



VIOLENCE FREE MINNESOTA

THE COALITION TO END RELATIONSHIP ABUSE

UNDERSTANDING THE NEW DOMESTIC VIOLENCE FIREARMS RESTRICTIONS

MARCH 17, 2015

Understanding the New Domestic Violence Firearms Restrictions

Contents

| | |
|---|--------------------|
| Law | 2 |
| Firearms Surrender Law Chapter 213 – HF 3238 | 2 |
| Questions | 17 |
| FAQs on Firearms Surrender Law | 17 |
| Forms | 24 |
| State Court Administration – Affidavit of Transfer | 24 |
| Sample Language for OFP Petition & Order | 27 |
| Protocols | 28 |
| Sample Protocol on Firearms Surrender to Local Authorities | 28 |
| Resources | 32 |
| Judicial Training Update from Judge Pendleton | 32 |
| Firearms Prohibitions under Minnesota Law | 37 |
| Quick Reference Guide to Minnesota & Federal Firearms Bans in Domestic Violence Cases | 42 |

CHAPTER 213--H.F.No. 3238

An act relating to public safety; prohibiting persons subject to domestic violence restraining orders from possessing weapons; requiring persons convicted of domestic violence offenses to surrender their firearms while they are prohibited from possessing firearms; providing penalties; amending Minnesota Statutes 2012, sections 260C.201, subdivision 3; 518B.01, subdivision 6; 609.2242, subdivision 3; 609.749, subdivision 8; 624.713, subdivision 1; proposing coding for new law in Minnesota Statutes, chapter 624.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1.

Minnesota Statutes 2012, section 260C.201, subdivision 3, is amended to read:
Subd. 3.

Domestic child abuse.

(a) If the court finds that the child is a victim of domestic child abuse, as defined in section 260C.007, subdivision 13, it may order any of the following dispositions of the case in addition to or as alternatives to the dispositions authorized under subdivision 1:

- (1) restrain any party from committing acts of domestic child abuse;
 - (2) exclude the abusing party from the dwelling which the family or household members share or from the residence of the child;
 - (3) on the same basis as is provided in chapter 518, establish temporary visitation with regard to minor children of the adult family or household members;
 - (4) on the same basis as is provided in chapter 518 or 518A, establish temporary support or maintenance for a period of 30 days for minor children or a spouse;
 - (5) provide counseling or other social services for the family or household members;
- or
- (6) order the abusing party to participate in treatment or counseling services.

Any relief granted by the order for protection shall be for a fixed period not to exceed one year.

(b) No order excluding the abusing party from the dwelling may be issued unless the court finds that:

- (1) the order is in the best interests of the child or children remaining in the dwelling;
- (2) a remaining adult family or household member is able to care adequately for the child or children in the absence of the excluded party; and

(3) the local welfare agency has developed a plan to provide appropriate social services to the remaining family or household members.

(c) Upon a finding that the remaining parent is able to care adequately for the child and enforce an order excluding the abusing party from the home and that the provision of supportive services by the responsible social services agency is no longer necessary, the responsible social services agency may be dismissed as a party to the proceedings. Orders entered regarding the abusing party remain in full force and effect and may be renewed by the remaining parent as necessary for the continued protection of the child for specified periods of time, not to exceed one year.

(d) An order granting relief that was issued after a hearing of which the abusing party received actual notice and at which the abusing party had the opportunity to participate, shall prohibit the abusing party from possessing firearms for the length the order is in effect if the order (1) restrains the abusing party from harassing, stalking, or threatening the child or restrains the abusing party from engaging in other conduct that would place the child in reasonable fear of bodily injury, and (2) includes a finding that the abusing party represents a credible threat to the physical safety of the child or prohibits the abusing party from using, attempting to use, or threatening to use physical force against the child. The order shall inform the abusing party of that party's prohibited status. Except as provided in paragraph (f), the court shall order the abusing party to transfer any firearms that the person possesses, within three business days, to a federally licensed firearms dealer, a law enforcement agency, or a third party who may lawfully receive them. The transfer may be permanent or temporary. A temporary firearm transfer only entitles the receiving party to possess the firearm. A temporary transfer does not transfer ownership or title. An abusing party may not transfer firearms to a third party who resides with the abusing party. If an abusing party makes a temporary transfer, a federally licensed firearms dealer or law enforcement agency may charge the abusing party a reasonable fee to store the person's firearms and may establish policies for disposal of abandoned firearms, provided such policies require that the person be notified via certified mail prior to disposal of abandoned firearms. For temporary firearms transfers under this paragraph, a law enforcement agency, federally licensed firearms dealer, or third party shall exercise due care to preserve the quality and function of the transferred firearms and shall return the transferred firearms to the person upon request after the expiration of the prohibiting time period, provided the person is not otherwise prohibited from possessing firearms under state or federal law. The return of temporarily transferred firearms to an abusing party shall comply with state and federal law. If an abusing party permanently transfers the abusing party's firearms to a law enforcement agency, the agency is not required to compensate the abusing party and may charge the abusing party a reasonable processing fee. A law enforcement agency is not required to accept an abusing party's firearm under this paragraph.

(e) An abusing party who is ordered to transfer firearms under paragraph (d) must file proof of transfer as provided for in this paragraph. If the transfer is made to a third party, the third party must sign an affidavit under oath before a notary public either

acknowledging that the abusing party permanently transferred the abusing party's firearms to the third party or agreeing to temporarily store the abusing party's firearms until such time as the abusing party is legally permitted to possess firearms. The affidavit shall indicate the serial number, make, and model of all firearms transferred by the abusing party to the third party. The third party shall acknowledge in the affidavit that the third party may be held criminally and civilly responsible under section 624.7144 if the abusing party gains access to a transferred firearm while the firearm is in the custody of the third party. If the transfer is to a law enforcement agency or federally licensed firearms dealer, the law enforcement agency or federally licensed firearms dealer shall provide proof of transfer to the abusing party. The proof of transfer must specify whether the firearms were permanently or temporarily transferred and include the name of the abusing party, date of transfer, and the serial number, make, and model of all transferred firearms. The abusing party shall provide the court with a signed and notarized affidavit or proof of transfer as described in this section within two business days of the firearms transfer. The court shall seal affidavits and proofs of transfer filed pursuant to this paragraph.

(f) When a court issues an order containing a firearms restriction provided for in paragraph (d), the court shall determine by a preponderance of evidence if an abusing party poses an imminent risk of causing another person substantial bodily harm. Upon a finding of imminent risk, the court shall order that the local law enforcement agency take immediate possession of all firearms in the abusing party's possession. The local law enforcement agency shall exercise due care to preserve the quality and function of the abusing party's firearms and shall return the firearms to the person upon request after the expiration of the prohibiting time period, provided the person is not otherwise prohibited from possessing firearms under state or federal law. The local law enforcement agency shall, upon written notice from the abusing party, transfer the firearms to a federally licensed firearms dealer or a third party who may lawfully receive them. Before a local law enforcement agency transfers a firearm under this paragraph, the agency shall require the third party or federally licensed firearms dealer receiving the firearm to submit an affidavit or proof of transfer that complies with the requirements for affidavits or proofs of transfer established in paragraph (e). The agency shall file all affidavits or proofs of transfer received with the court within two business days of the transfer. The court shall seal all affidavits or proofs of transfer filed pursuant to this paragraph. A federally licensed firearms dealer or third party who accepts a firearm transfer pursuant to this paragraph shall comply with paragraphs (d) and (e) as if accepting transfer from the abusing party. If the law enforcement agency does not receive written notice from the abusing party within three business days, the agency may charge a reasonable fee to store the abusing party's firearms. A law enforcement agency may establish policies for disposal of abandoned firearms, provided such policies require that the abusing party be notified via certified mail prior to disposal of abandoned firearms.

Sec. 2.

Minnesota Statutes 2012, section 518B.01, subdivision 6, is amended to read:

Subd. 6.

Relief by court.

(a) Upon notice and hearing, the court may provide relief as follows:

(1) restrain the abusing party from committing acts of domestic abuse;

(2) exclude the abusing party from the dwelling which the parties share or from the residence of the petitioner;

(3) exclude the abusing party from a reasonable area surrounding the dwelling or residence, which area shall be described specifically in the order;

(4) award temporary custody or establish temporary parenting time with regard to minor children of the parties on a basis which gives primary consideration to the safety of the victim and the children. In addition to the primary safety considerations, the court may consider particular best interest factors that are found to be relevant to the temporary custody and parenting time award. Findings under section 257.025, 518.17, or 518.175 are not required with respect to the particular best interest factors not considered by the court. If the court finds that the safety of the victim or the children will be jeopardized by unsupervised or unrestricted parenting time, the court shall condition or restrict parenting time as to time, place, duration, or supervision, or deny parenting time entirely, as needed to guard the safety of the victim and the children. The court's decision on custody and parenting time shall in no way delay the issuance of an order for protection granting other relief provided for in this section. The court must not enter a parenting plan under section 518.1705 as part of an action for an order for protection;

(5) on the same basis as is provided in chapter 518 or 518A, establish temporary support for minor children or a spouse, and order the withholding of support from the income of the person obligated to pay the support according to chapter 518A;

(6) provide upon request of the petitioner counseling or other social services for the parties, if married, or if there are minor children;

(7) order the abusing party to participate in treatment or counseling services, including requiring the abusing party to successfully complete a domestic abuse counseling program or educational program under section 518B.02;

(8) award temporary use and possession of property and restrain one or both parties from transferring, encumbering, concealing, or disposing of property except in the usual course of business or for the necessities of life, and to account to the court for all such transfers, encumbrances, dispositions, and expenditures made after the order is served or communicated to the party restrained in open court;

(9) exclude the abusing party from the place of employment of the petitioner, or otherwise limit access to the petitioner by the abusing party at the petitioner's place of employment;

(10) order the abusing party to have no contact with the petitioner whether in person, by telephone, mail, or electronic mail or messaging, through a third party, or by any other means;

(11) order the abusing party to pay restitution to the petitioner;

(12) order the continuance of all currently available insurance coverage without change in coverage or beneficiary designation;

(13) order, in its discretion, other relief as it deems necessary for the protection of a family or household member, including orders or directives to the sheriff or other law enforcement or corrections officer as provided by this section;

(14) direct the care, possession, or control of a pet or companion animal owned, possessed, or kept by the petitioner or respondent or a child of the petitioner or respondent; and

(15) direct the respondent to refrain from physically abusing or injuring any pet or companion animal, without legal justification, known to be owned, possessed, kept, or held by either party or a minor child residing in the residence or household of either party as an indirect means of intentionally threatening the safety of such person.

(b) Any relief granted by the order for protection shall be for a period not to exceed two years, except when the court determines a longer period is appropriate. When a referee presides at the hearing on the petition, the order granting relief becomes effective upon the referee's signature.

(c) An order granting the relief authorized in paragraph (a), clause (1), may not be vacated or modified in a proceeding for dissolution of marriage or legal separation, except that the court may hear a motion for modification of an order for protection concurrently with a proceeding for dissolution of marriage upon notice of motion and motion. The notice required by court rule shall not be waived. If the proceedings are consolidated and the motion to modify is granted, a separate order for modification of an order for protection shall be issued.

(d) An order granting the relief authorized in paragraph (a), clause (2) or (3), is not voided by the admittance of the abusing party into the dwelling from which the abusing party is excluded.

(e) If a proceeding for dissolution of marriage or legal separation is pending between the parties, the court shall provide a copy of the order for protection to the court with jurisdiction over the dissolution or separation proceeding for inclusion in its file.

(f) An order for restitution issued under this subdivision is enforceable as civil judgment.

