Misdemeanor Crimes of Domestic Violence

Identification for Firearms Sales Flags in Wyoming Criminal History Records

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Introduction

The U.S. Bureau of Justice Statistics (BJS), State Justice Statistics (SJS) Program provides funding to state Statistical Analysis Centers (SACs) to build their capacity to collect, analyze, and disseminate criminal justice data to state and local policy makers, administrators, and other stakeholders. In 2019 and 2020, the SAC for Wyoming—the Wyoming Survey & Analysis Center (WYSAC) at the University of Wyoming—received special-emphasis capacity-building funding from BJS to conduct a targeted analysis using Wyoming's criminal history records.

SACs are strongly encouraged to collaborate with their state's State Administering Agency (SAA) to develop and implement projects that support the State's criminal justice planning needs. The Wyoming Division of Criminal Investigation (DCI) is the SAA for the State of Wyoming and serves as the central repository for criminal history record information. WYSAC worked with DCI to develop and implement this research project in support of one of DCI's top priorities, maintaining accurate and complete criminal history records.

Wyoming statute requires all city, county, and state law enforcement agencies; district courts; courts of limited jurisdiction; district attorneys; the Department of Corrections; state juvenile correctional institutions; and local probation and parole agencies to submit criminal history record information to DCI.[1] DCI stores these data in a computerized state criminal history system (CCH) and uses the data for many purposes including complying with the 2002 Help America Vote Act, conducting background checks for employers and professional licensing boards, and sharing data with the Federal Bureau of Investigation's (FBI's) National Criminal Background Check System (NICS).[2,3] To effectively serve these purposes, criminal justice entities (law enforcement agencies, the courts, and corrections) must provide DCI with accurate and complete data.

The objectives of this project were to 1) explore the accuracy and completeness of Wyoming's criminal history records, specifically for misdemeanor crimes of domestic violence (MCDVs), 2) provide DCI with a report outlining the results of the analysis, and 3) provide recommendations on how DCI and other state criminal justice agencies can improve the accuracy and completeness of the state's criminal history records.

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[1] Wyoming Division of Criminal Investigation [DCI] Criminal Records Unit. (*n.d.*). https://wyomingdci.wyo.gov

[2] Help America Vote Act (HAVA). 52 U.S.C. § 20901 -§ 21145.

[3] DCI. (*n.d.*). Criminal Records Unit. https://wyomingdci.wyo.gov/criminal-justice-information-services-cjis/criminal-records-unit

Background

In 1996, Congress amended the Federal Gun Control Act of 1968 to disqualify any person convicted of an MCDV from possessing or receiving firearms.[4] This amendment, the Lautenberg Amendment, defines an MCDV as any misdemeanor under local, state, tribal, or federal law that has two elements. The first is the "use or attempted use of physical force or the threatened use of a deadly weapon." The second element is that the victim and offender share a domestic relationship.[5,6]

To identify disqualified individuals attempting to purchase firearms, federal law requires licensed gun dealers, Federal Firearms Licensees (FFLs; e.g., sellers), to initiate a background check on all prospective firearm transferees (e.g., buyers).[7] The NICS Section conducts background checks initiated by the seller at the point of sale (POS).[8] When a seller initiates a NICS background check, the NICS Section compares the prospective buyer's information (name, date of birth, sex, state of residency, etc.) to records in four federal databases: the Interstate Identification Index (III), the National Crime Information Center (NCIC), the NICS Indices, and the U.S. Immigration and Customs Enforcement (ICE) database.[9]

NICS background check results are usually instant and definitive. That is, the NICS notifies the seller at the time of sale that the sale may or may not proceed; however, missing, incomplete, or unclear criminal records in the databases can delay the NICS result.[10] When the NICS cannot return an instant result, the sale may be delayed for up to 3 business days while the NICS Section does additional research.[11] After 3 business days, the sale, under "default proceed,"[12] may occur, regardless of the status of the background check.[13] The NICS Section may continue

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[4] Gun Ban for Individuals Convicted of a Misdemeanor Crime of Domestic Violence. 18 U.S.C. § 922(g)(9)

