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The National Domestic Violence
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Saving Women's Lives

Ending Firearms Violence Against Intimate Partners

Americans for Responsible Solutions
National Domestic Violence Hotline
State Toolkit

June 2014

Saving Women's Lives

Part 1

Firearms and Intimate Partner Homicides: The Scope of the Problem

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Firearms and Intimate Partner Homicides: The Scope of the Problem

Domestic violence and firearms are a lethal combination

Victim advocates who work with victims of domestic and dating partner violence know how dangerous firearms are in the hands of an abuser. Domestic violence and its related crime, dating violence, include verbal and emotional abuse, but also a broad range of types of physical abuse against an intimate partner, including:

- Pulling hair, punching, slapping, kicking, biting, choking
- Trapping the victim in the home or kidnapping them
- Sexually assaulting the victim
- Threatening the intimate partner or the children with severe physical violence, up to and including death
- **Using weapons, including firearms, to threaten to hurt the victim, or actually causing physical injury to the victim or the children with a weapon¹**
- **Killing an intimate partner or the children**

Domestic violence offenders commit more than a million acts of domestic violence each year, resulting in hundreds of deaths from domestic violence. If the abuser possesses a firearm, an abuse victim is 6 times more likely to be killed than if there were no firearm in the household.² More than half of women murdered with guns are killed by family members or intimate partners.³ Female intimate partners are more likely to be murdered with a firearm than all other means combined.⁴

These numbers should shock us

We need to reduce these numbers. The law recognizes the dangers of firearms in the hands of abusers. Federal law and an increasing number of state and tribal laws prohibit adjudicated abusers from having access to firearms.

¹ National Domestic Violence Hotline, "Abuse Defined." <http://www.thehotline.org/is-this-abuse/abuse-defined/>

² Jacqueline Campbell et al., Assessing Risk Factors for Intimate Partner Homicide. U.S. Department of Justice, National Institute of Justice Journal, No. 250, p. 16 (Nov. 2003).

³ J.C. Campbell, D.W. Webster, J. Koziol-McLain, et al., "Risk factors for femicide within physically abusive intimate relationships: results from a multi-site case control study," 93 Amer. J. of Public Health 1089-1097 (2003).

⁴ When Men Murder Women: An Analysis of 2010 Homicide Data: Females Murdered by Males in Single Victim/Single Offender Incidents. 2012. Violence Policy Center. Washington, DC. Retrieved January 17, 2013. <http://www.vpc.org/studies/wmmw2012.pdf>.

There are also jurisdictions where laws are inadequate for keeping firearms out of the hands of abusers. Many jurisdictions have no regular laws or policy for removing firearms from domestic abusers. And even where there are strong laws to protect victims of domestic violence, implementation and enforcement do not happen because the complexity of our justice system allows too many cases to fall through the cracks or because some part of the protective framework—courts, prosecutors, law enforcement, and victim advocates—is unable to do its part to make these laws work.

Every time we let an adjudicated abuser retain access to firearms, we put that abuser's intimate partner at enormous risk of serious injury or death. It seems obvious that we do not want persons who use violence against their intimate partners to have a firearm at hand the next time the abuse begins.

But holes in our laws and the application of our laws allow abusers access to firearms. And too often injury, intimidation, and death are the avoidable result.

We can do better. We must take the tools we have and make them work more effectively. We must identify the gaps in the law, in our policies, and in our practices that leave guns in the hands of abusers—and we must close those gaps. We know what we have to do. We need to get started moving forward with the changes that will make victims and their children safer. But first we need to understand the framework of laws already in place—and the best practices for keeping victims safe from firearms violence.

When a victim seeks a protection order, she may be at greatest risk of firearms violence

When a victim makes the difficult decision to leave or seek protection from an abuser, she may petition for a protection order from her local court. For many abusers, service of the protection order is the first indication for them that the victim plans to leave. Other abusers react violently because the victim has revealed the abuse for the first time to someone outside of the home. A review of court records in many states showed that many violent abusers, when served with a protection order, dramatically escalated to potentially lethal abuse in retaliation, threatening their victims with firearms violence.⁵

⁵ Michael Luo, "In Some States, Gun Rights Trump Orders of Protection." New York Times, March 17, 2013. <http://www.nytimes.com/2013/03/18/us/facing-protective-orders-and-allowed-to-keep-guns.html>

Misdemeanor crimes of domestic violence can be as dangerous as felony violence

Historically, many domestic violence crimes were not charged as felonies, even if the abuser’s violence would have been charged as a felony had the violence been committed against a stranger. Though prosecution of domestic violence crimes is more vigorous today, many domestic violence crimes are resolved as plea agreements, where the defendant pleads guilty to a misdemeanor crime rather than risk being convicted of a felony. Because of this practice, Congress recognized that a serious gap existed in the federal firearms law. On the one hand, persons subject to a protection order could not have access to firearms – and persons convicted of felony crimes could not get guns. But those in the middle – domestic violence misdemeanants – faced no prohibition against possessing or purchasing a firearm, even though their crimes were likely worse than the violence that earned an abuser a protection order.⁶ That gap has now been closed by the Lautenberg Amendment, which prohibits domestic violence misdemeanants from having access to firearms.

Bringing courts, prosecutors, law enforcement, and victim advocates together

Despite the grim statistics about domestic violence homicides by firearms, we can improve the safety of victims of domestic violence⁷—and we can improve the odds that they will avoid firearms violence at the hands of their abusers. In states that require a background check for every handgun sale, 38 percent fewer women are shot to death by intimate partners.⁸ Many cities and counties have developed strong and effective policies and protocols that recognize and respond to the role firearms play in domestic violence cases, resulting in greater safety for victims and their children.

Make changes to your state code to protect victims of domestic violence, dating violence, and stalking from firearms violence

Keeping firearms out of the hands of abusers requires legislative changes, also. State legislatures and tribes developing criminal codes have recently signaled a new commitment to saving victims of domestic abuse from the tragedy of firearms violence.⁹

⁶ 142 Congressional Record 22985 (1996) (statement of Senator Frank Lautenberg).

⁷ The general term “domestic violence” means abuse or violence directed at an intimate partner, and the offender may be a current or former spouse, a current or former dating partner, a current or former cohabitant or the parent or step-parent of a child in common of the victim. Under federal law, however, “domestic violence” is more limited. See Part 2 for a list of the relationships covered under federal law.

⁸ U.S. Department of Justice, Federal Bureau of Investigation, Supplementary Homicide Reports, 2010, available at <http://bit.ly/V1GvFe> (excludes New York due to incomplete data).

⁹ http://www.huffingtonpost.com/2014/04/22/nra-domestic-violence_n_5191555.html

States must develop strong connections with federal agencies

Equally importantly, states must develop strong connections with the federal agencies that have a role in keeping firearms out of the hands of abusers. All too often, jurisdictions do not know with whom to work on the federal level, but that gap can easily be closed through effective cross-communications.

Yet more is needed. State and federal laws must be implemented and enforced. We must engage a broad spectrum of professionals responding to the dangers posed by the intersection of domestic violence and firearms: courts, prosecutors, law enforcement, and victim advocates. This toolkit will address the roles justice system professionals can play.

