

## The Truth About Gun Shows

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There is no gun show loophole. Guns sales at gun shows are subject to exactly the same laws as apply to gun sales anywhere else. Research for the U.S. Department of Justice, as well as research by other scholars, and even research by Sarah Bradys organization shows that gun shows have almost nothing to do with criminal gun acquisition. Proposed gun show legislation would impose special restrictions on meetings of gun club, target shooting matches, hunting traps, and political meetings of Second Amendment organizations.

***What the Bills Do:** House Bill 1220 makes it a crime for a person under 21 to buy a handgun at a gun show. House Bill 1242 requires government approval for all firearms sales at gun showseven if the buyer and seller would not be required to get approval for a sale that took place anywhere else. Both House Bills define a gun show as any meeting of a gun club, gun collectors, hunting clubs, and Second Amendment organizations. Senate Bill 89 requires government permission for all firearms transfers, whether conducted at a gun show, between neighbors, or by inheritance.*

### I. There is no Gun Show Loophole

*Close the gun show loophole, demands Handgun Control, Inc., and its Colorado surrogates. In fact, existing gun laws apply just as much to gun shows as they do to any other place where guns are sold. Since 1938, persons selling firearms have been required to obtain a federal firearms license. The federal Gun Control Act specifically states that a licensed dealer must comply with all laws, including record keeping, when making a transfer at a gun show. 18 U.S.Code 923(j).*

If a dealer sells a gun from a storefront, from a room in his home or from a table at a gun show, the rules are exactly the same: he can get authorization from the Colorado Bureau of Investigation for the sale only after the CBI runs its instant background check (which often leads to false denials based on CBIs inadequate records).

Conversely, people who are not engaged in the business of selling firearms, but who sell firearms from time to time (such as a man who sells a hunting rifle to his brother-in-law), are not required to obtain the federal license required of gun dealers or to call the CBI before completing the sale.

Similarly, if a gun collector dies and his widow wants to sell the guns, she does not need a federal firearms license because she is just selling off inherited property and is not engaged in the business. And if the widow doesnt want to sell her deceased husband's guns by taking out a classified ad in the newspaper, it is lawful for her to rent a table at a gun show and sell the entire collection.

If you walk along the aisles at any gun show, you will find that the overwhelming majority of guns offered for sale are from federally licensed dealers. Guns sold by private individuals (such as gun collectors getting rid of a gun or two over the weekend) are the distinct minority.

Handgun Control, Inc., claims that 25-50 percent of the vendors at most gun shows are unlicensed dealers. That statistic is true only if one counts vendors who are not selling guns (e.g., vendors who are selling books, clothing or accessories) as unlicensed dealers.

Now, suppose that someone claiming to be a gun collector is actually operating a firearms business. He rents a table at a gun show 50 weekends a year, and sells 20 guns each weekend. Selling firearms at the

rate of 1,000 per year, and conducting a business week after week, he appears to be engaged in the business of selling firearms. If this man does not have a federal firearms license, then he is guilty of a federal felony. Indeed, every separate gun sale constitutes a separate federal felony. (The federal laws are section 922 and 923 of volume 18 of the U.S. Code.)

In short, gun shows are no loophole in the federal laws. If a person is required by federal law to have a federal firearms license, then the requirement applies whether or not the person sells at a gun show. And if a person is not required to have a license, then the person's presence at a gun show does not change the law.

The gun prohibition lobbies express outrage that a person can buy a firearm at a gun show without going through the state background check, though this is only the case when the purchase is made from the minority of tables that do not have an FFL. However, even if the non-FFL gun collector sold his gun from his home rather than from a gun show, a federal background check still would not be required.

Why should the location of the sale determine whether a background investigation will be required

## **II. Gun Shows and Crime Guns**

Denver Congresswoman Diana DeGette says that 70 percent of guns used in crimes come from gun shows. SAFE head Arnie Grossman claimed in the *Denver Post* that most guns used for criminal purposes are purchased at guns shows.

The true figure is rather different, according to the National Institute of Justice, the research arm of the U.S. Department of Justice. According to an NIJ study released in December 1997 (Homicide in Eight U.S. Cities, a report that covers much more than homicide), **only 2 percent of criminal guns come from gun shows.** (The same study found that twenty-five percent of crime guns came from gun stores, even though FBI permission is required for every purchase from a gun store.)

That finding is consistent with a mid-1980s study for the NIJ, which investigated the gun purchase and use habits of convicted felons in 12 state prisons. The study (later published as the book *Armed and Considered Dangerous*) found that **gun shows were such a minor source of criminal gun acquisition that they were not even worth reporting as a separate figure.**

At the November 1999 recent meeting of the American Society of Criminology, a study of youthful offenders in Michigan reported that **only 3 percent of the youths in the study had acquired their last handgun from a gun show.**

Even for the tiny percentage of criminal guns acquired at gun shows (and the 25% figure for gun stores) does not mean that the criminal necessarily purchased the gun himself at that location. Many persons with criminal records use a straw man purchaser—someone with a clean record who buys the gun, and then transfers it to the criminal.

