Response to Gun Violence and the Connecticut Mental Health System

The National Association of Mental Health Program Directors (NASMHPD) Forensic Division
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Director of Forensic Services
Timeline

• 1923: CT enacted pistol permit laws; aliens and minors prohibited

• 1947: CT prohibits gun permit to those convicted of felony; determination of “suitability to carry weapons”

• 1968: Federal Gun Control Act
  – Prohibitions under 18 USC § 922(d)(4):
    • Any person adjudicated as a mental defective or has been committed to any mental institution
“adjudicated as a mental defective”

• 27 CFR 478.11
  – (a) A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease:
    • (1) Is a danger to himself or to others; or
    • (2) Lacks the mental capacity to contract or manage his own affairs
  – (b) The term shall include—
    • (1) A finding of insanity by a court in a criminal case; and
    • (2) Those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to articles 50a and 72b of the Uniform Code of Military Justice, 10 U.S.C. 850a, 876b.
Corresponding Adjudication Categories in CT

• Civil Commitment
• Conservator appointment
• NGRI
• Incompetent to stand trial
Timeline (2)

- **1993: Federal Brady Handgun Violence Prevention Act**
  - Introduced 1987, faced opposition from NRA
    - 5 day waiting period to sunset after 5 years
    - Switch to instant background check (NICS)

- **CT PA 94-1**
  - Prohibits gun permit to those found NGRI for 20 years after release from hospital, and confined under civil commitment in last 12 months [CGS 29-28]
  - Possession by such persons made a felony [CGS 53a-217c]
Timeline (3)

• 1997: *Printz v U.S.* [521 U. S. 898]
  – 9th Circuit held Brady Bill constitutional
  – amicus from NRA
  – USSC Holding: Brady Bill violates 10th amendment if participation not voluntary for states
Timeline (4)

- March 6, 1998: **CT Lottery Shootings**
- March 11, 1998: AN ACT CONCERNING HANDGUN SAFETY referred to Judiciary Committee
- March 16, 1998: public hearing
- May 4, 1998: PA 98-129 passed
- May 27, 1998: signed by Governor
- Ended “honor system” for civil commitments
PA 98-129, S. 18

- Established requirements for Probate Courts, DMHAS and Dept of Public Safety (DPS; now DESPP) to share information about civil commitments and gun permits
  - 17a-500(b)
    - “...the Commissioner of Mental Health and Addiction Services... shall maintain information on commitment orders by a probate court and shall provide such information to the Commissioner of Emergency Services and Public Protection in fulfillment of his obligations... for a person who applies for or holds a permit or certificate .... The Commissioner of Emergency Services and Public Protection shall maintain as confidential any such information provided to him and shall use such information only for purposes of fulfilling his obligations...”
• “The Commissioner of Mental Health and Addiction Services shall obtain from the Commissioner of Emergency Services and Public Protection the status of any firearm application, permit or certificate ...of each person who is the subject of an order of commitment ..., in such a manner so as to only receive a report on the firearm application, permit or certificate status of the person with respect to whom the inquiry is made.”
Implementation

• Dual confidentiality requirements and limits only to applicable persons required creation of an automated database checking system ("Black Box")
  – Civil commitment database not available to DESPP
  – Gun permit database not available to DMHAS
  – When matches occur, both agencies are notified in order to take statutory action
Implementation (2)

• § 17A-500c(3)
  – “The Commissioner of Mental Health and Addiction Services shall advise the hospital for psychiatric disabilities to which a person has been committed of the status of a firearm application, permit or certificate of such person …, as reported by the Commissioner of Emergency Services and Public Protection for consideration by such hospital in any psychiatric treatment procedures.”

• DESPP revokes permit (per § 29-32) and orders transfer/surrender of firearm within 2 business days (per § 29-36k)
• Since 1998, 7,590 civil commitments reported  
  – 4,775 unduplicated  
• 81 unique matches have occurred (1%)  
  – Only 1 of the 81 has been a person applying for a gun permit after a civil commitment (0.013% of reported civil commitment adjudications resulted in permit denial over 16 year period)  
  – Other 80 have been individuals civilly committed after holding a gun permit
CT Gun Seizure legislation 1999

• Bill started in January as minor modifications of gun permit statutes (CGS 29-28 to 29-32)
• Columbine shootings 4/20/99 (13 months after Lottery shootings)
• Bill expanded to permit gun seizures with warrant (PA 99-212, S. 18)
  – Began as discussion of having psychiatrists evaluate persons for safety to have guns
  – Evolved to less stigmatizing notion of “imminent risk” regardless of mental health history
§ 29-38c(b)

