

# CRS Report for Congress

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## Gun Legislation in the 109<sup>th</sup> Congress

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## Summary

Congress continues to debate the efficacy and constitutionality of federal regulation of firearms and ammunition. It is a contentious debate, with strong advocates for and against the further federal regulation of firearms.

Gun control advocates argue that federal regulation of firearms curbs access by criminals, juveniles, and other “high-risk” individuals. They contend that only federal measures can successfully reduce the availability of guns throughout the nation. Some seek broad policy changes such as near-prohibition of non-police handgun ownership or the registration of all firearms or firearm owners. They assert that there is no constitutional barrier to such measures and no significant social costs. Others advocate less comprehensive policies that they maintain would not impede ownership and legitimate firearm transfers.

Gun control opponents deny that federal policies keep firearms out of the hands of high-risk persons; rather, they argue, controls often create burdens for law-abiding citizens and infringe upon constitutional rights provided by the Second Amendment. Some argue further that widespread gun ownership is one of the best deterrents to crime as well as to potential tyranny, whether by gangs or by government. They may also criticize the notion of enhancing federal, as opposed to state, police powers.

In the 109<sup>th</sup> Congress, several dozen gun control-related proposals are likely to be introduced. If past Congresses are any indication, however, only a handful of bills will receive significant legislative action. In the 108<sup>th</sup> Congress, for example, two firearms-related bills were enacted. One exempts certain law enforcement officers from limitations imposed by state concealed carry laws (P.L. 108-277). The other extends the undetectable firearms ban for 10 years (P.L. 108-174). Provisions were also included in the Consolidated Appropriations Acts for FY2004 and FY2005 (P.L. 108-199/P.L. 108-447) that require the destruction of Brady background check records for approved transactions within 24 hours. The House passed a bill (H.R. 3193) to repeal the District of Columbia “handgun ban,” but the Senate did not consider this measure.

In addition, in the 108<sup>th</sup> Congress, the House passed a “gun industry liability” bill (H.R. 1036) to prohibit lawsuits against firearm manufacturers/dealers for unlawful or criminal use of their products by other persons. The Senate considered a similar bill (S. 1805) and amended it with several gun control amendments, but did not pass S. 1805. The 109<sup>th</sup> Congress may reconsider the gun industry liability bill (H.R. 800/S. 397). Three other firearms-related issues that may receive consideration include (1) further regulating certain firearms previously defined in statute as “assault weapons,” (2) requiring background checks for private firearm transfers at gun shows, and (3) retaining Brady background check records for approved transactions.

This report will be updated as needed.

# Contents

Background and Analysis .....	1
Pro/Con Debate .....	1
Gun Related Statistics .....	2
How Many Guns Are in The United States? .....	3
How Often Are Guns Used in Homicides? .....	4
How Often Are Guns Used in Non-lethal Crimes? .....	4
How Prevalent Is Gun Violence Among Youth? .....	4
How Prevalent Are Gun-Related Fatalities? .....	5
How Often Are Firearms Used in Self-Defense? .....	5
What About The Recreational Use of Guns? .....	6
Federal Regulation of Firearms .....	7
The National Firearms Act (NFA) .....	7
The Gun Control Act of 1968 (GCA) .....	7
Firearm Transfer and Possession Eligibility .....	8
Licensed Dealers and Firearm Transfers .....	8
Private Firearm Transfers .....	8
Brady Handgun Violence Prevention Act .....	9
Federal Firearm Prosecutions .....	10
Legislative Action in the 108 <sup>th</sup> Congress and Possible Issues for the 109 <sup>th</sup> Congress .....	11
108 <sup>th</sup> Congress: Summary of Legislative Action .....	11
Gun Industry Liability .....	12
District of Columbia Handgun Ban .....	12
Semiautomatic Assault Weapons Ban .....	12
Gun Shows and Private Firearm Transfers .....	14
Brady Background Check Fee and Record Retention .....	15
Brady Background Checks and Terrorist Watch Lists .....	16
Appendix A. Major Federal Firearm and Related Statutes .....	19

# Gun Legislation in the 109<sup>th</sup> Congress

The 109<sup>th</sup> Congress is likely to continue the national debate over the efficacy and constitutionality of further federal regulation of firearms and ammunition. Several dozen gun control-related proposals are likely to be introduced that will represent a variety of positions on gun control. If past congressional action is indicative, however, only a handful of bills will likely receive significant legislative action. Congress may reconsider a “gun industry liability” bill, which passed the House in the last Congress (H.R. 1036), but not the Senate (S. 1805). This bill has been reintroduced in both chambers (H.R. 800/S. 397). Three other firearm-related issues that may receive consideration include (1) further regulating certain firearms previously defined in statute as “assault weapons,” (2) requiring background checks for private firearm transfers at gun shows, and (3) retaining Brady background check records for approved firearm transactions.

## Background and Analysis

### Pro/Con Debate

Through the years, legislative proposals to restrict the availability of firearms to the public have raised the following questions: What restrictions on firearms are permissible under the Constitution? Does gun control constitute crime control? Can the nation’s rates of homicide, robbery, and assault be reduced by the stricter regulation of firearm commerce or ownership? Would restrictions stop attacks on public figures or thwart deranged persons and terrorists? Would household, street corner, and schoolyard disputes be less lethal if firearms were more difficult and expensive to acquire? Would more restrictive gun control policies have the unintended effect of impairing citizens’ means of self-defense?

In recent years, proponents of gun control legislation have often held that only *federal* laws can be effective in the United States. Otherwise, they say, states with few restrictions will continue to be sources of guns that flow illegally into more restrictive states. They believe that the Second Amendment to the Constitution, which states that “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed,” is being misread in today’s modern society. They argue that the Second Amendment: (1) is now obsolete, with the presence of professional police forces; (2) was intended solely to guard against suppression of state militias by the central government and therefore restricted in scope by that intent; or (3) does not guarantee a right that is absolute, but one that can be limited by reasonable requirements. They ask why a private citizen needs any firearm in today’s modern society that is not designed primarily for hunting or other recognized sporting purposes.

Proponents of firearm restrictions have advocated policy changes on specific types of firearms or components that they feel are useful primarily for criminal purposes or that pose unusual risks to the public. Fully automatic firearms (i.e., machine guns) and short-barreled rifles and shotguns have been subject to strict regulation since 1934. Fully automatic firearms have been banned from private possession since 1986, except for those legally owned and registered with the Secretary of the Treasury on May 19, 1986. More recently, “Saturday night specials” (loosely defined as inexpensive, small handguns), “assault weapons,” ammunition-feeding devices with capacities for more than seven rounds, and certain ammunition have been the focus of control efforts.

Opponents of gun control vary in their positions with respect to specific forms of control but generally hold that gun control laws do not accomplish what is intended. They argue that it is as difficult to keep weapons from being acquired by “high risk” individuals, even under federal laws and enforcement, as it was intended to stop the sale and use of liquor during Prohibition. In their view, a more stringent federal firearm regulatory system would only create problems for law-abiding citizens, bring mounting frustration and escalation of bans by gun regulators, and possibly threaten citizens’ civil rights or safety. Some argue that the low violent crime rates of other countries have nothing to do with gun control, maintaining instead that multiple cultural differences are responsible.

