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# Mental Health and Gun Control Briefing Report

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# Mental Health and Gun Control Briefing Report

## **Abstract**

The issue of gun control has once again become a highly contested issue in the United States after the most recent mass shootings at a movie theatre in Aurora, CO, a Sikh temple in Wisconsin, a mall in Portland, OR, and involving Representative Gabby Giffords in Arizona. However, it was not until the horrific tragedy in Newtown, CT, where 20 children and 6 adult staff members were fatally shot at Sandy Hook Elementary School, that the gun control debate reached its peak.

## **Keywords**

Mental Health, Gun Control

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Harris Rollinger

## **Mental Health & Gun Control Briefing Report**

### **Executive Summary**

The issue of gun control has once again become a highly contested issue in the United States after the most recent mass shootings at a movie theatre in Aurora, CO, a Sikh temple in Wisconsin, a mall in Portland, OR, and involving Representative Gabby Giffords in Arizona. However, it was not until the horrific tragedy in Newtown, CT, where 20 children and 6 adult staff members were fatally shot at Sandy Hook Elementary School, that the gun control debate reached its peak.

As more information came to light about the Sandy Hook shooting, it was revealed that the perpetrator, Adam Lanza, had been diagnosed with Asperger's syndrome and had access to at least six firearms. These revelations left many American citizens and members of the media calling for stricter gun control and improved background checks in order to prevent similar tragedies from occurring in the future. However, while there are advocates for stricter gun control and background check legislation, there are others who oppose legislation that would alter the laws that are currently in effect. This report describes the positions of advocates on both sides of this highly divisive issue and explores potential solutions.

### **Gun Violence in America**

According to the Center for Disease Control and Prevention, more than 31,000 people per year in the United States die from gunshot wounds, and gun violence is one of the leading causes of premature mortality in the U.S <sup>1</sup>.

Additionally, the homicide rate in America is seven times higher than the combined

homicide rate of 22 other high-income countries <sup>1</sup>. Furthermore, in 2010 there were an estimated 337,960 non-fatal violent crimes committed with guns <sup>1</sup>.

### **Current Legislation and Subsequent Loopholes**

There are currently two significant federal laws regarding gun control in the United States: the Gun Control Act (GCA) of 1968, and the Brady Handgun Violence Prevention Act of 1994, which includes the National Instant Criminal Background Check System (NICS). While these pieces of legislation have been somewhat effective in curbing gun violence, they also have some significant flaws that have contributed to the issue of gun violence in America.

#### ***The Gun Control Act (GCA) of 1968***

The GCA of 1968 was enacted to regulate imported guns and expand gun-dealer licensing and record keeping requirements, and it places specific limitations on the sale of handguns. The list of persons banned from buying guns includes persons convicted of any non-business related felony, persons found to be mentally incompetent, and users of illegal drugs.

A fundamental flaw in the GCA of 1968 was the failure to define the term “engaged in the business of dealing in firearms” as well as the fact that while straw purchases are deemed illegal under the act, gifts are not. A straw purchase occurs when a person agrees to acquire a firearm for someone else because they are unable purchase the good themselves, and these purchases could be classified as a gift in order to exploit the flaw. In the case of gun control, only the purchaser receives a background check when in reality, the person who will be using the gun may not have been able to pass the background check. Furthermore:

- 1) Guns that are obtained through such straw purchases actually account for nearly one-third of the firearms involved in federal gun trafficking investigations (according to an ATF analysis covering cases handled from 1996 through 1998)<sup>2</sup>
- 2) The straw purchase loophole has been referred to as “the most significant factor in gun trafficking” according to the ATF <sup>2</sup>
- 3) In the case of the 1999 shooting at Columbine High School, the two perpetrators used two shotguns and a rifle that were purchased through the straw purchase loophole.

