

# SAFVIC ON THE SCENE

## DOMESTIC VIOLENCE & FIREARMS... A DEADLY COMBINATION

BY: NICOLE MARTINEZ, SAFVIC PROGRAM ANALYST

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### Women Killed in Texas by their Intimate Partner

**In 2005, 77 out of 143  
women were murdered  
with a gun or firearm.**

**In 2006, 76 out of 120  
women were murdered  
with a gun or firearm.**

This information was taken from  
the Texas Council on Family  
Violence (TCFV) website at  
[www.tcfv.org](http://www.tcfv.org).

Guns and domestic violence are a lethal combination, injuring and killing women every day. Firearms, especially handguns, are the weapon of choice for intimate partner homicide. In fact, more than three times as many women are murdered with guns used by their husbands or intimate acquaintances than are killed by strangers' guns, knives or other weapons combined. The Violence Policy Center produces an annual report, *When Men Murder Women*, detailing the reality of homicide committed against women. The 2005 report found that among homicides in which weapons could be identified, 52% (887 out of 1,713) of the female victims were killed with a gun. Of these women killed, 317 women were shot and killed by either their husband or intimate acquaintance during the course of an argument.<sup>1</sup> This illustrates how guns can escalate a domestic violence situation into domestic homicide. These statistics hold true in Texas as well. The Texas Council on Family Violence (TCFV) conducts research annually by tracking the women killed by their intimate partner in Texas. According to TCFV, murder by firearm was the cause of death for 63% of women killed by their intimate partners in 2006, and 53% in 2005.<sup>2</sup>

The mere presence of a firearm or possibility of obtaining one serves as an unspoken threat, making it difficult and more dangerous for a victim to leave the relationship. In response, state and federal legislation has been enacted over the years to provide some safety to those women who are in an abusive relationship. The Gun Control Act passed in 1968 was the first piece of federal legislation broadly regulating the firearm industry and firearms owners, as well as developing a list of persons prohibited from possessing a firearm. In 1994 Congress passed the Violent Crime Control Act, making it a federal offense to possess or receive a firearm while subject to a restraining order protecting an intimate partner or the child of an intimate partner (18 U.S.C. § 922 [g][8]). This statute was enacted along with the Violence Against Women Act (VAWA), which created federal crimes of domestic violence. Texas passed similar laws protecting victims of domestic violence, although the penalties are not as severe. Texas state law states it is a misdemeanor (punishable up to one year in jail and/or a \$4,000 fine) for an abuser to possess a firearm if there is a protective order in place (Tx Penal Code § 25.07 [a] and [g]). There are certain requirements a protective order must meet to qualify under federal law

(see *Featured Agency Article on page 2 for more information on federal firearm laws*). For example, the federal law includes a due process provision that excludes temporary restraining orders; only those orders issued after a hearing at which the individual had the opportunity to participate invoke the federal firearm exclusion.<sup>3</sup>

In 1996, the Lautenberg Amendment was added to the Gun Control Act making it a federal offense for offenders convicted of a qualifying misdemeanor crime of domestic violence to possess or receive a firearm or ammunition (18 U.S.C. § 922 [g][9]). This differs from other gun control legislation because it provides no exception for police or military personnel.<sup>4</sup> A Texas Protective Order states that a peace officer who is actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision may possess a firearm, but the officer can be subject to federal prosecution for possessing the firearm if the criteria for federal statutes are met. In Texas, if an abuser has been convicted of a misdemeanor crime of domestic violence and is within 5 years after release or parole, they are not allowed to possess a firearm (Tx Penal Code § 46.04 [b]).

A number of states have passed laws regarding confiscation of firearms allegedly used to perpetrate domestic violence, but Texas is not one of them.<sup>3</sup> Texas law enforcement officers are recommended to contact The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) local field offices to assist in such confiscation. The ATF and U.S. Attorney's Offices are responsible for investigating and prosecuting federal firearm crimes. These laws can not protect victims without the coordinated efforts of local law enforcement officers, federal agents, courts (prosecutors and judges), and victim advocates.