Gun control opponents also reject the assumption that the only legitimate purpose of ownership by a private citizen is recreational (i.e., hunting and target-shooting). They insist on the continuing need of people for effective means to defend person and property, and they point to studies that they believe show that gun possession lowers the incidence of crime. They say that the law enforcement and criminal justice system in the United States has not demonstrated the ability to furnish an adequate measure of public safety in all settings. Some opponents believe further that the Second Amendment includes a right to keep arms as a defense against potential government tyranny, pointing to examples in other countries of the use of firearm restrictions to curb dissent and secure illegitimate government power.

The debate has been intense. To gun control advocates, the opposition is out of touch with the times, misinterprets the Second Amendment, or is lacking in concern for the problems of crime and violence. To gun control opponents, advocates are naive in their faith in the power of regulation to solve social problems, bent on disarming the American citizen for ideological or social reasons, or moved by irrational hostility to firearms and gun enthusiasts.

## **Gun Related Statistics**

Crime and mortality statistics are often used in the gun control debate. According to a recent study, however, none of the existing sources of statistics provide either comprehensive, timely, or accurate data with which to definitively assess whether there is a causal connection between firearms and violence.<sup>1</sup> For

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<sup>1</sup> National Research Council, *Firearms and Violence: A Critical Review* (Washington, (continued...))

example, existing data do not show whether the number of people shot and killed with semiautomatic assault weapons declined during the 10-year period (1994-2004) those firearms were banned from further proliferation in the United States.<sup>2</sup> Presented below are data on the following topics: (1) the number of guns in the United States, (2) firearm-related homicides, (3) non-lethal/firearm-related victimizations, (4) gun violence and youth, (5) gun-related mortality rates, (6) use of firearms for personal defense, and (7) recreational use of firearms. In some cases, the data presented below are over a decade old, but remain the most recent available.

**How Many Guns Are in The United States?** The National Institute of Justice (NIJ) reported in a national survey that in 1994, 44 million people, approximately 35% of households, owned 192 million firearms, 65 million of which were handguns.<sup>3</sup> Seventy-four percent of those individuals were reported to own more than one firearm.<sup>4</sup> According to Bureau of Alcohol, Tobacco, and Firearms (ATF), by the end of 1996 approximately 242 million firearms were available for sale to or were possessed by civilians in the United States.<sup>5</sup> That total includes roughly 72 million handguns (mostly pistols, revolvers, and derringers), 76 million rifles, and 64 million shotguns.<sup>6</sup> By 2000, the number of firearms had increased to approximately 259 million: 92 million handguns, 92 million rifles, and 75 million shotguns.<sup>7</sup>

Most guns available for sale are produced domestically. In recent years, 1 to 2 million handguns were manufactured each year, along with 1 million rifles and fewer than 1 million shotguns.<sup>8</sup> Annual imports are considerably smaller — from 200,000 to 400,000 handguns, 200,000 rifles, and 100,000 to 200,000 shotguns.<sup>9</sup> Retail prices of guns vary widely, from \$75 or less for inexpensive, low-caliber handguns to more than \$1,500 for higher-end standard-production rifles or shotguns.<sup>10</sup> Data are not available on the number of “assault weapons” in private possession or available for

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<sup>1</sup> (...continued)  
2005), p. 48.

<sup>2</sup> Ibid., p. 49.

<sup>3</sup> Jens Ludwig and Phillip J. Cook, *Guns in America: National Survey on Private Ownership and Use of Firearms*, NCJ 165476, May 1999, 12 pp., available at [<http://www.ncjrs.org/pdffiles/165476.pdf>].

<sup>4</sup> Ibid.

<sup>5</sup> U.S. Department of the Treasury, Bureau of Alcohol, Tobacco & Firearms, *Commerce in Firearms in the United States*, Feb. 2000, pp. A3-A5.

<sup>6</sup> Ibid., pp. A3-A5.

<sup>7</sup> U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, *Firearms Commerce in the United States 2001/2002*, ATF P 9000.4, (Apr. 2002), pp. E1-E3, available at [[http://www.atf.gov/pub/fire-explo\\_pub/firearmscommerce/index.htm](http://www.atf.gov/pub/fire-explo_pub/firearmscommerce/index.htm)].

<sup>8</sup> Ibid., pp. E1-E3.

<sup>9</sup> Ibid.

<sup>10</sup> Ned Schwing, *2005 Standard Catalog of Firearms: The Collector's Price and Reference Guide*, 15<sup>th</sup> edition (Iola, Wisconsin, 2005), 1,504 pp.

sale, but one study estimated that there were 1.5 million privately owned assault weapons in 1994.<sup>11</sup>

**How Often Are Guns Used in Homicides?** Reports submitted by state and local law enforcement agencies to the Federal Bureau of Investigation (FBI) and published annually in the *Uniform Crime Reports* indicate that the violent crime rate has declined from 1981 through 2003; however, the number of homicides and the proportion involving firearms have increased in recent years. From 1993 to 1999, the number of firearm-related homicides decreased by an average rate of nearly 11% annually, for an overall decrease of 49%. Since then, firearm-related homicides have *increased*:

- by 2% (to 8,661) in 2000;
- by 2.6% (to 8,890) in 2001;
- by 7.2% (to 9,528) in 2002; and
- by 1.2% (to 9,638) in 2003 (according to preliminary data).<sup>12</sup>

In addition, of homicides in which the type of weapon could be identified, from 60% to almost 70% have involved firearms each year. In 2002, of the 14,263 homicides reported, 67% (9,528) were committed with firearms. Of those committed with firearms, 77% (7,294) involved handguns.<sup>13</sup>

**How Often Are Guns Used in Non-lethal Crimes?** The other principal source of national crime data is the *National Crime Victimization Survey* (NCVS) conducted by the Bureau of the Census and published by the Bureau of Justice Statistics (BJS). The NCVS database provides some information on the weapons used by offenders, based on victims' reports. Based on data provided by survey respondents in calendar year 2003, BJS estimated that, nationwide, there were 5.4 million violent crimes (rape or sexual assault, robbery, aggravated assault, and simple assault). Weapons were used in about 1.2 million of these criminal incidents. Firearms were used by offenders in about 367,000 of these incidents, or roughly 7%.<sup>14</sup>

**How Prevalent Is Gun Violence Among Youth?** Youth crime statistics have often been used in the gun control debate. The number of homicides committed annually with a firearm by persons in the 14- to 24-year-old age group increased sharply from 1985 to 1993; they have declined since then, but not returned to the

<sup>11</sup> Christopher S. Koper, *Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003*, (Washington, July 2004), 108 pp., available at [<http://www.ncjrs.org/pdffiles1/nij/grants/204431.pdf>].

<sup>12</sup> U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States, 2003* (Washington, Oct. 25, 2004), p. 19. (*N.B.*, the homicide-related data for 2003 are very likely to change in the 2004 report, as they have in most past years.)

<sup>13</sup> *Ibid.*

<sup>14</sup> U.S. Department of Justice, Bureau of Justice Statistics, National Crime Victimization Survey, *Criminal Victimization, 2003*, by Shannan M. Catalano, at [<http://www.ojp.usdoj.gov/bjs/pub/pdf/cv03.pdf>].

