



NATIONAL COUNCIL OF
JUVENILE AND FAMILY COURT JUDGES

WWW.NCJFCJ.ORG

Domestic Violence Homicide Prevention

FIREARMS

Technical Assistance Project

suggested components of
**law enforcement protocols
addressing firearms in domestic
violence cases**

Suggested components of law enforcement protocols addressing firearms in domestic violence cases

Note: Only firearms-specific provisions are described below (with a few exceptions); effective protocols include significant additional provisions addressing law enforcement responsibilities and procedures in domestic violence cases

1. Introductory language

- ▶ Description of public health impact and lethality of abusers' access to firearms and rationale for the policy ([Snohomish/King County](#))
- ▶ Statutory language and explanation of relevant state and federal laws
- ▶ Discussion of the relationship between state and federal law ([Michigan](#))
- ▶ Chart with effects of different CPOs ([Michigan](#))
- ▶ Detailed discussion of different types of CPOs ([Snohomish/King County](#))
- ▶ Discussion of what constitutes violation and mandatory/discretionary arrest ([Snohomish/King County](#))

2. 911 dispatch

- ▶ Inquire about firearms at scene ([New Hampshire](#); [Snohomish/King County](#))
- ▶ Investigate and report firearms ID cards/licenses held by persons at address ([Massachusetts](#))

3. Response at scene of incident

- ▶ On-scene assessment of firearms presence, use, and/or access
 - ▶ Ask all adult parties about firearms, with safe procedures ([Santa Clara County](#); [Rhode Island](#); [Maricopa County](#); [Snohomish/King County](#))
- ▶ On-scene investigation regarding civil protection orders (including firearms prohibitions and orders to surrender)
 - ▶ Verification of CPOs ([Rhode Island](#))
 - ▶ Determine if CPO prohibits possession and take appropriate steps Seizure (with
 - ▶ description of authority)
 - ▶ Search (with description of authority) ([Rhode Island](#))
 - ▶ Inter-jurisdictional/full faith and credit issues ([Massachusetts](#); [Rhode Island](#); [Inver Grove Heights](#))
 - ▶ Matrix guide to enforcing CPOs ([New Hampshire](#))
- ▶ Actions to be taken regarding firearms if presence, use, or access indicated
 - ▶ Description of seizure authority and steps to be taken ([Rhode Island](#); [Maricopa County](#); [Massachusetts](#) (also interdepartmental cooperation language); [Michigan](#); [New Hampshire](#); [Maryland DV Policy](#); [San Mateo County](#); [Snohomish/King County](#); [West Virginia](#))
 - ▶ If weapon used; if weapon not used ([Santa Clara County \(1\), \(2\)](#); [Marin County \(1\), \(2\)](#); [Massachusetts](#))
 - ▶ General seizure authority ([Marin County \(1\), \(2\)](#); [Appleton PD](#)); [New Hampshire](#)
 - ▶ Potential search authority ([Rhode Island](#); [Marin County \(1\), \(2\)](#); [Appleton PD](#); [Maricopa County](#); [San Mateo County](#); [West Virginia](#))
 - ▶ Requirements to obtain search warrant ([Santa Clara County](#); [Marin County](#))
 - ▶ Seizure of firearms for safekeeping/public safety: authority and process ([Appleton PD](#); [Snohomish/King County \(throughout\)](#); [Rhode Island](#); [Maricopa County](#))
 - ▶ Response if respondent denies presence/access to firearms ([Snohomish/King County](#))
- ▶ Use of lethality assessment and documentation ([Santa Clara County \(1\), \(2\), \(3\)](#); [Marin County](#); [North Dakota](#); [Massachusetts](#) and [Appendix](#); [Maryland](#); [Snohomish/King County](#))
- ▶ Provide officers with list of common criminal charges arising out of DV incidents ([Marin County](#))
- ▶ Background check to determine if offender is a prohibited person (e.g., felon in possession)
- ▶ Notification of prosecution re: firearms seized ([Maricopa County](#))
- ▶ Documentation
 - ▶ Document in report any info and actions re: firearms ([Rhode Island](#); [Santa Clara County \(1\), \(2\)](#); [Marin County \(1\), \(2\)](#); [Snohomish/King County](#))
 - ▶ Firearms statement and summary sheets ([Appleton PD](#))
 - ▶ DVIR with gun info ([North Dakota](#); [Canadian model](#))

3. Response at scene of incident

- ▶ Provision of information (written and oral; multiple languages):
 - ▶ To victims re: rights, next steps, resources, availability of CPO, etc. ([Marin County](#) and [appendix](#); [Maryland](#); [Snohomish/King County](#))
 - ▶ To offenders (receipt for confiscated firearms)
- ▶ Follow-up investigation
- ▶ Investigate possible violation of federal law: Cross-deputization (where applicable)
 - ▶ Process for referral to ATF for fed violations ([Rhode Island](#))
 - ▶ Notify chief ([Massachusetts](#))
- ▶ Handling illegal firearms ([Appleton PD](#))

4. Service of CPOs

- ▶ Requirements and process for entry of orders into registries/databases ([Snohomish/King County](#); [San Mateo County](#))
- ▶ Pre-service gathering of Information regarding firearms access, lethality, etc.
 - ▶ Law enforcement information sheets ([WA State form](#))
 - ▶ Interview with petitioner (and safety planning) [Montgomery County, MD \(NCPOFFC Promising Practices Report\)](#); [San Mateo County](#)
 - ▶ Risk assessment prior to service ([Snohomish/King County](#))
- ▶ Creation of service packet, with contents list ([Snohomish/King County](#))
- ▶ Procedures for service in high-risk cases ([San Mateo County](#); [Snohomish/King County](#))
- ▶ Requirement for expedited service, with specified expectations ([Snohomish/King County](#))
- ▶ Directions regarding which agency has responsibility to serve
- ▶ Clear description of seizure authority (e.g., “request immediate surrender”) ([Marin County](#); [San Mateo County](#); [Santa Clara County](#))
 - ▶ “WARM/Knock and Talk” strategy ([San Mateo County](#); also described in [PAGV Report](#))
 - ▶ Clear description of authority to search/seize: consent, exigent circumstances, plain view, etc. (For examples, see those cited above under “Response at Scene of Incident)
 - ▶ Provision of oral and written information (multiple languages) to respondents regarding their responsibilities and the process ([Appleton, appendix](#); [Snohomish/King County](#))
 - ▶ Actions to be taken when respondents deny access to firearms or refuse to comply ([San Mateo County](#); [Snohomish/King County](#))
 - ▶ See search warrant provisions below
- ▶ Documentation of service ([Snohomish/King County](#))

4. Service of CPOs

- ▶ Steps to obtain search warrant and appropriate circumstances to do so ([Michigan](#); [Snohomish/King County \(1\)](#), [\(2\)](#))
- ▶ Actions if service cannot be effected ([Massachusetts](#); [Snohomish/King County](#))
- ▶ Response to inquiries from NICS/NCIC
 - ▶ Provide detailed information regarding protection orders and domestic violence offenses
 - ▶ Provide information on the relationship between the victim and the abuser
- ▶ Use of a “gun letter” from state police ([Michigan](#))

5. Other possible topics to include in protocols

- ▶ Facilitation of compliance review process (e.g., provision of receipt for surrendered firearms; communication with court; etc.) ([Snohomish/King County](#); [Multnomah County MOU](#); [Santa Clara County](#))
- ▶ Process for receipt by law enforcement of surrendered weapons ([Inver Grove Heights](#); [San Mateo County](#))
- ▶ Protocol for law enforcement offenders
- ▶ Return process ([Appleton PD](#); [Inver Grove Heights](#); [San Mateo County](#); [Snohomish/King County](#))
- ▶ Storage directives, including how to store and mandatory timeframes; destruction of firearms ([Appleton PD](#); [Maricopa County](#); [Snohomish/King County](#))

This project was supported by 2016-TA-AX-K043 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this document are those of the authors and do not necessarily reflect the views of the U.S. Department of Justice, Office on Violence Against Women.

APPLETON POLICE DEPARTMENT POLICY	TITLE: Domestic Abuse - Seizing and Returning Firearms		
ISSUE DATE: New Policy	REVIEW DATE: New Policy	REVISED DATE: New Policy	SECTION: Operational
POLICY SOURCE: Chief of Police		TOTAL PAGES: 15	
SPECIAL INSTRUCTIONS: <p style="text-align: center;">Draft Policy</p>			

I. PURPOSE

The purpose of this policy is to establish guidelines for responding to domestic abuse with a particular focus on seizing or removing dangerous firearms, deterring the defendant from committing continuing acts of violence, helping adult victims and children, and reducing potential injuries to the involved parties and to assigned officers. Our goal is to keep victims safe and hold abusers accountable for their criminal behavior.

II. POLICY

This policy is focused on keeping dangerous firearms out of the hands of people who commit violent domestic crimes.

III. DISCUSSION

With the potential for violence in domestic relationships, courts shall order parties involved in criminal or civil domestic violence cases to surrender firearms and/or ammunition to the Sheriff’s Department. At the scene of a domestic violence call, officers may encounter citizens requesting, for personal safety reasons, to surrender non-evidentiary firearms and/or ammunition.

Officers may also confront circumstances at the scene of a domestic violence call where, in the officers’ judgment, removal of firearms/ammunition is warranted in the interests of public safety. The following procedures address the process for accepting, storing, and returning firearms and/or ammunition.

IV. DEFINITIONS

- A. Ammunition: means ammunition or cartridge. Covers primers, bullets, or propellant powder designed for use in any firearms.
- B. Cohabitation: requires a live-in relationship (or former live-in relationship) between two individuals (can be same sex), which in essence is asexual/romantic one, not merely a roommate.

- C. Domestic Violence Surrendered Firearms: firearms that are voluntarily surrendered by a party involved in a domestic violence investigation and are not known to be evidence of a crime, firearms removed in the interests of public safety, and domestic violence firearm that are surrendered or forfeited per court order.
- D. Evidentiary Firearms: firearms that are evidence of a crime and may be required for future criminal prosecution.
- E. Firearm: Any weapon (including a starter gun) which will or is designed to, or may readily be converted to expel a projectile by the action of an explosive;
 - 1. the frame or receiver of any such weapon; or
 - 2. any firearm muffler or firearm silencer; or
 - 3. any destructive device. Such term does not include an antique firearm
- F. Intimate Partner: with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates with the person.
- G. Non-evidentiary Firearms: a domestic violence surrendered firearm that has no value as evidence. The firearm appears to be legal to possess and ownership can be established.

V. PROCEDURE

- A. The following conditions prohibit, under Federal law, any person from possessing a firearm and/or ammunition:
 - 1. Person who has been convicted of a crime, punishable by imprisonment for more than one year (convicted felon). 18 U.S.C. 922(g)(1)
 - 2. Fugitive from justice. 18 U.S.C. 922(g)(2)
 - 3. Unlawful user of or addicted to a controlled substance. 18 U. S. C. 922(g)(3)
 - 4. Adjudicated as a mental defective or committed to a mental institution. 18 U. S. C. 922(g)(4)
 - 5. Person who is an illegal alien or unlawfully in the United States or legal, non-immigrant who fail to meet specific exceptions. 18 U.S.C. 922(g)(5)(A)
 - 6. Dishonorable discharge from the military. 18 U.S.C. 922(g)(6)
 - 7. Renounced U.S. Citizenship. U.S.C. 922(g)(7)

8. Possession of a firearm and/or ammunition while subject to a protection order. 18 U.S.C. 922(g)(8)
9. Possession of a firearm and/or ammunition after conviction of a qualifying misdemeanor crime of domestic violence. 18 U. S. C. 922(g)(9)
10. Title 18, U.S.C. 922(n) makes it unlawful to receive a firearm or ammunition while under federal indictment

B. Federal Gun Control Act

1. The Federal Gun Control Act, 18 U.S.C. section 922(g) (8), prohibits persons from possessing a firearm and/or ammunition while subject to a valid qualifying protection order. The protection order will qualify if it meets these requirements:
 - a. The Protection Order was issued after a hearing of which the defendant had actual notice and an opportunity to participate:
 - b. The Protection Order restrained the defendant from harassing, stalking, or threatening an intimate partner or child of the defendant or intimate partner, from engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child.
 - c. The Protection Order included a finding that the defendant posed a credible threat to the physical safety of an intimate partner; or
 - d. The Protection Order explicitly prohibited the use, attempted use or threatened use of physical force that would reasonably be expected to cause bodily injury.
2. Federal Gun Control Act, Firearms Prohibition for Misdemeanor Crimes of Domestic Violence Firearms Prohibition, Lautenberg Amendment, 18 U.S.C. section 922(g)(9)
 - a. The Federal Gun Control Act, 18 U.S.C. section 922(g)(9), prohibits persons who have been convicted of a Misdemeanor Crime of Domestic Violence (MCDV) from receiving or possessing a firearm/or ammunition.
 - b. State and local law enforcement officers at the scene of a domestic incident may seize firearms from a person subject to a qualifying conviction for a misdemeanor crime of domestic violence. In the absence of authority for a State or local forfeiture action, the investigation should be referred, within 30 days, to investigators from Alcohol, Tobacco, and Firearms and/or prosecutors from the United

States Attorney's Office for determination of federal prohibitors for possible seizure and/or prosecution.

- c. 18 U.S.C. section 922(g)(9) defines a MCDV as "an offense" that is a misdemeanor under federal, state, or tribal law; has as an element the use or attempted use of physical force, or the threatened use of a deadly weapon; and at the time the offense was committed, the defendant was:
 - (1) A current or former spouse, parent, or guardian of the victim;
 - (2) A person with whom the victim shares a child in common;
 - (3) A person who is cohabitating with or has cohabitated with the victim as a spouse, parent or guardian: or
 - (4) A person who was or is similarly situated to a spouse, parent, or guardian of the victim
- d. The date of conviction for the MCDV must have preceded the firearms possession.
- e. Not considered a qualifying misdemeanor crime of domestic violence unless:
 - (1) Represented by counsel or waived right to counsel
 - (2) If entitled to jury, had a jury trial or waived right to a jury trial
 - (3) If a conviction is expunged, set aside or civil rights have been restored (if the offense provides for loss of civil rights)

C. Wisconsin Firearms Prohibitions

1. Orders for surrender are mandatory under domestic abuse injunctions and child abuse injunctions. The court must inform the respondent of the requirements and penalties.
2. The following persons, subject to injunctions, are prohibited under Wisconsin State Statutes from possessing a firearm:
 - a. The surrender of firearms is mandatory when a domestic abuse injunction protection order is granted against a respondent. §813.12(4m)
 - b. The surrender of firearms is mandatory when a child abuse injunction protection order is granted against a respondent. §813.122(5m)
 - c. The surrender of firearms is discretionary when a harassment injunction protection order is granted against a respondent. §813.125(4m)(a)

- d. The surrender of firearms is discretionary when a vulnerable adult injunction protection order is granted against a respondent. §813.123.

D. Sheriff's Department Responsibility for Storage

1. When an injunction is issued, the respondent must surrender any firearms he/she owns or possesses to §813.12(4m)(a)2:
 - a. The sheriff in the county where the action was commenced, or
 - b. The sheriff in the county where the respondent resides, or
 - c. Another person that the respondent may designate, if the court approves.
2. Possession of a firearm after the issuance of an injunction is a class G Felony punishable by up to 10 years and a \$25,000 fine or both. §941.29
3. The Sheriff's Department must provide respondents with a receipt for each firearm surrendered, including the manufacturer, model, serial number, and the signature of the respondent. §813.12 (4m)(am)1
4. Information on receipt may not be entered into any computerized or electronic data transfer system. §813.12 (4m)(am) 4
5. The Sheriff's Department may store firearms in a warehouse licensed under Chapter 99 and charge those costs to the respondent. §813.12 (4m)(aw)
6. The Sheriff's Department must enter injunctions into the TIME system within 24 hours. §813.12(6)(c)

E. Exemptions from the Federal and State of Wisconsin Firearms Prohibitions include:

1. The court order/injunction may not require a peace officer to surrender a firearm that he/she is required, as a condition of employment, to possess whether or not he/she is on duty. §941.29(10) (a)
2. The court order/injunction may not require a member of the U.S. Armed Forces/National Guard, to surrender a firearm that he/she is in possession of while in the line of duty. §941.129(10)(b)
3. The court order/injunction may not require a correctional officer to surrender a firearm, if that officer was employed prior to May 1, 1982 and required to possess a firearm as a condition of employment. The exception applies only if the officer is eligible to possess under federal law and applies only while the officer is "on-duty" and working in an official capacity.

§941.29(6).

4. Nothing prohibits an employer from imposing firearms restrictions upon its employees.

F. Evaluation of the Threat of Firearms When Investigating Domestic Violence

1. With the potential for violence in domestic relationships, courts may order parties involved in criminal or civil domestic violence cases to surrender firearms to local law enforcement officers. At the scene of a domestic violence call, officers may encounter citizens requesting, for personal safety reasons, to surrender non-evidentiary firearms.
2. Officers may also confront circumstances at the scene of a domestic violence call where, in the officers' judgment, removal of firearm(s) is warranted in the interests of public safety. The following are the procedures for accepting, storing, and returning firearms:
 - a. Opportunities to search:
 - (1) plain view
 - (2) consensual
 - (3) exigent circumstances
 - (4) search warrant
 - (5) incident to arrest
 - (6) probable cause
 - (7) Terry frisks
 - (8) protective sweeps
 - (9) community caretaking function
 - b. Opportunities to seize:
 - (1) safe keeping
 - (2) evidence/contraband
 - (3) voluntary relinquishment
 - c. Mandatory
 - (1) When an alleged offender in a domestic incident uses or threatens the imminent use of firearms or other legally possessed specifically identified weapons, confiscation is required.
 - (2) Seize and confiscate illegally possessed weapons as contraband. Arrest for appropriate weapons violations.

- (3) Upon arresting an individual who is licensed to sell, carry, possess, repair or dispose of firearms, the arresting officer should, whenever practicable, notify the licensing body.

d. Discretionary

- (1) Encourage the voluntary relinquishment of firearms when investigating domestic violence. Accept legally possessed weapons that are voluntarily surrendered.
- (2) In other domestic incidents not involving the threat of weapons, consider facilitating the voluntary surrender of firearms and other dangerous weapons.

G. Returning Firearms Seized or Forfeited After the Issuance of an Injunction. Sheriff's Departments Responsibilities:

1. Once surrendered, a firearm may not be returned except by application to the court. The burden is on the owner, not the bailee, to apply to the circuit court for the return of a firearm. §813.12(4m)(a)2
2. Expiration of the injunction does not automatically authorize the return of the firearm.
3. Voluntary dismissal of the injunction does not automatically authorize the return of the firearm.
4. Third party ownership is no exception to the requirement of surrender.
5. Application to return the firearm is to be made to the Sheriff's Department in the county in which the firearm was surrendered.
6. Receipt from the Sheriff's Department given to the respondent at the time of surrender is conclusive proof of ownership for the purposes of returning firearms. §813.12(4m)(am)3
7. If a firearm is returned while the restriction is in place, the person returning the firearm to the respondent **may be** subject to penalties under §941.29(4)

H. Return of Firearms Seized as Evidence or Voluntarily Surrendered for Safe Keeping

1. The investigating officer should complete the following research before

authorizing the identification unit to return a firearm and/or ammunition:

- a. Review the investigative report connected with the seizure or voluntary surrender of the firearm and/or ammunition to confirm that the firearm and/or ammunition is no longer needed for a criminal case.
- b. Complete a criminal history, National Crime Information Center (NCIC), and Interstate Identification Index (III) check to make sure that the person requesting the release of the firearm and/or ammunition is not prohibited by federal or state law from possessing the firearms.
- c. Check Circuit Court Access Program (CCAP) database records to determine if there are any criminal cases pending or findings that the person requesting the firearm has been adjudicated as not guilty due to reason of mental disease or defect in a criminal trial.
- d. Review the receipt provided by the person requesting the firearm and/or ammunition to establish proper ownership.
- e. Complete release form

I. Handling of Illegal Weapons.

1. Illegal weapon(s), or illegally modified weapon(s), (for example, weapons modified to fire fully auto or with serial numbers removed or altered) will not be returned to person(s) requesting to recover firearms without a court order and/or Federal and State licenses or permits to possess. The Alcohol, Tobacco and Firearms Bureau (ATFB) should be notified of such weapons and offered the opportunity to take custody and investigation of such weapons.

J. Probation, Extended Supervision and Deferred Prosecution Agreements

1. A respondent/defendant who is on probation and federally prohibited from possessing a firearm, on extended supervision, or under a deferred prosecution agreement will not be able to recover his/her firearms throughout the duration of the probationary or extended supervision period or the deferred prosecution agreement.

K. Third Party Recovery/New Ownership

1. In general, the legal owner will be the only person, absent a court order, that can recover firearms from the Department. If the legal owner is not able to recover the firearm, because he/she no longer wants it or because of legal prohibitions, he/she may transfer ownership with a court order. The third party must undergo the same background clearances as the owner prior to release. The third party shall be advised of the criminal liability that attaches

when a firearm is knowingly transferred to a prohibited person.
§813.12(4m)(c)

L. Reason for Denial for Prior Conviction

1. Return can be denied when the case in point has been adjudicated but the prohibited person has a prior conviction that disqualifies them. A letter of notice sent giving the prior owner 90 days notice will trigger disposal in the 90-day period.

M. When Firearms Can Be Returned

1. Individuals that have contacted the Department and indicated their intent to recover their property after receiving a court order authorizing the return, must forward a copy of the return order to the Department prior to the return. Weapons taken without an order but voluntarily surrendered for safekeeping may require a court order for return but in most cases will not.

N. Processing of the clearances

1. The general policy of the Department is that a firearm(s) will be returned after all legal reasons for not returning the firearm(s) have expired and the firearm(s) are no longer needed as evidence. Clearances can take up to a month. If the respondent provides a copy of a release or dismissal order, the respondent must also furnish the Department with a copy of his/her driver's license in advance to complete the records clearance check.
2. In cases where release is pursuant to a court order, such as mental health incidents where the Department has determined a court order is necessary, the failure to supply such an order copy will cause the refusal of release of any firearm(s) to the respondent until such time as a new appointment is made and the court order copy tendered. The order must be valid and signed by competent jurisdiction. In all cases, the tendered court order for release must name the specific person to whom the weapons will be released, the respondent to the original order, their legal representative or other person named by the court to receive the weapons.

David J. Walsh
Chief of Police

Date

FIREARMS STATEMENT

1. Does the suspect possess, own, or have access to firearms?

Type Of Firearm

- Yes Total firearms _____ **(List on page 2)** _____ Handgun(s) _____ Shotgun(s) _____ Rifle(s) _____ Other _____
- No
- Unknown

2. Where are the firearms located?

- Unknown _____
- Residence _____
- Vehicle _____
- Third Party _____
- Other _____

3. Has the suspect used, displayed, or threatened to use firearms in the past against you or others?

- Yes If yes, describe below: No

4. Firearm Used/Involved in current incident.

- Yes If Yes, Describe below: No N/A

Summary Of Firearms

Firearm Make and Model	Caliber	Serial Number	Firearm(s) Removed	Location If Firearm(s) Is Not Removed
			<input type="checkbox"/> Yes <input type="checkbox"/> No	
			<input type="checkbox"/> Yes <input type="checkbox"/> No	
			<input type="checkbox"/> Yes <input type="checkbox"/> No	
			<input type="checkbox"/> Yes <input type="checkbox"/> No	
			<input type="checkbox"/> Yes <input type="checkbox"/> No	
			<input type="checkbox"/> Yes <input type="checkbox"/> No	
			<input type="checkbox"/> Yes <input type="checkbox"/> No	
			<input type="checkbox"/> Yes <input type="checkbox"/> No	
			<input type="checkbox"/> Yes <input type="checkbox"/> No	
			<input type="checkbox"/> Yes <input type="checkbox"/> No	

February 5, 2020

INSTRUCTIONS TO TURN IN FIREARMS

Pursuant to a court order, you have been ordered to turn in any firearm(s) to the _____ County Sheriff's Office. **Follow these instructions:**

- (1) Contact the _____ County Sheriff's Office Property Management Unit at (999) 999-999 during normal business hours, Monday-Friday (8:00 am – 4:00pm). Inform the deputy that the court has ordered you to turn in your firearms to the Sheriff's Department and arrange a time to do this as soon as possible. **Have your court case number available – this number is printed on the court order.**
- (2) If staff are not available, leave a detailed message, including your name, phone number(s) and the court case number. You will be contacted to schedule an appointment. **If you have not received a call back within (1) business day you must call again to arrange for the surrender of your firearm(s).**
- (3) **You must have a copy of the court order with you to give to the _____ County Sheriff's Department when you turn in your firearm(s).**
- (4) When you arrive at the designated location to surrender your firearm (s) you must keep your "**unloaded**" firearm(s) locked inside your vehicle (trunk if possible). Upon contacting sheriff's department personnel, provide them with a copy of the order and inform them that your firearm(s) are inside the vehicle. The deputy will advise you on what to do for the removal of the firearm(s).
- (5) You must obtain a receipt from the Sheriff's Department to provide proof to the court that you have turned in your firearm(s). You must then provide this receipt to the court.

**YOU ARE RESPONSIBLE FOR COMPLYING WITH
THE CONDITIONS OF THE COURT ORDER IN
A TIMELY MANNER.**

COUNTY SHERIFF'S DEPARTMENT
Property Management Unit, Firearms Surrender
(999) 999-999

RETURN OF SURRENDERED WEAPONS

Your Police Case Number is: _____

The _____ Police Department's Property Management Unit's policy regarding the return of firearms is as follows:

Resolved Criminal Cases. In the case of resolved criminal cases, the _____ Department will release the firearm (s) to the owner if the owner is not legally prohibited from gun ownership, after the officer investigating the case has certified the firearm (s) is no longer needed as evidence in a future court action. ***Firearms used in the commission of a crime and any firearm that is illegal to possess will not be returned.***

After obtaining approval from the District Attorney's Office to dispose of the firearm (s), the officer will complete a release form and forward it to the Property Management Unit. The _____ Department will not release a firearm prior to receipt of this form. The weapon will not be released if a civil action to forfeit the weapon is being pursued.

Court Order to Surrender Firearms in a Civil or Criminal case. If a court issued an order to surrender the firearm(s) in a civil case, or in a pending criminal case, the _____ Department will return the firearm to the legal owner after the order has expired, unless another legal basis exists to withhold the firearm. The court that issued the original order to surrender the firearm(s) will be required to submit an order to the _____ Department authorizing the return of the firearm.

Court Order to Surrender Firearms after the issuance of a Temporary Protection Order or Court Injunction
The firearm(s) will be returned when an Order to Surrender Firearms, a Temporary Protection Order, a Protection Order, or another similar order issued in a civil or criminal case has expired or been dismissed. However, the expiration of an injunction or the voluntary dismissal of an injunction does not automatically authorize the return of the firearm(s). Once surrendered, a firearm (s) may not be returned except by application to the court. The burden is on the owner, not the bailee, to apply to the court for return. Application should be made in the county in which the person/agency to whom the firearm (s) was surrendered is located.

WHAT DOES THAT MEAN? Simply put, when everything is over in court and if you were not convicted of a crime that stops you from having a gun and there are no court orders on file that stop you from having a gun, you can get your gun back!

Call and advise the _____ Police Department that everything has been settled and the process to evaluate whether your firearm (s) can be returned will begin. This process can take up to 30 days or more. NOTE: If your case is being dismissed, a copy of the court's order of dismissal and a copy of your driver's license will speed up the process of evaluating whether or not your firearm (s) should be returned.

Suicide attempts or other mental health incidents. If the _____ Police Department obtained the firearm (s) after responding to an attempted suicide or other mental health complaints, the Department will not release the Firearm without a court order.

FIREARM RETURN FORM

To Whom It May Concern:

The purpose of this notice is to advise you of several federal and state laws that could affect you as you take possession of the firearms described in the “Firearms Description” below. The _____ Police Department wants you to make an informed decision as you take possession of, and become the legally responsible party for the(se) firearm(s) and/or ammunition.

There are several laws that regulate the transfer of firearms. In order for the _____ Department to comply with federal and state laws, we require a full criminal history check of each person who wishes to obtain possession of a firearm in our custody. This includes a person picking up his or her own firearm, a person picking up a firearm for the purpose of delivering the weapon to the owner and any person taking possession and ownership, at the request of the legal owner of a firearm that is temporarily being held by the _____ Department (called a third party transfer).

Federal Law

It shall be unlawful for you to possess, transport or ship a firearm (s) or ammunition if you answer “YES” to any of the questions below:

Initials		Question	Federal Law
Yes	No		
		Have you been convicted of a crime punishable by imprisonment for more than one year (felony)?	18 U.S.C. § 922(g) (1)
		Are you an alien illegally or unlawfully in United States or legal, non-immigrants who fail to meet specific exceptions?	18 U.S.C. § 922(g) (5)
		Are you a fugitive from justice?	18 U.S.C. § 922(g) (2)
		Are you an unlawful user of or addicted to controlled substance?	18 U.S.C. § 922(g) (3)
		Have you ever been adjudicated as mental defective or committed to mental institution?	18 U.S.C. § 922(g) (4)
		Were you dishonorably discharged from military?	18 U.S.C. § 922(g) (6)
		Have you ever renounced your U.S. citizenship?	18 U.S.C. § 922(g) (7)
		Are you currently subject to a qualifying protective order?	18 U.S.C. § 922(g) (8)
		Have you ever been convicted of a qualifying misdemeanor crime of domestic violence?	18 U.S.C. § 922(g) (9)
		Are you currently under federal indictment?	18 U.S.C. § 922(n)

My initials next to each question confirms my true and correct response.

Signature

(Date)

DOMESTIC VIOLENCE SUPPLEMENTARY REPORT

To be completed by investigating officer where there are charges laid and an occurrence report submitted.
Also to be attached to the Show Cause Report

Date of This Report _____ Time: _____ Occurrence # _____
 (yy / mm / dd) (24 hr. clock)

Date of Incident _____ Time: _____
 (yy / mm / dd) (24 hr. clock)

Investigating Officer: _____ Division/
 Detachment: _____

VICTIM : _____
 (Surname, First Name)(to include birth name)

Relationship to Accused Married Common-Law Separated (includes dating, common-law)
 (check all that apply) Child in Common Dating Divorced Same gender couple By Marriage

Condition of Victim at time of interview (duration of time passed since incident occurred: _____)
 Crying Angry Nervous Hysterical Upset Calm
 Drugs Alcohol Afraid Other / Specify: _____

Victim Vulnerability Immigration Status geographic/community isolation children language
 lack of access to telephone/other means of communication other considerations

Medical Treatment Not Required Refused Will Seek Own To Hospital by Ambulance Other
 Medical Release Signed YES NO Refused/Specify: _____

Describe all injuries _____
 (Include part of body injured and appearance, and date of observations)

Children Present YES NO AGES: _____ Violence Directly Assaulted Witnessed Heard
 CAS Notified YES NO Notified by: _____ Name of CAS Contact: _____

ACCUSED : _____ Telephone _____
 (Surname, First Name, alias if applicable)

Address _____
 Charge(s) Laid _____

Condition of Accused Drugs Alcohol Angry Threatening Apologetic Upset Nervous Crying Calm Other / Specify: _____

Medical Treatment Not Required Refused Will Seek Own To Hospital by Ambulance Other

Describe all injuries _____
 (Include part of body injured and appearance and date of observations)

HISTORY (ACCUSED)

CPIC checked: On File Not on File _____ Checked by: _____ Criminal Record NO YES (attach)
 810 Peace Bond
 Parole Probation
 Breach of Parole Certificate
 Conditional Sentence
 Other Current Court Orders
 Breach of any Court Orders

Local RMS checked: On File Not on File _____
 Bail release with FAC/PAL FAC/PAL Possesses Firearms, Storage location: _____
 conditions Refused/ Revoked Other weapons _____

Driver's License Vehicle access
 Outstanding Charges file attached: Name of Probation Officer and Probation and Parole Officer contacted (if applicable): _____
 Previous occurrences related to domestic violence: Yes No

Previous Incidents Reported To:	No. of Incidents	Brief Details (include date and nature of injuries)
<input type="checkbox"/> Regional Police Service		
<input type="checkbox"/> Municipal Police Service		
<input type="checkbox"/> OPP (including previous org. #)		
<input type="checkbox"/> Another Police Service		
<input type="checkbox"/> Victim Services		
<input type="checkbox"/> Hospital		
<input type="checkbox"/> Other Agency		
<input type="checkbox"/> Unreported		

EVIDENCE:

Statements: _____

A Guide to the Domestic Violence Supplementary Report Form

VICTIM: None Written Audio Video other corroborating evidence _____ KGB warned: YES NO

Children: None Written Audio Video

Caller: None Written Audio Video

Witness (es): None Written Audio Video

Police witness (es) None Written Audio Video

Accused: None Written Audio Video Utterance

Photographs:

Videotaping:

Scene _____ Scene _____ Tape No.: _____
 Relating to Victim: | at the time | 48 hrs later relating to Victim _____ Tape No.: _____
 Relating to Accused _____ Relating to Accused Tape No.: _____

Incident Information:

9-1-1- Call Non-Emergency Call None Tape Ordered: YES NO
 Caller: Victim Child (ren) Accused Other (specify) _____

Weapons: Involved in incident YES No Seized: YES No FAC/PAL seized YES No Ammunition Seized YES No

Type of Weapon: _____

Investigative follow-up required: Yes No Action Required: _____

Date Required by: _____

RISK FACTORS:

To be completed by the investigating officer. Where there are multiple choices circle all that apply!

	YES	NO	U/K
a) Does the victim fear that the accused will continue the assaults, seriously injure or kill her/him or the children?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Has there been a recent escalation in frequency or severity of assaults/threats against the victim?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Has there been a recent separation or change in the relationship between the victim and the accused?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Has there been a recent change in the contact between the children and the accused?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Has the accused experienced any unusually high stress recently, e.g. financial, loss of job, health problem?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Does the accused have any known mental health problems, or exhibits a loss of touch with reality or bizarre behavior?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g) Has the accused ever demonstrated jealousy or obsessive behavior towards the victim and/or previous partner?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h) Has the accused demonstrated any stalking behavior towards (a) the victim? (b) Family? or (c) any other person? (e.g. harassing phone calls, watching, threatened or has destroyed the victim's personal property, sending unwanted letters, following/contacting through third party, frequenting workplace etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i) Does the accused abuse drugs and/or alcohol?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
j) Has there been a noticeable increase in the abuse of drugs and/or alcohol?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
k) Is the accused more angry or violent when using drugs and/or alcohol?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
l) Has the accused ever sexually abused the victim and/or a previous partner?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
m) Has the accused threatened/attempted suicide?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
n) Has the accused threatened to harm/kill the victim or any other family members/acquaintances?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
o) Has the accused threatened to or destroyed any of the victim's personal property?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
p) Has the accused injured or killed a pet owned by the victim?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
q) Does the accuser's personality feature anger, impulsiveness or poor behavior control?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
r) Does the accused own/have access to firearms or weapons including a license for the firearm?			
s) Has the accused used or threatened the use of firearms or weapons against the victim/children or any other person?			

ADDITIONAL INFORMATION:

Offered to Contact VSA	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Did Victim Accept Offer	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Place of Safety provided/Women's Shelter	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Third Party Contact Available	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Information on safety planning provided	<input type="checkbox"/> Yes	<input type="checkbox"/> No			

REPORT COMPLETED BY:

_____ (please print)

CHECKED BY SUPERVISOR:

_____ (please print)


Date of Completion: _____

(Rank, Badge #) _____

Date: _____

(Rank, Badge #) _____

FOLLOW-UP/BAIL CONDITIONS:

Inver Grove Heights Police Policy Manual		Subject: Prohibited Possession of Firearms for Domestic Violence and Restraining Orders		
Effective: August 1, 2018	Policy Number: 18-05.01	Replaced Policy Number:	Page: 1	

Contents

- | | |
|---|---|
| I. Policy | V. Firearms Storage Intake/Release Fees |
| II. Definitions | VI. Immediate Possession of Firearms - Imminent Risk Involved |
| III. Court Ordered Firearms Surrendering | VII. Out of Jurisdiction Compliance |
| IV. Intake Procedure for Surrendered Firearms | VIII. Return, Abandonment or Forfeiture of Firearms |

I. POLICY:

The Inver Grove Heights Police Department’s shall except all firearms from those parties required by the courts surrender their firearms. This is done to protect the victim and shall communicate the philosophy that domestic abuse is criminal behavior.

II. DEFINITIONS:

Authorized Recipients of the Firearms: Defendants may choose to whom they surrender their firearms. The statute allows the transfer to a local law enforcement agency, a federally licensed authorized dealer, or a third party who does not reside with the abusing party/defendant.

Domestic Abuse Convictions and Firearms: When persons are convicted of Domestic Assault under MN Statute 609.2242 or any other assault against a family or household member (includes Assault 1, Assault 2, Assault 3, Assault 5, Domestic Assault Strangulation) or are convicted of Stalking under MN Statute 609.748, the court must order them to transfer any firearms they possess to a federally licensed firearms dealer, a law enforcement agency or a third party who may lawfully receive them. The transfer must occur within three business days unless the court finds the defendant is an imminent risk of causing substantial bodily harm to another, in which case the court must order the local law enforcement agency to take immediate possession.

Domestic Violence Restraining Orders: Provisions in Minnesota statutes require the court when issuing restraining orders under MN Statute 260C.201 (Domestic Child Abuse) or MN Statute 518B.01 (Order for Protection) to order the restrained person to surrender firearms and permits to carry or purchase firearms if the court finds the restrained party represents a credible threat to the physical safety of the protected party. An order granting relief that was issued after a hearing of which the abusing party received actual notice and which the abusing party had the opportunity to participate, shall prohibit the abusing party from possessing firearms for the length the order is in

Effective: August 1, 2018	Subject: Prohibited Possession of Firearms for Domestic Violence and Restraining Orders	Page: 24
----------------------------------	---	-----------------



effect. The order shall direct the abusing party to transfer any firearms that the person possesses to a federally licensed firearms dealer, a law enforcement agency or a third party who may lawfully receive them.

Firearm: The Federal definition of firearm is any weapon (including a starter gun) which will expel a projectile; by means of an explosive or is designed or may be readily converted to do so. MN Statute 97A.015, Subd. 19 defines a firearm as a gun that discharges shot or a projectile by means of an explosive, a gas, or compressed air. Some Minnesota courts have ruled that, under this definition, rifles, shotguns, handguns (both pistols and revolvers), muzzleloaders and BB guns are firearms. However, paintball guns are not considered firearms.

Reasonable Storage Fee: Actual expenses the city incurs for storage of firearms to include the cost of storage space and staff time to process related paperwork. The storage fee will not exceed the value of the firearm.

Transfers: Within three business days, Defendants must transfer their firearms permanently or temporarily depending on the court order. If the court determines there is an imminent risk, the Department will be ordered to take immediate possession of the firearms.

III. COURT ORDERED FIREARMS SURRENDERING:

- A. Courts are required to issue orders to domestic child abusers, domestic abusers, persons convicted of domestic assault and persons convicted of stalking, to surrender their firearms to a law enforcement agency, a federally licensed firearms dealer or a third party.
- B. The authority for this policy is established by the following MN Statutes;
 - 1. 260C.201 - Domestic Child Abuse
 - 2. 518B.01 - Order for Protection
 - 3. 609.2242 - Domestic Assault
 - 4. 609.749 - Stalking
 - 5. 624.713 - Certain Persons Not to Possess Firearms

IV. INTAKE PROCEDURE FOR SURRENDERED FIREARMS:

- A. A copy of the court order is required before accepting the transfer of firearms.
- B. The court ordered the party/respondent must arrange for the transfer within three business days.
- C. The Department shall accept firearms in every situation. All decisions to reject must be approved by a supervisor. Factors to consider might be;
 - 1. The proper jurisdiction for any underlying criminal prosecutions

Effective: August 1, 2018	Subject: Prohibited Possession of Firearms for Domestic Violence and Restraining Orders	Page: 25
----------------------------------	---	-----------------



2. The county of residence for the petitioner and/or respondent.
- D. The Department may charge a reasonable storage fee for firearms held under the provisions of this policy, see section V “Firearms Storage Intake/Release Fees.”
- E. Surrendered firearms will be received by an officer, by appointment, during regular business hours or at other times at the discretion of the Department.
- F. The court ordered party/respondent surrendering weapons will be directed to not bring firearms into the department until they receive the following instructions on the proper procedure for the safe surrender of weapons.
 1. The firearms must be completely contained in gun cases made expressly for that purpose.
 2. The cases must be zipped, buckled, tied or otherwise fastened, with no portion of the firearm exposed.
 3. All firearms must be unloaded. This means having no shell or cartridge in the chamber of the firearm or any magazine attached to the firearms.
 4. Caps must be removed from a percussion muzzle loading firearms or have the flash pan cleaned of powder from a flint locked muzzle loading firearm.
- G. The receiving officer shall complete the Surrendered Firearms Receipt form ensuring the following information is included as required by the Court:
 1. Whether the firearms are to be temporarily or permanently transferred;
 2. The name of the court ordered party/respondent;
 3. Date of the transfer to the department;
 4. Serial number of all surrendered firearms;
 5. Make of all surrendered firearms;
 6. Model of all surrendered firearms;
 7. Brief description and condition of the firearms.
- H. Once completed, a copy of the Surrendered Firearms Receipt form is given to the court ordered party/respondent to file with the Court.
- I. The receiving officer shall prepare a report documenting the surrendering of the firearms along with the completed forms.
 1. If the surrendering of the firearms is related to a Department incident, a supplemental report shall be completed.
 2. If the surrendering of the firearms is not related to a Department incident than an incident report shall be completed.
- J. The receiving officer will verify the weapon is safe, secure and package the firearms under Evidence Intake guidelines and protocols. No ammunition will be accepted.

Effective: August 1, 2018	Subject: Prohibited Possession of Firearms for Domestic Violence and Restraining Orders	Page: 26
----------------------------------	---	-----------------



- K. Property Room personnel will store the surrendered firearms under Evidence Intake guidelines and protocols.
- L. Accepting the surrendered firearms gives the department the lawful authority to possess the firearms; it does not transfer ownership or title to the department.
- M. All staff will use due care to preserve the quality and function of the transferred firearms.

