

Recommendations for Addressing the Problem of Illegal Transfer of Guns, including Straw Purchases in Monroe County, New York

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Introduction

Violence in Rochester, New York, has been a serious problem for its citizens, with a homicide per capita rate hovering at about 25 per 100,000 persons since 2005 and violent crime rates at about 900 incidents per 100,000 persons since 2003 (UCR for Rochester, N.Y.). In 2007, 36 of the 50 (72%) of homicides and 858 of 2352 (36.5%) of violent crimes in Rochester involved the use of a firearm (UCR for Rochester, N.Y.). Research has also shown each year there are approximately 250 victims of shootings in Monroe County. Even apart from the problem of homicide, the non-fatal shootings result in medical costs of approximately \$3.3 million. Of that approximately \$2.6 million is not recovered because so many victims have no insurance of any kind and cannot otherwise pay their bill. The unrecovered costs are ultimately passed on to the general population through higher medical bills, higher insurance premiums and a State indigent care pool.

A significant portion of the local problem of gun violence is attributable to the illegal transfer of guns from lawful owners to illegal gun users. These may include Straw Purchases which involve a legal gun buyer purchasing a weapon on behalf of a person prohibited by law from owning a gun. In New York other illicit transfers may also involve a purchase by a legitimate permit holder who gives the weapon to someone who does not register it on their own pistol permit.

A review of guns seized by the Rochester Police shows that nearly half of all guns used in crimes were illegally possessed at the time of the crime: That is, the possessor of the gun did not have a permit for the weapon and/or was a person prohibited by law from possessing the gun. Additionally, in the study 7% of guns had serial numbers that were obliterated or defaced. Finally, 15% of the crime guns had been reported stolen. Bureau of Alcohol, Tobacco, Firearms and Explosives local tracing data also show that most guns used in crime come from the local area rather than being smuggled in from other states. In summary, the data show that a large number of guns used in crimes are, at one time or another, transferred, perhaps through theft or illegal intention, from legal owners to illegal possessors of the weapon. Any successful efforts to reduce the illegal transfer of weapons can have a significant impact on local gun violence and the enormous costs born by the local community.

We will begin this paper by examining federal, state and local laws dealing with gun ownership. We will also briefly discuss straw purchases. That is followed by a description of the legal process in Monroe County for the ownership and possession of pistols. That includes a review of some recent case law. This is followed by a review of a program in Los Angeles that was designed to reduce straw purchases. Finally, the paper presents five recommendations for programs that could reduce the incidence of transfer of weapons from legal to illegal possessors.

Laws Regarding Gun Possession and Use

Federal Statutes

The Gun Control Act of 1968 set the ground work for the regulation of firearms in the United States. The act used the Commerce Clause in the United States Constitution as grounds to regulate the manufacture, sale, and use of firearms involved in interstate trade. Congress stated that firearms involved in interstate trade could be regulated under this clause as well as the actions of those using these weapons. Now, all firearm manufacturers are required to maintain manufacture records and these records are available for review. Since 1968 additions and safe guards have been added to further regulate those who can own a firearm and to protect the rights and property of antique firearms collectors.

Who

Current (May 2008) federal law has put regulations on who can own firearms and who can sell firearms, as well as what types of firearms can be owned for private use. It is unlawful for any person to engage in the business of dealing in firearms for the purpose of profit who is not licensed to do so (18 U.S.C. Section 922-a-1-A).

This wording exempts firearm collectors who choose to sell or exchange firearms for the purpose of collection. This has spurred a national debate over the past few decades surrounding gun shows and the potential ease a person might have when obtaining a firearm at a gun show for the purpose of committing a crime. There are Federal and State licensing regulations that pertain to anyone who sells a firearm at Gun Shows and Flea Markets. There are primarily two types of individuals who sell firearms at these venues: licensed gun dealers and private citizens. However, seeing as how this

issue has yet to resolve itself at the national level, it will not be discussed further in this paper.

It is also unlawful under federal legislation for any licensed firearm salesperson to sell a handgun or pistol to another person that is under the age of twenty-one (18 U.S.C. Section 922-b-1) or for any juvenile to possess a handgun or handgun ammunition (18 U.S.C. Section 922-x-2). Federal legislation also restricts licensed firearm salespersons from selling firearms to; persons that are under indictment for a felony or convicted of a felony (1), fugitives from justice (2), users or addicts to any controlled substance (3), any person that has been adjudicated as mentally deficient or has been committed to a mental institution (4), any person that is unlawfully in the United States as an illegal alien (5A) or is in the United States under a “non-immigrant Visa” (5B), any person that has been discharged dishonorable from the military (6), any person that has renounced his citizenship (7), any person that is under court order restraining that person from harassing or stalking another (8), and any person that has been convicted of a misdemeanor domestic violence charge (9) (18 U.S.C. Section 922-d). The purchaser of a firearm must also sign a written statement stating that he is not in violation of any of these regulation or any state or local regulations that are in place where he resides (18 U.S.C. Section 922-c-1).

