

**BLUEPRINTS FOR CHANGE:
CRIMINAL JUSTICE POLICY ISSUES IN VIRGINIA**

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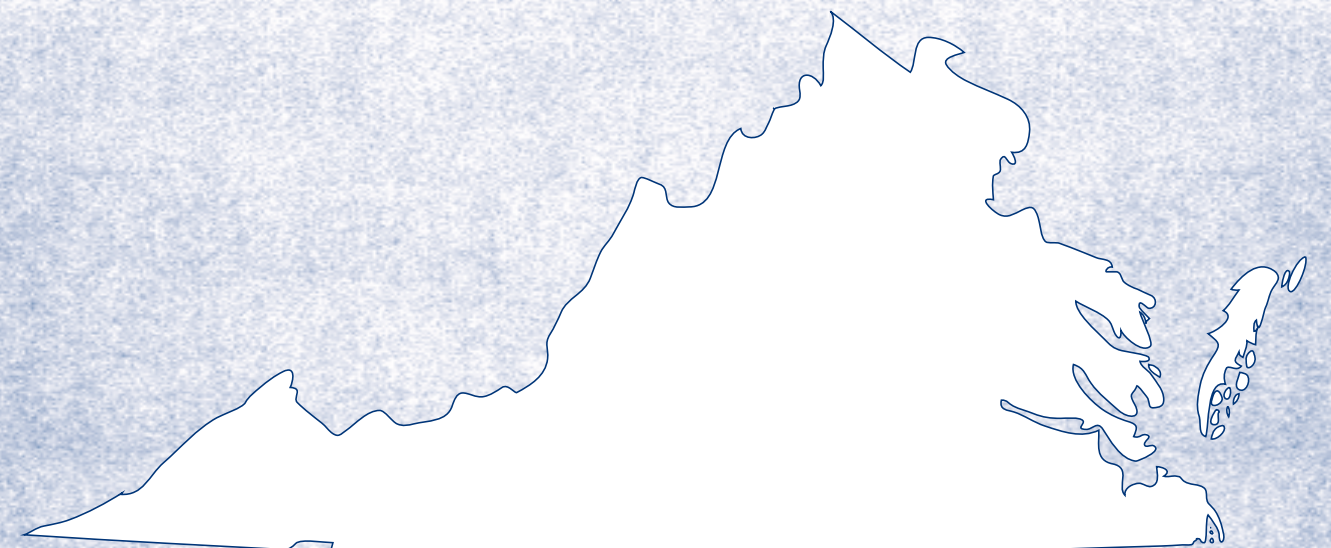


For additional information, please visit the
Virginia Department of Criminal Justice Services website at:
www.dcjs.virginia.gov/blueprints

2014

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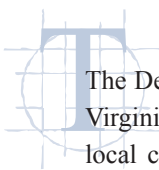
**FIREARMS IN VIRGINIA 2:
QUALIFICATIONS TO
POSSESS AND PURCHASE**



Virginia Department of Criminal Justice Services
www.dcjs.virginia.gov

January 2015

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The Department of Criminal Justice Services (DCJS) is the state criminal justice planning agency in Virginia and is responsible for administering state and federal funds dedicated to improving state and local criminal justice practices, preventing crime and delinquency, and ensuring services to crime victims.

At the request of the Secretary of Public Safety and Homeland Security, the Department convened two leading-edge policy sessions on firearms in September and October, 2014. Each session began with expert research and data on firearms violence presented to a multi-disciplinary group of executive-level participants who were selected because of their knowledge of the issues and their ability to advance the discussion of public safety policy related to these issues.

This is the second of two papers in which the discussions in these sessions, and the recommendations that emerged, are recorded.

In publishing these papers, DCJS hopes that the evidence based recommendations will stimulate further discussions by state and local decision-makers and provide useful guidance for making substantive statutory change where necessary, as well as for decisions on funding, and policy and program development.

Similarly, participants discussed mechanisms for restoring firearms rights to persons who have been temporarily prohibited from possessing firearms. For example, the group discussed issues surrounding the timeframe at which a person with a mental health prohibition can petition the court for restoration of firearms rights following an involuntary hospitalization. Additionally, how should the court determine that a person no longer presents a threat to him or society and thus should have his firearms rights restored? Who is qualified to make such an assessment? Group members proposed

that mental health experts and doctors qualified to make such a determination might be provided by the courts or by local community service boards, but that this might be cost prohibitive. An overarching concern about this restoration process raised by mental health advocates dealt with the timeframe for which restoration could take place. Participants noted that each individual is different and a blanket timeframe should not be codified without serious research and consideration of evidence. In sum, participants agreed that additional research and evaluation of these issues would need to be explored.



