

Extreme Risk Laws: An Overview

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1



Extreme Risk Laws

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2



CONSORTIUM FOR
RISK-BASED FIREARM POLICY



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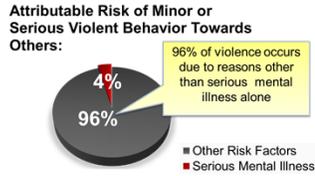


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3

Serious mental illness, on its own, contributes very little to overall violence towards others (a bigger risk factor for suicide)



Slide credit:
Dr. Jeffrey Swanson



4

So if mental illness is the root cause of only 4% of interpersonal gun violence in the US, what causes the other 96%?

- Alcohol misuse
- Anger
- History of abuse or trauma
- Association with delinquent peer groups in adolescence
- Involvement in gangs/illegal drug markets
- Socioeconomic status, e.g. poverty

In terms of predicting interpersonal violence, past history of violent behavior is the best predictor of future violence.

Slide credit:
Dr. Beth McGinty



5

Gun Access and Suicide

Access to firearms is correlated with the risk of suicide. Case-control studies in the US have found that the presence of a firearm in the household is a strong risk factor for **suicide**.

There is a stronger association between mental illness and suicide, but the relationship is complex. In many cases, mental illness in combination with alcohol or drug misuse, stressful or traumatic life events, and other factors combine to increase risk of suicide.

Source: Anglemeyer et al (2014). The Accessibility of Firearms and Risk for Suicide and Homicide Victimization among Household Members: A Systematic Review and Meta-Analysis. *Ann Intern Med.* 160(2): 101-110.

Slide credit:
Dr. Beth McGinty



6

Gun Violence Restraining Order

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Connecticut: Risk Warrants

- State's attorney, assistant state's attorney or two law enforcement officers may petition a judge for a warrant to search for and seize firearms from persons they have probable cause to believe: (1) pose a risk of imminent personal injury to himself, herself, or others; (2) possesses one or more firearms, and (3) such firearm or firearms are within or upon any place, thing or person.
- In determining whether to issue a warrant, judges shall consider:
 - Recent threats or acts of violence by such person directed toward himself, herself, or others; and
 - Recent acts of cruelty to animals.
- Judges may consider, but are not limited to, the following:
 - The reckless use, display or brandishing of a firearm;
 - A history of the use, attempted use, or threatened use of physical force by such person against other persons;
 - Prior involuntary confinement; and
 - The illegal use of controlled substances or abuse of alcohol.
- If a judge issues a warrant, a hearing shall be held within 14 days to consider whether firearms should be removed for up to 1 year or returned to the owner. At the hearing, the state must prove by clear and convincing evidence that the owner remains at "a risk of imminent injury to self or others" for the order to be extended.

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8

Study on Connecticut Risk Warrants

Implementing a LAW AND CONTEMPORARY PROBLEMS (October, August 20, 2016)

IMPLEMENTATION AND EFFECTIVENESS OF CONNECTICUT'S RISK-BASED GUN REMOVAL LAW: DOES IT PREVENT SUICIDES?

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INTRODUCTION

Developing practical, effective, and legally sustainable policies to separate firearms from people at risk of harming themselves or others requires a particularly rigorous, but challenging public health opportunity for gun violence prevention in the United States. Risk-based, time-limited, pre-emptive gun removal is a type of legal tool that three states—Connecticut, Indiana, and California—have adopted, and which has recently attracted considerable attention from policymakers in other jurisdictions. To date, there has been little empirical analysis of these states' practices, and there are important unanswered questions about how they work. What are the legal and logistical barriers to implementing risk-based gun removal laws? Do they reach to target the right people, and are the laws fair? Do they actually help reduce gun deaths?

In 2009, following a highly publicized mass shooting, Connecticut became the first state to implement a risk-based gun removal law. Connecticut's law is the focus of this study.

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9

Study on Connecticut Risk Warrants

Police found firearms in 99 percent of instances when a risk-warrant was issued, removing an average of **seven guns per warrant**.

People in Connecticut subject to risk-warrants had an annual suicide rate **40 times higher** than the general population, showing the increase risk among this population.

Nearly **one-third of all risk warrant subjects** received mental health and substance abuse treatment after a risk-warrant was issued.

For every 10-20 warrants issued – **at least 1 life is saved**.



10

Indiana: Warrant

A judge may issue a warrant for a law enforcement officer to search for and seize firearms from an individual if:

1. The law enforcement officer provides the court a sworn affidavit that:
 - a. States why the law enforcement officer believes that the individual is dangerous and in possession of firearms;
 - b. Describes the law enforcement officer's interactions and conversations with (a) the individual who is alleged to be dangerous; or (b) another individual, if the law enforcement officer believes that information obtained from this individual is credible and reliable that have led the law enforcement officer to believe that the individual is dangerous and in possession of a firearm;
2. The affidavit specifically describes the location of the firearm; and
3. The court determines that probable cause exists to believe that the individual is (a) dangerous; and (b) in possession of a firearm.

