



GUN BACKGROUND CHECKS

Background checks are the only systematic way to stop felons, domestic abusers, the seriously mentally ill, and other dangerous people from buying firearms. Since its creation in 1998, the National Instant Background Check System has worked well, resolving over 90 percent of checks instantaneously and blocking more than two million gun purchases by prohibited buyers. But two loopholes give these prohibited purchasers easy access to guns:

THE “PRIVATE SALE LOOPHOLE”

In more than 40 states, criminals and other prohibited purchasers can avoid background checks by buying handguns or long guns from unlicensed “private sellers”—often at gun shows or through anonymous online transactions—who are not required by federal law to conduct them. An estimated 6.6 million guns are transferred each year without a background check.

MISSING RECORDS

The background check system is missing many relevant records, particularly records of individuals who are prohibited due to serious mental illness. As of May 31, 2013, fifteen states had submitted fewer than 100 mental health records.

CURRENT FEDERAL LAW

Federal law requires licensed firearms dealers to conduct background checks on buyers. Anyone who is “engaged in the business of selling guns” must get a federal firearms license. There is no clear definition of what it means to be engaged in the business of selling guns, but anyone who sells guns “occasionally” from their “personal collection” is considered a private seller, and may sell a gun without conducting a background check or keeping a record of the sale. The imprecise definition of “engaging in the business” means that some private sellers transfer tens or hundreds of guns each year for profit — evading regulations that licensed gun dealers follow and free to sell firearms to anyone, including people willing to pay a premium to avoid a background check.

ADDITIONAL STATE LAWS

Sixteen states and Washington, D.C. go beyond federal law by requiring background checks on all handgun transfers, including those by unlicensed, private sellers.

Background checks for handguns and long guns: Ten of those states and Washington, D.C. require background checks for sales and transfers of both handguns and long guns: CA, CO, CT, DE, HI, IL, MA, NJ, NY, and RI.¹

Background checks for handguns only: The other six states require background checks for all handgun sales and transfers, but not for sales of shotguns or rifles: IA, MD, MI, NC, NE, and PA.²

HOW BACKGROUND CHECKS WORK AT LICENSED DEALERS

When a person decides to buy a gun at a licensed dealer (or FFL, for “federal firearms license”), he or she fills out a **Form 4473**. The Form 4473, which dealers have used for more than 40 years, asks for basic information about a buyer, including address, date of birth, and verification that he or she is the true buyer of the firearm and does not fall within one of the nine categories of prohibited purchasers under federal law. For more than a decade, ATF has also issued the e-Form 4473, an electronic version of the form, which helps dealers automate their records and reduce human error. The National Shooting Sports Foundation (NSSF) supports the use of the e-Form 4473.

The dealer then runs a **background check** on the prospective buyer. In most states, the dealer calls a hotline to the National Instant Criminal Background Check System (NICS), run by the FBI in Clarksburg, West Virginia, where a NICS operator runs the name of the buyer through the background check system.³

The NICS operator tells the dealer either to **proceed, deny, or delay** the sale.

If potentially prohibitive criteria exists and NICS concludes that more information about the buyer is required in order to make a determination about the sale, NICS can advise the dealer to delay the sale. NICS then has three business days to determine whether the buyer is in fact prohibited from purchasing a gun. When the NICS research is complete, it notifies the dealer to ‘proceed’ or ‘deny’ the sale. If NICS cannot make a final determination within three business days, it is up to the dealer’s discretion whether to proceed with the transfer.

Background checks are fast. Over 91 percent of checks are completed in 90 seconds.⁴

¹ CA, CO, CT, DE, NY, RI, and Washington, D.C. require background checks at the time of purchase for all gun sales. HI, MA, NJ and IL require purchase permits for all gun sales but do not necessarily require background checks for private sales at the time of purchase.

² MD and PA require background checks for all handgun sales, but not for long guns transferred in private sales. IA, MI, NC and NE require purchase permits for all handguns but do not necessarily require background checks for private sales at the time of purchase.

