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THESIS

MIDDLE GROUND ON GUN CONTROL

by

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December 2016

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MIDDLE GROUND ON GUN CONTROL

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ABSTRACT

Each tragic shooting incident that the American news media covers highlights the problem of gun violence in the United States. However, the focus of this reporting is rarely on the largest component of total gun deaths: suicides. Suicides make up two-thirds of all gun deaths. Limiting access to firearms for individuals with suicidal tendencies could cause a significant reduction in the total number of casualties included in gun violence statistics. This thesis examines the efficacy of adding more mental health information to the FBI's database of persons who are prohibited from gun purchases, and also compares U.S. gun laws to the National Firearms Agreement in Australia, which is widely accepted as an effective gun control measure. This research finds that mental health information on clinical depression and schizophrenia can be a strong predictor of suicidal tendencies, and reporting of this information could be improved in order to reduce overall gun violence. Improved mental health reporting must be a matter of federal law, because current state laws on guns vary widely and have limited effectiveness.

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LIST OF ACRONYMS AND ABBREVIATIONS

ATF	Bureau of Alcohol, Tobacco, Firearms and Explosives
BETA	Behavioral Evaluation and Threat Assessment
CDC	Centers for Disease Control and Prevention
CJIS	Criminal Justice Information Services Division
FBI	Federal Bureau of Investigation
FDA	Food and Drug Administration
FDLE	Florida Department of Law Enforcement
FFL	Federal Firearms License
GAO	Government Accountability Office
HIPAA	Health Insurance Portability and Accountability Act
III	Interstate Identification Index
NCIC	National Crime Information Center
NFA	National Firearms Agreement
NIAA	NICS Improvement Amendments Act
NICS	National Instant Criminal Background Check System
TICS	Tennessee Bureau of Investigation Instant Check System
WHO	World Health Organization

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I. A MIDDLE GROUND ON GUN CONTROL

Imagine it is Friday night in summertime America. What should we do? There is a new superhero movie that looks interesting; we should go see it. This conversation has probably played out hundreds of times today, just as it did for the people of Aurora, Colorado on July 20, 2012. Unfortunately, there was someone who had a different idea about what to do at the movie theater on that Friday night. This individual was named James Holmes.

In his notebook, Holmes described himself as “a dark knight rising.”¹ This dark knight, dressed in black combat gear, entered the theater shortly after the movie began, threw an improvised tear gas canister, and then opened fire on the people inside. Twelve people lost their lives and another 70 suffered serious injuries.² More probably would have died, but the shooter’s gun jammed and he tried to escape. He was apprehended by the police, standing next to his car still dressed in full body armor with just a bit of his bright orange hair poking out from under his gas mask, and reeking of body odor.³

Three years later, Holmes’ trial drew out mountains of evidence about his long-documented mental health history. Despite this well-documented history, he was able to purchase legally the three guns he later used in the shooting rampage.⁴

1 “James Holmes Notebook,” *Denver Post*, last accessed June 14, 2016, extras.denverpost.com/trial/docs/notebook.pdf.

2 Anna O’Neill, “Theater shooter Holmes Gets 12 Life Sentences, Plus 3,318 Years,” CNN, August 26, 2015, <http://www.cnn.com/2015/08/26/us/james-holmes-aurora-massacre-sentencing/>.

3 Gary Strauss, “Aurora Officers Describe Arresting James Holmes,” *USA Today*, January 8, 2013, <http://www.usatoday.com/story/news/nation/2013/01/08/james-holmes-aurora-hearing/1816875/>.

4 Larry Buchanan, “How They Got Their Guns,” *New York Times*, December 3, 2015, http://www.nytimes.com/interactive/2015/10/03/us/how-mass-shooters-got-their-guns.html?rref=collection%2Ftimestopic%2FHolmes%2C%20James&action=click&contentCollection=timestopics®ion=stream&module=stream_unit&version=latest&contentPlacement=7&pgtype=collection&_r=0.

Holmes' precarious mental state was recognized and reported—to the extent that such reports can be made. In the weeks leading up to the attack, Holmes' psychiatrist thought him enough of a danger to report him to the University of Colorado Denver's Behavioral Evaluation and Threat Assessment team (BETA).⁵ Several universities have these types of teams, but as is often the case they cannot do much because the information they discuss about potentially dangerous students is confidential.⁶ Unless mental health providers have specific information about an imminent dangerous situation, they cannot provide that information to law enforcement. Even if they could, it is a difficult and sometimes impossible task to get that information into the National Instant Criminal Background Check System (NICS) that the Federal Bureau of Investigation (FBI) and Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) use for background checks on gun sales from licensed dealers. So even though Holmes' psychiatrist thought he was a potential danger to himself and others, he was still legally able to buy guns, and police could not be alerted to his dangerous state of mind.

A. THE ROAD AHEAD

This chapter outlines the debate on gun control in the United States. Chapter II will focus on the NICS and the current legal framework that surrounds it. On the whole it has been effective, but gaps remain in coverage that allow dangerous individuals to buy guns. Chapter III will narrow down the greater problem of gun violence to its largest component, in terms of number of people killed, suicides. Extensive statistical data will be covered to draw linkage between mental health, legal gun purchases, and suicides. Additionally, will this chapter will investigate how individuals get added to the NICS for their mental health status.

⁵ Jeremy P. Meyer and Allison Sherry, "James Holmes referred to University of Colorado threat-assessment team," *Denver Post*, August 1, 2012, http://www.denverpost.com/ci_21212797/alleged-theater-gunman-was-referred-threat-assessment-team.

⁶ *Ibid.*

Chapter IV will be a case study of gun regulation in Australia. Examples from the Australians' experience with gun violence and what they have done to correct it are often brought up as examples of what some politicians think should be implemented in the United States. Chapter V will go over my recommendations to help reduce suicide deaths based on my research. This chapter will also cover the possible opposition to my plan and how to counter it in order to effect real change. Additional methods to counter gun violence will also be discussed.

B. THE BIGGER PROBLEM

Sadly, the story of James Holmes is not unique. Christopher Harper-Mercer, who killed nine people at a community college in Oregon in 2015, was kicked out of Army basic training for his mental health issues, and had previously attended a school that was for people whose mental health issues negatively affected their ability to learn.⁷ Despite this record, he purchased 14 guns from licensed gun dealers and passed a background check each time.⁸ John R. Houser, who killed two people in a movie theater in Louisiana, had been court-ordered into psychiatric care but was able to buy a gun legally a few years later.⁹ Such incidents have made the mentally ill scapegoats for the gun violence in the United States.

Although they are tragic incidents, mass shootings make up an infinitesimally small portion of the total gun violence in America—meaning that shooting rampages by the mentally ill represent high-impact, low-probability events. According to the Centers for Disease Control and Prevention (CDC), there are about 86 gun related deaths in the United States every day.¹⁰ Even the

7 Buchanan, "How They Got Their Guns."

8 Ibid.

9 Ibid.

10 Dewey G. Cornell, "Gun Violence and Mass Shootings—Myths, Facts and Solutions," *Washington Post*, June 11, 2014, <https://www.washingtonpost.com/news/the-watch/wp/2014/06/11/gun-violence-and-mass-shootings-myths-facts-and-solutions/>.

24-hour news networks do not have the time or the resources to cover all these events, so they focus their reporting on rare events like school shootings, giving people the impression that they are happening all the time.¹¹ Mass shootings may dominate the headlines, but they only represent about 2 percent of the total non-accidental firearm related deaths.¹² The real core of gun violence is suicide; specifically, 61 percent of gun deaths are suicides.¹³ Some 21,384 of 33,599 gun deaths reported by the CDC in 2014 were suicides.

Several studies have linked mental illness with an increased risk of suicide.¹⁴ The CDC does not receive data from all 50 states on suicides, but its National Violent Death Reporting System statistics show that at least 44 percent of the people who take their own lives suffer from mental illness—and that 33 percent have been diagnosed as having a serious mental health issue by a mental health professional.¹⁵ Such disturbed or distressed people are vastly more likely take their own lives when they buy a gun than they are to perpetrate a mass shooting—and vastly more of them do so. Because suicide is such a public health problem, almost on par with influenza deaths, it makes sense to try and stem the tide of people dying this way.¹⁶ A reduction in the number of total suicides by even 20 percent by limiting gun access to the mentally ill translates to some 8,000 lives saved each year.

11 Cornell, "Gun Violence and Mass Shootings."

12 German Lopez, "Mass Shootings Are a Fraction of Gun Deaths. Why Don't We Pay More Attention to the Rest?," Vox, December 3, 2015, <http://www.vox.com/policy-and-politics/2015/12/3/9844470/mass-shootings-gun-violence>.

13 Emanuella Grinberg, "Gun Violence Not a Mental Health Issue, Experts Say, Pointing to 'Anger,' Suicides," CNN, January 25, 2016, <http://www.cnn.com/2016/01/25/health/gun-violence-mental-health-issue/index.html>.

14 Ibid.

15 Jeffrey W. Swanson, "Mental Illness and Reduction of Gun Violence and Suicide: Bringing Epidemiologic Research to Policy," *Annals of Epidemiology*, May 25, 2015, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4211925/>.

16 "Deaths and Mortality," CDC, April 27, 2016, <http://www.cdc.gov/nchs/fastats/deaths.htm>.

C. REPAIRING THE WEAKEST LINK IN THE CHAIN

The link between both the most publicly jarring form of gun violence and the most statistically significant form of gun violence is mental health. Limiting access to firearms for mentally ill individuals will almost certainly reduce the rates of overall gun violence. This is not to say that mentally ill individuals are responsible for violent crime. If it were possible to keep all mentally ill people from committing violent crimes it would only be a reduction of about 4 percent in violent crimes.¹⁷ Keeping the mentally ill from firearms would, in contrast, significantly lower the rate of deaths by firearms.

Firearms are particularly problematic in terms of suicide because a suicide attempt with a firearm is much more likely to result in death than other means. One study found that suicide attempts with a gun resulted in death 76 percent of the time, but only 4 percent of people who attempted suicide by some other means actually died.¹⁸ Studies have also shown that only 10 percent to 15 percent of people who attempt suicide by firearm have an unbreakable desire to kill themselves; if their access to firearms were cut off, they would likely try other means, but most people would likely not attempt suicide without access to a firearm.¹⁹ Limiting the access to guns of people who are the most likely to commit suicide could have a profound impact on the number of people killed each year by guns.

The primary means used to limit gun ownership in the United States is background checks. Based on the stories that opened this chapter, it would seem that background checks are not very successful in stopping the mentally ill from legally buying guns. However, is the system ineffective because it does not work or because it is not given what it needs to work properly? The NICS is simply a database of information that is searched for disqualifying factors for gun

¹⁷ Swanson, "Mental Illness and Reduction of Gun Violence."

¹⁸ David Hemenway, *Private Guns, Public Health* (Ann Arbor: University of Michigan Press, 2006), 36.

¹⁹ Hemenway, *Private Guns*, 38–39.

ownership. So, the background check system can only be as good as the information that goes into it.

If an insurance company uses a database on car accidents to set its insurance rates, but it is missing information on cars that have manual transmissions, then it will be ineffective at setting policy prices. Similarly, if the NICS does not have quality information on individuals that have mental health problems it will be ineffectual. Unfortunately, precisely this situation characterizes the NICS. Because of the legal status of people's mental health records, most states—and almost all private mental health providers—fail to submit all of the potential disqualifying mental health information to the NICS system. Current federal regulations seek to strike a balance between the legitimate concerns for safeguarding patient privacy and the needs that arise for sharing patient information for the sake of their own health. Although this thesis does not seek to relitigate this particular debate, it does take the position that without potentially disqualifying mental health information, the background check system cannot be anywhere near as effective as it could be and thousands of lives are lost as a result.

The aim of my research is to illustrate that improvements to both the quality and quantity of information that goes into the NICS can reduce the level of gun violence in the United States. Using statistics and case study comparisons of other countries that have enacted similar gun control measures, I will explain how making these changes can reduce gun violence in the more limited scope of suicide. I believe the study of suicide is a good place to start because it is problem that people on either side of the gun control debate can agree needs to be solved. However, to propose gun control measures one has to understand the context of the argument over guns in America.

D. THE DEBATE

One of the most contentious issues in modern American politics is gun control. Not one of the candidates for president in 2016 has failed to raise the subject multiple times in speeches, rallies, or debates. Even outside high-political circles, the debate is characterized by its abject lack of middle ground, and the debate over gun control in this country only becomes more contested all the time. Each school shooting or news story about inner city gang violence brings the debate back to the forefront of the American attention. The two main sides of the debate over guns are centered on those totally opposed to and those in favor of tighter restrictions on guns. Within each camp, individuals debate the best way to curb gun violence, whether it be a ban on assault weapons or 50-state legal concealed carry permits. However, these solutions are often based more on opinion or ideas that are politically popular, instead of practical and empirically proven solutions to the problem.

At the heart of the matter is the Second Amendment to the Constitution, which reads: “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.”²⁰ Much debate has taken place over the framers’ meaning of this Amendment, and whether should still apply today. Recent legal cases have changed the way that courts have to apply this amendment, making gun legislation even more complicated.

