



CHANGING SYSTEMS
TRANSFORMING LIVES



IMPROVING THE RESPONSE TO
FIREARMS IN CIVIL PROTECTION
ORDER CASES

BWJP

Improving the Response to Firearms in Civil Protection Order Cases

The civil legal system uses its full authority in protection order cases to take guns away from abusers and make sure abusers surrender illegally possessed firearms.

This Community Strategy challenges communities to safeguard domestic violence survivors, their children, and others from firearms violence through the civil protection order (CPO) process, which offers myriad opportunities to identify and address the threat posed by abusers who have access to firearms. Research has shown that civil protection orders (CPOs) can be an effective means to prevent firearms-related intimate partner homicides, and demonstrates that judicial officers' use of their authority to order surrender or seizure of firearms is a "vital tool in the effective removal of firearms from restrained persons." ¹

Jurisdictions across the country use different names for CPOs, including restraining orders, injunctions, protection from abuse orders, etc., and the legal authority granted to judicial officers, as well as court processes, vary significantly from jurisdiction to jurisdiction. Nonetheless, all CPO processes share certain common elements, and despite differences in specific legal authority, all communities can implement effective policies and practices to enhance their ability to use the CPO system to disarm abusers and prevent further access to weapons where they are prohibited by law.

In addition to enforcing applicable state and Tribal laws that prohibit possession of firearms by individuals subject to CPOs, communities should take steps to facilitate enforcement of the federal firearm prohibition found at 18 U.S.C. § 922(g)(8), which applies to CPOs meeting its specific requirements. [Learn more.](#)

Each of the common steps of the CPO process, listed below, provides opportunities for the legal system to learn about and respond to offenders' use of and access to firearms. Click on a step to learn about suggested policies and practices, which may be adapted to the unique characteristics and needs of your community. The Safer Families, Safer Communities Project is available to assist you with this effort.

1. Vittes et al., "Removing Guns from Batterers: Findings from a Pilot Survey of Domestic Violence Restraining Order Recipients in California," *Violence Against Women*, Vol. 19, No. 5, 602 at 611-612 (2013).

Opportunities to Prevent Firearms Access by Offenders

1. Pre-Petition Advocacy and Information Gathering

Absent accurate and comprehensive information about individual respondents' access to firearms, even a carefully crafted, collaboratively implemented system for ordering surrender of firearms and monitoring for compliance is destined to fail.¹

As research has demonstrated, no single source of information is adequate to identify which respondents in CPO cases possess firearms, and courts, law enforcement, and others must draw from multiple potential sources for that information.

One critical stage in the CPO process for obtaining specific information regarding a respondent's access to firearms is the period when a victim meets with an advocate or attorney to discuss potential legal remedies and to plan for safety.

During that period of time when victims are considering whether to pursue relief through the legal system, they also may conduct research on the internet or gather written materials regarding the CPO process and how to protect themselves and their children.

Victims benefit greatly when they discuss the risk of firearms and respondents' access to them with their advocates and/or attorneys. By having this conversation in a private setting during a discussion about the victim's and any children's safety, rather than in a courtroom or other setting, the victim is more likely to process the information and engage in a two-way conversation about the risk posed by the respondent's access to firearms and the steps that can be taken to reduce it. In addition, these conversations are likely to be confidential, so victims can discuss with their advocates and/or attorneys whether and how to invoke legal protection from the firearms without the legal system imposing a specific remedy before the victim has an opportunity to consider all available options. Thus, these types of conversations enable victims to exercise their autonomy by enabling them to make an informed decision about whether to pursue a CPO or specific firearms-related remedies. When a victim ultimately does decide to petition for a CPO and seek protection from respondent's use of firearms, she will be motivated to gather and provide as much information as possible about the respondent's use of and access to firearms.

By implementing the suggested strategies below, communities can both provide victims with accurate and helpful information regarding how they may use the legal system to obtain protection against abusers' use of firearms, and begin to obtain necessary information from victims regarding abusers' access to and prior use of firearms.

- Advocates should use a questionnaire or other instrument to ask questions about the respondent's firearms access and possession, and to engage in responsive safety planning
- Questionnaires should include questions about:
 - Firearms owned, shared, and to which respondent has access
 - Petitioner's fear and thoughts about respondent's access to firearms
 - The specific make, model, etc. of the firearms owned or accessible (with pictures of firearm types available to facilitate identification)

- The specific location and how to access the firearms
- Informational brochures, online information, etc. should be made available regarding the dangers of firearms in DV cases, the availability of firearms-related relief in CPOs, how to request such relief, etc.
 - Information should be available in multiple languages and be culturally appropriate

(Wintemute, G.J., Frattaroli, S., Claire, B.E., Vittes, K.A., Webster, D.W. Identifying Armed Respondents to Domestic Violence Restraining Orders and Recovering Their Firearms: Process Evaluation of an Initiative in California. American Journal of Public Health (2014))

Advocates >

Advocates' roles and scope of their duties may differ based on their location. Some programs are community based and others affiliated with criminal justice agencies such as prosecuting attorney's office, law enforcement agencies, the court, probation or the prison system. Advocates can be a paid position or volunteer. Advocacy may also be referred to as victim assistance, victim witness and/or victim services.

Advocate's primary mandate is to educate and empower victims and help them plan for their safety. They are an essential source of knowledge of both legal and non-legal resources, available to victims in their communities. Victims of domestic violence who decide to petition the court for a protective order can benefit from an advocate's input while they are navigating the system.

Advocates should utilize a questionnaire or other instrument to ask questions about respondent's firearm access and possession. All information about firearms owned or accessible by the respondent should be inquired about. Knowing the number of firearms, make and model of firearms, and location will help the court tailor specific relief.

Advocates should assist victims in obtaining the appropriate court forms and completing them. Victims will want to include copies of any evidence of the allegations including photographs of injuries, letters or messages (including texts or screen shots from social media) from the defendant, and police reports. Advocates should encourage victims to include information about weapons used, threatened to be used, or possessed by the abuser in the petition.

Advocates should educate victims about the court process, including how to dress, where to sit, and how to address the judge. Advocates should be physically present with the victim in court whenever possible. Help victims focus their thoughts on a sequential presentation of the relevant facts to the judge. The relief requested by the victim should include the court requiring the abuser to surrender firearms and ammunition as well as any concealed carry permit.

