

Separating Myth from Fact: Unlinking Mental Illness and Violence and Implications for Gun Control Legislation and Public Policy

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I. INTRODUCTION

In the wake of recent national tragedies involving mass shootings by individuals suffering from mental illnesses, there have been considerable calls for changes to existing gun laws.¹ Following the shootings in Aurora, Newtown, and Washington, D.C., many groups—including the National Rifle Association (NRA)—are quick to blame these incidents of violence on the lack of services for those with mental health issues.² Most notably,

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1. See Nedra Pickler, *Navy Yard Memorial: Obama Calls For Reforming Nation's Gun Laws*, DENVER POST, Sept. 23, 2013, http://www.denverpost.com/politics/ci_24154301/navy-yard-memorial-obama-calls-reforming-nations-gun.

2. See, e.g., Kerry Picket, *Colo. Shooting Shows Failure in Treatment of Mentally Ill*, THE WASH. TIMES, July 20, 2012, <http://www.washingtontimes.com/blog/watercooler/2012/jul/20/picket-colo-shooting-shows-failure-mental/>; Jonathan Capehart, *The NRA's Insulting Response to Newtown*, WASH. POST, Dec. 21, 2012, <http://www.washingtonpost.com/blogs/post-partisan/wp/2012/12/21/the-nras-insulting->

lawmakers in both parties have committed to ensuring that persons with mental illnesses have less access to guns.³ In fact, it seems that the only agreement across party lines in the gun control debate is the apparent necessity for more gun registries to monitor those with mental health issues, presumably to prevent senseless acts of gun violence.⁴ Arguably, these promises have been made to ease public fear. Unfortunately, the blame set on those with mental illnesses is overstated at best and misplaced at worse; most violence is not committed by people who are mentally ill, and most mentally ill people are not violent.⁵ The rhetoric surrounding recent events has consistently named those with mental illnesses as the culprit and cause of the majority of gun violence, when statistics show that this simply is not true.⁶

This paper will address the facts about mental illness and its effect on an individual's propensity for violence, which is relatively low and not the "epidemic" that public opinion reinforces. Suicide, a much greater risk to those with mental illnesses, will also be addressed, highlighting the need for changes to gun laws to have an impact on suicide prevention. This paper will further tackle the dangers of allowing public perception to dictate poor policies and laws, which, in fact, have a chilling effect on reporting and treatment. Finally, this paper will describe the need for comprehensive reforms and suggest model approaches to gun control.

II. MENTAL ILLNESS: THE FACTS AND MYTHS

In the United States, mental illness is a disease that affects over 50 million people.⁷ According to the National Institute of Mental Health, one in four adults have experienced a mental health disorder each year.⁸ While

response-to-newtown/?hpidz2; Evan McMurry, *NRA's LaPierre on Navy Yard Shooting: 'There Weren't Enough Good Guys with Guns'*, MEDIAITE (Sept. 22, 2013), <http://www.mediaite.com/tv/nras-lapierre-on-navy-yard-shooting-there-werent-enough-good-guys-with-guns/>.

3. Erwin Chemerinsky, *Putting the Gun Control Debate in Social Perspective*, 73 *FORDHAM L. REV.* 477, 483-84 (2004).

4. *Id.* at 481-83.

5. *Facts Sheets: Facts About Mental Illness and Violence*, MENTAL HEALTH REPORTING U. OF WASH. SCH. OF SOC. WORK, http://www.depts.washington.edu/mhreport/facts_violence.php (last visited Mar. 24, 2014) [hereinafter *Facts Sheets*].

6. Liz Szabo, *Identifying Mental Illness Only Small Part in Gun Debate*, USA TODAY, Mar. 13, 2014, <http://www.usatoday.com/story/news/nation/2013/03/03/mental-illness-gun-control/19289531>.

7. *The Numbers Count: Mental Disorders in America*, NAT'L INST. OF MENTAL HEALTH, <http://www.nimh.nih.gov/health/publications/the-numbers-count-mental-disorders-in-america/index.shtml> (last visited Mar. 14, 2014).

8. *Id.*

one in seventeen adults live with a serious mental illness,⁹ only one in three of those adults receive mental health services in any given year.¹⁰

While the rate of people living with mental illness is substantial, the incidence of violence among those with mental illness is marginal. This proposition is well documented among health professionals. According to the Surgeon General, there is an extremely small connection between mental illness and violence.¹¹ In fact, people suffering from severe mental illnesses, such as schizophrenia, bipolar disorder, and psychosis, are much more likely to be victims of violent crimes than perpetrators.¹²

Unfortunately, in the wake of the recent gun tragedies, public perception links mental illness and violence, which is a link that is unsupported by the data. In reality, persons with mental health diagnoses commit only 4-5% of all violent acts nationwide.¹³ According to the Institute of Medicine, most men and women with mental health diagnoses never manifest violent behaviors, “although studies suggest a link between mental illnesses and violence, the contribution of people with mental illnesses to overall rates of violence is small.”¹⁴

While public perception assumes that violent perpetrators have some form of mental health issues, people with mental illnesses are eleven times more likely than those without mental illnesses to be the victims of violent crimes.¹⁵ “The magnitude of the relationship [between mental illness and violence] is greatly exaggerated in the minds of the general population.”¹⁶ The overwhelming majority of Americans believe that people with mental

9. *Id.*

10. NAT'L ALLIANCE ON MENTAL ILLNESS, MENTAL ILLNESS FACTS AND NUMBERS 1 (2013), available at http://www.nami.org/factsheets/mentalillness_factsheet.pdf.

