Promising Legal Tools for Public Health Progress:

Extreme Risk Laws

Josh Horwitz
Executive Director, Educational Fund to Stop Gun Violence

National Public Health Law Conference
September 21, 2021
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Number of Gun Deaths, 2000-2019

- Suicide
- Homicide
- Other
About the Consortium for Risk-Based Firearm Policy

The Consortium for Risk-Based Firearm Policy (Consortium) comprises experts committed to advancing evidence-based gun violence prevention policies. The group includes the nation’s leading researchers and academics with expertise at the intersections of gun violence prevention and public health, law, behavioral health, medicine, criminology, and related fields.

Following the horrific school shooting in Newtown, Connecticut, in 2012, Josh Horwitz, executive director of the Educational Fund to Stop Gun Violence, convened the Consortium in March 2013 to identify areas of consensus regarding risk factors for future violence, discuss existing research evidence on the issue, and foster collaboration on the development of new research that could lead to new practices and policies. Though they are separate entities, the Consortium is organized and staffed by the Educational Fund to Stop Gun Violence.

The Consortium convenes regularly to develop evidence-based gun violence prevention policies. In turn, policymakers have come to rely upon the Consortium’s recommendations to craft legislation and executive action and to inform implementation efforts which continue to shape the policy landscape of the gun violence prevention movement.

Best known for its development of the extreme risk protection order policy, or ERPO, the Consortium has published reports on evidence-based recommendations for state and federal policy, best practices for firearm removal in cases of domestic violence, and guidelines for practice and training in lethal means safety counseling for firearm suicide prevention.
Quick Facts about Extreme Risk Laws

Extreme risk laws create a legal mechanism to temporarily remove firearms from individuals at an elevated risk of harm to self or others — preventing potential tragedy.

Extreme risk laws are modeled after domestic violence restraining orders and afford similar due process protections.

Nineteen states and the District of Columbia have extreme risk laws.

For every 10-20 firearm removal orders issued, one suicide is prevented.

California’s extreme risk law was used in efforts to prevent 21 mass shootings from 2016 to 2018.

Factors for Consideration

- Recent acts or threats of violence towards self or others.
- History of threatening or dangerous behavior.
- History of or current misuse of controlled substances and/or alcohol.
- Unlawful or reckless use, display, or brandishing of a firearm.
- Recent acquisition of firearms, ammunition, or other deadly weapons.
- *Strongly recommend against using psychiatric diagnoses in consideration of an order.* Not only is this stigmatizing, but mental illness is not a reliable predictor of violence.
Extreme risk law timeline

- California passed the first modern-day extreme risk law (called a gun violence restraining order or GVRO) in 2014
- As of September 2021, 19 states and DC have extreme risk laws
EXTREME RISK PROTECTION ORDER: A TOOL TO SAVE LIVES

ERPO laws are helping to prevent gun deaths and protect communities. Their implementation — in 19 states and the District of Columbia — is part of a national effort to reduce the daily loss of life due to firearm violence, including gun suicide.

This evolving resource will be frequently updated to help implementers take action — and save lives.

https://americanhealth.jhu.edu/implementERPO
Extreme risk law use in several states

- California (January 1, 2016, to December 31, 2019)
  - 1,094 respondents to GVROs, 725 orders served
- Washington state (December 8, 2016 - May 10, 2019)
  - 238 orders filed
- Colorado (January 2020 - December 2020)
  - 66 temporary orders, 49 364-day orders
- Virginia (July 2020 - June 2021)
  - 129 emergency risk orders, 73 final orders
Increased usage of extreme risk laws in California

Figure 1. Counts of Gun Violence Restraining Order Respondents by Month, 2016 to 2019
The data behind extreme risk laws

1 life saved for 10-20 removals

So that means...

If 1 life is saved for every 10-20 firearm removals …

Extreme risk laws have saved a lot of lives!

Extreme risk law case studies

Preventing suicide

Washington state:

- “A girlfriend filed an Extreme Risk Protection Order against her boyfriend as he recently tried to commit suicide and wanted to purchase a firearm. At the Extreme Risk Protection Order hearing, the couple came to court together (holding hands). The respondent had no objection to the Extreme Risk Protection Order. The respondent expressed gratitude that someone cared enough to make sure that he did not have access to a gun.”
Extreme risk law case studies

Preventing school shootings

Maryland:
- A Maryland student posted Snapchats of him holding a rifle and threatening a school shooting. Police issued a temporary order and removed a pair of loaded assault rifles and ammunition.
Extreme risk law case studies

Preventing mass violence

Connecticut:
- In 2019, Melissa Potter received a call from her estranged nephew, Brandon Wagshol, who told her he intended to build an AR-15-style rifle and needed to ship magazines to her home in New Hampshire (the magazines he wanted were not legal to purchase in Connecticut). Potter alerted Wagshol’s mother and then a week later, she contacted the local police department. Upon investigation, items such as “planning a mass murder” were found under activities on his Facebook page. The police applied for and received a risk warrant, searched Wagshol’s residence, and seized the firearms and ammunition (including four hundred rounds, a long rifle, and a hand grenade) they found.
Extreme risk law case studies

Preventing white supremacy and hate crimes

Washington state:

- A Washington man posted numerous mass shooting threats on social media including stating that he planned on shooting 30 Jews, along with pictures of Nazi artifacts and of his gun collection. An order was granted and 12 firearms were removed.
Thank you! Questions?