Step Checklist

1. Examine with each victim her needs and assist her in making an informed decision.
2. Use questionnaire to ask about the presence of firearms during the intake and document victim's response.
3. Inform victims about the different types of protection orders available including the potential benefits and adverse consequences the orders can have on the victim.
4. Explain the impact of a protection order on respondent's rights to firearms.
5. Discuss the potential consequences should the respondent violate a protection order.
6. Assist victims in finding legal representation as desired.
7. Assist victims in obtaining the most appropriate protection order.
8. Explain courtroom logistics to the victim (where to sit, what will be asked, how to address the judge).
9. Explain that, for the victim's safety, she should tell the judge about any weapons owned by the abuser.
10. Explain the service process.
11. Advise victim to keep a copy of the order with her at all times.
12. Assist the victim in developing a safety plan including what to do if the abuser violates the protection order.
13. Discuss the option available after a protection order has been issued including modifying a protection order, requesting restricted contact, dismissing a protection order and reapplying for a protection order in the future.

2. Petitions for CPOs

The petition forms used for obtaining CPOs provide an important opportunity for the legal system to gather information about respondents' access to firearms.

Strategies for enhancing the effectiveness of CPO petitions and increasing the likelihood of obtaining accurate and comprehensive information about firearms include the following:

- Courts and other stakeholders should work collaboratively to develop CPO petitions and/or supplemental forms and informational materials to enable petitioners to readily request firearms-related relief and describe the type, location, ownership, etc. of firearms owned by the respondent or to which he has access.
 - Supplemental, non-mandatory petitions for firearms-related relief, which are used by some courts, enhance victim autonomy by permitting them to decide whether to request that the court address respondents' firearms access
- Petitions, supporting affidavits, and/or supplemental forms should include space to provide specific information (make, model, serial number, location, etc.) about firearms owned, possessed, or to which respondent has access
 - Photographs or other visual representations of common firearms types should be provided to petitioners
- Petitions should include checkboxes or other mechanisms for petitioners to request discretionary relief regarding firearms

- Petitions and/or supplemental forms should include specific questions about firearms, including respondent's ownership/access, previous incidents involving firearms, and petitioner's concerns about firearms

Civil Attorney >

Often the most helpful resource for a victim seeking a civil protection order is effective legal representation. Informed civil attorneys can provide their clients with legal advice and be pivotal in obtaining protection from the courts.

Attorneys should work with the victim to create clear specific terms of the requested protection order.

Step Checklist

1. Determine existence of firearms
2. Inform the court of issues related to weapons.
3. Object to conflicting provisions either within the existing order or with another existing court order.
4. Seek enforcement through civil contempt or criminal charges for violations.

Advocate >

Disclosure of the existence of firearms in respondent's possession may expose petitioner to greater danger. The primary consideration should be the petitioner's safety, and her subjective viewpoint of what makes her safest should be paramount.

Step Checklist

1. Determine existence of firearms
2. Inform the court of issues related to weapons.
3. Object to conflicting provisions either within the existing order or with another existing court order.
4. Seek enforcement through civil contempt or criminal charges for violations

3. Temporary Orders

In some states, judges are authorized to include firearms-related relief in temporary CPOs (here we define these as orders issued on an ex parte basis, before the respondent has had an opportunity to be heard.)

Such relief may include provisions prohibiting possession of firearms or, in a small number of states, orders to surrender firearms to a law enforcement agency until a final order is issued

after the respondent has an opportunity to be heard. This form of legal relief comes at a critical time for the victim's safety, as she begins the process of separating from the abuser.

Where judges have such legal authority, the following suggested practices should be implemented:

- Courts should access state license/permit and criminal history databases/registries for information regarding firearms possession and prohibitions, and judges should account for these in their orders.
- Judges should understand and, where appropriate, exercise all available authority to prohibit possession of firearms and/or order surrender as part of temporary orders.
 - “Catch-all” or implicit legal authority to include such prohibitions may be available (e.g., “other relief that the court considers necessary to provide for the safety and welfare of the petitioner and the children in the custody of the petitioner.”)
- Courts should work collaboratively with other community stakeholders, including law enforcement, prosecutors, and probation, to develop an effective mechanism to monitor compliance with firearms relief in temporary orders (see Surrender and Seizure Process, Including Compliance Monitoring).

Civil Attorney >

If authorized in your jurisdiction, request surrender of firearms at ex parte stage. Discuss with client the considerations of personal and public safety relevant this issue. This can be a particularly difficult subject to advise a client on. Counsel should stress the heightened danger to the petitioner at this stage of the proceeding. Along with that is the increased danger of firearms being used. Petitioner is probably in best position to assess the risks associated with firearm relinquishment. Public safety is a concern, but care should be taken to not shift the burden onto the petitioner. This calls for considerable finesse.

Step Checklist

1. Determine existence of firearms
2. Discuss with client pros and cons of disclosing this information
3. Assist client in reaching a decision
4. Include information on firearms in petition

Judge >

Some states authorize judges to prohibit gun access by people subject to ex parte protective orders.

Court must ask Plaintiff at the ex parte hearing whether Defendant has weapons, ammunition, permits. If so, Court must describe and put location of weapons in the order whenever possible.

Step Checklist

1. Determine whether the threshold for issuance of a temporary protection order has been met.
2. Temporary order should be effective for fixed term.
3. A full hearing should be set before temporary protection order ceases to be effective.
4. Order respondent to surrender any firearms or ammunition in his/her possession to designated law enforcement office pending further order of the court.

Advocates >

Where the petitioner is not represented by counsel, the advocate may need to discuss the pros and cons of disclosing the existence of firearms. In some cases, the respondent will know immediately that the petitioner has disclosed the information about the guns. The petitioner is in the best position in most cases to assess the danger of proceeding in either direction. This can be an overwhelming decision for the petitioner, and care should be taken not to pressure her into deciding.

Step Checklist

1. Determine if petitioner has counsel
2. Determine existence of firearms
3. Discuss pros and cons of disclosing information about the guns. This should be done even if petitioner is represented by counsel
4. Ensure that firearms information is included in the order, if appropriate

4. Final Orders

CPO statutes in many states and some Tribes include specific authority for judicial officers to include firearms-related relief in final CPOs (defined here as orders issued after the respondent has had an opportunity to be heard.)

