



Submission in response to Domestic Violence Amendment Draft Bill, 2020

Published by the Department of Justice and Correctional Services to amend the Domestic Violence Act, 1998

Submission made by:
Gun Free South Africa

Submission endorsed by:
Childsafe
Children's Institute
Children's Radio Foundation
Save the Children South Africa
Sonke Gender Justice

20 April 2020

CONTENTS

About Gun Free South Africa and partner organisations.....	3
Submission	3
<i>Introduction</i>	3
<i>Context: Firearms and domestic violence</i>	3
Intimate partner violence	3
Violence against children.....	6
<i>Policy interventions to prevent gun-related domestic violence.....</i>	6
<i>Detailed comments on the Domestic Violence Amendment Draft Bill, 2020.....</i>	7
A. Definitions: Deletions, insertions and substitutions.....	7
B. Insertion of section 2A: Services for complainants relating to domestic violence	8
C. Insertion of section 2B: Duty to report commission of acts of domestic violence	9
D. Substitution of section 3: Arrest by peace officer without warrant	9
E. Substitution of section 4: Permanent protection order	10
F. Substitution of section 5: Interim protection order	10
G. Substitution of section 9: Seizure of weapons.....	11
H. Amendment of section 18: Withdrawing charges	12
Conclusion	13
Appendix 1: Challenges in implementing laws to remove firearms in domestic violence	14
Reactive: Removing guns from individuals with a history of violent behaviour.....	14
1. The Domestic Violence Act (DVA)	14
2. The Firearms Control Act (FCA).....	15
Proactive: Preventing individuals with a history of violent behaviour access to guns	15

ABOUT GUN FREE SOUTH AFRICA AND PARTNER ORGANISATIONS

Gun Free South Africa (GFSa) is a national NGO committed to reducing gun violence in South Africa through evidence-based interventions involving strengthening national gun laws, creating safe public spaces, and working with those most affected by gun violence to demonstrate alternatives to the prevailing social norms that contribute to gun violence.

This submission has been endorsed by:

- Childsafe: Childsafe is a campaign of the Child Accident Prevention Foundation of Southern Africa (CAPFSA) and Safe Kids Worldwide that promotes the optimal health and development of all children in South Africa.
- Children’s Institute: The Children's Institute, University of Cape Town, aims to contribute to policies, laws and interventions that promote equality and realise the rights and improve the conditions of all children in South Africa, through research, advocacy, education and technical support.
- Children’s Radio Foundation: The Children's Radio Foundation uses radio to create opportunities for youth dialogue, participation, leadership, and active citizenship, training and mentoring a new generation of youth broadcasters across Africa.
- Save the Children South Africa: SCSA is part of the world’s largest independent development and rights based organisation for children, represented in over 120 countries worldwide. In South Africa, we work to ensure that every child, especially the most vulnerable, has a happy and healthy childhood.
- Sonke Gender Justice: Working across Africa, Sonke Gender Justice’s vision is a world in which men, women and children can enjoy equitable, healthy and happy relationships that contribute to the development of just and democratic societies.

SUBMISSION

INTRODUCTION

GFSa’s submission focuses specifically on proposed amendments that aim to reduce firearm-related deaths, injuries and threats within domestic violence.

CONTEXT: FIREARMS AND DOMESTIC VIOLENCE

Intimate partner violence

The United Nations Human Rights Commission has named South Africa as having one of the highest rates of femicide (intentional killing of females [women or girls] because they are females) in the world.¹ Research in South Africa shows that:

- **Women are most at risk of being killed by an intimate partner²:** 57% of female homicides in SA in 2009 were committed by an intimate partner, up from 50% in 1999, though the researchers

¹ United Nations Human Rights Council. 2016. Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to South Africa (4 to 11 December 2015), p. 4.

² Although women and girls globally are much less likely to be victims of homicide than men and boys (19% of homicide victims globally are female), they bear the greatest burden of intimate partner/family-related homicide, and intimate partner homicide: Of the 87,000 women murdered across the world in 2017 (the most recent year for which data are available), more than half (58% or 50,000) were killed

note that these figures are likely to be higher as, for example, in over 20% of femicides in 2009 no perpetrator was identified.³

- **Femicide rates track homicide rates**⁴: As SA’s homicide rate steadily declined between 2000 and 2011⁵, femicide rates also declined, dropping from four women a day in 1999 (translating into one woman killed every six hours) to three women a day (one every eight hours) in 2009.⁶
- **Reducing access to firearms reduces homicide and femicide rates:**
 - The drop in SA’s homicide rate between 2000 and 2011 has been attributed to stricter gun control coinciding with the passing and implementation of the Firearms Control Act, 2000 (FCA).⁷
 - As shown in Graph 1,⁸ the reason for the drop in femicide in SA between 1999 and 2009 has been attributed to the reduced access to firearms coinciding with the FCA which resulted in a substantial decline in the number of women being shot and killed compared to deaths resulting from stab and blunt injuries, with gunshot-related deaths almost halving from 30.6% in 1999 to 17.4% in 2009. Of significance is that this study also confirmed that gunshot-related deaths were not replaced by deaths from other weapons – both stab- and blunt-related deaths dropped slightly (from 33.2% to 31.4% and 33.2 to 29.5% respectively) – indicating that weapon substitution did not occur, and that the overall benefit of reducing gun deaths is lives saved.

by intimate partners or other family members, and more than a third (30,000) were killed by their current or former intimate partner – someone they would normally trust. Source: United Nations. 2019. Gender-related killing of women and girls. Global Study on Homicide. Vienna: UNODC.

