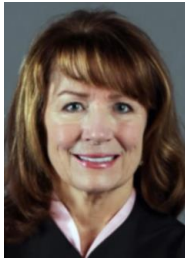


## FROM THE BENCH

# Surprise Judge: Firearms, domestic violence are lethal combo

Posted Wednesday, June 21, 2023 12:00 am



Judge Catherine A. Gaudreau

**By Judge Catherine A. Gaudreau**

Surprise City Court is pleased to announce its Firearms Compliance Initiative for certain Protective Orders involving domestic violence. But first, some background.

Domestic violence and firearms can be a lethal combination. Arizona law recognizes this in several respects, including by its laws governing civil orders of protection. Under Arizona law, a judge who issues an order of protection may include – if the circumstances are appropriate – a provision known as the “firearms prohibition and transfer order.”

When included in an order of protection, that provision will do two things: bar the defendant from possessing firearms while the order is in effect, and require the defendant to immediately transfer to law enforcement any firearms they own or possess. The goal of the provision is to remove a potentially dangerous defendant’s ability to grab their firearm in a moment of rage, frustration, or despair, and use it to kill their former partner, loved one, or others.

The law is this: When a judge hears testimony on a plaintiff’s petition for an order of protection, if the Court finds that the defendant “poses a credible threat to the physical safety of the plaintiff or other protected persons,” the Court may prohibit the defendant from possessing, receiving, or purchasing firearms while the order is in effect. In doing so, the Court must also require the defendant to immediately transfer to law enforcement any firearms they currently own or possess.

The standard provision in such a protective order is this: “Under A.R.S. § 13-3602(G)(4), the Court finds that Defendant poses a credible threat to the physical safety of Plaintiff or Protected Persons. Therefore, Defendant shall not possess, receive, or purchase firearms for the duration of this order, and shall surrender same within 24 hours of service to: [a designated law enforcement agency].”

There is no statutory requirement for a court to verify a defendant's compliance with the firearms transfer order. But courts have a strong interest in determining a party's compliance with their orders, especially those that may impact someone's physical safety. In these situations – which by definition involve recent or potential domestic violence in an intimate-partner or family relationship, a judicial finding that the defendant poses a “credible threat” to the physical safety of the plaintiff, and the possible presence of now-prohibited firearms – the stakes can be extremely high.

For these reasons, to fill that compliance-check gap Surprise City Court has created its Firearms Compliance Initiative. In developing our process, we began with the procedures in place in Phoenix Municipal Court. We then sought input from Surprise Police Department leadership and other stakeholders, including City of Surprise prosecutors, defense attorneys who regularly practice in our Court, other judges, victim advocates, and court leadership. Our initiative was also an aspect of a Fellowship awarded to Judge Gaudreau by the national Judicial Engagement Network, whose members provided expertise along the way.

The result is this: Going forward, if the firearms provision is included in an order of protection issued by Surprise City Court, the defendant will be required to provide proof to the Court that they have complied with the order to transfer their firearms.

To facilitate defendant's proof, two additional documents will be served with the protective order. One is the “Instructions for Transferring Firearms to Law Enforcement and Firearms Information,” which tells the defendant specifically how and where they must transfer their firearms to the Surprise Police Department. It also explains how they may get their firearms back when the order is no longer in effect.

The other is a blank form entitled, “Defendant's Declaration of Firearms Transfer.” The defendant must complete the Declaration and sign under penalty of perjury either that they have transferred their firearms as ordered (in which case the officer receiving the firearms will also document and sign the Declaration) or that they have not transferred any firearms because they do not own or possess any firearms.

The protective order itself will require the defendant to file their completed Declaration with Surprise City Court within two business days after being served with the order. Court staff will immediately check the defendant's compliance. If the defendant has timely filed their completed Declaration, the Court will take no further action. If they have not, the Court will send a non-compliance packet to the Surprise Police Department for potential criminal charges.

The purpose of the Court's initiative is to obtain compliance with the firearms provision. But a defendant who does not file their Declaration as ordered, or who possesses firearms in violation of the protective order, may face criminal charges. That decision is one for the City's police and prosecutors.

A defendant who disagrees with a protective order has the right to have a hearing to contest it, and nothing about the Court's Firearms Compliance Initiative changes that. Contested

hearings are usually set within five to ten business days after the request is made. In the meantime, the order remains in effect. If a defendant does not comply with any of its terms – including the firearms provision and the requirement to timely file their Declaration – they may be charged with a crime, even if a hearing to contest the order has been scheduled.

When considering their right to a contested hearing, a defendant should know that under a federal law, certain conditions may also cause them to be prohibited from possessing firearms. As explained in the Defendant’s Guide Sheet (given to the defendant along with the protective order), if a contested hearing is set and those conditions exist, the federal prohibition will take effect even if the protective order itself does not prohibit firearms possession.

After the protective order is no longer in effect – whether because the order has expired or was dismissed, or because the firearms prohibition was removed at a contested hearing and the circumstances did not implicate the federal law – the defendant may seek a Court order directing law enforcement to return the firearms they had previously transferred.

To our knowledge, Surprise City Court is the fourth court in Arizona (along with the municipal courts in Phoenix, Scottsdale, and Tempe) with a process in place to verify compliance with the firearms transfer provision of its protective orders. We believe this practice will enhance the services provided to those within our jurisdiction and will make for a safer community, including for individuals who have been victims of domestic violence.

For legal advice on firearms or any other topic, please consult with an attorney. To file a petition for a protective order through AZPOINT, go to <https://azpoint.azcourts.gov/>. For general information on domestic violence, see [azcourts.gov/domesticviolencelaw](http://azcourts.gov/domesticviolencelaw).

***Editor’s Note: Catherine Gaudreau is the associate judge for the Surprise City Court.***