

Guns and Domestic Violence: A Lethal Combination
Remarks by Assemblywoman Amy Paulin

December 8, 2014

Good afternoon and welcome. Before I begin, I would like to thank you all for the work that you do for domestic violence victims.

As you may know, I have been an advocate for domestic violence victims since before my term in the NYS Assembly. As executive director of My Sisters' Place, I witnessed up close and personal, the tragedy of domestic violence here in Westchester County. But as we know, domestic violence is prevalent everywhere and touches people in every ethnic, socio-economic and religious demographic. Most importantly, it invades the lives of not just the victim, but their families too, especially children. Domestic violence often escalates in severity over time and the presence of a firearm increases the likelihood that it will escalate to a homicide. It is a fact that an abused woman is six times more likely than other abused women to be killed when a firearm is in the house.

For today's discussion I would like to present the issue in terms of the loopholes/problems in current law and the legislative solutions that are needed to get guns, rifles and shotguns out of the hands of domestic violence abusers. For purposes of this discussion, when I talk about guns or firearms, I am referring to pistols and revolvers. Rifles or shotguns, and black powder rifles and shotguns, muzzle-loading firearms and antique firearms are separate categories.

The first loophole I want to talk about has to do with when we can take away guns, rifles and shotguns. Under current law, when a person is convicted of a felony or serious offense, the court must revoke any existing license to possess a firearm the person has and order the immediate surrender of any firearms, rifles and shotguns he/she owns or possesses. The law also requires the court to revoke an existing license and order the surrender of all firearms where an order of protection has been issued and the court finds either:

- a substantial risk that the person may use or threaten to use a firearm against the person protected by the order of protection; or
- the person willfully failed to obey an order of protection and that willful failure involved the infliction of physical injury, the use or threatened use of a deadly weapon or dangerous instrument, behavior constituting a violent felony offense, or behavior constituting stalking.

The law does not, however, provide for the surrender of guns, rifles or shotguns upon a conviction of a misdemeanor crime of domestic violence. This is a gap in the law since under federal and state law, he/she would be prohibited from buying a gun.

The incident with Hiram Montserrat is a case in point. Montserrat was convicted of assault in the third degree when he slashed his girlfriend with a broken glass, an offense that under current state law constitutes a misdemeanor crime of domestic violence if the appropriate intimate relationship is found. That conviction would prevent him from buying a gun under federal or state law or possessing a gun under federal law, but without a change in state law, he can POSSESS a gun under state law. Accordingly, if Montserrat had legally owned a gun when he was convicted, he would not have been required to surrender it.

I've introduced a bill that will close this loophole by requiring that any person convicted of a misdemeanor crime of domestic violence must surrender any firearms, rifles and shotguns. By providing this in state law, we give local law enforcement the authority to enforce compliance and take the guns,

rifles and shotguns if they are not surrendered. The bill also makes it a misdemeanor offense to possess a firearm, rifle or shotgun upon a conviction of a misdemeanor crime of domestic violence.

The second gap in the law has to do with what law enforcement can take away in addition to guns, rifles and shotguns. We have learned from law enforcement in upstate NY, that black powder rifles, black powder shotguns and muzzle-loading firearms are very common in rural areas, often used for hunting, and are extremely powerful. The shot from muzzle-loading firearms travels faster than from other rifles and is more deadly because it does not pass through the body but rather scatters shot throughout the body, inflicting even more damage. These rifles and shotguns pose a particular problem in rural communities when the police or sheriffs go to seize firearms to enforce a court order. Local law enforcement cannot seize black powder rifles and shotguns or muzzle-loading firearms or antique firearms because they do not fall within the definition of a firearm, rifle or shotgun.

It makes no sense that law enforcement is authorized to take any guns, rifles or shotguns from someone who has been convicted of a felony or serious offense but not able to take any black powder rifles, black powder shotguns, muzzle-loading firearms or antique firearms even if they are in plain sight and can cause injury or death, or be used to threaten injury or death, as effectively as guns, rifles and shotguns can. In addition, even though it is a crime to possess a black powder rifle or shotgun, a muzzle-loading firearm or an antique firearm upon a conviction of a felony or serious offense, it is not a crime to possess those weapons where a person has been convicted of a misdemeanor crime of domestic violence.

My bill will establish that it is a crime to possess a black powder rifle or shotgun, a muzzle-loading firearm or an antique firearm upon a conviction of a misdemeanor crime of domestic violence and will require the surrender of any black powder rifles, black powder shotguns, muzzle-loading firearms or antique firearms owned or possessed upon the conviction of a felony, serious offense or misdemeanor crime of domestic violence.

With this legislation, then, we will close two holes in the law and make it clear that if you've been convicted of a felony, serious offense or misdemeanor crime of domestic violence,

- you will lose any existing license to possess you have,
- you will be required to surrender any guns, rifles, shotguns, black powder rifles, black powder shotguns, muzzle-loading firearms or antique firearms you own or possess,
- if you don't surrender them, law enforcement will be able to seize them, and
- it will be a crime to possess a gun, rifle, shotgun, black powder rifle, black powder shotgun, muzzle-loading firearm or antique firearm.

Another problem that needs to be addressed involves the removal of weapons from the home where law enforcement responds to a domestic violence incident. As we know, domestic violence incidents are highly volatile. A gun in the house increases the risk of injury or death to the victim as well as to responding law enforcement. Currently, we do not require law enforcement officers to remove firearms from the scene of a domestic violence incident, even if an arrest is made.

We have a bill in the Assembly that will allow a police officer, responding to a report of a family offense, to take temporary custody of any firearm, rifle, shotgun, antique firearm, electronic dart or stun gun, black powder rifle, black powder shotgun, muzzle-loading firearm, disguised gun or imitation weapon that is in plain sight or is discovered through a consensual search or other lawful search, along with any

weapon that is in the possession of the person arrested for the family offense. An officer who seizes any weapons will also be required to take the person's license to carry or possess any of the seized weapons.

Lastly, I want to tell you about another new bill that will be coming up in the next session. This bill, modeled after legislation recently signed into law in California, allows a family member, friend or medical professional to apply for a gun violence restraining order to prohibit someone from possessing a firearm, rifle or shotgun, and if the person who has been issued a gun violence restraining order possesses or owns a firearm, rifle or shotgun, the judge will direct law enforcement to seize that firearm, rifle or shotgun.

Allowing a domestic violence abuser to have a gun, rifle, shotgun or other dangerous weapon is a sure road to tragedy. We must fight to keep guns out of the hands of abusers where the circumstances require. With your help and the support of advocates, law enforcement, administrators and elected officials, we must close the gaps in our laws and get this legislation passed and signed into law.

Thank you.