11. U.S. DEP'T OF HEALTH AND HUMAN SERVS., MENTAL HEALTH: A REPORT OF THE SURGEON GENERAL 7 (1999); THE JUDGE DAVID L. BAZELON CTR. FOR MENTAL HEALTH LAW, WRONG FOCUS: MENTAL HEALTH IN THE GUN SAFETY DEBATE 1 (2013) [hereinafter BAZELON CTR.].

12. Linda A. Teplin et al., *Crime Victimization in Adults with Severe Mental Illnesses*, 62 ARCH. GEN. PSYCHIATRY 911, 914 (2005); BAZELON CTR., *supra* note 11, at 1; *Fact Sheets*, *supra* note 5; Virginia Aldigé Hiday et al., *Criminal Victimization of Persons with Severe Mental Illness*, 50 PSYCHIATRY SERVS. 1 (1999).

13. AM. PSYCHIATRIC ASS'N, ACCESS TO FIREARMS BY PEOPLE WITH MENTAL ILLNESS 1 (2009) [hereinafter APA].

14. INST. OF MED., IMPROVING THE QUALITY OF HEALTH CARE FOR MENTAL AND SUBSTANCE-USE CONDITIONS 103 (2006); *Violence and Mental Illness: The Facts*, SAMHSA'S RESOURCE CENTER TO PROMOTE ACCEPTANCE, DIGNITY, AND SOCIAL INCLUSION ASSOCIATED WITH MENTAL HEALTH, <http://promoteacceptance.samhsa.gov/publications/facts.aspx?printid=1> (last visited Apr. 10, 2014).

15. Teplin et al., *supra* note 12.

16. INST. OF MED., *supra* note 14.

illnesses pose a threat for violence towards themselves or others.¹⁷ This belief that people with mental illness are dangerous is a significant factor in the development of stigma and discrimination and only acts to discourage persons with mental illnesses from seeking treatment.¹⁸

A. Factors that Contribute to Gun Violence

Contrary to popular belief, the majority of people who are violent do not suffer from mental illnesses.¹⁹ Research suggests that other demographic and socioeconomic factors weigh more heavily on the likelihood of committing violence than mental illness.²⁰ Other factors that have more bearing on the likelihood of committing violence include: being young, single, working class, and male.²¹ These factors tend to show a higher likelihood of perpetuating violence than a stand-alone mental illness.²² Substance abuse, particularly alcohol abuse, is another significant risk factor that substantially increases the risk of violence in a person, including those with mental illnesses.²³ However, the most relevant factors to predicting serious violence in individuals include: “having less than a high school education, history of violence, juvenile detention, perception of hidden threats from others, and being divorced or separated in the past year.”²⁴

Severe mental illness is not statistically related to future violence.²⁵ The MacArthur Violence Risk Assessment Study compared the prevalence for violence among individuals with mental illnesses and other residents in the same neighborhoods.²⁶ The study found the prevalence for violence in both

17. See generally BERNICE A. PESCOSOLIDO ET AL., AMERICANS' VIEWS OF MENTAL HEALTH AND ILLNESS AT CENTURY'S END: CONTINUITY AND CHANGE: PUBLIC REPORT ON THE MACARTHUR MENTAL HEALTH MODULE 3, available at <http://www.indiana.edu/~icmhsr/docs/Americans%20Views%20of%20Mental%20Health.pdf> (last visited Apr. 10, 2014); Bernice A. Pescosolido et al., *The Public's View of the Competence, Dangerousness, and Need for Legal Coercion of Persons with Mental Health Problems*, 89 AM. J. PUB. HEALTH 1339, 1339-45 (1999); INST. OF MED., *supra* note 14.

18. Patrick W. Corrigan et al., *Challenging Two Mental Illness Stigmas: Personal Responsibility and Dangerousness*, 28 SCHIZOPHRENIA BULL. 293, 293-309 (2002).

19. APA, *supra* note 13.

20. Heather Stuart, *Violence and Mental Illness: An Overview*, 2 J. WORLD PSYCHIATRY 121, 122 (2003).

21. *Id.*

22. Eric B. Elbogen & Sally C. Johnson, *The Intricate Link Between Violence and Mental Disorder: Results from the National Epidemiologic Survey on Alcohol and Related Conditions*, 66 ARCH. GEN. PSYCHIATRY 911, 914 (2005).

23. *Id.*

24. *Id.*

25. *Id.*

26. Henry J. Steadman et al., *Violence by People Discharged from Acute Psychiatric Inpatient Facilities and by Others in the Same Neighborhoods*, 55 ARCH. GEN. PSYCHIATRY

groups to be “statistically indistinguishable.”²⁷ In other words, a person with a severe mental illness, without substance abuse issues, has the same chances of being violent as any other person, without substance abuse issues, in the general population.²⁸

Although it is well established that mental illness is only attributed to a small percentage of violence, certain categories of mental illness will enhance an individual’s propensity for violent behavior.²⁹ Specifically, anti-social personality disorders, affective (mood) disorders, and psychotic disorders can contribute to a manifestation of violence.³⁰

Violence associated with mental illness becomes more pervasive when an individual suffers from a dual-diagnosis of mental illness and substance abuse, specifically alcoholism.³¹ The MacArthur Violence Risk Assessment Study also made these findings: the prevalence rates for violent incidents in a one year span was 17.9% for a person suffering from a severe mental illness, who did not also have a co-diagnosis of a substance abuse disorder; those with co-occurring substance abuse disorders with major mental illnesses had a violence prevalence rate of 31.1% in that same year; and those with a substance abuse disorder and a personality disorder had a 43% violence prevalence rate.³²

While mental health alone has very little bearing on an individual’s propensity for violence, there is a correlation between access to guns and the rate of gun-related deaths.³³ Compared with other first world countries, the United States has the most guns per civilian, weakest gun laws, and highest rates of gun homicide and gun suicide.³⁴ Research has shown that the United States has the highest rate of civilian guns per person—at approximately ninety guns for every one hundred people.³⁵ The countries following the

393, 400-01 (1998); Stuart, *supra* note 20.

