



Center for the Human Rights of Users and Survivors of Psychiatry

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A Response to President Obama's Proposals on Reducing Gun Violence

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The four areas for action designated by the President include serious invasions into our civil liberties. There is a shocking emphasis on profiling people as “mentally ill” and dangerous, and on inducting healthcare providers, educators, families and police into a partnership with the state to implement such profiling and restriction of freedom. The Obama administration claims that these actions respect the Second Amendment rights of law-abiding citizens. The vast majority of people who are labeled with “serious mental illnesses”, including those of us who have been committed to mental hospitals, are indeed law-abiding citizens. Profiling persons with psychiatric disabilities as “dangerous” and “irresponsible” is unacceptable. Revoking any of our Constitutional rights on the basis of such profiling is reprehensible.

“1. Closing background check loopholes to keep guns out of dangerous hands” The proposals made in this area begin with an assumption that it is possible to identify “dangerous” individuals who can be distinguished from those deemed responsible enough to own a gun. Furthermore “closing loopholes” suggests that we actually have a system to keep guns out of the hands of such people but that it is not stringent enough.

In fact, the NICS database used for the background checks casts a wide net that includes very few individuals who actually have a record of committing violent acts (See Tables 1 and 2). The largest number of active records in the NICS database, with 63% of all records, is 5.2 million in the category “Illegal Unlawful Alien,” and the runner-up is “Adjudicated Mental Health” with 1.8 million records, 22% of the total (See Table 2). The only categories directly linked to violence, “Misdemeanor Crime of Domestic Violence Conviction” and “Protection/Restraining Order for Domestic Violence” amount to a little over 1% of the total records. (The category “Convicted of a crime punishable by more than one year or a misdemeanor punishable by more than two years,” accounting for less than 9% of the total, would include both violent crimes and crimes accomplished without violence.)

NICS amounts to a federal police database that keeps records on personae non grata and makes gun dealers aware of their status as such, making it more difficult for affected individuals to move freely in society, not only denying them access to guns. Now, in order to “strengthen the background check system,” the President is proposing to increase reporting of the category “Adjudicated Mental Health” and to consider adding categories to the database. This will heighten ostracism of people labeled as mentally ill. It is

irresponsible as well as counter to our Constitution, counter to the Americans with Disabilities Act, counter to the United Nations Convention on the Rights of Persons with Disabilities (which was signed by President Obama in 2009, even though it has not yet been ratified by the Senate), and to other laws and human rights obligations requiring equal protection and non-discrimination against persons with disabilities.

In particular the Administration plans to issue regulations to “remove any needless barriers” under HIPAA to states’ sharing mental health records with this police database. The Department of Health and Human Services has already advised health care providers that the HIPAA Privacy Rule does not prevent them from reporting to authorities.¹

The administration also intends to invest tens of millions of dollars in giving states stronger incentives to make criminal history records and mental health records available to the database, and will require federal agencies to report relevant records.

Most worrisome, “the President will direct the Attorney General, in consultation with other relevant agencies, to review the laws governing who is prohibited from having guns and make legislative and executive recommendations to ensure dangerous people aren’t slipping through the cracks.” This executive action opens the door to a vast expansion of the criteria for inclusion in the NICS database, based on the same faulty premise that underlies the existing database: that individuals can be profiled as dangerous and irresponsible members of society based on characteristics that happen to be stigmatized in law and in the public imagination.

Conclusion: The NICS database should be reconsidered in its entirety and a moratorium should be placed on its further expansion. Congress should hold hearings on the impact of the NICS database on stigmatized groups and on alternative approaches to prevention of gun violence and the question of what may constitute responsible gun ownership and how that might be monitored throughout society.

“2. Banning military-style assault weapons and high-capacity magazines, and *taking other common-sense steps to reduce gun violence.*” [Italics added.]

Under this heading (“other common-sense steps”) the President announced that the Department of Health and Human Services would issue a letter advising health care providers that they can report “direct and credible threats of violence” to authorities. The letter actually states that the HIPAA Privacy Rule does not prevent disclosure of information to law enforcement when they believe a person “presents a serious danger to himself or other people”² (which is not quite the same as a direct and credible threat).

On the same day as HHS issued its letter, New York State passed legislation requiring physicians, psychologists, registered nurses and licensed social workers to report individuals whom they consider likely to harm themselves or others, for inclusion in the NICS database as well as a state criminal database.³

¹ <http://www.hhs.gov/ocr/office/lettertonationhcp.pdf>.

² Id.

³ <http://open.nysenate.gov/legislation/bill/s2230-2013>.

The Administration also plans to issue guidance clarifying that health care providers can ask about firearms in their patients' homes and safe storage, "especially if their patients show signs of certain mental illnesses or if they have a young child or mentally ill family member at home."