In Summary: What you'll find in this toolkit

Your state can reduce firearms violence against intimate partners and other family members by developing and adopting the following tools and resources. They will help to ensure that the justice system works quickly and effectively to reduce firearms threats to domestic violence victims. Helpful responses and practices include:

- Laws mirroring the federal firearms prohibitions, including firearms prohibitions for:
 - persons subject to a protection order or
 - persons convicted of misdemeanor crimes of domestic violence
- Similar statutory protections for victims of dating violence and stalking, who are currently unprotected under most state and federal laws
- A statewide background check system that can be accessed by law enforcement and courts around the clock
- Ensuring real-time entry of protection orders and convictions for misdemeanor crimes of domestic violence into state criminal records databases
- Improvement of state entry of protection order records and records of misdemeanor crimes of domestic violence into the federal National Crime Information Center (NCIC) databases.
- Enhancing the authority of courts to temporarily order adjudicated abusers to surrender firearms and ammunition during the background check period or any other time period where the victim may be exposed to enhanced danger
- Explicitly authorizing law enforcement officers to search for and seize firearms where there is probable cause to believe that an offender has used a firearm in the commission of domestic violence or where there is probable cause to believe that an offender has threatened to use deadly force against the victim

- Developing policies and procedures for local law enforcement regarding search, seizure, and storage of weapons, when removed during the time in which a protection order is in effect
- Developing policies and procedures for the disposal of firearms permanently removed from an convicted abuser
- Adopting cover sheets and checklists for courts, prosecutors, law enforcement and victim advocates to ensure best practices in cases where firearms violence and domestic violence intersect
- Establishing a liaison from the court, prosecution agency, law enforcement agency, and victim service provider to regularly communicate with each other and federal authorities about policies and procedures used and actions taken in domestic violence cases
- Ensuring victim advocates are available to help the victim develop a safety plan
- Providing notification to the victim when the courts prohibit an offender's access to firearms, when the offender fails a state background check, or when law enforcement intends to conduct a search of the home for firearms or ammunition
- Training courts, prosecutors, law enforcement and victim advocates about state and local firearms policies and about intersecting federal firearms laws
- Adopting the Lethality Assessment Program developed by the Maryland Network Against Domestic Violence¹⁰

¹⁰ Maryland Network Against Domestic Violence, "Lethality Assessment Program."
<http://mnadv.org/lethality/>

Saving Women's Lives

Part 2 Federal Law: Firearms and Domestic Violence

Part 2 Federal Law: Firearms and Domestic Violence¹¹

The Brady Act

In order to keep guns away from persons prohibited under federal law from possessing or purchasing firearms, Congress enacted the Brady Handgun Violence Prevention Act (“Brady Act”) in 1993.¹² This law authorized the Attorney General to create a national system for conducting background checks.

The National Instant Criminal Background Check System (NICS)

To implement the Brady Act, the U.S. Attorney General established the National Instant Criminal Background Check System (NICS) so that any federally licensed firearms dealer may contact the FBI by telephone, or by other electronic means, to obtain information on whether the sale, transfer or return of a firearm to a particular person would violate federal gun prohibitions.

The Violence Against Women Act and the Lautenberg Amendment

In the Violence Against Women Act of 1994,¹³ Congress added a provision to the federal firearms law that prohibited persons subject to a domestic violence protection order from possessing or purchasing firearms or ammunition (“the protection order prohibition”). Two years later, Congress created an additional firearms prohibition for persons convicted of misdemeanor crimes of domestic violence,¹⁴ (“the Lautenberg Amendment prohibition”¹⁵). The laws have similarities, but also have some important differences.

Federal firearms law prohibits the possession or purchase of firearms or ammunition by:

- persons subject to a state or tribal court-issued qualifying protection order (18 U.S.C. 922(g)(8))
- persons convicted by a state or tribal court of qualifying misdemeanor crimes of domestic violence (18 U.S.C. 922(g)(9))

¹¹ Throughout this toolkit, any information or action relating to federal firearms authority to provide protection for victims of domestic violence will be indicated in green.

¹² P.L. 103-159 (1993).

¹³ P.L. 103-322 (1994).

¹⁴ P.L. 104-208 (1996).

¹⁵ Named after its author, Senator Frank Lautenberg.

What does federal law require to trigger the federal firearms protection order prohibition (18 U.S.C. 922(g)(8))?

PROTECTION ORDER PROHIBITION - REQUIREMENT 1

✓ *Court orders and convictions must state the relationship between the offender and victim*

Federal law requires court documents to identify one of the following relationships between the parties to trigger the protection order prohibitor:

- current or former spouse
- cohabitant or former cohabitant
- the protected party has a child in common with the respondent
- the protected party is a child of either the victim or the respondent

PROTECTION ORDER PROHIBITION - REQUIREMENT 2

✓ *The court must make the following findings in the protection order related to the respondent's violence and order the respondent to refrain from future violence*

✓One from Column A ✓One from Column B

Ordered to refrain from:

- harassing, stalking, or threatening an intimate partner or the intimate partner's child,

OR

Ordered to refrain from:

- engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the petitioner or the child,

• *Finding of credible threat:*

to physical safety of petitioner or their child

OR

• *Express prohibition on conduct:*

order must prohibit use, attempted use or threatened use of physical force against the petitioner or their child that would reasonably be expected to cause bodily injury.

PROTECTION ORDER PROHIBITION - REQUIREMENT 3

✓ *The court must provide information on the protection order or in the court record showing that the respondent had notice and an opportunity to be heard in a full hearing prior to the issuance of the protection order.*

PROTECTION ORDER PROHIBITION - REQUIREMENT 4

✓ *The court must notify the respondent that the issuance of the protection order may adversely impact the respondent's ability to possess or purchase a firearm.¹⁶*

Conditions of access to firearms under federal law

If all of the requirements above are met, the federal protection order prohibition lasts for the duration of the protection order.

- During the life of the protection order, respondents violate federal law if they possess or try to purchase a firearm or ammunition.
- If the respondent owned firearms prior to the issuance of the protection order, it may be possible for the court to make arrangements for the guns and ammunition to be held by a third party or stored by law enforcement until the termination of the order.
- If the respondent is a law enforcement officer or serves in the military, it may be possible for the respondent's supervisor to give the respondent a service weapon only for the time while the respondent is on duty.

✗ **The federal protection order prohibition** does not apply to ex parte (temporary) protection orders.

¹⁶ This is a 2005 amendment to the Violence Against Women Act. (42 U.S.C. 3796gg-4 (e))

Federal law requires states to provide the following information in order to trigger the Lautenberg Amendment prohibition (18 U.S.C. 922(g)(9))

LAUTENBERG PROHIBITION - REQUIREMENT 1

✓ *The defendant must have been convicted or pleaded guilty to a misdemeanor under federal, state, tribal or local law.*

LAUTENBERG PROHIBITION - REQUIREMENT 2

✓ *The charging documents or court record must make it clear that the defendant was convicted or pleaded guilty to a specific crime involving the use or attempted use of physical force¹⁷ or threatened use of a deadly weapon.*

LAUTENBERG PROHIBITION – REQUIREMENT 3

✓ *The date of the conviction must precede the firearm possession.*

LAUTENBERG PROHIBITION – REQUIREMENT 4

✓ *The court record must show the relationship between the victim and the misdemeanant.*

- current or former spouse
- parent or guardian
- has a child in common
- is a current or former cohabitant, ex-cohabitant or
- is a person similarly situated to a spouse, parent, or guardian of the victim.

LAUTENBERG PROHIBITION – REQUIREMENT 5

✓ *The offender must have had a jury trial or waived the right to a jury trial.¹⁸*

¹⁷ The U.S. Supreme Court decided in *United States v. Castleman* that the act constituting the crime can range from “offensive touching” (slap, shove, and similar acts that involve force, but do not necessarily cause bodily injury) to severe physical violence, including homicide. *United States v. Castleman*, 572 U.S. ____, 134 S.Ct. 1405 (2014), Opinion of the Court, Sotomayor, J., March 26, 2013.

¹⁸ Many states do not offer defendants in a misdemeanor case a jury trial by right under state law. If the defendant has no right to a jury trial under state law, then this provision does not apply.

LAUTENBERG PROHIBITION – REQUIREMENT 6

✓ *The offender must have been represented by counsel or waived that right.*

LAUTENBERG PROHIBITION – REQUIREMENT 7

✓ *The court must notify the respondent that the conviction for a misdemeanor crime of domestic violence may adversely impact the respondent's ability to possess or purchase a firearm or ammunition.¹⁹*

✗ **The Lautenberg Amendment prohibition** does not apply to a misdemeanant who has been pardoned, or whose conviction has been expunged or set aside, or where the misdemeanant's civil rights (the right to vote, the right to serve in public office, and the right to serve as a juror) have been restored, UNLESS the state imposes any restriction on firearm rights after pardon, expungement, or civil rights restoration.

Conditions of access to firearms and ammunition under the Lautenberg Amendment prohibition

If all of the requirements above are met, the Lautenberg Amendment prohibition lasts for the life of the misdemeanant.

- Unlike the protection order prohibition, the Lautenberg Amendment prohibition is permanent.
- Even if the misdemeanant is a law enforcement officer or serves in the military, the misdemeanant cannot have access to a firearm or ammunition.
- The only way to lift this lifetime ban is if the misdemeanor conviction that triggered the federal prohibition is expunged, pardoned, or the misdemeanant has had his or her civil rights restored by the state, including rights to possess or purchase a gun or ammunition.

