

COMMENTARY

Defying the Odds on Gun Regulation: The Passage of Bipartisan Mental Health Laws Across the States

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After the December 2012 murder of 20 first graders and 6 educators at Sandy Hook Elementary School in Newtown, Connecticut, the U.S. Senate took up a gun reform bill that had long languished on Capitol Hill. The bill would have extended the nation's 20-year-old background check system, which licensed gun sellers use without difficulty, to most transfers between private individuals.

The legislation, SB 649, was championed by a Democrat, Sen. Joe Manchin of West Virginia, and a Republican, Sen. Pat Toomey of Pennsylvania. It contained provisions to mitigate unnecessary burdens on gun owners, including exempting temporary transfers between sportsmen and transfers between immediate family members. Polls suggested that 80% or more of the American public was in favor. The president and vice president pushed hard, both publicly and behind the scenes. The citizen lobbying effort was fierce: Mass-shooting survivors and family members, as well as a new organization of outraged mothers, e-mailed, called, organized, conducted media events, and held emotional meetings with lawmakers. Organizations long interested in stricter gun laws revved up their efforts as well.

The bill seemed to have all the ingredients to propel it to passage: a shocking "focusing event," a sensible proposal already enacted successfully in a handful of states, bipartisan sponsors, a grassroots lobbying effort, and public and presidential support. And yet the measure failed to clear the 60-vote threshold that has become customary for Senate pas-

sage. The House never so much as held a hearing on the measure. Its failure, just 4 months after the Sandy Hook massacre—and less than a year after mass shootings at a movie theater in Colorado, a Sikh temple in Wisconsin, and a university in California, among others—seemed to validate the conventional wisdom on gun regulation in America, neatly summarized by public opinion scholar Hazel Erskine in a 1972 article in *Public Opinion Quarterly*: "It is difficult to imagine any other issue on which Congress has been less responsive to public sentiment for a longer period of time."

The United States has far more gun violence, including mass shootings, than do other advanced industrial democracies. While peer nations—notably Australia, Canada, and United Kingdom—have responded to mass shootings by dramatically strengthening their already strong gun laws, the United States has moved incrementally, if at all. American gun laws remain far weaker than those of most other nations and, according to Robert Spitzer's forthcoming book *Guns Across America*, today's firearms laws are in some respects weaker than they were in the United States in earlier centuries. Strengthening America's gun laws, especially in a highly polarized political environment, is often written off as a pipe dream.

This article documents an important exception to the conventional wisdom that politicians just will not tighten gun laws. Over the past decade, and mostly under the radar, both state and federal legislators have enacted more than 80 laws designed to regulate access to guns by people with mental illness and to support programs to reduce gun violence within that population. It is interesting to note, given the delicate stakes involved, that these firearms-and-mental-health laws represent something rare in American politics: compromise and consensus-building among advocacy

groups and between the two major political parties, whose interests and perspectives are often in stark conflict.¹ It is worth noting that the only national gun legislation enacted in the past 20 years to tighten the federal regulatory framework, the National Instant Criminal Background Check System (NICS) Improvement Amendments Act of 2007, was in essence a firearms-and-mental-health bill worked out by gun reform and gun rights leaders.

This study begins with a brief overview and evaluation of the barriers to enacting firearms regulations (of all sorts) in America. I next review lawmaking at the nexus of mental health and firearms over the past decade. I provide an overview of the types of laws that have been enacted and the political circumstances that have facilitated their passage. I conclude with some thoughts about whether these cases provide any generalizable lessons for consensus-based policymaking on guns.

Barriers to Gun Regulation

The United States is exceptional among advanced industrial democracies for the large number of firearms in private possession, the high rate of gun homicide and suicide, and the strong legal protections afforded gun ownership. Roughly one third of American households report having a firearm, and an estimated 200–300 million guns are in private hands.

More than 31,000 individuals are shot and killed each year in the United States, with roughly 19,000 of those being suicides. Access to a firearm greatly increases the risk that a suicide attempt will result in death,

¹Another emerging area of bipartisan agreement concerns reducing access to guns by those who have committed domestic violence.

