Enforcing Domestic Violence Firearm Prohibitions

A Report on Promising Practices

Office on Violence Against Women | National Center on Full Faith and Credit

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Preface

This report highlights promising practices currently employed around the United States and in tribal jurisdictions that represent innovative approaches to enforcing domestic violence firearm prohibitions. It provides brief descriptions of programs that are located primarily in law enforcement agencies, prosecutors' offices, courts, and probation departments. The work of one state legislature in enacting statutes to protect victims of domestic violence is also described because comprehensive legislation represents the first step toward disarming abusers.

This report does not contain an exhaustive summary of all innovative programs aimed at ensuring that firearms are removed from and kept out of the hands of abusers. The programs identified herein as models are not the only programs of their kind, but they represent examples of some of the best practices currently in effect. Many more praiseworthy programs exist; however, necessary limitations on time and resources do not allow for them to be included in this report.

All jurisdictions face challenges in keeping victims safe. It is the hope of the Office on Violence Against Women and the National Center on Full Faith and Credit (NCFFC) that the policies, practices, and activities described in this report may be of significant assistance to those looking to expand or improve their enforcement efforts. It would be unrealistic to expect that programs could be implemented elsewhere without adaptation, but specific elements could be replicated or tailored to address enforcement gaps in other communities.

For more information about the initiatives contained in this report, assistance with implementation of any of the program elements, or questions about the enforcement of firearm laws that relate to domestic violence, please contact NCFFC at (800) 903-0111.

Introduction

One of the most important ways that criminal justice and civil legal systems can significantly enhance the safety of domestic violence victims is by enforcing federal, state, and tribal statutes and court orders that prohibit abusers from possessing firearms. If firearm prohibitions are consistently enforced, communities can effectively reduce the threat of lethal violence and serious injuries to victims.

Firearms are the weapons of choice among abusers who kill their intimate partners and children. Multiple studies have found that intimate partners are more likely to be murdered with a firearm than by all other means combined.[1] In fact, the mere presence of a firearm makes it six times more likely that a batterer will commit lethal abuse. Women who have been previously threatened or assaulted with a firearm or other weapon are 20 times more likely than other women to be murdered by their abusers.[2]

According to a recent University of California, Los Angeles study, when a firearm is kept in a home with an abuser, nearly two-thirds of the victims report that it is used by the abuser to scare, threaten, or harm them.[3]

A study of abusers between 1999 and 2003 found that owning a gun is highly correlated with using it to threaten an intimate partner, typically in one or more of the following ways:

- Threatening to shoot the victim
- Cleaning, holding, or loading the gun during an argument
- Threatening to shoot a person or pet the victim cares about
- Firing a gun during an argument with the victim[4]

To protect victims of domestic violence, Congress, many states, and a number of tribes have enacted statutes that bar abusers from possessing or purchasing firearms. If enforced, these laws can dramatically reduce domestic homicides. Moreover, enforcement can diminish the power of abusers to terrorize and intimidate their partners.

Federal, state, and tribal firearm prohibitions are not self-implementing. These laws cannot protect victims without the concerted actions of law enforcement officers, prosecutors, courts, probation and parole officers, and advocates to vigorously facilitate their enforcement. The processes involved in enforcing firearm prohibitions—including those prohibitions established by statute or court order outside of the enforcing state or tribe—often require intergovernmental and interagency communication, coordination, and cooperation among multiple state, tribal, and federal agencies. To accomplish these goals, agencies must develop the capability to work closely with their counterparts in other jurisdictions to

[1] See, e.g., L. J. Paulozzi, L. E. Saltzman, M. P. Thompson, and P. Holmgreen, Centers for Disease Control and Prevention, "Surveillance for Homicide Among Intimate Partners—United States, 1981–1998," *Morbidity and Mortality Weekly Report Surveillance Summaries* 50 (October 12, 2001): 1–16. Violence Policy Center, *When Men Murder Women: An Analysis of 2003 Homicide Data—Females Murdered by Males in Single Victim/Single Offender Incidents* (September 2005), retrieved Sept. 26, 2005, from http://www.vpc.org/studyndx.htm.

[2] J. Campbell, D. Webster, J. Koziol-McLain, C. R. Block, D. Campbell, M. A. Curry, F. Gary, J. McFarlane, C. Sachs, P. Sharps, Y. Urich, and S. A. Wilt, "Assessing Risk Factors for Intimate Partner Homicide," *NIJ Journal* 250 (2003): 14–19.

[3] S. Sorenson and D. Wiebe, "Weapons in the Lives of Battered Women." *American Journal of Public Health* 94 (8) (2004): 1412–17.

[4] E. Rothman, D. Hemenway, M. Miller, and D. Azrael, "Batterers' Use of Guns to Threaten Intimate Partners." *Journal of the American Medical Women's Association* 60 (2005): 62–68.

enforce firearm prohibitions and protection orders issued in other states or tribes and to investigate and prosecute crimes that involve more than one jurisdiction.

Consider the first case below, which exemplifies how state-federal coordination can be used to effectively prevent abusers from possessing firearms.

Domestic homicides can frequently be linked to missed opportunities to use all available resources to prevent a batterer from possessing and using a firearm. Below are two examples that illustrate the tragic consequences of failing to take adequate measures to disarm abusers.

Federal Firearm Prohibition Enforcement Halts Serial Abuser in His Tracks[5]

In early 2003, the partner of Kenneth Rogers, 51, called police for assistance in safely moving herself and her children out of the house that she shared with Rogers. The police suggested that she file a petition for a protection order, and she did so promptly. After she obtained the order, officers accompanied her while she moved her family's belongings out of the house. The officers asked Rogers, who was present during the move, if he had any weapons in the residence. Rogers showed them cases for a handgun and a rifle. Suspicious, the officers contacted the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). After launching an investigation, ATF agents discovered that three other women had obtained current protection orders against Rogers and that he had been convicted in 2002 of misdemeanor assault in a domestic violence case, making him a prohibited firearm possessor under two sections of the federal Gun Control Act (18 U.S.C. §§ 922(g)(8) and (g)(9)).

On the basis of this information, ATF agents immediately obtained a warrant to search Rogers's residence. Upon executing the warrant, agents located and seized an Intra Tec 9 mm. semiautomatic pistol, a Browning 12-gauge pump-action shotgun, and 45 rounds of ammunition. After his arrest, a federal magistrate found him to be a danger to the community, and ordered him to be held until his trial for illegal gun possession.

Examples of Breakdown in Enforcement

- Hours after his 22-year-old former girlfriend obtained a protection order against him, John Peck purchased an assault rifle on April 26, 2004, in Wilmington, North Carolina, although he was legally prohibited from doing so pursuant to 18 U. S.C. § 922(g)(8). Less than two months later, he used the rifle to shoot his former partner 11 times as she stood in front of her apartment.
- In September 2004, Robert Hewsom's wife petitioned for and was granted a protection order against him. Although the judge who issued the order included a provision requiring him to relinquish his handgun for the duration of the order, Hewsom did not turn over the weapon. Neither the court that issued the order nor law enforcement officers followed up to ensure that Hewsom complied with the firearm relinquishment order. Later that same month, Hewsom used a handgun to kill his wife inside her home.[6]

[5] *United States v. Rogers*, 120 Fed. Appx. 225 (10th Cir. 2004).

[6] K. Little, "Deadly Loopholes: Domestic Violence Protective Orders Don't Protect Victims from Gun Laws, Cases Show." *Star News* (Wilmington, NC), November 7, 2004.

Section I: Overview of Firearm Laws

1. Domestic Violence Firearm Laws

This section contains a description of federal, state, and tribal statutes that prohibit receipt and possession of firearms by abusers. Included is a discussion of the relationship between federal, state, and tribal laws and of jurisdictional issues related to enforcement of the various statutes. The laws differ in a number of ways, including who is included as a prohibited person and what the statutes require of abusers and the criminal and civil legal systems. Only brief summaries of the statutes are included in this section. Readers are urged to research and devote time to further study of relevant federal, state, and tribal statutes.

A. Federal Statutes

The Gun Control Act (GCA) of 1968 (18 U.S.C. § 921 et seq.) regulates firearms at the federal level. Subsection 922(g) of the act lists persons disqualified from possessing firearms and ammunition. Under subsection 922(n), persons under indictment for a crime punishable by imprisonment for up to one year cannot receive firearms or ammunition. Any person disqualified from possessing firearms or ammunition under the Gun Control Act is prohibited from shipping, transporting in interstate or foreign commerce, or possessing or affecting commerce in any firearm or ammunition.[7] A disqualified person is also prohibited from receiving any firearm or ammunition that has been shipped or transported in interstate or foreign commerce.[8] Subsection 922(d) prohibits firearms or ammunition from being transferred to persons who are not eligible to possess firearms. Nearly all firearms and ammunition meet this requirement, because most include at least one component part that was imported from another country or that was manufactured in another state from the state where it was possessed.

Four subsections added to the GCA since 1994 (18 U.S.C. § 922(g)(8) and (g)(9), and 18 U.S.C. § 922(d)(8) and (d)(9)) specifically prohibit certain perpetrators of domestic violence from possessing firearms or ammunition and make it a crime to transfer a firearm/ammunition to these prohibited persons. Below are descriptions of these provisions.

18 U.S.C. §§ 922(g)(1–7)

The 922(g) subsections of the Gun Control Act prohibit certain persons from possessing firearms and ammunition. Persons convicted of a crime punishable by more than one year of imprisonment, fugitives, drug addicts, certain mentally ill persons, illegal and certain immigrant aliens, dishonorably discharged military personnel, and those who have renounced their U.S. citizenship may not possess a firearm or ammunition. Some abusers who are not disqualified under sections 922(g)(8) or 922(g)(9) (see below) may be prohibited from possessing firearms and ammunition pursuant to one of the other subsections of 922(g).

18 U.S.C. § 922(g)(8)

This section, enacted in 1994 as part of the Violent Crime and Law Enforcement Act, of which the Violence Against Women Act is also a part, prohibits certain court-restrained abusers from possessing firearms and ammunition. For a person to be disqualified under this statute, a number of conditions must be met:

1. The protection order must have been issued after a hearing of which the respondent (the abuser) had actual notice and an opportunity to participate. Most emergency or temporary *ex parte*

[7] 18 U.S.C. § 922(g).
[8] Id.

orders do not qualify under this statute because they are typically issued before notice is provided to the respondent.

2. The order must restrain the abuser from harassing, stalking, or threatening an intimate partner of the abuser or a child of the abuser or intimate partner, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child.
3. The order must include a finding that the abuser represents a credible threat to the physical safety of the intimate partner or child, **or** the order must explicitly prohibit the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury.
4. The petitioner must be an intimate partner of the abuser. The federal statute defines intimate partner as a spouse or former spouse, a person who is a parent of the child of the abuser, or a person who cohabits or has cohabited with the respondent.[9] This definition does not include orders issued against a person who dated the petitioner but with whom the petitioner never cohabited or with whom the petitioner does not share a child in common.

If an order meets the above requirements, possession of a firearm or ammunition can subject the court-restrained abuser to federal prosecution. The respondent does not need to have violated any court-ordered provisions in a protection order to violate the federal statute. Additionally, there does not have to be a statement in a protection order that requires the respondent to turn over his/her firearm(s) or ammunition while the order is operative. Language in a protection order that indicates the abuser can have weapons does not negate the applicability of the federal law, and the person is still disqualified from possessing firearms or ammunition during the duration of the protection order. The firearm prohibition under 922 g(8) applies only while the protection order is valid.

Law enforcement officers, armed forces personnel, and other local, state, and federal employees who are required to use weapons as part of their official duties have a limited exemption from this statute.[10] Firearms used in performing official duties are permitted while their possessors are carrying out their official duties. Weapons possessed in a personal capacity, however, are prohibited while a final protection order is enforceable.

18 U.S.C. § 922(d)(8)

This section of the Gun Control Act prohibits the transfer of firearms and ammunition to persons who are subject to qualifying protection orders. It is a federal crime to sell or otherwise dispose of a firearm or ammunition to a person while knowing or having reasonable cause to believe that the person is subject to a federally disqualifying protection order. There is no exception for law enforcement and court personnel who return firearms to abusers who are subject to qualifying protection orders. If a third party receives an abuser's firearms to keep in his/her possession for the duration of a protection order, the court should apprise the third party of steps he/she must take before lawfully returning the firearm or weapon to the abuser, such as ensuring the order is no longer in effect. Transferring the firearm or ammunition back to the abuser while the protection order is in effect can subject the third party to federal prosecution.

18 U.S.C. § 922(g)(9)

This section—commonly referred to as the "Lautenberg Amendment"**—prohibits a person convicted of a "misdemeanor crime of domestic violence" ( ) from possessing firearms and ammunition.**

[9] 18 U.S.C. § 921(a)(32).

[10] 18 U.S.C. § 925(a)(1).

Anyone who has ever been convicted of an MCDV is prohibited from possessing firearms or ammunition. An MCDV under this statute is the following:

1. A misdemeanor under federal, state, or tribal law.
2. Includes as an element the use or attempted use of physical force or the threatened use of a deadly weapon.[11]
3. The offender of the crime must have been a current or former spouse of the victim; a parent or guardian of the victim; a person who shares a child in common with the victim; a person who is currently cohabitating with or has cohabited with the victim as a spouse, parent, or guardian; or a person similarly situated to a spouse, parent, or guardian of the victim.[12]
4. The offender must have been represented by counsel or knowingly and intelligently waived counsel and, if the crime with which the abuser was charged allowed the defendant to opt for a jury trial, the defendant must have been afforded a jury trial or made a knowing and intelligent waiver of this option.[13]

To qualify under this statute, the misdemeanor crime need not have consisted of the violation of a statute that is labeled or categorized as a domestic violence crime (e.g., domestic abuse, domestic assault). A crime is covered by this statute if the defendant is convicted under a general misdemeanor statute, provided that the requisite relationship between the perpetrator and the victim exists; if the use of force/deadly weapon is an element of the crime that must be proven in order to obtain a conviction/plea, and the defendant was represented by counsel or waived the right to counsel; and if the offender was entitled to a jury trial, the offender was afforded a jury trial, or waived one.

[11] 18 U.S.C. § 921(a)(33).
[12] Id.
[13] Id.

The disability imposed by this statute is a lifetime prohibition. It applies even if the conviction occurred years before 1996, the year that the statute was enacted. The disability may, however, be lifted if the conviction is expunged or legally set aside, or the abuser is pardoned or has his or her civil rights restored, if the law of the applicable jurisdiction provides for loss of civil rights for conviction of the offense.

There is no official use exemption for law enforcement officers or military personnel under this section of the Gun Control Act. Consequently, officers and military personnel who have been convicted of a qualifying MCDV may not carry a duty weapon.

18 U.S.C. § 922(d)(9)

This section prohibits the transfer of firearms and ammunition to a person who has been convicted of an MCDV. As with the protection order prohibition (18 U.S.C. § 922(d)(8)), it is illegal to sell or otherwise dispose of firearms and ammunition to a person who has been convicted of an MCDV. If a third party is given an abuser's firearms to hold after such a conviction, the third party may not transfer the firearm back to the convicted person. Doing so can subject the third party to federal prosecution.

18 U.S.C. § 922(a)(6)

This section makes it a crime for any person to knowingly make false statements or furnish false identification that is intended or is likely to deceive a firearm importer, manufacturer, dealer, or collector regarding the lawfulness of a firearm transfer. Each person who intends to receive a firearm from a federal firearms licensee ("transferee") must fill out ATF Form 4473 (Firearms Transaction Record), which asks a number of questions designed to reveal whether a person is federally disqualified from receiving a firearm or ammunition. A person who fails to answer any question truthfully (e.g., indi-

Would-Be Firearm Purchaser Sentenced for Failing to Disclose Abuse History

Casey John King attempted to buy a rifle at D&G Sports and Western in Glasgow, Montana. He filled out ATF Form 4473, checking "No" in answer to the question that asked whether he was prohibited from possessing firearms. When the store clerk requested a National Instant Criminal Background Check System (NICS) check, it was found that King was subject to a qualifying order of protection obtained by his former wife and had been convicted of a misdemeanor crime of domestic violence for assaulting her. ATF agents investigated and turned the case over to the U.S. Attorney's Office for federal prosecution.[14] The U.S. Attorney's Office for the District of Montana charged Casey John King with making false statements during a firearm purchase. The defendant subsequently pled guilty.

cating that he/she is not currently subject to a protection order when he/she is in fact the restrained party to a protection order) commits a federal crime. The box above is an example of a case that was prosecuted under this statute.

B. State Statutes

The approaches of the states to domestic violence and firearms vary. Several states have enacted statutes that closely track 18 U.S.C. § 922(g)(8) by automatically prohibiting all protection order respondents from possessing firearms while their orders are active. For example, a person subject to a protection order in California "shall not own, possess, purchase, or receive a firearm" while the protection order is in effect.[15] Other states require firearm permit holders to surrender the license for the duration of a protection order.[16] State laws can disqualify from possessing firearms a wider range of persons subject to protection orders than does the federal law. For example, a few states that provide for a mandatory ban on possession for the term of a protection order include among eligible petitioners for protection orders persons who had a dating relationship with the respondent,[17] while 18 U.S.C. § 922(g)(8) does not apply to a protection order issued to such a petitioner.

Most states provide the option for judges to include a firearm prohibition as part of the relief granted in a protection order, either by explicitly stating in the statute that the terms of the order may include a ban on firearms, or through a "catch-all" provision that allows a judge to issue all relief deemed necessary to protect the victim.

Fewer than one dozen state laws track 18 U.S.C. § 922(g)(9) and prohibit abusers convicted of a misdemeanor domestic violence offense from possessing firearms and/or ammunition. For example, both Indiana and Delaware prohibit persons convicted of a domestic violence crime from possessing a firearm upon release from incarceration.[18] However, the state ban on possession may not impose a

[14] Casey John King pled guilty to making false statements during firearm purchase. *States News Service* (Billings, Montana), April 25, 2005.

[15] Cal. Fam. Code § 6389(a). See also, e.g., 11 Del. Code Ann. § 1448(a); Me. Rev. Stat. Ann. tit. 15, § 393(1)(D).

[16] See, e.g., Ky. Rev. Stat. Ann. § 237.110(11) (requiring that when a domestic violence or emergency protection order is issued pursuant to the provisions of KRS Chapter 403 against a person holding a license, the holder of the permit must surrender the license to the officer serving the order).

[17] See, e.g., W. Va. Code § 48-27-204.

[18] 11 Del. Code Ann. § 1448(a)(7); Ind. Code Ann. § 3-7-13-5.

lifetime disability, as does the federal prohibition.[19]

Many states prohibit persons from possessing firearms for other crimes; some persons prohibited under these statutes may be domestic violence offenders. For example, the Arizona legislature enacted a statute that prohibits probationers who committed certain misdemeanor crimes from possessing firearms.[20] This can include persons on probation for domestic violence crimes, but is not limited to domestic violence offenders. Similarly, Maryland law covers persons convicted of crimes of violence, but does not limit those crimes to domestic violence offenses.

Some states allow law enforcement officers who respond to a domestic violence incident to seize weapons that were used or threatened to be used during an incident of domestic violence, or that are in plain view, or that are located during a consent search.

Many states require potential purchasers to obtain a license before they may possess a firearm in the state. In some of these states (e.g., Massachusetts, New York, Pennsylvania, and Texas), state law requires the prohibited party to turn in his/her firearm licenses when the party becomes a person who is prohibited from possessing a firearm. In other states that require "concealed carry" licenses in order for a person to lawfully carry a concealed weapon, a judge who is careful to completely restrict the respondent to a protection order from possessing and using a firearm will order him/her to relinquish such licenses in addition to firearms and ammunition.

Two states (New Jersey[21] and New Hampshire[22]) specifically permit the court to authorize law enforcement to search and seize firearms subject to a protection order.

C. Tribal Statutes

There are 562 Indian nations recognized by the U.S. government. The congressional findings contained in the 1993 Indian Tribal Justice Act (Public Law 103-176, 25 U.S.C. 3601) provide a brief overview of the basic concepts of the unique sovereign status of these nations.

1. There is a government-to-government relationship between the United States and each Indian tribe.
2. The United States has a trust responsibility to each tribal government that includes the protection of the sovereignty of each tribal government.
3. Congress, through statutes, treaties, and the exercise of administrative authorities, has recognized the self-determination, self-reliance, and inherent sovereignty of Indian tribes.
4. Indian tribes possess the inherent authority to establish their own form of government, including tribal justice systems.
5. Tribal justice systems are an essential part of tribal governments and serve as important forums for ensuring public health and safety and the political integrity of tribal governments.
6. Congress and the federal courts have repeatedly recognized tribal justice systems as the appropriate forums for the adjudication of disputes affecting personal and property rights.
7. Traditional tribal justice practices are essential to the maintenance of the culture and identity of Indian tribes and to the goals of this act.

[19] The Revisor's Note to the Delaware Code section notes, "It is the intent of § 1448(a)(7) to create a period of prohibition which is not to be extended past 5 years. Nothing contained in this section is designed to, nor may it be interpreted as, extending the definition of 'misdemeanor crime of domestic violence' so as to invoke existing or future federal law so as to cause a person to be a 'person prohibited' for a period exceeding that 5-year term, and nothing contained therein may be construed as having that effect." 11 Del. Code Ann. § 1448 (Notes).

[20] Ariz. Rev. Stat. § 3-3101(6)(d).

[21] N.J. Crim. Code § 2C:25-26.

[22] N.H. Rev. Stat. Ann. § 173-B:5.

In April 1994, the long-standing federal policy supporting the self-determination of Indian nations was reinforced by an executive order that directs federal agencies to interact with Indian nations on a government-to-government basis when tribal governmental or treaty rights are at issue.

Each Indian nation has its own body of laws. Some include protections that place restrictions on the ability of abusers to access firearms and ammunition. For example, the Salt River Pima-Maricopa Indian nation, located in Arizona, enacted a protection order statute within its domestic violence code that states that a protection order shall include "restrain[ing] the respondent from receiving, possessing, or transporting a firearm or ammunition within the Salt River Pima-Maricopa Indian Community." The domestic violence code of the Oglala Sioux tribe allows tribal judges to include a prohibition on the possession of a firearm or any other specified weapon in the conditions of probation of a person convicted of a crime involving domestic violence.[23] The Oglala Sioux code also states that any person convicted of or having pled guilty to three or more offenses of domestic violence or related offenses shall be "subject to the permanent or extended prohibition against possessing, using, selling, trading or access to any firearm or ammunition[.]"[24] The Eastern Band of Cherokees directs law enforcement officers who arrest an abuser for a crime of domestic violence to "seize all weapons that are alleged to have been involved or threatened to be used in the commission of the crime" and "any weapon that is in plain view of the officer or was discovered pursuant to a consensual search if an existing order or condition of release prohibits the use or possession of a firearm or any other weapon."[25] The tribe also prohibits the possession of a firearm by any person who has been convicted of the crime of domestic violence in any state or tribal jurisdiction, regardless of the sentence imposed.[26]

More information about tribal codes can be found at the Web site of the Tribal Law and Policy Institute at http://www.tribal-institute.org/lists/codes.htm.

2. The Relationship between Federal and State/Tribal Firearm Laws

Circumstances sometimes arise in which the applicable state/tribal and the federal firearm laws appear to contradict one another. This can be confusing for those responsible for enforcement of state laws. For example, a person may be prohibited from possessing a firearm under federal law, but no state statute makes it a crime for that person to possess a gun. Or, a victim with a protection order issued in another state or tribe may request enforcement of the provision in the protection order that prohibits possession of a firearm by the respondent, but requests enforcement in a jurisdiction that does not specifically allow judges the authority to include a firearm prohibition as relief in a protection order. Even experienced practitioners do not always know which law(s) may be enforced in such circumstances, and who has the authority to enforce them. This section will provide an introductory explanation that is intended to assist with making decisions about cases that appear to involve conflicting laws.

Federal vs. State/Tribal Firearm Laws—Which Law Applies?

Federal firearm laws sometimes impose restrictions upon abusers that are not also imposed by state or tribal law. These restrictions can leave victims, abusers, and practitioners wondering whether the abuser is permitted to possess a firearm, or whether

[23] 99.2 Oglala Sioux Law & Order § 228(2)(f).
[24] Id. at § 237(5).
[25] Eastern Band Cherokee Domestic Violence Code § 14.40.1(h)(4)(a)–(c).
[26] Id. at § 14.40.1(u).

doing so will subject him/her to state, tribal, or federal prosecution. The short answer to the question is that where federal and state/tribal laws conflict, the law with the greater restriction applies in determining whether the abuser can possess a firearm. If the federal law places greater restrictions on an abuser than does the applicable state law, the abuser is subject to the stricter requirements of the federal statute. The abuser who is allowed to continue to possess a firearm pursuant to state or tribal law will not be subject to state prosecution for possessing the firearm; however, he/she will still be subject to federal prosecution for possessing the firearm if the terms of the federal statute are met. Conversely, if the state or tribal law or a state/tribal court-issued protection order imposes greater restrictions on an abuser than does the applicable federal law, then the state or tribe can prosecute the abuser for failing to meet the restrictions imposed by the state/tribal code or the protection order. However, if the abuser does not meet the requirements of the federal law, then he/she will not be subject to federal prosecution.

Questions also arise regarding who has the authority to enforce the federal firearm laws. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and U.S. Attorney's Offices are responsible for investigating and prosecuting federal firearm crimes. While state and tribal officials do not have an affirmative obligation to enforce federal prohibitions, they also may not ignore these laws. Additionally, judges and other state officials cannot exempt an abuser from an applicable federal law, even if it appears to conflict with the requirements of state law, as illustrated in *State v. Wahl* (see box below).

***State v. Wahl*[27]**

The defendant was arrested for slapping, strangling, and dragging his wife down the stairs in December 2000. His wife filed a complaint against him in Hackettstown Municipal Court for violating New Jersey's domestic abuse law. Police seized the defendant's multiple firearms pursuant to state law. The defendant's wife obtained a temporary restraining order against him, which was later made final.

Subsequently, the victim asked the court to dismiss the criminal charges and the protection order. The prosecutor's office downgraded the aggravated assault charge to simple assault, of which the defendant was convicted. In contradiction to the federal law, under New Jersey law, a convicted misdemeanant's firearm may be returned if the owner is no longer deemed either "unfit" or "a threat to the public in general or a person or persons in particular." After completing more than one year of counseling, the defendant filed a petition requesting that his weapons be returned to him. The judge ordered the return of the firearms, finding that the defendant was no longer a threat. The prosecutor objected, arguing, among other things, that federal law precluded a convicted domestic violence misdemeanant from possessing firearms.

On appeal, the higher court supported the judge's finding that the defendant was no longer a threat to others. However, regarding the federal gun law, the court agreed with the prosecutor. The appellate court ruled that the defendant's conviction for simple assault constituted a misdemeanor crime of domestic violence as contemplated in the federal statute, noting that "certainly he was convicted of an offense that has, as an element, the use of force against his spouse and was, thus, domestic violence in nature."

[27] *State v. Wahl,* 365 N.J. Super. 356, 839 A.2d 120 (2004).

Full Faith and Credit and Firearms

The Violence Against Women Act includes a provision that requires recognition and enforcement of protection orders by states, tribes, and territories, regardless of where a protection order was issued.[28] Pursuant to this federal law, all 50 states, the U.S. territories, the District of Columbia, Puerto Rico, and Indian tribes must enforce orders issued by other states, tribes, and territories provided the orders meet the jurisdictional and due process requirements prescribed by the statute.[29] The definition of "protection order" that applies to the statute is extremely broad, and thus covers most protection orders.[30] The statute does not exempt any protection order relief from enforcement,[31] and therefore all relief that the issuing court included in the order must be enforced in other jurisdictions, regardless of whether a petitioner could be entitled to such protection order relief under the laws of the enforcing state. For example, if a protection order issued in state A (the issuing jurisdiction) prohibits a respondent from possessing a firearm for the duration of the order, and the respondent later follows the petitioner to state B (the enforcing jurisdiction), where the respondent violates the order by brandishing a handgun, state B must enforce the protection order issued in state A as it would a protection order that was issued in state B.

