Background Checks for all Gun Buyers and Gun Violence Restraining Orders: State Efforts to Keep Guns from High-Risk Persons

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Introduction
Despite an upsurge of public interest in gun violence prevention since the Newtown shooting, the U.S. Congress has been unable to overcome resistance by a vocal minority to enact new gun laws. And more than 40 states have laws that specifically forbid cities from enacting at least some types of local public safety ordinances relating to firearms. As a result, states have become the primary engines of change for firearm policy.

In particular, state legislation poses opportunities for making it more difficult for high-risk persons to purchase or possess firearms. Newly enacted legislation of this type includes laws requiring background checks on all gun sales, including guns sold by unlicensed sellers, as well as innovative efforts to temporarily remove guns from persons who pose a danger to themselves or others through gun violence restraining orders.

Under federal law, anyone who buys a gun from a licensed firearm dealer must undergo an instant criminal background check. The check is designed to determine if the prospective buyer fits any criteria that prohibit purchase or possession of firearms, including a prior felony conviction, certain domestic violence misdemeanors, unlawful use of controlled substances, or, inter alia, commitment to a mental institution.

However, federal law does not require a background check when a gun is purchased from someone who is not a licensed gun dealer. People prohibited from purchasing firearms may not legally acquire guns under any circumstances, but when no check is required to verify their status, there is nothing to enforce the prohibition.

The Riskiness of Unlicensed Online Sales
Since 1994, prohibited people have attempted to purchase firearms from licensed dealers nearly three million times but were stopped by background checks. In light of this, common sense suggests that offering these persons an alternative method to buy firearms without background checks will pose an elevated risk to public safety. A variety of data corroborate this.

Offenders say so themselves. Surveys of people incarcerated for crimes involving handguns show that more than three-quarters obtained their firearms from a person not required to conduct a background check under federal law — whether with an acquaintance or “street” source.

Just as commerce in many consumer goods has moved online, there is now a thriving trade in firearms conducted on thousands of websites, much of it between unlicensed sellers. In a series of investigations of online gun markets, including Armslist.com, one of the largest online gun markets with over half a million unique gun ads listed by unlicensed sellers each year, Everytown for Gun Safety showed that between four and ten percent of would-be online buyers are prohibited by federal or state law from possessing firearms due to prior felony or domestic violence convictions or active domestic violence restraining orders, but were shopping for guns anyway. That share is four to fifteen times higher than the share of prohibited buyers blocked by the background check system at licensed dealers in the states examined.

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Background Check and Permit-to-Purchase Laws

Currently 18 U.S. states go beyond federal law and require a background check for all handgun sales, whether from a licensed dealer or unlicensed seller. These laws fit into two main groups (see Figure 1). Ten states require prospective buyers to first obtain a license or permit prior to initiating a purchase, whether at a gun store or show or elsewhere, and a background check is required to obtain the permit. The permit must be periodically renewed, with the duration varying from state to state. Some permit-to-purchase states also give the license issuer the authority to deny permits to people who may pose a threat to public safety, even if they do not fit into a specified category. For example, in New Jersey authorities may deny a permit to one who is not “of good character and good repute in the community in which he lives...”

Eight states require background checks for all handgun transfers at the point-of-sale without a permitting system. In these states, unlicensed sellers must conduct background checks on potential buyers with the help of a third party. Typically a licensed dealer or the local police conduct the check on behalf of the unlicensed seller. (One state, Nebraska, may fit into either the permit category or the background check without a permit category, depending on how the law is interpreted.)

States with laws requiring background checks of all buyers are unevenly distributed throughout the U.S., with a greater density of these laws in the northeast and western states. That geographic distribution became even more skewed in 2007 when Missouri repealed its longstanding permit-to-purchase law. An evaluation of Missouri’s repeal showed that it was associated with a 25% increase in annual firearm homicides, or an additional 68 homicides per year through 2010. These changes occurred at the same time that the national firearm homicide rate declined 5.5% and the rate in the eight states bordering Missouri fell 2.2%. Missouri’s repeal was not, however, associated with any change in homicides committed with other weapons (or no weapon). This is important because if such a change had been observed, one might suspect that some other factor, other than the repeal, was affecting homicide rates.

Connecticut is one of the newest states to enact a permit-to-purchase law, in 1995. An evaluation using somewhat different methods than the Missouri study indicated that enactment of Connecticut’s law was associated with a 40% reduction in the firearm homicide rate through 2005, with no effect on non-firearm homicides.

One mechanism by which background checks may affect homicide rates is through their effect on interstate gun trafficking. An analysis of ATF data showed that states that do not require background checks for all handgun sales via a permit-to-purchase law are three times more likely to “export” crime guns (i.e., be the source state of guns later recovered and traced by the police) than states that do.

Gun purchase laws also affect rates of violence beyond homicides. Most deaths by gunfire in the U.S. are suicides. Research found a 15.4% reduction in firearm suicide rate associated with Connecticut’s enactment of a permit-to-purchase law, and a 16.1% increase in firearm suicide rate following Missouri’s repeal.
Background Check Laws and Behavior Change

The crucial contribution that background checks make to public safety and health plays out across the country as people prohibited from purchasing firearms, who would have failed background checks at licensed gun dealers, are nevertheless able to buy firearms from unlicensed sellers and then perpetrate crimes.\(^1\) Colorado’s recent enactment of a state background check requirement provides a case study of how legislative change can affect population behavior in ways that help safeguard public health.

