

Testimony of
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Homicide

The sheer number of homicides committed by an intimate partner as well as the proportion of intimate partner homicides that were committed with a firearm has dropped over the past thirty years.¹ However, women remain more than twice as likely to be fatally shot by a male intimate than to be shot, stabbed, strangled, beaten, or killed any other way by a stranger.²⁻³

An abuser's access to a gun is a consistent and substantial predictor of intimate partner homicide. In an 11-city study of nearly 600 women who were assaulted by a male intimate, the largest single predictor of homicide was whether the abuser used a gun in the assault.⁴

Women are at highest risk of being killed by an intimate partner when they attempt to end the relationship.⁵ In other words, a woman who is being abused by her partner increases her risk of being killed when she does exactly what society tells her to do, to leave him.

Threats with a firearm

A gun does not have to be fired to have an impact. It can be used to intimidate and coerce an intimate partner to do what the abuser wants.

Using findings from a recent national survey,⁶ an estimated 4.0 million U.S. women have been threatened with a gun by an intimate partner and nearly 800,000 have had an intimate partner use a gun against them. In other words, it would be as if every woman in Washington, D.C., Boston, San Francisco, Chicago, Los Angeles, Miami, Hartford, Columbus, Indianapolis, Salt Lake City, Albany, Rochester, Syracuse, Buffalo, Milwaukee, Richmond, and Des Moines had, at least once in her life, an intimate partner use or threaten to use a gun against her.

Firearms and firearm use appear to be more common in the homes of battered women. Handguns, specifically, are more than three times as common in homes where battering recently had occurred than in homes of the general public.^{7,8} In two thirds of homes with an male abuser and a firearm, the man used the gun against the woman. Most often (71.5%) he threatened to kill or shoot her; 5.1% of the women were actually shot at. The firearm was not the only weapon used: If the intimate partner used a firearm against her, he was

more likely than the intimate partners who did not use guns to use multiple other weapons (8.1 vs. 4.6 other weapons, respectively).

Women sometimes turn to restraining orders in an attempt to increase their safety, particularly when they are trying to end a relationship. Restraining orders, in which a judge or commissioner orders the person to be restrained to have either no or only peaceful contact with the protected person, are available in all 50 U.S. states. The orders are known by different names (e.g., restraining orders, protection from abuse orders) and the criteria for obtaining and the time period for which they are issued varies.

Federal policy

Recognizing the deadly combination of abuse, firearms, and ending a relationship, Congress passed the 1994 Violent Crime Control and Enforcement Act. The list of persons who are prohibited from purchasing and possessing firearms was expanded to include persons against whom a domestic violence restraining order has been issued.^a This law was enacted along with the 1994 Violence Against Women Act, which created federal crimes of domestic violence and the honoring of restraining orders across the nation (i.e., Full Faith and Credit).

Then, in 1996, Congress passed what is commonly known as the Lautenberg Amendment, by which persons convicted of a domestic violence misdemeanor are prohibited from purchasing and possessing a firearm. Those convicted of a felonious assault upon an intimate partner (or any other person) already were subject to these restrictions as part of the 1968 Gun Control Act. A primary reason for expanding the prohibitions to include domestic violence misdemeanors was the perceived difficulty in obtaining a felony conviction when the victim was an intimate partner.

Responsibility for how the laws were implemented was left to the individual states. Legislation typically was required. Some states already had or soon thereafter enacted such prohibition provisions and developed a data base against which firearm purchase applications could be checked. Others have yet to pass relevant laws and develop a fully functioning data base. Up to eight years after the enactment of the relevant federal legislation, only 12 states had laws that prohibited domestic violence misdemeanants and only 24 had laws that prohibited persons under a domestic violence restraining order from possessing firearms.⁹

Implementation and enforcement

Each year about a million people in the U.S. obtain a restraining order against an intimate partner because of physical assault, sexual assault or stalking.⁶ Persons who come under a

^a Several conditions must be met for the firearms prohibitions to be valid under federal law: a) the petitioner is an intimate partner of the defendant; b) the order restrains the defendant from harassing, stalking, or threatening the petitioner; c) the order includes a finding that the defendant is a credible threat to the physical safety of the petitioner; and d) the order was issued after a hearing of which the restrained person was notified and had an opportunity in which to participate.

domestic violence restraining order likely are the largest single class of new prohibited purchasers each year.