Although not all state, Tribal, and territorial laws grant judicial officers with such authority, all communities, regardless of their governing law, can adopt strategies to maximize the likelihood that respondents subject to final CPOs both relinquish their firearms and are prevented from purchasing new ones.¹

- Judicial officers should understand and, where appropriate, exercise all available legal authority to prohibit possession of firearms and/or order surrender; such authority may include:
 - Specific authority to order surrender in final orders issued after a hearing
 - “Catch-all” authority in the absence of specific firearms-related authority (e.g. ., “other relief that the court considers necessary to provide for the safety and welfare of the petitioner and the children in the custody of the petitioner.”)
- Orders should include clear, specific, and readily enforceable firearms relief

- Orders to surrender firearms (or a supplemental form) should specify the exact firearms involved, the location of the firearms, and where, when, and how to surrender firearms to the receiving agency
 - Orders should include directions for the law enforcement agency designated to receive surrendered firearms (see Surrender and Seizure Process, Including Compliance Monitoring for more information)
 - Respondents should be provided with an instruction sheet, developed in collaboration with law enforcement, for the surrender process (in multiple languages)
- Courts should take steps to ensure that parties understand the terms and obligations imposed by orders, and how to obtain enforcement (an instruction sheet or supplemental form may be used for this purpose)
- Orders should satisfy all requirements for application of federal prohibitions on possession and purchase of firearms (found at 18 U.S.C. §§ 922(g)(8) and 921(a)(32)):
 - Include necessary language in the order
 - Include information about the qualifying relationship of the parties
 - Indicate compliance with due process requirements
 - Notify respondents about the federal firearm prohibitions (which also should be provided orally)
- Application of the federal firearm laws prohibiting purchase and possession should be further facilitated by taking the following steps:
 - Orders are entered into state/Tribal and federal databases in a timely manner
 - Personnel responsible for entry of orders follow a protocol and are trained on accurate entry of the Brady indicator
 - Disqualifying orders not eligible for entry in the NCIC Protection Order File are entered into the NICS Index
 - Where state/Tribal prohibitions apply, Protection Order Condition (PCO) code 7 is used upon entry into the NCIC POF
 - Court responds promptly to requests by NICS personnel for information concerning protection orders
 - Courts and other agencies cooperate closely with NICS on audits

1. Although the strategies described here focus on surrender or seizure of firearms as part of the CPO system, state or Tribal laws also may prohibit respondents from maintaining firearms licenses or permits, or may authorize judges to order surrender of such documents as part of a CPO. Many of the strategies described here are equally applicable to jurisdictions in which such authority exists.

Civil Attorney >

Having made its findings and entered an order for protection, the court should also order firearms surrendered and schedule a hearing or employ other appropriate means to ensure compliance with the surrender order. Counsel for petitioner should address this issue on the record at the time of entry of the final order. Without this final follow through, enforcement of the

order becomes increasingly difficult. It is therefore imperative that the court address the issue with the individual while the individual is in the courtroom.

Step Checklist

1. Request court address the firearms issue at the time of the final decision, on the record
2. Review the written order in court, if possible
3. Request follow-up hearing or other available means of ensuring compliance with the order to surrender

Judge >

The court should make all applicable firearm restriction orders under state and federal law. States provide courts with explicit or implicit authority to remove/retrieve firearms from persons subject to civil protection orders. Explicit authority is further divided into states that require judges to order firearm removal and those that authorize judges to order firearm removal. In implicit authority states, catch-all provisions typically allow judges to order any other relief necessary for the protection of a petitioner.

During the hearing, the court should affirmatively inquire of the respondent whether the respondent possesses firearms or ammunition and inquire as to the number, type, location, and storage conditions of those firearms. Careful consideration should be given as to if and how this inquiry is put to the petitioner. The court should instruct the respondent on how to dispose of the firearms; what proof must be submitted to the court to prove the firearms are no longer in the person's possession; the deadline for submitting proof of disposition; and the consequences of failing to comply with the order. The court may want to schedule a compliance hearing and require the defendant to appear with proof of disposition on that date.

Each court or jurisdiction should work with local, state, and federal law enforcement to arrange firearm surrender procedures for persons subject to the prohibitions in 18 U.S.C. § 922. The court should consider asking local law enforcement to adopt a procedure for storage of weapons and ammunition for the duration of the protective order.

Step Checklist

1. Respondents should be required to fill out a firearm form with a sworn statement of possession of firearms and/or ammunition.
2. Judge should make on record inquiry of each Respondent regarding the content of the firearm form.
3. Verify that respondent does not possess firearm or ammunition
4. If respondent possesses, clarify current status of weapon
5. Issue protection orders that include broad relief, tailored to the petitioners needs.
6. Orders should include clear, specific, readily enforceable firearms relief.
7. Orders should clearly describe firearms and ammunition to be surrendered.
8. Orders should detail when, where and how to surrender firearms to the receiving agency.
9. Notify law enforcement of respondent's against whom protection orders were issued.

10. Establish a mechanism for monitoring compliance with firearm surrender orders.
11. Ensure that orders are entered into state/Tribal and federal databases.

Advocate >

If the advocate is not allowed to address the court, then any failure to follow the surrender or compliance protocol for the jurisdiction should be pointed out to the petitioner (assuming there is not prosecutor in the courtroom).

As noted above, failure of the court to order surrender and ensure compliance with that order becomes increasingly difficult if not addressed while all parties are in the courtroom. If no one is available to speak for the petitioner, she may be required to do so herself, and address the court. This may place the petitioner in more danger, and care should be taken to discuss this situation before the hearing, if possible.

Step Checklist

1. Ensure that surrender is ordered, if appropriate
2. Ensure that the written order includes the order to surrender
3. Ensure that follow up compliance hearing or other appropriate method is included

5. Service of Process

Service of process in CPO cases by a designated law enforcement, at both the temporary/ex parte stage and upon issuance of the final order after a hearing, presents an important opportunity for officers to learn about respondents' access to firearms, notify respondents about any prohibitions on possession and/or orders to surrender, and to obtain surrender of firearms from respondents.

