by Section 112A-10; or the petitioner is diligently attempting to complete the required service of process.”)

⁵⁵ 725 Ill. Comp. Stat. Ann. 5/112A-17 (West) (For the firearm prohibition, “petitioner shall establish that: ... [t]here is good cause to grant the remedy, regardless of prior service of process or of notice upon the respondent, because: ... the harm which that remedy is intended to prevent would be likely to occur if the respondent were given any prior notice, or greater notice than was actually given, of the petitioner's efforts to obtain judicial relief...”)

⁵⁶ 725 Ill. Comp. Stat. Ann. 5/112A-19 (West) (“For each remedy requested, petitioner must establish that: ... [a] general appearance was made or filed by or for respondent or process was served on respondent in the manner required by Section 112A-10; and ... [r]espondent has answered or is in default.”)

⁵⁷ 725 Ill. Comp. Stat. Ann. 5/112A-14(b)(14.5)(A) (West).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Haw. Rev. Stat. § 804-7.1(3),(9) (West).

Virginia

Under Virginia law, where a law enforcement officer or alleged victim asserts that the alleged victim is or has been subjected to an act of violence, force, or threat and a judge or magistrate finds: “(i) there is probable danger of a further such act being committed by the respondent against the alleged victim or (ii) a petition or warrant for the arrest of the respondent has been issued for any criminal offense resulting from the commission of an act of violence, force, or threat, the judge or magistrate shall issue an ex parte emergency protective order.”⁶¹ When a petitioner files a petition alleging: “(i) the petitioner is or has been, within a reasonable period of time, subjected to an act of violence, force, or threat, or (ii) a petition or warrant has been issued for the arrest of the alleged perpetrator for any criminal offense resulting from the commission of an act of violence, force, or threat, the court may issue a preliminary protective order against the alleged perpetrator...”⁶²

The ex parte emergency protective order or preliminary protective order may include, among other things, **other conditions the judge or magistrate deems necessary to prevent further abuse, criminal offenses, or communication or contact by the respondent.**⁶³

Recommendations

1. **Judicial Outreach:** For states that are explicitly or implicitly required or authorized to remove/retrieve firearms from individuals subject to domestic violence protective orders, we recommend that you engage with judges to ensure they understand the importance of such a removal/retrieval process and to ensure that they are exercising their authority. We will further discuss the importance of inter-governmental and inter-agency collaboration in section VIII.
2. **Law Enforcement Pledges:** For states that have implicit authority to remove/retrieve firearms from individuals subject to domestic violence protective orders, we recommend that important stakeholders, such as courts, prosecutors, and law enforcement officers enter into formal or informal agreements to work in tandem to ensure that those individuals are ordered not to possess firearms for the duration of the order and that firearms in the possession of such persons are removed/retrieved.
3. **Petitioner Education:** For states with any kind of explicit or implicit authority to remove/retrieve firearms from respondents of civil domestic violence protective orders, we recommend that applications for orders explicitly ask petitioners whether the respondent owns or possesses a firearm and to describe the number, type and location of the firearm.
4. **New Legislation:** For states that do not currently require or authorize law enforcement officers to remove/retrieve firearms from individuals subject to domestic violence protective orders, explicitly or implicitly, we recommend that these states enact legislation to allow judges to order removal/retrieval and for law enforcement officers to enforce the removal/retrieval of firearms. We recognize the legislative and political obstacles to passing such legislation and will discuss this further in section VIII.

⁶¹ Va. Code Ann. § 19.2-152.8(B) (West).

⁶² Va. Code Ann. § 19.2-152.9(A) (West)

⁶³ Va. Code Ann. § 19.2-152.8(B)(3) (West); Va. Code Ann. § 19.2-152.9(A)(3) (West).

III. Identifying Respondents & Defendants with Firearms

A critical step to removing firearms from individuals subject to domestic violence protective orders, and one of the biggest obstacles to accomplishing that goal, is identifying those persons who are in possession of a firearm or firearms. For the purpose of this section, we will use California as an example to illustrate the need to use multiple sources of information for identifying respondents and defendants with firearms.

California

A study of respondents to civil domestic violence protective orders, conducted in San Mateo and Butte counties in California from 2007 through 2010, determined that **no single source of information adequately identified respondents in possession of firearms.**⁶⁴ The study included 6,024 civil restraining orders involving 2,973 respondents in San Mateo County and 1,978 civil restraining orders involving an unknown number of respondents in Butte County.⁶⁵ Two detectives in each county used three main resources to determine whether respondents possessed firearms: 1) administrative databases, including California's Automated Firearms System ("AFS"), the Armed and Prohibited Persons System (APPS), and other relevant criminal justice sources; 2) copies of restraining orders to review the narrative of abuse submitted by petitioners; and in some cases, 3) interviews with petitioners.⁶⁶ In order to assist petitioners with identifying the types of firearms possessed by respondents, the detectives also utilized a firearm identification form originally developed by a Butte County client service organization (see Appendix F). Detailed information about the guns in possession provided more complete case history information for the officers to use when approaching respondents to facilitate removal with newly prohibited respondents.

The three sources of information yielded links to firearms for 525 respondents in San Mateo County and 88 respondents in Butte County. As displayed in Figure x, the three sources of information all contributed to the number of respondents in possession identified. In many of these cases, only one source revealed the respondent was in possession. Fewer than 5% of respondents in San Mateo County and 10% of respondents in Butte County were linked to firearms by all three sources.⁶⁷ The data from this study illustrates that it is crucial to use as many resources as possible to identify all respondents in possession of firearms.

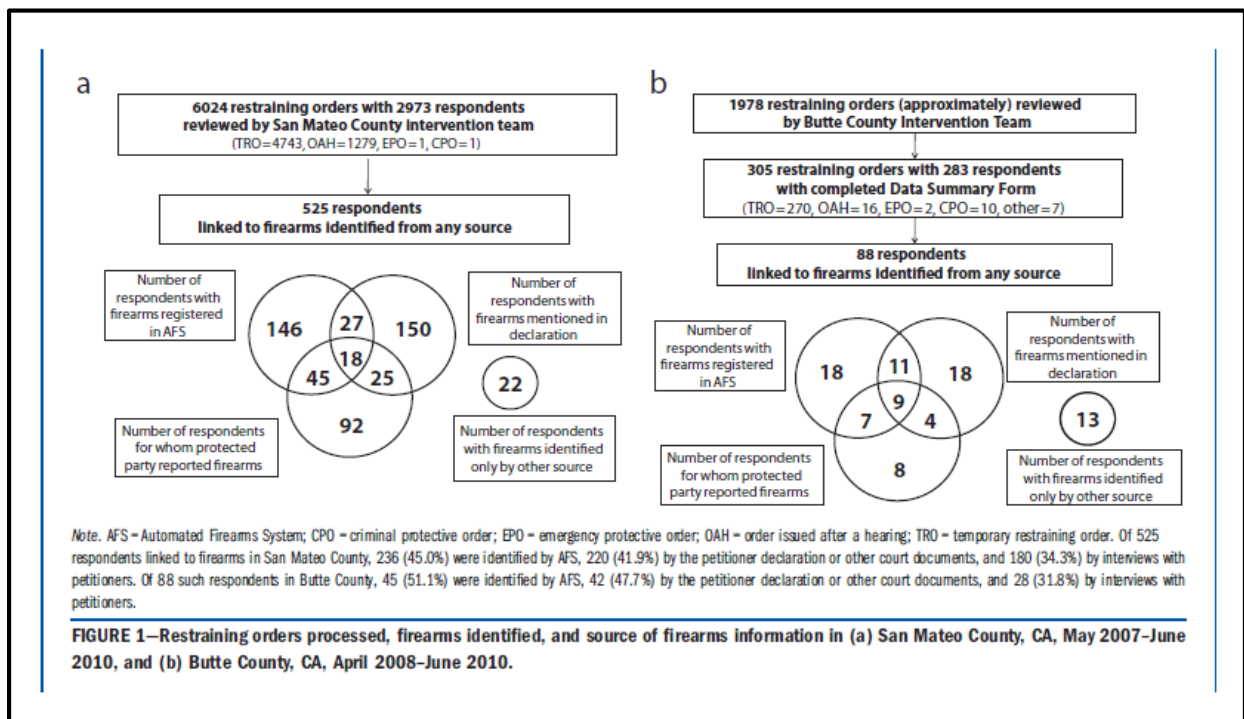
⁶⁴ Wintemute, G.J., Frattaroli, S., Claire, B.E., Vittes, K.A., Webster, D.W. (2014) Identifying Armed Respondents to Domestic Violence Restraining Orders and Recovering Their Firearms: Process Evaluation of an Initiative in California. *American Journal of Public Health* e114.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

Figure 4: Restraining orders processed, firearms identified, and source of firearm information in (a) San Mateo County, CA, May 2007-June 2010, and (b) Butte County, CA, April 2008-June 2010.



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Recommendations

1. Use Multiple Data Sources to Identify Prohibited Possessors. States should use as many sources of data as are available. Databases like AFS and APPS provide information about gun sales and gun crimes committed, copies of protective orders, including the narrative part of the application, interviews with petitioners, and any other source of data available that can inform whether a prohibited person is in possession of a gun.

Readers should note that, in California, where neither party to a firearm transaction is a licensed firearms dealer, the transaction must be completed through a licensed California dealer.⁶⁹ In states without such a requirement, a system like AFS would not perform as well as it did in California.

2. Include Firearm Identification Forms with Civil Protective Order Applications. A promising practice employed in California, and easily replicated in other states, is to provide petitioners with a form that includes photographs of firearms typically possessed in the state. Many petitioners may be unfamiliar with the various types of firearms commercially available and such a form could help them identify types of firearms possessed by the respondent. Additionally, since the form does not rely on literacy or fluency in a

⁶⁸ Wintemute, G.J., Frattaroli, S., Vittes, K.A., Claire, B.E., Wright, M.S., Webster, D.W. (2012) Firearms and Domestic Violence Education and Intervention Project Final Report of Process and Outcome Evaluations.

⁶⁹ Law Center to Prevent Gun Violence. (2015) Private Sales in California. Accessed October 23, 2015.

<http://smartgunlaws.org/private-sales-in-california/>

particular language, it is accessible to a wider range of people.⁷⁰ We recommend that such a form be provided with the petition for a domestic violence protective order. Additionally, petition forms should request that petitioners describe, to the best of their ability, the number, types, and locations of any firearms the petitioner knows to be in the control or possession of the respondent. Information about guns in possession can be important for officer safety when recovering guns from prohibited people.



Other Applications

Identifying persons who are prohibited from possessing firearms presents a critical step in the process towards removing/retrieving firearms from such prohibited persons in any context; including, but not limited to, persons convicted of a felony, persons convicted of a domestic violence misdemeanor, or persons at the scene of a domestic violence incident. In these other contexts, states should also utilize as many sources of information as are available. These sources may differ from those listed above, including, but not limited to, police reports, arrest records and other court documents.

⁷⁰ Wintemute, G.J., Frattaroli, S., Vitti, K.A., Claire, B.E., Wright, M.S., Webster, D.W. (2012) Firearms and Domestic Violence Education and Intervention Project Final Report of Process and Outcome Evaluations. 36

IV. Notifying Prohibited Possessors

Another critical step in the process towards removing/retrieving firearms from individuals who are prohibited from possessing them is notifying people when they become prohibited possessors. This section will focus on the content of civil domestic violence protective orders and the process of serving civil domestic violence protective orders to respondents, using California as an example of this step.

California Civil Domestic Violence Restraining Orders

In the California study, referred to in section III, law enforcement recovered firearms from 119 respondents in San Mateo County and from 45 respondents in Butte County.⁷¹ In San Mateo County, the most common reason that firearms were not recovered from a respondent who had been linked to firearms was that the order was never served.⁷² In Butte County, the most common reason that firearms were not recovered was that the respondent claimed or was determined not to possess firearms.

Legislative Developments

Two recent legislative changes in California likely improved the ability of law enforcement to remove/retrieve guns from prohibited people. In 2012, California lawmakers passed a law requiring protective order respondents to immediately surrender all firearms in their possession to a law enforcement agent upon demand, and in 2011, the Automated Firearm System was expanded to include long gun sales.

Senate Bill 1433, 212 Reg. Sess. (C.A. 2012);
Assembly Bill 809, 2011 Reg. Sess. (C.A. 2011)

According to the California study, the processes for serving orders in San Mateo and Butte County were different.⁷³ In San Mateo County, most orders were served by private parties.⁷⁴ Where petitioners requested service by a law enforcement officer, personnel within the civil division of the sheriff's office typically completed the task.⁷⁵ Civil deputies often did not recover the firearms as it was not within their scope of practice. Instead, if the respondent, upon service of the order and notification of the prohibition, acknowledged there were firearms at the scene, "the civil deputies were expected to remain in place until a member of the team, a patrol deputy, or an officer from a local police department with primary jurisdiction arrived to take custody of the firearms."⁷⁶ The civil division personnel, due to the large number of orders they needed to serve, often could not wait at the scene for other law enforcement to arrive and take custody of firearms.⁷⁷

⁷¹ *Id.* at 38

⁷² Wintemute, G.J., Frattaroli, S., Claire, B.E., Vites, K.A., Webster, D.W. (2014) Identifying Armed Respondents to Domestic Violence Restraining Orders and Recovering Their Firearms: Process Evaluation of an Initiative in California. *American Journal of Public Health*, e115

⁷³ Wintemute, G.J., Frattaroli, S., Vites, K.A., Claire, B.E., Wright, M.S., Webster, D.W. (2012) Firearms and Domestic Violence Education and Intervention Project Final Report of Process and Outcome Evaluations. 37.

⁷⁴ *Id.* at 37.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.* at 38.

Detectives in Butte County operated as investigators and process servers.⁷⁸ When the detectives' investigation linked a respondent with firearms, they served the order (if it had not been served already), asked the respondent if he or she had any firearms, reviewed the terms of the order and the prohibition on possessing firearms, and explained the respondent's options for complying with the order, which included surrendering his or her guns to the detectives immediately.⁷⁹ In this way, the Butte County process established a means for law enforcement to remove guns from newly prohibited respondents upon service of the order and eliminated the gap between notification and removal that occurred in San Mateo.

California Criminal Cases

In a criminal case, prosecutors would not face the same issues with notifying a prohibited person. The defendant would be present in court and personally served with a copy of the criminal protective order.

RECOMMENDATIONS IN CIVIL CASES

1. **Prioritize service of protective orders to armed respondents.** Protective orders involving respondents who are believed to own or possess firearms should be given a high priority for service.⁸⁰
2. **Use trained law enforcement personnel to investigate and serve protective orders involving respondents with access to firearms.** In cases believed to involve firearms, specially trained detectives, deputies, officers, or investigators should serve orders, to determine whether respondents own or possess a firearm should be performed as soon as possible after receiving the order from the courts.⁸¹
3. **Communicate to respondents their options for complying with the firearm prohibition.** At the time of service, officers should clearly explain to respondents their options for removal/retrieval of their firearms.⁸²
4. **Consider whether immediate surrender of firearms should be a standard practice for law enforcement agencies.** Under California law, law enforcement officers may demand that respondents immediately surrender any firearms in their possession when serving a domestic violence protective order. Agencies should consider establishing as a standard practice that a demand be made for immediate surrender of firearms.⁸³
5. **Ask whether respondents to protective orders have guns when serving the orders.** Even if advance investigations have not yet been conducted or if such investigations do not identify a gun, officers serving orders should routinely inquire whether the respondent owns or possesses a firearm.⁸⁴

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.* at 107

⁸¹ *Id.* at 108

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

RECOMMENDATIONS IN CRIMINAL CASES

Notifying prohibited possessors of a firearm possession prohibition and accompanying removal/retrieval process is equally important for implementation in criminal cases. A November 2015 report by Court Watch Montgomery found that out of 126 domestic violence offenders in Montgomery County, Maryland, who became prohibited from purchasing and possessing firearms, only one was informed orally by a judge of the prohibition.⁸⁵ None of the offenders were given written notice that they were prohibited from purchasing and possessing firearms.⁸⁶

We recommend judges do the following in criminal cases where the offender becomes prohibited from purchasing or possessing firearms:

1. Verbally inform every offender that he or she is prohibited from purchasing or possessing a firearm and that firearms currently in his or her ownership or possession, if applicable, must be removed/retrieved.⁸⁷
2. Provide disqualified offenders with a written statement warning them of the prohibition on the purchase and possession of firearms, the removal/retrieval process in their jurisdiction, and the penalties associated with illegal possession of a firearm.⁸⁸
3. Ask offenders under oath whether or not they possess a firearm and note the response. If the offender responds that he or she is in possession of a firearm, the judge should provide such information to the relevant law enforcement agency.⁸⁹
4. Verbally inform every offender that possessing a firearm while prohibited may result in additional criminal charges.⁹⁰

⁸⁵ Court Watch Montgomery: A Public Eye on Domestic Violence. (2015). *Abusers with Guns: The Critical Role of Maryland's Courts in Reducing Lethal Risks to Domestic Violence Victims*. Retrieved November 23, 2015, from <http://courtwatchmontgomery.org/wp-content/uploads/2015/11/Court-Watch-DV-gun-crime-report-11.5.15.pdf>

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

V. Removal/Retrieval of Firearms

Types of Removal/Retrieval

States that authorize or require the removal/retrieval of firearms from individuals subject to domestic violence protective orders employ three different methods; surrender, search and seizure, or a hybrid of the two. Below we will discuss Colorado, Wisconsin, New York, Illinois, California and Delaware as examples of each type of removal/retrieval.

1) SURRENDER

Colorado

Pursuant to Colorado law, a judge issuing a civil protective order that qualifies as an order described in 18 U.S.C. § 922(d)(8) or (g)(8), shall order the person to “[r]elinquish, for the duration of the order, any firearm or ammunition in the respondent’s immediate possession or control or subject to the respondent’s immediate possession or control ... [n]ot more than twenty-four hours after being served with the order in open court; or ... [n]ot more than forty-eight hours after being served with the order outside of the court.”⁹¹ The law further provides that “[a] court may allow a respondent up to seventy-two hours to relinquish a firearm or up to five days to relinquish ammunition if the respondent demonstrates to the satisfaction of the court that he or she is unable to comply within the time frame set forth” above.⁹²

Wisconsin

Wisconsin has a unique and detailed process for the surrender of firearms by respondents to permanent injunctions. If the respondent is present at the injunction hearing, he or she is required to complete and submit a firearm possession form (attached as Appendix G).⁹³ The respondent must certify the contents of the firearm possession form under penalty of perjury.⁹⁴ “If the respondent is not present at the injunction hearing, the court shall provide the petitioner with an opportunity to inform the court orally or in writing whether he or she believes that the respondent possesses a firearm” (attached as Appendix F).⁹⁵ If the petitioner answers affirmatively, the court shall request the petitioner to inform the court orally or in writing of the number, make, model, and location of any firearm he or she believes that the respondent possesses.⁹⁶

If the firearm possession form submitted to the court by the respondent indicates that the respondent possesses a firearm, the law requires the respondent to surrender that firearm. If the respondent has not surrendered the firearm, the court shall order the respondent to surrender his or her firearm and schedule a

⁹¹ Colo. Rev. Stat. Ann. § 13-14-105.5(1)(a)(II), (2)(a) (West).

⁹² Colo. Rev. Stat. Ann. § 13-14-105.5(2)(b) (West).

⁹³ W.S.A. 813.1285(2)(a) (West).

⁹⁴ W.S.A. 813.1285(5)(a) (West).

⁹⁵ W.S.A. 813.1285(2)(b) (West).

⁹⁶ *Id.*

firearm surrender hearing to occur within one week of the injunction hearing.⁹⁷ If the petitioner indicates that the respondent possesses a firearm or the court is not satisfied that the respondent does not possess a firearm, the court shall schedule a firearm surrender hearing to occur within one week of the injunction hearing.⁹⁸

The respondent is required to attend the hearing to surrender firearms – failure to attend shall result in the court issuing a warrant for the respondent’s arrest.⁹⁹ At the hearing, if the respondent is determined to possess a firearm and has not yet surrendered it, the respondent shall be ordered to surrender his or her firearm.¹⁰⁰

New York

Pursuant to New York law, whenever a temporary order of protection is issued, the court shall revoke the respondent’s license, order the respondent ineligible for a license, and order the immediate surrender “of any or all firearms owned or possessed where the court receives information that gives the court good cause to believe that: (i) the respondent has a prior conviction of any violent felony offense ... (ii) the respondent has previously been found to have willfully failed to obey a prior order of protection and such willful failure involved (A) the infliction of physical injury... (B) the use or threatened use of a deadly weapon or dangerous instrument ... or (C) behavior constituting any violent felony offense ... or (iii) the respondent has a prior conviction for stalking” in the first, second, third, or fourth degree.¹⁰¹ The court shall also revoke the respondent’s license, order the respondent ineligible for a license, and order the immediate surrender “where the court finds a substantial risk that the respondent may use or threaten to use a firearm unlawfully against the person or persons for whose protection the temporary order of protection is issued [.]”¹⁰²

Similarly, whenever a family court issues an order of protection, the court shall revoke the respondent’s license, order the respondent ineligible for a license, and order the immediate surrender “of any or all firearms owned or possessed where the court finds that the conduct which resulted in the issuance of the order of protection involved (i) the infliction of physical injury ... (ii) the use or threatened use of a deadly weapon or dangerous instrument ... or (iii) behavior constituting any violent felony offense[.]”¹⁰³ The court shall also revoke the respondent’s license, order the respondent ineligible for a license, and order the immediate surrender “where the court finds a substantial risk that the respondent may use or threaten to use a firearm unlawfully against the person or persons for whose protection the order of protection is issued [.]”¹⁰⁴

⁹⁷ W.S.A. 813.1285(2)(c)(2) (West).

⁹⁸ W.S.A. 813.1285(2)(c)(3) (West).

⁹⁹ W.S.A. 813.1285(4)(a) (West).

¹⁰⁰ W.S.A. 813.1285(4) (West).

¹⁰¹ N.Y. Fam. Ct. Act § 842-a(1)(a) (McKinney).

¹⁰² N.Y. Fam. Ct. Act § 842-a(1)(b) (McKinney).

¹⁰³ N.Y. Fam. Ct. Act § 842-a(2)(a) (McKinney).

¹⁰⁴ N.Y. Fam. Ct. Act § 842-a(2)(b) (McKinney).

2) SEARCH AND SEIZURE

Illinois

Pursuant to Illinois law, a judge issuing an order of protection or an emergency order of protection¹⁰⁵ “shall issue a warrant for seizure of any firearm in the possession of the respondent, to be kept by the local law enforcement agency for safekeeping.”¹⁰⁶

3) HYBRID

There are two types of hybrid removal/retrieval laws. The first is a system in which surrender is ordered, and if a respondent does not comply within the timeframe allotted, the court issues a warrant authorizing law enforcement to search for and seize such firearms. The second is a system in which judges may choose either to order surrender or seizure.

California

In California, upon issuance of a civil domestic violence protective order, the court shall “order the respondent to relinquish any firearm in the respondent’s immediate possession or control or subject to the respondent’s immediate possession or control ...”¹⁰⁷ A law enforcement officer serving a protective order that indicates that the respondent possesses weapons or ammunition shall request that the firearm be immediately surrendered.¹⁰⁸ If the law enforcement officer makes no such request, the surrender shall occur within 24 hours of being served with the order.¹⁰⁹ The respondent may surrender the firearm to local law enforcement officials or sell it to a licensed gun dealer.¹¹⁰ The respondent may also surrender the firearm to a licensed gun dealer for the duration of the order.¹¹¹ The law enforcement official or licensed gun dealer taking possession of any firearms or ammunition shall issue a receipt to the person surrendering the firearm at the time of surrender.¹¹² The respondent shall file the original receipt with the court that issued the protective order and a copy of the receipt with the law enforcement agency that served the protective order within 48 hours of service of the order.¹¹³ If the respondent fails to relinquish the firearm within the aforementioned time period, California law authorizes the issuance of a search warrant.¹¹⁴

¹⁰⁵ 750 Ill. Comp. Stat. Ann. 60/217(a)(3)(i) (West) (If the petitioner can establish that “there is good cause to grant the remedy, regardless of prior service of process or of notice upon the respondent, because: ... the harm which that remedy is intended to prevent would be likely to occur if the respondent were given any prior notice, or greater notice than was actually given, of the petitioner’s efforts to obtain judicial relief ...”).

¹⁰⁶ 750 Ill. Comp. Stat. 60/214(b)(14.5) (West) (If the order: “(1) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate; (2) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and (3)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.”)

¹⁰⁷ Cal. Fam. Code § 6389(c)(1) (West).

¹⁰⁸ Cal. Fam. Code § 6389(c)(2) (West).

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ Cal. Penal Code § 29830 (West).

¹¹² *Id.*

¹¹³ Cal. Fam. Code § 6389(c)(2)(A),(B) (West).

¹¹⁴ Cal. Penal Code § 1524(a)(11) (West).

Similarly, upon issuance of a criminal protective order in California, the court “shall order that person to relinquish any firearm in that person's immediate possession or control, or subject to that person's immediate possession or control, within 24 hours of being served with the order, either by surrendering the firearm to the control of local law enforcement officials, or by selling the firearm to a licensed gun dealer.”¹¹⁵ Within 48 hours of receiving the order, the subject of the order shall file with the court a receipt showing the firearm was surrendered to the local law enforcement agency or sold to a licensed gun dealer.¹¹⁶

Delaware

In Delaware, as noted in section II, a judge issuing a civil domestic violence protective order may “[o]rder the respondent to temporarily relinquish to the sheriff, constable or to a police officer the respondent's firearms and ammunition and to refrain from purchasing or receiving additional firearms for the duration of the order,” or “[i]ssue an order directing any law-enforcement agency to forthwith search for and seize firearms of the respondent” provided the petitioner can show that the respondent is in possession of a firearm, the petitioner can describe, with sufficient particularity, the type and location of the firearm, and “[r]espondent has used or threatened to use a firearm against the petitioner, or the petitioner expresses a fear that the respondent may use a firearm against them.”¹¹⁷

A bill passed by the Delaware legislature and signed into law on October 2, 2015 further provides that respondents ordered to relinquish firearms are required to relinquish “immediately to a police officer if requested by the police officer upon personal service of the protective order. If no request is made by a police officer, the relinquishment shall occur within 24 hours of personal service of the order at any staffed police station unless the person is incarcerated at the time personal service is received, in which case the 24 hour relinquishment period shall commence at the time of release from incarceration.”¹¹⁸ The respondent must also file “within 48 hours of personal service or, if the Court will not be open within 48 hours from the time of personal service, within the first 3 hours the Court is thereafter open, one of the following documents:”

- a. A certification, under penalty of prosecution for false written statement under § 1233 of Title 11, that the respondent did not own, possess, or control any firearms or ammunition at the time of the order and currently does not own, possess, or control any firearms or ammunition.
- b. A copy of a proof of transfer showing, for each firearm and any ammunition owned, possessed, or controlled by the respondent at the time of the order, that the firearm or ammunition was relinquished to a police officer.
- c. A certification, under penalty of prosecution for false written statement under § 1233 of Title 11, for each firearm and any ammunition owned, possessed, or controlled by the respondent at the time of the order, that the respondent is unable to obtain access to the firearm or ammunition,

¹¹⁵ Cal. Civ. Proc. Code § 527.9(b) (West).

¹¹⁶ *Id.*

¹¹⁷ Del. Code Ann. tit. 10, §§ 1045(a)(8), (11); 1043(c) (West).

¹¹⁸ Senate Bill 83, 2015 Reg. Sess. (D.E. 2015)

[http://legis.delaware.gov/LIS/lis148.nsf/vwLegislation/SB+83/\\$file/legis.html?open](http://legis.delaware.gov/LIS/lis148.nsf/vwLegislation/SB+83/$file/legis.html?open)

specifying the location of the firearm or ammunition and the reason why the respondent is unable to obtain access.¹¹⁹

The new statutory language also provides that when law enforcement “determines probable cause exists to believe that the respondent has failed to relinquish a firearm or ammunition in violation of a protective order ... or gave false information regarding the respondent’s access to firearms and ammunition which the respondent claimed to be unable to access, and law enforcement can describe, with sufficient particularity, the type and location of the firearm or ammunition, they shall seek a search warrant within 48 hours of such determination, when possible.”¹²⁰ The new provision will become effective on January 1, 2017.¹²¹

What if the Respondent Denies Possession?

Wisconsin and Washington have ways of addressing this problem.

Wisconsin

As mentioned in section V, if the respondent is present at the injunction hearing, he or she is required to complete and submit a firearm possession form. The respondent must certify the contents of the firearm possession form under penalty of perjury. A copy of the firearm possession form can be found as Appendix G.

Washington

A party ordered to surrender firearms, dangerous weapons, and his or her concealed pistol license, and who denies possession of the aforementioned items must file a declaration of nonsurrender form with the clerk of court within five judicial days of the entry of the order. The party must sign the declaration of nonsurrender form under penalty of perjury. A copy of the declaration of nonsurrender form can be found as Appendix H.

To Whom Do Respondents Surrender?

Some states that require or authorize the surrender of firearms from individuals subject to domestic violence protective orders require that such persons surrender firearms to law enforcement only. Others permit surrender to a combination of law enforcement, licensed gun dealers, and/or third parties. Below we will discuss Maryland, California, New York, Wisconsin, Colorado, and Pennsylvania as examples of persons or entities to whom respondents and defendants must surrender firearms.

1) LAW ENFORCEMENT

Maryland

In Maryland, a judge issuing a final protective order “shall order the respondent to surrender to law enforcement authorities any firearm in the respondent’s possession, and to refrain from possession of any

¹¹⁹ *Id.*

¹²⁰ Del. Code Ann. tit. 10, § 1045(l) (West).

¹²¹ Senate Bill 83, 2015 Reg. Sess. (D.E. 2015)

[http://legis.delaware.gov/LIS/lis148.nsf/vwLegislation/SB+83/\\$file/legis.html?open](http://legis.delaware.gov/LIS/lis148.nsf/vwLegislation/SB+83/$file/legis.html?open)

firearm, for the duration of the protective order.”¹²² For the purpose of surrendering a firearm, a respondent is allowed to transport a firearm if: “(1) the firearm is unloaded; (2) the respondent has notified the law enforcement unit, barracks, or station that the firearm is being transported in accordance with the protective order; and (3) the respondent transports the firearm directly to the law enforcement unit, barracks, or station.”¹²³

2) COMBINATION

Most states that authorize or require respondents to domestic violence protective orders to surrender firearms, require such firearms to be surrendered to a combination of law enforcement, licensed firearm dealers, and/or third parties.

