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**UPDATED
EVIDENCE
and
POLICY
DEVELOPMENTS**
on
**REDUCING
GUN VIOLENCE
IN AMERICA**



Edited by
**DANIEL W. WEBSTER
and JON S. VERNICK**

Updated Evidence and Policy Developments
on Reducing Gun Violence in America

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Introduction

Daniel W. Webster and Jon S. Vernick

Reducing Gun Violence in America: Informing Policy with Evidence and Analysis was published in 2013 only 44 days after twenty children and six adults were murdered in a mass shooting at Sandy Hook Elementary School in Newtown, Connecticut. This 2014 update to *Reducing Gun Violence in America* summarizes some key points made in the book and provides new data, research, policy developments, and analysis.

Despite the growing number of people killed and wounded in mass shootings and the more than 11,000 murders and 19,000 suicides with guns annually, little has been done to strengthen porous federal gun laws since 1996, when legislation was enacted to prohibit persons convicted of misdemeanor crimes of domestic violence from possessing firearms. In fact, since then, the U.S. Congress has actually weakened federal gun laws by giving the gun industry immunity against most lawsuits, preventing the release of crime gun trace data, mandating the destruction of data from background checks within 24 hours, and limiting research that might threaten the gun lobby.

There was reason to believe that the mass shooting in Newtown might reverse that trend. At a time when mass shootings were occurring with regularity

in the United States, this tragic loss of so many young lives was a seminal event. The outpouring of grief and support for the families were overwhelming. News coverage of the event and of the many difficult issues it raised—the role of guns in violence, gun control, mental illness—was pervasive.

America had been shaken by many other mass shootings in recent years, but the tragedy at Newtown seemed different. Public opinion data collected following the Newtown shootings (see *Reducing Gun Violence in America*, chap. 19) demonstrated overwhelming, bipartisan support to strengthen policies to keep guns from high-risk individuals. New groups to advocate for stronger gun laws were formed, such as Moms Demand Action for Gun Sense in America and Americans for Responsible Solutions, while others saw expanded membership and activism, such as Mayors Against Illegal Guns and Faiths United to Prevent Gun Violence. The Center for American Progress, an influential think tank for progressive policies, took on gun policy as one of its priority issues.

Advocates were pleased to see President Barack Obama and Vice President Joseph Biden press for stronger gun laws, Congress hold hearings on the long-dormant issue, and several bills introduced to strengthen federal gun laws, including one cosponsored by Senators Joe Manchin (D-WV) and Pat Toomey (R-PA)—both from states with large numbers of gun owners—to expand background checks for some gun sales. But the background check bill did not garner sufficient support in the Senate to move forward and the Republican-led House refused to consider it or any other bill to strengthen gun laws. The only gun-related legislation passed was a renewal of a ban against firearms undetectable to metal detectors. The update by McGinty and colleagues in the present volume (chap. 19) articulates the structural hurdles for reforms at the federal level as well as the potential for optimism over the longer term.

In their update (chap. 8), Webster and colleagues note that gun laws were strengthened in 15 states plus the District of Columbia in 2013. The jurisdictions affected accounted for roughly 44% of the U.S. population. Eight of these states made fairly substantial changes, including Colorado, Delaware, and Illinois, each enacting background check requirements for all handgun sales. Maryland adopted a licensing system for handgun purchasers and stronger regulation of gun dealers. California, Connecticut, and Maryland expanded firearm prohibitions for high-risk individuals. Assault weapon bans or restrictions on large-capacity ammunition magazines were passed or strengthened in California,

Colorado, Connecticut, Maryland, and New York. Rosenthal and Winkler's update (chap. 18) indicates that, although there have been a number of legal challenges to gun laws based on claims that the laws violate the Second Amendment, nearly all have been unsuccessful.

Moreover, the Obama administration took action on many relevant executive orders. As the update by Vernick and Webster (chap. 10) discusses, a director of Bureau of Alcohol, Tobacco, Firearms and Explosives was finally confirmed by the Senate and several other gun dealer-specific changes were made. Braga and Gagliardi (chap. 11) identify additional steps the administration could take to strengthen gun law enforcement.

In his essay on advances in gun safety technology (chap. 13), Teret describes progress on personalized guns, which cannot be fired by unauthorized users. This includes executive actions by President Obama, reports by the National Institute of Justice on the technology, challenge grants to design safer guns, and the introduction of legislation to eventually require that all guns be designed so that they are childproof or inoperable by unauthorized users.