Josh Horwitz
Executive Director, Educational Fund to Stop Gun Violence

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Promising Legal Tools for Public Health Progress

Overdose Crisis

September 21, 2021
Sally Friedman, Vice President of Legal Advocacy
Overdose crisis accelerates

• 92,000 overdose deaths, Dec. 2019- Dec. 2020
• 30% increase over similar period prior year
• Disparate racial impact
• Factors include fentanyl and COVID-19 pandemic
Health care solutions not sufficiently used

• Health care strategies exist – evidence-based treatment, including medication for opioid use disorder (MOUD) – which can cut risk of overdose death in half.

• But often are not used, hence….

• Overrepresentation of people with substance use disorder (SUD) in criminal legal system, family regulation system, and cycling in/out of emergency departments.

• Why? Often stigma – perception of SUD as moral failing, worthy of criminalization; exacerbated by racism.
This presentation will cover

Legal strategies to address denial of evidence-based care in:

- **Criminal legal system & family regulation system** (a.k.a. child welfare system)
- **Health care system:**
  - Emergency departments
  - Skilled nursing facilities
Illegal prohibition of medication for opioid use disorder

- Denial of MOUD in criminal legal system + family regulation system + skilled nursing facilities + emergency departments

- **2011 LAC report**: criminal legal system’s denial of access to MOUD violates Americans with Disabilities Act and Constitution.

- Two successful NY cases – Judges backed off requirement to get off Suboxone or face prison time. But no published decision.

- 2018 – *Pesce v Coppinger* – landmark decision: jail’s failure to provide methadone likely violated ADA and Constitution
9 Cases After *Pesce*

1. *Smith v. Aroostook County* (D. Maine, 1st Cir.) – jail
3. *Kortlever v. Whatcom County* (D. Wash.) – jail, class action
8. *Finnigan v. Mendrick* (N.D. IL) – jail

* = favorable court decision
Department of Justice & Office of Civil Rights

- LAC engaged Department of Justice (DOJ) and Office of Civil Rights (OCR):
  - education, intervention, state-wide investigations; settlements

- Settlements. Denial of MOUD in --
  - **Jail**: Cumberland County, NJ (2021) – found violation of 8th Amendment. Ordered provision of MOUD.
  - **Family regulation system** - West Virginia Department of Health & Human Resources; SDNY letter to NY Attorney General
  - **Health care**: skilled nursing facilities, primary care, organ transplantation
Education and support for attorneys

- **Support for attorneys** – LAC engaged public defenders & attorneys representing parents to object/appeal MOUD denial. Example:

- **Trainings** – judges & others working or practicing in criminal and juvenile courts

- **Impact**: education and support of attorneys leverages the litigation & DOJ/OCR activities to drive change. MOUD prohibition less common than 10 years ago.
Emergency Departments

- **New LAC 2021 report**: failure to provide evidence-based care for patients with SUD:
  - Negates core role – to identify and address life-threatening emergencies and connect to ongoing care
  - Can violate four federal laws.

*Emergency: Hospitals are Violating Federal Law by Denying Required Care for Substance Use Disorders in Emergency Departments*
Three evidence-based practices

1. **Screen** and diagnose SUD

2. **Offer buprenorphine** to treat opioid withdrawal & suppress cravings

3. **Connect** patients with appropriate care for ongoing treatment through facilitated referral *and provide naloxone* to patients who use opioids or drugs that can be mixed with synthetic opioids, such as fentanyl
It’s a racial justice issue

• Disparate impact on Black, Latinx, and Indigenous people:
  • Black and Latinx people – more likely to seek emergency department services than white people
  • Prevalence data:
    • National: Black and Latinx – increased rates of overdose deaths; Indigenous -- highest prevalence of opioid misuse and highest rate of alcohol use disorder
    • In some states and localites:
      • Black people – overrepresentation in opioid-related deaths (e.g., Cook County, Ill.)
      • Indigenous and Black people – higher rates of overdose deaths than white people (e.g., Minnesota)
Can Violate Four Federal Statutes

1. **EMTALA** (Emergency Medical Treatment and Labor Act) – failure to provide required screening and, if emergency medical condition identified, stabilization services.

