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Reconsidering the Adequacy of Current Conditions on Legal Firearm Ownership

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An important objective of successful gun violence prevention policy is to keep guns from high-risk individuals without infringing on the rights of law-abiding citizens to use firearms for protection or recreation. Given the potential of laws designed to keep guns from dangerous individuals to save lives, the categories of individuals to be prohibited from possessing firearms merits careful consideration. The goals of this chapter are to (1) briefly review the current federal prohibitory criteria for firearm possession and the rationale for these prohibitions, (2) make the case for broadening these criteria to limit access to firearms among additional categories of individuals, and (3) put forth specific policy recommendations based on the available research evidence. This chapter does not address prohibitory criteria related to mental

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health status and only touches on prohibitions for violent misdemeanants, because these are covered elsewhere in this volume.

Rationale for Current Conditions that Prohibit Firearm Possession

Recognizing that certain categories of individuals are at high risk for committing violence, federal law prohibits firearm possession by the following groups: felons; fugitives; persons convicted of a misdemeanor crime for domestic violence; those who are subject to certain restraining orders for domestic violence; unlawful users of or those addicted to controlled substances; those who have been found by a judge to be mentally incompetent, a danger to themselves or others as a result of mental illness, or have been involuntarily committed to a mental institution; those who have been dishonorably discharged from the military; illegal aliens; and persons who have renounced their U.S. citizenship. In addition, federal law sets 21 years as the minimum age at which a person can lawfully purchase a handgun from a federally licensed firearms dealer but sets 18 as the minimum legal age for handgun possession and for transfers of handguns from anyone who is not a licensed gun dealer (18 U.S.C. §922 (d) (2012)). No minimum possession age applies to long guns (rifles and shotguns) under federal law.

Research provides justification for restricting firearm possession for many of these groups. Convicted felons are much more likely to commit subsequent violent crimes—including homicide—than are nonfelons (Cook, Ludwig, and Braga 2005). Similarly, persons with a history of committing intimate partner violence are at increased risk for killing an intimate partner (Campbell et al. 2003) and for committing violence against nonfamily members (Etter and Birzer 2007; Fagan, Stewart, and Hansen 1983; Gayford 1975; Hotaling, Straus, and Lincoln 1989).

Research also supports restricting firearm possession for drug abusers. Illicit drug use and abuse is strongly associated with violent and criminal behavior (Afifi et al. 2012; Friedman 1998; Kelleher et al. 1994; Parker and Auerhahn 1998; Rivara et al. 1997; Walton-Moss et al. 2005) and suicide (Borges, Walters, and Kessler 2000; Borowsky, Ireland, and Resnick 2001; Rivara et al. 1997). For example, homicide offenders are nearly five times more likely to abuse drugs than are nonoffenders, and the use of illicit drugs is associated with a seven times higher risk of suicide (Rivara et al. 1997).

There also is strong evidence for restricting access to firearms by young people. Involvement in violent crime, either as a perpetrator or victim, increases dramatically during adolescence and in early adulthood (Fabio et al. 2006; Fox and Zawitz 2010). Brain structures related to risk taking and impulse control are developing throughout adolescence, and this may contribute to heightened risk of violent behavior among this age group (Johnson, Blum, and Giedd 2009; Steinberg 2004).

The Case for Broadening Firearm Prohibitions for High-Risk Persons

Federal law sets the minimum standards for legal firearm ownership, but many states have laws that disqualify additional categories of high-risk individuals. The differences across states are significant. For example, New Jersey prohibits firearm possession by anyone who has been convicted of a crime for which the penalty can be 6 months or more of imprisonment and sets the minimum legal age for handgun possession at 21 years. (Federal law sets age 18 as the minimum legal age to *possess* a handgun.) In contrast, 13 states have standards for legal firearm possession that either mirror or are weaker than federal standards. In these 13 states, individuals who are likely at high risk for committing violence against themselves or others can legally possess firearms.

