

NATIONAL LAW ENFORCEMENT PARTNERSHIP TO PREVENT GUN VIOLENCE

STRENGTHENING BACKGROUND CHECKS FOR FIREARM PURCHASERS



HISTORY OF BACKGROUND CHECKS

The 1968 Gun Control Act prohibits anyone from possessing a firearm if he or she is a convicted felon, under indictment, a fugitive from justice, an unlawful user of or addicted to any controlled substance, an illegal alien, adjudicated as a mental defective or committed to a mental institution, dishonorably discharged from the military, or has renounced U.S. citizenship. The Act was later amended to include those under a restraining order for, or convicted of, a crime of domestic violence.

The Brady Law, which became effective on February 28, 1994, established an enforcement mechanism for the 1968 Gun Control Act by requiring background checks for firearm purchases made through federally licensed gun dealers. Initially, the measure established a five-business day waiting period, providing law enforcement time to conduct background checks in a period when record histories were largely not computerized or accessible. It also provided \$200 million to states to improve their criminal record histories and required the Attorney General to establish a National Instant Criminal Background Check System (NICS) within five years of enactment, at which point the federal waiting period requirement ended. NICS became operational on November 30, 1998. Currently, anyone who purchases a firearm through a federally licensed dealer must undergo a background check.

GUN VIOLENCE IS TAKING ITS TOLL ON AMERICA'S POLICE OFFICERS AND CITIZENS

Gun violence is killing the citizens who police are sworn to protect and is also taking its toll on law enforcement officers, who are increasingly the targets of gun violence.

- Annually in the United States, there are more than 100,000 firearm-related injuries and deaths from homicides, suicides and accidental shootings.¹
- Over the past decade, firearm-related fatalities have steadily risen. In 2013, the last year for which data are available, an average of 92 Americans per day were killed by firearms, up from an average of 82 per day in 2003.²
- According to the most recent data from 2014, guns were used in 8,124 murders, accounting for more than two-thirds of all the murders committed in the U.S.³

¹ Philip J. Cook and Jens Ludwig, 2000, *Gun Violence: The Real Costs*, NY: Oxford University Press.

² National Center for Injury Prevention and Control, "2013, United States Firearm Deaths and Rates per 100,000: All Races, Both Sexes, 2013" Centers for Disease Control and Prevention, (http://webappa.cdc.gov/sasweb/ncipc/mortrate10_us.html).

³ Federal Bureau of Investigation, "Uniform Crime Report: Expanded Homicide Data Table 8," (https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/tables/expanded-homicide-data/expanded_homicide_data_table_8_murder_victims_by_weapon_2010-2014.xls).

- Approximately 2,000 children, ages 18 and under, die of firearm-related deaths in the U.S. every year.⁴
- 466,113 persons were victims of a crime committed with a firearm in 2014, an increase of approximately 40 percent from 2013.⁵
- 2011 marked the first time in 14 years that firearms were the leading cause of police officer line of duty deaths.⁶ Again in 2014, gunfire was a leading cause of death for officers killed in the line of duty. As of October 20, 2015, officer firearm fatalities have decreased 18 percent compared to the same time period in 2014, but they remain a leading cause of officer line of duty deaths.⁷
- Alarming, 2014 was the fifth year in a row that ambushes of police officers were the leading felonious cause of officers killed in the line of duty, resulting in the deaths of 15 officers.⁸
- Firearms were responsible for 93 percent of homicides of law enforcement officers between 1996 and 2010, according to a 2013 Johns Hopkins Bloomberg School of Public Health study.⁹
- According to a September 2014 FBI report, active shooter incidents are on the rise. From 2000 to 2013, 160 active shooter incidents resulted in 486 people killed and 557 wounded, not including the shooters. There was an increase in active shooter incidents during the period studied, with an average of 6.4 per year from 2000 to 2006, and an average of 16.4 per year from 2007 to 2013. The FBI report also shows a rise in mass killings by active shooters. Of the 160 active shooter incidents, the FBI characterizes 64 of them as “mass killings.” There were 25 between 2000 and 2006, and 39 between 2007 and 2013 – a 56 percent increase.¹⁰
- In 2010, the national cost of gun violence was more than \$57 billion. In a single week in 2011, gun crime in just six cities generated a price tag of \$38 million, according to information compiled by the Police Executive Research Forum.¹¹

⁴ National Center for Injury Prevention and Control, “2003-2013, United States Firearm Deaths and Rates per 100,000: All Races, Both Sexes, Ages 0 to 18,” Centers for Disease Control and Prevention, (http://webappa.cdc.gov/sasweb/ncipc/mortrate10_us.html).

