

Domestic Violence and Firearms: A Model Protocol

RI Coalition Against Domestic Violence

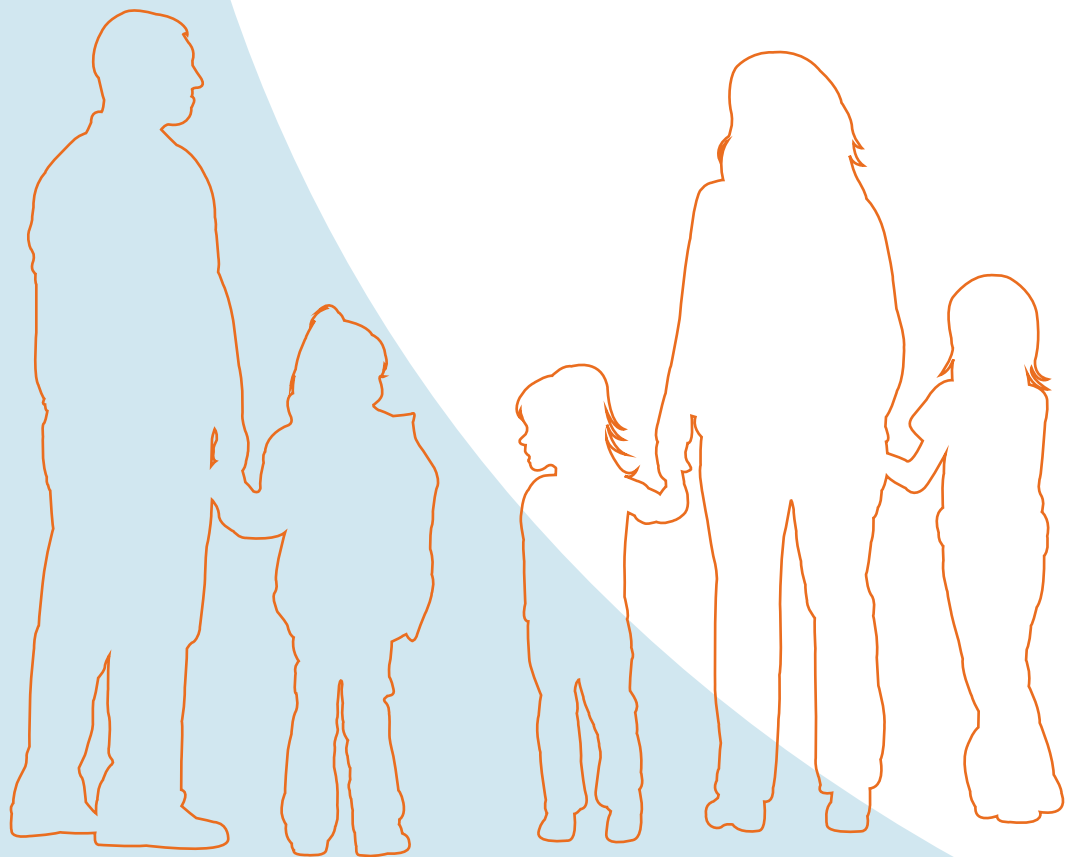


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Acknowledgments

Thank you to the members of the Firearms Taskforce:

Magistrate Jeanne Shepard, Rhode Island Family Court
Sergeant Dennis Leahey, Burrillville Police Department

Jim Dube, RI Office of the Attorney General

Thomas O’Connell, U.S. Attorney’s Office

Deborah DeBare, Rhode Island Coalition Against Domestic Violence

Thank you to the staff and students from Salve Regina University:

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Thank you to our funders:

This project has been made possible by a grant from the Women’s Fund of Rhode Island.

This project was supported by Grant No. 2009-ED-S6-0038 and Grant No. 2008-WE-AX-0019 awarded by the Office on Violence Against Women, U.S. Department of Justice.

The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

Executive Summary

The purpose of this project was to develop a model policy for Rhode Island's law enforcement agencies to use when responding to domestic violence calls involving firearms. This document is intended to provide insight to police officers, the judicial system and advocates about the shared and differing practices that law enforcement officers use in these types of cases. In addition, this report will provide recommendations for the purpose of improving the response to domestic abuse calls involving weapons.

Graduate students from Salve Regina University's Criminal Justice Program conducted a statewide survey of local law enforcement agencies and the Rhode Island State Police. The research team used three data collection methods:

- Surveying local law enforcement agencies to determine their current practices and protocols when responding to domestic violence calls involving firearms
- Conducting three key informant interviews to gain further insight on the issue from state and federal perspectives
- Reviewing and analyzing state and federal laws relating to firearms and domestic violence

The interviews revealed that nearly all of Rhode Island's law enforcement agencies have common practices for assessing the presence of weapons at a scene and for the removal of firearms when an incident results in an arrest or when a protective order exists. However, according to the survey results, the practices among police departments differ when they encounter non-arrest situations. This occurs when there is no probable cause for arrest or when there is a question regarding the existence of a valid restraining order. Under these circumstances, police departments utilize an assortment of practices to determine if firearm seizure is warranted. In addition, the research team concluded that law enforcement officers have different interpretations of Rhode Island General Law §15-15-3 (5) and that the statewide database, RONCO (Restraining Orders No Contact Orders), is not a reliable tool to validate the existence of a restraining order or no contact order.

After reviewing the results of the survey, key informant interviews, state and federal laws, and policies from other jurisdictions, the Firearms and Domestic Violence Task Force (FADVTF) proposes the recommendations on the following page.

Legislative Recommendations

- Prohibit the possession of firearms by a “third party” residing in the same household or building as the defendant

Recommendations for Law Enforcement Agencies

- Conduct follow up investigations whenever the defendant does not surrender the firearms in compliance with a restraining order
- Revoke any existing gun license and forward the information to the office of Alcohol, Tobacco and Firearms (ATF) Division Counsel as federal law prohibits possession of firearms by anyone convicted of a domestic violence related offense
- Develop, create and distribute a model uniform policy for police response to domestic violence calls involving firearms (see “Model Law Enforcement Policy” on page 11)

Training Recommendations

- Address RONCO data entry issues to improve accuracy and timeliness of information
- Educate “third parties” who agree to take possession of firearms, for the defendant when he/she is not legally able to possess a weapon, on their obligations under state and federal law and prosecute those who fail to comply
- Offer key stakeholders training on firearm laws

Introduction

In the summer of 2005, the Homicide Prevention Act became law (RIGL §8-8.1-3 and §15-15-3) and Rhode Island became the 41st state to restrict the possession of firearms when a restraining order has been issued. The law provides discretion to the court to order a respondent to surrender his or her firearm(s) within 24 hours of issuing a permanent restraining order when the respondent is present at a hearing, or within 48 hours if the respondent is served. The respondent must then submit to the court a receipt of transfer for the firearm(s) within 72 hours of receiving the order.