[5] Ibid

[6] A domestic relationship is a relationship where the offender is the current or former spouse, parent, or guardian of the victim; a person with whom the victim shares a child in common; a person who is cohabitating with or has cohabitated with the victim as a spouse, parent, or guardian; or a person similarly situated to a spouse, parent, or guardian of the victim

[7] USDOJ. 2019 NICS Operations Report. (2019). https://www.fbi.gov/file-repository/2019-nics-operations-report.pdf/view

[8] Ibid

[9] Ibid

[10] Ibid

[11] Ibid

[12] Ibid

[13] Ibid

to research the buyer's eligibility after a default proceed for another 87 days. By law, all NICS records must be destroyed within 90 days of the date of inquiry even if there has not been a definitive result.[14]

If a buyer is ultimately determined ineligible to possess a firearm, the FBI notifies the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) of the sale. The ATF then attempts to retrieve the weapon.[15] In 2019, the FBI notified the ATF of 2,989 sales nationwide to buyers later determined to be prohibited from possessing firearms. Of these sales, 21% were to buyers who were ineligible due to an MCDV conviction.[16]

The MCDV element, "use or attempted use of physical force or the threatened use of a deadly weapon," can often, though not always, be determined based on the conviction statute. For example, WY Stat § 6-2-501 *Simple assault; battery; penalties* states that "a person is guilty of battery if he intentionally, knowingly or recklessly causes bodily injury to another person by use of physical force."[17] All convictions under this statute meet the first element of an MCDV. Establishing a domestic relationship, the second element required, is not always straightforward. Some statutes, for example WY Stat § 6-2-511 *Domestic battery*, explicitly indicate a domestic relationship; convictions under this statute are easily flagged as MCDVs.[18,19] If, however, an offender is convicted of an offense where the domestic relationship is not explicitly indicated by statute, the evaluation must access additional information to determine if the conviction is an MCDV.

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[14] Retention and destruction of records in the system. 28 CFR § 25.9

[15] USDOJ. 2019 NICS Operations Report. (2019)

[16] Ibid

[17] Simple assault; battery; penalties. WY Stat § 6-2-501

[18] Domestic battery. WY Stat § 6-2-511

[19] Domestic violence protection – Definitions. WY Stat § 35-21-102. A household member is defined as (A) Persons married to each other; (B) Persons living with each other as if married; (C) Persons formerly married to each other; (D) Persons formerly living with each other as if married; (E) Parents and their adult children; (F) Other adults sharing common living quarters; (G) Persons who are the parents of a child but who are not living with each other; and (H) Persons who are in, or have been in, a dating relationship.

Wyoming participates in the Identification for Firearms Sales (IFF) program created by Congress to designate applicable convictions as disqualifying.[20] DCI uses IFS flags to indicate whether a conviction is disqualifying. The CCH used three flags to indicate the status of a conviction. The flags are C (no disqualification), D (disqualification), or X (unknown). As no state statute or rule mandates any Wyoming criminal justice entity report domestic relationships to DCI as part of final disposition reporting, Wyoming's criminal records are sometimes incomplete and inaccurate, and not all MCDV convictions are flagged as disqualifying. The NICS searches that rely on these records may be delayed and could ultimately result in the sale of a firearm to an ineligible buyer.

