



# Gun Control Proposals in the 113<sup>th</sup> Congress: Universal Background Checks, Gun Trafficking, and Military Style Firearms

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## Summary

Congress has debated the efficacy and constitutionality of federal regulation of firearms and ammunition, with strong advocates arguing for and against greater gun control. The mass shooting in Newtown, CT, along with other mass shootings in Aurora, CO, and Tucson, AZ, has restarted the national gun control debate. Members of the 113<sup>th</sup> Congress could consider a range of legislative proposals, including several that President Barack Obama has announced his support for as part of his national gun violence reduction plan. The most salient of the President's legislative proposals would (1) require background checks for intrastate firearms transfers between unlicensed persons at gun shows and nearly any other venue, otherwise known as the "universal background checks" proposal; (2) increase penalties for gun trafficking; and (3) reinstate and strengthen an expired federal ban on detachable ammunition magazines of over 10-round capacity and certain "military style" firearms commonly described as "semiautomatic assault weapons," which are designed to accept such magazines.

In response to Newtown and the President's plan, the Senate Committee on the Judiciary considered and approved the following four gun control-related bills:

- Stop Illegal Trafficking in Firearms Act of 2013 (S. 54), on March 7, 2013, to establish standalone straw purchasing and gun trafficking prohibitions and increase related penalties;
- Fix Gun Checks Act of 2013 (S. 374), on March 11, to require background checks for private, intrastate firearms transfers, and encourage states to provide the Federal Bureau of Investigation (FBI) with greater access to records on prohibited persons for background check purposes; and to authorize additional appropriations of \$100 million annually (FY2014-FY2018) for funding grants to states to improve access to firearms-related prohibiting records—especially for persons adjudicated "mentally defective" and persons convicted of misdemeanor crimes of domestic violence;
- School Safety Enhancements Act of 2013 (S. 146), on March 11, to authorize annual appropriations of up to \$40 million for the next 10 years for the Secure Our Schools grant program under the Department of Justice (DOJ) Community Oriented Policing Services (COPS); and
- Assault Weapons Ban of 2013 (S. 150), on March 14, to ban permanently the further production or importation of certain semiautomatic firearms, as well as high-capacity magazines.

The votes on universal background checks and assault weapons (S. 374 and S. 150) split down party lines (10-8). Senator Charles E. Grassley, the committee's ranking minority Member, voted for the gun trafficking bill (S. 54), making the vote on that measure 11-7. The school safety bill (S. 146) was approved by a vote of 14-4.

On March 21, 2013, Senator Harry Reid introduced the Safe Communities, Safe Schools Act of 2013 (S. 649). This bill includes the language of S. 54, S. 374, and S. 146. However, S. 649 does not include the language of S. 150. Senator Dianne Feinstein, the principal sponsor of S. 150, has indicated that Senator Reid has assured her that he would allow her to offer an "assault weapons" amendment when the Senate considers the gun control proposals noted above. This report examines these proposals and provides an overview of federal firearms law.

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## Developments in the 113<sup>th</sup> Congress

In the wake of the Newtown, CT, tragedy, the 113<sup>th</sup> Congress could consider several legislative proposals supported by the Administration. In this mass shooting, a 20-year-old male entered Sandy Hook Elementary School and shot 20 first graders and 6 adult staff members to death. He allegedly also shot his mother to death. According to press accounts, the firearms he used in the shooting included a .223 caliber Bushmaster (M16-style) semiautomatic rifle, and two semiautomatic pistols, a 10mm Glock and 9mm Sig Sauer.<sup>1</sup> These firearms were reportedly owned legally by his mother, and were registered under Connecticut state law.<sup>2</sup> When first responders entered the building, the gunman, who reportedly suffered from profound mental incapacity, shot himself to death with the 10mm Glock pistol.<sup>3</sup> According to a Connecticut State Medical Examiner, the shooter mostly used the Bushmaster rifle, reloading it with detachable 30-round magazines several times, to murder the children and staff at Sandy Hook.<sup>4</sup> “Dozens and dozens” of spent .223 cartridges were found at the crime scene, along with additional, unused magazines filled with ammunition.<sup>5</sup>

### Legislative Action

On January 16, 2013, the White House released a document entitled: *Now is the Time: The President’s Plan to Protect our Children and our Communities by Reducing Gun Violence*.<sup>6</sup> This plan includes several legislative proposals, the most salient of which would (1) require background checks for intrastate firearms transfers between unlicensed persons at gun shows and nearly any other venue (otherwise known as the “universal background checks” proposal); (2) increase penalties for gun trafficking; and (3) reinstate and strengthen an expired federal ban on detachable ammunition magazines of over 10-round capacity and certain “military style” firearms commonly described as “semiautomatic assault weapons,” which are designed to accept such magazines.<sup>7</sup>

In alignment with the President’s plan, the Senate Committee on the Judiciary approved the following four gun control-related bills:

- Stop Illegal Trafficking in Firearms Act of 2013 (S. 54), on March 7, 2013, to establish standalone straw purchasing and gun trafficking prohibitions and increase related penalties;

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<sup>1</sup> Emily Flitter and Dan Burns, “Connecticut Gunman Had Hundreds of Rounds; Obama to Console Newtown,” *Reuters*, December 16, 2012.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> Paul Duggan, David A. Fahrenthold, and Steve Vogel, “Obama Speaks at Memorial in Shaken Town,” *Washington Post*, December 17, 2012, p. A1 and A11.

<sup>5</sup> *Ibid.*

<sup>6</sup> White House, *Now is the Time: The President’s Plan to Protect our Children and our Communities by Reducing Gun Violence*, January 16, 2013, <http://www.wh.gov/now-is-the-time>.

<sup>7</sup> *Ibid.*

- Fix Gun Checks Act of 2013 (S. 374), on March 11, to require background checks for private firearms transfers, and encourage states to provide the Federal Bureau of Investigation (FBI) with greater access to records on prohibited persons for background check purposes; and to authorize additional appropriations of \$100 million annually (FY2014-FY2018) for funding grants to states to improve access to firearms-related prohibiting records—especially for persons adjudicated “mentally defective” and persons convicted of misdemeanor crimes of domestic violence;
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The votes on universal background checks and assault weapons (S. 374 and S. 150) split down party lines (10-8). Senator Charles E. Grassley, the committee’s ranking minority Member, voted for the gun trafficking bill (S. 54), making the vote on that measure 11-7. The school safety bill (S. 146) was approved by a vote of 14-4.

On March 21, 2013, Senator Harry Reid introduced the Safe Communities, Safe Schools Act of 2013 (S. 649). This bill includes the language of S. 54, S. 374, and S. 146. Although S. 649 does not include the language of S. 150, according to press accounts, Senator Dianne Feinstein has indicated that Senator Reid has assured her that he would allow her to offer an “assault weapons” amendment when the Senate considers the proposals described above.<sup>8</sup>

## **Executive Action**

On December 20, 2012, President Barack Obama established a Task Force on Gun Violence under the leadership of Vice President Joseph R. Biden. On January 16, 2013, the Administration released a plan to reduce gun violence that includes 18 legislative proposals and 23 executive actions.<sup>9</sup> For the purposes of this report, the most salient legislative proposals include the following:

- require background checks for private firearms transfers at gun shows and any other venue, or “universal background checks”;
- strengthen and reinstate a ban of semiautomatic assault weapons and magazines of over 10 rounds (cartridges);
- increase penalties for gun trafficking;
- re-examine and strengthen restrictions on armor piercing ammunition;

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<sup>8</sup> Ed O’Keefe and Philip Rucker, “Assault Weapons Ban Dropped from Gun Bill,” *Washington Post*, March 20, 2013, p. A5.