V. FIREARMS STORAGE INTAKE/RELEASE FEES:

- A. The Department shall set a nominal fee for the storage and processing of firearms surrendered and released from police custody.
- B. The fee shall be established by resolution of the Inver Grove Heights City Council.
- C. The Department will only release the firearms after the intake /release fee have been paid.
- D. In the interest of community safety, the Chief of Police or designee shall have the authority to waive firearm surrender and release fees.

VI. IMMEDIATE POSSESSION OF FIREARMS - IMMINENT RISK INVOLVED:

- A. The court may order the department to take immediate possession of a court-ordered party/respondent firearms.
- B. An officer or investigator will be assigned the case and will create a case or tracking number. Only a licensed officer may accept surrendered firearms from a court-ordered party/respondent.
- C. Due to the risks of firearms being delivered to the department or seized from private residences, the assigned officer or investigator will give due consideration to the variety of safety concerns. The assigned officer or investigator should initiate contact with the court ordered party/respondent, arranging for the safest means of firearms surrender.
- D. The difficulties in knowing with certainty the full extent of the court ordered party/respondent's firearm inventory are acknowledged. The assigned officer or investigator will attempt to insure the court ordered party/respondent complies with the Order. If the court ordered party/respondent refuses to comply with the order every effort, including a consent search or possibly seeking a search warrant, will be initiated to ensure the court order is carried out.
- E. Within three business days of the court ordering the immediate transfer of the firearms, the court ordered party/respondent may request the transfer of their firearms from the department to a federally licensed firearms dealer or a third party, who may lawfully receive them.
 - 1. An officer or investigator will facilitate the transfer.

Effective: August 1, 2018	Subject: Prohibited Possession of Firearms for Domestic Violence and Restraining Orders	Page: 27
----------------------------------	---	-----------------



2. Before transfer, the officer will require the federally licensed firearm dealer or third party who may lawfully receive them, to complete a Minnesota Uniform Firearm Application/Receipt Permit to Purchase/Transfer.
3. Once the application is completed, the department has two business days to file the completed application to purchase/transfer with the respective courts.

VII. OUT OF JURISDICTION COMPLIANCE:

- A. Notwithstanding a court order to the contrary, the Department is responsible for the enforcement of firearm surrender orders when the court ordered party/respondent resides in the Department’s jurisdiction.
- B. The assigned officer or investigator tasked with enforcement of a surrender order, when learning the firearms is in another jurisdiction, will share that information with the pertinent law enforcement agency to aid in the order’s enforcement.
- C. The assigned officer or investigator asked to assist another law enforcement agency with the enforcement of a firearm surrender order shall provide reasonable assistance to help aid the order’s enforcement.

VIII. RETURN, ABANDONMENT OR FORFEITURE OF FIREARMS:

- A. Upon receipt of a court order, the department will return the surrendered firearms to the court ordered party/respondent so long as the court ordered party/respondent is not otherwise prohibited from possessing firearms under State or Federal law.
- B. The assigned officer or investigator will facilitate the release of the firearms pursuant to the court order, complying with State and Federal law and department protocol. The assigned officer or investigator shall complete the Surrendered Firearms Release Receipt form.
- C. On requests to transfer to a third party, the assigned officer or investigator will conduct a record check to ensure the third party is eligible to receive the firearms.
- D. The assigned officer or investigator will have the court ordered party/respondent inspect the firearms before returning and have the court ordered party/respondent acknowledge the firearms are in the same condition as when turned in, except for reasonable wear and tear including the deterioration of firearms that may occur during prolonged storage periods.
- E. If a temporarily transferred firearm is abandoned, the department will notify the court ordered party/respondent via certified U.S. mail before the disposal of the abandoned firearms pursuant to department protocol.
- F. If the court order indicates that the firearms transfer is permanent, the firearms will not be returned to the court ordered party/respondent and will be disposed of pursuant to forfeiture and/or department protocol.

DOMESTIC VIOLENCE PROTOCOL MANUAL



**BILL MONTGOMERY
MARICOPA COUNTY ATTORNEY
REVISED 2015**

5. Repetitive Misdemeanor Offenders

Defendants who repeatedly commit the same misdemeanor offense within a two-year period may be eligible for sentencing as a felony offender. Detectives should contact a Family Violence DCA to staff a case if the Detective has a case that may warrant felony prosecution.

- “A person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of any misdemeanor or petty offense, other than a traffic offense, and who has been convicted of one or more of the same misdemeanors or petty offenses within two years next preceding the date of the present offense shall be sentenced for the next higher class of offense than that for which such person currently stands convicted.” A.R.S. § 13-707(B)

6. Domestic Violence in the Workplace

A domestic violence call originating from a workplace will require additional considerations.

See the Domestic Violence in the Workplace section of the Protocol for additional information.

7. Medical Treatment

Officers should document any medical attention that is provided at the scene and whether or not hospitalization was required. Unless a detective assumes the investigation, the officer should:

- ◆ Obtain authorization for release of medical records from the victim, if hospital follow-up is required;
- ◆ Document extent of injury and treatment, if known; and
- ◆ Obtain names, addresses, and phone numbers of fire, ambulance, or paramedic personnel treating the victim.

See the Medical Response section of the Protocol for additional information.

Domestic Violence Firearm Seizures

A.R.S. § 13-3601(C)&(D) allows police officers to:

1. Question persons present at domestic violence incidents to determine if a firearm is present on the premises.
2. Temporarily seize the firearm, upon learning or observing that one is present, if it is in plain view, or if it was found pursuant to a consent search.

- The officer must reasonably believe that the firearm would expose the victim or another person in the household to a risk of serious bodily injury or death.
 - The officer must document the reasons for seizing the firearm in the report.
3. Seize firearms owned or possessed by the victim if there is probable cause to believe that both parties independently have committed an act of domestic violence.
 4. Impound a seized weapon.
 - Impounded weapons must be held for a minimum of 72 hours. There is no maximum time limit.
 - Weapons seized per A.R.S. § 13-3601 (E), require the victim is to be notified by law enforcement before the firearm is released from temporary custody.

If the defendant and victim are residing together, either may give consent to search areas of the residence to which they have access. However, if one of the parties is present and refuses the search, the residence may not be searched without a search warrant.

If the officer concludes that there is not probable cause to arrest either party, consideration should be given to having the parties consent to having any firearms impounded for safekeeping.

Written Reports

An officer responding to any call covered in this protocol must complete a domestic violence report. Thorough documentation provides the basis for successful prosecution of the case.

Officers should include the following information in their report:

1. Elements of the offense
 - Document each element of the crime in the report. Be specific with names, what occurred, and who witnessed the incident.
2. Injury
 - Document in detail any injuries that the victim or suspect sustained. The preferred method for this to be accomplished is to have photographed the injuries.
3. Addresses
 - Ensure that the names and personal information of all victims and witnesses are documented.

4. If a victim has asserted his or her victims' rights, the prosecutor or victim services advocate must make all reasonable efforts to speak with the victim about the disposition of the case before conveying a plea offer to the defendant.
 - The prosecutor shall consider the views of the victim when deciding how to proceed with the case and whether to dispose of it by plea agreement or diversion.
 - According to A.R.S. § 13-4419, the prosecutor alone decides how to proceed after conferring with the victim.

It is the policy of the Maricopa County Attorney's Office to make a reasonable effort to consult with the victim regarding plea agreements, even if the victim has not opted in for victims' rights.

Weapon Seizures in Prosecution

The police may be authorized to seize a firearm while at the scene of a domestic violence call. After this seizure occurs, the prosecutor is required to make a determination of the necessity of retaining the firearm. See A.R.S. §. 13-3601 (C) (D) (E).

1. The officer should document any firearms seized at the scene pursuant to A.R.S. § 13-3601 (D) in addition to notifying the prosecutor's office pursuant to A.R.S. § 13-3601 (F). A required form outlines the following details:
 - the owner's and/or possessor's name, date of birth, and address;
 - a description of the firearm; and
 - a written incident narrative.
2. Upon notice, the prosecutor will decide whether to retain the firearm. If the decision is made to retain the firearm, notification is sent to the police agency, the court is notified, and a certified letter is sent to the owner or possessor. A.R.S. § 13-3601 (F).
3. If the owner of the firearm requests a hearing, the court immediately notifies the prosecutor of the request. The prosecutor provides notices to substantiate the grounds for retention of the firearm.

Note: Federal law (18 U.S.C. § 922) prohibits the release of firearms to persons under a Protective Order or convicted of a domestic violence crime.

Marin County, CA DV Protocol

REPORTING REQUIREMENTS

A report shall be written on all incidents of domestic violence. This is the intent of the California Legislature. (Pen. Code §13730.)

1. The report shall be identified as a domestic violence incident report.
2. The report shall note whether the officer or officers who responded to the call found it necessary to inquire of the victim, the alleged abuser, or both, whether a firearm or deadly weapon was present at the location. If there was such an inquiry, the report should indicate whether the inquiry disclosed the presence of a firearm or other deadly weapon. Any firearm or deadly weapon discovered by an officer at the scene shall be subject to confiscation pursuant to Penal Code Section 12028.5. (Pen. Code §13730(c)(3).)
3. The report shall identify whether the officer or officers who responded to the call observed any signs that the alleged abuser was under the influence of alcohol or a controlled substance. (Pen. Code §13730(c)(1).)
4. The report shall document whether a child resides in the residence where the domestic violence incident occurred. This shall include the name and date of birth of the child.
5. The report shall note whether any law enforcement agency has previously responded to a domestic violence incident at the same address involving the same parties. (Pen. Code §13730(c)(2).)
6. After determining if either party acted in lawful self-defense, the investigating officer must make reasonable efforts to identify the dominant aggressor. In identifying the dominant aggressor, an officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved. (*See Appendix 2.*) (Pen. Code §13701(b).)
7. The victim of domestic violence shall be provided the incident report case number at the scene, when possible, or at a later date. (Pen. Code §13701(c)(8).)

COMMON CHARGES

A situation involving domestic violence may result in, but is not limited to, a violation of one or more of the following sections of the Penal Code and Health and Safety Code:

- 136.1 PC - Intimidating or dissuading a witness
- 148 PC - Resisting arrest
- 166.4 PC - Criminal contempt
- 166(a)(4) PC - Willful disobedience of the terms of any lawfully issued, out-of-state court order, including orders pending trial.
- 166(d)(1) PC - A person who owns, possesses, purchases, or receives a firearm knowing he/she is prohibited from doing so under a protective order under Penal Code Section 136.2, Code of Civil Procedure Sections 527.6, 527.8, or Family Code Section 6218, can be charged with a felony or misdemeanor.
- 187PC -Murder
- 203 PC -Mayhem
- 207PC - Kidnapping
- 236PC - False imprisonment
- 240PC -Assault
- 242PC - Battery
- 243(d) PC - Battery with serious bodily injury
- 243(e) PC - Battery against a spouse, cohabitant, or person who is a parent of defendant's child, or former spouse, fiancé/fiancée, or former fiancé/fiancée or person with whom the defendant currently has, or has previously had a dating relationship.
- 243.25 PC - Battery of an elder or dependent adult, with knowledge that the victim is an elder or dependent adult
- 245PC - Assault with a deadly weapon or by means of force likely to produce great bodily injury
- 246PC - Shooting at an inhabited dwelling
- 261.5 PC - Unlawful sexual intercourse
- 262PC - Spousal rape
- 270.6 PC - Leaving California with the intent to avoid paying spousal support, after having notice that a court has made a temporary or permanent order awarding such support.
- 273aPC - Child endangerment
- 273dPC - Willful infliction of corporal injury to child

- 273.5 PC - Willful infliction of corporal injury (domestic violence) against spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child.
- 273.6 PC - Violation of a protective order
- 2716(g)(l) PC - same language as Penal Code Section 166(d)(l). Cross-reference to Penal Code Section 12021(g).
- 417(a)(l) PC - Brandishing a weapon
- 418PC - Forcible entry into the home of another
- 422PC - Criminal threats
- 459PC - Residential burglary
- 591 PC - Malicious destruction of a telephone
- 591.5 PC - Unlawful removal, damage of wireless communication device, or obstructing use of such device to summon law enforcement
- 594(b) PC - Vandalism
- 597PC - Cruelty to animals (implication is that the victim will suffer the same fate)
- 602.5 PC - Trespassing
- 603PC - Forcible entry with damage to property
- 646.9 PC - Stalking
- 647(f) PC - Public drunkenness
- 11550 HS - Being under the influence of drugs
- 653m(a) PC - Obscene or threatening phone calls or electronic contacts
- 653m(b) PC - Making repeated, annoying telephone calls or electronic contacts.
- 653m(e) PC - 653m (a) and (b) are violated when a person knowingly permits any telephone or electronic communication under that person's control to be used for purposes prohibited by these subdivisions.
- 653.2 PC Electronically distributing, publishing, e-mailing, or making available for download, personal identifying information of an electronic message or images of a harassing nature, about another person, with the intent to place the person in reasonable fear for his or her safety, or his or her immediate family's safety and for the purpose of imminently causing the person unwanted physical contact, injury or harassment by a third party.
- Various Sections - Possession of a dangerous weapon. For example, see Penal Code Sections 22210, 24310, and 33220.
- 29825(a) PC - Purchasing or receiving a firearm while subject to a domestic violence protective order (EPOs, TROs, orders after hearing or 136.2 orders) which contains notice of prohibiting the purchase of or receiving of a firearm.

- 29825(b) PC - Owning or possessing a firearm while subject to a domestic violence protective order, which includes a prohibition from possessing or owning a firearm, who was personally served with or was present in court when the order was made and actual notice of the prohibition was given.
- 25400 PC ◦ Possession of a concealed firearm
- 25850 PC - Possession of a loaded firearm
- 25900 PC
- 664PC - Attempting any of the above

6. An officer shall make no statements or comments about the surrounding circumstances of the incident or the victim that would tend to belittle a victim or which would tend to discourage a victim from reporting an act of domestic violence or requesting a citizen's arrest.

A peace officer who accepts a private person's arrest is immune from civil liability for false arrest or false imprisonment when (1) at the time of the arrest, the officer had reasonable cause to believe that the arrest was lawful (Pen. Code §836, misdemeanor domestic violence, or Pen. Code §836.5, misdemeanor elder abuse); (2) the arrest was made pursuant to Penal Code Section 142, i.e., a victim or witness demanded that the officer receive a private person's arrest; or (3) the arrest was made pursuant to a charge, upon reasonable cause, of the commission of a felony by the person to be arrested. (Pen. Code §847.)

7. Pursuant to Penal Code Section 13730, an officer responding to an incident of domestic violence shall prepare a domestic violence incident report irrespective of the wishes of the victim or the presence or absence of the suspect.
8. An officer at the scene of a domestic violence incident involving a threat to human life or a physical assault, shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or other lawful search as necessary for the protection of the peace officer or other persons present. When such weapons are taken into custody, the officer must review Penal Code Sections 12028.5, and 12028.7, to ensure that the statutorily mandated procedures are followed.

C. INVESTIGATION OF DOMESTIC VIOLENCE CASES

1. Upon arrival at a domestic violence related incident, the officer's first duty should be to provide for the safety of the officers and parties involved. Officers arriving at a domestic violence scene should conduct a thorough and diligent investigation, including determining the dominant aggressor, and submit reports of all incidents of domestic violence and all crimes related to domestic violence. (Pen. Code §13700, et seq.) If the incident occurred in another jurisdiction, the officer should contact that jurisdiction to determine which agency will investigate the incident.

The Marin County policy is PRO-ARREST in order to break the cycle of violence and to deter future abuse. *(See Appendix 1 for a brief overview of the pattern of abuse.)* At times, there are situations in which both parties have been violent toward one another. It will be necessary determining issues of self-defense and determining who is the dominant aggressor. The dominant aggressor is the person most likely to inflict injury and the person least likely to be afraid. In identifying the dominant aggressor, the officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse, whether or not threats were made. It also will be necessary to look at criminal history and history of abuse, both documented and undocumented (check other jurisdictions), to make this determination. It is critical to interview all potential witnesses, including children and neighbors. Avoid mutual arrests if at all possible. Be sure that self- defense is absolutely not an issue. *(See Appendix 2.)*

When investigating an incident of domestic violence, do not overlook the welfare of children. If a child resides in a home where a domestic violence incident occurs, this fact must be documented in your report and a copy sent to Child Protective Services. If such a child witness(es) is present during a domestic violence incident, you must also determine if the child is in danger and, if necessary, remove the child from the home.

2. The following steps should be included in an officer's investigation and subsequent report:
 - a. Officer Safety
 - i. Exercise reasonable care for the safety of officers and parties involved.
 - b. Arrival At Scene
 - i. Determine location and condition of victim, suspect, children, and pets.
 - ii. Determine if any weapon is involved or in the home. Confiscate and collect as evidence any weapons or firearms used in the incident. If the incident involves any threat to human life or physical assault, officers shall take temporary custody of any firearm or deadly weapon in plain sight or pursuant to a consensual or other lawful search. If unable to book the weapon (other than firearms) due to size or other circumstances, photograph the weapon.

- xv. The officer shall not advise victims of domestic violence that they can "press" charges or "drop" charges. The decision to prosecute is made by the District Attorney. The victim and suspect will be advised that once a crime report is taken he/she has no control over the decision to prosecute.

- xvi. Arrests should be made pursuant to Penal Code Section 836 under the following circumstances: for any felony crime, including Penal Code Section 273.5; for a misdemeanor Penal Code Section 243(e)(1), when the assault or battery (without injury) was upon spouse, former spouse, cohabitant, former cohabitant, fiancée, parent of his or her child, or a person with whom the suspect has had or is having an engagement relationship or a current or prior dating relationship, pursuant to Penal Code Section 836(d). An arrest shall be made for violations of Penal Code Section 273.6(a) per Penal Code Section 13701(b).

- xvii. Advise the victim of right to private person's arrest in misdemeanor cases for which there is no exception under Penal Code Section 836.

- xviii. Ask the following risk assessment questions of every victim. Include responses in the written report. Asking a minimum of three risk questions at the scene will frequently result in information accessible to prosecutors, defense attorneys, probation, and the court, even when the victim cannot be reached before the first appearance.
 - e Do you think he/she will seriously injure you or your children? Why do you think so or think not?
 - o Does he or she own or have access to guns?
 - o Describe incident when you were most battered or afraid?
 - o What is the frequency of the violence and is it changing?
 - o Has he or she ever forced you to perform sexual acts under the threat of violence?
 - o How frequently and seriously does he or she intimidate, threaten, or assault you?
 - o Describe the most frightening event/worst incidence of violence involving him or her.

- Do you have concerns about or is there any history of victim/witness intimidation?

d. Identifying and Responding to Strangulation Cases

Effective 2012, the definition of "traumatic condition" in Penal Code Section 273.5 has been amended to include a definition of strangulation that is defined as the perpetrator obstructing the normal breathing or circulation of the blood of a person by applying pressure on the throat or neck. This amendment recognizes the long known medical evidence that strangulation is a serious crime and a marker of risk to the victim. Previous strangulation increases the risk for lethal assaults. Only four pounds of pressure for ten seconds can cause unconsciousness and death can result in as little as one or two minutes, depending on the pressure applied. Injuries are often not immediately evident. Strangulation may lead to death up to 30 hours after an incident.

Initial Symptoms:

- Breathing Changes -- Difficulty breathing; hyperventilation; unable to breath
- Voice Changes -- Raspy, hoarse voice; coughing; unable to speak
- Swallowing Changes -- Trouble swallowing; painful to swallow; neck pain; nausea; vomiting
- Behavioral Changes -- Agitation; amnesia; PTSD, hallucinations; combativeness
- Eye Changes -- Ruptured capillaries in the eyes, under the eyelids, on the face or on the neck
- Other Symptoms -- Dizzy; headaches; fainted; urination; defecation

Responding to Strangulation:

- Seek emergency medical assistance at the scene
- Make self-defense and dominant aggressor determination
- Flag the case for prompt follow-up

f. If Suspect Taken Into Custody

1. Record spontaneous statements.
11. Prevent communications between suspect and victim/witnesses/children.
- iii. Record alibi statements.
- iv. Advise suspect of rights.
- v. Obtain waiver.
- vi. Obtain statements.
- vii. Request that the jail block the suspect's ability to telephone the victim.
- viii. Request the jail, or the arresting agency, to notify the victim if the suspect is to be released.
- ix. Obtain bail enhancement if necessary and appropriate. *(See Appendix 4.)*

g. Evidence, Firearms, and Other Deadly Weapons

- i. If possible, audio or video record statements.
- ii. If possible, have victim and suspect complete a written statement.
- iii. Ensure that victim's/suspect's injuries are photographed on the day of the incident and several days thereafter. Make sure to photograph their faces for identification purposes.
- iv. Photograph crime scene.
- v. Note condition of crime scene (disarray of physical surroundings).

vi. Identify, impound and/or photograph weapons/firearms and other evidence. (Pen. Code §12028.5.) For example, if the victim states the defendant wrapped the phone cord around her neck, seize the cord as evidence. If the victim points out property damaged by the suspect, seize it if possible.

vu. Firearms and Other Deadly Weapons

⦿ Seize any firearm, ammunition, or other deadly weapon located in plain sight, discovered pursuant to a consensual search or other lawful search, as necessary for protection of officers or other persons present. (Pen. Code §12028.5(b).)

⦿ If necessary, for the protection of officers or other persons present, inquire of the victim, alleged abuser, or both, whether a firearm, ammunition, or other deadly weapon is present at the location. If that inquiry discloses a firearm or other deadly weapon, confiscate the weapon pursuant to Penal Code Section 12028.5. Note this in the incident report. (Pen. Code §13730.)

e If an EPO is issued, request the immediate surrender of firearms once the perpetrator is served. (Fam. Code §6389.)

⦿ Check in the Consolidated Firearms System (CFS) and Prohibited Armed Persons (PAP) file to determine if firearms are registered to any involved person or if any involved person is prohibited from owning firearms.

⦿ Seize any firearms possessed by convicted felons in violation of Penal Code Section 12021(a), or people with certain misdemeanor convictions, as specified in Penal Code Section 12021(c).

- e If a firearm is confiscated, issue a receipt to the owner describing the firearm and listing the serial number or other known identifier. Explain that the weapon will be returned within five business days after the owner or possessor demonstrates compliance with Penal Code Section 12021.3 (must apply to the State Department of Justice for a determination of whether he or she is eligible to possess a firearm). If the weapon is seized as evidence of a crime or the owner of a firearm is subsequently prohibited from possession by a restraining order, the firearm will not be returned (Pen. Code §12028.5). If the person does not file the receipt with the court within 48 hours after being served with the protective order, it is a violation of the protective order.
- o A search warrant for the suspect or his real or personal property may be obtained if the suspect owns a or is in possession of or has custody or control of a firearm and there is a prohibition regarding firearms pursuant to Family Code Sections 6389 or 6218 and the suspect has been lawfully served with the order. (Pen. Code §1524(a)(11).)

vm Preserve as evidence the 9-1-1 dispatch tape(s) regarding this incident. (Note request in report.)

1x. Upon request send 9-1-1 tape and all photos to District Attorney's Office.

h. Medical Treatment

1. Arrange transportation of victim and children to hospital for medical treatment, if necessary, or stand by until victim and children can safely leave.

n. Obtain a medical records release signed by the victim at the scene. (*See Appendix 5 for example waiver.*)

iii. Send waiver signed by victim to medical facility as soon as possible and obtain copy of records for report including doctor's name, address, and phone number.

1v. Document complaints of injuries.

- v. Obtain names, addresses, and phone numbers of ambulance or paramedic personnel treating the victim.

1. Confidentiality

- 1. Penal Code Section 293 regarding sexual assault crimes and Government Code Section 6254(±)(2) requires the ADDRESS OF THE VICTIM be deleted from crime reports for the crimes listed below. Further, these sections require DELETING THE NAME OF THE VICTIM from the crime report at the victim's request. If so requested, you should not refer to the victim by name, but rather Jane or John Doe, or victim, and submit a separate document (*see Appendix 6 for example waiver*) with the private information to the District Attorney, in a sealed envelope, when the case is submitted for review. This is applicable to the following crimes:

Sexual Assault Penal Code Sections:

261,261.5, 262,264,264.1, 286,288, 288a, or 289

Violence Penal Code Sections:

273a, 273d, 273.5, 422.6, 422.7, 422.75, or 646.9

* Note: 243(e)(1) PC and 273.6 PC do not apply to 293 PC.

- ii. Advise victim of confidentiality if arrest is made for 273.5 PC, 646.9 PC, or other stated offense.
- iii. Ask if the victim wishes to have confidentiality. If so, prepare report as stated above.

j. Completing Crime Report

- i. Maintain objectivity in reporting. Avoid personal opinions regarding comments from victim/suspect.
- ii. Ensure that elements of all involved crimes are included in the report and document:
 - Any injuries victim and suspect have sustained. Documentation should include a description in the police report, as well as photographs and medical reports, if medical treatment was obtained.
 - That victim received the Domestic Violence Resource Card per Penal Code Section 13701(c)(9)(H)(i) and paragraph vii. below.
 - Past history of violence and check for existence of a restraining order.
 - Prior domestic violence incidents at that address involving the alleged abuser or victim.
 - Statements of victim, suspect, and all witnesses, including children.
 - Physical evidence obtained.

- Probation/parole status.
 - Whether alcohol, illegal drugs, or prescription drugs were involved by the abuser or victim.
 - Names, ages and relationship of children who were present and/or residing in the home at the time the offense occurred or who were not present but reside in the home.
 - Names, addresses and ages of children present in the home at the time of the incident, who may not be related to the victim and/or suspect. Include information on their whereabouts after the incident.
 - If any pets were threatened, harmed, or there is evidence of animal abuse.
 - Whether the officer found it necessary, for the protection of the officer or other persons present, to inquire of the victim, abuser, or both, whether a firearm or other deadly weapon was present at the location. (Pen. Code §13730.)
- iii. If the parties do not speak English, please note what language they do speak for the benefit of other staff attempting to contact them. *Use objective interpreters (someone who is not a family member or a percipient witness) to obtain statements and/or audio-recorded statements.*
- iv. If a valid restraining order prohibits firearms and ammunition possession, or ownership by a person involved in the incident, the officer shall make record in the crime or incident report of:
- Inquiries made to determine if the restrained person possesses any firearms or ammunition;
 - The results of efforts made to locate and seize any unlawfully possessed firearms and ammunition.

e A statement informing the victim of the right to file a civil suit for losses suffered as a result of the abuse, consistent with Penal Code Section 13701(c)(9)(G).

* A "Victims of Domestic Violence" card, which shall include Penal Code Section 13701(c)(9)(H). *(See Appendix 3.)*

⦿ The names and phone numbers for local shelters, victimhotlines, and counseling centers.

e A simple statement on the proper procedures for a victim to follow after a sexual assault.

e A statement that sexual assault by a person who is known to the victim is a crime.

e A statement that domestic violence or assault by a person who is known to the victim is a crime.

⦿ The Attorney General's card on Marcy's Law Rights (Calif. Const., art. I, §28(b)(17)). *(See Appendix 9.)*

v111. Document past history of violence (include report number(s)), whether or not reported to law enforcement. *(NOTE: Past incidents of violence may be admissible to show defendant's disposition, pursuant to Evidence Code Section 1109.)*

lx. If possible, record name, address, and phone number of two close friends or relatives of the victim who will know of her/his whereabouts 6-12 months from the time of the investigation. If victim indicates he/she will be leaving the home, document when and where he/she will be leaving.

(EXAMPLE)
MARIN COUNTY
INFORMATION FOR VICTIMS OF DOMESTIC VIOLENCE/SEXUAL ASSAULT

Victim's name: _____ **Case#:** _____

PENAL CODE 13701: PRIVILEGES AND RELIEF ADVISAL

If you have become the victim of domestic violence or sexual assault you have certain rights and privileges under the law. This information is provided to you by the Law Enforcement Agencies of Marin County.

This is a supplement to the Marin Abused Women's Services *Domestic Violence Help and Information* pamphlet. For more information, call 415-457-2464.

Be aware that despite official restraint of a person alleged to have committed domestic violence the restrained person may be released at any time.

For information about the *California victims' compensation program*, you may contact 1-800-777-9229.

You may ask the District Attorney to file a criminal complaint.

You have the right to go to the Superior Court and file a petition requesting any of the following orders for relief:

- An order restraining the attacker from abusing you and other family members.
- An order directing the attacker to leave the household.
- An order preventing the attacker from entering your residence, school, business, or place of employment.
- An order awarding you, or the other parent, custody or visitation with a minor child or children
- An order restraining the attacker from molesting or interfering with minor children in your custody.
- An order directing the party not granted custody to pay support of minor children, if that party has a legal obligation to do so.
- An order directing the defendant to make specified debt payments.
- An order directing that either or both parties participate in counseling.

You have the right to file a civil suit for losses suffered as a result of the abuse, including medical expenses, loss of earnings, and other expenses for injuries sustained and damage to property, and any other related expenses incurred by the victim or any agency that shelters the victim.

Sexual assault victims should notify the local law enforcement agency immediately. A law enforcement officer will respond and take a report and collect evidence. Victims should retain any clothing worn during the assault and other evidence, such as bed sheeting. Officers will transport victims to the hospital for a medical examination. Victims should not shower or douche before the exam.

A sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime.

Domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime.

PENAL CODE 679.04: VICTIM ADVOCATE ADVISAL

As a victim of a sexual assault, you have the right to have a victim advocate and at least one other support person of your choosing present at any interview with law enforcement authorities, district attorneys or defense attorneys. This includes an advocate for any court procedure; however, this right does not apply to the initial interview by first responding officers. The support person may be excluded if the law enforcement authority or the district attorney determines that the presence of that individual would be detrimental to the interview.

Maryland Model DV Policy for Law Enforcement

- E. Observe whether there are any firearms present at the scene of the incident: under § 4-511 of the Family Law Article, law enforcement officers:
- (1) May remove a firearm from the scene, if they have:
 - (a) probable cause to believe that an act of domestic violence has occurred; and,
 - (b) have observed the firearm on the scene during the response.
 - (2) If they remove the firearm from the scene officers will:
 - (a) Provide the owner of the firearm with information on the process for retaking possession of the firearm;
 - (b) Provide for the safe storage of the firearm, per agency policy and procedures, while any proceeding related to the alleged act of domestic violence is pending; and
 - (c) Advise the owner that he/she may retake possession of the firearm at the conclusion of a proceeding on the alleged act of domestic violence, unless the court orders the surrender of the firearm.^[54]
- F. In cases where probable cause exists and an on-scene, warrantless arrest is authorized:
- (1) Law enforcement officers should make the arrest.
 - (2) Law enforcement officers should take a statement from the defendant, after he/she has been given *Miranda* warnings.
 - (3) In cases of mutual battery under CP § 2-203 (b), if the investigation reveals that:
 - (a) One party was the primary aggressor and the other acted in self-defense, law enforcement officers should arrest the primary aggressor and should not arrest the person who acted in self-defense; or
 - (b) Both parties committed crimes against the other, and neither was acting in self-defense, law enforcement officers should arrest both parties.
 - (4) Where a violation of a protective order under § 4-509 of the Family Law Article has occurred, law enforcement officers will make the arrest.
 - (5) For an offense committed in their presence or view under CP § 2-202, law enforcement officers should make the arrest. Most commonly, officers will hear threats made in their presence. In deciding whether to arrest the party(ies) making the threats, they will consider:

- (a) When officers respond to certain types of calls, they should consider that stalking may be a component: crimes such as domestic violence, vandalism/destruction of property, burglary, theft, identity theft, utility theft, wiretapping, assault, child abuse, hate crimes, harassment, threats, excessive texting, social media posts, cyber-stalking, etc. may have a stalking component.

(2) Why Stalking May Be Difficult to Recognize and Investigate

Stalking cases are often difficult for officers to recognize and investigate for the following reasons:

- (a) Stalking cases often appear as relatively minor/less significant acts: a violation of a protective or peace order; no violence; perhaps a crime has not even occurred; the complainant will often not know that she/he is being stalked only that there is a problem in her/his life.
- (b) The victim's fear is overwhelming; often the victim is not believed; nothing in the way of a crime has yet to occur for the victim to report; and the victim feels isolated and believes that no one can help him/her.
- (c) Stalkers may commit acts in multiple jurisdictions; however, there is no communication among law enforcement agencies concerning the occurrence of these acts and no key case strategy that would connect the acts to the one victim.
- (d) Stalking is a crime that is committed over the average span of about two years, with periods of decreased and increased activity. Investigative policies and procedures are usually ill-equipped to handle this type of prolonged investigation.
- (e) Arrest and prosecution and/or obtaining a protective or peace order does not necessarily mean that the stalker will stop his/her activities toward the victim. In fact, these actions against the stalker may aggravate the situation and drive the stalker to violence. This does not mean that these actions should not be taken, only that they must be taken in conjunction with safety planning for and with the victim.

F. Investigation

There are two basic components to a stalking investigation: (1) assessing the complaint and the threat level, (2) and corroborating the complaint through evidence collection.

(1) Assessment

- (a) In order to assess the complaint, the officer must gather such basic information about the stalker such as personal data, prior threats or stalking behaviors, access to weapons, criminal and mental history, homicidal and suicidal tendencies, presence of any social inhibitors, proximity to significant dates.

- (b) Once a stalking offense is confirmed or suspected, the officer must gather such pertinent information as what other suspicious incidents have occurred; were police reports taken; is a protective or peace order in place; has the suspect violated any protective or peace order; has the suspect threatened the victim; is the victim afraid of the suspect; how has the victim reacted to the stalking or harassing behavior (for example, has the victim moved, bought a security alarm system, changed work schedule and route to work)?
- (c) As the officer interviews the victim, he/she should try to ascertain how much the suspect actually knows about the victim and the degree of their relationship.
- (d) As part of the assessment phase, the officer should conduct a threat assessment to seek to prevent future harm to the victim. The threat assessment includes basic and pertinent information about the stalker, and should take into account factors that suggest a high risk of danger, such as if there are current threats to kill the victim; use and possession of lethal weapons, especially firearms; the degree of obsession, possessiveness, and/or jealousy regarding the victim; violation of protective or peace order with little or no concern for the consequences; access to the victim and/or victim's family; hostage-taking, history of prior stalking; etc.
- (e) In evaluating the threat, the following questions should be answered:
 - (i) Does the victim believe the threat?
 - (ii) Was the threat made in the presence of other people? Was it made in writing? Was it recorded in a telephone conversation? Was it sent by electronic device such as computer, cell phone, etc.? Was some form of social media involved?

Note: Willingness to leave evidence or not caring who knows may indicate a more serious intention to follow through.

- (iii) Is the threat detailed and specific?

Note: The more thought that has gone into the plan, the more likely it is to be acted on.

6. CJ § 3 – 8A – 19.2 (b) (1) states “if a **Peace Order** is filed under CJ § 3-8A-19.1 (b) the respondent shall have an opportunity to be heard on the question of whether the court should issue a **Peace Order**.
- (2) if the court finds by clear and convincing evidence that the respondent has committed and is likely to commit in the future an act specified in CJ § 3-8A-19.1 (b) [listed above] or if the respondent consents to the entry of a **Peace Order**, the court may issue a **Peace Order** to protect the victim.
7. CJ § 3–8A–19.2(c) (1) states “The **Peace Order** may include any or all of the following relief:
- (i) order the respondent to refrain from committing or threatening to commit an act specified in CJ § 3-8A-19.1(b) against the victim;
 - (ii) order the respondent to refrain from contacting, attempting to contact or harassing the victim;
 - (iii) order the respondent to refrain from entering the residence of the victim;
 - (iv) order the respondent to remain away from the place of employment, school or temporary residence of the victim;
 - (v) direct the respondent or the victim to participate in professionally supervised counseling.
- (2) If the court issues an order under this section, the order shall contain only the relief that is minimally necessary to protect the victim.
- (3) All relief granted in a **Peace Order** shall be effective for the period stated in the order not to exceed 6 months.
8. CJ § 3-8A-19.5 (a) states “a violation of any of the provisions of a **Peace Order** specified in CJ § 3-8A-19.2 (c) (1) (i), (ii), (iii) or (iv) is a delinquent act.
(b) A law enforcement officer shall take into custody a child whom the officer has probable cause to believe is in violation of a **Peace Order** in effect at the time of the violation.



- 7.0 Victim Assistance
- 7.1 General Policy
- 7.2 Legal Requirements
 - 7.2.1 **Written Notification of Rights (FL § 4-503)**
 - 7.2.2 **Providing the Victim with a Copy of the Field Report (FL §4-503.1)**
- 7.3 Non-criminal Domestic Incidents
- 7.4 Assisting a Victim When No Arrest Is Made
 - 7.4.1 **When the Assailant Is Not on the Scene**
 - 7.4.2 **When the Assailant Is on the Scene**
- 7.5 Assisting a Victim When an Arrest Is Made
- 7.6 About the Safety Procedures
 - 7.6.1 **Reviewing Safety Procedures with the Victim**
 - 7.6.2 **Exercising Caution in Devising Safety Procedures**

7.1 General Policy

- 7.1.1 Law enforcement officers will assist victims of domestic violence by ensuring their safety, listening to them, referring them for additional services, and providing other means of assistance and problem-solving so as to stop the violence if it has already begun and to prevent it from occurring if it has not.

Commentary: Section 7.1.1 is taken from the policy statement that was included in the November 1996 report of the Attorney General's and Lt. Governor's Family Violence Council, entitled "Stop the Violence – A Call to Action: Recommendations & Action Plan." ^[128]

7.2 Legal Requirements

7.2.1 Written Notification of Rights (FL § 4-503)

- A. When a law enforcement officer responds to a domestic violence situation, Family Law Article § 4-503 of the Maryland Annotated Code requires that the officer give the victim a copy of a **written** notice of rights which:
 - (1) states that the victim may:
 - (a) Request that a district court commissioner file a criminal charging document against the alleged abuser;
 - (b) If the commissioner declines to charge the alleged abuser, request that the state's attorney file a criminal charging document against the alleged abuser;
 - (c) File a petition for relief from abuse in the district court or circuit court or with a commissioner when neither the office of the clerk of the circuit court nor the Office of the District Court Clerk is open;
 - (d) Obtain a copy of the incident report as provided under FL § 4-503.1; and,
 - (2) includes the telephone number of a local domestic violence program.

- B. The officer will also explain the information contained in the notice of rights to the victim.

Commentary: Section 7.2.1 was included to ensure compliance with FL § 4-503, entitled “Notification of Victim’s Rights When Responding to Spousal Assault.” Subsection 7.2.1-B is taken from the November 1996 Family Violence Council report. The developers wanted to ensure that victims are properly advised. They felt that leaving it up to the victim to read the statement is not a proactive approach. ^[129]

7.2.2 Providing the Victim with a Copy of the Field Report (FL§4-503.1)

- A. When a law enforcement officer responds to a domestic violence incident, he/she will advise the victim of the availability of a copy of the report that he/she will prepare concerning the incident.
- B. However, the officer on the scene is not required to give the victim the copy. The officer should direct the victim to the office in his/her agency that provides reports to the public, and inform the victim if there is a fee for the copy of the report.

Commentary: Section 7.2.2 was included to ensure compliance with FL § 4-503.1, Report of Domestic Abuse to State Police and Victim.” The requirement of the law is that the “agency” provide the victim with a copy on request. Accordingly, the officer on the scene is obligated to inform the victim how to obtain a copy of the report through the officer’s agency.

7.3 Non-criminal Domestic Incidents

7.3.1 In non-criminal domestic incidents, when a law enforcement officer is not required to make an arrest, he/she will be required to take other action to ensure the peace, protect and assist the parties, and provide information about services that are available to people involved in domestic situations.

7.3.2 In situations where the law enforcement officer establishes that one of the parties has been or is a potential victim of domestic violence, the officer will:

- A. Refer the victim or potential victim to the local service provider for assistance, and
- B. Warn the abuser or potential abuser that acts of domestic violence are criminal acts for which he/she can be arrested and that he/she should also seek assistance from the local service provider.

7.3.3 In situations where the law enforcement officer establishes that both parties are mutually aggressive, the officer will warn both parties that acts of domestic violence are criminal acts for which both can be arrested and that they should seek assistance from the local service provider.

*Commentary: Concerning Sections 7.3.1 and 7.3.2, because most calls for service involving domestic situations will not require the law enforcement officer to make an arrest, officers should be able to make the parties, primarily the perceived victim, aware of the availability of services. Officers also should be able to properly refer the parties for assistance so as to perhaps prevent violence early and introduce the victim and abuser to services that might also aid in preventing violence. This section was included to reinforce the basic policy in **non-criminal** incidents.*

Section 7.3.3 addresses mutually aggressive disputants, and the necessity to warn them of the consequences of their potential acts, and to advise them both to seek assistance from the local service provider.

7.4 Assisting a Victim When No Arrest Is Made

7.4.1 When the Assailant Is Not on the Scene

When the abuser is not present on the scene, the law enforcement officer should:

- A. Assist the victim in contacting the local service provider;
- B. Inform the victim about the civil protective order process and where he/she can go to petition for either an **Interim** or **Temporary Protective Order**;
- C. Review some procedures with the victim, intended to ensure his/her immediate safety;
- D. Encourage the victim to leave if the victim feels it is unsafe for him/her to remain in the home, or if the officer assesses that the situation is unsafe;
- E. If the victim decides to leave, assist him/her in arranging for transportation to a shelter or other location, or transport the victim to safety according to the policy and procedures of the officer's agency;
- F. If the victim decides not to leave, ensure:
 - (1) the victim is safe at the time the officer leaves;
 - (2) the victim knows to call the police if the abuser returns;
 - (3) the officer has assisted the victim to contact the local service provider; and
 - (4) the officer has discussed safety procedures with the victim; and
- G. The victim is given the agency's **written** notification of rights and that the contents of the notice have been explained; and
- H. Complete a written report of the incident as required.

Commentary: Section 7.4.1 affords a law enforcement officer ample time and opportunity to inform the victim about the range of available services, to discuss some safety procedures that will ensure the victim's immediate safety, and generally to help the victim understand the need for the assistance of the local service provider. This is also a good time to directly put the victim in touch with the local service provider, so that a domestic violence counselor can speak with the victim. The officer should remain on the scene until the conversation between the victim and counselor is over. The officer should speak with the counselor to see whether there is any further reasonable assistance he/she can provide, and finally, should speak with the victim to determine what the victim wants to do and whether the officer can help.

