



January 29, 2020

## **WRITTEN TESTIMONY OF MARK W. PENNAK, PRESIDENT, MSI, IN OPPOSITION TO SB 208**

### **A. Introduction**

I am the President of Maryland Shall Issue (“MSI”). Maryland Shall Issue is an all-volunteer, non-partisan organization dedicated to the preservation and advancement of gun owners’ rights in Maryland. It seeks to educate the community about the right of self-protection, the safe handling of firearms, and the responsibility that goes with carrying a firearm in public. I am also an attorney and an active member of the Bar of Maryland and of the District of Columbia. I recently retired from the United States Department of Justice, where I practiced law for 33 years in the Courts of Appeals of the United States and in the Supreme Court of the United States. I am an expert in Maryland Firearms Law, federal firearms law and the law of self-defense. I am also a Maryland State Police certified handgun instructor for the Maryland Wear and Carry Permit and the Maryland Handgun Qualification License (“HQL”) and a certified NRA instructor in rifle, pistol and personal protection in the home and outside the home and in muzzle loader. I appear today as President of MSI in opposition to SB 208.

The bill (as well as its cross-filed bill HB4) would add a wholly new set of restrictions on temporary and permanent long gun “transfers” which would be defined in an extremely broad manner. The bills would severely criminalize any non-compliance with its many and highly complex new restrictions. The bills would effectively eviscerate loans of guns between law-abiding individuals, including fellow hunters and effectively destroy the market value of countless gun collections, as their sales would be all but banned. The bills mandate the use background checks by Federal Firearms Licensees (“FFLs”) for private loans of long guns in a manner that would actually violate federal law. The bills would create nightmarish uncertainty in violation of the Due Process Clause of the Fourteenth Amendment. Finally, the bills ignore the well-documented reality that these sorts are long guns are almost never used in crime. Indeed, FBI statistics demonstrate that a person far more likely to be killed by a knife or hands or feet than a long gun. There is simply no public safety purpose that would be served by these bills.

## **B. THE BAN ON PRIVATE TRANSACTIONS AND LOANS OF HUNTING RIFLES AND SHOTGUNS**

The bill would amend MD Code Public Safety 5-201 and create a new Section 5-204.1 in the Public Safety Article to impose new restrictions on the private “transfers” of all regular (non-regulated) rifles and shotguns, such as conventional hunting guns of the type that have been in use for decades in Maryland. The term “transfer” is very broadly defined to include “A SALE, A RENTAL, A FURNISHING, A GIFT, A LOAN, OR ANY OTHER DELIVERY, WITH OR WITHOUT CONSIDERATION.” The bills first impose a broad ban on any such transfers, providing that “A PERSON WHO IS NOT A LICENSEE MAY NOT COMPLETE THE TRANSFER OF A RIFLE OR SHOTGUN OTHER THAN A REGULATED FIREARM, AS A TRANSFEREE OR TRANSFEROR, UNLESS THE PERSON IS IN COMPLIANCE WITH THIS SECTION.” The bills then provide that such transfers may take place only through a licensed firearms dealer (a “licensee”), stating that “BEFORE A TRANSFER IS CONDUCTED, THE TRANSFEROR AND TRANSFEREE SHALL MEET JOINTLY WITH A LICENSEE AND REQUEST THAT THE LICENSEE FACILITATE THE TRANSFER.” The dealer is free to decline to do so and is free to charge any “REASONABLE” fee if the dealer elects to do. The bills then state that “A LICENSEE WHO AGREES TO FACILITATE A TRANSFER UNDER THIS SECTION SHALL PROCESS THE TRANSFER AS THOUGH TRANSFERRING THE RIFLE OR SHOTGUN FROM THE LICENSEE’S OWN INVENTORY TO THE TRANSFEREE.” The “licensee” is then directed to “COMPLY WITH ALL FEDERAL AND STATE LAW THAT WOULD APPLY TO THE TRANSFER, INCLUDING ALL BACKGROUND CHECK AND RECORD-KEEPING REQUIREMENTS.” A violation of these requirements is severely punished with “IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING \$10,000 OR BOTH.”

### **1. The Premise Of The Bill Is Contradicted By Recent Studies**

The proffered premise of the bill is supposedly public safety. Specifically, the idea appears to be that requiring comprehensive background checks for private sales and loans of long guns will reduce homicides and suicides by keeping guns out of the hands of prohibited persons or persons who may use them to commit suicide. That premise is flawed. In a recent study concerning California's comprehensive background check (“CBC”) and misdemeanor violence prohibition policies conducted by researchers from the UC Davis School of Medicine, and by Daniel Webster of the Johns Hopkins Bloomberg School of Public Health (among others), the study concluded that California’s long standing comprehensive background check system “was not associated with a net change in the firearm homicide rate over the ensuing 10 years in California.” (Study at 1, Abstract). A copy of the study is attached. The researchers further concluded that the same was true for suicides, finding that “[t]he decrease in firearm suicides in California was similar to the decrease in nonfirearm suicides in that state” and that the “[r]esults were robust across multiple model specifications and methods.” (Id.). As the study also states, “a more rigorous time-series analysis found no effect on firearm suicide and homicide rates from repealing CBC policies in two states.”

In other words, imposing comprehensive back ground checks beyond those already required by federal law does nothing to promote public safety. Given its authors (Daniel Webster of Johns Hopkins testified before the General Assembly in support of the Firearms Safety Act of 2013), this study is entitled to considerable weight. Indeed, the California CBC law, addressed in the study, covered both long guns and handguns and Maryland already requires the same sort of comprehensive background checks on private sales of handguns. See MD Code, Public Safety, § 5-124. The study's conclusion thus applies with even greater force to Maryland. As detailed below, the bill criminalizes an enormous amount of innocent conduct in order to criminalize private transfers and loans of rifles and shotguns, even though these firearms are very seldom used in crime. These bills would thus mint thousands of new criminals for engaging in private transactions that have been legal for centuries and that is less risky to the public safety than a private sale of a knife. The General Assembly should require strong factual support of the public safety benefits before severely criminalizing conduct that has been common and legal since before Maryland became a State. As this latest study makes plain, that support is lacking here. After all, “[m]aking something a crime is serious business.” *Carter v. Welles-Bowen Realty, Inc.*, 736 F.3d 722, 731 (6th Cir. 2013) (Sutton, J., concurring).

## 2. Existing Federal and State Law

Under current law, dealers are required by federal law to conduct a background check through The National Instant Criminal Background Check System (“NICS”). The NICS system is run by the FBI, as required by the Brady Handgun Violence Prevention Act of 1993, codified at 18 U.S.C. § 922(t). <https://www.fbi.gov/services/cjis/nics>. Current federal law bans the sale of firearms that have moved in interstate commerce by persons other than a Federal Firearms Licensee (“dealer” or “FFL”). 18 U.S.C. § 922(a). Federal law provides that a dealer must do a NICS check for all sales of long guns. See 18 U.S.C. § 922(t). See also Preamble to ATF Regulations at 63 FR 58272-01, 1998 WL 750214 (October 29, 1998), currently codified at 27 C.F.R. Part 478 (“the law clearly states that the permanent provisions apply to all firearms, including rifles and shotguns”). A “dealer” is defined as “any person engaged in the business of selling firearms at wholesale or retail.” 18 U.S.C. § 921(11)(A).

As clarified in 1986, the term “[e]ngaged in the business” means “a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms.” 18 U.S.C. § 921(21)(C). Sales by persons who are not “engaged in the business” of firearm sales are not regulated by federal law. NICS checks are not performed by the FBI for secondary sales between private citizens who are not “engaged in the business” of selling firearms,

Background checks for sales of rifles and shotguns in Maryland are governed exclusively by federal law. Specifically, Maryland is a Point of Contact state for NICS checks purposes only for dealer sales of **handguns**. Thus, for handgun sales by a dealer, the Maryland State Police serves as the Point of Contact for purposes of contacting the FBI for a NICS check on a dealer sale of a handgun. However, the Maryland State Police is

not a Point of Contact for long gun sales and thus does not conduct a background check for sales of long guns. Only the dealer does the NICS checks on sales of long guns, using Federal form 4473. Similarly, Maryland regulates private sales of **handguns** by requiring an application, using State form 77R, to be submitted to the State Police for such sales. See MD Code, Public Safety, § 5-124. Because such private sales of handguns (and long guns) is not regulated by federal law, the State Police likewise may not conduct a NICS check on such private handgun sales. It may conduct only a background check using state databases. The State Police does not perform either a NICS check or a state database check on for private sales of long guns.

In addition to sales regulated by federal law, Maryland may also access NICS “in connection with the issuance of a firearm-related or explosives-related permit or license...” 28 C.F.R. 25.6(j). Access to NICS for other reasons, including background checks for private sales, is strictly prohibited. “State or local agencies, FFLs, or individuals” who misuse their NICS access privileges are “subject to a fine not to exceed \$10,000 and subject to cancellation of NICS inquiry privileges.” 28 C.F.R. 25.11(a). The bill does not disturb this basic allocation of responsibility. The State Police would remain the Point of Contact for contacting the FBI for a NICS check for dealer handgun sales and the dealer would continue to be responsible for obtaining the NICS background check for all dealer long gun sales. With respect to private long gun sales, the only change is that the bill would now ban private long gun sales and temporary possessions unless the transaction is “facilitated” by a dealer who would conduct a NICS background check “as though” the sale was from the dealer’s inventory. But, as discussed below, the dealer simply may not legally conduct such NICS checks in this manner for private long gun loans or temporary possessions.

### 3. The NICS Check Required By The Bill Is Contrary To Federal Law

The foregoing federal regulatory system is fatal to the bill, as Nevada discovered recently when it tried to implement a similar requirement in that state. Stated simply, a dealer is allowed under federal law to request a NICS check only when the dealer is actually making the sale or transfer from his/her own inventory. NICS checks are not permitted for private sales because NICS is a federal database and bona fide private sales are not regulated by federal law. See *United States v. Hosford*, 843 F.3d 161 (4<sup>th</sup> Cir. 2016). That means that no dealer may legally comply with the requirements for private transfers that would be imposed by the bill because the dealer **is not** actually making the transfer and thus may not access NICS to institute a background check. Federal regulations are quite explicit on that point. 28 C.F.R. 25.6(a) provides that “FFLs may initiate a NICS background check **only** in connection with a proposed firearm transfer as **required by the Brady Act**. FFLs are **strictly prohibited** from initiating a NICS background check for any other purpose.” (Emphasis added). Similarly, the Federal Firearms Licensee Manual issued by the FBI states that “[a]n FFL is never authorized to utilize the NICS for employment or other type of **non-Brady Act-mandated background checks**.” (Emphasis added).

There is a limited, quite complex, Guidance approved for dealers by the ATF for “the procedures to follow when facilitating private sales.” Guidance at 1. A copy of that

Guidance is attached. This method is available only for “private party sales of firearms.” (Id). Under that procedure, “[t]he prospective transferee (buyer) must complete Section A of the ATF Form 4473” and the dealer is likewise required to fill out the dealer portions of Form 4473. The dealer must then follow federal regulations for the entry of the firearm in his or her records for each completed sale. This procedure is limited to actual sales. Under the Brady Act, as codified in 18 U.S.C. 922(t), expressly is limited to “transfers,” providing that the dealer may not “transfer” a firearm to a person without conducting a NICS check. The Guidance thus permits dealers to conduct such “facilitation” only for private sales or transfers and for no other types of conveyance, such as longs or gifts.

The structure of other provisions Section 922 confirms that the term “transfer” means a “sale” or permanent transfer. For example, in 1986, Congress amended Section 922(d) to include to provide that a person may not “sell *or otherwise dispose of* firearms to *prohibited persons*, as set forth in Section 922(d). See, e.g., *United States v. Jefferson*, 334 F.3d 670, 675 (7th Cir. 2003) (noting that when Congress amended Section 922(d) in 1986 to include the term “dispose of,” Congress intended to broaden the law to ban dealers and all other persons from engaging in temporary transfers to prohibited persons under Section 922(d)). See also 18 U.S.C. 922(j) (regulating the disposal of stolen firearms). Other portions of Section 922 are directed to legal possession without addressing the meaning of “transfer.” See Section 922(a)(3), (g), (h), (k). Nothing in these provisions purport to address, much less prohibit, temporary transfers to law-abiding persons. The term “transfer” is nowhere defined in the Brady Act, 18 U.S.C. § 922(t), to include a mere loan or gift or temporary possession to an otherwise law-abiding person. Nor would such coverage make sense as the NICS system instituted by the Brady Act was intended to regulate **sales by dealers**, not private sales (which are unregulated). Dealers sell firearms; they do not normally engage in the temporary loans or gifts of firearms and certainly do not do so “without consideration.”

