



Risk-Based Firearm Policy Recommendations for Illinois

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The Educational Fund to Stop Gun Violence

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Additional Resources:

The Consortium for Risk-Based Firearm Policy State Report: *Guns, Public Health, and Mental Illness: An Evidence-Based Approach for State Firearm Policy*
<http://www.efsgv.org/wp-content/uploads/2014/10/Final-State-Report.pdf>

Illinois Council Against Handgun Violence: <http://www.ichv.org/>

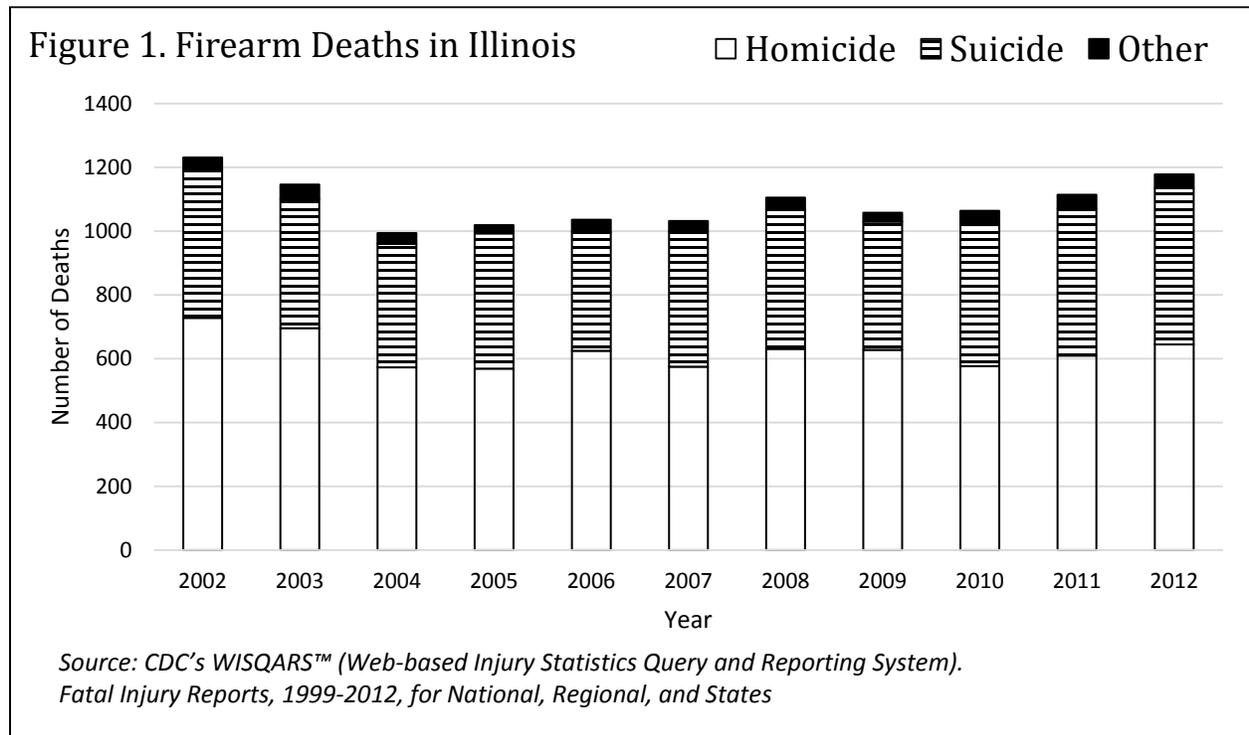
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Introduction

Firearm violence takes a tragic toll on society. There are more than 74,000 firearm injuries¹ and 32,000 deaths²—nearly two-thirds of which are suicides³—each year in the United States. Effective solutions to reduce gun violence demand a comprehensive, evidence-based strategy. The Consortium for Risk-Based Firearm Policy (Consortium), a group of the nation’s leading experts in public health, mental health, and gun violence prevention, came together in March 2013 to address this complex issue. These esteemed researchers, practitioners, and advocates developed evidence-based gun violence prevention policy recommendations to reduce access to firearms by people who are at an increased risk of dangerous behavior. This analysis from the Educational Fund to Stop Gun Violence (Ed Fund) presents the Consortium’s recommendations, and recommends Illinois implement a Gun Violence Restraining Order process, to prohibit individuals at increased risk of dangerousness from accessing firearms. The evidence supporting these recommendations is presented in the full Consortium Report: *Guns, Public Health, and Mental Illness: An Evidence-Based Approach for State Firearm Policy*.⁴

