

MASS SHOOTING RESOURCE GUIDE FOR PROSECUTORS

HOW TO PREVENT, PROTECT, AND PROSECUTE



SPRING 2020

PAGV

PROSECUTORS AGAINST GUN VIOLENCE

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LETTER FROM PAGV CO-CHAIRS:



Two years after the deadliest mass shooting in American history occurred at the Route 91 Harvest Festival in Las Vegas, **Prosecutors Against Gun Violence (PAGV)** gathered for its tenth convening on October 4, 2019 entitled, *“The New Norm: Mass Shootings in America.”* From Parkland to El Paso, Pittsburgh to Poway, mass shootings indeed threaten to become a new norm in America. At a time when national leadership on the issue is lacking, prosecutors from 30 cities and counties across the nation gathered to engage experts and devise actionable strategies to prevent mass shootings in every community. The daylong conference featured an array of specialists in public safety, mental health, and law enforcement, all of whom shared their wisdom on panels ranging from “The Role of a Prosecutor’s Office in Mass Shootings” to “The Mind of a Mass Shooter.”

One truth has emerged from PAGV’s convenings in five years: prosecutors have unique credibility and expertise when it comes to protecting our communities. It is why we formed PAGV—a bipartisan coalition advancing prosecutorial and policy solutions to the crisis of gun violence. Until the scourge of gun violence is a relic of the past, we remain steadfast in our commitment to effectuate change.

PAGV has partnered with the William S. Boyd School of Law at the University of Nevada, Las Vegas, to produce this first-of-its-kind resource guide on the issue of mass shootings. Prosecutors can play a leading role in combating gun violence well before crisis strikes. This guide will serve as a valuable resource to prevent mass shootings or in the event one occurs. Notably, the text of this report will not include the names of any mass shooter, to avoid glorifying them and their actions.



This undertaking would not be possible without the tireless effort of Assistant District Attorney Sabrina Margret Bierer of the Manhattan District Attorney’s Office, and William S. Boyd School of Law J.D. candidates Haley Beza, J. Gregory Cloward, and Hannah Nelson, who worked with PAGV in drafting this report. The entire PAGV community thanks them and the panelists for their invaluable contributions. PAGV also thanks The Joyce Foundation, Everytown for Gun Safety, and Giffords: Courage to Fight Gun Violence for their continued support and partnership.

Sincerely,

Cyrus R. Vance, Jr.
Co-Chair
Manhattan District Attorney

Mike Feuer
Co-Chair
Los Angeles City Attorney



INTRODUCTION

IN THE LATE 1990S, NEWS THAT TWO TEENAGERS had opened fire in a high school in Columbine, Colorado shook the nation—this type of tragedy was unconscionable and largely unheard-of. By 2017, however, word that a man had fired more than 1,100 rounds of ammunition into a concert crowd in Las Vegas, Nevada, massacring dozens and wounding hundreds more, was easier to believe. By that time, the nation had already grappled with the realities of the mass shootings at Virginia Tech, Fort Hood, Sandy Hook Elementary School, an Aurora movie theater, an Orlando nightclub, and countless other locations. People still mourned the losses from these shootings—how could they not?—but some had become desensitized to the shock of it all. Mass shootings, or events where four or more people are shot,¹ were, and are, the new norm.

As what constitutes “normal” changes, so, too, must the approach of a prosecutor, because prosecutors are charged with the duty of continuing to keep their communities safe regardless of how commonplace a particular evil becomes. This is especially true in the context of mass shootings, as prosecutors serve vital roles at every stage of these tragedies—before, during, and after, regardless of whether there is someone to prosecute. This resource guide aims to assist prosecutors at all stages.

This guide first discusses the ways in which prosecutors can, on a micro level, work to prevent mass shootings. Those methods include identifying mass shooting response teams, mitigating the risk of such tragedies at public events, leveraging technology to combat extremism from rising to the level of violence, and prosecuting threats before they are actualized. Next, the guide provides lessons for what to do in the event of a mass shooting. In that regard, it discusses charging decisions, continuing the investigation, talking to the community, and providing victim services. Finally, the paper discusses how prosecutors can, on a macro level, work to mitigate the risk of these tragedies by advocating specific legislation and policy.

No one thinks a mass shooting will take place in their city—until it does. This paper references and uses lessons from various past mass shooting events, including the:

- **NOVEMBER 14, 2019** Saugus High School shooting in Santa Clarita, California, in which the shooter, using a “ghost gun,” or a gun that is untraceable and undetectable, killed two students, wounded three others, and took his own life²;
- **AUGUST 4, 2019** Dayton, Ohio Entertainment District shooting, in which the shooter killed 9 victims and wounded 17 others, and the shooter was fatally wounded by law enforcement³;

1 *Gun Violence Statistics*, GIFFORDS LAW CENTER, <https://lawcenter.giffords.org/facts/gun-violence-statistics/> (last visited Feb. 10, 2020).

2 Dakin Andone, *The Gunman in the Saugus High School Shooting Used a ‘Ghost Gun,’ Sheriff Says*, CNN (Nov. 21, 2019), available at <https://www.cnn.com/2019/11/21/us/saugus-shooting-ghost-gun/index.html>.

3 Timothy Williams & Farah Stockman, *Gunman Kills 9 in Dayton Entertainment District*, N.Y. TIMES (Aug. 4, 2019), available at <https://www.nytimes.com/2019/08/04/us/dayton-ohio-shooting.html>.

- **AUGUST 3, 2019** El Paso, Texas Walmart shooting, in which the shooter posted an anti-Mexican manifesto on the website 8chan before he killed 22 people and injured 24 others, turned himself in, and was subsequently indicted for 90 federal crimes, including 22 counts of a hate crime resulting in death⁴;
- **JULY 28, 2019** Gilroy Garlic Festival in California, in which the shooter used a “military-style” semi-automatic rifle to kill three and wound 12 others, and the shooter was fatally wounded by law enforcement⁵;
- **MARCH 15, 2019** Christchurch, New Zealand Mosque shootings, in which the shooter issued a 74-page white supremacist manifesto before killing 51 people, and was apprehended by law enforcement and subsequently charged with dozens of crimes, including 51 counts of murder⁶;
- **NOVEMBER 7, 2018** Borderline Bar & Grill in Thousand Oaks, California shooting, in which the shooter fired more than 50 rounds, killed 12 people, and wounded another before taking his own life⁷;
- **NOVEMBER 2, 2018** Tallahassee, Florida yoga studio shooting, in which the gunman posted online messages of sexism, racism, and sympathy for misogynist shootings before opening fire in a yoga studio, wounding two women fatally, wounding an additional four women, pistol-whipping a man, and taking his own life⁸;
- **OCTOBER 1, 2017** Las Vegas, Nevada shooting, in which the shooter used 24 modified firearms to shoot 1,100 rounds into a concert crowd, killing 58 and wounding about 850 people, more than 400 of them by gunfire, before ultimately taking his own life⁹;

4 Michael Balsamo et al., *Walmart Shooting Suspect is Charged with Federal Hate Crimes*, ASSOCIATED PRESS (Feb. 6, 2020), <https://apnews.com/540119399f935dcc9ff1c151663a8c23>.

5 Alex Johnson et al., *Three Dead, Suspect Killed in Shooting at Gilroy Garlic Festival in California*, NBC NEWS (July 29, 2019), <https://www.nbcnews.com/news/crime-courts/multiple-victims-reported-possible-shooting-gilroy-garlic-festival-n1035546>.

6 Scott Neuman, *Man Accused in New Zealand Mosque Shootings That Killed 51 Pleads Not Guilty*, NPR (June 14, 2019), <https://www.npr.org/2019/06/14/732615781/man-accused-in-new-zealand-mosque-shootings-that-killed-51-pleads-not-guilty>.

7 Ina Jaffe, *Authorities Describe ‘Confusion and Chaos’ at Borderline Bar Shooting in California*, NPR (Nov. 28, 2018), <https://www.npr.org/2018/11/28/671353612/no-motive-yet-found-for-mass-shooting-at-borderline-bar-and-grill>.

8 Jenny Gathright, *Gunman in Yoga Studio Attack Had a Criminal History, Posted Racist and Sexist Videos*, NPR (Nov. 4, 2018), <https://www.npr.org/2018/11/04/664157610/gunman-in-yoga-studio-attack-had-a-criminal-history-posted-racist-and-sexist-vid>.

9 Jennifer Medina, *A New Report on the Last Vegas Gunman Was Released. Here are Some Takeaways*, N.Y. TIMES (Jan. 19, 2018), available at <https://www.nytimes.com/2018/01/19/us/las-vegas-attack-shooting-paddock.html>.

- **JANUARY 8, 2011** Tucson, Arizona shooting, in which the shooter killed six people and wounded 13 others, including U.S. Representative Gabrielle Giffords. The shooter was tackled by a bystander when he paused to reload his gun, apprehended by law enforcement, convicted of 19 counts of murder-related charges, and sentenced to life in prison¹⁰;
- **NOVEMBER 5, 2009** Fort Hood, Texas shooting in which the shooter, a U.S. Army major and psychiatrist, murdered 14 people and injured more than 30 others and was charged with 13 counts of premeditated murder, 32 counts of attempted murder, and ultimately sentenced to death.¹¹

The lessons learned from these mass shootings can aid prosecutors in mitigating the havoc mass shooters wreak on communities.

ACTION PLANS: BEFORE A MASS SHOOTING

A PROSECUTOR'S ROLE IN A MASS SHOOTING begins long before the event itself. Prosecutors can take steps to prevent mass shootings by creating threat-assessment teams; coordinating with the staff at venues that are vulnerable to mass shootings; identifying domestic terrorists, white supremacists and extremists; and identifying and prosecuting threats of mass shootings before they manifest into tragic events.

IDENTIFYING MASS SHOOTING RESPONDERS AND CREATING THREAT-ASSESSMENT TEAMS

IDENTIFYING THE KEY PLAYERS BOTH INSIDE AND OUTSIDE the prosecutor's office is the first step to prepare for a mass shooting. State and local prosecutors, as well as local law enforcement, communities of faith and clergy, social workers, psychologists and psychiatrists, victim services organizations, emergency services, national non-profits, federal law enforcement, federal prosecutors' offices, and state government offices will be critical collaborators in the hours, days, and months that follow a mass shooting.¹² Identifying these people and entities and determining what role they can play will be necessary in advance crisis planning. These various agencies will be able to help with threat assessment, major-incident response, investigation, victim services, victim family services, and community rebuilding, among other things.

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- 10 CNN Library, *Arizona Safeway Shootings Fast Facts*, CNN (Dec. 31, 2018), <https://www.cnn.com/2013/06/10/us/arizona-safeway-shootings-fast-facts/index.html>;
- Large Capacity Magazines*, GIFFORDS LAW CENTER, <https://lawcenter.giffords.org/gun-laws/policy-areas/hardware-ammunition/large-capacity-magazines/> (last visited Apr. 13, 2020).
- 11 Kyle Rempfer, *The Mass Shooting at Fort Hood was 10 Years Ago, on Nov. 5, 2009*, ARMY TIMES (Nov. 5, 2009), <https://www.armytimes.com/news/your-army/2019/11/05/the-mass-shooting-at-fort-hood-was-10-years-ago-on-nov-5-2009/>.
- 12 See NATIONAL THREAT ASSESSMENT CENTER, <https://www.secretservice.gov/protection/ntac/> (last visited Nov. 26, 2019).

Once a prosecutor has identified these key players, the prosecutor should open lines of communication. For example, the Utah County Attorney’s Office assigns one or two members of the office to serve as the main points of contact with each outside agency it works with in the wake of a crisis.¹³ The assigned members of the office provide on-call assistance to the agencies around the clock, and the agencies know that they may reach out to these points of contact for general questions at any time.¹⁴ This practice has increased the efficiency of inter-agency work.¹⁵

Prosecutors can also assist by leading an effort to develop community-based threat assessment teams with local law enforcement, communities of faith or clergy, social workers, psychologists and psychiatrists, and anyone else who has the ability to assist those experiencing a crisis.¹⁶ The process of threat assessment was originally developed by the U.S. Secret Service in response to school violence, and is described as “a structured group process used to evaluate the risk posed by a student or another person, typically as a response to an actual or perceived threat or concerning behavior.”¹⁷ Essentially, threat assessment teams seek to evaluate a particular individual, and look at the surrounding facts and circumstances to determine whether that person poses a credible, identifiable risk.¹⁸ In that regard, threat assessment teams conduct preventative investigations to determine whether someone is on a “pathway to violence” that could ultimately result in a mass shooting.¹⁹ These preventative teams work to identify those in need, assist them in getting off the pathway toward violent behavior, and help them cope with any personal crises they may be experiencing.²⁰ The overarching goal of threat assessment teams is to prevent people from resorting to violence when they feel they are at their tipping point.²¹

When working to identify mass shooters, teams can look for the four things that mass shooters tend to have in common: (1) childhood trauma and early exposure to violence; (2) an identifiable personal crisis; (3) study of other mass shooters; and (4) the means to carry out the attack, e.g., access to a firearm.²² Notably, too, regardless of whether a shooter actually survives, committing a mass shooting puts an end to life as the shooter previously knew it. Thus, mass homicide can be a form of suicide.