California

In California, as noted above, persons served with a protective order must surrender their firearm to local law enforcement, lawfully transfer, or sell to a licensed gun dealer, any firearm owner or subject to their immediate control or possession.¹²⁴

New York

In New York, when a protective order is issued and surrender of firearms is ordered, the order “shall specify the place where such firearms shall be surrendered ... a date and time by which the surrender shall be completed and, to the extent possible, shall describe such firearms to be surrendered [.]”¹²⁵ The prompt surrender of firearms pursuant to the court order shall be considered a voluntary surrender and the respondent may “arrange for the sale, or transfer, of such firearm to a dealer in firearms licensed” in accordance with New York law.¹²⁶

Wisconsin

In Wisconsin, respondents to a permanent injunction are required to surrender their firearm to the sheriff or a third party.¹²⁷ There are several ways in which a respondent may surrender his or her firearm to a third party:

1. A respondent may surrender his or her firearm to a third party if the respondent surrenders his or her firearm to a sheriff no later than 48 hours after the injunction hearing ordering the respondent to surrender his or her firearm and provides a copy of the receipt to the clerk of courts and “[t]he court informs the person to whom the firearm is surrendered of the requirements and penalties under s. 941.29(4) ¹²⁸ ... [t]he court, after considering all relevant factors and any input from the petitioner, approves the surrender of the firearm,” and “[t]he sheriff determines that the person is not prohibited from possessing a firearm.”¹²⁹
2. A respondent may surrender his or her firearm to a third party if:

¹²² Md. Code Ann., Fam. Law § 4-506(f) (West).

¹²³ Md. Code Ann., Fam. Law § 4-506.1(c) (West).

¹²⁴ Cal. Fam. Code § 6389(c)(2); Cal. Penal Code § 29830(a) (West).

¹²⁵ N.Y. Fam. Ct. Act § 842-a(5)(a) (McKinney).

¹²⁶ N.Y. Fam. Ct. Act § 842-a(5)(b); N.Y. Penal Law § 265.20(f); N.Y. Penal Law § 400.05(6) (McKinney).

¹²⁷ W.S.A. 813.1285(3), (4) (West).

¹²⁸ Wis. Stat. Ann. § 941.29(4) (West) (Which makes it a crime to knowingly furnishes a person with a firearm when such person is prohibited from possessing it.)

¹²⁹ W.S.A. 813.1285(3)(a)(3) (West).

- a. The respondent and the person to whom the respondent is surrendering his or her firearm appear at the injunction hearing.
 - b. At the injunction hearing, the person testifies under oath that the person has received the firearms listed on the respondent's firearm possession form.
 - c. At the injunction hearing, the court determines that the person is not prohibited from possessing a firearm.
 - d. The court informs the person to whom the firearm is surrendered of the requirements and penalties under s. 941.29(4).
 - e. The court, after considering all relevant factors and any input from the petitioner, approves the surrender of the firearm.¹³⁰
3. A respondent may surrender his or her firearm to a third party at the firearm surrender hearing, if the court, “after considering all relevant factors and input from the petitioner, approves the surrender and informs the person to whom the firearms are surrendered of the requirements and penalties under s. 941.29(4)[.]” The respondent may surrender to a third party in one of the following ways:
- a. To the person, after the person testifies under oath that he or she has received the firearms listed on the respondent's firearm possession form and after the court determines that the person is not prohibited from possessing a firearm.
 - b. To the sheriff, who shall transfer the firearms to the person after determining that the person is not prohibited from possessing a firearm.¹³¹

Colorado

In Colorado, respondents to a civil protective order that qualifies as an order described in 18 U.S.C. § 922(d)(8) or (g)(8), must relinquish any firearm, firearms or ammunition. They may satisfy this requirement by:

1. Selling or transferring possession of the firearm or ammunition to a federally licensed firearms dealer;
2. Surrendering the firearm or ammunition to a law enforcement agency for storage;
3. Selling or otherwise transferring the firearm or ammunition to a private party who may legally possess the firearm or ammunition, provided the respondent shall satisfy all the statutory requirements “concerning private firearms transfers, including but not limited to the performance of a criminal background check of the transferee.”¹³²

A federally licensed firearm dealer who takes possession of a firearm or ammunition – or a law enforcement agency that elects to store a firearm or ammunition for a respondent – shall issue the

¹³⁰ W.S.A. 813.1285(3)(a)(1) (West).

¹³¹ W.S.A. 813.1285(4)(b)(1) (West).

¹³² Colo. Rev. Stat. Ann. § 13-14-105.5(2)(c) (West) (Neither a federally licensed firearms dealer nor a law enforcement agency is required to purchase, accept possession, or store, as applicable, a respondent's firearm or ammunition); see *also* Colo. Rev. Stat. Ann. § 18-12-112 (West).

respondent a receipt at the time of relinquishment.¹³³ If the respondent sells or otherwise transfers a firearm to a private party, the respondent shall acquire a written receipt from the private party and a written statement of the results of the background check from the licensed gun dealer who requested the background check.¹³⁴ The respondent shall file a copy of the receipt from the licensed firearms dealer, law enforcement agency or private party and, if applicable, the written statement of the results of a background check with the court within three days of relinquishment.¹³⁵

Pennsylvania

In Pennsylvania, a defendant subject to a protection from abuse order that provides for the relinquishment of firearms, other weapons or ammunition during the period of time the order is in effect, may relinquish his or her firearms, other weapons or ammunition to the sheriff or a third party.¹³⁶

A defendant who wishes to relinquish his or her firearms, other weapons or ammunition to a third party shall report, with the third party, to the sheriff's office in the county where the order was entered in the time frame specified in the order. The defendant shall, in the presence of the sheriff or sheriff's designee, execute an affidavit that shall include, at a minimum, the following:

- A. The caption of the case in which the protection from abuse order was issued.
- B. The name, address, date of birth and the Social Security number of the defendant.
- C. The name, address and date of birth of the third party.
- D. A list of the firearms, other weapons and ammunition that will be relinquished to the third party, including, if applicable, the manufacturer, model and serial number.
- E. An acknowledgment that the defendant will not take possession of any firearm, other weapon or ammunition relinquished to the third party until the sheriff accepts return of the safekeeping permit pursuant to subsection (d).
- F. A plain-language summary of 18 Pa.C.S. § 6105(a.1)(2) and (c)(6) (relating to persons not to possess, use, manufacture, control, sell or transfer firearms).
- G. A plain-language summary of 18 U.S.C. § 922(g)(8) (relating to unlawful acts).¹³⁷

The third party to whom the defendant wishes to relinquish his or her firearms, other weapons or ammunition shall, in the presence of the sheriff or the sheriff's designee, execute an affidavit, which shall include, at a minimum, the following:

- A. The caption of the case in which the protection from abuse order was issued.
- B. The name, address and date of birth of the defendant.
- C. The name, address, date of birth and the Social Security number of the third party.
- D. A list of the firearms, other weapons and ammunition, which will be, relinquished to the third party, including, if applicable, the manufacturer, model and serial number.

¹³³ Colo. Rev. Stat. Ann. § 13-14-105.5(4), (5)(c) (West).

¹³⁴ Colo. Rev. Stat. Ann. § 13-14-105.5(8) (West).

¹³⁵ Colo. Rev. Stat. Ann. § 13-14-105.5(9)(a) (West).

¹³⁶ 23 Pa. Cons. Stat. Ann. § 6108.3(a),(i) (West) (Third party is defined as a person other than the defendant who is neither a member of the defendant's household nor prohibited from possessing firearms pursuant to any Federal or State law.)

¹³⁷ 23 Pa. Cons. Stat. Ann. § 6108.3(b)(3)(i) (West).

- E. An acknowledgment that no firearm, other weapon or ammunition relinquished to the third party will be returned to the defendant until the sheriff accepts return of the safekeeping permit pursuant to subsection (d).
- F. A plain-language summary of 18 Pa.C.S. §§ 6105(a.1)(5) and (c)(6), 6111(c) (relating to sale or transfer of firearms) and 6115 (relating to loans on, or lending or giving firearms prohibited).
- G. A plain-language summary of this section.
- H. An acknowledgment that the third party is not prohibited from possessing firearms, other weapons or ammunition pursuant to any Federal or State law.
- I. An acknowledgment that the third party is not subject to an active protection from abuse order.
- J. An acknowledgment that the defendant has never been the subject of a protection from abuse order issued on behalf of the third party.
- K. An acknowledgment that any firearms, other weapons and ammunition relinquished to the third party will be stored using a locking device as defined in paragraph (1) of the definition of “locking device” in 18 Pa.C.S. § 6142(f) (relating to locking device for firearms) or in a secure location to which the defendant does not have access.
- L. A detailed description of the third party liability pursuant to this section relating to civil liability.
- M. An acknowledgment that the third party shall inform the sheriff of any change of address for the third party within seven days of the change of address.¹³⁸

Civil Liability

A third party who intentionally or knowingly violates any of the provisions of the statute relating to relinquishment to a third party for safe keeping shall, “in addition to any other penalty prescribed in this chapter or 18 Pa.C.S. Ch. 61 [relating to firearms and other dangerous articles], be civilly liable to any person for any damages caused thereby and, in addition, shall be liable to any person for punitive damages in an amount not to exceed \$5,000, and the court shall award a prevailing plaintiff a reasonable attorney fee as part of the costs.”

23 Pa. Cons. Stat. Ann. § 6108.3(b)(2) (West).

Once the sheriff has determined that the third party is not prohibited from possessing firearms by state or federal law, and both the defendant and the third party have executed the aforementioned affidavits, “the sheriff shall issue a safekeeping permit to the third party, which shall include, at a minimum, a list of the firearms, other weapons and ammunition which will be relinquished to the third party.”¹³⁹ The permit shall require the third party to retain possession of the defendant’s firearms, other weapons and ammunition until the sheriff revokes the safekeeping permit or accepts return of the safekeeping permit.¹⁴⁰ A copy of the safekeeping permit is attached as Appendix I.

The sheriff shall revoke a safekeeping permit and the sheriff shall either seize or require the third party to relinquish to the sheriff the defendant’s firearms, other weapons or ammunition upon determining or being notified that any of the following apply:

¹³⁸ 23 Pa. Cons. Stat. Ann. § 6108.3(b)(3)(ii) (West).

¹³⁹ 23 Pa. Cons. Stat. Ann. § 6108.3(b)(2) (West) (The safekeeping permit shall be issued to the third party at no cost.)

¹⁴⁰ 23 Pa. Cons. Stat. Ann. § 6108.3(b)(2) (West).

- i. A protection from abuse order has been entered against the third party.
- ii. The third party is prohibited from possessing firearms, other weapons or ammunition pursuant to any federal or state law.
- iii. The defendant has been convicted of a violation of 18 Pa.C.S. Ch. 61 (relating to firearms and other dangerous articles) or any other offense involving the use of a firearm.
- iv. The defendant has been held in indirect criminal contempt for violating a provision of the protection from abuse order consistent with section 6108(a)(1), (2), (6), (7) or (9) (relating to relief).¹⁴¹

A defendant subject to a final protection from abuse order which provides for the relinquishment of firearms, other weapons or ammunition during the period of time the order is in effect, may, in lieu of relinquishment to the sheriff, relinquish any firearms, other weapons or ammunition to a dealer licensed pursuant to state law.¹⁴²

If the defendant relinquishes firearms, other weapons or ammunition to a dealer, the defendant shall obtain an affidavit, developed by the Pennsylvania State Police, from the dealer, which shall include, at minimum, the following:

1. The caption of the case in which the protection from abuse order was issued.
2. The name, address, date of birth and Social Security number of the defendant.
3. A list of the firearms, other weapons or ammunition, including, if applicable, the manufacturer, model and serial number.
4. The name and license number of the dealer licensed pursuant to 18 Pa.C.S. § 6113 and the address of the licensed premises.
5. An acknowledgment that the firearms, other weapons or ammunition will not be returned to the defendant or sold or transferred to a person the dealer knows is a member of the defendant's household, while the defendant is the subject of an active protection from abuse order pursuant to section 6108, which order provides for the relinquishment of the firearm, other weapon or ammunition being returned, sold or transferred.
6. An acknowledgment that the firearms, other weapons or ammunition, if sold or transferred, will be sold or lawfully transferred in compliance with 18 Pa.C.S. Ch. 61 (relating to firearms and other dangerous articles).¹⁴³

The defendant shall, within the time frame specified in the order, provide the affidavit obtained from the dealer to the sheriff.¹⁴⁴ If the respondent fails to do so, "the sheriff shall, at a minimum, provide immediate notice to the court, the plaintiff and appropriate law enforcement agencies."¹⁴⁵

"Sale or lawful transfer," as used in the aforementioned statutes, is defined to exclude a sale or transfer to the defendant or a member of the defendant's household.

¹⁴¹ 23 Pa. Cons. Stat. Ann. § 6108.3(c)(1),(2) (West).

¹⁴² 23 Pa. Cons. Stat. Ann. § 6108.2(a) (West).

¹⁴³ 23 Pa. Cons. Stat. Ann. § 6108.2(b),(c) (West).

¹⁴⁴ 23 Pa. Cons. Stat. Ann. § 6108.2(c) (West).

¹⁴⁵ 23 Pa. Cons. Stat. Ann. § 6108.2(c) (West).


Strategies for Successful Removal for Civil Protective Orders

1) THE “W.A.R.M.” APPROACH

California

Detectives implementing the removal/retrieval process in Butte County employed the “WARM” approach – an acronym consisting of the first initials of the names of the four detectives most involved in the initiative.¹⁴⁶ Detectives reviewed information about each case and gathered information about any firearms possessed by the respondents.¹⁴⁷ To keep a low profile, the detectives dressed in plain clothes and drove unmarked cars. The detectives reported that respondents appreciated this approach, and that it proved advantageous when talking to people about giving up their firearms.¹⁴⁸ The detectives emphasized the importance of being honest with respondents and following the letter of the law, while treating respondents with respect and empathy.¹⁴⁹

The detectives noted that the “WARM” approach was “central to their ability to obtain firearm surrenders, rather than refusals, mostly without incident.”¹⁵⁰



“Let’s say I was going to an individual’s home to confiscate their dog. I get to the home, I say, ‘Sir, I’m taking your dog and you’re never going to see it again.’ That person is gonna tell me I have a better chance of seeing Jesus than getting that dog.”

**-Corporal Todd Spieth
Prince George’s County Sheriff’s Department**

¹⁴⁶ Wintemute, G.J., Frattaroli, S., Vittes, K.A., Claire, B.E., Wright, M.S., Webster, D.W. (2012) Firearms and Domestic Violence Education and Intervention Project Final Report of Process and Outcome Evaluations. 62-63

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 60-61.

Maryland

Corporal Todd Spieth of the Prince George's County Sheriff's Department, which is the primary entity responsible for serving domestic violence protective orders in that jurisdiction, noted similar experiences approaching respondents with respect and empathy.¹⁵¹ Corporal Spieth noted that when serving an order, officers request that the respondent turn over any firearms in his or her possession and remind the respondent that if he or she is in possession of a firearm, fails to turn it in, and is discovered he or she will go to jail.¹⁵² He also noted that when serving an order, officers stress the temporariness of the prohibition. Corporal Spieth analogized the situation in the following way: "Let's say I was going to an individual's home to confiscate their dog. I get to the home, I say, 'Sir, I'm taking your dog and you're never going to see it again.' That person is gonna tell me I have a better chance of seeing Jesus than getting that dog."¹⁵³

2) ROLE OF DEFENSE ATTORNEYS

Defense attorneys representing respondents may also have an important role to play.¹⁵⁴ In the California study cited throughout this report, attorneys representing respondents in Butte County facilitated the removal/retrieval of firearms in several cases.¹⁵⁵ According to the study, there were only four attorneys in Butte County who regularly took domestic violence cases and, therefore, the detectives and attorneys were familiar with one another. The Butte County detectives noted that a common occurrence when they encountered resistance from a respondent was for the respondent to call his or her lawyer, only to be told "[t]urn over your guns or they will take you to jail."¹⁵⁶

The authors of the study noted the small group of detectives and attorneys interacting with one another and speculated that the detectives' "transparent approach to their work and their commitment to following the letter of the law may ... be reasons that the defense attorneys did not challenge the implementation efforts and were viewed by the detectives as an asset."¹⁵⁷

Fifth Amendment Implication

The Fifth Amendment to the United States Constitution provides, in pertinent part, that no person "shall be compelled in any criminal case to be a witness against himself ..."¹⁵⁸ Most states have an analogue to the Fifth Amendment. Below we will discuss California and Wisconsin as models that avoid Fifth Amendment self-incrimination.

¹⁵¹ Corporal Todd Speith, Training Division, Prince Georges County Sheriff's Office. Personal Communication, October, 21 2015.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ Defense attorneys may also play a role in criminal cases; however, the California study was solely focused on the civil context.

¹⁵⁵ Wintemute, G.J., Frattaroli, S., Vittes, K.A., Claire, B.E., Wright, M.S., Webster, D.W. (2012) Firearms and Domestic Violence Education and Intervention Project Final Report of Process and Outcome Evaluations. 103

¹⁵⁶ *Id.* at 60

¹⁵⁷ *Id.* at 61

¹⁵⁸ U.S. Const. amend. V.

California

The Constitution of the State of California provides, in relevant part, that “[p]ersons may not be compelled in a criminal cause to be a witness against themselves.”¹⁵⁹ In California, if a respondent to a civil domestic violence protective order “declines to relinquish a firearm based on the assertion of the right against self-incrimination, as provided by the Fifth Amendment to the United States Constitution and Section 15 of Article I of the California Constitution, the court may grant use immunity for the act of relinquishing the firearm required under this section.”¹⁶⁰ Use immunity, as referred to in the California statute, means use and derivative use immunity and applies to the compelled testimony and any evidence derived from it.

Wisconsin

The Constitution of the State of Wisconsin provides, in relevant part, that “[n]o person ... may be compelled in any criminal case to be a witness against himself or herself.”¹⁶¹

In Wisconsin, for the purpose of allowing a respondent to surrender his or her firearm, “if the respondent is present at the injunction hearing, the court shall stay the injunction for a period not to exceed 48 hours and shall extend the temporary restraining order for 48 hours ...”¹⁶² Under state law, an injunction prohibits a respondent from purchasing or possessing a firearm for the duration of the order. There is no such prohibition for respondents subject to temporary restraining orders. The stay of the injunction and extension of the temporary restraining order, therefore, would avoid the self-incrimination implication under the state constitution.

The respondent would, however, still be prohibited from purchasing or possessing a firearm under federal law. Federal law prohibits possession of a firearm by a person who is subject to a domestic violence protective order that “was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate.”¹⁶³ A respondent to an injunction in Wisconsin would be

Types of Immunity

Courts have generally recognized three basic types of immunity:

1. Transactional immunity: protects a witness from prosecution for offenses to which compelled testimony relates. Typically described as the broadest type of immunity.
2. Use and derivative use immunity: protects a witness against the use of the compelled testimony or evidence derived from the compelled testimony.
3. Use immunity: protects a witness against the use of the compelled testimony only, not against evidence derived from it.

29 A.L.R.5th 1 (1995)

¹⁵⁹ Cal. Const. art. I, § 15, cl. 6.

¹⁶⁰ Cal. Fam. Code § 6389(d) (West); see also *Murphy v. Waterfront Comm'n of New York Harbor*, 378 U.S. 52, 84 S. Ct. 1594, 12 L. Ed. 2d 678 (1964) *abrogated by United States v. Balsys*, 524 U.S. 666, 118 S. Ct. 2218, 141 L. Ed. 2d 575 (1998) (Holding that “the constitutional privilege against self-incrimination protects a state witness against incrimination under federal as well as state law and a federal witness against incrimination under state as well as federal law” ... and that “a state witness may not be compelled to give testimony which may be incriminating under federal law unless the compelled testimony and its fruits cannot be used in any manner by federal officials in connection with a criminal prosecution against him.”)

¹⁶¹ Wis. Const. art. I, § 8.

¹⁶² Wis. Stat. Ann. § 813.1285(2)(a) (West).

¹⁶³ 18 U.S.C. § 922(g)(8).

served with notice and given an opportunity to participate before the judge stayed the injunction and extended a temporary restraining order to allow the respondent to surrender his or her firearm.¹⁶⁴

Recommendations¹⁶⁵

1. **Employ a hybrid model for firearm removal that authorizes law enforcement to remove guns from prohibited people and if that removal is unsuccessful, allow the court to issue a search warrant to complete the removal.** States should consider employing a hybrid removal/retrieval process in which respondents are first given an opportunity to surrender firearms in his or her possession. If the respondent refuses to surrender firearms, or the respondent claims not to be in possession of a firearm despite evidence of such possession, law enforcement are empowered to seek a warrant to search for and seize firearms.

If the respondent claims not to be in possession of a firearm, but law enforcement has fresh evidence to believe the respondent does possess a firearm, law enforcement officers serving the order should notify the respondent that he or she will not be allowed to go anywhere and an officer will remain on the scene while another officer procures a warrant. Such a process minimizes the opportunity for a respondent to hide firearms and may also encourage a respondent to voluntarily surrender.

2. **Adopt and implement post-service follow-up procedures to assure respondents and defendants are no longer in possession of their guns.** States should consider requiring the party that will store firearms for the duration of the order to issue a receipt, as is required in California, that the individual must file with the court and the law enforcement agency that served the order. These procedures should be required to occur within a time period specified by law.

In cases where the prohibited person claims not to be in possession of a firearm, states should consider requiring the individual to sign a document to such effect under oath or under penalty of perjury. Documents should not be taken as dispositive, however, without corroborating evidence of non-possession.

3. **Establish qualifications and procedures for third-party surrender.** If the state allows the prohibited person to surrender to a third party, the third party should pass the same background check required to purchase a firearm. Additionally, we recommend that the third party be notified and execute a document signifying their understanding of any penalties and liability associated with returning firearms to the respondent before instructed to do so by the court.¹⁶⁶

¹⁶⁴ Wis. Stat. Ann. §§ 813.12; 813.1285 (West)

¹⁶⁵ Depending on whether a jurisdiction is implementing a removal protocol in civil or criminal cases, the precise recommendations may need to be adjusted to accommodate the differing situations. Please refer to the City of Los Angeles model protocol and Multnomah County Memorandum of Understanding for examples of each.

¹⁶⁶ *E.g.* 23 Pa. Cons. Stat. Ann. § 6108.3(b)(3)(ii) (West) (Requiring the third party accepting surrender to execute an affidavit which includes a plain summary of the statute which makes it a misdemeanor of the first degree for a third party “if he intentionally or knowingly returns a firearm, other weapon or ammunition to a defendant or intentionally or knowingly allows a defendant to have access to the firearm, other weapon or ammunition prior to either of the following: (i) The sheriff accepts return of the safekeeping permit issued to the party pursuant to 23 Pa.C.S. § 6108.3(d)(1)(i). (ii) The issuance of a court order pursuant to subsection (f)(2) or 23 Pa.C.S. § 6108.1(b) (relating to return of relinquished firearms, other weapons and ammunition and additional relief) which modifies a valid protection from abuse order issued pursuant to 23 Pa.C.S. § 6108, which order provided for the relinquishment of the firearm, other weapon or ammunition by allowing the defendant to take possession of the firearm, other weapon or ammunition that had previously been ordered relinquished.”)

We recommend that the third party taking possession of the firearm issue a receipt that must then be filed with the court that issued the order, the law enforcement agency that served the order, or both.

4. **Consider the “WARM” approach for gun removal.** Law enforcement agencies should consider promoting some or all elements of the “WARM” approach among officers who remove firearms from prohibited people. Being familiar with the circumstances surrounding violence that led to the order; seeking information about firearms possessed by the respondent; dressing in plain clothes and driving unmarked cars; and treating respondents with empathy and respect are all elements of the approach to gun removal that detectives described as important to their success.
5. **Explain the removal policy and how it is being enforced to defense attorneys.** Defense attorneys can help to facilitate gun removal when respondents are reluctant to cooperate. Providing defense attorneys who routinely represent respondents to domestic violence protective orders with information about the gun prohibition and ways their clients can comply with this provision of the law may facilitate peaceful surrenders.
6. **Establish legal protections against self-incrimination for disclosing gun possession.** States should consider providing respondents with a legal shield for protection against self-incrimination when asked to disclose gun possession.¹⁶⁷ States that do not prohibit firearm possession by respondents to temporary or ex parte domestic violence protective orders may consider implementing a more complex system, like that in Wisconsin, with limited protection from state prosecution.

¹⁶⁷ State prosecutors may not offer federal immunity.

VI. Storage or Sale of Firearms

Once firearms have been removed or retrieved from respondents to civil domestic violence protective orders, or defendants subject to criminal protective orders, the parties responsible for storing such firearms must address a host of issues; such as, who is responsible for storing firearms, maintenance and safekeeping, liability for loss or damage, storage fees, and whether respondents should be allowed an opportunity to sell such firearms. In this section, we will use California, Maryland, and Delaware as examples of options for storage and will address storage-related considerations.

Current Practices

California

As noted in section V, respondents to a California civil domestic violence protective order or criminal protective order may surrender their firearms to local law enforcement officials or a licensed gun dealer for the duration of the order, or sell it to a licensed gun dealer.¹⁶⁸

California law provides that a local law enforcement agency may charge the respondent a fee, not to exceed the actual cost incurred by the local law enforcement agency, for the storage of any firearm.¹⁶⁹ A licensed dealer may also charge a fee for storage.¹⁷⁰

Additionally, California law provides that the respondent or defendant, during the period of the relinquishment order, is entitled to make one sale of all firearms that he or she relinquished to the local law enforcement agency.¹⁷¹

Where and how to store firearms emerged as a major concern for San Mateo and Butte County authorities according to the study cited throughout this report.¹⁷² In San Mateo County, the Sheriff's Office was able to designate existing space to store recovered firearms, however, they did report problems with maintaining adequate storage space.¹⁷³ Law enforcement officers in Butte County reported storing firearms "in cardboard boxes in a metal shed type building."¹⁷⁴ In an interview, one officer noted that their storage area is **"over flowing to the point of storing evidence and firearms in the metal framing rafters of the building."**¹⁷⁵ In order to alleviate the burden of storing so many firearms, Butte County set storage fees high to discourage respondents from storing firearms with law enforcement. Upon learning of the high fees, respondents typically chose to store firearms with a licensed dealer with more reasonable fees.¹⁷⁶

¹⁶⁸ Cal. Fam. Code § 6389(c)(2); Cal. Civ. Proc. Code § 527.9. Cal. Penal Code § 29830(b) (West)

¹⁶⁹ Cal. Fam. Code § 6389(e) (West).

¹⁷⁰ Cal. Penal Code § 29830(b) (West).

¹⁷¹ Cal. Fam. Code § 6389(i) (West); Cal. Civ. Proc. Code § 527.9.

¹⁷² Wintemute, G.J., Frattaroli, S., Vittes, K.A., Claire, B.E., Wright, M.S., Webster, D.W. (2012) Firearms and Domestic Violence Education and Intervention Project Final Report of Process and Outcome Evaluations. 38.

¹⁷³ *Id.* at 39.

¹⁷⁴ Sgt. Bryan Marshall, Civil and Evidence Division, Butte County Police Department. Personal Communication, September 10, 2015.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

Butte County law enforcement was also worried about possible damage to the stored firearms; including, but not limited to: rust, scratches, nicks and stains.¹⁷⁷ Butte County insulated the building and installed an air conditioning unit, but the officer interviewed noted that “[t]emperatures here in Oroville [the county seat of Butte County] can be extreme: over 100 degrees in the summer and freezing in the winter. **A metal building has its limitations.**”¹⁷⁸

Maryland

In Maryland, if a respondent to a temporary or final protective order surrenders his or her firearm to law enforcement, the law enforcement officer is required to “transport and store the firearm in a protective case, if one is available, and in a manner intended to prevent damage to the firearm during the time the protective order is in effect.”¹⁷⁹

In Prince George’s County, as noted above in section V, the sheriff’s department is primarily responsible for serving civil domestic violence protective orders and is also primarily responsible for storing firearms surrendered pursuant to a civil domestic violence protective order. The firearm is stored in a temperature and humidity controlled secure environment to prevent damage.¹⁸⁰

Other firearms removed in Prince George’s County are stored at the Prince George’s County Police Department Property Management Section – the tenth-largest property storage facility in North America. The firearms are stored in a humidity and temperature controlled secure room inside the facility to prevent damage.¹⁸¹

Vermont

In Vermont, a person required to relinquish firearms, ammunition, or other weapons pursuant to court order may relinquish to a cooperating law enforcement agency, an approved federally licensed firearms dealer, or a third party – unless the court finds that relinquishment to the third party will not adequately protect the safety of the victim.¹⁸²

A law enforcement agency or firearms dealer that takes possession of a firearm, ammunition, or other weapon is required to “photograph, catalogue, and store the item in accordance with standards and guidelines established by the Department of Public Safety.”¹⁸³ Law enforcement agencies and licensed firearms dealers may also charge fees for storage according to statutory guidelines.¹⁸⁴

The law provides law enforcement agencies immunity “from civil or criminal liability for any damage or deterioration of firearms, ammunition, or weapons stored or transported pursuant to” statute, so long as the damage or deterioration did not occur as a result of recklessness, gross negligence, or intentional misconduct by the law enforcement agency.¹⁸⁵

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ Md. Code Ann., Fam. Law § 4-506.1(a)(2) (West).

¹⁸⁰ Corporal Todd Speith, Training Division, Prince Georges County Sheriff’s Office. Personal Communication, October, 21 2015.

¹⁸¹ Acting Lieutenant Brian Lott, Property Custodian, Prince Georges County Police Department. Personal Communication, October, 21 2015.

¹⁸² Vt. Stat. Ann. tit. 20, § 2307(b) (West).

¹⁸³ Vt. Stat. Ann. tit. 20, § 2307(c) (West).

¹⁸⁴ Vt. Stat. Ann. tit. 20, § 2307(d) (West).

¹⁸⁵ Vt. Stat. Ann. tit. 20, § 2307(h) (West).