In September of 2006, the Rhode Island Coalition Against Domestic Violence (RICADV) had the opportunity to bring together representatives from the criminal justice field and advocates to attend a national summit addressing the issue of firearms and domestic violence. The RICADV was able to send a magistrate from the Rhode Island Family Court, a representative from the RI Office of the Attorney General (Firearms Unit), a law enforcement officer and a domestic violence advocate. The group returned from the conference and established the Firearms and Domestic Violence Taskforce (FADVTF) with the purpose of addressing the issues that surfaced with the passage of the Homicide Prevention Bill. Their goal was to develop and recommend policies, protocols and procedures that would strengthen judicial, law enforcement and advocate response for cases of domestic abuse involving firearms. By January 2008, the FADVTF created an action plan to:

- Rewrite state statutes to tighten language and include relinquishment of firearms when ex parte orders are issued
- Create a multidisciplinary and comprehensive policy to implement firearm surrender laws
- Create uniformity in policies and procedures (training, protocols, information to victims, etc.) relating to domestic violence and firearms

The FADVTF members agreed that their first project would be to create a uniform model protocol for law enforcement agencies when responding to domestic violence calls involving firearms. Before writing the protocol, the FADVTF needed to identify the current practices that police departments were utilizing and the challenges they were facing with these types of cases. They decided to conduct a statewide survey of all police departments. In February of 2008, Professor Daniel J. Knight from Salve Regina University's Criminal Justice Program agreed to direct the survey project. In the spring of 2008, Professor Knight's Research Team began interviewing law enforcement officers regarding firearm removal issues in domestic abuse cases. They completed their data collection by January 2009.

The information presented in this report explains the process, the findings and provides recommendations to ensure that the protections provided by RIGL §8-8.1-3 and §15-15-3 will save the lives of those victims whose abusers own firearms.

Methodology

In order to identify the inconsistencies in the implementation of the current law and provide meaningful recommendations to Rhode Island's criminal justice system, the FADVTF initiated a survey project.

The Research Team

The research team consisted of graduate students from Salve Regina University in the field of Criminal Justice. Professor Daniel J. Knight recruited ten students from his Public Policy and the Justice System course to participate in this project.

Groundwork

In order to introduce the project to the law enforcement community, RICADV sent out letters to the chiefs of the local departments and the state police explaining the taskforce, its purpose and the need for the survey. Burrillville Sergeant Dennis Leahey contacted members of the Rhode Island Law Enforcement Trainers Association (RILETA) as another measure of promoting the project. The FADVTF developed eight survey questions:

- When police respond to a domestic violence call, do they ask if there are firearms in the home?
- If so, do they ask the defendant, the victim or both?
- Once the officer knows there are firearms in the home, what is done with that information? What are the next steps?
- Are the next steps different if an arrest is made?
- If firearms are removed, where are they stored? What is the removal procedure?
- Under what authority are police departments removing firearms in these cases?
- What is the procedure for returning firearms?
- Is any data collected on the issue? Is the department willing to share the data with the RICADV?

Survey Interviews

The research team conducted a total of 32 interviews which included 31 out of 39 local law enforcement agencies and the Rhode Island State Police. The interviews were conducted either in person or by telephone. The team began surveying the officers in April of 2008 and completed the interviews in January 2009. Each interviewer was responsible for transcribing the interviews they conducted and submitting their transcript to the team for inclusion in the summary report for RICADV.

Key Informant Interviews

Three key informant interviews were conducted to gain further insight on the issue from state and federal perspectives. The interviewees included Jim Dube from the RI Office of the Attorney General and a member of the FADVTF, firearms expert Fanny Haslebacher, who is the Assistant General Counsel of the FBI's Access Integrity Unit; and Anthony J. Silva, Director of the Rhode Island Municipal Police Training Academy and former Chief of Police for the Cumberland Police Department.

Review and Analysis of State and Federal Laws

The research team also reviewed and analyzed state and federal laws relating to firearms and domestic violence. Their review and analysis included the following laws:

- Rhode Island General Laws
 - + The Domestic Violence Prevention Act 12 – 29 (Criminal Procedures)
 - + The Uniform Interstate Enforcement of Domestic Violence Protection Order Act 15- 15 (Civil Procedures)
 - + Domestic Assault 8-8.1-3 (Civil Procedures)
- United States Codes
 - + Federal Firearms Prohibition Resulting from Protection Orders, 18 U.S.C. §922 (g) (8)
 - + Misdemeanor Crimes of Domestic Violence, 18 U.S.C. §922 (g) (9)

Summary Report

In the spring of 2009, Professor Knight and his students completed a written report containing a transcript of 32 interviews, an executive summary and recommendations. They presented their key findings to RICADV staff and submitted a written copy of the report. A copy of the report was given to all members of the FADVTF.

Findings

In reviewing the results of the survey and with input from key informant interviews, the research team concluded that there are considerable inconsistencies in our state for firearm removal in cases involving domestic violence. Moreover, an unintended consequence surfaced with the passage of the Homicide Prevention Law. The language used in the law created uncertainty for responding officers because they are unclear about their authority and responsibilities regarding the removal of firearms in these cases.

Overall, the data indicated that in situations where a responding officer's authority and responsibility is clear (when an arrest is made) firearm removal consistently does occur. However, in non-arrest situations — where an officer's authority is not clear—the results demonstrate that all police departments have differing practices for weapons seizure.

Shared Practices Among Law Enforcement Agencies

The interviews revealed that 93% of Rhode Island's law enforcement agencies have common practices for assessing the presence of weapons at a scene and for the removal of firearms when an incident results in arrest or when a protective order exists. Some commonly shared practices include:

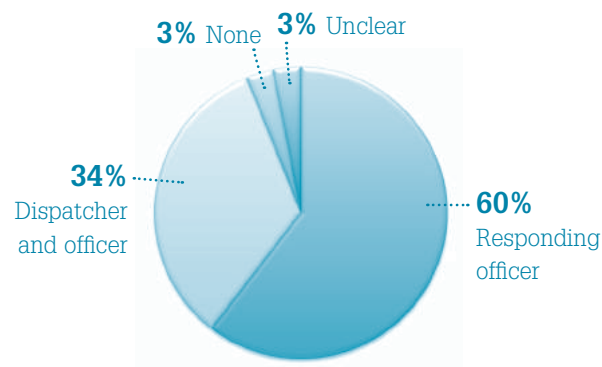
- Asking the subject, victim(s) and others at the scene if firearms are present or directing their dispatchers to ascertain the presence of weapons prior to the officer's arrival
- Removing firearms from the setting if they are determined to be present
- Seizing weapons when there is probable cause for arrest, when a restraining order clearly directs relinquishment, or under the authority of the federal law

In the interviews, two questions were asked to determine the procedures that police departments use to find out about firearms at the scene. The first question was, *"When responding to a domestic violence call, do police ask if there are firearms in the home?"* The second was, *"If so, do they ask the defendant, victim, or both?"*



The responses to the first question revealed that 60% of police departments do have a standard practice for responding officers to ask if there are firearms present in the home. Additionally, 34% of the departments have a standard practice for both the dispatcher and the responding officer to solicit the information (Figure 1). For the second question, 50% of those departments interviewed have a standard practice to ask both the victim and the suspect to determine the presence of weapons at the scene, while 43% responded that they ask all individuals (Figure 2).