FOUR THINGS THAT MASS SHOOTERS TEND TO HAVE IN COMMON:

- 1 childhood trauma and early exposure to violence;**
- 2 an identifiable personal crisis;**
- 3 study of other mass shooters; and**
- 4 the means to carry out the attack, e.g., access to a firearm**

13 Telephone Interview with Chad Grunander, Chief Deputy District Attorney, Utah County Attorney’s Office (Nov. 7, 2019).

14 *Id.*

15 *Id.*

16 NATIONAL THREAT ASSESSMENT CENTER, *supra* note 12.

17 *School-Based Threat Assessment*, WASH. OFF. OF SUPERINTENDENT OF PUBLIC INSTRUCTION, <https://www.k12.wa.us/student-success/health-safety/school-safety-center/z-index/threat-assessment> (last visited Nov. 26, 2019).

18 *Id.*

19 Dr. Marisa Randazzo, Ph.D., Managing Partner at SIGMA Threat Management Associates, Remarks at The New Norm: Mass Shootings in America, Oct. 4, 2019.

20 *Id.*

21 *Id.*

22 Jillian Peterson & James Densley, *Op-Ed: We Have Studied Every Mass Shooting Since 1966. Here’s What We’ve Learned about the Shooters*, L.A. TIMES (Aug. 4, 2019), available at <https://www.latimes.com/opinion/story/2019-08-04/el-paso-dayton-gilroy-mass-shooters-data>.

PATHWAY TO VIOLENCE



IDEATION: Expressing thoughts or fantasies considering the use of violence to address a real or perceived grievance, threat, or provocation. Note that many people have occasional or fleeting thoughts of violence in response to perceived grievances. Most do not act on those thoughts or move forward along the pathway. Therefore, knowledge that someone is thinking about violence does not confirm that a danger exists but should alert us to the possibility, and that the person may be struggling with a grievance of some sort or otherwise considering violence as a way to solve a problem.

PLANNING: Giving thought and consideration not only to the idea of committing violence, but the who, what, when, where and how of doing so. Expressions may begin to reference timing, location, targets, means, methods, etc. The person of concern may seek out and gather information regarding prior shootings or shooters, information about potential targets, means of causing harm, equipment, etc.

PREPARATION: Beyond just acquiring weapons, this stage involves attempts to prepare for the violence and to develop or acquire the means and methods to engage in harm to target(s)/victim(s). They may try to obtain the means to fulfill their plans (e.g., weapons, tools, plans. The person of concern may test boundaries to practice accessing secure areas.

IMPLEMENTATION: The person of concern moves to carry out the violent plan. Research indicates that while targeted violence incidents are rarely spontaneous and impulsive, they can escalate rapidly from ideation through implementation. This may be expedited by a sense of desperation for resolution, lack of concern for consequences, or the influences of others encouraging escalation (e.g., through social media or direct communications). When there are indications that a person of concern may pose a threat to the school community, the threat assessment team will need to move quickly to inquire about and intervene in that planning or preparation.

IMPLICATIONS FOR PREVENTION:

Many school shootings and other acts of targeted violence are preventable. The challenge is that, while pieces of the puzzle are usually available, the information is likely to be scattered and fragmented. When a threat is reported, a multi-disciplinary threat assessment team can act quickly to assemble the facts to determine if the person of concern is on the pathway to violence, and to work with them to solve underlying problems and move them away from thoughts/plans of violence.

Source: Texas State School Safety Center

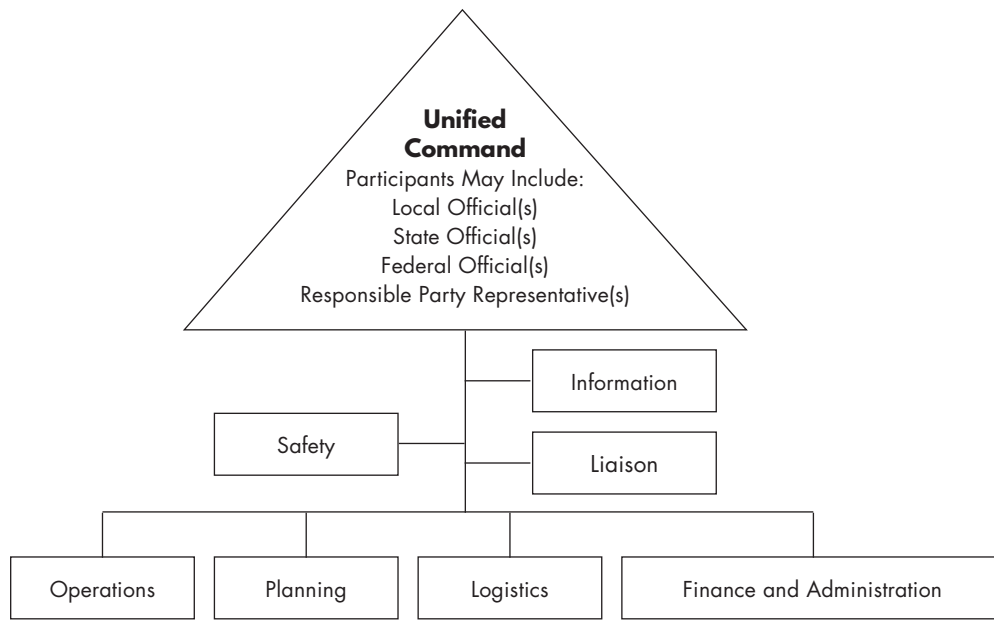
Lessons can be learned from the behaviors of suicidal individuals, as there are known, effective ways to prevent death by suicide. For example, before suicidal individuals carry out their actions, they typically experience conflict—part of them does not want to follow through while the other part has to. By taking part in threat assessment, prosecutors can focus on the side of the individual’s conflict that is most receptive to non-violent solutions to their problems.²³

“It is important and useful to understand mass homicide as a form of suicide, since people who commit these crimes have given up on life as they know it. Either they die or they will spend the rest of their lives locked up.”

– Dr. Joel Dvoskin, *PAGV Las Vegas Summit, “The New Norm: Mass Shootings in America,” Oct. 4, 2019*

There are resources and tools available online that prosecutors and other agencies can use as models for their major-incident response and threat-assessment plans. For example, the United States National Response Team Incident Command System provides a Unified Command Technical Assistance Document intended to guide agencies at the state, federal, and local level to promote safe and effective incident response.²⁴ The Secret Service and Department of Education authored *Threat Assessment in Schools: A Guide to Managing Threatening Situations and to Creating Safe School Climates*, intended for school personnel and law enforcement officials tasked with protecting schools. It can serve as a useful resource for threat management and mass-shooting prevention.²⁵

RELATIONSHIP BETWEEN INCIDENT COMMAND SYSTEM AND UNIFIED COMMAND



23 Dr. Joel Dvoskin, Ph.D., A.B.P.P. (Forensic), Clinical and Forensic Psychologist, Remarks at The New Norm: Mass Shootings in America, Oct. 4, 2019.

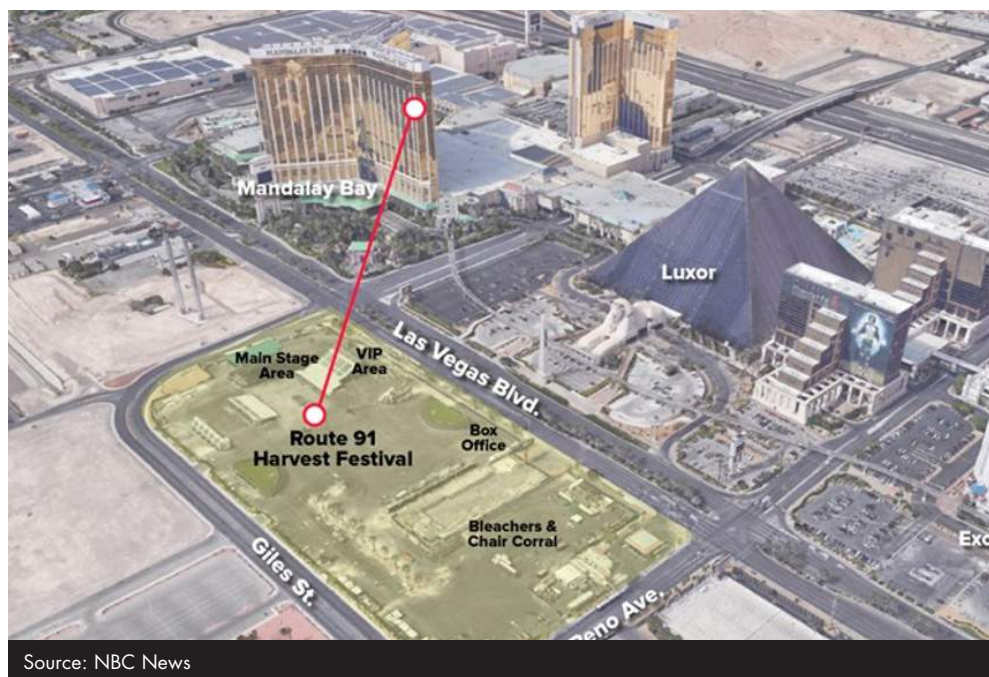
24 *Incident Command System/Unified Command: Technical Assistance Document*, NAT. RESPONSE TEAM (February 27, 2003), available at <https://www.nrt.org/sites/2/files/ICSUCTA.pdf>.

25 *Threat Assessment in Schools: A Guide to Managing Threatening Situations and to Creating Safe School Climates*, U.S. SECRET SERV. & U.S. DEPT. OF ED. (July 2004), available at <https://www2.ed.gov/admins/lead/safety/threatassessmentguide.pdf>.

In short, facilitating relationships with outside agencies and designating roles inside and outside the prosecutor's office aimed at identifying would-be mass shooters and responding if a tragedy is actualized is a first step prosecutors can take to keep their communities safe.

PREVENTING MASS SHOOTINGS AT PUBLIC EVENTS

MAP OF MANDALAY BAY/ROUTE 91 FESTIVAL



SEVERAL MASS SHOOTINGS HAVE TAKEN PLACE AT PUBLIC EVENTS, victimizing thousands of people at the same time and place. The 1 October shooting in Las Vegas in 2017 took place at the Route 91 Harvest Festival, an outdoor country music concert.²⁶ Another mass shooting that left four dead and 17 others injured took place at the Gilroy Garlic Festival, one of the nation's best-known food festivals, which attracts tens of thousands of visitors.²⁷ Prosecutors can learn from these situations to prevent future mass shootings.

“Many mass shootings could never have taken place without the fuel of racist and misogynist propaganda, or the help of unscrupulous purveyors of the weapons of war, or the failure of public venues to implement effective security measures.”

– Professor Mary Anne Franks,
Our Collective Responsibility for Mass Shootings, N.Y. Times, Oct. 9, 2019

²⁶ Daniel Kreps, *Las Vegas Shooting: At Least 59 Dead at Route 91 Music Festival*, ROLLING STONE (Oct. 2, 2017), <https://www.rollingstone.com/music/music-country/las-vegas-shooting-at-least-59-dead-at-route-91-music-festival-122293/>.

²⁷ Johnson et al., *supra* note 5.

Because public events are planned in advance, they provide prosecutors, law enforcement, and other entities the opportunity to put mechanisms in place to prevent mass shootings. Prosecutors can play a significant role in planning a major event by informing police and security staff of laws that they can rely on ahead of time to empower promoters, hotels, or venues to implement such protocols, and can ensure that there are procedures in place to educate individuals staffing the event of their responsibilities.²⁸

Former Assistant Director for Counterintelligence at the Federal Bureau of Investigation (FBI) Frank Figliuzzi outlined the “three E’s” for prosecutors: embed, exercise, and evaluate.²⁹ Prosecutors should **embed** seasoned personnel early in the planning stage with law enforcement partners and clearly define roles.³⁰ Prosecutors should **exercise** their well-written and well-rehearsed comprehensive incident response plans to avoid falling into the human-nature trap of throwing out all established policies and practices when something new happens and emotions and adrenaline are high.³¹ Lastly, prosecutors should **evaluate** the venue and engage with venue staff to gain information about individuals who may pose a threat, such as individuals who recently became unemployed, expressed unusual interest in the venue, or requested particular hotel rooms that overlook outdoor events.³² Following these protocols in advance of a public event decreases the probability that a mass shooting will happen, and, at the very least, helps ensure that the response effort is seamless.

THE THREE “Es” OF RISK MITIGATION:

- 1 EMBED seasoned personnel in the planning stage;**
- 2 EXERCISE incident response plans; and**
- 3 EVALUATE the venue and engage with venue staff.**

PREVENTING MASS SHOOTINGS BY COMBATING DOMESTIC TERRORISM, EXTREMISM, AND WHITE SUPREMACY THROUGH SOCIAL NETWORKING

PROSECUTORS MUST ALSO BE VIGILANT about the powerful role social media platforms may play in a mass shooting. Prosecutors can leverage the information found on social networking websites to prevent or prosecute a mass shooting and can partner with agencies like The Southern Poverty Law Center and the ADL’s (Anti-Defamation League) Center on Extremism to bolster enforcement and investigation efforts.