With gun control laws in effect protecting victims of domestic violence, one would wonder if there was a correlation between legislation and homicide rates among intimate partners. Vidgor and Mercy (2006) sought to answer this by conducting a study focusing on the impact of three types of state laws on intimate partner homicide. They focused on laws preventing those individuals subject to a current restraining order from owning or purchasing a fire-

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## FEATURED AGENCY: THE BUREAU OF ALCOHOL, TOBACCO, FIREARM, & EXPLOSIVES (ATF)

**Contact Your  
Local ATF  
Field Offices  
Today!**



Specific ATF offices  
and telephone  
numbers can be  
obtained at  
[www.atf.treas.gov](http://www.atf.treas.gov).

### ATF's Role in Combating Domestic Violence Firearms Violations

By: Special Agent Tom Crowley

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is the federal agency charged with administering and enforcing federal firearms and explosives laws and regulations. ATF is dedicated to reducing violent crime and protecting our nation, by working in partnerships with communities, industries, and law enforcement and public safety agencies through information sharing, training, research and the use of technology.

An example of such a partnership is the Project Safe Neighborhoods (PSN) initiative. PSN is a focused, national strategy committed to ensuring that every community actively combats the problem of gun violence through the vigorous enforcement of existing gun laws. This includes people illegally possessing firearms or ammunition, such as convicted felons, fugitives from justice and unlawful users of controlled substances.

In the late 1990's the Domestic Violence Offender Gun Ban was passed, which prohibits persons who have been convicted in any court of a qualifying Misdemeanor Crime of Domestic Violence (MCDV) from possessing firearms or ammunition. This prohibition also applies to federal, state, and local government employees in both their official and private capacities.

Violation of this prohibition is punishable by up to 10 years' imprisonment.

A qualifying MCDV is an offense that:

- Is a federal, state or local offense that is a misdemeanor under federal or state law; (regardless of the title of the offense).
- Has as an element the use or attempted use of physical force, or the threatened use of a deadly weapon; and
- At the time the MCDV was committed, the defendant was:
  - A current or former spouse, parent, or guardian of the victim;
  - A person with whom the victim shared a child in common;
  - A person who was cohabiting with or had cohabited with the victim as a spouse, parent or guardian; or,
  - A person who was or had been similarly situated to a spouse, parent, or guardian of the victim.

Additionally, federal law prohibits the possession of firearms or ammunition by persons subject to a qualifying protection order. Violation of this prohibition is an offense punishable by up to 10 years' imprisonment.

Generally, a defendant/respondent subject to a protection order that includes one element (indicated by bullet point) from each section listed below is covered by the federal firearms prohibition.

1. **HEARING**  
Defendant/Respondent received actual notice of the proceedings and had an opportunity to participate.
2. **INTIMATE PARTNER**  
Plaintiff/Petitioner is an intimate partner of the Defendant/Respondent,
  - a spouse of Defendant/Respondent
  - a former spouse of Defendant/Respondent
  - an individual who is a parent of a child of Defendant/Respondent
  - an individual who cohabitates or has cohabited with Defendant/Respondent
3. **RESTRAINS FUTURE CONDUCT**
  - The order restrains Defendant/Respondent from harassing, stalking, or threatening the intimate partner, child of the Defendant/Respondent or child of the Defendant/Respondent's intimate partner; or
  - The order restrains Defendant/Respondent from engaging in other conduct that would place the intimate partner in reasonable fear of bodily injury to the partner or child.
4. **CREDIBLE THREAT OR PHYSICAL FORCE**
  - The order includes a finding that Defendant/Respondent is a

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### 6th Annual SAFVIC Instructor Summit

*We would like to thank all the instructors who attended this year's Instructor Summit in San Antonio!*

*We hope everyone had the opportunity to meet each other, exchange stories and techniques, and take an active role in the growth of SAFVIC.*

