

**Model Law Enforcement Policy:**  
**Serving and Enforcing Protection Orders**  
**&**  
**Seizing Firearms in Domestic Violence Cases**

**DRAFT – JULY 2005**

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## **I. Purpose**

The purpose of this Model Law Enforcement Policy (hereinafter “model policy”) is to provide policies and standard operating procedures for the following specific areas related to domestic violence cases that may be encountered by a law enforcement agency:

- ◆ The seizure of firearms from persons who are prohibited from possessing firearms pursuant to a protection order, State law, Tribal law, or Federal law;
- ◆ Law enforcement officers who are subject to protection orders or who have been convicted of a misdemeanor crime of domestic violence;
- ◆ The storage and return of seized firearms;
- ◆ The enforcement of protection orders that were issued by a court of another State, Indian Tribe, or U.S. territory or possession; and
- ◆ Service of process/notice to Respondents of protection orders.

It is recommended that each law enforcement agency review its current policies and procedures related to these topics and compare them with those included in the model policy. Where a current agency policy is inconsistent with the model policy or does not address an area that is covered by the policy, it is recommended that the agency consider adopting the relevant section(s) of the model policy, modifying the language where necessary in order to comply and maintain consistency with the State or Tribal constitution, and State or Tribal statutes.

*Please note* that this model policy is not intended to provide policies and procedures for officers in all areas related to domestic violence cases, but was developed for the purpose of addressing a discrete set of topics related to firearms and protection orders in domestic violence cases. For guidance in writing or revising policies related to other areas of domestic violence law, please contact the International Association of Chiefs of Police (IACP) for a copy of the IACP model domestic violence policy (revised July 2005).

## **II. Policy Statement**

Officers shall endeavor to enforce all protection orders issued by the court of any State, Indian Tribe, and U.S. territory or possession in order to protect victims of domestic violence from further harm. Officers shall use all reasonable efforts to remove firearms from the possession and control of alleged perpetrators of domestic violence, consistent with the mandates and limitations of State and Federal law. Further, reasonable efforts shall be made to effect service of process of protection orders that are issued by the court of another State, Indian Tribe, or U.S. territory or possession, upon request of an agency of that State, Tribe, or territory/possession, the attorney or advocate of the victim/petitioner, or the victim/petitioner. Coordination with other jurisdictions can be critical to the protection of victims, and to the effective prosecution of Federal firearm crimes, or Federal domestic violence/stalking crimes. All reasonable efforts shall be made to assist State, Tribal, and Federal jurisdictions, including by providing prompt verification of protection orders upon request by another jurisdiction, and the referral of cases for Federal prosecution.

## **III. Definitions**

- A. **Consent Order:** A protection order that is issued or approved by a court after the parties reach an agreement regarding the terms of the order. Such an order is sometimes referred to as an “agreed order.”
- B. **Contraband:** Property whose possession is unlawful.
- C. **Criminal Court Orders:** These include orders issued by a criminal court of another State, Indian Tribe, U.S. territory or possession, Puerto Rico, or the District of Columbia.

These kinds of orders are often a component of the following:

- ◆ Pre-trial conditions
- ◆ Bail/Bond conditions
- ◆ No contact orders
- ◆ Probation conditions
- ◆ Parole conditions

Prohibited acts contained in a criminal court order may include one or more of the following: violent or threatening acts against the victim, harassment of the victim, contact or communication with the victim, or physical proximity to the victim.

- D. **Divorce Decrees:** Protection orders to which the model policy applies may be found in divorce decrees/judgments.
- E. **Enforcing Jurisdiction:** The State in which enforcement of the protection order is requested.
- F. **Final Protection Order:** A protection order that was issued after notice and an opportunity to participate in a hearing were provided to the Respondent.
- G. **Firearm:**

[State definition] *For purposes of enforcement of State firearm laws, use the State definition.*

[Federal definition.] *For purposes of compliance with Federal firearm laws, use the following Federal definition.* Any weapon (including a starter gun), which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; or any destructive device. Under this definition, a firearm does not include an antique firearm.

*A destructive device means:*

1. Any explosive, incendiary, or poison gas --
  - a. bomb,
  - b. grenade,
  - c. rocket having a propellant charge of more than four ounces,
  - d. missile having an explosive or incendiary charge of more than one-quarter ounce,
  - e. mine, or



- f. device similar to any of the devices described in the preceding clauses.
- 2. Any type of weapon (other than a shotgun or a shotgun shell which the Secretary of the Treasury finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of any explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and
- 3. Any combination of parts whether designed or intended for use in converting any device into any destructive device described in subparagraph (1) or (2) and from which a destructive device may be readily assembled.

The term “destructive device” shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordinance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of title 10; or any other device which the Secretary of the Treasury find is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting, recreational or cultural purposes.