¹⁹ This is a 2005 amendment to the Violence Against Women Act at 42 U.S.C. 3796gg-4 (e).

In Summary: Why states should work in coordination with federal agencies to keep firearms and ammunition out of the hands of adjudicated abusers

Federal firearms laws are an important part of the system needed to keep guns out of the hands of abusers. Congress led the way back in 1994 and 1996 when it passed laws recognizing that domestic violence offenders and firearms were a lethal combination. Congress' strong stance has inspired many states to adopt similar laws.

Having complementary systems is good news for victims living in terror of firearms violence at the hands of their abusers. Sometimes a local response is better. Local law enforcement officers are more readily available to deal with emergency situations than federal agents. But in some cases, federal agents may be better equipped to address larger threats. Where a state's laws regarding firearms and domestic violence are weak, a federal investigation and prosecution may result in a tougher sentence, giving the victim many more years of safety than local law would allow.

But there are very clear limits to the federal response, not the least of which is a limited capacity to address all victims' needs. There are not enough ATF agents to investigate every domestic violence offender who is in violation of federal law. Nor are there enough U.S. Attorneys available to prosecute all of the cases that should properly be addressed. NICS has incomplete data because states are not able to upload court records in real time. Domestic violence abusers can circumvent the federal background check system by purchasing firearms and ammunition at gun shows, through private sales, or via the internet.

Saving Women's Lives

Part 3 The Background Check System and Enforcement of Federal Firearms Laws

Part 3 – The Background Check System and Enforcement of Federal Firearms Laws

How does the federal background check system work?

The Brady Handgun Violence Prevention Act requires all federally licensed gun dealers to do a criminal background check of all purchasers before completing a sale to determine if purchase is disqualified. Domestic violence offenders may fail background checks because of –

- a qualifying protection order or
- a qualifying misdemeanor conviction for domestic violence, or
- any other of the other federal firearms prohibitions.²⁰

The National Instant Criminal Background Check System (NICS) is administered by the U.S. Department of Justice. The FBI is the agency responsible for conducting a search of protection order, misdemeanor and felony crime records. By law, the FBI has only three business days to conduct the records search; if no state or federal prohibitions are uncovered within that period, the sale is allowed to proceed by default. The vast majority of checks – 92% - are processed instantaneously.

NICS is part of the National Crime Information Center's (NCIC) records database, which is open 24 hours a day, 7 days a week, and 365 days a year. Law enforcement officers across the country rely on NCIC to run checks through their database of almost 12 million records.

NCIC includes Protection Order Files, NICS' database of denied firearms transactions, and the Interstate Identification Index, which contains criminal history record information, form the basis for a background check. Records of cleared and expired protection orders are maintained in NCIC for 5 years.

²⁰ These other prohibitors include: felons; fugitives from justice; unlawful users of or persons addicted to any controlled substance; persons adjudicated as having certain mental health problems; undocumented aliens; persons dishonorably discharged from the military; persons who have renounced U.S. citizenship; and persons indicted for a felony. 18 U.S.C. 922(g).

State data is not getting into the federal background check system²¹

Too many domestic violence offenders easily purchase or gain access to firearms, even though federal law may prohibit it. The NCIC database is only as good as the information that is entered into it by states. The FBI counts on state users to enter information in a timely fashion through designated points of contact in the states, but not all states provide consistent information. Some states do not enter their protection orders into NCIC.

States must provide up-to-date information to NCIC in order to protect victims of domestic violence

Additionally, responsibility for updating the records—for example, noting the dismissal of a protection order—is up to the state that entered the record. If states do not provide up-to-date information to NCIC, the background check system will not work effectively.

Even those states that do enter protection orders may not enter the records quickly, which can jeopardize a victim's safety, since the time in which a victim seeks and receives a protection order is often the most dangerous.

Because states do not enter all the data required for a background check, some gun sales are allowed to go forward, even though the abuser would have failed a background check if the complete data had been provided

When someone tries to purchase a gun or ammunition from a federally licensed firearms dealer, the dealer must, as required by federal law, run a background check through NICS. If the response is positive -- that the prospective purchaser is subject to a domestic violence protection order, has a conviction for a misdemeanor crime of domestic violence, or meets the requirements of any other federal prohibition -- then the federally licensed firearms dealer who requested the background check is notified to halt the sale. From 1998-2001, 14% of failed background checks were the result of domestic violence misdemeanor convictions.²²

Incomplete entry of state data may allow domestic violence abusers to get access to a firearm or ammunition

By law, the FBI has only 72 hours to complete a background check on a gun purchaser. If states provide incomplete or inconclusive data to NCIC, then the FBI,

²¹ Information and actions that are the responsibility of state agencies and courts are indicated in blue.

²² Johns Hopkins School of Public Health. "Intimate Partner Violence and Firearms." http://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-gun-policy-and-research/publications/IPV_Guns.pdf

when performing a background check, will have to reach out to the local courts to fill in the gaps in information. In too many cases, it will take more than 72 hours to obtain that information, so under federal law, the purchase will go forward. In 2012, more than 3,000 firearms purchases went forward because of incomplete records, even though the FBI later found that these persons should have been prohibited from doing so.²³

Unless states require background checks for gun show and internet sales, domestic violence abusers can evade the federal background check system to obtain firearms and ammunition

Loopholes in current law allow domestic violence offenders who are federally prohibited from purchasing firearms or ammunition to avoid background checks by buying guns from unlicensed “private sellers,” at gun shows, or online.

States can close the dangerous gap under federal law for “private,” gun show, or online sales of firearms by adopting statutes such as the following:

- ✓ Require sellers of firearms—whether the sale is conducted through a private sale, a gun show, or an online sale—to utilize the federal background check system through a federally licensed dealer or face a fine or other sanction
- ✓ Establish a state background check system that all sellers and purchasers must use to complete firearms or ammunitions sale or face a fine or other sanction
- ✓ Require both the seller and purchaser of firearms to obtain—and have available to show law enforcement—receipts from either the federally licensed dealer or through the state background check system certifying that either a federal or state background check was conducted

²³ M. Cooper, M. Schmidt, and M. Luo. “Loopholes in Gun Laws Allow Buyers to Skirt Checks.” New York Times (April 10, 2013).

The roles of state and federal actors in making NICS work

All state courts, prosecutors, and law enforcement agencies should participate in getting the right information into NCIC.

- *State courts* generate the information that goes into NCIC; this is the source of the records the FBI uses to determine whether a person is prohibited from possessing or purchasing a firearm.
- *State prosecutors* can ensure that charging documents and other justice system records contain all of the information that the FBI needs during a background check.
- *State law enforcement officers* develop evidence (through the investigation process) that courts and prosecutors rely upon to address firearms violence in domestic violence cases; law enforcement is responsible for entering the information into NCIC that the FBI relies upon to conduct a background check. Law enforcement is also responsible for enforcing state firearms laws and removing firearms and ammunition from domestic violence offenders.

Three federal agencies are involved in implementing the federal firearms prohibitions for domestic violence offenders.

- *Bureau of Alcohol, Tobacco and Firearms (ATF)* agents are responsible for investigating potential violations of federal firearms laws; they are also responsible for searching for illegally possessed firearms and ammunition, as well as seizing them from prohibited persons.
- *Federal Bureau of Investigation (FBI)* implements the federal background check system (NICS) and determines whether records searched indicate that a person is prohibited from possessing or purchasing a firearm or ammunition.
- *U.S. Attorneys* may prosecute persons who are in violation of federal firearms prohibitions.