2. **Americans with Disabilities Act and**

3. **Rehabilitation Act of 1973** – denial of services due to stereotypes about disabilities & failure to provide reasonable accommodation

4. **Title VI of Civil Rights Act** – disparate treatment and disparate impact discrimination
Strategy – report as tool to drive change

1. **Educate** – hospitals and patients

2. **Spawn litigation and government enforcement**
   - EMTALA – Center for Medicare & Medicaid Services
   - ADA/RA – DOJ & State Attorneys General
   - Title VI – Office of Civil Rights & State Attorneys General

3. **Spur policy change** – financial supports, adoption of evidence-based practice guidelines, use of peer services, establishment of bridge clinics, development of linkages to community-based care
Law, Policy, and Racial Equity

Presented [September 21, 2021]

Dawn Hunter, JD, MPH, CPH
Director, Network for Public Health Law – Southeastern Region
Acknowledge History and Seek to Understand
Build Trusting Relationships
Craft Solutions with Impacted Communities
Align Existing Efforts and Take Collective Action
How does racism show up in public health policies and practices?

- Personal
  - Between individuals

- Institutional
  - Through policies and practices within institutions

- Structural
  - Systematized across institutions and populations through laws, policies, practices, and collective norms
Infant mortality rates, by race and Hispanic origin:
United States, 2017–2018

<table>
<thead>
<tr>
<th>Race/Ethnicity</th>
<th>2017</th>
<th>2018</th>
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<tbody>
<tr>
<td>White</td>
<td>4.67</td>
<td>4.63</td>
</tr>
<tr>
<td>Black</td>
<td>10.97</td>
<td>10.75</td>
</tr>
<tr>
<td>American Indian or Alaska Native</td>
<td>9.21</td>
<td>8.15</td>
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<tr>
<td>Asian</td>
<td>3.78</td>
<td>3.63</td>
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<tr>
<td>Native Hawaiian or Other Pacific Islander</td>
<td>7.64</td>
<td>9.39</td>
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<tr>
<td>Hispanic</td>
<td>5.10</td>
<td>4.86</td>
</tr>
</tbody>
</table>

Non-Hispanic

What reduces infant mortality rates?

- Civil rights laws
- Minimum wage laws
- Public health laws (e.g., mortality review committees)
- Medicaid expansion
- Education and Training Requirements
Black and White Infant Mortality Rates in the South, 1955-1975

Many Black, Hispanic People Would Benefit From Further State Medicaid Expansions

Share of uninsured adults who would become eligible for Medicaid, by race and ethnicity

Note: Estimates by subgroup are not available for South Dakota and Wyoming, so the "other people of color" category represents all people of color, including Black and Hispanic people.

Source: Kaiser Family Foundation based on 2018 Census Bureau data

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## Florida Minimum Wage Increase
Effective September 30, 2021

**Figure 5: SHARE OF WORKING FLORIDANS WHO WOULD SEE PAY INCREASE, BY RACE**

<table>
<thead>
<tr>
<th>Race</th>
<th>Percentage</th>
</tr>
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<tbody>
<tr>
<td>Black Employees</td>
<td>36.3%</td>
</tr>
<tr>
<td>Latinx Employees</td>
<td>34.7%</td>
</tr>
<tr>
<td>Asian or Other Race(s) of Employees</td>
<td>25.5%</td>
</tr>
<tr>
<td>White employees</td>
<td>19.0%</td>
</tr>
</tbody>
</table>

A. Davis, Florida Policy Institute, “A Minimum Wage Boost Would Improve Equity for 2.5 Million Floridians and Bolster the State’s Post-Pandemic Recovery,” September 2020
Health and Racial Equity: Legislative Trends
Topics of bills addressing racism, racial equity, and health equity

- Racism as a public health crisis or emergency
- Educational inequities
- Data collection and use
- Provider education and training
- Infrastructure (offices, positions, task forces)
- Equity in birth outcomes
- Environmental justice
- Funding

The use of racial or health impact statements in policymaking
How does racism show up in public health policies and practices…
…and where can law and policy make a difference?

- Provider education and training requirements on implicit bias and culturally competent care.
- Increasing workforce diversity by reevaluating HR policies.
- Incorporating community feedback into programming and investment decisions.
- Strengthening local public health authority and infrastructure.
- Identifying and removing legal barriers that impact access and opportunity.

Law, Policy, and Racial Equity [Sept. 21, 2021]
In practice:
FEMA ends a policy that resulted in Black families being denied disaster relief funds
What do we need to do now to ensure more equitable outcomes in the future?

- **Formalize commitments** to health and racial equity
- **Craft legislation** that is informed by **data, evidence, and subject matter expertise**
- **Systematically and regularly review** laws and policies using an **equity lens**
- **Allocate sufficient resources** and leverage budgets as a policy tool
- **Engage communities** in the policymaking process and **equip community members** to lead
- **Monitor the impact** of laws and policies on health outcomes over time
Acknowledge History and Seek to Understand

Build Trusting Relationships

Craft Solutions with Impacted Communities

Align Existing Efforts and Take Collective Action

Law, Policy, and Racial Equity [Sept. 21, 2021]
Questions?

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