

Risk-Based Firearm Policy Recommendations for Pennsylvania

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The Educational Fund to Stop Gun Violence

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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>

CeaseFirePA: <http://www.ceasefirepa.org/>

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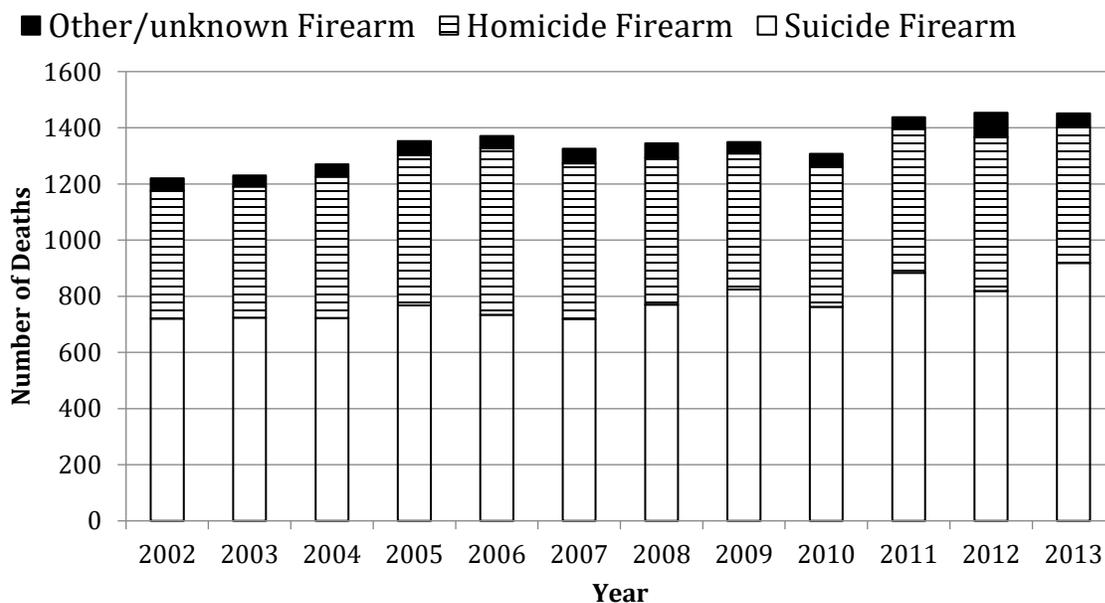
Introduction

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) examines how Pennsylvania law compares to the Consortium’s recommendations, and outlines steps Pennsylvania can take 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 Pennsylvania

Almost four people die every day from firearm-related injuries in Pennsylvania (1,451 total deaths in 2013).⁵ Similar to national data, the majority of gun deaths in Pennsylvania are suicides⁶ (see Figure 1). Firearm suicides consistently represent more than half of Pennsylvania gun deaths, and accounted for 63% of all firearm deaths in 2013.⁷

Figure 1. Firearm Deaths in Pennsylvania



Source: CDC’s WISQARS™ (Web-based Injury Statistics Query and Reporting System). *Fatal Injury Reports, 1999-2013, for National, Regional, and States*

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 half of Pennsylvania firearm deaths were by suicide in 2013 (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. Individuals who abuse alcohol are at increased risk of homicide and suicide,³⁷ and research also shows that firearm owners are more likely to abuse alcohol.³⁸⁻⁴¹ 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. Opportunities for Pennsylvania

Pennsylvania firearms law is stronger than federal law in a few ways.⁵³ Among other approaches, Pennsylvania goes beyond federal firearm prohibitions by including the following firearm disqualifying categories:

- Individuals subject to emergency mental health treatment if the physician certified that inpatient care was necessary, or the individual was committable⁵⁴

- Individuals subject to temporary domestic violence restraining orders, if a firearms prohibition was ordered by the judge⁵⁵
- Individuals convicted of driving under the influence of alcohol or a controlled substance three or more times within a five-year period⁵⁶

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

There are opportunities for Pennsylvania to expand current firearm prohibitions to address risk factors for dangerousness, and Pennsylvania should take the following steps to meet the Consortium's recommendations:

Consortium Recommendation #1: Mental Health Risk Factors for Dangerousness

- Prohibit individuals following a short-term involuntary hospitalization from purchasing or possessing a firearm for five years.
- Refine the restoration process to include evidence from a clinician that the petitioner is unlikely to be a danger to themselves or others in the foreseeable future.

Consortium Recommendation #2: Other Risk Factors for Dangerousness

- Prohibit individuals convicted of a violent misdemeanor from purchasing or possessing a firearm for at least ten years.
- Refine the current discretionary prohibition for respondents to temporary domestic violence restraining orders by prohibiting all respondents to temporary domestic violence restraining orders.
- Prohibit individuals convicted of two or more misdemeanor crimes involving controlled substances in a five-year period from purchasing or possessing firearms for at least five years.

Consortium Recommendation #3: Periods of Crisis

- 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.