(g) An order granting relief shall prohibit the abusing party from possessing firearms for the length the order is in effect if the order (1) restrains the abusing party from harassing, stalking, or threatening the petitioner or restrains the abusing party from

engaging in other conduct that would place the petitioner in reasonable fear of bodily injury, and (2) includes a finding that the abusing party represents a credible threat to the physical safety of the petitioner or prohibits the abusing party from using, attempting to use, or threatening to use physical force against the petitioner. The order shall inform the abusing party of that party's prohibited status. Except as provided in paragraph (i), the court shall order the abusing party to transfer any firearms that the person possesses, within three business days, to a federally licensed firearms dealer, a law enforcement agency, or a third party who may lawfully receive them. The transfer may be permanent or temporary. A temporary firearm transfer only entitles the receiving party to possess the firearm. A temporary transfer does not transfer ownership or title. An abusing party may not transfer firearms to a third party who resides with the abusing party. If an abusing party makes a temporary transfer, a federally licensed firearms dealer or law enforcement agency may charge the abusing party a reasonable fee to store the person's firearms and may establish policies for disposal of abandoned firearms, provided such policies require that the person be notified via certified mail prior to disposal of abandoned firearms. For temporary firearms transfers under this paragraph, a law enforcement agency, federally licensed firearms dealer, or third party shall exercise due care to preserve the quality and function of the transferred firearms and shall return the transferred firearms to the person upon request after the expiration of the prohibiting time period, provided the person is not otherwise prohibited from possessing firearms under state or federal law. The return of temporarily transferred firearms to an abusing party shall comply with state and federal law. If an abusing party permanently transfers the abusing party's firearms to a law enforcement agency, the agency is not required to compensate the abusing party and may charge the abusing party a reasonable processing fee. A law enforcement agency is not required to accept an abusing party's firearm under this paragraph.

(h) An abusing party who is ordered to transfer firearms under paragraph (g) must file proof of transfer as provided for in this paragraph. If the transfer is made to a third party, the third party must sign an affidavit under oath before a notary public either acknowledging that the abusing party permanently transferred the abusing party's firearms to the third party or agreeing to temporarily store the abusing party's firearms until such time as the abusing party is legally permitted to possess firearms. The affidavit shall indicate the serial number, make, and model of all firearms transferred by the abusing party to the third party. The third party shall acknowledge in the affidavit that the third party may be held criminally and civilly responsible under section 624.7144 if the abusing party gains access to a transferred firearm while the firearm is in the custody of the third party. If the transfer is to a law enforcement agency or federally licensed firearms dealer, the law enforcement agency or federally licensed firearms dealer shall provide proof of transfer to the abusing party. The proof of transfer must specify whether the firearms were permanently or temporarily transferred and include the name of the abusing party, date of transfer, and the serial number, make, and model of all transferred firearms. The abusing party shall provide the court with a signed and notarized affidavit or proof of transfer as described in this section within two business days of the firearms

transfer. The court shall seal affidavits and proofs of transfer filed pursuant to this paragraph.

(i) When a court issues an order containing a firearms restriction provided for in paragraph (g), the court shall determine by a preponderance of evidence if an abusing party poses an imminent risk of causing another person substantial bodily harm. Upon a finding of imminent risk, the court shall order that the local law enforcement agency take immediate possession of all firearms in the abusing party's possession. The local law enforcement agency shall exercise due care to preserve the quality and function of the abusing party's firearms and shall return the firearms to the person upon request after the expiration of the prohibiting time period, provided the person is not otherwise prohibited from possessing firearms under state or federal law. The local law enforcement agency shall, upon written notice from the abusing party, transfer the firearms to a federally licensed firearms dealer or a third party who may lawfully receive them. Before a local law enforcement agency transfers a firearm under this paragraph, the agency shall require the third party or federally licensed firearms dealer receiving the firearm to submit an affidavit or proof of transfer that complies with the requirements for affidavits or proofs of transfer established in paragraph (h). The agency shall file all affidavits or proofs of transfer received with the court within two business days of the transfer. The court shall seal all affidavits or proofs of transfer filed pursuant to this paragraph. A federally licensed firearms dealer or third party who accepts a firearm transfer pursuant to this paragraph shall comply with paragraphs (g) and (h) as if accepting transfer from the abusing party. If the law enforcement agency does not receive written notice from the abusing party within three business days, the agency may charge a reasonable fee to store the abusing party's firearms. A law enforcement agency may establish policies for disposal of abandoned firearms, provided such policies require that the abusing party be notified via certified mail prior to disposal of abandoned firearms.

Sec. 3.

Minnesota Statutes 2012, section 609.2242, subdivision 3, is amended to read:

Subd. 3.

Domestic assaults; firearms.

(a) When a person is convicted of a violation of this section or section 609.221, 609.222, 609.223, 609.224, or 609.2247, the court shall determine and make written findings on the record as to whether:

(1) the assault was committed against a family or household member, as defined in section 518B.01, subdivision 2;

(2) the defendant owns or possesses a firearm; and

(3) the firearm was used in any way during the commission of the assault.

(b) If the court determines that the assault was of a family or household member, and that the offender owns or possesses a firearm and used it in any way during the

commission of the assault, it shall order that the firearm be summarily forfeited under section 609.5316, subdivision 3.

(c) When a person is convicted of assaulting a family or household member and is determined by the court to have used a firearm in any way during commission of the assault, the court may order that the person is prohibited from possessing any type of firearm for any period longer than three years or for the remainder of the person's life. A person who violates this paragraph is guilty of a gross misdemeanor. At the time of the conviction, the court shall inform the defendant ~~whether and~~ for how long the defendant is prohibited from possessing a firearm and that it is a gross misdemeanor to violate this paragraph. The failure of the court to provide this information to a defendant does not affect the applicability of the firearm possession prohibition or the gross misdemeanor penalty to that defendant.

(d) Except as otherwise provided in paragraph (c), when a person is convicted of a violation of this section or section 609.224 and the court determines that the victim was a family or household member, the court shall inform the defendant that the defendant is prohibited from possessing a ~~pistol~~ firearm for three years from the date of conviction and that it is a gross misdemeanor offense to violate this prohibition. The failure of the court to provide this information to a defendant does not affect the applicability of the ~~pistol~~ firearm possession prohibition or the gross misdemeanor penalty to that defendant.

(e) Except as otherwise provided in paragraph (c), a person is not entitled to possess a pistol if the person has been convicted after August 1, 1992, or a firearm if a person has been convicted on or after the effective date of this act, of domestic assault under this section or assault in the fifth degree under section 609.224 and the assault victim was a family or household member as defined in section 518B.01, subdivision 2, unless three years have elapsed from the date of conviction and, during that time, the person has not been convicted of any other violation of this section or section 609.224. Property rights may not be abated but access may be restricted by the courts. A person who possesses a ~~pistol~~ firearm in violation of this paragraph is guilty of a gross misdemeanor.

(f) Except as otherwise provided in paragraphs (b) and (h), when a person is convicted of a violation of this section or section 609.221, 609.222, 609.223, 609.224, or 609.2247 and the court determines that the assault was against a family or household member, the court shall order the defendant to transfer any firearms that the person possesses, within three business days, to a federally licensed firearms dealer, a law enforcement agency, or a third party who may lawfully receive them. The transfer may be permanent or temporary, unless the court prohibits the person from possessing a firearm for the remainder of the person's life under paragraph (c). A temporary firearm transfer only entitles the receiving party to possess the firearm. A temporary transfer does not transfer ownership or title. A defendant may not transfer firearms to a third party who resides with the defendant. If a defendant makes a temporary transfer, a federally licensed firearms dealer or law enforcement agency may charge the defendant a reasonable fee to store the person's firearms and may establish policies for disposal of abandoned firearms,

provided such policies require that the person be notified by certified mail prior to disposal of abandoned firearms. For temporary firearms transfers under this paragraph, a law enforcement agency, federally licensed firearms dealer, or third party shall exercise due care to preserve the quality and function of the transferred firearms and shall return the transferred firearms to the person upon request after the expiration of the prohibiting time period imposed under this subdivision, provided the person is not otherwise prohibited from possessing firearms under state or federal law. The return of temporarily transferred firearms to a person shall comply with state and federal law. If a defendant permanently transfers the defendant's firearms to a law enforcement agency, the agency is not required to compensate the defendant and may charge the defendant a reasonable processing fee. A law enforcement agency is not required to accept a person's firearm under this paragraph. The court shall order that the person surrender all permits to carry and purchase firearms to the sheriff.

(g) A defendant who is ordered to transfer firearms under paragraph (f) must file proof of transfer as provided for in this paragraph. If the transfer is made to a third party, the third party must sign an affidavit under oath before a notary public either acknowledging that the defendant permanently transferred the defendant's firearms to the third party or agreeing to temporarily store the defendant's firearms until such time as the defendant is legally permitted to possess firearms. The affidavit shall indicate the serial number, make, and model of all firearms transferred by the defendant to the third party. The third party shall acknowledge in the affidavit that the third party may be held criminally and civilly responsible under section 624.7144 if the defendant gains access to a transferred firearm while the firearm is in the custody of the third party. If the transfer is to a law enforcement agency or federally licensed firearms dealer, the law enforcement agency or federally licensed firearms dealer shall provide proof of transfer to the defendant. The proof of transfer must specify whether the firearms were permanently or temporarily transferred and include the name of the defendant, date of transfer, and the serial number, make, and model of all transferred firearms. The defendant shall provide the court with a signed and notarized affidavit or proof of transfer as described in this section within two business days of the firearms transfer. The court shall seal affidavits and proofs of transfer filed pursuant to this paragraph.

(h) When a person is convicted of a violation of this section or section 609.221, 609.222, 609.223, 609.224, or 609.2247, and the court determines that the assault was against a family or household member, the court shall determine by a preponderance of the evidence if the person poses an imminent risk of causing another person substantial bodily harm. Upon a finding of imminent risk, the court shall order that the local law enforcement agency take immediate possession of all firearms in the person's possession. The local law enforcement agency shall exercise due care to preserve the quality and function of the defendant's firearms and shall return the firearms to the person upon request after the expiration of the prohibiting time period, provided the person is not otherwise prohibited from possessing firearms under state or federal law. The local law enforcement agency shall, upon written notice from the person, transfer the firearms to a

federally licensed firearms dealer or a third party who may lawfully receive them. Before a local law enforcement agency transfers a firearm under this paragraph, the agency shall require the third party or federally licensed firearms dealer receiving the firearm to submit an affidavit or proof of transfer that complies with the requirements for affidavits or proofs of transfer established in paragraph (g). The agency shall file all affidavits or proofs of transfer received with the court within two business days of the transfer. The court shall seal all affidavits or proofs of transfer filed pursuant to this paragraph. A federally licensed firearms dealer or third party who accepts a firearm transfer pursuant to this paragraph shall comply with paragraphs (f) and (g) as if accepting transfer from the defendant. If the law enforcement agency does not receive written notice from the defendant within three business days, the agency may charge a reasonable fee to store the defendant's firearms. A law enforcement agency may establish policies for disposal of abandoned firearms, provided such policies require that the person be notified via certified mail prior to disposal of abandoned firearms.

Sec. 4.

Minnesota Statutes 2012, section 609.749, subdivision 8, is amended to read:

Subd. 8.

Stalking; firearms.

(a) When a person is convicted of a stalking crime under this section and the court determines that the person used a firearm in any way during commission of the crime, the court may order that the person is prohibited from possessing any type of firearm for any period longer than three years or for the remainder of the person's life. A person who violates this paragraph is guilty of a gross misdemeanor. At the time of the conviction, the court shall inform the defendant ~~whether~~ and for how long the defendant is prohibited from possessing a firearm and that it is a gross misdemeanor to violate this paragraph. The failure of the court to provide this information to a defendant does not affect the applicability of the firearm possession prohibition or the gross misdemeanor penalty to that defendant.

(b) Except as otherwise provided in paragraph (a), when a person is convicted of a stalking crime under this section, the court shall inform the defendant that the defendant is prohibited from possessing a ~~pistol~~ firearm for three years from the date of conviction and that it is a gross misdemeanor offense to violate this prohibition. The failure of the court to provide this information to a defendant does not affect the applicability of the ~~pistol~~ firearm possession prohibition or the gross misdemeanor penalty to that defendant.

(c) Except as otherwise provided in paragraph (a), a person is not entitled to possess a pistol if the person has been convicted after August 1, 1996, of a stalking crime under this section, or to possess a firearm if the person has been convicted on or after the effective date of a stalking crime under this section, unless three years have elapsed from the date of conviction and, during that time, the person has not been convicted of any

other violation of this section. Property rights may not be abated but access may be restricted by the courts. A person who possesses a ~~pistol~~ firearm in violation of this paragraph is guilty of a gross misdemeanor.

(d) If the court determines that a person convicted of a stalking crime under this section owns or possesses a firearm and used it in any way during the commission of the crime, it shall order that the firearm be summarily forfeited under section 609.5316, subdivision 3.

