



July 24<sup>th</sup>, 2018

Alissa Sughrue

Policy Coordinator, NAMI Texas (Texas affiliate of the National Alliance on Mental Illness)

Email: [policy.fellow@namitexas.org](mailto:policy.fellow@namitexas.org)

Phone: 512-693-2000

Testimony to Senate Select Committee on Violence in Schools & School Security

Interim charge: Examine whether current protective order laws are sufficient or whether the merits of Extreme Risk Protective Orders, or “Red Flag” laws, should be considered for seeking a temporary removal of firearms from a person who poses an immediate danger to themselves or others, only after legal due process is provided with a burden of proof sufficient to protect Second Amendment rights guaranteed by the United States Constitution.

## **Introduction:**

NAMI Texas is a nonprofit 501(c)3 organization founded by volunteers in 1984. We are part of the nation’s largest grassroots mental health organizations and we exist to help improve the quality of life for individuals with mental illness and their families. Around the state, we have 30 local NAMI affiliate organizations and approximately 2,000 members.

## **Mental Illness in Texas:**

### Adults

- 1 in 5 adults, or 4.1 million Texas adults, experience a mental illness in a given year.
- 1 in 25 adults, or 800,000-1 million in Texas, experience a serious mental illness in a given year.
- 1 in 100 adults lives with schizophrenia
- 2.6% of all adults lives with bipolar disorder
- 6.9% of all adults lives with major depression
- 18.1% of all adults lives with an anxiety disorder

### Children/Youth

- Lifetime prevalence for ages 13-18 for any mental illness: 49.5%
- 1 in 5 ages 13-18 has a serious mental health disorder at some point in their lives
- 11% of youth has a mood disorder
- 10% of youth has a behavior or conduct disorder
- 8% of youth have an anxiety disorder
- **50% of all lifetime cases of mental illness begin by age 14 and 75% by age 24**

## Violence and mental illness:

The vast majority of people with mental illness are not violent. In fact, people with mental illness are more likely to be the victims of violence than the perpetrators. Research on the relationship between mental illness and violence shows that there are certain factors that may increase risks of violence among a small number of individuals with mental illness. These factors include:

- Co-occurring abuse of alcohol or illegal drugs
- Past history of violence
- Being young and male
- Untreated psychosis

The best way to reduce this risk of violence due to untreated mental illness *is* through treatment.

- Only 4% of interpersonal violence is attributable to mental illness alone.
- Individuals living with mental illness pose a greater threat to themselves than anyone else.
- When there is a lack of access treatment, the risk of violence increases.

## Suicide Background:

- Mental illnesses such as depression significantly increase the risk of suicide, which account for 60% of gun deaths in the U.S. each year.
- From 2000 to 2015, Texas has seen a 23% increase in the number of suicides. In 2015, suicide claimed the lives of 3,403 people, more than double of those killed by homicide. Of these victims, 504 of them were under the age of 25, solidifying suicide as the second leading cause of death among 15 to 34-year-olds. It's the 4<sup>th</sup> leading cause of death for people ages 15-64.<sup>1</sup>
- Geographically, the suicide rate has increased in both rural and non-rural counties, with the rate being consistently higher in rural areas.<sup>2</sup>
- In 2017, one in 8 Texas high school students reported a suicide attempt. 12% in 2017, 10% in 2013. Almost twice the national average of 7%. 17.2% of high school students nationwide report seriously considering attempting suicide.
- More than half of suicides are by a person without a diagnosed mental health condition, so it is important to not target prevention/intervention just to people with mental health conditions.
- The increase in suicide deaths is across genders, with the suicide rates for women increasing more quickly
- In addition to the tragic loss experienced from suicide, there is a financial outcome. In 2014, Texas estimated a \$4.264 million in work-loss and medical expenses attached to the high suicide rate.
- **80% of people considering suicide give some sign of their intentions beforehand.**

<sup>1</sup> <https://www.utsystem.edu/sites/default/files/news/assets/Suicide%20in%20Texas.pdf>

<sup>2</sup> <https://utsystem.edu/sites/default/files/news/assets/northeasttx-health-status-report-2016.pdf>

## Firearms and Suicide:

- Most people who attempt suicide do not die—unless they use a gun. Most suicide attempts do not involve guns, but most suicides do. Firearms are the leading method of suicide: they account for half of all suicide deaths.
- Most gun deaths are suicides: Suicides represent two-thirds of all gun deaths.
- People who live in a home with a gun are three times more likely to die by suicide than those without access.
- Firearm suicide rates are greater in TX compared to the US. In 2015, firearm was the leading cause of suicide in both Texas and the US. The rate of firearm suicide was 7.3 per 100,000 in Texas vs. 6.5 per 100,000 in the US.