A number of practical and legal issues have been raised regarding the mechanisms that might be used to enforce protection orders that were issued in another state, tribe, or territory. Take, for example, the case of an enforcing state that has a protection order statute that specifies that certain types of relief included in protection orders issued in the enforcing state are enforceable through arrest, and other types are enforceable through the court-contempt processes. If a law enforcement officer is presented with a protection order from another state or tribe that includes relief that is not available in the enforcing state, such as a firearm relinquishment provision, it may not be clear to him/her whether he/she can enforce the protection order by arresting the respondent. Additionally, "criminal orders" (orders that prohibit the abuser from engaging in certain behaviors as part of conditions of release or probation/parole) are covered by the federal full faith and credit statute. As a practical matter, though, states rarely have codified mechanisms that allow for

[28] 18 U.S.C. § 2265.

[29] Id. at § 2265(a)–(b).

[30] The amended definition of "protection order" in the Violence Against Women Act of 2005 states that the term "protection order" includes "any injunction, restraining order, or any other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence, or contact or communication with or physical proximity to, another person[.]" 18 U.S.C. § 2266(5)(A). Temporary and final orders are covered by the statute, and such orders are included among those that must be enforced pursuant to 18 U.S.C. § 2265 if they were issued by either a civil or a criminal court, "whether obtained by filing an independent action or as a *pendente lite* order in another proceeding so long as any civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection." Id.

[31] The Violence Against Women Act of 2005 makes it clear that all provisions, including support, child custody, and visitation provisions in protection orders, must be enforced pursuant to 18 U.S.C. § 2265. The definition of "protection order," as amended in 2005, includes "any support, child custody or visitation provisions, orders, remedies or relief issued as part of a protection order, restraining order, or injunction pursuant to State, tribal, territorial, or local law authorizing the issuance of protection orders, restraining orders, or injunctions for the protection of victims of domestic violence, sexual assault, dating violence, or stalking." 18 U.S.C. § 2266(5)(B).

the enforcement of an order issued by a criminal court in another state. Unless the new jurisdiction has a statute that allows it to prosecute an abuser for violating a criminal order that was issued outside of the state, the enforcing state can do little else than briefly detain the abuser and contact authorities in the issuing jurisdiction to notify them of the violation. Extradition may be a possibility, but is unlikely if the crime that led to the issuance of the criminal order was a misdemeanor.[32] Such limitations in the laws regarding the mechanisms for enforcement may be best resolved by amending state, tribal, or territorial codes to provide specific direction and authority for law enforcement, prosecutors, and the courts on enforcement of orders that present unique challenges to the system.

State Full Faith and Credit Statutes

The federal full faith and credit statute is not self-implementing. This means that the statute does not prescribe specific procedures that states, tribes, and territories must use to enforce protection orders issued outside of the jurisdiction. To date, most states and a number of tribes have enacted legislation that addresses the enforcement of protection orders issued in another state or tribe. However, there is inconsistency among these statutes; some track the federal law, some go beyond the language of the federal statute and provide for specific procedures that law enforcement and the courts must use to ensure enforcement of out-of-state protection orders, and some state statutes include provisions that are inconsistent with the federal law or that raise additional barriers for victims who request enforcement of their protection orders.

To help promote uniformity and encourage enforcement of protection orders across state and tribal lines as envisioned by Congress, the National Center on Full Faith and Credit (NCFFC) developed and distributed a model state code and a model tribal code that include provisions that states or tribes might enact to address full faith and credit.[33] Additionally, the National Conference of Commissioners on Uniform State Laws (NCCUSL) crafted the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act in 2002.[34] Approved by the American Bar Association in 2003, the uniform code provides for recognition and enforcement of orders issued pursuant to a state or tribe's domestic violence, antistalking, or family violence laws. As of 2005, 15 states/jurisdictions have enacted this legislation: Alabama, California, Delaware, District of Columbia, Idaho, Indiana, Kansas, Mississippi, Montana, Nebraska, North Dakota, South Dakota, Texas, U.S. Virgin Islands, and West Virginia.[35] Other states have enacted statutes that contain similar procedures to those contained in UIEDVPOA.

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[32] However, if the violation of the criminal protection order of the other state or tribe includes conduct that may constitute a crime in the enforcing state, law enforcement may pursue criminal charges against the offender for that conduct, even if it cannot prosecute for violation of the other state's/tribe's criminal protection order.

[33] Contact NCFFC at (800) 903-0111 for more information on the NCFFC model code.

[34] The uniform code may be found online at http://www.law.upenn.edu/bll/ulc/ulc_frame.htm. Although several states have enacted the uniform code, many advocates have concerns about many of the provisions. For more information, contact NCFFC at (800) 903-0111 for more information.

[35] National Conference of Commissioners on Uniform State Laws, "A Few Facts About the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act (2000)(2002)," –retrieved Jan. 26, 2006, from http://www.nccusl.org/Update/uniformact_factsheets/uniformacts-fs-uiedvpoa.asp.

The uniform code provides for two ways to enforce orders:

1. *Judicial enforcement.* The uniform code includes a provision that directs a tribunal to enforce a valid final or *ex parte* protection order that was issued in another state or tribe as if the order had been issued in the enforcing jurisdiction.
2. *Enforcement by law enforcement.* This provision requires a law enforcement officer, if he or she has probable cause to believe that a valid protection order issued in another state or tribe exists, to enforce it as the officer would enforce an order that was issued within the jurisdiction. The uniform code specifies that probable cause can be found if the order identifies the petitioner and abuser, and the order, on its face, appears to be currently in effect. A certified copy of the order is not required for law enforcement to enforce the order. Even if a paper copy of the order is not available at the time enforcement is requested, the officer may enforce the order if there is other evidence that constitutes probable cause that the order is in effect.

The uniform code includes a provision that allows the petitioner to register the out-of-state order in the new jurisdiction. Registration of the order—which often results in entering the order into the new state's protection order registry—allows police and others to verify and enforce the order without relying on the petitioner's paper copy of the order or hit confirmation through the National Criminal Information Center at the time she/he requests enforcement. To register the order, the petitioner must present the new jurisdiction with a certified copy of her/his order along with an affidavit (a sworn statement) that the order is current.

The uniform code provides immunity for law enforcement officers and other government officials, shielding them from civil and criminal liability for enforcement or registration of orders issued by the court of another state or tribe, provided that the officer or government official acts in good faith. To be protected by the immunity provision, the officer must make a probable cause determination that the order is valid and enforceable.

3. Pre-transfer Background Checks

Congress enacted the Brady Handgun Violence Prevention Act to ensure that persons who fall under one or more of the categories of "prohibited persons" listed in the federal Gun Control Act are unable to receive firearms and ammunition from federally licensed firearm dealers ("licensees"). Effective November 30, 1998, the act established the National Instant Criminal Background Check System (NICS) and requires that licensees[36] conduct a NICS background check through the Federal Bureau of Investigation (FBI) or a state point of contact (POC) on every person applying to receive a firearm or ammunition. An NICS check involves a search of federally maintained databases, i.e., the National Crime Information Center (NCIC), III ("Triple I"), a criminal history file, and the NICS that includes federally prohibiting records (including mental health records). When necessary, NICS personnel conduct further inquiries and seek information beyond that available in the searchable databases.

NICS completes most background checks very quickly. For certain applicants, though, it may be unclear as to whether a person is disqualified from receiving a firearm. For this reason, the Brady Act allows NICS up to three business days to complete an investigation. If insufficient information is found to verify that a person is, in fact,

[36] The Brady Act does not regulate the sale of guns by persons who are not in the regular business of selling or otherwise transferring firearms, such as private persons who sell one or two firearms at a local gun show or through a classified newspaper advertisement. Federally licensed dealers must conduct background checks when they participate in gun shows.

disqualified, the transfer may proceed after three days have passed.[37] If a disqualifying record is found after the end of the three-business-day period and the transfer has already taken place, the FBI makes a referral to the ATF to investigate whether it can retrieve the firearm.

The accuracy and speed with which NICS checks are conducted depends on whether local, state, and tribal jurisdictions forward complete and accurate criminal history, protection order, and other relevant information to the FBI in a timely manner. NICS checks are currently limited in their ability to identify all prohibited persons because many states and tribes submit incomplete records. For example, only 949 of more than 3,000 domestic violence assault convictions between 2002 and 2003 were properly filed with the FBI. It is vital that state misdemeanor offenses are placed in both state and federal systems for access in background data.

In 2002, NICS checks prevented 19,040 abusers from purchasing firearms. A quarter of those thwarted sales were due to the discovery of an active protection order against the person who wished to purchase a firearm.[38] However, according to FBI statistics, nearly 4,040 domestic violence abusers were able to buy firearms between 2002 and 2006.[39] A General Accounting Office study found that despite the efforts of some states to make it easier to identify individuals convicted of domestic violence, NICS was still unable to determine that some persons were prohibited from purchasing firearms. Additionally, nearly 10,000 persons who were later found to be ineligible were allowed to purchase firearms in the first 30 months of NICS operation because their records could not be obtained within the three-day maximum mandated waiting period.[40]

Many states also conduct prepurchase background checks using their own databases to investigate whether a person is prohibited under state law from possessing a firearm. However, as with the federal NICS, state efforts can be hampered if the information that is needed to conduct accurate and timely checks is unavailable. Automated registries and statewide registries help to make data readily available for background checks. Most states have a system for tracking protection orders, but a handful of states do not access a statewide system as part of the background check process.[41] Six states do not include MCDVs in the criminal history files that they access for background checks.[42] Four other states include MCDVs in their criminal history records that are searched during background checks, but do not flag the records or otherwise distinguish them from other misdemeanors.[43]

Data such as these make it clear that states must improve the quality and increase the quantity of information that they submit to the databases searchable by NICS as well as improve their own systems

[37] Some state laws allow for a longer period of time in which to investigate whether a potential transferee is a prohibited person.

[38] M. Bowling, M. Hickman, and D. Adams, "Background Checks for Firearm Transfers, 2002," *Bureau of Justice Statistics Bulletin*, September 2003.

[39] FBI statistics.

[40] J. Kessler and L. Kimbrough, "Study of U.S. Gun Law finds 7,030 Illegal Buys," *St. Louis Post Dispatch,* January, 2002.

[41] According to the Bureau of Justice Statistics, the states that do not access a statewide database containing protection order information are Idaho, Mississippi, North Carolina, Ohio, Oklahoma, and South Carolina. *Survey of State Procedures Related to Firearm Sales, Midyear 2004*. Washington, DC: Bureau of Justice Statistics, Regional Justice Information Service, August 2005.

[42] Regional Justice Information Service, *supra*, at note 40.

[43] Id. The report notes that the extent of flagging and the ability to distinguish domestic crimes from other misdemeanors vary significantly among jurisdictions. Id. at table 10.

for storing and accessing information about prohibited persons. Equally important, the data highlight the need for jurisdictions to institute agency, community, and systemic changes that maximize the effectiveness of current state, tribal, and federal firearm laws by using all available resources to ensure that abusers are unable to possess and use firearms.

Section II: Model Programs and Promising Practices to Remove Firearms from Abusers

This section describes a number of programs around the country that offer models for effective firearm prohibition enforcement. Most use state laws, federal laws, or a combination of both as the legal basis for disarming abusers.

Highlighted first are several efforts initiated by law enforcement agencies in Montgomery County, Maryland, and King County, Washington and Schuykill County, Pennsylvania, the descriptions of which are based on site visits to each jurisdiction. These programs exemplify innovative approaches to the enforcement of protection orders, including firearm relief contained in orders. A set of forms developed in King County that may serve as a template for similar efforts is included.

A description of a program of the Miami-Dade County, Florida, Domestic Violence Court follows. Among its promising practices, the court has developed a series of forms (included in this section) that enable the court to take appropriate action related to firearms at each stage of its proceedings—from issuance of a protection order through enforcement.

The innovative efforts of three prosecutors' offices are summarized, including programs of the U.S. Attorney's offices in Utah and the Northern District of West Virginia, and a state prosecutor's office in Montgomery, Alabama. In all three jurisdictions, federal prosecutors have partnered with local law enforcement officers to facilitate the enforcement of federal firearm laws. At the local level, the Montgomery prosecutor has restructured the processing of domestic violence cases so that cases involving firearms are given high priority.

Model probation programs in Maricopa County, Arizona, and Douglas County, Nebraska, are described. Probation officers maintain contact with abusers for months or years, providing an opportunity to implement long-term strategies to keep them disarmed.

Included in this section are descriptions of two model databases established in California and Massachusetts. The databases were designed to make it easier for gun dealers and the criminal justice system to quickly ascertain who is prohibited from possessing a firearm and ammunition.

The section concludes with a description of one rural state's successful effort to reform its firearm laws. New Hampshire's amended code includes specific authorization for firearm searches and seizures to enforce court-ordered firearm prohibitions.

1. Law Enforcement

Effective firearm enforcement programs begin with local law enforcement. Without their dedication and commitment to victim safety and offender accountability, even the most restrictive firearm statutes stand little chance of having a significant impact on the possession and use of firearms by abusers.

A. Montgomery County, Maryland, Sheriff's Office

Growing out of a countywide assessment of its response to domestic violence in 2001, the Assessment, Lethality, and Emergency Response Team (ALERT) was established by agencies in Montgomery County, Maryland, including the Sheriff's Office, State's Attorney's Office, county police, the county human service and corrections agencies, and the state Department of Probation and Parole. Led by a domestic violence coordinator, ALERT has the goal of identifying high-risk domestic

violence cases and intervening to increase victim safety.

The Montgomery County Sheriff's Office ("the office") is an active participant in the ALERT program. Its Domestic Violence Unit ("unit"), established in 1994 and staffed 24 hours a day, plays a critical role in the success of ALERT. The unit, consisting of a lieutenant, four sergeants, ten deputies, and eight civilian workers, is charged with the task of serving protection orders. It serves approximately 3,000 orders a year plus more than 1,000 "peace orders."[44] The unit works closely with victims to maximize their safety—as well as the safety of the deputy who is assigned to serve a protection order on the respondent—and focuses on removing firearms from abusers at the time the deputy serves protection orders. The Sheriff's Office believes that taking firearms at the time it serves the order decreases the chance that the firearms will later be removed from the location by the abuser, hidden, or turned over to a third party.

The unit attempts to interview every victim who seeks a protection order in Montgomery County. Civilian employees are trained to discuss with each victim how she/he may be best protected, and how the abuser can be located so the protection order can be served. Staff works with victims to conduct a lethality assessment, which includes a review of the abuser's criminal history. The civilian aide queries the office's databases to determine the abuser's legal status—whether he/she has outstanding warrants, has a prior history of domestic violence, and is on probation or parole, and whether cases are pending against him/her. Information regarding the abuser's criminal history is shared with the victim, who may be unaware of it. Cellular telephones, alarm pendants, and/or follow-up visits by deputies may be offered to the victim. As part of the assessment and to ensure the officer's safety when he/she serves the order, the victim is asked whether the abuser is likely to be armed, is involved with drugs, has mental health issues, has made threats of suicide, or has made threats against the petitioner, to resist arrest, and how the abuser might react upon receiving the protection order. The unit also attempts to ascertain whether other individuals might be present at the location where the order is to be served. If the petitioner was assisted by a victim service agency (the Abused Persons Program), and if the victim agrees, advocates contact the unit to provide it with further information. At the victim's option, deputies conduct periodic phone calls and/or home visits—referred to as "welfare checks"—after the order is served. Visits to a victim's home are made daily depending on the workload of the deputies.

When serving interim (i.e., emergency) or temporary orders, deputies attempt to remove all prohibited firearms and/or encourage the immediate voluntary surrender of firearms even if the alleged abuser is not yet prohibited under state or federal law from possessing them. The office's procedures related to protection orders authorize deputies to remove firearms in the course of serving an interim or temporary protection order at the scene of an alleged act of domestic violence if they have probable cause to believe that

[44] Maryland peace orders are injunctions that do not require a particular type of relationship between the petitioner and the respondent. They are often used by petitioners who are assaulted/battered by a person with whom the petitioner lacks the requisite relationship required for a protection order, such as a petitioner who had a dating/romantic relationship with the respondent but did not cohabit or have a child with him/her. One can file a petition for a peace order if the petitioner alleges an act that caused serious bodily harm or that placed the petitioner in fear of imminent serious bodily harm, assault, rape or a sexual offense, false imprisonment, harassment, stalking, trespass, or malicious destruction of property. Md. Code Ann., Courts and Jud. Proc. § 3-8A-19.1.

The Domestic Violence Unit of the Montgomery County Sheriff's Office does more than serve protection orders.

an act of domestic violence has occurred and they observe the firearm on the scene when they serve the order. Deputies must take custody of firearms that are voluntarily surrendered by either the petitioner (victim) or respondent (abuser) during service of a protection order. After any seizure or relinquishment of a firearm, deputies must complete an incident report and a "Seized Property Report" by the end of their shift. The weapons are stored by the Sheriff's Office for the duration of the protection order.

In response to an abuser's claim that he/she no longer has any firearms, deputies ask the following questions of the abuser: "Who last saw the weapon? Where was it? What type of weapon was it? Who was it sold to and when?" Most abusers, however, relinquish their firearms when they are served the interim or temporary order; some wait to do so until a final order has been issued.

Along with the protection order documents, the serving deputy gives the respondent a red card with information about federal and state firearm statutes (18 U.S.C. § 922(g)(8) & Md. Code Ann., Pub. Safety § 5-133(b)(8)) that prohibit the respondent from possessing a firearm once the final order is issued. The card provides directions to respondents on how they can arrange to surrender their firearms and ammunition for the duration of the order. If there is an outstanding warrant, county police will arrest the respondent on the warrant.

During the week that the initial temporary order is in effect, deputies from the unit call the victim twice and make two in-person welfare checks. If a final order is secured, deputies make no more checks during the maximum one-year duration of the order unless the petitioner or his/her advocate requests them.

When deputies serve a final order, they give the abuser a notice informing him/her that he/she is prohibited from possessing firearms while the order is active. Another form states that the Sheriff's Office has specific information indicating that the abuser has a firearm. This form makes it more difficult for the abuser to simply deny that he/she possesses a firearm.

After a deputy serves the protection order and seizes the firearms, the unit takes further steps to ensure the victim's and officer's safety. Although state law requires that civil orders be entered into the state's computer network within 24

hours after issuance, Montgomery County does so within four to eight hours. Additionally, Maryland state police maintain a database on all regulated firearms. Using the weapon serial numbers and the markings on test-fired bullets, the Sheriff's Office can use the database to determine the registered owner of any firearm taken into custody, and whether it was reported to have been used in a crime. Firearms that are not regulated by the state are checked through the database of ATF. Digital photos are taken of the seized and relinquished firearms. Deputies then complete a follow-up call to all victims to notify them of the status of the firearms that were taken into possession by the Sheriff's Office.

After the protection order expires or is dismissed, the Sheriff's Office does not automatically return firearms to abusers. Instead, the office waits to receive a request from the abuser that he/she would like to regain possession of the firearm(s). After an order expires or is dismissed, the office holds firearms for an additional three years if it does not receive a request to return the firearms. At the end of three years, the office sends a letter to the last known address of the abuser informing him/her that the weapon will be destroyed in 30 days. Approximately 30 percent of abusers abandon their firearms.

Before the Sheriff's Office returns weapons, the unit checks criminal files to make sure the abuser can legally possess them and informs the victim of the abuser's request for return of the weapons. Firearms are returned secured by safety locks. The keys are mailed separately to their owners so that abusers do not have immediate use of their weapons upon their return.

The Montgomery County deputies say they are enthusiastic about their work in the Domestic Violence Unit. According to one deputy, when an opening in the unit occurs, there is competition for the assignment. Asked to give his advice to other departments that might want to initiate a similar program, Lt. James Dunn responded, "Maximize the services provided by deputies, find a way to make it happen,

Montgomery County Form

Notice for all Interim and Temporary Protection Orders

The Montgomery County Sheriff's Office has received a copy of an Interim or Temporary Protection Order entered against you by a Montgomery County court. If the court issues a non ex parte civil Protection Order that prohibits the Respondent from abusing the Petitioner, the following Maryland and Federal laws will apply.

During the term of a non ex parte Protection Order, it is illegal for any person subject to the Protection Order to possess:

1. Any firearm or ammunition (as defined by) (Federal law, 18 U.S.C. § 922(g)(8)), and,

2. Any handgun or assault weapon (Maryland Law, Md Code, Public Safety Article, § 5-133(b))

VIOLATION OF THESE PROVISIONS COULD LEAD TO AN ARREST, CRIMINAL PENALTIES AND FORFEITURE OF FIREARMS.

You may arrange to surrender any firearms or ammunition in your possession to a law enforcement agency. For further information call the Domestic Violence Unit.

The reverse side of the written notice contains the language of the cited Maryland and federal statutes.

make every attempt possible to meet the needs of a victim. You can do it…if you make the task a priority." He added, "Don't try to start up all by yourself; seek support and resources from successful programs, identify the issues, and determine the best practices that will work at your level. Create opportunities for dialogue, invite people to sit down and talk about the issues, and don't initiate a program until your mission is clear." Finally, he observed, "Some of the most promising practices can be implemented with no additional funds." The Domestic Violence Unit of the Montgomery County Sheriff's Office did not receive additional funding to initiate its firearm seizure program, but the lieutenant and his deputies found a way to start a successful program with existing resources.

Sources

Lieutenant James Dunn (retired)
Montgomery County Sheriff's Office
Domestic Violence Unit

Vivian Levi
Coordinator
Montgomery County Abused Persons Program

Sergeant J. E. Portillo
Montgomery County Sheriff's Office
Domestic Violence Unit

Lieutenant Colonel Bruce T. Sherman
Assistant Sheriff
Montgomery County Sheriff's Office

Sergeant M. Uy
Montgomery County Sheriff's Office
Domestic Violence Unit

B. King County, Washington, Sheriff's Office Firearms Surrender and Forfeiture Program

The King County Sheriff's Office responds to between 10,000 and 12,000 domestic violence incidents each year. Its Domestic Violence Unit handles approximately 5,000 of these cases, focusing efforts on reviewing patrol reports for quality and completeness, assessing risk, and determining follow-up needs.

The Sheriff's Office, along with many of the other agencies in King County and Seattle that work with domestic violence victims, determined that not enough was being done to prevent abusers from using firearms to harm their victims. After an extensive strategy-development process, the King County Sheriff's Office, in collaboration with the King County Prosecutor's Office and the King County courts, established a multifaceted Firearms Surrender and Forfeiture Program to facilitate the enforcement of laws and effective use of court rules. The program has successfully addressed some of the problems that plague many law enforcement efforts to enforce firearm prohibitions, such as determining which agencies are responsible for tracking firearms, storing them, and returning them to their owners when a prohibition no longer applies. The King County program has developed a system that attempts to resolve these problems.

The program focuses on the enforcement of state firearm laws (see box, next page). Although these laws were enacted before the creation of the Firearms Surrender and Forfeiture Program, they largely were not enforced until the program began in March 2003. Under this program, implemented in the unincorporated towns of King County, more than 920 firearms have been surrendered voluntarily to the Sheriff's Office at the scene of a domestic violence call or pursuant to an order of the court. According to the Sheriff's Office, forfeited and unclaimed firearms worth a total of approximately

Summary of Washington State Domestic Violence Firearm Prohibition Statutes

Rev. Code Wash. (RCW) § 9.41.040(2)(a)(i) (Unlawful Possession of Firearms): It is a felony to possess a firearm upon conviction for the following crimes committed against a family or household member: assault in the fourth degree, coercion, stalking, reckless endangerment, criminal trespass in the first degree, violation of a no contact order restraining or excluding the person from a residence.

Rev. Code Wash. (RCW) § 9.41.800(1) (Surrender of Weapons or Licenses): A court may issue a surrender order that requires a party to surrender any firearm or other dangerous weapon or concealed pistol license, and prohibit the party from obtaining or possessing a firearm or other dangerous weapon or a concealed pistol license, based upon a showing that a party has displayed or threatened to use a firearm or other dangerous weapon in a felony or previously committed any offense that makes him or her ineligible to possess a firearm pursuant to § 9.41.040.

Rev. Code Wash. (RCW) § 9.41.098 (Forfeiture of Firearms): The superior courts and courts of limited jurisdiction may order the forfeiture of a firearm that was found concealed by a person without a valid license, sold illegally to the possessor, possessed by a prohibited person, possessed by a person during the commission of a felony during which the firearm was used or displayed, possessed by a person under the influence of drugs or liquor, possessed by a person on bail for an offense in which the firearm was used or displayed, possessed by a person who was mentally incompetent at the time of apprehension, or that was used or displayed by a person in violation of a court order. Upon forfeiture, the firearm may be destroyed.

Wash. CrR 3.2(d)(3) (Release of Accused): On the basis of a showing that a party has displayed or threatened to use a firearm or other dangerous weapon in a felony and that there exists a substantial danger that the accused will commit a violent crime, seek to intimidate witnesses, or unlawfully interfere with the administration of justice, the courts may prohibit the accused from possessing firearms as a condition of release.

$180,000 have been destroyed each year since the program began.

The Sheriff's Office program is part of an effort that was begun by professionals in the entire Seattle metropolitan area more than 10 years ago. The City of Seattle and King County worked together to establish a coordinated response to domestic violence. The Seattle Mayor's Office led this effort, establishing an ongoing Domestic Violence and Sexual Assault Prevention Office within the city's Department of Human Services. The King County Sheriff's Office periodically reviewed the local responses to domestic violence. The office first examined the role of firearms in domestic violence in 1995. A number of recommendations were developed as a result of this examination but were not implemented until renewed efforts to address firearms began in 2000, thanks to a federal Grants to Encourage Arrest Policies and Enforcement of Protection Orders award from the U.S. Department of Justice's Office on Violence Against Women.

The Sheriff's Office devised a strategy to better ensure the seizure and relinquishment of abusers' firearms and ammunition.

Order/Firearm Section of DV Supplemental

Court Order Information

Current Court Order Exists: ☐Yes ☐No ☐Unknown Respondent Served: ☐Yes ☐No

Type of Order: ☐No Contact Order ☐Protection Order ☐Restraining Order ☐Anti-Harassment Order

• If Valid NCO/Served Protection Order Exists, Possession of Firearms by Respondent is Prohibited Under Federal Law.

Firearms / Weapons

1. Does the suspect possess, own, or have access to firearms? ☐Yes ☐No ☐Unknown
2. Where are the firearms (residence / vehicle / suspect)?
3. Has the suspect used, displayed or threatened to use firearms in the past against you or others? ☐Yes ☐No
   If yes, describe:_____
4. **If Yes to #3, and [the firearm(s) is (are) present and under the victim's control], do you want KCSO to remove the firearm(s) now?**
   ☐Yes ☐No Firearm(s) Taken? ☐yes ☐No
5. Firearm / Weapon Used / Involved in Current Incident? ☐Yes If Yes, Describe ☐No ☐N/A
6. **If Yes to #5**, Firearm / Weapon Placed Into Evidence? ☐Yes ☐No

Firearm Make	Model	Caliber	Serial #	Status:
				Firearm Removed ☐Yes ☐No
				Firearm Removed ☐Yes ☐No
				Firearm Removed ☐Yes ☐No
				Firearm Removed ☐Yes ☐No

The Sheriff's Firearm Repository Facility houses firearms seized in all case types; the red-labeled boxes contain firearms surrendered in domestic violence cases (October 11, 2004).

