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The Adoption of Mandatory Gunshot Wound Reporting Legislation in Canada: A Decade of Tension in Lawmaking at the Intersection of Law Enforcement and Public Health

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In 2005, Ontario adopted the *Mandatory Gunshot Wounds Reporting Act*. Over the following decade, seven other provinces and one territory adopted largely identical legislation. While these statutes require health facilities to report gunshot wounds to the police, they are mostly silent on what

En 2005, le gouvernement ontarien a adopté la *Loi de 2005 sur la déclaration obligatoire des blessures par balle*. Au cours de la décennie suivante, sept autres provinces et un territoire ont adopté des lois en grande partie identiques. Bien que ces lois exigent que les établissements de santé rapportent

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purpose this reporting is intended to achieve and how police are to use the reports to achieve it. This paper analyzes the legislative history across these nine jurisdictions to identify these features. It demonstrates that the statutes embody an unresolved tension between the purposes of public health and safety, on the one hand, and law enforcement on the other. In particular, the legislative debates focus heavily on criminality and gang activity, anchored in the dubious assumption that victims of gunshot wounds are criminals. Both this assumption and the absence of epidemiological provisions undermine the purported purpose of public health and safety. The paper then sets out a series of amendments that would improve these statutes. At a minimum these would include explicit purpose and use provisions. To the extent that public health and safety is indeed an actual purpose, several other changes would also be appropriate.

les cas de blessures par balles à la police, elles restent essentiellement silencieuses sur le but de ces rapports et la façon dont les services policiers devraient utiliser ces rapports afin d'atteindre ce but. Cet article propose une analyse du contexte législatif de ces neuf juridictions dans le but d'identifier ces caractéristiques des lois. Nous montrons que ces lois reflètent une tension entre le souci pour la santé et la sécurité publiques, d'une part, et l'application de la loi, d'autre part. Plus particulièrement, les débats législatifs se concentrent principalement sur la criminalité et l'activité des gangs et laissent donc transparaître une attitude générale selon laquelle toutes les victimes d'une blessure par balle sont des criminels. Cette attitude, ainsi que l'absence de justifications épidémiologiques, minent le soi-disant but d'assurer la santé et la sécurité publiques. Nous proposons une série de modifications afin d'améliorer ces lois. À tout le moins, ces modifications viseraient à rendre explicite l'objet de la loi et à préciser la façon d'utiliser les rapports. Dans la mesure où la santé et la sécurité publiques sont en réalité des objectifs principaux de ces lois, plusieurs autres modifications seraient également appropriées.

Introduction

In 2005, Ontario adopted the *Mandatory Gunshot Wounds Reporting Act* (the *Ontario Act*).[1] This legislation, the first of its kind in Canada, requires health care facilities treating a patient with a gunshot wound to inform the police of the name of the facility, the fact that the facility is treating such a wound, and the name of the patient if known. Over the following decade, seven other provinces and one territory adopted largely identical legislation.[2] There were two key differences: most included stab wounds as well as gunshot wounds,[3] and some included paramedics as mandated reporters.[4] But otherwise they followed the Ontario model with only a few minor variations.

In this paper, I analyze the legislative history across Canadian jurisdictions to demonstrate that these laws embody a live tension between two purposes: public health and safety on the one hand, and law enforcement – i.e., crime detection and punishment – on the other. The legislative debates are a particularly important source of information, given the absence of any re-

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1 *Mandatory Gunshot Wounds Reporting Act, 2005*, SO 2005, c 9 [*Ontario Act*].

2 *The Gunshot and Stab Wounds Mandatory Reporting Act*, SS 2007, c G-9.1 [*Saskatchewan Act*]; *An Act to protect persons with regard to activities involving firearms*, CQLR c P-38.0001, s 9 [*Québec Act*]; *Gunshot Wounds Mandatory Reporting Act*, SNS 2007, c 30 [*Nova Scotia Act*]; *The Gunshot and Stab Wounds Mandatory Reporting Act*, SM 2008, c 21, CCSM c G125 [*Manitoba Act*]; *Gunshot and Stab Wound Mandatory Disclosure Act*, SA 2009, c G-12 [*Alberta Act*]; *Gunshot and Stab Wound Disclosure Act*, SBC 2010, c 7 [*BC Act*]; *Gunshot and Stab Wound Reporting Act*, SNL 2011, c G-7.1 [*NL Act*]; *Gunshot and Stab Wound Mandatory Disclosure Act*, SNWT 2013, c 19 [*NWT Act*]. Québec is the exception, in that a short mandatory reporting provision was inserted into a slightly longer statute to which it was only tangentially related.

3 *Saskatchewan Act*, *supra* note 2, s 3(1); *Manitoba Act*, *supra* note 2, ss 1, 2(1); *Alberta Act*, *supra* note 2, ss 1, 2, 3(1), 5; *BC Act*, *supra* note 2, ss 1, 2(1), 7; *NL Act*, *supra* note 2, ss 1, 2(d), 3(1), 7(b); *NWT Act*, *supra* note 2, ss 1, 2, 3(1).

4 British Columbia and Alberta, which require paramedics to report, place that obligation on the individual paramedic as opposed to the paramedic organization: *Alberta Act*, *supra* note 2, s 3(1); *BC Act*, *supra* note 2, s 2(1). In contrast, Newfoundland and Labrador, Nova Scotia, and the Northwest Territories, which also require paramedics to report, place the obligation on the paramedic "service": *NL Act*, *supra* note 2, s 3(1); *Nova Scotia Act*, *supra* note 2, s 3(1); *NWT Act*, *supra* note 2, s 3(1).

ported cases that mention these acts.[5] While this particular tension between public health and safety and law enforcement is not unique to these statutes, it is unusually explicit. As a series of freestanding and fairly concise bills, these proposals received unusually focused and detailed debate. The large number of jurisdictions to consider and adopt this legislation provides considerable material on which to draw. Moreover, since virtually all American states have adopted this kind of legislation as well,[6] there are many variants of statutory language to consider.

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[5] The reporting provision in the *Québec Act* (*supra* note 2, s 9) was mentioned in passing by the Court of Québec during a discussion regarding exceptions to confidentiality in *R c Snider*, 2015 QCCQ 4286 at para 54, JE 2015-1054. Provisions of the *Québec Act*, other than those concerning hospitals reporting gunshot wounds to the police, have been mentioned in two reported cases: *Degroote c Ducharme*, 2012 QCCS 1144 at paras 19, 25, JE 2012-856; *Québec (PG) c Canada (PG)*, 2013 QCCA 1263 at para 12, JE 2013-1344. The lack of reported cases is not surprising, given the absence of an offence provision for non-compliance. (The *Québec Act* does contain an offence provision – section 12 – but it specifically does not apply to section 9, the provision mandating the reporting of gunshot wounds.)

[6] The following list is adapted from Thomas L Hafemeister, "If All You Have Is a Hammer: Society's Ineffective Response to Intimate Partner Violence" (2011) 60 Cath U L Rev 919 at 954, n 234: Alaska Stat § 08.64.369 (2015); Ariz Rev Stat Ann § 13-3806 (2015); Ark Code Ann § 12-12-602 (2015); Cal Penal Code § 11160(a)(1) (West 2015); Colo Rev Stat § 12-36-135(1) (2015); Conn Gen Stat § 19a-490f (2015); Del Code Ann tit 24, § 1762 (2015); DC Code § 7-2601 (2015); Fla Stat § 790.24 (2015); Haw Rev Stat § 453-14 (2015); Idaho Code Ann § 39-1390 (2015); 20 Ill Comp Stat § 2630/3.2 (2015); Ind Code § 35-47-7-1 (2015); Iowa Code § 147.111 (2015); Kan Stat Ann § 21-6319 (2015); La Stat Ann § 14:403.5 (2015); Me Stat tit 17-A, § 512 (2015); Md Code Ann, Health-Gen § 20-703 (West 2015); Mass Gen Laws ch 112, § 12A (2015); Mich Comp Laws § 750.411 (2015); Minn Stat § 626.52 (2015); Miss Code Ann § 45-9-31 (2015); Mo Rev Stat § 578.350 (2015); Mont Code Ann § 37-2-302 (2015); Nev Rev Stat § 629.041 (2015); NH Rev Stat Ann § 631:6 (2015); NJ Stat Ann § 2C:58-8 (2015); NY Penal Law § 265.25 (McKinney 2015); NC Gen Stat § 90-21.20 (2015); ND Cent Code § 43-17-41 (2015); Ohio Rev Code Ann § 2921.22 (LexisNexis 2015); Or Rev Stat § 146.750 (2015); 18 Pa Cons Stat Ann § 5106 (2015); RI Gen Laws § 11-47-48 (2015); SC Code Ann § 16-3-1072 (2015); SD Codified Laws § 23-13-10 (2015); Tenn Code Ann § 38-1-101 (2015); Tex Health & Safety Code Ann § 161.041 (West 2015); Utah Code Ann § 26-23a-2 (West 2015); Vt Stat Ann tit 13, § 4012 (2015); Va Code Ann § 54.1-2967 (2015); Wash Rev Code § 70.41.440 (2015); W Va Code § 61-2-27 (2015); Wis Stat § 255.40 (2015). Note that in addition to the above, two states (Georgia and Nebraska) have broadly worded reporting

As I will demonstrate below, police may have a role both in law enforcement and in public health and safety. On the one hand, police activity can prevent future violence. On the other hand, police can also detect, identify, and charge perpetrators of crimes to enable prosecution and punishment. These purposes are not always neatly separable. The distinction blurs, for example, if punishment is considered a deterrent or incarceration is intended to protect the public for a time from dangerous persons.

I begin by reviewing the literature, and specifically the key arguments made by supporters and opponents of the legislation. I note that there is some dispute among commentators over the purpose of the legislation. I then turn to the legislative text and legislative history, where this dispute erupts into sharp contrast. Finally, I conclude by considering how changes could improve these laws by addressing, or at least acknowledging, this tension.

I. The Literature

The Canadian literature on mandatory gunshot wound legislation clearly sets out the arguments for and against. The first support for these laws was a 2003 position statement by the Emergency Medicine Section of the Ontario Medical Association (OMA).[7] The statement focused on the danger of firearms and, while noting that most fatalities are suicides, argued that any gunshot wound indicated a chance of future harm – whether the wound was accidental, self-inflicted, or gang-related.[8] The statement also noted the existence and acceptance of other mandatory reporting laws, such as those on child abuse and neglect, and argued that gunshot wound reporting would

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laws that do not explicitly specify gunshot wounds but would include them nonetheless. See Ga Code Ann § 31-7-9 (2015) (requiring the reporting of any patient with a "physical injury or injuries inflicted upon him other than by accidental means"); Neb Rev Stat § 28-902 (2015) (establishing a misdemeanour for treating physicians and surgeons who fail to report "a wound or injury of violence which appears to have been received in connection with the commission of a criminal offense"). Mandatory reporting of gunshot wounds was at one time controversial in the US, but that was long ago. See e.g. "Compulsory Reporting of Gunshot Wounds", Editorial, (1927) 88:6 JAMA 404.