(e) Except as otherwise provided in paragraphs (d) and (g), when a person is convicted of a stalking crime under this section, the court shall order the defendant to transfer any firearms that the person possesses, within three business days, to a federally licensed firearms dealer, a law enforcement agency, or a third party who may lawfully receive them. The transfer may be permanent or temporary. A temporary firearm transfer only entitles the receiving party to possess the firearm. A temporary transfer does not transfer ownership or title. A defendant may not transfer firearms to a third party who resides with the defendant. If a defendant makes a temporary transfer, a federally licensed firearms dealer or law enforcement agency may charge the defendant a reasonable fee to store the person's firearms and may establish policies for disposal of abandoned firearms, provided such policies require that the person be notified via certified mail prior to disposal of abandoned firearms. For temporary firearms transfers under this paragraph, a law enforcement agency, federally licensed firearms dealer, or third party shall exercise due care to preserve the quality and function of the transferred firearms and shall return the transferred firearms to the person upon request after the expiration of the prohibiting time period imposed under this subdivision, provided the person is not otherwise prohibited from possessing firearms under state or federal law. The return of temporarily transferred firearms to a defendant shall comply with state and federal law. If a defendant permanently transfers the defendant's firearms to a law enforcement agency, the agency is not required to compensate the defendant and may charge the defendant a reasonable processing fee. A law enforcement agency is not required to accept a person's firearm under this paragraph. The court shall order that the person surrender all permits to carry and purchase firearms to the sheriff.

(f) A defendant who is ordered to transfer firearms under paragraph (e) must file proof of transfer as provided for in this paragraph. If the transfer is made to a third party, the third party must sign an affidavit under oath before a notary public either acknowledging that the defendant permanently transferred the defendant's firearms to the third party or agreeing to temporarily store the defendant's firearms until such time as the defendant is legally permitted to possess firearms. The affidavit shall indicate the serial number, make, and model of all firearms transferred by the defendant to the third party. The third party shall acknowledge in the affidavit that the third party may be held criminally and civilly responsible under section 624.7144 if the defendant gains access to a transferred firearm while the firearm is in the custody of the third party. If the transfer is to a law enforcement agency or federally licensed firearms dealer, the law enforcement agency or federally licensed firearms dealer shall provide proof of transfer to the

defendant. The proof of transfer must specify whether the firearms were permanently or temporarily transferred and include the name of the defendant, date of transfer, and the serial number, make, and model of all transferred firearms. The defendant shall provide the court with a signed and notarized affidavit or proof of transfer as described in this section within two business days of the firearms transfer. The court shall seal affidavits and proofs of transfer filed pursuant to this paragraph.

(g) When a person is convicted of a stalking crime under this section, the court shall determine by a preponderance of the evidence if the person poses an imminent risk of causing another person substantial bodily harm. Upon a finding of imminent risk, the court shall order that the local law enforcement agency take immediate possession of all firearms in the person's possession. The local law enforcement agency shall exercise due care to preserve the quality and function of the defendant's firearms and shall return the firearms to the person upon request after the expiration of the prohibiting time period, provided the person is not otherwise prohibited from possessing firearms under state or federal law. The local law enforcement agency shall, upon written notice from the person, transfer the firearms to a federally licensed firearms dealer or a third party who may lawfully receive them. Before a local law enforcement agency transfers a firearm under this paragraph, the agency shall require the third party or federally licensed firearms dealer receiving the firearm to submit an affidavit or proof of transfer that complies with the requirements for affidavits or proofs of transfer established in paragraph (f). The agency shall file all affidavits or proofs of transfer received with the court within two business days of the transfer. The court shall seal all affidavits or proofs of transfer filed pursuant to this paragraph. A federally licensed firearms dealer or third party who accepts a firearm transfer pursuant to this paragraph shall comply with paragraphs (e) and (f) as if accepting transfer from the defendant. If the law enforcement agency does not receive written notice from the defendant within three business days, the agency may charge a reasonable fee to store the defendant's firearms. A law enforcement agency may establish policies for disposal of abandoned firearms, provided such policies require that the person be notified via certified mail prior to disposal of abandoned firearms.

Sec. 5.

Minnesota Statutes 2012, section 624.713, subdivision 1, is amended to read:

Subdivision 1.

Ineligible persons.

The following persons shall not be entitled to possess a pistol or semiautomatic military-style assault weapon or, except for clause (1), any other firearm:

(1) a person under the age of 18 years except that a person under 18 may carry or possess a pistol or semiautomatic military-style assault weapon (i) in the actual presence or under the direct supervision of the person's parent or guardian, (ii) for the purpose of military drill under the auspices of a legally recognized military organization and under

competent supervision, (iii) for the purpose of instruction, competition, or target practice on a firing range approved by the chief of police or county sheriff in whose jurisdiction the range is located and under direct supervision; or (iv) if the person has successfully completed a course designed to teach marksmanship and safety with a pistol or semiautomatic military-style assault weapon and approved by the commissioner of natural resources;

(2) except as otherwise provided in clause (9), a person who has been convicted of, or adjudicated delinquent or convicted as an extended jurisdiction juvenile for committing, in this state or elsewhere, a crime of violence. For purposes of this section, crime of violence includes crimes in other states or jurisdictions which would have been crimes of violence as herein defined if they had been committed in this state;

(3) a person who is or has ever been committed in Minnesota or elsewhere by a judicial determination that the person is mentally ill, developmentally disabled, or mentally ill and dangerous to the public, as defined in section 253B.02, to a treatment facility, or who has ever been found incompetent to stand trial or not guilty by reason of mental illness, unless the person's ability to possess a firearm has been restored under subdivision 4;

(4) a person who has been convicted in Minnesota or elsewhere of a misdemeanor or gross misdemeanor violation of chapter 152, unless three years have elapsed since the date of conviction and, during that time, the person has not been convicted of any other such violation of chapter 152 or a similar law of another state; or a person who is or has ever been committed by a judicial determination for treatment for the habitual use of a controlled substance or marijuana, as defined in sections 152.01 and 152.02, unless the person's ability to possess a firearm has been restored under subdivision 4;

(5) a person who has been committed to a treatment facility in Minnesota or elsewhere by a judicial determination that the person is chemically dependent as defined in section 253B.02, unless the person has completed treatment or the person's ability to possess a firearm has been restored under subdivision 4. Property rights may not be abated but access may be restricted by the courts;

(6) a peace officer who is informally admitted to a treatment facility pursuant to section 253B.04 for chemical dependency, unless the officer possesses a certificate from the head of the treatment facility discharging or provisionally discharging the officer from the treatment facility. Property rights may not be abated but access may be restricted by the courts;

(7) a person, including a person under the jurisdiction of the juvenile court, who has been charged with committing a crime of violence and has been placed in a pretrial diversion program by the court before disposition, until the person has completed the diversion program and the charge of committing the crime of violence has been dismissed;

(8) except as otherwise provided in clause (9), a person who has been convicted in another state of committing an offense similar to the offense described in

section 609.224, subdivision 3, against a family or household member or section 609.2242, subdivision 3, unless three years have elapsed since the date of conviction and, during that time, the person has not been convicted of any other violation of section 609.224, subdivision 3, or 609.2242, subdivision 3, or a similar law of another state;

(9) a person who has been convicted in this state or elsewhere of assaulting a family or household member and who was found by the court to have used a firearm in any way during commission of the assault is prohibited from possessing any type of firearm for the period determined by the sentencing court;

(10) a person who:

(i) has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

(ii) is a fugitive from justice as a result of having fled from any state to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding;

(iii) is an unlawful user of any controlled substance as defined in chapter 152;

(iv) has been judicially committed to a treatment facility in Minnesota or elsewhere as a person who is mentally ill, developmentally disabled, or mentally ill and dangerous to the public, as defined in section 253B.02;

(v) is an alien who is illegally or unlawfully in the United States;

(vi) has been discharged from the armed forces of the United States under dishonorable conditions; ~~or~~

(vii) has renounced the person's citizenship having been a citizen of the United States; or

(viii) is disqualified from possessing a firearm under United States Code, title 18, section 922(g)(8) or (9), as amended through March 1, 2014; ~~or~~

(11) a person who has been convicted of the following offenses at the gross misdemeanor level, unless three years have elapsed since the date of conviction and, during that time, the person has not been convicted of any other violation of these sections: section 609.229 (crimes committed for the benefit of a gang); 609.2231, subdivision 4 (assaults motivated by bias); 609.255 (false imprisonment); 609.378 (neglect or endangerment of a child); 609.582, subdivision 4 (burglary in the fourth degree); 609.665 (setting a spring gun); 609.71 (riot); or 609.749 (stalking). For purposes of this paragraph, the specified gross misdemeanor convictions include crimes committed in other states or jurisdictions which would have been gross misdemeanors if conviction occurred in this state-;

(12) a person who has been convicted of a violation of section 609.224 if the court determined that the assault was against a family or household member in accordance with section 609.2242, subdivision 8 (domestic assault), unless three years have elapsed since the date of conviction and, during that time, the person has not been convicted of another violation of section 609.224 or a violation of a section listed in clause (11); or

(13) a person who is subject to an order for protection as described in section 260C.201, subdivision 3, paragraph (d), or section 518B.01, subdivision 6, paragraph (g).

A person who issues a certificate pursuant to this section in good faith is not liable for damages resulting or arising from the actions or misconduct with a firearm committed by the individual who is the subject of the certificate.

The prohibition in this subdivision relating to the possession of firearms other than pistols and semiautomatic military-style assault weapons does not apply retroactively to persons who are prohibited from possessing a pistol or semiautomatic military-style assault weapon under this subdivision before August 1, 1994.

The lifetime prohibition on possessing, receiving, shipping, or transporting firearms for persons convicted or adjudicated delinquent of a crime of violence in clause (2), applies only to offenders who are discharged from sentence or court supervision for a crime of violence on or after August 1, 1993.

For purposes of this section, "judicial determination" means a court proceeding pursuant to sections 253B.07 to 253B.09 or a comparable law from another state.

Sec. 6.

[624.7144] ALLOWING AN INELIGIBLE PERSON ACCESS TO FIREARMS.

A person who accepts a transferred firearm from an abusing party or offender pursuant to section 260C.201, subdivision 3; section 518B.01, subdivision 6; section 609.2242, subdivision 3; or section 609.749, subdivision 8, is guilty of a gross misdemeanor if the abusing party or offender obtains possession of the transferred firearm while the person is prohibited from possessing firearms. It is an affirmative defense to a violation of this section that the third party who accepted the transferred firearm exercised due care to ensure that the abusing party or offender could not access the firearm. The third party shall not return the firearm to the abusing party or offender until the prohibiting time period imposed under section 260C.201, subdivision 3; section 518B.01, subdivision 6; section 609.2242, subdivision 3; or section 609.749, subdivision 8, has expired and the abusing party or offender presents a current, valid transferee permit or passes a federal background check through the National Instant Criminal Background Check System. The third party may rely on a court order describing the length of the prohibiting time period as conclusive evidence that the prohibiting time period has expired, unless otherwise notified by the court.

Presented to the governor May 6, 2014

Signed by the governor May 9, 2014, 10:04 a.m.

Copyright © 2014 by the Revisor of Statutes, State of Minnesota. All rights reserved.

Frequently Asked Questions (FAQs): 2014 Minnesota Domestic Violence Firearm Lawⁱ



Minnesota Coalition
for Battered Women

I. INTRODUCTION

WHEN IS THIS LAW EFFECTIVE?

- August 1, 2014

IN WHAT CASES MUST FIREARMS BE SURRENDERED/TRANSFERRED IN THE NEW LAW?

- **Qualifying Orders for Protection (OFPs)**ⁱⁱ
- **Qualifying Domestic Child Abuse Orders**ⁱⁱⁱ
- **Domestic Assault Convictions** (domestic assault, assault first through fifth degree and assault by strangulation against family or household member).^{iv}
- **Stalking Convictions**^v
 - In the cases of domestic assault and stalking convictions, the defendant must also surrender/transfer all permits to carry and purchase firearms to the sheriff.^{vi}

WHAT IS MEANT BY "FIREARMS"?

- Pistols;
- Long-guns (rifles); or
- "a gun that discharges shot or a projectile by means of an explosive, a gas, or compressed air."^{vii}

WHAT IS REQUIRED FOR QUALIFYING OFP OR DOMESTIC CHILD ABUSE ORDERS?