To suggest changes to the current legal framework of gun control, one must understand the current legal precedents. Adam Winkler, in his book *Gun Fight*, goes into great detail on the history of the *District of Columbia v. Heller* Supreme Court case that has changed the legal interpretation of the second amendment.²¹ The case was about the constitutionality of Washington, D.C.’s

20 U.S. Constitution, September 17, 1787, http://www.archives.gov/exhibits/charters/constitution_transcript.html.

21 Adam Winkler, *Gun Fight: The Battle over the Right to Bear Arms in America* (New York: W. W. Norton & Co., 2013); 5–6; *District of Columbia v. Heller*, No. 07-290 (2008).

ban on handgun ownership; the court's 5–4 opinion held that the constitution protected an individual's right to own guns for the purpose of self-defense—a major shift in focus and in the extent of permissible gun ownership in the District.²² Although the opinion was and is viewed as a gun-rights victory, Justice Scalia, who wrote for the majority, did note that the Second Amendment was not unlimited but that “longstanding prohibitions on the possession of firearms by felons and the mentally ill,” were constitutionally permissible.²³

Winkler divides the debate into two primary groups that he calls “gun grabbers” and “gun nuts.”²⁴ The gun grabbers are those who seek to enact more forms of gun control. The gun nuts religiously oppose any restriction on gun ownership. These two groups represent the extremes at either end of the gun debate. Winkler believes that both groups have lost sight of the basic fact that because of the extraordinarily high level of gun proliferation in the United States, guns are not going anywhere and solutions cannot be based on having more or less of something that is omnipresent in our society.²⁵

Not surprisingly, only two hours after the *Heller* decision was read the *McDonald v. Chicago* case was filed and made it to the top court two years later.²⁶ The court decided in *McDonald* that the individual gun ownership right applied to the states as well, and the floodgates were opened for the lower courts to figure out the mass of lawsuits challenging the constitutionality of various gun laws. In the first two years after the decision, federal courts heard more than 200 gun-law cases and upheld all but two of them.²⁷ One of the two was the decision to overturn the Illinois law that prohibited carrying a loaded weapon outside the home. The case's opinion was written by Seventh Circuit Judge Richard Posner.

²² Winkler, *Gun Fight*, 278.

²³ *Ibid.*, 279.

²⁴ *Ibid.*, 15, 45.

²⁵ *Ibid.*, 10.

²⁶ Michael Waldman, *The Second Amendment: A Biography* (New York: Simon & Schuster, 2014), 143.

²⁷ *Ibid.*, 145.

He wrote that “the Supreme Court made clear in *Heller* that it was not going to make the right to bear arms depend on casualty counts.”²⁸ Posner followed the Supreme Court’s interpretation of the law illuminating the “fundamental” rights issue. Fundamental rights are those that the Supreme Court has determined to have the strictest level of protection from government infringement, and laws that limit these rights are often seen by the Court as unconstitutional.²⁹ “Fundamental rights” are guaranteed to all citizens, and states may not unduly restrict them.

Waldman argues that two cases following *Heller* and *McDonald* show the foolishness of cases where the “fundamental” right of the Second Amendment was applied: one in Iowa where legally blind people believed that they should be able to carry loaded weapons, and another in Louisiana where a proposed law to keep guns stored safely was rejected despite accidental gun deaths in Louisiana being three times the national average.³⁰ For Waldman, these cases represent the biggest problem in limiting gun violence—because local governments will avoid common-sense gun regulation just to avoid Second Amendment-based litigation.³¹

One area that has shown some promise to break the political and legal deadlock over gun violence is the public health perspective on the subject. David Hemenway’s 2004 book *Private Guns Public Health* is one of the first works to seriously take on the gun debate from this angle. He finds that because this perspective uses scientific research to aid in injury prevention it is able to get past the fault-finding and blame game that makes up much of the rest of the debate.³² Hemenway’s analysis points to suicides and gun accidents as the most important problems because they result in by far the greatest number of injuries

28 Waldman, *The Second Amendment*, 148.

29 Legal Information Institute, “Fundamental Right,” Cornell University Law School, accessed March 19, 2016, https://www.law.cornell.edu/wex/fundamental_right.

30 Waldman, *Second Amendment*, 153.

31 *Ibid.*, 165–166.

32 Hemenway, *Private Guns*, 25.

and deaths.³³ Stopping these two problems does not have the same level of political appeal as efforts to ban guns used in mass shootings or to stop gang violence, but because they account for most of the gun deaths focusing them is paramount.

Hemenway's analysis of various means of reducing gun violence starts with public health studies on reducing accidental shooting while hunting. In the 1980s, 1,000 people a year were accidentally shot while deer hunting.³⁴ These findings prompted a North Carolina county to be the first to adopt mandatory bright orange clothing to be worn while deer hunting—resulting in an 83-percent decrease in accidental shootings.³⁵ There are now laws in 40 states requiring hunters to wear bright colored clothing and the practice is recommended by the U.S. Forest Service.³⁶ This solution did not involve gun bans that were unlikely to get passed or new untested safety systems that could be costly and impractical. But, capitalizing on public concern about accidental shootings among hunters, political leaders and safety officials arrived at an effective and practical solution that the community embraced.

E. THE MIDDLE GROUND

Because of the current political environment, more outside the box solutions will be necessary to combat gun deaths in the United States. The extreme nature of the debate has led many people to believe that gun violence is at an all-time high, however the opposite is true. Since 1993, when gun violence was at an all-time high, there has been a steady decline in firearm homicides.³⁷ Conversely, firearm suicides have been on the rise in the same time frame,

³³ Hemenway, *Private Guns*, 25.

³⁴ *Ibid.*, 31.

³⁵ *Ibid.*

³⁶ "Hunting Safety: Information for Hunters and Non-Hunters," U.S. Forest Service, Accessed March 18, 2016, <http://www.fs.fed.us/>.

³⁷ Jens Manuel Krogstad, "Gun Homicides Steady after Decline in '90s; Suicide Rate Edges up," Pew Research Center, October 21, 2015, <http://www.pewresearch.org/fact-tank/2015/10/21/gun-homicides-steady-after-decline-in-90s-suicide-rate-edges-up/>.

keeping the total number of deaths similar, but the problem is not what the media often makes it out to be.³⁸

The sharp decline in gun homicides coincides with the 1993 Brady Bill that set five-day waiting limits on handguns until the NICS was up and running. With homicides down 49 percent since 1993, the NICS can claim to have been largely a success.³⁹ Some non-permanent provisions of the bill like the Assault Weapons Ban were not renewed.

The commonly mentioned gun show loophole in this bill allows people to sell a few guns a year without requiring background checks. For example, if you buy a gun from your friend in most states you do not need a background check. However, if your friend sells guns to a few different people without having a Federal Firearms License then he could be headed to jail. The huge tables at gun shows covered with hundreds of handguns that are depicted in news stories as being available without a background simply is not true. According to the ATF convictions of unlicensed gun dealers have been up held when as few as two guns were sold without the seller having a Federal Firearms License (FFL).⁴⁰

For the most part if you buy a gun in the United States you are probably going to have to get a background check. The question is whether the background check catches the people who should not have access to firearms. In 2007, the state of Connecticut began a process of reporting all mental health data on potential dangerous individuals to the NICS.⁴¹ Doing so did not prevent the Sandy Hook shooting, but a study of the gun crime rate in Connecticut before and after this measure was implemented showed a positive effect on gun violence.⁴² The study was focused on reducing violent crime and did show a

³⁸ Krogstad, "Gun Homicides.

³⁹ Ibid.

⁴⁰ "Do I Need a License To Buy and Sell Firearms?," ATF, January 2016, <https://www.atf.gov/file/100871/download>.

⁴¹ Daniel W. Webster and Jon S Vernick, *Reducing Gun Violence in America: Informing Policy With Evidence and Analysis* (Baltimore: Johns Hopkins University Press, 2013), 35.

⁴² Ibid.

corresponding decrease after the information input to the NICS was expanded. Though, at the same time overall suicide rates in the state were going up, and Connecticut does not provide specific details of suicide data, so it is impossible to see the correlation to suicide by firearm. Nevertheless, the study suggests that improvements to the flow of information on individuals with potentially dangerous mental health issues to NICS does stop the wrong kind people from getting guns.

This study also points to the fact that people who are seeking to take their own life do not seek out the guy in a dark alley to buy a gun. Likewise, they do not buy a gun from a friend, because they would likely know their intentions for the weapon. People who legally purchase a handgun are 57 percent more likely to commit suicide in the first week they own the gun.⁴³ Again, this statistic points to the fact that establishing means to stop people from acquiring guns at the point of sale by means of a background check will help to reduce suicides and save lives. On either side of the gun debate, people can agree that reducing suicide would be a good thing. Similarly, efforts to expand the background check system have run into resistance, but adding mental health information is much more likely to be sufficiently widely accepted to actually get passed into law. The middle ground on gun violence will be the things that can actually reduce deaths, but also do not step on the toes of people on either of the extreme ends of the debate.

⁴³ Hemenway, *Private Guns*, 41.

II. GARBAGE IN, GARBAGE OUT

There has been another mass shooting in the United States. A man named Omar Mateen walked into a night club and killed 50 people, using guns that he had recently bought legally.⁴⁴ Much of the debate about this incident will be about the gunman's motives. Was this act terrorism? Or a hate crime? And, most ubiquitously, what made him snap? These questions are outside of the scope of this thesis, but the threshold question forms the heart of this chapter: How was a guy who had been investigated by the FBI three times for potential links to ISIS able to buy guns legally?⁴⁵ Furthermore, if he did buy guns, why was no one watching him afterward?

Gun rights activists will cite this incident as another example of how background checks do not work; supporters of gun control will inevitably seek to ban the types of weapons that the gunman used. There is, however, a better solution. This chapter explains how Mateen was able to buy guns, how the NICS works, and some of the problems besetting the current system. These issues range from the discrepancies between federal and state laws regarding mental health and gun ownership, to the discrepancies in terms of reporting requirements, and whether federal or state systems are used to conduct background checks.

A. IMPRESSING JODIE FOSTER

At 2:25 p.m. on March 30, 1981, President Reagan, White House Press Secretary James Brady, a local policeman, and a Secret Service agent were all shot by a man named John Hinckley.⁴⁶ The would-be assassin described his

⁴⁴ Ashley Fantz, Elliott C. McLaughlin and Tim Hume, "Orlando Shooting: What Motivated a Killer?," CNN, June 13, 2016, <http://www.cnn.com/2016/06/13/us/orlando-nightclub-shooting/index.html>.

⁴⁵ Ibid.

⁴⁶ "Attempted Assassination of President Ronald Reagan," FBI, May 1, 1981, <https://vault.fbi.gov/president-ronald-reagan-assassination-attempt/president-ronald-reagan-assassination-attempt-part-01-of-04/view>.

efforts to kill the President as an “unprecedented demonstration of love” for actress Jodie Foster with whom he was fascinated, clear evidence of his deranged mental state.⁴⁷ He was later found not guilty of the various charges against him by reason of insanity and has spent most of his life in a mental institution.⁴⁸ Now 61 years old, Hinckley was recently released, but is still required to continue psychiatric treatment, and is never allowed to interact with a government official.⁴⁹

President Reagan fully recovered from his wounds but his press secretary was not so fortunate. Brady’s gunshot wound left him partially paralyzed and in a wheel chair for the rest of his life.⁵⁰ His post-shooting disability, however, did not stop him from working. He and his wife, Sarah, started a lobbying group called the Brady Campaign to Prevent Gun Violence, and in 1993 President Clinton signed The Brady Handgun Violence Prevention Act into law.⁵¹ This law mandated the creation of the NICS within five years, and set a five day waiting period for handgun purchases which was made to expire once the NICS was up and running.⁵² James Brady passed away in 2014 due to complications from the brain damage he suffered as a result of the shooting, but he laid the groundwork to help stop the next John Hinckley from getting his hands on a gun.

47 “John Hinckley Jr. Biography,” Biography, last accessed June 14, 2016, <http://www.biography.com/people/john-hinckley-jr-17171774#related-video-gallery>.

48 Ibid.

49 Elizabeth Chuck, “John Hinckley Freed From Mental Hospital 35 Years After Reagan Assassination Attempt,” NBC News, September 10, 2016, <http://www.nbcnews.com/news/us-news/john-hinckley-freed-mental-hospital-35-years-after-reagan-assassination-n646076>.

50 “John Hinckley Jr.,” Biography.

51 “About Jim Brady,” Brady Campaign to Prevent Gun Violence, last accessed June 14, 2016, <http://www.bradiycampaign.org/jim-and-sarah-brady>.

52 Congressional Research Service, “H.R.1025 - Brady Handgun Violence Prevention Act,” November 22, 1993, <https://www.congress.gov/bill/103rd-congress/house-bill/1025>.

B. CLARKSBURG TO CHARLESTON

The NICS is operated out of the FBI's Criminal Justice Information Services Division, or CJIS, in Clarksburg, West Virginia.⁵³ Federal Firearms Licensees, or FFLs, who are selling a gun in the 37 states that do not administer their own background check system contact the NICS Section at CJIS by phone or internet to process ATF Form 4473. This form is required for all gun purchases from licensed dealers and the data in the form is used to check against the databases of people who are categorically prohibited from owning firearms. According to the FBI's 2015 data, dealers that used the electronic method to submit ATF Form 4473 got the results of the background check in just over 100 seconds.⁵⁴

If nothing comes up in the computer's check of the databases of prohibited persons it will advise the dealer to proceed with the transaction by simply saying approved. If it matches any information at all in the databases it will tell the dealer that transaction is either denied or delayed, but does not provide the firearm dealer with any additional information as to why. If the transaction is denied the dealer is unable to sell a firearm to that individual under any circumstances. If it is delayed, then the FBI has three business days to provide the FFL with a proceed or deny decision on the transaction in question with a message that says, the transaction "will be delayed while the NICS continues its research. If you do not receive a final response from us, the Brady Law does not prohibit the transfer of the firearm on day/date."⁵⁵

In other words, after the three business days have passed, the FFL can legally sell the gun to the individual trying to buy it even if he or she turns out to be prohibited from firearm ownership. Sadly, this exact scenario played out in South Carolina last year. Dylann Roof killed nine people in a church with a gun

⁵³ "National Instant Criminal Background Check System," FBI, last accessed June 13, 2016, <https://www.fbi.gov/about-us/cjis/nics/general-information/fact-sheet>.

