


Blueprints for Change: Criminal Justice Policy Issues in Virginia



Virginia Department of Criminal Justice Services
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The Department of Criminal Justice Services (DCJS) is the state criminal justice planning agency in Virginia and is responsible for administering state and federal funds dedicated to improving state and local criminal justice practices, preventing crime and delinquency, and ensuring services to crime victims.

In its role as a planning agency, the Department convened six policy sessions over a two day period in August, 2006. The facilitated sessions explored six different leading edge criminal justice issues, chosen by the Department. Each three-hour session brought together a multidisciplinary group of executive-level participants who were selected because of their knowledge of the issue and their ability to advance the discussion of public policy related to the issue.

The discussions in these sessions, and the recommendations that emerged, are recorded in these policy papers.

In publishing these papers, DCJS hopes that they will stimulate further discussions by state and local decision makers and will provide useful guidance for making substantive statutory change where necessary, as well as for decisions on funding, and policy and program development.

The 2006 Blueprints for Change: Criminal Justice Policy Issues in Virginia documents are:

- **Disproportionate Minority Contact (DMC) with the Juvenile Justice System** •
- **Domestic Violence, Protective Orders, and Firearms** • **Drug Enforcement Status in Virginia** •
- **Enhancing Virginia's Campus Security and Safety** • **Mental Health Issues in Jails and Detention Centers** •
- **Regional Crime Information Sharing Networks** •

**For additional information on these documents, please visit the
Department of Criminal Justice Services website at: www.dcjs.virginia.gov/blueprints**

Domestic Violence, Protective Orders, and Firearms



Domestic violence and guns are a deadly combination. The FBI reports in “Crime in the United States: Supplementary Homicide Report, 2000” that 33% of women who are murdered with firearms are killed by an intimate partner. The Bureau of Justice Statistics reports that 63% of spousal murders and 47% of boyfriend/girlfriend murders were committed with firearms.¹ An article published in the *New England Journal of Medicine* in 1993 reports that households with guns are eight times more likely to have a firearm homicide than those without guns, and that the risk of gun-related homicide is much higher if there is a history of domestic violence.²

In Virginia, firearms are the most frequently used weapons in homicides, accounting for 70% of all homicides in Virginia and 62% of intimate partner homicides.³

Approximately ten years ago, in attempts to address the lethality found when firearms are present in a domestic violence situation, Congress and state legislatures passed laws to remove guns from known domestic violence abusers, specifically those who were respondents to domestic violence protective orders and those who had been convicted of misdemeanor crimes of domestic violence. Federal statutes and the *Code of Virginia* include some very different provisions, as well as some similar ones, resulting in some confusion and inconsistency of practice at the state and local levels.

The federal Violence Against Women Act (VAWA) of 2005 and the Department of Justice Reauthorization Act require that states, as a condition of receiving federal grant funds available through VAWA, certify that their courts notify offenders about these restrictions or, if they don’t do so now, that they will begin doing so within three years (January 2008). Currently Virginia courts do not consistently comply with this requirement.

This requirement prompted the Department of Criminal Justice Services (DCJS), which administers VAWA funds, to examine this issue as part of the Blueprints meeting. The group convened for this purpose included individuals representing federal, state, and local agencies with a stake in the issues. They discussed successes and challenges in policy and practices related to domestic violence and firearm use as they relate to federal and state laws.



POLICY/RESEARCH QUESTIONS

The following questions were posed to the participants.

1. What policies and/or practices could be implemented to enhance **offender notification**, specifically as it relates to the new VAWA regulation?
2. What policies and/or practices could be implemented to enhance **enforcement of the firearms provisions of protective orders**, as they relate to both state and federal law?
3. What policies and/or practices could be implemented to better address **officer involved domestic violence**, particularly as it relates to the firearms provisions of both state and federal law (and the contradiction, therein)?

¹ U.S. DOJ, Bureau of Justice Statistics, “Family Violence Statistics Including Statistics on Strangers and Acquaintances,” June 2005

² Kellermann AL, Rivara, FP, Rushforth NB, Banton JG, Reay DT, Francisco JT, Locci AB, Prodzinski J, Hackman BB, Somes G. “Gun Ownership as a Risk Factor for Homicide in the Home.” *New England Journal of Medicine* 1993 Oct 7;329(15):1084-91.

³ Virginia Department of Health, Office of the Chief Medical Examiner, “Family and Intimate Partner Homicide, Virginia 1999-2003,” October 2004



Differences in State and Federal Laws

Congress passed the federal Gun Control Act in 1994 making it unlawful for a person who is a subject of a protective order which prohibits harassing, stalking or threatening an intimate partner or engaging in conduct which would place an intimate partner in fear of bodily injury to:

- Possess a firearm or ammunition.
- Ship or transport firearms or ammunition in interstate or foreign commerce.
- Receive any firearm or ammunition which has been so shipped or transported.
- Have seized firearms returned.