- The order must be issued after a hearing of which the abusing party received notice and had the opportunity to participate;^{viii} **AND**
- The order must inform the abusing party of his responsibilities under the order;^{ix} **AND**
- The language of the order must ^x:

DO 1 OF THESE THINGS:

restrain the abusing party from harassing, stalking, or threatening the petitioner;

OR

restrain the abusing party from engaging in other conduct that would place the petitioner in reasonable fear of bodily injury;

AND

DO 1 OF THESE THINGS:

include a finding that the abusing party represents a credible threat to the physical safety of the petitioner;

OR

prohibit the abusing party from using, attempting to use, or threatening to use physical force against the petitioner.

II. WHAT IS

THE PROCESS FOR SURRENDERING FIREARMS?

HOW QUICKLY MUST FIREARMS BE SURRENDERED/TRANSFERRED?

- **Qualifying OFPs and Qualifying Domestic Child Abuse Orders**
 - If court does not determine imminent risk: 3 business days after court order.^{xi}
 - If court determines there is an imminent risk: immediately after court order.^{xii}
- **Domestic Assault and Stalking**
 - If court does not determine imminent risk: 3 business days after court order.^{xiii}
 - If court determines there is an imminent risk: immediately after court order.^{xiv}
 - If firearm used during the assault or stalking, the firearm in question must be summarily forfeited under Minn. Stat. section 609.5316, subdivision 3.^{xv}

FOR HOW LONG MUST FIREARMS BE SURRENDERED/TRANSFERRED?

- **Qualifying OFPs**
 - For the length of time the order is in effect.^{xvi} The standard time for an OFP is 2 years.
- **Qualifying Domestic Child Abuse Orders**
 - For the length of time the order is in effect.^{xvii} The standard time for this order is 1 year.
- **Domestic Assault and Stalking**
 - If firearm used during assault or stalking: any period longer than 3 years, and up to the duration of a person's life^{xviii}
 - If no firearm used during assault or stalking: 3 years from date of conviction^{xix}

TO WHOM CAN FIREARMS BE SURRENDERED/TRANSFERRED?

- A federally licensed firearm dealer
- A law enforcement agency, or
- A third party who may lawfully receive them^{xx}

HOW ARE FIREARMS SURRENDERED/TRANSFERRED TO A THIRD PARTY?

- Who qualifies as a third party who may lawfully receive firearms?
 - Cannot be someone who resides with the abusing party/defendant^{xxi}
- What documentation of a third party transfer is required?
 - The third party must sign an affidavit under oath before a notary public^{xxii}
- What information must be included in the affidavit?
 - The affidavit must say that the abusing party permanently transferred his/her firearms to the third party, or that the third party has agreed to temporarily store the abusing party's firearms until he/she is legally permitted to possess firearms.^{xxiii}
 - The affidavit must say that the third party knows that he/she may be held criminally and civilly responsible under 624.7144 if the abusing party gains access to a transferred firearms while the third party has custody of the firearms.^{xxiv}
 - The affidavit must list:
 - Serial number of transferred firearms,
 - Make of transferred firearms,
 - Model of transferred firearms.^{xxv}

HOW ARE FIREARMS SURRENDERED/TRANSFERRED TO A LAW ENFORCEMENT AGENCY OR FEDERALLY LICENSED FIREARMS DEALER?

- What documentation of a transfer to a law enforcement agency or federally licensed firearms dealer is required?
 - The law enforcement agency or federally licensed firearms dealer must provide the abusing party a “proof of transfer.”^{xxvi}
- What information must be included in a proof of transfer?
 - The proof of transfer must specify whether the firearms were permanently or temporarily transferred.
 - The proof of transfer must include:
 - Abusing party’s name,
 - Date of transfer,
 - Serial number of transferred firearms,
 - Make of transferred firearms,
 - Model of transferred firearms.^{xxvii}

WHAT IS THE TIMELINE FOR AN ABUSING PARTY/DEFENDANT TO FILE PROOF OF SURRENDER/TRANSFER OR 3rd PARTY AFFIDAVIT WITH COURTS?

- The abusing party must file proof of transfer to law enforcement agency or federally licensed firearms dealer, or an affidavit if surrendering/transferring to third party, within two business days of the firearms surrender/transfer.^{xxviii}

WHAT IS THE PROCEDURE FOR IMMEDIATE SURRENDERS/TRANSFERS WHEN THE COURT DETERMINES IMMINENT RISK?

- The local law enforcement agency must take immediate possession of all firearms in abusing party’s possession.
- If the abusing party wants firearms transferred to a third party or federally licensed firearms dealer, she/he must give written notice to the law enforcement agency.
- Upon written notice from the abusing party, the law enforcement agency must transfer the firearms to a federally licensed firearms dealer or a third party who may lawfully receive them.
- Prior to transfer, the law enforcement agency must get a third party affidavit or proof of transfer that complies with the requirements for third party affidavits and proofs of transfer governing normal surrender/transfer (see above).
- The law enforcement agency must file all affidavits or proofs of transfer with the court within two business days of the transfer.^{xxix}

WHAT IS THE PROCEDURE FOR FIREARM SURRENDERS/TRANSFERS WHEN A FIREARM IS USED DURING DOMESTIC ASSAULT OR STALKING CRIMES?

- If the defendant owns and uses a firearm during a domestic assault or stalking, the firearm used during the crime needs to be summarily forfeited to the appropriate agency (usually law enforcement) under Minn. Stat. section 609.5316, subdivision 3.^{xxx}
- If the defendant owns additional firearms, surrender/transfer of additional firearms follows the normal surrender procedures.

CAN LAW ENFORCEMENT REFUSE TO ACCEPT FIREARMS?

- Law enforcement is not required to take immediate possession of firearms **UNLESS** it is an immediate surrender case.^{xxxi} Immediate surrender cases include:

- In qualifying OFP or Domestic Child Abuse Order when the court finds imminent risk of substantial bodily harm.^{xxxii}
- In domestic assault, assault, assault by strangulation and stalking convictions when the court finds imminent risk of substantial bodily harm.^{xxxiii}
- In domestic assault, assault, assault by strangulation and stalking convictions, if firearm was used during the commission of the crime.^{xxxiv}

IN WHAT OFP-RELATED CASES IS SURRENDER/TRANSFER NOT REQUIRED?

- Ex parte orders,
- Final orders that have automatically converted without a hearing,
- No notice to abusing party,
- No opportunity for the abusing party to be heard.^{xxxv}

CAN A VICTIM OR PETITIONER SURRENDER/TRANSFER THE FIREARMS?

- The statute does not address petitioners/victims transferring firearms.

III. AFTER SURRENDER/TRANSFER

IS INFORMATION ABOUT WHO HAS SURRENDERED FIREARMS AVAILABLE FROM THE COURTS?

- Affidavits and proofs of transfer that confirm the surrender/transfer are sealed court documents in ALL cases.^{xxxvi}

WHAT FEES CAN BE CHARGED FOR HOLDING AN ABUSING PARTY'S FIREARMS?

- For temporary surrenders/transfers to federally licensed firearms dealers or law enforcement agencies:
 - May charge the abusing party a reasonable fee to store the person's firearms.^{xxxvii}
- For permanent surrenders/transfers to law enforcement agencies:
 - The agency is not required to compensate the abusing party and may charge the abusing party a reasonable processing fee.^{xxxviii}
- For immediate surrenders/transfers to local law enforcement agency when court finds imminent risk:

If the law enforcement agency does not receive written notice to transfer the firearms from the abusing party within three business days, the agency may charge a reasonable fee to store the abusing party's firearms.^{xxxix}

CAN LAW ENFORCEMENT DISPOSE OF FIREARMS?

- If the firearms are transferred to law enforcement, and the abusing party/defendant does not retrieve firearms once allowed to possess again, law enforcement can dispose of the firearms if:
 - They have an established policy for disposal of abandoned firearms, and
 - They notify the abusing party/defendant via certified mail prior to disposal.^{xl}

WHAT IS THE PENALTY FOR LETTING ABUSING PARTIES OR OFFENDERS ACCESS THEIR FIREARMS DURING THE PROHIBITED PERIOD?

- Any law enforcement agency, federally licensed firearms dealer, or third party who was transferred firearms from an abusing party/defendant pursuant to the above procedures is guilty of a gross misdemeanor if the

abusing party/defendant obtains possession of the surrendered/transferred firearms during the prohibited period.^{xli}

- It is an affirmative defense that the law enforcement agency, federally licensed firearms dealer, or third party exercised due care to ensure the abusing party or defendant could not access the firearms.^{xlii}

IV. INELIGIBLE PERSONS

WHAT DOES IT MEAN TO BE AN INELIGIBLE PERSON?

- An ineligible person is not entitled to possess a firearm.^{xliii}
- The courts then reports the ineligibility of certain persons to the National Instant Criminal Background Check System.^{xliv}

WHAT WERE SOME OF THE DV-RELATED CONVICTIONS THAT MADE A PERSON INELIGIBLE TO POSSESS A FIREARM PRIOR TO THE 2014 FIREARM LAW ENACTMENT?

- Crimes of Violence, which are felony conviction of crimes defined in Minn. Stat. 624.712 (e.g., terroristic threats, stalking, 5th degree assault, assault by strangulation, domestic assault, criminal sexual conduct, kidnapping, etc.)
- Certain gross misdemeanor convictions (including stalking), unless three years have elapsed since the date of conviction and, during that time, the person has not been convicted of any other of these offenses.^{xlv}
- Conviction in another state of committing an offense similar to assault in the 5th degree against a family or household member or domestic assault, unless three years have elapsed since the date of conviction and, during that time, the person has not been convicted of any other violation of these offenses or a similar law of another state.^{xlvi}
- Conviction in this state or elsewhere of assaulting a family or household member, and who was found by the court to have used a firearm in any way during commission of the assault, is prohibited from possessing any type of firearm for the period determined by the sentencing court.^{xlvii}

WHAT PERSONS HAVE BEEN ADDED TO THE LIST OF INELIGIBLE PERSONS?

- Abusing parties in Qualifying OFPs^{xlviii}
- Abusing parties in Qualifying Domestic Child Abuse Orders^{xlix}
- Perpetrators with Domestic Assault convictions^l
- Persons that have been disqualified per 18 USC 922 (g)(8) and (g)^{li}
 - 922(g)(8): Prohibits firearm possession by a person who is subject to a court order that a) was issued after a hearing of which such person received notice and had opportunity to participate, b) restrains the person from harassing, stalking, or threatening an intimate partner or child, and c) includes a finding that the person represents a credible threat to the physical safety of an intimate partner or child or explicitly prohibits the person from using, attempting to use, or threatening to use physical force against an intimate partner or child.^{lii}
 - 922(g)(9) : Prohibits firearm possession by a person who has been convicted at any time in any court of a misdemeanor of domestic violence^{liii}
---- "*Misdemeanor of domestic violence:*" misdemeanor under Federal, State, or Tribal law that has, as an element, the use or attempted use of physical force committed by a current or former spouse, parent, or guardian of the victim, by a person whom the victim shares a child in common, by 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.^{liv}

WHAT IS THE PENALTY FOR POSSESSING FIREARMS WHILE INELIGIBLE?

- Gross misdemeanor.^{lv}

V. OUTSTANDING QUESTIONS & CONCERNS

LENGTH OF PROHIBITORY PERIOD IN THE CASE OF DOMESTIC ASSAULT CRIMES:

- The Minnesota domestic assault statute states that defendants convicted of domestic assault or stalking crimes are prohibited from possessing firearms for 3 years from the date of conviction, or, if the defendant used a firearm while committing the crime, anywhere from over 3 years to life.
- Federal gun prohibitions on persons convicted of misdemeanors of domestic violence last for a lifetime.
- Anyone convicted of domestic assault under Minnesota law falls under the federal gun prohibition.
- Since Minnesota law now incorporates the federal gun ban into state law, by including it under the list of ineligible persons, Minnesota law provides two different lengths of firearms prohibition periods for domestic assault offenders. Which is the correct length of time? 3 years (or anywhere from 3 years to life if firearm used during assault), or life?

ⁱ This FAQ document is not intended to be a complete review of Minnesota firearm law. It specifically addresses the provisions in the [2014 Session Law Chapter 213](#).

ⁱⁱ Minn. Stat. § 518B.01(6); H.F. 3238, 88th Sess., ll. 1.10-4.14 (2014).

ⁱⁱⁱ § 260C.201(3); H.F. 3238, ll. 4.15-8.12.