At the same time, the service stage may present significant danger to victims and others, including officers. Communities should consider implementing the following strategies to use the service of process stage to both protect victims and others and to enhance their response to firearms in CPO cases:

- Upon issuance of a protection order, law enforcement personnel should conduct safety planning with the victim prior to service of process and obtain information to facilitate safe service and recovery of firearms (where authorized)
- Victims should be notified about the result of the service process, including whether firearms have been surrendered
- Law enforcement agencies should conduct criminal background check on respondents to determine whether there are any outstanding warrants, domestic violence protection orders or pending charges or past convictions, and whether respondents are on probation or parole
- Serving officers should be trained specialists regarding firearms and domestic violence

- Service officers should inquire about firearms access/possession and, consistent with governing law and policy, seize or seek voluntary surrender of firearms, including taking firearms for safekeeping purposes, where authorized and appropriate under the circumstances
- A formal policy or protocol governs law enforcement's responsibilities during service of process regarding firearms
- Where authorized, the policy or protocol should mandate immediate surrender of firearms by respondents
- Agencies unsure of their legal authority to seize firearms pursuant to protection order service should obtain a legal opinion delineating their authority
- Serving officers should explain to respondents any firearm prohibitions in the order and the process for surrendering firearms to comply with such prohibitions; in addition, officers should provide written information regarding the federal and any state/Tribal prohibitions to which respondent may be subject
- An information sheet should be provided to respondent upon service regarding firearm prohibitions and instructions if surrender is ordered

Law Enforcement >

Some protection orders are not effective until they are properly served on the respondent, leaving victims of domestic violence vulnerable during a critical period. Because of the danger involved to both the victim and the officer serving the order, careful planning is required.

Officers should check the respondent's criminal history for warrants, convictions, and firearms prior to serving a protection order to ensure the safety of both the victim and the officer. Officers should seek information from the victim about respondent's habits, schedule and locations where he can be found. Document all service attempts and results, including dates and times. Establish a procedure for conducting follow-up calls to the victim when initial attempts to serve the protection order have been unsuccessful.

In some jurisdictions if personal service is unsuccessful the petitioner may request service by publication. Service by publication utilizes the newspaper to notify the respondent of the upcoming hearing and the protection order. Some courts also allow service by certified mail instead of service by publication.

Step Checklist

1. Prioritize service of protective orders to armed respondents.
2. Use trained law enforcement personnel to investigate and serve protective orders involving respondents with access to firearms.
3. Use correctional officers for service of incarcerated respondents, and probation officers for service of respondents who are on probation.
4. Communicate to respondents their options for complying with the firearm prohibition.
5. Ask whether respondents to protective orders have firearms when serving protective orders.

6. Seize any firearms in respondents' possession when serving protection orders.
7. Notify the victim and the court promptly after an order has been served.
8. Adopt policies that require the immediate entry of protection orders into databases and registries.

Civil Attorney >

It is the responsibility of petitioner's counsel to ensure that the court obtains jurisdiction over the respondent by proper service. Where it appears that the respondent may be avoiding service, alternate means may be available.

Step Checklist

1. Consult the file or check VINE or other online access to confirm that service has been properly accomplished within legal time frames
2. Petitioner may be in possession of proof of service

Advocates >

Proof of service may be in the petitioner's possession, the entity having served the respondent may have provided this to the petitioner

Step Checklist

1. Check the file or online access to confirm that service has been obtained
2. Contact petitioner to determine whether proof of service is in her possession

6. Surrender and Seizure Process, Including Compliance Monitoring

Court orders to surrender firearms are potentially powerful tools for preventing offenders' access to firearms in both the criminal and civil protection order contexts.

By mandating surrender of firearms by a time certain and imposing meaningful sanctions for non-compliance, judicial officers can maximize the likelihood that offenders will not access or possess firearms during the period in which they are legally prohibited from doing so.

However, judicial officers cannot accomplish this alone, nor are any court orders self-executing. Instead, a multi-disciplinary, multi-agency approach is necessary to ensure that orders to surrender or seize firearms are supported by a process that is seamless and effective.

Communities around the country have implemented compliance monitoring procedures that help courts and others to detect non-compliance with firearm prohibitions and surrender provisions without requiring a significant outlay of resources and without placing the burden on the victim to notify authorities or the court of respondents' failure to comply with orders.

An initial investment in establishing collaborative relationships among courts, law enforcement, prosecutors, victim advocates, and other professionals in the community can yield large dividends in the form of increased compliance with orders and a clear message that the community and court take such compliance seriously.

Communities should consider several potential approaches to establishing compliance monitoring mechanisms and to adopt those strategies that are best suited to the governing legal standards and to the procedures and other characteristics of their legal systems. For instance, in some settings the use of compliance review hearings may be the best use of the court's time and other resources, whereas in other communities a more form-intensive process with direct communication from relevant non-court agencies may be more appropriate. In designing their own process for surrender/seizure of firearms and for monitoring compliance, communities should consider adopting the following elements:

- Courts should establish the foundation for an effective process by issuing orders to surrender firearms (or use supplemental forms) that use clear and specific terms, including as to the exact firearms involved, the location of the firearms, and where, when, and how to surrender firearms to the receiving agency
- Defendants should be provided with an instruction sheet, developed in collaboration with law enforcement, for the surrender process, including information regarding:
 - Deadline to surrender
 - Where to surrender
 - How to surrender
 - Type of proof required
- Forms should be used to facilitate and monitor compliance with the surrender process, including for example a defendant/respondent's affidavit of firearms possession or non-possession; receipt or affidavit of surrender of firearms; forms returned to court by receiving law enforcement agency indicating compliance or non-compliance, etc.
- Relevant stakeholders (courts, law enforcement, prosecutors, probation, defense attorneys, victim advocates) should work together to create a collaborative mechanism to ensure that defendants comply with orders to surrender firearms
- The compliance review process should include effective means to alert court of non-compliance; some alternatives include:
 - Direct communication between accepting agency and court
 - Court sets hearing, cancelled if proof of compliance received
 - Defendant required to provide receipt or other proof of compliance
- An effective mechanism should be in place to address non-compliance, as authorized by law; some alternatives include:
 - Issuance of search and/or arrest warrant
 - Revocation of probation
 - Violation charged by prosecutor
- Agencies involved in surrender process should designate dedicated personnel to the task

- A protocol for alerting victim as to status of surrender process should be in place (including notice of failure to surrender and any subsequent court hearings/steps taken)
- Where prosecutors charge for violations of orders to surrender, a mechanism should be established for the prosecutor's office to learn about the violations (e.g., from law enforcement, probation, victims/advocates)
- Where surrender of license/permits has been ordered, the relevant state department should be involved in the development and implementation of a compliance-review process

Prosecutor >

Prosecutors will routinely be asked to advise advocates, law enforcement and others on the surrender, seizure and compliance monitoring procedures in their jurisdiction.