How states can develop contacts with partner federal agencies

In an ideal world, all state and federal actors should be working in a coordinated fashion. Unfortunately, in too many jurisdictions, state enforcement does not have a good communications system with the federal agencies. To improve the functioning of the system, it is crucial that your court, your prosecutors, and law enforcement agencies identify point persons to serve as direct liaisons to the federal actors. You can identify the federal field offices to work with at the following websites:

- *Bureau of Alcohol, Tobacco and Firearms-Regional Offices*
-- <https://www.atf.gov/content/contact-us/local-atf-office>
- *National Instant Criminal Background Check System-FBI*
-- <http://www.fbi.gov/about-us/cjis/nics>
- *Executive Office of the U.S. Attorneys*
-- <http://www.justice.gov/usao/districts/>

State background check systems

Your state should have a comprehensive background check system that includes protection order records. This is a highly effective way to reduce firearms homicides in domestic violence cases. **In states that require a background check for every handgun sale, 38 percent fewer women are shot to death by intimate partners.**²⁴ Research shows that jurisdictions that adopted laws prohibiting persons subject to protection orders from purchasing firearms reduced firearms homicides of battered women by 13 percent.²⁵

In Summary: What your state can do to improve the background check system

This is an opportunity for your state to identify and fill in the gaps that federal law simply cannot address. You have a chance to build a comprehensive system that can effectively reduce domestic violence homicides by firearms. By bringing together

²⁴ U.S. Department of Justice, Federal Bureau of Investigation, Supplementary Homicide Reports, 2010, available at <http://bit.ly/V1GvFe> (excludes New York due to incomplete data).

²⁵ E.R. Vigdor and J.A. Mercy. "Do laws restricting access to firearms by domestic violence offenders prevent intimate partner homicide?" *Evaluation Review*. 2006;30(3):313-346.

courts, prosecutors, law enforcement and victim services to build a coordinated response to incidents of firearms violence in domestic violence cases, you and your colleagues can change the grim statistics, one new law, one new policy, and one new resource at a time.

Saving Women's Lives

Part 4 State Laws and Policies to Protect Victims of Abuse From Firearms Violence

Part 4 – State Laws and Policies to Protect Victims of Abuse From Firearms Violence

When state courts, prosecutors, law enforcement, and victim advocates work together to implement best practices, women’s lives can be saved

Federal firearms laws are helpful for keeping guns out of the hands of abusers, but they are currently not the complete solution to the problem. In the pages that follow, you will find outlines of the roles that the courts, prosecutors, law enforcement, and victim advocates can play to keep guns out of the hands of abusers. Many of these changes are small efforts that will yield large results. Others, such as passing legislation limiting abusers’ access to firearms and ammunition may take a greater effort, but are well worth the fight to keep victims safe.

The Role of State Courts

Your state courts are central to ensuring that domestic violence offenders do not have access to firearms and ammunition.

It is crucial that your courts protect victims of domestic abuse from dangerous—even lethal—firearms violence. State courts

- generate the information that goes into NCIC and is accessed through NICS when a background check occurs;
- order remedies to protect victim safety;
- play a central part in managing the behavior of the abuser; and
- monitor compliance of the abuser, to ensure that the abuser honors the protections the court has ordered to protect the victim.

Always think about victim safety as you establish new or enhance existing state laws, protocols, and policies to keep firearms and ammunition out of the hands of abusers

A victim is in the greatest danger of increased—even lethal—violence when seeking help from the courts. Because of this enhanced danger, courts should take special precautions to protect victims seeking temporary and final protection orders.

Protection Orders: State courts can offer remedies and relief to keep victims safe

While federal firearms laws only prohibit access to firearms and ammunition for respondents subject to final domestic violence protection orders, states have the capacity to provide protections for victims in temporary protection orders, too. If a victim comes before a court to ask for a temporary or final protection order, the court should have the authority, established either legislatively or by court rule, to take

certain actions relating to the respondent's access to firearms and ammunition in order to protect the victim of abuse and the victim's children.²⁶

Procedures State Courts Can Use to Protect Victims from Firearms Violence

Outline for development of effective protocols

- ✓ If the offender used firearms to threaten or harm the victim, make findings in the protection order regarding those actions; these findings form the basis of the information needed to trigger the federal protection order prohibition.
- ✓ Order the offender to turn over all firearms and ammunition to local law enforcement within 24 hours of the issuance of the order.
- ✓ Order local law enforcement to certify that the offender has surrendered firearms and ammunition within 24 hours.
- ✓ Order local law enforcement to store surrendered weapons until the expiration of the protection order OR order a safe third-party transfer of the firearms and ammunition.
- ✓ If the offender fails to surrender firearms and ammunition in a timely way, order local law enforcement to go to the offender's home and search for and seize any firearms or ammunition there.
- ✓ Hold a formal hearing before returning the firearms to the offender in order to determine whether the offender is still likely to pose a threat to the victim's safety.
- ✓ Notify the victim of each step taken by the court, so that the victim can make safety arrangements.

²⁶ In many jurisdictions, protection orders can be used to protect family members or friends of the victim, where the domestic violence offender has threatened their safety, too. Note that, although local law may cover these extended relationships, the federal firearms law regarding protection orders only covers certain relationships: a current or former spouse, a current or former co-habitant, a victim who has a child in common with the offender, and a child of the offender or the victim. 18 U.S.C. 922(a)(32). Similarly, the Lautenberg Amendment prohibitor relationships are limited to current or former spouse, parent, or guardian of the victim, have a child in common, cohabitant, ex-cohabitant, or guardian, or person similarly situated to a spouse, parent, or guardian of the victim. 18 U.S.C. 921(a)(33).

STATE COURT STEP 1 – MAKE FINDINGS IN PROTECTION ORDERS THAT MEET THE REQUIREMENTS OF FEDERAL FIREARMS LAWS

In order to be sure that victims of domestic violence have access to the federal firearms protections, your state court protection order form should have check boxes for judges to make findings or restrain the actions of the respondent that are like the following:

- Defendant is ordered to refrain from harassing, stalking, or threatening the petitioner or a child of the parties.
- Respondent is ordered to refrain from engaging in conduct that would place the petitioner or a child of the parties in reasonable fear of bodily injury.
- The court finds that the respondent poses a credible threat to the physical safety of the petitioner or a child of the parties.
- The respondent is prohibited from using, attempting to use, or threatening to use physical force that would reasonably be expected to cause bodily injury to the petitioner or a child of the parties.
- The court finds that the respondent used, attempted to use, or threatened to use a firearm against the petitioner or a child of the parties.
- Respondent is prohibited from possessing or purchasing firearms or ammunition for the duration of this order.
- Respondent is ordered to surrender all firearms and ammunition to _____²⁷ within 24 hours.

STATE COURT STEP 2 – ENSURE THAT YOUR COURT’S PROTECTION ORDER FORM INCLUDES THE INFORMATION THE FBI NEEDS TO CONDUCT A FEDERAL BACKGROUND CHECK:

- ✓ Information showing the respondent had notice of the protection order hearing and an opportunity to be heard
- ✓ The relationship between the parties
- ✓ A unique numeric identifier: either the respondent’s Social Security number or date of birth; the address of the respondent is also helpful, as is the driver’s license number
- ✓ The duration of the protection order
- ✓ The name and contact information of court personnel able to respond to questions about the information in the order.

²⁷ See page 31 for a detailed discussion of firearms surrender procedures.

STATE COURT STEP 3 – ADOPT STATUTES TO ESTABLISH COURT AUTHORITY TO ORDER THE ABUSER SUBJECT TO A PROTECTION ORDER TO SURRENDER FIREARMS AND AMMUNITION AND ESTABLISH COURT AUTHORITY TO ORDER LAW ENFORCEMENT TO REMOVE FIREARMS AND AMMUNITION FROM AN ABUSER SUBJECT TO A PROTECTION ORDER

- ✓ The state court has the authority to order respondent to surrender firearms and ammunition within 24 hours of the issuance of or at the time of service of the order.
- ✓ The state court has the authority to order law enforcement to certify that the respondent has surrendered firearms and ammunition within 24 hours.
- ✓ The state court has the authority, if the respondent has not surrendered firearms and ammunition in the time allowed, to order law enforcement to search for and remove the respondent's firearms and ammunition.
- ✓ The state court shall notify the victim when such orders are issued.

STATE COURT STEP 4 – ADOPT STATUTES TO ESTABLISH COURT AUTHORITY TO ORDER STORAGE OF FIREARMS AND AMMUNITION BELONGING TO AN ABUSER SUBJECT TO A PROTECTION ORDER

- ✓ The state court has the authority to order that law enforcement store any weapons or ammunition seized from respondent until the termination of the protection order.
- ✓ The state court has the authority to order a third-party transfer of the firearms and ammunition for the duration of the order.
- ✓ The state court, in either case, shall provide notice to the victim(s) protected by the order when the respondent's firearms and ammunition are transferred to and from storage.

