



**Statement on Behalf of the National Coalition Against Domestic Violence  
Submitted for the hearing on**

**Constitutional and Common Sense Steps to Reduce Gun Violence**

**Senate Committee on the Judiciary**

**March 23, 2021**

The National Coalition Against Domestic Violence (NCADV) applauds the Senate Judiciary Committee for holding a hearing on an issue critical to the safety of survivors of domestic violence (used interchangeably with ‘intimate partner violence’) – Constitutional and Common Sense Steps to Reduce Gun Violence. Domestic abusers with firearms pose a unique threat to their victims, their victims’ family and friends, their communities, and themselves. Abusers regularly use firearms as a tool by which to exert power and coercive control; approximately 4.5 million American women alive today have been threatened with a firearm, and one million of those have either been shot or shot at.<sup>1</sup> The COVID-19 pandemic is exacerbating the threat posed by abusers with firearms. In recently published study, 50% of domestic violence programs surveyed reported firearm-involved domestic violence had increased in their communities during the pandemic, and one-third reported that intimate partner homicides in their communities had increased.<sup>2</sup>

In addition to being used as a tool of power and coercive control, firearms are the method of choice for intimate partners intent on committing murder. Approximately half of all homicides of women are committed by intimate partners,<sup>3</sup> and most of those are committed using firearms.<sup>4</sup> A male abuser’s access to a firearm increase the risk of intimate partner femicide at least five-fold.<sup>5</sup> Moreover, while intimate partner homicides using means other than firearms are decreasing, the overall rate of intimate partner homicides is increasing after years of decline, driven solely by an increase in firearm intimate partner homicides.<sup>6</sup>

Recognizing the danger that armed abusers pose, Congress took an important step in 1994 to keep guns out of the hands of adjudicated abusers by including a provision in the first Violence Against Women Act that restricts firearm access by respondents to final protective orders if the parties have a certain relationship and if the order includes certain findings and certain relief (‘DVPO prohibitor’).<sup>7</sup> Two years later, recognizing both the unique danger armed abusers pose and the fact that, simply due to the relationship between the parties, felony-level violence is often pled down to a misdemeanor crime, Congress also restricted domestic violence misdemeanants from possessing firearms if the offender and the victim have a certain relationship and if the misdemeanor crime

involves physical force or the use of a deadly weapon ('MCDV prohibitor').<sup>8</sup> Both prohibitors apply only to adjudicated abusers.

Neither the DVPO nor the MCDV prohibitors are permanent. The DVPO prohibitor lasts only for the duration of the protective order. The definition of a MCDV explicitly lays out remedies by which domestic violence misdemeanants can have their guns restored.<sup>9</sup> In most jurisdictions, people who do not reoffend are able to access these remedies.

While these prohibitors are vital to saving lives and protecting the safety of survivors and their communities, there are a number of loopholes that leave survivors unprotected. The first, and best known, of these loopholes is what is often referred to as the 'boyfriend loophole.' In 1994, our understanding of domestic violence was in its infancy. Neither lawmakers nor the field recognized at the time that intimate partner violence can be directed against dating partners as well as spouses. Thus, for the purposes of the DVPO and MCDV prohibitors, the definition of intimate partner includes only current or former spouses, current or former cohabitants, and people who share a child in common<sup>10</sup> – it excludes dating partners.

We now know that the patterns of violence and abuse directed toward dating partners is the same as those directed toward spouses. In fact, approximately half of intimate partner homicides are committed against dating partners,<sup>11</sup> and that percentage is expected to rise as relationship patterns change and people marry cohabit at a later age, marry at a later age, and have children at a later age. Recognizing this, Congress incorporated dating partners into the federal crime of interstate domestic violence more than fifteen years ago.<sup>12</sup> It is time and past for Congress to take action to close the loophole that allows adjudicated dating abusers to have firearms by updating the anachronistic definition of 'intimate partner' in federal firearms law to include dating partners as defined for the purposes of the interstate crime of domestic violence.

One common argument that opponents of closing this loophole make is that it is retroactive or a violation of due process. This argument is patently false. Ensuring that the definition of intimate partner includes dating partners does not impose a criminal penalty that did not exist at the time when the crime was committed. The penalty would accrue only to someone who illegally possesses a firearm after the enactment of the legislation to close this loophole. Were it truly retroactive, the penalty would accrue to people who possessed firearms before the updated definition took effect. The Supreme Court has thrice considered the MCDV prohibitor and thrice had no Constitutional concerns.<sup>13</sup> Including dating partners in the definition of intimate partner would in no way impact its constitutionality.

