

# Accountable Sale and Transfer of Firearms

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## **Safe States Alliance Supports the Accountable Sale and Transfer of Firearms.**

Safe States Alliance supports the following efforts to ensure the responsible sale and transfer of firearms from one owner to another:

- **Expand the existing background check requirement to cover *all* firearm sales, including gun shows and online, to ensure that guns stay out of the hands of those prohibited by federal and state laws.**
- **Close loopholes for unlicensed sales and other provisions in current federal laws that exempt some firearm purchasers from submitting to and being cleared by the [National Instant Criminal Background Check System \(NICS\)](#), and/or any other systems required by individual states, where applicable.**
- **Encourage all states and U.S. territories to:**
  - Participate fully in the NICS,
  - Ensure that all records of prohibited purchasers are submitted in a timely manner to the NICS,
  - Ensure that records in the NICS are revised and updated on a timely schedule as an individual's status changes.
  - Improve the consistency of records reporting laws and systems in all states and U.S. territories.
- **Strengthen the NICS, which is managed by Federal Bureau of Investigation [FBI], by:**
  - Seeking additional funding to ensure the background check system operates more effectively and efficiently at national, state and territorial levels.
  - Establishing incentives for all states and territories to participate in the NICS.
  - Assuring that sufficient time is allowed for the background check to be completed and the potential purchaser does not get to complete the transaction until a report is received.
- **Support [President Obama's Executive Orders](#) to reduce gun violence, which includes expanding background checks and strengthening the NICS.**

## **BACKGROUND**

Building on the Safe States Alliance *Preventing Firearm-Related Violence & Injuries*<sup>1</sup> policy statement, this position statement focuses on procedures for firearms sales, and how these relate to creating effective safeguards against firearm violence in order to protect the U.S. public. For example, the purchase and transfer of other potentially dangerous products such as motor vehicles, medications, cigarettes, and alcohol are regulated. Firearms deserve equivalent oversight, both because of their lethality and their potential use in criminal activity. **Expanded background checks and a more robust, efficient and effective NICS are necessary and common sense steps, and important tools, for reducing the toll of firearm violence, death and injury.**

### ***Impact of firearm violence***

Although many firearm owners take their responsibilities to safeguard and maintain their guns seriously, injury and death data show the impact of firearm violence in the U.S. Each day 323 persons are injured or killed by gunshot from a firearm according to data reported by the Center for Disease Control and Prevention.<sup>2</sup> Encounters with firearms are dramatically more lethal than, for example, motor vehicles, both of which are responsible for almost 34,000 deaths per year. Consider this simple comparison: A person injured by a gunshot has a better than 1 in 4 chances of dying compared with a person in a motor vehicle crash, who faces less than 1 chance in 50 of dying. Suicide is also a concern. Firearms were used in about half of the 41,149 suicide deaths in the U.S. in 2013; about 85 percent of suicide attempts with a firearm end in death.<sup>3</sup>

### ***Rights and responsibilities***

Firearm ownership is protected in the Second Amendment of the U.S. Constitution. However, to reduce the risk of injury and death from firearms, and for the sake of public safety, there must be a balance among the *rights* of firearm ownership, the *responsibility* of firearm owners to demonstrate accountability for access to and use of their firearms, and the *safety interests* of the community and society as a whole.<sup>4</sup> Finding this balance is not easy, and no single policy or regulation will guarantee that no firearms end up in the wrong hands.

### ***Background checks***

Since taking effect in 1994, the [Brady Bill](#) has required criminal background checks of potential purchasers from **federally licensed firearm dealers**. Designed to prevent dangerous people from purchasing firearms, the law requires a retailer to first contact the FBI to run a background check on each potential firearm purchaser. The FBI then checks the NICS to determine if the person wanting to buy a firearm is a prohibited purchaser. Prohibited purchasers include convicted felons and persons who are dangerously mentally ill.

Background checks are effective. The Brady Campaign reports that the Brady Bill has blocked more than 2.4 million gun sales to prohibited purchasers since 1994.<sup>5</sup> Multiple studies have concluded that background checks save lives, from a 38% reduction in women shot and killed by their intimate partners in states where background checks are required for all handgun sales,<sup>6</sup> to a strong association between laws regulating unlicensed handgun sales and fewer trafficked guns.<sup>7</sup>

Arguments by gun advocates against background checks include that criminals will always have access to guns, but no peer-reviewed research is available to support this assertion. Without uniformly applied laws and regulations, the U.S. has no standards against which to hold individuals who transfer a gun accountable for their actions. The criminal background check before each firearm transfer from one owner to another is such a standard.

### ***Exemptions and loopholes***

Currently, however, federal law and the laws in most states do not require unlicensed “private” sellers to conduct background checks on individuals purchasing a firearm. A 1997 report for the National Institute of Justice estimated that about 40% of firearm transfers are transactions with unlicensed “private” sellers who, unlike licensed firearm dealers, are not required to conduct background checks on firearm purchasers.<sup>8</sup> Many of these unlicensed sales and transfers occur online or among unlicensed dealers at gun shows, which are not required by many states to conduct background checks. More recently, preliminary results from a 2015 study on gun ownership show that 40% of the 2,072 gun owners surveyed reported that they had acquired their most recent firearm (through a sale or transfer)

without going through a background check.<sup>9</sup> The current policy of exempting a number of classes of sellers from conducting background checks is inherently biased against the licensed dealers. In addition, persons who seek to avoid the background checks are given easy opportunity to do so at the expense of public and individual safety.