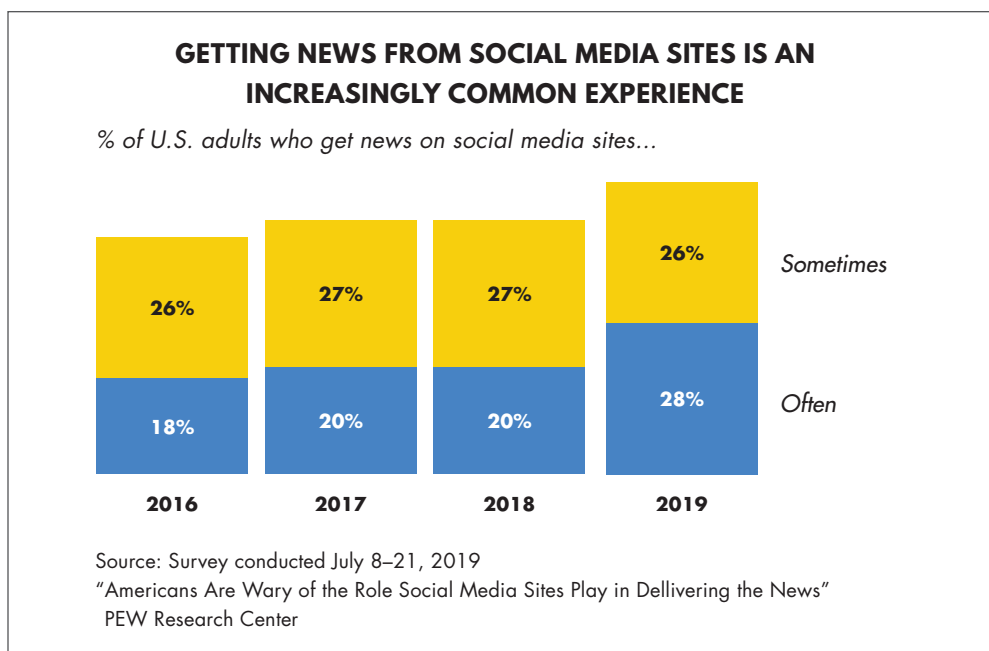
28 Frank Figliuzzi, Former Assistant Director for Counterintelligence at the Federal Bureau of Investigation, Remarks at The New Norm: Mass Shootings in America, Oct. 4, 2019.

29 *Id.*

30 *Id.*

31 *Id.*

32 For example, the 1 October shooter specifically requested a room with a view of the concert site. AP Wire Service, *Vegas Gunman Requested 32nd Floor Mandalay Bay Hotel Room Where He Opened Fire*, FOX 6 NEWS (Oct. 4, 2017), <https://fox6now.com/2017/10/04/vegas-gunman-requested-32nd-floor-mandalay-bay-hotel-room-where-he-opened-fire/>.



Social media has permeated our culture and is a way for like-minded people to find one another. According to a 2019 Pew research study, 55% of U.S. adults get their news from social media either “often” or “sometimes”—an 8% increase from the year before.³³ Beyond the mainstream social media networking sites like Facebook, there are fringe sites that allow individuals to share extreme worldviews, find like-minded sympathizers, and recruit followers.³⁴ Many of these fringe sites allow users to post anonymously and in a manner that prevents their location from being tracked, which poses problems for law enforcement and other agencies trying to investigate crimes discussed on these platforms.³⁵

One such fringe platform is 8chan, an online messaging board that allows users to create anonymous accounts, share extremist messages, and encourage mass shooters.³⁶ The El Paso and Christchurch shooters both posted messages or manifestos on 8chan prior to opening fire and the active threads on the site celebrated their actions after the fact.³⁷ Minutes before the El Paso shooter killed 22 and injured 25 at a Walmart, he made a lengthy post—describing an “invasion” of Hispanics—on 8chan.³⁸ Shortly after the shooting, a thread urged site users

33 Elisa Shearer & Elizabeth Grieco, *Americans Are Wary of the Role Social Media Sites Play in Delivering the News*, PEW RESEARCH CENTER (October 2, 2019), <https://www.journalism.org/2019/10/02/americans-are-wary-of-the-role-social-media-sites-play-in-delivering-the-news/>.

34 *Id.*

35 Oren Segal, Vice President of ADL’s Center on Extremism, Remarks at The New Norm: Mass Shootings in America, Oct. 4, 2019.

36 Kevin Roose, ‘Shut the Site Down,’ Says the Creator of 8chan, a Megaphone for Gunmen, N.Y. TIMES (Aug. 4, 2019), available at <https://www.nytimes.com/2019/08/04/technology/8chan-shooting-manifesto.html>.

37 *Id.*

38 Sasha Ingber, ‘Uniquely Lawless’: Security Firm Drops 8chan Website Following El Paso Shooting, NPR (Aug. 5, 2019), <https://www.npr.org/2019/08/05/748179892/uniquely-lawless-security-firm-drops-8chan-website-following-el-paso-shooting>.

to create “memes and original content” making it easier to “celebrate the [gunman’s] heroic action.”³⁹ Likewise, before the Christchurch shooter, a white supremacist, killed 51 and injured dozens of others at two mosques, he posted a manifesto to the site and live-streamed his attack.⁴⁰

“Radicalization into violent extremism involves three basic ingredients: the need, the narrative, and the network. Our theory identifies the need for personal significance as the dominant need that underlies violent extremism.”

– Dr. David Webber et al., *The Making of Violent Extremists*,
Review of General Psychology, Vol. 22, No. 1, pp. 107-120, Mar. 1, 2018

Although these sites contribute to spreading extreme ideologies and are connected to mass shooters, there is danger in shutting down or “de-platforming” these speakers or speech and denying them a venue to express their opinions. Of course, there are First Amendment concerns associated with such actions. So, too, de-platforming risks losing investigation tools and evidence.⁴¹ Thus, individuals, groups, and organizations must weigh the cost of shutting down a recruitment tool against losing the ability to monitor the individuals on these sites and the content they post; as discussed below, the appropriate balance may be advocating the implementation of new laws that provide liability for facilitating illegal activity on the internet.⁴²

Notably, too, fringe platforms are not the only mediums where extremists post information that may be valuable in preventing and investigating mass shootings. For example, the gunman in the 2018 Tallahassee yoga studio shooting, who shot six women (two of whom died) and pistol-whipped a man before killing himself, had posted videos on YouTube with messages of sexism, racism, and sympathy for other misogynist killings. YouTube removed the videos from public view after they were uncovered, which surely helped cease the glorification of the gunman and the spread of his extremist views, and the videos provided investigative leads for law enforcement.⁴³

39 Drew Harwell, *Three Mass Shootings This Year Begin with a Hateful Screed on 8chan. Its Founder Calls it a Terrorist Refuge in Plain Sight*, WASH. POST (Aug. 4, 2019), <https://www.washingtonpost.com/technology/2019/08/04/three-mass-shootings-this-year-began-with-hateful-screed-8chan-its-founder-calls-it-terrorist-refuge-plain-sight/>.

40 Charlotte Graham-McLay, *Death Toll in New Zealand Mosque Shooting Rises to 51*, N.Y. TIMES (May 2, 2019), <https://www.nytimes.com/2019/05/02/world/asia/new-zealand-attack-death-toll.html>; Ian Bogost, *The Meme Terrorists*, ATLANTIC (Apr. 30, 2019), <https://www.theatlantic.com/technology/archive/2019/04/california-synagogue-shooting-worse-you-thought/588352/>.

41 Howard Graves, Senior Research Assistant at The Southern Poverty Law Center, Remarks at The New Norm: Mass Shootings in America, Oct. 4, 2019.

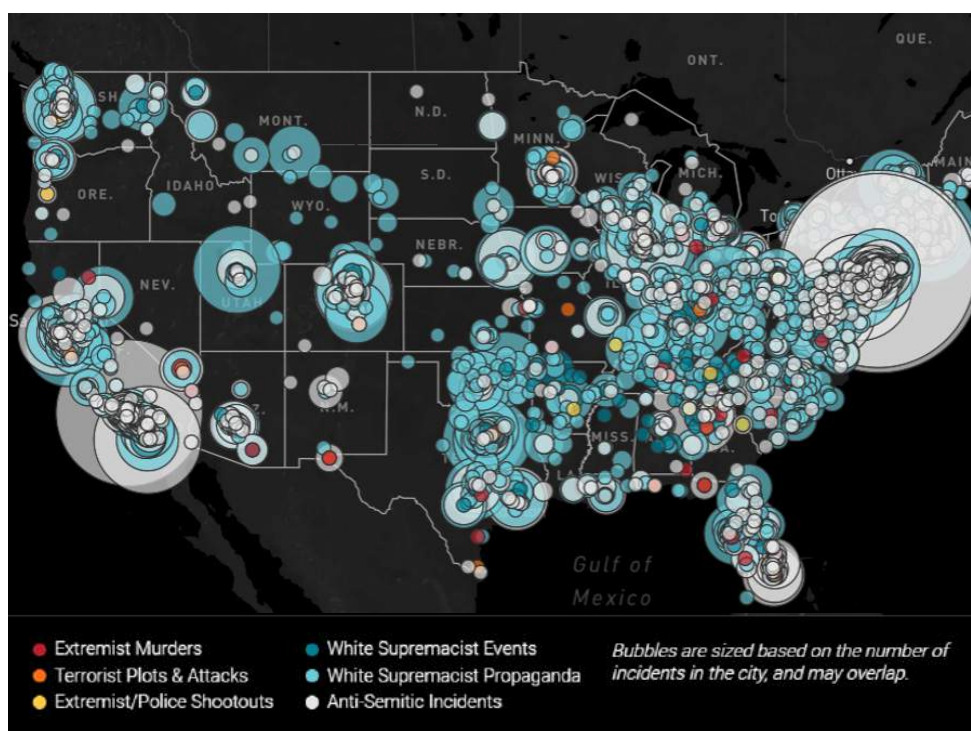
42 *Id.*

43 Gathright, *supra* note 8.

While fringe platforms and other mediums do exist for extremists to utilize, prosecutors can partner with organizations like the The Southern Poverty Law Center and the ADL’s Center on Extremism to combat domestic terrorism, extremism, and white supremacy. The Southern Poverty Law Center is currently tracking more than 1,600 extremist groups operating across the country.⁴⁴ The organization also publishes investigative reports (including an annual census of U.S. hate groups), trains law enforcement officers, shares key intelligence, and offers expert analysis to the media and the public.⁴⁵ Similarly, the ADL’s Center on Extremism provides resources (such as heat maps), expertise, and training, which enable law enforcement, public officials, and internet companies to identify and counter emerging threats.⁴⁶ The ADL can also support prosecutors in building cases both preemptively and after the fact.⁴⁷

ADL HEAT MAP

In 2018 and 2019, there were 7,067 incidents of extremism or anti-Semitism in the United States



Source: <https://www.adl.org/education-and-resources/resource-knowledge-base/adl-heat-map>

In short, social media platforms provide a space for extremists to connect with one another, but also a valuable investigative tool, and law enforcement can leverage this tool and partner with organizations like The Southern Poverty Law Center and the ADL’s Center on Extremism to combat domestic terrorists, extremists, and white supremacists.

44 *Hate & Extremism*, SOUTHERN POVERTY LAW CENTER, <https://www.splcenter.org/issues/hate-and-extremism> (last visited Apr. 13, 2020).

45 *Id.*

46 *Center on Extremism*, ADL, <https://www.adl.org/who-we-are/our-organization/advocacy-centers/center-on-extremism> (last visited Apr. 13, 2019).

47 *Id.*

PREVENTING MASS SHOOTINGS BY PROSECUTING THREATS OF MASS SHOOTINGS

ANOTHER TOOL PROSECUTORS HAVE AVAILABLE to prevent mass shootings is to prosecute an individual for making a mass shooting threat. There are challenges attendant to such prosecutions, such as First Amendment limitations and the availability of charging options. In the right situations, however, these challenges must be navigated to protect the community.

To begin, there are, of course, instances in which individuals make traceable and articulable threats of mass violence. Although hate-based violence is not new to America,⁴⁸ evolving technological advances and the existence of the internet make it easier than ever for extremists to “find, encourage, and abet one another,” because of the capability of instant communication that facilitates radicalization.⁴⁹ And, as noted above, although the easier spreading of extremist ideals is detrimental to society in many ways, it does empower prosecutors with new investigative tools to leverage when investigating and prosecuting threats.

One of the first considerations a prosecutor must make is to determine what laws are available to prosecute threats of mass violence. Of course, each state has its own laws that prosecutors should familiarize themselves with before such threats occur. On the federal level, the law prohibits the transmission in interstate commerce of “any communication containing any threat . . . to injure the person of another.”⁵⁰

The next steps include deciding when an individual’s words constitute a prosecutable offense under the available laws and deciding what charges to bring. Under federal law, at least, a threat only becomes a crime if the person making the statement has some form of intent beyond mere negligence.⁵¹ Even once a prosecutor has determined that a threat is prosecutable, the prosecutor must evaluate whether charging the highest crime is the best approach for public safety or if a lesser crime that gets the individual off the path of violence is best. To that end, many people who eventually commit mass shootings have had previous contacts with law enforcement or a history of criminal tendencies.⁵² By holding individuals responsible for lower-level crimes, including misdemeanors or crimes unrelated to gun violence, prosecutors can gain necessary leverage to require counseling, mental health services, or temporary or permanent forfeiture of weapons. So, too, the imposition of a prison sentence at a pivotal moment could potentially exacerbate the individual’s criminal tendencies by further hardening and angering the individual.⁵³

48 Frank Figliuzzi, *White Nationalist Domestic Terrorism is Rising—Rethinking How We Label It Can Help the FBI Stop It*, NBC NEWS (Aug. 10, 2019), <https://www.nbcnews.com/think/opinion/white-nationalist-domestic-terrorism-rising-rethinking-how-we-label-it-ncna1040876>.