### ***The Brady Handgun Violence Prevention Act of 1994***

The Brady Act requires licensed gun dealers and law enforcement in 32 states to conduct background checks for handgun purchases, and to allow waiting periods of up to five business days for the transfer of these weapons. The remaining 18 states, including the District of Columbia, already had sufficiently stringent regulations in place and were granted exemptions from the new requirements <sup>3</sup>. If there are no additional state restrictions, a firearm may be transferred to an individual upon approval by the NICS maintained by the FBI. The Brady Act has undergone two significant changes since being signed into law:

- 1) From 1994 to 1997, there were background check and waiting-period provisions. In 1997, the Supreme Court struck down the background check component on 10th Amendment grounds <sup>4</sup>
- 2) A new version was passed in 1998, this time covering all guns, instituting an "instant" background check of states' and FBI

databases identifying criminals and requiring a three-day waiting period <sup>4</sup>

### ***Flaws In The Brady Act***

While some regard the Brady Act as the most important piece of federal gun control legislation in recent history, it has many flaws and the Johns Hopkins Center for Gun Policy and Research has dubbed the Brady Act “necessary but insufficient” <sup>5</sup>.

- 1) The Brady Act only requires prospective purchasers to pass a background check if they are purchasing the firearm from a licensed firearm dealer, but data from a nationally representative sample of gun owners indicates that 40% of firearms are acquired from individuals who are not licensed gun dealers <sup>5</sup>. Thus, criminals are able to exploit the private sales loophole, which is also known as the gun show loophole
- 2) The Brady Act bars “occasional sellers” from selling guns to those whom they have reason to believe would fail a background check. However, the ambiguous definition of “occasional sellers” creates many problems, as these occasional sellers may not have access to the necessary databases to determine whether or not the customer would fail a background check.

Furthermore, while the Brady Campaign to End Gun Violence has stated that the Brady Act has prevented more than 1.9 million criminals and other prohibited purchasers from buying guns <sup>6</sup>, a recent study conducted to determine how effective the Brady Act has been in curbing gun violence found that there were no significant trend differences between the Brady and non-Brady states in the most reliably measured gun crime – homicide <sup>3</sup>. Therefore the direct effect on gun crime that

advocates expected from denying disqualified adults in the Brady states may not actually exist.

### ***The National Instant Criminal Background Check System (NICS)***

The NICS is a point of sale system for determining eligibility to purchase a firearm <sup>7</sup>. The NICS determines if the buyer is prohibited from buying a firearm under federal law. The NICS is applicable to sales from federally licensed dealers, which poses a problem if a gun is sold through a straw purchase or at a gun show, where background checks are not required. Sales of firearms by private sellers are allowed to proceed without a background check unless required by state law <sup>7</sup>.

According to the FBI, the NICS has prevented nearly 1.8 million criminals and other prohibited purchasers from buying guns. However, there are many problems with the NICS:

- 1) The NICS is not fully funded, despite the NICS Improvement Amendments Act of 2007. Congress has appropriated only 5.3% of the total authorized amounts in the fiscal years of 2009, 2010, and 2011 <sup>8</sup>.
- 2) Many states do not report data to the NICS – 23 states and the District of Columbia have provided fewer than 100 records of individuals disqualified on mental health grounds since the implementation of the NICS. Seventeen states have submitted fewer than 10 mental health records, and four states have not submitted any. Failing to report this data has allowed people to

commit mass shooting murders, such as the shooters in both Arizona and Aurora, CO <sup>9</sup>

## **The Other Side of The Coin: Opponents of Gun Control**

### ***The Second Amendment***

The most cited argument against stricter gun control is that new legislation would infringe on the second amendment rights of US citizens. The Second Amendment to the constitution states: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed” <sup>10</sup>. Any proposed solution that involves banning automatic and semi-automatic weapons will likely meet heavy resistance and will be seen as an infringement on Second Amendment rights.

