American women are 11 times more likely to be shot to death than women in other developed countries.\(^1\) And a majority of these murders are committed by intimate partners—an average of 48 women shot to death each month.\(^2\) Our federal gun laws already protect women from domestic abusers by prohibiting gun possession for people convicted of a “misdemeanor crime of domestic violence” or subject to a final domestic violence restraining order. But dangerous gaps and weaknesses in the system remain.

There are five critical steps that the Administration can take to address the lethal intersection of guns and domestic violence, keep guns out of dangerous hands, and make American women safer.

**THIS REPORT RECOMMENDS:**

1. Improving the quality of the domestic violence records in the background check system;
2. Clarifying that domestic abusers are prohibited from having guns regardless of their marital status;
3. Notifying state authorities when a prohibited domestic abuser attempts to buy a gun;
4. Conducting a study of domestic violence homicide to reveal further the connection between firearms and abuse; and
5. Ensuring that domestic abusers turn in their guns when they become prohibited.
**IMPROVE THE QUALITY OF DOMESTIC ABUSE RECORDS IN THE BACKGROUND CHECK SYSTEM**

Convicted domestic abusers and subjects of domestic violence restraining orders are prohibited from having guns under federal law, but some court records for these abusers are missing from the background check system and others are not identifiable as prohibiting. When a prohibited abuser tries to buy a gun and the National Instant Criminal Background Check System (NICS) runs a background check, the sale will only be stopped if his record is in the system and contains sufficient information to identify it as prohibiting.

**THE PROBLEM IN DETAIL**

Records of prohibiting domestic abuse crimes (“misdemeanor crimes of domestic violence,” or MCDVs) and domestic violence restraining orders (DVROs) are held in NICS databases, but these records do not always effectively block abusers from purchasing guns for these reasons:

- **Some records are missing from the system altogether.**
  - **MCDVs** All state criminal records should be submitted to NICS through the Interstate Identification Index (III) as a matter of course. But many records fall through the cracks. Some states routinely fail to submit records: One report found that Nevada failed to submit dispositions from 800,000 criminal cases over 20 years. Furthermore, III is a fingerprint-based system, and it rejects some records due to poor fingerprint quality.
  - **DVROs** Submission of DVRO records to NICS through the National Crime Information Center (NCIC) varies dramatically by state and even locality. Some states have established successful processes for getting these records into NCIC nearly instantaneously, while other states are struggling. Reasons for failure to submit records range from lack of access to NCIC terminals, to a failure to prioritize submission of short-term orders. NCIC also requires that officials be available around the clock to verify records, and some states may not submit records for this reason.

- **Authorities fail to flag the records as prohibiting.**
  - States can place special flags on MCDV and DVRO records when submitting them to the system to indicate that they are prohibiting under federal law. If a record is flagged as prohibiting and the offender attempts to buy a gun, the background check operator will see the flag—and will know automatically that the sale should be denied.

  Under federal law, if NICS cannot determine that a prospective gun buyer is prohibited within three days, the dealer can complete the sale and transfer the gun to the buyer before the background check is complete. When NICS operators lack sufficient details to determine if a record is prohibiting, they may have to contact state courts and conduct a time-consuming investigation—which may mean that a prohibited abuser can buy a gun by default. If records are clearly flagged before submission, that risk is averted.

- **Courts produce inadequate records.**
  - Domestic violence records are only prohibiting under federal law if certain elements are met. But sometimes courts do not include the information necessary to determine if a conviction or restraining order meets these requirements, forcing background check operators to contact court officials for additional information. Background check operators are sometimes unable to tell if a conviction or order is prohibiting within the three-day default window—enabling abusers to buy illegal guns.

