Resource Document on Access to Firearms by People with Mental Disorders

Debra A. Pinals, M.D.
Paul S. Appelbaum, M.D.
Richard Bonnie, J.D.
Carl Fisher, M.D.
Liza Gold, M.D.
Li-Wen Lee, M.D.

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Gun violence is a major public health problem in our country. Recent data indicate that 19,392 people used a gun to kill themselves in 2010, and 11,078 killed someone else with a firearm (1). In 2003, the homicide rate in the United States was seven times higher than the average of other high-income countries (2). Although concern is understandably heightened when mass tragedies occur, the daily occurrence of scores of murders and suicides due to the use of guns rarely gets the attention afforded mass tragedies. Nevertheless, reports of mass shootings and other serious firearm-related violence, such as the Columbine shootings of 1999, the Virginia Tech shootings in 2007, the Aurora movie theater shooting of 2012, and the Newtown elementary school shooting in 2012, have focused on the perpetrators' alleged mental disturbance or mental disorder. Increasingly negative views of mental disorders have resulted from media coverage of these incidents (3). Taken together, these tragic incidents have raised growing concern about access to firearms specifically by people with mental disorders. Along with these concerns have come a host of collateral issues that have the potential to expose persons with mental disorders to greater stigma based on erroneous views that mental disorder is a primary driver of firearm violence.

To be sure, firearm violence requires greater research and sustained attention by policymakers, regardless of who perpetrated the violence. The American Psychiatric Association (APA) has for many years emphasized the need to decrease overall access to firearms as one means of reducing violence and continues to adhere to this principle (4). This Resource Document summarizes data on firearm usage and mental disorders and discusses several important issues affecting psychiatrists and their patients: the possible benefits and costs of using registries of excluded gun purchasers, including large numbers of people with mental disorders, as a tool for curtailing firearm-related violence and suicide; gaps in privacy protections of information submitted to firearm registries; and the need for fair procedures for restoring firearms rights to individuals with histories of mental illness whose treatment history and behavior indicate that they are no longer at elevated risk for suicide or violence.

The Relationship Among Mental Disorders, Firearms, Suicide, and Violence

The role of mental disorders in violence is often misunderstood. Mental disorders cover a broad range of conditions and are much more closely linked to suicide than to homicide. Diagnosable mental disorders are present in an overwhelming proportion of people who commit suicide. However, the vast majority of violence in our society is not perpetrated by persons with serious mental disorders. The best available estimates indicate that violent behavior attributable to mental disorder accounts for only 3 to 5% of the violence in the United States (5), and that the rate of violence among people with mental disorders (without co-morbid substance abuse disorders) who have recently been discharged from psychiatric hospitals is about the same as the rate among people who live in the same neighborhoods (6). Even among this minority of individuals who are violent, only a small percentage of those violent acts (2-3% in a major study) involve guns (7). Additionally, if one were to look at cycles of violence in their entirety, people with mental disorders are far more likely to be the victims than the perpetrators of acts of violence (8).

Active substance use substantially increases the risk of violence by anyone, and particularly by persons with mental disorders. Substance use and impulse control disorders may place people at greater risk of threatening violence using firearms (9). The evidence also shows that the risk of violence among people with major mental disorders is elevated when they have histories of violence, psychopathic traits, and are experiencing violent ideation. Research suggests that individuals with mental disorders engaged in regular treatment are considerably less likely to commit violent acts than those who could benefit from, but are not engaged in, appropriate mental health treatment (10-15).

