



THE FIFTH AMENDMENT AND FIREARMS RELINQUISHMENT PROGRAMS

The National Resource Center on
Domestic Violence and Firearms

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What is the Fifth Amendment right against self-incrimination?

The Fifth Amendment of the United States Constitution states that no person “shall be compelled in any criminal case to be a witness against himself.” This right against self-incrimination protects individuals from being forced to provide evidence or testimony that would implicate them in a crime or may result in a criminal prosecution. The right is applicable in state proceedings as a result of the Due Process Clause of the Fourteenth Amendment. In addition, most states have incorporated this protection in their constitutions or statutes. As a result, defendants in any criminal case cannot be forced to testify or provide other evidence if it may cause them to incriminate themselves. Refusing to answer questions is sometimes referred to as “pleading the Fifth.”

The Fifth Amendment has been interpreted by courts to extend to individuals involved in non-criminal proceedings if there is a reasonable possibility that they may incriminate themselves in a criminal proceeding that takes place in the future. Civil protection order proceedings are an excellent example of this. Although civil protection orders are civil in nature, violations of such orders typically constitute a criminal offense under state law and testimony given by the respondent in a civil protection order hearing may be able to be used in future or contemporaneous criminal cases.

How is the Fifth Amendment relevant to firearms relinquishment programs?

A key challenge for communities working to improve their response to prohibited domestic abusers’ access to firearms is the transformation of what is essentially an honor system into one in which compliance with court orders not to possess and/or to relinquish firearms is monitored, and noncompliance is identified and addressed. Several strategies have been developed and implemented towards these ends, all of which rely upon a critical element: timely information regarding a prohibited person’s access to firearms. Unfortunately, all too often the onus is placed on the protected person to alert authorities to the fact that a prohibited person has retained access to their firearms or has obtained new ones, even after issuance of a court order to relinquish firearms. To alleviate the responsibility being placed solely on the protected person, some communities have charged law enforcement agencies, prosecutor officers, court compliance officers, and other professionals with the responsibility to conduct investigations into whether prohibited individuals have complied with firearm prohibitions and relinquishment requirements. But overburdened and under-resourced agencies may be reluctant or unable to engage in these activities, and an increasingly favored approach is to require that the prohibited

persons themselves provide information about their access to firearms and to provide proof that they have relinquished any in their possession for the duration of the prohibition.

In the context of court orders that prohibit firearms possession and/or require relinquishment of firearms, this strategy typically includes mandatory court forms, including sworn affidavits or declarations, to be submitted by the prohibited person regarding the status of their firearms possession. In some instances, the form is to be submitted prior to a hearing that results in a court order, so that the order can provide specific information regarding the firearms to be relinquished (type, location, etc.). In other processes, the form must be submitted to the court after issuance of the order, compelling the prohibited person to disclose to the court whether and how the firearms have been disposed of (e.g., relinquished to a law enforcement agency or a federally-licensed firearms dealer, or to an eligible third party, depending on what is allowed under the governing law).

