

Gun Victim Compensation Insurance: Creating a Screening Process and Victim Compensation Fund

Professor Deborah Ramirez

Research Assistant: Claire Bergstresser

Revised: 3-8-23

The Two Problems

Problem 1: We do not have an effective firearm screening system to prevent those who are a danger to themselves or others from obtaining firearms.

Problem 2: No current system to compensate victims of gun violence.

The Solution

Mandating gun victim compensation insurance to require insurance companies or third party contractors to complete a risk assessment, screen potential gun owners for dangerousness, and use premiums and fees for a victim compensation fund.

The Highland Park Shooting: A Problem Case Study

- On July 4th, 2022, Robert E. Crimo III used a legally acquired Smith & Wesson M&P15 semiautomatic rifle to shoot into an Independence Day parade in Highland Park, Illinois. Lasting 15 minutes, 7 people were killed and 48 others wounded.
- Prior to the mass shooting, Crimo performed under the name "Awake the Rapper" and posted on YouTube as well as on other platforms multiple videos of violent images, including a man with a rifle shooting people. Another video he posted showed a cartoon character carrying a rifle and facedown in a pool of blood, surrounded by police officers.

The Highland Park Shooting could have been avoided with proper screening and action to restrict gun access

- **April 2019:** The Highland Park Police Department called to Crimo's house for attempted suicide.
- **September 2019:** The Highland Park Police Department called to Crimo's house because household member said he threatened to "kill everybody." He and his mother denied it and Crimo wasn't arrested. Police seized a "12-inch dagger," a box of 16 hand knives, and a "24-inch samurai-type blade" from Crimo's bedroom, but his father said they were his and the police returned them. Highland Park officers sent the Illinois State Police a "clear and present danger" report, saying Crimo admitted to having a history of drug use and "to being depressed when statements were made."
- **December 2019:** Crimo's father signed a form giving his son adult consent to apply for a FOID card. Crimo was 19.
- **January 2020:** The state police approved Crimo III's request for a firearm owner's identification card. According to the state police, there was insufficient evidence to deny the request. He passed four background checks, including checks of the federal National Instant Criminal Background Check System.
- **February 2020:** Crimo III bought the Smith & Wesson M&P15 semiautomatic rifle that authorities say he used in the Independence Day mass shooting. Crimo used his FOID card to buy firearms five times in 2020 and 2021.

Preventing Mass Shootings Would Save Lives

SHOOTING	LIVES LOST	VIOLENCE/ FASCINATION WITH VIOLENCE/DEATH	MENTAL HEALTH CONCERNS	SUBSTANCE ABUSE	PREVIOUS ENCOUNTERS WITH POLICE/FBI
Sandy Hook Elementary School	26	×	×		
Highland Park	7	×	×	×	×
Boulder Supermarket	10	×	×		×
Dayton Mass Shooting	9	×	×	×	
Santa Fe High School	10	×	×		
Route 91 Concert	59	×	×		
Sutherland Springs	27	×	×		×
Pulse Night Club	50	×			×

Mass Shootings in the United States

- Between 1966-2019, 77 percent of mass shooters obtained the weapons they used through legal purchases.

The Idea

- Mandated gun victim compensation insurance for gun owners and gun dealers.
- Insurance companies do a thorough background check to assess for dangerousness. The higher the risk, the higher the premium.
- Premiums would go into a victim compensation fund to cover willful, accidental, negligent, and reckless injuries.
- Coverage goes to victims, not gun owners. Gun owners pay first \$50k in damages to victims.
- Cap victim compensation at \$100k per person.

The Screening Process

- Factors could include:
 - periodic mental health assessments
 - gun safe and trigger locks
 - gun safety training
 - children in the home
 - number and type of firearms
 - prior violent behavior or prior threats of violent behavior
 - previous gun-related issues
 - police reports (including DUI convictions and DV)
 - public online presence

How It Works

- In order to get a gun permit, citizens would need to present proof of insurance.
- Insurance companies conduct effective background checks before agreeing to provide individuals with insurance.
- Premiums determined based on risk of dangerousness to self or others.
- This insurance requirement would cover both commercial and private sales.
- Small fine for failure to procure insurance analogous to driving without auto insurance.

Insurance Coverage

- In an ideal world, insurance could cover intentional acts of gun violence to compensate victims of mass shootings.
- None of the payouts would go to gun owners, and gun owners could be liable for the first 50K of costs.
- Payouts would only be to unrelated and individuals previously unknown to the gun owner.

- However, currently insurance companies do not provide this kind of liability insurance.
- We propose that gun owners and gun dealers become collectively responsible for gun victim injuries and deaths by mandating that they have victim compensation insurance.

Victim Compensation Fund Management Options

- Option 1: Through insurance companies. Premiums would be collected for coverage payout.
- Option 2: Through government. Municipalities, state, or federal government could create a victim compensation policy and fund. Examples: medical malpractice victim compensation insurance (patient compensation fund).
- Option 3: Government and insurance hybrid. Insurance companies and government could share or divide compensation fund responsibilities or coverage. This would include reinsurance or shared risk pool responsibilities.

Mandatory gun insurance is analogous to car insurance

- All 50 states require car owners to purchase car insurance.
- Insurance companies do an initial background check and set premiums based upon the risk each driver presents. It compensates victims of car accidents.
- When drivers engage in patterns and practice dangerous driving, premiums go up. If the behavior continues, premiums continue to rise.

Feasibility

- Gun insurance already exists.
- Homeowners and renters may add riders to their current insurance policies.
- Only around 40% of renters have renter insurance, meaning there could be a market to increase coverage.
- Premiums could be set as high as automobile insurance, driving a new market potential in revenue.

Challenges

- Moral hazard: Insurance companies will not insure intentional acts of violence. In our proposal, bad actors would be required to pay first \$300k. Compensation would only cover victims with no relationship with shooter. Thus, bad actors are not incentivized to do bad acts.
- Second Amendment Concerns:
 - Judge Freedman's Opinion: This decided that the insurance mandate in San Jose did not violate the 2nd Amendment because the historical analogue is 18th century surety law and because jurisprudence historically held gun owners liable for injuries caused by guns. She emphasized that the court did not require a historical twin.
 - Cf. Michigan Law Review Article Gun Insurance Mandates and the Second Amendment: Adam Shniderman believes that while the historical analogue is surety law, the gun owner presented an individual danger.

Additional Bruen Considerations

- “Our holding decides nothing about who may lawfully possess a firearm or the requirements that must be met to buy a gun. Nor does it decide the kinds of weapons people may possess.” - P. 2 of Alito’s Concurrence
- The Second Amendment does not prohibit “shall-issue” open carry laws that require things like fingerprinting, background checks, and gun safety training certificates. It held that New York’s open carry laws were unconstitutional because an individual had to prove that “proper cause” exists for carrying a concealed weapon.
- Gun dealers have no 2nd Amendment rights.
- Burden on gun owners will be low and comparable to an annual vehicle excise tax.

Thank you

Special thanks to my team of research assistants assisting in this project: Caitlin Rams, Amanda Brea, Jalon Fowler, Nathaniel Leabo, Jacqueline Bohatch, and Anastasia Moawde.