Recommendations

Maintenance and Safekeeping

1. **Identify or build structures to store firearms removed from prohibited people.** These facilities should control for temperature and humidity, and firearms should be stored in such a manner as to prevent rust, scratches, stains, and other damage. Alternatively, contracting with licensed firearms dealers, or allowing respondents to surrender to a licensed firearms dealer – who is better equipped to store firearms in a manner to prevent damage – may help alleviate the burden on law enforcement to maintain stored firearms in good condition.
2. **Provide law enforcement with immunity from civil liability.** States may consider providing law enforcement agencies with immunity from civil liability for any damage or deterioration of firearms stored or transported by law enforcement, as Vermont does.

Fees for Storage

3. **Allow law enforcement agencies storing firearms to charge respondents a fee.** Charging respondents, who are required to surrender their firearm to law enforcement, a fee for storage is one way law enforcement agencies may address the cost of storing such firearms. Allowing law enforcement to charge a fee for storage may be politically unpopular in some jurisdictions. Allowing respondents to store firearms with a firearms dealer or a third party may help alleviate the burden on law enforcement to store firearms free of charge.

Option for Respondents to Sell Firearm

In *Henderson v. United States*, the U.S. Supreme Court held that 18 U.S.C. §922(g), which, among other things, prohibits felons from possessing firearms, does not bar the court-ordered transfer of a felon's firearm "to a person who expects to maintain custody of them, so long as the recipient will not allow the felon to exert any influence over their use."¹⁸⁶ In so holding, the Court noted that 18 U.S.C. §922(g) proscribes *possession* of a firearm in every form, but does not prevent a felon from *owning* firearms.¹⁸⁷ Additionally, *Henderson* states that a court may order the firearm to be turned over to a firearms dealer for sale on the open market.¹⁸⁸

4. **Allow respondents to sell firearms.** In light of the *Henderson* decision, states should consider allowing respondents to sell their firearms to a firearms dealer with restrictions to ensure that the respondents are unable to access those firearms for the duration of the order.

¹⁸⁶ *Henderson v. United States*, 135 S. Ct. 1780, 1787, 191 L. Ed. 2d 874 (2015).

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

VII. Returning Firearms to Respondents

Once a protective order has expired, absent some other firearm possession prohibiting event, the respondent is allowed to re-take possession of the firearm that was removed/retrieved. There are several considerations in outlining a process for returning firearms; such as, automatic return or return dependent upon a background check; notification to protected parties; and what can be done with a firearm that cannot be returned. Below we will use Maryland, West Virginia, Washington, Delaware and California as examples illustrating options for returning firearms.

Returning Firearms to Respondents: Process Examples

Maryland

Maryland law provides that the respondent to a temporary domestic violence protective order who surrendered his or her firearm may retake possession of the firearm upon the expiration of such an order unless the respondent is ordered to surrender his or her firearm pursuant to a permanent protective order, or the respondent is otherwise prohibited from owning or possessing the firearm.¹⁸⁹ Additionally, the respondent to a permanent domestic violence protective order who surrendered his or her firearm may retake possession of the firearm upon the expiration of such an order unless the protective order is extended, or the respondent is otherwise prohibited from owning or possessing the firearm.¹⁹⁰

According to Prince George's County Police Department policy, when there is no longer a reason to hold a firearm, an officer shall inform the Property Division with a notification via email.¹⁹¹ The Property Division shall then send the owner of the firearm a certified letter along with an Application for the Return of a Handgun/Shotgun/Rifle, found as Appendix J, detailing what the owner needs to do to have the firearm returned.¹⁹² The letter also advises that the owner has 30 days to contact the Property Division if he or she wishes to have the firearm returned.¹⁹³ The respondent must return a completed Request for the Return of Handgun/Shotgun/Rifle application, proof of ownership and a copy of their government issued identification to the Property Division.¹⁹⁴ Once the Property Division receives all the aforementioned information, the respondent will be given a date and time to appear for a gun hearing.¹⁹⁵ Prior to the hearing, a criminal background check shall be completed.¹⁹⁶ If the background check reveals that the respondent is ineligible to possess a firearm, a hearing will not be held, the respondent will be notified by certified mail and will be given 30 days to petition the court for a show cause hearing.¹⁹⁷

¹⁸⁹ Md. Code Ann., Fam. Law § 4-506.1(b)(1) (West).

¹⁹⁰ Md. Code Ann., Fam. Law § 4-506.1(b)(2) (West).

¹⁹¹ Major Oscar Rodriguez Jr. Executive Officer, Bureau of Forensic Science and Intelligence, Prince George's County Police Department. Personal Communication, August 21, 2015.

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ Major Robert Nealon. Division Commander, Property Division, Prince George's County Police Department. Personal Communication, September 2, 2015.

The hearing shall occur before the Property Custodian or his designee, who shall consider all the information contained in the case file, the type of weapon involved, and whether there are any restrictions in Maryland for possession of such a firearm, and whether the applicant qualifies under State law to possess or own firearms.¹⁹⁸ Acting Lieutenant Brian Lott, Property Custodian of the Prince George's County Police Department noted that the decision not to return a firearm to an individual is never made by a single officer, but rather by a group of 10-12 different law enforcement officials.¹⁹⁹ Acting Lieutenant Lott stated that this was to reduce the number of erroneously denied return requests and to ensure that the denial is not the result of animus towards the requesting individual.²⁰⁰

If the Property Custodian or his designee denies the owner the return of his or her firearm, the owner may petition the court for a Show Cause Hearing within 30 days of the denial and shall provide paperwork to the Property Division of this request. The Property Division will then hold the firearm until the hearing is over and a judge makes a final disposition.²⁰¹

If it is determined that the owner is subject to a lifetime prohibition on the possession of firearms, or the owner does not contact the Property Division within 30 days of notice, documentation is made and the firearm may be destroyed following Prince George's Police departmental procedures.²⁰² The Prince George's County Police Department Property Management Section sends **500-600 firearms per month** out for destruction.²⁰³

West Virginia

According to West Virginia State Court Rules, "[u]pon the termination, dismissal or expiration of a protective order, the respondent shall petition the court, on the form approved by the West Virginia Supreme Court of Appeals²⁰⁴, for the return of any and all firearms and ammunition surrendered or transferred [to a third party] pursuant to the order of the court."²⁰⁵ The court shall order the return of all firearms and ammunition provided that, prior to the return, a law enforcement agency shall conduct a criminal background check "to determine whether the respondent is qualified to possess firearms and is not otherwise prohibited by law from possessing firearms and ammunition" and shall provide the background check to the court.²⁰⁶ The Petition for Firearm Return Form (Appendix K), approved by the West Virginia Supreme Court of Appeals, is required to be made on oath or affirmation before a judge, clerk or notary public.

Washington

A new provision went into effect in Washington on July 24, 2015, which requires each law enforcement agency to develop a notification protocol which "allows a family or household member to use an incident or case number to request to be notified when a law enforcement agency returns a privately owned firearm to

¹⁹⁸ *Id.*

¹⁹⁹ Acting Lieutenant Brian Lott, Property Custodian, Prince Georges County Police Department. Personal Communication, October, 21 2015.

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² Major Oscar Rodriguez Jr. Executive Officer, Bureau of Forensic Science and Intelligence, Prince George's County Police Department. Personal Communication, August 21, 2015.

²⁰³ Acting Lieutenant Brian Lott, Property Custodian, Prince Georges County Police Department. Personal Communication, October, 21 2015.

²⁰⁴ <http://www.courtswv.gov/public-resources/domestic/DVforms/FDVPFIR-PetitionforFirearmReturn.pdf>

²⁰⁵ WV R DOM VIOL AND CIVIL P Rule 10b(4).

²⁰⁶ *Id.*

the individual from whom it was obtained or to an authorized representative of that person.”²⁰⁷ Notification may be made by telephone, email, text message, or any other method that does not result in unnecessary delay.²⁰⁸ Additionally, the statute grants immunity from civil liability to appointed or elected officials, public employees, public agencies, “or combination of units of local government and its employees,” for damages arising out of the release of information or failure to release information for notification, so long as the release or failure was without gross negligence.²⁰⁹

Delaware

Delaware law provides that a deadly weapon or ammunition which was validly seized from a person who is prohibited from purchasing, owning, possessing or controlling a deadly weapon or ammunition under state law – including the subject of a permanent family court protection from abuse order - be disposed of by the law enforcement agency holding the deadly weapon or ammunition after the exhaustion of any right of direct appeal, and six months from the date of proper notice of the intent to dispose of such firearm or ammunition.²¹⁰ Disposition of a deadly weapon or ammunition may include sale or transfer to a federal firearms licensee, or destruction of the firearms and ammunition.²¹¹

California

California law provides that no law enforcement agency or court that has taken custody of any firearm may return the firearm to any individual unless the following requirements are satisfied:

- a) The individual presents to the agency or court notification of a determination by the Department of Justice that the person is eligible to possess firearms.
- b) The agency or court has verified that the firearm is not listed as stolen, and that the firearm has been recorded in the Automated Firearms System in the name of the individual who seeks its return.
- c) If the firearm has been reported lost or stolen, a law enforcement agency shall notify the owner or person entitled to possession. However, that person shall provide proof of eligibility to possess a firearm.²¹²

California law also provides that “no law enforcement agency or court shall be required to retain a firearm for more than 180 days after the owner of the firearm has been notified by the court or law enforcement agency that the firearm has been made available for return.”²¹³ It provides that law enforcement may “dispose” of a firearm that is unclaimed after the expiration of the 180-day period.²¹⁴

²⁰⁷ Wash. Rev. Code Ann. § 9.41.0001(1) (West).

²⁰⁸ Wash. Rev. Code Ann. § 9.41.0001(1)(a) (West).

²⁰⁹ Wash. Rev. Code Ann. § 9.41.0001(4) (West).

²¹⁰ Del. Code Ann. tit. 11, § 2311(c) (West).

²¹¹ *Id.*

²¹² Cal. Penal Code § 33865 (West).

²¹³ Cal. Penal Code § 33875 (West).

²¹⁴ *Id.*

Role of Defense Attorneys

Defense attorneys may also have a role to play in the return of firearms to respondents. **Acting Lieutenant Brian Lott of the Prince George's County Police Department noted that in preparing for a gun hearing, at which the department will decide whether to approve the return of a firearm, he has received calls from defendants' attorneys advising the Department not to return firearms.**²¹⁵

Recommendations

Return of Firearm

1. **Require a background check as a condition of returning firearms to prohibited possessors at the conclusion of their orders.** Prior to returning a firearm to a respondent, law enforcement should perform a background check on the respondent to ensure the respondent is not otherwise prohibited from possessing a firearm under state or federal law, and to ensure the existing order has not been extended, or that a new order has not been issued.

Option for Law Enforcement to Dispose of Firearms

2. **Enact a policy to allow unclaimed firearms to be sold or destroyed.** In cases where the lawful owner of a surrendered or removed firearm does not request the firearm back within a specified period of time, states should consider explicitly authorizing law enforcement to sell such firearm to a licensed firearm dealer or to destroy the firearm.

Notification to Petitioners of Return of Firearm

3. **Notify petitioners when firearms have been removed and when they are returned to the respondent.** States should consider notifying petitioners both when a firearm has been removed/retrieved and when such firearm is returned to a respondent. This enables petitioners to make more informed decisions about their safety.

²¹⁵ Acting Lieutenant Brian Lott, Property Custodian, Prince Georges County Police Department. Personal Communication, October, 21 2015.

VIII. Obstacles to Implementation

We recognize that there are significant obstacles to implementing effective removal/retrieval processes; including: scarce resources, competing priorities, low stakeholder engagement, liability, limited data, and statutory authority to remove.

Cost/Resources

An effective removal/retrieval process requires monetary resources that may be scarce and difficult to obtain. The experience of the Rose Aandom Center in Denver, Colorado may provide some insight.

The Rose Aandom Center is currently under construction, will be open for move-in and planning in February 2016 and services will begin in May 2016.²¹⁶ Rose Aandom Center brings together seven government and fifteen community-based organizations in one building to accommodate the needs of domestic violence victims and their children.²¹⁷ At the Center, “community organizations and government agencies will work together under one roof” to provide victims and their families access to “domestic violence counseling, mental health services, crisis intervention, civil legal support, law enforcement services, job readiness and job search assistance, and information regarding the criminal justice system among other critical services.”²¹⁸

Family Justice Centers like the Rose Aandom Center will also help facilitate communication between stakeholders, allowing for a smooth and effective removal/retrieval process.

Documents detailing the budget for the Rose Aandom Center are attached to this report as Appendix K.

The family justice center model that began in San Diego in 2002 inspired the Rose Aandom Center.²¹⁹ Today, **there are more than 80 successfully operating family justice centers across the United States** that may also provide some insight for the acquisition of funds.

Closely associated with the cost/resources obstacle to implementation, is the concept of competing priorities for those, often scarce, resources. Courts, prosecutors, law enforcement agencies and legislators must make strategic decisions on how to spend finite budgets and human resources.

Stakeholder Engagement

The participation of all stakeholders identified throughout this report – including, judges, prosecutors, law enforcement agencies, and client service organizations – is critical to the successful implementation of any removal/retrieval process.

²¹⁶ Steve Siegel Director, Special Programs Unit, Denver District Attorney's Office. Personal Communication. November 20, 2015.

²¹⁷ *Id.*

²¹⁸ <http://roseaandomcenter.org/about/>

²¹⁹ *Id.*

A study conducted by Everytown for Gun Safety on domestic violence protective orders in Rhode Island between 2012 and 2014 found that of the 1,609 final protective orders reviewed, courts only required respondents to surrender their firearms in 84 cases (5%).²²⁰ In cases where written records provided evidence that the respondent had threatened to use a firearm, the rate at which courts ordered respondents to surrender their firearm rose to just 13%.²²¹

An article in the *Journal of Interpersonal Violence* noted similar experiences among women in a focus group.²²² The authors noted that “one problem associated with protecting women from gun violence was the general belief that women who are in dangerous or abusive situations are not taken seriously by the justice system ... [s]ome women expressed frustration that their abuser even admitted to owning a gun to the judge during a domestic violence hearing, but nothing was ever done about it and no steps were taken to remove the abuser’s guns.”²²³ Many participants said that a judge did not even ask about guns during the protective order hearing.²²⁴

Inclusion of the requirement that firearms be removed/retrieved in domestic violence protective orders is inconsistent in many states that authorize judges to include such a provision.

A common denominator in places where stakeholders report success in removing/retrieving firearms from prohibited persons is good communication and working relationships between stakeholders.²²⁵

Stakeholders in each state should reach out to other stakeholders to discuss the removal/retrieval process available in their state, to discuss the importance of such processes, to identify areas within the process that could be improved through collaboration, more strategic implementation, and/or improved statutory language, and to clearly define the roles of each stakeholder.

Limited Data on Promising Practices

There are few studies on the effectiveness of removal/retrieval processes. Of the studies that do exist, such as the California study cited throughout this report, processes are emphasized and demonstrate proof of concept. Of the impacts on victim safety that have been measured, the samples are small but the findings are promising. In San Mateo County, a majority of women who participated in a survey after they had filed a domestic violence restraining order petition reported that, when respondents’ guns were removed, they felt safer as a result. When some or all of the guns had not been removed, or removal was unknown, most petitioners reported feeling less safe.²²⁶ In a separate analysis of recidivism of the San Mateo sample, results were inconclusive with regard to whether removing guns from respondents to domestic violence

²²⁰ Everytown for Gun Safety. (2015, June). *Domestic Abuse Protective Orders and Firearm Access in Rhode Island*. Retrieved August 21, 2015, from <http://everytownresearch.org/reports/domestic-abuse-protective-orders-and-firearm-access-in-rhode-island/>; see also

²²¹ *Id.*

²²² Lynch, K.R.; Logan, TK. 2015. “You Better Say Your Prayers and Get Ready”: Guns Within the Context of Partner Abuse. *Journal of Interpersonal Violence*, 1-26: 13.

²²³ *Id.*

²²⁴ *Id.*


²²⁵ Acting Lieutenant Brian Lott, Property Custodian, Prince Georges County Police Department. Personal Communication, October, 21 2015; Corporal Todd Speith, Training Division, Prince Georges County Sheriff’s Office. Personal Communication, October, 21 2015.

²²⁶ Vitte KA, Webster DW, Frattaroli S, Claire BE, Wintemute GJ. 2013. Removing guns from batterers: findings from a pilot survey of domestic violence restraining order recipients in California. *Violence Against Women*, 19(5):602-16.

restraining orders was associated with reduced offending.²²⁷ Our review revealed no studies that compare different types of removal/retrieval processes in order to highlight promising practices. More data on removal/retrieval processes is necessary to study its effects. Specific recommendations to address this lack of data are detailed in section IX below.

Statutory Authority to Remove

In section II, we recommended that states that do not currently require or authorize law enforcement officers to remove/retrieve firearms from persons subject to domestic violence protective orders enact legislation to allow judges to order removal/retrieval and for law enforcement officers to enforce the removal/retrieval of firearms. We recognize that there are legislative and political obstacles to passing such legislation. These difficulties may lie in persuading members of the state legislature that such a process is worth overcoming the obstacles to implementation outlined above in this section; such as the limited available data to support the efficacy of removal/retrieval.



“EVERY YEAR IN WISCONSIN, THOUSANDS OF PEOPLE, MOSTLY WOMEN, SEEK HELP FROM LAW ENFORCEMENT AND THE LEGAL SYSTEM, BECAUSE THEY BELIEVE SOMEONE THEY HAVE A RELATIONSHIP WITH, MAY HARM THEM. **THESE LAWS EMPOWER THE SYSTEM THAT SERVES THEM, SO WE CAN DO BETTER IN PROTECTING THE VICTIMS, AND POTENTIAL VICTIMS, OF DOMESTIC ABUSE AND CONNECT THEM WITH CRUCIAL SERVICES, WHEN THEY NEED OUR HELP THE MOST.**”

-Wisconsin Governor Scott Walker
April 16, 2014

There is strong evidence demonstrating an increased risk associated with fatal intimate partner violence when guns are involved.²²⁸ Furthermore, domestic violence legislation related to firearms has been successful in a number of states in the last several years where gun violence prevention policies have

²²⁷ Wintemute GJ, Frattaroli S, Wright MA, Claire BE, Vittes KA, Webster DW. 2015. Firearms and the incidence of arrest among respondents to domestic violence restraining orders. *Injury Epidemiology*, 2:14.

²²⁸ Campbell JC, Webster D, Koziol-McLain J, Block CR, Campbell DW, Curry MA, et al. 2003. Risk factors for femicide in abusive relationships: Results from a multisite case control study. *American Journal of Public Health*, 93(7), 1089-1097.

traditionally been met with resistance, such as Alabama²²⁹, Louisiana²³⁰, South Carolina²³¹, Washington,²³² Vermont, and Wisconsin.

In 2014, Vermont enacted a law establishing a fairly comprehensive removal/retrieval procedure for persons subject to a domestic violence protective order.²³³ The bill passed both chambers with strong bipartisan support and was signed into law by Governor Peter Shumlin, a Democrat, on June 16, 2014.²³⁴

The same year, the Wisconsin legislature passed a law establishing the removal/retrieval procedure cited throughout this report. The bill passed by an overwhelming voice vote in both chambers and was signed into law by Governor Scott Walker, a Republican on April 16, 2014.²³⁵

In a press release on the signing of the bill, known as the SAFE Act, Walker wrote: “Every year in Wisconsin, thousands of people, mostly women, seek help from law enforcement and the legal system, because they believe someone they have a relationship with, may harm them. These laws empower the system that serves them, so we can do better in protecting the victims, and potential victims, of domestic abuse and connect them with crucial services, when they need our help the most ... The SAFE Act (Stopping Abuse through Enforcement) strengthens victim protections by establishing a procedure for persons prohibited from possessing a firearm under domestic abuse, child abuse, or harassment injunctions to turn over their firearms ... Outagamie, Winnebago, Waushara, and Sauk Counties have already implemented the procedures in a successful pilot program.”²³⁶

Asked why this kind of legislation was successful, Everytown’s Director of Partnerships, Kirsten Moore observed that legislators on both sides of the aisle have shown a willingness to acknowledge the problem of domestic violence and firearms when key stakeholders *in their community* present the problem. Everytown worked closely with domestic violence advocates, representatives of the courts, prosecutors and key legislators in places like Vermont and Wisconsin to advance policy solutions that simultaneously support the Second Amendment and protect women from domestic abusers.²³⁷ “Bipartisan support for the

²²⁹ House Bill 47, 2015 Reg. Sess. (Al. 2015) (Which prohibits any person who has been convicted of committing or attempting to commit a misdemeanor crime of domestic violence or is subject of a valid protection order for domestic abuse from owning a firearm or having one in his or her possession or under his or her control.) <http://arc-sos.state.al.us/cgi/actdetail.mbr/detail?year=2015&act=%20341&page=bill>

²³⁰ House Bill 753, 2014 Reg. Sess. (La. 2014)(Which prohibits domestic violence misdemeanants and persons subject to a domestic violence protective order from possessing a firearm or carrying a concealed weapon.) <http://www.legis.la.gov/legis/BillInfo.aspx?i=224712>

²³¹ Senate Bill 3, 2015 Reg. Sess. (S.C. 2015) (Which provides, among other things, that it is unlawful for a person to ship, transport, receive, or possess a firearm or ammunition, if the person has been convicted of enumerated misdemeanor domestic violence offenses and meets certain criteria listed in statute.) http://www.scstatehouse.gov/sess121_2015-2016/prever/3_20150526.htm

²³² Senate Bill 1840, 2014 Reg. Sess. (Wash. 2014) <http://lawfilesexxt.leg.wa.gov/biennium/2013-14/Pdf/Bills/Session%20Laws/House/1840-S.SL.pdf>

²³³ House Bill 735, 2013-2014 Reg. Sess. (Vt. 2014). [http://legislature.vermont.gov/assets/Documents/2014/Docs/BILLS/H-0735/H-0735%20As%20Passed%20by%20Both%20House%20and%20Senate%20\(Unofficial\).pdf](http://legislature.vermont.gov/assets/Documents/2014/Docs/BILLS/H-0735/H-0735%20As%20Passed%20by%20Both%20House%20and%20Senate%20(Unofficial).pdf)

²³⁴ Sarah Tofte, Deputy Research Director, Everytown for Gun Safety. Personal Communication, November 19, 2015.

²³⁵ *Id.*

²³⁶ <http://walker.wi.gov/newsroom/press-release/safer-wisconsin-governor-scott-walker-signs-legislation-protect-victims>

²³⁷ Kirsten Moore, Director of Partnerships, Everytown for Gun Safety. Personal Communication, November 23, 2015.

Violence Against Women Act, told us that politicians by and large want to do the right thing on the issue of domestic violence,” she said.²³⁸

Moreover, these kinds of policies are often backed up by local law enforcement who know first-hand the risks that firearms in situations of domestic violence pose not just to the individuals involved, but also to law enforcement officers who are called to intervene. In Wisconsin, Republican Sheriff Christopher Schmaling of Racine County was a vocal proponent of that state’s SAFE Act.²³⁹

Additionally, stakeholders in different states may be able to find support for other policies, such as a gun violence restraining order, discussed in more detail in Appendix N. The first gun violence restraining order law was enacted in California in September 2014, and went into effect on January 1, 2016. **A recent national poll found that 72% of the general public and 64% of gun owners would support a law “...allowing family members to ask the court to temporarily remove guns from a relative or intimate partner who they believe is at risk of harming himself or others.”**²⁴⁰

The experiences of Alabama, Louisiana, South Carolina, Vermont, Washington, Wisconsin and others show that it is possible to enact such life-saving legislation even in places previously thought to be unlikely.

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ Barry CL, McGinty EE, Vernick JS, Webster DW. Two years after Newtown—public opinion on gun policy revisited. *Prev Med.* 2015;79:55-58.

IX. Data Needs

An early evaluation of firearms removal programs in two California counties (San Mateo and Butte) shows that it is possible to remove firearms safely from persons subject to domestic violence restraining orders.²⁴¹ A pilot, small-sample survey suggested that petitioners felt safer when firearms were removed.²⁴²

However, one study focusing on whether firearm removal from DVRO respondents in San Mateo County reduced the likelihood of future arrest found inconclusive results.²⁴³ Risk of incident arrest – a subsequent arrest of a prohibited possessor – however is one of many metrics for evaluating “success” of firearm removal processes; other outcomes include victim mortality/morbidity risk following removal, or as mentioned previously, perceived safety. The San Mateo evaluation lays the foundation for data collection so that the removal process can be evaluated over time with a sufficient sample to provide conclusive results.

Importance of Building & Implementing a Removal Process that can be Evaluated

In order to evaluate the effects of different aspects of the firearm removal process, it is essential to collect repeated, quality measurements throughout the removal process. Partnerships among police departments, public health departments, researchers, and courts can help ensure that the necessary data are collected and evaluated. Additionally, cooperation between cities, counties, and states can help ensure that data can be compared across jurisdictions. The data collected will inform an evidence-based promising practice for removing firearms from individuals who are prohibited, and will enable jurisdictions to monitor the safety and compliance of both the persons serving the orders, and the respondents.

Necessary Data Fields

Data that should be collected as part of any firearm removal process include, but are not limited to the following variables:

- a. Identifiers for petitioner and respondent
- b. Reason for firearm removal

²⁴¹ Wintemute GJ, Frattaroli S, Wright MA, Claire BE, Vittes KA, Webster DW. Identifying Armed Respondents to Domestic Violence Restraining Orders and Recovering their Firearms: Process Evaluation of an Initiative in California. *American Journal of Public Health*, December 12, 2013 Epub. e1–e6.

²⁴² Vittes KA, Webster DW, Frattaroli S, Wintemute G. Removing Guns from Batterers: Findings from a Pilot Survey of Domestic Violence Restraining Order Recipients in California. *Violence Against Women*, 2013;19(5):602-16.

²⁴³ Wintemute, G. et al. (2015). Firearms and the incidence of arrest among respondents to domestic violence restraining orders. *Injury Epidemiology*, 2(14). doi:10.1186/s40621-015-0047-2

- c. Screening process for firearm identification (i.e. NICS/state-level firearm system, petitioner declaration (check box on petitioner's restraining order applications), contact with petitioner, other method, or combination of sources)
- d. Date and time when order issued
- e. Date and time when order served
- f. Did petitioner or attorney/legal advocate request law enforcement service?
- g. Records of interactions with firearm removal/retrieval
 - i. Who served the order (were they authorized to remove guns?)
 - ii. Time from order served until firearm is recovered
 - iii. Number of firearms recovered
 - iv. Make, model, caliber, and serial number of firearms recovered
 - v. Reports of violence or threats of violence during recovery
 - vi. Uncooperative respondents
 - vii. Arrests
- h. Storage of guns
- i. Access to criminal records
- j. Access to court records
- k. Reasons for non-recovery
- l. DV calls for service records
- m. Police and prosecutorial reports*
- n. Respondent/petitioner interviews
- o. Program staff interviews

The California study cited throughout this report included a data collection sheet and is attached to this report as Appendix M.

Who Collects the Data?

Many of the pieces of information needed to evaluate formally the firearm removal process come from a variety of sectors. Collaboration across sectors is essential to ensure that the data is being collected and evaluated. Each jurisdiction should determine an evaluation process based on its unique needs.

Client service organizations may be in the best position to conduct interviews with petitioners and victims to assess their safety and perceived safety after successful removal. Therefore, it is vital to foster communication between all stakeholders, including client service organizations.

Research Questions Going Forward

It is essential to identify what is the outcome of interest in the removal process. Ultimately, we hope that the removal of firearms leads to an increase in safety for the victim and a decrease in violence. These can be measured through use of a proxy variable such as risk of arrest, or by following up with victims surveying their feelings of safety. Thus, potential outcome variables may include, but are not limited to:

- a) Risk of arrest
- b) Mortality/morbidity of victim and associates/family
- c) Safety or perceived safety of victim

* Where possible.

- d) Safety or perceived safety of serving officers
- e) Community health outcomes

X. Conclusion

There are many options for states to remove/retrieve firearms from persons prohibited from possessing them, such as persons subject to domestic violence protective orders as discussed in this report. There are many recommendations in this report for each stage of the process, however, one that cannot be stressed enough is the development of working relationships between stakeholders. In interviews conducted for this report, communication between prosecutors, law enforcement, and judges was consistently repeated as a critical factor in successful removal/retrieval of firearms.



“LAWS PROHIBITING THE POSSESSION OF FIREARMS BY FELONS, MISDEMEANANTS, PERSONS SUBJECT TO DOMESTIC VIOLENCE PROTECTIVE ORDERS AND OTHERS ARE ONLY AS EFFECTIVE AS THE REMOVAL PROCEDURES WE PUT IN PLACE. GETTING FIREARMS OUT OF THE HANDS OF PEOPLE WHO ARE PROHIBITED FROM POSSESSING THEM WILL HELP SAVE A LOT OF LIVES.”

Kelly Roskam
Educational Fund to Stop Gun Violence



XI. Appendices

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Appendix A: Multnomah County Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is entered into by and between:

Multnomah County Circuit Court

Multnomah County District Attorney's Office

Portland Police Bureau

A. Purpose

Under Oregon law, the court may restrict anyone who is subject to a restraining order from possessing firearms, when the court deems the step necessary to protect the safety and welfare of a restraining order applicant, and any child or children in the applicant's custody.

When a Multnomah County judge issues such an order, the restrained individual is served with the order by the Multnomah County Sheriff. Individuals served with such an order, who have firearms in their possession or control at the time of service, must turn those firearms over to law enforcement immediately. Otherwise, individuals must surrender their firearms within 48 hours to law enforcement or a qualified friend or relative. If individuals are served in jail, they must turn their firearms over within 48 hours of being released. Individuals can take their firearms to three sites: Portland Police Bureau's Central Precinct (open 24 hours), the Police Bureau's Property & Evidence Warehouse or the Multnomah County Sheriff's Office. Or, they can transfer their firearms to a friend or relative who must pass an Oregon State Police background check and sign a notarized affidavit. Within three court days of the restraining order being served, the restrained person must file a firearms affidavit with the court that shows a receipt for their firearm surrender or a notarized signature of the person who now has it. If they're served while in jail, they have three court days from their release to file the affidavit.

This Memorandum of Understanding establishes procedures for enforcement against individuals who fail to comply with the firearms prohibition on their restraining order by failing to file the required affidavits with the court.