**RECOMMENDATIONS**

1. **The Department of Justice should audit the integrity of domestic violence records in the background check system and act to address gaps that enable domestic abusers to arm themselves.** An effective audit will include a state-by-state study of: whether and how quickly state officials submit timely, accurate, and complete criminal records to III and restraining orders to NCIC; whether states flag MCDV and DVROs upon submission; and whether records can be identified as prohibiting.
   - NICS conducts regular audits of III and NCIC—and should be able to do a historical analysis of these issues. DOJ should also release details from these audits each year, to expose the nature of dangerous gaps going forward.
   - DOJ should analyze whether prohibited domestic abusers are being blocked when they attempt to buy guns. If the rate of background check denials varies widely across states, DOJ should study whether states with lower denial rates are failing to block abusers because of deficiencies in their MCDV and DVRO record submission.
   - DOJ should also study whether states submit records of abusers prohibited under state law and whether they properly identify them as prohibiting.

2. **The White House and DOJ should issue best practices for submission of domestic violence records to NICS to ensure that prohibited abusers are blocked from buying guns.**
   - These best practices should instruct courts to include necessary details on all DVRO and MCDV records—and for state officials to properly flag these records before submission to NICS.
   - In determining these best practices, DOJ should survey a diverse set of courts and law enforcement agencies to determine the sufficiency of practices across the country. The project should call on the Executive Office of the United States Attorneys and outside groups such as the National Center for State Courts.

3. **Funding of existing federal grant programs—including the National Criminal History Improvement Program—should prioritize state programs to upgrade the quality of domestic violence records.**
CLARIFY THAT UNMARRIED DOMESTIC ABUSERS ARE PROHIBITED FROM OWNING GUNS

People convicted of MCDVs are federally prohibited from buying or possessing guns. But for a crime to qualify as an MCDV, the offender must be a current or former spouse of his victim, a person who shares a child with or has cohabited with the victim, or a person “similarly situated to a spouse...of the victim” (emphasis added). The term “similarly situated to a spouse” is not defined in law or regulation. This has led to a lack of clarity in the case law. While some courts have looked to the statute’s legislative history and determined that congressional intent was for the term to be interpreted broadly, the uncertainty has left prosecutors and background check operators with no clear definition to use.

RECOMMENDATION

DOJ should promulgate a regulation defining “similarly situated to a spouse” to have the same meaning as the term “intimate partner” used in the Violence Against Women Act (VAWA): “a person who is or has been in a social relationship of a romantic or intimate nature with the abuser, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.”

» As Americans get married later and less frequently, more and more women are in unmarried intimate relationships. The median age at which Americans first get married has increased by 6 years since 1960. And the share of people aged 25 and over who are unmarried has more than doubled over that time period—now at a historic high of 20%.

» Women in unmarried relationships are just as vulnerable to homicide as those in married relationships. Younger women—who are less likely to be married—are actually at a higher risk of intimate partner violence. And in 2012 more women were killed by boyfriends than by husbands.

» In the July 2014 Senate Judiciary Committee hearing on guns and violence against women, all five witnesses agreed that, as a matter of policy, unmarried abusers should be prohibited in the same fashion as abusers who are married to their victims.

» Not only does VAWA recognize that the domestic violence crisis extends beyond married couples, but state law also reaches abusive dating partners. Forty-two states and the District of Columbia issue restraining orders against abusive dating partners, and 23 states and DC require or explicitly allow gun prohibition for dating partners subject to restraining orders.
INVESTIGATE PROHIBITED ABUSERS WHO TRY TO BUY GUNS

The NICS system works to stop dangerous people from getting guns. Since 1998, background checks have stopped over 300,000 sales to prohibited domestic abusers. And many of those prohibited people are deterred: In the states that require background checks on all handgun sales, 38 percent fewer women are shot to death by their intimate partners. But we can do more to stop abusers who break the law by trying to buy guns.

RECOMMENDATIONS

1. FBI and ATF should notify state and local authorities every time a prohibited domestic abuser fails a background check—and should notify the court that issued the restraining order or adjudicated the offense.

2. DOJ should study domestic abusers who fail background checks and determine which individuals go on to commit subsequent crimes. In 2008, DOJ found that prohibited people who fail background checks were at a 28% higher risk of arrest in the five years after denial. A new study targeted to domestic abusers could inform ATF, state law enforcement, and prosecutor decision-making on which denied buyers are most dangerous and should be prioritized for prosecution.