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what criminologists term the “instrumentality effect.” According to the Centers for Disease Control, roughly half of U.S. residents who kill themselves do so with a firearm, and when a firearm is used in a suicide

reported in 2013 that 45% of gun-rights supporters and 26% of gun-control supporters had taken political action on the issue. This finding is perplexing, given that gun regulation supporters feel just as strongly as progun advo-

(e.g., a reduction of gun violence). In a policymaking system with many “veto points,” advocates who want to block legislation have an easier road than do their change-seeking opponents, who must clear all choke points while holding together a winning coalition.

Advocates for gun regulation historically have faced formidable obstacles, as detailed in my study of the “missing movement” for gun control. At least until very recently, these advocates have struggled to develop an organizational infrastructure, stable funding sources, savvy legislative strategies, and broadly resonant messages to match those of their opponents. Nevertheless, recent mass shootings have galvanized public passions and revived the stalled gun reform movement. The proreform forces have a generous patron in former New York Mayor Michael Bloomberg, who pledged to spend \$50 million on the issue in 2014 alone and is funding Everytown for Gun Safety, which has more than 150 employees, dwarfing any gun violence prevention group that has come before. The movement also has a dedicated cadre of activist, social-media-savvy mothers, organized in state chapters and operating under the Everytown banner as Moms Demand Action for Gun Sense in America. Finally, family members and survivors of gun violence, especially mass shootings, have organized into a critical mass of nationally prominent activists. They serve both as active volunteers and as paid staff members of gun violence prevention groups, adding the authenticity of direct experience to groups whose major resource had been institutional knowledge. While billionaires, mothers, and survivors and family members have mobilized before, they have not done so at this scale or with the set of organizing tools now at their disposal.

Nevertheless, these invigorated forces face strong headwinds. Although most people support limited gun regulations, such as background checks on private gun sales, support for gun control as a broad principle has declined markedly over the past two decades, and support for gun rights as a broad principle has risen. The proreform movement also must contend with scores of new, politically assertive state-based gun lobbies (many of which believe the NRA is too accommodating), as well as partisan polarization around the gun issue that has made Republicans increasingly leery of supporting further firearms regulation. Indeed, with a few important exceptions—notably private-sale background check laws in 17 states and a handful of new laws to restrict access by domestic batterers—gun regulations at the state and national levels have loosened over the past two decades. At the

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attempt, death results 85% of the time. The extraordinary lethality of firearms is of note because many suicides are impulsive acts and most people who attempt suicide but survive do not undertake another attempt.

Unlike many other countries, which ban or severely restrict transfers, ownership, and carrying of firearms, the United States begins with the presumption that people should be allowed to transfer, own, and, increasingly, carry guns unless there is some reason not to allow them to do so. This legal regime appears to follow the 2nd Amendment to the U.S. Constitution, which states in part, “the right of the people to keep and bear Arms, shall not be infringed.” However, until quite recently courts treated the amendment as conferring a collective right to states to muster militias and declined to strike down gun laws on constitutional grounds. Although the Supreme Court shifted to the individual rights interpretation in 2008 (in *District of Columbia v. Heller*) and reaffirmed that interpretation in 2010 (in *McDonald v. City of Chicago*), these rulings and their progeny have had limited impact on gun laws thus far, except in the two cities in question and in Illinois, whose ban on carrying concealed weapons was overturned.

The reasons for America’s relatively relaxed gun laws lie more in politics than in jurisprudence. U.S. gun owners, several million of whom belong to the National Rifle Association (NRA), constitute an especially politically engaged group. As Howard Schuman and Stanley Presser demonstrated three decades ago, gun owners are more likely to contact public officials or take another action than are people who favor stricter gun laws. This finding was echoed by Drew DeSilver, senior writer at the Pew Research Center, who

attempts do about their position. These contacts from gun advocates, often angry and sometimes menacing, have persuaded many elected officials in districts with high proportions of gun owners that a vote for gun regulation may cost them their next election.

