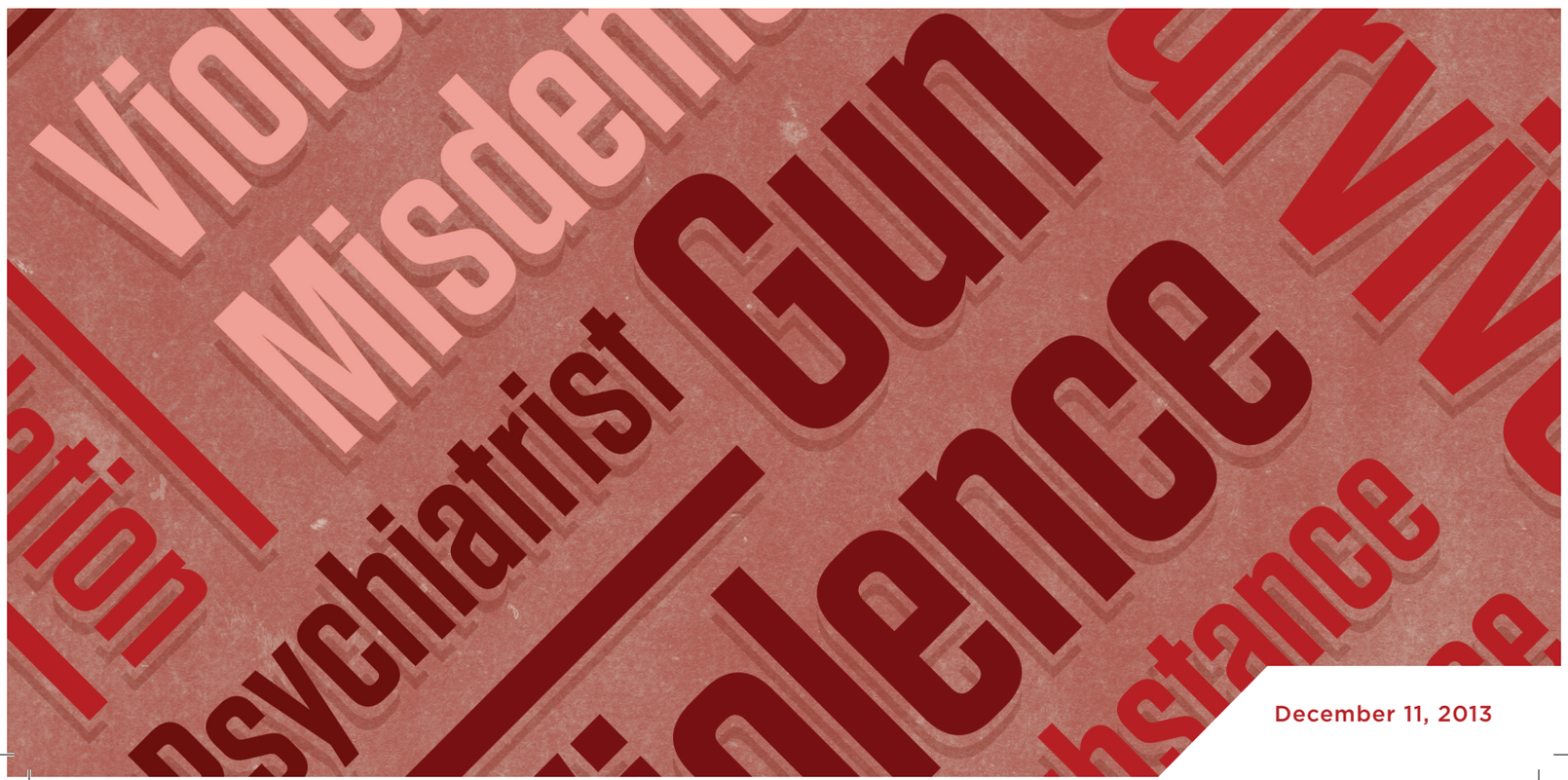
From the Consortium for Risk-Based Firearm Policy

GUNS, PUBLIC HEALTH, AND MENTAL ILLNESS:

An Evidence-Based Approach for Federal Policy



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Consortium for Risk-Based Firearm Policy

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Summary

The Consortium for Risk-Based Firearm Policy (Consortium) includes the nation's leading researchers, practitioners, and advocates in gun violence prevention and mental health. In March of 2013, members of the Consortium met for a two-day conference to discuss research evidence and identify areas of consensus. This initial meeting resulted in a commitment to advance evidence-based gun violence prevention policy recommendations through the newly formed Consortium.

The current national dialogue around mental illness and gun violence is refracted through the lens of news accounts of mass shootings by individuals described as psychotic or mentally disturbed. Such acts galvanize public attention and reinforce the widespread perception that serious mental illness generally causes violent behavior. With the benefit of clear hindsight, these tragedies often appear to have been predictable and preventable. However, mass shootings are statistically rare events and thus inherently difficult to predict.

These rare events need to be seen in the context of the broader problem of firearms-related injury and mortality in the population; an estimated 31,000 people die and 74,000 suffer non-fatal gunshot injuries each year.[1] On the day of the massacre at Sandy Hook Elementary School in December, 2012, an estimated 85 other people died of gunshot injuries throughout the US, including in gang shootings, intimate partner attacks, and suicides; another 85 died the day before, and the day after.[2] Although major mental illnesses are associated with increased risk of violent acts, policies targeted at this group alone will be ineffective at reducing the risk of the vast majority of violence towards others. Mental illness, however, plays a very significant role in gun suicides, which account for over half of gun deaths, and interventions aimed at people with mental illness may be more effective here.

