

## Laws That Bit The Bullet: A Review of Legislative Responses to School Shootings

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**Abstract** The recent mass shooting at Sandy Hook Elementary School in Newtown, Connecticut sparked an immediate discourse calling for a review of gun control legislation. However, this discourse was not new; rather, it was one that routinely follows this type of tragedy. In the wake of school shootings such as Columbine, Virginia Tech, and Jonesboro, a similar discourse appeared which prompted policymakers to introduce a number of pieces of legislation aimed at more efficient firearms regulation. While a few of these bills were enacted, many never made it past introduction. The flurry of legislative responses to such incidences warrants further discussion as to whether these bills are effective, or rather simply “feel good legislation.” Further, public opinion is a driving force behind such policy, but how can this change in the wake of school shootings? This paper examines both considerations and proposes directions for continued research in this critical and understudied area.

**Keywords** School shootings · Columbine · Virginia Tech · Gun control · Mental health

On the morning of December 14, 2012, an armed gunman forcefully entered Sandy Hook Elementary School in the community of Newtown, Connecticut (Barron, 2012; Dolnick & Grynbaum, 2012). As shots rang out, the shooter, 20-year-old Adam Lanza, was confronted by the school’s principal and psychologist (Dolnick & Grynbaum, 2012). They were both killed (Dolnick & Grynbaum, 2012). Lanza then shot and killed several teachers, their aids, and students in two separate kindergarten classes (Barron, 2012). As first responders entered the building, Lanza committed

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suicide (Barron, 2012). A later investigation revealed that prior to his rampage, Lanza had shot and killed his mother, Nancy, as she slept (Barron, 2012). In total, 27 people were dead (not counting the shooter) and at least one other wounded (Barron, 2012). Four weapons were found at the scene by authorities—a Glock 10 mm handgun, Sig-Sauer 9 mm handgun, a 12-gauge shotgun, and a Bushmaster .223 caliber rifle with high capacity magazine, which was the primary weapon used in the massacre (Connecticut State Police, Public Information Office, 2013). The weapons were all legally purchased and registered to Nancy Lanza (Luo & Cooper, 2012).

The shooting at Sandy Hook triggered an immediate discourse about gun control legislation. It also brought back eerie reminders of the rash of school shootings in the late 1990's, including Columbine, as well as more recent incidents, such as the mass shootings at Virginia Tech, Northern Illinois University, Fort Hood, and the shooting at a movie theater in Aurora, Colorado just 5 months earlier. In the wake of such tragedies, there has been an outcry from both politicians and the public alike for stricter gun legislation including limits on carrying a concealed handgun and a renewal of the ban on assault rifles that lapsed 8 years ago (e.g., Associated Press, 2012; Frosch & Johnson, 2012; Huetteman, 2012). Politicians rushed legislation to the floor, but how many of them actually passed and were enacted into law?

This paper examines the legislative responses to three school shootings—Westside Middle School (Jonesboro, AR), Columbine High School (Littleton, CO), and Virginia Tech (Blacksburg, VA)—in an attempt to answer such questions. This is important for several reasons. Given the disproportionate nature of these events, compared to the amount of attention they garner, school shootings can incite “moral panics,” whereby members of society believe their values and interests are being threatened (Cohen, 1972; see also Burns & Crawford, 1999 or Springhall, 1999). In response to moral panics, members of society may focus on “strengthening the social control apparatus of the society, including tougher or renewed rules, increased public hostility and condemnation, more laws, longer sentences, more police, more arrests, and more prison cells” (Goode & Ben-Yehuda, 1994, p. 30). While politicians may respond to school shootings through introducing new legislation, reactions from the public sector may be examined through a changing discourse about gun control. Such changes also will be discussed.

## A Brief History of Firearms Laws in the United States

On December 15, 1791, the Second Amendment to the U.S. Constitution was ratified. The amendment stated that “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” (U.S. Const. amend. II). Since its inception, the wording of the Second Amendment has been challenged, particularly in a number of key Supreme Court cases, including *Robertson v. Baldwin* (1897), *United States v. Miller* (1939), *District of Columbia v. Heller* (2008), and *McDonald v. Chicago* (2010). Although regulation of firearms under the Second Amendment was typically left to the states, a number of federal laws were introduced during the 20th century, offering more uniform guidelines for national regulation.

Although the first ban on handguns was enacted in 1837, it was not until the following century that restrictions became prevalent (Hardy, 1986). In 1934, as a response to the Prohibition-era violence, President Franklin D. Roosevelt introduced the National

Firearms Act (26 U.S.C. § 53; see also Hardy, 1986; Singh, 1999). This act targeted machine guns that were being used by gangsters as well as short-barreled shotguns (less than 18 in. in length), rifles, and silencers (Bureau of Alcohol, Tobacco, and Firearms, n.d.; Zimring, 2001). The National Firearms Act required all buyers to fill out paperwork when purchasing firearms, with approval subject to the U.S. Department of Treasury (Bureau of Alcohol, Tobacco, and Firearms, n.d.). In addition, a \$200 tax per weapon was levied on all sales of guns (Bureau of Alcohol, Tobacco, and Firearms, n.d.).<sup>1</sup>

On July 30, 1938, the *Federal Firearms Act* (15 U.S.C. §§ 901–909) went into effect. Also approved by Roosevelt, this act was designed to regulate interstate firearms commerce (Ascione, 1939; Zimring, 2001). The act included provisions for the licensing of all firearms dealers and manufacturers within and between states as well as for foreign commerce (Ascione, 1939). Firearms dealers were required to keep records of every sale and were prohibited from selling to anyone without a permit or to convicted criminals (Ascione, 1939; Zimring, 2001). The primary goal of the act was to “eliminate the gun from the crooks’ hands, while interfering as little as possible with the law-abiding citizen” (S. Rep. 82, 1937).