I. Firearm Deaths in Illinois

At least three people die every day from firearm-related injuries in Illinois (1178 total deaths in 2012).⁵ Contrary to national data, which shows the majority of firearm deaths are suicides, the majority of gun deaths in Illinois are homicides⁶ (see Figure 1). Firearm homicides consistently represent more than half of Illinois gun deaths; homicide deaths by firearm accounted for 55% of all firearm deaths in 2012.⁷



II. Consortium Recommendation Summary

The discourse after horrific mass shootings often centers on the link between gun violence and mental illness. While research shows mental illness is strongly associated with suicide,^{8,9} the majority of mentally ill individuals will never be violent toward others.¹⁰⁻¹² There are certain times when mentally ill persons are at increased risk of interpersonal violence, such as the time period surrounding an involuntary hospitalization,^{13, 14} but most people with common mental illnesses are not more violent than the general population without mental illness.¹⁵ Mental illness alone accounts for a very small proportion of societal violence (about 4%),¹⁶ therefore policies must address other risk factors for dangerousness in order to reduce overall violence in society.^{17, 18} Aside from mental illness on its own, stronger predictors for interpersonal violence—including homicide—are a history of violence (violent misdemeanor crime convictions¹⁹ and domestic violence²⁰⁻²²), drug abuse,²³ and alcohol abuse.^{24,25} The Consortium recommends states expand current federal firearm prohibitions to include these broader risk factors for dangerousness. Policies addressing these criteria provide a comprehensive approach to gun violence prevention that is true to the evidence and does not stigmatize mental illness alone as the root cause of violence.

1. Mental Health Risk Factors for Dangerousness

Evidence shows that while mental illness on its own is not a strong predictor for violent behavior toward others, there are certain times when the mentally ill are more prone to violence. The first episode of psychosis, and the time period just before and after an involuntary hospitalization, for example.^{26, 27} Mental illness *is* strongly associated with self-harm, and common mental illnesses such as depression can increase risk of suicide.^{28, 29} Risk of suicide and access to firearms is particularly dangerous; 90% of attempted suicides by firearm are fatal.³⁰ More than 40% of Illinois firearm deaths were by suicide in 2012 (see Figure 1.) and evidence informed policies restricting access to firearms during these periods of crisis may be effective. See below for the Consortium's recommendations regarding mental health risk factors for dangerousness.

Recommendation #1: Current state law should be strengthened to temporarily prohibit individuals from purchasing or possessing firearms after a short-term involuntary hospitalization. Concurrently, the process for restoring firearm rights should be clarified and improved.

- 1.1 States should enact new legislation temporarily prohibiting individuals from purchasing or possessing firearms after a short-term involuntary hospitalization. This prohibition should be predicated on a clinical finding of danger to self or danger to others.

- 1.2 Restoration of an individual's ability to purchase or possess a firearm following a firearm disqualification due to mental illness should be based on an evaluation by a qualified clinician and a finding that the petitioner is unlikely to relapse and present a danger to self or others in the foreseeable future.

2. Other Risk Factors for Dangerousness

As the majority of violence is related to factors other than mental illness alone, the Consortium recommends a risk-based approach to reducing violence, looking at other risk factors for dangerousness. A history of violence,^{31, 32} including violent misdemeanor convictions³³ and perpetration of domestic violence,³⁴⁻³⁶ is the strongest predictor of violence toward others. Research also shows that firearm owners are more likely to abuse alcohol,³⁷⁻⁴⁰ and individuals who abuse alcohol are at increased risk of homicide and suicide.⁴¹ Studies also show that illegal use of controlled substances is related to an increased risk of violence.⁴²⁻⁴⁶ The cognitive impairment associated with drug use also makes it difficult to avoid violent conflict.⁴⁷⁻⁴⁹ See below for the Consortium's recommendations regarding these other risk factors for dangerousness.