Importantly, the research evidence points to several key factors that are associated with risk of committing firearm violence – toward self and others – in people both with and without mental illness, including history of violent crime, perpetration of domestic violence, alcohol abuse, and drug abuse. Current federal policies do not adequately reduce access to firearms by individuals who meet these evidence-based criteria for risk of violence. The policy recommendations proposed in this report are based on the best available research evidence, and hold promise for preventing gun violence by persons at high risk of committing gun violence – including suicide. While some updates to federal firearm disqualification criteria related to mental health are needed, the Consortium has concluded that rather than focusing on mental health as a single factor in isolation, future gun violence prevention policy efforts should use evidence-based criteria shown to increase the risk of violence – including suicide – to disqualify individuals meeting those criteria from purchasing or possessing firearms.

The Consortium supports two distinct paths for intervention at the federal level. The first concerns needed updates to the existing federal mental health firearm disqualification policy. The second path expands federal firearm prohibitions to include people who meet

specific, evidence-based criteria that elevate their risk for committing violence. With this dual approach we offer policy makers a way forward that is informed by the best available evidence, meaningful for the victims and families affected by gun violence, and respectful of individuals with mental illness and their care providers.

Recommendation #1: Make one addition to existing federal mental health firearm disqualification criteria and update the current process and standards for restoration of individuals' ability to purchase and possess firearms following a federal disqualification due to mental illness.

Federal policy related to mental illness and gun violence prevention should be updated to reflect current knowledge. We recommend:

1.1 Current provisions for permanently disqualifying individuals from purchasing or possessing firearms under federal law should be maintained. These provisions follow a judicial or administrative order for involuntary commitment to a facility and in other specified circumstances.

1.2 Involuntary outpatient commitment should disqualify individuals from purchasing or possessing firearms under federal law if there is a court finding of substantial likelihood of future danger to self or others or an equivalent finding.

1.3 Restoration of an individual's ability to purchase or possess a firearm following a firearm disqualification due to mental illness should require a qualified clinician to provide evidence on the petitioner's mental health status and to affirm that the petitioner is unlikely to relapse and present a danger to himself or others in the foreseeable future.

Recommendation #2: Enact new prohibitions on individuals' ability to purchase and possess a firearm based on presence of evidence-based risk factors for violence.

Our recommendations for new temporary firearm prohibitions focus on groups at heightened risk of future violence:

2.1 Individuals convicted of a violent misdemeanor.

2.2 Individuals subject to a temporary domestic violence restraining order.

2.3 Individuals convicted of two or more DWI or DUIs in a period of five years.

2.4 Individuals convicted of two or more misdemeanor crimes involving a controlled substance in a period of five years.

Introduction

The Consortium for Risk-Based Firearm Policy (Consortium) includes the nation's leading researchers, practitioners, and advocates in gun violence prevention and mental health. In March of 2013, members of the Consortium met for a two-day conference to discuss evidence, identify areas of consensus, and formulate evidence-based policy recommendations to prevent gun violence. This initial meeting was a success, with one result being a commitment to advance evidence-based gun violence prevention policy recommendations through the newly formed Consortium.

While much of the national dialogue around recent mass shootings has focused on the relationship between mental illness and violence, the research evidence shows that the large majority of people with mental illness do not engage in violence against others and most violence is caused by factors other than mental illness.[3-5] However, research suggests that small subgroups of individuals with serious mental illness, including psychiatric inpatients and individuals experiencing first-episode psychosis, are at elevated risk of violence.[6] In addition, mental illnesses such as depression significantly increase the risk of suicide,[7, 8] which accounts for more than half of gun deaths in the United States each year.[9]

Policies to prevent the tragic toll of gun violence on our families and communities are greatly needed. Policy approaches should be evidence-based, promote public safety, and respect persons with mental illness. The Consortium recognizes that violence prevention policies targeting broad groups of people with mental illness – most of whom will never be violent – could further stigmatize those with mental illness and potentially create barriers to mental health treatment seeking.[10-12] While some updates to the existing federal mental health firearm disqualification policy are needed, the Consortium has concluded that rather than focusing primarily on mental illness, future gun violence prevention policy efforts should use evidence-based criteria shown to increase the risk of violence – including suicide – to disqualify individuals meeting those criteria from purchasing or possessing firearms. Importantly, successful implementation of our recommendations depends on all firearm transfers requiring a background check under federal law.

The Role of Research Evidence

Many recent gun violence prevention policy discussions have assumed a direct causal connection between mental illness and violence. The research evidence suggests that violence has many interacting causes, and that mental illness alone very rarely causes violence.[13-16] As a result, strategies that aim to prevent gun violence by focusing solely on restricting access to guns by those diagnosed with a mental illness are unlikely to significantly reduce overall rates of gun violence in the US.[17, 18] Research evidence is needed to inform public dialogue and policy discussions regarding gun violence prevention.

Unless they have other risk factors for violence, individuals with common mental health conditions, such as anxiety and depression, are not much more likely to be violent toward others than individuals without these conditions.[19] Similarly, most people with serious mental illness – which includes conditions such as schizophrenia and bipolar disorder – are never violent toward others, and are in fact more likely to be victims than perpetrators of

violence.[20-22] However, research suggests that small subgroups of individuals with serious mental illness, at certain times, such as the period surrounding a psychiatric hospitalization or first episode of psychosis, are at elevated risk of violence.[23, 24] In addition, the population with serious mental illness experiences high rates of co-occurring substance use,[25, 26] an important risk factor for violent behavior in the general population.[27] Importantly, only a very small proportion of violence in the United States – about 4% – is attributable to mental illness.[28] While this is low in relative terms, we recognize the tragic consequences of this type of violence for victims, survivors, and society.