What Types

Federal Law also regulates the types of firearms and firearm paraphernalia that can be possessed by the public. Federal law allows pistols, revolvers and other semi-automatic handguns, as well as rifles and shotguns. However, under Federal Law it is unlawful to possess or transport a machinegun (18 U.S.C. Section 922-o-1). At one point,

Federal Code also prohibited the possession or transport of a semi-automatic assault weapon (18 U.S.C. Section 922-v), or any large capacity ammunition feeding device (can hold more than 10 rounds) (18 U.S.C. Section 922-w). However, these statutes have since been repealed (Pub.L. 103-322, § 110105).

In addition to these, no person can remove or change the serial identification number on any firearm that was once involved in interstate trade(18 U.S.C Section 922-k), or to possess or receive any firearm with an altered or removed serial number that at one time was involved in interstate trade (18 U.S.C Section 922-k).

Where

Federal Law restricts areas where firearms can be carried. It is unlawful for an individual to carry or possess any firearm on school grounds (18 U.S.C. Section 922-q-1-I-2-A) unless that firearm is unloaded and locked in a carrying case (18 U.S.C. Section 922-q-1-I-2-B-iii-). It is also unlawful to possess any firearm in any federal building (18 U.S.C. Section 930-a).

State Statutes

New York State has many of the same regulations that are covered by Federal Statute with varying penalties for the same offenses. Similar to Federal Statute, New York State regulates who can own a firearm, what types of firearms can be owned, and where these firearms can be carried. Unlike Federal Statute, New York is able to further regulate the actions of firearm owners without relying on the Commerce Clause within the Constitution. In one other key difference the Federal law considers long guns as firearms and includes regulations of their sale and possession. New York State firearm

law generally does not, except if they may be altered, such as being sawed-off. Most importantly, New York State has a ban on all handguns, only allowing those who fall under listed exemptions to possess a handgun.

Who

In New York State it is unlawful for a person who is not a citizen of the United States (New York State Penal Law Article 265.01(5) 2008) to have possession of a firearm of any kind. It is also unlawful for any person who has been convicted of a felony to have possession of any rifle or shotgun (New York State Penal Law Article 265.01(4) 2008).

What Types

New York State regulates more types of firearms and firearm paraphernalia than Federal Law. In addition to disallowing machine guns (New York State Penal Law Article 265.02(2) 2008), large capacity ammunition feeding devices (New York State Penal Law Article 265.02(8) 2008), and assault weapons (New York State Penal Law Article 265.02(7) 2008), New York State does not allow the possession of firearm silencers (New York State Penal Law Article 265.02(2) 2008), disguised guns, which have been altered or changed so their appearance leads someone to think that it is something other than the type of firearm that it is (New York State Penal Law Article 265.02(6) 2008), exploding ammunition (New York State Penal Law Article 265.01(7) 2008), or armor piercing ammunition with the intent to use it unlawfully against another (New York State Penal Law Article 265.01(8) 2008).

Where

Following the example of Federal Law, New York State prohibited the carrying of firearms, including rifles and shotguns on school grounds (New York State Penal Law Article 265.01-(3) 2008).

Actions

New York State restricts the actions of firearm owners more than Federal Law and places additional penalties on crimes when they are committed with a firearm. New York State prohibits the possession of a firearm with intent to commit a crime with such firearm (New York State Penal Law Article 265.03(1) 2008) including harsher sanctions for possession of machine guns (New York State Penal Law Article 265.03(1)(a) 2008) and disguised guns (New York State Penal Law Article 265.03(1)(c) 2008). New York State expands on Federal Law prohibiting the possession of a firearm that is not on a person's permit by using graduated penalties for possessing three or more (New York State Penal Law Article 265.02(5i) 2008), five or more (New York State Penal Law Article 265.03(2) 2008), and 10 or more (New York State Penal Law Article 265.04(2) 2008) un-permitted firearms.

New York State provides additional sanctions when an offender commits a class C violent felony and possess a loaded firearm or any other deadly weapon (New York State Penal Law Article 265.08(1) 2008) or displays what appears to be a firearm or any other deadly weapon (New York State Penal Law Article 265.08(2) 2008), or commits a class B violent felony while possessing a loaded firearm or any other deadly weapon (New York State Penal Law Article 265.09(1)(a) 2008) or displaying what appears to be a shotgun, rifle, or handgun (New York State Penal Law Article 265.09(1)(b) 2008). To

deter offenders from being in contact with certain firearm paraphernalia, New York State prohibits not only the possession of but also the manufacturing (New York State Penal Law Article 265.10(1) 2008), transporting (New York State Penal Law Article 265.10(2) 2008), disposing (New York State Penal Law Article 265.10(3) 2008), and defacing (New York State Penal Law Article 265.10(6) 2008) of any machine gun, assault weapon, large capacity ammunition feeding device, silencer, or disguised gun.

