



American Probation and Parole Association

# GUNS, SAFETY AND PROACTIVE SUPERVISION

*Involving Probation  
and Parole in*





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# PREFACE

Project Safe Neighborhoods (PSN) is a comprehensive, strategic approach to reducing gun crime in the United States. By linking together federal, state, and local law enforcement, prosecutors, other justice entities, and community leaders, PSN provides a multifaceted approach to deterring and punishing gun crime. The program was announced in May 2001 and implements President George W. Bush's promise to fight gun crime by building on effective programs across the United States.

In 2004, the Bureau of Justice Assistance (BJA) awarded a cooperative agreement to the Council of State Governments/American Probation and Parole Association for Incorporating and Training Probation and Parole Professionals to Reduce Gun Violence (2004-GP-CX-K001). It recognizes that probation and parole officers and agencies have a great deal to add to the existing initiatives and partnerships that have made PSN so successful. Probation and parole officers work closely with judges, prosecutors, prevention initiatives, law enforcement, community resources, and victims. The aforementioned groups and individuals are PSN's contacts on the ground at every stage of the justice system and work daily with offenders who are prohibited from possessing firearms.

## PURPOSE OF THIS MONOGRAPH

The information in this monograph is intended to raise concerns and issues that agencies and officers should consider in decisions about proactive supervision as it relates to dealing with prohibited offenders who may possess guns. The document does not prescribe a template or model for this. Rather, agencies and officers may wish to use the document as a center of discussion on policies and procedures, especially with the agency's legal counsel who is in the position to advise them on federal, state, and local laws that apply to the practice of supervision.

The primary purpose of this monograph is to provide probation, parole, community supervision officers, and their agencies with a framework to assist them in planning, implementing, and enhancing services provided to offenders who may possess firearms. Information provided will neither endorse nor oppose the carrying of weapons by supervising officers. Further, references to matters of law are not intended to be legal interpretations and agencies should consult with legal counsel relative to the development of policies and procedures.

APPA recognizes that PSN is not a "one size fits all" program. As you will learn, PSN suggests that each U.S. judicial district analyze the gun crime problem in their area and then, after considering the issues and resources available, design a response program maximizing the resources specific to that area.

The APPA/PSN project asked for input from the field in the fall of 2004 about their proactive supervision, especially search procedures aimed at the discovery and seizure of firearms in the hands of prohibited offenders. Only about half of the responding agencies reported that they are actively involved in such supervision practices. When asked what would be required should they initiate such practices, there were three issues in the forefront. Administrators wanted to be assured that if officers were to be tasked with the type of proactive supervision that would take on illegal gun possession they should be:

1. trained in proper search technique,
2. trained in safety so they would return home at the end of the day, and
3. endowed with sufficient knowledge to do it legally.

In the Texas "Project Spotlight" program, after the first year of the program, all participating jurisdictions identified safety training as the number one issue that needed to be addressed.

The APPA/PSN initiative has established a web site to enable interested probation and parole officers and agencies to learn about Project Safe Neighborhoods. The web site ([www.appa-net.org/PSN/default.html](http://www.appa-net.org/PSN/default.html)) includes examples of federal firearm information, resources, examples of effective programs already in operation, and free distance learning through audio teleconferences. Additionally, the field has been informed how to establish contact with local U.S. Attorneys' Offices to begin

discussion about joining in the PSN efforts. APPA has developed training that is tailored to the unique needs of probation and parole and delivered by trainers with hands-on experience. Given the various levels of proactive supervision in existence already, the training is adapted to specific localities, whether a jurisdiction or agency is interested in beginning a program or just needs help with one or more aspects of an already successful one.

APPA's association with Project Safe Neighborhoods comes at a time that coincides with a renewed interest and revitalization of probation and parole officers' work with offenders. Similar to practices in policing that had evolved over time, the venue of our work has changed. In recent years the emphasis on police work has taken officers out of cars and onto the street. Police officers can be seen on foot, on bicycles, and even on scooters. They are where the people are. The shift in probation and parole work is not movement from a car, but movement out of an office.

The base of this effort is at once simple and straightforward, as well as enormously complex and challenging. It is this: Probation and parole supervision must be done in the community where the offenders live, work and go to school, and it must be done when the offenders are likely to be around. This means officers will be out of their offices and in the neighborhoods during non-traditional working hours.

But, as previously discussed, this type of strategy will inevitably put officers in dangerous places at high-risk times. Probationers and parolees, as well as other current and former offenders, live and work there, and drugs, illegal guns, and violence are a fact of life. If probation and parole is to carry out its mission, agencies have to prepare, train, and equip officers to work in this dangerous environment. They can't back away from community-based supervision, and they must do it safely and effectively.

APPA's work with Project Safe Neighborhoods is an effective way to address departments' demands for safe, informed, and legal approaches to proactive supervision. Through the PSN project, APPA was given the means to reach out to departments and help them provide the kind of supervision that will help prevent reoffending as well as to control the behavior of offenders.

PSN believes every jurisdiction should develop and implement strategies and policies designed to enable their staff to work safely and effectively in this dangerous environment.





# CHAPTER(one)

## THE IMPACT OF ILLEGAL GUNS ON COMMUNITY SUPERVISION

### COMMUNITY SUPERVISION – A BALANCED APPROACH

Community supervision, for probation and parole, refers to the ability to promote long-term behavioral change in offenders that leads to a reduction in recidivism and enhanced public safety. Successful supervision programs can be measured by the program's impact on recidivism (Fulton, Stone, & Gendreau, 1994).

Adult probation and parole activities and objectives are generally categorized as intervention, surveillance, and enforcement. Within this context, intervention includes the entire gamut of treatment and services provided to offenders to enable them to become productive and responsible citizens. Surveillance involves those activities that relate to monitoring offender behaviors as well as the social environment of the offender. Surveillance provides a mechanism for short-term offender control and public protection. The enforcement component holds offenders accountable for their actions. For example, drug screening directly confronts offenders with their past drug use and is an important accountability measure. Payment of restitution and community service work are means of holding offenders strictly accountable for their crime (Fulton et al, 1994).

Illegal guns in the hands of supervised offenders are a threat to the community and put probation, parole, and community supervision officers at risk. By federal law, felons and certain domestic violence offenders are prohibited from gun possession. Although violent crime rates in the United States have been declining steadily and are now at a 30-year low, gun violence, particularly homicide, continues to be a significant problem. Officers providing effective and proactive supervision need to be safe as they work with prohibited offenders who regardless of admonitions and conditions of supervision illegally possess firearms.

### Gun Violence in the United States

Gun violence in the United States is a serious social and public health problem. The Bureau of Justice Statistics indicates that between 1993 and 1997 nearly 80,000 homicides and more than 250,000 nonfatal injuries resulted from a crime with a firearm (Bureau of Justice Statistics, 2000). Victims of these violent acts have included bystanders, family members, law enforcement personnel, and probation and parole professionals, as well as the offenders themselves.

2005 statistics compiled by the Federal Bureau of Investigation's Law Enforcement Officers Killed and Assaulted (LEOKA program) reported that of the 53 law enforcement officers feloniously killed in the line of duty, (these figures do not include parole, probation, or community supervision officers) 48 were killed with a firearm. Of those firearms, 40 were handguns, three were rifles, and five were shotguns. LEOKA statistics for 2004 show that being on probation or parole was the single most common denominator in profiling the killer of a police officer. Research conducted by Community Corrections Institute found that of the male parole and probation officers feloniously killed in the line of duty, 80 percent were killed with a firearm—the majority of those firearms being handguns. Research also found that female community supervision officers are most often stabbed or beaten to death (Schweer & Thornton, 2005).

## Gangs and Gun Violence

Many believe that gang activity has been a major source of gun violence. According to an online report by The New York Times (Zernike, 2006), while violent crime has been at historic lows nationwide in cities such as New York, Miami, and Los Angeles, it is rising sharply in many other places across the country. “While such crime in the 1990’s was characterized by battles over gangs and drug turf, the police say the current rise in homicides has been set off by something more bewildering: petty disputes that hardly seem the stuff of fistfights, much less gunfire or stabbings. Suspects say they killed someone who ‘disrespected’ them or a family member, or someone who was ‘mean mugging’ them, which the police loosely translate as giving a dirty look. More weapons are on the streets, giving people a way to act on their anger.”

The article further quoted Police Chief Nannette Hegerty of Milwaukee as calling it “the rage thing.” In Milwaukee, homicides jumped from 88 in 2004 to 122 in 2005. The number classified as arguments rose to 45 from 17, making it by far the largest category of killings, as gang and drug murders declined.

According to the article, (Zernike, 2006) homicides in Houston rose 24 percent last year and disputes were by far the largest category; 113 out of 336 killings. In Philadelphia, where 380 homicides made 2005 the deadliest year since 1997, 208 were disputes; drug-related killings, which accounted for about 40 percent of homicides during the high-crime period of the early 1990s, accounted for just 13 percent. “When we ask, ‘Why did you shoot this guy?’ it’s, ‘He bumped into me,’ ‘He looked at my girl the wrong way,’” said Police Commissioner Sylvester Johnson. “It’s not like they’re riding around doing drive-by shootings. It’s arguments—stupid arguments over stupid things.”

Research indicates that in 2002, males and females 18-24 years of age are consistently the highest percentage of both victims and offenders relating to homicide, with that age group committing 26.8 percent of the homicides (Bureau of Justice Statistics, 2004). A teenager is more likely to die from gunshots than from all natural causes of death combined. In a study of juvenile drug sellers who owned a firearm 42 percent admitted to using a gun in a crime (Bureau of Justice Statistics, 1995). The next age group of 25-34 committed 12.8 percent of the homicides, and for every fatal shooting there are about three non-fatal shootings (Bureau of Justice Statistics, 2004).

## Prohibited Persons

The Violent Crime Control and Law Enforcement Act (1994) placed new restrictions on the types of individuals prohibited from possessing firearms (i.e. persons subject to domestic violence restraining orders) and increased penalties for using a firearm in the commission of a crime of violence or Federal drug trafficking crime. See Figure 1-1 for a list of prohibited offenders as specified by Federal law, 18 U.S.C. § 922 (g).

Gun laws, however, were not uniformly enforced and in many jurisdictions state gun laws were, and still are, far less strict. In response to the various disparities in laws and enforcement, legislators proposed, and in some areas passed, enhanced penalties for the illegal use and/or possession of firearms. However, as evidenced by the continuing gun related violence and deaths, having laws on the books without a strategic plan for notification and innovative enforcement does little to reduce gun violence. In response to these issues and concerns, Project Safe Neighborhoods was created.

## PROJECT SAFE NEIGHBORHOODS

In 2001, President George W. Bush launched an aggressive, comprehensive gun crime reduction strategy called Project Safe Neighborhoods (PSN). PSN is a unique partnership among federal, state, and local law enforcement agencies, community corrections, county prosecutors, business, media, and the community-at-large. Additional information on PSN can be found on its Web site ([www.psn.gov](http://www.psn.gov)).

The program’s approach is to reduce gun crime by providing locally based programs with the tools and resources they need to succeed. Under the leadership of the U.S. Attorney in each of the 94 federal judicial districts, local law enforcement and other officials can create a task force, and tailor the PSN strategy to fit the unique gun crime problems in that district. Criminals who use guns are prosecuted under federal, state, or local laws, depending on which jurisdiction can provide the most appropriate sanction (Bureau of Justice Assistance, 2004).

Each district engages in deterrence, intervention, and prevention efforts through community outreach and media campaigns and also provides the training necessary to make the program work. The PSN program stresses that to be successful, five elements are essential: partnerships, strategic planning, training, outreach, and accountability.

## FIGURE 1-1: PROHIBITED PERSONS

18 U.S.C. § 922 (g) It shall be unlawful for any person—

- (1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
- (2) who is a fugitive from justice;
- (3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));
- (4) who has been adjudicated as a mental defective or who has been committed to a mental institution;
- (5) who, being an alien—
  - (A) is illegally or unlawfully in the United States; or
  - (B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));
- (6) who has been discharged from the Armed Forces under dishonorable conditions;
- (7) who, having been a citizen of the United States, has renounced his citizenship;
- (8) who is subject to a court order that—
  - (A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
  - (B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
  - (C) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or  
(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or
- (9) who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

### Partnerships

Members of PSN task forces may include federal, state, and local agencies, including the U.S. Attorney who heads each task force; state and local prosecutors; heads of the state, local, and federal law enforcement agencies, and community leaders. Together they develop strategies to reduce gun crime and review and prepare gun cases for prosecution in the most appropriate forum and venue.

As you will read later in this document, though many community corrections agencies have embraced this program and become actively involved, some community corrections agencies have not become involved. In those instances, the agencies have attributed their noninvolvement to what might be called a difference in mission statements.

But this perceived difference indicates a lack of understanding of PSN on the part of the community corrections agency. PSN is not just a law enforcement endeavor; it is an effort of the community to reduce gun violence.

### Strategic Planning

Each PSN task force creates a strategic plan tailored to address the specific dynamics of its crime problem. Strategies are designed to intensify enforcement using state-of-the-art technology and intelligence-gathering techniques such as crime mapping, identifying hot spots, tracing seized guns, and using ballistics technology.

## Training

Specialized training on current laws and trends is essential. PSN provides training for partners in areas such as firearm identification, safety, interdiction, trafficking, and tracing. Other training topics include federal and state firearm statutes, federal and state search and seizure laws, evidence management, and strategic planning. The American Probation and Parole Association ([www.appa-net.org](http://www.appa-net.org)) is the primary PSN national partner providing training specifically designed for community corrections agencies.

## Outreach

Outreach activities include producing and distributing literature, conducting mail campaigns, sponsoring local workshops and producing public service announcements, educational literature, press releases, and news articles. PSN's national public service announcement campaign began with a portrayal of the pain of mothers who have lost their children to gun violence, using the "Gun Crimes Hit Home" message. Then came "A Mother Sentenced", "Brother Sentenced", and "Sister Sentenced". The most recent PSA is "Family Sentenced".

Community outreach and public awareness are essential to PSN's success, and a prime area for contribution by community corrections agencies. The U.S. Attorney and other PSN partners work with their local communities to increase awareness of PSN, promote community involvement, send a gun crime deterrent message, and work with citizens to develop a gun crime reduction strategy for the community.

## Accountability

U.S. Attorneys must continually review gun crime reduction efforts to measure PSN's impact on reducing crime. The U.S. Attorneys also assess the effectiveness of their strategic plans and provide semiannual reports to the Attorney General. Probation and Parole agencies should learn what the strategies are for their district. In some districts community corrections has not yet been involved. In others jurisdictions they are an integral part of the PSN effort and have been leaders in prevention, education, and interdiction.

## FIGURE I-2: PSN TRAINING AND TECHNICAL ASSISTANCE PROVIDERS [WWW.PSN.GOV/TRAINING/PROVIDER.ASPX](http://WWW.PSN.GOV/TRAINING/PROVIDER.ASPX)

Federal, state, and local partners engaged in the national PSN initiative have available to them a wide variety of no-cost training and technical assistance support. Access to the PSN-related services of each of the organizations listed below is available through the U.S. Attorney's Office PSN Coordinator (for state and local agencies), and through the FEAT Points of Contact at the U.S. Department of Justice (for PSN Coordinators).