B. Roles and Responsibilities

Multnomah County Circuit court agrees to:

- Track the restraining order cases where a timely affidavit is not filed with the court.

- At least once a month, forward a list of individuals who have failed to file their firearms affidavits to the Portland Police Bureau and the Multnomah County District Attorney's Office.

Portland Police Bureau agrees to:

- Upon receipt of the court information listing individuals who did not file required firearms affidavits, the Domestic Violence Reduction Unit (DVRU) sergeant will apply the criteria listed in DVRU's SOP to determine whether or not an investigator will be assigned to any given named individual.
- Once assigned the investigator will verify that the restraining order is still in effect. If the restraining order is still in effect the investigator will do the following:
 1. Contact the petitioner to ascertain additional information regarding the location and type of firearm(s) possessed by the respondent as well as other information to include updated contact numbers and addresses.
 2. If the respondent is currently on probation or parole, contact the assigned probation or parole officer to determine if he/she is able to follow up with the respondent in retrieving the firearm(s) or otherwise bringing the respondent into compliance with the provisions of the Restraining Order (i.e., submitting an affidavit to the court stating the firearm(s) have been turned in; he/she does not have a firearm etc).
 3. Call the respondent and ascertain whether or not they surrendered their firearm(s) and/or ammunition, or have filed an affidavit.
 4. Mail the respondent a follow-up letter.
 5. If the respondent does not respond to phone contact or letter *the investigator will complete an Investigation Report documenting the violation of restraining order. The investigator will notify the DVRU sergeant and responsible Deputy District Attorney for a determination whether or not a Contempt Arrest Warrant will be issued.*
 6. If an arrest warrant for contempt is issued, the investigator will begin preparing for arrest and/or search warrant service per Portland Police Bureau protocols.

7. If the respondent complies and surrenders their firearm(s) the investigator will prepare and issue a receipt for Safekeeping and include the phrase, "R/O Gun Turn-in."
8. The investigator will complete a special report documenting the circumstances of the firearm surrender. The investigator will place the firearm(s) and/or ammunition into any satellite property room or by delivering it to the Property Evidence Division.

Multnomah County District Attorney agrees to:

- Provide legal advice to the Portland Police Bureau during their investigation of individuals who failed to file required firearm affidavits with the court.
- Review all completed investigations forwarded by the Portland Police Bureau to determine whether or not contempt charges with an accompanying arrest warrant will be filed with the court.
- Notify the Domestic Violence Reduction Unit (DVRU) sergeant if contempt charges with an accompanying arrest warrant are filed with the court.
- Provide legal advice to the Portland Police Bureau during their execution of any warrants.
- Prosecute in court any contempt charges filed.


Multnomah County Circuit Court

Maureen McKnight 9/8/14
 Hon. Maureen McKnight, Chief Family Court Judge date

The FAPA cases listed are those in which a current firearm has been claimed.

Portland Police Bureau
Michael Reese 9/05/14
 Chief Michael Reese date

Multnomah County District Attorney's Office
Rod Underhill 9/8/14
 Rod Underhill, Multnomah County District Attorney date



Appendix B: Multnomah County Firearm Surrender and Return FAQ

FIREARMS SURRENDER AND RETURN TERMS
For RESPONDENTS under RESTRAINING ORDERS

The restraining order against you may prohibit you from possessing firearms and ammunition and require you to surrender them. Read your order carefully. The firearms section is on page 4, paragraph 10 & 10A.

IF THE RESTRAINING ORDER PROHIBITS YOU from possessing firearms and ammunition and orders that surrender terms apply, **you must do one of the following:**

1. Surrender to law enforcement any firearms and/or ammunition in your possession, control, or custody at the time you are served with the restraining order. If the firearms or ammunition are not in your custody at that time, you must surrender them to law enforcement (see bottom of page) within 48 hours of being served. If you are incarcerated when served, you must surrender them within 48 hours of your release.

You also must complete and file a Firearms Affidavit showing that the surrender has occurred. You must file the Affidavit with the Court within 3 court days of being served or released.

2. Have an eligible Third Party take possession of any firearms and/or ammunition in your possession, control, or custody within 48 hours of being served. If you are incarcerated when served, a third party must take possession within 48 hours of your release.

You must complete an Oregon State Police ID Services firearms background check on the third party you select. The third party must complete paragraph 4 of the Firearms Affidavit. You must also complete sections of the Firearms Affidavit and file it with the court within 3 court days of being served or released. To get a firearms background check, call 1-800-432-5059. It costs \$10.00.

3. Tell the Court you have no firearms or ammunition. If you do not have firearms or ammunition in your custody, control, or possession, you must complete paragraph 3 on the Firearms Affidavit and file the document with the Court within 3 court days of being served or released.

The **Firearms Affidavit** is included in your service packet. It is also available in Room 211 of the courthouse or online at: http://courts.oregon.gov/Multnomah/General_Info/Family/pages/form.aspx

**FAILURE TO COMPLY WITH COURT- ORDERED TERMS ABOUT FIREARMS POSSESSION AND SURRENDER
MAY SUBJECT YOU TO A CONTEMPT OF COURT CHARGE.**

OPTION TO SURRENDER TO LAW ENFORCEMENT

The Portland Police Bureau and the Multnomah County Sheriff's Office will accept unloaded firearms and ammunition or individuals under restraining orders, *regardless of the location of the respondent's residence.*

Portland Police Bureau
Central Precinct
1111 SW 2nd Ave.
Portland, Oregon 97204
Hours: 24 hours/7 days a week
503/823-0097

Portland Police Bureau
Property & Evidence Division
2619 NW Industrial Way
Portland, Oregon 97210
Hours: 9-12; 1-4 M-F
503/823-2179

Multnomah County Sheriff's Office
12240 NE Glisan St.
Portland, OR 97230
Call 503-255-3600 to schedule
Mon-Thurs 8- 4PM; Friday 8- 3PM

RETURN of firearms/ammunition to you by law enforcement is subject to their background check. Return by a Third Party requires a completed Firearms Background check by the Oregon State Police (\$10 cost - 800/432-5059). More information is available online at the court's website:
http://courts.oregon.gov/Multnomah/General_Info/Family/pages/rulesandprocedures.aspx

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH
Family Law Department

_____))
_____))
Petitioner) Case No.: _____
_____))
vs) **FIREARMS AFFIDAVIT**
_____))
_____))
Respondent)

I am _____ (your name),
the Respondent in this Family Abuse Prevention Act case. Being sworn, I state that:

1. **Surrender of Firearms/Ammunition to Law Enforcement**

I have surrendered my firearms and ammunition to the law enforcement agency named on the attached receipt. *Attach copy of the receipt.*

2. **Third Party Possession of Firearms and Ammunition**

The Third Party named on page 2 has taken possession of my firearms and ammunition. I obtained a background check on this Third Party from the Oregon State Police. The Third Party may legally possess firearms. The affidavit of the Third Party is set out on Page 2. *Third Party must sign affidavit on Page 2 and include background check number from Oregon State Police.*

3. **No Firearms or Ammunition**

I have not surrendered any firearms or ammunition because I do not own any firearms or ammunition. I do not have any firearms or ammunition in my custody, control, or possession.

I do do not have a concealed handgun license.

Signature of Respondent

Print Name

Address or Contact Address

City, State, Zip

Telephone /Contact Telephone #

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public/Court Clerk/Judge

4. Third Party's Affidavit about Taking Possession

I am _____, *(Name of Third Party who has received the firearms/ammunition)*. **Being sworn, I state that:**

I am aware of the Court's order prohibiting Respondent from possessing firearms and ammunition. I agree to receive and store for Respondent the following firearms and/or ammunition while s/he is prohibited by the court order from possessing them. *(Set out the make, model, caliber, and serial numbers. Attach extra sheets if needed).*

Firearm Make	Model	Caliber	Serial Number
Ammunition:	<i>Describe type and amount:</i>		

I do not live in the same residence as Respondent.

I am not prohibited from owning or possessing firearms under state or federal laws.

The respondent has obtained an Oregon State Police background check to verify that I am not prohibited from owning or possessing firearms. The ID Services Firearms Background Check Number is set out below.

I agree not to return, loan, or otherwise transfer firearms to Respondent unless I have completed an ID Services Firearms Background check on Respondent to make sure that I may return the weapons and ammunition to him/her.

I understand that violation of these terms may result in the filing of criminal charges against me.

This can include federal charges if I transfer a firearm to a person who is subject to federal firearm prohibitions.

Oregon State Police ID Services Firearms Background Check Number on me: _____

Signature of Third Party

Print Name of Third Party

Address (or Contact Address) Street/City/State/Zip

Phone or Contact Phone #

Subscribed and sworn to before me by _____ this _____ day of _____, 20____.

Notary Public/Court Clerk/Judge

Frequently Asked Questions:

SURRENDER and RETURN OF FIREARMS

In Multnomah County

Family Abuse Prevention Act (FAPA) Restraining Order Cases

1. Do I have to surrender (give up) my guns?

It depends on what the restraining order says. Look at paragraph 10 on page 4 of the order. If the judge's initials are on the right side of the page, on the line next to number 10, the "Firearms Surrender and Return Terms" attached to the order apply to you. This means that **if you have guns or ammunition, you must turn them over:**

- to a law enforcement officer who serves the restraining order on you in Multnomah County, if you have the weapons/ammunition in your possession at that time, or
- to the Portland Police Bureau or the Multnomah County Sheriff's Office, or
- to someone you know who is willing to store them while the restraining order is in place and who passes a firearms background check.

You must then complete and file the Firearms Affidavit at the Courthouse. The Firearms Affidavit is included with the court papers you received. It is also available on the court's website.

2. How much time do I have to turn over my guns?

If you have guns in your possession or control when you are served with the restraining order by law enforcement, you must turn them over right then. Otherwise, you have 48 hours to turn over your guns to law enforcement or a qualified friend or relative. If you are served in jail, you must turn them over within 48 hours of being released.

3. How much time do I have to file the Firearms Affidavit?

You have 3 court days from the time you were served with the restraining order to file the Firearms Affidavit with the court. (Weekend days and holidays do not count as court days). If you were served in jail, you have 3 court days from your release to file the Affidavit. You must sign the Affidavit in front of a notary and can mail or take the Affidavit to:

Room 210
Main Multnomah County Courthouse
1021 SW 4th Avenue
Portland, Oregon 97204

or East County Courthouse
18480 SE Stark
Portland, Oregon

4. Where can I surrender my guns?

You can surrender (give) your guns to the Portland Police Bureau or Multnomah County Sheriff's Office at these locations during the times listed. To turn them over to the sheriff's office, you must call first to schedule an appointment.

Portland Police Bureau
Central Precinct
1111 SW 2nd Ave.
Portland, Oregon 97204
Hours: 24 hours/7 days a week
503/823-0097

Portland Police Bureau
Property & Evidence Division
2619 NW Industrial Way
Portland, Oregon 97210
Hours: 9-12; 1-4 M-F
503/823-2179

Multnomah County Sheriff's Office
12240 NE Glisan St.
Portland, OR 97230
Call 503-255-3600 to schedule
Mon-Thurs 8- 4PM; Friday 8- 3PM

5. Will I get a receipt from the law enforcement agency that is storing my guns?

Yes. The agency will give you a receipt. The receipt will list all the guns you turn over and the type/amount of ammunition. You must attach a copy of the receipt to the Firearms Affidavit that you file.

6. What if I want a friend or relative (instead of law enforcement) to store my guns while the restraining order is in effect?

If your guns were not given to law enforcement when you were served, you can turn your guns over to a friend or relative. However, you must first get an ID Services Firearms Background Check done on the friend or relative to show that he or she is legally able to have firearms. If you decide to turn your guns over to a friend or relative, you will fill out paragraph 2 on page 1 of the Firearms Affidavit. Your friend or relative will fill out paragraph 4 on page 2 of the Affidavit. Each of you must sign the Affidavit in front of a notary.

7. How do I get a firearms background check done on the person I want to store my guns?

The background check is done through the Oregon State Police. It costs \$10. You will need a credit or debit card. The number to call is: **1-800-432-5059**. If the person passes the background check, you will be given a number to record on the Firearms Affidavit. This number goes in the space provided on page 2 of the Firearms Affidavit, before the person signs the form in front of a notary.

8. What if I don't have any firearms?

You still need to complete and file the Firearms Affidavit. Paragraph 3 on page 1 applies in this situation. This section states that you do not own or possess any firearms. You must sign the Affidavit in front of a notary and file it at the Courthouse within 3 court days of being served or released from jail.

9. What happens if I don't file the Firearms Affidavit ?

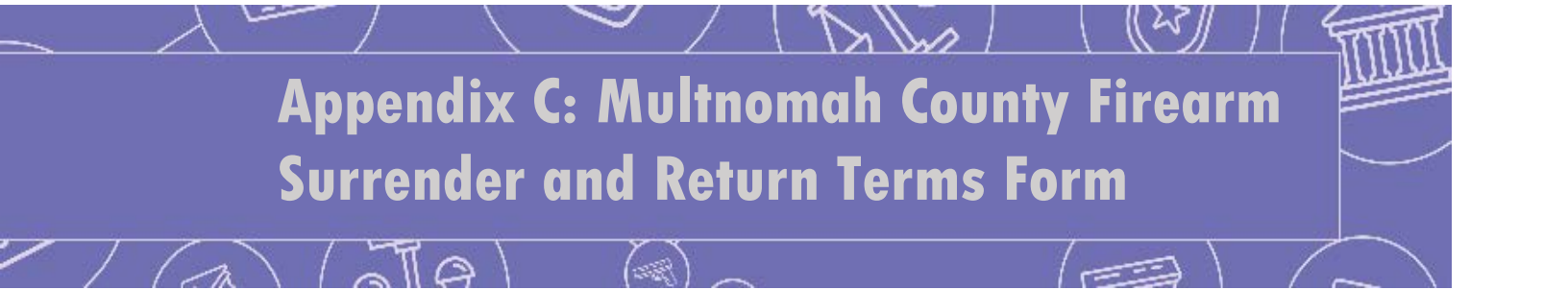
If you are required to file the Firearms Affidavit and do not, you are disobeying the court's order. This is a serious matter. A law enforcement officer could contact you for questioning or cite you to appear in court. The District Attorney's (DA) office could charge you with violating a restraining order (contempt of court). In that case, you will have the right to a court-appointed lawyer if you cannot afford to hire a lawyer. If the judge decides after a hearing that you disobeyed the restraining order, you could go to jail for up to 6 months, be placed on probation, or be ordered to pay a fine of up to \$500 plus the cost of your state-provided attorney.

10. How do I get my firearms back from the police or sheriff when the restraining order no longer exists?

You must call the police or sheriff's office at the numbers provided above and make arrangements to pick up your guns and ammunition. The police or sheriff's office will do a background check on you to be sure you are legally able to possess firearms before returning your guns and ammunition. Take photo identification when you go to pick them up.

11. How do I get my firearms back from the person storing them when the restraining order no longer exists?

The person storing them can return them to you after obtaining an ID Services Firearms Background Check on you. See question 7 above for information about what the person needs to do to get a background check.



Appendix C: Multnomah County Firearm Surrender and Return Terms Form

FIREARMS SURRENDER AND RETURN TERMS **For RESPONDENTS under RESTRAINING ORDERS**

The restraining order against you may prohibit you from possessing firearms and ammunition and require you to surrender them. Read your order carefully. The firearms section is on page 4, paragraph 10 & 10A.

IF THE RESTRAINING ORDER PROHIBITS YOU from possessing firearms and ammunition and orders that surrender terms apply, **you must do one of the following:**

1. Surrender to law enforcement any firearms and/or ammunition in your possession, control, or custody at the time you are served with the restraining order. If the firearms or ammunition are not in your custody at that time, you must surrender them to law enforcement (see bottom of page) within 48 hours of being served. If you are incarcerated when served, you must surrender them within 48 hours of your release.

You also must complete and file a Firearms Affidavit showing that the surrender has occurred. You must file the Affidavit with the Court within 3 court days of being served or released.

2. Have an eligible Third Party take possession of any firearms and/or ammunition in your possession, control, or custody within 48 hours of being served. If you are incarcerated when served, a third party must take possession within 48 hours of your release.

You must complete an Oregon State Police ID Services firearms background check on the third party you select. The third party must complete paragraph 4 of the Firearms Affidavit. You must also complete sections of the Firearms Affidavit and file it with the court within 3 court days of being served or released. To get a firearms background check, call 1-800-432-5059. It costs \$10.00.

3. Tell the Court you have no firearms or ammunition. If you do not have firearms or ammunition in your custody, control, or possession, you must complete paragraph 3 on the Firearms Affidavit and file the document with the Court within 3 court days of being served or released.

The **Firearms Affidavit** is included in your service packet. It is also available in Room 211 of the courthouse or online at: http://courts.oregon.gov/Multnomah/General_Info/Family/pages/form.aspx

**FAILURE TO COMPLY WITH COURT- ORDERED TERMS ABOUT FIREARMS POSSESSION AND SURRENDER
MAY SUBJECT YOU TO A CONTEMPT OF COURT CHARGE.**

OPTION TO SURRENDER TO LAW ENFORCEMENT

The Portland Police Bureau and the Multnomah County Sheriff's Office will accept unloaded firearms and ammunition or individuals under restraining orders, *regardless of the location of the respondent's residence.*

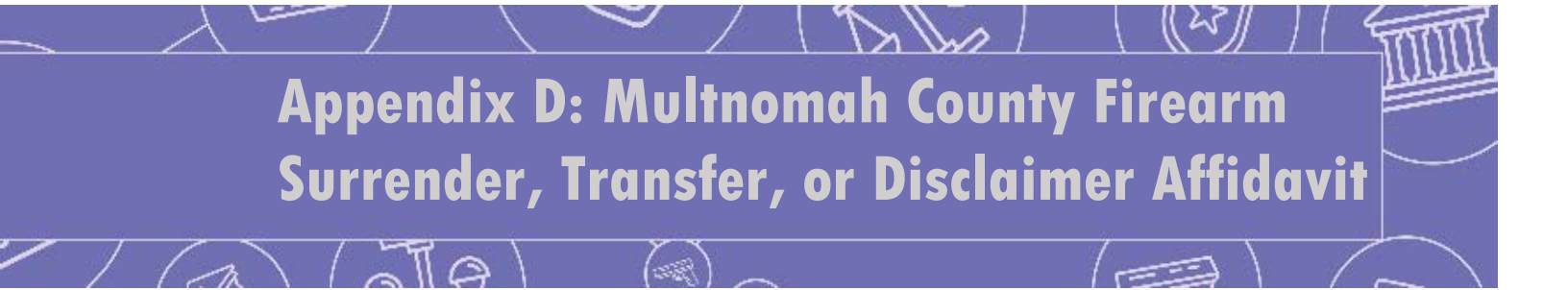
Portland Police Bureau
Central Precinct
1111 SW 2nd Ave.
Portland, Oregon 97204
Hours: 24 hours/7 days a week
503/823-0097

Portland Police Bureau
Property & Evidence Division
2619 NW Industrial Way
Portland, Oregon 97210
Hours: 9-12; 1-4 M-F
503/823-2179

Multnomah County Sheriff's Office
234 SW Kendall Ct
Troutdale, OR 97060
Mon-Thurs 8- 4PM; Friday 8- 3PM
Call 503-988-7300, option #5 to
schedule

RETURN of firearms/ammunition to you by law enforcement is subject to their background check. Return by a Third Party requires a completed Firearms Background check by the Oregon State Police (\$10 cost – 800/432-5059). More information is available online at the court's website:

http://courts.oregon.gov/Multnomah/General_Info/Family/pages/rulesandprocedures.aspx



**Appendix D: Multnomah County Firearm
Surrender, Transfer, or Disclaimer Affidavit**

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH
Family Law Department

_____))
Petitioner) Case No.: _____
vs))
_____))
Respondent))
))
))
))
))
))

FIREARMS AFFIDAVIT

I am _____ (your name),
the Respondent in this Family Abuse Prevention Act case. Being sworn, I state that:

1. Surrender of Firearms/Ammunition to Law Enforcement

I have surrendered my firearms and ammunition to the law enforcement agency named on the attached receipt. *Attach copy of the receipt.*

2. Third Party Possession of Firearms and Ammunition

The Third Party named on page 2 has taken possession of my firearms and ammunition. I obtained a background check on this Third Party from the Oregon State Police. The Third Party may legally possess firearms. The affidavit of the Third Party is set out on Page 2. *Third Party must sign affidavit on Page 2 and include background check number from Oregon State Police.*

3. No Firearms or Ammunition

I have not surrendered any firearms or ammunition because I do not own any firearms or ammunition. I do not have any firearms or ammunition in my custody, control, or possession.

I do do not have a concealed handgun license.

Signature of Respondent Print Name

Address or Contact Address City, State, Zip Telephone /Contact Telephone #

Subscribed and sworn to before me this ____ day of _____, 20 ____.

Notary Public/Court Clerk/Judge

4. **Third Party's Affidavit about Taking Possession**

I am _____ . (*Name of Third*

Party who has received the firearms/ammunition). **Being sworn, I state that:**

I am aware of the Court's order prohibiting Respondent from possessing firearms and ammunition. I agree to receive and store for Respondent the following firearms and/or ammunition while s/he is prohibited by the court order from possessing them. (*Set out the make, model, caliber, and serial numbers. Attach extra sheets if needed.*)

Firearm Make	Model	Caliber	Serial Number
Ammunition:		<i>Describe type and amount:</i>	

I do not live in the same residence as Respondent.

I am not prohibited from owning or possessing firearms under state or federal laws.

The respondent has obtained an Oregon State Police background check to verify that I am not prohibited from owning or possessing firearms. The ID Services Firearms Background Check Number is set out below.

I agree not to return, loan, or otherwise transfer firearms to Respondent unless I have completed an ID Services Firearms Background check on Respondent to make sure that I may return the weapons and ammunition to him/her.

I understand that violation of these terms may result in the filing of criminal charges against me.

This can include federal charges if I transfer a firearm to a person who is subject to federal firearm prohibitions.

Oregon State Police ID Services Firearms Background Check Number on me: _____

Signature of Third Party Print Name of Third Party

Address (or Contact Address) Street/City/State/Zip Phone or Contact Phone #

Subscribed and sworn to before me by _____ this _____ day of _____, 20____.

Notary Public/Court Clerk/Judge



Appendix E: Los Angeles City Attorney's Domestic Violence Policy

Domestic Violence Firearm Policy

In order to prevent gun violence by domestic violence abusers, the City Attorney is implementing the following mandatory procedures. The procedures shall be followed in all cases involving domestic violence¹ where the court issues a criminal protective order².

Pursuant to Code of Civil Procedure Sec. 527.9, any person who is subject to a criminal protective order, issued pursuant to Penal Code Sec. 136.2³, shall surrender to local law enforcement, lawfully transfer⁴, or sell to a licensed gun dealer, any firearm owned or subject to their immediate possession or control, within 24 hours after service of the order. A firearm is any “device, designed to be used a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion.”⁵ This includes, but is not limited to: revolvers, single-shot pistols, semi-automatic handguns, rifles, shotguns, and assault weapons. The restrained person must file a receipt with the court, showing compliance with the order, within 48 hours of service. Moreover, pursuant to Penal Code Section 29825, the restrained person may not own, possess, purchase, receive, or attempt to purchase or receive, a firearm while the order is in effect.

In order to ensure compliance with the law, the following procedures are hereby implemented:

FILING

- An Automate Firearms System (AFS) printout will be provided by the LAPD at the time of filing in all domestic violence cases.⁶ If an AFS has not been provided, the filing deputy shall request a copy from the LAPD Liaison. The AFS will show all registered firearms.
- Copies of the AFS shall be included with the filing/discovery packets that are initially provided to the defense and court.
- The filing deputy shall review the police report and AFS. If it is determined that the defendant owns or possesses a firearm (even if the firearm was not

¹ Cal. Pen. Code Sec. 13700 (“Domestic violence means abuse committed against an adult or minor who is a spouse, former spouse, cohabitant, former cohabitant, or a person with whom the suspect has a child or is having or has had a dating or engagement relationship.” “Abuse means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another.”).

² The LASC is currently using Judicial Council Form CR-160 (“Criminal Protective Order – Domestic Violence”). Please be advised that this form could be revised, modified, or re-titled in the future. A copy of CR-160 is attached hereto.

³ In deciding whether good cause exists to issue a criminal protective order in a domestic violence case, the court may consider the underlying nature of the offense charged and the information provided to the court pursuant to PC 273.75 (domestic violence defendant’s history). (Cal. Pen. Code. Sec. 136.2(h)).

⁴ A prohibited person may transfer their firearm to a licensed firearms dealer for storage during the duration of the prohibition, if the prohibition on owning or possessing the firearm will expire on a date specified in the court order. (Cal. Pen. Code Sec. 29830).

⁵ Cal. Pen. Code Sec. 16520.

⁶ LAPD Chief of Detectives Notice 1.8 (Nov. 21, 2013) (AUTOMATED FIREARM SYSTEM INQUIRY – DOMESTIC VIOLENCE CASES). A copy of Notice 1.8 is attached hereto.

used in the course or commission of the crime), the filing deputy shall document this fact in the “Notes” section on the back of the CRF and determine whether any firearm-related charges should be filed.⁷ Any recommended offer shall include weapons conditions.⁸

ARRAIGNMENT

- The arraignment deputy shall notify the court:
 - ✓ (1) the defendant owns or possesses a firearm (based on the police report, AFS, or other evidence);⁹
 - ✓ (2) pursuant to CCP 527.9(b), the defendant is required to surrender their firearm within 24 hours of service of the protective order;
 - ✓ (3) pursuant to CCP 527.9(b), the defendant is required to provide a receipt to the court within 48 hours showing the firearm was lawfully transferred, sold, or surrendered; and
 - ✓ (4) pursuant to PC 29825(b), possession of a firearm after issuance of the protective order constitutes a criminal offense.
- Due to the increased risk of serious injury or death when a firearm is accessible to someone who perpetrates domestic violence, the arraignment deputy shall seek to have the defendant remanded and request appropriate bail in order to protect the victim (PC 1269(c), 1270(a), 1275).
- If the court grants OR over the People’s objection, the arraignment deputy shall request that the court impose search and seizure conditions as a condition of OR release.¹⁰
- The arraignment deputy shall, as mandated by California Rules of Court 4.700, request that the court order the defendant to return in two court days after issuance of the protective order for a compliance review hearing. If the defendant is in custody at the time the protective order is issued, the review hearing should take place two court days after their release.¹¹

⁷ Common firearm possession charges include: (1) loaded firearm possession (PC25850); (2) concealed firearm possession (PC25400); and (3) open carry of a firearm (PC26350). Additionally, a defendant may not possess a firearm if he/she: (1) has a prior enumerated misdemeanor conviction in the last 10 years (PC29805); (2) is currently on probation with weapons conditions (PC29815); (3) is under the age of 30 and previously committed an enumerated juvenile offense (PC29820); or (4) is under a restraining order (PC29825).

⁸ If the defendant pleads to one of the charges listed in PC 29805, including 240, 242, 243, and 273.5, make sure that the court gives the defendant notice that he/she is prohibited from having a firearm for 10 years. (PC 29810).

⁹ “At any hearing where the court issues a criminal protective order, the court must consider all credible information, including information provided on behalf of the defendant, to determine if there is good cause to believe that the defendant has a firearm within his or her immediate possession or control.” (Cal. Rules of Court, Rule 4.700(c)(1)). Make sure the AFS is part of the court file and is referenced on the record.

¹⁰ The defendant shall not be released from custody under an own recognizance until the defendant signs a release agreement which includes “the defendant’s promise to obey all reasonable conditions imposed by the court or magistrate.” (PC 1318(a)(2); *In Re York* (1995) 9 Cal.4th 1133 (OR conditions that include search and seizure are lawful when reasonable under the circumstances and related to public safety.)).

¹¹ When a court finds good cause to believe that the defendant has a firearm within his or her immediate possession or control, the court must set a review hearing to ascertain whether the defendant has complied with CCP 527.9. Unless the defendant is in custody at the time, the review hearing should occur within two court days after the issuance of the criminal protective order. If circumstances warrant, the court may

- If compliance is not made within required time frame, the deputy shall immediately notice a bail review hearing and seek to have the defendant remanded and bail set/increased.¹² The deputy should also, when appropriate and supported by the facts, give notice and seek to amend the complaint to add a charge for unlawful possession of a firearm by a prohibited person (PC 29825(b)) and/or criminal contempt (PC 166(c)(1)).¹³
- If the defendant is convicted and the court issues a criminal protective order as a condition of probation, the deputy shall request a compliance review hearing two court days after issuance of the protective order or release from custody.¹⁴ If the defendant fails to provide the required receipt, the deputy handling the case shall request that the court revoke probation, set bail, and proceed with a probation violation hearing (PC 1203.2).¹⁵

COMPLIANCE ENFORCEMENT

- The arraignment deputy or assigned prosecutor must complete the “Domestic Violence Firearm Compliance Form” at the time of the compliance review hearing.¹⁶ This form, along with a copy of the criminal protective order, must be emailed to the Gun Violence Prevention Unit (pamela.blair@lacity.org).
- If the defendant is not in compliance, the Gun Violence Prevention Coordinator will notify the LAPD Gun Unit.
- The Gun Violence Prevention Coordinator will thereafter notify the assigned deputy of the results of the LAPD investigation.

Any questions or inquiries should be made to Deputy City Attorney Greg Dorfman at (213) 978-4620.

extend the review hearing to occur within five court days. If the defendant is in custody at the time the criminal protective order is issued, the review hearing should take place two court days after release from custody. (*Note: The assigned DCA will be responsible for monitoring the defendant’s custodial status and seek a review hearing upon his release*). The court must give the defendant an opportunity to present information at the review hearing to refute the allegation that he or she owns any firearm. (Cal. Rules of Court, Rule 4.700(c)).

¹² At the review hearing, if the court finds that the defendant has a firearm in or subject to their immediate possession or control, the court must consider whether bail, as set, or defendant’s OR release is appropriate. (Cal. Rules of Court, Rule 4.700(d)(1)). If bail is set or increased, the court may order the defendant to be “committed to actual custody” until he/she can post the increased bail. (PC 1289).

¹³ If the defendant claims that the gun was lost or stolen, require proof of a report pursuant to LAMC 55.12.

¹⁴ Cal. Rules of Court, Rule 4.700(c).

