

Alternatives to Current Relinquished Firearms Storage Arrangements in Vermont: A Feasibility Study

*****ABBREVIATED*****

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EXECUTIVE SUMMARY

This study explores the feasibility of alternative arrangements for storing firearms relinquished by persons subject to Relief From Abuse (RFA) orders in Vermont. Establishing alternative firearms storage arrangements would alleviate current storage burdens for law enforcement agencies, allow for more consistent law enforcement and judicial responses to RFA defendants with firearms, and reduce concerns about potential access to these firearms by abusers when firearms are relinquished to friends and relatives, as commonly occurs.

I first examined the statutes and procedures for the three states contiguous to Vermont: Massachusetts, New Hampshire, and New York. Massachusetts has moved from a system of firearms storage by law enforcement to one of routinely transferring firearms to federally and state licensed, bonded firearms dealers (FFLs) for storage. In New Hampshire, relinquished firearms are stored by law enforcement agencies if a defendant does not make alternative arrangements. New Hampshire does not permit friends, relatives or other persons to store firearms or ammunition for a defendant, however. Although New York statutes stipulate only that protection orders specify the place where firearms are to be relinquished, as well as the date and time, sheriffs departments routinely store relinquished firearms.

To acquire information about current storage arrangements for relinquished firearms in Vermont and to document the extent of any associated burdens on law enforcement as well as proposed solutions, I surveyed police chiefs, sheriffs and Vermont State Police (VSP) station commanders. Fifty-seven surveys were completed on line or returned by mail, yielding a response rate of 72 percent. Of the 57 respondents, 33 (58 percent) indicated that their department or station currently stores firearms for individuals subject to RFA orders. Of the 24 respondents who do *not* currently store relinquished firearms, 13 have done so in the past. Insufficient space was the reason most frequently given for not storing relinquished firearms, followed by concerns about liability.

An estimated 540 relinquished firearms were being stored by law enforcement agencies at the time of the survey. Nearly three-quarters currently store fewer than 20 relinquished firearms, with the largest number of stored firearms falling in the range of 80-100. The percentage of storage space filled by *all* firearms (including firearms stored as evidence) was 60 percent or higher for more than half of respondents, and 80 percent or higher for more than one-third of respondents. The lack of storage space some agencies face appears to be partly due to firearms not being picked up when RFA orders expire, yet only four departments have a policy stipulating that firearms must be picked up or forfeited after a certain length of time.

Eighty percent of respondents view lack of space as problematic, and more than 75 percent of respondents were at least somewhat concerned about liability issues related

to maintaining the condition of firearms. Asked about their overall level of satisfaction with current firearms storage arrangements, 36 percent of all respondents were extremely dissatisfied and an additional 30 percent were somewhat dissatisfied.

Most respondents (78 percent) are receptive to exploring the possibility of using FFLs to store relinquished firearms. Three-quarters would be at least somewhat supportive of state-constructed storage facilities. Currently, no police or sheriff's department or VSP station charges a fee for storing firearms, but 82 percent of respondents would support doing so. Nearly half of all respondents said the Vermont Department of Public Safety should oversee any new storage facilities; another 26 percent of respondents think sheriffs should be responsible. Forty-one percent of respondents said that a storage facility is most needed in Central Vermont (includes Burlington), while 26 percent said Southern Vermont has the greatest need, followed by Northwestern Vermont (18 percent) and Northeastern Vermont (14 percent; multiple responses permitted).

I also sought input from judges by emailing a four-question survey to all trial judges, but only seven of 30 judges responded and only five of them hear relevant cases. While the responses of these judges indicate that they are aware of the storage problems facing law enforcement agencies, unfortunately their small number precludes generalizing to all trial judges.

I then examined five relinquished firearms storage alternatives: private storage by FFLs, storage at Vermont National Guard armories, state-constructed regional storage facilities, state-constructed county storage facilities, and state-constructed storage space at individual law enforcement agencies.

To determine the feasibility of using FFLs to store relinquished firearms in Vermont, I surveyed 180 FFLs about their level of interest in such an arrangement and their ability to accommodate firearms from law enforcement. Eleven FFLs indicated an interest in the possibility of storing firearms for law enforcement. Of these, five said their business is operated from a residence, while the remaining six have commercial storefronts. Using FFLs to store relinquished firearms would provide a low or no cost storage option to law enforcement agencies and relieve them of the liability associated with maintaining the condition of firearms, provided FFLs have appropriate security. Unless more FFLs develop an interest in storing firearms for law enforcement, FFLs could likely serve only as backup for some law enforcement agencies. Therefore, it is unlikely that this option would alleviate storage constraints for all agencies.