For the sake of public safety, New York State prohibits the use of a firearm when; a person willfully discharges it at a car, bus, train, or plane with increased sanctions if there is immediate danger brought unto another person (New York State Penal Law Article 265.35(2) 2008). New York State also prohibits the discharge of a firearm in any public place, any place where another person will be endangered by that discharge, or within ¼ mile of an occupied school building (New York State Penal Law Article 265.35(3)(a) 2008) unless that person is acting in self defense. Similarly it is prohibited for any person to intentionally point any firearm at another even without malice (New York State Penal Code Article 265.35-3-b 2008).

Exemptions from Handgun Ban

New York State exempts certain individuals from the handgun ban. Firstly, any person who has been issued a pistol permit may possess a handgun (New York State Penal Law Article 265.20(3) 2008). Other exemptions include possession by a police officer (New York State Penal Law Article 265.20(1)(b) 2008), possession by a peace officer (New York State Penal Law Article 265.20(1)(c) 2008), persons “employed in fulfilling defense contracts with the government of the United States thereof when the possession of the same is necessary...under the requirements of such contract (New York

State Penal Law Article 265.20(1)(e) 2008),” any person in the military in “pursuit of official duty (New York State Penal Law Article 265.20(1)(d) 2008),” or any person voluntarily surrendering such weapon provided that such person surrenders the weapon under terms of the police (New York State Penal Law Article 265.20(1)(f) 2008). New York also offers exemptions to executives receiving weapons from a decedent, as noted in detail below.

City of Rochester Ordinances

The City of Rochester has passed laws placing regulations on gun owners in an attempt to provide increased safety for its citizens. These laws include; prohibiting the carrying of a firearm in the city limits without a carry concealed permit or without having the firearm locked in a non-transparent carrying case (Rochester City ordinances, Chapter 47-5-C); Prohibiting the storage of any firearm in ones home or dwelling unless it was secured in a locked place or with a lock preventing the weapon from being fired (Rochester City ordinances, Chapter 47-5-D), which becomes problematic considering the recent supreme court case discussed below; prohibiting the discharge of a firearm within the city limits (Rochester City ordinances, Chapter 47-5-M); and prohibiting the possession of a firearm if any possessor has a BAC of .1% or higher (Rochester City ordinances, Chapter 47-5-H), if any possessor is intoxicated (Rochester City ordinances, Chapter 47-5-I), or if any possessor is under the influence of a controlled substance (Rochester City ordinances, Chapter 47-5-J).

Straw Purchases and Other Illicit Transfers

With this background knowledge in place we can now discuss the local issues surrounding straw purchases and other illicit transfers. As stated in the opening of this paper, gun violence accounts for the bulk (72%) of homicides every year and a significant portion (36.5%) of total violent crime locally. But where do these weapons come from? It is popular belief among local academics and police policy makers that the majority of these weapons are locally obtained and distributed, not brought in from out of state regions with less restrictive laws (Ridgeway et al. 2008). These weapons are purchased by local citizens and then, excluding the ones that are stolen from legal owners, resold or given to others for the purpose of protection or use in the commission of crime. Police report that they are also commonly exchanged for drugs. Eventually, either immediately after being illicitly transferred or after changing hands multiple times, these handguns are used in a crime or found to be illegally possessed through police searches and seizures.

There are three types of transfers that will designate as problematic in this paper. The first type of transfer comes about when a legal possessor of a handgun or multiple handguns “engages in the business of dealing in firearms” without the proper license (18 U.S.C. section 922-a). The Federal code is thorough in its description of “engaged in the business of dealing in firearms,” stating that it is defined by “a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms.” This is prohibited under Title 18 U.S.C. Section 922-a on the basis that only persons with the appropriate license can “engage in the business of dealing in firearms.”

Any person found to be in violation of this can be prosecuted for such an act, with the penalties including up to a \$10,000 fine and a 10 year prison sentence. Several mitigating factors affect sentencing for this charge, including whether or not the person has a criminal record and if the person has a pistol permit in New York State., meaning that the actual sentence averages around two to three years. However, this excludes people “who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby.” Also, some prosecutors and investigators feel that the wording of “engaged in the business of dealing in firearms” is vague and creates difficulties when attempting to prove guilt at trial.

