

## Guns and protective orders

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In 1994 the U.S. Congress passed the *Violence Against Women Act (VAWA)* in a national effort to stem, what they had belatedly acknowledged, was the wide spread prevalence of men's violence against women and their children throughout the United States.

Among the many worthy provisions of this federal legislation was disarming men convicted of misdemeanor domestic battery and/or who were the subject of an order of protection: conviction of a felony was no longer a requirement if the perpetrator's violence had been directed against an intimate partner.

There has been little fanfare concerning this landmark decision primarily because there has been precious little enforcement despite the fact that year after year the majority of intimate partner homicides are committed with a firearm. During 2007, 40 of Indiana's 72 domestic murders were with guns, 2006: 44 of 74; 2005: 31 of 61 and 2004: 31 of 50.

Nationally, during 2006, nearly 10,000 firearms sales were stopped due to the gun buyer having a misdemeanor conviction for domestic battery or being subject to a protective order. An additional 8,000 firearm transfers or permits were denied during 2006 when a background check revealed this information. However, these checks and balances do nothing to confiscate the firearms already in the perpetrators possession or accessible to them as Indiana's numbers clearly illustrate.

### **What do Indiana laws say?**

The *2002 Indiana General Assembly* restructured the laws governing the eligibility, issuance and enforcement of orders of protection in Indiana. Among the victim-friendly changes made was the provision that possessing a firearm would be illegal under certain circumstances and that firearms could be confiscated. Advocates and victims alike assumed that Indiana's criminal justice system would at least be enforcing this law when a firearm had been displayed and/or when the perpetrator had verbally threatened the victim with a firearm.

Well, we all know what they say about assuming... and you guessed it, firearms are not being confiscated.

One of the reasons some attorneys attempt to plead down D felony domestic battery cases to A misdemeanors is specifically so the perpetrator can keep his guns, or so we have overheard an attorney claim. Despite the fact that possession of a firearm after a misdemeanor domestic battery conviction is against federal gun law and a violation of a protective order, some Indiana judges continue to routinely ignore laws specifically passed to assist in stopping firearm domestic murders.

Some states automatically issue a search warrant with a protective order so authorities don't have to rely on the perpetrators word that he doesn't have any guns.

Some states have passed mandatory gun bans similar to federal legislation, although this shouldn't have been necessary since federal law supposedly always trumps state law.

Some states encourage the federal prosecution of perpetrators found in possession of a firearm after they have been legally prohibited.

Some states have given judges the authority to routinely prohibit possession of firearms when the subject has displayed violent tendencies or serious mental illness.

Some states actually look for opportunities to keep women and their children safe and place that safety above a man's right to hunt.

Some states aren't Indiana.

### **Focusing on a solution**

The *Indiana General Assembly* can pass laws until the cows come home, but they mean nothing if they are not enforced. Drunk driver laws are a perfect example. There were poorly enforced laws on the books for decades until MADD (*Mothers Against Drunk Drivers*) took to the streets and the courts. They sued. Municipalities, towns and states paid multi-millions to settle wrongful death lawsuits because the courts had chosen to ignore the laws they were charged with enforcing. MADD's tactics worked but at a horrible cost to everyone in both dollars and lives.

The courts grant protective orders; however, local law enforcement is responsible for enforcing them. Law enforcement is not required to undergo protective order enforcement training and therefore don't do a very effective job, but not because they don't care; they do. Budget restrictions eventually strangle good intentions if they are the only motivation in place.

Both the *American Bar Association* and *Legal Momentum* sponsor judicial education programs recommending that both attorneys and judges follow the letter and the spirit of the law in enforcing protective orders and therefore federal gun laws. That this should be necessary points to a dreadful lack of anguish on the part of some judges and attorneys over the thousands of women and children murdered each year because a man chooses to pick up a gun and fire the bullets into their bodies.

When an attorney represents a victim or perpetrator and does not demand that the laws be followed, he should be disbarred. When a judge allows this miscarriage of justice, he should be removed from the bench.

Ultimately our judges are responsible for putting teeth in the protective orders they grant, otherwise they truly aren't worth the paper they are written on.

Routinely removing guns would be a very good start particularly in light of the fact that the laws of Indiana and the United States already permit this.