Loopholes also include “default proceed” sales.<sup>10</sup> If a background check does not clear right away and requires more information, the FBI must make a decision about the prospective buyer within three business days. If this determination cannot be made within that timeframe, the federally licensed firearm dealer is allowed to complete the sale.<sup>11</sup>

Expanded background checks for *all* sales and transfers of firearms from one owner to another are needed to address these loopholes in federal and state laws. Recognition and support for expanded background checks are growing,<sup>12</sup> and 19 states have already enacted laws expanding the background check requirement to at least some unlicensed sales.<sup>13</sup>

### ***The National Instant Criminal Background System (NICS)***

The NICS is operated by the FBI and was created by Congress in 1998 to prevent firearms from being sold to prohibited individuals. It has blocked the sale of firearms to over 2 million prohibited purchasers.

Participation by states and other entities in this national system is voluntarily, and completeness of reporting varies widely. Local, state, tribal, and federal agencies increased the number of records made accessible to the NICS by nearly 70 percent since 2013<sup>14</sup> (due in part to incentives created by Congress to increase record sharing), but 11 states and the District of Columbia still have no reporting requirement laws, and the level of compliance among states is uneven. For example, 12 states have reported fewer than 100 records to NICS.<sup>15</sup> More robust data collection and analysis of the NICS and state systems could inform how well this approach helps communities and families control access to firearms to prevent homicides and suicides.<sup>16</sup>

## **References**

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<sup>1</sup> Safe States Alliance. Preventing Firearm-Related Violence & Injuries, June 2013, at

[https://c.ymcdn.com/sites/safestates.site-ym.com/resource/resmgr/Files/Safe\\_States\\_Firearm\\_Policy\\_S.pdf](https://c.ymcdn.com/sites/safestates.site-ym.com/resource/resmgr/Files/Safe_States_Firearm_Policy_S.pdf)

<sup>2</sup> Centers for Disease Control and Prevention, National Center for Injury Prevention and Control. Web-based Injury Statistics Query and Reporting System (WISQARS) [online]. Accessed August 25, 2015.

<sup>3</sup> CDC National Center for Health Statistics website <http://www.cdc.gov/nchs/fastats/suicide.htm>, downloaded March 17, 2016.

<sup>4</sup> *District of Columbia v Heller*, at <http://www.supremecourt.gov/opinions/07pdf/07-290.pdf>

<sup>5</sup> <http://www.bradycampaign.org/our-impact/campaigns/background-checks>, downloaded March 21, 2016.

<sup>6</sup> Everytown for Gun Safety, Gun Background Checks Reduce Crime and Save Lives, at

<http://everytown.org/documents/2014/10/background-checks-reduce-crimes-and-save-lives.pdf>.

<sup>7</sup> Daniel W. Webster et al., Effects of State-Level Firearm Seller Accountability Policies on Firearms Trafficking, *Journal of Urban Health* 86: 525–537 (2009).

<sup>8</sup> Philip J. Cook & Jens Ludwig, Guns in America: National Survey on Private Ownership and Use of Firearms, U.S. Department of Justice, at National Institute of Justice Research in Brief 6-7 (May 1997),

<https://www.ncjrs.gov/pdffiles/165476.pdf>; see also Bing, Godbee, Eight Local Mayors Oppose New Gun Bill, CBS Detroit (Sept. 25, 2012), at <http://detroit.cbslocal.com/2012/09/25/bing-godbee-eight-local-mayors-oppose-new-gun-bill/>.

<sup>9</sup> <http://www.thetrace.org/2015/10/private-sale-loophole-background-check-harvard-research/>, downloaded April 1, 2016.

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- <sup>10</sup> <http://www.thetrace.org/2015/07/brady-bill-amendment-default-proceed-loop-hole-amendment-nra/>, downloaded April 1, 2016.
- <sup>11</sup> <http://www.thetrace.org/2015/07/background-checks-nics-guns-dylann-roof-charleston-church-shooting/>, downloaded March 21, 2016.
- <sup>12</sup> <http://www.pollingreport.com/guns.htm>, downloaded March 31, 2016.
- <sup>13</sup> [http://americansforresponsiblesolutions.org/files/2015/11/20141203\\_ARS\\_BackgroundCheckToolKit\\_V4.pdf](http://americansforresponsiblesolutions.org/files/2015/11/20141203_ARS_BackgroundCheckToolKit_V4.pdf), downloaded March 21, 2016.
- <sup>14</sup> <https://www.fbi.gov/about-us/cjis/nics/reports/2013-operations-report>, downloaded March 21, 2016.
- <sup>15</sup> <http://americansforresponsiblesolutions.org/learn/stopping-gun-trafficking/>, downloaded March 21, 2016.
- <sup>16</sup> Julian Santaella-Tenorio, et al, What Do We Know About the Association Between Firearm Legislation and Firearm-Related Injuries? *Epidemiologic Reviews* Vol. 38, 2016, February 10, 2016. Downloaded from <http://epirev.oxfordjournals.org/> by guest on March 7, 2016