

**Testimony Before the Pennsylvania Senate Judiciary Committee Hearings on “Behavioral Health, Second Amendment Rights, and Other Gun Related Issues”**

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Brady United Against Gun Violence

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Chairwoman Baker, Minority Chair Farnese, Vice Chair Langerholc, and other distinguished Members of the Senate Judiciary Committee,

On behalf of Brady, I urge this committee’s support for SB 90 to create an extreme risk law, as well as SB 88 to close Pennsylvania’s “long gun loophole” to ensure a background check must be conducted before every gun sale.

Brady is one of America’s oldest gun violence prevention organizations. Founded in 1974, Brady works across Congress, the courts, and communities, uniting gun owners and non-gun owners alike, to take action, not sides, and end America’s gun violence epidemic. Our organization today carries the name of Jim Brady, who was shot and severely injured in the assassination attempt on President Ronald Reagan. Jim and his wife, Sarah, led the fight to pass federal legislation requiring background checks for gun sales. Brady continues to uphold Jim and Sarah’s legacy by uniting Americans from coast to coast, red and blue, young and old, liberal and conservative, to combat the epidemic of gun violence.

We respectfully urge this committee to take up these two important policy solutions that will help address the gun violence epidemic in Pennsylvania. Make no mistake, gun violence **is** an epidemic, both nationally and in the Commonwealth of Pennsylvania. Over the past five years, over 7,500 Pennsylvanians have lost their lives to guns.<sup>1</sup> The trends in firearm deaths in Pennsylvania mirrors much of what we see in the rest of America: approximately 6 out of every 10 gun deaths are self-inflicted.<sup>2</sup>

We know that when a firearm is involved in a suicide attempt, the result is most often fatal. Suicide attempts with a firearm result in death a staggering 85 percent of the time, compared to just three percent for other common methods, like intentional drug misuse.<sup>3</sup> The presence of a gun turns what is frequently an impulsive act—that is usually not repeated if the person

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<sup>1</sup> For the past 5 years which data is available (2013-2017), according to CDC’s WISQARS (Web-based Injury Statistics Query and Reporting System), <https://www.cdc.gov/injury/wisqars/fatal.html>. Pennsylvania firearms deaths from 2013-2017 totaled 7,517. 4,716 of those deaths were suicide, or about 63% of the total firearms deaths.

<sup>2</sup> For the past 5 years which data is available (2013-2017), according to CDC’s WISQARS (Web-based Injury Statistics Query and Reporting System), <https://www.cdc.gov/injury/wisqars/fatal.html>, there were 181,913 gun violence deaths. Of those, 111,371, or about 61%, were firearms suicide.

<sup>3</sup> Madeline Drexler, ed. “Guns & Suicide: The Hidden Toll,” Harvard Public Health Magazine of the Harvard T.H. Chan School of Public Health, available at [https://www.hsph.harvard.edu/magazine/magazine\\_article/guns-suicide/](https://www.hsph.harvard.edu/magazine/magazine_article/guns-suicide/).

survives—into an almost always fatal result.<sup>4</sup> People who choose a firearm over other methods typically do not have the opportunity or ability to summon help or reconsider their decision.

By temporarily removing firearms or making them more difficult to access for individuals in the midst of a crisis, those experiencing suicidal ideation are more likely to survive and get a second chance at life. That second chance is critical: the vast majority - about 90 percent - of people who survive suicide do not ultimately go on to die by suicide later in life.<sup>5</sup> This is why laws like extreme risk protection orders are so important.

Extreme risk protection orders are a critical, life-saving tool that Brady has long supported. These laws effectively target various forms of gun violence we see on a daily basis in the United States, including interpersonal violence, homicides, intimate partner violence, some unintentional shootings and most of all - suicides, the most common type of gun violence.

Extreme risk laws are evidence-based solutions currently enacted in 17 states and the District of Columbia that give family members, law enforcement, and the courts an avenue to prevent an individual in crisis from harming themselves or others by temporarily removing guns and prohibiting the purchase and possession of other firearms.