³ Abrahams, Naeemah, Shanaaz Mathews, Rachel Jewkes, and Carl Lombard. 2012. Every Eight Hours: Intimate femicide in South Africa 10 years later. MRC Research Brief, August. Tygerberg: South African Medical Research Council.

⁴ It is globally recognised that homicide rates track femicide rates. Source: Alvazzi del Frate, Anna. 2011. When the Victim is a Woman. Geneva Declaration Secretariat. Global Burden of Armed Violence 2011. Lethal Encounters. Cambridge: Cambridge University Press, pp. 113-144.

⁵ Kriegler, Anine. 2019. BOX 4: Long-term homicide dynamics in South Africa. United Nations. 2019. Homicide trends, patterns and criminal justice response. Global Study on Homicide. Vienna: UNODC, which references:

- Matzopoulos, Richard, Mary Lou Thompson, and Jonathan Myers. 2014. Firearm and Nonfirearm Homicide in 5 South African Cities: A Retrospective Population-Based study. American Journal of Public Health, Vol. 104, No. 3, pp. 455-460.
- Matzopoulos, Richard, Megan Prinsloo, Victoria Pillay-van Wyk, Nomonde Gwebushe, Shanaaz Mathews, Lorna Martin, Ria Laubscher, Naeemah Abrahams, William Msemburi, Carl Lombard, and Debbie Bradshaw. 2015. Injury-related mortality in South Africa: a retrospective descriptive study of postmortem investigations. Bulletin of the World Health Organization, Vol. 93, pp. 303-313.

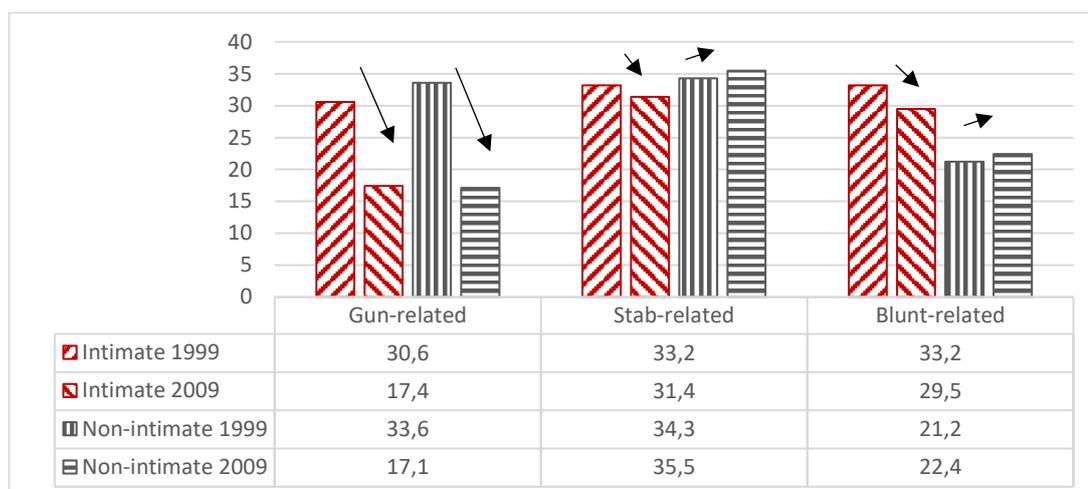
⁶ Abrahams, Naeemah, Shanaaz Mathews, Rachel Jewkes, and Carl Lombard. 2012. Every Eight Hours: Intimate femicide in South Africa 10 years later. MRC Research Brief, August. Tygerberg: South African Medical Research Council.

⁷ Kriegler, Anine. 2019. BOX 4: Long-term homicide dynamics in South Africa. United Nations. 2019. Homicide trends, patterns and criminal justice response. Global Study on Homicide. Vienna: UNODC, which references:

- Matzopoulos, Richard, Mary Lou Thompson, and Jonathan Myers. 2014. Firearm and Nonfirearm Homicide in 5 South African Cities: A Retrospective Population-Based study. American Journal of Public Health, Vol. 104, No. 3, pp. 455-460.
- Matzopoulos, Richard, Megan Prinsloo, Victoria Pillay-van Wyk, Nomonde Gwebushe, Shanaaz Mathews, Lorna Martin, Ria Laubscher, Naeemah Abrahams, William Msemburi, Carl Lombard, and Debbie Bradshaw. 2015. Injury-related mortality in South Africa: a retrospective descriptive study of postmortem investigations. Bulletin of the World Health Organization, Vol. 93, pp. 303-313.

⁸ Abrahams, Naeemah, Shanaaz Mathews, Lorna Martin, Carl Lombard, and Rachel Jewkes. 2013. Intimate Partner Femicide in South Africa in 1999 and 2009. PLOS Medicine, Vol. 10, No. 4, pp. 1-8.