The Maryland Court of Appeals is in accord with this limited meaning of transfer. In *Chow v. State*, 393 Md. 431, 903 A.2d 388 (2006), the Court of Appeals held that “the word ‘transfer,’ as used in [MD Code Public Safety § 5-124], is used in an ownership context and does not apply to the situation extant in the case *sub judice* — that of a gratuitous temporary exchange or loan between two adults who are otherwise permitted to own and obtain regulated firearms.” Again, nothing in Maryland law purports to ban the loan of a handgun or a long gun to an otherwise law-abiding person.

These bills would change that result only for long guns by defining “transfer” to include loans or gifts or any “delivery” of any kind. That definition of “transfer” is fundamentally incompatible with this limited definition of the term as used in the Brady Act. Specifically, the bill defines transfer to mean “A SALE, A RENTAL, A FURNISHING, A GIFT, A LOAN, OR ANY OTHER DELIVERY, WITH OR WITHOUT CONSIDERATION.” Such a temporary “transfer” under the bill is not a “transfer” under federal law for purposes of the Guidance issued by ATF for “facilitating” a private sale. That is fatal to the bill. As noted, the bill requires that “A LICENSEE WHO AGREES TO FACILITATE A TRANSFER UNDER THIS SECTION SHALL PROCESS THE TRANSFER AS THOUGH TRANSFERRING THE RIFLE OR SHOTGUN FROM

THE LICENSEE'S OWN INVENTORY TO THE TRANSFEREE.” Yet, as explained above, the dealer is not authorized by federal law to request such a NICS check for “a rental, a furnishing, a gift, a loan or any other “delivery” as defined in these bills. Under ATF Guidance, a dealer may only “facilitate” a private “sale” – the Guidance does not address such temporary possessions. See Guidance at 1. Such activities are not, in fact and law, regulated by federal law. The FBI will thus refuse to conduct such a NICS check for such temporary transfers. In short, the NICS check required by the bills requires the dealer to commit a violation of federal law and inappropriately seeks to enlist the dealer in an effort to commandeer the FBI into providing a NICS check system in a manner contrary to federal law.

That result cannot be evaded by adopting a legal fiction requiring a dealer to treat the private “transfer” (as defined) “as though” it came out the dealer’s “own inventory.” Treating a private temporary exchange of possession “as though” it came out of inventory simply is not the same as an actual “transfer” actually coming from the dealer’s inventory under the Brady Act. As explained above, the Brady Act and the NICS system covers dealer sales and permanent transfers – not loans. These bills cannot change federal law; they cannot broaden the federal definition of a “transfer” to include a mere loan. Any dealer who attempted to make that false certification to the FBI in requesting a NICS check would be subject to prosecution and imprisonment for making a false “representation.” See 27 C.F.R. 478.128(c) (“Any \* \* \* licensed dealer \* \* \* who knowingly makes any false statement or representation with respect to any information required by the provisions of the Act \* \* \* under the Act or this part shall be fined not more than \$1,000 or imprisoned not more than 1 year, or both.”). Similarly, a State or a FFL that requests a NICS check not authorized by federal law is subject to a \$10,000 fine and a termination of access to the NICS system. 28 C.F.R. § 25.11(a).

The FBI and federal law will not permit FBI resources to be commandeered in the manner required by these bills. For example, in Nevada, an initiative was adopted on November 8, 2016, that expressly required dealers to perform NICS checks for all private sales. Indeed, the Nevada statute used much of the same language in these bills, instructing the dealers to treat the transfer “as though” it took place from the dealer’s own inventory. As shown by the attached letter, the FBI refused to perform such NICS checks because federal law does not regulate private transactions and thus did not permit the FFLs to access the NICS system for purposes of the checks newly required by the Nevada statute. As the FBI informed Nevada, state “legislation regarding background checks for private sales cannot dictate how federal resources are applied.” FBI Letter, Dec. 14, 2016 at 2 (attached). Because of this reality, the Nevada Attorney General refused to enforce the Nevada statute and a Nevada state court sustained that refusal, holding that the entire Nevada statute was unenforceable and thus invalid. See *Zusi v. Sandoval*, No. A-17-762975-W (Nev. Dist. Ct. August 20, 2018). See <http://www.lccentral.com/2018/09/05/judge-confirms-gun-background-check-law-unenforceable/> **The bill thus requires the legally impossible, viz., a NICS background check for a temporary change of possession that a dealer is federally prohibited from requesting and that the FBI will not perform.**

The legal impossibility of conducting a NICS check required by the bill means that the requirement is contrary to the Due Process Clause of the Fourteenth Amendment and thus unenforceable. 1 W. LaFare & A. Scott, Jr., *Substantive Criminal Law* § 3.3(c) at 291 (1986) (“[O]ne cannot be criminally liable for failing to do an act which he is physically incapable of performing.”). See also *Broderick v. Rosner*, 294 U.S. 629, 639 (1935) (Brandeis, J.) (invalidating a statute, in part, because it “imposes a condition which, as here applied, is legally impossible of fulfillment”); *Ezell v. City of Chicago*, 651 F.3d 684, 710-11 (7th Cir. 2011) (invalidating a requirement that that Chicago had made legally impossible to satisfy within the city); *Hughey v. JMS Dev. Corp.*, 78 F.3d 1523, 1530 (11th Cir. 1996) (“The law does not compel the doing of impossibilities.”). These bills should be withdrawn for this reason alone.

#### 4. Long Guns Are Very Seldom Used In Crime

Apart from the illegality of the requirements imposed by the bill, the bill inappropriately criminalizes private “transfers” and temporary possessions of long guns even though such long guns are very seldom used in crime. This is confirmed by the Maryland 2015 UNIFORM CRIME REPORT issued annually by the State Police. For example, in 2014, a rifle (of any type) was used in one (1) murder in Maryland and a shotgun was used in seven (7). In 2015, a rifle was used in five (5) murders and a shotgun used in six (6). By way of comparison and perspective, a knife was used in **79** murders in 2014 and **65** murders in 2015. A “blunt object” was used in **12** murders in 2014 and **17** murders in 2015. “Personal weapons” (hands and feet) were used in **13** murders in 2014 and **19** murders in 2015. The same pattern is presented by the most recent data published by the State Police for 2017. Specifically, in 2017, a rifle was used in 5 murders and a shotgun used in 7. A knife was used in 63 murders while blunt objects were used in 13 murders and hands and feet were used in 18 murders.

FBI statistics show similar results nationwide. [https://ucr.fbi.gov/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](https://ucr.fbi.gov/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).

According to the latest data from the FBI (attached), in Maryland, there were **470** murders in 2018. Of those **470** murders, 1 (less than 1%) was committed with a rifle and 10 (2%) were committed with shotguns. In contrast, knives were used in **39** murders and hands and feet were used in **13** murders. **Thirty** (30) murders were committed in Maryland in 2018 using “other weapons.” In short, murders using long guns are not only exceedingly rare, they are the **least** used weapon for such crimes. Yet, nothing in the bill would address murders using knives or murders by using hands and feet or by “other weapons.”

As is apparent from these numbers, there is simply no serious public safety justification for the restrictions imposed by the bill. As discussed below, the State may not constitutionally ban firearms or their acquisition. Nor may the General Assembly enact legislation just because a majority of legislators hate guns or want to discourage the ownership of all firearms. As explained below, those purposes are constitutionally illegitimate and any legislation based on those reasons is likewise illegitimate. There are somewhere between 300 million upwards to 600 million firearms in the United

States, maybe more. There are literally “more guns than people.” [https://www.washingtonpost.com/news/wonk/wp/2018/06/19/there-are-more-guns-than-people-in-the-united-states-according-to-a-new-study-of-global-firearm-ownership/?utm\\_term=.38aed4ccac25](https://www.washingtonpost.com/news/wonk/wp/2018/06/19/there-are-more-guns-than-people-in-the-united-states-according-to-a-new-study-of-global-firearm-ownership/?utm_term=.38aed4ccac25). The State may not confiscate firearms under the Second Amendment, as construed the Supreme Court. So firearms are here to stay.

And so are knives. But would the General Assembly seriously consider requiring background checks for loans of knives? After all, in 2014, a knife was used in a murder 79 times in Maryland while a rifle was used only once. Surely if a rifle transfer warrants a background check then a knife transfer should be also subjected to a background check. Is it “common sense” to impose background checks for private “transfers” of rifles, but not for knives? Similarly, in 2018 “other weapons” were used as murder weapons in Maryland, 3 times more often than long guns (11 for long guns, 30 for other weapons). Will the State enact a regulatory regime for paper weights, baseball bats, hammers and all other blunt objects because they can be misused? **Every year**, personal weapons, such as feet and hands, kill more people than long guns. Will the State now require all persons with hands and feet to submit to background checks? Legally, these bills are “wildly underinclusive” and thus insufficiently tailored to the asserted government interest. In sort, the bill would not even survive intermediate scrutiny under the test set out by the Supreme Court in *Coakley*. See, e.g., *National Institute of Family and Life Advocates v. Becerra*, 138 S.Ct. 2361, 2375 (2018). *A fortiori*, the bill will not survive any application of the “text, history and tradition” test actually used by the Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 561 U.S. 742, 767-68 (2010).

## 5. The Bill Criminalizes Innocent Conduct.

There are other practical problems. A widow who wishes to sell off her deceased husband’s long gun firearms collection will now be forced to do so through a dealer who is free to charge a fee, the amount of which need only be “reasonable” (whatever that means). That fee effectively decreases the amount of money she will receive for each such sale. Will the State supervise the “reasonableness” of the fees charged? Highly doubtful. There is no mechanism for doing so in these bills. Participation by a dealer in these private sales is entirely voluntary. If she cannot find a willing dealer, she is effectively foreclosed from liquidating a firearms collection, thereby depriving her of what may be a desperately needed source of funds.

Worse, if the widow fails to understand that these sales, which have been taking place in Maryland for centuries, are now criminalized, **each** such sale would be punishable by placing her (as well as each transferee) in prison for 5 years. Even if a dealer can be found, the dealer is free to charge a substantial fee for any such services. Because a dealer **cannot** access the NICS system without **complying with ATF Guidance and** taking the firearm into his inventory, the dealer will have substantial record keeping and federal and state compliance risks and costs associated with every such transfer. Dealers are tightly regulated by Maryland law. See, e.g., MD Code Public Safety §§ 5-106-5-111, 11-106. Any dealer transfer fees will thus likely be substantial for every single firearm. Most dealers will simply not want to be bothered. In short, the likely



effect of the bill will be to ban private long gun sales and thereby effectively destroying the value of long gun collections.

The bill also directly impacts hunters. As noted, the bill comprehensively defines a “transfer” to include “**SALE, A RENTAL, A FURNISHING, A GIFT, A LOAN, OR ANY OTHER DELIVERY, WITH OR WITHOUT CONSIDERATION.**” For hunters, the bill carves out a narrow exception for transfers taking place “**WHILE THE TRANSFEREE IS HUNTING OR TRAPPING**” and only in so far as the hunting “**IS LEGAL IN ALL PLACES AND AT ALL TIMES WHEN THE HUNTING OR TRAPPING IS CONDUCTED.**” Presumably, that limited exception would mean that a “transfer” taking place between neighbors or friends the night before a hunt would be subject to the requirements imposed by these bills. Any hiatus in the hunting (a break for lunch?) would likely re-impose the ban on possession. In every case, the hunter and his friend would be required to find a dealer for that loan for the next day’s hunt **and then** find the dealer again to transfer the gun back to the original owner after the hunt is over and pay the dealer’s transfer fees associated with each such transfer. The same would be true if the loan was for a longer period, such as a week-long trip to Wyoming to hunt elk. The transferor would become a criminal if the transferee hunter took “delivery” of the long gun before he left to hunt in Wyoming and would become a criminal again the moment the transferee stopped “hunting” and returned to Maryland with the long gun still in his possession. The transferee would become a criminal at the same time for the same reasons.

In 2013, when Governor O’Malley pushed hard for enactment of the Firearms Safety Act of 2013 (SB 281), he wrote an email to hunters in Maryland stating that “Let me be clear: We are committed to protecting hunters and their traditions. *That’s why we specifically carved out shotguns and rifles from the licensing requirements of our bill.*” <https://www.washingtontimes.com/blog/guns/2013/feb/12/miller-omalley-emails-licensed-hunters-push-gun-co/> (Emphasis added). Now, a mere six years later, “hunters and their traditions” are under direct assault by these bills. That promise has been broken. That breach applies to all aspects of the bill.