<sup>9</sup> White House, *Now is the Time: The President’s Plan to Protect our Children and our Communities by Reducing Gun Violence*, January 16, 2013, <http://www.wh.gov/now-is-the-time>.

- Senate confirmation of Minnesota U.S. Attorney B. Todd Jones as Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); and
- repeal an ATF appropriations rider and strengthen that agency's authority to deny importation permits for 50-year-old military surplus firearms that fall under the regulatory definition of "curio or relic."<sup>10</sup>

Other legislative proposals primarily consist of requests for additional funding to

- maintain 15,000 police officers on the streets of the United States, otherwise known as the COPS (Community Oriented Policy Services) program<sup>11</sup> (\$4 billion);
- train state, local, tribal, and territorial law enforcement officers in responding to shootings (\$14 million);
- allow the Centers for Disease Control (CDC) to conduct additional research on the possible nexus between video games, media images, and violence (\$10 million);
- expand the National Violent Death Reporting System (NVDRS)<sup>12</sup> from 18 to all 50 states;
- improve incentives to encourage states to provide the FBI with prohibiting records on individuals who fall under the definition of "mental defective" (\$50 million); and
- improve school security (\$230 million).

The Administration's 23 executive actions, under the plan, range from directing the Attorney General to work with U.S. Attorneys to ensure that firearms-related criminal cases are prosecuted to directing the CDC to research the causes and prevention of gun violence.<sup>13</sup>

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<sup>10</sup> For FY1996 and every fiscal year after, Congress has included a limitation on the ATF salaries and expenses appropriation that prohibits that agency of changing the regulatory definition of "curios or relics." This provision was in response to an ATF proposal to amend the definition of "curio or relic," because of concerns about the volume of surplus military firearms that could be imported into the United States. ATF has consistently opposed the importation of certain World War II era, surplus military firearms.

<sup>11</sup> For further information on COPS, see CRS Report RL33308, *Community Oriented Policing Services (COPS): Background and Funding*, by Nathan James.

<sup>12</sup> For FY2002, Congress appropriated funding for CDC to establish the NVDRS, a system that has been built upon a pilot program sponsored by private foundations and coordinated by the Harvard School of Public Health's Injury Control Research Center.

The NVDRS aims to create a comprehensive individual-level data set in each state that links data from medical examiners and coroners, police departments, death certificates, and crime labs on each death—resulting from violence (homicide, suicide, unintentional firearms-related deaths, and undetermined causes).

*See* National Research Council, *Firearms and Violence: A Critical Review* (Washington, DC: 2005), p. 33.

<sup>13</sup> For FY1997-FY2012, Congress has included a provision in the Departments of Health and Human Services, Labor, and Education appropriations that has prohibited that agency from spending any appropriated funding to "advocate or promote gun control." This rider is known as the "Dickey amendment," for the Member, Representative Jay Dickey, who attempted to redirect \$2.6 million away from a CDC firearms injury program during committee markup or the FY1997 Departments of Labor, Health and Human Services (HHS), and Education Appropriations bill (H.R. 3755). While the Dickey amendment was rebuffed (6-8), the committee chairman, Representative Robert L. Livingston, inserted into the reported bill the following limitation on the CDC salaries and expenses appropriation language: "That (continued...)"

This report does not focus on the President’s plan in its entirety. Rather, this report provides an overview of federal firearms laws as a basis for examining the three most salient legislative proposals included in the President’s plan. Those proposals would (1) require background checks for intrastate firearms transfers between unlicensed persons at gun shows and nearly any other venue, otherwise known as the “universal background checks” proposal; (2) increase penalties for gun trafficking; and (3) reinstate and strengthen an expired federal ban on detachable ammunition magazines of over 10-round capacity and certain “military style” firearms commonly described as “semiautomatic assault weapons,” which are designed to accept such magazines.

## **Federal Regulation of Firearms: Background**

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 firearms laws are stricter than federal law. For example, some states require permits to obtain firearms and impose a waiting period for firearms 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 and revolvers, which 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.

Machine guns—or fully automatic firearms—have been banned from private possession since 1986, except for those legally owned and registered with the Secretary of the Treasury as of May

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(...continued)

none of the funds made available for injury prevention and control at the Centers for Disease Control and Prevention may be used to advocate or promote gun control.” Report language noted further:

The bill [H.R. 3755] contains a limitation to prohibit the National Center for Injury Prevention and Control at the Centers for Disease for Disease Control from engaging in any activities to advocate or promote gun control. The CDC may need to collect data on the incidence of gun related violence, but the Committee does not believe that it is the role of the CDC to advocate or promote policies to advance gun control initiatives, or to discourage responsible private gun ownership. The Committee expects research in this area to be objective and grants to be awarded through an impartial peer review process. (H.Rept. 104-659, p. 49.)

This limitation was first enacted as part of the Omnibus Consolidated Appropriations Act, 1997 (P.L. 104-208; September 30, 1996; 110 Stat. 3009, 3009-244). For FY2012, Congress expanded this limitation so that it applies to all HHS funding in addition CDC in the Consolidated Appropriations Act, 2012 (P.L. 112-74; November 18, 2012; 125 Stat. 786, 1086 (Section 218), 1110 (Subsection501(c)). The Administration’s plan maintains that research on the causes of gun violence does not constitute “advocacy,” and such research would not be in violation of the Dickey amendment. For further information, see “Current Appropriations Provisions Regarding Domestic Gun Control,” CRS Congressional Distribution Memorandum, February 7, 2013. Available upon request.



19, 1986.<sup>14</sup> According to one estimate, as of November 2007, there were approximately 182,600 machine guns available for transfer to civilians in the United States based upon an audit of the ATF-maintained National Firearms Registry and Transfer Record (NFRTR).<sup>15</sup> Under the NFA, a machine gun is defined as:

any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term also includes the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.<sup>16</sup>

To deal in NFA firearms, a person is required to be a federally licensed gun dealer (federal firearms licensee, or “FFL”) under the Gun Control Act of 1968 (described below) and also be a special occupational taxpayer (SOT) under the NFA. Class I SOTs are importers of NFA firearms; Class II SOTs are manufacturers of NFA firearms; and Class III SOTs are dealers. NFA firearms are often referred to as Class III weapons, for Class III dealers. The NFA imposes a \$200 manufacturing tax and a \$200 transfer tax each time a firearm is transferred from an unlicensed individual.<sup>17</sup> For non-tax exempt transfers, ATF places a tax stamp on the tax paid transfer document upon the transfer’s approval. The transferee may not take possession of the firearm until he holds the approved transfer document. Private persons, who are not otherwise prohibited by law, may acquire an NFA firearm in one of three ways:

- a registered owner of an NFA firearm may apply for ATF approval to transfer the firearm to another person residing in the same state or to a FFL in another state;
- an individual may apply to ATF for approval to make and register an NFA firearm (except machine-gun); or
- an individual may inherit a lawfully registered NFA firearm.