¹⁵ “If the criminal protective order is issued as a condition of probation under Penal Code Section 1203.097, and the court finds at the review hearing that the defendant has a firearm in or subject to his or her immediate possession or control, the court must proceed under Penal Code Section 1203.097(a)(12).” (Cal. Rules of Court, Rule 4.700(d)(2)). PC 1203.097(a)(12) requires the court, as a priority calendar item, hold a hearing to determine whether further sentencing should proceed.

¹⁶ A copy of the “Domestic Violence Firearm Compliance Form” is attached hereto.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
STREET ADDRESS:
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME:

FOR COURT USE ONLY

PEOPLE OF THE STATE OF CALIFORNIA

vs.

DEFENDANT:

CRIMINAL PROTECTIVE ORDER—DOMESTIC VIOLENCE
(CLETS - CPO) (Pen. Code, §§ 136.2, 1203.097(a)(2), 273.5(i), and 646.9(k))

CASE NUMBER:

- ORDER UNDER: [] ORDER UNDER PENAL CODE, § 136.2 [] MODIFICATION
[] PROBATION CONDITION ORDER (Pen. Code, § 1203.097)
[] PENAL CODE, § 273.5(i) [] PENAL CODE, § 646.9(k)

CLETS ENTRY BY:

This Order May Take Precedence Over Other Conflicting Orders, See Item 1 on Page 2.

PERSON TO BE RESTRAINED (complete name):
Sex: [] M [] F Ht.: Wt.: Hair color: Eye color: Race: Age: Date of birth:
[] The defendant is a peace officer with Department:

- 1. This proceeding was heard on (date): at (time): in Dept.: Room: by judicial officer (name):
2. This order expires on (date): If no date is listed, this order expires three years from the date of issuance.
3. [] Defendant was personally served with a copy of this order at the court hearing, and no additional proof of service of this order is required.
4. COMPLETE NAME OF EACH PROTECTED PERSON:
5. [] For good cause shown, the court grants the protected persons named above the exclusive care, possession, and control of the following animals:

GOOD CAUSE APPEARING, THE COURT ORDERS THAT THE ABOVE-NAMED DEFENDANT

- 6. must not harass, strike, threaten, assault (sexually or otherwise), follow, stalk, molest, destroy or damage personal or real property, disturb the peace, keep under surveillance, or block movements of the protected persons named above.
7. must surrender to local law enforcement or sell to a licensed gun dealer any firearm owned or subject to his or her immediate possession or control within 24 hours after service of this order and must file a receipt with the court showing compliance with this order within 48 hours of receiving this order.
8. must not attempt to or actually prevent or dissuade any victim or witness from attending a hearing or testifying or making a report to any law enforcement agency or person.
9. must take no action to obtain the addresses or locations of protected persons or their family members, caretakers, or guardian unless good cause exists otherwise. [] The court finds good cause not to make the order in item 9.
10. [] must have no personal, electronic, telephonic, or written contact with the protected persons named above.
11. [] must have no contact with the protected persons named above through a third party, except an attorney of record.
12. [] must not come within yards of the protected persons and animals named above.
13. [] may have peaceful contact with the protected persons named above only for the safe exchange of children for court-ordered visitation as stated in the attached Family, Juvenile, or Probate court order in Case No., issued on (date):, as an exception to the "no-contact" or "stay-away" provision in paragraph 10, 11, or 12 of this order.
14. [] may have peaceful contact with the protected persons named above only for the safe exchange of children for visitation as stated in a Family, Juvenile, or Probate court order issued after the date this order is signed, as an exception to the "no-contact" or "stay-away" provision in paragraph 10, 11, or 12 of this order.
15. [] must not take, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of the animals described in paragraph 5.
16. [] The protected persons may record any prohibited communications made by the restrained person.
17. Other orders including stay-away orders from specific locations:

Date:

JUDICIAL OFFICER

Department/Division:

WARNINGS AND NOTICES

1. Except as provided in this paragraph, this order takes precedence over any conflicting protective order, visitation order, or any other court order if the protected person is a victim of domestic violence under Penal Code section 13700. However, this order does not take precedence if (1) there is a more restrictive *Emergency Protective Order* (form EPO-001) restraining and protecting the same parties as in this order, or (2) if box 13 or 14 has been checked on page 1 of this order. (Pen. Code, § 136.2(e)(2).)
2. **VIOLATION OF THE ORDER IS SUBJECT TO CRIMINAL PROSECUTION.** Violation of this protective order may be punished as a misdemeanor, a felony, or a contempt of court. Taking or concealing a child in violation of this order may be a felony and punishable by confinement in state prison, a fine, or both. Traveling across state or tribal boundaries with the intent to violate the order may be punishable as a federal offense under the Violence Against Women Act, 18 U.S.C. § 2261(a)(1) (1994).
3. **NOTICE REGARDING FIREARMS.** Any person subject to a protective order is prohibited from owning, possessing, purchasing or attempting to purchase, receiving or attempting to receive, or otherwise obtaining a firearm. Such conduct is subject to a \$1,000 fine and imprisonment. The person subject to these orders must relinquish any firearms and not own or possess any firearms during the period of the protective order. Under federal law, the issuance of a protective order after hearing will generally prohibit the restrained person from owning, accepting, transporting, or possessing firearms or ammunition. A violation of this prohibition is a separate federal crime. (Pen. Code, § 136.2(d).)
4. **ENFORCING THIS ORDER IN CALIFORNIA**
 - This order must be enforced in California by any law enforcement agency that has received the order or is shown a copy of the order or has verified its existence on the California Law Enforcement Telecommunications System (CLETS).
 - Law enforcement must determine whether the restrained person had notice of the order. If notice cannot be verified, law enforcement must advise the restrained person of the terms of the order and, if the restrained person fails to comply, must enforce it. (Fam. Code, § 6383.)
5. **CERTIFICATE OF COMPLIANCE WITH VIOLENCE AGAINST WOMEN ACT (VAWA).** This protective order meets all Full Faith and Credit requirements of the Violence Against Women Act, 18 U.S.C. § 2265 (1994). This court has jurisdiction over the parties and the subject matter, and the restrained person has been afforded notice and a timely opportunity to be heard as provided by the laws of this jurisdiction. This order is valid and entitled to enforcement in each jurisdiction throughout the 50 United States, the District of Columbia, all tribal lands, and all U.S. territories, and shall be enforced as if it were an order of that jurisdiction.
6. **EFFECTIVE DATE AND EXPIRATION DATE OF ORDERS**
 - These orders are effective as of the date they were signed by a judicial officer.
 - These orders expire as explained in item 2 on the reverse.
 - Orders under Penal Code section 136.2 are valid as long as the court has jurisdiction over the case. They are not valid after imposition of a state prison commitment. (See *People v. Stone* (2004) 123 Cal.App.4th 153.)
 - Orders under Penal Code section 1203.097 are probationary orders and the court has jurisdiction as long as the defendant is on probation. (Pen. Code, § 1203.097(a)(2).)
 - Orders under Penal Code sections 273.5 and 646.9 are valid for up to 10 years and may be issued by the court whether the defendant is sentenced to state prison or county jail or if imposition of sentence is suspended and the defendant is placed on probation. (Pen. Code, §§ 273.5(i) and 646.9(k).)
 - To terminate this protective order, use form CR-165, *Notice of Termination of Protective Order in Criminal Proceeding (CLETS)*.
7. **CHILD CUSTODY AND VISITATION**
 - Child custody and visitation orders may be established or modified in Family, Juvenile, or Probate court.
 - Unless box 14 on page 1 is checked, contact between the restrained and protected persons permitted by a Family, Juvenile, or Probate court order for child custody or visitation must not conflict with the provisions of this order.
 - If box 13 or 14 on page 1 is checked, the restrained and protected persons should always carry a certified copy of the most recent child custody or visitation order issued by the Family, Juvenile, or Probate court.

DOMESTIC VIOLENCE FIREARM COMPLIANCE FORM

FORM TO BE COMPLETED 2 DAYS AFTER ISSUANCE OF CRIMINAL PROTECTIVE ORDER IN A DOMESTIC VIOLENCE CASE

Case Name	Case Number
-----------	-------------

1. Did the Court issue and serve a domestic violence criminal protective order pursuant to PC 136.2? YES NO

Date Served	Dept.	Judge
-------------	-------	-------

2. Did the Court order the defendant to surrender his/her firearm(s)? YES NO

3. Is the defendant in compliance? YES NO

Date of Compliance	Model/Serial No. of Firearm(s)	Method of Compliance (surrendered/sold/transferred)
--------------------	--------------------------------	---

4. What is the status of the case?

Next Court Date	Dept.	Type of Hearing
-----------------	-------	-----------------

5. Does the defendant have search and seizure conditions? YES NO

If Yes, please note any expiration, limitation(s), or restriction(s) _____

EMAIL COMPLETED FORM ALONG WITH COPY OF CRIMINAL PROTECTIVE ORDER TO THE GUN VIOLENCE PREVENTION COORDINATOR (greg.dorfman@lacity.org)

DATE

NAME

Below to be completed by Gun Violence Prevention Coordinator

* If Defendant is NOT in compliance

Date LAPD Gun Unit Notified	Officer Name	
Firearm(s) recovered	Date	Action Taken

APPENDIX:

Cal Code Civ Proc § 527.9 (2014)

§ 527.9. Relinquishment of firearm by person subject to temporary restraining order or injunction; Storage; Fee; Employment exemption; Sale

(a) A person subject to a temporary restraining order or injunction issued pursuant to Section 527.6, 527.8, or 527.85 or subject to a restraining order issued pursuant to *Section 136.2 of the Penal Code*, or *Section 15657.03 of the Welfare and Institutions Code*, shall relinquish the firearm pursuant to this section.

(b) Upon the issuance of a protective order against a person pursuant to subdivision (a), the court shall order that person to relinquish any firearm in that person's immediate possession or control, or subject to that person's immediate possession or control, within 24 hours of being served with the order, either by surrendering the firearm to the control of local law enforcement officials, or by selling the firearm to a licensed gun dealer, as specified in Article 1 (commencing with Section 26700) and Article 2 (commencing with *Section 26800 of Chapter 2 of Division 6 of Title 4 of Part 6 of the Penal Code*). A person ordered to relinquish any firearm pursuant to this subdivision shall file with the court a receipt showing the firearm was surrendered to the local law enforcement agency or sold to a licensed gun dealer within 48 hours after receiving the order. In the event that it is necessary to continue the date of any hearing due to a request for a relinquishment order pursuant to this section, the court shall ensure that all applicable protective orders described in *Section 6218 of the Family Code* remain in effect or bifurcate the issues and grant the permanent restraining order pending the date of the hearing.

(c) A local law enforcement agency may charge the person subject to the order or injunction a fee for the storage of any firearm relinquished pursuant to this section. The fee shall not exceed the actual cost incurred by the local law enforcement agency for the storage of the firearm. For purposes of this subdivision, "actual cost" means expenses directly related to taking possession of a firearm, storing the firearm, and surrendering possession of the firearm to a licensed dealer as defined in *Section 26700 of the Penal Code* or to the person relinquishing the firearm.

(d) The restraining order requiring a person to relinquish a firearm pursuant to subdivision (b) shall state on its face that the respondent is prohibited from owning, possessing, purchasing, or receiving a firearm while the protective order is in effect and that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed with the court within a specified period of receipt of the order. The order shall also state on its face the expiration date for relinquishment. Nothing in this section shall limit a respondent's right under existing law to petition the court at a later date for modification of the order.

(e) The restraining order requiring a person to relinquish a firearm pursuant to subdivision (b) shall prohibit the person from possessing or controlling any firearm for the duration of the order. At the expiration of the order, the local law enforcement agency shall return possession of any surrendered firearm to the respondent, within five days after the expiration of the relinquishment order, unless the local law enforcement agency determines that (1) the firearm has been stolen, (2) the respondent is prohibited from possessing a firearm because the respondent is in any prohibited class for the possession of firearms, as defined in Chapter 2 (commencing with Section 29800) and Chapter 3 (commencing with *Section 29900 of Division 9 of Title 4 of Part 6 of the Penal Code* and *Sections 8100 and 8103 of the Welfare and Institutions Code*), or (3) another successive restraining order is issued against the respondent under this section. If the local law enforcement agency determines that the respondent is the legal owner of any firearm deposited with the local law enforcement agency and is prohibited from possessing any firearm, the respondent shall be entitled to sell or transfer the firearm to a licensed dealer as defined in *Section 26700 of the Penal Code*. If the firearm has been stolen, the firearm shall be restored to the lawful owner upon his or her identification of the firearm and proof of ownership.

(f) The court may, as part of the relinquishment order, grant an exemption from the relinquishment requirements of this section for a particular firearm if the respondent can show that a particular firearm is necessary as a condition of continued employment and that the current employer is unable to reassign the respondent to another position where a firearm is unnecessary. If an exemption is granted pursuant to this subdivision, the order shall provide that the firearm shall be in the physical possession of the respondent only during scheduled work hours and during travel to and from his or her place of employment. In any

case involving a peace officer who as a condition of employment and whose personal safety depends on the ability to carry a firearm, a court may allow the peace officer to continue to carry a firearm, either on duty or off duty, if the court finds by a preponderance of the evidence that the officer does not pose a threat of harm. Prior to making this finding, the court shall require a mandatory psychological evaluation of the peace officer and may require the peace officer to enter into counseling or other remedial treatment program to deal with any propensity for domestic violence.

(g) During the period of the relinquishment order, a respondent is entitled to make one sale of all firearms that are in the possession of a local law enforcement agency pursuant to this section. A licensed gun dealer, who presents a local law enforcement agency with a bill of sale indicating that all firearms owned by the respondent that are in the possession of the local law enforcement agency have been sold by the respondent to the licensed gun dealer, shall be given possession of those firearms, at the location where a respondent's firearms are stored, within five days of presenting the local law enforcement agency with a bill of sale.

Cal Pen Code § 136.2 (2014)

§ 136.2. (First of two; Operative until July 1, 2014) Orders of protection; Kathy's Law and electronic monitoring of defendants; Payment for electronic monitoring; Relinquishment of firearms by defendants

(a) Except as provided in subdivision (c), upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, a court with jurisdiction over a criminal matter may issue orders, including, but not limited to, the following:

(1) An order issued pursuant to *Section 6320 of the Family Code*.

(2) An order that a defendant shall not violate any provision of Section 136.1.

(3) An order that a person before the court other than a defendant, including, but not limited to, a subpoenaed witness or other person entering the courtroom of the court, shall not violate any provisions of Section 136.1.

(4) An order that a person described in this section shall have no communication whatsoever with a specified witness or a victim, except through an attorney under reasonable restrictions that the court may impose.

(5) An order calling for a hearing to determine if an order as described in paragraphs (1) to (4), inclusive, should be issued.

(6)

(A) An order that a particular law enforcement agency within the jurisdiction of the court provide protection for a victim or a witness, or both, or for immediate family members of a victim or a witness who reside in the same household as the victim or witness or within reasonable proximity of the victim's or witness' household, as determined by the court. The order shall not be made without the consent of the law enforcement agency except for limited and specified periods of time and upon an express finding by the court of a clear and present danger of harm to the victim or witness or immediate family members of the victim or witness.

(B) For purposes of this paragraph, "immediate family members" include the spouse, children, or parents of the victim or witness.

(7)

(A) An order protecting victims of violent crime from all contact by the defendant, or contact, with the intent to annoy, harass, threaten, or commit acts of violence, by the defendant. The court or its designee shall transmit orders made under this paragraph to law enforcement personnel within one business day of the issuance, modification, extension, or termination of the order, pursuant to subdivision (a) of *Section 6380 of the Family Code*. It is the responsibility of the court to transmit the modification, extension, or termination orders made under this paragraph to the same agency that entered the original protective order into the Domestic Violence Restraining Order System.

(B)

(i) If a court does not issue an order pursuant to subparagraph (A) in a case in which the defendant is charged with a crime of domestic violence as defined in Section 13700, the court on its own motion shall consider issuing a protective order upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, that provides as follows:

(I) The defendant shall not own, possess, purchase, receive, or attempt to purchase or receive, a firearm while the protective order is in effect.

(II) The defendant shall relinquish any firearms that he or she owns or possesses pursuant to *Section 527.9 of the Code of Civil Procedure*.

(ii) Every person who owns, possesses, purchases, or receives, or attempts to purchase or receive, a firearm while this protective order is in effect is punishable pursuant to Section 29825.

(C) An order issued, modified, extended, or terminated by a court pursuant to this paragraph shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of *Section 6380 of the Family Code*. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(D) A protective order issued under this paragraph may require the defendant to be placed on electronic monitoring if the local government, with the concurrence of the county sheriff or the chief probation officer with jurisdiction, adopts a policy to authorize electronic monitoring of defendants and specifies the agency with jurisdiction for this purpose. If the court determines that the defendant has the ability to pay for the monitoring program, the court shall order the defendant to pay for the monitoring. If the court determines that the defendant does not have the ability to pay for the electronic monitoring, the court may order electronic monitoring to be paid for by the local government that adopted the policy to authorize electronic monitoring. The duration of electronic monitoring shall not exceed one year from the date the order is issued. At no time shall the electronic monitoring be in place if the protective order is not in place.

(b) A person violating an order made pursuant to paragraphs (1) to (7), inclusive, of subdivision (a) may be punished for any substantive offense described in Section 136.1, or for a contempt of the court making the order. A finding of contempt shall not be a bar to prosecution for a violation of Section 136.1. However, a person so held in contempt shall be entitled to credit for punishment imposed therein against a sentence imposed upon conviction of an offense described in Section 136.1. A conviction or acquittal for a substantive offense under Section 136.1 shall be a bar to a subsequent punishment for contempt arising out of the same act.

(c)

(1) Notwithstanding subdivisions (a) and (e), an emergency protective order issued pursuant to Chapter 2 (commencing with *Section 6250 of Part 3 of Division 10 of the Family Code* or *Section 646.91 of the Penal Code*) shall have precedence in enforcement over any other restraining or protective order, provided the emergency protective order meets all of the following requirements:

(A) The emergency protective order is issued to protect one or more individuals who are already protected persons under another restraining or protective order.

(B) The emergency protective order restrains the individual who is the restrained person in the other restraining or protective order specified in subparagraph (A).

(C) The provisions of the emergency protective order are more restrictive in relation to the restrained person than are the provisions of the other restraining or protective order specified in subparagraph (A).

(2) An emergency protective order that meets the requirements of paragraph (1) shall have precedence in enforcement over the provisions of any other restraining or protective order only with respect to those provisions of the emergency protective order that are more restrictive in relation to the restrained person.

(d)

(1) A person subject to a protective order issued under this section shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses pursuant to *Section 527.9 of the Code of Civil Procedure*.

(3) A person who owns, possesses, purchases or receives, or attempts to purchase or receive a firearm while the protective order is in effect is punishable pursuant to Section 29825.

(e)

(1) In all cases where the defendant is charged with a crime of domestic violence, as defined in Section 13700, the court shall consider issuing the above-described orders on its own motion. All interested parties shall receive a copy of those orders. In order to facilitate this, the court's records of all criminal cases involving domestic violence shall be marked to clearly alert the court to this issue.

(2) In those cases in which a complaint, information, or indictment charging a crime of domestic violence, as defined in Section 13700, has been issued, a restraining order or protective order against the defendant

issued by the criminal court in that case has precedence in enforcement over a civil court order against the defendant, unless a court issues an emergency protective order pursuant to Chapter 2 (commencing with *Section 6250*) of Part 3 of Division 10 of the Family Code or *Section 646.91* of the Penal Code, in which case the emergency protective order shall have precedence in enforcement over any other restraining or protective order, provided the emergency protective order meets the following requirements:

(A) The emergency protective order is issued to protect one or more individuals who are already protected persons under another restraining or protective order.

(B) The emergency protective order restrains the individual who is the restrained person in the other restraining or protective order specified in subparagraph (A).

(C) The provisions of the emergency protective order are more restrictive in relation to the restrained person than are the provisions of the other restraining or protective order specified in subparagraph (A).

(3) Custody and visitation with respect to the defendant and his or her minor children may be ordered by a family or juvenile court consistent with the protocol established pursuant to subdivision (f), but if ordered after a criminal protective order has been issued pursuant to this section, the custody and visitation order shall make reference to, and acknowledge the precedence of enforcement of, an appropriate criminal protective order. On or before July 1, 2006, the Judicial Council shall modify the criminal and civil court forms consistent with this subdivision.

(f) On or before January 1, 2003, the Judicial Council shall promulgate a protocol, for adoption by each local court in substantially similar terms, to provide for the timely coordination of all orders against the same defendant and in favor of the same named victim or victims. The protocol shall include, but shall not be limited to, mechanisms for ensuring appropriate communication and information sharing between criminal, family, and juvenile courts concerning orders and cases that involve the same parties, and shall permit a family or juvenile court order to coexist with a criminal court protective order subject to the following conditions:

(1) An order that permits contact between the restrained person and his or her children shall provide for the safe exchange of the children and shall not contain language either printed or handwritten that violates a "no-contact order" issued by a criminal court.

(2) Safety of all parties shall be the courts' paramount concern. The family or juvenile court shall specify the time, day, place, and manner of transfer of the child, as provided in *Section 3100* of the Family Code.

(g) On or before January 1, 2003, the Judicial Council shall modify the criminal and civil court protective order forms consistent with this section.

(h) In any case in which a complaint, information, or indictment charging a crime of domestic violence, as defined in Section 13700, has been filed, the court may consider, in determining whether good cause exists to issue an order under paragraph (1) of subdivision (a), the underlying nature of the offense charged, and the information provided to the court pursuant to Section 273.75.

(i)

(1) In all cases in which a criminal defendant has been convicted of a crime of domestic violence as defined in Section 13700, a violation of Section 261, 261.5, or 262, or any crime that requires the defendant to register pursuant to subdivision (c) of Section 290, the court, at the time of sentencing, shall consider issuing an order restraining the defendant from any contact with the victim. The order may be valid for up to 10 years, as determined by the court. This protective order may be issued by the court regardless of whether the defendant is sentenced to the state prison or a county jail, or whether imposition of sentence is suspended and the defendant is placed on probation. It is the intent of the Legislature in enacting this subdivision that the duration of any restraining order issued by the court be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family.

(2) An order under this subdivision may include provisions for electronic monitoring if the local government, upon receiving the concurrence of the county sheriff or the chief probation officer with jurisdiction, adopts a policy authorizing electronic monitoring of defendants and specifies the agency with jurisdiction for this purpose. If the court determines that the defendant has the ability to pay for the monitoring program, the court shall order the defendant to pay for the monitoring. If the court determines that the defendant does not have the ability to pay for the electronic monitoring, the court may order the electronic monitoring to be paid for by the local government that adopted the policy authorizing electronic monitoring. The duration of the electronic monitoring shall not exceed one year from the date the order is issued.

(j) For purposes of this section, "local government" means the county that has jurisdiction over the protective order.

Cal Pen Code § 13700 (2014)

§ 13700. Definitions

As used in this title:

(a) "Abuse" means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another.

(b) "Domestic violence" means abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship. For purposes of this subdivision, "cohabitant" means two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship. Factors that may determine whether persons are cohabiting include, but are not limited to, (1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves out as husband and wife, (5) the continuity of the relationship, and (6) the length of the relationship.

(c) "Officer" means any officer or employee of a local police department or sheriff's office, and any peace officer of the Department of the California Highway Patrol, the Department of Parks and Recreation, the University of California Police Department, or the California State University and College Police Departments, as defined in Section 830.2, a peace officer of the Department of General Services of the City of Los Angeles, as defined in subdivision (c) of Section 830.31, a housing authority patrol officer, as defined in subdivision (d) of Section 830.31, or a peace officer as defined in subdivisions (a) and (b) of Section 830.32.

(d) "Victim" means a person who is a victim of domestic violence.

Cal Pen Code § 29825 (2014)

§ 29825. Person prohibited from purchasing or receiving firearm by temporary restraining order, injunction, protective order

(a) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that the person is prohibited from doing so by a temporary restraining order or injunction issued pursuant to *Section 527.6, 527.8, or 527.85 of the Code of Civil Procedure*, a protective order as defined in *Section 6218 of the Family Code*, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or a protective order issued pursuant to *Section 15657.03 of the Welfare and Institutions Code*, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(b) Every person who owns or possesses a firearm knowing that the person is prohibited from doing so by a temporary restraining order or injunction issued pursuant to *Section 527.6, 527.8, or 527.85 of the Code of Civil Procedure*, a protective order as defined in *Section 6218 of the Family Code*, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or a protective order issued pursuant to *Section 15657.03 of the Welfare and Institutions Code*, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(c) If probation is granted upon conviction of a violation of this section, the court shall impose probation consistent with Section 1203.097.

(d) The Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm while the protective order is in effect. The order shall also state that a firearm owned or possessed by the person shall be relinquished to the local law enforcement agency for that jurisdiction, sold to a licensed firearms dealer, or transferred to a licensed firearms dealer pursuant to Section 29830 for the duration of the period that the protective order is in effect, and that proof of surrender or sale shall be filed within a specified time of

receipt of the order. The order shall state the penalties for a violation of the prohibition. The order shall also state on its face the expiration date for relinquishment.

Cal Pen Code § 29830 (2014)

§ 29830. Transfer of firearm to dealer during ownership prohibition

(a) Any person who is prohibited from owning or possessing a firearm pursuant to this article, or who is prohibited from owning or possessing a firearm pursuant to any other law, may transfer or cause to be transferred, any firearm or firearms in his or her possession, or of which he or she is the owner, to a firearms dealer licensed pursuant to Section 26700 to 26915, inclusive, for storage during the duration of the prohibition, if the prohibition on owning or possessing the firearm will expire on a date specified in the court order.

(b) A firearms dealer who stores a firearm or firearms pursuant to subdivision (a), may charge the owner a fee for the storage of the firearm or firearms.

(c) A firearms dealer who stores a firearm or firearms pursuant to subdivision (a) shall notify the Department of Justice of the date that the firearms dealer has taken possession of the firearm or firearms.

(d) Any firearm that is returned by a dealer to the owner of the firearm pursuant to this section shall be returned in accordance with the procedures set forth in Section 27540 and Article 1 (commencing with Section 26700) and Article 2 (commencing with Section 26800) of Chapter 2 of Division 6.

Cal Pen Code § 29825 (2014)

Cal Rules of Court, Rule 4.700 (2014)

Rule 4.700. Firearm relinquishment procedures for criminal protective orders

(a) **Application of rule** This rule applies when a court issues a criminal protective order under Penal Code section 136.2 during a criminal case or as a condition of probation under Penal Code section 1203.097(a)(2) against a defendant charged with a crime of domestic violence as defined in Penal Code section 13700.

(b) **Purpose** This rule is intended to:

(1) Assist courts issuing criminal protective orders to determine whether a defendant subject to such an order owns, possesses, or controls any firearms; and

(2) Assist courts that have issued criminal protective orders to determine whether a defendant has complied with the court's order to relinquish or sell the firearms under Code of Civil Procedure section 527.9.

(c) **Setting review hearing**

(1) At any hearing where the court issues a criminal protective order, the court must consider all credible information, including information provided on behalf of the defendant, to determine if there is good cause to believe that the defendant has a firearm within his or her immediate possession or control.

(2) If the court finds good cause to believe that the defendant has a firearm within his or her immediate possession or control, the court must set a review hearing to ascertain whether the defendant has complied with the requirement to relinquish the firearm as specified in Code of Civil Procedure section 527.9. Unless the defendant is in custody at the time, the review hearing should occur within two court days after issuance of the criminal protective order. If circumstances warrant, the court may extend the review hearing to occur within 5 court days after issuance of the criminal protective order. The court must give the defendant an opportunity to present information at the review hearing to refute the allegation that he or she owns any firearms. If the defendant is in custody at the time the criminal protective order is issued, the court should order the defendant to appear for a review hearing within two court days after the defendant's release from custody.

(3) If the proceeding is held under Penal Code section 136.2, the court may, under Penal Code section 977(a)(2), order the defendant to personally appear at the review hearing. If the proceeding is held under Penal Code section 1203.097, the court should order the defendant to personally appear.

(d) Review hearing

(1) If the court has issued a criminal protective order under Penal Code section 136.2, at the review hearing:

(A) If the court finds that the defendant has a firearm in or subject to his or her immediate possession or control, the court must consider whether bail, as set, or defendant's release on own recognizance is appropriate.

(B) If the defendant does not appear at the hearing and the court orders that bail be revoked, the court should issue a bench warrant.

(2) If the criminal protective order is issued as a condition of probation under Penal Code section 1203.097, and the court finds at the review hearing that the defendant has a firearm in or subject to his or her immediate possession or control, the court must proceed under Penal Code section 1203.097(a)(12).

(3) In any review hearing to determine whether a defendant has complied with the requirement to relinquish firearms as specified in Code of Civil Procedure section 527.9, the burden of proof is on the prosecution.

Advisory Committee Comment

When issuing a criminal protective order under Penal Code section 136.2 or 1203.097(a)(2), the court is required to order a defendant "to relinquish any firearm in that person's immediate possession or control, or subject to that person's immediate possession or control . . ." (Code Civ. Proc., § 527.9(b).) Mandatory Judicial Council form CR-160, Criminal Protective Order--Domestic Violence, includes a mandatory order in bold type that the defendant "must surrender to local law enforcement or sell to a licensed gun dealer any firearm owned or subject to his or her immediate possession or control within 24 hours after service of this order and must file a receipt with the court showing compliance with this order within 48 hours of receiving this order."

Courts are encouraged to develop local procedures to calendar review hearings for defendants in custody beyond the two-court-day time frame to file proof of firearms relinquishment with the court under Code of Civil Procedure section 527.9.



Appendix F: California Firearm Identification Form

EXAMPLES

HANDGUNS



Semi Auto Handgun

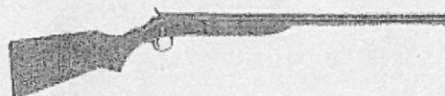


Revolver

SHOTGUNS



Pump Shotgun



Single Shot Shotgun

RIFLES



Bolt Action Rifle



Lever Action Rifle

ASSAULT RIFLES



Miscellaneous Assault Rifles



Feel free to make notes on this form!!