The evidence supporting these perceptions is mixed. On the one hand, there is no question that gun rights advocates were responsible for the successful recall of two Colorado state lawmakers who had supported gun reform in 2013. And in a study appearing in the *British Journal of Political Science*, Christopher Kenny and his colleagues found that NRA endorsements helped Republican candidates challenging Democratic incumbents in the 1994 congressional midterms. On the other hand, Governors who supported gun reform—including Colorado’s—have survived reelection. And the Kenny et al. study found that NRA endorsements had no effect on the 1996 congressional elections. Finally, in a multipart series appearing in *Think Progress*, journalist Paul Waldman presented an analysis finding little empirical support for broader and more commonly repeated claims, notably that the House of Representatives flipped to the Republicans in the 1994 elections because of Clinton-era gun regulations.

The extraordinary engagement of gun owners stems in part from the fact that they are hobbyists with many natural and pleasurable opportunities to meet face to face—for example, at gun stores, shooting ranges, and gun shows—where they can easily share political information and strategies. Gun advocates’ political leverage is also rooted in structural advantages that generalize beyond the gun issue. People react more strongly to the threat of real, present-day losses (e.g., gun liberties) than to the prospect of theoretical gains in the future

national level, Congress in 2004 allowed the decade-long ban on certain types of assault weapons to sunset, and the following year, Congress enacted the Protection in Lawful Commerce in Arms Act, which afforded broad pro-

has been interpreted to reach only involuntary *inpatient* commitments, but after the Sandy Hook shooting, President Obama ordered the Department of Justice to develop rules that would extend the prohibition to involuntary

history. Two years earlier, a judge had found the student to be a danger to himself and had ordered him into outpatient mental health treatment, presumably making him ineligible to buy or possess a gun, according to the Virginia Tech Review Panel. At the time of the shooting, only 22 states reported mental health records to the NICS database. Although Virginia was one of these states, Virginia law did not explicitly require that mandatory outpatient records be reported. Thus, the student was able to pass the NICS background check and purchase the firearms he would use in the massacre.

The Virginia Tech shooting led the U.S. Congress to pass the NICS Improvement Amendments Act (NIAA), sponsored by Rep. Carolyn McCarthy (D-NY), whose husband had been killed and son badly injured in a mass shooting on the Long Island Railroad in 1993. Passed on a voice vote, and with major concessions to and the eventual blessing of the NRA, the NIAA provided incentives for states to add mental health records to the system. States became eligible for new Department of Justice grants and relief from existing grant matching requirements. States that lagged in complying faced a reduction in funds from the federal government's Justice Assistance Grant program, a major source of money for state law enforcement programs.⁴ Crucially, as a condition of funding, the NIAA also required states to create protocols for restoring firearms rights, where warranted, to people whose mental health history had made them a prohibited purchaser—a process formally known as “relief from disability.” Before the NIAA, an official mental health adjudication or involuntary commitment had been tantamount to a lifetime ban on firearm ownership.

The NIAA was signed into law in January 2008. Because it included the NRA-sponsored restoration provision, it split the gun violence

However, there is one area of firearms regulation that has largely gone in the direction of tighter restrictions: laws affecting access to firearms by the seriously mentally ill

tections to gun manufacturers and dealers against lawsuits. In 2009, Congress voted to allow unloaded guns in the luggage compartment of Amtrak trains, as well as in national parks. With a handful of exceptions, mostly on the coasts, states also have loosened their gun laws, notably by enacting preemption statutes that limit localities' latitude in regulating firearms, by easing or eliminating licensing rules for those who wish to carry concealed guns in public, and by passing “stand your ground” laws, which provide expanded legal protections to those who discharge publicly carried firearms (rather than retreating) in the face of a threat.

However, there is one area of firearms regulation that has largely gone in the direction of tighter restrictions: laws affecting access to firearms by the seriously mentally ill. Although some of these laws have moved to restore gun rights to those previously denied them, most lawmaking in this area has bucked the national trends and tightened access. I review these developments below and discuss some of the key drivers behind them.

Mental Health and Firearms: A Brief Policy History

The Gun Control Act of 1968 introduced mental health restrictions into federal firearms law by barring transfers to and possession by anyone who “has been adjudicated as a mental defective or who has been committed to any mental institution.”² This prohibition applies to anyone determined by a court or other legal authority to be “a danger to himself or others” or to lack “the mental capacity to contract or manage his own affairs.” With respect to mental institutions, the law extends only to those involuntarily committed, not those who admit themselves or those in the hospital for observation.³ The law

outpatient commitments, as well.