The bill makes an exception for a transfer “**THAT IS TEMPORARY AND NECESSARY TO PREVENT IMMINENT DEATH OR SERIOUS BODILY HARM,**” but only “**IF THE TRANSFER LASTS ONLY AS LONG AS NECESSARY TO PREVENT IMMINENT DEATH OR SERIOUS BODILY HARM.**” That would mean that a person becomes a criminal if they hang onto the long gun for too long (a minute?) after the use that was “necessary” to save a person’s life or the life of another person. Such a provision would mean that an abused spouse or intimate partner could not obtain a loan of a gun from a friend for her own self-protection or for the protection of her children because a loan would be banned. The provisions would also create extremely difficult questions of fact for individuals, law enforcement, judges and juries as to whether the harm was “imminent,” whether the loan was “necessary” to prevent the threatened harm, or whether harm was truly one of “death or serious bodily injury,” or whether possession of the long gun was immediately relinquished once possession was no longer “necessary.” Respectfully, the bill creates massive uncertainty to the point of nonsense. The bill ignores the benefits of defensive use of firearms. “[D]efensive use of guns by crime

victims is a common occurrence . . . with estimates of annual uses ranging from about 500,000 to more than 3 million per year.” Priorities for Research to Reduce the Threat of Firearm-Related Violence, Washington, DC: The National Academies Press, 15 (2013).

Because a violation of these provisions is punishable with five years of imprisonment, person convicted (regardless of sentence) would be subject to a permanent, lifetime firearms disability under federal law. See 18 U.S.C. § 922(g), and 18 U.S.C. § 921(a)(20). Subsequent possession (or constructive possession) of any modern firearm or ammunition (no matter how temporary or fleeting) by a person subject to this firearms disability is a violation of federal law, 18 U.S.C. § 922(g), which is punishable by up to 10 years imprisonment. See 18 U.S.C. § 924(a)(2). A similar disability and similar punishments are imposed under Maryland law. See MD Code, Public Safety, § 5-101(g)(3), § 5-133(b)(1), § 5-205(b)(1), § 5-144. Does Maryland really want to wage legal war on its otherwise law-abiding hunters and other citizens? Because that is what these bills do.

#### **6. The Bill Criminalizes Loans Of Long Guns Between Law-Abiding Citizens While Loans Of Handguns Among The Law-Abiding Are Perfectly Legal.**

Indeed, the definition of “transfer” in these bills would actually criminalize **more conduct** for long gun “transfers” than Maryland law imposes on the transfer of handguns. For example, as amended just last Session, Maryland law, MD Code, Public Safety, § 5-134, provides that “[a] dealer or other person may not sell, rent, loan, or transfer a regulated firearm to a purchaser, lessee, borrower, or transferee who the dealer or other person knows or has reasonable cause to believe” **is a prohibited person**. A loan of a handgun to **a non-prohibited person is not criminal** under Section 5-134.

Indeed, under the State Police’s official public policy, a temporary receipt of a handgun in a loan is not covered by the requirement to obtain a Handgun Qualification License under MD Code Public Safety 5-117.1. Maryland State Police Advisory LD-HQL-17-003 (Nov. 17, 2017) (“The MSP views ‘transfer’ and ‘receive’ as equivalent for purposes of Maryland’s firearms laws and interprets ‘receive’ as including the gratuitous permanent exchange of title or possession, but excluding temporary gratuitous exchanges or loans of handguns.”). Loans of **handguns** among law-abiding persons are thus not criminalized.

These bills, in contrast, would severely criminalize any such “loan” of a **long gun** between law-abiding persons. That special discriminatory treatment of long guns is irrational. Non-compliance will be exceedingly common and thus the new criminals created by these bills would most likely most include law-abiding hunters in this State. Stated simply, hunters and other law-abiding citizens have been buying and selling and loaning long guns in Maryland since long before Maryland became a State and these sorts of transfers historically have been and are part of rural life in America. These bills won’t stop such transfers; it will just criminalize the participants.

## 7. The Bill Criminalizes Long Gun Loans Between Law-Abiding Citizens Much More Severely Than Maryland Law Treats Actual Thefts Of Firearms And More Severely Than Similar Laws In Other States.

Similarly, these bills would punish the otherwise innocent **loan** of a long gun between law-abiding persons **much more severely** than the actual **theft** of a long gun. Specifically, under current Maryland law, a firearm theft is treated like any other theft of personal property. Under current law, theft of property valued less than \$1,500 but more than \$100 is punishable by a fine of \$500 and a maximum six months imprisonment on first offense. MD Code Criminal Law § 7-104(g)(4). A conviction for this offense would not even be sufficient to make the firearm thief a prohibited person. See MD Code Public Safety § 5-101(g)(3) (defining “disqualifying crime”).

A bill (HB 722) to address specifically thefts of **firearms** was offered in this Committee last Session and yet that bill received **an unfavorable report**. <http://mgaleg.maryland.gov/mgawebsite/Legislation/Details/hb0722/?ys=2019rs>. If these bills receive a favorable report, the General Assembly would thus be on record **as favoring thieves over law-abiding citizens**. If this Body was serious about addressing illegal acquisitions of firearms, it would endorse a bill like HB 722 instead of criminalizing law-abiding persons for innocent loans. Alternatively, the Committee could endorse a long gun counterpart to MD Code Public Safety § 5-134, as amended last year, and thus criminalize knowing loans of long guns to prohibited persons. Yet, these bills do neither of these things. The unthinking animus toward law-abiding gun owners is apparent.

These bills would also criminalize more conduct and criminalize that conduct much more severely, than similar laws in other states, including the states neighboring Maryland. For example, Pennsylvania law, Section 6111(f) - Title 18 - Crimes And Offenses, requires background check for private transfers only for *handguns* and short barrel rifles and shotguns – not ordinary rifles and shotguns. Current Maryland law likewise applies only to private sales of handguns. See MD Code Public Safety 5-124. The penalty for a violation of the Pennsylvania law is classified as a misdemeanor in the second degree, which involves 1-2 years imprisonment and a fine of \$5,000 – not 5 years imprisonment and \$10,000 fine imposed by these bills. Current Virginia law does not criminalize private sales at all.

Most recently in Virginia, a bill (SB70) creating a background check requirement similar to these bills was amended in Committee (and passed the Senate) to eliminate a background check requirement for private **loans** of any firearm (amending Va Code § 18.2-308.2:5). That bill would classify a violation as a Class One misdemeanor, punishable by not more than 12 months in jail and a fine of \$2,500. In Delaware, Section 904A of Title 24 of the Delaware code requires a dealer, as a condition to its state license, to facilitate private transfers with a fee not to exceed \$30. Section 1448B of the Delaware Criminal Code covers private transfers, but specifically exempts any “loan of a firearm for any lawful purpose, for a period of 14 days or less, by the owner of said firearm to a person known personally to him or her.” A violation of the Delaware law is punished by at most one year in jail and a \$2,300 fine.

Even California law is more lenient. For example, it specifies that the dealer may charge only one fee regardless of the number of firearms. Cal. Penal Code §28240. An unlicensed private sale or transfer is a misdemeanor punishable by six months in jail and a \$1,000 fine. Id. at §26500. Similarly, a Nevada law that just went to effect, NV SB143 | 2019 | 80th Legislature (which these bills appear to be modeled after) expressly covers only sales and transfers and, unlike these bills, does not define a transfer to include a simple loan, “with or without consideration.” A violation of that law is a gross misdemeanor which is punishable in Nevada only by one year in jail and a fine of up to \$2,000. Unlike the severe punishments allowed by HB4 and SB 208, none of these punishments in these other states is a disqualifying offense under federal law. This states recognize that there is no earthly reason to inflict such a severe punishment of 5 years in prison and a fine of \$10,000, especially for a strict liability crime that includes no requirement of culpable *mens rea*. That *mens rea* point is discussed below in greater detail.

Finally, it bear emphasis that many of the states that impose these sorts of regulations on private sales are full Point of Contact states for NICS purposes and thus have a state agency that serves as a central control point for conducting background checks, much as the Maryland State Police is a partial Point of Contact agency for conducting NICS checks for the sales of handguns. Virginia and Pennsylvania, for example, are full POC states, as is Nevada and California. Like the Maryland State Police for handgun private sales, these full POC agencies can simply conduct a background check of state databases for a private sale, rather than do a federal NICS checks, which is generally barred by federal law, as explained above. In a full POC state, the dealer need only contact the state agency to do the check. Indeed, that was the only way that Nevada was able to pass a private sale background check law as the prior law was declared unenforceable by the Nevada courts, as discussed above. These bills do not make the Maryland State Police a full POC agency. If this bill was serious about minimizing the criminalization of innocent conduct while avoiding conflicts with the NICS system and the FBI (such as occurred in Nevada), it would mandate that the State Police become a full POC agency, thereby enabling it to conduct private sales background checks on State databases, precisely in the same way it does now for private handgun sales.

## **8. The Bill Is Unconstitutional In Its Coverage**

In vastly restricting temporary possessions among otherwise law-abiding persons, the bill trivializes the right of self-defense recognized by the Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570 (2008)) (self-defense is “the *central component* of the right itself”) (emphasis the Court’s), as applied to the States in *McDonald v. City of Chicago*, 561 U.S. 742, 767-68 (2010) (same). Under *Heller*, law-abiding persons have a constitutional right to arm themselves for self-defense, including most acutely in the home. As a matter of common sense, a person must arm themselves before the threat is “imminent” as there is simply no time to so once such threat has manifested and is thrust upon the person. There is no text, history of tradition -- the test employed in *Heller* and *McDonald* -- that would support such limitations on temporary possessions. We believe that it is highly likely that the Supreme Court will again make use of this “text, history

and tradition” test in reaching of the merits of *NYSPRA v. NYC*, No. 18-280, *cert granted* 139 S.Ct. 939 (2019). *NYSPRA* was argued on December 2, 2019, and numerous petitions for certiorari in Second Amendment cases are now being held by the Supreme Court pending a decision in *NYSPRA*. These bills fail under the text, history and tradition test.

Even under intermediate scrutiny, such restrictions on temporary possession by a law-abiding person are not narrowly tailored to any legitimate state interest. See *McCullen v. Coakley*, 573 U.S. 464, 496 (2014) (“To meet the requirement of narrow tailoring, the government must demonstrate that alternative measures that burden substantially less speech would fail to achieve the government's interests, not simply that the chosen route is easier.”). See also *Culp v. Madigan*, 840 F.3d 400, 407 (7th Cir. 2016) (decision on preliminary injunction appeal) (Manion, J., dissenting on other grounds) (“a law that curtails the fundamental right of law-abiding citizens to carry a weapon for self-defense must pass even more exacting (although not quite strict) scrutiny. Defenders of such a law must show a ‘close fit’ between the law and a strong public interest. As in First Amendment cases, the tailoring requirement prevents government from striking the wrong balance between efficiency and the exercise of an enumerated constitutional right.”); *Culp v. Raoul*, 921 F.3d 646 (7th Cir. 2019) (decision on appeal from final judgment), *petition for cert. pending* No. 19-487 (U.S., filed Oct. 15, 2019). These bills fail under all these principles. While the State has an undoubted legitimate interest in preventing the sale of arms to prohibited persons, these bills sweep far beyond the line drawn in MD Code Public Safety § 5-134 (banning loans of handguns to **prohibited persons**) to a ban on temporary possessions of long guns by the **law abiding**. Under the Second Amendment, the State has no legitimate interest in criminalizing temporary possessions of long guns in the home by the law-abiding citizens.

These bills also fails to grasp that Maryland law has long held that the actual use of lethal force (including using a firearm) is permissible where a threat to life or severe bodily harm is “imminent or immediate.” See *State v. Faulkner*, 301 Md. 482, 485, 483 A.2d 759 (1984). The Maryland Court of Appeals has also made clear that such a threat need not be “immediate” in order to be “imminent,” particularly in cases involving a battered spouse. See, e.g., *Porter v. State*, 455 Md. 220, 166 A.3d 1044 (2017). Yet, these bills would effectively criminalize (or, at a minimum, create a jury question concerning) such a loan. In the real world, these bills would prevent a friend from loaning a long gun to a battered spouse or intimate partner who may be at imminent risk. Few if any potential “transferors” will risk arrest and prosecution by loaning a long gun to such a person where the “transfer” and possession is legal “ONLY AS LONG AS NECESSARY TO PREVENT IMMINENT DEATH OR SERIOUS BODILY HARM.” These bills thus undermines this right of self-defense recognized by Maryland law.