### PROVIDERS

- Academy for Educational Development
- American Probation and Parole Association
- American Prosecutors Research Institute
- American University
- Bureau of Alcohol, Tobacco, Firearms and Explosives
- Cosmos Corporation
- Hobson & Associates
- Institute for Law and Justice
- International Association of Chiefs of Police
- Michigan State University
- National Crime Prevention Council
- Office of Community Oriented Policing Services

## Involving Probation and Parole in PSN

The U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance (BJA) has worked with federal agencies already engaged in the initiative (e.g., the U.S. Marshals Service and the Bureau of Alcohol, Tobacco, Firearms and Explosives) to assist existing and potential partners in joining the PSN efforts. In this regard, BJA has established a network of training and technical assistance providers (see Figure 1-2) to assist U.S. Attorneys in getting the involvement of state and local agencies in PSN in new ways, by delivering training and technical assistance that was previously unavailable to them. Many state and local agencies have received assistance in joining in this national, presidential initiative.

In 2004, BJA entered into a cooperative agreement with the American Probation and Parole Association on a project known as Incorporating and Training Probation and Parole Professionals to Reduce Gun Violence. It is recognized that probation and parole officers and agencies have a great deal to add to the existing initiatives and partnerships that have made PSN so successful. Supervising officers work closely with judges, prosecutors, defense attorneys, prevention initiatives, law enforcement, community resources, victims, and offenders.



# CHAPTER(two)

## PROACTIVE SUPERVISION: TAKING GUNS INTO ACCOUNT

### UNDERSTANDING WHAT HAPPENED

The challenges that face probation, parole, and community supervision officers in the 21st century are many and varied, ranging from the mundane to the life threatening. Not the least of these challenges is dealing with offenders in possession of prohibited firearms. Whether a community corrections agency arms its officers; is involved with a Project Safe Neighborhoods initiative; actively partners with other law enforcement agencies; or does community-based contact with offenders and their families, friends, or others, clearly they must be concerned with and take active steps to ensure the safety of their staff and the public. This is a concern that must be addressed by all probation and parole agencies, irrespective of size, location, offender population, or mission. Offenders on probation and parole and the neighborhoods where they live usually have had a higher probability of the possession and presence of illegal weapons, particularly firearms. Consequently, every jurisdiction should develop and implement strategies and policies designed to enable their staff to work effectively and safely.

This monograph has been designed and developed to assist probation, parole and community supervision officers in providing proactive supervision; preventing the possession of weapons by prohibited offenders; and removing illegal guns through safe, legal, and effective practices. This chapter will review the recent history of probation and parole supervision practices and examine current trends that have had an impact on and changed practices of supervision from office-based probation to community-based supervision.

Four major changes came together in the late 1970s and 1980s to form a kind of perfect storm that negatively influenced probation and parole supervision. These changes included 1) the “nothing works” era, 2) the war on drugs, 3) crack cocaine, and 4) the risk and needs classification system. The effects were significant, wide ranging and, at times, paralyzing.

### “Nothing Works”

In 1974, Robert Martinson published “What Works—Questions and Answers about Prison Reform,” an article describing research on the effectiveness of correctional treatment. Martinson made several key points about a massive review of research on correctional treatment. His first point was that the research showed that there was not much good news about rehabilitative programs. Some programs worked, but they were few and far between. The second point, which was largely ignored, was that the quality of the program implementation and research was so poor that it was hard to draw many strong conclusions. The nuances of his findings were lost, and the research was presented as showing that correctional treatment programs did not work at rehabilitating criminal offenders. The infamous sound bite that emerged from this was that “Nothing Works” when it comes to rehabilitation. In fact, the actual results said no one approach works with everybody. Despite the fact that the sound bite was an exaggeration, the message carried great influence in legislative and public policy debates and actions.

The Nothing Works message swept the political and public policy arenas and correctional programs and practice. Rehabilitation programs and services were greatly reduced from the correctional landscape. This belief indicated that if offenders



could not be rehabilitated then they should be punished and it was time to get tough on crime. Within a relatively short time parole was attacked and the individual approach of indeterminate sentencing, or release by the authority of a parole board was abolished in 16 states (Rhine, Smith, and Jackson, 1991) and some form of determinate sentencing was adopted in all 50 states (MacKenzie, 2000).

The movement away from rehabilitation and correctional treatment toward just desserts was a problem for probation and parole because it was contrary to their traditional mission to assist in offender behavior change. It was a departure from the core mission of community corrections. The new emphasis on getting tough on crime relegated probation and parole to second class status in the justice system. They were not high profile like law enforcement, prisons, and other justice entities, and were perceived as being soft on crime because the offenders they supervised were not incarcerated. In response, many agencies accepted a trail 'em, nail 'em, and jail 'em strategy.

## War on Drugs

In the 1980s, the federal and state governments declared a war on illegal drugs. The criminal justice system became the primary response to the problem of drugs and addiction. There were increased arrests, more convictions, and longer sentences. With a primary focus on interdiction, probation and parole caseloads grew quickly and significantly. Despite much of the get-tough rhetoric that suggested that drug use would lead to prison or jail, it was probation that bore the brunt of the war on drugs and absorbed most of the increased caseload (Beck, 2004).

The result was more cases to supervise and less time to devote to each case. Officers faced more offenders with the intractable problems of chronic addiction and agencies gained more responsibilities, such as drug testing, electronic monitoring, and the need for intensive supervision. These factors, plus the cost of treatment and the number of treatment failures, placed even more pressure on an already stressed system.

## Crack Cocaine

Around 1985, a highly addictive new form of cocaine hit the streets. Crack cocaine had a devastating effect on drug users, communities, and the justice system. In comparison to heroin addicts, crack users were increasingly violent; heroin creates a feeling of euphoria while crack elicits paranoia. Users were increasingly violent and their involvement in the drug trade increased gun use. The streets and communities where offenders lived, and where supervising officers traditionally went, became very dangerous places. Agencies and officers became increasingly concerned about safety and more reluctant to go into these communities and neighborhoods. In certain jurisdictions, areas were off limits for probation and parole officers—officers were directed by their agencies not to enter. The resulting effect was the establishment of safe zones for offenders where the offenders' actions could go unobserved by parole and probation officers.

## Risk and Need Based Classification Systems

In response to the increasing caseloads and workload management challenges, probation and parole agencies adopted classification systems based on assessment of offender risk and needs (Burke, Hayes, Connelly, Adams, and Ney, 1989). The assessment would indicate the risk of the offender to reoffend and the needs of the offender that should be addressed to assist the offender in behavior change. The purpose of the classification system was to determine the levels of supervision by risk—e.g., high, medium, and low; therefore allowing the supervising officer to focus the majority of time with the higher risk offenders.

As implemented in many probation and parole agencies, the classification systems focused rather narrowly on risk assessment and corresponding contact standards, completing the required number of face-to-face contacts per month, rather than considering the needs of the offender to bring about positive behavior change. Further, the emphasis shifted to making home, office, and collateral contacts to monitor offender compliance, and away from behavior change. In some jurisdictions this approach mistakenly embodied the punitive ideology (Feeley and Simon, 1992). When monitoring through supervision contacts revealed noncompliance with the conditions of supervision, the primary response was to file a violation report and seek revocation with limited regard to what an offender needed to change or what assistance was available.

## The Impact

The cumulative impact of these varying forces on community corrections was that the supervising officer remained in the



office, seeing offenders only through office contacts. This gave rise to the term fortress probation. Officers were safe in their fortresses or courthouses, while life was going on out in the community. The exception to this was Intensive Supervision Programs (ISP), which in many instances put a great deal of emphasis on monitoring their compliance and trying to catch offenders in violation of their conditions of supervision. But ISPs were limited to small portions of high risk offenders and for regular supervision, fortress probation or parole became the norm.

Many good probation and parole officers were doing the best that they could in a fortress probation environment. However, because of limited access to the community, the supervising officer was forced to rely on the self-reporting of offenders and collateral contacts with family, employers, and treatment programs to provide information about how their lives were going and how well they were complying with the conditions of supervision. The limitations of this approach are evident in the words of Bernard Fitzgerald, Chief Probation Officer of the Dorchester District Court in Boston, MA. During training provided by APPA/PSN in conjunction with the Office of the U.S. Attorney for the Northern District of Ohio, Fitzgerald said, “We make probationers lie to us.” His remarks further indicated that offenders knew what their supervising officers wanted to hear, and the offender wanted to get out of the office contact as quickly as possible, so they lied, gave the answers the officers want to hear (that everything is okay) and went on their way. And since the supervising officers were confined in their offices, they may not have had any other information. This approach eroded probation and parole’s credibility with other justice entities and the public.

In this situation, much of the information the supervising officer uses to make decisions is of questionable accuracy and reliability. The information comes from a source (the offender) that has little incentive to be honest, because telling the officer that for example, they had a police contact, were not working or going to school, or not complying with myriad of conditions of probation would only prolong the office contact with the officer, would likely result in additional involvement by the officer, and could result in a violation of supervision. The odds just do not work in favor of offender candor and honesty in such a situation.

During the late 1980s and early 1990s, supervising officers became increasingly office bound while time spent in the field decreased significantly. As previously explained, there were many reasons why this occurred such as the increased violence related to the use of drugs, burgeoning case loads, and the attitude that only punishment would work. But the bottom line was that this development had many serious consequences for community corrections, including the reduced effectiveness of community supervision. Probation and parole agencies were less visible or viable as a part of the community. Supervising officers were placed in a reactive posture, able to respond to situations only after they happened. When information about an offender’s lack of compliance (new arrest or technical violation) came to light, the officer reacted and filed a violation petition. The opportunity for prevention and intervention was lost. Instead of working with offenders for positive change, probation and parole officers were reacting to past behavior. It does not take much thought to conclude that this approach is not very effective at achieving the goals of offender behavior change. The overall research on the effectiveness of probation and parole bears this out (Petersilia, 1997).

## THE WINDS OF CHANGE

The 1990s brought a number of significant developments in criminal justice that began to change the working environment of probation and parole agencies and their supervision practices. These changes include, but are not limited to, the emergence of performance-based measurements, evidence-based practices and the reemergence of rehabilitation as a policy goal, the theoretical concepts of restorative and community justice, and “Broken Windows” probation. These developments were leading to proactive supervision in the community.

### Performance-based Measures

“Reinventing Government” is a term that was coined in the early 1990s to describe a movement that was taking a critical look at government at all levels. It emerged from a general public dissatisfaction with the size, cost, and performance of government agencies across the board. Citizens and advocates of “Reinventing Government” demanded that agencies be less cumbersome and bureaucratic, more responsive, and more accountable for the results produced with their tax dollars.

One result of this movement has been increased pressure for agencies to focus on and measure the results produced by their programs and services. As an example, community corrections would have to go beyond counting activities such as caseload size, contacts, and officer activities. Probation and parole would begin to address outcomes, like recidivism, offender employment, restitution collection, completion of treatment, school attendance, and other measures of the outcome of supervision activities—

## FIGURE 2-1: EVIDENCE-BASED PRINCIPLES FOR EFFECTIVE INTERVENTIONS

### *Principle 1) Assess Actuarial Risk/Needs*

Offenders are not alike. Determine risk and need that must be addressed to reduce likelihood of re-offending.

### *Principle 2) Enhance Intrinsic Motivation*

Increase offenders motivation to change behavior.

### *Principle 3) Target Interventions*

Provide effective interventions matched to the criminogenic needs of offender according to the principles of risk, needs, and responsivity.

### *Principle 4) Skill Train with Directed Practice*

Use cognitive behavioral methods when appropriate.

### *Principle 5) Increase Positive Reinforcement*

Behavior change is increased through positive reinforcement.

### *Principle 6) Engage Ongoing Support in Natural Communities*

Prosocial family networks increase the resources available and reinforce positive behavior.

### *Principle 7) Measure Relevant Processes/ Practices*

Collect data to determine program impact on offender behavior change as well as staff performance.

### *Principle 8) Provide Measurement Feedback*

Encourage behavior change by providing feedback.

not just the number of activities, but paying attention to the quality of activities.

The emergence of performance-based measurement (PBM) resulted in part from the *Reinventing Government Movement* (Osborne and Gaebler, 1992). PBM has provided tools for ongoing measurement of performance and outcomes. It is now more common to expect and much easier to obtain reports of results from government agencies and to expect a cost-benefit analysis for government services (Boone and Fulton, 1995).

## “What Works” or Evidence-based Practices

The phrase *What Works* has its roots in the publication of Robert Martinson’s 1974 article that attacked correctional rehabilitation programs as largely ineffective or “nothing works.” The “*What Works*” body of knowledge from the academic and correctional research community is now more commonly considered as part of Evidence-based Practices (EBP) (Bogue, et al., 2005). Figure 2-1 provides a brief description of the eight principles for effective interventions.

Evidence-based practice has compellingly demonstrated that recidivism can be reduced, often significantly, by following this set of principles. The tools to be effective at offender intervention, treatment, and programming are available. It is no longer acceptable nor credible for community corrections administrators to shrug their shoulders and act as though they do not know what can be effective in intervention for offenders in the community—particularly if the necessary resources are available and attainable.

## Behavior Change as a Goal of Supervision

Research has demonstrated that cognitive-behavioral interventions, effectively implemented with appropriate offenders, are successful in changing behavior and thereby reducing offender recidivism. Cognitive-behavioral interventions target specific cognitive deficits (e.g., manipulation, impulsivity, callousness, egocentricity, lack of guilt or remorse, low frustration tolerance, blaming others, concrete thinking, poor problem solving and interpersonal skills, difficulties with anger, rigid thinking). These interventions facilitate self-change and aid in the development of thinking skills used to cope with life situations. According to the Minnesota Cognitive Behavioral Network(n.d.), the benefits of cognitive-behavioral interventions include:

- Improved community safety through increased supervision, client contact, and cognitive groups that target specific risk factors.
- Reduced cost to community through reduced crime and less need of expensive residential settings.
- Research based rationale that supports this approach with offender populations.
- Improved community collaboration through pooling of resources between private and public agencies in the delivery of services (i.e., cognitive groups).
- Proactive vs. reactive approach to community supervision

- Expectation of positive progress with clients through direct action and targeting of specific risk factors for recidivism.
- Outcome measures that demonstrate the effectiveness of correctional programming.

Community corrections agencies have found that cognitive-based programs such as Thinking for a Change, Reasoning and Rehabilitation, Moving on Change, and Aggression Replacement Training change behavior in offenders. Cognitive-based programs are also used by problem solving courts (domestic violence courts, drug courts, DWI courts). Cognitive behavioral technologies clearly demonstrate the efficacy of rehabilitation in changing criminal attitudes and behavior. These and other programs based on the evidence-based practices have begun to refute the ‘Nothing Works’ ideology and clearly demonstrate the reemergence of rehabilitation as a desired policy goal within the justice system.

### Restorative Justice and Community Justice

From the perspective of restorative justice, the most significant aspect of crime is that it harms citizens and communities. The justice system should focus on repairing the harm by ensuring that offenders are held accountable for making amends for the damage and suffering they have caused. The primary stakeholders of restorative justice are the crime victims, community, and the offenders. All parties should be part of the restorative justice process and involved in the goals of accountability, public safety, and competency development as described in Figure 2-2.

