



Written by [Bruce Walker](#) on February 2, 2011

## N.Y. Undercover Agents Investigate Ariz. Gun Sellers

These New York investigators have tested gun laws in several other states as well. In response to the results of these investigations, Bloomberg adviser John Feinblatt told the mayor:

The background check system failed in Arizona, it failed in Virginia and it fails in states around the country.

If we don't fix it now, the question is not whether another massacre will occur, but when.



However, Bob Templeton, president of the Crossroads of the West Gun Show, contested the findings of Bloomberg's agents: "When we find someone who isn't complying with the law, we ask them to leave or don't allow them back," he emphasized.

What specifically happened was this: Two New York City investigators asked a seller at the gun show if he was a gun dealer; the man said that he was not and that he required a valid Arizona identification card, but not a background check, before he could sell the gun. The crux of the complaint from the New York team came when the investigator then replied: "That's good, because I probably couldn't pass one — you know what I mean?"

Although a private and unlicensed seller is not required, under federal law, to run background checks automatically, he may not sell firearms to any individual whom he believes is either a felon, mentally unstable, or prohibited for some other reason from buying firearms. One of the New York investigators was able to buy a Glock pistol similar to the one used by Jared Loughner in Tucson, in a sale that was perfectly lawful according to everyone involved.

There are a number of problems with the sort of investigation conducted by Mayor Bloomberg's administration. For one thing, it presumes that the federal background checks might have worked. However, many aspects of the federal system are notoriously porous and uncertain. For example, the definitions for "felon" and "mentally unstable" differ significantly from state to state; depending upon the criminal code of the state, a particular act may be a felony or a misdemeanor or no crime at all. The juvenile codes of states differ as well, so that an act that would allow a juvenile to be tried as an adult in one state would not rise to that level in another state. Even the definition of a "conviction" of a crime varies among the states. Terms such as "suspended sentence," "deferred sentence," and "deferred prosecution" may or may not be considered a conviction, depending upon the state involved.

States also have differing definitions of what "mentally unstable" may be and how such a condition may be proven. Is a voluntary commitment to a private psychiatric hospital evidence of unsafe mental health? How about past involuntary commitments? Psychiatric definitions and findings naturally carry an element of subjectivity — innocuous enough when the situation is merely a physician treating a



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patient, but open to wide-ranging interpretations when applied to national legal standards.

Second, practical access to databases of records across the country is difficult, as these databases are a great and uneven patchwork, varying from state to state. Some state courts have either paper records or records in electronic systems which cannot easily share data with a national database. Not all these databases are online all the time, either; almost every system must shut down periodically for maintenance. Although the federal government has mandated that states have national instant background checks as a condition of receiving federal funds, this mandate works only when those agencies within state governments have the practical capabilities.

Third, providing any gun dealer with generalized access to American citizens' psychiatric records raises thorny legal and ethical issues: the privacy of those records from state access has long been recognized as important to patient therapy. The privacy issue would be particularly important if the records involved an individual seeking a mental health professional on his own, but would also be real for those entering veterans' hospitals. What is to prevent a mischievous gun dealer from accessing these records to research a purported gun sale? What is to prevent anyone from finding out who has received psychiatric care — which might arguably make the patient unsuitable for owning a firearm?

The federal laws regulating gun sales which mandate the opening of medical records may ironically run directly counter to other federal laws in recent years which have increased the rights of patients to keep their medical records confidential (as anyone who has been to any clinic recently knows). So which federal laws should state governments respect? Additionally, juvenile records are also often confidential and may not be released without a judge's order. How do states reconcile that confidentiality with the requirement to reveal records of criminal misconduct or irrational and potentially dangerous behavior?

In any event, none of this would have mattered in the case of the January 8 Tucson shooter: Jared Loughner passed a background check when he made his firearms purchase in Arizona. That background check — which should have provided all the relevant information about his criminal and mental health records — did not stop him from acquiring what he needed to commit his crimes.

A more troubling aspect to Mayor Bloomberg's operation is sending investigators (presumably law enforcement officers) to Arizona, Virginia, and several other states in an attempt to entice citizens of those states to violate the law. The investigators may themselves have violated Arizona law. Certainly it is both unethical and dangerous, even if not illegal, for New York law enforcement officers to enter Arizona or any other state without honoring standard law enforcement protocols. They should have checked in with the local police, told those agencies what they were going to do, and then reported any possible criminal misconduct to local law enforcement — not have sent a confidential report on possible criminal misconduct in Arizona to the mayor of New York.

One might guess how well Mayor Bloomberg would react if, for example, undercover agents from Arizona traveled to New York City to see how seriously that government was enforcing immigration laws, or how many illegal aliens with potentially dangerous criminal records were in New York — or if Arizona investigators revealed how easy it was to receive welfare and food stamps in New York. One might also ponder, if the State of New York or New York City ever seeks help from the federal government to avoid default, what questions Arizona and Virginia members of Congress might want to ask Mayor Bloomberg about “essential government expenses” in his city, and whether that included sending investigators two thousand miles away to see how well Arizona was enforcing gun laws.

*Photo: New York City Mayor Michael Bloomberg*



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