

RECOMMENDED ACTION MEMO

Agency: Department of Justice, Executive Office of United States Attorneys (EOUSA)
Topic: Domestic Violence Specialists
Date: November 2020

Recommendation: Ensure there is a domestic violence specialist in each of DOJ's 94 US Attorney's Offices.

I. Summary

Description of recommended executive action

Every year, millions of Americans report intimate partner violence (IPV).¹ Firearm access makes this violence particularly deadly, posing a serious threat to victims: domestic violence assaults involving a gun are 12 times more likely to result in death than those involving other weapons or bodily force.² While domestic violence touches all groups, 85% of IPV victims are women.³ As a result, an abuser's mere access to a firearm makes it five times more likely that a woman will be killed.⁴

In order to promote a coordinated, multidisciplinary response to domestic violence, the next administration should ensure there is a domestic violence specialist in each of the 94 USAAttorney's Offices (USAOs) to serve as an assistant United States attorney (AUSA). This domestic violence specialist would support the adoption of trauma-informed prosecutorial techniques; support local non-profit organizations, advocacy groups, and state and municipal agencies in accessing federal resources for survivors; and ensure federal prosecutions are targeted towards the most violent domestic violence offenders.

Overview of process and enactment

Under 28 U.S.C. § 543(a), the US attorney general may appoint attorneys to assist US attorneys (i.e. AUSAs) "when the public interest so requires." Under Department of Justice (DOJ) regulations, the authority to appoint AUSAs has been delegated to the director of the Office of Attorney Recruitment and Management (OARM).⁵ Individual US attorneys are authorized to recruit, screen, and submit nominations of the best-qualified candidates to serve as AUSAs; however, these appointments must be approved by the OARM.⁶ As such, appointing

¹ Centers for Disease Control and Prevention, "Preventing Intimate Partner Violence," 2018, <https://www.cdc.gov/violenceprevention/pdf/IPV-Factsheet.pdf>.

² Linda E. Saltzman, "Weapon Involvement and Injury Outcomes in Family and Intimate Assaults," *JAMA* 267, no. 22 (1992): 3043–3047.

³ Emory University School of Medicine, "Domestic Violence/Intimate Partner Violence Facts," accessed October 1, 2020, <http://psychiatry.emory.edu/niaproject/resources/dv-facts.html>.

⁴ J.C. Campbell, "Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study," *American Journal of Public Health* 93, no.7 (2003): 1089–1097.

⁵ U.S. Department of Justice, "Justice Manual: 3-4.300(A)," Accessed October 1, 2020, <https://www.justice.gov/jm/jm-3-4000-personnel-management>.

⁶ *Id.* at 3-4.213.

domestic violence specialists is within the authority of the DOJ, and the agency may use existing funding to carry out such appointments.⁷ To effectuate these appointments, the OARM and the Executive Office of United States Attorneys (EOUSA) should direct all individual USAOs that do not currently employ a domestic violence specialist as an AUSA to identify existing budgetary authority and use it to hire a domestic violence specialist to fill an AUSA position, as such positions become available.

II. Current state

Scope of domestic violence in the United States

In the US, more than 10 million adults experience domestic violence annually.⁸ While domestic violence touches all groups, 85% of IPV victims are women,⁹ and about one in four women in the US report experiencing some form of sexual or physical violence or stalking by an intimate partner throughout their lifetime.¹⁰

The biggest definable group of female murder victims consists of those killed by intimate partners: one study found that between 1976 and 2005, 30% of female murder victims were killed by intimate partners, while only 5% of male murder victims were killed by an intimate partner.¹¹ More recent data confirms this fact: between 2003 and 2012, 33.7% of homicides of women resulted from intimate partner violence.¹²

Firearm access makes domestic violence far more lethal. Domestic violence assaults involving a gun are 12 times more likely to result in death than those involving other weapons or bodily force.¹³ As a result, an abuser's mere access to a firearm makes it five times more likely that a woman will be killed.¹⁴ The scope of this violence is enormous: nearly one million women alive today in the US have reported being shot or shot at by intimate partners, and 4.5 million women have reported being threatened with a gun.¹⁵

⁷ See e.g., U.S. Department of Justice, "FY21 Request At A Glance - U.S. Attorneys," 2020, <https://www.justice.gov/doj/page/file/1246611/download>.