27. Stuart, *supra* note 20.

28. Elbogen & Johnson, *supra* note 22, at 915.

29. Konstantinos N. Fountoulakis, *Personality Disorders and Violence*, 21 CURRENT OPINION IN PSYCHIATRY 84, 92 (2008).

30. Marie E. Rueve & Randon S. Welton, *Violence and Mental Illness*, 5 PSYCHIATRY 34, 38 (2008).

31. Steadman, *supra* note 26.

32. *Id.*

33. Nancy Shute, *Around the World, Gun Ownership and Firearms Deaths Go Together*, NPR (Sept. 18, 2013), <http://www.npr.org/blogs/health/2013/09/17/223508595/around-the-world-gun-ownership-and-firearms-deaths-go-together>.

34. Erin G. Richardson & David Hemenway, *Homicide, Suicide, and Unintentional Firearm Fatality: Comparing the United States with Other High-Income Countries*, 70 J. TRAUMA & ACUTE CARE SURGERY 238, 238-43 (2011).

35. Sripal Bangalore et al., *Gun Ownership and Firearms-related Deaths*, 126 AM. J.

United States—Switzerland and Finland—have nearly half that amount, approximately forty-five guns for every one hundred people, in each country.³⁶ The same clinical research study has shown a correlation between access to guns and gun related deaths.³⁷ In a study done by the American Journal of Medicine, with the purpose of testing the hypothesis that “guns make people safer,” the national crime rate was used to measure the safety of a country.³⁸ Among twenty-seven countries, the study found that there was a strong, positive correlation between access to guns and crime rate, with gun access as a strong predictor to crime rate.³⁹ This study refutes the proposition by gun proponents that owning a gun makes people safer.⁴⁰ Further, the study also found that access to guns was more instrumental in determining propensity for gun violence than mental illness.⁴¹

III. GUNS, SUICIDE, AND PREVENTION

While the myths surrounding mental illness and violence are pervasive and may result in ill-conceived changes to state and federal legislation, there is a greater risk of suicide associated with gun ownership in the home with a mentally ill person. This forgotten aspect of gun control reform affects significantly more of the population than random acts of gun violence by a small portion of those with mental illnesses. While gun advocates claim the necessity of guns for protection, having firearms in the home who has someone with a mental illness is exceptionally dangerous for that individual.

In 2010, there were approximately 20,000 people who successfully committed suicide using a gun.⁴² According to data from the Center for Disease Control (CDC), over 52% of completed suicides were attributable to access to a firearm in 2005,⁴³ a year that suicide was the 11th leading cause of death.⁴⁴ According to the CDC, in 2007, the suicide rate was 11.26 per every 100,000 people.⁴⁵ In 2010, the number of gun deaths by suicide

MED. 873, 875 (2013); Shute, *supra* note 33.

36. Bangalore et al., *supra* note 35.

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Suicide and Self-Inflicted Injury*, CTR. FOR DISEASE CONTROL AND PREVENTION, <http://www.cdc.gov/nchs/fastats/suicide.htm> (last visited Mar. 12, 2014).

43. APA, *supra* note 13.

44. *Id.*

45. NAT'L INST. OF MENTAL HEALTH, 1999-2007 TRENDS IN SUICIDE RATES, <http://www.nimh.nih.gov/statistics/4SR99.shtml> (last visited Feb. 26, 2014).

outnumbered homicides: 19,392 to 11,078.⁴⁶

Suicides are most often unexpected and, in fact, most people who commit suicide act without premeditation. The most recent numbers show that 90% of suicides are attributed to people with a mental illness, but 80% of those individuals had not received treatment.⁴⁷ Because factors that contribute to successful suicide attempts are impulsivity, access to lethal methods (guns), and substance abuse, stricter requirements for gun licensure are necessary for effective suicide prevention.

While the general public perceives those who commit suicide as “weak” or “selfish,” often it is a vulnerable person committing an impulsive act due to a recent outside trigger, and not an impulsive person.⁴⁸ The Suicide Intent Scale ranks suicide attempts as “Impulsive,” “Intermediate Impulsive,” and “Nonimpulsive.”⁴⁹ Impulsive suicide attempts are those that do not involve premeditation or planning.⁵⁰ According to a study conducted using the Suicide Intent Scale, 55% of 478 individuals who attempted suicide were impulsive, and another 28% were intermediate impulsive.⁵¹ Further, 40% of those studied had only contemplated suicide for five minutes prior to attempting it.⁵² The National Violent Injury Statistics System reported that 63% of suicide victims had not told anyone about their plans to commit suicide.⁵³ Because suicide ideation is treatable, 90% of people who survive a suicide attempt do not die by suicide later.⁵⁴

Because of the short time frame available when a person is suffering from impulsive suicidal thoughts, the access to lethal methods, such as guns, is critical to determining whether their attempts will be successful. Research shows that states with high and low gun ownership have identical suicide attempts.⁵⁵ However, the number of gun deaths from suicide is four

46. *Suicide and Self-Inflicted Injury*, CTRS. FOR DISEASE CONTROL & PREVENTION (Dec. 30, 2013), <http://www.cdc.gov/nchs/fastats/suicide.htm>.

47. E. Michael Lewiecki & Sara Miller, *Suicide, Guns, and Public Policy*, AM. J. PUB. HEALTH 27, 27-31 (2012); J.J. Mann et al., *Suicide Prevention Strategies: A Systematic Review*, 294 JAMA 2064, 2069 (2005).