Appendix G: Wisconsin Firearm Possession Forms

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY

Respondent's Name

Amended

Street Address, City, State, Zip Code

Respondent's Statement of Possession of Firearms

Phone Number

Case No. _____

ANSWER THE FOLLOWING QUESTIONS AND BRING THIS COMPLETED FORM TO THE INJUNCTION HEARING:

1. Do you now or have you in the past six months owned or possessed any firearm(s)?
"Firearm" means a weapon that acts by force of gunpowder to fire a projectile, regardless of whether it is inoperable due to disassembly. (§167.31(1)(c), Wis. Stats.)

NO. [If you answered no, please continue to signature line.]

YES. [If you answered yes, please continue to Question 2.]

2. For each firearm you currently own or possess, or within the past six months have owned or possessed, provide the following information:

Type of Firearm	Make/Model	Serial Number	Current Location of Firearm(s)	Surrendered or Sold (No or Yes. If Yes, to whom)			Receipt (No or Yes)	
				No	Yes	To Whom	No	Yes
				<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

[If you need room for additional firearms, attach additional sheet to this form]

The Respondent is advised that failure to completely and accurately complete this statement may result in felony false swearing, punishable by a fine not to exceed \$10,000, or imprisonment not to exceed 6 years, or both.

I have read this document and the facts stated in it are true.

DISTRIBUTION:

- Original - Court
- Petitioner
- Respondent
- Law Enforcement
- Other: _____

Respondent's Signature

Name Printed or Typed

Date

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY

Amended

Petitioner's Name

**Petitioner's Statement
of Respondent's
Possession of Firearms**

Case No. _____

(THIS FORM IS OPTIONAL. IF YOU CHOOSE TO USE IT, BRING IT TO THE INJUNCTION HEARING.)

ANSWER THE FOLLOWING QUESTIONS:

1. Do you know whether the respondent in this case currently or in the past six months owned or possessed any firearms?

"Firearm" means a weapon that acts by force of gunpowder to fire a projectile, regardless of whether it is inoperable due to disassembly. (§167.31(1)(c), Wis. Stats.)

NO, I do not know that the respondent now owns or possesses, or during the past six months has owned or possessed, any firearms. *(If you answered no, please continue to signature line.)*

YES, I believe the respondent currently, or within the past six months, owned or possessed a firearm. *(If you answered yes, please continue to Question 2.)*

2. List the firearm(s) that you believe the respondent currently, or within the past six months, has owned or possessed, and the quantity, make or model and location of the firearm(s).

Firearm	Quantity	Make/Model	Serial Number	Location of Firearm(s)

[If you need room for additional firearms, attach additional sheet to this form]

▶ _____
Petitioner

Name Printed or Typed

Date

DISTRIBUTION:

- 1. Original - Court
- 2. Petitioner
- 3. Other: _____

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY

Amended

Petitioner

-VS.-

Respondent

Address (City, State, Zip Code)

**Notice of Firearm
Surrender Hearing**
(Respondent Not Present at
Injunction Hearing)

Case No. _____

TO: RESPONDENT

The Court granted an injunction against you on [insert date the injunction was granted] _____
and you did not appear at the injunction hearing.

THE COURT ORDERS:

1. You must appear at a Firearm Surrender Hearing on: *(Hearing shall be held within one week of the injunction hearing.)*

Date	Time	Location
Circuit Court Judge/Circuit Court Commissioner		

2. You must bring a completed Respondent's Statement of Possession of Firearms form (CV-800) to this hearing.
3. Failure to appear at this hearing may result in the court issuing a warrant for your arrest.

If you require reasonable accommodations due to a disability to participate in the court process, please call _____ prior to the scheduled court date. Please note that the court does not provide transportation.

BY THE COURT:

 Circuit Court Judge Circuit Court Commissioner

Name Printed or Typed

Date

DISTRIBUTION:

- Original - Court
- Petitioner
- Respondent
- Law Enforcement
- Other: _____



Appendix H: Washington Declaration of Nonsurrender

_____ Court of Washington
For _____

Petitioner

vs.

Respondent

No.

**Declaration of Non-Surrender
(DCLRNS)**

I understand that the court has ordered me to surrender any firearms, other dangerous weapons, or concealed pistol license that I own or have in my possession or control. I have not surrendered any firearms, other dangerous weapons, or concealed pistol license pursuant to that order because I do not have any of those items.

I understand that I am prohibited from obtaining or possessing a firearm or other dangerous weapon or concealed pistol license until further order of the court.

I certify, under penalty of perjury under the laws of the State of Washington, that this statement is true and correct.

Dated: _____ at (place) _____, Washington.

➤ _____
Signature of Restrained Person

Print name

Warning! Failure to comply with an Order to Surrender Weapons issued in this case number could result in the restrained person being found in contempt of court and/or being charged with a misdemeanor or felony, and punished accordingly. RCW 9.41.040(2) and RCW 9.41.810.



Appendix I: Pennsylvania Safekeeping Permit

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA STATE POLICE
AFFIDAVIT OF SAFEKEEPING PERMIT FOR RELINQUISHMENT OF FIREARMS**

THIRD PARTY RECIPIENT INFORMATION

1. Name (Last, First, MI)	2. Date of Birth	3. Social Security No.	4. Photo ID/Driver License No.
5. Street Address <i>(The sheriff must be notified within 7 days of any change in address.)</i>		6. City and State	7. Zip Code
8. Have you ever been convicted of a crime enumerated in section 6105(b), or do any of the conditions under 6105 (c) apply to you? <i>(Read entire list of enumerated prohibiting offenses prior to answering this question.)</i>			<input type="checkbox"/> YES <input type="checkbox"/> NO
9. Are you now charged with, or have you ever been convicted of a crime punishable by imprisonment for a term exceeding one year? This is the maximum sentence that you "could have received," not the actual sentence you did receive. (This does not include Federal or state offenses pertaining to antitrust, unfair trade practices, restraints of trade, or regulation of business; or state offenses classified as misdemeanors and punishable by a term of imprisonment not to exceed two years.) <i>(Read entire list of enumerated prohibiting offenses prior to answering this question.)</i>			<input type="checkbox"/> YES <input type="checkbox"/> NO
10. Are you currently subject to an active protection from abuse order?			<input type="checkbox"/> YES <input type="checkbox"/> NO
11. Has the named defendant ever been the subject of a protection from abuse order issued on your behalf?			<input type="checkbox"/> YES <input type="checkbox"/> NO

12. Acknowledgment
 A person who has accepted possession of a firearm, other weapon or ammunition pursuant to 23 Pa.C.S. § 6108.3 commits a misdemeanor of the first degree if he intentionally or knowingly returns a firearm, other weapon or ammunition to a defendant or allows a defendant to have access to the firearm, other weapon or ammunition. No firearms, weapons, or ammunition as listed in this form and relinquished to me for safekeeping will be returned to the defendant until such time as the sheriff accepts return of the safekeeping permit. I understand that if I knowingly return or allow named defendant to have access to the firearms, other weapons, or ammunition prior to the sheriff accepting return of the safekeeping permit or issuance of a court order which provides for allowing the defendant to take possession of the firearm, other weapon or ammunition that was relinquished to me that I commit a misdemeanor of the first degree. In addition to any penalties prescribed in 23 Pa.C.S. Chapter 61 or 18 Pa.C.S. Chapter 61, I may be civilly liable to any person for any damages caused and shall be liable to any person for punitive damages in an amount not to exceed \$5,000.

I understand that all firearms, other weapons, and ammunition relinquished to me for safekeeping will be stored using a locking device (relating to firearms) or in a secure location to which the defendant does not have access.

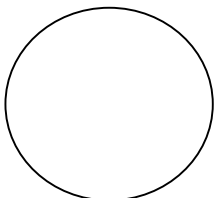
I do solemnly swear (or affirm) that the facts that I have set forth in this form are true and correct to the best of my knowledge, information and belief. This verification is made subject to both the penalties of Section 4904 of the Crimes Code (18 Pa.C.S. 4904) relating to unsworn falsification to authorities and the Uniform Firearms Act. I also understand that the making of any false written statement or the exhibiting of any false misrepresented identification with respect to this application is a crime punishable as a felony.

Signature of Third Party Recipient (in ink): _____ **Date:** _____

Taken, sworn, and subscribed before me, this

_____ day of _____, _____
 (day) (month) (year)

Notary



PROTECTION ORDER INFORMATION

13. Name (Last, First, MI)	14. County Court of Jurisdiction	15. Case No.	16. Iss. Date of Order	17. Exp. Date of Order
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DEFENDANT INFORMATION

18. Name of Defendant (Last, First, MI)	19. Date of Birth	20. Social Security No.	21. Photo ID/Driver License No.
22. Street Address	23. City and State		24. Zip Code

25. Acknowledgment

A person who is the subject of an active protection from abuse order issued pursuant to 23 Pa.C.S. § 6108, which provides for the relinquishment of firearms during the period of time the order is in effect and which order prohibits the defendant from possessing a firearm. The defendant shall decide in what manner he will relinquish his firearms, weapons, or ammunition. Relinquishment may be made to the sheriff, a third party for safekeeping, or to a licensed firearm dealer upon completion of the required forms. (Lending or giving of firearms is prohibited unless otherwise specified in 18 Pa.C.S. § 6115(b) Exception.) This prohibition shall terminate upon the expiration or vacation of an active protection from abuse order or portion thereof relating to the relinquishment of firearms.

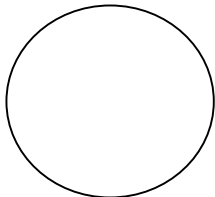
It is the responsibility of the defendant to provide the sheriff with an affidavit relinquishing firearms, other weapons or ammunition within the time frame specified in the order for relinquishment. Failure to comply will result in the sheriff providing immediate notice to the court, plaintiff, and appropriate law enforcement agencies, and may result in a criminal investigation and possible prosecution of misdemeanor charges of the first degree.

I do solemnly swear (or affirm) that I am the lawful owner of the firearm(s), other weapon(s), or ammunition listed in this affidavit and will abide by its terms.

Signature of Defendant (in ink): _____ **Date:** _____

Taken, sworn, and subscribed before me, this

Notary



_____ day of _____, _____
 (day) (month) (year)

26. FIREARM(S), WEAPON(S), AMMUNITION LISTING

Description/Make	Model	Caliber or Gauge	Barrel Length	Serial Number	Comments

For additional firearms attach a separate sheet that is signed by the defendant, sheriff or designee, and the responsible third party recipient.

FOR SHERIFF'S USE ONLY (Note: Return of handguns to a defendant will require a PICS background check and approval number.)

27. Sheriff's Name or Designee:	28. County	29. Sheriff's Signature or Designee
30. Safekeeping Accepted: <input type="checkbox"/> YES <input type="checkbox"/> NO	31. PICS Approval No:	32. Sheriff's Signature or Designee and Date:
33. Safekeeping Rejected: <input type="checkbox"/> YES <input type="checkbox"/> NO	34. Reason for Rejection:	35. Sheriff's Signature or Designee and Date:
36. Safekeeping Revoked: <input type="checkbox"/> YES <input type="checkbox"/> NO	37. Reason for Revocation:	38. Sheriff's Signature or Designee and Date:
39. Date Weapons Returned:	40. PICS Approval No:	41. Sheriff's Signature or Designee:

ENUMERATED PROHIBITING OFFENSES

Section 6105(a):

Effective November 22, 1995, 18 Pa.C.S. § 6105(a) prohibits persons convicted of any of the following offenses under 18 Pa.C.S. from possessing, using, controlling, transferring, manufacturing, or obtaining a license to possess, use, control, transfer, or manufacture a firearm in the Commonwealth of Pennsylvania. A conviction includes a finding of guilty or the entering of a plea of guilty or nolo contendere, whether or not judgement has been imposed, as determined by the law of the jurisdiction in which the prosecution was held. The term does not include a conviction which has been expunged or overturned or for which an individual has been pardoned unless the pardon expressly provides that the individual may not possess or transport firearms.

Section 6105(b)

§ 908 Prohibited offensive weapons.	§ 3503 Criminal trespass, if the offense is graded a felony of the second degree or higher.
§ 911 Corrupt organizations.	§ 3701 Robbery.
§ 912 Possession of weapon on school property.	§ 3702 Robbery of motor vehicle.
§ 2502 Murder.	§ 3921 Theft by unlawful taking or disposition, upon conviction of the second felony offense.
§ 2503 Voluntary manslaughter.	§ 3923 Theft by extortion, when the offense is accompanied by threats of violence.
§ 2504 Involuntary manslaughter, if the offense is based on the reckless use of a firearm.	§ 3925 Receiving stolen property, upon conviction of the second felony offense.
§ 2702 Aggravated assault.	§ 4912 Impersonating a public servant, if the person is impersonating a law enforcement officer.
§ 2703 Assault by prisoner.	§ 4952 Intimidation of witnesses or victims.
§ 2704 Assault by life prisoner.	§ 4953 Retaliation against witness or victim.
§ 2709.1 Stalking.	§ 5121 Escape.
§ 2716 Weapons of mass destruction.	§ 5122 Weapons or implements for escape.
§ 2901 Kidnapping.	§ 5501(3) Riot, if the offense relates to a firearm or other deadly weapon.
§ 2902 Unlawful restraint.	§ 5515 Prohibiting of paramilitary training.
§ 2910 Luring a child into a motor vehicle.	§ 5516 Facsimile weapons of mass destruction.
§ 3121 Rape.	§ 6110.1 Possession of firearm by minor.
§ 3123 Involuntary deviate sexual intercourse.	§ 6301 Corruption of minors.
§ 3125 Aggravated indecent assault.	§ 6302 Sale or lease of weapons and explosives.
§ 3301 Arson and related offenses.	Any offense equivalent to any of the above-enumerated offenses under the prior laws of this Commonwealth, or any offense equivalent to any of the above-enumerated offenses under the statutes of any other state or of the United States.
§ 3302 Causing or risking catastrophe.	
§ 3502 Burglary.	

Section 6105(c):

Effective November 22, 1995, 18 Pa.C.S. § 6105(c) also prohibits the following persons from possessing, using, controlling, transferring, manufacturing, or obtaining a license to possess, use, control, transfer, or manufacture a firearm in the Commonwealth of Pennsylvania.

ARE YOU A PERSON WHO:

- is a fugitive from justice; or
- was convicted of an offense under the act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act, or any equivalent Federal statute or equivalent statute of any other state, that may be punishable by a term of imprisonment exceeding two years; or
- was convicted of driving under the influence of alcohol or controlled substance as provided in 75 Pa.C.S. § 3802 (relating to driving under influence of alcohol or controlled substance) or the former 75 Pa.C.S. § 3731, on three or more separate occasions within a five-year period. For the purposes of this paragraph only, the prohibition of section 6105 (a) shall only apply to transfers or purchases of firearms after the third conviction; or
- has been adjudicated as an incompetent or who has been involuntarily committed to a mental institution for inpatient care and treatment under section 302, 303, or 304 of the provisions of the act of July 9, 1976 (P.L. 817, No. 143), known as the Mental Health Procedures Act; or
- being an alien, is illegally or unlawfully in the United States; or
- is the subject of an active protection from abuse order issued pursuant to 23 Pa.C.S. § 6108 (relating to relief), which order provides for the relinquishment of firearms during the period of time the order is in effect. This prohibition shall terminate upon the expiration or vacation of an active protection from abuse order or portion thereof relating to the relinquishment of firearms; or
- was adjudicated delinquent by a court pursuant to 42 Pa.C.S. § 6341 (relating to adjudication) or under any equivalent Federal statute or statute of any other state as a result of conduct which if committed by an adult would constitute an offense under 18 Pa.C.S. sections 2502, 2503, 2702, 2703, 2704, 2901, 3121, 3123, 3301, 3502, 3701, and 3923; or
- was adjudicated delinquent by a court pursuant to 42 Pa.C.S. § 6341 or under any equivalent Federal statute or statute of any other state as a result of conduct which if committed by an adult would constitute an offense enumerated in 18 Pa.C.S. § 6105(b) with the exception of those crimes set forth in paragraph 7. This prohibition shall terminate 15 years after the last applicable delinquent adjudication or upon the person reaching the age of 30, whichever is earlier.
- is prohibited from possessing or acquiring a firearm under 18 U.S.C. § 922(g)(9) (relating to unlawful acts) who has been convicted in any court of a misdemeanor crime of domestic violence by a person in any of the following relationships: (i) the current or former spouse, parent or guardian of the victim; (ii) a person with whom the victim shares a child in common; (iii) a person who cohabits with or has cohabited with the victim as a spouse, parent or guardian; or (iv) a person similarly situated to a spouse, parent or guardian of the victim; then the relationship need not be an element of the offense to meet the requirements of this paragraph. (6105(c)(9) shall take effect 5/9/06)

(18 U.S.C. § 922 (g)(8) prohibits persons subject to a court order that restrains them from harassing, stalking, or threatening an intimate partner or child of an intimate partner.)



Appendix J: Maryland Application for the Return of a Handgun/Shotgun/Rifle

Prince George's County Police Department



PROPERTY NOTIFICATION LETTER

Date:

To:

RE: CCN

The property described below is being held by the Prince George's County Police Department:

In order to claim your property, please call (301) 386-8000 to verify the location and status of the property. If your property is **RELEASABLE, you may claim it at 1739 Brightseat Road, Suite G, Landover, MD 20785. You must bring your current valid photo identification when picking up your property.**

Property must be picked up no later than 90 days from the above date, **UNLESS** the property is being held as **EVIDENCE** for court. If property is being held as evidence for court, it cannot be released until after the court proceedings are completed.

Police Property Hours:

Open Monday through Thursday – 9:00am-3:00pm

Closed Friday through Sunday and Holidays

Respectfully,

Prince George's County Police

District _____

Application for Return of a Handgun / Shotgun / Rifle (cont.)

Case Number: _____ - _____ - _____

- Have you ever been convicted of a felony or serious misdemeanor crime in this state or elsewhere? Yes No
- Do you suffer from a mental disorder for which treatment has been recommended? Yes No
- Have you ever been confined for 30 consecutive days for treatment of a mental disorder? Yes No
- Are you aware if anyone currently has a protective/peace order filed against you? Yes No
- Are you addicted to or a habitual user of alcohol, narcotics, barbiturates or amphetamines? Yes No

Below provide a detailed explanation for all Yes" responses:

Have you attached proof of ownership* for the requested weapon(s)? Yes No

(Acceptable proofs of ownership are: a copy of the sales receipt, a copy of the Maryland State Police Application Purchase Form a copy of the Power of Attorney with original owner documentation, or Letters of Administration if the owner is deceased.)

By signing below, I acknowledge that all information that I've provided is true and correct. I understand that any attempt to intentionally falsify information provided on this application will result in the forfeiture of the requested firearms to the State of Maryland. I understand that the Prince George's County Police Department can only transfer possession of a firearm to an applicant if the applicant qualifies under United States Code, Title 18, §922 (d) and Maryland State Law to possess firearms, and if the weapon in question is permitted in the State of Maryland.

Signature

Date: ____ / ____ / ____
MM DD YYYY

FOR PROPERTY SECTION USE ONLY

Please return this form to the Property Section Office by _____ for processing.



Appendix K: West Virginia Petition for Firearm Return Form

Petitioner (First/Middle/Last)

Magistrate Court Case No.: _____

By: (Parent/Guardian/Next Friend)

Family Court Civil Action No.: _____

v.

Circuit Court Case No.: _____

Respondent (First/Middle/Last)

Address

PETITION FOR FIREARMS RETURN

I, _____, hereby request the return of firearms surrendered/transferred pursuant to the Protective Order entered on the _____ day of _____, 20_____.

In support of this Petition, the Respondent states that the Protective Order entered above terminated or expired on the _____ day of _____, 20_____. The Respondent is not otherwise prohibited from possessing a firearm based upon any of the following federal or state laws:

1. I have not been convicted in any Court of a crime punishable by imprisonment for a term exceeding one year;
2. I am not a fugitive from justice;
3. I am not an unlawful user of or addicted to any controlled substance;
4. I am not habitually addicted to alcohol;
5. I have not been adjudicated as a mental defective or been committed to a mental institution;
6. I am not an alien illegally or unlawfully in the United States;
7. I have not been discharged from the armed forces under dishonorable conditions;
8. I have not renounced my citizenship of the United States;
9. I am not subject to a Domestic Violence Protective Order issued by this state or any other state.
10. I have not been convicted of a misdemeanor offense of assault or battery under the provisions of § 61-2-28 or § 61-2-9 of the West Virginia Code in which the victim was a current or former spouse, current or former sexual or intimate partner, a person with whom I have a child in common, a person with whom I cohabit or has cohabited, a parent or guardian, my child or ward, or a member of my household at the time of the offense, or have been convicted in any Court of any state or jurisdiction of a comparable misdemeanor crime of Domestic Violence.

Magistrate Court Case No.: _____

Family Court Civil Action No.: _____

Circuit Court Case No.: _____

I fully agree to and understand that a criminal background check will be performed at the direction of the Court by a law enforcement agency and the return of my firearms is subject to the results of the background check.

My date of birth is _____.

My driver's license number is _____.

My social security number is _____.

My current address is _____.

Based upon all of the above, the Respondent respectfully requests that an Order allowing the return of all firearms to the Respondent be entered by the Court.

STATE OF WEST VIRGINIA
COUNTY OF, TO WIT:

I, _____, on oath or affirmation, say that I am the Respondent named in this Petition for Return of Firearms and that the facts contained herein are true, except that where they are stated to be upon information or belief, I believe them to be true.

Respondent's Signature

Taken, subscribed, and sworn or affirmed before me this _____ day of _____, 2_____.

Judge/Clerk/Notary Public

My commission expires on _____.



Appendix L: Rose Andom Center Budget Documents

ROSE ANDOM CENTER				
OPERATING BUDGET 2015 to 2017				
Category	Details	FISCAL YEAR		
		2015	2016	2017
I. PERSONNEL				
A. Salaries & Wages				
Executive Director	1 FTE (Start date: Aug 1, 2015)	29,167.00	70,000.00	72,100.00
Business Manager	0.5 FTE (Start date: Jan 1, 2016)	0.00	22,500.00	22,500.00
Development Director	1 FTE (Start date: July 1, 2016)	0.00	27,000.00	54,000.00
Program Director	1 FTE (Start date: Oct 1 2015)	13,500.00	54,000.00	55,620.00
Intake Specialist	2 FTE (Mar 2016);1 FTE (Aug 2016)		102,000.00	105,060.00
Volunteer Coordinator	1 FTE (Start date Oct 1, 2015)	9,000.00	36,000.00	37,080.00
B. Fringe Benefits				
Executive Director	payroll tax 7.65% + Benefits 15%	6,606.33	15,855.00	16,330.65
Business Manager	payroll tax 7.65% + Benefits 15%	0.00	5,096.25	5,096.25
Development Director	payroll tax 7.65% + Benefits 15%	0.00	6,115.50	12,231.00
Program Director	payroll tax 7.65% + Benefits 15%	3,058.00	12,231.00	12,597.93
Intake Specialist	payroll tax 7.65% + Benefits 15%	0.00	23,103.00	23,796.09
Volunteer Coordinator	payroll tax 7.65% + Benefits 15%	2,040.00	8,154.00	9,399.00
	Total Personnel (Salary & Benefits)	63,371.33	382,054.75	425,810.92
II. CONTRACTED/ PROFESSIONAL SERVICES				
Contract (IT, accountant)			10,000.00	10,000.00
HR Expenses (Volunteer recruitment)		3,000.00	3,000.00	3,000.00
Audit/Banking/Accounting		4,800.00	4,800.00	4,800.00
	Total Services	7,800.00	17,800.00	17,800.00
III. BUILDING AND EQUIPMENT				
Building Maintenance				
Utilities				
Water/Sewer				
Equipment Rental (Copier/Printers)		25,000.00	31,044.00	31,044.00
Technology/IT		8,840.00	10,840.00	10,840.00
	Total Building/Equip exp.	33,840.00	41,884.00	41,884.00
IV. SUPPLIES AND OPERATING				
Office Supplies		3,000.00	5,000.00	5,000.00
Phone		23,560.00	47,120.00	47,120.00
Printing		2,400.00	4,800.00	4,800.00
Postage		1,750.00	3,500.00	3,500.00
Insurance (D&O)		1,500.00	1,500.00	1,500.00
	Total Supplies & Operating	32,210.00	61,920.00	61,920.00
V. PROGRAM ACTIVITIES				
Board Development		1,000.00	1,000.00	1,000.00
Public Awareness		10,000.00	6,000.00	6,000.00
Fundraising Expenses		10,000.00	10,000.00	10,000.00
Staff Development			5,000.00	5,000.00
Victim Transportation			5,000.00	5,000.00
Volunteer Expenses		3,000.00	3,000.00	3,000.00
Interpretive Services			21,720.00	21,720.00
Program Expense/General		3,000.00	5,000.00	5,000.00
	Total Program activities	27,000.00	56,720.00	56,720.00
VI. OTHER				
Membership Dues		250.00	500.00	500.00
Miscellaneous Expenses		1,000.00	1,550.00	1,550.00
	Total Others	1,250.00	2,050.00	2,050.00
TOTAL BUDGET (I through VI)		165,471.33	562,428.75	606,184.92

Phased in Personnel depending on revenue				
Phase I at or prior to opening				
Phase III				
Projected Revenue				
Broncos		\$50,000.00	\$50,000.00	\$50,000.00
Rose Andom			\$125,000.00	\$125,000.00
VOCA funding			\$50,000.00	\$50,000.00
RAC Young Prof Events			\$10,000.00	\$20,000.00
Total		\$50,000.00	\$235,000.00	\$245,000.00
Anticipated Program Grant requests				
Rose Foundation				
Denver Foundation				
El Pomar				
Boettcher Foundation				
Kresge Foundation				
VOCA				

2/10/2016

Project Manager: Bud Thompson
Project Phase: Construction
Rentable Square Feet

	Budget	Adjusted Budget	VE Items	VE Items	TI Allowance	VE Items	Contract	Accepted	Current	Pending	Contract	Expenses	Balance	Percent of Total Budget	Cost Per Square Foot
	\$0	\$0	Hard/Soft	Hard/Soft	FR&E	FR&E	Amount	Changes	Contract	Changes	Protections	To Date	Available		
A. Land Acquisition															
1. Site Development Costs	26000	\$0	\$0	\$0			\$0	\$0	\$0	\$0	\$0	\$0	\$0	0.00%	\$0.00
2. Misc. Site Costs/Acquisition	26000	\$0	\$0	\$0			\$355,000	\$0	\$355,000	\$0	\$355,000	\$0	\$355,000	0.00%	\$0.00
Total Land Acquisition Costs		\$0	\$0	\$0			\$355,000	\$0	\$355,000	\$0	\$355,000	\$0	\$355,000	0.00%	\$13.65
B. Professional Services															
1. Architect / Engineer (TI)		\$136,330	\$0	\$0			\$136,330	\$0	\$136,330	\$0	\$136,330	\$123,809	\$12,521	1.64%	\$5.24
a. Basic Services (suggested \$1.25 - \$1.75/sf)		\$247,500	\$0	\$0			\$247,500	\$25,630	\$273,130	\$0	\$273,130	\$270,772	\$2,358	2.98%	\$9.52
b. Additional Services		\$0	\$0	\$0			\$0	\$0	\$0	\$0	\$0	\$0	\$0	0.00%	\$0.00
c. Reimbursables (suggested 7%-10% of basic services fee)		\$55,000	\$0	\$0			\$55,000	\$0	\$55,000	\$0	\$55,000	\$5,500	\$5,346	0.07%	\$0.21
2. Architect / Engineer (other)		\$55,000	\$0	\$0			\$55,000	\$0	\$55,000	\$0	\$55,000	\$22,000	\$33,000	0.66%	\$2.12
3. Construction Management [OZPDS]		\$13,350	\$0	\$0			\$13,350	\$0	\$13,350	\$0	\$13,350	\$3,500	\$9,850	0.16%	\$0.51
a. Additional Services		\$5,500	\$0	\$0			\$5,500	\$0	\$5,500	\$0	\$5,500	\$154	\$5,346	0.07%	\$0.21
Reimbursables 10%		\$0	\$0	\$0			\$0	\$0	\$0	\$0	\$0	\$0	\$0	0.00%	\$0.00
4. Code Review		\$0	\$0	\$0			\$0	\$0	\$0	\$0	\$0	\$0	\$0	0.00%	\$0.00
a. Code Consultant		\$0	\$0	\$0			\$0	\$0	\$0	\$0	\$0	\$0	\$0	0.00%	\$0.00
b. Fire Protection		\$0	\$0	\$0			\$0	\$0	\$0	\$0	\$0	\$0	\$0	0.00%	\$0.00
5. Other		\$15,000	\$0	\$0			\$5,470	\$1,997	\$7,466	\$0	\$7,466	\$7,466	\$0	0.18%	\$0.58
a. Asbestos Monitoring Eng		\$0	\$0	\$0			\$0	\$0	\$0	\$0	\$0	\$0	\$0	0.00%	\$0.00
b. Interior Designer		\$0	\$0	\$0			\$0	\$0	\$0	\$0	\$0	\$0	\$0	0.00%	\$0.00
c. Graphic Designer		\$0	\$0	\$0			\$0	\$0	\$0	\$0	\$0	\$0	\$0	0.00%	\$0.00
d. Telecommunication Consultant		\$0	\$0	\$0			\$0	\$0	\$0	\$0	\$0	\$0	\$0	0.00%	\$0.00
e. Bidding Phase Expenses		\$0	\$0	\$0			\$0	\$0	\$0	\$0	\$0	\$0	\$0	0.00%	\$0.00
f. Closeout Phase Expenses		\$0	\$0	\$0			\$0	\$0	\$0	\$0	\$0	\$0	\$0	0.00%	\$0.00
g. Reproduction / Printing / Postage		\$0	\$0	\$0			\$0	\$0	\$0	\$0	\$0	\$0	\$0	0.00%	\$0.00
h. Other		\$0	\$0	\$0			\$0	\$0	\$0	\$0	\$0	\$0	\$0	0.00%	\$0.00
Total Professional Services		\$472,680	\$0	\$0			\$463,150	\$27,627	\$490,776	\$0	\$490,776	\$427,701	\$63,075	5.60%	\$18.18
C. Construction															
1. Building		\$5,155,651	\$0	\$0			\$5,155,651	\$73,133	\$5,228,784	\$0	\$5,228,784	\$1,728,501	\$3,500,283	62.03%	\$201.11
Milander White		\$382,000	\$0	\$0			\$382,000	\$25,602	\$407,602	\$0	\$407,602	\$407,602	\$0	4.60%	\$15.68
Demolition/Abatement		\$0	\$0	\$0			\$0	\$119,260	\$119,260	\$0	\$119,260	\$119,260	\$0	0.00%	\$4.59
MEP PO		\$0	\$0	\$0			\$0	\$5,000	\$5,000	\$0	\$5,000	\$0	\$5,000	0.09%	\$0.19
Roofing PO		\$0	\$0	\$0			\$0	\$36,200	\$36,200	\$0	\$36,200	\$0	\$36,200	0.00%	\$1.39
Edward TRESPA PO		\$0	\$0	\$0			\$0	\$139,004	\$139,004	\$0	\$139,004	\$4,784	\$4,784	0.00%	\$5.35
Electrical PO's		\$0	\$0	\$0			\$0	\$4,784	\$4,784	\$0	\$4,784	\$0	\$4,784	0.00%	\$1.92
Elevator repair		\$1,350,000	\$0	\$0			\$1,350,000	\$0	\$1,350,000	\$0	\$1,350,000	\$0	\$1,350,000	16.24%	\$51.92
2nd Floor build out		\$0	\$0	\$0			\$0	\$0	\$0	\$0	\$0	\$0	\$0	0.00%	\$0.00
2. Other		\$0	\$0	\$0			\$0	\$31,902	\$31,902	\$0	\$31,902	\$31,902	\$0	0.00%	\$0.00
c. Permits / Fees		\$0	\$0	\$0			\$0	\$0.00	\$0.00	\$0	\$0.00	\$0.00	\$0.00	0.00%	\$0.00
d. Sales/county tax		\$0	\$0	\$0			\$0	\$0	\$0	\$0	\$0	\$0	\$0	0.00%	\$0.00
Total Construction Cost		\$6,887,651	\$0	\$0			\$6,537,651	\$434,885	\$6,972,536	\$1,350,000	\$7,322,536	\$2,431,053	\$4,885,283	82.87%	\$280.23
D. Furnishings															
1. Furnishings		\$393,593	\$0	\$0			\$393,593	\$0	\$393,593	\$0	\$393,593	\$0	\$393,593	0.00%	\$0.00
a. Furniture		\$0	\$0	\$0			\$0	\$0	\$0	\$0	\$0	\$0	\$0	0.00%	\$0.00
System furniture		\$0	\$0	\$0			\$0	\$0	\$0	\$0	\$0	\$0	\$0	0.00%	\$0.00
Engineering racks		\$0	\$0	\$0			\$0	\$0	\$0	\$0	\$0	\$0	\$0	0.00%	\$0.00
Receiving and shipping racks		\$0	\$0	\$0			\$0	\$0	\$0	\$0	\$0	\$0	\$0	0.00%	\$0.00
Private offices		\$0	\$0	\$0			\$0	\$0	\$0	\$0	\$0	\$0	\$0	0.00%	\$0.00
Admin Conference rooms/cas		\$0	\$0	\$0			\$0	\$0	\$0	\$0	\$0	\$0	\$0	0.00%	\$0.00
Reception desk		\$0	\$0	\$0			\$0	\$0	\$0	\$0	\$0	\$0	\$0	0.00%	\$0.00
Total Furniture Cost		\$393,593	\$0	\$0			\$393,593	\$0	\$393,593	\$0	\$393,593	\$0	\$393,593	4.74%	\$15.14
2. Equipment		\$0	\$0	\$0			\$0	\$0	\$0	\$0	\$0	\$0	\$0	0.00%	\$0.00
a. Repair / Reuse exist. equipment		\$0	\$0	\$0			\$0	\$0	\$0	\$0	\$0	\$0	\$0	0.00%	\$0.00
b. UPS system		\$0	\$0	\$0			\$0	\$0	\$0	\$0	\$0	\$0	\$0	0.00%	\$0.00
c. Security		\$5,000	\$0	\$0			\$5,000	\$0	\$5,000	\$0	\$5,000	\$0	\$5,000	0.69%	\$0.19
d. Audio Visual		\$0	\$0	\$0			\$0	\$0	\$0	\$0	\$0	\$0	\$0	0.00%	\$0.00
b. Shades / Blinds		\$0	\$0	\$0			\$0	\$0	\$0	\$0	\$0	\$0	\$0	0.00%	\$0.00



