



Firearms and Intimate Partner Violence

Crime Victims Institute at the Criminal Justice Center at Sam Houston State University

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In honor of October's Domestic Violence Awareness Month, the Crime Victims' Institute and SHSU's victim studies student organization (Crime Victim Services Alliance or CVSA) co-sponsored the Clothesline Project on the Sam Houston State University campus. The Clothesline Project (www.clotheslineproject.org) is a way of "bearing witness to violence against women" and of commemorating individuals who have been killed as a result of domestic violence. SHSU's Clothesline Project displayed 114 decorated white t-shirts, each representing one of the 114 women who were killed by current or former intimate partners in Texas in 2012.¹ Of those women, 60% (68 women) were killed with firearms, and many of those incidents also involved the injury or death of bystanders, including children.²

Research has consistently demonstrated a link between firearms and lethal intimate partner violence. In developing a Lethality Assessment for intimate partner violence, Campbell and colleagues³ identified abuser gun ownership as one of the most significant factors in predicting intimate partner homicide. Women living with a gun in the home have a significantly higher risk of homicide victimization, and women's risk of being murdered is up to twenty times higher when there is a history of abuse combined with gun ownership.⁴ Laws and policies have attempted to address this link in a number of ways. The purpose of this report is to provide advocates with information

about those laws and policies and the resources available in their efforts on behalf of domestic violence survivors.

Laws Related to Firearms and IPV

Federal law, through the Gun Control Act of 1968, makes it illegal to purchase or possess firearms or ammunition by a person who has been convicted of a felony, who is subject to a protection order⁵ or who has been convicted of misdemeanor domestic violence.⁶ Thus, many incidents involving domestic violence that proceed through the criminal justice system are likely to trigger firearms prohibitions.

Protection Orders

Qualifying protection orders must meet a number of criteria to fall under these federal prohibitions.⁷ The protection order must include a qualifying relationship (i.e., current or former spouse, current or former cohabitant, or having a child together) and must have involved a hearing for which the respondent received notice and had an opportunity to respond. Additionally, the terms of the order must include a specific prohibition against the actual, attempted, or threatened use of physical force against the petitioner or a child. The only exception to the firearm prohibitions under this law involves government employees who are required to have a firearm to perform official duties (e.g., law enforcement or military duties).

SHSU Clothesline Project 2013



Misdemeanor Domestic Violence Convictions

The prohibition for those convicted of misdemeanor domestic violence is an addendum to the original Gun Control Act. Referred to as the Lautenberg Amendment, the prohibition on gun ownership for those convicted of misdemeanor domestic violence was signed into law in 1996.⁸ Similar to protection orders, qualifying domestic violence convictions must meet several criteria. The conviction charge must be a misdemeanor and include an element of the actual, attempted, or threatened use of physical force or a deadly weapon. The relationship requirement is somewhat broader, including current/former spouse, current/former cohabitant (including spouse, parent, or guardians), parents or guardians, or have a child in common.

In addition, there are a number of important components of the Lautenberg Amendment that differ from those prohibitions under other parts of the Gun Control Act.

- The law is *Retroactive* – The date of conviction is irrelevant. Any misdemeanor domestic violence conviction as defined above that occurred at any time before or after the law was passed will trigger the firearms prohibition.
- The ban on gun ownership is *Lifetime* – The firearms prohibition does not expire. Those individuals prohibited from possessing and purchasing firearms and ammunition under this law cannot have that right restored unless the conviction is expunged, set aside, or the convicted person has had their civil rights restored.
- There is *No Official Use Exemption* – This exemption DOES NOT apply under the misdemeanor crimes of domestic violence prohibition. Law enforcement or military personnel convicted of misdemeanor domestic violence cannot possess or purchase firearms for any purpose, including the performance of official duties.

Texas Law and Policy

In addition to federal law, states may have statutes addressing possession and purchase of firearms as it relates to domestic violence. Texas law regarding domestic violence prohibitions on gun possession and purchase is very similar to federal law.⁹ An additional specification under Texas law refers to eligibility for a Concealed Handgun License (CHL). According to Texas state law, persons subject to a qualifying protection order or convicted of misdemeanor domestic violence are not eligible to apply for or hold a CHL.¹⁰

Firearms Prohibitions in Texas

Recent efforts to address firearms in domestic violence cases in Texas have largely originated with par-

ticular judges or courts. For example, El Paso County Judge Patricia Macias implemented a firearms surrender protocol in domestic violence cases in her court that has been adopted in other jurisdictions as well.¹¹ As part of this program, judges ask convicted offenders about firearm possession and order surrender of firearms when present, advocates explain the firearm surrender policies to survivors, and county attorneys provide follow-up on compliance with the firearm surrender orders. When firearms may be returned to convicted offenders (e.g., when a protection order has expired), survivors should be notified.

Other similar programs and policies have been implemented with success in other jurisdictions throughout Texas and the nation.¹² In fact, the Texas Family Violence Bench Book identifies many of these steps as best practices for judges to follow in domestic violence cases.¹³ In addition to inquiring as to the presence of firearms, judges are encouraged to provide a defendant with information on disposal or surrender of firearms and to require proof that firearms are no longer in the defendant's possession, including setting a compliance hearing if warranted.