IV. Policy Analysis

An in depth analysis of current Pennsylvania law and the corresponding Consortium recommendations is provided in the table below.

Consortium Recommendation #1: Mental Health Risk Factors for Dangerousness

1.1: Prohibit individuals following a short-term involuntary hospitalization from purchasing or possessing a firearm.

Current Statute

18 Pa. Cons. Stat. Ann. § 6105:

(a) *Offense defined.--*

(1) A person who has been convicted of an offense enumerated in subsection (b),...or whose conduct meets the criteria in subsection (c) shall not possess, use, control, sell, transfer or manufacture or obtain a license to possess, use, control, sell, transfer or manufacture a firearm in this Commonwealth.

(c) Other persons.--*In addition to any person who has been convicted of any offense listed under subsection (b), the following persons shall be subject to the prohibition of subsection (a):*

*(4) A person who has been adjudicated as an incompetent or who has been involuntarily committed to a mental institution for inpatient care and treatment under section 302, 303 or 304 of the provisions of the act of July 9, 1976 (P.L. 817, No. 143), known as the Mental Health Procedures Act. This paragraph shall not apply to any proceeding under section 302 of the Mental Health Procedures Act **unless the examining physician has issued a certification that inpatient care was necessary or that the person was committable.***

Mental Health Procedures Section 302:

50 Pa. Cons. Stat. Ann. § 7302

(a) Application for Examination.--*Emergency examination may be undertaken at a treatment facility upon the certification of a physician stating the need for such examination; or upon a warrant issued by the county administrator authorizing such examination; or without a warrant upon application by a physician or other authorized person who has personally observed conduct showing the need for such examination.*

(b) Examination and Determination of Need for Emergency

Treatment.--*A person taken to a facility shall be examined by a physician within two hours of arrival in order to determine if the person is severely mentally disabled within the meaning of section 301 and in need of immediate treatment. If it is determined that the person is severely mentally disabled and in need of emergency treatment, treatment shall be begun immediately. If the physician does not so find, or if at any time it appears there is no longer a need for immediate treatment, the person shall be discharged and returned to such place as he may reasonably direct. The physician shall make a record of the examination and his findings. In no event shall a person be accepted for involuntary emergency treatment if a previous application was granted for such treatment and the new application is not based on behavior occurring after the earlier application.*

Summary & Recommendation

- PA prohibits those subject to emergency mental health treatment if the physician certifies that inpatient care was necessary, or the individual met commitment criteria. There is no specified duration for the prohibition.
- Recommend specifying a five-year prohibition following short-term involuntary hospitalization.

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| 1.2: Refine the restoration process to include evidence from a clinician that the petitioner is unlikely to be a danger to themselves or others in the foreseeable future. | |
| <p>Current Statute 18 Pa. Cons. Stat. Ann. § 6105.1: (a) Restoration.--A person convicted of a disabling offense may make application to the court of common pleas in the county where the principal residence of the applicant is situated for restoration of firearms rights. The court shall grant restoration of firearms rights after a hearing in open court to determine whether the requirements of this section have been met unless:</p> <p>(1) the applicant has been convicted of any other offense specified in section 6105(a) or (b) (relating to persons not to possess, use, manufacture, control, sell or transfer firearms) or the applicant's conduct meets the criteria in section 6105(c)(1), (2), (3), (4), (5), (6) or (7);</p> <p>(2) the applicant has been convicted of any other crime punishable by imprisonment exceeding one year as defined in section 6102 (relating to definitions); or</p> <p>(3) the applicant's character and reputation is such that the applicant would be likely to act in a manner dangerous to public safety.</p> | <p>Summary & Recommendation</p> <ul style="list-style-type: none"> • PA does not restore firearms rights unless the petitioner's character and reputation show they are not likely to act in a manner dangerous to public safety. • PA does not require evidence from a clinician that the petitioner is unlikely to be dangerous to themselves or others in the foreseeable future. • Recommend implementing Consortium recommendation 1.2 to include such evidence from a clinician. |
| Consortium Recommendation #2: Other Risk Factors for Dangerousness | |
| 2.1: Prohibit individuals convicted of a violent misdemeanor from purchasing or possessing a firearm for at least ten years. | |
| <p>Current Statute 18 Pa. Cons. Stat. Ann. § 6105: (1) A person convicted of an offense enumerated under subsection (b)</p> <p>(b) Enumerated offenses.--The following offenses shall apply to subsection (a): Section 908 (relating to prohibited offensive weapons). Section 911 (relating to corrupt organizations). Section 912 (relating to possession of weapon on school property). Section 2502 (relating to murder). Section 2503 (relating to voluntary manslaughter). Section 2504 (relating to involuntary manslaughter) if the offense is based on the reckless use of a firearm. Section 2702 (relating to aggravated assault). Section 2703 (relating to assault by prisoner). Section 2704 (relating to assault by life prisoner). Section 2709.1 (relating to stalking)...</p> | <p>Summary & Recommendation</p> <ul style="list-style-type: none"> • PA specifies a lengthy list of prohibitory offenses, but it does not encompass all violent misdemeanor convictions. • Recommend implementing Consortium recommendation 2.1 to include a ten year prohibition for violent misdemeanants. |