### ***Self Defense***

Statistics from Gun Owners of America indicate that guns are used between 1.5-2.5 million times per year in self-defense, which includes 200,000 women per year who use guns to defend themselves against sexual abuse <sup>11</sup>. Furthermore, states that passed concealed carry laws reduced their murder rate by 8.5%, rapes by 5% and robbery by 3%. Florida, which passed concealed carry in 1987, saw its higher than average homicide rate drop 52% during the following 15 years after passage, to below the national average <sup>12</sup>.

### ***Arming Citizens and Mandatory School Security***

One of the arguments that came out of the Sandy Hook tragedy was the idea that if we arm more citizens, then we will be able to prevent mass shootings. A Mother Jones study found that no more than 1.6% of mass shootings were ended by



armed civilians <sup>13</sup>. However, it is hard to determine how many more shootings would have become mass murders had civilians not been on the scene to end them early (the FBI classifies a mass shooting as four murders or more, and the study followed this definition).

Following Sandy Hook, the National Rifle Association (NRA) proposed that every school should have an armed security guard as a means of protecting the school. The NRA believes that many mass murderers target “gun-free zones” such as schools where the victims are generally defenseless against the perpetrator(s). Arming citizens and requiring schools to have an armed security guard on the premises may help to curb mass shootings in gun-free zones. However, the cost of requiring armed security guards at schools is unknown and there is no sound evidence to support this course of action. In the instance of the Columbine High School shooting, an armed police officer was present at the time of the shooting, but he was still unable to prevent the massacre from happening.

### **Programs and Interventions to Curb Gun Violence**

#### ***Australia***

As the gun control debate has intensified, many have pointed to Australia as a role model for gun control. Following the country’s worst tragedy in which 35 people were shot dead, in 1997, Australia banned automatic and semi-automatic weapons. Gun owners were compensated for handing in previously legal weapons and almost 700,000 guns were destroyed <sup>14</sup>. Since the gun ban, Australia has not suffered any mass shootings and gun related murders decreased by 10% <sup>15</sup>, but some gun violence rates have risen:

- 1) Accidental gun deaths are 300% higher <sup>15</sup>
- 2) The assault rate has increased 200% since the 1997 gun ban <sup>15</sup>
- 3) From immediately after the ban was instituted in 1997 through 2002, the robbery and armed robbery rate was up 200% over the pre-ban rates <sup>15</sup>
- 4) While gun related murders decreased by 10%, murders by knives increased by 10% <sup>15</sup>

### ***Mayors Against Illegal Guns***

Mayors Against Illegal Guns was started in 2006 by Boston Mayor Thomas Menino and New York Mayor Michael Bloomberg <sup>16</sup>. An initial group of 15 mayors, which now includes more than 850 mayors from 44 states, is dedicated to making America's cities safer by cracking down on illegal guns. Each mayor has signed a statement of principles to guide their efforts in cracking down on gun violence. The statement of principles includes <sup>16</sup>:

- 1) Target and hold accountable irresponsible gun dealers who break the law by knowingly selling guns to straw purchasers
- 2) Oppose all federal efforts to restrict cities' right to access, use, and share trace data that is so essential to effective enforcement, or to interfere with the ability of the Bureau of Alcohol, Tobacco, and Firearms to combat illegal gun trafficking
- 3) Work to develop and use technologies that aid in the detection and tracing of illegal guns
- 4) Support all local, state, and federal legislation that targets illegal guns; coordinate legislative, enforcement, and litigation strategies; and share

information and best practices

The Mayors Against Illegal Guns has conducted numerous studies and reports regarding gun control, including “Trace the Guns”, an analysis of the effectiveness of state laws in controlling interstate gun trafficking. The report endorsed required background checks for handgun sales only at gun shows, but according to an article published in the American Journal of Public Health <sup>17</sup>, the finding on which the endorsement is based is actually attributable to states that have adopted universal background check requirements. While the mission of Mayors Against Illegal Guns is admirable, the statistics that they are gathering from their own studies may be misleading.