The second type of transfer occurs when a person buys a handgun with intent to transfer that weapon to another immediately after the sale. The purchaser is in essence buying the weapon in place of another person. This act is commonly referred to as a straw purchase. Federal law deals with this by mandating that any person who buys a handgun must fill out a form stating that they are not a prohibited person and that they are buying the weapon for themselves and not another. If the person admits that they are purchasing the weapon for another, the transaction is cancelled. If the person falsifies the document they can be charged for doing so under Title 18 U.S.C. 922-a-6, and that person can be subject to a fine and a five year prison term (18 U.S.C 924-a-1). New York State law applies to this type of transfer as well. Section 265.17 of the New York Penal Code states that a person is guilty of ‘criminal purchase of a weapon’ when “knowing that it would be unlawful for another person to possess a firearm..., he or she purchases a firearm...on behalf of, or for the use of such other person.” New York State classifies this as a class A misdemeanor.

The third type of problem transfer happens when a person legally purchases a handgun with the intent to possess it for legal reasons. If that person then decides to transfer a handgun to another person, under both Federal law and New York State law that person can “sell handguns without inquiring into the identity of the person to whom they are selling, making any record of the transaction, or conducting [background] checks. (Congressional Record of the House of Representatives, Sept. 23 1999).” However, the transferor can not legally transfer the weapon if he or she reasonably believes that the recipient is under the age of 18 (18 U.S.C Section 922-x) or does not reside in the state in which the transferor resides (18 U.S.C. Section 922-a). Now even though the act in itself is not unlawful, the result of the transfer may be. For example if the recipient is a restricted person they will be in violation of federal law (18 U.S.C. Section 922-g). New York State law also restricts this third type of transfer. For example, if the recipient does not have a pistol permit they will also be in violation of New York State law that requires that all persons that have handguns in their possession registered on their permit (265.20-3 NYS Penal Law). Even though the result of these transfers can have a negative effect on our communities, because there is little we can do to dissuade the transferor from conducting a transfer with threat of legal action, it may be necessary to reduce our focus on this particular type of problem transfer at the time being.

The City of Rochester also passed legislation to help limit the amount of illicit transfers that could take place. Because it was not possible for people who were legally restricted from officially buying a firearm as a prohibited person, they could do so unofficially through a person who was not legally restricted from doing so. The unrestricted seller simply had to tell the police that the firearm had become “lost” or

“stolen” when it was eventually found outside of their possession. To protect against this, legislation was passed that requires owners of firearms to report to the police within twenty-four hours of any theft or loss of a firearm with news of such theft or loss (Rochester City ordinances, Chapter 47-5-N). That person would also be required to check on his or her registered firearm at least once every seven days or upon returning to the City from an extended trip so that he or she could not use the fact that the firearm was missing as a defense (Rochester City ordinances, Chapter 47-5-N). If that person did not report the theft or loss to the police, or if they failed to check on the weapon, they would be fined up to \$1000 and incarcerated for up to 6 months in jail (Rochester City ordinances, Chapter 47-5-N). The issue with this is that the areas of Monroe County that fall outside of the city do not follow the city ordinances. Needless to say those city ordinances cannot be applied to acts that take place outside of the city.

Pistol Permit & Purchases Processes for Monroe County, New York

In order to obtain a pistol permit in Monroe County an applicant must first obtain and fill out a pistol permit application from the County Clerk. This application includes a generic physical description and place of residence along with the applicant’s name and date of birth. It also requires applicants to list what type of permit they wish to receive; a carry concealed permit, a possess on premises permit, or a possess/carry during employment permit. The applicant must list four references that will attest to the applicant’s good character and obtain those references’ signatures as proof of good character. The applicant must list any arrests, summons, charges, or indictments for any offenses. The applicant must also answer yes or no to questions regarding; discharge

from the armed services, drug and alcohol addiction or use, history of mental illness, revocation of past pistol permits, medical history of illnesses that would interfere with the use of a firearm such as epileptic seizures, and involvement in family court. These questions help weed out applicants who are restricted from owning a firearm by federal statutes as noted above. The application then warns the applicant of the consequences of providing false information and the applicant signs under threat of perjury in affirmation that all information is truthful. A page attached to the application signed by the County Clerk then states that verifying and approving the application in Monroe County takes between six and eight months.

Once being approved for an application prospective gun buyers would travel to a firearm retailer. They would pick out a weapon and pay in full depending on the retailer's policy, and receive a receipt with information about the firearm; serial number, model, caliber, etc. The retailer then holds onto the firearm while the buyer takes the receipt to the County Clerk's Office. The County Clerk's Office then puts the firearm's information on the purchaser's firearm permit. The buyer receives a 'coupon' from the Clerk representative and can then return to the retailer. The purchaser gives the coupon to the retailer who gives the buyer an ATF Form 4473 to be filled out by the buyer, which lists questions similar to the permit application; name, residence, place and date of birth, questions to weed out restricted persons, questions asking if the buyer is buying the weapon for another, and others. After the buyer signs under threat of perjury the retailer calls into the NICS, National Instant Criminal Background Check System, and is given one of three commands; the first is to proceed with the sale and transfer, the second is to cancel the sale and transfer because the buyer has been found to be a restricted person

and the transfer would violate federal law, and the third is a ‘delayed’ response where for whatever reason the information could not be obtained. In the event of a delayed response the retailer will be given a date and time, three business days after the initial call to NICS, when the firearm can be legally transferred to the buyer unless within that time NICS has called informing the retailer that the transfer would be in violation of federal law, which would be the case if the buyer is a prohibited person (ATF form 4473).