⁸ National Coalition Against Domestic Violence, "Domestic Violence Fact Sheet," accessed October 1, 2020, https://assets.speakcdn.com/assets/2497/domestic_violence-2020080709350855.pdf?1596828650457.

⁹ Emory, *supra* note 3.

¹⁰ Sharon G. Smith et al., "National Intimate Partner and Sexual Violence Survey 2015 Data Brief – Updated Release," National Center for Injury Prevention and Control, November 2018, <https://www.cdc.gov/violenceprevention/pdf/2015data-brief508.pdf>.

¹¹ Jacqueline Campbell, et al., "Intimate Partner Homicide: Review and Implications of Research and Policy," *Trauma, Violence & Abuse* Vol. 8, no. 3 (2007), 246.

¹² Arkadi Gerney and Chelsea Parsons, "Women Under the Gun," Center for American Progress, June 18, 2014, <https://www.americanprogress.org/issues/guns-crime/reports/2014/06/18/91998/women-under-the-gun/>.

¹³ Linda E. Saltzman, et al., "Weapon Involvement and Injury Outcomes in Family and Intimate Assaults," *JAMA* 267, no. 22 (1992): 3043–3047.

¹⁴ Campbell, *supra* note 4.

¹⁵ Everytown for Gun Safety, "Guns and Violence Against Women," October 17, 2019, 4, <https://everytownresearch.org/report/guns-and-violence-against-women-americas-uniquely-lethal-intimate-partner-violence-problem/>.

With our high rates of domestic violence-related gun violence, the US is the most dangerous country in the developed world when it comes to women and guns. Women in the US are 21 times more likely to be killed with a gun than women in other high-income countries.¹⁶

The COVID-19 pandemic has accelerated these devastating trends. According to the Center for American Progress, “stay-at-home orders essential to slowing the spread of the virus, coupled with the economic and health stressors caused by the pandemic, have forced [domestic violence] survivors already at risk of domestic abuse into even more vulnerable and dangerous positions.”¹⁷ While the piecemeal nature of data reporting by states and localities makes it difficult to paint an accurate picture of the prevalence and severity of IPV overall, available fragmented data from counties across the country indicate that almost every state has reported increases in IPV.¹⁸

Despite the prevalence of domestic violence in the US, the criminal justice system’s response to domestic violence is significantly lacking. Survivors are often re-traumatized through their experiences in legal proceedings, and many choose not to report crimes, due to fear of retaliation from abusers or doubts about the legal system’s effectiveness.

Federal resources and programs

Much of the progress made to address the needs of domestic violence survivors over the past 25 years has focused on building a network of national, state, and local programs and services intended to prevent, mitigate, and respond to domestic violence.¹⁹ This infrastructure—made up of elements such as crisis hotlines, shelters, domestic violence programs, and state, local, and tribal law enforcement—has been bolstered by a series of federal laws, such as the Violence Against Women Act (VAWA), which first passed in 1994 and was reauthorized in 2000, 2005, and 2013.

Among other things, the VAWA has enhanced investigations and prosecutions of sex offenses; provided for a number of grant programs to address the issue of violence against women from a variety of angles, including law enforcement, public and private entities and service providers, and victims of crime; and established immigration provisions for abused immigrants.²⁰

The Office on Violence Against Women (OVW) administers the majority of VAWA-authorized programs, while other federal agencies, including the Centers for Disease Control and Prevention (CDC) and the Office of Justice Programs (OJP), also manage VAWA programs. Since its creation in 1995 and through fiscal year 2018, the OVW has awarded more than \$8 billion in grants and cooperative agreements to state, tribal, and local governments, nonprofit

¹⁶ Erin Grinshteyn and David Hemenway, “Violent Death Rates in the US Compared to Those of the Other High-income Countries,” *Preventive Medicine* 123 (2019): 20–26.