Following the November 22, 1963 assassination of President John F. Kennedy, there was a renewed interest in revising federal gun laws (Singh, 1999; Zimring, 2001). The Gun Control Act of 1968 (18 U.S.C. § 44), support for which was fueled by the subsequent assassinations of Martin Luther King, Jr. and Robert F. Kennedy, was quickly passed and enacted into law on October 22, 1968 (see also Hardy, 1986; Zimring, 2001). The key element of this act was the outlawing of sales of rifles and shotguns by mail order (Hardy, 1986).<sup>2</sup> Prior to the act, purchasers only had to sign a form saying they were over the age of 21.<sup>3</sup> The Gun Control Act also required expanded licensing requirements for dealers and the records they had to keep, and strictly prohibited sales to persons convicted of felonies, those found to be mentally incompetent, and those who used drugs. Restrictions for selling handguns across state lines also were included.

A number of the provisions set forth by the Gun Control Act were eased with the passage of the Firearm Owners’ Protection Act of 1986 (18 U.S.C. § 921). One such provision regarded who was required to carry a dealer’s license—only those who sold guns regularly as a business would be required to be licensed; those who made occasional sales, such as a pawnbroker, or selling a personal collection did not need to be licensed (Firearm Owners’ Protection Act, 1986; Hardy, 1986). Although the act no longer required records to be kept for ammunition sales,<sup>4</sup> it did require that any licensee must report all sales of multiple firearms (Firearm Owners’ Protection Act, 1986). Interstate sales were reinstated, as was transportation of firearms across state lines, so long as the sale was not in violation of the law where the purchaser resided (Hardy, 1986). Additionally, the restrictions on felons owning firearms were reduced only to include those convicted of

<sup>1</sup> Using the Bureau of Labor Statistics’ inflation calculator, a tax of \$200 in 1934 would cost gun owners and manufacturers \$3,425.04 in 2012 (U.S. Department of Labor, n.d.). However, the tax has never increased beyond the \$200 set forth in 1934 (Bureau of Alcohol, Tobacco, and Firearms, n.d.).

<sup>2</sup> The gun used to assassinate President Kennedy was a 6.5 mm Mannlicher-Carcano rifle purchased by Lee Harvey Oswald through the mail (The Warren Commission Report, 1964; see pages 118–119).

<sup>3</sup> A consumer had to be 21 years old to purchase a handgun. In order to purchase a shotgun or a rifle, the consumer needed only to be 18.

<sup>4</sup> Requirements for reporting the sales of armor-piercing ammunition did remain in effect (Firearm Owners’ Protection Act, 1986).

“disabling crimes,” including those using or threatening force, as outlined by the United States Code (Hardy, 1986, p. 608). The act also prohibited individuals from owning or selling a machinegun (Firearm Owners’ Protection Act, 1986).

Two important pieces of legislation also were enacted in 1994. The first, The Brady Handgun Violence Prevention Act<sup>5</sup> (amended 18 U.S.C. §§ 921–924), imposed a five-day waiting period and background check on any unlicensed individual seeking to purchase a firearm from a licensed gun manufacturer, dealer, or importer (see also Singh, 1999). This change was, however, only an interim measure while the Federal Bureau of Investigation (FBI) established a National Instant Criminal Background Check System (NICS) (18 U.S.C. §§ 921–924). The new system allowed background checks to be done instantly, either electronically or by phone, and was applicable to all firearms (18 U.S.C. §§ 921–924). Further, the Brady Law, as it became known, prevented the sale of firearms to those who had been judged mentally ill or who had been committed to a mental institution (18 U.S.C. §§ 921–924).

The other key piece of legislation introduced in 1994 was the Violent Crime Control and Law Enforcement Act (also amending 18 U.S.C. §§ 921–922), more commonly known as the Federal Assault Weapons Ban (AWB).<sup>6</sup> The AWB declared that it was “unlawful for a person to manufacture, transfer, or possess a semiautomatic assault weapon” (18 U.S.C. §§ 921–922). The AWB also prohibited large-capacity ammunition feeding devices (or magazines), holding more than 10 rounds for civilian-used firearms. The AWB provided a specific list of 19 specific semi-automatic firearms that were banned from production, which included the Colt AR-15, IntraTec TEC-9 and TEC DC-9, and the Uzi (18 U.S.C. §§ 921–922; Singh, 1999). Criteria for semiautomatic weapons also were presented in the ban (18 U.S.C. §§ 921–922). The AWB further prohibited juveniles from possessing a handgun or ammunition for a handgun, and prohibited a person to sell or deliver a handgun to a juvenile (18 U.S.C. §§ 921–922). However, the AWB also contained a sunset provision. This meant that the ban was only in effect for 10 years (Singh, 1999). Congress failed to renew the AWB and it expired on September 13, 2004; at the time of this writing, one can legally own or possess a semi-automatic assault rifle and larger capacity magazines.

