

## The Connection between Domestic Violence and Weak Gun Laws

- ❑ **Bottom Line:** Domestic violence in America is inexorably bound to our weak gun laws. Women in the U.S. are far more likely to be murdered with guns than they are in any other high-income country, and the presence of a gun in domestic violence situations increases the risk of homicide for women by 500 percent. More than half of women murdered with guns in the U.S. are killed by intimate partners, and more than half of high-profile mass shootings are acts of domestic violence.
  - Background checks for gun sales keep guns out of the hands of domestic abusers, but loopholes in the law give dangerous people easy access to guns. In more than 40 states, criminals and other prohibited purchasers can avoid background checks by buying guns from unlicensed “private sellers”—often at gun shows or through anonymous online transactions—who are not required by federal law to conduct them.
  - **Background checks reduce violence against women and save lives:** In states that have closed the private sale loophole by requiring a background check for every handgun sale, 38 percent fewer women are shot to death by intimate partners.<sup>1</sup>
- ❑ **Women in the U.S. are killed at alarming rates by intimate partners, and firearms play a key role in turning domestic abuse into murder.**
  - Women in the United States are eleven times more likely to be murdered with guns than women in other high-income countries.<sup>2</sup>
  - People with a history of committing domestic violence are more likely to subsequently murder an intimate partner. But firearms play a special role in increasing lethality rates in domestic violence incidents.
  - The presence of a gun in domestic violence situations increases the risk of homicide for women by 500 percent.<sup>3</sup>
  - Over the past 25 years, more intimate partner homicides in the U.S. have been committed with guns than with all other weapons combined.<sup>4</sup>
- ❑ **A significant share of gun violence in America—including a majority of mass shootings—is comprised of incidents of domestic violence.**
  - More than half (54%) of women murdered with guns in the U.S. in 2010 were killed by intimate partners or family members.<sup>5</sup> Of the women murdered with guns in 2010 where the relationship to the offender was known, 64% were shot to death by a current or former

<sup>1</sup> U.S. Department of Justice, Federal Bureau of Investigation, Supplementary Homicide Reports, 2011, *available at* <http://bit.ly/V1GvFe> (excludes New York due to incomplete data); Florida Department of Law Enforcement, Supplementary Homicide Report, 2010.

<sup>2</sup> D. Hemenway and E.G. Richardson, “Homicide, Suicide, and Unintentional Firearm Fatality: Comparing the United States with Other High-Income Countries, 2003,” 70 *Journal of Trauma* 238-42 (2011), *available at* doi: 10.1097/TA.0b013e3181dbaddf.

<sup>3</sup> 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).

<sup>4</sup> Professor April M. Zeoli, Letter to the Hon. Patrick J. Leahy & Charles Grassley, January 28, 2013.

<sup>5</sup> Federal Bureau of Investigation, “Supplementary Homicide Report,” 2010.

intimate partner.<sup>6</sup>

- More than half (57%) of mass shootings involved domestic violence.
  - Mayors Against Illegal Guns conducted an analysis of every identifiable mass shooting between January 2009 and January 2013. In at least 32 of those 56 incidents (57%), the shooter killed a current or former intimate partner or other family member.
  - In at least 8 of those shootings, the perpetrator had a prior domestic violence charge.

❑ **Certain existing laws are designed to keep guns out of the hands of domestic violence offenders.**

- Federal law: The Gun Control Act prohibits certain domestic abusers from purchasing or possessing firearms:
  - Any person who has been convicted of a felony or a crime punishable by imprisonment for more than a year,<sup>7</sup>
  - Any person who is subject to a domestic violence restraining order,<sup>8</sup> and
  - Any person who has been convicted of a “misdemeanor crime of domestic violence,”<sup>9</sup> defined as an offense that is a federal, state, or tribal law misdemeanor against an intimate partner and has the use or attempted use of physical force or threatened use of a deadly weapon as an element.<sup>10</sup>
  - Definitions: The restraining order and “misdemeanor crime of domestic violence” prohibitors apply only to certain categories of domestic abusers.
    - To qualify for the federal gun prohibition because of a domestic violence restraining order:
      - ◆ The restraining order must have been issued after the abuser received actual notice and had an opportunity to be heard (e.g. excluding temporary restraining orders issued ex parte),<sup>11</sup> and
      - ◆ The respondent must be a current or former spouse of the victim; have a child with the victim; or be a current or former cohabitant with the victim.<sup>12</sup>
        - This definition is fairly restrictive and excludes, for example, other family members and dating partners who have not lived together—even though more than a third of intimate partner homicides are committed by current dating partners, and the share of intimate partner homicides committed by current dating partners is increasing.<sup>13</sup>
    - To qualify for the federal gun prohibition because of a “misdemeanor crime of domestic violence”:

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<sup>6</sup> Federal Bureau of Investigation, “Supplementary Homicide Report,” 2010.