Community justice, based upon some of the same principles and practices of restorative justice, redefined the role of the justice system in relation to the community, victim, and offender. The emphasis shifted to collaborate and to form partnerships within the community to prevent or find and fix community problems. The agents and agencies of the justice system began to work to prevent crime in partnership with communities—not just react to it and probation and parole officers formed partnerships with law enforcement, mental health and substance abuse treatment providers, and civic and community organizations. The natural place for such work to be done is in the community.

In 1992, a partnership was forged between police and juvenile probation officers in Boston, MA. In response to a dramatic rise in youth violence and homicides, a broad based partnership of juvenile and criminal justice, government, and community organizations came together to try to address the epidemic of violence. Working together, probation and police officers focused on deterrence and prevention. Probation developed a visible presence in the community not only during traditional work hours, but also in the evenings when youth were subject to curfew restrictions. The involvement of police-probation partnership within Operation Nightlight, led to similar collaborative efforts in criminal and juvenile justice agencies across the country that became a foundation for replication through Project Safe Neighborhoods. Operation Nightlight and other foundational programs of PSN will be discussed in Chapter 3 of this monograph.

### Broken Windows Probation

In 1999, Manhattan Institute released a report entitled “Broken Windows Probation: The Next Step in Fighting Crime” (Reinventing Probation Council, 1999). The report is the work of John Dilulio and 13 veteran probation and parole practitioners known as the Reinventing Probation Council. The term “Broken Windows” is borrowed from “Fixing Broken Windows” by James Q. Wilson and George Kelling. In brief, the theory suggests that broken windows (illustratively speaking) are small indicators of disorder in a community and if not addressed, or fixed, are signals that would be offenders that the neighborhood is fair game for

## FIGURE 2-2: GOALS OF RESTORATIVE JUSTICE

**Accountability:** Sanctioning works best when offenders are held accountable to victims rather than punished for violating a law. Offenders take responsibility for their behavior and repair the harm done to the victim and the community.

**Public Safety:** Crime is a community problem, public safety is most effectively increased when communities become more capable of preventing crime and monitoring offenders and at-risk youth.

**Competency Development:** Behavior change occurs when offenders build skills and strengthen relationships with law-abiding citizens and increase their ability to become productive members of the community.

*(Zehr 1990).*

more serious crimes because no one cares about the community. If small problems are fixed before they become big ones, the spread of more serious crime can be combated. Police should respond aggressively to less serious offenses and quality-of-life crimes and thereby make it clear to current and future offenders that crime and disorder are not welcome.

Noted for coining the term Broken Windows Probation, the Reinventing Probation Council was formed to address the problems and challenges of a system that they said “is at once both the most troubled and most promising part of America’s criminal justice system” (Reinventing Probation Council, 1999). The council attacked fortress probation as ineffective and they proposed seven strategies to restore the effectiveness of probation and parole. The following recommendations are key strategies to the discussion of proactive supervision of offenders (Reinventing Probation Council, 1999):

### **1. Offenders Should be Supervised in the Neighborhood, Not the Office.**

The council was clear that fortress probation is ineffective and must be replaced by community probation. Effective supervision must take place where the offenders live and work in communities and neighborhoods.

Depending upon the service area of the supervising officer or the agency, neighborhoods may vary tremendously; regardless of being an urban or rural setting the neighborhood would be the area where the offender lives and is employed. Agencies should consider the demographics of the area to be supervised and adjust policy and practice to meet the workload and safety needs of the supervising officer.

### **2. Supervising Officers and Caseloads Should be Assigned Geographically.**

To maximize the time of officers and help them get to know the communities where their offenders live, the council called for probation and parole agencies to assign officers to supervise specific geographical areas. This approach will enable officers to more readily learn in detail about the area, people, and organizations related to their caseload.

### **3. Probation and Parole Should Develop Partners in the Community.**

The days of the Lone Ranger as a role model for the supervising officer are over. The job of effective offender supervision in the community is just too great for one person or organization to accomplish. The involvement of other agencies, organizations and interest groups is critical to the success of probation. The environment of criminal and juvenile justice has changed. Partnerships with justice and human service agencies and community organizations are the more effective approach. Collaboration with others can leverage scarce resources and maximize impact.

The cumulative impact of these developments has changed the assumptions and approaches of community corrections. Building on this momentum, we are proposing a new approach, or perhaps a reinvented model, for community corrections.

## **THE ESSENTIAL ELEMENTS OF EFFECTIVE SUPERVISION**

There is tremendous diversity of practice among the hundreds of probation and parole agencies in this country and that makes it hard to definitively prescribe what should be done. However, the research on and experience of effective probation and parole supervision is clear in showing that all agencies must incorporate three essential elements in their supervision strategies and programs. The essential elements are:

- Monitoring offender behavior and compliance
- Enforcing conditions of supervision
- Assisting offenders to change their behavior

Incorporating all three elements in a balanced approach will increase the effectiveness of supervision (Dowden and Andrews, 2004; Paparozzi and Gendreau, 2005; Aos, Miller, and Drake, 2006).

### **Enhancing the Essential Elements**

All of the essential elements of probation and parole supervision are more effective when there is regular contact and



interaction by the supervising officer with offenders, their family, employers, acquaintances, and if appropriate, their victims. These functions will be done more effectively in the offender's natural environment, not in an artificial environment such as the courthouse or parole office. Supervising officers must work where offenders live and work. The following briefly addresses each element.

**Monitoring:** Supervising officers can see first hand the offender's behavior, attitude, deportment, living situation, associates, family, and employment, and judge for themselves. Real time visual verification is a term that describes what happens when the supervising officer is in the field with the offender and other key parties.

**Enforcing:** Supervising officers will have opportunities to intervene and reinforce conditions, remind offenders of consequences, and implement measured, targeted responses in a timely manner.

**Assisting:** Supervising officers are more likely to be present when real problems, challenges, and opportunities arise, providing chances to intervene and engage in problem solving, role modeling and reinforcement, counseling and referrals to services or treatment.

In addition to the offender, the supervising officer will see, interact with, and engage their natural allies in the effort to positively influence the offender's behavior (Austin, 2006). These allies include:

- Spouse, family members, parents, neighbors
- Community or faith-based organizations, schools
- Employers
- Criminal/juvenile justice partners
- Treatment and social service providers
- Faith-based organizations

Many of these organizations and collaborative partners are not normally found in the offender's unnatural environment—the courthouse or parole office. They are found in the offender's natural habitat, the community, where they work and live.

## Corrections and the Community

The trends described in this chapter are about leading probation, parole, and other community corrections supervision officers back to the community, back to the traditional values and the balanced approach that incorporates monitoring, enforcement, and assistance. Probation and parole should once again openly embrace offender behavior change (rehabilitation) as a core element of its mission. The term Community Corrections means more than that the offender resides in the community and is not incarcerated; it also means that many of the tasks and activities of probation and parole also must take place within the community and outside the office. Probation and parole supervision should occur—where offenders live, work, and go to school, and if appropriate it should be done when the offenders are likely to be present. Caution should be taken in the case of domestic violence offenders or other offenses where family members may be victims; it may be necessary to contact victims separately from offenders.

For some in probation and parole, supervision of offenders in the community seems to be an obvious statement. Historically the emphasis for the supervising probation or parole officer was to be in the field. If probation and parole agencies are going to be effective at providing offender supervision, they must ensure that they have built their supervision strategies and programs on a sound model. From the developments described, it seems clear that any model for supervision must incorporate the following key strategies.

- Be proactive, not reactive—Don't just sit back and wait for information, seek it out. Take action to intervene and prevent problems.
- Be where the offenders are, when they are there—Increase the likelihood of personal contact with offenders and significant others, providing timely, first hand information, not hearsay.
- Base interventions on reliable assessment tools—Offenders are individuals with unique attributes; assess the risk and needs of the offender to develop a plan to change behavior and reduce the likelihood to reoffend.
- Work collaboratively with other partners—Crime is a community problem; involve community organizations and agencies in your mission.

## Implementing Safety Procedures in Supervision

Officers need to be aware of their environment. Given the characteristics of the offenders' natural environment, it is likely that

supervising officers will also encounter uncooperative offenders and others, prohibited firearms and other weapons, drugs and other contraband. For this reason, it is essential that agencies and officers implement supervision with their eyes wide open, fully aware of the challenges and risks that come with the shift to a supervision model that is truly community-based. Training, equipment, policies and procedures, and overall awareness are essential for safe and effective implementation of proactive supervision.

Previously the argument has been made that supervision of probationers and parolees will be more effective if done in the community. The realities of life in the communities where probationers and parolees live are that weapons, in particular illegal guns, are readily available and commonplace. Safety concerns for staff and others must be primary and any community corrections agency that currently deploys or plans to deploy its officers into the community must make sure they are trained and equipped. Supervising officers must be able to carry out their responsibilities in an effective, safe, and legal manner.

In this chapter we have attempted to outline the evolutionary changes that first drew probation and parole agencies and officers into the office environment and made the case for their return to, and involvement in, the community. The return of agencies and officers to the community and a community-based mind set works simultaneously with the emergence of Project Safe Neighborhoods. Before the events that withdrew officers from the community, they worked more closely with offenders, their families, schools, employers, etc., to prepare the offender for reintegration to the community. These are the fundamentals of the recent reentry initiatives and of Project Safe Neighborhoods. PSN also focuses on behaviors that lead to illegal gun possession and gun violence, and provides significant sanctions for such involvement by offenders.

While the recent developments in the probation and parole field have pointed the way to proactive supervision, they have increased involvement in some of the activities that Project Safe Neighborhoods asserts. Officers have been encouraged to work with law enforcement and other partners in Project Safe Neighborhoods and enable them to fulfill an important mission—increased public safety through reduction of gun violence. They are encouraged to join not only with law enforcement, but also other probation and parole officers nationwide in a joint effort to bring prohibited offenders in the possession of guns to the attention of state and federal prosecutors.

# CHAPTER(three)

## PROACTIVE SUPERVISION AND PSN: AN EFFECTIVE ALLIANCE

### COLLABORATION AND PARTNERSHIP

Project Safe Neighborhoods programs were built on the early successes of programs such as Operation Ceasefire and Operation Nightlight in Boston, MA. Each program utilized collaboration among law enforcement and probation agencies, and community partners to mount a focused proactive search for prohibited offenders who were considered high risk for illegally possessing and using firearms. Specified offenders were then notified, through a court admonition, and required to attend a group or individual meeting during which they were educated about the penalties of illegal gun possession and also the facts surrounding the gun-related deaths of many of the people the offenders knew.

#### Operation Ceasefire

The gun project Operation Ceasefire involved:

- Assembling an interagency working group of largely line-level criminal justice and other practitioners.
- Applying quantitative and qualitative research techniques to assess the nature of and dynamics driving youth violence in Boston.
- Developing an intervention strategy designed to have a substantial near-term impact on youth homicide.
- Implementing and adapting the intervention.
- Evaluating the intervention's impact.

The Boston Gun Project Working Group began meeting in January 1995. By the fall of that year, the project's basic problem assessment had been completed and the elements of what is now known as Operation Ceasefire was mapped out; implementation began in early 1996. The two main elements of Ceasefire were a direct law enforcement attack on illicit firearms traffickers supplying youths with guns and an attempt to generate a strong deterrent to gang violence.

The Boston Ceasefire project found that of 125 offenders involved in the 155 homicides in the city, 80 percent were on probation or parole at the time of the offense and 56 percent of the victims of the homicides were also probationers or parolees. Many victims and perpetrators were also young and involved with gangs. Essentially, probation and parole officers were key players in Operation Ceasefire.

#### Offender Notification

After an in-depth analysis of quantitative and qualitative data, the project selected a strategy of focused deterrence that combined suppressive and social intervention techniques. In combination with a focus on shutting down the city's illegal firearms

trafficking, Operation Ceasefire relied on offender notification meetings, often called “Lever Pulling”, to educate the offender about the consequences of illegal gun possession and gun crimes and to provide options for behavior change.

The term “Lever Pulling” generally refers to a strategy that includes delivering a strong, consistent message to a specific group of offenders that any violation of the law or their conditions of supervised release will result in swift and severe consequences. But this definition can be too narrow. The term should also imply that other choices are available in the form of assistance through counseling, employment opportunities, and educational alternatives.

When a gang came into focus because of violent behavior, the relevant partners would pull every potential criminal justice sanction lever for that particular gang and/or gang member(s). At the same time, opportunities for, and access to, social services were made available to gang members to support an alternative to life in the gang and involvement with illegal firearms. An evaluation found that Operation Ceasefire was associated with a decline in youth homicide, firearm assaults, and “shot-fired” calls to law enforcement (Braga, Kennedy, Waring, and Piehl, 2001). As part of Boston’s initiative, the U.S. Attorney’s Office for the District of Massachusetts has expanded its programs to bring the most successful elements of the project to other major cities in the district, including Brockton, Lowell, Springfield, Holyoke, Chicopee, New Bedford, and Fall River (Bureau of Justice Assistance, 2004).

In Boston, the “Ten Point Coalition” (a group of clergy and other church members) sponsored a prayer meeting and endorsed the “Lever Pulling” strategy (Corbett, 1998). These efforts were supported by a core of “street workers,” hired by the mayor, whose duty was to patrol the streets and work with young people and mobilize community resources. Though efforts initially were greeted with suspicion by the police, in time a close mutual respect developed which allowed police to get their message to gang leaders without the resistance that had previously come with direct communication. The street workers assisted with juveniles whom the police or probation identified as being on the verge of getting into trouble and connected these youth with services, creating positive options for the juveniles to pursue (Buntin, 1998).

A study of the Boston education and notification strategy, including “Lever Pulling”, developed at Harvard University’s Kennedy School of Government, summarized the program as follows (Buntin, 1998, p.19):

*The outreach efforts established by the Gang Unit and the Anti-Gang Violence Unit had a two-fold effect: They benefited kids and gave the police the credibility it needed to build close ties to the Ten Point Coalition and other service organizations. The presence of these relationships in turn created a reservoir of good will that allowed the police and other law enforcement agencies to intensify its policing efforts without alienating large segments of the black community.*

Massachusetts also teamed with its PSN media outreach partner, federal and state law enforcement agencies, and community-based service providers to launch a media campaign to target previously convicted felons. The campaign reminded felons of the significant federal sentences faced if they were found in possession of firearms.

In another Massachusetts program, the Boston Reentry Initiative, offenders are assigned mentors to guide them in obtaining job training, substance abuse counseling, employment opportunities, and any other needed services. The severity of the penalty for offenders in possession of firearms is also reiterated by the mentors.

## Operation Nightlight

Through Operation Nightlight, state probation officers and police officers make unannounced home and community contacts during the evening hours to monitor high-risk probationers in the effort to ensure compliance with probation conditions. The program has been found to provide more interactive relationships among probation officers, probationers and probationers’ families, strengthen cooperation between police and probation officers, and serves notice to the community that the police and probation officers are serious about their mission.

## Other Successful PSN Partnerships

### Operation Homefront

Operation Homefront, A spin-off program in Massachusetts, teams clergy with police to visit more than 600 at-risk minors and their families per year with the goal of preventing future criminal behavior. The participation of clergy, who are often known



to the families and welcomed into their homes, encourages parents to see police as positive figures who sincerely want to help.