49 *Id.*

50 18 U.S.C.A § 875(c) (West 2019).

51 See e.g., *Elonis v. United States*, 575 U.S. 723 (2015).

52 See Bonnie Berkowitz et al., *The Terrible Numbers that Grow With Each Mass Shooting*, WASH. POST (Nov. 17, 2019), available at <https://www.washingtonpost.com/graphics/2018/national/mass-shootings-in-america/>.

53 The impact prison has on a person is an important topic, too vast to discuss herein. For more information, see Christian Jarrett, *How Prison Changes People*, BBC FUTURE (May 1, 2018), <https://www.bbc.com/future/article/20180430-the-unexpected-ways-prison-time-changes-people>; Stanton Samenow, *Do Prisons Really Make Offenders Worse*, PSYCH. TODAY (Apr. 9, 2011), <https://www.psychologytoday.com/us/blog/inside-the-criminal-mind/201104/do-prisons-really-make-offenders-worse>; Zawn Villines, *The Effects of Incarceration on Mental Health*, GOOD THERAPY (Mar. 15, 2013), <https://www.goodtherapy.org/blog/prison-incarceration-effects-mental-health-0315137>.

Another factor that demands consideration is the constitutional rights of the suspect. The First Amendment's free speech protections are constantly looming when attempting to prosecute a threat. Notably, however, the First Amendment does not protect "true threats" — threats where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.⁵⁴ Thus, a prosecution can survive such challenge where the threat is a true one.

An example of a state prosecution where this challenge arose is the January 21, 2019 mass shooting threat that was prosecuted by Chad Grunander, Chief of the Criminal Division at the Utah County Attorney's Office. In that case, an individual had posted a Facebook message stating that he intended to become the "next mass shooter" and kill "as many girls" as he could.⁵⁵ Federal and local law enforcement in Colorado had been monitoring the individual and contacted the Utah County Attorney's Office to verify that it could bring charges in conjunction with the threat. A manhunt ensued and ended within minutes when law enforcement found the suspect at a McDonald's in Provo, Utah and arrested him.⁵⁶

The prosecutor's office had a difficult time determining the best way to prosecute the case. First, the office considered the defendant's First Amendment rights and concluded that the speech likely constituted a true threat. Next, they faced challenges in deciding what charges to bring, because Utah law expressly excluded firearms from the definition of "weapon of mass destruction" for the purposes of its felony Threat of Terrorism charge, yet Utah's misdemeanor Threat of Violence charge seemed insufficient.⁵⁷ Another factor weighing on the charging decisions was an evaluation of whether bringing more severe charges would result in a jury sympathizing with the defendant and acquitting him. Ultimately, the office proceeded with the prosecution by charging Attempted Threat of Terrorism in the Second Degree, and, as part of a plea disposition, the defendant pled guilty to the reduced charge of Attempted Threat of Terrorism in the Third Degree and was sentenced to five years in prison.⁵⁸

In short, despite the challenges prosecutors face in bringing charges for threat crimes, it is possible to pursue such charges and stop a true threat before it results in actual casualties.

In conclusion, prosecutors play a role in mass shootings even before they begin. They are uniquely positioned to bring other agencies together to develop plans to prevent and respond to these tragedies and can, among other things, leverage new technologies and prosecute threats to protect their communities.

54 *Virginia v. Black*, 538 U.S. 343, 359 (2003).

55 Michael Kunzelman et al., *Man Arrested in Provo for Threatening Mass Shooting is Serial Online Harasser Who Received Lenient Punishments*, SALT LAKE TRIB. (May 22, 2019), <https://www.sltrib.com/news/nation-world/2019/05/22/man-arrested-provo/>.

56 *Id.*

57 Chad Grunander, Chief Deputy Attorney General, Utah County Attorney's Office, Remarks at The New Norm: Mass Shootings in America, Oct. 4, 2019; see Utah Code Ann. §§ 76-5-107, 76-10-401(6)(b) (West 2019).

58 Grunander, *supra* note 57; see Brady McCombs, *Serial Cyberstalker Who Threatened Women Gets Prison Term in Utah*, SALT LAKE TRIB. (May 23, 2019), <https://www.sltrib.com/news/nation-world/2019/05/23/serial-cyberstalker-who/>.

ACTION PLANS: AFTER A MASS SHOOTING

PROSECUTORS PLAY A CRITICAL ROLE IN THE AFTERMATH of a mass shooting.

That role varies based on whether the shooter lives, takes his own life, or is fatally wounded by law enforcement. If the shooter lives, difficult charging decisions need to be made. Even if the shooter dies, however, a prosecutor is intricately involved in victim assistance, investigation, and information dissemination.

CHARGING DECISIONS

IF A MASS SHOOTER LIVES, one of the first decisions a prosecutor must make is what charges to bring. Such charging decisions are plagued with some of the same problems discussed above in threat cases, but they also present other, unique challenges. One such challenge is bringing the perpetrator to justice and doing so with each victim in mind. By its very nature, a mass shooting creates many victims—not just the individuals shot, but also other individuals present at the time of the shooting. In many circumstances, a prosecutor would be able to prove attempted murder of unwounded victims. That said, charging a shooter with individual crimes for every wounded and non-wounded victim, in addition to bringing charges for the fatalities, may result in an untenable prosecution that lasts years, causes jury fatigue, undermines the credibility of the People’s case, and delays the healing process not just for the victims, but for the community as well. Along those same lines, a prosecutor may have to make a difficult decision about whether to seek the death penalty, a divisive measure that many see as wholly inappropriate in any situation but that others may feel is justifiable and even necessary after a mass shooting.

An illustrative example is the November 5, 2009 Fort Hood shooting, in which an Army Major entered Fort Hood’s Soldier Readiness Processing Center and opened fire on his fellow troops with a customized, high-capacity handgun.⁵⁹ It was the worst incident of mass murder to take place at a military installation in United States history; the Army major murdered 13 people and wounded 32 others.⁶⁰ The shooter had been radicalized online, even exchanging emails with an al-Qaeda leader, before deciding to “switch sides” in what the shooter considered to be the Army’s war on Islam.⁶¹ Colonel Michael Mulligan was appointed lead prosecutor in the case. He and his team had to make the difficult decision of what charges to bring. Ultimately, they decided to bring a charge per victim who was shot, but none for those

59 Manny Fernandez, *Death Penalty for Rampage at Fort Hood*, N.Y. TIMES (Aug. 28, 2013), available at <https://www.nytimes.com/2013/08/29/us/jury-weighs-sentence-for-fort-hood-shooting.html>.

60 *Id.*

61 *Id.*

who were present but not wounded, which required the team to have difficult conversations with the other victims.⁶² Ultimately, the defendant was charged with 13 counts of premeditated murder and 32 counts of attempted premeditated murder.⁶³ In 2013, a panel of military officials unanimously sentenced him to death.⁶⁴

In short, there are many difficult decisions to navigate when prosecuting a mass shooter and prosecutors ought to be cognizant of this before making those determinations.

CONTINUING THE INVESTIGATION AND TALKING TO THE COMMUNITY

NEITHER THE DEATH, NOR THE CAPTURE, OF AN IDENTIFIED SHOOTER signals the end of the prosecutor's need to investigate and communicate with the public. Prosecutors must attempt to identify where the shooter's weapons came from, how the shooting happened, whether there are additional suspects, and whether other individuals are at risk of committing similar acts. Prosecutors may also serve a role in ensuring that misinformation is not disseminated to the public by participating in press conferences held by other law enforcement agencies or by issuing their own public statements.

In the aftermath of a mass shooting, the public will demand explanations, and, in the absence of reliable information, the media is more likely to issue unsubstantiated and false reports. Such reports risk sensationalizing the mass casualty, misleading the public regarding the underlying motives, and may even poison the jury pool in the jurisdiction and jeopardize the prosecution. Balancing this demand from the public and preserving the integrity of the criminal prosecution (or the completion of an officer-involved shooting report if the shooter was fatally shot by law enforcement) is no easy task. There are, however, ways to approach this. For example, although it is often the police that make regular statements to the public, ensuring that the prosecutor's office has a strong relationship with any entity making such public statements may be key to ensuring that the facts being disseminated are accurate and also do not risk the prosecution.⁶⁵ For example, after the Fort Hood shooting, Colonel Mulligan embedded an army prosecutor in the public affairs team that was issuing statements about the attack to ensure that the information shared was appropriate and factually accurate such that it satisfied questions from the public and did not compromise the ongoing prosecution.⁶⁶

Similarly, it may be prudent to intervene when the media asperses about motive. Often, the media and the public at large will speculate that mental illness is the underlying cause of mass shootings. Mental illness, however, only accounts for about four percent of violent

62 Similarly, the Oklahoma City bomber, responsible for the death of 168 people and the injury of over five hundred more, was officially charged with only eight counts of murder. See Lois Romano & Tom Kenworthy, *McVeigh Guilty on All 11 Counts*, WASH. POST (June 3, 1997), available at <https://www.washingtonpost.com/wp-srv/national/longterm/oklahoma/stories/guilty2.htm>.

63 McCombs, *supra* note 58.

64 Kenber, *supra* note 59.

65 Telephone Interview with Michael Mulligan, Colonel, Ret., U.S. Army, (Nov. 5, 2019).

66 *Id.*

crime.⁶⁷ So, too, by expressing the idea that a mass shooter was beyond help, or extremely mentally ill, distracts from the real problem. People have been led to believe that mass shooters suffer from mental illness, and that “normal” people could never do something similar. In reality, the contrary is true, as those who commit mass shootings are oftentimes “normal” people experiencing a personal crisis.⁶⁸ Further, most mass shooters could have been helped before they reached the point of committing a violent act. By reporting otherwise, the media exacerbates the problem by causing others to avoid seeking treatment and reducing the number of intervention points law enforcement and mental health providers can have with potential mass shooters.⁶⁹

Along those same lines, sensationalizing mass shootings can cause a ripple effect that emboldens other at-risk individuals to commit similar acts, and prosecutors may be able to intervene to prevent this.⁷⁰ Aside from identifying and locating these individuals, prosecutors can discourage copycat behavior by encouraging the media to focus on victims, not the shooter.⁷¹ Prosecutors can also push the media to “de-identify,” or to remove the details regarding the identity of the shooter.⁷² De-identification reduces glorification of shooters and makes it more difficult for would-be shooters to research the paths of previous mass shooters, which may prevent the mass shooting from rippling into a subsequent event.⁷³ The “No



Notoriety” campaign challenges news organizations to make no reference of the shooter while reporting on mass shootings.⁷⁴ To reduce “rampage acts of mass violence due to media-inspired fame,”⁷⁵ a few of the campaign’s media protocols include limiting using the name of the shooter to once per piece as a reference point, but never in the headlines never printing a photo above the fold; elevating the names and likeness of all victims to enforce the message their lives are more important than the killer’s actions; and agreeing “to promote data and analysis from experts in mental health, public safety, and other relevant professions to support further steps to help eliminate the motivation behind mass murder.”⁷⁶ Organizations such as the International Police Association, the Major Cities Chiefs, International Association of Chiefs of Police, Rabbis Against Gun Violence, along with *People* magazine and the Florida Chapter of the Society of Professional Journalists have endorsed No Notoriety’s mission.⁷⁷

67 Dvoskin, *supra* note 23.

68 *Id.*

69 *Id.*

70 Jaclyn Schildkraut, *The Media Should Stop Making School Shooters Famous*, VOX (Mar. 31, 2018), <https://www.vox.com/the-big-idea/2018/2/22/17041382/school-shooting-media-coverage-perpetrator-parkland>. For more information on the issue of media coverage of mass shootings, see Denise-Marie Ordway, *How Journalists Cover Mass Shootings: Research to Consider*, Journalist’s Resource (Aug. 6, 2019), <https://journalistsresource.org/studies/society/news-media/mass-shootings-news-research/>.

71 Erik Wemple, *Is Las Vegas Coverage Prepping the Next ‘Copycat’ Killer?*, WASH. POST (Oct. 3, 2017), <https://www.washingtonpost.com/blogs/erik-wemple/wp/2017/10/03/is-las-vegas-coverage-prepping-the-next-copycat-killer/>.

72 David Weber, Ph.D., M.S., Assistant Professor at Virginia Commonwealth University, Remarks at The New Norm: Mass Shootings in America, Oct. 4, 2019.

73 *Id.*

74 No NOTORIETY, <https://nonotoriety.com/> (last visited Apr. 14, 2020).

75 *Id.*

76 *Id.*

77 *Official Endorsements*, No NOTORIETY, <https://nonotoriety.com/data-%e2%80%a2-experts/> (last visited Apr. 14, 2020).