- H. **Issuing Jurisdiction:** The State or Tribe in which the court that issued the protection order is located.
- I. **Military Protection Order:** A protection order issued by a military commanding officer in any branch of the U.S. Armed Services that prohibits a member of the military from engaging in certain behaviors toward another person, or directs the military member to do certain things. In general, military protection orders are not enforceable by law enforcement and courts in civilian (i.e., State or Tribal) jurisdictions, unless there is an agreement between the military base and the civilian jurisdiction that such orders will be enforced by the law enforcement agency(ies) located in the civilian jurisdiction.
- J. **Mutual Protection Order:** A single court order containing provisions that require both parties (the Petitioner and the Respondent) to do certain things or that prohibit certain behaviors. The issuing court intends for mutual orders to be enforceable against both parties, but a mutual order may not be enforceable in a jurisdiction other than the jurisdiction in which the issuing court is located. Two separate orders of protection issued by one or more courts after the filing of separate petitions, motions, complaints, or other pleadings requesting a protection order are NOT considered to be mutual orders for purposes of the model policy.
- K. **Misdemeanor Crime of Domestic Violence:** [For purposes of the model policy, the definition contained in the Federal Gun Control Act should be applied:]

An offense that:

- (1) Is a misdemeanor under Federal or State law;
- (2) Has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon;

- (3) Was committed by a current or former spouse, parent or guardian of the victim, a person with whom the victim shares a child in common, 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.

- L. **No Contact Order:** A provision within a protection order, or a free-standing order, that prohibits the Respondent from making, or attempting to make, contact with the Petitioner or other protected persons, including communication via telephone, email, instant messaging, fax transmission, verbal or written messages through third parties, U.S. mail and/or other delivery service; personal visits to the home or workplace of the Petitioner, schools, daycare, or after-school care programs of the children of the Petitioner, and/or any other place(s) from which the Respondent is barred. Such an order may also include a provision that requires that the Respondent maintain a specified distance from the Petitioner/protected parties and/or any place at which he/she/they may be present.
- M. **Non-Emergency:** A situation that does not present a need for immediate action by law enforcement to protect the Petitioner/protected person(s) from imminent physical harm. Non-emergency situations do not include requests for enforcement of violence, harassment, contact, communication, physical proximity, custody, or visitation provisions.
- N. **Petitioner:** The party who obtained a protection order against the Respondent, after filing a complaint, pleading, petition, or other document requesting that a court issue a protection order.
- O. **Protection Order:**

STATE CODE DEFINITION – *apply when the issuing jurisdiction and the enforcing jurisdiction are the same (i.e., the order was issued by a court in the State or Tribe in which enforcement is requested).* [Insert State Code definition of protection order here].

FEDERAL DEFINITION – *apply when the enforcing jurisdiction and the issuing jurisdiction are not the same (i.e., the order was NOT issued by a court in the State in which enforcement is requested), if the Federal definition is broader, or more inclusive, than the State definition.*

1. **Definition:** Any injunction or other order issued for the purpose of preventing the Petitioner and any other person(s) protected by the order from being subjected to the following by the Respondent:

- ◆ Violent or threatening acts;
- ◆ Harassment;
- ◆ Contact;
- ◆ Communication;
- ◆ Physical proximity.

2. **Titles of Orders.** Orders that fall within this definition may have different titles or names. They are covered provided they contain at least one of the types of provisions listed in (i). The different titles of these orders include the following:



- ◆ Protection order
- ◆ Order for protection
- ◆ Injunction
- ◆ Peace order
- ◆ Harassment order
- ◆ Stalking order

3. **Short-Term and Long-Term Orders.** Orders that fall within this definition may be those that are enforceable for a relatively short period of time (e.g., 24 hours, 10 days, 30 days, etc.), and those that are enforceable for a longer period of time (e.g., 6 months, 2 years, the lifetime of the Petitioner, etc.) and include:

- ◆ Temporary orders
- ◆ Emergency orders
- ◆ Ex parte orders
- ◆ Final orders
- ◆ Permanent orders

P. **Respondent:** The person against whom the Petitioner has filed a complaint, pleading, petition, or other document requesting that a court or other authority issue a protection order, and who is prohibited by the protection order from engaging in certain behaviors, or who is mandated, pursuant to the protection order, to perform certain behaviors (e.g., pay child support, comply with custody and visitation provisions, etc.). For purposes of this model policy, the term Respondent does not refer to a person against whom a mutual order has been issued, where no complaint, pleading, petition or other document requesting a protection order has been filed by the opposing party, and where the judge has not made specific findings that the parties are both entitled to such an order (*see also the Mutual Protection Order definition*).

Q. **State:** For purposes of this policy, this includes any State of the United States, as well as Guam, the District of Columbia, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

R. **Temporary, Ex Parte, or Emergency Protection Order:** A protection order that was issued prior to notice being provided to the Respondent, and prior to a hearing at which the Respondent had an opportunity to participate.

#### IV. Seizure of Firearm - Response to an Incident of Domestic Violence

##### A. Firearm Used or Threatened to Be Used During Incident.

Upon arrival at the scene of an alleged incident of domestic violence, the responding officer(s) shall seize any firearm allegedly used or threatened to be used in the incident, if in plain view or found pursuant to a consent or custodial search, or a search incident to arrest, where authorized by State law to do so. [The responding officer(s) must rely on State law for the authority to seize weapons or seize weapons as contraband.]