## Legislative Responses to School Shootings

### Westside Middle School

On March 24, 1998, students Andrew Golden (age 11) and Mitchell Johnson (age 13) drove Johnson’s mother’s stolen minivan to Westside Middle School in Jonesboro, AR. The boys were armed with seven firearms stolen from Golden’s grandfather’s house, including two semi-automatic rifles, a bolt-action rifle, and four handguns. Upon arrival, Golden entered the school and pulled the fire alarm, then ran back to the woods where Johnson had set up their weapons. As students and faculty exited the school, the boys opened fire. When the shots finally subsided, four students and one teacher were dead,

<sup>5</sup> The Brady Handgun Violence Prevention Act was signed into law on November 30, 1993 but did not take effect until February 28, 1994. See House Bill 1025 (1993).

<sup>6</sup> See House Bill 3355 (1994).

and an additional 10 were wounded. The boys fled into the wooded area and were subsequently apprehended by the police.

Prosecutors charged Johnson with five counts of murder and 10 counts of aggravated assault. Golden was charged with murder, attempted murder, and unlawful firearm possession. Due to their young ages, the Craighead County Prosecutor's office was not able to try them as adults because they did not meet the statutory minimum age for transfer to adult court (Ford, 2011). Additionally, at the time of the shooting, the law in the state of Arkansas did not include any provisions which would allow a juvenile to serve a life sentence (Cotton, 1999; Ford, 2011).

Within 5 months of the shooting, both boys had been tried and convicted. They were both sentenced to confinement in the Arkansas Department of Youth Services (DYS) Facility until they turned 18 (Koon, 2008). Unable to sentence the boys to life in prison, the judge added on an additional 3 years on federal charges for the aggravated circumstances and weapons violations (known as blended sentencing), so that the boys were transferred to federal prisons upon release from the DYS facility, and held until their 21st birthdays (Cotton, 1999; Koon, 2008). The boys served their full sentences, and in 2005 and 2007 respectively, Johnson and Golden were released with clear records (Koon, 2008). Although Golden has remained free since his release, Johnson was rearrested on January 1, 2007 after a loaded gun and marijuana were found in his vehicle during a traffic stop and search (Koon, 2008). A year later, he was convicted by a federal jury and sentenced to 4 years in federal prison for the weapons possession charge (Koon, 2008).

In response to the Jonesboro shooting, the Extended Juvenile Jurisdiction Act (EJJA) was introduced and passed by the Arkansas General Assembly (Ford, 2011; S. 505, 1999; Tanner, 2000). Enacted into law in 1999, the EJJA revised a number of key provisions to Arkansas' penal code relating to juveniles.<sup>7</sup> One key change involved allowing the state to charge a juvenile of any age with either capital or first-degree murder. In accordance with this change, the state must show that a juvenile understands the charges brought against him, and has the ability to understand the trial process (see Ark. Code Ann. § 5-2-301 to -318). This provision includes the requirement that a court-appointed psychiatrist or clinical physician evaluates the juvenile. Prior to this change, it was presumed that juveniles ages seven to 13 were incompetent to stand trial (Cotton, 1999; Tanner, 2000).

Additional revisions were made with regard to record keeping and jurisdiction. Juveniles who were convicted and received an adult sentence would have all of their case records transferred to the circuit court to become a part of their adult criminal record (Ark. Code Ann. § 9-27-508; Tanner, 2000). This change was particularly important because it prevented a juvenile who had been convicted of weapons possession from legally purchasing a firearm.<sup>8</sup> There were also provisions for imprisoning juvenile offenders in the EJJA (Ark. Code Ann. § 5-4-402). The EJJA included provisions for juveniles who could be sentenced to adult prison, requiring that they be segregated from

<sup>7</sup> The EJJA amended the following Arkansas codes: § 5-2-301 to -318; § 5-4-402; § 9-27-303; § 9-27-309; § 9-27-316; § 9-27-317; § 9-27-318; § 9-27-325; § 9-27-327; § 9-27-330; § 9-27-331; §§ 9-27-501 to -510; § 9-28-206; § 9-28-210. See also Senate Bill 505 (1999).

<sup>8</sup> On October 7, 2008, Jonesboro shooter Andrew Golden, under his new alias Drew Douglas Grant, applied for a concealed handgun permit in Arkansas. After the State Police linked Grant to Golden, the permit was denied (Koon & Brantley, 2008). The permit, however, was not denied under the provisions of Senate Bill 505 (1999), but rather because of false information supplied on the application (Koon & Brantley, 2008).

the general DYS population until their transfer to the Department of Corrections (DOC) (Ark. Code Ann. § 5-4-402; Tanner, 2000). However, juveniles were only eligible for transfer to the DOC when they turned 16 (A.C.A. § 5-4-402; Tanner, 2000). During the same legislative session, the Arkansas legislature passed a bill requiring the DYS to establish separate facilities to house offenders between the ages of 18 and 21.<sup>9</sup> Although the majority of state legislatures amended their transfer laws prior to the Jonesboro shooting (Griffin, Torbet, & Szymanski, 1998), no states other than Arkansas made such changes in response to the event.