We believe too little attention has been given to questions about those conditions that should disqualify someone, even if temporarily, from possessing firearms; the only exception has been issues associated with mental illness. Swanson and Robertson's (chap. 3) update highlights the limits of focusing on mental illnesses as disqualifying conditions as a means to reduce criminal gun violence. Their update, congruent with updates by Wintemute (chaps. 6 and 7) and by Zeoli and Frattaroli (chap. 4), promotes a more data-driven approach to firearms policies to keep guns from individuals whose past criminal behavior, including domestic violence and alcohol offenses, should prohibit firearm possession.

There remains one other reason for at least some long-term optimism. In 2013, federal agencies made awards for or released requests for proposals on research on gun violence. The Institute of Medicine issued a report with recommendations for new federal funding of public health research on gun violence. We also saw new initiatives by private foundations to support research, policy analysis, and prevention efforts directed at reducing gun violence in the aftermath of the tragedy at Newtown. We hope that these efforts will lead to better science that can be applied to the pervasive problem of gun violence in America.

Thinking Differently about Mental Illness, Violence Risk, and Gun Rights

Jeffrey W. Swanson and Allison G. Robertson

Politicians and pundits called the Newtown massacre “unspeakable.” That did not stop anyone from speaking about it. In the year following the Sandy Hook shooting, words poured out by the millions—in the mass media, task-force hearings, legislative debates, and difficult private conversations. After all that talk, what has been accomplished to prevent gun violence?

Some said the problem is all about guns. Others blamed our violent culture. But many Americans—across the political spectrum—concluded that gun violence is about *mental illness*. A post-Sandy Hook national opinion poll found a majority of gun owners as well as non-gun owners favored “increasing government spending to improve mental health screening and treatment as a strategy to prevent gun violence” (Barry et al. 2013). Is that the answer?

The average adult in this country believes that the average person with mental illness is dangerous (Pescosolido et al. 1999). That this media-fueled belief is wrong does not make it less influential in driving public support for violence prevention strategies targeting mental illness (McGinty et al. 2013; The Economist 2013).

One approach is to expand mandatory psychiatric treatment for purportedly dangerous mentally ill persons—to make them behave less dangerously (Torrey 2008). This is the idea behind broadening the scope of involuntary outpatient commitment as part of a gun violence prevention law, as New York State did in its (Newtown-inspired) Secure Ammunition and Firearms Enforcement (SAFE) Act of 2013. Another approach is to limit access to lethal means for persons assumed to be risky by dint of mental health adjudication. Our chapter in *Reducing Gun Violence in America* (Swanson et al. 2013) evaluated that second approach, as implemented in a single state. What can be made of it now?

The centerpiece of our essay was an empirical study of whether a state's policy of reporting gun-disqualifying mental health adjudication records to the FBI's National Instant Criminal Background Check System (NICS) can reduce violent crime in the community. We had assembled a longitudinal database of matched mental health, court, and arrest records for 23,292 persons diagnosed with schizophrenia, bipolar disorder, or major depression who were receiving services in Connecticut's public behavioral healthcare system. We found a statistically significant 6% reduction in violent crime in gun-disqualified individuals attributable to Connecticut's initiating a policy of reporting records to NICS in 2007.

On one level, our study's take-home message was simply that states should proceed to report mental health adjudication records to the NICS—that this actually works to reduce violent crime. A lot of states seem to have gotten that message. Indeed, the number of mental health records deposited with the Federal Bureau of Investigation's background check database rose 77% in one year—from 1.8 million in November 2012 to 3.2 million in November 2013. By comparison, the number of records in the NICS for other categories of prohibited persons rose by 21% in 2013 (FBI 2013a, 2013b).

On another level, our study suggested a more complex answer than simply populating the NICS with states' civil commitment records. The NICS mental-health-reporting effect was indeed statistically significant, but it was substantively trivial; the policy affected only 7% of the study population of persons with serious mental illness, while 96% of the violent crimes recorded for that population were committed by persons who were *not* exposed to the policy. As a result, the estimated net reduction in violent crime in the population was miniscule—a tiny fraction of 1%.

Involuntary commitment orders are uncommon in Connecticut; federal firearms law is nested in widely variable state commitment practices (Appelbaum

and Swanson 2010). In many states, police commonly detain persons who are in a mental health crisis and transport them to a treatment facility, where they are briefly held before either being discharged or persuaded to sign into the hospital voluntarily. Neither of those dispositions currently results in gun disqualification in most states, notwithstanding elevated risk of harm to self or others that may coincide with involuntary hospitalization.