Another common argument in opposition of including dating partners in the existing domestic violence prohibitors is that the definition of 'dating partner' is too vague and will implicate people who go on a single date. This is also false. As previously noted, the interstate crime of domestic violence includes dating partners, and the same definition that applies to the federal felony crime would apply in the case of firearm possession.<sup>14</sup>

The definition provides a number of criteria for prosecutors and judges to consider in determining whether or not a relationship qualifies as a dating relationship. The definition is in no way vague, and it very clearly excludes people who go on a single date. Definitions of dating violence under state law are generally modeled after the federal definition.

In addition to failing to protect victims of dating violence from firearm violence at the hands of their abusive partners, federal law also fails to protect victims of stalking. Stalking is a course of conduct 'with the intent to kill, injure, harass, intimidate, or place under surveillance with intent to kill, injure, harass, or intimidate another person' that places the person in reasonable fear of harm to themselves or their families or causes them substantial emotional distress. Stalking is a serious crime. Stalking is *not* harassment that does not cause a person to fear for their safety, nor is it repeated texts or phone calls that are annoying but not fear-inducing. Isolated incidents that do not constitute a pattern and repeated, unwanted romantic advances that do not cause fear are not stalking.

In the intimate partner context, stalking is a key indicator of lethality. One study found that 76% of women murdered by intimate partners and 85% of women who survived murder attempts were stalked in the preceding year.<sup>15</sup> Moreover, a study of contacts to the National Domestic Violence Hotline found that 76% of women who were threatened with a firearm were stalked, and one out of three women who were stalked but not threatened with a firearm worried that their abusers would obtain a firearm and harm them.<sup>16</sup> 30% of stalking is directed at current or former spouses or dating partners.<sup>17</sup>

Outside of the intimate partner context, Americans who experience stalking are at least 200 times more likely to be murdered than those who do not; due to data limitations, the true magnitude of the increased risk is likely substantially higher.<sup>18</sup> More than 40% of stalkers threaten to physically harm their victims,<sup>19</sup> 10% of stalking victims fear for their lives,<sup>20</sup> and 20% of stalking victims are ultimately physically attacked by the individual stalking them.<sup>21</sup>

Clearly, stalking is a very serious crime that can lead to serious injury or even death. As with the misdemeanor crime of domestic violence, felony-level stalking is often pled down to a misdemeanor, and in some states, a first stalking charge can only result in a misdemeanor conviction (in some states, all stalking cases are felonies). Opponents of creating a stalking prohibitor often minimize stalking, conflating it with harassment that causes irritation but not fear or with a one-time incident, or by claiming that it is a nebulous and poorly defined concept. Neither of these arguments hold water when considering the definition of stalking, and Congress must prohibit stalking misdemeanants from possessing firearms.

Finally, Congress must act to disarm domestic abusers who are subject to *ex parte* protective orders. *Ex parte* protective orders are short-term orders issued when abuse is escalating and when the issuance of such order is appropriate and necessary, because

the threat of violence and death is imminent. An *ex parte* protective order is designed to preserve the safety and the status quo of the parties until a full hearing can be scheduled. Petitioners must provide evidence of abuse in order for a judge to issue an *ex parte* protective order, which typically last from three to twelve days.

Survivors are at the greatest danger for severe injury or death when they first leave an abusive situation, which often coincides with the survivor petitioning for an *ex parte* protective order. Abusers frequently escalate when they no longer have full control over the victim, which escalation is too often fatal. Many states either restrict respondents to *ex parte* protective orders from possessing firearms or authorize judges to do so when issuing orders.<sup>22</sup> Due process is protected in these cases by: (a) ensuring that a full hearing at which the respondent has the opportunity to appear is scheduled within a reasonable time sufficient to protect the due process rights of the respondent, and (b) ensuring the respondent receives notice of the hearing. Arguments that an *ex parte* prohibitor is a violation of due process is an argument that *ex parte* protective orders in and of themselves are a violation of due process. It is settled law that such is not the case.

