

PS COMMITTEE #2
November 30, 2015

MEMORANDUM

November 25, 2015

TO: Public Safety Committee

FROM: Susan J. Farag, Legislative Analyst *SJF*

SUBJECT: **Update – Court Watch Montgomery**

Today the Public Safety (PS) Committee will receive an update from the Executive Director of Court Watch Montgomery, Laurie Duker. The update will provide a briefing on Court Watch Montgomery's new report, "Abusers with Guns: The Critical Role of Maryland's Courts in Reducing Lethal Risks to Domestic Violence Victims" (attached at © 1-28).

Background:

Court Watch Montgomery was founded in September 2010 to provide a public eye on domestic violence in Montgomery County. It observes court proceedings in the County, to identify ways in which safety may be increased for domestic violence victims, and makes recommendations on court policies and practices that may provide added protections.

November 2015 Report:

The newest report examines how Montgomery County District Courts are currently applying existing gun laws in criminal domestic violence dockets. Court Watch Montgomery monitored 654 criminal domestic violence hearings over the past year. During these proceedings, 561 individuals were prosecuted of various domestic violence charges.

The report's findings include:

- **Telling offenders that they are permanently disqualified from possessing or purchasing a gun.** Only one of 126 offenders was told by the judge that he was permanently disqualified from possessing or purchasing a gun. No judges warned any offender of the consequences of gun possession or purchase. Court Watch Montgomery recommends that judges consider verbally informing every offender who becomes disqualified from possessing guns that he is immediately and permanently barred from possessing or purchasing firearms, asking offenders under oath whether they possess firearms now, and warning each offender that possessing a gun may result in felony charges.
- **Providing written notice that offenders are disqualified from purchasing or possessing guns.** Currently, offenders receive a one-page Trial Summary, which summarizes the verdict and the sentence. It offers a warning to all defendants that they may be barred from owning a gun under Federal law. Court Watch Montgomery recommends providing written notice of gun laws for all convicted offenders who are actually disqualified from purchasing or possessing guns. The statement should include notice that guns must be relinquished immediately, and what penalties the offender faces from possession or purchase of a firearm. The notice should be available in multiple languages.
- **State law does not lay out a clear process for how and when disqualified firearms are to be relinquished in a way that maximizes victim and community safety.** Court Watch Montgomery recommends that courts work with police to develop a method of more rapidly sharing information on all offenders who become disqualified from possessing guns.
- **A few offenders who were given Probation Before Judgment (PBJ) were not disqualified from purchasing or possessing guns, either because the prosecutor failed to ask the judge to mark the case as domestic, or the judge declined to do so. Regular DV prosecutors almost always requested this designation, but when other prosecutors handled the cases, it was sometimes overlooked.** Court Watch Montgomery recommends that prosecutors ask the judge to specifically identify every relevant case as domestically-related, and judges should make the designation based only on the domestic violence status and not on other details such as whether it is a first offense.
- **There may be a misperception that guns are not a serious issue in the criminal domestic violence case because the defendant's guns have already been relinquished as part of a parallel civil protective order process.** Court Watch Montgomery recommends focusing on the criminally-disqualified individuals. A protective order requirement to surrender guns only lasts for the time that the order is in place.
- **Montgomery County has a fatality review process that studies domestic violence-related deaths, but it is currently inactive.** Court Watch Montgomery recommends that the Domestic Violence Fatality Review Committee be reconstituted and report annually, giving assessments of needed systemic improvements to prevent future deaths.

Discussion Issues:

- 1) The Committee may wish to ask how and when different County departments are responsible for the removal of guns from individuals charged or convicted of domestic violence. What is the currently communication process among the Courts, Sheriff, and Police?
- 2) The Committee may wish to ask more about the County's fatality review process. Is this a standing committee, or only convened at certain times? Are additional staffing or funding necessary?

F:\Farag\Packets\Public Safety\CourtWatch Montgomery Update 11-30-2015.doc

**Abusers with Guns:
The Critical Role of Maryland's Courts in Reducing Lethal Risks
to Domestic Violence Victims**

Recommendations for Policy and Practices



CourtWatch
MONTGOMERY
A Public Eye on Domestic Violence

By Laurie Duker and Judy Whiton
November 2, 2015



**This report is dedicated to the many
domestic violence victims and their children
who lose their lives to guns each year in Maryland**



Abusers with Guns: The Critical Role of Maryland’s Courts in Reducing Lethal Risks to Domestic Violence Victims

Recommendations for Policy and Practices

Table of Contents

Introduction and purpose of this report	3
Data collection approach	4
Gun laws impacting domestic violence survivors	4
Study findings and recommendations	5
Conclusion	11
Footnotes	13
Appendices	
Appendix 1. Current trial summary language and sample trial summary form	15
Appendix 2. Best practices used in Montgomery County regarding guns & domestic violence offenders	17
Appendix 3. The District Court criminal domestic violence docket	17
Chart of criminal charges and offenders disqualified from possessing guns	
Appendix 4. Victim safety: guns before and after trial	20
Appendix 5. Identifying those prohibited from possessing or purchasing a gun and successful gun transfers	20
Appendix 6. Study Methodology	21
Appendix 7. Guide to photos of domestic violence gun violence victims	22
Appendix 8. Court Watch Montgomery	24
Bibliography	25

**Abusers with Guns:
The Critical Role of Maryland's Courts in Reducing Lethal Risks to
Domestic Violence Victims**

Recommendations for Policy and Practices

Introduction and Purpose of This Report

Guns pose a unique and alarming threat to victims of domestic violence. Every year, thousands of adults in Montgomery County, and tens of thousands across Maryland, are the victims of domestic violence.¹ When an abuser has access to a gun the risk of homicide for women rises by 500 percent.² Guns were the cause of death in 74% of all domestic violence homicides in Maryland from July, 2013 through June, 2014.³

Children and the broader community are also endangered by gun-related domestic violence incidents. In a recent study of every mass shooting in the United States between 2009 and 2013, the shooter killed an intimate partner or other family member in 57% of the cases, in addition to the many other victims.⁴

Both the U.S. Congress and the Maryland legislature have recognized the unique dangers posed by domestic violence abusers with guns. Both federal and Maryland law disqualify certain convicted offenders from purchasing or possessing guns.⁵

A number of Montgomery County departments, including the police, the sheriff's department, probation, and the State's Attorney's Office already go to great lengths to remove guns from domestic violence offenders when possible during 911 calls, follow up investigations, protective order proceedings, prosecutions, and probation. Courts also have a critical role to play in reducing the lethal risk that firearms pose to domestic violence victims by fully implementing Maryland laws that restrict the availability of guns to dangerous domestic violence offenders.