New York State Law Surrounding Deceased Firearm Holders

As noted above, executives or administrators who receive handguns that once belonged to a decedent may lawfully possess handguns that were passed on to them for a period of no more than 15 days (New York State Penal Law Article 265.20(1)(f) 2008). New York State Penal Law section 265.20(1)(f) states that if the handgun is not disposed of lawfully within that time, 15 days, that it must be surrendered to the police who will hold the weapon for a period no more than a year. Upon written request the handgun will be delivered back to the executive or a person to be named by the executor provided that the recipient is licensed or otherwise permitted to possess the handgun (New York State Penal Law Article 265.20(1)(f) 2008). If no such request is filed within that year, the handgun will be disposed of (New York State Penal Law Article 265.20(10)(f) 2008).

District of Columbia Et Al. vs. Heller (June 2008)

The most recent nationally significant Supreme Court case on the topic of firearms possession and the Second Amendment was decided in *District of Columbia v. Heller* June, 2008. The court majority ruled that the Second Amendment guaranteed the right of a citizen “unconnected with service in the militia” to possess and use a firearm for “traditionally lawful purposes (*Heller 2008, syllabus p.2*).” This included the right to possess a firearm in ones home for self-defense. However, this right is limited and the majority warned that the opinion should not be construed as saying it is not. Meaning, “It is not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose...” The court held that longstanding restrictions on persons (such as felons or the mentally ill), “sensitive places” (such as schools and federal buildings), and types of “dangerous and unusual weapons” (such as fully automatic firearms) were constitutional (*Heller 2008, syllabus p. 2*). However, the blanket restrictions on the possession of handguns in a person’s home, as well as the “trigger-lock” requirement were both un-constitutional (*Heller 2008, syllabus p. 2*). The majority stated that the restriction on an “entire class of arms that Americans overwhelmingly choose for the lawful purpose of self defense...[and] under any standards of scrutiny the court has applied to constitutional rights, this prohibition-in the place (ones home) where the importance of lawful defense of self, family, and property is most acute-would fail constitutional muster (*Heller 2008, syllabus p. 2-3*).” This also held true for the requirement that and firearm in the home must be “disassembled or bound by a trigger lock,” so that it can not be fired or used as intended if stolen or found

by a child, as well because “[this] makes it impossible for citizens to use arms for the core lawful purpose of self defense and is hence unconstitutional (*Heller 2008, syllabus p. 3*).”

The dissent, however, voiced the opinion that “The Second Amendment was adopted to protect the right of the people of each of the several States to maintain a well-regulated militia,” and that “neither the text of the [Second] Amendment nor the arguments advanced by its proponents evidenced the slightest interest in limiting any legislature’s authority to regulate private civilian uses of firearms (*Heller 2008, dissent p. 1*).” The dissent referred to the case of *U.S. vs. Miller*, 307 U.S. 174 (1934), which stated that “in the absence of any evidence tending to show that possession or use of a ‘shotgun having a barrel of less than eighteen inches in length’ at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument” provided the most “natural reading of the Amendment’s text and the interpretation most faithful to the history of its adoption (*Heller 2008, dissent p. 1*).” This meaning that the constitution only protects the rights of states to organize militias and to arm them, and that legislatures have, because of no clause constitutionally, the unrestricted right to limit the personal possession of firearms.

Los Angeles County Straw Purchase Reduction Initiative

In an attempt to see how affective data driven approaches could be in disruption illicit firearm markets, the RAND research corporation helped put together a working group in Los Angeles County composed of members from “ATF, LAPD, The U.S.

Attorneys Office, state and city prosecutors, academics, and other criminal justice organizations (Ridgeway et al. 2008).” This group was designed to work together using available and reliable data to construct a strategy that would; help themselves and others better understand the workings of illicit firearms markets, enact a “community-based intervention designed to disrupt the illegal flow of guns to Los Angeles–area criminals,” and then measure the extent of that disruption (Ridgeway et al. 2008). To better understand the processes that govern the illicit gun market, the working group focused its time and energy on crime guns that have been seen to cause visible harm to the community. The working group hypothesized that they could prevent these weapons from ever being used in the commission of a crime if they could eliminate their source of entry into the illicit gun market. To find this point of entry the group developed a software system that traced the origins of the weapons back to their last legal owners and found that two-thirds of all of the traceable crime guns had in fact been purchased legally at the local level in LA and then disappeared from the tracking system of legally required paperwork, and then reappeared when used in a crime or found during a pat down or warrant search. The question was, ‘How did these weapons go from legally owned to being used in crime by another?’ The group discussed this and determined that either the firearms were stolen from the legal owner and that owner did not report the theft, or the weapons were transferred to another without the proper paperwork. The group hypothesized that a substantial portion of the crime guns once purchased locally were being bought from retailers for the purpose of straw purchases. Thus, the working group felt that any reduction in straw purchases would have an affect on the supply of firearms to those who would use them in crimes, therefore disrupting the illicit firearm market and fulfilling