That strategy required the office to do the following:

- Develop a departmental policy for firearm forfeiture.
- Create a database of court orders that includes "firearm prohibitions" and "relinquished firearms," which enables the office to generate weekly reports that show which abusers have not complied with their court-ordered requirements.
- Train Sheriff's Office personnel and brief judges on the new policies and procedures.
- Partner with domestic violence advocates on firearm seizure-related issues.
- Educate involved parties on the Revised Code of Washington and the U.S. Code.
- Develop new "Domestic Violence Supplemental Forms" to remind deputies to gather and record firearm information at the crime scene.
- Teach deputies to ask for voluntary surrender (for safekeeping) of firearms at domestic violence scenes.
- Assign a detective to oversee the management of firearms that are held by the Sheriff's Office.
- Support prosecutor applications for the issuance of "surrender orders" pending adjudication in domestic violence criminal cases when it is reasonably believed that the defendant has access to firearms.
- Train prosecutors to request a forfeiture order when the case outcome bars the defendant from possessing firearms or ammunition.

Before beginning the program, the Sheriff's Office first reviewed, updated, and created new policies and procedures to facilitate the enforcement of state firearm statutes and promote a uniform response among all deputies. Simultaneously, it refurbished a building to create a bullet-proof, central facility designed to hold surrendered and forfeited firearms. The Sheriff's Office determined that it was important to establish one facility to receive and store firearms in order to avoid situations in which large numbers of abusers and others required to turn over their weapons appear with their firearms at the local stations positioned throughout the large county. The facility is outfitted with external discharge tubes at the front of the building that are designed to ensure that all firearms are completely unloaded before they are brought into the building.

A 2003 report, *Removing Firearms from Domestic Violence Perpetrators,* written by Kennedy Conder, a retired Seattle Police Department officer, further challenged Seattle and King County to improve efforts to enforce firearm laws. The report began by describing the 2001 and 2002 fatal shootings of three domestic violence victims by their abusers who illegally possessed the firearms that they used to kill their victims. In each case, gaps in the system allowed the abusers to either continue to possess their firearms or to purchase new ones. Using data collected by Washington State's periodic fatality reviews in 2000 and 2002, Conder concluded that such cases represented approximately 10 percent of all domestic homicides that occurred in the county between 1997 and August 2002.

Conder's review of the data revealed the following:

- No law enforcement, prosecution, or court policies supported the enforcement of laws that removed guns from perpetrators.
- Police officers were not removing firearms at the scene of domestic violence incidents.
- Officers were failing to document the presence of firearms in police reports.
- Firearms were not taken from arrested abusers before their conviction.

- Officers were not enforcing firearm prohibitions in protection orders.
- Firearms were returned to abusers without determining whether other available grounds to retain the firearms existed.
- Procedures governing the surrender of firearms were lacking.[45]

The report further identified issues that were not yet adequately addressed by law enforcement in the Seattle metropolitan area. The author argued that many of the issues were caused by a number of barriers to the effective enforcement of firearm prohibitions, including the following:

- The process for removing firearms was too complex and costly.
- Resources for dealing with these cases were lacking.
- No suitable way existed to store and dispose of weapons.
- Judges did not appear to act consistently regarding firearm prohibitions.
- No mechanisms existed to enforce court orders to surrender or forfeit weapons.
- Victims often did not disclose the presence of firearms.
- The belief that one solution to the risk posed by abuser retention/purchase of firearms was for victims to buy handguns to protect themselves.[46]

Conder concluded that to remove these barriers, all agencies that work with domestic violence victims and/or perpetrators must make major changes to their policies and practices, in coordination with the other agencies in the community. The report offered recommendations to a number of agencies, including the Seattle Police Department, community-based victim advocacy programs, the defense bar, personal recognizance screeners (in lieu of cash bail release), the Seattle City Attorney's Office, the Seattle Municipal Court Probation Department, and providers of perpetrator intervention services. The following chart details the proposed changes and the rationale for the changes.

By consensus, the King County Sheriff's Office was charged with creating a model program to combine all the recommended changes. The Seattle Police Department and others agreed that they would follow up on the work of the Sheriff's Office and build on the foundation laid by the Sheriff's Office. The Sheriff's Office Firearms Surrender and Forfeiture Program was thus launched in 2003.

Deputies are now trained to look for firearms and every domestic violence case is screened for firearms. Officers use a DV Supplemental Form (see page 28 for a portion of the form) that was developed to ensure that responding officers check for firearms at the scene and record what they find. An analysis of the forms turned in so far indicates that there is access to firearms in 14 percent of domestic violence cases to which officers are called to respond. This figure is significant, because where police are not trained to look for firearms, most report much lower rates of firearm involvement in domestic violence incident reports—often not more than 1 or 2 percent.[47]

If deputies find firearms, they encourage abusers to surrender them. Even if no firearms are found, deputies conduct a background check of criminal history and current civil protection orders to

[45] K. Conder, *Removing Firearms from Domestic Violence Perpetrators.* Seattle: City of Seattle Human Services Department, Domestic and Sexual Violence Prevention Office, December 2003, 18–19.
[46] Id. at 21–22.

[47] See, e.g., A. Klein, *The Criminal Justice Response to Domestic Violence*. Belmont, CA: Wadsworth/Thomson (2004): 18 (Georgia, 2002, reports 2.1 percent of domestic violence incidents involved firearms; Michigan, 2000, only 1 percent; New Jersey, 2001, less than 1 percent; only Alabama reported more at 18 percent).

Conder's Breakdown of Agency Responsibilities for Firearm Prohibition Enforcement

Who	Major Responsibilities	Rationale
City Attorney's Office		
Advocates	• Gather information on firearm issues in the current case. • Gather historical information related to defendant's access to firearms and forward to the city attorney. • Provide report and court file to the Assistant City Attorney.	• Ensure firearm issues are identified and made available during proceedings.
Intake and Case Preparation Staff	• Perform database checks for possession or access to firearms and for criminal history.	• Ensure relevant information on guns and history are available during proceedings.
Assistant City Attorney	• Use negotiation and court hearing opportunities to disarm defendant. • Request immediate sanctions for failure to comply with surrender and forfeiture orders.	• Take advantage of opportunities for early disarming. • Seek prompt enforcement of court orders.
City Attorney	• Engage U.S. Attorney for the Western District of Washington to prosecute violations of federal laws on purchase or possession of firearms by perpetrators.	• Federal penalties are stiffer than state penalties. • U.S. Attorney's Office should assist in stopping domestic violence deaths and injuries.
Seattle Municipal Court		
Bailiffs	• Facilitate and verify defendant's compliance with surrender or forfeiture orders.	• Handle logistics and track compliance.
Judges	• Order the surrender of firearms within 24 hours at court hearings for arraignment, pleas, Stipulated Orders of Continuance, and deferred prosecution. • Order forfeiture upon conviction. • Order an arrest warrant and/or search warrant (when location of firearms is known) and immediate review hearing for noncompliance with orders to surrender or forfeit firearms. • Authorize Seattle Police Department to conduct search and seizure as necessary to enforce orders.	• Protect safety of victim and the community. • Ensure compliance with state law. • Implement procedures to enforce compliance.
Probation	• Facilitate the surrender of firearms. • Include firearm issues in presentence report. • Monitor and act on noncompliance with court orders on firearm prohibitions.	• Provide court with information to issue and enforce orders disarming perpetrators.
Providers of Batterer Intervention Services	• Require compliance with firearm laws and orders before beginning intervention. • Report noncompliance immediately.	• Enlist providers of batterer intervention services to assist in compliance.

determine whether an abuser is prohibited under federal or state law from possessing firearms. When an abuser is mandated by law to turn over a firearm, deputies require that he/she do so immediately. Deputies are trained to investigate the circumstances of each prior incident in order to learn whether the abuser ever used, displayed, or threatened to use firearms. If a deputy discovers that an abuser did so, he/she will ask the abuser to turn over all firearms in the household for safekeeping. If the defendant is not on the scene during the investigation, deputies ask the victim for permission to take the firearms. Because the firearms are considered joint property under Washington law, the present party can give permission for the police to remove the firearms.[48] The deputies provide the victim with a consent form for his/her signature. If the abuser is also present, both parties must agree to the firearm removal.[49]

After deputies receive a firearm, prosecutors receive the firearm information along with the case file so they can request the firearm(s) to be surrendered pending the outcome of the case. If the judge orders the surrender of firearms in the defendant's possession, the defendant must turn in all firearms to the sheriff or supply the court with an affidavit of compliance stating that he/she has already transferred them. If the defendant does not turn over his/her weapon(s), the prosecutor will ask the defendant to be taken into custody. Although most defendants (48 percent) comply with these orders by turning their weapons over to the sheriff, 42 percent show compliance by affidavit. Approximately 10 percent of abusers are noncompliant. If the defendant pleads or is found guilty, the prosecutor will ask for the defendant's firearms to be forfeited at the time of adjudication. Even if the defendant is not convicted, the prosecutor can request forfeiture.

To coordinate this work, the Sheriff's Office hired or assigned several full-time personnel. Mark Hanna was hired as the Firearms Surrender and Forfeiture Program manager, and Detective Craig Sarver was assigned to head the Domestic Violence Gun Compliance Unit within the Property Management Unit.

Following the example of the Sheriff's Office, the Seattle Police Department revised its Domestic Violence Firearms Seizure policy and finalized it in April 2005. Firearm seizures in Seattle have begun to increase as officers receive training on the new policy. To assist in this effort, an 18-minute training video was developed and distributed for use at roll call, with the goal of training all 1,150 sworn officers employed by the department.

Whether they are seized or relinquished pursuant to court order, all firearms are stored in the Seattle Police Department Evidence Unit. Copies of all Evidence Submission Reports involving firearms seized or surrendered pursuant to domestic violence cases are forwarded to the Domestic Violence Unit.[50] For firearms that have been forfeited or surrendered pursuant to a court order, facsimiles of the reports are sent to the appropriate prosecutors or city attorney designees. The Domestic Violence Unit is also charged with conducting background checks before returning firearms to verify that the claimants to the weapons may legally receive them.

[48] *State v. Mathe*, 102 Wn.2d 537, 688 P.2d 859 (1984) (allowing one party to surrender to police joint property).

[49] *State v. Leach*, 113 Wn.2d 1035, 782 P.2d 1035 (1989) (requiring both present parties to agree to surrender of joint property).

[50] In 2004, 7,140 cases were forwarded to the Seattle Police Department's Domestic Violence Unit. The unit served 1,241 protection orders and 1,034 anti-harassment orders. It referred 2,561 misdemeanor cases and 1,087 felony cases to prosecutors.

King County Forms

KING COUNTY SHERIFF DOMESTIC VIOLENCE SUPPLEMENTAL FORM

CASE #

VICTIM INFORMATION

Last Name: First Name: MI:

Race: Sex: DOB:

Address Verification:

Alternate Contact Name #1: Phone Number(s)

VICTIM DEMEANOR

Victim Appeared: ❑ Angry ❑ Apologetic ❑ Afraid ❑ Calm ❑ Crying ❑ Hysterical ❑ Nervous ❑ Upset ❑ Other

Excited Utterances: Describe in detail

INCIDENT

Victim Under Influence of Drugs/Alcohol ❑ Yes ❑ No ❑ Unknown
Suspect Under Influence of Drugs/Alcohol ❑ Yes ❑ No ❑ Unknown

❑ Photographs Taken/Submitted to Photo Lab
❑ Physical Evidence Recovered
❑ Physical Attack: ❑ Grabbed ❑ Punched ❑ Pushed ❑ Slapped ❑ Other

Threats to: ❑ Assault Victim ❑ Assault Others ❑ Damage Property ❑ Take Children ❑ Kill Victim ❑ Kill Others ❑ Suicidal Threats ❑ Other

❑ **STALKING**

Strangulation Involved **Symptoms [Check All That Apply]:**

❑ Neck Pain ❑ Sore Throat ❑ Scratches ❑ Difficulty Swallowing ❑ Nausea/Vomiting
❑ Fainting or Unconsciousness ❑ Tiny Red Spots (Petechia) ❑ Red Marks or Bruising
❑ Light Headed ❑ Raspy Voice ❑ Neck Swelling ❑ Ears Ringing ❑ Loss of Bodily Function

Prior Incidents of Strangulation ❑ Yes If Yes, Describe _____ ❑ No

WITNESSES

Person that Called 911:

Contacted: ❑ Yes ❑ No ❑ Unknown

Statement(s) Taken from Witnesses: ❑ Yes ❑ No ❑ N/A

CHILDREN

Children Present During Incident: ❑ **Yes** **If Yes, complete detailed information:**
❑ **No** ❑ **Unknown**

Child Victim Assaulted/Injured During Incident ❑ **Yes** **If Yes, describe in detail:**
❑ **No** ❑ **Unknown**

Statement(s) Taken from Children: ❑ Yes ❑ No ❑ N/A

Children(s) Name (Last, First, Middle) Sex DOB
Location During Incident
Observations of Child

COURT ORDER INFORMATION

Current Court Order Exists: ❑ Yes ❑ No ❑ Unknown
Respondent Served: ❑ Yes ❑ No Date_____

Court Order #_____ Court_____ Expires_____

Type of Order: ❑ No Contact Order ❑ Protection Order ❑ Restraining Order
❑ Anti-Harassment Order

- **If Valid NCO/Served Protection Order Exists, Possession of Firearms by Respondent may be Prohibited Under Federal Law.**

FIREARMS / WEAPONS

1. Does the suspect possess, own, or have access to firearms?
   ❑ Yes ❑ No ❑ Unknown
2. Where are the firearms? (residence/vehicle/suspect)
3. Has the suspect used, displayed or threatened to use firearms in the past against you or others? ❑ **Yes** If yes, describe:
   ❑ No
4. **If yes to # 3, and [the firearm(s) is (are) present and under the victim's control], do you want KCSO to remove the firearm(s) now?** ❑ **Yes** ❑ No
   Firearm(s) taken? ❑ **Yes** ❑ No
5. Firearm/Weapon Used/Involved in current incident. ❑ **Yes** If Yes, Describe
   ❑ No ❑ N/A
6. **If yes to # 5,** Firearm/Weapon Placed Into Evidence ❑ **Yes** ❑ No

DESCRIPTION:

Firearm Make:	Model	Caliber	Serial #	Status:
				Firearm Removed ❑ Yes ❑ No
				Firearm Removed ❑ Yes ❑ No
				Firearm Removed ❑ Yes ❑ No
				Firearm Removed ❑ Yes ❑ No

RELATIONSHIP BETWEEN VICTIM AND SUSPECT

Relationship: Length:

Prior DV History ❑ Yes ❑ No Reported ❑ Unreported ❑

Number of Prior Incidents_____ Date of Last Incident:_____

SUSPECT INFORMATION

Suspect Contacted: ❑ Yes ❑ No
Miranda Warning given by:_____ Serial #_____

Suspect Injured: ❑ Yes If yes, describe in report. ❑ No

Suspect Photographed: ❑ Yes ❑ No

Suspect demeanor: ❑ Angry ❑ Apologetic ❑ Calm ❑ Crying ❑ Hysterical
❑ Nervous ❑ Threatening ❑ Upset ❑ Violent
❑ Other, describe: _____

Mental Health History: ❑ Yes If yes, describe:_____
❑ No ❑ Unknown

VICTIM INJURIES

❑ Abrasion(s) ❑ Bruises
❑ Complaint of Pain ❑ Hair Pulled Out
❑ Lacerations ❑ Minor Cuts

❑ Strangulation: Describe in Detail [Page 1]

Treatment:
❑ None/refused ❑ At Scene
[Identify] Treatment:

❑ At Hospital
Signed Medical Release
❑ Yes ❑ No ❑ Refused

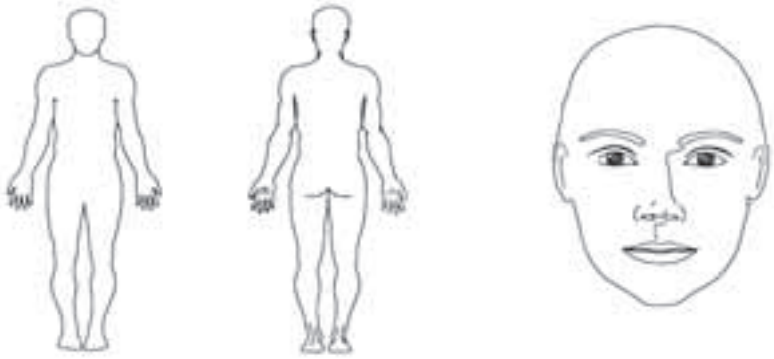
SUSPECT INJURIES

❑ Abrasion(s) ❑ Bruises
❑ Complaint of Pain ❑ Hair Pulled Out
❑ Lacerations ❑ Minor Cuts

❑ None/refused ❑ At Scene
[Identify] Treatment:

❑ At Hospital
Signed Medical Release
❑ Yes ❑ No ❑ Refused

INJURIES DIAGRAM
Deputy is to mark the location of any injuries and describe:



Have Victim Initial:

_____I have physically pointed out to the deputy(s) where I was injured.
_____I have indicated on the diagram where I was injured.
_____I was able to tell the deputy(s) who injured me.

VICTIM WRITTEN STATEMENT

❑ If victim refuses written statement, check and document what was stated in the Incident Report.

❑ Check if additional sheet attached for continuation of victim statement.

"I DECLARE UNDER PENALTY OF PERJURY, UNDER THE LAWS OF THE STATE OF WASHINGTON, THAT THE ABOVE STATEMENTS ARE TRUE AND CORRECT."

Victim Signature_____

Deputy Signature_____ Date_____

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON, Plaintiff, vs. Defendant,	))))))))	No. **ORDER TO FORFEIT AND DESTROY FIREARMS**

THIS MATTER having come on before the undersigned judge, and the court having considered the records and files herein, hereby ORDERS, ADJUDGES and DECREES:

❑ *Forfeiture:*
Pursuant to RCW 9.41.098, the court finds: (1) the firearms listed below were in the possession or under the control of the defendant at the time the defendant committed or was arrested for committing a felony or committing a non-felony crime in which a firearm was used or displayed; or (2) the firearm was used or displayed by the defendant in the commission of a felony or a non-felony crime in which a firearm was used or displayed; or (3) the firearm was in the possession or under the control of the defendant at the time the defendant was prohibited from possessing a firearm under RCW 9.41.040 or 9.41.045; or (4) another basis for forfeiture exists pursuant to RCW 9.41.098; or (5) the defendant agrees to forfeiture of the firearm pursuant to a plea agreement entered into by the parties. The court hereby orders forfeiture of the firearms listed below:

Firearm Make	Model	Caliber	Serial Number

❑ *Destruction of Firearm:*

Pursuant to RCW 9.41.98, the court hereby orders the _____ to destroy the above-referenced firearms.
(list police agency)

DONE IN OPEN COURT this _____ day of _____, 20_____.

_____
JUDGE

Presented by:

_____
Deputy Prosecuting Attorney

_____
Attorney for Defendant

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

Defendant,

No.
ORDER TO SURRENDER FIREARMS

THIS MATTER having come on before the undersigned judge, and the court having considered the records and files herein, hereby ORDERS, ADJUDGES and DECREES:

That pursuant to CrR 3.2 and RCW 9.41.800, the defendant shall surrender any and all firearms in his/her possession, control or custody, including, but not limited to, the firearms described as follows:

Firearm Make	Model	Caliber	Serial Number

The defendant shall surrender the firearm to the _____ Police Department/ King County Sheriff's Office, at the following address: _____ _____. The police incident number for this case is _____.

The defendant shall surrender all of his/her firearms pursuant to this order by two business days following release from custody, or if the defendant is out of custody, by _____. The defendant shall file with this court proof of surrender of all of his/her firearms within five business days of his release from custody. If the defendant possesses a concealed pistol license, the defendant shall surrender such license along with his/her surrender of the firearms.

If any of the defendant's firearms are within the custody and control of the law enforcement agency described above, the court hereby orders that law enforcement agency to retain custody and control of these firearms until further order of this court.

DONE IN OPEN COURT this _____ day of _____, 20_____.

_____
JUDGE

Presented by:

_____
Deputy Prosecuting Attorney

_____
Attorney for Defendant

STATEMENT BY DEFENDANT:

I HAVE READ THIS ORDER. I understand that if I violate this order by failing to surrender each of my firearms in a timely manner, I can be arrested and punished for contempt of court, and that I can be charged with a crime. I understand that if I am in possession of a concealed pistol license I must surrender such license along with the surrender of my firearms, and that failure to do so constitutes contempt of court.

_____
(Signature of Defendant)

INSTRUCTIONS TO TURN IN FIREARMS

Pursuant to a court order, you have been ordered to turn in any firearm(s) to the King County Sheriff's Office (KCSO). **Follow these instructions:**

1. Contact the King County Sheriff's Office Property Management Unit Detective for the "Surrender of Firearms," at (206) 205-5421 during normal business hours, Monday–Friday (8:00am–4:00pm). Inform the detective that the court has ordered you to turn in your firearms to the KCSO and arrange a time to do this as soon as possible. **Have your KCSO case number available—this number is printed on the court order.**
2. If the detective is not available, leave a detailed message, including your name, phone number(s) and the KCSO case number. You will be contacted to schedule an appointment. **If you have not received a call back within one (1) business day you must call KCSO again to arrange for the surrender of your firearm(s).**
3. **You must have a copy of the court order with you to give KCSO when you turn in your firearm(s).**
4. When you arrive at the designated location to contact KCSO, keep your **"unloaded"** firearm(s) locked inside your vehicle (trunk if possible). Upon contacting KCSO personnel, provide them with a copy of the order and inform them that your firearm(s) are inside the vehicle. KCSO will advise you on what to do for the removal of the firearm(s).
5. You must obtain a receipt from the KCSO to provide proof to the court that you have turned in your firearm(s). You must then provide this receipt to the court.

YOU ARE RESPONSIBLE FOR COMPLYING WITH THE CONDITIONS OF THE COURT ORDER IN A TIMELY MANNER.

KING COUNTY SHERIFF'S OFFICE
Property Management Unit, Firearms Surrender
(206) 205-5421

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,	)	No.
Plaintiff,	)	**PROOF OF COMPLIANCE WITH FIREARM SURRENDER ORDER—AFFIDAVIT OF NON-SURRENDER**
vs.	)	
Defendant,	)	

I understand that the court has ordered me to surrender any and all firearms that I own or have in my possession, control or custody. I have not surrendered any weapons pursuant to that order because I do not own any firearms or have any in my possession, control or custody.

Under penalty of perjury under the laws of the State of Washington, I certify that the foregoing is true and correct. I understand that I can be charged with the felony crime of Perjury under RCW 9A.72.020 if this affidavit contains a material misstatement.

Defendant | Date Signed | Place Signed

08/03/2004

Mr. X.

12328 Main St

Anytown, WA 98XXX

RE: King County Sheriff's Case #03-XXXXXX

Dear Mr. X,

The King County Sheriff's Office, Property Management Unit currently holds an item(s) under the above case number, Item(s) #CS-01 through CS-05, firearms.

These item(s) were surrendered/seized under Case #03-XXXXXX and/or Court order #Y30XXXXXX and Y30XXXXXX on 02/01/04, 01/05/04 and 01/07/04.

Pursuant to a conviction for Violation of Protection order D.V. you have ninety (90) days to make arrangements to have the property sold to a qualified person or licensed firearms dealer or released to a person legally able to possess firearm(s). In order to accomplish this two things are required:

1. A letter of agreement from yourself and the person receiving the weapon stating that you are surrendering all ownership, that they understand that they are accepting sole ownership and will not return the weapon to anyone not legally able to possess firearms.
2. Please forward to Det. Sarver at the KCSO Property Management Unit a copy of the driver's license of the person receiving the weapon to complete the required background clearance for release of firearms.

Please note that the agreement letter need not be formal, a hand written letter can be acceptable. The agreement however must be reviewed by the KCSO Legal Officer, Ms. Patty Shelledy, who can be reached at 206/296-XXXX, Fax# 206/296-XXXX.

The firearms will be automatically forfeited as abandoned property within ninety (90) days from the date of this notice unless you arrange the sale/disposal of the firearms/ items within the ninety-day period including weekends and holidays. The Sheriff's Office will destroy or auction the firearm(s) as provided in RCW 63.40.010.

If you have any questions or concerns please do not hesitate to contact me.

Thank you for your attention to this matter.

Sincerely,

Sue Rahr, Sheriff

Detective Craig C. Sarver
Property Management Unit/GCU
4623 7th Ave S.
Seattle, WA 98108-1719

FIREARM RETURN FORM

To Whom It May Concern:

The purpose of this letter is to advise you of several federal and state laws that could affect you as you take possession of the firearms described in the "Firearms Description" below. The King County Sheriff's Office wants you to make an informed decision as you take possession of, and become the legally responsible party for the(se) firearm(s).

There are several laws that regulate the transfer of firearms. In order for the Sheriff's Office to comply with federal and state laws, we require a full criminal history check of each person who wishes to obtain possession of a firearm in our custody. This includes a person picking up his or her own firearm, a person picking up a firearm for the purpose of delivering the weapon to the owner and any person taking possession and ownership, at the request of the legal owner, of a firearm that is temporarily being held by the Sheriff's Office (called a third-party transfer).

Certification of Recipient of Firearm(s)

I have read this form and understand its terms. I understand that, by receiving the(se) firearm(s), I will become the responsible party for the firearm(s) listed below. I also understand that if I knowingly transfer the firearm(s) to a person prohibited by law from possession of a firearm, I would be in violation of the law and may face prosecution and imprisonment.

_____ _____

Person Receiving Firearm(s) Date of Birth
Today's Date

_____ _____

Witness Today's Date

Firearm(s) Description

Either attach a copy of the Master Evidence Record or describe each firearm in detail, including item number and weapon serial number.

Sources

Evelyn Chapman
Senior Planning and Development Specialist
Domestic and Sexual Violence Prevention Office
Human Services Department
City of Seattle

Sergeant Thad Frampton
Criminal Investigation Division
Domestic Violence Intervention Unit
King County Sheriff's Office

Mark Hanna
Manager
Firearms Surrender and Forfeiture Program
Domestic Violence Intervention Unit
King County Sheriff's Office

Lieutenant Deborah L. King
Domestic Violence Unit
Seattle Police Department
Seattle Police Headquarters

Marilyn J. Littlejohn
Director
Domestic and Sexual Violence Prevention Office
Human Services Department
City of Seattle

Captain Ron Mochizuki
Commander
Seattle Police Department
Gender and Age Crimes Section
Seattle Police Headquarters

Detective Craig C. Sarver
Property Management Unit
Domestic Violence Gun Compliance Unit
King County Sheriff's Office

Cheryl Snow
Prosecutor
King County Prosecutor's Office

C. Schuylkill County, Pennsylvania: One Deputy Makes a Tremendous Difference[51]

The issuance of protection orders increased 8.5 percent, from 420 to 456, in Schuylkill County, Pennsylvania, between 2003 and 2004. A grant from the Office on Violence Against Women of the U.S. Department of Justice enabled this small county with a population of 147,000 to assign a full-time deputy sheriff to serve protection orders and confiscate weapons. After making this change, the deputy served 456 orders in 2004 and confiscated 238 firearms from protection order respondents. The federal grant also pays for secure space to store the confiscated weapons.

According to Sheriff Francis V. McAndrews, the full-time assignment of the deputy hired in 2002 was "the right choice and the right move." Not only has the deputy kept up with serving the ever-increasing number of protective orders issued in the county and seized a great number of firearms, but he also has coordinated protection order activities with the Schuylkill County Court Prothonotary's Office (court clerk), Women in Crisis (the local domestic violence advocacy program), and all other relevant agencies in the county.