A recent study, using data from a survey of inmates in state prisons, examined the criminal history and ages of 253 persons incarcerated for committing gun-related crimes in the 13 U.S. states with the least stringent criteria for legal firearm possession.¹ Sixty percent ($n=151$) of the offenders in the study were legally permitted to possess firearms prior to committing the gun crime that led to their incarceration, including 4% who had prior misdemeanor convictions involving violence or firearms, 6% convicted of other misdemeanors, 5% convicted of a serious offense as a juvenile, and 13% who had prior arrests but no convictions. It is important to note that, if these 13 states had laws prohibiting firearm possession for these additional high-risk groups, nearly half of the 151 offenders ($n=73$) who were legally in possession of firearms would have been prohibited when they committed the gun offense for which they were incarcerated (Vittes, Vernick, and Webster 2012). Some portion of these gun crimes might have been prevented if these offenders had been prohibited from possessing firearms when they committed the offenses for which they were incarcerated.

Few rigorous scientific studies directly examine whether laws prohibiting individuals in specific high-risk groups from purchasing or possessing firearms reduce criminal offending by prohibited individuals (Hahn et al. 2005; Welford, Pepper, and Petrie 2004). However, studies that examine the effects of prohibiting access to firearms by perpetrators of domestic violence suggest that these laws can effectively reduce violence. For example, Wintemute and colleagues (2001) examined a California law that expanded firearm prohibitions to include persons convicted of violent misdemeanors. The study found that misdemeanants who were denied purchase of a handgun due to a change in the law were less likely than handgun purchasers to commit subsequent violent and gun-related crime. Studies also have found that state laws prohibiting firearm possession by those subject to certain types of domestic violence restraining orders are associated with lower rates of intimate partner homicide (Vigdor and Mercy 2003, 2006; Zeoli and Webster 2010).

Despite the lack of specific evaluations of prohibitory criteria for firearm possession for some categories of individuals, ample evidence shows that certain categories of individuals are at increased risk for violent and criminal behavior. We draw upon this literature to make the case for broadening prohibitions for firearm possession to include alcohol abusers, persons less than 21 years of age, and adults convicted of serious crimes as juveniles.

Alcohol Abusers

Unlike illicit drug abusers, alcohol abusers are not prohibited from purchasing or possessing firearms under federal law. Yet, alcohol abuse is at least as strongly associated with the perpetration and victimization of violence (Afifi et al. 2012; Friedman 1998; Kelleher et al. 1994; Parker and Auerhahn 1998; Rivara et al. 1997; Sharps et al. 2001; Walton-Moss et al. 2005) and suicide (Borges, Walters, and Kessler 2000; Borowsky et al. 2001; Rivara et al. 1997). For example, a case-control study that examined risk factors for homicide and suicide in three large urban areas in the United States found that subjects who drank alcohol, had ever been in trouble at work for drinking, or were ever hospitalized for alcohol abuse were at increased risk for homicide and suicide compared with controls (Rivara et al. 1997). Another multicity case-control study found that victim and perpetrator alcohol abuse was strongly associated with nonfatal and fatal intimate partner violence (Sharps et al. 2001).

Several studies suggest that firearm owners may be at increased risk for abusing alcohol (Diener and Kerber 1979; Miller, Hemenway, and Wechsler 1999, 2002; Nelson et al. 1996; Wintemute 2011). This is especially concerning, given that alcohol has been shown to hamper shooting accuracy and impair judgment about when it might be appropriate to use a gun (Carr et al. 2009). A recent study that analyzed population-based survey data from eight U.S. states found that respondents who owned firearms were more likely than those who did not live in a home with a firearm to engage in binge drinking, drive under the influence of alcohol, and have at least 60 drinks per month. Heavy drinking was also more common among firearm owners who carried a gun for protection and stored a gun loaded and unlocked (Wintemute 2011). College students who own firearms are more likely than their unarmed counterparts to binge drink (Miller, Hemenway, and Wechsler 1999, 2002), to drive after binge drinking (Miller et al. 1999, 2002), to be arrested for driving under the influence of alcohol (Miller et al. 1999), and to damage property after drinking alcohol (Miller et al. 1999).