FIGURE 1:
Shared Practices: Inquiring for Firearms



To find out the police departments' practices on firearms removal, researchers asked "Do you remove firearms from the home if they are found?" The responses showed that a total of 67% of police departments remove weapons from the scene when an arrest is made and 20% remove firearms all the time. The other 13% reported that they do not have a clear policy (Figure 3).

FIGURE 2:
Shared Practices: Who is Asked?

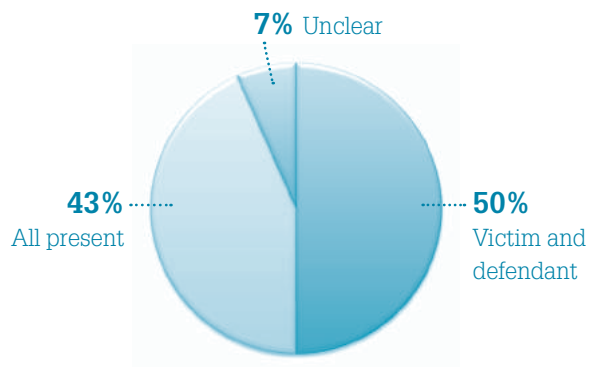
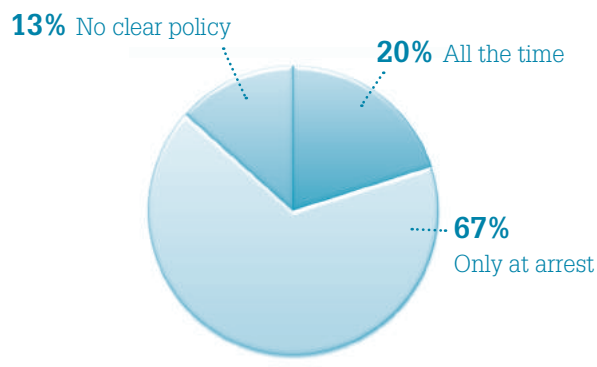


FIGURE 3:
Shared Practices: Removing Firearms



Furthermore, with regard to firearm storage, researchers asked: "If firearms are removed, where are they stored?" A total of 60% of the survey participants indicated that they stored firearms in their evidence locker and 33% store them in the property locker.

Differing Practices Among Law Enforcement Agencies

According to the survey, the practices among police departments differ considerably when officers encounter non-arrest situations. These circumstances occur when there is no probable cause for arrest or when there is a question regarding the existence of a valid restraining order. Under these conditions, police departments utilize an assortment of practices to determine if firearm seizure is warranted. They include, but are not limited to, the following:

- Using the responding officer’s individual judgment of the situation
- Adhering to departmental standing orders
- Conducting a background check of the subject for previous domestic abuse convictions
- Discussing with the owner the possibility of voluntarily surrendering the weapon(s)
- Evaluating the risk of escalation

When no arrests are made firearm removal depends on the discretion of the law enforcement agency. The data indicated (Figure 4) that:

- 20% of departments remove the weapons regardless of arrest
- 33% remove the weapons only if arrest is made
- 24% rely on the responding officer’s individual judgment of the situation
- 10% remove the weapons if only used to threaten the victim
- 13% have unclear policies

Another area which demonstrated varying police department practices was the authority the agencies use to remove weapons from the situation. When asked, “What law gives a police department the authority to remove firearms in these cases?” 40% of the respondents answered Rhode Island General Laws (RIGL) and 17% referred to both RIGL

FIGURE 4:
Differing Practices: Removing Firearms

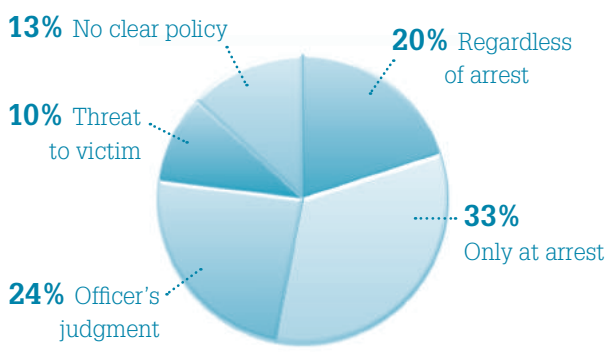
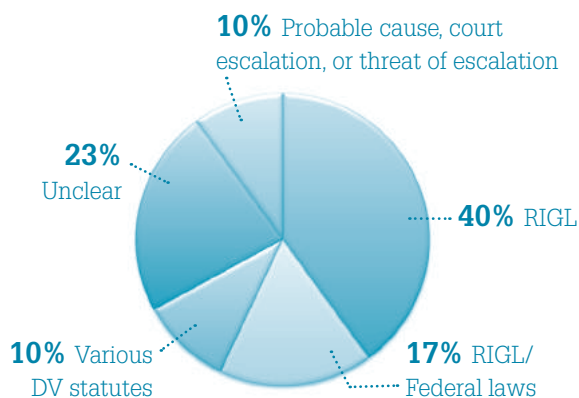


FIGURE 5:
Differing Practices: Authority to Remove



and federal statutes. A total of 23% of respondents said they use probable cause, a court order, or the threat of escalation to help them determine if firearm removal is necessary (Figure 5).

In addition, the research team found that the law enforcement officers who were interviewed expressed confusion about interpreting the Rhode Island statutes. They specifically cited the following passage found in §15-15-3 (5): “After notice to the respondent and a hearing, the court, in addition to any other restrictions, may order the defendant to surrender physical possession of all firearms in his or her possession, care, custody or control.”

Several key informant interviews relayed uncertainty regarding the court’s intent relating to the relinquishment of firearms when they issue a restraining order. Survey respondents indicated that they had concerns about liability and that they needed clarity regarding their authority and responsibility when responding to domestic violence calls involving firearms.