Discussion in this policy about "safety procedures" is intended to ensure the immediate safety of the victim. The officer should be aware that the local service provider will help the victim to develop a comprehensive safety plan, which is one reason it is important that the victim make contact with the provider.

7.4.2 When the Assailant Is on the Scene

If the assailant is on the scene, and the law enforcement officer assesses that domestic violence likely occurs in the household, the officer should:

- A. If possible, out of the presence and hearing of the assailant, carry out the same steps as when the assailant is not on the scene [listed in section 7.4.1];
- B. Assess the lethality of the situation, advise the victim of this assessment and encourage the victim to leave if the officer believes there will be a threat to the victim's safety once the officer leaves; [Conduct a Lethality Assessment Screen or similar lethality assessment tool as described in section 3.7.1 of this model policy (Pages 26-28).]
- C. If the victim decides to leave, stand-by until he/she gathers clothing and personal effects, and ensure his/her safe departure; and
- D. Once the victim is safe, advise the victim's partner:
 - (1) His/her pursuit of the victim could result in his/her being arrested for stalking;
 - (2) It is the officer's assessment that domestic violence exists in the relationship;
 - (3) Such conduct is criminal; and
 - (4) The partner should seek help from the local service provider before he/she commits a crime against the victim.

Commentary: Section 7.4.2 does not offer the same time and opportunity to a law enforcement officer to speak with the likely victim as when the assailant is not on the scene. In effect, the officer has more to do in that he/she must deal with two parties and the dynamics that are present in such a situation. The officer must basically inform the victim of all the services that are available to him/her and must determine the danger of the situation. If the officer assesses that a potentially dangerous situation exists, he/she must alert the victim and warn the assailant that domestic violence is a crime for which a person is arrested. In order to ensure the victim's safety, the officer should encourage him/her to leave, and assist the victim if requested.

7.5 **Assisting a Victim When an Arrest Is Made**

7.5.1 When an assailant is arrested for committing a crime of domestic violence, the law enforcement officer should:

- A. Obtain medical attention for the victim, if required:
 - (1) If the victim has injuries and is not inclined to seek medical attention, the officer should encourage him/her to do so.
 - (2) Medical care may reveal other injuries and the documentation of such injuries helps to build evidence.
- B. Assist the victim in contacting the local service provider;
- C. Inform the victim of the civil protective order process and where he/she can go to petition for either an **Interim** or **Temporary Protective Order**;
- D. Explain the bail process to the victim and the likelihood that his/her partner may be released from custody in a short period of time; and
- E. Encourage the victim to find a safe location away from home.

Commentary: Section 7.5 still requires the law enforcement officer to provide assistance to the victim. However, because of the time constraints posed by the fact that he/she has made an arrest, the officer must provide the victim with information in fairly quick order, and especially advise him/her that the assailant may soon be released from custody and that the victim should try to find a safe location away from home. If the officer is unable to assist the victim any further, he/she should encourage the victim to contact the local service provider and, if necessary, arrange for the further assistance of another law enforcement officer, if one is available.

7.6 **About the Safety Procedures**

7.6.1 **Reviewing Safety Procedures with the Victim**

The law enforcement officer must remember that often a victim of domestic violence, as any victim, is not in a position to properly think his/her situation through.

- A. The victim needs guidance, and the officer should provide it in a simple, direct, and repetitive way.
- B. The officer should review safety procedures with the victim to ensure that it is clear in the victim's mind what actions he/she will take if it becomes necessary to escape.
 - (1) The officer should ask questions to help the victim focus on ways that will make him/her safer and to help him/her make decisions: "Where will you go if you have to run from here quickly?" "Do you have a key to the car?"



Domestic Violence Law Enforcement Guidelines 2017

**The Commonwealth of Massachusetts
Executive Office of Public Safety & Security**

**Charles D. Baker
Governor**

**Karyn E. Polito
Lieutenant Governor**

**Daniel Bennett
Secretary**

SECTION SIX

DISPATCHER RESPONSE TO DOMESTIC CALLS

The likelihood of injury associated with domestic violence situations requires that officers immediately proceed to the place of the dispute.

Number of Officers

Whenever possible, two officers should be dispatched to the scene.

Tasks

Dispatch officers or call takers should do the following:

- Assign a priority response to all domestic violence calls, whether or not the assailant is known to be on the premises, including those calls that involve or appear to involve a police officer of any department;
- Immediately notify a supervisor of any domestic violence calls;
- Preserve documentation of the facts and circumstances of each call, including tapes, for use in potential administrative and criminal investigations;
- Maintain current contact information of local domestic violence victim advocacy organizations for responding officers to provide to victims;
- Attempt to elicit any and all information from the caller that may help the responding and investigating officers assess the situation, including the following:
 - Immediate safety of the caller, the victim, and others at the scene;
 - Nature of the incident (verbal or physical), nature of injuries, and whether violence is ongoing;
 - The type of weapons that are involved, or present, if applicable;
 - Potential hazards to responders, including animals;
 - Whether the caller or alleged assailant is under the influence of alcohol or drugs, or if there are mental health issues;
 - Caller's and alleged assailant's description;
 - Presence or absence of the alleged assailant, and direction and mode of travel, if applicable;
 - Other people involved or witnesses at the scene, including children;
 - Alleged assailant's criminal history (BOP check);
 - Number of times the department has been called to this scene because of this suspect;
 - Existence of a protection order currently on file against the suspect or caller (check BOP)
 - Outstanding warrants against the caller or alleged assailant if any exist (check CJIS and Warrant Management System);

- Caller's and alleged assailant's date of birth or social security number; and
- Record of firearms identification cards and/or licenses to carry having been issued to resident(s);
- Inform the caller of an approximate time of the officers' arrival;
- Keep the caller on the telephone, if the caller is a victim or witness to a domestic violence incident in progress, in order to relay ongoing information provided by the caller to the responding officers and remain aware of victim's safety;
- Make the safety of domestic violence victims a primary concern;
- Address threats of violence, whether immediate or remote, by working with the victim to focus on ways to enhance safety, such as waiting for officers at another location or leaving the location if the suspect returns;
- Keep in mind that the caller could be the victim or assailant; and
- Do not cancel the original call for service if a subsequent request to cancel the original call is received – advise the responding officers of the second call and instruct them to continue to respond, investigate, and assess the situation to ensure that all parties are safe.

SECTION SEVEN

POLICE RESPONSE TO DOMESTIC VIOLENCE RELATED CALLS

1. On-scene Considerations

Initial Observations

Upon arrival, responding officers should approach the scene with the utmost degree of caution. Upon approach, officers should make observations of the surrounding area for evidence such as weapons, damaged furniture, broken windows, and any other items that may be evidence of a domestic violence incident.

Officers shall listen for sounds of an argument, threats, or an ongoing physical assault. All evidence, utterances, statements, and observations should be documented in an incident report—and photographically if appropriate.

Entering a Private Premises

When investigating a report of domestic violence, officers should wait for a second officer unless exigent circumstances exist. Officers may enter private premises without a warrant in the following circumstances:

- At the request of someone in lawful control of the premises;

- To assess that the suspect has left the scene, and
- To carry out the responsibilities outlined in this section.

Medical Treatment

Assist the victim in obtaining medical treatment for any sustained injuries by arranging for appropriate transportation by ambulance to a health care facility. Officers should consider responding to the Emergency Room to properly document any sustained injury. In addition, consideration should be given to whether a sexual assault forensic exam needs to be completed. (See Appendix III for list of MA Sexual Assault Nurse Examiner (SANE) sites).

In cases of serious injury, the preferred method of transportation is via ambulance. Officers are authorized by MGL c209A, § 6 to transport victims of domestic violence to the emergency room of the nearest hospital, or to arrange for appropriate transportation to a health care facility. Officers should receive approval from their supervisor prior to transporting a victim of domestic abuse in a cruiser, except in an emergency.

Interviewing Witnesses

Attempt to identify and interview the party who called the police, neighbors, and other potential witnesses. All parties present and involved should be documented in the incident report. It is not unusual for some witnesses to be unsupportive of the victim. Do not tell the suspect who called the police.

Information from the Scene

Attempt to obtain the following information at the scene. If that is not possible, obtain the information during the follow-up investigation:

- Determine the relationships of all parties, including children, at the scene. If children are not immediately observed, ask if there are children present in the household.
- If children are present,
 - record their names and dates of birth;
 - check on the children to ascertain whether or not they have sustained an injury;
 - unless it involves a medical emergency or safety concern, consider conducting a “minimal facts” interview on scene if appropriate; and
 - if the child needs a more comprehensive interview, contact the District Attorney’s Office/Children’s Advocacy Center to schedule a forensic interview.

- Obtain at least two phone numbers where the victim can be reached. Include a cell phone number, a daytime phone number, or the number of a close relative or friend. Include these numbers in the incident report so the bail bondsperson or court personnel may inform the victim of the abuser's release on bail.
- Inform the victim that if they intend to leave the residence, and wish to be informed of the abuser's release, the victim must inform the police department of a number where they may be reached, or where a message may be left safely.
- Consult with the victim whether their phone number should remain confidential and take steps to ensure that it is, if necessary.
- Do not rely on prior phone numbers in your in-house system, as they may be outdated.
- Obtain information about the suspect's ownership of, presence of, or access to firearms, and their location.
- Officers should gather information regarding suspect's past behavior/dangerousness. This information should be documented in an incident report and/or high risk assessment worksheet (See attached Appendix IV) and provided to the Bail Commissioner in determination of bail and to the Prosecutor for use at arraignment. That information includes but is not limited to the suspect's:
 - Criminal history;
 - History of abusing the current victim;
 - History of abusing other victims;
 - History of non-fatal strangulation;
 - History of forced sex;
 - History of extreme possessiveness or jealousy;
 - Possession of weapons;
 - History of use of/or threats with a weapon;
 - Use of weapons in prior abuse of the victim;
 - Past threats against or abuse of pets;
 - Past attempts or threats to kill;
 - Past attempts or threats to commit suicide; and
 - Current or past vacate, restraining, no-contact or other protective orders, including those held against the suspect by someone other than this victim.
- After ascertaining past reported and non-reported criminal history, seek appropriate criminal action for current and prior incidents.
- Refer victims to appropriate resources listed in attached Appendices II & III.

Information Documentation

Officers shall properly document important information, i.e., spontaneous utterances (direct quotes) by the victim, the suspect, children, and other witnesses

In collecting evidence of domestic abuse, law enforcement officers are strongly encouraged to use photographs to document injuries sustained by the victim and the condition of the crime scene.

Contemporaneous records of injuries and crime scene condition are critical to the prosecution of alleged abusers:

- When documenting the scene photographically, officers are reminded to take both close-up and full-scene pictures. Follow-up photographs of injuries should be taken 2-3 days after the incident to document progression of injuries;
- Collect physical evidence (including weapons used, even when simple household item) and document collection in the incident report; and
- If the incident involves strangulation, the officer shall complete a strangulation worksheet. (See attached Appendix VI.)

Getting to a Safe Place

Assist the victim and dependent children in locating and getting to a safe place, including but not limited to a designated meeting place for entry into emergency shelter or a family member's or friend's residence (or a similar place of safety). The officer shall consider the victim's preference in this regard and what is reasonable under all the circumstances.

The location and street addresses of all domestic violence programs are absolutely confidential and shall not be required to be revealed in any criminal or civil proceeding. See MGL c233, § 20L. For the purposes of this provision, a domestic violence program is defined as any refuge, shelter, office, safe home, institution, or center established for the purpose of offering assistance to victims of abuse through crisis intervention, medical, legal or support counseling. See MGL c233, §20K.

If a report is made at a domestic violence program, the incident occurred at that program or an officer transported someone to a program, the officer shall not include this address in the incident report. **Under no circumstances should a law enforcement officer release information to the public or otherwise regarding the location of a domestic violence program.**

Notice of Rights

Give abuse victims immediate and adequate notice of rights by handing to them and reading them their rights (see Appendix V attached) per DV. Where the person's native language is not English, the statement shall be provided in the person's native language whenever possible.

Activating the Emergency Judicial Response System (E.J.R.)

Assist the victim by activating the Emergency Judicial Response System when a judge is not available through court. This should be done even when the alleged abuser has been arrested.

- If a victim is unable to appear in court because of severe hardship due to the victim's physical condition, officers can seek an order by contacting the court.
- A representative may appear in court on behalf of the victim to seek an emergency or temporary order. Officers shall advise these victims that a representative may appear on their behalf.

Issuance of an Abuse Prevention Order

Upon issuance of any applicable order under MGL c209A, police shall immediately take possession of all firearms and licenses in the control, ownership or possession of the defendant. Such firearms and licenses may not be returned until the order has been completely vacated or the firearms provision modified by order of the court.

- Violations of Orders: In the interest of immediacy and the statutory mandate to arrest, officers shall make a warrantless arrest of any person the officer witnesses or has probable cause to believe has violated an order—including a violation, which stems from the possession of firearms, weapons, or licenses.
- If after your assessment, the situation does not meet the substantive dating relationship, consider if the facts and circumstances apply regarding a 258E protection order.

Substantive Dating Relationships

Officers will gather information to determine whether or not a substantive dating relationship exists. Officers will examine the same factors which the courts review when making this determination:

- the length of time of the relationship;
- the type of relationship; and
- the frequency of interaction between the parties.

- A report will be filed with the **Disabled Persons Protection Commission** whenever the officer has reasonable cause to believe that a caretaker has abused and/or neglected a person with a disability between the ages of 18 and 59, in accordance with MGL c19C, § 10. An immediate report should be filed by calling the hotline at **1-800-426-9009**. If an officer intends to file a report, he/she should tell the person with a disability who is the subject of the abuse.
- A report will be filed with the **Executive Office of Elder Affairs** whenever the officer has reasonable cause to believe that someone age 60 or older has been abused or neglected, in accordance with MGL c19A, §§ 14-26. An immediate call shall be placed to the 24- hour hotline at **1-800-922-2275**. If an officer intends to file a report, he/she should tell the elder person who is the subject of the abuse.

SECTION NINE

FIREARMS

When a firearm or other weapon is present at the scene of a domestic violence situation, officers shall:

- Seize the firearm or weapon as evidence of the crime, if the responding officers are informed that a firearm or weapon has been involved in the dispute.
- Every department within the Commonwealth shall honor another department's request for assistance in seizing firearm, weapons, or licenses, regardless of which department is named within the order.

If the firearm or weapon is not reported to have been involved in the dispute:

- Request that the firearm or weapon be placed in their custody temporarily to alleviate the threat of serious violence.
- Search for and take custody of the firearms or weapon if a party, who lawfully resides there, requests that the officer do so. A consent search is allowed in areas where the victim has access to, including areas of joint access with the suspect
- Determine whether a firearm or weapon is lawfully possessed before returning the same.
- If the officer determines that the firearm or weapon cannot be seized, the following actions can take place:
 - A judge can order the defendant to surrender guns and licenses; and

- The chief who issued a license to carry may revoke or suspend such license.
- In all domestic violence cases, the investigating department shall advise the licensing authority that the subject of the licenses is suspected of abuse.

1. Storage of Firearms

The department named within the order shall be responsible for the storage of the seized items or the delegation of storage to an authorized facility.

- In cases involving police officers that are defendants in Abuse Prevention Orders, the defendant shall immediately surrender all firearms, including departmental weapons and licenses, to the department serving the order.

2. Federal Firearms Provisions

Although State and Local Police officers cannot enforce Federal provisions, the chief should be notified whenever an officer identifies a case involving the following circumstances, because there may be Federal action that can be taken:

- 1) Misdemeanors Involving Domestic Violence—Under 18 USC § 922(g)(9), it is unlawful for any person convicted of certain misdemeanor crimes involving domestic violence to ship, transport, possess, sell or otherwise dispose of, or receive firearms or ammunition.
- 2) Federal law prohibits any person subject to a qualifying order of protection from possessing firearms and ammunition. See 18 USC § 922(g)(8).
- 3) Federal Felon in Possession of a Firearm—Under 18 USC. § 922(g)(1), "Felon in possession of a firearm," it is unlawful for any person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year to possess any gun or ammunition.
- 4) Persons Named in Protective Orders—Under the Federal Crime Control and Law Enforcement Act of 1994, it is unlawful for an individual subject to a "permanent" restraining order involving "intimate partners" to receive, ship, transport, or possess guns (including handguns, rifles, and shotguns) or ammunition that traveled in interstate commerce.
- 5) Misdemeanors are excluded from consideration if they are punishable by a term of two years or less. Therefore, misdemeanors punishable by a term of imprisonment of more than two years fall within that provision.

- Inform victim of DV shelter hotline and assist if asked
- Inform the victim of Protective Order information and options
- The officer will offer to contact the local domestic violence agency for the victim to speak with an advocate
- The officer will give the victim the palm cards and brochures

SECTION THIRTEEN

SERVICE OF RESTRAINING ORDERS

In-hand Service

Service of orders shall be made in hand unless otherwise ordered by the court. MGL Chapter 209A, § 7, requires that "the law enforcement agency shall promptly make its return of service to the court."

- Orders shall be served promptly upon receipt. If service is initially unsuccessful, the responsible Police Department must continue to attempt service until it is completed. Service of orders will not be delayed in order to forward service by a specialized officer or unit. If an officer is unable to make service after "numerous attempts", the officer should document, in detail, the service attempts on the "return of service" form and request the court to allow service by leaving a copy of the order at the last known address of the defendant.
- Service of orders may compromise victim safety. Victim safety should be considered in the timing of the service of the order. Officers should encourage the victim to contact an advocate (either through the D.A.'s Office, SAFEPLAN or the local domestic violence program) in order to develop a safety plan around the service of the order.

Record of Service

Departments must keep a record of all attempts at service.

Return of Service

All returns of service, including service of Emergency Orders, must be sent to the court.

Orders Disseminated to the Department

The Court is responsible for sending the order to the appropriate law enforcement agency for service on the defendant. In the event that the plaintiff brings an order to the

police department for service, officers should ensure that the police department's responsibilities under MGL c209A and these guidelines are met.

Firearms

Upon service of the order, officers shall immediately take possession of all firearms, rifles, shotguns, ammunition and any licenses or FID cards in the control, ownership, or possession of the defendant. The license-issuing authority shall be contacted at once and fully informed of the incident and provided full reports in accordance with current law. All confiscated items shall not be returned until the Order has been vacated or the firearms provision has been modified by order of the court. MGL c140, §§ 129B, 131.

Notice to Plaintiffs

When assisting plaintiffs with emergency abuse prevention orders, officers should provide guidance to the plaintiff as to the exact terms of the order sought.

Out-of-state Order Violations

- A protective order issued in another jurisdiction (as defined in MGL c209A, §1) shall be given full faith and credit in the Commonwealth. A responding officer shall serve and enforce the terms and conditions of an out-of-state protective order as written by the issuing jurisdiction.
- Officers shall make a warrantless arrest of any person the officer witnesses or has probable cause to believe has violated an emergency, temporary or permanent vacate, refrain from abuse, stay away, or no-contact order or judgment issued by another jurisdiction.
- In assessing probable cause, an officer may presume the validity of the protection order issued by another jurisdiction when the officer has been provided with:
 - A copy of the order, by any source; and
 - A statement by the victim that such order remains in effect.
- An order of protection is presumed valid if it gives the names of the parties involved, contains the date the order was issued, has not expired, specifies the terms and conditions set against the abuser, contains the name of the issuing court, and is signed by the issuing authority.
- Violations of out-of-state orders or Massachusetts orders violated in another state may be charged criminally as contempt of court (MGL c220 §14) in the Commonwealth of Massachusetts.

Notice to Defendants

When serving an abuse prevention order, officers shall fully inform the defendant of the contents of the order and penalties for any violation of an order and provide additional resources, including information on batterer's intervention programs, substance abuse counseling, alcohol abuse counseling and financial counseling. (MGL c 209A §7) (See attached Appendix VIII).

Third-Party Contact

The Abuse Prevention Order states that the defendant is "ordered not to contact the plaintiff in person, by telephone, in writing, electronically or otherwise, either directly or through someone else." If there is third party contact in violation of an outstanding abuse prevention order, consider taking out charges against the third party or defendant for violation of a restraining order or intimidation of a witness, depending on the appropriate circumstances.

SECTION FOURTEEN

ALLEGATIONS AGAINST LAW ENFORCEMENT PERSONNEL

Departments must recognize that law enforcement personnel, whether sworn or non-sworn, are not immune from committing or being a victim of Domestic Violence. Although no person is exempt whatever their occupation, the dynamics change when Law Enforcement personnel are involved.

The following response protocols are critical components to the integrity of the law enforcement profession and the trust of the community.

When responding to a Domestic Violence incident involving a law enforcement officer all of the previously outlined protocols apply. However, additional protocols also apply.

Dispatch / Officer Response

- The dispatcher / communications officers shall immediately notify the on-duty commanding officer of all domestic violence involving officers.
- The responding officers shall take immediate action to ensure the safety of the victim and all parties present.
- A supervisor of higher rank than the officer involved must respond to the scene.
- The responding officers will remain on the scene until relieved by the responding supervisor.

IV. Sample High Risk Worksheet

DOMESTIC VIOLENCE RISK ASSESSMENT FORM

Offender's Name: _____
 Offender's DOB: _____
 Police Department: _____
 Officer's Name: _____
 Report Number: _____
 Date: _____

Victim's Name: _____
 Victim's DOB: _____
 Victim's home #: _____
 Victim's cell #: _____
 Work/Alternative #: _____
 Victim's email: _____

Check here if victim did not want to answer any of these questions.

Please provide as much information as possible to each answer. Information can also be documented in your report.

Has the physical violence increased in severity or frequency? <input type="checkbox"/> Yes <input type="checkbox"/> No	Have the Offender and Victim separated in last year? <input type="checkbox"/> Yes <input type="checkbox"/> No
Does the Offender have firearms or immediate and easy access to firearms through friend, family member, or 3 rd party? <input type="checkbox"/> Yes <input type="checkbox"/> No	Has the Offender threatened or attempted suicide? When? <input type="checkbox"/> Yes <input type="checkbox"/> No
Has the Offender used or threatened to use a lethal weapon against Victim, such as made a direct threat, or brandished a weapon in front of the victim? <input type="checkbox"/> Yes <input type="checkbox"/> No	Is the Victim pregnant? Visibly? Yes No <input type="checkbox"/> Yes <input type="checkbox"/> No
Has the Offender threatened to kill the Victim? <input type="checkbox"/> Yes <input type="checkbox"/> No	Are there children living in the home that are not the Offender's? <input type="checkbox"/> Yes <input type="checkbox"/> No
Are threats recent and detailed? <input type="checkbox"/> Yes <input type="checkbox"/> No	Has the Offender committed prior violence toward others? <input type="checkbox"/> Yes <input type="checkbox"/> No
Has the Offender tried to kill the Victim? <input type="checkbox"/> Yes <input type="checkbox"/> No	Has the Offender avoided past police contact, such as leaving the scene before the police arrive? <input type="checkbox"/> Yes <input type="checkbox"/> No
Does Victim believe that Offender is capable of killing him/her? <input type="checkbox"/> Yes <input type="checkbox"/> No	Has the Offender prevented Victim from obtaining help? <input type="checkbox"/> Yes <input type="checkbox"/> No
Has the Offender choked/strangled/suffocated the Victim regardless of whether or not the victim has visible injuries or lost consciousness? (complete Strangulation Worksheet) <input type="checkbox"/> Yes <input type="checkbox"/> No	Has the Offender abused animals/pets? <input type="checkbox"/> Yes <input type="checkbox"/> No
Has the Offender choked/strangled, or suffocated the Victim multiple times? <input type="checkbox"/> Yes <input type="checkbox"/> No	Does the Offender have mental health issues? <input type="checkbox"/> Yes <input type="checkbox"/> No
Does the Offender control Victim's daily activities, e.g. such as by monitoring the victim's activities or relationships, or sought to restrict or control them? <input type="checkbox"/> Yes <input type="checkbox"/> No	Does the Offender misuse or has misused drugs/alcohol? <input type="checkbox"/> Yes <input type="checkbox"/> No
Does the Offender exhibit extreme jealousy? <input type="checkbox"/> Yes <input type="checkbox"/> No	Is the Offender currently not employed? <input type="checkbox"/> Yes <input type="checkbox"/> No

Please list any other concerns that the Victim may have regarding safety issues:

If strangulation occurred, please see additional Strangulation Tool

L. PERSONAL PROTECTION ORDERS AND THE PURCHASE OR POSSESSION OF A FIREARM

1. A PPO (domestic relationship or non-domestic stalking) may prohibit an individual from purchasing or possessing a firearm.

REMEMBER: Not all PPOs contain the same prohibitions. Officers need to read the PPO to determine what conduct is prohibited. Not all PPOs prohibit the purchase or possession of a firearm.

The prohibition lasts only as long as the PPO is in effect; it is not a lifetime prohibition. (MCL 600.2950(1)(e); MCL 600.2950a(22)).

2. Actions that the officer should take if an individual who has been served with a PPO that prohibits purchasing or possessing a firearm is in possession of a firearm:
 - a. arrest the individual; and
 - b. seize firearms as evidence, including all firearms:
 - 1) in the possession of the individual;
 - 2) in plain view; and
 - 3) found during a valid search.

NOTES ON CONSENT

If the petitioner lives in the house with the respondent, the petitioner can consent to a search of the house.

However, the occupant of a dwelling may not give the police consent to search the common areas of the premises if the other occupant is present at the front door and objects to the search. *Georgia v. Randolph*, 126 S.Ct. 1515 (2006).

The North Dakota Supreme Court concluded that a petitioner who “fled the marital home, sought a protective order, and rented a new residence” because of domestic violence retained the authority to consent to a search of the marital home. *State v Huffman*, 542 N.W. 2d 718 (1996).

NOTES ON SEARCH WARRANTS: Officers cannot obtain a search warrant to look for firearms possessed in violation of a PPO, because violation of a PPO is not a crime. However, the circuit court that issued the PPO could issue an order authorizing officers to enter the premises and seize firearms purchased or possessed in violation of the PPO.

NOTE: A condition of the assailant’s release on bond could be that the assailant must turn over all firearms in the assailant’s possession. At arraignment, the court could be asked to impose such a condition (no possession of firearms) and to enter an order authorizing officers to enter the assailant’s home to remove any firearms.

3. Responsibility of the officer when an individual prohibited by a PPO from purchasing or possessing a firearm has not been served and, after being served or provided notice of the PPO, chooses to comply.

When an individual prohibited by a PPO from purchasing or possessing a firearm has not been served and, after being served or provided notice of the PPO, chooses to comply, the officer may take possession of the firearm for safe keeping.

NOTE: Check department policy for guidance about what to do with guns taken at the scene. Procedures and policies should be developed for seizing, storage, return and/or destruction of weapons found at the scene or upon issuance of a PPO. Some judges may require the respondent to turn over guns upon issuance of a PPO.

4. If an individual is prohibited by a PPO from purchasing or possessing a firearm, there are no exceptions, including:

- a. police officers, and
- b. persons with a concealed weapon permit.

5. An individual prohibited by an ex parte PPO from purchasing or possessing a firearm may file a motion to modify or terminate the PPO and request a hearing.

- 6. The circuit court shall schedule a hearing on a motion to modify or terminate a PPO within:**
- a. 14 days after the filing of the motion; or
 - b. 5 days (expedited hearing) after the filing of the motion if the PPO prohibits the purchase or possession of a firearm and the respondent is a:
 - 1) person who is issued a license to carry a concealed weapon and is required to carry a weapon as a condition of employment;
 - 2) certified police officer;
 - 3) sheriff or deputy sheriff;
 - 4) member of the Michigan department of state police; or
 - 5) local corrections officer, Department of Corrections employee, or federal law enforcement officer who carries a firearm during the normal course of employment.
- 7. Upon service of *any* PPO (domestic relationship or non-domestic stalking, with or without a prohibition on the purchase or possession of a firearm), the Department of State Police must mail a letter to the individual restrained or enjoined stating that:**

NOTE: In order to ensure victim safety and to prevent a situation where a respondent learns about a PPO by way of the MSP “gun letter” before being served, the letter is now mailed only after MSP receives notice that the respondent has been served.

- a. a PPO was entered into the LEIN on a certain date;
- b. the individual *cannot* obtain a license to *purchase a pistol* or obtain a *concealed weapon license* until the PPO is removed from the LEIN; and
- c. the individual may request that the state police correct or expunge inaccurate information entered into the LEIN (MCL 28.422b) (Appendix B)

NOTES ON PROHIBITION AGAINST PURCHASING A PISTOL OR OBTAINING A CONCEALED WEAPON LICENSE:

Any PPO (not just a PPO with a specific prohibition against purchasing or possessing a firearm) entered into the LEIN causes the letter to be sent by the state police after the PPO has been served.

This prohibition lasts only as long as the PPO is in effect.

This prohibition does not affect all firearms; only the purchase of a *pistol*.

This prohibition does *not* affect a police officer's job; an officer does not need a concealed weapon license to carry a service weapon.

This prohibition is also not retroactive. The individual can continue to possess any firearms the individual already has; existing concealed weapon licenses are not automatically revoked.

Again, compare the situation of an individual against whom a PPO with a specific prohibition against the purchase or possession of a firearm has been issued: this *does* apply to firearms already owned, and this *does* affect a police officer's job.

FIREARMS PROHIBITION: COURT LIMITATION ON FIREARMS PROHIBITION: EFFECT OF STATE AND FEDERAL LAW

The court might issue a PPO with a limitation on the firearms prohibition. For example, the court might prohibit possession of firearms in the respondent's home, but permit the respondent to keep a hunting rifle at a specified cabin, or permit a law enforcement officer to carry a service weapon while working. Regardless of the court's decision in the PPO regarding firearms, however, state and federal firearms laws apply.

Under *state* law, regardless of the court's decision regarding firearms, a PPO respondent cannot obtain a concealed weapons permit, or a license to purchase a pistol, while the PPO is in effect. See MCL 28.425b(7)(d); MCL 28.422(3)(a). In the above example, the court's permission for respondent to keep a hunting rifle at a cabin, or for a law enforcement respondent to carry a service weapon while on duty, does not violate these *state* firearms laws.

Now consider *federal* firearms laws. Federal law prohibits possession of a firearm by a person who is subject to a protection order that specifically prohibits the use or attempted use of force against an intimate partner, or child of an intimate partner, if the protection order was issued after a hearing. See 18 USC 922(g)(8). This federal firearms prohibition, however, does not apply to law enforcement officers' possession of a duty weapon during working hours. In the above example, then, if the PPO fits the federal description (i.e., the protection order specifically prohibits the use of force or attempted use of force against an intimate partner or child of an intimate partner, and the order was issued after a hearing) federal law prohibits the respondent from possessing a firearm, regardless of whether the PPO itself prohibits firearm possession. A judge cannot override this federal law and permit the respondent to possess a firearm, in violation of federal law, under any circumstances.

In the above example, if the PPO fits the federal description, it would be a violation of federal law for the respondent to possess a hunting rifle at the respondent's cabin, regardless of the court's permission in the PPO to do so. If the PPO fits the federal description, it is *not* a violation of this federal law for a law enforcement officer respondent to possess a service weapon during working hours, if the PPO specifically permits this, or if the PPO does not contain any firearms prohibition.

I. IF THE PPO SPECIFICALLY PROHIBITS POSSESSION OF FIREARMS:

- Any and all respondents cannot purchase or possess any type of firearm;
- The prohibition applies to law enforcement officers;
- State law firearms prohibitions apply, i.e., respondent is prohibited from obtaining a CCW permit or a pistol purchase permit (MCL 28.425b(7)(d); MCL 28.422(3)(a));
- Federal firearms prohibitions apply (18 USC 922(g)(8)).

Note: The concealed weapons licensing board will be notified that a PPO prohibiting firearms has been issued. MCL 600.2950(15)(d), MCL 600.2950a(12)(d). A concealed weapons licensing board may suspend an existing concealed weapons permit, because the respondent is no longer eligible to obtain a concealed weapons permit. MCL 28.428(1). No automatic suspension or revocation of the concealed weapons permit occurs, however.

Regardless of the existence of the concealed weapons license or pistol purchase license, the respondent is prohibited by the PPO from possessing or purchasing any firearm.

II. IF THE PPO DOES NOT SPECIFICALLY PROHIBIT POSSESSION OF FIREARMS:

State Law:

- Respondent is disqualified from obtaining a concealed weapons permit or pistol purchase permit
- Respondent may possess hunting rifles;
- A law enforcement officer may carry a weapon during working hours;

These state laws do not prohibit a respondent from possessing concealed weapons if the respondent has a concealed weapons permit, or from keeping the concealed weapons permit. The concealed weapons licensing board *will not* be notified that a PPO has been issued because the PPO does not contain a provision prohibiting possession of firearms. Because respondent is now disqualified from *obtaining* a concealed weapons permit, the concealed weapons licensing board *may* suspend respondent's existing concealed weapons permit. MCL 28.428(1). No automatic suspension or revocation of a concealed weapons permit or a license to purchase a pistol occurs, however.

Federal Law:

- Federal law prohibits respondent from possessing a firearm, and prohibits any person from transferring a firearm to respondent, if respondent is subject to a protection order that specifically prohibits the use or attempted use of force against an intimate partner, or child of intimate partner and if the protection order was issued *after a hearing* for which respondent had actual notice and an opportunity to be heard. See 18 USC 922(g)(8).

The federal definition of intimate partner does not include dating or former dating partners unless they cohabit as “as spouses.”

- Does not apply to the “official use” of firearms by government employees, including law enforcement officers.

The “official use” exemption can be found at 18 USC 925(a)(1).

Effect of PPOs and Domestic Violence Misdemeanor Convictions On Gun Purchases and Possession		
	Effect on Gun Purchase and Possession	Effect on Police Officer’s Job
All PPOs	Restrained party cannot obtain: •License to purchase a pistol •Concealed weapon license	<i>Does not</i> affect police officer’s ability to carry a gun on the job
Some PPOs	PPO specifically states that restrained party cannot purchase or possess a firearm	<i>Does</i> affect police officer’s ability to carry a gun on the job
Domestic Violence Misdemeanor Convictions 18 USC 922 (g)(9) *	Under federal law, a convicted defendant cannot possess a firearm*	<i>May</i> affect police officer’s ability to carry a gun on the job
PPO Issued after a Hearing 18 USC 922 (g)(8).	The respondent may not possess a firearm under Federal law.	Does <u>not</u> affect officer’s ability to carry a gun on the job.

Enforcing Domestic Violence Firearm Prohibitions

A Report on Promising Practices



Section II: Model Programs and Promising Practices to Remove Firearms from Abusers

This section describes a number of programs around the country that offer models for effective firearm prohibition enforcement. Most use state laws, federal laws, or a combination of both as the legal basis for disarming abusers.

Highlighted first are several efforts initiated by law enforcement agencies in Montgomery County, Maryland, and King County, Washington and Schuylkill County, Pennsylvania, the descriptions of which are based on site visits to each jurisdiction. These programs exemplify innovative approaches to the enforcement of protection orders, including firearm relief contained in orders. A set of forms developed in King County that may serve as a template for similar efforts is included.

A description of a program of the Miami-Dade County, Florida, Domestic Violence Court follows. Among its promising practices, the court has developed a series of forms (included in this section) that enable the court to take appropriate action related to firearms at each stage of its proceedings—from issuance of a protection order through enforcement.

The innovative efforts of three prosecutors' offices are summarized, including programs of the U.S. Attorney's offices in Utah and the Northern District of West Virginia, and a state prosecutor's office in Montgomery, Alabama. In all three jurisdictions, federal prosecutors have partnered with local law enforcement officers to facilitate the enforcement of federal firearm laws. At the local level, the Montgomery prosecutor has restructured the processing of domestic violence cases so that cases involving firearms are given high priority.

Model probation programs in Maricopa County, Arizona, and Douglas County, Nebraska, are described. Probation officers maintain contact with abusers for months or years, providing an opportunity to implement long-term strategies to keep them disarmed.

Included in this section are descriptions of two model databases established in California and Massachusetts. The databases were designed to make it easier for gun dealers and the criminal justice system to quickly ascertain who is prohibited from possessing a firearm and ammunition.

The section concludes with a description of one rural state's successful effort to reform its firearm laws. New Hampshire's amended code includes specific authorization for firearm searches and seizures to enforce court-ordered firearm prohibitions.

1. Law Enforcement

Effective firearm enforcement programs begin with local law enforcement. Without their dedication and commitment to victim safety and offender accountability, even the most restrictive firearm statutes stand little chance of having a significant impact on the possession and use of firearms by abusers.

A. Montgomery County, Maryland, Sheriff's Office

Growing out of a countywide assessment of its response to domestic violence in 2001, the Assessment, Lethality, and Emergency Response Team (ALERT) was established by agencies in Montgomery County, Maryland, including the Sheriff's Office, State's Attorney's Office, county police, the county human service and corrections agencies, and the state Department of Probation and Parole. Led by a domestic violence coordinator, ALERT has the goal of identifying high-risk domestic

violence cases and intervening to increase victim safety.

The Montgomery County Sheriff's Office ("the office") is an active participant in the ALERT program. Its Domestic Violence Unit ("unit"), established in 1994 and staffed 24 hours a day, plays a critical role in the success of ALERT. The unit, consisting of a lieutenant, four sergeants, ten deputies, and eight civilian workers, is charged with the task of serving protection orders. It serves approximately 3,000 orders a year plus more than 1,000 "peace orders."⁴⁴ The unit works closely with victims to maximize their safety—as well as the safety of the deputy who is assigned to serve a protection order on the respondent—and focuses on removing firearms from abusers at the time the deputy serves protection orders. The Sheriff's Office believes that taking firearms at the time it serves the order decreases the chance that the firearms will later be removed from the location by the abuser, hidden, or turned over to a third party.

The unit attempts to interview every victim who seeks a protection order in Montgomery County. Civilian employees are trained to discuss with each victim how she/he may be best protected, and how the abuser can be located so the protection order can be served. Staff works with

⁴⁴ Maryland peace orders are injunctions that do not require a particular type of relationship between the petitioner and the respondent. They are often used by petitioners who are assaulted/battered by a person with whom the petitioner lacks the requisite relationship required for a protection order, such as a petitioner who had a dating/romantic relationship with the respondent but did not cohabit or have a child with him/her. One can file a petition for a peace order if the petitioner alleges an act that caused serious bodily harm or that placed the petitioner in fear of imminent serious bodily harm, assault, rape or a sexual offense, false imprisonment, harassment, stalking, trespass, or malicious destruction of property. Md. Code Ann., Courts and Jud. Proc. § 3-8A-19.1.

victims to conduct a lethality assessment, which includes a review of the abuser's criminal history. The civilian aide queries the office's databases to determine the abuser's legal status—whether he/she has outstanding warrants, has a prior history of domestic violence, and is on probation or parole, and whether cases are pending against him/her. Information regarding the abuser's criminal history is shared with the victim, who may be unaware of it. Cellular telephones, alarm pendants, and/or follow-up visits by deputies may be offered to the victim. As part of the assessment and to ensure the officer's safety when he/she serves the order, the victim is asked whether the abuser is likely to be armed, is involved with drugs, has mental health issues, has made threats of suicide, or has made threats against the petitioner, to resist arrest, and how the abuser might react upon receiving the protection order. The unit also attempts to ascertain whether other individuals might be present at the location where the order is to be served. If the petitioner was assisted by a victim service agency (the Abused Persons Program), and if the victim agrees, advocates contact the unit to provide it with further information. At the victim's option, deputies conduct periodic phone calls and/or home visits—referred to as "welfare checks"—after the order is served. Visits to a victim's home are made daily depending on the workload of the deputies.

When serving interim (i.e., emergency) or temporary orders, deputies attempt to remove all prohibited firearms and/or encourage the immediate voluntary surrender of firearms even if the alleged abuser is not yet prohibited under state or federal law from possessing them. The office's procedures related to protection orders authorize deputies to remove firearms in the course of serving an interim or temporary protection order at the scene of an alleged act of domestic violence if they have probable cause to believe that



The Domestic Violence Unit of the Montgomery County Sheriff's Office does more than serve protection orders.

an act of domestic violence has occurred and they observe the firearm on the scene when they serve the order. Deputies must take custody of firearms that are voluntarily surrendered by either the petitioner (victim) or respondent (abuser) during service of a protection order. After any seizure or relinquishment of a firearm, deputies must complete an incident report and a "Seized Property Report" by the end of their shift. The weapons are stored by the Sheriff's Office for the duration of the protection order.

In response to an abuser's claim that he/she no longer has any firearms, deputies ask the following questions of the abuser: "Who last saw the weapon? Where was it? What type of weapon was it? Who was it sold to and when?" Most abusers, however, relinquish their firearms when they are served the interim or temporary order; some wait to do so until a final order has been issued.

Along with the protection order documents, the serving deputy gives the respondent a red card with information about federal and state firearm statutes (18 U.S.C. § 922(g)(8) & Md. Code Ann., Pub. Safety § 5-133(b)(8)) that prohibit the respondent from possessing a firearm once

the final order is issued. The card provides directions to respondents on how they can arrange to surrender their firearms and ammunition for the duration of the order. If there is an outstanding warrant, county police will arrest the respondent on the warrant.

During the week that the initial temporary order is in effect, deputies from the unit call the victim twice and make two in-person welfare checks. If a final order is secured, deputies make no more checks during the maximum one-year duration of the order unless the petitioner or his/her advocate requests them.

When deputies serve a final order, they give the abuser a notice informing him/her that he/she is prohibited from possessing firearms while the order is active. Another form states that the Sheriff's Office has specific information indicating that the abuser has a firearm. This form makes it more difficult for the abuser to simply deny that he/she possesses a firearm.

After a deputy serves the protection order and seizes the firearms, the unit takes further steps to ensure the victim's and officer's safety. Although state law requires that civil orders be entered into the state's computer network within 24

Enforcing Domestic Violence Firearm Prohibitions:

A Report on Promising Practices

hours after issuance, Montgomery County does so within four to eight hours. Additionally, Maryland state police maintain a database on all regulated firearms. Using the weapon serial numbers and the markings on test-fired bullets, the Sheriff's Office can use the database to determine the registered owner of any firearm taken into custody, and whether it was reported to have been used in a crime. Firearms that are not regulated by the state are checked through the database of ATF. Digital photos are taken of the seized and relinquished firearms. Deputies then complete a follow-up call to all victims to notify them of the status of the firearms that were taken into possession by the Sheriff's Office.