⁵ Bureau of Justice Statistics, “NCVS Victimization Analysis Tool (NVAT) Report: Personal Victimization, Violent Victimization, Serious Violent Victimization, Weapon Category, 1993-2014” (<http://www.bjs.gov/index.cfm?ty=nvat>).

⁶ National Law Enforcement Officers Memorial Fund, “Firearms-Related Incidents are the Leading Cause of Officer Fatalities in 2011” (<http://www.nleomf.org/assets/pdfs/reports/2011-EOY-Report.pdf>).

⁷ National Law Enforcement Officers Memorial Fund, “Preliminary 2015 Fatality Statistics: Preliminary 2015 Law Enforcement Officer Fatalities October 20, 2015 vs. October 20, 2014” (<http://www.nleomf.org/facts/officer-fatalities-data>).

⁸ National Law Enforcement Officers Memorial Fund, “126 Law Enforcement Officer Fatalities Nationwide in 2014,” (<http://www.nleomf.org/newsroom/news-releases/eoy-report-2014.html>).

⁹ Daniel W. Webster and Jon S. Vernick, ed. “Updated Evidence and Policy Developments on Reducing Gun Violence in America.” Center for Gun Policy and Research. Johns Hopkins Bloomberg School of Public Health. (http://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-gun-policy-and-research/resources/digital_update_Webster_Vernick.pdf).

¹⁰ Percentage calculated by dividing the number of active shooter mass killing deaths between 2000 and 2006 (25) by the number of active shooter mass killing deaths between 2007 and 2013 (39).
U.S. Department of Justice, Federal Bureau of Investigation, “A Study of Active Shooter Incidents in the United States Between 2000 and 2013,” (<http://www.fbi.gov/news/stories/2014/september/fbi-releases-study-on-active-shooter-incidents/pdfs/a-study-of-active-shooter-incidents-in-the-u.s.-between-2000-and-2013>).

¹¹ Cost estimates developed by Cohen and Piquero, 2008.

LAW ENFORCEMENT IS CALLING FOR BACKGROUND CHECKS FOR ALL FIREARM SALES

The Brady Law requires background checks for firearms purchased through federally licensed dealers. However, no check is required for private sales. An individual can evade a check by going to a gun show or answering an online or print ad, for example.¹² A national survey of inmates found that nearly 80 percent of those who used a handgun in a crime acquired it in a private transfer.¹³ Up to 40 percent of firearm transactions are private, which means that criminals, felons, fugitives and other dangerous people are buying guns on the honor system.¹⁴ Allowing these transactions to occur without background checks is tantamount to permitting 40 percent of passengers to board an airplane without going through airline security.

BACKGROUND CHECKS WORK: THEY BLOCK DANGEROUS PEOPLE FROM BUYING GUNS

The effectiveness of the Brady Law is indisputable: background checks work. Federal and state background checks stopped more than 2.4 million prohibited purchases from federally licensed dealers between 1994, when the Brady Law took effect, and December 31, 2012, according to the Department of Justice's Bureau of Justice Statistics.¹⁵ Expanding background checks to cover all sales would prevent more prohibited purchasers from acquiring firearms and doing harm in our communities. A background check law would affect only people prohibited by law from buying guns and would have no effect on law-abiding citizens' ability to purchase firearms, as has been demonstrated since 1994.

