



Virginia Sexual and Domestic Violence
ACTION ALLIANCE

**NEW LAW JULY 1, 2016:
Persons subject to a “permanent” Protective Order
may not possess a firearm**

Frequently Asked Questions

1. Why is this legislation significant?

Domestic violence and firearms are a lethal combination. This new law is a critical step forward in limiting access to guns for perpetrators of intimate partner violence.

The new legislation brings Virginia in line with current federal law, which has prohibited for decades possession of a firearm for persons subject to protective order. The problem is that it was virtually unenforceable at the state level because only federal law enforcement and prosecutors have the authority to act on federal law. This meant that it was very difficult—if not nearly impossible—to effectively remove guns from perpetrators of intimate partner violence.

The legislation provides an additional safety measure for victims choosing to seek a Family Abuse Protective Order against someone who owns a gun. Prior to this legislation, there was no impetus on localities to address the presence of firearms in domestic violence. The new law provides law enforcement, prosecutors and the courts a new tool for removing firearms from these dangerous situations and demands systemic action to ensure that violations of the law are enforced.

This policy alone will not eliminate intimate partner homicides, but it is an important and necessary step to reducing these preventable deaths.

2. What does the legislation do?

Prior to the new law, persons subject to a “permanent” Protective Order were prohibited from purchasing or transporting a firearm, but not prohibited from keeping firearms they already had in their possession.

The new law prohibits possession of a firearm for persons subject to a “permanent” Family Abuse Protective Order (the type issued after a hearing and lasting up to 2 years). Respondents have 24 hours to sell or transfer all guns or face being charged with a felony.

3. What does the legislation not do?

The new law only applies to “permanent” Family Abuse Protective Orders.

The new law does not apply to:

- emergency or preliminary Family Abuse Protective Orders;
- emergency, preliminary or “permanent” Acts of Violence Protective Orders issued by the General District Court. The “Acts of Violence” protective orders are not intended to address domestic violence. They apply to situations where the individuals are not current family or household members, or are not former family and household members with a child in common.

The new law does not provide a plan for implementation. It does not prescribe or layout a process for the voluntary or involuntary removal/surrender of firearms. It also does not describe a process for safely and lawfully returning firearms after the Protective Order has expired.

4. What issues should your community be discussing regarding implementation?

Because the new law goes into effect July 1, 2016 and does not tell localities “how” to make it happen, it is important that localities begin having discussions about how the new law will be implemented. Below are a few key issues to consider:

IDENTIFICATION:

- a. How will the courts identify respondents who possess a firearm?
- b. Will judges ask about respondents during the protective order hearing whether or not they possess firearms?
- c. Will petitioners be asked if the respondent owns a firearm? Will they be asked during the hearing? Will a question be included on the petition?

NOTIFICATION:

- d. How will respondents be informed that they are prohibited from possessing a firearm? Verbally? In writing?
- e. Will respondents be notified at the time of issuance? At service? Both?

REMOVAL/STORAGE:

- f. There are numerous methods for removal: voluntary surrender, search and seize or a hybrid of the two. What removal options will be used?
- g. Will respondents be ordered to surrender firearms by the courts? To whom?
- h. What follow up is in place to ensure surrender/removal? Will the courts hold a review hearing to ensure removal within 24 hours?
- i. Will law enforcement inquire about firearms at service and allow voluntary surrender at time of service?
- j. Will law enforcement have the authority to search and seize at service of the order?
- k. What role can a respondent’s attorneys have in surrender and compliance?

- l. Once firearms have been surrendered or removed, where will they be stored and by whom? Law enforcement? Third party? Firearm dealer?
- m. What is the process for storage? Receipt for firearms—proof of surrender? Fee for storage? Liability issues re: damage while in storage?
- n. What qualifications or procedures are needed for third party storage?
- o. What happens to unclaimed firearms?

RETURN:

- p. What, if any, process will be in place to notify petitioners if firearms are returned?
- q. What, if any, process will be in place to ensure firearms are lawfully returned? For example, not returned to a prohibited party?

For more information on the above, including best practices from other states: <http://efsgv.org/wp-content/uploads/2016/02/Removal-Report-Updated-2-11-16.pdf>

5. What's next?

Key stakeholders will be convening soon to discuss numerous issues surrounding the effective implementation of the new law and to develop guidelines to assist localities. In the meantime, we encourage localities to consider policy, procedural and practice changes needed to enforce this new law to protect victims and help respondents comply.

The Action Alliance will be hosting a TA call in July/August to answer questions and provide updates. Date and time TBD.

For questions, Kristine Hall, Public Policy Director, at khall@vsdvalliance.org or 804-377-0335.