After the protection order expires or is dismissed, the Sheriff's Office does not automatically return firearms to abusers. Instead, the office waits to receive a request from the abuser that he/she would like to regain possession of the firearm(s). After an order expires or is dismissed, the office holds firearms for an additional three years if it does not receive a request

to return the firearms. At the end of three years, the office sends a letter to the last known address of the abuser informing him/her that the weapon will be destroyed in 30 days. Approximately 30 percent of abusers abandon their firearms.

Before the Sheriff's Office returns weapons, the unit checks criminal files to make sure the abuser can legally possess them and informs the victim of the abuser's request for return of the weapons. Firearms are returned secured by safety locks. The keys are mailed separately to their owners so that abusers do not have immediate use of their weapons upon their return.

The Montgomery County deputies say they are enthusiastic about their work in the Domestic Violence Unit. According to one deputy, when an opening in the unit occurs, there is competition for the assignment. Asked to give his advice to other departments that might want to initiate a similar program, Lt. James Dunn responded, "Maximize the services provided by deputies, find a way to make it happen,

Montgomery County Form

Notice for all Interim and Temporary Protection Orders

The Montgomery County Sheriff's Office has received a copy of an Interim or Temporary Protection Order entered against you by a Montgomery County court. If the court issues a non ex parte civil Protection Order that prohibits the Respondent from abusing the Petitioner, the following Maryland and Federal laws will apply.

During the term of a non ex parte Protection Order, it is illegal for any person subject to the Protection Order to possess:

1. Any firearm or ammunition (as defined by) (Federal law, 18 U.S.C. § 922(g)(8)), and,
2. Any handgun or assault weapon (Maryland Law, Md Code, Public Safety Article, § 5-133(b))

VIOLATION OF THESE PROVISIONS COULD LEAD TO AN ARREST, CRIMINAL PENALTIES AND FORFEITURE OF FIREARMS.

You may arrange to surrender any firearms or ammunition in your possession to a law enforcement agency. For further information call the Domestic Violence Unit.

The reverse side of the written notice contains the language of the cited Maryland and federal statutes.

make every attempt possible to meet the needs of a victim. You can do it...if you make the task a priority.” He added, “Don’t try to start up all by yourself; seek support and resources from successful programs, identify the issues, and determine the best practices that will work at your level. Create opportunities for dialogue, invite people to sit down and talk about the issues, and don’t initiate a program until your mission is clear.” Finally, he observed, “Some of the most promising practices can be implemented with no additional funds.” The Domestic Violence Unit of the Montgomery County Sheriff’s Office did not receive additional funding to initiate its firearm seizure program, but the lieutenant and his deputies found a way to start a successful program with existing resources.

Sources

Lieutenant James Dunn (retired)

Montgomery County Sheriff’s Office
Domestic Violence Unit

Vivian Levi

Coordinator
Montgomery County Abused Persons
Program

Sergeant J. E. Portillo

Montgomery County Sheriff’s Office
Domestic Violence Unit

Lieutenant Colonel Bruce T. Sherman

Assistant Sheriff
Montgomery County Sheriff’s Office

Sergeant M. Uy

Montgomery County Sheriff’s Office
Domestic Violence Unit

***B. King County, Washington,
Sheriff’s Office Firearms Surrender
and Forfeiture Program***

The King County Sheriff’s Office responds to between 10,000 and 12,000 domestic violence incidents each year. Its Domestic Violence Unit handles approximately 5,000 of these cases, focusing efforts on reviewing patrol reports for quality and completeness, assessing risk, and determining follow-up needs.

The Sheriff’s Office, along with many of the other agencies in King County and Seattle that work with domestic violence victims, determined that not enough was being done to prevent abusers from using firearms to harm their victims. After an extensive strategy-development process, the King County Sheriff’s Office, in collaboration with the King County Prosecutor’s Office and the King County courts, established a multifaceted Firearms Surrender and Forfeiture Program to facilitate the enforcement of laws and effective use of court rules. The program has successfully addressed some of the problems that plague many law enforcement efforts to enforce firearm prohibitions, such as determining which agencies are responsible for tracking firearms, storing them, and returning them to their owners when a prohibition no longer applies. The King County program has developed a system that attempts to resolve these problems.

The program focuses on the enforcement of state firearm laws (see box, next page). Although these laws were enacted before the creation of the Firearms Surrender and Forfeiture Program, they largely were not enforced until the program began in March 2003. Under this program, implemented in the unincorporated towns of King County, more than 920 firearms have been surrendered voluntarily to the Sheriff’s Office at the scene of a domestic violence call or pursuant to an order of the court. According to the Sheriff’s Office, forfeited and unclaimed firearms worth a total of approximately

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 of enforcement or to 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 the restraining order. If the investigator will not; the DVRU sergeant and responsible Deputy District Attorney/or 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, if true, 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

<p><i>Maureen McKnight</i> Hon. Maureen McKnight, Chief Family Court Judge <i>The FAPA cases that are now in which a current firearm has been claimed.</i></p>	<p><i>9/8/14</i> date</p>
<p><u>Portland Police Bureau</u> <i>Michael Reese</i> Chief Michael Reese</p>	<p><i>7/05/14</i> date</p>

Multnomah County District Attorney's Office

(2J::) \i" ""f'L1<..LS--[3/4-
 Rod Underhill, Multnomah County District Attorney

7/9/14
 date

STATE OF NEW HAMPSHIRE

GOVERNOR'S COMMISSION ON DOMESTIC AND SEXUAL VIOLENCE



OFFICE OF THE ATTORNEY GENERAL:

A MODEL PROTOCOL FOR LAW ENFORCEMENT RESPONSE TO DOMESTIC VIOLENCE CASES

Third Edition, 2013

DOMESTIC ABUSE INVESTIGATION CHECKLIST

POLICE DEPARTMENT

I. VICTIM (Interview separate from suspect)

- Describe the victim's location upon arrival.
- Record victim's name, dob, address, home and work phone numbers.
- Note time dispatched, time arrived.
- Record any spontaneous statements (excited utterances) made by the victim.
- Describe the victim's emotional condition.
- Note victim's relationship to suspect (married, boyfriend, family member, etc.)
- Document the victim's injuries in detail (**size, location and coloration**) and if medical treatment sought.
- If victim received or may receive any medical attention, **complete medical records release form and have victim sign it.**
- Document evidence of alcohol and/or other drugs consumed by victim relative to the incident.
- Record any history of substance/chemical use by victim.
- Note any restraining/court orders in effect.
- Advise and provide victim with written notice of rights and services available.
- Ask victim about the presence and location of any firearms and ammunition within the dwelling.
- Ask victim about the presence and location of any deadly weapons that were used or threatened to be used, by the suspect.
- Receive audio, video or written statement from victim. (Audio or video preferred)
- Ask victim if any aspect of crime was facilitated by use of any technological devices (cell phone, computer, instant messaging, text, social networking, etc.)

II. SUSPECT (Interview separate from victim)

- Note suspect's location upon arrival.
- Record suspect's name, dob, address, home and work phone numbers.
- Record any spontaneous statements (excited utterances) made by the suspect.
- Describe the suspect's emotional condition.
- Describe the suspect's overall physical condition and appearance.
- Describe the suspect's injuries in detail (**size, location and coloration**). **Complete medical records release form and have suspect sign it.**
- Document evidence of alcohol and/or other drugs consumed by suspect during incident.
- Ask suspect about the presence, location, type of firearms and ammunition, in suspect's control, ownership or possession.
- Ask suspect about the presence of other deadly weapons that were may have been used or threatened to be used during incident.
- If arrested**, issue Miranda rights, ask suspect if he/she wants to make a statement, knew of restraining order, and/or understood order.
- Receive audio, video or written statement from suspect. (Audio or video preferred)

III. CHILDREN

- Interview each child alone. **Special efforts should be made to minimize the impact on the child even if it includes not taking a statement.**
- Every** report should include if children live in home, whether or not they are present, and child's relationship to each person present at scene.
- List names, ages, and school attended for each child present.
- If possible and necessary, arrange to have the child interviewed at a CAC with a forensic interviewer.
- Describe each child's emotional state.
- Describe and document each child's injury, if applicable.
- Notify DCYF of any child's injuries.

IV. WITNESSES

- Interview the reporting party.
- Identify all witnesses and take an audio, video or written statement. (Audio or video statement preferred)
- Record all witnesses' addresses and phone numbers.
- Record names and addresses of emergency personnel or are present or responded to the call.
- Identify treating physician and hospital.
- Receive audio or written statements from medical personnel. Medical release form required.

V. EVIDENCE

- Record the "911" number and incident number.
- Obtain recording of "911" call.
- Photograph the victim's injuries
- Photograph the suspect's injuries.
- Impound and take into evidence all deadly weapons used or threatened to be used.
- Photograph and take into evidence any objects thrown, broken, or otherwise used in incident
- Obtain copies of any text messages, e-mails, phone messages or other social networking materials.
- Complete preservation of orders and follow up with grand jury subpoena or search warrant if necessary.
- Obtain copies or all medicals records from doctors, hospitals and responding emergency service personnel.
- Obtain copies of any civil protective orders or criminal bail orders in effect.

VI. OTHER

- Incident was domestic violence abuse and/or violation of a protective order.
- If arrest is affected, as **required by RSA 173-B**, remove all firearms and ammunition in the defendant's control, ownership or possession.
- Consider lethality assessment questionnaire and implement LAP protocol if applicable.**

ABUSE DEFINED:

Assault or reckless conduct (RSA 631:1 through 631:3)
Criminal Threatening (RSA 631:4)
Sexual Assault (RSA 632-A:2 through 632-A:5)
Interference with freedom (RSA 633:1 through 633:3-a)
Destruction of property (RSA 634:1 & 634:2)
Unauthorized entry (RSA 635:1 & 635:2)
Harassment (RSA 644:4)

DOMESTIC VIOLENCE INVOLVING LAW ENFORCEMENT

Members of the law enforcement profession are not immune from committing domestic violence against their intimate partners. All departments should have a policy in place on dealing with domestic violence involving law enforcement officers. The International Association of Chiefs of Police (IACP) has developed a model protocol for handling acts of domestic violence committed by law enforcement and for implementing prevention strategies. The IACP policy provides best practice in addressing incidents of reported domestic violence where either the perpetrator, victim or both, is an employee, whether sworn or civilian, of any rank in any law enforcement agency.

See [Appendix E](#) for the *IACP Domestic Violence by Police Officers Model Policy*

When handling a domestic violence incident involving a law enforcement officer, officers should:

- Handle it like any other domestic violence case.
- Notify a supervisor in accordance with department policy.
- Seize all firearms and ammunition to include department issued and any deadly weapons used or threatened to be used ([NH RSA 173-B:10](#)).

New Hampshire law, unlike federal law, has no exception for law enforcement or military personnel to carry or possess firearms and ammunition while on duty or otherwise after being served with a protective order that specifically prohibits possession of firearms and ammunition.

Anyone found to be in possession of a firearm or ammunition contrary to a court order must be arrested as outlined in [RSA 173-B:9](#).

LIABILITY ISSUES

An appropriate and effective law enforcement response to domestic violence calls is the best mechanism for enhancing the safety of victims. It is also the means by which law enforcement departments can minimize liability for the agency and officers. It is therefore imperative that officers receive appropriate training in handling of domestic violence complaints.

The ten major areas of domestic violence lawsuits against law enforcement are:

1. Failure to take proper actions to protect citizens.
2. Failure to appropriately enforce a court order of protection of a victim of domestic violence.
3. Failure to respond at all or in a timely manner.
4. Failure to provide notification information to a victim as required by law enforcement.

ROLE OF THE DISPATCHER AND CALL TAKERS

Law enforcement rely on dispatchers/call takers to describe in as much detail as possible what has and what is occurring throughout a call. **Domestic violence calls should be given a high priority.** Whenever possible the dispatcher/call taker should assign a back-up unit. The dispatcher/call taker receiving a domestic violence call should attempt to keep the caller on the telephone, if safety permits. Dispatchers should ask the caller if they are safe and encourage them to seek safety.

Domestic violence calls should be coded as such for data collection purposes. Information obtained should include:

- Name of caller and their callback number.
- The exact nature of the incident; when it happened; anyone injured.
- Name of victim and suspect.
- The telephone number where the caller can be called back and whether it is safe to do so.
- The exact location of the incident.
- Whether firearms or other deadly weapons are involved or were threatened to be used.
- The precise location of any firearms and/or other weapons.
- The precise location of the victim.
- The precise location of the suspect.
- The precise location of the children, or other individuals present at the scene, if applicable.
- The location of the entryways.
- In trying to determine the suspect's state of mind, the caller should be asked about:
 - Alcohol and/or other drug use
 - Mental illness, including depression
- The dispatcher/call taker should determine:
 - Whether an ambulance is needed
 - If there are any warrants in effect for any party present
 - Whether an active protective order is in effect and if so, the conditions of the order
 - Whether bail restrictions are in effect

It is important to get as much information as possible from the victim and other household members to provide to the responding officer(s).

Recorded information can be an essential tool for the investigating officer.

When the officer indicates that s/he is in position to meet with the caller, the dispatcher/call

ROLE OF THE FIRST RESPONDER

OFFICER SAFETY CONCERNS

- Be mindful that in the majority of cases the parties know that law enforcement is responding.
- If possible, a minimum of two officers should respond to a domestic violence call.
- Obtain all available information from the dispatcher before arriving at the scene and notify dispatch upon arrival.
- Avoid the use of sirens and emergency lights while responding unless it is believed that the victim is in imminent danger of serious bodily injury.
- Be alert to vehicles and people leaving the immediate area.
- Keep in mind that the threat to law enforcement safety **may be waiting outside the scene.**
- Pause outside the scene and attempt to determine what is taking place inside.
- ***STOP, LOOK AND LISTEN.***
- Unless exigent circumstances require forced entry, such as the necessity to stop what officers believe to be an ongoing physical assault or a felony, the officers should seek to have one of the parties admit them to the residence. **In the absence of exigent circumstances, the officer has no right to enter, but shall make reasonable efforts to ascertain the well-being of those present.**
- Remain until it is believed that there is no immediate threat of physical harm, and appropriate measures have been taken to ensure the safety of those present, or an arrest is made and a criminal investigation has begun.

Statistically, the first minute after arrival at the scene is the most dangerous for law enforcement

Officers should establish control by:

- **Separating the victim and the suspect.** **NOTE:** If responding alone, keep both parties in view. (Position the victim so the officer can keep the suspect in view and the suspect cannot visually intimidate the victim.) **NEVER** lose sight of the parties involved;
 - Removing the parties from areas of the home that pose the most threat, e.g., kitchen;
 - Identifying and taking physical control of any weapons, including but not limited to firearms, knives, etc.;
- Assessing injuries, administering first aid, and requesting medical services; and

NOTE: *A parent or legal guardian NEED NOT be present when interviewing a child as a potential witness. Parents and legal guardians are only required to be present during an interview if the minor is a **SUSPECT** in a crime.*

REMINDER: If there is a protective order in place, law enforcement MUST arrest in all instances where they have probable cause to believe that the protective order was violated. The officer may rely upon a copy of any protective order provided by any source or may rely on the statement by the protected party that the order remains in effect.

The officer should take the suspect into custody as soon as the officer determines that a warrantless arrest is appropriate. If the suspect has fled the scene, the officer should initiate procedures to pursue and apprehend the suspect as soon as possible; arrange for the safety of the family, and take reasonable measures to safeguard the property. If a warrant is necessary, the officer **should** obtain and execute the warrant as soon as possible.

Subsequent to an arrest for the violation of the protective order, or abuse, officers **SHALL SEIZE** any firearms and ammunition in the control, ownership, or possession of the defendant. Officers shall also seize any other deadly weapons in the control, ownership or possession of the defendant which may have been used, or were threatened to be used, during the violation of the protective order. The law enforcement agency **SHOULD** maintain possession of the firearms, ammunition, or deadly weapons until the court issues a written order for return. (See [Firearms Issues](#), page 52)

PROCEDURE WHEN ARREST IS NOT POSSIBLE

- If no crime has been committed or there is no probable cause for an arrest, and there are no safety concerns, officers should refer the parties to appropriate community services, and/or suggest a temporary separation.
- When arrest is not possible, officers are still obligated to advise victims of their rights under RSA 173-B:10, and should always discuss safety options. It is highly recommended that law enforcement encourage victims to call their local crisis center (**1-866-644-3574**) where housing and safety plans can be formulated and assessed by a trained advocate.
- The officer should discuss the possibility of alternative housing with the victim and encourage the victim to contact law enforcement again if necessary. The victim's perception of the willingness of law enforcement to assist and protect the victim is often the determining factor in the victim's decision to seek further assistance from the criminal justice system.

*Protective orders are civil orders designed to protect the victim from the defendant. **The prohibited actions in a protective order only apply to the person that the order is addressed to and NOT to the victim.** It is therefore not possible for the victim to be in violation of the order and **under no circumstances should an officer threaten, or actually arrest the victim for violating a protective order.** Temporary reconciliation **shall not** revoke the order. IF the victim indicates a desire to initiate contact with the defendant, however, the officer should suggest that the victim contact the issuing court to amend the*

- Even when an arrest is not made the issuance of a protective order may be appropriate. Officers may assist the victim by directing that person to the court during business hours or by requesting a judge to issue an emergency telephonic protective order during hours when the court is closed. Officers should be mindful of the statutory protection provided to victims by [RSA 173-B:10](#).
- In addition, [RSA 173-B:11](#) states that “all officers shall give victims of abuse immediate and adequate notice of their right to go to the district or superior court in their county to file for a petition asking for a protective order against the abusive person and to seek a private or criminal complaint”.

PROTECTION BY LAW ENFORCEMENT

Whenever law enforcement has probable cause to believe that a person has been abused, as defined in [RSA 173-B:10](#), officers **SHALL** use all means to prevent future abuse, including, but not limited to:

- Confiscating any firearms and ammunition in the defendant’s control, ownership or possession.
- Confiscating any deadly weapons used or threatened to be used in the domestic abuse.
- Transporting or obtaining transportation for the victim and any child to a designated place to meet with a crisis center advocate, family member or friend.
- Standing by while the victim removes toiletries, medication, clothing, business equipment and other items as determined by the court, from the residence or business. (See [Civil Standbys](#), page 45)
- Giving the victim immediate and written notice of the rights and of the remedies and services available to victims of domestic violence as defined in [RSA 173-B:10 I\(d\)](#). (See [Appendix G](#), Victim Notification Form.)

CONFIDENTIALITY OF VICTIM’S LOCATION/ADDRESS

It is important for the officer to determine if the perpetrator knows where the victim lives. If the perpetrator does not know and the victim does not want the perpetrator to know, the officer should not include any reference to the victim’s address in the body of the report, the incident arrest sheet or other police documents. The criminal complaint should just identify the city (i.e. Dover NH) as the location of the incident without reference to the specific street. (See [Appendix H](#), Sample Complaint). Defendants have purposely violated protective orders to obtain victim’s address from the criminal complaint.

EMERGENCY CARE, LIMITATIONS AND LIABILITY [RSA 173-B:12](#)

“Any act or omission of any peace officer rendering emergency care or assistance to a victim of domestic violence including, **but not limited to** transportation, **shall not impose** civil liability upon the peace officer or the peace officer’s supervisors or employer if the care and assistance is rendered in good faith, **unless the act or omission is a result of gross negligence or willful misconduct**”.

occurred within **12 hours** of the incident. The arresting agency **SHALL** seek an arrest warrant if the defendant is not arrested within **12 hours** of the incident. The officer should verify that the order was served on the defendant.

Subsequent to the arrest, law enforcement **SHALL** seize any firearms and ammunition in the control, ownership or possession of the defendant. (See [Firearms Issues](#) page 52) **Law enforcement should not return the items seized to the defendant without an order from the court.** Unless there are exigent circumstances, this rule of mandatory seizure does not authorize a law enforcement officer to enter the person’s home for the purpose of seizing the weapons. A search warrant must be obtained unless the officer is given consent to enter.

The violation of a protective order is a Class A misdemeanor, for which arrest and detention is statutorily mandated. An individual arrested for a violation of a protective order **MUST** be detained until arraignment. A Bail Commissioner may not set bail on the defendant. If extreme conditions exist that prevent the defendant from being safely detained, the arresting agency may request alternate orders from a judge.

***NOTE:** Remember that the provisions of the protective order remain in effect while the civil standby is taking place.*

CIVIL STANDBYS

Law enforcement is required by statute to conduct civil standbys for the purpose of allowing a defendant or victim to retrieve personal property. The process is outlined in statute.

Defendant- [RSA 173-B:5 I\(a\)\(2\)](#) restrains the defendant from entering the premises and curtilage where the plaintiff resides, except when the defendant is “accompanied by a peace officer and is allowed entry by the plaintiff for the sole purpose of retrieving personal property specified by the court”.

The defendant must make arrangements through the local law enforcement agency to retrieve any property specified by the court. The law enforcement agency should contact the victim and arrange for a convenient time for the defendant and the law enforcement officer to proceed to the residence to retrieve the items designated. Should the victim deny access to the items specified by the court, the law enforcement officer should notify the court of the refusal. Disputed property needs to be addressed by the court and should be left at the residence until so ordered. **UNDER NO CIRCUMSTANCES SHOULD THE DEFENDANT BE ALLOWED ACCESS TO THE RESIDENCE WITHOUT THE SPECIFIC CONSENT OF THE VICTIM AND THE PHYSICAL PRESENCE OF AN OFFICER.**

For the personal safety of law enforcement and the victim, the officer should physically remain in the presence of the defendant while the victim is retrieving the items specified by the court.

Victim – [RSA 173-B:10 I\(d\)](#) requires a law enforcement officer to “assist the victim in removing toiletries, medication, clothing, business equipment and any other items determined by the court.”

If the victim has left the residence, this statute does not require notification to, or permission from, the defendant to remove the items specified. Nor does it require that the defendant be present.

If there is a court order allowing a large amount of personal property, such as furniture, to be removed from the residence and it is apparent that it will take a prolonged period of time, the law enforcement agency may seek guidance from the court relative to cost reimbursement or any other alternative plan the court may recommend or dictate.

Best practice is that whenever someone asks for a standby the law enforcement agency should grant the request, within reason, regardless of whether or not there is an order in place EXCEPT if the victim objects.

OTHER PROTECTIVE ORDERS

MARITAL ORDERS OF PROTECTION - [RSA 458](#)

After a party files for divorce, annulment or separation, the court may include temporary or permanent protective orders in the marital order that:

- Direct the offending party to refrain from abusing or interfering in any way with the liberty of the other party.
- Direct the offending party from entering the premises wherein the other party resides upon a showing that physical or emotional harm would otherwise result.
- Direct the offending party from contacting the other party at, or entering, the other party's place of employment or school.
- Direct the offending party from harassing, intimidating or threatening the other party, other party's relatives regardless of their place of residences, or the other party's household members in any way

These orders cannot prohibit someone from possessing firearms and ammunition.

These orders do not provide the same level of protection afforded by a civil domestic violence protective order (173-B). These orders are not entered into a state database

Enforcement Of Marital Protective Orders

A warrantless arrest for violation of the order may be made within **12 hours** of the incident, when supported by probable cause, whether or not the violation is committed in the presence of a peace officer.

Violations of non-protective provisions of a marital protective order (e.g. failure to pay bills) are non-criminal matters. The complaining party should return to the court that issued the orders.

CRIMINAL BAIL PROTECTIVE ORDERS - [RSA 595:7](#)

Criminal bail protective orders (CBPO) can be issued by the bail commissioner or judge in a criminal case involving domestic violence. There is a specific CBPO order form that should be used in these cases. (See [Bail Issues](#), page 35)

APPENDIX I
A GUIDE TO ENFORCING PROTECTIVE ORDERS

Statute/ Name of Order	Issuing Court	Protected Party	Action taken when there is Probable Cause for a Violation	Firearms and <u>Ammunition</u>	Charging Decision (only the “Protective Orders” section, not “Other Relief” section
RSA 173-B DVP Orders: Emergency Order Temporary Order Final Order	Circuit Court- Family Division Superior Court	Family or household member, current or former sexual or intimate partner	Shall arrest. 12 hour warrantless arrest exception. Shall be detained until arraignment.	Emergency and Temporary DVP Orders: Judge’s discretion Final Orders: Shall confiscate at time of service or arrest	Can charge with Violation of a Protective Order or Stalking 633:3-a(c)
RSA 633:3-a Stalking Order	Circuit Court- District Division	No relationship required	Shall arrest. 12 hour warrantless arrest exception. Shall be detained until arraignment for violating a stalking protective order.	Temporary Stalking Orders: Judge’s discretion Final Orders: Shall confiscate at time of service or arrest	Can charge with Stalking 633:3-a(c)
RSA 491 Equity Order	Superior Court only	<i>Examples:</i> Issued to a parent who wants orders to keep her daughter’s boy friend away from her daughter, disputing neighbors and other individuals not related.	NO arrest. Document incident. Protected party files motion for contempt in issuing Court.	N/A	Investigate for a charge of Stalking 633:3-a(c)
RSA 458:16 Marital Order	Circuit Court- Family Division	Orders issued in divorce decree by Circuit Court- Family Division	When the violation is the result of a criminal act CAN arrest. 12 hour warrantless arrest exception.	If the order is violated, shall be seized at the time of arrest	Can charge with Stalking 633:3-a(c)
RSA 458:16 Marital Order	Superior Court	Orders issued in divorce decree by Superior Court before the existence of the	Violations that are not the result of a criminal act but merely a violation of a non-protective	N/A	

		Family Courts	part of the order should be handled the same way as an Equity Order above.		
RSA 169-C:16 169-C Order of Protection	Circuit Court-Family Division	Orders issued in a juvenile Abuse and Neglect proceeding to keep a person away from a child, the premises or another party.	Shall arrest <u>6 hour</u> warrantless arrest exception. Shall be detained until arraignment.	Shall confiscate all firearms at time of arrest	
RSA 597-7 Criminal Bail Protective Orders (CBPO) – Bail Conditions	Circuit Court-District Division (which includes Bail Commissioners) Superior Court for felony cases	Orders issued against a defendant in a criminal case as a condition of release to bail to protect the victim	Should be charged with stalking under 633:3-a.	Shall confiscate under 173-B:10	

North Dakota Model DV Policy

REPORTS

A. **Required Reports:** “A law enforcement officer shall make a written report of the investigation of any allegation of domestic violence regardless of whether an arrest was made. If the officer determines through the course of an investigation that one of the individuals was the predominant aggressor, the report must include the name of that individual and a description of the evidence that supports the findings. The officer shall submit the report to the officer’s supervisor or to any other person to whom the officer is required to submit similar reports.” N.D.C.C. § 14-07.1-12

1. The investigating officer shall prepare an investigation report regarding the incident in accordance with existing departmental policy. Any domestic violence call handled by this department shall have the initial report completed before the officer goes off duty. The complete report shall be written and completed within five (5) days from the incident’s occurrence regardless of whether an arrest was made or not. [Note: Officers should utilize Appendix D.]

B. **Documentation:** The following should be documented within the report [Note: Officer should utilize Appendix H for documentation purpose.]:

- The victim’s and suspect’s exact words / excited utterances;
- Elements of all crimes investigated;
- Any visible injuries and/or complaints of pain – documentation should include a description in the police report, as well as photographs and medical reports (including a medical release), if medical treatment was obtained;
- Note whether children were present;
- Whether either party was photographed;
- Whether alcohol and/or drugs were present or used in the incident;
- Any past domestic violence (if possible, attach copies of previous reports made if law enforcement responded to other incidents);
- Note if weapons were present and/or are possessed by the suspect;
- Any court orders currently or previously in place (i.e. an Order for Protection, custody order, etc.);
- Any restraining order violations;
- List the phone number of the victim’s residence along with alternative contact information, (i.e. additional phone numbers, etc.) where messages can be safely left if the victim decides to leave the residence for safety reasons. Also, if possible, record name, address, and phone number of two close friends or relatives of the victim who will know of her/his whereabouts 6-12 months from the time of the investigation. [Note: If the victim will be seeking to hide from the suspect, KEEP A SEPARATE RECORD of the address and phone number where the victim will be located.]
- Referrals provided to domestic violence program and other victim services; and
- If the parties do not speak English, please note what language they do speak for the benefit of other staff attempting to contact them. *Use objective interpreters*

(someone who is not a family member or a percipient witness) to obtain statements and/or tape-record statements.

C. **Lethality Assessment Provided to Prosecutor's Office:** Officers should provide information regarding a suspect's dangerousness / lethality to the prosecutor for use at arraignment. Therefore, officers should gather information regarding the suspect's:

- Criminal history;
- History of abusing the current victim, including expired or dismissed protective orders;
- History of abusing other victims;
- History of abuse from other jurisdictions (including tribal and other states);
- Ownership, presence, or access to firearms, and their location;
- Use of weapons in prior abuse of current or previous victim(s);
- Present or past threats against or abuse of pets;
- Present or past attempts or threats to kill; and
- Present or past attempts or threats to commit suicide

D. **Documentation in non-arrest cases:** In addition to the above considerations, in cases in which an arrest is not made for domestic violence, stalking, or related crime, the incident still must be documented. In such cases, law enforcement should note in the incident report:

1. What referral information was provided; and
2. Why no arrest was made, nor any warrant sought.

E. **Access to Domestic Violence Reports:** Law enforcement will provide, at no cost, one copy of all domestic violence face sheets and incident reports to a domestic violence victim upon request. Absent good cause, the face sheet should be made available during business hours, within a reasonable amount of time of the request. Incident reports should be completed in an expeditious manner.

Reports should also be provided, at no cost when requested, to domestic violence advocates, shelters, and/or victim-witness coordinators under the same timelines provided above.

Military:

___ Yes

___ No

960 Required:

___ Yes

___ No

Domestic Violence Worksheet

CFS #: _____ **Time:** _____ **Date:** _____ **Officers:** _____

Location of incident:

Victim's name: _____ **DOB:** _____ **Sex:** _____ **Phone # H:** _____
 M ___ F ___ W: _____

Address of victim: _____ **Alternate contact (Name, Address, Phone):** _____

Suspect's name: _____ **DOB:** _____ **Sex:** _____ **Phone # H:** _____
 M ___ F ___ W: _____

The Victim/Suspect displayed the following emotional and physical conditions:

Victim:		Suspect:	
___ angry	___ complained of pain	___ angry	___ complained of pain
___ crying	___ abrasion(s)	___ crying	___ abrasion(s)
___ fearful	___ minor cut(s)	___ fearful	___ minor cut(s)
___ hysterical	___ laceration(s)	___ hysterical	___ laceration(s)
___ calm	___ fracture	___ calm	___ fracture
___ afraid	___ concussion(s)	___ afraid	___ concussion(s)
___ irrational	___ Under the influence of drugs	___ irrational	___ Under the influence of drugs
___ threatening	___ Under the influence of alcohol	___ threatening	___ Under the influence of alcohol
___ nervous		___ nervous	
___ other, explain _____		___ other, explain _____	

Relationship between Victim and Suspect: (Mark all that apply)
 ___ spouse ___ former spouse
 ___ dating relationship ___ child in common
 ___ parent and child ___ emancipated minor
 ___ family member ___ other _____
 ___ residing together ___ present ___ past

Length of relationship: ___ Years ___ Months
 If applicable, date relationship ended: _____

Medical treatment: ___ none ___ self-administered
 ___ paramedics ___ will seek own doctor
 ___ hospital ___ refused medical aid

Paramedics at scene: ___ Yes ___ No
 Name(s): _____
 Hospital where treated: _____
 Attending Physicians: _____

Domestic violence arrest made: ___ Yes ___ No
Domestic violence charges pending: ___ Yes ___ No
Investigative report filed: ___ Yes ___ No
Protection/Restraining order: ___ Yes ___ No ___ **Current** ___ **Expired**
Other charges: **Suspect:** ___ Yes ___ No
Victim: ___ Yes ___ No

Follow-up photo(s) ___ or statement(s) ___ required? (explain)

Copy of 9-1-1 call needed: ___ Yes ___ No

Weapons: **Suspect:** ___ Yes ___ No **Type of weapon Used:** _____
Victim: ___ Yes ___ No **Type of weapon Used:** _____
Weapons confiscated: ___ Yes ___ No **Firearms confiscated:** ___ Yes ___ No

Evidence collected from: ___ Crime Scene ___ Hospital ___ Property Inventory #

Rhode Island DV and Firearms Model Protocol

RIGL § 12-7-21 and active members of military service including members of the reserve components thereof who are required by law or departmental policy to carry departmental firearms while on duty, or any person who is required by their employment to carry a firearm in the performance of their duties. Any individual exempted pursuant to this exception may possess a firearm only during the course of their employment. Any firearm required for employment must be stored at the place of employment when not being possessed for employment use; all other firearm(s) must be surrendered. RIGL § 8-8.1-3

Seizure Of Firearms

A. Response to an incident of domestic violence

Upon arrival at the scene of an alleged incident of domestic violence, the responding officer(s) shall seize any firearm allegedly used or threatened to be used in the incident, if in plain view or found pursuant to consent or custodial search, or a search incident to arrest, where authorized by State law to do so. *[The responding officer(s) must rely on State law for the authority to seize weapons, or the authority to seize weapons as contraband.]*

B. Seizure of firearm pursuant to protection order prohibition

1. Determination of existence of current protection order

A. Interview of victim

The responding officers shall determine whether there is a current protection order in effect by interviewing the alleged victim.

B. Verification of protection order

If the alleged victim states that he/she is protected by a current protection order, the officer shall verify the existence of the protection order by examining the paper copy. If there is no paper copy available, the officer shall verify the existence and terms of the order through electronic means of the statewide protection order database, RONCO (Restraining Order No Contact Order).

If no copy is immediately available through paper or electronic means, the officer should use all reasonable efforts to determine the existence of the order, including contacting the court that issued the order or the law enforcement agency in the jurisdiction in which the order was issued, drawing upon the personal knowledge of the officer or relying upon credible statements made by the alleged victim and/or the respondent during the interview process.

i. Paper copy of protection order – determination of facial authenticity

If a paper copy of the order is available to the officer no other means of verification shall be undertaken, provided the following can be determined:

- The order is still in effect evidenced by the fact that the expiration date has not yet passed; the order contains the date on which it was issued, which is prior to the date when enforcement was sought;
- The names of the parties are contained in the order and they are same names of the parties involved in the domestic violence incident;
- There is an indication that the order was issued by a judicial officer or other appropriate authority. The responding officer should look for an official seal, signature or stamp representing the judicial entity granting the order;
- The order specifies terms and conditions against the Respondent.

ii. No Service or Notice Determination

- Unless the order is a temporary/ex parte protection order, the officer shall not try to determine if the final order was served on the Respondent.

2. Firearm prohibition pursuant to protection order (RIGL §8-8.1-3 (d) and §15-15-3 (5))

Once the officer has determined that there is a current protection order in effect, the officer shall determine whether the Respondent is prohibited from possessing a firearm for the duration of the protection order.

NOTE!

If the protection order was issued in Rhode Island either (i) or (ii) below may apply. If the protection order was issued in a jurisdiction other than Rhode Island, in which enforcement is requested (i.e. another State or Tribe), only (ii) may apply.

- i. RIGL §8-8.1-3 (d) and §15-15-3 (5) may prohibit possession of some or all firearms for the duration of a protection order.
- ii. The protection order includes relief/conditions/provisions that prohibit possession of all or certain firearms for the duration of the protective order.

-
- a. If, upon responding to the scene of a domestic violence incident, the responding officer learns that there is a protection order currently in effect that was issued either by a Rhode Island court, or the court of another State/Tribe that prohibits possession or control of a firearm (*because either (B)(2)(i) or (ii) apply*), the officer shall seize any firearm prohibited by the protection order if it is:

- i. In a vehicle driven by the alleged perpetrator when he/she is apprehended and the firearm is seized pursuant to a valid stop-and-frisk search;
 - ii. In plain view at the scene of the incident;
 - iii. Found pursuant to a consent search at the scene of the incident;
 - iv. Found pursuant to a custodial search; and/or
 - v. Found pursuant to an inventory search of a vehicle upon arrest of the alleged perpetrator.
- b. The responding officer shall note the firearm(s) seizure in the report and whether the protection order is a final order.

NOTE!

The officer shall note if the order was issued after a hearing at which the Respondent either appeared or had an opportunity to appear.

3. Federal firearm prohibition due to existence of protection order

If the protection order appears to meet the requirements of the federal definition of protection order and a firearm is found:

- a. The responding officer shall seize the firearm as contraband and turn it over to the federal authorities;
- b. The responding or supervising officer shall immediately contact the State of Rhode Island Office of the Attorney General and the local field office for the Bureau of Alcohol, Tobacco, and Firearms (ATF);
- c. The seized firearm(s) shall be immediately turned over to the ATF as soon as possible. A copy of the report shall be immediately forwarded to the State of Rhode Island Office of the Attorney General and the local field office of the ATF and shall clearly indicate the suspected violation of 18 U.S.C. § 922 (g) (8).

C. Firearm seizure where there is no current protection order, and firearm was not used or threatened to be used.

When a firearm is determined to be present because the firearm was in plain view, or located pursuant to a consent or custodial search or a search incident to arrest, the firearm shall be confiscated from the alleged perpetrator if it is determined that control and/or possession of the firearm is one of the following:

1. A violation of the state license to carry, or possession laws, and/or regulations.
2. Otherwise prohibited under state law.
3. Prohibited by federal law.
 - a. If there is probable cause to believe that the alleged perpetrator is prohibited from possessing a firearm under federal law either because (1) there is probable cause to believe that the alleged perpetrator was convicted of a qualifying misdemeanor that prohibits firearm possession pursuant to 18 U.S.C. § 922(g)(9) or other provision of the Federal Gun Control Act, or (2) the officer has reason to believe that the alleged perpetrator is otherwise prohibited under federal law from possessing a firearm, the responding officer shall follow the procedures outlined below:
 - i. Misdemeanor Crime of Domestic Violence: If it is determined through a criminal records search that the alleged perpetrator has been previously convicted of a misdemeanor crime of domestic violence, the firearm shall be seized as contraband. The responding officer/supervising officer shall immediately contact the State of Rhode Island Office of the Attorney General and the local field office for the ATF. A copy of the report of the incident shall be immediately forwarded to all such parties and shall clearly indicate the suspected violation of 18 U.S.C. § 922(g)(9) or other provision of the Gun Control Act.

Officers may also confront circumstances at the scene of a domestic violence call where, in the officers' judgment, removal of firearms) is warranted in the interests of public safety. The following are procedures for firearms removal when officers confront such circumstances:

1. Opportunities to search:
 - a. Plain view
 - b. Consensual
 - c. Exigent circumstances
 - d. Search warrant
 - e. Incident to arrest
 - f. Probable cause
 - g. Terry frisks
 - h. Protective sweeps
 - i. Community caretaking function
2. Opportunities to seize:
 - a. Safekeeping
 - b. Evidence/contraband
 - c. Voluntary relinquishment
3. Mandatory:
 - a. When an alleged offender in a domestic incident uses or threatens the imminent use of firearms or other legally possessed specifically identified weapons, confiscation is required.
 - b. Seize and confiscate illegally possessed weapons as contraband. Arrest for appropriate weapons violations.
 - c. Upon arresting an individual who is licensed to sell, carry, possess, repair or dispose of firearms, the arresting officer should, whenever practicable, notify the licensing body.
4. Discretionary
 - a. Encourage the voluntary relinquishment of firearms when investigating domestic violence. Accept legally possessed weapons that are voluntarily surrendered.
 - b. In other domestic incidents not involving the threat of weapons, consider facilitating the voluntary surrender of firearms and other dangerous weapons.

Domestic Violence Firearms Compliance Program Protocol



Revised 3/13/2008

Domestic Violence Firearm Compliance Program
“A Model Program for San Mateo County”

Domestic violence experts estimate that having a firearm in the home makes it three times more likely that a family member will be murdered by another family member or intimate partner. In addition, domestic violence calls are amongst the most dangerous calls that law enforcement officers may ever encounter. Nationally, firearms are used in two-thirds of domestic violence homicides. In abusive households, firearms are the weapons used most often to threaten and intimidate partners.

Over the past several years, there have been many cases in which persons prohibited from possessing firearms have tragically killed family members or intimate partners. This often has been as a response to, or in retaliation against, their partner for obtaining a restraining order. Many of these cases may have been prevented if there was a formal mechanism in place to track and enforce firearms restrictions imposed by the Courts.

According to the California Department of Justice (2006), there are approximately 260,000 active restraining orders in California. In 2006, there were 141 domestic violence homicides in California and over half involved firearms. Since 2004, all domestic violence restraining orders in California must have a firearm prohibition.

Currently, San Mateo County law enforcement agencies follow a countywide protocol in which firearms (and ammunition) are seized when called to the scene of domestic violence cases. Under the authority of Penal Code Section 12028.5, law enforcement officers may seize and hold all firearms located at a domestic violence scene. Unfortunately, unless the firearms are in plain view, consent (absent a search warrant or other court order) is required from the occupants to search for any firearms at a domestic violence scene.

Even after firearms are seized by law enforcement at a domestic violence scene, the prohibited person may have access to more firearms that officers didn't find, or the person may attempt to purchase a firearm(s) from an authorized gun dealer or private party. In any event, additional follow up on these types of cases are beyond the capabilities of most law enforcement agencies.

Currently, the Court relies on an honor system that leaves compliance with the law almost entirely to the restrained person. In essence, it is the responsibility of the restrained person to inform the court officials about firearms they own, to surrender those firearms and to provide proof to the court that the firearms have been turned over to law enforcement or a licensed firearms dealer.

In May 2006, the San Mateo County Domestic Violence Council, in cooperation with the Offices of Supervisor Mark Church, Sheriff Don Horsley, District Attorney Jim Fox, Chief Probation Officer Loren Buddress, San Mateo County Superior Court, Community Overcoming Relationship Abuse (CORA), and the San Mateo County Police Chiefs and Sheriff Association, began working with representatives from the California Department of Justice Firearms Bureau to create a model program for tracking, investigating and enforcing firearm compliance requirements, pursuant to court orders and existing state laws. The Unit would work closely with San Mateo County law enforcement and other agencies to provide domestic violence firearms training and ensure compliance.

