



Risk-Based Firearm Policy Recommendations for Virginia

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The Educational Fund to Stop Gun Violence

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**The Educational Fund to Stop Gun Violence
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Additional Resources:

The Consortium for Risk-Based Firearm Policy State Report: *Guns, Public Health, and Mental Illness: An Evidence-Based Approach for State Firearm Policy*
<http://www.efsgv.org/wp-content/uploads/2014/10/Final-State-Report.pdf>

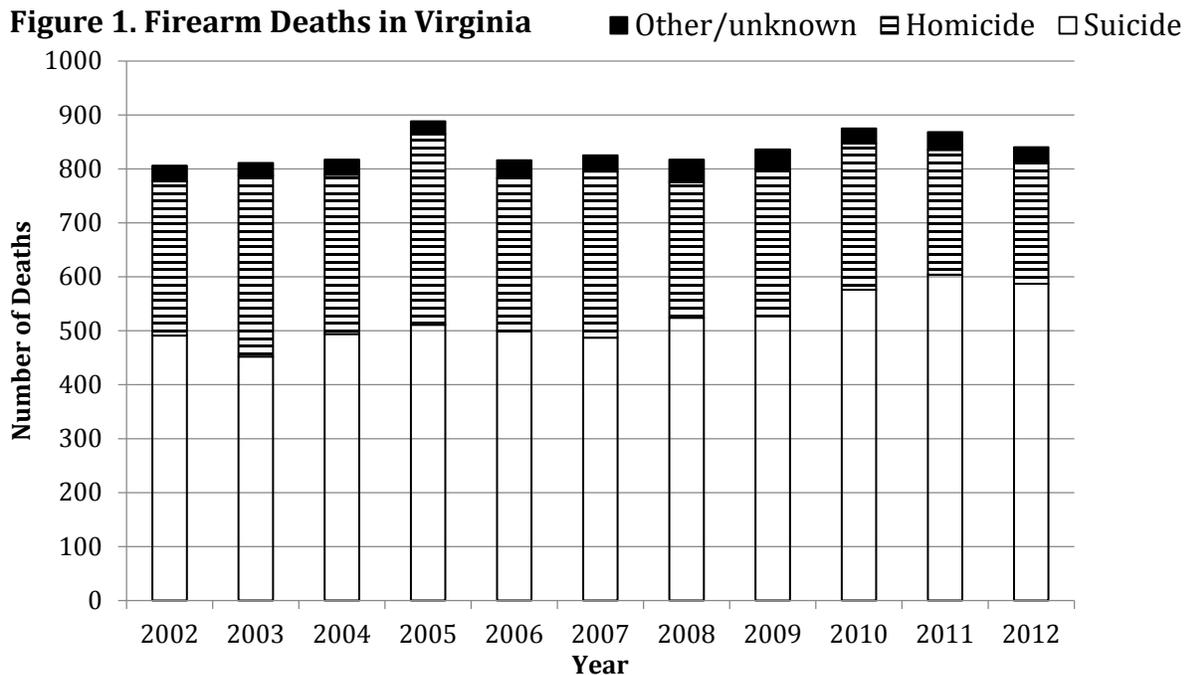
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Introduction

Firearm violence takes a tragic toll on society. There are more than 74,000 firearm injuries¹ and 32,000 deaths²—nearly two-thirds of which are suicides³—each year in the United States. Effective solutions to reduce gun violence demand a comprehensive, evidence-based strategy. The Consortium for Risk-Based Firearm Policy (Consortium), a group of the nation’s leading experts in public health, mental health, and gun violence prevention, came together in March 2013 to address this complex issue. These esteemed researchers, practitioners, and advocates developed evidence-based gun violence prevention policy recommendations to reduce access to firearms by people who are at an increased risk of dangerous behavior. This analysis from the Educational Fund to Stop Gun Violence (Ed Fund) examines how Virginia policy compares to the Consortium’s recommendations, and outlines steps Virginia can take to prohibit individuals at increased risk of dangerousness from accessing firearms. The evidence supporting these recommendations is presented in the full Consortium Report: *Guns, Public Health, and Mental Illness: An Evidence-Based Approach for State Firearm Policy*.⁴

