



**Responses by Roberta Valente to Questions for the Record from Senator Richard J. Durbin
Chair, Senate Judiciary Committee
Hearing on “Stop Gun Violence: The Jackson-Elias Domestic Violence Survivor Protection Act”
May 18, 2022**

1. What impact can additional resources and funding like the grant program proposed in the Jackson-Elias Domestic Violence Survivor Protection Act have on efforts to improve legal responses to domestic violence and increase access to justice for survivors? Throughout your extensive experience as an advocate for domestic violence survivors, what other kinds of federal government support have you found to be the most useful?

What impact can additional resources and funding like the grant program proposed in the Jackson-Elias Domestic Violence Survivor Protection Act have on efforts to improve legal responses to domestic violence and increase access to justice for survivors?

One of the most important ways to prevent domestic violence homicides is to provide comprehensive training in communities across the country for law enforcement, prosecutors, judges, victim advocates, and other community stakeholders who all have roles to play in identifying and disarming adjudicated abusers. This grant program emphasizes the need for all of the professionals in the justice system to work in close coordination with victim services and social services programs. This kind of coordination is necessary for true offender accountability and continuing victim safety.

Many local jurisdictions are starting to build the coordinated effort described above, either on their own initiative or by participating in pilot programs funded through the U.S. Department of Justice. Each stakeholder group has to embrace their appropriate role in the coordinated effort, whether they are law enforcement investigating domestic violence crimes or victim services finding safe housing for victims and their children. On the local level, all of these critical programs are often siloed from each other, and the burden of keeping law enforcement and courts informed about offenders’ actions falls on the victims of these crimes, just as the victims are all too often left on their own to find a safe place to live, as well as work to support their children (and to find affordable childcare).

This grant program would give local courts, law enforcement, prosecutors, victim services, social services, and housing services the funding they need to ensure that they are engaged in cross-training and cross-communication to ensure that they develop policies and protocols to implement appropriate and comprehensive support to domestic violence survivors of firearms violence. Good policy, at a minimum, would require the creation of specialized domestic violence teams to help survivors navigate the justice system. Additionally, if funding is robust enough to support victim services and social services needs, domestic violence gun violence survivors will have critically needed housing and legal assistance.

In jurisdictions where state and local justice systems must work together with tribal governments



and/or the federal government, implementation of coordinated responses will leverage the strengths of each of the partnering systems to provide enhanced safety for victims and the community.

Doing this collaborative work will enable the local justice, social services and victim services systems to identify gaps in the law or in the implementation thereof that, if fixed, can save lives. For example, states that have recognized the need for adopting laws laying out the process by which respondents to restraining orders must relinquish their firearms report a 12% reduction in IPV homicide.

Throughout your extensive experience as an advocate for domestic violence survivors, what other kinds of federal government support have you found to be the most useful?

Without question, the Violence Against Women Act (starting in 1994 and with its subsequent reauthorizations) has had the most dramatic impact on the safety of domestic violence victims experiencing firearms violence.

In the first place, the Violence Against Women Act (VAWA) has, since 1994, promoted and supported cross-disciplinary coordination in response to domestic violence, dating violence, sexual assault and stalking cases, encouraging state, Tribal and local jurisdictions to implement comprehensive responses by the courts, law enforcement, prosecution and victim services.

Secondly, from the beginning, VAWA has addressed the significant impact of firearms violence in domestic violence and dating violence cases. In 1994, VAWA created the protection order prohibitor (which was supplemented in 1996 by the misdemeanor domestic violence prohibitor). VAWA has supported training for courts, law enforcement and prosecution to improve the entry of court records into NCIC in order to implement these prohibitors. In the past decade, the Grants to Improve the Criminal Justice Response program has funded pilot projects and grants to local, state and Tribal jurisdictions in order to improve the removal of firearms from adjudicated domestic violence perpetrators.

VAWA has paved the way for reducing domestic and dating violence homicides by abusers using firearms, but it is now time for comprehensive funding targeting this particularly lethal aspect of domestic and dating violence. The Jackson-Elias Domestic Violence Survivor Protection Act would provide much-needed support in this area to jurisdictions struggling with firearms violence in domestic and dating violence cases, and in stalking cases, which are currently not addressed in the current version of VAWA.

2. How have states, including some states that typically have less restrictive gun laws, been successful in eliminating the “boyfriend loophole?” What lessons do these state experiences provide for efforts at the federal level?

The true experts in eliminating the “boyfriend loophole” on the state level have been the state domestic violence coalitions. (Information on the state and territorial coalitions can be found here: <https://nnedv.org/content/state-u-s-territory-coalitions/>.) Thanks to the tireless advocacy of state domestic violence coalitions in state legislatures, 31 states now do a better job of limiting



dating violence offenders' access to firearms than does the federal government. These include states that otherwise tend to have less restrictive gun laws, like Louisiana, Texas, West Virginia, Tennessee, South Dakota and Alabama. Even in these states, legislators understand that limiting dating violence offenders' access to firearms is not a burden on the Constitutional rights of law-abiding gun owners.