### *Caught in the Crossfire*

In Oakland, California, a PSN associated non-profit group developed an emergency room-based intervention entitled “Caught in the Crossfire”, aimed at reducing gang and gun-related youth violence and death. The staff, which includes previous victims of violence, provides support and mentorship to victims of youth violence who are admitted to a local hospital. Beginning with bedside visits and extending into release, the staff identifies the needs of the victim (e.g., employment, social services, mental health services), discourages retaliation, and aids in his or her reintegration into the community. The staff also provides these services to local youth on probation for violent offenses. According to an evaluation, hospitalized youth who took part in the project were 70 percent less likely to be arrested and 60 percent less likely to engage in criminal involvement than hospitalized youth who did not partake in the program (for more information, go to [www.youthalive.org/caught.html](http://www.youthalive.org/caught.html)).

### *In My Shoes*

“In My Shoes,” the Chicago program created by the Schwab Rehabilitation Hospital, operates under the premise that prevention is the best medicine, and thus, created a violence prevention program aimed at increasing knowledge and changing attitudes about the consequences of violent activity. The program stresses that gun violence does more than kill; it also causes permanent disability. A key message is that for those who survive gun violence, a life of constant pain and permanent physical limitation is often the result.

The “In My Shoes” program is available in two formats: presentations and interactive workshops. Both involve former gang members and victims of violence (mainly gun violence) speaking to youth about their experiences. Many of the presenters are past Schwab patients who have been disabled by gun violence and volunteer to serve as peer facilitators. Program presenters see the program as a first essential step toward reducing gun violence and gang involvement.

The program reports that it has seen statistically significant increases in the program participants’ knowledge about the consequences of spinal cord and brain injuries, as well as statistically significant increases in participants’ knowledge about the consequences of their involvement with gangs, violence, and illegal guns. Ninety-four percent of participants said the program made them think about the consequences of their choices.

Another important factor in the success of such a program is that the participants report that they identify with the peer facilitators. Eighty-four percent of participants agreed that the facilitators had a good understanding of their lives and could relate to them. For more information on In My Shoes, go to [www.psnchicago.org/inmyshoes.html](http://www.psnchicago.org/inmyshoes.html).

Other jurisdictions have adapted and continue to adopt such programs that have been shown to be effective models; however, the need for effective intervention and enforcement strategies continues.

## **IMPORTANCE OF STRATEGIC PLANNING**

As with any issue before law enforcement and community corrections, an effective strategy must be rooted in a preceding problem analysis that takes the time and the care to define the various components of the situation. While gun-related violence issues are pressing in many areas and waiting to complete an analysis is difficult, the consequences of failing to engage in this step can lead to wasted efforts and even enhance the danger to officers. A misinformed strategy may possess ineffective tactics, making it impotent, or worse, leading to a further decline of the situation (McGloin, 2003).

# Gun-crime plan: Help offenders

## Aid will be offered to try to turn lives around

Cabarrus County (NC) law enforcement officials say a new strategy they're adopting will reduce gun-related crime by helping habitual offenders shed their criminal past and start their lives over. The federal initiative Project SAFE Neighborhoods started in 2002. It monitors offenders and offers them help to change their lives for the better and keep them from repeating their crimes. It also assures that if the offenders don't change, they'll face stiffer penalties for going back to crime.

The program relies on partnerships among law enforcement, community agencies and clergy, said Robert Lang, assistant U.S. attorney and coordinator of the project for the federal courts' Middle District of North Carolina.

Here's how the program works: Officers from the Cabarrus County Sheriff's Office, Concord and Kannapolis police, District Attorney's Office, probation and parole, and a University of North Carolina, Greensboro research team pored over countywide crime data to identify where violent gun crimes occur and target the people who commit them.

Officials will target habitual violent offenders with arrest histories, including those convicted of homicides, robberies, aggravated assaults, and felony gun charges who are on probation, Lang said. They also will identify youths at risk of getting involved in gun-related crimes. "It's community policing times 10," Lang said.

About 60 percent to 70 percent of violent crimes nationwide are committed by just 5 percent to 10 percent of criminal offenders, Lang said. This strategy, he said, targets that group. The identified people must attend a group session with their probation officers, program coordinators at each police agency, and the community partners that will offer resources for them to build new lives, Brown said.

Resources include assistance with transportation and housing, GED classes, parenting classes, counseling, job training courses, and other community college offerings. "These resources are here to give them the tools and assistance to let them make better choices in how they are going to live their lives and hopefully ... stop the violence," Brown said. "If you choose not to accept those resources and you choose a criminal lifestyle, then you can expect us to do everything in our power to put you in prison."

Although the program uses existing resources, Brown said, local agencies plan to apply for grants to help cover expenses and pay for a coordinator. Some experts say this strategy will work because it holds offenders accountable for their behavior and gives them alternatives.

"It's a crime protection mechanism," said Paul Friday, a criminology professor at University of North Carolina, Charlotte. "This is supervision with control and with consequences. ... This is a form of adult parenting because of the supervision, and it's a lot cheaper than being incarcerated."

Jodi Ramirez, community relations manager for the United Way in Cabarrus County, said she's helping to coordinate the community resources for the program. Ramirez said officials will begin observing the offenders' progress and will have additional training for police and agency workers. She said the effort is worthwhile, regardless of how many or how few offenders eventually take advantage of it.

"They have to make that choice to seek the help that the community is offering or go back to the streets and take their chances," Ramirez said. "I think everybody will go for it, but if we can get one person or two persons to do it, then I think it's worth it."

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Following the examples of Operation Ceasefire and Operation Nightlight for collaboration, many PSN programs have developed partnerships based upon the multi-jurisdictional team concept designed to identify community “hot spots,” prioritize prosecutions, and disrupt the trafficking in firearms by and to gangs. The teams led by the U.S. Attorney’s Office and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), usually include other federal, state and local agencies such as probation, parole, department’s of youth services and the U.S. Drug Enforcement Administration (DEA).

In the strategic planning meetings, the team members come with information regarding their core groups. Probation and parole officers can present details regarding offenders of interest, such as residences and location of their last criminal conduct. These locations can be highlighted on a map of the city or community. Others in the group may be able to identify nearby areas of drug or gang activity, noting groups that “control” that area or other offenders who frequent that area. Figure 3-1 lists questions officers should come prepared to answer.

### The Newark Approach

In 1996, the director of the Newark, NJ, Police Department, Joseph Santiago, approached the School of Criminal Justice at Rutgers University, Professor George Kelling in particular, and asked whether the university could provide help addressing violence in Newark. While Newark had recently illustrated a fairly sharp decline in violence (murder, robbery, aggravated assault, and rape), its violent crime index still greatly surpassed those of Boston, New York, and Philadelphia (Police Foundation, 1981). Despite the benefits of the newly instituted CompStat (computerized analysis of crime data), Santiago was concerned that violence in Newark appeared immune to law enforcement tactics. Because the School of Criminal Justice has the goal of training researchers within this urban environment and Kelling had a professional history with the Newark Police Department, a relationship began based on a common goal: reduced violence in the city of Newark. This project came to be known as the Greater Newark Safer Cities Initiative (GNSCI).

During the next three years, the School of Criminal Justice built relationships with and across agencies. This was not always easy, often because of past problems and perceived conflicting interests. Still, if agencies and partners are able to agree on a common goal and are willing to communicate and work through such difficulties, forging a collaborative relationship is often a linchpin of problem analysis and intervention success. By 1999, staff began collecting data on the nature of the violence problem in Newark. It took three years to convince people that it may be time to change current practices and procedures and work together to improve the quality of life and reduce violence in Newark.

By 2000, GNSCI had established what has become its cornerstone: biweekly meetings hosted by Rutgers University that included various law enforcement and prosecution agencies, parole and probation, social service providers, clergy, community groups, the public defender, and various mental health, substance abuse, and employment agencies.

These partners had a stake in the violence problem in Newark, insight into the problem, and unique resources that could potentially help address this problem. This working group had the task of addressing the primary finding of the earlier analysis. In

## FIGURE 3-1: QUESTIONS FOR STRATEGIC PLANNING MEETINGS

1. Details of the offender’s offense.
2. Information regarding the victim of the offense.
3. Known associates.
4. Was the victim an associate or tied to the offender in any way?
5. Gun crime related history of the offender.
6. Relevant criminal history.
7. Is, or has, the offender been involved with any particular groups?
8. Information regarding the location of the offense and/or other offenses committed by the offender.
9. The motivation behind the offense.
10. Current activities of the offender regarding schooling, employment, counseling, etc.
11. Current residence and/or main place where the offender stays.
12. Community/neighborhood strengths and resources.

## FIGURE 3-2: Key Factors in Increasing the Success of Strategic Planning

1. Good cooperation and collaboration among key agencies in the local justice system should include police, prosecutors, and probation and parole officers.
2. Strong commitment from the leadership of those key organizations.
3. Strong commitment from line staff and line supervisors.
4. Delegation of operational responsibilities to a committee or person representing the key organizations.
5. Confidence among participants that incident review is not a forum for criticizing investigations or the policies of the agency, and that information will be kept confidential.
6. Sound analysis and quality research for input into the intervention planning process.
7. Commitment among agency leaders to strategic planning based on reliable statistics.
8. A clear process for continuous assessment and revision to meet changing needs.
9. Demonstrated linkage between the incident review meetings and strategic interventions on the street to reduce gun crime and solve crimes.

incarceration to return to their communities each year. Probation and parole officers are tasked with the duty to protect the public by monitoring and intervening with these offenders.

In a 1997 BJS Survey of Inmates in Federal Correctional Facilities, the data suggests that the majority of federal inmates who reported possessing a firearm (83 percent) may have been statutorily prohibited from lawfully possessing a firearm as half of the

Newark, as in any city, a small portion of people are responsible for the majority of the violence and are remarkably similar to the victims of that violence. Whether an individual is the killer or is killed seemingly depends on chance (Decker and Rosenfeld, 2004). Similar to Boston, a large proportion of these problematic people in Newark are under probation or parole supervision; therefore, agencies have leverage opportunity over them.

The GNSCI working group became responsible for managing the most at-risk people with the goal of reducing their violent behavior and, in turn, the overall violence in Newark. The ultimate goal was to deter them and others by example, through the “Lever-Pulling” strategy (Kennedy, 1998).

Between the inception of the GNSCI program and 2003, of the 353 individuals in the at-risk group, only 7.9 percent were arrested for violence and only 7.4 percent had been victims of violence. In addition, from 2001 to 2002, the homicide rate dropped by 28 percent. By 2003, however, homicide in Newark jumped 28 percent. The working group sought out an explanation and one consistent answer emerged: gangs and guns (Decker and Rosenfeld, 2004).

As the crisis that may have brought the partners to the table subsides, it can be difficult to maintain the sense of urgency about the problem at hand. Accordingly, partners can become distracted and allow the collaboration and data analysis to subside. Resources can often be shifted to more urgent concerns. This can be an unintended consequence of program success or simply a product of shifting attention and priorities. Once created, partnerships must be committed to sustaining the collaborative and analytic process. The partnership, if functioning effectively, should be independent of political or funding changes and must have the flexibility to address new violence-related issues as they arise.

While forging partnerships can be difficult, partnerships are integral to understanding the problem by combining information, perspectives, and resources. They also help each separate group gain an appreciation for the challenges and missions of the other groups. For example, in the Strategic Approaches to Community Safety Initiative in St. Louis, MO, the U.S. Attorney had the political power to push past roadblocks and ensure open access to data. While stressing partnership, having a strong leader is often the catalyst to bringing groups together and overcoming barriers. Figure 3-2 lists key factors in increasing the success of strategic planning groups.

## NEED FOR PROACTIVE SUPERVISION

Joan Petersilia notes in her 2003 book, *When Prisoners Come Home*, that currently more than 4 million adults are under community supervision and more than 90 percent of the 1.4 million incarcerated adults will eventually be released. Nearly 600,000 adults are released from



In a 1997 BJS Survey of Inmates in Federal Correctional Facilities, the data suggests that the majority of federal inmates who reported possessing a firearm (83 percent) may have been statutorily prohibited from lawfully possessing a firearm as half of the inmates indicated that they had a prior sentence to incarceration, a third were on probation or parole at the time of their current offense, and about half indicated illicit drug use within a month of the current offense. This is not surprising to probation and parole officers regularly dealing with repeat offenders.

## The Notification Process

In the earliest stages of almost any period of supervision, a probation or parole officer meets with the offender to discuss behaviors and acts that are governed by the sentencing or releasing authority (e.g., the court, the parole board). It is necessary that the offender and those close to the offender be clearly informed of the consequences of firearms possession during and after supervision.

Ideally, the offender will heed the restrictions and refrain from any future illegal possession of guns. If, on the other hand, the offender violates the federal and/or state prohibitions regarding firearms possession, it will have been done knowingly, and serious consequences should be no surprise. Proactive jurisdictions have clearly defined practices regarding admonitions. Admonitions may start as early as the pretrial phase if it becomes known that the person is already a prohibited person as outlined in 18 U.S.C. § 922 (g). The defendant should also be admonished by the court and upon release from detention regarding illegal gun possession. A condition of their pretrial release should include a prohibition regarding the possession of firearms.

Even if the defendant is not involved in the pretrial process but is later found guilty of a felony charge and a presentence report is ordered, again the offender should be advised that they are prohibited from possessing a firearm if, based on either past convictions or status or a current felony or misdemeanor conviction, they meet any of the restrictions as listed in 18 U.S.C. § 922 (g). Supervising officers should also inquire whether offenders currently have any firearms in their possession and, if they do, be instructed to dispose of the firearm(s). Offenders should also be educated as to the appropriate disposal options.

The presentence phase is also a good time to research the offender's past with an eye toward behaviors that would classify the offender as a prohibited person – for example, alien status, a dishonorable discharge verified by a copy of the offender's military discharge paper, or misdemeanor crime conviction of domestic violence, or any of the other status qualifications for firearms prohibitions listed in 18 U.S.C. § 922 (g).

Admonitions should be provided before the offender hits the streets by those agencies involved in the reentry process. The message also can be reinforced at the halfway house level.

Besides the avenues for admonition listed above, juvenile officers have the opportunity to intervene at the school level. Not only will juvenile offenders be provided information regarding prohibited persons, they can take the message home to their parents, who may have been, or are currently, involved in the criminal justice system and may be a prohibited person.

The probation office should work in concert with prosecutors to educate judges about PSN. Judges, at the time of sentencing, can clearly advise offenders of their prohibition of possessing firearms. Not only does the judge carry the weight of the court, the admonition is part of the court record and available as evidence that the offender was advised of his or her loss of rights to possess firearms should the offender's actions result in future prosecutions.

In any gun-related crime, and especially in cases of domestic violence, notifications to victims can also prove beneficial from a safety, deterrent, and rehabilitative standpoint. Obviously, when the offender is received on supervision, the admonition should be given again along with written documentation for the file.

The Philadelphia, PA, County Adult Probation Department has made the prohibition of firearms its first condition on the Rules of Probation that governs the acts of all persons on supervision. They also provide a form that outlines how offenders surrender firearms that they may have possessed at the time supervision began. The PSN Supplemental Resources located in Appendix B of this publication provides sample forms from PA that are used for these purposes and other sample forms related to providing an admonition.

When firearms are removed from prohibited offenders through a low stress, educational, and informational process, those illegal firearms will not be available to offenders at times of stress and anger. In addition, fewer illegally possessed firearms will be present when the probation or parole officer makes the next home contact. Figure 3-3 lists considerations for educating offenders as well as staff about firearms prohibitions.