##### B. Seizure of Firearm Pursuant to Protection Order Prohibition.

###### 1. Determination of Existence of Current Protection Order.

- a. Interview of Victim. The responding officers shall determine whether there is a current protection order in effect by interviewing the alleged victim.
- b. Verification of Protection Order. If the alleged victim states that he/she is protected by a current protection order, the officer shall verify the existence of the protection order by examining a paper copy of the protection order. If there is no paper copy available, the officer shall verify the existence and terms of the order through electronic means, by [conducting a search/requesting a search] of the [local, county, or State protection order registry, and/or the NCIC Protection Order File]. If no copy is immediately available through paper or electronic means, the officer should use all reasonable efforts to determine the existence of the order, including attempting to contact the court that issued the order, a law enforcement agency in the jurisdiction in which the order was issued, drawing upon the personal knowledge of the officer, or relying upon credible statements made by the alleged victim during the interview process.
- i. Paper Copy of Protection Order – Determination of Facial Authenticity. If a paper copy of the order is available to the officer, no other means of verification shall be undertaken, provided the following can be determined:
  - ◆ The order is still in effect (as evidenced by the fact that the order is either a non-expiring order/lifetime order, the expiration date has not yet been reached, or the order contains the date the order was issued, which is prior to the date when enforcement is sought);
  - ◆ The names of the parties are contained in the order, and they are the same as the names of the parties involved in the domestic violence incident;
  - ◆ The order contains the name of the issuing court or other authority that issued that order;



- ◆ There is an indication that the order was issued by a judicial officer or other appropriate authority. The indicia will vary among jurisdictions, but may include, for example, a stamp, signature, or seal; and
- ◆ The order specifies terms and conditions against the Respondent.

ii. No Service or Notice Determination. Unless the order is a temporary/ex parte protection order, the officer shall not endeavor to determine if the final order was served on the Respondent [*unless required to do so by State law*]. Notice is an issue that may be raised by the Respondent in a court enforcement proceeding.

2. Firearm Prohibition Pursuant to Protection Order (State Law).

Once the officer has determined that there is a current protection order in effect, the officer shall determine whether the Respondent is prohibited from possessing a firearm for the duration of the protection order.

*If the protection order was issued in the same State in which enforcement is requested, either (i) or (ii) may apply. If the protection order was issued in a jurisdiction other than the jurisdiction in which enforcement is requested (i.e., another State or Tribe), only (ii) may apply.*

- i. *The State Code prohibits possession of some or all firearms for the duration of the protection order.*
  - ii. *The protection order includes relief/ conditions/ provisions that prohibit possession of all or certain firearms for the duration of the protection order.*
- a. If, upon responding to the scene of a domestic violence incident, the responding officer learns that there is a protection order currently in effect that was issued either by a court of this State, or the court of another State/Tribe, that prohibits possession or control of a firearm (*because either (B)(2)(i) or (ii) apply*), the officer shall seize any firearm prohibited by the protection order if it is:
- i. In a vehicle driven by the alleged perpetrator when he/she is apprehended, and the firearm is seized pursuant to a valid stop-and-frisk search;
  - ii. In plain view at the scene of the incident;
  - iii. Found pursuant to a consent search at the scene of the incident;
  - iv. Found pursuant to a custodial search; and/or
  - v. Found pursuant to an inventory search of a vehicle, upon arrest of the alleged perpetrator.
- b. The responding officer shall note the firearm(s) seizure in the report, and whether the protection order is a final order (the order was issued after a hearing at which the Respondent either appeared or had an opportunity to appear).

3. Federal Firearm Prohibition Due to Existence of Protection Order --- Federal Law.

If the protection order appears to meet the requirements of the Federal definition of protection order (see the Definitions section), and a firearm is found, the responding officer shall seize the firearm as contraband and turn it over to Federal authorities. The [responding officer/supervising officer] shall immediately contact the county/district/state's attorney's office, and the local field office for the Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATF). The seized firearm(s) shall be immediately turned over to the BATF, or as soon as possible. A copy of the report shall be immediately forwarded to the county/district/state's attorney's office, and the local field office for the BATF, and shall clearly indicate the suspected violation of 18 U.S.C. § 922(g)(8).

C. Firearm Seizure Where There is No Current Protection Order, and Firearm Was Not Used or Threatened to Be Used.

When a firearm is determined to be present, either because the firearm is in plain view, or was located pursuant to a consent or custodial search, or a search incident to arrest, the firearm shall be confiscated from the alleged perpetrator if it is determined that control and/or possession of the firearm is one of the following:

1. A violation of the State license to carry or possession laws and/or regulations.
2. Otherwise prohibited under State law.
3. Prohibited by Federal law *[where State law allows such a seizure, or as contraband]*.
  - a. If there is probable cause to believe that the alleged perpetrator is prohibited from possessing a firearm under Federal law, either because there is probable cause to believe that the alleged perpetrator was convicted of a qualifying misdemeanor that prohibits firearm possession pursuant to 18 U.S.C. § 922(g)(9) or another section of the Federal Gun Control Act, or the officer has reason to believe that the alleged perpetrator is otherwise prohibited under Federal law from possessing a firearm, the responding officer shall follow the procedures outlined below.
    - i. Misdemeanor Crime of Domestic Violence. If it is determined through a criminal records search that the alleged perpetrator has been previously convicted of a misdemeanor crime of domestic violence, the firearm shall be seized as contraband. The [responding officer/supervising officer] shall immediately contact the county/district/state's attorney's office, and the local field office for the Bureau of Alcohol, Tobacco, Firearms, and Explosives. A copy of the report of the incident shall be immediately forwarded to all such parties, and shall clearly indicate the suspected violation of 18 U.S.C. § 922(g)(9).