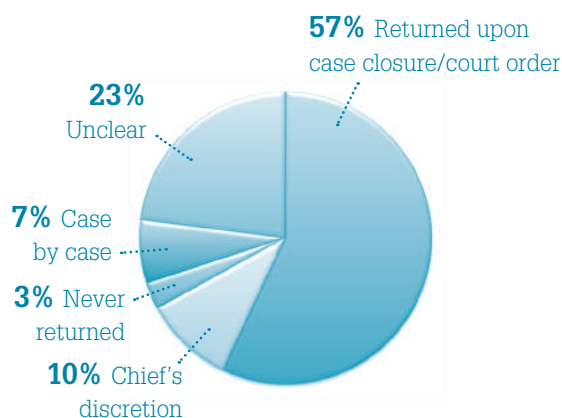
Furthermore, several key informants expressed concerns that the RONCO (Restraining Orders No Contact Orders) statewide database is not a reliable tool when they are trying to validate the existence of a restraining order or no contact order.

Practices on Returning Firearms and Data Collection

The survey included two other questions relating to practices on returning firearms to the owner and data collection of cases involving weapons and domestic violence. Those questions were: “What is the procedure for returning firearms?” and “Is there data collected on the issue of firearm removal from domestic violence situations?” .

When responding to the issue of weapons return practices, 57% of police departments return firearms to their owners when the case is disposed of by court order. The procedure for returning weapons is unclear for 23% of police departments, and seven percent use a “case by case” standard. In addition, ten percent of departments defer to their Chief of Police to determine if the weapons should be returned to the owner; and three percent of departments responded they never return the weapons (Figure 6).

FIGURE 6:
Other Practices: Returning Firearms

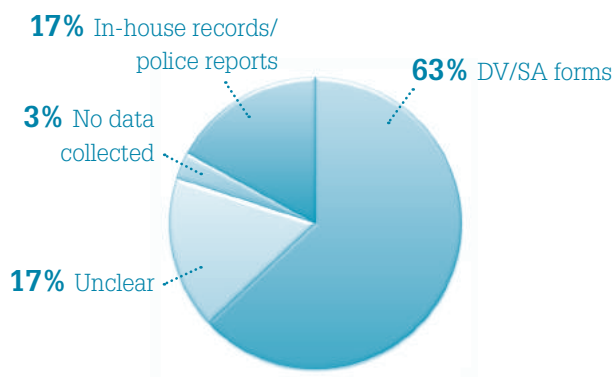


1 A DV/SA Form is a data collection tool that Rhode Island law requires police departments to complete upon responding to a domestic violence or sexual assault incident.

When asked about data collection practices regarding removal of firearms from domestic violence situations, 63% of police departments collect information by using the Domestic Violence/Sexual Assault (DV/SA) Forms . Another 17% use their in-house records/police reports and another 17% were unclear on their data collection procedures. Three percent did not collect data (Figure 7).

FIGURE 7:

Other Practices: Data Collection



Recommendations

After reviewing the results of the survey, key informant interviews, state and federal laws, and policies from other jurisdictions, the FADVTF proposes the following recommendations:

Legislative Recommendations

- Prohibit the possession of firearms by a “third party” residing in the same household or building as the defendant

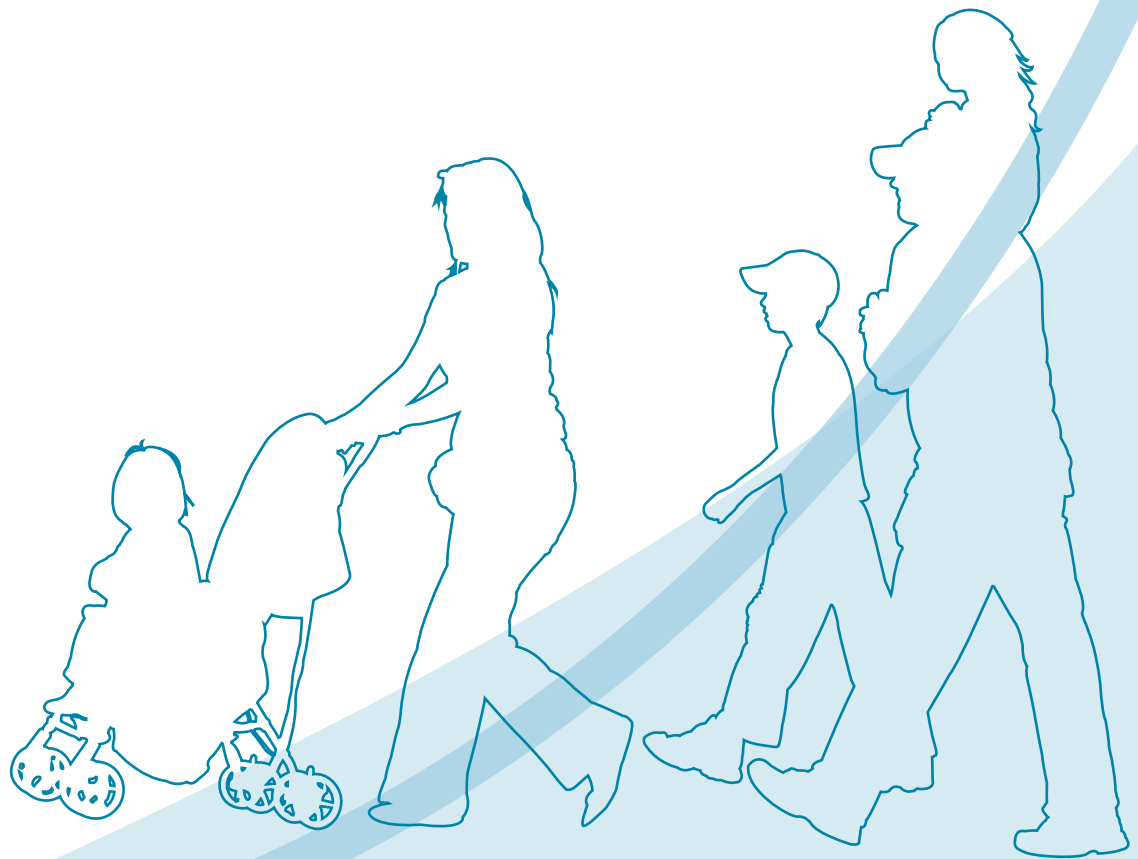
Recommendations for Law Enforcement Agencies