This particular provision of the Gun Control Act does **not** apply to official use by military or law enforcement personnel while on duty.

In 1996 Congress passed the Lautenberg Amendment to the Gun Control Act, which applies to any person convicted of a misdemeanor crime of domestic violence. This amendment:

- Imposes criminal liability on anyone convicted of domestic violence who subsequently **possesses, ships, or transports** a firearm or ammunition.
- Applies to convictions that occurred before **and** after the date of enactment.
- Carries no official-use exemption for law enforcement or military personnel.

In 1996 the Virginia General Assembly passed legislation making it unlawful for any person who is the subject of a protective order or who has been convicted of assault and battery or stalking to purchase or transport a firearm. In addition, these individuals are required to surrender their concealed weapon permits to the court. The Virginia statutes:

- Do **not** prohibit **possession** of firearms.
- Carries no official-use exemption for law enforcement or military personnel.

The most significant difference between the federal and Virginia firearms provisions is that the federal law prohibits possession, and Virginia law prohibits only purchase and transport. This is typically interpreted by Virginia law enforcement to mean gun owners may possess a firearm as long as they do not carry it on their person or move it from one place to another by other means.

One member of the group, a Virginia law enforcement officer, reported that he served a protective order on a respondent who owned multiple weapons. The officer was not authorized to seize the weapons, as they were not being transported, but he talked the respondent into surrendering six weapons. Two days later the respondent kidnapped his son, shot his wife, and barricaded himself inside his home. Police shot and killed him and found two additional weapons he had not voluntarily relinquished.

Another difference between the federal and Virginia firearms provisions is that Virginia law does not carry an official-use exemption for law enforcement or military personnel. So these personnel are prohibited from carrying weapons (which may be required by their jobs) while they are subject to a protective order.

Law enforcement agencies in Virginia are required by Code to address officer-involved domestic violence in their written domestic violence policies. This subject is included in the Sample Directives Manual published by DCJS. However, in a survey conducted by DCJS in 2002, 30% of the agencies surveyed (127 agencies) reported they had no written guidance on officer involved domestic violence.

U.S. Attorneys' Offices in Virginia prosecute ten to twelve cases a year involving firearms and other protective order provisions under VAWA. They report successful conviction rates. However, they are limited in the number of cases that they can take. There are also some localities in Virginia where prosecutors are aggressive in their prosecution of state firearms violations, for example, localities implementing Project Exile.

Offender/Respondent Notification

As a condition for receiving VAWA grant funds, states must certify that their courts notify convicted domestic violence offenders and respondents to protective orders of the federal firearms prohibitions, as well as any state or local prohibitions.

All protective orders issued in Virginia bear a statement regarding the state firearms prohibitions. Full protective orders issued in Virginia also include a statement regarding the federal firearms prohibitions. At this time there is no procedure for informing a person convicted of a misdemeanor crime of domestic violence of the federal firearms prohibitions.

It is the practice in some localities for the judge to verbally advise respondents/offenders of the firearms restrictions at the end of the hearing or trial. It is also the practice in a few localities to have court service personnel or victim advocates advise both the petitioner/victim and the respondent/offender of the provisions, prohibitions, and procedures initiated as a result of their cases. Some victim advocates and civil attorneys also encourage the inclusion of the seizure of firearms as a separate provision in the protective order petition.

An obstacle encountered in this area is the reluctance of law enforcement, magistrates, and judges, particularly in rural regions of the state, to confiscate guns. Some judges will issue "no contact" orders rather than issue a protective order because of the attached firearms provisions.

Seizure, Storage, Disposal, and Return of Weapons

There are no laws or regulations in Virginia which address law enforcement policy or procedure for the seizure of weapons in domestic violence cases. Practices vary widely not only in seizure, but also in storage, disposal, and return of weapons.

Because the Virginia Code does not make it unlawful to *possess* a firearm when one is a respondent of a protective order, law enforcement officers are often reluctant to seize weapons, without a search warrant. Officers are even reluctant in cases where the victim requests the officer to take the weapon, but she is not the licensed owner. It is also not clear to officers what to do when enforcing a protective order from another state.

In some localities, weapons are temporarily confiscated until a criminal records check is run or until the officer can explain to the victim that if a protective order is issued, the police can hold the weapon until the protective order expires. In other localities, judges order guns confiscated as a specific provision of the

protective order. In short, law enforcement officers are not provided with consistent guidance on when and how weapons should be seized.

Secure storage space is a challenge for many law enforcement agencies. Some charge the respondent for storage space. If the respondent does not pay the storage fee by the time the order expires, the weapon is destroyed.

Respondents will also occasionally persuade third parties to retrieve or hold their weapons for the duration of the protective orders. In one locality where this happened frequently, the law enforcement agency developed a form to be signed by the third parties advising them that if they surrender the weapon to the subject of a protective order or a convicted person, they could be prosecuted under federal law. Since this practice was instituted, no guns have been retrieved by third parties.