I. Firearm Deaths in Virginia

At least two people die every day from firearm-related injuries in Virginia (840 total deaths in 2012).⁵ Similar to national data, the majority of gun deaths in Virginia are suicides⁶ (see Figure 1). Firearm suicides consistently represent well over half of Virginia gun deaths, and accounted for 70% of all firearm deaths in 2012.⁷



Source: CDC’s WISQARS™ (Web-based Injury Statistics Query and Reporting System). *Fatal Injury Reports, 1999-2012, for National, Regional, and States*

II. Consortium Recommendation Summary

The discourse after horrific mass shootings often centers on the link between gun violence and mental illness. While research shows mental illness is strongly associated with suicide,^{8,9} the majority of mentally ill individuals will never be violent toward others.¹⁰⁻¹² There are certain times when mentally ill persons are at increased risk of interpersonal violence, such as the time period surrounding an involuntary hospitalization,^{13, 14} but most people with common mental illnesses are not more violent than the general population without mental illness.¹⁵ Mental illness alone accounts for a very small proportion of societal violence (about 4%),¹⁶ therefore policies must address other risk factors for dangerousness in order to reduce overall violence in society.^{17, 18} Aside from mental illness on its own, stronger predictors for interpersonal violence—including homicide—are a history of violence (violent misdemeanor crime convictions¹⁹ and domestic violence²⁰⁻²²), drug abuse,²³ and alcohol abuse.^{24,25} The Consortium recommends states expand current federal firearm prohibitions to include these broader risk factors for dangerousness. Policies addressing these criteria provide a comprehensive approach to gun violence prevention that is true to the evidence and does not stigmatize mental illness alone as the root cause of violence.

1. Mental Health Risk Factors for Dangerousness

Evidence shows that while mental illness on its own is not a strong predictor for violent behavior toward others, there are certain times when the mentally ill are more prone to violence. The first episode of psychosis, and the time period just before and after an involuntary hospitalization, for example.^{26, 27} Mental illness *is* strongly associated with self-harm, and common mental illnesses such as depression can increase risk of suicide.^{28, 29} Risk of suicide and access to firearms is particularly dangerous; 90% of attempted suicides by firearm are fatal.³⁰ Seventy-percent of Virginia firearm deaths were by suicide in 2012 (see Figure 1.) and evidence informed policies restricting access to firearms during these periods of crisis may be effective. See below for the Consortium's recommendations regarding mental health risk factors for dangerousness.

Recommendation #1: Current state law should be strengthened to temporarily prohibit individuals from purchasing or possessing firearms after a short-term involuntary hospitalization. Concurrently, the process for restoring firearm rights should be clarified and improved.

- 1.1 States should enact new legislation temporarily prohibiting individuals from purchasing or possessing firearms after a short-term involuntary hospitalization. This prohibition should be predicated on a clinical finding of danger to self or danger to others.

- 1.2 Restoration of an individual's ability to purchase or possess a firearm following a firearm disqualification due to mental illness should be based on an evaluation by a qualified clinician and a finding that the petitioner is unlikely to relapse and present a danger to self or others in the foreseeable future.

2. Other Risk Factors for Dangerousness

As the majority of violence is related to factors other than mental illness alone, the Consortium recommends a risk-based approach to reducing violence, looking at other risk factors for dangerousness. A history of violence,^{31, 32} including violent misdemeanor convictions³³ and perpetration of domestic violence,³⁴⁻³⁶ is the strongest predictor of violence toward others. Individuals who abuse alcohol are at increased risk of homicide and suicide,³⁷ and research also shows that firearm owners are more likely to abuse alcohol.³⁸⁻⁴¹ Studies also show that illegal use of controlled substances is related to an increased risk of violence.⁴²⁻⁴⁶ The cognitive impairment associated with drug use also makes it difficult to avoid violent conflict.⁴⁷⁻⁴⁹ See below for the Consortium's recommendations regarding these other risk factors for dangerousness.

Recommendation #2: States should enact new prohibitions on individuals' ability to purchase or possess a firearm that reflect evidence-based risk of dangerousness.

