

Dear Senator:

We, the undersigned organizations, write to applaud the bipartisan Senate negotiators for including a provision in the gun violence package framework to **address firearm access by adjudicated dating abusers who are not covered under current law**. We recognize that the framework is only the first step, and text development is currently underway.

**Armed abusers pose a danger to their victims, their families, and their communities.**

13.6% of women and 5.9% of men in the United States experience nonfatal intimate partner firearms abuse in their lifetimes, with 43% of the women experiencing nonfatal firearm abuse being injured with a firearm (shot, pistol whipped, sexually assaulted with the firearm, etc.).<sup>1</sup> A survey of callers to the National Domestic Violence Hotline found that 67% of respondents whose abusers owned firearms believed their abusive partners were capable of killing them.<sup>2</sup>

Far too often, abusers follow through on these threats. Most femicides in the United States are committed by intimate partners,<sup>3</sup> and 60% of intimate partner femicides are committed using firearms.<sup>4</sup> A male abuser's access to a firearm increases the risk of intimate partner femicide by 1,000%,<sup>5</sup> and murderous assaults are twelve times more likely to be successful when committed with a firearm compared to other weapons or bodily force.<sup>6</sup>

Domestic abusers often target not only their intimate partners but also others around them. Almost 60% of mass shootings between 2014 and 2019 were related to domestic violence, and in 68% of mass shootings, the shooter either had a history of domestic violence or killed an intimate partner or family member in the shooting.<sup>7</sup> Twenty percent of intimate partner homicide victims are someone other than the intimate partner, including children, other family members, friends, neighbors, law enforcement responders, other parties who intervened, or bystanders.<sup>8</sup>

**No package, with the intent to respond to mass shootings, can overlook the role of armed abusers in such shootings.**

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<sup>1</sup> Adhia, A., Lyons, V. H., Moe, C. A., Rowhani-Rahbar, A., & Rivara, F. P. (2021). Nonfatal use of firearms in intimate partner violence: Result of a national survey. *Preventive Medicine*. <https://doi.org/10.1016/j.ypmed.2021.106500>

<sup>2</sup> National Domestic Violence Hotline (2014). *Firearms and domestic violence*. <http://www.thehotline.org/resources/firearms-dv/#tab-id-2>

<sup>3</sup> Petrosky, 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. <https://doi.org/10.15585/mmwr.mm6628a1>

<sup>4</sup> Kivisto, A.J. & Porter, M. (2020). Firearm use increases risk of multiple victims in domestic homicides. *Journal of the American Academy of Psychiatry and the Law*, 48(1), 26-34. doi: 10.29158/JAAPL.003888-20

<sup>5</sup> Spencer, C. M. & Stith, S. M. (2020). Risk factors for male perpetration and female victimization of intimate partner homicide: A meta-analysis. *Trauma, Violence, & Abuse*, 21(3), 527-540. doi: 10.1177/1524838018781101

<sup>6</sup> Saltzman, L. E., Mercy, J. A., O'Carroll, P. W., Rosenberg, M. L., & Rhodes, P. H. (1992). Weapon involvement and injury outcomes in family and intimate assaults. *JAMA*, 267(22), 3043-3047.

<sup>7</sup> Geller, L. B., Booty, M., & Crifasi, C. K. (2021). The role of domestic violence in fatal mass shootings in the United States, 2014-2019. *Injury Epidemiology*, 8(38). <https://doi.org/10.1186/s40621-021-00330-0>

<sup>8</sup> Smith, S., Fowler, K. & Niolon, P. (2014). Intimate partner homicide and corollary victims in 16 states: National violent death reporting system, 2003-2009. *American Journal of Public Health*, 104(3), 461-466. <https://doi.org/10.2105/AJPH.2013.301582>

