

Faribault Police Department

Policy #: 315	Subject: Prohibited Possession of Firearms – Domestic Violence and Restraining Orders
Issued by: Chief Andy Bohlen	
Personnel: All Personnel	Date Issued: November 13, 2014

Policy

It is the policy of the Faribault Police Department to protect lives while enforcing the law and to guide its officers in the safe and reasonable performance of their duties. To accomplish these goals, the following policy is provided to give guidance to officers on proper enforcement of laws that prohibit certain persons subject to domestic violence restraining orders from possessing weapons and requiring persons convicted of domestic violence offenses to surrender their firearms while they are prohibited from possessing firearms.

Scope

This policy applies and is distributed to all full-time peace officers and part-time peace officers of this department engaged in the discharge of official duties, whether within or outside the city limits of Faribault, Minnesota.

Authority

The authority for this policy is established by Minn. Stat. 260C.201 (Domestic Child Abuse); Minn. Stat. 518B.01 (Order for Protection); Minn. Stat. 609.2242 (Domestic Assault); Minn. Stat. 609.749 (Stalking); and Minn. Stat. 624.713 (Certain Persons Not to Possess Firearms).

Legislative changes require the courts to issue orders to domestic child abusers, domestic abusers, persons convicted of domestic assault and persons convicted of stalking, to surrender their firearms to a law enforcement agency, a federally licensed firearms dealer or a third party.

Definitions

A. **Domestic Violence Restraining Orders** – Provisions in Minnesota statutes require the court when issuing restraining orders under Minn. Stat. 260C.201 (Domestic Child Abuse) or Minn. Stat. 518B.01 (Order for Protection) to order the restrained person to surrender firearms and permits to carry or purchase firearms if the court finds the restrained party represents a credible threat to the physical safety of the protected party. An order granting relief that was issued after a hearing of which the abusing party received actual notice and which the abusing party had the opportunity to participate, shall prohibit the abusing party from possessing firearms for the length the order is in effect. The order shall direct the abusing party to transfer any firearms that the person possesses to a federally licensed firearms dealer, a law enforcement agency or a third party who may lawfully receive them. A law enforcement agency is not required to accept an abusing party/respondent's firearms under this paragraph.

B. **Domestic Abuse Convictions and Firearms** - When persons are convicted of Domestic Assault under Minn. Stat § 609.2242 or any other assault against a family or household

member (includes Assault 1, Assault 2, Assault 3, Assault 5, Domestic Assault Strangulation) or are convicted of Stalking under Minn. Stat. § 609.748, the court must order them to transfer any firearms they possess to a federally licensed firearms dealer, a law enforcement agency or a third party who may lawfully receive them. The transfer must occur within 3 business days unless the court finds the defendant is an imminent risk of causing substantial bodily harm to another, in which case the court must order the local law enforcement agency to take immediate possession.

- C. **Authorized Recipients of the Firearms** – Defendants may choose to whom they surrender their firearm(s). The statute allows the transfer to: a local enforcement agency, a federally licensed authorized dealer, or a third party who does not reside with the abusing party/defendant.
- D. **Transfers** – Within three business days, Defendants must transfer their firearms permanently or temporarily depending on the court order. If the court determines there is an imminent risk, law enforcement will be ordered to take immediate possession of the firearm(s).
- E. **Firearm** – The Federal definition of firearm is any weapon (including a starter gun) which will expel a projectile; by means of an explosive or is designed or may be readily converted to do so. Minnesota statutes defines firearm as a gun that discharges shot or a projectile by means of an explosive, a gas, or compressed air Minn. Stat. § 97A.015, subd. 19. Some Minnesota courts have ruled that, under this definition, rifles, shotguns, handguns (both pistols and revolvers), muzzleloaders and BB guns are firearms. However paintball guns are not considered firearms.
- F. **Reasonable Storage Fee** – Actual expenses a city incurs for storage of firearms to include the cost of storage space and staff time to process related paperwork. The storage fee should not normally be so high that it exceeds the value of the firearm. Agencies should periodically review their fee schedule to insure their storage fee covers the city's actual costs. Agencies should give consideration to releasing firearm(s) only after the reasonable storage fee is paid.