The purpose of this report is to examine how Montgomery County District Courts are currently applying existing gun laws in criminal domestic violence dockets and to suggest court policies and practices that may save lives by reducing the number of guns in the hands of convicted

domestic violence offenders. Although every County is different, data from Montgomery County may be useful in raising questions that are relevant state-wide and may suggest reforms that can reduce domestic violence deaths across counties by reducing dangerous offenders' access to guns.

Our findings are stark and disturbing. A full 22% of domestic violence offenders studied (126 out of 561) became legally and permanently disqualified from possessing or purchasing firearms as a result of their criminal case. **Yet only one offender out of 126 was told by a judge that he could no longer possess a gun; that suggests this is happening in less than 1% of relevant cases. Not a single one of the offenders disqualified under Maryland law was given written notice to that effect. Judges did not warn a single disqualified offender that possessing a gun could result in a felony charge with a mandatory minimum sentence of 5 years.**

Gun safety advocates have hailed Maryland's gun laws as one of our Country's most comprehensive. Yet our state's gun laws mean little if they are not consistently and actively applied by the courts. With simple steps to implement current laws, Maryland's courts can help prevent domestic violence homicides by doing more to prevent dangerous convicted offenders from illegally possessing guns.

Data Collection Approach

This report is based on data collected by ten trained Court Watch Montgomery volunteers, who monitored a total of 654 criminal domestic violence hearings over a one year period in Montgomery County's District Courts. A total of 561 individuals were prosecuted on a wide array of charges ranging from second degree assault (45% of all charges) to violating protective orders, theft and reckless endangerment. Monitors collected data on a wide range of topics which will be analyzed in future reports. Descriptions of current information given to offenders by the court following sentencing, best practices currently used in Montgomery County to keep guns out of the hands of dangerous offenders, details on the docket studied, and the methodology used in the study are included in the appendices.

Gun laws impacting domestic violence survivors

Although both Federal and Maryland law disqualify certain domestic violence criminal offenders from purchasing or possessing guns, this report focuses on persons disqualified under Maryland law.

Although prosecution under a similar Federal gun statute is also possible, it is impractical in most cases, as it requires the participation of the Bureau of Alcohol, Tobacco and Firearms (ATF). It seems most pertinent to address local judicial actions based on Maryland law that are most likely to prevent local gun deaths.

Maryland's statute mandating that certain offenders be disqualified from possessing firearms provides a basis for court action to prevent homicides. The Maryland legislature and governor signaled the great importance they placed on removing guns from potentially dangerous offenders by making a violation of this statute a felony carrying a minimum mandatory five year sentence with no parole.⁶

Yet the statute is silent on the critical question of how guns are to be relinquished or to whom, and requires no verification that the gun has actually left the offender's possession. Despite the law's lack of a stated process for enforcement, **there is much that judges can do to decrease the risk of domestic violence homicides by notifying those who are disqualified, identifying which disqualified persons possess guns, stressing the severe penalty associated with violating the gun ban, and encouraging the transfer of guns to police departments.**

Study findings and recommendations

Guns were virtually never discussed during the criminal domestic violence docket despite the fact that when an abuser has access to a gun the risk of domestic violence turning into homicide rises five-fold. During the twice-weekly dockets, District Court judges covered a wide range of issues with offenders as part of their careful explanations of each conviction and sentence. Topics included everything from supervised probation or mental health treatment to required domestic violence classes and court costs.

Case studies help illustrate the severity of the crimes typically monitored in this study, and the implicit danger of not doing more to implement the ban on gun possession for those convicted of such abuse.

One victim was pregnant. Her boyfriend hit her continually in the stomach.

A husband pushed his wife and strangled her twice with a scarf. She called 911. He had previously threatened to kill both her and their children. The defendant owned a gun, and the prosecutor trying the case reported that "the victim is terrified."

A husband brandished a butcher knife near his wife, broke a bottle over his adult son's head, poured gasoline on clothes and threatened to burn down the house.

In not one of these cases did the judge notify the defendant that he was disqualified from possessing a gun or warn him of possible felony charges if he possessed a gun going forward.

Judges also routinely warned offenders that they could serve their full sentence if they violated its terms. Yet a discussion of guns was heard only twice in 210 discussions of pleas and convictions, despite the fact that 22% of defendants on the docket were permanently disqualified from possessing guns as a result of their day in court.

The 126 offenders in our study who became disqualified from possessing or purchasing guns fell into three categories. Defendants were disqualified if they were:

- convicted of a “crime of violence” (72 offenders)⁷;
- convicted of a Maryland misdemeanor with a statutory penalty of greater than 2 years, such as reckless endangerment or resisting arrest (25 offenders)⁸; or were
- sentenced to “probation before judgment” for a domestically-related crime (29 offenders).⁹

Since the sample of cases we observed constituted less than half of all criminal domestic violence dockets during the study period, the total number of disqualified defendants during this time period would have been substantially higher. In addition, the most serious domestic violence cases (e.g., murder, 1st degree assault, etc.), which are prosecuted in the higher Circuit Court, are not included in this study. That docket presumably has a higher percentage of defendants disqualified from possessing or purchasing guns.

Finding 1:

Only one out of 126 offenders was told by the judge that he was permanently disqualified from possessing or purchasing a gun. Not a single judge warned any offender of the serious consequences of gun possession or purchase.

Recommendation 1:

Judges can and should play a central role in ensuring that domestic violence offenders who become disqualified from purchasing or possessing guns understand the gun prohibition facing them and move swiftly to relinquish all firearms.

We urge judges to consider taking the following actions:

- **Verbally inform every offender** who becomes disqualified from possessing guns that he is immediately and permanently barred from possessing or purchasing firearms;¹⁰
- **Ask offenders under oath whether or not they possess a firearm** and note the offender’s response on a Trial Summary worksheet revised to document this information. If the offender states that he or she does possess a gun the court should send this information to the Montgomery County Firearms Taskforce within 48 hours for follow-up to ensure gun transfer; and

- **Verbally warn** each offender that possessing a gun may result in prosecution on **felony charges that carry a minimum five year sentence** if convicted. Even though judges may not be able to order immediate gun surrender, they can actively discourage possession, **promote rapid relinquishment of guns, and encourage disqualified offenders to turn guns in to law enforcement authorities.**

Verbally informing the defendant in this way also helps to educate the victim of the crime, if she is present. For example, it can empower her to provide information to law enforcement, a probation officer or her victim advocate or lawyer if she knows or learns at a later date that her abuser has access to a gun.