As you know, **federal law prohibits respondents in final domestic violence protective orders (DVPO)<sup>9</sup> and individuals convicted of a misdemeanor crime of domestic violence (MCDV)<sup>10</sup> from possessing firearms if certain elements are present and certain due process protections are met.** However, the DVPO and MCDV prohibitors apply only to current/former spouses, current/former cohabitants, and people who share a child in common (and, in the case of the MCDV prohibitor, parents, guardians, and people similarly situated as spouses, parents, or guardians). **They exclude dating partners who have neither cohabited nor share a child in common.**

**Neither the DVPO nor the MCDV prohibitor is permanent.** In the case of a final protective order, the restriction ends when the protective order expires. In the case of a misdemeanor conviction, Federal law stipulates that misdemeanants' gun rights can be restored by having their records expunged or set aside, obtaining a pardon, or having their civil rights restored. Expungement or the restoration of civil rights is very common for misdemeanants who do not reoffend for a period of time determined by state statute.

The federal domestic violence prohibitors have made a huge impact on spousal homicides. However, while spousal homicides have decreased by 50% since the federal DVPO and MCDV prohibitors were enacted, homicides of dating partners have decreased only 5% in this same period.<sup>11</sup> In 2020, 60% of intimate partner homicides were committed by dating partners rather than spouses.<sup>12</sup> State level data shows that closing the dating loophole decreases overall intimate partner homicides by 10%.<sup>13</sup> Victims of domestic violence who are dating partners deserve the same level of protection as spouses, but current federal firearms law denies them legal remedies and compromises their safety..

**For decades, the domestic violence field has advocated for lawmakers to close the 'dating loophole' (often referred to as the 'boyfriend loophole').** Textually, the fix is simple. Dating partners were added to the (felony) interstate crime of domestic violence in the 2005/2006 reauthorization of the Violence Against Women Act (VAWA). The definition of 'dating partner' for the interstate crime of domestic violence forms the basis of every state's definition of 'dating partner,' and it is circumscribed by sixteen years of case law, therefore it is neither vague, nor broad. Similarly, we have asked for 'dating partner' to be added to the definitions of 'intimate partner' and 'misdemeanor crime of domestic violence' in 18 USC 921(a), with a reference to the existing definition in the federal criminal code. Thirty-three states have taken steps to close the dating loophole. It is time for all survivors, across the nation, to have access to these protections. VAWA, in its entirety, has been updated with the dating partner language

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<sup>9</sup> 18 U.S.C. 922(g)(8)

<sup>10</sup> 18 U.S.C. 922(g)(9)

<sup>11</sup> Federal Bureau of Investigation. (2021). *Expanded homicide data*. Crime Data Explorer. <https://crime-data-explorer.app.cloud.gov/pages/explorer/crime/shr>

<sup>12</sup> *Ibid.*

<sup>13</sup> Zeoli, A. M., McCourt, A., Buggs, S., Frattaroli, S., Lilley, D., & Webster, D. W. (2017). Analysis of the strength of legal firearms restrictions for perpetrators of domestic violence and their association with intimate partner homicide. *American Journal of Epidemiology*. doi: 10.1093/aje/kwx362

found in the federal criminal code. **The domestic violence prohibitors, the first of which originated in the 1994 VAWA, must be consistent with the rest of VAWA.**

While that remains the best public policy outcome, we ultimately were willing to enter into a compromise during 2021/2022 VAWA negotiations to substantially narrow the application of this proposed change. While federal courts have ruled that the existing prohibitors,<sup>14</sup> including the MCDV prohibitor, do not violate the *ex post facto* clause of the Constitution<sup>15</sup> and thus are not 'retroactive,' we recognize that the perception of adding dating partners to the DVPO prohibitor is 'retroactive' is difficult. Thus, **we, along with both Democratic and Republican Senators, agreed to language (see attachment) that would clarify that in the case of dating partners, only MCDV convictions after the date of enactment and DVPOs issued after the date of enactment would trigger those prohibitors,** with the further clarification that the date of enactment would have no application beyond dating partners. This compromise does not touch those with prior adjudications and potentially allows them to keep their firearms. We entered into this agreement to safeguard our **primary goal - to save lives and protect survivors. Closing this loophole for convictions and protective orders after the date of enactment does this.**