STATE COURT STEP 5 – ADOPT STATUTES AND COURT PROCEDURES TO ENSURE THAT THE ABUSER SUBJECT TO THE PROTECTION ORDER IS IN COMPLIANCE

- ✓ The state court has the authority to conduct compliance hearings at any time during the duration of the protection order in order to ascertain whether the respondent has regained access to firearms or ammunition.
- ✓ The state court shall provide the victim protected by the order with notice of the compliance hearings and an opportunity to provide relevant evidence.
- ✓ The state court has the authority, if the respondent has committed further violence or made credible threats of violence against the victim, to extend the duration of the order, including continuing to prohibit the respondent from having access to firearms and ammunition.

STATE COURT STEP 6– ADOPT STATUTES OR COURT RULES TO REQUIRE COURTS TO HOLD A HEARING PRIOR TO RETURNING FIREARMS OR AMMUNITION BELONGING TO AN ABUSER SUBJECT TO A PROTECTION ORDER

- ✓ The state court shall hold a hearing prior to returning firearms or ammunition to the respondent (whether during the life of the protection order or at its termination) to determine whether:
 - Respondent has engaged in any conduct since the issuance of the protection order that would likely subject the respondent to any federal or state firearms prohibitions
 - Respondent has violated any of the anti-violence, anti-harassment, anti-stalking or firearms and ammunition prohibitions that are terms of the protection order
 - Respondent has attempted to obtain access to any firearms or ammunition during the life of the order
 - There is any other reason to believe that the respondent poses a safety risk to the victim sufficient to preclude return of the firearms or ammunition

Misdemeanor crimes of domestic violence: Information that state courts must provide in the court record so that a federal background check can be conducted

In many cases, domestic violence offenders will be convicted of or plead guilty to misdemeanor crimes that are not specifically identified as “misdemeanor crimes of domestic violence.” Instead, the defendant may be convicted of or plead guilty to a generic crime such as battery or assault. In such cases, it is crucial that the court provide information about the relationship between the parties. Without that information, the FBI, when conducting a NICS background check, may not know that the crime is one that would trigger the Lautenberg Amendment prohibition, which is limited to misdemeanor crimes committed against intimate partners.

STATE COURT STEP 7– STATE CRIMINAL COURTS SHOULD INCLUDE THE FOLLOWING INFORMATION IN THE MISDEMEANOR CRIME COURT RECORD TO ENSURE THAT A FEDERAL BACKGROUND CHECK CAN BE CONDUCTED

- Relationship between the parties:
 - ✓ Current or former spouse
 - ✓ Parent or guardian of the victim
 - ✓ Person with whom the defendant has a child in common
 - ✓ Cohabitant or ex-cohabitant
 - ✓ Person similarly situated to a spouse, parent, or guardian of the victim

- The defendant has been convicted of or pleaded guilty to a misdemeanor crime of domestic violence, which consists of the following:
 - ✓ *It must be a misdemeanor under federal, state, tribal or local law.*
 - ✓ *The defendant was convicted of or pleaded guilty to a specific crime involving the use or attempted use of physical force (can include offensive touching) or threatened use of a deadly weapon.*

- If the defendant had a right to a jury trial under state law for the crime charged, the defendant has had such a jury trial or waived the right to such a jury trial.

- The offender has been represented by counsel or waived that right.

- The misdemeanor has been notified that the conviction may adversely impact the misdemeanor's ability to possess or purchase a firearm.

- The record contains one or more unique numeric identifiers for the misdemeanor:
 - Social Security number
 - Date of birth
 - Address
 - Driver's license number

- The name and contact information of court personnel able to respond to questions about the information is in the court record.

The court's responsibility under federal law to notify the offender about state and federal firearms law prohibitions

The 2005 reauthorization of the Violence Against Women Act requires states receiving STOP funding to certify that their “judicial administrative policies and practices include notification to domestic violence offenders of the requirements delineated in section 922(g)(8) and (g)(9) of Title 18, United States Code, and any applicable related Federal, State, or local laws[.]”

State courts issue the protection orders or convict offenders of misdemeanor crimes of domestic violence that are likely to trigger the federal firearms prohibition. As a result, state courts are in the best position to notify offenders that their access to firearms and ammunition may be restricted by federal—and where appropriate—state firearms laws.

Your State’s STOP funding depends on your court’s ability to show that you have a policy or practice that reliably informs domestic violence offenders about the potential or actual prohibitions they may face under federal or state firearms laws. Failure to show compliance could result in your State losing all or part of its STOP grant funding.

NOTE: State courts have no responsibility under the Judicial Notification provision of VAWA to enforce 18 U.S.C. 922(g)(8) or (9). Their **only** responsibility is to **notify** respondents in protection order cases and cases involving misdemeanor crimes of domestic violence that as long as the protection order is in effect, they may be in violation of federal law if they possess or purchase a firearm or ammunition.

How should courts provide this notification to abusers subject to a protection order?

The best practice is to include the U.S. Department of Justice-developed language on the protection order form. If the offender fails to appear at the final protection order hearing and the protection order is issued by default, local law enforcement personnel should alert the offender to the printed notification on the protection order form when serving the respondent with the final protection orders.

STATE COURT STEP 7 – INCLUDE THE FOLLOWING NOTIFICATION ON THE PROTECTION ORDER AND POINT IT OUT TO RESPONDENT

“As a result of this order, it may be unlawful for you to possess or purchase a firearm, including a rifle, pistol, or revolver, or ammunition pursuant to federal law under 18 U.S.C. 922(g)(8) [and/or state law]. If you have any questions whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney.”

Similarly, courts should offer notification to persons convicted of misdemeanor crimes of domestic violence²⁸

STATE COURT STEP 8 – PROVIDE THE FOLLOWING NOTIFICATION TO THE DEFENDANT AND NOTE IN THE COURT RECORD THAT IT WAS PROVIDED TO THE DEFENDANT

“If you are convicted of a misdemeanor crime involving violence where you are or were a spouse, intimate partner, parent, or guardian of the victim or are or were involved in another, similar relationship with the victim, it may be unlawful for you to possess or purchase a firearm, including a handgun or long gun, or ammunition, pursuant to federal law under 18 U.S.C. 922(g)(9) [and/or state law].

“If you have any questions whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney.”

*Ordering the offender to surrender firearms and ammunition:
Develop a protocol that will provide clear direction for law enforcement while providing maximum safety for victims*

When a court orders an abuser to surrender firearms and ammunition for the duration of a protection order or surrender them following a conviction for a misdemeanor crime of domestic violence, the issue of where surrendered firearms and ammunition can be stored will arise. The best practice is for local law enforcement to arrange for the storage of the weapons in a law enforcement-

²⁸ Judicial notification does not create any constitutional due process concerns. Nor does judicial notification raise any Second Amendment concerns. In establishing this requirement, Congress is merely enlisting the courts in informing domestic violence offenders about potential restrictions on firearms possession or purchase under federal, state, local or tribal firearms laws. A court’s failure to provide notification does not create a defense for domestic violence offenders who wish to challenge restrictions on firearms possession and purchase.

managed facility. Unfortunately, in most jurisdictions, the court is likely to order the respondent to transfer firearms or ammunition to a third party, often a family member or close friend.

Giving the abuser's guns to a third party creates compliance problems. Will the offender actually give his or her firearms and ammunition to the designated recipient? Will the court know if the third party will keep the firearms and ammunition away from the offender for the life of the protection order? What if the third party decides that they no longer want to hold the guns or ammunition for the abuser?