### FIGURE 3-3: CONSIDERATIONS FOR EFFECTIVE NOTIFICATION

1. Educate staff about local, state, and federal laws concerning firearm prohibitions for probationers and parolees.
2. Incorporate notice about the laws and consequences into forms, brochures, posters, and other written materials. Conditions of supervision should be modified to reflect those laws and prohibit possession of firearms.
3. Train staff to inquire at every stage of an offender's involvement in the justice process about possession of firearms. This includes pretrial release, pre-sentence interviews, prerelease, and sentencing.
4. Give the judges, releasing authorities, and officers as much information as possible so they can fashion the appropriate conditions of release and supervision, and to enable safe supervision.
5. Incorporate information about firearms possession into pre-sentence reports, sentencing memoranda, and prerelease plans, as well as contact with family members and victims of domestic violence. Encourage judges and releasing authorities to admonish offenders about the consequences of illegally possessing firearms.
6. Develop an informational brochure on firearm prohibitions for families and others involved with offenders.
7. Collaborate with law enforcement agencies (police, sheriff, ATF) to accommodate the surrender of firearms.

# CHAPTER(four)

## PROJECT SAFE NEIGHBORHOODS: DETERRING GUN CRIME

### ENFORCEMENT PARTNERSHIPS

Many parole and probation agencies across the country have embraced the Project Safe Neighborhoods (PSN) initiative and become actively involved with their federal, state, and local partners. Some examples of proactive involvement with PSN, in addition to programs already discussed, and the focus of their efforts are listed in Figure 4-1.

PSN partnerships have generated a significant increase in prosecution for firearms related offenses as a result of providing support at the federal, state, and local levels for law enforcement and prosecutorial initiatives. From the onset, PSN has stressed a collaborative effort, marshalling the forces of law enforcement, local leaders and interested parties, educational and research expertise, faith-based programs, and other criminal justice and community partners. Billboards and other marketing tools are parts of the preventive focus of PSN and warn that crimes involving firearms can result in serious penalties, not the least of which is federal prosecution.

### Prohibitions and Penalties

For supervising parole and probation officers enforcing gun laws and trying to convince prohibited offenders that they are facing more assured prosecution and stiffer penalties, it is important to understand and communicate the specific ramifications of gun laws and the violation of these laws.

Although not true in all states, the federal laws controlling possession of firearms and destructive devices generally carry a greater penalty than state law. It is important that officers know both their state and the federal penalties for violation of gun-related laws and also assist in prosecution should the need occur. The offender should be advised, from the outset, of the penalties

### FIGURE 4-1

#### Proactive Probation and Parole PSN Partnerships in various U.S. Judicial Districts

- **Boston, Massachusetts:** Reentry, Community Youth Workers, Project Nightlight
- **District of Colorado:** Incorporating referral to local, state, and federal law enforcement on firearms possession into policy (see the PSN Supplemental Resources located in Appendix B.)
- **Indianapolis, Indiana:** Involving probation in PSN taskforce and homicide review.
- **Northern District of Ohio:** Requesting juvenile probation officers modify probation conditions to include search conditions.
- **Richland County, Ohio:** Expanding field contacts during non-standard hours and partnership with local and federal law enforcement.
- **South Carolina:** Coordination of probation and parole databases with state law enforcement.
- **Western District of Tennessee:** Intake officers check state Concealed Weapons Permit databases to see if offenders have applied for permit.
- **Western District of Washington:** State parole and probation officers involved as members of fugitive task force.

for both federal and state laws.

Firearms and explosive devices are regulated by the Gun Control Act of 1968 (GCA), 18 U.S.C. § 921 et seq. and the National Firearms Act (NFA), 26 U.S.C. § 5801 et seq. The United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) administer and enforce the provisions detailed in both the GCA and the NFA.

In 1968 Congress declared that the purpose of the GCA was to provide support to law enforcement officials in their fight against crime and violence and not to place an undue burden on law abiding citizens in their right to acquire or possess firearms for lawful purposes. The GCA also made it mandatory for gun dealers to obtain a federal firearms license (FFL) to be in the business of manufacturing, importing, or selling firearms. The GCA created the framework to investigate and prosecute federal firearms crimes.

The GCA defines a firearm as, “...any weapon...which will or is designed to, or may readily be converted to, expel a projectile by the action of an explosive...the frame or receiver of any such weapon, any firearm muffler or firearm silencer, or any destructive device.” It is important to know, and convey to offenders, that the firearm does not need to be operational for its possession to be in violation of the law. The federal law states the weapon continues to be a firearm regardless of its condition or inoperability at the time of possession. The issue is if it was “...designed or may readily be converted, or if it includes a frame or receiver of a firearm.” The possession, by a prohibited person, of merely the frame or receiver of any weapon can be a law violation. (18 U.S.C. § 921 (a) (3)). Antique firearms are excluded, but, for the officer on the street, it may not be readily apparent which firearms are antique and which are not.

As has been previously discussed, and as provided in 18 U.S.C. § 922 (g), categories of persons prohibited from possessing firearms and/or ammunition include;

- felons (state or federal convictions),
- fugitives from justice,
- unlawful drug users and addicts,
- illegal aliens.

Restrictions are also imposed on those who are;

- found to be mentally ill or committed to a mental institution,
- subject to a domestic restraining order,
- dishonorably discharged from the military, or a person who;
  - » formally denounced U.S. citizenship,
  - » convicted of misdemeanor domestic violence, or is
  - » subject to a court order prohibiting harassing, stalking, or threatening of an intimate partner or child of an intimate partner.

It is also unlawful under § 922 (g) for any person to knowingly selling or transferring any firearm or ammunition to any person who is a prohibited person under these provisions.

## Ammunition

In addition, it is unlawful for a prohibited person to possess ammunition. During a search, an officer may not find a weapon but may find ammunition, if it is possessed by a prohibited person it is a federal crime. Even the possession of a single bullet has been held to be sufficient to support a conviction under this law. (United States v. Cardoza, 129 F.3d 6 (1st Cir. 1997)). In federal court, conviction for any of the above, including unlawful possession of ammunition, is punishable by a statutory maximum of up to 10 years imprisonment. (18 U.S.C. § 924 (a) (2)).

In another proactive PSN district, the Western District of Tennessee, an offender received a sentence of nine years and four months for being a felon in possession of ammunition. The ammunition charge stemmed from a traffic stop where a Memphis police officer stopped a suspect's car. As the officer approached the car, the suspect opened fire on the officer. The officer ducked behind his police car, which was hit numerous times. Although the suspect fled the scene and discarded his firearm, the casing and/or bullets from nine rounds of .380 caliber ammunition were recovered and formed the basis for the suspect's conviction. The suspect was charged in federal court as his initial charge in state court carried a maximum of six years, of which he would have



served a relatively small percentage due to his single prior felony conviction. The suspects’ sentence was especially gratifying to the community as his sentencing was held approximately one week after a Memphis police officer was shot and killed while responding to a domestic violence call.

The prohibitions of 18 U.S.C. § 922 (g), have been outlined and most officers may be familiar with them, but there is more to the federal gun laws than this one statute. Thorough knowledge of all gun related statutes (federal and state) is essential for effective enforcement, prosecution venue selection, admonition of offenders, and officer safety. Officers should become familiar with other common federal firearm violations such as, lying and buying, straw purchases, obliterating the serial number of a firearm, and selling or transferring a firearm to a juvenile.

Lying and Buying and Straw Purchases

Record checks through the National Instant Criminal Background Check System (NICS) are required on persons who purchase firearms from federally-licensed dealers. It is not uncommon that a prohibited person will try to get around the gun laws in one of two ways: either by falsifying the Federal Firearms Transaction Record-ATF 4473, or by having someone else, frequently someone who is not a prohibited person, buy a firearm for them. These acts, commonly referred to as “lying and buying” or “straw purchases” carry significant penalties, usually with a statutory maximum of up to five years imprisonment and up to a \$250,000.00 fine under 18 U.S.C. § 924 (a) (1) (A).

In the first situation, the purchaser falsifies the information on the ATF 4473, either by supplying a false name and identification and/or by indicating that they are not a prohibited person, hence the term “lying and buying”. With the NICS background check that are currently required of firearm purchasers, as long as the licensed seller performs the background check, “lying and buying” is becoming increasingly more difficult.

In the second situation, the actual buyer directs another person to go through the motions of purchasing a firearm, including filling out the ATF 4473. The purchaser then gives or sells the firearm to the convicted felon or prohibited person. Commonly the “straw purchaser” is a friend or family member and has no previous criminal record. According to the Federal Sentencing Guidelines the penalties for the actual buyer in such an act can be significant, (see sidebar).

False statements to obtain firearms are a significant problem. A study determined that between 2000 and 2002, 450,000 individuals were caught lying and subsequently denied the purchases by NICS (Kessler, Harrington, and Hill, 2003). In another study, 26 percent of Baltimore, MD, crime guns traced were purchased less than three years before being used in a crime, and 11 percent were purchased within one year. The author concluded that this short “time to crime” is an indicator of illicit gun sales of new guns for criminal purposes. In the same year, research showed that nine out of 10 Baltimore crime guns traced changed ownership at least once from the time of purchase by the original possessor to the time of the crime (Johns Hopkins Center for Gun Policy and Research, 2004). These figures would indicate a high incidence of both lying and buying as well as straw purchases.

In another 1997 Bureau of Justice Statistics Report, inmates serving time in state prisons who were in possession of a firearm during their offense indicated they obtained the weapon in the following manner:

Purchased from a retail store	8.3 percent
Purchased at a pawn shop	3.8 percent
Purchased at a flea market	1.0 percent
Purchased at a gun show	0.7 percent
Obtained from friends or family	39.6 percent
Got on the street/illegal source	39.2 percent

It is important to know, and convey to offenders, that the firearm does not need to be operational for its possession to be in violation of the law. The federal law states the weapon continues to be a firearm regardless of its condition or inoperability at the time of possession.

Officers should be prepared, when they find a gun, for a friend or some other person without a criminal record to make the claim that the gun is theirs. Investigate the case thoroughly, and look for all evidence that can tie the offender to the gun.

## Obliterating the Serial Number

Offenders may attempt to conceal the origin or history of the weapon by removing the serial number of the weapon in some way, usually by grinding the number off. The motivation of the offender is to make the firearm untraceable. Federal law makes it unlawful to ship, transport, receive or possess a firearm with the manufacturer's serial number obliterated, removed or altered. (18 U.S.C. § 922 (k)). Violation of this statute is punishable by up to five years imprisonment. (18 U.S.C. § 924 (a) (1) (A)).

Laboratory techniques can sometimes enhance or bring back serial numbers. Therefore, if a weapon with an obliterated serial number is seized it is important that the supervising officer take the firearm, or arrange for it to be taken, to a laboratory or to the local ATF office for examination.

## Juveniles

Juveniles under the age of 18 are prohibited by federal law from possessing a handgun or ammunition that is suitable for use only in a handgun. However, there are many exceptions to this law and officers should familiarize themselves with the exceptions if supervising juveniles. (18 U.S.C. § 922 (x) (2)-(3)).

Federal law prohibits a federal firearms licensee (FFL) from selling, transferring or delivering any gun or ammunition to anyone under the age of 18. The licensee is also prohibited from selling or delivering a firearm other than a shotgun or rifle, or ammunition other than for a shotgun or rifle, to any person under the age of 21. (18 U.S.C. § 922 (b) (1)). Violation of this statute is punishable by up to five years imprisonment. (18 U.S.C. § 924 (a) (1)).

It is also unlawful, with exceptions, for any person (as opposed to a FFL) to sell, deliver, or transfer a handgun, or ammunition suitable for handgun only, to a juvenile. (18 U.S.C. § 922 (x)). Statutory punishment for the person delivering the firearm to the juvenile is up to one year imprisonment. (18 U.S.C. § 924 (a) (6) (B) (i)).

Persons between the ages of 18 to 21 may still purchase handguns from non-FFL sellers. In addition, there are no age related restrictions on the purchase of shot guns and rifles from non-licensed sellers.

Other federal firearms laws that an officer may need to make note of include:

- 18 U.S.C. § 922 (j): Prohibits the receipt, possession, concealment, storage, bartering, selling, or disposing of stolen firearms and ammunition knowing or having reason to believe the firearm or ammunition is stolen. Punishment is up to 10 years imprisonment.
- 18 U.S.C. § 922 (q): Except as authorized, generally may not possess nor discharge a firearm in a school zone. Punishment is up to five years imprisonment.
- 18 U.S.C. § 931: Prohibits the purchase or possession of body armor by persons who have been convicted of a violent felony. Punishment is up to three years imprisonment.

## Automatic Weapons and other NFA provisions

The National Firearm Act (NFA) applies to firearms that are restricted and must be registered with ATF such as a machine gun, short barreled rifle, etc... All NFA firearms that are not in possession or control of the United States government must be registered. The NFA branch of ATF administers the registration of them in the National Firearms Registration and Transfer Record.

NFA makes it unlawful for a person to possess any unregistered machine gun or fully automatic weapon or any part designed or intended exclusively for use in converting a weapon into such a weapon. In addition, the law also applies to a firearm silencer, a short-barrel machine-gun, a rifle with a barrel length of less than 16 inches or overall length of less than 26 inches, a shotgun with a barrel length of less than 18 inches or overall length of less than 26 inches, destructive device, or other concealable weapon without registration. (26 U.S.C. § 5861) and (18 U.S.C. § 922 (o)). Violation of this statute is up to 10 years imprisonment. (18 U.S.C. § 924 (a) (2)).

## Semi Automatic Weapons

The Violent Crime Control and Law Enforcement Act (1994) made it illegal to manufacture, transfer or possess a semi-automatic assault weapon and/or to transfer or possess a large capacity ammunition feeding device (holding more than 10 rounds) manufactured after September 13, 1994. This law automatically expired on September 13, 2004, by statute, 10 years after it was enacted.

## Federal Sentencing Enhancements

In response to the epidemic crack cocaine problem in American cities and the gun violence associated with the problem, Congress enacted Armed Career Criminal Act of 1984 (ACCA). ACCA is a federal sentencing enhancement that imposes a mandatory minimum 15-year sentence of imprisonment (and a life maximum) for persons who violate 18 U.S.C. § 922 (g) and who have three previous convictions for a “violent felony” or “serious drug offense”, committed on occasions different from one another. The 15 year mandatory minimum does not have any provisions for a suspension of sentence or the granting of a probationary sentence.

“Violent felony” is defined as any crime punishable by imprisonment for more than one year that has as an element the use, attempted use, or threatened use of force against another or is burglary, arson, or extortion, or involves the use of explosives, or involves other conduct that presents a serious potential risk of physical injury to another. (18 U.S.C. § 924 (e)).

“Serious drug offense” is defined as either certain federal drug offenses with a statutory maximum of 10 years or more imprisonment, or state offenses involving manufacturing, distributing, or possessing with intent to manufacture or distribute, with a statutory maximum of 10 years or more imprisonment. (18 U.S.C. § 924 (e)).