These bills’ exemption for transfers that occur “at an established sport shooting range or gun club,” is hopelessly vague as well as unduly restrictive. Established clubs loan out precision, highly expensive firearms to the parents of young people who compete nationally and internationally so as to permit daily practice of that sport. This sort of practice is constitutionally protected by the Second Amendment. *Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011) (“[T]he core right wouldn’t mean much without the training and practice that make it effective.”). Such temporary loans extend overnight

beyond the borders of any range or gun club, as such loans allow the parent to facilitate practice time. Such expensive long guns cannot be kept at a range, as that would expose them to a high risk of theft and such storage is thus typically prohibited by insurance policies. The text of these bills would appear to criminalize such loans. At a minimum, it is unclear whether such loans are covered by these bills and such vagueness is, in itself, unconstitutional under the Due Process Clause of the Fourteenth Amendment. See *United States v. Davis*, 139 S. Ct. 2319, 2325 (2019) (“Vague statutes threaten to hand responsibility for defining crimes to relatively unaccountable police, prosecutors, and judges, eroding the people’s ability to oversee the creation of the laws they are expected to abide.”). Again, there is no legitimate purpose served by this criminalization of these parents and young competitors.

Finally, by its terms, these bills would also impose strict criminal liability on the defendant without regard to the *mens rea* of the defendant. The defendant need not know that the transfer was illegal to be a criminal under these bills. See *Chow v. State*, 393 Md. 431, 471 (2006) (construing a “knowingly participate” requirement in MD Code Public Safety § 5-144(a), to mean that “a person must know that the activity they are engaging in is illegal.”). Imposing strict criminal liability for innocent conduct would be unjust by any measure. Where such liability is imposed on conduct arguably protected by the Constitution, it is particularly pernicious. See, e.g. *City of Chicago v. Morales*, 527 U.S. 41, 55 (1999) (due process); *Okpalobi v. Foster*, 244 F.3d 405, 438 (5th Cir. 2001) (en banc) (Benavides, J., concurring in part, dissenting in part) (right to an abortion).

To avoid precisely these kinds of injustices, strict liability statutes are heavily disfavored in the law. See *Staples v. United States*, 511 U.S. 600, 605 (1994) (noting that “the requirement of some *mens rea* for a crime is firmly embedded” in common law). Thus, when construing federal statutes, the federal courts will require specific *mens rea* to the extent “necessary to separate wrongful conduct from ‘otherwise innocent conduct.’” *Carter v. United States*, 530 U.S. 255, 269 (2000) (citation omitted). The guiding principle is that “wrongdoing must be conscious to be criminal.” *Morissette v. United States*, 342 U.S. 246, 252 (1952). Implementation of that requirement varies with the context, but it is undeniable that in some instances “requiring only that the defendant act knowingly ‘would fail to protect the innocent actor.’” *Elonis v. United States*, 135 S.Ct. 2001, 2010 (2015) (citation omitted) (emphasis added). State law also strongly favors an appropriate *mens rea* requirement. See, e.g., *Garnett v. State*, 332 Md. 571, 577-78, 632 A.2d 797, 800 (1993) (“The requirement that an accused have acted with a culpable mental state is an axiom of criminal jurisprudence.”); *Lowery v. State*, 430 Md. 477, 498, 61 A.3d 794, 807 (2013) (same). These bills ignore all these principles. At the very least, these bills should be amended to include a “knowingly” requirement such as examined in *Chow* and present in MD Code Public Safety §§ 5-134, 5-144.

### C. CONCLUSION

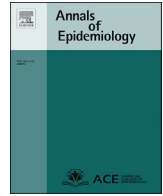
If these bills are enacted into law, the State will be prosecuting inevitable violations of these bills by otherwise law-abiding citizens, thereby destroying reputations and inflicting legal and perhaps economic ruin on these individuals. Enormous discretion

will be bestowed on law enforcement and prosecutors, thereby ensuring arbitrary and racially discriminatory enforcement. Jobs will be lost, security clearances revoked and families traumatized. The public safety rationale is transparently hollow, as it is beyond dispute that long guns are used in far less violent crime than ordinary knives and feet and fists. This is over-criminalization at its worse. We urge an unfavorable report.

Sincerely,

A handwritten signature in blue ink that reads "Mark W. Pennak". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Mark W. Pennak  
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## Original article

## California's comprehensive background check and misdemeanor violence prohibition policies and firearm mortality



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## ABSTRACT

**Purpose:** In 1991, California implemented a law that mandated a background check for all firearm purchases with limited exceptions (comprehensive background check or CBC policy) and prohibited firearm purchase and possession for persons convicted within the past 10 years of certain violent crimes classified as misdemeanors (MVP policy). We evaluated the population effect of the simultaneous implementation of CBC and MVP policies in California on firearm homicide and suicide.

**Methods:** Quasi-experimental ecological study using the synthetic control group methodology. We included annual firearm and nonfirearm mortality data for California and 32 control states for 1981–2000, with secondary analyses up to 2005.

**Results:** The simultaneous implementation of CBC and MVP policies was not associated with a net change in the firearm homicide rate over the ensuing 10 years in California. The decrease in firearm suicides in California was similar to the decrease in nonfirearm suicides in that state. Results were robust across multiple model specifications and methods.

**Conclusions:** CBC and MVP policies were not associated with changes in firearm suicide or homicide. Incomplete and missing records for background checks, incomplete compliance and enforcement, and narrowly constructed prohibitions may be among the reasons for these null findings.

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## Introduction

Firearm violence is one of the leading causes of death and injury in the United States, resulting in more than 38,000 deaths in 2016 [1]. Firearm ownership and access are risk factors for death from both suicide and homicide [2–6], and firearm access is a necessary precondition for committing firearm-related violent crimes.

Federal law prohibits certain categories of individuals from purchasing or possessing firearms; examples include persons

convicted of felonies or domestic violence misdemeanors [7]. To help prevent prohibited persons from acquiring firearms, the Brady Handgun Violence Prevention Act requires that purchases from federally licensed retailers be subject to a background check. Since Brady's inception in 1994, more than 3 million attempted purchases by prohibited persons have been denied [8]. Sales by unlicensed private parties are exempt from background check requirements in many states; however, it is estimated that more than 20% of all firearm acquisitions do not involve background checks [9]. About 80% of all firearms acquired for criminal purposes—96% of those acquired by prohibited persons—are obtained through private-party transfers [10].

Among legal purchasers of firearms, as in the general population, a history of violence is strongly associated with an increase in risk for future violence [11]. A prospective study of California handgun purchasers found that individuals with a

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single prior conviction for a nonprohibiting violent misdemeanor crime (such as assault and battery) were nearly five times as likely as those with no prior criminal history to be arrested for a subsequent firearm-related or violent offense [12]. For purchasers with multiple such prior convictions, risk was increased by a factor of 15.

In 1991, California mandated background checks for nearly all firearm sales (a comprehensive background check [CBC] policy) and a 10-year prohibition on gun purchase and possession for persons convicted of most violent misdemeanor crimes (a misdemeanor violence prohibition [MVP] policy). These policies are complementary. Expanded background check requirements are meant to create an additional barrier to firearm access for prohibited persons; nationally, they are associated with a lower proportion of private-party firearm sales conducted without background checks (26% vs. 57%) [9]. Expanded prohibitions reflect an intent to reduce violence through preventing access to firearms by larger numbers of high-risk individuals.

We know little about the effectiveness of CBC policies. Studies showing clear benefits have focused on permit-to-purchase (PTP) laws, a particularly rigorous subset of CBC policies that require a background check and a permit, typically issued by a law enforcement agency, to purchase a firearm [13–17]. Some cross-sectional, ecological studies of CBC policies have shown negative associations between CBC laws and firearm mortality [18,19]. However, a more rigorous time-series analysis found no effect on firearm suicide and homicide rates from repealing CBC policies in two states [20]. Newly enacted CBC policies led to increases in background checks, presumably the principal mechanism by which they would exert intended effects on violence, in only 1 of 3 states studied [21].

Incomplete compliance and enforcement have been suggested as possible reasons for these findings. The possibility of these mechanisms of action is reinforced by studies showing benefits to more thorough background checks [22,23] and by well-known instances of violence, including mass shootings, where prohibited persons purchased firearms because the data on which their background checks were performed were incomplete [24].

Evaluations of MVP policies have yielded positive results, but the literature is sparse. At the individual level, a controlled longitudinal study of California's MVP policy found that denial of firearm purchase because of a prior violent misdemeanor conviction was associated with a substantial reduction in risk of arrest for future violent or firearm-related crimes [25]. A recent multistate

population-level study found similar benefits from MVP policies for intimate partner homicide [15].

The objective of our study was to evaluate the effects of California's CBC and MVP policies on firearm-related homicide and suicide. Given their simultaneous implementation and limited possibilities for estimating individual policy effects (both were intended to prevent high-risk people from acquiring firearms), we evaluated the two policies together.

## Methods

### Design and study sample

We used a quasi-experimental design at the state level, with California as the treated state and “treatment” defined as the simultaneous implementation of CBC and MVP policies in 1991. The control units, also known as the donor pool, were 32 states that did not have CBC or MVP policies at the start of the study period and did not implement them or other major firearm policy changes during that period (Table 1). The main analysis considered the preintervention period to be all years before the intervention for which data were available (1981–1990) and assessed effects for 10 years postintervention (1991–2000).

### Data sources and variables

Outcomes: Our main outcomes were the annual rates of firearm-related homicides and suicides per 100,000 people, available from the US Centers for Disease Control and Prevention [1]. As these data do not include numbers when there are fewer than 10 cases, we performed simple imputation using linear regression. This resulted in the imputation of 2 years for New Hampshire, South Dakota, Vermont, and Wyoming, and 1 year for Delaware. We rejected multiple imputation because inference in the synthetic control group method does not rely on variance estimates (the main concern in single imputation methods) but on permutation tests (see Supplemental Material).

To account for potential spurious associations and explore the influence of additional exogenous factors, we included rates of non-firearm-related homicides and suicides as negative control outcomes. The rationale is that these outcomes should not be affected by policies restricting access to firearms, but if there is a relationship, it should be in the opposite direction (i.e., other

**Table 1**  
States with nonzero weights in synthetic California for firearm and nonfirearm homicide and suicide rates\*

State	Firearm homicide <sup>†</sup>	Nonfirearm homicide <sup>‡</sup>	Firearm suicide <sup>‡</sup>	Nonfirearm suicide <sup>‡</sup>
Alaska	0	0.021	0	0
Arizona	0	0.015	0	0
Colorado	0	0.123	0	0
Georgia	0.101	0	0	0
Louisiana	0.259	0	0	0
Nevada	0	0.2	0	0.308
New Mexico	0	0.039	0	0
Ohio	0	0	0.681	0.237
Texas	0	0.603	0.319	0
Virginia	0.566	0	0	0
Wisconsin	0.073	0	0	0.455
RMSPE synthetic control/all control states	0.299/2.408	0.230/1.675	0.294/2.191	0.482/1.811

\* States in the donor pool ( $n = 32$ ): Alabama, Alaska, Arizona, Arkansas, Colorado, Delaware, Florida, Georgia, Idaho, Kansas, Kentucky, Louisiana, Maine, Minnesota, Mississippi, Montana, Nevada, New Hampshire, New Mexico, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming.

<sup>†</sup> Covariates included in the homicide models are percentage Hispanic; percentage black; percentage male; percentage living below the federal poverty line; percentage unemployment; percentage of population aged 15–29 years; percentage of population aged older than or equal to 65 years; number of gallons of ethanol from spirits consumed per capita; percentage veterans; gun availability (annual); outcomes at 1984, 1987, and 1990.

<sup>‡</sup> Covariates included in the suicide models are the same as<sup>†</sup>, plus the natural logarithm of the states' populations.

methods would be substituted for firearms, increasing the rates of non-firearm-related deaths). A decline in the rates of non-firearm-related homicides and suicides associated with the implementation of CBC and MVP policies would likely be the result of other unmeasured confounders.

**Covariates:** Based on previous research [17,20] and model performance (lowest root mean square prediction error [RMSPE]), we defined the following set of covariates: percentage of people 15–29 years of age; percentage of people older than or equal to 65 years of age; logarithm of the population (which improved the RMSPE only for the suicide models); percentages of the population who were white, Hispanic, and males [1]; living below the federal poverty line, veterans [26], and unemployed [27]; the per capita consumption of gallons of ethanol from spirits by people aged older than or equal to 14 years [28]; and as an indicator of gun availability, firearm suicides as a percentage of total suicides [29,30]. We also included as predictors in the models the values of each of the outcomes at three time points in the preintervention period; using three time points yielded the lowest RMSPE: 1984, 1987, and 1990 [31,32].

