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CITY OF BURLINGTON, VERMONT  
OFFICE OF  
THE CITY ATTORNEY  
AND  
CORPORATION COUNSEL

To: House Government Operations Committee  
From: Burlington City Attorney's Office  
Re: Domestic Violence and Firearms  
Date: January 27, 2016

1. State Laws Authorizing Law Enforcement to Remove Firearms or Ammunition at the Scene of a Domestic Violence Incident:

- a. The States that require law enforcement to remove at least some firearms at the scene of a domestic violence incident:
  - i. California- Cal. Penal Code §§ 18250-18500, 33850-33895
  - ii. Hawaii- Haw. Rev. Stat. § 134-7.5, 709-906
  - iii. Illinois- 725 Ill Comp. Stat. 5/112A-30(a), 750 Ill. Comp. Stat. 60/304(a)(2)
  - iv. Montana- § 46-6-603
  - v. Nebraska- Neb. Rev. Stat. § 29-440
  - vi. New Hampshire- N.H. Rev. Stat. Ann. § 173-B:10
  - vii. New Jersey- N.J. Stat. Ann. § 2C:25-21(d).
  - viii. Ohio- Ohio Rev. Code Ann. §§ 2935.03(B)(3)(h), 2981.12(A)(2)
  - ix. Oklahoma- Okla. Stat. tit. 22, § 60.8
  - x. Pennsylvania- 18 Pa. Cons. Stat. § 2711
  - xi. Tennessee- Tenn. Code Ann. §§ 36-3-620, 39-17-1317
  - xii. Utah - Utah Code Ann. § 77-36-2.1(1)(b)
  - xiii. West Virginia- W. Va. Code § 48-27-1002
- b. The states that authorize, but do not require, law enforcement to remove firearms at the scene of a domestic violence incident:
  - i. Alaska- Alaska Stat. § 18.65.515(b)
  - ii. Arizona- Ariz. Rev. Stat. § 13-3601
  - iii. Connecticut- Conn. Gen. Stat. § 46b-38b(a)
  - iv. Indiana- Ind. Code Ann. § 35-33-1-1.5
  - v. Maryland- Md. Code Ann., Fam. Law § 4-511
- c. **Firearms Subject to Removal:** The most comprehensive approach requires law enforcement to remove all firearms in the abuser's possession, ownership or control.

- In New Hampshire, law enforcement must remove all firearms and ammunition in an abuser's control, ownership, or possession whenever law enforcement has probable cause to believe that a person has been abused.
- Connecticut authorizes, but does not require, the removal of all firearms and ammunition at the location where domestic violence is alleged to have been committed if the firearms or ammunition are in the possession of the suspect or in plain view.

i. Other states allow the removal of only certain firearms, or allow the removal of firearms only if certain conditions are met:

- In New Jersey, law enforcement must remove firearms observed at the scene if law enforcement has probable cause to believe domestic violence has occurred and reasonably believes these firearms expose the victim to danger.
- In California, law enforcement officers who are at the scene of a domestic violence incident involving a threat to human life or a physical assault must take temporary custody of any firearm in plain sight or discovered pursuant to a consensual or other lawful search.
- In Hawaii, a police officer who believes that a person recently assaulted or threatened to assault a family or household member must seize all firearms and ammunition that were used or threatened to be used in the commission of the offense, and may seize all firearms in plain view, or discovered pursuant to a consensual search, as necessary for the protection of the officer or any family or household member.

d. **Duration of the Removal:** State laws vary with respect to the duration of the removal of firearms from domestic abusers.

- Of the states that specify a duration, Ohio law is the strictest, requiring firearms seized at the scene of a domestic violence incident to be given (permanently) to law enforcement, sold at public auction, or destroyed, although this law only applies to firearms used, brandished, or threatened to be used in the incident.
- Some states, such as Illinois and Maryland, direct that firearms may only be held so long as they are needed for evidence or until the proceedings against the abuser are concluded.

**Some states require firearms to be held for a specified time period:**

- Arizona requires firearms seized at a domestic violence scene be held by law enforcement for at least 72 hours, and up to 6 months if a court finds that return of the firearm may endanger the victim.
- New Jersey gives the prosecutor 45 days in which to petition for title of a firearm seized at a domestic violence scene.

(Source: Law Center to Prevent Gun Violence)

2. Existing Vermont Law.

Vermont law does not prohibit persons subject to an abuse prevention order from possessing firearms, although a court may include a requirement that the defendant relinquish all firearms in the abuse prevention order.

In 2015, Vermont laws (13 VSA 4017, 4822; 18 VSA 7617) were amended to prohibit persons convicted of violent crimes (including various domestic violence crimes) from possessing firearms under

state law and to require the courts to report persons in need of mental health treatment or hospitalization to the federal National Instant Criminal Background Check System.

3. Federal Law. The federal Violence Against Women Act contains the following provisions:
  - a. **Possession of Firearm While Subject to Order of Protection is Illegal.** It is illegal for a person to possess a firearm while subject to a court order restraining such person from harassing, stalking, or threatening an intimate partner or the child of an intimate partner. The protection order must have been issued following an evidentiary hearing in which the defendant had notice and an opportunity to appear.
  - b. **Transfer of Firearm to Person Subject to Order of Protection is Illegal.** It is also illegal to transfer a firearm to a person subject to a court order that restrains such person from harassing, stalking.
  - c. **Possession of Firearm After Conviction of Misdemeanor Crime of Domestic Violence is Illegal.** It is illegal to possess a firearm after conviction of certain misdemeanor crimes of domestic violence.
  - d. **Transfer of Firearm to Person Convicted of a Misdemeanor Crime of Domestic Violence is Illegal.** It is also illegal to transfer a firearm to a person convicted of a misdemeanor crime of domestic violence.

The City of Burlington will not tolerate unlawful harassment or discrimination on the basis of political or religious affiliation, race, color, national origin, place of birth, ancestry, age, sex, sexual orientation, gender identity, marital status, veteran status, disability, HIV positive status or genetic information. The City is also committed to providing proper access to services, facilities, and employment opportunities. For accessibility information or alternative formats, please contact Human Resources Department at 865-7145.