- Conduct follow-up investigations whenever the defendant does not surrender firearms in compliance with a restraining order
- Revoke any existing gun license and forward the information to the Office of Alcohol, Tobacco and Firearms (ATF) Division Counsel as federal law prohibits possession of firearms by anyone convicted of a domestic violence related offense
- Develop, create and distribute a model uniform policy for police response to domestic violence calls involving firearms (see “Model Law Enforcement Policy” on page 11)

Training Recommendations

- Address RONCO data entry issues to improve accuracy and timeliness of information
- Educate “third parties” who agree to take possession of firearms, for the defendant when he/she is not legally able to possess a weapon, on their obligations under state and federal law and prosecute those who fail to comply
- Offer key stakeholders training on firearm laws

Model Law Enforcement Policy:
**Seizing Firearms in
Domestic Violence Cases**



Purpose

The purpose of this policy is to establish clear guidelines for law enforcement professionals responding to domestic abuse calls involving firearms. This policy focuses on the seizure and removal of firearms from a domestic abuse situation in order to prevent a subject from committing any future acts of violence towards a victim, child, and others present as well as the responding officer. The goal of this protocol is to increase victim safety and batterer accountability.

Discussion

A clear and consistent response to domestic violence can protect victims of abuse and their families from immediate danger, connect them with the resources and services that they require, and communicate the message that domestic violence is not tolerated in our community. In adopting this policy, Rhode Island's law enforcement agencies will work together to:

1. Prevent domestic abuse assaults to victims, their children, and other adults present
2. Prevent homicides
3. Reduce law enforcement callbacks
4. Provide consistent statewide law enforcement response
5. Reduce liability for the department
6. Prevent injuries to responding officers

Federal Firearm Law Summary

A. Definitions

Ammunition is defined as ammunition or cartridge cases, primers, bullets or propellant powder designed for use in any firearm. 18 U.S.C. § 921 (17) (A)

Intimate partner is defined as (18 U.S.C. §921(32)):

1. A spouse of the defendant/respondent;
2. A former spouse of the defendant/respondent;
3. An individual who is a parent of a child of the defendant/respondent; or
4. An individual who cohabitates or has cohabitated with the defendant/respondent.

Qualifying Misdemeanor Crimes of Domestic Violence (18 U.S.C. 921 (a) (33))

contains three elements:

1. A federal, state, or local offense that is a misdemeanor under federal or state law
2. The use or attempted use of physical force, or the threatened use of a deadly weapon
3. At the time the misdemeanor crime of domestic violence was committed, the defendant must have been an intimate partner of the victim (exceptions exist to these conditions: (18 U.S.C. 921 (b) (33)).

B. Under federal law the following conditions prohibit any individual from possessing a firearm or ammunition:

1. Person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year. 18 U.S.C. §922 (g) (1)
2. Person who is a fugitive from justice. 18 U.S.C. §922 (g) (2)
3. Person who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)). 18 U.S.C. §922 (g) (3)
4. Person who has been adjudicated as a mental defective or who has been committed to a mental institution. 18 U.S.C. §922 (g) (4)
5. Person who, being an alien, is legally or unlawfully in the United States. 18 U.S.C. §922 (g) (5)(a)
6. Person who has been discharged from the Armed Forces under dishonorable conditions. 18 U.S.C. §922 (g) (6)
7. Person who, having been a citizen of the United States, has renounced his citizenship. 18 U.S.C. §922 (g) (7)
8. Person who is subject to a court order. 18 U.S.C. §922 (g) (8)
9. Person who has been convicted in any court of a qualifying misdemeanor crime of domestic violence. 18 U.S.C. §922 (g) (9)
10. Person who is under indictment for a crime punishable by imprisonment for a term to exceeding one year. 18 U.S.C. §922 (n)

C. Federal Gun Control Act

1. **The Federal Gun Control Act**, 18 U.S.C. §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 the following requirements (one element from each category):
 - a. Hearing
 1. The Protection Order is issued after a hearing where the defendant had actual notice and an opportunity to participate.
 - b. Intimate partner
 1. A spouse of the Defendant/ Respondent
 2. A former spouse of the Defendant/Respondent
 3. An individual who is a parent of a child of Defendant/Respondent
 4. An individual who cohabitates or has cohabitated with Defendant/Respondent
 - c. Restrains future contact
 1. The Protection Order prohibits the defendant/respondent from harassing, stalking, or threatening an intimate partner or child of the defendant or intimate partner, and from engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child.
 2. The Protection Order includes a finding that the defendant/respondent posed a credible threat to the physical safety of an intimate partner.
 - d. Credible threat or physical force
 1. The order includes a finding that Defendant/Respondent is a credible threat to the physical safety of the intimate partner or child; or
 2. The 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 Crime of Domestic Violence Prohibition, Lautenberg Amendment**, 18 U.S.C. §922(g)(9)
 - a. The Federal Gun Control Act, 18 U.S.C. §922(g)(9), prohibits persons who have been convicted of a misdemeanor crime of domestic violence 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 of 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 the Alcohol, Tobacco, and Firearms Unit and/or prosecutors from the U.S. Attorney's Office for determination of federal prohibitors for possible seizure and/or prosecution.

- c. Misdemeanor Crimes of Domestic Violence is defined in 18 U.S.C. §922(g)(9) as an offense that is (1) a misdemeanor under federal, state, or tribal law; (2) the use or attempted use of physical force or the threatened use of a deadly weapon, and (3) 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 misdemeanor crime of domestic violence must have preceded the firearms possession.
- e. A person has not been convicted of a qualifying misdemeanor crime of domestic violence if:
 1. The person was not represented by counsel – unless the person waived the right of counsel
 2. The person was entitled to a jury trial AND the case was not tried by a jury – unless the person waived his or her right to a jury trial or
 3. The conviction was set aside, expunged, or the defendant was pardoned, and civil rights were restored.

NOTE!

This exception does NOT lift the federal firearms prohibition if:

- The expungement, pardon, restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms; or
 - The person is otherwise prohibited by the law of the jurisdiction in which the proceedings were held from receiving or possessing any firearms.
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Rhode Island Firearm Law Summary

A. Definitions

Firearm is defined as any machine gun, pistol, rifle, air rifle, air pistol, “blank gun,” “BB gun,” or other instrument from which steel or metal projectiles are propelled or which may readily be converted to expel a projectile, excepting recurve, compound, or longbows, and instruments propelling projectiles which are designed or normally used for a primary purpose other than as a weapon.