Figure 1: Possible Outcomes for Delayed NICS Transactions
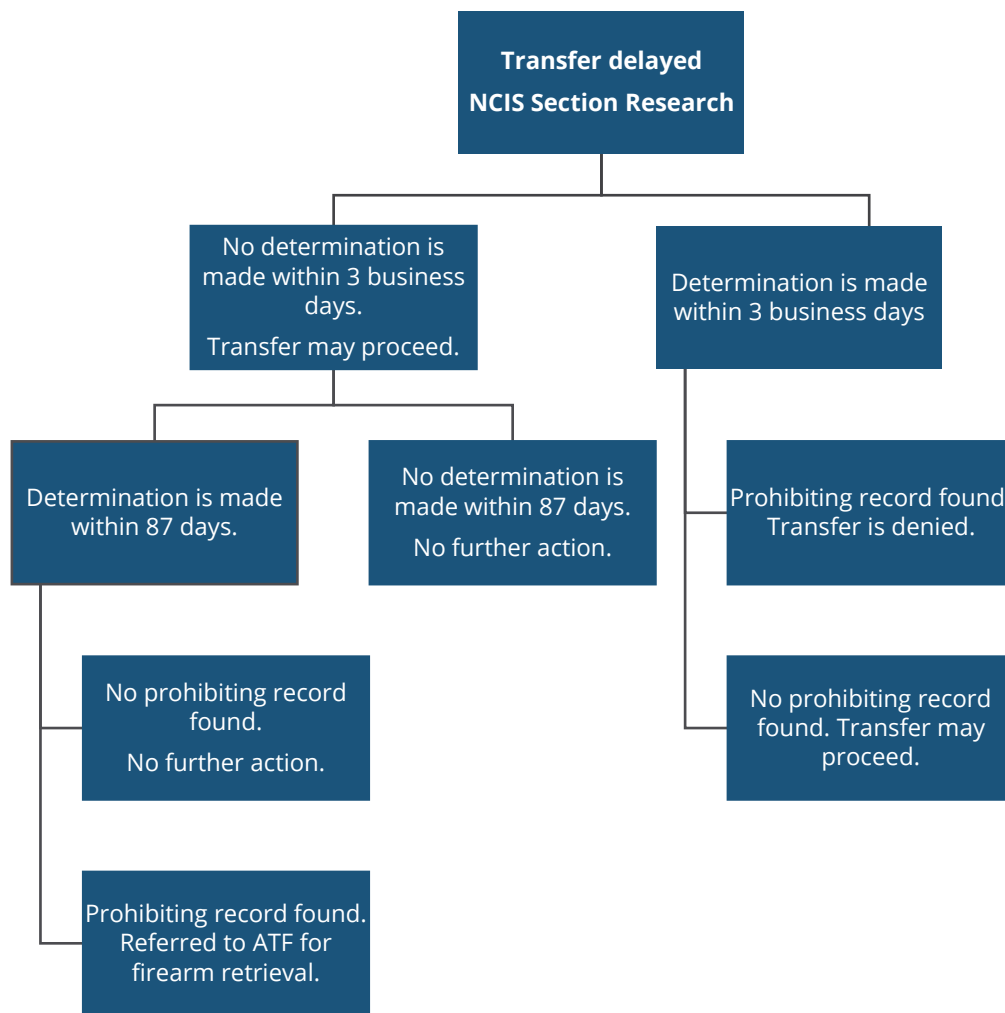
Source: US Department of Justice. (2019). 2019 NICS Operations Report

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[20] U.S. DOJ. (2003). National instant criminal background check system (NICS): 2001/2002 operational report. https://ucr.fbi.gov/nics/reports/01-02-operations-report/ops_report_01_02.pdf

Methods

DATA SOURCES AND DESCRIPTIONS

This study used data from two state-level databases: the Computerized Crime Victim Compensation (CCVC) system maintained by the Wyoming Division of Victim Services (DVS) and criminal history records from the CCH.

CCVC Crime Victim Compensation Claims

DVS administers Wyoming's crime victim compensation program and provides financial compensation to victims of crime who have suffered physical injury or mental harm because of a criminal act when they have no other means to cover the cost.[13] Victims who file claims for compensation provide information about the crime and the offender to DVS. This information includes the date of the offense, date the victim reported the offense to law enforcement, police report number, and the offender's name.

Criminal History Records

The CCH contains records for Wyoming arrests submitted by LEAs to DCI via fingerprints.[21] These records include offender demographics (e.g., gender, race), information about the arrest (e.g., arrest date, offense, arresting agency), and information about the disposition (e.g., disposition date, offense, court agency, verdict).[22] All dispositions have an IFS flag.

SAMPLE

The primary barrier in appropriately identifying disqualifying MCDV convictions in criminal records databases is identifying domestic relationship between victims and offenders. We overcame this barrier by creating a convenience sample of domestic violence offenders whose victims filed claims for victim compensation. DVS provided WYSAC with data on all domestic and family violence claims (e.g., offender name, date of offense, date reported, police report number) filed between 2015 and 2020 (n=2,015) to create the study sample. For the purpose of this research, we assumed a domestic relationship between the claimant and the offender identified in the domestic violence crime victim compensation claim.