Gun violence is frequently preceded by a troubling escalation in problematic behavior - threats (whether physical, verbal, or online), inappropriate activity with firearms, misuse of controlled substances or alcohol, violating prior restraining or protective orders, or stalking or harassing others. In many cases, family members or law enforcement are the witnesses to this escalation of behaviors that typically precedes an act of gun violence - whether that violence ultimately ends up against one's self, or another individual. Extreme risk protection orders provide a swift, effective way for family members and law enforcement to remove guns from a loved one in crisis.

An analysis of the first 14 years of Connecticut's extreme risk law (1999-2013) found that 99% of orders issued resulted in the removal of firearms, with an average of seven guns removed from each subject.<sup>6</sup> Researchers estimated that not only was at least one life saved from suicide for every 10-20 orders issued, but that 44% of the orders led to the individual receiving treatment by the state's public behavioral health system they otherwise might not have received.<sup>7</sup> Furthermore, a recent study found that extreme risk laws may provide exactly the type of urgent

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<sup>4</sup> Id.

<sup>5</sup> Harvard T.H. Chan School of Public Health, "Means Matter: Attempters' Longterm Survival," available at <https://www.hsph.harvard.edu/means-matter/means-matter/survival/>.

<sup>6</sup> Jeffrey W. Swanson et al., Implementation and Effectiveness of Connecticut's Risk-Based Gun Removal Law: Does it Prevent Suicides?, 80 *Law and Contemporary Problems* 179-208 (2017), available at <http://scholarship.law.duke.edu/lcp/vol80/iss2/8>

<sup>7</sup> Id.

and individualized intervention that could prevent mass shootings in the future.<sup>8</sup> The more evidence surrounding the use of extreme risk laws that is collected, the more it becomes clear that they are highly effective tools for both law enforcement and family members to be able to prevent tragedies *before* they happen.

There are a variety of elements for lawmakers to consider when drafting an extreme risk law that will save the most lives. Brady's recommendations for strong and effective piece of legislation are as follows:

1. Extreme risk laws are most effective when made available to close family and household members in addition to law enforcement. Family members, intimate partners, and housemates are frequently those best positioned to both understand the individual's typical behavior and recognize and identify behavior that is out of the ordinary and may be symptomatic of an impending crisis. These important categories of individuals should be enabled and empowered to take a petition directly to the court.

2. Extreme risk laws should rely on behavioral indicators of risk, *not* a diagnosis of mental illness. Only four percent of violent acts nationwide are solely attributable to mental illness.<sup>9</sup> In fact, the overwhelming majority of people with mental illnesses are not violent and are far more likely to be a victim of a crime than a perpetrator. One study shows that those affected by mental illnesses have victimization rates 65-130% higher than the general public.<sup>10</sup> Overall, mental illness is not a predictive factor of interpersonal violence. That is why extreme risk laws should focus on known risk factors for future violence, including: history of domestic violence or past violent behaviors, alcohol or substance misuse, and access to firearms.<sup>11</sup> Courts may choose to review other evidence before them that suggests an individual is not able to responsibly own or possess firearms at that time including evidence of suicidal ideation, displayed intent to harm themselves or others in the future, stalking, dangerously brandishing or recklessly using a firearm, cruelty to animals, and previous violations of protective orders, among others. ERPO laws should never stigmatize those living with mental illnesses, nor rely exclusively on a mental illness diagnosis in order to obtain an order. These two options would result in either over- or

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<sup>8</sup> Garen J. Wintemute, et al., Extreme Risk Orders Intended to Prevent Mass Shootings: A Case Series, *Annals of Internal Medicine* (2019), available at <https://annals.org/aim/fullarticle/2748711/extreme-risk-protection-orders-intended-prevent-mass-shootings-case-series>.