Crime of violence means and includes committing or attempting to commit any of the following crimes: murder, manslaughter, rape, first or second degree sexual assault, first or second degree child molestation, kidnapping, first and second degree arson, mayhem, robbery, burglary, breaking and entering, any felony violation involving the illegal manufacture, sale, or delivery of a controlled substance, or possession with intent to manufacture, sell, or deliver a controlled substance classified in schedule I or schedule II of RIGL § 21-28-2.08, any violation of RIGL § 21-28-4.01.1 or 21-28-4.01.2 or conspiracy to commit any violation of these statutes, assault with a dangerous weapon, assault or battery involving grave bodily injury, and/or assault with intent to commit any offense punishable as a felony; or upon any conviction of an offense punishable as a felony offense under RIGL § 12-29-5.

Fugitive from justice means any person who has fled from any state, territory, the District of Columbia, or possession of the United States in order to avoid prosecution for a crime of violence or to avoid giving testimony in any criminal proceeding.

Sworn peace officer (RIGL §12-7-21) means Rhode Island state police; any member of a municipal or local police department; Rhode Island marshals; Rhode Island Airport Corporation police; Rhode Island park police; Rhode Island capitol police; Rhode Island conservation officers; Rhode Island Department of Environmental Management officers; Rhode Island fire marshals; Brown University police officers; University of Rhode Island campus police officers; Rhode Island College campus security; Campus security at the Community College of Rhode Island; Rhode Island Sheriff’s Department; Rhode Island drug enforcement officers; the investigators of the RI Office of the Attorney General appointed pursuant to § 42-9-8.1; the Director, Assistant Director, and other inspectors and agents of the Rhode Island State Fugitive Task Force appointed pursuant to § 12-6-7.2; any federal law enforcement officer; correctional investigators and correctional officers of the Rhode Island Department of Corrections; the Witness Protection Coordinator of the RI Office of the Attorney General; or

- The warden, associate wardens, majors, captains, lieutenants, sergeants, correctional officers and investigators employed by a project operated by a municipal detention facility corporation,

including, but not limited to, the Donald W. Wyatt Detention Facility; provided that such parties listed in this subsection (21) herein shall be deemed to be peace officers while in performance of their duties for the municipal detention facility only and shall not be deemed to be peace officers at any time when they are not in performance of said duties; and

- Retired non-permanent sworn members of any municipal police department shall be deemed to be peace officers only while in the performance of their duties for any municipal police department and shall be permitted to carry their firearm while in the performance of their duties for the municipal police department, and shall be subject to in-service training requirements of title 42, chapter 28.

B. The following persons are prohibited under Rhode Island State Laws from possessing a firearm:

1. A person who has been convicted of a crime of violence or who is a fugitive from justice. RIGL §11-47-5 (a)
2. A person convicted of an offense punishable as a felony offense under RIGL §12-29-5 for a period of two years following the date of that conviction. RIGL §11-47-5 (b)
3. A person who is in community confinement pursuant to the provisions of RIGL § 42-56-20.2 or who is otherwise subject to electronic surveillance or monitoring devices as a condition of parole. RIGL §11-47-5 (c)
4. A person who is an unnaturalized foreign born person who entered the United States in violation of the laws of the United States or, having legally entered the United States in a lawful manner, but now remains in the United States in violation of the laws of the United States. RIGL §11-47-7 (a)
5. Except as provided in § 11-47-33, a person under eighteen (18) years of age. RIGL §11-47-32
6. A person who has mental incompetencies, drug addicts, and drunkards. RIGL §11-47-6
7. A person who has a permanent restraining order against him/her may be required to surrender his/her firearm under the provisions of RIGL §8-8.1-3 (d) and §15-15-3 (5).

C. Persons who are exempt from the Federal and Rhode Island Firearms Prohibitions include:

1. Police officers, military personnel, and some other government agents who may carry service weapon. 18 U.S.C. §925
2. The prohibition against possessing a firearm(s) due solely to the existence of a domestic violence restraining order shall not apply with respect to sworn peace officers as defined in

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.

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- 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 or 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.

Firearm Storage

A. Storage within the agency

The storage of firearms seized pursuant to conditions specified in a protection order shall be handled in the same manner in which contraband and/or evidence is handled by the agency. In the case of limited storage space within the agency that necessitates the rental of storage space off site, fees for storage of such firearms shall be the responsibility of the Respondent. Non-payment of such fees shall result in the destruction of the stored firearm(s).

Return of Firearms to Owners

A. If a person's firearm(s) were seized by, or relinquished to the custody of a law enforcement agency because he/she:

1. Is/was subject to a protection order that contained one or more remedies, provisions, or conditions that prohibited the person from possessing a firearm or ammunition for the duration of the protection order;
2. Violated state law prohibiting the possession of a firearm while subject to a protection order;
3. Is/was subject to a protection order that met the requirements of 18 U.S.C. § 922(g) (8), making the person one who is prohibited from possessing a firearm or ammunition under Federal law;
4. Used or threatened to use a firearm during an incident of domestic violence; or
5. Otherwise unlawfully possessed a firearm and he/she desires to regain possession of the firearm(s) must submit a written request to the law enforcement agency asking for return of the firearm(s) and describing each firearm in detail.

B. Upon receipt of a written request for the return of one or more firearms, the agency shall conduct a background check using NCIC, the state protection order registry, and any other relevant databases in order to determine whether the person is prohibited from possessing a firearm.

C. If the person is found to be prohibited from possessing a firearm for any reason whether pursuant to local, State, or Federal law or policy, the agency shall not return the firearm. The agency shall instead provide in writing to the person the reason for the denial of the firearm return request.

- The person may re-submit the request for firearm(s) return of the firearm(s) after 180 days, if the stated reason for the denial is due to a circumstance that may change (e.g., expiration of a protection order).

- If the return of a firearm(s) was denied due to a circumstance that is not likely to change within 180 days (e.g., the person was convicted of a misdemeanor crime of domestic violence), the person may not reapply after 180 days.
- Only one repeat request for return of the firearm(s) may be submitted (i.e., two requests is the maximum number of requests that may be made for return of the firearm(s)). A repeat request will be accepted up to 365 days after an initial denial of the return request.

Firearms Policy for Law Enforcement Officers Subject to Protection Orders

- A. Any sworn officer subject to a current protection order** that meets the following conditions shall not possess a firearm, including the officer's duty weapon. This policy applies to all protection orders that meet all of the following conditions:
1. The relationship of the Petitioner to the Respondent officer is one of the following:
 - a. Current or former spouse;
 - b. Currently shares or previously shared a household;
 - c. Has a child in common; or
 - d. Is a child of the Petitioner or the Respondent.
 2. The protection order was issued after a hearing, the officer was provided with actual notice of the time/date of the hearing, and the officer had an opportunity to participate in the hearing;
 3. The protection order prohibits the Respondent from:
 - a. Harassing, stalking, or threatening the Petitioner or the Petitioner's child/children; and
 - b. Engaging in any conduct that would place the Petitioner in fear of bodily injury to her/himself or the child/children of the Petitioner.
 4. The protection order either:
 - a. Prohibits the use, attempted use or threatened use of physical force against the Petitioner or child/children that could reasonably be expected to cause bodily injury or
 - b. Contains a finding that the Respondent represents a credible threat to the physical safety of the Petitioner or child/children of the Petitioner.