Sarah Casey, executive director of Schuylkill Women in Crisis, said that the full-time assignment of the deputy to these duties "finally allows the Sheriff's Department to prioritize these cases and give them the attention they should have."

D. Law Enforcement Liability for Failure to Enforce Firearm Prohibitions

The above three examples of police programs that work to disarm abusers stand in stark contrast to departments that ignore the inverse relationship between firearm

[51] C. Parker, "Deputy Sheriff to Handle PFAs," *The Morning Call*, February 1, 2005.

Police Fail to Seize Gun and Are Held Liable

The Montana Supreme Court in *Massee v. Thompson* (321 Mont. 210, 90 P.3d 394 (2004)) held a county sheriff liable for his failure to protect a domestic violence victim because, among other things, he failed to seize "weapons used to assault or threaten" as required by state law. The court found that state domestic violence statutes created a special duty to the victim by virtue of the heightened protective relationship created by these statutes.

The victim repeatedly called for police assistance when her husband threatened her and her children with a gun. Pursuant to a Montana statute, law enforcers are mandated to assist victims and seize weapons. State law also prescribes arrest as the "preferred response" in domestic violence cases that "involv[e] [the] use or threatened use of weapons," violation of a protection order, or other imminent danger. Police did not take these actions, and the husband eventually shot and killed his wife.

The court ruled that sufficient evidence existed to prove that the sheriff breached his duty to the victim. The sheriff was held liable because he had negligently failed to give the victim the statutorily mandated notice of her legal rights and the remedies available to her, did not seize her abuser's gun, and did not arrest the abuser when there was probable cause to do so. The jury awarded the victim's sons $358,000 in damages.

possession by abusers and victim safety. Research clearly illustrates the risks to victims, children, law enforcement officers, and the abusers themselves when an abuser possesses a firearm.

The above case illustrates the liability that a law enforcement agency may face when it fails to act to protect victims by using all applicable laws to remove guns from the hands of abusers.

2. Courts

Even where firearm prohibitions are mandated by state, tribal, and/or federal statute, enforcement is enhanced considerably when orders containing the language of the relevant statutes are contained in court documents. Court compliance reviews also help to ensure that abusers are disarmed.

A. Miami-Dade County Domestic Violence Court

Created in 1992, the Miami-Dade County Domestic Violence Court ("the court"), staffed by seven full-time and eight part-time judges, handles approximately 9,000 protection order petitions a year and issues approximately 3,000 protection orders over the same period. In addition to judges, the court's efforts to disarm abusers include case managers,[52] a bailiff, intake unit staff, the Miami-Dade County Sheriff's Department liaison, and two court clerks.

The court has four locations in the county to make the protection order process more accessible for victims and law enforcement personnel. Two of these locations have extended hours on two evenings every week and are open for business on Saturdays. High-risk victims in immediate need of protection orders can access the system by calling a hotline that is staffed around the clock. Hotline staff is trained

[52] Not all court locations have designated case managers on staff. In the courts that do not have case managers, the magistrate/court clerk or probation staff performs case manager job functions.

to conduct assessments and help victims present petitions for emergency protection orders to an on-call judge.

"Getting guns out of the hands of batterers has always been a priority for me," says Domestic Violence Court Chief Administrative Judge Amy Karan. Judge Karan directed the preparation of several forms to facilitate the complex flow of information regarding firearm possession and surrender. The forms are designed to document each system interaction that relates to an abuser and his/her firearms. They help to ensure that an abuser is disarmed as required by law and that he/she remains so for as long as required by court order or statute.

When law enforcement officers serve temporary (*ex parte*) protection orders, they also provide notice that respondents must surrender firearms and/or ammunition to their local police department. Officers inform respondents that they must bring the receipts to court as proof of the relinquishment. According to Judge Karan, the majority of respondents willingly surrender firearms before the final protection order hearing.

Two databases document the existence of protection orders. Court clerks enter orders issued by the court into a court-based system. The Miami-Dade County Sheriff's Department, which is responsible for serving protection orders, enters the orders into the National Crime Information Center Protection Order File and the Florida Crime Information Center, which provide officers with 24-hour-a-day access to orders.

The Process for Ensuring and Documenting the Surrender of Firearms

If a respondent fails to appear in court after being served with a temporary protection order, the following steps are taken:

1. The judge reviews the firearm restrictions with the victim to ensure her/his understanding of the applicable prohibitions.
2. If the petitioner knows that the respondent currently keeps a firearm in the house, the judge will issue an order requiring the respondent to surrender the weapon(s).
3. The Sheriff's Department is responsible for attempting to locate the respondent and serve the order to surrender firearms, and also for reporting the outcome to the court.

Chief Administrative Judge Amy Karan, Miami-Dade County Domestic Violence Court

The surrender of firearms becomes mandatory in Miami when a temporary protection order is issued. This process begins at the hearing. The following occurs when the respondent appears in court:

1. The court provides the respondent with a form that requests information on firearms possessed by the respondent. The respondent fills out and signs the sworn statement, which is printed on orange paper and is available in English, Spanish, and Creole.
2. The case manager, with the bailiff's assistance, collects the forms and

verifies that the respondent's name and case number are correct. To the extent possible, the case manager ensures that the form is complete, accurate, and legible. The firearm forms are maintained in the court file.

3. If the judge does not issue an extension of the temporary protection order or a final protection order, no further action may be necessary. If a temporary protection order was issued but guns were not surrendered, the judge may direct compliance as required by the temporary order, even if the protection order will expire or the case is dismissed.
4. The judge makes an "on record" inquiry of each respondent regarding the content of the firearm form. In many cases, this will be as simple as verbally verifying that the respondent does not now and has not in the past six months possessed a firearm and/or ammunition. In other cases, it will be necessary to clarify the current status and location of a weapon—for example, when and to whom it was sold and whether supporting documentation for the transfer has been provided.
5. If, after a full inquiry, the judge is satisfied that the respondent does not currently possess a firearm and has complied with all surrender requirements, the court requires no further action.
6. If the judge determines that the respondent still possesses a weapon, the court completes the order to surrender firearms and delivers it to the respondent at the conclusion of the hearing.
7. The case manager monitors the respondent's compliance in providing proof of surrender. Case managers maintain a firearm surrender logbook. If a respondent does not comply, the case manager notifies the judge and the judge directs the matter to be set for hearing.

The forms developed to document the process include the following:

- Respondent's sworn statement regarding possession of firearms
- Court order to surrender respondent's firearms
- Court order to show cause why respondent failed to surrender firearms
- Affidavit of third party for sale/transfer of firearms
- Order releasing firearms to third party
- Order allowing sale/transfer to third party
- Order for return of firearms
- Information to respondent regarding surrender and return of firearms
- Summary of potential collateral consequences for conviction of domestic violence, including permanent loss of firearms
- Checklist of potential collateral consequences from a permanent/final protective order, including surrender of firearms
- Standard memo to petitioner (victim) providing notice that respondent has requested return of firearms, with a copy of respondent's request, and directions to petitioner regarding her/his options in responding

Case managers have primary responsibility for monitoring respondents' compliance with orders and notifying the judge in cases of noncompliance. Not all courts have designated case managers; the magistrate/court clerk or probation department staff performs case manager job functions in the courts that do not have case managers.

Judge Karan rarely authorizes the transfer of a firearm to a third party because she believes that the respondent thinks that the third party will allow the respondent access to the firearm(s) while the protection order is in effect. On the infrequent occasions when the court does allow such an arrangement, the third party must appear

in court. It is the respondent's responsibility to ensure that the third party appears. At the hearing, the court informs the third party of his/her legal obligations regarding storage of the firearm, and notifies him/her that he/she may not allow the respondent to have access to the firearm.

Return of Firearms

Three-quarters of the firearms surrendered to law enforcement in Miami-Dade County are not reclaimed. It is theorized that this is largely because the conditions for return deter many abusers. To reclaim firearms, a respondent must prove that he/she legally owned them before the protection order was issued. This condition alone serves as a significant barrier to reclamation for some respondents. A respondent must further prove that he/she qualifies for its return and attests the following:

- He/she has not been found guilty of a felony or MCDV.
- There is no protection order in effect in Florida or in any other state.
- No forfeiture action is pending in another court.
- He/she has never been adjudicated mentally defective or been committed to a mental institution.
- There is no other legal impediment to his/her owning or possessing a firearm.

The respondent must also provide the name of the law enforcement agency that originally seized the weapons, the property receipt number, and the police case number. Serial numbers and detailed descriptions of the weapons also are required. If it is determined that the firearm can be returned to the respondent, he/she is required to deliver a certified copy of the affidavit to the police agency that seized the weapon before the agency can return it to him/her.

Keys to Success

Judge Karan cites the four major components of what she believes constitute a successful firearm surrender program:

1. Consistent application of procedures
2. Diligence by system providers
3. Focus on keeping firearms away from violent offenders
4. Strong leadership

Judge Karan believes that one significant factor that makes the Miami-Dade County Court's approach successful is the requirement that all parties appear in court. This helps to ensure that both the victim and abuser understand what is required of the respondent, and allows court officers to personally evaluate each case. Judge Karan also favors providing extensive information to both victims and respondents, which she believes deters noncompliance and future violence. Two of the domestic violence forms provide explanations about the restrictions placed on the abuser's ability to possess or purchase a firearm after a final protection order is issued and the legal consequences for violating these restrictions. Additionally, respondents receive specific notice that a domestic violence conviction will prohibit them from possessing a firearm again, even after the expiration or dismissal of a protection order. Judge Karan explicitly verifies this information with each respondent who appears in court. She believes that this notice should be read to defendants before the court's acceptance of a guilty plea.

Another contributor to the effectiveness of the program is the requirement that risk assessments be conducted at each stage of the process by each institutional participant. Periodic reviews are important because the assessments may change as conditions in the case change. The requirement for risk assessments emerged from the Miami-Dade County Domes-

tic Violence Fatality Review Team in the late 1990s. A key use of the assessment occurs when a judge sets bond conditions; the judge must largely rely on information found by prosecutors and law enforcement officers in their risk assessments. The Miami-Dade County Police Department developed a Lethality Assessment Form to document its risk assessments. Lt. Vicki Todaro, a supervisor in the department's Domestic Crimes Bureau, reported that the assessments and the resulting conditions on release are particularly helpful in getting guns out of the hands of violent offenders.

Ways to Improve the System

Judge Karan has identified several enhancements that she hopes will be made to the Miami-Dade system:

1. The county's Domestic Violence Council is proposing a Florida statute that will prohibit the purchase or possession of firearms, weapons, or ammunition when a defendant is charged with a crime of domestic violence. This would place tighter restrictions on the ability of arrested abusers to access and use firearms before conviction.
2. Methods should be developed to access data maintained on individuals who have a permit to carry a concealed weapon. These would facilitate the revocation of a permit held by an abuser when he/she commits a domestic violence crime.
3. Language should be provided about applicable firearm disabilities to all defendants for their review and signature before the court accepts a plea for commission of a crime of domestic violence. The form should also be used at the time of a sentencing review.

Sources

The Honorable Amy Karan
Chief Administrative Judge
Domestic Violence Division

Roberta Katz, Esq.
Domestic Violence Case Manager

Lauren Lazarus, Esq.
Director of Court Projects and Programs

Jennifer Leal, Esq.
Domestic Violence Case Manager
Administrative Officer of the Courts

Lieutenant Vicki Todaro
Supervisor
Miami-Dade Police Department
Domestic Crimes Bureau

Note: Appellate courts have upheld court orders prohibiting firearms without specific statutory authorization pursuant to "catch all" provisions contained in state protection order legislation. See, for example, *Benson v. Muscari*, 172 Vt. 1, 769 A.2d 1291 (2001); see also *Conkle v. Wolfe*, 131 Ohio App.3d 375, 722 N.E.2d 586, 592–94 (Ohio App. 1998)

Miami-Dade Forms

_____,
Petitioner
v.
_____,
Respondent

DOMESTIC VIOLENCE DIVISION

CASE NO. _____

RESPONDENT'S SWORN STATEMENT OF POSSESSION OF FIREARMS AND/OR AMMUNITION

Under penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are true.

I am the Respondent in this cause. My name is _____ and my current
(Please print full name)

address is _____

Please answer the following questions:

Do you now or have you in the past six months before today, owned or possessed any firearms or firearm ammunition? (Please initial correct statement).

___ NO, I do not now own or possess, and during the past six months I have not owned or possessed, any firearms or ammunition.

___ YES, I currently, or within the past six months, have owned or possessed a firearm or ammunition. If you answered yes, please continue to Question 3.

1. **Please list the firearm and/or ammunition which you currently, or within the past six months, have owned or possessed, the quantity, make or model, whether you surrendered it to the local police or sold it and whether you have brought the receipt with you to court today.**

Firearm and/or Ammunition	Quantity	Make/Model	Surrendered/ Sold (Yes or No)	Receipt (Yes or No)

The Respondent is advised that if they fail to completely and accurately complete this sworn statement they may face serious civil and criminal penalties. If a Respondent remains in possession of a firearm or ammunition after a Final Judgment of Injunction is entered, he or she would be in violation of 18 U.S.C. § 924 (a)(2) which is punishable by a maximum of ten (10) years imprisonment and or a $250,000.00 fine.

Signature: _____ **Date:** _____

Instructions to Respondent Following Issuance of Temporary Restraining Order

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

INSTRUCTIONS TO RESPONDENT

1. Immediately go to the nearest police station to your residence and surrender all firearms and/or ammunition in you care, custody, or control.
2. Obtain a written receipt from the police department that you surrendered the firearms and/or ammunition.
3. If you have been in possession of firearms and/or ammunition within the past six months but are not currently in possession of these items, you must provide documentation of this surrender in the form of a signed, sworn and notarized bill of sale.
4. Fax your proof of surrender along with this Order to (305) 349-5559 within twenty-four (24) hours of entry of this Order.
5. Respondent's failure to completely comply with this order may result in civil and criminal charges being filed against you.

CLERK'S CERTIFICATE OF SERVICE
I hereby certify that a certified copy of this Order was delivered to:

[ ] Petitioner, _____,
by [ ] hand [ ] mail [ ] certified mail at _____AM/PM

[ ] Petitioner's counsel, _____,
by [ ] hand [ ] mail [ ] certified mail at _____AM/PM

[ ] Respondent, _____,
by [ ] hand [ ] mail [ ] certified mail at _____AM/PM

[ ] Respondent's counsel, _____,
by [ ] hand [ ] mail [ ] certified mail at _____AM/PM

this _____ day of _____, 20____.

Harvey Ruvin, Clerk
Circuit and County Court

_____
Deputy Clerk

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

_____, DOMESTIC VIOLENCE DIVISION
Petitioner
v. CASE NO._____

_____,
Respondent

ORDER TO SURRENDER RESPONDENT'S FIREARMS AND/OR AMMUNITION

TO: RESPONDENT
_____
_____
_____

THE COURT upon consideration of the Respondent's Sworn Statement of Possession of Firearms and/or Ammunition filed in this cause, testimony presented in open court, and this Court otherwise being fully advised, it is hereby

ORDERED and ADJUDGED:

_____1. Respondent's firearms and ammunition may be described as and the serial number(s) of said firearm(s) are as follows: _____
_____
_____

_____ 2. The Respondent has previously testified that he/she has surrendered the above-described firearms and/or ammunition but failed to provide documentary proof of surrender to the Court as further instructed below.

_____ 3. The Respondent failed to surrender the above-described firearms and/or ammunition and now must surrender them and also provide documentary proof to the Court as further instructed below.

DONE AND ORDERED at Miami, Dade County, Florida this _____ day of _____, 20_____.

_____
Judge

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

_____, DOMESTIC VIOLENCE DIVISION
Petitioner
v. CASE NO._____
_____,
Respondent

ORDER TO SHOW CAUSE WHY RESPONDENT FAILED TO SURRENDER FIREARMS AND/OR AMMUNITION

TO: RESPONDENT
_____
_____
_____

You were ordered on _____, 20___, to surrender all firearms and/or ammunition that are in your care, custody, or control within the past six months and to provide documentation of surrender to this Court.

You were given twenty-four (24) hours to fax proof of this surrender to the Court and it appears the Court has not received it.

THEREFORE, it is **ORDERED AND ADJUDGED** that you shall appear before this Court on the _____ day of _____, 20_____, at_____a.m./p.m. in the Courtroom _____, at Courthouse Center, 175 N.W. 1st Avenue, Miami, Florida 33128, to show cause why you should not be held in contempt and punished for indirect criminal contempt of court, pursuant to Fla. R. Crim. P. 3.840, for your willful failure to comply with the terms of the Order to Surrender Respondent's Firearms and/or Ammunition. Such punishment, if imposed, may include a fine and incarceration.

Should the court determine, based on the evidence presented at the hearing, that the Respondent's conduct warrants sanctions for civil contempt in addition to, or instead of, indirect criminal contempt, the Court reserves the right to find the Respondent guilty of civil contempt and impose appropriate civil sanctions.

DONE AND ORDERED at Miami, Dade County, Florida this _____ day of _____, 20___.

_____
Judge

If you believe that you have previously complied with this Order, please fax this Order along with proof of surrender of firearms and/or ammunition to (305) 349-_____ immediately.

Affidavit of Receipt of Third-Party Transfer

9 IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA.
9 IN THE COUNTY COURT IN AND FOR DADE COUNTY, FLORIDA

DIVISION 9 CRIMINAL 9CIVIL 9OTHER	AFFIDAVIT OF THIRD PARTY FOR SALE/TRANSFER OF FIREARM AND/OR AMMUNITION	CASE NUMBER
PLAINTIFF/PETITIONER v. DEFENDANT/RESPONDENT.		CLOCK IN

BEFORE ME, the undersigned authority personally appeared _____ who after being duly
(name of affiant)
sworn, deposes and says:

1. _____ residing at _____, whose date of birth is
(Name of Affiant)

_____ hereby agrees to receive by sale and/or transfer from Defendant/Respondent the following

described firearms and/or ammunition (set forth make model & serial number):_____.

2. I do not reside with the Defendant/Respondent in the same residence. My relationship to

Defendant/Respondent is _____.

3. I agree not to return, loan or sell the firearms and/or ammunition evidenced by this receipt to the

Respondent/Defendant under any circumstances, without a court order allowing the same. I understand that

violation of this oath may result in contempt of court charges against me.

4. I also affirm that I am not prohibited from owning firearms under either State or Federal laws.

Further Affiant Sayeth Naught

_____
(Signature)

_____
(Print Name)

SWORN TO AND SUBSCRIBED before me this ____day of _____, 2003.
Personally known/identification

_____
Notary Public, State of Florida at Large.
My Commission Expires:

IN AND FOR DADE COUNTY, FLORIDA

STATE OF FLORIDA,

DOMESTIC VIOLENCE DIVISION
CASE NO.: _____

Plaintiff, _____

vs.

Defendant, _____

ORDER RELEASING FIREARMS AND/OR AMMUNITION TO THIRD PARTY

THIS CAUSE having came on to be heard and the Court being fully advised in the premises it is hereby:

ORDERED AND ADJUDGED:

1. Whereas the Defendant has been convicted of a qualifying crime of domestic violence and cannot lawfully possess firearms and/or ammunition; and,

2. Whereas the _____ Police Department retains custody of the following firearms and/or ammunition seized from or surrendered by the Defendant,_____ _____; and,

3. Whereas the third party purchaser/transferee _____ has filed a sworn affidavit, subject to the penalty of contempt of Court, affirming that he/she:

   a. does not reside with the Defendant; and,

   b. will accept possession of said firearms and/or ammunition; and, that

   c. the Defendant will not, under any circumstances, receive possession, custody or control of said firearms or ammunition, without a Court order allowing same.

WHEREFORE, it is hereby **ORDERED AND ADJUDGED**:

That the _____ Police Department shall release the firearms and/or ammunition identified above to_____ upon presentation of this Order and valid identification.

DONE AND ORDERED in Miami, Dade County, Florida this _____day of _____, 2003.

_____
Judge

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that a certified copy of this Order was delivered to:

[ ] Petitioner, _____,
by [ ] hand [ ] mail [ ] certified mail at _____AM/PM

[ ] Petitioner's counsel, _____,
by [ ] hand [ ] mail [ ] certified mail at _____AM/PM

[ ] Respondent, _____,
by [ ] hand [ ] mail [ ] certified mail at _____AM/PM

[ ] Respondent's counsel,_____,
by [ ] hand [ ] mail [ ] certified mail at _____AM/PM

this _____ day of _____, 20____.

Harvey Ruvin, Clerk
Circuit and County Court

_____
Deputy Clerk

Notice to Petitioner Regarding Firearm Possession by Respondent

Date: _____

Re: **Case Number** _____

Dear Petitioner:

Please be advised that it is a crime for a Respondent in an injunction case to possess a firearm or ammunition when a permanent injunction is in effect against him/her. Recently, the Court received a request from the Respondent in your case requesting the return of firearms and/or ammunition that he/she surrendered at the beginning of the case.

The Court has preliminarily determined that the respondent is entitled to the return of the firearm(s) and/or ammunition. You have the right to file an objection to the return of the firearm(s) or ammunition with the Court. Please state your objection **in writing within fifteen (15) days** from the date of this letter. Some legal basis why the firearms/ammunition should not be returned are:

1) the firearm is not legally owned by the Respondent;
2) the Respondent has been found guilty of a felony in Florida or any other state;
3) the Respondent has been found guilty of a misdemeanor crime of domestic violence in Florida or any other state;
4) there is an injunction in effect against the Respondent in Florida or any other state;
5) there is a pending forfeiture action against the Respondent in another court;
6) the Respondent has been adjudicated mentally defective or committed to a mental institution; and
7) there is some other legal impediment to the Respondent owning or possessing a firearm, including but not limited to those mentioned above.
8) Any other reason you think the Court should be aware of.

Should you have any other questions, please do not hesitate to contact me.

Sincerely,

Jennifer D. Leal, Esq.
Case Manager

cc: Respondent

Order for Return of Firearm(s) and Ammunition

IN THE CIRCUIT OF THE ELEVENTH JUDICIAL CIRCUIT I N
AND FOR MIAMI-DADE COUNTY, FLORIDA

Domestic Violence Division	ORDER FOR RETURN OF FIREARM(S) AND AMMUNITION	CASE NUMBER:
Petitioner	Respondent	CLOCK IN

THIS CAUSE having come on to be heard pursuant to the respondent's motion for return of firearm(s) and ammunition in the above styled cause, and the court having reviewed all pertinent documents, finds as follows:

1. The respondent was ordered to surrender all firearms and ammunition in his/her possession pursuant to a valid Temporary or Permanent Injunction for Protection.
2. The firearm(s) and ammunition surrendered may be described as, and the serial number(s) of said firearm(s) are as follows:
3. _____
4. _____
5. _____
6.
7. The respondent surrendered said firearm(s) and ammunition to _____police agency nearest to his/her home and obtained property receipt number _____evidencing surrender, which was filed with the Clerk's Office. The police case number is _____.
8.
9. The firearm(s) is/are legally owned by the respondent.
10.
11. The respondent has not been found guilty of a felony in Florida or any other state.
12.
13. The respondent has not been found guilty of a misdemeanor crime of domestic violence.
14.
15. There is no injunction in effect against the respondent in Florida or in any other state.
16.
17. There is no forfeiture action pending against the respondent in another court.
18.
19. The respondent's affidavit attests to the fact that he/she has never been adjudicated mentally defective or been committed to a mental institution and that there is no other legal impediment to the respondent owning or possessing a firearm, including but not limited to those mentioned above.
20.
21. Based upon the foregoing findings, it is hereby ORDERED and ADJUDGED that the respondent's motion for return of firearm(s) and ammunition is GRANTED and the law enforcement agency which has retained said firearm(s) and ammunition is to return the above described firearm(s) and ammunition to the respondent forthwith, upon presentation of a certified copy of this order, the police property receipt or Arrest Affidavit, proof of ownership, and valid identification of the respondent. Based upon the policies of the law enforcement agency, the firearm(s) and ammunition may be returned separately, at different times, for safety reasons.
22.
23. DONE AND ORDERED at Miami-Dade County, Florida this _____day of _____, 2004.
24.
25. _____
26. Judge
27.
28. Copies furnished to:
29. Petitioner
30. Respondent
31. Petitioner's counsel
32. Respondent's counsel
33.
34.
35.

IN THE COUNTY COURT OF THE ELEVENTH JUDICIAL CIRCUIT

INFORMATION FOR RESPONDENTS REGARDING THE SURRENDER AND RETURN OF FIREARMS AND AMMUNITION

- If a TEMPORARY or PERMANENT Injunction has been entered and served, ordering you to surrender all firearms and ammunition in your possession, you must surrender all firearms and ammunition in your possession to the police department nearest to your home immediately upon service of the TEMPORARY or PERMANENT Injunction and obtain a receipt of surrender (property receipt), OR

- If a PERMANENT Injunction has been entered, you may alternatively sell or transfer any and all firearms and ammunition in your possession to a third party not residing with you in the same household upon service of the PERMANENT Injunction. You must file a notarized receipt with the Clerk's Office bearing the name, address and signature of the third party. The receipt must state the following: "The purchase/transferee agrees not to return or sell back the firearms and ammunition evidenced by this Bill of Sale/Receipt of Transfer to _____(insert your name), until further order of court."

- If a TEMPORARY Injunction has been entered ordering you to surrender all firearms and ammunition in your possession, you must bring the receipt of surrender (property receipt) to the Permanent Injunction hearing.

- If a PERMANENT Injunction has been entered ordering you to surrender all firearms and ammunition in your possession, you must bring the receipt of surrender (property receipt) or Bill of Sale or Receipt of Transfer to the Clerk's Office at the location where your case was heard, within 72 hours of service of the PERMANENT Injunction, for filing in the court file.

IT IS A FEDERAL CRIME FOR A RESPONDENT TO POSSESS A FIREARM OR AMMUNITION WHEN A PERMANENT INJUNCTION IS IN EFFECT AGAINST HIM/HER, PURSUANT TO 18 U.S.C. §922(g)(8). THE PENALTY FOR VIOLATING THIS SECTION MAY INCLUDE UP TO TEN (10) YEARS IMPRISONMENT AND/OR $250,000 FINE.

IT IS ALSO UNLAWFUL FOR A PERSON CONVICTED OF A MISDEMEANOR CRIME OF DOMESTIC VIOLENCE TO POSSESS A FIREARM OR AMMUNITION, PURSUANT TO 18 U.S.C. §922(g)(9).

HOW TO GET YOUR FIREARM(S) AND AMMUNITION BACK IF YOUR INJUNCTION IS NO LONGER IN EFFECT

- All firearms and ammunition surrendered to the police department will be kept by them during the term of the injunction. Upon expiration or dismissal of your injunction, you may request the return of your firearm(s) and ammunition by filing a motion or writing a letter to the court which contains the following:

  Attach to the motion or letter an affidavit signed by you attesting that:
  - a) the firearm is/are legally owned by you;
  - b) you have not been found guilty of a felony in Florida or any other state;
  - c) you have not been found guilty of a misdemeanor or crime of domestic violence;
  - d) there is no injunction in effect against you in Florida or any other state;
  - e) there is no forfeiture action pending against you in another court;
  - f) you have never been adjudicated mentally defective or been committed to a mental institution; and
  - g) there is no legal impediment to you owning or possessing a firearm, including but not limited to those mentioned above.

1) **Attach a copy of the receipt of sale, bill of sale, receipt of transfer, or other document evidencing your ownership of the firearm(s) and ammunition.**

2) **Include a description of the firearm(s) and ammunition which were surrendered and its/their serial number(s).**

The judge will review your motion/letter and determine if your firearm(s) and ammunition should be legally returned. If the judge determines that your firearm(s) and ammunition should be returned, the judge will enter a court order providing for its/their return. A copy of this court order will be sent to the petitioner in the case. If the judge determines that there is not a legal basis for your firearm(s) and ammunition to be returned upon review of your motion/letter, the court shall set a hearing on your request.