Using National Guard armories to store relinquished firearms also does not appear feasible. Lt. Colonel Schumacher, Director of Operations for Military Support for the Vermont National Guard, does not see the utility or appropriateness of storing relinquished firearms at armories, and doing so would likely present a new set of logistical problems. Civilian firearms would have to be kept separate from the military's, and the National Guard could not provide security or any courier service that might be

required. For these reasons, the option of storing relinquished firearms at National Guard armories was eliminated from further consideration.

Regional, county and individual (agency) storage facilities were also considered and cost estimates obtained for prefabricated and locally constructed storage vaults, as well as the addition/expansion of interior rooms. Costs will depend on the number, size and desired features of storage facilities, and whether additional administrative personnel or courier service are needed. Regional storage would create transportation burdens for law enforcement agencies unless courier service is provided. Adding storage space to dozens of individual agencies would be extremely expensive. A more practical solution would be to negotiate with county sheriffs to operate state constructed storage facilities at their departments. Sheriffs have a close working relationship with the courts, and firearms could be relinquished directly to them for storage. This would eliminate transportation burdens and alleviate storage responsibilities for other law enforcement agencies.

In addition to the recommendation that the Department of Public Safety negotiate with sheriffs to operate state-constructed firearms storage facilities, this report recommends initiating policies/statutes that permit charging storage fees to help offset operating expenses; allow destruction of firearms if fees are delinquent by 90 days or (if fees are not charged) firearms are not retrieved 90 days after RFA orders expire; hold law enforcement agencies harmless for maintaining the condition of stored firearms provided due care is taken; and discontinue the practice allowing storage of relinquished firearms by friends and relatives of offenders, something that should not be necessary if law enforcement's storage space is adequate.

Current storage arrangements for relinquished firearms are untenable in Vermont. The majority of the state's sheriffs, police chiefs, and VSP station commanders are dissatisfied with current arrangements, primarily because of space constraints and liability concerns. Some agencies have opted out altogether, increasing the burden for those who continue to store firearms. If space constraints are not addressed, this will likely maintain the status quo in terms of inconsistent judicial and law enforcement responses to RFA defendants who own firearms.

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The Violence Against Women Act of 1994 stipulates that it is a crime for anyone under a restraining order to possess firearms or ammunition. Vermont statutes do not address the issue of firearms seizure, but the Vermont Supreme Court has interpreted 15 V.S.A. Section (c) as allowing seizure of firearms when a final Relief From Abuse (RFA) order is issued. When firearms are surrendered under this statute, they must be stored until an RFA order has expired or a defendant has been convicted of an offense that would make him/her a prohibited person under the federal Gun Control Act. In the latter case, firearms cannot be returned to the offender, so must be disposed of in some other way.

Vermont does not have a systematic method of storing firearms relinquished by persons subject to RFA orders. When judges order the surrender of firearms, they stipulate to whom the firearms must be relinquished. Although firearms are often turned over to local police, state police or sheriffs by order of the courts, law enforcement agencies do not always have space or appropriate conditions in which to store them. Moreover, storage constraints may encourage judges to order offenders to store firearms with relatives or friends. Although this is legal in Vermont, provided these individuals are not prohibited from possessing firearms, it raises concerns about offenders' potential access to firearms and the safety of domestic violence victims.

Establishing additional firearms storage in Vermont would alleviate current storage burdens for law enforcement agencies, and reduce concerns about potential access to these firearms by abusers when relatives and friends store relinquished firearms. This study explores the feasibility of alternative storage arrangements for firearms relinquished by persons subject to RFA orders.

Gun Storage Procedures in Other States

The time and cost to conduct research on the gun storage procedures in all states would be prohibitive, so I examined the statutes and procedures for the three states contiguous to Vermont: Massachusetts, New Hampshire, and New York.

Massachusetts has moved from a system of firearms storage by law enforcement to one of routinely transferring firearms to federally and state licensed, bonded firearms dealers (FFLs) for storage (excluding firearms that may be evidence in a criminal case). Transferring firearms to FFLs for storage alleviates the space, liability, and some administrative responsibilities that characterize current storage arrangements in Vermont. The owner of the firearms is responsible for administrative, transfer and storage costs. Owners may also transfer ownership to a licensed dealer of their choice, or another person legally permitted to own firearms, for up to one year after surrendering their firearms.

