

# STOP Newsletter:

## Resources for Pennsylvania STOP Teams



**MARCH 2013**

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### How COURTS CAN REDUCE GUN VIOLENCE

Pennsylvania courts and law enforcement already have legal means to keep firearms out of the hands of abusers and other potentially violent criminals.

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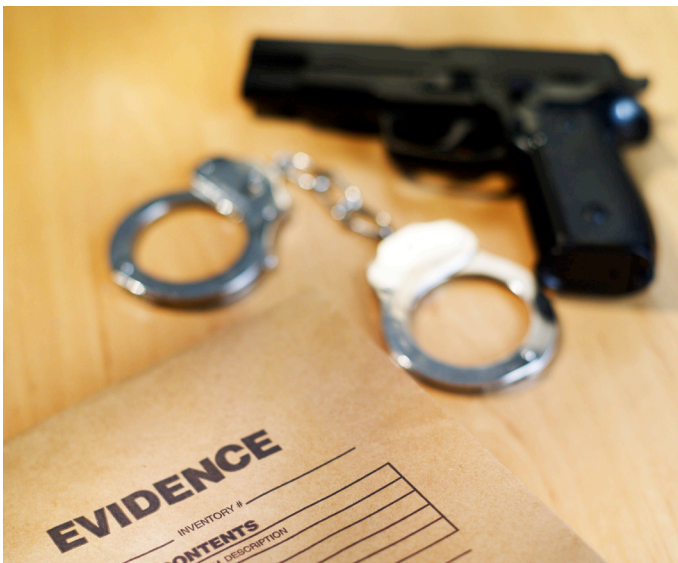


### Q & A ABOUT PCAR'S CAMPUS LAW ENFORCEMENT TRAININGS

Christopher Mallios is an Attorney Advisor for AEquitas: The Prosecutors' Resource on Violence Against Women. Christopher Weaver is a Detective with the State College Police Department. Both are members of the PCAR Campus Project Training Team conducting trainings for campus law enforcement across the state.

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# How Courts Can Reduce Gun Violence



Pennsylvania courts and law enforcement already have legal means to keep firearms out of the hands of abusers and other potentially violent criminals.

## Removal of Firearms from Domestic Violence Perpetrators is Crucial for Victim Safety

Firearms are the weapons of choice among abusers who kill their intimate partners. In fact, intimate partners are more likely to be murdered with a firearm than by any other means.<sup>i</sup> In Pennsylvania alone, 166 domestic violence-related fatalities occurred in 2011, and 66% of those deaths involved a firearm.<sup>ii</sup> Abusers also use guns to scare, threaten, or harm victims. A study of abusers between 1999 and 2003 found that ownership of a gun is highly correlated with using it to threaten an intimate partner.<sup>iii</sup>

With an understanding that access to firearms increases the likelihood of a domestic violence fatality, federal and state policy makers enacted laws to limit an abusive intimate partner's access to firearms. The

United States Congress amended the Federal Gun Control Act to include prohibitions on possession of firearms when an abuser is subject to a court order that prohibits harassment, abuse or threats against an intimate partner.<sup>iv</sup> On the state level, the Pennsylvania General Assembly amended the Protection From Abuse (PFA) Act and the Uniform Firearms Act (UFA) several times to increase the court's authority to protect victims of intimate partner violence from firearm injuries.

When fully implemented, federal and state firearm laws create a web of protection that can prevent domestic violence fatalities. But to successfully implement the protections, each part of the system – the courts, county sheriffs, and the Pennsylvania State Police – must do its part. One hole in the system can destroy the entire web of carefully crafted protections, placing victims of domestic violence, emergency responders, and the public at risk of harm.

Federal and state legislatures recognized that imposing gun prohibitions would not adequately protect victims without enforcement provisions. A defendant must know about the firearm prohibitions in order to comply, and county sheriffs, the Pennsylvania State Police and other law enforcement agencies must know about the defendant's prohibition to properly enforce the laws. Thus, the legislature imposed notice requirements on the court. Notice provisions generally require the court to notify the sheriff, the state police or local law enforcement about orders or convictions that affect a defendant's right to possess firearms. A copy of the order or conviction can serve as notice. The laws also empower the appropriate law enforcement agency to seize firearms from prohibited defendants. This article examines the laws that require the court to provide such notice and the associated duties notice places on sheriffs, the state police or other local law enforcement.