For decades after the 1968 act, enforcement of the mental health provision and other “prohibited person” strictures was difficult because in most states there was no easy way to check a buyer's name against mental health, court, prison, or other records. Buyers purchasing from federally licensed dealers (though not private sellers) were obligated to fill out a federal form (Form 4473) attesting that they did not fall into one of the prohibited categories, meaning that gun transfers relied on an honor system. Those buying from private sellers did not even have to fill out the form. The law left honest gun dealers having to navigate their common law “duty of care” —which legal scholar Anthony Dunbar notes was quite nebulous and inconsistently interpreted by the courts—to avoid selling a gun to anyone whose observed behavior was suggestive of a mental health problem.

The Brady Handgun Violence Prevention Act, which went into effect in 1994, was aimed at replacing the honor system with a stronger mechanism for enforcing the law on prohibited persons. The Act, which applied only to federally licensed firearm dealers (those “in the business” of gun sales), initially created a 3-day waiting period on handgun purchases, allowing for a mandatory background check to be conducted. In 1998, the National Instant Background Check System went into effect, replacing the 3-day waiting period with an instantaneous search of digital records.

The difficulty with NICS is that for many years, most states did not submit their mental health records to the system. These gaps pierced the public consciousness in April 2007, when a 23-year-old college senior massacred 32 fellow students and professors and wounded 17 others at Virginia Tech—the most lethal mass shooting in American

²As norms and knowledge around mental illness have evolved, Jeffrey Swanson and colleagues note, terms such as “mentally defective” now are widely considered clinically meaningless, stigmatizing, and offensive.

³For the mental illness provisions, see 27 CFR Section 478.32; for the definitions, see 27 CFR, Section 478.11

⁴At least as of mid-2013, the Department of Justice had not imposed a penalty under this provision, according to the FixNICS website operated by the National Shooting Sports Foundation and a report released in June 2010 from Arkady Gerney and Chelsea Parsons of the Center for American Progress.

prevention community, with the Brady Campaign to Prevent Gun Violence in support and the Coalition to Stop Gun Violence, the Violence Policy Center, and the Legal Community Against Violence having serious concerns, according to newspaper accounts at the time. Today, gun violence prevention groups generally live with the NIAA, in some cases supporting states that enact a restoration law because doing so clears the way for them to receive government grants to improve their mental health reporting systems. The NIAA remains the only national firearms legislation enacted in the past 20 years supported by (some) gun violence prevention advocates.

Studies conducted in 2011 and again in 2014 found that states have been slow to pass reporting and restoration laws in response to the incentives in the NIAA. In 2011, nearly 4 years after the law's enactment, 19 states had no laws directing courts or mental hospitals to submit their records, and only 16 had enacted a restoration provision, according to research by Mayors Against Illegal Guns (MAIG). At least 25 states cited privacy concerns as a reason for not complying, the research found. Nearly half of states had submitted fewer than 100 records apiece. In the 2014 follow-up study, conducted by MAIG's successor, Everytown for Gun Safety, the number of effectively noncompliant states had dropped from 19 to 11, and the number of records had tripled, to 3.4 million. These developments were in part because, in the intervening period, 18 states had enacted ($n = 8$) or substantially strengthened ($n = 10$) record-reporting laws. The report found that those states lacking such laws also reported few records.

States Legislate: Guns and Mental Health, 2004–2014

Outside of gun policy circles, the NICS Improvement Amendments Act is not a well-known law. Its development and enactment did not garner nearly the media attention of other gun-related legislation, including the package of bills that the Senate took up after the Sandy Hook shooting. Two factors make the NIAA characteristic of mental health-related firearms legislation in general: It passed, and it passed largely under the public radar.

The conventional wisdom is that most American lawmakers won't touch gun regulation, either out of ideological support for broad gun rights or out of fear of electoral reprisal from gun owners. Lawmakers are said to be "gun-control shy" even in the face

Suggestions for Further Reading

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of broad public support for certain types of measures (e.g., universal background checks) and amid public outrage over particularly shocking incidents of gun violence. A 2013 ProPublica investigation of states that have had mass shootings, for example, concluded that these events "do little to change state gun laws." This claim is disputable, certainly in the area of mental health regulations and reporting. Here, the evidence suggests that there has been a quiet sea change in the laws, mostly in the direction of tightening restrictions. As mentioned above, laws in at least 18 states changed in response to the NIAA, which in turn was prompted by the mass shooting at Virginia Tech. My own data turned up other instances where "focusing events" led to policy change.