Finding 2:

Not a single one of the 126 offenders disqualified from purchasing or possessing guns was told in writing by the court that they were personally, definitively disqualified, nor what the potential penalties were for failing to relinquish a gun.

Among the papers offenders receive following their conviction is a one page Trial Summary, which summarizes the verdict and their sentence. Yet the main section of the Trial Summary makes no mention of the Maryland gun possession restriction, even though defendants are asked to sign this part of the form, acknowledging that they understand the verdict and sentence of the court and promise to comply as ordered. What information on guns *is* included on the Trial Summary comes lower on the page in small type. It offers a blanket warning to *all* defendants, whether or not they are disqualified from owning guns, and only says that they “*may*” be barred from having a gun under Federal law (See full text of existing written warning in Appendix 1.)

This current notice is not a definitive statement of disqualification for those directly affected. It is incomplete, addressing only the federal gun statute, and only defendants convicted of crimes of violence, but not those who were disqualified under the two other binding Maryland statutes rendering defendants disqualified to possess guns (conviction of a misdemeanor with a statutory sentence of more than 2 years, or a probation before judgment sentence in a domestically-related case other than second degree assault).

The current warning concerning gun possession conveys no sense of the need to act immediately and gives no specifics as to where guns may be turned in. Penalties for non-compliance are not addressed. Interpreters for non-English speaking defendants have usually left the courtroom by the time defendants receive their paperwork, yet this written “alert” is available only in English.

Recommendation 2:

Written notice of gun purchase and possession disqualification is not a replacement for an oral explanation and warning from a judge, but it is also a critical element in the process and every effort should be made to make it prominent and understandable. Judicial leadership should consider the following actions state-wide:

- **Develop a separate statement for all convicted offenders who are actually disqualified** from purchasing or possessing guns that plainly states that they are permanently disqualified, urges

that guns be relinquished immediately, and details what laws will be violated and penalties incurred should the person possess or purchase firearms;

- Make the notice available in **multiple languages**. In Montgomery County the notice should be available in English, Spanish, French, Korean, Mandarin, and Amharic. Other counties may need the notice translated into a different set of languages; and
- Print the notice on **red paper** (the way gun surrender information is presented to respondents in protective order cases) to underscore its importance and urgency.

It is essential that each individual be given a clear written statement describing any restrictions resulting from his sentence. Offenders who receive supervised probation are given a contract to sign before they leave court that states that they may not purchase a gun without permission of their probation officer. Actions by the police, probation department or others, however, do not obviate the need for action on the judge's part to drive this important message home at the time of sentencing.

Finding 3:

Maryland law does not lay out a clear process for how and when disqualified firearms are to be relinquished in a way that maximizes victim and community safety. Members of the Montgomery County Firearms Task Force are charged with obtaining guns from disqualified owners. Although police officers go to great lengths to identify and take custody of firearms when they respond to 911 domestic disturbance calls, not all criminal cases begin with a 911 call, and even when such calls occur, they are often just the beginning of a longer process. Identifying prohibited gun owners in order to recover illegally held guns is a critical law enforcement task that requires timely information from the courts about new convictions.

Recommendation 3:

To ensure dangerous domestic violence offenders relinquish all guns immediately, courts need to **work with police to develop a method of more rapidly sharing information** on all offenders who become disqualified from possessing guns. This information sharing will enable police to greatly enhance their effectiveness in ensuring guns are relinquished.

Finding 4:

A small percentage of the defendants who were given "probation before judgment" sentences were not disqualified from purchasing or possessing guns because either the prosecutor failed to ask the judge to mark the case as domestically-related or the judge declined to do so. The regular domestic violence prosecutors virtually always requested this important designation, but when other prosecutors (those who do not handle domestic violence cases regularly) were handling these cases, this crucial step often fell by the wayside. The designation is important both to establish gun disqualification and to track state-wide what portion of crime is related to domestic violence.

One defendant was a veteran with a traumatic brain injury, post-traumatic stress disorder, and an alcohol problem.

In an incident more than a year ago, he had removed his gun from a safe during a heated argument with his girlfriend in order to scare her. He shot the gun into the air outside the home. He was later arrested, highly intoxicated, with both the loaded gun and an open bottle in his truck.

The veteran “agreed” to relinquish his gun under a plea agreement, almost a full year after an incident.

The judge took the time to discuss with the defendant the fact that a traumatic brain injury and alcohol or weapons simply don’t mix, and urged him to develop a plan to proceed in a safe and non-violent manner.

June, 2015

Recommendation 4:

Prosecutors should ask the judge to specifically identify every relevant case as domestically-related. Judges should make the designation based only on whether an intimate relationship between the parties has been established, not on any other details of the case, such as whether it is a first offense.

Finding 5:

The same violent incident that leads to criminal prosecution of an offender may lead a victim to seek a civil protective order, which offers numerous distinct remedies and protections for survivors of domestic violence. There may be a misperception that guns are not a serious issue requiring action in criminal domestic violence cases because defendant’s guns have already been relinquished as part of the parallel civil protective order process. In fact, **only 26% of defendants who were disqualified from owning guns actually had protective orders against them in place already requiring them to surrender their firearms for the duration of the order.**

Recommendation 5:

Removing a gun from a domestic violence offender on the basis of a protective order is usually much faster than waiting for a possible conviction in a criminal case. Criminal cases in our study averaged 97 days. The protective order requirement to surrender guns, however, lasts only for the year or less that the order is in place and

disappears if the victim rescinds her order.

Raising the percentage of victims involved in domestic violence criminal cases that have protective orders is a desirable goal – and it is one that staff at the State’s Attorneys’ Office, The Family Justice Center and Abused Persons Program work at pro-actively – but there is no substitute for a focus on criminally disqualified individuals.

Finding 6:

A nationally accepted “best practice” is to have a “fatality review team” study each domestic violence death in a region. **A fatality review process is urgently needed in Montgomery County that studies each domestic violence death and near death in the County, including the history of any guns used in these incidents.** Such a team has functioned at times in the County and provided very valuable insights resulting in important reforms. Such studies can again inform local and state public policy, identify possible legal loopholes, gaps in enforcement, and areas needing foundation grant-making. A fatality review process is fundamental to the identification of practical steps which may prevent future homicides.