Data from the FBI shows that, in states that require background checks for all handgun sales, there were 38 percent fewer shooting deaths of women by intimate partners compared to states without this requirement.¹⁶

Missouri's 2007 reversal of its law requiring a permit-to-purchase for *all* handgun sales was met with an alarming 25 percent increase in gun-related homicides. Additionally, the number of handguns used in crime in Missouri that were originally purchased in Missouri increased as a result of the weakened background check requirements.¹⁷

Police Executive Research Forum, "Gun Violence in America: One Week, Six Cities, and the Implications," 26 April 2012 (<http://www.joycefdn.org/assets/1/7/PERFPresentationonGunViolence.pdf>).

¹² Philip J. Cook and Jens Ludwig, "Guns in America: Results of a Comprehensive National Survey on Firearms Ownership and Use," Washington, DC: Police Foundation, January 1997 (<http://www.policefoundation.org/wp-content/uploads/2015/06/Cook-et-al.-1996-Guns-in-America.pdf>).

¹³ Daniel Webster, "The Case for Gun Policy Reforms in America," Johns Hopkins Bloomberg School of Public Health, October 2012 (http://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-gun-policy-and-research/publications/WhitePaper020514_CaseforGunPolicyReforms.pdf).

¹⁴ Philip J. Cook and Jens Ludwig, "Guns in America: Results of a Comprehensive National Survey on Firearms Ownership and Use," Washington, DC: Police Foundation, January 1997 (<http://www.policefoundation.org/wp-content/uploads/2015/06/Cook-et-al.-1996-Guns-in-America.pdf>).

¹⁵ Bureau of Justice Statistics, "Background Checks for Firearms Transfers, 2012 - Statistical Tables," U.S. Department of Justice, December 2014 (<http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5157>).

¹⁶ Federal Bureau of Investigation, data compiled by Everytown for Gun Safety, "Background Checks Save Lives," (<http://everytownresearch.org/issue/background-checks/>).

¹⁷ Cassandra Kercher Crifasi, "Repeal of Missouri's Repeal Background Check Law Associated with Increase in State's Murders," Johns Hopkins Center for Gun Policy and Research, Johns Hopkins Bloomberg School of Public Health, 14 May 2014 (<http://www.jhsph.edu/news/news-releases/2014/repeal-of-missouris-background-law-associated-with-increase-in-states-murders.html>).

BACKGROUND CHECKS ARE NEEDED FOR ALL GUN SALES NATIONWIDE

Dangerous people acquiring firearms is a serious problem that demands a federal response. State and local governments cannot go it alone, as ineligible firearm purchasers are able to circumvent the strong laws of some cities and states by obtaining guns in other states or jurisdictions with weaker gun laws where they can avoid a background check. Interstate trafficking is a critical problem, and requiring a background check for every gun sale reduces the flow of guns to criminals.

Of the guns recovered at crime scenes and successfully traced to their source state by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) in 2009, 30 percent had crossed state lines.¹⁸ Using firearm trace data from 2009 to 2013, a 2014 City of Chicago and Chicago Police Department study found that 60 percent of the firearms used in crime in Chicago came from states with weaker gun laws.¹⁹

According to a 2009 Johns Hopkins analysis of gun trafficking in 53 U.S. cities, intrastate gun trafficking is 48 percent lower where private gun sales are regulated.²⁰ Of the 20 cities with the *least* intrastate gun trafficking, 18 were located in states that regulated private sales. Of the 20 cities with the *most* intrastate gun trafficking, 17 were located in states that did not regulate private sales. Nationwide background checks for all sales will keep guns out of the wrong hands and combat trafficking.

EXPANDED BACKGROUND CHECK PROPOSALS EXEMPT MANY TYPES OF TRANSFERS

Expanded background checks will target criminals and other prohibited purchasers rather than law-abiding citizens. Proposals to expand background checks include reasonable exceptions in which the transferee would not require a check. These include gifts between immediate family members, temporary transfers while hunting, and willed firearms, for example.