1985 level. According to the BJS, from 1985 to 1993, the number of firearm-related homicides committed by 14- to 17-year-olds increased by 294%, from 855 to 3,371. From 1993 to 2000, the number of firearm-related homicides committed by persons in this age group decreased by 68%, from 3,371 to 1,084. From 1985 to 1993, firearm-related homicides committed by 18- to 24-year-olds increased by 142%, from 3,374 to 8,171. From 1993 to 1999, firearm-related homicides committed by persons in this age group decreased by 39%, from 8,171 to 4,988. They increased by 3% to 5,162 in 2000.<sup>15</sup> More recent statistics for youth have yet to be reported. Although gun-related violence in schools is statistically a rare event, a Department of Justice survey indicated that 12.7% of students age 12 to 19 reported knowing a student who brought a firearm to school.<sup>16</sup>

**How Prevalent Are Gun-Related Fatalities?** Firearm fatalities have decreased continuously from 1993 through 2001. The source of national data on firearm deaths is the publication *Vital Statistics*, published each year by the National Center for Health Statistics. Firearm deaths reported by coroners in each state are presented in four categories: homicides and legal intervention,<sup>17</sup> suicides, accidents, and unknown circumstances. In 2002, a total of 30,242 firearm deaths occurred, according to such reports. Of this total, 12,129 were homicides or due to legal intervention; 17,108 were suicides; 762 were unintentional (accidental) shootings; and 243 were of unknown cause.<sup>18</sup> From 1993 to 2000, firearm-related deaths decreased by an average rate of nearly 5% annually, for an overall decrease of nearly 28%. As compared to 2000, firearm deaths increased by 3% in 2001. They increased again by 2% in 2002. Also in 2002, there were 1,443 juvenile (under 18 years of age) deaths attributed to firearms. Of the juvenile total, 879 were homicides or due to legal intervention; 423 were suicides; 115 were unintentional; and 26 were of unknown cause. From 1993 to 2001, firearm-related deaths for juveniles have decreased by an average rate of 10% annually, for an overall decrease of 56%. As compared to 2001, they increased slightly in FY2002, by less than 1%.<sup>19</sup>

**How Often Are Firearms Used in Self-Defense?** According to BJS, NCVS data from 1987 to 1992 indicate that in each of those years roughly 62,200 victims of violent crime (1% of all victims of such crimes) used guns to defend themselves.<sup>20</sup> Another 20,000 persons each year used guns to protect property.

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<sup>15</sup> U.S. Department of Justice, Bureau of Justice Statistics, *Homicide Trends in the United States*, by James Alan Fox and Marianne W. Zawitz, at [<http://www.ojp.usdoj.gov/bjs/homicide/teens.htm>].

<sup>16</sup> For further information, see CRS Report RL30482, *The Safe and Drug-Free Schools and Communities Program: Background and Context*, by Edith Fairman Cooper.

<sup>17</sup> “Legal interventions” include deaths (in these cases by firearms) that involve legal uses of force (justifiable homicide or manslaughter) usually by the police.

<sup>18</sup> National Vital Statistics System data taken from the Injury Statistics Query and Reporting System (WISQARS), available at [<http://www.cdc.gov/ncipc/wisqars/default.htm>].

<sup>19</sup> *Ibid.*

<sup>20</sup> U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Guns and Crime: Handgun Victimization, Firearm Self-Defense, and Firearm Theft*, NCJ-147003, (continued...)

Persons in the business of self-protection (police officers, armed security guards) may have been included in the survey.<sup>21</sup> Another source of information on the use of firearms for self-defense is the “National Self Defense Survey” conducted by criminology professor Gary Kleck of Florida State University in the spring of 1993. Citing responses from 4,978 households, Dr. Kleck estimated that handguns have been used 2.1 million times per year for self-defense, and that all types of guns have been used approximately 2.5 million times a year for that purpose during the 1988-1993 period.<sup>22</sup>

Why do these numbers vary by such a wide margin? Law enforcement agencies do not collect information on the number of times civilians use firearms to defend themselves or their property against attack. Such data have been collected in household surveys. The contradictory nature of the available statistics may be partially explained by methodological factors. That is, these and other criminal justice statistics reflect what is *reported* to have occurred, not necessarily the actual number of times certain events occur. Victims and offenders are sometimes reluctant to be candid with researchers. So, the number of incidents can only be estimated, making it difficult to state with certainty the accuracy of statistics such as the number of times firearms are used in self-defense. For this and other reasons, criminal justice statistics often vary when different methodologies are applied.

Survey research can be limited, since it is difficult to produce statistically significant findings from small incident populations. For example, the sample in the National Self-Defense Survey might have been too small, given the likely low incidence rate and the inherent limitations of survey research.

**What About The Recreational Use of Guns?** According to NIJ, in 1994 recreation was the most common motivation for owning a firearm.<sup>23</sup> There were approximately 15 million hunters, about 35% of gun owners, in the United States and about the same number and percentage of gun owners engaged in sport shooting in 1994.<sup>24</sup> More recently, the U.S. Fish and Wildlife Service reported that there were over 14.7 million persons who were paid license holders in 2003<sup>25</sup> and, according to the National Shooting Sports Foundation, in that year approximately 15.2 million

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<sup>20</sup> (...continued)

Apr. 1994, available at [<http://www.ojp.usdoj.gov/bjs/pub/ascii/hvfstdaft.txt>].

<sup>21</sup> Ibid.

<sup>22</sup> Gary Kleck, “Armed Resistance to Crime: The Prevalence and Nature of Self Defense with a Gun,” *Journal of Criminal Law and Criminology*, vol. 86, issue 1, 1995, available at [<http://www.guncite.com/gcdgklec.html>].

<sup>23</sup> Jens Ludwig, and Phillip J. Cook, *Guns in America: National Survey on Private Ownership and Use of Firearms*, NCJ 165476, May 1999, p. 2.

<sup>24</sup> Ibid., p. 3.

<sup>25</sup> U.S. Department of the Interior, U.S. Fish and Wildlife Service, *National Hunting License Report* (Dec. 2, 2004), see [<http://www.nssf.org/IndustryResearch/PDF/CurrLicSales.pdf>].

persons hunted with a firearm and nearly 19.8 million participated in target shooting.<sup>26</sup>

## Federal Regulation of Firearms

Two major federal statutes regulate the commerce in, and possession of, firearms: the National Firearms Act of 1934 (26 U.S.C. §5801 *et seq.*) and the Gun Control Act of 1968, as amended (18 U.S.C. Chapter 44, §921 *et seq.*). Supplementing federal law, many state firearm laws are stricter than federal law. For example, some states require permits to obtain firearms and impose a waiting period for firearm transfers. Other states are less restrictive, but state law cannot preempt federal law. Federal law serves as the minimum standard in the United States.

**The National Firearms Act (NFA).** The NFA was originally designed to make it difficult to obtain types of firearms perceived to be especially lethal or to be the chosen weapons of “gangsters,” most notably machine guns and short-barreled long guns. This law also regulates firearms, other than pistols or revolvers, that can be concealed on a person (e.g., pen, cane, and belt buckle guns). It taxes all aspects of the manufacture and distribution of such weapons. And, it compels the disclosure (through registration with the Attorney General) of the production and distribution system from manufacturer to buyer.

