



CLOSING ILLEGAL GUN MARKETS

Virginia's Gun Show Loophole

**A Report by Virginians Against Handgun Violence and the
Educational Fund to Stop Gun Violence**

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January 2003

SUMMARY

Approximately 800 Virginians died from gun violence in 2000 -- 52 of them were 18 or younger.¹ In fact, Virginia's youth gun death rate is higher than the national average.²

Unfortunately, avenues still exist for firearms purchased in Virginia to enter the illegal market, both within the state and across state lines. In 2002, a government study found that Virginia was the source for more than 1,100 traced firearms exported to other states, making it one of the largest sources of crime guns in the nation.³

One major weakness in current law is the Gun Show Loophole – the fact that firearms can be purchased at gun shows without criminal background checks. Nationally, the Bureau of Alcohol, Tobacco, and Firearms has cited gun shows as the second leading source of crime guns nationwide.⁴ Felons, domestic abusers and other prohibited purchasers are less likely to attempted to buy guns when they must undergo a background check. But current Virginia law requires criminal background checks only for guns sold through licensed firearm dealers, which account for just 60 percent of overall gun sales nationwide.⁵ That means 22 to 35 percent of guns sold at the more than seventy-four Virginia gun shows every year change hands *without* a background check.⁶

The best way to close the Gun Show Loophole – and reduce gun trafficking – is

“It is a mockery of liberty and freedom when citizens live in fear behind locked doors and when children are in danger in their home and in their schools from gun violence.”⁷

Reverend Benjamin Sparks
Second Presbyterian Church
Richmond, VA

to require criminal background checks for ALL sales at gun shows.

INTRODUCTION

“Criminals should not be allowed to get guns.” This simple, common sense belief is shared by nearly every Virginian, no matter which side of the gun debate he or she is on. It is also the intent behind our state's gun laws: Convicted felons, domestic abusers, and those with a history of dangerous mental illness are prohibited from buying or owning guns.

However, the reality is that criminals still do obtain guns, and they can do so easily. Federal background checks are required only for gun sales that occur through *licensed* gun dealers. ***The 40 percent of sales that take place outside the network of licensed gun dealers can, under Virginia law, occur with no background check, no questions asked.***⁸

Background checks are a critical tool used by law enforcement to stop criminals from getting guns. The 1994 Brady Act mandated background checks for sales by licensed gun dealers, such as gun stores. But criminals can avoid gun stores, opting instead to get their guns through private transactions between unlicensed sellers at events such as gun shows. Remarkably, neither federal nor Virginia law requires background checks at these events.

This report presents background information on the problem of gun violence, firearms trafficking, and the Gun Show Loophole in Virginia, and recommends extending background checks to all sales at gun shows to prevent more criminals from getting guns.

GUN VIOLENCE IN VIRGINIA

Virginia citizens die from gun violence at an alarming rate. In 2000, there were 794 gun deaths in Virginia, almost 70 per month. Of the total gun deaths, 284 were homicides, 484 were suicides, 15 were unintentional shootings, 6 were shootings of undetermined intent, and 5 were in the category of legal intervention.⁹

- 794 Virginians died from gun violence in 2000 — 52 of them 18 years old or younger. Virginia's youth gun death rate is higher than the national average.¹⁰
- In Richmond, nearly 80% of all crime guns have changed hands at least once.¹¹
- A 2002 federal law enforcement study found that more than 1,100 crime guns used in various states and Washington, DC were traced back to Virginia, making the state a leading source of crime guns.¹²

- 91% of crime guns recovered in Richmond were originally purchased within Virginia, suggesting that the state's own weak gun laws aid criminal access to guns.¹³
- Nationally, 40% of gun sales are conducted by *unlicensed* sellers who, under current law, are not required to conduct criminal background checks on new gun buyers.¹⁴

WHAT IS THE "GUN SHOW LOOPHOLE?"