48. Lewiecki & Miller, *supra* note 47.

49. *Id.* at 28.

50. *Id.*

51. *Id.*

52. *Id.*

53. See NAT'L VIOLENT INJURY STATISTICS SYSTEM, HARVARD INJURY CONTROL RESEARCH CENTER, CHARACTERISTICS OF VICTIMS OF SUICIDE 3, *available at* <http://www.cpyv.org/wp-content/uploads/2011/05/NVISS-Characteristics-of-Victims-of-Suicide.pdf>.

54. David Hemenway, *Preventing Gun Violence by Changing Social Norms*, 173 JAMA 1167, 1168 (2013).

55. Marian E. Betz, et al., *Suicidal Behavior and Firearm Access: Results from the*

times higher in states with high gun ownership than those with low gun ownership.⁵⁶ Studies have also shown that often gun purchases are made with suicide in mind.⁵⁷ Some suggest that if a person has an intent to commit suicide and does not have access to a gun, they will simply substitute it for a different method and inevitably commit suicide. Research, however, has shown that when access to guns is low, the alternate is more likely to be less lethal and less likely to result in death.⁵⁸ Access to guns is a strong risk factor for suicides—firearm owners are not more suicidal than others, but they are more likely to succeed.⁵⁹

Substance abuse can also be a catalyst for violent behavior—including self-harm. The overlap between mental illness and substance abuse is significant—over 40% of those suffering from a mental illness also struggle with substance abuse.⁶⁰ Research by the National Center for Injury Prevention and Control found that data collected on seventeen states in 2007 showed that one-third of suicide decedents had alcohol in his or her system.⁶¹ Increased access to substance abuse treatment is critical to assuring public safety and decreasing the incidence of suicide.

A. Suicide Prevention Strategies

Limiting access to guns is a potential method to decrease suicide rates in this country. Regionally, stricter gun laws have been shown to reduce suicide rates in the United States.⁶² The Northeast is an area with the strictest gun legislation and lowest access to firearms.⁶³ The legal mechanisms that

Second Injury Control and Risk Survey, 41 *SUICIDE & LIFE-THREATENING BEHAV.* 384, 384-91 (2011).

56. Matthew Miller et al., *Firearms and Suicide in the United States: Is Risk Independent of Underlying Suicidal Behavior?*, 178 *AM. J. EPIDEMIOL.* 946, 951 (2013).

57. Lewiecki & Miller, *supra* note 47, at 28.

58. Marc S. Daigle, *Suicide Prevention Through Means Restriction: Assessing the Risk of Substitution, A Critical Review and Synthesis*, 37 *ACCID. ANALYSIS & PREVENTION* 625, 625-32 (2005); Keith Hawton, *Restricting Access to Methods of Suicide: Rationale and Evaluation of the Approach to Suicide Prevention*, 28 *CRISIS: J. CRISIS INTERVENTION & SUICIDE PREVENTION* 4, 4-9 (2007).

59. Matthew Miller, et al., *Suicide Mortality in the United States: The Importance of Attending to Method in Understanding Population-Level Disparities in the Burden of Suicide*, 33 *ANN. REV. PUB. HEALTH* 393, 393-408 (2012).

60. *Data: Rates of Co-Occurring Mental and Substance Use Disorders*, *SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMIN.*, <http://www.samhsa.gov/co-occurring/topics/data/disorders.aspx> (last visited Apr. 4, 2014).

61. DEBRA L. KARCH ET AL., *CTRS. FOR DISEASE CONTROL, SURVEILLANCE FOR VIOLENT DEATHS—NATIONAL VIOLENT DEATH REPORTING SYSTEM, 16 STATES, 2007*, <http://www.cdc.gov/mmwr/preview/mmwrhtml/ss5904a1.htm>.

62. Lewiecki & Miller, *supra* note 47, at 29.

63. *Id.*

are used in the Northeast that make it more difficult for persons to purchase guns include waiting periods, a twenty-one year age requirement, and strong, safe storage requirements.⁶⁴ Studies have shown that where gun ownership is stricter, suicide rates are substantially lower than in regions where there are less restrictions on gun purchases.⁶⁵

Method reduction has been suggested as a way to decrease suicide rates. By reducing the availability to firearms, suicide attempts can be made less successful. A study done in the Northeast showed that 90% of those who attempted suicide by firearms were successful in their suicide attempt, while only 5% of those who attempted suicide by drug overdose were successful.⁶⁶

Education is essential to preventing suicides. As commented about in depth above, there are many fictions regarding mental health and gun access.⁶⁷ However, because suicide with weapons is widely ignored, similarly there are misconceptions about the preventability of suicide. Research has shown that the general popular belief is that suicides are unpreventable, and that restricting access to guns is pointless because suicidal people would find alternate means to kill themselves. For example, results from a telephone survey showed that one out of three respondents believed that none of the suicides committed by persons jumping off the Golden Gate Bridge could have been prevented.⁶⁸ In another survey taken, two out of three nurses who participated believed that persons who committed suicide would have died by another method if they had no access to guns.⁶⁹ Some experts have suggested addressing suicide as a public health issue, which could be attained by making meaningful changes to promote mental health, change social norms, and decrease gun access.⁷⁰

IV. STIGMA AND ITS EFFECT ON PUBLIC POLICY

A recent national survey, which was published in January in the New

64. *Id.*

65. Matthew Miller & David Hemenway, *Guns and Suicide in the United States*, 359 *NEW ENG. J. MED.* 989, 989-91 (2008).

66. Matthew Miller et al., *The Epidemiology of Case Fatality Rates for Suicide in the Northeast*, 43 *ANNALS OF EMERGENCY MED.* 723, 723-30 (2004).