These developments, reviewed below, are perhaps surprising given that policymaking around guns and mental health is extremely challenging. After especially high-profile shootings, which often involve people with a history or signs of mental illness, policy-

makers face strong political pressures to act. But they also must contend with competing interests and goals—promoting public safety, protecting individual rights and privacy, not inflaming bias against mentally ill people generally, and crafting measures that do not dis-incentivize individuals from seeking treatment. Indeed, some states hesitated to craft mental health reporting laws for fear of violating federal medical-privacy laws, a concern that the federal government is seeking to alleviate by clarifying the rules.

What is more, policymakers must balance these different considerations without much by way of robust, evidence-based answers to critical policy-relevant questions. For example, while research has identified group-level risk factors for violent behavior—for example, being diagnosed with certain types of serious mental illness or having simultaneous mental health, substance abuse, and medicine-noncompliance issues—it is very hard even for trained professionals to predict who will become violent, as studies by psychologist John Monahan and sociologist

Charles Lidz and colleagues have shown. Likewise, mental health experts note that most people who suffer from mental illness, even severe mental illness, are not violent. Acts of gun violence, and certainly mass shootings, by the mentally ill are exceedingly rare. Given these empirical findings, mental health researchers such as Jeffrey Swanson and his colleagues argue that public policies—including the 1968 Gun Control Act—are blunt and anachronistic instruments that may unjustly stigmatize, and burden the civil liberties of, people with mental illness who will never pose a danger to themselves or others.

Nevertheless, states have found a way—often involving bipartisan coalitions and strange bedfellows in the interest group community—to legislate at the nexus of firearms and mental health. The relevant federal laws, especially the Gun Control Act of 1968, the Brady Act of 1993, and the NIAA of 2007, provide the legal foundation, or policy floor, on which states are free and sometimes encouraged to build. Here I present findings on state lawmaking in the realm of mental health and firearms from 2004 to 2014, a period that encompasses the periods before and after some of the nation's most high-profile mass shootings.

The review is based on a search of the Lexis-Nexis State Capital database of bills introduced from January 1, 2004, through December 31, 2014. Using the search terms “mental and background” and “mental and firearm” for each legislative session, I identified 282 bills whose summary indicated that were explicitly directed at the nexus between mental health and firearms. These bills featured a variety of approaches, and although most did not pass, many of them did.

Key Findings

During the 2004–2014 period, legislation on firearms and mental health was introduced in all but two states. Of those 48 states, 40 enacted at least one measure. Among those enacting laws, the majority ($n = 26$) both tightened and loosened restrictions over the period (sometimes in the same bill). However, 12 states only tightened their laws, while just one state only relaxed them. One state passed only a neutral measure, a suicide awareness program in the schools.

Another way to look at the overall movement across the states is to examine each bill and its component provisions. The 82 bills that were enacted (a figure that excludes companion bills and those absorbed within larger legislation) contained 117 significant provisions relating to men-

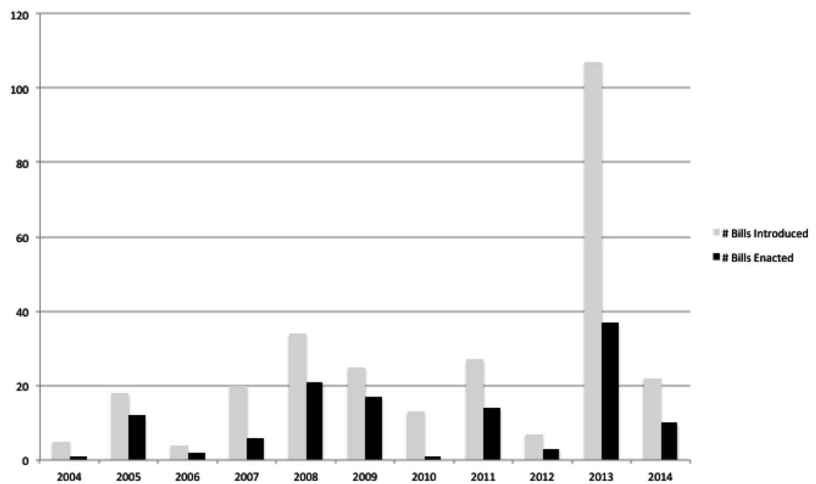


Figure 1. State legislation relating to guns and mental health, 2004–2014.

