

Removing Firearms from Domestic Violence Perpetrators

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1. Introduction

July 2001 A man attempting to buy a gun fills out a form for an FBI criminal background check. The purchaser is subject to a protection order that may prohibit him from buying the gun. The FBI can't obtain information to make a definitive conclusion within the 3 days it is allowed. One hour after the gun shop sells the gun to the purchaser, he murders his former live-in girlfriend, the person who obtained the protection order. December 2001 on Christmas Day, a man murders his wife and 13-year-old daughter with a firearm. He was able to purchase the gun without a background check because he had a concealed weapon permit, despite that fact that a protection order had been entered against him that disqualified him from purchasing a gun. The court did not revoke the concealed weapon permit, and the protection order had not been entered into any registry. January 2002 A man shoots and kills a law school dean and injures others. The killer had been arrested on domestic battery charges in August 2001 and had been released with bail conditions restricting firearm possession.¹

This nation has an abysmal rate of domestic violence, including many murders which are committed each year with guns. About two-thirds of the intimate partner homicides in the U.S. are committed using guns.²

Seattle and Washington State are no exception. From 1997 to August of 2002, there were a total of 308 domestic violence homicides in Washington State, 84 of them in King County. This includes homicides of domestic violence victims, their children, friends and family, police officers, self-defense homicides in which perpetrators (the term "perpetrator" is used in this report to describe an individual who has engaged in a pattern of domestic violence towards an intimate partner or spouse so that he or she would be subject to a criminal justice intervention, or restrained by a domestic violence-related civil order) were killed, and perpetrator suicides.³

Domestic violence perpetrators killed 59 percent of these homicide victims (n=123) with a gun or rifle.⁴ At least 12 of these homicides were committed by perpetrators using guns they were federally prohibited from possessing because they had a prior domestic violence conviction.⁵

Laws are not effective. Despite the enactment of federal and state laws designed to prevent domestic violence perpetrators from purchasing or possessing firearms, there are major holes that undermine the system. They come in the form of loopholes in legislation; lack of complementary and enforcing legislation at the state level; little or no implementation of available laws by police, prosecutors and judges; and confusion and complexity in putting existing tools to work.

Comprehensive approach needed. A comprehensive approach would ensure that anyone subject to a restraining order or convicted of domestic violence would be prohibited from acquiring or possessing a firearm; that the prohibitions were quickly and effectively enforced;⁶ and that violators were prosecuted to the full extent of the laws. In addition, it would require police to remove firearms from the scenes of domestic violence calls to protect the victim and the community.

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How to select improvements. Each state and local government trying to reduce domestic violence homicides, and injuries committed with firearms must determine its current strengths and challenges, as measured against an effective approach. Then each must find its next best step(s). States have taken a wide variety of approaches and are at different stages. Given the legal complexities, philosophical differences about the propriety of federal or state laws, and relatively recent attention to preventing domestic violence homicides with guns, states and local jurisdictions

may be better off starting where they have available tools and feasible solutions than trying to tackle all parts of the system at once.

The purposes of this paper are to:

1. Inform policymakers of the danger, cost and risk caused by allowing firearms to remain in the hands of domestic violence perpetrators, and of the existing laws and mechanism available to disarm perpetrators;
2. Provide a framework for understanding the components of a comprehensive approach and a process for “diagnosing” where a local or state government might begin to improve its effectiveness; and
3. Describe how the Seattle Municipal Court and the King County Sheriff’s Department chose to focus on removing firearms from misdemeanants at or before the time of conviction, and the specific coordinated steps that will be necessary for Seattle/King County to achieve that goal.

In 2000, staff from the City of Seattle’s Human Services Department’s Domestic & Sexual Violence Prevention Office obtained grant funding from the federal Grants to Encourage Arrest Policies Program to fund the research and recommendations presented in this paper. That office contracted with the Seattle Municipal Court to gather information and prepare this paper. The information presented in this paper was gathered and written by Kennedy Conder, as Special Project Coordinator. The Honorable Fred Bonner of Seattle Municipal Court has served as judicial advisor for this project.

What This Report Contains

Chapter 2 provides an overview of the problems, risks and costs when domestic violence and guns intersect. It also describes how current efforts across the country are inadequate; the failure to utilize existing tools; and the growing consensus among the public and elected officials that more must and can be done to prevent domestic violence homicides with guns. Chapter 3 provides a description of a comprehensive legal framework for disarming domestic violence perpetrators, and shows the loopholes and corresponding “patches” needed to reduce risks to victims, their children and their communities. This chapter also outlines a process for determining next steps within a local jurisdiction. Chapter 4 explores the current situation in Seattle and recommended next steps.

This chapter serves as both an example of how local jurisdictions can develop feasible changes, while also describing a comprehensive solution to the major gap of disarming domestic violence perpetrators who have committed an alleged misdemeanor offense.

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2. Domestic Violence + Guns + Lack of Effective Responses = Loss, Cost and Risk

Loss of Lives is Staggering

From 1976 to 2000, over 37,500 intimate homicides (spouses, ex-spouses, boyfriends and girlfriends) in the United States took place with guns. Over 23,700 of these, or 63%, were female.⁷

In 2000, guns were the weapon used in 961 of the intimate homicides; 76% of the victims killed with guns were female.⁸

From 1997 to August of 2002, there were a total of 308 domestic violence homicide victims (intimate partners, children, family and friends) in Washington State.⁹ Family and intimate partner assaults involving firearms are 12 times more likely to result in death than those that do not involve firearms.¹⁰ Survivors of firearms assaults may suffer horrible injuries. A recent study

of survivors described such cases, including one in which the perpetrator “essentially shot off [the survivor’s] leg—what was left of it had to be amputated—as she pleaded for her life.”¹¹ Abusers who kill their intimate partners often injure or kill third parties. A Florida study found that in 38% of homicides involving intimate partners the perpetrator kills more than one person, including children, those that intervene, and bystanders.¹² Law enforcement officers are at risk as well. Four out of the last five officers who died in the line of duty in Washington State were killed while investigating a domestic violence related incident or by a suspect with a significant history of domestic violence.¹³

Costs Accrue to Victims, Families, and Communities

Victims and their families incur significant losses as a result of perpetrators’ possession and use of firearms. Community safety is threatened and enormous health and criminal justice costs are incurred. Between 60 and 80 percent of the hostage or barricaded person incidents responded to by law enforcement SWAT teams are domestic violence related.¹⁴

The average cost to treat a gunshot wound including therapy is \$50,000.¹⁵

From 1987 to 1990, crime costs related to adult victims of domestic violence totaled \$67 billion in the United States. Medical costs for abused women, children and older people are estimated at a national annual cost of \$857 million. In addition, employers incur many costs due to worker absenteeism and reduced productivity due to domestic abuse; the value of lost productivity from employment each year is estimated to be \$727.8 million.¹⁶

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Civil Liability for Failing to Implement Effective Domestic Violence Firearms Policy

Failure to Protect or Train

Criminal justice systems in many jurisdictions have been sued for damages for action or inaction of law enforcement officers, prosecutors, and post-conviction supervisory personnel. Theories for seeking damages include “failure to protect,” “failure to train,” and “negligent entrustment.” When citizens believe their criminal justice personnel have not met the expected level of service, or have not been trained properly, local governments become vulnerable to costly lawsuits from citizens or their estates.

The following are quotes from Steve Hogan, a national expert on liability for law enforcement in DV related cases, made at a presentation given at the National College of District Attorneys conference in 2000:

The town of Newton, Connecticut was held liable when police failed to confiscate a firearm carried by the defendant during a verbal dispute with his girlfriend. Six days later the defendant returned to the house and shot his girlfriend and himself.¹⁷

In New York, the court found liability when, during a domestic violence incident, police failed to confiscate a semi-automatic pistol that the defendant possessed unlawfully. The defendant later used the weapon to kill his wife.¹⁸

Washington Courts have outlined the circumstances in which a special duty of care – and therefore increased likelihood of liability – arises for government agents. In *Bailey v Forks*, police officers allowed an intoxicated person to drive away and he injured Bailey in an accident that occurred a little while later. Excerpts from the ruling in *Bailey*:

Thus far we have identified four situations in which a governmental agency acquires a special duty of care owed to a particular plaintiff or a limited class of potential plaintiffs, rather than the general duty of care owed to the public at large:

1. When the terms of the legislative enactment evidence an intent to identify and protect a particular and circumscribed class of persons (legislative intent).