Suicide, in contrast to violence toward others, is much more often directly linked to mental disorders, which are major risk factors for suicide. According to the Centers for Disease Control and Prevention's 2010 mortality data (16), just over 51% of suicides were inflicted by firearms, and just over 61% of firearm-related deaths were due to

suicide, compared to 35% attributed to homicide. Suicide as the 10th leading cause of death that year and the 3rd leading cause among those aged 15-25. Although data regarding suicide attempts are less comprehensive, suicide attempts vastly outnumber completed suicides. Although many suicide attempts do not involve firearms, when they are used, firearms are more likely to lead to a completed suicide than are other means of attempted suicide. These findings raise concerns about firearm access by persons with mental disorders who may be at risk of suicide. Furthermore, given the link between suicide and several mental disorders, it is of great importance that individuals who present an increased risk of suicide have access to appropriate psychiatric treatment.

Registries of Prohibited Purchasers as a Strategy for Preventing Firearm Suicide and Violence: The Issues

Current federal law (17) and the laws of several states (18) bar purchase of firearms by certain categories of people, and include among them persons with a number of types of mental health histories, particularly involuntary hospitalization after a formal adjudication or administrative determination. These laws require federally licensed firearms dealers to confirm a person's eligibility for purchasing firearms by running a "check" through the National Instant Criminal Background Check System (NICS). However, as became evident in the wake of the Virginia Tech shootings, most states had not been reporting complete information on relevant mental health histories to the NICS. By enacting the NICS Improvement Amendment Act of 2007 (19), Congress sought to encourage the states to establish registries of persons who by virtue of their mental health histories are ineligible to purchase firearms under federal law. Over the years since this latter Act was passed there have been growing efforts to enhance the usefulness of the NICS database by increasing the number of mental health records reported, and this has also led to a re-examination of the categories of persons that should be disqualified from purchasing firearms and included in the database.

The federal Brady Act disqualifies persons who have been "commit[ed] to a mental institution by a court or other administrative or lawful authority" and those "adjudicated as mental defective" (20); the latter category is defined by federal regulation to include persons adjudicated incompetent to manage their affairs in guardianship proceedings, incompetent to stand trial, or not guilty by reason of insanity (21). Federal regulations also state that the disqualification does not apply to mandatory "observations" or voluntary admissions (22), suggesting that judicial orders for emergency examination or precautionary hospitalization do not constitute "commitments" for Brady Act purposes. State laws, however, may require reporting of broader categories of persons with mental health histories who are banned from purchasing firearms under state law (but not under federal law). These reporting laws are distinct from so-called "Tarasoff" laws that recognize a duty to protect third parties believed to be at risk from a patient. Some state laws require reporting to a registry of adults who have sought voluntary inpatient psychiatric treatment, as well as persons who were committed as juveniles, and include individuals with intellectual disabilities regardless of mental health histories (23). Thus, although NICS reporting is limited to a specific list of prohibitory statuses, federal laws do not preclude state laws from expanding the scope of persons included in the national database.

Striking the proper balance between the interest in protecting public health and safety and the individual's interest in owning and carrying a firearm is complex. No one doubts the importance of preventing violence and suicide. Yet, there is little evidence as to whether, and how much, maintaining registries of people with certain mental health histories contributes to that goal (24). On one hand, widespread availability of firearms in the United States, and the existence of a large secondary market outside current regulatory control, inevitably limit the effectiveness of a strategy of curtailing firearms purchases by any particular group of people. One might also question whether a comprehensive registry would have prevented any of the mass killings in recent years, and whether the expenditure of the more than one hundred million dollars (25) needed to create and maintain registries for persons with mental health histories could be better spent on broader public-safety targeted interventions that might yield greater overall benefits to society. On the other hand, it is also possible to argue that restrictions on firearms purchase by anyone at elevated risk for violence, including people with particular mental health histories—and the registries maintained to enforce these laws—are warranted if they reduce the chances of even one major incident of mass violence, not to mention reducing the everyday toll from firearm suicides and impulsive killings that often go unnoticed by the media.

