

U.S. Gun Policy Framework with a Focus on Mass Shootings

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Abstract: From the creation of the Constitution in 1787 to now, this paper seeks to explain gun culture in the United States and why such an importance is placed in the U.S. on the protections granted by the Second Amendment. The United States possesses the most civilian owned firearms, and that number has continuously increased over the last few years. In a country plagued by mass murders, especially in school settings, there is a lack of policy changes implemented to assist in keeping guns out of the hands of those who wish to do harm. This paper seeks to explain why firearms ownership has increased, why mass shootings have increased, and what can be done to ensure the number of mass shootings per year decreases, without infringing on the constitutional right to bear arms.

Keywords: Guns, mass shootings, NRA, Constitution

Introduction

The last 10 years have shown an alarming increase in mass shootings in the United States. This paper will examine the multifaceted cause of the increase of this phenomenon. Beginning with U.S. gun culture is essential to seeing the footprint guns have in this country. The media's involvement has been a critical talking point post-mass shootings. There have been many changes in policy but they have either become ineffective or written in such a way that they require being reintroduced in legislation. The NRA and Conservatives are set on going forward without any additional gun control, but it is known now that we need stricter policies in order to effectively protect American citizens. This paper seeks to understand the causes of the rising number of gun ownership and mass shootings in the past few years and to provide suggestions on legislative policy changes that would curve the rise.

American Gun Culture

There are two key points that must be mentioned in order to understand the current culture involving guns in the United States. First and foremost, the Second Amendment to the United States Constitution explicitly states that the people have the right to keep and bear arms, and that right shall not be infringed. It explicitly states, "A well-regulated Militia, [is] necessary to the security of a free state" and "the right of the people to keep and bear Arms, shall not be infringed."³⁶⁹ However, there remains no consensus on the matter and rather American citizens remain divided roughly into two groups – those that believe that the second amendment protects citizens to own guns in order to defend the country against a tyrannical government and the other that believe it was intended for the use of a militia or military. At the time of writing this paper, the highest court in the United States is led by a conservative majority, who recently ruled in favor

³⁶⁹ U.S. Const. Amend. II.

of gun owners by striking down the state of New York in *New York State Rifle & Pistol Association v. Bruen*.³⁷⁰

During the pandemic and following recent protests, the United States saw an increase in gun purchases. To illustrate this, an average of 13 million guns were legally sold each year between 2010 to 2019, and then jumped to nearly 20 million in 2020 and again in 2021.³⁷¹ Those who never previously owned a gun have purchased them in an effort to protect their homes and businesses. Since November 1998, over 427 million background checks have been performed for the purchase of firearms, with over 94 million of those checks taking place between January 2020 to June 2022.³⁷²

Many Americans blame the rise of mass shootings to the expiration of a federal assault weapons ban that occurred over 15 years ago. The ban, within the Crime Control Act of 1994, prevented the possession of specific weapons and large capacity magazines.³⁷³ Research indicates that if the ban had continued, then at least 30 of the mass shootings that have occurred after its expiration, would not have taken place.³⁷⁴ It is worth pointing out that there remains no consensus in the U.S. as to what is constituted as a mass shooting. While some organizations define mass shootings according to the number of victims, committed acts, or type of weapon used, this paper uses the Congressional Research Services definition which classifies a mass shooting as having four or more victims, not including the offender.³⁷⁵ The chart presented below shows that under the definition of Congress, there has been a noticeable increase in mass shootings in recent years.

³⁷⁰ *New York State Rifle & Pistol Association INC., ET AL v. Bruen*, Superintendent of New York State Police, ET AL. 597 U.S. 1 (2022)

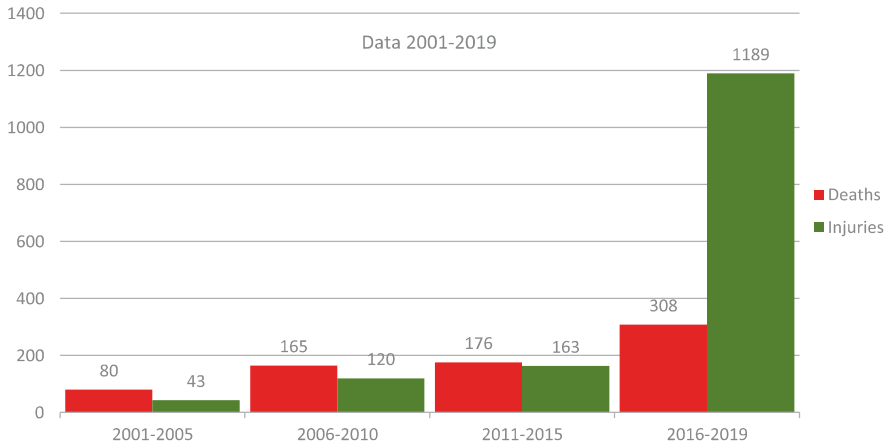
³⁷¹ Eric Young. (2022, March 24). *One in Five American Households Purchased a Gun During the Pandemic*. NORC at the University of Chicago. <https://www.norc.org/NewsEventsPublications/Press-Releases/Pages/one-in-five-american-households-purchased-a-gun-during-the-pandemic.aspx>