Subsequently, this language was removed from the 2022 VAWA to speed its passage. However, closing the dating loophole remains a top priority for the domestic violence field, including the undersigned organizations. **We urge the Senate to include the bipartisan VAWA Senate compromise language in the bipartisan Senate firearms package currently under development.**

If you have any questions, please contact Rachel Graber ([rgrab@ncadv.org](mailto:rgrab@ncadv.org)) and Rob Valente ([robvalente@dvpolicy.com](mailto:robvalente@dvpolicy.com)).

Sincerely,

Esperanza United  
Futures Without Violence  
Jewish Women International  
Just Solutions  
Legal Momentum  
National Alliance to End Sexual Violence  
National Coalition Against Domestic Violence  
National Council of Jewish Women  
National Domestic Violence Hotline  
National Network to End Domestic Violence  
Tahirih Justice Center  
Ujima, Inc., The National Center on Violence Against Women in the Black Community  
YWCA USA

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<sup>14</sup> *United States v. Brady*, 26 F.3d 282 (2d Cir.), cert. denied; 115 S.Ct. 246 (1994) (denying *ex post facto* challenge to a 922(g)(1) conviction); *United States v. Waters*, 23 F.3d 29 (2d Cir. 1994) (*ex post facto* based challenge to a 922(g)(4) conviction).

<sup>15</sup> *Hiley v. Barrett*, 155 F.3d 1276 (11<sup>th</sup> Cir. 1998); *United States v. Mitchell*, 209 F.3d 319 (4<sup>th</sup> Cir. 2000).



Attachment

18 USC 921(a)

(33)

(A) ~~Except as provided in subparagraph (C),~~†The term “misdemeanor crime of domestic violence” means an offense that—

(i) is a misdemeanor under Federal, State, Tribal, or local law; and

(ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, by a dating partner, or by a person similarly situated to a spouse, parent, or guardian of the victim.

(B)

(i) A person shall not be considered to have been convicted of such an offense for purposes of this chapter, unless—

(I) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and

(II) in the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either

(aa) the case was tried by a jury, or

(bb) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

(ii) A person shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

...

(36)

(A) The term ‘dating partner’ has the meaning given the term in section 2266.

(B) Nothing in the meaning of ‘dating partner’ shall be construed to require that sexual contact between 2 persons has occurred to establish the existence of a relationship.

18 USC 922

(d)(8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner or dating partner of such person or child of such intimate partner, dating partner, or person, or engaging in other conduct that would place an intimate partner or dating partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

(B)

(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner, dating partner, or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner, dating partner, or child that would reasonably be expected to cause bodily injury;

(g)(8) who is subject to a court order that--

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner or dating partner of such person or child of such intimate partner, dating partner, or person, or engaging in other conduct that would place an intimate partner or dating partner in reasonable fear of bodily injury to the partner or child; and

(C)

(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner, dating partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner, dating partner or child that would reasonably be expected to cause bodily injury; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence.

Applicability.—The amendments made by this section relating to dating partners shall apply only to—

(1) with respect to an offense under subsection (d)(8) or (g)(8) of section 922 of title 18, United States Code, a court order issued on or after the date of enactment of this Act; and

(2) with respect to an offense under subsection (d)(9) or (g)(9) of section 922 of title 18, United States Code, a conviction of a misdemeanor crime of domestic violence entered on or after the date of enactment of this Act.

No limiting effect.—The amendments made by this section shall not be construed--

(1) to limit the effect of any State law, including the ruling of a State court, that prohibits an individual who is not described in subsection (d) or (g) of section 922 of title 18, United States Code, from purchasing or possessing a firearm; or

(2) to change the effect on the application of subsection (d) or (g) of section 922 of title 18, United States Code, to any individual described in those subsections as of the date of enactment of this Act.