⁵⁴ Ibid.

⁵⁵ Ibid.

that he acquired in this manner.⁵⁶ Roof had a prior arrest record for felony drug possession, and as such should have been barred from firearm ownership. However, because of errors in the filing of the police report, Roof was able to return to the gun store after 72 hours and buy the gun.⁵⁷

Buying a gun in this manner did not make his ownership legal; as a convicted felon, he had to lie on ATF Form 4473, but it did make the sale of the firearm legal for the FFL. With the current legal framework, the only thing to stop such a transaction is honesty by the buyer on ATF Form 4473. This sort of breakdown in the system does not happen often, but it also is not the only area where the system fails.

C. MENTAL HEALTH RECORDS

The NICS database itself is made up of three parts. The first is the Interstate Identification Index, or III. The III is the primary way that criminal-background information is shared between the federal government and the states. The FBI actively manages this database, which includes all persons indicted for, or convicted of felonies, and of misdemeanor domestic assault.⁵⁸ The second is the National Crime Information Center, or NCIC. This database is automated and includes information on fugitives and people that are subject to restraining orders.⁵⁹ The final part is the NICS index, which contains all other records for prohibiting firearm sales.

The first two parts are well established and are accessible by most law enforcement personnel throughout the country in order to add records. This broad ability to input data is why the Dylann Roof situation happens so infrequently.

⁵⁶ Michael S. Schmidt, "Background Check Flaw Let Dylann Roof Buy Gun, F.B.I. Says," *New York Times*, July 10, 2015, http://www.nytimes.com/2015/07/11/us/background-check-flaw-let-dylann-roof-buy-gun-fbi-says.html?_r=0.

⁵⁷ *Ibid.*

⁵⁸ "GUN CONTROL: Sharing Promising Practices and Assessing Incentives Could Better Position Justice to Assist States in Providing Records for Background Checks," United States Government Accountability Office, July 2012, <http://www.gao.gov/assets/600/592452.pdf>.

⁵⁹ *Ibid.*

The third component is where the problem lies. There is not one unified set of data for people's mental health records.

People who receive treatment for mental health issues may go through several doctors in both private and publicly funded institutions. These institutions have different reporting standards under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule.⁶⁰ This rule, among other things, protects the treatment information of a mental health patient from being shared with anyone but their doctor, and only under certain circumstances with law enforcement.⁶¹ This rule keeps a significant number of mental health records from reaching the NICS system. To screen better for people with mental health issues, some states have passed laws that create in-state databases to conduct their own background checks for the mental health disqualification.⁶²

The problem with this set up is that the information states have is not always in the NICS, and if the person who should be barred from buying a gun in one state moves to another state, he or she could purchase a gun there. Many of the states that have provided very few mental health records to the NICS do so because they have a legitimate worry that they could be sued for releasing confidential mental health information, but this hesitancy leaves a large number of potentially dangerous individuals with the ability to buy guns.

D. VIRGINIA TECH

A 23-year-old English major at Virginia Tech is chaining and locking the doors of one of the buildings on campus. He has two handguns that he bought legally, and he also has a long history of mental illness.⁶³ Until recently, the 32

60 Leon Rodriguez, "HIPAA Privacy Rule and the National Instant Criminal Background Check System," Office of the Federal Register, April 16, 2013, <https://www.federalregister.gov/articles/2013/04/23/2013-09602/hipaa-privacy-rule-and-the-national-instant-criminal-background-check-system-nics#h-9>.

61 Ibid.

62 Ibid.

63 "Massacre at Virginia Tech Leaves 32 Dead," History, 2011, <http://www.history.com/this-day-in-history/massacre-at-virginia-tech-leaves-32-dead>.

people who were shot and killed at Virginia Tech on April 16, 2007, represented the worst mass shooting in United States history. The gunman had passed a background check twice, despite his long-documented struggles with mental illness. Not unlike Roof's arrest record, the Virginia Tech shooter's mental health record was never input into the NICS database. The difference between the two is that felony arrest records usually always make it into the NICS, but mental health records do not. After this tragic event unfolded, Congress passed the NICS Improvement Amendments Act, or NIAA, which incentivizes states to provide information to the NICS about individuals prohibited from owning guns out side of their arrest records.⁶⁴

In 2006, the year before the Virginia Tech shooting, there were only 298,571 records of persons that were prohibited from owning guns due to their mental health in the NICS.⁶⁵ In 2014 that number had grown to 3.7 million records, a huge improvement, but still far short of the estimated 13.6 million Americans living with serious mental illnesses.⁶⁶

Also troubling is the fact that twelve states made up the majority of the increase in mental health reporting to the NICS; the other 38 states contributed less than 10,000 additional records to the NICS.⁶⁷ According to the Bureau of Justice, in 2015 only 22 states took advantage of the federal grants available through the NIAA.⁶⁸ States turn down money from the federal government for a number of reasons. One of the biggest obstacles for states to comply with the NIAA standards is that it requires 90 percent of the states disqualifying records to

64 Rodriguez, "HIPAA Privacy Rule."

65 "National Instant Criminal Background Check System," FBI.

66 Ibid.; Ken Duckworth, "Mental Illness Facts and Numbers," NAMI, March 2013, http://www2.nami.org/factsheets/mentalillness_factsheet.pdf.

67 "National Instant Criminal Background Check System," FBI.

68 "The NICS Improvement Amendments Act of 2007," Bureau of Justice Statistics, October 15, 2016, <http://www.bjs.gov/index.cfm?ty=tp&tid=49#authorize>.

be reported to the NICS.⁶⁹ Because of the legal complexities outlined previously, it can be very hard to reach that level of reporting.

Another issue is that the funds that are granted through the NIAA have to be used for systems that stream line reporting to the NICS.⁷⁰ Because 20 different states administer their own background check systems to enforce firearm regulations that are more restrictive than federal law, they have little use for funds that can only go to improving the federal system. An added complication to the NIAA's grant structure is the relief of the mental health prohibitor. Before the NIAA, people "who had been adjudicated a mental defective, or who have been committed to a mental institution" had a life time ban on firearm ownership because they would be permanently be in this category of prohibited persons in the NICS.⁷¹ However, under the NIAA states must have a process in place to redress this ban on Second Amendment rights for individuals that fall under the mental health prohibitor in order to receive grant money.⁷² Getting some states to change their state firearm regulations to allow even the possibility of restoring firearm purchasing rights to people with prior mental illness is virtually impossible. As previously stated, only 22 states made all the changes recommend by the NIAA, so this act helps to close some gaps in the NICS, but it can only go so far because more than half of the states do not meet all its conditions.

⁶⁹ *The NICS Improvement Amendments Act of 2007.*

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid.

E. AFTER THE BRADY BILL

According to a 2013 Pew Research Center study, only 12 percent of Americans believe that gun violence has gone down since 1993.⁷³ However, gun homicides are down by more than half, and suicides are down as well, although not nearly as much.⁷⁴ Most tellingly is the rate of nonfatal gun crimes. This number better represents the total level of gun crime, because with modern medicine people do not die nearly as often from gunshot wounds and some of the decrease in homicide rate can be attributed to better medical practices.

In 1993, the same year the Brady bill was enacted, nonfatal firearm crime was 725.3 per 100,000 people, in 2014 it was down to 174.8.⁷⁵ A decrease of more than 75 percent! This figure is a huge win for proponents of background checks because they obviously work. One could say that other gun laws have helped to change these statistics as well, however, over the last 20 years other gun legislation is unlikely to have helped much. Researchers at Harvard found that after a high-profile mass shooting there is a 15-percent increase in the number of new state gun laws proposed, but proposals that actually become law are almost always to make guns easier to buy, rather than harder.⁷⁶ So as other gun laws have actually become less restrictive, background checks through the NICS have resulted in a major decrease in gun violence that mostly goes unnoticed.

F. BUYING A GUN IN THE SUNSHINE STATE

Much of the confusion regarding the effectiveness of background checks begins with the fact that most people do not understand how the process works. This misunderstanding is largely due to the fact that most people have never

⁷³ Jens Manuel Krogstad, "Gun homicides steady after decline in '90s; suicide rate edges up," Pew Research Center, October 21, 2015, <http://www.pewresearch.org/fact-tank/2015/10/21/gun-homicides-steady-after-decline-in-90s-suicide-rate-edges-up/>.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Neil Irwin, "After Mass Shootings, it's Often Easier to Buy a Gun," *New York Times*, June 14, 2016, <http://www.nytimes.com/2016/06/15/upshot/policy-changes-after-mass-shootings-tend-to-make-guns-easier-to-buy.html>.

tried to buy a gun. In the 1970s, more than 50 percent of U.S. households owned guns; today only about 32 percent of households have a firearm.⁷⁷ Americans who do own guns, on average, own twice as many guns today as people used to own.⁷⁸ Even they may not clearly understand the complexities of the system by which guns are sold in the United States.

To buy a gun in the United States, a person must fill out ATF Form 4473 per federal law—and then the next steps can vary widely from state to state.⁷⁹ In most states, the purchaser's information will be checked against the FBI's NICS. However, in a few states the information on this form is only checked against the NICS for handgun purchases, and 13 states, including Florida, operate their own form of a NICS program, which can, but does not have to, use the information in the FBI's NICS.⁸⁰ Figure 1 is a map of different states' NICS participation.

77 Christopher Ingraham, "The Average Gun Owner Now Owns 8 Guns—Double What it Used to be," *Washington Post*, October 21, 2015, <https://www.washingtonpost.com/news/wonk/wp/2015/10/21/the-average-gun-owner-now-owns-8-guns-double-what-it-used-to-be/>.

78 Ibid.

79 "National Instant Criminal Background Check System," FBI, last accessed June 13, 2016, <https://www.fbi.gov/about-us/cjis/nics/general-information/participation-map>.

80 Ibid.



NICS PARTICIPATION MAP

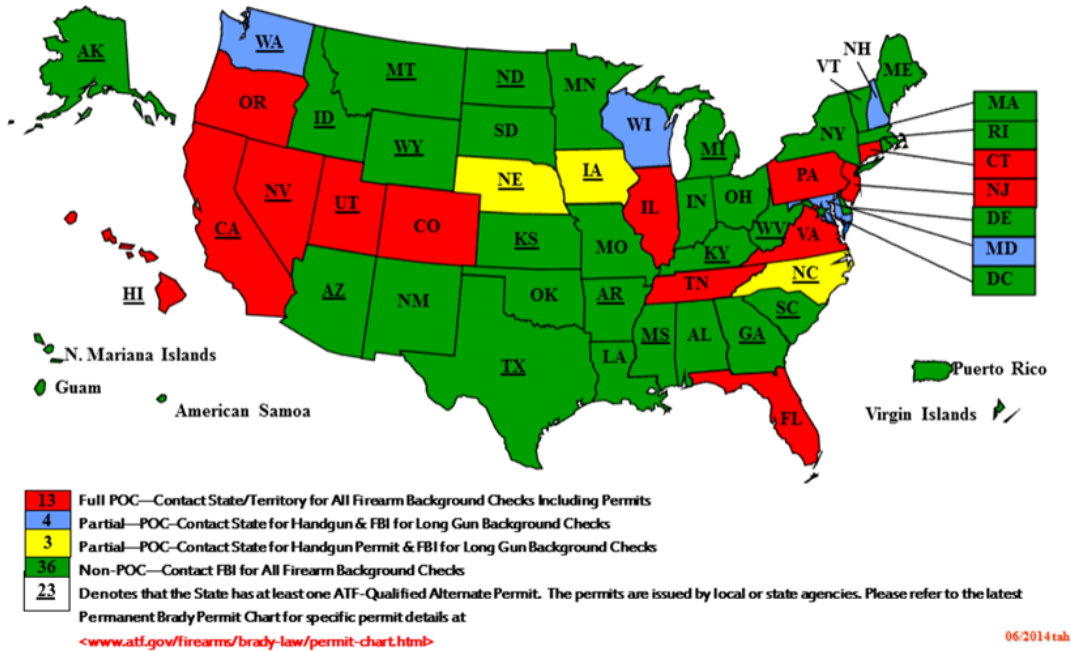


Figure 1. Map of Levels of NICS Participation⁸¹

The choice of a state like Florida not to participate in the NICS does not automatically mean that these states have lax gun laws. States that operate their own background check system usually do so to cast a wider net in order to catch more people who should not be able purchase guns. For example, the Tennessee Bureau of Investigation Instant Check System, or TICS, is used to identify stolen guns, and has helped to recover over 5,000 of them.⁸² They are able to do so because the TICS database catalogs specific firearm information to a much greater extent than the NICS, and is also a database of persons prohibited from firearm ownership.

⁸¹ Source: “National Instant Criminal Background Check System,” FBI

⁸² “TBI Instant Check System Statistical Summary,” Tennessee Bureau of Investigation, last accessed June 13, 2016, https://www.tn.gov/assets/entities/tbi/attachments/2015_TICS_Summary.pdf.