### Columbine High School

The Columbine High School shooting was one event in a succession of highly publicized school shootings in the late 1990s, including the shooting in Jonesboro as well as shootings at Pearl High School (Pearl, MS) and Heath High School (West Paducah, KY) in 1997, Thurston High School (Springfield, OR) in 1998, and Heritage High School (Conyers, GA) in 1999. However, it was the April 20, 1999 shooting at Columbine that brought the school shooting phenomenon even more notoriety. After over a year of planning, Columbine seniors Eric Harris and Dylan Klebold converged on their school, ready to cause mass carnage. They had built nearly 100 improvised explosive devices (IEDs) including two 20-pound propane tank bombs and amassed an arsenal that included two shotguns,<sup>10</sup> a 9 mm carbine rifle, and a TEC-9 semi-automatic handgun. At the end of the 46-minute rampage, 12 students and one teacher lay dead in the school. The boys then shot themselves.

The immediate concern following Columbine was how the shooters had acquired their guns. At the time of the shooting, Klebold was still 17, which made him ineligible to purchase any of the firearms. Harris had just turned 18 on April 9, 11 days prior to the shooting, which made him legally eligible to purchase the shotguns and rifle, but not the handgun. However, according to Harris' journal excerpts released by the Jefferson County Sheriff's Office (1999), the boys had acquired the rifle and two shotguns on November 22, 1998, when they were both legally juveniles (p. 26,016). So how did Harris and Klebold get their guns?

The investigation turned to a friend of the boys, Robyn Anderson. Anderson, then 18, purchased the two shotguns and the rifle at a local gun show in an effort to help her friends (Olinger, 2000; Soraghan, 2000). Harris, in fact, had researched the regulations set forth by the Brady Act and even wrote about them in a class paper earlier in 1998: "the biggest gaping hole is that background checks are only required for licensed dealers... not private dealers... private dealers can sell shotguns and rifles to anyone who is 18 or older" (Jefferson County Sheriff's Office, 1999, p. 26,538). Anderson explained in her testimony before the Colorado Supreme Court how the boys had scouted out such private dealers at the gun show specifically to avoid the background check requirement because she did not want to give her name (Soraghan, 2000).

The debate about the "gun show loophole" was immediately recharged. Many, including Anderson, said that there should be a law requiring background checks for firearms

<sup>9</sup> House Bill 1316 amended Arkansas code § 9-28-801.

<sup>10</sup> The barrels of the shotguns used in the Columbine massacre had been sawed off to make them easier to conceal. This made them shorter than 18 in., and thus they were in violation of the National Firearms Act of 1934.

purchased at gun shows (Soraghan, 2000). Though this debate gained a considerable amount of attention post-Columbine, legislators had been trying since May of 1998 to get the loophole closed. The first piece of legislation, House Bill 3833, called for a better regulation of firearms at gun shows. Sponsored by Rod Blagojevich, the bill required more detailed records for sales to unlicensed purchasers, including name, age, and address; the serial number, make, and model of the firearm; and the date and location of transfer (H.R. 3833, 1998). The bill died nearly as fast as it was introduced; it was later reintroduced as House Bill 4442 in August of 1998, Senate Bill 2527 in September 1998, and House Bill 109 in January 1999, where it died each time. Two additional bills, Senate Bill 443 and House Bill 902, were also introduced in the months prior to Columbine (February and March 1999, respectively). Entitled the Gun Show Accountability Act, these bills required any persons “organizing, planning, promoting, or operating a gun show” to register with and pay a fee to the Secretary of Treasury, keep them notified of date and location, verify the identity of their vendors, and ensure that background checks were being conducted and sales reported (H.R. 902, 1999; S. 443, 1999). These two bills also never passed (H.R. 902, 1999; S. 443, 1999).

Immediately following Columbine, there was a rush to get federal legislation addressing the gun show loopholes to the floor. Within 3 weeks, the Youth Gun Crime Enforcement Act (YGCEA) of 1999 was introduced in both the House and the Senate (H.R. 1768, 1999; S. 995, 1999). The YGCEA extended the Brady Act to gun shows by regulating the events and requiring background checks, as well as establishing mandatory waiting periods to allow more thorough background checks by law enforcement (H.R. 1768, 1999; S. 995, 1999). Further, the YGCEA created greater restrictions for youth access to firearms, including raising the age of handgun eligibility, requiring gun storage and safety devices, increasing sanctions for possession, and even holding parents responsible in cases of death or injury by firearm when carried out by a juvenile (H.R. 1768, 1999; S. 995, 1999). The Gun Show Accountability Act was reintroduced a month after the shootings (H.R. 1903, 1999), and a separate bill requiring background checks at gun shows and banning fees in connection with such checks was introduced in June (H.R. 2122, 1999). None of the bills passed.

Several other key reforms were introduced to try and address the gun show loophole. Introduced in 2001, the Gun Show Loophole Closing and Gun Law Enforcement Act not only required criminal background checks on all gun show transfers, it also provided additional resources for gun crime enforcement (H.R. 2377, 1999; S. 890, 1999). The Gun Show Background Check Act, also introduced in 2001, required the registration of gun show promoters, the reporting of all sales to unlicensed purchasers, and criminal background checks for purchasers (S. 767, 1999). A third piece of legislation, the Gun Show Loophole Closing Act, was first introduced in the Senate in 2003 and again required criminal background checks on all transactions conducted at gun shows, as well as better recordkeeping by those selling or transferring the firearms (S. 1807, 2003). Each of these pieces of legislation died. Both the Gun Show Background Check Act<sup>11</sup> and the Gun Show Loophole Closing Act<sup>12</sup> have been reintroduced in subsequent years, both have never passed. Additionally, as of the time of this writing, there were bills for each of these pieces

<sup>11</sup> Later versions of the Gun Show Background Check Act include House Bill 4034 (2002), House Bill 260 (2003), Senate Bill 2577 (2008), and Senate Bill 843 (2009).