Under current law, there are two types of gun dealers: licensed and unlicensed. Licensed dealers are "engaged in the business" of selling firearms, and must conduct criminal background checks on all new gun buyers. As strange as it sounds, unlicensed dealers, people who sell guns from their "personal collections" — at gun shows, for example — are not required to conduct simple criminal background checks. Unfortunately, between 25% and 50% of dealers at gun shows are unlicensed. These individuals can sell guns to anyone — no criminal background check, no

questions asked.¹⁵ Research shows that these unregulated transactions disproportionately feed the illegal gun market.

In one study, the Bureau of Alcohol, Tobacco, and Firearms (ATF) reviewed more than 1,500 gun trafficking investigations during a two-year period. The study found that gun shows and other secondary-market sources — venues for selling weapons after their original purchase — were a "major trafficking channel," involving "approximately 26,000 illegally diverted firearms." Unlicensed, private

"One favorite pathway for gun violence is gun shows. One way to combat gun violence is to close the pathway of easy access to guns at gun shows. ... As a health advocate, I see gun violence as a public health problem."

Dr. Margaret Dolan
Director, Virginia
Emergency Medical
Service for Children

sellers were responsible for nearly 23,000 illegally trafficked guns. The report notes "investigations usually involve multiple trafficking channels," suggesting that many trafficked guns may involve both a gun show sale and a sale by an unlicensed seller.¹⁶

"Like many of the young people in my community, I'm tired of hearing gun shots all the time and I'm tired of being afraid to walk down certain streets."

Emily Spencer
Student, Virginia Beach, VA

The same ATF study of trafficking investigations found that "the many thousands of guns that traffickers supply illegally, without a Brady background check or [a federal] transfer record that enables tracing, are firearms that are likely to be associated with other crimes." ATF also noted that "persons prohibited from possessing firearms, including felons, are obtaining guns from the illegal market," and that these trafficked firearms "are subsequently used in serious crimes...."¹⁷

This access to anonymous sales and the availability of large numbers of weapons makes gun shows attractive to criminals and other prohibited purchasers. And the havoc wreaked by the state's loose gun laws affects more than just Virginia. Our state was the source of more than 1,100 guns exported to other states and Washington, DC that were used in murders, assaults, and other crimes in 2000.¹⁸ That happens in part because Virginia has not acted effectively to stop criminals from buying guns at gun shows.

- In 2002, 74 gun shows were held in Virginia. 16,012 gun transactions by licensed sellers occurred at these shows.¹⁹

- Between 22 and 35% of gun show vendors are unlicensed sellers.²⁰
- States that do not require gun show background checks – such as Virginia – are more likely to export crime guns to other states.²¹
- In 2002, background checks prevented nearly 2,500 illegal gun transactions to criminals in Virginia -- 69% of these denied transactions involved a felony or domestic violence conviction.²²
- Nationally, 26,000 guns were illegally trafficked from gun shows between 1996 and 1998, making gun shows America's second largest source of crime guns.²³
- 10% of guns used in crime by juveniles were sold either at a gun show or a flea market.²⁴
- Gun shows are the second largest source of crime guns in our nation. In 1999, gun shows were associated with tens of thousands of firearms used in crime.²⁵
- An overwhelming majority (88%) of Virginians support requiring criminal background checks on all sales at gun shows. Even 84% of Virginia's gun owners favor the measure.²⁶

With criminal background checks required for only some gun transactions at gun shows, criminals still have easy access to guns. Closing the gun show loophole is a common-sense, widely supported solution that will protect Virginians, as well as our neighbors in nearby states.

VIRGINIA'S GUN SHOW HISTORY

Virginia has a long history of gun shows – one that law-abiding citizens participate in, but criminals abuse. But closing the Gun Show Loophole, by requiring criminal background checks for all buyers, is the

safe, responsible thing to do and won't interfere with law abiding citizens.

“Right now in Virginia, just as it was in Colorado two years ago, you can go to any gun show without a background investigation and you can access a weapon.”