STATE COURT STEP 9 – THE LOCAL COURT SHOULD ADOPT, THROUGH COURT RULES, A SAFE THIRD PARTY SURRENDER PROCESS²⁹

- ✓ The offender must, under oath during the court hearing, tell the court if he or she possesses any firearms or ammunition and provide a written list of those weapons to the court.
- ✓ The offender is provided with clear and detailed instructions as to how to surrender the firearms and ammunition safely to law enforcement.
- ✓ The process also creates a safe third party transfer process. Sample certification forms for third party transfers are provided, including forms that notify the third party that allowing the offender access to the firearms or ammunition without court approval is a violation of the court order and a violation of federal firearms prohibitions.
- ✓ Court personnel have clearly defined tasks in the firearms surrender process, including collecting the offender's written list of weapons, following up with local law enforcement to make sure the offender has actually surrendered the firearms and ammunition listed, and notifying the court whether the offender complied in a timely manner or whether the offender has failed to surrender any or all of the listed firearms or ammunition.
- ✓ The court procedure for ordering the surrender and later return of firearms and ammunition is clearly outlined and forms are used to ensure consistency. This procedure requires the offender to certify that he or she is not in violation of any of the federal firearms law prohibitions.
- ✓ Provisions are made for victim safety, including notifying the victim when the offender's firearms or ammunition will be returned.

²⁹ These excellent practices were developed by the late Judge Amy Karan of the Miami-Dade County court. All of the information about the Judge Karan's process and the associated forms can be found at http://www.bwjp.org/files/bwjp/files/firearms_forms.pdf.

The Role of Law Enforcement

Law enforcement officers play a crucial role in securing the safety of victims of domestic violence and their children when abusers have access to firearms. Like the courts, their actions make it possible for the federal firearms laws to work effectively. State and local law enforcement:

- ✓ Law enforcement has access to NCIC records
- ✓ In many jurisdictions, they are the agencies charged with entering the court data into NCIC
- ✓ As first responders, they may have occasion to remove firearms and ammunition for the safety of the victim or as evidence
- ✓ Law enforcement can provide safe storage of firearms for the duration of a protection order

State and local law enforcement officers are uniquely suited to protecting the safety of victims of domestic violence

On the local level, law enforcement officers are often the first—and sometimes the only—justice system professionals who will have an opportunity to prevent firearms homicides in domestic and dating violence cases. Local law enforcement officers are also in the best position to keep track of whether domestic abusers are in possession of firearms or ammunition in violation of state law.

Sometimes state and local law enforcement can act more quickly and effectively than federal agencies

The ATF is authorized to seize an offender's prohibited firearms and ammunition. However, the ATF simply does not have the resources to respond to the many incidents where domestic violence and firearms intersect. Local law enforcement is more likely to know an individual abuser's history of violence and whether firearms have played a dangerous role in an abuser's conduct, as well as keeping a consistent eye on events in the abuser's household. Local law enforcement can have an enormous impact on victim safety by developing good policies and strategies around searching for, removing, and storing an abuser's illegally possessed firearms and ammunition.

Responding to an incident: What state and local law enforcement should do to immediately protect victim safety

When law enforcement officers arrive at the scene of a domestic violence incident, firearms or ammunition may be in plain view as officers arrive. In other cases, officers may not realize that there are firearms or ammunition on the premises.

It is tremendously important that local law enforcement has the authority and the training to conduct a risk assessment for lethality, which includes determining whether firearms or ammunition are at the site of the incident and whether they have been used to threaten or harm any household members and should therefore be removed.

Train state and local law enforcement officers to assess lethality when responding to domestic violence incidents

The Maryland Network Against Domestic Violence has been a leader in developing and promoting a homicide reduction program called the Lethality Assessment Program. Local officers are trained to ask victims of domestic violence a series of questions that help an officer determine whether there are enough “red flags” to warrant a more in-depth intervention to reduce the likelihood that the abuser will expose the victim to lethal violence.³⁰

STATE AND LOCAL LAW ENFORCEMENT STEP 1 – ADOPT THE LETHALITY ASSESSMENT PROGRAM AND TRAIN OFFICERS TO DO THE FOLLOWING WHEN RESPONDING TO DOMESTIC VIOLENCE INCIDENTS:

- ✓ Screen for high risk conduct
- ✓ If assessment returns a high risk score, connect the victim with the state domestic violence hotline immediately
- ✓ Have the victim work with the hotline advocate to determine what services the victim is in immediate need of, including shelter, counseling, and legal advocacy
- ✓ Have both a law enforcement officer and a victim advocate follow up with the victim within a few days to re-assess safety issues and provide additional safety planning assistance

The lethality risk assessment process counts several activities as “red flags” for potential homicides.³¹ A number of the questions address firearms-related issues, such as:

- Does the abuser own a gun?
- Has the abuser threatened the victim with a gun?
- Has the abuser threatened to kill the victim?
- Has the abuser threatened suicide?

³⁰ Maryland Lethality Assessment Program at http://www.ncdsv.org/images/MNADV_LethalityAssessmentProgramTheMarylandModel.pdf

³¹ <http://www.dangerassessment.org/uploads/pdf/DAEnglish2010.pdf>

Based on extensive research done by Dr. Jacqueline Campbell at the John Hopkins University, the lethality risk assessment process has proven successful at reducing domestic violence homicides. Law enforcement officers should be trained to use the tool in coordination with local victim service providers.

Search and seizure of illegal firearms and ammunition

Law enforcement officers have the general authority to seize firearms and ammunition if they have probable cause to believe those firearms were used to commit or threaten domestic violence.

STATE AND LOCAL LAW ENFORCEMENT STEP 2 – ADOPT STATUTES, POLICIES OR PROTOCOLS TO AUTHORIZE LAW ENFORCEMENT TO REMOVE FIREARMS AND AMMUNITION AT THE SCENE OF A DOMESTIC VIOLENCE INCIDENT

- ✓ Adopt a statute that authorizes state courts to order law enforcement to search for and seize firearms and ammunition when a protection order is issued or at any point in a criminal proceeding relating to domestic violence.
- ✓ Adopt statutory provisions that authorize and guide search and seizure of firearms and ammunition by law enforcement in domestic violence cases.³²
- ✓ Adopt a protocol that authorizes local law enforcement officers, when responding to a domestic violence incident, to ask the victim (preferably out of sight and hearing of each of the offender) if there are any firearms or ammunition on the premises.

NOTE: Local law enforcement should always check NCIC when responding to a domestic violence incident to see if there is an existing protection order that includes a provision prohibiting the respondent from possessing firearms and ammunition or if the offender has been convicted of a misdemeanor crime of domestic violence. These records form the basis for removal of firearms and ammunition at the scene of the incident.

A best practice and an excellent addition to your state’s domestic violence codes would be a provision authorizing law enforcement to seize and remove firearms or ammunition in the possession of the offender as contraband.

³² For example, see N.J. Stat. Ann. 2C:25-21 and Arizona Rev. Stat. 13-3601.

STATE AND LOCAL LAW ENFORCEMENT STEP 3 – DETERMINE IF THERE IS PROBABLE CAUSE TO BELIEVE THAT THE OFFENDER IS PROHIBITED FROM POSSESSING A FIREARM OR AMMUNITION UNDER FEDERAL LAW (18 U.S.C. 922(g))

Any firearms possessed by the offender in violation of federal or state firearms prohibitions are contraband. The following may indicate that the offender is in possession of a firearm or ammunition under federal law:

- The offender is subject to a protection order that meets the requirements of the federal protection order prohibition
- The offender has been convicted of a misdemeanor crime of domestic violence that meets the requirements of the Lautenberg Amendment prohibition OR
- The offender is prohibited from possessing firearms or ammunition under any other provision of 922(g)³³

Courts should order law enforcement to search for and remove firearms and ammunition from the offender

Law enforcement may be called upon to serve a protection order upon the offender subject to the order. If the court has prohibited the respondent from possessing firearms and ammunition, the court should also order law enforcement to remove any firearms or ammunition at the offender’s premises. **Service of a protection order on the offender is one of the most dangerous times for a victim; the victim should be connected with a victim service provider at this time.**

³³ Good model language can be found in a document published by the National Center on Full Faith and Credit, M. Seighman and D. Thomas, “Model Law Enforcement Policy: Serving and Enforcing Protection Orders & Seizing Firearms in Domestic Violence Cases,” pages 19-20.
<http://www.fullfaithandcredit.org/files/bwjp/articles/ModelLEPolicyFINAL.pdf>

**STATE AND LOCAL LAW ENFORCEMENT STEP 4 – ADOPT A STATUTE
AUTHORIZING LAW ENFORCEMENT TO REMOVE FIREARMS AND AMMUNITION
FOLLOWING THE ISSUANCE OF A PROTECTION ORDER AND DEVELOP RELATED
IMPLEMENTATION PROTOCOLS**

Service of a protection order or any other court documents relating to domestic violence creates an additional opportunity for local law enforcement to remove illegal firearms and ammunition.