In generating the final models, we removed variables with low V-weights, that is, variables with low predictive values in final models. Variables tested but not included were additional age and race/ethnicity categories; percentages of people with different categories of marital status and religion; an indicator for state mental health parity laws; a measure of the crack epidemic, which incorporates cocaine-induced emergency room visits, deaths, arrests, among other proxies [33]; and a violent crime index [34].

### Statistical analyses

For the main analysis, we used the synthetic control group method, which aims to generate a trend counterfactual to the observed outcome by creating a weighted average of the states in the donor pool [32].

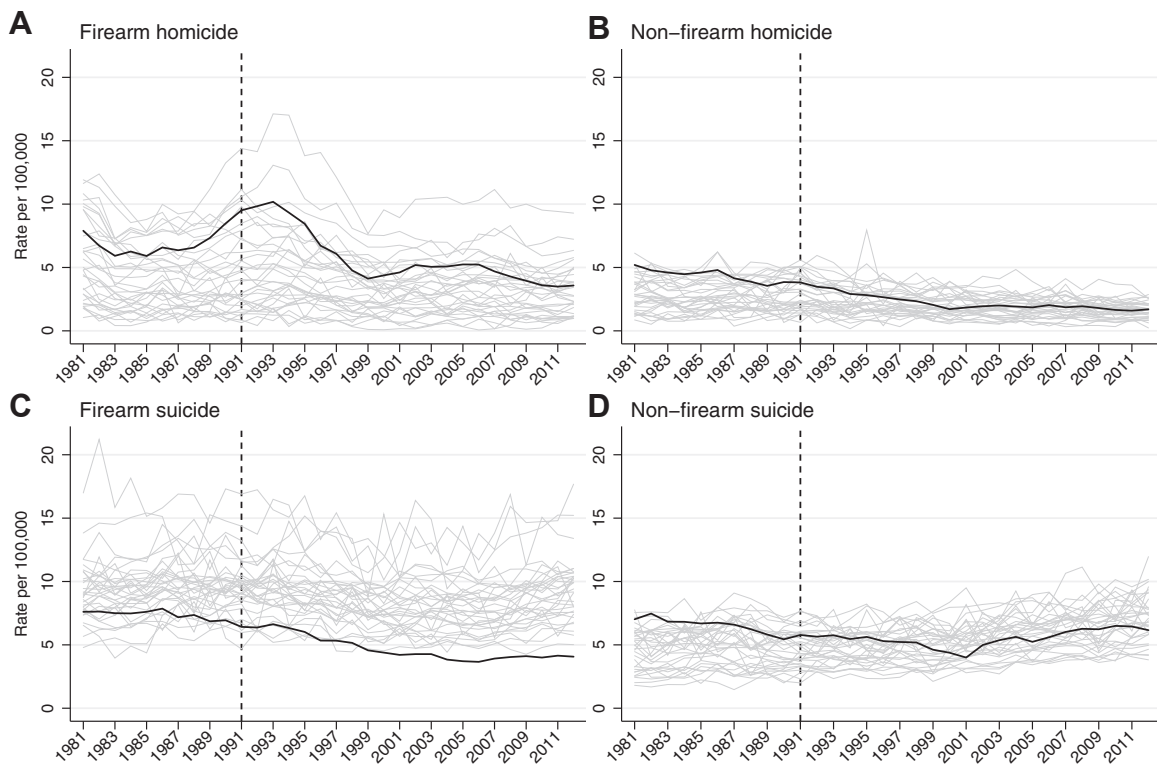
The policy effect is estimated as the difference between the values in the treated state (California) and the values in the synthetic control group (synthetic California) in the post-intervention period. Consistent with other studies that have used this method [20], we averaged the annual differences across the 10 years after CBC and MVP implementation (to the year 2000); in secondary analyses, we also considered 5 years (to 1995) and 15 years (to 2005) after the intervention. We did not include longer postintervention periods to avoid forecasting counterfactual trends too far removed from the preintervention period.

Given that the synthetic control group method does not produce traditional measures of uncertainty (e.g., 95% confidence intervals), inference is based on permutation tests, also known as placebo tests (see [Supplemental Material](#)).

To account for imperfect fit in the preintervention period, we provided estimates that subtracted the preintervention average difference between California and the synthetic control from the postintervention difference (as in a difference-in-difference estimator) [35,36]. In addition, we showed results produced by states that had a comparable fit in the preintervention period, that is, RMSPE less than or equal to 5 and less than or equal to 2 times the RMSPE for California [13].

We conducted multiple sensitivity analyses, which included removing states that prohibited firearm purchases by people convicted of domestic violence before the national enactment of such a law in 1996, testing for a delayed and gradual effect of CBC/MVP policies, restricting the population to the age groups that have the greatest risk of firearm-related homicide and suicide, and changing the methodological approach to estimate the results (see [Supplemental Material](#)).

All analyses were conducted using Stata 14.1 (StataCorp, College Station, Texas, USA).



**Fig. 1.** Trends in annual rate of firearm homicides (A), non-firearm homicides (B), firearm suicides (C) and non-firearm suicides (D) per 100,000 people in California and all control.

**Results**

Annual trends in firearm and nonfirearm homicide and suicide rates are in [Figure 1](#). California experienced a large increase in firearm-related homicides from the mid-1980s until the early 1990s (peaking at 10.2/100,000 people in 1993). A sharp decline followed until approximately 2000, then relative stabilization until 2012. Non-firearm-related homicides showed a stable decline, from the beginning of the time series until the first years of the 2000s.

For firearm-related suicides, there was an overall decline, concentrated mostly between the years 1997 and 2000. Non-firearm-related suicides showed a similar trend but with an increase from 2002 to the last years of the series.

*Results from the synthetic control group method*

Of the 32 states in the donor pool, 11 had nonzero weights and were included in one or more of the synthetic controls for the four outcomes ([Table 1](#)). None of the states with imputed data were included in the synthetic controls.

Levels and trends for firearm homicide rates in the preintervention period were similar for California and synthetic California, although the increase in the 2 years before 1991 was slightly higher in California ([Fig. 2A](#)). For firearm suicides, California witnessed a similar trend compared with synthetic California until 1988, but a small relative decline thereafter ([Fig. 2C](#)). Nonfirearm outcomes for California and all control states are shown in [Figure 1B](#) and [D](#). Both were well balanced in the preintervention period in relation to the trend in synthetic California.

Estimated absolute and relative effects of CBC and MVP policies on each outcome and the results from the permutation tests are presented in [Table 2](#). The 10-year postintervention period

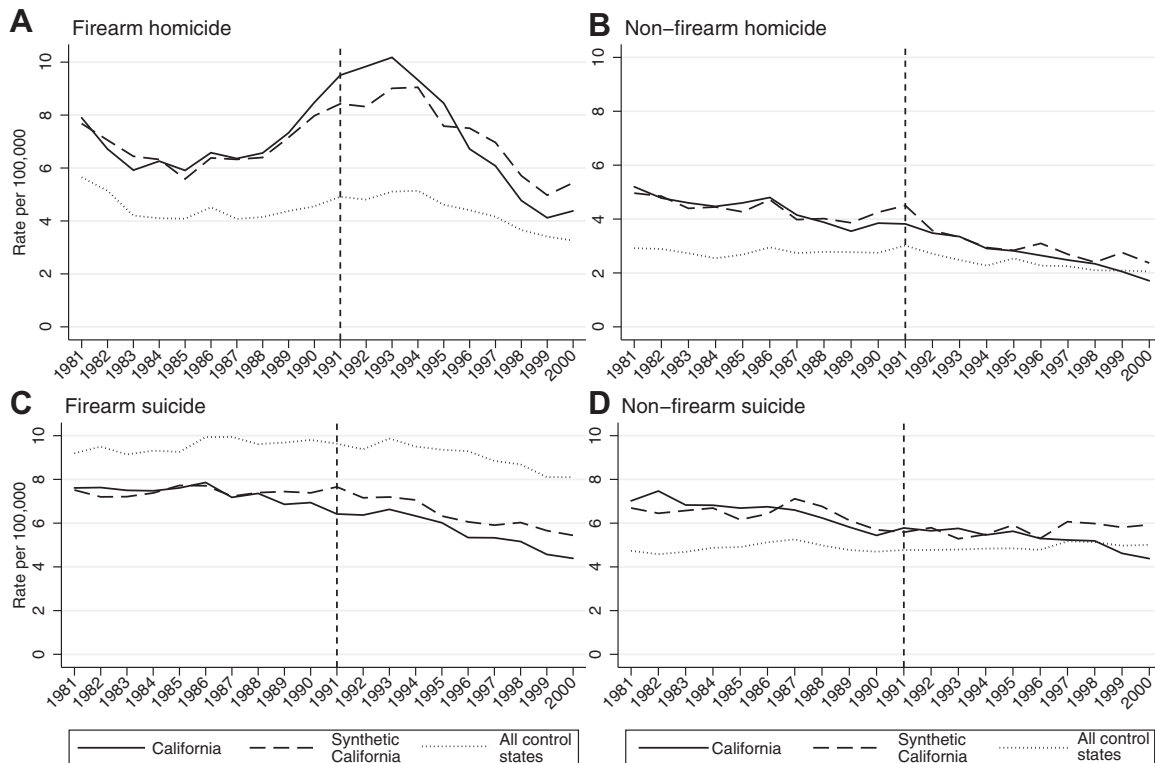
provided our primary results. The average difference in the rate of firearm homicides between California and synthetic California in the postintervention period was 0/100,000; for firearm suicides, it was  $-0.7/100,000$ , corresponding to a 10.9 percent decrease. Five of the 32 states eligible to serve as controls experienced larger effects for firearm suicides over the same time period in the permutation tests. However, after restricting the comparison states to those with a reasonable preintervention fit ( $\leq 2$  times the RMSPE for California), no states (out of 11) experienced a decrease larger than California. Consistent results were observed for firearm homicides and suicides at both 5 and 15 years postintervention.

In the 10 years following implementation, the average differences in nonfirearm homicides and suicides were  $-0.3/100,000$  ( $-9.7$  percent) and  $-0.4/100,000$  ( $-7.0$  percent), respectively. For nonfirearm suicides, only one state experienced a larger decrease than California, regardless of the number of control states used as comparison. For the nonfirearm homicide rate, the decline observed after policy implementation was within the range that would be expected given random variation.

Results from sensitivity analyses were consistent with those of the main analysis (see [Supplemental Material](#)).

**Discussion**

This study evaluated the association between rates of firearm-related homicides and suicides and California's simultaneous enactment of two policies aimed at preventing firearms acquisition by people who are at increased risk of interpersonal and self-directed violence: a comprehensive background check requirement and a firearm prohibition for persons convicted of violent misdemeanors. Enactment was not associated with significant and specific changes in rates of fatal firearm violence.



**Fig. 2.** Trend in annual rate of firearm homicides (A), non-firearm homicides (B), firearm suicides (C) and non-firearm suicides (D) per 100,000 people in California, synthetic California, and average for all control states, 1981–2000.

**Table 2**  
Association between CBC and MVP policies and firearm-related and non-firearm-related homicides and suicides in California for 3 post-implementation periods

	Firearm homicide	Nonfirearm homicide	Firearm suicide	Nonfirearm suicide
Five years postimplementation				
California's rate per 100,000*	9.5	3.3	6.4	5.7
Counterfactual rate per 100,000†	8.5	3.4	7.1	5.6
Estimated absolute effect of CBC/MVP‡	1.0	-0.1	-0.7	0.1
Estimated relative effect (%) of CBC/MVP§	11.8	-2.9	-9.9	1.8
Number of states with effect ≥ CA				
All control states	27/32	11/32	4/32	14/32
≤5 × CA RMSPE	26/30	11/32	3/30	14/32
≤2 × CA RMSPE	15/17	6/18	1/11	12/28
Ten years postimplementation (main results)				
California's rate per 100,000*	7.3	2.8	5.7	5.3
Counterfactual rate per 100,000†	7.3	3.1	6.4	5.7
Estimated absolute effect of CBC/MVP‡	0.0	-0.3	-0.7	-0.4
Estimated relative effect (%) of CBC/MVP§	0.0	-9.7	-10.9	-7.0
Number of states with effect ≥ CA				
All control states	17/32	6/32	5/32	1/32
≤5 × CA RMSPE	16/30	6/32	4/30	1/32
≤2 × CA RMSPE	10/17	2/18	0/11	1/28
Fifteen years postimplementation				
California's rate per 100,000*	6.6	2.5	5.1	5.2
Counterfactual rate per 100,000†	6.8	2.9	6.2	6.0
Estimated absolute effect of CBC/MVP‡	-0.2	-0.4	-1.1	-0.8
Estimated relative effect (%) of CBC/MVP§	-2.9	-13.8	-17.7	-13.3
Number of states with effect ≥ CA				
All control states	11/32	3/32	3/32	1/32
≤5 × CA RMSPE	10/30	3/32	2/30	1/32
≤2 × CA RMSPE	5/17	0/18	0/11	1/28

\* Mean rate per 100,000 people in California after CBC and MVP implementation.