• Requires warrant:
  – “...probable cause to believe that (1) a person poses a risk of imminent personal injury to himself or herself or to other individuals,...”
  • Recent threats or acts of violence to self/others
  • recent acts of cruelty to animals
  • Judge may also consider:
    – the reckless use, display or brandishing of a firearm
    – a history of the use, attempted use or threatened use of physical force against other persons
    – prior involuntary psychiatric hospitalization
    – illegal use of controlled substances or abuse of alcohol
§ 29-38c(d)

“If the court finds that the person poses a risk of imminent personal injury to himself or herself or to other individuals, it shall give notice to the Department of Mental Health and Addiction Services which may take such action pursuant to chapter 319i as it deems appropriate.”
§ 29-38c in National Context

• First law of its kind in nation to allow seizure of gun *before* owner has committed an act of violence

• In 2005, Indiana passed similar law, allowing gun seizure with *or without* warrant (after August 2004 incident that left one officer dead and four others wounded)

• Other states have not followed this specific methodology
Gun Seizure Data
10/1/99 – 7/31/13

- 764 seizures
  - 700 men (91.5%); 64 women (8.5%)
  - Ages 21 to 92 (mean 47.4; SD – 14.7)
    - 15% < 30 (all male); 10% > 64
  - 27% married; 10% children in house at time of seizure
  - 5% veterans; 1% deployed in last year
  - 45% calls from family/friend; 25% other; 4% clinicians or employer/peer
  - 51% risk to self males; 83% females; total 53%
  - Risk to others: 24% males; 15% females
  - Risk to both: 9% males; 2% females
Seizure Increase Over Time

![Graph showing the increase in seizures over time with a notable peak in 2013, labeled as Newtown Shootings on 12/14/2012.](image-url)
A Small Town Intervention

![Bar graph showing the number of gun seizures in individual municipalities, comparing populations of 70,000 or more and less than 70,000.]
Gun Seizure and MH History

• Involuntary Hospitalization
  – 20% males
  – 30% females

• DMHAS Services
  – 10% males
  – 20% females

• Active treatment at time of seizure
  – 1% males
  – 0% females
Circumstances

• Substances
  – Alcohol: ~ 26% both genders
  – Illicit drugs: < 5%
  – Prescribed pain meds: 6% male; 10% female

• Triggers described in police report for 78% of cases
  – Conflict with significant other – 24%
  – Depression – 21%
  – Under age 36: conflict ~ 40%
  – Over age 59: death of SO – 42%; failing health – 39%
Police Intervention Outcomes

- Emergency Department evaluation
  - 60% males
  - 80% females

- Arrested - 20%

- Arrested and send to ED – 16% (all males)

- Results of ED assessments unknown
Firearms Seized

• Just one – 22%
• Average 7.4
• Range 1-231
• Handguns most common; rifles second
• Hearings
  – Outcome unknown 70%
  – 68% of known outcomes – court ordered firearms held
CT NICS Legislation

• PA 05-283:
  – Adopted provisions of federal firearms prohibitions based on mental health adjudications
  – Required CT to comply with NICS reporting and enter into MOU with FBI

• Nov 2006 MOU finalized
  – Applicable adjudications reported to NICS through DESPP
NICS Reports Data 2003-12

- Incompetent to stand trial – 2,084 (~ 200/yr)
- Civil commitments – 5,014 (~500/year)
- NGRI – 51 (~5/yr)
- Conservatorships – ~ 20,000 (~2,000/yr)
- Denials of gun permits based on above alone: 14 (approx 0.05% of reported cases)
# NICS Mental Health Adjudications

<table>
<thead>
<tr>
<th></th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
</tr>
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<tbody>
<tr>
<td>NGRI</td>
<td>5</td>
<td>11</td>
<td>6</td>
</tr>
<tr>
<td>NCST</td>
<td>192</td>
<td>197</td>
<td>235</td>
</tr>
<tr>
<td>Civil commitments</td>
<td>475</td>
<td>598</td>
<td>573</td>
</tr>
<tr>
<td>Invol Conservatorship</td>
<td>2470</td>
<td>2476</td>
<td>2471</td>
</tr>
<tr>
<td>TOTAL</td>
<td>3142</td>
<td>3282</td>
<td>3285</td>
</tr>
</tbody>
</table>
Subsequent Federal NICS Legislation