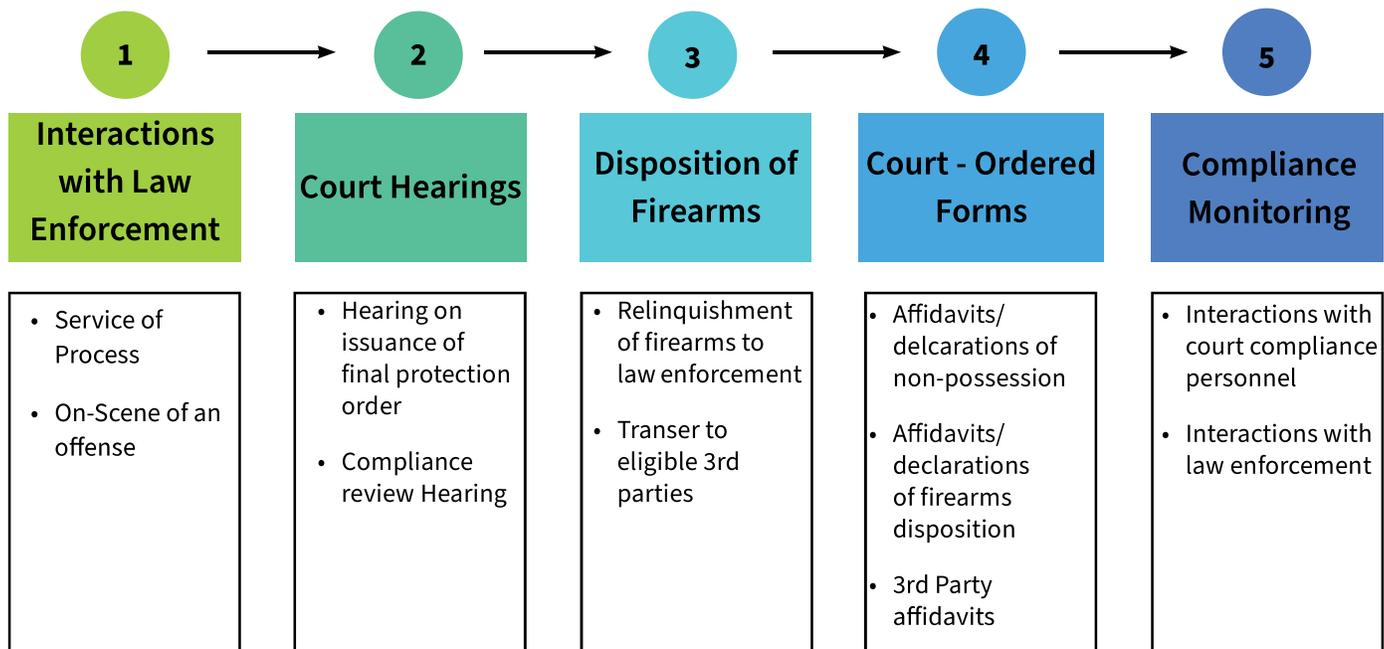
The Fifth Amendment right against self-incrimination may apply in all of these scenarios, because the prohibited person is required to provide information to the court about firearms possession that may be unlawful at the time, or may involve a firearm that has been used in the commission of a crime or otherwise could lead to a potential criminal prosecution.

In fact, some courts have found that the very act of relinquishing a firearm in response to a court order to do so can constitute “testimony” protected by the Fifth Amendment. (See section ___ below for more details).

What strategies should courts and communities pursue to implement effective firearms relinquishment programs while complying with prohibited individuals’ right against self-incrimination?

There are several strategies to consider in developing a firearms relinquishment program that is both effective and compliant with the Fifth Amendment. The most relevant approach depends in part on the specific step of the process and the compliance strategy being implemented. Ideally, courts and other system stakeholders should collaborate to select, adapt, and implement an effective, Fifth-Amendment compliant process, as well as to assess its effectiveness over time. Judicial officers, court administrators, prosecutors, defense attorneys, attorneys representing victims, and others should all be involved in this work. As described in greater detail below, useful strategies include the use of Fifth Amendment waivers on required court forms, offers of immunity from prosecution for compliance with court orders, and admonishment of prohibited individuals during court hearings regarding their Fifth Amendment rights.

Firearm Relinquishment Process



As illustrated above, firearms relinquishment processes typically include five key components that have implications for the Fifth Amendment right against self-incrimination. The first component includes prohibited persons' interaction with law enforcement officers who may ask questions about firearms access or seek dispossession of firearms as a part of their response to a domestic violence incident or in serving a protection order that includes a firearms prohibition or order to relinquish firearms. The second component includes court hearings in which judicial officers may seek information about the status of a prohibited respondents' firearms possession. The third component involves the steps that the prohibited defendant takes to relinquish possession of their firearms, including by turning them into law enforcement or handing them over to a third party (such as a friend, family member, or a federally licensed firearms dealer). The fourth component focuses on any required forms related to firearms possession or transfer that respondents must file with the court to demonstrate compliance with court orders. The fifth and final component includes any interactions the prohibited respondent has with law enforcement or court personnel responsible for monitoring compliance with orders to relinquish firearms or investigating violations of orders.