Similarly, the Florida Department of Law Enforcement, or FDLE, manages the state's background check system which includes some mental health records that the NICS does not.⁸³ Using a larger data base of prohibited persons bars more people with mental illness from buying guns in Florida in theory. However, anyone with a concealed carry permit in Florida is only subject to the NICS screening when buying a gun, and not the FDLE screening that contains more disqualifying mental health information.⁸⁴ So as an example, a person who holds a Florida concealed carry permit could be diagnosed with a mental illness that disqualifies him or her from buying a gun in Florida, but might still pass a background check because the particular illness does not meet the guidelines in federal law, or if the diagnosis came after the concealed carry permit was issued.

G. BACKGROUND CHECKS

Outside of a few high-profile cases that have slipped through the cracks, background checks have had measurable levels of success in reducing gun crime. However, their effectiveness is clearly limited by a few different factors. Most notable is the fact that it is possible to buy a gun without a background check in the United States. No matter how good the NICS is, it cannot screen people who do not have to use it. There are some gaps in information when applying state laws and restrictions to a database designed to screen for federal laws. Additionally, different reporting requirements in different states make gaps in effective screening more likely. Some states, in an effort to fill these breaks in coverage maintain their own NICS equivalent, but these systems do not communicate with other state's systems.

⁸³ "Background Checks in Florida," Law Center to Prevent Gun Violence, August 19, 2015, <http://smartgunlaws.org/background-checks-in-florida/>.

⁸⁴ Ibid.

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III. TAKING YOUR OWN LIFE

Americans do not want to talk about suicide, and they do not want to talk about mental illness. Therefore, it is exceedingly difficult for people who are having problems that might lead them to suicide to seek help for fear of being ostracized because of their struggles. Not seeking help is particularly troubling because a small intervention could go a long way. The majority of suicides are impulse decisions, and if there is even a small barrier to actually making a suicide attempt, it can make a significant difference. Research shows that this is especially true in the case of firearm suicides.⁸⁵

Figure 2 outlines just how much more common firearm suicides are, and how much more deadly they can be. This chart compares the percentage of all suicide attempts with the percentage of those attempts that are fatal.

⁸⁵ Kate Masters, "A Psychiatrist Debunks the Biggest Myths Surrounding Gun Suicides," The Trace, November 2, 2015, <https://www.thetrace.org/2015/11/gun-suicides-mental-illness-statistics/>.

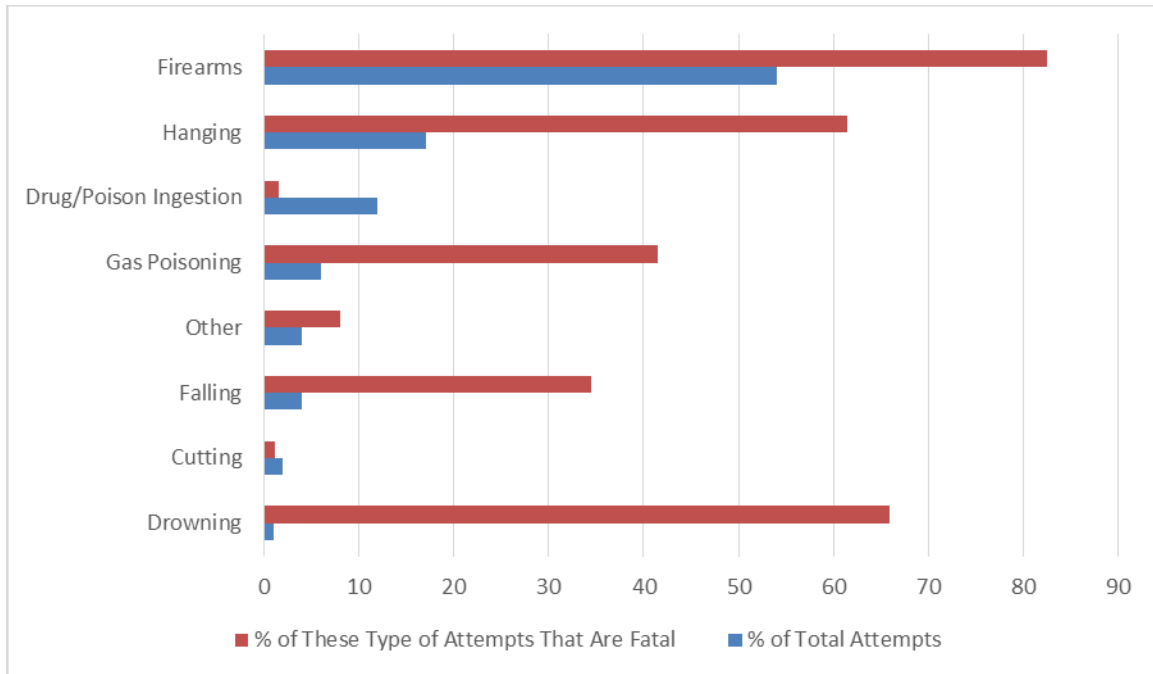


Figure 2. Suicide Attempts vs. Their Lethality⁸⁶

For example, drownings represent a very small percentage of suicide attempts, but they are often fatal. As Figure 2 shows, gun suicides are three times more common than hanging, the next most common means of suicide, and 21 percent more likely to result in death.⁸⁷ For these reasons alone, limiting firearm access to suicidal people is imperative—not only to reduce suicides, but to reduce gun violence as a whole.

Unfortunately, this proposition is easier said than done. The challenge starts with the way that Americans view suicide. Suicidal people are often looked upon as being unable to cope with the stresses of everyday life that normal people are dealing with just fine. There is so much shame about suicide in American culture that many families try to have the circumstances of a loved one’s death recorded as an accidental death, or unknown cause of death rather

⁸⁶ Adapted from Rebecca S. Spicer and Ted R. Miller, “Suicide Acts in 8 States: Incidence and Case Fatality Rates by Demographics and Method,” *American Journal of Public Health* 90, no. 12 (2000): 1887–88.

⁸⁷ *Ibid.*

than admit someone in their family committed suicide.⁸⁸ This negative stigma is compounded by the undesirable perceptions that surround individuals with mental health problems, because almost all suicide victims have suffered from some degree of mental illness.⁸⁹

The present chapter focuses on the mental health factors that contribute to suicide, as well as the problems with the effectiveness of mental health data in the NICS. The system currently in place could work, but there are significant gaps in coverage that must be addressed before it could to reduce this vector of gun violence.

A. SUICIDE AND MENTAL ILLNESS

What is it that makes people want to take their own life? A host of factors can contribute to an individual's propensity to commit suicide. People with a family history of suicide are at a higher risk for suicide. Studies have shown that these individuals often have reduced levels of serotonin in their brains which, much like alcohol, can inhibit a person's ability to resist suicidal thoughts.⁹⁰ A prior suicide attempt is also a strongly correlated predictor of a future suicide attempt.⁹¹ However, the most common is depression. Various studies put the number of individuals that attempt suicide with depression between 65 percent and 90 percent, but they all agree that depression is the most common driver for suicidal behavior.⁹² Research by the World Health Organization (WHO) showed in their studies that 80 percent of people who committed suicide had at least some form of depression symptoms.⁹³

88 Masters, *Psychiatrist Debunks the Biggest Myths*.

89 Ibid.

90 Etienne G. Krug, ed. "World Report On Violence and Health," World Health Organization, 2002, http://apps.who.int/iris/bitstream/10665/42495/1/9241545615_eng.pdf, 194.

91 Ibid.

92 Ibid., 192.

93 Ibid.

Depression is difficult to treat, because those suffering from it may not display obvious signs of distress.⁹⁴ Men are especially effective at keeping their depression to themselves, so unless they tell someone, their problems will often go untreated.⁹⁵ Moreover, depression is often accompanied by, or is the result of, another physical or mental ailment.⁹⁶ It is, thus, even harder to diagnose and then treat individuals who are asymptomatic, because the clinical focus will be on whatever else is ailing that person—the symptoms or para-symptoms, rather than the cause. This situation is especially common in elderly individuals. A Hong Kong study found that 80 percent of people who took their own life that were over 65 also had been diagnosed with a serious physical ailment.⁹⁷

Fortunately, depression is highly treatable, and even the most extreme instances can be treated effectively.⁹⁸ Antidepressants and psychotherapy have been highly effective in the mitigation of depression, and consequently rates of suicide among affected individuals.⁹⁹ It is important to note that the US Food and Drug Administration (FDA) has warned that persons under 25 are at a very high risk of suicide when starting or changing doses of antidepressants.¹⁰⁰ People in this age group have one of the highest statistical rates of suicide, because this is the age when people often experience their first significant psychological stressor when they go off to college, or start their careers.¹⁰¹ Similarly, increased rates of severe depression have been seen across all age groups when an individual on antidepressants suddenly stops taking their medication.¹⁰² This situation happens because, as people feel they have gotten over their depression, they no

94 Krug, *World Report on Violence and Health*, 192.

95 Ibid.

96 The National Institute of Mental Health, “Depression,” National Institute of Mental Health, October, 2016, <https://www.nimh.nih.gov/health/topics/depression/index.shtml>.

97 Krug, *World Report on Violence and Health*, 194.

98 The National Institute of Mental Health, “Depression.”

99 Krug, *World Report on Violence and Health*, 192.

100 The National Institute of Mental Health, “Depression.”

101 Webster, *Reducing Gun Violence in America*, 49.

102 The National Institute of Mental Health, “Depression.”

longer need their medication. But an abrupt stop causes a significant chemical imbalance that can lead to suicidal thoughts or tendencies.

The story of James Holmes is also the story of the other psychological condition most associated with suicide: schizophrenia. Holmes' violent behavior against others is not common for people suffering from schizophrenia, but what is very common among people diagnosed with this disease is suicide. The WHO estimates that as many as 12 percent of people diagnosed with schizophrenia will successfully take their own lives.¹⁰³ On average in the UK, people with schizophrenia are responsible for less than 5 percent of murders, but they commit suicide so often that their untimely deaths outpace the general population's traffic fatalities.¹⁰⁴ Additionally, the WHO has identified that people who were well adjusted in life that then develop schizophrenia are much more likely to commit suicide.¹⁰⁵

Unlike depression, those suffering from schizophrenia will almost always exhibit signs of their disease. Delusions and hallucinations are the most common characterizations of those suffering from this disease.¹⁰⁶ Violent behavior in depressed individuals often depends on a wide variety of factors that in conjunction lead to violence. In individuals suffering with schizophrenia risk factors for violent behavior, including self-harm, are much more clear cut. Schizophrenics who have had a history of violent behavior will almost always revert back to violence; alcohol and drug abuse increases their tendency toward violent behavior 15-fold.¹⁰⁷ Those schizophrenics who have been on psychiatric medicine and then suddenly stop taking it are highly prone to violent behavior.¹⁰⁸

103 Krug, *World Report on Violence and Health*, 193.

104 "Schizophrenia and Dangerous Behaviour," *Living with Schizophrenia*, 2016, <https://www.livingwithschizophreniauk.org/advice-sheets/schizophrenia-and-dangerous-behaviour/>.

105 Krug, *World Report on Violence and Health*, 193.

106 *Ibid.*

107 "Schizophrenia and Dangerous Behaviour," *Living with Schizophrenia*.

108 Krug, *World Report on Violence and Health*, 193.

Outside of these risk factors, schizophrenics may display numerous forms of strange behavior, but not usually dangerous behavior. Because the potential risk factors are well known it should be easy to keep schizophrenics away from these potential triggers to violent behavior. However, in the UK alone, almost 300,000 people have been diagnosed with schizophrenia, and no mental-health program anywhere in the world could watch over that many people.¹⁰⁹ So the burden to stay away from things that could elicit violent behavior falls primarily on the individual with schizophrenia, who through no fault of his or her own may not be able to do so.

B. GUNS AND SELF-DIRECTED VIOLENCE

Outside of a person's mental health, several other factors strongly influence a person's likelihood to commit suicide. Alcohol abuse is a contributing factor in at least 25 percent of suicides in the United States, according to the WHO.¹¹⁰ As alcohol reduces a person's inhibitions, it also reduces his or her resistance to self-harm. As mentioned before, there are some people with an unbreakable desire to kill themselves, so a prior unsuccessful attempt will inevitably be followed up with another. However, one of the most statistically relevant suicide factors outside of mental illness is access to a firearm.

For example, research showed that when Israeli soldiers were no longer allowed to keep their service weapons at home on the weekends, their rate of suicide on the weekends went down by 40 percent.¹¹¹ The decline came in comparison to their rates of suicide during the week, when they still had access to the weapons, pointing directly to the level of firearm access that they had as a predictor of suicidal behavior.¹¹²

109 "Schizophrenia and Dangerous Behaviour," *Living with Schizophrenia*.

110 Krug, *World Report on Violence and Health*, 193.

111 Justin Thomas Briggs, and Alexander Tabarrok, "Firearms and Suicides in U.S. States," *International Review of Law and Economics* 37, (2014): 181.

112 *Ibid.*, 181.

In another study that controlled for variables common to suicide like alcohol abuse and prior mental illness, a suicide was still five times more likely if there was a gun in the home.¹¹³ The WHO has found that the global trend in suicide is to use the most readily available means. For example, poisoning is the most common method of suicide in China because pesticides and herbicides that can be deadly are poorly regulated, but guns are hard to come by.¹¹⁴

A study of gunshot suicide survivors found that more than half of them had experienced suicidal thoughts for less than one day prior to their attempt.¹¹⁵ Another study found that one in four suicide survivors only seriously considered killing themselves in the five minutes before they tried to take their own life.¹¹⁶ Obviously, if a gun is not accessible during that five-minute period, or during the first day that someone contemplates suicide their odds of survival are much better, even if they eventually try some other method. It is important to note that there is no correlation between non-firearm suicides and gun ownership levels.¹¹⁷ So total suicide attempts are not affected by the presence of guns, but the number of successful attempts is drastically increased by the presence of firearms.