2. Where the governmental agent responsible for enforcing statutory requirements possesses actual knowledge of a statutory violation, fails to take corrective action despite a statutory duty to do so, and the plaintiff is with the class the statute intended to protect (failure to enforce).
3. When governmental agents fail to exercise reasonable care after assuming a duty to warn or come to the aid of a particular plaintiff (rescue doctrine).
4. Where a relationship exists between the governmental agent and any reasonably foreseeable plaintiff, setting the injured plaintiff off from the general public and the plaintiff relies on explicit assurances given by the agent or assurance inherent to a duty vested in a governmental entity.

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Currently, there is no established standard for law enforcement personnel for disarming domestic violence or other violent offenders – either from case law, federal or state legislation, or certification organizations.

When law enforcement agencies are mandated by state and federal laws to provide training to their employees in some areas (e.g., first aid, breathalyzer operation, blood borne pathogens, etc.), failure to provide the training can result in fines and reprimands from federal and state authorities – but may or may not create civil liability to parties who believe they are harmed. However, no such mandate exists for disarming domestic violence offenders.

In addition, many law enforcement agencies seek to be certified (by organizations such as the Commission on Accreditation of Law Enforcement Agencies) to show a certain level of professionalism and effectiveness in their policies, procedures and training. No certification organization contacted required units seeking certification to have in place either a general domestic violence policy or a specific one related to firearms.

Without any established standards, law enforcement agencies and local governments may be more at risk in defending their actions or inactions in civil lawsuits alleging failure to disarm a domestic violence offender.

Seeking Return of Weapons Seized by the Criminal Justice System

Some criminal justice personnel resist development of procedures to disarm domestic violence misdemeanor offenders out of concern of being sued for improperly seizing or retaining a firearm.

However, in most states, there is relatively minor exposure to civil liability in replevin (actions to seek recovery of seized goods) actions; damages in a failure to protect or train case where death or serious injuries are involved could vastly exceed the minor damages available in replevin cases.

Furthermore, local government's liability in replevin actions can be minimized through adherence to policies that allow seizures under exceptions to search warrant requirements and pursuant to state statute.¹⁹

Growing Concern about Lack of Effective Responses

How many abuse victims murdered with guns is enough to spur reforms?

Sarah Buel, Clinical Professor, University of Texas School of Law

Despite the passage of several pieces of federal legislation designed to keep guns out of the hands of domestic violence perpetrators, hundreds of people every year continue to lose their lives when guns are in the hands of domestic perpetrators.

At least 12 of 123 deaths of domestic violence victims in Washington State between 1997 and August 2002 were committed by perpetrators using guns they were federally prohibited from possessing because they had a prior domestic violence conviction.²⁰

State legislatures taking action. Some states have begun to realize that they must pass their own legislation to complement and enforce the federal laws if they want to prevent domestic violence homicides and injuries with guns. Among the states tackling various federal loopholes with “model” legislation are Arizona, California, Delaware, Hawaii, New Hampshire, New Jersey, New York, Texas, West Virginia, and Wisconsin.²¹ Most states have passed at least some legislation to disarm domestic violence perpetrators.²² The federal laws and recent state laws reflect a growing understanding and consensus among the voting public and their elected representatives that perpetrators present a heightened threat to survivors when they have access to firearms.²³

Laws don’t work if they’re not enforced. The largest problem with these laws is insufficient enforcement. A state law in Wisconsin prohibiting someone under a court restraining order from possessing a firearm during the duration of the order received little response.²⁴ In 2001, U.S. Attorney’s offices across the country (federal prosecutors charged with bringing charges on violations of federal gun laws) filed 118 cases against misdemeanor perpetrators in possession of a firearm. None were filed in the Western District of Washington, which includes the Greater Puget Sound region,²⁵ although in Seattle alone it is estimated that each year 150-200 defendants in Seattle Municipal Court fail to surrender firearms after being ordered by the court to do so.²⁶

Resistance to enforcement. In addition to historic resistance by police officers and prosecutors in enforcing domestic violence laws, many officers and their unions reacted with “confusion, outrage, and legal challenge” to a 1996 federal law²⁷ that did *not* exempt law officers who have previous domestic violence convictions from possessing a firearm, even for use in their official capacity.

Police departments around the country do not show reluctance to disarm felons, gang members, terrorists and other perpetrators perceived as violent and dangerous. In fact, during the 1990’s, police engaged in numerous gun “buy back” programs, appealing to urban youth to bring firearms to their station house. Some of these same police departments now claim they do not want domestic violence offenders turning in firearms at their facilities because they have no room to store them.

Since 1995, the City of Seattle and many criminal justice practitioners and organizations in King County have studied the role of firearms in domestic violence. A local group of criminal justice and community agencies’ representatives chaired by then-Superior Court Judge Bobbi Bridge to review a high profile domestic violence homicide and the Washington State Coalition Against Domestic Violence have developed specific recommendations to reduce the harm caused by domestic violence perpetrators who possess firearms. To date, none of those recommendations have been implemented.

Without Legislative and Policy Changes, and Leadership at the Highest Levels, Unnecessary Deaths and Costs Will Continue

Throughout the country, law enforcement officers, prosecutors and judges are treating the removal of firearms in domestic assaults differently than in other forms of violent criminal behavior. Even when laws exist to disarm domestic violence suspects and offenders, patrol officers and others in the criminal justice system are failing to put them to use.

This situation is reminiscent of the circumstances that led to legislation with compulsory arrest provisions for domestic violence crimes. Twenty years ago, law enforcement officers would respond to a “domestic disturbance,” find there was probable cause to arrest the male party for

assaulting his female partner, but exercise their “discretion” and not make an arrest – contrary to their arrest procedures in other types of assaults. When it came to light that this was the typical practice of many law enforcement agencies and individuals, battered women and their advocates demanded that state legislatures pass laws to remedy the situation.

The Washington State law and most other state laws have three major provisions. They require arresting the perpetrator when probable cause exists to do so, provide for sanctions against an officer and his/her department if they fail to arrest the suspect as required, and grant “good faith” immunity from liability for officers when they make an arrest.

Only with this “mandatory arrest” legislation, the increase in liability protection for officers, and the threat of sanctions for non-compliance did the practices of law enforcement change dramatically. All indications nationally suggest that mandatory enforcement legislation may also be necessary before local and federal firearms laws are enforced.

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3. A Comprehensive Response to Disarming Domestic Violence Abusers

Keep Guns Away and Get Them Away from Abusers

A comprehensive approach to disarming domestic violence perpetrators must stop perpetrators from purchasing or possessing firearms, remove guns that perpetrators already possess, and prevent them from acquiring more firearms.²⁸ In addition, it should hold perpetrators accountable to the full extent of the law for violations of gun laws.

Two premises – both good news – are important in preventing domestic violence homicides with firearms:

- 1. We know what works: take the guns*
- 2. What you do makes a huge difference: take the guns*

Sarah Buel, Clinical Professor, University of Texas School of Law

Goal is simple; getting there is complex. Given the complex tangle of federal and state laws, regulations, constitutional restraints on search and seizure, policy, practices and personal beliefs that come into play in accomplishing these goals, no state or local community should underestimate the complicated nature of this undertaking. In fact, as noted below, it may be both necessary and wise for states and local communities to move ahead incrementally rather than try to make too many changes at once.