Many lessons can be taken from the aftermath of 1 October. After the massacre, the Las Vegas Metropolitan Police Department (LVMPD) knew that there were several unanswered questions and worked to resolve them. Among other things, they participated in hourly briefings, in which they conveyed the information they knew and asked the public to come forward with any information about the unresolved issues.⁷⁸ Indeed, Clark County District Attorney Steve Wolfson participated in several of the conferences alongside the LVMPD.⁷⁹ The



LVMPD strategically timed the press releases in phases. The first phase was intended to release information to calm the public's initial fear and to solicit any intelligence that the public may have. The second phase was focused on keeping people informed, and the third phase was to release information as it became available. Chief issues in the ongoing investigation were whether the shooter's girlfriend was involved in or knew about the attack and where she was located.⁸⁰ Ultimately, investigators located her, and, after interviewing her, determined she was not an additional suspect.⁸¹

In sum, prosecutors have many roles after a mass shooting beyond making charging decisions. In addition to continuing the investigation, prosecutors can help mitigate the spread of misinformation.

VICTIM SERVICES

SO, TOO, REGARDLESS OF WHETHER THE SHOOTER LIVES, prosecutors will likely be called upon to assist with victim services, as they often have the most robust victim service programs and the community looks to them for support.

Victim services are unsurprisingly complicated when several victims are involved, but prosecutors can work together with other agencies to ensure that there are protocols in place to respond quickly in instances of mass tragedy. Aside from the typical victim services that must be contemplated—providing resources, counseling, and various supports—victims of mass casualty events often leave countless personal effects at the scene that will need to be returned once the items are deemed no longer necessary for the ongoing investigation.⁸² So, too, it is important to remember a single mass shooting victim can touch multiple families, and connecting with

78 See David Choi et al., *The FBI Has Closed its Investigation of the Las Vegas Mass Shooting that Killed 58 People and Injured Hundreds More. Here's Exactly How the Nation's Worst Modern Gun Massacre Unfolded*, BUS. INSIDER (Jan. 29, 2019), <https://www.businessinsider.com/timeline-shows-exactly-how-the-las-vegas-massacre-unfolded-2018-9>.

79 *News Conference on Las Vegas Mass Shooting*, C-SPAN (Oct. 2, 2017), available at <https://www.c-span.org/video/?435041-1/death-toll-rises-58-las-vegas-mass-shooting>.

80 Vanessa Romo, *Unsealed Documents Show the Las Vegas Shooter's Girlfriend Acted Swiftly*, NPR (Jan. 14, 2018), <https://www.npr.org/sections/thetwo-way/2018/01/14/578020814/unsealed-documents-show-the-las-vegas-shooters-girlfriend-acted-swiftly>.

81 Jennifer Medina et al., *2nd Person of Interest Was Identified in Days After Las Vegas Shooting, Documents Show*, N.Y. TIMES (Jan. 30, 2018), available at <https://www.nytimes.com/2018/01/30/us/las-vegas-attack-paddock-shooting.html>.

82 Kasey Halcón, Program Director of Victim Services at the Santa Clara District Attorney's Office, Remarks at The New Norm: Mass Shootings in America, Oct. 4, 2019.

various parents, grandparents, spouses and in-laws may become necessary.⁸³ And, especially when the shooter is deceased, many of the victims’ loved ones, as well as the survivors and their loved ones, will feel robbed of justice, making providing victim services an even more difficult task than it otherwise would be.⁸⁴ Prosecutors can attend memorial services, sponsor community events, and use their platform to comfort the community at large.⁸⁵ Notably, the need for victim services will not end in the hours or days after the events; long-term resiliency centers will often be needed to help the community recover.⁸⁶ Providing victim services comes in addition to “normal” investigative and legal work and can feel like a strain on a prosecutor’s office.⁸⁷ Being prepared will help ease the burden mass shootings place on all involved.

The aftermath of the Gilroy Garlic Festival mass shooting provides a model for victim service response. Kasey Halcón, Program Director of Victim Services in the Santa Clara County District Attorney’s Office, was tasked with providing services to over 800 victims after the shooting.⁸⁸ Her team relied on inter-agency relationships to set up a family assistance center within 24 hours of the incident.⁸⁹ The center was staffed with mental health professionals and had private rooms where families could meet.⁹⁰ The Santa Clara County District Attorney’s Office approved emergency spending to help fly victims’ family members home.⁹¹

Prosecutor’s offices should also consider setting up Operational Agreements of Mutual Aid with surrounding jurisdictions to support their mass victimization incident response. For instance, the Santa Clara County District Attorney’s Office utilized staff from San Mateo County and Alameda County Victim/Witness agencies, having them work in their Family Assistance Centers following the Gilroy shooting. This allowed for Santa Clara’s staff to receive

83 Following the Fort Hood shooting, Colonel Mulligan made numerous cross-country flights to meet with the family of every victim. While the military’s virtually limitless budget made such personal outreach possible in that case, local prosecutors also have regular contact with victims and their families. George Brauchler, the lead prosecutor against the Aurora shooter, met with victims to hear their stories and fight for justice on their behalf. Steve Helling, *Aurora Shooting Prosecutor George Brauchler: The James Holmes Trial ‘Will Always Stay with Me’*, PEOPLE (Aug. 25, 2015), <https://people.com/crime/aurora-shooting-prosecutor-george-brauchler-the-james-holmes-trial-will-always-stay-with-me/>. The Aurora shooter was sentenced to life in prison for murdering twelve and wounding 70 by opening fire in a movie theater during a showing of *The Dark Knight Rises* in 2012. *Id.*

84 Gregory Totten, Ventura County, California District Attorney, Remarks at The New Norm: Mass Shootings in America, Oct. 4, 2019.

85 Aside from sponsoring events, prosecutors can participate on committees aimed at healing the community. For example, following the 1 October shooting, Nevada Governor Steve Sisolak created a seven-member committee tasked with creating a memorial for the victims. Greg Haas, *1 October Memorial Committee Forms to Make Decisions*, 8 NEWS NOW (Sept. 26, 2019), <https://www.8newsnow.com/news/local-news/1-october-memorial-committee-forms-to-make-decisions/>. Prosecutors can strengthen their relationship with the community by seeking membership on such committees.

86 Halcón, *supra* note 82.

87 *Id.*

88 *Id.*

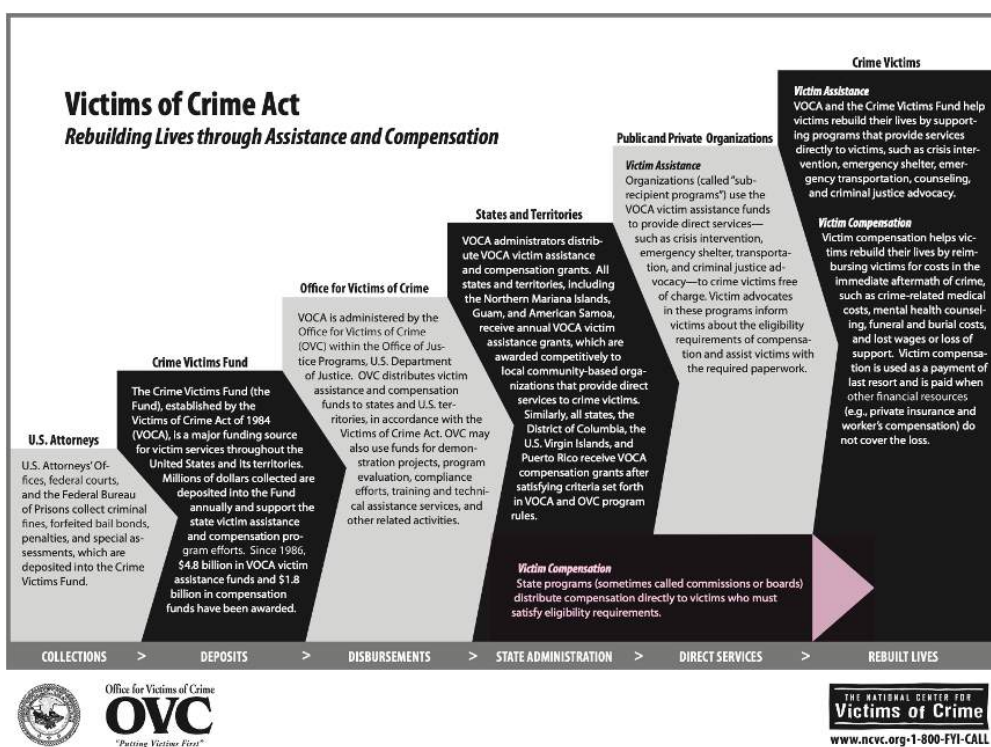
89 *Id.*

90 *Id.*; *National Incident Management System Guideline for Mutual Aid*, U.S. DEP’T OF HOMELAND SECURITY, FEMA (Nov. 2017), available at https://www.fema.gov/media-library-data/1510231079545-1fab7af0e06d89d8c79c7b619e55a03/NIMS_Mutual_Aid_Guideline_20171105_508_compliant.pdf.

91 Halcón, *supra* note 82; U.S. DEP’T OF HOMELAND SECURITY, *supra* note 90.

much needed reprieve after the initial response (several members of their team worked 24 hours straight the night of the incident), which created stasis within the main office to continue regular operation.⁹²

There are several resources that prosecutors can access in this space. Model Family Assistance Center guides can be found online from areas like Los Angeles and Texas.⁹³ In addition, there are funding streams available for victim services. For example, in New Jersey, in September 2019, the New Jersey Attorney General announced \$20 million of Victims of Crime Act funding for the establishment of hospital-based violence intervention programs across the state.⁹⁴ So too, under the federal Victims of Crime Act, the Office for Victims of Crime established the Crime Victims Fund, a major funding stream for victim services.⁹⁵ Further, the Assistant Secretary for Preparedness and Response provides information regarding technical resources, assistance centers, and post-mass shooting programs that prosecutors can utilize in the event of a mass shooting.⁹⁶



Sponsored by: U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime

92 Halcón, *supra* note 82.

93 See, e.g., LOS ANGELES COUNTY OPERATIONAL AREA: FAMILY ASSISTANCE CENTER PLAN, https://ceo.lacounty.gov/wp-content/uploads/OEM/HazardsandThreats/Annexes/LACo_FAC_Plan_May2014_Web.pdf (last visited Feb. 9, 2020); TEXAS DEPARTMENT OF STATE HEALTH SERVICES: FAMILY ASSISTANCE CENTER TOOLKIT, https://www.dshs.texas.gov/response/FAC_Toolkit_V1-0_09-1-2016 (last visited Feb. 10, 2020);

94 Press Release, State of New Jersey Office of the Attorney General, AG Grewal Announces \$20 Million in Available Grants to Establish Nine Hospital-Based Violence Intervention Programs Across New Jersey (Sept. 24, 2019), <https://www.nj.gov/oag/newsreleases19/pr20190924a.html>.

95 *Crime Victims Fund*, OFF. FOR VICTIMS OF CRIME, <https://www.ovc.gov/about/victimsfund.html> (last visited Apr. 14, 2020).

96 *Post-Mass Shooting Programs and Resources Overview*, ASSISTANT SECRETARY FOR PREPAREDNESS & RESPONSE (Apr. 2019), available at <https://files.asprtracie.hhs.gov/documents/post-mass-shooting-programs-and-resources-overview.pdf>.

In short, after a mass shooting, prosecutors may be called upon to participate in providing short- and long-term victim services, and they can follow the examples of Family Assistance Center and other post-mass shooting protocols published online.

Regardless of whether the shooter lives or how the shooter dies, there is a role for a prosecutor, including pursuing the investigation and prosecution, talking to the public, and being a leader in healing the community and assisting victims.

LEGISLATION AND POLICY

PROSECUTORS ALSO HAVE A ROLE IN SHAPING LEGISLATIVE CHANGES around gun issues in their counties or states and in advocating legislative changes at the national level. While Congress has passed a number of laws in an effort to limit access to weapons, current legislation is either plagued with loopholes or outdated. Much of America’s gun laws are decades old and have failed to keep up with changing times and advances in technology. Other legislation, like internet-related laws, has produced a challenging dilemma, as Congress and courts have given websites that facilitate illegal firearms sales blanket immunity. In addition, constitutional concerns lurk behind many legislative conversations. The following are various legislative proposals that prosecutors can use their unique platforms to support, in an effort to combat mass shootings.

BACKGROUND CHECKS AND OTHER LOOPHOLES

PROSECUTORS CAN HELP PREVENT MASS SHOOTINGS by advocating laws that close background-check loopholes, strengthen definitions, and empower courts to take firearms out of dangerous hands.

Common sense demands better background check laws. True, the law requires background checks in many instances, but there are glaring loopholes that allow mass shooters and would-be mass shooters to access firearms.⁹⁷ For example, unlicensed sellers, like individuals who sell guns online, at gun shows, or without a federal dealer’s license, can sell guns without having to run a background check on the purchaser.⁹⁸ Approximately 22 percent of gun owners in the United States reported that they obtained their most recent firearm within the last two years and without a background check.⁹⁹ However, background checks—most of which are processed through the National Instant Criminal Background Check System (NICS)—impose minimal burdens on legal gun purchases and take less than two minutes.¹⁰⁰ More than

97 *Universal Background Checks*, GIFFORDS LAW CENTER, <https://lawcenter.giffords.org/gun-laws/policy-areas/background-checks/universal-background-checks/> (last visited Nov. 25, 2019).