³ In 13 “Point of Contact” (POC) states, dealers call a state law enforcement agency that conducts its own NICS checks for all gun sales and/or permits: CA, CO, CT, FL, HI, IL, NV, NJ, OR, PA, TN, UT, VA. Eight states are “partial POC” states, meaning they run background checks on handgun sales and/or permits, while the FBI performs NICS checks for long gun purchases: IA, MD, MI, NE, NH, NC, WA, WI. See <http://www.fbi.gov/about-us/cjis/nics/poc>.

⁴ U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, 2009 NICS Operations Report, available at <http://www.fbi.gov/about-us/cjis/nics/reports/2009-operations-report>.

RECORDKEEPING AND GUN BUYERS' PRIVACY

- **The federal government is expressly prohibited from maintaining a national registry of gun owners.**⁵ The FBI is required to destroy any record of a successful background check within 24 hours.⁶
- Licensed gun dealers are required to keep a record of the sale for twenty years.⁷ These records are essential to enforcing the background check law and help law enforcement trace guns to their purchasers when they are recovered in violent crimes. Dealers have been keeping these sales receipts for more than 40 years.
- The NICS hotline cannot be accessed by the public.⁸
- If NICS denies or delays a sale, the NICS operator does not explain why to the dealer. For example, if a buyer's name is flagged as a prohibited purchaser for reason of having been adjudicated mentally ill, NICS will tell the dealer to deny the sale, but the operator will not convey the reason for denying the sale.⁹

WHY "PRIVATE" SALES SHOULD BE SUBJECT TO A BACKGROUND CHECK

A survey of prisoners who committed crimes with handguns found that 80 percent of them got those guns through private transfers.¹⁰

Without authorization to conduct a background check, private sellers have no way of knowing if they are selling to a prohibited purchaser. In fact, undercover investigations conducted by New York City in 2009 and 2011 found that 63 percent of private sellers at gun shows and 62 percent of private online sellers were willing to sell a gun to someone even when he said he probably couldn't pass a background check.

Again and again, dangerous people have skirted the background check system by acquiring guns in unregulated private sales, and innocent people have paid the price.

- In October 2012, Zina Haughton obtained a restraining order against her husband, who had a history of domestic abuse. The restraining order made him federally prohibited from buying a gun, but several days later he met a private seller on Armslist.com and bought a Glock .40 caliber semiautomatic handgun without a background check. The following day, Haughton went to the spa at a mall in Brookfield, WI, where Zina worked and murdered her and two other women and injured four others before killing himself.
- In March 2012, Jason Lee Morrill purchased a 9mm Taurus handgun from a private seller who had advertised his gun in the classified periodical Uncle Henry's. Morrill was prohibited from purchasing the gun due to a previous felony conviction, but the private seller was not required to conduct a background check. Morrill immediately resold the gun, and two months later it was recovered from a crime scene in the Bronx where a suspect had exchanged fire with a New York City police officer.¹¹
- In 2011, John Schick tried to purchase a gun in Portland, OR, but he failed the background check because of his history of having been adjudicated mentally ill. Four months later, he bought two handguns from a private seller in New Mexico without a background check. He would ultimately use these guns to kill one person and injure five others people at the Western Psychiatric Institute and Clinic before he was fatally shot by police. The Albuquerque resident who sold him the gun, John Karnis, later said that because of his link to the Western Psych shooting, he would never sell or buy a gun again.

5 18 U.S.C. § 926(a); 28 C.F.R. 25.9(b)(1).

6 18 U.S.C. § 926(a); 28 C.F.R. 25.9(b)(3).

7 27 CFR 478.129(b).

8 28 CFR 25.8(b).

9 28 CFR 25.6(c)(2).

10 U.S. Department of Justice, Bureau of Justice Statistics, Survey of Inmates in State and Federal Correctional Facilities, 2004, February 28, 2007.