Another challenge to the seizure of weapons in Virginia is the ease with which guns can be purchased or rented from unlicensed dealers. A crackdown on unlicensed dealers could do much in halting the availability of guns to domestic violence perpetrators. The Virginia State Police are notified of purchases from licensed dealers. When the State Police are notified that a respondent to a protective order is attempting to purchase a firearm, procedures are in place to hold him or her responsible.

As stated previously, federal law prohibits any person convicted of a misdemeanor crime of domestic violence from possessing a firearm. However, the federal Bureau of Alcohol, Tobacco, Firearms and Explosives, does not have the resources to enforce these provisions. Because federal law enforcement officials must enforce federal laws, federal marshals in some localities have deputized local law enforcement to enable them to assist in the confiscation of weapons from offenders.

Victim Notification

Some local law enforcement agencies notify victims when guns are returned. However, this is not required and the practice is not widespread. Lack of policy surrounding victim notification and the return of guns may also make the law enforcement agency potentially liable in a civil suit.

The Virginia State Police, which administers the state protective order registry and the Virginia Criminal Information Network, notifies local law enforcement agencies when respondents to protective orders issued in their localities attempt to purchase firearms from licensed dealers. This is done with the expectation that victims would be notified by the local agencies of a potential risk to their safety. However, neither the state police practice nor notification by local agencies is encoded or articulated in written policy.

Other

In the course of discussion on the topic of domestic violence, protective orders, and firearms, additional issues were raised that are worthy of future consideration. They include enforcement of interstate orders, victims services for spouses of officers who are domestic violence offenders, timely service of protective orders, lethality assessments, access to protective orders in rural areas, and access to protective orders for persons in a dating relationship.



CONCLUSIONS AND RECOMMENDATIONS

Much can be done in Virginia to address the use of firearms in domestic violence situations. Some strategies require limited effort by one or two agencies. Some require long-term work to effect a change in public policy at the state level. The following list of recommendations is not intended to be exhaustive. Local agencies are likely to create still other procedures that may have a positive impact on this issue at the community level.

1. Propose legislation making possession of a firearm unlawful if a person has ever been convicted of a crime of domestic violence or is the subject of a protective order. This would make Virginia laws consistent with federal law, as well as make it clear that any weapon in the perpetrator's/respondent's home or workplace could be seized. Because it may be difficult to get such legislation enacted, two other suggestions were made: 1) require a respondent of a preliminary protective order to surrender any firearms in his possession for 15 days (the duration of a preliminary protective order); and 2) make it unlawful for a respondent of a "full" protective order to possess a firearm.
2. Give law enforcement statutory authority to seize weapons at the scene, if there is probable cause that an assault and battery against a family/household member is present or if there are reasonable grounds to suspect that family abuse is present.
3. Propose legislation that gives law enforcement officers immunity from prosecution when enforcing firearms provisions in domestic violence cases.
4. Require state park service and staff of game and inland fisheries to do a VCIN check when individuals apply for a hunting license.
5. Provide model policy and training to law enforcement officers on firearms seizure, storage, disposal, and return protocols in domestic violence cases.
6. Develop and promote policy on officer-involved domestic violence. Consider using the International Association of Chiefs of Police (IACP) model, especially prevention and intervention strategies, as well as arrest policies and punitive measures.
7. Require that departments submit paperwork on officers convicted of a crime of domestic violence promptly for decertification by DCJS.
8. Require courts to obtain a signed statement from persons convicted of a crime of domestic violence that acknowledges their understanding that federal law prohibits them from possessing a firearm.
9. Train judges about offender notification requirements.
10. Promote the practice of judges reading the firearms prohibitions to the offender at the hearing or trial.
11. Promote the practice of court personnel, community corrections personnel, and/or victim advocates providing an explanation of the firearms provisions to both offenders and victims.
12. Provide training to magistrates and judges on lethality assessment and victim safety issues connected to firearms and domestic violence.
13. Include victim notification about return and attempted purchase of a firearm by local law enforcement in the notification requirements of Virginia's Victims' Bill of Rights, found in 19.2-11.01 of the *Code of Virginia*.
14. Include surrender of weapons as a specific provision of an individual protective order.

15. Encourage collaboration between local law enforcement and the Bureau of Alcohol, Tobacco, Firearms and Explosives in the enforcement of federal firearms prohibitions. Consider deputizing local law enforcement as federal marshals for this purpose.
16. Encourage collaboration between local law enforcement, local attorneys for the Commonwealth and U.S. attorneys in the prosecution of firearms cases.
17. Consider including effective procedures for serving and enforcing protective orders as one of the of community safety strategies to be considered when a locality seeks to become a certified crime prevention community.



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