Below, we describe specific strategies for ensuring that each of those components effectively accomplishes the goals of the relinquishment process (including identifying and addressing non-compliance) while preserving the Fifth Amendment protections against self-incrimination.

1. Interactions with law enforcement

On-scene response to an offense:

Best practices for officers responding to a domestic violence offense include separate interviews with each party that incorporate questions about firearms. Officers should inquire about:

- Whether any firearms were used or displayed/brandished during the incident
- Whether firearms threats were made
- The history of firearms use or threats in the relationship
- Whether there are any firearms in the area or whether there are otherwise accessible firearms

If the present circumstances permit¹, officers should remove all firearms they are legally justified in removing (considering applicable Constitutional and/or state law). Absent a search warrant, this is likely to apply to all firearms in plain sight, relinquished by consent, or obtained as a result of a lawful search (custodial, consensual, inventory (e.g., vehicular), or in exigent circumstances).

Fifth Amendment implications and strategies related to these practices:

- When officers ask the alleged perpetrator questions about their access to or possession of firearms, they should be sure that Fifth Amendment requirements are met
 - Miranda rights must be provided if a reasonable person under the circumstances would perceive that they are being detained by the officer (in other words, a “custodial interrogation” is taking place)
- Law enforcement agencies should develop protocols or standard operating procedures for their response to domestic violence incidents, and include specific provisions regarding issues related to firearms
 - See [link to FTAP resource] for suggested components to include in law enforcement protocols

Service of protection orders:

Best practices for service of protection orders that include firearms-related provisions include:

- Pre-service investigation and interview with petitioners:
 - Development of service packets to provide serving officers with information about criminal history, risk factors/assessment, and other information to support safe and effective service
- Use of a “[WARM](#)” approach: Use unmarked vehicles and plain clothes if possible, treat respondents with empathy and respect while explaining the requirements of the order, explain the temporary nature of an ex parte order, that law enforcement will retain the firearms for safekeeping, and there will be a hearing at which entry of a final order may be contested
- If the order includes a firearms relinquishment provision, officers should seek consent to a search and take possession of all firearms that are relinquished, are in plain view, or are discovered pursuant to a lawful search

Fifth Amendment implications and strategies related to these practices:

- Service of process typically does not constitute a “custodial interrogation,” (a reasonable person would consider themselves free to leave) so the requirement to provide a Miranda warning does not apply when officers ask about firearms
- As with the on-scene response to a domestic violence incident, law enforcement agencies should develop a protocol for service of protection orders that include firearms relinquishment provisions, including an explanation of the scope of authority to ask questions and conduct searches.

2. Court hearings

Best practices for conducting hearings leading to issuance of final protection orders:

- Judicial inquiry of respondents regarding firearms use and access
 - Ideally, information about firearms is explicitly sought in petitions, affidavits, and supplementary forms, and petitioners would not be questioned about firearms with the respondent present
 - Where firearms were ordered to be relinquished in ex parte orders, judicial inquiry at the hearing on the final order regarding the status of relinquishment and current possession of firearms

Best practices for conducting compliance review hearings:

- Judicial inquiry of respondent about firearms possession status, both firearms included in petitions, affidavits, and supplementary forms, as well as additional firearms
- Opportunity to provide evidence of firearms possession afforded to petitioner and others, such as court compliance officers, law enforcement officers, probation/parole, and prosecutors

Fifth Amendment implications and strategies related to these practices:

- Judicial inquiry during these hearings generally constitutes compelled testimony and implicates the Fifth Amendment right against self-incrimination
 - Potential criminal consequences include: violation of an existing order to relinquish and not possess firearms within the instant case or another case (e.g., a parallel criminal prosecution crimes related to the unlawful possession of a firearm by a prohibited person (e.g., the respondent's prior conviction of an offense that results in a firearms prohibition); crimes related to possession of an illegal firearm; and prosecution for a crime that involved a firearm subject to the relinquishment order
- Strategies to safeguard respondents' right against self-incrimination include:
 - Judicial admonishment of the respondent's right not to testify to avoid self-incrimination
 - Generally, judges have the discretion whether to inform a party about their right to answer incriminating questions.² Especially where the respondent is not represented by counsel, such an admonishment should be considered
 - The court should consider offering the respondent an opportunity to consult

- with an attorney; if it does so, it is important to emphasize the importance of full compliance with any surrender order and the criminal liability that could result from non-compliance.
- Grants of immunity: By prosecutor’s office or statutory (see sidebar for a description of the types of immunity that may be offered)
 - Prosecution: Prosecutors may offer respondents immunity from prosecution for unlawful possession of firearms in exchange for compliance with orders to relinquish firearms
 - A sample proffer of immunity from prosecution related to relinquishment of firearms may be found in Appendix A.
 - Statutory immunity: Some state statutes provide for immunity from prosecution for information provided during court proceedings related to relinquishment of firearms or for voluntary surrender of firearms or relinquishment of firearms as required by court orders. Examples include:
 - California, which authorizes the court to grant use immunity: “If the respondent declines to relinquish possession of any firearm based on the assertion of the right against self-incrimination, as provided by the Fifth Amendment to the United States Constitution and Section 15 of Article I of the California Constitution, the court may grant use immunity for the act of relinquishing the firearm required under this section.” Cal. Fam. Code § 6389(c)(1)
 - Louisiana: “Information required to be provided in order to comply with the provisions of this Title [requiring firearms relinquishment] cannot be used as evidence against that person in a future criminal proceeding, except as provided by the laws on perjury or false swearing.”³ Louisiana Code of Criminal Procedure § 1002(G)
 - New York grants immunity from prosecution for unlawful possession of duly surrendered weapons. N.Y. Penal Law § 265.20a(f)
 - Washington enacted new statutory provisions to address a state appellate court decision finding that the state’s firearm relinquishment statute violated respondents’ Fifth Amendment rights.⁴

Additional considerations in the context of court hearings:

Adverse inferences: In civil cases, judges may be able to draw adverse inferences based upon a respondent’s invocation of their Fifth Amendment right to not answer questions.⁵ This means that the judge (or other fact-finder) may decide that the respondent’s silence is used to hide testimony or information that is unfavorable and would tend to incriminate them. In the context of questions from the bench about firearms access or relinquishment status, the judge could infer that the respondent has failed to comply with a relinquishment order and retained possession of firearms. This could influence the judge’s next steps in addressing the issue, for instance in issuing a show cause/contempt order against the respondent.

It is important to note that at least one state supreme court has found that the unique circumstances of a domestic violence protection order case create an exception to the adverse-inferences rule in civil cases. Specifically, it is the quasi-criminal nature of the proceeding that changes the analysis, in part because “although the domestic violence complaint is civil in form, a defendant who testifies in the proceeding “must necessarily address the criminal predicate acts alleged.” MA v. JHM, No. A-1-24 (N. J. 2024) (available at https://www.njcourts.gov/system/files/court-opinions/2025/a_1_24.pdf)

Immunity from federal prosecution: Generally, state statutes and state/local prosecutors cannot grant immunity against prosecution by federal prosecutors. In this context, potential firearms-related federal prosecutions could include enforcement of the federal Gun Control Act provisions prohibiting possession of firearms by certain individuals, including convicted felons, people subject to orders of protection, and people convicted of qualifying misdemeanor crimes of domestic violence. Jurisdictions working on immunity-based strategies in the context of domestic violence cases involving firearms should consider recruiting the appropriate U.S. Attorney’s Office in the conversations to explore its willingness to grant immunity from federal prosecution in conjunction with state immunity offers.