## *Court Responsibilities - Notify*

Pennsylvania law prescribes at what stage a court must inform the sheriff, the state police or other law enforcement agencies about court orders and decisions that impact a defendant's right to possess firearms. Pennsylvania's PFA Act, UFA and Mental Health Procedures Act (MHPA) each include provisions related to the notice a court must provide.

### *Protection From Abuse (PFA) Act*

- If a PFA order includes firearms relinquishment relief, the PFA Act requires the court to transmit a copy of the court's order "to the chief or head of the police force or police municipality and to the sheriff of the county in which the defendant resides."<sup>v</sup>
- If the defendant is convicted of indirect criminal contempt, section 6114(b)(5) requires the court to notify the sheriff of the jurisdiction that issued the PFA order.
- There is no mandated notice form under the PFA Act. Best practice to ensure that proper notification takes place is for the court to modify all indirect criminal contempt disposition orders to include the sheriff of the issuing jurisdiction on the distribution line. The disposition order can then be mailed, faxed or delivered to that sheriff.

### *Pennsylvania Uniform Firearms Act*

In addition to enumerating the firearm prohibitions, the UFA sets forth the notice requirements for certain convictions, determinations and adjudications. To fully comprehend this statutory scheme, one should first look at who is prohibited and then look to when and under what circumstances notification is required.

### *Prohibitions*

- Section 6105 of the UFA imposes a firearm prohibition on all persons who have been convicted of certain enumerated offenses and certain other individuals.<sup>vi</sup> In relevant part, the prohibitions include any individuals who have been "adjudicated as an incompetent or . . .

involuntarily committed to a mental institution for inpatient care and treatment under section 302, 303 or 304" of the MHPA.<sup>vii</sup>

- Any "person who is the subject of an active protection from abuse order issued pursuant to 23 Pa.C.S. § 6108, which order provided for the relinquishment of firearms" is prohibited from possessing firearms.<sup>viii</sup>

### *Notice Requirements*

The UFA notice requires courts to follow a notification process **upon the entry** of a qualifying conviction (including a PFA order) or determination related to an individual's conduct (including a mental health commitment or judgment of incompetency) that would trigger a firearm prohibition.

### *Qualifying Conviction*

The court must **determine whether the defendant has a license to carry firearms.**<sup>ix</sup> "If the defendant has such a license, the court shall notify the sheriff of the county in which that person resides ...[and the state police] of the identity of the person and the nature of the crime or conduct which resulted in the notification."<sup>x</sup> The court must provide this notice on the form developed by the state police, [http://pubs.pcadv.net/palegal/PSP\\_CrtNotice\\_Conviction.pdf](http://pubs.pcadv.net/palegal/PSP_CrtNotice_Conviction.pdf).

### *Incompetency or Involuntary Commitment*

A judge, mental health review officer, or county mental health and mental retardation administrator may transmit the notice to the local sheriff and/or state police within seven days of a conviction or determination. The notice must be submitted on the form developed by the state police.<sup>xi</sup> This form can be found on the website of the Administrative Office of Pennsylvania Courts, [http://pubs.pcadv.net/palegal/PSP\\_Form\\_MentalHealthCommitment.pdf](http://pubs.pcadv.net/palegal/PSP_Form_MentalHealthCommitment.pdf).