Graph 1: Manner of death for women killed by intimate and non-intimate partners in South Africa in 1999 and 2009 (%)



- **Increasing access to firearms increases homicide and femicide rates**
 - Since 2011, South Africa’s homicide rate has steadily risen: Between 2011/12 and 2018/19 murder increased almost 30% (from an average of 43 to 58 murders a day).⁹
 - As of 2018/19, firearms have overtaken stab weapons as the leading cause of murder in SA.¹⁰
 - In keeping with the global finding that homicide rates track femicide rates,¹¹ the number of women that are killed has also increased: As of 2019, an estimated eight women are murdered a day, three of whom are shot and killed;¹² this is a 50% increase from 2009 when two women were shot and killed a day.¹³
 - The steady increase in firearm-related homicides – and thus femicides – has been directly linked to increased access to firearms as a result of poor enforcement of the FCA whether inadvertent (e.g. as a result of resource shortages) or deliberate criminality including fraud, corruption and leakage of guns from legal stores to illegal hands.¹⁴

⁹ South African Police Service national annual crime statistics. (Online). Available at www.saps.gov.za/services/crimestats.php (accessed 28 March 2020).

¹⁰ Ibid.

¹¹ Alvazzi del Frate, Anna. 2011. When the Victim is a Woman. Geneva Declaration Secretariat. Global Burden of Armed Violence 2011. Lethal Encounters. Cambridge: Cambridge University Press, pp. 113-144.

¹² Figure calculated based on the following:

- South African Police Service 2018-19 annual crime statistics, which show that 47% of the 21,022 murders that year were gun-related. Source: South African Police Service. 2019. Crime Statistics: Crime situation in Republic of South Africa (12) months (April to March 2018-19). Presentation to Portfolio Committee on Police, 12 September 2019. (Online). Available at <https://pmg.org.za/committee-meeting/28873/> (accessed 28 March 2020).

- The most recent national mortuary study which shows that 11% of gun homicide victims are female. Source: Matzopoulos, Richard, Megan Prinsloo, Victoria Pillay-van Wyk, Nomonde Gwebushe, Shanaaz Mathews, Lorna Martin, Ria Laubscher, Naeemah Abrahams, William Msemburi, Carl Lombard, and Debbie Bradshaw. 2015. Injury-related mortality in South Africa: a retrospective descriptive study of postmortem investigations. Bulletin of the World Health Organization, Vol. 93, pp. 303-313.

¹³ Matzopoulos, Richard, Megan Prinsloo, Victoria Pillay-van Wyk, Nomonde Gwebushe, Shanaaz Mathews, Lorna Martin, Ria Laubscher, Naeemah Abrahams, William Msemburi, Carl Lombard, and Debbie Bradshaw. 2015. Injury-related mortality in South Africa: a retrospective descriptive study of postmortem investigations. Bulletin of the World Health Organization, Vol. 93, pp. 303-313.

¹⁴ See:

- Matzopoulos, Richard, J. Simonetti, M. Prinsloo, I. Neethling, P. Groenewald, J. Dempers, L. Martin, A. Rowhani-Rahbar, J. Myers, and M. Thompson. 2018. A retrospective time trend study of firearm and non-firearm homicide in Cape Town from 1994 to 2013. South African Medical Journal, Vol. 108, No. 3 pp. 197-204.

Violence against children

Gun-related violence against children takes various forms:

- The most extreme is when children are shot and either killed or injured. Research in South Africa shows that guns are a leading cause of death for older children.¹⁵ The most recent data on child deaths, which is based on mortuary research undertaken at Salt River Mortuary in the Western Cape and Phoenix Mortuary in KwaZulu Natal in 2014, show that gunshots have overtaken stab wounds as the primary cause of murder for children aged 15 to 17 years, though this figure starts rising from the age of 10 years.¹⁶ According to this research:
 - Over 75% of children under the age of 5 years died following child abuse and neglect, with the former typically involving abandonment, blunt force and strangulation.
 - In contrast, older children are most often killed in non-abuse interpersonal conflicts; the leading cause of murder is guns, which account for 49.2% of all non-abuse related murders, followed by stab injuries at 44.3% and blunt force injuries at 6.6%.
- Even when children are not shot or at risk of being shot, they are nevertheless harmed by gun-related domestic violence arising from the close intersection between violence against women and violence against children.¹⁷ Thus, for example, when there is violence in the home and the perpetrator threatens the mother, this causes psychological harm to children, who are inadvertently victimised as well.

POLICY INTERVENTIONS TO PREVENT GUN-RELATED DOMESTIC VIOLENCE

Policy interventions that reduce access to firearms are an effective instrument to protect against all forms of gun-related violence, including domestic violence and violence against children. Such interventions can be classified into two broad categories, reactive and proactive, as summarised in the table below.