- 2.1 Individuals convicted of a violent misdemeanor should be prohibited from purchasing or possessing firearms for at least ten years.
- 2.2 Individuals who are subject to temporary domestic violence restraining orders should be prohibited from purchasing and possessing firearms for the duration of the temporary order.
- 2.3 Individuals convicted of two or more DWI or DUIs in a period of five years should be prohibited from purchasing and possessing firearms for at least five years.
- 2.4 Individuals convicted of two or more misdemeanor crimes involving controlled substances in a five-year period should be prohibited from purchasing or possessing firearms for at least five years.

3. Periods of Crisis

Law enforcement and concerned family members need tools to temporarily restrict firearms access during periods of crisis. Connecticut⁵⁰ and Indiana⁵¹ have discretionary gun-removal tools for law enforcement, and California⁵² became the first state in the country to pass a law providing family members with a similar option. See below for the Consortium's recommendations regarding these periods of crisis.

Recommendation #3: Develop a mechanism to authorize law enforcement officers to remove firearms when they identify someone who poses an immediate threat of harm to self or others. States should also provide law enforcement with a mechanism to request a warrant authorizing gun removal when the risk of harm to self or others is credible, but not immediate. In addition, states should create a new civil restraining order process to allow family members and intimate partners to petition the court to authorize removal of firearms and temporarily prohibit firearm purchase and possession based on a credible risk of physical harm to self or others, even when domestic violence is not an issue.

- 3.1: Authorize law enforcement to remove guns from any individual who poses an immediate threat of harm to self or others. Law enforcement officers are well versed in the “use of force” continuum, and may also use risk/lethality assessments to judge the risk of particular situations. In emergency situations, this authority can be exercised without a warrant.
- 3.2: Create a new civil restraining order process to allow private citizens to petition the court to request that guns be temporarily removed from a family member or intimate partner who poses a credible risk of harm to self or others. This process should mirror the restraining order process in most states and include a temporary *ex parte* order as well as a long-term order issued after a hearing in which the respondent had an opportunity to participate. Respondents to an order issued through this process (Gun Violence Restraining Order or GVRO) will be prohibited from purchasing and possessing guns for the duration of the order and required to relinquish all firearms in their possession for the duration of the order. Law enforcement officers should be able to request a warrant through this process to remove guns when there is a credible risk of harm that is not immediate.
- 3.3: Include due process protections for affected individuals. Specifically, provide respondents with an opportunity to participate in a hearing after having their guns removed by law enforcement (3.1) or through the GVRO process (3.2) and assure processes are in place for returning all removed guns at the conclusion of the temporary prohibition.

III. Opportunities for Virginia

Virginia firearms law is stronger than federal law in a few ways.⁵³ Among other approaches, Virginia goes beyond federal firearm prohibitions by including the following firearm disqualifying categories:

- Individuals involuntarily committed to outpatient treatment⁵⁴ (those committed to inpatient treatment are prohibited by federal law);
- Individuals voluntarily admitted to a state facility following a temporary detention order;⁵⁵
- Individuals subject to ex-parte protection orders from purchasing or transporting firearms (does not prohibit possession);⁵⁶
- Individuals convicted of two misdemeanor drug offenses within a three year period (prohibits purchase and transport, not possession; only for handguns);⁵⁷

Even with these expanded prohibitions, law enforcement and concerned family members lack clear legal authority to restrict firearms access from individuals in crisis.

There are opportunities for Virginia to expand current firearm prohibitions to address risk factors for dangerousness, and Virginia should implement the following Consortium recommendations:

Consortium Recommendation #1: Mental Health Risk Factors for Dangerousness

- Refine the restoration process to include evidence from a clinician that the petitioner is unlikely to be a danger to themselves or others in the foreseeable future.

Consortium Recommendation #2: Other Risk Factors for Dangerousness

- Prohibit individuals convicted of a violent misdemeanor from purchasing or possessing a firearm for at least ten years.
- Add a possession prohibition for individuals subject to a temporary domestic violence protection order.
- Prohibit individuals convicted of two or more DUI or DWIs within a five year period from purchasing or possessing firearms for at least five years.
- Refine the current misdemeanor drug related prohibition to include a possession prohibition, and apply to long guns and/or rifles.