It is important to note that the UFA empowers the state police to disclose records that are "relevant to a determination of whether a person is disqualified from possessing or receiving a firearm" because of mental health or drug addiction to the United States Attorney or a designee.<sup>xii</sup>

## ***Mental Health Procedures Act (MHPA)***

The MHPA absolves the court and law enforcement from its non-disclosure privacy provisions for the purpose of meeting the mandate of the UFA.<sup>xiii</sup> In relevant part, the MHPA provides confidentiality for documents related to mental health treatment.<sup>xiv</sup> However, an exception allows “judges of the courts of common pleas, mental health review officers and county mental health and mental retardation administrators [to disclose] information to the [state police] ... in accordance with [state and federal firearm laws].”<sup>xv</sup> The state police is also exempt from confidentiality requirements if disclosure is necessary to comply with the firearm laws.<sup>xvi</sup>

## **Responsibilities of Law Enforcement – Enforce and Administer**

The state police, local sheriffs and other law enforcement play vital roles in maintaining the safety web that our laws prescribe in relation to firearms and domestic violence. Prompt notification from the courts is key to carrying out these responsibilities. The state police administers instant background checks to determine a person’s eligibility to possess firearms and retains related information. Sheriffs coordinate the PFA safekeeping permit process,<sup>xvii</sup> evaluate applications for concealed-carry firearms licenses,<sup>xviii</sup> and revoke licenses in cases where a holder becomes ineligible.<sup>xix</sup> When notices are received promptly, law enforcement is better able to carry out such duties, described more fully in this section.

## ***Protection From Abuse Act***

Sheriffs are the backbone of the statutory structure for firearms relinquishment under the PFA Act. In addition to serving temporary PFA orders, sheriffs also confiscate or accept firearms from defendants. The sheriff’s department serves as the repository for and must safely store all relinquished firearms.<sup>xx</sup> If a defendant elects to relinquish firearms to a third party for safekeeping, it is the sheriff’s department that administers the safekeeping permit and ascertains if that person is legally eligible to hold firearms.

## ***Safekeeping Permits***

The UFA requires courts to provide specific notices to sheriffs and the state police to better enable them to administer firearms provisions. For example, in lieu of relinquishing firearms to the sheriff, the PFA Act permits a defendant to relinquish firearms to a third party for the duration of a PFA order, provided that person meets requirements set forth in the statute.<sup>xxi</sup> The sheriff is charged with ensuring that the chosen third party is not initially prohibited from possessing firearms pursuant to “any Federal or State law.”<sup>xxii</sup> To make that determination, the sheriff contacts the state police for a background check.<sup>xxiii</sup> The state police, in order to provide accurate background checks, must be promptly notified of any information relevant to the third party and/or the defendant’s right to possess firearms.





The sheriff has an ongoing duty to revoke the third party's permit and take possession of the relinquished guns upon notice or determination that a court:

- Has entered a PFA order against the third party<sup>xxiv</sup>
- Has held a defendant in indirect criminal contempt for violating certain provisions of the PFA order<sup>xxv</sup>
- Has convicted the defendant of a violation of the Uniform Firearms Act<sup>xxvii</sup> or any other firearm offense
- Has determined (or another law enforcement agency has determined) that the third party has become ineligible to legally possess firearms under federal or state law<sup>xxviii</sup>

While these conditions require the sheriff to revoke the safekeeping permit, sheriffs may not know about them unless they receive the required notices from the court. For example, the PFA Act requires a court in County A to provide notice of a PFA entered against a resident of County B to the sheriff in County B.<sup>xxix</sup> If that resident holds a safekeeping permit for a friend's or family member's firearms, the notice of the PFA order triggers the County B sheriff's duty to revoke the permit. Sheriff B may not know to do so unless Court A transmits the order or otherwise notifies the sheriff's office.

### ***Return of Firearms***

When a PFA order expires, most counties in Pennsylvania require a defendant to get a court order to allow the return of any firearms.<sup>xxx</sup> With or without a court order, the PFA Act requires that the sheriff determine whether the defendant is legally eligible to possess firearms.<sup>xxxi</sup> That determination requires a sheriff to obtain another background check through the state police.

### **Pennsylvania Uniform Firearms Act**

#### ***Pennsylvania State Police***

The UFA charges the state police with administration of its provisions and, in addition, specifically outlines the state police's duties with regard to background checks.<sup>xxxii</sup> These duties require the state police to review multiple records for the applicant, including criminal history, fingerprints, juvenile delinquency, and mental health records. In order to fulfill its duties the state police must have the requisite information, such as notice of mental health adjudications.<sup>xxxiii</sup> Thus, the court's role in providing the specific notice is a critical piece for the web of protection to properly function.