*The SAFVIC Team sincerely appreciates your dedication and hard work!*

## SAFVIC INSTRUCTOR OF THE YEAR

Our recipient of this year's SAFVIC Instructor of the Year Award is Don Gallion! Don has been a SAFVIC Instructor since April 2004, he is a SAFVIC for Cyber Crimes Instructor, and he has over 27 years of law enforcement experience. During employment with the San Angelo Police Department, he has held assignments with the Patrol Division as a Field Training Officer, the Crime Scene Investigation Unit as an Investigator, and C.I.D. – specializing as a Child Abuse/Sex Crimes Detective. In 2005, he accepted a new assignment as a Training Specialist for his department – affording him the opportunity to facilitate instruction in Child Abuse, Domestic Violence, Sexual Assault Investigations, and Investigative Interview Techniques. In 2006, he was recognized as his department's Support Services "Officer of the Year." Don is also a Texas State registered trainer with the Concho Valley Rape Crisis Center, serves as a member on the Rape Crisis Board of Directors, a Law Enforcement Instructor for the Concho Valley Regional Law Enforcement Academy, a Federal Law Enforcement Training Center S.T.A.R. Instructor, and a certified instructor in Domestic Violence with the Department of Homeland Security

Don wrote the cover story for the September 2007 issue of *SAFVIC on the SCENE* in which he addressed law enforcement's lack of understanding of what a sexual assault victim endures during a SANE exam. This observation led him to produce a 22 minute video entitled *Behind the Door: A Look Inside a S.A.N.E. exam*. He has also written and presents an 8-hour course entitled *Sexual Assault Response*. During his career he's received numerous letters of commendation from criminal justice organizations, law enforcement agencies, and the community alike.



**In recognition of his loyal service, dedication, & commitment to the SAFVIC Program,  
we would like to congratulate Don Gallion on receiving this year's  
SAFVIC Instructor of the Year Award!**

## SAVE THE DATE...

The 6<sup>th</sup> Annual Facing Family Violence Conference is designed for professionals working in criminal justice, social services, healthcare and faith-based organizations. The speaker lineup includes nationally known polygamy expert Laura Chapman addressing abuse in the polygamist community and Michael J. Wagner, Ph.D., Colonel (Retired), speaking on domestic violence after war.

Other topics include:

- "Animal Abuse and Family Violence" - Catherine A. Faver, Ph.D., LMSE and Alonzo M. Cavazos, Ed.D, LCSW
- "Domestic Violence and Crimes Against Immigrants" Linda A. Brandmiller, JD, CHES
- "The Six ABC's of Child Abuse: Bruises, Bones, Burns, Bellies, Brains and Bums" Linda Lewis, MSN, C-FNP
- "Prosecuting High-Profile Cases with Manipulative Defendants and Uncooperative Victims" Barnett Walker, JD; Bob Fine Ms, LPC; Sarah Feuerbacher, PhD., LCSW
- "When Tragedy Strikes: The Impact of Homicide and Violence on Families" Barbara Rubel, MA, BCETS, CBS, CPBC

To view the entire list of presenters and topics, as well as download a registration form, visit [www.cccfv.org](http://www.cccfv.org). Registration is \$120 for the full conference and includes continental breakfast, lunch and continuing education credits for professionals. Continuing education credits will be offered. For more information, please contact, Ellen L. Wells, Conference Chair at 972-981-3948.



### 6th Annual Facing Family Violence Conference

October 23 - 24, 2008

at the

**Collin County Spring Creek Campus Conference Center**

2800 E. Spring Creek Parkway  
Plano, TX 75074

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arm, laws that prevent individuals who have been convicted of a domestic violence misdemeanor from owning or purchasing a firearm, and laws that allow law enforcement officers to confiscate firearms at the scene of an alleged domestic violence incident. They found that limiting firearms access reduces the domestic homicide rate, with rates decreasing by 8% after the enactment of legislation, while restraining order laws only impacted rates in states that provided adequate background checks and those that kept qualifying domestic violence offenders from possessing a gun altogether.<sup>5</sup> A follow-up study by Bridges et al, examined 47 states' domestic violence legislation to determine if there was a correlation between state domestic violence laws and the rates of intimate partner and family homicide. The family homicide rate decreased across all 47 states as the number of states restricting firearms during a restraining order increased. This suggests that perhaps limiting firearms availability once a restraining order has been served may help to reduce family homicide rates.<sup>6</sup> If enforced, such laws restricting firearm posses-

