Legal Advocate & Attorney Guide to Karina's Law

the network
Advocating Against Domestic Violence

Considerations for the Firearm Remedy

Considerations for Search Warrant

While requesting a search warrant may be a necessary part of firearm removal proceedings, it is important to be aware of the potential unintended consequences. These may include:

- **Exposure of Private Information:**
  - Law enforcement may come across personal or sensitive information unrelated to the case, which could affect the survivor or others living in the household.
- **Impact on Household Relationships:**
  - The presence and actions of law enforcement during a search may strain or damage relationships with other individuals residing in the home.
  - The presence of law enforcement in the home could also be potentially triggering or traumatic to survivors of police violence.
- **Scope of the Search:**
  - A search warrant could authorize a broader examination of the home than initially anticipated, potentially leading to the discovery of unrelated items or issues that could complicate the legal process or lead to unintentional criminalization of any of the parties involved.

Delays in Service

Delays in serving an Order of Protection in Illinois can occur for a variety of reasons and may impact a survivor's safety planning. Common factors contributing to service delays include:

- **Difficulties Locating the Respondent:**
  - If respondent's address is unclear or if they moved addresses without knowledge of the survivor, law enforcement may face challenges in identifying or locating the respondent.
  - If respondent can only be served at their workplace, firearm removal will not be immediate.
- **Court Staff and Officer Availability**
  - The availability of judges, interpreters, and court staff can vary from day to day depending on the volume of cases in a specific courthouse. This can influence how quickly a petition for an order is heard by a judge and can also delay how quickly the order can be processed and served.
  - The availability of officers from the sheriff's department can also impact how quickly an order is served.
- **Actions of Respondent:**
  - In some cases, respondents may actively avoid being served, which can prolong the process and create additional safety concerns.

Implementation Challenges

Although Karina's Law represents a significant step forward in enhancing survivor safety by allowing for the removal of firearms from abusers, it is a newly enacted piece of legislation. As a result, survivors and their advocates may face certain challenges, including:

- **Judicial Familiarity with Firearm Removal:**
  - Although Illinois has a long-standing civil process for firearm removal through search warrants, many judges are more accustomed to granting such warrants in the context of criminal investigations or after a crime has occurred. The use of search warrants as a proactive safety measure in the Order of Protection (OP) context is relatively new and may require a shift in judicial thinking and practice.
- **Implementation Logistics:**
  - Courts, law enforcement, and legal practitioners may still be developing procedures for how to efficiently and effectively use Karina's Law, which can impact consistency and timing

Criminal Order of Protection (OP) Process

File for a criminal OP with the firearm remedy:

Petitioner requests a Surrender Order (SO)

Service Attempts Vary

OP and SO served simultaneously. Firearms are surrendered to law enforcement ***if present*** at service. **Receipt** is provided to respondent and court.

24 hours

Firearms surrendered to law enforcement ***if they were not present*** at service. **Receipt** is provided to respondent and court.

Law enforcement request a SO + Search Warrant (SW)

up to 96 hours

Execute SW and seize firearms. Receipt is provided to respondent and court. OP service and SW execution ***may or may not*** happen simultaneously.

After firearms have been surrendered to or seized by law enforcement, a respondent ***may*** file a **petition to transfer the firearms to a third party.** The third party must be a valid FOID holder, live at a different address, and testify to the judge that they will not give the respondent access to the firearms.

Civil Order of Protection (OP) Process

File for a civil OP with the firearm remedy. **Petitioner** requests a:

Surrender Order (SO)

Surrender Order + Search Warrant (SW)

Service Attempts Vary

OP and SO served simultaneously. Firearms are surrendered to law enforcement ***if present*** at service**. Receipt** is provided to respondent and court.

24 hours

Firearms surrendered to law enforcement ***if they were not present*** at service. **Receipt** is provided to respondent and court.

Delivery Timelines Vary

Law enforcement receives SW from court.

If petitioner **has not** had law enforcement contact in last 90 days:

up to 48 hours

Law enforcement **gather information** as needed.

up to 96 hours

If petitioner **has** had law enforcement contact in last 90 days:

up to 96 hours

Law enforcement either:

Petition to modify SW, if there is a mistake that inhibits execution, or **petition for additional time** to execute.

up to 96 hours

Execute SW and seize firearms. Receipt is provided to respondent and court. OP service and SW execution ***may or may not*** happen simultaneously.

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