• April 16, 2007: VA Tech shootings
• January 8, 2008: NICS Improvement Amendments Act of 2007 signed into law
  – Required state participation based on federal criminal justice funds
  – Required relief from federal firearms disability
    • Attempts to pass this legislation in CT failed in 2009 and 2010 sessions
    • Passed in PA 11-134
CT PA 11-134

• Began as discussion of DMHAS psychiatrists evaluating whether prohibited persons could regain firearms rights

• Evolved into process for application to probate court, with applicant bearing burden of proof by clear and convincing evidence that he/she
  – is not likely “to act in a manner that is dangerous to public safety”; and
  – granting relief from the federal firearms disability “will not be contrary to the public interest” [CGS 45a-100(j)]
Responses to Sandy Hook

• Dec 14, 2012: Shooter killed 20 children, 6 teachers, mother and self

• April 4, 2013: PA 13-3 signed into law

• Relevant provisions took effect July 1 and Oct 1
  – Sec. 8 increases state prohibition for civil commitment from 12 to 60 months
  – Secs. 10 & 11 add voluntary psychiatric admission (but not for substance use only) as 6 month prohibition
Implementation of Voluntary Admission Prohibition

• No data system existed to execute voluntary admission prohibitions

• DMHAS and DESPP created Voluntary Admission Tracking System (VATS)
  – Went live October 1, 2013
  – Hospitals are now reporting voluntary admissions to DMHAS data system
  – Similar “black box” protocols created
VATS Data
10/1/13 – 8/12/14

- Voluntary admissions reported: 12,969
- # matches: 427 (3.3%)

- DMHAS voluntary admissions: 174 (1.3% of total)
- DMHAS matches: 1 (0.2% of total)
  - odds ratio = 0.15
PA 13-220

• Signed into law 6/18/13

• New Language:
  – (k) Notwithstanding the provisions of subsection (j) of this section [*for relief from federal firearms disability*], the court shall not grant relief under this section if it finds that the petitioner is otherwise prohibited from possessing a firearm pursuant to section 53a-217, as amended by public act 13-3 [*i.e., has a federal firearms disability*].

• An apparently unintended abrogation of the relief provisions established in 2011 to comply with NICS Improvement Amendments Act
  – Made CT ineligible for further NICS grants
  – Efforts to fix problem in 2013 or repeal in 2014 not successful
CT Gun laws resources page with multiple links:


Contact: michael.norko@ct.gov
NICS Improvement Amendments Act of 2007

LESSONS LEARNED FROM OREGON

Juliet Follansbee, J.D., Psychiatric Security Review Board, Executive Director
History

• Oregon is a point of contact state for firearm purchases; therefore other states do not have access to Oregon prohibited person data unless it’s in NICS

• Prior to the work discussed today, no names were submitted to NICS and records were located in three large state agencies and several different databases

• For over 20 years, Oregonians could request state firearm privileges from local justice court

• Oregon received U.S. Department of Justice NARIP Grants in 2009, 2010 and 2011
HB 2853 (2009)

• Oregon State Police (OSP) created a work group to get legislation passed to create an ATF certifiable relief program and records reconciliation program. Several motivators:
  – To get records in NICS
  – To qualify for federal grant monies to fund this project
  – To prevent the penalty of failing to submit names to NICS (loss of Byrne Justice Assistance Grant - JAG)

• Consisted of Governor’s Public Safety Advisor, OSP, Judicial Department, Oregon Health Authority/Department of Human Services, disability advocacy groups and gun rights advocates. Led by law enforcement (Oregon State Police) *Note who isn’t on this list
Results of the New Law

• “Consensus” bill that passed on its first try. Throughout the session, Oregon Assistant Attorney General worked daily with an ATF attorney for assistance with statute language that was compliant with federal mandates.

• **Mandated** Oregon agencies to submit records to OSP for inclusion into NICS and transferred all mental health relief authority from courts to PSRB

• Records include “Guilty Except for Insanity”, civil commitments and those found “incompetent to stand trial”. Did not include all the determinations that may meet the federal definition of “mental defective.”

• In 2010, 30,000 names were uploaded into NICS. Only 3 relief hearings held since then.
Questions to Ask

• What records need to be submitted to NICS?
  – Both state and federal prohibitors – May be a bill buster
  – Federal prohibitors don’t always synch with state crimes or definitions; disability advocate concerns
  – Two years ago NICS began accepting both federal and state prohibitors

• Which agencies have these records?