Recommendation 6:

Montgomery County’s Domestic Violence Fatality Review Committee should be reconstituted immediately and should report to the public annually, giving their assessment of needed systemic improvements to prevent future deaths. **A well-functioning Fatality Review Team requires at least one full time staff position** to coordinate an ever-changing membership from a wide range of agencies, the collection of extensive files from county agencies and outside entities such as hospitals, and to make annual reports to the public possible. Reports will allow citizens to participate in solutions and monitor progress. The team should include members of the community as well as County employees.

Johnnie Perkins had a history with the criminal justice system since 1992. He was on parole from a 2012 sentence for selling crack and out on bail in spite of 2 charges, one for assaulting an officer, which he had appealed, and one for felony possession of a firearm.

At the preliminary hearing the commissioner ordered Perkins held without bond. At the subsequent bond review, the prosecutor told the judge Perkins was a threat to the community and should not be released.

The judge set a \$100,000 bond. Mr. Perkins paid \$1,000 and the bail bondsman \$4,000.

Less than a month later, Perkins shot and killed his wife, Shamika Moody-Perkins in their car at a Germantown gas station, with her sixteen year old nearby. He then turned the handgun on himself.



In September of 2014, a domestic violence victim filed criminal charges against her boyfriend. She described the incident this way:

“He pulled off the highway and grabbed my cell, then jumped out as I was getting out... and pushed me back in. He jumped on top of me and started saying he was going to kill me.”

“He choked me until I could no longer breathe. When I came to he still would not let me out. I tried to get out the back of the truck. He grabbed me again and began choking me. “

The boyfriend was charged with second degree assault and false imprisonment. He had a previous conviction in Montgomery County, two years earlier, for assault against a different woman.

The defendant pled guilty to second degree assault. He was not told by the judge that he was disqualified from owning guns, nor asked if he had guns, nor told of possible penalties.

The defendant was actually already disqualified from possessing guns due to his prior assault conviction. *But in that earlier hearing, as in the current hearing, he was not notified by the judge that he was permanently disqualified from possessing a gun.*

Conclusion

Although some offenders inevitably will hold on to guns illegally or purchase illegal guns following disqualification, studies show that legislation limiting the legal access criminals have to guns has reduced violent crime, and that what judges do in the court room can affect whether or not defendants relinquish weapons. **One study examined the rates at which convicts re-offended based on whether or not they were barred from purchasing guns. The convicts barred from purchasing guns were 20% to 30% less likely to commit future violent or firearm-related offenses.¹¹ A different study interviewed protective order petitioners and found that when they reported that the judge had ordered their abusers to surrender their weapons, the rate of gun surrender did rise.¹²**

Maryland's law that bans gun possession and purchase by convicted domestic violence abusers makes good sense given the deadly role that guns play in domestic violence. A great deal can be accomplished by more vigorous application of these critical statutes by judges at the time of sentencing. Judges can

use this opportunity to inform offenders of their disqualification, ask them under oath if they possess guns, describe the penalties for violating the statute, and reiterate that offenders can turn any guns they own into law enforcement. A clear written notice that outlines an offender's disqualification from possessing or purchasing guns is essential. By adding these important warnings at this juncture, judges can better safeguard victims of domestic violence at virtually no cost to the courts or taxpayers.

Footnotes

1. Domestic violence continues to endanger large numbers of Montgomery County and Maryland residents. In 2014 spouse or partner assaults made up 46% of all reported aggravated assaults in Montgomery County. (Montgomery County Crime Report 2014.)
<https://www.montgomerycountymd.gov/POL/Resources/Files/crime/MCPCrimeReport2014.pdf>

Statewide, over 16,000 domestic violence assaults were reported to police in 2013 (Maryland Uniform Crime Report). Domestic violence incidents that come to the attention of law enforcement are only the tip of the iceberg. In a recent national survey over half of the 600 domestic violence survivors interviewed said that calling the police would make things worse. Two thirds said that they were afraid the police would not believe them, or do nothing. (National Domestic Violence Hotline. Logan, T.K., R. Valente. Who will help me? Domestic violence survivors speak out about law enforcement responses. Washington DC. 2015.)
2. J.C. Campbell, D.W. Webster, J. Koziol-McLain, et al., "Risk factors for femicide within physically abusive intimate relationships: results from a multi-site case control study," 93 Amer. J. of Public Health 1089-1097 (2003).
3. Maryland Network Against Domestic Violence, 2015. <http://mnadv.org/about-domestic-violence/deaths-in-maryland/>
4. Everytown for gun safety. Analysis of recent mass shootings. July 2014.
5. This report uses the words gun and firearm interchangeably. Both refer to all types of guns including handguns, assault weapons and long guns.

Maryland's Public Safety law (5-133) disqualifies anyone convicted of a "disqualifying crime" from possessing or purchasing a regulated firearm. Disqualifying crimes include "crimes of violence", as defined in this section of the law, which includes second degree assault and any crime which has a statutory sentence of more than two years. Rifles and shotguns are prohibited by a conviction of a crime of violence. Md. Code, Public Safety 5-206. Md. Under the 2013 Gun Control Act individuals receiving a "probation before judgment" finding in a "domestically-related" case other than 2nd degree assault convictions are also prohibited from possessing or purchasing guns.

The amended Federal Gun Control Act of 1968 permanently prohibits those convicted of the "misdemeanor crime of domestic violence" from purchasing, or possessing firearms. (See 18U.S.C. § 922 (d) (9). A misdemeanor crime of domestic violence is defined as an offense that is a misdemeanor under federal or state law and 2) includes the use or attempted use of physical force, or the threatened use of a deadly weapon, and 3) is committed by a current or former spouse, a person with whom the victim shares a child in common or by a person who has cohabited with the victim as a parent or guardian. (See 18 U.S.C. § 921 (a) (33) (f).

6. See Md. Code Ann., Pub. Safety § 5-101 (b) and (c).
7. See Md. Code Ann., Pub. Safety § 5-101(c) for the crimes that constitute a “crime of violence.
8. Maryland misdemeanors with sentences of more than two years included for purposes of this docket reckless endangerment, fourth degree burglary, malicious destruction of more than \$1,000, resisting arrest, possession of a dangerous weapon with intent to injure, telephone misuse, false imprisonment, and transmission of HIV.
9. See Public Safety § 5-101(b).