Prosecutors should review surrender and seizure procedures and forms for legality, and officer and victim safety concerns. Prosecutors should be actively involved in task forces created to address firearm surrender and seizure. Prosecutors can provide education to team members on the federal and state laws that govern surrender. Non-compliance procedures the prosecutor may be involved in include issuance of search or arrest warrants, probation violations issued for non-compliance and filing of violations or contempt of court for failing to comply.

Although protection orders are issued in civil court, the violation of a protection order may, depending on statutory provisions, be treated as a criminal offense or as a civil contempt of court. If violation of the protection order is a criminal offense, prosecutors should make prompt charging decisions. In making charging decisions, regard victim safety and offender accountability as paramount.

Step Checklist

1. Provide legal advice to law enforcement during their investigation of non-compliance.
2. Provide legal advice to law enforcement seeking search or arrest warrants for investigation of non-compliance with protection orders.
3. Promptly charge and prosecute violations of orders to surrender.

Civil Attorney Representing Petitioners Seeking a Protective Order >

Individuals petitioning courts for orders for protection rarely have an attorney represent them. In the case of firearm surrender orders and compliance, an attorney representing the petitioner alleviates the need for the victim to initiate compliance proceedings.

Some jurisdictions provide attorneys for victims who can't afford to hire an attorney. Attorneys are provided through legal assistance, county bar pro bono services or other volunteer attorney services.

Attorneys representing a petitioner can assist in cases where there is a dispute about whether or not the respondent has firearms. Petitioners are unlikely to know what databases or records

exist to prove firearm ownership. Attorneys can also assist the petitioner in asking the court for relief when there is failure to to comply with a surrender order. Possible relief to seek from the court includes:

1. Review hearing;
2. Search/Arrest warrant;
3. Order to show cause;
4. Referral to prosecutor for prosecution of compliance violation.

Step Checklist

1. Work with law enforcement or the courts to verify respondents' compliance with firearm seizure orders.
2. If respondent fails to comply, petition the court for relief.

Law Enforcement >

Protective orders involving respondents who are believed to own or possess firearms should be given a high priority for service. Upon being served with a domestic violence protection order, the respondent must relinquish firearms to local law enforcement for that jurisdiction or sell them to local firearms dealer within a time frame prescribed by law or protocol. Law enforcement receiving a firearm should issue a receipt to the respondent. Protocol for surrender should also include a procedure for law enforcement to notify the court of the respondent's compliance.

Step Checklist

1. Prioritize service of protective orders to armed respondents.
2. Communicate to respondents their options for complying with the firearm prohibition.
3. Enforcement of protection orders that are valid on their face.
4. Consult a variety of sources to verify existence of protections orders including NICI, state and local databases, the issuing court and the protected party.
5. Arrest for protection order violations where permitted by law.
6. Refer victims to individuals who can help with civil or criminal contempt proceedings for non-arrestable violations of the order.
7. Develop forms, policies, and protocols for surrender and seizure of firearms.

Probation Officer >

Community corrections professionals play a critical role in enforcing civil protection orders issued to protect victims of offenders under supervision and have a number of tools at their disposal.

- In the regular course of supervision, make periodic inquiries of available information sources (e.g., NCIC, state registries, and state, regional, and local databases) to identify offenders subject to protection orders and document reported violations.
- In discussions with victims, ask if an order exists, explain the limitations of the order, and advise them how they can report violations to the community supervision officer and a law enforcement officer or the prosecutor.

- Facilitate enforcement by contacting law enforcement and/or the prosecutor to ensure they take appropriate action on reported violations.
- Facilitate enforcement by holding the offender accountable for behavior that violates a protection order.
- Consider initiating proceedings to revoke the offender's pretrial release privilege or probation when offenders are charged with violating a protection order.
- Initiate proceedings to revoke the offender's pretrial release privilege or probation when offenders are convicted of violating a protection order or a court finds the offender to be in contempt for violating a protection order.

Step Checklist

1. Offenders should not be permitted to possess firearms while on supervision if they are prohibited from doing so. This should be a standard inquiry on intake and if possible, should be a rule of supervision

7. Storage of Firearms

Ideally, any firearms seized from or surrendered by prohibited individuals should be stored under control of a designated law enforcement agency.

Some communities encounter challenges related to the proper storage and maintenance of seized and surrendered firearms, including a lack of adequate storage space and the need to store what may be very valuable firearms in a climate-controlled environment.

To overcome these obstacles, communities have pursued a range of creative strategies, including:

- Using existing, but under-utilized or capacious storage facilities, including National Guard armories, shooting ranges, etc.
- Entering into contracts with federally licensed firearms dealers to store and maintain firearms, with fees passed on to the prohibited individuals
- Allowing law enforcement agencies themselves to charge a fee for storage
- Granting immunity to law enforcement agencies storing firearms from liability for damage to stored firearms (absent recklessness, gross negligence, or intentional misconduct)

No matter what storage method is employed by a community, the responsible agencies should implement a protocol for release of firearms to the prohibited person or an eligible third-party, including background checks and other safeguards (see Return of Firearms for more details).

Law Enforcement >

Law enforcement serves initially as contact person for surrender arrangements with defendant. Documents firearms from defendant when surrendered. Documents condition of firearms when surrendered (digital photograph). Cares for firearms as appropriate. Returns firearms or arranges for destruction.

Identify or build structures to store firearms removed from prohibited people. These facilities should control for temperature and humidity, and firearms should be stored in such a manner as to prevent rust, scratches, stains, and other damage. Alternatively, contracting with licensed firearms dealers, or allowing respondents to surrender to a licensed firearms dealer – who is better equipped to store firearms in a manner to prevent damage – may help alleviate the burden on law enforcement to maintain stored firearms in good condition. Respondent may sell or transfer all firearms and ammunition to a third party not residing with the respondent, provided the third party is approved by the court. A notarized copy of an affidavit evidencing such transfer should be filed with the court and any concealed weapon permit should be surrendered to the police.