### **Will More Regulation Help?**

While it may be easy to assume that less guns equals less violence, this may not be the case. According to a recent review of how gun laws affect crime rates, the National Academy of Sciences (NAS) concluded that there exists “no credible evidence that the passage of right-to-carry laws decreases or increases violent crime, and there is almost no empirical evidence that the more than 80 prevention programs focused on gun-related violence have had any effect on children’s behavior, knowledge, attitudes, or beliefs about firearms” <sup>18</sup>.

Furthermore, the National Academy of Sciences formed a “Committee to Improve Research Information and Data on Firearms” which concluded “current research and data on firearms, violent crime, and suicide are too weak to support strong conclusions about the effects of various violence-prevention, deterrence and control measures”<sup>18</sup>. This conclusion has been reached by many, including the

National Research Collaborative on Firearm Violence<sup>19, 18, 20</sup>. The collaborative met for two days to critically review the main findings of the NAS report and they were able to reach conclusions on a number of subjects, including restricting access to firearms. The collaborative stated that “it is simply not known whether it is actually possible to shut down illegal pipelines of guns to criminals nor the costs to do so...the committee recommends that work be started to think carefully about possible research and data designs to address these issues”<sup>19</sup>.

### **Policy Recommendations**

It can be seen that there is much to contemplate when considering any new gun control policy and there are both realistic and unrealistic recommendations that could be made. This report will focus on what would be the most realistic solutions or policies that could be implemented regarding gun control.

#### ***Improve Current Background Checks***

One of the biggest issues that the NICS currently faces is the fact that some states do not report or under-report consequential mental health information to the NICS. While the Tenth Amendment restricts the federal government from compelling states to provide necessary data, 19 states have provided fewer than 100 records of individuals disqualified on mental health grounds from purchasing a gun since the NICS was put into place<sup>9</sup>.

Although the NICS Improvement Amendment Act of 2007 was put into place, it has not been effective enough in utilizing incentives and penalties for states to provide mental health records. In the case of the Virginia Tech shooting in 2007, the perpetrator was able to pass a background check because he did not reveal on the

background questionnaire that a Virginia court had ordered him to go through outpatient treatment at a mental health facility. Tragedies such as the Virginia Tech Massacre may not have happened if there were more incentives for states to provide mental health data to the NICS as a means of deterring individuals from purchasing a firearm who are prohibited from doing so under federal law.

An example of background checks proving to be effective can be seen in the state of California. California requires background checks for all gun sales, and these background checks are associated with a 25-30% reduction in risk of arrest for later crimes involving guns or violence on the part of prohibited individuals who are detected through the NICS <sup>17</sup>. Furthermore, in order for the NICS to be as effective as possible, it needs to be given the amount of funding that it requires.

### ***Conduct Sound Social Science Research***

Many research papers focusing on gun control reach the same conclusion; we need to perform sound social science research on the topics of gun violence, mental health, and gun control in order to determine what policies are effective and what, if anything, can be done to address the issue of gun violence. While advocates on both sides of the issue may say that there is plenty of data available on the issue of gun control, the hard truth is that not enough sound research has been performed on gun control. Both the NAS and the National Research Collaborative on Firearm Violence believe that a comprehensive research program on firearms is needed as a basis for criminal-justice and public health policy <sup>18,19</sup>. The NAS also found that “considerable gaps in research and data make it difficult to draw cause-and-effect relationships between firearms and violence” <sup>18</sup> and they recommended that the

federal government support a systematic program of data collection on firearms and violence, including emerging data systems on violent events<sup>18</sup>. If our society truly wants to take action against gun violence, then the only way to do so is to understand which steps to take. Closing loopholes and banning assault weapons may be the necessary steps, but there is no way to know until sound research is carried out and analyzed. Lastly, if researchers want to see their work used as a resource in the gun control debate, then they need to “become part of the game rather than fans of the game”<sup>20</sup>.

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