State laws vary with regard to firearm purchase and possession prohibitions for alcohol users or problem drinkers (Carr et al. 2010; Webster and Vernick 2009). Unfortunately, the state laws that do exist may be ineffective because they fail to provide precise definitions of who is disqualified, making them impossible to enforce (Webster and Vernick 2009). Pennsylvania is an exception in that it prohibits firearm purchase by persons who have been convicted of three or more drunk driving offenses within a five-year period. Webster and Vernick (2009) point out that Pennsylvania's law is particularly useful because it provides a definition of alcohol abuser that is sufficiently specific to allow for the identification of prohibited persons. It is also highly justifiable given the abundant evidence that repeat drunk driving offenders are a high-risk group. Not only have they demonstrated reckless behavior, people who drive under the influence are also more likely to abuse illicit drugs or alcohol and to have concurrent psychiatric disorders (Freeman, Maxwell, and Davey 2011; Lapham et al. 2001, 2006; Laplante et al. 2008), have lower self-control (Keane, Maxim, and Teevan 1993), and have higher rates of repeated arrests (Lucker et al. 1991).

Youth under Age 21

Under federal law, a person must be 18 years of age to purchase a long gun and 21 years of age to purchase a handgun from a federally licensed firearms

dealer. But persons 18 years of age and older may purchase a handgun from a private seller and may possess a handgun. And there is no minimum age to possess a long gun or to purchase one from a private seller. Yet, research shows that risk for violent perpetration and victimization continues into young adulthood. Young people between the ages of 18 and 20 have some of the highest rates of homicide offending, and age-specific homicide offending rates rise sharply in the late teens and peak at age 20 (*Homicide Trends in the U.S.* 2012).

Laws that set 21 years as the minimum legal age for alcoholic beverage consumption were enacted in all 50 states in response to the recognition that heightened risk-taking behavior by individuals in this age group was a public safety concern. These laws led to significant reductions in deaths from motor vehicle crashes involving drivers between the ages of 18 and 20 (O'Malley and Wagenaar 1991).

The few studies that have evaluated laws banning juvenile gun purchase or possession have found no effect on juvenile homicide *victimization* or suicide (Marvell 2001; Rosengart et al. 2005; Webster et al. 2004). However, there has yet to be a study on the effect of these types of laws on the *commission* of violent crimes or homicide. Violent crime and homicide perpetration may be particularly relevant outcomes. Access to firearms by juveniles increases their risk for violent offending and victimization into early adulthood (Ruback, Shaffer, and Clark 2011). In addition, a recent study of gun-using offenders incarcerated in state correctional facilities in the 13 states with the weakest standards for legal gun possession found that the largest segment of offenders who would have been prohibited in states with stricter standards were those between 18 and 20 years of age (Vittes et al. 2012).

Another type of age-based firearm restriction warrants mention. Recognizing that children and adolescents lack the requisite maturity and self-control to be trusted with firearms (Hardy 2003), child access prevention (CAP) laws hold adult gun owners criminally responsible if a child gains access to and uses a gun that is not securely stored. Eighteen states and the District of Columbia currently have some form of CAP laws (Legal Community Against Violence 2008). Studies have found that CAP laws—particularly those that carry felony rather than misdemeanor penalties—are effective in reducing accidental shootings of children (Cummings et al. 1997; Hepburn et al. 2006). Research also shows that enacting CAP laws is associated with lower rates of adolescent suicides (Webster et al. 2004).