In April 2013, Connecticut passed wide-ranging gun safety legislation that was intended to address the problem of presumably risky people having access to guns. The new law vastly expanded the mental health criteria for firearms disqualification in the state: it prohibits persons from accessing guns for six months following *any voluntary hospitalization* for mental health treatment. This could include anyone who comes knocking on the door of a mental health facility who could benefit from an inpatient stay and is able and willing to consent to admission. Many mental health stakeholders in Connecticut reacted to this provision with alarm. Some clinicians, in particular, expressed concern that it might deter people in a mental health crisis from seeking hospital treatment (Rama 2013).

New York's SAFE Act provided another instructive example of the hazards of crisis-driven policy. Governor Andrew M. Cuomo and state lawmakers rushed to enact sweeping new gun regulations just weeks after the Sandy Hook shooting. The law requires mental health professionals to report to the police the names of patients who threaten to harm themselves or others, to the end that law enforcement may revoke any handgun permit possessed by a reportedly risky mentally ill person. The reporting mandate on mental health clinicians provoked strong controversy and created strange bedfellows, as the psychiatric establishment and gun rights advocates—neither having been consulted in advance—both opposed the SAFE Act for entirely different reasons (Appelbaum 2013; Swanson 2013).

We do need better mental health care in America. An estimated 3.5 million people with serious mental illnesses are going without treatment (Kessler et al. 2001). That is scandalous. But *mentally ill people are not the cause of the violence problem*. If schizophrenia, bipolar disorder, and depression were cured, our society's problem of violence would diminish by only about 4% (Swanson 1994). Does that mean mental illness is irrelevant to gun prevention policy? The answer is no, for two reasons.

One reason is suicide, which accounts for 61% of gun deaths (Centers for Disease Control and Prevention 2013). Mental illnesses are a strong contributing

factor in suicide. Another reason, as mentioned, is that people with serious mental illness who encounter the involuntary treatment system pose an elevated risk for violence toward themselves or others *under certain circumstances and during certain times*, such as the period following an involuntary hospitalization. Temporarily limiting access to firearms for people with mental illnesses—during the particular period when risk is heightened—amounts to a meaningful public health opportunity.

The opportunity must be tempered by the reality that a constitutional right is at stake. The reason that federal law predicates gun prohibition on involuntary civil commitment is not only about the putative correlation of gun violence risk with the dangerousness criteria for commitment. It is also about the civil commitment process itself; that an adversarial court proceeding, with representation of the parties by counsel, affords people due process for the restriction of liberty in hospital confinement and, by proxy, for the removal of a constitutional right to bear arms.

The practical problem with the current federal approach, as implemented variously across the states, is that it misses a lot of people at risk who never get committed, while it prohibits gun ownership by many people after they no longer pose a risk of harming others or themselves. As such, the criteria are both underinclusive and overinclusive.

In theory, we could solve one part of the problem by simply expanding the category of gun-disqualified persons to include anyone who might be at risk. But that introduces another problem—the possibility of infringing on people’s civil rights without due process. And just focusing on persons with mental illness puts a very low ceiling on the proportion of violence that could possibly be prevented. It is time to think differently about gun violence as a public health problem. From that perspective, a fair and effective policy should start with *risk*, not mental illness.

The Consortium for Risk-Based Firearms Policy has crafted state and federal policy recommendations premised on three ideas: (1) that gun violence could be reduced by time-limited restrictions on gun access by persons based on evidence of their individual risk of harming themselves or others; (2) that a history of any kind of violence—particularly with criminal justice involvement—is a better predictor of future gun violence than is the broad category of persons diagnosed with serious mental illnesses; and (3) that expanding gun disqualification based on evidence of risk must achieve balance with policies that offer a timely opportunity for a clinically informed restoration of rights (CRBFP 2013a, 2013b).

In the end, following these principles could help us find our way to more effective policies that will meaningfully reduce the scourge of gun violence in America while safeguarding the rights of lawful gun owners. The problem is multifaceted and longstanding. There is no quick fix. But in the current environment where guns have become a radioactive political symbol, one can only hope that a risk-based approach to limiting firearms would emerge as at least one square inch of common real estate between those who are most concerned with the individual right to bear arms and those inclined toward greater regulation of guns in the public interest. We desperately need a place to start.

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