^{iv} § 609.2242(3); H.F. 3238, ll. 8.13-11.10.

^v § 609.749(8); H.F. 3238, ll. 11.11-13.32.

^{vi} § 609.2242(3)(f), 609.749(8)(e); H.F. 3238, ll. 10.2-10.3, 12.26-12.27.

^{vii} § 97A.015(19).

^{viii} § 260C.201(3)(d), 518B.01(a). H.F. 3238, ll. 2.17-2.18, 4.16-4.17, 6.16.

^{ix} § 260C.201(3)(d), 518B.01(g); H.F. 3238, ll. 2.24-2.25, 6.22-6.23.

^x § 260C.201(3)(d), 518B.01(g); H.F. 3238, ll. 2.20-2.24, 6.17-6.22.

^{xi} § 260C.201(3)(d)(2), 518B.01(6)(g); H.F. 3238, ll. 2.25-2.28, 6.23-6.26.

^{xii} § 260C.201(3)(f), 518B.01(6)(i); H.F. 3238, ll. 3.30-3.32, 7.28-7.30.

^{xiii} § 609.2242(3)(f), 609.749(8)(e); H.F. 3238, ll. 9.15-9.20, 12.5-12.9.

^{xiv} § 609.2242(3)(h), 609.749(8)(g); H.F. 3238, ll. 10.26-10.27, 13.12-13.14.

^{xv} § 609.2242(3)(b), 609.749(8)(d); H.F. 3238, ll. 8.21-8.24, 12.1-12.4.

^{xvi} § 518B.01(6)(b); H.F. 3238, ll. 5.33-5.34, 6.17.

^{xvii} § 260C.201(3)(a); H.F. 3238, ll. 2.1-2.2, 2.19-2.20.

^{xviii} § 609.2242(3)(c), 609.749(8)(a); H.F. 3238, ll. 8.25-8.28, 11.12-11.16.

^{xix} § 609.2242(3)(d), 609.749(8)(b); H.F. 3238, ll. 8.34-9.3, 11.24.

^{xx} § 260C.201(3)(d), 518B.01(6)(g), 609.2242(3)(f), 609.749(8)(e); H.F. 3238, ll. 2.25-2.28, 6.23-6.26, 9.15-9.20, 12.5-12.9.

^{xxi} § 260C.201(3)(d), 518B.01(6)(g), 609.2242(3)(f), 609.749(8)(e); H.F. 3238, ll. 2.30-2.31, 6.28-6.29, 9.24-9.25, 12.11-12.12.

^{xxii} § 260C.201(3)(e), 518B.01(6)(h), 609.2242(3)(g), 609.749(8)(f); H.F. 3238, ll. 3.12, 7.10, 10.6, 12.30.

^{xxiii} § 260C.201(3)(e), 518B.01(6)(h), 609.2242(3)(g), 609.749(8)(f); H.F. 3238, ll. 3.13-3.15, 7.11-7.13, 10.7-10.9, 12.31-12.33.

xxiv § 260C.201(3)(e), 518B.01(6)(h), 609.2242(3)(g), 609.749(8)(f); H.F. 3238, ll. 3.17-3.20, 7.15-7.18, 10.11-10.13, 12.35-13.1.

xxv § 260C.201(3)(e), 518B.01(6)(h), 609.2242(3)(g), 609.749(8)(f); H.F. 3238, ll. 3.15-3.17, 7.13-7.15, 10.9-10.11, 12.33-12.35.

xxvi § 260C.201(3)(e), 518B.01(6)(h), 609.2242(3)(g), 609.749(8)(f); H.F. 3238, ll. 3.20-3.22, 7.18-7.20, 10.13-10.16, 13.1-13.4.

xxvii § 260C.201(3)(e), 518B.01(6)(h), 609.2242(3)(g), 609.749(8)(f); H.F. 3238, ll. 3.20-3.24, 7.18-7.22, 10.13-10.18, 13.1-13.6.

xxviii § 518B.01(6)(h); H.F. 3238, ll. 7.23-7.24.

xxix § 260C.201(3)(f), 518B.01(6)(i), 609.2242(3)(h); H.F. 3238, ll. 3.30-4.7, 7.29-8.5, 10.26-11.2.

xxx § 609.2242(3)(c), 609.749(8)(a), 609.749(8)(g); H.F. 3238, ll. 8.25-8.28, 11.12-11.16, 13.12-13.25.

xxxi § 260C.201(3)(d),(f), 518B.01(6)(g),(i), 609.2242(3)(f),(h), 609.749(8)(e),(g); H.F. 3238, ll. 3.8-3.9, 3.31-3.32, 7.6-7.7, 7.28-7.30, 10.1-10.2, 10.26-10.27, 12.25-12.26, 13.13-13.14.

xxxii § 260C.201(3)(f), 518B.01(6)(i); H.F. 3238, ll. 3.30-3.32, 7.28-7.30.

xxxiii § 609.2242(3)(h), 609.749(8)(g); H.F. 3238, ll. 10.26-10.27, 13.12-13.14.

xxxiv § 609.2242(3)(b), 609.749(8)(d); H.F. 3238, ll. 8.21-8.24, 12.1-12.4.

xxxv § 260C.201(3)(d); § 518B.01(6)(a), (g); H.F. 3238, ll. 2.17-2.18, 4.16-4.17, 6.16.

xxxvi § 260C.201(3)(e),(f), 518B.01(6)(h),(i) 609.2242(3)(g),(h), 609.749(8)(f),(g); H.F. 3238, ll. 3.26-3.27, 4.7-4.8, 7.24-7.25, 8.5-8.6, 10.20-10.21, 11.2-11.3, 13.8-13.9, 13.25-13.26.

xxxvii § 260C.201(3)(d), 518B.01(6)(g), 609.2242(3)(f), 609.749(8)(e); H.F. 3238, ll. 2.31-2.34, 6.29-6.31, 9.25-9.27, 12.12-12.14.

xxxviii § 260C.201(3)(d), 518B.01(6)(g), 609.2242(3)(f), 609.749(8)(e); H.F. 3238, ll. 3.6-3.8, 7.4-7.6., 9.35-10.1, 12.22-12.26.

xxxix § 260C.201(3)(f), 518B.01(6)(i), 609.2242(3)(h), 609.749(8)(g); H.F. 3238, ll. 4.10-4.12, 8.8-8.10, 11.6-11.8, 12.28-12.30.

xl § 260C.201(3)(d),(f), 518B.01(6)(g),(i), 609.2242(3)(f),(h), 609.749(8)(e),(g); H.F. 3238, ll. 2.34-2.36, 4.12-4.14, 6.32-6.33, 8.10-8.12, 9.27-9.29, 11.8-11.10, 12.14-12.16, 12.30-12.32.

xli § 624.7144(6); H.F. 3238, ll. 16.32-17.1.

xlii § 624.7144(6); H.F. 3238, ll. 17.1-17.3.

xliii § 624.713(1); H.F. 3238, ll. 14.1-14.3.

xliv § 624.713(5).

xlv § 624.713(11); H.F. 3238, ll. 16.7.

xlvi § 624.713(8); H.F. 3238, ll. 15.10-15.16.

xlvii § 624.713(9); H.F. 3238, ll. 15.16-15.19.

xlviii § 624.713(13); H.F. 3238, ll. 16.15-16.16.

xlix § 624.713(13); H.F. 3238, ll. 16.15-16.16.

l § 624.713(12); H.F. 3238, ll. 16.10-16.14.

li § 624.713(9)(viii); H.F. 3238, ll. 15.34-15.35.

lii 18 U.S.C. § 922(g)(8) (2014).

liii § 922(g)(9).

liv § 921(33)(A)(i-ii). There are some due process requirements that must be met for this to apply, such as the offender must have been represented by counsel. See § 921(33)(B) for the complete list of requirements.

lv Minn. Stat. § 624.713(2)(C).

State of Minnesota

District Court

| |
|--------|
| County |
|--------|

| |
|--------------------|
| Judicial District: |
|--------------------|

| |
|--------------------|
| Court File Number: |
|--------------------|

| |
|------------|
| Case Type: |
|------------|

| |
|----------------|
| Domestic Abuse |
|----------------|

Petitioner

Affidavit / Proof of Transfer of Firearms

and

Respondent

STATE OF MINNESOTA)

) SS

COUNTY OF _____)

I, _____, state the following:

On _____, the ☐ Respondent named above ☐ the following

(Date firearms were transferred/received)

law enforcement agency: _____,

(name of agency)

☐ permanently or ☐ temporarily transferred the firearms identified below to me (check one box below):

☐ a person who may lawfully receive firearms and does not live with the Respondent. I acknowledge that I may be held criminally and civilly responsible under Minn. Stat. § 624.7144 if the Respondent named above gains access to a transferred firearm while the firearm is in my custody.

☐ a law enforcement agent with the following agency _____.

☐ a federally licensed firearms dealer, FFL# _____.

List the name, make, model and caliber of all firearms transferred in the table below:

| Firearm Name / Make | Serial Number | Model / Caliber |
|---------------------|---------------|-----------------|
| 1. | | |
| 2. | | |
| 3. | | |
| 4. | | |
| 5. | | |
| 6. | | |
| 7. | | |

If the Respondent transferred the firearms, the Respondent must file this Affidavit/Proof of Transfer with the court within two business days of the firearm transfer.

If a law enforcement agency transferred the firearms, the law enforcement agency transferring the firearms must file this Affidavit/Proof of Transfer with the court within two business days of the firearm transfer.

I declare under penalty of perjury that everything I have stated in this document is true and correct. Minn. Stat. § 358.116.

Dated: _____

Signature

Name _____

Agency or Business Name, if applicable: _____

Address _____

City/State/Zip _____

Telephone (_____) _____

Domestic Abuse Act – 518B.01

Petitioner's Affidavit

Options regarding Firearm Surrender

To notify the Court that Respondent possess firearms:

1. In Petition question 11 states, "Describe ...use or threatened use of guns...".
Recommend responding with, "The Respondent owns/possesses the following
firearms: _____"

OR

2. In Attachment for Description of Additional Abuse, add a question "Does the
Respondent own or possess any firearms? __ Yes __ No If Yes, list each firearm:
_____"

To request surrender of firearms:

Insert information in the relief requested section at "k.Other" or insert it at h. on the
relief requested at hearing:

1. Order Respondent to surrender all firearms in his/her possession including:
_____.

AND

2. Order Respondent to file the affidavit of transfer with the Court and to send a copy
to the Petitioner at the following address: _____.

Sample Protocol on Firearms Surrender to Law Enforcement

Domestic Violence Charges – Firearms Surrender to Local Authorities

On August 1, 2014, Minnesota law will require District Courts to order Respondents to Orders for Protection and individuals convicted of assaulting a family member or stalking to surrender their firearms to either local law enforcement, a federally licensed firearms dealer or a third party. This surrender may be permanent or temporary.

In order to ensure firearm transfers are conducted in the safest manner possible, Respondents will be given strict instructions to follow. Instructions will be given to Respondents at the time the Court Order is issued and will include the following instructions:

1. Do:

- Bring the firearm(s) to Saint Paul Police Department;
367 Grove Street

Saint Paul, MN 55101
- Transport the firearm according to State law; MSS 97B.045;
 - Ammunition stored separately and firearm(s) unloaded;
 - Fully secured in a gun case expressly made for that purpose, where the case is zipped, snapped, buckled, tied, or otherwise fastened; or,
 - In the closed trunk of the motor vehicle.
- Bring a photo ID with you;
- Bring a copy of the Court Order with you;

➤ **Leave the firearm(s) in your car**

- Enter the Saint Paul Police Department Headquarters building and inform the Desk Officer you have a firearm(s) to turn over according to a Court Order;
- A police officer will receive the weapon(s) at your vehicle; and,
 - Follow all instructions given by the responding officer
- After turning over the firearm(s), wait for the officer to fill out a *Proof of Transfer* form which you will need to return to the Court.

2. Don't:

- Bring the firearms into the Police Headquarters building; and,
 - An officer will receive the firearm(s) from you at your vehicle location
- Do not bring ammunition with the firearm(s).

