

Violence Risk Assessment and Gun Conundra: High Stakes, High Anxiety, High Anxiety

David Rosmarin, M.D.
Director, Forensic Psychiatry Service

(617) 699-8113
rosmarin.david@gmail.com

Disclaimer

No commercial or other conflicts of interest.

Opinions expressed are my personal ones, and not those of McLean or Harvard Medical School.

357 Million Guns: 1 Take Home

- **We don't ask and document info on guns and gun safety, sufficiently— nor counsel our concerns.**

How many assault weapons sold in Mass in 2015?

FOPA, 1986 Firearms Protection Act banned manufacture of machineguns, BUT there 175,000 registered machine guns in US. AK-47 and AR15 are semi-automatic. 357,000,000 guns in US!



Approaching Patients re: Guns

- ASK!!!
- **“Guns = bad” is a non-starter for many patients and families**
- Approach as a health/safety matter, safe storage as with meds/household chemicals
- Non-accusatory, non-prescriptive, open-ended— unless emergency
- Gun violence and mental illness only slightly overlap—most gun violence not by SMI

CDC Gun Statistics

- 33,000 fire-arm related deaths a year
- 11 per 100,000 in 2015, 12 per 100,000 in 2016
- **Mass shootings less than 2%--not predictive for SMI violence** Swanson: no common evidence from uncommon events, i.e small fraction of 33k
- Suicide ~ 61% (half US suicides via guns)
- Homicide ~ 36%
- Unintentional + law enforcement ~ 1.6%
- Undetermined ~ 2%
- 1996 **Dickey Amendment** prohibits CDC from using funds “to advocate or promote gun control”
- Chills research at agency or via grants

affirmresearch.org

- **American Foundation for Firearm Injury Prevention in Medicine**
- Partners: AMA, Mass Medical Society, American College of Surgeons, American College of Emergency Physicians
- Goals: research funding, develop best practice recommendations and training curricula based on research,

Suicide Gun Violence: Means Reduction

- ~61% of all firearm fatalities
- Guns suicide 90+% lethal—compare to OD, hanging
- Third leading cause of death in age 15-24 Americans.
- Gun ownership makes a strong independent contribution to increased suicide risk.
- BUT only small fraction were previously committed and barred from ownership !
- Gun Permit and Licensing requirements significantly lowered suicide rates among males; CT vs MO
- **Swanson: 10-20 CT gun removals avert 1 suicide**
- Research is limited but similar findings in other studies – background checks and waiting periods reduced suicide in older population, handgun ban/restriction in DC had abrupt decline (23%) in suicide

Brady Handgun Violence Act 1993

National Instant Criminal Background Check System (NICS)

- Maintained by the FBI
- Initially included a 5-day waiting period on handgun purchases
 - Struck down by SCOTUS as unconstitutional

Prohibited Possessors

- **Convicted of a crime punishable by imprisonment for a term exceeding one year**
- Fugitive from justice—redefined by Trump
- **Unlawful user of or addicted to any controlled substance**
- **Adjudicated as a mental defective or committed to a mental institution, NGRI, ICST**
- Illegal aliens in the United States
- Dishonorable discharge from the Armed Forces
- Renounced U.S. citizenship
- Subject to a **court order that restrains** the person from harassing, stalking, or threatening an intimate partner or child of such intimate partner, or;
- Convicted of a misdemeanor crime of **domestic violence**.

Gun Restrictions on MI

- Involuntary commitment status common in 1968 when NICS passed, much less so today
- A few states restrict guns for voluntary inpatients
- NICS not consulted at gun shows, Nevada gun show study: 1 of 11 buyers legally barred
- **1/3 Americans keep a handgun at home**
- 3 years after MO stopped requiring handgun permits homicide up 25%
- CT initiated permit in 1995 and homicides down 40%
- NY Times 10/21/16 “What 130 of the worst shootings say about guns in America”