B. Seize duty weapon and place officer on light-duty status

Any officer that is subject to a protection order, shall, upon receiving notice that he/she is subject to a protection order, immediately turn in his/her duty weapon and notify his/her supervising officer as soon as is reasonably possible. The supervising officer shall:

1. Upon receiving notification from the officer immediately, or as soon as possible, meet with the officer and take possession of the officer's duty weapon.
2. Write a report documenting the facts surrounding the agency taking possession of the duty weapon in accordance with agency disciplinary procedures.
3. Inform the officer that he/she will be placed on light-duty status for the duration of the protection order.
4. Assign the officer to duties within the agency in which he/she has no direct contact with the public and/or any aspect of cases involving domestic violence and/or protection orders.

NOTE!

Sections C & D, below, apply only to agencies **making policy decisions** that would allow officers who are Respondents to protection orders to possess their duty weapon.

C. Custody and use of duty weapon while subject to protection order

Any officer that is subject to a protection order is required to check his/her duty weapon out at the beginning of his/her shift of duty and return the duty weapon at the conclusion of his/her shift.

1. Check-out of duty weapon at beginning of shift

At the beginning of the shift, the supervising officer shall:

- a. Record the name of the officer and the date and time of check-out of the duty weapon in a log maintained for this purpose; and
- b. Sign the log and obtain the signature of the officer who is checking out the duty weapon.

2. Return of duty weapon at close of shift

At the close of the shift, the supervising officer shall:

- a. Record the name of the officer and the date and time of return of the duty weapon in the log; and
- b. Sign the log and obtain the signature of the officer who is checking in the duty weapon.

D. Officers required to carry service revolver while off-duty

If the agency requires an officer to carry his/her duty weapon while not on duty, or requires an officer to respond to criminal activity observed within the State of Rhode Island or the city or town where they serve when off duty, the officer must take the following measures:

1. When at his/her residence, the officer must keep the duty weapon in a locked storage container with the key stored separately.
2. When in his/her vehicle, the officer must keep the duty weapon in the trunk of the car or, in the absence of a trunk, within a locked storage container in the vehicle.

Law Enforcement Officers Convicted of Misdemeanor Crimes of Domestic Violence

- A. Pursuant to 18 U.S.C. § 922(g)(9), **Federal law** *[and State or Tribal law, if such legislation exists in the State/Tribe]* prohibits the possession of a firearm or ammunition by officers **who have been convicted of a misdemeanor crime of domestic violence**. Such officers may not possess a firearm or ammunition at any time, including while they are performing official duties as a **law enforcement** officer.
- B. Officers who were charged with, pled guilty to, or were convicted after a trial, of a misdemeanor crime of domestic violence shall thereafter not possess a firearm, while on duty or off duty.
- C. A misdemeanor crime of violence is defined by 18 U.S.C. § 922(g)(8) as an offense that:
1. Is a misdemeanor under Federal or State law;
 2. Has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon;
 3. Was committed by a current or former spouse, parent or guardian of the victim, a person with whom the victim shares a child in common, a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.
- D. Officers may be assigned to duties that do not require possession of a firearm, or, if such positions are not available, may be placed on administrative leave until such time as an appropriate position becomes available. Under certain circumstances, including the unavailability of an appropriate, alternative position, an officer may be terminated from employment with the agency.

² Convictions in tribal court do not qualify unless the crime was adjudicated in a C.F.R. court. See 27 C.F.R. § 478.11 for the definition of C.F.R. courts.

Coordination with Federal Authorities

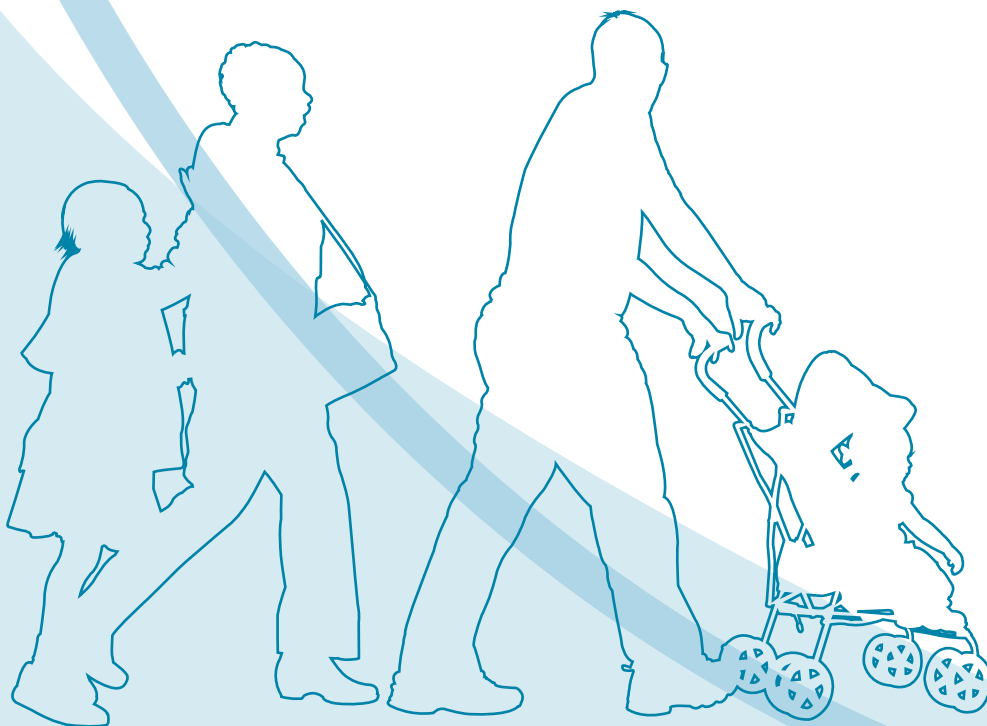
Upon identifying a case in which it is suspected that there has been a violation of Federal firearm laws or the Federal domestic violence/stalking laws:

- A. The responding officer shall immediately notify his/her supervising officer of the suspected violation of Federal law.
- B. The supervising officer shall, upon receiving notification from the responding officer, immediately contact the following agencies and notify the appropriate persons of the suspected violation(s) of Federal law:
 - 1. State of Rhode Island Office of the Attorney General; and
 - 2. For suspected firearm violations, local field office for the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) or the Federal Bureau of Investigations for suspected violations of the Federal domestic violence/stalking laws.
- C. A copy of the incident report shall be immediately forwarded to all of the above agencies. Any contraband seized that was in the possession of the alleged perpetrator shall be immediately turned over to the appropriate Federal authorities.

