

## Appendix 1G

### Enhancing a Coordinated Response to the Intersection of Domestic Violence Crimes and Access to Firearms

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#### **Introduction**

Access to firearms has long been identified as one of the most crucial lethality indicators for victims of domestic violence. The presence of firearms in a domestic violence situation can increase a victim's risk of lethality five times. According to the Violence Policy Center's 2019 report *When Men Murder Women*, 92% of homicides committed against women were perpetrated by men known to them. Of those, 62% were either spouses or intimate partners of the victims. For those cases in which a weapon could be identified, 57% of the homicides were committed with a firearm, two-thirds of which handguns. Black women were murdered at a rate twice that of white women, with 62% of those murders committed with a firearm, and 72% of those firearms being handguns.

It is against this backdrop of the role of firearms in intimate partner violence and homicide cases that communities have proactively addressed abusers' access to firearms. These efforts have been supported by laws prohibiting domestic abusers from possessing firearms on the federal level as well as in many states, territories, and tribal communities.

#### **Coordinating and Collaborating to Improve Enforcement of Firearm Prohibitions**

All levels of local, state, tribal and federal governments should work jointly to make sure that firearm prohibitions are enforced to disarm domestic abusers. This is particularly essential when there are no relevant state or tribal laws in place.

Federal firearm statutes can be potent tools for protecting victims of domestic violence from further harm and holding offenders accountable (see below for a summary of federal law). In addition to providing the basis for convictions, these statutes may also enable federal authorities to order relinquishment and seizure of firearms, even when state law does not authorize such action. In many

instances, convictions under federal statutes can result in penalties far more severe than those available under state law.

The effective enforcement of the federal firearm prohibitions, however, is no simple task. Successful prosecutions and seizure actions often require close collaboration among officials at the local, state, tribal, and federal levels. In many instances, information and evidence indicating a violation of the federal prohibitions may be known only to local or tribal officials, while their federal counterparts, who may have the exclusive authority to take action under the federal law, remain unaware of the federal offense. By establishing a coordinated approach to addressing domestic violence related firearm offenses, including improving communication and information sharing among relevant agencies at all levels of government, communities can take full advantage of the federal firearms prohibitions to protect victims and hold offenders accountable. *The Blueprint for Safety* is one way communities can achieve consistency and coordination of inquiry, communication, and information-sharing among criminal justice agencies related to firearms in domestic violence cases.

### ***Developing and Implementing an Effective Response to Cases Involving Firearms***

Across the nation, more than half of states have laws requiring domestic abusers to relinquish firearms in their possession if they are subject to protection orders or have been convicted of a misdemeanor crime of domestic violence. Unfortunately, very few communities have actually implemented these laws effectively. The reasons for this vary across jurisdictions but generally result from considerable the logistical hurdles that face law enforcement.

The National Resource Center on Domestic Violence and Firearms (NRCDVF), advises communities to consider, at a minimum, the following four steps when developing a domestic violence related firearm surrender protocol. Each of these steps is integrated, in detail, into the Blueprint policies and protocols and described further below:

1. Accurately identify individuals prohibited from possessing firearms;
2. Determine whether the prohibited individuals possess firearms;
3. Issue legal orders that direct prohibited individuals to surrender any firearms; and crucially,

4. Monitor compliance with the orders and ensure that firearms have been surrendered.

### ***Step 1: Accurately Identify Prohibited Individuals***

Law enforcement, advocates, survivors, or other interested parties can identify prohibited individuals. The court, however, is best positioned to make this determination. The disqualification can be part of a court proceeding, e.g. when there is a conviction for misdemeanor crime of domestic violence or imposition of a domestic violence protection order.

### ***Step 2: Determine if Prohibited Person Possesses Guns***

Determining if respondents have access to firearms can be obtained from sources of information that include law enforcement, police reports, and other witness statements. The best sources of information about firearms, however, are the respondents themselves.

Information about possession of firearms may be revealed throughout the court process. Minnesota law, for example, provides immunity to the respondent for statements made in the course of a protection order hearing. This is a unique opportunity for the court to gather relevant information about the respondent's access to firearms. Provided the respondent is granted this immunity, they have no Fifth Amendment right to refuse to answer so the court can compel such statements.

The second best source of information about a respondent's access to guns, as well as their location, can be the domestic violence survivor. Survivors often have personal knowledge about the respondent and his activities. It can be potentially dangerous for the survivor to reveal this information, so great care should be exercised never to place the survivor in a position where they are perceived as the catalyst for firearm surrender. If the law requires surrender, then the legal system should be the entity pursuing surrender. If the survivor wishes to assist law enforcement, after consultation and disclosure of the potential risks, then the survivor should be allowed every opportunity to cooperate with the court and law enforcement regarding the presence of firearms.