| 2.2: Prohibit individuals subject to a temporary domestic violence restraining order from purchasing or possessing a firearm for the duration of the order. | |
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| <p>Current Statute 18 Pa. Cons. Stat. Ann. § 6105: (6) <i>A person who is the subject of an active protection from abuse order issued pursuant to 23 Pa.C.S. § 6108, which order provided for the relinquishment of firearms during the period of time the order is in effect. This prohibition shall terminate upon the expiration or vacation of an active protection from abuse order or portion thereof relating to the relinquishment of firearms.</i></p> <p>23 Pa.C.S. § 6108: (a) <i>General Rule. The court may grant any protection order or approve any consent agreement to bring about a cessation of abuse of the plaintiff or minor children. The order or agreement may include:</i> (7) <i>Ordering the defendant to temporarily relinquish to the sheriff the defendant's other weapons and ammunition which have been used or been threatened to be used in an incident of abuse against the plaintiff or the minor children and the defendant's firearms and prohibiting the defendant from acquiring or possessing any firearm for the duration of the order and requiring the defendant to relinquish to the sheriff any firearm license issued under section 6108.3 (relating to relinquishment to third party for safekeeping) or 18 Pa.C.S. § 6106 (relating to firearms not to be carried without a license) or 6109 (relating to licenses) the defendant may possess. A copy of the court's order shall be transmitted to the chief or head of the police force or police department of the municipality and to the sheriff of the county of which the defendant is a resident.</i></p> | <p>Summary & Recommendation</p> <ul style="list-style-type: none"> • PA authorizes judges to include a firearm prohibition when issuing temporary abuse protection orders, therefore resulting prohibitions are discretionary. • Recommend implementing Consortium recommendation 2.2 to prohibit all respondents to temporary domestic violence restraining orders. |
| 2.3: Prohibit individuals convicted of two or more DUI or DWIs within a five year period from purchasing or possessing firearms for at least five years. | |
| <p>Current Statute 18 Pa. Cons. Stat. Ann. § 6105: (3) <i>A person who has been convicted of driving under the influence of alcohol or controlled substance as provided in 75 Pa.C.S. § 3802 (relating to driving under influence of alcohol or controlled substance) or the former 75 Pa.C.S. § 3731, on three or more separate occasions within a five-year period. For the purposes of this paragraph only, the prohibition of subsection (a) shall only apply to transfers or purchases of firearms after the third conviction.</i></p> | <p>Summary & Recommendation</p> <ul style="list-style-type: none"> • PA prohibits individuals convicted of three or more DUIs within a five year period. As such, this PA law was a model for developing Consortium recommendation 2.3. PA could consider redefining the prohibition to be based on two or more DUI/DWI convictions within a five year period to more fully meet Consortium recommendation 2.3. |

2.4: Prohibit individuals convicted of two or more misdemeanor drug crimes within a five year period from purchasing or possessing firearms for at least five years.

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| <p>Current Statute</p> <p><i>18 Pa. Cons. Stat. Ann. § 6105:</i> <i>(2) A person who has been convicted of an offense under the act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act, or any equivalent Federal statute or equivalent statute of any other state, that may be punishable by a term of imprisonment exceeding two years.</i></p> <p><i>18 Pa. Cons. Stat. Ann. § 106:</i> <i>(6) A crime is a misdemeanor of the first degree if it is so designated in this title or if a person convicted thereof may be sentenced to a term of imprisonment, the maximum of which is not more than five years.</i> <i>(7) A crime is a misdemeanor of the second degree if it is so designated in this title or if a person convicted thereof may be sentenced to a term of imprisonment, the maximum of which is not more than two years.</i> <i>(8) A crime is a misdemeanor of the third degree if it is so designated in this title or if a person convicted thereof may be sentenced to a term of imprisonment, the maximum of which is not more than one year.</i></p> | <p>Summary & Recommendation</p> <ul style="list-style-type: none"> • PA prohibits individuals convicted of drug related crimes punishable by more than two years imprisonment; this does not include all drug related misdemeanor crimes. • Recommend implementing Consortium recommendation 2.4 to prohibit individuals convicted of two or more misdemeanor drug crimes within a five year period for five years. |
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Consortium Recommendation #3: Periods of Crisis

3.1-3.3: 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.

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| <p>Current Statute</p> <p><i>n/a</i></p> | <p>Summary & Recommendation</p> <ul style="list-style-type: none"> • There is no mechanism for law enforcement to apply for a warrant to remove firearms in Pennsylvania. • There is no civil mechanism for private citizens to petition the court to remove firearms. Nor is there a mechanism for private citizens to contact law enforcement to petition the removal of guns for the broader dangerous behaviors we identify in the state report. • Recommend implementing Consortium recommendations 3.1, 3.2., and 3.3. |
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