<sup>7</sup> 18 U.S.C. § 922(g)(1).

<sup>8</sup> 18 U.S.C. § 922(g)(8).

<sup>9</sup> 18 U.S.C. § 922(g)(9).

<sup>10</sup> 18 U.S.C. § 921(a)(33)(A).

<sup>11</sup> 18 U.S.C. § 922(g)(8).

<sup>12</sup> 18 U.S.C. § 921(a)(32).

<sup>13</sup> J.A. Fox & M.W. Zawitz, “Homicide Trends in the United States: Bureau of Justice Statistics,” 2009, *available at* <http://bjs.ojp.usdoj.gov/content/homicide/homtrnd.cfm>.

- ◆ The offender must have been either represented by counsel or knowingly and intelligently waived the right to counsel,<sup>14</sup> and
  - ◆ The offender must be a current or former spouse, parent, or guardian of the victim; have a child with the victim; be a current or former cohabitant with the victim “as a spouse, parent, or guardian,” or be “a person similarly situated to a spouse, parent, or guardian of the victim.”<sup>15</sup> This definition of “intimate partner” is more expansive than the one covered by the gun prohibition for restraining orders.
- **State laws:** Some states have enacted gun purchaser prohibition laws that exceed the federal standard. For example, some states have expanded the definition of ‘domestic violence’ to include offenses by boyfriends and girlfriends who do not live together.
- Some states have also set standards for carrying concealed, loaded guns in public that include criteria beyond a federal background check, thereby screening out a larger number of people with a history of domestic violence:
    - At least 38 states prohibit people convicted of certain violent crimes from obtaining a carry permit.
    - 14 states require applicants to demonstrate good character.
    - About half of the states grant law enforcement discretion to deny a permit based on other criteria, such as a history of domestic abuse, including against dating partners.
- ❑ **The background check system, when it works properly, keeps guns out of the hands of domestic violence offenders.**
- Since its inception, the National Instant Criminal Background Check System (NICS) has blocked more than two million attempted gun sales to prohibited purchasers.
- Domestic violence prohibitions are second only to felonies as a basis for NICS denials of gun sales at licensed dealers.<sup>16</sup>
- Between 1998 and 2012, the FBI denied 143,852 gun sales based on misdemeanor crimes of domestic violence or restraining orders, comprising 15 percent of the total 987,578 federal denials issued to that point. This number does not include the unknown number of attempted purchases by DV offenders denied by state and local agencies in the 21 point-of-contact states.
- ❑ **However, the “private sale loophole” makes it easy for dangerous domestic abusers to avoid background checks and buy guns.**
- Domestic violence offenders who are federally prohibited from purchasing guns can avoid a background check by buying guns from unlicensed “private sellers”—often at gun shows or

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<sup>14</sup> 18 U.S.C. § 921(a)(33)(B). Not all domestic violence misdemeanants are federally prohibited under this definition. There is no constitutional right to counsel in misdemeanor cases, and, according to a 2001 Congressional Research Service report, “it has been surmised that many domestic violence misdemeanants appeared without representation and likely did not make a knowing and intelligent waiver of that right, thereby significantly limit[ing] the universe of individuals against whom the possession ban may be enforced.” CRS, “Firearms Prohibitions and Domestic Violence Convictions: The Lautenberg Amendment,” Report RL31143, Oct. 1, 2001, at 4. See also *United States v. Akins*, 243 F.3d 1199 (9th Cir. 2001) (holding that the evidence was insufficient to establish that the defendant had validly waived his right to counsel prior to pleading guilty to an underlying misdemeanor DV charge).

<sup>15</sup> 18 U.S.C. § 921(a)(33)(A)(ii).

<sup>16</sup> <http://bjs.gov/content/pub/html/bcft/2009/tables/bcft09st04.pdf>. In the same time period, 22-49% of NICS denials were based on felony indictments or convictions.

through anonymous online transaction—who are not required by federal law to conduct background checks on potential buyers.