Two target groups; different tactics required. There are two “populations” of perpetrators from which firearms need to be removed:

1. Those prohibited by law from purchasing or possessing a firearm
2. Those not prohibited by law from having a gun, but who pose a danger to victims or the community

Federal law provides the foundation. Table 1 describes the legal framework in effect to address both groups. Federal laws form the basis for making it illegal for some perpetrators in group one to buy or own firearms – through prohibiting felons, domestic violence misdemeanants, and persons subject to a domestic violence restraining order from purchasing or possessing guns. As noted in Table 1, despite the good intentions of these laws, they leave many loopholes, some of which have been filled by complementary state legislation. Yet even when the legal loopholes are filled, many states do not prescribe enforcement procedures to carry out the laws.

From the state house to the street level. To date, states have been slow to enact legislative authority for removing firearms for perpetrators who do not fit one of the prohibited federal or generic state categories for purchasing or possessing firearms. A few states have passed “second

generation” laws to start to fill the loopholes that were not closed in the first round of states’ legislative attempts. These newer laws move down to the street and courtroom level, giving those on the front lines tools to remove firearms at a domestic violence scene, restrict the return of firearms to domestic violence offenders, and identify and disarm perpetrators who already possess firearms. The tools range from providing an effective application of search and seizure procedures to mandated cross-referencing of records on purchase and ownership of guns with records of persons prohibited from owning or possessing them.²⁹

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Federal, state and local authorities must work together. The tactics differ considerably between the two groups of perpetrators who need to be disarmed and for different circumstances within each group, as shown in Table 1 below. Success requires state legislatures, courts and law enforcement authorities to work in tandem with federal authorities to enforce laws that identify domestic perpetrators and prevent them from having firearms.³⁰

Effective practices needed. In addition, success requires the ability and willingness of key players to develop effective practices to enforce the intent of the laws. Such practices have been described for judges,³¹ and the New Jersey courts have broadly construed the language of that state’s legislation on seizure and forfeiture of weapons in domestic violence cases to provide victims of domestic violence “the maximum protection from abuse the law can provide.”³²

Selecting Next Steps in a Local Jurisdiction: A Diagnostic Process

A local jurisdiction with interest in preventing domestic violence deaths and injuries with firearms faces a daunting task. Determining the needs, selecting a feasible option that meets an important need, and developing a clear plan to demonstrate that the desired approach is realistic is a big job.

Each jurisdiction has its unique set of state laws, its own local policies, and its own mix of leadership and resistance.

The Domestic Violence Council of the City of Seattle, the Seattle Municipal Court, and the Seattle Human Services Department’s Domestic & Sexual Violence Prevention Office used the steps below to determine a specific course of action to take now while also identifying additional necessary state and local actions. The following chapter describes how they chose to focus on removing firearms from misdemeanants at or before the time of conviction and their plan to accomplish that goal.

Assess Federal Legislation

- f*ô Understand federal legislation and its relationship to state legislation
- f*ô Determine extent to which federal officials are enforcing laws
- f*ô Determine extent to which state and local officials are enforcing federal laws
- f*ô Identify needs and gaps in legislation and practice

Assess State Legislation

- f*ô Determine what current laws allow in disarming perpetrators
- f*ô Determine extent to which current laws are being enforced
- f*ô Identify needs and gaps in legislation and practice

Assess Local Situation

- f*ô Determine what reports, studies or initiatives have been completed and the results
- f*ô Find out what efforts are underway or are planned
- f*ô Gather data on the extent of domestic violence firearms incidents locally
- f*ô Gauge awareness of the prevalence of these situations
- f*ô Establish what is working well and what is not

fô Identify needs and gaps in legislation and practice

fô Identify supporters and opponents

Analyze for Importance, Sequence and Feasibility

fô Identify largest gaps and select ones that represent the next logical building blocks locally

fô Find models for or create a specific plan to meet the gap

fô Seek input on feasibility and refine plan

fô Develop leaders and engage supports to effect change

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Table 1: Disarming Domestic Violence Abusers

A. Individuals Prohibited by Law from Purchasing or Possessing a Firearm

Federal Law Protection Offered Loopholes State Legislation Needed WA

Has? Changes in Practice Needed

Gun Control Act of 1968

Prohibits anyone convicted of a felony from possessing a firearm Law enforcement officers and military personnel who are required to carry a gun on the job are exempt

Ensure that all persons convicted of felonies are disarmed

Federal and state prosecutors prosecute all violations

Brady Handgun Violence Prevention Act of 1993 (18 U.S.C. Sec. 922(t))

Stop perpetrators who are prohibited by law from buying guns by requiring a background check

Only applies to federally licensed gun dealers require background check for “private” sales – gun shows, swap meets, newspaper ads, etc. (California Title 2, Penal Code, Art. 4. Licenses to Sell Firearms)

No

In a large number of cases, the FBI does not complete its investigation within the 3 business days allowed

Persons with a “conceal carry” permit are exempt

Require revocation of permit when holder loses eligibility

Yes Transmit court orders that eliminate eligibility to appropriate agency

Many states don’t send timely info to the database or fully participate

Yes Fully participate in a timely manner to submit information to the database

Violent Crime Control and Law Enforcement Act of 1994

Expands Brady Law by prohibiting perpetrators under a restraining order from purchasing or possessing firearms

Only applies to restraining orders in which the alleged perpetrator was given notice and an opportunity to appear at a Hearing

Only applies for the duration of the qualifying order

Limits the circumstances in which the prohibition applies

Limits the definition of eligible “intimate partners”

Require the offender subject to a restraining order to relinquish any firearms in the offender’s possession or control, and prohibit the offender from purchasing or possessing weapons for the extent of the

order. (California Family Code Sec. 6389; Hawaii Revised Statutes Sec. 134-7; Wisconsin Domestic Violence

Injunctions 813.12); include broad range of circumstances in which prohibition applies and the full range of domestic violence victims.

Allow prohibition to continue after the qualifying order expires Note firearms prohibition on first page of protective order

Yes

No

No

Encourage judicial training to encourage courts to effectively disarm perpetrators and facilitate enforcement of federal laws

Develop, streamline and enforce procedures to disarm perpetrators

Make sure existing restraining orders and related firearms prohibitions are clear and easy to verify

Federal and state prosecutors prosecute all violations

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A. Individuals Prohibited by Law from Purchasing or Possessing a Firearm (continued)

Federal Law Protection Offered Loopholes State Legislation Needed WA Has? Changes in Practice Needed

Violent Crime Control and Law Enforcement Act of 1994 (continued)

Many states don't send timely info to the database or fully participate

Contribute domestic violence restraining orders to state and federal databases

Yes Fully participate in a timely manner in submitting information to the database

Lautenberg Amendment of 1996 (19 U.S.C. Sec. 921 (A)(33))

Expands Brady Law by prohibiting anyone convicted of domestic violence misdemeanors from purchasing or possessing a firearm

To qualify, the perpetrator must have either used or attempted to use physical force or threatened the use of a deadly weapon

Many states don't send timely info to the database or fully participate or are not "flagging" qualified domestic violence misdemeanor convictions

Expand prohibition of domestic violence misdemeanants to purchase and possess firearms to full range of domestic violence misdemeanors

Define "Dispositional Continuances" and "Stipulated Orders of Continuance" as a conviction under state law

Contribute domestic violence convictions to state and federal databases and "flag" qualifying perpetrators for federal database

Yes

No

Yes

Encourage judicial training to encourage courts to effectively disarm perpetrators and facilitate enforcement of federal laws

Develop, streamline and enforce procedures to disarm perpetrators

Federal and state prosecutors prosecute all violations

Violence Against Women Act of 1994 and the strengthened VAWA 2000

States must honor out-of-state gun prohibitions in restraining/protective orders issued by other states or tribal courts

Does not prescribe the specific enforcement procedures that jurisdictions must adopt to comply

Establish procedures for honoring out-of-state protective orders that make it easy for out-of-state orders to be enforced

Yes

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B. Individuals Not Prohibited from Having a Firearm but Who Pose a Danger to Victims or Community

State Legislation Needed and Examples WA Has? Changes in Practice Needed

Removing Firearms from Domestic Violence Scenes

Require law enforcement officers at domestic violence scenes to seize firearms for "safekeeping" if the officer reasonably believes it poses a threat to the safety of the victim (N.J Stat. Ann. Sec. 2C:25-17 to 33)

No Use law enforcement officers' ability to seek surrender of firearms at the scene

Use law enforcement officers' existing authority to seize at the scene any weapon that is contraband, evidence or an instrumentality of a crime

Document the presence of firearms in police reports so that judges, prosecutors and advocates are aware the offender has firearms and can seek their removal at other stages in court proceedings.