	<i>Reactive</i>	<i>Proactive</i>
<i>Purpose</i>	Remove guns in the possession of individuals with a history of violent behaviour	Prohibit individuals with a history of violent behaviour from accessing guns
<i>Policies to disarm abusers</i>	<ul style="list-style-type: none"> - Immediate removal of firearms from domestic violence situations - Declaration of unfitness - Surrender of firearms following conviction for violence and/or declaration of unfitness 	<ul style="list-style-type: none"> - Updated nationwide register of violent individuals (violence is not limited to domestic violence, but must include all forms of violence) - Comprehensive background checks on all gun-related applications, including regular licence renewals

- Taylor, Claire. 2019. Gun Control and Violence: South Africa's Story. Johannesburg: GFSa. (Online). Available at www.gfsa.org.za/component/jdownloads/send/13-research/114-gun-control-and-violence-south-africa-s-story (accessed 28 February 2020).

- Western Cape Provincial Government. 2019. Western Cape Burden of Disease: Rapid Review Update 2019. (Online). Available at www.westerncape.gov.za/assets/departments/health/burden_of_disease_report_2020.pdf (accessed 28 February 2020).

¹⁵ Mathews, Shanaaz, Naeemah Abrahams, Rachel Jewkes, Lorna Martin and Carl Lombard. 2013. The epidemiology of child homicides in South Africa. Bulletin of the World Health Organization, Vol. 91, pp. 562-568.

¹⁶ Mathews, Shanaaz and Martin, Lorna. 2016. Developing an understanding of fatal child abuse and neglect: Results from the South African child death review pilot study. South African Medical Journal, Vol. 106, No. 12, pp. 1160-1163.

¹⁷ Guedes, Alessandra, Sara Bott, Claudia Garcia-Moreno and Manuela Colombini. 2016. Bridging the gaps: A global review of intersections of violence against women and violence against children. Global Health Action, Vol. 9, No. 10.

While both SA's Domestic Violence Act, 1998 (DVA) and FCA include reactive and proactive provisions to protect against gun-related domestic violence, these are ineffective for a range of reasons including loopholes in the policies themselves and their enforcement – see Appendix 1: Challenges in implementing laws to remove firearms in domestic violence on page 14 below for more detailed information.

It is within this context that GFSA welcomes the proposed amendments to the DVA and the opportunity to make comments on the Amendment Draft Bill.

DETAILED COMMENTS ON THE DOMESTIC VIOLENCE AMENDMENT DRAFT BILL, 2020

Below are eight detailed remarks on amendments in the Domestic Violence Amendment Draft Bill, 2020. Each remark includes a summary of the proposed amendment, commentary and recommendations to strengthen.

A. Definitions: Deletions, insertions and substitutions

Amendment of section 1 of Act 116 of 1998, as amended by section 10 of Act 31 of 2008:

- Deletes three definitions: arm, dangerous weapon and stalking
- Inserts 12 new definitions: child, coercive behaviour, controlling, elder abuse, electronic communications identity number, electronic communications service provider, harm, Minister, related person, sexual harassment, spiritual abuse, and weapon
- Substitutes 11 definitions: court; damage to property; domestic relationship; domestic violence; economic abuse; emergency monetary relief; emotional, verbal or psychological abuse; harassment; intimidation; physical abuse; and sexual abuse

GFSA's comments and recommendation:

1. GFSA supports the amendments made, as they strengthen and clarify definitions and align the DVA with relevant legislation. In particular we support:
 - a. Deleting “arm” and dangerous weapon” and inserting a new definition for “weapon” to align the DVA with the FCA.
 - b. Expanding definitions to recognise:
 - Single incidents rather than repeated acts or patterns as constituting: coercive behaviour; emotional, verbal or psychological abuse; and harassment
 - That domestic violence includes harm to or belief that harm may be caused to someone related to the complainant and not only the complainant.
 - c. Inserting new definitions e.g. of: harm; intimidation; related person; and weapon.
2. While we support the insertion of ‘weapon’ as a new definition, we propose this be amended to include imitation firearms, as defined in the FCA, for three reasons:
 - It is extremely difficult to tell the difference between a replica and real firearm, even the police report finding this difficult.¹⁸
 - The psychological and emotional damage from being threatened by an imitation firearm is exactly the same to being threatened with a real firearm if the status of the firearm is not known.

¹⁸ Wicks, Jeff. 2013. Toys put thieves in line of fire. Sunday Tribune, 6 January.

- Police report an increased use of imitation firearms in crime, indicating that they are increasingly prevalent.¹⁹

Recommendation: Amend proposed definition of weapon as follows:

“(a) any firearm or any handgun or airgun or imitation firearm or ammunition as defined in section 1 of the Firearms Control Act, 2000 (Act No. 60 of 2000); or”.

B. Insertion of section 2A: Services for complainants relating to domestic violence

Inserts a new section 2A in Act 116 of 1998: Services for complainants relating to domestic violence, which requires that:

“A medical practitioner, health service provider, social worker, caregiver, teacher or official employed in government at a public health establishment or any other point of service including facilities providing basic and higher education and training, who in the course of duty becomes aware of, is contacted or approached to assist following an incident of domestic violence must

-
- (a) screen, counsel or provide emergency medical treatment as applicable and do a risk assessment as prescribed, before referring the person for further services;
- (b) in the case of an adult, provide the complainant with a prescribed list, containing the names, addresses and contact particulars of accessible shelters and public health establishments;
- (c) in the case of a child render such assistance as is necessary to ensure the safety of the child, including reporting the matter to SAPS and social services and ensuring that medical treatment is obtained;
- (d) render such assistance to the complainant as may be required in the circumstances, including assisting or making arrangements for the complainant to find a suitable shelter and to obtain medical treatment;
- (e) if it is reasonably possible to do so, hand a notice containing information as prescribed to the complainant in the official language of the complainant's choice; and
- (f) if it is reasonably possible to do so, when dealing with an adult, explain to the complainant the content of such notice in the prescribed manner, including the remedies at his or her disposal in terms of this Act and the right to lodge a criminal complaint, if applicable.”