Congress has also enacted enhanced penalties for offenders who use or carry firearms during crimes of violence or serious drug offenses. The enhancements provide for a fixed mandatory prison term of five years for anyone who uses or carries a firearm during and in relation to any crime of violence or drug trafficking crime (in addition to the punishment provided for the crime of violence or drug trafficking crime). The sentence must be served consecutive to any other sentence. A 20-year consecutive sentence is imposed in the case of a second or subsequent conviction.

A heightened penalty also applies for certain weapons. The penalties must run consecutively to any other term of imprisonment imposed on the offender. If an offender uses a short barreled rifle or shotgun, and/or a semiautomatic assault weapon, during a crime of violence or a serious drug trafficking crime they will receive a 10 year mandatory sentencing enhancement.

If an offender uses a firearm equipped with a silencer, a destructive device or a machine gun during a crime of violence or a serious drug trafficking offense they will receive a 30 year mandatory sentencing enhancement that will run consecutive to any other sentence imposed.

Brandishing or discharging a firearm during a crime of violence or drug trafficking offense enhances the sentence with a 7 year mandatory minimum sentence and a prior conviction under this law will enhance the sentence to a 10 year mandatory minimum. (18 U.S.C. § 924 (c)).

For more information regarding the exceptions and sentencing enhancements mentioned, contact ATF or your local U.S. Attorney’s office. The question for the reader is how do the penalties for the listed crimes compare to your state penalties for a like offense? That is one of the main questions that will be considered by both local prosecutors and the U.S. Attorney in deciding

A Pottsville, Arkansas man was arrested this week after parole officers found a clandestine methamphetamine lab and a loaded 22 Magnum pistol while making a routine home visit.

Upon entry of the residence officers smelled a strong odor of chemicals, and later located several containers of chemicals believed to be used for the manufacture of meth in a bathroom closet. Officers also searched the offenders vehicle and found two large bags “full of various items” and the loaded pistol. The Drug Task Force was contacted to take over the investigation.

In addition to a possible manufacture charge, the offender is also facing charges of possessing methamphetamine, possessing marijuana (second offense), and the simultaneous possession of drugs and a firearm. He was on parole for a drug-related charge at the time of his arrest.

January 31, 2006  
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Courier News.Com Arkansas

Figure 4-2

Penalties for Gun Crimes Under Michigan State Law

CRIME	INCARCERATION TERM
Discharge of a Firearm	Up to 4 Years
Carrying a Concealed Weapon	Up to 5 Years
Felon in Possession of a Firearm	Up to 5 Years
Possession of a Sawed-Off Shotgun	Up to 5 Years
Possession of a Stolen Firearm	Up to 10 Years
Possession of a Firearm in the Commission of a Felony:	
First Conviction –	Mandatory 2 Years
Second Conviction –	Mandatory 5 Years
Third Conviction –	Mandatory 10 Years
<b>Penalties for Gun Crimes Under Federal Law</b>	
Felon in Possession of a Firearm, (where 3 or more prior violent felonies or serious drug crimes exist)	Up to 10 Years (Not Less Than 15 Years)
Use or Carrying a Firearm in Furtherance of a Drug Trafficking or Crime of Violence	Not Less than 5 Years, (Consecutive)
If Gun is Brandished	Not Less than 7 Years, (Consecutive)
If Gun is Discharged	Not Less than 10 Years, (Consecutive)
Short-Barreled Rifle or Short-Barreled Shotgun	Not Less than 10 Years, (Consecutive)
If Machine Gun, Destructive Device or Equipped with Silencer:	Not Less than 30 Years, (Consecutive)
Second or Subsequent Firearm –	
Second or Subsequent Firearm and the Weapon is a Machine Gun, Destructive Device or Equipped with Silencer	Not Less than 25 Years, (Consecutive)
	Life, (Consecutive)

whether to charge the offender in state court, or to charge federally.

Figure 4-2 provides a comparison between typical state penalties and federal penalties for gun violations. This comparison is for the state of Michigan and was provided by the U.S. Attorneys Office, Eastern District of Michigan, during an APPA/PSN training in 2006. Penalties for gun crimes will vary by state; verification should be made for your state and local laws and practices.

As previously noted, since the advent of Project Safe Neighborhoods federal prosecutions have significantly increased. Between 2000 and 2006 there was a 66 percent increase in federal prosecutions. Also, federal convictions generally result in the actual service of more of the sentence; at least 85 percent of the sentence imposed is served (Bureau of Justice Statistics, 2004).

In proving the case to the federal standard, the officer must show that the person knowingly possessed the firearm and/or ammunition; that the firearm or ammunition previously crossed a state line or international border, and that the possessor falls into one or more of the above nine categories, as identified as a crime under federal law in figure 4-2. So, how does the supervising officer prove the elements of the case? Many times proving the elements will not be as easy as it appears on television but, through proper questioning of the offender, and their associates and through good investigative techniques, it can be done.

## MAKING THE CASE

Any time a firearm, ammunition, or an explosive device is found, the supervising officer should first consider preservation of fingerprints and other biometric evidence (e.g., DNA). Obviously, this should not be done at the expense of safety. However, if the officer can safely retrieve the item and



preserve whatever evidence is available, that is preferred. Even if fingerprints cannot be preserved, it may be possible to retrieve DNA evidence.

Chapter 5 will discuss the need for proper planning before a search is initiated. There are items that should be part of an officer's everyday implements of doing the job, including latex and Kevlar gloves, evidence bags, and such routine objects as a well-charged cell phone to call for assistance. Officers involved in proactive supervision activities are subject to discovery of contraband at any time and advance planning will facilitate proper handling. While planned searches should include well-equipped search kits, thought should also be given to the many spontaneous events that officers encounter. Firearms' training has long asserted the value of imagining what might happen, and developing scenarios that reduce the potential for surprise to the officer. The same concept also applies to searching and seizing firearms. But where did this gun come from? Is it stolen (which could be another charge)? Has it ever been used in another crime? These are questions that may be answered by "tracing" the gun.

## Gun Traces

Once a gun is found, a trace of that gun should be initiated. Firearms traces can disclose current and previous owners and thus help determine possession, or possibly the rightful owner. Here again, partnership with both local and federal law enforcement agencies is important as most community supervision agencies do not have the ability to conduct the various tests required for prosecution, or have access to the databases needed to accomplish the previously discussed tasks.

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is the primary agency called upon to perform in-depth traces of firearms. Requests for traces are conducted by the ATF National Tracing Center Division in West Virginia, which is the only organization authorized to trace U.S. and foreign manufactured firearms for international, federal, state, and local law enforcement agencies. Its purpose is to provide investigative leads in the fight against violent crime and terrorism and to enhance public safety.

Firearms tracing is the systematic tracking of the movement of a firearm recovered by law enforcement officials from its first sale by the manufacturer or importer through the distribution chain (wholesaler/retailer), to the first retail purchase.

Firearm tracing can link a suspect to a firearm in a criminal investigation and assist to identify potential traffickers, whether the firearm was obtained through licensed or unlicensed sellers. By using the "eTrace" system, participating agencies can submit firearm trace requests electronically. They can also monitor the progress of their traces and efficiently retrieve completed trace results electronically.

To access and utilize the eTrace application, the only infrastructure an ATF approved agency needs is a secure computer and access to the Internet. Through eTrace, approved agencies can view a summary listing of recently submitted traces; view, print, and download detailed trace requests and trace result information; submit urgent trace requests;

## 18 U.S.C. § 924(a)(1)(A)

### Sentencing Guidelines for straw purchases (advisory)

- No prior record, one gun—6 to 16 months
- Substantial record, one gun—30 to 46 months
- No prior record, 25 guns—18 to 33 months
- Substantial record, 25 guns—51 to 87 months
- Substantial record, two convictions for crimes of violence or drug trafficking offenses, 1 gun—77 to 125 months

A New Hampshire man was sentenced to more than two years in federal prison followed by three years of supervised release for possessing an assault rifle after previously being convicted of a felony.

The defendant pled guilty to possessing an AK-47 and ammunition. The gun and ammunition were found when police and probation officers went to the defendant's home to arrest him on probation violation charges. At the time, the defendant was on probation for a felony drug conviction and had failed to report to his probation officer for four months. The rifle and 20 individually wrapped bags of heroin were found in a search of the residence.

Adapted from an article originally published in the Telegraph of Nashua, NH at [www.Nashuaghtelegraph.com](http://www.Nashuaghtelegraph.com)

obtain on-line help and access to the frequently asked questions bulletin board; and access the Firearms Identification Guide.

Before the trace can be conducted certain information must be supplied, if available, regarding the firearm in question. If you are asking an ATF or law enforcement agent to conduct the trace, the agent probably was not present at the time the firearm was recovered and does not have specific knowledge of the case. It is up to the parole or probation officer to supply the needed information.

ATF will need to know:

- All available information regarding the firearm, i.e., manufacturer, caliber, model, type of weapon, and country of origin. ATF agents can be of assistance in determining this information if not readily available by physical examination of the weapon.
- Whether the gun involved in gang related activity, and if so, what was the name of the gang.
- Whether the possessor an adult or juvenile?
- Specific information regarding the possessor-name, age, date of birth, etc.
- Any associate information, that is, any person who may have been with the possessor or in proximity of the firearm when it was found.
- Specific information about the recovery site.

ATF can be an invaluable asset in both firearms identification, and training officers to identify weapons, determine if they are antiques or modern firearms, how to safely handle weapons and how to preserve evidence.

## Interviewing Skills

Through proper observation or questioning, the officer may be able to determine possession of the firearm or other prohibited item by determining who owns or controls the premises, vehicle, or other item in which the firearm is found. It is important to question others at the scene and to follow up with others who may not even be present at the time the firearm or prohibited item is found, to determine possession.

In conjunction with PSN, ATF has developed a laminated interview card that is available to assist in the interview process. It includes the following questions:

- Where did you get the gun?
- Who else bought guns from your supplier?
- What other crimes is your supplier into?
- Does your supplier carry a gun?
- Is your supplier violent?
- Who else sells guns on the street?
- Is this gun stolen?
- Did you remove the serial number? Who did?
- Did you cut down/alter the gun? Who did?
- Can you get more guns?
- If given money, where would you go to buy guns right now?
- Can you introduce a friend to your supplier?

## REMEMBER- TREAT ALL GUNS AS EVIDENCE

### Totality of Circumstances

It is also important to make note of the “totality of the circumstances” surrounding the seizure, such as, were there other items of the offender’s found in proximity of the prohibited item that will assist in determining possession? Such items might include;

- Photographs
- Videos
- Receipts
- Manuals

- Gun boxes or gun cleaning kits
- Matching ammunition found on, or close to the offender
- Holsters, etc.

The important point is the officer present at the time a firearm is found is the only one who can observe, preserve, and recreate the situation in which the item was found. Once that moment has passed it cannot be recreated. The right observations must be made and documented, the right questions must be asked, and the evidence must be preserved. These skills only come through training—training that many community supervision officers have not historically received.

## Report Writing

The offenses that we have discussed have certain elements that must be proven for the act to be charged and for the person to be convicted. This underlines the importance of interviewing and report writing skills. The officer must have a firm understanding of the elements that must be proven when seizing the item, conducting the search, and conducting the interview. It is difficult, if not many times impossible; to go back later and obtain the answers to needed questions.

When you seize or are involved in the seizure of a firearm or ammunition that may be used as evidence in state or federal criminal charges, assume that the report you write will be closely scrutinized for the elements needed to prove the respective charge. Do not assume that just because you may be working with some other law enforcement agency, the agency's report will include the information needed. The following is a list of items the officer will likely be required to produce for prosecution;

- Officer's report
- Reports from any other officers or other individuals involved in the case or present at the time of discovery or seizure of the firearm.
- Certified copies of documents establishing that the individual is a prohibited person, i.e., judgment and conviction(s), records and/or statements demonstrating that the person is a drug user or addict, court orders, etc.
- Statements from witnesses regarding the ownership/possession of the gun.
- Gun trace information and records.
- Though not required, most attorneys will want a statement that the gun was operable.
- All evidence tying the offender to the gun; fingerprints, DNA, statements, photos, etc.
- The firearm available for presentation in court in a safe manner, usually with a device that assures the gun is inoperable, i.e. breech or chamber open and zip-tie through chamber.

Be meticulous in detail and think: "If I were the defense lawyer, what questions would I ask or what holes would I find in my report?" While you may not have the information or evidence to answer all the questions or plug all the holes, you will at least know they are there and be able to assist the prosecution in preparing the best case possible.

A defendant received 30 years for being a felon in possession of a firearm. He was involved in a home invasion robbery where a 12-year-old boy was beaten with a shotgun and the family's dog was shot. The defendant was arrested as a suspect several days after the robbery and a shotgun was located in the trunk of his car. The defendant's criminal history was so lengthy it resulted in a high criminal history score which correlated to the lengthy sentence.

Assistant U.S. Attorney,  
Western District of Tennessee

## For More Information Contact:

ATF National Tracing Center  
Law Enforcement Support Branch  
ETrace Customer Service Group  
244 Needy Road  
Martinsburg, WV 25401  
Tel: 1-800-788-7133  
Fax: 1-800-578-7223  
Email: [etraceadmin@atf.gov](mailto:etraceadmin@atf.gov)

**REMEMBER— IF IT IS NOT IN THE REPORT IT DID NOT HAPPEN!**





# CHAPTER(five)

## PAROLE AND PROBATION SEARCHES - THE TRAINING ASPECT

### LEGAL ISSUES

The Fourth Amendment of the United States Constitution states that “The right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” However, the courts have recognized that when people are convicted of an offense they, either by their custody or by condition of the court or parole commission, relinquish some, but not all, of their Fourth Amendment rights.

Irrespective of a person’s involvement within the criminal justice system, all persons are subject to search and seizure of contraband, through various means and when appropriate criteria are met. Even though in some circumstances community supervision officers work under different constraints than do law enforcement personnel, it is beneficial to understand the basis, and requirements for, various forms of search.

The majority of searches are conducted under the authority of a condition of supervision, allowed by statute, ordered by the court or releasing body, or based upon plain view in the course of the officer’s duties. The courts, in most jurisdictions, have stated that searches can be conducted as a condition of supervision, with the purpose of verifying the offender’s compliance with conditions of release and the law, (e.g., collection of urine specimens and review of computer files).

### Reasonable Suspicion

In most jurisdictions, by law or policy, probation and parole officers do not need to meet the “probable cause” standard normally required of law enforcement officers dealing with a person not under supervision. Probation and parole officers must only establish a “reasonable suspicion” to conduct a search when it is believed that the offender is in possession of some form of contraband that violates the law or a condition of supervision. In *Maryland v. Buie*, 494 U.S. 325 (1990), the court stated, “A reasonable suspicion is a reasonable belief based on specific facts together with rational inferences from those facts. It is more than a mere inchoate and unparticularized hunch.” This lowers the standard from that of a typical police officer, but does not allow arbitrary searches or searches aimed at avoiding the requirements of police merely due to the status of the offender. There are nuances to each state’s law for reasonable search but the standard definition is provided in Figure 5-1.

### FIGURE 5-1: REASONABLE SUSPICION STANDARD

Definition—A reasonable suspicion is a reasonable belief based on specific and articulate facts together with rational inferences from those facts. It is more than a mere inchoate (unclear) and unparticularized hunch.

The courts have also ruled that reasonable suspicion is evaluated by examining the “totality of circumstances,” (*Florida v. Bostick*, U.S. 111 S. Ct. 2382 (1991)) pointing to the need of the community supervision officer to be fully familiar with the case and the background of the offender.