It is a felony to receive, possess, or transfer an unregistered NFA firearm. Such offenses are punishable by a fine of up to \$250,000, imprisonment for up to 10 years, and forfeiture of the firearm and any vessel, vehicle, or aircraft used to conceal or convey the firearm.<sup>18</sup> To the extent it can be known, legally registered NFA machine guns are rarely, if ever, used in crime.

## **The Gun Control Act of 1968 (GCA)**

As stated in the GCA, the purpose of federal firearms 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

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<sup>14</sup> P.L. 99-308, §102(9); 100 Stat. 449, 452-453; codified at 18 U.S.C §922(o)(1).

<sup>15</sup> John Brown, “182,619—Is That All There Is,” *Small Arms Review*, vol. 13, no. 9, June 2010, p. 22.

<sup>16</sup> 26 U.S.C. §5845(b).

<sup>17</sup> Transfers of NFA-covered firearms incur a tax of \$200 except for those classified as “any other weapon,” which are taxed at a reduced \$5 rate. Certain NFA firearm transfers are tax-exempt. They include transfers to a lawful heir from an estate; transfers between federal firearms licensees, who are also SOTs; and transfers of “unserviceable firearms.”

<sup>18</sup> 26 U.S.C §§5861(d) and (j); 26 U.S.C §5872; 49 U.S.C §§781-788.

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. Under the GCA, the term “firearm” means:

any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (b) the frame or receiver of any such weapon; (c) any firearm muffler or firearm silencer; or (d) destructive device. Such term does not include an antique firearm.<sup>19</sup>

The GCA, as amended, contains the principal federal restrictions on domestic commerce in firearms 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 and 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 Attorney General 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.

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

### **Firearms Transfer and Possession Eligibility**

Under current law, there are nine classes of persons prohibited from shipping, transporting, receiving, or possessing firearms or ammunition:

- persons convicted in any court of a crime punishable by imprisonment for a term exceeding one year;
- fugitives from justice;
- unlawful users or addicts of any controlled substance as defined in Section 102 of the Controlled Substances Act (21 U.S.C. §802));
- persons adjudicated as “mental defective” or committed to mental institutions;<sup>20</sup>

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<sup>19</sup> 18 U.S.C. §921(a)(3).

<sup>20</sup> Under 27 C.F.R. Section 478.11, the term “adjudicated as a mental defective” is defined to include a determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence or a mental illness, incompetency, condition, or disease, (1) is a danger to himself or others, or (2) lacks the mental capacity to manage his own affairs. The term also includes (1) a finding of insanity by a court in a criminal case and (2) those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to articles 50a and 72b of the Uniform Code of Military Justice, 10 U.S.C. Sections 850a, 876(b).

This definition was promulgated by an ATF final rule (*Federal Register*, vol. 62, no. 124, June 27, 1997, p. 34634).  
(continued...)

- unauthorized immigrants and nonimmigrant visitors (with exceptions in the latter case, which have changed—effective July 9, 2012—as described below);
- persons dishonorably discharged from the U.S. Armed Forces;
- persons who have renounced their U.S. citizenship;
- persons under court-order restraints related to harassing, stalking, or threatening an intimate partner or child of such intimate partner; and
- persons convicted of a misdemeanor crime of domestic violence.<sup>21</sup>

In addition, there is a 10<sup>th</sup> class of persons prohibited from shipping, transporting, or receiving firearms or ammunition:

- persons under indictment in any court of a crime punishable by imprisonment for a term exceeding one year.<sup>22</sup>

It also unlawful for any person to sell or otherwise dispose of a firearm or ammunition to any of the prohibited persons enumerated above, if the transferor (seller) has reasonable cause to believe that the transferee (buyer) is prohibited from receiving those items.<sup>23</sup>

## **Age Eligibility**

Federal firearms licensees are prohibited from transferring a long gun or long gun ammunition to anyone less than 18 years of age, or a handgun or handgun ammunition to anyone less than 21 years of age.<sup>24</sup> Since 1994, moreover, it has been a federal offense for any unlicensed person to transfer a handgun or handgun ammunition to anyone less than 18 years of age. It has also been illegal for anyone under 18 years of age to possess a handgun or handgun ammunition (there are exceptions to this law related to employment, ranching, farming, target practice, and hunting).<sup>25</sup>

## **Licensed Dealers and Firearms Transfers**

Persons who are federally licensed to be engaged in the business of manufacturing, importing, or selling firearms are known as “federal firearms licensees (FFLs).” Under current law, FFLs may ship, transport, and receive firearms that have moved in interstate and foreign commerce. FFLs are currently required to verify with the FBI through a background check that non-licensed persons are eligible to possess a firearm before subsequently transferring a firearm to them. FFLs must also verify the identity of non-licensed transferees by inspecting a government-issued identity document (e.g., a driver’s license).

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It is noteworthy that it is possible for individuals to become eligible after being disqualified under §922(g)(4). For example, under the enacted NICS improvement amendments, VA beneficiaries who have been determined to be mental defectives could appeal for administrative relief and possibly have their gun rights restored if they could demonstrate that they were no longer afflicted by a disqualifying condition.

<sup>21</sup> 18 U.S.C. §922(g).

<sup>22</sup> 18 U.S.C. §922(n).

<sup>23</sup> 18 U.S.C. §922(d).

<sup>24</sup> 18 U.S.C. §922(b)(1).

<sup>25</sup> 18 U.S.C. §922(x).

FFLs may engage in interstate transfers of firearms among themselves without conducting background checks. Licensees may transfer long guns (rifles and 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. FFLs, however, may *not* transfer handguns to unlicensed out-of-state residents.<sup>26</sup> Since 1986, there have been no similar restrictions on the interstate transfer of ammunition. Furthermore, a federal firearms license is not required to sell ammunition; however, such a license is required to either manufacture or import ammunition.

Also, FFLs are required to submit “multiple sales reports” to the Attorney General if any person purchases two or more handguns within five consecutive business days. As described below, FFLs are required to maintain records on all acquisitions and dispositions of firearms. They are obligated to respond to ATF agents requesting firearms tracing information within 24 hours. Under certain circumstances, ATF agents may inspect, without search warrants, their business premises, inventory, and gun records.

### **Private Firearms Transfers**

Unlicensed persons are generally prohibited from acquiring firearms from out-of-state sources (except for long guns acquired from FFLs under the conditions described above).<sup>27</sup> Unlicensed persons are also prohibited from transferring firearms to anyone who they have reasonable cause to believe are not residents of the state in which the transaction occurs.<sup>28</sup> In addition, since 1986 it has been a federal offense for non-licensees to knowingly transfer a firearm or ammunition to prohibited persons.<sup>29</sup> It is also notable that firearms or ammunition transfers initiated through the Internet are subject to the same federal laws as transfers initiated in any other manner.<sup>30</sup>

## **National Instant Criminal Background Check System (NICS) Background Checks**

On November 30, 1998, the FBI activated the National Instant Criminal Background Check System (NICS) to facilitate firearms-related background checks, when the permanent provisions of the Brady Act became effective. Through NICS, FFLs conduct background checks on non-licensee applicants for both handgun and long gun transfers.

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<sup>26</sup> 18 U.S.C. §922(b)(3).

<sup>27</sup> 18 U.S.C. §922(a)(3).

<sup>28</sup> 18 U.S.C. §922(a)(5).

<sup>29</sup> 18 U.S.C. §922(d).