## Means matter:

What makes guns the most common mode of suicide in this country?

The answer: **They are both lethal and accessible.**

Suicide attempts are often impulsive and triggered by an immediate crisis.

- In 71% of suicide attempts that do not result in death, the person attempting made that decision within the hour.
- In about a quarter of attempts, the decision is made within 5 minutes.
- Suicidal impulses typically last only a short period of time.
- The vast majority of people (90 percent) who attempt suicide and survive do not go on to die by suicide.

If we can prevent the initial attempt from being successful, we can save lives. Suicide attempts with a gun, however, rarely afford a second chance. Suicide attempts by gun are usually successful and there is little opportunity for rescue or halt mid-attempt.

- About 85 percent of suicide attempts with a gun are fatal.
- Only 2 percent of overdoses, the most widely used method in suicide attempts, end in death.

## Existing protective order laws:

From the Giffords Law Center, 2017.

“Texas law prohibits firearm possession by any person (other than an active, sworn, full-time, paid peace officer) who is subject to a protective order for a party to a suit for dissolution of a marriage, a protective order for family violence, a magistrate’s order for emergency protection following an arrest for family violence, sexual assault, stalking, or human trafficking, a protective order for a victim of sexual assault, or a domestic violence protective order issued by another jurisdiction if he or she has received notice of the order.

If a court issues a temporary ex parte order for family violence, the order may direct the subject of the order to do or refrain from doing specific acts, but does not specify whether specifically prohibiting the subject from possessing a firearm is a permissible restriction. Nevertheless, any protective order for

family violence, including a temporary ex parte order, must contain the following statement: “It is unlawful for any person, other than a peace officer, as defined by section 1.07, Penal Code, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision, who is subject to a protective order to possess a firearm or ammunition.”

Texas law **does not**:

- Require the surrender of firearms or ammunition by domestic abusers who have become prohibited from possessing firearms or ammunition under federal or state law; or
- Explicitly authorize or require the removal of firearms or ammunition at the scene of a domestic violence incident.”

**Source:** <http://lawcenter.giffords.org/domestic-violence-and-firearms-in-texas/>

### **Why Texas needs a red-flag law:**

A common thread in many shootings are the family members of the shooters who saw their loved ones engage in dangerous behaviors and grew concerned about their risk of harming themselves or others—even before any violence occurred. Family members are often the first to know.

But family members are disempowered from stepping in to prevent violence. This is a clear missing piece is Texas’ response to gun violence. While family members can sometimes file for a person to be put under emergency detention due to mental health concerns:

- emergency detention alone does not address person’s access to firearms. In civil courts, it generally has to reach the level of involuntary commitment for mental health services in order for a prohibition on firearms purchasing and possession to be put in place. A person will often be put under emergency detention but the case doesn’t escalate to involuntary commitment – and family members can’t file for involuntary commitment without a certificate of medical examination, which can be impossible to get when a loved one is dangerous. Or, the judge / county or district attorney may be reluctant to pursue involuntary commitment because treatment options are not available (capacity issues in hospital system). Meanwhile, the individual still has access to firearms as risk escalates.
- emergency detention involves law enforcement, which family members can be afraid to do due to safety or stigma concerns
- emergency detention filings by a family member does not always lead to an emergency detention being issued, and this is for a variety of reasons. For one, individuals at risk can hide that they are at risk. Secondly, law enforcement may have a history with the individual and be unwilling to come to the home, especially if they’ve been to the home before and determined that emergency detention was not necessary (this happens often). Meanwhile, the level of risk may have escalated.
- a person can be a risk of harm and not have a mental illness, and therefore not meet the criteria for emergency detention.