7 H Ovens et al, "OMA Section on Emergency Medicine Position Statement: The Case for Mandatory Reporting of Gunshot Wounds in the Emergency Department" (2003) 70:10 Ont Med Rev 17.

8 *Ibid* at 19.

be similar.[9] It rejected the argument that patients would be deterred from seeking care, and observed that many American states had these laws and many people mistakenly believed that Canada did too.[10] It also noted that reports would aid in epidemiology and public health interventions.[11] A survey cited in the position statement revealed that 75% of the members of the Emergency Medicine Section of the OMA supported such a law.[12]

A key motivation for the position statement was that existing legislation prohibited hospital staff from providing patient information to police, causing police "frustration" and even "significant police efforts that border, at times, on intimidation."[13] Mandatory gunshot wound reporting would resolve this "conflict."[14] Indeed, Dr. Howard Ovens, one of the authors of the position statement and a key proponent of these laws, would later write that "the legislation was meant to improve public safety by aiding police investigations, promoting injury prevention and *reducing conflicts between health care workers and the police*."[15]

The position statement prompted two main responses, one by academics Merril Pauls and Jocelyn Downie and one by John Carlisle, a former deputy registrar of the College of Physicians and Surgeons of Ontario.[16] The primary criticism raised in both responses was that mandatory reporting would decrease trust in hospitals and physicians, potentially deterring patients from being forthright or from seeking care entirely:

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9 *Ibid* at 21.

10 *Ibid* at 19–21.

11 *Ibid* at 20.

12 *Ibid* at 18.

13 *Ibid* at 17–18.

14 *Ibid* at 21.

15 Howard Ovens, Hannah Park & Bjug Borgundvaag, "Reaction in Ontario to Bill 110: Canada's First Mandatory Gunshot Wound Reporting Law" (2009) 11:1 CJEM 3 at 4 [emphasis added].

16 Merril A Pauls & Jocelyn Downie, "Shooting Ourselves in the Foot: Why Mandatory Reporting of Gunshot Wounds Is a Bad Idea", Commentary, (2004) 170:8 CMAJ 1255 [Pauls & Downie, "Shooting Ourselves"]; John R Carlisle, "Mandatory Reporting of Gunshot Wounds to Police ... Not as Simple as It Seems" (2004) 25:1 Health L Can 1.

> Patients disclose information to their physicians that they rarely reveal to anyone …. They share this information with the understanding that it will be used to help them, not to initiate a police investigation. If physicians are obliged to report gunshot wounds, the real danger is not that a few people may be deterred from seeking care, but that many others, who see that physicians have become an extension of the police force, will choose not to reveal their drug use, will refuse to say how they received an injury or will not disclose their sexual practices for fear that this information will be used against them.[17]

The related "slippery slope" concern was that gunshot wounds were not unique, and thus the same rationales would support the imposition of other crime-related mandatory reporting obligations on hospitals or health professions, such as obligations to report spousal abuse, illegal drug use, or any indicators of criminal activity.[18] The authors argued that gunshot wounds were unlike other conditions, such as child abuse or communicable diseases, where reporting would reduce a risk to vulnerable persons or the general public.[19] Similar points were made by Professor Wayne Renke, who questioned the constitutionality of the legislation on both federalism and *Charter* grounds.[20]

In the responses by Pauls and Downie and by Carlisle, a similarly fundamental set of concerns was raised about the utility of mandatory reporting to police. First, the inclusion of all gunshot wounds overlooked the fact that a substantial portion of these incidents are self-inflicted and the reality that immediate police involvement in those cases may be counterproductive.[21]

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17 Pauls & Downie, "Shooting Ourselves", *supra* note 16 at 1255–56. See also Carlisle, *supra* note 16 at 5.

18 Pauls & Downie, "Shooting Ourselves", *supra* note 16 (listing "domestic violence, stabbings, assaults and illicit drug use" at 1255); Carlisle, *supra* note 16 at 5 (referring to calls for mandatory reporting of burns, on the premise that they indicate arson).

19 Pauls & Downie, "Shooting Ourselves", *supra* note 16 at 1255; Carlisle, *supra* note 16 at 2.

20 Wayne Renke, "The Constitutionality of Mandatory Reporting of Gunshot Wounds Legislation" (2005) 14:1 Health L Rev 3 at 4–7 (gunshot wounds are not like the subjects of other mandatory reporting laws and such reporting might deter individuals from seeking care).

21 Pauls & Downie, "Shooting Ourselves", *supra* note 16 at 1255; Carlisle, *supra*

Similarly, police involvement was likely unnecessary where the wounds were accidental.[22] Second, to the extent that reporting was indeed intended to gather data for epidemiological purposes and public health interventions, anonymized reporting would be sufficient and would have fewer adverse effects.[23] Third, these laws were expressly modelled after American precedents, and their transplanted utility was questionable given the different features of gun use in Canada.[24]

In a response to Pauls and Downie, Dr. Ovens (again on behalf of the Emergency Medicine Section) emphasized that other mandatory reporting laws already existed, suggested that deterrence would be minimal, and argued that the special danger of firearms made gunshot wounds different from other crimes.[25] He also argued that even when gunshot wounds are self-inflicted, patients may pose an ongoing risk to themselves or others.[26] A key disagreement between Dr. Ovens, on the one hand, and Pauls and Downie, on the other, was over whether mandatory gunshot wound reporting legislation would make physicians into "crime fighters": while Dr. Ovens claimed that such a transformation was not the purpose of the OMA statement, Pauls and Downie predicted that this would nonetheless be the result.[27]

Subsequent developments reveal strong support for these laws. In 2007, Dr. Ovens and colleagues conducted a survey of section members and the public.[28] The vast majority did not seem to oppose the law: 95% of the public

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note 16 at 6. See also Renke, *supra* note 20 at 5.

22 Pauls & Downie, "Shooting Ourselves", *supra* note 16 at 1255. See also Renke, *supra* note 20 at 5.

23 Pauls & Downie, "Shooting Ourselves", *supra* note 16 at 1255; Carlisle, *supra* note 16 at 6.

24 Merril A Pauls & Jocelyn Downie, "Mandatory Reporting of Gunshot Wounds: Rebuttal", Commentary, (2004) 170:8 CMAJ 1258 at 1258 [Pauls & Downie, "Rebuttal"]; Carlisle, *supra* note 16 at 6–7.

25 Howard Ovens, "Why Mandatory Reporting of Gunshot Wounds Is Necessary: A Response from the OMA's Executive of the Section on Emergency Medicine", Commentary, (2004) 170:8 CMAJ 1256 at 1257.

26 *Ibid* at 1257.

27 *Ibid* at 1257; Pauls & Downie, "Rebuttal", *supra* note 24 at 1258.

28 Ovens, Park & Borgundvaag, *supra* note 15.

agreed with the law, while 88% of physicians reported being willing to comply with it.[29] A more limited survey of police found that they unanimously found the law "helpful."[30] In 2009, the Canadian Association of Emergency Physicians adopted an updated position statement on gun control that included support for mandatory gunshot wound reporting legislation.[31]

The literature demonstrates some uncertainty over the intended purpose of mandatory gunshot wound reporting. The main point made by Pauls, Downie, and Carlisle, and to a lesser extent by Renke, is that such legislation would be an unwise choice for improving public health and safety. However, it would be unwise partly because the true purpose or effect would not be to promote public health and safety, but instead to "facilitate the detection and police investigation of the patient,"[32] "serv[e] prosecution, a criminal law purpose,"[33] and make physicians into "crime fighters."[34] By contrast, proponents of mandatory reporting, such as Dr. Ovens, have maintained that public health and safety is the only purpose of these laws: "We are not advocating for physicians to become crime fighters, we are interested in public safety and injury prevention."[35] These duelling purposes were both explicit in the legislative debates.

II. The Legislative Text and Debates: Public Safety or Law Enforcement?

The legislative text and debates reveal a fundamental disagreement over the purpose of the legislation itself. While the legislative text and statements by most government legislators tend to support the purpose of public health and safety, statements by other legislators – in both the government and the

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29 *Ibid* at 6.

30 *Ibid* at 7.

31 Carolyn E Snider et al, "CAEP Position Statement on Gun Control" (2009) 11:1 CJEM 64 at 64. See also *ibid* at 69–70. Note that Ovens was an author of this article.

32 Carlisle, *supra* note 16 at 2.

33 Renke, *supra* note 20 at 4.

34 Pauls & Downie, "Rebuttal", *supra* note 24 at 1258.

35 Ovens, *supra* note 25 at 1257.

opposition – suggest that the purpose is law enforcement, i.e., detecting and punishing crime. The debates are particularly important because none of the statutes have a purpose provision and, moreover, none of the statutes specify what police are intended to do with the reported information. There is nothing inherently problematic with different legislators supporting the same proposal for different or even contradictory reasons. However, in the case of this legislation, the disagreement extends to the goals the acts are intended to achieve and how police are to achieve them.

The statutory language itself provides only some indication of the intended purpose of reporting and the uses of the information. The closest thing to a purpose provision is the *Ontario Act*'s preamble, which explicitly invokes public safety: "The people of Ontario recognize that gunfire poses serious risks to public safety and that mandatory reporting of gunshot wounds will enable police to take immediate steps to prevent further violence, injury or death."[36] The closest thing to a provision indicating how the reports are to be used is found in Québec's *Act to protect persons with regard to activities involving firearms*.[37] The use of "police intervention" is

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[36] *Ontario Act*, *supra* note 1, Preamble. The *Québec Act*, *supra* note 2, also contains a purpose provision (section 1), but that provision and all of the other substantive provisions concern the prohibition of firearms in schools and related institutions, and so have no apparent relationship to gunshot wound reporting. Section 1 states:

> The purpose of this Act is, among other things, to protect persons who frequent the premises of a designated institution, including the grounds of the institution and the structures standing on those grounds.
>
> …
>
> This Act also seeks to protect persons who use public transportation, with the exception of taxis, and those who use school transportation.

The designated institutions are specified to include child care, nursery schools, schools, colleges, and universities (section 1). The *Act* prohibits possession of firearms in designated institutions (section 2), grants police a power of warrantless search and seizure of firearms in those institutions (section 5), requires employees of those institutions to notify police if a firearm is present (section 6), requires specified employees to notify police of unsafe behaviour involving firearms at a designated institution (section 7), and grants health professionals and social workers the discretion to breach confidentiality to make the same notification to police (section 8).

[37] *Supra* note 2, s 9(2).

necessarily implied by section 9(2) of this *Act*, which provides that "[t]he Government may, by regulation … determine any other information to be reported to the police to facilitate their intervention." However, there is no indication of whether the intended purpose of police intervention is public safety, law enforcement, or both.

