

Challenges to Expanding Background Checks for Firearms Purchases

*A SEARCH
Recommendation
Background Paper*

Background

This informational document provides details on the National Instant Criminal Background Check System (NICS) and outlines the challenges the states would face if background checks were expanded to private sales.

National Instant Criminal Background Check System

In 1993, Congress passed the Brady Handgun Violence Prevention Act (Brady Act) that, among other items, created the NICS.

The Federal Bureau of Investigation (FBI) maintains the NICS to conduct background checks on individuals seeking to purchase firearms from Federal Firearms Licensees (FFLs) or to obtain permits to possess, carry, or obtain firearms.

The system relies on a comparison of the applicant's name with the names in prohibitive category files.

The system does not include background checks for private firearm sales.

Who Conducts NICS Checks

There are 13 **full Point of Contact (POC) states** that handle all NICS and state prohibitor checks.

There are seven **partial-POC states** that handle their own handgun checks/handgun permit checks while the FBI handles the long gun checks.

36 states and territories rely on the **FBI** for all firearms background checks.¹

Challenge: Funding/Workload

The states' background check services are already operating at capacity (and in some cases, above capacity). Moreover, the number of noncriminal justice checks exceeded the number of criminal justice checks for the first time in 2014, and this trend has escalated in 2016, with noncriminal justice requests exceeding criminal justice requests by 3.3 million (14.6 million compared to 11.3 million). Given the expansive growth of using criminal history records to support a myriad of decisions, including firearms purchase decisions, this trend is likely to continue.²

If Congress expands the application of NICS checks to all firearms transactions, including private and online sales, state repository directors are concerned about the impact and funding for what promises to be a significant workload increase.

¹ <https://www.fbi.gov/file-repository/nics-participation-map.pdf/view>

² <http://www.search.org/new-blog-series-takes-closer-look-at-findings-of-search-bjs-survey-of-state-criminal-history-information-systems-2016/>

Imposition of a universal background check could fall especially hard on the 20 full or partial POC states if their state laws do not now cover every firearm transaction within the state. Alternatively, these states — as others have already chosen to do — could opt out of conducting the background checks by transferring the responsibility to the FBI, which would impact the FBI’s ability to handle NICS checks, appeals, and research.

Challenge: Three-Day Window To Complete a Background Check

When a NICS check does not deliver an instant decision, the FBI and POC states have three business days to research the information needed for a firearms check and make a final determination on the buyer.³ If a decision cannot be made in that time, an FFL is allowed by law to sell the firearm, in a sale known as a “default proceed.”

Given the deficiencies in the reporting of prohibitive information and the fact that many of the prohibitors are name-based, the FBI’s NICS Unit and POC states must frequently attempt to use the 72-hour window in the law to track down missing dispositions or other information. This often involves contacting and seeking the assistance of state repositories, arresting agencies, prosecutors, and courts, which is disruptive to the operations of these agencies that often must go through a laborious and time-consuming process of trying to locate information that may not be automated.

An increase in NICS checks will increase the amount of time the FBI and states must spend researching missing dispositions and other information to complete a background check. Proposals that include background screening for ammunition purchases will further exacerbate the workload issue.

Challenge: Appeals of Denials

If an individual believes he or she has been wrongfully denied a firearm transfer, that person may request an appeal.

The number of appeals and denial decisions is proportionate to the number of transactions processed by the FBI and the state POCs. As the number of transactions rise, so does the number of appeals.

Researching the basis for a denial is an unfunded and unmanageable burden for courts and state and local agencies. Expanding background checks to private sales will heighten this challenge.

Challenge: Establishment of Mechanisms for Private Parties to Conduct NICS Checks

A Federal Firearms License, which is issued by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), enables an individual or a company to engage in a business pertaining to the manufacture or importation of firearms and ammunition, or the interstate and intrastate sale of firearms.

Expanding background checks to private sales will require: the creation of infrastructure and systems to enable private parties to conduct background checks, the FBI to upgrade their user-authentications to discern who is querying the system, and the establishment of mechanisms to ensure appropriate information is being entered into the system to identify a gun purchaser.

³ States have the authority to enact statutes to extend the three-day window to complete a background check.

**Challenge:
Firearms
Retrieval**

If the FBI determines that a buyer is prohibited from purchasing a firearm after the firearm is sold, the agency sends out a retrieval order to the ATF. The ATF is then responsible for retrieving the firearm.

Systems are currently established between the FFL and the ATF to recover the firearm. New systems would have to be established if background checks were expanded to include private sales.

In addition, two ATF agents are typically involved in firearms retrieval procedures. Expanding background checks to private firearms sales would increase retrieval orders, further straining overburdened law enforcement resources.

Recommendations

Study to Review Impact of Expanding Background Checks:

SEARCH respectfully requests that lawmakers consider the operational impacts, implications, and challenges of expanding the national criminal history record background check system for firearms purchases.

Congress should authorize and fund a study to identify both the workload and fiscal impacts of expanding background checks, including quantifying the number of private sales that could potentially be subject to an expanded background check policy.

Investment in States' Capacity:

Expanding demand for background checks for firearms purchases will require an investment to build the capacity of state criminal history records repositories — specifically, to avoid the degradation of critical core background check services currently supporting law enforcement, public safety, and employment screening.

Legislation that seeks to expand background checks for firearms purchases should include adequate funding to ensure that states have the necessary resources to create new systems and infrastructure and to hire staff to respond to the increase in background checks.

Time to Implement Expanded Background Check Requirements:

States should be provided substantial time to implement expanded background check requirements. Time would be needed for state legislatures to respond to new federal laws,⁴ and for the states to develop the necessary technology and infrastructure to comply with expanded background check requirements.

**Additional
Information**

Please contact SEARCH's Director of Government Affairs, Melissa Nee (melissa@search.org), if you have questions or need more information.

SEARCH, The National Consortium for Justice Information and Statistics, is a nonprofit organization governed by a Membership Group of governor appointees from the States and territories. SEARCH Members operate the State criminal history record repository programs and related state criminal justice information systems, which are used to provide documented criminal history record information for criminal and civil background check screening and to assist regulatory agencies determine a person's suitability to possess firearms, etc. See www.search.org

⁴ States may need to seek legislative changes at the state-level in order to have the authority to conduct background checks on private sales.