REPORT OF THE BOARD OF TRUSTEES

B of T Report 11-I-18

Subject: Violence Prevention
(Resolution 419-A-18, Resolves 1 and 3)

Presented by: Jack Resneck, Jr., MD, Chair

Referred to: Reference Committee K
(Darlyne Menscer, MD, Chair)

INTRODUCTION

Resolution 419-A-18, “Violence Prevention,” was introduced by the Washington Delegation. The first and third Resolves, which were referred by the House of Delegates, asked:

That our American Medical Association (1) advocate that a valid permit be required before the sale of all rapidly-firing semi-automatic firearms and (3) study options for improving the mental health reporting systems and patient privacy laws at both the state and federal levels and how those can be modified to allow greater information sharing between state and federal government, law enforcement, schools and mental health professionals to identify, track and share information about mentally ill persons with high risk of violence and either report to law enforcement and/or the National Instant Criminal Background Check System, with appropriate protections.

Accordingly, this report addresses both firearm licensing and mental health reporting requirements.

CURRENT AMA POLICY

As one of the main causes of intentional and unintentional injuries and deaths, the American Medical Association (AMA) recognizes that firearm-related violence is a serious public health crisis in the United States. The AMA has extensive policy on firearm safety and violence prevention. Relevant to this report is existing policy that supports requiring the licensing of firearm owners, including completion of a required safety course and registration of all firearms. The AMA also supports a waiting period and background check for all firearm purchasers.

AMA also supports (1) the establishment of laws allowing family members, intimate partners, household members, and law enforcement personnel to petition a court for the removal of a firearm when there is a high or imminent risk for violence; (2) requiring states to have protocols or processes in place for requiring the removal of firearms by prohibited persons; (3) requiring gun violence restraining orders to be entered into the National Instant Criminal Background Check System; and (4) efforts to ensure the public is aware of the existence of laws that allow for the removal of firearms from high-risk individuals.
BACKGROUND

Council on Science and Public Health Report 4-A-18, “The Physician’s Role in Firearm Safety,” reviewed the epidemiology of firearm morbidity and mortality, identified barriers to physician counseling, discussed the 11th U.S. Circuit Court of Appeals decision, which held that Florida’s Firearm Owners' Privacy Act violated the First Amendment, explained that there are no state or federal laws that prohibit physicians from counseling patients on firearm safety, outlined the risk factors for firearm injuries, and identified policies that grant the authority to remove firearms from high-risk individuals who already possess them. Because these issues were recently addressed, they are not considered in this report. This report focuses on the issues of licensing of firearm purchasers and mental health reporting.

The National Instant Criminal Background Check System (NICS)

The Brady Handgun Violence Prevention Act of 1993 required the establishment of a computerized system to facilitate background checks on individuals seeking to acquire firearms from federally licensed firearms dealers. The NICS was activated in 1998 and is administered by the Federal Bureau of Investigation (FBI). In 2010, federal and state agencies conducted 10.4 million background checks and more than 150,000 purchases were denied when purchasers were identified as prohibited persons. However, records in the NICS are provided voluntarily by state, local, tribal, and federal agencies. Inconsistencies in states’ reporting of disqualifying records to the NICS, as well as loopholes (i.e., unlicensed dealers) in the requirements for background checks prior to a firearm purchase, contribute to the lack of success in consistently identifying individuals who are disqualified from possessing firearms.

Prohibited Persons and Mental Health

The federal Gun Control Act (GCA) of 1968 makes it unlawful for certain categories of persons to ship, transport, receive, or possess firearms or ammunition. Those categories include, but are not limited to individuals convicted of a felony; unlawful users or those with addiction involving any controlled substance; individuals adjudicated as a “mental defective” or under an order of civil commitment; individuals subject to a court order restraining them from harassing, stalking, or threatening an intimate partner or child of the intimate partner; or persons who have been convicted of a misdemeanor crime of domestic violence. “Adjudicated as a mental defective” is further defined as:

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 capacity to manage his own affairs. 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 lack of mental responsibility (under the Uniform Code of Military Justice).