In contrast to the statutory language, the legislative history reveals two broad sets of purposes – one of public safety and another of law enforcement (or being "tough on crime") – and a wide range of specific uses aimed at achieving those purposes. Although the other provinces did not replicate the *Ontario Act*'s preamble, the same purpose of public safety was invoked by government legislators in every jurisdiction that adopted a gunshot wound reporting statute. In fact, the Manitoba Minister of Justice closely echoed the Ontario text by indicating that the purpose of the statute was "to improve public safety by … enabling police to take immediate steps to prevent further violence, injury or death."[38] So did the legislator who introduced the Alberta bill when he stated that "[p]roviding police with this important information helps them keep the public safe by preventing further violence, injuries, or death."[39] Statements in the other provinces were to similar effect. The British Columbia Attorney General and the Nova Scotia Minister of Justice both referred to "public safety."[40] The Saskatchewan Minister of Justice referred to the same purposes ("to improve public safety"[41] and "to prevent further crimes"[42]), and elaborated that "to a certain extent this

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38 Manitoba, Legislative Assembly, *Debates and Proceedings Official Report (Hansard)*, 39th Leg, 2nd Sess, Vol LX, No 28B (22 April 2008) at 854 (Hon Dave Chomiak, New Democrat) [Manitoba, *Hansard*, Vol LX, No 28B].

39 Alberta, Legislative Assembly, *Alberta Hansard*, 27th Leg, 2nd Sess, No 35 (5 May 2009) at 966 (Dave Quest, Progressive Conservative (governing party)).

40 Nova Scotia, House of Assembly, *Debates and Proceedings (Hansard)*, 60th Assembly, 2nd Sess, No 07-6 (29 November 2007) at 576 (Hon Cecil Clarke, Progressive Conservative) [Nova Scotia, *Hansard*]; British Columbia, Legislative Assembly, *Official Report of Debates of the Legislative Assembly (Hansard)*, 39th Parl, 2nd Sess, Vol 15, No 7 (26 April 2010) at 4804 (Hon Michael de Jong, Liberal).

41 Saskatchewan, Legislative Assembly, *Debates and Proceedings (Hansard)*, 25th Leg, 3rd Sess, NS Vol XLVIV, No 11A (13 November 2006) at 355 (Hon Frank Quennell, New Democrat) [Saskatchewan, *Hansard*, Vol XLVIV, No 11A].

42 Saskatchewan, Legislative Assembly, Standing Committee on Intergovern-

legislation only makes a reality of what I think are many people's expectations of our health care system – that it act to protect the health of members of the public by reducing violence and the recurring cycle of violence in certain circumstances."[43] He also stated that "the purpose of this bill is not punishment."[44] Similarly, the Newfoundland and Labrador Minister of Justice referred to "public safety" and violence prevention.[45] Likewise, the Northwest Territories Minister of Health and Social Services stated that "[t]he purpose will be to assist RCMP to provide a prompt response to violen[t] incidences as well as to address firearms safety issues."[46]

At the same time, other legislators saw being "tough on crime" as a purpose of the acts – even in Ontario, where such a purpose fits awkwardly with the preamble's explicit articulation of public safety. One member of the Ontario legislature stated: "I'd like to thank my colleagues in the House, particularly [a specific opposition MPP] … for his support in recognizing that the McGuinty government is also getting tough on crime."[47] Indeed, the Alberta Minister of Health and Wellness (not Justice or Public Safety, but *Health*) responded to a question regarding the absence of consultations with health professionals with an answer that made no mention of health: "I can tell you who was consulted. It was Albertans, and they're fed up with crime. Despite the fact that this member tries to portray himself as some kind of a

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mental Affairs and Infrastructure, *Debates and Proceedings (Hansard)*, No 34 (5 February 2007) at 526 (Hon Frank Quennell, New Democrat) [Saskatchewan Committee, *Hansard*, No 34]. The representative of the Saskatchewan Chief of Police also referred to the purpose as being "to prevent and interrupt violent crime": *ibid* at 544 (Chief Clive Weighill).

43 *Ibid* at 530 (Hon Frank Quennell, New Democrat).

44 *Ibid* at 526 (Hon Frank Quennell, New Democrat, reading from a letter by "constitutional law experts" in his department).

45 Newfoundland and Labrador, House of Assembly, *House of Assembly Proceedings*, 46th Assembly, 4th Sess, Vol XLVI, No 17 (18 April 2011) (Hon Felix Collins, Progressive Conservative) [Newfoundland and Labrador, *Hansard*].

46 Northwest Territories, Legislative Assembly, *Hansard*, 17th Assembly, 4th Sess, Day 38 (24 October 2013) at 3148 (Hon Glen Abernethy) [Northwest Territories, *Hansard*]. (Note that territorial MLAs do not have political affiliations.)

47 Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 38th Parl, 1st Sess, No 126A (11 April 2005) at 6105 (Shafiq Qaadri, Liberal (governing party)) [Ontario, *Hansard*, No 126A].

crime fighter, I'd like to see him support this bill for once and actually show that he is a crime fighter."[48] Some comments seem to imply that facilitating the work of the police is an end in itself: "[W]ithout this kind of legislation … it makes the job of our police force much tougher, and I think we should do anything we can to encourage and enhance the ability of the police officers that we have on the streets today and in the streets to be able to do their work."[49] Some seemed to emphasize law enforcement, and specifically punishment, as the purpose:

> [I]t's in the best interests of society … to ensure that these kinds of incidents are reported because a gunshot wound or obviously a stab wound, anyone creating that kind of wound may have breached the Criminal Code … I think it's in the best interests of society to ensure that those kinds of wounds are reported to the police, and those people who are responsible for those kinds of wounds do, in fact, receive some punishment.[50]

Another Manitoba legislator described one purpose of the *Act* similarly: "[T]hey [i.e., people who commit crimes] can be effectively dealt with instead of having a revolving door."[51] A representative of the Police Association of Ontario testified that, among other things, the *Act* "will … help to hold persons accountable."[52] These comments fit uneasily beside the emphasis on public safety in the *Ontario Act*'s preamble and in the debates in many provinces. They also contradict Dr. Ovens's position that "[w]e are not advocating for physicians to become crime fighters."[53]

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48 Alberta, Legislative Assembly, *Alberta Hansard*, 27th Leg, 2nd Sess, No 40a (13 May 2009) at 1129 (Hon Ron Liepert, Progressive Conservative).

49 Manitoba, Legislative Assembly, *Debates and Proceedings Official Report (Hansard)*, 39th Leg, 2nd Sess, Vol LX, No 54 (9 June 2008) at 2789 (Larry Maguire, Progressive Conservative (opposition)) [Manitoba, *Hansard*, Vol LX, No 54].

50 Manitoba, *Hansard*, Vol LX, No 28B, *supra* note 38 at 856 (Gerald Hawranik, Progressive Conservative (opposition)).

51 Manitoba, *Hansard*, Vol LX, No 54, *supra* note 49 at 2793 (Blaine Pedersen, Progressive Conservative (opposition)). Pedersen also referred to "crime prevention" (*ibid*).

52 Ontario, Legislative Assembly, Standing Committee on Justice Policy, *Official Report of Debates (Hansard)*, No JP-23 (3 March 2005) at JP-445 (Bruce Miller) [Ontario Committee, *Hansard*, No JP-23].

53 Ovens, *supra* note 25 at 1257.

Instead of acknowledging this tension and the complicated dual role of police, legislators tended to present simplified arguments that minimized the special challenges posed by police involvement in matters of public health. One such argument was that gunshot wound reporting is analogous to long-standing reporting obligations, particularly of infectious diseases and child abuse.[54] However, these legislators glossed over the fact that none of these other laws require reports to be made directly to the police.[55] More troubling was that government legislators in Ontario repeatedly drew a remarkably simplistic analogy to an existing legal obligation on auto mechanics to report bullet marks in cars to the police.[56] This analogy was pioneered by the Minister of Community and Correctional Services. He first posed it as a rhetorical question: "[I]t's mandatory for businesses such as auto body shops to report bullet holes in cars. Why would we require the reporting

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[54] See e.g. Ontario, *Hansard*, No 126A, *supra* note 47 at 6103: "In Ontario, health care practitioners are mandated to report incidents of child abuse, contagious disease, violent deaths and medical conditions related to unsafe driving but are not mandated to report gunshot wounds in people" (Hon Monte Kwinter, Liberal); *ibid* at 6104: "All of these requirements [i.e., mandatory reporting for child abuse, infectious diseases, people unfit to drive, and suspicious/violent deaths] protect the public, as will this legislation, if it is passed" (Shafiq Qaadri, Liberal (governing party)); *ibid* at 6122 (Jim Brownell, Liberal (governing party)); Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 38th Parl, 1st Sess, No 129 (14 April 2005) at 6294 (Brad Duguid, Liberal (governing party)) [Ontario, *Hansard*, No 129]. Similarly, the Saskatchewan Justice Minister referred to a letter from the National Emergency Nurses' Affiliation, which he suggests recognized the "important connection … between mandatory reporting of child abuse and the mandatory reporting that we are suggesting" (i.e., for gunshot and stab wounds): Saskatchewan Committee, *Hansard*, No 34, *supra* note 42 at 529 (Hon Frank Quennell, New Democrat).

[55] See e.g. Pauls & Downie, "Shooting Ourselves", *supra* note 16 ("[u]nder these current mandatory reporting laws, patient information does not go to the police, but to other agencies (which have a duty of confidentiality) that investigate the actual risk posed and involve police only if they deem it necessary" at 1255). See also Carlisle, *supra* note 16 ("[t]here are currently no requirements in Canada for doctors to report the condition of their patient to the police" at 2).

[56] *Highway Traffic Act*, RSO 1990, c H.8, s 60(5):

> If a motor vehicle that shows evidence of having been involved in a serious accident or having been struck by a bullet is brought into a garage, parking station, parking lot, used car lot or repair shop, the person in charge of the garage, parking station, parking lot, used car lot or repair shop shall forthwith make a report to the nearest police officer in accordance with subsection (6).

of bullet holes in cars but not bullet holes in people?"[57] He later described the distinction as "ludicrous."[58] Another legislator termed it "[i]roni[c]" and then stated, "You might say that this just brings the legislation up to date to give people the same sort of status as cars, and I think it's high time we got on with doing that."[59] Two more legislators followed, calling the automobile–person distinction "a strange circumstance"[60] and claiming that it "just doesn't make sense."[61] The problem with this analogy is that the social role of health professions and health facilities is very different than the role of mechanics. Patients trust doctors with personal information they would never share with mechanics. Physicians are fiduciaries;[62] mechanics are not.

Moreover, at least some legislators and police stakeholders did not understand or appreciate the legal responsibility of physicians and hospital staff to maintain confidentiality. For example, a BC legislator appeared to suggest that doctors should already be reporting gunshot wounds as a matter of "common sense," regardless of their legal obligations:

> Is there something that says that the existing system isn't working appropriately?
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> When I say "existing system," I just mean the common sense of medical practitioners who …. If somebody shows up at the door of [a hospital] with three bullet holes in them, it might be incumbent on somebody to phone the police and suggest that there might have been a crime committed ….[63]

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57 Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 38th Parl, 1st Sess, No 67A (23 June 2004) at 3175 (Hon Monte Kwinter, Liberal).