**The Gun Control Act of 1968 (GCA).** As stated in the GCA, the purpose of federal firearm regulation is to assist federal, state, and local law enforcement in the ongoing effort to reduce crime and violence. In the same act, however, Congress also stated that the intent of the law is not to place any undue or unnecessary burdens on law-abiding citizens in regard to the lawful acquisition, possession, or use of firearms for hunting, trapshooting, target shooting, personal protection, or any other lawful activity. The GCA, as amended, contains the principal federal restrictions on domestic commerce in small arms and ammunition. The statute requires all persons manufacturing, importing, or selling firearms *as a business* to be federally licensed; prohibits the interstate mail-order sale of all firearms; prohibits interstate sale of handguns generally, sets forth categories of persons to whom firearms or ammunition may not be sold (such as persons under a specified age or with criminal records); authorizes the Secretary of the Treasury to prohibit the importation of non-sporting firearms; requires that dealers maintain records of all commercial gun sales; and establishes special penalties for the use of a firearm in the perpetration of a federal drug trafficking offense or crime of violence.

Private transactions between persons “not engaged in the business” are not covered by the GCA. These transactions and other matters such as possession, registration, and the issuance of licenses to firearm owners may be covered by state laws or local ordinances. As amended by the Brady Handgun Violence Prevention Act, 1993 (P.L. 103-159), the GCA requires background checks be completed for all

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<sup>26</sup> American Sports Data, Inc., *The SUPERSTUDY of Sports Participation*, available at [<http://www.nssf.org/IndustryResearch/PDF/HistTrendsParticipation.pdf>].

nonlicensed persons seeking to obtain firearms from federal firearms licensees. For a listing of other major firearm and related statutes, see **Appendix A**.

**Firearm Transfer and Possession Eligibility.** Under current law, there are nine classes of persons prohibited from possessing firearms: (1) persons convicted in any court of a crime punishable by imprisonment for a term exceeding one year; (2) fugitives from justice; (3) drug users, or addicts; (4) persons adjudicated mental defectives, or committed to mental institutions; (5) unauthorized immigrants and most nonimmigrant visitors; (6) persons dishonorably discharged from the Armed Forces; (7) U.S. citizenship renunciates; (8) persons under court-order restraints related to harassing, stalking, or threatening an intimate partner or child of such intimate partner; and (9) persons convicted of misdemeanor domestic violence (18 U.S.C. §922(g) and (n)).

Since 1994, moreover, it has been a federal offense for any nonlicensed person to transfer a handgun to anyone under 18 years of age. It has also been illegal for anyone under 18 years of age to possess a handgun (there are exceptions to this law related to employment, ranching, farming, target practice, and hunting) (18 U.S.C. §922(x)).

**Licensed Dealers and Firearm Transfers.** Under current law, federal firearms licensees (hereafter referred to as licensees) may ship, transport, and receive firearms that have moved in interstate and foreign commerce. Licensees are currently required to verify with the FBI through a background check that nonlicensed persons are eligible to possess a firearm before subsequently transferring a firearm to them. Licensees must also verify the identity of nonlicensed transferees by inspecting a government-issued identity document (e.g., a driver's license).

Licensees may engage in interstate transfers of firearms among themselves without conducting background checks. Licensees may transfer long guns (rifles or shotguns) to out-of-state residents, as long as the transactions are face-to-face and not knowingly in violation of the laws of the state in which the unlicensed transferees reside. Licensees, however, may *not* transfer handguns to unlicensed out-of-state residents. Transfer of handguns by licensees to anyone under 21 years of age is also prohibited, as is the transfer of long guns to anyone under 18 years of age (18 U.S.C. §922(b)). Also, licensees are required to submit "multiple sales reports" to the Attorney General if any person purchases two or more handguns within five business days.

Furthermore, licensees are required to maintain records on all acquisitions and dispositions of firearms. They are obligated to respond to ATF agents requesting firearm tracing information within 24 hours. Under certain circumstances, ATF agents may inspect, without search warrants, their business premises, inventory, and gun records.

**Private Firearm Transfers.** Nonlicensees are prohibited from acquiring firearms from out-of-state sources (except for long guns acquired from licensees under the conditions described above). Nonlicensees are also prohibited from transferring firearms to any persons who they have reasonable cause to believe are not residents of the state in which the transaction occurs. In addition, since 1986, it

has been a federal offense for nonlicensees to knowingly transfer a firearm to prohibited persons. It is also notable that firearm transfers initiated through the Internet are subject to the same federal laws as transfers initiated in any other manner.<sup>27</sup>

**Brady Handgun Violence Prevention Act.** In 1993, Congress amended the GCA with the Brady Act (P.L. 103-159) to require background checks on all nonlicensed persons seeking to obtain firearms from federal firearms licensees. It was implemented in two phases. During the interim period of the Brady Act (phase I), from February 1994 through November 1998, there was a waiting period of up to five days for handgun transfers in states without instant check systems. Nearly 13 million firearm background checks (for handguns) were completed during that four-year period, resulting in 312,000 denials.

The permanent provisions (phase II) of the Brady Act became effective on November 30, 1998. As part of phase II, the FBI implemented the National Instant Criminal Background Check System (NICS). Through NICS, background checks are conducted of applicants for both hand and long gun transfers. While the FBI handles background checks entirely for some states, other states serve as full or partial points of contact (POCs) and federal firearms licensees contact a state agency, and the state agency contacts the FBI for such checks. In 14 states, state agencies serve as full POCs and conduct background checks for both long gun and handgun transfers. In four states, state agencies serve as partial POCs for handgun permits, while in another four states, state agencies serve as partial POCs for handgun transfers only. In these eight partial POC states, checks for long gun transfers are conducted entirely through the FBI. In the 28 non-POC states, the District of Columbia, and four territories (Guam, Northern Marianna Islands, Puerto Rico, and the Virgin Islands), federal firearms licensees contact the FBI directly to conduct background checks through NICS for both handgun and long gun checks.

Through calendar year 2003, nearly 41 million background checks for firearm transfer applications occurred under the Brady Act. Of this number, nearly 790,000 background checks, or about 1.9%, resulted in firearm transfers being denied. More than 22.3 million of these checks were completed entirely by the FBI for non-POC states, the District, and four territories. These checks resulted in a denial rate of 1.5%. Nearly 18.5 million checks were conducted by full or partial POC states. These checks resulted in a higher denial rate of 2.4%. For total background checks, 57% of denials occurred because the applicant was a felon or was under felony indictment. The next most common reason for denial, over 11% of cases, was a domestic violence misdemeanor conviction. Protective orders accounted for about 4% of denials.<sup>28</sup>

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<sup>27</sup> For further information, see CRS Report RS20957, *Internet Firearm Sales*, by T.J. Halstead.

<sup>28</sup> For further information, see, *Background Checks for Firearm Transfers, 2003: Trends for Permanent Brady Period, 1999-2003*, Sept. 2004, at [<http://www.ojp.usdoj.gov/bjs/pub/pdf/bcft03.pdf>].)