## V. Service of Process of Protection Orders

### A. Service of Process – Emergency/Ex Parte/Temporary Protection Order

#### 1. Personal Service of Protection Order.

- a. If a protection order to be served upon a Respondent contains a provision prohibiting possession and/or control of a firearm for the duration of the protection order, the serving officer shall, upon personally serving the Respondent:
  - i. Request that the Respondent immediately relinquish all firearms in his/her possession to the officer; and
  - ii. Provide a receipt to the Respondent that lists all firearms relinquished, and that is signed by the officer and the Respondent.
- b. *[In jurisdictions where another person may accept service for the named Respondent, the following procedures should be used.]* If the Respondent is not present at the place of service, and another person accepts service of the protection order, the officer shall:
  - i. Obtain a signed statement by the person accepting service verifying that he or she is either the owner or co-owner of the residence, or a lessee or co-lessee of the residence, or otherwise legally entitled to be present at the place where service was effected;
  - ii. Request that the person accepting service turn over all firearms specified in the protection order to the serving officer; and
  - iii. Provide a receipt listing the firearms relinquished that is signed by the officer and the person accepting service.

#### 2. Personal Service of Emergency/Ex Parte/Temporary Protection Order When Responding to Incident of Domestic Violence. *[This section is not applicable if "short form" service of process is available in the jurisdiction in which service is to be effected.]*

If, when responding to a scene of a domestic violence incident, the responding officer is informed by the dispatcher, the Petitioner or other protected party, the protection order registry or other electronic system, or other credible source, that the alleged perpetrator is the subject of a protection order that has not yet been served upon him/her, the officer shall:

- a. Inquire as to whether the Petitioner has an extra copy of the protection order. If he/she does, the officer shall serve the copy on the suspect and fill out a return of service form. The return of service form should be given to the Petitioner for filing with the



court that issued the order (*or, where appropriate, the serving officer shall file the return of service*).

- b. Attempt to have the order, or a copy of the order brought to the scene in the interim, while the officer is completing her/his investigation.
- c. If the officer is unable to serve the order, the officer shall:
  - i. Verbally inform the Respondent of the existence of the protection order and note in the report that he/she was informed of the existence of the protection order, along with the case number of the protection order.
  - ii. Advise the Respondent that he/she should go to the courthouse where the order was issued and request a copy of the order.

B. Service of Process – Final/Permanent Order

- 1. Personal Service. If the Final/Permanent Protection Order contains a provision prohibiting the Respondent from possession/control of firearms for the duration of the protection order and the Respondent was not present in court at the time of the issuance of the order, and has not yet been served with a copy of the order, the serving officer shall, upon personally serving the Respondent:
  - a. Request that the Respondent immediately relinquish all firearms in his/her possession to the officer; and
  - b. If the Respondent turns over all firearms required to be relinquished pursuant to the protection order, provide a receipt to the Respondent that lists the make/model of all firearms turned over, and that is signed by the officer and the Respondent.
  - c. If the Respondent refuses to relinquish any or all of the firearms that he/she is required to turn over pursuant to the protection order:
    - i. Provide verbal notice to the Respondent that he/she may be in violation of Federal law, pursuant to 18 U.S.C. § 922(g)(8), for failure to turn over the firearm(s), and, as such, may be subject to Federal prosecution.
    - ii. Immediately notify the supervising officer, who will then contact the county/district/state's attorney's office, and the local field office for the Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATF) to notify them of the suspected violation of 18 U.S.C. § 922(g)(8).
    - iii. Note in the report that steps (a)-(c)(i)(iii) were taken.

2. *[In jurisdictions where another person may accept service for the named Respondent, the following procedures should be used.]* If the Respondent is not present at the place of service, and another person accepts service of the protection order, the officer shall:

- a. Document that service was effected by obtaining a signed statement by the person accepting service, that he or she is either the owner or co-owner of the residence, a lessee or co-lessee of the residence, or otherwise legally entitled to be at the place where service was effected;
- b. Request that the person accepting service turn over all firearms specified in the protection order to the serving officer; and
- c. Provide a copy of a receipt listing the make/model of the firearms that were turned over, that is signed by the officer and the person accepting service.