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[21] LEAs do not provide information about "cite and release" arrests to DCI.

[22] When provided by the sentencing court.

Table 1: Matching Criteria

Match Criteria Level	Criteria
1	Exactly matching Last Name, First Name, Agency ID, and Date Reported Range, Date of Offense, and Police Report Number
2	Exactly matching Last Name, First Name Soundex, Agency ID, and Date Reported Range; and matching either Date of Offense or Police Report Number
3	Exactly matching Last Name, First Name Soundex, Agency ID, and Date Reported Range
4	Exactly Matching Last Name, First Name Soundex, and Date Reported Range
5	Exactly Matching Last Name Soundex, First Name Soundex, and Date Reported Range
6	Exactly Matching Agency ID, Date Reported Range, Date of Offense, and Police Report Number

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Matching Compensation Claims to Arrests and Convictions

DCI's vendor, Analysts International (AIC), searched the CCH for arrests related to each claim in the sample. WYSAC and AIC developed criteria to define an acceptable match between 1) an offender and offense identified in a compensation claim, and 2) an offender and an arrest identified in the CCH. Table 1 presents the six levels of matching criteria. WYSAC provided AIC with offender information from crime victim compensation claims. AIC provided WYSAC with a de-identified dataset. AIC made the majority of matches on Level 3 criteria (55%) or Level 4 criteria (38%; Table 2).

Table 2: Matching Criteria

Match Criteria Level	n	%
1	0	0.0
2	11	3.5
3	173	55.4
4	118	37.8
5	9	2.9
6	1	0.3

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Although the data collected by DVS and DCI has some overlap, not all data fields are a one-to-one match. For example, compensation claims record the date the victim reported the crime to law enforcement, but CCH does not consistently record the date the victim reported the crime. Rather, the CCH records the date of the arrest. To match claims to arrests based on date, AIC searched for arrests where the date of the arrest was within +/- 30 days of the date reported to law enforcement as noted in the compensation claims. To account for data entry errors in offender name fields, AIC used a Soundex algorithm to match the offender named in the claim to the offender in the CCH. [23]

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[23] The Soundex algorithm matches names in the datasets based on the phonetic structure of the name rather than the spelling.

Of the 2,015 claims provided to AIC, 1,047 (52%) claims matched an arrest in the CCH (Figure 2). Of these, 36 were duplicate arrests. Duplicate arrests occur for two reasons: 1) a single arrest involves more than one victim and more than one claim, or 2) a single claim involves more than one arrest. When one arrest matched multiple claims, we retained only one arrest. When one claim matched multiple arrests, we retained all arrests. After removing duplicate matched arrests (n=17), we were left with 1,030 matched arrests.