<sup>30</sup> For further information, see CRS Report R42687, *Internet Firearm and Ammunition Sales*, by Vivian S. Chu.

**Table I. Brady Background Checks for Firearms Transfers and Permits**

1998-2010

Year	Total Annual Checks	Denials	FBI Checks	S&L Checks <sup>a</sup>	FBI Denials <sup>a</sup>	POC Denials <sup>b</sup>
1998 <sup>c</sup>	893,127	18,647	507,000	386,127	8,836	9,811
1999	8,621,315	204,455	4,538,000	4,083,315	81,000	123,455
2000	7,698,643	153,087	4,260,270	3,438,373	66,808	86,279
2001	7,957,926	150,500	4,291,926	3,666,000	64,500	86,000
2002	7,805,792	135,973	4,248,893	3,556,899	60,739	75,234
2003	7,831,146	126,181	4,462,801	3,368,345	61,170	65,011
2004	8,083,809	125,842	4,685,018	3,398,791	63,675	62,167
2005	8,277,873	131,916	4,952,639	3,325,234	66,705	65,211
2006	8,612,201	134,442	5,262,752	3,349,449	69,930	64,512
2007	8,658,245	135,817	5,136,883	3,521,362	66,817	69,000
2008	9,900,711	147,080	5,813,249	4,087,462	70,725	76,355
2009	10,764,237	150,013	6,083,428	4,680,809	67,324	82,689
2010	10,404,563	152,850	6,037,394	4,367,169	72,659	80,191
Total	105,509,588	1,766,803	60,280,253	45,279,335	820,888	945,915

**Source:** U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, available at <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbse&sid=13>.

**Notes:** On November 30, 1998, the interim provisions of the Brady Handgun Violence Prevention Act (P.L. 103-159) ended, and the permanent provisions were implemented when the FBI stood up the National Instant Criminal Background Check System (NICS).

- a. S&L Checks = State & Local Checks.
- a. In non-point of contact (non-POC) states, federal firearms licensees contact the FBI directly to conduct NICS background checks.
- b. In point of contact (POC) states, federal firearms licensees contact a state agency and, in turn, the state agency contacts the FBI to conduct NICS background checks.
- c. Background checks were essentially only conducted for a month (December) during calendar year 1998.

As part of NICS checks, the system will respond to an FFL or state official with a NICS Transaction Number (NTN) and one of three outcomes: (1) “proceed” with transfer or permit/license issuance, because a prohibiting record was not found; (2) “denied,” indicating a prohibiting record was found; or (3) “delayed,” indicating that the system produced information that suggested there could be a prohibiting record. Under the last outcome, a firearms transfer may be “delayed” for up to three business days while NICS examiners attempt to ascertain whether the person is prohibited.<sup>31</sup> At the end of the three-day period, an FFL may proceed with the transfer at his discretion if he has not heard from the FBI about the matter. The FBI, meanwhile, will continue to work the NICS adjudication for up to 90 days, during which the transaction is considered to be in an “open” status. If the FBI ascertains that the person is not in a prohibited status at any time during the 90 days, then the FBI will contact the FFL through NICS

<sup>31</sup> Accessing Records in the System, 28 C.F.R. §25.6.

with a proceed response. If the person is subsequently found to be prohibited, the FBI will inform ATF and a firearms retrieval process will be initiated.

Under no circumstances is an FFL informed about the prohibiting factor upon which a denial is based. Under the Brady background check process, however, a denied person may challenge the accuracy of the underlying record(s) upon which his denial is based. He would initiate this process by requesting (usually in writing) the reason for the denial from the agency that conducted the NICS check (the FBI or POC). The denying agency has five business days to respond to the request. Upon receipt of the reason and underlying record for the denial, the denied person may challenge the accuracy of that record. If the record is found to be inaccurate, the denying agency is legally obligated to correct that record.

As with other screening systems, particularly those that are name-based, false positives occur as a result of Brady background checks, but the frequency of these misidentifications is unreported. Nevertheless, the FBI has taken steps to mitigate false positives. In July 2004, DOJ issued a regulation that established the NICS Voluntary Appeal File (VAF), which is part of the NICS Index (described above).<sup>32</sup> DOJ was prompted to establish the VAF to minimize the inconvenience incurred by some prospective firearms transferees (purchasers) who have names or birth dates similar to those of prohibited persons. So as not to be misidentified in the future, these persons agree to authorize the FBI to maintain personally identifying information about them in the VAF as a means to avoid future delayed transfers. Current law requires that NICS records on approved firearm transfers, particularly information personally identifying the transferee, be destroyed within 24 hours.

Under the GCA, there is also a provision that allows the Attorney General (previously, the Secretary of the Treasury) to consider petitions from a prohibited person for “relief from disabilities” and have his firearms transfer and possession eligibility restored.<sup>33</sup> Since FY1993, however, a rider on the ATF annual appropriations for salaries and expenses has prohibited the expenditure of any funding provided under that account on processing such petitions.<sup>34</sup> While a prohibited person arguably could petition the Attorney General, bypassing ATF, such an alternative has never been successfully tested. As a result, the only way a person can reacquire his lost firearms eligibility is to have his civil rights restored or disqualifying criminal record(s) expunged or set aside, or to be pardoned for his crime.

As shown in **Table 1**, under the permanent provisions of the Brady Act (December 1998 through 2010), more than 105.5 million checks were completed, resulting in nearly 1.8 million denials, for a denial rate of 1.7%. More than 60.3 million of these checks were completed entirely by the FBI for non-point of contact (non-POC) states, the District of Columbia, and four territories. Those checks resulted in a denial rate of 1.4%. Nearly 45.3 million checks were conducted by full or partial point of contact (POC) states. Those checks resulted in a higher denial rate of 2.1%.

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<sup>32</sup> Final Rule, National Instant Criminal Background Check System Regulation, 69 *Federal Register* 43892 (July 23, 2004) (codified at 28 C.F.R. §25.10(g)).

<sup>33</sup> 18 U.S.C. §925(c). See also Relief from Disabilities Under the Act, 27 C.F.R. §478.144.

<sup>34</sup> For FY1993, see P.L. 102-393; 106 Stat. 1732 (1992). For FY2012, see P.L. 112-55; 125 Stat. 552, 609 (November 18, 2011). The FY2012 limitation provides: “That none of the funds appropriated herein shall be available to investigate or act upon applications for relief from Federal firearms disabilities under 18 U.S.C. 925(c).”

## Universal Background Checks

As noted above, the President's plan to reduce gun violence includes a legislative proposal to require "universal background checks." Under current law, intrastate transfers between unlicensed persons, who are not "engaged in the business" of dealing in firearms "as a regular course of ... business with the principal objective of livelihood and profit," are not covered by the recordkeeping or the background check provisions of the GCA. Nevertheless, such private transactions and other matters such as possession, registration, and the issuance of licenses to firearms owners may be covered by state laws or local ordinances.

Proponents of greater gun control view the fact that unlicensed persons engaging in intrastate firearms transfers are not subject to the recordkeeping and background check requirements of the GCA as a "loophole" in the law, particularly within the context of gun shows. This circumstance arguably flowed from two developments. One, in 1986, Congress amended the GCA to allow FFLs to transfer firearms to unlicensed persons at gun shows located within the state of their business; however, prohibitions on interstate transfers still applied. Two, in 1994, Congress passed the "Brady Act" and amended the GCA to require background checks be completed for all unlicensed persons seeking to obtain firearms from FFLs. As described above, in November 1998, the FBI brought NICS online to facilitate firearms background checks whenever an FFL transfers a firearm to an unlicensed person. However, federal law does not require background checks for intrastate (in-state) firearms transfers between unlicensed persons.