C. Service of a Protection Order Issued by the Court of Another State or Tribe.

Upon the request of a court, law enforcement agency, prosecutor's office, legal service provider, private attorney, or victim service agency located within another State or Tribal jurisdiction, the [law enforcement agency name] shall:

1. Serve the protection order, along with the petition and any accompanying documents, according to the procedures governing service of process in [State] and the policies and procedures of [name of law enforcement agency]. Faxed copies of protection order forms are acceptable for purposes of service of process, as are original copies that are delivered by U.S. mail, commercial carrier, a representative of any of the agencies listed in C, above, or the Petitioner. The agency or the Petitioner requesting service of process shall not be required to pay a fee for service of process.
2. Fill out the return of service form and send it to the agency or individual that requested service of process (or to the court that issued the protection order, if directed to do so on the return of service form).
3. Make a copy of the protection order and all accompanying forms and documents and provide the copy to [name of person or unit within the serving law enforcement agency who is responsible for filing such documents]. The [name of law enforcement agency] shall maintain a copy of the protection order and all accompanying documents for a minimum of 30 days past the expiration date of the protection order.
4. The protection order shall be forwarded within [time period] to the [State/County/Tribal/Municipal/Agency] registry of protection orders for entry after obtaining written consent to do so from the Petitioner. The order shall not be entered into the NCIC Protection Order File, unless the issuing jurisdiction does not have access to the NCIC Protection Order File, and the

[name of the serving law enforcement agency], or another agency within [State] has agreed to do so on behalf of the issuing jurisdiction.<sup>1</sup>

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<sup>1</sup> Be advised that the agency that enters the protection order information into the NCIC Protection Order File will be required to comply with all NCIC regulations and policies related to entry of protection orders, including the requirement that the agency have the capacity to provide 24-hour verification of the existence of the protection order. Contact the NCIC Protection Order File of the Federal Bureau of Investigation for further information about these requirements.



## VI. Enforcement of Firearm Relinquishment Provision in Protection Order

- A. Upon notice by a court that a protection order has been issued that requires the Respondent to relinquish a firearm/firearms to [name of law enforcement agency] for the duration of the protection order, the [unit or position responsible] shall record/enter into the [firearm log/database] the following information:
1. Name of the Respondent;
  2. Social Security Number or other numeric identifier for the Respondent;
  3. Address(es) and Phone Number(s) for the Respondent;
  4. The make and model of the firearm(s) that the Respondent has been ordered to relinquish; and
  5. The date and time by which the issuing court has required the Respondent to comply with the firearm relinquishment order.
- B. If the Respondent does not relinquish the specified firearm(s) by the date and time he/she was ordered to do so, [the law enforcement agency] shall:
1. Notify the issuing court of the violation of the order immediately after passage of the deadline; and
  2. Locate and arrest the Respondent, or, if the Respondent cannot be immediately located and arrested, seek a warrant for the arrest of the Respondent for violation of the order to relinquish the firearm(s), and a warrant to search the residence of the Respondent and/or any other location(s) where there is probable cause to believe that the firearm(s) may be present.

## VII. Firearms Policy for Law Enforcement Officers Subject to Protection Orders

- A. Any sworn officer subject to a current protection order that meets the following conditions, shall not possess a firearm, **including the officer's duty weapon**. *[This section may be covered by current State law.]* This policy applies to protection orders that do not contain remedies, conditions, or relief prohibiting the respondent officer from possessing a firearm.

This policy applies to all protection orders that meet the following conditions:

1. The relationships of the Petitioner to the Respondent officer may be described as one of the following:
  - a. Current or former spouse;
  - b. Currently or previously shares/shared a household with the Respondent;
  - c. Has a child with the officer; or
  - d. Is a child of the Petitioner or the Respondent.
2. The protection order was issued after a hearing, and the officer was provided with actual notice of the time/date of the hearing, and, as such, had an opportunity to participate in the hearing;
3. The protection order prohibits the officer from
  - a. Harassing, stalking, or threatening the Petitioner or the Petitioner's child/children; or
  - b. Engaging in any conduct that would place the Petitioner in fear of bodily injury to her/himself or the child/children of the Petitioner.
4. The protection order either:
  - a. Prohibits the use, attempted use or threatened use of physical force against the Petitioner or child/children that could reasonably be expected to cause bodily injury OR
  - b. The order contains a finding that the officer represents a credible threat to the physical safety of the Petitioner or child/children of the Petitioner.

B. Seize Duty Weapon and Place Officer on Light-Duty Status

Any officer that is subject to a protection order as defined in (VII)(A), shall, upon receiving notice that he/she is subject to a protection order, immediately, or as soon as is reasonably possible, notify his/her supervising officer and make arrangements to turn in his/her duty weapon.

1. Upon receiving notification from the officer, the supervising officer shall immediately, or as soon as possible, meet with the officer and take possession of the officer's duty weapon.
2. The supervising officer shall write a report documenting the facts surrounding the taking possession of the duty weapon, in accordance with agency disciplinary procedures.
3. The supervising officer shall inform the officer that he/she will be placed on light-duty status for the duration of the protection order.
4. The officer shall be assigned to duties within the agency in which he/she has no direct contact with the public and/or any aspect of cases involving domestic violence and/or protection orders.