Develop clear, easy-to-use resources to allow law enforcement officers to determine when and how they can seize weapons at a domestic violence scene based on both federal and state domestic violence laws and allowable search and seizure techniques

Restrict Return of Firearms to Domestic Violence Offenders

Authorize forfeiture proceedings with strict conditions for the return of any weapons, prohibiting such return if the perpetrator still poses a threat to the public or the victim. (New Jersey case law)

No

Prohibit return of firearms to perpetrators if there is any pending case or cause that would impose a state or federal firearm prohibition on the perpetrator and require a thorough search to determine prohibitions

Require courts to conduct a hearing, with notice to the victim, the defendant, and the relevant law enforcement agency before firearms can be returned (N.H. Rev. Stat. Ann. Sec. 173-B:5(X))

No

Identify and Disarm Abusers Who Already Possess Firearms

Authorize courts, when issuing a protection order, to order a search and seizure. (N.J. Stat. Ann. Sec. 2C:25-29(b)(16))

No Develop, streamline and enforce procedures to disarm perpetrators Authorize as a condition of release from custody before trial or on bail or personal recognizance, that a person charged with a domestic violence crime may, as a condition of release, be prohibited from possessing a firearm and order the search and seizure of firearms if required. (New Jersey Revised Statute Criminal Justice Procedures Sec. 2C:25-29)

No Develop, streamline and enforce procedures to disarm perpetrators

Require cross-referencing of records on purchase and ownership of firearms with records on persons prohibited from owning or possessing a firearms and investigation of individuals who are armed and prohibited from possessing a firearm. (California Penal Code Article 1.5)

Unknown Actively seek out permit holders to retrieve revoked permits

Develop, streamline and enforce procedures to disarm perpetrators

Federal and state prosecutors prosecute all violations

Note: Firearms may be voluntarily surrendered at any point in the criminal justice process.

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4. Next Best Steps: Removing Firearms from Misdemeanants At or Before Time of Conviction

Seattle faces many of the same challenges in disarming perpetrators as those faced in other cities and states. The issue has become more visible to both the public and the criminal justice system as a result of widespread news coverage of recent domestic violence victim homicides with firearms and the death by guns of several police officers involved in domestic violence situations.

The Domestic Violence Council of the City of Seattle, the Seattle Municipal Court, and the Human Services Department's Domestic & Sexual Violence Prevention Office identified disarming perpetrators as a priority in their efforts to prevent domestic violence deaths and injuries. The Domestic & Sexual Violence Prevention Office obtained a U.S. Department of Justice grant to gather information and develop a plan of action to reduce domestic violence assaults with guns in Seattle. Through a contract with the Seattle Municipal Court, a project coordinator (the author of this paper) was hired to conduct the researching and planning.

Using the steps described at the end of Chapter 3, the project coordinator and other stakeholders determined that getting guns out of the hands of misdemeanants represented an important and feasible next logical step. They then proceeded to develop a detailed plan to describe the roles and coordination needed by many segments of the criminal justice system. The process and results are described below, organized by the steps outlined in Chapter 3.

Assess Federal Legislation

The project coordinator reviewed applicable federal gun laws that can aid in disarming domestic violence perpetrators, as well as the loopholes in them. He also attended national conferences and spoke to experts around the country on this topic.

He also determined that the U.S. Attorney's office for the Western District of Washington, which includes Seattle, did not file any charges in 2001 for violation of the federal law prohibiting a person convicted of a domestic violence misdemeanor from possessing a firearm.³³ Additionally, few if any local law enforcement organizations are collecting and forwarding information on federal domestic violence gun violations to the U.S. Attorney's office.

Assess State Legislation

Washington State has some strong legislation prohibiting firearm possession by perpetrators under protection/restraining orders and by domestic violence misdemeanants. Washington also

has regulations and procedures in place for contributing its data on persons prohibited from possessing firearms to the federal database.

The project coordinator's data gathering, interviews, and participation in meetings led to the conclusion that neither of these laws were being enforced in Seattle or in any jurisdictions in King County. The reasons for non-enforcement, described further in the next section, are complex.

Although additional legislative tools would assist in enforcement of current laws, important changes in practices could be instituted in Seattle based on the current laws.

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Assess Local Situation

Reports, Studies or Initiatives – Past and Underway

Issue identified and recommendations made. In 1995 the Criminal Justice Committee (CJC) of the City of Seattle Domestic Violence Council elected to examine the role of firearms in domestic violence as one of the main topics to research. A Firearms Subcommittee of the CJC began preliminary research on the issue. They could find no law enforcement agencies actively pursuing this area of law enforcement. The subcommittee subsequently recommended that the Council focus on this critical issue.

In December of 1998, Carlton Edwards stalked, ambushed and shot and killed his estranged wife and three-year-old daughter. This tragedy led the King County Superior Court's Presiding Judge to convene an informal debriefing on the incident and the domestic violence history leading to the homicide. In June of 1999 the participants agreed to a number of recommendations with regard to how domestic violence cases are processed, including two recommendations related to gun seizure and surrender.

In both 2000 and 2002, the Washington State Coalition Against Domestic Violence issued reports on fatality reviews of domestic violence homicides in the state. Both reports contained several recommendations to limit perpetrators' possession to firearms.

Very limited progress. Except for the modest steps noted below, none of those recommendations have been implemented.

In 2000, the King County Superior Court Presiding Judge requested that the King County Prosecutor's Office look into the issue of firearms and domestic violence, thus forming the Firearms and Domestic Violence Committee. As a result in 2002, the King County Sheriff's Office changed its domestic violence reporting supplemental form to include specific information about firearms.

In 2003, the City of Seattle Domestic & Sexual Violence Prevention Office sought additional federal funding for a domestic violence firearms project in the King County Sheriff's Office. A project coordinator was hired and a database for tracking firearm information, from the incident report supplemental form to the orders for surrender, was developed. Further, under strong judicial leadership from a specialized domestic violence court, orders for misdemeanor perpetrators to turn in their firearms within 24 hours of sentencing and return to court within 48 hours with proof of surrender from the King County Sheriff ramped up activity on firearm surrender, getting the attention of law enforcement and policymakers. In the fall of 2003, the King County Sheriff's Office began roll call training for officers on this issue.

Data on domestic violence incidents and awareness of these situations

Neither the Seattle Police Department nor any major law enforcement agency in the region or around the country contacted could provide information on the number of domestic violence related firearms homicides they investigated each year. It appears they are not required to report

this data to other sources and have chosen not to track it themselves.

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What is working well and what is not; needs and gaps; supporters and opponents

Felons being disarmed. Policies and procedures exist for removing firearms from felons by the Washington State Department of Corrections and its armed parole officers. Additionally, law enforcement has traditionally and proactively arrested felons who possess firearms illegally.