In addition to the three categories described above, anyone convicted of a felony in Maryland is disqualified from gun purchase or possession. Domestic violence felony cases are virtually always heard in Montgomery County’s higher Circuit Court and so are not addressed in this report. There are also additional categories of disqualification for habitual drunkenness, certain mental health institutionalizations, etc. that did not arise in the docket covered in this report.

Maryland’s gun prohibitions due to criminal conviction or “probation before judgment” sentences are permanent and include all types of guns, including handguns, assault weapons, rifles and shotguns.⁷ Maryland, however, does not regulate the sale of rifles and shotguns, so state police have no record of who possesses them, making it virtually impossible to identify those who are disqualified but may not be forthcoming about the fact that they have long guns.

10. In this report we use “he” for offender since 90% of the offenders disqualified from possessing guns were male. Of the broader pool of 561 defendants, 81% were male. Due to these statistics use “she” for survivors of domestic violence.
11. Wright, Mona, Wintemute, G. and F. Rivara. Effectiveness of denial of handgun purchase to persons believed to be at high risk for firearm violence.
12. Webster, Daniel, Shannon Frattaroli, et. al., “Women with Protective Orders Report Failure to Remove Firearms from Their Abusive Partners: results from an exploratory study.” Journal of Women’s Health, Vol. 19. Number 1, 2010.

Appendix 1: Current Trial Summary language given to all those convicted in District Court criminal domestic violence dockets

The Trial Summary currently includes the generic “notification” copied in bold below, which is given to all defendants. No definitive statement is given to those who are permanently disqualified from possessing or purchasing all firearms that directly addresses Maryland law.

“If you are convicted of a misdemeanor crime involving violence where you are or were a spouse, intimate partner, parent or guardian of the victim or are or were involved in another, similar relationship with the victim, it may be unlawful for you to possess or purchase a firearm, including a rifle, pistol, or revolver, or ammunition, pursuant to federal law under 18 U.S.C. 922(g)(9). If you have any questions whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney.”

See a sample Trial Summary form on next page.

Case No.



DISTRICT COURT OF MARYLAND FOR MONTGOMERY COUNTY

Located at 191 EAST JEFFERSON STREET, ROCKVILLE, MD 20850

STATE OF MARYLAND VS.

CC #: State ID: LocID:
Eyes: BRN Hair: BL Height: Weight:
Race: Sex: DOB: DL #:

DEFENDANT TRIAL SUMMARY

The above case was heard today, 07/24/2015 by Judge:
The Court's finding is as follows:

002 ASSAULT-SEC DEGREE

Plea - GUILTY Verdict - PROBATION BEFORE JUDGMENT

Probation for 2 yrs., commencing today, to be supervised by the Division of Parole and Probation.
Criminal fine \$0.00 \$0.00 suspended.

003 RECKLESS ENDANGERMENT

Plea - OTHER PLEA Verdict - NOLLE PROSEQUI

Criminal cost \$22.50; CICF \$35.00.

Total criminal fines and costs \$57.50, \$57.50 due today.

I UNDERSTAND THE VERDICT AND SENTENCE OF THE COURT AND PROMISE TO COMPLY AS ORDERED:

To observe and follow the conditions of probation as indicated above and/or on the attached Defendant Probation Summary. I further understand that by consenting to and receiving a probation before judgment I waive my right to appeal and that my failure to abide by the conditions set by the Court may result in judgment being entered against me and Court proceeding as if I had been found guilty.

The Division of Parole and Probation is located at 191 E. JEFFERSON ST. 1ST FLOOR, ROCKVILLE, MD 20850

Defendant

FAILURE TO COMPLY WITH ANY OF THE REQUIREMENTS ORDERED BY THE COURT MAY RESULT IN A WARRANT BEING ISSUED FOR YOUR ARREST AND/OR, IF THE VIOLATION IS A MOTOR VEHICLE OFFENSE, YOUR DRIVER'S LICENSE BEING SUSPENDED.

If you are convicted of a misdemeanor crime involving violence where you are or were a spouse, intimate partner, parent, or guardian of the victim or are or were involved in another, similar relationship with the victim, it may be unlawful for you to possess or purchase a firearm, including a rifle, pistol, or revolver, or ammunition, pursuant to federal law under 18 U.S.C. 922(g)(9). If you have any questions whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney.

You may be entitled to expunge this record and any DNA Sample and DNA Record relating to the charge or charges against you if you meet certain conditions. Further information on expungement is contained in a brochure available at the Clerk's Office or on our website at <http://www.courts.state.md.us/district>.

Tracking No. 156337270703

17

Appendix 2: Best practices used in Montgomery County regarding guns and domestic violence offenders

A number of Montgomery County departments, including the Police, the Sheriff's Department, Probation, State's Attorney's Office and Abused Persons Program go to great lengths to remove guns from domestic violence offenders wherever possible. These departments utilize many innovative techniques to protect victims from gun violence. This impressive network of services does not obviate the need for vigorous court involvement in notifying and identifying parties who possess firearms.

Best practices already in place include:

- First responders from the police department regularly ask victims whether the offender has access to firearms as part of a Lethality Assessment Protocol during responses to 911 calls. As well as taking any guns that are evidence in the case police officers may obtain any guns currently in the home.
- All convictees who are placed on supervised probation (whether or not the case is domestic violence related) are required to turn in any guns for the duration of their probation. Gun ownership information received from probationers is checked against state police records. Each defendant is asked to sign a probation contract that includes a requirement to clear the purchase of any firearm prior to purchase. The six probation officers specializing in domestic violence also routinely administer a Lethality Assessment to victims.
- During the very dangerous period following service of the temporary protective order and a final order, Sheriff's deputies, State's Attorneys' Office staff, and victim advocates for the County keep in close contact with the victim. The Sheriff's office performs safety checks on the victim's place of residence as necessary. Victim advocates develop safety plans with victims who leave the home, and with those who are not ready to leave.
- An ALERT team (Assessment, Lethality and Emergency Response Team), comprised of members of key County departments, meets weekly to share information about high-risk domestic violence cases in the County.