Domestic Violence Firearm Compliance Program Protocol

PURPOSE:

The principal focus of the Domestic Violence Firearm Compliance Program Protocol is to address the procedure for tracking, investigating and enforcing Domestic Violence Protective Court Orders directing the seizure and storage of firearms surrendered or confiscated from persons subject to court ordered firearms prohibition. Recognizing the potential for violence in domestic violence relationships, Courts order the respondent/restrained person who is subject to the terms of a Family Court Temporary Restraining Order or Restraining Order After Hearing to surrender firearms to local law enforcement or sell them to a licensed firearms dealer within 24 hours of receiving the order (CA Family Code Section 6389(c)(2)). In 2007, Family Code Section 6389 was amended to include the immediate surrender of firearms “in a safe manner” upon immediate demand of law enforcement after being served with the order. Alternatively if no request is made by law enforcement, the relinquishment shall occur within 24 hours of being served with the order, by either surrendering the firearm “in a safe manner” to the control of law enforcement officials or by selling the firearm to a licensed gun dealer, as specified in Penal Code Section 12071.

We believe the safest manner to achieve compliance for the surrender and relinquishment of firearms is outlined in this protocol which is based on the guidelines set forth in Family Code Section 6389.

The goal is to prevent the restrained person from using firearms to threaten, injure, or kill domestic violence victims, their children, themselves, and law enforcement personnel.

POLICY:

As committed to in the San Mateo County Sheriff's Office Mission Statement to "protect life and property and preserve the public peace...and prevent crime," Deputy Sheriffs and/or Domestic Violence Firearm Compliance Unit (DVFCU) Detectives shall take custody of surrendered/relinquished firearms and place them into the Sheriff's Property Unit for safekeeping (pursuant to Family Code Section 6389(c)(2)). This applies to firearms (not other weapons) surrendered/relinquished by the restrained person/respondent who is subject to the terms of a court order.

The San Mateo County Sheriff's Office Domestic Violence Firearm Compliance Unit will follow up on court ordered domestic violence firearm surrender violations and work with local law enforcement to disarm the restrained person and achieve compliance.

Victim advocates working for community-based advocacy and social services agencies provide support and safety services to victims of domestic violence. Many of these advocates believe, and we agree, that victims who receive such services are more likely to feel safe and secure, and thus more likely to cooperate with local law enforcement and prosecutors.

The San Mateo County Sheriff's Office Domestic Violence Firearm Compliance Unit will work in a communal effort with the Superior Court of San Mateo County, San Mateo County Family Law Facilitator, CORA, and the San Mateo County Victim Advocacy groups to achieve compliance.

I. Definitions

- A. Consenting Party:** A party involved in a domestic violence incident who resides in the dwelling or works at the premises, and has dominion and control over areas in which domestic violence related firearms are located.
- B. Firearm:** Any device designed to be used as a weapon, from which is expelled through a barrel a projectile by the force of any explosion or other form of combustion (Penal Code Section 12001(b)).
- C. Domestic Violence Incident Related Surrendered Firearms:** Firearms that are voluntarily surrendered by a party involved in a domestic violence investigation and are not known to be evidence of a crime, firearms removed in the interest of public safety and firearms that are surrendered or forfeited per court order.
- D. Evidentiary Firearms:** Firearms that are evidence of a crime and may be required for future criminal prosecution.

- E. Non-Evidentiary Firearm:** A domestic violence surrendered firearm that has no value as evidence. It appears to be legal to possess and ownership of the firearm is established.
- F. Ammunition:** Shall include, but not be limited to, any bullet, cartridge, magazine, clip, speed loader, autoloader, or projectile capable of being fired from a firearm with deadly consequences. (Penal Code Section 12316 (b)(2))
- G. Peace Officer:** Any law enforcement officer as defined by Penal Code Section 830.1-830.32.
- H. Stalking:** Is the malicious and repeated following or maliciously harassing another person and making a credible threat with the intent to place that person in reasonable fear for his or her own safety, or the safety of his or her immediate family.
- I. Domestic Violence Court Order:** A type of restraining order which is issued pursuant to the Domestic Violence Prevention Act, (Family Code Sections 6200-6389), or the Uniform Parentage Act (Family Code Sections 7710 and 7720), or in connection with a dissolution, legal separation or annulment (Family Code Sections 2045, 2047, and 2049), or in cases of elder or dependent adult abuse (Welfare and Institution Code Section 15657.03). This includes all local Domestic Violence related orders from other states, counties, tribal courts and juvenile courts.
1. **A Temporary Restraining Order “TRO”** is obtained in court by a protected person upon submission of an application, including an affidavit explaining the need for the order. A TRO is valid for a limited period of time, usually about a month, until a court hearing is conducted to receive testimony from both the restrained and protected persons. A protected person may receive assistance from a victim advocacy agency in applying for a TRO.
 2. **A Restraining Order After Hearing “ROAH”** is an order issued after a formal judicial hearing that is set when the TRO is issued, which requires a person to refrain from doing a particular act or acts. It is issued by a Family Court, with notice, to the person who is to be restrained. A restraining order will remain in effect for a set period of time, which is stated on the face of the order. If no time period is stated on the face of the order, the effective time period is 3 years. However, the order can be extended beyond three years upon

the request of the protected person at the time the ROAH is scheduled to expire.

Upon service of the above orders the restrained person is ordered by the court to sell to a licensed gun dealer or turn in to the police any guns or firearms that he or she has or controls. This must be done within 24 hours of being served with this order. (Family Code 6389(c)(2))

3. **An Emergency Protective Order (EPO)** is a type of restraining order sought by a law enforcement officer and issued by a Judge or Commissioner at any time, whether or not Court is in session. It is intended to function as a temporary restraining order if a person is in immediate and present danger of domestic violence, elder or dependent adult abuse, child abuse, or where a child is in immediate and present danger of being abducted by a parent or relative or where stalking exists. It can also function as an order (when no custody order is in existence) determining temporary care and control of minor children of the above-described endangered person. The issuance of an EPO is not precluded by an arrest.

An EPO is valid for five court days or seven calendar days, providing the protected person sufficient time to obtain a Temporary Restraining Order. The EPO does not become enforceable until law enforcement informs the restrained party of the order. The law enforcement officer must make a reasonable effort to inform the restrained party, and must give copy of the order to the protected party. (Family Code 6200; Penal Code 646.91)

II. Applicable Statutes

- A. **Penal Code § 836(c)(1)** states that a peace officer responding to a call alleging a violation of a criminal or family court domestic violence protective order “shall” arrest the restrained party, even if the peace officer did not witness the alleged violation. The threat of punishment is intended to deter the restrained party from engaging in prohibited contact, thereby decreasing the risk of new domestic violence.

If the restrained party does not surrender all firearms in his or her possession, law enforcement may seize them and, as mentioned above, the restrained party shall be arrested and may be punished for violating the court order. Here again the threat of punishment is

designed to motivate the restrained party to relinquish their firearms and decrease the risk of new and aggravated domestic violence.

- B. Penal Code § 12316(b)(1)** states it is unlawful for any person who is prohibited from owning or possessing firearms to own, possess, or have under his or her custody or control, any ammunition or reload ammunition.

The following statutes relate to individuals who are subject to a Protective Order and prohibited from owning or possessing firearms.

- C. Penal Code § 12021(g)** states that persons who are subject to a protective order issued by a court pursuant to section 6218 of the Family Code, a protective order issued pursuant to section 136.2 or 646.91 of the Penal Code, or by a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, may not own, possess, purchase, or receive a firearm for the duration of the order. This includes any restraining order, whether issued ex-parte, after notice or hearing or in a judgment.
- D.** Pursuant to **Family Code § 6320** a court-issued order enjoining a party from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the other party.
- E.** Pursuant to **Family Code § 6321** a court-issued order to exclude a party from the family dwelling, the dwelling of the other party, the common dwelling of both parties, or the dwelling of the person who has care, custody, and control of a child to be protected from domestic violence.
- F.** Pursuant to **Family Code § 6322** a court-issued order enjoining a party from other specified behaviors as determined.
- G.** Pursuant to **Welfare and Institutions Code § 15657.03** a court-issued order enjoining a party from abusing, intimidating, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, destroying personal property, contacting, or coming within a specified distance of an elder or dependent adult.
- H.** Pursuant to **Family Code § 6389 (c)** the court upon issuance of a protective order shall additionally require the respondent to sell any firearms in that person's control to a licensed gun dealer or relinquish them for the duration of the protective order.

I. Pursuant to Family Code § 6389 (c)(2) The relinquishment ordered pursuant to paragraph (1) shall occur by immediately surrendering the firearm in a safe manner, upon request of any law enforcement officer, to the control of the officer, after being served with the protective order. Alternatively, if no request is made by a law enforcement officer, the relinquishment shall occur within 24 hours of being served with the order, by either surrendering the firearm in a safe manner to the control of local law enforcement officials, or by selling the firearm to a licensed gun dealer, as specified in Section 12071 of the Penal Code. The law enforcement officer or licensed gun dealer taking possession of the firearm pursuant to this subdivision shall issue a receipt to the person relinquishing the firearm at the time of relinquishment. A person ordered to relinquish any firearm pursuant to this subdivision shall file with the court that issued the protective order, within 48 hours after being served with the order, the receipt showing the firearm was surrendered to a local law enforcement agency or sold to a licensed gun dealer. Failure to timely file a receipt shall constitute a violation of the protective order.

1. Under Penal Code § 273.6(a), it is a misdemeanor for the restrained party to intentionally and knowingly violate any of the protective orders issued pursuant to the Uniform Parentage Act, Family Code, the Domestic Violence Prevention Act. Penal Code § 273.6 (d) makes it a felony to violate a restraining order with violence or threat of violence, after suffering a prior conviction for violation of Penal Code § 273.6 within 7 years. The elements of the crime require willful disobedience of the terms of the order. Proof of Service shows that the suspect has the requisite knowledge to be in violation of the order. Verbal notice by the officer of the terms of the Order is sufficient notice for the purpose of enforcing section 273.6 PC (Family Code Section 6383 (e)). Domestic violence restraining orders shall be enforced by all law enforcement officers.
2. The terms and conditions of the restraining order remain valid and enforceable, notwithstanding the acts of the victim, and may be changed only by order of the court. The “protected person” cannot be in violation of his or her own protective order nor can they “give consent” to violate any of the terms of the order.

III. Domestic Violence Firearms Compliance Unit Duties

General Policy Statement: The main function of the Domestic Violence Firearms Compliance Unit (DVFCU) is to assure the safe and timely surrender of firearms as required on Family Court Orders or surrendered per civil agreement for safekeeping. To that end, the following protocol has been developed for the DVFCU.

Every Family Court Domestic Violence Restraining Order issued by the San Mateo County Court is delivered to the Sheriff's Records Bureau for entry into CLETS DVROS. The orders are then forwarded to the Domestic Violence Firearms Compliance Unit where they are reviewed and processed.

The San Mateo County Sheriff's Office Civil Enforcement Bureau is tasked with the actual service of restraining orders upon request of the protected party. The procedures of the Civil Bureau are dictated by the California Civil Code of Procedures, the California Civil Code and the California State Sheriff's Association Civil Procedural Manual. The DVFCU will work in collaboration with the Civil Enforcement Bureau and other law enforcement agencies to ensure compliance with court ordered firearm surrenders.

A. Personal Responsibilities of the DVFCU Legal Office Specialist

1. Obtain copies of Family Court Domestic Violence Restraining Orders (DV260, DV110, DV130) and Confidential CLETS Information forms from the Sheriff's Records Bureau after they have been entered into CLETS-ROS.
2. Obtain copies of Family Court Domestic Violence Restraining Orders (DV110, DV130) forms (Including Letter of Instructions) from the Sheriff's Civil Bureau.
3. Open a case file and input relevant information into the DVFCU database.
4. Contact the court to obtain any relevant information regarding service of the restrained person in court. Contact the Family Law Facilitator, CORA, and related victim advocacy organizations to obtain relevant information regarding the restrained person.
5. Access all necessary and available law enforcement systems (including CLETS-Automated Firearms System (AFS), Armed and Prohibited Persons System (APPS), Law Net, ThinkStream, etc.) to facilitate the investigation. Conduct

criminal history background, check for firearms registered to the restrained person, CJIS history, DVROS court order history, and obtain relevant information.

Relevant officer safety concerns will be forwarded to the Civil Enforcement detectives as made available.

6. If the investigation (AFS) reveals firearms registered to the restrained person: Verify that the restrained person has been served with the Court Order (CLETS-DVROS or Proof of Service).
7. Maintain organized and accurate case files and filing system which will serve as initial reference information for the DVFCU detectives to initiate investigations and follow-up.
8. Priority for service will be given to orders that through investigation reveal that the restrained party may be in possession of firearms.

B. Responsibilities of the DVFCU Detective(s)/Peace Officer(s)

1. Contact the protected party to ascertain whether or not the restrained person may be in possession of any firearms or ammunition. Obtain an accurate description and location of the firearm(s) if known to the protected person. If the protected person alleges and can substantiate the restrained person to be in possession of firearms, the DVFCU detectives will make contact with the restrained party to determine the status of said alleged firearm(s).

If the restrained person is on probation, contact the on duty probation officer to advise them of the circumstances.

(Probation may be able to conduct a probation search depending on the circumstances).

2. If the restrained person is incarcerated in a San Mateo County Correctional facility, the DVFCU detective/peace officer will contact the restrained person and serve them with the court order (if not served) and advise of the firearms prohibition. The DVFCU detective/peace officer will complete the Proof of Service (DV200) form and file it with the court. The DVFCU detective/peace officer will advise the Sheriff's Records Bureau of the service and request DVROS be updated to reflect such service. (Appendix 1)

3. The DVFCU detective/peace officer will place the DVFCU Instructions to Restrained Party in the restrained party's inmate jacket. Upon release from the San Mateo County Jail, the restrained party will be advised of the firearm prohibition, given the Instructions to Restrained Party form and advised to contact the DVFCU within 24 hours of being released.

(Appendix 2)

4. If no firearms are registered to the restrained person (in AFS), the DVFCU detective will contact the restrained person (by phone, registered mail, field contact) to verify the status of alleged firearms in their possession; and make arrangements to have them complete the Proof of Compliance with Firearm Surrender Order Declaration. (Appendix 3) Approved by County Counsel

Once the declaration is completed and signed by the respondent/restrained person, the DVFCU detective will file the declaration with the court, provide a copy to the respondent/restrained person, and retain a copy for the DVFCU case file.

5. Options for surrender/relinquishment/confiscation of firearms include but are not limited to: Contacting the local law enforcement agency (within venue jurisdiction) to arrive on scene and take the firearms into custody; DVFCU detective(s)/peace officer(s) taking custody of the firearms; Provide the restrained person with information on the option to sell firearm(s) to a licensed gun dealer.

The DVFCU will contact the venue agency to advise that the restrained person will be surrendering his or her firearm(s) and provide the venue agency with restraining order case number and pertinent information.

The DVFCU will follow-up with the venue agency after 24 hours to ensure the restrained person has surrendered his/her firearms.

Local law enforcement agencies will notify the DVFCU when firearms are surrendered by faxing a copy of the Incident Report and the Property Report indicating the firearm(s) surrendered/confiscated to the DVFCU.

6. Advise the restrained person to provide a copy of their receipt for the surrendered/sold firearm(s) to the Court and the

DVFCU within 48 hours of being served with the court order. In cases where firearm(s) are surrendered to the DVFCU, the DVFCU detective(s)/peace officer(s) will advise the Court of the restrained person's compliance. (Appendix 4 & Appendix 5)

7. In certain circumstances when the DVFCU serves a Domestic Violence Court Order to the restrained person/respondent, the DVFCU will complete the Proof of Service form (DV200) and file it with the court. The DVFCU will provide a copy of the Proof of Service form to the Sheriff's Records Bureau for entry into C.L.E.T.S., the protected person or protected person's attorney, and the Sheriff's Civil Bureau. (Appendix 1)
8. No firearm(s) will be released to the restrained person/respondent from the San Mateo County Sheriff's Office Property Office until AFS, DVROS, and other criminal justice systems have been queried.
9. The necessary DOJ No Longer in Possession (NLIP) form and compliance notifications will be completed and submitted to the court (if necessary) when all follow-up is completed. (Appendix 6 & Appendix 7)

C. Maintenance of Information Systems

1. **Tracking Compliance Data Entry:** Recording compliance is a requirement and case files must be added to the DVFCU database. The appropriate sections should be updated as information changes. The system shortcut icon "Domestic Violence Database" is on the DVFCU desktop.
2. **Input Court Orders:** The DVFCU database will be updated as new, amended or re-issued court orders are received. Enter the type of order (TRO,ROAH), date of service, scheduled court hearing, location of court, and all pertinent contact information regarding the restrained person.
3. **Enter Respondent's Information into DVFCU database:** Update follow-up on documentation and compliance of restrained person. Enter the subject's name that is surrendering the firearm (Name, DOB, Incident case number, court case number, type and number of firearms).
4. **Update DVFCU Database When Firearms are Returned or Disposed:** Enter the name of the person receiving the

firearm(s) and document and confirm the firearm(s) being released. Close the file after compliance is determined or Court Order expires. Arrange for return or destruction of firearms.

IV. Firearm Surrender and Handling

A. Phone Message Policy:

The DVFCU shall maintain a phone line that will take messages (24/7) when the detective(s)/peace officer(s) are not available to take requests for an appointment from persons under court order to surrender firearms. The DVFCU shall make every attempt to establish contact with the calling parties by the next business day so as to allow the restrained person/respondent to comply with the court ordered 24-hour surrender requirement. (Appendix 8)

B. Walk-In Surrenders:

Surrender locations include the North Fair Oaks (NFO) sub-station and the Coast side sub-station. "Walk-ins" within the Sheriff's Office jurisdiction will be handled as expeditiously as possible and directed to contact the DVFCU at 650-363-4062 for instructions. If the DVFCU detective(s)/peace officer(s) is not available, County Communications will dispatch a Patrol Bureau deputy to facilitate the safe surrender of firearm(s). The Patrol Bureau deputy will complete a Sheriff's Office Evidence/Property Report, obtain an Incident Report number from County Communications, render the firearm(s) safe and secure the firearm(s) in the firearm/rifle safe at the designated location. The DVFCU detective(s)/peace officer(s) will transport and book all surrendered firearms and ammunition to the Sheriff's Property Office.

NLIP forms will be available to persons claiming they no longer possess firearm(s) that are registered in AFS.

Local Law enforcement agencies will refer to and implement their department's policy for the safe surrender of firearms.

C. Intake Procedures at designated Surrender Location (NFO Sub-Station): *In the case of a firearm, prior notice must be given to law enforcement agency prior to transporting it to that agency*

for disposition, and the firearm must be transported unloaded and in a locked container, as defined by Penal Code § 12026.2(d). (Penal Code §§ 12020(b)(15) and (16))

There will be a minimum of two deputy sheriffs or peace officers present during all firearm surrenders.

Upon arrival (BY APPOINTMENT ONLY) at the designated location(s), firearm(s) will be cleared in the outside firearms clearance barrel by the DVFCU detective(s)/peace officer(s). The firearms(s) will be left unloaded and the slide or bolt (in the case of semi-automatic rifles and pistols and bolt action long arms) will be left in the open-locked back position with magazines removed. Revolvers will be left with the cylinder open and all chambers empty before being brought into the building.

When the firearm(s) have been cleared the DVFCU detective/peace officer will manually check the safety conditions and make the firearm(s) safe by placing plastic ties through the action(s) so as to prevent loading or any potential accidents.

The DVFCU detective/peace officer must record the following information in order to complete the required checks on firearms:

Make, (“Colt”, “Ruger”, “Smith and Wesson”, etc.)

Model, (model#10,036-5, “Blackhawk”, “Python”, etc.)

Caliber, (.38, .357, 9mm, .308, 7.62x39, 8mm, etc.)

Country of Origin-if other than U.S., (Stamped normally on the weapons receiver)

Serial Number, (Stamped on the weapon’s frame)

Type of Weapon action,(bolt, semi-auto, revolver or slide, i.e. most shotguns and rifles

Additional Markings,(any identifiable markings or characteristics)

This information follows the guidelines set forth by the US Department of Justice Bureau of Alcohol, Tobacco, Firearms and Explosives-National Tracing Center Trace Request form(Part V) (Appendix 9)

The DVFCU detective/peace officer will verify each surrendered firearm’s status and ownership via AFS.

The DVFCU detective/peace officer will book all firearms and ammunition surrendered or confiscated for safekeeping into the Sheriff’s Property Office. Ammunition that is voluntarily surrendered for destruction will be transported and deposited at the Sheriff’s Firearms Range at Coyote Point. Firearms that are

voluntarily surrendered will be booked into the Sheriff's Property Office for processing.

D. Handling of Court Order Copies:

The DVFCU detective(s)/peace officer(s) should have a copy of the court order present during the surrender of firearm and later for the case file, as well as a copy of the subject's driver's license (available via Cal-Photo). Copies of the order should be obtained from the issuing court after the fact if necessary or the San Mateo County Records Bureau. Additionally a copy of both documents (CDL and Court Order) with the case number in the upper right corner will be forwarded to the San Mateo County Sheriff's Records Bureau.

E. Incident Reporting:

When the firearm(s) have been rendered safe by the DVFCU detective's/peace officer's inspection and secured with plastic ties, the DVFCU detective/peace officer will obtain an Incident case number from County Communications and complete an Incident Report. The DVFCU detective/peace officer will document the case number on the Sheriff's Evidence/Property Report receipt that is provided to the person surrendering the firearm(s).

F. Property Receipt Provided to Respondent:

The respondent will be provided a copy of the San Mateo County Sheriff's Office Evidence/Property Report that provides inclusive directions for recovery of surrendered firearms. The DVFCU detective/peace officer will have the respondent review the items listed and sign the Notification of Rights acknowledgment.
(Appendix 4 & Appendix 4a)

The signed San Mateo County Sheriff's Officer Evidence/Property Report will serve the respondent as a receipt for compliance in court. It will also serve as a receipt for recovery of firearm(s) surrendered to the DVFCU. The DVFCU detectives/peace officer will also complete and sign section 4 of the Proof of Firearms Turned in or Sold form **(DV800/JV252)** which should be provided by the respondent. ***(The respondent must provide the court with a copy of these documents indicating his or her compliance to surrender their firearm(s) within 48 hours of being served with the court order).*** Family Code 6389(c)(2)
(Appendix 4 & Appendix 4)

G. Surrender of Weapons at the time of Service (Respondent's Residence or Work place):

When the respondent is served with an applicable court order by the San Mateo County Sheriff's Office Civil Bureau detectives and ordered to surrender firearms immediately upon being served, the Civil Bureau detectives will contact the DVFCU (Patrol Bureau if DVFCU detectives are unavailable) immediately via County Communications to respond and effect the surrender within the unincorporated areas of the county.

The Sheriff's Civil Enforcement Bureau detectives will provide the respondent with contact information (650-363-4065) for the DVFCU for additional instructions to follow-up on surrendered firearms and court ordered compliance requirements. (Appendix 2)

As agreed to by the San Mateo County Police Chiefs and Sheriff Association, local law enforcement jurisdictions will be contacted by the San Mateo County Sheriff's Office Civil Bureau detectives and requested to respond in their respective jurisdictions. Local law enforcement agencies responding will contact the DVFCU and provide a copy of their Incident Report and Evidence /Property Report indicating the inventory of firearms surrendered by the respondent.

In the event that local law enforcement agencies and/or DVFCU detectives are unavailable, Civil Enforcement Bureau detectives will seize the weapons.

Surrendered/confiscated firearms (handguns) will be forwarded to the San Mateo County Forensic Crime Lab for ballistic fingerprint testing and entry into the National Integrated Ballistics Information Network (NIBIN). The Crime Lab will notify the investigating agency if it is determined that a firearm is linked to a criminal case.

H. Residential Response to Surrender Firearms:

A MINIMUM OF TWO DEPUTY SHERIFFS OR PEACE OFFICERS WILL RESPOND TO ALL RESIDENTIAL CONTACTS FOR FIREARM SURRENDER COMPLIANCE.

Unfortunately, unless the firearms are in plain view, (absent a search warrant or other court order) consent is required from an occupant with standing to search for any firearms at a domestic violence scene or after a Temporary Restraining Order has been served.

Even after firearms are seized by law enforcement at a domestic violence scene or after service of a Temporary Restraining Order, the prohibited person may have access to more firearms that officers did not find, or the person may attempt to purchase a firearm(s) from an authorized gun dealer or private party. In all cases AFS will be queried for firearms ownership. In any event, additional follow-up on these types of cases are beyond the capabilities of most law enforcement agencies.

If the DVFCU investigation reveals that the respondent is in possession of firearms after the court ordered 24 hour period, the DVFCU detectives/peace officers will initiate the following procedures.

1. Have verifiable and credible information supporting facts that the respondent is in possession of a firearm(s).
 - a. If the DVFCU has knowledge that the respondent is on probation and articulable facts are present to support that the respondent is in possession of a firearm, Probation should be advised of the circumstances as soon as practical. Individuals on probation are subject to a “general probation clause” in terms of search and seizure conditions. This may lend leverage to gaining compliance from the respondent with the assistance of the Probation Department.
 - b. The DVFCU will work with the Probation Department where applicable (searches and possible arrest) to gain the respondent’s compliance.
2. Complete due diligence in efforts to contact the respondent via telephone, registered mail, attorney contact with negative results.
3. Conduct a background check and have knowledge of the respondent’s criminal history, DV history, restraining order history, law enforcement response history to residence of location in question, verified identification (CAL PHOTO, MUG SHOTS, etc.) of the respondent, and any other relevant information.

4. Develop an action plan (considering such things as the respondent's actions resulting in the court order, criminal history, probation or parole status, location of residence, officer safety, etc.) before deploying to the residence.

- a. Minimum Security Contacts- may include individuals with no prior criminal history, no statement or threats of violence, no acts of violence or intimidation, residence has no CAD history of calls for service or DV history. Related contacts may require a lower level tactical response, always keeping officer safety and public safety a primary focus.

DVFCU detectives/peace officers should approach the residence in a "knock and talk" fashion in effort to make contact with the restrained party. If contact is made, the DVFCU detectives/peace officers will make effort to determine the disposition of the firearms registered to or known to be in the restrained party's possession. If the respondent indicates they no longer possess the firearms in question or any other firearms, the DVFCU detective(s)/peace officer(s) will have the restrained party complete and sign the DOJ No Longer in Possession form or a declaration to the court indicating they do not own or possess any firearms.

(Appendix 6 & Appendix 3)

- b. Situations presenting a heightened security risk (restrained party confirms their possession of firearms and is resistant to surrender them, has made credible threats of violence or death to the protected party, is otherwise prohibited).

As each situation will present various circumstances, seemingly non-compliant respondents will need to be dealt with accordingly. Factors to be considered shall include but not be limited to exigency, officer safety concerns, applicable search and seizure and other laws as well as jurisdictional boundaries. Due to the circumstantial dependence, it is not possible to list a procedure that would be followed in all situations involving non-compliant individuals. A summary of potential options is outlined in the paragraphs above.

The DVFCU will work with the venue jurisdiction to seize any firearms the restrained party has in their

possession and affect an arrest when appropriate. In circumstances where it is evident that the respondent is categorically non-compliant with the court's order, and there is established probable cause for search, seizure and or arrest, the option of obtaining a search warrant or a special needs warrant will be considered. (District Attorney' Office, Court, Local Law Enforcement, Probation, Parole)

The protected party may consent to the search of the residence, and any other structures on the property in which he or she has property under their domain and control. The DVFCU detective/peace officer will have the protected party (consenter) complete and sign the San Mateo County Sheriff's Officer Consent to Search form prior to conducting a search. (Appendix 10)

Each situation will need to be reviewed on an individual basis and responded to accordingly.

V. Return of Firearm(s) to Respondent or Owner:

On January 1, 2005, the Law Enforcement Gun Release (LEGR) process became effective with the addition of **Penal Code § 12021.3**. This process requires any person who claims title to any firearm that is in the custody or control of a court or law enforcement agency and who wishes to have the firearm returned to submit a LEGR Application form for determination by the Department of Justice (DOJ) as to whether he or she is eligible to possess a firearm. (Appendix 12 & Appendix 12a)

A. LEGR Application Submission Process:

Individuals seeking the return of a firearm(s) that is in the custody or control of a court or law enforcement agency must submit a LEGR Application along with the appropriate fees to the Department of Justice (DOJ). A firearms eligibility check will be conducted to determine if the applicant is lawfully eligible to possess firearms. The application is available online at www.ag.gov/firearm or by calling (916) 263-4887. It may take up to 30 days to process the application. A notice of the results will be sent to the applicant. The notice must be presented to the court or agency within thirty (30) days of the date of notice. Failure to do so will result in the need to submit a new application and fees and undergo another firearms eligibility check.

If the firearm was taken for safekeeping the owner must start clearance process with DOJ within 180 days. Upon receiving clearance from DOJ the owner must provide the clearance letter to the agency within 30 days of its receipt. If the owner is prohibited and the firearm is not illegal, he or she may sell/transfer the firearm to a licensed firearms dealer. (**Penal Code § 12071**)

No firearm(s) will be released to the restrained person/respondent from the San Mateo County Sheriff's Office Property Office until AFS, DVROS, and other criminal justice systems have been queried.

B. Firearm Retention:

Pursuant to **Penal Code § 12021.3g** firearms will not be retained after 180 days if unclaimed. The respondent must complete the firearm recovery process within 180 days of the expiration of the court order of prohibition.

The respondent will notify the DVFCU of his or her intention to recover firearms stored in safekeeping. The DVFCU Detective(s) will track the respondent's file to compliance within the 180 recovery period.

C. Firearm Registration:

If a firearm is not registered with the Department of Justice, or is not registered to the respondent, the respondent or its owner will be required to complete the DOJ Firearm Ownership Record form (Voluntary Registration Form) for each weapon and pay the required fees (\$19.00 each firearm) to the DOJ. (**Appendix 11 and Appendix 11a**)

D. Processing of Clearances:

The DVFCU will return the firearm(s) to the legal owner unless another legal basis exists to withhold the firearm. The firearm(s) will be returned when an Order to Surrender Firearms, a Temporary Protection Order, a Protection Order, or another similar order issued in a civil or criminal case has: (1) Expired or (2) been dismissed.

If a Temporary Order has been replaced with another order, such as a domestic relations mutual restraining order, DVFCU will review the latest order to determine whether any firearm restrictions under state or federal (Brady) law exist in the order.

E. Third Party Recovery:

In general, the legal owner will be the only person absent a court order that can recover firearms from the DVFCU. If the legal owner is not able to recover the firearm(s), because they no longer want it or because of legal prohibitions, they may transfer ownership with a court order and in accordance to DOJ procedures regarding transfers of firearms. The third party must undergo the same background clearance as the owner prior to release.

F. Firearm Release Paperwork Procedure:

Any person to whom firearm(s) are released must have had a background clearance completed prior to physical pickup of the firearm(s), be it the respondent, their lawyer or a third party. The day of the release appointment, prior to releasing the firearm(s), the DVFCU will conduct a computer check of the subject through C.L.E.T.S. The DVFCU will also verify that no new court orders have been entered or are pending entry.

G. Handling of Illegal Weapons:

Illegal firearm(s) or illegally modified firearm(s), for example firearms modified to fire fully automatic or with serial numbers removed or altered, will not be returned without a court order and/or Federal and State licenses or permits to possess. ATF should be notified of the existence of such weapons and offered an opportunity to take custody of them. These weapons, with the approval of the Sheriff may also be surrendered to other law enforcement agencies for legitimate law enforcement purposes.
(Appendix 9)

VI. Educational Component:

The San Mateo County Domestic Violence Firearm Compliance Unit, in collaboration with CORA, other San Mateo County victim advocacy organizations and the Department of Justice will develop educational materials on firearms prohibition, firearms surrender and confiscation laws. This material will be distributed to prohibited persons, firearms dealers, law enforcement agencies, the court, community-based advocates, and victims of domestic violence. (Appendix 13 & Appendix 13a)

The collaborative education efforts will also include material to assist the protected party in their preparation of filing for a Temporary Restraining Order, service of the order, and relevant firearms possession/prohibition information.

VII. Training Component

The DVFCU will develop a training program for local law enforcement and partnering agencies on the pilot project procedures and other relevant firearms and domestic violence issues.

VIII. Research Component:

The San Mateo County Domestic Violence Firearm Compliance Unit will work with the university researcher contracted by the California Department of Justice to evaluate the success of the project's activities, such as the increase in the number of restraining orders entered into DVROS, increase in the number of restraining orders served, increase in the number of firearms seized from DV perpetrators and other prohibited persons, increase in awareness of firearm laws on prohibition and confiscation of firearms, measure the reduction of firearm-related incidents between domestic violence victims and perpetrators. (Appendix 14 & Appendix 14a)

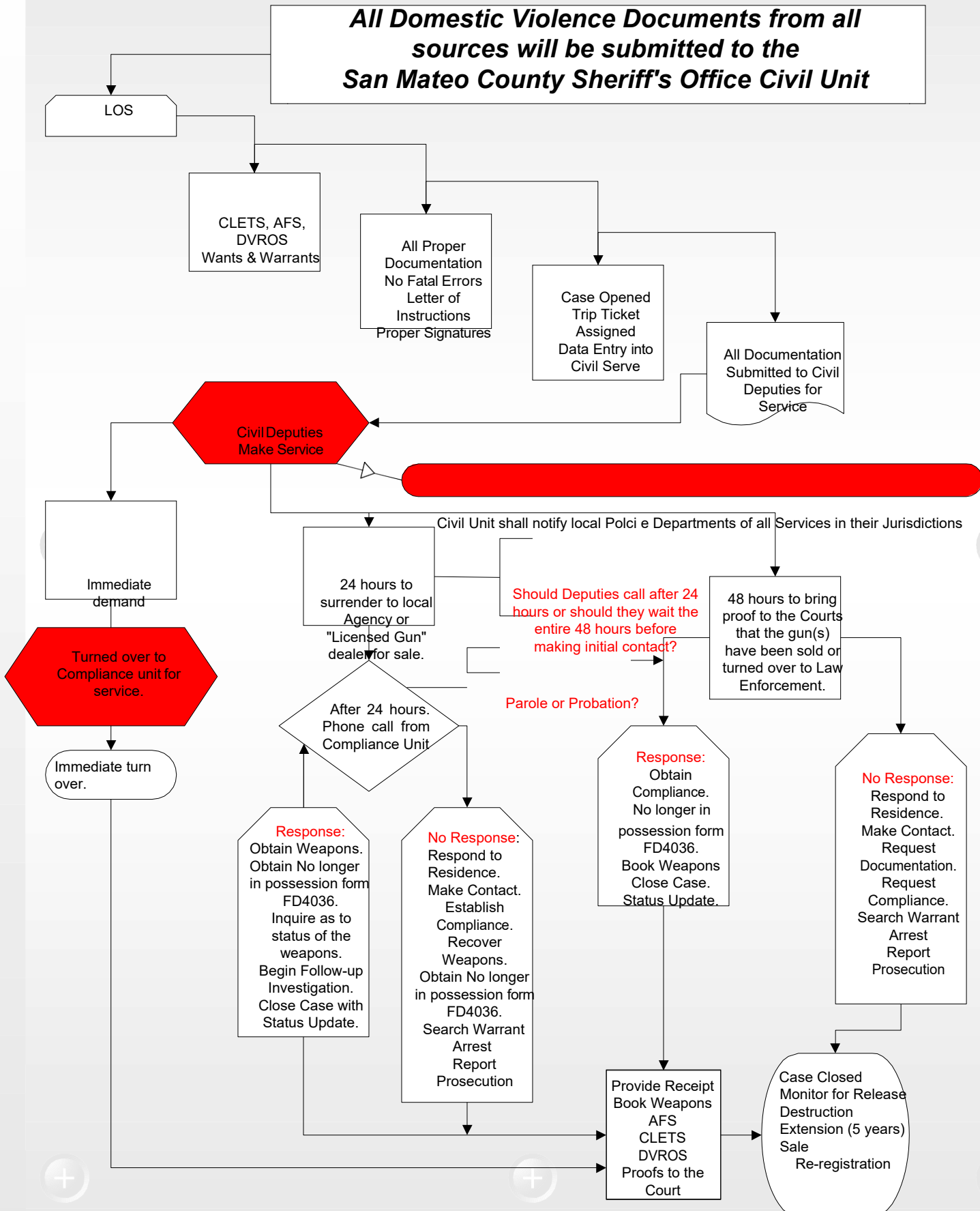
The Firearms and Domestic Violence Education and Intervention Project data collection form will be completed by the DVFCU for cases that are processed by the San Mateo County Sheriff's Office DVFCU. These cases will include firearms surrendered after service of an order by the Sheriff's Office Civil Enforcement Bureau in unincorporated San Mateo County or as a direct result of pro-active service by the Sheriff's Office DVFCU. The data will be forwarded to the UC Davis Evaluators.

By agreement with the San Mateo County Police Chiefs and Sheriff Association, wherever possible, the data collection form will be completed by other law enforcement agencies that facilitate surrenders/seizures in their respective jurisdiction.

There shall be no deviation of this protocol merely because the restrained person/respondent is employed by law enforcement, enlisted in the military, or a juvenile.

San Mateo County Sheriff's Office Proposed Compliance Unit Process

All Domestic Violence Documents from all sources will be submitted to the San Mateo County Sheriff's Office Civil Unit



APPENDICES

APPENDIX 1..... Proof of Service Form DV200

APPENDIX 2..... DVFCU Instructions to Restrained Party

APPENDIX 3..... Declaration Proof of Compliance Firearm Surrender

APPENDIX 4..... San Mateo County Sheriff’s Office Evidence/Property Report

APPENDIX 4a..... San Mateo County Sheriff’s Office Property Release Instructions

APPENDIX 5..... Proof of Firearms Turned in or Sold Form DV800/JV252

APPENDIX 6..... CA DOJ Notice of No Longer in Possession Form FD4036

APPENDIX 7..... DVFCU Firearms Compliance Form

APPENDIX 8..... DVFCU Hotline Recorded Message Instructions to Restrained Party

APPENDIX 9..... US DOJ ATF National Tracing Center Trace Request

APPENDIX 10..... San Mateo County Sheriff’s Office Consent to Search Form

APPENDIX 11..... CA DOJ Firearm Ownership Record/Voluntary Registration Form

APPENDIX 11a..... CA DOJ Instructions for Firearm Ownership Record

APPENDIX 12..... CA DOJ Law Enforcement Gun Release Application

APPENDIX 12a..... CA DOJ Instructions for Law Enforcement Gun Release Application

APPENDIX 13...DVFCU Confidential Restrained Party Weapons Possession Data Sheet

APPENDIX 13a..... Firearms Examples

APPENDIX 14..... UC Davis Evaluator Data Summary Form (Page 1)

APPENDIX 14a..... UC Davis Evaluator Data Summary Form (Page 2)

Peace Officer's Name

Server's name



Server to sign here

Family Code, §§ 6324, 6340-6344

Proof of Service (In Person) (CLETS)

(Domestic Violence Prevention)

DV-00 Page 1 of 1



San Mateo County Sheriff's Office

DOMESTIC VIOLENCE FIREARMS COMPLIANCE UNIT
400 County Government Center, Redwood City, CA 94063

(650) 363-4062 • Fax (650) 599-1563



INSTRUCTIONS TO RESTRAINED PARTY

PURSUANT TO THE ATTACHED RESTRAINING ORDER YOU CANNOT OWN OR POSSESS A FIREARM. THE FOLLOWING IS SAN MATEO COUNTY'S PROTOCOL FOR THE SURRENDER AND RELINQUISHMENT OF FIREARMS IN A SAFE MANNER PURSUANT TO FAMILY CODE SECTION 6389. IT IS YOUR RESPONSIBILITY TO REPORT TO THE SAN MATEO COUNTY SHERIFF'S OFFICE DOMESTIC VIOLENCE FIREARMS COMPLIANCE UNIT, WITHIN 24 HOURS OF BEING SERVED WITH THE RESTRAINING ORDER OR YOUR RELEASE FROM CUSTODY. **YOU MUST CALL AND REPORT, REGARDLESS OF WHETHER OR NOT YOU HAVE A FIREARM.** COMPLETE THE FORM BELOW, THEN CALL THE SAN MATEO COUNTY SHERIFF'S OFFICE DOMESTIC VIOLENCE FIREARMS COMPLIANCE UNIT HOTLINE AT: **(650) 363-4065** AND READ THE INFORMATION IN THE BOX BELOW INTO THE ANSWERING MACHINE.

ONCE COMPLETED, PLEASE READ THE FOLLOWING INFORMATION INTO THE AUTOMATED MESSAGE SYSTEM. PLEASE SPELL YOUR LAST NAME AND FIRST NAME INTO THE ANSWERING MACHINE:

MY LAST NAME IS: _____ FIRST NAME : _____

COURT CASE NUMBER: _____ DATE OF BIRTH: _____
(3RD BOX ON RIGHT OF RESTRAINING ORDER)

DRIVER LICENSE NO: _____ TOTAL NUMBER OF HAND GUNS _____

TOTAL NUMBER OF RIFLES _____ TOTAL NUMBER OF SHOTGUNS _____

TWO TELEPHONE NUMBERS WHERE I CAN BE REACHED IMMEDIATELY:

AREA CODE(____) _____ AREA CODE(____) _____

YOU WILL BE CONTACTED BY A DETECTIVE/SPECIAL AGENT OF THE SAN MATEO COUNTY SHERIFF'S OFFICE DOMESTIC VIOLENCE FIREARMS COMPLIANCE UNIT WHO WILL PROVIDE YOU WITH FINAL INSTRUCTIONS. PLEASE NOTE THAT THE DETECTIVE/SPECIAL AGENT WILL HAVE YOUR AUTOMATED FIREARMS SYSTEM (AFS) PRINTOUT AVAILABLE AND WILL COMPARE THE INFORMATION YOU PROVIDE WITH OUR AFS ENTRIES.