### ***Step 3: Ordering the Surrender of Firearms from the Prohibited Person***

Once the court has reliable information about guns under a respondent's control, the court should enter a specific order regarding when and where to surrender those guns.

This requires detailed planning and discussion between the court and law enforcement. Such court orders are the most enforceable when they identify specific information about how, when and where to surrender guns. Once this step has been completed, the court should be in a position to enter a surrender order which leaves no room for ambiguity. This protects the respondent, the court system, law enforcement, and ultimately the survivor.

### ***Step 4: Ensuring Compliance with Court Order***

Compliance with the court order is vital to the surrender process. For reasons already stated, the petitioner/survivor is not the appropriate person to take on this responsibility. In addition to the danger this could place them in, survivors in most cases are in no position to determine if surrender has taken place.

Law enforcement is better situated to make this determination, but this places a burden on officers to review all orders and determine if the respondent has complied. The burden is most appropriately placed on the respondent to comply and ensure that all steps have been taken. The respondent potentially faces criminal prosecution or contempt of court for failing to comply.

The court can facilitate the entire process by scheduling a compliance hearing requiring the respondent to appear or otherwise establish that they are in compliance. In the majority of cases, the court's involvement will be simply to schedule a hearing and notify the parties of the time and date; specifically informing the respondent of their obligations. The burden is on the respondent to comply or show cause for failure to comply.

### ***Conclusion***

With focused attention and careful effort, communities can reduce or eliminate risks posed by abusers' access to firearms, increase the safety of victims and the broader community, and ultimately reduce domestic violence fatalities. This effort involves reviewing and assuring compliance with relevant state, tribal, and

federal laws as well as seeking out key resources--including those listed below--to support protocol development. The coordination and communication among agencies essential to this process can be found throughout the Blueprint.

### **Key Resources**

- [National Resource Center on Domestic Violence and Firearms](#)
  - [The Criminal Process: Opportunities to Prevent Firearms Access by Offenders](#) (much of which is incorporated into *The Blueprint for Safety*)
- [National Center on Protection Orders and Full Faith & Credit](#)
  - Legal resources
    - [18 U.S.C. § 922\(g\)\(8\) Case Law](#)
    - [State Statutes: Misdemeanor Crimes of Domestic Violence](#)
    - [Firearms and Domestic Violence: State and Territorial Statutory Provisions](#)
  - Tools, Guides, Forms
    - [S.A.F.E. Tool: Strategic Assessment of Firearm Enforcement](#)
    - [Firearm Checklist: Judges](#)
    - [Firearm Checklist: Law Enforcement](#)
    - [Firearm Checklist: Prosecutors](#)

## Summary of Federal Law

Federal law prohibits certain individuals from possessing or purchasing firearms, including individuals who have been convicted of a qualifying misdemeanor crime of domestic violence and individuals who are subject to a qualifying domestic violence protection order. Individuals who have been convicted of a misdemeanor crime of domestic violence are prohibited from possessing or purchasing firearms under **18 U.S.C. § 922(g)(9)**, which includes the following requirements:

- The misdemeanor is a crime under state, Tribal or federal law.
- The crime for which the offender was convicted contained one of the following elements: the use or attempted use of physical force or the threatened use of a deadly weapon.
- The defendant was represented by counsel or knowingly and intelligently waived the right to counsel.
- In jurisdictions where the defendant was entitled to a jury trial, the case was tried by a jury or the defendant knowingly and intelligently waived the right to a jury trial by guilty plea or otherwise.
- The misdemeanor must have been committed by a person who, at the time of commission of the crime, was a current or former spouse, parent, or guardian of the victim, or was a parent of a child of the victim, or had cohabited or formerly cohabited with the victim as a spouse, parent or guardian, or was similarly situated to a spouse, parent, or guardian of the victim.
- The prohibition is permanent unless the defendant has had the conviction set aside or expunged, was pardoned, or had civil rights restored (i.e., the right to sit on jury, the right to vote, and the right to hold public office).

Individuals who are subject to a qualifying domestic violence protection order are prohibited from possessing or purchasing firearms under **18 U.S.C. § 922(g)(8)**, which includes the following requirements:

- The person subject to the order must have notice and an opportunity to be heard; and
- The order must restrain the person from harassing, stalking, or threatening an intimate partner of the person or a child of the person or the intimate

partner; or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

- The order must include either a finding that the person subject to the order represents a credible threat to the physical safety of an intimate partner or child or a prohibition against the use, attempted use or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury.
- The term “intimate partner” is defined as “a current or former spouse, a current or former cohabitant with the person subject to the protection order” or an individual who is a parent of a child of the person against whom the order was issued. 18 U.S.C. §921(a)(32)

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