In the 113<sup>th</sup> Congress, several proposals have been introduced that would require background checks for private, intrastate firearms transfers between unlicensed persons at gun shows or any other venue. These proposals would require an unlicensed transferor (seller) to engage the services of an FFL, who would conduct a NICS check on the unlicensed transferee (buyer). FFLs facilitating such transfers would also be required to maintain a record of all transfers in a bound volume, as well as individual transfers on a form prescribed by the Attorney General. For example, Senator Frank Lautenberg and Representative Carolyn McCarthy have introduced similar but separate proposals to require background checks for firearms transfers between unlicensed persons at gun shows (S. 22 and H.R. 141). Representative James P. Moran included a provision that would require background checks for firearms transfers between unlicensed persons at any venue in the NRA Members' Gun Safety Act of 2013 (H.R. 21), as did Representative McCarthy in the Fix Gun Checks Act (H.R. 137).

On March 11, 2013, the Senate Committee on the Judiciary approved and ordered reported the Fix Gun Checks Act of 2013 (S. 374). This bill too would require background checks for private firearms transfers. It would re-designate 18 U.S.C. Section 922(t), the permanent NICS background check provisions, Section 922(s), and amend Section 922(t) to read:

Beginning on the date 180 days after the date of enactment of this subsection, it shall be unlawful for any person who is not licensed under this chapter [44; 18 USC §921 et seq.] to transfer a firearm to any person who is not licensed under this chapter, unless a licensed importer, licensed manufacturer, or licensed dealer has first taken possession of the firearm for the purpose of complying with subsection (s). Upon taking possession of the firearm, the licensee shall comply with all requirements of this chapter as if the licensee were transferring the firearm from the licensee's inventory to the unlicensed transferee.

Exceptions are made for bona fide gifts between spouses, parents and their children, siblings, or grandparents and grandchildren; inheritance and similar operations of the law; as well as

temporary transfers in the home of a private person, for hunting and sporting purposes, inheritance, and examination and evaluation. The bill would require that the Attorney General, or his designee, set a maximum fee that a federal firearms licensee could charge for conducting such a background check for “private party” firearms transfers.<sup>35</sup> Private persons who transfer a firearm in violation of this provision would face a fine and possible imprisonment for not more than one year. The language of S. 374 has been included in the Safe Communities, Safe Schools Act of 2013 (S. 649).

## Improving Background Checks

In the wake of the Virginia Tech tragedy,<sup>36</sup> the 110<sup>th</sup> Congress passed the NICS Improvement Amendments Act of 2007 (P.L. 110-180).<sup>37</sup> This act includes provisions designed to encourage states, tribes, and territories (states) to make available to the Attorney General certain records related to persons who are disqualified from acquiring a firearm, particularly records related to domestic violence misdemeanor convictions and restraining orders, as well as mental health adjudications. To accomplish this, the act establishes a framework of incentives and disincentives, whereby the Attorney General is authorized to either waive a grant match requirement or reduce a law enforcement assistance grant depending upon a state’s compliance with the act’s goals of bringing firearms-related disqualifying records online.

Under P.L. 110-180, Congress authorized the Attorney General to make additional grants to states to improve further electronic access to records, including court disposition and corrections records, which are necessary to fully facilitate NICS background checks. Under the act, the Attorney General is required to report annually to Congress on federal department and agency compliance with the act’s provisions. Because DOJ’s Bureau of Justice Statistics (BJS) administers this program, the BJS Director is required to report annually on the progress that states are making in providing reasonable estimates of the number of firearms-related disqualifying records that they have jurisdiction over, as well as the number of those records that have been made accessible to the FBI for NICS background check purposes.<sup>38</sup> BJS has designated this grant program the “NICS Act Record Improvement Program (NARIP),” although congressional appropriations documents simply refer to it as “NICS improvement.”

As shown in **Table 2**, Section 103(e) of the act included an authorization for appropriations for FY2009 through FY2013. The act directs that the grants provided under this authorization be made “in a manner consistent” with National Criminal History Improvement Program. The act also requires that between 3% and 10% of each grant be allocated for a relief from disabilities program for persons adjudicated mentally defective. Also, as shown in **Table 2**, Section 301(e) of the act included an additional authorization for appropriations for the same fiscal to improve state

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<sup>35</sup> Also of note, ATF has issued an open letter to FFLs on facilitating background checks for private party transfers, and updated procedures for FFLs who voluntarily facilitate background checks for private transfers. These documents are posted at <http://www.atf.gov/regulations-rulings/procedures/031513-open-letter-atf-procedure-2013-1.pdf>, and <http://www.atf.gov/regulations-rulings/procedures/031513-procedure-2013-1.pdf>.

<sup>36</sup> On April 16, 2007, a student at Virginia Polytechnic Institute and State University shot 32 people to death and wounded many others.

<sup>37</sup> P.L. 110-180; January 8, 2008; 121 Stat. 2559.

<sup>38</sup> See U.S. Department of Justice, *Report to Congress Pursuant to the NICS Improvement Amendments Act of 2007 (P.L. 110-180)*, July 1, 2010.



court computer systems to improve timeliness of criminal history dispositions. Under both authorizations, up to 5% of all grants may be set aside to provide assistance to tribal governments.

**Table 2. NICS Improvement Authorizations and Appropriations under P.L. 110-180**

(dollars in millions)

Fiscal Year	Section 103(e)	Section 301(e)	Actual Appropriation
FY2009	125	62.5	10.000
FY2010	250	125.0	20.000
FY2011	250	125.0	16.567
FY2012	125	62.5	5.000
FY2013	125	62.5	12.000
Total	875	437.5	63.567

As an additional incentive, Section 102 of P.L. 110-180 also provides that on January 8, 2011, any state that provides at least 90% of disqualifying records is eligible for a waiver of the 10% match requirement under NCHIP for two years.<sup>39</sup> To be eligible for the waiver, as well as Section 103 grants, states are required to provide BJS with a reasonable estimate of the number of NICS-related disqualifying records that they hold within 180 days of enactment (July 6, 2008).

To further encourage compliance, Section 104 of P.L. 110-180 includes a schedule of discretionary and mandatory reductions in Byrne Justice Assistance Grants (JAG)<sup>40</sup> for states that do not provide certain percentages of disqualifying records:

- for a two-year period (January 8, 2011, through January 8, 2013), the Attorney General may withhold up to 3% of JAG funding from any state that provides less than 50% of disqualifying records;
- for a five-year period (January 8, 2013, through January 8, 2018), the Attorney General may withhold up to 4% of JAG funding from any state that provides less than 70% of disqualifying records; and
- after January 8, 2018, the Attorney General is required to withhold 5% of JAG funding from any state that provides less than 90% of disqualifying records.

The Attorney General's assessment of a state's progress is to be based upon the reasonable estimates that the state itself is required to provide under the act for the purposes of implementing the Section 103 grants and the Section 102 NCHIP waiver (discussed above).<sup>41</sup> The act also

<sup>39</sup> For FY2005-FY2010, BJS invoked its discretionary authority to increase the match requirement to 20%. For FY2011, BJS reportedly reduced the match requirement to 10%, the percentage match requirement set out under the Crime Identification Technology Act (CITA; P.L. 105-251); CRS conversation with BJS on March 7, 2011.