• How do we get the records from these agencies into NICS?
  Agency must have statutory authority to share

• What data do we upload? In Oregon, its Name, DOB and Gender only; uploaded nightly

• Who will be the Relief Authority?
Ongoing Issues with Records Reconciliation

• Differing systems/users use different name formats. Error reporting is a significant challenge as well

• Courts really have the complete records yet their computer system was not designed to query for prohibitors (code for: Requires manual searches of paper records)

• Persons with no MHD that have same name, DOB as a person in NICS
  – How do we verify they aren’t the person who is barred?
  – Oregon is working on a process to address this – fingerprints, allowing the agencies to tell NICS information beyond name, DOB and gender
  – Voluntary Appeal File thru FBI?
PSRB Relief Program

• Only applies to those with mental health adjudications

• Prior to 2009, Oregon allowed judicial gun relief for those adjudicated civil commits and misdemeanants who successfully asserted the insanity defense, Guilty Except for Insanity (GEI).

• This judicial relief was never recognized by the FBI because the federal mental health prohibitor was a lifetime bar prior to 2009 and we didn’t receive ATF Relief Certification until August 2009
PSRB

• When: created in 1977 by Legislature to ensure therapeutic services and stability for individuals who successfully asserted the insanity defense who otherwise might re-offend and enter the Department of Corrections

• Primary Mission is Public Safety

• 5 members each panel:
  – psychiatrist
  – psychologist
  – attorney experienced in criminal practice
  – parole/probation officer
  – member of the general public

• Appointed by Governor, confirmed by Senate
<table>
<thead>
<tr>
<th>GUN RELIEF FEATURES</th>
<th>Courts (pre-2009)</th>
<th>PSRB (post-2009)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mental health evaluations by licensed psychologist or psychiatrist, includes Risk Assessment</td>
<td>Not required</td>
<td>Mandatory</td>
</tr>
<tr>
<td>Mental health records from mental health determination/civil commitment</td>
<td>Not required</td>
<td>Mandatory</td>
</tr>
<tr>
<td>Criminal background check</td>
<td>Not required</td>
<td>Mandatory FBI Criminal Background Check</td>
</tr>
<tr>
<td>Restores federal gun rights</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>ATF Certified*</td>
<td>No</td>
<td>Yes</td>
</tr>
</tbody>
</table>
Setting up a Relief Program

- Get involved with feds during enabling legislation to ensure you can get ATF approved relief program in your statute/administrative rules.

- Decide what model of review you want
  - Courts (no petition requirements? – does this comply with ATF certification?)
  - Department of Human Services (paper review by panel of mental health experts) – see New York
  - State Police (paper review by panel of law enforcement then you can appeal to an administrative judge – see Illinois

- Get as much as you can written in the law so there won’t be ambiguity
  - Burden of Proof
  - Petition Requirements (forensic eval, med records, etc)
  - Hearing versus Paper Review (does this comply with ATF?)
  - Information sharing between agencies

- Clearly lay out the rest in administrative rules/Relief Application
Typical Petitioner

- Civil Commit with little or no criminal background
- MHD not recent
- Consistent employment
- Little if any mental health treatment since MHD
- Axis I diagnoses: Alcohol/Drug induced psychosis (especially from the 1990s - meth) or depression. Not chronically mentally ill
Hearing

• “Contested Case” reviewed by three member Panel
  – Attorney, Psychiatrist, Psychologist, Public Member and Parole and Probation

• Oregon Health Authority/DHS and District Attorney in county where mental health determination was made may appear and present evidence

• Receive/review exhibits before hearing, staff summarizes exhibits for Board’s review

• Hearing consists primarily of character witnesses and Board questions petitioner
After hearing

- Have a process in place to remove name from NICS
- In Oregon, PSRB notifies OSP same day as hearing
- OSP submits removal query
- Mental Health databases remove the name as well
- Name removed typically with 24-48 hours after hearing
- Create a Final Order for your records and for petitioner in the event he needs proof of relief
- Also need to update any state databases that house MHD information.
Resources

• Oregon Laws 2009, Chapter 827  
  (http://www.leg.state.or.us/09reg/measpdf/hb2800.dir/hb2853.en.pdf)

• Oregon Administrative Rules 859-300-001 to 230  
  (http://arcweb.sos.state.or.us/pages/rules/oars_800/oar_859/859_300.html)

• Jeff Burhans, Oregon State Police (503) 378-3055 x55012  
  – Technical assistance for reconciling records

• Juliet Follansbee, (503) 229-5596  
  – Relief Program questions, Sample Final Orders, Laws, Administrative Rules, etc
Questions / Discussion