CONCLUSIONS AND RECOMMENDATIONS

- Although there are federal and state laws prohibiting potentially dangerous persons from purchasing and/or possessing firearms, evidence suggests that additional risk factors should be considered in the list of prohibitions.
- These risk factors include convictions for violent misdemeanors, especially those involving domestic violence, as well as persons subject to any protective order. Persons with serious mental illness and/or substance abuse problems, including alcohol, should also be considered as meriting firearms prohibitions.
- Virginia should further research and explore evidence around gun violence restraining orders, similar to those adopted by California, Connecticut, Indiana and Texas.
- When evidence demonstrates that a person may be at increased risk of firearms violence, a prohibition should prevent the acquisition of new firearms, and a process for existing firearms to be surrendered. Mechanisms for removing firearms and for restoring firearms rights, when appropriate, needs further research and exploration.

Alcohol Abuse

Although federal law prohibits persons using or addicted to controlled substances from purchasing firearms, this prohibition does not extend to persons with alcohol abuse problems. As previously noted, alcohol abuse is linked to an increased risk of firearms violence. The Virginia State Police suggested that current statutory prohibitions against obtaining a concealed handgun permit (*Virginia Code* §18.2-308.09) might be a guide for defining alcohol-related risk factors for firearms violence. Section 18.2-308.09 prohibits obtaining a permit if the person has a conviction for DUI or various other alcohol-related offenses within three years prior to making the application, a conviction for certain drug offenses or a conviction for certain misdemeanor offenses. It was noted, however, that any alcohol-related firearms prohibitions would need to be crafted in such a manner as to not discourage people from seeking treatment for an alcohol abuse problem.

Protective Orders

Another factor which increases the risk of violence is whether a person is subject to a protective order. Currently, a person subject to an emergency, preliminary or permanent protective order is prohibited from purchasing or transporting firearms. However this same person may lawfully possess firearms.

The participants realized that if an individual is considered enough of a risk to be legally prohibited from purchasing or transporting a firearm, the same risk exists for that individual possessing a firearm. This led to a discussion of whether Virginia should consider expanding the prohibition to possession of firearms as well. With regard to this suggestion, it was noted that the process to obtain emergency protective orders sometimes is abused, and that asking for a prohibition on firearms possession based on such protective orders may not be feasible. Participants noted that it might be more palatable to consider a possession prohibition when the protective orders involve domestic violence. Virginia statistics indicate that about 8% of domestic violence homicides occurred when a protective order was in effect.

What mechanisms should prevent ineligible people from purchasing firearms?

The participants discussed various mechanisms to implement some of the additional firearms prohibitions discussed above. Throughout the discussions, it was evident that this is a complex issue and future initiatives must balance Virginians' second amendment rights, as well as the Commonwealth's concern for public safety.

In cases involving persons with prior violence, domestic violence, or subject to protective orders, participants suggested that an appropriate mechanism would be legislation to prohibit firearms possession by persons with certain prior misdemeanor convictions. Such misdemeanors should include stalking, sexual battery, assault and battery of a family member, brandishing a firearm and two or more convictions of assault and battery.

Regarding persons subject to protective orders, participants agreed that these orders should also serve as prohibitions against firearms, given the inherent dangers that exist when such orders are issued. Additionally, after much debate, people agreed that Virginia should continue exploring and researching whether a gun violence restraining order (GVRO) mechanism, similar to those used by other states, would be effective.

The group discussed the intersection between existing prohibitions and Virginia's current interest in, and use of, lethality assessments. Lethality assessments are evidence-based tools used by law enforcement officers when responding to domestic violence situations. Officers complete a checklist that assesses the risk of lethal violence and then utilize results to identify action steps to reduce the risk. As noted previously, the presence of firearms in domestic violence situations is one of the factors associated with an increased risk of lethal violence.

In cases involving alcohol abuse, to the group suggested allowing the courts, in DUI cases, to add a firearms prohibition as a condition of a suspended sentence.

Mr. Horwitz stressed that before any of the above recommendations can be successfully implemented, universal background checks for firearms, coupled with complete and accurate firearms records to identify prohibited persons, must be available.

Participants acknowledged the complexities of removing firearms from prohibited persons with firearms already in their possession. One issue that would have to be addressed is "constructive possession." The group raised the following questions:

- Does possession apply to the person who has ready access to a firearm?
- What if the firearm is locked in a safe in the home?
- What if the firearm in the home belongs to another person in the home?