ALLOTTED TIME TO COMPLETE BACKGROUND CHECKS MUST BE EXTENDED

When a federal firearm licensee (FFL) submits a background check to NICS, the FFL usually receives a determination within minutes on whether the buyer is legally permitted to possess a firearm, and the sale of the firearm may or may not proceed.²¹ In some cases, however, the buyer's identity or background requires additional review and investigation by the FBI before

¹⁸ Mayors Against Illegal Guns, "Trace the Guns: The Link Between Gun laws and Interstate Gun Trafficking," September 2010 (<http://www.tracetheguns.org/report.pdf>).

¹⁹ City of Chicago-Office of the Mayor, "Tracing the Guns: The Impact of Illegal Guns on Violence in Chicago," 27 May 2014. (<https://www.cityofchicago.org/content/dam/city/depts/mayor/Press%20Room/Press%20Releases/2014/May/05.27.14TracingGuns.pdf>).

²⁰ Daniel Webster, Jon Vernick, & Maria Bulzacchelli, "Effects of State-Level Firearm Seller Accountability Policies on Firearm Trafficking," *Journal of Urban Health*, July 2009 (<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2704273>). 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.

²¹ Criminal Justice Information Services Division, "National Instant Criminal Background Check System (NICS) Operations 2014," Federal Bureau of Investigation, U.S. Department of Justice. (<https://www.fbi.gov/about-us/cjis/nics/reports/2014-operations-report>).

a background check determination can be made. Under current federal law, a firearm purchase from an FFL can only be delayed for up to three business days, even if the background investigation has not yet concluded.²²

In 2014, the FBI reports that 2,511 prohibited persons were able to purchase firearms from an FFL because their background checks were not completed within the three-day period.²³ According to a Government Accountability Office report that studied prolonged background investigations over a ten-month period, it took the FBI an average of 25 business days to complete background checks that were not immediately determinative.²⁴

This discrepancy between the average amount of time needed to complete an investigation and the maximum time federal authorities can legally delay a firearm purchase can have fatal consequences. This was evident in June 2015 with the devastating loss of nine parishioners after a shooter opened fire at Emanuel AME Church in Charleston, South Carolina. The handgun reportedly used in the attack was purchased by the shooter from an FFL in South Carolina that legally proceeded to sell him the firearm after federal authorities could not complete his background check within the three-day period. Had the FBI been given the necessary time to complete the background investigation, the shooter's disqualifying record would have been verified, and the nine parishioners could be alive today.²⁵ The FBI must be provided the necessary time to complete background checks when a purchaser's eligibility to possess firearms is not immediately determinative, and firearm sales should not be allowed to proceed until the background check has been concluded.

RECORD-KEEPING IS AN ESSENTIAL TOOL FOR LAW ENFORCEMENT

For 40 years, dealers have been required to keep copies of gun sales receipts, and they should continue to do so under an expanded background check system. Sales receipts make it possible for law enforcement officers who recover guns in violent crimes to investigate the chain of custody for that particular gun. For the same reason, the sales receipts protect law-abiding gun owners from liability for crimes committed with guns no longer in their possession. Nothing about these sales receipts currently functions like a national registry, nor would they if they also covered private sales. Stored in a decentralized manner across more than 100,000 federal firearms licensees, these sales receipts do not compromise the privacy of law-abiding gun owners. Unless the sale is denied, the FBI is required to destroy within 24 hours any record of a dealer gun sale that is generated through the background check system.

²² Federal Bureau of Investigation, "A NICS Delay", U.S. Department of Justice, October 2010. (<https://www.fbi.gov/about-us/cjis/nics/federal-firearms-licensees/a-nics-delay>).

²³ Criminal Justice Information Services Division, "National Instant Criminal Background Check System (NICS) Operations 2014," Federal Bureau of Investigation, U.S. Department of Justice. (<https://www.fbi.gov/about-us/cjis/nics/reports/2014-operations-report>).

²⁴ Government Accountability Office, "Gun Control: Implementation of the National Instant Criminal Background Check System", U.S. Congress, February 2000. (<http://www.gao.gov/products/GGD/AIMD-00-64>).

²⁵ Michael Schmidt, "Background Check Flaw Let Dylann Roof Buy Gun, F.B.I. Says", *The New York Times*, 10 July 2015. (http://www.nytimes.com/2015/07/11/us/background-check-flaw-let-dylann-roof-buy-gun-fbi-says.html?_r=1).