Law enforcement shall not release firearms, ammunition, or permits without a court order granting the release.

Step Checklist

1. Document firearm condition during surrender.
2. Store firearms in climate controlled facility to prevent damage.
3. Charge for the cost of storage.
4. Do not release firearm without court order.

Prosecutor >

Law enforcement serves initially as a contact person for surrender arrangements with the defendant. Documents firearms from the defendant when surrendered. Documents condition of firearms when surrendered (digital photograph). Cares for firearms as appropriate. Returns firearms or arranges for destruction.

Identify or build structures to store firearms removed from prohibited people. These facilities should control for temperature and humidity, and firearms should be stored in such a manner as to prevent rust, scratches, stains, and other damage. Alternatively, contracting with licensed firearms dealers, or allowing respondents to surrender to a licensed firearms dealer – who is better equipped to store firearms in a manner to prevent damage – may help alleviate the burden on law enforcement to maintain stored firearms in good condition. Respondents may sell or transfer all firearms and ammunition to a third party not residing with the respondent, provided the third party is approved by the court. A notarized copy of an affidavit evidencing such transfer should be filed with the court and any concealed weapon permit should be surrendered to the police.

Law enforcement shall not release firearms, ammunition, or permits without a court order granting the release.

Step Checklist

1. Document firearm condition during surrender.

2. Store firearms in climate controlled facility to prevent damage.
3. Charge for the cost of storage.
4. Do not release firearm without court order.

8. Third-Party Transfer of Firearms

For many offenders, transfer of firearms to a third party who is eligible to receive and possess firearms is preferred over surrendering the firearms to a law enforcement agency or federally licensed dealer.

Such transfers may be safe and achieve the goals of an order to surrender possession of firearms, but they do present the possibility that the prohibited person will retain access to the firearms if the transfer is a sham, or if the third party does receive the firearms but nonetheless permits the prohibited person to access them while the prohibition on possession is in place.

To prevent third-party transfers from enabling prohibited persons to maintain access to firearms, communities should consider implementing the following strategies:

- Relevant stakeholders (courts, law enforcement, defense attorneys, victim advocates) should develop and implement a collaborative mechanism to ensure that transfer of firearms to an eligible third party is done safely and in compliance with all governing laws
- A protocol for third-party transfer should be developed and implemented by courts and other relevant agencies, including law enforcement
- An affidavit/acknowledgement form should be developed, including the following elements:
 - Numerical identifiers for third party to facilitate background check
 - Signatures by the defendant and the third party required
 - Directive not to permit possession of firearms by the prohibited person
 - Notice and explanation of criminal liability under applicable state law and federal law for doing so
- Defendant and third party both must be present in court prior to any transfer and oral and written warnings are provided regarding:
 - Directive not to permit possession of firearms by the prohibited person
- Criminal liability under applicable state law and federal law for doing so
- A full criminal background check is conducted on the third party prior to transfer (facilitated by requiring transfer through law enforcement or a federally licensed dealer)
- Victims are provided with an opportunity to object to the third-party transfer on safety grounds
- Victims are notified of third-party transfers and to whom the firearms have been transferred
- Probation department implements a protocol requiring monitoring of whether defendant gains access to transferred firearms and setting forth a process for addressing violations

Judge >

Surrender to a third party carries inherent potential for fraud. This can lead to extremely tragic outcomes. When done properly, however, third party surrender can have a positive effect in the form of involving one more party in the relationship.

Recommended procedures to reduce the potential for fraud include: ordering the initial surrender of all firearms to law enforcement, holding a hearing at which time the court addresses the third party personally on the record, requiring the court to place findings on the record, serve order on third party, require law enforcement to conduct a background check on the third party before releasing the firearms.

Step Checklist

1. Order firearms surrendered to law enforcement
2. Schedule hearing for third party, notice to petitioner
3. At hearing place 3rd party under oath, colloquy on record, full name and d.o.b.
4. Opportunity for petitioner to object
5. Prepare and serve order on 3rd party, copy to law enforcement

Evidence Technician >

If the third party is approved by the court, the evidence technician receives a copy of the order to release guns to that party. The third party then contacts the technician to schedule time to pick the guns up. The technician should run a background check prior to arranging for pick up. Third party must show ID before guns are released.

Step Checklist

1. Upon receipt, document firearms surrendered
2. Upon notification from court, run background check
3. When contacted by 3rd party, schedule time to pick up
4. Document guns released
5. Notify court if 3rd party denied

9. Return of Firearms

When a court order or other legal prohibition on possession of firearms expires, the previously prohibited person may have a right to regain possession of his or her firearms that have been held by a law enforcement agency, licensed firearms dealer, or individual third party.

The return of firearms should not be automatic, however: despite the expiration of the particular prohibition, the individual may remain ineligible to possess weapons due to a different existing prohibition (for instance, a civil protection order may have expired but the individual may have

been convicted of a disqualifying misdemeanor crime of domestic violence, or he or she may be subject to a different state, Tribal, or federal prohibition.)

In some jurisdictions, a statutory scheme for the return of firearms has been enacted; in others, stakeholders will need to consider how best to handle requests for returns under existing authority.

To prevent return of firearms to an ineligible individual, and to protect the safety of the victim, communities should consider implementing the following suggested practices:

- Relevant stakeholders (courts, law enforcement, defense attorneys, victim advocates, etc.) should develop and implement a collaborative mechanism to ensure that return of firearms to defendant is done safely and in compliance with all governing laws
- The individual subject to the prohibition should be required to petition court for return of firearms (where authorized by law) and the decision to return firearms should only be made after a hearing to consider the propriety of returning the firearms
- The individual seeking return of firearms should be required to fill out an affidavit (equivalent to the affidavit required to purchase a firearm, ATF Form 4473) prior to return of firearms
- Firearms should not be returned unless a criminal background check indicates no state/Tribal or federal prohibitions
- The victim should receive notice of hearing regarding return of firearms, with participation optional
- The victim should receive notice once any firearms have been returned to the previously prohibited individual

Judge >

The court should conduct a hearing if the respondent has requested by written motion to have firearms and ammunition returned. The scope of the hearing should include:

1. Determining whether the respondent is subject to any state or federal law or court order that precludes the respondent from owning or possessing a firearm or ammunition; and
2. Where the petitioner has requested an extension of the protection order, whether the petitioner has established by preponderance of the evidence that the respondent continues to represent a credible threat to the safety of the petitioner.