Consortium Recommendation #3: Periods of Crisis

- Create a Gun Violence Restraining Order (GVRO) mechanism to enable law enforcement, family members, and intimate partners to petition the court to temporarily prohibit an individual in crisis from purchasing or possessing firearms.

IV. Policy Analysis

An in depth analysis of current Virginia law and the corresponding Consortium recommendations is provided in the table below.

Consortium Recommendation #1: Mental Health Risk Factors for Dangerousness

1.1: Prohibit individuals following a short-term involuntary hospitalization from purchasing or possessing a firearm.

Current Statute

It shall be unlawful for any person involuntarily admitted to a facility or ordered to mandatory outpatient treatment pursuant to § 19.2-169.2, involuntarily admitted to a facility or ordered to mandatory outpatient treatment as the result of a commitment hearing pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, or who was the subject of a temporary detention order pursuant to § 37.2-809 and subsequently agreed to voluntary admission pursuant to § 37.2-805 to purchase, possess or transport a firearm.

Va. Code Ann. § 18.2-308.1:3

Subsection § 37.2-809:

B. A magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or upon his own motion and only after an evaluation conducted in-person or by means of a two-way electronic video and audio communication system as authorized in § 37.2-804.1 by an employee or a designee of the local community services board to determine whether the person meets the criteria for temporary detention, a temporary detention order if it appears from all evidence readily available, including any recommendation from a physician or clinical psychologist treating the person, that the person (i) has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, (ii) is in need of hospitalization or treatment, and (iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment. The magistrate shall also consider the recommendations of any treating or examining physician licensed in Virginia if available either verbally or in writing prior to rendering a decision. Any temporary detention order entered pursuant to this section shall provide for the disclosure of medical records pursuant to § 37.2-804.2. This subsection shall not preclude any other disclosures as required or permitted by law.

Va. Code Ann. § 37.2-809

A. The commitment hearing for involuntary admission shall be held after a sufficient period of time has passed to allow for completion of the examination required by § 37.2-815, preparation of the preadmission screening report required by § 37.2-816, and initiation of mental health treatment to stabilize the person's psychiatric condition to avoid involuntary commitment where possible, but shall be held within 72 hours of the execution of the temporary detention order as provided for in § 37.2-809
VA Code Ann. § 37.2-814

Summary & Recommendation

- Virginia meets Consortium recommendation 1.1. Individuals subject to a temporary detention order are either (1) involuntarily admitted to treatment following a commitment hearing, or (2) voluntarily admitted to treatment. Both outcomes are firearm prohibitory. If the individual does not meet commitment criteria they are released with no resulting firearm prohibition.

1.2: Refine the restoration process to include evidence from a clinician that the petitioner is unlikely to be a danger to themselves or others in the foreseeable future.

Current Statute

*B. Any person prohibited from purchasing, possessing or transporting firearms under this section may, at any time following his release from involuntary admission to a facility, his release from an order of mandatory outpatient treatment, or his release from voluntary admission pursuant to § 37.2-805 following the issuance of a temporary detention order, petition the general district court in the city or county in which he resides to restore his right to purchase, possess or transport a firearm. A copy of the petition shall be mailed or delivered to the attorney for the Commonwealth for the jurisdiction where the petition was filed who shall be entitled to respond and represent the interests of the Commonwealth. The court shall conduct a hearing if requested by either party. If the court determines, after receiving and considering evidence concerning the circumstances regarding the disabilities referred to in subsection A and the person's criminal history, **treatment record, and reputation as developed through character witness statements, testimony, or other character evidence, that the person will not likely act in a manner dangerous to public safety and that granting the relief would not be contrary to the public interest, the court shall grant the petition.** Any person denied relief by the general district court may petition the circuit court for a de novo review of the denial. Upon a grant of relief in any court, the court shall enter a written order granting the petition, in which event the provisions of subsection A do not apply. The clerk of court shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any such order.*

C. As used in this section, "treatment record" shall include copies of health records detailing the petitioner's psychiatric history, which shall include the records pertaining to the commitment or adjudication that is the subject of the request for relief pursuant to this section.