their initial goal. To dissuade persons from conducting legal purchases for the purpose of initiating illegal straw purchases, the working group designed a letter campaign to inform all people who purchased a firearm in the LA County area. The letter was sent out during the ten day period a person must wait before picking up their firearm as mandated by California State law. The letter itself (Appendix 1) informed the person of their legal responsibilities to file paperwork if they transfer a firearm as well as report to the police if their firearm is lost or stolen. It also notified the purchaser that if a firearm that is registered to them is ever used in the commission of a crime by another individual, that they would be prosecuted for not reporting the weapon had been transferred, lost, or stolen. The group found that in the first three months of the initiative, over 12% of firearms were not picked up after an order had been placed on them. This subsided somewhat for the next four months, but over the first seven months 9.7% of all firearms were never picked up. However, the number of firearms not picked up over the next three months, 1.7%, were substantially less than the 9.7% over the first seven (Ridgeway et al.). Despite this, over the seventeen months of the program, 6.8% of all firearms were never picked up (Ridgeway et al. 2008)

Recommendations

Below are five recommendations for discussion. These program recommendations each address some aspect of the problem of illegal transfers of guns. They were developed based on the research described above and conversations with police and prosecution members of the Board of Project Exile in Rochester. They are not, however, intended to represent anyone's ideas or agreements other than the authors of this paper. All of these recommendations are consistent with the practice of responsible gun ownership.

1. Biannual Survey of Gun Permit Holders

This survey (appendix 3) with a return envelope would be sent to all gun permit holders in the county every 2 years. It would mandate respondents to visually check their gun and list the guns they have in their possession. It would also remind permit holders that not checking guns (if they live in the city of Rochester), or not reporting them when lost or stolen, or not reporting changes of address is a violation of law. Returned undelivered surveys would also indicate possible violations. The police could use the data to check on the status of gun permit holders.

The number of unreturned surveys will give a relatively accurate count of the number of persons who have changed address and have not reported that change to the county, which is unlawful in NY State under section 400.00(9) of the New York State Penal Law. Police can investigate these addresses to see if they have in fact moved. Any discrepancies in the information regarding number of firearms self-reported in one's possession compared to those firearms the county has on that person's permit could show the county if there has been any transfers or unreported thefts or losses. For example, if a person lists 4 weapons in their possession and there are 5 registered on that persons permit, that person either had a weapon lost or stolen and didn't report it or transferred

their weapon to another person. This is applicable if that person over-reports the number of firearms that should be in their possession as well.

Measurable Results

One of the overall purposes of this proposal is to convince more pistol permit holders to report to the county if they change residence. To measure this, the number of reported address changes before the surveys would be compared to the number of reported address changes while the surveys are being sent out to see if there are any differences.

The next purpose of this survey is to see how many firearms are missing or have been stolen from the owner's home and have not been reported to the police. To measure this, the rate of reported 'stolen' and 'missing' firearms before the surveys are sent out would be compared to the rate of reported 'stolen' or 'missing' firearms while the surveys are being sent out.

2. Letters sent to addresses of deceased gun permit holders or their next of kin.

These letters would be sent in cases where gun permit holders die. They would provide information on what the next of kin can do with the guns of the deceased permit holder. They would also remind next of kin that failure to legally transfer guns is a violation of law

A mechanism would be put in place that informs the County Clerk's Office of any death of a firearm permit holder. The Clerk would then send an informative letter to the holder's address or address of first of kin. This letter would be designed to provide the family or first of kin on the basic firearm ownership requirements for the State of New York if that person has happened to inherit a firearm and does not know the law. The information would include; who can lawfully possess a handgun in New York if the

family wishes to keep it and how to go about the process of obtaining and (the police will hold onto an unregistered firearm while the permit process is taking place), the requirement that the handgun be legally disposed of before the 15 day exemption expires, information about how the police will hold the handgun for up to a year and how to reclaim the handgun, and the ability for the family or first of kin to surrender the firearm to the police without being charged with criminal possession of a weapon.