## County Sheriffs

Not only do county sheriffs implement many of the provisions related to firearms under the PFA Act, the UFA also compels them to take applications for, investigate and issue licenses to carry firearms.<sup>xxxiv</sup> The sheriff's investigation of an applicant must include review of the following:

- The applicant's record of criminal conviction<sup>xxxv</sup>
- Whether or not the applicant is under indictment for or has ever been convicted of a crime punishable by imprisonment exceeding one year<sup>xxxvi</sup>
- Whether the applicant's character and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety<sup>xxxvii</sup>
- Whether the applicant would be precluded from receiving a license under subsection (e) (1) or section 6105(h) (relating to persons not to possess, use, manufacture, control, sell or transfer firearms<sup>xxxviii</sup>
- Criminal background, juvenile delinquency and mental health checks following the procedures set forth in section 6111 (relating to sale or transfer of firearms)<sup>xxxix</sup>

The UFA excludes certain individuals from holding a firearms license.<sup>xl</sup> The sheriff may not issue a license<sup>xli</sup> and must revoke any existing licenses held by a person who is:

- Not of sound mind or who has ever been committed to a mental institution<sup>xlii</sup>
- Convicted of a crime enumerated in section 6105
- Convicted of certain drug charges
- Prohibited from possessing firearms under federal or state law, among others<sup>xliii</sup>

Individuals who are ordered to relinquish their licenses pursuant to the PFA Act become ineligible as well.<sup>xliv</sup>

A sheriff, once notified, must revoke the license of the person who has become ineligible and notify the state police of that revocation.<sup>xlvi</sup>

## Conclusion

The firearm laws of Pennsylvania are designed to provide a web of protection for all of the Commonwealth's citizens. For victims of domestic violence, full implementation of this web of protection can mean life or death. Many avenues exist under the laws to remove firearms from persons who commit domestic violence, but those avenues depend upon the courts, county sheriffs, and the state police each fulfilling their respective roles and carrying out their duties.

## End Notes

- i. Violence Policy Center, *When Men Murder Women: An Analysis of 2008 Homicide Data*, (2010) available at <http://www.vpc.org/studies/wmmw2010.pdf>.
- ii. PCADV, *Domestic Violence Fatalities in Pennsylvania*, 2011 available at <http://www.pcadv.org/Resources/FatalityReport2012.pdf>. According to the report, 53 of the 118 victims were killed by current or former intimate partners.
- iii. E. Rothman, D. Hemenway, M. Miller, and E. Rothman, D. Hemenway, M. Miller, and D. Azrael, "Batterers' Use of Guns to Threaten Intimate Partners." *J. Am. Med. Women's Ass'n* 60 (2005): 62–68
- iv. 18 U.S.C. § 922(g)(8).
- v. 23 Pa. C.S. § 6108 (a)(7).
- vi. 18 Pa. C.S. § 6105.
- vii. 18 Pa. C.S. § 6105(c)(4).
- viii. 18 Pa. C.S. § 6105(c)(6) (emphasis added).
- ix. 18 Pa. C.S. §§ 6109(i.1) (addressing notice to sheriff), and (f) (addressing notice to the PSP).
- x. *Id.*
- xi. *Id.*
- xii. 18 Pa. C.S. § 6109(f)(3).
- xiii. 50 P.S. § 7111.
- xiv. *Id.*
- xv. *Id.*
- xvi. *Id.*
- xvii. 23 Pa. C.S. § 6108.3.
- xviii. 18 Pa. C.S. § 6109.
- xix. 18 Pa. C.S. § 6109 (i).
- xx. 23 Pa. C.S. § 6108(a)(7)(ii).
- xxi. 23 Pa. C.S. § 6108.3
- xxii. 23 Pa. C.S. § 6108.3(b).