† Mean rate per 100,000 people in synthetic California after CBC and MVP implementation.

‡ Average difference between California and synthetic California in the postintervention period.

§ Percentage difference compared with synthetic California.

|| Results from the permutation test (control states = 32). To generate comparable estimates across control states, effects were computed as a difference in difference (DiD):  $DiD_{state} = (Outcome_{post}^{state} - Outcome_{post}^{Synth}) - (Outcome_{pre}^{CA} - Outcome_{pre}^{Synth})$ . Because the hypothesis of the study is that CBC and MVP are associated with reductions in mortality from firearms, we counted only states with reductions in mortality larger than those in California.

Firearm-related suicide rates during the 10 years after policy implementation were, on average, 10.9 percent lower in California than in synthetic California, a difference greater than for any of the 11 control states with a comparable model fit. Non-firearm-related suicides also decreased by 7.0 percent; however, a decrease exceeding that was seen in 27 of 28 states with RMSPE less than or equal to two times the RMSPE for California. This suggests that the policies' estimated impact on firearm suicide may be part of broader changes in suicide risk around the time that California's CBC and MVP policies were implemented. Still, the difference between changes in firearm and non-firearm suicides (3.9 percentage points) may indicate a preventive role of CBC/MVP policies in firearm suicide, although this study was not designed to test whether this difference is statistically meaningful.

Firearm-related homicide rates rose substantially from the mid-1980s through the early 1990s and fell thereafter. Both the increase and the decline were greater in California than in synthetic California; the net difference during the 10 years postintervention was practically 0. Sensitivity analyses testing for delayed and gradual effects did not change the overall conclusions. It is worth noting that the negative slope observed in California in the years following CBC/MVP implementation was more pronounced than the slope observed for the control states; however, the difference in slopes between California and the control group was not statically significant (see [Supplemental Material](#)).

Our findings conflict with those of studies associating CBC policies with a reduction in firearm homicide and suicide in Connecticut, where implementation occurred in 1995, and Missouri, where firearm homicide and suicide increased following CBC repeal in 2007 [13,14,17]. However, these states had PTP laws, a particularly rigorous form of CBC policy that several studies have found to be effective [37–39]. Consistent with our findings, repeal by

Indiana and Tennessee in 1998 of CBC policies without a PTP component was recently found not to be associated with changes in rates of firearm homicide or suicide [20].

Other mechanisms for our findings are plausible; however, several or all may be in play simultaneously. One well-documented example, which would diminish the population-level effects of both CBC and MPV policies, is that the criminal and mental health records on which background checks were performed were very incomplete in the 1990s, including in California [37–42]. For example, in 1990, only 25 percent of criminal records were accessible via the interstate identification index, the primary source of arrest and conviction information for background checks [37]. Centralized records of mental health prohibitions were almost nonexistent [37]. As a result, background checks almost certainly produced a large number of false negative results, which is a shortcoming that may have limited the effectiveness of the CBC and MVP policies.

Purchases by undetected prohibited persons would likely decrease the population-level effects of CBC policies and may account in part for negative findings here, in the assessment of CBC repeal in Indiana and Tennessee [20], and in an earlier study of trends in homicide and suicide following the Brady Handgun Violence Prevention Act [43]. Increased thoroughness of background checks and improvements in the data used to perform them are associated with reductions in violent crime, firearm homicide, and firearm suicide [22,23,44–46]. It is therefore important to note that the quality and completeness of the records on which background checks are performed have improved since our study period [47].

Incomplete compliance with and enforcement of background check and prohibition requirements may also play a role. After CBC policies were implemented in Colorado, Delaware, and

Washington, an overall increase in background checks was detected only in Delaware, and incomplete compliance and enforcement were reported in the two western states [21]. Enforcement may not be a law enforcement priority; in the 1990s, chief law enforcement officers in Montana and Arizona sued successfully to avoid conducting background checks [48]. The vigor with which firearm laws are enforced is variable and susceptible to a variety of external factors [49].

Finally, the population-level effect of CBC and MVP policies may be small if only a small number of transactions or individuals are affected. In California, on average, 0.54 percent of handgun purchases were denied before CBC and MVP policy implementation (data available from 1982 to 1990); this rose to 1 percent in the 10 years following implementation (1991–2000) [50]. The increase represents an annual average increase in denials of handgun purchases by approximately 1250 people considered to be at risk—a number too small, perhaps, for a decrease in firearm-related violence among those individuals to produce a detectable change in state-level, population-based outcome measures. A similar argument has been advanced as partial explanation for the lack of observed effects on homicide of the Brady Act [51,52]. California's MVP policy has been shown to have a substantial beneficial effect on those directly affected, however [25], and a multistate population-level analysis has associated MVP policies with a decrease in intimate partner homicide [15].

### Limitations

We carefully identified states that were “at risk” of implementing CBC and MVP policies and used additional criteria to select control states in sensitivity analyses (e.g., excluding states that had banned firearm purchases by people convicted of domestic violence before 1996, when this policy was adopted nationwide). Although we are fairly confident that no other major firearm policies were implemented during the study period in our study states, we cannot be certain about other policies (e.g., criminal, public health, or social policies) or idiosyncratic changes at the local level that may have affected firearm violence, including firearm homicide, the frequency of which was particularly unstable during our study period. Finally, in 1998, the National Instant Criminal Background Check System was launched; the interim provisions of the Brady Law, including a 5-day waiting period, were removed; and the federal background check requirement for handgun sales by licensed retailers was extended to rifles and shotguns. These changes may have had mixed and varying effects on our control states in the final two years of our study period; California had a waiting period throughout the time of our study.

### Conclusions

Our findings suggest that the simultaneous implementation of CBC and MVP policies did not result in population-level changes in the rates of firearm-related homicides and suicides in California. A combination of inadequate criminal and mental health records, incomplete compliance and enforcement, the absence of a permit requirement, and the small size of the population directly affected by the laws may account for these findings.

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### Supplementary data

Supplementary data related to this article can be found at <https://doi.org/10.1016/j.annepidem.2018.10.001>.

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FACILITATING  
PRIVATE  
SALES:

# A Federal Firearms Licensee Guide



# Welcome

We've put together this guide to educate Federal Firearms Licensees (FFLs) on how to facilitate private party sales of firearms. When individuals decide to use FFLs to facilitate the private sale of their firearms, it can enhance public safety, assist law enforcement, and help ensure firearms end up only in the hands of those who are legally allowed to possess them.

Every day, many lawful transfers of firearms take place between unlicensed individuals who reside in the same state. These transfers take place at residences, at gun shows, and through classified and online ads. But these unlicensed sellers, who are not FFLs, may not have the ability to conduct complete background checks on potential buyers. This leaves these private sellers with no way to confirm whether or not the person to whom they are selling the firearm is prohibited from possessing it. Indeed, many of these sellers may not even be aware of all the circumstances that prohibit someone from possessing a firearm.

As an FFL, you play a key role in safeguarding the public from violent crime by maintaining accurate records, instituting internal controls, and performing background checks on potential firearms purchasers. These practices help prevent violent criminals from obtaining firearms and help reduce the possibility that firearms will be used in crimes.



Facilitating private sales is purely voluntary under federal law. Note that state laws may impose their own requirements, and you should ensure that you comply with the requirements in your state.

When a private transaction is completed through a licensed dealer, both the customers and the community have some assurance that the individual wishing to purchase the firearm is not prohibited by law from possessing or receiving a firearm. When a private seller goes through an FFL to transfer his or her firearm, it can also improve the ability of law enforcement to trace that firearm if it is later recovered during a criminal investigation.

This guide will cover the procedures to follow when facilitating private sales, as well as answer some frequently asked questions (FAQs). There is also a list of resources that can provide further guidance.



Federal law prohibits certain persons from shipping, transporting, possessing, or receiving firearms or ammunition including any person who:

- Has been convicted of a crime punishable by a term of imprisonment exceeding one year;
- Is a fugitive from justice;
- Is an unlawful user of, or addicted to, any controlled substance;
- Has been adjudicated as a mental defective or committed to a mental institution;
- Is an alien illegally or unlawfully in the United States;
- Is an alien who has been admitted to the United States under a nonimmigrant visa (with certain exceptions);
- Has been discharged from the Armed Forces under dishonorable conditions;
- Has renounced United States citizenship;
- Is subject to a qualifying protective order;
- Has been convicted of a misdemeanor crime of domestic violence.

Further, Federal law prohibits the shipment, transportation, or receipt of firearms or ammunition by any person who is under indictment for a crime punishable by a term of imprisonment exceeding one year. Federal law also prohibits, with certain exceptions, the possession of handguns by any person under the age of 18.

# Procedures for Facilitating Private Sales

FFL-facilitated sales between private individuals are subject to the same rules and regulations as any other sale conducted by the FFL. In all cases, the prospective buyer must complete Section A of the [Firearms Transaction Record, ATF Form 4473](#). The FFL must complete section B of the ATF Form 4473.

When an FFL contacts the National Instant Criminal Background Check System (NICS) (or the state point of contact) for a background check, there are several responses that it may receive, and the procedure for moving forward depends upon that response, as indicated below.



## 1. The FFL receives an immediate “Proceed” response from NICS:

- The FFL enters the firearm into its Acquisition and Disposition (A&D) records as an acquisition from the private party seller.
- The FFL completes Section D of Form 4473 and transfers the firearm to the buyer.
- The FFL records the disposition of the firearm out of the A&D record to the buyer, no later than seven days following the transaction.

## 2. The FFL receives a “Denied” or “Cancelled” response from NICS:

- The FFL cannot transfer the firearm to the prospective buyer.
- If the private party seller has not left the firearm in the exclusive possession of the FFL, the private party seller can leave the premises with the firearm.
- The FFL would not enter the firearm as an acquisition into the A&D record.
- If the seller has left the firearm in the exclusive possession of the FFL, the FFL must record the firearm as an acquisition in its A&D record as an acquisition from the private party seller.
- Prior to the FFL transferring the firearm back to the private party seller, the FFL must do the following:
  - Complete a Form 4473 to return the firearm to the private party seller.
  - Conduct a NICS background check on the private party seller. The FFL may transfer the firearm to the private party seller if it receives a “proceed” response or a “delayed” response with no response from NICS after three business days (or the appropriate state waiting period if more than three business days).

- Record the return as a disposition in the A&D records, no later than seven days following the transaction.

### **3. The FFL receives a “Delayed” response from NICS:**

- The private party seller has two options:
  - He or she can leave with the firearm, if the private party seller has not left the firearm in the exclusive possession of the FFL. In this case, the FFL does not need to record the firearm in its A&D record. However, if the sale later occurs (because the FFL receives a “proceed” response from NICS or three business days — or the appropriate state waiting period — have passed) the private party seller must return to the business premises of the FFL to complete the transfer to the buyer. At that time, the FFL will need to record the transaction as an acquisition from the private party seller in its A&D records and record the disposition to the buyer no later than seven days following the transaction.
  - He or she can allow the FFL to keep the firearm at the business pending a response from NICS or until three business days (or the appropriate state waiting period if more than three business days) has passed with no response. In this case, the FFL has to take the firearm into inventory and record it as an acquisition from the private party seller in its A&D records. If NICS later issues a

“proceed” response, or no response after three business days (or the appropriate state waiting period if more than three business days) and the FFL decides to go forward with the transfer, the seller does not need to return to the premises to complete the transfer. The FFL will complete the transfer of the firearm to the buyer and record the disposition to the buyer in its A&D record no later than seven days following the transaction.

- Note that the FFL is not required to proceed with the transfer after the three business days have passed with no response from NICS; the decision to transfer is at the discretion of the FFL.
- In the case of a later “denied” response, the firearm cannot be transferred to the prospective buyer:
  - If the private party seller has chosen to allow the FFL to retain the firearm pending a response from NICS, the FFL and private party seller must complete a Form 4473, and the FFL must conduct a NICS check and receive a “proceed” response or a “delayed” response with no response from NICS after three business days (or the appropriate state waiting period) before transferring the firearm to the private party seller.
  - The FFL must also record the return as a disposition in the A&D record no later than seven days following the transaction.