<sup>12</sup> Later versions of the Gun Show Loophole Closing Act include House Bill 3832 (2004), House Bill 3540 (2005), House Bill 96 (2007), and House Bill 2324 (2009).

of legislation presently open with their respective committees, though the chance of either passing has been projected at less than 1 %.<sup>13</sup>

In the year following the Columbine shooting, over 800 bills relating to firearms were introduced, including those discussed here (Soraghan, 2000). However, only about 10 % of these laws were passed (Soraghan, 2000). Colorado, in particular, passed six bills, including the prohibition of “straw purchases,” or firearms purchases made on another person’s behalf, reinstating the state’s background check system, and including juvenile records in background checks (Soraghan, 2000). The other three bills offered protection for firearms owners engaging in interstate travel by car, protection for the gun industry against negligence lawsuits, and a final bill that would conceal the names of people provided government clearance to carry concealed firearms (Soraghan, 2000). Although then-Governor Bill Owens proposed five critical pieces of legislation designed to keep firearms away from children, the only one to pass was the requirement for a state background check, and it was only approved after a man killed his three daughters and engaged in a gun fight with police in a Denver suburb (Soraghan, 2000).

### Virginia Tech

Nearly 8 years to the day after the Columbine shooting, Seung-Hui Cho carried out what remains (to date) the largest mass casualty shooting in the United States.<sup>14</sup> Around 7:15 a.m. on the morning of April 16, 2007, Cho shot and killed two students in the West Ambler Johnston dormitory on Virginia Tech’s campus. After a two hour break, during which he disposed of evidence<sup>15</sup> and mailed a package containing his multimedia manifesto to NBC, Cho entered Norris Hall and opened fire. In his wake, he left an additional 30 students and faculty dead. He then shot himself as law enforcement entered the building.

In August 2007, the Virginia Tech Review Panel (VTRP) released their findings after a lengthy investigation of the case. In addition to findings related to the emergency response to the shooting as well as a reconstruction of Cho’s life up to the day of the shooting, a key focus of the report also examined Cho’s mental health. In 1992, Cho immigrated to the United States from Korea with his family (VTRP, 2007). Cho remained socially isolated after the move and during middle school was eventually diagnosed as having selective mutism and major depression (VTRP, 2007). Based on these disorders, which continued to plague Cho throughout high school, he was dissuaded from entering Virginia Tech due to its size and encouraged to find a smaller college closer to home, but went against these recommendations (VTRP, 2007). In the fall of 2003, Cho joined the freshman class at Virginia Tech (VTRP, 2007).

The fall of 2005, in particular, was a critical time for Cho (VTRP, 2007). Not only did he remain withdrawn from those around him, but his writings also became

<sup>13</sup> See Senate Bill 35 (2011) and House Bill 591 (2011). Passage projections available at [www.govtrack.us](http://www.govtrack.us).

<sup>14</sup> Prior to the shooting at Virginia Tech, the 1991 Luby’s cafeteria massacre was the largest mass casualty shooting in the United States. In this event, George Jo Hennard drove his pick-up truck through the front window of the Killeen, TX eatery (Hayes 1991). As patrons rushed to his aid, Hennard opened fire, killing 22 patrons and wounding 20 others before turning the gun on himself. The July 20, 2012 shooting at the Aurora, CO movie theater has a higher total victim count (70) with less total fatalities (12) than the Virginia Tech shooting (Frosch & Johnson, 2012).

<sup>15</sup> Police searches located Cho’s computer but the hard drive was missing. There has been speculation that he dumped it in the campus’ Duck Pond during this two hour break, but a search of the pond never turned up the hard drive (Adams, 2007).

increasingly hostile and his behavior more threatening. After his classmates in Professor Nikki Giovanni's class stopped attending out of fear, she had him removed, and department head Lucinda Roy mentored Cho one-on-one (VTRP, 2007). Cho continued to present dark and violent writings to Dr. Roy and his other professors, which sparked enough concern that they began documenting all encounters with him (VTRP, 2007). Dr. Roy offered on a number of occasions to help Cho seek counseling, though he refused her assistance (VTRP, 2007).

On November 27, Cho had his first run-in with the campus police department (VTRP, 2007). After texting back and forth with a female student, Cho appeared at her dorm room wearing sunglasses and a hat and introduced himself as "Question Mark," his imaginary twin brother (VTRP, 2007, p. 45). The student, fearful of her safety, alerted the Virginia Tech Police Department (VTPD) who visited Cho. Though he was not taken into custody, the officers advised Cho not to contact the student again (VTRP, 2007). Following this encounter, Cho finally contacted the Cook Counseling Center to seek treatment (VTRP, 2007). After a telephone triage, Cho set an appointment for December 12, but did not attend the meeting (VTRP, 2007).