Procedure

- A. Intake Procedure – Surrendered Firearms:
 - 1. A copy of the Court Order is required prior to accepting the transfer of firearms.
 - 2. The abusing party/respondent must arrange for the transfer within three business days.
 - 3. A law enforcement agency is not required to accept firearms in every situation. Factors to consider might be jurisdiction for any underlying criminal prosecution(s), county of residence for the petitioner and/or respondent. All decisions to reject must be approved by a supervisor.
 - 4. The department may charge a reasonable storage fee for firearms held under the provisions of this policy.
 - 5. Only a licensed peace officer may accept firearms from an abusing party/respondent with the respective court order.

6. Due to limited storage space at the Faribault Police Department, the party surrendering firearms should be encouraged to seek an eligible third party to receive the firearms if possible
7. Surrendered firearms will be received by an officer, by appointment, during regular business hours or at others times at the discretion of the accepting law enforcement agency.
8. The party surrendering weapons to a law enforcement agency shall receive instructions on proper procedure for the safe surrender of weapons:
 - a. The party should be directed to not bring firearms into the department but rather comply with specific instructions provided by the law enforcement agency.
 - b. When directed, the firearms should be delivered to the law enforcement agency enclosed in a carrying case for firearms.
 - i. The firearms must be completely contained in gun cases made expressly for that purpose.
 - ii. The cases must be zipped, buckled, tied or otherwise fastened, with no portion of the firearm exposed.
 - c. All firearms must be unloaded. This means having no shell or cartridge in the chamber of the firearm or in any magazine attached to the firearms.
 - d. Caps must be removed from a percussion muzzle loading firearm or have the flash pan cleaned of powder from a flint locked muzzle loading firearm.
9. The receiving officer shall complete the Surrendered Firearms Receipt form (See Appendix A) ensuring the following information is included as required by the Court:
 - a. Whether the firearm(s) is to be temporarily or permanently transferred;
 - b. The defendant's name;
 - c. Date of the transfer to the department;
 - d. Serial number of all surrendered firearms;
 - e. Make of all surrendered firearms;
 - f. Model of all surrendered firearms;
 - g. Brief description and condition of the firearm(s).
10. Once completed, a copy of the Surrendered Firearms Receipt form is given to the defendant to file with the Court.
11. The receiving officer will make the weapon safe, secure and package the firearm(s) pursuant to Evidence Intake guidelines and protocols. No ammunition will be accepted.
12. Property Room personnel will store the surrendered firearm(s) pursuant to Evidence Intake guidelines and protocols.
13. Accepting the surrendered firearm(s) gives the department the lawful authority to possess the firearm(s); it does not transfer ownership or title to the department.
14. All staff will use due care to preserve the quality and function of the transferred firearm(s).

B. Immediate Possession of Firearms - Imminent Risk Involved

1. The court may order (See Appendix B) the department to take immediate possession of a defendant's firearm(s).
2. A licensed peace officer will be assigned the case and will create a case number. Only a licensed peace officer may accept surrendered firearms from a defendant.
3. Due to the risks of firearms being delivered to the department or seized from private residences, the assigned officer will give due consideration to the variety of safety concerns. The assigned officer should initiate contact with the defendant, arranging for the safest means of firearm(s) surrender.
4. The difficulties in knowing with certainty the full extent of a defendant's firearms inventory are acknowledged. The assigned officer will attempt to insure the abusing party/respondent complies with the Order. If the abusing party/respondent refuses to comply with the order every effort, including a consent search or possibly seeking a search warrant, will be initiated to ensure the court order is carried out.
5. Within three (3) business days of the court ordering the immediate transfer of the firearm(s), defendants may request the transfer of their firearms(s) from the department to a federally licensed firearms dealer or a third party, who may lawfully receive them.
 - a. A licensed peace officer will facilitate the transfer;
 - b. Prior to transfer the officer will require the federally licensed firearm dealer or third party who may lawfully receive them, to complete a Minnesota Uniform Firearm Application/Receipt Permit to Purchase/Transfer;
 - c. Once the application is completed, the department has two business days to file the completed application to purchase/transfer with the respective courts.

C. Out of Jurisdiction Compliance

1. Notwithstanding a court order to the contrary, police agencies are responsible for the enforcement of firearm surrender orders when the respondent resides in the agency's jurisdiction.
2. When the court orders the firearm(s) must be turned over only to law enforcement, police agencies are only required, notwithstanding a court order to the contrary, to store firearms turned over by defendants/respondents residing within their jurisdiction.
3. Officers tasked with enforcement of a surrender order, when learning the firearm(s) is located in another jurisdiction, will share that information with the pertinent law enforcement agency to aid in the order's enforcement.
4. Officers asked to assist another law enforcement agency with the enforcement of a firearm surrender order shall provide reasonable assistance so as to help aid the order's enforcement.