## End Notes Continued

- xxiii. 18 Pa. C.S. § 6111.1. Under the Uniform Firearms Act, the Pennsylvania State Police (PSP) has the responsibility, upon receiving a request for a check, to determine if the potential purchaser or transferee is prohibited from receipt or possession of a firearm under federal or state law. The PSP reviews the potential recipient's PSP criminal history, fingerprint records, juvenile delinquency and mental health records.
- xxiv. 23 Pa. C.S. § 6108.3(c)(1)(i).
- xxv. 23 Pa. C.S. § 6108.3(c)(1)(iv).
- xxvi. 18 Pa. C.S. Ch. 61.
- xxvii. 23 Pa. C.S. § 6108.3(c)(1)(iii).
- xxviii. 23 Pa. C.S. § 6108.3(c)(1)(ii).
- xxix. 23 Pa. C.S. § 6108 (a)(7).
- xxx. A defendant in Delaware County challenged this practice claiming it violated his right to due process and equal protection. He, however, did not prevail and the motion for summary judgment filed by defendants, Delaware County and Delaware County's Sheriff Department, was granted. The U.S. District Court of the Eastern District of Pennsylvania found that the requirement for a court order to secure the return of the defendant's firearms was rationally related to a legitimate governmental objective, was not arbitrary nor a requirement that shocked the conscience and did not violate the defendant's rights. *Deorio v. Delaware Co.*, No. 08-5762, 2009 U.S. Dist. LEXIS 65176, 2009 WL 2245067 (E.D. Pa. 2009).
- xxxi. 23 Pa. C.S. § 6108.1.
- xxxii. 18 Pa. C.S. § 6111.1.
- xxxiii. 18 Pa. C.S. § 6111.1(f).
- xxxiv. 18 Pa. C.S. § 6109.
- xxxv. 18 Pa. C.S. § 6109(d)(1).
- xxxvi. 18 Pa. C.S. § 6109(d)(2).
- xxxvii. 18 Pa. C.S. § 6109(d)(3).
- xxxviii. 18 Pa. C.S. § 6109(d)(4).
- xxxix. 18 Pa. C.S. § 6109(d)(5).
- xl. 18 Pa. C.S. § 6109(e)(1)(xiii). A license shall not be issued to any of the following: (i) An individual whose character and reputation is such that the individual would be likely to act in a manner dangerous to public safety. (ii) An individual who has been convicted of an offense under the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act. (iii) An individual convicted of a crime enumerated in section 6105. (iv) An individual who, within the past ten years, has been adjudicated delinquent for a crime enumerated in section 6105 or for an offense under The Controlled Substance, Drug, Device and Cosmetic Act. (v) An individual who is not of sound mind or who has ever been committed to a mental institution. (vi) An individual who is addicted to or is an unlawful user of marijuana or a stimulant, depressant or narcotic drug. (vii) An individual who is a habitual drunkard. (viii) An individual who is charged with or has been convicted of a crime punishable by imprisonment for a term exceeding one year except as provided for in section 6123 (relating to waiver of disability or pardons). (ix) A resident of another state who does not possess a current license or permit or similar document to carry a firearm issued by that state if a license is provided for by the laws of that state, as published annually in the Federal Register by the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury under 18 U.S.C. § 921(a)(19) (relating to definitions). (x) An alien who is illegally in the United States. (xi) An individual who has been discharged from the armed forces of the United States under dishonorable conditions. (xii) An individual who is a fugitive from justice. This subparagraph does not apply to an individual whose fugitive status is based upon nonmoving or moving summary offense under Title 75 (relating to vehicles). (xiii) An individual who is otherwise prohibited from possessing, using, manufacturing, controlling, purchasing, selling or transferring a firearm as provided by section 6105. (xiv) An individual who is prohibited from possessing or acquiring a firearm under the statutes of the United States. 18 Pa. C.S. § 6109(e)(1).
- xli. 18 Pa. C.S. § 6109(e)(1).
- xlvi. 18 Pa. C.S. § 6109(e)(1)(v).
- xliii. 18 Pa. C.S. § 6109(e)(1)(iii); 18 Pa. C.S. § 6109(e)(1)(ii); 18 Pa. C.S. §§ 6109(e)(1)(xiii), (xiv).
- xliv. 18 Pa. C.S. § 6109(e)(1)(xiii).
- xl. 18 Pa. C.S. § 6109(i).
- xli. 18 Pa. C.S. § 6109(i).