Gathering information on current situation. Efforts were made to gather the information most relevant to the goals of this project. The goal was to gather enough information to help policymakers and leaders understand the need to take serious action to disarm misdemeanor domestic violence perpetrators and offer a concrete plan to make a significant difference in that regard. Interest in addressing this problem is only now slowly emerging so there is very little information on current implementation strategies. The following sources were used to determine what was and was not working well locally:

f▸ A literature review, which included: general domestic violence; policies and procedures for all members of the criminal justice community; statutes; case law; civil liability; and criminal law.

f▸ Participation in local training and strategic planning efforts related to enforcing firearms laws.

f▸ A short questionnaire, which was sent to selected criminal justice and community-based organizations that come in contact with domestic violence victims and perpetrators. ³⁴ Respondents were asked about their current practices with domestic violence misdemeanor suspects and firearms, and changes they would recommend to increase the safety of domestic violence victims, their families, law enforcement and the community.

f▸ Interviews with key informants employed in various institutions involved with law enforcement, the courts, with domestic violence were interviewed. People interviewed were offered anonymity, and many chose this option.

f▸ Two discussion groups with practitioners who were sent questionnaires. The first group covered current practices in this area; the second addressed best practices to achieve the goal of disarming misdemeanant perpetrators.

f▸ Local print media for news stories about domestic violence and weapons.

f▸ Where available, statistical data and police incident reports from local jurisdictions.

Findings of needs and gaps. With rare exceptions, the following serious gaps were found in disarming domestic violence perpetrators in Seattle:

*f*ô No law enforcement, prosecution or court policies supporting the enforcement of laws that get guns out of the hands of perpetrators

*f*ô No removal of firearms by police officers at a domestic violence scene

*f*ô Failure to document presence of guns in police reports

*f*ô No removal of arrested perpetrators' firearms prior to conviction

*f*ô Failure to enforce provisions in protection orders prohibiting the purchasing or possession of firearms

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*f*ô Lax procedures for returning firearms to perpetrators without determining available grounds to retain the firearms

*f*ô Lack of procedures for surrendering firearms

Some reasons for gaps. The primary reasons these serious gaps exist based on the information obtained from the above sources are: lack of awareness and/or understanding of the issue, the seeming complexity of the issue at first glance, and lack of interest or even resistance by law

enforcement and other sectors. Observations of the project coordinator that support identification of these issues as gaps include:

„X In a related project, all domestic violence related cases adjudicated in Seattle Municipal Court for the months of June, July and August 2003 were reviewed. Of the 90 cases reviewed, one police incident report mentions the presence of a firearm at the scene, and none of the domestic violence supplemental reports (which contain a section relating specifically to firearms) mention the presence of a firearm.

„X Community members and those in the criminal justice system appear anxious to take firearms away from offenders who assault strangers, yet do not show a similar interest in offenders who assault their intimate partners. “Everyone wants to take guns away from the ‘perp’ who has six numbers behind his name,” said one key informant, “but not even cops care about disarming convicted perpetrators.” (“Six numbers” refers to identification numbers assigned by the Washington State Department of Corrections to persons convicted of felony crimes.)

„X The FireArm Crime Enforcement Coalition of King County (FACE) has a mission to “Develop and implement strategic initiatives that unify law enforcement, prosecutors, corrections and other vested agencies in a consolidated effort to reduce the incidence of violent firearm related crimes.” The FireArm Crime Enforcement Coalition of King County developed a strategic plan for dealing with firearms crimes in King County in 1999. The issue of firearms in domestic violence situations is not addressed.

„X In June 2002, copies of relevant domestic violence related state and federal laws, along with some liability case law and legal opinions were submitted to FireArm Crime Enforcement Coalition of King County for use in an 8-hour countywide training session on enforcement of firearms laws. No information on domestic violence and firearms was included in the training, nor were the printed materials included in the handbook.

„X For this project, questionnaires seeking information about current practices and suggested changes in the area of domestic violence misdemeanors were sent to 105 Seattle law enforcement personnel; only 9 were returned – of those, 8 were from domestic violence detectives. None of the 60 patrol officers³⁵ or the 5 people in the 911 communications center³⁶ who received questionnaires returned them. One of 20 staff from the records/evidence section returned the form.

„X The same law enforcement personnel who received questionnaires were invited to two discussion groups to discuss current practices and suggestions for best practices. No one from the Seattle Police Department’s communications section or patrol division participated.

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„X In 2001, U.S. Attorney’s offices across the country (federal prosecutors charged with bringing charges on violations of federal gun laws) filed 118 cases for a misdemeanor perpetrator in possession of a firearm. None were filed in the Western District of Washington, which includes the Greater Puget Sound region.³⁷

„X There was a very low return rate for questionnaires sent out about this project.³⁸ Their responses about what is being done or what could be done to remove firearms from misdemeanor domestic violence offenders reflected the following themes:

„h Nothing is being done on this issue

„h Most groups blame lack of action on the failure of another group to do its part

„h Staff are not being attentive to the details around this issue

„h The process of determining eligibility for possession of a firearm is too time consuming

„h There is confusion about the laws in this area

As the project coordinator conducted interviews, met with stakeholders, and attended meetings with practitioners, he was consistently told that insurmountable barriers in their field of expertise prohibited them from taking more active steps to disarm perpetrators.

Analyze for Importance, Sequence and Feasibility

Two important options; one more feasible in the short term. As noted above there are many large gaps in disarming domestic violence perpetrators in Seattle. Perhaps the two largest ones are the failure to remove firearms at a domestic violence scene when the suspect is not prohibited from possessing firearms but poses a threat to the victim and community, and failure to remove firearms from domestic violence misdemeanants at or before the time of conviction. While addressing the first gap has the potential to remove many more firearms from the hands of many more perpetrators, it requires additional state legislation and major changes in practice by hundreds of individuals to effect a significant change. On the other hand, addressing the second gap can be accomplished within existing state laws and requires a much smaller number of people to change their practices to make a difference. It will reach fewer perpetrators initially, but may pave the way for plugging other gaps.

Recommended option to pursue. Because disarming domestic violence misdemeanants at or before the time of conviction can begin without further state legislation and involves a smaller group of people to change their practices, the project coordinator recommended that:

Additional research and planning should be directed to developing a plan to remove firearms from domestic violence misdemeanants at or before the time of conviction.

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Demonstrating how to overcome barriers: Vigorous arguments were made during information gathering for this report that disarming domestic violence misdemeanants was not feasible for a variety of reasons. The following is a response to those arguments most commonly made nationally and locally.

Barrier 1 – Process to Remove Firearms Too Complex and Costly

Response: Some jurisdictions have implemented programs for impounding vehicles driven by someone with a suspended driver's license. All members of the criminal justice system cooperated to create systems of vehicle seizure and storage, court hearings and sanctions. Such systems are feasible when the will to create them exists.

Barrier 2 – Lack of Resources and High Cost

Response: There is an exceptionally high cost to domestic violence victims and their loved ones of failing to stop firearm fatalities and serious injuries. At some point, that high cost is likely to lead to liability by local governments for failure to protect its citizens.

Barrier 3 – No Suitable Way to Store and Dispose of Weapons

Response: Local groups have figured out ways to store and dispose of vehicles, large amounts of drugs, and of guns acquired in “buy back” programs. The Danvers, Massachusetts Police Department has created a partnership with a local firearms dealer to store and dispose of surrendered weapons.

Barrier 4 – Judges Must Remain Neutral

Response: There are various restrictions that Congress and the state legislature have enacted to limit certain defendants' access to firearms to promote public safety and prevent death and severe injuries in domestic abuse cases – judges can and should enforce those laws. Judges should also be sensitive to the rationale behind provisions for mandatory and discretionary removal of firearms because of the considerable risk to the public and

survivors if perpetrators retain access to firearms.³⁹ Judges certainly have the authority and responsibility to monitor compliance of and enforce their orders.

Barrier 5 – No Mechanisms To Enforce Judge’s Orders to Surrender or Forfeit

Response: The lack of mechanisms to enforce Judge’s orders to surrender or forfeit firearms can be remedied by creating them.

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Barrier 6 – Victims Don’t Disclose Presence of Firearms

Response: Victims are likely to be in a state of crisis and confusion at the time they are asked about the presence of firearms. They may be filled with fear and feel powerless.

They may believe that the perpetrator will be even more abusive if they reveal information that leads to the loss of his firearms.