Va. Code Ann. § 18.2-308.1:3

Summary & Recommendation

- The restoration process includes examination of the individual's treatment record, but Virginia should mandate that a mental health practitioner provide an independent assessment of the petitioner's current and prior treatment for mental illness, to determine the petitioner is not likely to be a danger to self or others in the foreseeable future.
- Recommend implementing Consortium recommendation 1.2.

Consortium Recommendation #2: Other Risk Factors for Dangerousness

2.1: Prohibit individuals convicted of a violent misdemeanor from purchasing or possessing a firearm for at least ten years.

Current Statute n/a	Summary & Recommendation <ul style="list-style-type: none">• Virginia does not prohibit individuals who are convicted of violent misdemeanors from purchasing or possessing firearms.• Recommend implementing Consortium recommendation 2.1.
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2.2: Prohibit individuals subject to a temporary domestic violence restraining order from purchasing or possessing a firearm for the duration of the order.

Current Statute <i>It is unlawful for any person who is subject to (i) a protective order entered pursuant to § 16.1-253.1, 16.1-253.4, 16.1-278.2, 16.1-279.1, 19.2-152.8, 19.2-152.9, or 19.2-152.10; (ii) an order issued pursuant to subsection B of § 20-103; (iii) an order entered pursuant to subsection E of § 18.2-60.3; (iv) a preliminary protective order entered pursuant to subsection F of § 16.1-253 where a petition alleging abuse or neglect has been filed; or (v) an order issued by a tribunal of another state, the United States or any of its territories, possessions or commonwealths, or the District of Columbia pursuant to a statute that is substantially similar to those cited in clauses (i), (ii), (iii), or (iv) to purchase or transport any firearm while the order is in effect.</i> Va. Code Ann. § 18.2-308.1:4	Summary & Recommendation <ul style="list-style-type: none">• Virginia prohibits individuals subject to ex-parte protective orders from purchasing or transporting firearms while the order is in effect; this should be expanded to include a possession prohibition.• Recommend implementing Consortium recommendation 2.2.
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2.3: Prohibit individuals convicted of two or more DUI or DWIs within a five year period from purchasing or possessing firearms for at least five years.

Current Statute n/a	Summary & Recommendation <ul style="list-style-type: none">• Virginia does not prohibit individuals convicted of multiple DUI or DWIs within a five year period.• Recommend implementing Consortium recommendation 2.3.
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2.4: Prohibit individuals convicted of two or more misdemeanor drug crimes within a five

year period from purchasing or possessing firearms for at least five years.	
<p>Current Statute <i>Any person who, within a 36-consecutive-month period, has been convicted of two misdemeanor offenses under subsection B of former § 18.2-248.1:1, § 18.2-250 or 18.2-250.1 shall be ineligible to purchase or transport a handgun. However, upon expiration of a period of five years from the date of the second conviction and provided the person has not been convicted of any such offense within that period, the ineligibility shall be removed.</i> <i>Va. Code Ann. § 18.2-308.1:5</i></p>	<p>Summary & Recommendation</p> <ul style="list-style-type: none"> • Virginia prohibits individuals convicted of two misdemeanor drug offenses from purchasing or transporting handguns; this should be expanded to include a possession prohibition, and include long guns/rifles. • Recommend implementing Consortium recommendation 2.4.

Consortium Recommendation #3: Periods of Crisis	
3.1-3.3: Create a Gun Violence Restraining Order (GVRO) mechanism to enable law enforcement, family members, and intimate partners to petition the court to temporarily prohibit an individual in crisis from purchasing or possessing firearms.	
<p>Current Statute <i>n/a</i></p>	<p>Summary & Recommendation</p> <ul style="list-style-type: none"> • There is no mechanism for law enforcement to apply for a warrant to remove firearms in Virginia. • There is no civil mechanism for private citizens to petition the court to remove firearms. Nor is there a mechanism for private citizens to contact law enforcement to petition the removal of guns for the broader dangerous behaviors we identify in the state report. • Recommend implementing Consortium recommendations 3.1, 3.2., and 3.3.

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- ⁵⁴ Va. Code Ann. § 18.2-308.1:3
- ⁵⁵ Va. Code Ann. § 18.2-308.1:3
- ⁵⁶ Va. Code Ann. § 18.2-308.1:4
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