



MINNESOTA JUDICIAL TRAINING UPDATE

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MINNESOTA'S 2014 DOMESTIC VIOLENCE FIREARM ACT EIGHT (8) FACTS THAT JUDGES NEED TO KNOW

QUESTION: What is the 2014 Domestic Violence Firearm Act (HF 3238, Session Law Chapter 213, also called the Firearms Transfer/Surrender Act) and what do Minnesota judges need to know in order to comply with its mandatory provisions?

ANSWER: The Firearms Transfer Act is a new series of laws that went into effect on August 1, 2014. The act requires defendants convicted of certain domestic violence offenses or persons subject to an Order for Protection (OFP) or Domestic Child Abuse No Contact orders to **“Transfer or Surrender Firearms”** during the time they are prohibited from possessing firearms (i.e. period of probation or length of the no contact order).

- **Mandatory Provisions:** The act makes it MANDATORY for judges to order the “Transfer or Surrender” of firearms if the act applies.

FACT ONE: In What Three Types of Cases MUST Firearms be Surrendered or Transferred?

1. **Any Domestic Assault Conviction** – MS 609.2242, subd 3 (domestic assault; assault 1st thru 5th degree and assault by strangulation against a family or household member);
2. **Any Stalking Conviction** – MS 609.749 subd 8;
3. **Qualifying Orders for Protection & Domestic Child Abuse No Contact Orders:** (OFPs – MS 518B.01 subd 6) (Child Abuse - MS 260C.201 subd 3). **“Qualifying Order” means:**
 - a) **Order Issued After Hearing:** The order must be issued after a hearing in which the abusing party received notice and had the opportunity to participate), and;
 - b) **Order Must Inform:** The order must inform the abusing party of his responsibilities under the new law. All order forms available as of August 14, 2014 include the required language;
 - c) **Rare Exception:** This new law does NOT apply if the court order has been modified to delete the language in Paragraph 22 (see new order forms). Paragraph 22 restrains the abusing party from harassing, stalking or threatening the protected person(s), or engaging in other conduct that would place the protected person(s) in reasonable fear of bodily injury, and also prohibits the use, attempted use, or threatened use of physical force against the protected person(s). Deleting Paragraph 22 should rarely occur.

FACT TWO: WHAT IS MEANT BY FIREARMS? M.S. 97A.015(19)

- 1) Pistols; 2) Long-guns (rifles); or, 3) A gun that discharges shot or a projectile by means of explosive, gas, or compressed air.

FACT THREE: TO WHOM MUST FIREARMS BE SURRENDERED OR TRANSFERRED?

1. **To a law enforcement agency, or a federally licensed firearm dealer:**
 - a) The law enforcement agency or licensed firearm dealer MUST provide the abusing party a “proof of transfer”;
 - b) Abuser MUST file “proof of transfer” with court within 2 business days of transfer.
2. **To a third party who may lawfully receive them – however:**
 - a) Third party cannot be someone who resides with the abusing party/defendant.
 - b) Third party must sign a statutorily approved affidavit under oath (notary public).
 - c) Abusing party MUST file “affidavit” with court within 2 business days of transfer.

FACT FOUR: HOW QUICKLY MUST FIREARMS BE SURRENDERED OR TRANSFERRED?

1. **If court determines (by preponderance of the evidence) there is an “imminent” risk of harm to the victim:** immediately after the court order, the local law enforcement agency MUST take immediate possession of all firearms in abusing party’s possession.
 - a) Once firearms are seized by officers there are procedures the abusing party can follow to have the firearms transferred to a third party or a licensed firearms dealer;
2. **If court does NOT determine there is an imminent risk of harm to the victim:** the surrender or transfer of firearms must occur within 3 business days after court order;

NOTE: Assault or Stalking Conviction – Summary Forfeiture: If a firearm is used during the assault or stalking, the firearm MUST be summarily forfeited under MS 609.5316, subd. 3.

FACT FIVE: FOR HOW LONG MUST THE FIREARMS BE SURRENDERED OR TRANSFERRED?

1. **For Qualifying Orders for Protection (OFP) & Domestic Child Abuse No Contact Orders:**
 - a) For the length of time the order is in effect (OFP = up to 2 years; Child Abuse = 1 year).
2. **Domestic Abuse and Stalking Convictions:**
 - a) If no firearm is used during assault or stalking – 3 years from date of conviction;
 - b) If firearm is used during assault or stalking – minimum of 3 years up to life.

NOTE: Unresolved Question: MN law now incorporates the federal lifetime gun ban for misdemeanor crimes of domestic violence into state law by including it under the list of persons “ineligible” to possess firearms. MS 624.713 Subd 1. As a result, MN now provides two different lengths of firearm prohibition periods for domestic assault offenders. It is unclear if the prohibitory period in such cases is the state prohibition of 3 years (or 3 years to life if firearm used during assault), or the lifetime federal gun ban.

FACT SIX: IN WHAT OFF-RELATED CASES IS SURRENDER OR TRANSFER NOT REQUIRED?

1. Ex-parte orders;
2. Final orders that have automatically converted without a hearing;
3. No notice to abusing party;
4. No opportunity for the abusing party to be heard.
5. Orders in which Paragraph 22 has been deleted. (See "Fact One" above - #3c).

FACT SEVEN: WHAT IS THE PENALTY FOR ALLOWING THE ABUSING PARTY ACCESS TO THEIR FIREARMS DURING THE PROHIBITED PERIOD? MS 624.7144

1. **Gross Misdemeanor:** Any law enforcement agency, federally licensed firearms dealer, or third party who was transferred firearms from an abusing party/defendant pursuant to the above procedures is guilty of a gross misdemeanor if the abusing party/defendant obtains possession of the surrendered/transferred firearms during the prohibited period. **Affirmative Defense:** It is an affirmative defense that the law enforcement agency, federally licensed firearms dealer, or third party "exercised due care" to ensure the abusing party or defendant could not access the firearms.

FACT EIGHT: WHAT IS THE PENALTY FOR POSSESSING FIREARMS WHILE "INELIGIBLE"

1. **Gross Misdemeanor or Felony:** Any abusing party subject to the new Firearm Surrender/Transfer Act is "ineligible" to possess firearms. The penalty for an "ineligible" person possessing firearms is set out in MS 624.713, subd 2. (See Fact 5 – Note, above).

ADDITIONAL RESOURCES:

1. **The full text of the act:** (HF 3238, Session Law Chapter 213) can be found at: <https://www.revisor.leg.state.mn.us/laws/?year=2014&type=0&doctype=Chapter&id=213>;
2. **Frequently Asked Questions (FAQs):** The Minnesota Coalition for Battered Women (MCBW) has prepared an excellent series of Frequently Asked Questions (FAQs) with explanations and detailed citations to specific statutory provisions, located at: http://media.wix.com/ugd/f4bdb8_f847f672f9fa4059876b9e1ddd43e473.pdf.
3. **Court Forms & Orders:** The following new court forms (a-d) containing all required statutory language can be accessed at: <http://courtnet.courts.state.mn.us/courtnetforms/>
 - a) Firearm Transfer Order (Minn. Stat. 609.2242 and 609.749 (for criminal convictions)
 - b) Order for Protection Following Hearing (Minn. Stat. 518B.01, Subd 6);
 - c) Affidavit/Proof of Transfer of Firearms;
 - d) Firearms Forfeiture and Restriction Order (M.S. 518B.01, 609.2242, 609.5316, 609.749)

SOURCES: HF 3238, Session Law Chapter 213; Minnesota Coalition for Battered Women (MCBW).

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