

Gun Laws and Mental Illness: How Sensible Are the Current Restrictions?

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This column describes federal and state laws to restrict access to firearms among people with mental illness. The contribution to public safety of these laws is likely to be small because only 3%–5% of violent acts are attributable to serious mental illness, and most do not involve guns. The categories of persons with mental illnesses targeted by the laws may not be at higher risk of violence than other subgroups in this population. The laws may deter people from seeking treatment for fear of losing the right to possess firearms and may reinforce stereotypes of persons with mental illnesses as dangerous. (*Psychiatric Services* 61:652–654, 2010)

Violence is one of the leading causes of death and injury in the United States, killing an estimated 50,000 people annually (1,2), and firearms are a primary contributing factor. In 2006 firearms were involved in 57% percent of all violence-related deaths in the United States, including 69% of homicides and 51% of suicides (2). When a person with a mental illness commits a crime of violence, especially with a firearm, public cries are often heard to restrict gun

access for people with mental disorders and legislators are quick to implement new restrictions. However, just how much these measures protect the public is not at all clear, and their negative consequences are often ignored. This column describes federal and state efforts to restrict access to firearms among people with mental illness and examines evidence of their effectiveness and potential negative consequences.

Statutes to restrict access to firearms

Restrictions on gun ownership by people with mental illnesses are by no means recent innovations. Individuals with a history of involuntary psychiatric hospitalization have been legally barred at the federal level from purchasing or possessing firearms for over 40 years, since the enactment of the Omnibus Crime Control and Safe Streets Act and the Gun Control Act in 1968 (3). Together, the statutes banned firearms purchases or possession by persons who (in the language of the Gun Control Act) had been “adjudicated as a mental defective or committed to any mental institution”—at least if the guns were being purchased from a federally licensed gun dealer or had been shipped in interstate commerce. (Similar rules in these statutes apply to felons and other groups of presumptively dangerous persons.)

Regulations that more precisely defined who fell into the restricted categories were not issued until 1997, when the federal government clarified that the prohibited groups included people who were adjudicated as a danger to themselves or others, had been involuntarily committed to psychiatric facilities, or were adjudicated as lacking the mental capacity to contract or

to manage their own affairs. In addition, persons found not guilty by reason of insanity of a crime or incompetent to stand trial were barred from firearms possession.

However, in the early years enforcement of the federal statutes was haphazard. Dealers relied either on self-reports by would-be purchasers or the fortuitous availability of a state government database to enforce the federal restrictions. It was not until 1998, with the implementation of the National Instant Criminal Background Check System (NICS), mandated by the 1993 Brady Handgun Violence Prevention Act, that a potentially effective and comprehensive method emerged for enforcing restrictions on firearms purchases from licensed dealers by persons with disqualifying conditions. The goal of the NICS was systematically to identify and register excluded individuals in advance, enter their names into an easily accessed computerized database that could be queried before firearms purchase, and thus prevent them from purchasing firearms. (A licensed dealer must contact the FBI or an authorized state agency, which in turn queries the database and informs the dealer whether the purchaser is restricted from acquiring a gun—although not why a restriction was imposed.) States, however, were slow to contribute records of adjudications and commitments to the NICS. Thus, by December 2006, records citing “mental defect” constituted only 6.9% of all active records in the NICS registry (convicted criminals accounted for the great majority of excluded persons), and only .4% of all NICS denials (4). Indeed, only 23 states were contributing mental health records by mid-2007, and the data reported were neither uniform nor complete (5).

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As of January 2008, in the wake of the shootings at Virginia Tech, the Brady Act was amended by the NICS Improvement Act (NICSIA) to encourage states to report to the federal registry all persons disqualified from possessing or purchasing a handgun. States that comply with the statute are eligible for a partial waiver of the matching requirement for particular federal criminal justice grant programs and can receive federal funding to improve their reporting and querying capabilities. The NICSIA also requires states to create relief-from-disabilities programs, providing people excluded from firearms purchase because of "mental defect" the opportunity to apply for relief from that exclusion, which previously was more difficult to obtain.

In addition to the national registry, many states have developed their own databases to implement local restrictions on firearms access. But state firearms laws differ significantly in their disqualifying criteria related to mental illness, the types of restrictions they impose, the management of otherwise confidential medical records, and their appeals processes (5). States also differ in their civil commitment statutes and related judicial procedures, which may create ambiguity about whether certain procedures—such as temporary detention orders and court-ordered outpatient treatment in some states—fall under state or federal firearms laws' definitions of disqualifying mental health adjudications. Criteria for exclusion from firearms ownership range broadly across the states, including histories of voluntary or mandatory outpatient psychiatric treatment, treatment for mental illness that requires medication or supervision, any psychiatric hospitalization, involuntary civil commitment or other mental health adjudication, and voluntary or court-ordered substance abuse treatment (6). Moreover, state registries list only disqualifying episodes that occurred within that state, imposing no effective restrictions on persons who cross state lines to purchase firearms.