Floyd Wiggins
Department of Safety and Security
Richmond Public Schools

Some argue that requiring background checks for all sellers at gun shows would put these events out of business. Nothing could be farther from the truth. In fact, three of the five states that host the largest number of gun shows – Illinois, Pennsylvania, and California – closed the Gun Show Loophole years ago, and gun shows continue to take place in those states.

CLOSING THE GUN SHOW LOOPHOLE WOULD PREVENT ILLEGAL GUN SALES

Ninety-five percent of background checks are completed within two hours, and most of those are completed within just *two minutes*.²⁷ The few background checks that require longer periods are the ones most likely to uncover a criminal record. In 2002, more than 164,000 applications for firearm transfers were subject to a background check through federally licensed dealers in Virginia.²⁸ About two percent of these submissions, some 2,500 applications, were rejected because the applicant was a prohibited purchaser – 69% of these denied transactions involved a felony or domestic violence conviction.²⁹

Law-abiding Virginians have understood the need for criminal background checks for years, and closing the gun show loophole would merely require unlicensed gun

dealers at gun shows to implement that same well-tested system. By requiring background checks for all gun show transfers, we can once and for all eliminate Virginia gun shows as a major source of crime guns.

WHAT DO VIRGINIANS WANT?

By overwhelming margins, the people of Virginia want better gun safety laws – including criminal background checks at gun shows. This is true throughout the State, and among both men and women. It is even true for gun owners.

“There are a lot of issues that gun owners and non-gun owners can agree on. The two main areas I see are child safety issues and making sure criminals don't get guns.”

Melissa Mansfield
Virginians Against Handgun Violence

The following findings are from a statewide survey of 500 likely voters conducted October 14-16, 2001.³⁰

- 88% of Virginians favor requiring a criminal background check for *all* gun sales at gun shows
- 84% of gun owners – and 81% of self-described NRA supporters – favor closing the Gun Show Loophole
- 36% of Virginians consider themselves supporters of the NRA; this is consistent with the national figure of 35%
- 86% of *Northern Virginians* favor requiring a criminal background check for all gun sales at gun shows

- 87% of *Richmond-area* voters favor requiring a criminal background check for all gun sales at gun shows
- 90% of *Roanoke-area* voters favor requiring a criminal background check for all gun sales at gun shows
- 90% of the *rest of the State* favor requiring a criminal background check for all gun sales at gun shows