58 Ontario, *Hansard*, No 126A, *supra* note 47 at 6103 (Hon Monte Kwinter, Liberal).

59 Ontario, *Hansard*, No 129, *supra* note 54 at 6282 (Liz Sandals, Liberal (governing party)).

60 *Ibid* at 6293 (Laurel Broten, Liberal (governing party)).

61 *Ibid* at 6294 (Brad Duguid, Liberal (governing party)).

62 See e.g. *Norberg v Wynrib*, [1992] 2 SCR 226 at 275, 92 DLR (4th) 449, McLachlin J, concurring. In the literature on mandatory gunshot wound reporting, see e.g. Carlisle, *supra* note 16 at 2.

63 British Columbia, Legislative Assembly, *Official Report of Debates of the Legislative Assembly (Hansard)*, 39th Parl, 2nd Sess, Vol 16, No 7 (3 May

Similarly, the representative of the Saskatchewan Association of Chiefs of Police volunteered that police "sometimes" use threats of obstruction charges to coerce health workers into divulging confidential information, complaining that "it's gotten really, it's gotten almost silly. There's no common sense … all common sense seems to have gone out the window."[64] Note that, from this perspective, reducing conflict with police – by giving them at least some of the information that they want – is an exemplary goal.

III. The Tension in the Legislative Debates: Uses of the Information

The contradictory pushes of these purposes – public safety and prevention of violence, on the one hand, and being "tough on crime" on the other – are illustrated in the ways in which legislators expected the reported information to be used. In particular, the emphasis on public safety, as expressed in the legislative debates and the *Ontario Act*'s preamble, seems to be undermined by a contrasting emphasis on punishment.

A. Prompt criminal investigation

The implicit and perhaps most obvious use of the reported information is to facilitate a prompt criminal investigation by police.[65] The Saskatchewan Minister of Justice stated that the information would be used "to com-

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2010) at 5113 (Leonard Krog, New Democrat (opposition)) [British Columbia, *Hansard*, Vol 16, No 7] [ellipsis in original].

64 Saskatchewan Committee, *Hansard*, No 34, *supra* note 42 at 547 (Chief Clive Weighill):

> So I would say frustration is the main word right here. We just can't get any information at all. And you know trying to conduct any type of police investigation, sometimes we've had to threaten some staff to arrest them for obstruction. You know it's gotten really, it's gotten almost silly. There's no common sense… [A]ll common sense seems to have gone out the window.

65 See e.g. Pauls & Downie, "Shooting Ourselves", *supra* note 16 ("[p]roponents of mandatory reporting of gunshot wounds argue that police must be contacted to investigate the incident, determine the risk to the public and intervene to prevent future violence" at 1255).

mence an effective investigation."[66] As other legislators put it, "[t]he need to start the criminal investigation process at the earliest possible time must be paramount,"[67] and "the expectation would be that a police officer would attend, would want to be told where the patient is and would want to interview the patient."[68] Police testified that a prompt investigation is necessary to obtain evidence,[69] and that a particular concern is the obvious delay in voluntary reporting by the victim when that victim has been rendered uncon-

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66 Saskatchewan, *Hansard*, Vol XLVIV, No 11A, *supra* note 41 at 355 (Hon Frank Quennell, New Democrat).

67 Saskatchewan, Legislative Assembly, Standing Committee on Intergovernmental Affairs and Infrastructure, *Debates and Proceedings (Hansard)*, No 39 (2 March 2007) at 601 (June Draude, Saskatchewan Party (opposition)) [Saskatchewan Committee, *Hansard*, No 39]. See also Québec, National Assembly, *Journal des débats de la Commission permanente des institutions*, 38th Leg, 1st Sess, Vol 40, No 21 (4 December 2007) at 12h40 (Jacques Dupuis, Liberal (governing party)) [Québec Committee, *Hansard*]. The comments of Dupuis (*ibid* at 15) were as follows:

> *C'est évidemment pour être capables de commencer l'enquête le plus rapidement possible, parce qu'on sait que plus rapidement on commence l'enquête, plus on a des chances de trouver l'auteur du crime et d'avoir des preuves qui permettent de le traduire devant les tribunaux, si on le souhaite. Alors, évidemment, ce qu'on veut, ce qu'on vise, c'est une information qui contribue à l'intervention policière dans ce sens-là.*

A rough translation is as follows:

> This is obviously to be able to begin the investigation as quickly as possible, because we know that the sooner we begin the investigation, the more likely we will be able to find the perpetrator and to find the evidence needed to bring the person before the courts, if so desired. So, obviously, what we want, and what we're aiming for, is information that helps the police move towards this goal.

68 Saskatchewan, Legislative Assembly, Standing Committee on Intergovernmental Affairs and Infrastructure, *Debates and Proceedings (Hansard)*, No 35 (6 February 2007) at 565 (Don Morgan, Saskatchewan Party (opposition)) [Saskatchewan Committee, *Hansard*, No 35]; see also Carlisle, *supra* note 16 ("[t]he police will also have to carefully document all reports that are received and investigate them" at 6).

69 Saskatchewan Committee, *Hansard*, No 34, *supra* note 42 at 544 (Chief Clive Weighill). See also Renke, *supra* note 20 ("I do concede that, without mandatory reporting, at least some valuable evidence could be lost" at 5).

scious.[70] Investigation in itself, as the basis for arrest and prosecution, can have a preventative function if incarceration is believed to be a deterrent. For example, one Ontario legislator suggested that the purpose should be

> to ensure that we can match up criminal activity with police as soon as possible, … so that they can complete their investigations and the charges can be laid, so that we can get these people into court, and that will be the deterrent which is supposed to be designed into this in order to ensure greater public safety.[71]

Investigation is thus a key use of the reported information, but far from the only use.

B. Prevention of direct further violence

However, separate from the need to commence an investigation is a concurrent need for police to promptly intervene to prevent additional violence directly related to the wounding.[72] For this reason, Renke is arguably oversimplifying when he states that the direct use of the information reported to police is "prosecution, a criminal law purpose."[73] A gunshot wound may herald two types of further violence: additional violence against the patient, retaliatory violence on the patient's behalf, or both. In the first type, colloquially referred to as "finishing the job," the perpetrator attends

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70 Saskatchewan Committee, *Hansard*, No 34, *supra* note 42 at 544 (Chief Clive Weighill).

71 Ontario, *Hansard*, No 129, *supra* note 54 at 6285–86 (Cameron Jackson, Progressive Conservative (opposition)).

72 This is reflected in comments by the Manitoba Minister of Justice, who explained that police would use the information to "investigate the incident, determine the risk to the public and intervene to prevent future violence if necessary": Manitoba, *Hansard*, Vol LX, No 28B, *supra* note 38 at 854 (Hon Dave Chomiak, New Democrat). See also the comments by the Newfoundland and Labrador Minster of Justice, who referred to the fact that "intervention and proper, appropriate investigations occur to prevent future violence": Newfoundland and Labrador, *Hansard*, *supra* note 45 (Hon Felix Collins, Progressive Conservative); see also e.g. Pauls & Downie, "Shooting Ourselves", *supra* note 16 at 1255.

73 Renke, *supra* note 20 at 4.

at the hospital to shoot the patient again.[74] A representative of the Saskatchewan Association of Chiefs of Police cited the risk of "a continuation of the violence within the hospital setting" if the patient and the perpetrator were brought to the same hospital.[75] In addition to the obvious danger to the patient posed by this situation, there may also be danger to the other people around him or her.[76] Indeed, a representative of the Police Association of Ontario testified that hospital security took precedence over the investigation itself: "[I]f a gunshot is reported by a hospital … the first concern would be that patient at the hospital, to make sure there are no security problems there. Then it would be to start the investigation and try to secure the scene where the shooting occurred."[77] The legislator who introduced the Alberta bill specifically referred to police "protect[ing] the public in the case where the perpetrator returns to the scene or to the victim."[78] Similarly, the Saskatchewan Minister of Justice said that one use of the legislation would be for police "to ensure that this community violence does not follow the patient into that hospital."[79]

The second type of immediate further violence, retaliation against the known or suspected perpetrator,[80] is particularly gang-related. As the Sas-

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74 See e.g. Pauls & Downie, "Shooting Ourselves", *supra* note 16 at 1255; Renke, *supra* note 20 at 3; Carlisle, *supra* note 16 at 4; Ontario Committee, *Hansard*, No JP-23, *supra* note 52 at JP-445 (Liz Sandals, Liberal (governing party)); Saskatchewan Committee, *Hansard*, No 34, *supra* note 42 at 533 (Information and Privacy Commissioner Gary Dickson).

75 Saskatchewan Committee, *Hansard*, No 34, *supra* note 42 at 544 (Chief Clive Weighill).

76 See e.g. Renke, *supra* note 20 at 3; Saskatchewan Committee, *Hansard*, No 34, *supra* note 42 at 533 (Information and Privacy Commissioner Gary Dickson).

77 Ontario Committee, *Hansard*, No JP-23, *supra* note 52 at JP-446 (Bruce Miller).

78 Alberta, Legislative Assembly, *Alberta Hansard*, 27th Leg, 2nd Sess, No 54 (3 November 2009) at 1707 (Dave Quest, Progressive Conservative (governing party)) [Alberta, *Hansard*, No 54].

79 Saskatchewan, *Hansard*, Vol XLVIV, No 11A, *supra* note 41 at 355–56 (Hon Frank Quennell, New Democrat).

80 For example, the representative of the Saskatchewan Association of Chiefs of Police described one use of the information as "[t]o be proactive in preventing retaliatory violence": Saskatchewan Committee, *Hansard*, No 34, *supra* note 42 at 545 (Chief Clive Weighill).

katchewan Minister of Justice put it, "in the case of violence by gangs or organized crime, … to allow violence to go unreported and uninvestigated may lead to self-help … and other victims."[81] A representative of the Saskatchewan Federation of Police Officers elaborated that retaliatory gang violence can escalate in scope and present a risk to uninvolved bystanders:

> [M]any times when there's a gang attack there's retribution. And if the first attack isn't reported we have no way of preventing the retribution or the retaliation. And a lot of the times what we can see is the retaliation is often two- or ten-fold. And then we may even see innocent victims being harmed.[82]

Another Federation representative also explained that detention was a specific way in which police intervention can prevent retaliatory violence: "There will be payback if it's gang-related. There will be unless we intervene. But we'll do the investigation, hopefully arrest and charge the person that's done it [the initial assault]. And in many cases that is the payback that they've been looking for, that person is now in jail."[83]

C. Gunshot wound is in itself evidence of a risk

In addition to concern over further violence against the victim ("finishing the job") or the shooter (retaliation), legislators also seemed to believe

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[81] *Ibid* at 530 (Hon Frank Quennell, New Democrat). See also the testimony of Chief Weighill, *ibid* at 545:

> If the gunshot/stab wound was reported immediately, the police could be at the hospital in the event there is any confrontation between the suspect or acquaintances of the suspect. This assists in the safety of the medical staff and other patients. This prevention is extended to any community member that may be in the wrong place at the wrong time when retaliation occurs.