CONDUCT A STATISTICAL ANALYSIS OF DOMESTIC VIOLENCE HOMICIDES

Criminologists and public health scientists have clearly established the dangerous link between firearms and fatal domestic abuse. When an abuser has access to a gun, the risk that his partner will be killed increases by more than 500 percent. And the majority of people who perpetrated mass shootings in the past six years targeted an intimate partner or family member.

Research can help identify gaps in existing law that expose women to risk of fatal violence. For example, a DOJ study showed the share of intimate partner homicides committed by dating partners (as opposed to spouses) has increased steadily over 30 years. Likewise, research shows that, among incidents of attempted murders of women in 10 major cities, 90 percent of the perpetrators had stalked their victims in the previous year—and yet federal law does not prohibit gun ownership by convicted stalkers. More research is needed to clarify how domestic abusers obtain and use guns; and how current law succeeds or fails to protect women from abuse.

RECOMMENDATION

The Department of Health and Human Services and the Department of Justice should carry out a thorough epidemiological analysis of domestic violence homicides in the US, examining the common characteristics of these crimes and the intersection with firearms. Among other areas, the studies should assess risk factors common to perpetrators including their criminal and arrest histories, the protective role played by restraining orders, the incidence of serious violent precipitating events, and differences between violence inflicted by spouses versus dating partners.
ENSURE PROHIBITED ABUSERS TURN IN THEIR GUNS: RELEASE BEST PRACTICES AND A FEDERAL POLICY

Federal law prohibits several categories of dangerous people from possessing firearms, including convicted domestic abusers and people subject to final domestic violence restraining orders. Congress enforces this law at the point of sale, requiring that dealers conduct background checks to block prohibited people from buying guns. But federal law does not address how to enforce the law for guns already owned by prohibited people—meaning that in some states an abuser can be convicted of domestic battery, leave the courthouse as a prohibited person, and access the guns he has at home. As long as domestic abusers and other dangerous people can keep guns they already own, public safety is at risk.

The vast majority of domestic abusers become prohibited in state proceedings, so state courts are best positioned to enforce federal law—by requiring prohibited abusers to surrender their guns. In fact, 15 states already require DVRO subjects to surrender firearms, while 10 states require the same for MCDV offenders. But there has been no definitive research on the most effective practices in this area.

STATES THAT REQUIRE SURRENDER BY DOMESTIC ABUSERS

DVRO surrender states: CA, CO, CT, HI, IA, IL, MA, MD, MN, NC, NH, NY, TN, WA, and WI.26

MCDV surrender states: CA, CO, CT, HI, IA, IL, MN, NY, PA, and TN.27

RECOMMENDATIONS

1. The White House should issue best practices for ensuring timely surrender of illegal firearms. The Administration should work with court officials, prosecutors, and law enforcement from around the country to study the benefits and difficulties of existing practices for ensuring that domestic abusers and other prohibited people cannot access firearms.

   » Gather information on which states and localities are most effective at disarming abusers once they are barred from having guns. This should include data on how frequently prohibited people are ordered to surrender illegal firearms and how frequently surrender is actually effectuated.

   » Survey which state courts have thorough policies for surrender—including procedures for effecting surrender that minimize chances the person will regain access to the guns and a process for monitoring compliance.

2. DOJ should offer state grants for establishing or improving practices in this area and for better aligning practices with the federal guidance.

3. DOJ should release a policy for federal courts regarding surrender of guns from prohibited people, in conjunction with the Judicial Conference. The policy should be piloted in courts with high caseloads of felony or domestic abuse crimes.

2. Everytown for Gun Safety analysis of FBI Supplementary Homicide Reports, 2008-2012.


4. MDCV records may be flagged through the Identification for Firearm Sales program and DVRO records may be flagged with the Brady Indicator or the PCO code 07.