These measures make explicit the induction of health care providers and family members into the policing and profiling of people labeled with psychiatric diagnoses.

Two measures will reinforce the criminalization of people labeled with psychiatric diagnoses and others in the NICS database:

- Regulations to ensure that law enforcement has access to the database (for the purpose of ensuring that guns are not returned to a person prohibited from having them); and
- Prosecution of people who provide false information to the background check system when attempting to buy a gun.

Other measures that could negatively affect people labeled with psychiatric diagnoses include:

- CDC (Center for Disease Control) research on the causes of gun violence, including (but not limited to) the relationship between video games, media images and violence. This process should be carefully watched so it will not revive the racist "Violence Initiative" that sought a genetic basis for violence, or be used to fund research linking psychiatric diagnoses with violence. On the other hand, the CDC should be investigating psychiatric drug effects that trigger violent responses in some individuals, making sure to hear from people who use or have used these drugs.
- Launching a national responsible gun ownership campaign. Although the specific recommendations are all of the "universal precautions" type, this should be watched for its potential to divide family members by profiling.

There are additional proposals to beef up law enforcement, including a proposed bill to federally fund 15,000 more local police on the streets. Federal funding of police in relation to the so-called "drug war" has distorted policing by militarizing and incentivizing arrests for low-level drug crimes, a disastrous policy in itself and one that contributes to the mass incarceration of African Americans that some civil rights activists refer to as "the new Jim Crow."⁴ The details of this bill should be made known to determine whether it is a sensible measure piggybacking on the concern about gun violence, or another program that will militarize communities.

Conclusion: Under President Obama's recent executive orders, it is now U.S. federal policy to enlist healthcare providers, families and police in the monitoring and control of people labeled with psychiatric diagnoses and those who seek help with mental health issues, adding another layer to the criminalization of populations that are treated as expendable. These measures must be reversed. The research initiative should be watched carefully.

⁴ Michelle Alexander, *The New Jim Crow*.

“3. Making schools safer.” This includes proposals for bringing more police officers into schools, for increased mental health system presence in schools, and for coordination between schools, police and mental health system.

The Department of Justice will incentivize the hiring of police officers to work in schools (called “school resource officers”), by giving preference to grant applications of police departments that include this item, and will develop a model for the use of these officers in schools. The Administration is proposing to Congress a new \$150 million “Comprehensive School Safety Program” for law enforcements and school districts to hire police officers for schools, as well as school psychologists, social workers and counselors. It’s not clear whether the role of these workers will be directly related to security measures or whether it is merely a funding stream designation. Funding will also be made available to schools to conduct threat assessments and train police to work with “the mental health community” on crisis intervention teams to respond to students in crisis.

There is another \$50 million initiative, based on an existing program in the Department of Education, to fund the implementation of “evidence-based practices” school-wide including consistent rules and rewards for good behavior, with more intensive attention to students deemed “at-risk” and those who “continue to exhibit troubling behaviors.” DOE will also be asked to help schools develop and implement best practices in school discipline policies.

Conclusion: We need to sound an alarm about putting more and more children at risk of violence at the hands of the mental health system itself and the consequences to them and their families of having their civil rights violated. Our experiences should serve as examples of what should be avoided, not promoted!

“4. Improving mental health services.” This is a give-away to the mental health industry – not only funding but also a resounding endorsement of medical model diagnosis and treatment, both as an end in itself and as a means of preventing violence.

The policy rationale is worth quoting at length:

Today, less than half of children and adults with diagnosable mental health problems receive the treatment they need. While the vast majority of Americans with a mental illness are not violent, several recent mass shootings have highlighted how some cases of mental illness can develop into crisis situations if individuals do not receive proper treatment. We need to do more than just keep guns out of the hands of people with serious mental illness; we need to identify mental health issues early and help individuals get the treatment they need before these dangerous situations develop.”

Note:

- “Crisis” is equated with “violence.”

- Individuals not receiving “proper treatment” is posited as leading to crisis/violence.
- The President may be distinguishing people with “serious mental illness” from the “vast majority” of those labeled with mental illness who “are not violent” – this may signal a possibility of profiling based on particular labels like schizophrenia.
- Early identification and “treatment” is the companion policy to the criminal database and profiling, and is meant to serve the same purpose of control.

The proposals especially target teenagers and young adults. In particular, an initiative called Project AWARE is being promoted to diagnose an additional 750,000 children as mentally ill and refer them for “treatment” that will surely feature psychiatric drugs. It includes \$15 million to train teachers in “detecting” mental illness and encouraging children and their families to seek treatment, and \$40 million for cooperation between school districts and law enforcement, mental health agencies and other local organizations.