¹⁷ Osub Ahmed and Robin Bleiweis, “Ensuring Domestic Violence Survivors’ Safety,” Center for American Progress, August 10, 2020, <https://www.americanprogress.org/issues/women/reports/2020/08/10/489068/ensuring-domestic-violence-survivors-safety/>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Congressional Research Service, “The Violence Against Women Act (VAWA): Historical Overview, Funding, and Reauthorization,” April 23, 2019, <https://fas.org/sqp/crs/misc/R45410.pdf>.

organizations, and universities.²¹ In fiscal year 2019, approximately \$559 million was appropriated for VAWA-authorized programs administered by the OVW, OJP, and CDC. While several extensions of VAWA were provided through fiscal year 2019 continuing appropriations, authorizations for appropriations for all VAWA programs have since expired.²²

In April 2019, the US House Of Representatives passed the Violence Against Women Reauthorization Act of 2019 (H.R. 1585).²³ In addition to reauthorizing the programs noted above, the legislation would explicitly empower the attorney general to appoint “special assistant United States attorneys for the purpose of prosecuting violations” of the Gun Control Act’s (GCA) domestic violence-related gun-possession prohibitors (discussed below).

Federal domestic violence prosecutions

Federal prosecutions for domestic-violence crimes are extremely rare. While statistics are limited, a Bureau of Justice Statistics (BJS) study from 2005 found that between 2000 and 2002, individuals suspected of domestic-violence crimes comprised only 4% of the 18,653 violent crime suspects referred to US attorneys.²⁴

Federal prosecutions are also extremely rare for domestic-violence-related gun crimes. From 2008 to 2012, only 244 individuals with prior domestic violence convictions were prosecuted under federal law for unlawful firearms possession.²⁵ Although that number increased to 418 from 2013 to 2017, the vast majority of domestic violence crimes are still prosecuted at the state and local levels.²⁶

At the federal level, there are two statutes under which domestic violence crimes are predominately prosecuted: VAWA and the Gun Control Act (GCA).

VAWA, *inter alia*, makes it a federal crime to:

- cross state lines or enter or leave Indian country and physically injure an “intimate partner”²⁷
- cross state lines to stalk or harass or to stalk or harass within the maritime or territorial lands of the United States, including military bases and Indian country²⁸
- cross state lines, or enter or leave Indian country and violate a qualifying protection order²⁹

Amended in 1994 and 1996, the GCA makes it a federal crime to:

²¹ *Id.*

²² *Id.*

²³ Violence Against Women Reauthorization Act of 2019, H.R.1585, 116th Cong. (2019).

²⁴ Matthew R. Durose, et. al, “Family Violence Statistics,” Bureau of Justice Statistics, June 2005, 2, <https://www.bjs.gov/content/pub/pdf/fvs07.pdf>.

²⁵ TracReports, “Federal Weapons Prosecutions Rise for Third Consecutive Year,” November 29, 2017, <https://trac.syr.edu/tracreports/crim/492/>.

²⁶ *Id.*

²⁷ 18 U.S.C. § 2261 (a)(1).

²⁸ 18 U.S.C. § 2261A.

²⁹ 18 U.S.C. § 2262 (a)(1).

- possess a firearm and/or ammunition while subject to a qualifying protection order³⁰
- possess a firearm and/or ammunition after a conviction of a qualifying misdemeanor crime of domestic violence³¹
- possess a firearm and/or ammunition after a conviction of a felony³²

US Attorneys' Offices are responsible for prosecutions arising under these statutes. Currently, there are 94 US attorneys: one for each of the 94 federal judicial districts. In addition to their main offices, many US attorneys maintain smaller satellite offices throughout their districts. US attorneys are appointed by the president and confirmed by the Senate, and they serve terms of four years or at the president's discretion. While US attorneys are political appointees, the assistants, by law, hold non-partisan jobs.

Each USAO consists of two major divisions: criminal and civil. The criminal division, which is significantly larger than the civil division in most offices, prosecutes violations of the federal criminal laws, such as organized crime, drug trafficking, political corruption, tax evasion, fraud and other financial crimes, bank robbery, cybercrime, human trafficking, and civil rights offenses. Many criminal divisions have specialized units or sections within them, while in others, criminal AUSAs are generalists.

Several criminal divisions have a specific section or unit that focuses on sex offenses and domestic violence. For example, the US attorney for the District of Columbia operates a "Sex Offense and Domestic Violence Section."³³ The section is staffed with four supervisors (a chief and three deputy chiefs), and a large number of highly trained prosecutors who handle misdemeanor and felony cases involving the above crimes. The Sex Offense and Domestic Violence Section assistant United States attorneys are supported by victim-witness assistance advocates and two child interview specialists who have vast expertise in the areas of domestic violence, child abuse and sexual assault, along with paralegals and legal assistants.

