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SB320: A Call to Arms for Victims of Domestic Violence

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SB320: A Call to Arms for Victims of Domestic Violence

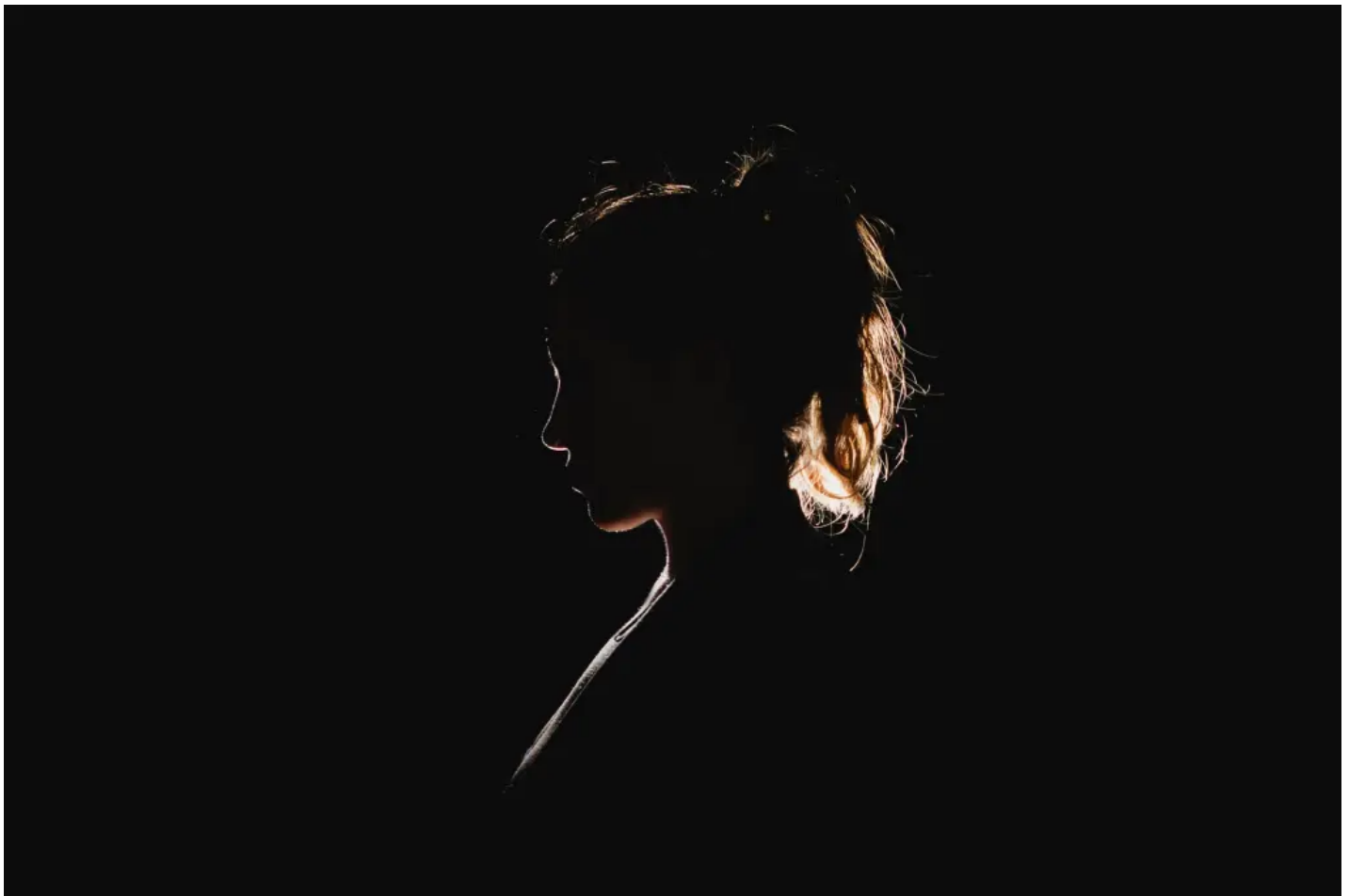


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In the United States today nearly **20 people per minute** are physically abused by an intimate partner. While physical abuse may be the most prominent earmark of domestic violence, the law has recognized domestic violence to include **many behaviors** apart from physical assault. In California, **33%** of women and **27%** of men experience some form of domestic violence during their lifetimes.

Under **California law**, a person restrained by any domestic violence protection order is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm while the order is in effect. According to the **Armed Prohibited Persons System** (APPS), over 23,000 restricted people are armed in California. This number reflects only the number of *known* registered firearms in the state. Of these 23,000 restricted people, special agents recovered 1,243 prohibited firearms last year – 778 of those firearms were identified in APPS; however, 465 were previously unknown.

Senate Bill 320 purports to redress the inadequacy of current practice and procedures by requiring courts to consistently enforce firearm prohibitions arising out of domestic violence protection orders, making it the latest policy effort to protect domestic violence survivors, their children, and the public from gun violence at the hands of batterers.

The Role of Guns in Domestic Violence

A horrifying yet unsurprising reality is that the presence of a gun in a domestic violence situation increases the risk of homicide by **500%**.

A **recent study** revealed that in more than two-thirds (68.2%) of mass shootings between 2014 and 2019, the perpetrator either killed family or intimate partners, or the shooter had a history of domestic violence. The fatality rate **doubles** if domestic violence plays a role, as there is a 1 in 6 chance of survival, compared to 1 in 3 chance of survival during a non-domestic violence mass shooting. Therefore, a batterer with a gun is not only a threat to his victim, but also to the public.

In May, a California man open fired on his coworkers, **killing nine people** before killing himself. Court records indicate the shooter had a **history of domestic violence**, as his ex-girlfriend accused him of rape and abusive behavior in 2009.