Appendix M: California Data Collection Form

APPENDIX 3: PROTECTED PARTY INTERVIEW DATA COLLECTION FORM**Questionnaire – Firearms and Domestic Violence Education and Intervention Program--English**Interview InformationInt1. Subject ID #: Int2. Interviewer ID #: Int3. Interview date:
month day yearIntroduction and Consent for Interview*If the participant passes the screening, use the following script to introduce her to the study:*

May I speak with _____ [name of protected party]? [Once you have confirmed that you are speaking with the protected party] Hello, my name is _____ and I work for the University of California, Davis. I got your name from the _____ [Sheriff's Department]. They said you agreed to be contacted by us so I could tell you more about a research study we're doing with John Hopkins University. Do you have a couple of minutes so I could tell you about the study, and you could decide whether you'd like to participate?

[Depending on her answer, either re-schedule for another time; if she's not interested, let her know that there is a small payment for the study; or thank her and end the interview if she still says she's not interested.]

If she says yes, continue:

We are doing a study with women 18 years old or older who have gotten restraining orders against a man they've been in a relationship with. We got your name because you received a temporary restraining order in _____ (month and year). This interview should take about 25 minutes, and after you complete it, I'll send you a \$25 gift card for Target or Amazon.com. Because some of the questions are personal, we need to do this interview when it's a safe time to talk, when you will not be overheard or interrupted. Is this a good time?

If she says no, ask the questions on the questionnaire about when to re-contact. If she says yes, continue

Great! Now before we begin the interview, I need to read you a consent form, which explains the study and your rights as a research participant. I need to read the whole document to you, and then ask if you agree to be in the study. OK?

*If she agrees, read her the Bill of Rights & consent form.**Getting her address for 911 in case there's an emergency*

Could you tell me the address you are at now, just in case we hear that you are in any danger during the call and need emergency assistance? We will not keep this address in our records, but will destroy the information after the call to protect your confidentiality. If I hear a disturbance in the background and believe you are in danger, or if you tell me you are in danger, I will call 911 and give them your name and number and tell them you may be in danger. Is this OK with you?

(Write address on scrap paper. Shred this paper at the end of the interview).

(If she will not give you her address, you may still conduct the interview.)

If this is not a good time to talk and she wants to do the interview at another time, ask:

Can I call you back at another time? When would be best to call? _____

If something comes up for you and we are not able to reach you then, are there other good times to call you? _____

In addition to the number I called you at today, are there any additional phone numbers that I could try to reach you at? (e.g., cell phone) _____

Is there anything I should know about the phone numbers? (e.g., if she lives with the abuser or anyone else who might answer the phone)? _____

BEGIN INTERVIEW

A. Relationship

Questions about the relationship at the time of the temporary restraining order:

A0. Before we begin, I'd like to ask you how you would like me to refer to the person you got the temporary restraining order against. Would you like me to use his first name, refer to him as your boyfriend, ex-boyfriend, or what?

His first name *(please record name here)*

Boyfriend

Husband

Partner

Ex-boyfriend

Ex-husband

Ex-partner

Child's father

Other *(please specify)* _____

Please insert the answer to question A0 in place of [name] in the remainder of the questionnaire. For example, if respondent answers 'boyfriend' to A0, replace [name] with 'your boyfriend'.

The first questions are about your relationship with [name] at the time just before the incident that led you to get a temporary restraining order against him in _____ *(month and year)*.

A1. At that time, what was your relationship with [name]? Were you married to him? *[Do not read categories.]*

Boyfriend

Husband

Estranged (separated from but not divorced) husband

Ex-boyfriend

Ex-husband

Other *(please specify)* _____

A2. Did you live in the same house or apartment with him?

- No
 Yes
 On and off

A3. At that time, how long were you/had you been in an intimate relationship with [name]? _____
 Check days months years

Questions about the current relationship:

Now I'd like to ask you some questions about your relationship with [name] now.

A4. a. What is your current relationship with [name]? Are you married to him?

- Boyfriend *Skip to A5*
 Husband *Skip to A5*
 Estranged (separated from but not divorced) husband
 Ex-boyfriend
 Ex-husband
 Other (please specify) _____

b. At this time, are you romantically or intimately involved with him?

- No → Do you have any voluntary contact with him at all? No Yes
 Yes
 On and off

A5. Do you live in the same house or apartment with him?

- No
 Yes
 On and off

A6. a. Do you have any children?

- No *Skip to A7*
 Yes → Ask: A6b. How many children do you have? _____
 → Ask: A6c. Is [name] the father of any of your children?
 No *Skip to A7*
 Yes → Ask: A6d. How many of your children? _____
 → Ask: A6e. Do they (any of them) live with you?
 No
 Yes
 Sometimes

A7. a. Since you got the temporary restraining order against [name] in _____ (month and year), have you stayed some place in order to avoid face-to-face contact with him, such as at a friend's, a family member's, a shelter, or a hotel?

- No *Skip to Section B*
 Yes

b. (If yes) For how long (total) _____ days weeks months (circle)

c. (If yes) Where did you go? (please check all that apply)

Family member's house 1 → How long? ____ days weeks months (circle)
→ Did he know where you were?

- No
- Yes
- Don't know

Family member's house 2 → How long? ____ days weeks months (circle)
→ Did he know where you were?

- No
- Yes
- Don't know

Friend's house 1 → How long? ____ days weeks months (circle)
→ Did he know where you were?

- No
- Yes
- Don't know

Friend's house 2 → How long? ____ days weeks months (circle)
→ Did he know where you were?

- No
- Yes
- Don't know

DV Shelter → How long? ____ days weeks months (circle)
→ Did he know where you were?

- No
- Yes
- Don't know

Other (please specify)

_____ → How long? ____ days weeks months (circle)

→ Did he know where you were?

- No
- Yes
- Don't know

d. (If yes) Are there any other reasons why he might not have been able to see you for find you?
(please check all that apply)

Abuser in jail → How long? ____ days weeks months (circle)

Abuser deceased → How long? ____ days weeks months (circle)

Abuser moved far away → How long? ____ days weeks months (circle)

Other (please specify) _____ → How long? ____ days weeks months (circle)

B. Restrained person's guns

The next set of questions is about firearms. When I say firearms or guns in all of these next questions, I mean rifles, shotguns, pistols, revolvers, or any other firearms. Please do not include BB guns, air guns, or toy guns.

B1.

a. You indicated that [name] had a gun when you got the restraining order against him. How do you know that he had a gun(s)? (please check all that apply)?

- He showed me.
 He told me he had a gun
 Someone else told me he had a gun → Who told you? (please specify) _____
 I saw it/them
 Other (please specify) _____

b. How many guns did he have? _____ Don't know → Ask: B1c.

c. Can you give me a range?

Did he have one gun, 2 or more guns, more than 5 guns?

- Don't know → Ask B1d
 1 → Ask B1d
 2-4 → Ask B1d
 5 or more → Ask B1d

d. Were any of them handguns, such as revolvers or pistols?

- No Skip to B2
 Don't know Skip to B2
 Yes → Ask: B1e.

e. How many were handguns? _____ Don't know → Ask: B1f.

f. Can you give me a range?

Did he have one gun, 2 or more guns, more than 5 guns?

- Don't know
 1
 2 - 4
 5 or more

B2. a. After you got the temporary restraining order, did you or your attorney/legal advocate ask law enforcement to take [name's] gun(s) from him or to make sure that he turned in his guns?

- Yes, victim did Skip to B3
 Yes, attorney/legal advocate did → Did you want the gun(s) removed?
 No Ask: B2b.

b. Why didn't you want the guns removed?

- Fear of retaliation (might make the abuse worse) Skip to B3
 He would just get other guns Skip to B3
 His gun(s) makes me feel safer Skip to B3
 Other (please specify) _____ Skip to B3
 Yes Skip to B3

- No → Did you want the gun(s) removed?
- No *Ask: B2b. Why didn't you want the guns removed?*
- Fear of retaliation (might make the abuse worse)
 - He would just get other guns
 - His gun(s) makes me feel safer
 - Other (*please specify*)
-

- Yes *Ask: B2c. Why didn't you ask for the gun(s) to be removed?*
- Fear of retaliation (might make the abuse worse)
 - Didn't think of it/Didn't know I could ask
 - Felt intimidated by judge/Didn't think judge would grant my request
 - Was not absolutely certain that he had a gun(s)
 - Other (*please specify*)
-

B3. a. Did the judge ask you if *[name]* had any guns?

- No
- Yes
- Didn't see the judge

b. Did the judge direct the police or sheriff's department to take *[name's]* guns?

- No
- Yes
- Don't know

B4. a. As far as you know, has *[name]* been convicted of a crime that is usually a felony, like robbery, burglary, selling illegal drugs, or assault with a serious injury?

- No
- Yes
- Don't know

b. As far as you know, has *[name]* been convicted of any crime at all involving violence or guns?

- No
- Yes
- Don't know

B5. a. Was the restraining order served to _____ *[name]*?

- No
 - Don't know
 - Yes → *Ask: B5b. Who served [name] with the restraining order?*
 - Someone from the Sheriff's Department
 - Another law enforcement officer
 - Other (*please specify*)
-
-

B6. a. After you got the restraining order, did someone from the Sheriff's Department or some other law enforcement officer ask you whether [name] had any guns?

No Skip to B7

Yes → Ask: B6b. Did the officer ask you whether you wanted to have [name's] guns turned in to authorities?

No Skip to B7

Yes → Ask: B6c. What did you tell the officer?

That you wanted his guns turned in → Ask B6d

That you did not want him to have to turn in his guns → Ask B6d

Other (please explain) → Ask B6d

B6d. Did they remove the gun(s)?

No

Yes

Don't know

B7. a. Did [name] give his gun(s) voluntarily to the police or sheriff's department?

Yes, all of his guns Skip to B8

Yes, some of his guns

No*

Don't know**

b. Did he take his guns to a gun dealer or pawn shop?

Yes, all of his guns Skip to B8

Yes, some of his guns

No*

Don't know**

c. Did a law enforcement officer remove his gun(s) from him against his wishes?

Yes, some of his guns

Yes, all of his guns

No*

Don't know**

Other (please explain)

***IF THE ANSWERS TO B7a - B7c ARE ALL 'NO,' SKIP TO B9**

****IF THE ANSWERS TO B7a AND B7c ARE BOTH 'DON'T KNOW,' SKIP TO B10**

B8. a. Did having his gun(s) turned in/taken to a gun dealer/removed by law enforcement make you feel safer, less safe, or did it not change how safe you felt?

- Safer
- Less safe
- No difference

b. Did [name] get angry with you, threaten you or try to hurt you because his guns were turned in/taken to a gun dealer/removed by law enforcement?

- No *Skip to Section C*
- Got angry, but didn't threaten or hurt *Fill in narrative then skip to Section C*
- Threatened *Fill in narrative then skip to Section C*
- Tried to hurt *Fill in narrative then skip to Section C*

[If answered got angry, threatened, or tried to hurt, please provide a brief narrative]

***ONLY ASK B9 if answers to B7a - B7c are ALL 'NO'**

B9. a. Did not having (all of) his gun(s) turned into/removed by law enforcement make you feel safer, less safe, or did it not change how safe you felt?

- Safer
- Less safe
- No difference

b. Do you think [name] would have gotten angry, threatened or tried to hurt you because his guns were turned in/taken to a gun dealer/removed by law enforcement?

- No
- Would have gotten angry, but wouldn't threaten or hurt *Fill in narrative*
- Would have threatened *Fill in narrative*
- Would have tried to hurt *Fill in narrative*

[If answered got angry, threatened, or tried to hurt, please provide a brief narrative]

****ONLY ASK B10 if answers to B7a AND B7c are BOTH 'DON'T KNOW'**

B10. a. Did not knowing whether his guns have been removed make you feel safer, less safe, or no different?

- Safer
- Less safe
- No difference

b. Do you think that having his gun(s) removed from him by law enforcement would have made you feel safer, less safe, or do you think it would not change how safe you felt?

- Safer
- Less safe
- No difference

c. Do you think [name] would have gotten angry, threatened or tried to hurt you if his guns were turned in/taken to a gun dealer/removed by law enforcement?

- No
- Would have gotten angry, but wouldn't threaten or hurt *Fill in narrative*
- Would have threatened *Fill in narrative*
- Would have tried to hurt *Fill in narrative*

[If answered got angry, threatened, or tried to hurt, please provide a brief narrative]

C. Questions about the temporary restraining order

Now I'm going to ask you some questions about the temporary restraining order you got against [name] in _____ (month and year).

C1. a. After the temporary restraining order, did you go back to court and get an Order After Hearing (OAH)/final restraining order against him?

- Yes *Skip to C2*
- Applied but was not granted one *Skip to C3*
- No → Ask: C1b. Why not? (check all that apply)
 - Stopped bothering me
 - Fear of retaliation
 - Reconciled with him
 - He moved away, went to jail, went to rehab, etc.
 - I moved away, went to a shelter, etc.
 - Couldn't take time off from work
 - Didn't think it would help
 - Other (please explain)

C2. a. Do you currently have a restraining order against [name]?

- No *Skip to C3*
- Yes → Ask: C2b. What type of restraining order is it? Is it a temporary or a final order?
 - Temporary Restraining Order
 - Final restraining order/Order After Hearing
 - Criminal Protective Order
 - Emergency Protective Order
 - Other (please specify)

C3. a. When the temporary restraining order that you got against [name] in _____ (month and year) expired, did he request to get his gun(s) back?

- N/A – guns not surrendered *Skip to C4*
- No, he did not ask to get gun(s) back *Skip to C4*
- No, he is still under a restraining order *Skip to C4*
- No, he is not allowed to have a gun(s) for another reason *Skip to C4*
- * Yes → Ask C3b C3b. Were his gun(s) returned to him?
- Don't know → Ask C3b
 - No
 - Yes
 - Don't know

C4. a. Has he gotten any (additional) guns since you got the temporary restraining order against him?

Don't know

No

* Yes → How many? _____ Don't know → Ask: C4b. (*If don't know*) Can you give me a range? Did he get one gun, 2 or more guns, more than 5 guns?

Don't know

1

2 – 4

5 or more

***ONLY ASK C5 IF SHE SAID 'YES' to C3b AND/OR C4a**

C5. Does his having gun(s) make you make you feel safer, less safe, or does it not change how safe you feel?

Safer

Less safe

No difference

D. The Conflict Tactics Scale 2 and Gun-Related Abuse

The next set of questions is about your relationship with [name]. For this set of statements, I would like to restraining order against [name] in _____ (month and year).

	Never	Once	Twice	3-5	6+	Ref
D1. Your partner threw something at you that could hurt.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D2. Your partner twisted your arm or hair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D3. Your partner made you have sex without a condom.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D4. Your partner pushed or shoved you.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D5. Your partner used force (like hitting you, holding you down, or using a weapon) to make you have sex.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D6. Your partner used a knife against you.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D7. Your partner used a gun against you.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D8. Your partner punched you or hit you with something that could hurt.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D9. Your partner choked you.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D10. Your partner slammed you against a wall.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D11. You needed to see a doctor because of a fight with your partner, but you couldn't.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D12. Your partner insisted on sex when you did not want to (but did not use force).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D13. Your partner beat you up.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D14. Your partner grabbed you.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D15. Your partner slapped you.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D16. Your partner burned or scalded you on purpose.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D17. Your partner kicked you.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D18. You called the police or other law enforcement because you were threatened or hurt by your partner.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

These next questions are about things involving guns that you may have experienced.

D19. a. Your partner threatened you with a gun.

- Refused → Ask: D19b
- Never → Ask: D19b

D19b. Were there times when you felt threatened because he had a gun, even though he didn't actually use it to threaten you?

- Refused
- Never
- Once
- Twice
- 3-5 times
- 6 or more times

- Once → provide description
- Twice → provide description
- 3-5 times → provide description
- 6 or more times → provide description

D20. Your partner pointed a gun at you.

Never	Once	Twice	3-5	6+	Ref
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

D21. Your partner shot at you.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
--------------------------	--------------------------	--------------------------	--------------------------	--------------------------	--------------------------

D22. Your partner hit you with a gun.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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D23. a. Your partner used his gun against you in another way. For example, to injure your pet, to damage your property, or in any other way

- Refused
- Never
- Once → provide description
- Twice → provide description
- 3-5 times → provide description
- 6 or more times → provide description

D24. a. Your partner used a gun to threaten or shoot at another person.

- Refused
- Never
- Once → Ask D24b
- of
- Twice → Ask D24b
- 3-5 times → Ask D24b
- 6 or more times → Ask D24b

D24b. Were you present when this (any of these) incident(s) happened?

- No
- Yes

Now I am going to ask you the same set of questions, but this time I would like to know how many times the following things happened after you got a temporary restraining order against [name] in _____ (month and year).

	Never	Once	Twice	3-5	6+	Ref
D25. Your partner threw something at you that could hurt.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D26. Your partner twisted your arm or hair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D27. Your partner made you have sex without a condom.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D28. Your partner pushed or shoved you.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D29. Your partner used force (like hitting you, holding you down, or using a weapon) to make you have sex.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D30. Your partner used a knife against you.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D31. Your partner used a gun against you.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D32. Your partner punched you or hit you with something that could hurt.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D33. Your partner choked you.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D34. Your partner slammed you against a wall.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D35. You needed to see a doctor because of a fight with your partner, but you couldn't.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D36. Your partner insisted on sex when you did not want to (but did not use force).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D37. Your partner beat you up.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D38. Your partner grabbed you.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D39. Your partner slapped you.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D40. Your partner burned or scalded you on purpose.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D41. Your partner kicked you.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D42. You called the police or other law enforcement because you were threatened or hurt by your partner.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

These next questions are about things involving guns that you may have experienced.

D43. a. Your partner threatened you with a gun.

- Refused → Ask: D43b
- Never → Ask: D43b

D43b. Were there times when you felt threatened because he had a gun, even though he didn't actually use it to threaten you?

- Refused
- Never
- Once
- Twice
- 3-5 times
- 6 or more times

- Once → provide description
- Twice → provide description
- 3-5 times → provide description
- 6 or more times → provide description

	Never	Once	Twice	3-5	6+	Ref
D44. Your partner pointed a gun at you.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D45. Your partner shot at you.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D46. Your partner hit you with a gun.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

D47. a. Your partner used his gun against you in another way. For example, to injure your pet, to damage your property, or in any other way

- Refused
- Never
- Once → provide description
- Twice → provide description
- 3-5 times → provide description
- 6 or more times → provide description

D48. a. Your partner used a gun to threaten or shoot at another person.

- Refused
- Never
- Once → Ask D48b
- Twice → Ask D48b
- 3-5 times → Ask D48b
- 6 or more times → Ask D48b

D48b. Were you present when this (any of these) incident(s) happened?

- No
- Yes

E. Partner/ex-partner demographics

Now, I'm going to ask you some general questions about [name].

- E1. How old was [name] when you got a temporary restraining order against him in ___ (month and year)? _____ years old
- E2. As far as you know, does he consider himself to be Latino or Hispanic?
 No
 Yes
 Declined
 Don't know
- E3. What is his race? (if "not sure" ask her to give her best guess)
 White
 Black or African American
 South Asian (India, Pakistan, Sri Lanka, Bangladesh, Nepal)
 East Asian (China, Japan, Korea, Vietnam, Thailand, Malaysia)
 Middle Eastern (Arab countries, Israel, Iran, Iraq, etc.)
 Native Hawaiian or other Pacific Islander
 American Indian or Alaska native
 Declined
 Other (please specify) _____
- E4. What was the highest grade of school [name] completed?
 Eighth grade or less
 Some high school
 High school graduate or GED
 Some college or vocational school beyond high school
 Graduated from college or vocational school
 Graduate or professional school beyond college
 Don't know
- E5. a. When you got a temporary restraining order against [name] in _____ (month and year), what was his approximate weekly, monthly, or yearly income?
 _____ Check whether per week per month per year
 Don't know
 Declined
- b. (If Don't know or Declined) Could you tell me if it was less or more than \$30,000 in a year?
 Less than \$30,000
 More than \$30,000
 Don't know
 Declined
- E6. What was his employment status at that time?
 Employed
 Unemployed (not looking for work)
 Looking for work
 Other (please specify) _____

E7. Did he hold a job that required him to carry a gun, such as police officer or security guard?

- No
 Yes
 Don't know

F. Respondent demographics

Before we end the interview, I have a few questions I'd like to ask about you.

F1. Do you consider yourself to be Latina or Hispanic?

- No
 Yes
 Declined

F2. What race do you consider yourself?

- White
 Black or African American
 South Asian (India, Pakistan, Sri Lanka, Bangladesh, Nepal)
 East Asian (China, Japan, Korea, Vietnam, Thailand, Malaysia)
 Middle Eastern (Arab countries, Israel, Iran, Iraq, etc.)
 Native Hawaiian or other Pacific Islander
 American Indian or Alaska native
 Declined
 Other (please specify) _____

F3. What is the highest grade of school you completed?

- Eighth grade or less
 Some high school
 High school graduate or GED
 Some college or vocational school beyond high school
 Graduated from college or vocational school
 Graduate or professional school beyond college
 Declined

F4. a. When you got a temporary restraining order against [name] in _____ (month and year), what was your approximate weekly, monthly, or yearly income?

- _____ Check whether per week per month per year
 Declined

b. (If Declined) Could you tell me if it was less or more than \$30,000 in a year?

- Less than \$30,000
 More than \$30,000
 Don't know
 Declined

F5. What was your employment status at that time?

- Employed
 Unemployed (not looking for work)
 Looking for work
 Other (please specify) _____

F6. That was the last question of the survey. Is there anything else you want to tell us? *(Please write answer below)*

Ending the interview

Please use the following closing text:

That was our last question. I want to thank you for taking the time to answer these questions for us. Do you have any questions you would like to ask me about the study?

You have a choice of a \$25 gift certificate to either Amazon.com or Target. The Amazon.com gift certificate can only be used online and the Target gift certificate can be used in person at any Target store. If you have access to the internet and would prefer an Amazon.com gift card, I can either give you a code right now that or have the study coordinator send one via email. If you would rather have a Target gift card, one will have to be sent to you by mail by the study coordinator. Which would you prefer?

Amazon.com → Would you rather I give read you a code right now, or would you like a code emailed to you by the study coordinator?

Code given over the phone _____
Please record code in the space provided

Email _____

Target → To what address would you like the gift card sent?
(Please record address below)

→ How would you like the envelope addressed?



Appendix N: Removal/Retrieval of Firearms Laws Synopsis

Removal/Retrieval of Firearms Laws Synopsis

States with no laws requiring or explicitly authorizing removal/retrieval of firearms

There are 14 states that have no law requiring or explicitly authorizing the removal/Retrieval of firearms from persons who have become prohibited from possessing them:¹

Alabama
Arkansas
Georgia
Idaho
Kansas
Kentucky
Louisiana
Mississippi
New Mexico
Oregon
South Carolina
South Dakota
Virginia
Wyoming

Domestic Violence and Firearm Removal/Retrieval²

1. Domestic Violence Misdemeanors

There are 10 states that require the removal/retrieval of firearms from persons convicted of a domestic violence misdemeanor:

California³
Colorado⁴
Connecticut⁵
Hawaii⁶
Illinois⁷
Iowa⁸
Minnesota⁹

¹ Not only do many of these states not have laws requiring the removal/Retrieval of firearms from persons who have become prohibited from possessing them, but many states, including Louisiana, affirmatively prohibit the seizure of firearms from people in lawful possession during emergency situations. See LSA-R.S. 29:738.

² For more information about domestic violence related firearm removal/Retrieval see the Law Center to Prevent Gun Violence Domestic Violence & Firearms Policy Summary, <http://smartgunlaws.org/domestic-violence-firearms-policy-summary/>

³ Cal. Penal Code § 29810.

⁴ Colo. Rev. Stat. Ann. § 18-6-801(8).

⁵ Conn. Gen. Stat. §§ 29-36k(a), § 29-36n.

⁶ Haw. Rev. Stat. Ann. § 134-7.3(b).

⁷ 730 Ill. Comp. Stat. 5/5-6-3(a)(9).

⁸ Iowa Code § 724.26(4).

⁹ Minn. Stat. §§ 609.749, subd. 8(d); 518B.01, subd. 14(m); Minn. Stat. § 609.2242, subd. 3(a), (b).

New York¹⁰
Pennsylvania¹¹
Tennessee¹²

Five of these states – California, Connecticut, Hawaii, New York and Pennsylvania – require the surrender of firearms by persons prohibited from possessing them for any reason.

Pennsylvania

In Pennsylvania, for example, “any person who becomes prohibited from possessing, using, controlling, selling, transferring or manufacturing a firearm ... shall have a reasonable period of time, not to exceed 60 days from the date of the imposition of the disability ... in which to sell or transfer that person's firearms to another eligible person who is not a member of the prohibited person's household.”¹³

California

By contrast, in California, a person who becomes prohibited from owning, purchasing, receiving, possessing, or having under custody or control, any firearm shall receive from the court a notice, on a form supplied by the Department of Justice which shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms.¹⁴ The form provides for a prohibited person to designate a person to have Power of Attorney for the purpose of transferring or disposing of the prohibited person's firearms. In all cases, except for those that involve a protective order or a more specific court order, “the person with Power of Attorney for Firearms Relinquishment, Sale or Disposal must do one of the following within 30 days:

- 1) Take the firearm(s) to a licensed firearms dealer so that it can be sold or transferred.
- 2) Surrender the firearm(s) to a California law enforcement agency for the purpose of safe keeping.
- 3) Surrender the firearm(s) to a California law enforcement agency for the purpose of destruction.”¹⁵

2. Civil Domestic Violence Restraining/Protective Orders

29 states and the District of Columbia explicitly authorize or require the removal/retrieval of firearms from the subjects of certain domestic violence restraining/protective orders:

Authorize:

Alaska¹⁶
Arizona¹⁷
Delaware¹⁸
District of Columbia¹⁹

¹⁰ N.Y. Crim. Proc. Law § 380.96.

¹¹ 18 Pa. Cons. Stat. Ann. § 6105(a)(2)(i).

¹² Tenn. Code Ann. §§ 39-13-111(c)(6); 36-3-625.

¹³ 18 Pa. Cons. Stat. Ann. § 6105(a)(2)(i).