67. *See generally supra* Part III.

68. Matthew Miller et al., *Belief in the Inevitability of Suicide: Results from a National Survey*, 36 *SUICIDE & LIFE-THREATENING BEHAV.* 1, 1-11 (2006).

69. Marian Betz et al., *Lethal Means Restriction for Suicide Prevention: Beliefs and Behaviors of Emergency Department Providers*, 30 *DEPRESSION & ANXIETY* 1013, 1013-20 (2013).

70. *See generally* Catherine Barber et al., *A Public Health Approach to Preventing Suicide*, in *PERSPECTIVES IN PUB. HEALTH: CHALLENGES FOR THE FUTURE* (Madelon L. Finkel ed., 2010).

England Journal of Medicine, found that almost half of those polled agreed that “people with serious mental illness are, by far, more dangerous than the general population.”⁷¹ Most of the respondents said they would not be willing to have a person with a serious mental illness as a neighbor.⁷² While the stigma of the mentally ill is not supported by factual data, public perception has played a key role in the call for changes within the gun control landscape, both within state and, to some extent, federal law. The legislature’s agreement, without statistical support, has the effect of creating poor public policies that fail to address the factors that have been shown to substantially affect the prevalence of gun violence.

In the few months after the Newtown shooting, five states, including New York and Connecticut, enacted stricter gun laws.⁷³ New York law thus far has been the most stringent with regard to mental health reporting.⁷⁴ In amending the New York law, mental health professionals are required to report patients whom they believe are likely to hurt themselves or others.⁷⁵ The reporting, which does not require an official mental health diagnosis, would result in police officers having the authority to seize weapons patients might have, and inevitably results in the patient being put on a state and national registry.⁷⁶

While thirty-eight states keep registries of people with mental illnesses as part of their gun licensing process,⁷⁷ some mental health advocates believe that the New York model requiring clinicians to report patients, whom they believe pose a threat to others carries risks:

The first is overidentification; the law could include too many people who are not at significant risk. The second is the chilling effect on help seeking; the law could drive people away from the treatment they need or inhibit their disclosures in therapy. The third is invasion of patient

71. Colleen L. Barry et al., *After Newtown – Public Opinion on Gun Policy and Mental Illness*, 368 NEW ENG. J. MED. 1077, 1080-81 (2013).

72. *Id.*

73. Wayne Drash & Toby Lyles, *States Tighten, Loosen Gun Laws After Newtown*, CNN (June 8, 2013, 7:18 AM), <http://www.cnn.com/2013/06/08/us/gun-laws-states/>.

74. *See generally id.*

75. NY Secure Ammunition and Firearms Enforcement (SAFE) Act of 2013, 2013 N.Y. Sess. Laws S02230 (McKinney); Drash & Lyles, *supra* note 73; Michael Ollove, *States Tackle Mental Health and Gun Ownership*, KAISER HEALTH NEWS (Mar. 21, 2013), <http://www.kaiserhealthnews.org/stories/2013/march/21/stateline-states-mental-illness-gun-ownership.aspx>.

76. Jeffrey Swanson, *Mental Illness and the New Gun Law Reforms: The Promise and Peril of Crisis-Driven Policy*, 310 JAMA 97, 1233-34 (2013).

77. Cathy Reisenwitz, *Better Mental Care, Not New Gun Laws, Will Prevent Future Mass Shootings*, REASON: FREE MINDS AND MARKETS (Sept. 22, 2013), <http://reason.com/archives/2013/09/22/better-mental-health-care-not-new-gun-la>.

privacy; the law amounts to a breach of the confidential patient-physician relationship. Mental health professionals already have an established duty to take reasonable steps to protect identifiable persons when a patient threatens harm. However, clinicians can discharge that duty in several ways. . . . For example, the clinician could decide to see the patient more frequently or prescribe a different medication. Voluntary hospitalization is also an option for many at-risk patients.⁷⁸

V. FEDERAL GUN LAW

There have been numerous proposed changes to the federal gun control laws. Currently, federal law prohibits the sale of firearms or ammunition to “any person knowing or having reasonable cause to believe that such person has been adjudicated as [mentally] defective or has been committed to any mental institution.”⁷⁹ The law, which prohibited those considered as “mentally defective” from gun ownership, was enacted in 1968, while regulations defining that term were not issued until 1997.⁸⁰ Currently, “mentally defective” includes: people who were adjudicated to be a harm to themselves or others; those involuntarily committed to psychiatric facilities; or those who were adjudicated to lack the capacity to enter contracts or manage their own affairs.⁸¹

Many mental health advocates denounce the current law and use of the term “mentally defective” for several reasons. First, the term “mental defective” is archaic and highly offensive.⁸² The rhetoric is an extremely negative, stigmatizing, and erroneous description of the condition of living with mental illness. Further, the federal gun control use of the term “mentally defective” ignores the fact that most mental illnesses are highly treatable, that many people with mental illnesses live full and productive lives, and that recovery is real.

Additionally, while federal law prohibits persons who have been adjudicated to be a risk of harm to themselves or others, states are the adjudicators and each state has different procedures for making such determinations. Similarly, states have different standards and requirements for

78. Swanson, *supra* note 76; Lexington, *Why the NRA keeps talking about mental illness, rather than guns*, THE ECONOMIST (Mar. 13, 2013), <http://www.economist.com/blogs/lexington/2013/03/guns-and-mentally-ill>.

79. Gun Control Act of 1968, 18 U.S.C. § 922(d)(4) (2006).

80. Paul S. Appelbaum, M.D. & Jeffrey W. Swanson, Ph.D., *Gun Laws and Mental Illness: How Sensible Are Current Restrictions?*, 61 PSYCHIATRIC SERVICES 652, 652 (2010), available at <http://psychiatryonline.org/data/Journals/PSS/3912/10ps652.pdf>.

