

Montana Legislature
Law and Justice Interim Committee
National Instant Criminal Background Check System (NICS) and Mental Health
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Testimony for Committee, by
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Will improved mental health evaluations, and data collection and reporting of mental health information decrease violence, especially gun-related violence?

I. Qualifications to provide information.

Mr. Marbut is accepted in state and federal courts in civil and criminal cases concerning firearms safety, use of force, legitimate self defense, and related topics. Mr. Marbut is an active self defense instructor and has graduated over 3,800 students from curriculae concerning Montana laws, and the tactics and methods of defense. Mr. Marbut is a member of the International Association of Law Enforcement Firearms Instructors, and a follower of and sometimes contributor to the Force Science Research Center.

II. Precursor, background issues.

Before the question posed above can be effectively answered, some foundation issues must be addressed.

1. **Are people with mental health issues commonly prone to future violence? No.** A 2009 study found that individuals with mental health disorders no more likely to commit acts of violence than the rest of the population; rather, future violence was indicated by other factors, such as substance abuse and a prior history of such acts. One explanation is that some individuals with severe disorders are too disorganized or afraid to commit crimes. For example, individuals with severe schizophrenia may have delusions – for instance, a belief that they and others around them face a danger of attack or threat. This leads some persons suffering from this form of delusion to seclude themselves from the outside world and to express extreme caution toward others...

<http://leb.fbi.gov/2014/february/responding-to-persons-with-mental-illness-can-screening-checklists-aid-law-enforcement>

2. **Is gun-related mass violence by persons with mental health issues increasing and is it a pressing national problem? No and no.** Despite obsessive media reporting when such incidents occur, the number of those incidents and the number of victims claimed in those incidents remain static, this notwithstanding an increasing population size and increasing levels of gun ownership.

<http://hereandnow.wbur.org/2013/09/23/mass-murder-decline>

3. **Is there an increased national murder rate that can be attributed to mental health failures?**

No. Actually, murder rates in the US are dramatically down, again despite increasing rates of firearms ownership, increasing population, and stressful economic times. Because overall murder rates, including murder rates with firearms, are in a definite downward trend, there is no rationale' to claim increases because of people with mental health problems, or inadequate mental health reporting.

<http://www.breitbart.com/Big-Government/2013/12/03/Congressional-Research-Service-More-Guns->

Less-Crime

4. **Is the state of the art in psychology capable of correctly identifying people with mental health problems who are prone to violence. No.** This answer only repeats what many professionals and experts in the field of psychology insist, that the art of psychology simply does not possess the tools at this stage in the evolution of the art to accurately predict violence. Much better predictors of violence include drug use, and history of violence.

<http://www.psychlawjournal.com/2012/08/risk-assessment-how-psychologists.html>

<http://articles.latimes.com/2012/dec/17/news/la-heb-predicting-violent-behavior-20121217>

"Skilled and practiced mental health professionals have gotten a lot better at predicting short-term dangerousness," said Dr. Steven E. Pitt, a forensic psychiatrist who consults with the Phoenix Police Department and directed the Columbine Psychiatric Autopsy Project after the 1999 school shootings. "But who's going to commit violence in some unspecified future? You might as well consult a Ouija board."

5. **Is there any connection at all between mass shootings and mental health? Yes.** Besides that we'd consider crazy any person who would take the lives of innocents, there is another connection between mass shootings and mental health. That connection is psychotropic drugs. All of the mass shootings in recent memory have been done by people who either were actively taking prescribed psychotropic drugs, or who were supposed to be taking psychotropic drugs but quit. In order to obtain these psychotropic drugs, these people perpetrating mass shootings were under the care of a mental health practitioner licensed to prescribe the drugs. See:

<http://www.ladailypost.com/content/brief-history-psychotropic-drugs-prescribed-mass-murderers>

http://www.naturalnews.com/025826_Antidepressants_school_shootings.html

<http://ssrstories.org/category/violence/school-or-other-mass-shooting/>

6. **Base Rate Fallacy.** A well defined and important but little known phenomenon is base rate fallacy. It has to do as much with statistics than with psychology, but it is essential for psychology. There is an excellent article on Base Rate Fallacy in Wikipedia at:

http://en.wikipedia.org/wiki/Base_rate_fallacy

Anyone contemplating the issue of mental health and persistent mental health records would be wise to learn about and understand the concept of base rate fallacy.

The essence is this: Any widespread screening for a condition (e.g., mentally unstable person prone to violence) among the general population is guaranteed to turn up many more false positives than true positives, just because of an unavoidable error rate, which would be especially pronounced in the fuzzy field of psychology. The false positives would outnumber the true positives by one or more orders of magnitude. Thus, people not prone to violence would unavoidably be stigmatized and likely lose civil rights because of an error rate that cannot be eliminated.