Trump administration efforts

In June 2019, Attorney General William Barr established a working group of US attorneys focused on prosecuting domestic abusers for illegal firearms possession.³⁴ The Domestic Violence Working Group consists of nine US attorneys from across the country.³⁵ The group shares best practices for prosecuting federal domestic violence crimes and provides guidance for how to collaborate with local law enforcement agencies and nonprofits.

Erin Nealy Cox, US attorney for the Northern District of Texas, chairs the working group. Her office leads the country in domestic violence prosecutions.³⁶ In 2018, Cox's office prosecuted 23

³⁰ 18 U.S.C. 922(g)(8).

³¹ 18 U.S.C. 922(g)(9).

³² 18 U.S.C. 922(g)(1).

³³ U.S. Attorney's Office for the District of Columbia, "Sex Offense and Domestic Violence Section," July 17, 2020, <https://www.justice.gov/usao-dc/superior-court/sex-offense-domestic-violence>.

³⁴ Kerry Shaw, "New DOJ Effort Targets Domestic Abusers," The Trace, June 11, 2019, <https://www.thetrace.org/2019/06/doj-us-attorneys-domestic-violence-guns/>.

³⁵ Id.

³⁶ Id.

people with prior misdemeanor domestic violence convictions.³⁷ Just four years earlier, only 23 individuals in the entire country were prosecuted under the same federal statute.³⁸

Obama administration efforts

Among other efforts to combat violence against women, the Obama administration launched the Sexual Assault Demonstration Initiative (SADI) to expand victims' services and build organizational capacity in six cities throughout the country.³⁹ The four-year program aimed to identify gaps in resources for survivors of domestic violence and sexual assault, devise site-specific solutions, and implement enhanced services at the local level.⁴⁰

The program has continued under the Trump administration, and participating sites are eligible to receive up to \$450,000 in funding over three years. Organizations selected to participate in the initiative also receive technical assistance provided by the National Resource Sharing Project and the National Sexual Violence Resource Center.

III. Proposed action

Substance of proposed action

In order to promote a coordinated, multidisciplinary response to domestic violence, the next administration should appoint a domestic violence specialist in each of the 94 USAOs to serve as an AUSA. The domestic violence specialist would be charged with improving the criminal justice system's overall response to domestic violence crimes in their jurisdiction.

In particular, the domestic violence specialist would have the following responsibilities.

- Support the adoption of trauma-informed prosecutorial and law enforcement practices at the federal, state, and local level. The domestic violence specialist would work with attorneys within their jurisdiction—including both within their own US Attorney Office and by partnering with state and local prosecutors and law enforcement—to implement evidence-based or promising policies and practices to incorporate trauma-informed techniques designed to: (a) prevent re-traumatization of the victim, (b) ensure that individuals use evidence-based practices to respond to and investigate cases of domestic violence, dating violence, sexual assault, and stalking, (c) improve communication between victims and law enforcement officers in an effort to increase the likelihood of the successful investigation and prosecution of the reported crime in a manner that protects the victim to the greatest extent possible, and (d) increase collaboration among stakeholders who are part of the coordinated community response to domestic violence, dating violence, sexual assault, and stalking.

³⁷ *Id.*

³⁸ *Id.*

³⁹ The White House, "The Administration's Record on Violence Against Women," accessed October 1, 2020, <https://obamawhitehouse.archives.gov/1is2many/about/federal-efforts>.

⁴⁰ Stephanie M. Townsend, "Sexual Assault Demonstration Initiative: Final Report," Sexual Assault Demonstration Initiative, January 6, 2017, <https://www.nsvrc.org/sites/default/files/2017-09/sadi-finalreportfinal508.pdf>.