C. MENTAL HEALTH IN AMERICA

About 18 percent of adults in the United States suffer from some form of mental illness, and about 4 percent have a serious mental illness that limits their ability to function normally in society.¹¹⁸ Treatments for mental illness have been getting much better, but access to treatment is getting harder. The number of psychiatric hospitals and dedicated psychiatric units in regular hospitals has

¹¹³ Hemenway, *Private Guns*, 40.

¹¹⁴ Krug, *World Report on Violence and Health*, 196.

¹¹⁵ Hemenway, *Private Guns*, 38.

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*, 43.

¹¹⁸ Victoria Bekiempis, "Nearly 1 in 5 Americans Suffers From Mental Illness Each Year," *Newsweek*, February 28, 2014, <http://www.newsweek.com/nearly-1-5-americans-suffer-mental-illness-each-year-230608>.

fallen by over 1,000 locations since 1995.¹¹⁹ Today, 55 percent of the counties in the United States do not have a single licensed psychiatrist or psychologist, and only 27 percent of hospitals offer inpatient psychiatric care.¹²⁰

With the lack of treatment facilities, the most common way to treat people with mental illness has become through prescription medication. A 2009 study found that 49 percent of people who did receive treatment for their mental illness got prescription medicines only, and an additional 32 percent got a prescription and some outpatient care.¹²¹ In the same study, only 4 percent of individuals that had been diagnosed with a mental illness received the combination of prescriptions, inpatient, and outpatient care that psychiatrists recommend.¹²² The reason for the lack of access to quality mental health treatment comes down to money. Between 2009 and 2012, the American Hospital Association notes, spending on mental health care was down by almost \$2 billion.¹²³ Figure 3 shows reasons that untreated individuals gave for not receiving mental health services.

119 American Hospital Association, "Bringing Behavioral Health into the Care Continuum: Opportunities to Improve Quality, Costs and Outcomes," Trendwatch, January, 2012, <http://www.aha.org/research/reports/tw/12jan-tw-behavhealth.pdf>, 4.

120 Ibid.

121 Ibid., 5.

122 Ibid.

123 Ibid., 4.

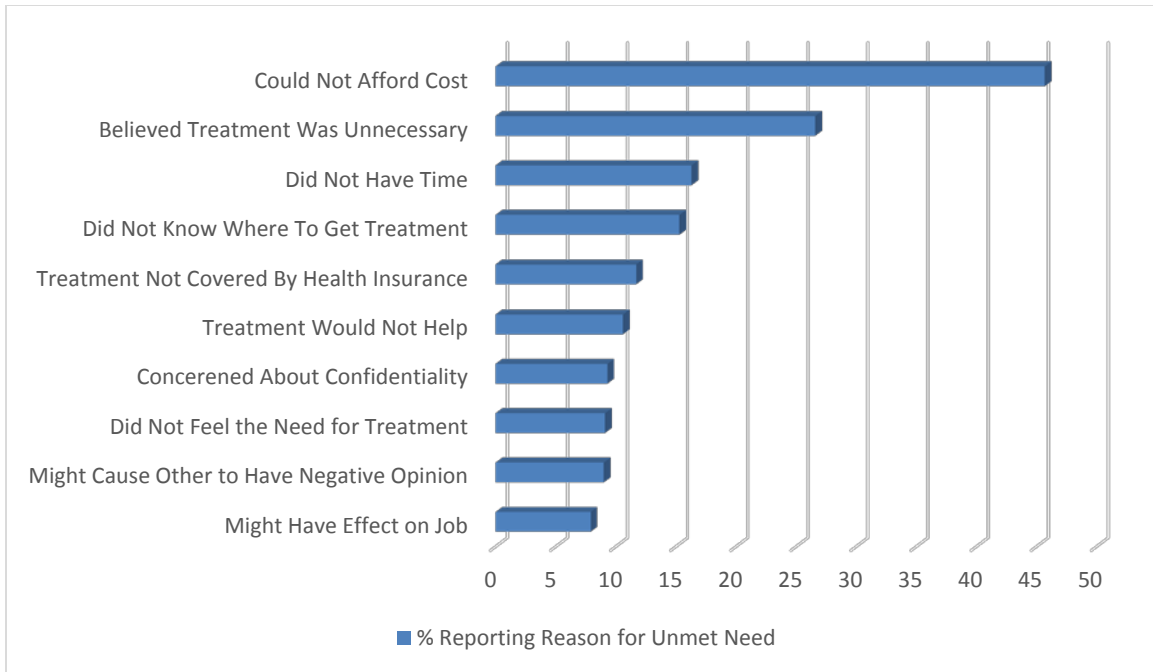


Figure 3. Stated Reasons for Not Receiving Mental Health Care¹²⁴

As government funding has gone down, the cost of health care has largely shifted to the people receiving it—even though they often cannot afford it. Individuals with mental health illness typically have lower socioeconomic status and earn about \$16,000 less per year than the average American does.¹²⁵ The inability to pay puts the people who need treatment the most at a huge disadvantage, and if people do not receive treatment, then mental health professionals cannot report potentially dangerous individuals to the NICS. Furthermore, if all the treatment that people get is being handed a prescription of psychiatric medication it is highly unlikely that they meet the criteria to have disqualifying information sent to the NICS. As previously mentioned, the reporting of mental health records has greatly increased for some states, but the low level of treatment that most people are getting is going to preclude them from having a record that could be input into the NICS.

¹²⁴ Adapted from American Hospital Association, “Bringing Behavioral Health into the Care Continuum,” 4.

¹²⁵ Ibid., 2.

D. ADJUDICATED AS MENTALLY DEFECTIVE

One of the largest confusions about mental health records in the NICS is what it even means to be mentally defective. In federal law the term “adjudicated as a mental defective” means that “if a court, board, commission, or other lawful authority has determined that he or she, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease: is a danger to himself, herself, or others; that he, or she, lacks the mental capacity to contract or manage his or her own affairs; and this explicitly includes a finding of not guilty by reason of insanity or incompetence to stand trial.”¹²⁶ The other half of the mental health prohibitor in the NICS, being involuntary committed to a mental institution, is simple enough. A legal state authority says that because of the potential danger an individual poses to himself or others, he must be formally committed to a mental institution for a period of time not determined by that individual.

These definitions, although thorough, do not include everyone who should be included under the mental health prohibitor. In most cases the term *adjudicated as mental defective* is applied in a court of law, and not in a mental health institution. Obviously, not all people with mental health issues end up in the criminal justice system, and the best source of information is the mental health professionals that are dealing with the individuals that should not own guns. Under the NIAA, each state has an information repository that is applied to the NICS Index, so there is a means of submitting individuals who should not have access to a gun, but have not been in the criminal justice system.¹²⁷

Unfortunately, no two states are the same in what information they do, and do not allow to be reported to the NICS Index. The Virginia Tech shooter had been ordered into outpatient mental health treatment, but was not denied the ability to buy firearms. Because under Virginia state law, the only persons

¹²⁶ “Federal Law on Mental Health Reporting,” Law Center to Prevent Gun Violence, 2016, <http://smartgunlaws.org/gun-laws/federal-law/sales-transfers/mental-health-reporting/>.

¹²⁷ Rodriguez, “HIPAA Privacy Rule.”

reported to the NICS are those who were involuntary committed to inpatient psychiatric care, or who were deemed to be mentally incapacitated.¹²⁸ Because the shooter's court-ordered care was outpatient, it was never reported to the NICS, and he was legally able to buy guns.

There is a legal debate on whether or not court ordered outpatient care specifically qualifies as committed to a mental institution. Most legal scholars are in agreement that it should, but many state laws do not make this distinction clear and fail to report these cases to the NICS.¹²⁹ To help fix some of the issues with state reporting the HIPAA Privacy Rule was amended in February, 2016 to make clear that if HIPAA covered state institutions only submit the minimum information required to make a record in the NICS index, they will not be in violation of the HIPAA Privacy Rule.¹³⁰ Doing so ensures the privacy of individuals' mental health treatment information, but ensures that records of potentially dangerous individuals make it into the NICS. The Department of Health and Human Services acknowledges that in some instances the wording of state laws will need to be changed in order to comply with the intent of this change, but it should represent a move in the right direction for state records to be reported to the NICS.

Additionally, there is significant pushback from mental-health advocacy groups who feel that expanded definitions of mentally ill individuals could dissuade them from seeking the care that they need.¹³¹ Figure 3 shows that almost 10 percent of individuals who did not get treatment for their mental illness did so because they were concerned about what other's opinions on mental illness were. The Association for Psychological Science has pointed to the common misrepresentation in the media that mental illness is linked to violent

128 Michael Luo, "Cho's Mental Illness Should Have Blocked Gun Sale," *New York Times*, April 20, 2007, http://www.nytimes.com/2007/04/20/us/20cnd-guns.html?_r=0.

129 Ibid.

130 Rodriguez, "HIPAA Privacy Rule."

131 Jake Tapper and Avery Miller, "'Mentally Ill' But Still Able to Buy a Gun," ABC News, April 19, 2007, <http://abcnews.go.com/WNT/VATech/story?id=3059185&page=1>.

behavior, as the largest problem in getting funding for research.¹³² People do not associate cancer patients with shooting up schools, so when they donate money to medical research it is rarely for mental health research. Insurance companies do not cover mental health the same way that they cover physical injuries, even though many mental illnesses can be cured just like physical ailments.¹³³ Additionally, mental health treatment is the lowest priority in most medical training programs, so even general practice doctors unknowingly advance stigmas about those with mental disabilities.¹³⁴ Because these negative stigmas are so strong there is a dramatic increase in social isolation in people who think they might have a mental illness.¹³⁵

So, if people who need treatment wall themselves off to avoid the negative stigmas of mental health issues, they may be putting themselves in a situation that exacerbates their symptoms. If there is a campaign to identify more individuals with mental health problems, there could be a corresponding decline in the number of people who seek treatment. Reversing stereotypes for those suffering from mental illness is a complex challenge, but programs to do so have shown to be effective in getting individuals to disclose problems with their mental health and seek treatment.¹³⁶ Seeking out treatment is an important piece of the puzzle, but it can run counter to the short-term goal of taking guns away from those most likely to harm themselves with guns.

What is most problematic, in terms of gun violence, is the fact that the majority of people who suffer from depression or schizophrenia do not meet federal standards for disqualification from firearm purchases. These individuals

132 Patrick Corrigan, "Stigma as a Barrier to Mental Health Care," The Association for Psychological Science, September 4, 2014, <http://www.psychologicalscience.org/news/releases/stigma-as-a-barrier-to-mental-health-care.html>.

133 Ibid.

134 Graham C.L. Davey, "Mental Health & Stigma," Psychology Today, August 20, 2013, <https://www.psychologytoday.com/blog/why-we-worry/201308/mental-health-stigma>.

135 Ibid.

136 Ibid.

also slip through the cracks in state laws that should be helping to fill out the NICS Index. Changes to the HIPAA Privacy Rule should help to improve the data in the NICS, but amending state laws may take considerable time. In the meantime, the majority of the people who are at the highest risk for committing suicide are not prohibited from legally buying firearms.

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IV. GUNS DOWN UNDER

When gun control is discussed, Australia is often brought up as a successful example of how to implement regulations that reduce gun violence. This chapter examines the history of guns in Australia and the regulations that Australians have used to curb gun violence in their country.

A. TASMANIAN DEVIL

Port Arthur is a popular tourist destination on the island of Tasmania, south of Melbourne. It is also home to the worst mass shooting in Australian history. On April 29, 1996, a 28-year-old man with long blond hair was eating lunch at a popular tourist restaurant in Port Arthur's historic penal colony.¹³⁷ His appearance fit right in with the surfer ambiance of the area, but the rifle in his bag did not. After he finished his lunch, he randomly started shooting anyone he saw and then cornered a few people inside a small building, which he then lit on fire with himself inside.¹³⁸ Police pulled his badly burned body from the building alive, but 35 innocent people were not so lucky.¹³⁹

The shooter, Martin Bryant, bought his guns from a local dealer, but he never should have had access to a weapon of any kind. He suffered from severe learning disabilities that stemmed from autism and was unable to even read or write.¹⁴⁰ A clinical psychiatrist diagnosed him as schizophrenic in 1984 and told his parents that his future was very bleak.¹⁴¹ The specialist noted that effective psychotherapy was not possible due to his limited mental capacity, said to be

¹³⁷ Matthew Grimson, "Port Arthur Massacre: The Shooting Spree That Changed Australia's Gun Laws," NBC News, April 28, 2016, <http://www.nbcnews.com/news/world/port-arthur-massacre-shooting-spreed-changed-australia-gun-laws-n396476>

¹³⁸ Ibid.

¹³⁹ Ibid.

¹⁴⁰ Robert Wainwright and Paola Totaro, "A dangerous Mind: What Turned Martin Bryant Into a Mass Murderer?," *Sydney Morning Herald*, April 27, 2009, <http://www.smh.com.au/national/a-dangerous-mind-what-turned-martin-bryant-into-a-mass-murderer-20090426-ajk4.html>.