Current federal law prohibits persons who have been involuntarily committed to inpatient psychiatric care, persons found incompetent to stand trial or acquitted because of serious mental illness, and persons placed under conservatorship because of serious mental illness from having a gun.[29] To date, few research studies have examined how gun violence prevention policies focusing on persons with mental illness affect risk of committing violence toward others in this group. One study examined how implementation of the federal law in Connecticut affected arrests for violent crime in a cohort of more than 23,000 people with serious mental illness.[30] Swanson and colleagues found that the state's initiation of reporting gun-disqualifying mental health records to the National Instant Background Check System resulted in a significant reduction in risk of arrest for violent crime among persons prohibited from having a gun due to mental illness.[31]

Swanson and colleagues concluded that mental health background checks and NICS reporting *can work*, with the clear policy implication that states should improve their reporting of gun-disqualifying records of persons with a history of mental health adjudication.[32] However, the investigators also noted that the potential impact of the policy was limited by the fact that only about 7% of persons with serious mental illnesses who were receiving services in Connecticut's public behavioral healthcare system *had* a gun-disqualifying record of involuntary commitment; states vary widely in their rates of civil commitment, and Connecticut's rate is low.[33] As a result, almost all (96%) violent crimes in this study population with serious mental illness were committed by individuals who did not have a federal *mental health* firearm disqualification in effect at the time of the crime.[34] It should be noted, however, that many of these individuals did have a disqualifying *criminal* record in effect.[35] The lesson for Connecticut is that while the current federal mental-health disqualification has reduced violence somewhat since NICS was provided with the necessary data, enforcing the mental-health disqualification is no substitute for enforcement of criminal prohibitors.[36] Further, there is a case to be made for gun seizure policies that are focused on dangerousness and history of violence, rather than on mental health diagnoses *per se.*

While the public dialogue about mental illness and violence has focused on violence toward others, mental illness is much more strongly linked with risk of suicide. Depression is the mental illness most strongly associated with risk of suicide.[37] Suicide is the second leading cause of death among young adults aged 25-34, and the 10th leading cause of death among all Americans.[38] While most suicide attempts do not involve guns, half of completed suicides are firearm suicides.[39] Because of the lethality of firearms, 90% of firearm suicide attempts result in death.[40] Critically, the majority (approximately 60%) of gun deaths in the

United States are suicides.[41] In 2011, nearly 20,000 people died as a result of firearm suicide, almost twice as many as were killed as a result of firearm homicide that year.[42]

To date, almost no studies have examined how gun violence prevention policies targeting persons with mental illness affect suicide.[43] Ludwig and Cook (2000) conducted research showing that the implementation of the Brady Law in states with waiting periods for a gun purchase was responsible for a 6% decline in the suicide rate for adults over age 55.[44] However, multiple research studies have shown that easy access to firearms increases risk of suicide.[45-61] This finding suggests that policies to restrict firearm access among persons with mental illness, particularly those with depression, could help to prevent suicide.

In the large majority of cases, mental illness does not lead to violence.[62, 63] In contrast, the evidence suggests that other factors – including alcohol abuse, [64, 65] drug abuse,[66] conviction for violent misdemeanor crimes,[67] and perpetration of domestic violence [68-70] – significantly increase individuals' risk of committing future violence. Use of these evidence-based criteria to prohibit firearm purchase and possession by individuals at high risk of committing future violence is a promising avenue for gun violence prevention policy. Existing federal policy mechanisms fail to effectively prevent these groups from possessing guns, suggesting a need for new evidence-based firearm prohibitions focusing on groups at heightened risk of committing future violence.

<u>Two paths forward</u>

The Consortium supports two distinct paths for policy intervention at the federal level. The first concerns needed updates to the existing federal mental health disqualification policy. The second path expands federal firearm prohibitions to include people who meet specific, evidence-based criteria that elevate their risk for committing violence. With this dual approach we offer policy makers a way forward that is informed by the best available evidence, meaningful for the victims and families affected by gun violence, and respectful of individuals with mental illness and their care providers.

The Consortium's recommendations are summarized below and described in greater detail in the subsequent sections of the report.

Recommendation #1: Make one addition to existing federal mental health firearm disqualification criteria and update the current process and standards for restoration of individuals' ability to purchase and possess firearms following a federal disqualification due to mental illness.

Federal policy related to mental illness and gun violence prevention should be updated to reflect current knowledge. We recommend:

1.1 Current provisions for permanently disqualifying individuals from purchasing or possessing firearms under federal law should be maintained. These provisions follow a judicial or administrative order for involuntary commitment to a facility and in other specified circumstances.

1.2 Involuntary outpatient commitment should disqualify individuals from purchasing or possessing firearms under federal law if there is a court finding of substantial likelihood of future danger to self or others or an equivalent finding.
1.3 Restoration of an individual's ability to purchase or possess a firearm following a firearm disqualification due to mental illness should require a qualified clinician to provide evidence on the petitioner's mental health status and to affirm that the petitioner is unlikely to relapse and present a danger to himself or others in the foreseeable future.

Recommendation #2: Enact new prohibitions on individuals' ability to purchase and possess a firearm based on presence of evidence-based risk factors for violence.