2016 Obama Executive Orders Trumped

- Post Newtown killings
- Senate fails to pass increased background checks or **terror watch-list gun prohibition**
- **ACA does not prohibit doctors from discussing gun safety at home**
- **Social Security Admin must report those with MI-caused disability and those with rep payees to NICS**
- HB40 joint resolution, passed house, passed Senate, Trump signed to law in February 2017.
- **Ended SSA reporting of people with MI, disability and payees to NICS**

NICS: Too Much and Too Little



- Criteria are **underinclusive**

Many dangerous persons are never treated for mental illness or may never have been involuntarily hospitalized, e.g., Loughner

- Criteria are **overinclusive**

Many people who have been involuntarily hospitalized have never been dangerous (despite dangerousness-based criteria) or no longer are

Who Can't Have or Get Guns in Mass?

- New: Extreme Risk Protection Order
- Convicted of felony, violent crime, or certain drug or gun laws
- Has been ordered to surrender firearms because of domestic abuse, or is subject to permanent or temporary protection orders, such as known as a “**209A**”
- **Committed** for mental illness, alcohol, or substance abuse; unlawful user or addicted to any controlled substance (**Sections 7, 8, 12e, 15b, 16c, 18, 35**)
transmitted to NICS
- Is or has been under the appointment of a guardian or conservator due to lack of mental capacity;
- **If the applicant is deemed “unsuitable” by police.**

Risk-based Gun Removal Laws

- AKA “gun violence restraining orders”, “extreme risk prevention/protection orders”
- 20-odd states considering as of April 2018
- Extant in at least 11 currently
- Mass: “Extreme Risk Protection Order” 7/3/18

Mass Extreme Risk Protection Order

- **Petitioner:** police, family, substantive dating relationship, child with, residing with respondent—**NOT CLINICIANS**
- “May pose a risk of causing bodily injury to self or others” via guns or ammo possessed
- Petitioner may request court anonymize
- Clerk provides 12e, crisis intervention, MH/SA info
- Court has 10 days (!#!) to conduct hearing with minimum 7 days notice to respondent—2 days if gun is job-required
- “Preponderance of evidence...poses a risk to self or others” via gun access
- BUT—without notice—court may issue “emergency order” for “reasonable cause”
- Police inform, take license and guns, NICS informed
- No civil/criminal liability for FAILURE to petition

Physician Options

- Attempt to petition court—But no standing
- Call police—but requires “**serious and imminent**” danger, per **HIPAA** (vs. mere serious, non-imminent)
- **Mass Ch.123 s. 36B (Tarasoff) pertains only to identifiable others—not, public, suicide or accident**
- Mass Ch.123 s.36B allows contacting police requires either 1.“**explicit threat**” and capacity **OR** 2. “**clear and present danger**” **combined with known history of violence** to “reasonably identified” victims (**Not public at large!**)
- Have family/friend take gun—but must be licensed if “in control”
- **Alberts vs. Devine (1985)** “except to meet a serious danger to the patient or others” But HIPPA exceeds.


Connecticut Approach 1999

- 1998 employee killing and suicide at lottery
- Civil court issues a “risk warrant” after police investigate—often following a citizen phone call
- Police remove guns when there is a **probable cause of significant risk to self/others**
- Focus on imminent risk not MI avoids stigma
- Court hearing by 14 days to keep guns a year requires **clear and convincing proof**
- After Virginia Tech, seizures up from 10 to 100/yr
- Study: 702 seizures: male, middle aged, suicide risk 61%, risk to others 32%, mixed 9%
- 7 guns removed on average case, 17% arrested, 55% to MH ER, 27% just guns removed
- **29% receiving public MH services year after removal**


Indiana: **Non MI** dangerous/imminent vs. **MI** mere propensity

- “**Dangerous individual**” presents imminent risk personal injury to himself, herself or another person; **VS:**
- Presents a risk of personal injury to himself or another person in the future; **AND**
- Has a mental illness **that may be controlled by medication**, and has not demonstrated a pattern of voluntarily and consistently taking the individual’s medication while not under supervision; **OR**
- There is documented evidence creating a reasonable belief that he has a propensity for violent or emotionally unstable conduct