Measureable Results

The number of calls inquiring about the firearms of deceased persons before the letters are sent out would be compared to the number of calls inquiring information while the letters are being sent out. This would include calls requesting information from the City Police department, County Sherriff's office, and State Police Department over the time period. The number of handguns voluntarily surrendered to the police before the letter initiative would be compared to the number of handguns surrendered before and after the letters as well. This will show if the letters are having any affect informing the public.

3. Handout and signoff of legal information on gun ownership.

All persons listing guns on their permits would be required to sign a sheet at the Clerks office acknowledging that they have received information describing the legal requirements of gun ownership including the prohibition against straw purchases or the selling or giving of the gun to others without legally transferring it.

As described in the body of the paper, when people go to purchase a firearm they must first obtain the firearm's information from the retailer and have the County Clerk's Office register that weapon to their pistol permit. At this stage of the process, when the person is in the County Clerk's office to register the weapon, they will be required to read

and sign a paper that informs that person of the illegality of illicit transfers and what that person must do to legally transfer a firearm. The sheet will also tell the person that they can cancel the registration of their firearm at any time, no questions asked. The sheet will then direct the person to ask the retailer of the firearm for a refund if they do not wish to register it. This sign off sheet is designed to both provide information and possibly deter against those that would violate Federal and New York State law (appendix 2a, appendix 2b). This should come at a relatively cheap cost to the county, with the only expenses coming from the supplies and printing fees required to make the handouts.

Measurable Results

The number of people that cancel registration before the handout, which is presumably none since the person in the past had likely paid for the firearm already, would be compared to the number of canceled registrations while the handouts are in effect. Successful prosecutions could also be counted since the signoff provides additional evidence of knowledge and criminal intent on the part of the person who transfers the gun to another.

4. Investigate Periodic Permit renewal

We should investigate further the possibility of requiring renewal of gun permits in the same way some counties in New York require periodic reapplications for gun permits through the County Clerk.

This process is already required by NY State law in the counties of Nassau and Suffolk. These permits expire “not more than five years after the date of issuance” as stated in section 400.00(10) of the New York State Penal Law. These counties require persons to re-apply for a pistol permit. Nassau County charges the same fee, \$200, for

first time applicants and previous applicants, though previous applicants do not have to repay the \$100 required to have their finger prints documented.

Westchester County undergoes a recertification program every five years that requires permit holders in the county to re-file with the county the person's name, date of birth, current address, and pertinent information on the number and type of "all firearms currently possessed" by that person (section 400.10 of the New York State penal code). This process only requires a \$10 re-certification fee to the County Clerk.

In order to institute either of these programs in Monroe County, the State law would have to be amended to include Monroe County in section 400.10 of the New York State Penal Code.

Measurable Results

The difference between the number of registered pistol permit holders and the number of persons that re-apply should indicate the number of people that pose a problem to our initiative. Only those people that own firearms would be required to re-apply. Of the people that own firearms and don't re-apply, we would have access to the people's name and residences as previous applicants. Most importantly, they have failed to re-apply for a reason. Outside of mailing errors or confusion, there can be a number of reasons. The only pertinent and measureable reason would be that permit holders changed address and did not inform the county. This can be easily observed and documented by the police.

5. Investigate State passage of a law similar to the Rochester Ordinance that provides penalties for not reporting a gun stolen.

As noted above, an existing state statute in this area is weak. Although it requires that if a gun is stolen or lost it is reported to the police it does not

provide a significant penalty for failing to do so. This should be remedied with a statute similar to the Rochester ordinance.

The penalties in the Rochester ordinance for not reporting a lost or stolen weapon can serve motivate owners to inform police that a gun may be in the hands of criminals. It may also deter individuals from illegally transferring guns only to later claim they were stolen and it will support arrest and prosecution in cases where the gun owner illegally transfers a weapon and does not inform the County Clerk or police.

Measurable Results

The impact of a new law in this area could be assessed by reviewing before and after data on the number of guns reported stolen to the police independent of the gun's involvement in crime. One could also measure the possible decline in the number of guns reported as stolen after the gun has been recovered following its use in a crime.

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Appendix 1

Office of the Attorney General for the State of California
Office of the Los Angeles City Attorney
Los Angeles Police Department



July 29, 2005

Name
Address
Los Angeles, CA 90001

Dear Mr./Ms. Name,

As you know, gun violence is a serious problem in Los Angeles. We understand that you have recently purchased a gun. It is important that we all do our part to store guns safely and keep guns out of the hands of kids and criminals. We are working in collaboration with the federal program called Project Safe Neighborhood (PSN).

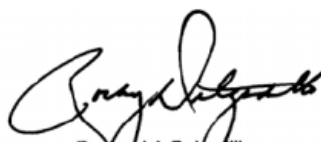
As partners in keeping the streets safe in your neighborhood we want to remind you of your obligations as a gun owner.

