DOMESTIC VIOLENCE CASES
ORDERS OF PROTECTION
& FIREARMS

Law: State, CPL § 530.14

I. Temporary Order of Protection

1. Mandatory suspension and surrender
2. "Permissive" suspension and surrender

II. Final Order of Protection

III. Hearing for mandatory or permissive suspension and surrender
Family Court Act § 842-a(1) and (2) (2002)
Federal, 18 USC § 921 and § 922

Appendix

Temporary/Final Order of Protection; Family Offense CPL § 530.12, Non-family Offense CPL § 530.13

Form to request Temporary or Final Order of Protection with disclaimer for sharing information

Destruct Order

STATE LAW: CPL § 530.14

I. Where a temporary order of protection is issued under CPL § 530.12(1) or § 530.13(1)

and the Court has "good cause to believe" that the defendant:

a) has a prior conviction for a violent felony offense (PL § 70.02)

b) has previously disobeyed a prior order of protection and such has involved:

1) infliction of serious physical injury

2) the use or threatened use of a deadly weapon or dangerous instrument PL § 10.00(12) or (13)

3) engaged in behavior constituting any violent felony (PL § 70.02)

4) been previously convicted of Stalking 1° (PL § 120.60), 2° (PL § 120.55), 3° (PL § 120.50) or 4° (PL § 120.45)

The court <u>must</u>:

a) suspend any existing license to possess firearms

b) order the defendant ineligible for such license

c) order the immediate surrender of any and all firearms

The suspension order remains in effect for the duration of the temporary or final order of protection (unless modified or vacated by court).

The order to surrender firearms should be part of the temporary or final order of protection.

Surrender order must contain:

1) where such firearms shall be surrendered

2) the date and time by which surrender must be complete

3) description of firearms (to the extent possible)

4) a direction to the police to notify the court of surrender

The court, in its discretion, may

a) suspend the defendant's existing license

b) order the defendant ineligible for a license

c) order the immediate surrender of any and all firearms, owned or possessed

if a temporary order of protection has been issued and the court finds that the defendant:

a) may use

b) or threaten to use a firearm unlawfully against the victim or witness

The defendant is entitled to a hearing regarding the suspension of license or surrender of firearms. (Must be "commenced" within 14 days of date of order.)

II. Where a final order of protection is issued, post conviction, revocation of the license or privileges and surrender of any and all firearms is mandatory.

The court is responsible to notify police authorities, of the locality, of the above action taken and immediately notify the state registry and NY State Police in Albany.

III. NY Family Court Act § 842-a, mirrors the criminal statute exactly and makes suspension and revocation of license and rights, and surrender of firearms, mandatory and permissive, as laid out above.

FAILURE TO SURRENDER FIREARMS

Where a Defendant, subject to an order of protection, fails to surrender their firearms as directed, the police or District Attorney may bring a charge against the Defendant for Criminal Contempt in the Second Degree pursuant to Penal Law section 215.50, a Class A Misdemeanor, under subdivision (3), "intentional disobedience or resistance to the lawful process or mandate of the Court".

The police or District Attorney may also apply for and be granted a search warrant to search the home of the Defendant and seize the firearms. The firearms are in fact evidence of the crime of criminal contempt.

DISPOSITION OF FIREARMS

Any firearms surrendered pursuant to the above shall be kept by the police agency to which it was surrendered in a secure location. Upon dismissal of the case the merit or an acquittal after trial, the firearms must be returned to the exonerated defendant. Upon conviction for a domestic violence crime, the firearms may no longer, under Federal Law, be possessed by the Defendant. Where the weapons were used in the incident resulting in conviction the weapons are declared a nuisance and destroyed. CPL § 400.05 (see order in Appendix).

FEDERAL LAW

18 USC § 922(g)(8), makes it a federal crime for a person who is subject to a qualifying protection order to possess a firearm or ammunition, or to ship or receive a firearm or ammunition in interstate or foreign commerce. To qualify under § 922(g)(8), a protection order must:

(1) have been issued after a hearing of which the respondent received actual notice, and at which the respondent had an opportunity to participate;

(2) restrain the respondent from harassing, stalking, or threatening an intimate partner of the respondent or child of such intimate partner or the respondent, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(3) either include a finding that the respondent represents a credible threat to the physical safety of such intimate partner or child or by its terms explicitly prohibit the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.

At a Term of the City Court of Binghamton held in the City Hall, Fifth Floor in the City of Binghamton, Broome County, New York, on the ____ day of _____, 2005.

PRESENT: HON. MARY ANNE LEHMANN
City Court Judge of Binghamton

STATE OF NEW YORK :: COUNTY OF BROOME
CITY COURT :: CITY OF BINGHAMTON

THE PEOPLE OF THE STATE OF NEW YORK

-vs-

D E S T R U C T
O R D E R

Defendant Docket No.

An application having been made sua sponte by the court for an Order directing the destruction of evidence against the defendant who has been charged and convicted of Discharging a Firearm Within the City Limits, in violation of §14-6 of the Code of Ordinances of the City of Binghamton, a violation, and the defendant having exhausted his appeal rights, the court is satisfied that there is reason to believe that the case against the defendant is closed and has been so since October 1, _____ and directs that the evidence, the BB gun, be declared a nuisance and destroyed, pursuant to §400.05 of the Criminal Procedure Law of the State of New York.

It is so ordered.

ENTER: October 1, _____

_____
HON. MARY ANNE LEHMANN
CITY COURT JUDGE of BINGHAMTON