Recommendation #2: States should enact new prohibitions on individuals' ability to purchase or possess a firearm that reflect evidence-based risk of dangerousness.

- 2.1 Individuals convicted of a violent misdemeanor should be prohibited from purchasing or possessing firearms for at least ten years.
- 2.2 Individuals who are subject to temporary domestic violence restraining orders should be prohibited from purchasing and possessing firearms for the duration of the temporary order.
- 2.3 Individuals convicted of two or more DWI or DUIs in a period of five years should be prohibited from purchasing and possessing firearms for at least five years.
- 2.4 Individuals convicted of two or more misdemeanor crimes involving controlled substances in a five-year period should be prohibited from purchasing or possessing firearms for at least five years.

3. Periods of Crisis

Law enforcement and concerned family members need tools to temporarily restrict firearms access during periods of crisis. Connecticut⁵⁰ and Indiana⁵¹ have discretionary gun-removal tools for law enforcement, and California⁵² became the first state in the country to pass a law providing family members with a similar option. See below for the Consortium's recommendations regarding these periods of crisis.

Recommendation #3: Develop a mechanism to authorize law enforcement officers to remove firearms when they identify someone who poses an immediate threat of harm to self or others. States should also provide law enforcement with a mechanism to request a warrant authorizing gun removal when the risk of harm to self or others is credible, but not immediate. In addition, states should create a new civil restraining order process to allow family members and intimate partners to petition the court to authorize removal of firearms and temporarily prohibit firearm purchase and possession based on a credible risk of physical harm to self or others, even when domestic violence is not an issue.

- 3.1: Authorize law enforcement to remove guns from any individual who poses an immediate threat of harm to self or others. Law enforcement officers are well versed in the “use of force” continuum, and may also use risk/lethality assessments to judge the risk of particular situations. In emergency situations, this authority can be exercised without a warrant.
- 3.2: Create a new civil restraining order process to allow private citizens to petition the court to request that guns be temporarily removed from a family member or intimate partner who poses a credible risk of harm to self or others. This process should mirror the restraining order process in most states and include a temporary *ex parte* order as well as a long-term order issued after a hearing in which the respondent had an opportunity to participate. Respondents to an order issued through this process (Gun Violence Restraining Order or GVRO) will be prohibited from purchasing and possessing guns for the duration of the order and required to relinquish all firearms in their possession for the duration of the order. Law enforcement officers should be able to request a warrant through this process to remove guns when there is a credible risk of harm that is not immediate.
- 3.3: Include due process protections for affected individuals. Specifically, provide respondents with an opportunity to participate in a hearing after having their guns removed by law enforcement (3.1) or through the GVRO process (3.2) and assure processes are in place for returning all removed guns at the conclusion of the temporary prohibition.

III. Illinois Firearm Prohibitions

Illinois firearms code goes beyond federal law in a few ways,⁵³ including requiring individuals to have a valid Firearm Owner’s Identification (FOID) card before they purchase or possess any firearm.⁵⁴ The card is valid for ten years from the date of issue.⁵⁵

Among other approaches, Illinois goes beyond federal firearm prohibitions by prohibiting firearm possession from:

- Individuals who have been admitted (involuntarily or voluntarily) to a mental health facility within the previous five years;⁵⁶
- Individuals under 21 years old who have been convicted of a misdemeanor (other than a traffic offense).⁵⁷

Illinois also requires physicians and clinical psychologists to notify the Department of Health and Human Services, and law enforcement and school administrators to report to the Department of State Police, any individual posing a “clear and present danger” to self or others.⁵⁸

As defined by the statute, “Clear and present danger” is an individual who:

“(1) communicates a serious threat of physical violence against a reasonably identifiable victim or poses a clear and imminent risk of serious physical injury to himself, herself, or another person as determined by a physician, clinical psychologist, or qualified examiner; or (2) demonstrates threatening physical or verbal behavior, such as violent, suicidal, or assaultive threats, actions, or other behavior, as determined by a physician, clinical psychologist, qualified examiner, school administrator, or law enforcement official.”