¹⁴¹ Ibid.

about the same as an 11 year old, and he would require constant supervision just to function in society.¹⁴² This supervision came from his father, until 1993, when the elder Bryant, after years of struggling with his troubled son, took his own life.¹⁴³

Martin was now alone, unsupervised, and thinking about violence. An advertisement in the local paper for a sale on semi-automatic rifles got Martin into a gun store.¹⁴⁴ He expected to be turned away because he did not possess a firearms license for obvious reasons.¹⁴⁵ However, because he had cash on hand, the store owner went ahead and sold him the guns that he would use for the attack that changed firearm regulation in Australia forever.¹⁴⁶

B. THE NATIONAL FIREARMS AGREEMENT

After the Port Arthur incident, the Australian Police Minister's Council met to determine a new set of firearms regulations to prevent this sort of episode from happening again.¹⁴⁷ What it came up with was called the National Firearms Agreement, or NFA. Within 12 months of the shooting, this legal framework had been adopted in every Australian state and territory.¹⁴⁸ The NFA created outright bans on several types of firearms, and changed the standards for obtaining a firearms license in Australia. Individuals who want to get a firearm license under the NFA are required to show legitimate need or purpose to own a gun, have a

¹⁴² Grimson, "Port Arthur Massacre."

¹⁴³ Wainwright, "Dangerous Mind."

¹⁴⁴ Liz Burke, "Martin Bryant: 'If (Guns) Weren't Advertised, It Wouldn't Have Happened'," News.com.au, March 14, 2016, <http://www.news.com.au/national/crime/martin-bryant-if-guns-werent-advertised-it-wouldnt-have-happened/news-story/be31e37a4c7e48584406c59000f23485>.

¹⁴⁵ Ibid.

¹⁴⁶ Ibid.

¹⁴⁷ Jens Ludwig and Philip J. Cook, ed., *Evaluating Gun Policy: Effects on Crime and Violence* (Washington, DC: Brookings Institution Press, 2003), 128-29.

¹⁴⁸ Ibid, 129.

safe means of firearm storage, and undergo safety training specific to the type of license they were applying for.¹⁴⁹

These licenses are broken down into categories that put even further restrictions on firearm ownership. For example, the License Category C, which is required for semi-automatic rimfire rifles and pump-action shotguns, limits magazine capacity and requires that the licensee show an occupational requirement for owning the gun.¹⁵⁰ Each of these license categories must be applied for separately, and each has a 28-day waiting period before a gun purchase can be made under that license.¹⁵¹

C. THE BUYBACK

Additionally, the NFA had a requirement that a gun buyback program would be implemented and completed before the end of 1997. In order to reduce the number of guns in circulation that had been categorically prohibited under the NFA, the government offered to buy them back. This measure allowed Australians to turn in weapons that were illegal both before and after the NFA, and to turn them in without punishment.¹⁵² A committee was established to determine the fair market price for each type of gun, and individuals turning them in were paid on average about \$350 US dollars per firearm.¹⁵³ In all, the program cost well in excess \$200 million US dollars.¹⁵⁴ To pay for the gun buyback program, health insurance premiums were raised by 0.2 percent.¹⁵⁵

¹⁴⁹ Ludwig, *Evaluating Gun Policy*, 129.

¹⁵⁰ "Special Firearms Meeting Resolutions," Australian Police Minister's Council, May 10, 1996, <https://www.ag.gov.au/CrimeAndCorruption/Firearms/Documents/1996%20National%20Firearms%20Agreement.pdf>, 7.

¹⁵¹ *Ibid.*, 6.

¹⁵² Ludwig, *Evaluating Gun Policy*, 130.

¹⁵³ *Ibid.*, U.S. dollar amount based on 2002 exchange rate.

¹⁵⁴ *Ibid.*

¹⁵⁵ *Ibid.*

Still, the buyback program collected almost 650,000 firearms. As in the United States, the exact number of guns in circulation in Australia at the time of the buyback was not known. However, estimates by Gun Control Australia and Newspoll put the number of privately held firearms in Australia at about 4 million at the time of the buyback, so the total number of guns may have been reduced by as much as 16 percent.¹⁵⁶ Consequently, data on the buyback's levels of success may have some variance, but these studies provide a good estimate on which to base further findings.

Compliance with the buyback also varied widely depending on the state. In Tasmania, where the Port Arthur shooting took place, an estimated 90 percent of prohibited weapons were turned in, but in New South Wales fewer than 50 percent of prohibited weapons were handed in based on surveys of individuals who reported being gun owners.¹⁵⁷ The Australian Shooter's Lobby is the commonly used title for a multitude of pro-gun groups in Australia, and similarly to the National Rifle Association in the United States, they have much more political power in mostly rural areas like New South Wales.¹⁵⁸ This political influence helps to explain that state's low level of compliance with the NFA buyback.¹⁵⁹ Throughout the rural areas of the country the NFA was very unpopular because many gun owners felt that they were being punished for the actions of one very disturbed individual and one irresponsible gun dealer.¹⁶⁰

¹⁵⁶ Ludwig, *Evaluating Gun Policy*, 130.

¹⁵⁷ *Ibid.*, 131.

¹⁵⁸ "The Problem Today," Gun Control Australia, last accessed November 29, 2016, <http://www.guncontrolaustralia.org/>.

¹⁵⁹ *Ibid.*

¹⁶⁰ Grimson, "Port Arthur Massacre."

The Shooter's Lobby was able to play on this sentiment to weaken the Prime Minister's coalition in Parliament by supporting conservative nationalist candidates.¹⁶¹ However, they have been unable to counter the strong support for the NFA in the urban areas of Australia, which represent more than 85 percent of the population, and efforts by the Shooter's Lobby to roll back many of the NFA's provisions have failed to gain enough popular support to change the NFA.¹⁶² However, the Shooter's Lobby has recently grown even more in power, and a member of the New South Wales Shooters and Fishers Party was elected to parliament.¹⁶³

D. BEHIND THE CURTAIN OF A SUCCESS STORY

The NFA and its buyback of illegal guns is often pointed to as a major success story by advocates of gun control.¹⁶⁴ What is true is that there has not been another mass shooting in Australia like the Port Arthur incident. However, that does not mean that gun violence is gone in Australia, or that the NFA is the reason that it is down. Figure 4 shows the trend in gun deaths and suicides with a firearm in Australia since 1990.

¹⁶¹ Gregory Krieg, "19 Years After Passing Strict Gun Control Laws, Here's What Happened in Australia," Mic Network Inc, July 29, 2015, <https://mic.com/articles/123049/19-years-after-passing-strict-gun-control-laws-here-s-what-happened-in-australia#.oJ4ZafJsx>.

¹⁶² Philip Alpers, "The Truth about Gun Ownership after Port Arthur," ABC, April 27, 2016, <http://www.abc.net.au/news/2016-04-28/alpers-the-truth-about-gun-ownership-after-port-arthur/7365790>.

¹⁶³ "The Problem Today," Gun Control Australia.

¹⁶⁴ Lenore Taylor, "After 20 Years, Australia's Gun Control Debate Is Igniting Once Again," *Guardian*, August 28, 2015, <https://www.theguardian.com/australia-news/2015/aug/28/after-20-years-australias-gun-control-debate-is-igniting-once-again>.

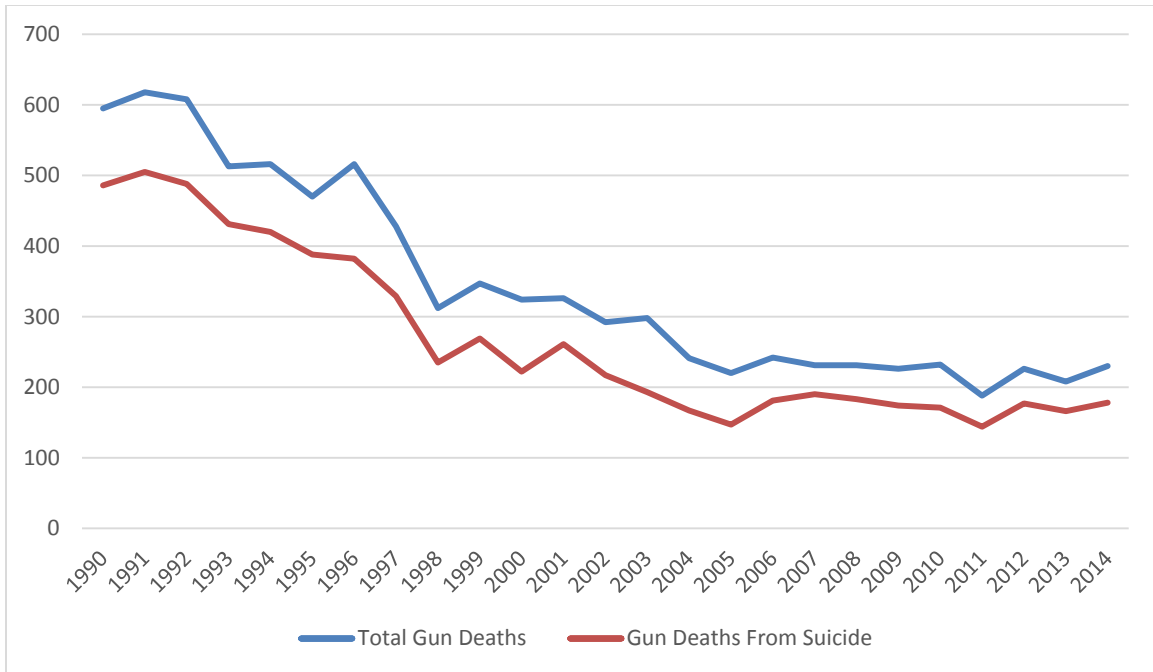


Figure 4. Gun Deaths in Australia¹⁶⁵

In 1996, when the Port Arthur shooting took place, there is a clear uptick in gun deaths, but gun violence had been trending down even before the NFA was implemented. Likewise, gun suicides had been trending down prior to the enactment of the NFA, so it is difficult to say that the law was a major contributing factor in the decline, as the press in both the United States and Australia often claim.¹⁶⁶ Studies have shown that immediately following the NFA's implementation the rate of decline in homicide rates almost doubled, but it soon returned to pre-NFA levels of decline.¹⁶⁷ After 2005, this decline stopped and both the gun homicide rate and gun suicide rate have flattened out.¹⁶⁸

¹⁶⁵ Adapted from Philip Alpers and Amélie Rossetti, "Australia — Gun Facts, Figures and the Law," Sydney School of Public Health, The University of Sydney, 2016, <http://www.gunpolicy.org/firearms/region/Australia>.

¹⁶⁶ Taylor, "Australia's Gun Control Debate Is Igniting."

¹⁶⁷ Webster, *Reducing Gun Violence*, 208.

¹⁶⁸ "Homicide weapon statistics," Australian Institute of Criminology, July 7, 2015, <http://www.aic.gov.au/statistics/homicide/weapon.html>.

An important piece of missing data that Australia does not report is the incidences of attempted homicides and attempted suicides. Studies have pointed to a lack of method substitution in homicides and suicides, but these studies are only based on statistics of individuals who actually died from a gunshot wound.¹⁶⁹ What is entirely possible is that just as many or more people attempt suicide, but they are not dying at the same rate because they are not using guns. This logic would hold true for murders as well, because an attempted murder with a weapon other than a gun is less likely to result in a fatality.¹⁷⁰

On the other hand, Australia might not be the best comparative case. Despite having a long-standing gun culture, handguns have always been heavily restricted in Australia.¹⁷¹ The concept of owning a handgun for self-defense, that is popular in the United States, never developed in Australia because handguns have only ever been allowed for competitive pistol shooting, and laws regarding even the lowest-caliber pistols were extremely strict even before the NFA was adopted.¹⁷² Its estimated that handguns have never made up more the 5 percent of the total firearms in Australia, and after the NFA, their numbers only continued to fall.¹⁷³

This lack of handguns is most pronounced in urban areas where shotguns and rifles are of little practical use. In Australia, the rural population has been dropping for years, and today only about 10 percent of the population lives outside of the major urban centers of the country.¹⁷⁴ The steady decline in gun deaths from the 1970s directly correlates with a 10-percent decrease in the

¹⁶⁹ Webster, *Reducing Gun Violence*, 209.

¹⁷⁰Criminal Justice Information Services Division, "Crime in the United States 2013," FBI, last accessed November 28, 2016, https://ucr.fbi.gov/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/offenses-known-to-law-enforcement/expanded-homicide/expanded_homicide_data_table_8_murder_victims_by_weapon_2009-2013.xls.

¹⁷¹ "What it's Like to Own Guns in a Country with Strict Gun Control," *TIME*, January 13, 2016, <http://time.com/4172274/what-its-like-to-own-guns-in-a-country-with-strict-gun-control/>.

¹⁷² *Ibid.*

¹⁷³ Webster, *Reducing Gun Violence*, 196.

¹⁷⁴ "Rural Population (% of Total Population)," The World Bank, 2016, <http://data.worldbank.org/indicator/SP.RUR.TOTL.ZS?end=2014&locations=AU&start=1990>.

percentage of the Australian population living in rural areas.¹⁷⁵ So, while the NFA reduced the overall availability of guns, the unavailability of handguns even before the NFA may be the larger driver of the decline in gun violence because of the changing demographics in Australia.