[82] Saskatchewan Committee, *Hansard*, No 35, *supra* note 68 at 570 (Darren Wilcox). See also Saskatchewan Committee, *Hansard*, No 34, *supra* note 42 at 544 (Chief Clive Weighill):

> Victims of unlawful acts of violence in some instances will not report the incident due to fear of retaliation. A serious injury resulting from gang activity may go unreported. This prevents the police from investigating and possibly conducting an intervention to further prevent violence before the retaliation escalates.

[83] Saskatchewan Committee, *Hansard*, No 35, *supra* note 68 at 572 (Evan Bray).

that a gunshot wound is evidence of a more general risk to the public at large – "an inherent threat to public safety."[84] The assumption here is that where there is one gunshot wound there may be more: "[W]hen people present with these kinds of injuries they often are the tip of the proverbial iceberg."[85] This idea deserves more detailed examination, as it is not as inherently obvious as its counterparts in other mandatory reporting laws. A gunshot wound is not "communicable" in the infectious-disease sense, and a gunshot wound victim is not as obviously at risk of future harm as an abused or neglected child.[86] As Pauls and Downie put it,

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[84] Saskatchewan Committee, *Hansard*, No 34, *supra* note 42 at 526 (Hon Frank Quennell, New Democrat).

[85] Manitoba, *Hansard*, *supra* note 49 at 2790 (Sharon Blady, New Democrat (governing party)). See also Ovens et al, *supra* note 7 at 21–22.

[86] See also Renke, *supra* note 20 at 4–5:

> A gunshot wound does not disclose a condition that poses a risk to the community, as might manifesting symptoms of a virulent highly contagious disease. One might argue, however, that the implicit context of the wound discloses public risk: the wound, probably, was caused in the context of some criminal activity. Because of the severe restrictions on the lawful uses of firearms … the wound likely occurred because the individual was the victim of an offence or because the individual had been engaged in an offence. The shooter or the individual or both are ongoing public risks.

Note that Renke goes on to state of this argument:

> In response, one might point to the facts. Most firearms-related deaths are suicidal; only about 15% are homicidal. Within the "homicidal" category, most deaths are impulsive acts caused by individuals who know their victims. The "State interest" argument is based on a narrative (gangland-style shootouts) that does not correspond to most actual instances of gunshot wounds. The accidentally-injured and the suicidal do not pose public risks.

(*Ibid* at 5 [footnotes omitted].) Renke similarly draws a distinction with regard to child and elder abuse:

> In abuse cases, the victims are powerless, unable to speak for themselves – in large part because of the abuse they have experienced. In these cases, mandatory reporting gives voices to those condemned to silence. In gunshot wound cases the victims, presumably, can report to police if they so wish. The problem is that they may not wish to report to the police.

> [t]here are significant differences between these situations and the case of gunshot wounds. Children are a vulnerable group and are usually unable to prevent ongoing abuse without the help of others. Impaired drivers represent a clear risk to others, and the removal of their licences should (at least in theory) decrease that risk. Similarly, a patient with a reportable infectious disease poses a direct risk to others, and intervention can mitigate or eliminate the risk.[87]

While Pauls and Downie are correct that these other reportable conditions are unlike gunshot wounds, they may seem overly narrow in their conclusion that "[i]n the case of a gunshot wound, the person being reported may or may not pose a risk to the public. There is no clear intervention that can be undertaken to mitigate or eliminate this undefined, and probably undefinable, risk."[88] Legislators seem to have taken the broader view that the risks related to the occurrence of a gunshot wound are not limited to a risk posed by the patient, and that police intervention may mitigate these risks.

This idea – that the occurrence of a gunshot wound is, in itself, evidence of a risk that requires intervention – can have up to four component assumptions, each supporting a distinct use of the information by the police. Three of these assumptions focus on a risk of repetition: first, that the assailant is likely to be a repeat assailant, therefore the police should confront him; second, that the victim is likely to be a repeat victim, therefore the police should protect him; and third, that the gun used is more likely to be used for additional violence, therefore the police should secure it. The fourth assumption, however, is unlike the others and goes directly to law enforcement: that the victim is a criminal, and therefore the police should confront him.

Police may use the reported information to target the two participants in a shooting – both the assailant and the victim – and the gun used, so as to prevent each from repeating that role.[89] For example, the Ontario Minister of Community Safety and Correctional Services said, "[W]e have a

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(*Ibid* at 6.)

87 Pauls & Downie, "Shooting Ourselves", *supra* note 16 at 1255.

88 *Ibid*.

89 See Renke, *supra* note 20 at 5: "The shooter or the individual or both are ongoing public risks. … At least some gunshot wounds are not self-inflicted, which entails that the shooter remained at large. Having shot at least one victim, the shooter has demonstrated that he or she is a risk to others."

responsibility, in terms of public safety, to find out what happened: Is there someone out there who still has that gun and is out shooting somebody?"[90] A similar concern was raised by the Nova Scotia Minister of Justice: "[P]ublic safety is jeopardized when, in the hours following a crime, police are unaware that there is a dangerous individual at large in the community."[91] These additional assaults may have already occurred; a Saskatchewan legislator suggested that the existence of one victim should prompt concern that there could already be other victims or potential victims.[92] Similarly, the victim may be the subject of repeat assaults absent police intervention. The representative of the Saskatchewan Association of Chiefs of Police who testified before the committee in that province stated that "[i]n many cases the most vulnerable in our society are victimized – those disadvantaged demographically, economically, and socially. If the incident is not reported, it prevents the police from intervening and possibly stopping a revictimization of the injured party."[93] In the same way that the victim may be a victim again, the weapon itself may be used in another assault. As the BC Minister of Justice explained, "reporting … means that they [the police] can enforce rules respecting the proper registration and storage of guns."[94] Similarly, as noted above, the Northwest Territories Minister of Health and Social Services stated that "[t]he purpose will be to assist RCMP to provide

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90 Ontario, *Hansard*, No 129, *supra* note 54 at 6292 (Hon Monte Kwinter, Liberal).

91 Nova Scotia, *Hansard*, *supra* note 40 at 575 (Hon Cecil Clarke, Progressive Conservative).

92 Saskatchewan Committee, *Hansard*, No 35, *supra* note 68 at 562 (Kevin Yates, New Democrat (governing party)):

> So if we have a situation where an individual comes into the hospital and has been the victim of a violent attack with a knife or shot, how do we know that there aren't other potential victims still in the home, there aren't children involved back at a potential residence? It's very difficult to know. And there is a potential that others, if you have somebody out there that's attacked an individual with a knife or shot somebody, that there may be other victims, and this is the one victim that was able to reach hospital.

93 Saskatchewan Committee, *Hansard*, No 34, *supra* note 42 at 544 (Chief Clive Weighill).

94 British Columbia, *Hansard*, Vol 16, No 7, *supra* note 63 at 5110 (Hon Michael de Jong, Liberal).

a prompt response to violen[t] incidences *as well as to address firearms safety issues*."[95]

Self-inflicted wounds, whether intentional or otherwise, present a unique combination of these roles of assailant and victim. In these cases, the patient may pose a continuing danger to himself or others because of unsafe firearm handling or storage, or because of further attempts at self-harm. While these kinds of incidents were raised less frequently in the legislative debates than were crimes, one Ontario legislator emphasized them: "[E]ven gunshot wounds that are accidental or self-inflicted could lead to issues of public safety …. [W]hat we're doing here is not just about police investigation of criminal activity; it's about public safety attached to all instances of gunshot wounds."[96]

Some opposition legislators argued that police are ill-suited to respond to suicide attempts if public health is indeed the goal – "it's simply not good public health policy, when a person has attempted suicide, to be generating a police investigation, when what we presumably want is adequate medical intervention," contended one member.[97] However, the disagreement was not

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95 Northwest Territories, *Hansard*, *supra* note 46 at 3148 (Hon Glen Abernethy) [emphasis added].

96 Ontario, *Hansard*, No 129, *supra* note 54 at 6282 (Liz Sandals, Liberal (governing party)). See also similar remarks made by another legislator, Donna Cansfield, also of the Liberal Party: "If in fact there is an accidental gunshot, it may have been from a hunter. It may be an opportunity to deal with issues around education. So it's not always just the thing about violent crime" (*ibid* at 6299). See also Ovens et al, *supra* note 7 at 19; Renke, *supra* note 20 at 5.

97 Ontario, *Hansard*, No 126A, *supra* note 47 at 6116 (Peter Kormos, New Democrat (opposition)); see also *ibid* at 6122. For similar comments by an Alberta legislator, see Alberta, *Hansard*, No 54, *supra* note 78 at 1710 (Harry Chase, Liberal (opposition)):

> That [self-inflicted] damage to themselves is in the realm of the patient and the doctor. It's not necessarily something that requires the involvement of the police. They need professional psychiatric or psychological treatment, and the fine line as to who has that information passed on and the privacy is, to a degree, a concern.

A representative of the Ontario Hospital Association described "great reservation about the lack of any exemption for self-inflicted wounds, as it is felt that police involvement may further stigmatize those injured as a result of a suicide attempt": Ontario Committee, *Hansard*, No JP-23, *supra* note 52 at JP-447

over the underlying assumption that a self-injuring person poses a future risk, but instead over whether it is the police or instead health professionals who are the appropriate initial responders to that risk.

These three assumptions – about the assailant, the victim, and the gun used – clearly lead to preventative public safety steps based on the reported information. However, a jarring emphasis on law enforcement *per se* underlies the fourth assumption: that the victim of a gunshot wound is a criminal.[98] This proposition was repeated by many legislators, with different degrees of certainty and rhetoric: patients *could* be criminals;[99] patients who resist reporting are criminals;[100] "[o]ne presumes" patients are

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(Hilary Short). See also the testimony on behalf of the Saskatchewan Union of Nurses, that "[i]n situations involving attempted suicide, the involvement of the police would not be conducive to the psychological well-being of the patient": Saskatchewan Committee, *Hansard*, No 35, *supra* note 68 at 560 (Marg Romanow). See also the statement of a representative of the Saskatchewan Registered Nurses' Association that "addressing disparities of social determinants of health such as poverty and mental health needs would be more useful for patients who attempt suicide with a firearm. These individuals require mental and social care, not a police investigation": *ibid* at 575 (Donna Brunskill). And see also Pauls & Downie, "Shooting Ourselves", *supra* note 16 at 1255.

98 This assumption is also recognized in the literature. See Renke, *supra* note 20 at 5:

> One might argue, however, that the implicit context of the wound discloses public risk: the wound, probably, was caused in the context of some criminal activity. Because of the severe restrictions on the lawful uses of firearms … the wound likely occurred because the individual was the victim of an offence *or because the individual had been engaged in an offence*. The shooter *or the individual* or both are ongoing public risks [emphasis added].