In 1994 and 1996, Congress took important steps to protect survivors from gun-enabled abuse and homicide. NCADV urges Congress to join us in continuing the lives of survivors of adjudicated abusers' and stalkers' access to firearms. By updating the definition of 'intimate partner' to include dating partners, by restricting stalking misdemeanants from possessing firearms, and by prohibiting respondents to *ex parte* protective orders from possessing firearms, Congress can save lives without violating the 2<sup>nd</sup> Amendment rights of law-abiding citizens.

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<sup>1</sup> Sorenson, S. B., & Schut, R. A. (2016). Nonfatal gun use in intimate partner violence: A systematic review of the literature. *Trauma, Violence, & Abuse*.

<sup>2</sup> Lynch, K., & Logan, T. (2021). *Assessing challenges, needs, and innovations of gender-based violence services during the COVID-19 pandemic: Results summary report*. Retrieved from [https://assets.speakcdn.com/assets/2497/covid\\_gender\\_based\\_violence\\_final\\_report.pdf](https://assets.speakcdn.com/assets/2497/covid_gender_based_violence_final_report.pdf).

<sup>3</sup> Petroksy, E., Blair, J. M., Betz, C. J., Fowler, K. A., Jack, S. P. D., & Lyons, B. H. (2017). Racial and ethnic differences in homicides of adult women and the role of intimate partner violence – United States, 2003-2014. *Morbidity and Mortality Weekly Report*, 66(28), 741- 746. DOI: <http://dx.doi.org/10.15585/mmwr.mm6628a1>

<sup>4</sup> Violence Policy Center (2020). *When men murder women: An analysis of 2018 homicide data*. Retrieved from <http://www.vpc.org/studies/wmmw2020.pdf>.

<sup>5</sup> Campbell, J.C., Webster, D., Koziol-McLain, J., Block, C., Campbell, D., Curry, M. A., Gary, F., Glass, N., McFarlane, J., Sachs, C., Sharps, P., Ulrich, Y., Wilt, S., Manganello, J., Xu, X., Schollenberger, J., Frye, V., & Lauphon, K. (2003). Risk factors for femicide in abusive relationships: Results from a multisite case control study. *American Journal of Public Health*, 93(7), 1089-1097.

<sup>6</sup> Fridel, E. E. & Fox, J. A. (2019). Gender differences in patterns and trends in U.S. homicide, 1976-2017. *Violence and Gender*, 6(1), 27-36. doi: 10.1089/vio.2019.0005

<sup>7</sup> 18 U.S.C. § 922(g)(8).

<sup>8</sup> 18 U.S.C. § 922(g)(9).

<sup>9</sup> 18 U.S.C. § 921(a)(33)(B).

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<sup>10</sup> 18 U.S.C. § 921(a)(32).

<sup>11</sup> Cooper, A. & Smith, E. L. (2011). *Homicide trends in the United States, 1980-2008*. Retrieved from <http://www.bjs.gov/content/pub/pdf/htus8008.pdf>.

<sup>12</sup> 18 U.S.C. § 2261.

<sup>13</sup> *United States v. Hayes*, 555 U.S. 415, (2009); *United States v. Castleman*, 134 S. Ct. 1405 (2014); *Voisine v. United States*, 136 S. Ct. 2272 (2016).

<sup>14</sup> 18 U.S.C. § 2266(10).

<sup>15</sup> McFarlane, J. M., Campbell, J. C., Wilt, S., Sachs, C. J., Ulrich, Y. & Xu, X. (1999). Stalking and intimate partner femicide. *Homicide Studies*, 3(4), 300-316.

<sup>16</sup> Logan, T. & Lynch, K. R. (2018). Dangerous liaisons: Examining the connection of stalking and gun threats among partner abuse victims. *Violence and Victims*, 33(13), 399-416.

<http://dx.doi.org/10.1891/0886-6708.VV-D-17-00134>

<sup>17</sup> Baum, K., Catalon, S., Rand, S., & Rose, K. (2009). Stalking victimization in the United States. *Bureau of Justice Statistics Special Report*. Retrieved from <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=365>.

<sup>18</sup> Meloy, J. R. (1999). Stalking: An old behavior, a new crime. *Forensic Psychiatry*, 22(1), 85-99.

<sup>19</sup> Baum, K., Catalon, S., Rand, S., & Rose, K. (2009). Stalking victimization in the United States. *Bureau of Justice Statistics Special Report*. Retrieved from <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=365>.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

<sup>22</sup> Information about individual state laws can be found at <https://www.disarmdv.org>.