Proposed document to be provided to the Restrained Party after service of order (by Civil Bureau and upon release from custody. * Can Family Law Facilitators and Victim Advocacy (Clinic) groups provide this form to the petitioner as part of the TRO and ROAH DV packet? How can we educate process servers and private attorneys (Bar Assoc) about this form?

SAN MATEO GO LINTY SHERIFFS OFFICE EVIDENCE/PROPERTY REPORT

DATE _____ TIME _____ CHARGE _____ CASE NUMBER _____

HELD FOR OBSERVATION - 72 HOURS STOLEN OREMBEZZLED PROPERTY FOUND PROPERTY SAFEKEEPING
 EVIDENCE FIREARMS HOLD See reverse side for IMPORTANT information regarding requirements for firearm return.

PERSON CODE: S - SUSPECT V - VICTIM O - OWNER OR PERSON IN LAWFUL POSSESSION R - REPORTING PARTY F - FINDER X - OTHER

PERSON CODE	NAME	LAST	FIRST	MI	DOB	ARRESTED	DYES	D NO
						D ADULT	D JUVENILE	

PROPERTY CODES: E - EVIDENCE F - FOONO O - OAMAGEIOESTROYED C - CONFISCATED K - SAFEKEEPING X - FOROESTROCTION R = RECOVERED L - LOST T - TAKEN

E	QTY	ITEM COMMON NAME	SERIAL #	MODEU	Caliber	COLOR	SIZE	VALUE	
								\$	
		Brand/Manufacturer	OTHER DESCRIPTION				FCN#		
								\$	
		Brand/Manufacturer	OTHER DESCRIPTION				FCN#		
								\$	
		Brand/Manufacturer	OTHER DESCRIPTION				FCN#		
								\$	
		Brand/Manufacturer	OTHER DESCRIPTION				FCN#		
								\$	
		Brand/Manufacturer	OTHER DESCRIPTION				FCN#		

COMMENTS/INSTRUCTIONS:

FCN#	ADDITIONAL PROPERTY	TOTAL RECOVERED \$	TOTAL STOLEN \$
BICYCLE ONLY:			
Code	Brand	Model	Serial
Age (years)	Speeds: <input type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 10 <input type="checkbox"/> 12 <input type="checkbox"/> 15 <input type="checkbox"/> 18 <input type="checkbox"/> 21 <input type="checkbox"/> Other	<input type="checkbox"/> Boys <input type="checkbox"/> Girls <input type="checkbox"/> Other	Rim Size <input type="checkbox"/> 16 <input type="checkbox"/> 20 <input type="checkbox"/> 24 <input type="checkbox"/> 26 <input type="checkbox"/> 27

Frame Color: _____ Fenders/Trim Color: _____ Other Description: _____

Reporting Officer Name/ID: _____
 I declare under penalty of perjury under the laws of the State of California that I provided the above named person with a copy of this notice.
 SIGNATURE OF OFFICER _____

<p>FOUND PROPERTY: I declare under penalty of perjury that the above listed items were found, that all items have been rendered, and I do not know who the true owner is.</p> <p><input checked="" type="checkbox"/> SIGNATURE OF FINDER _____</p>	<p>NOTIFICATION OF RIGHTS: This form constitutes notification of your rights according to law. Your signature is not an admission of responsibility, but indicates you have received a copy of this notice. Refer to the reverse side of this form for important information. If firearms are involved information regarding the time limits for their return is listed.</p> <p><input checked="" type="checkbox"/> SIGNATURE OF PERSON RECEIVING FIELD PROPERTY RECEIPT _____</p>
--	---

DISTRIBUTION: ORIGINAL WITH PROPERTY, YELLOW TO CASE FILE, PINK = FIELD PROPERTY RECEIPT
IMPORTANT INFORMATION ON REVERSE

PROPERTY IS RELEASED BY APPOINTMENT ONLY

CALL THE PROPERTY OFFICER AT (650) 599-1520 Monday-Friday BETWEEN 9:00-11:30a.m. & 1:00-3:45p.m. FOR AN APPOINTMENT

San Mateo County Sheriff's Office is located at 400 County Center, 3rd Floor, Redwood City, Ca. 94063

The property listed on the front of this sheet is currently under the protection of the San Mateo County Sheriff's Office. Please review the appropriate directions to recover your property.

FIREARMS:

Any person who claims title to any firearm that is in the custody or control of a court or law enforcement agency and who wishes to have the firearm returned shall submit a Law Enforcement Gun Release Application to the DOJ to determine whether he or she is eligible to possess a firearm (PC 12021.3). The application is available online at www.ag.ca.gov/firearms or by calling (916) 263-4887. It may take up to 30 days to process the application.

If the firearm was taken for safekeeping the owner must start the clearance process with DOJ within 180 days. Upon receiving clearance from DOJ, the owner must provide the clearance letter to this agency within 30 days of its receipt. If the owner is prohibited and the firearm is not illegal, he/she may sell/transfer the firearm to a licensed firearms dealer (12071 PC). Per 12021.39 PC firearms will not be retained after 180 days if unclaimed.

If the firearm has been taken as evidence in a crime or suspected crime you will have to wait to obtain clearance until the criminal case is closed. Then, upon closure of the criminal case, you will have 180 days to start the clearance process to obtain your firearm. The owner must provide the clearance letter to this agency within 30 days of its receipt.

If owner is prohibited and the firearm is not illegal, he/she may sell/transfer the firearm to a licensed firearms dealer (12071 PC). Per 12021.39 PC firearms will not be retained after 180 days if unclaimed.

Mental Health Incidents - Notice of Rights

If you were detained under WIC 5150 and are subsequently involuntarily admitted to a mental health facility, you are prohibited from owning, possessing and controlling firearms for a period of five (5) years in California. If you currently own any firearms, you must contact the nearest law enforcement agency to surrender those firearms.

If the firearms and/or other deadly weapons were confiscated from you pursuant to Welfare and Institutions Code section 8102 a report of the details surrounding the confiscation of these items may be given to the county prosecuting agency. The prosecuting agency must file a petition in the County Superior Court within 30 days of the above date, alleging that the return of these items would be likely to result in endangering you or others, or the items must be returned to you by the law enforcement agency if you are not prohibited from possessing firearms. If the prosecuting agency does file such a petition, you have a right to a hearing on the question of whether returning these items would, in fact, be likely to result in endangering you or others. A copy of the prosecuting agency's petition will be mailed to you at the address you provided to the law enforcement agency. If you wish to have a hearing you must notify the clerk of the County Superior Court within 30 days of the filing date of the prosecuting agency's petition. The clerk will then set a date and time for such hearing and a notification will be mailed to you.

Domestic violence related: Notice of Rights

Unless the items confiscated from you are to be used as evidence in any criminal procedure, the firearm(s) shall be made available to you from the law enforcement agency 5 business days after the seizure or as soon thereafter as possible. You will then be required to obtain the DOJ gun clearance as explained above. If, within this time, the law enforcement agency believes the return of these items will likely result in endangering the victim or person reporting a domestic violence assault, you will be advised, and within 60 - 90 days of the seizure a petition will be initiated in Superior Court to determine if these items should be returned.

FOUND: Items will be held for 90 days. **FINDERS:** Prior to the expiration of 90 days, contact the Property Officer for information on how to claim this property. (WEAPONS/BIKES WILL NOT BE RELEASED)

STOLEN OR EMBEZZLED PROPERTY: Pursuant to Penal Code Section 1413, upon the filing of a Declaration of Ownership, and after you have been given an opportunity to be heard on the matter, the property may be turned over to the person claiming to be the true owner. If criminal charges are filed, you may ask the court that hears the case to review the decision of this department concerning the return of property. **YOU HAVE 15 DAYS** from the date of this notice to assert any rights you may have in the property taken from you. If you choose to waive your rights such action **MAY NOT BE HELD AGAINST YOU IN ANY CRIMINAL PROCEEDING**. You must notify the **PROPERTY OFFICER IN WRITING** within 15 days of this notice if you wish to make a claim.

EVIDENCE: Wait 30 days, then contact the Property Officer for release information. Items will be released 90 days after court adjudication of the case. If a special circumstance or need is involved, please contact the Property Officer. -

SAFEKEEPING: Items will be held for safekeeping 60 days for pickup by owner.

DV-800/JV-252

Proof of Firearms Turned In or Sold

Clerk stamps below when form is filed.

0

Protected person's name:

Your name (restrained person):

Your address (skip this if you have a lawyer): (If you want your address to be private, give a mailing address instead):

City: _____ State: _____ Zip: _____

Your phone# (optional): (____) _____

Your lawyer (if you have one): (Name, address, phone#, and State Bar#):

Large empty rectangular box for clerk stamps.

Court name and street address:

Superior Court of California, County of

0. See Number, s,

To the person selling or turning in firearms:

When you sell or turn in your firearms, ask law enforcement or the gun dealer to complete item 0 or 0 and item ©. After the form is

signed, take it to the court clerk. Keep a copy. For help, read Form DV-810.

To: Law Enforcement

Fill out parts 0 and 0) of this form. Keep a copy and give the original to the person who turned in the firearms.

The firearms listed below were turned in on:

Date: _____ at: _____ D a.m. D p.m.

To: _____

Name and title of law enforcement agent

Name of law enforcement agency

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Signature of law enforcement agent

To: Licensed Gun Dealer

Fill out parts 0 and 0) of this form. Keep a copy and give the original to the person who sold the firearms to you.

The firearms listed below were sold on:

Date: _____ a.m. 0 p.m.

To: _____

Name of licensed gun dealer

License number () Telephone

Address

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Signature of licensed gun dealer

Firearm Make

1. _____

2. _____

3. _____

Model

Serial#

Check here if more firearms. Attach a sheet of paper and write "DV-800, Item 6 - Firearms Turned In or Sold" at the top. Include make, model and serial # for all other firearms.

Proof of Firearms Turned In or Sold

Family Code, § 6389et seq.

(Domestic Violence Prevention)

American LegalNet, Inc.
www.USCourtForms.com

CALIFORNIA DEPARTMENT OF JUSTICE
BUREAU OF FIREARMS

NOTICE OF NO LONGER INPOSSESSION

Please Type or Print
(1 Form Per Firearm)



Mail Completed Form: Department of Justice
Bureau of Firearms
P.O. Box 820200
Sacramento, CA 94203-0200
Phone (916) 263-4887

A. OWNER INFORMATION							
LAST NAME		FIRSTNAME			MIDDLENAME		
RESIDENCE STREET ADDRESS				CITY		STATE	ZIP
MAILING ADDRESS (If Different)				CITY		STATE	ZIP
DATE OF BIRTH Mo Day Yr		California Driver License, ID Card or Military ID#			DAYTIME PHONE # ()		
B. FIREARM INFORMATION							
DATE PURCHASED/ ACQUIRED Mo Day Yr		SERIAL NUMBER		<input type="radio"/> LONG GUN	<input type="radio"/> If Long Gun: Rifle	<input type="radio"/> If Handgun: Semiauto <input type="radio"/> Single Shot	
				<input type="radio"/> HANDGUN	<input type="radio"/> Shotgun	<input type="radio"/> Revolver	<input type="radio"/> Other
MAKE (As stamped on firearm)		MODEL (3032 Tomcat, KP95, 17C, etc.)		CALIBER	FIREARM ORIGIN (U.S., Italy, China, etc.)		BARREL LENGTH IN. CM.
C. DISPOSITION							
<input type="radio"/> Stolen		<input type="radio"/> Lost		<input type="radio"/> Sold/Transferred*		DATE OF DISPOSITION Mo Day Yr	
Surrendered to Law Enforcement (Agency Name) _____							
Other (Please Specify) _____							
D. DECLARATION							
I hereby certify under penalty of perjury that, to the best of my knowledge, the foregoing information is true and correct, and that I no longer own or possess the firearm described above. _____							
SIGNATURE				DATE			

***NOTE: Effective January 1, 1991, Penal Code (PC) Section 12072(d) states when neither party involved in a sale or transfer of a firearm possesses a dealer's license, issued pursuant to PC Section 12071, the transaction must be completed through a licensed firearm dealer.**

FD 4036 (Rev. 1/06)



San Mateo County Sheriff's Office

DOMESTIC VIOLENCE FIREARMS COMPLIANCE UNIT
400 County Government Center, Redwood City, CA 94063



Detective Roena Spiller
(650) 363-4062 • Fax (650) 599-1563

TO: SUPERIOR COURT OF CALIFORNIA
SAN MATEO COUNTY

DATE:

TELEPHONE: (650)
FACSIMILE: (650)

FROM: ROENA SPILLER, DETECTIVE
DOMESTIC VIOLENCE FIREARMS COMPLIANCE UNIT

FIREARMS COMPLIANCE NOTICE

Petitioner _____, *Family Court Case No.* _____
Respondent _____

On _____, the above named Respondent was ordered by the court to surrender to local law enforcement or sell to a licensed gun dealer all firearms that he or she has or controls within 24 hours of being served with the order or within 24 hours of release from custody. The Department of Justice Automated Firearms System indicates the Respondent is a registered firearm(s) owner and may have a firearm(s) in their possession.

- RESPONDENT WAS PERSONALLY SERVED ON, DATE: _____
 IN-CUSTODY RELEASE DATE: _____ TIME: _____

AS OF _____, THE ABOVE NAMED DEFENDANT HAS:

- COMPLIED AS ORDERED BY THE COURT**
 CONTACTED THE SAN MATEO COUNTY SHERIFF'S OFFICE DVFCU, ADVISED OF WEAPONS STATUS/ ARRANGED FOR SURRENDER OF FIREARM(S) TO LOCAL LAW ENFORCEMENT.
 FIREARMS SURRENDERED: DATE _____
 FIREARMS STATUS SURRENDERED CONFISCATED
 NO LONGER IN POSSESSION (DOJ UPDATED)
 OTHER _____

It was suggested that this form be forward to the court to assist in their efforts to track compliant respondents.



San Mateo County Sheriff's Office

DOMESTIC VIOLENCE FIREARMS COMPLIANCE UNIT

400 County Government Center, Redwood City, CA 94063

(650) 363-4062 • Fax (650) 599-1563



INSTRUCTIONS TO RESTRAINED PARTY

YOU HAVE REACHED THE SAN MATEO COUNTY SHERIFF'S OFFICE DOMESTIC VIOLENCE FIREARMS COMPLIANCE UNIT, AUTOMATED MESSAGE SYSTEM HOTLINE. YOU HAVE BEEN ADVISED BY THE SAN MATEO COUNTY SHERIFF'S OFFICE TO REPORT TO US WITHIN 24 HOURS OF BEING SERVED WITH THE RESTRAINING ORDER OR YOUR RELEASE FROM CUSTODY. AT THIS TIME, YOU SHOULD HAVE ALREADY COMPLETED THE FORM PROVIDED TO YOU BY OUR DEPARTMENT.

After the tone please speak slowly and clearly

READ THE INFORMATION CONTAINED WITHIN THE BOX ON YOUR FORM. PLEASE SPELL YOUR LAST NAME AND FIRST NAME, THEN CONTINUE WITH THE REST OF THE INFORMATION. FINALLY, IT IS IMPORTANT THAT YOU PROVIDE TWO TELEPHONE NUMBERS WHERE YOU CAN BE REACHED IMMEDIATELY. IF OUR INVESTIGATION REVEALS THAT YOU OWN OR POSSESS A FIREARM, A DETECTIVE/SPECIAL AGENT WILL BE CONTACTING YOU WITH FINAL INSTRUCTIONS. THANK YOU.

National Tracing Center Trace Request

Phone: 1-800-788-7133

Martinsburg, WV 25405

Fax: 1-800-578-7223

FOR NTC DATA ENTRY ONLY

Page 1 of 2 - Trace Request Information

NOTE: •• Required Entry Field (*Must be completed for trace processing*)
.. - Required Entry With Listed Data Response (*See back for codes and options*)**Part I - Trace Initiation Information**

1a. Date of Request	1b. Priority** Routine <input checked="" type="checkbox"/> Urgent (<i>Justification required</i>) <input checked="" type="checkbox"/> For NTC Data Entry Only <input type="checkbox"/>
ustification	

1c. Special Instructions

Part II - Crime Code Information2a. NCIC Crime Code.. : 2b. Project Code, Project Title, or other Initiative (*If you wish to obtain a Project Code, contact the Chief Firearms Tracing Branch, ATF National Tracing Center*):**Part III - A TF Agent Requesting Trace**

3a. Organization Code*	3b. Phone Number: Fax Number: E-Mail:	3c. ATF Special Agent's Name (<i>last, first, middle</i>)
3d. Badge Number	3e. ATF Case Number	3f. Field Office

Part IV - Other Agency Requesting Trace

4a. ORI Number*	4b. Phone Number: Fax Number: E-Mail:	4c. Other Agency Officer's Name (<i>Last, first, middle</i>)
4d. Badge Number	4e. Other Agency Case Number	4f. Department/Unit
4g. Mailing Address		

Part V - Firearms Information

5a. Serial Number* (<i>From Frame or Receiver</i>)	5b. Obliterated (<i>If yes, complete 5c. Firearms Manufacturer* Part IX</i>) Yes <input checked="" type="checkbox"/> No <input checked="" type="checkbox"/>	
5d. Type*	5e. Caliber*	5f. Model* 5g. Country of Origin* (<i>Importer required if other than U.S.</i>)
5h. Importer*		5i. Additional Markings

Part VI - Possessor Information

6a. Name (<i>Last, First, Middle, Suffix</i>)				6c. Alias Date of Birth	
6b. Alias (<i>If given</i>) (<i>Last, First, Middle, Suffix</i>)					
6d. Height	6e. Weight	6f. Sex	6g. Race (<i>Check one only</i>) American Indian or Alaskan Native Asian Black or African American <input type="checkbox"/> Hispanic <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> White <input type="checkbox"/> Other (Specify) <input type="checkbox"/>		6h. Address • Route Number
6i. Apt. Number	6j. Street No.	6k. Direction	6l. Street Name 16m. City		
6n. County		16o. State	6p. Zip Code (<i>Nine Digit Number</i>)		6q. Country

6r. DateofBirth	16s. Place of Birth	6t. Possessor's ID Number	6u. ID Type/State
-----------------	---------------------	---------------------------	-------------------

Part VII - Associate Information

7a. Name (Last, First, Middle, Suffix)

7b. Alias (If given)(Last, First, Middle, Suffix)

7c. Alias Date of Birth

7d. Height

7e. Weight

7f. Sex

7g. Race (Check one only)

American Indian or Alaskan Native

Asian

Black or African American

Hispanic

Native Hawaiian or Other Pacific Islander

White

Other (Specify)

D

7h. Address - Route Number

7i. Apt. Number

7j. Street No.

7k. Direction

7l. Street Name

17m. City

7n. County

7o. State

7p. Zip Code (Nine Digit Number)

7q. Country

7r. Date of Birth

17s. Place of Birth

7t. Associate's ID Number

7u. ID Type/State

Part VIII - Firearm Recovery Information

8a. Recovery Date*

8b. Street Number

8c. Direction

8d. Street Name

8e. Suffix

8f. Route Number

8g. Apt. Number

8h. City*

8i. County

8j. State*

8k. Zip Code

8l. Country

8m. Additional Information

Part IX - Obliterated Serial Number Information

9a. Serial Number Category (Check one of the following serial number categories)

Restoration Pending

0

Serial Number Restored

0

Partial Serial Number

D

Unable To Restore Serial Number

0

Attempt to Obliterate Serial Number

0

Research/Review Multiple Serial Number Combinations

D

9b. Serial Number Being Submitted

NOTE: On partial serial numbers enter * where character was unable to be recovered.

9c. Obliteration Method Used (Check all that apply)

AG - Worn by Age

D

DR - Drill

D

ES - Electric Scribe

D

FI - Filled In

D

GC - Grinder Course

D

GS - Grinder Smooth

D

GV - Grinder Concave

D

PD - Peened

D

PN - Punch

D

SB - Scratch Pointed/BROA

D

SN - Scratch Pointed/NARR

D

OR - Other

D

9d. Additional Remarks, Firearms Markings, Possible Serial Number Combinations, or Other Special Instructions

Instructions For Completing ATF Form 3312.1 - National Tracing Center Trace Request

General Instructions • *Required Data Entry Fields And **Available Options/Codes Listed For Reference

The information requested on this form is needed to initiate a trace request. All fields marked with an asterisk(*) indicate required entry data fields. All areas so marked must be completed in order to effectively and expeditiously execute the trace request. Fields marked with a double asterisk(..) indicate areas of required data entry with available options and codes listed for reference (refer to lists below to determine the appropriate entry and correct nomenclature).

Required Entry Fields Include:

- Question 1b** - (Justify Urgent Trace)** See Priorities listed below
- Question 2a*, 2b**** - Include Project Code and list NCIC Code
- Question 3a*** - Office Organizational Code For Use by ATFRR-Only
- Question 4a*** - ORI - NCIC Originating Requestor Identifier
- Question Sa*, Sc*, Sd*, Se*, Sf*, Sg* & Sh*** - Verify Data
- Question Sa*, Sh* & Sj**** - Confirm Recovery Data to be submitted

Question 1b - Trace Priority (Entered Numbered Qualifier to Justify Urgent Trace Request)

NOTE: An urgent trace is deemed necessary when the violations are significant and circumstances warrant or require that the firearm be traced without undue delay. Examples of this are: to hold a suspect, provide probable cause, officer and public safety, etc. The following are examples of significant violations.

- | | | | |
|-------------------------|---------------------------|--------------------------|---|
| 1 - Assault | 3 - Kidnapping | S - Rape/Scx | 7 - Terrorist Threat |
| 2 - Bank Robbery | 4 - Murder/Suicide | 6 - Terrorist Act | S - Other (specify circumstance) |

Question 2a - NCIC Crime Codes (Enter one code only. For complete listing refer to NCIC Manual)

- | | | | |
|--------------------------------|---|--|-----------------------------------|
| 0098 Found Firearm | 1301 Aggravated Assault (Family) | 2899 Stolen Property | 5212 Possession of Weapon |
| 0199 Sovereignty | 1311 Aggravated Assault (Police) | 2999 Damage Property | 5399 Public Peace |
| 0299 Military | 1399 Assault | 3599 Dangerous Drugs | 5499 Traffic Offense |
| 0399 Immigration | 1499 Abortion | 3699 Sex Offense | 5599 Health - Safekeeping |
| 0907 Homicide (Police) | 1602 Threat (Ferrostatic) | 3799 Obscenity | 5699 Civil Rights |
| 0911 Homicide (Suicide) | 1702 Material Witness (Federal) | 3802 Cruelty Towards Child | 5799 Invade Privacy |
| 0999 Homicide (Street) | 2099 Arson | 3803 Cruelty Towards Spouse | 5899 Smuggling (Customs) |
| 1099 Kidnapping | 2199 Extortion | 3999 Gambling | 5999 Election Laws |
| 1101 Rape | 2299 Burglary | 4099 Commercial Sex | 6099 Antitrust |
| 1199 Sexual Assault | 2399 Larceny | 4199 Liquor | 6199 Tax Revenue |
| 1201 Robbery (Business) | 2411 Unauthorized Use of Auto | 4899 Obstruction Police | 6299 Conservation |
| 1204 Robbery (Street) | 2499 Stolen Vehicle | 4999 Flight - Escape | 7099 Crimes Against Person |
| 1211 Bank Robbery | 2599 Counterfeiting | 5099 Obstruct | 7199 Property Crimes |
| 1212 Car Jacking | 2699 Fraud | 5199 Bribery | 7299 Morals |
| 1299 Robbery | 2799 Embezzlement | 5201 Altering Identification on Firearm | 7399 Public Order Crimes |
| | | 5211 Explosives | 8100 Escape (Juvenile) |

Question 5d - Type of Firearm

- C Combination** - A weapon designed to be fired from the shoulder which is fitted with both a rifled barrel 16" or greater in length and a smooth-bore barrel 18" or greater in length with an overall length of 26" or more.
- M Machine Gun** - A weapon of handgun, rifle or shotgun configuration designed to automatically fire more than one shot, without manually reloading, by a single function of the trigger.
- P Pistol** - A weapon which includes single shot and both single or double-action semiautomatic handguns fitted with a barrel(s) with an integral chamber design or having a chamber(s) permanently aligned with the barrel.
- PR = Pistol/Revolver** - A weapon which includes both single and double-action handguns having a breechloading chambered cylinder designed with a repetitive function based on rotation.
- PD = Pistol/Derringer** - A weapon which includes single barrel, super-posed (over/under) and multi-barrel configuration handguns based on a hinged or pivoting barrel small frame pistol design.
- R RiDe** - A weapon designed to be fired from the shoulder which discharges a single projectile through one or more rifled barrels 16" or greater in length with an overall length of 26" or more.
- S Shotgun** - A weapon designed to be fired from the shoulder which discharge a single or multiple projectiles through one or more smooth-bore barrels 18" or greater in length with an overall length of 26" or more.

Paperwork Reduction Act

This request is in accordance with the Paperwork Reduction Act of 1995. The information collection is used by Federal, State and local law enforcement officials to request that the Bureau of Alcohol, Tobacco, Firearms and Explosives trace firearms used or suspected to have been used in crimes.

The estimated average burden associated with this collection of information is 6 minutes per respondent or record keeper, depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be addressed to Reports Management Officer, Document Services Branch, Bureau of Alcohol, Tobacco, Firearms and Explosives, Washington, DC 20226.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.



San Mateo County Sheriff's Office

DOMESTIC VIOLENCE FIREARMS COMPLIANCE UNIT
400 County Government Center, Redwood City, CA 94063
Greg Munks, Sheriff Carlos Bolanos, Undersheriff



Detective Roena Spiller
(650) 363-4062 • Fax (650) 599-1563

CONSENT TO SEARCH

I, the undersigned, do hereby give consent to Detective _____
And any other deputies of the San Mateo County Sheriff's Office and/or other authorized Peace Officers
to search my: (check appropriate one)

_____ **DWELLING HOUSE;** or other structure commonly known as:

_____ (Address) _____ (Apt.#)

_____ (City) _____ (State)

including all rooms, storage areas, receptacles, cupboards, drawers, etc., and any other structures
on this property in which I have property under my domain and control.

_____ **VEHICLE(s):**

_____ (Year/Make, Model, License No.)

_____ (Year/Make, Model, License No.)

and all parts of said vehicle(s), including trunk, glove box and all storage areas and the contents
therein.

_____ **OTHER:**

_____ (Description of Property)

_____ (Location of Property)

I have read and understand the above statements, and I understand that I am not obligated to consent to
this search and do so of my own free will. No threats or promises have been made by anyone to me to
obtain this consent. I also understand that I can cancel this consent at any time.

DATED: _____

_____ (Signature of Consenter)

_____ (Print Name of Consenter)

CALIFORNIA DEPARTMENT OF JUSTICE
BUREAU OF FIREARMS
FIREARM OWNERSHIP RECORD
Processing Fee of \$19 Per Firearm Must Accompany Application
Instructions on Reverse



A. Owner Information

LAST NAME			FIRST NAME			MIDDLE NAME		
ALIAS LAST NAME (If Any)			ALIAS FIRST NAME			ALIAS MIDDLE NAME		
RESIDENCE STREET ADDRESS				CITY		STATE	ZIP	
MAILING ADDRESS (If Different)				CITY		STATE	ZIP	
DATE OF BIRTH Mo Day Yr		PLACE OF BIRTH (State or Country)			SEX	DAYTIME PHONE # ()		
U.S. CITIZEN? <input type="radio"/> YES <input type="radio"/> NO			If no, enter AR# or I-94# _____			AND Country of Citizenship _____		
Enter your California Driver's License (CDL), California ID (CID), or Military ID (MIL) number in the ID Number box to the right. If using your military identification you <u>must</u> send a copy of your permanent duty station orders stating you are stationed in California.					ID TYPE (Circle One) CDL CID MIL		ID NUMBER	

B. Firearm(s) Information

<input type="radio"/> Long Gun	If Long Gun:	<input type="radio"/> Rifle	If Handgun:	<input type="radio"/> Semiauto	<input type="radio"/> Single Shot	SERIAL NUMBER	
<input type="radio"/> Handgun		<input type="radio"/> Shotgun		<input type="radio"/> Revolver	<input type="radio"/> Other: _____		
MAKE (As stamped on firearm)		MODEL (3032 Tomcat, KP95, 17C, etc.)		CALIBER	FIREARM ORIGIN (U.S., Italy, China, etc.)	BARREL LENGTH <input type="radio"/> IN. <input type="radio"/> CM.	
DATE ACQUIRED Mo Day Yr		ACQUIRED FROM: <input type="radio"/> Firearms Dealer <input type="radio"/> Private Party <input type="radio"/> Gun Show				COLOR	
		Family Member (Specify relationship) _____				<input type="radio"/> Other: _____	

<input type="radio"/> Long Gun	If Long Gun:	<input type="radio"/> Rifle	If Handgun:	<input type="radio"/> Semiauto	<input type="radio"/> Single Shot	SERIAL NUMBER	
<input type="radio"/> Handgun		<input type="radio"/> Shotgun		<input type="radio"/> Revolver	<input type="radio"/> Other: _____		
MAKE (As stamped on firearm)		MODEL (3032 Tomcat, KP95, 17C, etc.)		CALIBER	FIREARM ORIGIN (U.S., Italy, China, etc.)	BARREL LENGTH <input type="radio"/> IN. <input type="radio"/> CM.	
DATE ACQUIRED Mo Day Yr		ACQUIRED FROM: <input type="radio"/> Firearms Dealer <input type="radio"/> Private Party <input type="radio"/> Gun Show				COLOR	
		Family Member (Specify relationship) _____				<input type="radio"/> Other: _____	

<input type="radio"/> Long Gun	If Long Gun:	<input type="radio"/> Rifle	If Handgun:	<input type="radio"/> Semiauto	<input type="radio"/> Single Shot	SERIAL NUMBER	
<input type="radio"/> Handgun		<input type="radio"/> Shotgun		<input type="radio"/> Revolver	<input type="radio"/> Other: _____		
MAKE (As stamped on firearm)		MODEL (3032 Tomcat, KP95, 17C, etc.)		CALIBER	FIREARM ORIGIN (U.S., Italy, China, etc.)	BARREL LENGTH <input type="radio"/> IN. <input type="radio"/> CM.	
DATE ACQUIRED Mo Day Yr		ACQUIRED FROM: <input type="radio"/> Firearms Dealer <input type="radio"/> Private Party <input type="radio"/> Gun Show				COLOR	
		Family Member (Specify relationship) _____				<input type="radio"/> Other: _____	

C. Declaration

I declare under penalty of perjury (Sections 126 and 672 PC) that all statements made by me on this application are true and complete. I expressly authorize DOJ to perform firearms eligibility checks of all relevant state and federal databases, including the National Instant Criminal Background Check System. I also understand that if I currently possess/own firearms and the results of this check reveal that I am ineligible either to lawfully possess or purchase firearms, I must relinquish any and all firearms in my possession.

SIGNATURE

DATE

INSTRUCTIONS ON REVERSE

California Department of Justice
Bureau of Firearms

INSTRUCTIONS FOR FIREARM OWNERSHIP RECORD

Firearm Ownership Record Submission Requirements

Individuals must submit this application with a fee (check or money order made payable to the Department of Justice) in the amount of **\$19 per firearm (i.e. 3 firearms x \$19 = \$57)** to:

**Department of Justice
Bureau of Firearms -FOR
P.O. Box 820200
Sacramento, CA 94203-0200**

Complete all required information. Incomplete applications or applications submitted without the proper fees will be returned without processing. If reporting more than three firearms, make and attach extra copies of this form to meet your reporting needs. A firearms eligibility check will be conducted to determine whether you are lawfully eligible to possess firearms. Once approved, you will receive a confirmation notice of your Firearms Ownership Record.

This form may not be used to report ownership of assault weapons defined in PC section 12276, 12276.1, or 12276.5. It is the responsibility of the applicant to determine if the firearm being reported is an assault weapon. A list of assault weapons is available on the Firearms Division web site at www.ag.ca.gov/firearms. Questions may be directed to the Bureau of Firearms at (916) 263-4887.

Part A. Owner Information

Enter the information requested. Only one applicant per form. If using a military number for identification you must submit a copy of your permanent duty station orders indicating, you are stationed in California.

Part B. Firearm Information

For each firearm, you must provide the identification information requested. Please refer to your firearm owner information or the samples below to assist you in providing the required information:

Serial Number	Usually located on the frame of the handgun, and on the receiver of a long gun. May be all numeric or a combination of alpha and numeric characters.
Make	The manufacturer of the firearm (e.g., Beretta, Ruger, Glock, Smith and Wesson).
Model	The model name of the firearm (e.g., 3032 Tomcat, KP95, 17C, Mini 14).
Caliber	The caliber of the firearm (e.g., .38, .45,.308).
Firearm Origin	The country of origin of the firearm (e.g., United States, Russia, China, Italy).
Barrel Length	Enter the barrel length as stated in your owner information, or measure the barrel length by closing the action of the firearm and inserting a wooden dowel down the barrel until it stops. Mark the dowel with a pen at the muzzle. Remove the dowel and measure the distance between the inserted end of the dowel and the pen mark.

Part C. Declaration

You must sign and date the application.

CALIFORNIA DEPARTMENT OF JUSTICE
BUREAU OF FIREARMS
LAW ENFORCEMENT
GUN RELEASE APPLICATION
Instructions on Reverse



A. OWNER INFORMATION:

LAST NAME		FIRST NAME		MIDDLE NAME	
ALIAS LAST NAME (If Any)		ALIAS FIRST NAME		ALIAS MIDDLE NAME	
ADDRESS			CITY		STATE ZIP
DATE OF BIRTH	PLACE OF BIRTH (State or Country)		SEX	DAYTIME PHONE # ()	
Mo	Day	Yr			
U.S. CITIZEN? <input type="radio"/> YES If no, enter AR# or I-94# _____			AND Country of Citizenship		
<small>Enter your California Driver's License (CDL), California ID (CID), Military ID (MIL) or Out-of-State ID (OSID) number in the ID number box to the right. If using military identification you must send a copy of your permanent duty station orders stating you are stationed in California. If using an out-of-state Driver's License or Identification number you must send a notarized copy of your Driver's License or Identification card.</small>			ID TYPE (Circle One)		ID NUMBER
			<input type="checkbox"/> CDL <input type="checkbox"/> CID <input type="checkbox"/> MIL <input type="checkbox"/> OSID		

B. FIREARM INFORMATION (Mark one of the following circles to describe the firearms you are reporting):

<input type="radio"/> Reporting only long guns. Proceed to Part D. Agency or Court Information.	<input type="radio"/> Reporting only handguns or handguns and long guns. Identification information for each handgun must be entered below in Part C. No descriptive information is required for long guns.
--	---

C. HANDGUN INFORMATION (To report additional handguns copy and attach additional applications)

HANDGUN TYPE					SERIAL NUMBER	
<input type="radio"/> Semiauto <input type="radio"/> Revolver <input type="radio"/> Single Shot <input type="radio"/> Derringer <input type="radio"/> Other: _____						
MAKE (As stamped on firearm)	MODEL (3032 Tomcat, KP95, 17C, etc.)	CALIBER	HANDGUN ORIGIN (U.S., Italy, China, etc.) (If known)	BARREL LENGTH <input type="radio"/> IN. <input type="radio"/> CM		
HANDGUN TYPE					SERIAL NUMBER	
<input type="radio"/> Semiauto <input type="radio"/> Revolver <input type="radio"/> Single Shot <input type="radio"/> Derringer <input type="radio"/> Other: _____						
MAKE (As stamped on firearm)	MODEL (3032 Tomcat, KP95, 17C, etc.)	CALIBER	HANDGUN ORIGIN (U.S., Italy, China, etc.) (If known)	BARREL LENGTH <input type="radio"/> IN. <input type="radio"/> CM		

D. AGENCY OR COURT INFORMATION:

Name of Law Enforcement Agency or Court in Possession of the Firearm(s) _____

Address _____ City _____ Zip Code _____ Incident/Case Number _____

E. DECLARATION:

I declare under penalty of perjury (Sections 126 and 672 PC) that all statements made by me on this application are true and complete. I expressly authorize DOJ to perform firearms eligibility checks of all relevant state and federal databases, including the National Instant Criminal Background Check System. I also understand that if I currently possess/own firearms and the results of this check reveal that I am ineligible either to lawfully possess or purchase firearms, I must relinquish any and all firearms in my possession.

Signature

Date

Submit completed application and fees to:
**Department of Justice
Bureau of Firearms - LEGR
P.O. Box 820200
Sacramento, CA 94203-0200**

FOR DOJ USE ONLY

Date Received: _____ Date Paid: _____ Date Processed: _____ Processed By: _____ NTN # _____

California Department of Justice
Bureau of Firearms

INSTRUCTIONS FOR LAW ENFORCEMENT GUN RELEASE APPLICATION

Application Submission Requirements

Individuals seeking the return of a firearm(s) that is in the possession of a law enforcement agency or court must submit this application with the appropriate fees to the Department of Justice (DOJ). A firearms eligibility check will be conducted to determine whether you are lawfully eligible to possess firearms. A notice of results will be sent to you via U.S. Mail. Complete all requested information. Incomplete applications may be returned without processing. If reporting more than two handguns, make extra copies of this form to meet your reporting needs. Once issued, a determination notice is valid for 30 days. Be advised that any unclaimed firearm may be disposed of by an agency or court 180 days after the owner has been notified that the firearm has been made available for return.

Fee Submission Requirements

The processing fee for a Law Enforcement Gun Release is \$20 for the first firearm (long gun or handgun), and \$3 for each additional handgun being reported (e.g., 1 handgun and 1 long gun = \$20; 2 handguns and 1 long gun = \$23). If the agency or court determines the firearm was reported stolen pursuant to Penal Code section 12021.3(b)(3), the fees for the stolen firearm(s) will be waived. Provide documentation from the agency or court with this application to qualify for the waiver of fees. DOJ will process your application within 30 days from the date of receipt unless delayed by circumstances beyond the control of the department.

Part A: Owner Information

Enter the information requested. If you are using a military number for identification, you must submit a copy of your permanent duty station orders indicating you are stationed in California with this application. Out of state residents must submit a notarized copy of their home state Driver's License or Government-issued Identification Card.

Part B. Firearm Information

Check the box that describes the firearms you are reporting. If you are reporting only long guns, you need not provide any firearm description. Proceed to Part D.

Part C. Handgun Information

For each handgun, you must provide the descriptive information requested. Most of this information can be found on the property receipt you received from the law enforcement agency or court. Please refer to your handgun owner information or the sample chart below to assist you in providing the required information:

Serial Number	May be all numeric or a combination of alpha and numeric characters and located on the frame of the handgun.
Make	The manufacturer of the handgun (e.g. Beretta, Ruger, Glock, Smith and Wesson).
Model	The model name of the handgun (e.g. 3032 Tomcat, KP95,22A).
Caliber	The caliber of the handgun (e.g. .38, .45, 9mm).
Handgun Origin	The country of origin of the handgun (e.g. United States, China, Italy).
Barrel Length	Enter the barrel length as stated in your owner information, or estimate the length of the barrel.

Part D. Agency or Court Information

Enter the name and address of the law enforcement agency or court that has possession of the firearm(s).

Part E. Declaration

You must sign and date the application. If you have any questions, call the Bureau of Firearms at (916) 263-4887.



San Mateo County Sheriff's Office

DOMESTIC VIOLENCE FIREARMS COMPLIANCE UNIT
400 County Government Center, Redwood City, CA 94063



Detective Roena Spiller
(650) 363-4062 • Fax (650) 599-1563

CONFIDENTIAL
Restrained Party Weapons Possession Data Sheet

Date: _____ Case No. _____

Name of Restrained Person: _____

Address of Restrained Person: _____

Phone Number of Restrained Person: _____

Description of Restrained Person: Race _____ Sex _____ Height _____ Weight _____

Date of Birth _____ Age _____ Hair Color _____ Eye Color _____

Tattoos _____ Scars _____

Is the Restrained Person in possession of any firearms of ammunition?

Make and model of firearm(s) _____

Is the firearm registered? _____ If so, to whom is the firearm registered? _____

Last known or observed location of the firearm? _____

Do you have a legal right to give consent to search the residence? _____

Will you give your consent to search the residence if necessary? _____

When was the restraining order granted? _____ Case number: _____

Types of firearms: See the attached sheet for descriptions

Please indicate the type of weapon and number of weapons the Restrained Party possesses.

Revolver(s): _____ Semi-Automatic handgun: _____

Shotgun(s): _____ Rifle(s): _____

Other types of weapons:

Knives: _____ Swords: _____

Clubs: (bats, sticks, etc): _____

Reporting Party information will remain confidential to the San Mateo County Sheriff's Office.