Sections C & D, below, apply only to agencies making policy decisions that would allow officers who are Respondents to protection orders to possess their duty weapon.<sup>2</sup>

C. Custody and Use of Duty Weapon While Subject to Protection Order.

Any officer that is subject to a protection order as defined in (VII)(A), is required to check his/her duty weapon out at the beginning of his/her shift of duty, and return the duty weapon at the conclusion of his/her shift.

1. Check-Out of Duty Weapon at Beginning of Shift.

At the beginning of the shift, the supervising officer shall:

- a. Record the name of the officer, the date, and the time of check-out of the duty weapon in a log maintained for this purpose; and
- b. Sign the log and obtain the signature of the officer who is checking out the duty weapon.

2. Return of Duty Weapon at Close of Shift.

At the close of the shift, the supervising officer shall:

- a. Record the name of the officer, the date, and the time of return of the duty weapon in the log; and
- b. Sign the log and obtain the signature of the officer who is checking-in the duty weapon.

D. Officers Required to Carry Service Revolver While Off-Duty

If the agency requires an officer to carry his/her duty weapon while not on duty, or requires an officer to respond to criminal activity observed within the [State/county/municipality] when off duty, the officer must take the following measures:

1. When at his/her residence, the officer must keep the duty weapon in a locked box, with the key stored separately.
2. When in his/her vehicle, the officer must keep the duty weapon in the trunk of the car or, in the absence of a trunk, within a locked storage container in the vehicle.

## VIII. Law Enforcement Officers Convicted of Misdemeanor Crimes of Domestic Violence

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<sup>2</sup> Agencies allowing their sworn personnel who are the subject of a current protection order to possess a duty weapon should consider the liability that may accompany such a policy decision.



- A. Pursuant to 18 U.S.C. § 922(g)(9), Federal law *[and State or Tribal law, if such legislation exists in the State/Tribe]* prohibits the possession of a firearm or ammunition by officers who have been convicted of a misdemeanor crime of domestic violence. Such officers may not possess a firearm or ammunition at any time, including while they are performing official duties as a law enforcement officer.
- B. Officers who were charged with, pled guilty to, or were convicted after a trial of a misdemeanor crime of domestic violence shall thereafter not possess a firearm, while on duty or off duty.
- C. A misdemeanor crime of violence is defined by 18 U.S.C. § 922(g)(8) as an offense that:
  - (1) Is a misdemeanor under Federal or State law;
  - (2) Has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon;
  - (3) Was committed by a current or former spouse, parent or guardian of the victim, a person with whom the victim shares a child in common, 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.
- F. Officers may be assigned to duties that do not require possession of a firearm, or, if such positions are not available, may be placed on administrative leave until such time as an appropriate position becomes available. Under certain circumstances, including the unavailability of an appropriate, alternative position, an officer may be terminated from employment with the agency.

## **IX. Storage of Firearms**

### **A. Storage Within the Agency**

The storage of firearms seized pursuant to conditions specified in a protection order shall be handled in the same manner in which contraband and/or evidence is handled by the agency. In the case of limited storage space within the agency that necessitates the rental of storage space off site, fees for storage of such firearms shall be the responsibility of the Respondent. Non-payment of such fees shall result in the destruction of the stored firearm(s).

## **X. Return of Firearms to Owners**

- A. A person whose has one or more firearms in the custody of the [law enforcement agency] that was relinquished or seized because the person:
  - 1. Is/was subject to a protection order that contained one or more remedies, relief, provision, or conditions that prohibited the person from possessing a firearm or ammunition for the duration of the protection order;
  - 2. Violated State law prohibiting the possession of a firearm while subject to a protection order;

2. Is/was subject to a protection order that met the requirements of 18 U.S.C. § 922(g)(8), making the person one who is prohibited from possessing a firearm or ammunition under Federal law;
3. Used or threatened to use a firearm during an incident of domestic violence; or
4. Otherwise unlawfully possessed a firearm

and who desires to regain possession of the firearm(s) must submit a written request to the [law enforcement agency] asking for return of the firearm(s) and describing each firearm in detail.

- B. Upon receipt of a written request for the return of one or more firearms, the agency shall submit a request for an instant firearm background check by the [state agency responsible for conducting background checks and/or the National Instant Criminal Background Check System, depending on whether the State conducts all background checks, conducts some background checks, or NICS conducts all background checks for transfers of firearms made within the State]. In addition [if not a component of a regular background check conducted prior to the transfer of a firearm], a criminal history check will be conducted.
- C. If the person is found to be prohibited from possessing a firearm for any reason, whether pursuant to local, State, or Federal law or policy, the agency shall not return the firearm. The agency shall provide in writing to the person the reason for the denial of the firearm return request.
  1. The person may re-submit the request for return of the firearm(s) after 180 days, if the stated reason for the denial is due to a circumstance that may change (e.g., expiration of a protection order).
  2. If the return of a firearm(s) was denied due to a circumstance that is not likely to change within 180 days (e.g., the person was convicted of a misdemeanor crime of domestic violence), the person may not reapply after 180 days.
  3. Only one repeat request for return of the firearm(s) may be submitted (i.e., two requests is the maximum number of requests that may be made for return of the firearm(s)). A repeat request will be accepted up to 365 days after an initial denial of the return request.