99 See Saskatchewan Committee, *Hansard*, No 39, *supra* note 67 at 601 (June Draude, Saskatchewan Party (opposition)): "[A] person [who] arrives at a health care facility … may not be just a victim of crime but also may be a perpetrator of related crimes."

100 See Manitoba, *Hansard*, Vol LX, No 54, *supra* note 49 at 2788–89 (Larry Maguire, Progressive Conservative (opposition)):

> Most law-abiding citizens don't come in with a stab wound or they don't come in with a gunshot wound …. [T]he reason that some persons wouldn't want to disclose where these things

criminals.[101] Some of them are "gangsters."[102] At the extreme, one legislator contended that "police say the hospitals are virtual safe havens for injured gunmen on the lam."[103] Such comments challenge Dr. Ovens's 2004 assertion in support of reporting that "[t]he patient is not accused of a crime but instead is being identified as someone who may have information that could lead to his or her own protection and that of other people."[104] Indeed, so does the position statement of 2003 – of which Dr. Ovens was the first author – in mentioning "[a]necdotes" such as "apparently innocent victims of accidental injury, who were in fact dangerous criminals."[105]

Under this fourth assumption, if the patient likely received the gunshot wound in the course of inflicting a gunshot wound on someone else, report-

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> came from is that they would have to be involved in some kind of gang activity or illegal act in the first place.

101 Ontario, *Hansard*, No 129, *supra* note 54 at 6285 (Cameron Jackson, Progressive Conservative (opposition)): "One presumes that the individual with a bullet wound is someone who has just engaged in some sort of criminal activity." See also Newfoundland and Labrador, *Hansard*, *supra* note 45 (Hon Felix Collins, Progressive Conservative): "Increasingly, both provincial police forces today are responding to incidents involving violence in our society *between individuals engaged in criminal activity*, and in some cases … the individuals are seriously injured" [emphasis added].

102 See British Columbia, *Hansard*, Vol 16, No 7, *supra* note 63 at 5110 (Hon Michael de Jong, Liberal): "As it relates to gangster activity, there are apparently some people out there that think it's okay to play with guns, but if you are injured as a result, you are going to speak to the police if you are seeking medical treatment." See also British Columbia, Legislative Assembly, *Official Report of Debates of the Legislative Assembly (Hansard)*, 39th Parl, 2nd Sess, Vol 17, No 2 (4 May 2010) at 5214 (Hon Michael deJong, Liberal):

> [T]he impetus for the legislation is more specifically related to circumstances where gangsters were showing up in health care facilities with gunshot wounds and saying: "Patch me up, and send me on my way." The police investigation would be playing catch-up from the get-go. It is designed with that particularly in mind.

103 Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 38th Parl, 1st Sess, No 87A (17 November 2004) at 4196 (Hon Robert Runciman, Leader of the Opposition, Progressive Conservative).

104 Ovens, *supra* note 25 at 1257.

105 Ovens et al, *supra* note 7 at 19.

ing of the one wound facilitates police investigation of the other and thus the types of intervention described above. However, if the gunshot wound is simply an indication that the patient is a "criminal," mandatory reporting becomes merely a mechanism to bring criminals to the attention of the police.

This fixation on criminality was reinforced by legislators questioning the commitment of health professionals who opposed mandatory reporting. The most extreme example came from Bob Runciman, then leader of Ontario's official opposition, in comments addressed to the representatives of the Ontario Public Service Employees Union who appeared before the legislative committee on behalf of the Union's members working in the health care sector:

> I find it passing strange that you, as a professional body, feel that if someone had been engaged, for example, in a murder, in a homicide, and was wounded in the carrying out of that homicide and is in your hospital, you'd feel no obligation to the community or in terms of broader public safety with respect to a requirement to contact the police about that individual in your institution. I find that disturbing.
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> …
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> … I have a problem with that and your obligation and sense of feeling for the community and others who might be involved.[106]

Indeed, Runciman dismissed concerns regarding physician–patient confidentiality and trust as "a sort of professional cover-your-ass approach."[107]

D. Police intelligence

The collection of intelligence was another purpose cited by police in testimony.[108] According to one Québec legislator, that province's reporting

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106 Ontario, Legislative Assembly, Standing Committee on Justice Policy, *Official Report of Debates (Hansard)*, 38th Parl, 1st Sess, No JP-22 (2 March 2005) at JP-439 to JP-440 (Hon Robert Runciman, Leader of the Opposition, Progressive Conservative) [Ontario Committee, *Hansard*, No JP-22].

107 *Ibid* at JP-435 (Hon Robert Runciman, Leader of the Opposition, Progressive Conservative).

108 See e.g. Ontario Committee, *Hansard*, No JP-23, *supra* note 52 at JP-445

provision was added at the request of police, in order to help them identify additional members of gangs: "*C'est à la demande des policiers de Montréal qui avaient besoin de cet article-là surtout en référence aux gangs de rue ....* [*C*]*ette disposition-là peut faciliter leur travail en identifiant plus de membres reliés aux gangs de rue.*"[109] Given that gang members are presumed to be at a higher risk of being the victims of gun crime, their identities are relevant to preventing such crime. Knowledge of the demographic, geographic, and temporal distributions of gunshot wounds could be used by police for purposes – such as resource deployment – that are analogous to the manner in which public health authorities would use epidemiological data from infectious disease reporting.[110]

E. The absent use: Data collection for public health interventions

One use of gunshot wound reports that is conspicuously absent from the Canadian acts and from the explanatory comments made by government legislators is the compilation of data for public health purposes that could be used for population-level interventions. In contrast, Massachusetts and Minnesota require the police to share gunshot wound reports with public health authorities, and Minnesota specifically requires the maintenance of a database of summary data.[111] Several commentators have called for a

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(Bruce Miller): "This legislation will enable police officers to investigate all incidents, gather intelligence, help to hold persons accountable, and hopefully prevent future acts of violence."

109 Québec Committee, *Hansard*, *supra* note 67 at 14 (Sylvie Roy, Action démocratique du Québec (opposition)). A rough translation is as follows: "It was at the request of the Montreal police officers who needed this clause, especially in terms of street gangs …. [T]his provision may facilitate their work by identifying more individuals connected to street gangs."

110 See e.g. Ovens et al, *supra* note 7 at 20: "[T]he data gathered has helped identify certain geographical locations or neighbourhoods that require greater police patrol and protection."

111 Mass Gen Laws ch 112, § 12A (2015):

> The colonel of state police shall make available to the commissioner of public health all reports regarding: (i) bullet wounds, gunshot wounds, powder burns or any other injury arising from or caused by the discharge of a rifle, shotgun, firearm or air rifle [as well as burns and stab wounds] … provided, however, that personal information identifying the victim or the perpetrator

national American database of firearm-related fatalities or injuries,[112] and several states have done so individually.[113]

While Canadian policy-makers may not have been aware of the legal requirements for data compilation and use in these states, the database idea was nonetheless proposed during the legislative process in Ontario. Several witnesses at public hearings in Ontario supported this use. Consider the testimony on behalf of the Ontario Medical Association by Dr. Ovens: "[A] database to track gunshot wounds … would provide important information for both the health care and law enforcement sectors. The data obtained from such surveillance would support education, harm-reduction strategies and increased attention to high-risk areas."[114] He emphasized that the pub-

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> may be redacted if the release of such information may compromise an investigation.

Minn Stat § 626.53(2) (2015):

> [T]he sheriff or chief of police shall forward the information contained in the report to the commissioner of health. … The commissioner shall maintain a statewide, computerized record system containing summary data, as defined in section 13.02, on information received under this subdivision.

Section 13.02(19) defines summary data as "statistical records and reports derived from data on individuals but in which individuals are not identified and from which neither their identities nor any other characteristic that could uniquely identify an individual is ascertainable."

112 See e.g. Stephen P Teret, Garen J Wintemute & Peter L Beilenson, "The Firearm Fatality Reporting System: A Proposal" (1992) 267:22 JAMA 3073; Stephen P Teret, "The Firearm Injury Reporting System Revisited" (1996) 275:1 JAMA 70; C Barber et al, "A 'Call to Arms' for a National Reporting System on Firearms Injuries", Editorial, (2000) 90:8 Am J Public Health 1191. These efforts, as well as state-level ones, are discussed in Ovens et al, *supra* note 7 at 20 [footnotes omitted]:

> During the 1990s, a number of authors identified the establishment of national data-collection system for GSWs as a top U.S. public health priority. The U.S. Centers for Disease Control and Prevention advocated a national databank in 1989. Since that time, a number of states have developed GSW tracking systems.

113 See e.g. Allegra N Kim & Roger B Trent, "Firearm-Related Injury Surveillance in California" (1998) 15:3 (Supp) Am J Prev Med 31. Other examples are cited and discussed in Ovens et al, *supra* note 7 at 20.

114 Ontario Committee, *Hansard*, No JP-23, *supra* note 52 at JP-442 (Dr. Howard

lic health benefits of such a database were not restricted to "urban crime" but also included "accidental shootings, … children who have access to guns, and … self-inflicted and domestic shooting occurrences."[115] He specified that such a database should fall under the mandate of public health authorities.[116] In contrast to Dr. Ovens, the chief of emergency medicine at an inner-city hospital opposed mandatory reporting to police as set out in the legislation, and instead argued that public health purposes would be achieved by anonymized reports:

> In terms of the public health role, I think this is a really positive aspect of a mandatory reporting structure. There's some evidence that the more data you have about the issue, where the hot spots are, what neighbourhoods have a gun control problem, what groups in society have an issue, the better you can target community interventions to high-risk groups and high-risk areas. …
>
> The fact is, you can achieve all of this with non-nominal data.[117]

Ovens); Pauls & Downie have also suggested that "[d]atabases of firearm-related violence should be created": Pauls & Downie, "Rebuttal", *supra* note 24 at 1258. A database was again proposed in a 2009 study evaluating acceptance of mandatory reporting in Ontario in Ovens, Park & Borgundvaag, *supra* note 15 at 9: "A publicly accessible database of reports and their outcomes would allow for a better evaluation of the law's impact and should be considered in all jurisdictions that are enacting legislation to mandate GSW reporting, and before extending the legislation to other situations."

115 Ontario Committee, *Hansard*, No JP-23, *supra* note 52 at JP-443 (Dr. Howard Ovens).

116 *Ibid* at JP-442 (Dr. Howard Ovens): "We recommend that … this database be maintained through the public health division of the Ministry of Health and Long-Term Care."

