



Memorandum for the Connecticut Coalition Against Domestic Violence on
Whether to Protect Victims of Domestic Violence from Firearms Through
Connecticut's Risk Warrant Statute or Through Connecticut's Civil Restraining
Order Statute As Ex Parte Relief

Kristine Lizdas
Legal Program Director
Battered Women's Justice Project
1801 Nicollet Ave South, Suite 102
Minneapolis MN 55403

January, 2016

I. Purpose

Adequately aiding victims of domestic violence demands careful analysis of the concerns of victims and the risks they face when attempting to leave their abusers. Consequently, the most effective legislation should take these factors into account. Connecticut's Risk Warrant statute, while a valuable tool, does not fully address the needs and concerns of domestic violence victims and should not be the only option available to victims who believe their abusers' access to firearms is a safety risk to them. Rather, the Battered Women's Justice Project deems giving judges the discretion and authority to order the surrender of firearms in an ex parte or temporary civil restraining order to be a substantially sounder policy because the responsibility and burden shifts from the victim to the state and courts, and it does not add an extra hurdle for victims. At least twenty states¹ concur and have passed legislation authorizing or requiring the surrender of firearms at the ex parte stage.

II. Background

To address gun violence at large, Connecticut adopted the Risk Warrant statute in 1999, which allows law enforcement officers to seize firearms from any person who is deemed to pose "a risk of imminent personal injury to himself or herself or to other individuals" after obtaining a warrant.² Individuals must lodge a complaint about the threatening person with law enforcement. The police, after investigating and determine probable cause, can then pursue a warrant to seize

¹ Arizona, California, Hawaii, Illinois, Maine, Massachusetts, Michigan, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Pennsylvania, Texas, Utah, Virginia, Washington and West Virginia.

² CONN. GEN. STAT. § 29-38c(a).

firearms from individuals who pose a risk to themselves or others.³ As of 2015, Indiana and California are the only states to have passed similar laws.⁴ From October 1999 through July 2013, 764 warrants for “imminent risk” gun seizures have been served in Connecticut, with 53% having been served since 2010.⁵

Connecticut has strong restrictions on access to firearms by domestic violence perpetrators; however, domestic violence deaths remain prevalent in Connecticut, and are frequently the result of gun crime. Nationally, domestic assaults involving firearms are 12 times more likely to result in fatal violence than those involving other weapons or bodily harm,⁶ and women are more at risk to be victims of fatal domestic violence. Further, women in abusive relationships are 5 times more likely to be killed if their abuser has access to a firearm.⁷ Connecticut averaged 14 intimate partner homicides per year between 2000 and 2012.⁸ Firearms were used in 39% of the 188 intimate partner homicides that occurred between 2000 and 2012, making firearms the most commonly used weapon to commit intimate partner homicide in Connecticut.⁹

³ *Id.*

⁴ While Connecticut and Indiana allow only law enforcement to seek the removal of firearms from dangerous individuals, California is the first state to adopt a law enabling immediate family members to bring a petition for a gun violence restraining order.

⁵ Michael A. Norko & Madelon Baranokis. *Gun Control Legislation in Connecticut: Effects of Persons with Mental Illness*, 46 Conn. Law Review 1609, 1616 (2014).

⁶ Center for Gun Policy and Research. “Intimate Partner Violence and Firearms.” John Hopkins Bloomberg School of Public Health, citing Satzman LE, et al., 1992. “Weapon Involvement and Injury Outcomes in Family and Intimate Assaults.” *Journal of the American Medical Association*. 41(2): 281-83.

⁷ Campbell, JC, et al. 2003. “Risk Factors for Femicide in Abusive Relationships: Results from a Multistate Case Control Study.” *American Journal of Public Health*. 93(7): 1092.

⁸ Connecticut Coalition Against Domestic Violence. (July 2014) *Upon Further Examination: 2014 Findings & Recommendations of the Connecticut Domestic Violence Fatality Review Committee*. p. 2.

⁹ Connecticut Coalition Against Domestic Violence (December 2014) *Firearms and Domestic Violence: Protecting Victims at the Most Dangerous Time*. p. 3.

III. Practical Considerations When Working with Victims of Domestic Violence

While the creation of the Risk Warrant statute speaks to a well-intentioned desire to protect the public from dangerous persons with firearms, and may be a valuable tool for some individuals, the statute places too great a burden on victims and further puts them at risk.

Use of the Criminal Justice System. The Risk Warrant statute requires a victim to report their abuser to law enforcement; however, contacting the police is not always in the best interest of the victim nor is it always safe. In a survey of over six hundred women who experienced partner abuse, including women who had and had not contacted the police about their experiences with domestic violence, both groups expressed a strong reluctance to turn to law enforcement for help due to the possible - and potentially deadly - repercussions. More than half the women surveyed stated that turning to the police would make things worse, with several victims frequently citing fear of reprisal by their abuser.¹⁰ Of the women who had not previously contacted the police, 70% feared that calling the police would make things worse, that the offender would only get a slap on the wrist, or calling the police would have negative consequences for them.¹¹ These concerns are not merely speculative fears, as indicated by the accounts of victims who had unfortunate experiences in which “[the police] believed [her abuser] every time [she called the police] because he didn’t leave marks”¹² or “sympathized with [her abuser] and said he [just] needed to stay away from [the victim].”¹³ Victims may also be threatened with arrest rather than their offenders or fear dual arrest, which poses a significant barrier to victims in Connecticut, where both the victim and

¹⁰ National Domestic Violence Hotline, *Who Will Help Me? Domestic Violence Survivors Speak About Law Enforcement Responses*. Washington, DC (2015). <http://www.thehotline.org/resources/law-enforcement-responses>.

