

# 144. PROHIBITED POSSESSION FIREARMS - SEIZURE



## RICHFIELD POLICE DEPARTMENT POLICY

Effective Date: 12/22/2014  
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Serial Number: 14-044  
Authority: Chief Jay Henthorne

*NOTE: This policy is for internal use only and does not enlarge an employee's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this policy, if proven, can only form the basis of a complaint by this Department, and then only in a non-judicial administrative setting.*

### I. PURPOSE

It is the purpose of this policy to establish procedures for collecting and impounding firearms that are court ordered to surrender to law enforcement agencies from certain persons ineligible to possess firearms.

### II. POLICY

It is the policy of this 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 prohibits certain persons subject to domestic violence restraining orders and Extreme Risk Protection Orders (ERPO) from possessing weapons and requiring persons convicted of domestic violence offenses and subjects of Extreme Risk Protection Orders (ERPO) to surrender their firearms while they are prohibited from possessing firearms.

### 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, persons convicted of stalking, and persons subject to Extreme Risk Protection Orders (ERPO) to surrender their firearms to a law enforcement agency, a federally licensed firearms dealer or a third party.

### III. DEFINITIONS

**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.

**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 three business days unless the court finds the defendant is at 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.

**Extreme Risk Protection Orders (ERPO)**- If the court finds there is probable cause that the respondent poses a significant danger of bodily harm to other persons or is at significant risk of suicide by possessing a firearm, and the respondent presents an immediate and present danger of either bodily harm to others or of taking their life, the court shall issue an ex parte emergency order prohibiting the respondent from possessing or purchasing a firearm for the duration of the order. The order shall inform the respondent that the respondent is prohibited from possessing or purchasing firearms and shall issue a transfer order under Minn. Stat. 624.7175, paragraph (d). The court shall direct the respondent to transfer any firearms the person possesses as soon as reasonably practicable, but in no case later than 24 hours, to a federally licensed firearms dealer or a law enforcement agency.

**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.

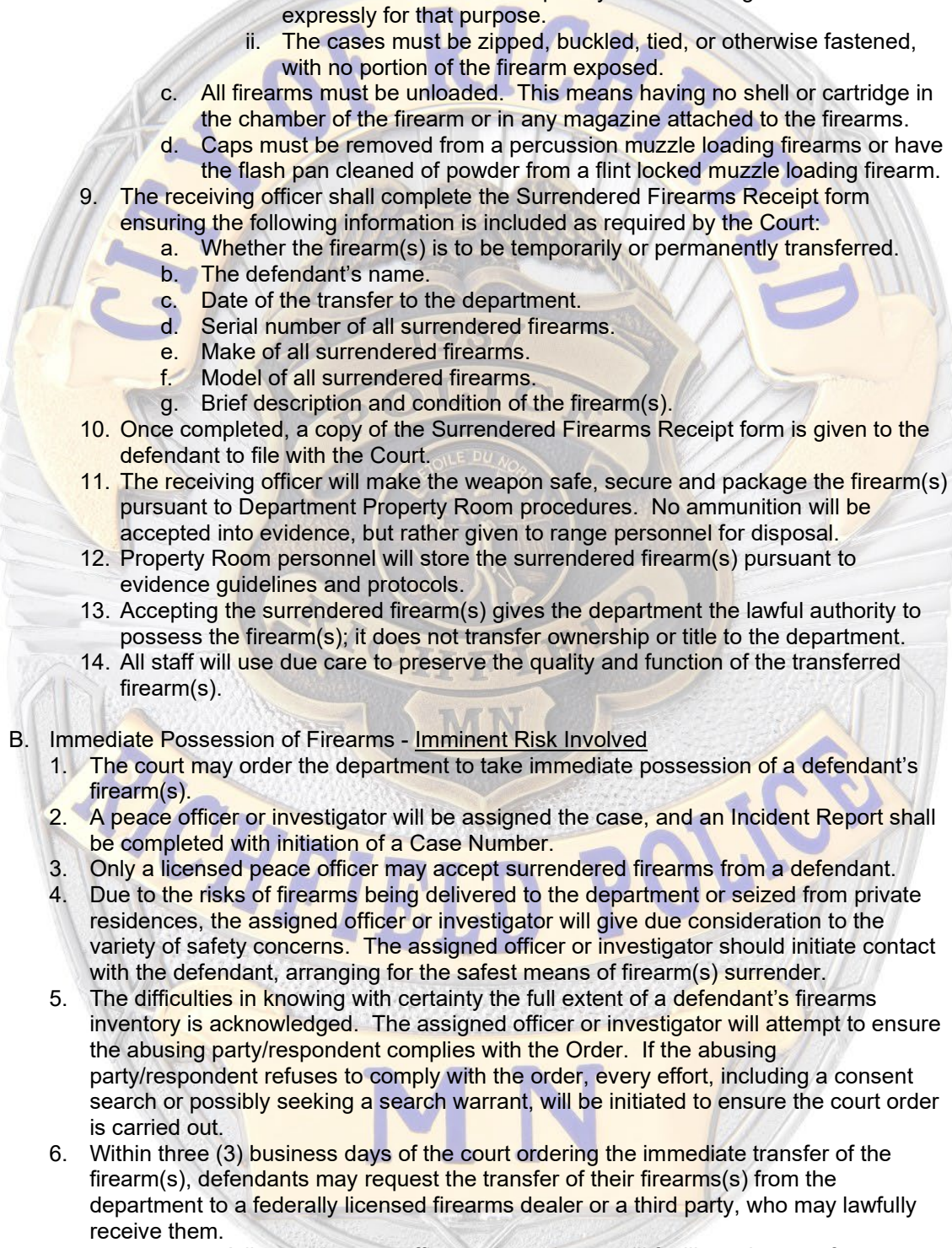
**Transfers** – Within three business days, Defendants must transfer their firearms permanently or temporarily depending on the court order. If the court determines there is an imminent risk, law enforcement will be ordered to take immediate possession of the firearm(s).