Gun seizure: Indianapolis results

- 
- 2006-13, police filed court petition 404 times
 - Suicide risk seizure 68%, violence 21%, psychosis 16%
 - Domestic dispute context 28%
 - Intoxication involved 26%
 - 29% of cases, at initial hearing court dismissed case, guns returned
 - 63% of cases court initial hearing seizure finding, most because defendants no-showed
 - At subsequent hearings for initially denied gun return, 24% of defendants got guns back
 - **Law functions as cooling-off period—removing few guns, but also gets police involved with people not seeking care**¹⁹

Multiple Approaches to Gun Control

- 
- Limit at point of purchase (NICS)
 - Remove from dangerous people
 - Limit types of guns, magazines
 - Biometric safety devices
 - Storage
 - Safety
 - **Identify, engage and treat**

Overlapping Categories of Gun Violence

- 
- By the seriously mentally ill (SMI)
 - By troubled, angry, aggrieved,
 - Intra-family, intra-relationship
 - Involving a stranger
 - Crime commission
 - Gang and criminal subcultures
 - Political, racial, religious
 - Terrorist
 - Rampage or spree killing
 - Murder vs. murder/suicide


SMI Gun Violence: Sensational but Rare

- SMI account for 3-5% of all US violence, and only a fraction involves guns—so laws focused on this cohort will be **low yield and waste resources**
- MacArthur Violence Risk Assessment Study: only 1% of stranger gun violence is by mentally ill
- **Most violence, including gun violence, involves SA as prime factor, not MI**
- When SMI violent, usually involves family
- SMI more likely violence victims than aggressors

Rampage: “Nobody Just Snaps”

- **Study: 100 US cases of spree murders, 1949-99**
- Not: domestic, criminal or gang, serial, political
- **Ignored warnings** and signs along the way—by co-workers, family, schools, stretched MH system
- 34 cases families or friends desperately tried to find help for a person they feared, but rebuffed by the police, school, or mental health
- **63 cases: killers made general threats of violence to others in advance**
- **54 cases: specific threats against specific people**
- Precipitators: job loss 47; divorce/partner loss 22

Rampage Risk: Easy in Retrospect

- 
- 55 cases: killers had regularly expressed explosive anger or frustration
 - 35 killers had a history of violent behavior
 - 40 killers had sudden behavioral change before assault
 - 47 killers had a history of mental health problems
 - 20 had been hospitalized for psychiatric problems
 - 42 had been seen by mental health professionals
 - 23 killers showed signs of serious depression before the killings; 49 expressed paranoid ideas
 - 6 females of 102 killers

Mass Killers: No One Typology

- Social alienation
- Media/cultural: copycat, “commandos”
- Acting solo (adults)
- Advance planning
- Expect suicide or death by police
- Paranoid traits: suspiciousness, grudge-holding, resentful, blaming or anti-society, entitlement
- Rumination about humiliations/injustice
- Revenge fantasies
- **Victims relate to motive and resentment focus:** school, workplace, specific community, family


Violence Risk Assessment Approach

- Careful assessment of past violence, perhaps the best predictor: most violent act
- Trajectory heating up or cooling down?
- Associated ideation at the time of past and future violence
- Assess phenomenology of each prior act
- Discern pattern of violence: Psychotic? SA? Narcissistic rage? Revenge for disrespect/shame? Sexual?
- Is violence ego-dystonic or ego-syntonic?
- Get collateral info (victim, family, police)
- Ask collaterals about level of concern

Risk Assessment Approaches


- **Clinical interview:** better than chance and better if embeds elements of other approaches
- **Actuarial only:** eliminates professional judgment
- **Structured behavioral analysis:** combines interview, collateral, records, and valences—uses professional judgment to stratify risks

Risk Assessment, not Prediction


- 
- **Magnitude:** verbal, shove, strike, shoot
 - **Likelihood:** low, medium, high
 - **Imminence:** immediate, short-term, long-term
 - **Frequency:** one-time, repeated