Types of Immunity

Transactional immunity: protects a witness from prosecution for offenses to which compelled testimony relates. Typically described as the broadest type of immunity

Use and derivative use immunity: protects a witness against the use of the compelled testimony or evidence derived from the compelled testimony

Use immunity: protects a witness against the use of the compelled testimony only, not against evidence derived from it. (29 A.L.R.5th 1 (1995))

3. *Disposition of firearms*

Best practices for disposition of firearms:

- Issuance of orders with clear relinquishment provisions and, where information is available, listing firearms and their locations to facilitate enforcement
 - Providing clear, language-accessible instructions regarding the relinquishment process, including where to relinquish, the applicable deadline, required proof of compliance, third-party transfer requirements (if available), etc.⁶

Fifth Amendment implications and strategies related to these practices:

- Some caselaw holds that the act of relinquishing a firearm in response to a court order to do so can constitute “testimony” protected by the Fifth Amendment.⁷
 - In most instances, this means that the person’s possession of the firearms cannot be used in subsequent prosecution, but at least one state appellate court has held a relinquishment procedure unconstitutional under the Fifth Amendment (*State v. Flannery*, footnote 6).
- To the extent that the act of relinquishment is deemed protected by the Fifth Amendment, consider:
 - Informing respondents on protection orders/orders to relinquish firearms that they may wish to consult with an attorney if they have questions regarding the surrender of firearms in compliance with the order.⁸
 - Prosecutors should consider offering immunity in conjunction with firearms relinquishment, as previously described.
- The implications of using mandatory court forms (affidavits/certifications of relinquishment, etc.) are discussed below.

4. *Mandatory court forms*

Best practices for use of mandatory court forms:

- Requirement that the respondent file with the court one or more mandatory forms indicating proof of compliance with relinquishment orders
 - Forms should be under penalty of perjury and indicate the location and identity of all relinquished firearms⁹
 - Receipts from law enforcement agencies or federally licensed firearms dealers should be attached as proof of compliance
 - Where transfer of firearms to third parties is lawful, both the respondent and the third party should file an affidavit with the court stating that the third party is eligible to possess firearms and will not permit respondent access to the firearms under penalty of state and federal law[JB3.1].
- Failure to timely file required forms triggers a response:
 - Further investigation by law enforcement
 - Prosecution for a violation of a protection order where authorized
 - Court action: Compliance review hearing (see below) or issuance of a show cause/contempt hearing order

Fifth Amendment implications and strategies related to these practices

- Mandatory forms are likely to be found to constitute compelled testimony regarding the respondent's firearms possession status
- Strategies to implement an effective process while protecting Fifth Amendment rights include:
 - Use of a checkbox for 5th Amendment declination¹⁰
 - If such an opportunity to decline to complete the form is offered:
 - Provide a clear explanation that such declination does not enable the respondent to evade a criminal violation and that they remain liable for a criminal violation if found to possess a firearm, as established through other evidence
 - Where appropriate, note that the court may draw adverse inferences based upon the declination¹¹

5. Compliance monitoring

Best practices for use of compliance monitoring:

- Requirement to file affidavits/declarations regarding firearms possession status and questioning of respondents about firearms during compliance review hearings (both previously discussed)
- Investigations and inquiries of respondents by court compliance officers or other personnel (probation in some jurisdictions)
- Investigations/inquiries by law enforcement officers or prosecution office personnel

Fifth Amendment implications and strategies related to these practices:

- To the extent that court personnel, law enforcement, or prosecution personnel ask questions of respondents regarding the status of their firearms possession and compliance with court orders, there is a question whether a respondent's response is considered compelled testimony protected by the Fifth Amendment
- Whether Fifth Amendment issues arise can be complicated, depending on the context for the conversation (whether it is "custodial" in nature, who is making the inquiry, and the perceived voluntariness of the responses).
- For court personnel, if the court intends to use the information or share it in such a way that it could result in a criminal prosecution or criminal contempt hearing, a suggested practice would be to admonish the respondent regarding their Fifth Amendment rights.
- For law enforcement, the requirements regarding Miranda rights previously discussed are applicable to the interaction with the respondent: While law enforcement can err on the side of providing Miranda-style warnings even if not required by the situation, for Miranda warnings to be required the interrogation must be "custodial." It is unlikely discussions about firearm relinquishment compliance would be custodial unless the circumstances are such that the respondent reasonably believes that they are in custody and not free to leave.
- Probation officers involved in compliance monitoring activities possess greater authority to question individuals under supervision, as well as to investigate and address violations of court orders to relinquish firearms or the commission of any additional crimes.
 - In general, individuals under supervision are required to answer probation officers' questions truthfully; however, probation officers typically do not have to provide probationers with a Miranda warning in a non-custodial situation¹²