The burden of disclosure or blame for nondisclosure should not be shifted to the victim.

Law enforcement, advocates, prosecutors and judges need to clearly and repeatedly ask the victim about firearms in the home or available to her perpetrator. They also need to use all available records and databases, and repeatedly ask the perpetrator about access to firearms.

Barrier 7 – Belief that Solution is for Victims to Buy Handguns to Protect Themselves

Response: This is a deadly myth. The Violence Policy Center says that “...the belief that the mere possession of a firearm, usually a handgun, offers both security and personal empowerment has long been a fixture of male mythology in our culture. New efforts to peddle this myth to women are more than a matter of trying to sell shopworn goods. It is a bad solution to a real problem, one guaranteed to make it worse, not better.”⁴⁰

The plan to disarm domestic violence misdemeanants in Seattle

To effectively disarm domestic violence misdemeanants, the following organizations will need to make major and coordinated changes in their policies and practices: The Seattle Police Department, community-based victim advocates, defense counsel, personal recognizance screeners, City Attorney’s Office, Seattle Municipal Court, Seattle Municipal Court Probation Department and providers of perpetrator intervention services.

Removal of illegally possessed firearms can be initiated at any point in the criminal justice system.

Police can remove illegally possessed firearms at the scene; City Attorney staff upon learning of illegal firearms possession can recommend removal to the judge while a criminal case is pending;

and judges can remove firearms at adjudication when defendant is found guilty and the judge is aware of the defendant’s access to firearms.

It is equally important that each person in the criminal justice system coming in contact with the suspect document his access to firearms so everyone subsequently involved in the case is aware of their existence and can consider it in their actions. Each criminal justice system department will play a role in each case where illegally possessed firearms are removed.

While the plan summarized below focuses on ensuring that no perpetrators are allowed to keep firearms at the point of their conviction, it also provides a number of opportunities earlier than conviction at which perpetrators could be disarmed. The complete list of responsibilities is contained in Appendix A.

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Who Major Responsibilities Rationale

Seattle Police Department

911 Operators,

Dispatchers

- „X Ask about the presence and location of firearms
- „X Check databases for information on possession or prohibitions against guns
- „X Protect safety of victim and officers
- „X Put focus on firearms from the beginning
- „X Identify opportunities for early disarming

Patrol Officers

- „X Ask about, locate, and neutralize firearms
- „X Seek surrender of firearms
- „X Seize firearms when allowed
- „X Document presence of firearms in police report
- „X Protect safety of victim and officers
- „X Take advantage of opportunities for early disarming
- „X Alert advocates, prosecutor and court to presence of firearms

Victim Support Team

- „X Ask about perpetrator’s access to firearms
- „X Provide counsel on safety
- „X Facilitate surrender of firearms
- „X Protect safety of victim and officers
- „X Take advantage of opportunities for early disarming

Evidence Section

- „X Accept and store firearms
- „X Release firearms only when ordered by judge and when person is not otherwise prohibited from possessing them
- „X Provide safe storage location
- „X Avoid disallowed return of firearms

Communitybased Victim Advocates

- „X Provide assistance in safety planning that addresses the danger of firearms
- „X Facilitate surrender and sale of firearms by providing information on procedures to do so
- „X Protect safety of victim
- „X Take advantage of opportunities for early disarming

Defense Counsel

- „X Advise client to surrender firearms
- „X Advise client of consequences of failure to comply with surrender or forfeiture orders
- „X Provide information to defendant on firearms laws and consequences

Personal Recognizance Screeners

- „X Determine defendant’s access to firearms by checking databases and asking victim about access to firearms
- „X Highlight history of violence, potential for dangerous behavior, and access to firearms
- „X Ensure relevant information on access to firearms and history is available during criminal proceedings

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Who Major Responsibilities Rationale

City Attorney’s Office

Advocates

- „X Gather information on firearms issues on the current case
- „X Gather historical information relating to defendant’s access to firearms and forward to the City Attorney
- „X Provide report to Deputy City Attorney and court file
- „X Ensure firearms issues are identified and made available during proceedings

Intake and Case Preparation Staff

- „X Perform database checks for possession or access to firearms and for criminal history
- „X Ensure relevant information on guns and history are available during proceedings

Assistant City Attorney

- „X Use negotiation and court hearing opportunities to disarm defendant
- „X Request immediate sanctions for failure to comply with surrender and forfeiture orders
- „X Take advantage of opportunities for early disarming
- „X Seek prompt enforcement of court orders

City Attorney

- „X Engage U.S. Attorney for the Western District of Washington to prosecute violations of federal laws on purchasing or possession of firearms by perpetrators
- „X Federal penalties are stiffer than state penalties
- „X U.S. Attorney's Office needs to assist in stopping domestic violence deaths and injuries

Seattle Municipal Court

Bailiffs

- „X Facilitate and verify defendant's compliance with surrender or forfeiture orders
- „X Handle logistics and track compliance

Judges

- „X Order the surrender of firearms within 24 hours at court hearings for arraignment, pleas, Stipulated Orders of Continuance, and deferred prosecution
- „X Order forfeiture upon conviction
- „X Order an arrest warrant and/or search warrant (when access to firearms is known), and immediate review hearing for noncompliance with orders to surrender or forfeit firearms
- „X Authorize Seattle Police Department to conduct search and seizure as necessary to enforce orders
- „X Protect safety of victim and the community
- „X Ensure compliance with state law
- „X Implement procedure to enforce compliance

Probation

- „X Facilitate the surrender of firearms
- „X Include firearms issues in pre-sentence report
- „X Monitor and act upon noncompliance with court orders on firearms prohibitions
- „X Provide court with information to issue and enforce orders disarming perpetrators

Providers of Batterer Intervention Services

- „X Require compliance with firearms laws and orders before beginning intervention
- „X Report non-compliance immediately
- „X Enlist providers of batter intervention services to assist in compliance

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Initial Investigation is Best Time to Intervene

Removing firearms at initial domestic violence investigations can make use of existing laws *and* makes common sense. A domestic violence incident rarely occurs in a vacuum. It is a pattern of behavior that most often increases with frequency and severity over time. It is therefore highly likely that by the time a law enforcement officer responds to the scene of a domestic violence incident, there has already been a history of multiple incidents of abuse. On average, a woman is abused six to ten times before she ever calls 911.

Removing firearms at an initial investigation provides a number of important benefits, including:

- „X **Immediate reduced risk** to the victim, family members, police officers and the community.
- „X **Maximizes opportunities to disarm.** Patrol officers have many more opportunities to disarm violent perpetrators than do other branches of the criminal justice system. Seattle Municipal

Court processes about 600 domestic violence convictions each year in which the court would have some ability to require removal of firearms from offenders.⁴¹ On the other hand, the Seattle Police Department responds to about 12,000 domestic violence 911 calls each year.

„X **Reduced cost to the criminal justice system** in trying to obtain the firearms at later stages of the proceedings.

„X **Utilizes personnel best suited to disarm.** Even if a court orders a perpetrator to surrender weapons after adjudication, municipal probation officers who monitor the terms and conditions of a sentence are not trained or equipped to deal with violent armed offenders, nor do they have authority to perform searches. (In contrast, state parole officers have these tools available to them.) Seattle Municipal Court needs to rely on the Seattle Police Department for these capabilities.

„X **Reduced liability for failure to protect** persons harmed by the firearms after the initial investigation. For example, possession of a firearm by a convicted perpetrator is a crime for which officers at the scene are obligated to investigate and to collect evidence; failure to do so could provide solid grounds for liability for later death or injury caused by firearms that should have been removed.

5. Additional Challenges and Further Opportunities

The above plan to remove firearms from domestic violence misdemeanants in Seattle is only one step needed to develop a comprehensive approach to disarm perpetrators. Depending on the success of implementing the overall plan as well as its various components, local stakeholders will need to determine how to further improve their response to this issue. Within this plan, one anticipated challenge concerns the legal and practical issues surrounding the removal of guns from perpetrators not prohibited from possessing a firearm, but who nevertheless are a danger to the victim and/or the community. Other major opportunities for disarming perpetrators and holding them accountable include enforcement of protection order provisions prohibiting possession of a firearm, and prosecution for State and Federal domestic violence firearms violations.