sion and access can dramatically reduce domestic homicide.<sup>4</sup>

When dealing with domestic violence situations in Texas, officers should be aware that the mere presence of a gun can turn quickly into a homicide. Two in every five adults (39%) live in households where one or more guns are owned.<sup>7</sup> There are several ways an officer can intervene in advance and thus prevent a domestic homicide. At initial contact with a domestic violence victim ask both the victim and the suspect about possession of and access to firearms. Make appropriate notations in police reports and try to include a space for firearms information, including detailed descriptions of each firearm. This information can be utilized when a protective order is served and during prosecution of abusive behaviors. Since Texas law does not authorize officers to confiscate firearms from offenders, it is crucial that the local ATF field offices have been identified and are notified.

Various databases give officers access to check if a person is prohibited from possessing firearms or ammunition. The Texas Criminal Justice Information System (CJIS) is comprised of

the Department of Public Safety (DPS) Computerized Criminal History (CCH) system and the Texas Department of Criminal Justice (TDCJ) Corrections Tracking System (CTS). CCH has flagged records for domestic violence misdemeanor convictions. These records include fingerprints, personal descriptors and history of arrests, prosecutions, court dispositions, and sentences to corrections. The National Instant Criminal Background Check System (NICS) is a computer system used to conduct Brady background checks. Once an Order of Protection is passed to the FBI National Crime Information Center (NCIC), criminal justice agencies throughout the country have access to information about that order. This greatly increases the ability of law enforcement agencies nationwide to properly respond to allegations of violations. Only served orders are passed to NCIC.<sup>8</sup>

Women face a greater threat from someone they know, most often a spouse or intimate acquaintance, than from a stranger who is armed with a gun.<sup>1</sup> Working closely with federal agents, the courts (prosecutors

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For more information go to <http://dvam.vawnet.org/>

## **NOTICE:** **CHANGE of DATE**

The next SAFVIC Instructor Course will be held on **February 9th - 13th, 2009** at TMPA Training Facility 6200 La Calma Drive, Ste. 200 Austin, Texas 78752.

For more information and to obtain an application, please call 1-800-848-2088 or visit [www.safvic.org](http://www.safvic.org).



*"Piecing together the tools needed to effectively investigate and prevent sexual assault and family violence."*

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[www.safvic.org](http://www.safvic.org)

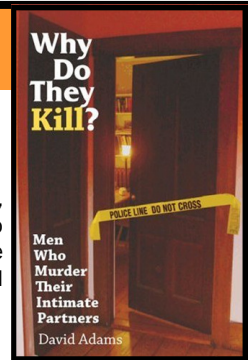
## FEATURED BOOK:

### Why do They Kill? Men Who Murder Their Intimate Partners

By: David Adams

David Adams, a licensed psychologist, is co-founder and co-director of Emerge, established in 1977, the first counseling program in the nation for men who abused women. He has conducted trainings for social service and criminal justice professionals in 38 states and ten countries. Adams is Director of the National Domestic Violence Danger Assessment Training Project.

Moving backwards from the murders they committed through their adult lives, relationship histories, and their childhoods, Adams sought to understand what motivates the men to kill. The patterns he found reveal that the murders were neither impulsive crimes of passion nor were they indiscriminate. "Why Do They Kill?" is the first book to profile different types of wife killers, and to examine the courtship patterns of abusive men. Adams shows that wife murders are not, for the most part, "crimes of passion," but culminations of lifelong predisposing factors of the men who murder, and that many elements of their crimes are foretold by their past behavior in intimate relationships. Key turning points of these relationships include the first emergence of the man's violence, his blaming of the victim, her attempts to resist, his escalation, her attempts to end the relationship, and his punishment for her defiance. Critical perspective on the men's accounts comes from interviews with victims of attempted homicide (standing in for the murder victims) who survived shootings, stabbings, and strangulation. These women detail their partners' escalating patterns of child abuse, sexual violence, terroristic threats, and stalking. He concludes with recommendations concerning restricting access to guns, conducting more comprehensive threat assessment and risk management, making the criminal justice system more victim friendly, improving community responses, educating young people about abusive behavior, and creating more options for battered women.