## **XI. Full Faith and Credit: Enforcement of a Protection Order Where the Enforcing Jurisdiction did not Issue the Protection Order**

### **A. Enforcement.**

1. Orders to be Enforced.
  - a. A Protection Order that is issued by a court of another State or Tribe shall be enforced (see the Definition section for details on the types of protection orders that shall be enforced).



- b. Mutual Orders of Protection. A mutual order is one that contains provisions that require both parties (the Petitioner and the Respondent) to do certain things or that prohibit certain behaviors. Two separate orders of protection obtained by each party against the other party after filing a petition, motion, complaint, or other pleading are NOT considered mutual orders for purposes of this policy.

- i. Enforceable Against the Petitioner Outside of the Issuing Jurisdiction Only Under Certain Circumstances.

An order shall be enforced only against the Respondent (the person against whom the order was issued) and not the Petitioner, unless:

- A. The Respondent filed a petition, complaint, or other written pleading, and
    - B. The issuing court made a specific finding that each party was entitled to such an order.

- ii. The officer shall not enforce a mutual order against the Petitioner, unless the officer has made a probable cause determination that the mutual order complies with (i)(A)-(B), above.

- c. Temporary, Ex Parte, or Emergency Protection Orders.

[For purposes of the model policy, Temporary, Ex Parte, and Emergency protection orders are those that were issued prior to providing the Respondent with notice or a hearing. These orders are entitled full faith and credit, and shall be enforced, if:

- i. The Respondent has been provided with notice of the order and will have the opportunity to be heard in court within the time required by State or Tribal law, or, in any event, within a reasonable period of time sufficient to protect the Respondent's right to due process.
  - ii. Such orders shall be enforced even if, at the time of enforcement by the responding officer, the Respondent has not yet had the opportunity to be heard in court.

## 2. Manner of Enforcement.

A provision in a protection order issued by the court of another State or Tribe shall be enforced by the responding officer in the manner in which a similar provision appearing in a protection order issued in this State or Tribe would be enforced.



- a. An officer shall arrest an alleged perpetrator for violation of provisions that are reasonably similar to any of the prohibited behaviors listed below, provided the violation of such provisions are considered to be arrestable pursuant to State law.

[Modify in accordance with the laws of the State. Examples of provisions:

- i. Contact with the Petitioner.
- ii. Coming within a certain range/proximity to the Petitioner and any protected parties.
- iii. Entry into the residence of Petitioner, his/her workplace, and any other place at which the Respondent is prohibited from presenting.
- iv. Abuse.
- v. Harassment.
- vi. Stalking
- vii. Threats.
- viii. Possession of a Firearm.]

- b. If the Respondent has violated a provision of an out-of-State/Tribe protection order that is not considered to be an arrestable violation, the officer shall:
  - i. Arrest the alleged perpetrator if he has violated a provision of the State criminal code, and such a violation is an arrestable offense under the criminal code; and
  - ii. Refer the Petitioner to the appropriate court for enforcement purposes [if he/she is currently residing within the enforcing State], or, if he/she is only temporarily in the State, to the court that issued the protection order, or other appropriate court within the original State or Indian Tribe. See Section (D) for custody enforcement policies/procedures.

B. Determination of Facial Authenticity.

The primary responsibility of the responding officer is to ensure the safety of the Petitioner. A protection order issued by another State or Tribe shall be presumed to be valid if, after a visual inspection of the face of the protection order, the officer has probable cause to believe that the order is authentic.

1. Paper Copy Available - Enforce if Order is Authentic on Its Face.
  - a. If a paper copy of the protection order is available for the responding officer to examine, the officer should enforce the order if:
    - ◆ The order is still in effect (as evidenced by the fact that the order is either a non-expiring order/lifetime order, the expiration date has not yet been reached, or the order contains the date the order was issued, which is prior to the date when enforcement is sought);

- ◆ The names of the parties are contained in the order, and they are the same as the names of the parties involved in the current incident;
  - ◆ The order contains the name of the issuing court or other authority that issued that order;
  - ◆ There is an indication that the order was issued by a judicial officer or other appropriate authority. The indicia will vary among jurisdictions, but may include, for example, a stamp, signature, or seal; and
  - ◆ The order specifies terms and conditions against the abuser/Respondent.
- b. If the order appears to contain a defect that, under the circumstances, would cause a reasonable officer to question the authenticity of the protection order, the officer shall make all reasonable attempts to verify the authenticity of the protection order using other means, including:
- i. State/County/Local registry [enforcing State].
  - ii. State/Tribal registry of the State or Tribe that issued the protection order.
  - iii. NCIC Protection Order File (NCIC POF).
  - iv. Contact the issuing court directly (during business hours).
  - v. Contact the law enforcement agency located in the jurisdiction where the order was issued, or the State police headquarters of the State where the order was issued for confirmation of the existence of the order.
- c. If an order appears to contain a serious defect that causes the officer to question its authenticity, and the officer is unable to determine whether the protection order is authentic after making reasonable efforts to verify its authenticity using the above-listed methods, the officer shall:
- i. Arrest the alleged perpetrator if a criminal offense has been committed;
  - ii. Explain to the Petitioner or other protected party the procedures for obtaining a protection order in this jurisdiction [emergency protection order, where available];
  - iii. [Where available] Explain the procedures for filing criminal charges without an arrest of the alleged perpetrator, or [where available] the procedures for enforcing the protection order using the civil process; and

- iv. Document the basis for non-enforcement of the out-of-State/Tribe order in the report.