11 Kevin Miller, "Many sales of firearms in Maine fall under the radar," Maine Sunday Telegram, Feb. 10 2013.

HOW BACKGROUND CHECKS WOULD WORK FOR “PRIVATE” SALES

Requiring a background check for every gun sale will simply expand the existing system to cover the estimated 40% of gun transfers that occur between “private” parties.

- When a private seller and buyer arrange to meet in person to conduct the transfer, they would meet at a licensed dealer, instead of in a parking lot or in another public place.
- Getting to a dealer may be easier than getting to a post office. As of January 2013 there were 31,857 post offices in the U.S.¹² and 58,344 licensed gun dealers.¹³ That makes gun dealers nearly twice as common as post offices.
- The buyer and the licensed dealer would proceed as if the buyer were trying to purchase from a dealer. The buyer would complete the Form 4473, and the dealer would call in the background check—in the exact same way as if the dealer were selling a firearm from its own inventory.

As with current sales at licensed dealers, the dealer would retain the Form 4473 as a basic sales receipt in its store records, and any government record of a successful background check would be destroyed by the FBI within 24 hours.

Voluntary for dealers: Licensed dealers would not be compelled to perform checks for private parties.

Reasonable Exemptions: Buyers in exceptionally remote locations would be exempt from the background check requirement. Most proposals also exempt giving firearms as gifts to immediate family members, temporarily loaning firearms during hunting and sporting events, transferring a firearm as part of an inheritance and temporarily transferring a firearm for immediate self-defense.

Alternatives for concealed carry permit holders: Most proposals for expanding background checks allow buyers to show valid concealed carry permits to private sellers in lieu of obtaining a background check.

BACKGROUND CHECKS ARE A PROVEN WAY TO REDUCE GUN CRIME AND SAVE LIVES

Gun trafficking, gun suicide, and gun murders associated with domestic violence are all less prevalent in the few states that already require background checks for all handgun sales.

The number of women killed with a firearm by an intimate partner is 38 percent lower in states that require background checks on all handgun sales, even though the non-firearm homicide rates of women by their intimate partners are nearly identical.¹⁴

The firearm suicide rate is 49 percent lower in states that require background checks on all handgun sales, even though the non-firearm suicide rates are nearly identical.¹⁵

Gun trafficking is 48 percent lower where private handgun sales are subject to background checks.¹⁶

In states where background checks are required for private handgun sales, 39% fewer law enforcement officers are shot to death with handguns.¹⁷

¹² United States Postal Service, “Progress and Performance: Annual Report to Congress,” 2012, available at <http://1.usa.gov/11dHE1K>

¹³ ATF, “Downloadable lists of Federal Firearms Licensees (FFLs),” 2013, available at <http://1.usa.gov/UKuMuZ>

¹⁴ U.S. Department of Justice, Federal Bureau of Investigation, Supplementary Homicide Reports, 2011, available at <http://bit.ly/V1GvFe>. Excludes New York due to incomplete data; Florida Department of Law Enforcement. Supplementary Homicide Report. 2010.

¹⁵ Centers for Disease Control and Prevention, National Center for Injury Prevention and Control. Web-based Injury Statistics Query and Reporting System (WISQARS) [online]. (2005) [cited 2012 Dec. 20]. Available at: www.cdc.gov/ncipc/wisqars

¹⁶ Daniel Webster, Jon Vernick, & Maria Bulzacchelli, “Effects of State-Level Firearm Seller Accountability Policies on Firearm Trafficking,” *Journal of Urban Health*, July 2009. To gauge gun trafficking, the authors measured the ratio of likely trafficked guns recovered from crime scenes to the total of guns recovered. A “likely trafficked gun” was defined as having been recovered at a crime scene and not in the possession of its original purchaser within one year of its last legal sale.

¹⁷ Federal Bureau of Investigation, 2001-11. Law enforcement killed with handguns that were not their own.