- ✓ Adopt a law authorizing law enforcement to remove firearms and ammunition prohibited as a term of a court order.
- ✓ Develop training for law enforcement officers to ensure they remove firearms and ammunition safely.
- ✓ Develop protocols for handling seized firearms and ammunition to preserve them as evidence and to protect victim safety.
 - Provide guidance to law enforcement officers as to how to request that the offender relinquish all firearms and ammunition immediately.
 - Require the responding office to have the offender sign a receipt listing the surrendered firearms and ammunition; the officer should also sign the receipt and provide the date and time of removal.
 - Law enforcement should submit the signed and dated receipt to the court handling the resulting case.
 - The law enforcement agency's victim assistant should be in simultaneous contact with the protected party in the protection order, to alert her that the police will be retrieving firearms or ammunition from the offender.

What law enforcement can do if the offender refuses to relinquish prohibited firearms and ammunition

STATE AND LOCAL LAW ENFORCEMENT STEP 5 – IF THE OFFENDER HAS REFUSED TO SURRENDER FIREARMS OR AMMUNITION, NOTIFY THE OFFENDER THAT HE OR SHE MAY BE IN VIOLATION OF FEDERAL OR STATE LAW

If the offender subject to the protection order refuses to surrender any firearms or ammunition, the officer should read the judicial notification warning to the offender:

“As a result of this order, it may be unlawful for you to possess or purchase a firearm, including a rifle, pistol, or revolver, or ammunition pursuant to federal law under 18 U.S.C. 922(g)(8) [and/or state law]. If you have any questions whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney.”

STATE AND LOCAL LAW ENFORCEMENT STEP 6 – LAW ENFORCEMENT SHOULD LET THE COURT ORDERING THE REMOVAL OF FIREARMS AND AMMUNITION KNOW OF THE OFFENDER’S REFUSAL TO RELINQUISH THEM

- ✓ Law enforcement should notify the court that issued the protection order of the offender’s refusal to surrender any firearms or ammunition.
- ✓ Law enforcement should also notify the ATF of the offender’s refusal, providing a copy of the protection order to the ATF.
- ✓ Law enforcement should expedite the entry of the protection order in the state protection order registry, as well as NCIC.
- ✓ **The offender’s refusal to surrender firearms or ammunition at this juncture may create truly serious safety issues for the victim, so law enforcement should connect the victim immediately with an agency victim assistant or a local domestic violence victim service provider.**

Storage of seized weapons within a law enforcement agency

Local law enforcement may seize firearms or ammunition from an abuser either because:

- the weapons are illegally possessed,
- the officer has probable cause to believe the firearms were used in the commission of domestic violence, or
- court has ordered law enforcement to seize the weapons.

In the case of illegally possessed weapons or firearms or ammunition that the offender used to commit or threaten domestic violence, law enforcement should handle the seized firearms and ammunition in the same way the agency handles any other contraband or evidence. Experts recommend giving law enforcement statutory authority to pass any costs associated with storing the offender's firearms and ammunition to the offender.³⁴

When a court orders a domestic violence offender to surrender firearms and ammunition, the surrender is generally done to local law enforcement.

STATE AND LOCAL LAW ENFORCEMENT STEP 7 – ADOPT PROCEDURES FOR LAW ENFORCEMENT STORAGE OF SEIZED FIREARMS AND AMMUNITION

- ✓ Where appropriate, law enforcement should store seized firearms and ammunition as they would any other evidence.
- ✓ If law enforcement has probable cause to believe that the seized firearms and ammunition are illegally possessed, law enforcement should handle them as they would any other contraband.
- ✓ Adopt a statute establishing law enforcement storage of firearms and ammunition seized in domestic violence cases, providing for:
 - Storage of seized firearms and ammunition for the duration of a protection order
 - Disposal of firearms in cases where the court determines that the offender possessed the firearms and ammunition illegally
 - Charging the costs of storage to the offender
 - Providing law enforcement with immunity for any damage or loss resulting to offender's firearms and ammunition while they were in storage according to the law.

³⁴ Id. at 20.

Procedures law enforcement should follow before returning of seized firearms and ammunition

STATE AND LOCAL LAW ENFORCEMENT STEP 8 – PROTECT THE SAFETY OF THE VICTIM BY TAKING STEPS TO ENSURE THE ABUSER NO LONGER POSES A SAFETY RISK TO THE VICTIM

If firearms and ammunition are returned to the offender, either at the order of the court or because charges are dropped, law enforcement should follow these protocols:

- Run a check on the offender through your state’s protection order database, the Interstate Identification Index (Triple I), and the protection order files of NCIC to see if new information about the offender has been entered since the firearms and ammunition were taken.
- Assess whether the new information shows it is unsafe or illegal to return the firearms and ammunition.
- If new information suggests it might be illegal or unsafe to return the firearms and ammunition to the abuser, notify the prosecutor’s office or the court that ordered the return of the firearms.
- **Notify the victim that the firearms and ammunition are being returned and help the victim connect with a local victim advocate to do safety planning and obtain legal assistance, if necessary.**

The Role of the Prosecutor

Prosecutions for violations of firearms laws can occur on the state and federal levels. Even where states have firearms prohibitions as strong or stronger than the federal laws, state prosecutors should consider whether there is any advantage to prosecuting firearms violations in federal court.

State prosecutors have greater knowledge of and access to information and evidence that originates locally. However, even in states that have good laws addressing firearms violence in domestic violence cases, prosecuting illegal firearms possession cases may not take priority. Sometimes, federal prosecution is preferable where federal sentences are tougher and federal actors have greater capacity to seize weapons in particularly dangerous situations. It is important that state prosecutors have strong communications links with the nearest U.S. Attorney's office, so that decisions as to where prosecution should take place can be made in a coordinated manner.

The state prosecutor should ensure victim safety throughout the proceedings, because the investigation and gathering of evidence can put a victim at extreme risk

STATE PROSECUTORS STEP 1 – BEFORE ATTEMPTING TO OBTAIN EVIDENCE OR TESTIMONY FROM THE VICTIM, TAKE STEPS TO ENSURE THE VICTIM'S SAFETY

- ✓ Establish the position of a victim assistant within the prosecutor's office to work with victims to determine whether any part of the investigation or proceedings may provoke safety issues.
- ✓ The victim assistant should also connect the victim with a local victim service provider to make safety planning arrangements for the victim.
- ✓ Review the victim's safety plan regularly and make adjustments, depending on the progress of the proceedings—particularly where the victim will have to provide testimony against the offender.

Evidence of firearms violence in domestic violence cases

Evidence of actual or threatened firearms violence may be the core of the crime being prosecuted, or such evidence may be ancillary to a non-firearms-related charge.

STATE PROSECUTORS STEP 2 – BE SURE TO INVESTIGATE FIREARMS VIOLENCE IN DOMESTIC VIOLENCE CASES AND DEVELOP PROTOCOLS FOR INTRODUCING APPROPRIATE EVIDENCE IN COURT

- ✓ Review the results of a lethality assessment conducted by law enforcement, or if law enforcement has not done a lethality assessment, have a victim assistant in the prosecutor’s office conduct one as soon as possible in order to identify gun safety and other high risk problems. **If high lethality is indicated, always connect the victim to a local victim service provider to ensure that the victim has access to services helpful to their safety.**
- ✓ Develop protocols for admitting the results of a lethality assessment done by law enforcement into evidence, including making the lethality assessment tool a self-authenticating form.
- ✓ Where firearms violence is a threat to a victim, ask the court at the earliest opportunity to issue a restraining order prohibiting the defendant from possessing or purchasing firearms or ammunition. At the same time, ask the court to order local law enforcement to remove weapons in the household of the defendant. Such an order can be issued even at the earliest stages of the proceedings, and should be reviewed for compliance throughout the proceedings.³⁵
- ✓ Be sure to enter descriptions and/or photos of any firearms or ammunition seized as evidence, along with testimony from the victim or others as to the use of such weapons in the commission of or threat to commit domestic violence.