Our recommendations for new temporary firearm prohibitions focus on groups at heightened risk of future violence:

2.1 Individuals convicted of a violent misdemeanor.
2.2 Individuals subject to a temporary domestic violence restraining order.
2.3 Individuals convicted of two or more DWI or DUIs in a period of five years.
2.4 Individuals convicted of two or more misdemeanor crimes involving a controlled substance in a period of five years.

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Recommendation 1.1: Current provisions for permanently disqualifying individuals from purchasing or possessing firearms under federal law should be maintained. These provisions follow a judicial or administrative order for involuntary commitment to a facility and in other specified circumstances.

Since the Gun Control Act of 1968, the civil commitment system has provided the foundation for the mental illness-based firearm disqualification in federal law. Current federal law disqualifies individuals from purchasing or possessing a firearm if they have been: involuntarily committed to inpatient psychiatric care, (2) deemed incompetent to manage their own affairs due to mental illness, or (3) found incompetent to stand trial or acquitted by reason of insanity.[71] We are not suggesting making any changes to the disqualifying criteria related to incompetency (2 and 3).

To implement these federal prohibitions, states submit records of prohibited persons to the National Instant Criminal Background Check System (NICS), which licensed gun dealers check at point of sale to identify illegal purchasers. However, reporting by states is voluntary and many states fail to report mental health records to NICS.[72, 73] Surveys suggest that many states lack the data systems necessary to collect and transmit mental health records to NICS.[74-76] States have also reported concerns around confidentiality as a reason for failing to transmit civil commitment and other mental health records to the NICS system.[77] The 2007 NICS Improvement Act provided funding to some states to create the data systems necessary to report mental health and other firearm disqualification records to NICS.[78]

Mental health practitioners, lawyers, and judges are familiar with the operation of the civil commitment system. However, there is no single model of civil commitment; state laws and practices differ substantially,[79] making implementation of federal statutes to restrict firearm purchase based on court-ordered commitment a challenge.[80] Recognizing these complexities, the Consortium recommends that current provisions for permanently disqualifying individuals from purchasing or possessing firearms under federal law should be maintained. The prohibiting criterion of involuntary commitment should be operationally defined, consistently across states, as a judicial or administrative order for involuntary commitment to a facility. Importantly, permanent firearm disqualification under existing federal law requires presence of a judicial or administrative court order for involuntary treatment. While the Consortium recommends that this requirement remain unchanged, our recommendation is not intended to preclude states from enacting additional *temporary* firearm prohibitions based on physician-certified emergency involuntary admission.[81, 82]

Given the diversity of state laws and practices for court ordered commitment, a meaningful and clinically informed restoration process is needed to provide individuals disqualified from having a gun due to involuntary commitment or incompetence with a standard process to determine whether the right to own a firearm should be restored.

Recommendation 1.2: Involuntary outpatient commitment should disqualify individuals from purchasing or possessing firearms under federal law if there is a court finding of substantial likelihood of future danger to self or others or an equivalent finding.

Involuntary outpatient commitment provides mandatory treatment in the community for individuals with serious mental illness who are unable or unlikely to comply on their own with prescribed medication or therapy, and are thereby at risk, without court supervision, of deteriorating to the point that they would require involuntary hospitalization.[83] During an involuntary outpatient commitment proceeding, judges make the determination that without treatment an individual is likely to become a danger to self or others. This danger can be managed with treatment, medication, and ensuring that patients are not also abusing controlled substances.[84]

Current federal law prohibits firearm possession by individuals adjudicated to be a danger to themselves or others. Federal regulations should be clarified to specify that this provision applies to individuals ordered by a court or similar authority to outpatient treatment based on this determination of dangerousness.

Allowing access to firearms provides the patient with a lethal weapon when the court has determined that intervention is needed to reduce the risk of violence. Thus, we recommend that involuntary outpatient commitment be a firearm disqualification under federal law. This recommendation is predicated on the creation of a reasonable and fair restoration process.

Recommendation 1.3: Restoration of an individual's ability to purchase or possess a firearm following a firearm disqualification due to mental illness should require a qualified clinician to provide evidence on the petitioner's mental health status and to affirm that the petitioner is unlikely to relapse and present a danger to himself or others in the foreseeable future.

The current federal standards for firearm restoration following prohibition due to mental illness were set by the 2007 National Instant Criminal Background Check System (NICS) Improvement Act.[85] The NICS Improvement Act mandates that for states to receive grant funds from the federal government they must have a restoration process that provides due process protection and "relief" from the firearm prohibition if "the person's record and reputation are such that the person will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest."[86] These standards do not require a specific restoration process, which has resulted in varied approaches among the states.[87]

To assure consistent and effective restoration processes with judicial due process protections in place, we developed restoration language that outlines minimum requirements for states to apply when deciding whether or not to restore a prohibited person's ability to legally purchase and possess firearms. For restoration from a permanent firearm disqualification we recommend the following language:

Recommended Restoration Language

Any person prohibited from purchasing, possessing or transporting firearms [under the applicable section] may, no sooner than one year following his release from involuntary admission to a facility or from an order of mandatory outpatient treatment [or from the date of any other disqualifying mental health adjudication], petition the [applicable court in the city or county in which he resides] to restore his right to purchase, possess or transport a firearm.

