

FEDERAL DOMESTIC VIOLENCE LAWS

VIOLENCE AGAINST WOMEN ACT “VAWA”

GUN CONTROL ACT

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Disclaimer:

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Why focus on domestic violence?

“Firearms and domestic strife are a potentially deadly combination nationwide.”

Justice Ruth Bader Ginsburg

***US v. Hayes*, 129 S.Ct. 1079
(2009)**

Why focus on domestic violence?

“This country witnesses more than a million acts of domestic violence, and hundreds of deaths from domestic violence, each year.”

Justice Sonia Sotomayor

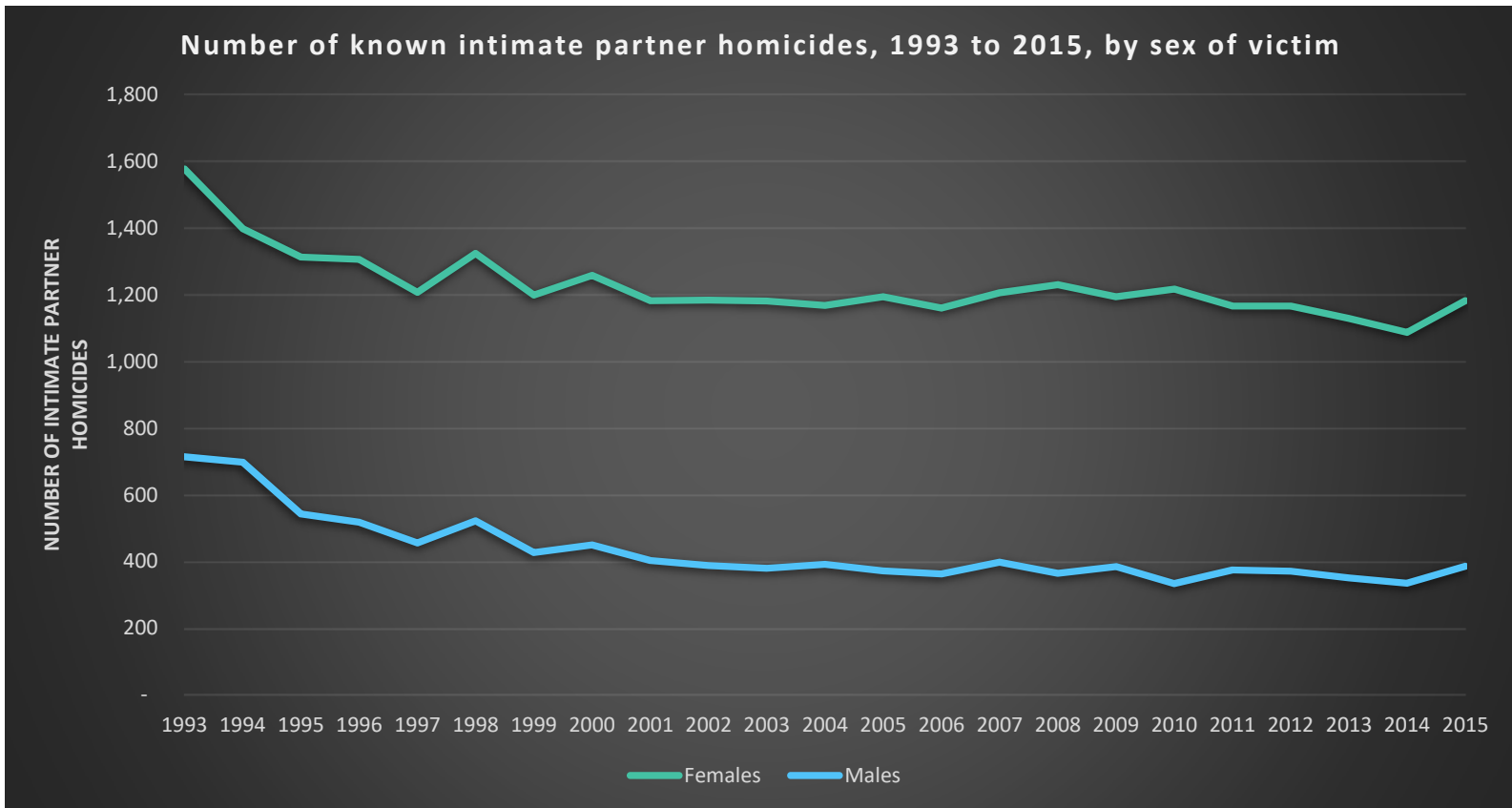
***US v. Castleman*, 134 S.Ct.
1405 (2014)**

Why focus on domestic violence?

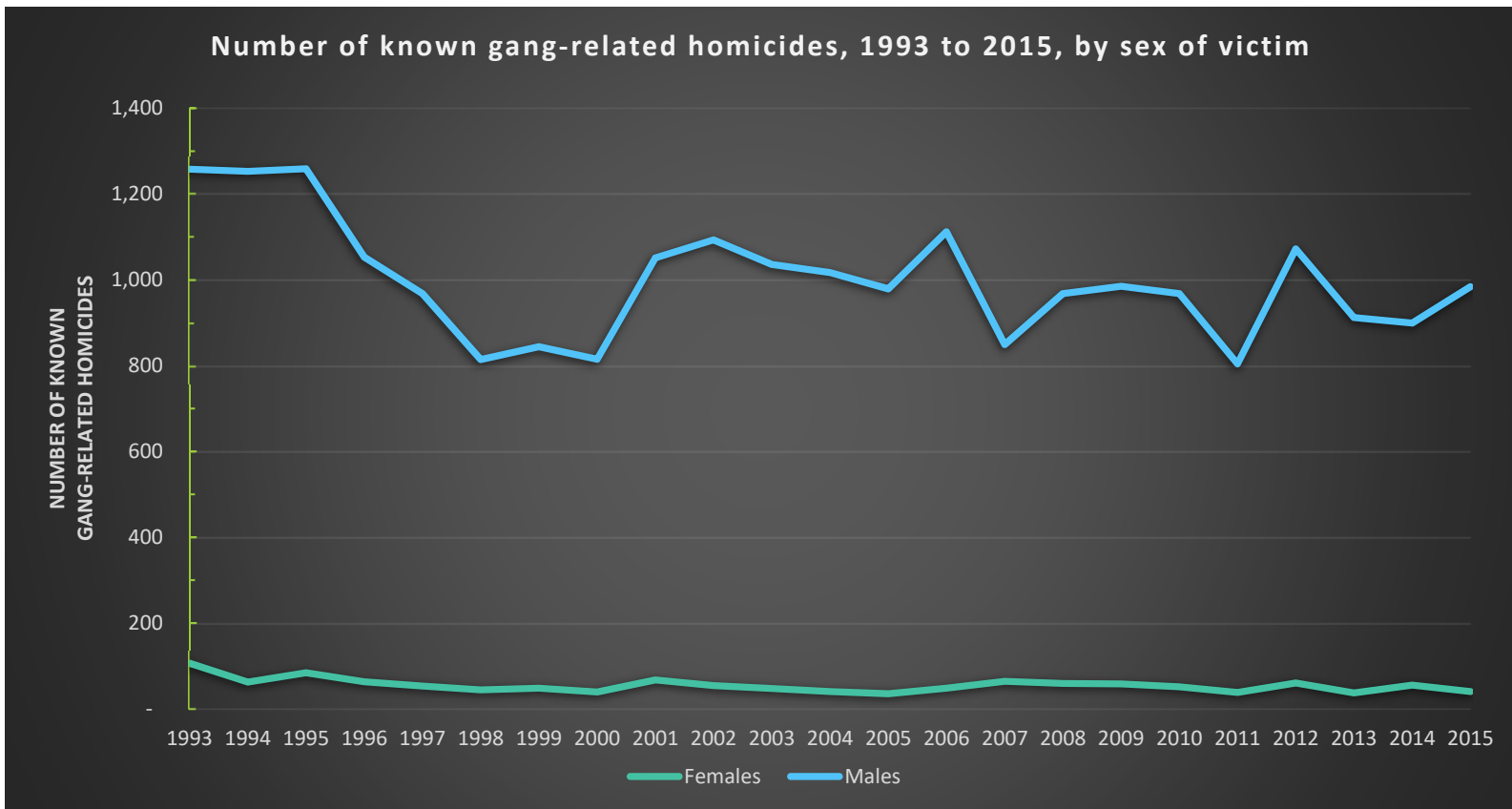
- **2015 FBI crime data**
- **1,719 women were murdered**
- **Relationship to offender:**
 - **509 wives**
 - **496 girlfriends**
 - **58% were intimate partners**

- FBI, Crime in the United States, Uniform Crime Reporting 2015

Intimate Partner Homicides 1993-2015



Gang Homicides 1993-2015



Why focus on guns and domestic violence?

- **When a gun was in the house, an abused woman was 6 times more likely than other abused women to be killed.**

- Campbell, *Assessing Risk Factors for Intimate Partner Homicide*, DOJ, NIJ (Nov. 2003)

Connection between mass shootings and domestic violence

54% (85 of 156) of mass shootings (4 or more people killed with a firearm) between 2009-2016 involved domestic or family violence.

42% exhibited warning signs: acts, attempted acts or threats of violence towards oneself or others; violations of protection orders; substance abuse.

34% involved a shooter who was a prohibited person.



Connection between mass shootings and domestic violence

Does not account for mass shooters with a family violence history:

James Hodgkinson, who injured Republican Rep. Steve Scalise of Louisiana and several others when he opened fire on lawmakers and aides at a baseball practice in June 2017, had been arrested in 2006 for hitting and strangling his daughter.



Connection between mass shootings and domestic violence


Omar Mateen, who killed 49 people in the Pulse nightclub massacre in Orlando in June 2016, had an abusive relationship with his ex-wife, who said he frequently beat her.

Robert Dear, who killed three people and wounded nine others when he opened fire on a Planned Parenthood clinic in Colorado in 2015, had been accused of domestic violence by two of his ex-wives.



Connection between mass shootings and domestic violence

Devin Kelley, the shooter in Sutherland Springs, Texas who walked into a Texas church and opened fire in November 2017, killing 26 and injuring some 20 others, was court-martialed and convicted in 2012, while serving in the Air Force, on two charges of domestic assault after he beat and strangled his wife, threatened her with a firearm and hit her infant son hard enough to fracture his skull. Earlier, in 2014, Mr. Kelley was charged with cruelty to animals, a misdemeanor, pleaded guilty and was given a deferred sentence.



VAWA

Enacted 1994, amended 1996, 2000, 2006,
2013 and 2019

**Interstate Domestic Violence – Section
2261**

**Interstate Violation of a Protection
Order – Section 2262**


**Interstate/Cyber Stalking – Section
2261A**



Interstate Domestic Violence

18 U.S.C. §2261(a)(1)


It is a federal crime to cross state or foreign lines or enter or leave Indian country or while present within SMTJ to commit or attempt to commit a crime of violence against an “intimate partner” or “dating partner.”



Interstate Domestic Violence

18 U.S.C. §2261(a)(1)

A “dating partner” refers to a person who is or has been in a social relationship of a romantic or intimate nature with the abuser. The existence of such a relationship is based on a consideration of (A) the length of the relationship; (B) the type of the relationship; and (C) the frequency of interaction between the persons involved in the relationship.



Interstate Domestic Violence

18 U.S.C. §2261(a)(1)


There is no injury requirement.

The defendant must have intended to kill, injure, harass or intimidate when crossing the line.

Interstate Domestic Violence

18 U.S.C. §2261(a)(2)


It is a federal crime to force or coerce an “intimate partner” or “dating partner” to cross state or foreign lines or enter or leave Indian country if the conduct or travel leads to the commission or the attempted commission of a crime of violence against the victim.



Interstate Violation of a Protection Order

18 U.S.C. §2262(a)(1)

It is a federal crime to cross state or foreign lines or enter or leave Indian country or be present within SMTJ and violate a Protection Order that protects the victim against violence, threats, harassment against contact or communication with, or physical proximity.



Interstate Violation of a Protection Order


18 U.S.C. §2262(a)(1)

The defendant must have intended to violate the Protection Order when crossing the line or while within SMTJ.

Interstate Violation of a Protection Order

18 U.S.C. §2262(a)(2)


It is a federal crime to force or coerce a person to cross state or foreign lines or enter or leave Indian country if the force or coercion leads to a violation of the portion of the Protection Order that...



Interstate Violation of a Protection Order

18 U.S.C. §2262(a)(2)

...prohibits or provides protection against violence, threats or harassment against, contact or communication with, or physical proximity to the protected person.



Interstate Violation of a Protection Order

18 U.S.C. §2262(a)(1)

This statute was amended as of January, 2019 to protect not only people but also “ a pet, service animal, emotional support animal or horse” of the victim.

Interstate Stalking

18 U.S.C. §2261A(1)

It is a federal crime to cross state, foreign or tribal lines (or while within SMTJ) to stalk another person by engaging in conduct:

- **That placed the victim or the victim's immediate family in reasonable fear of death or serious bodily injury, OR**

Interstate Stalking

- That causes, attempts to cause or would be reasonably expected to cause substantial emotional distress to the victim or the victim's immediate family.

The defendant must have intended to kill, injure, harass, intimidate, or place under surveillance with intent to kill, injure, harass, or intimidate when crossing the line or while within SMTJ.

Cyberstalking


18 U.S.C. §2261A(2)

It is a federal crime to intend to kill, injure, harass, intimidate, or place under surveillance with intent to kill, injure, harass, or intimidate another person and...

Cyberstalking

18 U.S.C. §2261A (2)

use the mail or any interactive computer service or electronic communication service or electronic communication system of interstate commerce or any other facility of interstate or foreign commerce to engage in a course of conduct that...



Cyberstalking

18 U.S.C. §2261A (2)

places the victim in reasonable fear of death or serious bodily injury OR

causes, attempts to cause, or would be reasonably expected to cause substantial emotional distress to the victim.

The victim includes the victim's immediate family, spouse or intimate partner.



Cyberstalking

18 U.S.C. §2266(2)

Course of conduct is a pattern of conduct composed of 2 or more acts, evidencing a continuity of purpose.



Cyberstalking

VAWA 2013 removes the requirement that the stalking victim be in “another jurisdiction.” This allows for federal prosecution of intrastate stalking if the interstate commerce requirement is met.

Stalking/Cyberstalking

18 U.S.C. §2261A

This statute was also amended as of January, 2019 to protect not only people but also “ a pet, service animal, emotional support animal or horse” of the victim.

Penalties


Sections 2261, 2261A and 2262 Offenses

- **5 years to life depending upon the seriousness of the bodily injury inflicted**
- **Section 2261(b)(6)**
 - **A defendant convicted of stalking in violation of a temporary or permanent civil or criminal injunction, restraining order, no-contact order, or other order described in Section 2266, shall be imprisoned for no less than one year.**

Gun Control Act – Domestic Violence Offenses

**Possession of a firearm and/or
ammunition while subject to a
protection order – Section 922(g)(8)**

**Possession of a firearm and/or
ammunition after conviction of a
misdemeanor crime of domestic
violence (MCDV) – Section 922(g)(9)**



Protection Order Prohibition

18 U.S.C. §922(g)(8)

It is a federal crime to possess a firearm and/or ammunition while subject to a valid qualifying Protection Order.

Law enforcement officers are not subject to this law.

Prohibition only lasts for life of the order.



§922(g)(8) Restrictions

Protection Order will qualify if it meets these requirements:

1. Order was issued after a hearing of which the defendant had actual notice and an opportunity to participate


What satisfies the hearing requirement?



§922(g)(8) Restrictions

- 2. Order restrained the defendant from harassing, stalking, or threatening an intimate partner, or from engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury.**

§922(g)(8) Restrictions

- 3. Order included a finding that the defendant posed a credible threat to the physical safety of an intimate partner; OR**
 - 4. Order explicitly prohibited the use, attempted use or threatened use of physical force that would reasonably be expected to cause bodily injury.**
- 

§922(g)(8) Restrictions

Does the firearm box have to be checked?

Does the Order have to warn the defendant of the federal firearms law?

Firearm Offenses

18 U.S.C. 922(g)(9)


It is a federal crime to possess a firearm and/or ammunition after conviction of a qualifying misdemeanor crime of domestic violence.

This statute applies to law enforcement.



§922(g)(9) Restrictions


Must be a “qualifying” misdemeanor:

- Misdemeanor under federal or state or tribal law.
 - Misdemeanor has *as an element* the *use or attempted use of physical force* or threatened use of a deadly weapon.
- 

§922(g)(9) Restrictions

Qualifying relationship between defendant and victim of the misdemeanor:

Misdemeanor committed by current or former spouse, parent or guardian, by current or former cohabitant as a spouse, parent or guardian, or by parent with the victim of a child in common or by person “similarly situated” as a spouse, parent, or guardian of the victim.



§922(g)(9) Litigation

Statute has survived Second Amendment challenges post-*Heller*. *US v. Skoien*, 614 F.3d 638 (7th Cir. 2010)(en banc).

§922(g)(9) Litigation

**More difficult statutory challenges.
What statutes qualify as MCDV?**

**Elements test eliminates common
domestic violence crimes, i.e. violation
of a protection order.**

**Qualification of individual statutes has
led to 3 rounds of Supreme Court
litigation.**



§922(g)(9) Litigation

***United States v. Hayes*, 129 S.Ct. 1079 (2009)**

- **Offense need not have a domestic relationship as an element in order to qualify as a MCDV.**
- **Still need to prove qualifying relationship in order to convict.**

§922(g)(9) Litigation

US v. Castleman, 134 S.Ct. 1405 (2014)

Is “physical force” requirement of MCDV met by assault statute prohibiting the causation of bodily injury?

- TN assault – defendant **intentionally and knowingly caused bodily injury to mother of his child**. Statute allowed for reckless mens rea, but charging documents (rare) established intentionally and knowingly conduct.

§922(g)(9) Litigation

US v. Castleman

“Physical force requirement is satisfied by any degree of force that satisfies common-law battery – namely offensive touching.”

Violent force not required, allowed TN assault statute causing bodily injury to qualify. “It is impossible to cause bodily injury without applying force in the common-law sense.”

Tennessee Assault Statute

Chapter 13, Section 39-13-101

(a) A person commits assault who:

- (1) Intentionally, knowingly or recklessly causes bodily injury to another;**
- (2) Intentionally or knowingly causes another to reasonably fear imminent bodily injury; or**


Tennessee Assault Statute

(3) Intentionally or knowingly causes physical contact with another and a reasonable person would regard as extremely offensive or provocative.

**Which prongs qualify post-*Castleman*?
Unresolved by the Supreme Court was whether reckless predicates qualify as MCDVs.**

§922(g)(9) Litigation

Voisine v. U.S., 136 S. Ct. 2272 (2016)

- Defendants convicted of assault under ME law: intentionally, knowingly or *recklessly* cause bodily injury or offensive physical contact.
 - Absent court records documenting conviction conduct, lowest denominator is reckless offensive physical contact.
 - Try to ensure documentation in court records establishing the prong of conviction.
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Voisine v. US

- Under ME law (which tracks the Model Penal Code) an act is committed recklessly if done in “conscious disregard” of substantial risk of harm to another.
- §921(a)(33)(A)(ii) requires that a qualifying MCDV involve “use of physical force.” Does reckless conduct, committed with “conscious disregard,” qualify as “use” of physical force?

Voisine v. US

Justice Kagan, writing for a 6-2 majority, answered the question:


“A person who assaults another recklessly ‘use[s]’ force, no less than one who carries out that same action knowingly or intentionally.”

Voisine v. US

“‘[U]se of physical force’...naturally read, encompasses acts of force undertaken recklessly-*i.e.*, with conscious disregard of a substantial risk of harm. And the state-law backdrop to that provision, which included misdemeanor assault statutes covering reckless conduct in a significant majority of jurisdictions, indicates that Congress meant just what it said. Each petitioner’s possession of a gun, following a conviction under Maine law for abusing a domestic partner, therefore violates §922(g)(9).”

§922(g)(9) Restrictions

Not considered convicted unless:

- **Represented by counsel or waived right to counsel**
 - **If entitled to jury, had a jury trial or waived right to jury trial**
 - **If conviction expunged, set aside, pardoned or civil rights have been restored, if the jurisdiction calls for loss of civil rights**
 - **These are affirmative defenses, *US v. Hartsock*, 347 F.3d 1 (1st Cir. 2003)**
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Notice to prohibited persons

It is preferable, although not legally required, for defendants to receive notice of a prohibition under §§922(g)(8) or (g)(9).

VAWA 2005 requires states to provide notice of §§(g)(8) and (g)(9) to receive STOP grant funding.

Notice to prohibited persons

**STATE OF NORTH CAROLINA
GENERAL COURT OF JUSTICE**

FIREARM PROHIBITION NOTICE

NOTICE

If you are convicted of a misdemeanor involving violence where you are or were a spouse, intimate partner, parent, or guardian of the victim or are or were involved in another, similar relationship with the victim, it may be unlawful for you to possess or purchase a firearm, including a rifle, pistol, or revolver, or ammunition, pursuant to federal law under 18 USC 922(g)(9) and/or state law. If you have any questions whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney.

NOTE: *Effective January 1, 2008, all defendants convicted of crimes subject to the firearm notification requirements shall be provided a copy of this form by the court. (S.L. 2007-294)*

Penalties

Sections 2261, 2261A and 2262 Offenses

- **5 years to life depending upon the seriousness of the bodily injury inflicted**

Section 922(g) Offense

- **10 year maximum sentence**

U.S.S.G. Section 2K2.1(b)(2) Offense

- **If firearm and/or ammunition used for “lawful sporting purposes” decrease offense level to 6.**
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Questions and Answers