CURRENT LAW IN VIRGINIA

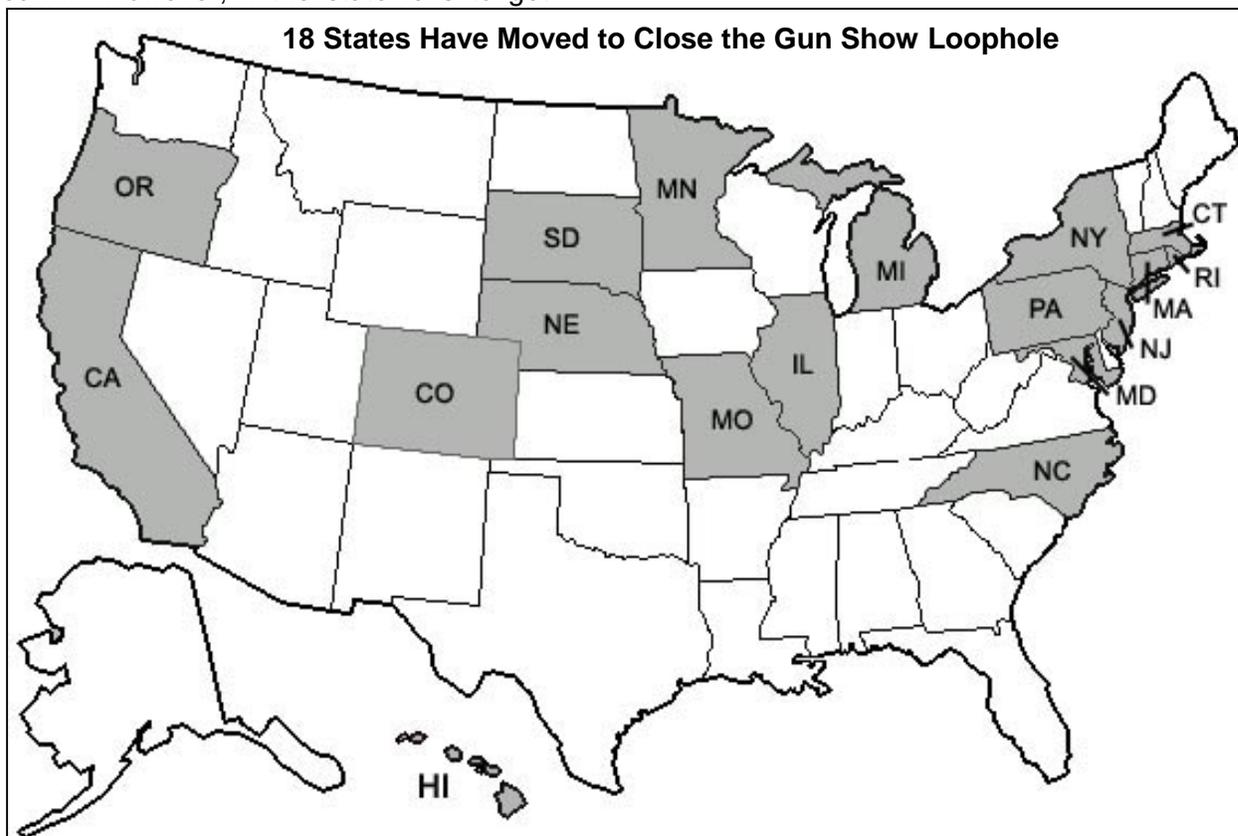
To purchase a firearm in Virginia from a licensed dealer, you must first undergo a background check. Dealers are required to submit to the State Police the name, birth date, gender, race, and social security number of a prospective firearm buyer. The State Police then conduct a background check to determine if the buyer is a felon or other prohibited purchaser. Usually, the background check is “instant” – the police immediately tell the dealer whether or not the purchaser is entitled to receive the firearm. However, if the state fails to get

back to the dealer by the end of three business days, the firearm may be transferred anyway.³¹

PROHIBITED PURCHASERS

- Convicted felons
- Fugitives from justice
- Persons who have been adjudicated mentally ill, committed to a mental institution, or acquitted by reason of insanity
- Illegal aliens
- Persons dishonorably discharged from the military
- Persons subject to a domestic violence restraining order or convicted of a domestic violence misdemeanor

Virginia law already requires that gun show promoters notify the State Police at least 30



days before a gun show is held.³² Gun show promoters are also required to maintain a list of vendors or exhibitors.

Although current federal law prohibits anyone from selling guns to prohibited purchasers, neither federal nor Virginia law requires unlicensed sellers to perform a background check on buyers.

THE NEXT STEP: CLOSING THE GUN SHOW LOOPHOLE

An effective and efficient solution to the Gun Show Loophole would be state policy requiring background checks prior to all firearm transfers at gun shows. Although specific proposals may differ in some details, the following principles rely on the successful experience of the 18 states that have already moved to close the Gun Show Loophole:³³

- Requiring criminal background checks for all firearm transfers at gun shows, whether the sellers are licensed or unlicensed
- Requiring that all background checks are conducted by licensed dealers, in the same manner as they currently conduct background checks for transfers from their own stock of firearms.
- Requiring that licensed gun dealers maintain records of a transfer to a prospective transferee in the same manner as when conducting a sale from his or her own stock of firearms.
- A definition of gun shows that includes, at a minimum, events at which 25 firearms are offered for sale, transfer, or exchange, or three or more vendors exhibit firearms for sale.