Experts in the field of dating violence encourage Congress to follow the example of these states. Prohibiting these offenders from possessing or obtaining firearms after they have been found by a court of law to have committed dating violence is a commonsense way to protect the lives of dating violence survivors. These laws provide full due process protections. As the late Supreme Court Justice Antonin Scalia wrote in the majority opinion in *District of Columbia v. Heller*, the guarantees of the Second Amendment and indeed the full Constitution are not impaired by sensible firearms laws like the domestic violence prohibitors.

3. Why has stalking been perceived differently than other domestic violence offenses when it comes to prohibiting offenders from purchasing or possessing firearms? Is stalking a serious domestic violence concern?

Stalking in a domestic violence situation is a key indicator of potential lethality, according to many research studies over the past two decades. Most domestic abusers who threaten their victims with firearms also stalk them.

Under current federal law, the domestic violence protection order prohibitor (18 U.S.C. (g)(8)) specifically lists "stalking" as one of the behaviors that can trigger the prohibition. Unfortunately, the domestic violence protection order prohibitor only applies to stalkers who are or have been married to the survivor, have a child in common with the survivor or who cohabit with the survivor. The law as it is currently written does not apply to dating violence perpetrators. The Jackson-Elias Survivor Protection Act would remedy this gap.

The misdemeanor crime of domestic violence prohibitor (18 U.S.C. (g)(9)) does not address stalking at all, despite the research that shows the great danger to victims of stalking by an intimate partner.

The failure of Congress to close these gaps in order to protect the lives of dating violence victims and victims of intimate partner stalking is a serious oversight. In 1996, Congress amended VAWA to include the interstate crime of stalking (18 U.S.C. 2261(A)) yet failed to link that criminal act to the federal firearms prohibitors created under VAWA.

Stalking is often minimized because the general public does not understand that stalking is a very strong lethality indicator. Domestic and dating violence stalking is a sign of serious escalation by the perpetrator. In fact, the first anti-stalking legislation to become law in the U.S. followed the shooting death of actress Rebecca Schaeffer in 1989, who was relentlessly stalked by a mentally unstable fan. Prior to the shooting, the stalking behavior was dismissed as unimportant by law enforcement, despite Ms. Schaeffer's increasing fears for her life. Since that time, research has confirmed that stalking is not merely harassment, but rather a dangerous



criminal behavior. Persons who have been found by a court to have committed the crime of stalking should not have access to firearms.

4. What are some of the challenges that states are facing in ensuring that laws that require surrender of firearms in situations involving domestic violence protective orders and convictions are adequately enforced? What are some ways in which states can overcome these challenges?

Thanks to over a decade of work by the U.S. Department of Justice Office on Violence Against Women (OVW), we now have a strong understanding of the policies and procedures necessary to require adjudicated domestic and dating violence abusers to surrender their firearms. OVW has worked closely with approximately a dozen jurisdictions across the country (rural, urban, suburban, Tribal) to develop standard policies and procedures for firearms surrender. States have fallen behind on this work because the implementation of a successful firearms surrender program requires the active engagement of many community entities: judges and clerks in criminal and civil courts; local police; sheriffs' departments; state troopers; Bureau of Indian Affairs law enforcement; the federal Bureau of Alcohol, Tobacco and Firearms; the Federal Bureau of Investigation; state, local, Tribal and federal prosecutors; state, Tribal and local victim advocacy organizations; as well as the broad range of professionals implementing state, county, Tribal and federal database management systems.

Funding for OVW's important (and successful) work developing standards for firearms removal programs should be increased so more jurisdictions can benefit from the work done by OVW over the past decade.

5. How important is it for state and federal law enforcement agencies to coordinate to improve enforcement of domestic violence-related firearms surrender laws?

State, Tribal, federal and local law enforcement all need to coordinate in order to improve enforcement of domestic violence-related firearms surrender laws. Each entity has strength to lend to the others' efforts. Tribal and local law enforcement agencies have the most knowledge on the ground: how dangerous is the armed offender? Where can law enforcement support the victim of the crimes (work, home, children at school)? Which victim advocacy agency can the victim be referred to make a safety plan? State law enforcement has access to the state and federal databases in order to run checks on the offender and work with the FBI on background checks. The ATF has the capacity to deal with very dangerous offenders who are involved in other criminal activity, like drug or gun trafficking, as well as offenders who have an arsenal of firearms to be removed. When all of these law enforcement agencies work together to remove firearms from dangerous domestic and dating violence offenders, not only is the victim safer, but the whole community benefits from their combined strengths.