Trends in gun buying are also a major area of concern to the long-term effectiveness of the NFA. In the few years following the NFA's implementation, gun imports to Australia were at all-time lows and most gun dealers had gone out of business.¹⁷⁶ However, gun imports to Australia have increased every year since 2000, and in 2016 the total number of guns in civilian hands exceeded the number in circulation before the NFA.¹⁷⁷ Much like the United States, most of these new guns are concentrated in a smaller overall group of gun owners, but many of these weapons make it into illicit markets despite the strict rules of the NFA.¹⁷⁸ This situation happens most often for weapons that were not turned in during the buyback in 1996 which fuel a large grey market of unregistered firearms in Australia.¹⁷⁹

Much of the success of the NFA is based on the reduction of the numbers of firearms in circulation, and going forward its effectiveness may be challenged by the increasing influx of firearms into the country. These weapons are not the semi-automatic rifles that Martin Bryant used to kill 35 people in Port Arthur, but they are the weapons that kill even more Australians. In Australia an even greater majority of firearm deaths are self-inflicted than they are in the United States.¹⁸⁰ Additionally, in most of these suicides a single shot weapon was used,

¹⁷⁵ *Rural Population.*

¹⁷⁶ Alpers, "The Truth about Gun Ownership."

¹⁷⁷ *Ibid.*

¹⁷⁸ *Ibid.*

¹⁷⁹ *Ibid.*

¹⁸⁰ Philip Alpers, "If Lawful Firearm Owners Cause Most Gun Deaths, What Can We Do?," Conversation, October 6, 2015, <http://theconversation.com/if-lawful-firearm-owners-cause-most-gun-deaths-what-can-we-do-48567>.

which under the NFA, is the easiest type of gun to buy in Australia.¹⁸¹ In the 20 years since the NFA was enacted, what has happened is more of a swap in the type of guns that are available than an overall reduction in firearms.¹⁸²

E. FIT AND PROPER PERSONS

Being a "fit and proper person" has a whole host of meanings in Australian law.¹⁸³ If a "fit and proper person" is taking out a bank loan it means that he or she the required collateral, and an income that can support the repayment schedule. In terms of gun buying, a "fit and proper person" is responsible enough to have a firearm in terms of mental health and safe storage practices, and that the individual has a legitimate reason for wanting a firearm.¹⁸⁴ As far as mental health is concerned, the NFA says that mental health professionals should submit a report about potentially dangerous individuals to the police station that is nearest to that person's permanent residence.¹⁸⁵ This measure reflects the legal requirement that individuals trying to get a firearms permit have to start the application process at their local police station. The police would know about that individual already and could stop the application before it even gets started, keeping that person as far away from a gun as possible.

Unlike U.S. laws, under which doctors could be held liable for disclosing information that is protected under privacy laws, mental health practitioners in Australia are specifically protected under law when making these reports to the police.¹⁸⁶ If there is a subsequent release or mishandling of private mental health information, the doctor who wrote the report cannot be sued so that doctors are

¹⁸¹ Alpers, "The Truth about Gun Ownership."

¹⁸² Ibid.

¹⁸³ Webster, *Reducing Gun Violence*, 199.

¹⁸⁴ Anne P F Wand, "Firearms, Mental Illness, Dementia and the Clinician," *Medical Journal of Australia*, August, 2014, <https://www.mja.com.au/journal/2014/201/11/firearms-mental-illness-dementia-and-clinician>.

¹⁸⁵ Ibid.

¹⁸⁶ Ibid.

not discouraged from making these public safety reports.¹⁸⁷ Also unlike in the United States, when a person who already owns a firearm is diagnosed with a mental illness that could make him or her a public health risk, the police can confiscate all of that individual's firearms.¹⁸⁸

Another aspect of being a fit and proper person for firearm ownership is completing a safety course. This requirement is another useful step in preventing the seriously mentally ill from obtaining firearms. Where someone like Martin Bryant could act normal enough to get through a point-of-sale transaction, it is highly unlikely that such a disturbed person could get through several hours of safety instruction without raising some red flags about his or her mental state.

F. COULD THE UNITED STATES IMPLEMENT ITS OWN NFA?

President Obama has often cited the Australian model of gun law reforms as a way to stem gun violence in the United States.¹⁸⁹ Projecting this type of policy to the problem of US gun violence is problematic for several reasons. The first is the speed at which it was able to be implemented. It took 12 days from the shooting in Port Arthur for the NFA to be signed into law.¹⁹⁰ The government of the United States rarely passes legislation that quickly. As has been the case with gun control measures proposed in this country after mass shootings, support for these measures fades rapidly after the event is no longer leading the news.

Another issue is the cost of a large-scale gun buyback in the United States. Part of the success of the buyback in Australia was that market value was paid for the guns that were turned in.¹⁹¹ Because people got fair prices for the guns they were asked to part with, they were more willing to comply with the program. In the United States, ownership of handguns and semi-automatic rifles

¹⁸⁷ Wand, "Firearms, Mental Illness."

¹⁸⁸ Ibid.

¹⁸⁹ Grimson, "Port Arthur Massacre."

¹⁹⁰ Webster, *Reducing Gun Violence*, 195.

¹⁹¹ Ludwig, *Evaluating Gun Policy*, 124.

is several orders of magnitude higher. In 2013 alone, more than 9 million new handguns and semiautomatic rifles were sold in the United States, likely more than the total number of firearms in Australia before the buyback.¹⁹² With more than 350 million total guns in circulation, the cost to buy these weapons back at fair prices would be astronomical, and efforts to raise the money would likely be undercut by the gun lobby that has much more overall influence in US politics than it does in Australia.¹⁹³

Outside of the cost, a large portion of the firearms that were turned in during the buyback in Australia were old military surplus weapons that were made for calibers of bullets that were no longer in production.¹⁹⁴ So for many people the buyback was just a way to get free money for a gun that they could not use anyway. Because this situation happens commonly with firearm buyback programs, it makes the incredible cost of a large US buyback even harder to justify.¹⁹⁵

Gun control efforts in Australia have some unique advantages to similar efforts in the United States. The total lack of gun manufacturing is extremely important for a number of reasons. Producing firearms is not the business of a single Australian, so it is immeasurably easier for politicians to categorically ban types of guns because there is not an Australian version of Smith and Wesson that is going to be put out of business. Additionally, because all of the guns in Australia are imported into the country it creates another opportunity for the government to regulate them.¹⁹⁶ Conversely, many foreign gun manufactures have opened factories in the United States to avoid paying tariffs on importing weapons, bypassing this avenue for regulation.

¹⁹² Christopher Ingraham, "There are Now More Guns Than People in the United States," *Washington Post*, October 5, 2015, <https://www.washingtonpost.com/news/wonk/wp/2015/10/05/guns-in-the-united-states-one-for-every-man-woman-and-child-and-then-some/>.

¹⁹³ *Ibid.*

¹⁹⁴ *Ibid.*

¹⁹⁵ Ludwig, *Evaluating Gun Policy*, 123.

¹⁹⁶ *Ibid.*, 127.

The Australian Parliament cited the fact that Australia was a signatory to The International Covenant on Civil and Political Rights and The Convention on the Rights of the Child as reasons that it had to introduce strict gun control measures.¹⁹⁷ Their logic was that guns can kill people, including children, so they were obligated by these treaties to ensure that their laws coincided with the UN's Bill of Human Rights.¹⁹⁸ It is highly unlikely that the United States would change any part of its constitution in order to ensure full compliance with a set of international regulations.

Also the low number of handguns in Australia is a significant factor in their declining homicide rate. Because of the already low numbers of handguns in the country, the 162,000 handguns that were turned in during the buyback may represent the most significant factor of the NFA when paired with the population shifting to a mostly urban make up.¹⁹⁹ Unlike a pistol, a hunting rifle is harder for a mugger to tuck under his shirt. This inconvenience alone is likely enough to drive down instances of firearm use in violent crime, and by extension gun deaths.

The Australian Institute of Criminology found that beginning in 1989, murders with a knife or other sharp object began to outpace firearm homicides and the gap between them has grown every year but 1996, when the Port Arthur shooting skewed the statistics.²⁰⁰ While the overall homicide rate has fallen, violent crime continues to be a problem, however, it is a less lethal problem.²⁰¹ The NFA is not the ultimate solution to gun violence but it does provide policy information that can help make better gun control measures in the United States.

¹⁹⁷ Jennifer Norberry, "After Port Arthur - Issues of Gun Control in Australia," Parliament of Australia Current Issues Brief 16, 1995-96, http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/CIB/cib9596/96cib16.

¹⁹⁸ Ibid.

¹⁹⁹ Ludwig, *Evaluating Gun Policy*, 122.

²⁰⁰ "Homicide weapon statistics," Australian Institute of Criminology

²⁰¹ Ibid.

V. FINDING THE MIDDLE

The NICS is just a database of names and associated records. It is a way to stop gun violence by making it difficult for potentially dangerous individuals to acquire guns. To this point it has worked well over all, but incidents like the recent shooting in Orlando, Florida, and the continued gun violence in large cities like Chicago remind us that it has not worked well enough. To make it work better there needs to be a concerted effort by our leaders to change the rules for inputting data into the NICS. Additionally, more sales of guns to need happen at FFLs, so that people are subjected to background checks anytime that they buy a gun. The system can work, but additional effort is needed to ensure it has the right information and broad enough application so it can work as well as possible. Especially in the case of mental health information.

A. TALKING MAKES IT WORSE

Gun violence is way down, but this fact could not be inferred from most politicians' speeches. People on both sides of the political aisle bring up the issue often, and the way they go about it never helps to reduce gun violence in America. On the left, there is a call for more gun restrictions. Firearm enthusiasts then rush out to buy the types of guns that they think will be banned, greatly increasing the supply of firearms in circulation.²⁰² From the right, the message is that more guns are needed to protect oneself from the dangerous criminals that are supposedly everywhere.

Depending on which side of the political spectrum one listens to, either gun violence is completely out of control, or every corner of America is filled to the brim with violent criminals and having your own gun is the only way to survive.²⁰³ Despite the fact that gun violence has gone down dramatically, it is never the message Americans get from their political leaders. Obviously just

²⁰² Ingraham, "More Guns than People."

²⁰³ Ibid.

saying that things have gotten better than they were in the 1990s does not help make things any better by itself, but it would be a much better way to spark partisan conversation on how to further improve the systems currently in place like the NICS. Instead politicians focus on measures like banning assault weapons, or changing gun free zones which are highly unlikely to make a significant difference to gun violence as a whole.²⁰⁴ When a mass shooting happens, politicians cannot simply throw out the fact that overall gun violence is down when the people they represent demand answers for why these events could happen in the first place.

B. THE ONLY WAY

After the recent Orlando night club shooting there has been a renewed call for an assault weapons ban like the 1994 Public Safety and Recreational Firearms Use Protection Act.²⁰⁵ This act banned military-style rifles and weapon magazines that could hold over ten rounds from being produced and sold. However, this law did not eliminate the resale of weapons and magazines that were made before the ban. So just like the case of the Australian's NFA, before this new law was enacted there was a massive buying spree of the types of weapons and magazines that were going to be banned. As a result, the law was largely ineffective. The number high-capacity magazines used in violent crimes actually increased during the ten years of the ban, prompting congress to not renew the law in 2004.²⁰⁶

This type of ban on specific types or features of firearms will inevitably fail in the United States because of the high level of firearm proliferation. More than 35 percent of the world's guns were owned by American citizens in a 2007 study, and that number has likely grown significantly over the last few years because

²⁰⁴ Nia-Malika Henderson, "The Changing Politics of Gun Control," CNN, June 17, 2016, <http://www.cnn.com/2016/06/16/politics/gun-control-politics/>.

²⁰⁵ Ibid.

²⁰⁶ Jonathan Stray, "Gun Violence in America: The 13 Key Questions (With 13 Concise Answers)," *Atlantic*, February 4, 2013, <http://www.theatlantic.com/national/archive/2013/02/gun-violence-in-america-the-13-key-questions-with-13-concise-answers/272727/#international>.

gun manufacturing in the United States has doubled since 2008.²⁰⁷ Therefore, it is possible that as much as half of the guns on earth are owned by private citizens in the United States, and without changing the constitution there is no way to remove those weapons from circulation.

Further limiting who can buy guns is the only realistic way to introduce new legislation that could curb gun violence in the United States. A study of people that were homicide offenders in the state of Illinois by the Journal of the American Medical Association found that 71.6 percent of them had a prior arrest in the previous 10 years.²⁰⁸ This study looked at all homicides, not just ones where a gun was used, but it shows that arrest record data can be highly useful in determining what people to limit firearm access to. As previously noted, because of the robust and uniform reporting system, arrest records make the NICS highly effective at screening these types of individuals.²⁰⁹ Increasing the quality and quantity of mental health information in the NICS could be even more effective because it affects a much larger vector of gun violence. However, the focus on adding data to the NICS is not in the direction of mental health records.

C. NO FLY, NO GUN

One recent suggestion by President Obama, as well as other politicians, is to add people on the terror watch list or the no-fly list to the NICS database of persons that are prohibited from firearm ownership.²¹⁰ While everyone can agree that terrorists should not be legally able to buy guns, there is much about debate about how effective adding the watch list to the NICS would be. The first problem is that American citizens have a constitutional right to own a gun, and being

²⁰⁷ Stray, *Gun Violence in America*, and, John W. Schoen, "Owned by 5 million Americans, AR-15 Under Renewed Fire After Orlando Massacre," CNBC, June 13, 2016, <http://www.cnbc.com/2016/06/13/owned-by-5-million-americans-ar-15-under-renewed-fire-after-orlando-massacre.html>.

²⁰⁸ P.J. Cook, J. Ludwig, and A.A. Braga, "Criminal Records of Homicide Offenders," JAMA, August 3, 2005, <http://jama.jamanetwork.com/article.aspx?articleid=201308>.

²⁰⁹ *GUN CONTROL*.