An additional \$25 million is being proposed for “innovative programs” targeting young people aged 16-25 with mental health and substance abuse issues, and \$50 million to train 5000 new mental health professionals (including social workers, counselors and psychologists among others) to serve students and young adults.

Secretary Sebelius (HHS) and Secretary Duncan (Education) will launch a national dialogue on mental illness with “young people who have experienced mental illness, members of the faith community, foundations, and school and business leaders” to address the “shame and stigma” that “prevents too many people from seeking help.”

The remaining measures address mental health coverage in private insurance and under Medicaid.

Conclusion: Non-medical approaches such as peer-support and trauma-informed care that respect a person’s right to make their own decisions are key components to successfully supporting people through mental health crises. The funding initiatives may tempt peer-run organizations as well as conventional service providers to focus only on opportunities to promote their services and shape mental health policy, while effectively glossing over the nefarious profiling measures, as the National Coalition for Mental Health Recovery has done in their press release of January 17.⁵ This is unacceptable accommodation and we must insist on our full human rights and dignity and make our objections known to the Administration, including the Secretary of HHS and SAMHSA officials, who should be called upon to stand with us against profiling, coercive measures and the irresponsible dogma of distress as “diagnosable illness” requiring “treatment” for purposes of social control.

⁵<http://pdf.reuters.com/pdfnews/pdfnews.asp?i=43059c3bf0e37541&u=urn:newsml:reuters.com:20130117:nPnDC44483>

Table 1.

Federal Categories of Persons Prohibited From Receiving⁶

A delay response from the NICS Section indicates the subject of the background check has been matched with either a state or federal potentially prohibiting record containing a similar name and/or similar descriptive features (name, sex, race, date of birth, state of residence, social security number, height, weight, or place of birth). The federally prohibiting criteria are as follows:

*A person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year or any state offense classified by the state as a misdemeanor and is punishable by a term of imprisonment of more than two years.

*Persons who are fugitives of justice—for example, the subject of an active felony or misdemeanor warrant.

*An unlawful user and/or an addict of any controlled substance; for example, a person convicted for the use or possession of a controlled substance within the past year; or a person with multiple arrests for the use or possession of a controlled substance within the past five years with the most recent arrest occurring within the past year; or a person found through a drug test to use a controlled substance unlawfully, provided the test was administered within the past year.

*A person adjudicated mental defective or involuntarily committed to a mental institution or incompetent to handle own affairs, including dispositions to criminal charges of found not guilty by reason of insanity or found incompetent to stand trial.

*A person who, being an alien, is illegally or unlawfully in the United States.

*A person who, being an alien except as provided in subsection (y) (2), has been admitted to the United States under a non-immigrant visa.

*A person dishonorably discharged from the United States Armed Forces.

*A person who has renounced his/her United States citizenship.

*The subject of a protective order issued after a hearing in which the respondent had notice that restrains them from harassing, stalking, or threatening an intimate partner or child of such partner. This does not include ex parte orders.

*A person convicted in any court of a misdemeanor crime which includes the use or attempted use of physical force or threatened use of a deadly weapon and the defendant was the spouse, former spouse, parent, guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited in the past with the victim as a spouse, parent, guardian or similar situation to a spouse, parent or guardian of the victim.

*A person who is under indictment or information for a crime punishable by imprisonment for a term exceeding one year.

⁶ <http://www.fbi.gov/about-us/cjis/nics/general-information/fact-sheet>.⁶

Table 2.⁷

Active Records in the NICS Index

UPDATED: As of December 31, 2012

Rank	Prohibited Category Description	Total	Percent of Total
1	Illegal Unlawful Alien	5,216,732	62.66%
2	Adjudicated Mental Health	1,821,217	21.88%
3	Convicted of a crime punishable by more than one year or a misdemeanor punishable by more than two years	727,255	8.74%
4	Fugitive from Justice	378,463	4.55%
5	Misdemeanor Crime of Domestic Violence Conviction	90,199	1.08%
6	Federally Denied Persons File	34,746	0.42%
7	Renounced U.S. Citizenship	20,654	0.25%
8	Unlawful User/Addicted to a Controlled Substance	18,174	0.22%
9	Dishonorable Discharge	10,163	0.12%
10	Protection/Restraining Order for Domestic Violence	4,101	0.05%
11	State Prohibitor	1,362	0.02%
12	Under Indictment/Information	865	0.01%
Total Active Records in the NICS Index		8,323,931	100.00%

ADD TABLE 2 from

http://www.fbi.gov/about-us/cjis/nics/reports/20130102_nics-index.pdf

⁷ http://www.fbi.gov/about-us/cjis/nics/reports/20130102_nics-index.pdf