Considerations for Victim Advocates

Unfortunately, while firearms surrender has generally been adopted as a best practice in domestic violence cases,^{14,15} whether that occurs in specific incidents can be sporadic and dependent on individual judges, prosecutors, as well as probation and law enforcement officers. Large-scale advocacy efforts may focus on raising awareness among criminal justice personnel of the problem of firearms in domestic violence cases, as well as both federal and state laws. Law enforcement agencies in Texas and other jurisdictions around the country have adopted policies to inquire about and potentially remove firearms at the scene of domestic violence incidents, and these policies could form the basis for recommendations in other locations.¹⁶ Judges and prosecutors may also not be aware of specific strategies that have been used with success that might also work in their courts. Advocates and victim service agencies could provide information to law enforcement and to the courts about these tools that could be adopted generally in all domestic violence cases.

At the same time, advocates may have concerns about firearms when working with specific clients who have experienced domestic violence. Tools are also available to advocates to assess whether this is a concern for a particular victim and how to proceed through the system to manage that problem. The National Center on Protection Orders and Full Faith & Credit (NCPOFFC, see www.fullfaithandcredit.org) is a project of the Battered Women's Justice Project (BWJP) and has prepared a manual, "Enforcing Domestic Violence Firearms Prohibitions." As part of this effort,

NCPOFFC has prepared a series of firearms checklists for advocates, law enforcement, prosecutors, and judges.

In communicating with victims/survivors of domestic violence, it is important that advocates become aware of any concerns related to the abuser's ownership or use of guns and talk with the survivor about addressing those concerns, whether through legal means or specific forms of safety planning. The NCPOFFC checklist for advocates¹⁷ provides suggestions for facilitating a discussion about firearms, including applicable laws and policies regarding firearm prohibitions and removal, the survivor's own concerns and experiences with firearms, and developing safety plans that address those concerns. It is important that survivors also understand how protection orders may or may not trigger firearm prohibitions. Advocates may also want to provide survivors with the S.A.F.E. TOOL (available from NCPOFFC), which was designed to provide survivors with a guide to thinking about firearms with respect to their safety and the choices available to them and to assist in their potential interactions with advocates, law enforcement, and prosecutors.

While many of the firearm surrender protocols and policies are driven by law enforcement and the courts, advocates play a critical role in communicating with survivors about firearms, as well as raising awareness throughout the system of the importance of addressing this issue in order to enhance safety and reduce lethal intimate violence.

Notes

¹ "Honoring Texas Victims: Family Violence Fatalities, 2012." (2013). Austin, TX: Texas Council on Family Violence. Available online at: www.tcfv.org

² Ibid.

³ Campbell, J.C., Webster, D., Koziol-McLain, J., et al. (2003). Assessing risk factors for intimate partner homicide. *NIJ Journal* 250:14-19.

⁴ Kellerman, A.L., Rivara, F.P., Rushforth, N.B., et al. (1993). "Gun Ownership as a Risk Factor for Homicide in the Home." *New England Journal of Medicine* 329:1084-1091.

⁵ 18 U.S.C. §§ 922 (g) (1-7)

⁶ 18 U.S.C. §§ 922 (g) (9)

⁷ Klein, A.R. (2006). "Enforcing Domestic Violence Firearms Prohibitions: A Report on Promising Practices." Washington, D.C.: Office on Violence Against Women, National Center on Full Faith and Credit. Available online at:

<http://www.fullfaithandcredit.org/files/bwjp/files/Enforcing%20Domestic%20Violence%20Firearm%20Prohibitions;%20A%20Report%20on%20Promising%20Practices.pdf>

⁸ Ibid.

⁹ "The Texas Family Violence Bench Book." Austin, TX: Office of Court Administration. Available online at: <http://www.txcourts.gov/oaca/DVRA/tfvbb.asp>

¹⁰ Tex. Penal Code § 46.04

¹¹ "Promising Practices." (n.d.). Available online at: http://www.bwjp.org/ncffc_promising_practices.aspx

¹² Klein (2006), "Enforcing Domestic Violence Firearms Prohibitions."

¹³ "The Texas Family Violence Bench Book."

¹⁴ Klein (2006), "Enforcing Domestic Violence Firearms Prohibitions."

¹⁵ "The Texas Family Violence Bench Book."

¹⁶ Klein (2006), "Enforcing Domestic Violence Firearms Prohibitions."

¹⁷ "Firearm Checklist for Advocates." (2012). Arlington, VA: National Center on Protection Orders and Full Faith & Credit. Available online at:

http://www.fullfaithandcredit.org/files/bwjp/files/Firearm_Checklist_Advocates_Final_April_2012.pdf

Resources

Texas Council on Family Violence (www.tcfv.org)

Firearm Checklist for Advocates (http://www.fullfaithandcredit.org/files/bwjp/files/Firearm_Checklist_Advocates_Final_April_2012.pdf)

S.A.F.E. (Strategic Assessment of Firearms Enforcement) TOOL – available from NCPOFFC (www.fullfaithandcredit.org or by email at ncffc@bwjp.org)

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www.crimevictimsinstitute.org