The petition shall be accompanied by an opinion of a psychiatrist or licensed clinical psychologist with a doctoral degree who has personally evaluated the petitioner and can attest that (i) the person no longer manifests the symptoms of mental disorder that necessitated the involuntary commitment [or other disqualifying mental health adjudication] or that otherwise significantly elevate the risk of harm to self or others; (ii) the person appears to have adhered consistently to treatment, if such treatment was recommended, for a substantial period of time preceding the filing of the petition and manifests a willingness to continue to be engaged in treatment with an appropriate mental health professional, if necessary; and (iii) if ongoing treatment is necessary, adherence to treatment is likely to minimize the risk that the person will relapse so as to present a danger to self or others in the foreseeable future.

The opinion of the clinician shall be accompanied by records and information concerning the person's mental health and treatment history, if any, including adherence to recommended treatment, history of suicide and prior violence, history of use of firearms and other weapons, history of use of alcohol and other drugs, and history of criminal justice involvement. If the state requests an independent clinical evaluation of the petitioner, the court shall appoint a psychiatrist or licensed clinical psychologist to conduct such an evaluation. After completion of the independent evaluation, if one has been ordered, and upon the request of either the petitioner or the state, the court shall conduct a hearing.

If, after receiving and considering the opinions of the evaluating clinician(s), accompanying records, and other relevant evidence, the court [or other governing authority] finds, by a preponderance of the evidence, that (i) the petitioner no longer manifests the symptoms of mental disorder that necessitated the involuntary commitment [or other disqualifying mental health adjudication] or that otherwise significantly elevate the risk of harm to self or others; (ii) the petitioner has consistently adhered to treatment recommendations, if any, for a substantial period of time preceding the filing of the petition and expresses a willingness to continue to be engaged in treatment with an appropriate mental health professional, if necessary; (iii) if ongoing treatment is necessary, adherence to treatment is likely to minimize the risk that the petitioner will relapse so as to present a danger to self or others in the foreseeable future; and (iv) granting the relief would be compatible with the public interest, the court shall grant the petition.

Clinical Considerations

Three components of this model firearm restoration policy will require changes to some state restoration processes currently in place. These changes are informed by clinical considerations that the Consortium believes will result in a more effective restoration process.

When can an individual petition for restoration of his/her ability to purchase, possess, and transport firearms? Under the proposed language, an individual cannot apply for restoration for at least one year after his or her civil commitment ends. This "waiting period" is important because the risk for violence is greatest in the immediate time period after a commitment.[88, 89] Furthermore, having a year wherein no restoration petition can be made allows for the clinician to observe the patient and monitor whether he or she is complying with treatment and, when relevant, maintaining sobriety from comorbid substance use. Evidence from research on violence among patients in an outpatient commitment setting has shown that risk of violence can be reduced when patients are compliant with treatment.[90] The waiting period increases the likelihood that there is a well-established pattern of treatment adherence and sobriety.

Who determines whether firearm rights should be restored? The Consortium's proposed language mandates that the judge[1] consider the clinical opinion of a psychiatrist or doctoral-level clinical psychologist regarding the petitioner's current mental state. Essentially, this opinion will be based on the petitioner's treatment history, and asks the clinician to verify "if ongoing treatment is necessary, adherence to treatment is likely to minimize the risk that the person will relapse so as to present a danger to himself or others in the foreseeable future."

Clinical predictions of future violence are far from perfect[91] and as such our language includes a provision that instructs the judge to consider the records of the "person's mental health and treatment history, if any, including adherence to recommended treatment, history of use of alcohol and other drugs, and history of criminal justice involvement." This ensures that there is both a clinical consideration and a judicial consideration of the petitioner's mental health and treatment history, as well as the petitioner's involvement with the criminal justice system.

What standard should be considered when assessing restoration?

The model firearms restoration language specifies that the judge take into account whether granting relief from the prohibition would be "compatible with the public interest." This clause is part of the standards set by the NICS Improvement Act. It requires the judge to consider other factors in the case, which may not be apparent in the mental health review but could lead to the conclusion that granting relief would be contrary to the public interest. The aim of our proposed restoration standard is to provide a model that includes a clinical perspective and a judicial process, and which balances public safety with the interests of the individual seeking restoration.

[1] Although we assume that most states will adopt a judicial restoration process, we recognize that some states may want to delegate these decisions to an administrative agency.

Legal Considerations

In addition to the clinical components of this proposal, three legal considerations are also important to ensuring effective and just restoration processes.

Who should bear the burden of initiating a restoration hearing? For a permanent firearm disqualification, the burden of initiating the hearing should fall to the petitioner. As a country we justify firearm disqualifications for the protection of public safety, and as the Supreme Court clearly indicated in the 2008 *District of Colombia v. Heller* decision there is no case law that prohibits the long-standing restrictions on firearm ownership by persons with mental illness.[92] Therefore, the burden of initiating the hearing should rest on the individual and not the state.

Which party should bear the burden of proof at the hearing? Our model law places the burden of proof on the petitioner at the hearing for restoration following a civil commitment. The petitioner has already had an adversarial hearing concerning the commitment and was deemed to be a danger to self or others as specified by the state's commitment criteria.[2] While the opportunity for restoration of firearm access must be allowed, in the interest of protecting public safety and because the government has already met its burden of proof in a prior hearing, the petitioner in this case must show that he or she no longer is at substantial risk of engaging in dangerous behavior.

Which standard of proof should the judge or administrator apply at the hearing? The final legal consideration is the standard of proof that should be applied at a restoration hearing. Case law after the 2008 *Heller* [93] decision indicates that the standard of proof should be set at a preponderance of the evidence.[94]

[2] Our recommendations focus on the civil commitment process because involuntary commitment accounts for most mental health disqualifications. However, we believe that the petitioner should also bear the burden of proof when the disqualification has been based on findings of incompetence.