From 430 Ill. Comp. Stat. Ann. 65/1.1

Illinois authorizes state police to deny FOID applications, and revoke and seize FOID cards from:

- Individuals who pose a “clear and present danger” to themselves or others due to a mental condition;⁵⁹
- Individuals under 21 years old who have been convicted of a misdemeanor (other than a traffic offense);⁶⁰
- Individuals convicted of certain violent misdemeanors within the previous five years;⁶¹
- Individuals convicted of an offense involving the use (or possession) of a controlled substance, cannabis, or methamphetamine within the previous year.⁶²

Illinois requires state police to deny FOID applications, and revoke and seize FOID cards from individuals subject to orders of protection, including temporary orders.⁶³

Even with these expanded prohibitions, law enforcement and concerned family members lack clear legal authority to restrict firearms access from individuals in crisis.

IV. Next Steps for Illinois

Illinois should implement Consortium Recommendation #3, and create a Gun Violence Restraining Order (GVRO) mechanism to enable law enforcement, family members, and intimate partners to petition the court to temporarily prohibit an individual in crisis from purchasing or possessing firearms.

What is a Gun Violence Restraining Order?

The Gun Violence Restraining Order offers law enforcement, family members, and intimate partners a tool for temporarily disarming an individual at increased risk of dangerous behavior. By intervening to remove guns already possessed and prohibit new gun purchases, the GVRO creates safer circumstances for the individual to seek treatment (e.g. for substance abuse, mental disorders) or engage other resources to address the underlying causes of the dangerous behaviors.

The GVRO is based on the long-standing infrastructure and procedure of Domestic Violence Restraining Orders in place in all 50 states, and would involve a court hearing and clearly defined due process protections.

Why is it needed?

There is currently no mechanism to restrict firearm access on a case-by-case basis when a person is dangerous to self or others but they have not been convicted of a prohibitory crime. A Gun Violence Restraining Order offers law enforcement, family members, and intimate partners a judicial pathway for temporarily removing firearms and prohibiting future gun purchases for the duration of the Order.

How would it work?

A law enforcement officer, family member, or intimate partner would request that a civil court in their jurisdiction issue a Gun Violence Restraining Order based on the facts they present through a formal, written application and at a hearing before a judge. This does not involve a criminal complaint. Specifically, the court process would include:

Stage 1: An initial hearing in which a judge considers the information presented and assesses whether the person is at risk of harming himself or herself or someone else.

If issued, an ex-parte GVRO will be in effect for a short period of time. If the respondent does not own or possess firearms, he or she is temporarily prohibited from purchasing a firearm. If the respondent does own or possess firearms, they must be removed for the duration of the order.

Stage 2: Before the *ex parte* GVRO expires, a subsequent hearing will take place in which both the petitioner (person seeking the order) and respondent (person identified as dangerous) have an opportunity to be heard and to address the charge of dangerousness.

If after the hearing the court determines the respondent is dangerous, the order prohibiting the purchase and possession of firearms will be extended for up to one year.

Law enforcement officers routinely serve restraining orders. Efforts to make sure they are trained and well-versed in communicating with respondents to ensure safe removal of the firearm are important. Firearms removed in conjunction with the GVRO service may be held by law enforcement, sold to a federally licensed firearm dealer, or held by a federally licensed firearm dealer. If at the expiration of the order the respondent is not otherwise prohibited from purchasing a gun and a new GVRO has not been issued, all firearms will be returned.

What needs to happen in order for GVROs to be available?

Authority to issue Gun Violence Restraining Orders must be created through Illinois law. Illinois has the infrastructure in place to support domestic violence restraining order applications, hearings, and service. Gun Violence Restraining Orders (GVROs) can be added to this infrastructure, creating a new civil process. Resources to assure that firearms are removed and new firearm purchases prohibited through the GVRO process are critical.

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⁴ Consortium for Risk-Based Firearm Policy. (2013). *Guns, Public Health and Mental Illness: An Evidence-Based Approach for State Policy*. Retrieved from <http://www.efsgv.org/wp-content/uploads/2014/10/Final-State-Report.pdf>

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