



FAMILY ABUSE PERMANENT PROTECTIVE ORDER: NEW FIREARM PROHIBITION

WHAT IT MEANS TO YOU

On July 1, 2016, a new provision of the law prohibits a person who is subject to a family abuse protective order (“respondent”) from possessing a firearm. The law provides that after being served with the protective order, the respondent has a 24-hour period to lawfully possess the firearm solely for purpose of transferring or selling the firearm to another person who is legally allowed to possess it. A violation of this law is a Class 6 Felony, punishable up to five years in prison, as well as the loss of certain civil rights, including the right to possess a firearm.

The law only applies to subjects of family abuse protective orders issued pursuant to *Virginia Code Section 16.1-279.1* and does not apply to individuals subject to an emergency, temporary or other protective order.

This brochure provides an overview of the roles and responsibilities of various stakeholders this law impacts. It is not meant to provide legal advice. **If you have immediate safety concerns you should call 911.**



ROLE AND RESPONSIBILITIES OF VICTIMS

If the court has issued you a family abuse permanent (up to two years) protective order, the respondent is prohibited from possessing a firearm. The respondent is required to sell or give the firearm(s) to someone else within 24 hours. If they keep the firearm(s), they may be charged with a felony. The police are not required to come and take the firearm(s).

- If you feel you are in danger at any time, call 911
- If you believe the respondent has a firearm(s), you may want to let the courts know when you ask for the protective order
- If you have a protective order and believe the respondent still has a firearm(s), contact law enforcement
- Contact a domestic violence advocate to discuss options to stay safe
- Contact a victim witness advocate for more information about protective orders, the court system, and your rights as a victim

Call the **Virginia Family Violence and Sexual Assault Hotline** at **1-800-838-8238** to speak with an advocate or to get information on a Domestic and Sexual Violence Program in your area.



ROLE AND RESPONSIBILITIES OF LAW ENFORCEMENT

- Police and Sheriffs serve family abuse protective order, both in and outside of court
- Observe and inquire about the respondent’s access to firearms through interactions with respondents, witnesses and victims
- Enforce violations of *Virginia Code § 18.2-308.1:4*, including investigations and/or arrests
- Agencies may accept firearms from respondents (subjects) of this law
- Police and Sheriffs along with local partners help educate community members about this new crime

To find your local law enforcement agency, visit:
www.dcjs.virginia.gov/directories/criminaljustice



ROLE OF COURTS

- Courts issue family abuse protective orders and may ask about the presence of firearms on protective order petitions and/or during the protective order hearing
- Courts may advise subjects about the implications of the new law, to include the 24-hour period to lawfully transfer firearms, and the consequences of violating *Virginia Code § 18.2-308.1:4*
- Courts determine guilt or innocence for alleged violations of family abuse protective orders
- Courts impose criminal sanctions for individuals found guilty of violating this law

To find your local court, visit:
www.courts.state.va.us/courts/home.html



ROLE OF COMMONWEALTH'S ATTORNEYS

- Commonwealth's Attorneys answer calls from law enforcement, victims and witnesses
- Refer victims to domestic violence advocacy resources
- Prosecute violations of *Virginia Code § 18.2-308.1:4*
- Work with witnesses who have sought out this type of protective order

To find your local Commonwealth's Attorney, visit:

www.cas.state.va.us



ROLE OF DEFENSE ATTORNEYS

- Defense attorneys defend clients charged with violating *Virginia Code § 18.2-308.1:4*
- Advise clients/respondents about the implication of being served with this type of order
- Advise clients/respondents about the potential loss of right to possess firearms if convicted of this law
- Advise clients/respondents on how to comply with this law and lawfully avoid possessing firearms while subject to *Virginia Code § 18.2-308.1:4*

There are many attorneys available for consultation. Some localities have public defender's offices, which can be found at:

www.indigentdefense.virginia.gov. You may also contact the **Virginia Lawyer Referral Service at 1-800-552-7977**



SUBJECTS OF PERMANENT PROTECTIVE ORDER

- Effective July 1, 2016, it is a crime for you to possess firearms if you are subject to a family abuse protective order—convictions may result in prison time and permanent loss of firearms rights
- Educate yourself, friends and family about *Virginia Code § 18.2-308.1:4*
- **Do not possess firearms** unless it is for the purposes of transferring or selling them to a lawful person within 24 hours of service of the family abuse permanent protective order
- If you transfer possession of firearms to another individual, ensure that person is legally permitted to possess firearms
- Living in a household where firearms are present could constitute possession and result in a violation of this law



3RD PARTY TRANSFERS

- Third parties, including federally licensed firearms dealers and law enforcement agencies, may receive firearms
- A local law enforcement agency may accept firearms, although this may not be available in all localities
- Citizens who are asked by respondents to accept possession of firearms must be legally allowed to possess firearms
- If you agree to possess firearms for respondents, you must ensure that the firearms are returned only to individuals who are lawfully allowed to possess firearms, or you may face criminal sanctions

Section B of *Virginia Code § 18.2-308.1:4* effective July 1, 2016:

A. It is unlawful for any person who is subject to (i) a protective order entered pursuant to § 16.1-253.1, 16.1-253.4, 16.1-278.2, 16.1-279.1, 19.2-152.8, 19.2-152.9, or 19.2-152.10; (ii) an order issued pursuant to subsection B of § 20-103; (iii) an order entered pursuant to subsection E of § 18.2-60.3; (iv) a preliminary protective order entered pursuant to subsection F of § 16.1-253 where a petition alleging abuse or neglect has been filed; or (v) an order issued by a tribunal of another state, the United States or any of its territories, possessions, or commonwealths, or the District of Columbia pursuant to a statute that is substantially similar to those cited in clauses (i), (ii), (iii), or (iv) to purchase or transport any firearm while the order is in effect. Any person with a concealed handgun permit shall be prohibited from carrying any concealed firearm, and shall surrender his permit to the court entering the order, for the duration of any protective order referred to herein. A violation of this subsection is a Class 1 misdemeanor.

B. In addition to the prohibition set forth in subsection A, it is unlawful for any person who is subject to a protective order entered pursuant to § 16.1-279.1 or an order issued by a tribunal of another state, the United States or any of its territories, possessions, or commonwealths, or the District of Columbia pursuant to a statute that is substantially similar to § 16.1-279.1 to knowingly possess any firearm while the order is in effect, provided that for a period of 24 hours after being served with a protective order in accordance with subsection C of § 16.1-279.1 such person may continue to possess and, notwithstanding the provisions of subsection A, transport any firearm possessed by such person at the time of service for the purposes of selling or transferring any such firearm to any person who is not otherwise prohibited by law from possessing such firearm. A violation of this subsection is a Class 6 felony.

If you need guidance contacting any of the stakeholders described herein, please contact protect@dcjs.virginia.gov and your inquiry will be forwarded to the right party.