Upon the judge determining that your firearm(s) and ammunition should be returned and entering a court order providing for its/their return, bring a certified copy of the court order, the police property receipt or Arrest Affidavit, and your proof of ownership (receipt of bill of sale) to the police station where you surrendered the firearm(s) and ammunition, along with your identification. Based upon the policies of the police department, your firearm(s) and ammunition may not be returned at the same time, for safety reasons.

Unless firearms and ammunition in the possession of law enforcement are reclaimed by the owner within 8 months of the receipt of the court order providing for their return, the firearm(s) and ammunition will be forfeited to the state and no action or their recovery can thereafter be maintained.

3. Prosecutors

State and federal prosecutors can guarantee that information about firearms possessed or used by an abuser reaches the court. They can also take the lead in mobilizing the efforts of local law enforcement in identifying firearm-related cases for prosecution at either the state or federal level.

A. Utah: Project Safe Neighborhoods

The U.S. Attorney for the District of Utah uses Project Safe Neighborhoods dollars to fund an innovative federal-state partnership that has proven effective in identifying and prosecuting abusers who violate federal firearm statutes. In 2001, U.S. Attorney Paul Warner created the Project Safe Neighborhoods/ATF Task Force ("task force"), which consists of line local, state, and federal law enforcement and correctional officers, as well as local, state, and federal prosecutors working side by side to disarm prohibited offenders. The program seeks to enforce all state and federal firearm laws, but it has a specific focus on the prohibitions that apply to domestic violence perpetrators. The program has been instrumental in successfully prosecuting dozens of abusers for firearm offenses each year.

The program has facilitated a federal-state partnership with a dozen local law enforcement officers across the state, two state probation and parole officers, and an officer from the state Department of Public Safety. Federal officials from Immigration and Customs Enforcement, as well as the FBI, participate. Without the participation and cooperation of the task force, the nine ATF agents responsible for covering the entire state of Utah would not have the assistance of local and state law enforcement officers in investigating and enforcing federal firearm crimes. Likewise, the ability of state/local officers to enforce federal firearm laws is critically important to keeping victims safe and holding offenders accountable; Utah does not have state laws that explicitly prohibit an abuser who is subject to a protection order from possessing firearms or ammunition. While judges may check a box on the protection order form that requires abusers to turn in their firearms, local enforcement of this kind of protection order relief has been inconsistent.

All the state and local officers passed ATF background checks and received ATF training regarding policies, procedures, and federal firearm laws. They were subsequently deputized as federal marshals, which gives them the authority to enforce federal firearm statutes. Although these officers continue to be paid by their local departments, their salaries are reimbursed using funds from the federal program, and their overtime is paid directly by the ATF. The nonfederal participants—all of whom volunteered for their assignments—are extremely motivated, which undoubtedly adds to their effectiveness.

The local officers function as the eyes and ears of the task force, using information obtained at the ground level. What makes this program particularly powerful is that the local officers who investigate firearm cases have at their disposal the resources of the U.S. Attorney's Office, the ATF, and the FBI, in addition to their local contacts and resources. Depending on which role will be most helpful in a particular case, the officers can act under either their state or federal authority. For example, if a prohibited person is subject to state correctional supervision, a state probation and parole officer assigned to the task force can conduct a warrantless search of the suspect and his/her residence pursuant to the terms of the suspect's probation/parole conditions. If firearms are found, the officer can then prepare a federal firearm case against the suspect using the officer's authority as a federally deputized marshal.

The task force reviews all reports regarding prohibited persons who have attempted to purchase a gun from federally licensed firearm dealers. It receives approximately 30 reports each week and follows up on as many of them as resources will allow.

Like its state-federal law enforcement partnership, the program encompasses a partnership between local and federal prosecutors. The lead task force prosecutor is John Huber, a West Valley City prosecutor cross-designated as a Special Assistant U.S. Attorney, which enables him to prosecute cases in both state and federal courts. He works with law enforcement officers and agents assigned to a multiagency Project Safe Neighborhoods Task Force at the ATF office in Salt Lake City. Mr. Huber also takes cases directly from Utah police departments, sheriffs' offices, and district attorneys.

After the initial case investigation by law enforcement officers, prosecutors decide whether to proceed in federal or state court, on the basis of which venue is more propitious for a particular case. They can also leverage their cases to persuade defendants to plead guilty. For example, when state prosecutors inform defendants that they potentially face a federal sentence for commission of a federal crime (many of which carry mandatory sentences that are much longer than the maximum sentence for a state crime), many defendants quickly plead guilty to state charges.

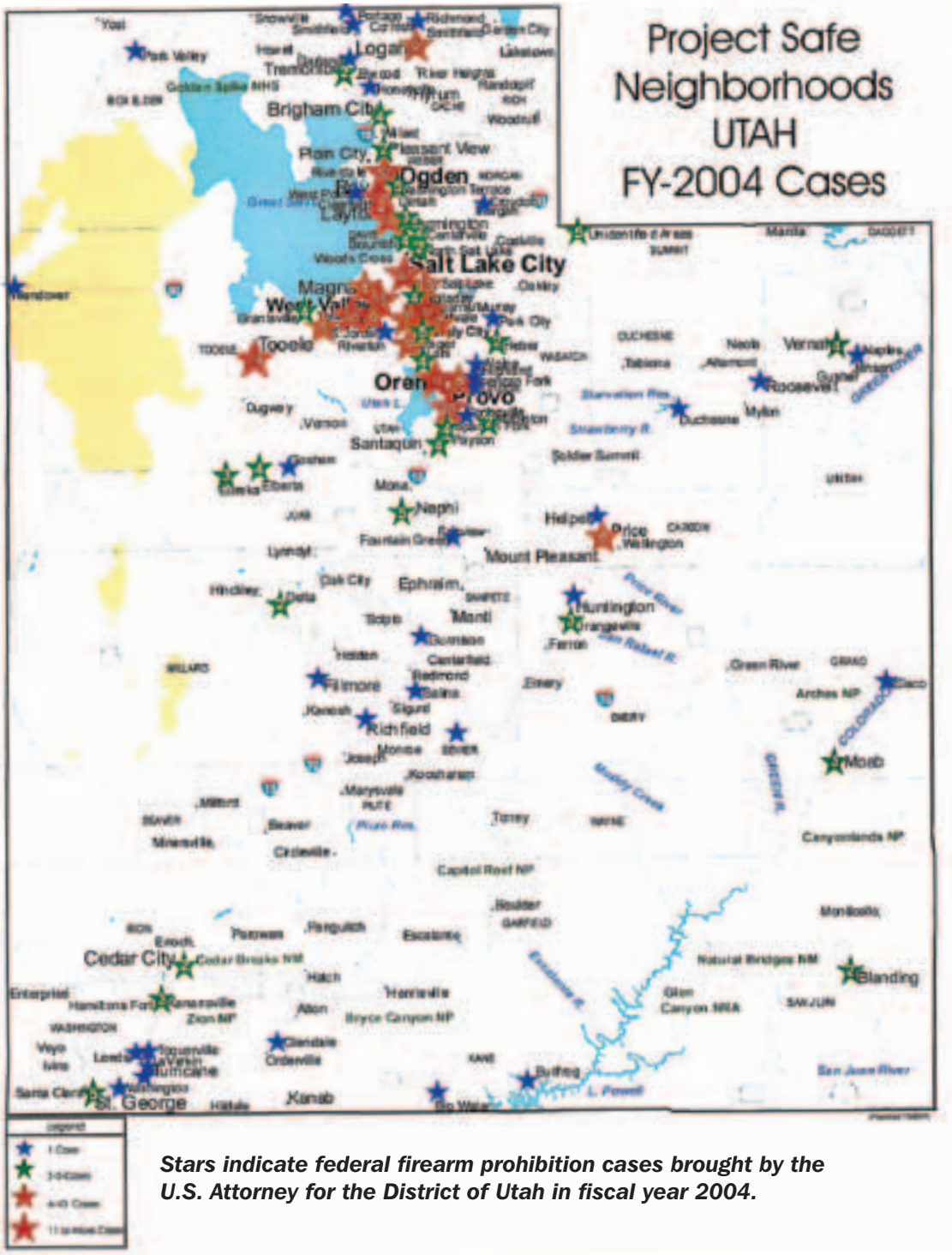
Since 2001, 27 people in Utah have been indicted in federal court for firearm possession while subject to a protection order. Thirty-eight people have been charged with firearm possession following a domestic violence conviction. The average sentence imposed for convicted defendants is 45 months. The state correctional budget thereby has been relieved from the costs of funding the incarceration of domestic violence offenders sentenced. More than 3,000 years of total prison time for all offenders has been imposed under Utah Project Safe Neighborhoods to date.

Because Utah does not have a federal prison, convicted defendants typically serve their time at the Yankton Federal Prison Camp located in South Dakota. This fact prompted a public education campaign by the U.S. Attorney's Office that warns, "Violate the Gun Law, Get a Trip to South Dakota," and is illustrated with a photo of the South Dakota prison facility.

The work of the task force has had a particularly powerful effect in rural areas of the state. Representatives describe how one successful federal prosecution in a rural county can reverberate through the area, resulting in a general deterrent effect for the entire county.

The task force encourages the involvement of non-task-force agencies and the community at large. It reaches out to child protection workers and urges them to report information about firearms in households in which they conduct home visits. The task force also reaches out to housing authority staff because many parolees and other prohibited persons seek residence in public housing. The task force has also provided training to the state's 29 county district attorneys and many local law enforcement officers.

Note: The cross-deputization of state/local prosecutors as Special Assistant U.S. Attorneys (SAUSAs) is authorized by federal statute (28 U.S.C. § 543).



Stars indicate federal firearm prohibition cases brought by the U.S. Attorney for the District of Utah in fiscal year 2004.

In the example below, federal prosecutors in Utah were confident that the respondent would be held in custody pending his federal trial because of the *United States v. Rogers* case that had been successfully prosecuted by the U.S. Attorney's Office.

Example of the Utah Federal-State Partnership in Action

In Park City, Utah, a small ski and summer resort town located approximately one hour away from Salt Lake City, a domestic violence victim petitioned the local district court for a protection order against her estranged husband. A hearing was held the following month, in February 2005. Both parties were represented by counsel. They entered into a consent agreement and the court issued the order. The following June, the victim called law enforcement early one morning to report that she believed that her husband had entered the house in violation of the protection order.

When Summit County Sheriff's Office deputies and Park City Police Department officers arrived, they observed the respondent's vehicle driving past the house, an act constituting a violation of the protection order. In addition, officers retrieved text messages and caller ID records from the victim's home, indicating that the respondent had contacted the victim in violation of the protection order. Officers then went to the respondent's home and arrested him for violating the order. The respondent consented to a search of his car where officers found a fully loaded .32 mm. semiautomatic handgun and ammunition. Officers located more ammunition during a protective sweep of the residence.

After police officers read the respondent his Miranda rights, he admitted that he had possessed the firearm for several months. He also admitted to text-messaging his estranged wife, telling officers he had passed his "breaking point."

Police brought the respondent before the local district court for arraignment, and the Summit County prosecutor asked for bail to be set in the amount of $50,000—the highest allowable bail for misdemeanor charges. They explained that in the course of their investigation, officers discovered that the respondent had told associates he planned to fly to England, buy illicit drugs, and then murder his wife's friend and make it look like a drug deal dispute. He confessed to shooting and killing his children's dog to prepare himself for the murder of his wife's friend. Officers found plane tickets to London at the respondent's house. The court imposed the bail requested, but officers were concerned that the bail was not high enough to keep the respondent, a successful businessman, from leaving the country.

Thanks to the federal-state partnership initiated by the U.S. Attorney's Office, local officers immediately knew to contact John Huber, the Project Safe Neighborhoods/ATF Task Force Special Assistant U.S. Attorney. Huber quickly secured as an investigator Robert Almgren, a violent crimes detective with the Layton City Police Department, who was cross-deputized by the U.S. Marshal for the District of Utah to enforce federal firearm laws. Almgren obtained the necessary information from local law enforcement officers to write up a complaint to file in the federal court.

In the interim, the respondent had raised his bail and was released. The federal charges were issued within hours of his release from custody. Police quickly reapprehended the respondent at his home and took him into federal custody for the commission of federal firearm crimes. Unlike the state charges, the federal charges carried with them mandatory pretrial detention.

The task force made it possible for federal and state agencies to ensure that the respondent remained in the United States and would be held accountable for his crimes. "We are very proud of our partnerships in Utah," said Special Assistant U.S. Attorney Huber.

United States v. Rogers[53]

Kenneth Rogers, 51, was arrested in February 2003 after police discovered two firearms in a locked bedroom in his Utah home. The officers were there to assist his ex-girlfriend while she moved her personal items out of the home. They asked the defendant if he possessed any firearms. After he showed them empty handgun and rifle cases, the local police contacted the ATF. When ATF agents determined that Rogers was subject to another previous protection order and had been convicted of prior misdemeanor domestic violence assaults, they obtained a search warrant and found firearms and ammunition in the home. The defendant was held in custody pending trial in federal court.

Rogers appealed his pretrial detention because he argued that the offense did not constitute a "crime of violence" necessary to carry a presumption of detention. The 10th Circuit disagreed, concluding that possession of a firearm while subject to a domestic protection order and possession of a firearm following the conviction for a misdemeanor crime of domestic violence both involved a substantial risk that physical force would be used against the person or property of another. The court explained that a defendant whose background included domestic violence that advances to either a criminal conviction or the imposition of a protection order had a demonstrated propensity for the use of physical violence against others. The court also noted that "the dangerousness of guns and their adaptability to use in violent crime is why Congress has prohibited their possession" by individuals subject to an order (at 262).

The court did not consider the particular circumstances surrounding Rogers's alleged violations of § 922(g)(8) and (9). Instead, it looked at whether possession of a firearm while subject to a domestic violence protection order and possession of a firearm following a conviction for a misdemeanor crime of domestic violence, in their generic sense, involved a risk that physical force might be used against the person or property of another.

Sources

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[53] 391 F.3d 1165 (10th Cir. 2004).

The following excerpt is from the case filing in* United States v. Osborne *describing the role of local law enforcement in enforcing federal firearm prohibitions.

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FILED WITH
JUN 22 2005
UNITED STATES MAGISTRATE JUDGE SAMUEL ALBA

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	Magis. Case No. A-05-195M
Plaintiff,	:	C O M P L A I N T
vs.	:	Vio. 18 U.S.C. 922(g)(8) POSSESSION OF FIREARM AND AMMUNITION WHILE SUBJECT TO A PROTECTIVE ORDER
ULUGBEK OSBORNE,	:	
Defendant.	:	

Before Samuel Alba, United States Magistrate Judge for the District of Utah, appeared the undersigned, who on oath deposes and says:

COUNT I

On or about June 18, 2005, in the Central Division of the District of Utah,

ULUGBEK OSBORNE,

the defendant herein, did knowingly possess in and affecting interstate commerce a firearm and ammunition, that is, a .32 caliber semi-automatic handgun and associated ammunition, and did so while subject to a protective order within the meaning of 18 U.S.C. § 922(g)(8), which was issued by the Third Judicial District Court, Summit County, State of Utah, on or about February 15, 2005 following a hearing where the defendant had

notice and had an opportunity to participate, all in violation of 18 U.S.C. § 922(g)(8).

I, ROBERT ALMGREN, being duly sworn, depose and say:

I am a Violent Crimes Detective with the Layton City Police Department, and I am in the eighth year of law enforcement in the State of Utah. In 2003, I was assigned to the Project Safe Neighborhoods/ATF Task Force where I continue to serve as an investigator. I am charged with investigating violations of Federal law including those relating to firearms, througbout the State of Utah. I am officially assigned to the Salt Lake City, Utah Field Office of ATF. I have been deputized by the United States Marshal for the District of Utah to enforce federal firearm laws.

The following is information obtained through an investigation that has included reviewing reports submitted by the Summit County Sheriff's Office along with speaking to several officers and witnesses who have first hand knowledge in regards to Ulugbek Osborne unlawfully being in possession of firearms.

On January 5, 2005, , the estranged wife of Ulugbek Osborne ("OSBORNE"), petitioned the Fourth District Court for a cohabitant abuse protective order. OSBORNE was, in turn, served with that petition, and a hearing was eventually scheduled for February 15, 2005 for all parties to attend. On February 15, both Ms. Osborne and OSBORNE were represented by counsel, and they entered into a stipulation consenting to the entry of a Protective Order.

B. West Virginia: Project Safe Homes

While the streets within the Northern District of West Virginia are fairly safe, some of the district's most violent chronic offenders commit their crimes inside their own homes. The incidence of domestic violence in West Virginia is among the highest in the nation.[54] An estimated 85 percent of households in the state have a firearm, according to the U.S. Attorney's Office, making it very likely that a West Virginia abuser possesses at least one firearm.

Before the appointment of Thomas Johnston as the U.S. Attorney for the Northern District of West Virginia, the state experienced a succession of high-profile domestic homicides, including one with four victims and another with six. Although the criminal justice system took action to intensify its response to abusers who possess firearms, state law enforcement lacked the statutory authority to dispossess abusers of their guns. After his 2001 appointment, Johnston realized that federal intervention would be critical in the effort to disarm abusers and prevent future domestic homicides and firearm injuries. He said, "I'm the type of person who wants to solve problems. I saw my appointment as a U.S. Attorney as an opportunity to focus on domestic violence crime and federal firearms violence." U.S. Attorney Johnston labeled his campaign to disarm dangerous abusers Project Safe Homes. Through it, he sought to educate law enforcement, abusers, victims, and the public about the federal firearm laws and the consequences an abuser faces if he/she violates them and to establish collaborative partnerships with county and local law enforcement to investigate and promptly prosecute abusers for violating federal gun statutes.

Former U.S. Attorney Thomas E. Johnston, Northern District of West Virginia

According to Christina Mehler, who has served for five years as victim witness coordinator for the Northern District, when Johnston took office, it was not widely known that the greatest threat of danger to women and children in the Northern District was domestic violence. Through Project Safe Homes, U.S. Attorney Johnston raised public awareness about the risks that domestic violence poses to women and children.

A Collaborative Effort

U.S. Attorney Johnston made the aggressive investigation and prosecution of domestic abusers who use or possess firearms an office priority. He began his work by contacting county and local law enforcement agencies. He sent a fax to all agencies that stated, "*If you know of an individual who is under a domestic violence protective order or has a conviction for domestic violence and still has guns,*

[54] L. J. Paulozzi, L. E. Saltzman, M. P. Thompson, and M. S. Holmgreen, Centers for Disease Control and Prevention, "Surveillance for Homicide Among Intimate Partners—United States 1981–1998," *Morbidity and Mortality Weekly Report* 50(SS03) (October 12, 2001): 1–16.

please provide…the information [to the U.S. Attorney]."

Johnston subsequently met with 32 sheriffs and 15 police chiefs in the Northern District to discuss his interest in prosecuting offenders who violate federal laws prohibiting the possession of firearms. This frank discussion made significant inroads to building trust and developing mutual respect among the participants.

The U.S. Attorney also worked with his staff to accomplish the following:

- Identify law enforcement personnel throughout the Northern District who were interested in providing ideas and feedback on various strategies to prevent gun violence.
- Provide law enforcement officers with federal firearm training and access to the federal prosecution of domestic violence crimes.
- Establish relationships with each of the domestic violence programs in the Northern District.
- Engage the half-dozen ATF agents assigned to the district in domestic violence investigations.

Johnston worked closely with the West Virginia Coalition Against Domestic Violence. Johnston also asked for and received support from the National Rifle Association (NRA) for Project Safe Homes. He emphasized that the project was not antigun, but rather antiabuse.

The partnering agencies did not always share the same perspective during the development of the project, but they agreed to disagree for the sake of the initiative. "When faced with obstacles and contrary positions, we agreed to stay together," said Sue Julian of the West Virginia Coalition Against Domestic Violence.

Learning from Victim Advocates

During the early stages of the development of the Project Safe Homes initiative, Victim Witness Coordinator Mehler and U.S. Attorney Johnston traveled throughout the Northern District to meet with each of the local domestic violence programs. Johnston wanted to lead by example in establishing personal working relationships with advocates and to hear directly from them. Mehler recalled the positive response by advocates as "overwhelming" and said she believes that Johnston's leadership style, as well as his sincere and passionate interest in getting guns out of the hands of abusers, helped him to earn the trust and respect of advocates.

Working closely with victim advocates during the developmental stage of Project Safe Homes helped Johnston to gather critical information and identify priorities. Ongoing close consultation with advocates has resulted in an improved program design and positive working relationships. Johnston attributes much of the success of the Project Safe Homes initiative to collaboration with victim advocates. "There is a lot to be learned from victim advocates and I learned that early on," Johnston said.

Mehler focuses on providing victims with direct access to her office and other key resources. "Advocates are often the first people to share or disclose information about the existence of firearms," she said, adding that she receives about six calls per week from domestic violence victims and advocates who have questions or want to report violations of federal law.

Training Local Law Enforcement Agencies

Assistant U.S. Attorney David Perri is responsible for prosecuting a significant number of the firearm cases handled in the Northern District. He understands the frustration of law enforcement officers who have identified high-risk cases but know that the abusers will not be held accountable under state law. Even when state convictions are achieved, offenders are usually incarcerated for short periods of time compared with the maximum sentences that

can be imposed under the federal sentencing guidelines.

Because the federal system has a greater capacity to prosecute and detain abusers, Perri stresses, it is essential that law enforcement officers become familiar with federal firearm laws and understand when they should refer a case to the U.S. Attorney's Office. As part of Project Safe Homes, the U.S. Attorney's Office has provided training to numerous law enforcement agencies; that training covers the requirements of the federal firearm statutes and prosecuting offenders.

Perri has also focused on changing the perception of law enforcement officers regarding the importance with which the U.S. Attorney's Office views domestic violence cases. When speaking with law enforcement, Perri emphasizes the U.S. Attorney's willingness to prosecute abusers who commit federal firearm crimes. Perri urges them to contact his office with information about suspects whom officers believe have violated federal law. He assures law enforcement that his office takes these crimes very seriously and that once a case is referred, it is prosecuted.

Fax Referral Sheet

Law enforcement officers in the Northern District can refer cases directly to the U.S. Attorney by completing and faxing a Federal Firearms Fax Referral to the U.S. Attorney's Office. The form is used when an officer identifies and investigates a suspect who possesses a firearm and is subject to a domestic violence protection order or was previously convicted of an MCDV.

The faxed form provides space for the following:

- The suspect's name, address, telephone number, place of employment, date of birth, Social Security number, and date of the most recent offense.
- The name and phone number of the domestic violence agency and advocate that are working with the victim.
- Information on the current protection order, if applicable, including the date of issuance, case number, and duration. Copies of the protection order are attached, if available.
- Information on any prior domestic violence conviction, including the exact description of the crime(s) of which the suspect was convicted, the date of the conviction(s), the court that entered the conviction(s), and the case number(s). When available, the order(s) is/are attached to the fax.
- Information that supports the conclusion that the suspect currently possesses firearms, or that he/she possessed them previously while subject to a legal disability.

ATF Involvement

The original Project Safe Homes grant funded a Bridgeport Police Department officer, who was assigned to assist the ATF with its investigations. The officer functions as an ATF agent for domestic violence crimes. This assignment has provided additional support to federal authorities and serves as an example of how law enforcement at the local level can collaborate and work closely with federal law enforcement.

U.S. Attorney Johnston informed the ATF that some domestic violence cases require rapid response, investigation, and prosecution. ATF agents recognize the dynamic nature of domestic violence investigations and have since changed practices and priorities to improve their response.

To assist with the effort to coordinate the work of these federal agencies, an assistant U.S. attorney is assigned to the Wheeling, West Virginia, ATF field office so that the two agencies can work closely with agents to evaluate and prepare cases for prosecution. Dewayne P. Haddix, the resident agent in charge of the ATF office in Wheeling, thinks that the leadership and support provided by the U.S. Attorney's Office is excellent. "We have a very aggressive and very open-minded U.S.

Attorney who wants to pursue domestic violence cases," he said, adding that he has a very positive working relationship with the office. "We see a correlation between domestic violence cases and a variety of other crimes," Haddix said, and described the ATF agents assigned to his office as "very aggressive and motivated." The agents focus on this question: How can we fight for those who cannot fight for themselves?

The following are fundamental elements of the work of the West Virginia ATF to disarm abusers. Agents keep these in mind as they work toward successful prosecutions.

- Focus on the investigation
- Focus on the prosecution
- Document the referral and action taken
- Prepare the case for the U.S. Attorney

The ATF developed specific criteria as guidelines in making the decision of whether to pursue a case. The criteria include whether the suspect is a repeat or an active offender, and whether he/she has been previously arrested or convicted for firearm violations.

Agent Haddix noted that the average sentence handed out for a conviction of a federal firearm crime is 58 months in federal prison. This is substantially longer than the allowable sentence for West Virginia domestic battery or assault (W. Va. Code § 48-2A-10d), which is only a maximum of 12 months in prison (except for third offenses, which require a minimum sentence of 12 months).

Haddix's goal is to gain the trust of victims through positive case outcomes. Victim Witness Coordinator Mehler said she has a very positive working relationship with agents assigned to the ATF bureau in Wheeling. "ATF is great to work with; they often use me to serve as a victim advocate for cases that they are actively investigating," she said.

The ATF encourages agencies and individuals to call its office with information about possible federal firearm violations. The office most commonly receives referrals in the following ways:

- Telephone calls from local law enforcement officers
- Referrals or investigation requests from the U.S. Attorney's Office
- Telephone calls from victims

Staff members from the ATF office are available around the clock. "We are proud to respond," Haddix says. "We pride ourselves on being available." He recalled that one domestic violence victim said, "ATF has done more for me in the past two weeks than any agency has done for me in the past 25 years."

A Strong Message to the Public

Upon taking office, U.S. Attorney Johnston communicated a message to the public that was simple and straightforward: *If you beat your wife or girlfriend, you will lose your guns.* His office backed up this message by aggressively prosecuting abusers. "You must have a message to support the prosecution, and prosecution to support the message," Johnston advises.

The office has worked hard to educate the community on the federal firearm prohibitions for abusers and the consequences abusers will face for violating the law. A public awareness campaign delivered the Project Safe Homes message directly to the residents of the Northern District. The office hired James Communication, Inc., of Pittsburgh, Pennsylvania, to develop and carry out the campaign via television, radio, print media, and posters. Linda Regelman, director of public relations and an account supervisor for James Communication, said she and her staff worked closely with Project Safe Homes to develop an effective ad campaign using a common theme and message.

Notice Posted by Northern District of West Virginia Project Safe Homes

The campaign used the following planning process:

- Choose whom to involve.
- Determine the goal.
- Identify the core issues.
- Identify the audience.
- Decide on the message.
- Select the media.
- Design the campaign.
- Develop an implementation plan.
- Determine the evaluation process.

Project Safe Homes Summit

After several years of project implementation, Johnston brought together key stakeholders at the Project Safe Homes Summit on August 30 and 31, 2004. Approximately 110 advocates, prosecutors, and law enforcement officers attended the summit, which focused on training, dialogue, and relationship building. The highlight was a panel of victims who spoke about their experiences with domestic violence in their own homes.

Measures of Success

The achievements of Project Safe Homes have been demonstrated in numerous ways, including the following:

- Prosecutions of offenders have doubled. In 2001, approximately 25 people were prosecuted for federal crimes involving domestic violence. In 2002 and 2003, 50 offenders were prosecuted each year for violating federal statutes. "I would like to do more, but we can only prosecute as many cases as the ATF agents can investigate," Johnston said.
- Communities throughout the Northern District are providing Johnston with feedback that the antigun message is reaching everyone.
- The defense bar in the Northern District is aware of the Project Safe Homes initiative and its focus on guns.