Straw man purchases have been classified a federal felony since the Gun Control Act of 1968; the federal law against straw purchases was strengthened in 1986 by the NRA-sponsored Firearms Owners Protection Act.

According to the Center to Prevent Handgun Violence (the legal/educational arm of Handgun Control, Inc.), the group's own survey of **major-city police chiefs found only 2 out of 48 who said that guns**

**from gun shows (both legal and illegal sales according to the questionnaire) were a major problem in their city.**

At the command of the Clinton White House, the Bureau of Alcohol, Tobacco and Firearms produced a paper in early 1999 which said that 10% of gun traces (not crime guns) came from gun shows (included purchases made from licensed dealers, and purchases from private individuals). As the Congressional Research Service has explained, BATF gun traces reveal no meaningful information about gun use in crime; traces are initiated at the request of local police, and can be requested for all sorts of reasons (e.g., to aid the recovery of a stolen gun, for curiosity). Most BATF gun traces do not involve crime guns taken from violent criminals.

What about the other charges against gun shows, such as Denver Congresswoman Diana DeGettes highly-publicized charge that gun shows allow illegal assault weapon sales. In fact, the 1994 Clinton assault weapon law bans the future manufacture of certain firearms based on cosmetic characteristics, such as whether the gun has a bayonet lug (as if criminals were conducting bayonet charges against convenience stores). The law imposes no controls on the pre-1994 supply of so-called assault weapons. It is perfectly legal to own, buy, and sell these pre-1994 guns. It is legal for a licensed federal dealer to sell such guns from his store, or at a gun show; and it is just as lawful for a private individual to sell such guns.

### **III. Columbine and Other Notorious Crimes**

Although the horrible murders at Columbine High School have energized anti-gun activists, no proposed federal law would have made any difference. The adults who supplied the Columbine murder weapons (Robin Anderson and Mark Manes — the latter a son of a longtime HCI activist) were legal purchasers.

And by the time of the crime, the older perpetrator (we refuse to give him publicity by uttering this name) was already 18 years old. Thus, the perpetrator himself could have legally bought firearms in a gun store, or anywhere else.

Before making unsupportable claims that punitive laws against gun show vendors and customers would have prevented Columbine, gun prohibition lobbies made similar, unsupportable claims about other notorious crimes.

The man who perpetrated the Oklahoma City bombing stole guns from an Arkansas gun store. He sold those stolen guns, as well as racist literature, at gun shows. Imposing more controls on gun show patrons would have had no effect on the Oklahoma City perpetrator. He was a vendor, not a customer. His customers weren't the criminals; he was.

David Koresh's Branch Davidian organization often rented a table at gun shows, where they sold novelty items, such as empty grenade hulls and ready-to-eat meals (army-type survival foods). One of Koresh's devotees, Paul Fatta, was a licensed firearms dealer who sold firearms at gun shows in full compliance with federal laws. The major source of the Branch Davidian arsenal came from purchases through another licensed firearms dealer: Hewitt Handguns. Purchased in full compliance with federal laws, these guns were registered by the dealer on the 4473 forms, which were made available to BATF agents when they began the investigation of Koresh.

The federal firearms crimes which Koresh and his group allegedly committed—illegal manufacture of machine guns and explosives without registration—were conducted entirely in private. Gun shows had nothing to do with them.

#### **IV. The Real Basis for the Campaign against Gun Shows**

Gun shows are huge gathering points for people who are interested in Second Amendment issues. Gun rights groups frequently set up booths at gun shows to distribute literature and recruit members. Gun shows are places where Americans properly exercise their First and Second Amendment rights, and neither gun show patrons nor vendors deserve the mean-spirited campaign of abuse to which they have been subjected.

As Rep. Ken Gordon has acknowledged, requiring government permission for every transaction at a gun show is simply a first step to requiring government permission for every other firearms transaction. After all, if it should be illegal for a widow to sell a gun without a background check at a gun show, then it should also be illegal for her to sell the same gun through a classified ad, and it should likewise be illegal for her to sell the gun to her neighbor.

In California, Handgun Control, Inc., has achieved its objective of outlawing all private gun sales. In California, you cannot sell a .22 squirrel rifle to your cousin. Instead, you must route the transaction through a licensed gun dealer, pay a fee for a background check, undergo a two-week waiting period, and have your sale registered by the California Department of Justice.

Attacking gun shows is the first step to abolishing all privacy regarding firearms, en route to implementing universal gun registration which is now being pushed in California.

And the step after that New York City, England, and Australia have already used gun registration lists to confiscate long guns. They are following the strategy enunciated by HCI founder and President Nelson Pete Shields, who explained in 1976: The first problem is to slow down the number of handguns being produced and sold in this country. The second problem is to get handguns registered. The final problem is to make possession of all handguns and all handgun ammunition—except for the military, police, licensed security guards, licensed sporting clubs, and licensed gun collectors—totally illegal. (Richard Harris, A Reporter at Large: Handguns, New Yorker, July 26, 1976, p. 58.)

Commendably, H.B. 1242 and S.B. 89 require that CBI records be destroyed within 48 hours of an approval of a sale. But in practice, the 48 hour period means that at least two daily computer back-up tapes will be created, and these will be, in effect, permanent records which could be accessed by a future government interested in gun confiscation.