<sup>40</sup> For further information, see CRS Report RS22416, *Edward Byrne Memorial Justice Assistance Grant (JAG) Program*, by Nathan James.

<sup>41</sup> As of July 1, 2010, 41 states and 1 territory had provided estimates to DOJ. As of December 31, 2009, 68 federal departments or agencies had also responded to a DOJ survey related to their obligations under P.L. 110-180. Twenty-two reported possessing no disqualifying information. Twenty-three reported possessing secondary disqualifying information (e.g., employment background check investigative results). Ten agencies claimed to create and possess disqualifying information. And, ATF was reviewing those claims to determine whether that information was relevant to a NICS background check. Fourteen agencies needed further clarification from DOJ. See U.S. Department of Justice, (continued...)

allows the Attorney General to waive the mandatory 5% cuts if a state provides substantial evidence that it is making reasonable compliance efforts.

The Senate-reported Fix Gun Checks Act of 2013 (S. 374) would authorize appropriations of \$100 million annually for FY2014-FY2018 to assist state and tribal governments with activities related to providing the FBI with greater accessibility to records on prohibited persons. For example, grants provided under this provision could be used for the following purposes:

- creating electronic systems, which provide accurate and up-to-date information that is directly related to NICS checks, including court disposition and corrections records;
- assisting states in establishing or enhancing their own capacities to perform NICS background checks;
- supplying accurate and timely information to the Attorney General concerning final dispositions of criminal records to databases accessed by NICS;
- supplying accurate and timely information to the Attorney General and FBI—solely for NICS checks—concerning the identity of persons who are prohibited from obtaining a firearm because they have been adjudicated as mental defective or committed to mental institutions;
- supplying accurate and timely court orders and records of misdemeanor crimes of domestic violence for inclusion in federal and state law enforcement databases used to conduct NICS background checks; and
- collecting and analyzing data needed to demonstrate levels of state compliance with the act.

In addition, S. 374 would amend P.L. 110-180 to adjust the timeline of JAG grants as follows for states that do not provide greater access to prohibiting records:

- for a two-year period following the regulatory implementation of the reauthorized NARIP program, the Attorney General would be authorized to withhold up to 3% of JAG funding from any state that provides less than 50% of disqualifying records;
- for the next three-year period, the Attorney General would be authorized to withhold up to 4% of JAG funding from any state that provides less than 70% of prohibiting records; and
- thereafter, the Attorney General would be required to withhold 5% of JAG funding from any state that provides less than 90% of prohibiting records.

In addition, S. 374 would amend the Brady Act (P.L. 103-159) to include federal courts under the provisions that require all federal agencies to provide the FBI with access to any and all prohibiting records.

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(...continued)

*Report to Congress Pursuant to the NICS Improvement Amendments Act of 2007 (P.L. 110-180), July 1, 2010, pp. 5-6.*

Although not related to background checks, S. 374 would also require all persons to report to the Attorney General a missing or stolen firearm with 24 hours of discovery.<sup>42</sup> Under current law, only FFLs are subject to such a requirement, and they are required to report to ATF such missing or stolen firearms within 48 hours of discovery.<sup>43</sup> The language of S. 374 has been included in the Safe Communities, Safe Schools Act of 2013 (S. 649).

## Gun Trafficking

Criminal “gun trafficking” essentially entails the movement or diversion of firearms from legal to illegal markets.<sup>44</sup> Therefore, it follows that the entire GCA is arguably a statutory framework designed to combat gun trafficking domestically, particularly interstate gun trafficking.<sup>45</sup> ATF has developed a nationwide strategy to reduce firearms trafficking and violent crime by preventing convicted felons, drug traffickers, and juvenile gang members from acquiring firearms from gun traffickers.<sup>46</sup> Gun trafficking cases include, but are not limited to, the following activities:

- straw purchasers or straw purchasing rings;<sup>47</sup>
- trafficking in firearms by corrupt federally licensed gun dealers;
- trafficking in firearms by unlicensed dealers (i.e., persons who deal in firearms illegally as the principal source of their livelihood);

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<sup>42</sup> Proposed 18 U.S.C. §922(aa).

<sup>43</sup> 18 U.S.C. 923(g)(6).

<sup>44</sup> U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, *Project Gunrunner: The Southwest Border Initiative*, ATF P 3317.6, March 2009, available at <http://www.atf.gov/publications/download/p/atf-p-3317-6.pdf>.

It is noteworthy that in 2006 the U.S. Sentencing Commission amended its guidelines to include the following definition: “firearms trafficking” occurred if an offender, “regardless of whether anything of value was exchanged,” engaged in the following activities: (1) transported, transferred, or otherwise disposed of two or more firearms to another individual, or received two or more firearms with the intent to transport, transfer, or otherwise dispose of firearms to another individual; and (2) knew or had reason to believe that such conduct would result in the transport, transfer, or disposal of a firearm to an individual (a) whose possession or receipt of the firearm would be unlawful; or (b) who intended to use or dispose of the firearm unlawfully. See United States Sentencing Commission, *Guidelines Manual*, §2K2.1(b)(5) (November 2006).

<sup>45</sup> With regard to Southwest Border gun trafficking, it is significant to note that the GCA does not include any provisions that directly address smuggling firearms out of the United States, across international boundaries, to countries like Mexico. However, the Arms Export Control Act (AECA; 22 U.S.C. §2778 et seq.) does include provisions that directly address such cross-border illegal arms trafficking.

<sup>46</sup> U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, Office of Field Operations, *Project Gunrunner: A Cartel Focused Strategy*, September 2010.

<sup>47</sup> As described in greater detail below, a “straw purchase” occurs when an individual poses as the actual transferee, but he is actually acquiring the firearm for another person. In effect, he serves as an illegal middleman. As part of any firearms transfer from a gun dealer to a private person, current law requires them both to fill out jointly an ATF Form 4473. In addition, the federally licensed gun dealer is required to verify the purchaser’s name, address, date of birth, and other information by examining a government-issued piece of identification, most often a driver’s license. Among other things, the purchaser attests on the ATF Form 4473 that he is not a prohibited person, and that he is the “actual transferee/buyer.” Hence, straw purchases are known as “lying and buying for the other guy.” Straw purchases are illegal and can be prosecuted under two provisions of the Gun Control Act of 1968, as amended (18 U.S.C. §922(a)(6) and 18 U.S.C. §924(a)(1)(A)). It is also illegal for any person to sponsor a straw purchase, because it is a federal offense for any person to aid, abet, counsel, command, or solicit a criminal act (18 U.S.C. §2); or engage in a conspiracy to defraud the United States (18 U.S.C. §371). It is also illegal to smuggle firearms out of the United States (18 U.S.C. §554).

- trafficking in stolen firearms; and
- trafficking of secondhand firearms acquired from unlicensed persons at gun shows, flea markets, and other private venues.<sup>48</sup>

Unlike other forms of contraband, almost all illegal firearms used criminally in the United States were diverted at some point from legal channels of commerce.<sup>49</sup> ATF works to reduce firearms-related crime with two approaches, industry regulation and criminal investigation.

