



CHANGING SYSTEMS
TRANSFORMING LIVES



LIMITATIONS OF THE LAW

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Current law undoubtedly protects victims of domestic violence and prevents their offenders from possessing firearms in many cases, however, there are limitations to the federal, state, and tribal prohibitions in place that affect their ability to faultlessly prevent offenders from purchasing and possessing firearms.

Dating Violence and Stalking

While the legal definition of an “intimate partner” includes a current or former spouse, a parent of a child in common with the abuser, or an individual with whom the abuser does or has cohabited, persons in relationships that fall outside of the listed categories experience domestic violence as well. Currently, an individual who experiences dating violence or stalking is not protected by federal law (unless the individual either lives or lived with or has a child with their abuser), despite findings that indicate that the proportion of intimate homicides involving a boyfriend or girlfriend is increasing. As a result, many states have enacted laws expanding the scope of relationships subject to firearm purchaser prohibitions to address this gap in federal law.

Removing Firearms

Enforcing the removal of firearms already in the possession of an offender falls primarily on state and local law enforcement, which can present a number of challenges. The federal law does not ensure that guns an abuser possesses are removed following conviction for an act of domestic violence and state courts have no responsibility to enforce the removal of firearms, only to notify respondents that their access to firearms and ammunition may be restricted by federal and possibly state laws. As a result, many jurisdictions have no laws or policy directing the removal of firearms from domestic abusers. Even in jurisdictions where removal laws are in place, the implementation and enforcement of firearm removal tend to be lacking – it is not uncommon to hear of a court ordering the abuser to transfer firearms or ammunition to a third party, often a close friend or family member, which can lead to compliance problems.

Background Checks and Legal Databases

Performing background checks on those seeking to purchase a firearm may prevent some offenders, but placing the onus on states to report those who qualify as perpetrators of domestic violence to the proper databases has allowed some individuals to slide under the radar when attempting to purchase a weapon. Background checks conducted by federally licensed firearms dealers rely on state and local authorities to collect and submit complete records on misdemeanor convictions and protective orders to state and federal databases. Some states fail to enter the necessary domestic violence protective order information into the National Crime Information Center database in a timely manner, if at all, as it is not required by law to do so.

Simply gaining access to the federal and state legal databases can prove to be an issue. Currently, tribal governments, law enforcement, and courts do not have clear, easy access to

federal and state databases on prohibited individuals, nor an easy way to enter tribal perpetrators into federal and state databases. Despite the passage of the Tribal Law and Order Act of 2010, which mandated that the federal government provide access to federal databases, many tribes are still without direct access to the National Crime Information Center database. As tribes are still commonly barred from submitting data by state authorities, many have entered into agreements with local authorities to enter the relevant information into databases for them; however, many tribes have no involvement with federal or state databases, allowing some perpetrators to slip through the cracks.