What are some considerations for civil attorneys representing victims in cases involving firearms?

Civil attorneys should consider both individual advocacy strategies (on behalf of their victim clients in individual cases) and systems advocacy (promoting processes that promote safety and autonomy for their clients and accountability for abusive partners) in at least three different situations:

(1) Where victims provide information to authorities regarding firearms located in a home that is shared with the abusive partner

- This situation may create liability for victims if it is determined that they have knowingly allowed their partner to have **constructive possession** of firearms, which would violate state and federal prohibitions
 - Constructive possession applies when a person lacks physical custody of an object but “still has the power and intent to exercise control over the object.” *Henderson v. United States*, 135 S. Ct. 1780, 1784 (2015)
 - It generally requires two elements: (1) power to exercise control over the object and (2) intent to exercise that control.¹³
 - Specifically, a victim could be charged as an “accomplice” to the crime of unlawful possession by the prohibited co-habitant (akin to the concept of “aiding and abetting” the violation.)¹⁴
 - In addition, victims providing information about firearms or relinquishing them for safekeeping potentially could be held criminally liable for constructive possession of illegal firearms themselves, depending on the circumstances; civil attorneys should discuss this issue with clients before they take such action
- Suggested practices:
 - Meet with prosecutors and/or discuss these issues during meetings of coordinated community response or other collaborative workgroups to:
 - Emphasize that such charges can endanger victims and be unjust in light of the power and control dynamics in domestic violence cases
 - Discuss the importance of practices that maximize safety and autonomy for victims, including encouraging safe storage practices
 - Encourage grants of immunity for victims who provide information known to them about firearms in the custody and control of defendants

2) Where firearms are marital or joint property of the victim and the abusive partner and the victim therefore could consent to police confiscation of the firearms

- This situation can raise victim safety and autonomy concerns (for instance, the victim may believe that their surrender of the firearm would be unsafe than alternatives)

Suggested practices:

- Advocate for law enforcement practices that do not require surrender of firearms where they are jointly owned by the victim
- Instead, support informed decision-making by victims by encouraging them to have a confidential conversation with an advocate and an opportunity for safety planning

(3) Where victims themselves seek to relinquish firearms owned by the abusive partner (not jointly owned):

- There is a potential for victims to be liable for unlawful possession if such possession requires a license or permit to carry firearms under state law, or for theft of property because they do not have an ownership interest in the firearms

Suggested practices:

- Advocate for a process in which law enforcement picks up voluntarily surrendered firearms to avoid potential liability for possessing/transporting firearms without a permit/license
- Meet with prosecutors and/or discuss these issues during meetings of coordinated community response or other collaborative workgroups to implement a safe and fair process to enable victims to turn in firearms owned by abusive partners pursuant to relinquishment court orders. One such strategy could include offering immunity from prosecution, as explored above.

