



## **Domestic Violence and Firearms: Research on Statutory Interventions**

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### **Part III: Firearm Prohibitions for Those Convicted of Misdemeanor Crimes of Domestic Violence**

Under the Federal Gun Control Act, those who have been convicted of misdemeanor crimes of domestic violence are prohibited from purchase and possession of firearms (18 U.S.C. § 922(g)(9)). The federal definition of a misdemeanor crime of domestic violence requires that the misdemeanor one is convicted of have

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, or by a person similarly situated to a spouse, parent, or guardian of the victim. (18 U.S.C. § 921(a)(33)).

This statute, therefore, covers both intimate and parental relationships. Which types of relationships are considered “similarly situated to a spouse, parent, or guardian of the victim” has been the subject of case law, and has been judged to include non-cohabiting dating partners. Additionally, and importantly, the firearm restriction applies even when the person to be prohibited is in the military or works in law enforcement. Another issue addressed in case law regards the language used in misdemeanor statutes and what misdemeanor statutes may fulfill the “elements” of the law. Click here (hyperlink to: <http://www.bwjp.org/ncpoffc-18-usc-922g9-case-law.pdf>) for a full discussion of case law.

In addition to the federal law, numerous states have also enacted legislation prohibiting those convicted of misdemeanor crimes of domestic violence from purchasing or possessing firearms. Some states have gone further and extended firearm prohibitions to those convicted of misdemeanor crimes of violence regardless of the victim-assailant relationship.

## *Research on whether firearm restrictions for violent misdemeanor convictions impact future violence*

Studies on the impact of laws prohibiting those convicted of misdemeanor domestic violence crime from accessing firearms have mixed results. Research suggests that the federal statute is associated with a reduction in intimate partner homicide (Raissian, 2016), however no measurable impact of the state-level statutes has been found (Vigdor & Mercy, 2003, 2006; Zeoli & Webster, 2010). A study of the impact of a firearm restriction statute for violent misdemeanants regardless of victim-offender relationship suggests that these restrictions may reduce future violent crime (Wintemute, Wright, Drake, & Beaumont, 2001). Each of these statutes operate on the same principle: those who have been convicted of misdemeanor violence against intimate partners or others are high risk for future violence, and preventing them from accessing firearms may reduce both their risk for future violence and the severity of future violence they may commit. Differences in estimated impacts from the research may be due to differences in the ways the laws are implemented.

Recent research suggests that the federal statute prohibiting those convicted of misdemeanor crimes of domestic violence from firearm purchase and possession has significantly reduced homicides of female intimate partners and male domestic children (Raissian, 2016). The researcher argued that despite it being federal legislation, the statute was implemented at different times in different states. As noted above, the lack of consensus surrounding whether the statute under which one is convicted must specify, "as an element," an assault and a relationship between the victim and offender the resulted in debate surrounding which misdemeanor statutes would qualify for the federal ban. This lack of consensus resulted in circuit courts being called upon to resolve the issue. The circuit courts ruled that the misdemeanor statute did not need to include a finding of an intimate partner relationship and a subsequent Supreme Court ruling affirmed this; therefore general assault statutes applied to domestic violence were covered under federal law (Raissian, 2016).

When taking this rolling coverage of the federal law into account, Raissian found that the law was associated with an 11% reduction in firearm intimate partner homicide (Raissian, 2016). Upon further investigation, Raissian found that the measurable reduction in firearm intimate partner homicide was only found for female victimizations, with a reduction of 17%. Additionally, the law was associated with a 31% decrease in homicides of male domestic children (Raissian, 2016).

Three studies have examined the impact of state-level firearm restrictions for those convicted of misdemeanor crimes of domestic violence (Vigdor & Mercy, 2003, 2006; Zeoli & Webster, 2010). The research studies were conducted at both the state level and city level using multiple decades of data to determine whether the passage of the statutes affected intimate partner homicide rates. Each of the studies took into account numerous additional factors that may impact intimate partner homicide rates, including marriage and divorce rates, median income, poverty rates, police staffing levels, and other domestic violence and firearm laws, when estimating the impact of the misdemeanor domestic violence restriction. The three studies

were consistent in finding no statistical evidence of an impact of the statutes. None of these studies, however, examined the extent to which the misdemeanor statutes under which domestic violence offenders were convicted were covered under state-level firearm restriction laws. It is possible that few offenders were restricted from firearm access under these statutes in some states, particularly those states that did not have assault statutes that specified an intimate partner relationship. No research examining the implementation of the state-level misdemeanor firearm restriction statutes was found in literature searches.

State statutes that prohibit firearm access to those convicted of misdemeanor crimes of violence regardless of victim-offender relationship, however, may also impact domestic violence offenders. A handful of states, such as Maryland, have the more general misdemeanor crime of violence firearm restriction statute without also specifying that misdemeanor crimes of domestic violence carry firearm restrictions. A prohibition under this more general statute could occur either due to a conviction for a misdemeanor crime of violence against an intimate partner or against a non-intimate.

The extent to which domestic violence offenders are prohibited from firearm access due to convictions for misdemeanor crimes of violence against non-intimate partners is unknown. A proportion of domestic violence offenders do commit crimes against non-intimate partners. For example, a study of probation files of people who were arrested for domestic violence and mandated to treatment found that roughly 17% of them had committed prior violent offenses against non-intimates (Busch & Rosenberg, 2004). Similarly, a study of criminal records of men and women arrested for assault of an intimate partner found that roughly 30% of men and 12% of women had prior arrests for violent offenses against a non-intimate partner (Henning & Feder, 2004). Finally, a case-control study comparing female victims of intimate partner homicide with victims of non-lethal intimate partner violence found that perpetrators of intimate partner homicide were significantly more likely to be reported as violent outside the home (56% versus 36%, respectively) (Campbell, et al., 2003). This suggests the possibility that there are some domestic violence offenders who are prohibited from firearm access due to convictions for violent misdemeanor crimes against non-intimate partners.

California implemented a general prohibition against firearm access for violent misdemeanants, as well a specific domestic violence misdemeanor prohibition, in 1991. Researchers examined the impact of the general violent misdemeanor firearm restriction law, and found encouraging results; however they did not specifically examine domestic violence offenders or subsequent domestic violence crimes. Two groups of people aged 35 years and under were compared: people who were denied purchase in 1991 due to prior violent misdemeanor convictions and people who had been convicted of violent misdemeanors but legally purchased firearms in 1989 or 1990. The researchers found that those who were denied legal handgun purchase due to the new law were less likely to be arrested for crimes involving violence and/or guns than those who were able to purchase firearms before the passage of the law in the three years after the purchase attempt (Wintemute, et al., 2001). In other words, the research suggests that the law is effective in reducing future violence among those it impacts.