Pursuant to the court orders, Saint Paul Police Officers should be prepared to receive firearms on all Tours. A Proof of Transfer form is shown below.

| | | |
|--|-------------------------------------|------------------------------------|
| SAINT PAUL POLICE DEPARTMENT FIREARMS PROOF OF TRANSFER | | |
| Case Number: _____ | Date: _____ | Time: _____ |
| Court File Number: _____ | Name of District Court: _____ | |
| Respondent's Name: _____ | | DOB: _____ |
| (First, Middle, Last) | | |
| Address: _____ | | |
| Firearms Turned in By: _____ | | DOB: _____ |
| (First, Middle, Last) | | |
| Address: _____ | | |
| Type of Transfer: | <input type="checkbox"/> Permanent | <input type="checkbox"/> Temporary |
| <u>Firearm Information (one form for each submitted firearm)</u> | | |
| Weapon Make: _____ | Weapon Model: _____ | |
| Serial Number: _____ | Number of Magazines: _____ | |
| Condition of Firearm: _____ | | |
| Officer: _____ | Employee Number: _____ | |
| Original in Firearm Storage Box | Yellow Copy to Prosecuting Attorney | Card Stock to Respondent |

Please read the following steps to understand the process to receive the firearm(s)

When a Respondent arrives at the Front Desk, the Desk Officer will determine which District the Respondent lives. The Desk Officer will place a P-3 call for service to RCECC for the appropriate District. In order to ensure officer safety during this call for service, a two-person car or two squads will be sent to complete this recovered property call.

- Respond to HQ;
 - It is recommended you obtain the name, DOB, mailing address and phone number right away in order to most easily complete the required form in a secure location.
- Take custody of the weapon(s) from the Respondent;
 - Do not accept ammunition.
- Fill out one *Proof of Transfer* form for each firearm received and enclose the top copy inside the evidence box with the firearm; and,

-
- Do not turn this form into Records.
 - *Proof of Transfer Forms* will be available at the Front Desk, Property Room and near the evidence lockers.
 - Additional forms will be stored at Records in forms storage and the Property Room.
 - Give bottom 2 copies of the *Proof of Transfer* to Respondent.

Inventorying the Firearm(s) into the Property Room

Follow established Department policy for firearm and firearm case inventory, including these additional steps which will be included in policy.

- Take a photograph of the firearm(s) to document condition at the time of transfer;
- Attach the top copy of the *Proof of Transfer* to the outside of the evidence box to which you are placing the firearm;
- Turn in any firearm case(s) into property according to existing policy; and,
- Give the bottom two copies of the *Proof of Transfer* form to the respondent.

A Packet Writer Report Must Be Written. Please include the following information in the narrative:

- Code the report *Recovered Property*;
- Date and time of firearm(s) transfer;
- Name, DOB, address, telephone number of the Respondent to the court order;
- Name, DOB, address, telephone number of person turning in the firearm(s), if different than the respondent;
- Court File number for the OFP, if available; and,
- Make, model, and serial number, and number of magazines with the firearm.

These Orders do not establish probable cause and are not search warrants.

This legislation clearly states that local law enforcement officers *shall receive* firearms according to an Order from the district court. The interpretation of this legislation by our City Attorney's Office is that our police officers are to rely on Respondents to transport their firearms in a legal manner and turn them over at Headquarters. Please keep these important keys in mind.

1. This law or an Order issued pursuant to this law does establish probable cause to arrest or to search a person, dwelling or vehicle in order to recover firearms ordered turned over to police custody or the custody of another.

-
2. Do not conduct knock and talks at known or suspected locations where a Respondent may be concealing or in possession of firearms. This Order places the burden of compliance on the Respondent and not a burden of seizure on law enforcement officers.
 3. If a violation of this type of Court Order is reported to police, officers should complete a Packet Writer report and document their observations and all statements according to department policy. Do not use the F-5 CAD update option to document these incidents.
 4. Although it could be argued that a Respondent to this Order is in “constructive possession” of firearms while turning them into police custody, please allow them to do so unless the totality of the circumstances indicates otherwise. In unusual circumstances, please contact your supervisor.
 5. When a Respondent is not compliant with an Order, it is a function of the court to enforce criminal or civil sanctions according to law.

Specific information on this legislation can be found in the following State statutes:

Domestic Abuse Act 518B.01; Domestic Assault 609.2242; Domestic Assault by Strangulation 609.2247; Assault 609.222, 609.223, and 609.224; Child Abuse 260C.201; and Stalking 609.749.

This new legislation is a step in a constructive direction to help protect those at high risk due to domestic assault lethality factors and the accessibility of OFP Respondents to firearms. Thank you for your attention to this new property recovery protocol to be initiated as necessary after August 1, 2014.

If you have any questions please contact Commander Joshua Lego at 65718 or Joshua.lego@ci.stpaul.mn.us/

MINNESOTA JUDICIAL TRAINING UPDATE

www.PendletonUpdates.com

QUESTION: What is the 2014 Domestic Violence Firearm Act (HF 3238, Session Law Chapter 213, also called the Firearms Transfer/Surrender Act) and what do Minnesota judges need to know in order to comply with its mandatory provisions?

MINNESOTA’S 2014 DOMESTIC VIOLENCE FIREARM ACT EIGHT (8) FACTS THAT JUDGES NEED TO KNOW

ANSWER: The Firearms Transfer Act is a new series of laws that went into effect on August 1, 2014. The act requires defendants convicted of certain domestic violence offenses or persons subject to an Order for Protection (OFP) or Domestic Child Abuse No Contact orders to **“Transfer or Surrender Firearms”** during the time they are prohibited from possessing firearms (i.e. period of probation or length of the no contact order).

☐ **Mandatory Provisions:** The act makes it MANDATORY for judges to order the “Transfer or Surrender” of firearms if the act applies.

FACT ONE: In What Three Types of Cases MUST Firearms be Surrendered or Transferred?

1. Any Domestic Assault Conviction – MS 609.2242, subd 3 (domestic assault; assault 1st thru 5th degree and assault by strangulation against a family or household member);

2. Any Stalking Conviction – MS 609.749 subd 8;

3. Qualifying Orders for Protection & Domestic Child Abuse No Contact Orders:

(OFPs – MS 518B.01 subd 6) (Child Abuse - MS 260C.201 subd 3). **“Qualifying Order” means:**

a) Order Issued After Hearing: The order must be issued after a hearing in which the abusing party received notice and had the opportunity to participate), and;

b) Order Must Inform: The order must inform the abusing party of his responsibilities under the new law. All order forms available as of August 14, 2014 include the required language;

c) Rare Exception: This new law does NOT apply if the court order has been modified to delete the language in Paragraph 22 (see new order forms). Paragraph 22 restrains the

abusing party from harassing, stalking or threatening the protected person(s), or engaging in other conduct that would place the protected person(s) in reasonable fear of bodily injury, and also prohibits the use, attempted use, or threatened use of physical force against the protected person(s). Deleting Paragraph 22 should rarely occur.

November 10, 2014 www.PendletonUpdates.com TRAINING UPDATE 14-21

Hon. Alan F. Pendleton, Anoka County Courthouse, alan.pendleton@courts.state.mn.us,
www.PendletonUpdates.com

FACT TWO: WHAT IS MEANT BY FIREARMS? M.S. 97A.015(19)

1) Pistols; 2) Long-guns (rifles); or, 3) A gun that discharges shot or a projectile by means of explosive, gas, or compressed air.

FACT THREE: TO WHOM MUST FIREARMS BE SURRENDERED OR TRANSFERRED?

1. To a law enforcement agency, or a federally licensed firearm dealer:

a) The law enforcement agency or licensed firearm dealer **MUST** provide the abusing

party a “proof of transfer”;

b) Abuser **MUST** file “proof of transfer” with court within 2 business days of transfer.

2. To a third party who may lawfully receive them – however:

a) Third party cannot be someone who resides with the abusing party/defendant.

b) Third party must sign a statutorily approved affidavit under oath (notary public).

c) Abusing party **MUST** file “affidavit” with court within 2 business days of transfer.

FACT FOUR: HOW QUICKLY MUST FIREARMS BE SURRENDERED OR TRANSFERRED?

1. **If court determines (by preponderance of the evidence) there is an “imminent” risk of harm to the victim:** immediately after the court order, the local law enforcement agency **MUST** take immediate possession of all firearms in abusing party’s possession.

a) Once firearms are seized by officers there are procedures the abusing party can follow

to have the firearms transferred to a third party or a licensed firearms dealer;

2. If court does NOT determine there is an imminent risk of harm to the victim: the surrender or transfer of firearms must occur within 3 business days after court order;

NOTE: Assault or Stalking Conviction – Summary Forfeiture: If a firearm is used during the assault or stalking, the firearm **MUST** be summarily forfeited under MS 609.5316, subd. 3.

FACT FIVE: FOR HOW LONG MUST THE FIREARMS BE SURRENDERED OR TRANSFERRED?

1. For Qualifying Orders for Protection (OFP) & Domestic Child Abuse No Contact Orders:

a) For the length of time the order is in effect (OFP = up to 2 years; Child Abuse = 1 year).

2. Domestic Abuse and Stalking Convictions:

- a) If no firearm is used during assault or stalking – 3 years from date of conviction;
- b) If firearm is used during assault or stalking – minimum of 3 years up to life.

NOTE: Unresolved Question: MN law now incorporates the federal lifetime gun ban for misdemeanor crimes of domestic violence into state law by including it under the list of persons “ineligible” to possess firearms. MS 624.713 Subd 1. As a result, MN now provides two different lengths of firearm prohibition periods for domestic assault offenders. It is unclear if the prohibitory period in such cases is the state prohibition of 3 years (or 3 years to life if firearm used during assault), or the lifetime federal gun ban. November 10, 2014 www.PendletonUpdates.com TRAINING UPDATE 14-21

Hon. Alan F. Pendleton, Anoka County Courthouse, alan.pendleton@courts.state.mn.us,
www.PendletonUpdates.com

FACT SIX: IN WHAT OFP-RELATED CASES IS SURRENDER OR TRANSFER NOT REQUIRED?

- 1. Ex-parte orders;
- 2. Final orders that have automatically converted without a hearing;
- 3. No notice to abusing party;
- 4. No opportunity for the abusing party to be heard.
- 5. Orders in which Paragraph 22 has been deleted. (See “Fact One” above - #3c).

FACT SEVEN: WHAT IS THE PENALTY FOR ALLOWING THE ABUSING PARTY ACCESS TO THEIR FIREARMS DURING THE PROHIBITED PERIOD? MS 624.7144

1. **Gross Misdemeanor:** Any law enforcement agency, federally licensed firearms dealer, or third party who was transferred firearms from an abusing party/defendant pursuant to the above procedures is guilty of a gross misdemeanor if the abusing party/defendant obtains possession of the surrendered/transferred firearms during the prohibited period. **Affirmative Defense:** It is an affirmative defense that the law enforcement agency, federally licensed firearms dealer, or third party “exercised due care” to ensure the abusing party or defendant could not access the firearms.

FACT EIGHT: WHAT IS THE PENALTY FOR POSSESSING FIREARMS WHILE “INELIGIBLE”

1. **Gross Misdemeanor or Felony:** Any abusing party subject to the new Firearm Surrender/Transfer Act is “ineligible” to possess firearms. The penalty for an “ineligible” person possessing firearms is set out in MS 624.713, subd 2. (See Fact 5 – Note, above).

ADDITIONAL RESOURCES:

1. **The full text of the act:** (HF 3238, Session Law Chapter 213) can be found at: <https://www.revisor.leg.state.mn.us/laws/?year=2014&type=0&doctype=Chapter&id=213>;

2. **Frequently Asked Questions (FAQs):** Violence Free MN has prepared an excellent series of Frequently Asked Questions (FAQs) with explanations and detailed citations to specific statutory provisions, located at: http://media.wix.com/ugd/f4bdb8_f847f672f9fa4059876b9e1ddd43e473.pdf.

3. **Court Forms & Orders:** The following new court forms (a-d) containing all required statutory language can be accessed at:

<http://courtnet.courts.state.mn.us/courtnetforms/>

a) Firearm Transfer Order (Minn. Stat. 609.2242 and 609.749 (for criminal convictions)

b) Order for Protection Following Hearing (Minn. Stat. 518B.01, Subd 6);

c) Affidavit/Proof of Transfer of Firearms;

d) Firearms Forfeiture and Restriction Order (M.S. 518B.01, 609.2242, 609.5316, 609.749)

SOURCES: HF 3238, Session Law Chapter 213; Violence Free MN.