No later than 14 days after a law enforcement officer returns the warrant, the court shall conduct a hearing to determine whether firearms should be returned to the individual or retained by law enforcement for up to 180 days. At the hearing, the burden is on the state to prove by clear and convincing evidence that the respondent is dangerous.



11

Indiana: Warrant-less

- If a law enforcement officer seizes a firearm from an individual the officer believes to be dangerous without obtaining a warrant, the officer must submit to the court a written statement under oath or affirmation describing the basis for the officer's belief that the individual is dangerous.
- If, based on the statement, the court finds that probable cause exists to believe the individual is dangerous, the court shall order the law enforcement agency having custody of the firearm to retain it. If the court finds there is no probable cause to believe the individual is dangerous, the court shall order the firearm to be returned to the individual.
- No later than 14 days from the date on which the written submission is made or a warrantless seizure, the court shall conduct a hearing to determine whether firearms should be returned to the individual or retained by law enforcement for up to 180 days. At the hearing, the burden is on the state to prove by clear and convincing evidence that the respondent is dangerous.



12

Isla Vista, California – May 23, 2014

The perpetrator: killed 6 people and injured 14

- Stabbed 3 men in his apartment
- Drove to a sorority house and shot 3 women, killing 2
- Drove to a nearby deli and shot and killed 1 man
- Drove around Isla Vista shooting and wounding several pedestrians
- Shot and killed himself



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13

No Legal Intervention Available

A month prior to the rampage, the perpetrator's mother, alarmed at some "bizarre" videos the perpetrator had posted on YouTube, contacted the perpetrator's therapist. The therapist called a mental health crisis service and they referred the matter to police.



On April 30, 2014, police officers arrived at the perpetrator's residence to conduct a welfare check **but felt they did not have a legal basis to intervene.**

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14



California

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Gun Violence Restraining Order

- Prohibits the subject of the order from having in his or her custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition for the duration of the order.
- Three types of orders:
 - Temporary Emergency GVRO
 - Ex Parte GVRO
 - Final GVRO



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16

Temporary Emergency GVRO

- Petitioner: Law enforcement officer only
- Standard: Reasonable cause to believe that the person presents **an immediate and present danger** of injury to self or others by having a firearm in his or her possession, **AND** less restrictive alternatives have been ineffective, inadequate or inappropriate.
- Duration: 21 days

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17

Ex Parte GVRO

- Petitioner: Law enforcement officer or immediate family member
- Standard: Substantial likelihood that the subject of the petitioner poses a **significant danger in the near future** of personal injury to himself, herself, or another by having a firearm in his or her possession **AND** an ex parte order is necessary to prevent personal injury and less restrictive alternatives have been ineffective, inadequate or inappropriate
- Duration: Up to 21 days

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18

Final GVRO

- Not later than 21 days after the issuance of an ex parte GVRO, the court shall provide a hearing for the respondent to determine if a one-year GVRO should be issued.
- Standard: The petitioner bears the burden of proving by **clear and convincing evidence** that the subject of the petition poses a **significant danger** of personal injury to himself, herself, or another by having possession of a firearm and that a GVRO is necessary to prevent personal injury and less restrictive alternatives have been ineffective, inadequate or inappropriate.
- Duration: One year – subject to renewal or termination

Factors Court Shall Consider

- A recent **threat of violence** or **act of violence** by the subject of the petition directed toward himself, herself, or another.
- A recent violation of a protective order of any kind.
- A conviction of a **violent** offense.
- A **pattern of violent acts** or **violent threats** within the past 12 months, including, but not limited to, threats of violence or acts of violence by the subject of the petition directed toward himself, herself, or another.

Factors Courts May Consider

- The unlawful and reckless use, display, or brandishing of a firearm;
- The history of use, attempted use, or threatened use of physical force against another person;
- Any prior arrest for a felony offense;
- Any violation of a protective order of any kind;
- Evidence of criminal offenses involving controlled substances or alcohol or ongoing abuse of controlled substances or alcohol.

Termination and Renewal

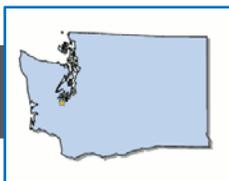
A respondent may petition for termination of a final GVRO one time while the order is in effect. If the court finds, after a hearing, that there is **no longer clear and convincing** evidence that the subject poses a **significant danger to themselves or others**, or that less restrictive alternatives are effective, adequate, or appropriate, the court shall terminate the order.