GFSA’s comments and recommendation:

3. We strongly support the inclusion of Section 2A as providing practical steps to intervene and break the cycle of domestic violence. However, we urge that a further service – that of assessing the risk of access to a gun and requiring that action be taken to have it removed – be listed. Our recommendation is based on global research which shows that intimate partner homicide and family-related homicide is more likely to be perpetrated with a firearm than any other weapon.²⁰ The high percentage of guns used in intimate-homicide-suicide is attributed to the lethality of guns and the ease with which they can be used, with a gun being up to 12 times more likely to result in death than a non-firearm assault in interpersonal violence.²¹

Recommendation: Add wording to the effect that medical practitioners, health service providers, social workers, caregivers, teachers or officials employed in government at a public health establishment or any other point of service including facilities providing basic and higher

¹⁹ Charles, Marvin. 2019. Cape metro cops worry over fake guns being used in crimes. Cape Argus, 18 December.

²⁰ United Nations. 2019. Understanding homicide: typologies, demographic factors, mechanisms and contributors. Global Study on Homicide. Vienna: UNODC.

²¹ Shaw, Margaret. 2013. Too Close to Home – Guns and Intimate Partner Violence. Small Arms Survey 2013: Everyday Dangers. Cambridge: Cambridge University Press.

education and training must assess the risk of access to a firearm/s, whether licensed to the respondent, another person or unlicensed, and take action to have it/these removed.

C. Insertion of section 2B: Duty to report commission of acts of domestic violence

Inserts a new section 2B in Act 116 of 1998: Duty to report commission of acts of domestic violence, which requires that:

“(1)(a) A person who has knowledge, reasonable belief or suspicion that an act of domestic violence has been committed against a child, person with a disability or an elderly person must report such knowledge, reasonable belief or suspicion immediately to a social worker or police official.

(b) A person who fails to report such knowledge, reasonable belief or suspicion as contemplated in (a), is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

(2)(a) A person who has knowledge that an act of domestic violence has been committed against an adult in a domestic relationship must report such knowledge immediately to a social worker or police official.

(b) A person who fails to report such knowledge as contemplated in (a), is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.”

GfSA’s comments and recommendation:

4. We strongly support the inclusion of Section 2B, viewing this as an important contribution to stop the silence and support action by service providers and people related to the complainant (such as family members, friends, colleagues or neighbours) to intervene and help break the cycle of domestic violence. However, we urge that a further duty to report be listed to protect against the specific risk posed by a firearm.

Recommendation: Add wording to the effect that:

- Any person who believes, suspects or has knowledge that a firearm may be/is present or accessible in an act of domestic violence even when this firearm was not specifically used must report such belief, suspicion or knowledge immediately to a social worker or police official.
- Failure to report such belief, suspicion or knowledge constitutes an offence which is punishable by a fine or imprisonment or both.

D. Substitution of section 3: Arrest by peace officer without warrant

Substitutes a new section 3 in Act 116 of 1998: which states that:

“(1) A peace officer may without warrant arrest any person at the scene of an incident of domestic violence whom he or she reasonably suspects of having committed an offence –

(a) against any person in a domestic relationship; or

(b) referred to in section 17(1)(a) of this Act.

(2) A peace officer must –

(a) arrest a person whom is reasonably suspected of having committed an offence where physical violence is involved;

(b) the person against whom the offence has been committed must be referred for a medical examination; and

(c) where necessary arrangements to obtain medical attention must be made.”

GFSA’s comments and recommendation:

5. We support the expanded power of peace officers to arrest without warrant at the scene of an incident of domestic violence. However, we urge that the authority of peace officers be further strengthened to seize firearms and hand them over to the police.

Recommendation: Insert an additional section to section 3 to the effect that a peace officer must enquire about the presence of a firearm/s – whether licensed to the person reasonably suspected of having committed an offence, another person or unlicensed, seize all firearms at the scene and immediately hand these to a member of the South African Police Service.

E. Substitution of section 4: Permanent protection order

Substitution of section 4 of Act 116 of 1998:

(3)(a) has been amended to allow “another person” to apply for a protection order on behalf of the complainant.

(3)(b) has been added to read, “An application referred to in paragraph (a) must be brought with the written consent of the complainant, except in circumstances where the complainant is a person who, in the opinion of the court, is unable to provide the required consent.”

GFSA’s comments and recommendation:

6. We strongly support the amendment to section 4(3)(a) as we are aware that many domestic violence survivors/victims are far too afraid to apply for a protection order themselves. However, we urge that the specific risk posed by a firearm in instances of domestic violence be recognised and that the provision of consent from the complainant be waived in these situations.