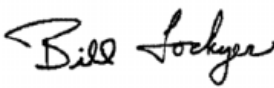
If you ever decide to sell or give your gun to someone, you must complete a "Dealer Record of Sale" (DROS) form. These forms can be obtained and completed at any gun store. Remember, it is a crime to transfer a gun to anyone without first filling out this form.

If the police recover a gun that was involved in a crime, the Los Angeles City Attorney will prosecute the gun's previous owner if that owner did not complete the "Dealer Record of Sale" form. Please make sure you go to a firearms dealer and fill out that form if you want to sell or give away your firearm.

You can help us make Los Angeles a safer community by preventing your gun from ending up in the wrong hands.

Thank you,


Rockard J. Delgado
Los Angeles City Attorney


Bill Lockyer, Attorney General
State of California


William J. Bratton, Chief
Los Angeles Police Department

Resident of Monroe County

THE FOLLOWING HAS IMPORTANT LEGAL CONSEQUENCES AND COMPLIANCE IS MANDATORY TO REGISTER YOUR FIREARM.

The Federal Government has designated that only certified persons can engage in the sale of firearms or firearm ammunition.

It is a crime to engage in the sale of firearms without the proper license. A conviction for this offense could result in a \$10,000 fine and a prison term of 10 years.

It is a crime to purchase a handgun in place of another person unless that handgun is intended to be a gift. If it is a gift, be certain that the recipient can lawfully possess a firearm. If your intention for buying this handgun is to transfer it to another person, you are in violation of both New York State and Federal law. A conviction for this offense could result in a \$10,000 fine and a prison term of 10 years.

Please sign as a sworn statement that you understand the legality and consequences surrounding the transfer and sale of firearms.

Signature.....

Name
Address
City of Rochester, 14623

Dear Mr./Ms. Name,

As you know, gun violence is a serious problem in Rochester. We understand that you have recently purchased a gun. It is important that we all do our part to store guns safely and keep guns out of the hands of kids and criminals.

As partners in keeping the streets safe in your neighborhood we want to remind you of your legal obligations as a gun owner.

If you ever decide to sell or give your gun to someone, you should fill out a Bill of Sale form at the Monroe County Clerk's Office located at 39 West Main Street. If you do not, the transfer may result in a crime. Please check with the County Clerk's Office to ensure that you will not be violating Federal or State law.

In addition, the City of Rochester requires that you check on your firearm at least once every seven days, and you must report any theft or loss of your firearm to the police within 24 hours of discovering it missing.

If the police recover a gun that was involved in a crime, the District Attorney can prosecute the gun's previous owner, you, if you did not legally transfer the firearm. **These are both Federal and New York State laws, and convictions could result in a \$10,000 fine and a 10 year federal prison sentence.** For your protection, please make sure you go to the County Clerk's Office if you want to sell or give away your firearm.

Firearms that are illegally transferred are used to kill citizens in Rochester every year. You can help us make Rochester a safer community by preventing your gun from ending up in the wrong hands.

Thank you,

Chief of police,
David Moore
(Example)

District Attorney,
Michael Green
(Example)

Mayor,
Robert Duffy
(Example)

Appendix 3 (Bi-annual survey)

Name

Address

City of Rochester, 14623

Dear Mr./Ms. Name,

As you know, gun violence is a serious problem in Rochester. We understand that you are a registered pistol permit holder and may be interested in purchasing a gun in the future if you do not own one already. It is important that we all do our part to store guns safely and keep guns out of the hands of kids and criminals.

As partners in keeping the streets safe in your neighborhood we want to remind you of your legal obligations as a gun owner.

If you ever decide to sell or give your gun to someone, you should fill out a Consent Form at the Monroe County Clerk's Office located at 39 West Main Street. If you do not, the transfer may result in a crime. Please check with the County Clerk's Office to ensure that you will not be violating Federal or State law.

In addition, the City of Rochester requires that you check on your firearm at least once every seven days, and you must report any theft or loss of your firearm to the police within 24 hours of discovering it missing. It is a crime not to do so.

Please make sure you go to the County Clerk's Office if you want to sell or give away your firearm to another person, and that you report any theft or loss to the police.

Firearms that are illegally transferred are used to kill citizens in Rochester every year. You can help us make Rochester a safer community by preventing your gun from ending up in the wrong hands.

Thank you,

Chief of police,
David Moore
(Example)

District Attorney,
Michael Green
(Example)

Mayor,
Robert Duffy
(Example)

Appendix 3 cont.

We now ask that you visually check on all handguns in your possession and list their information on the following page in the space provided. If you have no firearms in your possession simply leave the page blank, **but still sign the page**. After doing so, please sign the bottom of the page where it reads 'signature' confirming that all information is accurate and honest. Then place the page with the firearm information into the return envelope and mail it to the County Clerk's Office.

IMPRTANT: You are required to mail this information to the County Clerk even if it is blank. Not doing so is a violation of the law and may result in the revocation of your pistol permit.