Figure 2: Matching Domestic Violence Offenders to Criminal Records
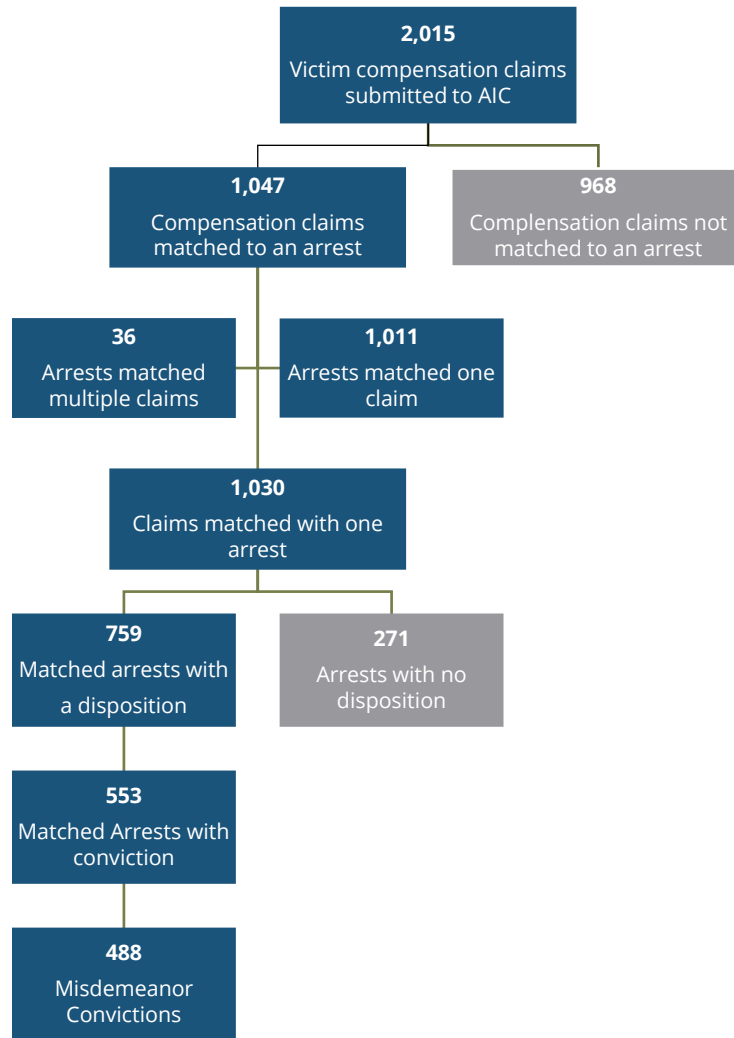
Source: WYSAC analysis of Wyoming Division of Criminal Investigation (DCI) criminal history records (accessed 3/18/2021) and Wyoming Division of Victim Services (DVS) crime victim compensation claims (2015-2020).

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Of the matched arrests, we retained only those with a final disposition (n=759). A single arrest can result in multiple dispositions. For example, one offender may have been charged with three offenses and be convicted of the first, have charges dismissed for the second, and be acquitted of the third. We kept matched arrests that resulted in at least one conviction (n=553). These 553 matched arrests resulted in 799 convictions of which 61% (n=488) were misdemeanors.

Identifying MCDV Convictions

The dataset included convictions for 37 unique offenses. We consulted the *18 U.S.C 922(g)(9) Chart Guidelines* for Wyoming prepared by the NICS Legal Analysis Team (LAT) to identify offenses that met the physical force element of the Lautenberg Amendment (use or attempted use of physical force or the threatened use of a deadly weapon). Of the 37 offenses in our sample, 11 are included on the list of possible MCDVs (Table 3). Of the 488 misdemeanor convictions, 312 (64%) were possible MCDVs.

Table 3: Possible Misdemeanor Crimes of Domestic Violence Offense

Offense	Statute	Attempted use of physical forc
Assault	6-2-501 A	Possible
Battery	6-2-501 B	All meets
Domestic Assault	6-2-510(A)(I)	Possible
Domestic Battery	6-2-511(A)(I)	All meets
Domestic Battery w/Prior	6-2-511(A)(II)	All meets
False Imprisonment	6-2-203 A	Possible
Reckless Endangering	6-2-504 B	Possible
Sexual Battery	6-2-313 (A)	Possible
Stalking	6-2-506 D	Possible
Unlawful Contact	6-2-501 G	All meets
Unlawful Contact Household Member	6-2-501 (G)(E)	All meets

Note: Offenses ta*18 U.S.C 922(g)(9) Chart Guidelines*

Source: WYSAC analysis of Wyoming Division of Criminal Investigation (DCI) criminal history records (accessed 3/18/2021) and Wyoming Division of Victim Services (DVS) crime victim compensation claims (2015-2020).

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Results

KEY DEMOGRAPHICS OF OFFENDERS AND CRIME TYPES

The sample included 321 misdemeanor convictions and 276 unique offenders. Offenders in the sample were predominantly White (90%) and male (95%; Table 4). Offenders ranged in age from 18 to 66 (AIC did not search for matches in records under age 18) with a median age of 34. More than two-thirds (67%) of the convictions were for domestic battery, followed by unlawful contact (10%), and battery (9%; Table 5).