5. MCDVs include misdemeanor offenses for which: (i) the offender and victim have a qualifying domestic relationship (includes spouses and former spouses, parents and guardians, people who share a child in common, and people who are similarly situated to a spouse, parent, or guardian); and (ii) the predicate criminal statute has as an element the use of force. 18 USC 922(g)(9), 921(a)(33). DVROs include restraining orders for which: (i) the subject of the order and the petitioner are “intimate partners” (defined to include spouses and former spouses, co-habitants and former co-habitants, and people who share a child in common); (ii) the subject receives notice and an opportunity to be heard; and (iii) the order includes certain restraining language. 18 USC 922(g)(8), 921(a)(32).

6. Other state agencies also do not include adequate information, such as arresting police agencies who fail to include the relationship between suspect and victim.

7. Offenders may also be parents or guardians of their victims. 18 USC 921(33)(A)(ii).

8. An interim rule was written by ATF in 1998, but never finalized. 63 Fed Reg. 35520.

9. See, e.g., United States v. Costigan, 2000 WL 898455 (D. Me. 2000) (“I suspect that there are many people previously convicted of assault who are unable to tell from reading the statute whether their assault was ‘domestic violence’ such that they can no longer possess firearms.”).

10. The Eighth Circuit has found that the statute covered an offender who abused a woman with whom he had an extramarital affair, while the Tenth Circuit has affirmed a ruling that the statute covers “the myriad close personal relationships that could result in recurring conflicts.” United States v. Cuervo, 354 F.3d 969 (8th Cir. 2004); United States v. Heckenliable, 2005 WL 856389 (D. Utah 2005), affirmed by United States v. Heckenliable, 2006 U.S. App. LEXIS 10475 (10th Cir. 2006) (interpreting the term “similarly situated to a spouse” to “cover, without specifically enumerating, the myriad close personal relationships that could result in recurring conflicts—conflicts that could escalate to deadly violence if a previously convicted misdemeanant had access to a firearm.”).

11. 18 USC 2266.

12. Change from 1960 (when the median age for men was 22.8 and for women was 20.3) to 2010 (when the median age for men was 28.7 and for women was 26.5). D’Vera Cohn and Jeffrey Passel, “Barely Half of US Adults Are Married - A Record Low,” Pew Research Center, Social and Demographic Trends, last modified December 14, 2011, last accessed October 22, 2014, available at http://pewrsr.ch/1mGhz5a.


17. All states except AL, GA, OH, KY, SC, SD, UT, and VA.

18. Abusive dating partners subject to restraining orders are prohibited from having guns in CA, CT, DE, DC, HI, IL, MA, MI, MN, NC, NH, NJ, NY, TX, WI, and WV. Judges are explicitly allowed prohibit gun possession by abusive dating partners subject to restraining orders in AK, AZ, IN, NE, NV, PA, RI, and VT.
19. Between the inception of the NICS system in 1998 and April 30, 2014, 154,584 gun sales were federally denied due to misdemeanor crime of domestic violence convictions or restraining or protection orders for domestic violence. (U.S. Department of Justice, FBI, NICS Denials: Reasons Why the NICS Section Denies, Nov. 1, 1998 – Apr. 30, 2014, at http://1.usa.gov/1qnuuHj). Between 1998 and 2010, state and local agencies issued a total of 945,915 denials, and it is estimated they have issued 225,000 denials in the three years since data was last released. (U.S. Department of Justice, Bureau of Justice Statistics, Feb. 2013, Background Checks for Firearms Transfers, 2010–Statistical Tables, Feb. 2013, at http://1.usa.gov/28vY5a). For agencies that reported reasons for these denials, 13.2% were denials for domestic violence reasons — which represents another 155,000 domestic violence denials. Thus, the background check system has likely issued more than 300,000 denials for domestic violence reasons.


26. In addition, 13 states plus DC do not require surrender from DVRO subjects but explicitly allow judges to order surrender (AK, AZ, DC, DE, FL, IN, ME, NV, NJ, ND, PA, RI, SD, and VT).

27. In addition, 2 states fail to require surrender from MCDV offenders but explicitly allow judges to order surrender (UT and WA).