Thus only a national database is likely to achieve comprehensive coverage. Advocates of expanding NICS were thus heartened by the response to the incentives offered by the NICSIA,

which contributed to a substantial increase in state reporting to the federal database. The number of people listed in NICS because of mental illness–related adjudications increased by 25% in 2008 alone, to a total of almost 650,000 (7). As of March 2010, 15.6% of NICS records were related to mental health adjudications (8), although they still accounted for only .7% of denials (9).

Effectiveness and potential negative consequences

Ironically, given the national commitment to firearms restrictions for multiple categories of presumably dangerous persons, there is limited evidence regarding the effectiveness of such laws as a means of reducing gun violence. Ludwig and Cook (10) evaluated the association between homicide and suicide rates and the implementation of the Brady Act in 1994, when background checks became required for purchasing a firearm. Using data from the National Center for Health Statistics for 1985 through 1997, the authors found no change in overall homicide and suicide rates with firearms covered by the Brady Act but did observe a significant reduction in firearms suicides among people aged 55 years and older, particularly in states that had instituted mandatory waiting periods in addition to background checks. A systematic review of firearms laws and reductions in violence conducted by Hahn and colleagues (11) found the evidence inconclusive because of differences in direction of effect, lack of statistical significance, and limitations associated with study designs and analyses. We are not aware of any studies that have evaluated restrictions on gun access for persons with mental illnesses *per se*.

There are, of course, commonsense reasons to expect that limiting access to firearms will reduce the use of guns by persons with mental illnesses and others. Miller and colleagues (12), for example, observed that homicide was more common in areas where household firearms ownership was higher. But the net increment to public safety from restricting gun access by persons with mental illnesses is likely to be small. The best available national data suggest that only 3%–5% of violent

acts are attributable to serious mental illness (13), and most of those acts do not involve guns (14). Most studies concur that the added risk of violence, if any, conferred by the presence of a serious mental disorder is small (15). Moreover, there are no data to indicate whether the categories of persons with mental illnesses targeted by federal and state laws—that is, persons subject to involuntary commitment or found incompetent to manage their affairs—are actually at higher risk than other groups with mental illness. One of the strongest predictors of violence among persons with mental illness is a history of violent crime. But having a violent criminal record would already disqualify an individual from purchasing a gun, irrespective of any coincident mental health adjudication. Thus one might question whether the disproportionate emphasis on restricting firearms access by persons with mental disorders reflects sound public policy or is a manifestation of exaggerated public perceptions of the danger associated with mental illnesses (16).

In addition, reasons exist to question just how efficacious restrictions on firearms purchases from federally licensed dealers are likely to be. For one thing, approximately 40% of all firearms sales come from private owners who are not covered by the federal restrictions (17). With an estimated 270 million guns already in private hands in over one-third of U.S. households (18), guns are readily available from both legal and illegal sources. From 1998 to early 2010, over 5,000 persons were denied gun purchases through the NICS because of their mental health histories (9); how many of them were actually deterred from committing violent crimes or suicide—and how many may have obtained guns by other means—is unknown. In any event, compared with the more than 573,000 persons denied access to guns because of their criminal histories, restrictions on persons with mental illnesses represent a drop in the bucket of crime prevention policy.

In the face of questions such as these about the likely effectiveness of restrictions on gun access—at least in a society that tolerates widespread gun possession—the potential negative consequences of registries such

as the NICS and its state-level counterparts cannot be ignored. At a minimum, solid research is needed to examine whether these policies are achieving their intended social benefit in protecting the public or whether they might be doing more harm than good. Some persons in need of psychiatric treatment, particularly in areas of the country where hunting and other shooting sports are an important part of life, may well avoid contact with mental health services out of fear (perhaps completely unrealistic) that it might lead to loss of their right to possess firearms. Further, insofar as these policies reinforce popular stereotypes of persons with mental illnesses as dangerous—the statutory term “mental defective” is not helpful in this regard—they are likely to contribute to greater public fear of, discrimination against, and desire for distance from people with mental disorders. Given that people with mental illnesses often internalize the negative perceptions of others, both their own self-images and their inclination to affiliate with other people who suffer similar disorders may be adversely affected. Such internalized negative stereotypes result in active social avoidance, decreased self-esteem and hopefulness, and poor recovery outcomes (19).

Recent Supreme Court cases

Previous case law gives little indication that courts would be receptive to challenges to federal or state laws restricting gun access by persons with mental illnesses. Indeed, even as the U.S. Supreme Court in *District of Columbia v. Heller* struck down the District's comprehensive handgun ban on Second Amendment grounds, it noted that “nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill.” (20). Most observers expect that the impending decision of the Supreme Court in *McDonald v. Chicago* will extend the *Heller* rationale to states and localities. However, in the context of fewer restrictions on gun ownership in general, governments may be under greater pressure to demonstrate that the remaining limitations—including those placed on

persons with mental illnesses—are rationally related to a legitimate governmental objective, that is, that they are likely to make a difference with regard to violent crime.