Firearms Prohibitions under Minnesota Law

| Disqualifiers based on Status | Length of Prohibition | Penalty | Statute |
|---|--|-----------------------|--------------|
| Under age 18 ^{lv} (Prohibition is limited to pistols & semiautomatic military assault style weapons) | To Age 18 | Felony, up to 5 years | 624.713.1(1) |
| Are or have ever been committed by a judicial determination that they are mentally ill, developmentally disabled, or mentally ill and dangerous to the public | Life, unless restored under 624.713.4 | Gross Misdemeanor | 624.713.1(3) |
| Have been found incompetent to stand trial or not guilty by reason of mental illness | Life, unless restored under 624.713.4 | Gross Misdemeanor | 624.713.1(3) |
| Have been committed by a judicial determination for treatment for habitual use of a controlled substance or marijuana | Life, unless restored under 624.713.4 | Gross Misdemeanor | 624.713.1(4) |
| Have been committed to a treatment facility by a judicial determination that the person is chemically dependent | Life, unless restored under 624.713.4 | Gross Misdemeanor | 624.713.1(5) |
| Peace officers who are informally admitted to a treatment facility pursuant to 253B.04 | Until being discharged or provisionally discharged from the facility | Gross Misdemeanor | 624.713.1(6) |

| | | | |
|---|---|-------------------|---------------------|
| for chemically dependency | | | |
| Are fugitives from justice as a result of having fled from any state to avoid prosecution or testifying | Life | Gross Misdemeanor | 624.713.1(10)(ii) |
| Are unlawful users of any controlled substance | While being an unlawful user | Gross Misdemeanor | 624.713.1(10)(iii) |
| Have been judicially committed to a treatment facility as a person who is mentally ill, developmentally disabled, or mentally ill and dangerous to the public | Life | Gross Misdemeanor | 624.713.1(10)(iv) |
| An alien who is illegally or unlawfully in the United States | While illegally in the U.S. | Gross Misdemeanor | 624.713.1(10)(v) |
| Have been discharged from the armed forces of the United States under dishonorable conditions | Life | Gross Misdemeanor | 624.713.1(10)(vi) |
| Have renounced their United States citizenship | Life | Gross Misdemeanor | 624.713.1(10)(vii) |
| Are disqualified from possession of a firearm under 18 USC 922(g)(8)– while a qualifying OFP is in effect | While OFP is in effect | Gross Misdemeanor | 624.713.1(10)(viii) |
| Respondents in a qualifying Child Abuse Order or an Order for Protection (OFP) | While the Child Abuse Order or OFP is in effect | Gross Misdemeanor | 624.713.1(13) |

| | | | |
|---|------|-------------------|---------------------|
| Are disqualified from possession of a firearm under 18 USC 922(g)(9) – following a qualifying misdemeanor domestic assault conviction | Life | Gross Misdemeanor | 624.713.1(10)(viii) |
|---|------|-------------------|---------------------|

| Disqualifiers based on Criminal Convictions or Juvenile Adjudications | Length of Prohibition | Penalty | Statute |
|--|------------------------------|----------------------|------------------|
| Convicted of or adjudicated delinquent of a crime of violence | Life | Felony, up to 15 yrs | 624.713.1(2) |
| Charged with committing a crime of violence & placed in a pretrial diversion | Until charge is dismissed | Gross Misdemeanor | 624.713.1(7) |
| Convicted of a crime punishable by imprisonment for more than 1 year | Life | Gross Misdemeanor | 624.713.1(10)(i) |
| Convicted of Crimes for the Benefit of a Gang as a GM (609.229) | 3 years from the conviction | Gross Misdemeanor | 624.713.1(11) |
| Convicted of 4 th Degree Assault - Bias as a GM (609.2231.4) | 3 years from the conviction | Gross Misdemeanor | 624.713.1(11) |
| Convicted of False Imprisonment as a GM (609.255) | 3 years from the conviction | Gross Misdemeanor | 624.713.1(11) |
| Convicted of Neglect or Endangerment of a Child as a GM (609.378) | 3 years from the conviction | Gross Misdemeanor | 624.713.1(11) |

| | | | |
|---|---------------------------------|-------------------|--------------------------------|
| Convicted of 4 th Degree Burglary as a GM (609.582.4) | 3 years from the conviction | Gross Misdemeanor | 624.713.1(11) |
| Convicted of Setting a Spring Gun as a GM (609.665) | 3 years from the conviction | Gross Misdemeanor | 624.713.1(11) |
| Convicted of Riot as a GM (609.71) | 3 years from the conviction | Gross Misdemeanor | 624.713.1(11) |
| Convicted of Stalking as a GM (609.749) | 3 years from the conviction | Gross Misdemeanor | 624.713.1(11) 609.749.8(c) |
| Convicted of a M or GM violation of Chapter 152 (Controlled Substance Crimes) | 3 years from the conviction | Gross Misdemeanor | 624.713.1(4) |
| Convicted of 5 th Degree Assault against a family or household member (609.224) | 3 years from the conviction | Gross Misdemeanor | 624.713.1(12) 609.2242.3(e) |
| Convicted of possessing a pistol within 3 years of a conviction for Domestic Assault or 5 th Degree Assault against a family or household member | 3 years from the conviction | Gross Misdemeanor | 624.713.1(8) |
| Convicted of assaulting a family or household member & who were found by the Court to have used a firearm during the assault | For the Period set by the Court | Gross Misdemeanor | 624.713.1(9) |
| Convicted of Domestic Assault (609.2242) | 3 years from the conviction | Gross Misdemeanor | 609.2242.3(e) |
| Convicted of Violation of an Order for Protection (518B.01.14) (Prohibition is limited to pistols) | 3 years from the conviction | Gross Misdemeanor | 518B.01.14(l) |

| Crimes of Violence under 624.712.5 include felony level convictions (including attempts) for the following offenses | | | |
|--|-------------------|--|--|
| 1 st , 2 nd , 3 rd Degree Murder | Stalking | 1 st , 2 nd , 3 rd , 4 th , 5 th Degree Assault | Malicious Punishment of a Child |
| 1 st , 2 nd Degree Manslaughter | Domestic Assault | Domestic Assault by Strangulation | Neglect or Endangerment of a Child |
| 1 st , 2 nd , 3 rd , 4 th Degree Crim Sex | Kidnapping | False Imprisonment | Simple & Aggravated Robbery |
| 1 st , 2 nd Degree Arson | Riot | Terroristic Threats | Use of Drugs to Injure or Facilitate Crime |
| 1 st , 2 nd Degree Burglary | Drive by Shooting | Any offense under 152 (Drugs) | Aiding Suicide & Aiding Attempted Suicide |
| Shooting at a Public Transit Vehicle or Facility | | Theft involving theft of a firearm, a controlled substance, an explosive or incendiary device | |
| Crimes Committed for the Benefit of a Gang | | Unlawfully Owning, Possessing or Operating a Machine Gun or Short-barreled Shotgun | |
| Solicitation, Inducement & Promotion of Prostitution, Sex | | Trafficking Commission of a Crime while wearing a Bullet Proof Vest | |

¹ A person may carry under the age of 18 if (i) in the actual presence or under the direct supervision of the person's parent or guardian, (ii) for the purpose of military drill under the auspices of a legally recognized military organization and under competent supervision, (iii) for the purpose of instruction, competition, or target practice on a firing range approved by the chief of police or county sheriff in whose jurisdiction the range is located and under direct supervision; or (iv) if the person has successfully completed a course designed to teach marksmanship and safety with a pistol or semiautomatic military-style assault weapon and approved by the commissioner of natural resources;

Quick Reference Guide to Minnesota and Federal Firearms Bans in Domestic Violence Cases

| Conviction Offense | Conviction Date when Ban Applies | Type of Firearms Prohibited | Length of the Prohibition | Statutory Authority & Max Criminal Penalty | Special Notes |
|--|----------------------------------|-----------------------------|------------------------------|--|---|
| Violation of an Order for Protection | After 8/1/96 | Any pistols | 3 years from conviction date | 518B.01.14(l) Gross Misdemeanor | Court “shall” issue this ban upon a conviction. Ban applies even if the court does not notify defendant of the ban. 518B.01.14(k) |
| Domestic Assault* | On or after 8/1/14 | Any firearms | 3 years from conviction date | 609.2242.3(e) Gross Misdemeanor | Court “shall” issue this ban upon a conviction. Ban applies even if the court does not notify defendant of the ban. 609.2242.3(d) |
| Domestic Assault * | Between 8/1/92-8/1/14 | Any pistols | 3 years from conviction date | 609.2242.3(e) Gross Misdemeanor | Court “shall” issue this ban upon a conviction. Ban applies even if the court does not notify defendant of the ban. 609.2242.3(d) |
| 5 th Degree Assault if the victim was a family or household member* | On or after 8/1/14 | Any firearms | 3 years from conviction date | 609.2242.3(e) Gross Misdemeanor | Court “shall” issue this ban upon a conviction. Ban applies even if the court does not notify defendant of the ban. 609.2242.3(d) |
| 5 th Degree Assault if the victim was a family or household member* | Between 8/1/92-8/1/14 | Any pistols | 3 years from conviction date | 609.2242.3(e) Gross Misdemeanor | Court “shall” issue this ban upon a conviction. Ban applies even if the court does not notify defendant of the ban. 609.2242.3(d) |

| | | | | | |
|--|--------------------|----------------------------|---|--|--|
| 5 th Degree Assault within 3 years of a prior assault conviction* | After 8/1/92 | Any pistols | 3 years from conviction date | 609.224.3(b) Gross Misdemeanor | Statute does not provide that the ban is still in effect even if the defendant is not notified of the ban by the court. Prior conviction may be for 1 st , 2 nd , 3 rd , or 5 th degree assault |
| Stalking* | On or after 8/1/14 | Any firearms | 3 years from conviction date | 609.749.8(c) Gross Misdemeanor | Court “shall” issue this ban upon a conviction. Ban applies even if the court does not notify defendant of the ban. 609.749.8(b) |
| Stalking* | After 8/1/96 | Any pistols | 3 years from conviction date | 609.749.8(c) Gross Misdemeanor | Court “shall” issue this ban upon a conviction. Ban applies even if the court does not notify defendant of the ban. 609.749.8(b) |
| Respondent in a qualifying OFP | N/A | Any firearms | While OFP is in effect | 518B.01.6(g) 624.713.1(13) Gross Misdemeanor | Must verify that the Order is a qualifying order. (See reverse) Court shall order transfer. |
| Respondent in a valid and qualifying OFP or RO or DANCO | N/A | Any firearms or ammunition | While Order is in effect | 18 U.S.C. 922(g)(8) Up to 10 years & \$250,000 fine 624.713.1(10)(viii) Gross Misdemeanor | Must verify that the Order is a qualifying order. (See reverse) Military and law enforcement personnel are exempted from this ban while on duty and when acting in an official capacity |
| Person convicted of a qualifying misdemeanor crime of domestic violence | Any Conviction | Any firearms or ammunition | Life, unless the conviction has been set aside or expunged. | 18 U.S.C. 922(g)(9) Up to 10 years & \$250,000 fine 624.713.1(10)(viii) Gross Misdemeanor | Must verify that the conviction is a qualifying conviction (See reverse) |

*Convictions for felony level violations of 609.224, 609.2242, and 609.749 are also considered crimes of violence pursuant to 624.712. 5 and persons convicted of those offenses are prohibited for life from possessing, receiving, shipping or transported firearms pursuant to 624.713.1(2).

Under **Minn. Stat. 624.712.2**, a “**pistol**” is a weapon designed to be fired by the use of a single hand and with an overall length less than 26 inches, or having a barrel or barrels of a length less than 18 inches in the case of a shotgun or having a barrel of a length less than 16 inches in the case of a rifle (a) from which may be fired or ejected one or more solid projectiles by means of a cartridge or shell or by the action of an explosive or the igniting of flammable or explosive substances; or (b) for which the propelling force is a spring, elastic band, carbon dioxide, air or other gas, or vapor. “Pistol” does not include a device firing or ejecting a shot measuring .18 of an inch, or less, in diameter and commonly known as a “BB gun”, a scuba gun, a stud gun or nail gun used in the construction industry or children’s pop guns or toys.

Under **18 U.S.C. 921(a)(3)**, a “**firearm**” is (A) 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; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer, or (D) any destructive device. It doesn’t include an antique firearm.