Aside from debates about the effectiveness of mental health registries as a strategy for reducing firearm violence and suicide, major questions can also be raised about the fairness of singling out people with a broad range of mental health histories, including episodes that occurred many years ago and conditions that have been effectively treated, or a single episode of involuntary hospitalization, as grounds for denying them a right to purchase and carry a firearm, especially in a society in which ownership of firearms is a constitutionally protected right (26). The problem of overinclusiveness is compounded when states require reporting of persons who have been hospitalized voluntarily, since many of them will have given no

indication of intent to harm themselves or other people (27). Concerns about discrimination are further heightened when the statutory exclusion is categorical rather than being based on an individualized risk determination.

Questions have also been raised about the possibly counterproductive effects of registries. Persons with treatable mental disorders may delay or avoid obtaining treatment because of concern about adverse consequences should their conditions become known to others or because they are unwilling to forfeit their right to use firearms for legitimate purposes (e.g., hunting), especially in regions of the country where recreational firearm use is deeply embedded in the culture. Although the statutes typically prohibit disclosures of registry information for purposes other than determining eligibility for firearms purchases, persons in need of psychiatric treatment may understandably question the security of the registries and the limitations on the use of the information they contain.

Whatever one's views about the justifiability of using registries of excluded gun purchasers as a strategy for preventing firearms violence, it appears that these approaches have been implemented and expanded over the last five years as federal grants have funded states to improve databases and share information (28). One promising development has been a recent effort by a consortium of experts in mental health and public health to shift the focus of policy discourse from histories of mental illness, per se, to the occurrence of adjudicated conduct indicative of elevated violence risk, such as conviction for violent misdemeanor or repeated convictions for driving under the influence of alcohol or drugs (29). Such a shift in firearm access policies would represent a major advance, both legally and empirically (30).

Making Registries of Prohibited Firearms Purchasers Fairer

In principle, properly tailored mechanisms for restricting firearm purchase by specific persons or groups at significantly elevated risk of violence or suicide are justified from a public safety perspective. Factors that could make registries more useful, and prevent unfair discrimination, include straightforward and well-founded parameters for inclusion, exclusion, removal, and appeal. Two specific needs are carefully designed procedures for removal from the registry and secure protection of registry records so that they are not used for purposes other than preventing access to firearms.

An individual who is legally prohibited from purchasing a firearm due to a mental health adjudication should have a fair opportunity for restoration of the right to purchase a firearm after a suitable waiting period. These time periods should be reflective of the person's need for and participation in recommended psychiatric care. Psychiatric evaluations and testimony should be required when persons seek restoration of their firearm-related rights because psychiatrists can describe and interpret the individual's mental health history and current mental health status, and the effects of treatment and other factors on improvement or exacerbation of the person's condition. However, ultimate decision-making about restoration of the right to purchase a firearm is best suited to administrative (e.g., review panels establish by state agencies) or judicial bodies that can weigh the right to bear arms against the considerations of public safety in making restoration determinations (31).

Restricting Access to Firearms During a Crisis

The debate regarding creation and maintenance of a national registry as a primary legal tool for keeping firearms out of the hands of people with mental disorders has obscured a potentially useful strategy for reducing firearm violence or suicide—temporary removal of a firearm from a person's custody during periods of acutely elevated risk (32). Some states, e.g., California (33), permit removal of firearms from people during mental health emergencies and restrict access during the period of commitment. Specified clinicians in these states can work with appropriate personnel to facilitate removal of firearms from persons they believe are at significant risk of harm to themselves or others. Indiana and Connecticut (34) allow firearms to be removed from imminently dangerous individuals, whether or not they have mental disorders. Under the Connecticut statute, the state's attorney or two police officers can file a complaint in court whereby temporary seizure of firearms of persons posing risk of imminent personal injury to self or others may be authorized for up to 14 days. After the initial firearm removal period, a court can extend the order for up to a year if it finds, after a hearing, that the danger persists. Under this statute, a history of confinement in a psychiatric hospital is only one factor that the judge may consider, in addition to several non-clinical factors, in evaluating the danger that the person presents.