 - For each and overall: low, medium or high
 - Be humble, tolerate uncertainty,
 - **Articulate the valence given each risk factor**

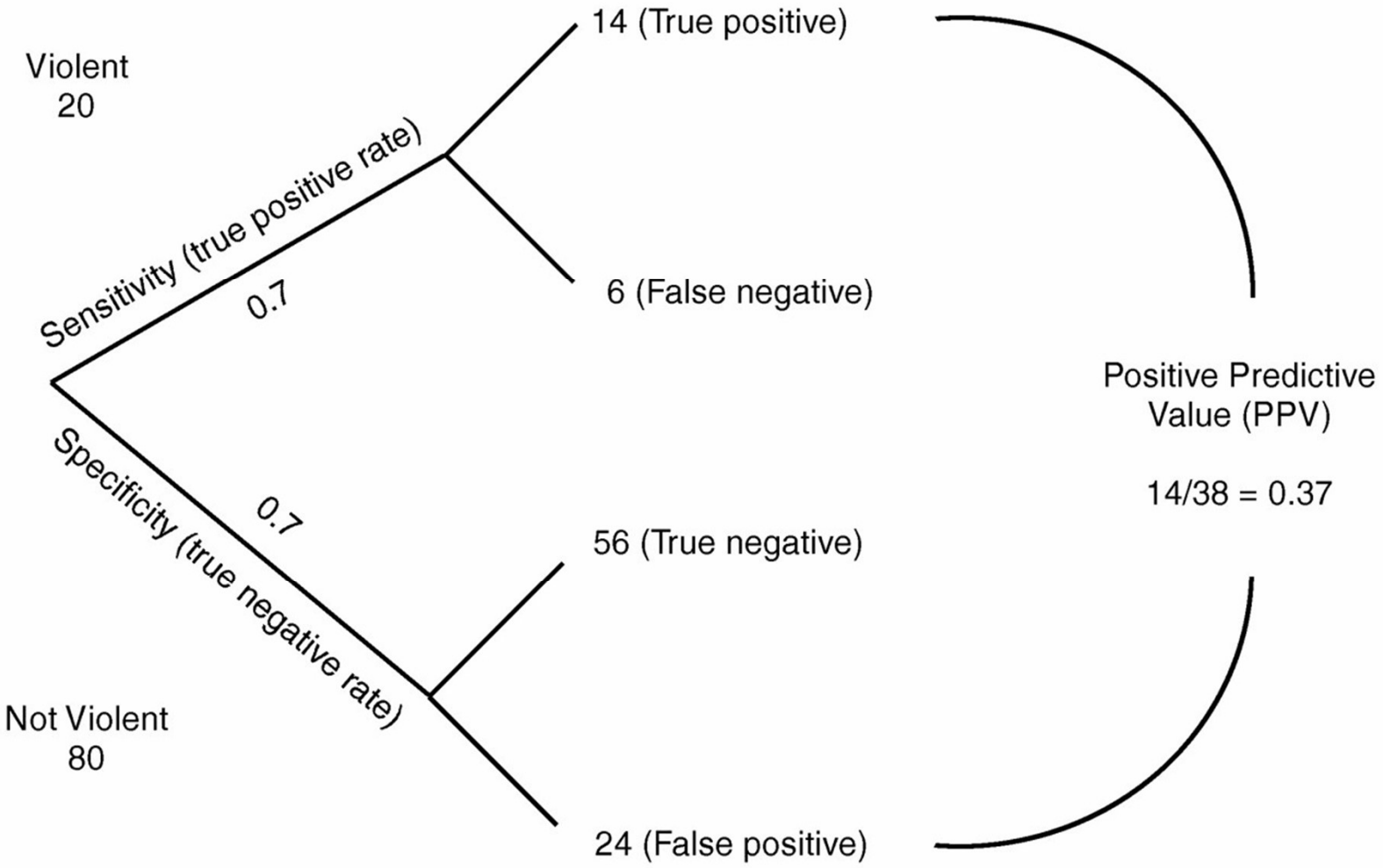
Structured Professional Judgment

- 
- **What are dynamic factors?**
 - Stressors
 - Anger
 - SA
 - Family/school/work conflicts,
 - Active symptoms
 - Medication refusal/adherence
 - Treatment availability, living arrangements
 - Sees limited choices, cognitive distortions
 - Humiliation, entitlement, grudge, fatalism, grandiose fantasies
 - Concurrent suicidality
 - Therapeutic alliance
 - **Gun access**