Also, H.B. 1242 and S.B. 89 have no enforcement mechanism to prevent the illegal retention of records. A better system would be to require that records of approvals be destroyed immediately; if the records are supposed to be destroyed eventually, there is no reason for them to be kept for 48 hours. Also, a legal cause of action should be created, allowing the recovery of civil damages from all government employees who participate in the illegal retention of records.

## V. Defining Hunting Trips as Gun Shows

When a person hears the phrase gun show, he naturally thinks of weekend events where dozens of people rent tables at a specific location, to sell firearms and firearms-related accessories, books, and clothing. But all of the bills before the Colorado legislature define gun show much more broadly. H.B. 1220 and H.B. 1242 define gun show as any event sponsored by gun clubs or gun organizations. This would include the monthly meeting of a local gun club, a competitive target shooting event, a political strategy session of National Rifle Association members, or a hunting trip sponsored by a gun club.

Indeed, if two people become friends through membership in a gun club, and, years later (not at a club meeting), one person sells the other a gun, then they are both criminals, because Any transfer of a firearm that occurs as a result of contacts made at a gun show shall be deemed to be a transfer at a gun show.

Even more ridiculous is the H.B. 1242s definition that gun show even includes private events (such as birthday parties) sponsored by almost any gun owner. According to the bill,

Gun show means an event or a function sponsored by:

A national, state, or local organization or person involved the sale, collection, competitive use, or sporting use of firearms; or

An organization, association, or person that sponsors functions involved in the sale, collection, competitive use, or other sporting use of firearms in the community.

(H.B. 1220 has a similar definition, but omits the word person.) In other words, if a person is a hunter (and therefore is a person involved in the sporting use of firearms) and he sponsors an event or function, then the event or function is a gun show, according to H.B. 1242. So if a wife who hunts throws a birthday party for her husband, the party is a gun show. If a man who collects guns organizes the office Christmas party, the office party is a gun show.

The effect of this extremely broad definition is a bait-and-switch. **Although sold to the public as legislation about gun shows, H.B. 1220 and H.B. 1242 would bring every firearm sale even sales by persons who have never been inside a real gun show within their control.** This definition is inconsistent with the Colorado Constitutions requirement that the subject matter of every bill be clearly expressed in the title.

Under current law, persons aged 18-20 may not purchase handguns from Federal Firearms Licensees (at a store, or at a gun show), but they may purchase handguns privately. Although purporting only to affect handgun purchases at gun shows, H.B. 1220 would criminalize almost every handgun purchase by an 18-20 year old (e.g., a 19-year-olds purchase of a handgun from someone in the hunting club he belongs to). Again, if the objective is to completely strip 18-to-20-year-olds of their civil right to purchase a handgun, then the objective should be clearly stated in the bills title and not created obliquely by calling events gun shows that are not really gun shows. How are young people supposed to comply with the law if the law calls things what they are not

Of course most people participating in target shooting competitions, gun club meetings, gun rights group meetings, birthday parties for gun owners, or club-sponsored hunting trips would not think of themselves as participating in a gun show. Failing to comply with the special restrictive laws that H.B. 1220 and 1242 create for gun shows, the participants at target shooting events, hunting trips, NRA meetings, and the like would be turned into criminals. For example, if a gun club held a target shooting match, one participant might offer to buy a gun belonging to another participant. The participants would not know that they were legally required by H.B. 1242 to (somehow) get the Colorado Bureau of Investigation to perform a background check before consummating the sale. Both participants would become criminals.

The false definition of gun show also creates huge privacy risks for everyone, regardless of whether they own a gun. If any gun club meeting, hunting trip, or birthday party can be a gun show for which the CBI is required to perform background checks at anyones request, then anyone can call CBI, claim to be at a gun show (since gun shows would be ubiquitous, with hundreds per week, under the statutory definition). The caller could then order CBI to run a background check on any target of the callers choosing.

So if you show your drivers license to a clerk in order to write a check, the clerk can wait a few hours, claim to be at a gun show, and call the CBI to get them to run a background check on you.

**The problem with defining gun shows shows why gun shows, however defined, should not be subject to special punitive legislation. The laws about gun sales should be the same, no matter where the sale takes place.** To the extent that public opinion polls suggest approval for restrictive laws targeted at gun shows, the opinion is based almost entirely on the false, media-fostered perception that laws about gun shows are currently less restrictive than laws about gun sales anywhere else.

**Conclusion:** The mean-spirited campaign of vilification against gun show operators, vendors, and customers is unjustifiable. All available data about crime guns show that gun shows play virtually no role in criminal gun acquisition. The so-called gun show loophole is a fraud; laws at gun shows are already the same as everywhere else. To impose additional restrictions solely on gun shows is to make laws at gun shows more restrictive than at any other location. Such special legislation would entrap many people at target shooting events, gun club meetings, political meetings, hunting trips, and similar events into unintended criminal violations. The effect is to punish people for exercising their constitutional right to assemble and their right to arms at the same time.

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