tal health.⁵ Of these provisions, 61% tightened restrictions; 29% relaxed them; and 10% were neutral. As described below, nearly all of the loosening measures (30 out of 34) provided for the restoration of firearm rights for certain previously disqualified people—a process required for states to receive NICS grants under the NIAA.⁶ With the exception of the restoration provisions, nearly every provision enacted into law from 2004–2014 had the effect of restricting access to firearms by the mentally ill.

Moreover, bills relating to firearms and mental health enjoyed a comparatively high rate of passage. Of the 282 bills introduced, 124 of these measures—including companion bills and those absorbed within larger legislation—were enacted, or 44% of those introduced.⁷ This rate exceeds the overall rate for all types of legislation in state legislatures, which was 29% in the 2010–2012 sessions, according to Council of State Governments data. If we include bills introduced in one session that passed in identical or largely similar form in a later session, the enactment rate rises to 48%.

Figure 1 shows the level of activity over time. I interpret “enacted” broadly to encompass bills that were substantially the same as, or absorbed within, a bill that passed within that legislative session. As the figure shows, lawmakers’ attention to the issue varied widely by year, in part because of different legislative calendars across the states and in part because of events. For example, only four bills were introduced in 2006, the year before the Virginia Tech shooting, while 107 bills were introduced in 2013, which began just 2 weeks after the Sandy Hook shooting. Likewise, rates of enactment

varied over time, from a low of 20% in 2004 to a high of 68% in 2009.⁸

Nearly all of the bills fell into one or more of six categories:

- (1) the collection, reporting, or disposition of mental health *records* used to identify those prohibited from possessing firearms (50% of bills);
- (2) the *criteria* used to determine who should be prohibited because of mental illness from possessing firearms (26%);
- (3) *restoration* of the right to possess a firearm, under certain conditions, for people

⁵A provision was considered significant if it was included in the bill summary provided by Lexis-Nexis, which often is based off the summary provided at the top of the bill itself.

⁶Although I counted restoration provisions as a “loosening” of restrictions, gun violence prevention groups do not necessarily oppose these measures now, as their enactment paves the way for states to receive federal grants to improve their mental health records collection and reporting systems.

⁷Because the denominator includes all bills introduced in both chambers, it is necessary also to count companion and absorbed legislation in the numerator so as not to falsely understate the enactment rate. Five bills introduced in 2014 were pending as of this writing.

⁸To ensure an “apples to apples” comparison, the “enacted” bar represents laws introduced in the given year that became law either in that year or the following year. Many laws are enacted the same year they are introduced, but some are not.

who have been previously disqualified for a reason related to mental illness (21%);

To accommodate these concerns, I present two sets of findings. Table 1 provides a rough account of the pass rates across types of bills. Here, I count as enacted companion

states—and indirectly, through its insistence that a restoration provision be included in the NIAA, to which a number of states sought to conform in these years.

What we can say is that for a substantial fraction of these new laws—somewhere between one third and one half—high-profile shootings provided the impetus

- (4) the *seizure* or *surrender* of firearms, or *revocation* of a firearms license, because of mental illness (17%);
- (5) support for *education* initiatives to prevent suicide or the creation of *task forces* to inform policymakers (5%); or
- (6) requirements that mental health professionals *report* certain people whose mental illness puts them at heightened risk of firearms violence (4%).⁹

Rates of Policy Enactment and Diffusion

Across the six categories of policies we see wide variation in the rate of enactment and of diffusion across the states. Note that comparing rates of enactment is tricky because some bills that are introduced but not officially deemed enacted may in fact have been absorbed within other enacted legislation, or be very similar to it. Likewise, a dramatic event, such as the Sandy Hook school shooting, might prompt the introduction of many similar bills, no more than one of which is likely to emerge as the consensus bill for legislative focus (that is to say, the enactment rate might appear very low if many similar bills were introduced in a given year, and very high if very few were).

bills, bills that get absorbed within other legislation, and bills that did not pass but are similar to those that did in any given session. In other words, bills that did not officially pass—but had the effect of being enacted—are considered enacted (what I term the *effective enactment rate*).