7. **Persistent records/improper records non-correction.** There are not good, affordable or comprehensive mechanisms in place or available to get persistent records corrected if a person is incorrectly identified as prone to violence, or if the person gets treatment and is cured of any tendency towards violence. This is especially true of the National Instant Check System (NICS). People who are marked on NICS as ineligible for firearms transfer find it difficult or impossible to get records corrected.

Summary of a Texas legal case is in order here (US v. Bean, 537 U.S. 77(2002)). After attending a gun show in Texas, Thomas Bean drove to Mexico. When Mexican officials stopped his vehicle at the

border, they found ammunition, and Bean was subsequently convicted in a Mexican court of importing ammunition. Because of his felony conviction, 18 USC section 922(g)(1) prohibited Bean from possessing, distributing, or receiving firearms or ammunition. Bean applied to the Bureau of Alcohol, Tobacco, and Firearms (ATF) for relief from his firearms disabilities, but the ATF returned the application unprocessed, explaining that its annual appropriations law forbade it from expending any funds to investigate or act upon applications such as Bean's. Bean then filed suit, asking the District Court to conduct its own inquiry into his fitness to possess a gun and grant relief from his inability to possess, distribute, or receive firearms or ammunition.

In a unanimous opinion delivered by Justice Clarence Thomas, the Court held that the absence of an actual denial of Bean's petition by ATF precludes judicial review. Because Bean's application for relief from the firearms disabilities was not considered due to appropriation provisions, Justice Thomas reasoned that the court could not grant relief since the statute only permitted judicial review of an affirmative denial of an application.

Thus, Bean could not get his rights restored, notwithstanding that what he was convicted of in Mexico is not a crime in the US, simply because Congress had not funded the BATF's process to correct records swept in from other countries, and restore Bean's rights. Not only was Bean, a competitive trapshooter, unable to purchase new firearms, he was ineligible for life to possess any firearms he had previously purchased legally.

http://www.oyez.org/cases/2000-2009/2002/2002_01_704

8. Barking up the wrong tree; "Gun free zones." Besides psychotropic drugs, the other common denominator for mass shootings in schools, theaters, and other places, is that they ALL happen in purported "gun free zones." These alleged "gun free zones," of course, are NEVER "gun free," but only gun free for the victims. People bent on mayhem never respect "gun free zones." In fact, perpetrators of mass violence seek out disarmed victim zones, for obvious reasons. Only those who respect the law and have no murderous intent comply with such silly zone rules and are thereby rendered defenseless. Thus, "alleged "gun free zones" are demonstrated to be very dangerous places, places where deranged perpetrators are assured of a resistance free killing field. Collection and sharing of mental health records will do nothing to address this glaring problem.

9. Will a system-reported mental health deficiency prevent deranged people from acquiring guns? No. Almost universally, those who have committed mass shootings have acquired the guns they used through means that would not be interdicted by a NICS check. A mental health disqualification for firearm purchase will only affect those who obtain guns through legal channels. That is, mental health evaluation and disqualification would have zero effect on the class of people intended for interdiction, perpetrators of mass shootings.

10. Will the prospective loss of civil rights dissuade possibly needy people from seeing mental health professionals? Yes. If there are people who need psychological intervention, the expected loss of their civil rights via data sharing will certainly persuade many of them to avoid any contact with the mental health community. See:

<http://gunowners.org/congress1132014.htm>

Conclusion

People with mental health issues have no greater incidence of violence than the public at large. Any



mental health search for violent people would assuredly turn up far more false positives than true positives (base rate fallacy). These people tagged because of false positives would likely be stripped of their civil rights for life, with no practical way to get their records cleared or revised following treatment. Within the arena of psychology, experts disagree about whether the art has evolved sufficiently to provide tools allowing practitioners to correctly predict an individual's future violence. Even if the violent people could be identified and documented through mental health screenings, and disqualified from firearms purchase, that would not interdict the ability of such individuals to obtain guns and commit mayhem. Integrating mental health treatment with civil rights denial systems will persuade many people who may need treatment to avoid treatment. Nor would any such system address the dominant twin problems with mass shootings of psychotropic drugs and the low-hanging fruit for violent people of "gun free zones."

Finally, there will be those who will respond with some version of, "... but if it saves just one life ...". Criminologist professor Gary Kleck estimates that 2.5 million people in the US defend themselves every year with a firearm. In most cases the mere display of a firearm is sufficient to make assailants go away and save the defender, since Kleck says shots are fired in only 9% of these cases. Causing a significant percentage of these 2.5 million people to be disarmed (revisit base rate fallacy) would certainly end up costing far more lives than might be saved through the fuzzy and problematic process of mental health screening and records sharing.

Will improved mental health evaluations, and data collection and reporting of mental health information decrease violence, especially gun-related violence? No. But it can destroy the civil rights of too many innocent people in a fruitless quest to "do something." That would be especially unfortunate and unwise if the "something" were so easily predictable to be contraindicated.