Name: _____ Date of Birth: _____

Address: _____

Day Phone Number: _____ Evening Phone Number: _____

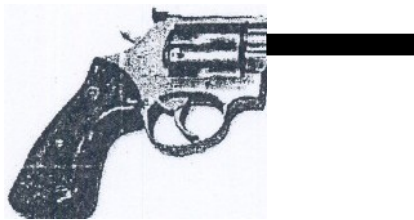
Exan1plcs



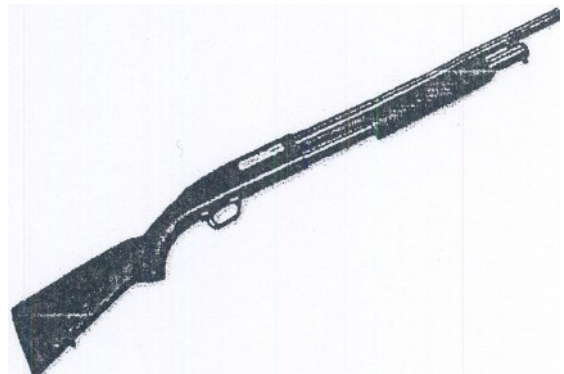
U ".45 Semi-Automatic Handgun••



0 "9mm Semi-Automatic Handgun••



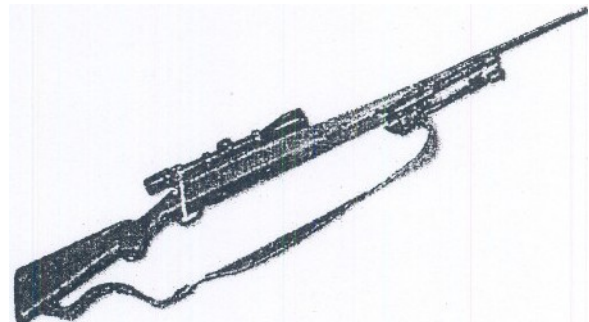
0 ".357 Magnum Revolver••



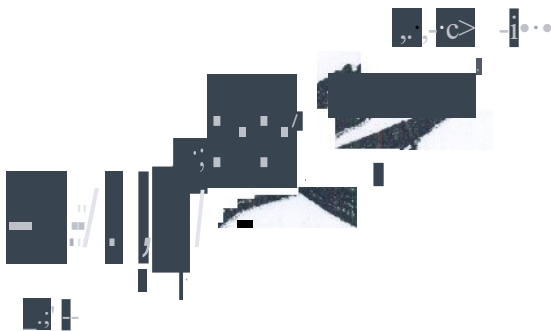
0 "Pump- Action 12-Gauge Shotgun••



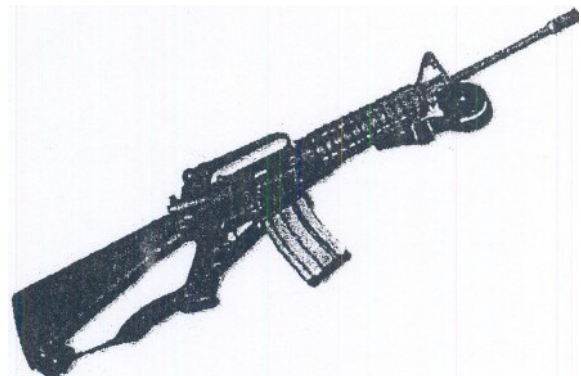
0 ".30-10 Rifle"



0 ".30-06 Rifle••



0 "AK-47 Assault Rifle"



0 "AR-15 Assault Rifle"

A. CASE INFORMATION:

1. Docket Number: _____
2. Date TRO Issued: _____ OAH Hearing Date: _____ OAH Expires: _____
3. Name and Location of Court: _____
4. Name of Petitioner: _____
5. Name of Respondent: _____
6. Name of Judge: _____

B. INFORMATION ABOUT FIREARMS:

1. Declaration includes information about Respondent's access to firearms:
Yes [] No []
2. Respondent's firearm ownership verified in administrative databases:
Yes [] Number of firearms registered: _____
No [] Reason:
Unable to access administrative databases [] Explanation: _____
Other [] Explanation: _____

C. SERVICE SUMMARY:

1. Service Agency:
 Sheriff's Civil Unit Sheriff's compliance unit CA DOJ
 Local law enforcement Agency Name: _____
 Other _____

2. Name of Server: _____

3. Date of First Service Attempt: _____
 Order served Order not served

4. Date of Second Service Attempt: _____
 Order served Order not served

5. Date of Third Service Attempt: _____
 Order served Order not served

6. Service Unsuccessful
 Reason: Respondent not present
 Incorrect address
 Respondent no longer lives at address
 Other Explanation: _____

For each firearm received from Respondent:

List Manufacturer, Model, Caliber, Serial # on line

1. Shotgun Rifle Pistol Revolver Derringer

2. Shotgun Rifle Pistol Revolver Derringer

3. Shotgun Rifle Pistol Revolver Derringer

4. Shotgun Rifle Pistol Revolver Derringer

Regarding served orders:

7. For orders NOT served by Sheriff's Compliance Unit, Unit officer contacted Respondent following service to review gun prohibition:
 Phone In-Person No contact made

8. Server informed Respondent about gun prohibition:
 Yes No Reason: _____

9. Server asked Respondent to surrender firearms:
 Yes No
 Reason:
 No firearms registered in databases
 Service did not occur where firearms are stored
 Other Explanation: _____

5. Shotgun Rifle Pistol Revolver Derringer

*Please list additional firearms in the comments section on the reverse. _____

10. Attempted methods to secure surrender of firearms from the Respondent:
 Explained the reason for surrender
 Described penalties for non-compliance
 Requested permission to search, Respondent denied permission
 Requested and received permission to search from Respondent
 Sought search warrant, warrant denied
 Sought and obtained search warrant
 Other: _____

11. Server received surrendered firearms from Respondent:

Yes Number of firearms received: _____ (Record details in box above.)
 Location, number of recovered firearms: Bedroom Living room Kitchen
 Garage Vehicle
 Other _____

Number of guns stored "safely" (i.e. unloaded with a trigger lock, gun safe, etc.): _____

Number of guns NOT stored "safely": _____

No Reason:
 Respondent denies possessing firearms
 Respondent states firearms were stolen
 Respondent states firearms were transferred to an FFL
 Proof of transfer provided: Yes No
 Respondent states firearms *will be* transferred to an FFL or to law enforcement
 Other Explanation: _____

Do you *believe* Respondent is in possession of firearms?

Yes No



Firearm Removal/Retrieval in Cases of Domestic Violence

IDENTIFY - NOTIFY - REMOVE - STORE


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.”

¹⁴⁶ 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. 62-63

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 60-61.

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.

Santa Clara County, CA DV LE Protocol

outlined on page 42.

2. Once a suspect is arrested on a misdemeanor offense, he/she should be booked into the County Jail or Juvenile Hall.
3. The officer should interview the victim, suspect, children, roommates, and any available neighbor witnesses. Interviews should be digitally recorded if possible. A warrant check, Domestic Violence Restraining Order System (DVROS) check, criminal history check and Juvenile Probation status check should also be conducted.
4. **An officer shall make no statements which would tend to discourage a victim from reporting an act of domestic violence or requesting a private person's arrest.** A peace officer who accepts a private person's arrest is immune from civil liability for false arrest or false imprisonment when, 1) at the time of the arrest, the officer had reasonable cause to believe that the arrest was lawful, 2) the arrest was made pursuant to PC 142 i.e., a victim or witness demanded that the officer receive a private person's arrest, or, 3) the arrest was made pursuant to a charge, upon reasonable cause, of the commission of a felony by the person to be arrested (PC 847).
5. Pursuant to Penal Code section 13700 et seq., an officer responding to an incident of domestic violence shall prepare a Domestic Violence Incident Report irrespective of the wishes of the victim or the presence or absence of the suspect.

C. INVESTIGATION OF DOMESTIC VIOLENCE CASES

1. Officers arriving at a domestic violence scene should conduct a thorough investigation and submit reports of all incidents of violence and all crimes related to domestic violence. If the incident occurred in another jurisdiction, the officer should contact that jurisdiction to determine which agency will investigate the incident.
2. The following steps should be included in an officer's investigation and subsequent report:
 - a. Arrival at scene
 - i. Determine location and condition of victim, suspect, children and pets.
 - ii. Determine if any weapon is involved or in the home. Confiscate and collect as evidence any weapons or firearms used in the incident. If the incident involves any threat to human life or physical assault, officers shall take temporary custody of any firearm or deadly weapon in plain sight or pursuant to a consensual

search or other lawful search. If unable to book the weapon (other than firearms) due to size or other extenuating circumstances, photograph the weapon. (PC 18250

iii. There are now three additional instances when a search warrant can be requested and issued in a case (PC 1524).

1) At the premises occupied or under the control of, the person arrested for a domestic violence incident involving a threat to human life or a physical assault as provided in 12028.5 (b) above.

2) When the property or things to be seized include a firearm or other deadly weapon that is owned by, or in the possession of, or in the custody of, a person described in W&I 8102 (a). W&I 8102 (a) permits a peace officer to confiscate a firearm or other deadly weapon from a person who is detained for examination of his or her mental condition.

3) When the property or things to be seized include a firearm/ammunition that is owned by, or in the possession of, or in the custody or control of, a person who is subject to the prohibitions regarding firearms and or ammunition pursuant to Family Code 6389 (restraining order prohibiting abuse or excluding from dwelling) and:

a) the prohibited firearm and or ammunition is possessed, owned, or in the custody of, or controlled by a person against whom a protective order has been issued pursuant to Family Code 6218 and,

b) the person has been lawfully served with that order, and

c) the person has failed to relinquish the firearm as required by law.

4) Consider contacting the on-call Deputy District Attorney in charge of search warrants.

iv. Provide appropriate level of aid to injured parties.

v. Separate suspect, victim, and witnesses. (Victim should be out of suspect's view.

b. Preliminary investigation

- i. Interview everyone separately – victim, suspect, children, other witnesses. Officers are strongly encouraged to audiotape these statements.
- ii. If a person being interviewed speaks a language other than English, the interview should be conducted in the individual's primary language by a qualified interpreter. An investigating officer may need to call for another bilingual officer fluent in that language, a telephone interpreter, a qualified civilian interpreter, or arrange for other certified professional translation services. Avoid using third party individuals (children, family members, neighbors, or bystanders) for interpretation except during exigent circumstances. Once the exigent circumstance has passed, the officer should utilize a qualified interpreter. Document the names and personal information of all witnesses and interpreters.
- iii. Document names and ages of all children who were present and/or residing in the home at the time the offense occurred or who were not present but reside in the home. Also document the names, addresses and ages of children present in the home at the time of the incident, who may not be related to the victim and/or suspect AND children who may not reside in the home but whose parents are involved in the domestic violence incident.

(Note also that suspected child abuse must be cross-reported as required pursuant to PC 11166).
- iv. Ask victim and suspect if they have pain even if there are no visible injuries. Determine if there are indications of strangulation. Victims should be encouraged to seek medical attention if there has been strangulation even if there are no visible injuries.
- v. Ask the victim if she/he has been forced to have sex against her/his will.
- vi. Document and photograph the victim's, suspect's, and child's condition and demeanor including:
 - Bruises, cuts, marks, pulled hair or other injuries
 - Torn clothing.
 - Smearred make-up.
 - If victim is pregnant, a senior or juvenile.
 - If any of the parties are under the influence of alcohol, drugs, or prescription medication.

- Condition and disarray of the house.
- vii. **Inquire and fully investigate any allegations of previous reported or unreported acts of domestic violence or child abuse.**
- viii. Document size relation of victim and suspect.
- ix. **In apparent "mutual combat" situations, try to determine who was the dominant aggressor (dual arrests shall be discouraged, when appropriate, but not prohibited per Penal Code Section 13701).** Please refer to the dominant aggressor chart found on page 43 and attempt to make the following determinations:
- Was one party in actual fear of the other?
 - Did one party escalate the level of violence, i.e., did one party react to a slap by beating the other party?
 - Was one party physically larger and stronger than the other?
 - Was there a history of violence or pattern of control by one of the parties against the other? Against other people?
 - Who has access to and control of resources?
 - Who has injuries that do not appear to be consistent with statements made?
 - Was one party usually the aggressor?
 - Did any injuries appear to be defense wounds?
 - Which party will be in greater danger if nothing is done?
- x. Check for the existence of any restraining orders against the suspect. If victim has a restraining order against suspect, obtain a copy of the order and valid proof of service (proof of service is not necessary if the suspect was in court when the order was issued). If no copy is available, contact the Department of Justice Domestic Violence Restraining Order System (DVROS/CLETS) to verify the existence of the order (Family Code Section 6383(d)). If there is no order, inform victim how to get an order.
- xi. **The officer shall advise the victim of the availability of an EPRO and civil restraining orders in every case even if the**

suspect is arrested and in criminal situations where the victim is fearful. The officer is required to request the protective order if the officer believes the person requesting the order is in immediate and present danger even if the victim does not want the order. The judge should hear your concerns and will make the decision whether or not the EPRO will issue. (Victim should be out of suspect's view.) If possible, prepare the form before calling the on-duty judge. An emergency protective order shall have precedence in enforcement over any other restraining or protective order (criminal or civil) if all of the following requirements are met: (1) the emergency protective order protects one or more persons who are already protected under another restraining or protective order, (2) the emergency protective order restrains the same person who is restrained under the other order, and (3) the provisions of the emergency protective order are more restrictive than the provisions of the other order.

- xii. **If victim has a restraining order, which has not yet been served on suspect, verbally inform the suspect of the order and note in the report including case number of the Restraining Order.** If victim has an extra copy of the order, serve on the suspect and fill out proof of service. If the officer does not have an additional copy of the order he or she shall give verbal notice of the terms and conditions of the order. This shall constitute service and notice for purposes of PC 273.6 and 12021(g). This also includes protective orders issued for protection of elders/dependent adults, their family members, household members or conservator, stalking victims and workplace violence victims (CCP 527.8, FC 6383 and W&I 15657.03). Within one business day of service, the law enforcement agency serving the protective order shall enter the proof of service directly into the DOJ Domestic Violence Restraining Order System (DVROS), including the officer's name and employing agency and shall transmit the original proof of service to the issuing court (FC 6380(d)). If a suspect is given verbal notice of the Order, the officer must advise the suspect to go to the local Family Court to obtain a copy of the Order containing the full terms and conditions of the Order (FC 6383(g)).
- xiii. If victim has proof that a copy of the restraining order was sent by mail to the respondent and he/she was present in court when the initial order was made, this is good service if the only change in the new order is the expiration date.
- xiv. When serving any protective order, including but not limited to

criminal, civil and Emergency Protective Orders, law enforcement officers shall request the immediate surrender of firearms and ammunition rather than having to wait 24 hours for the person to self-surrender the firearms and ammunition. County Firearm Removal Protocols should be followed.

- xv. Note information concerning the victim's whereabouts for the next few days in the police report. Obtain any emergency/secondary contact information. This should include name, relationship, telephone number(s) and address.
- xvi. An officer may pursuant to their department's policies, conduct a Lethality Assessment for First Responders and put the victim in immediate contact with a domestic violence advocate.

3. The "protected person" cannot be in violation of his or her own protective order.

- a. Officers shall enforce a restraining order even if it has been issued in another jurisdiction, providing that the order identifies both parties and on its face is currently ineffect.
- b. Document if the defendant has made any threats against anyone.

4. If suspect taken into custody:

- a. Document spontaneous statements by the victim and/or suspect.
- b. Prevent communication between suspect and victim/witnesses/children.
- c. Advise suspect of Miranda rights. The Miranda Admonition should be read to suspects in their primary language by a qualified interpreter.
- d. Conduct interviews and document statements of the suspect. If a "violent felony" is alleged, the interview of the suspect will be electronically recorded as outlined in the Santa Clara County Police Chiefs' Association "Recording of Violent Suspect Statement Protocol." See PC 667.5(c) for a listing of violent felonies.
- e. Evaluate the suspect for danger to self or others under 5150 W&I. If appropriate, complete a 5150 W&I form for jail mental health staff.

5. Photographs

- i. Document and photograph the condition of crime scene (i.e., disarray of physical surroundings).
- ii. Ensure that the victim's and suspect's visible injuries are photographed. Make sure that the photos taken preserve the dignity of the victim as much as is possible, and also photograph their faces for identification purposes.
- iii. Encourage the victim to contact the investigating agency/follow-up investigator if further bruising occurs.

6. Firearms and Ammunition

- i. If necessary for the protection of officers or other persons present, inquire of the victim, alleged abuser, or both, whether a firearm/ammunition or other deadly weapon is present at the location and confiscate any firearm/ammunition or deadly weapon discovered pursuant to paragraph v. below, and note this in the report (13730 (3) PC). If an EPRO is issued, request the immediate surrender of firearms once the perpetrator is served. (Family Code 6389). A search warrant can also be obtained. (See Pg. 16 Section C, 2, a,iii).
- ii. Check in the Consolidated Firearms System (CFS) and Prohibited Armed Persons (PAP) file to determine if firearms are registered to any involved person or if any involved person is prohibited from owning firearms.
- iii. Seize any firearm/ammunition or other deadly weapon located in plain sight, discovered pursuant to a consensual search or other lawful search, as necessary for the protection of officers or other persons present (18250 PC).
- iv. Seize any firearms possessed in violation of 29800(a) PC – convicted felons, or 29805 PC – other specified misdemeanor convictions.
- v. If a firearm is confiscated, issue a receipt to the owner describing the firearm and listing the serial number or other known identifier. Explain that the weapon will be returned within five business days after the owner or possessor demonstrates compliance with PC sections 33850 and 33855 (must apply to the State Department of Justice for a determination of whether he or she is eligible to possess a firearm). If the weapon is

seized as evidence of a crime or the owner of the firearm is subsequently prohibited from possession by a restraining order, the firearm will not be returned (PC 33850, 33855, 34000). If the person does not file the receipt with the court within 48 hours after being served with the protective order it is a violation of the protective order. (Refer to Firearms Relinquishment Protocol for further details).

7. Medical treatment

- i. Obtain authorization for release of medical records from victim, if possible.
- i. Document extent of injuries/treatment, if known.
- ii. Obtain names, addresses, and phone numbers of fire and emergency medical personnel treating the victim, if possible.
- iv. Transport or call for transport of victim and children to a hospital for treatment when necessary, or stand by until victim or children can safely leave.
- v. If there is reasonable suspicion of child abuse or neglect, a cross-report must be made to DFCS and officers must follow the Joint Response Protocol.
- vi. Determine if a party had been strangled. When appropriate, call for immediate medical care and advise to seek medical care even if there is no visible injury.

8. Completing Crime Report

- i. Maintain objectivity in reporting. Avoid personal opinions regarding comments from victim/suspect.
- ii. Ensure that elements of all involved crimes are included in the report and document:
 - any injuries victim and suspect have sustained.
 - that victim received the Domestic Violence Resource Card per Penal Code Section 13701 (i).
 - past history of violence and check for existence of a restraining order.
 - prior domestic violence incidents at that address involving the alleged abuser or victim.
 - statements of victim, suspect, and all witnesses including children.

- physical evidence obtained.
 - probation/parole status.
 - whether alcohol, illegal drugs or prescription drugs were involved by the alleged abuser.
 - names, ages and relationship of children who were present and/or residing in the home at the time the offense occurred or who were not present but reside in the home AND children who may not reside in the home but whose parents are involved in the domestic violence incident.
 - names, addresses and ages of children present in the home at the time of the incident, who may not be related to the victim and/or suspect. Include information on their whereabouts after the incident.
 - if any pets were threatened, harmed, or there is evidence of animal abuse.
 - whether the officer found it necessary, for the protection of the officer or other persons present, to inquire of the victim, abuser, or both, whether a firearm or other deadly weapon was present at the location (13730 PC).
 - **any emergency/secondary contact information. This should include name, relationship, telephone number(s) and address.**
 - **all email addresses should be obtained.**
 - **all cellular and text messaging contact information should be obtained.**
 - **obtain all employment information.**
- ii. If a valid restraining order prohibits firearms possession or ownership by a person involved in the incident, the officer shall make record in the crime or incident report of:
- Inquiries made to determine if the restrained person possesses any firearms/ammunition.
 - The results of efforts made to locate and seize any unlawfully possessed firearms/ammunition, including requesting a search warrant (see pg 16).
- iv. If a violation of a restraining order is alleged:
- In the police report, describe the specific terms of the order that were violated by the restrained person.
 - Attach a printout of the order from DVROS.
 - Request of records or communications personnel that information on the reported violation is entered into the Domestic Violence Restraining Order System

(DVROS). (See the California Department of Justice Information Bulletin #02-05-BCIA, dated April 4, 2002.)

9. When documenting a domestic violence-related crime, identify the report as a domestic violence incident on the face of the report as required by Penal Code Section 13730 (c).
10. If a victim spontaneously states that prosecution is not desired, the victim should be told that the decision to prosecute is made by the District Attorney. Officers shall not advise victims of domestic violence that the victim has the authority to "press" charges or "drop" charges.
11. Officers shall furnish victims with the following information:
 - A "Domestic Violence Resource Card" which includes the phone number for the Victim/Witness Assistance Center in Santa Clara County (408-295-2656) and the toll free number for the California Victim Compensation and Government Claims Board (1-800-777-9229).
 - The card shall also include the names and phone numbers of shelters or counseling centers and state that domestic violence or assault by a person who is known to the victim or who is the spouse of the victim is a crime. The California Victim Compensation and Government Claims Board can authorize a cash payment or reimbursement to an adult victim of domestic violence for specified expenses. Counseling funds for children may also be available for those identified in the police report. **Victims should be encouraged to contact a shelter or counseling center in order to receive important information about safety issues and services that are available to them.**
 - The card shall also include the statement that the victim has a right to have a domestic violence advocate and a support person of the victim's choosing present at any follow-up interview by law enforcement authorities, prosecutors, or defense attorneys. (679.05 P.C.) Officers should strongly consider providing additional DV resource cards to support persons, friends and family at the scene.
 - The Attorney General's/SCCO card on Marcy's Rights (Prop 9)
 - Inform the victim of their right to request in writing that the landlord change the locks of their dwelling unit within 24 hours when they are the victim of domestic violence, sexual assault, or stalking. The victim must give the landlord a copy of the police report or restraining order (which was written in the last 180 days). The landlord must also give the victim a key to the new locks. The victim also has the right to change the locks if the landlord fails to do so, regardless of any provision in the lease to the contrary. The victim must then give the landlord a key to the new locks. If the victim and restrained person live together the victim can make the same request of the landlord in

2014 Domestic Violence Law Enforcement Protocol Training Comments

In addition to legislative and other changes included in the revised protocol, trainers are encouraged to discuss the following issues with members of their organizations.

For a current copy of this Protocol, the Firearms Relinquishment Protocol and other DV related resources, visit <http://dvc.sccgov.org>

Victim's rights. On November 4, 2008, state voters approved Prop 9, the Victims' Bill of Rights Act of 2008: Marsy's Law. This measure amended the California Constitution to provide additional rights to victims. This card contains specific sections of the Victims' Bill of Rights and resources for the victim. (See attached).

Law Enforcement Relocation Recommendation Form –Trainers should provide multiple copies or place this form on an accessible computer system for officers and detectives to use. All previous copies should be shredded.

Annual Training - the Domestic Violence Council and its sub-committees, in partnership with the Santa Clara County Police Chief's Association and the District Attorney's office, will conduct a four (4) hour "Train the Trainer" course on the annual changes to this protocol in the spring of each year. In addition, topical and relevant training will supplement the training of the protocol.

Lethality Assessment Tool - Agencies are encouraged to use some form of lethality assessment in dealing with domestic violence cases. Model forms can be obtained from the Los Gatos/Monte Sereno PD or SCCO Probation Department. Please see a copy of the tool at the end of this protocol.

Firearm relinquishment - Law enforcement is authorized to request the immediate surrender of firearms when a person is served with a domestic violence protective order, rather than having to wait 24 hours for the person to self-surrender the firearms. See Firearms Relinquishment Protocol.

Pets provision. The law now allows a court, on a showing of good cause, to include in a DV protective order a grant to the petitioner (victim), the exclusive care, possession or control of any animal owned or kept by the victim and respondent (perpetrator). Also authorizes the court to order the respondent to stay away from or take, conceal, threaten or harm the animal protected.

EPROs denied. EPROs are occasionally denied by the reviewing magistrate. If the requesting officer or follow-up investigator still has concerns for the victim's safety, the District Attorney's Office should be notified. Considerations should be given to preparing a written affidavit or having further discussions with the magistrate.

Purpose of the Lethality Assessment:

This evidence based Lethality Assessment form is a user-friendly, straightforward instrument that predicts danger and lethality in domestic incidents between intimate or former intimate partners to a high degree. Research shows that **only 4% of intimate partner murder victims ever used domestic violence services**. This Assessment encourages victims in high danger to seek domestic violence program services to prevent serious injury or death.

Step 1 – Fill out the Assessment Form with the victim.

Step 2 - If any of the first three answers are yes, ask the victim to call the agency's local advocacy agency and ensure they make contact. You may need to dial the number for them if they are upset.

Step 3 – If they talk to someone, check the box that they spoke to a hotline counselor.

Step 4 – If they answer yes to one of the first three questions but do not want to speak to a hotline counselor right away, note the victim's safe phone numbers to call and fax the Lethality Assessment to the appropriate DV organization at the bottom of the form.

Step 5 – If the victim answers yes to the first three answers, or a significant number of follow up questions are yes, but they refuse to speak to a hotline counselor advise the victim that in your opinion, he/she is in high danger for lethality and you highly encourage them to seek DV program services. Fax the Lethality Assessment to the appropriate DV organization at the bottom of the form.


Step 6 – Provide them with the DV resource card, case number and Marsy's card as per the DV protocol.

Step 7 – Please fax all Lethality Assessment forms to the appropriate DV organization listed on the bottom of the form regardless of the answers or whether or not the victim answered any of the questions.

PROTECTION ORDERS, ORDERS TO SURRENDER WEAPONS AND EXTREME RISK PROTECTION ORDERS INFORMATION

June 8, 2018

Disclaimer: This information is not a WASPC Model Policy. It is, however, a model policy substantially adopted by the King County Chiefs Association and the Snohomish County Chiefs Association, and is provided here as information available to law enforcement agencies seeking to review/revise their related policies.



SAMPLE FOR MODEL POLICIES
AND PROCEDURES COVERING:
PROTECTION ORDERS,
EXTREME RISK PROTECTION
ORDERS, AND ORDERS TO
SURRENDER WEAPONS

FOR MORE INFORMATION, CONTACT:

SANDRA SHANAHAN - SANDRA.SHANAHAN@KINGCOUNTY.GOV

CHIEF CAROL CUMMINGS - CAROL.CUMMINGS@BOTHELLWA.GOV

(Note: Sections in orange are specific to Snohomish County agencies and sections in green are specific to King County agencies)

INTRODUCTION (*note: a longer and a shorter version are included as examples below*)

Domestic violence is a serious crime against victims, families, and society. Domestic violence laws emphasize the criminal nature of domestic violence and establish enforcement of the law, victim safety, and offender accountability as the priorities for the law enforcement response. The failure of any law enforcement officer to properly respond and handle a domestic violence call in accordance with existing law and agency procedure is a violation of this department's policy,

Every response to a domestic call will include a substantive investigation of the incident leading to the call. Officers responding to a domestic violence call will complete a thorough investigation and shall take a complete offense report to include:

- Background information detailing the relationship;
- domestic violence history (risk assessment factors);
- the presence, possession, and availability of firearms;
- injuries and complaints of pain;
- victim and witness statements to include children in the home;
- physical evidence to include photos of injuries and scene, text messages, clothing and weapons;
- the attempt to locate and physically arrest the suspect.

Officers will complete the Domestic Violence Report Checklist and Domestic Violence History forms as part of their investigation and report.

Officers are authorized to provide assistance by offering, facilitating, or arranging transport for a domestic violence victim and children to a hospital for treatment, or to a place of safety or shelter.

In any criminal domestic violence incident, officers will provide the victim with a victim services information sheet detailing resources available to the victim.

If an officer has probable cause to believe that a crime has been committed, the officer shall exercise arrest powers with reference to the criteria in RCW 10.31.100. If the suspect is not present for arrest, officers will broadcast probable cause for arrest and make a reasonable effort to locate and arrest the suspect.

In all domestic violence incidents, officers will make inquiry with the victim and any witnesses to get as much information as possible about any firearms the suspect has possession, access to, or control over. This will include firearms that may be in the residence but are owned by other parties, or firearms that are stored or kept in locations outside of the residence or location of the incident, or held by other family members for the suspect. Officers will provide as much detail as possible about such firearms in the police report. If the firearms are jointly in the custody of the victim, witnesses, or other parties at the location, officers shall ask if the firearms may be removed by law enforcement and impounded for safekeeping. If the firearms are solely under the control

of and only accessible by the suspect, officers will make the same inquiry with the suspect.

Court orders are issued by the courts to protect victims of domestic violence and to prevent possession of firearms by domestic violence offenders or others that exhibit that they are at a high risk of harming themselves or others. These orders include:

- Domestic Violence No Contact Orders
- Domestic Violence Protection Orders
- Order to Surrender Weapons
- Extreme Risk Protection Orders

It is the policy of this agency to locate and serve in a timely manner Respondents to such orders and to enforce the terms of these court orders. Officers responding to an order violation call will complete a thorough investigation. Officers will enforce any order restricting the Respondent's ability to have contact with a victim by arresting and taking the Respondent into custody if the officer has probable cause to believe that the Respondent has violated the terms of that order. If the suspect is not present for arrest, officers will broadcast probable cause for arrest and make a reasonable effort to locate and arrest the suspect.

All domestic violence incident calls and domestic violence order violation calls will be investigated thoroughly enough to minimize the need for follow-up and with a goal of being able to prosecute the case without victim participation or cooperation if necessary.

Domestic violence calls can be highly emotional situations and should be considered as an officer safety risk as well as a risk to victims. Officers will always approach in-progress domestic violence incidents with a sufficient number of responding officers and using appropriate caution and tactics.

BACKGROUND

The purpose of domestic violence laws in the State of Washington is to recognize the importance of domestic violence as a serious crime against society and to assure the victim of domestic violence the maximum protection from abuse with the law and those who enforce the law can provide. In 1979, the Washington State Legislature found that existing criminal statutes were adequate to provide protection for victims of domestic violence. However, previous societal attitudes reflected in policies and practices of law enforcement agencies and prosecutors resulted in differing treatment of crimes occurring between cohabitants and of the same crimes occurring between strangers. Public perception of the serious consequences of domestic violence to society and to the victims led to the recognition of the necessity for early intervention by law enforcement agencies. It is the intent of the Washington State Legislature that the official response to cases of domestic violence stress the enforcement of the laws to protect the victim and communicate the attitude that violent behavior is not excused or tolerated. Furthermore, it is the intent of the Washington State Legislature that criminal laws be enforced without regard to whether the persons involved are or were married, cohabiting, or involved in a relationship.

MODEL POLICIES AND PROCEDURES COVERING: PROTECTION ORDERS, EXTREME RISK PROTECTION ORDERS, AND ORDERS TO SURRENDER WEAPONS

In 1984, the Legislature enacted the Domestic Violence Prevention Act (RCW 26.50) creating orders for protection to further the tools available to protect victims of domestic violence.

The Legislature further recognized that in the effort of seeking protection from batterers and other violent persons, victims, family members, Petitioners, and law enforcement personnel face significant risks. In the United States, based on an analysis of FBI and Florida State homicide reports, a woman is fatally shot by her partner every 16 hours. Research shows that people with a history of domestic violence are five-times more likely to murder their partner if there is a firearm in the house. A 2016 report from the National Law Enforcement Officers Memorial Fund found that calls related to domestic disputes and domestic-related incidents resulted in more police fatalities than any other type of call. Further, research reveals that a woman's risk of homicide is highest when she is trying to end the relationship. For these reasons, in 2014, the Washington State Legislature unanimously passed a law requiring immediate surrender of weapons for certain persons subject to Protection Orders.

In addition, in 2016, the Washington voters authorized a new type of order, the Extreme Risk Protection Order (ERPO), mandating immediate removal of firearms from those posing risk of harm to self or others, such as individuals in crisis.

Swift order service, along with temporarily removing firearms for safekeeping at the time of service, particularly for those Restrained Persons who present the greatest risk, is critically important.

This policy is designed to provide law enforcement personnel with clear definitions, direction, and procedures for response to domestic violence incidents; entry, service, and enforcement of all types of court orders, including Extreme Risk Protection Orders and Orders to Surrender Weapons, to most effectively reduce risk of harm to victims, the community, and law enforcement.

This model policy and procedures may be supplemented and/or updated as needed based on changes in the law or best practices as recommended by the [Snohomish County Sheriff and Police Chiefs Association](#).

[shorter alternative intro: In the effort of seeking protection from batterers and other violent persons, victims, family members, Petitioners, and law enforcement personnel face significant risks. In the United States, based on an analysis of FBI and Florida State homicide reports, a woman is fatally shot by her partner every 16 hours. And research shows that people with a history of domestic violence are five-times more likely to murder their partner if there is a firearm in the house. A 2016 report from the National Law Enforcement Officers Memorial Fund found that calls related to domestic disputes and domestic-related incidents resulted in more police fatalities than any other type of call. Further, research also tells us that a woman's risk of homicide is highest when she is trying to end the relationship. For these reasons, in 2014, the Washington State Legislature unanimously passed a law requiring immediate surrender of weapons for certain persons subject to Protection Orders.

In addition, in 2016, the Washington voters authorized a new type of order, the Extreme Risk Protection Order (ERPO), mandating immediate removal of firearms from those posing risk of harm to self or others, such as individuals in crisis.

Swift order service, along with temporarily removing firearms for safekeeping at the time of service, particularly for those Restrained Persons who present the greatest risk, is critically important.

This policy is designed to provide law enforcement personnel with clear definitions, direction, and procedures for entry, service, and enforcement of all types of court orders, including Extreme Risk Protection Orders and Orders to Surrender Weapons, to most effectively reduce risk of harm to victims, the community, and law enforcement.]

This model policy may be supplemented and/or updated as needed based on changes in the law or best practices as recommended by the Regional Domestic Violence Firearms Enforcement Unit. (206-477-1074; SeaKingFirearms@KingCounty.gov)

DEFINITIONS

Family or Household Member – Individuals who have the following types of relationships with a Respondent/Restrained Person:

- Persons related by blood, marriage or adoption
- Dating partners. Persons 13 years of age or older in a dating relationship with a person 16 years of age or older
- Persons with a child in common, regardless of whether such persons have been married or have lived together
- Persons who reside or have resided together (for an ERPO, the persons must have resided together within the past year)
- Domestic partner
- Person in a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren
- Persons acting or have acted as the Respondent/Restrained Person's legal guardian

Intimate Partner – A person who is or was married, in a state-registered domestic partnership, or in an intimate or dating relationship with another person at the present or at some time in the past. Any person who has one or more children in common with another person, regardless of whether they have been married, in a domestic partnership with each other, or lived together at any time, shall be treated as an Intimate Partner.

Petitioner – The person who files the initial case. In most cases, the person who initiates the case is also the Protected Person. In some situations, where there is an overarching family law case, such as a dissolution, or parenting plan, the person who initiated that case may be listed as the Respondent/Restrained Person on the Protection Order.

Protected Person – The person who asks the court to issue a Protection Order. The Protected Person may be either the named Petitioner or Respondent, depending upon the type of case, as noted above. In the case of ERPOs, there is no Protected Person; rather there is a Petitioner, who may be an individual or a law enforcement agency.

Respondent – The person who initially must respond to the case filed by the Petitioner and who is the “Restrained Person”. In an Extreme Risk Protection Order, the Respondent is always the person ordered to surrender firearms/concealed pistol license.

Restrained Person – The person to whom the order applies. A Restrained Person may be prohibited from having contact with the Protected Person or other family member, or having access to any firearm and concealed pistol license.

TYPES OF ORDERS

(See also: <https://wscadv.org/wp-content/uploads/2015/06/WA-State-Civil-Safety-Order-Comparison-Chart.pdf>)

Court Orders – Court orders come in many forms and may be issued by a Superior Court, Juvenile Court, District Court, Municipal Court, other states, or a Tribal Court. For some orders, the court may issue an Ex Parte Order (a temporary/emergency order obtained after hearing only from the Petitioner) that is effective until the court holds a hearing with both the Petitioner and Respondent having been given notice of the hearing. Different types of orders include:

1. No Contact Order – No Contact Orders may be imposed as part of a criminal proceeding, usually during a defendant’s first court appearance. The order is served in court, and does not require a petition, request, or approval from the victim. No Contact Orders can be issued in any Superior, District or Municipal Court. No Contact Orders may be issued for the following types of criminal events:
 - a. Domestic Violence (RCW 10.99)
 - b. Promoting Prostitution (RCW 9A.88)
 - c. Trafficking (RCW 9A.40)
 - d. Harassment (9A.46) Obtained by a person alarmed, annoyed or harassed by another person.
 - e. Stalking (RCW 7.92.160) When any person charged with or arrested for stalking as defined in RCW 9A.46.110 or any other stalking-related offense under RCW 9A.46.060 is released from custody before arraignment or trial on bail or personal recognizance, the court authorizing the release may prohibit that person from having any contact with the victim. If there is no outstanding restraining or protective order prohibiting that person from having contact with the victim, and the victim does not qualify for a domestic violence Protection Order under chapter RCW 26.50, the court authorizing release may issue, by telephone, a stalking no-contact order prohibiting the person charged or arrested from having contact with the victim or from knowingly coming within, or knowingly remaining within, a specified distance of a location.

2. Protection Orders and Ex Parte Protection Orders – Civil order obtained by a person who has been assaulted or who fears abuse. These types of orders are issued at the request of an alleged victim. Presence of a related criminal case is not required. Protection Orders are most often issued by Superior and District Courts. Some Municipal Courts accept Protection Order filings, but not all. Some orders must originate in District Court, while others can be filed directly into Superior Court. When the person seeking protection alleges that harm could result if an order is not issued immediately without prior notice to the Respondent, the court may grant an Ex Parte Temporary Protection Order, which lasts until the full hearing, for which the Respondent will be served notice. Some Temporary Orders entered in District Court will be transferred to Superior Court for the full hearing (most commonly when children are involved.)

The following types of Protection Orders are available:

- a. Domestic Violence (RCW 26.50)
- b. Vulnerable Adult (RCW 74.34) Obtained by a vulnerable adult or an interested person on behalf of a vulnerable adult.
- c. Stalking (RCW 7.92) Obtained by a person who does not qualify as a family or household member for a Protection Order under RCW 26.50 and who is a victim of stalking conduct. The order can also be obtained by an interested person on behalf of a vulnerable adult or the legal guardian of a minor child.
- d. Sexual Assault (RCW 7.90) Obtained by a person who does not qualify for a Domestic Violence Protection Order and is a victim of non-consensual sexual conduct or non-consensual sexual penetration, including a single incident.
- e. Anti-Harassment (RCW 10.14) Obtained by a person who does not qualify for a Stalking Order and who is the victim of unwanted continuing contact that seriously annoys, alarms, or causes distress. Courts often require a showing that the person being harassed has made it clear to the other party that they want no further contact. There are filing fees for this type of order but fees can be waived if the person filing is low-income.

Orders to Surrender Weapon Issued Without Notice entered at the time of the Temporary Domestic Violence Protection Order are becoming more common. Personnel should look through all order paperwork sent for service to see if this type of order has been granted. Refer to the “Service of Orders” section for more details.

3. Restraining Order (RCW 26.09, 26.10, 26.44) – Temporary and Permanent Restraining Orders are generally filed as part of an existing family law case, generally in conjunction with divorce proceedings or child custody cases. Restraining Orders may also be granted when there are allegations of domestic violence, child sexual or physical abuse by a parent or family member.

4. Order to Surrender Weapons (OTSW) and Order to Surrender Weapon Without Notice (OTSWWN) (RCW 9.41.800) – Depending on the facts, a court must or may order a party to surrender any firearm or other dangerous weapon. The court directs surrender to law enforcement, to the party's legal counsel, or to any person designated by the court. An Order to Surrender Weapons is generally issued in conjunction with other orders and requires a Respondent/Restrained person to:
 - a. Immediately surrender all firearm or other dangerous weapons;
 - b. Surrender any concealed pistol license issued under RCW 9.41.070;
 - c. Prohibit the party from obtaining or possessing firearms or other dangerous weapons;
 - d. Prohibit the party from obtaining or possessing a concealed pistol license.

5. Extreme Risk Protection Order (ERPO) (RCW 7.94) – A court order that temporarily suspends a person's access to firearms if there is evidence that the person is threatening to harm him or herself or others. Unlike a No Contact Order or Protection Order, ERPOs do not restrict contact with persons or locations. ERPOs are limited to restricting access to firearms. Because of the risk of violent behavior, the person, who is called a "Respondent" in the ERPO, is ordered by the court to immediately turn over all firearms and any concealed pistol license to law enforcement. The Respondent is also directed not to have a firearm in his or her custody or control, and not to purchase, possess, receive, or attempt to purchase or receive a firearm.

A family or household member or a law enforcement officer or agency may ask the court to issue an ERPO by filing a petition. No criminal case is needed. The law defines a family or household member as any of the following:

- Person related by blood, marriage, or adoption to the Respondent;
- Dating partner of the Respondent;
- Person who has a child in common with the Respondent, regardless of whether such person has been married to the Respondent or has lived together with the Respondent at any time;
- Person who resides or has resided with the Respondent within the past year;
- Domestic partner of the Respondent;
- Person who has a biological or legal parent-child relationship with the Respondent, including stepparents and stepchildren and grandparents and grandchildren, or;
- Person who is acting or has acted as the Respondent's legal guardian.

6. Ex Parte Extreme Risk Protection Orders

This Temporary Order is issued by the court without notification to the Respondent. A full ERPO must be issued by Superior Court following a hearing with notice to the Respondent; however, an **Ex Parte** ERPO may be initially issued by District or Municipal court and transferred by the court to Superior Court for the full hearing and final order (RCW 7.94.030(10)) and (RCW 7.94.050).

Petitioners may request the issuance of an Ex Parte ERPO prior to a full hearing, by including facts in the Petition that based on personal knowledge the Respondent poses a significant danger of causing personal injury to self or others in the near future by having in his or her custody or control, purchasing, possessing, or receiving a firearm. Providing notice of the hearing to the Respondent may increase the danger to the Petitioner or others. The court may factor this in their decision to issue an Ex Parte ERPO.

If a court finds there is reasonable cause to believe that the Respondent poses a significant danger of causing personal injury to self or others in the near future by having in his or her custody or control, purchasing, possessing, or receiving a firearm, (and may also note that providing notice increases danger to the Petitioner or others), the court shall issue an Ex Parte ERPO.

ORDER VIOLATIONS

A violation of an order may constitute a criminal offense if:

1. The order was in place AND
2. The offender knew about the order AND
 - The offender engaged in any type of prohibited contact, OR
 - The offender possessed or attempted to possess a firearm (ERPO/OTSW/DVPO's)

Violations may be:

- Gross Misdemeanor – If the violation did not involve an assault or reckless endangerment and if the Respondent/Restrained Person does not have two prior convictions for violating an order.
- Class C Felony for some types of Protective Orders) – If the contact involved assault or reckless endangerment or if the Respondent/Restrained Person has two prior convictions for violating an order.

Mandatory Arrests for Some Court Order Violations

Personnel are encouraged to contact and consult with appropriate prosecutors regarding questions about Court Order violations. Personnel should also contact the Law Enforcement Agency responsible for entering the order to do a hand search, if they do not see the order in WACIC. Per RCW 26.50.115(3), presentation of an unexpired, certified copy of a Protection Order with proof of service is sufficient for a law enforcement officer to enforce the order regardless of the presence of the order in the law enforcement computer-based criminal intelligence information system.