- In 2012, an estimated 6.6 million guns were exchanged through private transfers without a criminal background check.<sup>17</sup> That is more guns than there are seats in every major league sports stadium in the U.S. combined.
- The internet has created a vast marketplace for guns where prohibited purchasers can easily identify private sellers and buy guns in almost total anonymity.
  - In 2011, the City of New York launched an undercover investigation to determine whether private sellers on the internet were complying with federal law by refusing to sell to people who could not pass a background check. The investigation found just ten websites had more than 25,000 unique gun listings, including 13,660 guns for sale on Armslist.com.
  - The online market is growing – in December 2012, there were more than 25,000 guns for sale on Armslist.com alone, which allows buyers to choose between private and licensed sellers. More than 90 percent of the current listings were placed by private sellers who do not have to conduct a background check under federal law.<sup>18</sup>
  - The New York City investigation found that 62 percent of online private sellers were willing to sell to someone who said he probably couldn't pass a background check – a federal felony.<sup>19</sup>
- Online private gun sales play a role in fueling domestic violence. For example, in October 2012, Zina Haughton got a domestic violence restraining order against her estranged husband, Radcliffe Haughton, in Wisconsin state court, making him federally prohibited from buying a gun. Several days later, Radcliffe purchased a gun from a private seller he contacted on Armslist.com and who was not required to conduct a background check. The next day, Haughton used the gun to murder his wife and two other women and injure four others at the spa where she worked in Brookfield, WI.

**❑ Even when background checks are performed, prohibited purchasers are not always denied because NICS is missing relevant domestic violence records.**

- States appear to have particular difficulty with submitting criminal records of misdemeanor domestic abuse that make a perpetrator federally prohibited from buying a gun.
  - For example, if a domestic abuser is convicted on a general assault charge, the misdemeanor conviction alone might not make clearly prohibit the defendant from buying or possessing a gun. That record would have to be flagged as a record of a qualifying 'misdemeanor crime of domestic violence' that meets the federal prohibition standard. But states might not be consistently doing so, and some records of prohibited domestic abusers may be getting by NICS operators.
- It is difficult to evaluate state reporting of protective orders to the NICS system.

**❑ Background checks save women's lives. In states that require a background check for every handgun sale, fewer women are shot to death by intimate partners.**

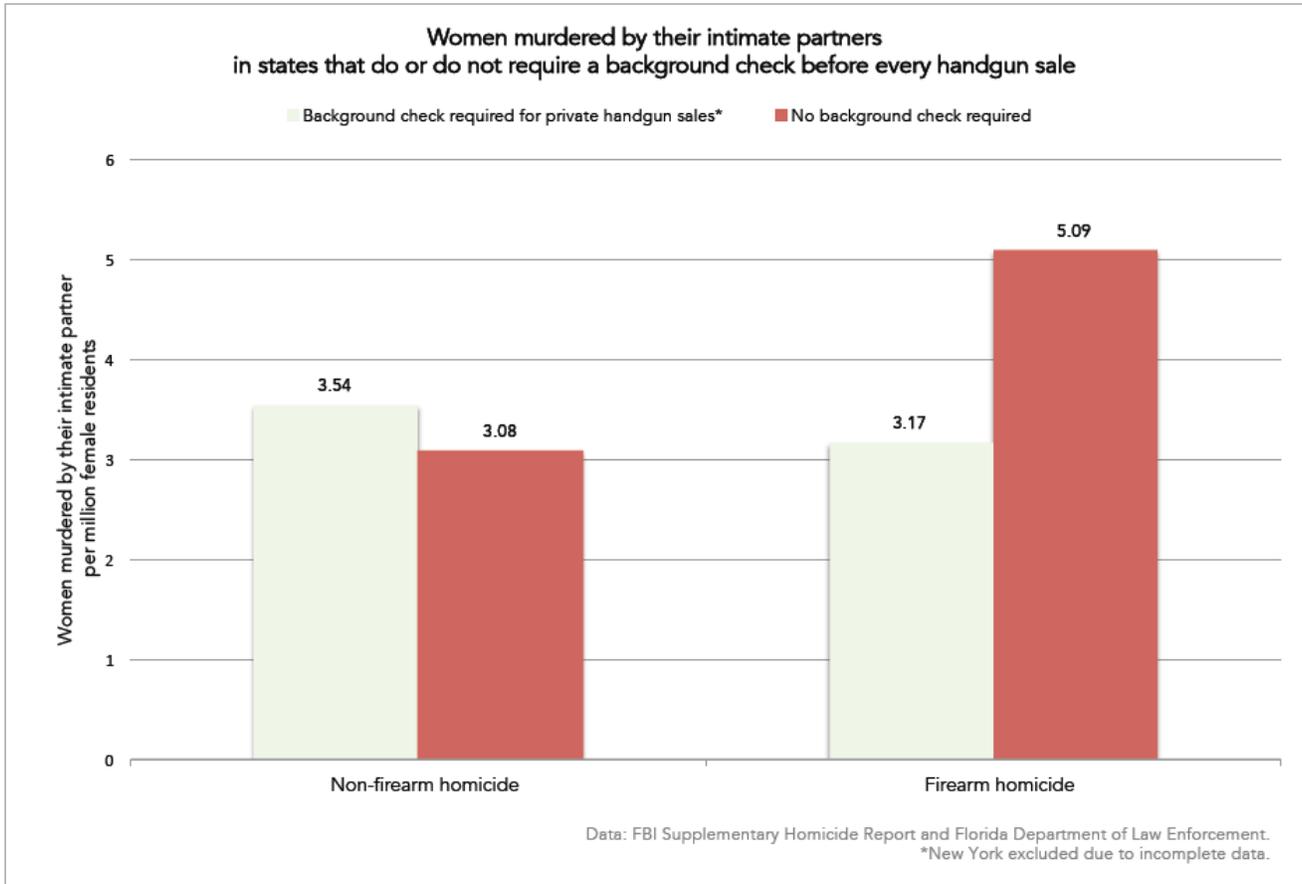
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<sup>17</sup> In the 38 states that have not fully closed the private sale loophole, an estimated 9,856,984 background checks were conducted between November 2011 and November 2012 – 40 percent of which is an estimated 6.6 million gun sales without background checks.