Table 4: Key Demographics

		n	%
Gender	Male	261	94.6
	Female	15	5.4
Race	White	250	90.4
	Black/African American	15	5.3
	American Indian/Alaska Native	10	3.6
	Unknown	2	0.7
Age at Arrest	18-25	45	16.3
	26-34	95	34.4
	35-54	119	43.1
	55-64	16	5.8
	65+	1	0.4

Source: WYSAC analysis of Wyoming Division of Criminal Investigation (DCI) criminal history records (accessed 3/18/2021) and Wyoming Division of Victim Services (DVS) crime victim compensation claims (2015-2020).

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Table 5: Frequencies – Possible Misdemeanor Crimes of Domestic Violence

Offense	Statute	Number of Offenses	% of Offenses
Domestic Battery	6-2-511(A)(I)	216	67%
Unlawful Contact	6-2-501 G	31	10
Battery	6-2-501 B	28	9
False Imprisonment	6-2-203 A	10	3
Domestic Battery w/Prior	6-2-511(A)(II)	9	3
Domestic Assault	6-2-510(A)(I)	8	2
Reckless Endangering	6-2-504 B	8	2
Stalking	6-2-506 D	6	2
Sexual Battery	6-2-313 (A)	2	1
Assault	6-2-501 A	2	1
Unlawful Contact Household Member	6-2-501 (G)(E)	1	<1

Source: WYSAC analysis of Wyoming Division of Criminal Investigation (DCI) criminal history records (accessed 3/18/2021) and Wyoming Division of Victim Services (DVS) crime victim compensation claims (2015-2020).

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IFS FLAGS FOR POSSIBLE MCDV CONVICTIONS

The majority of possible MCDV convictions (74%) were flagged D (disqualification) or X (unknown; 10%). The remaining possible MCDVs (17%) were flagged as C (no disqualification; Figure 2).

Convictions where the name of the statute specifies a domestic relationship (e.g., battery – household member, domestic assault) were more likely to be marked D or X than convictions that did not (Figure 2).