Colorado has required background checks for sales by unlicensed sellers at gun shows since 2000 (gun sellers elsewhere could voluntarily request their buyer undergo a background check but were not required to do so).\(^2\) In 2013, the state’s legislators passed HB 1229, extending the background check requirement to all unlicensed sellers, with some exceptions including gifts to immediate family members and some types of temporary transfers.

The Colorado Bureau of Investigation (CBI) conducts background checks of would-be gun buyers in the state. Would-be gun buyers who are denied may appeal the finding, and CBI resolves these cases within 30 days.\(^3\) On a monthly basis, CBI publishes the number of gun sales by licensed gun dealers and by unlicensed sellers that were approved or denied.\(^4\) CBI has also intermittently issued data separating sales from unlicensed sellers that occurred at gun shows from those that did not, and to reflect denials that were appealed and ultimately reversed.

These data show that the expansion of the state’s background check system has made it more difficult for some high-risk people to acquire guns. In the first two years after passage of HB 1229, CBI conducted 29,634 background checks for unlicensed sales of firearms. Over that period, 393 sales from unlicensed sellers were denied and upheld, including to people convicted of assault or sexual assault, people under restraining orders, and people prohibited due to mental illness or mental impairment. The number of checks conducted for unlicensed sales has increased since the law’s passage.

The data also demonstrate the specific changes wrought in gun seller behavior. At the time of passage of the law, even during a period of record-high gun sales, CBI conducted few checks for sales by unlicensed sellers outside of gun shows. But since enactment, the number has steadily increased, and by June 2015, background checks conducted for unlicensed transfers at sites other than gun shows outnumbered those at gun shows seven to one (Figure 2). This suggests unlicensed sellers increasingly require background checks of their buyers before completing their sales.

Gun Violence Restraining Orders

The gun violence restraining order (GVRO) is an evidence-based policy that complements policies such as background checks for all gun buyers. GVROs give law enforcement and families the authority they need to petition a court and temporarily remove firearms from an individual who presents a danger to himself or to others during times of crisis, regardless of whether that person has been diagnosed with a mental illness.\(^5\)

Additionally, the GVRO temporarily prevents these individuals from purchasing new firearms and ammunition during the time that the order is in effect. By targeting high-risk individuals on the basis of behavior indicating they are a danger to themselves or others, regardless of a mental illness diagnosis,
the GVRO can reduce gun violence without promulgating the false narrative that mental illness itself is the root cause of gun violence.

In March of 2013, a group of researchers, public and mental health practitioners, and gun violence prevention advocates met to discuss the scientific evidence and identify areas of consensus at the intersection of mental illness, gun violence, and policy. This group, now known as the Consortium for Risk-Based Firearm Policy (Consortium), agreed on one guiding principle: while restricting firearm access on the basis of certain dangerous behaviors is supported by the evidence, restricting access on the basis of mental illness diagnoses alone is not. The Consortium reviewed evidence that the vast majority of people with mental illness are never violent, and only 4% of interpersonal violence is attributable to mental illness alone. The GVRO, as fully conceived by the Consortium, is a civil order modeled on the well-established system of domestic violence restraining orders that allows law enforcement and families to intervene before an act of violence occurs. In 2014, California enacted a GVRO law that allows both family members and law enforcement to petition for orders. Indiana and Connecticut have GVRO-type laws that are limited to law enforcement petitioners.

Data are emerging about the effectiveness of GVRO-type laws. An evaluation of the first 14 years (1999-2013) of Connecticut’s risk-warrant law shows that there were 762 risk-warrants issued, with significantly more widespread use after the 2007 mass shooting at Virginia Tech. In nearly all cases (99%), police found and removed firearms when they conducted a search, with an average of seven guns removed per subject. When information was available, the majority of cases (61%) listed suicidality or self-injury as a concern. Despite the documented elevated risk of self-harm, most risk-warrant subjects (88%) did not have contact with the public behavioral health system in the year before the risk-warrant was served. However, in the year following gun removal, nearly one-third (29%) of risk-warrant subjects received treatment in the state system, indicating that the risk-warrant provided an entryway to critically needed mental health and substance use related services. Notably, the study estimated there was one averted suicide for every 10 to 20 gun removals — saving 38 to 76 lives over the period of study.

Other states are currently considering enacting their own GVRO-type laws. The GVRO policy fills an important gap in current state laws by preventing violent acts through the temporary removal of firearms from individuals in crisis who present a danger to themselves or to public safety. Moreover, data from Connecticut demonstrate that the GVRO can be a vehicle for individuals to get the healthcare they need.

**Conclusion**

Keeping guns from high-risk persons is a proven violence prevention strategy. With more than 36,000 gun deaths in the U.S. in 2015 alone, additional legal innovation as well as political will to act are needed.

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