Appendix 3: The District Court criminal domestic violence docket

Misdemeanor criminal cases involving domestic violence are usually heard in District Court and are "bench trials", in which the judge rules on the case. Cases may be appealed to the higher Circuit Court where a jury or Circuit Court judge will determine the outcome. The most severe felony assaults, such as attempted murder, are tried originally in the Circuit Court.

Although misdemeanors, many of the cases prosecuted in the District Court domestic violence docket involve serious abuse and carry potentially significant and life changing penalties. For instance, second

degree assault charges (45% of all charges prosecuted) are considered misdemeanors but carry a maximum sentence of ten years. Misdemeanor assaults can be precursors to more violent, lethal assaults as abusers dominance and control tend to increase in severity over time in domestic violence relationships.

Crimes of violence

Almost half (49%) of domestic violence defendants in the study were charged with at least one count of a “crime of violence”, as defined in the relevant Maryland public safety law. Charges included first and second degree assault, sexual offenses and robbery. In our study all “crime of violence” convictions were for second degree assault.

Assault cases ranged from punching, strangulation or use of a knife or bottle, to mutual brawls or a single slap or push. Prosecutors described many cases involving hitting with fists, bite marks, broken teeth, and broken ribs. Strangulation, a particularly lethal form of assault, was asserted in approximately 8% of cases. The use of weapons was relatively rare but included one incident in which a gunshot was fired into the air, and 12 assaults with other weapons such as knives, bottles, scissors, a machete, or keys.

Probation before judgment

In general, a defendant who receives probation before judgment, as opposed to a specific sentence based on a finding of guilt, can clear his or her record at the end of the sentence if they do not violate their probation. Defendants given probation before judgment usually appear to have made an uncharacteristic mistake, appear unlikely to commit further crimes, or are charged with a crime for the first time.

The law governing gun ownership for those with domestically-related probation before judgment sentences is an illogical mix of contradictions. Current law appears to impose a disqualification from possessing or purchasing a gun for probation before judgment cases that tend to be quite minor, but not require gun disqualification for the same charge committed by someone who receives an actual sentence due to the severity of the incident or an extensive criminal history.

Even more troubling, the statute exempts anyone convicted of second degree assault who receives probation before judgment from the ban on gun possession. Someone convicted of physical assault who receives a probation before judgment appears to be a greater threat to a domestic violence victim and more worthy of being barred from gun possession than an offender convicted of only domestically-related intoxication.

According to state officials, training and follow up are needed with court clerks and State’s Attorneys’ Offices to ensure that “domestically-related” determinations show up in the appropriate criminal data bases. We did not examine this part of the process in our study.

**Convictions disqualifying persons from gun possession/purchase
Study of District Court domestic violence criminal docket**

Sept. 1, 2014 - Sept. 1, 2015

561 unique cases

Crim charge	Initial charges	Pled guilty	Convicted at trial	Total # of disqual. offenders
<u>Crimes of violence</u>				
First degree assault	47	0	0	0
Second degree assault	522	48	24	72
Sexual offense (1,2,3)	4	0	0	0
Robbery	2	0	0	0
Kidnapping	1	0	0	0
Attempted murder	1	0	0	0
Armed robbery	1	0	0	0
Crimes of violence subtotal	578	48	24	72
<u>Misd. with sentence of >2 years</u>				
Reckless endangerment	44	12	0	12
Burglary, 4th degree	9	2	1	3
Malicious destruction >1K	6	2	0	2
Telephone misuse	11	2	0	2
Resisting arrest	6	2	0	2
Attempted dang weapon/int	10	2	0	2
Dangerous weapon/intent to injur	8	1	0	1
CDS Possess - not marij.	3	1	0	1
False imprisonment	18	0	0	0
Stalking	3	0	0	0
Transmission of HIV	4	0	0	0
Verbal extortion	2	0		0
Misd. w/ 2 year sent. subtotal	124	24	1	25
Domestically-related				
Prob. before judgement subtotal				29
Total # of offenders disqualified from possessing guns				126

20

Appendix 4: Victim safety: guns before and after a criminal case

From criminal charges to case completion

In Maryland, firearms relinquishment is not a standard condition of bonds or pre-trial process. While defendants with a history of gun use may have special restrictions added to their bonds, most will be able to retain any guns in their possession for the long period between being charged with a crime and completion of their criminal case. Although pre-trial probation officers, State's Attorneys' Office staff and others coordinate to help legally remove guns during this volatile period, such as when the victim asks them to remove a gun from the home, or files of a protective order, the pre-trial period is obviously a dangerous one. (See Appendix 4 for County best practices).

In Seattle, Washington, firearm removal is addressed at each juncture in a criminal proceeding. Judges are expected to order the temporary surrender of firearms within 24 hours at court hearings for arraignment, pleas, orders of continuance and deferred prosecution. Upon conviction, the firearms are forfeited.

The immediate post-conviction period

The immediate post-conviction period is fraught with dangers for domestic violence victims. In our study only 21% of second degree assault defendants were taken into custody. In the majority of cases resulting in sentences judges do require supervised probation, but defendants are free to leave the courthouse immediately after sentencing, at which time they may be able to access firearms and may blame the victim for their conviction.

Appendix 5: Identifying those prohibited from purchase or possession of a gun and successful gun transfers

Identifying prohibited owners and recovering illegally held guns is a daunting but critical task. Many guns are seized during 911 family disturbance calls when police have broad authority to take firearms, whether or not they were part of the immediate incident. Officers are often able to get information from the victim on the location of any firearms.

Statewide, the staff of the Maryland Gun Center are on call 24/7 to help law enforcement and prosecutors track firearms used in crimes and individuals who are disqualified. Gun Center staff report difficulty in keeping current on newly purchased guns and new disqualifying convictions.

Law enforcement efforts to correlate gun owners with those disqualified begins with the MAFS database (Maryland Automated Firearms System), which documents over one million legally acquired regulated firearms, handguns and assault weapons in Maryland. It does not track "long gun" ownership, as rifles and shotguns are not regulated by the state. There is no software connecting the MAFS to Maryland's Criminal Justice Information System (CJIS), a computer system that tracks approximately 3 million criminal convictions. The MAFS is name-based while the CJIS is fingerprint based and, put simply, the

two systems don't talk to each other. This complicates the task of tracking down illegally possessed guns a great deal.

Checks for disqualified individuals are also dependent on the NICS, the National Instant Criminal Background Check system established by the FBI. NCIC is an electronic clearinghouse for crime data available to all local, State and Federal criminal justice agencies nationwide.