## GUIDELINES FOR ALL FFL-FACILITATED TRANSFERS

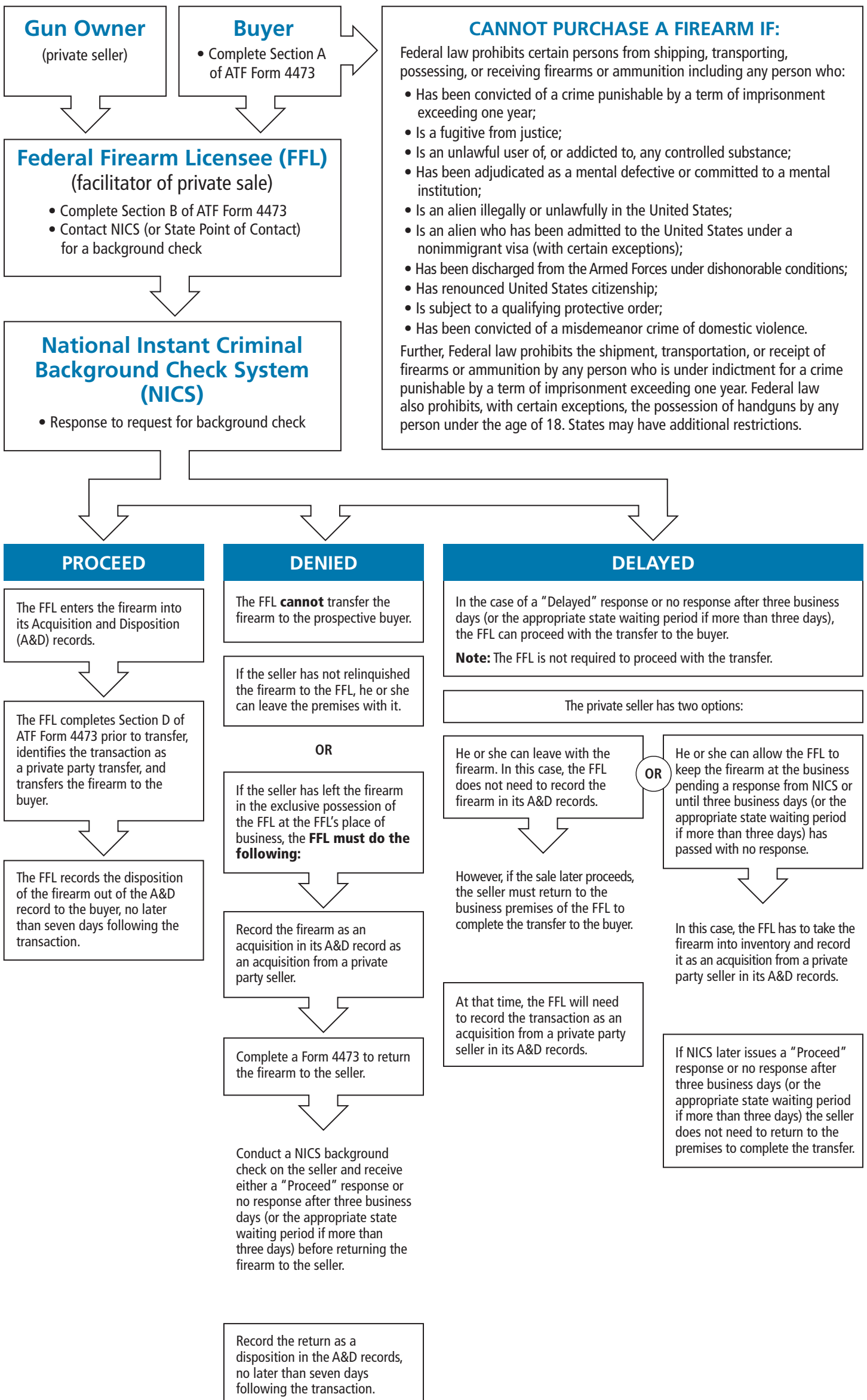
- The prospective transferee (buyer) must complete Section A of the ATF Form 4473.
- The FFL must complete Section B of the 4473, conduct a NICS check on the buyer, and record the response.
- The FFL must complete Section D of ATF Form 4473 prior to transfer, identify the transaction as a private party transfer on the ATF Form 4473, and record the disposition in its A&D record no later than seven days following the transaction.
- The FFL must maintain the Form 4473 in accordance with 27 CFR 478.129(b).
- The transfer must be completed within 30 calendar days of the date NICS was initially contacted. If not, the FFL must conduct a new NICS check.
- If the transfer takes place on a day different than the day the prospective buyer signed Section A of ATF Form 4473, the FFL must check the buyer's photo ID again and the buyer must complete the recertification in Section C immediately prior to the transfer.
- All other legal requirements (for example, providing secure gun storage or safety devices with each transferred handgun, and any applicable multiple sales reporting) apply equally to these transfers.

For a full description of the procedures applicable when facilitating private party sales, please see ATF Proc. 2013-1, <https://www.atf.gov/file/88181/download>

# FFL-Facilitated Firearm Sales

## GUIDELINES FOR ALL FFL-FACILITATED TRANSFERS

- The prospective transferee (buyer) must complete Section A of the ATF Form 4473.
- The FFL must complete Section B of the 4473, conduct a NICS check on the buyer, and record the response.
- The FFL must complete Section D of ATF Form 4473 prior to transfer, identify the transaction as a private party transfer on the ATF Form 4473, and record the disposition in its A&D record no later than seven days following the transaction.
- The FFL must maintain the Form 4473 in accordance with 27 CFR 478.129(b).
- The transfer must be completed within 30 calendar days of the date NICS was initially contacted. If not, the FFL must conduct a new NICS check.
- If the transfer takes place on a day different than the day the prospective buyer signed Section A of ATF Form 4473, the FFL must check the buyer's photo ID again and buyer must complete the recertification in Section C immediately prior to the transfer.
- All other legal requirements (for example, providing secure gun storage or safety devices with each transferred handgun, and any applicable multiple sales reporting) apply equally to these transfers.



# Frequently Asked Questions (FAQs)

## **Is it legal for an FFL to facilitate private sales?**

Yes. Not only is it legal for an FFL to facilitate private sales, it can help enhance public safety by ensuring a background check is run on the prospective purchaser.

## **Are FFLs required to facilitate private sales under federal law?**

No. Facilitating private sales is purely voluntary under federal law. Note that state laws may impose their own requirements, and you should ensure that you comply with the requirements in your state.

## **Why should an FFL facilitate private sales?**

Although it's legal under federal law for a private seller to sell a firearm to a resident of his or her own state, private sellers have no way of checking to see if the buyer is legally able to possess a firearm. Private sellers generally do not have access to complete background checks. Note, however, that some states may require potential purchasers to undergo background checks, and have set up systems to meet that requirement.

## **Can I charge a fee for facilitating private sales?**

Yes. An FFL can charge a fee as long as it is consistent with the FFL's state law requirements.



## **What's the procedure for facilitating private sales?**

ATF has developed a procedure to assist FFLs who choose to facilitate private sales. See ATF Proc. 2013-1, <https://www.atf.gov/file/88181/download>. The steps are also outlined in this guide on pages 4-5 and in the flow chart on page 7.

For more information, visit the [Conduct of Business](#) section of [www.atf.gov](http://www.atf.gov).

## **Is there anything different I should do on the ATF Form 4473?**

The FFL must identify the transaction as a "Private Party Transfer" in Section D of the ATF form 4473 to ensure transaction records correspond with private party transfers in the FFL's Acquisition and Disposition record.

**If I receive no response from NICS, or my state point of contact (POC), within three business days after initially receiving a “delayed” response, do I have to complete the transfer?**

If you initially receive a “delayed” response from NICS (or your state point of contact) and have not received a further response,

it is legal for you to complete the transfer after three business days (or the appropriate state waiting period if more than three business days). However, the law does not require you to complete the transfer.

For answers to more of your questions, visit the ATF’s FAQs:  
<https://www.atf.gov/questions-and-answers/firearms-qas>

# Resources

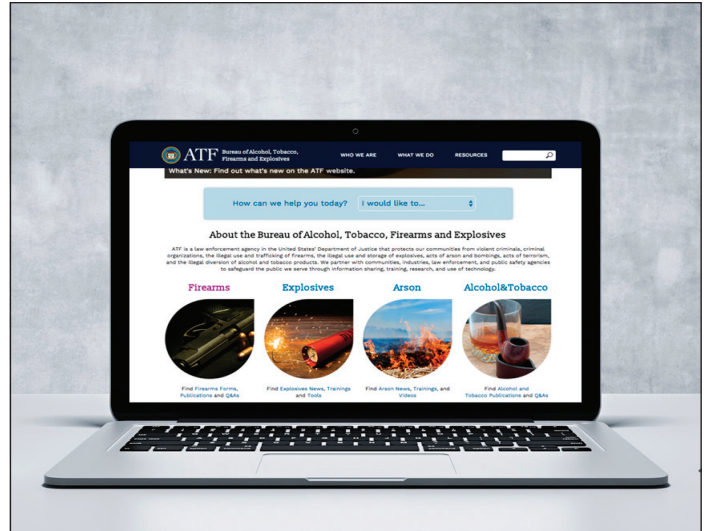


## Bureau of Alcohol, Tobacco, Firearms and Explosives

**Website:** [www.atf.gov](http://www.atf.gov)

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is a law enforcement agency in the United States Department of Justice that protects the public from crimes involving firearms, explosives, arson, and the diversion of alcohol and tobacco products; regulates lawful commerce in firearms and explosives; and provides worldwide support to law enforcement, public safety, and industry partners.

- Federal Firearms Transaction Record: <https://www.atf.gov/firearms/docs/4473-part-1-firearms-transaction-record-over-counter-atf-form-53009/download>
- Federal Firearms Regulations Reference Guide: <https://www.atf.gov/file/11241/download>
- The Gun Control Act of 1968: <https://www.gpo.gov/fdsys/pkg/USCODE-2015-title18/pdf/USCODE-2015-title18-part1-chap44.pdf>
- Federal Firearms Licensee Quick Reference and Best Practices Guide: <https://www.atf.gov/file/58681/download>
- Firearms Industry Programs Branch, 202-648-7090



## Federal Bureau of Investigation

**Website:** [www.fbi.gov](http://www.fbi.gov)

As an intelligence-driven and a threat-focused national security organization with both intelligence and law enforcement responsibilities, the mission of the FBI is to protect and defend the United States against terrorist and foreign intelligence threats, to uphold and enforce the criminal laws of the United States, and to provide leadership and criminal justice services to federal, state, municipal, and international agencies and partners.

- National Instant Criminal Background Check System (NICS): <https://www.fbi.gov/services/cjis/nics>



MORE ≡

# FBI: UCR

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# 2018 CRIME in the UNITED STATES

Criminal Justice Information Services Division

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## Table 20

### Murder by State, Types of Weapons, 2018

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State	Total murders <sup>1</sup>	Total firearms	Handguns	Rifles	Shotguns	Firearms (type unknown)	Knives or cutting instruments	Other weapons	Hands, fists, feet, etc. <sup>2</sup>
Alabama <sup>3</sup>	2	2	2	0	0	0	0	0	0
Alaska	47	31	7	3	0	21	8	3	5
Arizona	339	203	139	12	6	46	45	87	4
Arkansas	218	156	66	6	5	79	17	38	7
California	1,739	1,177	834	24	27	292	252	223	87
Colorado	207	147	99	2	8	38	27	13	20
Connecticut	83	54	10	2	0	42	18	9	2
Delaware	48	40	14	1	2	23	4	3	1
District of Columbia	151	120	120	0	0	0	20	7	4
Georgia	568	460	410	11	10	29	44	62	2
Hawaii	33	11	6	1	0	4	10	6	6
Idaho	32	19	14	2	2	1	4	8	1
Illinois <sup>3</sup>	864	708	592	14	4	98	77	53	26
Indiana	371	294	136	10	7	141	33	29	15
Iowa <sup>4</sup>	43	20	6	2	2	10	8	9	6
Kansas	110	78	47	0	2	29	7	19	6
Kentucky	237	179	112	12	6	49	17	32	9
Louisiana	521	436	233	12	5	186	30	44	11

Maine	23	11	6	0	1	4	2	6	4
Maryland	470	388	345	1	10	32	39	30	13
Massachusetts	136	93	37	0	1	55	25	13	5
Michigan	550	394	166	17	11	200	31	99	26
Minnesota	104	49	36	4	0	9	16	28	11
Mississippi	142	118	99	3	2	14	7	15	2
Missouri	555	473	235	16	9	213	40	32	10
Montana	34	17	9	3	0	5	2	12	3
Nebraska	43	26	22	0	1	3	5	9	3
Nevada	201	134	46	1	1	86	23	24	20
New Hampshire	21	12	6	0	0	6	3	4	2
New Jersey	286	202	152	0	2	48	37	28	19
New Mexico	137	87	39	3	0	45	23	22	5
New York	546	313	254	6	10	43	124	63	46
North Carolina	479	346	231	15	16	84	44	52	37
North Dakota	16	9	8	0	0	1	1	1	5
Ohio	546	383	184	3	7	189	49	87	27
Oklahoma	202	134	95	7	3	29	28	29	11
Oregon	81	48	30	3	1	14	12	18	3
Pennsylvania	787	580	464	17	7	92	83	99	25
Rhode Island	16	12	1	1	1	9	2	1	1
South Carolina	386	296	188	8	6	94	29	42	19
South Dakota	13	8	5	0	0	3	4	1	0
Tennessee	496	397	245	26	8	118	28	49	22
Texas	1,301	956	522	33	37	364	128	133	84
Utah	59	28	17	1	0	10	12	10	9
Vermont	10	3	3	0	0	0	0	5	2
Virginia	391	297	141	8	5	143	30	49	15
Washington	232	138	76	2	5	55	45	35	14
West Virginia	57	34	21	1	1	11	5	14	4
Wisconsin	178	136	67	4	2	63	15	16	11
Wyoming	12	8	6	0	2	0	2	0	2

■ <sup>1</sup> Total number of murders for which supplemental homicide data were received.