For state agencies (POCs), background checks may not be as expeditious, but they may be more thorough, since state agencies may have greater access to databases and records that are not available through NICS. According to the Government Accountability Office (GAO), this is particularly true for domestic violence misdemeanor offenses and protective orders.<sup>29</sup>

NICS eligibility determination rates (how expeditiously the system makes eligibility determinations) have been controversial. According to GAO, about 72% of the NICS checks handled by the FBI resulted in immediate determinations of eligibility. Of the remaining 28% that resulted in a non-definitive response, neither a “proceed” nor a denial, 80% were turned around within two hours. The remaining 20% of delayed transactions took hours or days for the FBI NICS examiners to reach a final determination.<sup>30</sup>

In many cases firearm transfers were delayed because there was an outstanding charge without a final disposition against the person seeking to purchase the firearm. Such cases necessitate that the FBI examiners contact local or state authorities for additional information. Under current law, the FBI is authorized to delay the sale for three business days in order to determine the outcome of the charge and, thus, establish the eligibility of the transferee to possess a firearm. The FBI reported that, from July 2002 through March 2003, the immediate determination rate for NICS increased to 91%, as compared to just under 77% from November 2001 through July 2002.<sup>31</sup>

NICS system availability — how regularly the system can be accessed during business hours and not delay legitimate firearm transfers — has also been a source of complaint. GAO found, however, that in the first year of NICS operation, the FBI had achieved its system availability goal of 98% for four months. System availability for the remaining eight months averaged 95.4%.<sup>32</sup> The FBI reports that NICS service availability was increased to 99% in FY2001 and FY2002.<sup>33</sup> During consideration of legislation in the 106<sup>th</sup> Congress to extend the Brady Act background check provisions to all firearm transfers at gun shows, the capacity of NICS to instantaneously accomplish these checks became a major stumbling block to enactment.

**Federal Firearm Prosecutions.** Regarding enforcement of the Brady Act, from November 1998 through June 2000, the FBI referred 134,522 Brady-related cases to the ATF, and 37,926 of these cases were referred to ATF field offices for

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<sup>29</sup> For further information, see GAO, *Gun Control: Opportunities to Close Loopholes in the National Instant Criminal Background Check System*, GAO-02-720, July 2002, p. 27.

<sup>30</sup> For further information, see GAO, *Gun Control: Implementation of the National Instant Criminal Background Check System*, GGD/AIMD-00-64, p. 68. (Hereafter cited as GAO, *Implementation of NICS*.)

<sup>31</sup> See *National Instant Criminal Background Check System (NICS): 2001/2002 Operational Report*, May 2003, p. 8. (Hereafter cited as *NICS 2001/2002 Operational Report*.)

<sup>32</sup> See GAO, *Implementation of NICS*, p. 94.

<sup>33</sup> See *NICS 2001/2002 Operational Report*, p. 6.

investigation. According to ATF, in FY2000 there were 1,485 defendants charged with firearm-related violations as a result of NICS checks under Brady. Of these defendants, 1,157 were *charged* with providing falsified information to federal firearms licensees (18 U.S.C. §922(a)(6)); another 86 were persons ineligible to possess firearms under the domestic violence gun ban (18 U.S.C. §§922(g)(8) and (9)); and 136 were convicted felons (18 U.S.C. §922(g)(1)).

According to the BJS, however, federal firearm *prosecutions* decreased by 19% from 1992 to 1996, leveled off through 1997, and increased in 1998 and 1999. The decline in federal prosecutions can be attributed in part to a Supreme Court decision (*Bailey v. United States* (516 U.S. 137, 116 S.Ct. 501)) that limited the use of the charge of using a firearm during a violent or drug-related offense, as the firearm could not be just incidental to the arrest (18 U.S.C. §924(c)).<sup>34</sup>

## **Legislative Action in the 108<sup>th</sup> Congress and Possible Issues for the 109<sup>th</sup> Congress**

Several gun control-related proposals have been introduced in the 109<sup>th</sup> Congress that represent a range of positions on federal regulation of firearms. If past congressional action is any indication, however, only a handful of these bills will receive significant legislative action. The 109<sup>th</sup> Congress may revisit several gun control issues considered in the 108<sup>th</sup> Congress. For example, the 109<sup>th</sup> Congress may reconsider the gun industry liability bill (H.R. 800/S. 397). Three other firearm-related issues that may receive consideration include (1) further regulating certain firearms often referred to as “assault weapons,” (2) requiring background checks for private firearm transfers at gun shows, and (3) retaining Brady background check records for approved transactions.

**108<sup>th</sup> Congress: Summary of Legislative Action.** The 108<sup>th</sup> Congress approved bills that exempt certain law enforcement officers from state laws that prohibit the concealed carry of firearms (P.L. 108-277) and extend the undetectable firearms ban for an additional 10 years (P.L. 108-174). Several other gun-related provisions — the most notable of which require the next-day destruction of approved Brady background check firearm transaction records — were included in the FY2004 and FY2005 Consolidated Appropriations Act (P.L. 108-199, P.L. 108-447). The House passed a “gun industry liability” bill (H.R. 1036) that would prohibit law suits against firearm manufacturers or dealers for unlawful or criminal use of their products by other persons. The Senate considered a similar bill (S. 1805) and amended it with several gun control provisions, but did not pass it. The House also passed a bill (H.R. 3193) to repeal the District of Columbia “handgun ban,” but the Senate did not act on this measure. It is also notable that the 10-year ban on the manufacture, transfer, or possession of “semiautomatic assault weapons” and “large capacity ammunition feeding devices” expired on September 13, 2004.

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<sup>34</sup> See *Federal Firearm Offenders, 1992-98 (with Preliminary Data for 1999)*, June 2000, at [<http://www.ojp.usdoj.gov/bjs/pub/pdf/ffo98.pdf>].

**Gun Industry Liability.** In the 108<sup>th</sup> Congress, the House passed the Protection of Lawful Commerce in Arms Act (H.R. 1036) on April 9, 2003. This bill would have prohibited certain types of law suits against firearm manufacturers and dealers to recover damages related to the criminal or unlawful use of their products (firearms or ammunition) by other persons. The Senate considered a similar measure (S. 1805) and amended it with several gun control amendments. Among other things, these amendments would have (1) required firearm dealers to provide safety locks with handguns they sell or transfer, (2) extended the semiautomatic assault weapons ban for additional 10 years, (3) required background checks for private firearm transfers at gun shows, and (4) commissioned a study on armor-piercing ammunition. The Senate did not pass S. 1805, however, as many Senators, who either opposed the bill as introduced, or opposed the gun control amendments, withdrew their support for the bill. As stated above, the 109<sup>th</sup> Congress may reconsider this legislation. It has been reintroduced as H.R. 800/S. 397.<sup>35</sup>

**District of Columbia Handgun Ban.** In the 108<sup>th</sup> Congress, the House passed a bill (H.R. 3193) that would have repealed the District of Columbia “handgun ban” and other limitations on firearms possession. The handgun ban was passed by the District of Columbia Council on June 26, 1976. It requires that all firearms within the District be registered, all owners be licensed, and prohibited the registration of handguns after September 24, 1976 (hence, the “DC handgun ban”). Under the Home Rule Act (P.L. 93-198), however, Congress reserved for itself the authority to legislate for the District.