Structured Professional Judgment


- 
- **What are static factors?**
 - History of violence
 - Abuse victim
 - Mental illness
 - Antisocial/narcissistic/paranoid/obsessive traits
 - Violent subculture
 - Brain insults
 - Past injustices
 - Hostile
 - Impulsiveness
 - Male
 - **What valence is accorded each factor—a matter of judgment**

Probability tree for determining the predictive ability of a test for violence.



Szmukler G BJP 2001;178:84-85

Rosmarin's Gun Anxiety Thirteen

- 
- Anti-social attitudes
 - SA
 - Past history violence
 - Abuse history
 - Active major mental illness
 - Psychosis crescendo, especially first event
 - Anger, impulsive (9% US adults “break things” and have guns at home--but 10% of these ever committed)
 - Desperation/narrow thinking/status loss
 - Grievance/vengeance, justification/entitlement/racist
 - Specific > implied threat
 - Steps taken/planning
 - Fatalism/suicidality
 - High gun affinity, Stand your ground, spoiling for fight

MacArthur Study: Gun Use



Gun Violence and Victimization of Strangers by Persons With a Mental Illness: Data From the MacArthur Violence Risk Assessment Study

- 951 discharged patients followed for 1 year 1990s
- 178 “weapon threat/weapon use” incidents
- In 67 (37%) of these incidents, the weapon was a gun
- Gun use involved 23 individuals (2% of 951)
- No schizophrenics used guns
- Overrepresented: SA, depression, prior violence, early trauma
- Steadman, HJ et al, Hospital Services, 2015; 66 (11) 1238-1241

Childhood Brutalization




“Hurt people hurt people.”

Guns and Impulsivity


“Guns, Impulsive Angry Behavior, and Mental Disorders: Results from the National Comorbidity Survey Replication” Behav. Sci. Law 33: 199–212 (2015)

- 9282 home interviews 2001-2003
- Throw or break things? Etc.
- 36% had 1 or more guns at home
- Estimated 8,865 per 100,000 have guns at home in conjunction **PLUS** impulsive angry behavior,
- Estimated 1,488 per 100,000 carry guns outside **PLUS** impulsive angry behavior.
- **Three-way association: multiple guns, carrying a gun, and having impulsive angry behavior.**
- Impulsive angry behavior associated w/ mult diagnoses and personality disorders

HIPAA: Serious **and** Imminent

- 
- Good faith belief by healthcare provider
 - Warning necessary to lessen serious or imminent threat
 - To patient or others
 - May alert others who are reasonably able to prevent or lessen threat (**police**)
 - May be based on interactions with person or credible information from others
 - HIPAA is higher bar than some Mass law
 - Jan 15, 2013 guidance letter from HHS Office of Civil Rights

Audience: Model Reporting Law

- 
- Current Mass law gives chief of police discretion whether to issue, continue to endorse, or retract gun license
 - Any licensed clinician **MAY** report any person to police if the clinician has a (mere) good faith belief that the person can not handle guns safely or is a (mere) substantial threat to himself or others (for any reason, not based solely on MI)
 - Any clinician not making such a report shall not be subject to civil liability or licensing actions for failing to report
 - The report need only provide the clinician's conclusory opinion and need not include additional information, but may do so at clinician discretion
 - Person need not be a patient, good faith belief may be based on reports of others or any other source (similar to Ch 123 s 12a good faith basis)
 - Upon receipt of any clinician report, the chief may in his or her sole discretion, suspend the person's gun license and remove the person's guns
 - The licensee will be entitled to reasonably prompt district court review to contest an adverse finding by chief, along with other due process provisions TBD.