D. Return, Abandonment or Forfeiture of Firearms

1. Upon receipt of a court order, the department will return the surrendered firearms(s) to the abusing party/defendant so long as the abusing party/defendant is not otherwise prohibited from possessing firearms under State or Federal law.

2. An assigned officer will facilitate the release of the firearms(s) pursuant to the court order, complying with State and Federal law and department protocol.
3. On requests to transfer to a third party the assigned officer will conduct a records check to ensure the third party is eligible to receive the firearm(s).
4. The assigned officer will have the Defendant inspect the firearm(s) before returning and have the defendant acknowledge the firearms are in the same condition as when turned in, except for reasonable wear and tear including the deterioration of firearms that may occur during prolonged storage periods.
5. If a temporarily transferred firearm is abandoned, the department will notify the abusing party/defendant via certified U.S. mail prior to the disposal of the abandoned firearms(s) pursuant to department protocol.
6. If the court order indicates that the firearms(s) transfer is permanent, the firearm(s) will not be returned to the Defendant and will be disposed of pursuant to forfeiture and/or department protocol.

FARIBAULT POLICE DEPARTMENT

PROHIBITED POSSESSION OF FIREARMS

PURSUANT TO COURT ORDER – INTAKE AND RECEIPT

The authority for this transfer of firearm(s) is established under Minn. Stat. 260C.201 Domestic Child Abuse;
Minn. Stat. 518B.01 Order for Protection; Minn. Stat. 609.2242 Domestic Assault;
Minn. Stat. 609.749 Stalking; and Minn. Stat. 624.713 Certain Persons Not to Possess Firearms

CASE #: _____ **COURT ORDER #:** _____

Date of Transfer: _____ **Time of Transfer:** _____

Respondent's Name: _____ **DOB:** _____
First Middle Last

FIREARMS TO BE TRANSFERRED (CHECK ONE) **TEMPORARILY** **PERMENANTLY**

TRANSFERRED FIREARM(S) DESCRIPTION

MAKE	MODEL	CALIBER	SERIAL#

Person Transferring Firearm(s): _____ **DOB:** _____
First Middle Last

Address: _____
Street City State Zip

Phone(s): _____
Home Cell Work

Person Transferring Signature: _____ **Date:** _____

Officer's Signature & Badge#: _____ **Date:** _____

FARIBAULT POLICE DEPARTMENT

PROHIBITED POSSESSION OF FIREARMS

PURSUANT TO COURT ORDER – RELEASE RECEIPT

The authority for this transfer of firearm(s) is established under Minn. Stat.260C.201 Domestic Child Abuse;
Minn. Stat. 518B.01 Order for Protection; Minn. Stat. 609.2242 Domestic Assault;
Minn. Stat. 609.749 Stalking; and Minn. Stat. 624.713 Certain Persons Not to Possess Firearms

CASE #: _____ **COURT ORDER #:** _____

Date of Release: _____ **Time of Release:** _____

Respondent's Name: _____ **DOB:** _____
First Middle Last

RELEASED FIREARM(S) DESCRIPTION

MAKE	MODEL	CALIBER	SERIAL#

Person Firearm(s) Released To: _____ **DOB:** _____
First Middle Last

Address: _____
Street City State Zip

Phone(s): _____
Home Cell Work

Person Receiving Firearms Signature: _____ **Date:** _____

Officer's Signature & Badge#: _____ **Date:** _____

Appendix B - Sample Court Order

District Court _____

Judicial District _____

On or by _____, you are hereby ordered by the court to contact
(Date)

the _____ at (Area Code) _____
(Law Enforcement Agency) (Telephone #)

to set up an appointment to surrender your firearm(s) pursuant to:

*The authority for this transfer of firearm(s) is established under Minn. Stat. 260C.201 Domestic Child Abuse;
Minn. Stat. 518B.01 Order for Protection; Minn. Stat. 609.2242 Domestic Assault;
Minn. Stat. 609.749 Stalking; and Minn. Stat. 624.713 Certain Persons Not to Possess Firearms*

The surrender must be completed on or by _____. You are not
(Date)

authorized to surrender your firearm(s) without making an appointment with the aforementioned
law enforcement agency.

(District Court Judge Signature)

ALL FIREARMS SHALL BE
SURRENDERED UNLOADED AND
SECURED IN A GUN CASE
WITHOUT EXCEPTION!

List All Law Enforcement Agencies within District Court Jurisdiction: