

# Closing the Gap: The Need to Eliminate Loopholes in Legislation at the Intersection of Gun Violence and Intimate Partner Violence

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Gun violence and intimate partner violence (IPV) are two public health issues that intersect significantly in the United States, contributing to the urgent need for legislative changes. There is federal legislation that aims to address the rising firearm-related deaths that result from IPV by prohibiting persons convicted of misdemeanor domestic violence offenses from possessing firearms. Yet, this legislation leaves loopholes in interpretation by each state, whereby some have chosen to strengthen and others to weaken regulations. Gaps persist in legal definitions of “domestic violence” as well as how the removal of firearms is enforced. To address the intersection of these two life-threatening public health issues, federal legislation must be amended to increase clarity and standardize processes of enforcement. Thus, the purpose of this paper is to highlight the shortcomings among current IPV-related firearm legislation while recommending that further action be taken to amend these considerations. Specifically, the Strengthening Protections for Domestic Violence and Stalking Survivors Act of 2023 could account for the omitted considerations among current legislation. In turn, this will extend protections to more individuals and may prevent cases of firearm-related intimate partner violence.

## Keywords

Intimate Partner Violence • Gun Violence • Domestic Violence Legislation • Gun Control Policy • Statutes And Laws • Public Health

## Introduction

The convergence of intimate partner violence (IPV) and gun violence presents a dangerous intersection of two life-threatening public health issues, resulting in a dominant public health crisis.

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Approximately 25 million US adults have experienced firearm abuse by an intimate partner over their lifetime (Adhia et al., 2021; Paruk & Liddell-Quintyn, 2024). Not only is this stark prevalence concerning, but access to firearms in IPV situations also exacerbates injuries and death (Tobin-Tyler, 2023; Kafka et al., 2021). Greater than 50% of all intimate partner homicides involve a firearm (Tobin-Tyler, 2023; Zeoli et al., 2016). Each month, an average of 70 women are shot and killed by an intimate partner, while access to a gun makes it five times more likely that a woman will die at the hands of her abuser (Everytown, 2021; Tobin-Tyler, 2023).

The Lautenberg Amendment (18 U.S.C. 922) and the Bipartisan Safer Communities Act (BSCA)(S.2938) are federal pieces of legislation that prohibit purchase and possession of firearms by people who have been convicted of misdemeanor domestic violence offenses or who are subject to certain domestic violence protective orders (IFIP, 2024). The Lautenberg Amendment expanded restrictions in the Gun Control Act of 1968 to include misdemeanor crimes of domestic violence and broadened the definition of intimate partners to include other types of relationships than marriage (18 USC § 921(a)(32); Tobin-Tyler, 2023). The BSCA prohibits the purchase and possession of firearms for five years for people convicted of a misdemeanor crime of domestic violence against a victim with whom they have had a current or former dating relationship (Bipartisan Safer Communities Act, 2022). This aimed to address the loophole in the Lautenberg Amendment that did not include dating relationships in the definition of intimate partners.

The interpretation of federal legislation including the Lautenberg Amendment and the BSCA differs by state but aims to address the rising firearm-related deaths and the specific vulnerability of IPV survivors (Bipartisan Safer Communities Act, 2022). However, the laws omitted several considerations that allow for variations in state interpretation of the definition of domestic violence. Including, what crimes and relationship types qualify for domestic violence firearm restrictions. Positive outcomes will continue to be hindered without clearer legislation and standardized enforcement of domestic violence firearm relinquishment. Therefore, we aim to present information regarding current domestic violence federal legislation followed by the wide variability in how domestic violence is defined in various types of legislation and the loopholes this creates. Finally, we will conclude with a call to action and a potential solution of passing the Strengthening Protections for Domestic Violence and Stalking Survivors Act of 2023.

In this article, we use the terms “intimate partner violence” and “domestic violence” interchangeably, although there are differences in how these terms have been defined. Domestic violence is an older term that is typically used in legislation and involves acts of violence or aggression that occur between two or more people living in the same domestic situation (Patra et al., 2018). Intimate partner violence is a more recent term and generally includes acts of violence or aggression between two people who have a current or former intimate relationship (Breiding et al., 2015). Many people consider domestic violence as referring to intimate or dating partners thus we have decided to use these terms interchangeably as we examine relationship violence until there is a more inclusive term utilized by the general public (Women Against Abuse, n.d.).

## Domestic Violence Federal Legislation

### *The Lautenberg Amendment*

Ratified in 1996, the Lautenberg Amendment prohibits people from buying or owning guns if they have been convicted of specific misdemeanor domestic violence crimes (18 U.S.C. § 922(g)(8), (9)).

Additionally, this amendment applies to individuals who have restraining orders issued against them for acts of domestic violence (18 U.S.C. § 922(g)(8), (9)). Previously, the Gun Control Act of 1968 only warranted firearm prohibition if an individual was convicted of a felony domestic violence crime (Tobin-Tyler, 2023). The Lautenberg Amendment includes misdemeanor crimes if the crime involves the use or attempted use of physical force or threats with a deadly weapon (IFIP, 2024). The person convicted of domestic violence must also be a current or former guardian, parent, or spouse of the victim, share a child with the victim, live with the victim, or be similarly situated to a spouse, guardian, or parent of the victim (18 U.S.C. § 922(g)(8), (9)). This broadened the previous definition of intimate partners to include relationships beyond marriage (18 USC § 921(a)(32). There is evidence that the expansion of the Gun Control Act of 1968 led to fewer gun-related homicides among female intimate partners as well as domestic male children of the perpetrator (Raissan, 2016).

### *The Bipartisan Safer Communities Act*

In 2022, the BSCA was enacted which prohibits the purchase and possession of firearms for five years for people convicted of a misdemeanor crime of domestic violence (Bipartisan Safer Communities Act, 2022). If a person is convicted more than once of a misdemeanor crime of domestic violence against a current or former dating partner, then the restrictions on gun possession and purchases last indefinitely (IFIP, 2024). The BSCA extended the length of time for firearm relinquishment while also further expanding the definition of intimate partners to include dating relationships (Bipartisan Safer Communities Act, 2022). A dating relationship is considered a relationship between individuals who have or had a serious relationship of a romantic or intimate nature (18 USC § 921(a)(37)). The determining factors for what is considered dating include the length of the relationship, the nature of the relationship, and the type and frequency of interactions (18 USC § 921(a)(37)). This aimed to address the loophole in the Lautenberg Amendment that did not include dating relationships in the definition of intimate partners. Since 2023, over 10,000 firearm purchases have been prevented due to a misdemeanor crime of domestic violence conviction including crimes that took place among dating partners (U.S. Department of Justice, 2024).

### *Stalking Loophole*

There is a crucial link between IPV and stalking, and stalking is a key indicator of potential harm in the future (Monckton-Smith et al., 2017). 76% of women murdered and 85% who survived a murder attempt by a current or former intimate partner experienced stalking in the year preceding the murder (McFarlene et al., 1999). However, under federal law, those convicted of misdemeanor stalking offenses are not prohibited from accessing guns if the offense was not in the context of a domestic relationship (Giffords Law Center, 2024a). Issues may arise because the definition of a domestic relationship differs across states, thus stalking protections may also vary. Given that stalking has indications for future violence, the gap must be addressed in federal legislation to include stalking as well as clarifying and expanding the definition of a domestic relationship.

### *Dating Partner Loophole*

Domestic violence is not reserved solely for married couples. More than half of all intimate partner homicides are committed by dating partners (AbiNader et al., 2023). Prior to the BSCA in

2022, a gap in federal gun laws allowed a person who abused a dating partner to legally access guns even if they would be prohibited from doing so if they committed the same misdemeanor acts against a spouse, child, or other family or household member (Rochford et al., 2022). This is called the dating partner loophole that was only partially addressed with the BSCA. The BSCA seemingly addressed the dating partner loophole by expanding the federal definition of intimate partners to include dating relationships for misdemeanor domestic violence crimes (Tobin-Tyler, 2023). Whereas, in previous legislation, dating relationships were not included as a form of domestic violence regardless of the type of misdemeanor crime committed. Despite the inclusion of dating relationships, this inclusion only pertains to particular crimes of misdemeanor domestic violence. The definition of what is considered an intimate partner among other domestic violence crimes that are not misdemeanors continues to hinder inclusivity, especially among protective orders (Wilson et al., 2023). Federal law, including the BSCA and Lautenberg Amendment, does not prohibit dating partners from accessing firearms if they are subject to final domestic violence protective orders (Wilson et al., 2023). Spouses and co-habitants are prohibited from possessing firearms while final protective orders are issued but dating partners are left out (Wilson et al., 2023). This is particularly dangerous because final domestic violence protective orders are only ordered when a court has evidence that an individual poses a significant threat to the lives and safety of their victims or children of their victims (Wilson et al., 2023). Herein lies the loophole, since an individual that the survivor was formerly or is currently dating, but who does not share a child and has not lived together with the survivor are not covered (Wilson et al., 2023). This gap allows people who have a record of violence or abuse against a dating partner to lawfully keep and acquire guns.

## Variability in State Laws Regarding Firearm Restrictions

State law varies regarding the logistics of physically removing firearms, from whom they will remove them, and the duration of removal. Additionally, state-level legislation varies based on the types of relationships and crimes that warrant firearm relinquishment. Some states have laws that broaden relationship types to include more individuals in firearm relinquishment including California, Hawaii, Connecticut, and New York (Giffords Law Center, 2024b). The laws do this by allowing domestic violence criteria to expand to unmarried romantic relationships, family members, and in California there are no relational requirements for situations to be considered IPV (Giffords Law Center, 2024b). Even though the states that apply these laws to the fullest scope by expanding definitions experience the most effective outcomes with reductions in violence, not all states adopt this approach (Schiller & Sidorsky, 2022). Some states' definitions of IPV vary based on the type of crime committed. For example, Vermont law restricts possession of firearms to those who have committed violent crimes including domestic assault, stalking, and sexual assault (Giffords Law Center, 2024b). Domestic assault in Vermont's legislation only includes family and household members but misdemeanor-level stalking, sexual assault, and aggravated assault regardless of relationship type would trigger the prohibition. These differences in prohibitions are concerning because research suggests that broader restrictions are more impactful (Sivaraman et al., 2019). Additionally, states that elect to have stricter firearm prohibitions in their legislation are correlated with a lower rate of female intimate partner homicides (Sivaraman et al., 2019).

### *Protective Orders Versus Convicted Crimes*

Some laws prohibit those with a court-issued protective order from purchasing and possessing firearms. Many states have expanded laws to remove firearms from people when they become subject to a protective order related to domestic violence (Everytown, 2024). While others only authorize these firearm restrictions after a person has perpetrated and been convicted of domestic violence (Giffords Law Center, 2024a). This leaves out protective court orders including restraining orders for some cases. Among protective orders, what warrants firearm restrictions also differs. The lack of consensus on what warrants firearm restrictions is harmful and must be amended in federal legislation.

### *Relinquishment of Firearms*

In states that do allow for firearm restrictions with protective orders, some procedures exist that require firearms to be surrendered by individuals to law enforcement while others allow surrendering to designated third parties (Giffords Law Center, 2024a). Some states require the physical removal of firearms by law enforcement directly after domestic violence crimes and protective orders (Department of Justice, 2021). Others authorize but do not require judges to mandate that individuals surrender their firearms (Giffords Law Center, 2024a). This highlights the varying interpretations and evasion opportunities in some states that do not even mandate the removal of firearms. However, an analysis of data suggests that states that relinquished firearms from individuals with domestic violence-related restraining orders decreased firearm-related intimate partner homicides by 14% (Díez et al., 2017; Schiller & Sidorsky, 2022). States that do require proof of relinquishment among people subject to IPV-related restraining orders are linked to lower rates (9.7%) of intimate partner homicide (Díez et al., 2017). This variation among states may be a result of the lack of federal legislation on the mechanisms and processes to relinquish firearms.

### *The Duration of Removal*

The duration of firearm removal also varies greatly between states. Some states require that firearms be seized permanently by law enforcement, destroyed, or sold at public auction if they were threatened or used at the scene of a misdemeanor domestic violence incident (Legislative Service Bureau, 2024). Other states require that firearms only be held by law enforcement if they are needed as evidence of the misdemeanor domestic violence crime and must be released when proceedings are concluded (Giffords Law Center, 2024a). Twenty states permit law enforcement officers to remove firearms at the scene of the domestic violence incident (Giffords Law Center, 2024a). Again, these permissions vary by state including which firearms can be removed, the length of removal, and when removal takes place. Some of these interpretations stray away from federal legislation that prohibits the possession of firearms for five years after misdemeanor crimes (Bipartisan Safer Communities Act, 2022).

## **The Challenges in Prosecuting Domestic Violence Perpetrators**

In order to have legislation related to restricting firearm access to those who have perpetrated IPV, there must first be legal evidence that such events have occurred and been adjudicated. This



becomes a significant barrier to receiving such protection since it is important to highlight that such cases are underreported, difficult to disclose, difficult to prosecute, and may be dismissed in Court (Heron & Eisma, 2021). Survivors of IPV are typically in a position where they do not have the power to assert their needs and may fear that reporting such behaviors will result in more abuse. Federal legislation, including the BSCA, requires governmental involvement through protection orders or convictions to impose firearm restrictions (Bipartisan Safer Communities Act, 2022). However, this leaves out a large number of cases where either survivors are fearful of reporting or not enough evidence can be obtained for a conviction, and this allows abusers to continue to possess firearms (Heron & Eisma, 2021). Domestic violence survivors may have trouble fighting for justice and these clear loopholes allow for violent perpetrators to have access to deadly weapons. This is particularly concerning because research suggests that access to a firearm can heighten the possibility that IPV turns deadly (Hans et al., 2024).

## Conclusion

The tragic interconnectedness of gun violence and IPV warrants more attention. While federal legislation aims to restrict those convicted of domestic violence from possessing firearms, loopholes remain that undermine their efficacy. There is difficulty with cohesive solutions across states enforcing these laws due to a lack of clarity in federal legislation. Therefore, some states vaguely enforce these laws and as a result, legislation is far less stringent than at the federal level. A failure remains regarding a lack of addressing different methods of perpetration and forms of IPV. This includes stalking, the definition of domestic violence, the dating partner loophole, ways to relinquish firearms, and the duration of removal. The differing interpretations and implementation of these laws result in discrepant protection for survivors of violence as well as allowing those who have demonstrated violent behaviors to legally continue to possess firearms. This is why federal legislation must broaden the definition of domestic violence to include any type of relationship. It is important to clarify that domestic violence-related protective orders such as restraining orders and offenses related to stalking justify the relinquishment of firearms. Last, there must also be amendments related to who is to relinquish the firearms, when, and for how long.

One potential solution that could alleviate the burden of domestic violence is passing The Strengthening Protections for Domestic Violence and Stalking Survivors Act of 2023. If passed, this legislation would prevent individuals subject to final protective orders from possessing firearms (Wilson et al., 2023). In addition, it will update the definition of dating partners to individuals who had a relationship of a romantic or intimate nature regardless of when the relationship occurred (Wilson et al., 2023). This addresses both the dating partner loophole among final protective orders as well as expanding protections from the BSCA to include prior relationships. Modernizing the definition of dating partners is essential to ensuring that protections are reaching the appropriate populations. This act also expands the crimes related to stalking that warrant firearm prohibition at the federal level which narrows the stalking loophole. This act was introduced in both the House and Senate at the end of 2023, however, its status is still pending. Through this vital legislative reform, clarifications have the potential to unify and strengthen state interpretations. This, in turn, will help to address gaps and increase protections for millions of individuals.

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