In determining whether there is cause to deny respondent's request for return of firearms, the Court must review the respondent's record for an indication about whether the respondent is subject to any state or federal prohibitions.

Step Checklist

1. Court determines if the protective order has expired
2. Court then sends order to law enforcement to conduct background check on individual
3. Law enforcement determination sent to court

4. Court enters appropriate order, either return or do not return firearms to the individual

Evidence Technician >

In jurisdictions which require destruction of firearms that cannot be returned or are not claimed, the evidence technician should commence the procedure for destruction following the law of the jurisdiction, usually requiring notice to the individual.

Where return is appropriate, the evidence technician should contact the individual to arrange return of firearms pursuant to local protocol. This includes a background check before returning the firearms, identification of the individual, and documentation that firearms are returned

Step Checklist

1. Conduct background check of individual
2. Contact individual to arrange for return
3. Document return of firearms
4. Local law may require return of all receipts to the individual

Coordinate and Collaborate to Improve Enforcement of Federal Firearm Prohibitions

Coordinate and Collaborate to Improve Enforcement of Federal Firearm Prohibitions

All levels of local/state/Tribal/federal governments work jointly to make sure that federal firearm prohibitions are enforced to disarm and prosecute abusers, especially where state or Tribal laws are lacking.

Federal law prohibits certain individuals from possessing or purchasing firearms, including individuals who have been convicted of a qualifying misdemeanor crime of domestic violence (MCDV) and individuals who are subject to a qualifying domestic violence protection order. Individuals who have been convicted of an MCDV are prohibited from possessing or purchasing firearms under 18 U.S.C. § 922(g)(9), which includes the following requirements:

- The misdemeanor is a crime under state, Tribal or federal law.
- The crime for which the offender was convicted contained one of the following elements: the use or attempted use of physical force or the threatened use of a deadly weapon.
- The defendant was represented by counsel or knowingly and intelligently waived the right to counsel.

- In jurisdictions where the defendant was entitled to a jury trial, the case was tried by a jury or the defendant knowingly and intelligently waived the right to a jury trial by guilty plea or otherwise.
- The misdemeanor must have been committed by a person who, at the time of commission of the crime, was a current or former spouse, parent, or guardian of the victim, or was a parent of a child of the victim, or had cohabited or formerly cohabited with the victim as a spouse, parent or guardian, or was similarly situated to a spouse, parent, or guardian of the victim.
- The prohibition is permanent unless the defendant has had the conviction set aside or expunged, was pardoned, or had civil rights restored (i.e., the right to sit on jury, the right to vote, and the right to hold public office).

Purchase Prevention

Individuals who are subject to a qualifying domestic violence protection order are prohibited from possessing or purchasing firearms under 18 U.S.C. § 922(g)(8), which includes the following requirements:

- The person subject to the order must have notice and an opportunity to be heard; and
- The order must restrain the person from harassing, stalking, or threatening an intimate partner of the person or a child of the person or the intimate partner; or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
- The order must include either a finding that the person subject to the order represents a credible threat to the physical safety of an intimate partner or child or a prohibition against the use, attempted use or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury.
- The term “intimate partner” is defined as “a current or former spouse, a current or former cohabitant with the person subject to the protection order” or an individual who is a parent of a child of the person against whom the order was issued. 18 U.S.C. §921(a)(32)

These federal firearm statutes can be potent tools for protecting victims of domestic violence from further harm and holding dangerous offenders accountable. In addition to providing the basis for convictions that may result in the imprisonment of the offender, these statutes may also enable federal authorities to order relinquishment and seizure of firearms, even when state law does not authorize such action. In addition, in many instances convictions under these statutes can result in penalties far more severe than those available under state law. Effective enforcement of the federal firearm prohibitions, however, is no simple task. Successful prosecutions and seizure actions often require close collaboration among officials at the local, state, Tribal, and federal levels. In many instances, information and evidence indicating a violation of the federal prohibitions may be known only to local or Tribal officials, while their federal counterparts, who may have the exclusive authority to take action under the federal

laws, remain unaware of the federal offense. By establishing a coordinated approach to addressing domestic violence related firearm offenses, including improving communication and information sharing among relevant agencies at all levels of government, communities can take full advantage of the federal firearms prohibitions to protect victims and hold offenders accountable.

Collaborative initiatives in this arena may take on many different forms. For instance, one approach followed in some jurisdictions is the convening of a task force or similar collaborative working group consisting of local, state, Tribal, and federal authorities for purposes of:

- developing protocols and/or memoranda of understanding for triaging cases for intervention by authorities at the appropriate level (local vs. state vs. Tribal vs. federal)
- ensuring that protection order and criminal proceedings in state/Tribal courts result in orders and/or convictions that satisfy requirements for federal firearm prohibitions
- providing training to professionals in all relevant disciplines on firearms and domestic violence, including the federal laws.

Another approach that has met with success is the cross-deputization of local, state, or Tribal prosecutors and/or law enforcement officers as federal prosecutors/officers. A single person assuming both roles is ideally positioned to identify cases for further investigation, to investigate the cases or to ask others to investigate them, and to decide (or make appropriate recommendations about) whether to pursue a prosecution at the state/Tribal level or in federal court.

Cross-Deputization

Cross-deputization has been a key component of the U.S. Department of Justice's (U.S. DOJ) Tribal Special Assistant U.S. Attorney (SAUSA) program. Under the program, Tribal prosecutors are cross-deputized as SAUSAs and therefore are able to prosecute crimes in both Tribal court and federal court, as appropriate. In 2012, the U.S. DOJ's Office on Violence Against Women (OVW) established the Violence Against Women Tribal SAUSA Pilot Project to increase the use of Tribal SAUSAs in cases involving violence against Native women. OVW granted awards to four tribes in Nebraska, New Mexico, Montana, North Dakota, and South Dakota to fund cross-designated Tribal prosecutors. The goal of the Tribal SAUSA Pilot Project was "to increase the likelihood that every viable criminal offense is prosecuted in Tribal court, federal court or both. The program enabled Tribal prosecutors to bring violence against women cases in federal court and to serve as co-counsel with federal prosecutors on felony investigations and prosecutions of offenses arising out of their respective Tribal communities." SAUSAs under the project have brought several successful federal prosecutions for firearms-related domestic violence crimes that occurred on Tribal lands.