SALES RECORDS KEPT BY DEALERS ARE A CRITICAL TOOL FOR ENFORCING THE LAW AND INVESTIGATING CRIMES

The tracing process: When law enforcement recovers a gun in a crime, they submit the serial number to ATF for tracing. ATF contacts the manufacturer, distributor, and eventually the dealer to determine the chain of custody. The dealer then reviews its store records to identify the first retail purchaser. ATF may interview the purchaser to determine if he or she was involved in the crime or whether the gun was sold to another person.

Trafficking investigations: In a survey of ATF gun trafficking investigations, 29 percent were initiated through analysis of gun trace data, multiple sales records, or both, and tracing was used as an investigative tool in 60 percent of investigations once they had begun. But almost 60 percent of the investigations involved secondhand guns, which are difficult to trace because unlicensed sellers are not required to keep transfer records.¹⁸

- Prosecutors successfully convicted Jose Sandoval in the gun murders of four bank employees and a customer in Norfolk, Nebraska, after tracing the firearm he used through five previous owners, from a gun dealer to three young men with criminal backgrounds.¹⁹
- Dr. Mark Trach, an Orlando physician, bought a 9mm Beretta handgun for self-defense and took the unusual step of having the firearm traced. Police determined the firearm had been stolen from a car in March 1998, used to kill Lee Bradley on March 17, 1998, and then sold or transferred a half-dozen more times before being sold to Trach.²⁰

PRIVATE SALES, WHICH DO NOT GENERATE SALES RECORDS, HAVE HINDERED INVESTIGATIONS

- Twenty-five-year old Darien Richardson was murdered during a home invasion on January, 8 2012. The .45 caliber handgun used to kill her was traced to a Maine gun show, but because the gun was sold there between private individuals, the police declared it a cold case. "There's no documentation, no bill of sale, no background check," said Portland Police Chief Michael Sauschuck. "So we have no idea where that weapon went after that (sale) [sic] or how many times it exchanged hands."²¹
- Trevor Saunders used a .45 caliber Beretta handgun to kill his former girlfriend Louissa Thompson, her co-worker Peter Zornes, and himself on December 10, 2005, in Pullman, Washington. But investigation of how he acquired the gun ran cold when law enforcement discovered that the firearm had been exchanged in a private sale with no record. "They have the initial sale, and after that it went into a private sale," said Pullman Police Commander Chris Tennant. "And then after that we lost track of it, so that particular lead isn't any good."²²
- On September 24, 2003, Jaki Marion killed Kirk Bickham Jr. and two other people outside a bar in Milwaukee, Wisconsin. He purchased the firearm, a .380 caliber Bryco handgun, in a private transfer for \$150. ATF traced the weapon to the man who first bought the weapon in 1995, Charles Anglemeyer, who reported selling it at a gun show in Milwaukee a few years later. Milwaukee police said that given the time elapsed between initial purchase and homicide, it had likely been exchanged in several subsequent private transfers, and the chain of possession would never be fully traced.²³

¹⁸ U.S. Department of Treasury, Bureau of Alcohol, Tobacco and Firearms, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers*, (Washington, D.C.: Government Printing Office, 2000).

¹⁹ Joe Duggan, "Gun trail is key in the case against Sandoval," *Lincoln Journal Star*, Nov. 21, 2003, at P1-2.

²⁰ Henry Pierson Curtis, "Gun took twisting path after theft," *Orlando Sentinel*, July 14, 2002, at A14.

²¹ Kevin Miller, "Many sales of firearms in Maine fall under the radar," *Maine Sunday Telegram*, Feb. 10, 2013.

²² Joel Mills, "Trail runs cold on gun used in Pullman crime," *Lewiston Morning Tribune*, Jan. 28, 2006.

²³ Tom Sheehan, "Shooting victim's mother wants better tracking of guns," *The Chippewa Herald*, March 20, 2005, available at <http://bit.ly/130cwm9>.