Firearms in Virginia: Qualifications to Possess and Purchase



Federal and state laws currently prohibit certain individuals from purchasing, possessing, or transporting firearms, based on the assumption that these individuals pose a potential threat to the public and/or to themselves. For example, federal law prohibits firearms possession by convicted felons; fugitives from justice; persons convicted of a misdemeanor domestic violence crime; persons subject to permanent domestic violence restraining orders; and persons unlawfully using or addicted to controlled substances.

Additionally, Virginia law prohibits firearms possession by individuals voluntarily admitted to a state facility following an involuntary emergency hospitalization, and by individuals convicted of two misdemeanor drug offenses (handgun prohibition).

Recent tragic events suggest it may also be prudent to prohibit individuals from possessing firearms, at least temporarily in other situations. In April 2007, 23 year-old Seung-Hui Cho killed 32 people on the campus of Virginia Tech before committing suicide. In late 2005, Cho had been ordered by a judge to seek treatment after he expressed suicidal thoughts to his roommate. In May 2014, in Isla Vista, California, a 22 year-old man shot and killed six people and injured 13 others before killing himself. Although he was not legally prohibited from purchasing or possessing firearms, subsequent investigation revealed numerous pre-existing signs of his emotional disturbance and intent to commit violence. In a similar case in July 2014, a 33 year-old man with numerous prior domestic violence charges and protective orders against him shot and killed six family members in Texas.

In light of these and similar events, policy experts have suggested that certain individuals at higher risk of violence should also be prohibited from possessing firearms. Research shows there are certain times, in certain settings, when those with a serious mental illness are at increased risk of violence. Additionally, those individuals involved in domestic violence situations or who have particular prior criminal convictions are at increased risk of dangerous behavior. These individuals should, at least temporarily and where constitutionally acceptable, be prohibited from purchasing and possessing firearms. These restrictions, in order to be effective, should include a means for removing firearms already possessed by these individuals.

Several states have enacted legislation to address this issue. California recently enacted a "gun violence restraining order," under which family members can petition a judge to remove firearms from close relatives for at least 21 days (and up to one year) if they fear the person may commit gun violence. This law is seen as an extension of current laws that temporarily prohibits people subject to domestic violence restraining orders from owning firearms. Connecticut law allows law enforcement or a state's attorney to file a petition with the court to remove weapons based on probable cause that an individual: 1) poses a risk of imminent injury to self or others, and 2) possesses one or more firearms. Indiana law authorizes law enforcement officers to remove firearms from an individual considered "dangerous," which is defined as: 1) an individual who "presents an imminent present risk or possible future risk and who has not consistently taken medication to control a mental illness that may be controlled by medications," or 2) "has a history to support a reasonable belief that the person has a propensity for violent or emotionally unstable conduct."

Similar federal legislation, the Lori Jackson Domestic Violence Survivor Protection Act, was introduced in Congress in June 2014. The Act, named for a Connecticut resident shot and killed by her husband after she obtained a temporary restraining order against him, would require an individual to surrender any firearms when an emergency or temporary restraining order is issued.

The Consortium for Risk-Based Firearms Policy has recommended a three-pronged approach which may serve as a guide for any action to prohibit persons at increased risk of violence from obtaining firearms:

Mental Health

Temporarily prohibit individuals from purchasing or possessing firearms after a short-term involuntary hospitalization. This should include a clear process for restoring firearms rights by the judiciary based on an evidentiary hearing where expert testimony is presented and it is demonstrated that the person no longer presents a threat.

Risk of Dangerousness

Prohibitions on purchasing or possessing firearms based on evidence-based determination of an individual’s risk of dangerousness. Groups considered at high risk of dangerousness would include:

- Individuals convicted of violent misdemeanors;
- Individuals subject to temporary domestic violence restraining orders;
- Individuals convicted of two or more DWI/DUI offenses within a five-year period; and

- Individuals convicted of two or more misdemeanor crimes involving a controlled substance within a five-year period.

Firearms Removal Process

Develop a mechanism (such as the California Gun Violence Restraining Order) authorizing law enforcement officers to remove firearms from individuals posing an immediate threat of harm to themselves or others.

POLICY/ RESEARCH ISSUES

1. What factors should prohibit someone from purchasing or possessing a firearm?
2. What are the inconsistencies in eligibility to purchase and possess a firearm?
3. What mechanisms should prevent ineligible people from purchasing firearms?

DISCUSSION

The session began with a presentation by Joshua Horwitz, J.D., Executive Director of the Educational Fund to Stop Gun Violence. Mr. Horwitz provided the attendees with an overview of the following:

- Statistics on homicides and suicides by firearms in Virginia, indicating that although the number of firearms homicides decreased from 286 in 2002 to 224 in 2012 (a 22% drop), the number of firearms suicides increased by 20% from 491 to 587 during this period,
- Research evidence on risk factors for increased possibility of violence, including serious mental illness and prior violent behavior,
- Indicators of who is at increased risk of violence, and who should be prohibited, and when, from obtaining or possessing a firearm, and
- Possible mechanisms to prevent ineligible persons from purchasing or possessing firearms.