Persons Convicted of Serious Juvenile Offenses

A sizeable body of research suggests that the commission of crimes at a young age is a robust predictor of subsequent criminal activity and violent offending (Berk et al. 2009; Brame, Bushway, and Paternoster 2003; Farrington 1987; Ou and Reynolds 2010). For example, a study analyzing data from a cohort of low-income minority youth in Chicago found that men who were arrested before age 18 had a 38% higher likelihood of a subsequent felony conviction by age 26 compared with those who had not been arrested (Ou and Reynolds 2010). A study of probationers and parolees in Philadelphia found that serious criminal offending at a young age strongly predicted the subsequent commission of homicide or attempted homicide (Berk et al. 2009).

There is also a sizable literature suggesting that criminal recidivism is inversely associated with time since criminal conviction and with age (Blumstein and Nakamura 2009; Kurlychek, Brame, and Bushway 2005, 2007; Kurlychek, Bushway, and Brame 2012; Soothill and Francis 2009). Many of the states that have laws that restrict firearm possession from these offenders take this into account by making the restriction effective for a specified period of time or until the offender reaches a certain age. For example, Massachusetts bans firearm possession for five years after conviction for a serious juvenile offense, and California and Pennsylvania prohibit firearm possession until age 30 for juveniles adjudicated of certain felonies and misdemeanors.

Policy Recommendations

Despite the contentious debate among policymakers and others in the United States about policies governing the ownership and use of firearms, there is wide agreement that access ought to be restricted for individuals deemed to be at high risk for using guns to inflict harm on themselves or others. There also is a growing research literature that supports prohibiting firearm access among such dangerous persons. Nonetheless, some may argue that expanding prohibitory criteria for firearm possession is unfairly discriminatory or too difficult to achieve.

Persons who are barred from firearm possession, however, do have some legal recourse under the relief from federal firearms disabilities program. Under the provisions of the Gun Control Act of 1968, felons and other persons who have been prohibited under federal law from possessing firearms can

apply to the attorney general to have this prohibition lifted. The U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is responsible for reviewing and responding to requests for relief from firearms disability submitted by individual applicants. In recent years, however, appropriations have not been provided for this program (ATF 2013). Providing adequate appropriations for the relief from firearms disabilities program could make policies that broaden denial criteria for legal firearm possession more politically palatable.

Although many of the federal prohibitory criteria for firearm possession were established decades ago by the Gun Control Act of 1968, it is not the case that the categories of persons that are prohibited under federal law are unchangeable or even that they have not been changed recently. In fact, persons convicted of a domestic violence misdemeanor and those subject to certain types of domestic violence restraining orders were added to the list of prohibited firearm possessors as recently as 1996 and 1994, respectively (Vernick and Hepburn 2003).

The following recommendations are based on the evidence presented in the previous sections:

1. Prohibit firearm purchase for persons convicted of two or more crimes involving drugs or alcohol within any three-year period for a period of 10 years.
2. Raise the federal minimum age requirement for handgun purchase or possession to 21 years of age.
3. Prohibit firearm purchase for persons who have committed one or more serious juvenile offenses until age 30.

The research presented in this chapter indicates that alcohol abusers, young people, and persons who have been convicted of serious crimes as juveniles are at increased risk for violence. Access to firearms by individuals in these groups increases their own and the public's risk for injury and death. Firearm prohibitions for individuals in other high-risk groups such as domestic violence misdemeanants and respondents to domestic violence restraining orders are effective injury prevention policies. Evaluations of policies that can isolate the effect of firearm restrictions on high-risk groups are needed. Universal background checks, discussed elsewhere in this volume, would aid in the implementation and enforcement of these policies. Meanwhile, broadening these prohibitions has the potential to save additional lives.

NOTES

1. The 13 U.S. states with the least stringent criteria for legal firearm possession are Arkansas, Georgia, Idaho, Louisiana, Maine, Michigan, Mississippi, Montana, New Hampshire, New Mexico, Vermont, Wisconsin, and Wyoming.

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