Communities developing a coordinated approach seem to have the best success in combating these crimes. Creation of formal lines of communication and information-sharing among participants at all levels of government is critical. This may include either formal or informal

agreements that delineate the various participants' roles and responsibilities and establish mechanisms for making and responding to referrals for investigation by federal officials.

Purchase Prevention

Prevent Perpetrators Subject to Legal Prohibitions from Purchasing Firearms and Ammunition
All systems work together to prevent purchase of firearms by perpetrators who are legally prohibited from possessing firearms by making sure that information about criminal history and protection orders is readily available to those responsible for conducting criminal background checks.

The primary mechanism in place to prevent prohibited individuals from purchasing firearms is the Federal Bureau of Investigation's (FBI) National Instant Criminal Background Check System (NICS).

Under the permanent provisions of the Brady Handgun Violence Prevention Act (Brady Act,) which took effect on November 30, 1998, federally licensed firearm dealers may not sell a firearm to an individual without initiating a background check to ascertain whether the transfer would violate state or federal law (unless the individual possesses a valid state-issued permit that exempts him or her from a NICS check at the point of sale). Under the law, firearm dealers may transfer a firearm to the purchaser if there has been a "proceed" issued by NICS or a "delay" issued by NICS that is not resolved within three business days. If the FBI determines, after the three business days have elapsed, that an individual to whom a firearm was transferred is in fact prohibited from receiving or possessing a firearm, the FBI refers the case (called a "delayed denial") to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) for possible retrieval of the firearm—a potentially dangerous scenario to be avoided.

To facilitate the NICS check, the dealer provides identifying information about the individual to the FBI, so that a search of three national databases may be conducted. The three databases are:

- **The Interstate Identification Index (III):** The III contains criminal history records submitted by state and federal agencies, specifically information on individuals indicted for, or who have been convicted of, a crime punishable by imprisonment for a term exceeding 1 year or who have been convicted of a misdemeanor crime of domestic violence (MCDV).
- **The National Crime Information Center (NCIC):** NCIC consists of 21 separate files (7 property files and 14 person files) made available to law enforcement and criminal justice agencies around the country. One of the files, the Protection Order File, contains information about individuals subject to protection orders issued by state and Tribal courts.

- **The NICS Index:** The NICS Index was developed by the FBI specifically for use in conducting NICS background checks. It contains information on individuals who have been ascertained to be prohibited under state, Tribal, or federal law from possessing or receiving a firearm. Protection orders not otherwise eligible for entry into the NCIC POF may be entered into the NICS Index if the determination is made that the order disqualifies the respondent from possessing or receiving a firearm. Likewise, MCDV-related court records may be entered into the NICS index.

The effectiveness of the NICS depends critically upon the timeliness, comprehensiveness, and accuracy of information submitted by states, Tribes, and federal agencies to the three national databases. Communities can adopt practices and policies for the relevant agencies (courts and law enforcement, primarily) to ensure that information about MCDVs and civil and criminal protection orders that meet the requirements of the federal firearm prohibitions are made accessible to the NICS through the national databases.

Misdemeanor Crimes of Domestic Violence

In criminal domestic violence cases, information regarding the offense of conviction should be included in charging documents, plea agreements, conviction orders, and other official court documents, and accurate information should be transmitted to state and federal criminal history databases indicating that a criminal conviction meets the federal definition of a misdemeanor crime of domestic violence under 18 U.S.C. § 922(g)(9).

Official court records (ideally, a standard record of conviction form) should include all information necessary to indicate that the offense of conviction is a predicate offense for application of the federal firearms prohibition at 18 U.S.C. § 922(g)(9), including:

- The actual elements of the applicable criminal statute under which the defendant was convicted
 - This is especially important where the criminal statute is multi-pronged or “disjunctive” and not all alternative elements satisfy the requirements of the federal law (18 U.S.C. § 922(g)(9)); a citation to the general statute will not be sufficient
- The qualifying intimate partner relationship between the parties, if available;
- That the defendant was represented by an attorney or knowingly and intelligently waived representation; and
- That the defendant had a trial by jury or knowingly and intelligently waived that right
- Records of conviction should be transmitted to the Interstate Identification Index (III) in a timely fashion
- The relationship between the victim and offender, as well as the specific subsection of the offense of conviction should be denoted on the face of the III record; this facilitates a quick and efficient determination for NICS purposes

Alternatively, any MCDV information not eligible for entry in the III should be entered into the NICS Index

Court and other agencies should respond promptly to requests by NICS personnel for information concerning criminal convictions, especially in light of the strict three-business-day limit imposed upon the NICS

Courts and other agencies should cooperate closely with the NICS Section on audits

Protection Order Cases

In civil and criminal protection order cases, qualifying orders should be indicated as meeting the requirements of the federal prohibition for protection orders under 18 U.S.C. § 922(g)(8), and all such orders should be entered immediately into state/Tribal registries and the federal National Crime Information Center Protection Order File (NCIC POF).

- Orders should satisfy all requirements for application of federal prohibitions on possession or receipt of firearms (found at 18 U.S.C. §§ 922(g)(8) and 921(a)(32)):
 - Include necessary language in the order
 - Include information about the qualifying relationship of the parties (the relationship need not be included in the submitted order as long as the qualifying relationship is met)
 - Indicate compliance with due process requirements
 - Notify respondents about the federal firearm prohibitions (which also should be provided orally)
- Application of the federal laws prohibiting possession or receipt of firearms should be further facilitated by taking the following steps:
 - Orders are entered into state/Tribal and federal databases in a timely manner
 - Personnel responsible for entry of orders follow a protocol and are trained on accurate entry of the Brady indicator (a “field code,” or marker used upon entry of a protection order into the NCIC POF to indicate whether that order prohibits the respondent from possessing or purchasing a firearm under federal law)
 - Disqualifying orders not eligible for entry in the NCIC POF are entered into the NICS Index
 - Where state/Tribal prohibitions apply, Protection Order Condition (PCO) code 7 is used upon entry into the NCIC POF
 - Court responds promptly to requests by the NICS Section’s personnel for information concerning protection orders, especially in light of the strict three-business-day limit imposed upon NICS
 - Courts and other agencies cooperate closely with the NICS Section on audits