Between 1999 and 2005, just under 2% of the applications for a firearm transfer (about one million of 57 million applications) were denied.¹⁰ Prohibitions related to domestic violence were the second most common reason for denial. (A felony was the most common reason.) Roughly 150,000 applications to purchase a firearm during this time were denied because of a domestic violence restraining order or misdemeanor. In 2004 and 2005, about one of every seven firearm transfer applications were denied due to domestic violence. Many more are not denied purchase because the information about the domestic violence is not available, not made available, or not easily accessed.

Although it is against the law to attempt to purchase a firearm while prohibited from doing so, few denials are investigated and prosecuted.¹¹ This holds true for all NICS denials, not just denials due to domestic violence.

Purchase prohibitions are more easily addressed than possession prohibitions. Although persons under a domestic violence restraining order are required to relinquish their firearms, few do. Preliminary findings from our on-going California-based research indicate that slightly fewer than 2% of the handguns each year are purchased by individuals who later are subject to a restraining order; these guns should be relinquished. This estimate is based on handguns only and the data are from one of only three states that limit the number of firearm purchases, therefore, in other locales, a higher proportion of recently purchased firearms are likely to come under relinquishment requirements. New state-level legislation may be needed to facilitate relinquishment and removal. As of 2004, only 18 states had law enforcement gun removal laws and 16 had court-ordered removal laws related to domestic violence.¹²

A recent task force created by former California Attorney General Bill Lockyer¹³ identified multiple weaknesses in the implementation of laws designed to keep firearms out of the hands of those who have committed domestic violence. The following are but two of the problems that make compliance with state and federal law difficult:

- Based on the size of their population, many counties were generating fewer than expected restraining orders for criminal domestic violence defendants and many were not noting firearm prohibitions on the restraining order.
- Few criminal justice agencies had a coordinated policy of proactively enforcing the firearm prohibitions that accompany domestic violence restraining orders.

The task force identified multiple promising practices ranging from monitoring the data, developing new administrative forms, and training those responsible for implementing and enforcing these laws. Thoughtful implementation of these practices can be expected to improve compliance with the law and increase the safety of victims of intimate partner violence.

Recommendations

To ensure the integrity of federal laws designed to keep firearms out of the hands of persons subject to a domestic violence restraining order or who have been convicted of a domestic violence misdemeanor, I offer the following recommendations:

1. States should implement, maintain and monitor the quality of an electronic data base for all domestic violence restraining orders and misdemeanors, and the data base must be submitted so that it can be part of NICS.

- Domestic violence restraining orders and misdemeanors should be entered immediately (within one business day) into an electronic data base, and responsibility for this action must be designated.
- Domestic violence misdemeanors should be flagged or otherwise indicated as such so that they are entered into the data base of prohibited persons.

Work of the states is essential to meet the intent of federal law, therefore, some sort of incentive may be useful to speed quality compliance.

2. A federal agency should monitor the amount and quality of the data submitted to NICS and should issue periodic reports on these findings. Current efforts by the National Criminal History Improvement Project of the Bureau of Justice Statistics can be expanded to more fully address concerns specific to domestic violence records.^{e.g., 13}

3. Persons who are denied purchase may pose a particular risk to their intimate partners. When this occurs, NICS should notify local law enforcement so that prevention is possible. In addition to their own efforts to prevent harm, local law enforcement should notify the protected person (or victim in a misdemeanor domestic violence conviction) of the attempt to obtain a firearm.

4. Allocations should be made to an appropriate federal agency that can convene key stakeholders from across the nation to develop guidelines for ensuring state-level compliance with federal law. Doing so will reduce the duplication of effort: Although enforcement of these laws will occur primarily at the state and local levels, many of the implementation and enforcement issues are shared across jurisdiction and locale.

- Standard court documents given to a restrained person or domestic violence misdemeanant should include a statement (in bold typeface or otherwise highlighted) indicating that firearm purchase and possession is prohibited.

Models and guidelines for firearm relinquishment and removal should be a central topic.

5. Consideration should be given to whether firearm prohibitions should be extended to related circumstances. For example, federal law does not address the needs of those who did not live with or have a child with an abuser, that is, former dating partners are not covered. Federal firearm prohibitions should include provisions for victims of stalking even if there was no prior intimate relationship. Stalkers typically either strongly desire a relationship or perceive one when none exists. When attempts to establish contact are not fulfilled, stalkers may develop the motivation yet should not be allowed the means by which to harm their victims.

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