APPENDIX A

Sample Proffer of Immunity for Relinquishment of Firearms

This proffer of immunity for the respondent, _____, by [prosecutor's office] on ____[date]_____, is governed by the following terms and conditions:

1. A protection order requiring relinquishment of firearms by the respondent was entered by the court in case number _____.
2. The order requires the respondent to relinquish all firearms owned or possessed by the respondent to _____ within X hours of the entry of the order.
3. If the respondent complies with the relinquishment of all firearms owned and or possessed by the respondent as directed, the State agrees not to prosecute any charges related to possession of those relinquished firearms. No firearms turned by the respondent shall be used as evidence to directly charge the respondent. No evidence turned in or statements by the respondent will be used in any case against the respondent in the government's case in chief at trial.
4. However, the government may use such statements and any other information provided by the respondent to pursue investigative leads suggested thereby and may use any evidence or information generated by its investigation directly against the respondent. Moreover, the government may use statements made and information provided by the respondent to rebut any evidence or arguments offered on the respondent's behalf. In addition, the government may disclose to the probation department and the court any statements made and information provided by the respondent, and may use such information to determine supervision of the respondent.
5. The government may use any statement made or information provided by the respondent or on his behalf in a prosecution for false statements, perjury or obstruction of justice premised on statements or actions by the respondent subsequent to the signing of this document.
6. The respondent waives any Constitutional right against twice being placed in jeopardy with respect to any offense that the State may prosecute if this agreement is terminated.

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Endnotes

- 1 As of January 2026, laws in 21 states provide for law enforcement officers at the scene of a domestic violence incident to remove firearms. These laws vary as to the circumstances in which removal is authorized and whether such removal is required or permitted. For a summary of state laws on law enforcement removal of firearms at the scene of a domestic violence incident, see Giffords Law Center, “Removal of Firearms from Individuals Shown to Be Dangerous,” within <https://giffords.org/lawcenter/gun-laws/policy-areas/who-can-have-a-gun/domestic-violence-firearms/>.
- 2 See Broun et al., McCormick on Evidence at § 131 ((7th ed. 2013) (“trial judge who becomes aware that the questioning of a witness raises the risk that the witness by responding will incriminate himself . . . has substantial discretion as to whether and how to respond.”).
- 3 Upon issuance of protection orders, Magistrate judges in New Orleans have been provided with a sample script that explains this provision in plain language: “This means that if you tell the court about a firearm that you possess as part of this process your possession of that firearm cannot be used as evidence in a case brought in the future.”
- 4 Washington State: RCW 9.41.801(9)(a) The act of voluntarily surrendering firearms or weapons, providing testimony relating to the surrender of firearms or weapons, or complying with an order to surrender and prohibit weapons issued pursuant to RCW [9.41.800](#) or [10.99.100](#), and any information directly or indirectly derived from such act or testimony, may not be used against the person subject to the order in any criminal prosecution under this chapter, chapter [7.105](#) RCW, or RCW [9A.56.310](#), or in any criminal prosecution pursuant to which such order to surrender and prohibit weapons was issued, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order. Every such order issued subsequent to July 23, 2023, shall contain language consistent with the statutory immunity set forth in this subsection.

(b) If a person subject to such an order invokes the privilege against self-incrimination at the time of issuance of the order or at a subsequent hearing, the court may afford the person subject to the order an opportunity to demonstrate that compliance with the surrender provision of the order would expose that person to a realistic threat of self-incrimination in a subsequent or pending criminal proceeding. The court may conduct this portion of the proceeding *ex parte* or receive evidence in camera, without the presence of the prosecuting attorney, after the court conducts an analysis under *State v. Bone-Club*, 128 wn.2d 254, and concludes that the courtroom may be closed.

(c) If the person subject to the order establishes such a realistic threat of self-incrimination regarding possible criminal prosecution that is not addressed by the immunity from prosecution set forth in (a) of this subsection, the court shall afford the relevant prosecuting attorney an opportunity to offer an immunity agreement tailored specifically to the firearms or weapons implicated by the potential self-incrimination. To achieve the purposes of this section, any immunity offered should be narrowly tailored to address any realistic threat of self-incrimination while ensuring that any other firearms not implicated are surrendered.

(d) Any immunity from prosecution beyond the immunity set forth in (a) of this subsection, may only be extended by the prosecuting attorney. If the prosecuting attorney declines to extend immunity such that the person subject to the order cannot fully comply with its surrender provision without facing a realistic threat of self-incrimination, the court’s order must provide for the surrender of every firearm, dangerous weapon, and concealed pistol license that does not implicate a realistic threat of self-incrimination. The order’s prohibitions regarding accessing, purchasing, receiving, or attempting to purchase or receive, any firearms or other dangerous weapons, or concealed pistol license, remain in effect.