¹⁴ Cal. Penal Code § 29810.

¹⁵ California Department of Justice Bureau of Firearms, “Power of Attorney for Firearms Relinquishment, Sale or Disposal – Declaration.” <http://ag.ca.gov/firearms/forms/pdf/sb950frm1107.pdf>

¹⁶ Alaska Stat. § 18.66.100(c)(7).

¹⁷ Ariz. Rev. Stat. § 13-3602(G)(4).

¹⁸ Del. Code Ann. tit. 10, §§ 1045(a)(8), (11); 1043(c).

¹⁹ D.C. Code § 16-1005(c)(10).

Florida²⁰
Indiana²¹
Maine²²
Nevada²³
New Jersey²⁴
North Dakota²⁵
Pennsylvania²⁶
Rhode Island²⁷
South Dakota²⁸
Vermont²⁹
Washington³⁰

Require:

California³¹
Colorado³²
Connecticut³³
Hawaii³⁴
Illinois³⁵
Iowa³⁶
Maryland³⁷
Massachusetts³⁸
Minnesota³⁹
New Hampshire⁴⁰
New York⁴¹
North Carolina⁴²

²⁰ Fla. Stat. §§ 741.31(4)(a)(8), 784.047(8), 784.0487(4)(g).

²¹ Ind. Code Ann. § 34-26-5-9(c)(4), (f).

²² Me. Rev. Stat. tit. 19-A, § 4007(1-A).

²³ Nev. Rev. Stat. Ann. §§ 33.031(1)(a); 33.033.

²⁴ N.J. Stat. Ann. §§ 2C:25-28j, 2C:25-29b(16)

²⁵ N.D. Cent. Code §§ 14-07.1-02(4)(g); 14-07.1-03(2)(d).

²⁶ 23 Pa. Cons. Stat. Ann. §§ 6108(a)(7); 6107(b)(3).

²⁷ R.I. Gen. Laws §§ 8-8.1-3; 15-15-3

²⁸ S.D. Codified Laws § 25-10-24.

²⁹ Vt. Stat. Ann. tit. 20, § 2307(b).

³⁰ Wash. Rev. Code Ann. § 9.41.800.

³¹ Cal. Fam. Code § 6389.

³² C.R.S.A. § 13-14-105.5.

³³ Conn. Gen. Stat. §§ 29-36k(a), § 29-36n.

³⁴ Haw. Rev. Stat. Ann. § 134-7.

³⁵ 750 Ill. Comp. Stat. 60/214(b)(14.5).

³⁶ Iowa Code § 724.26(4).

³⁷ Md. Code Ann., Fam. Law §§ 4-506(f); 4-505(a)(2)(viii); 4-506.1.

³⁸ Mass. Gen. Laws ch. 209A, § 3B.

³⁹ M.S.A. § 518B.01 Subd.6(g).

⁴⁰ N.H. Rev. Stat. Ann. §§ 173-B:5(I), (II); 173-B:4(I).

⁴¹ N.Y. Fam. Ct. Act § 842-a(1)(a)-(b); N.Y. Crim. Proc. Law § 530.14(1)(b); N.Y. Fam. Ct. Act § 842-a(2)(a)-(b); N.Y. Crim. Proc. Law § 530.14(2)(b); N.Y. Fam. Ct. Act § 842-a(3)(a)-(b); N.Y. Crim. Proc. Law § 530.14(3)(b).

⁴² N.C. Gen. Stat. § 50B-3.1(a).

Tennessee⁴³
Washington⁴⁴
West Virginia⁴⁵
Wisconsin⁴⁶

There are 15 states among those listed above that explicitly authorize or require the removal/retrieval of firearms from the subjects of ex parte domestic violence restraining/protective orders:

Authorize:

Delaware⁴⁷
Indiana⁴⁸
Maine⁴⁹
New Hampshire⁵⁰
New Jersey⁵¹
North Dakota⁵²
Pennsylvania⁵³
South Dakota⁵⁴
Washington⁵⁵

Require:

California⁵⁶
Hawaii⁵⁷
Illinois⁵⁸

⁴³ Tenn. Code Ann. §§ 36-3-604(c); 36-3-625(a),(b),(h).

⁴⁴ Wash. Rev. Code Ann. § 9.41.800 (Law enforcement agencies are required to develop protocols to allow family or household member to request to be notified when law enforcement returns a firearm to the individual who surrendered it or to an authorized representative of that person. It also outlines actions the law enforcement agency must take before returning a firearm; such as, confirming that the individual is eligible to possess a firearm, ensure that the firearm is not otherwise required to be held in custody or otherwise prohibited from being release. <http://app.leg.wa.gov/documents/billdocs/2015-16/Htm/Bills/Senate%20Passed%20Legislature/5381-S.PL.htm>)

⁴⁵ WV R DOM VIOL AND CIVIL P Rule 10b.

⁴⁶ W.S.A. 813.1285.

⁴⁷ Del. Code Ann. tit. 10, §§ 1045(a)(8), (11); 1043(c).

⁴⁸ Ind. Code Ann. § 34-26-5-9(f) (West)

⁴⁹ Me. Rev. Stat. tit. 19-A, § 4006(2-A).

⁵⁰ N.H. Rev. Stat. Ann. § 173-B:4(l).

⁵¹ N.J. Stat. Ann. § 2C:25-28j.

⁵² N.D. Cent. Code §14-07.1-03(2)(d).

⁵³ 23 Pa. Cons. Stat. Ann. § 6107(b)(3).

⁵⁴ S.D. Codified Laws § 25-10-24.

⁵⁵ Wash. Rev. Code Ann. § 9.41.800(2), (4) ("Any court entering an order... may, upon a showing by a preponderance of the evidence but not by clear and convincing evidence, that a party has: Used, displayed, or threatened to use a firearm or other dangerous weapon in a felony, or previously committed any offense that makes him or her ineligible to possess a firearm ... The court may order temporary surrender of a firearm or other dangerous weapon without notice to the other party if it finds, on the basis of the moving affidavit or other evidence, that irreparable injury could result if an order is not issued until the time for response has elapsed.")

⁵⁶ Cal. Fam. Code § 6389.

⁵⁷ Haw. Rev. Stat. Ann. § 134-7(f).

⁵⁸ 750 Ill. Comp. Stat. Ann. 60/217(a)(3)(i).

Maryland⁵⁹
Massachusetts⁶⁰
New York⁶¹
North Carolina⁶²
Washington⁶³

To whom do respondents surrender firearms?

The following 11 states allow respondents subject to a domestic violence restraining/protective order and ordered to surrender firearms to surrender them to law enforcement only:

Arizona⁶⁴
Delaware⁶⁵
Illinois⁶⁶
Indiana⁶⁷
Maryland⁶⁸
Massachusetts⁶⁹
New Hampshire⁷⁰
New York⁷¹
North Carolina⁷²
North Dakota⁷³

The following 6 states allow respondents subject to a domestic violence restraining/protective order and ordered to surrender firearms to surrender them to law enforcement, a licensed dealer, or a third party:

⁵⁹ Md. Code Ann., Fam. Law §§ 4-505(a)(2)(viii); 4-506(f); 4-506.1.

⁶⁰ Mass. Gen. Laws ch. 209A, § 3B (“...if the plaintiff demonstrates a substantial likelihood of immediate danger of abuse ...”).

⁶¹ N.Y. Fam. Ct. Act § 842-a (McKinney)

⁶² N.C. Gen. Stat. § 50B-3.1(a).

⁶³ Wash. Rev. Code Ann. § 9A.46.010(1) (“Any court when entering an order ... shall, upon a showing by clear and convincing evidence, that a party has: Used, displayed, or threatened to use a firearm or other dangerous weapon in a felony, or previously committed any offense that makes him or her ineligible to possess a firearm ... During any period of time that the person is subject to a court order issued under chapter 7.90, 7.92, 9A.46, 10.14, 10.99, 26.09, 26.10, 26.26, or 26.50 RCW that: (a) Was issued after a hearing of which the person received actual notice, and at which the person had an opportunity to participate; (b) Restrains the person from harassing, stalking, or threatening an intimate partner of the person or child of the intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and (c)(i) Includes a finding that the person represents a credible threat to the physical safety of the intimate partner or child; and (ii) By its terms, explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury...”)

⁶⁴ Ariz. Rev. Stat. § 13-3602(G)(4).

⁶⁵ Del. Code Ann. tit. 10, §§ 1045(a)(8), (11); 1043(c).

⁶⁶ 750 Ill. Comp. Stat. 60/214(b)(14.5).

⁶⁷ Ind. Code Ann. § 34-26-5-9(c)(4), (f).

⁶⁸ Md. Code Ann., Fam. Law §§ 4-506(f); 4-505(a)(2)(viii); 4-506.1.

⁶⁹ Mass. Gen. Laws ch. 209A, § 3B.

⁷⁰ N.H. Rev. Stat. Ann. §§ 173-B:5(I), (II); 173-B:4(I).

⁷¹ N.Y. Fam. Ct. Act § 842-a(1)(a)-(b); N.Y. Crim. Proc. Law § 530.14(1)(b); N.Y. Fam. Ct. Act § 842-a(2)(a)-(b); N.Y. Crim. Proc. Law § 530.14(2)(b); N.Y. Fam. Ct. Act § 842-a(3)(a)-(b); N.Y. Crim. Proc. Law § 530.14(3)(b).

⁷² N.C. Gen. Stat. § 50B-3.1(a).

⁷³ N.D. Cent. Code §§ 14-07.1-02(4)(g); 14-07.1-03(2)(d).

Colorado⁷⁴
Minnesota⁷⁵
Nevada⁷⁶
Pennsylvania⁷⁷
Rhode Island⁷⁸
Vermont⁷⁹

California,⁸⁰ Connecticut,⁸¹ and Hawaii⁸² allow respondents subject to a domestic violence restraining/protective order and ordered to surrender firearms to surrender them to law enforcement or a licensed dealer.

Iowa⁸³ and Wisconsin⁸⁴ allow respondents subject to a domestic violence restraining/protective order and ordered to surrender firearms to surrender them to law enforcement or a third party.

Tennessee requires respondents subject to a domestic violence restraining/protective order and ordered to surrender firearms to "terminate physical possession by any lawful means, such as transferring possession to a third party who is not prohibited from possessing firearms ..."⁸⁵

Alaska⁸⁶ and Washington⁸⁷ do not specify to whom respondents subject to a domestic violence restraining/protective order and ordered to surrender firearms should surrender.

There are 16 states that implicitly authorize the removal/retrieval of firearms from the subjects of certain domestic violence restraining/protective orders:

Alabama⁸⁸
Arkansas⁸⁹
Connecticut⁹⁰

⁷⁴ CO §§ 13-14-105.5; 18-1-1001.

⁷⁵ M.S.A. § 518B.01 Subd.6(g).

⁷⁶ Nev. Rev. Stat. Ann. §§ 33.031(1)(a); 33.033(1).

⁷⁷ 23 Pa. Cons. Stat. Ann. §§ 6107(b)(3); 6108; 6108.2, 6108.3.

⁷⁸ R.I. Gen. Laws §§ 8-8.1-3(d)(The third party to whom a respondent may surrender firearms may not be related to the respondent by "blood, marriage or relationship as defined by § 15-15-1 (3), (4), or (5) of the Rhode Island general laws..."); 15-15-3(d).

⁷⁹ Vt. Stat. Ann. tit. 20, § 2307(b) ("The Court may order that the person relinquish the firearms, ammunition, or other weapons to a person other than a cooperating law enforcement agency or an approved federally licensed firearms dealer unless the Court finds that relinquishment to the other person will not adequately protect the safety of the victim.")

⁸⁰ Cal. Fam. Code § 6389(c)(2).

⁸¹ Conn. Gen. Stat. §§ 29-36k(a), § 29-36n; 6; Conn. Agencies Regs. 29-36m-16 et seq.

⁸² Haw. Rev. Stat. Ann. § 134-7.

⁸³ Iowa Code § 724.26(4).

⁸⁴ W.S.A. 813.1285(3), (4).

⁸⁵ Tenn. Code Ann. § 36-3-604(c)(1).

⁸⁶ State of Alaska Department of Law website states that court may order respondent to surrender firearms to police.

http://www.law.alaska.gov/department/criminal/victims_assistDV.html

⁸⁷ Wash. Rev. Code Ann. § 9.41.800.

⁸⁸ Ala.Code 1975 §§ 30-5-7(b)(9); 30-5-6.

⁸⁹ A.C.A. § 9-15-205(a)(8).

⁹⁰ C.G.S.A. § 46b-15(b).

Idaho⁹¹
Kansas⁹²
Kentucky⁹³
Mississippi⁹⁴
Montana⁹⁵
Nebraska⁹⁶
New Mexico⁹⁷
Ohio⁹⁸
Oklahoma⁹⁹
Oregon¹⁰⁰
Utah¹⁰¹
Virginia¹⁰²
Wyoming¹⁰³

3. At the Scene of a Domestic Violence Incident

There are 18 states that authorize or require law enforcement to remove firearms at the scene of a domestic violence incident under certain circumstances:

Authorize:

Alaska¹⁰⁴
Arizona¹⁰⁵
Connecticut¹⁰⁶
Hawaii¹⁰⁷
Indiana¹⁰⁸
Maryland¹⁰⁹

⁹¹ I.C. § 39-6306(1)(e).

⁹² Kan. Stat. Ann. § 60-3107(a)(10) (West)(Not applicable to emergency orders).

⁹³ KRS §§ 403.740(1)(h); 403.750(1)(j).

⁹⁴ Miss. Code Ann. §§ 93-21-13; 93-21-15(1)(a) ("The relief the court may provide includes, but is not limited to, the following ...").

⁹⁵ MCA 40-15-201(2)(j).

⁹⁶ Neb.Rev.St. § 42-924(1)(h).

⁹⁷ N.M. Stat. Ann. § 40-13-5(7) (West)

⁹⁸ R.C. § 3113.31(E)(1)(h).

⁹⁹ Okla. Stat. Ann. tit. 22, § 60.4(C)(1) (West)(Not available for ex parte orders).

¹⁰⁰ O.R.S. § 107.718(1)(h); *see also* Senate Bill 525, 2015 Reg. Sess. (Or.2015).

¹⁰¹ Utah Code Ann. § 78B-7-106(2)(h) (West)

¹⁰² VA Code Ann. §§ 16.1-253.1; 16.1-279.1.

¹⁰³ W.S.1977 § 35-21-105.

¹⁰⁴ Alaska Stat. § 18.65.515(b).

¹⁰⁵ Ariz. Rev. Stat. § 13-3601(C)-(F).

¹⁰⁶ Conn. Gen. Stat. § 46b-38b(a).

¹⁰⁷ Haw. Rev. Stat. Ann. § 134-7.5.

¹⁰⁸ Ind. Code Ann. § 35-33-1-1.5.

¹⁰⁹ Md. Code Ann., Fam. Law § 4-511.

Require:

California¹¹⁰
Hawaii¹¹¹
Illinois¹¹²
Montana¹¹³
Nebraska¹¹⁴
New Hampshire¹¹⁵
New Jersey¹¹⁶
Ohio¹¹⁷
Oklahoma¹¹⁸
Pennsylvania¹¹⁹
Tennessee¹²⁰
Utah¹²¹
West Virginia¹²²

Hawaii

Under Hawaii law, a police officer responding to a scene of domestic violence "... **shall** seize all firearms and ammunition that the police officer has reasonable grounds to believe were used or threatened to be used in the commission of ..." physical abuse of a family or household member.¹²³

Hawaii statute further provides that "[a]ny police officer who has reasonable grounds to believe that a person has recently assaulted or threatened to assault a family or household member **may** seize all firearms and ammunition that the police officer has reasonable grounds to believe were used or threatened to be used in the commission of the offense. The police officer **may** seize any firearms or ammunition that are in plain view of the officer or were discovered pursuant to a consensual search, as necessary for the protection of the officer or any family or household member."¹²⁴

Mental Health Related Removal/Retrieval

There are 11 states that require or authorize the removal/retrieval of firearms from individuals for mental health-related reasons:

¹¹⁰ Cal. Penal Code § 18250.

¹¹¹ Haw. Rev. Stat. § 709-906(4)(f).

¹¹² 725 Ill. Comp. Stat. 5/112A-30(a)(2); 750 Ill. Comp. Stat. 60/304(a)(2).

¹¹³ Mont. Code Ann. § 46-6-603(1).

¹¹⁴ Neb. Rev. Stat. § 29-440(1)(a), (b).

¹¹⁵ N.H. Rev. Stat. Ann. § 173-B:10(l)(a).

¹¹⁶ N.J. Stat. Ann. § 2C:25-21d(1).

¹¹⁷ Ohio Rev. Code Ann. § 2935.03(B)(3)(h).

¹¹⁸ Okla. Stat. Ann. tit. 22, § 60.8(A).

¹¹⁹ 18 Pa. Cons. Stat. Ann. § 2711.

¹²⁰ Tenn. Code Ann. § 36-3-620(a)(1).

¹²¹ Utah Code Ann. § 77-36-2.1(1)(b).

¹²² W. Va. Code §§ 48-5-509; 48-27-1002(e); 48-5-608.

¹²³ Haw. Rev. Stat. § 709-906(4)(f).

¹²⁴ Haw. Rev. Stat. Ann. § 134-7.5.

Authorize:

Texas¹²⁵

Washington¹²⁶

Require:

California¹²⁷

Connecticut¹²⁸

Hawaii¹²⁹

Illinois¹³⁰

Maryland¹³¹

New York¹³²

Pennsylvania¹³³

West Virginia¹³⁴

Wisconsin¹³⁵

California

In California, for example, law enforcement shall confiscate any firearm or other deadly weapon found to be owned, possessed, or under the control of an individual who:

- “has been detained or apprehended for examination of his or her mental condition,” who “has been admitted to a facility and is receiving inpatient treatment and, in the opinion of the attending health professional who is primarily responsible for the patient's treatment of a mental disorder, is a danger to self or others,”¹³⁶
- within the past five years, has communicated to a licensed psychotherapist “a serious threat of physical violence against a reasonably identifiable victim or victims,”¹³⁷ or
- “has been adjudicated by a court of any state to be a danger to others as a result of a mental disorder or mental illness, or who has been adjudicated to be a mentally disordered sex offender[.]”¹³⁸

Washington

In Washington, in comparison, “the superior court and courts of limited jurisdiction of the state *may* order forfeiture of a firearm which is proven to be ... [i]n the possession of a person found to have been mentally incompetent while in possession of a firearm when apprehended or who is thereafter committed” due to criminal insanity or by court order for mental health treatment.¹³⁹

¹²⁵ Tex. Health and Safety Code § 573.001

¹²⁶ Wash. Rev. Code Ann. § 9.41.098

¹²⁷ Cal. Welf. & Inst. Code § 8102.

¹²⁸ Conn. Gen. Stat. §§ 53a-217(a), 29-36k(a), § 29-36n.

¹²⁹ Haw. Rev. Stat. Ann. §§ 134-7; 134-7.3.

¹³⁰ 720 Ill. Comp. Stat. 5/24-6(c).

¹³¹ Md. Code Ann., Health, Gen. § 10-632.

¹³² N.Y. Crim. Proc. Law § 330.20(2-a).

¹³³ 18 Pa. Cons. Stat. Ann. § 6105.

¹³⁴ W. Va. Code § 61-7-7(a)(4).

¹³⁵ Wis. Stat. § 51.20(13)(cv)(1).

¹³⁶ Cal.Welf. & Inst. Code § 8102.

¹³⁷ Cal.Welf. & Inst. Code § 8100.

¹³⁸ Cal.Welf. & Inst.Code § 8103.

¹³⁹ Wash. Rev. Code Ann. §§ 9.41.098, 71.05.010 et seq., 10.77.010 et seq.

Texas

Texas allows a peace officer to take an individual into custody, seize the individual's firearms, and transport the individual to a mental health facility, without a warrant, if the officer:

- “(1) has reason to believe and does believe that:
 - (A) the person is mentally ill; and
 - (B) because of that mental illness there is a substantial risk of serious harm to the person or to others unless the person is immediately restrained; and
- (2) believes that there is not sufficient time to obtain a warrant before taking the person into custody.”¹⁴⁰

Removal/Retrieval of Firearms from Dangerous Persons

There are three states that authorize the removal/retrieval of firearms from persons who pose a danger to themselves or others:

California¹⁴¹

Connecticut¹⁴²

Indiana¹⁴³

The Connecticut and Indiana laws are law enforcement driven processes, mandating warranted or warrantless removal of firearms.

Connecticut

The Connecticut law allows any two law enforcement officers, any state's attorney, or any assistant state's attorney to file for a warrant when such law enforcement officers, state's attorney, or assistant state's attorney “have probable cause to believe that (1) a person poses a risk of imminent personal injury to himself or herself or to other individuals, (2) such person possesses one or more firearms, and (3) such firearm or firearms are within or upon any place, thing or person.”¹⁴⁴ Upon such a filing, on oath, and the consideration of enumerated factors, a judge may issue a warrant ordering the removal of firearms.¹⁴⁵ Connecticut law mandates that a hearing be scheduled within 14 days to consider whether the guns should be removed for up to one year or returned to the owner.¹⁴⁶ At this hearing the state must prove by clear and convincing evidence that the owner remains “a risk of imminent injury to self or others” for the order to be extended.¹⁴⁷

¹⁴⁰ Tex. Health and Safety Code § 573.001

¹⁴¹ Cal. Penal Code § 18100 et seq.

¹⁴² Conn. Gen. Stat. § 29-38c.

¹⁴³ Ind. Code Ann. § 35-47-14-1 et seq.

¹⁴⁴ Conn. Gen. Stat. § 29-38c(a).

¹⁴⁵ Conn. Gen. Stat. § 29-38c(b).

¹⁴⁶ Conn. Gen. Stat. § 29-38c(d).

¹⁴⁷ *Id.*

Indiana

Indiana law contains a warrant-based removal process similar to Connecticut's.¹⁴⁸ In Indiana, a law enforcement officer may also seize a firearm from an individual the officer believes to be dangerous without obtaining a warrant.¹⁴⁹ Indiana law defines an individual as "dangerous" for both the warranted and unwarranted seizure of firearms if:

- "(1) the individual presents an imminent risk of personal injury to the individual or to another individual;
or
- (2) the individual may present a risk of personal injury to the individual or to another individual in the future and the individual:
 - (A) has a mental illness (as defined in IC 12-7-2-130) that may be controlled by medication, and has not demonstrated a pattern of voluntarily and consistently taking the individual's medication while not under supervision; or
 - (B) is the subject of documented evidence that would give rise to a reasonable belief that the individual has a propensity for violent or emotionally unstable conduct."¹⁵⁰

California

In contrast, California law allows a law enforcement officer or an immediate family member of the respondent to seek a gun violence restraining order (GVRO). The following excerpt is from an article published in the University of Virginia's *Developments in Mental Health Law*.¹⁵¹

There are three types of GVROs established by Assembly Bill No. 1014: a temporary emergency GVRO, an ex parte GVRO and a GVRO issued after notice and hearing.

Temporary Emergency GVRO

A temporary emergency GVRO may be sought only by a law enforcement officer based on a petition or oral request to a judicial officer any time of day or night.¹⁵² A temporary emergency GVRO may be issued on an ex parte basis if a law enforcement officer asserts, and a judicial officer finds, there is reasonable cause to believe that a person poses an immediate and present danger of injury to self or others by having a firearm in his or her possession and that less restrictive alternatives have been ineffective, inadequate, or inappropriate.¹⁵³ The temporary emergency GVRO shall prohibit the subject of the petition from having in his or her custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition, and shall expire twenty-one days from the date the order is issued.¹⁵⁴

Ex Parte GVRO

An ex parte GVRO may be sought by a law enforcement officer or immediate family member who submits a petition to a judicial officer during normal court hours.¹⁵⁵ A court may issue an ex parte

¹⁴⁸ Ind. Code Ann. § 35-47-14-2.

¹⁴⁹ Ind. Code Ann. § 35-47-14-3.

¹⁵⁰ Ind. Code Ann. § 35-47-14-1.

¹⁵¹ Ward, K. (2015). The Gun Violence Restraining Order: An Opportunity for Common Ground in the Gun Violence Debate. *Developments in Mental Health Law*, 34(3), pp. 1-12.

¹⁵² Cal. Penal Code § 18125 (West).

¹⁵³ Cal. Penal Code § 18125(a)(1),(2) (West).

¹⁵⁴ Cal. Penal Code § 18125(b) (West).

¹⁵⁵ Cal. Penal Code § 18150(a)(1) (West).

GVRO if the petition shows that there is a substantial likelihood that “(A)the subject of the petition poses a significant danger, in the near future, of personal injury to himself, herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm ...” and “an ex parte gun violence restraining order is necessary to prevent personal injury to the subject of the petition or another because less restrictive alternatives either have been tried and found to be ineffective, or are inadequate or inappropriate for the circumstances of the subject of the petition.”¹⁵⁶ The court must consider the following types of evidence to determine whether to issue an ex parte GVRO:

- (1) A recent threat of violence or act of violence by the subject of the petition directed toward another.
- (2) A recent threat of violence or act of violence by the subject of the petition directed toward himself or herself.
- (3) A recent violation of a protective order of any kind.
- (4) A conviction of a violent offense.
- (5) A pattern of violent acts or violent threats within the past 12 months, including, but not limited to, threats of violence or acts of violence by the subject of the petition directed toward himself, herself, or another.¹⁵⁷

The court may also consider any other evidence of an increased risk for violence, including, but not limited to, evidence of any of the following:

- (1) The unlawful and reckless use, display, or brandishing of a firearm by the subject of the petition.
- (2) The history of use, attempted use, or threatened use of physical force by the subject of the petition against another person.
- (3) Any prior arrest of the subject of the petition for a felony offense.
- (4) Any violation of a protective order of any kind.
- (5) Documentary evidence, including, but not limited to, police reports and records of convictions, of either recent criminal offenses by the subject of the petition that involve controlled substances or alcohol or ongoing abuse of controlled substances or alcohol by the subject of the petition.
- (6) Evidence of recent acquisition of firearms, ammunition, or other deadly weapons.¹⁵⁸

The ex parte GVRO shall prohibit the subject of the petition from having in his or her custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition, and shall either be dissolved or extended at a hearing to be held within twenty-one days of the issuance of an ex parte GVRO.¹⁵⁹

[GVRO Issued After Notice and Hearing](#)

¹⁵⁶ Cal. Penal Code § 18150(b)(1),(2) (West).

¹⁵⁷ Cal. Penal Code §§ 18150(b)(1); 18155(b)(1)(West).

¹⁵⁸ Cal. Penal Code §§ 18150(b)(1); 18155(b)(2)(West).

¹⁵⁹ Cal. Penal Code § 18165 (West).

Not later than twenty-one days after the issuance of an ex parte GVRO, the court shall provide a hearing for the respondent to determine if a more permanent gun violence restraining order should be issued.¹⁶⁰ At the hearing, the petitioner shall have the burden of proving, by clear and convincing evidence, that “[t]he subject of the petition, or a person subject to an ex parte gun violence restraining order, as applicable, poses a significant danger of personal injury to himself, herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition” and “[a] gun violence restraining order is necessary to prevent personal injury to the subject of the petition, or the person subject to an ex parte gun violence restraining order, as applicable, or another because less restrictive alternatives either have been tried and found to be ineffective, or are inadequate or inappropriate for the circumstances of the subject of the petition, or the person subject to an ex parte gun violence restraining order, as applicable.”¹⁶¹ If the court finds that there is clear and convincing evidence to issue a GVRO, the court shall issue a GVRO that prohibits the subject of the petition from having in his or her custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition for up to one year, subject to termination or renewal.¹⁶²

Termination and Renewal

A respondent may petition for the termination of a GVRO issued after notice and hearing one time while the order is in effect.¹⁶³ If the court finds after the hearing that there is no longer clear and convincing evidence to believe that the subject of a GVRO poses a significant danger of personal injury to himself, herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition and a GVRO is not necessary to prevent personal injury to the subject of the GVRO or another because less restrictive alternatives either have been tried and found to be ineffective, or are inadequate or inappropriate for the circumstances of the subject of the GVRO are true, the court shall terminate the order.¹⁶⁴

A law enforcement officer or immediate family member of the respondent may request a renewal of a GVRO at any time within the three months before the expiration of a GVRO.¹⁶⁵ The evidentiary requirements and standard of review are the same as those of an initial GVRO issued after notice and hearing.¹⁶⁶

Surrender of Firearms

Upon issuance of a GVRO, the court shall order the restrained person to surrender to the local law enforcement agency all firearms and ammunition in the restrained person’s custody or control, or which the restrained person possesses or owns.¹⁶⁷ Surrender shall occur by immediately surrendering all firearms and ammunition in a safe manner, upon request of any law enforcement officer, to the control of the officer, after being served with the restraining order.¹⁶⁸ A law

¹⁶⁰ *Id.*

¹⁶¹ Cal. Penal Code § 18175(b)(1),(2) (West).

¹⁶² Cal. Penal Code § 18175(c)(1),(d) (West).

¹⁶³ Cal. Penal Code § 18185(a) (West).

¹⁶⁴ Cal. Penal Code § 18185(b) (West).

¹⁶⁵ Cal. Penal Code § 18190 (West).

¹⁶⁶ *Id.*

¹⁶⁷ Cal. Penal Code § 18120(b)(1) (West).

¹⁶⁸ Cal. Penal Code § 18120(b)(2) (West).

enforcement officer serving a gun violence restraining order that indicates that the restrained person possesses any firearms or ammunition shall request that all firearms and ammunition be immediately surrendered.¹⁶⁹ Alternatively, if no request is made by a law enforcement officer, the surrender shall occur within 24 hours of being served with the order, by either surrendering all firearms and ammunition in a safe manner to the control of the local law enforcement agency, or by selling all firearms and ammunition to a licensed gun dealer.¹⁷⁰ The law enforcement officer or licensed gun dealer taking possession of any firearms or ammunition shall issue a receipt to the person surrendering the firearm or firearms or ammunition or both at the time of surrender.¹⁷¹ A person ordered to surrender all firearms and ammunition shall file the original receipt with the court that issued the GVRO and a copy of the receipt with the law enforcement agency that served the gun violence restraining order within 48 hours of service of the order.¹⁷²

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² Cal. Penal Code § 18120(b)(2)(A),(B) (West).