³⁷² Federal Bureau of Investigations (2022, June 30). *NICS Firearm Checks: Month/Year*. FBI. Retrieved July 20, 2022 from https://www.fbi.gov/file-repository/nics_firearm_checks_-_month_year.pdf/view

³⁷³ Jeffrey Roth and Christopher Koper. (1999). *Impacts of the 1994 Assault Weapons Ban: 1994-96* (Report No. NCJ173405). U.S. Department of Justice. <https://www.ojp.gov/pdffiles1/173405.pdf>

³⁷⁴ Merla Paul. (2021, March 25). *Assault weapon ban significantly reduces mass shooting*. Northwestern Now. Retrieved July 28, 2022, from <https://news.northwestern.edu/stories/2021/03/assault-weapon-ban-significantly-reduces-mass-shooting/>

³⁷⁵ William Krouse and Daniel Richardson. (2015, July 2015). *Mass Murder with Firearms: Incidents and Victims, 1999-2013*. Congressional Research Service. <https://sgp.fas.org/crs/misc/R44126.pdf>

Table 1: Death and Injury Data 2001 to 2019

Source: Shahid, S. & Duzor, M. (2021, June 1). *History of Mass Shooters*. The Violence Project. <https://projects.voa-news.com/mass-shootings/>

The Media's Involvement

On average, there is a mass shooting in the United States every 12.5 days.³⁷⁶ When an event as tragic as a mass shooting occurs, the media is quick to fill the headlines with details about the shooter and the shooting. A study done in 2015 indicated that once a mass shooting occurs, after being covered by the media, at least 0.3 new incidents will occur in the following 13 days.³⁷⁶ This “contagion” as some call it, is used to explain how the behavior spreads across various people, through means of the media. The media continuously covering the manifestos, life stories and images of the shooters pushes the imitation, giving a sort of role model to those who have already considered inflicting harm on others. Recently, the “Don’t Name Them” campaign, created by the Advanced Law Enforcement Rapid Response Training team from Texas State University, in working with the FBI, has a goal of not sensationalizing the name of a shooter.³⁷⁷ The purpose

³⁷⁶ Sherry Towers, Andres Gomez-Lievano, Maryam Khan, Anuj Mubayi, & Carlos Castillo-Chavez. (2015). Contagion in mass killings and school shootings. *PLOS ONE*, 10(7). <https://doi.org/10.1371/journal.pone.0117259>

³⁷⁷ Adam Lankford & Eric Madfis. (2017). Don’t Name Them, Don’t Show Them, But Report Everything Else: A Pragmatic Proposal for Denying Mass Killers the Attention They Seek and Detering Future Offenders. *American Behavioral Scientist*, 62(2), 260–279. <https://doi.org/10.1177/0002764217730854>

is to stop putting a spotlight on the attacker, and instead focus on the victims and the heroes in each incident.

The news reports on these attacks, and social media spread the information faster than ever before. Following the Parkland school shooting in 2018, there was a two-week period where over 630 threats were made to schools across the country.³⁷⁸ Not all these threats were credible, some were merely a hoax, but it still sent fear rippling through communities. By publicizing the names and information of offenders, the media is giving them the fame and attention they so desperately want, and as a society we are helping them to achieve the goal of becoming a household name. It is heavily indicated that individuals who commit these acts to seek fame, will take the lives of twice as many victims. In 2015, the Umpqua Community College shooter said “the more people you kill, the more you’re in the limelight.”³⁷⁷

Notable Changes in Policy, A Brief History

One of the first acts passed by congress was the National Firearms act of 1934 to regulate the “importing, manufacturing, and dealing in firearms” by tax and registration.³⁷⁹ In 1938, the Federal Firearms Act of 1938 was passed which mandated persons involved in the selling of firearms to obtain a Federal Firearms License but most important, prohibited firearms from being sold to felons.³⁸⁰ The 1938 act was the first to highlight a need to keep guns out of the hands of violent individuals.³⁸⁰ Most legislative traction on gun reform occurred after the catalyst that was President John F. Kennedy’s assassination in Dallas, Texas in 1963. Arguably, one

³⁷⁸ Christal Hayes, (2018). After Florida shooting, more than 600 copycat threats have targeted schools. USA Today.