<sup>9</sup> Jeffrey W. Swanson, E. McGinty, S. Fazel and V. Mays, Mental Illness and Reduction of Gun Violence and Suicide: Bringing Epidemiologic Research to Policy, *Annals of Epidemiology* 25 (2015), 366-376, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4211925/>.

<sup>10</sup> Jonathan M. Metzl and Kenneth T. MacLeish, Illness, Mass Shootings, and the Politics of American Firearms, 105 *American Journal of Public Health*, 2 (2015), 240-249, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4318286/>

<sup>11</sup> Lola Gomez, "Mental Illness Isn't a Major Risk Factor for Gun Violence, But Here's What Is," NBC News, Aug. 6, 2019, available at <https://www.nbcnews.com/health/health-news/mental-illness-isn-t-major-risk-factor-gun-violence-here-n1039666>.

under-inclusivity, and not effectively remove firearms from those who pose an actual danger to either themselves or others.

3. Extreme risk law petitions should be easy to use and as accessible as possible, including:
  - a. being readily available in print and online at courts;
  - b. being readily available in the languages most commonly spoken in Pennsylvania; and
  - c. being free to file.
  
4. Extreme risk law petitions should be able to be filed on an emergency or ex parte basis. This process follows the long-standing process for domestic violence restraining orders already in place, involving a court hearing and due process protections for the individual the order is being brought against. Ex parte orders are brought where there is an imminent need, and, in this case, enables a family member or law enforcement to bring a civil order during the height of the crisis. Gun violence does not follow a business day timetable, and family and law enforcement must be able to access these lifesaving orders in the most critical of cases after court hours are officially over.
  
5. Extreme risk laws should specifically spell out processes by which the orders are served to the respondent, and how guns are removed after an order is issued. Victims are most at risk in the immediate aftermath of an order being issued. For this reason, there should be a short time frame after issuance of the order and when surrender or removal of guns is required.
  
6. Extreme risk laws should spell out processes for the uploading of extreme risk orders into records databases, including:
  - a. into which state and local databases they should be entered (in addition to the federal NICS databases);
  - b. in what time frame; and
  - c. by whom.
  
7. Researchers should be granted access to court records (with redactions to ensure they are HIPPA compliant and protect individuals' confidentiality) for the purposes of evaluating efficacy of these laws to further inform lawmakers and communities. It is critical that non-biased assessments of extreme risk laws are taking place to further determine strengths and weaknesses in the laws, and enable successes to be duplicated elsewhere.

Extreme risk laws are evidence-based policies that effectively prevent firearm death and injury. The epidemic of gun violence, which includes the epidemic of gun suicide, requires a slate of solutions specifically tailored to address the intricacies and root causes of gun violence, for each and every community. A strong and comprehensive extreme risk law must be part of the solution, as it *will* save lives in Pennsylvania.

Another critical solution to preventing gun injuries and deaths is ensuring that a background check must accompany *every* gun sale. One of the pillars of Brady's legacy is the critically important role that Jim and Sarah had in creating the federal background check system which, to date, has stopped more than 3 million prohibited purchases.<sup>12</sup> And since its implementation in 1998, the Pennsylvania Instant Check System, which conducts firearms background checks in the Commonwealth, has blocked sales to nearly 200,000 prohibited purchasers.<sup>13</sup>

But we also know that the system has loopholes which enable about every 1 in 5 guns nationwide to be sold today without any background check due to private transactions, gun shows, and the rise of websites that facilitate gun sales online.<sup>14</sup> These unregulated sales allow convicted felons, domestic abusers, and others who wish to do harm to obtain guns without any oversight. Pennsylvania has taken the right step in ensuring that all handgun sales require a background check, no matter if they are being sold by a licensed gun dealer, or a private seller, but they have yet to extend that protection to all long gun sales. This means that rifles, shotguns, and even semi-automatic assault-style rifles can be sold in the Commonwealth of Pennsylvania with no background check, and no questions asked. Ensuring that this loophole is closed so that *every* gun requires a background check is essential to save lives in Pennsylvania.