As passed by the House, H.R. 3193 would have amended the DC Code to (1) limit the Council’s authority to regulate firearms; (2) remove the term “semiautomatic weapon” that can fire more than 12 rounds without manually reloading from the definition of “machine gun”; (3) amend the registration requirements so that they do not apply to handguns, but only to sawed-off shotguns, machine guns, and short-barreled rifles; (4) remove restrictions on ammunition possession; (5) repeal requirements that DC residents keep firearms in their possession unloaded and disassembled, or bound by a trigger lock; (6) repeal firearm registration requirements generally; and (7) repeal certain criminal penalties for possessing unregistered firearms or carrying unlicensed handguns. A similar measure was introduced in the Senate (S. 1414). As of the date of this report, no similar legislation has been introduced in the 109<sup>th</sup> Congress.

**Semiautomatic Assault Weapons Ban.** In 1994, Congress banned for 10 years the possession, transfer, or further domestic manufacture of semiautomatic assault weapons (SAWs) and large capacity ammunition feeding devices (LCAFDs) that hold greater than 10 rounds that were not legally owned or available prior to the date of enactment (September 13, 1994). The SAW-LCAFD ban expired on September 13, 2004. Assault rifles were originally developed to provide a lighter infantry weapon that could fire more rounds, more rapidly (increased capacity and rate of fire). To increase capacity of fire, detachable, self-feeding magazines were

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<sup>35</sup> For further information, see CRS Report RS22074, *Limiting Tort Liability of Gun Manufacturers and Gun Sellers: Legal Analysis of 109<sup>th</sup> Congress Legislation*, by Henry Cohen.

developed. These rifles were usually designed to be fired in fully automatic mode, meaning that once the trigger is pulled, the weapon continues to fire rapidly until all the rounds in the magazine are expended, or the trigger is released. Often these rifles were also designed with a “select fire” feature that allowed them to be fired in short bursts (e.g., three rounds per pull of the trigger), or in semiautomatic mode (i.e., one round per pull of the trigger), as well as in fully automatic mode. Semiautomatic firearms by comparison, including semiautomatic assault weapons, fire one round per pull of the trigger.

Under current law, any firearm, including “assault weapons,” that can be fired in fully automatic mode or in multi-round bursts are classified as “machine guns,” and must be registered with the federal government under the National Firearms Act of 1934. Furthermore, it is illegal to assemble a machine gun with legally or illegally obtained parts. The population of legally owned machine guns has been frozen since 1986, and they were not covered by the semiautomatic assault weapons ban. According to a 1997 survey of 203,300 state and federal prisoners, who had been armed during the commission of the crimes for which they were incarcerated, fewer than one in 50, or less than 2%, used, carried, or possessed a fully automatic or semiautomatic assault weapon.<sup>36</sup>

Statute classified a rifle as a semiautomatic assault weapon, if it was able to accept a detachable magazine, and included two or more of the following five characteristics: (1) a folding or telescoping stock; (2) a pistol grip; (3) a bayonet mount; (4) a muzzle flash suppressor or threaded barrel capable of accepting such a suppressor; or (5) a grenade launcher. There were similar definitions for pistols and shotguns that were classified as semiautomatic assault weapons.<sup>37</sup> Semiautomatic assault weapons that were legally owned prior to the ban were not restricted and remained available for transfer under applicable federal and state laws.

Opponents of the ban argue that the statutorily defined characteristics of a semiautomatic assault weapon were largely cosmetic, and that these weapons were potentially no more lethal than other semiautomatic firearms that were designed to accept a detachable magazine and were equal or superior in terms of ballistics and other performance characteristics. Proponents of the ban argue that semiautomatic military-style firearms — particularly those capable of accepting large capacity ammunition feeding devices — had and have no place in the civilian gun stock.

In the 108<sup>th</sup> Congress, proposals were introduced to extend or make permanent the ban, while other proposals would have modified the definition of “semiautomatic assault weapon” to cover a greater number of firearms by reducing the number of features that would constitute such firearms, and expand the list of certain makes and models of firearms that are statutorily enumerated as banned. A proposal (S. 1034) introduced by Senator Dianne Feinstein would have made the ban permanent, as would have a proposal (H.R. 2038/S. 1431) introduced by Representative Carolyn McCarthy and Senator Frank Lautenberg. The latter measure, however, would have

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<sup>36</sup> For further information, see *Firearm Use by Offenders*, by Caroline Wolf Harlow, at [<http://www.ojp.usdoj.gov/bjs/pub/pdf/fuo.pdf>].

<sup>37</sup> 18 U.S.C. §921(a)(30).

modified the definition and expanded the list of banned weapons. Senator Feinstein also introduced measures that would have extended the ban for 10 years (S. 2190/S. 2498). In addition, on March 2, 2004, the Senate passed an amendment to the gun industry liability bill (S. 1805) that would have extended the ban for 10 years, but the Senate did not pass this bill.<sup>38</sup> In the 109<sup>th</sup> Congress, Senator Dianne Feinstein has introduced a bill that would reinstate previous law for 10 years (S. 620). Representative McCarthy and Senator Lautenberg have reintroduced their bills to make the ban permanent (H.R. 1312/S. 645).

**Gun Shows and Private Firearm Transfers.** Federal law does not regulate gun shows specifically. Federal law regulating firearm transfers, however, is applicable to such transfers at gun shows. Federal firearms licensees — those licensed by the federal government to manufacture, import, or deal in firearms — are required to conduct background checks on nonlicensed persons seeking to obtain firearms from them, by purchase or exchange. Conversely, nonlicensed persons — those persons who transfer firearms, but who do not meet the statutory test of being “engaged in the business” — are not required to conduct such checks. To some, this may appear to be an incongruity in the law. Why, they ask, should licensees be required to conduct background checks at gun shows, and not nonlicensees? To others, opposed to further federal regulation of firearms, it may appear to be a continuance of the status quo (i.e., non-interference by the federal government into private firearm transfers within state lines). On the other hand, those seeking to increase federal regulation of firearms may view the absence of background checks for firearm transfers between non licensed/private persons as a “loophole” in the law that needs to be closed. A possible issue for Congress is whether federal regulation of firearms should be expanded to include private firearm transfers at gun shows and other similar venues.

Among gun show-related proposals, there are two basic models. The first model is based on a bill (S. 443) that was introduced in the 106<sup>th</sup> Congress by Senator Lautenberg, who successfully offered this proposal as an amendment to the Senate-passed Violent and Repeat Juvenile Offender Act (S. 254). Several members introduced variations of the Lautenberg bill in the 107<sup>th</sup> Congress. In the 108<sup>th</sup> Congress, Representative Conyers — ranking minority member of the Judiciary Committee — introduced H.R. 260, which was very similar to the Lautenberg bill. In addition, former Senator Daschle introduced the Justice Enhancement and Domestic Security Act of 2003 (S. 22), which included gun show language that was similar to the Lautenberg bill. The second model is based on a bill (S. 890) introduced in the 107<sup>th</sup> Congress by Senators McCain and Lieberman. In the 108<sup>th</sup> Congress, Senators McCain and Reed introduced a bill (S. 1807), which was similar to S. 890. On March 2, 2004, the Senate passed an amendment offered by Senator McCain to the gun industry liability bill (S. 1805) that would have required