³⁷⁹ Bureau of Alcohol, Tobacco, Firearms and Explosives. (2009). *ATF national Firearms Act Handbook*. <https://www.atf.gov/firearms/docs/guide/atf-national-firearms-act-handbook-atf-p-53208/download>

³⁸⁰ Alfred Ascione, (1938). The Federal Firearms Act. *St. John’s Law Review*, 13(2), 439-441. http://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=5667&=&context=lawreview&=&sei-redir=1&referer=https%253A%252F%252Fscholar.google.com%252Fscholar%253Fhl%253Den%2526as_sdt%253D0%25252C44%2526q%253Dfederal%252Bfirearms%252Bact%252Bof%252B1938%2526btnG%253D#search=%22federal%20firearms%20act%201938%22

of the most important legislative moves was the passing of the Gun Control Act of 1968 which directly set restrictions on the purchase or possession of a firearm based on age, criminal background and incompetence.³⁸¹ Tasked with the national tracing of guns, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) was created in 1972.³⁸² Since then, the role of ATF has expanded to become an investigative agency under the direction of the United States Department of Treasury.³⁸³ The Armed Career Criminal Act of 1986 paved the way of holding criminals accountable by enhancing penalties to crimes committed with a firearm while simultaneously imposing mandatory minimums for the illicit use of a firearm under specified conditions and banning the transfer or possession of a machine-gun; a fully automatic firearm that continuously fires bullets by pulling and holding down the trigger and stops firing when released.³⁸⁴

The Crime Control Act of 1990 banned the manufacturing and the importation of parts to build a semiautomatic rifle, which are self-loading, or shotguns.³⁸⁵ In addition to firearms bans, gun-free zones were also established; these are areas where firearms are not permitted, such as on school grounds, whether public or private, and within 1,000 feet of a school.³⁸⁶ Gun-free school zones carried over, and you will now find many establishments with gun-free signs in their windows, to include malls and restaurants. In 1994, the Brady Act forced background checks to be conducted on individuals attempting to obtain a handgun by means of the Chief local law enforcement officer and established a 5-day waiting period for purchasing handguns.³⁸⁷ Shortly after, the United States Supreme Court ruled that the Brady Act interim provisions were unconstitutional but the permanent provision of establishing a National Instant Criminal Background Check

³⁸¹ Gun Control Act of 1968, 48 U.S.C. § 922 (1968).

³⁸² Bureau of Alcohol, Tobacco, Firearms and Explosives. (n.d.). *ATF History Timeline*. Retrieved July 15, 2022 from <https://www.atf.gov/our-history/atf-history-timeline>

³⁸³ U.S. Department of Treasury. (n.d.). *Bureaus*. <https://home.treasury.gov/about/bureaus>

³⁸⁴ The Armed Career Criminal Act of 1986, 18 U.S.C. § 924(e)

³⁸⁵ Crime Control Act of 1990, 18 U.S.C. § 2204

³⁸⁶ Gun-Free School Zones Act of 1990, 18 U.S.C. § 1702

³⁸⁷ Brady Handgun Control Act of 1994, 18 U.S.C. § 102

System, also referred to as NICS, went into effect in 1998.³⁸⁸ This required dealers to conduct background checks to pre-purchase. In 2008, President George W. Bush signed the NICS Improvement Act of 2007 expanding the background check to include persons that are mentally ill.³⁸⁹

Following the Uvalde massacre on May 24, 2022, there was a strong push throughout the country for better gun control policy. After 28 years, this was considered the most significant firearms legislation to pass the House and Senate.³⁹⁰ The Bipartisan Safer Communities Act was sponsored by Florida Republican Senator Marco Rubio and introduced in October of 2021. The original goal of the act was to enhance background checks for those wishing to purchase a firearm, and close what is referred to as the “boy-friend loophole”, by no longer permitting convicted domestic abusers from buying a firearm for a period of five years.³⁹⁰ Additionally, the act gave some \$15 billion in funding to mental health services across the country.³⁹¹ One key change from this act was that juvenile records, both criminal and mental health related, would now be heavily examined through NICS.³⁹¹ BSCA included much more than just gun reform; however, as with common practice in the United States, many topics are looped into one bill such as Medicaid.