As stated in *Griffin v. Wisconsin*, 483 U.S. 868 (1987), “a tip from a police officer that there were, or might be, guns in a probationer’s apartment, combined with the probation officer’s peculiar knowledge of the probationer, was sufficient to establish reasonable grounds to search probationer’s apartment.”

It is also important to have knowledge of, and be able to articulate, the offender’s prior criminal history. In *U.S. v. Schoenrock*, 868 F.2d 289, 290-291 (8th Cir. 1989), the court stated that:

*Where a defendant was convicted of a drug offense, smuggled drugs into a work release center, failed to complete drug counseling, was evasive about present living arrangements, suspected of diluting his urine sample, and tested positive for THC twice, there was reasonable suspicion for a probation officer to search the defendant’s residence for drugs and alcohol pursuant to defendant’s special condition of probation imposed by the judge.*

With large caseloads and other demands on supervision officers, it can be difficult to not only maintain the level of contact that is desired with offenders, but also perform collateral contacts that can aid in the supervision process. This reinforces the importance of partnerships in not only providing services, but also maintaining knowledge of the activities of offenders. Many times this knowledge comes from outside sources such as police, family members, associates, etc., or even an anonymous tip. Here again, the courts have acknowledged the importance of collaboration and that effective supervision must depend not only on the direct activities of the officer, but on the information provided by others, as long as this information is verified or supported by the acts and investigation of the officer.

*U.S. v. Gianetta*, 909 F.2d 573, 576 (1st Cir. 1990), ruled on the officer’s ability to search based upon both information received from other sources and the officer’s own investigation, and stated that “...the defendant was convicted of drug conspiracy. His probation officer receives a tip from out-of-state police that the defendant is involved in auto insurance fraud. The officer learns that the defendant has left the state without permission, made false statements on a car loan application, and had contact with a felon, all in violation of probation terms. There was reasonable suspicion to conduct a warrantless search of (the) probationer’s residence, pursuant to a special condition of probation.”

More recently, the court has ruled in *U.S. v. Knights*, 53 U.S. 112 (2001), that that police need only “reasonable suspicion” of a possible criminal act—less than the usual “probable cause”—to search a probationer’s property if the probationer has already agreed to submit to warrantless searches as a condition of probation. In this case, Chief Justice William Rehnquist embraced the assumption that “the probationer is more likely than the ordinary citizen to violate the law.”

This provides a legal position for the collaboration with police to assist in searches where distance or circumstances may not allow for the community supervision officer to actually conduct the physical search. This can be a significant paradigm shift for some agencies that have not allowed police to conduct a search without a supervision officer present or even assist in the search when supervision officers are present.

Courts have repeatedly supported the reasonable suspicion standard in an effort to prevent searches from being arbitrarily conducted and subject to abuse, to provide guidance to allow the officer to more easily determine the reasonable scope of the search, and to safeguard the offender-supervising officer relationship. It is important to note that a search resulting in the discovery of contraband does not automatically correlate to revocation. Based on the type of contraband found, many times the resulting action is some form of intermediate sanction such as closer supervision, possibly with the aid of some form of monitoring device, initiation or increase of treatment, or a referral to some form of closer custody such as a halfway house or residential treatment program.

## Plain View Seizures

Plain view seizures are those searches that result from officers observing contraband in the normal course of their duties. While one of the most common methods of initiating a search, it can also be the most dangerous. A common scenario, especially for untrained officers conducting a home contact, the officers observe some type of contraband, such as a gun or drugs. Legally, only

three criteria must be met by officers before they can legally seize the contraband:

1. The contraband must be within the plain view of the supervision officer (*Harris v. U.S.*, 390 U.S. 234 (1968)),
2. The officer must be justified to be in the place where the contraband is observed (*Horton v. California*, 496 U.S. 128, 136 (1990) and *U.S. v. Peters*, 912 F.2d 208, 210 (8th Cir. 1990)), and
3. It must be immediately apparent to the officer that the item is contraband as it pertains to the offender (*Arizona v. Hicks*, 480 U.S. 321, 327 (1997), *U. S. v. Giannetta*, 909 F.2d 571, 579 (1st Cir. 1990) and *U.S. v. Poulos*, 895 F.2d 1113, 1121-22 (6th Cir. 1990)).

Usually, these three criteria are easily met and the officer decides to seize the item. But the officer has failed to ask the most important question, which is not posed by the court—Is it safe to seize the item? Numerous officers have gotten into dangerous situations because they became too task oriented or careless and decided to seize the item without thoroughly assessing the situation; determining if they have a tactical advantage; and then, unemotionally deciding if it is safe to proceed or if, should they back out, obtain additional assistance, and determine how to best approach the task of recovering the contraband. In classes conducted through the PSN program on the issue of search and seizure, when the plain view/safety issue is discussed, usually at least one person will respond, “Well, what if they destroy the evidence?” The instructor response is generally a question: “which is more important—the evidence or your life?”

In reality, unless the officer makes it obvious that they have seen the contraband, the officer can leave and come back with additional assistance and the contraband will still be there. Even if it is gone, the officer knows what he or she observed, especially if it was a gun or evidence of drug dealing activity, and action can probably be taken based merely on the officer’s observation. Also, when confronted with proper questioning, the offender will often admit to the presence of the contraband. Even if all the above does not occur, there is always another day and this one experience may not dissuade the offender from further involvement in the illegal activities just interrupted.

## Approval of Searches

Although the courts have not dealt with the administrative aspect of a search, such as the form or process for approval of a search or even if a review process is needed, many community supervision agencies that conduct planned searches have created an application and review process to both enhance officer safety and assure the reasonableness of the search. The agency goal should be to establish a system for quality control and safety, while not creating a system so cumbersome that it dissuades officers from using searches as a valuable supervision tool.

It is incumbent on managers that serve as the approving body to understand the laws and procedures of conducting a probation or parole search. Managers may also be called upon to educate the court, parole board, attorneys, and law enforcement on the laws relating to parole and probation searches.

## Preparing a Written Application for Search

If a written application or request to conduct a search is required, it is recommended that it contain the following information to address both the legal requirements and the safety of all involved.

- The name, address, type and term of supervision, offense of conviction, and relevant background of the person to be searched.
- Whether the search would be pursuant to a search condition or consent.
- A description of the place to be searched.
- A specific description of the grounds to believe that the search will yield contraband or evidence of a violation of the conditions of release.
- A description of the general nature of the contraband or evidence sought.
- A description of any potential dangers the search may present to the probation officers or others.
- The assistance to be provided by other law enforcement agencies or the reasons why such assistance is unavailable, unnecessary, or impractical.
- A description of any contemplated minor damage to the property that may be caused by the search.

Most agencies also require some narrative report regarding the results of the search (See the PSN Supplemental Resources located in Appendix B of this publication for sample forms). Provisions should also be made in agency policy that allow for searches to be conducted when situations exist that do not allow for completion of a formal approval process.

## CONDUCTING THE SEARCH

Once the legal basis for a search has been established, the officer and/or administrator responsible for the search should take necessary safety precautions to assure the safety of all involved. First, officers must be trained. Agencies have allowed searches, conducted searches, and even established written policies requiring that officers be trained in search tactics, but never provided the training. Obviously, this creates a significant liability issue for the agency.

On the other side, agencies and governing bodies have not allowed officers to conduct searches, even though search conditions are ordered by the court or board, stating that the officers have not been trained. The obvious response is to train them.

The extent of law enforcement assistance required will vary depending on the type of search being conducted, offender's history of violence, skill level of the supervising officers involved, and the safety equipment available to the supervision officers. Irrespective of the characteristics and skill level of the supervising officer, law enforcement provides added protection, a clear armed presence, and, usually, a source of expertise for the seizure and handling of evidence. Law enforcement should also be actively involved in conducting the initial security sweep of the premises to look for and control third parties and other potential dangers.

Some form of receipt should be given to the offender for any item seized (See the PSN Supplemental Resources located in Appendix B of this publication for sample forms). This not only initiates the chain-of-custody process, but also establishes documentation of what was seized and provides a process for tracking should the officer need to return any of the seized property.

The seizure of the item is just the first step. Consideration needs to be made regarding how the seized items will be stored. Taking seized weapons, drugs, and money to the office poses various issues. Generally, the best procedure for handling of contraband is to turn it over to law enforcement. Agencies should not store seized items unless there is the ability to safely store items under the following conditions:

- Firearms and/or ammunition should be stored in a facility that can be secured and meets local codes for storage of such items.
- Drugs should be stored in such a way as to assure against theft or contamination. Make sure there are no issues with any hazardous materials.
- Access to seized currency is limited.

### Pre-search Planning

All of these issues should be discussed, and hopefully resolved, during the pre-search planning. Information gathered and shared with the search team should include:

- A description and photo of the offender.
- The criminal history, especially as it relates to weapons and violence.
- Relevant psychiatric and health issues.
- The basis for the search.
- The contraband sought (this will set the scope of the search).
- The address to be searched along with a description and any known hazards.
- Third parties who may be present and their backgrounds, if known.
- Whether law enforcement assistance is needed and available.
- Maps and directions to the search location and the nearest hospital.
- A sketch of the interior of the place to be searched.
- Information on known associates.
- Descriptions and license plate numbers of the offender's and associate's vehicles.

During the pre-search meeting, the search team leader and team will determine:

- How will entry be made, (e.g., by whom, what method)?
- Who will maintain perimeter security?

- Who will cover exits?
- Who will determine if the search is to be abandoned?
- Once entry is made, what are the assignments?
- Who will be the evidence technician?
- Who will stay with the offender and any others?
- Who will deal with third parties?

Consider creating a checklist to ensure the proper equipment is available for each officer and to ensure the safety of the search team. Some of the items should include:

- Safety equipment (e.g., firearm, OleoResin Capsicum (pepper) spray, body armor, hand cuffs) as authorized by the agency
- Badges that can be displayed
- Protective gloves—latex, Kevlar
- ID jackets, vests

Also, ensure that the search team has access to special equipment including:

- Evidence collection equipment, i.e., bags, tape, forms, pens, computer equipment
- Drug-testing kits
- Flashlights
- Mirrors
- Eye protection
- Tools for entry of areas that may be locked (e.g., screw drivers, bolt cutters)
- First-aid equipment
- Camera
- Communications equipment (e.g., cell phones and/or radios)

## Timing the Search

In considering the timing of the search, again, safety is the paramount concern. The courts, both in addressing general search guidelines and sometimes in wording search conditions, have stated, “searches should be conducted in a reasonable manner and at a reasonable time” (Maggio, 1995).

While the courts have not specifically defined “reasonable time,” searches will generally be conducted during “daytime hours” for safety. In discussing the timing for the execution of search warrants, Rule 41 of the Federal Rules of Criminal Procedure allows for daytime warrants to be executed between the hours of 6:00 a.m. and 10:00 p.m. Be sure to check your local and state laws.

## The “Stalking Horse”

One of the most commonly misunderstood legal guidelines surrounds the term “Stalking Horse.” Probation and parole officers are generally encouraged to elicit the assistance of law enforcement officers for protection, instruction in conducting the search, and taking possession of contraband. A search may be conducted with the assistance of police officers so long as the purpose of the search is to further the goals of probation or parole.

The “Stalking Horse” issue is illustrated in *U.S. v. Hallman*, 365 F.2d 289 (1966). A police officer, accompanied by an FBI agent, removed an offender from a car in which he was sitting with his girlfriend and then took him to the parole office. Upon arrival, based upon a request from the FBI agent, the parole officer asked the offender certain questions and directed him to produce whatever money he had. The offender produced 13 marked \$20 bills from a robbery. The bills were later used against the parolee at his trial. Upon appeal, the court found that the parole officer was merely acting as a shield for the police officer’s illegal arrest of the offender and was not acting pursuant to his parole authority. In essence, it was a police search masked by the presence of a parole officer.

In *U.S. v. Jarred*, 754 F.2d 1451 (1985), police officers conducted warrantless searches of two offenders at the request of their parole officer. The parole officer had been informed by the police of the offender’s suspected involvement in robberies. As a result,



the parole officer requested that local detectives assist him in conducting a search of the residence of one of the offenders. The search was conducted by detectives in the presence of the parole officer and the search disclosed shotgun shells. The parole officer requested by telephone that police officers who had impounded the second offender's (Jarred's) car to conduct a search of the trunk. In compliance with this request, the officers found a shotgun in the trunk which was subsequently used as evidence against Jarred at trial.

In this case, the court ruled that in applying the stalking horse doctrine, an appellate court should only look for clear error. The fact that the parole officer acted on information received from police did not invalidate the parolee search. Rather, it acknowledged that police and parole officials cooperate all the time. The fact that, in this instance, the parole officer had initiated the search was sufficient grounds for defeating the stalking horse allegation.

In *U.S. v. Richardson*, 849 F.2d 439, 441 (9th Cir), cert. denied, 488 U.S. 866 (1988), the issue was further clarified when the court stated "...police and parole officers are entitled to work together to achieve their objectives; concerted action does not in and of itself make a search constitutionally infirm. The proper question is whether the parole officer used her authority to help the police evade the Fourth Amendment's warrant requirement or whether the parole officer cooperated with police to achieve her own legitimate objectives."

## AVOID BEING A "STALKING HORSE."

A search may be conducted with the assistance of police officers as long as the purpose of the search is to further the goals of probation.

### Scope of the Search

So, where can you look in an effort to find the contraband sought? Basically, the size of the item dictates the locations that can be searched. "You cannot look for an elephant in a drawer." The scope of the search is determined by the size of the item(s) sought. If you are looking for a shotgun, can you look in the drawer of an end table in the living room? Obviously the standard shotgun is larger than the average described drawer, even if the shotgun is broken down. What about the ammunition for the shotgun? Did you articulate that the search team was looking for a shotgun and ammunition? If you did, would it be reasonable that ammunition could be located in such a drawer? We would offer that it is.

It is important that we analyze not only the tactics of the search, but the legal issues relating to the search in consideration of the totality of the item(s) sought. Officers are encouraged to work closely with their department's legal counsel and learn as much as possible about the laws in their states.

### The Issue of Force

Another heavily debated issue is how much force probation and parole officers can use in gaining entry. This is an issue that has not been specifically addressed by the courts. The majority of agencies across the country do not allow forced entry, what is commonly referred to as kicking in the door. The debate usually centers on what officers can do once the door is opened. What if someone says the officers cannot come in?

Here it is best to consult both local legal counsel and the policies of the agency. In the absence of specific court rulings, various policies are or should be established within individual agencies.

### Third Parties

Adding to the list of heavily debated issues is the topic of how probation and parole officers deal with third parties that may be present during a search. A probation or parole officer's ability to physically control third parties is more easily remedied if additional law enforcement authority is present, but that is not always possible.

The third party issue has two points. The first is what can supervising officers do to protect themselves and stop attempted interference with a search and evidence preservation. Obviously, supervising officers can do whatever is necessary to protect themselves and, in most jurisdictions, to protect others. The agency should have a use-of-force continuum that provides guidance in that area. The second and more debated point is what force can be used against a third party who may attempt to stop or interfere with a lawful search.