- Work with local law enforcement agencies to develop and implement policies and procedures regarding Extreme Risk Protection Orders (ERPOs). Nineteen states and the District of Columbia currently have ERPO laws.⁴¹ These laws create a process by which families, household members, or law enforcement officers can petition a court to temporarily restrict a person’s access to firearms. This tool saves lives by allowing the people who are most likely to notice when a loved one or community member becomes a danger to take concrete steps to disarm them. The domestic violence specialist would work with local law enforcement agencies in their jurisdiction to develop and implement procedures, protocols, or training to assist in the implementation of ERPO laws, and help ensure the lawful recovery and storage of any dangerous weapon from an individual subject to an ERPO.
- Work with federal agencies and local advocates to increase outreach to populations experiencing domestic violence but not currently accessing services. The domestic violence specialist would build strong relationships with advocates to develop a deep understanding of the particular needs in their jurisdiction. Using this knowledge, the specialist should work with state and local agencies and nonprofits to identify federal resources available to fill service gaps for victims. In particular, in coordination with the DOJ’s Office for Victims of Crime and the OVW, the specialist would work with localities to best utilize grant programs such as the following.
 - **The Improving Criminal Justice Responses to Sexual Assault, Domestic Violence, Dating Violence, and Stalking grant program (ICJR program).**⁴² The ICJR Program is designed to encourage partnerships among state, local, and tribal governments, courts, victim service providers, coalitions and rape crisis centers to ensure that sexual assault, domestic violence, dating violence, and stalking are treated seriously, requiring the coordinated involvement of the entire criminal justice system and community-based victim service providers. The ICJR Program challenges communities to work collaboratively to identify problems and share ideas that will result in effective responses to ensure victim safety and offender accountability.
 - **Sexual Assault Services Program (SASP) Formula grants.**⁴³ These grants are the first federal funds solely dedicated to the provision of direct intervention and related assistance for sexual assault victims. SASP directs grant dollars to states and territories to assist them in supporting rape crisis centers, and other nonprofit organizations or tribal programs that provide services, direct intervention, and related assistance to victims.
 - **STOP Violence Against Women Formula grants.**⁴⁴ STOP grants enhance the capacity of local communities to develop and strengthen effective law enforcement and prosecution strategies to combat violent crimes against women, and to develop and strengthen victim services. As a condition of this funding, VAWA requires states and local governments to certify that their judicial

⁴¹ Giffords Law Center, “Extreme Risk Protection Orders,” accessed October 1, 2020,

<https://lawcenter.giffords.org/gun-laws/policy-areas/who-can-have-a-gun/extreme-risk-protection-orders/>.

⁴² 34 U.S.C. §§ 10461-10465.

⁴³ 42 U.S.C. §14043(g).

⁴⁴ 34 U.S.C § 10441.

administrative policies and practices include notification to domestic violence offenders of both federal firearm prohibitions mentioned above and any applicable related federal, state, or local laws.⁴⁵ The law also requires coordination and collaboration with federal, state, and local entities engaged in violence against women activities.⁴⁶

- **Grants for Outreach and Services to Underserved Populations (Underserved program).**⁴⁷ The Underserved program supports the development and implementation of strategies targeted at adult or youth victims of sexual assault, domestic violence, dating violence, or stalking in underserved populations; and victim services to meet the needs of such populations. Eligible applicants include nonprofit organizations that serve populations traditionally underserved due to geographic location, religion, sexual orientation, gender identity, race and ethnicity, and special needs (such as language barriers, disabilities, legal status, or age).
- **Legal Assistance for Victims (LAV) grants.**⁴⁸ The LAV program strengthens civil and criminal legal assistance for survivors of domestic violence, dating violence, sexual assault, and stalking. These grants support survivors who are seeking legal relief in matters relating to or arising out of abuse or violence. Eligible applicants include private nonprofit entities; territorial organizations; Indian tribal governments and tribal organizations; and publicly funded organizations not acting in a governmental capacity, such as law schools.
- Ensure survivor supports are fully accessible to all survivors. Given that survivors represent all gender identities and sexual orientations, and that LGBTQ people face disproportionately high rates of intimate partner violence, the DV specialist would work to ensure that DV programs and support services are free of discrimination.
- Prioritize prosecutions under 18 U.S.C. 922(g)(8) and (9). People who have been convicted of domestic violence crimes tend to be high-risk offenders. Prosecuting these individuals for illegal firearms possession could prevent other forms of violent crime, such as homicides and mass shootings. An analysis of 749 mass shootings between 2004 and 2019 found that nearly 60% were either domestic violence attacks, or committed by men with histories of domestic violence.⁴⁹ The domestic violence specialist would help USAOs target prosecutions under 18 U.S.C. 922(g)(8) and (9) to the most violent offenders. The specialist would also help ensure that those convicted of domestic violence crimes or are subject to protective orders relinquish their firearms and are notified about the firearm prohibitions.