2. No Paper Copy Available.

- a. If no paper copy of the protection order is available for the responding officer to examine, [and/or the State requires verification of any protection order, and/or whether service has been effected, regardless of whether there is a paper copy available for examination by the responding officer], the responding officer should verify the existence of the protection order using one of the following methods:
  - i. State/County/Local registry [enforcing State/Tribe].
  - ii. Registry of the State or Tribe that issued the protection order.
  - iii. NCIC Protection Order File (NCIC POF).
  - iv. Contact the issuing court (during business hours).
  - v. Contact the law enforcement agency located in the jurisdiction where the order was issued, or the State police headquarters of the State where the order was issued for confirmation of the existence of the order.
  - vi. Obtain verbal confirmation of the existence of the protection order from the Petitioner/protected party, and the signature of the Petitioner/protected party.
  - vii. Reliance upon the personal knowledge of the responding officer.
- b. The responding officer shall advise the Petitioner/protected party to:
  - i. Obtain a copy of the protection order from the issuing court as soon as possible, and to carry it on his/her person at all times.
  - ii. Contact the local domestic violence agency, or the local, statewide, tribal, or national domestic violence hotline. The responding officer should provide the phone numbers for the local agency and/or the hotline(s).
  - iii. Consider whether to file or register a copy of the protection order in the State, after weighing the accompanying risks and benefits of doing so with the assistance of a legal advocate at the local domestic violence agency.

C. Enforcement of Firearm Provisions

If the alleged perpetrator is in possession/control of a firearm and there is a provision in the protection order that prohibits him/her from possession/control of a firearm, the responding officer shall enforce the provision as he/she would enforce a similar provision in a protection order issued

in this State. See Section IV(B) for specific policies and procedures.

[If such a provision is not available in the State, see Section IV(C) for policies and procedures related to firearms when there is no existing protection order.]

D. Enforcement of Custody and Visitation Provisions

Due to the extremely high risk of child endangerment and abduction presented by Respondents to protection orders who are provided with access to the children of the Respondent and the Petitioner, suspected violations of custody and visitation provisions shall be treated as high priority cases, and shall be investigated thoroughly.

1. When the agency receives a report of a violation of a custody or visitation order that is contained in a protection order issued by a court of this State or the court of another State Tribe, the responding officer shall:
  - a. Make a determination as to whether there is probable cause to believe that a custody or visitation provision in a protection order has been violated, and, if so, whether the child/children is/are in immediate and present danger of harm or abduction.
  - b. Upon concluding that there is probable cause to believe that there is an immediate and present danger of child abuse or abduction, use all reasonable efforts to locate the Respondent and return the child/children to the Petitioner.
  - c. If there is not probable cause to believe that there is an immediate or present danger of child abuse or abduction, refer the Petitioner to the court in the jurisdiction in which the Petitioner is currently residing, or where he/she obtained the Protection Order. If he/she is now a resident of the State of [name of jurisdiction], the officer shall refer the Petitioner to the appropriate court for enforcement of the order.

## **XII. Coordination with Federal Authorities**

Upon identifying a case in which it is suspected that there has been a violation of Federal firearm laws or the Federal domestic violence/stalking laws:

- A. The responding officer shall immediately notify his/her supervising officer of the suspected violation of Federal law.
- B. The supervising officer shall, upon receiving notification from the responding officer, immediately contact the following agencies and notify the appropriate persons of the suspected violation(s) of Federal law:
  - 1. City/County/District/State' s Attorney' s office; and
  - 2. The local field office for the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives (BATF) (for suspected firearm violations) or the Federal Bureau of Investigations (for suspected violations of the Federal domestic violence/stalking laws).
- C. A copy of the incident report shall be immediately forwarded to all of the above agencies. Any contraband seized that was in the possession of the alleged perpetrator shall be immediately turned over to the appropriate Federal authorities.

## **XIII. Verification of Existence of Protection Order in Response to Request from Another Law Enforcement Agency**

In response to a request from another law enforcement agency to provide verification of the existence of a protection order that was issued within [name of responding jurisdiction], the [name of responding agency] shall immediately provide a copy to the requesting agency in either paper format, to be faxed to the number provided by the requesting agency, or electronic format, via email or other means of transferring the electronic copy of the order.

If no means of transferring a paper or electronic copy of the protection order is immediately available to [name of responding agency], the [name of responding agency] shall provide verbal verification of the protection order, relaying all information that the requesting agency seeks and that is available on the face of the protection order, and shall as soon as possible thereafter make all reasonable efforts to procure a paper or electronic copy of the protection order and send it to the requesting agency using the most expeditious method available.