Per RCW 10.31.100(2)(a), officers are mandated to make arrests for some Court Order violations:

MODEL POLICIES AND PROCEDURES COVERING: PROTECTION ORDERS, EXTREME RISK PROTECTION ORDERS, AND ORDERS TO SURRENDER WEAPONS

1. A Respondent/Restrained Person has violated the terms of an order by committing an act or threat of violence, and/or going onto the grounds of or entering a residence, workplace, school, or day care, or knowingly coming within or remaining within, a specified distance of a location prohibited in the order, **AND**
2. The type of order is one of the following:
 - Stalking Protection Order and Court-Initiated Stalking No Contact Orders (RCW 7.92)
 - Sexual Assault Protection Order (RCW 7.90)
 - Harassment No Contact Order (RCW 9A.46)
 - Domestic Violence No Contact Order (RCW 10.99)
 - Domestic Violence Protection Order (RCW 26.50)
 - Vulnerable Adult Protection Order (RCW 74.34)
 - Restraining Order (RCW 26.09 & 26.10) – Front page of Order must state: “VIOLATION OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER RCW 26.50 AND WILL SUBJECT A VIOLATOR TO ARREST”
 - Foreign Protection Order (RCW 26.52.020)

Additionally, per RCW 26.50.110, arrests are mandated for violations of the following additional types of orders if a Respondent/Restrained Person knowingly comes within a prohibited residence, workplace, school, day care, or the person knowingly remains within a specified distance of a prohibited location:

- Trafficking No Contact Order (RCW 9A.40)
- Promoting Prostitution No Contact Order (RCW 9A.88)

ENTRY OF ORDERS RECEIVED FROM COURT

The law enforcement agency has responsibility for entering court orders into the state (WACIC/NCIC) and local databases. Orders, including Temporary Orders, should be entered the same day they are received whenever possible, so that all law enforcement personnel are aware of them. Timely and complete entry is also important to ensure proper tracking of orders and to be able to work effectively inter-jurisdictionally.

The Entering Agency is generally the law enforcement agency with jurisdiction for where a Petitioner resides. If an order was issued by a jurisdiction’s Municipal Court, that jurisdiction should enter the order regardless of where the Petitioner resides. The Serving Agency is the law enforcement agency with jurisdiction for where the Respondent/Restrained Person resides. If both Petitioner and Respondent/Restrained Person reside in the same city, the law enforcement agency with jurisdiction will both enter and serve the order.

Personnel should also notify the law enforcement agency that issued the CPL to have them inactivate the CPL.

PREPARING ORDER FOR SERVICE / CREATING INFORMATION PACKET AND SERVICE PACKET

The (Insert applicable agency division/section/unit) / **Records Unit** should conduct research regarding the Respondent/Restrained Person's history, and create a packet of information for personnel serving the orders. This will help ensure that service is successfully completed and will reduce risks associated with the service.

The information packet should include the following research and documents (these are not provided to the Respondent/Restrained Person):

- Whether the Respondent/Restrained Person has any outstanding warrants or has knowingly attempted to acquire a firearm in violation of federal or state law, or been denied an application to purchase or transfer a firearm as the result of a background check that indicates the Respondent/Restrained Person is ineligible to possess a firearm under state or federal law. (WACIC/NCIC check);
- Known information about the Respondent/Restrained Person's in-custody status;
- Information from State DOL regarding any concealed pistol license and pistol transfers, and firearm purchase history (if Social Security Number is known);
- State DOL photograph of Respondent/Restrained Person;
- Local / Agency records of Respondent/Restrained Person;
- Law Enforcement Information Sheet (LEIS), for law enforcement personnel use only;
- Supplemental Law Enforcement Information Sheet – Firearms. The Firearm LEIS is first-hand information from the Petitioner on the types of firearms and the likely known location of the firearms.

The service packet, to be served on the Respondent/Restrained Person, should contain the following documents:

- Petition for Order for Protection and any law enforcement affidavit or other reports or documents incorporated into the petition by reference
- Law Enforcement Addendum to the Petition (for E R P O s where law enforcement is the Petitioner)
- Temporary Order for Protection and Notice of Hearing
- Order to Surrender Weapons Without Notice (this may not always be issued with a Temporary Order for Protection)
- Proof of Surrender form
- Order Transferring Case to Superior Court (if ex parte order obtained in Municipal or District court)
- Instructions explaining how weapons are to be surrendered when applicable

If a court order is not sufficient for service (e.g. expired order, unsigned order, wrong address, etc.), law enforcement personnel should contact the **Court Orders Problem-Solver in the Regional Domestic Violence Firearms Enforcement Unit** / **clerk of the issuing**

court, to resolve the problem if possible, and efforts should be made to notify the Petitioner.

SERVICE OF ORDERS

Risk Assessment

Some orders may carry more risk for the Protected Person, family, community, or law enforcement, and should be prioritized for service. The (insert applicable agency division/section/unit should submit all service packets to the on-duty supervisor for review of appropriate staffing and expertise needed for service. After completing the information and service packet, the Records Unit provide the packet to an on-duty supervisor for review and evaluation of service requirements.

The reviewing supervisor should conduct a formal risk assessment on all orders involving the surrender of weapons, including Extreme Risk Protection Orders. Prioritization of all other orders should be based on the Risk Assessment criteria noted below.

In conducting the review, the reviewing supervisor should keep in mind that the risk of lethality to a Petitioner is heightened upon a Respondent/Restrained Person's first notification of an order. Timing of order service and any required surrender of weapons should be prioritized to occur as expediently as possible based on factors considered in the risk assessment.

High-risk orders should not be served with fewer than two personnel.

Factors that should be taken into consideration during the risk assessment include:

- Prior incidents of assault (domestic violence and non-domestic violence)
- Prior incidents of assault or threat against children
- Prior incidents of assault against law enforcement
- Any type of physical violence, stalking or sexual harm toward victim
- Threat to harm or kill victim or others
- Conviction or arrest involving violent acts
- Presence of firearms or other dangerous weapons
- History of alcohol or substance abuse
- Violence against animals
- Behavioral crisis indicative of dangerousness to self and/or others including suicidality.

Order Service

1. Prior to serving the order, assigned personnel should read the order and the petition thoroughly and verify that the correct person is being served.
2. Prior to serving the order, assigned personnel should verify all firearms identified in the order and from any available information, including police reports leading to the order. All firearms must be surrendered upon service.

3. Service is not considered valid unless the Respondent/Restrained Person is personally served, has knowledge of the order, or unless the court specifies otherwise.
4. The first attempt at service should, if possible, occur within 24 hours of receiving the order and service packet from the (insert applicable agency division/section/unit) / Records Unit. If the first attempt is not successful, no fewer than two additional attempts should be made to serve the order. If the Respondent/Restrained Person was determined to be high-risk, additional attempts at service should be made.
5. Each attempt at service should be noted in the Service Packet and reflected in CAD records, with date, time, address, and the reason service was not completed. Any known or suspected attempts by a Respondent/Restrained Person to avoid service should also be noted on the Return of Service form.
6. Service should be completed at least five court days prior to the hearing date (business days - Monday through Friday, excluding holidays) wherever possible so that the court hearing is not delayed, which can result in ongoing risk to the victim. However, service attempts should continue until the date of the hearing.
7. If the Respondent/Restrained Person is in the Protected Person's presence at the time of contact for service, serving personnel should take reasonable steps to separate the parties when possible prior to completing the service or inquiring about or collecting firearms.
8. If the Respondent/Restrained Person is served in the Protected Person's presence, serving personnel should take reasonable steps to help safeguard the Protected Person. (See *Washburn v. Federal Way*, 178 Wn.2d 732 (2013)). These steps also apply to civil standbys. Personnel should document any steps taken to ensure Protected Person's safety. Examples of reasonable steps may include:
 - If the order is served at the Protected Person's home, personnel should remain on-scene until the Respondent/Restrained Person departs.
 - If the order is served at the Respondent/Restrained Person's home, personnel should remain on-scene until the Protected Person departs.
 - If the order is served at a third-party location, personnel should remain on-scene until either the Respondent/Restrained Person or the Protected Person departs.
9. If the Protected Person has provided information about additional firearms the Respondent/Restrained Person has access to, personnel should take reasonable steps to obtain them in accordance with this policy/procedure.

10. Personnel completing the service should take steps, when needed, to ensure that the Respondent/Restrained Person understands the order (e.g. use of an interpreter).
11. Expired court orders shall not be served and should be returned to the Court Orders Problem-Solver in the Regional Domestic Violence Firearms Enforcement Unit.
12. Unsigned court orders shall not be served and should be returned to the Court Orders Problem-Solver.
13. Attempts should be made to notify the Petitioner if an order cannot be served.

Successful Service of Orders

1. Provide the Respondent/Restrained Person with copies of all the forms, **EXCEPT**:
 - Law Enforcement Information Sheet (LEIS)
 - Supplemental Law Enforcement Information Sheet – Firearms
 - Return of Service Sheet
2. Complete the Return of Service form. Note that **every box must be marked** for each document that was required to be served or the court may determine that the service was incomplete and will require a continuance and further attempts to serve the Respondent/Restrained person to ensure proper service. These delays can result in additional risk to the Protected Person. Sign and date the form. Your agency's procedure may also include immediate notification of the records unit of the time and date service was completed.
3. Document on the Return of Service form any behavior or pertinent evidence (e.g. belligerence at time of service, threats, avoidance of service, description of firearms seen at the time of service, as well as Respondent's statements regarding possession of the firearms. This kind of information will not be available to the court unless it is included on the Return of Service form.
4. A supervisor should review the completed Return of Service form for thoroughness and quality control.
5. Attempt to notify the Petitioner/Protected Person if phone or email contact information has been provided.

Unsuccessful Service of Orders

If attempts at service are not successful, complete the Return of Service form or the form letter showing that the order was not served, stating the reason. Include all attempts made to serve the Respondent/Restrained Person, including any avoidance attempts made by the Respondent/Restrained Person. Efforts should be made to contact the protected party about the inability to serve, using the email or phone number provided.

ORDER TO SURRENDER WEAPONS

No Contact Orders and Protection Orders may also include an Order to Surrender Weapons (OTSW). No Contact Orders issued by the court may have limited information about what firearms the Respondent possesses or has access to. Typically, in Protection Orders and Extreme Risk Protection Orders, the Petitioner will provide information as to the number and types of firearms the Restrained Person possesses, if it is known. Personnel should follow the following procedures for an OTSW:

1. Follow the instructions provided in the court order.
2. Although the order may specify specific firearms brands and models to be surrendered, personnel should also ask the victim separately for ALL firearms to which a Respondent/Restrained Person has access to or is in possession of, in addition to any firearms specifically listed in the order. Assigned personnel should verify all firearms from any available information including police reports leading to the order.
3. Advise the Respondent/Restrained Person that the court has ordered that all firearms in his or her custody, control, or possession, and any CPL, must be immediately temporarily turned over to law enforcement for safekeeping.
4. Explain to the Respondent/Restrained Person this is a temporary court order, law enforcement will retain the firearms for safekeeping, and s/he can contest it at the hearing.
5. If the Respondent/Restrained Person denies possession of firearm(s) or reports that firearms have been transferred to another party or sold, conduct basic investigative steps to help verify or disprove Respondent/Restrained Person's claims, to include contacting the party the Respondent claims to have transferred the firearms to. Obtain a statement if possible and a signed "Declaration of Non-Surrender." Note on the Return of Service if Respondent/Restrained Person asserts he or she possesses no weapons or a CPL.
6. Ask the Respondent/Restrained Person if s/he will consent to a search. (*Refer to specific agency policies concerning search procedures.*)
7. Consider application for a search warrant to ensure all firearms in the Respondent/Restrained Person's custody, control or possession have been surrendered. Take possession of all firearms that are surrendered, are in plain view, or are discovered pursuant to a lawful search. For victim safety, every lawful effort should be made to obtain any and all firearms at the time of the order service, rather than asking the Respondent/Restrained Person to bring firearms to the agency at a later date.
8. In order to reduce risk of lethality and harm, if the Respondent/Restrained Person is not physically located where his/her firearms and CPL are located, transport or follow him or her to retrieve all firearms and the CPL whenever practicable.
 - If a Respondent/Restrained Person is served in court or via mail/publication, he or she may surrender firearms and CPL to law enforcement within 48 hours of

receiving notice, rather than immediate surrender. Follow-up should be done to ensure this occurred.

9. Provide a receipt for all surrendered firearms and CPL to the Respondent/Restrained Person. Keep a copy for agency files. The original is to be filed with the court within 72 hours after the service of the order.
10. Book the firearms into evidence according to Department procedure.
11. Complete and sign the Return of Service form and mark the appropriate box for surrender of firearms.
 - Every box must be marked for each document that was required to be served or the court may find that the service was incomplete and will require further service of the Respondent/Restrained Person. Note that there are separate boxes for Orders to Surrender Weapons.
12. Attempt to notify the Petitioner/Protected Person if phone or email contact information was provided.

Refusal to Surrender Weapons

An Order to Surrender Weapons or Extreme Risk Protection Order does not by itself, grant personnel authority to enter homes to seize firearms or effect an arrest. Depending on the specific facts and observations available to personnel at the time of service there may be articulable exigencies, or keeping in mind victim, family and community safety, it may be prudent under the community caretaking function, for personnel to proceed in seizing firearms without first obtaining a search warrant. Personnel will, if feasible, consult with an on-duty supervisor in such situations, and are encouraged to consult with the police legal advisor for further guidance in this area as necessary.

If a Respondent/Restrained Person refuses to surrender firearms and/or CPL, he or she should be advised that possessing or acquiring a firearm or CPL is prohibited and that violating the order may subject the Respondent/Restrained Person to criminal and civil penalties.

If a Respondent/Restrained Person states they do not possess any firearms and there is probable cause to believe otherwise, personnel should request consent for a search. (*Refer to specific agency policies for consent to search procedures*). Failure to turn over firearms as mandated by an ERPO ***must*** be reviewed by the courts. If firearms are not surrendered as directed by an ERPO officers will complete a report documenting the incident for court review. See “Non-surrender” and “Search Warrant” sections under the following ERPO portion of this policy/procedure.

If the Respondent/Restrained Person fails to comply with the surrender of firearms as directed by the order, fails to provide consent for a search, and there is probable cause to believe that the Respondent/Restrained Person possesses or has access to firearms, personnel may apply for a search warrant. In the case of an ERPO court review is automatic and required.

- Absent exigent circumstances or for an articulable community caretaking function, personnel do not have legal authority to detain a Respondent/Restrained Person during OTSW or ERPO service, including the time while applying for a search warrant.

EXTREME RISK PROTECTION ORDERS (ERPOs)

An Extreme Risk Protection Order is intended to temporarily prevent individuals who are at high risk of harming themselves or others from possessing or accessing firearms. Family, household members, and police agencies may obtain an ERPO when there is evidence that a Respondent/Restrained Person poses a significant danger, including danger as a result of dangerous mental health crisis or violent behavior.

With an ERPO, there is no separate Order to Surrender Weapons. The order itself is the order to surrender. The service of ERPOs takes precedence over the service of other orders, unless the other orders are of similar emergency nature. Due to the nature of these orders, the Respondent/Restrained Person may be uncooperative and present a significant danger to Petitioners and law enforcement.

When personnel encounter a person who expresses interest in petitioning for an ERPO, information should be provided to the person about what an ERPO is and that one may be obtained at Superior Court (or at District Court or Municipal Court for a temporary ex parte order). Personnel should provide the person with an ERPO brochure or information on how to find additional resources. Available web resources include:

- <http://www.protectionorder.org>
- <https://www.courts.wa.gov/forms>

An ERPO is issued for one year by the court. The Respondent/Restrained Person may ask the court to cancel the order once in the 12-month period but must prove that he or she no longer poses a significant danger to self or others by having access to firearms. The Petitioner may ask the court to renew the order for another year at any time after the order has been in effect for 260 days.

Unlike all other types of Protection Orders, with ERPOs, a law enforcement officer may be the individual who files a petition for this type of order. (RCW 7.94.030). If there is reasonable belief that a person is a present danger to him/herself or another person by controlling, owning, purchasing, possessing, receiving or otherwise having custody of a firearm and an officer believes an ERPO would assist, the officer should review the circumstances with his/her on-duty supervisor. The supervisor will review any requests to petition the court for an ERPO with a command staff officer to approve and coordinate a petition through the department.

Personnel petitioning the court must use the ERPO petition and order forms created by the Administrative Office of the Court. In addition, a Law Enforcement Addendum to the

Petition and Law Enforcement Affidavit is available for Law Enforcement Petitioners and should be submitted with the ERPO petition.

Law Enforcement ERPO Petition Procedure

Law enforcement personnel should obtain approval from and coordinate with command personnel prior to submitting a petition on behalf of the Department for an Extreme Risk Protection Order. Consideration should also be given to consulting with the **Department legal advisor (local prosecutor or Snohomish County Prosecutor's Office Civil Division) / Agency Navigator and/or one of the Regional Unit prosecutors or local prosecutor** when petitioning for an ERPO. Personnel should follow the following procedures to petition for an ERPO:

1. Complete ERPO Petition forms. The forms are located at www.protectionorder.org/ / the Snohomish County Prosecutor's law enforcement forms website at <https://snohomishcountywa.gov/DocumentCenter/Index/3836>. The Petition must be completed in full, but has limited space for law enforcement information. The petition may have an "affidavit attached and incorporated by reference herein" with a detailed description of law enforcement information leading to the request for an ERPO. The affidavit form is included on the website. Information in the Petition and the affidavit should include the following:
 - Detailed explanation of why the Respondent/Restrained Person poses a significant danger of injuring self or others by having in his or her custody or control, purchasing, possessing, or receiving firearms. Explanations may include:
 - A recent act or threat of violence by the Respondent/Restrained Person against self or others, whether or not such violence or threat of violence involves a firearm;
 - A pattern of acts or threats of violence by the Respondent/Restrained Person against self or others;
 - Any behavioral issues of the Respondent/Restrained Person that might contribute to dangerousness;
 - The history of use, attempted use, or threatened use of physical force by the Respondent/Restrained Person against another person, or the Respondent/Restrained Person's history of stalking another person.
 - The number, types, and locations of any firearms believed to be in the Respondent/Restrained Person's current ownership possession, custody, or control;
 - Whether there is a known existing Protection Order governing the Respondent/Restrained Person, under chapter 7.90, 7.92, 10.14, 9A.46, 10.99, 26.50, or 26.52 RCW or under any other applicable statute;
 - Whether there is a pending lawsuit, complaint, petition, or other action between the parties under the laws of Washington;

MODEL POLICIES AND PROCEDURES COVERING: PROTECTION ORDERS,
EXTREME RISK PROTECTION ORDERS, AND ORDERS TO SURRENDER WEAPONS

- A violation by the Respondent/Restrained Person of a Protection Order or a No Contact Order issued under chapter 7.90, 7.92, 10.14, 9A.46, 10.99, 26.50, or 26.52 RCW;
 - A previous or existing ERPO issued against the Respondent/Restrained Person;
 - A violation of a previous or existing ERPO issued against the Respondent/Restrained Person;
 - A prior arrest or conviction of the Respondent/Restrained Person for a crime that constitutes domestic violence as defined in RCW 10.99.020;
 - The Respondent/Restrained Person's ownership or access to, or intent to possess firearms;
 - The unlawful or reckless use, display, or brandishing of a firearm by the Respondent/Restrained Person;
 - Any prior arrest of the Respondent/Restrained Person for a felony offense or violent crime;
 - Corroborated evidence of the abuse of controlled substances or alcohol by the Respondent/Restrained Person; and
 - Evidence of recent acquisition of firearms by the Respondent/Restrained Person.
 - Police reports or other documents related to the ERPO petition may be referenced in the affidavit and "attached and incorporated by reference herein."
2. Complete Law Enforcement Addendum (LEA). The LEA Addendum to the Petition is for law enforcement Petitioners only and provides additional information regarding the Respondent/Restrained Person.
 3. Complete the Law Enforcement Information Sheet (LEIS). The LEIS should include the Respondent/Restrained Person's full name, date of birth, address, and other identifying information (e.g. height, weight, eye color, driver's license, etc.)
 4. In the case of a Temporary Order, prepare the Temporary Extreme Risk Protection Order form for the court and an Order Transferring Case to Superior Court. In the case of the full hearing ERPO, the court will complete the order.
 5. Personnel should make a good faith effort to provide notice to a family or household member of the Respondent/Restrained Person and any known third parties who have been specifically identified as being at risk of violence. Personnel will attempt notification prior to filing the Petition, if possible, and if not possible, personnel will notify after filing the Petition. Notification attempts should be documented in the CAD or supplemental report.

6. Submit completed forms to the appropriate court / legal advisor for review. The legal advisor will coordinate a hearing with the clerk of the court hearing the petition. In the case of ex parte ERPOs, it is recommended that a district court or municipal court review the petition. The court clerk will assign the Petition a case number and provide a date and time for the hearing. If a temporary order is not requested, the hearing to issue the order may take place in up to 14 days, as it requires notice to the Respondent in advance of the hearing.

The Snohomish County Prosecutor's Office Civil Division will be the legal advisor for any agency submitting an ex parte ERPO to a Snohomish County District Court. Contact the Prosecutor's office for review and coordination with the court clerk for the hearing.

7. If law enforcement personnel file the Petition, they must attend the hearing(s). (If a hearing is continued and law enforcement does not appear, the court may dismiss the ERPO Petition). In the case of an ex parte order, the officer completing the Petition and Affidavit will appear before the court to answer any questions relating to the petition. The hearing will be "in session" and on the record. In the case of a full hearing, the Petitioner (or law enforcement officer) will be sworn in and must testify as to the facts supporting the order. If the Respondent is present, the Respondent (or Respondent's attorney) may cross-examine the Petitioner. The Respondent will be sworn in to testify and will also be open to cross-examination. Witnesses may be called to testify at the hearing and are also open to cross-examination.

Ex Parte Extreme Risk Protection Orders

This temporary order is issued by the court without notification to the Respondent/Restrained Person. Petitioners may request that an Ex Parte ERPO be issued before a full hearing on the Petition, by including facts in the Petition that based on personal knowledge the Respondent/Restrained Person poses a significant danger of causing personal injury to self or others in the near future by having in his or her custody or control, purchasing, possessing, or receiving a firearm. It is helpful to note as well that providing notice of the hearing to the Respondent/Restrained Person may increase the danger to the Petitioner or others.

If a court finds there is reasonable cause to believe that the Respondent/Restrained Person poses a significant danger of causing personal injury to self or others in the near future by having in his or her custody or control, purchasing, possessing, or receiving a firearm, (and may also note that providing notice increases danger to the Petitioner or others), the court shall issue an Ex Parte ERPO.

If law enforcement is seeking an Ex Parte ERPO during non-business hours (nights and weekends), law enforcement should contact the **Regional Domestic Violence Firearms Enforcement Unit** / Snohomish County on-duty prosecutor (as with the after-hours search warrant process).

Service of ERPOs

ERPOs and Ex Parte ERPOs should be served in the same manner as Orders to Surrender Weapons. A patrol supervisor will complete a risk analysis prior to service. Service will be completed with the appropriate resources based on the risk analysis, but in no case with fewer than two officers and one supervisor. Command staff notifications should be made in advance of service at the discretion of the supervisor. Personnel should be cognizant there may be an escalated risk of danger to officers and Petitioners during and following the service of ERPOs.

Ex Parte ERPOs and ERPOs should be served concurrently with the notice of hearing, order transferring case to superior court, petition, and other documents required for service in the service packet (documents attached and incorporated in the Petition and Affidavit, etc.)

Upon service, the respondent is required to surrender all firearms under his or her control and any concealed pistol license (CPL). It is a crime for the respondent to be in possession of or in control of a firearm once the order has been served. Assigned officers will request voluntary surrender of all firearms and any CPL, and request permission to conduct a consensual search of the location. Officers will take possession of all firearms and any CPL voluntarily surrendered or lawfully discovered during the consensual search.

If all firearms possessed or controlled by the respondent are surrendered, an officer will complete the form "Receipt for Surrendered Weapons and Concealed Pistol License" and "Proof of Surrender" The officer will make three copies of the forms once completed, leaving one copy with the respondent, immediately turning in the second copy with the police case report, and attaching the third copy to the firearms being impounded.

Non-surrender

If the respondent claims the he or she does not possess or control any firearms or have a CPL, an assigned officer will request the respondent complete a statement form and sign the form "Declaration of Non-Surrender" explaining/verifying that the respondent has no firearms or a CPL to surrender. The officer must then complete a police case report documenting the incident, and then complete the form "Receipt for Surrendered Weapons and Concealed Pistol License And/or Proof of Fail to Surrender." The officer will then consult the legal advisor and advise of the non-surrender.

RCW 7.94.090 mandates that in any case where firearms were not surrendered as required the courts will hold a hearing to determine if probable cause exists to believe the respondent failed to surrender weapons and, if so, the court will issue a warrant authorizing a search of the places where the firearms are reasonably believed to be located. The agency legal advisor will work with the department to provide the information needed by the courts for a hearing to review the case.

Regardless of what court issued the ERPO, a local court will be considered as the first option for conducting a hearing related to non-surrender. The local court will coordinate

MODEL POLICIES AND PROCEDURES COVERING: PROTECTION ORDERS, EXTREME RISK PROTECTION ORDERS, AND ORDERS TO SURRENDER WEAPONS

with the court that issued the ERPO to determine which court is best situated to hold the hearing.

Search Warrant

If a search warrant is issued by a court following a review of non-surrender, the search warrant will be given to an on duty supervisor for review and coordination of service. The supervisor will see that a Risk Analysis is completed based on the available information and manage service of the search warrant.

If firearms are located during a search, a new “Receipt for Surrendered Weapons and Concealed Pistol Licenses” and “Proof of Surrender” forms will be completed to document the firearms being taken, and a copy left at the location with a copy of the warrant and the inventory.

Notification to Courts

The Department **Records Unit** will forward a copy of all Receipt for Surrendered Weapons and Concealed Pistol Licenses and Proof of Surrender forms to the court where the order was issued. If a search warrant is being obtained from a court other than the issuing court, the department will inform the originating court of the petition for the warrant and the outcome.

Renewal of Extreme Risk Protection Orders

The Department Records Unit will monitor all ERPOs obtained by the department, and advise the office of the Chief and the Department legal advisor of an upcoming expiration not less than 30 days prior to the expiration of the order. The Department will evaluate the order to determine if a renewal should be requested through the courts.

SURRENDER, STORAGE AND RETURN OF FIREARMS

In the interest of public safety, it is the policy of this department to accept surrendered firearms regardless of where a Respondent/Restrained Person resides, and to record which firearms were surrendered and when, to ensure that verification of compliance with the Court Order can be determined.

Surrender by appointment (*When allowed by agency*):

1. Respondent/Restrained Person may call the law enforcement agency to schedule an appointment to surrender firearms and CPL. In the interest of public safety, appointments should be scheduled at the soonest opportunity. Respondent/Restrained Person should also be advised of the potential for delay based on personnel availability, even with a scheduled appointment.
2. Respondent/Restrained Person should be advised to come to the agency at the appointed time with unloaded firearms in vehicle. Respondent/Restrained Person should be advised to leave the firearms and ammunition inside the vehicle and contact

MODEL POLICIES AND PROCEDURES COVERING: PROTECTION ORDERS, EXTREME RISK PROTECTION ORDERS, AND ORDERS TO SURRENDER WEAPONS

the front desk. No firearms should be brought into the agency building by the Respondent/Restrained Person. Note: In some cases, Respondent/Restrained

Persons may appear in department facilities in possession of firearms in order to surrender them without an appointment. These subjects may not be aware of the department's preference to leave such firearms secured outside the facility. In such cases, if an officer is present, the officer should immediately take custody of any firearms. If no officer is present, civilian staff will ask the Respondent/Restrained Person to secure the firearm in their vehicle before returning to the facility to wait for an officer. Civilian staff will not take possession of firearms.

3. Personnel should take the surrendered firearms, ammunition and CPL into agency custody immediately and, if possible, with the Respondent/Restrained Person and any other persons away from the vehicle or location of the firearm(s).
4. Personnel should check WACIC/NCIC to ensure that any firearm is not listed as stolen and that all identified firearms have been surrendered.
5. Personnel should provide the Respondent/Restrained Person with a property receipt. A copy of the receipt should be added to the agency case file.
6. Personnel should complete the Proof of Surrender form and provide a copy of the form to the Respondent/Restrained Person, route a copy to the appropriate court that issued the order to surrender weapons, and attach a copy to the agency case file.
7. Personnel should complete a report (or follow-up) to be added to the agency case file.
8. Personnel should notify the clerk's office in the applicable issuing court of the weapon surrender or the court will not find compliance with the Court Order.

Surrender by Walk-in

Same as steps 2 through 6 above. Respondent/Restrained Person should be encouraged to wait for available personnel if the agency anticipates a delay by responding personnel.

Storage of Firearms

Firearms and CPLs surrendered under RCW 9.41.800 (Surrender of Weapons or Licenses) should be stored for safekeeping pursuant to the procedures in the agency Property and Evidence Manual.

Return of Firearms and CPL

The Respondent/Restrained Person must have proper identification and authority from the court for the firearms and CPL to be returned. In addition, the Protected Person or family members could be at greater risk after a firearm is returned. Timely notification to the Protected Person of any firearms to be returned may help reduce the risk of violence or lethality.

MODEL POLICIES AND PROCEDURES COVERING: PROTECTION ORDERS, EXTREME RISK PROTECTION ORDERS, AND ORDERS TO SURRENDER WEAPONS

Firearms surrendered pursuant to a Court Order should only be returned to the rightful owner pursuant to proof of a specific court order revoking the Surrender Order and granting the release of the firearms at issue, subject to the Respondent/Restrained Person's eligibility to possess firearms, or to a new owner if the Respondent/Restrained Person has transferred ownership, with affidavits from both parties confirming transfer of ownership, following a background check on the new owner, and with the new owner attesting that Respondent/Restrained Person will not control, possess, or have access to the firearms.

Prior to the return of a firearms or CPL, Evidence personnel should ensure confirmation of the following:

- That, if required or requested, the Protected Person and/or family or household members have been notified immediately that the Respondent/Restrained Person has requested the return of surrendered firearms and/or CPL. The law requires reasonable efforts be made to reach the Protected Person when required or requested.
- That the individual and/or owner is otherwise eligible to possess a firearm and/or CPL, regardless of the status of this particular order. The following databases must be checked:
 - NCIC III / WACIC – Check for protection orders, felony or DV warrants, or active DOC status.
 - NICS – Obtain an NTN number.
 - JIS / DISCUS / JABS (if agency has access) – Check for pending cases that may not be included in the NCIC check. Check for disqualifying juvenile convictions.
 - DSHS – Request mental health background check.
- That the individual to whom the firearms are to be returned is the individual from whom the firearms were obtained, or an authorized representative of that individual, or the legal owner of the firearms, or another person identified by a Court Order.
- Proof of a Court Order authorizing release of the firearms and CPL.
- The Protection Order has expired by its terms or is dismissed and is no longer in effect.
- The Order was a temporary order that has expired and the court denied a motion for a permanent order.
- The Order has been modified by the court and the person is no longer prohibited from possessing firearms.
- The firearms are not required to be held for evidence or another reason.

- If the owner is eligible to possess firearms but the agency has knowledge the owner lives with a person who is ineligible to possess firearms (felon, disqualifying DV convictions, No Contact and Protection Orders), the **firearms may not be released without a Court Order / agency legal advisor must be contacted prior to release of the firearms**. Felons and others disqualified from possession are prohibited from actual or constructive possession.
- If a person other than the Respondent/Restrained Person claims title to any firearms surrendered and is determined by the agency to be the lawful owner of the firearm, the owner should be advised that he or she may request of the court that the firearm should be returned to him or her.

Agencies should also ensure that firearms surrender protocols are included in their Domestic Violence policies and procedures. Essential elements include:

Domestic Violence 911 Response Regarding Firearms

It is a priority of the Department to timely serve and enforce protective court orders, and to track and report on orders received and enforced as part of Department performance measures.

- Communications Centers should ensure that call-takers inquire about accessibility of firearms with all domestic violence calls, and that available information is provided to responding personnel before they arrive at the scene.
- Officers should separate involved parties so that the victim is out of the hearing range of the alleged suspect at the scene, prior to any inquiry by the responding officers.
- Temporary removal of firearms for safekeeping is within community caretaking authority given known risks of ongoing access to firearms by domestic violence abusers; permission of both parties is not requisite, nor is use of the firearm in the incident.
- PRIOR to asking for the temporary removal of firearms, responding personnel should inquire of the victim about all firearms to which the suspect has access, control, or possession, so that there is a complete record for future court proceedings. The inquiry should make clear to the victim that the officer is not just asking about whether a firearm was used at that time (i.e., the suspect may keep a firearm in plain sight in a manner that is coercive; the suspect may have threatened use of firearms in the past; the suspect may have additional firearms in a vehicle, etc.) Personnel should be advised that use of a firearms pictures tool may help with descriptions.
- Responding personnel should comprehensively document in incident reports details about all firearms to which a suspect may have access, control or possession, to help reduce the risk to victims, families and law enforcement of ongoing access to firearms.
- Responding personnel should ask the victim for permission to remove all accessible firearms temporarily for the safety of the victim, family and others until the court holds a hearing.

MODEL POLICIES AND PROCEDURES COVERING: PROTECTION ORDERS, EXTREME RISK PROTECTION ORDERS, AND ORDERS TO SURRENDER WEAPONS

- Responding personnel to provide victims, family, or household members with information and resources about orders (including OTSW and ERPO) that may be available for their protection.

Personnel should be advised that situations that don't meet the criteria for domestic violence orders may be appropriate for ERPOs.

- Personnel must enforce any order restricting a Respondent's ability to have contact with a victim and to take appropriate arrest action when there is probable cause to believe an order was violated.
- Personnel must complete a substantive investigation of the incident leading to the domestic violence call. Policy and training include details about information to include in report, and provide an understanding of risk factors to which personnel should be attentive.
- All offense reports are documented under the appropriate crime classification with department code for Domestic Violence (RCW 10.99.030(11)). Departments should also have a code for reports where there are firearms, so that those cases are appropriately followed up on by supervisors, prosecutors and judicial officers.
- Offense reports must be forwarded to the appropriate prosecutor within ten days of making such report if there is probable cause to believe that an offense has been committed (RCW 10.99.030(9)).

RESOURCES

King County Regional Domestic Violence Firearms Enforcement Unit

The mission of the King County DV Firearms Unit is to reduce gun violence and increase victim and community safety through regional collaboration, proactive implementation and enforcement of firearms laws. The unit is available as a resource to police agencies with questions about Protection Orders, Orders To Surrender Weapons, and Extreme Risk Protection Orders.

516 Third Avenue, E400
Seattle, Washington 98104

Unit Program Manager: Sandra.Shanahan@kingcounty.gov 206-477-1074

Unit Prosecutors:

Kim Wyatt:	Kimberly.Wyatt@KingCounty.gov	206-477-1201
Krystle Curley:	Krystle.Curley@Seattle.gov	206-684-7738
Michelle Larson:	Michelle.Larson@KingCounty.gov	206-477-6224

Public Materials, Brochure

www.protectionorder.org has extensive information about various orders, and includes FAQs and an ERPO brochure meant for the public. Click on: "Extreme Risk Protection Orders".

POLICY FORM ATTACHMENTS

- Domestic Violence Report Checklist
- Domestic Violence History Form
- Petition for Extreme Risk Protection Order
- Law Enforcement Affidavit

Washington State Law Enforcement Information Sheet

LAW ENFORCEMENT INFORMATION

Do NOT serve or show this sheet to the restrained person!
Do NOT FILE in the court file. Give this form to law enforcement.

Type or print clearly! This completed form is **required** by law enforcement. This information is **necessary** to serve, enforce and enter your order into the state wide law enforcement computer. Fill in the following information as completely as possible.

Court: Snohomish County Superior Court **Case Number:**

Today's Date:

Domestic Violence Dissolution/Separation/Invalidity/Non-Parental Custody/Paternity Extreme Risk
 Unlawful Harassment Vulnerable Adult Sexual Assault

Respondent/Restrained Person's Information (This is the person that you want the court to restrain.)

Name: First Middle Last Nickname Relationship to Protected Person:

Date of Birth Male Race Height Weight Eye Color Hair Color Skin Tone Build
 Female

Current Address Phone(s) w/Area Code Need Interpreter? **Yes** or **No**
 Street: City: State: Zip: Language:

Employer Employer's Address WORK Hours: Phone: ()

Vehicle License Number Vehicle Make and Model Year Vehicle Color Drivers License or ID number State

Does the restrained person have a disability, brain injury, or impairment requiring special assistance when law enforcement serves the order? No Yes. If yes, describe (continue on back, if needed):

Hazard Information Restrained Person's History Includes:

Involuntary/Voluntary Commitment Suicide Attempt or Threats
 Assault Assault with Weapons Alcohol/Drug Abuse Other:
Weapons: Handguns Rifles Knives Explosives Other:
Location of Weapons: Vehicle On Person Residence Describe in detail:

Current Status (Circle Yes, No or N/A.) Is the restrained person a current or former cohabitant as an intimate partner? **Y N**
 Are you and the restrained person living together now? **Y N** Does the restrained person know he/she may be moved out of the home? **Y N N/A**
 Does the restrained person know you're trying to get this order? **Y N** Is the restrained person likely to react violently when served? **Y N**

Petitioner/Protected Person's Information (This is the person you want the court to protect.)

Name: First Middle Last

Date of Birth Male Race Height Weight Eye Color Hair Color Skin Tone Build
 Female

If your information **is not confidential**, you must enter your address and phone number(s).

Current Address Phone(s) w/Area Code Need interpreter? **Yes** or **No**
 Street: City: State: Zip: Language:

If your information **is confidential**, you must provide the name, address and phone number of someone willing to be your contact.

Contact Name Contact Address Contact Phone

If you filed for someone else, list your name, phone number and address:

Minor's Information Describe the minor's relationship using terms such as: child, grandchild, stepchild, nephew, none. → Minor's Relationship to Protected Restrained

Name: First	Middle	Last	Sex	Race	Birth date	Resides With	Person	Person

Victim's Household Members or Adult Children Protected

Name:	Name:	Birthdate:
Birthdate:	Birthdate:	Birthdate:

SERVICE:

ENTRY:

West Virginia DV Response Guide for Law Enforcement

- e) **Do not reveal the caller's name** if the person who called is someone other than the subject of the call.

3. Entry

- a) **Enter and conduct a search** of the premises relevant to the incident if written or verbal consent has been given to do so or when exigent circumstances exist.
- b) If a domestic violence protective order is in effect, **written consent** to enter may have been given by the victim and be on file.
- c) **Limit the scope of the search to other** suspects, victims, witnesses, or evidence connected with the alleged domestic incident.
- d) In some exigent circumstances, **forced entry** is necessary and appropriate. Exigent circumstances include but are not limited to:
 - 1) The residence area shows signs of a **fight or scuffle**; or
 - 2) A person from inside the residence **calls for assistance** or is yelling; or
 - 3) You have reason to believe that the **person is wounded, injured**, or is otherwise in need of assistance; or
 - 4) The accused is suspected of **concealing the victim**; or
 - 5) The call came from the residence and the victim is identified as the caller and **entry is denied** by others present on the scene; or
 - 6) You have articulable suspicion that absent immediate entry **serious bodily injury or death may result**.

4. Establishing control of scene

- a) Identify and secure potential **weapons** in the surroundings.
- b) **Separate the victim and the accused** when circumstances are appropriate.
- c) **Assess injuries** (including inquiry about possible internal injuries), administer first aid, and notify emergency medical services as necessary.
- d) **Identify all occupants and witnesses** on the premises.
- e) **Separate occupants and witnesses from the victim and accused** and keep them out of hearing range (to avoid compromising their witness status).
- f) **Maintain visibility and restrict mobility** of all persons present at the scene.

5. On-scene investigation

- a) Conduct an **investigation** using the same procedures used in any other on-scene criminal investigation.
- b) Attempt to **establish the existence of credible corroborative evidence**.
- c) Make specific note of and **document all statements made by the victim, accused and all witnesses**, particularly those statements that may be admissible as evidence as exceptions to the hearsay rule such as excited utterances, present sense impression and statements made for medical treatment.
- d) Determine if such **statements were made to the dispatcher** and take appropriate measures to **secure and preserve such evidence**.

- e) **Collect and preserve all physical evidence** reasonably necessary to support prosecution, including evidence substantiating the victim's injuries, evidentiary articles that substantiate the attack (weapons, torn clothing, etc.), and evidence recording the crime scene.
- f) Ensure that **photographs** are taken of visible injuries on the victim and of the crime scene. **Document** the location of any injuries that may result in potential bruising.
- g) **Collect all physical evidence** noted in reports and vouchered as in other criminal investigations.

6. Interviewing the Victim, Accused & Witnesses

Ensure the victim's safety and privacy by interviewing the victim in an area apart from the accused, witnesses, and bystanders if possible. Remember that what you see upon arrival may be misleading. The accused may appear calm and in control assuring you that there has only been a minor argument. The victim may be hysterical and unruly, or displaying a "flat affect" (no emotional at all). Try not to make presumptions. Gather evidence. Listen carefully before taking action.

West Virginia DV Response Guide for Law Enforcement

Firearms and Domestic Violence

- ✓ Seize all firearms, ammunition, and any other weapons that are alleged to have been involved or threatened to be used in the commission of domestic violence.
- ✓ Seize weapons that are in plain view, or is discovered pursuant to a consensual search, or is necessary for the protection of yourself or other persons.
- ✓ Seize all firearms and ammunition possessed in violation of a protective order prohibiting possession of a firearm.

ct (1994), and The Omnibus Consolidated Appropriations Act of 1997.

- f) Persons who have renounced their citizenship.
- *The Omnibus Crime Bill of 1994*, a subsection of which is the Violence Against Women act, amended the *Gun Control Act* by adding two more classes of person to the list of person prohibited from possessing firearms. They are:
 - g) A person who is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate with violence.
 - h) A person who has been convicted in any court of a misdemeanor crime of domestic violence.