## **ATF Regulation**

ATF regulates the U.S. firearms industry by inspecting FFLs to monitor their compliance with the GCA and NFA, and to prevent the diversion of firearms from legal to illegal channels of commerce. Despite its crime-fighting mission, ATF's business relationships with the firearms industry and larger gun-owning community have been a perennial source of tension, which from time to time has been the subject of congressional oversight.<sup>50</sup> Nevertheless, under current law, ATF Special Agents (SAs)<sup>51</sup> and Industry Operations Investigators (IOIs)<sup>52</sup> are authorized to inspect or examine the inventory and records of an FFL *without search warrants* under three scenarios:<sup>53</sup>

- in the course of a reasonable inquiry during the course of a criminal investigation of a person or persons other than the FFL;
- to ensure compliance with the record keeping requirements of the GCA—not more than once during any 12-month period, or at any time with respect to records relating to a firearm involved in a criminal investigation that is traced to the licensee; or
- when such an inspection or examination is required for determining the disposition of one or more firearms in the course of a criminal investigation.

By inspecting the firearms transfer records that FFLs are required by law to maintain, ATF SAs and IOIs are able to trace crime guns from their domestic manufacturer or importer to the first retail dealer that sold those firearms to persons in the general public, generating vital leads in

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<sup>48</sup> U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, *Following the Gun: Enforcing Federal Laws against Firearms Traffickers*, June 2000, p. 11.

<sup>49</sup> Greg Ridgeway, Glenn L. Pierce, and Anthony A. Braga et al., *Strategies for Disrupting Illegal Firearms Markets: A Case Study of Los Angeles*, RAND Corporation, 2008, p. 1.

<sup>50</sup> For example, in the 109<sup>th</sup> Congress, the House Judiciary Crime subcommittee held two oversight hearings examining ATF firearms enforcement operations at gun shows in Richmond, VA, in 2005. ATF agents reportedly provided state and local law enforcement officers with confidential information from background check forms (ATF Form 4473s), so that officers could perform residency checks on persons who had otherwise legally purchased firearms at those gun shows. Questions were also raised as to whether ATF agents had profiled gun purchasers at those gun shows on the basis of race, ethnicity, and gender. See U.S. Congress, House of Representatives, Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security, *Oversight Hearing on the Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE) Parts I & II: Gun Show Enforcement*, February 15 and 28, 2006. Also see Department of Justice, Office of the Inspector General, *The Bureau of Alcohol, Tobacco, Firearms and Explosives' Investigative Operations at Gun Shows, I-2007-007*, June 2007.

<sup>51</sup> For FY2012, Congress provided ATF with funding for 2,539 SA positions.

<sup>52</sup> For FY2012, Congress provided ATF with funding for 834 IOI positions.

<sup>53</sup> 18 U.S.C. §923(g)(1)(B).

homicide and other criminal investigations. In addition, by inspecting those records, ATF investigators sometimes discover evidence of corrupt FFLs dealing in firearms “off the books,” straw purchases, and other patterns of illegal behavior.

### Anatomy of a Firearms Straw Purchase

A “straw purchase” occurs when an individual poses as the actual transferee, but he is actually acquiring the firearm for another person. In effect, he serves as an illegal middleman. As part of any firearms transfer from an FFL to a private person, the GCA requires them to fill out jointly an ATF Form 4473. In addition, the FFL is required to verify the purchaser’s name, address, date of birth, and other information by examining a government-issued piece of identification, most often a driver’s license. Among other things, the purchaser attests on the ATF Form 4473 that he is not a prohibited person, and that he is the “actual transferee/buyer.”<sup>54</sup> Hence, straw purchases are known as “lying and buying for the other guy.” Straw purchases are illegal under two provisions of the GCA.

If the purchaser makes any false statement to a FFL with respect to any fact material to the lawfulness of a prospective firearms transfer, it is a federal offense punishable under 18 U.S.C. §922(a)(6). This provision also captures misrepresentations such as presenting false identity documents. Violations are punishable by up to 10 years of imprisonment.<sup>55</sup>

It is also illegal for any person knowingly to make any false statement with respect to the records that FFLs are required to maintain under 18 U.S.C. §924(a)(1)(A). This provision, however, also captures misrepresentations related to licensure and other benefits under the GCA. Violations are punishable by up to five years of imprisonment.<sup>56</sup>

Straw purchases, however, are not easily detected, because their illegality only becomes apparent when the straw purchaser’s true intent is revealed by a subsequent transfer to the actual buyer (third party). In many cases, the actual buyer may be a prohibited person, who would not pass a background check. Under such a scenario, if the straw purchaser knew or had reasonable cause to know the actual transferee was a prohibited person, he would also be in violation of 18 U.S.C. Section 922(d), for which the penalty is up to 10 years of imprisonment.<sup>57</sup> It would also be a violation for the prohibited person to possess or receive the firearm under 18 U.S.C. Section 922(g), for which the penalty is also up to 10 years of imprisonment.<sup>58</sup>

Alternatively, the actual buyer may not be a prohibited person, but may be seeking to acquire firearms without any paper trail linking him to the acquisition of the firearm. Under such a scenario, however, the straw purchase and subsequent illegal transfer would be even less apparent for several reasons. Under federal law, it is *legal* for an unlicensed, private person to purchase firearms and then resell them or give them away, as long as the

- transferees *are not* prohibited or underage persons;

<sup>54</sup> On the ATF Form 4473, question 11a reads: “Are you the actual transferee/buyer of the firearm(s) listed on this form? Warning: You are not the actual buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual buyer, the dealer cannot transfer the firearm(s) to you.”

<sup>55</sup> 18 U.S.C. §922(a)(2).

<sup>56</sup> 18 U.S.C. §924(a)(1)(D).

<sup>57</sup> 18 U.S.C. §924(a)(2).

<sup>58</sup> *Ibid.*

- transferors *do not* deal in firearms in a volume that would require licensing; and
- transfers are *intrastate*, as generally only federally licensed gun dealers can legally transfer firearms *interstate*.

Hence, individuals may buy several firearms at a time with the intention of giving those firearms away as presents to anyone, as long as they do not present those firearms to persons who are underage, out-of-state residents, or prohibited persons. They may also buy firearms and, then, sell those firearms at any time, as long as selling firearms is not the principal objective of their livelihood and profit, in which case they would be required to be federally licensed to deal in firearms. Furthermore, no federal background checks are required for recipients of subsequent intrastate firearms transfers.

On the other hand, if the suspected straw purchaser were observed departing the licensed gun dealer's place of business and traveling immediately to another locale, where he transferred the firearm(s) to another person, there would be a reasonable suspicion that he was a straw purchaser. However, the actual buyer would not have committed a crime unless it could be proven that he had sponsored the straw purchase.<sup>59</sup> Usually, such illegal arrangements become clear when the straw purchaser is interviewed by agents and admits to having bought the firearms for the third party, non-prohibited person. Moreover, depending on the time that elapses between the initial straw purchases and subsequent transfers to the actual buyer (third party), the illegality of the transfers may not become apparent until the actual buyer's true intent is revealed, when he either transports those firearms across state lines to be sold or bartered, attempts to smuggle them across an international border, or engages in some other illegal act.