<sup>18</sup> Armslist.com, accessed December 8, 2012.

<sup>19</sup> City of New York, *Point Click Fire*, 2011, available at <http://on.nyc.gov/tYPRrF>.

- According to a Mayors Against Illegal Guns analysis of FBI and Florida Department of Law Enforcement data, the number of women killed with a firearm by an intimate partner is **38 percent lower in states that have closed the private sale loophole for handguns** than in states that do not regulate such sales. In contrast, the number of women killed by intimate partners with other weapons is nearly identical in these groups of states.<sup>20</sup>



□ **Solution:** The Fix Gun Checks Act (H.R. 137) will fix the background check system by requiring a criminal background check for every gun sale and making sure that states and federal agencies are submitting relevant domestic violence records to the NICS databases. Other changes to federal law will strengthen the rules keeping guns out of the hands of domestic violence offenders.

- **Requiring a background check for every gun sale:** The Fix Gun Checks Act would require every gun buyer—with reasonable exceptions—to pass a background check.
  - Private sellers would have a licensed firearms dealer run a background check before the sale is completed. Individuals with certain gun permits would be able to display them in lieu of a background check.
  - Certain gun transfers would be exempt from background checks: temporary loans during hunting and sporting events, gifts to immediate family members, inheritances and temporary transfers for self-defense.

<sup>20</sup> U.S. Department of Justice, Federal Bureau of Investigation, Supplementary Homicide Reports, 2011, *available at* <http://bit.ly/V1GvFe> (excludes New York due to incomplete data); Florida Department of Law Enforcement, Supplementary Homicide Report, 2010.

- Penalties for noncompliance would be the same as those that now apply to licensed dealers who violate the Brady Law – up to one year in prison for knowing violations.
- **Closing the gaps in the NICS databases:** The Fix Gun Checks Act would get all of the names of domestic abusers, as well as other dangerous people, into the background check system by enforcing the law on federal agency reporting and increasing incentives and penalties related to state record-sharing.
- **Americans—including law enforcement officials, mayors, gun owners, and NRA members—strongly support requiring background checks for all gun sales.**
  - A January 17, 2013 survey by NY Times/CBS News found that 92 percent of Americans support requiring a background check on all gun sales.<sup>21</sup>
  - Ten national police organizations support closing the private sale loophole by requiring background checks for all gun sales.
  - The more than 850 members of Mayors Against Illegal Guns support background checks for all gun sales, with reasonable exceptions.
  - A 2012 survey by Republican pollster Frank Luntz found that 82 percent of U.S. gun owners – including 74 percent of NRA members – support criminal background checks for all gun sales.

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<sup>21</sup> <http://www.nytimes.com/interactive/2013/01/18/us/new-york-times-cbs-poll-on-guns.html>