Furthermore, “committed to a mental institution” is defined as:

A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.
It is important to note that a diagnosis of, or treatment for, mental illness does not alone qualify an individual for reporting to the NICS. Existing federal criteria for firearm-disqualifying mental health records are not perfect. They have been criticized for being both over-inclusive and under-inclusive. It is the American Psychiatric Association’s position that:

Reasonable restrictions on gun access are appropriate, but such restrictions should not be based solely on a diagnosis of mental disorder. Diagnostic categories vary widely in the kinds of symptoms, impairments, and disabilities found in affected individuals. Even within a given diagnosis, there is considerable heterogeneity of symptoms and impairments.

Furthermore, individuals with mental illness, when appropriately treated, do not pose an increased risk of violence compared with the general population. However, mental illness is strongly associated with suicide, which represents nearly 60 percent of firearm-related deaths in the United States.

DISCUSSION

State Licensing Requirements

Federal law does not require the licensing of firearm purchasers or owners. A number of states have enacted licensing requirements to help prevent prohibited individuals from purchasing firearms. Different types of firearm licensing laws exist in states. Permits-to-purchase (PTP) licensing systems require prospective firearm purchasers to have direct contact with law enforcement or judicial authorities that review the purchase application and verify the passage of a background check. While similar to PTP laws, license to own firearm laws differ in that the license must remain valid for as long as the person owns the firearm. Firearm safety certificates require completion of a required safety training course as a part of the firearm licensing process in addition to the passage of a background check. Firearm registration laws require individuals to record their ownership of a firearm with a designated law enforcement agency.

PTP laws, which have been enacted in 10 states and the District of Columbia, are the most common type of firearm licensing laws. In these jurisdictions, both licensed and unlicensed dealers can only sell firearms to individuals with a current PTP license, closing the loophole that exists under federal law. While the licensing requirements vary by state, they generally require an individual to fill out a license or permit application form, submit the form in-person to the licensing authority, and pay the required fees. A background check through the NICS is usually required. Some states also require fingerprints to be taken as a part of the application process. In some jurisdictions (Massachusetts, New York and New Jersey), law enforcement agencies have discretion in denying a permit. If approved, the permit or license is issued. State licensing laws usually apply to specific types of firearms (i.e., handguns or long guns and rifles).

States with PTP laws tend to have lower firearm-related death rates than states without these laws after controlling for demographic, economic and other differences across states. Evidence suggests that state laws leading to tighter regulation of sale and possession of firearms, including PTP laws, reduce the availability of in-state guns involved in crimes and traced by law enforcement. Furthermore, criminals who used firearms in places with PTP laws typically acquired them from states with weaker laws. PTP laws also are associated with reductions in firearm homicide and suicide rates. Connecticut’s PTP law was associated with a 40 percent reduction in firearm homicide rates during the first 10 years the law was in place while there was no evidence for a reduction in non-firearm homicides. Missouri’s firearm-related homicide rate increased abruptly after the state repealed its PTP handgun licensing law in 2007. The state saw a
25 percent higher rate in the first three years post repeal than during the prior nine years.\textsuperscript{15} A study conducted in large urban counties found that PTP laws were associated with a 14 percent reduction in firearm homicides.\textsuperscript{16} PTP law enactment was associated with protective effects against firearm suicides in Connecticut, and PTP repeal in Missouri was associated with increased risk of firearm suicides.\textsuperscript{17}

**Mental Health Reporting**

In 2007, the NICS Improvement Amendments Act (NIAA) authorized the Attorney General to provide grants to states to improve electronic access to records and incentivize states to turn over records of persons prohibited from possessing firearms.\textsuperscript{18} The NIAA created the NICS Act Record Improvement Program (NARIP), which provides funding to states to ensure that the appropriate mental health records are included in the NICS. In November of 2011, a report by Mayors Against Illegal Guns found that for complex legal and logistical reasons, records of serious mental health and substance use problems that disqualify people from firearm ownership have been difficult to capture in NICS.\textsuperscript{19} In 2012, the Government Accountability Office examined states’ progress in reporting mental health records to the NICS. They found that from 2004 to 2011, the total number of mental health records that states made available to the NICS increased by 800 percent – from 126,000 to 1.2 million records.\textsuperscript{20} However, the increase largely reflected the efforts of 12 states. A variety of technological, coordination, and legal (i.e., privacy) challenges limit states’ ability to report mental health records.\textsuperscript{21}