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Appendix A: Plan to Disarm Domestic Violence Misdemeanants in Seattle

SEATTLE POLICE DEPARTMENT

911 Operators/Dispatcher/Chief Dispatcher

„X Always ask about the presence and location of firearms.

„X Always inform patrol officers of the presence and location of firearms, whether reportedly used in the instant crime or not.

„X Run a premise history and advise responding officers of previous incidents.

„X Check data bases (National Criminal Information Center (NCIC); Washington Criminal Information System (WCIS); Municipal Court Information System (MCIS); Washington State Department of Licensing (DOL); Washington State Department of Corrections (DOC); and District Court Information System (DISCIS)) for concealed license permits, firearm ownership, criminal history, terms and conditions of sentences, terms and conditions of release, warrants, protection orders, etc.

„X Inform responding officers of the results of those data base checks.

„X Facilitate the timely surrender process when ordered by Municipal Court. A request may come at any time during the adjudication process, from first appearance to sentencing and post conviction reviews. (For example the judge can order the surrender at the defendant's first appearance. 911 staff will be contacted by the court. The court will provide the specifics as to

location, incident number, number and type of firearms etc. 911 staff will immediately dispatch officers to take the firearms into custody.)

„X Be familiar with the firearms surrender process in order to provide clear and accurate information when a caller requests assistance in surrendering firearms.

Patrol Officers

„X Ask all parties including children for location of firearms.

„X Obtain consent to view firearms.

„X Locate firearms.

„X Neutralize firearms.

„X Check for warrants, protection orders, criminal history, previous responses to location, previous Seattle Police Department contacts with all parties.

„X Check MCIS for terms and conditions of probation.

„X Accept surrender of firearms.

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„X Seize firearms when they are an instrumentality of a crime.

„X Seize firearms when they are possessed illegally including possession of firearms by DV misdemeanants.

„X Patrol clerks and precinct sergeants accept firearms surrendered by perpetrator, victim, other involved parties 24 hours a day. Provide a receipt (i.e. copy of evidence form) to person surrendering the firearm.

„X Document the presence of firearms in a police report such that the prosecutor, advocates, and the court are aware that the defendant has access to firearms.

Victim Support Team

„X Ask the victim about the perpetrator's access to firearms.

„X Counsel the victim about the dangers of firearms in the home generally and about the dangers the firearms pose to her and children in the home specifically.

Evidence Section

„X Accept, store and release firearms.

„X Release firearms only when ordered by a judge.

„X Release firearms only to qualified persons. Evidence staff will perform data base checks to ensure the receiving party is eligible to possess firearms (MCIS, DISCIS, NCIC, WACIC, DOL, DOC).

„X Give the receiving party copies of state and federal firearms laws outlining the sanctions associated with illegal transfer of firearms.

„X Have the receiving party sign a form acknowledging receipt of information.

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COMMUNITY BASED VICTIM ADVOCATES

„X Ensure that the danger of firearms is addressed when discussing a safety plan with the victim.

„X Emphasize that the best place for storing the firearms is with the Seattle Police Department rather than relatives, friends etc.

„X Inform victim of surrender and/or sale of firearms process.

DEFENSE COUNSEL

„X Advise client to surrender firearm to Seattle Police Department at earliest point in the process.

„X Advise client of consequences of failure to comply with surrender/forfeiture orders.

„X Know the surrender and retrieval process.

„X Assist with legal ownership transfer.

PERSONAL RECOGNIZANCE SCREENERS

- „X Ask defendant about his ability to access firearms.
- „X Ask defendant’s references about his ability to access firearms.
- „X Ask the victim about the defendant’s ability to access firearms.
- „X Perform data base checks, looking for indicators of access to firearms (Department of Licensing for concealed weapon permits, etc).
- „X In narrative portion of form, highlight defendant’s history of violence, potential for dangerous behavior and access to firearms.

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CITY ATTORNEY’S OFFICE

Advocates

- „X Listen to 911 tapes for references to firearms.
- „X Review defendant file for history of firearm access, threatened use and/or use.
- „X Discuss defendant’s ability to access firearms with victim and other involved parties.
- „X Include the issue of firearms access in safety planning discussions with the victim.
- „X Prepare a written summary of the results of the above investigation. Provide that summary to the Deputy City Attorney handling the case. Ensure that memo is placed in the court file such that the sentencing judge has access to at time of sentencing or when accepting a plea.
- „X Provide the complete summary to Probation.

Intake and Case Preparation Staff

- „X Perform database checks for history of possession or access to firearms for both the defendant and the victim.
- „X Perform a “Triple I” criminal history check.

Assistant City Attorney

- „X Listen to 911 tapes for references to firearms.
- „X Assistant City Attorney request surrender at sentencing, including pleas, deferred prosecutions and trial convictions.
- „X Request surrender of firearms at arraignment and every appearance thereafter.
- „X Request the judge order the defendant to surrender all firearms as part of any plea agreement.
- „X Request the judge order the defendant to forfeit all firearms.
- „X Include firearm surrender and forfeiture in all negotiations with defense counsel.
- „X Ensure that defendant is advised of the firearms prohibitions both in writing and verbally by the trial judge.
- „X Educate police officers in the area of firearms seizure and surrender.
- „X Request immediate sanctions for failure to comply with surrender and forfeiture orders.
- „X Emphasize history and pattern of dangerousness at all proceedings.

City Attorney

- „X Explore application for federal grant funds from the “Project Safe Neighborhood” Program that would provide an Assistant United States Attorney to work with the Domestic Violence Unit in the City Attorney’s Office. This Assistant U.S. Attorney would be responsible for reviewing all of the domestic violence cases filed by the City Attorney’s Office, selecting those defendants who qualify for prosecution under the federal statutes and proceeding to file charges and try the cases in U.S. District Court.

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SEATTLE MUNICIPAL COURT

Clerks

- „X Ensure file is complete before presenting it to the sentencing judge.
- „X Send signed firearms ineligibility form to Seattle Police Department Records for them to enter prohibition into Department of Licensing computer.

Bailiffs

- „X Ensure defendant completes all forms related to firearms ineligibility.
- „X Ensure defendant receives surrender procedure information.
- „X Ensure firearms surrender process is explained to defendant.
- „X Explain the process for re-establishing right to possess a firearm post conviction.
- „X Arrange surrender of the firearms to Seattle Police Department before defendant leaves the courtroom or is released from custody.
- „X Check with Seattle Police Department evidence section within 24 hours (via phone or email) to verify compliance with surrender order.
- „X Accept immediate surrender of Concealed Pistol License.
- „X Coordinate immediate surrender of firearms.
- „X Facilitate the return of the firearm upon completion of probation.

Judges

- „X Order the surrender of firearms for all domestic violence related cases, including pleas, Stipulated Orders of Continuance and deferred prosecutions within 24 hours.
- „X Order forfeiture upon conviction.
- „X Order arrest warrant, search warrant, and/or immediate review hearings for failure to comply with the orders to surrender firearms.
- „X Order defendant held in custody until firearms are surrendered to Seattle Police Department.
- „X Order polygraph testing of defendant to ensure compliance with firearms prohibitions of judgment and sentence or plea agreements.

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- „X Ensure a complete record is maintained to identify the conviction for purposes of felony and federal prosecutions in case of noncompliance.
- „X Create a policy that states that the only acceptable placement of firearms is with Seattle Police Department until the case is adjudicated.
- „X Order immediate surrender of Concealed Pistol License.
- „X Order surrender of firearms at every stage in the process, from arraignment to sentencing to final review hearings.