These firearm removal provisions have some attractive features. First, by focusing on immediate risk, rather than on a person's mental health history, they are more carefully tailored to prevent firearm violence and suicide. The approaches taken in Indiana and Connecticut are particularly commendable because they address dangerousness per se, and discard the mistaken premise that acute violence risk is associated exclusively or primarily with mental disorder; these laws thereby avoid the discrimination inherent in statutes that exclusively target people with mental disorders. Second, they provide clear legal authority for police to remove firearms from possibly

dangerous individuals even if no crime has been committed. Third, they clearly establish the legal framework for psychiatrists and other clinicians to inform police of an apparent danger and the accompanying need to remove firearms. Moreover, the authority to initiate such a removal procedure provides a potentially useful source of leverage for psychiatrists and other clinicians trying to convince a patient to yield firearms voluntarily to a family member or other temporary custodian.

Laws permitting the temporary removal of firearms from individuals believed to be imminently dangerous are sensible from a public policy perspective, and would help psychiatrists respond prudently to genuine threats posed by their patients. However, other important issues must be addressed in drafting statutes related to firearm access, and the California, Connecticut and Indiana approaches differ from one another in relation to the criteria that trigger removal, whether the police may effectuate removal in the absence of a warrant, and whether the procedure is independent of the commitment process and necessarily triggers the reporting requirements of federal law (35). All these issues merit further study.

Privacy Protections and Firearm-Related Mental Health Registries

As efforts have accelerated to create a more robust database envisioned under the NICS Improvement Amendment Act of 2007, new concerns have emerged about permissible breaches of confidentiality involved in reporting to the NICS or to public safety officials when individuals appear to be at increased risk of harm to themselves or others. For example, if mental health adjudications are to be one of the key disqualifying events reported to the federal databases, automated findings from court proceedings might comprise the minimally necessary information related to an individual. However, laws and regulations have been proposed and enacted requiring private practitioners or other clinical entities to transmit patient information to the database (36-37). The APA and other professional organizations have reviewed federal regulatory initiatives governing information-sharing from providers to NICS data management systems and taken a strong position opposing the imposition of reporting mandates on clinicians and clinical facilities.

In addition, states have enacted legislation that requires mental health professionals to disclose to state officials the name of persons in treatment who are perceived as dangerous, requirements that exceed legal duties in some states to protect potential victims; such reporting may trigger gun removals (38). These initiatives could undercut the treatment relationship and dissuade patients from seeking treatment and, if they do, from being open about their thoughts and actions. Moreover, such requirements preempt clinical approaches to dealing with the disorders that may underlie impulses to harm oneself or others.

Conclusion

Research focused on the public health aspects of firearms access, including the effectiveness of violence risk reduction interventions, has not been adequately funded in the past. However, a robust program of research on the issues identified in this document will be needed as legislation and policy related to firearms and mental illness continue to evolve (39). It remains important to bear in mind that the risk of violence and suicide by individuals with mental illness could be reduced more effectively by investing in proven methods of prevention as well as treatment for people with mental illness who do not otherwise have access to care. As indicated above, improving access to care, treatment adherence and alleviating the symptoms of severe mental illness can be key factors in decreasing the small portion of community violence that is associated with serious psychiatric disorders. The most effective interventions for reducing risk of injuries that may occur when people experience crises are to provide them with services needed to prevent such crises in the first place and to defuse the crises when they occur. Measures that increase recognition, diagnosis, access to care, quality treatment, appropriate follow up, and community understanding of mental illness—and those that decrease underfunded and inadequate care, treatment dropout, premature discharge, and social stigma—will ultimately have the greatest yield in terms of reducing violence and suicide and other social costs associated with mental disorders.