117 Ontario Committee, *Hansard*, No JP-22, *supra* note 106 at JP-435 (Dr. Daniel Cass). See also the comments of Donna Brunskill, a representative of the Saskatchewan Registered Nurses' Association in Saskatchewan Committee, *Hansard*, No 35, *supra* note 68 at 575:

> Gathering data on the number, nature, and cost of gunshot wounds would be a key initial proactive strategy and would help policy-makers like yourselves formulate strategies for best intervention. … Data like this could be collected without disclosing the identity of citizens with gunshot or stab wounds. Research could be conducted and beneficial results realized

Similarly, Pauls and Downie note that "these data could be collected without disclosing the identity of patients with gunshot wounds. Research could be conducted, and beneficial results realized, without compelling physicians to breach confidentiality, particularly to the police."[118] Dr. Cass's testimony was picked up by opposition legislators during further debate,[119] while one government legislator commented that he was "intrigued by [Dr. Ovens's] proposal to set up a database."[120]

Yet no public health database, let alone an obligation on police to share data with public health authorities, made it into the *Ontario Act* or that of any other province. The Ontario Minister of Community Safety and Correctional Services later stated that "privacy concerns" were the barrier to a database.[121] Given that the reports are in any case to be provided to police with no special legislative provisions for protection or retention, and that public health authorities are routinely tasked with using confidential health information, this reasoning is unconvincing.

However, a major limitation of such a database would be the little information required by the Canadian statutes to be included in each mandatory report: the name of the facility, the fact that the facility is treating a gunshot wound,

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> without compelling RNs [registered nurses] to breach confidentiality, particularly to the police.

118 Pauls & Downie, "Shooting Ourselves", *supra* note 16 at 1255. See also Carlisle, *supra* note 16 at 4.

119 See Ontario, *Hansard*, No 126A, *supra* note 47 at 6120 (Peter Kormos, New Democrat (opposition)); Ontario, *Hansard*, No 129, *supra* note 54 at 6291 (Shelly Martel, New Democrat (opposition)).

120 Ontario Committee, *Hansard*, No JP-23, *supra* note 52 at JP-443 (Bob Delaney, Liberal (governing party)). There is no indication in the literature or the debates as to why a database of this information would be different or more useful than other sources, such as the Ontario Trauma Registry, the National Trauma Registry, or information collected by Statistics Canada. The Ontario Trauma Registry is operated by the Canadian Institute for Health Information (CIHI); the National Trauma Registry was also operated by CIHI but was discontinued in March 2014. See Canadian Institute for Health Information, "Trauma and Injuries", online: CIHI <www.cihi.ca/en/types-of-care/specialized-services/trauma-and-injuries>.

121 Ovens, Park & Borgundvaag, *supra* note 15 at 7 (citing a 2005 personal communication from Minister Monte Kwinter). The phrase is that of the authors.

and the name of the patient if known. In contrast, several American states require much more information,[122] such as the name of the treatment provider,[123]

the patient's "age, sex, race,"[124] home address,[125] or employer,[126] the "extent of the person's injuries,"[127] "the place the injury occurred,"[128] and the "names of persons bringing the patient in for treatment, if any."[129] California's list of parameters is open-ended,[130] and New Hampshire, instead of providing a list of requirements, simply refers to "all the information [the person rendering treatment or assistance] possesses concerning the injury."[131] Similarly, Canadian provinces require extensive information to be included when physicians make mandatory reports on patients with reportable diseases.[132]

The absence of provisions that would promote public health and safety in the Canadian gunshot wound reporting legislation suggests that the true motivation for these statutes is law enforcement. This impression is all

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122 See Carlisle, *supra* note 16 at 3.

123 Wash Rev Code § 70.41.440(2)(c) (2015).

124 Ark Code Ann § 12-12-603(a) (2015). Whether race would be an appropriate detail to include is a complex issue that I do not purport to resolve here.

125 See e.g. Tenn Code Ann § 38-1-101(a) (2015); Md Code Ann, Health-Gen § 20-703(b) (2015).

126 Tenn Code Ann § 38-1-101(a) (2015).

127 Cal Penal Code § 11160(b)(4) (West 2015). See also Haw Rev Stat § 453-14(a) (2015); Tenn Code Ann § 38-1-101(a) (2015).

128 Tenn Code Ann § 38-1-101(a) (2015).

129 Ark Code Ann § 12-12-603(a) (2015).

130 Cal Penal Code § 11160(b)(4) (2015): "The report shall include, but shall not be limited to, the following …."

131 NH Rev Stat Ann § 631:6 (2015).

132 For example, a report of a reportable disease under the *Health Protection and Promotion Act*, RSO 1990, c H.7, includes the patient's name, address, date of birth, sex, and date of onset of symptoms. For particular diseases, such as tuberculosis, influenza, and AIDS, an extensive set of information about the patient's personal and medical history is required as well. See *Reports*, RRO 1990, Reg 569, s 1(1) (all reportable diseases), s 5(1) (additional information for specified diseases).

the more obvious when the omission is considered in conjunction with the strong "tough on crime" themes in the legislative debates.

IV. Harm and Deterrence

In considering the various uses that police might make of gunshot wound information provided by health professionals, legislators and stakeholders also disputed the concomitant harms of mandatory reporting and police involvement. Perhaps the most intuitive harm, given the premise that gunshot wounds are mostly a result of intentional violence, is the assailant's possible retaliation – whether against the victim or the physician – for the police becoming involved.[133] From the premise that victims of gunshot wounds are criminals stems the potential for the patient to threaten the health professional against reporting, and to carry out those threats if the report is made.[134] Interestingly, some suggest that mandating reporting

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[133] See e.g. Saskatchewan Committee, *Hansard*, No 34, *supra* note 42 at 557 (Marcus Davies, Saskatchewan Medical Association representative): "[Y]ou can be sure that, if they are the victim of a violent attack and it is known that they have been in contact with the police, that they are now at greater harm, at risk of greater harm." See also Chief Clive Weighill's comments, *ibid* at 544–45: "Victims of unlawful acts of violence in some instances will not report the incident due to fear of retaliation. … Victims are often afraid to report the crime to police because of potential retaliation." See also Newfoundland and Labrador, *Hansard*, *supra* note 45 (Kelvin Parsons, Progressive Conservative (governing party)):

> If you went to the hospital and therefore it ended up being reported, you felt that there was going to be a reprisal taken against you. You might have an opposite effect that once you [are] aware of this you will not go to the hospital because you are afraid you are going to get someone in trouble or someone is going to take it out on you for them ending up finding out about what you reported.

[134] See e.g. Carlisle, *supra* note 16 at 6: "There may even be the risk that persons knowing that an ordinary approach to the hospital will be immediately reported, will attend the hospital ER in a threatening manner demanding quick treatment with no report – perhaps with such demands backed up by threats or weapons." See also Ontario Committee, *Hansard*, No JP-23, *supra* note 52 at JP-435 (Dr. Daniel Cass): "[I]t may increase the risk to hospital personnel if a victim feels that their care provider has betrayed their confidence. There's potential for coercion and threats to staff." And see e.g. Saskatchewan, *Hansard*, Vol XLVIV, No 11A, *supra* note 41 at 357 (Greg Brkich, Saskatchewan Party

will reduce the danger to both the patient and the reporting professional, the argument being that the patient will not be punished because he himself did not contact the police and the professional will not be punished because he or she had no choice but to report the incident.[135] Obviously, this presumes an understanding assailant with a particular view of causation and

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(opposition)): "A guy's coming in. He's been hurt. He's a gang member. He tells the nurse, he says, you report me, I'll find out where you live or whatever."

135 For example, see the remarks made by a representative of the Saskatchewan Association of Chiefs of Police in Saskatchewan Committee, *Hansard*, No 34, *supra* note 42 at 545 (Chief Clive Weighill):

> Victims are often afraid to report the crime to police because of potential retaliation. Mandatory reporting takes that decision out of their hands and allows someone else to be their advocate, thereby minimizing the potential for retaliation.
>
> …
>
> Mandatory reporting of the name of the victim of a gunshot or stab wound would take the discretionary decision making from the hands of the medical practitioners and obligate them to report. This act in itself minimizes the potential for victimization by an offender or retaliation on the medical profession for making this decision to call the police, because they have no choice.

See also the comments of two Manitoba legislators, asserting that there will be no deterrence to seeking medical care because the patient will not be blamed for reporting. First, Gerald Hawranik, a Progressive Conservative (opposition) member stated: "[T]he bill itself puts the onus not on the individual who [was] stabbed or shot to report the incident but it's the health facility itself that will do that. So there will be no blame put on the particular victim. I don't believe that someone won't seek treatment simply because the bill is in place": Manitoba, *Hansard*, Vol LX, No 28B, *supra* note 38 at 856. In addition, Sharon Blady, of the governing New Democratic Party, stated in Manitoba, *Hansard*, Vol LX, No 54, *supra* note 49 at 2790:

> [I]t relieves the onus from the patient if the patient is a victim of a crime, because they don't have to worry about repercussions. They know that they have presented at a hospital, they will be looked after and they are not referred to as a snitch of any sort, that the idea is this is about care providers doing what they need to do, about police doing what they need to do, and, so, again, it might encourage some people to present at hospital who might not otherwise for fear that getting care could compromise their safety.

responsibility – one who accepts that professionals must comply with the reporting law.[136]

Legislators and stakeholders also disagreed about the significance of available evidence regarding deterrence from seeking care. An Ontario government legislator and the representative of the Saskatchewan Association of Chiefs of Police both cited an American survey of inmates that found that 91% had sought hospital treatment for their most recent gunshot wound, suggesting that deterrence was thus not a significant problem.[137] However,

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136 A representative of the Saskatchewan Union of Nurses alluded to this issue, stating: "Once a nurse's name is on a report, that patient knows who reported it to the police. Whether it was mandatory or not, they know. And they may not be rational to think it through and determine that it was the law and that that employee didn't have a choice. The fact is they know who did it, who reported it" (Saskatchewan Committee, *Hansard*, No 35, *supra* note 68 at 563 (Marg Romanow)).

137 The study cited was JP May, D Hemenway & A Hall, "Do Criminals Go to the Hospital When They Are Shot?" (2002) 8:3 Inj Prev 236 ("[a]mong the inmates who had been shot, 277 (91%) reported going to the hospital the most recent time they were shot" at 236). This study appears to assume that gunshot wound reporting was mandatory in the jurisdictions in which these criminal considered seeking care, and explicitly acknowledged the argument that "that these criminals rarely go to the emergency department because they are afraid doctors will report them to the police" (*ibid* at 236). Given the proportion of states that have mandatory gunshot wound reporting laws (see *supra* note 6), this assumption seems reasonable. The police representative and legislator who referred to this study seemed to share this assumption. For the police representative's reference to the study in the course of legislative deliberations, see Saskatchewan Committee, *Hansard*, No 34, *supra* note 42 at 545 (Chief Clive Weighill): "In a research study performed in the United States involving 2,123 inmates, 91 per cent reported going to the hospital after they were shot, even when the wound was to an extremity and less likely to cause death." For the legislator's reference to it, see Ontario, *Hansard*, No 126A, *supra* note 47 at 6104 (Shafiq Qaadri, Liberal (governing party)):

> [I]t has been the belief of some that the majority of individuals who are shot in the process of committing a criminal act do not and will not go to the hospital to receive treatment out of fear of being identified, questioned or reported to the police. Yet statistics show clearly that this is not the case. For example, an American report called Do Criminals Go to the Hospital When They Are Shot? looked at the issue. After interviewing about 2,300 male inmates from five different jails across the United States, it found the conclusions that 14.5% of them reported having been

when one Saskatchewan government legislator used this study to suggest that "the issue that continually gets raised about people not seeking medical help doesn't seem to be proven out in the one study that does exist,"[138] the representative of the Saskatchewan Registered Nurses' Association pointed out that 9% deterrence was "not insignificant."[139] The chief of emergency medicine at an inner-city hospital, in referring to a second survey, similarly emphasized the proportion that were deterred: "92% of those who had been shot went to the emergency department for care. If you think about that for a second, it means that 8% of them didn't."[140] Some opposition legislators also expressed concerns about deterrence.[141]

> shot, and that of that 14.5%, 91% said that they actually went to the hospital seeking care for those injuries. This would seem to indicate that criminals will still seek hospital medical treatment for injuries sustained from the discharge of a firearm, regardless of their fear of being reported to the police.

