

# Brady Campaign



To Prevent Gun Violence

**SENSIBLE GUN LAWS SAVE LIVES**

June 11, 2007

Col. Gerald Massengill, Chair  
Governor Tom Ridge  
Gordon Davies  
Dr. Roger L. Depue  
Dr. Aradhana A. Sood  
Dr. Marcus L. Martin  
The Honorable Diane Strickland  
Carol Ann Ellis  
Virginia Tech Review Panel  
P. O. Box 12337  
Arlington, VA 22219-2337

**Re: Recommendations in response to massacre at Virginia Tech**

Dear Chairman Massengill and distinguished members of the Virginia Tech Review Panel:

Thank you for conducting a thorough review of Virginia law and campus security issues in the aftermath of the horrific shooting at Virginia Tech. We believe one of the most important lessons to be learned from the tragedy is the need for thorough, universal background checks before anyone can purchase a firearm in Virginia. We also believe strongly that the gun lobby's "solution" to this massacre – arm students and faculty, enabling a crossfire – would dramatically increase risks to everyone on college campuses and therefore should be rejected.

**Strengthen Background Checks**

The Brady Campaign and Brady Center first broke the story on April 19, 2007 that Seung Hui Cho was a prohibited purchaser under federal law because he had been adjudicated mentally defective by a Virginia special justice in December 2005. The special justice declared Cho to be "an imminent danger" to himself as a result of mental illness, and directed him to seek outpatient treatment. Federal regulations define "adjudication as a mental defective" to include a "determination by a court, board, commission or other lawful authority" that as a result of incompetency or a mental illness, condition or disease, the person is a "danger to himself or to others."<sup>1</sup> Thus, Cho was prohibited by federal law from purchasing a firearm.

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<sup>1</sup> 27 C.F.R. § 478.11.

Cho “passed” the two background checks he underwent to buy the two pistols he used in the attack, however, because his mental health records were not among those checked by Virginia State Police. Prior to the Virginia Tech shooting, Virginia law only required mental health records that would disqualify a purchaser under *state* law be sent to the state criminal history database.<sup>2</sup> It appears that this is the reason why the record of the proceeding deeming Cho to be an imminent danger to himself was not forwarded to the state database or to the National Instant Criminal Background Check System (“NICS”), and his status as a prohibited purchaser under federal law was not revealed during either of the two background checks he passed.

Once these facts came to light, Governor Kaine issued Executive Order 50, effective April 30, 2007, directing all executive branch employees to consider outpatient treatment as “involuntary admission to a mental health facility” for purposes of Virginia law. The Order further directed law enforcement to include records of involuntary outpatient as well as inpatient care in the state database and forward such records to federal law enforcement.

### **Compiling and checking complete background check records**

We applaud the Governor’s swift efforts to close this loophole in Virginia law. However, we question whether there may be other categories of prohibited firearms purchasers whose records are not checked by Virginia State Police, or that may not be supplied to the NICS database. As of 2003, most state domestic violence misdemeanor records were incomplete and were not accurately reported to NICS.<sup>3</sup> As of January 2004, only 84 percent of felony records in the United States had been automated.<sup>4</sup> In Virginia, criminal disposition records can be missing from the system or contain incomplete information to conduct a proper check.<sup>5</sup> These issues may allow other dangerous individuals to slip through cracks in Virginia’s background check system. It is critical to the safety of all Virginians that these gaps be addressed comprehensively and expeditiously. The Virginia Tech tragedy, if it teaches us anything, shows that allowing dangerous and unstable people to purchase firearms can lead to tragic consequences.

### **Closing the gun show loophole**

In addition, even had Governor Kaine’s Executive Order been in place before Cho purchased his firearms from the Roanoke gun dealer and Blacksburg pawn shop, and those sales had been denied due to his mental illness, a gaping loophole in Virginia law permits unlicensed gun sellers to sell firearms to individuals with no background check being conducted. A bill was submitted

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<sup>2</sup> Va. Code Ann. § 37.2-1014 requires the clerk of the circuit court to certify and forward to Virginia’s Central Criminal Records Exchange (“CCRE”) a copy of any order adjudicating a person incapacitated (as defined by state law) and section 37.2-819 requires the clerk to certify and forward to the CCRE a copy of any order for involuntary admission to a mental health facility. Cho was not deemed incapacitated as defined by state law and his treatment was outpatient in nature.

<sup>3</sup> Peter Brien (Bureau of Justice Statistics), *Survey of State Records Included in Presale Background Checks: Mental Health Records, Domestic Violence Misdemeanor Records, and Restraining Orders, 2003*, 1 (Aug. 2004).