DCI REVIEW

WYSAC provided DCI with the State ID (SID), arrest ID, and disposition ID for the 54 potential MCDV dispositions flagged C. DCI's Criminal Records Unit reviewed each record and corresponding documents and identified 19 misflagged MCDV convictions and immediately corrected these records. Following its review, DCI determined the remaining 35 convictions were not flagged incorrectly either because crime was not a crime of domestic violence, the records review did not establish a qualifying domestic relationship, the offense did not include the use or attempted use of force, or the disposition was already flagged as "unknown" due to no clear indication of a disqualifying domestic relationship. In addition, DCI made changes to its own policies regarding flagging convictions in the criminal history records. Going forward, X will be the default IFS Flag for all convictions unless the conviction is a firearms disqualifier. DCI will no longer use the C IFS flag.
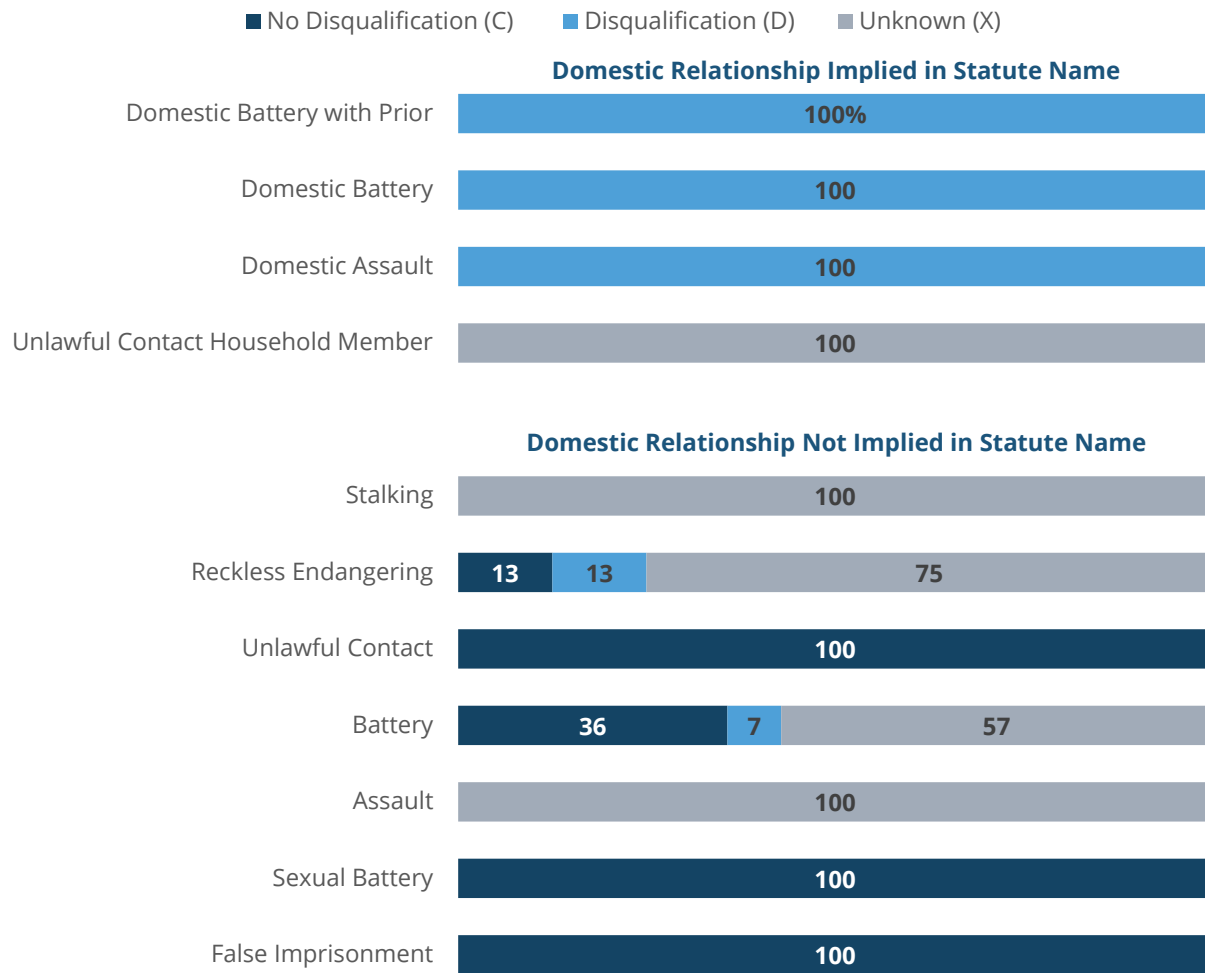
Figure 2: IFS Flags for Possible MCDV Convictions
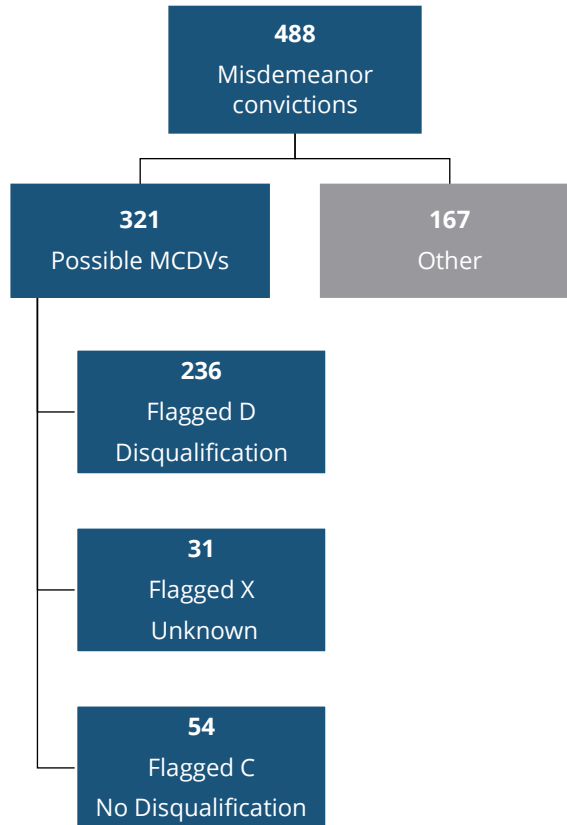
Source: WYSAC analysis of Wyoming Division of Criminal Investigation (DCI) criminal history records (accessed 3/18/2021) and Wyoming Division of Victim Services (DVS) crime victim compensation claims (2015-2020).