New Hampshire statutes permit defendants to store firearms at FFLs, but the court must approve this arrangement. In these cases, firearms must be relinquished to a law enforcement agency first (judges specify to which agency firearms are to be relinquished), and the agency then turns them over to the designated FFL. New Hampshire does not permit friends, relatives or other persons to store firearms or ammunition for a defendant. If a defendant does not make alternative arrangements, relinquished firearms are stored by law enforcement agencies. New Hampshire statutes allow law enforcement agencies to charge a fee for storage, not to exceed the actual cost of storage. Statutes stipulate that law enforcement agencies are not liable for damage or deterioration of confiscated firearms, provided due care is taken. Relinquished firearms may be retrieved only by court order, and only after court personnel run a background check. As with relinquishments, law enforcement officers rather than defendants retrieve firearms stored by FFLs.

New York statutes stipulate that when firearms are ordered surrendered, the protection order shall specify the place where they are to be relinquished, as well as the date and time. Specifics about storage arrangements are not addressed, but I learned from the Plattsburgh Police Department that New York sheriffs store firearms owned by persons subject to RFA orders. In New York, defendants are not charged for firearms storage, and a court order is required for their return.

Law Enforcement Survey

To acquire information about current storage arrangements for relinquished firearms in Vermont and to document the extent of any associated burdens on law enforcement as well as proposed solutions, I surveyed police chiefs, sheriffs and Vermont State Police (VSP) station commanders.

Major findings of the law enforcement survey are highlighted below:

- Fifty-seven of 79 Vermont police chiefs, sheriffs, and VSP station commanders (72 percent) responded to a survey designed to assess current storage arrangements for firearms relinquished by persons subject to Relief From Abuse orders.
- Thirty-three respondents (57.9 percent) said their department or station currently stores relinquished firearms. An additional 13 said that have done so in the past but do not currently store relinquished firearms, primarily because of lack of space.
- Although three-quarters of the agencies that store firearms currently store fewer than 20 firearms and close to 20 percent store 20-39, these numbers must be put in the context of all firearms stored, including those stored as criminal evidence. The percentage of storage space currently filled is 60

percent or higher for more than half of respondents, and 80 percent or higher for about one-third of respondents.

- Storage of relinquished firearms typically lasts for 6-11 months, and individuals commonly surrender 1-4 firearms valued at between \$500 and \$999. Law enforcement respondents reported as many as 75 firearms being relinquished by one person, however, and the highest value of a single firearm was \$5,000.
- Firearms are not always picked up when an RFA order expires, contributing to storage constraints, yet only four respondents indicated that they have a policy regarding time limits for retrieval. Initiating such a policy could reduce the number of stored firearms.
- Some law enforcement personnel would prefer that a court order be required for the return of relinquished firearms, as mandated by some other states.
- Approximately 80 percent of respondents said lack of firearms storage space is a problem. The same percentage view an inability to maintain the condition of firearms as a problem and are at least somewhat concerned about liability issues. Fewer are concerned about the administrative work associated with relinquished firearms storage. Overall, 66 percent are at least somewhat dissatisfied with current storage arrangements, with sheriffs being considerably more satisfied and VSP station commanders being somewhat less satisfied than police chiefs.
- About three-quarters of respondents are at least somewhat supportive of the possibility of using Federal Firearms Licensees for relinquished firearms storage, as is done in Massachusetts.
- Respondents are equally supportive of the possibility of state-constructed storage space for relinquished firearms.
- No respondents said their department or station charges a fee for storing relinquished firearms, but 80 percent of respondents would support this.
- Almost half of respondents think the Department of Public Safety should oversee any state-constructed storage facility (this percentage was notably lower for VSP respondents). Another quarter think sheriffs should oversee such a facility. VSP station commanders are most supportive of sheriffs administering such a facility, followed by sheriffs themselves. Police chiefs were least supportive of this option.
- Forty-one percent of respondents said a storage facility is most needed in Central Vermont (includes Burlington), while 25.5 percent said Southern Vermont has the greatest need, followed by Northwestern Vermont (17.7

percent) and Northeastern Vermont (13.7 percent). Respondents were most likely to say the need for storage facilities was greatest in the area in which they work. Thirty-five percent of respondents said they don't know where a storage facility should be located, or that more than one facility is needed—one in each county, VSP station, or quadrant of the state.