Process

⁴⁵ 34 U.S.C § 10449(e).

⁴⁶ 34 U.S.C § 10441(c).

⁴⁷ 34 U.S.C. § 20123.

⁴⁸ 34 U.S.C. § 20121.

⁴⁹ Jackie Gu, "Deadliest Mass Shootings are Often Preceded by Violence at Home," *Bloomberg* June 30, 2020, <https://www.bloomberg.com/graphics/2020-mass-shootings-domestic-violence-connection/>.

As noted above, under 28 U.S.C. § 543(a), the attorney general may appoint USAs “when the public interest so requires.” Individual US attorneys are authorized to recruit, screen, and submit nominations of the best-qualified candidates to serve as AUSAs. However, these appointments must be approved by the OARM.

US attorneys’ direct authorized positions for fiscal year 2021 total 11,344 positions, including 5,928 attorneys.⁵⁰ As such, appointing domestic violence specialists to serve as an AUSA is within the authority of the DOJ, and the agency may use existing funding to carry out such appointments. To effectuate these appointments, the OARM and EOUSA should direct all individual OUSAs that do not currently employ a domestic violence specialist as an AUSA to identify existing budgetary authority, and use it to hire a domestic violence specialist to fill an AUSA position as available.

IV. Risk Analysis

Legal vulnerability

There is little legal vulnerability in instituting this recommendation. Appointing a domestic violence specialist is within the Attorney General’s legal authority under 28 U.S.C. § 543(a). The appointment of domestic violence specialists also complies with the Appointments Clause of the US Constitution, which permits Congress to vest the attorney general with power to appoint “inferior officers.”

As noted above, if enacted, the Violence Against Women Act Reauthorization of 2019 would empower the attorney general to appoint “special assistant United States attorneys for the purpose of prosecuting violations” of “paragraphs (8), (9), and (10) of section 922(g).” Although these appointments could be accomplished through this new specific provision of authority, the attorney general already has authority to appoint such individuals under 28 U.S.C. § 543(a).

Other potential downsides

Some criminal justice reform advocates may oppose increasing the number of prosecutors in US Attorneys’ Offices. While the domestic violence specialist would lead prosecutions, the primary goal of the position is to promote a multidisciplinary, community-based response to domestic violence crimes.

This role would aim to improve the criminal justice system’s overall response to domestic violence crimes and increase the quality of services available to survivors. The specialist would support the implementation of trauma-informed prosecutorial practices and bias training. The specialists would serve as leaders on domestic violence legal advocacy in their respective regions and develop working groups to systematize best practices.

Federal domestic violence prosecutions are extremely rare and limited to high-risk offenders. Prosecuting domestic abusers for illegal firearms possession would not significantly increase the incarcerated population, 90% of whom are held in state prisons.⁵¹ Furthermore, prosecuting

⁵⁰ See e.g., U.S. Department of Justice, “FY21 Budget Request At A Glance - U.S. Attorneys,” 2020, <https://www.justice.gov/doj/page/file/1246611/download>.

⁵¹ Ann Carson, “Prisoners in 2018,” Bureau of Justice Statistics, April 2020, <https://www.bjs.gov/content/pub/pdf/p18.pdf>.

these individuals should be a priority, as it could prevent other forms of violent crime, such as mass shooting and other homicides.

For example, an analysis conducted by Everytown for Gun Safety, found that in at least 54% of mass shootings, the perpetrator shot a current or former intimate partner or family member during the course of the incident.⁵² In addition, about 20% of all mass public shootings involved a domestic dispute as a contributing factor.⁵³ It is possible, therefore, that prohibitions associated with domestic violence could disarm a potential mass shooter and prevent a mass shooting.

⁵² Everytown for Gun Safety. Mass Shootings in the United States, 2009-2018, forthcoming. <https://everytown.org/1XVAmcc>.

⁵³ Krouse, William J., and Daniel J. Richardson, "Mass Murder with Firearms: Incidents and Victims, 1999–2013," Congressional Research Service, July 30, 2015, <https://fas.org/sgp/crs/misc/R44126.pdf>.