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19. By way of background, the Brady Handgun Violence Prevention Act of 1993 was enacted to provide a five-day waiting period in order to complete a background check of handgun purchasers. In 1998, the National Instant Criminal Background Check System (NICS) provisions replaced the waiting period of the Brady Act, and provided a mechanism for the Federal Bureau of Investigation (FBI) to maintain a database of individuals who could be prohibited from purchasing certain firearms. The NICS Improvement Act of 2007 (H.R. 2640), which was signed into law in January 2008, amends the Brady Handgun Violence Prevention Act in several ways, including a requirement for states to develop and improve automation and transmittal of record information to federal and state record repositories regarding background information of potential firearm purchasers, such as information related to mental health adjudications and commitment records. The law also directs the Attorney General to issue funding grants to assist states in the development of these record repositories and information sharing mechanisms.
20. Although the term “mental defective” is used in this document because of its ongoing use in federal law, the term is highly objectionable to the mental health community because it is antiquated and profoundly stigmatizing.
21. The Brady Act, as well as many state registry statutes, use highly anachronistic and stigmatizing terminology to refer to persons with mental disorders. Even if these laws are retained, they should be amended to use more descriptive and less stigmatizing language.
22. 27 C.F.R. Section 478.11
23. Illinois Firearm Concealed Carry Act of 2013 (PA 98-063)
24. The limited data that are currently available suggest that the reduction in acts of violence (not just gun violence) by people with mental disorders as a result of such registries is quite small. Swanson JW, Robertson AG, Frisman LK, Norko MA, Lin H-J, Swartz MS, Cook PJ. Preventing gun violence involving people with serious mental illness. In Reducing Gun Violence in America: Informing Policy with Evidence and Analysis, edited by Webster DW, Vernick JS, 33-51. Baltimore: The Johns Hopkins University Press, 2013.
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26. District of Columbia v. Heller, 554 U.S. ___ (2008)
27. See, e.g, Illinois Firearm Concealed Carry Act, PA 98-063, amending Firearms Ownership Identification Card Act, 430 ILC 65/1.1.
28. NICS Act Record Improvement Program (NARIP) Awards FY 2009-2013 available at http://www.bjs.gov/index.cfm?ty=tp&tid=491#summaries
29. Examples of such developments are delineated in The Consortium for Risk-Based Firearm Policy, Firearms, Public Health and Mental Illness: An Evidence-Based Approach for Federal Policy. December 2013, available at http://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-gunpolicy-and-research/publications/, accessed 2/23/14; and The Consortium for Risk-Based Firearm Policy, Firearms, Public Health and Mental Illness: An Evidence-Based Approach for State Policy. December 2013, available at http://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-gunpolicy-and-research/ publications/, accessed 2/23/14
30. For example, research demonstrates that people with misdemeanor convictions are at increased risk for future firearm-related crimes. See e.g., Wintemute GJ, Drake CM, Beaumont JJ, Wright MS, Parham CA: Prior misdemeanor convictions as a risk factor for later violent and firearm-related criminal activity among authorized purchasers of handguns. JAMA 1998; 280:2083-2087
31. Ibid.
32. States might consider statutes that authorize a permanent removal of firearms in cases when, based on an individualized determination, there is a significant probability that the person’s violence-related symptoms will recur based on a prior history of relapse and deterioration. If a state statute authorized permanent removal based on such a finding, firearm purchase presumably would be forbidden as well.
33. California Welfare and Institutions Code 8100-8108
34. Indiana Code 35-47-14-1; Connecticut General Statutes 29-38C
35. If properly crafted, a temporary seizure would not trigger the federal registry provision; reporting would be required only when the removal order is based on a formal finding, after adjudication, that the patient presents a danger to himself or others as a result of mental illness.
36. Illinois Firearm Concealed Carry Act of 2013 (PA 98-063)
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38. Ibid. at 38, and New York Secure Ammunition and Firearms Enforcement Act of 2013

39. An agenda for research on gun violence is set forth in the Institute of Medicine and National Research Council (2013): Priorities for Research to Reduce the Threat of Firearm-Related Violence. For research recommendations specifically relating to the effects of firearm restrictions on violence by persons with disqualifying mental health histories, see Ibid, 28 above.