Protocols needed to ensure that data is available for a federal background check

Although courts generally are responsible for generating the information to be entered into NCIC, court records are often incomplete, making it difficult to conduct a NICS background check. Prosecutors can help to guard against these gaps in information by making sure that certain types of information are provided clearly in the charging documents, the court record, or in plea agreements.

³⁵ See the safe firearms removal protocols described on page 32. The same protocols should be used in criminal cases.

STATE PROSECUTORS STEP 3 – PROSECUTORS SHOULD ADOPT PROTOCOLS FOR ENSURING THAT INFORMATION REQUIRED TO CONDUCT A FEDERAL FIREARMS BACKGROUND CHECK IS IN THE COURT RECORD OR PLEA AGREEMENT

- ☑ Relationship between the parties:
 - ✓ Current or former spouse,
 - ✓ Parent or guardian of the victim
 - ✓ Misdemeanant has a child in common with victim
 - ✓ Cohabitant or ex-cohabitant
 - ✓ Person similarly situated to a spouse, parent, or guardian of the victim.

- ☑ The defendant has been convicted of or pleaded guilty to a misdemeanor crime of domestic violence, which consists of the following:
 - ✓ *It must be a misdemeanor under federal, state, tribal or local law.*
 - ✓ *The defendant was convicted of or pleaded guilty to a specific crime involving the use or attempted use of physical force (can include offensive touching) or threatened use of a deadly weapon.*

- ☑ If the defendant had a right to a jury trial for the crime charged he offender must have had such a jury trial or waived the right to a jury trial.

- ☑ The offender must have been represented by counsel or waived that right.

- ☑ *The defendant received that the issuance of the misdemeanor conviction for a crime of domestic violence may adversely impact the respondent's ability to possess or purchase a firearm.*

- ☑ *The record contains one or more unique numeric identifiers for the misdemeanant:*
 - *Social Security number*
 - *Date of birth*
 - *Address*
 - *Driver's license number*

- ☑ The name and contact information of court personnel able to respond to questions about the information is in the court record.

Getting information into federal databases

Local prosecution agencies can develop standard forms that contain the information outlined above to be included with charging documents or plea agreements. This will ensure that basic information needed to conduct a federal background check will be available when needed.

STATE PROSECUTORS STEP 4 – WORK WITH LAW ENFORCEMENT TO ENSURE THE RAPID ENTRY OF COURT DATA RELATING TO MISDEMEANOR CRIMES OF DOMESTIC VIOLENCE

If the defendant is convicted of or pleads guilty to a misdemeanor crime of domestic violence, ensure that the information outlined in Step 3 is entered into the state criminal records database and the appropriate NCIC files. **It is critical that this information is uploaded to the federal databases quickly, as victims' protections under federal firearms laws depend on that data being available.**

Prosecutors should take immediate steps to secure the safety of victims³⁶

STATE PROSECUTORS STEP 5 – USE THE POWER OF THE COURT TO ESTABLISH SAFETY FOR THE VICTIM DURING THE COURSE OF CRIMINAL PROCEEDINGS RELATING TO FIREARMS AND DOMESTIC VIOLENCE

- ✓ Prosecutors or victim assistants in the prosecutors' offices should advise victims to obtain protection orders in the family or domestic violence court.
- ✓ The prosecutor should ask the court, immediately after arrest, to order criminal restraining orders against the defendant,³⁷ including the following provisions:
 - ☑ Respondent is prohibited from possessing or purchasing firearms or ammunition for the duration of this order.
 - ☑ Respondent is ordered to surrender all firearms and ammunition to _____ within 24 hours.
- ✓ Prosecutors should collaborate with the U.S. Attorney to refer cases where federal prosecution is more appropriate or where the stronger federal penalties are warranted.

³⁶ <http://www.nij.gov/topics/crime/intimate-partner-violence/practical-implications-research/ch3/Pages/firearms.aspx>

³⁷ If the criminal restraining order contains the provisions outlined in State Prosecutors Step 3, it is likely to trigger federal firearms protection order prohibition.

Prosecutors should have a clear idea of the number and types of firearms in the possession of the defendant

A victim assistant in the prosecutor's office or a victim advocate from a local domestic violence services program can work with the victim to develop a list of firearms and ammunitions in the possession of the defendant. This list can be incorporated into the restraining order issued by the criminal court, to ensure law enforcement removes all of the firearms and ammunition that pose a risk to the victim's safety.

Prosecutors can ensure that the court notifies the defendant that federal law prohibits domestic violence misdemeanants from possessing firearms and ammunition

We explained in the court section that federal law requires courts to notify misdemeanants that federal law may prohibit them from possessing or purchasing a firearm or ammunition for the rest of their life (unless the conviction is expunged, pardoned or all civil rights are restored). Prosecutors are uniquely situated to ensure that courts provide that notification, by asking the court to provide oral or written notification, at any time during the criminal proceeding.

STATE PROSECUTORS STEP 6 – PROSECUTORS SHOULD ENSURE THAT COURTS PROVIDE THE FOLLOWING NOTIFICATION TO DEFENDANTS IN CASES INVOLVING MISDEMEANOR CRIMES OF DOMESTIC VIOLENCE:

“If you are convicted of a misdemeanor crime involving violence where you are or were a spouse, intimate partner, parent, or guardian of the victim or are or were involved in another, similar relationship with the victim, it may be unlawful for you to possess or purchase a firearm, including a handgun or long gun, or ammunition, pursuant to federal law under 18 U.S.C. 922(g)(9) [and/or state law].

“If you have any questions whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney.”

Saving Women's Lives

Part 5 Summary of Recommended State Laws

Part 5 – Summary of Recommended State Laws

Most states mirror the federal firearms protection order prohibitor. Some states exceed federal law by including ex parte or temporary protection orders in their protection order prohibition. States can either mirror the federal firearms prohibitions or they can adopt broader prohibitions. The following are elements that should be included in any state legislation meant to address firearms violence:

Establishing a state background check system

- ✓ Establish a state background check system
- ✓ Adopt domestic violence firearms prohibitions that at least mirror the federal domestic violence prohibitions:
 - Prohibit persons subject to a protection order from possessing or purchasing firearms or ammunition for the duration of the order
 - Prohibit persons convicted of or who have pleaded guilty to a misdemeanor crime of domestic violence from possessing or purchasing firearms or ammunition, unless the conviction is expunged
- ✓ Add protections for victims of dating violence and stalking, too
- ✓ Authorize state courts or law enforcement to enter information about protection orders or misdemeanor crimes of domestic violence into the newly established background check system
- ✓ Fund the development of an automatic information upload system, so that court orders are entered automatically into the state and federal background check databases

Establishing court authority

- ✓ *Protection order prohibition:* Persons subject to temporary or final protection or restraining orders issued for the purpose of protecting victims of domestic violence, dating violence, or stalking are prohibited from possessing or purchasing firearms or ammunition.
- ✓ *Prohibition based on misdemeanor crimes:* Persons convicted of misdemeanor crimes of domestic violence, dating violence, or stalking are prohibited from possessing or purchasing firearms or ammunition.
- ✓ *Third party transfers:* Persons who intentionally transfer firearms or ammunition to a person they know to be prohibited under state law from possessing or purchasing firearms or ammunition face fines and/or criminal liability.

- ✓ *Court authority:* Courts have the authority, in cases involving domestic violence, dating violence, or stalking, to order (within the limits of due process) that the adjudicated abuser:
 - Surrender firearms and ammunition to law enforcement or to transfer firearms or ammunition to a third party approved by the court within 24 hours
 - Participate in compliance reviews and hold a non-compliant offender in contempt or find that the non-compliant offender is guilty of a misdemeanor crime
- ✓ *Remedies and relief:* Courts have the statutory authority to order any remedy or relief relating to firearms and ammunition removal necessary to protect the safety of the victim or children.

Establishing law enforcement authority

- ✓ *Law enforcement authority:* Law enforcement has the statutory authority to:
 - Seize any firearms or ammunition where there is probable cause to believe that these items are contraband
 - Ask the persons present on the scene if there are any firearms or ammunition on the premises (ask the victim out of sight or sound of the abuser); if there are, law enforcement shall seize any firearm or ammunition, as well as any firearms permit belonging to the offender. Law enforcement will take these weapons as potential evidence, pending a full hearing on the incident. Law enforcement should have statutory immunity for carrying out any of these acts in good faith.