Recommendation: (3)(b) be amended to read “An application referred to in paragraph (a) must be brought with the written consent of the complainant, except when there is a firearm/s present or in circumstances where the complainant is a person who, in the opinion of the court, is unable to provide the required consent.”

F. Substitution of section 5: Interim protection order

Substitution of section 5 of Act 116 of 1998, as amended by section 19 of Act 55 of 2003:

(2)(b) has been amended to include recognition of harm that is being or may be suffered by the complainant or a related person.

(3)(bA) has been added which requires that a copy of the application for an interim protection order as well as the order itself be:

(i) captured by the clerk of the court in a central electronic repository of protection orders;

(ii) accessible as prescribed within the criminal justice system;”

GFSA’s comments:

7. We strongly support the amendment to:
- Section 5(2)(b) as we are aware that many domestic violence survivors/victims are far too afraid to apply for a protection order themselves.

- Section 5(3)(bA) as this will help police members ascertain whether a firearm licence applicant – either new or a renewal – remains “fit and proper” by making this information electronically accessible.

G. Substitution of section 9: Seizure of weapons

Substitution of section 9 of Act 116 of 1998:
 Seizure of weapons

9. (1) The court must order a member of the South African Police Service to seize any weapon in the possession or under the control of a respondent, regardless of the requirements of the respondent’s employment to possess such weapon, if the court is satisfied on the evidence placed before it, including any affidavits supporting an application referred to in section 4 (1), that -

- (a) the respondent has threatened or expressed the intention to kill or injure himself or herself, any person in the domestic relationship or a related person, whether or not by means of such weapon; or
- (b) possession of such weapon is not in the best interests of the respondent or any other person in a domestic relationship, as a result of the respondent's -
 - (i) state of mind or mental condition;
 - (ii) inclination to violence; or
 - (iii) use of or dependence on intoxicating liquor or drugs.

(2) Any weapon seized in terms of subsection (1) must be kept by the South African Police Service and the court must direct the clerk of the court to refer a copy of the record of the evidence concerned to the relevant station commander for consideration in terms of section 102 of the Firearms Control Act 2000.

(3) Any weapon seized in terms of subsection (1) -

- (a) must be given a distinctive identification mark and retained in police custody for such period of time as the court may determine; and
- (b) may only be returned to the respondent or, if the respondent is not the owner of the weapon, to the owner thereof, by order of the court and on such conditions as the court may determine:

Provided that -

- (i) if, in the opinion of the court, the value of the weapon so seized is below the amount determined by the Minister in the Gazette from time to time;
- (ii) if the return of the weapon has not been ordered within 12 months after it had been so seized; or
- (iii) if the court is satisfied that it is in the interest of the safety of any person concerned, the court may order that the weapon be forfeited to the State.

(4) (a) When a final protection order has been issued against the respondent in terms of section 6, the clerk of the court must, in the prescribed manner, inform the relevant station commander thereof.

(b) The relevant station commander must, on receipt of the information contemplated in paragraph (a), —

- (i) determine whether the respondent holds a licence, permit, competency certificate or other authorisation in terms of the Firearms Control Act, 2000, for any firearm or ; and
- (ii) in terms of section 102 of the Firearms Control Act, 2000, determine whether the person is unfit to possess a firearm;”.

GFSA's comments and recommendation:

8. We warmly welcome the proposed amendments to section 9, in particular we support the following changes:
- Section 9(1) which orders the removal of a firearm/s from a respondent even when a firearm is a requirement of the respondent's employment. Research in South Africa shows a significant proportion of intimate partner-suicide perpetrators are employed in the police, army or private security industry, reflecting easier access to guns in these professions.²²
 - Section 9(1)(a) which recognises threats or expressions of an intention to kill or injure by a respondent or a related person. Research internationally shows that in addition to threatening to shoot their partner, other threatening gun-related behaviour used by men in domestic violence is cleaning, holding, or loading a gun during an argument; threatening to shoot a person or pet the partner cared about; and discharging the weapon during an argument with their partner.²³
 - Sections 9(2) and 9(4) which align the DVA with section 102 of the Firearms Control Act, under which the police can declare a person unfit to own a firearm.
9. Recommendation: We strongly urge that the amended section 9(4) be strengthened so that the issuing of a temporary protection order, and not a final order as is proposed, result in the two actions listed, viz:
- The clerk of the court informs the relevant station commander.
 - The station commander upon receipt of this notification to:
 - Determine whether the respondent holds a licensed firearm/s.
 - Determine whether the respondent is unfit to possess a firearm under section 102 of the Firearms Control Act.

H. Amendment of section 18: Withdrawing charges

Amendment of section 18 of Act 116 of 1998 as amended by section 36 of Act 1 of 2011, including by the substitution for subsections (1) of the following subsections:

“(1) No prosecutor may -

- (a) refuse to institute a prosecution; or
- (b) withdraw a charge,

in respect of a contravention of section 17(1)(a) or in respect of any offence against a person in a domestic relationship –

- (i) involving the infliction of grievous bodily harm or a dangerous wound; or
- (ii) where the complainant is threatened with a firearm,

unless he or she has been authorised thereto, whether in general or in any specific case, by a Director of Public Prosecutions as contemplated in section 13(1)(a) of the National Prosecuting Authority Act, 1998 (Act 32 of 1998), or a senior member of the prosecuting authority designated thereto in writing by such a Director.