Both the Maryland system and the NICS rely on careful entry of information at the local and state level and if records are not entered immediately and precisely, they may fail to record convictions in a retrievable way. Too often abusers are able to purchase firearms simply because the data designating them as prohibited purchasers fails to make it into the NICS system correctly. Law enforcement can obtain guns if they find a perpetrator with them, provided that the disqualification has been properly entered in databases and supplied to NICS or a state database.

Appendix 6: Study methodology

Ten Court Watch volunteers filled out a detailed 4 page form on 654 cases that were heard between 8:30 am and noon once a week in each District courthouse during the criminal domestic violence docket. Teams of two observers at a time allowed us to gather more insights and improve reliability. Criminal dockets often continued into the afternoon but those cases were not monitored. Afternoon cases were more likely to be trials than cases in the mornings. In some cases monitors observed more than one hearing on the same case, however 85% of the cases and defendants were unique.

We trained volunteers in a two hour classroom setting, and then did extensive "on the job" training at court, and follow up trainings to address questions. A supervisor was scheduled for each day who knew court process well and who discussed the docket when the team of two volunteers finished, making sure their forms were completely filled out and answering any questions.

We chose not to equalize the number of hearings we monitored for each judge, but rather to let collected data speak to the randomness of judge's schedules and that fact that some judges appear to be hearing more domestic violence cases than others.

Appendix 7. Guide to photos of domestic violence gun victims



Mariam Adebayo (24), a recent University of Maryland graduate, was shot to death by her ex-boyfriend outside the Target where she worked in Germantown, Maryland in June, 2015.



Cynthia Hayward (32) and Natalee Hayward (2) were shot to death by Cynthia's husband and the father of Natalee in Owings, Maryland in August of 2012. The couple's 12 year old boy was found alive in the home with lacerations to the neck and burns to his body.

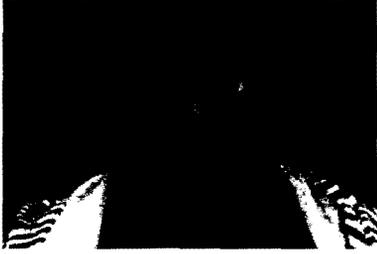


Donna Laudick (50), was born in Rockville Maryland. She worked most recently in radiology. Donna loved to spend time with her grandchildren, and was an avid volunteer. She was shot to death by her husband in Mt. Airy, Maryland in October, 2015.



Gail Pumphrey (43), was a flight attendant. She and the couple's children, **David (12), Meagan (10) and Brandon (7)** were shot to death by Gail's ex-husband during an exchange for a visit on Thanksgiving Day, 2007 in Unity Park, Montgomery County Maryland.

"The only way he killed all four of them was that he had a gun."
(Janet Blackburn, sister and aunt of the victims)



Preeta Gabba (49), was shot to death by her ex-husband and his new partner as she took a walk in her Germantown neighborhood in October, 2013. Preeta earned \$10 an hour at her clerical job but had plans to attend community college and work in the health-care industry.

"She was the only family I had." (Son, 23 years of age)



Laila Miller (3), was shot in the head and her throat was slit by her father, shortly after he snapped a "selfie" of the two of them in his car. Shortly before he abducted Laila he shot both her maternal grandparents in Temple Hills, Maryland in August of 2014.



Reanna Greene (26), was shot and killed in April, 2015 at the Canton Crossing shopping center by her boyfriend, who then killed himself. Both were registered nurses at the Shock Trauma Center. Reanna volunteered for a medical mission in Honduras. She ran numerous 10K races and half marathons.

Appendix 8: Court Watch Montgomery



CourtWatch
MONTGOMERY

Cite: Duker, Laurie and Judy Whiton. Abusers with guns: the critical role of Maryland's courts in reducing lethal risks to domestic violence victims. 2015. www.courtwatchmontgomery.org

1112 Noyes Drive, Silver Spring MD 20901. 240-606-6620. Email: lduker@gmail.com

Court Watch Montgomery is a 501c3 non-profit organization founded in 2010 to reduce domestic violence by improving the courts and advocating for needed reforms. Approximately 50 volunteers monitor over 1,000 protective order and criminal domestic violence hearings each year in Montgomery County's three courthouses.

Court Watch Montgomery works to reduce domestic violence by promoting

- the use of best practices in domestic violence courtrooms;
- comprehensive legal protections to keep victims safe and self-sufficient;
- judicial decisions in the best interest of the child;
- practices that reduce offender recidivism; and
- community awareness of domestic violence issues.

Thank you to the many Court Watch volunteers who collected data in District Court criminal court hearings, reviewed case records, researched, and edited drafts.

25

Bibliography

"About District Court" available at <http://www.courts.state.md.us/district/about.html>

Anne Arundel County Police Dept., Written Directive, Index Code 1603 & 1604, Dec. 5, 2014

Campbell, Jacquelyn, et al. "Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study." American Journal of Public Health. Vol. 93, No. 7, 2003.

Campbell, Jacquelyn, Webster, Daniel and Glass, Nancy. "The Danger Assessment: Validation of a Lethality Risk Assessment Instrument for Intimate Partner Femicide." Journal of Interpersonal Violence, vol. 24 (2009).

Connecticut Stat. Analysis Ctre. & Conn. Jud. Branch, State of Connecticut Family Violence Case Flow Analysis, 2/2001

Daniel W. Webster and others, "The Case for Gun Policy Reforms in America , Johns Hopkins Center for Gun Policy and Research (2012), available at <http://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-gun-policy-and-research/publications/WhitePaper102512-CGPr.pdf>

110,000 Gun owners soon to face confiscation, downloaded
<http://www.guns.com/2014/03/14/Maryland/110,000-gun-owners-soon-face-confiscation>

Federal Bureau of Investigation, National Instant Criminal Background Check System: NICS Participation Map, <http://www.fbi.gov/about-us/cjis/nics/general-information/participation-map>

Frantzen, Durant; Miguel, Claudia San; Kwak, Dae-Hoon. "Predicting Case Conviction and Domestic Violence Recidivism: Measuring the Deterrent Effects of Conviction and Protection Order Violations," Violence and Victims, Volume 26, Number 4, 2011 , pp. 395-409(15) still need

Gavin, Chandra & Nora K. Pickett, Criminal Domestic Violence Case Processing: A Study of the Five Borough of New York City, Center for Court Innovation, NY, NY 2005

Hobbs, Carla, Pam Loginsky, David Martin, Prosecutors Domestic Violence Handbook, Washington Assc. Of Prosecuting Attorneys & King County Prosecuting Attorneys DV Unit, 12/11/14

Klein, A.R. (2006) "Enforcing Domestic Firearms Prohibitions: A Report on Promising Practices." Washington, D.C., Office on Violence Against Women.