PUBLIC SUPPORT IS OVERWHELMING – INCLUDING AMONG GUN OWNERS – FOR BACKGROUND CHECKS

Law enforcement and the public, including gun owners, overwhelmingly support background checks. Few public policy matters register near universal support.

- A July 2014 Quinnipiac poll found that **92%** of Americans favor requiring background checks for all gun buyers.²⁶
- A January 2013 Gallup poll found that **91%** of Americans favor requiring criminal background checks for all gun sales.²⁷
- According to a January 2013 CBS poll, **92%** Americans approve of universal background checks on all potential gun buyers.²⁸
- According to an April 2013 Post-ABC poll, **86%** of Americans support a law requiring background checks for gun buyers at gun shows and online.²⁹
- According to a May 2013 Pew Research Poll, **81%** of Americans support background checks for private and gun show sales.³⁰
- A January 2013 poll confirmed gun owners' strong support, noting **88%** of *gun owners, including 86%* of *NRA members*, believe that all gun buyers should be required to pass a background check.³¹
- A July 2012 poll found that **85%** of *gun owners, including 87%* of *NRA members*, agree that "support for 2nd Amendment rights goes hand-in-hand with keeping illegal guns out of the hands of criminals."³²

EXAMPLES OF PROHIBITED PURCHASERS BUYING GUNS ON THE HONOR SYSTEM

On Sunday, August 9, 2015, David Conley allegedly shot and killed his ex-girlfriend, her partner, and her six children in their home in Harris County, Texas. Conley, who had been previously convicted of multiple domestic violence offenses, should have been legally prohibited from possessing or purchasing a firearm due to his criminal history. However, he

²⁶ Tim Malloy, "92 Percent Back Background Checks for All Gun Buyers," *Quinnipiac University Poll*, 3 July 2014, (http://www.quinnipiac.edu/images/polling/us/us07032014_ulps31.pdf).

²⁷ Gallup, January 2013, "Americans Back Obama's Proposals to Address Gun Violence" (<http://www.gallup.com/poll/160085/americans-back-obama-proposals-address-gun-violence.aspx>).

²⁸ CBS, January 2013, "Majority Support for Many Gun-Related Proposals," (http://www.cbsnews.com/8301-250_162-57564597/poll-majority-of-americans-back-stricter-gun-laws/?pageNum=2).

²⁹ Post-ABC, April 2013, "Would you support or oppose a law requiring background checks on people buying guns at gun shows or online?" (http://www.washingtonpost.com/politics/polling/would-background-requiring-support/2013/05/22/23b52c3e-a682-11e2-9e1c-bb0fb0c2edd9_page.html)

³⁰ Pew Research Center, "A Public Opinion Trend that Matters: Priorities for Gun Policy." 9 January 2015 (<http://www.pewresearch.org/fact-tank/2015/01/09/a-public-opinion-trend-that-matters-priorities-for-gun-policy/>)

³¹ Douglas E. Schoen, "National Gun Survey," January 2013 (http://libcloud.s3.amazonaws.com/9/13/a/1088/schoen_summary_memo_-3.pdf).

³² Mayors Against Illegal Guns, "2012 Frank Luntz National Poll of Gun Owners and NRA Members," 20 October 2012 (<http://everytownresearch.org/2012-polling-on-support-for-background-checks/>).

avoided the background check by purchasing the firearm online through an unlicensed seller who was not legally required to conduct a background check.³³

On Monday, December 1, 2014, Jody Lee Hunt, a convicted felon, went on a shooting rampage in Monongalia County, WV, killing four people including his ex-girlfriend and three others before turning the gun on himself. According to ATF, Hunt purchased the firearm from a private seller, also from WV, who had posted an ad on Facebook. Hunt, a prohibited purchaser, was able to evade a background check because such checks are not required for private sales.³⁴