(e) Nothing in this section shall be interpreted as diminishing the requirement that the person subject to the order fully comply with the order issued by the court. The burden remains on the person subject to the order to prove compliance.

- 5 See *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976) (court may draw an adverse inference against a witness “when they refuse to testify in response to probative evidence offered against them.”).
- 6 See National Council of Juvenile and Family Court Judges, “Firearms Technical Assistance Project: Compendium of Respondent Info and Instruction Sheets,” <https://www.ncjfcj.org/publications/firearms-technical-assistance-project-compendium-of-respondent-info-and-instruction-sheets/>.
- 7 See *State v. Zachary James Marshall*, No. 23650101 (Kitsap County Dist. Ct. May 27, 2020) (cited in *State v. Flannery* (Court of Appeals of Washington, Division 2 November 22, 2022) (available at <https://www.courts.wa.gov/opinions/pdf/D2%2055682-1-II%20Published%20Opinion.pdf>) (holding Washington’s statutory procedure requiring surrender of firearms unconstitutional on Fifth Amendment grounds); *New York v. Havrish*, 8 N.Y.3d 389 (2007) (available at <https://law.justia.com/cases/new-york/court-of-appeals/2007/2007-02787.html>) (holding defendant’s surrender of firearms pursuant to protective order testimonial because it revealed his subjective thought process, and therefore gave rise to Fifth Amendment protection); See also *Haverstraw Town Police v. C.G.*, 2023 NY Slip Op 23154 (Supreme Court, Ulster County 2023) (available at <https://law.justia.com/cases/new-york/other-courts/2023/2023-ny-slip-op-23154.html>) (“The [Havrish] Court did not hold that the issuance of the underlying order of protection was unconstitutional or that the mandate that the subject disclose and turn over his weapons was improper. In fact, the Court did not call into doubt the propriety of those events in any way. Rather, the Court found that as a consequence of those events, the evidence obtained could not be used in a subsequent criminal prosecution. Note also the existence of a line of cases addressing compelled production of potentially incriminating documents, which may be analogized to production of a firearm that incriminates one in a crime: See, e.g., *United States v. Ponds*, 454 F.3d 313 (D.C. Cir. 2006; *United States v. Hubbell*, 530 U.S. 27, 38 (2000).
- 8 It is important to recognize that including advisements that may deter full compliance with orders should be carefully considered. Essentially, courts are balancing the possibility that a future prosecution may be impaired because the act of relinquishment is deemed testimonial against the immediate safety concerns presented by a respondent’s continued access to a firearm after issuance of a court order against them.
- 9 Examples of such forms include: [Minnesota](#); Washington ([no firearms](#); [relinquishment](#)); Pennsylvania ([relinquishment to dealer](#); [relinquishment to law enforcement](#)). Many other states have adopted these types of mandatory forms.
- 10 See for example Oregon’s [form](#) (checkbox stating “I am asserting my constitutional right against self-incrimination. I decline to make any statement about firearms.”)
- 11 See Kitsap County, WA [form](#): “I understand that in a civil case, the court may make assumptions against me based on my refusal to provide information.”
- 12 See *Minnesota v. Murphy*, 465 U.S. 420 (1984).
- 13 See Blocher and Wilson, *Living With Guns: Legal and Constitutional Considerations for those Living with Temporarily Prohibited Possessors*, Duke Law School Public Law & Legal Theory Series No. 2022-19 (2022) (available at <https://firearmslaw.duke.edu/assets/mat108-1.pdf>). This article presents a helpful overview of the issues that arise when a prohibited person cohabitates with a person who owns a firearm in the home.
- 14 See *United States v. Huet*, 665 F.3d 588, 602 (3d Cir. 2012) (upholding defendant’s indictment for aiding and abetting her boyfriend’s prohibited possession of a firearm owned by the defendant).



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