Klein, Andrew R. "Practical implications of current domestic violence research: for law enforcement, prosecutors and judges." National Institute of Justice, June 2009. Department of Justice. www.ojp.usdoj.gov/nij

Law Center to Prevent Gun Violence, Domestic Violence and Firearms in Maryland,
<http://smartgunslaw.org/domestic-violence-firearms-policy-summary/>

<http://smartgunslaws.org/prohibited-purchasers-generally-in-maryland/>

<http://www.smartgunslaws.org/domesticviolence-firearms-in-maryland/>

Lethality Assessment, Maryland Network Against Domestic Violence. Available at <http://mnadv.org/lethality/>

Md. Code, Criminal Procedure, § 6-233.

Md. Code, Public Safety, § 5-101-5-206.

Maryland Network Against Domestic Violence, Individuals who Lost their Lives by County, 2008-2014, available at <http://mnadv.org/mnadvWeb/wp-content/uploads/2011/07/Lives-by-county.png>

Maryland State 2015 Legislative Session, HB 0857 & SB 0530 www.mgaleg.maryland.gov

Minnesota 2nd Judicial District Family Violence Coordinating Council, Guidelines and Procedures for Domestic Violence Abuse-related Cases, Sept. 1, 2013 (4th Ed.), appr. September 11, 2013

Misdemeanor Crimes of Domestic Violence & Federal Firearms Prohibitions, ATF 1 3310.3 (09-01)

Model Domestic Violence Policy for the Maryland Law Enforcement Community, April 2004

Montgomery County Police Dept, 2014 Montgomery County Crime Report.

National Center for Victims of Crime, "Stalking Fact Sheet," download http://www.victimsofcrime.org/docs/src/stalking-factsheet_english.pdf?sfvrsn=4

National Center on Protective Orders & Full Faith & Credit, Firearms Checklist, Grant No. 2006-WT-AX-K047, DOJ Office of Violence Against Women

National Coalition Against Domestic Violence, Firearms and DV, <http://www.thehotline.org/resources/firearms-dv/>

North Carolina Domestic Violence Best Practice Guide for Judges, N.C. Administrative Office of the Courts, (updated 12/20/10)

Montgomery County Crime Report 2014. <https://www.montgomerycountymd.gov/POL/Resources/Files/crime/MCPCrimeReport2014.pdf>

Montgomery County Family Justice Center Newsletter, vol. 1, Iss. 5, Fall 2010, "The Role of the LOTD," p. 3

National Council of Juvenile and Family Court Judges. Civil Protection Orders: a Guide for Improving Practice. NCJFCJ: Reno, Nev. 2010.

National Domestic Violence Hotline. Logan, T.K., R. Valente. Who will help me? Domestic violence survivors speak out about law enforcement responses. Washington DC. 2015.

National Network Against Domestic Violence, Guns, DV & Homicide, Fact Sheet, p. 2

O'Malley, Brown, 2013 Uniform Crime Report, pp. 52-59

Salzman, L.E., J.A. Merg, P. O'Connell, M. Rosenberg & P. Rhodes, "Weapons Involvement and Injury Outcomes in Family & Interpartner Assault," Journal of the American Medical Assc. 26,7; 3043-47

Stachelberg, Winnie, Arkadi Gerney, Chelsea Parsons & Megan Knauss, "Preventing Domestic Violence Abusers and Stalkers from Accessing Guns, Center for American Progress,"

State of Connecticut Family Violence Case Flow Analysis, Conn. Stat. Analysis Ctr. & Conn. Jud. Branch, 2/2001

Suntag, David, Cutting Edge: New Research Shows Strong Results for Vermont Integrated Domestic Violence Docket, NASJE, National Association of State Judicial Educators, posted 1/18/12

The Supreme Court of Ohio, Domestic Violence Program <http://www.supremecourt.ohio.gov.domviol>

St. Paul Blue Print for Safety, Praxis Int.

Texas Family Violence Bench Book, Offc. Of Court Administrators, w/ OVA Grant WF-08-1130-21069-01. Sept. 2011

Tjaden, Patricia and Nancy Thoennes. National Institute of Justice and the Centers of Disease Control and Prevention. "Extent, Nature, and Consequences of Intimate Partner Violence: Findings from the National Violence Against Women Survey." 2000.

U.S. Census Bureau, DP-1. Profile of general demographic characteristics: 2000. Census 2000 Summary File, Montgomery County Maryland.

U.S. Dept. of Justice, FBI Supplementary Homicide Reports, 2010

U.S. Department of Justice, Special Report, Nov. 2007

Violence Policy Center, When Men Murder Women: an Analysis of 2013 Homicide Data, September 2015. <http://www.vpc.org/studyndx.htm>.

Washington Post, Article on Perkins

Websdale, N. (2000, Feb.). "Lethality Assessment Tools: a Critical Analysis." Harrisburg, Pa. VAWNET, A Project of the National Resource Center on DV/Pennsylvania CADV, retrieved 5/23/2012. <http://www.vawnet.org>

Webster, Daniel W. & Jon S. Vernick, Reducing Gun Violence in America, Johns Hopkins Un. Press, Balt., Md., 2013, & Chapter 4 and Chapter 8 Updates

Webster, Daniel, Shannon Frattaroli, et. al., "Women with Protective Orders Report Failure to Remove Firearms from Their Abusive Partners: results from an exploratory study." Journal of Women's Health, Vol. 19. Number 1, 2010.

Webster, Daniel, Shannon Frattaroli, et. al., "Women with Protective Orders Report Failure to Remove Firearms from Their Abusive Partners: results from an exploratory study." Journal of Women's Health, Vol. 19. Number 1, 2010.

Women's Law Center, Maryland State Gun Laws, www.Women'slaw.org/Maryland:StateGunLaws-state-type-php?id=2792state-code=MD&pwe-is=9484/9485

Wright M. A., et al. "Effectiveness of Denial of Handgun Purchase to Persons Believed to be at High Risk for Firearm Violence." Am J Public Health 1999.