98 *Id.*

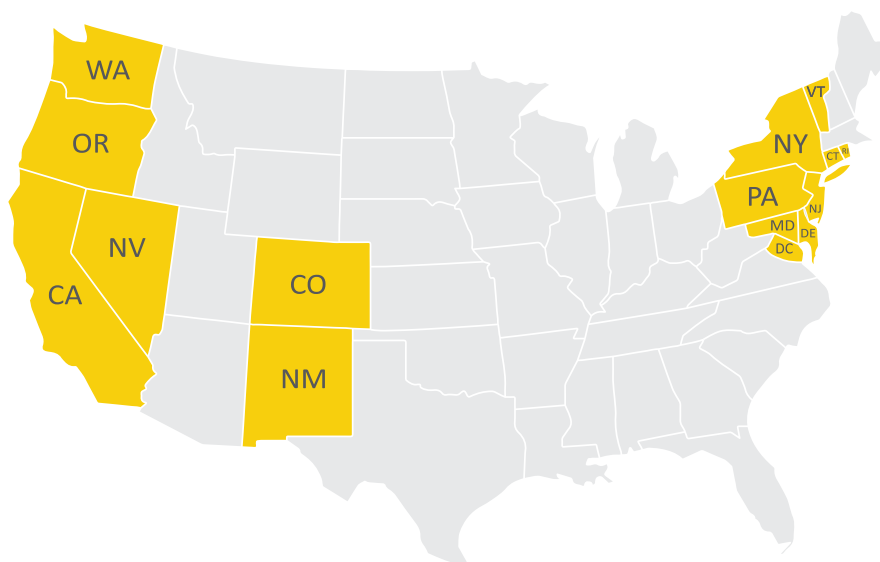
99 Tara Law, *A Background Check Loophole Let the Odessa Shooter Get a Weapon. Millions of Guns Change Hands that Way*, TIME (Sept. 4, 2019), <https://time.com/5668471/gun-violence-background-checks-odessa-mass-shooting/>.

100 GIFFORDS LAW CENTER, *supra* note 97.

90 percent of Americans support background checks for all gun sales.¹⁰¹ So, too, closing the loophole may help prevent guns from being diverted to the illegal gun market in the first place.¹⁰² Although strengthening background check laws will not alone solve the problem of mass shootings, closing this loophole will bring us one step closer to ensuring that guns stay out of the hands of those who should not have them.

In September 2019, Attorney General William Barr floated a proposal that would expand background checks for purchases of firearms made online or at gun shows, require a bill of sale and a certificate of a successful background check with any commercial sale of a firearm, and require that law enforcement be notified of failed background checks.¹⁰³ The National Rifle Association adamantly opposed the bill and no subsequent action has been taken.¹⁰⁴ In the absence of federal legislation, however, prosecutors can advocate stronger state background check laws, such as the laws in the District of Columbia and the following states that require a background check at the point of transfer: California, Colorado, Connecticut, Delaware, Maryland, Nevada, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington.¹⁰⁵

JURISDICTIONS WITH STRONG BACKGROUND CHECK LAWS



¹⁰¹ *Id.*

¹⁰² *Id.*

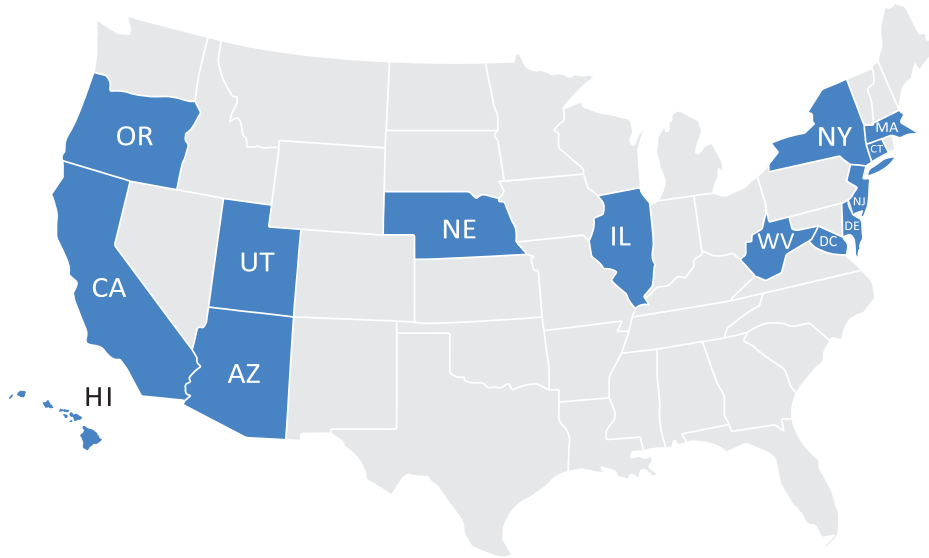
¹⁰³ Alexander Bolton & Jordain Carney, *GOP Signals Unease with Barr's Gun Plan*, THE HILL (Sept. 18, 2019), <https://thehill.com/homenews/senate/462084-gop-signals-unease-with-barrs-gun-plan>.

¹⁰⁴ *Id.*

¹⁰⁵ GIFFORDS LAW CENTER, *supra* note 97.

Likewise, prosecutors can advocate legislation to close the “boyfriend loophole,” a gap in gun legislation that allows violent ex-intimate partners and stalkers to access firearms.¹⁰⁶ Under present law, current or former spouses convicted of abuse or subject to a restraining order are prohibited from purchasing a firearm.¹⁰⁷ However, in April 2019, the House of Representatives passed a bill that would reauthorize the Violence Against Women Act and close the “boyfriend loophole.”¹⁰⁸ After months of bipartisan efforts to pass the bill in the Senate, negotiations ultimately broke down and the bill stalled.¹⁰⁹ In the absence of a change in federal law, prosecutors can champion state legislation that closes this loophole, like the laws in Arizona, California, Connecticut, Delaware, Hawaii, Illinois, Massachusetts, Nebraska, New Jersey, New York, Oregon, Utah, West Virginia, and the District of Columbia.¹¹⁰

JURISDICTIONS WITH LAWS CLOSING THE “BOYFRIEND LOOPHOLE”



Clarifying and strengthening the definition of “fugitive from justice” for the purpose of barring firearms purchases will also help keep weapons out of dangerous hands. Fugitives from justice are barred from purchasing firearms, but, presently, that definition is fairly narrow.¹¹¹ From the early 2000s until 2016, the FBI and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) disagreed over the correct definition of the term “fugitive from justice.” The FBI

106 *Domestic Violence & Firearms*, GIFFORDS LAW CENTER, <https://lawcenter.giffords.org/gun-laws/policy-areas/who-can-have-a-gun/domestic-violence-firearms/>.

107 Juliegrace Brufke, *House Votes to Reauthorize Violence Against Women Act, Closing ‘Boyfriend Loophole’*, THE HILL (Apr. 4, 2019), <https://thehill.com/homenews/house/437348-house-votes-to-reauthorize-violence-against-women-act-close-the-boyfriend>.

108 *Id.*

109 Jordain Carney, *Senate Talks on Stalled Violence Against Women Act Reauthorization Unravel*, THE HILL (Nov. 8, 2019), <https://thehill.com/homenews/senate/469635-senate-talks-on-stalled-violence-against-women-act-reauthorization-unravel>.

110 GIFFORDS LAW CENTER, *supra* note 106.

111 Sari Horwitz, *Tens of Thousands with Outstanding Warrants Purged From Background Check Database for Gun Purchases*, WASH. POST (Nov. 22, 2017), https://www.washingtonpost.com/world/national-security/tens-of-thousands-with-outstanding-warrants-purged-from-background-check-database-for-gun-purchases/2017/11/22/b890643c-ced1-11e7-9d3a-bcbe2af58c3a_story.html.

had interpreted the phrase broadly as any person with an outstanding arrest warrant.¹¹² The ATF, however, considered it to mean a person who both had an outstanding arrest warrant and had traveled across state lines.¹¹³ In late 2016, the Justice Department Office of Legal Counsel adopted the ATF's narrow interpretation of the phrase.¹¹⁴ Then, shortly after President Trump's inauguration, the definition was narrowed even further to include only persons who had an outstanding arrest warrant and had traveled across state lines to avoid prosecution for a crime, or to avoid testifying in a criminal proceeding.¹¹⁵ On February 15, 2017, the FBI purged its database of the 450,000 people who no longer fit within the Justice Department's definition of a "fugitive from justice."¹¹⁶ Recently, a former ATF official called upon Congress to pass a law clarifying the proper definition of the phrase.¹¹⁷ Prosecutors can use their platform to inform the debate over which criminal justice involved—individuals should be allowed to purchase firearms.

Enhancing Extreme Risk Protection Order (ERPO) laws can also help keep guns out of dangerous hands. ERPO laws permit families or law enforcement officials to directly petition a court for a protection order that limits a high-risk individual's access to firearms on a temporary basis.¹¹⁸ Seventeen states and the District of Columbia currently have laws providing for ERPOs.¹¹⁹ While some states limit ERPO petitions to law enforcement only, other laws are broader. In Maryland and the District of Columbia, for example, mental health providers are allowed to petition courts for an ERPO¹²⁰; New York law allows police officers, district attorneys, family members, and school administrators to file ERPO petitions¹²¹; and Hawaii permits medical professionals, co-workers, and school administrators to file.¹²² ERPO laws are generally based on a number of factors that might make an individual a high-risk for committing gun violence.¹²³ California's statute, for instance, takes into account threats of violence against oneself or others, being subject to an emergency domestic violence order, or being convicted of a crime that impacts your rights to purchase or possess a firearm.¹²⁴ Prosecutors in states that lack such laws can advocate the passage of such to help improve public safety. The District of Columbia and the following states have enacted ERPO laws: California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Maryland, Massachusetts, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia, and Washington.¹²⁵

112 *Id.*

113 *Id.*

114 *Id.*

115 *Id.*

116 *Id.*

117 *Id.*

118 *Extreme Risk Protection Orders*, GIFFORDS LAW CENTER, <https://lawcenter.giffords.org/gun-laws/policy-areas/who-can-have-a-gun/extreme-risk-protection-orders/> (last visited Nov. 10, 2019).

119 *Id.*

120 Md. Code Ann., Pub. Safety § 5-601 et seq. (West. 2019), as added by Md. H.B. 1302; D.C. Code Ann. § 7-2510.01 et seq. (West 2020); Dvoskin, *supra* note 23.

121 N.Y. Civ. Prac. L. & Rules 6340–47 (West 2019); see Dvoskin, *supra* note 23.

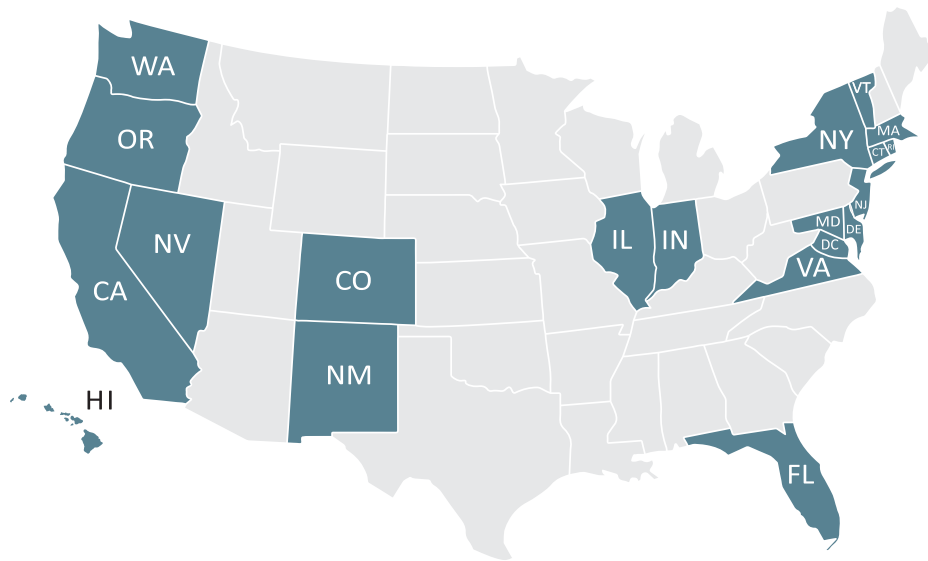
122 Haw. Rev. Stat. Ann. § 134-61 et seq. (West 2019); Dvoskin, *supra* note 23.

123 Dvoskin, *supra* note 23.

124 *Id.*; Cal. Pen. Code § 18155(b)(1) (West 2019).

125 GIFFORDS LAW CENTER, *supra* note 118.

JURISDICTIONS THAT HAVE ENACTED EXTREME RISK PROTECTION ORDER LAWS



In short, there are a number of laws prosecutors can support at the state and federal level that would close loopholes in firearms legislation and help get guns out of dangerous hands. Seventeen states and DC have enacted Extreme Risk laws:

GHOST GUNS AND MODIFIED WEAPONS

ADVANCES IN TECHNOLOGY HAVE MADE IT EASIER to conceal weapons and for mass shooters to massacre more people quickly. Prosecutors can support legislation to change this reality.

“Ghost guns” are increasingly becoming a problem that needs to be addressed. Advancements in 3-D printing have empowered individuals to create plastic guns, or “ghost guns,” which easily bypass metal detectors.¹²⁶ These guns can be assembled from kits purchased online or at gun shows.¹²⁷ Although firearms created with 3-D printers are not as durable as metal firearms, they can be just as dangerous.¹²⁸ For example, on November 14, 2019, in Santa Clarita, California, a Saugus High School student with a ghost gun made from a kit of separately acquired parts with no serial numbers murdered two students and injured three others.¹²⁹

126 Alain Stephens, *What Makes a Ghost Gun*, THE TRACE (Dec. 5, 2019), <https://www.thetrace.org/2019/12/what-makes-a-gun-a-ghost-gun/>.