Under **18 U.S.C. 921(a)(4)**, the term “destructive device” means---

(A) any explosive, incendiary, or poison gas—

- (i) bomb,
- (ii) grenade,
- (iii) rocket having a propellant charge of more than four ounces,
- (iv) missile having an explosive or incendiary charge of more than 1/4 ounce,
- (v) mine, or
- (vi) device similar to any of the devices described in the preceding clauses.

- (B) any type of weapon (other than shotgun or a shotgun shell which the Attorney General finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of any explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and
- (C) any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraph (A) or (B) and from which a destructive device may be readily assembled.

Under, **18 U.S.C. 921 (17)(A)**, the term “**ammunition**” means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.

Under **518B.01.6(g)**, an order is a qualifying order if the order (1) restrains the abusing party from harassing, stalking, or threatening the petitioner or restrains the abusing party from engaging in other conduct that would place the petitioner in reasonable fear of bodily injury, and (2) includes a finding that the abusing party represents a credible threat to the physical safety of the petitioner or prohibits

the abusing party from using, attempting to use, or threatening to use physical force against the petitioner.

Under **18 U.S.C. 922 (g)(8)**, an **order is a qualifying order**, if all of the following are true:

1. The Respondent must have had actual notice of the hearing and an opportunity to participate in it.
2. The Petitioner for the Order is a current or former spouse, a co-parent, or one who cohabits or has cohabited with the subject of the protection order.
3. The Order must prohibit either or both of the following:
 - harassing, stalking, or threatening an intimate partner or child of such partner; OR
 - engaging in other conduct which would place an intimate partner in reasonable fear of bodily injury to self or child.
4. The Order must also contain either or both of the following:
 - a finding that the person subject to the order represents a credible threat to the physical safety of an intimate partner or child; OR
 - an explicit prohibition against the use, attempted use, or threat of physical force against an intimate partner or child which would be reasonably expected to cause bodily injury.

Under **18 U.S.C. 922 (g)(9)**, a **domestic assault conviction is a qualifying conviction**, if all of the following are true:

1. The crime convicted of is a federal, state or local offense that is a misdemeanor under federal or state law.
2. The crime convicted of has an element of either 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 or has cohabited with the victim as spouse, parent or guardian of the victim; or a person similarly situated to the spouse, parent, or guardian of the victim.
4. The conviction was obtained after the defendant had an attorney or knowingly waived the right to an attorney.
5. The conviction was obtained after the defendant either had a jury trial or knowingly and intelligently waived the right to a jury trial.
6. The conviction has not been set aside or expunged, or the person has not been pardoned.

Quick Summary of Firearms Transfer Laws in Criminal Cases effective August 1, 2014

| Conviction Offense | Must Conviction involve a Family or Household Member | Prohibition Includes | Possible Length of time Firearms must be Transferred | Must Transfer be Ordered by Judge on Conviction | Must Immediate Possession by Law Enforcement be Ordered | Statutory Authority |
|-----------------------------------|---|-----------------------------|---|--|--|----------------------------|
| 5 th Degree Assault | Yes | Possession of any Firearms | 3 years (or life if firearm used in commission of crime) | Yes | No, unless finding of "imminent risk" | 609.2242.3(f) |
| Domestic Assault | Yes (by definition, against a family or household member) | Possession of any Firearms | 3 years (or life if firearm used in commission of crime) | Yes | No, unless finding of "imminent risk" | 609.2242.3(f) |
| Stalking | No | Possession of any Firearms | 3 years (or life if firearm used in commission of crime) | Yes | No, unless finding of "imminent risk" | 609.749.8(e) |
| Domestic Assault by Strangulation | Yes (by definition, against a family or household member) | Possession of any Firearms | 3 years (or life if firearm used in commission of crime) | Yes | No, unless finding of "imminent risk" | 609.2242.3(f) |
| 1 st Degree Assault | Yes | Possession of any Firearms | 3 years (or life if firearm used in commission of crime) | Yes | No, unless finding of "imminent risk" | 609.2242.3(f) |

| | | | | | | |
|--------------------------------|-----|----------------------------|--|-----|---------------------------------------|---------------|
| 2 nd Degree Assault | Yes | Possession of any Firearms | 3 years (or life if firearm used in commission of crime) | Yes | No, unless finding of “imminent risk” | 609.2242.3(f) |
| 3 rd Degree Assault | Yes | Possession of any Firearms | 3 years (or life if firearm used in commission of crime) | Yes | No, unless finding of “imminent risk” | 609.2242.3(f) |

Note: Defendants conviction of Interference with an Emergency Call, Violation of an Order for Protection, Violation of a Harassment/Restraining Order, or Violation of Domestic Abuse No Contact Order are **NOT** subject to an Order for Transfer of Firearms.

Note: Defendants convicted of felony level offenses described above are also prohibited from possession of firearms pursuant to Minnesota Statute 624.713.1(2).

Details of Transfer:

When must the transfer be made? Within 3 days of the Court Order.

Who can transfer be made to? A federally licensed law enforcement dealer, local law enforcement agency (they do not have to accept), or a 3rd party who can lawfully receive them.

What makes someone a 3rd Party who can lawfully receive them? The person does not live with the Defendant and is lawfully eligible under state & federal law to possess or receive firearms.

How will Court know of transfer? Defendant must file proof of transfer with the Court within 2 business days of the transfer.

When can the Defendant get the firearms back? When the prohibition on firearms possession expires unless the Defendant is prohibited under federal or state law from possessing firearms.

Are there criminal penalties for failing to transfer firearms or file proof of transfer documents?
No, except a Defendant can be charged with possession of a firearm following a conviction if

possessing one following a conviction.

Quick Summary of “Immediate Possession” Laws in Criminal Cases effective August 1, 2014

| Conviction Offense | Does Conviction involve a Family or Household Member | Was Finding of “Imminent Risk of Causing Substantial Bodily Harm” made | Standard of Proof needed to show “Imminent Risk” | Must Immediate Possession by Law Enforcement be Ordered | Must Law Enforcement Attempt to take Immediate Possession of Firearms | Statutory Authority |
|-----------------------------------|---|---|---|--|--|----------------------------|
| 5 th Degree Assault | Yes | Yes | Preponderance of the Evidence | Yes, if finding of imminent risk is made | Yes | 609.2242.3(h) |
| Domestic Assault | Yes (by definition, against a family or household member) | Yes | Preponderance of the Evidence | Yes, if finding of imminent risk is made | Yes | 609.2242.3(h) |
| Stalking | No | Yes | Preponderance of the Evidence | Yes, if finding of imminent risk is made | Yes | 609.749.8(g) |
| Domestic Assault by Strangulation | Yes (by definition, against a family or household member) | Yes | Preponderance of the Evidence | Yes, if finding of imminent risk is made | Yes | 609.2242.3(h) |
| 1 st Degree Assault | Yes | Yes | Preponderance of the Evidence | Yes, if finding of imminent risk is made | Yes | 609.2242.3(h) |
| 2 nd Degree Assault | Yes | Yes | Preponderance of the Evidence | Yes, if finding of imminent risk is made | Yes | 609.2242.3(h) |
| 3 rd Degree Assault | Yes | Yes | Preponderance of the Evidence | Yes, if finding of imminent risk is made | Yes | 609.2242.3(h) |

Note: Defendants conviction of Interference with an Emergency Call, Violation of an Order for Protection, Violation of a Harassment/Restraining Order, or Violation of Domestic Abuse No Contact Order are **NOT** subject to an Order for Immediate Possession of Firearms.

Details of Immediate Possession:

When must immediate possession occur? Immediate possession is not defined in the Statute.

How can law enforcement enforce the Immediate Surrender Order? The Statute does not define how law enforcement may enforce the Order

How will Court know of transfer? Law Enforcement must file an affidavit or proof of transfer with the Court within 2 business days of the transfer.

Can a Defendant ask that firearms be transferred to a 3rd party or an authorized firearms dealer? Yes, and law enforcement must transfer if provided with the required documentation under 609.2242(3)(g) or 609.749(8)(e).

Can law enforcement charge a fee to store firearms? Yes, if a request to transfer is not received within 3 business days of the immediate possession.

Can law enforcement destroy firearms taken through immediate possession? Yes, provided they have a policy regarding the destruction of abandoned firearms that includes notice to the Defendant via certified mail that abandoned firearms will be destroyed.

When can the Defendant get the firearms back? When the prohibition on firearms possession expires unless the Defendant is prohibited under federal or state law from possessing firearms.

**Quick Summary of Firearms Transfer Laws in Orders for Protection issued under 518B.01
effective August 1, 2014**

| | Must Court Order Transfer of Firearms | Prohibition Includes | Length of Prohibition | Must Immediate Possession by Law Enforcement be Ordered | Criminal Penalty for Possession of Firearms while OFP is in effect | Statutory Authority |
|--------------------------------|--|-----------------------------|------------------------------|--|---|----------------------------|
| Respondent in a qualifying OFP | Yes, if OFP is a qualifying OFP (See below) | Possession of any Firearms | Term of the OFP | No, unless finding of "imminent risk" | Yes. 624.713.1(13) Gross Misdemeanor Also may be charged federally under 18 U.S.C. 922(g)(8) Up to 10 years & \$250,000 fine | 518b.01.6.(g) |

Under **518B.01.6(g)**, an order is a qualifying order if the order:

- (1) restrains the abusing party from harassing, stalking, or threatening the petitioner or restrains the abusing party from engaging in other conduct that would place the petitioner in reasonable fear of bodily injury, and
- (2) includes a finding that the abusing party represents a credible threat to the physical safety of the petitioner or prohibits the abusing party from using, attempting to use, or threatening to use physical force against the petitioner.

Details of Transfer:

When must the transfer be made? Within 3 days of the Court Order.

Who can transfer be made to? A federally licensed law enforcement dealer, local law enforcement agency (they do not have to accept), or a 3rd party who can lawfully receive them.

What makes someone a 3rd Party who can lawfully receive them? The person does not live with the Respondent and is lawfully eligible under state & federal law to possess or receive firearms.

How will Court know of transfer? Respondent must file proof of transfer with the Court within 2 business days of the transfer.

When can the Respondent get the firearms back? When the prohibition on firearms possession expires unless the Respondent is prohibited under federal or state law from possessing firearms.

Are there criminal penalties for failing to transfer firearms or file proof of transfer documents? No, except a Respondent can be charged with possession of a firearm while the OFP is in effect.

Quick Summary of Firearms “Immediate Possession” Laws in Orders for Protection issued under 518B.01 effective August 1, 2014

| | Was Finding of “Imminent Risk of Causing Substantial Bodily Harm” made | Standard of Proof needed to show “Imminent Risk” | Must Immediate Possession by Law Enforcement be Ordered | Must Law Enforcement Attempt to take Immediate Possession of Firearms | Statutory Authority |
|--------------------------------|--|--|---|---|---------------------|
| Respondent in a qualifying OFP | Yes | Preponderance of the Evidence | Yes, if finding of imminent risk is made | Yes | 518b.01.6.(i) |

Under **518B.01.6(g)**, an order is a qualifying order if the order:

- (1) restrains the abusing party from harassing, stalking, or threatening the petitioner or restrains the abusing party from engaging in other conduct that would place the petitioner in reasonable fear of bodily injury, and
- (2) includes a finding that the abusing party represents a credible threat to the physical safety of the petitioner or prohibits the abusing party from using, attempting to use, or threatening to use physical force against the petitioner.

Details of Immediate Possession:

When must immediate possession occur? Immediate possession is not defined in the Statute.

How can law enforcement enforce the Immediate Surrender Order? The Statute does not define how law enforcement may enforce the Order

How will Court know of transfer? Law Enforcement must file an affidavit or proof of transfer with the Court within 2 business days of the transfer.

Can a Defendant ask that firearms be transferred to a 3rd party or an authorized firearms dealer? Yes, and law enforcement must transfer if provided with the required documentation under 518b.01.6(h).

Can law enforcement charge a fee to store firearms? Yes, if a request to transfer is not received within 3 business days of the immediate possession.

Can law enforcement destroy firearms taken through immediate possession? Yes, provided they have a policy regarding the destruction of abandoned firearms that includes notice to the Respondent via certified mail that abandoned firearms will be destroyed.

When can the Defendant get the firearms back? When the prohibition on firearms possession expires unless the Respondent is prohibited under federal or state law from possessing firearms.