The federal efforts have sparked interest in local initiatives. For example, the jurisdiction has seen an increase in the number of judicial and magistrate orders specifically requiring abusers to surrender firearms in connection with protection orders. When victims saw that orders were being enforced, they were more likely to seek them.

Johnston's outreach efforts played a major role in the program's success. Law enforcement officers and victim advocates received education and training, and the community heard a consistent, strong message through the public relations campaign. Project Safe Homes has raised awareness of the consequences domestic violence offenders face if they violate federal statutes by possessing a firearm or ammunition. Its success reflects the importance Johnston places on the issue. "Men need to acknowledge that domestic violence is wrong," he said in a *Charleston Daily Mail* story by Vicki Smith, "and that it should be neither tolerated nor ignored." Johnston concluded, "Domestic violence is a law enforcement issue that is crying out for attention."

Sources

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The Honorable Thomas E. Johnston
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C. Montgomery, Alabama: TARGET[55] Program

Connie Lewis was shot to death by her husband. At the time of her murder, a domestic violence case was pending against Connie's husband in a local court. As is the case in many communities that experience similar tragedies, the murder had a galvanizing effect on the community, and it began to reorganize its response to domestic violence cases. One step it took was to develop the TARGET program.

The TARGET program focuses on high-risk abusers who use firearms. It fast-tracks their prosecution to safeguard victims and prevent homicides. The program uses vertical prosecution, which allows one prosecutor to handle a case from beginning to end. Pursuant to an agreement between local and county judges, TARGET cases are transferred from the municipal domestic violence court to a county TARGET domestic violence court. One reason that the decision was made to prosecute all TARGET cases in the county court is that bail can be set between $3,000 and $5,000, as opposed to the significantly lower maximum bail of $500 in municipal court. The higher bail has resulted in approximately 50 percent of TARGET defendants remaining in custody before their trial. Additionally, municipal court provides for unsupervised probation, but TARGET court dispositions generally involve lengthy suspended sentences and supervised probation. A specially assigned officer supervises TARGET probationers, and the TARGET court judge reviews their cases biweekly.

Local police screen all domestic violence arrests, protection orders, and victim-initiated warrants to determine whether cases should be flagged as TARGET cases. If a case becomes a TARGET case, officers advise the magistrate of this fact. If the defendant is not in custody, an arrest warrant is served by the Domestic Violence Unit of the Montgomery Police Department. If the defendant has committed a federal violation as well as a state violation, the case is referred to the ATF. Two Montgomery police officers have been cross-deputized as federal marshals.

There is a high rate of weapon seizures in TARGET cases,[56] and the property room at the police department has filled up. Once they are seized, few weapons are later returned because abusers are often unable to prove that they legally owned the guns.

A Short Program History and Analysis of Its Success

Montgomery, Alabama, a community of 225,000, averaged seven or eight domestic homicides each year during the 1990s, according to local police officials. In an effort to prevent future homicides, community leaders formed the Montgomery County Task Force on Domestic Violence in 1998. Representatives from law enforcement, the judiciary, probation and parole, domestic violence programs, the media, and concerned citizens joined the task force. The commitment of these stakeholders early in the process became one of the keys to the program's success. The task force processes encouraged communication and helped to build a sense of trust among law enforcement officers, victim advocates, and courts. "TARGET would never have happened if we did not break down some of the traditional barriers to communication," said Lt. Steve M. Searcy, the commander of the Montgomery Police Department's specialized domestic violence unit. "As you can imagine, this was difficult in a community that has historically not openly shared information."

Montgomery County District Court Judge Peggy Givhan, who played a key role in developing the program, points to the role played by law enforcement. "Great leadership from law enforcement

[55] TARGET is not an acronym.

[56] In 2003, there were 95 TARGET prosecutions.

is essential to success," said Judge Givhan. She also attributes the program's creation to Lieutenant Searcy, about whom she declares, "[Searcy] is single-handedly the most knowledgeable officer in the state of Alabama on domestic violence."

Getting Cases on the Fast Track

One of the initial realizations of the task force was that it must improve the court response to high-risk domestic violence cases. In its review of domestic violence homicides, the task force found that those cases were characterized by excessive delays between the time of arrest of an offender and a formal court hearing. The task force also found that cases in which an abuser was clearly more dangerous were not assigned a higher priority; the system treated defendants who used firearms in the same way as those who did not. Several prosecutors handled each case. Multiple judges were assigned to each case. These findings motivated the task force to make its mission putting high-risk cases of domestic violence on a judicial fast track. As the task force dealt with this challenge, its members stayed motivated by keeping in mind that "[they had] made a pledge that [they] would not let Connie Lewis die in vain," said Lieutenant Searcy.

Task Force Objectives

The task force decided on a number of objectives, which included the following:

- Establish a community plan.
- Identify high-risk cases through the use of a lethality assessment tool.
- Complete a formal investigation by trained professionals.
- Vertically prosecute high-risk offenders.
- Move all gun cases involving domestic violence to a specialized domestic violence court.

The following four actions form the foundation of the TARGET program:

1. *Target the case*. Law enforcement officers review domestic violence cases to identify the dangers present and the involvement of a firearm. Officers review the domestic violence history, including protection orders and separation or divorce orders, to determine whether firearms were ever used or threatened to be used by an abuser.
2. *Target the victim*. Law enforcement officers are trained to make victim safety their first priority. They connect the victim with on-call victim advocates or, if necessary, transport them to shelters. Advocates respond with wrap-around victim services as needed and requested.
3. *Target the offender*. TARGET officers determine the offender's criminal history, focusing on violent behavior and identifying prior gun violations. They also identify whether he/she abuses drugs or alcohol and assess the impact of the substance abuse.
4. *Target the gun*. TARGET officers investigate whether a defendant currently or previously used a firearm against a partner or a third party. They identify any firearms that a defendant may have recently obtained or possessed.

System Changes

The task force worked with the court to create a specialized court docket for abusers who possessed firearms. By drastically reducing the time from the date of arrest through court disposition of the case, the task force predicted that victim safety would be significantly enhanced. The task force banked on the likelihood that even if a TARGET defendant was released before the trial, expedited disposition of the case would enhance offender accountability and victim safety.

One obstacle that the task force had to overcome was that the state law limited the sanctions that could be ordered in district court cases. The county court offers stiffer

sentences, including supervised probation. The task force helped to negotiate an agreement between local and county judges and other officials that allows the transfer of eligible cases from the municipal to the county court. When possible, other cases are moved from state to federal courts. The transfer of cases to district or federal court subjects the defendant to higher maximum sentences and supervised probation, as well as court-ordered alcohol and drug assessment and counseling.

The effort to make this change required a great deal of persistence. A number of politicians in Montgomery were reluctant to move the cases to district court because some believed that the city would suffer a revenue loss. The grassroots support for the TARGET program made great strides to persuade the political leaders that the potential benefits to Montgomery's residents far outweighed the risk of decreased city income. This effort resulted in political and community support for the initiative. Ultimately, the mayor and other leaders became convinced that the proposed change would be extremely beneficial and would be the most effective way to address the escalating number of domestic homicides.

The TARGET Court

In May 2002, a specialized domestic violence docket was created in the district court, and Judge Peggy Givhan was appointed the presiding judge. This docket allowed for speedier prosecution of cases. The quicker progress of cases through the system encouraged more victims to stay engaged in their cases and to testify against their abusers. "The earlier the court gets involved in domestic violence cases, the more confidence the victim has," said Givhan. "We need to get offenders in court as soon as possible."

A dedicated probation and parole agent is assigned to Judge Givhan's court. The assignment allows the agent to become familiar with the offenders quickly, as well as the judge's priorities, making it easier to hold offenders accountable. The judge reviews the docket twice each month to make sure that defendants are complying with her orders to participate in counseling and assessments.

While a TARGET defendant is in court, Judge Givhan asks him/her, on the record, if he/she has any guns. Regardless of the answer, she warns each defendant about the prohibitions on possession of a firearm. She requires defendants to file a motion in her court if they want their firearms returned. The judge usually gives the defendant the maximum sentence of one year in jail, two years' probation, alcohol and drug assessment, and a mandatory counseling program. The sentence is usually suspended. "I would rather have jail time out there to use as a way to motivate defendants to complete programs," she said.

When the court is not in session, magistrates are available around the clock to review cases. A law enforcement officer, victim, or an officer and a victim can bring a case before a magistrate at any time.

Alabama ICE

The TARGET program can direct its efforts only at armed abusers who commit domestic assaults. This is because Alabama law does not have a statute that imposes a mandatory prohibition on the possession of a firearm upon the issuance of a protection order or upon conviction for an MCDV. To hold these abusers accountable for their firearm possession, TARGET turns to federal authorities.

The U.S. Attorney's Office and agents from the ATF began collaborating in 2002 to create Alabama ICE, which stands for Isolate the Criminal Element. The ICE program complements TARGET by extending its reach to federal firearm violators who cannot be prosecuted for state crimes, but who are in violation of federal laws. If a domestic violence offender possesses a

firearm while subject to a protection order or after conviction of an MCDV, local police refer the case to the U.S. Attorney's Office or the ATF. There are definite advantages to this strategy. Not only do the federal laws authorize the prosecution of abusers for possessing a firearm or ammunition while subject to a protection order or after conviction of an MCDV, there also is a higher probability that a person who violates a federal gun statute will serve the entire sentence because there is no possibility of parole in the federal system. Violators are also usually brought to trial more quickly in the federal system.

Two Montgomery police officers work full time with ATF agents to investigate domestic violence cases involving violation of federal laws. The salaries of the officers are paid by the police department, but the ATF foots the bill for their overtime. The officers are cross-deputized, which gives them the authority to arrest for violation of federal law.

U.S. Attorney Leura Garrett Canary has been a leader in providing training to law enforcement officers to instill recognition of the importance of prosecuting firearm cases in federal court. "I gave my word that we would follow through on cases to prosecute offenders," Canary said. In 2003, 95 cases were tried by the U.S. Attorney's Office for domestic violence crimes.

Initially, resistance came from defense attorneys who filed motions in an attempt to clog the court system with additional hearings. However, Canary and her staff remained focused on holding offenders accountable, and there is now less resistance to the office's aggressive stance. A defendant serves an average of 80 months for a gun-related crime. "Defendants are afraid of getting hard federal time for gun violations," U.S. Attorney Canary said, adding that defendants are now saying, "Don't ICE me."

Sharing Information

The Montgomery Police Department tracks high-risk domestic violence cases in digital case files. The digital system allows for the collection, management, archiving, and retrieval of specific information about a case. Case files include

Firearms seized by the ATF on January 23, 2004, fulfilling U.S. Attorney Canary's promised "follow-through."

test files, photos, audio and video transmissions, and scanned images. All file information can be easily shared via e-mail.

The department used an Alabama ICE Community Engagement Grant to purchase resources and equipment to improve the efficiency of the unit. The $11,030 grant was used to purchase software, digital cameras, digital recorders, and two-way radios.

Confiscating Weapons

Montgomery County places an emphasis on seizing the firearms of domestic violence offenders. Eighty-five percent of domestic violence homicide victims in the county were killed in their homes with a handgun. "We need to get the guns away from the violent offenders to save the lives of law enforcement officers and victims," Lieutenant Searcy said.

Once seized, the return of firearms to offenders is not automatic. Offenders who want their firearms returned are told to get a court order or written approval from the city prosecutor. Before a firearm is returned, a criminal history check is conducted using the National Crime Information Center and the Alabama Criminal Justice Information Center.

TARGET Success

Judge Givhan identified the following factors as the keys to the success of the TARGET program:

- Approval and support of key players.
- Relationships developed between law enforcement.
- Memorandum of understanding among system stakeholders to clarify the focus of the task force.
- Implementation of each jurisdiction's policies and procedures while maintaining consistency for the overall initiative.

Lieutenant Searcy offered the following reasons for the program's success:

- *Identification and pursuit of key stakeholders.* The key players in the TARGET initiative were law enforcement personnel, domestic violence advocates, prosecutors, community awareness projects, the court, probation and parole officers, and community support resources.
- *Communication*. With strong leadership and the development of mutual trust, local agencies, political leaders, and other stakeholders reached an agreement on how information could be shared in a manner that protects and preserves victim confidentiality and rights.
- *Community awareness*. "Citizens need to be encouraged to report what they see and hear so that law enforcement officers can get involved earlier in the violence," Lieutenant Searcy said. "Domestic violence goes beyond the two people directly involved and extends to the community [...] The TARGET program has been a success because it excels at educating the community," he added.
- *Domestic Violence program engagement.* "The domestic violence center [The Family Sunshine Center] is one of the best in the country," Lieutenant Searcy said. He worked with the director and staff to break down barriers and improve communication between law enforcement and advocates.

The benefits of the TARGET program are evidenced by the decreased number of domestic violence homicides in Montgomery. The number fell from seven in 2000 to two in 2001. There was one homicide in 2002 and four in 2003. Lieutenant Searcy attributes this drop to the TARGET program and the court system. "We need to break the mindset that domestic violence is a family problem," he said. "Domestic violence is a community problem...a preventable crime, and victims of domestic violence need the community's

help." He concludes, "If you can imagine it, you can predict it. If you can predict it, you can prevent it."

Sources

Keith Armagost
Supervisor
State of Alabama Probation and Parole

Marjorie Baker
Program Director
Family Sunshine Center

Leura Garrett Canary
U.S. Attorney

Caroline C. Carr
Magistrate
District Court of Montgomery

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The Honorable Peggy Givhan
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4. Probation

The Maricopa County Probation Department in Arizona is an example of the positive and important role probation can play in enforcing firearm prohibitions. Their task is made easier because Arizona state law (Ariz. Rev. Stat. § 13-3101) complements federal law that prohibits firearm possession after conviction for an MCDV (18 U.S.C. § 922(g)(9)). Arizona's firearm prohibition, however, is limited to those domestic violence offenders who are on probation or parole.

A. Maricopa County, (Phoenix) Arizona: Probation Domestic Violence Unit Firearm Seizure Program

Most Arizonans live in Maricopa County, which had a population of 3.5 million as of 2004. The county includes Phoenix, with a population of 1.4 million. Maricopa County is served by a county adult probation service administered by the county courts. The adult probation service is large, with approximately 1,300 employees, including 800 probation and surveillance officers. These officers work in teams that are responsible for case supervision, monitoring, and surveillance of probationers.

The adult probation department supervises all felons convicted in the county's Superior Court and all defendants placed on probation for domestic violence offenses (felonies and misdemeanors). This expanded jurisdiction is the result of legal and administrative reforms. In 1999, Arizona's legislature enhanced the charge and penalty for repeated acts of domestic violence, making repeat offenses a felony. As a result, repeat domestic violence offenders arrested for misdemeanor offenses are prosecuted as felons and become eligible for county probation supervision. Furthermore, pursuant to an administrative agreement, domestic violence offenders who are convicted in local misdemeanor courts are transferred to the county for adult probation supervision.

The most dangerous domestic violence probationers are supervised by the department's Domestic Violence Unit (DVU). The cases supervised by the DVU are selected because the offenders raise significant safety concerns for the victims, the offenders' future intimate partners, or the community at large. Like all domestic violence probationers, those supervised by the DVU must complete a 32-week batterer intervention program as required by state statute.

The DVU was established a decade ago and is one of several specialized units created within the Probation Department. It has 12 officers (six probation officers and six surveillance officers) who work in five offices around the county. The surveillance officers specialize in enforcement activities. They are armed with Glock 9s, while probation officers are armed at their own discretion. Both types of officers are considered "peace officers" and have full arrest powers. Each officer carries an average load of 60 cases.

Saul Schoon, the senior supervisor in the DVU, oversees the eastern side of the county while Edith Sneed supervises the western portion. Using federal funds from a discretionary grant from the Office on Violence Against Women, the unit employs a full-time victim's advocate. A private

Arizona Rev. Stat. § 13-3101(6)(d)

"Prohibited possessor" means any person who is at the time of possession serving a term of probation pursuant to a conviction for a domestic violence offense as defined in section 13-3601 or a felony offense, parole, community supervision, work furlough, home arrest or release on any other basis or who is serving a term of probation or parole pursuant to the interstate compact under title 31, chapter 3, article 4.

foundation grant allows the western division to carry an additional two officers who supervise first-offense abusers. Initially, the first-offender program was limited to 60 probationers, but quickly increased to its current caseload of 150 offenders.

The probation and surveillance officers in the DVU understand the critical role they play in keeping victims of domestic violence safe. They use every available opportunity to learn about weapon possession by probationers. Either during the initial contact with the victim or during a subsequent conversation, officers ask questions pertaining to the probationer's weapons history and current weapon possession. Officers also investigate each probationer's criminal history and look for collateral information that indicates he/she possesses firearms.

When officers have a reasonable suspicion that a probationer has a firearm, they assess the case with one of the two DVU supervisors. If a search is indicated, the unit often tries to coordinate the search with the appropriate local law enforcement agency. If this is possible, a joint law enforcement/probation team goes to the probationer's household or workplace to search for and seize weapons. If they find weapons, officers arrest the probationer for violation of state law.

Ariz. Rev. Stat. § 13-3601(C)-(F) (Weapon Seizure)

(C) A peace officer may question the persons who are present to determine if a firearm is present on the premises. On learning or observing that a firearm is present on the premises, the peace officer may temporarily seize the firearm if the firearm is in plain view or was found pursuant to a consent to search and if the officer reasonably believes that the firearm would expose the victim or another person in the household to a risk of serious bodily injury or death. A firearm that is owned or possessed by the victim shall not be seized unless there is probable cause to believe that both parties independently have committed an act of domestic violence.

(D) If a firearm is seized pursuant to subsection C of this section, the peace officer shall give the owner or possessor of the firearm a receipt for each seized firearm. The receipt shall indicate the identification or serial number or other identifying characteristic of each seized firearm. Each seized firearm shall be held for at least 72 hours by the law enforcement agency that seized the firearm.

(E) If a firearm is seized pursuant to subsection C of this section, the victim shall be notified by a peace officer before the firearm is released from temporary custody.

(F) If there is reasonable cause to believe that returning a firearm to the owner or possessor may endanger the victim, the person who reported the assault, or threaten another person in the household, the prosecutor shall file a notice of intent to retain the firearm in the appropriate superior, justice or municipal court. The prosecutor shall serve notice on the owner or possessor of the firearm by certified mail. The notice shall state that the firearm will be retained for not more than six months following the date of seizure. On receipt of the notice, the owner or possessor may request a hearing for the return of the firearm, to dispute the grounds for seizure or to request an earlier return date. The court shall hold the hearing within 10 days after receiving the owner's or possessor's request for a hearing. At the hearing, unless the court determines that the return of the firearm may endanger the victim, the person who reported the assault or threat, or another person in the household, the court shall order the return of the firearm to the owner or possessor.

Although Phoenix and other municipal police departments seize firearms when arresting suspected domestic violence perpetrators, the DVU probation officers regularly seize firearms from probationers who procure new firearms after their initial arrest and after police seized their firearms.

In 2002, Phoenix police seized weapons in 110 arrests of domestic violence suspects, including 81 handguns and 11 rifles. The Maricopa County Probation Department seized an additional two dozen weapons from probationers (mostly firearms). The police firearm seizure rate was about 6 percent, but the probation department rate was approximately 13 percent.

The DVU operates under a specific protocol pursuant to Administrative Order 01-99. The goals of the DVU, as articulated in the order, are as follows:

- Stop the violence.
- Enhance the safety of victim(s).
- Enhance the safety of the probationer's children and other family members.
- Enhance the safety of the general public.
- Rehabilitate the probationer.
- Provide restitution to the victim(s).
- Provide specialized domestic violence treatment to the probationer and the victim.

The DVU is not only concerned with holding offenders accountable; it is also focused on victim safety. It has determined that its primary mission is victim and community safety, with a secondary focus on offender rehabilitation. This stands in contrast to many probation departments that are solely offender focused, even with regard to domestic violence cases.

Within 45 days of their assignment to the DVU, unit officers receive specialized training. Their training includes at least two "ride-alongs" with officers in the unit and with the department's Warrant Unit. They also attend a Domestic Violence Court session and participate in a domestic violence training session, which covers patterns and purposes of domestic violence, orders of protection, empowerment of victims, and the characteristics of a domestic violence offender. The training also reviews the batterer intervention program curriculum. Within the first year, DVU officers must attend victim sensitivity training and complete a defensive tactics course. All surveillance officers must successfully meet all firearms training qualifications as soon as reasonably possible and complete training on booking procedures.

The DVU supervision protocol calls for officers to contact victims by phone or letter within 30 days of receiving a new case. Officers are required to obtain information regarding probationer conduct and victim safety and to be accessible to victims after business hours to address emergency safety situations. After the initial 30-day period, they must contact the victims every six months.

The DVU supervision protocol has a section devoted to search and seizure. It reads in part:

> Firearms and other deadly weapons may significantly increase the severity of injuries and risk of lethality in incidents of domestic violence. Therefore, officers… are encouraged to place a strong emphasis on enforcing that probationers do not possess or control firearms, ammunition, explosives, or deadly or prohibited weapons. When safe to do so during the initial contact with the victim or any subsequent conversations with the victim, officers should ask questions pertaining to the probationer's weapons history and current weapon possession. Prior criminal history and collateral information should be utilized.

Upon determination of reasonable suspicion, officers are required to assess the situation with a supervisor to determine if a search should be conducted. Further, because state statute makes it a crime for probationers to possess firearms or other

deadly weapons, officers are directed to encourage the law enforcement agency assisting with the search to pursue new criminal charges.

The Superior Court has 11 special conditions of probation for persons convicted of domestic violence. They include serving up to 60 days in the county jail, no contact with the victim, completion of the designated batterer intervention program, and compliance with any curfew imposed by a probation officer.

The special conditions play a crucial role in securing victim safety, according to Supervisor Schoon. If, for example, the victim is abused again by the probationer but is afraid to testify, often other technical violations of probation are present. The enforcement of these conditions can involve placing further restrictions on the abuser, including incarceration.

Below are recent examples drawn from probation officer files that illustrate DVU policies in practice.

Example: Reasonable Suspicion Leads to Search of Female Probationer's Home[57]

On March 25, 2005, a probation officer learned that one of her female probationers possessed weapons that were hidden under her mattress. The weapons had been left behind by her husband who had died the year before. The weapons raised alarm because the officer had reason to believe that a male probationer was living with the female probationer. The male probationer had an outstanding warrant against him from another Arizona county that indicated that he was prone to violent behavior. The officer assessed the case with the unit supervisor, who authorized a search to remove the weapons and arrest the male probationer.

Mesa Police Domestic Violence Emergency Response Team (DVERT) officers were contacted and agreed to assist in the search. It was decided that probation officers would knock and ask the probationer to open the door, and then police would conduct a preliminary search for the male probationer.

Despite evidence that the probationer was home, she did not respond to the knocks on the door. The officer called her on her cell phone. She eventually answered her phone and explained that she had been in the shower. When she answered the door, she was secured by Mesa police officers. Probation officers asked her if anyone else was in the house. She repeatedly answered in the negative. Mesa officers entered the house to secure it before the probation officers entered to conduct the weapons search.

Mesa police officers reported that no one was there and it was safe for the probation officers to begin their search. One of the probation officers went to the bedroom, lifted the mattress, and observed three long guns and a hatchet. He proceeded to the head of the bed and observed a foot sticking out of the bed, underneath the headboard. The officer summoned the Mesa police officers who drew their weapons and ordered the suspect to exit the bed. He was taken into custody without incident and was later identified as the male probationer in question.

The search yielded two .22 caliber rifles, one SKS rifle, and a hatchet. A search of the male probationer's knapsack revealed a X26 Taser gun as well as drugs. All the seized items were turned over to the Mesa police for criminal charges to be filed against both probationers. Later, it was discovered that the Taser gun had been stolen from a Chandler police officer.

[57] From Maricopa County probation files.

As illustrated in the following case histories, information concerning the presence of weapons can come from many different sources, including the victim, concerned family members of the probationer, or even children.

Example: Reasonable Suspicion Leads to Joint Probation/ATF Search

Following a defendant's arrest for a new domestic violence assault in December 2004, the victim, who had served in the military, reported to the probation officer that the defendant had two boxes in storage that she believed contained C-4 plastic explosives. The officer assessed the case with the unit supervisor, who authorized a search of the storage unit. The officer coordinated the search with two Tempe police officers. The victim provided a key. The police officers were accompanied by an explosives-sniffing dog. The dog registered an immediate "hit" upon approaching the locker. The locker was double-locked and the key provided by the victim did not open it. The manager of the storage company told the officers that he had provided special locks by request of the defendant.

The next day, the officers returned with ATF agents, who had been contacted by the DVU supervisor. Both were assigned to the U.S. Attorney's Safe Neighborhood Program. When the federal agents could not open the locks, a locksmith was called in to drill open the locker. No explosives were found. What the victim had suspected were explosives were discovered to be "sleeves" of ammunition, each containing 10 boxes of .308 ammunition. ATF agents estimated that there were 2,500 rounds. Also found were a 12-gauge shotgun and a .45 caliber Kimbere semiautomatic pistol. Automatic weapons parts were also found, as were several videos about weapon repair, including one titled *The Ultimate Sniper*. ATF agents seized the weapons and filed charges against the defendant.

The probation officer accompanying the agents was from the department's Warrant Squad. He is deputized as a U.S. Marshal and, by agreement, the ATF pays for his overtime.

Example: Child Calls Probation Officer[58]

During a routine home visit, a probation officer and a surveillance officer each spoke separately with the domestic violence probationer's three young children and with the probationer himself. The probation officer gave her card to the oldest of the children (an eight-year-old boy) and encouraged him to call her if he ever felt like talking.

The probation officer received a call one evening. Although no one spoke to her when she answered, she heard the sounds of a loud argument in the background. She identified the voices as her probationer and his victim. The officer immediately called her supervisor on his cell phone and obtained permission to intervene at the probationer's home. She contacted local police and asked them to meet her at the residence. At the scene, they discovered a domestic violence offense in progress. A search uncovered a loaded handgun. The probationer was arrested and later incarcerated for a probation violation.

It was discovered later that the call had been made by the eight-year-old, who had left the phone off the hook, revealing the crime.

[58] From Maricopa County probation files.

Example: Victim's Sister Reports Possible Firearm[59]

In June 2004, the sister of a domestic violence victim called the abuser's probation officer to express concerns over her sister's safety. She reported that her sister had told her that the probationer kept loaded guns in the house. She also reported that both her sister and the probationer currently were intoxicated and she feared for her sister's life. The probation officer immediately assessed the case with her supervisor, who authorized a search. Later that evening, a team of probation officers were joined by Phoenix police officers at the house. Concerned that the defendant would not open the door if he saw the police, one of the probation officers agreed to knock on the front door. As he approached the house, he observed the victim sitting outside on the driveway, intoxicated, and obviously distraught. She stated that the defendant had assaulted her that evening. The probation officer went to the front door, which was open, and observed the probationer putting on his pants. The officer summoned the probationer, who came to the front stoop, and the other probation and police officers joined them. The police officers entered the house.

The defendant was extremely intoxicated. The victim approached and began arguing with the increasingly agitated defendant. The probation officer handcuffed the defendant to ensure that no further incidents would occur.

The search yielded a semiautomatic Browning 40-caliber handgun and a .357 magnum handgun. The firearms and ammunition were impounded by the Phoenix officers and they arrested the defendant for illegal possession of firearms. The probation charges were added to the paperwork and the Phoenix police transported the defendant to the police station for booking. Later the defendant was given a breathalyzer test that registered .333, more than four times the legal limit. He was subsequently imprisoned.