A supervising officer may have limited authority to detain or restrain third parties; this is an issue that should be discussed with legal counsel for your agency. If third parties are present who may present a risk to any person conducting the search or to the offender or if the officer becomes aware of any other reasonably foreseeable danger of harm to any person, the officer may wish to consider abandoning the search. No evidence is worth jeopardizing the safety of an officer. Many times, just the observation of an item of contraband is enough for further action by the officer, even if the item cannot be seized for safety reasons.

If a search is abandoned because of danger to the officer or another person, there may be reasonable grounds to believe that there exists a danger to the public. The officer should notify the appropriate law enforcement authority as soon as possible.

A third party has no legal right to stop a lawful probation search that is based on reasonable suspicion and pursuant to a special condition of the court (*Muehler v. Mena*, 544 U.S. 93 (2005)). This is the case even if the third party has an ownership interest in the premises and is not suspected of criminal involvement. (Review of case law by General Council of the U.S. Courts and internal memo of 3/28/06).

A recent court case that provides an exception to this rule is found in *Georgia v. Randolph* (No. 04-1067) 278 Ga.614, 604 S.E. 2d 835, affirmed (2006). In this case, the respondent's estranged wife gave police permission to search the marital residence for items of drug use after the respondent, who was also present, had unequivocally refused to give consent. The respondent was indicted for possession of cocaine and the trial court denied his motion to suppress the evidence as products of a warrantless search unauthorized by the consent. The Georgia Court of Appeals reversed that decision. In affirming that decision, the U.S. Supreme Court held that consent given by one occupant is not valid in the face of the refusal of another physically present occupant. The court went on to state that the Fourth Amendment recognizes a valid warrantless entry and search of a premises when the police obtain the voluntary consent of an occupant who shares, or is reasonably believed to share, common authority over the property and no present co-tenant objects.

But how does this relate to a probation or parole search? The first question is if the search is being conducted on purely a consent basis, as in *Randolph*, or if the search is pursuant to a search condition. The aforereferenced opinion of the Office of General Council of the U.S. Courts (OGC) states: "Assuming an offender is not subject to a search condition and that his consent therefore matters, the co-occupant consent rule would preclude a search only if the offender consents but his present co-occupant objects. If a co-occupant is absent and the offender consents to a full search, officer may search based on the offender's consent. The critical phrase precluding a search under *Randolph* in consent searches is 'present and refusing.' If the offender is the only one present and he consents, *Randolph* allows officers to search based on the offender's consent alone." *The OGC also states,*

*"Searches pursuant to a search condition differ greatly from the co-occupant consent rule addressed in Randolph. Most significantly, the Model Search and Seizure Guidelines (for U.S. Probation) require offenders to advise co-occupants that areas of the premises are subject to search. OGC's view has always been that this entitles officers to search all common areas of the residence and all areas within the exclusive control of the offender. In practical terms, this means that a co-occupant could not effectively object to a search pursuant to a condition because she was put on notice of the search condition and the places in the residence that could be searched. Thus, she would have no reasonable expectation of privacy in those areas.*

*"Obtaining written third party consent in advance is a good practice because it negates any later false claim by the third party that she was unaware of the search condition and therefore had a valid expectation of privacy. Advance notice to a third party that she will be living in a residence subject to search also raises the doctrine of implied consent to a search. Obtaining third-party written consent at an early juncture obviates any later factual disputes about the adequacy of the notice and the nature of the third party's consent."*

Also, third parties do not have the right to interfere with the search or act in a manner that may jeopardize the safety of those in the area. For federal officers 18 U.S.C. § 2232 (a) makes it a felony to interfere with an authorized search, and 18 U.S.C. §1509 makes it a felony to interfere or obstruct any lawful order of the court.

## Detention by Parole and Probation Officers

The courts have not specifically addressed the issue of detention of occupants of a residence by probation and parole officers. However, there is case law on the issue as it relates to police. In *Michigan v. Summers*, 452 U.S. 692 (1981), police officers executing a warrant to search a house for narcotics encountered Summers descending the front steps; they requested his assistance in gaining entry and detained him while they searched the premises. After finding narcotics and ascertaining that Summers owned the house, the police arrested him, searched him, and found heroin in his coat pocket. Summers, who was charged with possession of heroin, moved to suppress the heroin as the product of an illegal search in violation of the Fourth Amendment.

The court held that for Fourth Amendment purposes, a warrant to search for contraband founded on probable cause implicitly carries with it the limited authority to detain the occupants of the premises while a proper search is conducted. Because it was lawful to require the respondent to re-enter and to remain in the house until evidence establishing probable cause to arrest him was found, his arrest and the search incident thereto were constitutionally permissible. For parole and probation officers who have law enforcement or peace officer status, their authority is presumably more defined. Officers should consult with their legal counsel for opinion.

In a more recent case, *Muehler v. Mena*, 544 U.S. 93 (2005), the court ruled that "... detention in handcuffs for the length of the search is consistent with our opinion in *Michigan v. Summers*, 452 U.S. 692 (1981.)". Again, seek legal counsel, especially in light of the varying degrees of police powers that supervising officers carry.

## SAFE AND EFFECTIVE SEARCH TECHNIQUES

Only after aforementioned legal, procedural, and equipment issues have been discussed are the supervising officer and agency ready to actually conduct searches. In conducting searches probation, parole, and community supervision officers are venturing into a highly tactical endeavor that often lacks definitive answers and processes.

### Pre-Search Surveillance

The first step when embarking in the search process is to conduct pre-search surveillance. This can be done personally by the officer(s), or by the use of equipment. Some probation agencies have placed video cameras in surveillance vehicles, left the locked vehicle, recorded the activities over a period of time, and then reviewed the tapes in the comfort and safety of the office to determine the activities at a specific location or of a specific offender.

Many times the surveillance is not this covert and merely involves direct observation to determine:

- The type of dwelling, primary door(s), other building(s)
- Type of construction of the dwelling and doors, e.g., wood, metal, brick, screen doors, security doors
- Types of locks
- Possible alarms, determined from visual indicators such as boxes, lights
- Exterior lighting and how it is activated
- Walls, fences, and gates
- Entanglements and debris
- Dogs and if so what type. Have there been reports of dog bites at that site?
- Lookouts: people or equipment
- Hazardous materials
- Possibly talking to neighbors if this will not alert the offender

Only after this information is obtained should the search team initiate the search.

As the team approaches the target (house, car, business, etc.), verify the address. Though in most cases the supervising officer will have been to the target previously in connection with prior supervision activities, in some cases the supervising officer may not be part of the search team.

As the team approaches, note should be taken of crowds outside, large numbers of vehicles, or other indicators that more people may be present than were expected.

If the decision is made to approach the site, the team leader should make sure team members are in position. Changes in the environment may call for a change in tactics or even withdrawal from the site.

## SAFETY FIRST!

Note should be taken of how the doors open, with officers placing themselves in a position that will give them the greatest view of the interior of the residence when the door opens and with the least personal exposure. Officers should be listening for any sounds that would indicate numerous people are in the residence. Also, officers should be sensitive to any unusual odors that may indicate drug activity. It is no secret that drugs and illegal guns are often together.

Once entry is made, it is very important that the search does not begin until a security sweep is done and the lead officer gives the go-ahead for the search to begin. All officers should have training on the various techniques of moving down a hallway, clearing a room, searching an attic, and checking blind spots.

### The Lead Officer

The lead officer is in charge of the execution of the search. It may or may not be the officer supervising the case. The lead officer can make decisions regarding tactics and entry as well as on-the-spot decisions regarding the search, but still defer questions regarding what items are to be seized, if the offender is to be taken into custody, etc., to the supervising case officer.

It is usually best for the lead officer to not take an active role in the physical search, enabling the lead to view the total operation. The lead should not only have experience and skill knowledge relating to conducting searches, but also a thorough knowledge of search laws and the agency policies relating to search.

### Securing Contraband Found

Once contraband is found, it should be photographed as it was found, if safe to do so, then handled with attention to the preservation of evidence and then logged by a trained evidence technician. All weapons should be handled as if they are loaded and officers should be trained on how to make a weapon safe without destroying evidence such as fingerprints.

Once the search is completed and the decision to leave has been made, numerous steps still need to take place, and more decisions need to be made, such as:

- If the offender is taken into custody, what can he/she take with him/her?
- Any clothing requested by the offender or others at the site should only be obtained by the officers and should be patted-down before being given to the person
- Children, animals, and others not taken into custody must be provided for
- Lights should be turned out as appropriate and officers should assure nothing flammable is left
- Doors should be locked

### The Debriefing

After each search, even if abandoned, a debriefing should take place. The debriefing, usually led by the team leader, should evaluate the effectiveness of the operation. This is done by:

- Reviewing the initial plan
- Determining how well the plan worked
- Discussing changes that had to be made and why
- Discussing how officers rated their performance in their respective roles
- Evaluating the degree of coordination and effectiveness of the tactics used



# CONCLUSION

By federal and/or state law, felons and many other classifications of individuals are prohibited from gun possession. In exercising proactive probation and parole supervision, it is likely that probation and parole officers will supervise offenders who are armed or have access to guns. Through the Council of State Governments/American Probation and Parole Association's Project Safe Neighborhoods project, and other PSN initiatives, training and technical assistance has been, and may still be, available to probation and parole professionals to assist in keeping officers safe. Training should include areas such as preventive measures, search, seizure, officer safety, and legal issues related to prohibited offenders with firearms.

After attending a training provided by APPA's PSN project, an administrator reported that one of his officers conducted a home search the following week where the offender indicated that her husband was looking for their shotgun. The offender advised that she had taken the gun to a pawn shop and pawned it. Both the offender and her husband are convicted felons. Based on training the probation officer had received through PSN, she obtained a statement from the offender and contacted the nearest ATF office, who in turn went to the pawn shop and seized the gun. The pawn ticket contained the offender's signature and driver's license number. The case was then referred to the U.S. Attorney for consideration of prosecution.

By learning the specific laws and techniques of dealing with illegal gun-related offenses, parole or probation officers can stop offenders they supervise from becoming illegally involved with guns. But the reality is that in spite of your best efforts, some offenders will continue to possess illegal firearms. We hope the information provided will assist you and your agency in getting those guns off the street—making you and your community a safer place.

We must look at this not as a one-time effort, but a continued way of “doing business.” The concepts of PSN must continue as an enduring product. Collaborations and treatment alternatives must advance so new arrivals to the parole and probation caseloads will not merely replace the repeat behaviors supervising officers are trying to change. As the crisis subsides, however, it can be difficult to maintain the sense of urgency about the problem at hand. Accordingly, partners can become distracted and the collaborations can subside. This can be an unintended consequence of program success or simply a product of shifting attention and priorities (McGloin, 2003). For the safety of all, we can never retreat into fortress supervision conducted solely from agency offices.

Gun violence reduction can be accomplished through the collaboration and partnership of probation, parole, and community supervision officers in PSN initiatives. Probation and parole officers can remove illegal firearms from the possession of offenders and their homes, but this must be accomplished through proactive supervision in the community and it must be done safely, effectively, and legally.

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# APPENDIX A:

## WEB SITES AND RELATED LINKS

The following Web Sites provide text of articles and program information related to Project Safe Neighborhoods.

### Gun Violence Among Serious Young Offenders (Braga)

Center for Problem Oriented Policing, available online with full text:

[www.popcenter.org/Problems/problem-gun\\_violence\\_p3.htm](http://www.popcenter.org/Problems/problem-gun_violence_p3.htm)

### Reinventing Probation and Reducing Youth Violence-Boston's Operation Nightlight--(Corbett, 2002) PDF

[www.popcenter.org/Problems/Supplemental\\_Material/gun\\_violence/Corbett\\_2002.pdf](http://www.popcenter.org/Problems/Supplemental_Material/gun_violence/Corbett_2002.pdf)

### Reducing Violence, The Boston Gun Projects Operation (Kennedy, Braga, and Piehl 2001) PDF – full text

[www.ncjrs.gov/pdffiles1/nij/188741.pdf](http://www.ncjrs.gov/pdffiles1/nij/188741.pdf)

### Notification Meetings--American Prosecutors Research Institute (APRI)

Enlisting the Resources of Probation and Parole, available online:

[http://www.ndaa-apri.org/publications/newsletters/swift\\_volume\\_2\\_number\\_2\\_2004.html](http://www.ndaa-apri.org/publications/newsletters/swift_volume_2_number_2_2004.html)

## RELATED LINKS

- |   |  |
|---|--|
| • American Probation & Parole Association             | <a href="http://www.appa-net.org">www.appa-net.org</a>   |
| • Bureau of Alcohol, Tobacco, Firearms and Explosives | <a href="http://www.atf.gov">www.atf.gov</a>   |
| • Bureau of Justice Assistance                        | <a href="http://www.ojp.usdoj.gov/BJA">www.ojp.usdoj.gov/BJA</a>                                 |
| • Bureau of Justice Statistics                        | <a href="http://www.ojp.usdoj.gov/bjs">www.ojp.usdoj.gov/bjs</a>                                 |
| • International Association of Chiefs of Police       | <a href="http://www.theiacp.org">www.theiacp.org</a>   |
| • National Center for Victims of Crime                | <a href="http://www.ncvc.org">www.ncvc.org</a>   |
| • National Coalition Against Domestic Violence        | <a href="http://www.ncadv.org">www.ncadv.org</a>   |
| • National Crime Prevention Council                   | <a href="http://www.ncpc.org">www.ncpc.org</a>   |
| • National District Attorneys Association             | <a href="http://www.ndaa-apri.org">www.ndaa-apri.org</a>   |
| • National Organization for Victim Assistance         | <a href="http://www.try-nova.org">www.try-nova.org</a>   |
| • Office of Community Oriented Policing Services      | <a href="http://www.cops.usdoj.gov">www.cops.usdoj.gov</a>                                       |
| • Project Safe Neighborhoods                          | <a href="http://www.projectsafeneighborhoods.gov">www.projectsafeneighborhoods.gov</a>           |
| • U.S. Department of Justice                          | <a href="http://www.usdoj.gov">www.usdoj.gov</a>   |
| • U.S. Attorneys' Offices Contact Information         | <a href="http://www.usdoj.gov/usao/offices/index.html">www.usdoj.gov/usao/offices/index.html</a> |

# APPENDIX B:

## PSN SUPPLEMENTAL RESOURCES

### APPA/PSN Distance Learning Series-Firearm Interdiction, Safety, and Proactive Supervision

- Proactive Supervision-Taking Guns into Account
- Conducting an Effective, Legal and Safe Search, Part 1
- Conducting an Effective, Legal, and Safe Search, Part 2

### Sample Policies and Forms

- Oklahoma Search and Seizure Standard
- Nevada Division of Probation and Parole, Notification of Firearm Prohibition
- Illinois Notification of Firearm Prohibition
- Philadelphia Firearm Surrender Policy
- Philadelphia Rules of Probation and Parole
- Third Party Acknowledgement Notification of Notice in Receiving Firearms

### Sample Surveillance Policy and Related Forms

- Sample Surveillance Policy
- Surveillance Log
- Surveillance Request Form
- Offender Surveillance Briefing Sheet

### Sample Search Policy and Related Forms

- Search and Seizure Policy
- Defendant Search Acknowledgement
- Resident Search Acknowledgement
- Search Waiver
- Inventory Sheet/ Property Receipt
- Receipt for Returned Property
- Search Summary
- Search Inventory/Property
- Destruction of Seized Property

### Sample Operations Plan

