



## MEMORANDUM

**TO** Interested Parties  
**FROM** Lindsay Nichols, Federal Policy Director  
**DATE** February 16, 2022  
**RE** Gun-Related Provisions in S. 3623, VAWA Reauthorization

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## SENATE VAWA BILL INCLUDES MODEST GUN PROVISIONS

On February 9, a group of 19 senators led by Senator Diane Feinstein introduced S. 3623, a bill to reauthorize the Violence Against Women Act of 1994. This bill would help survivors of gender-based violence and prevent further acts of abuse in many ways, including through certain provisions in Title XI addressing guns. **While this bill represents an important step forward, it also lacks many of the strong provisions included in H.R. 1620, the version passed by the House last year.**

### NICS DENIAL NOTIFICATIONS

Section 1101 of the bill would create the “NICS Denial Notification Act of 2022,” which would require the Attorney General to provide a notice to state or tribal law enforcement whenever a person fails a background check to buy a gun. The notice would identify the person, when and where they tried to buy the gun, and why they were denied. If practicable, the Attorney General must also provide the report to local law enforcement and state, tribal, and local prosecutors.

The attempted purchase of a gun by an abuser is often a sign of escalating violence; law enforcement notification is critical both to remove the gun and to ensure the person does not obtain one from other sources. Under this bill, these notices would be provided whenever the background check system determines that a person is ineligible to buy a gun under federal, state, or tribal law, even if the reason is not domestic violence, but rather another kind of disqualifying event, such as a felony conviction.

The Attorney General would be required to provide these notices within 24 hours after the background check system denies the person the gun. If the person was trying to buy a gun in a jurisdiction other than the jurisdiction where he or she lives, the notice must go to the authorities in both jurisdictions. If the Attorney General subsequently determines that a person was denied a gun in error, another notice must be sent to that effect.

In addition, section 1102 of the bill would require the Attorney General to submit to Congress an annual report detailing the reasons why individuals are denied a gun through a background check, how often those decisions are overturned, and how often ATF prosecutes individuals who tried to buy a gun and failed a background check.

The language of both sections 1101 and 1102 is almost identical to language in S. 675, a bipartisan bill introduced by Senator Chris Coons. The language differs only because it includes notice to the authorities within Native American tribes.

## FURTHER ENFORCEMENT OF GUN LAWS

The bill also includes a provision to ensure adequate staffing for the enforcement of the laws against gun possession by domestic abusers. Federal law (18 U.S.C. § 922(g)(8), (9)) prohibits certain individuals convicted of domestic violence misdemeanors or subject to domestic violence protective orders from purchasing or possessing guns. Section 1103 of the bill would allow the Attorney General to make certain appointments to assist in the enforcement of these laws.

More specifically, section 1103 would authorize the Attorney General to appoint qualified attorneys to act as Special Assistant US Attorneys to prosecute these cases of illegal gun possession. It would also allow the Attorney General to deputize state and local law enforcement officers to enhance the capacity of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to investigate those cases.

While this section would generally authorize the Attorney General to make these appointments in any jurisdiction, it would also require the Attorney General to make such appointments in at least 75 jurisdictions with high rates of firearm violence against intimate partners and wherever local authorities lack the resources to address such violence.

The Attorney General would also be required to establish points of contact in each ATF Field Division and each District Office of the US Attorneys to assist state and local law enforcement responding to cases of illegal gun possession by domestic abusers.

Notably, the bill would not provide increased funding to the Department of Justice or ATF in order to make these appointments.

## COMPARISON WITH THE HOUSE-PASSED VERSION

In March 2021, the House of Representative passed H.R. 1620 (Jackson Lee), a VAWA reauthorization bill with stronger provisions. While both H.R. 1620 and S. 3623 contain the provisions described above, the House bill included Title VIII entitled “Homicide Reduction Initiatives,” which would ensure that persons convicted of domestic violence against a dating partner, a misdemeanor crime of stalking, and persons subject to an *ex parte* protection order do not have access to firearms.

Unlike S. 3623, H.R. 1620 would explicitly allow certain grants administered by the Office of Violence Against Women to be used to ensure the lawful recovery and storage of firearms when a court has ordered a perpetrator guilty of domestic violence, dating violence, sexual assault, or stalking to relinquish weapons or when a court has ordered the subject of a protective or other restraining order to relinquish weapons. Current federal law does not require domestic abusers to turn in their firearms once they are convicted of a crime of domestic violence or become subject to a restraining order, allowing abusers to continue to commit crimes or threaten their partners with guns they are prohibited from owning.

Additionally, H.R. 1620 would expand the prohibition against gun possession for those who commit violence against a dating partner, those who are convicted of a misdemeanor crime of stalking, and those subject to an *ex parte* protective order (a protective order that covers the period before the hearing) issued in compliance with due process.

- *Boyfriend loophole*: Nearly half of all intimate partner homicides are committed by dating partners, yet current federal prohibitions against convicted domestic abusers do not apply in these situations.
- *Stalking loophole*: Similarly, while stalking is a strong indicator of future violence and many felony stalking charges are pled down to the misdemeanor level, current federal law does not prohibit stalking misdemeanants from purchasing or possessing guns.
- *Ex parte loophole*: Finally, the time immediately following the issuance of an ex parte order is the most dangerous time for victims of domestic violence, yet current federal law allows abusers to continue to legally purchase and possess firearms.

## OTHER PROVISIONS THAT MAY REDUCE GUN VIOLENCE

S. 3623 includes many provisions that do not explicitly mention the use of firearms in gender-based violence. Many of these provisions may nevertheless reduce gun violence indirectly, since they would prevent gender-based violence generally and provide services before guns become involved.

Among other things, these provisions would strengthen rape prevention and education efforts, provide funding to address gender-based violence within marginalized communities like the LGBTQ community, ensure restorative practices and culturally specific services are available, and help address housing needs and economic security for victims. The bill also includes provisions regarding harassment in the workplace, gender-based violence on college campuses, and trauma-informed training for law enforcement.

The bill would also expand protections for victims on tribal land in several ways, including by expanding the special criminal jurisdiction of tribal courts to cover non-Native perpetrators of sexual assault. In fact, one of the provisions designed to address the authority of tribes would help address gun violence directly. That provision (section 802) would provide funding to tribes to help them enter information into a criminal history record database that is part of the background check system used for firearms purchasers.

## CONGRESS MUST ACT

The presence of a gun in a domestic violence situation makes it five times more likely the victim will die, and domestic violence assaults involving a gun are 12 times more likely to end in death than assaults with other weapons or physical harm. Because guns and domestic violence are such a deadly mix, we continue to urge our leaders to enact the strongest possible laws to address this devastating nexus.

## ABOUT GIFFORDS

Giffords is a nonprofit organization dedicated to saving lives from gun violence. Led by former Congresswoman Gabrielle Giffords, Giffords inspires the courage of people from all walks of life to make America safer.