The National Rifle Association

In 1871, the National Rifle Association (NRA) was founded by Union veterans, displeased with the lack of marksmanship and proper firearms training in their troops.³⁹² In 1903, there was a push to promote shooting sports for the youth of the country. This led to the creation of NRA clubs throughout universities and military academies.³⁹² The NRA was a focal point in World War II, giving assistance to government organizations and even aided in

³⁸⁸ Printz, Sheriff/Coroner, Ravalli County, Montana v. United States, 521 U.S. 898 (1997)

³⁸⁹ National Instant Criminal Background Check System Act of 2008, 18 U.S.C. § 2

³⁹⁰ George Wright, & Matt Murphy. (2022, June 24). Congress passes first gun control bill in decades. BBC News. Retrieved July 26, 2022, from <https://www.bbc.com/news/world-us-canada-61919752>

³⁹¹ Bipartisan Safer Communities Act 2022, § 12001

³⁹² *A Brief History of the NRA.* (n.d.). The NRA Foundation. Retrieved July 22, 2022, from <https://www.nrafoundation.org/about-the-nra/>

arming Britain in preparation for German invasion. With a goal of protecting the Second Amendment, the NRA continues the mission of ensuring Americans have the proper firearms training necessary to be proficient firearm owners.³⁹³

Specified on their website, the NRA targets all constituents of the United States, to include women and the disabled. While some money donated to the NRA goes to funding programs, a good majority of the money is spent lobbying for votes towards individuals who best represent the ideas of the NRA. Mitt Romney, the junior United States Senator for the State of Utah, has received over \$13 million from the NRA over the last few years.³⁹⁴ Between 2019 and 2020, over \$5 million went to the political campaigns of Republicans across the country.³⁹⁴

Policy Change Recommendations

Policy changes cannot be made without the participation and cooperation of all aspects of the United States government. Unfortunately, it is not as easy as it sounds. For these policies to be implemented into law, they must be written into a bill, which will be decided on by the House and Senate before being sent to the President for signature. The President can veto a law, but this can be overruled by Congress with a two-thirds majority vote.³⁹⁵ Over the years numerous ideas have been presented, but few have made it far enough to become law. This section suggests three policy recommendations to improve gun enforcement.

Establishing red flag laws: Currently, 19 states and the District of Columbia have red flag laws. These laws are intended to prevent those who

³⁹³ *About the NRA Foundation.* (n.d.). The NRA Foundation. Retrieved July 22, 2022, from <https://www.nrafoundation.org/about-us/>

³⁹⁴ Brady United. (n.d.). *Which Senators Have Benefitted the Most from NRA Money?* Retrieved July 19, 2022, from <https://elections.bradyunited.org/take-action/nra-donations-116th-congress-senators>

³⁹⁵ United States Senator Tom Carper. (n.d.). *HOW A BILL BECOMES A LAW.* Tom Carper U.S. Senator for Delaware. Retrieved July 28, 2022, from <https://www.carper.senate.gov/public/index.cfm/how-a-bill-becomes-a-law#011260A1-287E-4716-829F-8C1F3459A144>

exhibit signs of being a threat to themselves or others from being able to purchase and possess a firearm. In the State of New York, an Extreme Risk Protection Order (ERPO) must be completed and filed with the supreme court local to the respondent. This information is then reviewed by a judge who decides if an ERPO should be issued, and if one is, then the police are responsible for removing the guns from the respondent's access.³⁹⁶ This gives law enforcement a tool to protect people who may suffer a spontaneous mental health episode. Often, these episodes derive from domestic disputes, drug use, being under the influence of drugs or alcohol. According to The Violence Project, "80% of mass shooters were in a noticeable crisis prior to their shooting."³⁹⁷

Raising the age minimum to purchase a gun: In May of 2022, just one week after the Uvalde school shooting that claimed the lives of 19 children and two educators, Democratic Congressman Jerry Nadler of New York presented the Protecting Our Kids Act.³⁹⁸ In the bill, it moves to prohibit sales of firearms to individuals under the age of 21. Currently, only six states prevent those under 21 from buying a firearm; California, Florida, Illinois, Hawaii, Vermont, and Washington, although each state has exemptions of their own to this rule.³⁹⁹ In Texas, where the Uvalde shooting occurred, an individual as young as 18 can buy firearms. The Protecting Our Kids Act also moved to establish new federal criminal offenses for the trafficking of firearms, and to prohibit the import and sale of large capacity ammunition feeding devices.³⁹⁸ The average age of a mass shooter was 34 years old, with the youngest being 11 years old and the oldest being 70 years old.³⁹⁷