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<sup>38</sup> For further information, see CRS Report RL32077, *The Assault Weapons Ban: Legal Challenges and Legislative Issues*, by T.J. Halstead, and CRS Report RL32585, *Semiautomatic Assault Weapons Ban*, by William J. Krouse.

background checks for private firearm transfers at gun shows, but the Senate did not pass this bill.<sup>39</sup>

**Brady Background Check Fee and Record Retention.** A provision in the Consolidated Appropriations Act, 2004 (P.L. 108-199) prohibited the collection of any fee for firearms-related background checks made through the National Instant Criminal Background Check Systems (NICS). Similar provisions were included in Commerce-Justice-State appropriations acts for the past five years for fiscal years 1999 through 2003. Additional language, regarding the retention of approved firearm transfer records, was added to this provision as part of the amendment offered by Representative Todd Tiahrt during full committee markup of the CJS appropriations bill (H.R. 2799). This language would have required the FBI to destroy approved firearm background check records immediately. It was included in the House-passed bill, but was not part of the Senate-reported bill. Modified language was included in the Consolidated Appropriations Act, 2004 (P.L. 108-199) that required these records be destroyed within 24 hours. Similar language was included in the FY2005 Consolidated Appropriations Act (P.L. 108-447).

Under Attorney General John Ashcroft, the Department of Justice (DOJ) had proposed an administrative rule that called for the “next-day” destruction of these files. Among other things, the DOJ asserted that maintaining approved firearm transfer records for any length of time violated Section 103(i) of the Brady Handgun Violence Prevention Act (P.L. 103-159). This provision prohibits the establishment of any electronic registry of firearms, firearm owners, or approved firearm transactions or dispositions. Denied firearm transaction records are maintained by the FBI permanently. Previously, however, the DOJ promulgated a final rule that allowed such records to be maintained for up to 90 days for audit purposes on January 22, 2001. Concerning the maintenance of these records, the National Rifle Association (NRA) challenged the DOJ in federal court, arguing that retaining the approved records was tantamount to a temporary registry. On July 11, 2000, however, the United States Court of Appeals for the District of Columbia, in the case of *NRA v. Reno* (No. 99-5270, 216 F. 3d 122; 2000 U.S. App. Lexis 15906), found that nothing in the Brady Act prohibited the temporary retention of information about lawful firearm transfers for certain audit purposes.

In July 2002, GAO reported that under Attorney General Reno the FBI had conducted “nonroutine” searches of the NICS audit log for law enforcement agencies to determine whether a person, whom subsequent information showed was a prohibited person, had been transferred a firearm within the previous 90 days. The FBI informed GAO that such searches were routinely conducted, but were a “secondary benefit” given that the audit log was maintained primarily to check for system “accuracy, privacy, and performance.” The next day destruction of NICS records will essentially end “nonroutine” searches. In addition, GAO reported that the next-day destruction of records would “adversely affect” other NICS operations, including firearm-retrieval actions, NICS audit log checks for previous background

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<sup>39</sup> For further information, see CRS Report RL32249, *Gun Control: Proposals to Regulate Gun Shows*, by William J. Krouse and T.J. Halstead.

checks, verifications of NICS determinations for federal firearms licensees, and ATF inspections of federal firearms licensees' record keeping.<sup>40</sup>

**Brady Background Checks and Terrorist Watch Lists.** Historically, terrorist watch list checks were not part of the Brady background check process, since being a suspected or known terrorist was and is not a disqualifying factor for firearm transfer/possession eligibility under federal or state law. As is the case today, to determine such eligibility, FBI-NICS examiners check three databases maintained by the FBI. They include the National Crime Information Center (NCIC), the Interstate Identification Index (III), and the NICS index. The NICS index includes disqualifying records on persons: (1) dishonorably discharged from the armed forces, (2) adjudicated mentally defective, or (3) convicted of certain serious immigration violations. The III includes criminal history records for persons arrested and convicted of felonies and misdemeanors. The NCIC includes law enforcement hot files on fugitives and persons subject to restraining orders, among other persons. NCIC also includes a hot file known as the Violent Gang and Terrorist Offender File (VGTOF). Prior to the 9/11 attacks, this file included *limited* information on known or suspected terrorists and gang members. NICS examiners were not informed of VGTOF hits, as such information was not considered relevant to determining firearms transfer/possession eligibility.

Following the 9/11 attacks, FBI officials reportedly searched approved firearm transaction records in the then NICS 90-day audit log for 186 illegal alien detainees. Two were found to have been improperly cleared to be transferred firearms.<sup>41</sup> Upon learning of this practice, however, then Attorney General Ashcroft barred the FBI from searching the NICS audit log, maintaining that the Brady Handgun Violence Prevention Act prohibited the use of NICS as an electronic registry of firearms, dispositions, or owners.<sup>42</sup> Advocates of greater gun control opposed this shift in policy, arguing that law enforcement and counterterrorism officials ought to have access to NICS records to further ongoing terrorist and criminal investigations. As described above, however, gun rights advocates successfully amended the FY2004 and FY2005 Consolidated Appropriations Act to require the destruction of those records within 24 hours.

In February 2002, DOJ initiated a NICS transaction audit to determine whether prohibited aliens (non-citizens) were being improperly transferred firearms. As part of this audit, NICS procedures were changed, so that NICS examiners were informed of VGTOF hits. Under Homeland Security Presidential Directive 6, moreover, the Administration initiated a broad-based review of the use of watchlists, among other terrorist identification and screening mechanisms.<sup>43</sup> In September 2003, the FBI-

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<sup>40</sup> For further information on these issues, see GAO, *Gun Control: Potential Effects of Next-Day Destruction of NICS Background Check Records*, GAO-02-653, July 2002.

<sup>41</sup> Fox Butterfield, "Justice Dept. Bars Use of Gun Checks in Terror Inquiry: FBI Wants to See Files," *New York Times*, Dec. 6, 2001, p. A1.

<sup>42</sup> Subparagraph 103(i) of P.L. 103-159 (107 Stat. 1542).

<sup>43</sup> For further information, see CRS Report RL32366, *Terrorist Identification, Screening*, (continued...)

administered Terrorist Screening Center (TSC) was established and work was begun to improve and merge several watchlists maintained by U.S. government into a consolidated Terrorist Screening Database (TSDB). One of these “watchlists” was VGTOF. As part of these efforts, TSDB lookout records from other agency watchlists were downloaded into VGTOF, growing that file from 10,000 to over 140,000 records. Effective February 2004, the FBI officially changed its NICS operating procedures to inform NICS examiners of VGTOF hits for known and suspected terrorists.<sup>44</sup>

Under the new procedures in non-Point of Contact (non-POC) states, NICS staff validate terrorism-related VGTOF hits by contacting TSC staff. The latter have greater access to identifiers in terrorist files, with which known and suspected terrorists can be more positively identified. In full and partial POC states, the law enforcement officials that conduct firearms-related background checks under the Brady Act contact TSC staff directly. In the case of valid hits, NICS staff delay the transactions for up to three business days and contact the FBI Counterterrorism Division to allow field agents to check for prohibiting factors. If no prohibiting factors are uncovered within this three-day period, NICS staff *anonymize* the transaction record by deleting the subject’s identifying information. The firearms dealers may proceed with the transaction at their discretion, but FBI counterterrorism officials continue to work the case for up to 90 days. If they learn of a prohibiting factor within that 90-day period, they are able to contact the NICS unit and de-anonymize the transaction record by filling in the subject’s identifying fields. At the end of 90 days, if no prohibiting factor has been found, all records related to the NICS transaction are destroyed.

Senators Joseph Biden and Frank Lautenberg requested that GAO report on these new NICS operating procedures.<sup>45</sup> In January 2005, GAO reported that in a five month period — February 3, 2004 through June 30, 2004 — NICS checks resulted in an estimated 650 terrorist-related record hits in VGTOF. Of these, 44 were found to be valid. As noted above, however, being identified as a known or suspected terrorist is not grounds to prohibit a person from being transferred a firearm under current law. As a consequence, 35 of these transactions were allowed to proceed, six were denied, one was unresolved, and two were of an unknown status.<sup>46</sup> GAO recommended that the Attorney General should (1) clarify what information generated by the Brady background check process could be shared with counterterrorism officials; and (2) either more frequently monitor background checks

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<sup>43</sup> (...continued)

*and Tracking Under Homeland Security Presidential Directive 6*, by William J. Krouse.

<sup>44</sup> Dan Eggen, “FBI Gets More Time on Gun Buys,” *Washington Post*, Nov. 22, 2003, p. A05.

<sup>45</sup> For further information, see GAO, *Gun Control and Terrorism: FBI Could Better Manage Firearm-Related Background Checks Involving Terrorist Watch List Records*, GAO-05-127, Jan. 2005, 38 pp.

<sup>46</sup> *Ibid.*, p. 9.

conducted by full and partial POC States that result in terrorism-related VGTOF hits, or allow the FBI to handle such cases.<sup>47</sup>

Meanwhile, several related pieces of legislation have been introduced that are related to NICS operations and terrorist watchlists. The Terrorist Apprehension and Record Retention Act of 2005 (S. 578/H.R. 1225), introduced by Senator Frank Lautenberg and Representative John Conyers, would require that the FBI, along with appropriate federal and state counterterrorism officials, be notified immediately when the NICS indicated that a person seeking to obtain a firearm was a known or suspected terrorist. Furthermore, the proposal would (1) require that the FBI coordinate the response to such occurrences, (2) authorize the retention of all related records for at least 10 years, and (3) allow federal and state officials access to such records.

In addition, Representative Peter King introduced H.R. 1168, a bill that would require the Attorney General to promulgate regulations to preserve records of terrorist- and gang-related record hits during such background checks until they were provided to the FBI. Representative Carolyn McCarthy introduced H.R. 1195, a bill that would make it unlawful for anyone to transfer a firearm to a person who was on the “No Fly” lists maintained by the Transportation Security Administration.<sup>48</sup>

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<sup>47</sup> Ibid., p. 26.

<sup>48</sup> For further information about the “No Fly” lists, see CRS Report RL32802, *Homeland Security: Air Passenger Prescreening and Counterterrorism*, by Bart Elias, William Krouse, and Ed Rappaport.

## **Appendix A.**

### **Major Federal Firearm and Related Statutes**

The following principal changes have been enacted to the Gun Control Act since 1968.

- The “Firearms Owners Protection Act,” McClure-Volkmer Amendments (P.L. 99-308, 1986) eases certain interstate transfer and shipment requirements for long guns, defines the term “engaged in the business,” eliminates some record-keeping requirements, and bans the private possession of machine guns not legally owned prior to 1986.
- The “Armor Piercing Ammunition” Ban (P.L. 99-408, 1986, amended in P.L. 103-322, 1994) prohibits the manufacture, importation and delivery of handgun ammunition composed of certain metal substances and certain full-jacketed ammunition.
- The Federal Energy Management Improvement Act of 1988 (P.L. 100-615) requires that all toys or firearm look-alikes have a blazed orange plug in the barrel, denoting that it is a non-lethal imitation.
- The Undetectable Firearms Act (P.L. 100-649, 1988, amended in P.L. 108- 174, 2003), also known as the “plastic gun” legislation, bans the manufacture, import, possession, and transfer of firearms not detectable by security devices.
- The Gun-Free School Zone Act of 1990 (P.L. 101-647), as originally enacted, was ruled unconstitutional by the U.S. Supreme Court (*United States v. Lopez*, 514 U.S. 549 (1995), April 26, 1995). The act prohibited possession of a firearm in a school zone (on the campus of a public or private school or within 1,000 feet of the grounds). In response to the Court’s finding that the act exceeded Congress’s authority to regulate commerce, the 104<sup>th</sup> Congress included a provision in P.L. 104-208 that amended the act to require federal prosecutors to include evidence that the firearms “moved in” or affected interstate commerce.
- The Brady Handgun Violence Prevention Act, 1993 (P.L. 103-159) requires that background checks be completed on all nonlicensed person seeking to obtain firearms from federal firearms licensees.
- The Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322) prohibited the manufacture or importation of semiautomatic assault weapons and large capacity ammunition feeding devices for 10 years. The act also bans the sale or transfer of handguns and handgun ammunition to, or possession of handguns and handgun ammunition by, juveniles (under 18 years of age) without prior written consent from the juvenile’s parent or legal

guardian; exceptions related to employment, ranching, farming, target practice, and hunting are provided. In addition, the act disqualifies persons under court orders related to domestic abuse from receiving a firearm from any person or possessing a firearm. It also increased penalties for the criminal use of firearms. The assault weapons ban expired on September 13, 2004.

- Federal Domestic Violence Gun Ban (the Lautenberg Amendment, in the Omnibus Consolidated Appropriations Act for FY1997, P.L. 104-208) prohibits persons convicted of misdemeanor crimes of domestic violence from possessing firearms and ammunition. The ban applies regardless of when the offense was adjudicated: prior to, or following enactment. It has been challenged in the federal courts, but these challenges have been defeated.<sup>49</sup>
- The Omnibus Consolidated and Emergency Appropriations Act, 1999 (P.L. 105-277), requires all federal firearms licensees to offer for sale gun storage and safety devices. It also bans firearm transfers to, or possession by, most nonimmigrants, and those nonimmigrants who have overstayed the terms of their temporary visa.
- The Treasury, Postal and General Government Appropriations Act (P.L. 106-58) requires that background checks be conducted when former firearm owners seek to redeem a firearm that they sold to a pawnshop.
- The Homeland Security Act of 2002 (P.L. 107-296) establishes a Bureau of Alcohol, Tobacco, Firearms and Explosives by transferring the law enforcement functions, but not the revenue functions, of the former Bureau of Alcohol, Tobacco and Firearms from the Department of the Treasury to the Department of Justice.
- Law Enforcement Officers Safety Act of 2004 (P.L. 108-277) provides that qualified active and retired law enforcement officers may carry a concealed firearm. This act supersedes state level prohibitions on concealed carry that would otherwise apply to law enforcement officers, but it does not override any federal laws. Nor does the act supersede or limit state laws that permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property or prohibit or restrict the possession of firearms on any state or local government property, installation, building, base, or park.

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<sup>49</sup> See CRS Report RL31143, *Firearms Prohibitions and Domestic Violence Convictions: The Lautenberg Amendment*, by T.J. Halstead.