

Background Checks

Background

The efficacy of the federal NICS background checks system is affected by the untimely and often inadequate reporting of state criminal records to the federal databases that make up the NICS system. Because of this, many prospective purchasers who should be prohibited are not flagged during a NICS check and are able to proceed with their purchase. This underscores the importance of instituting a state-based system to check whether a person is prohibited from firearms ownership prior to a transfer. In addition to providing the benefit of a much more comprehensive, sensitive, and efficient way to access records and determine whether there is a criminal history of violence, state background checks would likely be completed in a much timelier fashion, thus lowering the waiting period for transfer of a purchased firearm.

About the Policy

This policy sets up a system by which, for the first time ever, private gun sellers can conduct an immediate background check to determine whether a prospective buyer is prohibited or not. The policy also gives every gun owner a choice of how the background check is to be conducted. They can opt for a standard, state-level background check or they can take advantage of a new, automated approval check system by which any gun seller can access a computerized database of prohibited persons and immediately determine whether the prospective buyer is prohibited. In addition, the automated approval check system is instantly updated whenever a person is no longer prohibited, such as when an extreme risk protection order or domestic violence restraining order expires.

Protection of Gun Rights

The policy includes provisions that protect gun owners from unwittingly committing a felony if they lend a gun to a family member for a hunting trip or give a family member a gun as a gift. The law contains an exemption of a background check for certain temporary transfers, as well as for the sale or transfer of guns to what the law defines as “immediate family members,” and certain established responsible firearm owners-- active or retired law enforcement, certified firearm safety and shooting instructors, and paid and established members of the seller’s gun club, provided that the gun club meets certain provisions.

The policy includes safeguards aimed to prevent the unreasonable bureaucratic delays of a standard state-level background check: if such a check is not completed within three business days, law enforcement must justify the delay and give the prospective buyer an opportunity to provide clarity and any relevant documents. Upon receipt of any documents, state law enforcement will have an additional three business days to complete the check before the sale is allowed to proceed. Furthermore, due to the often-prohibitive costs of firearm safety training courses, this policy provides tax incentives for firearm owners who choose to undergo such training.

Protection of Public Health

This policy adds substantial new gun violence prevention protections at the state level by explicitly requiring, with minimal and specific exemptions, state-level background checks for the purchase or transfer of all firearms. State background checks provide the benefit of a much more comprehensive, sensitive, and efficient way to access records and determine whether there is a criminal history of violence than does solely relying on the NICS database. A state that enacts this policy will become one of only 15 in the nation to require state-level background checks for all gun purchases and transfers, with minor exceptions. This policy would also require that law enforcement be notified with immediacy when a prohibited person attempts to make a purchase and directs them to investigate the circumstance of the attempted sale. Perhaps most importantly, the policy sets up a first-in-the-nation system by which the state maintains a computerized list of prohibited persons that is instantly updated the moment a court ruling makes a person prohibited.

Consent Tally

This proposal received the unanimous consent of all 23 panelists.