The VTPD did, however, receive another complaint regarding Cho, this time on December 12, the same day he was supposed to be at the Cook Counseling Center (VTRP, 2007). Another female student had found writings on her dorm room door that mirrored Facebook messages and postings she had received from Cho (VTRP, 2007). The student declined to file criminal charges, and the following day, the VTPD once again let Cho off with a warning to cease communication with her (VTRP, 2007). However, the VTPD would make a second visit to Cho's dorm room on December 13, after they received a call that Cho was making suicidal threats (VTRP, 2007).

This time, Cho was not let off with a warning. He was taken to the VTPD, where a member of the local community service board (CSB) pre-screened him for mental illness (VTRP, 2007). Based on her findings—that Cho was in fact mentally ill, that he refused to seek treatment voluntarily, and that he posed an imminent danger to himself or others—the pre-screener immediately contacted the magistrate for the St. Albans Behavioral Health Center, seeking a temporary detention order (Bonnie, Reinhard, Hamilton, & McGarvey, 2009; VTRP, 2007). The order was granted, and Cho was transported to St. Albans (Bonnie et al., 2009; VTRP, 2007).

The following morning, Cho attended a mental health hearing, where an independent licensed clinical psychologist also determined Cho to be mentally ill, but did not find that he posed an imminent threat to himself or others and that continued involuntary hospitalization was not needed (Bonnie et al., 2009; VTRP, 2007). The attending psychiatrist at St. Albans evaluated Cho just prior to his commitment hearing (VTRP, 2007). Based on the meeting, this psychiatrist recommended outpatient counseling. At the commitment hearing, the special justice ruled Cho was "an imminent danger to himself as a result of mental illness" but still recommended outpatient treatment (VTRP, 2007, p. 48; see also Bonnie et al., 2009). Although Cho kept his appointment scheduled for later that afternoon, he never received any additional counseling (VTRP, 2007).

This series of events was never reported to the Central Criminal Records Exchange (CCRE) as required by Virginia Code (see § 37.2-819), amended in 2005, to include such a provision. According to the statute, the court clerk was required to notify the CCRE of any person who was either voluntarily or involuntarily admitted to any facility, who has been the subject of a temporary detention order, or who has been prohibited by a judge or

justice of possessing a firearm. In the state of Virginia, it was against the law for any person who met any one of these criteria to purchase, possess, or transport a firearm (see VA Code § 18.2-308.1:3). Further, the language of the code required that only forms related to the admissions or temporary detention order be forwarded; medical records are excluded from reporting (VA Code § 37.2-819). Additionally, the only information that was to be forwarded to the NICS by the state police is “a person’s eligibility to purchase, possess, or transfer a firearm” (VA Code § 37.2-819).

As a result of the failed reporting to the NICS of Cho’s temporary detention order and court-ordered outpatient treatment, he was not flagged when he went to purchase his firearms. Cho purchased his first gun, a Walther P-22 semi-automatic pistol, on February 9th (Roberts, 2009). At the time of purchase, Virginia state law had a mandated 30-day waiting period between gun purchases (Roberts, 2009; see also VA Code § 18.2-308.2:2), though this law was repealed in 2012 (Sherfinski, 2012). Cho waited, and purchased the Glock 19 semi-automatic pistol on March 13th (Roberts, 2009). Both times, Cho presented the required documentation—proof of residency and a government-issued photo ID (Roberts, 2009). Both times, he passed the instant background check (Roberts, 2009).

Following the Virginia Tech massacre, Governor Timothy Kaine signed an executive order requiring that anyone deemed a danger to himself or others, regardless of whether designated for inpatient or outpatient treatment, be immediately reported to all relevant databases, including the CCRE.<sup>16</sup> New legislation also was enacted in 12 states to improve reporting (Brady Campaign Press Release, 2011).<sup>17</sup> President George W. Bush signed the NICS Improvement Amendments Act in early 2008 (H.R. 2640, 2007). The act was designed to improve the NICS by requiring swifter reporting, more frequent updating of records, and better coordination between State and Federal agencies (H.R. 2640, 2007). The act further designated \$875 million in grant funds over a span of 5 years to be allocated to state court systems to help establish or update reporting systems for firearms eligibility (H.R. 2640, 2007). Nearly \$500 million in additional grants were made available to state courts to help establish or update systems for criminal history reporting (H.R. 2640, 2007). Five years after the Virginia Tech shooting, around \$50 million of these funds had been appropriated by states; although a million records were added to the NICS, as many as 24 states submitted less than 100 mental health records to the system (Brady Campaign Press Release, 2011; Witkin, 2012). However, the Brady Campaign (2011) noted there should be nearly twice as many records disqualifying individuals from firearms purchases in the system.

In total, over one thousand pieces of legislation have been introduced following these events in an attempt to prevent the next tragedy. Measures related to gun control were the primary focus of this legislation, but it also has included bills related to mental health issues, improved reporting and tracking of sales, and criminal justice-related policy changes. Despite the number of provisions already in place at the time of these events, including the National Firearms Act and The Brady Handgun Violence Prevention Act, these events have triggered a demand for new and better legislation. One key driving

<sup>16</sup> See Virginia Exec. Order No. 50, 2007.

<sup>17</sup> Following the Virginia Tech shooting, Arkansas, Illinois, Maine, Minnesota, New York, North Carolina, Oregon, Pennsylvania, Texas, Washington, West Virginia and Wisconsin passed legislation to improve reporting (Brady Campaign Press Release, 2011). Both Arkansas (Jonesboro) and Oregon (Springfield) had been sites of previous school shootings, although Brady background checks were not relevant because the shooters were minors.