Appendix

The attached documents are forms that are used by law enforcement agencies around the country to enhance their documentation of firearms seizure in domestic violence cases. We hope that you find these forms useful and adapt them in the implementation of the Model Law Enforcement Policy. Included are:

1. Firearms Statement
2. Summary of Firearms
3. Instructions to Turn in Firearms
4. Return of Surrendered Weapons
5. Firearm Return Form



Firearms Statement

1. Does the suspect possess, own, or have access to firearms? Yes No

Type of firearm (please list on Summary of Firearms form):

Handgun(s) Shotgun(s) Rifle(s)

Other _____

2. Where are the firearms located?

Residence(s) Vehicle(s) Unknown Third Party Other

Location description:

3. Has the suspect used, displayed, or threatened to use firearms in the past against you or others? Yes No

If yes, describe below:

4. Firearm used/involved in current incident. Yes No

If yes, describe below:

Instructions to Turn in Firearms

Pursuant to a court order, you have been ordered to turn in any firearms(s) to the _____ Police Department, **follow these instructions:**

1. Contact the _____ Police Department at [add telephone number] during normal business hours, Monday – Friday [add office hours here]. Inform the deputy that the court has ordered you to turn in your firearms to the _____ Police 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 is 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 received a call back within one (1) business day you must call again to arrange for the surrender of your firearms(s).
3. *You must have a copy of the court order with you to give to the _____ Police 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 the police department personnel, provide them with a copy of the order and inform them that your firearm(s) are inside the vehicle. An officer will advise you on what to do for the removal of the firearm(s).
5. You must obtain a receipt from the _____ Police 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.

Return of Surrendered Weapons

Your police case number is: _____

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

Resolved criminal cases

In the case of resolved cases, the _____ Police Department will release the firearm(s) to the owner he/she is not legally prohibited from gun ownership or 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 RI Office of the Attorney General to dispose of the firearm(s), the officer will complete a release form and forward it to the Property Management Unit. The _____ Police 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 _____ Police Department will return the firearm(s) 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 _____ Police Department authorizing the return of firearm(s).

Court order to surrender firearms after the expiration of a temporary protection order or court injunction

The firearm(s) will be returned when an order from the court, 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.

Please continue on other side ►►

WHAT DOES THAT MEAN?

- Simply put, when everything is over in court, 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 another mental health complaint, the Department will not release the firearm(s) 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 firearm(s) listed in the "Firearms Description" attached. The _____ Police Department wants you to make an informed decision as you take possession of, and become legally responsible for the (use) firearms and/or ammunition.

There are several laws that regulate the transfer of firearms. In order for the _____ Police 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(s) that is temporarily being held by the _____ Police 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 (write your initials in either the "Yes" or "No" box for each question):

Your 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 unlawfully in the 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(s)?	18 U.S.C. §922 (g) (3)
		Have you ever been adjudicated as mental defective or committed mental institution?	18 U.S.C. §922 (g) (4)
		Were you dishonorably discharged from the 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)
		Are you currently subject to a qualifying misdemeanor crime of domestic violence (see definition on the next page)?	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 _____

Please continue on other side ►►

Definition of qualifying misdemeanor crime of domestic violence:

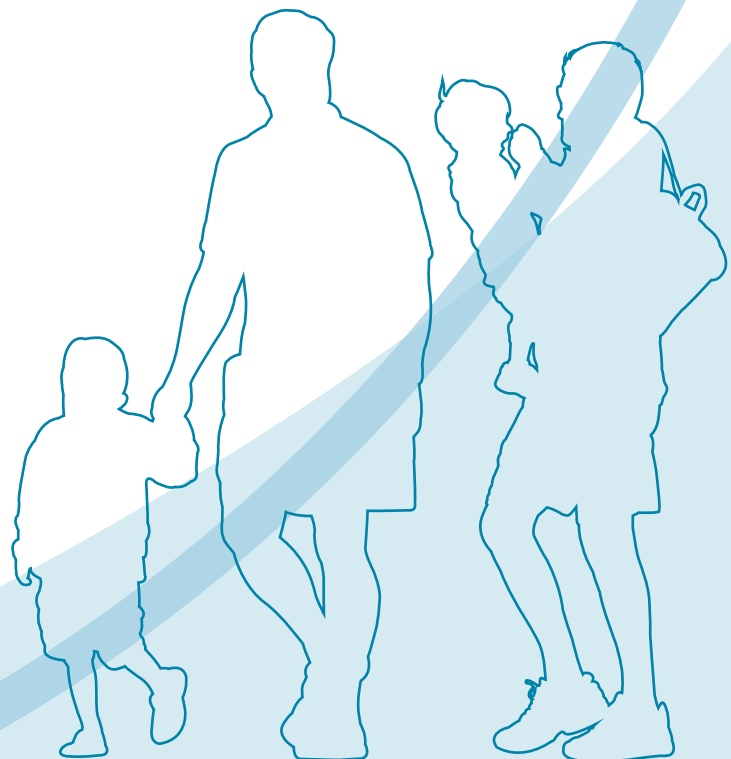
- A. Misdemeanor Crimes of Domestic Violence are defined in 18 U.S.C. §922(g)(9) as an offense that is (1) a misdemeanor under federal, state, or tribal law; (2) involves the use or attempted use of physical force or the threatened use of a deadly weapon, and (3) at the time the offense was committed, the defendant was:
- A current or former spouse, parent, or guardian of the victim;
 - A person with whom the victim shares a child in common;
 - A person who is cohabitating with or has cohabitated with the victim as a spouse, parent or guardian; or
 - A person who was or is similarly situated to a spouse, parent or guardian of the victim
- B. The date of conviction for the misdemeanor crime of domestic violence must have preceded the firearms possession.
- C. A person has not been convicted of a qualifying misdemeanor crime of domestic violence:
- If the person was not represented by counsel- unless the person waived the right of counsel;
 - If the person was entitled to a jury trial AND the case was not tried by a jury – unless the person waived his or her right to a jury trial; or
 - If the conviction was set aside, expunged, pardoned and civil rights were restored.

For more information:

Rhode Island Coalition Against Domestic Violence

422 Post Rd Ste 102, Warwick, RI 02888-1524

TEL: 401.467.9940 | www.ricadv.org





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