²¹⁰ Henderson, "The Changing Politics of Gun Control."

suspected of terrorism, or having a connection to someone who is a terrorist is not a crime in and of itself. However, it is enough to get your name on the terror watch list. A law that denies people a constitutional right will not be on the books long before it is challenged in court, where it will likely not hold up. Another problem is the majority of people on the terror watch list and the no-fly list are not US citizens, according to the FBI, and therefore they would not be able to buy a gun legally anyway.²¹¹

A congressional report from the Government Accountability Office (GAO) also showed that in the last ten years just over 2,000 people on the terrorist watch list have bought guns through a FFL where they were subject to NICS screening, and the FBI receives a special notice automatically whenever they do.²¹² Because the FBI already receives a notification when people on the terrorist watch list buy a gun, and because it happens so infrequently, it seems at worst counterproductive, and at best ineffective to add people on the terrorist watch list or the no-fly list to the prohibited purchaser database. The FBI can use this information to start an investigation into an individual that is transitioning from supporting a terrorist ideology, to actually planning an attack.

If the policy is that people on terror watch lists cannot buy guns at all, then these individuals will be forced into the illicit gun market, where catching them is less likely.²¹³ For many politicians, this policy represents an easy sell to say they did something related to gun control, even if they know it could be counterproductive. For example, the GAO report that outlined why this policy was unnecessary and would likely undermine current FBI investigations was

²¹¹ Josh Siegel, "Gun Control and the No-Fly List: All You Need to Know," *Newsweek*, December 11, 2015, <http://www.newsweek.com/gun-control-and-no-fly-list-all-you-need-know-403821>.

²¹² *Ibid.*

²¹³ Alicia Parlapiano, "How Terrorism Suspects Buy Guns — and How They Still Could, Even With a Ban," *New York Times*, June 15, 2016, http://www.nytimes.com/interactive/2016/06/14/us/gun-purchase-ban-for-suspected-terrorists.html?_r=0.

requested by, and briefed to, Senator Dianne Feinstein in 2015.²¹⁴ However, the following year she was one of the biggest proponents of this policy, and was extremely critical of those who opposed it.²¹⁵ This line of thinking, doing something just for the sake of doing something, is just part of the counterproductive political rhetoric that besets the US government today and drastically inhibits progress on reducing gun violence.

D. CHIRAQ

More Americans have died in shooting incidents in the city of Chicago than have been killed in the recent wars in Iraq and Afghanistan.²¹⁶ It reached national news when a girl that had performed at the White House with her school band just weeks before was shot and killed on a playground in the Windy City. Despite all the gun violence, Chicago is a city with some of the most restrictive gun laws in the United States. It is illegal to even have a gun store or shooting range within the city limits, but gun violence there is out of control.²¹⁷ To legally own a handgun in Chicago one must go through a series of background checks, a lengthy permit process, and even then many types of firearms are restricted, and high capacity magazines are banned.²¹⁸ Basically every type of gun restriction that anyone has ever proposed has been written into law in the city of Chicago.

The problem is that for gun control measures to work they have to be in place everywhere. Putting that level of restriction on guns throughout the country

²¹⁴ David C. Maurer, *Update on Firearm and Explosives Background Checks Involving Terrorist Watchlist Records*, (Washington, DC: U.S. Government Accountability Office, 2015), 1, <https://assets.documentcloud.org/documents/2640548/DALLAS-510354-v3-NICS-WATCHLIST-2015-UPDATE-for.pdf>.

²¹⁵ Parlapiano, "How Terrorism Suspects Buy Guns."

²¹⁶ Charlie LeDuff, "Guns, Money, Death, and the Dude — Welcome to Chiraq" Vice News, June 24, 2015, <https://news.vice.com/article/guns-money-death-and-the-dude-welcome-to-chiraq>.

²¹⁷ Monica Davey, "Strict Gun Laws in Chicago Can't Stem Fatal Shots," *New York Times*, January 29, 2013, <http://www.nytimes.com/2013/01/30/us/strict-chicago-gun-laws-cant-stem-fatal-shots.html>.

²¹⁸ *Ibid.*

would be politically impossible, so there is little hope that these measures will stem the gun violence in Chicago. The overly tight measures in Chicago are as easy to get around as driving outside of the city, county, or state lines depending on which set of laws is in a buyer's way.

A better way to fight this problem would be to encourage more legal sales of firearms. This is not to say that everyone needs to be armed at all times or that American need to buy more guns than they already do, but if the process to legally buy a gun is not made impossibly difficult, then more people will use it. As noted above, other states, operate their own NICS type system, just like the state of Illinois already does, which they could use to track illegal guns and prohibited purchasers. However, the more that gun transactions are forced into the shadows, the more likely negative results become.

This type of over-restriction leads to the high number of straw-man purchases in Chicago and other areas with high levels of firearm restriction. These straw-man purchases are when people, who cannot buy a gun legally where they live, get a friend or family member to buy a gun for them in a place where that person can legally buy a gun. A large portion of the illegal guns in Chicago come from Mississippi; after the Civil War more people moved to Chicago from Mississippi than any other southern state, and the lasting family ties make straw purchases easy, especially in a state with very lax gun laws like Mississippi.²¹⁹

Straw-man purchases also let people who know they could not pass the NICS background check acquire guns.²²⁰ Despite all of Chicago's hash gun laws, buying a gun for someone who could not legally buy one themselves is only

²¹⁹ Davey, "Strict Gun Laws in Chicago."

²²⁰ Hansi Lo Wang, "'Straw Buyers' Of Guns Break The Law — And Often Get Away With It," NPR, December 9, 2015, <http://www.npr.org/2015/12/09/459053141/straw-buyers-of-guns-break-the-law-and-often-get-away-with-it>.

a \$1,000 fine, or a few months in jail which has not been enough of a deterrent to stop the practice.²²¹

E. BEING EVERYWHERE

One of the key aspects of Australia's NFA was that all the states and territories agreed to a single set of firearm laws that would be applied everywhere in the country. For changes to have any level of real impact on gun violence in the US, they will have to be federal laws so that they apply in every state. In our current system, most of the regulation of firearms is at the state level, and because freedom of travel is central to the American way of life, it makes these regulations easy to circumvent. Chicago is not misguided when it comes to the type of restrictions it has tried to implement. As previously mentioned, low levels of handgun ownership in an urban population may be the most significant factor in the lower levels of gun violence that Australia has experienced recently. In 72 percent of all gun deaths in the United States, a semi-automatic handgun was involved.²²² So, tightly restricting these firearms makes sense from a public health point of view.

Unlike Australians, however, Americans have always had handguns, and the demand for them has never been higher.²²³ Every state, except Illinois, has a law allowing concealed carry of handguns and permit holders have increased by almost 6 million since the mid-1980s.²²⁴ Firearm ownership in general has been rapidly growing in the US, even among groups who do not traditionally favor firearms. Gun ownership among women is up by 10 percent since 2005, and since 2009 firearm ownership among registered democrats is up 10 percent as

²²¹ Lo Wang, "Straw Buyers' of Guns Break The Law."

²²² Stray, *Gun Violence in America*.

²²³ Jade Molde and Russ Thurman, "U.S. Firearms Industry Today 2016: Industry Maintains Encouraging Growth During Pivotal Election Year," Shooting Industry, 2016, <https://www.shootingindustry.com/u-s-firearms-industry-today-2016/>.

²²⁴ Frank Miniter, "What the Left Won't Tell You about the Boom in U.S. Gun Sales," *Forbes*, August 23, 2012, <http://www.forbes.com/sites/frankminiter/2012/08/23/what-the-left-wont-tell-you-about-the-boom-in-u-s-gun-sales/2/#6eb4d47d1f3c>.

well.²²⁵ Local regulations need to account for this national trend in order to be effective. In US cities, it is impossible to eradicate handguns completely because they are so widely available in other places.

What can be done at the local level is limiting transactions to FFLs so that no legal purchases are made without a background check. Additionally, harsher punishments for those trying to circumvent the NICS by making straw purchases are needed to help this stop practice. But even these changes will not have the lasting impact needed to significantly reduce gun violence. In 2013, more than half of the background checks that were conducted for new firearm purchases were processed by state agencies and not the FBI's NICS section.²²⁶ So the one piece of comprehensive firearm regulation that exists in the United States does not apply to everything that it should.

As outlined in Chapter II, states conduct their own background checks for a number of reasons, but if the NICS was a truly national system that applied to all firearm transactions it would be significantly more effective. Many of the aspects of the Australian NFA would be impractical or cost prohibitive to implement in the US, but the US already has a national system in place. Applying a single uniform barrier to firearm purchases can drastically limit violence, politicians simply need to agree the NICS should apply to all gun purchases. The states can still maintain their expanded categories of prohibited persons, but if this information is in the NICS, vice a state background check system, then it will be able to prevent dangerous individuals from buying guns in other states as well.

F. OTHER BARRIERS

In order to get around the political deadlock in America, some groups have taken the issue of suicide and firearms into their own hands. In Colorado, a few gun stores and shooting ranges have started displaying information from the

²²⁵ Miniter, "What the Left Won't Tell You."

²²⁶ Maurer, *Update on Firearm and Explosives Background Checks*, 1.

National Suicide Prevention Lifeline, and they have emergency room doctors speak about suicide to people taking gun safety classes.²²⁷ Their aim is to make sure that the most at risk population, new gun owners, has the best information about guns and suicide. In New Hampshire, a similar grass roots movement is getting mental health training classes for individuals that work in gun stores.²²⁸ This training does not make them doctors, but it gives them a greater ability to recognize signs that a person buying a gun is in mental or emotional distress. Additionally, they learn ways to encourage these individuals to delay their gun purchase for even one day which could save their lives.²²⁹

Initiatives by the National Shooting Sports Foundation aim to educate gun owners on firearm storage that is available at most police stations across the country.²³⁰ When people are going through a difficult time police stations can hold on to their weapons for a few days with no questions asked, putting one more barrier in the way of a suicide. These efforts represent a small, but significant, change in American's views on suicide.

Among people who considered suicide, and who had a gun in their home, there was a 10-percent reduction in suicide attempts if their gun was kept unloaded, another 10-percent reduction if the gun was locked and unloaded, and a further 10 percent if the gun was unloaded, locked, and the ammunition was stored away from the gun.²³¹ Such small steps can reduce the likelihood of a suicide attempt by 30 percent, because the more steps a person has to take to kill themselves the less likely they are to actually do it. Each time a person must cross another obstacle to a suicide attempt he or she has the opportunity to change course. As previously noted, only about 10 percent of people who

²²⁷ John Daley, "Colorado Gun Shops Work Together To Prevent Suicides," NPR, September 2, 2016, <http://www.npr.org/sections/health-shots/2016/09/02/492144056/colorado-gun-shops-work-together-to-prevent-suicides>.

²²⁸ Ibid.

²²⁹ Ibid.

²³⁰ Ibid.

²³¹ Masters, "A Psychiatrist Debunks the Biggest Myths."

attempt suicide have an unpreventable ambition to kill themselves, so having even small barriers in place should be able to stop most firearm suicides. However, putting these kind of barriers in place requires having honest conversations about people's suicidal thoughts, and their mental health which Americans are often reluctant to do. Although, if politicians could seize on these sorts of small barriers to firearm suicide they could change the national conversation on mental health and gun violence, and save a lot of lives.

G. CONCLUSION

Central to this debate on gun violence is if mental illness is what causes gun violence. Many studies on the subject say it absolutely does not, and less than 5 percent of gun homicides are at the hands of the mentally ill.²³² These studies have often been conducted in the wake of a mass shooting that was perpetrated by a mentally ill individual. Their aim is to prove that just because someone has a mental illness they should not be looked upon as a threat to society. Also, these studies have overwhelming evidence that mentally ill individuals are much more likely to be victims of abuse than the normal population.²³³

In my research I find no reason to disagree with these findings, except in their definition of gun violence. Because gun homicides only represent one third of the gun violence in the United States. It is an incredibly rare event for a mentally ill person to buy a gun and kill another person with it. However, it is an incredibly common event for a mentally ill person to buy a gun and then kill himself or herself. Efforts to prove that mentally ill individuals are not significant perpetrators of gun violence do a disservice to the affected individuals—and to the greater public health prospective on gun control. They do not pose a great danger to others, but because they pose a significant danger to themselves they

²³² Jonathan Metzl and Kenneth MacLeish, "Mental Illness, Mass Shootings, and the Politics of American Firearms," *American Journal of Public Health*, February, 2015, <http://search.proquest.com.libproxy.nps.edu/docview/1646330605?accountid=12702>, 241.

²³³ *Ibid.*, 242.

need to be better accounted for in our firearm purchase screening system. Otherwise, their lives will represent another soul lost to gun violence.

The debate over guns in the United States is filled with misinformation on all fronts, but expanded utilization of the NICS by the states, and more importantly increased mental health reporting, will lower the number of people that die from gunshot wounds in this country. There are many other reforms that can help at the margins, but because the gun culture of the United States is growing, efforts to protect those most likely to commit suicide are more important than ever.

This solution is not filled with political style points, but because of this fact it is also not likely to be challenged as heavily by those that oppose new firearm regulations. Efforts to improve public health have to focus on the long game, and implementing these changes could take years before they bear significant fruit. Many of the individuals that suffer from clinical depression and schizophrenia, that are the most likely to commit suicide, may already own guns, or at least have access to them. But each year that goes by when these individuals can no longer purchase guns will correspond with a decrease in overall gun violence.

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2. Dudley Knox Library
Naval Postgraduate School
Monterey, California