Radcliffe Haughton answered an Internet ad and purchased a .40 caliber semiautomatic handgun from a private seller, without having to undergo a background check. The next day, on October 21, 2012, he used the gun to shoot eight people at a spa in Brookfield, WI, killing his wife and two others, before turning the gun on himself. Haughton, a prohibited purchaser, had a four-year restraining order against him, issued after he threatened to kill his wife.³⁵

On June 29, 2011, Berks County Deputy Sheriff Kyle D. Pagerly was shot and killed by Matthew Connor, with an AK-47 rifle. Connor was a prohibited purchaser under Pennsylvania law, due to a felony conviction as a juvenile. However, because Connor purchased the rifle in a private transaction, he was able to bypass the background check system.³⁶

Four Detroit police officers were wounded in 2011 with a 20-gauge Mossberg 500 shotgun that had multiple owners while moving through the secondary market. It is unclear how the officers' assailant, Lamar Moore, obtained the firearm. In the first recorded transaction, convicted felon Elijah Gayden bought the shotgun for \$200 from a man who had purchased it online. The man who sold Gayden the gun said he knew the buyer (Elijah) only as "Eric." Gayden later sold the gun.³⁷

In July 2010, Dane Eisenman, a convicted felon, purchased a .30-06 rifle in Connecticut that he found through a classified ad. Eisenman told the seller, who later reported the purchase to the police, that he was buying the gun to protect himself from the "aliens who live under the sun [and] come to Earth to kill humans" every 36,000 years.³⁸

John Patrick Bedell, 36, armed with two semiautomatic 9mm handguns, opened fire on two police officers at the Pentagon entrance on March 4, 2010. "[D]espite a history of mental illness and early warnings from family members that he might pose a danger to himself and others," Bedell obtained one of the guns "through an unregulated private sale in Nevada,"³⁹ a state that does not require a background check for all gun purchasers.⁴⁰ He had previously

³³ Jennifer Mascia, "Mass Family Shooting in Texas Highlights County's Domestic Violence Problem", *The Trace*, August 12, 2015 (<http://www.thetrace.org/2015/08/texas-domestic-violence-shooting/>).

³⁴ Erin Beck, "Monogalia County Shooter Got Gun on Facebook." *WV Gazette*, Dec. 6 2014 (<http://www.wvgazette.com/article/20141206/GZ01/141209458/1101>).

³⁵ Brendan O'Brien, "Estranged Wife of Suspected Wisconsin Spa Gunman Among Dead," *Reuters*, Oct. 22, 2012 (<http://www.reuters.com/article/2012/10/22/us-usa-shooting-wisconsin-idUSBRE89K0F620121022>).

³⁶ Turner, Ford, Oct. 16, 2013 "Advocate: Background check might have spared Berks deputy's life" *Reading Eagle* (<http://readingeagle.com/article.aspx?id=516592>)

³⁷ Josh White and Sari Horwitz, "Pentagon Shooter's Gun Had Many Previous Owners," *The Washington Post*, March 15, 2010 (<http://www.washingtonpost.com/wp-dyn/content/article/2010/03/14/AR2010031401254.html>).

³⁸ Joseph Wenzel IV, "Police: Felon Bought Rifle to Stop Alien Invasion," *Hartford Courant*, July 4, 2010 (articles.courant.com/2010-07-04/news/hc-rifle-to-fight-alien-invasion-070520100705_1_alien-rifle-police).

³⁹ Josh White and Sari Horwitz, "Pentagon Shooter's Gun Had Many Previous Owners," *The Washington Post*, March 15, 2010 (<http://www.washingtonpost.com/wp-dyn/content/article/2010/03/14/AR2010031401254.html>).

⁴⁰ "Nevada State Law Summary," Law Center to Prevent Gun Violence, March 6, 2012 (<http://smartgunlaws.org/nevada-state-law-summary>).

attempted to purchase a gun in California, a state with a strong background check system, but the sale was halted because the background check uncovered his mental health history.⁴¹

⁴¹ Coalition to Stop Gun Violence, “The Strong Link in the Chain,” (<http://csgv.org/blog/2010/the-strong-link-in-the-chain/>).