127 Carolyn Wilke, *3-D Printed ‘Ghost Guns’ Pose New Challenges for Crime-Scene Investigators*, SCIENCE NEWS (Sept. 24, 2019), <https://www.sciencenews.org/article/3d-printed-guns-plastic-ballistics-crime>.

128 *Ghost Guns*, GIFFORDS LAW CENTER, <https://lawcenter.giffords.org/gun-laws/policy-areas/hardware-ammunition/ghost-guns/> (last visited Feb. 10, 2020).

129 Carter Evans, *Untraceable, But Legal, DIY ‘Ghost Gun’ Used in Saugus School Shooting, Police Say*, CBS NEWS (Nov. 23, 2019), <https://www.cbsnews.com/news/saugus-high-school-shooter-used-untraceable-diy-ghost-gun/>.

WHAT EXACTLY IS A GHOST GUN?

The term “ghost gun” is used by the media, law enforcement, and sometimes the firearms industry to describe homemade weapons devoid of serial numbers or other identifying markings that enable them to be tracked to their maker, seller, or original owner. For years, law enforcement authorities referred to these weapons as simply “homemade” guns or “kit” guns.

Source: *The Trace*

Few states have laws to address this problem, and current federal law is insufficient.¹³⁰ Federal law requires serial numbers only on the “frame” or the “receiver” (the component housing the firing mechanism) of a gun.¹³¹ To circumvent the serial-number requirement, some online retailers sell nearly complete frames or receivers which the buyer can make functional with minimal effort.¹³² Once functional, these guns are untraceable by law enforcement, which uses serial numbers to track firearms.¹³³ Congress has the ability to modernize the Undetectable Firearm Act by requiring that 3-D printed guns and unfinished frames or receivers have a serial number, or by requiring individuals to have a license to manufacture or assemble a firearm using unfinished materials.

At the state level, prosecutors can support the passage of laws like those in California and New Jersey.¹³⁴ California’s “ghost gun” law requires any self-assembled firearm to contain a serial number.¹³⁵ If a firearm is made of plastic, the serial number must be embedded within the plastic on a piece of metal large enough to be detected by a metal detector.¹³⁶ New Jersey’s statute prohibits acquiring un-serialized frames or receivers from which an un-serialized firearm may be “readily” assembled.¹³⁷ The statute also prohibits using 3-D printers to manufacture firearms except by manufacturers or dealers registered with the state.¹³⁸ In advocating legislation to target these emerging issues, it is important to address both the issues of undetectable and untraceable guns. If statutory language is unclear or not comprehensive, people may exploit loopholes to justify the continued use of ghost guns or plastic guns. Prosecutors can use their platform, expertise, and connections with legislators to explain the issues involved to ensure that new laws are sufficiently written to address the problem.

130 Press Release, Rep. Madeleine Dean Introduces H.R. 869, The Undetectable Firearms Modernization Act, (Jan. 31, 2019), <https://dean.house.gov/media/press-releases/rep-madeleine-dean-introduces-hr-869-undetectable-firearms-modernization-act> (last visited Nov. 25, 2019).

131 GIFFORDS LAW CENTER, *supra* note 128.

132 *Id.*

133 *Id.*

134 *Id.*

135 *Id.*; Cal. Penal Code § 29180(b)(1) (West 2019).

136 GIFFORDS LAW CENTER, *supra* note 128; Cal. Penal Code § 29180(b)(2)(B) (West 2019).

137 GIFFORDS LAW CENTER, *supra* note 128; N.J. Stat. Ann. § 2C:39-9(k) (West 2019).

138 N.J. Stat. Ann. § 2C:39-9(l)(1) (West 2019).

So, too, the laws surrounding large capacity magazines and assault weapons must be strengthened. Mass shootings involving large capacity magazines result in approximately twice as many fatalities as mass shootings that do not involve large capacity magazines.¹³⁹ Large capacity magazines have been used in all ten of the deadliest mass shootings in the last decade.¹⁴⁰ For example, in 2017, the 1 October shooter used a large capacity magazine, bump stock, and an assault rifle to fire 100 rounds in just ten seconds, killing 58 people and injuring hundreds more.¹⁴¹ In 2019, the Dayton shooter used an assault weapon and a drum magazine that held 100 rounds, which allowed him to fire at least 41 rounds in less than 30 seconds,¹⁴² killing nine people and injuring 26 others.¹⁴³

It is not surprising that the deadliest mass shootings involve large capacity magazines. Those devices increase the number of rounds a shooter can fire consecutively and increase the shooter’s ability to wound and kill large numbers of people in a short amount of time.¹⁴⁴ Similarly, high capacity magazines limit victims’ ability to escape and the opportunity for law enforcement or others to intervene, because without those modifications, a shooter would have to take time to reload his weapon.¹⁴⁵ For example, the January 8, 2011 Tucson, Arizona shooter was stopped by a bystander tackling him when he paused to reload his gun.¹⁴⁶

Currently, there is no federal law that bans or limits large capacity magazines.¹⁴⁷ In 1994, Congress passed the Violent Crime Control and Law Enforcement Act, making it illegal to transfer or possess a large capacity ammunition feeding device not lawfully possessed on or before the law’s enactment.¹⁴⁸ The law also forbids the manufacture, transfer, and possession of semi-automatic assault weapons.¹⁴⁹ However, the law expired in 2004 and, as a result, large capacity ammunition magazines that had been banned under the law are now legal, unless banned by state or local law.¹⁵⁰ One study estimated that mass shooting deaths were 70 percent less likely to occur when the federal prohibition was in effect.¹⁵¹

139 GIFFORDS LAW CENTER, *supra* note 10.

140 *Id.*

141 *Id.*; Matthew Haag, *No ‘Clear Motivating Factor’ Inspired Las Vegas Gunman, F.B.I. Says*, N.Y. TIMES (Jan. 29, 2019), available at <https://www.nytimes.com/2019/01/29/us/las-vegas-shooting-stephen-paddock.html>.

142 Paul P. Murphy et al., *Dayton Shooter Had an Obsession with Violence and Mass Shootings, Police Say*, CNN (Aug. 7, 2019), <https://www.cnn.com/2019/08/05/us/connor-betts-dayton-shooting-profile/index.html>.

143 GIFFORDS LAW CENTER, *supra* note 10.

144 *Id.*

145 *Id.*

146 *Id.*

147 *Id.*

148 Violent Crime Control and Law Enforcement Act, Pub. L. No. 103-322 (1994). According to the law, magazines with the ability to hold more than ten rounds of ammunition were considered “large capacity.” GIFFORDS LAW CENTER, *supra* note 10.

149 Violent Crime Control and Law Enforcement Act, Pub. L. No. 103-322 (1994).

150 Meghan Keneally, *Understanding the 1994 Assault Weapons Ban and Why it Ended*, ABC News (Sept. 13, 2019), <https://abcnews.go.com/US/understanding-1994-assault-weapons-ban-ended/story?id=65546858>.

151 *Assault Weapons and High-Capacity Magazines*, EVERYTOWN FOR GUN SAFETY, <https://everytownresearch.org/assault-weapons-high-capacity-magazines/>. (Last visited Apr. 14, 2020).

One way to limit access to these devices is for states to implement bans. As of 2019, only nine states and Washington D.C. had laws banning large capacity magazines¹⁵² and seven states and Washington D.C. had also banned assault weapons.¹⁵³ State laws, however, cannot mitigate the problem as well as federal law could, because individuals can access these devices in states where they are not banned and carry them across state lines, as was demonstrated by the 2019 Gilroy Garlic Festival shooting, in which the shooter purchased such a weapon in Nevada and carried it across state lines to California, where it was illegal.¹⁵⁴

In sum, there is a need for legislation to regulate the significant advances in gun technology that have made it easier for shooters to massacre victims.

ACCOUNTABILITY

THE LAWS REGARDING RESPONSIBILITY, both for committing mass shootings and for facilitating violence via the internet, are outdated, and there are legislative changes that could bring those laws into the 21st Century.

In light of the evolution of the internet, public safety demands revisiting the decades old laws governing it. Twenty-five years ago, before mass shootings were the new norm and before websites like 8chan and Armslist, a website that facilitates firearms sales, provided platforms that facilitate criminal and extremist behavior, Congress passed the Communications Decency Act, which provides immunity from liability to providers and users of internet platforms that publish information by third-party users.¹⁵⁵ Courts have interpreted this statute broadly to insulate online intermediaries from liability “when they actively remove content in good faith for socially beneficial purposes” and “when they make no attempt to remove content and regardless of whether they act in good faith.”¹⁵⁶ So, too, the law permits online intermediaries to benefit from other peoples’ speech while still being shielded from liability.¹⁵⁷ This broad interpretation and ability to profit eliminates incentives for online intermediaries to remove or monitor the content posted to its site.¹⁵⁸ For example, a broad interpretation of Section 230 could mean that Facebook would be immune from liability if it (1) deletes a post it believes is unlawful; (2) fails to delete a post not knowing whether it is unlawful; and (3) fails to delete a post *knowing that it is unlawful*.¹⁵⁹

152 Those states are California, Colorado, Connecticut, Hawaii, Maryland, Massachusetts, New Jersey, New York, and Vermont. GIFFORDS LAW CENTER, *supra* note 10.

153 Those states are California, Connecticut, Hawaii, Maryland, Massachusetts, New Jersey, and New York. GIFFORDS LAW CENTER, *supra* note 10.

154 Richard Winton & Patrick McGreevy, *Gilroy Garlic Festival Gunman Used a Rifle Banned in California, Officials Say*, L.A. TIMES (July 29, 2019), <https://www.latimes.com/california/story/2019-07-29/gilroy-garlic-festival-shooting-weapon-gun>.

155 47 U.S.C.A. § 230 (West 2020).

156 *Id.*

157 MARY ANNE FRANKS, *THE CULT OF THE CONSTITUTION* 175 (2019).

158 *Id.* at 171.

159 *Id.*

In 2012, Zina Daniel Haughton obtained a restraining order against her husband after he assaulted and threatened to kill her.¹⁶⁰ Despite the order prohibiting him from possessing a firearm for four years, he posted a “want to buy” advertisement on Armslist, “seeking to buy a handgun with a high-capacity magazine ‘asap.’”¹⁶¹ Through that posting, he bought a gun and, the next day, he murdered his wife and two others, injured four additional people, then killed himself.¹⁶² Zina’s daughter sued Armslist for allowing the sale to occur, alleging that Armslist facilitated firearms sales to prohibited persons because the site allowed prospective purchasers to filter sellers to “private sellers” to bypass background checks and allowed users to remain anonymous.¹⁶³ Citing Section 230, the Wisconsin Supreme Court sided with Armslist.¹⁶⁴ Although the court’s interpretation was fair on the law, the law is outdated. The internet has evolved immensely since 1996. Today, Section 230 goes well beyond facilitating free speech on the internet to shielding online intermediaries like Armslist from liability for facilitating illegal behavior and eliminating any incentive to promote safety.

Another way to improve safety is to enhance terrorism laws under which these crimes can be investigated and prosecuted. Federal law defines terrorism as crimes of violence that are intended to intimidate or coerce a civilian population or government policy, but there is a distinction between “international” terrorism, which must have a foreign or transnational nexus, and “domestic” terrorism, which occurs primarily on American soil. While domestic terrorism is defined in federal law,¹⁶⁵ no criminal charge of domestic terrorism exists at the federal level.¹⁶⁶ Accordingly, the FBI lacks the investigative tools needed to adequately respond to threats of mass shootings. Under the Patriot Act, the federal government has a variety of tools and resources to combat international terrorism, including the authority to conduct surveillance of suspected terrorists.¹⁶⁷ However, the federal government has fewer tools and resources to investigate domestic terrorism because would-be perpetrators of domestic terrorism are afforded greater constitutional protections than would-be perpetrators of international terrorism.¹⁶⁸

The gap in this law is illustrated by the El Paso, Texas Walmart shooter. He killed 22 people, injured 26 others, and confessed that he had planned the attack with the intention of targeting Mexicans.¹⁶⁹ According to former FBI Assistant Director Frank Figliuzzi, had he been “Islamic, and his hateful online screed full of mentions of Allah, law enforcement would have [had] the legal resources needed to address the ideological motivation for his violence in an

160 *Daniel v. Armslist*, 386 Wis. 2d 449, 926 N.W.2d 70, 715 (Apr. 30), cert. denied __ U.S. __ (Nov. 25, 2019).

161 *Id.*

162 *Id.*

163 *Id.*

164 *Id.* at 723.

165 Domestic terrorism is defined as activities that “appear to be intended [] to intimidate or coerce a civilian population; to influence the policy of a government by intimidation or coercion; or to affect the conduct of a government by mass destruction, assassination, or kidnapping; and occur primarily within the territorial jurisdiction of the United States.” 18 U.S.C.A. § 2331 (West 2001).

166 Ryan Lucas, *Federal Prosecutors Are Treating El Paso Shooting as Incident of ‘Domestic Terrorism’*, NPR (Aug. 5, 2019), <https://www.npr.org/2019/08/05/748387322/federal-prosecutors-are-treating-el-paso-shooting-as-incident-of-domestic-terror>.