Recommendation #2: Enact new prohibitions on individuals' ability to purchase and possess a firearm based on presence of evidence-based risk factors for violence.

In this section, we recommend prohibitions on individuals' ability to purchase and possess a firearm based on the presence of evidence-based risk factors for violence. While most violence is not committed by individuals diagnosed with a mental illness, factors such as alcohol abuse, drug abuse, and violent behavior are strongly associated with perpetration of violence.[95-113]

Our recommendations for new temporary firearm prohibitions focus on groups at heightened risk of future violence:

2.1 Individuals convicted of a violent misdemeanor.
2.2 Individuals subject to a temporary domestic violence restraining order.
2.3 Individuals convicted of two or more DWI or DUIs in a period of five years.
2.4 Individuals convicted of two or more misdemeanor crimes involving a controlled substance in a period of five years.

Current Federal Standards

In addition to the federal firearm disqualifications related to mental illness, current federal law also prohibits firearm possession by certain categories of individuals at high risk of committing violence, including: felons; fugitives; persons convicted of a misdemeanor crime for domestic violence; persons subject to permanent domestic violence restraining orders; unlawful users or those addicted to a controlled substance; those who have been dishonorably discharged from the military; illegal aliens; and persons who have renounced their United States citizenship.[114, 115]

To implement these federal prohibitions, states submit records of prohibited persons to the National Instant Criminal Background Check System (NICS), which licensed gun dealers check at point of sale to identify illegal purchasers. However, reporting by states is voluntary and some states fail to report complete records to NICS.[116, 117] For example, the majority of states do not submit complete records of unlawful drug abuse to NICS.[118]

Recommendations

We recommend expanding federal firearm prohibitions to include four groups of people who meet specific, evidence-based criteria associated with increased risk of committing violence. The policies outlined in this section of the report have the potential to restrict access to firearms by those individuals who are most likely to commit future acts of violence against themselves or against others. The evidence base that underlies these categorical prohibitions demonstrates the potential of these policies to reduce gun violence.

Recommendation 2.1: Individuals convicted of a violent misdemeanor should be prohibited from purchasing or possessing firearms for ten years.

The research evidence conclusively shows that individuals convicted of violent misdemeanors are at increased risk of committing future violent crimes.[119-121]

Furthermore, research has shown that California's law prohibiting firearm ownership among violent misdemeanants[122] resulted in reduced arrest rates for violent crime overall and gun crime specifically among individuals previously convicted of violent misdemeanor crimes.[123]

Aside from a firearm prohibition for individuals with a misdemeanor conviction of domestic violence, federal law does not currently prohibit individuals who commit violent misdemeanor crimes from purchasing and possessing a firearm. However, twenty-three states and the District of Columbia prohibit firearm purchase and possession among individuals convicted of one or more misdemeanor crimes.[124] We recommend that a similar prohibition be added to the federal firearm prohibitions, and that misdemeanor convictions involving the use of a deadly weapon, the threat of force, or stalking should result in an automatic firearm prohibition of ten years.

Recommendation 2.2: Individuals who are subject to temporary domestic violence restraining orders should be prohibited from purchasing and possessing firearms for the duration of the temporary order.

Most victims of intimate partner homicide are killed with a gun,[125, 126] and the research clearly shows that there is an increased risk of intimate partner homicide when an abuser has a firearm.[127-129] Importantly, these abusive relationships are often known to authorities. One study found that approximately half of women killed by their intimate partners had contact with the criminal justice system related to their abuse within the year preceding their murders.[130,131] The research shows that policy in this area can be effective. Cities in states with laws prohibiting respondents to domestic violence restraining orders from purchasing or possessing guns had 25% fewer firearm-related intimate partner homicides.[132] This research also illustrated that "would-be killers do not replace guns with other weapons to effect the same number of killings."[133]

Temporary *ex-parte* orders are the first step in the domestic violence restraining order process. These temporary emergency orders, which occur in the absence of the respondent, reflect the immediate danger domestic violence victims often face and the dangerous nature of initiating separation in abusive relationships. Current state-level infrastructure around temporary domestic violence restraining orders ensures that a full hearing – with the respondent present – occurs within a short, defined timeframe. As a result, the temporary *ex-parte* protection order is quickly dismissed when a judge determines the order is not warranted. In response to evidence that temporary *ex-parte* restraining orders are associated with increased risk of violence,[134, 135] a number of states prohibit firearm purchase and possession by respondents for temporary *ex-parte* protection orders.[136]

Federal law currently prohibits firearm purchase and possession by respondents to permanent restraining orders or by those convicted of a misdemeanor crime of domestic violence.[137] These prohibitions are supported by well-corroborated evidence linking guns with domestic violence.[138-142] However, current federal law does not prohibit firearm purchase and possession by respondents subject to temporary *ex-parte* restraining orders.

Due to the risks respondents to temporary *ex-parte* domestic violence restraining orders pose to victims of domestic violence, we recommend that individuals subject to temporary domestic violence restraining orders be prohibited from purchasing and possessing firearms for the duration of the temporary order.

Recommendation 2.3: Individuals convicted of two or more DWI or DUIs in a period of five years should be prohibited from purchasing and possessing firearms for at least five years.