Probation

- „X Facilitate the surrender of firearms by working with bailiffs and the Seattle Police Department.
- „X Prepare pre-sentence reports that include details about the defendant's access to firearms.
- „X Bring the issue of non-compliance with firearms prohibitions to the bench immediately.
- „X Act on information regarding non-compliance immediately. This may mean contacting Seattle Police Department 911 dispatchers immediately and requesting services.
- „X Refer and monitor the administration of polygraph testing of defendant to ensure compliance with firearms prohibitions.

PROVIDERS OF BATTERER INTERVENTION SERVICES

- „X Report non-compliance with firearms prohibitions immediately to probation officer.
- „X Report firearms related threats immediately to 911.

„X Require documentation from Seattle Police Department that defendant has surrendered his firearms to them.

„X Know the current surrender/forfeiture procedure. Do not allow intervention to begin until firearms are surrendered.

„X Know the current requirements and procedures for the return of firearms to the defendant.

¹ Information from National Instant Criminal Background Check Program, Federal Bureau of Investigation, cited in Mitchell, D. and S.B. Carbon, Firearms and Domestic Violence: A Primer for Judges, *Court Review*, Summer 2002.

² See U.S. Department of Justice, Bureau of Justice Statistics, Homicide Trends in the U.S.: “Intimate Homicide,” available at <http://www.ojp.usdoj.gov/bjs/homicide/intimates.htm>

³ Hobart, Margaret for the Washington State Coalition Against Domestic Violence. “*Tell the world what happened to me*” – *Findings and Recommendations from the Washington State Domestic Violence Fatality Review*, December 2002.

⁴ *Id.*

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⁵ *Id.*

⁶ Jose, Julissa. *Disarming Domestic Violence Abusers: States Should Close Legislative Loopholes That Enable Domestic Abusers to Purchase and Possess Firearms*. Los Angeles: Brady Campaign to Prevent Gun Violence United with the Million Mom March, September 2003.

⁷ See U.S. Department of Justice, Bureau of Justice Statistics, Homicide Trends in the U.S.: “Intimate Homicide,” available at <http://www.ojp.usdoj.gov/bjs/homicide/intimates.htm>

⁸ *Id.*

⁹ Margaret Hobart for the Washington State Coalition Against Domestic Violence. “*Tell the World What Happened to Me*” – *Findings and Recommendations from the Washington State Domestic Violence Fatality Review*, December 2002.

¹⁰ Saltzman, L.E. et al., Weapon Involvement and Injury Outcomes in Family and Intimate Assaults, 267 *J. Amer. Med. Assn.*, 3043 (1992); Johns Hopkins University, Center for Gun Policy and Research, *Factsheet: Firearm Injury and Death in the United States* (revised April 2002), available at http://www.jhsph.edu/bin/i/g/US_factsheet.pdf

¹¹ Farr, Kathryn Ann. Battered Women Who Were “Being Killed and Survived It”: Straight Talk from Survivors, 17 *Violence & Victims* 267, 268 (2002) (citing additional studies).

¹² Florida Governor’s Task Force on Domestic and Sexual Violence. *Florida Mortality Review Project Report*, at 51, table 28.

¹³ Coverage in the *Seattle Times* and author’s personal communications.

¹⁴ Bureau of Justice Statistics (2000)

¹⁵ Journal of the American Medical Association.

¹⁶ National Institute of Justice, *Victim Costs and Consequences*, A New Look, Washington, D.C., 1996; Meyer, H. The Billion Dollar Epidemic, *American Medical News*, January 6, 1992; (cited in *Get the Facts – Domestic Violence and Public Policy*, Family Violence Prevention Fund) and Centers of Disease Control and Prevention, *Costs of Intimate Partner Violence in the United States*, available at www.cdc.gov/ncipc/pub-res/lpv_cost/ipv.htm (cited in *Billions Lost to Abuse in the U.S. Each Year, Study Finds*, Family Violence Prevention Fund at <http://endabuse.org>

¹⁷ Czap v. Town of Newton, 1998 Conn. Super. LEXIS 3720 (1998), cited in presentation by Steve Hogan at the National College of District Attorneys conference in 2000.

¹⁸ Benway v. Casey, 1A.D. 2d 465 (N.Y. A.D. 4th 1956), cited in presentation by Steve Hogan at the National College

of District Attorneys conference in 2000.

¹⁹ Stephen Hogan, Assistant Counsel for New York State Police; remarks at the National College of District Attorneys, Sept. 2001

²⁰ *Id.*

²¹ Jose, Julissa. *Disarming Domestic Violence Abusers: States Should Close Legislative Loopholes That Enable Domestic Abusers to Purchase and Possess Firearms*. Los Angeles: Brady Campaign to Prevent Gun Violence United with the Million Mom March, September 2003.

²² *Id.*, Appendix A.

²³ Mitchell, D. and S.B. Carbon, Firearms and Domestic Violence: A Primer for Judges, *Court Review*, Summer

2002.

²⁴ Mecka, Melanie L. Seizing the Ammunition from Domestic Violence: Prohibiting the Ownership of Firearms by Abusers, 29 *Rutgers Law Journal* 607, Spring 1998.

²⁵ Americans for Gun Safety Report, 2001.

²⁶ Author's estimate.

²⁷ The Lautenberg Amendment of 1996, 19 U.S.C. Sec. 921 (a) (33)

²⁸ Jose, Julissa. *Disarming Domestic Violence Abusers: States Should Close Legislative Loopholes That Enable Domestic Abusers to Purchase and Possess Firearms*. Los Angeles: Brady Campaign to Prevent Gun Violence United with the Million Mom March, September 2003.

²⁹ *Id.*

³⁰ *Id.*

³¹ Mitchell, D. and S.B. Carbon, Firearms and Domestic Violence: A Primer for Judges, *Court Review*, Summer 2002.

³² Legislative findings and declarative provisions of N.J. Stat. Ann. Sec. 2C:25-21(d) upheld by numerous court decisions. Mecka, Melanie L. Seizing the Ammunition from Domestic Violence: Prohibiting the Ownership of Firearms by Abusers, 29 *Rutgers Law Journal* 607, Spring 1998, note 40.

³³ Americans for Gun Safety Foundation. *The enforcement gap: federal gun laws ignored, a study of federal gun prosecutions from FY 2000-FY 2002*, and personal contacts with staff of the foundation.

³⁴ The author regrets not including perpetrator treatment providers in the survey.

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³⁵ Questionnaire packets were sent to the Chief of Police, Deputy Chief of Operations, both patrol bureau Assistant Chiefs, the four Precinct Captains, the Sergeant in charge of field training officer program, and thirty patrol officers who had been recipients of the City Attorney's award for excellence in misdemeanor domestic violence investigations.

³⁶ The packet of questionnaires sent to the Seattle Police Department Communication Center was returned. *The Model Operating Procedure for Law Enforcement Response to Domestic Violence and Resource Guidelines*, prepared

by the Washington Association of Sheriffs and Police Chiefs, notes that communications personnel shall inquire about

the presence of firearms and check databases for criminal history.

³⁷ Americans for Gun Safety Report, 2001.

³⁸ Repeated calls to various public defender agencies resulted in no response. The presiding judge of the Seattle Municipal Court called on these organizations to respond, but no completed questionnaires were received.

³⁹ Mitchell, D. and S.B. Carbon, Firearms and Domestic Violence: A Primer for Judges, *Court Review*, Summer 2002.

⁴⁰ Violence Policy Center. Executive Summary of Female Persuasion: *A Study of How the Firearms Industry Markets to Women and the Reality of Women and Guns*, found at <http://www.vpc.org/studies/fpstudy.htm> See also the Executive Summaries of *Unintended Consequences: Pro-Handgun Experts Prove That Handguns Are a Dangerous Choice for Self-Defense*, and *A Deadly Myth: Women, Handguns, and Self-Defense* at <http://www.vpc.org/studies/>

⁴¹ Personal communication with Seattle Municipal Court Presiding Judge Fred Bonner.