# Q & A ABOUT PCAR'S CAMPUS LAW ENFORCEMENT TRAININGS

*Christopher Mallios is an Attorney Advisor for AEquitas: The Prosecutors' Resource on Violence Against Women. Christopher Weaver is a Detective with the State College Police Department. Both are members of the PCAR Campus Project Training Team conducting trainings for campus law enforcement across the state. These trainings are available to college campuses upon request.*

## **Do you believe sexual assault on campus differs from other forms of sexual assault (i.e. sexual assault in the community)?**

Weaver: Yes, mainly due to the age of the victim and the number of drug and alcohol related assaults.

Mallios: There are some unique aspects of campus life and social situations – increased use of alcohol and other drugs, group living arrangements, sports and fraternities — that create an environment with a higher rate of sexual violence.



## **As a detective/former prosecutor, how would you define your role as a part of the PCAR campus law enforcement training team?**

Weaver: To help train and pass on information to other law enforcement agencies dealing with campus-related sexual assaults.

Mallios: As a criminal justice insider, I am able to explain the behind-the-scenes decisions made by police, prosecutors, judges, and juries based on extensive experience. I can also explain the best ways for the criminal justice system to interact with the other systems that respond to victims.

## **Why do you think PCAR's campus law enforcement trainings are important?**

Weaver: Hopefully they will increase the number of cases that are investigated and successfully prosecuted.

Mallios: Getting accurate information to criminal justice professionals is important because law enforcement officers have such wide discretion in their handling of cases. Myths and misunderstandings about sexual violence, as well as common victim responses to sexual trauma can lead to bad investigation and charging decisions. Also, these misunderstandings can have the effect of the criminal justice system re-victimizing a victim. Law enforcement agencies need to be welcoming places that create a judgment-free atmosphere where victims can make truthful disclosures without fear of law enforcement.

## **What do you believe is the single most important piece of information you can impart to participants of the law enforcement trainings?**

Weaver: Thoroughly investigate all sexual assaults and partner with medical and advocacy groups to respond the needs of the victims.



Mallios: Keep an open mind and follow the evidence wherever it leads. It is important not to assume that a victim is lying because the disclosure seems implausible or because the victim's behavior seems counterintuitive to how many people think a sexual assault victim should act.

**Why is collaboration between law enforcement, rape crisis centers, campuses, and the prosecutor so important in responding to these cases?**

Weaver: In order to provide victims with the proper support and services it is important for collaboration to take place. Collaboration or a team approach allows the investigator to focus on the investigation while others respond to the victim's needs.

**What advice do you give investigators about interviewing a victim?**

Weaver: Try to establish a rapport with the victim and take it slow.

Mallios: Create an atmosphere in which victims can make truthful disclosures without fear of judgment. Allow the victim to have someone there to support them, such as an advocate. Do not say or do anything that conveys to the victim that the sexual assault is their fault, or that they are being judged harshly.

**What do you teach about social media and investigations?**

Weaver: To investigate social media sources for possible evidence and to have victims monitor their use of social media during an investigation.

**What are the key elements to an investigation of sexual assault on campus?**

Weaver: The key elements are collaboration, using a team approach, and being thorough and creative with your investigations.

**What are the key elements to building a prosecutor's case?**

Mallios: Establishing and supporting the victim's credibility is the key to building a strong prosecution. Witnesses, physical evidence, crime scene evidence, medical evidence and expert witnesses can all play a role. Prosecutors must also do their best to eliminate bias from the jury and educate the judge and jury about the dynamics of sexual violence to ensure that cases are decided based on the evidence and the law, and not based on inaccurate beliefs about sexual assault.



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