Judges Survey

I sought input from judges by emailing a four-question survey to all trial judges via the Court Administrator's Office. I asked if current relinquished firearms storage arrangements and associated space limitations have affected their ability to conduct their job in any way; whether they could suggest alternatives to the current system; whether, as some law enforcement officers suggest, a court order should be required to return relinquished firearms; and whether they have any additional experiences or concerns they wished to convey. Only seven of 30 judges responded. While responses indicate that these judges are aware of the storage problems facing law enforcement agencies, unfortunately their small number precludes generalizing to all judges.

Alternatives to Current Storage Arrangements: Summary of Options and Costs

Five alternative storage arrangements were considered: storage at Vermont National Guard armories, private storage by FFLs, state-constructed regional storage facilities, state-constructed county storage facilities (sheriffs), and state-constructed storage space at individual law enforcement agencies. The pros, cons and associated costs are summarized for these options.

National Guard Armories

I investigated the possibility of storing civilian firearms at some of the 22 National Guard armories located throughout the state. Although the military does store some nonmilitary items, military regulations require that civilian firearms be stored in a vault separate from those housing military firearms. In addition, the military could not assume responsibility for the items or administer a storage program. Most of the armories are full. Those with the most available space are in Chittenden County, which may not provide accessible storage for law enforcement in other parts of the state. For these reasons, the option of storing relinquished firearms at National Guard armories is eliminated from further consideration.

Private Storage by Federal Firearms Licensees (FFLs)

Pros:

- Low cost alternative.
- Storage, administrative and liability burdens assumed by FFL.

Cons:

- Only 11 of 180 FFLs surveyed expressed interest in this option, and five of them operate out of a residence.
- FFLs would likely not be able to accommodate all relinquished firearms, so law enforcement agencies would still have to provide some storage.
- Law enforcement agencies would likely have to accept and release firearms stored at FFLs, as is the practice in Massachusetts.
- FFL security and storage requirements must be established.
- Firearms will have to be transported by law enforcement agencies unless FFLs provide this service.

Costs:

- No new costs to law enforcement, other than the time required to establish FFL storage arrangements, protocols, and monitoring.

Regional Storage Facilities

Pros:

- Shifts storage burden from many individual agencies to fewer regional facilities.
- Provides space to accommodate all relinquished firearms.

Cons:

- Requires capital investment, either new construction or expansion of storage area in an existing facility.
- Requires identifying appropriate sites and negotiations to acquire them.
- Requires identifying existing agency or establishing independent entity to oversee facilities.
- Requires law enforcement to travel to storage facility unless courier service is provided by state (travel becomes less burdensome as number of facilities increases).
- Requires operating costs (e.g., administrative, security, utilities, insurance), but these could be at least partially offset by charging defendants a storage fee.

Costs:

- The cost of constructing new regional storage facilities will depend on their number, location, and size. Two 40' x 12' x 10' prefabricated Armag vaults (<http://www.armagcorp.com>), each with 78 gun racks, would cost approximately \$400,000 (less expensive gun racks may be available). Four 20' x 10' x 10' unit costs, each with 18 gun racks, would cost approximately \$280,000 (six units would cost approximately \$420,000).
- Montpelier based, DeWolfe Engineering Associates, estimated the cost of two 20' x 20' x 10' concrete vaults with reinforced flooring at \$80,000. Adding 78 gun racks to each vault would bring the cost of two units to \$320,000.

Four 20' x 10' x 10' vaults, each with 18 gun racks, would cost approximately \$220,000.

- The cost of expanding storage facilities in existing buildings would depend on current and desired building configuration and materials, as well as the amount of space needed. New construction would likely cost approximately \$200/square foot, and renovations would likely cost more.

County Storage Facilities— Sheriffs Departments

Pros:

- Shifts responsibility of relinquished firearms storage to one agency, alleviating other agencies of the burdens associated with current storage practices.
- Consistent with close working relationships between sheriffs departments and the courts.
- Sheriffs appear most receptive of any type of law enforcement agency to the possibility of assuming responsibility for storing relinquished firearms if adequate support is provided by the State.
- Firearms can be turned over by defendants to sheriffs directly, eliminating the need for other agencies to transport relinquished firearms.

Cons:

- Requires capital investment, either new construction or expansion of storage area in existing buildings.
- May require State to contribute to operating costs if cannot be absorbed by sheriffs departments, but this could be at least partially offset by charging defendants a storage fee.