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Figure 3: IFS Flags for Possible MCDV Convictions

■ No Disqualification (C)　■ Disqualification (D)　■ Unknown (X)

Domestic Relationship Implied in Statute Name

Category	Value
Domestic Battery with Prior	100%
Domestic Battery	100
Domestic Assault	100
Unlawful Contact Household Member	100

Domestic Relationship Not Implied in Statute Name

Category	No Disqualification (C)	Disqualification (D)	Unknown (X)
Stalking			100
Reckless Endangering	13	13	75
Unlawful Contact	100		
Battery	36	7	57
Assault			100
Sexual Battery	100		
False Imprisonment	100		

Source: WYSAC analysis of Wyoming Division of Criminal Investigation (DCI) criminal history records (accessed 3/18/2021) and Wyoming Division of Victim Services (DVS) crime victim compensation claims (2015-2020).

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Limitations

MATCHING

Although WYSAC and AIC developed a rigorous matching procedure to link domestic violence incidents to misdemeanor convictions, the expected challenges of working with administrative data are present. The majority of matches were at Level 2 (57%) or Level 3 (37%) but this does not guarantee that the arrest is necessarily a result of the domestic incident that led to the victim compensation claim. In other words, the offender identified in the victim compensation claim may have been arrested for and convicted of an unrelated violent crime.

IDENTIFYING POTENTIAL MCDVS

Establishing a Qualifying Domestic Relationsip

For the purposes of this research we assumed the misdemeanor conviction we matched to a domestic violence compensation claim involved a disqualifying domestic relationship, however it is important to remember that the definition of domestic relationship DVS uses and the federal definition of domestic relationship are not the same. The sample of domestic violence claims we used in our analysis may have included offenses where there was not a domestic relationship under the federal definition (e.g., the victim and offender were involved in a dating relationship but do not cohabitate or share a child in common). In addition, Wyoming state statute does include current and former dating relationships as domestic relationships meaning some convictions may meet the statutory definiton of domestic violence (e.g., [Domestic Assault 6-2-510(A)(I)]) but not the federal definition.

Establishing Element of Use or Attempted Use of Physical Force

When selecting misdemeanor crimes to include in our sample, we retained convictions for any of the offenses included in the LAT Chart Guidelines for Wyoming. Here it is important to remember that six of the statutes present in our sample and included in the Chart Guidelines are identified as *possibly* meeting the "use or attempted use of force" element required for a conviction to be an MCDV. It is possible that a conviction for an offense included in the Chart Guidelines for Wyoming included in our sample did not meet the "use or attempted use of force" element. For example, False Imprisonment (6-2-203) requires the knowing and unlawful restraint of another so as to intervere substantially with his liberty; however unlawful restraint does not necessarily indicate the use of force. An offender can "unlwafully restrain" by blocking a doorway and preventing the victim from leaving a room.

REPRESENTATIVENESS OF DOMESTIC VIOLENCE CONVICTIONS

We analyzed convictions matched to a sample of domestic violence crime victim compensation claims. In order to receive compensation, victims must have a qualifying expense (e.g., medical treatment) that is not covered by any other source (e.g., medical insurance). DVS requires that victims cooperate with any law enforcement investigation (with some exceptions). For these reasons, we do not consider the convictions we analyzed to be representative of all convictions for possible crimes of domestic violence in Wyoming.

Recommendations

IMPLEMENT NEW PROCEDURES

- Require that courts clearly indicate on the Judgement and Sentencing sheet for all misdemeanor convictions 1) the relationship the offender has to the victim, and 2) if the offense involved the actual use of or threatened use of force.

IMPROVE INFORMATION SHARING BETWEEN THE COURTS AND DCI

- Create a "bridge" between the database currently used by the Supreme Court and the CCH to allow DCI to access District and Circuit court data in real time.
- Establish procedures to improve information sharing between DCI and municipal courts.