

1 § 1048. REMOVAL OF FIREARMS

2 (a)(1) When a law enforcement officer arrests, cites, or obtains an arrest
3 warrant for a person for domestic assault in violation of this subchapter, the
4 officer may remove any firearm that is in the immediate possession or control
5 of the person being arrested or cited, in plain view of the officer at the scene of
6 the alleged domestic assault, or discovered during a consensual search obtained
7 pursuant to a search warrant or a judicially recognized exception to the warrant
8 requirement if the removal is necessary for the protection of the officer or any
9 other person.

10 (2) As used in this section, “judicially recognized exception to the
11 warrant requirement” includes a search incident to a lawful arrest, a search
12 with consent, a search under exigent circumstances, a search of objects in plain
13 view, and a search pursuant to a regulatory statute.

14 (b) A person cited or arrested for domestic assault shall be arraigned on the
15 next business day after the citation is issued or the arrest occurs except for
16 good cause shown.

17 (c)(1) At arraignment, the court shall issue a written order releasing any
18 firearms removed pursuant to subsection (a) of this section unless:

19 (A) the firearm is being or may be used as evidence in a pending
20 criminal or civil proceeding;

21 (B) a court orders relinquishment of the firearm pursuant to
22 15 V.S.A. chapter 21 (abuse prevention) or any other provision of law

1 consistent with 18 U.S.C. § 922(g)(8), in which case the weapon shall be
2 stored pursuant to 20 V.S.A. § 2307;

3 (C) the person requesting the return is prohibited by law from
4 possessing a firearm; or

5 (D) the court imposes a condition requiring the defendant not to
6 possess a firearm.

7 (2) If the court under subdivision (1) of this subsection orders the
8 release of a firearm removed under subsection (a) of this section, the law
9 enforcement agency in possession of the firearm shall make it available to the
10 owner within three business days after receipt of the written order and in a
11 manner consistent with federal law.

12 (d)(1) A law enforcement officer shall not be subject to civil or criminal
13 liability for acts or omissions made in reliance on the provisions of this section.
14 This section shall not be construed to create a legal duty to a victim or to any
15 other person, and no action may be filed based upon a claim that a law
16 enforcement officer removed or did not remove a firearm as authorized by this
17 section.

18 (2) A law enforcement agency shall be immune from civil or criminal
19 liability for any damage or deterioration of firearms removed, stored, or
20 transported pursuant to this section. This subdivision shall not apply if the
21 damage or deterioration occurred as a result of recklessness, gross negligence,
22 or intentional misconduct by the law enforcement agency.

1 (3) This section shall not be construed to limit the authority of a law
2 enforcement agency to take any necessary and appropriate action, including
3 disciplinary action, regarding an officer's performance in connection with this
4 section.

5 (e) This chapter shall not be construed to prevent a court from prohibiting a
6 person from possessing firearms under any other provision of law, nor shall it
7 be construed to prevent law enforcement from searching for and seizing
8 firearms in accordance with any other provision of law.

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