81. 27 C.F.R. § 478.11 (2010); Appelbaum & Swanson, *supra* note 80, at 652.

82. Elizabeth Flock, *Gun Control Clouds Definition of Mentally Ill*, U.S. NEWS, Apr. 3, 2013, <http://www.usnews.com/news/articles/2013/03/-gun-control-debate-clouds-definition-of-mentally-ill>.

involuntarily committing persons to psychiatric facilities. These discrepancies contribute to ineffective and inconsistent mechanisms for denying persons access to firearms.

The current federal gun control framework further prohibits certain groups of people from purchasing firearms—for example felons, people convicted of misdemeanors for domestic violence, and those with substance abuse issues.⁸³ However, persons convicted of other violent misdemeanors, including assault and battery, are still permitted to purchase and own guns under federal law.⁸⁴ Further, while current federal gun law prohibits persons from buying and possessing guns who are “unlawful user[s] of or addicted to any controlled substance,” this framework fails to mention alcohol abuse.⁸⁵ Moreover, only sixteen states currently prohibit alcohol abusers from purchase firearms.⁸⁶

VI. MASSACHUSETTS’S LAW

Massachusetts’s law on gun ownership is notoriously stricter than most states. Massachusetts’s law prohibits individuals who have been confined to any hospital or institution for mental illness from owning or possessing guns.⁸⁷ During the application process for a firearm license, the local licensing authority contacts the Department of Mental Health (DMH) and runs applicants through an electronic search of its records to determine if the applicant is in their system and ineligible for a weapon.⁸⁸ If an individual has a history of commitment, he may petition to be qualified by applying for a license with an affidavit from his physician who assures his capacity to handle a firearm.⁸⁹

Even with the already strict gun laws, following the recent gun tragedies, there have been proposals to amend the existing gun laws.⁹⁰ For example, Governor Patrick has proposed House Bill 47: An Act to Strengthen and Enhance Firearm Laws in the Commonwealth.⁹¹ This bill would require DMH to transfer records of anyone who has been confined to any mental

83. Gun Control Act of 1968, 18 U.S.C. § 922(d).

84. *See id.*

85. *Id.* § 922(d)(4); 27 C.F.R. § 478.11.

86. D.W. Webster & J.S. Vernick, *Keeping Firearms from Drug and Alcohol Abusers*, 15 INJ. PREVENTION 425, 425-27 (2009).

87. MASS. GEN. LAWS ch. 140, § 131 (2011).

88. *Id.*

89. *Id.*

90. *Linsky Starts a Conversation on Guns and Public Health*, BOS. GLOBE, Feb. 15, 2013, http://www.bostonglobe.com/editorials/2013/02/15/gun-control-bill-with-public-health-promise/fKtNgJvi7Aja4Ms1inicCI/story.html?s_campaign=8315.

91. H.B. 47, 188th Gen. Court (Mass. 2013).

health hospital or institution in the past twenty years to the National Instant Criminal Background Check System (NICBS), effectively bringing the state up to date with the Improvement Amendments Act of 2007, a federal law passed in the aftermath of the Virginia Tech shooting.⁹² Future records would be updated quarterly by DMH.⁹³

Representative Davis Linsky proposed House Bill 3253, which would require applicants for gun licensure to sign waivers to allow licensing authorities to access the applicant's health records from the past twenty years.⁹⁴ The applicant would be required to identify any providers used for mental health treatment and the providers would be required to turn over any records to the licensing authorities.⁹⁵ The licensing authorities would then determine if the applicant is "mentally defective" and if so, disqualify him from licensure unless a physician's affidavit could confirm the applicant is "not disabled."⁹⁶ DMH would also be required to turn over its records from the past twenty years to NICBS.⁹⁷

The mental illness reporting language in Representative Linsky's proposed bill is so broad as to potentially discourage people from seeking treatment, for fear that their names will be placed in a database. Further, it fails to be limited to those who have a demonstrated history of violent behavior, which as stated before, has a great bearing on the likelihood of future violence.

VII. NECESSARY REFORM FOCUS

A. Expanding the Category of Prohibited Persons

Mental health professionals believe that changes to the existing state of federal law are required to minimize the risk of violent episodes. Mental health advocates suggest that stricter measures are in place to ensure that those with criminal histories, not solely felonies and domestic violence related misdemeanors, are denied access to guns. For example, a study done in California has shown that people convicted of any misdemeanor who purchase guns are two to ten times more likely to commit crimes after that gun purchase than buyers with no prior convictions.⁹⁸ This research tracked

92. NICS Improvement Amendments Act of 2007, Pub. L. No. 110-180, 121 Stat. 2559 (2008).

93. Mass. H.B. 47, §§ 43(a)-(b).

94. H.B. 3253, 188th Leg., Gen. Court (Mass. 2013).

95. *Id.*

96. *Id.*

97. *Id.* § 15(a).