A more precise way to look at the same patterns is by analyzing the percentage of states that enacted at least one bill in each category, contingent on whether such a bill had been introduced (so, for example, 84% of states that considered a mental health records bill between 2004 and 2014 enacted at least one such bill into law). This formulation helps to control for the high number of similar bills introduced in the wake of an especially deadly mass shooting. Table 2 presents the results.

Although the percentages differ, a broad but not surprising pattern emerges, which is that more coercive policies, such as those that would tighten the criteria for possession by the mentally ill or force such owners to give up their guns, are less likely to pass than are those that focus on reporting, record keeping, and educational initiatives. Proposals centered on firearms rights—the vast majority of which facilitated their restoration—also enjoyed a relatively strong pass rate. Public records of these deliberations suggest that the comparatively high pass rate is partly because of the gun lobby, both directly—through its lobbying in the

Factors Propelling Lawmaking

State legislatures and lawmakers do not keep systematic data on the origins of bills considered, and newspaper coverage of state legislatures is uneven, particularly in an era of shrinking news budgets. Thus, assembling a definitive political history of these nearly 300 bills would pose a daunting and perhaps impossible challenge. Nevertheless, for at least some of the 124 measures that were enacted, the public record offers clues to the reasons behind their introduction and the political dynamics surrounding their legislative journeys.

Strangely for this most partisan of “hot button” issues, there is little if any aggregate relationship between the party controlling state government (or its legislative branch) and enactment of legislation relating to firearms and mental health.

Bill Origins: The Role of Shootings and Government Actions

Political scientists have found that numerous factors can catapult issues onto lawmakers’ decision agendas. Two factors are particularly relevant to policymaking around mental health and firearms: (a) the presence of events that focus attention on a problem and (b) pressure imposed by a higher level of government. Table 3 shows the factors associated in public records with bills that were enacted.¹⁰ Note that this analysis is merely suggestive, as factors that prompted the introduction of nonenacted bills were not coded, and even with enacted legislation, public accounts of their origins were sparse.

Table 1. Types of Legislation and Rates of Enactment

	# Bills introduced	Effective enactment rate (%)
Records	140	56
Criteria	73	32
Restoration	58	67
Seizure, surrender, and/or revocation	48	27
Education/task force	13	62
Report	10	70

⁹Percentages do not sum to 100 because some bills contained provisions in more than one category.

¹⁰To understand the origins of these bills, a research assistant and I searched publicly accessible records: local and national newspaper reports, advocacy group websites, lawmaker statements, legislative reports, preambles attached to bills, and so forth. Shootings were coded as a contributing factor only when they were explicitly mentioned. The NIAA was coded as a contributing factor when federal requirements or grants associated with that law were mentioned.

Table 2. *States That Considered and Enacted Different Types of Legislation*

	# States where bill introduced	% States enacting bill once introduced
Records	43	84
Criteria	22	41
Restoration	35	77
Seizure, surrender, revocation	19	42
Education	9	55
Report	6	67

What we can say is that for a substantial fraction of these new laws—somewhere between one third and one half—high-profile shootings provided the impetus. The Sandy Hook shooting led to at least 17 enacted measures. Virginia Tech was a direct spur for six measures, and an indirect spur for 28 others in that it served as the impetus for the NIAA. Local shootings appeared to play a role in a handful of conservative southern states, namely Alabama and South Carolina. But these events are only facilitators—most states did not change their laws on mental health in direct response to a particularly high-profile shooting, even Sandy Hook.

For somewhere between half and three-quarters of the new laws, government pressure provided a spur. These points of leverage included the NIAA, with its financial incentives for enhanced record reporting; court rulings; requests from law enforcement authorities and recommendations by official panels for enhanced laws; and even the moral suasion that comes from lagging behind other states in complying with the spirit of the Brady law.

