



Slipping Through the Cracks:
How Incomplete Data Collection Allows
Domestic Abusers Access to Firearms

Citizens for a Safer Minnesota Education Fund
Battered Women's Justice Project

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About the Contributors

Citizens for a Safer Minnesota Education Fund (CSMEF) is a state-based, nonprofit organization that educates policymakers and the public about the causes of gun violence. Using a public health model, CSMEF advocates for sensible policies to prevent gun death and injury based on sound, academic research.

Battered Women's Justice Project (BWJP) is a program of the Minnesota Program Development, Inc., a federally funded, non-profit organization focusing on eliminating one form of violence that women experience – battering. The Battered Women's Justice Project provides training and technical assistance nationwide to communities that are developing organized responses to domestic violence. It focuses on effective criminal justice system intervention through the development of inter-agency coordination and policy development that guides individual practitioners in the use of arrest, prosecution, sentencing, victim safeguards and batterer's intervention programs.

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Summary

Citizens for a Safer Minnesota Education Fund (CSMEF) and the Battered Women's Justice Project (BWJP) recently conducted a project to assess the completeness of the Criminal History Database maintained by the Bureau of Criminal Apprehension (BCA) for domestic violence misdemeanors.¹ It was determined that less than 30% of individuals convicted of misdemeanor domestic assault during a one-year period were found in the BCA live criminal database. The following report provides background information, detailed methodology, implications, and recommendations based on these results.

Domestic Violence and Firearms

Almost 700,000 people are abused by their partners each year in the United States, according to the Bureau of Justice Statistics, and over 1200 women are killed by an intimate partner each year.² Within Minnesota, 16 of every 100,000 Minnesotans were hospitalized for intimate partner violence in 2001. Thirty-one people in the state were killed by an intimate partner in 2000.³ Victims of domestic violence account for more than one-quarter of all violent crime victims in the state of Minnesota.⁴

While many people are seriously injured from domestic violence, the likelihood of death increases dramatically when a firearm is present. In 1998, two-thirds of all domestic homicides in the United States involved guns.⁵ Similarly, a study of factors related to violent deaths among women found that women with guns in the home were 7.2 times more likely to become a victim of domestic homicide compared to those without a gun.⁶ A more recent study appearing in the *American Journal of Public Health* also found that women whose abusers had access to a firearm were 7.6 times more likely to be killed.⁷ Additionally, a gun in the home of an individual with a previous domestic violence assault increases the risk of domestic homicide by 20-fold.⁸ Within Hennepin County⁹ and the State of Minnesota, investigators found that two-thirds of all individuals killed in domestic homicides were killed with a gun. In 1997, 25% of guns forfeited in Minnesota were connected to a domestic assault.¹⁰

Federal Legislation

State and federal lawmakers have recognized the link between intimate partner homicide and firearms. In 1993, the U.S. Congress passed the Brady Handgun Violence Prevention Act which sought to prevent individuals convicted of a felony from possessing or purchasing a handgun by requiring a background check for all individuals purchasing a firearm from federally licensed gun dealers. The law was strengthened in 1996 by expanding the prohibition of gun purchase or even possession to those convicted of domestic violence misdemeanors; this law is frequently referred to as the Lautenberg Amendment.¹¹ The National Instant Criminal Background Check System (NICS), maintained by the FBI, is the database used by federally licensed firearm dealers to conduct these background checks. The database contains the criminal histories from some states or refers back to local databases for other states such as Minnesota. Because the vast majority of criminal records are state records, the capability of NICS to effectively screen firearms purchasers depends largely on the ability to access and interpret these state records.¹²

Under federal law, the FBI only has 3 days to determine whether an applicant is eligible to purchase a gun. If the FBI is unable to determine whether there is a disqualifying conviction, the sale is allowed to proceed. The FBI must then try to retrieve the gun if it later learns that the applicant was not legally allowed to possess it. According to the U.S. General Accounting Office, in just three years, over 2,800 domestic violence offenders were able to purchase guns without being identified by NICS. And almost 26% of retrievals by the FBI involved domestic violence offenders.¹³

State Legislation and Criminal History Tracking

Minnesota state law prohibits a person convicted of misdemeanor domestic assault from possessing a pistol for at least three years (Minn. Stat. §609.2242, subd. 3.) Minnesota state law also provides that a misdemeanor domestic assault can be enhanced to a gross misdemeanor or felony if it occurs within 5 years of previous domestic assault convictions.¹⁴ In order to be able to charge these repeat offenders properly, prosecutors must have access to accurate and complete criminal history records.

The state of Minnesota maintains its criminal history database through the Bureau of Criminal Apprehension (BCA). This database is used for local background checks, and is the referral source for individuals running a national check on NICS.

The procedure for entering convictions into this system varies based on offense. Felony and gross misdemeanor information is automatically forwarded electronically to the BCA by the courts. As counties are implemented on the Court's new Minnesota Court Information System (MNCIS), the daily court pass of information to BCA will also include targeted misdemeanors. Currently, for all misdemeanors, including domestic assault convictions, local law enforcement is responsible for sending conviction records to the BCA.

In all cases, fingerprints are required before an arrest can be entered into the database in order to verify the identity of the individual with the criminal conviction. By law, law enforcement must record the fingerprints of all persons arrested for targeted misdemeanors (including 5th degree assault and misdemeanor domestic assault) and forward the information to the BCA within 24 hours.¹⁵ If the BCA receives a record of a conviction from the court for which it has no fingerprint information, that record is placed in a suspense file. The BCA must then follow-up with the law enforcement agency to obtain the fingerprint card.

Misdemeanor Domestic Assault Tracking

A 2002 report from the U.S. General Accounting Office (GAO) found that nearly 3,000 domestic abusers bought firearms between 1998 and 2001. The GAO concluded from the study that state laws and procedures are currently inadequate to allow the NICS to function correctly to keep guns out of the hands of those who commit crimes of domestic violence.¹⁶

In order to determine the effectiveness of Minnesota's reporting system, CSMEF and BWJP reviewed the reporting rates for domestic assault misdemeanors in the state. According to Supreme Court records, between May 1, 2002 and April 30, 2003, 3,189 individuals were convicted of or pleaded guilty to one of two domestic assault misdemeanor charges.¹⁷ (Minn. Stat. §609.2242 subd. 1 and Minn.

Stat. §609.224, subd. 1) According to the BCA records for that same period, only 949 convictions were received from law enforcement with the required fingerprint cards and entered into the electronic database.¹⁸ An additional 137 convictions were received without fingerprint cards and, therefore, could not be entered.¹⁹ Thus, only 30% of all convictions for misdemeanor domestic assault in the state over a one-year period were successfully forwarded to the BCA for inclusion in the automated database. According to these statistics, the remaining 70% of individuals with a misdemeanor domestic assault conviction could potentially illegally purchase a handgun or obtain a permit to carry a weapon in Minnesota. This statistic reveals a significant problem with the system established by the State and Federal Legislatures to keep lethal weapons out of the wrong hands.

Recommendations

Based on the inadequate reporting of domestic violence misdemeanors in the BCA database, CSMEF and BWJP make the following recommendations:

- 1) The Supreme Court should convert misdemeanor reporting to an electronic system similar to that used for felony convictions. This would eliminate the burden on local law enforcement and would likely improve the percentage of misdemeanor convictions entered into the criminal history database. It would also create a suspense file so that the BCA can monitor whether fingerprint records are being obtained.

CSMEF and BWJP have learned that the Supreme Court began testing an electronic pass of targeted misdemeanor data, including domestic violence convictions, to the BCA in October 2004. Once the testing is completed, all of the data that is currently in the court's warehouse (targeted misdemeanor cases that have had any activity since May of 2002) will be passed to the BCA and a daily pass of disposed cases will be implemented from that point forward. In addition to current charges, it is estimated that there may be as many as 120,000 old files from prior to 2002 that will be sent to the BCA. We urge officials at both agencies to closely monitor the implementation of the electronic pass to insure that this critical information is correctly being captured by the BCA and that adequate resources are devoted to eliminating the anticipated backlog created by transferring some 120,000 old cases at the same time. Due to the potentially serious consequences that can flow from the live criminal history database being incomplete, we urge the Supreme Court and BCA to have their electronic pass working by the end of the year.

- 2) The Supreme Court, the BCA, and local law enforcement must develop a strategy for capturing the names of all individuals convicted of a domestic violence misdemeanor who have not yet been entered into the system. After conversations with the Supreme Court and the BCA, it appears that this is a formidable task both because the court data is not easily accessible and because law enforcement may be prevented from obtaining fingerprints if the defendant has already completed probation. We recommend that the Department of Public Safety be required to explore ways that these obstacles can be overcome so that prior convictions can be captured and recorded with the BCA.

Fortunately, some of this information may be available in the Criminal Justice Intervention databases maintained by various battered women's advocacy groups in some parts of the state. The Department of Public Safety should work with the advocacy community to develop procedures so that their information can be incorporated easily into the BCA's database.

3) Because of the importance of fingerprints for inclusion of convictions into the criminal history database, it is imperative that law enforcement ensures that that all defendants who are arrested for misdemeanor domestic violence assault are fingerprinted. The BCA has held over 150 county wide workshops to stress the necessity of fingerprint cards for each arrest and the unintended consequences of not obtaining arrest cards. The BCA also addresses this problem in its Computerized Criminal History (CCH) Audits of Law Enforcement agencies.

Unfortunately, despite this training, fingerprints still are not always 1) obtained at the time of arrest for misdemeanor domestic assault defendants or 2) forwarded to the BCA as required. For example, the Minneapolis Police made 2,368 domestic assault arrests in 2002 and yet the BCA only received 308 fingerprint cards from all of Hennepin County in a one-year period May 1, 2002 to April 30, 2003.²⁰ We recommend that the Department of Public Safety task force also explore alternative methods of insuring that law enforcement agencies are properly capturing and forwarding fingerprint information to the BCA. Perhaps the booking process could be reprogrammed so that defendants could not be booked into the jail without forwarding their fingerprints to the BCA.

4) Because fingerprint identification is the only accurate method for verifying individual's identities, fingerprints should be required to obtain a permit to purchase or carry a weapon.

5) All of the above changes will require financial and staff resources on the part of the BCA, the Supreme Court, and local law enforcement. We strongly recommend the allocation of funds by the State Legislature to accomplish these changes.

Firearms in the hands of domestic abusers represent a tremendous risk to the women and children who fall victim to this abuse. Lawmakers have recognized the need to protect victims from firearm injury and death by prohibiting access to these weapons for individuals convicted of domestic assault. In Minnesota and many other states, however, good intention has become lost in the intricacies and logistical details of the reporting system. CSM and BWJP now bring the system failures to the attention of the public and elected officials in the hope that future energy and resources may be devoted to correcting these problems.

¹ Minn. Stat. §§609. 224 and 609.2242.

² Rennison, C.M. 2003. Intimate Partner Violence, 1993-2001. Bureau of Justice Statistics Crime Data Brief, NCJ 197838. US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. Available at: <http://www.ojp.usdoj.gov/bjs/abstract/ipv01.htm>.

³ Minnesota Department of Health. 2002. Intimate Partner Violence. Violence Data Brief, No 1, November. Injury and Violence Prevention Unit. Available at: www.health.state.mn.us.

⁴ Minnesota Coalition for Battered Women. 2003. Facts about Domestic Violence in Minnesota and in the United States. Available at: www.mcbw.org.

⁵ U.S. Department of Justice, Bureau of Justice Statistics, Homicide Trends in the U.S., Intimate Homicide, <http://www.ojp.usdoj.gov/bjs/homicide/intimates.htm>.

⁶ Bailey, JE, Kellerman, A.L. et al. 1997. Risk factors for violence death of women in the home. Archives of Internal Medicine, 157: 777-782.

⁷ Campbell, J.C. et al. 2003. Risk factors for femicide in abusive relationships: results from a multisite case control study. American Journal of Public Health, 93(7): 1089-1097.

⁸ Kellerman et al. 1993. Gun ownership as a risk factor for homicide in home. New England Journal of Medicine, 329: 1084-1091.

⁹ Lederer, S, ed. 2002. A Matter of Life and Death. Hennepin County Domestic Fatality Review Pilot Project.

¹⁰ MN State Auditor's Office. 1997. Gun Points 1997: Firearm Forfeitures in Minnesota.

¹¹ Disarming Domestic Violence Abusers: States Should Close Legislative Loopholes that Enable Domestic Abusers to Purchase and Possess Firearms. 2003. Brady Campaign to Prevent Gun Violence, Los Angeles, CA.

¹² US General Accounting Office. 2002. Gun Control: Opportunities to Close Loopholes in the National Instant Criminal Background Check System. Report to the Ranking Member, Committee on the Judiciary, House of Representatives. GAO 02-720, page 5. Available at: http://www.securitymanagement.com/library/gao02720_gun1002.pdf

¹³ Id. at 3-5.

¹⁴ Minn. Stat. §§609.224, subs. 2 and 4 and 609.2242, subs. 2 and 4.

¹⁵ Minn. Stat. §299C.10, subd. 1(a) and 1(b).

¹⁶ US General Accounting Office. 2002. Gun Control: Opportunities to Close Loopholes in the National Instant Criminal Background Check System. Report to the Ranking Member, Committee on the Judiciary, House of Representatives. GAO 02-720. Available at: http://www.securitymanagement.com/library/gao02720_gun1002.pdf.

¹⁷ Information from Minnesota Supreme Court, Appendix A-1

¹⁸ Information from Bureau of Criminal Apprehension, Appendix A-3.

¹⁹ Id. (Another 2,185 arrests for these offenses appeared in the criminal history repository but did not contain convictions. Law Enforcement does have access to these "open arrests" and can use the information in conjunction with other factors to determine whether to issue a gun permit. However the FBI could not use an arrest to stop a purchase without proof of the ultimate conviction.)

²⁰ MN Office of Justice Programs: Interagency Task Force on Domestic Violence and Sexual Assault. Report to the Legislature-January 2004. Available at: http://www.dps.state.mn.us/OJP/IATF/IATF_Report_04.pdf.