Partnering with Local Law Enforcement

Cooperation between the DVU and local law enforcement agencies in the seizure of firearms has greatly enhanced the goals of DVU—offender accountability and victim/community safety. A letter from the Mesa Police DVERT to the chief probation officer attests to the cooperation between the probation Domestic Violence Unit and local police. The letter begins by describing a recent cooperative venture between the two agencies. DVERT had been working on a domestic violence aggravated assault case in which a defendant was suspected of running over his wife with his vehicle. During the investigation, probation officers learned that the defendant, who was already on probation, had driven while intoxicated on a revoked license. They also learned that he might be storing drugs in his house along with firearms. The DVU supervisor contacted Mesa police for assistance in searching the house.

The police provided security while probation officers gained nonforcible entry into the house. During the search, officers found several bales of marijuana and a shotgun hidden in the master bedroom. The Mesa Police Department Special Investigations Division secured a search warrant to continue the search, which netted 277 pounds of marijuana, a 12-gauge shotgun, an AK47 assault rifle, and a large amount of ammunition.

An excerpt from the letter reads (see box below):

[59] Id.

> We have always enjoyed an exceptionally good working relationship with your office and your DV Adult Probation Officers. We have established a very high degree of trust and professionalism in each other...cooperation between our agencies resulted in the removal of a violent felon and social predator from one of our normally quiet neighborhoods. Our cooperation in this case could also have the effect of keeping larger scale organized criminal activity out of the neighborhood....I would like to commend Ofc. Schoon, Ofc. Shipley and Ofc. Gordon for their exceptional dedication to domestic violence enforcement, their exceptional professionalism toward other agencies, and their outstanding cooperation with our domestic violence unit....
>
> Sincerely,
>
> Commander John Meza,
> Special Investigations, Mesa Police Department

Cooperation between law enforcement and probation departments is made easier by working with the specialized domestic violence units within local police departments. In addition, DVU officers meet regularly with police and other officials at various domestic violence task force meetings.

Probation and surveillance officers should be equipped for search and seizure operations. In Maricopa County, they are issued Kevlar vests, OC spray, a police radio, handcuffs, and firearms. Their training includes 40 hours of firearms training. According to officials, there have been no injuries to officers in the past nine years due to the training, which emphasizes safety.

If an abusive probationer reveals that a firearm in the household does not belong to him, and if the owner is unwilling to remove the firearm, a probationer is required to leave the premises and move elsewhere. Firearms confiscated by probation officers are turned over to the county sheriff.

Assessing his department's commitment to disarm abusers, Supervisor Schoon notes that Arizona probation officers have been vested with great power, but with that power comes great responsibility. As he sees it, one of the most important responsibilities of the unit is to keep victims safe by ensuring that probationers are disarmed. He asks, "What's more important than taking that gun out of the offender's home?"

Sources

The Honorable Carey Snyder Hyatt
Judge
Domestic Violence Court
Maricopa County Superior Court

Randy Koeppen
Domestic Violence Unit
Maricopa County Adult Probation

Sharon Ranch
Assistant Program Director
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Maricopa Probation Search and Seizure Standards

30[2].301: Search and Seizure, Evidence Collection and Retention
R: 06/23/2004
Effective Date: 07/01/2004

Search and Seizure/Evidence Collection and Retention

AUTHORITY: Conditions of Probation, Arizona Revised Statutes §§13-3916, 12-941, 12-942, 12-943, 12-944, 12-945 and 12-946

FORMS: Maricopa County Adult Probation - Search Inventory Form,
Probation Area Office Evidence Locker – Log Sheet
Chain of Custody – Evidence Disposition Sheet
Post-Arrest/Search and Seizure Incident Report
Maricopa County Adult Probation Evidence Release Form
MCSO Property Invoice and Receipt Form
MCSO Property Release Authorization Form
Arizona Department of Public Safety Request for Scientific Analysis
Department of Treasury (ATF) Crime Gun Information Referral/Request Form

PURPOSE: To provide guidelines for the appropriate and safe use of search and seizure as well as collection and retention of evidence.

POLICY:

I. **Definitions:**
   A. Contraband (relative to probation) is any property or items that cannot be possessed or produced by any probationer.
   B. Finder/Locator is the person designated to officially "locate" items during a search and usually writes the evidence supplement to a police report.
   C. Knock and announce (per ARS §13-3916) indicates a peace officer may break into (enter) a building, premises, or vehicle to serve a search warrant after notice of his/her authority and purpose have been given and the officer receives no response within a reasonable time, or is refused admission.
   D. Lead Officer is the person who supervises the defendant, determines need for search, coordinates search, contacts PD, assigns duties, ensures thorough and systematic search techniques, ensures chain of custody and proper bagging, tagging and impounding, completes paperwork and testifies if necessary.
   E. Officer refers to both probation and surveillance officers.
   F. Plain view search (relative to probation) refers to a visual scan of the probationer's property without involving any moving or physical contact with objects (except room doors) which may obstruct one's view. This can also refer to items inadvertently found but subsequently seized during a search where it is immediately apparent the items seized are contraband or evidence of a crime.
   G. Probable cause (relative to probation) is the existence of certain circumstances or reliable evidence that would lead a reasonably prudent person to believe that more likely than not an offense was or is being committed.
   H. Reasonable is what a "reasonable" person would do under particular facts and circumstances, decided on a case-by-case basis. Refers to a course of action that is rational, appropriate, ordinary or usual in the circumstances. When determining what is viewed as "reasonable," a staff member should consider:
      1. The observations of a staff member.
      2. Information provided by an informant.
      3. The reliability of the information. Attention should be given to whether the information is detailed and consistent and whether it is corroborated.
      4. Probationer activity that indicates he/she might possess contraband.

5. Prior seizures of contraband from the probationer.

I. Reasonable suspicion is information and/or observations that would induce an ordinarily prudent and cautious person under the circumstances to believe criminal activity is occurring.

J. Recorder is the person assigned during a search to assist the finder/locator and record all items found and record the time and location that the items were located.

II. Two General Circumstances for Searches:

A. First-hand field observation – the officer determines the necessity of:
   1. Calling for aid after leaving the scene but keeping the location under observation
   2. Leaving the scene and returning with assistance as appropriate when officer safety may be compromised

B. Reliable information is received from an outside source such as the police, victim, relatives, another probation employee, or social agency. In this situation, the officer has more time to plan the most effective course of action and shall arrange for "backup" from the appropriate police agency.

III. Search & Seizure Guidelines:

A. In all cases, an officer must obtain supervisor approval prior to conducting a search. After hours, the APD Communications Center may assist in contacting a supervisor.

B. Officers are prohibited from conducting searches of defendants on pretrial supervision (not on probation).

C. In the event an item (such as a weapon) is discovered during a routine field visit and the probation officer is alone, he/she should immediately leave the residence and contact his/her supervisor and the appropriate police agency. Once the situation has been staffed with a supervisor and the police agency is present, the probationer will be recontacted and taken into custody by police. The residence shall then be thoroughly searched for that weapon and any other illegal items.

D. All officers must be trained in proper search and seizure procedures and proper invoicing and packaging procedures for placing the property into the MCSO Property Room prior to conducting any searches unless accompanied by a supervisor. It is preferable for a supervisor to be present for all searches. However, if the supervisor is unavailable, he/she may designate another officer to be present during the search.

E. Officers must wear body armor when conducting a search. The carrying of restraining devices/handcuffs and expandable batons is required in accordance with APD Policy 30[3].105: Handcuffs/Restraining Devices and 30[3].107: Expandable Batons.

F. Searches shall be witnessed by a fellow officer or supervisor and include a police agency.

G. SEARCHES WHERE THE PROBATIONER IS NOT PRESENT ARE GENERALLY DISCOURAGED:
   1. Exceptions require the presence of the police and someone with proprietary rights, such as a parent or landlord, to ensure the reasonableness of the search and confirm the area to be searched is in the domain of the probationer.
   2. Reasonable care shall be exercised in the search of "common areas" (e.g., living room, kitchen, bathroom, garage, etc.) of a shared residence.

H. The police agency should be contacted well in advance and be fully briefed with all information concerning the search (including the items allegedly to be seized) to allow the police agency to respond with the appropriate number of officers to safely secure the residence and conduct the search.

I. If any evidence that could lead to new criminal charges, such as drugs or firearms, is located, the police agency should be encouraged to take over the search, possibly obtain a search warrant and prepare a Departmental Report for new charges. The police officers should be advised probation officers cannot file new criminal charges, which may be the most appropriate course of action depending on the nature of the items located.

J. The responding police officers should be reminded probation employees are not trained for tactical entries or securing a residence, and therefore, the police agency will be

required to gain entry into the residence, secure the residence and make sure it is fully safe before probation employees enter the residence. The police normally conduct all pat-down searches, unless probation/surveillance officers are required to do so for safety considerations. Once all persons in the residence have been secured, probation employees may proceed with the search.

K. FORCIBLE ENTRY BY PROBATION/SURVEILLANCE OFFICERS IS PROHIBITED: The KNOCK AND ANNOUNCE rule should be adhered to at all times unless the responding police agency determines forcible entry is warranted based on that police agency's policies and practices. If it is determined a structure shall be forcibly entered, the police agency shall make the entry and secure the residence prior to the search being conducted by the probation officer and/or the police agency as warranted by the circumstances of the incident. If the police will not force entry, division director approval must be obtained prior to an officer authorizing a police agency to make a forcible entry on behalf of the Adult Probation Department.

L. With the exception of Warrants officers, officers are not authorized to clear a residence, even at the request of the assisting law enforcement agency.

M. A search kit shall be maintained at each area office by the support staff supervisor. The support staff supervisor is responsible to check the search kit at least every ninety days to assure that the search kit contains all of the items. The officer conducting the search shall check out the search kit via a sign-in/sign-out sheet. The officer checking in the search kit shall notify the support staff supervisor responsible for maintaining the search kit what items were used and what items need to be replaced. The search kit shall be taken on all planned searches and should include the following items:

1. Writing tablet
2. Search checklist [Form #1100-200 (7/91)]
3. MCAP Search Inventory [Form #1100-199 (7/91)]
4. Arrest/Booking Record [Form #50-12 (R8-86)]
5. Release Questionnaire/Form 4 [Form #3899-031 IV-D (R11-90)]
6. Money Envelopes
7. MCSO Property Invoice [Form #50-83 (R1-90)]
8. MCSO Property Release Authorization [Form #50-004 (R4-90)]
9. MCSO Evidence Tags & Labels
10. DPS Agency Request for Scientific Examination [Form #DPS 802-01550)]
11. Clip board
12. Pens and markers
13. Paper bags (medium and large)
14. Zip-lock bags (medium and large)
15. Envelopes (5"x8" and 9"x12")
16. Masking tape (1" and 2")
17. Clear packing tape
18. Hard plastic sharps container
19. Zip ties
20. Evidence labels (Form #5000-007 [8/94]) and tie-on type labels
21. Protective disposable gloves
22. Flashlight and spare batteries
23. Screwdrivers (standard and Phillips) & pliers
24. Camera with spare film (Polaroid)
25. Tweezers
26. Telescoping mirror
27. First aid items complete with all inventory items listed on the kit
28. Tongs (for needles and sharp items)
29. Cardboard or material for securing blades on edged weapons
30. U/A bottles with lids
31. APO Jackets (2) large and X-large

N. Officers should also bring the following items pertaining to the specific case:

1. Conditions of probation

2. Sketch/layout of house or apartment
3. Photo of probationer

IV. **Conducting the Search:**

A. Once entry to the residence has been gained and the probationer and all others at the residence have been secured by the police agency, the probation/surveillance officers shall conduct a systematic search of the residence or search location. It is mandatory for all officers involved in the search to wear protective disposable gloves when conducting the search or handling any evidence items, especially any suspected drug items.

B. Probation/surveillance officers shall conduct all searches as a team of two or three. One officer conducts the search while the second officer records all items located, time of location and exact place the item was located. If possible, the third officer takes custody of the item and properly secures and marks the item with appropriate identifying information. If a third officer is not available, the second officer assumes this responsibility. Officers shall systematically search each room of the residence, searching one room at a time. All items to be retained as evidence or confiscated as contraband shall be secured as indicated in Section VI of this policy.

C. If an officer locates any weapons, drugs or any items that indicate the commission of a criminal offense, the assisting police agency must be notified and encouraged to take those items as evidence in order to complete a Departmental Report for new charges to be filed.

1. If large amounts of drugs are found, or indications that illegal drugs are being manufactured at the residence, the assisting police agency must be notified and encouraged to take over responsibility for the search, which may require the issuance of a search warrant.
2. If officers locate evidence of a methamphetamine lab, they are to immediately vacate the residence, notify the police agency, and ensure the residence is secured for processing by a Hazardous Materials Team.
3. If officers locate any firearms, sharp objects (knives) or needles, and the police agency is not taking possession of those items, proper precautions must be taken to ensure they are packaged and stored in a safe manner as indicated in Section VI of this policy.
4. Biohazards:
   a. If officers locate biohazards such as needles, the officers shall dispose of the items in a sharps container.
   b. If officers locate biohazards such as blood-stained items or body fluids, the officers shall not attempt to secure the item(s). The assisting police agency should secure the item(s) if seizure is necessary.

D. Following the search, the officer shall complete an incident report in accordance with APD Policy 30[1].601: Special Incidents detailing any officer safety issues as well as a detailed contact-incident in APETS. The contact incident should detail the reasons for the search; supervisor permission for the search; date, time and location of the search; the officers who participated in the search, and a description of the search, including persons who were present and how the search was conducted. In addition, contraband seized shall be listed along with the places of discovery and the disposition of these items. Copies of each shall be provided to the Supervisor, Division Director, and to the Safety Committee. A copy of the MCAPD Search Inventory Form may be attached to the Special Incident Routing Tag to provide additional information.

E. If a search reaches the level of a critical incident, the supervisor is responsible for conducing a debriefing with the search team to review how the search was conducted.

V. **Impounding Property:** Firearms, ammunition, drugs, currency and any other item that cannot be safety stored in the probation area office evidence lockers must be transported to the MCSO Property and Evidence Room for holding and eventual disposition.

B. Douglas County, Nebraska: Specialized Probation Unit Disarms Probationers

Nebraska does not have a state statute that prohibits abusive probationers from possessing firearms. Nevertheless, thanks to a cooperative agreement between the U.S. Attorney's Office and the Douglas County Probation Department in Omaha, the department has implemented an aggressive firearm seizure program for abusers on probation. Pursuant to a cooperative agreement with the U.S. Attorney, qualifying cases are turned over for federal prosecution. Local police have agreed to hold the seized weapons and dispose of them as required.

As part of probation intake, officers examine the county firearm registry to check for prior legal firearm purchases. They also confidentially check with victims. Meanwhile, probationers are told they must turn in all firearms or subject themselves to federal prosecution. Armed with pepper spray and protective armor, probation officers conduct an average of one dozen firearm seizures each month.

The Douglas County DVU comprises eight officers who are supervised by Deputy Chief Probation Officer Ron Broich. Organized in 1997—the same year that local police adopted a mandatory arrest policy for domestic violence—the unit's three field officers (two men and one woman) are armed with pepper spray and protective armor. In 2003, the DVU seized 77 firearms from a caseload of 500 domestic violence offenders. A raid of a locker last year owned by one of the probationers uncovered hand grenades as well as a machine gun. The unit has won the praise of the county's Domestic Violence Coordinating Committee, whose membership includes advocates and local criminal justice officials. An advocate who sits on the committee calls the unit "phenomenal," praising its "dedication, and willingness to put themselves in danger to safeguard victims."[60]

[60] A. Klein (2004): op. cit. 207.

Sources

Ron Broich
Deputy Chief Probation Officer, Douglas County

Tracy Grinstead-Everly
Victim Advocate
Domestic Violence Coordinating Committee, Omaha

5. Firearm Prohibition Databases

The easier it is to retrieve information on persons prohibited from possessing or purchasing firearms, the more likely it is that these prohibitions will be enforced. The following two states have developed comprehensive databases of prohibited persons that assist gun dealers and the criminal justice system in disarming prohibited abusers and keeping them disarmed.

A. Massachusetts: Electronic Instant-Check System[61]

Massachusetts completed its electronic instant-check system in December 2004. That month, it became the first state to install an electronic instant-check system complete with a fingerprint scanner for gun licenses and gun purchases. Its effectiveness was immediately apparent. Several days after the system was operational, Woburn police were automatically notified on their computer terminal that a man living in their city was subject to a protection order that his wife had requested. On the basis of this information, police went to the man's house and confiscated his collection of 13 guns. The new system allowed the police to intervene immediately in a situation that could have led to injury or loss of life.

The system allows police and gun stores to learn right away if a person can legally own or buy a firearm. It provides instant

[61] F. Butterfield, "State Sees Instant Results in Electronic Gun Checks," *New York Times,* December 25, 2004.

updates on arrest warrants, protection orders, and convictions, and links fingerprint scanners and computers at gun stores and police departments to a central database. When a person attempts to buy a gun or apply for a license (a prerequisite for gun ownership in Massachusetts), his/her fingerprints can be checked electronically to verify his identity and determine whether he/she is prohibited from owning a gun.

The Massachusetts system operates parallel to NICS, which is operated by the FBI. Although state files are checked by NICS, the Massachusetts system is more current, particularly for protection orders; Massachusetts protection orders are entered into the file within four hours of their issuance. Further, because the Massachusetts system is based on fingerprints, it prevents firearm purchases based on false identification documents.

The state's largest gun seller endorses the system, and his store was used to test the system during its development. According to owner, Carl Ingrao, the computerized system is quicker, more efficient, and cheaper for gun dealers. The old paper reporting system cost 50 cents per form, not including postage. Ingrao estimated that the automated system will save him $2,000 a year. The electronic system is faster, partly because once the fingerprint scan determines the identity of the would-be buyer, the computer automatically fills in the buyer's address, date of birth, height, weight, and coloring—information that is required on all state gun licenses. Unlike the federal system, which allows only three days to complete a background check, Massachusetts police have 45 days to complete an investigation. However, most buyers with gun licenses are able to purchase guns in a few minutes.

Computer terminals have been installed in 159 of the state's 351 police departments and at the four largest gun dealers. This has facilitated access to crucial information by law enforcement and gun dealers.

B. Armed and Prohibited in California[62]

In 2003, the California attorney general unveiled a new program to identify and apprehend dangerous individuals who illegally possess firearms in the state. Domestic violence offenders were declared to be a priority target. The goal of the Armed and Prohibited program, which is sponsored by the California attorney general and the State Sheriff's Association, is to make available a statewide, comprehensive database of all persons prohibited from possessing firearms in the state.

The database automatically cross-references the names of gun owners with court convictions, domestic violence protection orders, and records of individuals deemed to be a danger to themselves or others. The database initially contained 170,000 names—with another 17,000 added each year—of every person in the state who has purchased a firearm since 1996 or who has registered to possess an assault weapon. If any of these people are ever entered into the system as being prohibited from possessing firearms, the name will be automatically flagged as a person who possesses an illegal weapon.

The Armed and Prohibited database is available to all California law enforcement agencies, and is searchable by suspect name. Firearm purchases in California require the purchaser's California driver's license to be scanned. That same information is used to identify persons in the Armed and Prohibited database. The database also alerts officers arriving at the scene of a domestic disturbance or making a traffic stop on whether an individual owns firearms.

To make sure the information in the database is used, the attorney general

[62] California Department of Justice press release, "Attorney General Lockyear Unveils New Program Seizing Firearms from Convicted Spousal Abusers, Felons and Individuals Deemed a Danger to Themselves and Others," September 30, 2003.

designated two teams of five agents each to identify and arrest the most dangerous individuals found to be armed but prohibited from possessing firearms. Individuals were targeted based on the number of firearms that they own and the seriousness of the disqualification. The results showed that domestic violence abusers constitute the greatest percentage of prohibited persons, representing 25 percent of the people in the database, followed by people who have been ruled a danger to themselves or others because of mental illness (20 percent).

In the first two and a half years since implementation of the program, the California Department of Justice identified 500 prohibited persons with firearms and seized more than 3,874 firearms, including 1,040 assault weapons. Nearly half of those identified were prohibited from possessing weapons because of a domestic violence restraining order or conviction. After identifying an individual through the database who is prohibited from possessing firearms, agents obtain search and arrest warrants, notify local law enforcement that they will be serving the warrants, and invite local law enforcement, as well as ATF agents, to join them. However, if the initial purchase of a firearm occurred years before the person was prohibited from possessing it, judges may demand fresh evidence that the person still possesses the weapon. To obtain such evidence, officers pursue various strategies such as checking with the gun shop where the weapon was originally purchased to determine if the person recently bought ammunition or sending a notice that the weapon can be upgraded and noting whether the person responds. In addition, a victim's affidavit can be used if it indicates that an abuser had a firearm or used it to threaten or abuse the victim. If the special agents cannot obtain a warrant, they approach the suspected gun owner and ask him/her to voluntarily forfeit his/her weapons.

According to Randy Rossi, the director of the Firearms Division of the California Department of Justice, the database is crucial for law enforcement to determine whether to return firearms to persons whose protection orders have expired. NICS is not available to local law enforcement for this purpose. Initial rechecks have revealed that persons who request the return of firearms are 14 times more likely to be prohibited from possessing them for other reasons than are those who seek to purchase firearms in the first place. The alternative prohibitions may be due to new convictions for domestic or nondomestic offenses, commitment due to mental illness, drug addiction, or other state prohibitions.

Source

Randy Rossi
Director of the Firearms Division
California Department of Justice

6. Legislative Reform

Although many states authorize courts to prohibit court-restrained abusers subject to protection orders from possessing firearms, only two specifically enable law enforcement to search for and seize prohibited firearms from them.[63] The following section describes how such legislation came to fruition in one small, fairly rural state.

New Hampshire Statutes

A recent study found that in states with laws that restrain abusers from possessing firearms, intimate partner homicide rates are 9 to 12 percent lower than the rates in states without such laws. Researchers also found that these laws are most effective when states cross-check protection orders with firearm purchases.[64] Nowhere are

[63] N.H. Rev. Stat. Ann. § 173-B:5; N.J. Crim. Code § 2C:25–26.

[64] E. Vigdor and J. Mercy, "Disarming Batterers," in J. Ludwig and P. Cook (Eds.), *Evaluating Gun*

such laws more critical than in states with high firearm possession rates, including those characterized as "rural and/or populated with small towns."[65] Many states that fit this description have not enacted state laws restricting abusers from possessing firearms.

One of the exceptions is New Hampshire, which has taken the lead in enacting a set of firearm prohibition statutes that are intended to keep firearms away from dangerous abusers. Search and seizure authorization was included in the law. Passage of New Hampshire's legislation took several years and extensive work by its supporters. The legislation was opposed by an active, well-organized gun lobby led by Gun Owners of New Hampshire, referred to as "GO New Hampshire," and the Sisters of the Second Amendment, an organization that promotes female gun ownership. While the legislation was pending, the head of the National Rifle Association traveled to New Hampshire from Florida to campaign against the legislation. The legislation was also opposed by the Manchester Union Leader, the state's largest and most influential newspaper.

New Hampshire's model legislation was nevertheless enacted, but it took a concerted campaign. The legislative process began in 1995 following the release of the Model Code on Domestic & Family Violence, promulgated by the National Council of Juvenile and Family Court Judges, a code that did not address firearms. Domestic violence advocates in New Hampshire created a Model Code Committee that included the governor-appointed attorney general. The committee also included representatives of state and local law enforcement, defense attorneys, city and county prosecutors, and advocates. The committee was charged with reviewing the state's domestic violence legislation.

The committee took two years to develop the legislation. Once a final draft was ready, the committee secured legislative sponsors—four in the House and four in the Senate—that were evenly split between Republicans and Democrats, although the legislature was overwhelmingly Republican. New Hampshire maintains the largest legislature in the United States (and third largest in the world), comprising 400 House members and 24 senators. The primary sponsor was Representative William Knowles, a Democrat. The bill was introduced in 1997. The following insert provides a summary of the final version enacted four years later.

Summary of New Hampshire Domestic Violence Firearm Prohibition Statutes

N.H. Rev. Stat. Ann. § 173-B:4(I)(a) (Temporary Protective Order Relief):

Upon showing of immediate and present danger of abuse, the court may enter temporary orders to protect the plaintiff that are effective until the close of the next regular court business day. Such temporary relief "may direct the defendant to relinquish to a peace officer any and all firearms and ammunition in the control, ownership, or possession of the defendant, or any other person on behalf of the defendant for the duration of the protective order."

Policy. Washington, DC: The Brookings Institution Press (2003): 157–214.

[65] P. Cook, "Firearms Ownership: Ten FAQs," conference presentation, National Institute of Justice, 2004.

Summary of New Hampshire Domestic Violence Firearm Prohibition Statutes

N.H. Rev. Stat. Ann. § 173-B:5 (Protective Order Relief):

(I) Upon a showing of abuse, the court "shall [direct] the defendant to relinquish to the peace officer any and all weapons specified in the protective order and any and all firearms and ammunition that are in the control, ownership, or possession of the defendant, or any other person on behalf of the defendant."

(II) The defendant is prohibited from purchasing, receiving or possessing any deadly weapons and any and all firearms and ammunition for the duration of the order. The court may subsequently issue a search warrant authorizing a peace officer to seize all weapons specified in the protective order and any and all firearms and ammunition if there is probable cause to believe such firearms are kept on the premises or curtilage of the defendant.

(IX)(a) If a criminal record check conducted by the department of safety indicates that a potential buyer or transferee is prohibited from receipt or possession of a firearm pursuant to a protective order, the department shall notify the administrative office of the court regarding the denial. The administrative office shall immediately notify the plaintiff that the defendant has attempted to purchase or obtain a firearm in violation of the protective order.

(X)(a) Within fifteen days of the expiration of the order, the defendant may request by court motion the return of the firearms and ammunition. The court shall schedule a hearing within fifteen days of the expiration of the order. The court shall provide written notice to the victim regarding the right to appear and be heard. The scope of the hearing is to determine whether the defendant is subject to any state or federal law or court order that precludes possession of a firearm, and if the plaintiff seeks to extend the order, whether the plaintiff has established by a preponderance of the evidence that the defendant continues to represent a credible threat to the safety of the plaintiff.

(X)(c) Law enforcement may only return weapons if there is a court order granting their release. Law enforcement may charge a reasonable fee for storage of the weapons. The defendant may make alternative storage arrangements with a federally licensed firearms dealer at the defendant's expense, upon approval of the court.

(X)(d) No law enforcement agency shall be held liable for alleged damages or deterioration due to storage and transport of firearms held so long as due care is used.

N.H. Rev. Stat. Ann. § 173-B:9(I)(b) (Violation of Protective Order):

Subsequent to an arrest, a peace officer shall seize any firearms and ammunition in the control, ownership, or possession of the defendant which may have been used, or were threatened to be used, during the violation of the order. The law enforcement agency shall maintain possession of them until the court issues an order that they be relinquished.

N.H. Rev. Stat. Ann. § 173-B:10(I) (Protection by Peace Officer):

Whenever any peace officer has probable cause to believe that a person has been abused, the officer shall use all reasonable means to prevent further abuse including (a) confiscating any deadly weapons involved in the alleged domestic abuse and any firearms and ammunition in the control, ownership, or possession of the defendant.

N.H. Rev. Stat. Ann. § 173-B:11 (Notice to the Victim):

(I) Police must inform the victim of the right to request a protective order.

(II) The clerk of the court is responsible for advising victims of their right to request that the judge issue an order that may include removing any and all firearms and ammunition in the control, ownership, or possession of the defendant.