Technological challenges are relevant to mental health reporting because the records originate from multiple sources within a state (i.e., courts, private hospitals, state mental health agencies) and are not captured by a single agency.\textsuperscript{22} In terms of legal challenges, some states indicated that the lack of explicit state-level authority to share mental health records with NICS was an impediment.\textsuperscript{23} Coordination challenges involved getting hospitals and departments of mental health to collaborate with law enforcement, who make the majority of records available to NICS.\textsuperscript{24} Non-criminal justice entities may not be aware of NICS reporting requirements, or, if they are aware, may be unfamiliar with how to report.

**Relationship to NARIP Funding.** NARIP funding has been provided to states to address these barriers. In order to receive NARIP funding, states are required to have a “relief from disabilities statute” whereby firearm purchasing rights can be restored to a person who had them removed because of a mental health adjudication or involuntary commitment. Information on the level of funding by state from FY 2009-2017, as well as promising practices for improved record reporting to the NICS, are available on the Bureau of Justice Statistics website.\textsuperscript{25} As of July 2015, there were 3.8 million state-submitted mental health records in the NICS.\textsuperscript{26} Forty-three states have enacted laws that require (32) or authorize (11) the reporting of mental health records to NICS. The largest increase in reported mental health data from 2008 to 2015 occurred in states with a reporting requirement.\textsuperscript{27} Twenty of the 26 states with the largest increase in mental health data also received NARIP funding.

**HIPAA Considerations.** In 2013 there was considerable focus on whether the Health Insurance Portability and Accountability Act (HIPAA) or state privacy laws were an obstacle to the submission of mental health records to NICS.\textsuperscript{28} On January 4, 2016, the U.S. Department of Health and Human Services modified HIPAA to expressly permit certain covered entities to disclose to the NICS the identities of those individuals who, for mental health reasons, are prohibited by federal law from having a firearm.\textsuperscript{29} The final rule noted that creating a limited express permission in the HIPAA Privacy Rule to use or disclose certain information relevant to the federal mental health prohibitor for NICS purposes was necessary to address barriers related to HIPAA, and to ensure...
that relevant information can be reported for this important public safety purpose. The rule
specifically prohibits the disclosure of diagnostic or clinical information from medical records or
other sources, and any mental health information beyond the indication that the individual is
subject to the federal mental health prohibitor, and does not apply to most treating providers.30

Education Records. The Family Educational Rights and Privacy Act (FERPA) is a Federal law that
protects the privacy of student education records. Due to the nature of mental health records
reported to the NICS, schools are not likely to be among the organizations reporting. However,
FERPA does have an exception that allows educational agencies and institutions to disclose
personally identifiable information from education records to appropriate parties in connection with
an emergency if knowledge of the information is necessary to protect the health and safety of the
student or other individuals.31 The information may be disclosed to any person whose knowledge
of the information is necessary to protect the health or safety of the student or other individuals.

CONCLUSION

The AMA House of Delegates adopted policy at A-18 to require the licensing of all firearm
owners. PTPs are a type of license, thus a separate policy requiring a permit prior to the sale of
rapidly-firing semi-automatic firearms is not necessary. This requirement is encompassed in the
existing licensing policy. However, amending the policy to clarify that permits are a type of license
would be helpful to avoid future confusion.

In terms of mental health reporting, several national reports have identified the technological,
coordination, and legal (i.e., privacy) challenges that limit states’ ability to report mental health
records to the NICS. In recent years, progress has been made to increase the reporting of these
records through the enactment of state reporting requirements, federal grants to states to address
collaboration through state level task forces focused on NICS improvement, training to help
identify the records that should be reported, automated transfer of mental health data to the NICS,
and clarification of federal privacy laws. In addition, legislation was enacted by Congress as part of
the FY 2018 Omnibus Appropriations bill—the Fix NICS Act of 2017—that, among other
provisions, requires states to develop a plan to ensure maximum coordination and automation of
the reporting the NICS.32 The law also reauthorizes NARIP through FY 2022.33 While existing
AMA policy supports a waiting period and background checks for all firearm purchases, AMA
policy does not currently address deficiencies in the current NICS system.