Conclusions

Imposing differential restrictions on firearms possession by persons with mental illnesses is not a costless policy, which strongly suggests the need for careful evaluation of the effectiveness of such restrictions, a task not yet undertaken. If firearms access restrictions for the currently designated groups of persons prove not to make a significant contribution to public safety, society is not without other possible remedies. A small number of states now have statutes allowing firearms to be removed from persons in emergency situations, when the risk of violence is heightened, whether or not they have a mental disorder (21,22). This may be a less stigmatizing as well as more effective approach to prevention of gun violence, and one that more states might well consider while awaiting data on the extent to which current approaches are effective.

References

1. WISQARS Leading Causes of Death Reports, 1999–2006. Atlanta, Centers for Disease Control, National Center for Injury Prevention and Control. Available at webappa.cdc.gov/sasweb/ncipc/leadeaus10.html
2. WISQARS Injury Mortality Reports, 1999–2006. Atlanta, Centers for Disease Control, National Center for Injury Prevention and Control. Available at webappa.cdc.gov/sasweb/ncipc/mortrate10_sy.html
3. Simpson JR: Bad risk?—an overview of laws prohibiting possession of firearms by individuals with a history of treatment for mental illness. *Journal of the American Academy of Psychiatry and the Law* 35:330–338, 2007
4. NICS: The National Instant Criminal Background Check System, 2006 Operations Report. Washington, DC, Federal Bureau of Investigation. Available at www.fbi.gov/hq/cjisd/nics.htm
5. Regulating Guns in America: An Evaluation and Comparative Analysis of Federal, State and Selected Local Gun Law. San Francisco, Legal Community Against Violence, 2008. Available at www.lcav.org/publications-briefs/reports_analyses.asp
6. Norris DM, Price M, Gutheil TG, et al: Firearm laws, patients and the roles of psychiatrists. *American Journal of Psychiatry* 163:1392–1396, 2006
7. Background Checks for Firearm Transfers, 2008, Statistical Tables. Washington, DC, Bureau of Justice Statistics. Available at bjs.ojp

usdoj.gov/index.cfm?ty=pbdetail&iid=1706

8. Active Records in the NICS Index as of March 31, 2010. Washington, DC, Federal Bureau of Investigation. Available at www.fbi.gov/hq/cjisd/nics/NICS%20Index.htm
9. Federal Denials: Reasons Why the NICS Denies, November 30, 1998–February 28, 2010. Washington, DC, Federal Bureau of Investigation. Available at www.fbi.gov/hq/cjisd/denials.htm
10. Ludwig J, Cook PJ: Homicide and suicide rates associated with implementation of the Brady Handgun Violence Prevention Act. *JAMA* 284:585–591, 2000
11. Hahn RA, Bilukha O, Crosby A, et al: Firearms laws and the reduction of violence: a systematic review. *American Journal of Preventive Medicine* 28(suppl 1):40–71, 2005
12. Miller M, Azrael D, Hemenway D: Rates of household firearm ownership and homicide across US regions and states, 1988–1997. *American Journal of Public Health* 92:1988–1993, 2002
13. Swanson JW: Mental disorder, substance abuse, and community violence: an epidemiological approach; in *Violence and Mental Disorder*. Edited by Monahan J, Steadman H. Chicago, University of Chicago Press, 1994
14. Monahan J, Steadman H, Silver E, et al: Rethinking Risk Assessment: The MacArthur Study of Mental Disorder and Violence. New York, Oxford University Press, 2001
15. Appelbaum PS: Violence and mental disorders: data and public policy. *American Journal of Psychiatry* 163:1319–1321, 2006
16. Pescosolido BA, Monahan J, Link BG, et al: The public's view of the competence, dangerousness, and need for legal coercion of persons with mental health problems. *American Journal of Public Health* 89:1339–1345, 1999
17. Cook PJ, Ludwig J: Guns in America: National Survey on Private Ownership and Use of Firearms. National Institute of Justice, Research in Brief. Washington, DC, Department of Justice, May 1997. Available at www.ncjrs.gov/pdffiles/165476.pdf
18. 2009 California Report: Recent Developments in Federal, State, and Local Gun Laws. San Francisco, Legal Community Against Violence. Available at www.lcav.org/publications-briefs/reports_analyses.asp
19. Ritsher JB, Phelan JC: Internalized stigma predicts erosion of morale among psychiatric outpatients. *Psychiatry Research* 129:257–265, 2004
20. *District of Columbia v Heller*, 128 S Ct 2783 (2008)
21. Access to Firearms by People With Mental Illness. APA Resource Document. Arlington, Va, American Psychiatric Association, 2009. Available at www.psych.org/mainmenu/educationcareerdevelopment/library
22. Parker G: Application of a firearm seizure law aimed at dangerous persons: outcomes from the first two years. *Psychiatric Services* 61:478–482, 2010