

# Frequently Asked Questions (FAQs): 2014 Minnesota Domestic Violence Firearm Law<sup>i</sup>



## 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 (OPFs)**<sup>ii</sup>
- **Qualifying Domestic Child Abuse Orders**<sup>iii</sup>
- **Domestic Assault Convictions** (domestic assault, assault first through fifth degree and assault by strangulation against family or household member).<sup>iv</sup>
- **Stalking Convictions**<sup>v</sup>
  - 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.<sup>vi</sup>

### 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."<sup>vii</sup>

### WHAT IS REQUIRED FOR QUALIFYING OFF 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;<sup>viii</sup> **AND**
- The order must inform the abusing party of his responsibilities under the order;<sup>ix</sup> **AND**
- The language of the order must <sup>x</sup>:

#### **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.<sup>xi</sup>
  - If court determines there is an imminent risk: immediately after court order.<sup>xii</sup>
- **Domestic Assault and Stalking**
  - If court does not determine imminent risk: 3 business days after court order.<sup>xiii</sup>
  - If court determines there is an imminent risk: immediately after court order.<sup>xiv</sup>
  - If firearm used during the assault or stalking, the firearm in question must be summarily forfeited under Minn. Stat. section 609.5316, subdivision 3.<sup>xv</sup>

### **FOR HOW LONG MUST FIREARMS BE SURRENDERED/TRANSFERRED?**

- **Qualifying OFPs**
  - For the length of time the order is in effect.<sup>xvi</sup> The standard time for an OFP is 2 years.
- **Qualifying Domestic Child Abuse Orders**
  - For the length of time the order is in effect.<sup>xvii</sup> 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<sup>xviii</sup>
  - If no firearm used during assault or stalking: 3 years from date of conviction<sup>xix</sup>

### **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<sup>xx</sup>

### **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<sup>xxi</sup>
- What documentation of a third party transfer is required?
  - The third party must sign an affidavit under oath before a notary public<sup>xxii</sup>
- 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.<sup>xxiii</sup>
  - 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.<sup>xxiv</sup>
  - The affidavit must list:
    - Serial number of transferred firearms,
    - Make of transferred firearms,
    - Model of transferred firearms.<sup>xxv</sup>

## **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.”<sup>xxvi</sup>
- 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.<sup>xxvii</sup>

## **WHAT IS THE TIMELINE FOR AN ABUSING PARTY/DEFENDANT TO FILE PROOF OF SURRENDER/TRANSFER OR 3<sup>rd</sup> 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.<sup>xxviii</sup>

## **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.<sup>xxix</sup>

## **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.<sup>xxx</sup>
- 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.<sup>xxxix</sup> Immediate surrender cases include:
  - In qualifying OFP or Domestic Child Abuse Order when the court finds imminent risk of substantial bodily harm.<sup>xxxix</sup>
  - In domestic assault, assault, assault by strangulation and stalking convictions when the court finds imminent risk of substantial bodily harm.<sup>xxxix</sup>
  - In domestic assault, assault, assault by strangulation and stalking convictions, if firearm was used during the commission of the crime.<sup>xxxix</sup>

### **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.<sup>xxxix</sup>

### **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.<sup>xxxix</sup>

### **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.<sup>xxxix</sup>
- 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.<sup>xxxix</sup>
- 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.<sup>xxxix</sup>

### **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.<sup>xl</sup>

## **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.<sup>xli</sup>
  - 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.<sup>xlii</sup>

## **IV. INELIGIBLE PERSONS**

### **WHAT DOES IT MEAN TO BE AN INELIGIBLE PERSON?**

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

### **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, 5<sup>th</sup> 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.<sup>xlv</sup>
- Conviction in another state of committing an offense similar to assault in the 5<sup>th</sup> 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.<sup>xlvi</sup>
- 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.<sup>xlvii</sup>

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

- Abusing parties in Qualifying OFPs<sup>xlviii</sup>
- Abusing parties in Qualifying Domestic Child Abuse Orders<sup>xlix</sup>
- Perpetrators with Domestic Assault convictions<sup>l</sup>
- Persons that have been disqualified per 18 USC 922 (g)(8) and (g)<sup>li</sup>
  - 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.<sup>lii</sup>

- 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<sup>liii</sup>  
 ----"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.<sup>liv</sup>

#### WHAT IS THE PENALTY FOR POSSESSING FIREARMS WHILE INELIGIBLE?

- Gross misdemeanor.<sup>lv</sup>

## V. OUTSTANDING QUESTIONS & CONCERNS

#### LENGTH OF PROHIBITORY PERIOD IN THE CASE OF DOMESTIC ASSUALT 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 the 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?

---

<sup>i</sup> 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](#).

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

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

<sup>iv</sup> § 609.2242(3); H.F. 3238, ll. 8.13-11.10.

<sup>v</sup> § 609.749(8); H.F. 3238, ll. 11.11-13.32.

<sup>vi</sup> § 609.2242(3)(f), 609.749(8)(e); H.F. 3238, ll. 10.2-10.3, 12.26-12.27.

<sup>vii</sup> § 97A.015(19).

<sup>viii</sup> § 260C.201(3)(d), 518B.01(a). H.F. 3238, ll. 2.17-2.18, 4.16-4.17, 6.16.

<sup>ix</sup> § 260C.201(3)(d), 518B.01(g); H.F. 3238, ll. 2.24-2.25, 6.22-6.23.

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

<sup>xi</sup> § 260C.201(3)(d)(2), 518B.01(6)(g); H.F. 3238, ll. 2.25-2.28, 6.23-6.26.

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

<sup>xiii</sup> § 609.2242(3)(f), 609.749(8)(e); H.F. 3238, ll. 9.15-9.20, 12.5-12.9.

<sup>xiv</sup> § 609.2242(3)(h), 609.749(8)(g); H.F. 3238, ll. 10.26-10.27, 13.12-13.14.

<sup>xv</sup> § 609.2242(3)(b), 609.749(8)(d); H.F. 3238, ll. 8.21-8.24, 12.1-12.4.

<sup>xvi</sup> § 518B.01(6)(b); H.F. 3238, ll. 5.33-5.34, 6.17.

<sup>xvii</sup> § 260C.201(3)(a); H.F. 3238, ll. 2.1-2.2, 2.19-2.20.

<sup>xviii</sup> § 609.2242(3)(c), 609.749(8)(a); H.F. 3238, ll. 8.25-8.28, 11.12-11.16.

<sup>xix</sup> § 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)9e), 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)9e), 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)9e), 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)9e), 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).