N.H. Rev. Stat. Ann. § 159-D:3 (Penalty for Attempts to Purchase Firearms Illegally):

It is a crime for a person to complete an application for purchase of a firearm who knows that the purchase is illegal because he/she is subject to a protective order. A first offense is a class A misdemeanor, and a second or subsequent offense is a class B felony.

Linda Griebsch, a state representative from 1989 to 1991, and public policy director of the New Hampshire Coalition Against Domestic and Sexual Violence (NHCADSV), took charge of meeting and lobbying personally with the legislators. According to Griebsch, among the many "heroes" responsible for eventual passage of the legislation was David Welch, a gun-owning Republican, and chair of the House Committee on Criminal Justice and Public Safety, where the bill was originally heard. He subsequently spoke in favor of the bill on the House floor.

When the first legislative hearing on the proposed legislation was held, so many people came that the hearing had to be moved from the regular committee room to the House of Representatives chamber. At the hearing, opponents of the bills emphasized their strong support for gun ownership and expressed fear that the law would affect their ability to possess firearms. Proponents of the bill countered with statements by representatives from law enforcement, prosecutors, Judge Susan Carbon (a respected expert on domestic violence), and others who argued that the bill was not antigun but rather pro–victim safety.

After passing the House, the legislation came up for a final vote in the Senate just as the state's two-year legislative session was scheduled to end. Although proponents counted a slim majority in favor of their legislation, an opposition senator

delayed a final vote until enough proponents had left the session so that opponents were able to defeat the bill. Although that senator was himself defeated in the next election, the bill was killed for that legislative session.

Determined proponents of the bill met with legislative opponents in an attempt to modify the proposed legislation to overcome their opposition. As a result of opponents' suggestions, a section was added that specified how firearms would be returned to owners once orders were lifted. The new section included giving owners whose guns had been surrendered a 15-day notice before their orders expired. The language for search and seizure was softened by emphasizing that prohibited persons would be allowed to "relinquish" their firearms and only upon failure to do so would the firearms be seized. While making it clear that this did not undermine the authority of the court or significantly limit law enforcement, it allowed opponents to reassure constituents that the bill would not result in the wholesale seizure of citizens' firearms. Proponents refiled the legislation.

Despite the changes to the legislation, opponents continued to rally against it. The National Rifle Association sent out notices to its members urging them to oppose the law. Supporters countered by conducting statewide education campaigns that emphasized how the legislation could save lives throughout the state. The House again passed the legislation by a small margin. Although the final vote was close, the bill was finally passed in the Senate, and Governor Jean Shaheen signed it into law, effective January 1, 2001.

When asked about implementation, NHCADSV spokespersons point to a stunning statistic that suggests that implementation has not been a problem so far. Intimate partner homicides by firearms immediately declined after the new law went into effect. The following table, based on FBI Supplemental Homicide Reports and assembled by the Violence Policy Center, documents the number of females murdered by males in single-victim/single-offender incidents before and after enactment of the new statutes.

New Hampshire Domestic Homicides Before and After Adoption of New Domestic Violence/Firearm Statutes

YEAR	# OF HOMICIDES
1998	6
1999	7
2000	5
Total Before	18
2001	5
2002	2
2003	1
Total After	8

It should be noted that even in jurisdictions without specific search and seizure provisions such as those found in New Hampshire and New Jersey, appellate courts have upheld the power of law enforcement to search and seize firearms consistent with protection order prohibitions. The following case is from Pennsylvania.

Absent specific search and seizure provisions in state law, many states authorize seizure of firearms in "plain view," including Alaska, Arizona, California, Connecticut, Maryland, and Tennessee. Others authorize law enforcement to seize weapons used or threatened to be used during domestic violence incidents, including Montana, Ohio, and Oklahoma.[66] Tribal codes may also contain specific provisions addressing the power of tribal police to search and seize firearms.[67]

[66] Mont. Code Ann. § 46-6-603(1); Ohio Rev. Code Ann. § 2935.03(3)(h); Okla. Stat. Ann. tit. 22, § 60.8.
[67] Eastern Band Cherokee Domestic Violence Code § 14.40.1(h)(4)(a)–(c).

Pennsylvania Superior Court Upholds Search and Seizure Order.[68]

In November 2004, the Pennsylvania Superior Court upheld a Montgomery County judge's ruling that because a court had issued a protection order against a respondent, his weapons and a gun belonging to his father could be confiscated. The court ruled two to one that when an order is issued, authorities can conduct searches for weapons, including in residences and vehicles that do not belong to the person accused of abuse, and can confiscate anything they find.

The case arose in September 2003 when a victim secured an order against her abuser after he allegedly pointed his father's loaded handgun at her and threatened to kill her. The respondent lived with his parents. As part of the order, the judge required the respondent to turn over all weapons to police. When police arrived at the parents' house, the respondent signed a document stating that there were no guns present. The victim insisted, however, that there were guns. The judge then issued another order directing a search of the respondent's parents' home, vehicles, and a hunting lodge in the Poconos. The judge also authorized police to use any necessary force to carry out the order. Police conducted the searches and found several firearms. The father and son argued that the searches were not legal and that their weapons should be returned to them. The Superior Court ruled that such searches were justified under the terms of the protection from abuse order, noting that the purpose of the order was to disarm the abuser. In upholding the judge's order, the Superior Court panel majority ruled that because the respondent did not contest the victim's testimony, the trial court had to accept her testimony as valid. While the protection order did not specifically grant the court the authority to order the sheriff's department to search the abuser's home or property and forcibly remove weapons, such search and seizures fulfill the intent of the order.

The court dismissed the father's complaint that the firearms belonged to him, not his son. It ruled, "If a court cannot reach weapons wherever an abuser resides, it nullifies the preventive thrust of the most critical section of the act, that is, to disarm the abuser."

Sources

The Honorable Susan Carbon
Supervisory Judge, Grafton County Family Division
Judge of Concord District Court

Linda Griebsch
Public Policy Director
New Hampshire Coalition Against Domestic and Sexual Assault

[68] N. Guidry, "Pa. Court's Decision on Seizure of Guns to Protect the Abused; Gun Groups Likely to Target Weapons Confiscations," *Pittsburgh Post Gazette*, November 15, 2004.

Campaign Flyer Used to Promote New Hampshire Firearm Prohibition Legislation

Please Vote for HB 722

- *This bill is fair. It is gender non-specific.* It provides the necessary protections to victimized citizens, while due process is carefully observed.
- *Voting against this bill will not effect the federal law whatsoever.* It will still be enforced in this state, along with the gun check line.
- *Much work has been done on this bill with input from all sides.* Many compromises were made. The resulting bill is good even-handed law.
- **Vote "yes" on the committee recommendation for HB 722.**

List of Members of Model Code Review Committee to Develop NH Firearm Prohibition Reform Legislation

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University of New Hampshire
Durham

Women's Crisis Service of the Monadnock Region
Keene
Peterborough

New Beginnings: A Women's Crisis Center
Laconia

WISE
Women's Information Service
Littleton

The Support Center Against Domestic Violence & Sexual Assault
Littleton
Woodsville

YWCA Crisis Service
Hinsdale
Derry

Rape and Assault Support Services
Nashua
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A Safe Place
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Salem

Sexual Assault Support Services
Portsmouth
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Model Code Committee – page 2

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Additional Input and resources:

Judge Sue Carbon, Grafton County Family Court
Judge Jack Colby, Rockingham County Family Court
Judge Ed Kelly, Administrator NH District Courts
Lara Saffo, President, NH Prosecutor's Assn.
Jean Weld, US Atty.'s Office

Section III: Lessons Learned

Although the programs outlined above rely on specific state laws, local rule, and/or federal laws, and are administered by different agencies in different branches of government in different jurisdictions, they all share the following principles.

1. The honor system is not sufficient to ensure compliance with state and federal statutes, or court orders. It is not enough to instruct or order abusers to refrain from possessing firearms. There must be a specific, comprehensive effort to enforce such orders over time.

2. Checking federal and state databases to determine if persons are prohibited from possessing firearms represents only a first step in completing full investigations. More investigation is necessary, given the incompleteness of these files.

3. Once firearms are relinquished, they should not be automatically returned to their owners until the owners' eligibility for repossession is determined. Although the firearms may have been surrendered as a result of a protection order filed against the firearm owner, there may be other bases that disqualify the person from possessing firearms.

4. Authorities must act quickly and encourage immediate, voluntary surrender of firearms to police, not to other third parties. Authorities should encourage firearm relinquishment as soon as possible after the presence of domestic violence has been established, and encourage victims to identify and, where authorized pursuant to state joint ownership rules, turn over household firearms for safe storage or destruction.

5. Written procedures are vital. To ensure necessary follow-up and institutionalization of programs and procedures to keep firearms from prohibited persons, agencies must develop specific forms and regulations, accompanied by in-service training of all relevant personnel.

6. Disarming abusers is not antigun. Firearm prohibition enforcement programs should not allow themselves to be perceived as antigun, and should communicate that they are pro–victim safety. It should be made clear that such efforts are not aimed at law-abiding, nonabusive citizens.

7. There is no substitute for federal involvement. Notwithstanding the presence or absence of equivalent state statutes, federal firearm prohibition enforcement has a crucial role to play in educating both the public and local criminal justice officials about the necessity of disarming dangerous abusers as well as effectively removing from society the most dangerous abusers. Adequate federal enforcement requires cross-deputization of local law enforcement officers.

8. Disarming abusers saves lives.

Helpful Reference:

Cross-Designation & Federal Firearms Laws: What Local Prosecutors Need to Know, produced by the American Prosecutors Research Institute. http://www.ndaa-apri.org.

Appendix

Firearms and Domestic Violence: State and Territorial Statutory Provisions
Revised May 2006
Compiled by the National Center on Full Faith and Credit

State	Protection Orders	Criminal Offenses, Procedures, and Prohibited Transferees	Licenses/Permits, Background Checks, and Misc. Provisions
Alabama	*Catch-all provision* A court may order in an ex parte or final order for protection "other relief as it deems necessary to provide for the safety and welfare of the plaintiff or minor and any designated family or household member." Ala. Code § 30-5-7(c)(9) (2005).	*Commission of crime of violence when armed with pistol* If person commits, or attempt to commit, a crime of violence when armed with a pistol, the person may, in addition to the punishment provided for the crime, also be punished as provided by Article 3 (Offenses Relating to Firearms and Weapons), Division 2 (Pistols). The fact that a person was armed with a pistol and had no license to carry it is prima facie evidence of the person's intention to commit a crime of violence. Ala. Code § 13A-11-71 (2005). *Bail for domestic violence offense* A judge or magistrate may impose conditions of release or bail on a person arrested for an offense involving domestic violence to protect the alleged victim of domestic violence or the person protected by a protection order. The conditions may include prohibiting the person from possessing a firearm or other weapon specified by the court, except when such weapon is necessary for the person's employment as a peace officer or member of the military. Ala. Code § 15-13-190(b) (2005). *Conviction for crime of violence* A person convicted in Alabama or elsewhere of committing or attempting to commit a crime of violence may not own a pistol or have one in his or her possession or under his or her control. Ala. Code § 13A-11-72(a) (2005).	*Gun shows* No county or municipal corporation, instrumentality, or political subdivision may by ordinance, resolution, or other enactment, regulate gun shows, the possession, ownership, transport, carrying, transfer, sale, purchase, licensing, registration or use of firearms, ammunition, components of firearms, firearms dealers, or dealers in firearm components. Ala. Code § 11-80-11(a) (2005).

State	Protection Orders	Criminal Offenses, Procedures, and Prohibited Transferees	Licenses/Permits, Background Checks, and Misc. Provisions
Alaska	*Discretionary protective order relief* A domestic violence protective order may prohibit the respondent from using or possessing a deadly weapon if the court finds the respondent was in the actual possession of or used a weapon during the commission of domestic violence. Alaska Stat. § 18.66.100(c)(6) (2006).	*Notification to victim* A peace officer investigating a crime involving domestic violence shall orally and in writing inform the victim of the rights of victims of domestic violence and the services available to them including the right to file a petition in court requesting a protective order that may include a provision directing the abuser to surrender any firearm owned or possessed by that person if the court finds that the abuser was in the actual possession of or used a firearm during the commission of the abuse. Alaska Stat. § 18.65.520(a)(7) (2006). *Duties of police officer in domestic violence cases* If a peace officer investigating a crime involving domestic violence determines that it is necessary to protect the victim or the victim's family from domestic violence or to protect the officer or the public during the investigation, the officer may: seize a deadly weapon in plain view of the officer, and, if a deadly weapon was actually possessed during or used in the domestic violence, seize all deadly weapons owned, used, possessed, or within the control of the alleged perpetrator. If the weapon is not needed as evidence in a criminal case, the law enforcement agency having custody of the weapon, within 24 hours of making the determination that the weapon is not needed as evidence in a criminal case, shall make the weapon available for pickup by the owner of the weapon during regular business hours. Alaska Stat. § 18.65.515(b) (2006).	

State	Protection Orders	Criminal Offenses, Procedures, and Prohibited Transferees	Licenses/Permits, Background Checks, and Misc. Provisions
		Conditions of release before or after trial for domestic violence offense Before ordering release before or after trial, or pending appeal, of a person charged with or convicted of a crime involving domestic violence, the court shall consider the safety of the alleged victim or other household member. To protect the alleged victim, household member, and the public and to reasonably assure the person's appearance, the court may impose bail and any of the conditions authorized under § 12.30.020 (release before trial), any of the provisions of § 18.66.100(c)(1)-(7) and (11) (protective order relief, including prohibition on possession of deadly weapon), and any other condition necessary to protect the alleged victim, household member, and the public, and to ensure the appearance of the person in court. Alaska Stat. § 12.30.027(a) (2006). *Misconduct involving weapons* A person commits the crime of misconduct involving weapons in the third degree if the person commits criminal trespass in the first (§ 11.46.320) or second degree (§ 11.46.330) by entering or remaining unlawfully on premises or in a propelled vehicle in violation of a protective order issued or filed under §§ 18.66.100 – 18.66.180, or issued under former § 25.35.010(b), or § 25.35.020 and, during the violation, possesses on his/her person a defensive weapon or a deadly weapon, other than an ordinary pocketknife. Alaska Stat. § 11.61.200(a)(8) (2006).	

State	Protection Orders	Criminal Offenses, Procedures, and Prohibited Transferees	Licenses/Permits, Background Checks, and Misc. Provisions
		Forfeiture after conviction of offense Except as limited by § 12.55.125 – 12.55.175 (sentencing and probation provisions), the court may, in imposing sentence on a defendant convicted of an offense, order the forfeiture to the commissioner of public safety or a municipal law enforcement agency of a deadly weapon that was in the actual possession of or used by the defendant during the commission of an offense described in Chapter 11.41 (homicide, assault, reckless endangerment, kidnapping, custodial interference, sexual offenses, robbery, extortion, and coercion), Chapter 11.46 (property offenses including burglary, criminal trespass, vehicle theft, arson, and criminal mischief), Chapter 11.56 (offenses against public administration), or Chapter 11.61 (offenses against public order including weapons and explosives). Alaska Stat. § 12.55.015(a)(9) (2006). Notwithstanding § 12.55.015(a), the court shall order the forfeiture to the commissioner of public safety or a municipal law enforcement agency of a deadly weapon that was in the actual possession of or used by the defendant during the commission of a crime involving domestic violence. Alaska Stat. § 12.55.015(f) (2006).	
Arizona	*Discretionary relief* A court may issue an order of protection that prohibits the defendant from possessing or purchasing a firearm for the duration of the order, if the court finds that the defendant is a credible threat to the physical safety of the plaintiff or	*Seizure of firearm by law enforcement* A peace officer may question the persons who are present to determine if a firearm is present on the premises. On learning or observing that a firearm is present on the premises, the peace officer may temporarily seize the firearm if: the firearm is in plain view or was found pursuant to a consent to search,	*Concealed weapons permit* The concealed carry permit of a person who is arrested or indicted for an offense that would make the person unqualified under the provisions of section 13-3101, § 13-3101(A)(6) (domestic violence probationers) or this section shall be

State	Protection Orders	Criminal Offenses, Procedures, and Prohibited Transferees	Licenses/Permits, Background Checks, and Misc. Provisions
	other specifically designated persons. If the court prohibits the defendant from possessing a firearm, the court shall also order the defendant to transfer any firearm owned or possessed by the defendant immediately after service of the order to the appropriate law enforcement agency for the duration of the order. If the defendant does not immediately transfer the firearm, the defendant shall transfer the firearm within twenty-four hours after service of the order. Ariz. Rev. Stat. Ann. § 13-3602(G)(4) (2006). An emergency order of protection may include a order prohibiting the defendant from possessing or purchasing a firearm for the duration of the order if the court finds that the defendant may inflict bodily injury or death on the plaintiff. Ariz. Rev. Stat. Ann. § 13-3624(D)(4) (2006).	and the officer reasonably believes that the firearm would expose the victim or another person in the household to a risk of serious bodily injury or death. A firearm that is owned or possessed by the victim shall not be seized unless there is probable cause to believe that both parties independently have committed an act of domestic violence. Each seized firearm must be held for at least seventy-two hours by the law enforcement agency that seized the firearm. If a firearm is seized, the victim must be notified by a peace officer before the firearm is released from temporary custody. Ariz. Rev. Stat. Ann. § 13-3601 (2006). *Bail conditions* After providing notice to the victim pursuant to § 13-4406, a judicial officer may impose conditions on a person who is released on his own recognizance or on bail including prohibiting the person from possessing any dangerous weapon. Ariz. Rev. Stat. Ann § 13-3967(D)(4) (2006). *Prohibited possessor of firearms* Any person who is serving a term of probation pursuant to a conviction for a domestic violence offense as defined in § 13-3601 (domestic violence), or a felony offense, parole, community supervision, work furlough, home arrest or release on any other basis or who is serving a term of probation or parole pursuant to the interstate compact under title 31, chapter 3, article 4. Ariz. Rev. Stat. § 13-3101(6)(d) (2006).	immediately suspended and seized. The permit of a person who becomes unqualified on conviction of that offense shall be revoked. The permit shall be restored on presentation of documentation from the court if the permittee is found not guilty or the charges are dismissed. The permit shall be restored on presentation of documentation from the county attorney that the charges against the permittee were dropped or dismissed. Ariz. Rev. Stat. § 3112(C) (2006).

State	Protection Orders	Criminal Offenses, Procedures, and Prohibited Transferees	Licenses/Permits, Background Checks, and Misc. Provisions
		Application for restoration of civil rights A person who was convicted of a dangerous offense under § 13-604 (repeat and dangerous offenders) may not file for the restoration of his/her right to possess or carry a gun or firearm. If the person was convicted of a serious offense as defined in § 13-604, the person may not file for the restoration of his right to possess or carry a gun or firearm for ten years from the date of his discharge from probation. If the person was convicted of any other felony offense, he/she may not file for the restoration of the right to possess or carry a gun or firearm for two years from the date of discharge from probation. Ariz. Rev. Stat. Ann. § 13-905(C) (2006).	
Arkansas	*Catch-all provision* In addition to relief enumerated in the statute, the court may order such other relief as the court deems necessary or appropriate for the protection of a family or household member. Ark. Code Ann. § 9-15-205(a)(7)(A) (2006).	*Stalking* A person commits stalking in the first degree if he or she purposely engages in a course of conduct that harasses another person and makes a terroristic threat with the intent of placing that person in imminent fear of death or serious bodily injury or placing that person in imminent fear of the death or serious bodily injury of his or her immediate family and the person does so in violation of an order of protection consistent with § 9-15-101 et seq. (Domestic Abuse Act), or a no contact order as set out in subdivision (a)(2)(A) of this section, protecting the same victim, or any other order issued by any court protecting the same victim; and: has been convicted within the previous ten years of stalking in the second degree, violating § 5-13-301 or § 5-13-310; stalking or threats against another person's safety under the statutory provisions of any other state jurisdiction; or is armed with a deadly weapon or represents by word	*Concealed handgun license* The application for a concealed handgun license must include a statement of whether the applicant has been found guilty of a crime of violence or domestic abuse. Ark. Code Ann. § 5-73-310(9) (2006). An applicant will not be issued a concealed handgun license if he/she is subject to any federal, state, or local law that makes it unlawful to receive, possess, or transport any firearm. Ark. Code Ann. § 5-73-309(a)(4)(A) (2006). The Director of the Department of Arkansas State Police may deny a license if within the preceding five years the applicant has been found guilty of one or more crimes of violence constituting a misdemeanor

State	Protection Orders	Criminal Offenses, Procedures, and Prohibited Transferees	Licenses/Permits, Background Checks, and Misc. Provisions
		or conduct that he or she is armed with a deadly weapon. Ark. Code Ann. § 5-71-229 (2006). *Probation or suspended sentence conditions* If the court suspends imposition of sentence on a defendant or places him/her on probation, as a condition of its order the court may require that the defendant have no firearm in his/her possession. Ark. Code Ann. § 5-4-303(c)(7) (2006). *Transfer of firearm to prohibited person* It is a Class A misdemeanor for a person shall to sell, rent, or transfer a firearm to any person who he/she knows is prohibited by state or federal law from possessing the firearm. It is a felony if the firearm transferred is a handgun, sawed-off or short-barreled shotgun (§ 5-1-102), sawed-off or short-barreled rifle (§ 5-1-102), firearm that has been specially made or specially adapted for silent discharge, machine gun, explosive or incendiary device (§ 5-71-301), defaced firearm (§ 5-73-107), or other implement for the infliction of serious physical injury or death that serves no common lawful purpose. Ark. Code Ann. § 5-73-132 (2006).	or for the offense of carrying a weapon. Ark. Code Ann. § 5-73-308(a)(1)(A) (2006).
California	*Mandatory prohibition – domestic violence protective order* A person subject to a protective order (§ 6218), shall not own, possess, purchase, or receive a firearm while that protective order is in effect. A respondent who owns, possesses, purchases or receives, or attempts to purchase or receive a firearm while the protective order is	*Violation of protective order prohibition* A person who owns, possesses, purchases, or receives a firearm knowing that he/she is prohibited from doing so by the provisions of a protective order as defined in Cal. Pen. Code § 136.2, Cal. Fam. Code § 6218, Cal. Civ. Proced. Code § 527.6 or 527.8, or Cal. Wel. and Inst. Code § 15657.03 shall be punished under the provisions of § 12021(g). Cal. Pen. Code § 273.6(g)(1) (Deering 2006).	

State	Protection Orders	Criminal Offenses, Procedures, and Prohibited Transferees	Licenses/Permits, Background Checks, and Misc. Provisions
	in effect is punishable pursuant to § 12021(g) of the Penal Code (possession of firearm by felon or other specified persons). Cal. Fam. Code § 6389(a) (Deering 2006). Upon issuance of a protective order (§ 6218), the court shall order the respondent to relinquish any firearm in that person's immediate possession or control, or subject to that person's immediate possession or control, within 24 hours of being served with the order, by either surrendering the firearm to the control of local law enforcement officials, or by selling the firearm to a licensed gun dealer, as specified in Cal. Pen. Code § 12071. A person ordered to relinquish any firearm pursuant to this subdivision shall file with the court a receipt showing the firearm was surrendered to the local law enforcement agency or sold to a licensed gun dealer within 72 hours after receiving the order. If the respondent declines to relinquish possession of any firearm based upon the assertion of the right against self-incrimination, as provided by the Fifth Amendment to the U.S. Constitution and § 15 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)-(d) (Deering 2006).	*Bail condition* Unless good cause is shown not to impose the condition a judge shall impose as additional conditions of release on bail that the defendant shall not possess any firearms or other deadly or dangerous weapons. Cal. Pen. Code § 646.93(c)(3) (Deering 2006). *Prohibition after conviction* A person who has been convicted of misdemeanor domestic violence, violation of a protective order, stalking, or one of several other misdemeanor offenses enumerated, who, within 10 years of the conviction, owns, purchases, receives, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail or state prison for up to one year, by a fine of up to $ 1,000), or both. The court shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3). Cal. Pen. Code § 12021(c) (Deering 2006). Any person employed as a peace officer whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under §§ 273.5, 273.6, or 646.9, may petition the court only once for relief from the post-conviction firearm prohibition provided in § 12021(c). Cal. Pen. Code § 12021(c)(2) (Deering 2006).	

State	Protection Orders	Criminal Offenses, Procedures, and Prohibited Transferees	Licenses/Permits, Background Checks, and Misc. Provisions
	Protective order forms On all forms providing notice that a protective order has been requested or granted, the Judicial Council shall include a notice that, upon service of the order, the respondent shall be ordered to relinquish possession or control of any firearms and not to purchase or receive or attempt to purchase or receive any firearms for the duration of the restraining order. Cal. Fam. Code § 6389(b) (Deering 2006). The restraining order requiring a person to relinquish a firearm shall state on its face that the respondent is prohibited from owning, possessing, purchasing, or receiving a firearm while the protective order is in effect and that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed with the court within a specified period of receipt of the order. The order shall also state on its face the expiration date for relinquishment. Cal. Fam. Code § 6389(f) (Deering 2006). *Exemption from mandatory prohibition* The court may grant an exemption from the relinquishment requirements of this section for a		

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	particular firearm if the respondent can show that it is necessary as a condition of continued employment and that the current employer is unable to reassign the respondent to another position where a firearm is unnecessary. If an exemption is granted, the order shall provide that the firearm shall be in the physical possession of the respondent only during scheduled work hours and during travel to and from his or her place of employment. In any case involving a peace officer who as a condition of employment and whose personal safety depends on the ability to carry a firearm, a court may allow the peace officer to continue to carry a firearm, either on duty or off duty, if the court finds by a preponderance of the evidence, that the officer does not pose a threat of harm. Prior to making this finding, the court shall require a mandatory psychological evaluation of the peace officer and may require the peace officer to enter into counseling or other remedial treatment program to deal with any propensity for domestic violence. Cal. Fam. Code § 6389(h) (Deering 2006). When making a protective order (§ 6218) where both parties are present in court, the court shall inform both the petitioner and the respondent of the terms of the		

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	order, including notice that the respondent is prohibited from owning, possessing, purchasing or receiving or attempting to own, possess, purchase or receive a firearm, and including notice of the penalty for violation. Cal. Fam. Code § 6304 (Deering 2006). *Storage and sale of firearms* A local law enforcement agency may charge the respondent a fee for the storage of any firearm relinquished pursuant to a protective order. The fee may not exceed the actual cost incurred by the local law enforcement agency for the storage of the firearm. For purposes of this subdivision, "actual cost" means expenses directly related to taking possession of a firearm, storing the firearm, and surrendering possession of the firearm to a licensed dealer as defined in Cal. Penal Code § 12071 or to the respondent. Cal. Fam. Code § 6389(e) (Deering 2006). During the period of the relinquishment order, a respondent is entitled to make one sale of all firearms that are in the possession of a local law enforcement agency pursuant to a protective order. A licensed gun dealer, who presents a local law enforcement agency with a bill of sale indicating that all firearms owned by the respondent that are in		

State	Protection Orders	Criminal Offenses, Procedures, and Prohibited Transferees	Licenses/Permits, Background Checks, and Misc. Provisions
	the possession of the local law enforcement agency have been sold by the respondent to the licensed gun dealer, shall be given possession of those firearms, at the location where a respondent's firearms are stored, within five days of presenting the local law enforcement agency with a bill of sale. Cal. Fam. Code § 6389(i) (Deering 2006). The disposition of any unclaimed property under this section shall be made pursuant to Cal. Pen. Code § 1413. Cal. Fam. Code § 6389(j) (Deering 2006). *Mandatory prohibition – emergency ex parte stalking protective order* A person subject to an emergency ex parte stalking protective order shall not own, possess, purchase, or receive a firearm while the order is in effect. Cal. Pen. Code § 646.91(n) (Deering 2006).		