²² Mathews, Shanaaz, Naeemah Abrahams, Rachel Jewkes, Lorna Martin, Carl Lombard, and Lisa Vetten. 2008. Intimate femicide–suicide in South Africa: a cross-sectional study. *Bulletin of the World Health Organization*, Vol. 86, pp. 552–558.

²³ Rothman, Emily, David Hemenway, Matthew Miller, Deb Azrael, 2005. Batterers' Use of Guns to Threaten Intimate Partners. *Journal of the American Medical Women's Association*, Vol. 60, No. 1, pp. 62–68.

GFSA's comment and recommendation:

10. GFSA warmly welcomes the proposed amendment to Section 19(1) which orders that no prosecutor may refuse to institute a prosecution or withdraw a charge where the complainant is threatened with a firearm. We recommend though that this amendment be strengthened to:

- Recognise threats with a firearm to related people, which would include children, parents, siblings or new romantic partners.
- Exclude general exceptions to this rule.

Recommendation: Subsection 18(1)(b)(ii) be amended to read:

(ii) where the complainant or related person is threatened with a firearm, unless he or she has been specifically authorised thereto, ~~whether in general or in any specific case~~, by a Director of Public Prosecutions as contemplated in section 13(1)(a) of the National Prosecuting Authority Act, 1998 (Act 32 of 1998), or a senior member of the prosecuting authority designated thereto in writing by such a Director.

CONCLUSION

In the past two years firearm-related violence has reached epidemic proportions in South Africa: While firearms have overtaken knives as the leading cause of murder nationally, in Gauteng gunshots have replaced motor-vehicle accidents as the leading cause of non-natural death.

Although the majority of gun violence victims are young men, women and children are vulnerable in very particular ways – being most at risk of threats, injury or murder by a family member, usually an intimate partner, in the home.

Easy access to firearms increases the lethality of domestic violence by 12 times. In contrast, reducing access to firearms reduces the likelihood of death or serious injury.

As such, GFSA welcomes many of the proposed amendments in the Domestic Violence Amendment Draft Bill, 2020; their inclusion and strengthening in some cases can facilitate both proactive and reactive interventions to reduce access to firearms, thereby reducing the incidence and lethality of firearm-related domestic violence.

APPENDIX 1: CHALLENGES IN IMPLEMENTING LAWS TO REMOVE FIREARMS IN DOMESTIC VIOLENCE

South Africa's Domestic Violence Act, 1998 (DVA) and Firearms Control Act, 2000 (FCA) include clauses to remove a gun in the possession of an individual with a history of violent behaviour and/or prohibit such an individual from accessing a gun at all. However, these reactive and proactive provisions are rarely enforced, as is summarised below:

Reactive: Removing guns from individuals with a history of violent behaviour

While the DVA and FCA allow the courts and/or the police to immediately remove a firearm from a gun owner who is violent, this rarely happens.

1. The Domestic Violence Act (DVA)

The DVA allows magistrates' courts to grant interim and permanent protection orders that order the respondent to stop their abusive behaviour. The court can also order the police to remove a gun or any other dangerous weapon from the respondent, whether the respondent owns the gun or has access to it.

Challenges in implementing the DVA

The process for having magistrates' courts remove a firearm is straight-forward; but service providers report a number of problems:

- In addition to delays in securing final protection orders, local courts hardly ever order the police to remove guns.²⁴ The reasons for this include that there is low reporting of gun use by domestic violence victims as well as poor responses from criminal justice structures responsible for removing guns that have been reported.²⁵ The low removal rate of firearms following domestic violence is of particular concern as international research shows:
 - Displaying a firearm in a domestic altercation is a predictor of actual use, with many victims of femicide reporting having been threatened with a firearm before being shot.²⁶
 - "(C)ompelling evidence that a gun in the home is a risk factor for intimidation and for killing women in their homes, and it appears that a gun in the home may more likely be used to threaten intimates than to protect against intruders."²⁷
- A record of partner violence does not necessarily translate into safety for women, with international research showing that femicide victims may be even more vulnerable in the period following the issuance of a protection order, as the perpetrator may feel increased animosity and

²⁴ See:

- Parenzee, Penny, Lilian Artz, and Kelly Moulton. 2001. Monitoring the Implementation of the Domestic Violence Act: First Research Report 2000–2001. Cape Town: Institute of Criminology, University of Cape Town.
- Vetten, Lisa, and Vera Schneider. 2006. Going somewhere slowly? A comparison of the implementation of the Domestic Violence Act (no. 116 of 1998) in an urban and semi-urban site. Johannesburg: Centre for the Study of Violence and Reconciliation.
- Vetten, Lisa. 2006. Mapping the use of guns in violence against women: Findings from three studies. *African Security Review*, Vol. 15, No. 2, pp. 86–92.
- Vetten, Lisa. 2014. Domestic violence in South Africa. ISS Policy Brief 71, November. Pretoria: Institute for Security Studies.
- Bezuidenhout, Christiaan, and Laetitia Coetzee. 2017. Domestic violence in South Africa. Scharff Peterson, Diana, and Julie Schroeder (eds). 2017. *Domestic Violence in International Context*. London and New York: Routledge.