In addition to the NICS system, it is important to have policies in place that remove current access
to firearms rather than just preventing the purchase of new firearms by individuals who are at high
or imminent risk for harming themselves or others. The Council on Science and Public Health
report and recommendations on “The Physician’s Role in Firearm Safety,” at A-18 led to the
adoption of policy addressing the removal of firearms from high risk individuals, which includes
support for gun violence restraining orders. Since overlapping policy on gun violence restraining
was adopted and appended to Policy H-145.996, “Firearm Availability.” We recommend
streamlining AMA policy in this area and removing the reference to “red flag” laws.
RECOMMENDATIONS

The Board of Trustees recommends that the following recommendations be adopted in lieu of the first and third resolves of Resolution 419-A-18 and the remainder of the report be filed.

1. That Policy H-145.996, “Firearm Availability” be amended by addition and deletion to read as follows:

   H-145.996 Firearm Availability
   1. Our AMA: (a) Advocates a waiting period and background check for all firearm purchasers; (b) encourages legislation that enforces a waiting period and background check for all firearm purchasers; and (c) urges legislation to prohibit the manufacture, sale or import of lethal and non-lethal guns made of plastic, ceramics, or other non-metallic materials that cannot be detected by airport and weapon detection devices.
   2. Our AMA policy is to support requiring the licensing/permitting of owners of firearms, owners and purchasers, including the completion of a required safety course, and registration of all firearms.
   3. Our AMA supports granting local law enforcement discretion over whether to issue concealed carry permits, in the permitting process in such that local police chiefs are empowered to make permitting decisions regarding “concealed carry”, by supporting “gun violence restraining orders” for individuals arrested or convicted of domestic violence or stalking, and by supporting “red flag” laws for individuals who have demonstrated significant signs of potential violence. In supporting local law enforcement, we also support as well the importance of “due process” so that decisions could be reversible by individuals can petition petitioning in court for their rights to be restored. (Modify Current HOD Policy)


   Our AMA supports: (1) the establishment of laws allowing family members, intimate partners, household members, and law enforcement personnel to petition a court for the removal of a firearm when there is a high or imminent risk for violence; (2) prohibiting persons who are under domestic violence restraining orders, convicted of misdemeanor domestic violence crimes or stalking, from possessing or purchasing firearms; (3) expanding domestic violence restraining orders to include dating partners; (4) requiring states to have protocols or processes in place for requiring the removal of firearms by prohibited persons; (5) requiring domestic violence restraining orders and gun violence restraining orders to be entered into the National Instant Criminal Background Check System; and (6) efforts to ensure the public is aware of the existence of laws that allow for the removal of firearms from high-risk individuals. (Reaffirm HOD Policy)

3. That our American Medical Association: (1) encourages the enactment of state laws requiring the reporting of relevant mental health records, as defined by state and federal law, to the National Instant Criminal Background Check System (NICS); (2) supports federal funding to provide grants to states to improve NICS reporting; and (3) encourages states to automate the reporting of mental health records to NICS to improve the quality and timeliness of the data. (New HOD Policy)

Fiscal Note: Less than $500.
REFERENCES

2 27 C.F.R. §478.11
3 27 C.F.R. §478.11
24 Goggins B. and Gallegos A. State Progress in Record Reporting for Firearm-Related Background Checks: Mental Health Submissions. SEARCH and the National Center for State Courts. February 2016.
26 Goggins B. and Gallegos A. State Progress in Record Reporting for Firearm-Related Background Checks: Mental Health Submissions. SEARCH and the National Center for State Courts. February 2016.
27 Goggins B. and Gallegos A. State Progress in Record Reporting for Firearm-Related Background Checks: Mental Health Submissions. SEARCH and the National Center for State Courts. February 2016.
29 81 FR 382
31 34 CFR 99.36
32 Public Law No: 115-141.
33 Public Law No: 115-141.