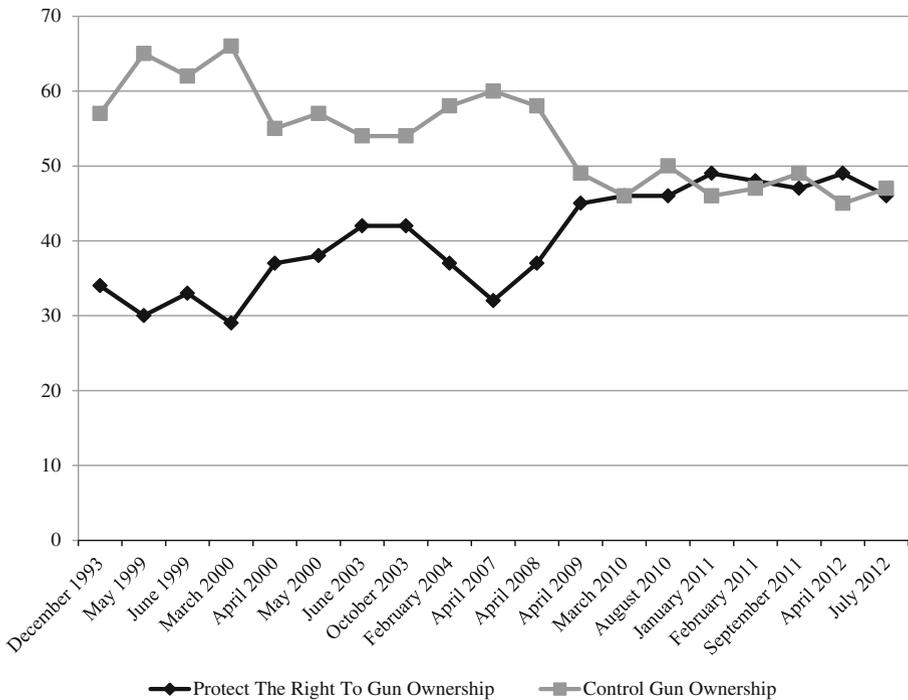
force behind this flurry of legislation is public opinion, which is discussed in the next section.

### Public Opinion and Gun Control

There is a considerable body of scholarly literature that examines public opinion and gun control, and the impact this has on legislation (see for example Blendon, Young, & Hemenway, 1996; Kleck, Gertz, & Bratton, 2009; Semet & Ansolabehere, 2011; Vernick, Teret, Howard, Teret, & Wintemute, 1993; Wolpert & Gimpel, 1998; Wright, 1981). In addition, gun control is a continual hot button issue in public opinion polls, such as the Gallup polls, the General Social Survey (GSS), and routine surveys conducted by Pew Research Center for the People & the Press. In a 2011 poll, Gallup reported that support for banning handguns (26 %) and semiautomatic firearms (43 %) was at an all-time low (Jones, 2011). Though support for handgun bans has continually declined since 1959 (then 60 %), and support for restrictions on semiautomatic guns has continued to decline since the expiration of the AWB, both experienced slight increases in support around the time of the Columbine shooting (Jones, 2011). Perhaps, however, one of the most interesting findings reported by the Gallup poll is that Americans are more in favor of enforcing current laws (trending around 60 % support per year) rather than enacting new laws (averaging around 38 % support) (Jones, 2011). Yet, in a separate poll, Gallup respondents believed that stricter gun control laws (24 %) and better mental health screening (15 %) were the two most important measures that could prevent mass shootings (Newport, 2011).

The Pew Research Center for the People and the Press also routinely polls U.S. citizens regarding their opinions about gun control. One of the particular questions is whether respondents believe it is more important to protect gun rights or control gun ownership. Figure 1 charts the responses to this question from 1993 to 2012. At the end of 1993, just prior to the introduction of the AWB, respondents overwhelmingly favored regulating gun ownership. However, there has been a clear shift of many respondents over the last 19 years towards protecting the right to gun ownership, which has actually surpassed the preference to regulate gun ownership on two separate occasions. An interesting trend in these responses comes after school shooting incidents, particularly Columbine and Virginia Tech. In the year following Columbine (May 1999 to May 2000), there was an 8 % shift from controlling gun ownership to protecting owners' rights. Following Virginia Tech (April 2007 to April 2008), respondents favoring control over gun ownership increased by 5 % while their desire to protect the rights of the gun owners decreased by only 2 %. Overall, however, it does not appear that school shootings have a significant impact on public opinion related to gun control.

Understanding public opinion is crucial in understanding how and why legislation is introduced. Researchers (e.g., Burstein, 2003; Haider-Markel & Joslyn, 2001; Monroe, 1998; Page & Shapiro, 1983; Page, Shapiro, & Dempsey, 1987) have repeatedly examined the relationship between public opinion and policy. All have concurred that public opinion influences policy (Burstein, 2003; Haider-Markel & Joslyn, 2001; Monroe, 1998; Page & Shapiro, 1983; Page et al., 1987), and does so with greater effect than policy has on public opinion (Page & Shapiro, 1983). Monroe (1998) found that policy outcomes for over 500 issues between 1980 and 1993 were also consistently impacted by public opinion. The key determinant of this effect is the salience of the



**Fig. 1** Pew research center for the people & the Press responses: 1993–2012. Question asked: what do you think is more important—to protect the right of Americans to own guns, or to control gun ownership? (Pew Research Center for the People & the Press, n.d.)

issue—the more public interest there is for a particular issue, the greater the democratic responsiveness (Burstein, 2003). For instance, the proportion of citizens who cited crime, violence, and gun control as the most important issues facing government increased dramatically following the Columbine High School shooting (Saad, 1999). This shift in public opinion may be linked to the introduction of the large amount of legislation following the event (Page & Shapiro, 1983).