Costs:

- Cost will depend on available space at sheriffs departments, but most if not all departments will likely require construction of additional storage space.
- The cost of adding a prefabricated 10' x 10' by 10' storage vault with 12 gun racks to each of 14 sheriffs departments would cost around \$650,000 (less expensive gun racks may be available).
- The cost of adding a locally constructed 10' x 10' by 10' concrete storage vault with 12 gun racks to 14 sheriffs departments would likely cost approximately \$600,000 but quantity discount may be available.
- The cost of adding a 10' by 10' by 10' interior evidence room to 14 sheriffs departments would likely cost a minimum of \$280,000. Twelve gun racks per room would add \$252,000 to the cost for a total of approximately \$530,000.
- May be some additional operating costs, but these can be at least partially offset by charging storage fees.

Individual Storage Units

Pros:

- Individual agencies would have autonomy with regard to firearms storage.
- Minimal transportation of firearms to other locations.
- Would likely not require additional staff for administration or security.

Cons:

- Burden of responsibility continues to rest with individual agencies. Burden would be reduced if storage space is adequate, but some law enforcement officers do not think it should be their responsibility to store relinquished firearms.
- Requires capital investment, either new construction or expansion of storage area in existing facilities.
- Would likely be the most expensive option, since many departments would require construction of a storage vault or an addition. Currently, 11 survey respondents said they are at 80-100 percent of storage capacity, and another seven are at 60-79 percent of capacity. Additional departments could near or reach capacity at any time if individuals relinquish large numbers of firearms.

Costs:

- The cost of constructing or expanding storage units at individual agencies will depend on the configuration of existing facilities, as well as the number of agencies requiring expanded storage space.
- The cost of a 10' x 10' x 10' prefabricated vault with 12 gun racks is approximately \$46,000 (less expensive gun racks may be available).
- The cost of a 10' x 10' x 10' locally constructed concrete vault with 12 gun racks is approximately \$40,000.
- The cost of adding a 10' x 10' x 10' room would likely cost about \$20,000 (new construction costs are around \$200 per square foot, depending on desired features, but renovation costs tend to be higher).

Recommendations:

Based on the findings of this firearms storage feasibility study, the following recommendations are made to the Vermont Department of Public Safety:

- Place responsibility for firearms storage with one agency, and provide the financial support needed to construct and operate appropriate storage facilities. Negotiating with sheriffs to assume this responsibility appears to be the most feasible and logical alternative.
- The type of storage facilities to be constructed/purchased would have to be determined based on security standards and cost constraints.

- Initiate a firearms/ammunition storage fee to help offset operating costs of storage facilities (e.g., see N.H. Revised Statutes 173-B, Protocol 14-17).
- If storage fees are initiated, allow destruction of firearms if owner defaults on payment of storage fees after 90 days (e.g., see General Laws of Massachusetts, chapter 140, section 129D).
- If storage fees are not initiated, establish policy/statute to limit the amount of time defendants can store firearms after an RFA order expires, permitting destruction of firearms if not retrieved within 90 days.
- Establish policy/statute that holds law enforcement agencies harmless for maintaining condition of stored firearms provided due care is exercised (e.g., see N.H. Revised Statutes 173-B, Protocol 14-17).
- Although some law enforcement officers would prefer that a court order be required to release firearms when an RFA order expires, it is unlikely that judges would support such a requirement. Therefore, when RFA orders expire, the law enforcement agency responsible for storage should continue to follow their current practice of assuring to the best of their ability that defendants are not subject to any other protection orders and have not ever been convicted of a felony or a qualifying misdemeanor crime of domestic violence.
- Consider the possibility of discontinuing the practice allowing storage of relinquished firearms by friends and relatives of offenders, as New Hampshire has done (see N.H. Revised Statutes 173-B, Protocol 14-16). If adequate storage by law enforcement agencies is available, this should no longer be necessary.

Current storage arrangements for relinquished firearms are clearly untenable in Vermont. The majority of the state's sheriffs, police chiefs, and VSP station commanders are dissatisfied with current arrangements, primarily because of storage pressures and liability concerns. Some agencies have opted out altogether, increasing the burden for those who continue to store firearms. If space constraints are not addressed, this will likely maintain the status quo in terms of inconsistent judicial and law enforcement responses to RFA defendants who own firearms.

Even when judges order that firearms be relinquished, the lack of available storage space at law enforcement agencies means that judges often permit storage by defendants' friends and relatives. Victims' rights advocates and some law enforcement officers raise concerns about Vermont's practice of permitting this type of arrangement since victims are most vulnerable to retribution after they leave their abuser and there is no assurance that defendants can not gain access to their firearms. Providing adequate storage would alleviate the need for this practice and provide some increased sense of security to victims.