**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.

**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. Storage fees will not be incurred in the case of Extreme Risk Protection Orders (ERPO)

#### **IV. PROCEDURE: DOMESTIC VIOLENCE-RELATED**

- 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. If a decision is made to accept the firearms, an Incident Report shall be completed with initiation of a Case Number.
  5. The department may charge a reasonable storage fee for firearms held under the provisions of this policy.
  6. Only a licensed peace officer may accept firearms from an abusing party/respondent with the respective court order.
  7. Surrendered firearms will be received by an officer, by appointment, during regular business hours or at other 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:

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- 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 firearms 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 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 Department Property Room procedures. No ammunition will be accepted into evidence, but rather given to range personnel for disposal.
12. Property Room personnel will store the surrendered firearm(s) pursuant to evidence 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 the department to take immediate possession of a defendant's firearm(s).
  2. A peace officer or investigator will be assigned the case, and an Incident Report shall be completed with initiation of a Case Number.
  3. Only a licensed peace officer may accept surrendered firearms from a defendant.
  4. Due to the risks of firearms being delivered to the department or seized from private residences, the assigned officer or investigator will give due consideration to the variety of safety concerns. The assigned officer or investigator should initiate contact with the defendant, arranging for the safest means of firearm(s) surrender.
  5. The difficulties in knowing with certainty the full extent of a defendant's firearms inventory is acknowledged. The assigned officer or investigator will attempt to ensure 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.
  6. 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 or investigator 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) to 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 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 or investigator 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 or investigator will conduct records check to ensure the third party is eligible to receive the firearm(s).
4. The assigned officer or investigator 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.

## V. PROCEDURE: ERPO-RELATED

Whenever a court issues an ERPO, it is also required to issue a "transfer order under section 624.7175." The transfer order is directed to the respondent and requires that they dispossess themselves of all firearms in their possession. Respondents have three options for doing this:

1. They may transfer their firearms to a federally licensed dealer.
2. They may turn them over to a law enforcement agency.
3. In the case of relic or curio firearms, they may transfer them to a relative who does not live with them.

If the respondent transfers the firearms to a dealer, the respondent must file a copy of the proof of transfer with the law enforcement agency and also attest that all firearms have been transferred. If the respondent claims they had no firearms in their possession when the ERPO was served, they must file a declaration to that effect with the law enforcement agency.

A. Intake Procedure – Firearms Surrendered to a Law Enforcement Agency:

1. A copy of the Court Order is required prior to accepting the transfer of firearms.

2. The respondent must arrange for the transfer as soon as reasonably practicable, but in no case later than 24 hours.
3. A peace officer or investigator will be assigned the case, and an Incident Report shall be completed with initiation of a Case Number.
4. Due to the risks of firearms being delivered to the department or seized from private residences, the assigned officer or investigator will give due consideration to the variety of safety concerns. The assigned officer or investigator should initiate contact with the defendant, arranging for the safest means of firearm(s) surrender.
5. The difficulties in knowing with certainty the full extent of a defendant's firearms inventory is acknowledged. The assigned officer or investigator will attempt to ensure the respondent complies with the Order. If the 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.
6. The department shall, upon written notice from the respondent, transfer the firearms to a federally licensed firearms dealer. Before the department transfers a firearm under this paragraph, the agency shall require the federally licensed firearms dealer receiving the firearm to submit a proof of transfer that complies with the requirements for proofs of transfer established. The agency shall file all proofs of transfer received by the court within two business days of the transfer.

B. Abandonment or Forfeiture of Firearms

1. The department that accepted temporary transfer of firearms under section 624.7175 shall return the firearms to the respondent after the expiration of the order, provided the respondent is not otherwise prohibited from possessing firearms under state or federal law.
2. An assigned officer or investigator will facilitate the release of the firearms(s) pursuant to the court order, complying with State and Federal law and department protocol.
3. The assigned officer or investigator 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.
4. If a temporarily transferred firearm is abandoned, the department will notify the respondent via certified U.S. mail prior to the disposal of the abandoned firearms(s) pursuant to department protocol.
5. 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 applicable state law and/or department protocol.

By Order Of:

  
\_\_\_\_\_  
Chief of Police

# RICHFIELD 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: \_\_\_\_\_

# RICHFIELD 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: \_\_\_\_\_