Table 3. *The Impetus for Mental Health and Firearms Bills: Suggestive Evidence*

	% of all enacted bills (n = 82)	% of bills for which impetus identifiable (n = 59)
Events	35	49
Nationally prominent shooting	28	39
Local shooting	7	12
Government actions	52	73
NIAA incentive	34	47
Task force recommendation	6	10
Law enforcement request	8	14
Court ruling	3	5
Funding availability	2	2
Lagging behind other states	1	3

Note. Based on search of newspaper and online records. At least one factor could be identified for 59 of the 82 bills enacted (72%). Percentages exceed 100 because for some bills more than one contributing factor was identified. Percentages for specific factors may not sum to the aggregate percentages for events or government actions because sometimes more than one factor within each of these broad categories was identified.

since 1966, the organization “has urged the federal government to address the problem of mental illness and violence.”¹² The NRA helped negotiate the NIAA, in particular the restoration of rights provision. Thus, when states sought to align their reporting and restoration procedures with the national law, the NRA frequently issued statements in support. The National Shooting Sports Foundation, which represents the firearms industry, has a “FixNICS” advocacy program urging states to submit their records (<http://www.fixNICS.org>).

Curiously, among the 82 enacted bills, I could find 11 cases where a progun group was opposed and the NRA was in favor. Again, this estimate should be considered a lower-bound figure, as groups’ positions were frequently not identifiable. What is more, in some cases it was mental health groups—not the NRA—that opposed these provisions.

Finally, a review of the scant information that does exist about the political origins and dynamics of these bills suggests that, in some cases—particularly in gun-friendly states—they may have served as cover for progun legislation, in effect allowing lawmakers to loosen gun laws while providing reassurance to the public that the law tightened restrictions on those who might be perceived as posing a particular danger. For example, in 2005 Florida passed a law requiring firearms purchases to undergo an additional review of mental health records, and that same year the state passed its seminal Stand Your Ground law. Some gun reform advocates worry that laws restricting gun access by the seriously mentally ill represent lowest-common-denominator policies that have little impact on gun violence but potentially further stigmatize an already marginalized group of people.

Where Policy Goes From Here

Gun reform organizations historically have focused on blanket approaches to gun violence—for example licensing of all gun owners, registration of all handguns, bans on certain types of weapons or ammunition magazines, background checks on all (or vir-

¹¹The final 1% was a bill that passed in the only state with a nonpartisan legislature, Nebraska.

¹²National Rifle Association, 2013.

tually all) gun sales, and so forth. They have paid far less attention to the nexus between gun violence and mental illness. This may be changing.

The Educational Fund to Stop Gun Violence, the research arm of the 40-year-old Coalition to Stop Gun Violence, convened a consortium of academic experts and activists to study and recommend evidence-based policy interventions that would take into account not individuals' mental health status, per se, but rather their risk factors for self- or other-directed violence. The consortium recommended that states pass laws banning firearm purchases or possession by those involuntarily committed for short-term hospital stays and those who have been convicted of certain misdemeanors. The consortium also urged states to enact a "gun

violence restraining order," such as California's, which would allow an individual to petition a court to order the temporary removal of a firearm from the home of a family member or partner deemed a credible risk of harm to himself or others.

Gun politics are partisan and usually rancorous. Yet, policymaking around mental health and firearms has proven to be much less so. Even where principled differences arise, lawmakers have forged consensus bills that have passed at comparatively high rates. These bills defy the conventional wisdom that gun regulations are politically untenable outside a handful of liberal states. Many of these new laws gave both gun reform and gun rights advocates something they wanted and did not affect gun owners across the board.

As gun reform advocates and policymakers increasingly look to sensitive and sensible policies to prevent gun violence by mentally ill individuals, these new laws will provide useful information. Early research by Jeffrey Swanson suggests that record reporting works, but additional studies will prove helpful. Politically, as the gun reform movement gains resources and energy, it will be interesting to see where gun rights groups, especially the NRA, will stand on legislation affecting mental health and firearms. Will the two sides make strange bedfellows—as they did with NIAA in 2007—or have the opportunities to find common ground dried up?

Keywords: mental illness; firearms; gun control; public policy