## Discussion

In his research on mass shootings in schools, Gary Kleck noted, “the specific gun control measures proposed in their aftermath were largely irrelevant and almost certainly could not have prevented the incidents or reduced their death tolls” (2009, p. 1447). Further examination into the cases discussed in this paper support Kleck’s statement as each shooter was, in some way, in violation of existing laws. Andrew Golden, Mitchell Johnson, Eric Harris, and Dylan Klebold each had weapons in their possessions as juveniles, which was illegal under the AWB. The sawed-off shotguns used in the Columbine massacre were in deliberate violation of the National Firearms Act of 1934. The TEC-9 semi-automatic handgun used by Klebold was expressly banned under the AWB, which was in effect at the time of the shooting. Although he cleared the background check as a result of failed reporting by the mental health system, Seung-

Hui Cho violated the Gun Control Act of 1968 and the Brady Law by purchasing guns after multiple members of the medical community had declared him mentally ill.

The question still remains, then, whether existing bills and laws, as well as bills and laws that are introduced in response to such tragedies, can prevent the next shooting. Though none of the measures to close the gun show loophole have yet to be successfully enacted into legislation, other bills, such as the NICS Improvement Act, have been implemented. But are they successful? One could argue that in fact they are not.

Perhaps most notable in discussing the failure of legal responses to school shootings is the mental health loophole that was the focus of legislation post-Virginia Tech. It can be argued that even if all mental health records were forwarded to the NICS as required by the 2008 act, there is still a gap that would allow people with mental health issues to legally obtain firearms. The reporting requirements under the NICS Improvement Act address only people who have been diagnosed mentally ill or an imminent danger to themselves or others. It fails, however, to account for those people with illnesses who are never found mentally unfit, those who are never committed to an institution, or those who never receive outpatient treatment.

One case in point was the recent mass shooting involving Congresswoman Gabrielle Giffords. On January 28, 2011, 22-year-old Jared Lee Loughner attended an open meeting where Giffords was addressing her constituents. He opened fire, killing six and wounding an additional 13 (including Giffords). The 9 mm Glock pistol used in the shooting had been purchased a month and a half earlier from a Tucson-area sporting goods store, and Loughner had passed the background check. Similar to Virginia, Arizona also prohibited the sale of firearms to those considered a danger to themselves or others. Yet, this required a diagnosis to occur prior to the gun purchase, which had not happened with Loughner. However, he was later declared to be incompetent to stand trial by the judge assigned to the case, and a year and a half after the shooting, had finally been declared competent to stand trial (Santos, 2012). He pled guilty in exchange for a life sentence (Santos, 2012). Questions of mental competency also have recently arisen in pre-trial hearings for Aurora shooter James Holmes, as well as in the investigation of Newtown shooter Adam Lanza.

One glaring limitation in answering these questions is the lack of accurate data. While data are available through the NICS to see how many people were declined when trying to purchase weapons due to either mental issues or criminal convictions, there are still over a million cases of diagnosed mental illness and institutionalization that have yet to be reported to the system (Brady Campaign Press Release, 2011). Therefore, it is virtually impossible to know if any of the people passing background checks each year should not be eligible to do so because of mental illness. Further, due to the lack of restrictions on private sellers, including at gun shows, there is no way to trace how many of these transactions include sales to people who do not actually meet the criteria for legal gun ownership, such as in the case of Columbine shooters Eric Harris and Dylan Klebold. There also is no way to accurately account for the number of firearms stolen, as was the case with Jonesboro shooters Andrew Golden and Mitchell Johnson, which are either never reported to authorities or never recovered.

It could be argued that in some cases, while the legislation could be useful in deterring or preventing some future acts, the key purpose of these legal responses is to ease the mind of citizens who fear future attacks and to provide assurance that something is being done to address gun violence.

If this is true, then future research should continue to examine people's attitudes about particular legislative issues, including whether assault weapons should be banned, whether gun laws should be stricter, or whether there should be fewer restrictions for CHL holders. An important and understudied connection between public opinion on these key issues and other influencing factors, such as mass media and interest groups (Monroe, 1998), also should be studied. Research should also examine whether people believe the legal responses to school shootings discussed in this paper are preventing crime or if they are, in essence, reactive or "feel better" legislation. However, as many of the bills introduced never pass, such as in the response to Columbine, future research should also examine why they are unsuccessful—what would it take to get such legislation passed? Perhaps such an answer will surface in the wake of the Sandy Hook Elementary School shooting; however, given the recentness of the event, this remains to be seen. Further, what impact do the moral panics that ensue from school shootings have on legislation and its success? Understanding how legislatures respond to incidents of mass shootings, both on and off school campuses, is important in the continual understanding of how people perceive and understand these random acts of violence.

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