138 Saskatchewan Committee, *Hansard*, No 35, *supra* note 68 at 578 (Kevin Yates, New Democrat (governing party)).

139 *Ibid* (Donna Brunskill).

140 John P May et al, "Medical Care Solicitation by Criminals with Gunshot Wound Injuries: A Survey of Washington, DC, Jail Detainees" (2000) 48:1 J Trauma 130, as discussed in Ontario Committee, *Hansard*, No JP-22, *supra* note 106 at JP-434 (Dr. Daniel Cass). Again, this study appears to assume that gunshot wound reporting was mandatory in the jurisdictions in which these criminals considered seeking care. And again, that assumption seems reasonable. The study notes that "most doctors are required to report treatment of gunshot wounds to the police" (May et al, *supra*, at 130), and seems to assume that all or most of the participants – "[e]very male detainee entering the city jail in Washington, DC, from March through June 1997" (*ibid*) – considered seeking care in jurisdictions where reporting was mandatory. (I also note that the DC mandatory reporting law, DC Code § 7-2601, was in force in 1997 and last amended in 1989, although I do recognize that the inmates did not necessarily consider hospitals in DC.)

141 See e.g. Saskatchewan, Legislative Assembly, *Debates and Proceedings (Hansard)*, 25th Leg, 3rd Sess, Vol XLVIV, No 16A (21 November 2006) at 522 (Dustin Duncan, Saskatchewan Party (opposition)): "[T]here is a concern that somebody who is injured, that has suffered a gunshot wound or a stabbing, that they might be deterred from seeking medical attention because of fear that law enforcement would be brought into that situation." See also e.g. Alberta, *Hansard*, No 54, *supra* note 78 at 1709 (Brian Mason, New Democrat (opposition)): "[A] person who needs care who might be a victim, not necessarily a perpetrator, might not go for the medical care they need. There are lots of reasons why

In addition to having different perspectives than health professionals on whether deterrence of less than 10% was significant, it could be that legislators were less worried than health professionals about impinging on the health of criminals. This would be consistent with comments about a different deterrence-related outcome – that gunshot victims who do not want to be reported to the police will seek treatment outside conventional settings,[142] including from veterinarians.[143] The concern expressed by legislators was not that such patients would receive inferior care, but that they would evade police and pose a danger to the health professionals involved.

Conclusion: Room for Improvement

Given the unresolved tension between public safety and law enforcement, the mandatory reporting statutes discussed in this article have significant potential for improvement. Indeed, the fairly close copying of the *Ontario Act* represents a series of missed opportunities. It is worth emphasizing that the uniformity among these statutes is not the result of a model act developed by an organization such as the Uniform Law Conference of Canada or a report by a law reform commission, both of which would have been accompanied by a thorough consideration of options and a reasoned argument for the recommendation made. Instead, legislators across Canada seem to have assumed that the regime adopted in Ontario was the right one. The two substantive changes, as already noted, were that most provinces

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victims would not necessarily want to go if their injury had to be reported to the police." See also Carlisle, *supra* note 16 at 5; Renke, *supra* note 20 at 6–7.

142 See e.g. Manitoba, *Hansard*, Vol LX, No 54, *supra* note 49 at 2792 (Jon Gerrard, Liberal (opposition)): "[T]his act and the way it is written will likely move some health care, as it were, to some extent, underground into areas which there is not a required reporting." See also British Columbia, *Hansard*, Vol 16, No 7, *supra* note 63 at 5111 (Mike Farnworth, New Democrat (opposition)) (raising the possibility that "someone involved in gang activity tries to seek out a physician outside of a hospital or outside of a medical clinic, either in a physician's home or in a private setting, to get treatment").

143 British Columbia, *Hansard*, Vol 16, No 7, *supra* note 63 at 5117 (Vicki Huntington, Independent): "My other concern is that there are other medically trained professionals out there, such as veterinarians, who are fully capable of assisting in these situations. I don't believe the act contemplates protection of the public in those instances."

included stab wounds as well as gunshot wounds and that some imposed reporting on paramedics as well as health facilities.

However, Alberta and the Northwest Territories each made a minor improvement to the Ontario regime. Alberta's *Gunshot and Stab Wound Mandatory Disclosure Act*, alone among all the statutes, explicitly addresses the situation where a patient *declines* treatment for a gunshot wound, specifying that reporting is still required;[144] Newfoundland and Labrador later adopted this provision in a regulation.[145] This provision avoids uncertainty about reporting where treatment is offered but not accepted, although it might be more consistent with patient autonomy if reporting were triggered only if treatment is accepted. This would allow a patient to avoid reporting by the drastic step of refusing treatment. Similarly, the Northwest Territories' *Gunshot and Stab Wound Mandatory Disclosure Act* is unique in explicitly addressing its interaction with privacy legislation, as it specifies that the *Act* prevails over such legislation.[146] This statement improves clarity for health professionals and institutions and provides predictability for patients. These two additions would constitute useful improvements to the corresponding statutes in other provinces.

Of the other possible amendments, the most important would be the adoption of purpose or use provisions, or both. In order to reduce or at least acknowledge the tension between the purposes of public safety and law enforcement, purpose provisions would be advisable. Such provisions would improve transparency and clarity, regardless of the chosen purpose. That is, a decision to prioritize law enforcement over public safety should be specifically and explicitly acknowledged in the statute. Conversely, if public safety is indeed the primary purpose, the language of the *Ontario Act*'s preamble could be adapted to serve as a purpose provision in each of the other acts. For example, such a purpose provision could state that "the purpose of this Act is to enable police to take immediate steps to prevent further violence, injury or death." Similarly, the acts would be improved if they were to specify how police are intended to use the reported information.

If public safety is in fact a goal, several other amendments could also further that purpose. As discussed above, these should at a minimum in-

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144 *Alberta Act*, *supra* note 2, s 3(2): "An injured person is considered to have been treated when treatment is offered."

145 *Gunshot and Stab Wound Reporting Regulations*, NLR 20/15, s 3(2).

146 *NWT Act*, *supra* note 2, s 6.

clude provisions requiring police to share the reported information with public health authorities and imposing on those authorities a positive duty to use the data for epidemiological purposes. These could be accompanied by amendments that would either anonymize reporting, increase the types of information to be reported, or both. Similarly, the adoption of special provisions for self-inflicted or accidental wounds – provisions that would delay police involvement in favour of psychiatric intervention – would recognize that these categories of wounds have different implications for public safety than do wounds of intentional violence against others.[147] Indeed, those provincial acts that cover both gunshot and stab wounds do provide exemptions for either self-inflicted stabbings, accidental stabbings, or both.[148] The absence of any of the provisions identified here seriously undermines, and indeed calls into question, the purported goal of public health and safety.

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147 See e.g. Pauls & Downie, "Shooting Ourselves", *supra* note 16 at 1255.

148 Manitoba and Saskatchewan exempt only self-inflicted wounds, while British Columbia, Alberta, Newfoundland and Labrador, and the Northwest Territories exempt both self-inflicted and accidental wounds. See *Manitoba Act*, *supra* note 2, s 1 (definition of "stab wound"); *Alberta Act*, *supra* note 2, s 2(a); *BC Act*, *supra* note 2, s 1 (definition of "stab wound"); *NL Act*, *supra* note 2, s 2(d) (definition of "stab wound"); *NWT Act*, *supra* note 2, s 2(a); *The Gunshot and Stab Wounds Mandatory Reporting Regulations*, RRS c G-9.1 Reg 1, s 2(2) (definition of "stab wound"). Note that the Saskatchewan exemption is in the associated regulation and not the act itself. This discrepancy, between exempting either self-inflicted stab wounds, accidental stab wounds, or both, but not equivalent gunshot wounds, was raised by some legislators. See e.g. Alberta, *Hansard*, No 54, *supra* note 78 at 1709 (Brian Mason, New Democrat (opposition)):

> The law has the potential to needlessly stigmatize the mentally ill and the suicidal. Although stab wounds that appear to be self-inflicted are exempted from the law, it may in fact be extremely difficult to judge that. Self-inflicted gunshots are not exempted, meaning that if a person shoots themselves, the wound must be reported. No good will come of opening up suicidal and ill people to scrutiny from the police through reporting their wounds as though they were due to criminal activity.

See also Alberta, Legislative Assembly, *Alberta Hansard*, 27th Leg, 2nd Sess, No 59e (17 November 2009) at 1853 (Rachel Notley, New Democrat (opposition)): "I do have a concern about what this law might do to the mentally ill and, particularly, those who may have attempted suicide. I appreciate that the legislation tries to deal with that with respect to stab wounds, but it does not deal with that with respect to gun wounds."

More broadly, the adoption of mandatory gunshot wound reporting legislation clearly illustrates the challenges that arise in lawmaking at the intersection of public health and law enforcement. Community concerns over detecting and punishing criminals, augmented by tough-on-crime rhetoric, should not be minimized or dismissed. Careful consideration must be paid to how these concerns can be reconciled with the goal of improving public safety by preventing future violence. In particular, all stakeholders should recognize that while police may play a legitimate role in some circumstances, care must be exercised in defining the relationships among the police, health professionals and institutions, and public health actors. It is possible that police involvement may impede the achievement of public health goals or cause greater harms than benefits to public health. Even where police involvement is conducive to public health and safety, the complex implications of their parallel roles in law enforcement must be acknowledged. These considerations emphasize the importance of evidence in lawmaking, both in the adoption of new provisions and for their ongoing evaluation.

Recall, in particular, that one argument in support of mandatory gunshot wound reporting laws was that they would reduce conflict between police and health professionals.[149] Indeed, the OMA position statement claimed that reducing this conflict would "improve public safety."[150] This argument received curiously little attention in the ensuing literature and legislative debates. Reducing that conflict could be a legitimate goal, to the extent that the conflict impedes either the police or health professionals from exercising their important public functions. However, that goal is less compelling if the conflict is merely a personal and professional irritant. In either case, the goal has been advanced by sacrificing the wishes and interests of the patient. While such a sacrifice may be a desirable policy choice, it should also be a conscious and deliberate one.

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149 See Ovens, Park & Borgundvaag, *supra* note 15 and accompanying text.

150 *Ibid* at 4.