¹¹ *Id.*, at 3.

¹² *Id.*, at 8.

¹³ *Id.*, at 6.

abuser were arrested in 20% of domestic violence cases.¹⁴ Law enforcement can be a powerful, beneficial tool for victims of domestic abuse in the right context, from providing specific safety suggestions to arresting a victim's abuser; but obliging victims to initiate a criminal justice system response might leave victims more vulnerable to additional harm.

Increased Burden on and Risk for Victims. Requiring a victim to go to the police places additional burdens on the victim and forces the victim to take on a more active role when attempting to leave their abuser.

Connecticut's ex parte civil restraining order application allows a victim to indicate whether the abuser possesses a firearm, but permits for a dangerous loophole in protection for victims of domestic violence. The two-week period between the issuance of an ex parte order and the hearing for a permanent restraining order leaves victims of domestic violence vulnerable during a highly dangerous time – the period immediately after the victim takes steps to leave their abuser. During this time, abusers might resort to extreme measures to regain power when they perceive that their control over the victim is slipping, either to coerce the victim into staying or to retaliate for the victim's attempt at departure. In at least twenty states,¹⁵ courts have the explicit authority to address the temporary removal of firearms at the ex parte stage, offering victims of domestic abuse significant protection during this time, evidenced by the fact that state laws that prohibit persons subject to restraining orders from possessing firearms reduced rates of fatal domestic

¹⁴ Helen Ubiñas. *State's Domestic Violence Law Leads to High Rate of Dual Arrests: Officers' Practice of Taking Both Accuser and Accused into Custody Can Traumatize Victims*, HARTFORD COURANT, July 24, 2011. (2011). http://articles.courant.com/2011-07-24/news/hc-ubinas-domestic-arrests-0724-20110723_1_domestic-violence-law-tracey-thurman-victim-and-offender.

¹⁵ Arizona, California, Hawaii, Illinois, Maine, Massachusetts, Michigan, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Pennsylvania, Texas, Utah, Virginia, Washington and West Virginia.

violence by 12-13%.¹⁶ In 2015, Connecticut courts issued 4,417 ex parte restraining and 2,788 long-term restraining orders following official hearings induced by either an ex parte order or an Order for Hearing and Notice Summons.¹⁷ By giving courts the explicit authority to require the surrender of firearms at the ex parte stage, Connecticut would offer significantly more protection to victims of domestic violence. Further, should a victim apply for a risk warrant, the victim then must also apply for a civil restraining order if they need their abuser to be removed from the home. This creates not only an additional burden for the victim, but the judicial system as well, by requiring two hearings, one on the risk warrant that involves the time of state's attorneys and police, and one on the restraining order that may involve a different judge.

Finally, accounting for the safety concerns of many victims supports adding language to the civil restraining order statute that would grant courts and judges the power to authorize the removal of firearms at the ex parte stage, prior to a formal hearing. Victims are extremely exposed to retaliation by their abusers. Seeking a civil restraining order has always required a cost-benefit analysis for victims, but many victims ultimately determine that the safety benefits outweigh the cost of possible retaliation. Connecticut's Risk Warrant statute, however, adds substantial cost for victims because it requires the victim to be the primary actor in seeking seizure of firearms. When applying for a civil restraining order, a petitioner only needs to disclose whether the respondent possesses firearms or has used or threatened to use firearms, and indicate whether this poses a safety concern for the petitioner. The victim is not required to spearhead any dispossession effort; rather, the victim is able to distance him or herself from the actual request to prohibit firearms possession, thereby deflecting possible retaliation. By requiring a victim to take a more active role

¹⁶ Vigdor ER, Mercy JA. 2006. "Do Laws Restricting Access to Firearms by Domestic Violence Offenders Prevent Intimate Partner Homicide?" *Evaluation Review*. 30: 313-46.

¹⁷ State of Connecticut Judicial Branch Statistics on Protective Orders and Restraining Orders. http://www.jud.ct.gov/statistics/prot_restrain/Prot_Restrain_Order.pdf

- by asking him or her to go to the police, wait for the police to determine that the victim's abuser poses an immediate risk of harm, then wait for the court to assess the merits of the Risk Warrant application, and file a separate application and affidavit for a civil restraining order – not only puts a substantial burden on a victim, but ties the victim very closely to the firearm dispossession, thereby increasing an abuser's likelihood of retaliation. Additionally, requiring victims to shoulder the burden of firearm seizure or forfeiture is an enormous deterrent to help-seeking - many victims would never avail themselves of the Risk Warrant Statute process for fear of reprisal. The issue of whether to order the surrender of firearms more appropriately sits with the courts, and should be an automatic consideration at the ex parte stage in restraining order applications in which firearm possession is an issue. Shifting the onus of removing firearms to the courts provides an additional shield between the victim and his or her abuser.

IV. Conclusion

Victims need options. Going to law enforcement presents safety risks for many victims and, at the end of the day, victims still do not have the civil restraining order that offers them significant protection during the critical departure period. Connecticut's Risk Warrant statute fails to provide a safe and tenable option for victims of domestic violence and should not be the only route available to victims who believe their abusers' access to firearms is a safety risk to them. As such, the Battered Women's Justice Project advocates that giving explicit authority to courts to order the surrender of firearms in an ex parte or temporary restraining order addresses the complex relationship between gun control and protecting victims of domestic violence in the nuanced way it requires.