A **law enforcement officer** or **immediate family member** of the respondent may request the renewal of a one-year GVRO any time **within 3 months of the expiration** of a GVRO. Evidentiary requirements and standard of review are the same as those of an initial one-year GVRO.



Firearm Removal

- A GVRO requires that respondents surrender firearms and ammunition.
- A law enforcement officer serving an order shall request immediate surrender of firearms and ammunition.
- If no request is made, the respondent must surrender, within **24 hours** of service, to a local law enforcement agency, surrender to a licensed firearms dealer, or sell to a licensed firearms dealer.
- The law enforcement agency or licensed firearms dealer taking possession shall issue a receipt to the respondent.
- Within **48 hours** of service of the order, the respondent shall file the original receipt with the court that issued the GVRO and a copy of the receipt to the law enforcement agency that served the order.
- If the respondent fails to surrender within the provided time frame, the court may issue a search warrant



Washington



Oregon

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Florida

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Risk Protection Order

- Prohibits the subject of the order from having in his or her custody or control, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition for the duration of the order.
- Two types of orders:
 - Temporary ex parte risk protection order
 - Final protection order



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Temporary Ex Parte Risk Protection Order

- Petitioner: Law enforcement officer or law enforcement agency only
- Standard: Reasonable cause to believe that the person poses a **significant danger** of causing personal injury to self or others **in the near future** by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm or ammunition.
- Duration: Up to 14 days

Final Risk Protection Order

- Petitioner: Law enforcement officer or law enforcement agency only
- Standard: Clear and convincing evidence that the person poses a **significant danger** of causing personal injury to self or others by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm or ammunition.
- Duration: Up to 12 months

Factors courts may consider

- Recent act or threat of violence by the respondent against himself or herself or others;
- An acts or threat of violence by the respondent within the past 12 months;
- Evidence of the respondent being seriously mentally ill or having recurring mental health issues;
- A violation by the respondent of a protection order or no-contact order;
- A previous or existing risk protection order issued against the respondent;
- A violation of a previous or existing risk protection order issued against the respondent;
- A conviction of the respondent for a crime of domestic violence;
- Use or threatened use of a weapon against himself or herself or others;
- Ownership, access to, or intent to possess firearms;
- Unlawful or reckless use, display, or brandishing of a firearm by the respondent;
- History of use, attempted use, or threatened use of physical force by the respondent against another person;
- History of stalking another person;
- Any prior arrest of the respondent for a violent crime;
- Corroborated evidence of the abuse of controlled substances or alcohol by the respondent;
- Evidence of the recent acquisition of firearms or ammunition by the respondent;
- Any relevant information from family and household members concerning the respondent; and
- Witness testimony taken under oath.

Termination and Extension

The respondent may submit one written request for a hearing to terminate the risk protection order. If the respondent proves by **clear and convincing evidence** that he or she does not pose a significant danger of causing personal injury to himself, herself, or another the court will terminate the order.

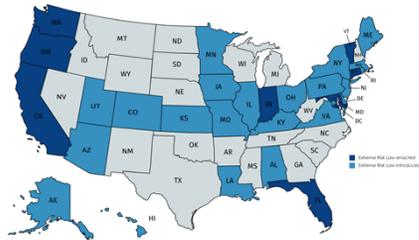
Any time **within 30 days before the end of the order**, the petitioner may request an extension of the risk protection order. Evidentiary requirements and standard of review are the same as those of an initial final risk protection order.



Firearm Removal

- A risk protection order requires that respondents **surrender** firearms and ammunition.
- A law enforcement officer serving an order shall request **immediate surrender** of firearms, ammunition, and any license to carry a concealed weapon or firearm.
- If no request is made, the respondent must surrender all firearms, ammunition, and any license to carry a concealed weapon or firearm immediately after being served by alternate service or immediately after the hearing to the local law enforcement agency.
- Where the respondent fails to surrender firearms, ammunition, or a license to carry a concealed weapon or firearm, law enforcement may seek a search warrant.

Extreme Risk Laws



Relation to Domestic Violence Restraining Orders

Not all domestic violence restraining orders (DVROs) prohibit firearm purchase and possession or require removal of firearms already in the possession of an abuser. Additionally, persons in dating or sexual relationships who do not cohabitate and do not share a child in common may not be eligible for a DVRO. Extreme risk orders may supplement protections provided by DVROs or may be used by individuals who are not eligible to petition for a DVRO.

Persons in abusive relationships should seek assistance from an advocate to determine the best course of action.



34



QUESTIONS?

35