98. Garen J. Wintemute et al., *Prior Misdemeanor Convictions as a Risk Factor for Later Violent and Firearm-Related Criminal Activity Among Authorized Purchasers of Handguns*, 24 JAMA 2083, 2083-87 (1998); see also Mona A. Wright & Garen J. Win-

handgun purchasers, both with convictions for non-violent misdemeanors and no criminal histories, for five years.⁹⁹ The research found that in that time, only 3.7% of individuals with no criminal history were arrested, whereas 21% of individuals with non-violent misdemeanors were arrested, and 4.5% were convicted of a crime that prohibited them from owning guns under federal law.¹⁰⁰

Further, stricter measures for gun ownership for those with criminal histories has shown some success. In 1991, California gun control laws were enacted, which prevented persons with violent misdemeanor convictions from purchasing guns for ten years.¹⁰¹ This was enacted after studies showed that those who purchased guns with one or more misdemeanor convictions were five times more likely to be arrested for gun-related crimes, or other violent crimes, than those without such records.¹⁰² Following the enactment of the stricter gun laws, there was a notable decrease in arrests, attributable to the denial of gun sales to those with misdemeanors.¹⁰³

As stated above, substance abuse plays a large role in gun violence. Research has shown that subjects who were hospitalized for alcohol abuse or had been in trouble at work for drinking were at an increased risk of committing homicide and suicide.¹⁰⁴ There is no clear definition of what constitutes alcohol abuse in the federal gun landscape, which creates difficulty in monitoring it for purposes of gun purchasing and ownership. Pennsylvania however, has created a model framework in which people are prohibited from purchasing or owning guns if they have been convicted three times or more of drunken offenses within a five-year period as a result of demonstrated recklessness and law breaking.¹⁰⁵

temute, *Felonious or Violent Criminal Activity That Prohibits Gun Ownership Among Prior Purchasers of Handguns: Incidence and Risk Factors*, 69 J. TRAUMA INJ. INFECTION & CRITICAL CARE, 1, 1-3 (2010); see also Editorial, *Violent, Drunk and Holding a Gun*, N.Y. TIMES, Feb. 23, 2013, http://www.nytimes.com/2013/02/24/opinion/sunday/violent-drunk-and-holding-a-gun.html?_r=0.

99. See Wright & Wintemute, *supra* note 98, at 2-3.

100. See *id.* at 4-5.

101. Garen J. Wintemute et al., *Subsequent Criminal Activity Among Violent Misdemeanants Who Seek to Purchase Handguns: Risk Factors and Effectiveness of Denying Handgun Purchase*, 285 JAMA 1019, 1020 (2001).

102. *Violent, Drunk and Holding a Gun*, *supra* note 98; see also Wintemute et al., *supra* note 98, at 2083-87.

103. Wintemute et al., *supra* note 101, at 1025.

104. Frederick P. Rivara et al., *Alcohol and Illicit Drug Abuse and the Risk of Violent Death in the Home*, 278 JAMA 569, 571 (1997).

105. 18 PA. CONS. STAT. § 6105(c) (2008); *Violent, Drunk and Holding a Gun*, *supra* note 98.

B. Removing Firearms

In 2001, California enacted The California Armed and Prohibited Persons System (APPS).¹⁰⁶ APPS acts as a tracker for legal gun owners who purchased their guns after 1996, and who, by court order or criminal history, were no longer permitted to possess weapons.¹⁰⁷ APPS provides the California Department of Justice Task Force the authority to seize these weapons from prohibited persons.¹⁰⁸ Funding for APPS is provided by additional surpluses from gun purchasers, who are required to pay \$22 for a background check.¹⁰⁹

California's model has already seen success. As of September 2013, there are over 20,000 persons registered in APPS, and approximately 30% illegally own firearms after a change in their mental health status.¹¹⁰ APPS tracks those with mental illnesses who are prohibited from owning weapons due to spending seventy-two hours in a mental health institution.¹¹¹ In 2012, the State seized over 2000 firearms, 117,000 rounds of ammunition, and 11,000 illegal high-capacity magazines.¹¹²

In Indiana, the law allows a circuit or superior court to issue a warrant to search for or seize a firearm in the possession of a "dangerous individual."¹¹³ A dangerous individual is defined as: 1) an individual who presents an imminent risk of personal injury to himself, herself, or another person; or 2) an individual who presents a risk of personal injury to himself, herself or another person in the future; and 3) he or she has a mental illness that may be controlled by medication and has not demonstrated a pattern of voluntarily and consistently taking that medication while not under supervision; or 4) is the subject of documented evidence that would give rise to a reasonable belief that he or she has a propensity for violent or emotionally unstable conduct.¹¹⁴

106. S.B. 950, 2001 Leg., 76th Sess. (Ca. 2001).

107. CAL. WELF. & INST. CODE §§ 8100-8108 (2001); Press Release, State of California Department of Justice, Office of the Attorney General, Attorney General Kamala D. Harris Announces Seizure of 1,200 Guns from Mentally Unstable and Other Individuals (June 16, 2011), available at <https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-announces-seizure-1200-guns-mentally-unstable>.

108. CAL. WELF. & INST. CODE §§ 8100-8108.

109. *Id.*

110. *Id.*

111. *Id.*

112. Alexandra Sifferlin, *Gun Seizures: Will Taking Guns from the Mentally Ill Prevent More Violent Crime?*, TIME HEALTH & FAMILY (Sept. 23, 2013), <http://healthland.time.com/2013/09/23/gun-seizures-will-taking-guns-from-the-mentally-ill-prevent-more-violent-crime/>.

113. IND. CODE § 35-47-14 (2006).

114. *Id.* § 35-47-14-1.