- <sup>2</sup> Pushed is included in hands, fists, feet, etc.
- <sup>3</sup> Limited supplemental homicide data were received.
- <sup>4</sup> Limited data for 2018 were available for Iowa.

## Data Declaration

Provides the methodology used in constructing this table and other pertinent information about this table.



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December 14, 2016

Ms. Julie Butler  
General Services Division Administrator  
Nevada Department of Public Safety  
Suite 100  
333 West Nye Lane  
Carson City, NV 89706

Dear Ms. Butler:

In accordance with the Brady Handgun Violence Prevention Act of 1993 (Brady Act), the U.S. Attorney General was charged with establishing a system, the National Instant Criminal Background Check System (NICS), in which Federal Firearms Licensees (FFL) must contact for a background check (NICS check) prior to transferring a firearm to a non-licensee to determine if the transferee is prohibited under state or federal law from receiving or possessing a firearm. The Brady Act required the U.S. Attorney General to establish the NICS on or before November 30, 1998.

Under Title 28, Code of Federal Regulations, Section 25.6(b) and (d), NICS checks may be conducted by either the FBI Criminal Justice Information Services (CJIS) Division's NICS Section or a local or state law enforcement agency serving as an intermediary between an FFL and the FBI. These intermediaries are referred to as Points of Contact (POC). In this capacity, the POC agrees to receive NICS background check requests from FFLs, check state or local record systems, perform NICS inquiries, determine whether matching records provide information demonstrating that an individual is disqualified from receiving or possessing a firearm under state or federal law, and respond to FFLs with the results of a NICS background check. A POC is the agency with express or implied authority to perform POC duties pursuant to state statute, regulation, or executive order. Nevada FFLs are required to contact the state POC, the Nevada Department of Public Safety (DPS), for a background check prior to the transfer of any long gun or handgun to a non-licensee since the state of Nevada has opted to serve as a POC.

State and local authorities serving as POCs are likely to have readier access to more detailed information for processing background checks than the FBI, thus resulting in fewer system misses of disqualified persons and enhancing system responsiveness for non-disqualified persons. The POCs have access to more current criminal history records and more data sources (particularly regarding noncriminal disqualifiers such as mental hospital

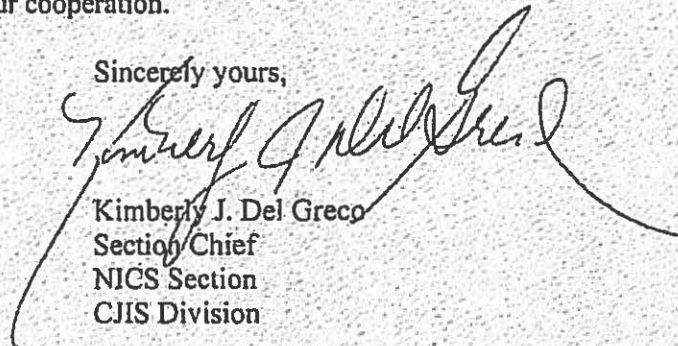
commitments) from their own state than does the FBI, and have a better understanding of their own state laws and disqualifying factors. Specifically, the POC for Nevada checks additional databases to include state protection orders, state warrants, state driver's licenses, parole and probation, and SCOPE (which is Clark County, Las Vegas area records). Also, most of Nevada's protection orders are not in the National Crime Information Center File, which is important to note since only the POC has access to these protection orders and if the FBI were processing background checks on private sales of firearms for Nevada, these protection orders would not be part of the NICS check.

The state of Nevada can provide a more comprehensive NICS check that is accomplished when a POC accesses state-held databases that are not available to the FBI. The Nevada DPS is also in a better position for understanding and applying state laws. It is for these reasons, the POC for the state of Nevada will be best suited to conduct the NICS checks for private sales as provided for in the recent legislation that was passed, the Background Check Act, as opposed to the FBI conducting these checks.

In conclusion, the recent passage of the Nevada legislation regarding background checks for private sales cannot dictate how federal resources are applied. The position of the NICS Section is that these background checks are the responsibility of the state of Nevada to be conducted as any other background check for firearms, through the Nevada DPS as the POC.

Thank you in advance for your cooperation.

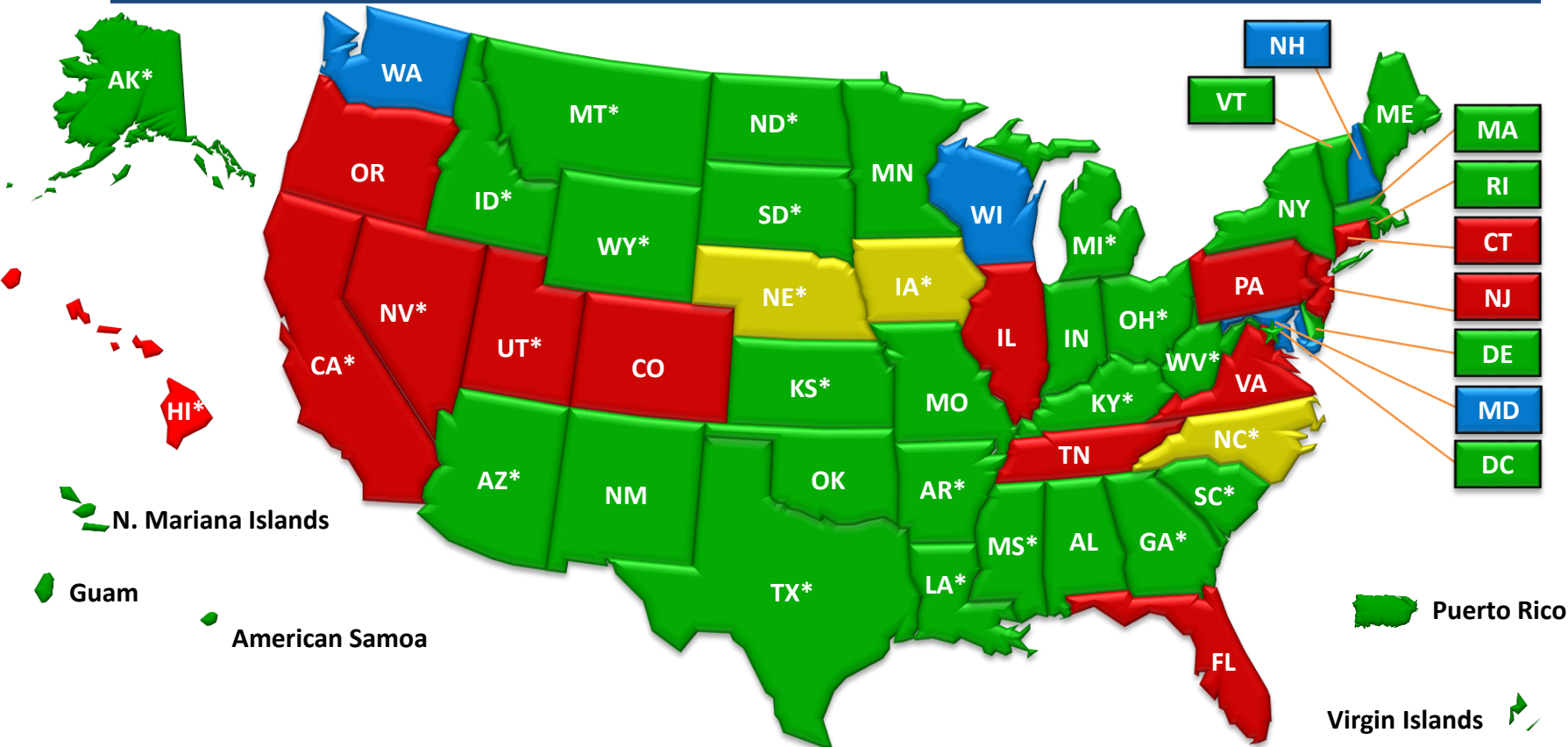
Sincerely yours,

A handwritten signature in black ink, appearing to read "Kimberly J. Del Greco", written over a horizontal line.

Kimberly J. Del Greco  
Section Chief  
NICS Section  
CJIS Division



# NICS Participation Map



**36 Non Point-of-Contact (POC) States**

Federal Firearms Licensees (FFL) contact FBI for all firearm background checks

**13 Full POC States**

FFLs contact state for all firearm background checks

**4 Partial POC States**

FFLs contact state for handguns, and contact FBI for long gun background checks

**3 Partial POC States**

State-issued handgun permit is used for handguns, and FFLs contact FBI for long gun background checks

\*25 Bureau of Alcohol, Tobacco, Firearms and Explosives Qualified Alternate Permits issued by state or local agencies

Please refer to the latest Permanent Brady Permit Chart for specific permit details.  
[www.atf.gov/rules-and-regulations/permanent-brady-permit-chart](http://www.atf.gov/rules-and-regulations/permanent-brady-permit-chart)

Thirty-six Non Point-of-Contact (POC) states/territories do not have POC status. Federal Firearm Licensees (FFL) rely on the FBI for all firearm background checks by electronically accessing the NICS.

- *Non POC states/territories: Alabama, Alaska, American Samoa, Arizona, Arkansas, Delaware, District of Columbia, Georgia, Guam, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, New Mexico, New York, North Dakota, Northern Mariana Islands, Ohio, Oklahoma, Puerto Rico, Rhode Island, South Carolina, South Dakota, Texas, Vermont, Virgin Islands, West Virginia, and Wyoming.*

Thirteen Full POC states have agencies acting on behalf of the NICS in a Full POC capacity. These POC states have designated agencies to conduct firearm background checks for FFLs in their respective state by electronically accessing the NICS.

- *Full POC states: California, Colorado, Connecticut, Florida, Hawaii, Illinois, Nevada, New Jersey, Oregon, Pennsylvania, Tennessee, Utah, and Virginia.*

Seven states are currently sharing responsibility with the FBI by acting as partial POCs. Partial POC states have agencies designated to conduct checks for handguns and/or handgun permits, while the FBI handles the processing of the state transactions for long gun transfers.

- *Four Partial POC states conduct handgun background checks and the FFLs contact the FBI for long gun background checks: Maryland, New Hampshire, Washington, and Wisconsin.*
- *Three Partial POC states issue handgun permits used for handgun background checks, and the FFLs contact the FBI for long gun background checks: Iowa, Nebraska, and North Carolina.*

Twenty-five states have at least one Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)-qualified alternate permit, issued by a state or local agency.

- *ATF-qualified alternate permit states: Alaska, Arizona, Arkansas, California, Georgia, Hawaii, Idaho, Iowa, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Montana, Nebraska, Nevada, North Carolina, North Dakota, Ohio, South Carolina, South Dakota, Texas, Utah, West Virginia, and Wyoming.*

Please refer to the latest Permanent Brady Permit Chart for specific permit details at <[www.atf.gov/rules-and-regulations/permanent-brady-permit-chart](http://www.atf.gov/rules-and-regulations/permanent-brady-permit-chart)>.