The research consistently shows that alcohol abuse is associated with violence toward self and others.[143-152] For example, one study of adults in three large urban areas in the United States found that adults who abused alcohol were at increased risk for both homicide and suicide compared to adults who did not drink alcohol.[153] Another study found a strong association between victim and perpetrator alcohol abuse and intimate partner homicide.[154] Importantly, several studies have shown that firearm owners are at increased risk of abusing alcohol.[155-158] A 2011 study found that gun owners were more likely than people who lived in a home without a gun to binge drink, drive under the influence of alcohol, and have at least 60 drinks per month.[159]

While multiple states have laws prohibiting individuals who abuse alcohol from purchasing and possessing and firearms, the majority of laws fail to provide precise definitions of who is disqualified, making such policies difficult to implement.[160] One exception is Pennsylvania, which prohibits persons who have been convicted of three or more drunken driving offenses in a five-year period from having a gun.[161] In addition to providing a specific definition of alcohol abuser, use of DWI or DUIs as criteria to prohibit firearm ownership is strongly justified by the research evidence. One study found that compared to individuals with a single DUI arrest, those with multiple DUI arrests were more than three times as likely to be arrested for other misdemeanor and felony crimes.[162] In addition, studies have shown that people who drive under the influence are at increased risk of abusing illicit drugs[163, 164] and being arrested multiple times. [165]

There is currently no federal firearm prohibition for alcohol abuse, and we have concluded that most state laws prohibiting firearm ownership among individuals who abuse alcohol are difficult to enforce and unlikely to be effective. We therefore recommend that individuals convicted of two or more DWI or DUIs in a period of five years be prohibited by federal law from purchasing or possessing a firearm for at least five years.

Recommendation 2.4: Individuals convicted of two or more misdemeanor crimes involving controlled substances in a five-year period should be prohibited from purchasing or possessing firearms for at least five years.

The research evidence consistently shows that illegal use of controlled substances is associated with a heightened risk of violence.[166-170] The physical and psychological effects of controlled substances, including agitation and cognitive impairment, can heighten risk for violent behavior and impair the decision-making and communication skills necessary to avoid violent conflicts.[171-173] In addition, involvement in illicit drug markets is strongly

associated with violence. Studies have shown that conflicts within illegal drug markets are the most common cause of drug-related violence. [174-178]

Federal law currently prohibits illegal users of a controlled substance from purchasing or possessing a firearm.[179] According to the General Accounting Office (GAO),[180] which interviewed state officials in 2012, the prohibition is poorly defined in current regulation and many states report confusion about which records of unlawful drug use they should submit to NICS. In addition, while felony drug convictions – like all felony convictions – lead to a permanent firearm disqualification under federal law, other records of unlawful drug use lead to a one-year firearm prohibition. According to the GAO, states are reluctant to submit records for such a short-term prohibition.

To address these issues, we recommend that the regulatory definition of "illegal user of a controlled substance" be clarified and that the one-year prohibition period be extended to five years. While the research evidence suggests that individuals with multiple misdemeanor crimes involving controlled substances are at increased risk of future violence,[181-190] there is little evidence to suggest that non-criminal records of unlawful drug use – such as failed drug tests or drug-related arrests that do not result in conviction – represent individuals at heightened risk of violence. We therefore recommend that individuals who are convicted of two or more misdemeanor crimes involving controlled substances in a five-year period should be prohibited from purchasing or possessing firearms for at least five years.

States should work with the federal government to ensure that all relevant and necessary records are submitted to the NICS system. Use of drug-related misdemeanor convictions to trigger firearm prohibition is feasible for most states and parallels our recommendations regarding alcohol abuse (2.1) and conviction for violent misdemeanors (2.3). While a single misdemeanor drug conviction does not necessarily heighten risk of future violence, multiple misdemeanor drug convictions in a short period of time indicates sustained involvement in the illicit drug market, which substantially increases risk of violence.[191-195]

General Policy Reform

This report provides guidance for the development of evidence-based policies to prevent gun violence. However, successful implementation of new federal firearm prohibitions depends on a) states entering all relevant records into the NICS firearm background check system and b) all firearm sales requiring a background check under federal law.

The NICS is the federal background check system licensed gun dealers check, at the point of sale, to verify that the purchaser is not prohibited from purchasing and possessing a gun. The system relies on input from the states. States submit the names of individuals prohibited from having a gun under federal law – due to mental illness or other reasons – to the federal NICS system. Reporting by states is voluntary, and many states lack the data systems necessary to report records to NICS. To date, many states do not report complete records – particularly records of civil commitment – to the NICS system.[196] To ensure that all state records are entered into NICS, Congress should expand the grant funding originally provided to a subset of states through the NICS Improvement Act of 2007. The original round of grant funding led to significantly increased reporting of civil commitment and other mental health records from funded states.[197] Expanded funding would allow additional states to develop the data systems necessary to report complete mental health records to NICS. As a condition for receipt of new funding, states should be required to implement the Consortium's evidence-based recommendations regarding firearm disqualification due to involuntary outpatient commitment and development of a standard restoration process for individuals disqualified from having a gun for mental health reasons.