Extreme risk protection order (ERPO) laws allows certain parties to petition a court directly for an order temporarily restricting a person’s access to guns.

A person entering a mental health crisis often exhibits signs that may alert community members to the person's mental state. In many of gun violence incidents – both suicides and interpersonal shootings - people who knew the shooter observed these signs, but federal and state laws provided no clear legal process to restrict his or her access to guns, even temporarily.

People who engage in certain kinds of behavior, such as violence, self-harm, or ongoing abuse of drugs or alcohol, are significantly more likely to commit an act of violence towards him- or herself or others within the near future. This behavior should act as a warning sign that the person might soon commit an act of violence. Research has shown that these behaviors are a stronger predictor of future violence than mental illness.

### **Evidence in support of having a Texas red flag law:**

- *Research estimates one life is saved for every 10-20 risk-warrants issued.*<sup>3</sup>
- *Risk-warrants are proven to reach individuals who are at a dangerously elevated risk of suicide.* They are proven to prevent additional suicide deaths by intervening in crises. They do so by shifting suicide attempt methods from firearms to less lethal means.
- *Risk-warrants in and of themselves promote access to care for those who need care*
  - Before risk-warrant: Most risk-warrant subjects (88%) were not known to Connecticut's public behavioral health system when the warrants were served – despite their elevated risk of self-harm.
  - After risk-warrant: Nearly one-third (29%) of subjects received treatment in the state system.
  - Significance: Risk-warrants provided a portal to critical mental health and substance abuse services.

See: Dr. Jeffrey Swanson of Duke University study:

<https://scholarship.law.duke.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=4830&context=lcp>

### **Red Flag Law considerations:**

Critical considerations - Red flag law must:

- **Not specifically target individuals with mental illness.** Mental illness itself should not be considered a particular risk factor for gun violence. The criteria should be a risk-based criteria rather than a mental health-based one. Focusing too much on mental health as a criteria fails to capture the full range of individuals who should be temporarily restricted from firearms access due to risk of harm. Furthermore, stigmatizing mental illness is counterproductive to the goal of encouraging treatment-seeking behavior.
- **Have appropriate criteria:** The petitioner must allege in writing that the respondent poses a threat of personal injury to themselves or others by owning, possessing, or purchasing a firearm (immediate and present danger of causing bodily injury, serious bodily injury, or death to any person, including the respondent). The petitioner must provide credible evidence that the respondent poses the risk alleged in the petition. This evidence may include recent threats or acts

<sup>3</sup> <http://efsgv.org/wp-content/uploads/2017/09/CT-Risk-Warrant-Data-One-pager-ERPO-9-15-17-FINAL.pdf>

of violence by the respondent toward him or herself, recent violations of domestic violence protection orders, or evidence of a pattern of violent threats or acts.

- **Threshold for ex parte order lower than that of longer term order**
- **Allow family members to petition for risk warrants.** Family members are most likely to be privy to information that warrants concern.
- **Contain appropriate due process protections.** Similar to the domestic violence ex parte order, an emergency risk warrant would require a petitioner to file an affidavit with the court alleging that the respondent poses an immediate and present danger to himself or herself and others. The judge must then determine whether the petitioner has met the standard of proof to issue the ex parte risk warrant. If it is issued, the person subject to the order is entitled to a full hearing before a judge within a short time frame to determine if the order should remain in effect or be dismissed. The risk process provides the respondent with adequate due process before restricting his or her access to firearms. The due process protections afforded by the ex parte risk warrant are nearly identical in substance and form to those afforded by the domestic violence ex parte protective order.
- **account for provision of mental health services in many of these cases, but not entail automatic require treatment for mental illness**
- **establish fair and appropriate processes for** 1.) the suspension of firearms purchasing rights, 2.) acquisition of firearms by appropriate agencies when rights are suspended, 3.) storage of firearms throughout duration of protective order, and 4.) reinstatement of firearms rights when risk is mitigated
- **be a civil court process rather than a criminal court process**
- **contain a penalty for false petitions**