<sup>4</sup> Jim Kessler, *Missing Records: Holes in Background Check System Allow Illegal Buyers to Get Guns*, THE THIRD WAY CULTURE PROJECT (May 2007).

<sup>5</sup> See Peter M. Brien (Bureau of Justice Statistics), *Improving Access to and Integrity of Criminal History Records* (July 2005).

in the Virginia Legislature earlier this year – SB 827 – that would have started to close this gap by requiring all sellers at gun shows in Virginia to conduct a background check before selling a gun. Currently, only federally licensed gun dealers are required to conduct such checks in Virginia. At least nineteen states have already taken action to close this loophole.<sup>6</sup> In 2004, there were 66 gun shows in Virginia, and anywhere from 25 to 32 percent of the sellers at those venues were unlicensed.<sup>7</sup> Between May 2004 and May 2005, the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”), in conjunction with state and local law enforcement, conducted investigations at Richmond-area gun shows and uncovered extensive illegal activity.<sup>8</sup> ATF has also reported the criminal gun trafficking that occurs at gun shows nationwide.<sup>9</sup> The most complete Brady background check in the world will remain vulnerable to widespread evasion if persons can purchase guns from private sellers without going through such a check. We urge the Virginia Tech Review Panel to support closing Virginia’s gun show loophole.

### **Retain No-Gun Policies of Virginia Public Colleges and Universities**

We also strongly urge the panel to reject the suggestion being offered by the gun lobby, namely to arm students and teachers on college and university campuses so that we enable crossfire in the event of a future attack. This suggestion is extremely irresponsible and dangerous. It will dramatically increase, rather than diminish, the risks to college students, faculty, and visitors. We have just published a comprehensive report that explains these risks in detail. It is called: *No Gun Left Behind: The Gun Lobby's Campaign to Push Guns Into Colleges and Schools*. We have included a copy of the report for each of you. More material on this subject can be found at [www.bradycampaign.org/action/schools](http://www.bradycampaign.org/action/schools).

The findings in *No Gun Left Behind* should lay to rest the notion that introducing more guns on campus would be a good thing. In fact, the ages between 18-24 years old – prime college-age years – happen to be the peak years for:

- Criminal gun possession;
- Committing violent gun crimes, including homicides;
- Binge drinking;
- Illegal drug use; and
- Suicide attempts.<sup>10</sup>

Moreover, college gun owners are more likely than non-gun-owning college students to:

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<sup>6</sup> The states that have taken action to close the gun show loophole or go beyond that to require background checks on all private sales include: California, Colorado, Connecticut, District of Columbia, Hawaii, Illinois, Iowa, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Carolina, Oregon, Pennsylvania, and Rhode Island. See [www.stategunlaws.org](http://www.stategunlaws.org).

<sup>7</sup> See Virginians Against Handgun Violence & Education Fund to Stop Gun Violence. *Cutting Criminals Out of the Loop: Closing the Gun Show Loophole in Virginia*, available at <http://vahav.org>.

<sup>8</sup> ATF’s operations at these Richmond gun shows resulted in 25 cases of illegal activity being recommended for prosecution and prevented at least 48 unlawful purchases. Every one of the cases that was prosecuted was successful, with 19 convictions for federal gun law violations. See Letter from Carl J. Truscott, then-ATF Director, to Rep. Howard Coble (R-N.C.) (Feb. 1, 2006), at 15-6.

<sup>9</sup> See ATF, *Gun Shows: Brady Checks and Crime Gun Traces* 6-9 (Jan. 1999).

<sup>10</sup> See Brady Center, *No Gun Left Behind* 6-8 (2007).

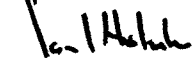
- Engage in binge drinking;
- Need an alcoholic drink first thing in the morning;
- Use cocaine or crack;
- Be arrested for a DUI;
- Vandalize property;
- Be injured in alcohol-related fights; and
- Get in trouble with police.<sup>11</sup>

Despite the massacre at Virginia Tech, college campuses are actually much safer than the surrounding communities in large part because the overwhelming percentage of colleges nationwide tightly restricts gun possession and use.<sup>12</sup> Why introduce new risks?

Also, no one should forget that Seung Hui Cho was a 23-year-old student that the Commonwealth of Virginia thought was a lawful firearms purchaser. Had he applied for a carrying concealed weapons ("CCW") license, Virginia no doubt would have issued him one prior to his attacks. It would be madness to make it easier for such individuals to carry guns on Virginia college campuses.

On behalf of the thousands of Brady Campaign members in Virginia, and our Virginia Million Mom March Chapters, thank you for your consideration.

Sincerely,



Paul Helmke  
President

Encl: *No Gun Left Behind* reports.

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<sup>11</sup> *Id.* at 7.

<sup>12</sup> *Id.* at 5.