As the states increase their ability to ensure that records from civil commitment proceedings are automatically entered into the NICS background check system, there is a parallel opportunity for states to automate the system so that disqualifying domestic violence restraining orders or misdemeanor domestic violence convictions are automatically included in NICS. As with disqualifying mental health records, many states have been remiss in including disqualifying domestic violence records in the NICS firearm background check system. The first step to ensuring that violent abusers cannot access firearms is making sure that disqualifying records are included in the system.[198]

Even if every record of firearm disqualification were submitted to NICS, new firearm prohibitions would still not be fully effective without a background check on all gun sales. Current federal law only requires a background check when a firearm is purchased from a licensed firearms dealer, not when a firearm is purchased from a private, unlicensed seller. If we continue to allow prohibited purchasers to obtain firearms through private sales without a background check, firearm purchasers will be able to avoid screening altogether. In addition, even with enhanced laws and policies, response to this issue may vary considerably based on location, availability of services, and law enforcement commitment. Although these general policy recommendations do not represent novel federal legislation, they are essential to the effectiveness of the Consortium's recommendations.

Priorities for Future Research

In concert with our policy recommendations, the Consortium has also developed a series of future research priorities surrounding gun violence prevention, mental health and dangerousness. It is critical to advance the field of gun violence prevention research by evaluating interventions and determining the effects of policies to prevent both suicide and violence toward others.

<u>Research Priorities Related Recommendation #1</u>: Make one addition to existing federal mental health firearm disqualification criteria and update the current process and standards for restoration of individuals' ability to purchase and possess firearms following a federal disqualification due to mental illness.

1. Study how state and federal laws prohibiting firearm possession by individuals involuntarily committed to inpatient psychiatric care or adjudicated mentally incompetent due to mental illness affect gun violence in states with different policy and social contexts. For example, the effects of the existing federal law on gun violence may differ depending upon states' gun laws, involuntary commitment policies and practices, rates of gun ownership, and population demographics

2. Evaluate the effects of state-specific laws to prevent some persons with mental illness who are not subject to involuntary hospitalization and have not been adjudicated incompetent from having guns, such as New York's SAFE Act, on violence toward others and suicide.

3. Investigate implementation of mental illness gun restriction policies across states and localities. Research in this area should seek to understand how, in practice, those prohibited from having a gun due to mental illness are prevented from purchasing and possessing firearms. Implementation research should also investigate the roles that healthcare providers, educators, law enforcement and other stakeholders play in the implementation of policies to prevent persons with mental illness from accessing guns.

4. Study implementation of firearm restoration processes. Research in this area should examine the processes used in different states to restore firearm rights to persons prohibited from having guns due to mental illness.

5. Investigate how existing state and federal policies to prevent persons with mental illness from having guns affect suicide.

6. Study innovative approaches to preventing firearm suicides. Research should focus on evaluating policies and programs intended to restrict access to firearms among individuals at risk of attempting suicide.

7. Study the role of firearm access in the epidemic of suicide among military Veterans of different eras and in different age groups. Research on gun violence and suicide

in this population of concern should investigate and compare firearm- and non-firearm-related suicide and violent crime risk among Veterans with mental illness; among those who are enrolled and not enrolled in Veterans Health Administration (VA) services; and those with and without gun-disqualifying VA or state records of mental health adjudication or crime. Research should specifically examine the implementation and effectiveness of VA's policy to prohibit firearms from Veterans with psychiatric disabilities who have been assigned fiduciaries to manage their VA benefits.

8. Study training of psychiatric residents, clinical psychologists, clinical social workers, and other professionals who respond to suicide threats. What are they taught about separating suicidal clients from their guns? In addition, investigate healthcare providers' attitudes and practices related to firearm restriction among persons with mental illness. Research should focus on how healthcare providers view the problem and what they do, currently, to try to limit access to guns when faced with a patient who may be at risk of suicide or of committing violence toward others.

9. Investigate if and how colleges and universities attempt to prevent access to firearms among students identified as at risk of harming themselves or others. As mental illnesses often develop among college-age young adults, a better understanding of how colleges and universities can help to prevent firearm suicide and violence toward others is critically important. Studies might focus specifically on how colleges and universities have implemented multi-disciplinary Threat Assessment Teams; effectiveness, and barriers to effectiveness of these teams; and how colleges attempt to balance concerns about student privacy, discrimination, campus safety, and college's perceived legal liability for adverse safety events as well as consequences of various policies and interventions (e.g., disclosing private health information and enforcing removal of enrolled students from campus when they are at risk.)

10. Investigate law enforcement policies and practices regarding prevention of access to firearms among individuals with serious mental illness.

11. Examine potential negative consequences of existing mental illness-focused gun policies, which can 'over-identify' the target population with mental illness and capture people at low risk of future violence. Future research should investigate how such policies affect stigma and discrimination, mental health treatment seeking, and therapeutic relationships.

<u>Research Priorities Related to Recommendation #2</u>: Enact new prohibitions on individuals' ability to purchase and possess a firearm based on presence of evidence-based risk factors for violence.

12. Evaluate the impact of state laws allowing removal of firearms from persons behaving dangerously (e.g., IN, CT), as alternatives or supplements to restrictions focused on persons with mental illness.

13. New models for removing firearms from persons behaving dangerously should also be developed and evaluated. For example, research in this area could inform development of a new expanded civil restraining order process to allow guns to be legally removed from individuals, including but not limited to those with mental illness, who pose a serious risk of harm to self or others.

14. Investigate which specific criteria should be used in making evidence-based judgments of dangerousness.

Conclusion

The Consortium for Risk-Based Firearm Policy (Consortium) includes the nation's leading researchers, practitioners, and advocates in gun violence prevention and mental health who are invested in promoting evidence-based policies that work to decrease gun violence. Our recommendations are informed by the best available research evidence. The recommendations in this report provide a blueprint for strengthening federal firearm policy by expanding firearm prohibitions to encompass groups the research evidence shows are at heightened risk of committing violence.

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