167 USA Patriot Act, Pub. L. No. 107-56 (2001).

168 For more information, see Tom Head, *6 Major U.S. Supreme Court Hate Speech Cases*, THOUGHTCO. (July 18, 2019), <https://www.thoughtco.com/hate-speech-cases-721215>.

169 Vanessa Romo, *El Paso Walmart Shooting Suspect Pleads Not Guilty*, NPR (Oct. 10, 2019), <https://www.npr.org/2019/10/10/769013051/el-paso-walmart-shooting-suspect-pleads-not-guilty>.

enhanced fashion.”¹⁷⁰ Likewise, if he had been “identified as a follower of Islam, [it is] possible the FBI could have prevented the horror of El Paso because the law for international terrorism allows counterterrorism officials to monitor the racist and violence-enabling chat rooms where terrorists gather.”¹⁷¹

In the absence of federal legislation, at the state level, prosecutors can support implementation of laws that treat domestic and international terrorism in the same manner and allow prosecutors to bring such charges. New York’s general terrorism statute is a good example, as it allows prosecutors to bring both domestic and international terrorism charges. New York law provides that a person is guilty of a crime of terrorism when, “with intent to intimidate or coerce a civilian population, influence the policy of a unit of government by intimidation or coercion, or affect the conduct of a unit of government by murder, assassination, or kidnapping, he or she commits a specified offense.”¹⁷² Similarly, the law provides that an “act of terrorism,” is an act constituting a “specified offense,” i.e., an enumerated offense from the list provided in the statute, that is intended to intimidate or coerce a civilian population, influence the policy of a unit of government by intimidation or coercion, or affect the conduct of a unit of government by murder, assassination or kidnapping.¹⁷³

Under those laws, in 2019, the Manhattan District Attorney’s Office charged a 28-year-old white man, who traveled from Maryland, with the intent of starting a race war, and stabbed a 66-year-old black man named Timothy Caughman to death, with Murder in the First Degree in Furtherance of an Act of Terrorism and Murder in the Second Degree as a Crime of Terrorism.¹⁷⁴ The defendant pled guilty to the charges and was sentenced to life in prison without the possibility of parole.¹⁷⁵ Although the defendant in that case did not commit a mass shooting, the example demonstrates how laws can be crafted such that prosecutors can bring terrorism charges against individuals who engage in behavior that would not constitute international terrorism, but rather would fall into the category of domestic terrorism, a crime that the federal government is unable to pursue due to the lack of a foreign nexus.

In short, stronger laws regulating liability for illegal activity on the internet and empowering law enforcement to investigate and prosecute domestic terrorism may promote the ability to seek justice in mass shooting events.

170 Figliuzzi, *supra* note 48.

171 *Id.*

172 N.Y. Penal Law § 490.25 (West 2019).

173 N.Y. Penal Law § 490.05 (West 2019). Notably, on April 3, 2020, New York Governor Andrew Cuomo signed a law to become effective November 1, 2020, relating to hate crimes and “Domestic Terrorism.” That law created the crimes of First- and Second-Degree Domestic Act of Terrorism Motivated by Hate. An individual is guilty of the second-degree crime if, as part of the same criminal transaction, the individual (1) attempts to cause the death of, or serious physical injury to, five or more non-participants in the criminal transaction; (2) acts with the intent to cause the death of, or serious physical injury to, such five or more non-participants in the criminal transaction; and (3) acts in whole or in substantial part because of the perceived race, color national origin, ancestry, gender, gender identity or expression, religion, religious practice, age, disability, or sexual orientation of such other person. Such acts and intentions are elevated to the first-degree offense if the actor is over the age of 18 and kills at least one person. N.Y. Penal Law §§ 490.27 & 490.28 (as added by Laws of New York 2020 ch. 55).

174 Jan Ransom, *White Supremacist Pleads Guilty to Killing Black Man in New York to Start a ‘Race War’*, N.Y. TIMES (Jan. 23, 2019), available at <https://www.nytimes.com/2019/01/23/nyregion/timothy-caughman-white-supremacist-guilty.html>.

175 Press Release, Manhattan District Attorney’s Office, DA Vance: James Jackson Sentenced to Life Without Parole for Murdering Timothy Caughman to Incite a “Race War” (Feb. 13, 2019), <https://www.manhattanda.org/da-vance-james-jackson-sentenced-to-life-without-parole-for-murdering-timothy-caughman-to-incite-a-race-war/>.

FUNDING FOR RESEARCH AND MENTAL HEALTH SERVICES

ALTHOUGH THE ABOVE-DISCUSSED LEGISLATIVE changes would go a long way to improving public safety, funding for research and mental health services could go even further.

The Centers for Disease Control (CDC) had not received funding to study gun violence in over 20 years.¹⁷⁶ A March 2018 budget deal clarified that the CDC could study gun violence provided it abstained from promoting gun control legislation, but the agency has noted it is limited in what it can do without additional funding.¹⁷⁷ Despite a House panel appropriating \$50 million for gun violence research in April 2019, many Republican legislators contend that increased funding is unnecessary.¹⁷⁸ However, gun violence research can and should be used to inform the discussion on effective gun control legislation.

Another way to improve public safety aside from strengthening gun legislation is prioritizing access to mental health care services. Although a diagnosis of mental illness does not increase the likelihood someone will commit an act of violence, access to supportive care can reduce the likelihood.¹⁷⁹ Thus, increasing access to even short-term, supportive mental health care can dramatically reduce the frequency of mass shootings. This is because, as discussed elsewhere in this resource guide, those who commit mass shootings may be average people experiencing a short-term personal crisis, as opposed to severe mental illness.

Relatedly, prosecutors can educate legislators about the mental-health toll *caused* by mass shootings. For example, coroners and first responders endure severe trauma in the aftermath of mass shootings. These courageous men and women are forced to see and experience the horrific carnage of a mass shooting and it is unfair and dangerous to assume that they can witness such tragedy and not be affected mentally. Less than two years after 1 October, the deadliest mass shooting in United States history, the Las Vegas legislature passed Senate Bill No. 463, which authorized the coroner to “establish a program to promote the mental health of the employees of the office of the coroner” and any person impacted as a result of providing services in his or her professional capacity in response to an incident involving mass casualties within the county.¹⁸⁰ Prosecutors should encourage their state legislature to pass similar statutes, ensuring that if a mass shooting occurs, those who care for the community in times of need have resources available to care for themselves.

In short, funding for research and treatment is a necessary component of combating gun violence.

In sum, there is significant room for improvement in current laws regarding gun violence and prosecutors can use their platforms to advocate these changes to keep their communities safer.

¹⁷⁶ Rachel Roubein, *House Panel Allots \$50M to Study Gun Violence*, POLITICO (Apr. 29, 2019), <https://www.politico.com/story/2019/04/29/house-gun-violence-study-1292456>.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ Dvoskin, *supra* note 23.

¹⁸⁰ S.B. 463, 2019 Leg., 80th Sess. (Nev. 2019).


CONCLUSION


WHILE IT IS NOT FEASIBLE TO PREVENT ALL MASS SHOOTINGS, this resource guide aims to help the nation's prosecutors prepare for, prevent, and respond to mass shootings within their diverse jurisdictions around the country. Prosecutors do not need to wait for their city to join the countless others that are forever united by the tragedy of a mass shooting. Rather, they can plan and prepare ahead of time to prevent a mass shooting from taking place. In addition, prosecutors can use their platform to champion legislation to limit the frequency and severity of future mass shootings. Just because mass shootings have become the new norm in the present does not mean that they are our future, and prosecutors are uniquely positioned to leverage the tools and relationships they have available to them to help make that difference.


RESOURCES FOR PROSECUTORS

GENERAL RESOURCES

ADL **ADL's Center on Extremism**
 A research and investigation team that tracks and analyzes extremist activity in the United States.
<https://www.adl.org/who-we-are/our-organization/advocacy-centers/center-on-extremism>


 **Association of Prosecuting Attorneys**
 A global group of prosecutors working to improve the criminal justice system.
<http://www.apa-inc.org/>

 **Everytown for Gun Safety**
 A nonprofit organization that advocates for common-sense reforms to reduce gun violence.
<https://everytown.org/>


 **Giffords: Courage to Fight Gun Violence**
 A nonprofit policy organization dedicated to saving lives from gun violence.
<https://giffords.org/>


 **Gun Violence Archive**
 A nonprofit formed to provide free, accurate information about gun-related violence in the United States.
<https://www.gunviolencearchive.org/>


 **Joyce Foundation**
 A private foundation that invests in reforming public policies and systems.
<http://www.joycefdn.org/>


 **Southern Poverty Law Center**
 An organization dedicated to fighting hate and bigotry.
<https://www.splcenter.org/what-we-do>


PREPARATION RESOURCES

 **Department of Homeland Security Active Shooter Preparedness**
 A page with various links to information regarding preparation for an active shooter event.
<https://www.dhs.gov/cisa/active-shooter-preparedness>

 **FBI Active Shooter Resources**
 FBI's informational page about active shooter resources.
<https://www.fbi.gov/about/partnerships/office-of-partner-engagement/active-shooter-resources>

 **Texas School Safety Center, Understanding the Pathway to Violence**
 Provides information to understand the "pathway to violence" an individual takes before executing something like a mass shooting.
<https://txssc.txstate.edu/tools/tam-toolkit/understanding>

 **United States National Response Team Incident Command System/Unified Command Technical Assistance Document**
 A document intended to guide agencies at the state, federal, and local levels promote safe and effective incident response.
<https://www.nrt.org/sites/2/files/ICSUCTA.pdf>

 **United States Secret Service and United States Department of Education: Threat Assessment in Schools: A Guide to Managing Threatening Situations and to Creating Safe School Climates**
 A guide intended for use by school personnel and law enforcement officials tasked with protecting schools that can serve as a useful resource with regard to threat management and mass shooting prevention.
<https://www2.ed.gov/admins/lead/safety/threatassessmentguide.pdf>

POST-MASS SHOOTING AND VICTIM ASSISTANCE CENTER RESOURCES



Assistant Secretary for Preparedness and Response: Technical Resources, Assistance Center, and Information Exchange Post-Mass Shooting Programs and Resources Overview

Compilation of post-mass shooting programs and resources provided by a section of the U.S. Department of Health and Human Services.
<https://files.asprtracie.hhs.gov/documents/post-mass-shooting-programs-and-resources-overview.pdf>



Los Angeles County Operational Area: Family Assistance Center Plan

A plan to aid in the development of a multi-agency plan to provide for disaster victims and their families.
https://ceo.lacounty.gov/wp-content/uploads/OEM/HazardsandThreats/Annexes/LACo_FAC_Plan_May2014_Web.pdf



Texas Department of State Health Services: Family Assistance Center Toolkit

A plan to provide a framework for state agencies to operate a Family Assistant Center in the event of a mass casualty or other tragedy.
https://www.dshs.texas.gov/commprep/response/5ToolsAndInfo/FAC_Toolkit_V1-0_09-1-2016.pdf



Virginia Department of Emergency Management: Family Assistance Center Plan

A plan to provide a framework for state agencies to operate a Family Assistant Center in the event of a mass casualty or other tragedy.

VICTIM ASSISTANCE FUNDING RESOURCES



National Organization for Victim Assistance

Organization that offers trainings for victim assistance professionals.
<https://www.trynova.org/training/overview/>



Victims of Crime Act, Crime Victims Fund

A major funding source for victim services.
<https://www.ovc.gov/grants/index.html>

1 OCTOBER AFTER-ACTION REPORTS REVIEWS



Federal Emergency Management Agency

Summaries of the events that took place on 1 October, intended to distribute best practices and guidance from lessons learned.
<https://www.hsdl.org/?abstract&did=814668>



Las Vegas Metropolitan Police Department

Summaries of the events that took place on 1 October, intended to distribute best practices and guidance from lessons learned.
https://www.lvmpd.com/en-us/Documents/1_October_AAR_Final_06062019.pdf

PAGV'S LAS VEGAS SUMMIT

“THE NEW NORM: MASS SHOOTINGS IN AMERICA” (10/4/19)



(Left to right) PAGV Co-chairs Manhattan District Attorney Cyrus R. Vance, Jr., and L.A. City Attorney Mike Feuer, Clark County District Attorney Steve Wolfson



(Left to right) Giselle Inoa Aquino, Wayne County Prosecutor Kym Worthy, Mateo Beers, and Karl Catarata



(Left to right) LA City Attorney Mike Feuer, Dr. Joel Dvoskin, Dr. Marisa Randazzo, Dr. David Webber – Panel on the Mind of a Mass Shooter



U.S. Senator Catherine Cortez Masto



(Left to right) Pima County Attorney Barbara LaWall, Harris County District Attorney Kim Ogg, Denver County District Attorney Beth McCann, Jefferson County-Bessemer Cutoff District Attorney Lynneice Washington, Jackson County Prosecutor Jean Peters Baker, Fulton County District Attorney Paul Howard, Santa Barbara County District Attorney Joyce Dudley, Columbus City Attorney Zach Klein, Clark County District Attorney Steve Wolfson, Manhattan District Attorney Cyrus R. Vance, Jr., L.A. City Attorney Mike Feuer, Mateo Beers of March For Our Lives, Deschutes County District Attorney John Hummel, Dane County District Attorney Ismael Ozanne, and Multnomah County District Attorney Rod Underhill