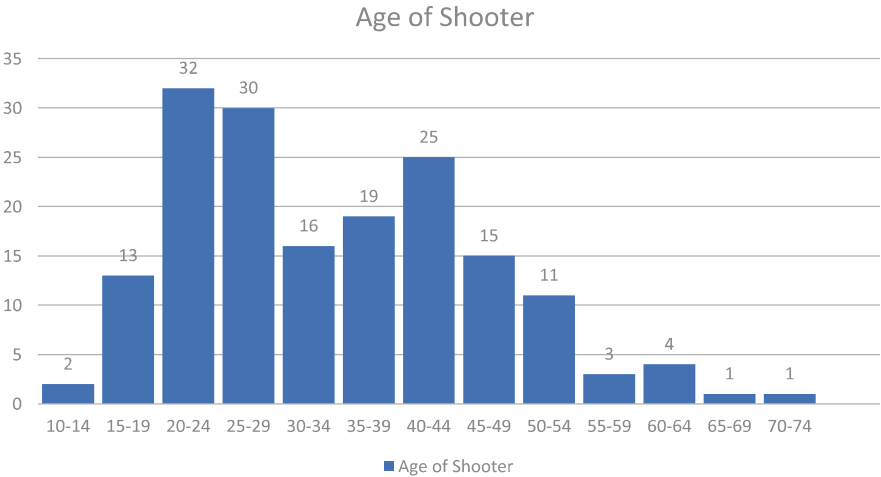
³⁹⁶ The State of New York. (2019, August). Red Flag Gun Protection Law. Retrieved July 22, 2022, from <https://www.ny.gov/programs/red-flag-gun-protection-law>

³⁹⁷ Sharon Shahid & Megan Duzor, (2021, June 1). *History of Mass Shooters*. The Violence Project. <https://projects.voanews.com/mass-shootings/>

³⁹⁸ Protecting Our Kids Act of 2022, 18 U.S.C. § 101

³⁹⁹ Darragh Roche, (2022, June 3). *The 6 U.S. States Where Under 21s Can't Buy Guns*. Newsweek. Retrieved July 25, 2022, from <https://www.newsweek.com/6-u-s-states-where-under-21s-cant-buy-guns-uvalde-shooting-1712586>

Table 2: Age of mass shooters



Source: Shahid, S. & Duzor, M. (2021, June 1). *History of Mass Shooters*. The Violence Project. <https://projects.voanews.com/mass-shootings/>

Continuous and mandatory background checks: At the moment, federal law only mandates firearm dealers to conduct a pre purchase background check. Once that background comes back clear, a purchaser will never have to conduct another background check unless he or she makes another purchase. Conducting continuous background checks ensures that if a person becomes a prohibited possessor at any time after having purchased a firearm, it will show up and notify authorities. Additionally, as our laws are currently written, private sales of firearms do not require a background check. The only time a private sale background check is run is when one of the two parties, buyer or seller, requests it.⁴⁰⁰

Conclusion

Future research into mass shootings can assist in the introduction of new policies. At this time, more research is needed to make connections

⁴⁰⁰ Giffords Law Center. (n.d.). Universal Background Checks. <https://giffords.org/lawcenter/gun-laws/policy-areas/background-checks/universal-background-checks/>

between mental illness and mass shootings, and this research could push more specific policy in regard to mental health and gun ownership. Without taking the proper steps to ensure firearms are not easily accessible to the masses, we will not be able to lessen the amounts of mass shootings that occur each year. The United States has taken minor steps in the past, but by allowing them to expire or not wording them specifically, there have been ways to get around these laws and continue allowing for firearms to fall into the wrong hands.

With the implementation of the recent Bipartisan Safer Communities Act, we may see a decrease in mass shootings committed by those under the age of 21, but it is simply not enough given how often they occur in the United States. Studies have shown that some of the mass shootings that occurred could have been prevented through the Crime Control Act of 1990, had it been extended, and it is time the United States implements something similar to crack down on the violence that is plaguing the nation. Taking guns away from those who are licensed and follow the law will not prevent them from falling into the hands of those who wish to do harm, but instead it will make it harder for law abiding citizens to protect themselves.