²⁵ Shaw, Margaret. 2013. *Too Close to Home – Guns and Intimate Partner Violence*. Small Arms Survey 2013: Everyday Dangers. Cambridge: Cambridge University Press.

²⁶ Alvazzi del Frate, Anna. 2011. *When the Victim is a Woman*. Geneva Declaration Secretariat. *Global Burden of Armed Violence 2011*. Lethal Encounters. Cambridge: Cambridge University Press, pp. 113-144.

²⁷ Hemenway, David. 2011. Risks and Benefits of a Gun in the Home. *American Journal of Lifestyle Medicine*, 2 February, p. 7.

hostility during this time.²⁸ In confirmation of this finding, 33% of women killed in South Africa in 2009 had a protection order against their male partner.²⁹

2. The Firearms Control Act (FCA)

Chapter 12 of the FCA allows the courts and police to declare a gun owner unfit:

Courts: Section 102 of the FCA	Police: Section 103 of the FCA
<p>Gives the courts the power to declare a gun owner unfit to own a gun for a range of reasons, including if s/he is convicted of an offence involving:</p> <ol style="list-style-type: none"> 1. The negligent handling of a firearm; 2. Handling of a firearm while under the influence of any substance which has an intoxicating or narcotic effect; 3. Any offence involving violence or sexual abuse for which the accused is sentenced to a period of imprisonment without the option of a fine; 4. Any offence involving physical or sexual abuse occurring in a domestic relationship as defined in the DVA; 5. Any offence in terms of the DVA in respect of which the accused is sentenced to a period of imprisonment without the option of a fine. 	<p>Gives the Registrar (the National Police Commissioner) the power to declare a gun owner unfit; identifying five reasons for reporting a gun owner to the police:</p> <ol style="list-style-type: none"> 1. A final protection order has been issued against the gun owner; 2. The gun owner has expressed the intention to injure or kill himself or someone else using a firearm or other dangerous weapon; 3. It is not in the interests of the gun owner or any other person that s/he keeps the gun, because of the person’s mental condition, inclination to violence or dependence on alcohol or narcotic drugs; 4. The gun owner has failed to carry or store the gun safely, as required by law; 5. The gun owner has provided information required in terms of FCA which is false or misleading. <p>Once a statement has been made, the police are required to undertake an investigation, including interviewing witnesses. If the gun owner is found unfit, s/he must hand in all guns and licences and is not allowed to apply for a gun licence for five years.</p>

As with the DVA, there are various problems in the enforcement of sections 102 and 103 – see section *Challenges in implementing the FCA* below for a summary of some of these.

Proactive: Preventing individuals with a history of violent behaviour access to guns

It is globally recognised that prohibiting an individual with a history of violent behaviour from owning a gun is more effective at preventing gun violence than removing a gun after the fact. As such, a significant strength of the FCA is that it makes provision to disqualify unfit people from owning guns in the first place. The FCA has two key elements to certify that only “fit and proper” people are granted firearm licences, these are:

1. A two-tier licensing system which involves establishing competency before issuing a licence to possess, thereby ensuring that the person has been judged “fit and proper” by the state to own a firearm.

²⁸ Gerney, Arkadi, and Chelsea Parsons. 2014. Women Under the Gun: How Gun Violence Affects Women and 4 Policy Solutions to Better Protect Them, June.

²⁹ 33% of the 1,024 intimate femicide cases reported in 2009 had a history of intimate partner violence. Source: Abrahams, Naeemah, Shanaaz Mathews, Lorna Martin, Carl Lombard, and Rachel Jewkes. 2013. Intimate Partner Femicide in South Africa in 1999 and 2009. PLOS Medicine, Vol. 10, No. 4, pp. 1-8.

2. A licence renewal system under which firearm licence holders must regularly renew their licences, thereby allowing the state to confirm the licensed owner is still qualified to have a firearm.

Challenges in implementing the FCA

While the FCA contains various provisions to both remove firearms from and prevent at risk individuals from ownership, there are a range of problems in implementing these provisions, including:

- Courts failing to make declarations of unfitness: Whenever a person is convicted of a violent or firearm-related offence, it is the court’s duty to make a ruling on their fitness to possess a firearm. However, research assessing the enforcement of the FCA found that “the courts are letting the justice cluster down by not declaring firearm perpetrators unfit to possess firearms in terms of Section 103... An obviously frustrated police official pointed out that ‘In most instances that I have seen, a person will be convicted of a crime in court and nothing is said about the firearm’.”³⁰
- No process to ensure firearms are surrendered by gun owners declared unfit: Even when a person is declared unfit to own a firearm, research indicates that this doesn’t necessarily lead to surrender; a large part of the problem seems to be a breakdown in the chain of communication between the courts and the relevant police officials e.g. just under half of police members interviewed reported that administration clerks at times fail to capture unfitness declarations, so compromising the integrity of the police data and follow up action.³¹

³⁰ Bopape, Lesetja. 2014. An Analysis of firearms control measures used by the South African Police Service, PhD Thesis. University of South Africa, p. 147.

³¹ Ibid.