- A definition of gun shows that includes the entire premises, both inside and out, including parking areas
- A requirement that gun show operators arrange for at least one licensed dealer to conduct background checks for transfers between unlicensed sellers and buyers.
- A provision authorizing licensed dealers to charge a reasonable, capped fee for conducting background checks.

Extending criminal background checks to all sales at gun shows would still allow law-abiding Virginians to purchase firearms at gun shows, while providing law enforcement with one more tool to stop illegal gun trafficking.

For additional information about closing the Gun Show Loophole, please contact the Educational Fund to Stop Gun Violence, (202) 408-7560.

¹ Centers for Disease Control's Web-based Injury Statistics Query and Reporting System (WISQARS), <http://www.cdc.gov/ncipc/wisqars/>

² Ibid.

³ Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury. *Crime Gun Trace Reports: The Youth Crime Gun Interdiction Initiatives*, July 2002.

⁴ Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury. *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers*. June 2000.

⁵ Cook, PJ and Ludwig, J, *Guns in America: National Survey on Private Ownership and Use of Firearms*, National Institute of Justice Research in Brief, May, 1997.

⁶ Virginia State Police, Criminal Justice Information Services Division

⁷ All of the quotes in this publication are from the educational forum "Cutting Criminals Out of the Loop: Closing the Gun Show Loophole in Virginia," convened by Virginians Against Handgun Violence

and the Educational Fund to Stop Gun Violence in Richmond, Virginia on November 15, 2001.

⁸ Cook, PJ and Ludwig, J, *Guns in America: National Survey on Private Ownership and Use of Firearms*, National Institute of Justice Research in Brief, May, 1997.

⁹ Centers for Disease Control's Web-based Injury Statistics Query and Reporting System (WISQARS), <http://www.cdc.gov/ncipc/wisqars/>

¹⁰ Ibid.

¹¹ Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury. *Crime Gun Trace Reports (2000): The Youth Crime Gun Interdiction Initiatives*, July 2002.

¹² Ibid.

¹³ Webster DW, Vernick J, Hepburn L, "Relationship Between Licensing, Registration, and Other Gun Sales Laws and the Source State of Crime Guns," *Injury Prevention*, September 2001.

¹⁴ Cook, PJ and Ludwig, J, *Guns in America: National Survey on Private Ownership and Use of Firearms*, National Institute of Justice Research in Brief, May, 1997.

¹⁵ Bureau of Alcohol, Tobacco and Firearms, *Gun Shows: Brady Checks and Crime Gun Traces*, January 1999.

¹⁶ Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury. *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers*. June 2000.

¹⁷ Ibid.

¹⁸ Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury. *Crime Gun Trace Reports (2000): The Youth Crime Gun Interdiction Initiatives*, July 2002.

¹⁹ Virginia State Police, Criminal Justice Information Services Division.

²⁰ Ibid.

²¹ Americans for Gun Safety Foundation, *No Questions Asked: Background Checks, Gun Shows and Crime*, April 2001.

²² Virginia State Police, Criminal Justice Information Services Division.

²³ Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury. *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers*. June 2000.

²⁴ U.S. Department of Justice and Treasury. "Commerce in Firearms in the United States," February 2000.

²⁵ Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury. *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers*. June 2000.

²⁶ Lake, Snell, Perry & Associates, October 2001

²⁷ United States General Accounting Office, *Gun Control: Implementation of the National Instant Background Check System*. February 2000.

²⁸ Virginia State Police, Criminal Justice Information Services Division.

²⁹ Ibid.

³⁰ Lake, Snell, Perry and Associates. Margin of error +/- 4.4%.

³¹ Virginia Code Section 18.2-308.2:2

³² There is an exception to this rule that only applies to gun shows held in a single town.

³³ Source: Vernick J, Hepburn L. *Examining State and Federal Gun Laws: Trends for 1970-1999*. (Forthcoming, as a chapter to be published by the Brookings Institution, 2003).