Under Indiana law, the warrant may be issued by a circuit or superior court if the court finds probable cause to believe that an individual is dangerous and in possession of a firearm.¹¹⁵ To find probable cause, law enforcement personnel must issue an affidavit describing the facts that have led him or her to believe the individual is dangerous and in possession of a firearm.¹¹⁶

In Indiana, law enforcement officers may also seize firearms from individuals whom law enforcement officers believe to be dangerous without a warrant, but after such time, the officer must provide the court with a statement under oath describing the basis for the officer's belief that he or she is dangerous.¹¹⁷

Similarly, Connecticut has mechanisms in place to seize firearms from individuals whom police or state attorneys have probable cause to believe: 1) pose a risk of imminent personal injury to himself, herself, or others; 2) who possess firearms; and 3) such firearms "are within or upon any place, thing or person, such judge may issue a warrant commanding a proper officer to enter into or upon such place or thing, search the same or the person and take into such officer's custody any and all firearms."¹¹⁸ Prior to requesting a warrant from a judge, law enforcement or state attorneys must have "conducted an independent investigation and have determined that such probable cause exists and that there is no reasonable alternative available to prevent such person from causing imminent personal injury to himself or herself or to others with such firearm."¹¹⁹

When considering whether probable cause exists, judges will consider: recent threats of violence directed toward himself, herself, or others, and acts of cruelty to animals.¹²⁰ Factors taken into consideration as to recent threats of violence are: the reckless use of a firearm, history of violence, history of involuntary commitment, and history of substance abuse.¹²¹

The American Psychiatric Association¹²² has already voiced its support for states with statutes in place, such as California, Connecticut, and Indiana, which permit the removal of firearms from persons seen as "imminently dangerous," stating:

States might consider statutes that authorize a permanent removal of

115. *Id.* § 35-47-14-2.

116. *Id.*

117. *Id.* § 35-47-14-3.

118. CONN. GEN. STAT. § 29-38c (2013).

119. *Id.*

120. *Id.*

121. *Id.*

122. COUNCIL ON PSYCHIATRY AND LAW, AM. PSYCHIATRIC ASS'N, ACCESS TO FIREARMS BY PEOPLE WITH MENTAL ILLNESS 3 n.22 (2009).

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.¹²³

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, herself, or others as a result of mental illness.¹²⁴

C. Education

Mental and public health experts have proposed a public health approach to combat gun violence.¹²⁵ A public health approach is geared towards the entire population and not any particular group, while focusing on prevention, and changing the entire population's belief about a particular activity.¹²⁶ Further, this approach creates a set of circumstances, which make it difficult to behave inappropriately by changing social norms and ensuring that the community is responsible for preventing this type of behavior.¹²⁷

The public health approach has contributed to the success of decreasing motor vehicle deaths by 80% in the past sixty years.¹²⁸ The success can be attributed to numerous changes made. For example, discouraging bad behavior by installing speed bumps; adding increased protection in cars, such as safety glass, seatbelts, and airbags; safer roads; and better emergency response teams.¹²⁹ The public health approach has also been key in reducing drunk-driving deaths due to stronger laws and changes in social norms, such as the introduction of the concept of a "designated driver."¹³⁰

Gun deaths can benefit from the same public health approach that was used for motor vehicle deaths.¹³¹ By creating reliable data sources that lend themselves to analysis and evaluation to determine the types of changes needed, sensible policies may be created.¹³² For example, the National Violent Death Reporting System, available in eighteen states, annually reports

123. *Id.*

124. *Id.* at 2.

125. David Hemenway & Matthew Miller, *Public Health Approach to the Prevention of Gun Violence*, 368 *NEW ENG. J. MED.* 1, 1 (2012).

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.* at 1-2.

130. *Id.* at 3.

131. *Id.* at 2.

132. *Id.*

the number of gun deaths.¹³³ A public education campaign that focuses on the high rates of suicide by guns may potentially lead to a change in societal norms, allowing for people to get guns out of the homes of people at risk of suicide. Further, as car manufacturers were pressured to create safer cars, gun manufacturers could play a huge role in decreasing gun deaths. Changes to gun design, such as ensuring they do not go off if dropped, or requiring greater safety locks on magazines, can prevent a significant amount of accidental gun deaths.¹³⁴

Such research and information could easily change social norms, such as those that changed the landscape around drinking and driving in the past few decades. A public health approach could potentially change social norms and place societal pressure on gun owners to safely store their guns. Further, celebrity pull could also be used to curb gun violence, with public service announcements and anti-gun themes.

VIII. CONCLUSION

The issues surrounding mental illness and access to guns are complicated and fraught with the potential to inadvertently make bad law and bad public policy. With each mass shooting involving a person with mental illness comes a renewed cry for a quick fix. The emotions experienced by the public in response to these tragedies are understandably raw and palpable. It is critical that our political leaders educate themselves on the facts and not rush to pass laws that will have the unintended consequences of further stigmatizing individuals with mental illness and creating barriers to people seeking needed treatment, while not making communities any safer. Both the federal and many state governments have committed themselves to work towards making effective changes in the gun control landscape.¹³⁵ Up until now, however, the main changes that have been considered by both sides of the gun control debate have targeted a small group of the population—individuals with mental illness—a group that collectively commits less than 5% of the gun violence in this country.¹³⁶ Politics and big gun lobby money have otherwise left gun laws intact. It is incumbent on our political leaders not to let stigmatizing misconceptions regarding mental illness dictate the democratic process, but instead to enact sensible, public health-driven policies that can effect change. We look to Congress and state legislatures to consider approaches taken by states like California and Indiana, where gun policies have targeted those with a history of violence

133. *Id.*; *National Violent Death Reporting System*, CTR. FOR DISEASE CONTROL AND PREVENTION (Nov. 11, 2013), <http://www.cdc.gov/ViolencePrevention/NVDRS/index.html>.

134. Hemenway & Miller, *supra* note 125, at 2.

135. *See supra* Part V-VI.

136. *See supra* Part VII.A.

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and have taken guns out of the hands of those most at risk. Finally, we call on lawmakers to turn the focus on suicide, an overlooked component of gun control policy. Only by enacting laws that are data-driven and drawn from public health approaches to mental illness and violence, can we decrease the stigma of mental illness and strike a necessary balance between personal privacy and public safety.