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and judges), and victim advocates, law enforcement officers can initiate a coordinated policy of proactively enforcing firearm prohibitions in their communities. It is imperative that all agencies involved develop the capacity to work together. This collaborated effort can be the difference between life and death.

**References:**

<sup>1</sup> Violence Policy Center (September 2007). *When Men Murder Women: An Analysis of 2005*

(Continued from page 2)

credible threat to the physical safety of the intimate partner or child; or

- The order, by its terms, explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury.

Information identifying an offense as an MCDV is used by ATF, federal prosecutors, and the FBI's National Instant Criminal Background Check System (NICS). ATF uses the information in investigations of persons prohibited from receiving or possessing firearms under the Gun Control Act (GCA), firearms licensing matters, and the administrative forfeiture of firearms by prohibited persons. Federal

*Homicide Data*

<sup>2</sup> Women Killed in Texas, Taken from the Texas Council on Family Violence (TCFV) website at <http://www.tcfv.org/resources/abuse-in-texas/> (Retrieved on August 9, 2008).

<sup>3</sup> Gun Laws in Texas, Taken from Women's Law website at [http://www.womenslaw.org/laws\\_state\\_type.php?id=302&state\\_code=TX&open\\_id=all](http://www.womenslaw.org/laws_state_type.php?id=302&state_code=TX&open_id=all) (Retrieved on August 9, 2008).

<sup>4</sup> Office of Violence Against Women and the National Center on Full Faith and Credit (September 2006). *Enforcing Domestic Violence Firearm Prohibitions: A Report on Promising Practices*, Grant #: 96-VF-GX-K005.

<sup>5</sup> Elizabeth Richardson Vigdor, and James A. Mercy (June 2006). *Do Laws Restricting Access to Firearms by Domestic Violence Offenders Prevent*

*Intimate Partner Homicide?* Evaluation Review: Volume 30 No. 3: 313-346. DOI:10.1177/0193841X06287307.

<sup>6</sup> Bridges, Stephen F., Tatum, Kimberly M., and Kunselman, Julie C., (March 2008). *Does Violence Statutes and Rates of Intimate Partner Homicide: A Research Note*. Evaluation Review: Volume 19 No. 1:117-130. DOI:10.1177/0887403407309038.

<sup>7</sup> Taylor, Humphrey, (2001) Gun Ownership: Two in Five Americans Live in Gun-Ownning Households, Taken from Harris Interactive Inc. website at [http://www.harrisinteractive.com/harris\\_poll/index.asp?PID=234](http://www.harrisinteractive.com/harris_poll/index.asp?PID=234) (Retrieved on August 9, 2008).

<sup>8</sup> Texas Department of Public Safety (August 2003) A Brief Guide to the Texas Computerized Criminal History System (CCH) at [http://www.txdps.state.tx.us/administration/crime\\_records/pages/index.htm](http://www.txdps.state.tx.us/administration/crime_records/pages/index.htm) (Retrieved on August 9, 2008).

prosecutors use the information in prosecutions of prohibited persons possessing firearms and in civil and criminal firearm forfeitures under the GCA. NICS uses the information when making firearm eligibility determinations for persons seeking to acquire a firearm from a Federal firearms licensee (FFL). A NICS check includes a check of automated databases and, in cases where additional information is needed, follow-up requests to agencies, such as police, prosecutors or the courts, that may have relevant information.

Therefore, in addition to ensuring that necessary information about domestic violence offenses is included in the records of the convicting court, investigators, prosecutors, court personnel, and victims' advocates should work with the agencies responsible for updating that information in the auto-

mated databases within their state and at the FBI, so that information is available to NICS through its automated check. This will allow NICS to immediately determine if the MCDV prohibitor applies, lessening the likelihood that (1) a gun will be transferred to a prohibited person because of delays in getting the information from the court or (2) a lawful transaction will be delayed because of the need to do additional research on the offense. The FBI can help identify the responsible agencies and relevant databases.

ATF has the primary responsibility for enforcing the GCA prohibitions on possession of firearms. Further information can be found at the ATF Web site, [www.atf.gov](http://www.atf.gov), and questions can be directed to your local ATF office by calling (800) 800-3855 or to the ATF Firearms Program Division at (202) 648-7090.