Additionally, suicide by firearm accounts for approximately **90%** of intimate partner homicides that end with the batterer taking his own life. Furthermore, access to a gun **decreases the time** batterers have to consider their extreme behavior in a highly emotional situation. Thus, removing a gun from a domestic violence incident may lower the likelihood of not only the survivor's death, but also the batterer's suicide.

In 1998, the infamous **death** of celebrity Phil Hartman shocked the public. Hartman's wife, Brynn Omdahl, impulsively shot the beloved comedian as he lay sleeping in bed. The two had a tumultuous marriage and fought just before Hartman retired to the bedroom. The gun came from Omdahl's own personal collection stored in their home. After killing her husband, Omdahl left the house only to return hours later to take her own life using the same gun. The couples' two children were in the house the entire time.



In addition to inflicting fatal consequences, a batterer with a gun can perpetuate cycles of abuse without ever having to fire a single shot. Guns in every instance make it almost foolproof for a batterer to assert **power and control** over his victim. A batterer, even a physically weak one, can coerce, intimidate, and threaten a victim or those close to the victim (e.g., children) by simply brandishing the gun. One **UCLA study** found that nearly two-thirds of domestic violence victims who live in homes where there are guns report their abusers used a gun to scare, threaten,

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or harm them. Therefore, enforcing firearm prohibitions in domestic violence situations not only decreases the likelihood of a firearm-related homicide, but also disarms an abuser of multiple coercive tactics used to keep victims in an endless cycle of domestic violence.

Furthermore, the risk of violence is drastically elevated when a victim is attempting to separate from her abuser. Separation is the most common risk factor present in domestic homicide (81%). One study found that threats of separation or actual separation are most often the precipitating events that lead to domestic homicide. Seeking a protection order is an event that commonly coincides with a victim's attempt to separate. Hence, providing additional safeguards during the protective order process (SB320's undertaking) is critical to prevent further, and potentially fatal, violence.

SB320

SB320 was approved by Governor Gavin Newsom on October 08, 2021 and becomes effective on January 1, 2022. SB320 was largely borne out of California Rule of Court 5.495. A 2005 report exposed significant deficiencies that disserved victims of domestic violence. The report prompted Chief Justice Ronald M. George to appoint a task force to recommend improvements to court practice and procedure in cases involving domestic violence. As a result, California adopted Rule 5.495 in an effort to establish sound procedures to ensure compliance with firearm prohibitions arising out of domestic violence protection orders. However, courts failed to consistently follow Rule 5.495, treating the rule as an optional recommendation. This scattershot enforcement caused firearms to remain in the hands of restricted batterers, putting survivors and the public at risk. Consequently, advocates of progressive domestic violence policy codified Rule 5.495, hoping it would have more success as a California statute.

Under existing law, a restricted person who is thought to be in possession of a firearm must relinquish his firearm upon police request at the time of service of the protective order. If there is no request by law enforcement, a restricted person must relinquish currently owned firearms within 24 hours of being served and file proof of firearm relinquishment with law enforcement and the court within 48 hours of service of the protective order.

SB320 mandates that if a restricted person fails to lodge proof with the court and an appropriate law enforcement agency, the court must take action. They may set a review hearing but any violation must be reported to a prosecuting attorney within two business days of the hearing. Additionally, law enforcement must receive immediate notice of the violation and take all actions necessary to obtain the prohibited firearm. A written record of the firearm relinquishment or lack thereof must be maintained by the court.

Importantly, under SB320, the court must notify the restricted batterer of relinquishment procedures unique to the locality. Willingness to comply aside, lack of how to relinquish a firearm is another significant factor in noncompliance. Requiring courts to provide specificity (information that must go beyond just "turn it into law enforcement") will prompt the creation of formal and detailed relinquishment procedures, paving a path of minimal resistance to compliance.

SB320 also requires courts to consider a batterer's violation of the firearm prohibition when determining child custody and visitation matters. The health consequences of physical and psychological domestic violence can be significant

and long lasting for both survivors and their children. Indeed, **1 in 15** children are exposed to domestic violence each year, and **90%** of these children are eyewitnesses to violence. Additionally, batterers will commonly **use children** to exert power and control over victims. Thus, requiring courts to consider firearm violations ends up protecting both children and survivors from further abuse.

Not a Bulletproof Solution

SB320 is an attempt to make sure all parties are doing their job. It prompts development of a formal firearm relinquishment process, ensures judges are overseeing compliance with firearm prohibitions, and attempts to increase the likelihood that prosecutors will move forward with criminal charges in the event of noncompliance. Unfortunately, once a domestic violence protection order ends, **the firearm prohibition ends**. A firearm prohibition by way of criminal conviction has the benefit of potentially lasting longer (sometimes **for life**). However, historically it has been **commonplace** for prosecutors to drop charges against domestic violence offenders. From 2007 to 2012 San Francisco dropped **72%** of its criminal cases related to domestic violence. Whether prosecutors drop these charges because of a lack of evidence or a lack of investigative effort is a point of contention. More recently in the last quarter of 2020, San Francisco dismissed **86%** of its felony domestic violence cases. This is especially alarming since the **Covid-19 pandemic** has caused a **global** uptick in domestic violence.

Legal safeguards available to domestic violence survivors today are a result of decades-long fights for progress. Making sure these safeguards are not failing is essential to saving lives. SB320 is a step in the right direction, but like all policy, it remains toothless until the players involved do their parts. The social overlap inherent in domestic violence presents policymakers with a unique obstacle of compelling multiple departments to make a concerted effort. SB320 strives to overcome this obstacle. However, policy can only go so far. To protect victims of domestic violence we must actually *do* the work, or better articulated by the Dalai Lama: “It is not enough to be compassionate. You must act.”



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