The public agrees that it is past time to expand these life saving checks: 97% of Americans, including over 90% of gun owners, support expanding Brady background checks.<sup>15</sup> Just last year, a poll indicated that support is overwhelming in Pennsylvania, with 86% of state residents favoring enhanced background checks.<sup>16</sup> A recent look into key suburban districts across the country (including those living in the 1st Congressional District in Pennsylvania) showed that women responded overwhelmingly in favor of more strict gun laws, with universal background checks being the highest ranked policy proposal.<sup>17</sup>

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<sup>12</sup> This estimate was derived from data in the following reports: Office of Justice Programs, Bureau of Justice Statistics, "Background Checks for Firearms Transfers, 2013-14 - Statistical Tables" (2016), available at <https://www.bjs.gov/content/pub/pdf/bcft1314st.pdf> and Federal Bureau of Intelligence, "Federal Denials," [https://www.fbi.gov/file-repository/federal\\_denials.pdf/view](https://www.fbi.gov/file-repository/federal_denials.pdf/view) (last accessed August 2019). Approximately 312,000 sales were blocked during the interim period from 1994-1999, 1,338,294 sales were denied via state and local agencies from 1999-2014, and FBI data shows that 1,653,771 sales were denied by the federal system from Nov. 1998 through July 31, 2019. This is a total of 3,304,065 sales that have been denied since 1994.

<sup>13</sup> CeasefirePA, "Background Checks," accessible at <https://www.ceasefirepa.org/background-checks/>.

<sup>14</sup> Matthew Miller, Lisa Hepburn & Deborah Azrael, Firearm Acquisition Without Background Checks, *166Annals of Internal Medicine* 4 (2017): 233-239, available at <https://annals.org/aim/fullarticle/2595892/firearm-acquisition-without-background-checks-results-national-survey>.

<sup>15</sup> Quinnipiac University, "U.S. Support for Gun Control Tops 2-1, Highest Ever, Quinnipiac University National Poll Finds; Let Dreamers Stay, 80 Percent of Voters Say," February 20, 2018, available at <https://poll.qu.edu/national/release-detail?ReleaseID=2521>.

<sup>16</sup> CBS Philly, "Poll: Pennsylvania Voters' Support for Gun Control At All-Time High," Mar. 29, 2018, available at <https://philadelphia.cbslocal.com/2018/03/29/fm-poll-support-for-gun-control-at-all-time-high/>.

<sup>17</sup> Robert Blizzard & Neil Newhouse, "Suburban Congressional Districts Women Voters," Aug. 7-8, 2019, available at [https://documentcloud.adobe.com/link/track?uri=urn%3Aaaid%3Aascds%3AUS%3Ad8d95096-d8b6-4129-a62d-871c6100a85d&wpisrc=nl\\_daily202&wpmm=1](https://documentcloud.adobe.com/link/track?uri=urn%3Aaaid%3Aascds%3AUS%3Ad8d95096-d8b6-4129-a62d-871c6100a85d&wpisrc=nl_daily202&wpmm=1). In total, 72% of suburban women responded that gun laws should

Brady urges this committee to seriously consider SB 88, which will close this deadly loophole and ensure that every gun sale is accompanied by a lifesaving Brady background check. In addition, we respectfully urge the committee to consider SB 90, which will create an extreme risk law in Pennsylvania, for the purposes of temporarily removing firearms from those in crisis. Both of these policies have proven effective at mitigating the disastrous toll of gun violence across the nation in a myriad of cases - domestic violence, mass shootings, and suicides included. We urge this committee to make the safety of Pennsylvanians a priority, and bring this progress to the Commonwealth.

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be more strict, with only 4% saying they should be less strict and 23% responding that they should be kept as they currently are now. 90% of the respondents supported universal background checks with a national firearms registration requirement.