The Office of the Chief Medical Examiner (OCME) provided participants with a more detailed look at the role of firearms and other risk factors in family and intimate partner homicides in Virginia.

Following these presentations, session participants engaged in a facilitated discussion of the issues, moderated by David Steingraber, Senior Policy Adviser with the National Criminal Justice Association. The major points that emerged from the discussion are summarized below.

What factors should prohibit someone from purchasing or possessing a firearm?

Based on the information provided above, the participants further reviewed and discussed various factors which research has shown to increase the risk of firearms violence.

Among the most significant risk factors for violence are young age, male gender, low socioeconomic status, alcohol or drug use, a prior history of violence, and serious mental illness.

Participants noted that some of these factors, such as alcohol or drug use, a prior history of violence, or serious mental illness, can be legally used to limit or prohibit access to firearms. However, others, such as gender or socioeconomic status, cannot be used as prohibitions for constitutional reasons.

Research shows that at certain times, under certain circumstances, persons with a serious mental illness are at increased risk of violence. Although persons without mental illness have only about a 2% risk of engaging in violence, persons admitted to an emergency department for mental illness have about a 23% risk for violence, and those who are involuntarily committed as inpatients or experience first-episode psychosis have a 36%-37% risk of violence.

Information was also presented indicating that felons and domestic violence offenders are at increased risk of firearms violence. The strongest predictor of future violent behavior is past violent behavior. Data presented from the Virginia Family and Intimate Partner Homicide Surveillance Project further highlighted the link between some of these factors and firearms violence. In domestic violence situations, the presence of a firearm increases the homicide risk for women by 500%. More than 6,400 women were shot and killed by an intimate partner in the U.S. between 2001 and 2012. Of the 2,037 family and intimate partner homicides in Virginia between 1999 and 2013, in 55% of the cases, the cause of death was a firearm. Among the events in which these homicides occurred:

- 38% involved alleged offenders with a history of violence or threats of violence against the victim,
- 21% involved alleged offenders with a criminal history,
- 17% involved alcohol or illegal drug use as a direct contributor, and
- 11% involved an alleged offender with a history of mental illness.

Although 11% of the firearms homicide events involved mental illness, mental illness, on its own, contributes very little to overall violence. Data presented showed that 96% of violence occurs due to reasons other than serious mental illness alone.

It is often a combination of risk factors such as a young male, mental illness, prior arrests, etc., that cumulatively raise the probability of violence occurring. Likewise, firearms, by themselves, do not cause violence. However, their presence, along with these other factors, increases the likelihood that violence will occur. Furthermore, the presence of a firearm is much more likely to lead to lethal violence.

What are the inconsistencies in eligibility to purchase and possess a firearm?

Following a review of research on factors linked to an increased risk for firearms violence, the participants reviewed current federal and state prohibitions on the purchase and/or possession of firearms. They then discussed the inconsistencies between evidence based risk factors and current statutory firearms prohibitions and tried to identify additional prohibitions in order to prevent future gun violence and to close the gap between evidence and public policy.

Current federal law prohibits firearms possession by convicted felons; fugitives from justice; persons convicted of a misdemeanor domestic violence crime; persons subject to permanent domestic violence restraining orders; and persons unlawfully using or addicted to controlled substances.

Additionally, current Virginia law prohibits firearms possession by individuals voluntarily admitted to a state facility following an involuntary emergency hospitalization, and prohibits handguns from individuals convicted of two misdemeanor drug offenses.

Based on their review of firearms violence risk factors and current firearms prohibitions, the participants noted the following areas where inconsistencies between the two might be examined for additional ways to reduce firearms violence:

Prior Violence

Because research indicates that prior violence, especially in domestic situations, is a significant risk factor for future violence, participants discussed whether Virginia should consider adding prohibitions for certain violent misdemeanor offenses. Instead of creating an additional Code section to include “violent misdemeanors,” that the group suggested adding to the offenses listed in Senate Bill 510 (introduced in the 2014 General Assembly session). Senate Bill 510 would have prohibited any person convicted of stalking, sexual battery, or assault and battery of a family member from possessing, transporting, or carrying a firearm or any other weapon for a period of five years following his or her conviction. Participants also suggested adding brandishing a firearm and two or more convictions of assault and battery to the list of prohibitory misdemeanors, and introducing the bill during the 2015 General Assembly Session.