Sometimes, the behavior of the prospective transferee (straw purchaser) may raise reasonable suspicions. For example, during a controversial ATF Phoenix-based investigation known as "Operation Fast and Furious," several of the individuals under indictment made multiple purchases from the same FFL of multiple semiautomatic firearms. Raising suspicions further, they paid for these firearms with thousands of dollars in cash. Indeed, FFLs contacted ATF about these suspicious transfers, prompting the investigation. They did so, in part, because they realized that these firearms might be traced back to their businesses and they probably wanted to avoid any negative attention that those traces might bring back on them. It is notable that if an FFL believes a firearms transfer to be suspicious, he may choose not to sell those firearms to the individuals in question. If he should proceed with the transfer, however, as long as he had conducted the required criminal background check on the prospective buyer, and he and the prospective buyer had filled out the proper paperwork, his obligations under federal law would have been fulfilled.

In summation, with regard to interstate transfers, it is unlawful for any person who is not federally licensed to deal in firearms to transport or receive a firearm into his own state of residence that was obtained in another state.<sup>60</sup> In addition, it is unlawful for any person who is not federally licensed to deal in firearms to deliver a firearm to another unlicensed person who resides in a state other than the transferor's state of residence.<sup>61</sup> Violations of either provision are punishable by a fine and/or not more than five years of imprisonment.<sup>62</sup> It is also unlawful to smuggle

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<sup>59</sup> It is unlawful for any person to aid, abet, counsel, command, or solicit a criminal act (18 U.S.C. §2).

<sup>60</sup> 18 U.S.C. §922(a)(3).

<sup>61</sup> 18 U.S.C. §922(a)(5).

<sup>62</sup> 18 U.S.C. §924 (a)(1)(D).

firearms, or any other merchandise contrary to U.S. law from the United States.<sup>63</sup> Violations are punishable by a fine and/or not more than 10 years of imprisonment.<sup>64</sup>

### **Federal Prosecutions under 18 U.S.C. Sections 922(a)(6) and 924(a)(1)(A)**

According to the Government Accountability Office (GAO), the largest percentage of Southwest Border gun trafficking cases is comprised of multiple straw purchases.<sup>65</sup> And, large-scale straw purchasing schemes were at the center of several ATF Phoenix-based gun trafficking investigations, including Operation Fast and Furious. Contributing to the controversy surrounding Operation Fast and Furious, reportedly, the U.S. Attorney's Office in Arizona was reluctant to prosecute straw purchasing cases, even though ATF conducted several investigations involving dozens of firearms and multiple defendants from 2006 through 2010.<sup>66</sup> Some of this reluctance to prosecute referred cases may have stemmed from legal interpretations (and underlying case law) made by the U.S. Attorney's Office in Arizona that "differed substantially from those of other U.S. Attorney's Offices."<sup>67</sup> Other considerations could have included allocation of scarce resources and prosecutorial priorities. Nonetheless, as shown below, federal prosecutions for straw purchasing and related offenses nationally appear to have fallen off significantly in recent years, despite congressional efforts to increase ATF appropriations to combat gun trafficking.

In addition, at a hearing on Operation Fast and Furious, an ATF agent testified that the penalties levied under current law are not harsh enough to deter gun trafficking to Mexican drug trafficking organizations.<sup>68</sup> He opined that the "statute doesn't carry significant jail time," and that straw purchases were viewed as "paperwork violations."<sup>69</sup> To explore this assertion, CRS requested criminal caseload data from the U.S. Attorneys Office for 18 U.S.C. Sections 922(a)(6) and 924(a)(1)(A) for FY2004 through FY2010. It is noteworthy, however, that the criminal cases under these provisions include violations involving false identities and entries, in addition to straw purchases.

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<sup>63</sup> 18 U.S.C. §554.

<sup>64</sup> Ibid.

<sup>65</sup> U.S. Government Accountability Office, *Firearms Trafficking: U.S. Efforts to Combat Arms Trafficking to Mexico Face Planning and Coordination Challenges*, GAO-09-709, June 29, 2009, p. 21.

<sup>66</sup> U.S. Congress, *Fatally Flawed: Five Years of Gunwalking in Arizona*, House Committee on Oversight and Government Reform, Minority Staff Report, 112<sup>th</sup> Cong., 2<sup>nd</sup> Sess., January 2012, p. 72, [http://www.scribd.com/doc/79930290/%E2%80%9CFatally-Flawed-Five-Years-of-Gunwalking-in-Arizona-%E2%80%9D?tw\\_p=tw](http://www.scribd.com/doc/79930290/%E2%80%9CFatally-Flawed-Five-Years-of-Gunwalking-in-Arizona-%E2%80%9D?tw_p=tw).

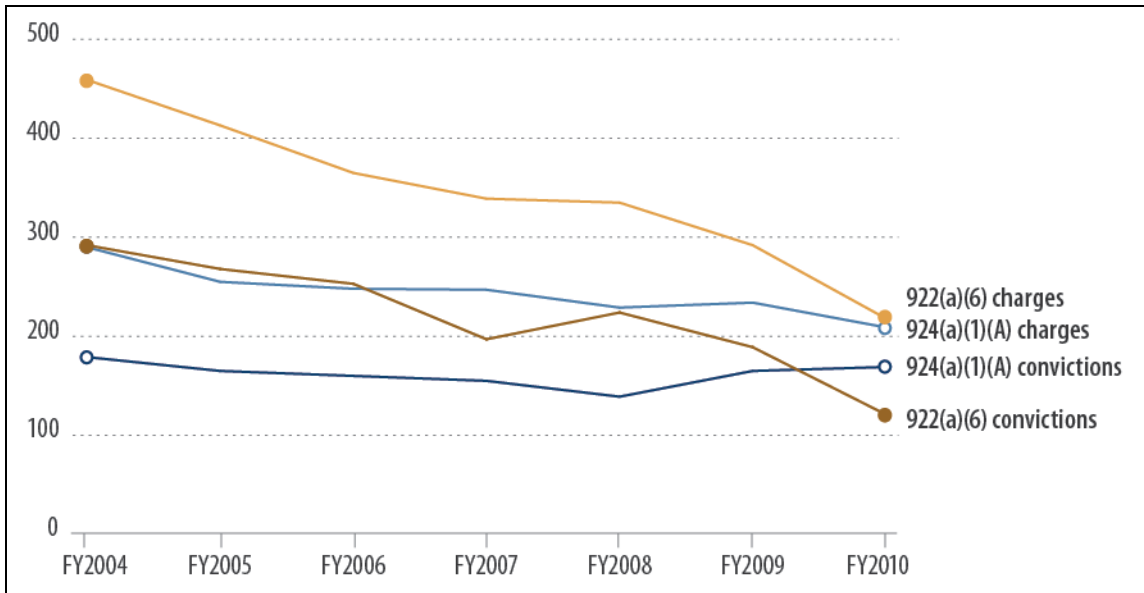
See also Colby Goodman and Michel Marizco, *U.S. Firearms Trafficking to Mexico: New Data and Insights Illuminate Key Trends and Challenges*, Woodrow Wilson International Center for Scholars Mexico Institute and University of San Diego Trans-Border Institute, September 2010, p. 29.

<sup>67</sup> Ibid.

<sup>68</sup> U.S. Congress, House Committee on Oversight and Government Reform, *Operation Fast and Furious: Reckless Decisions, Tragic Outcomes*, 112<sup>th</sup> Cong., 1<sup>st</sup> sess., June 15, 2012, p. 120.

<sup>69</sup> Ibid.

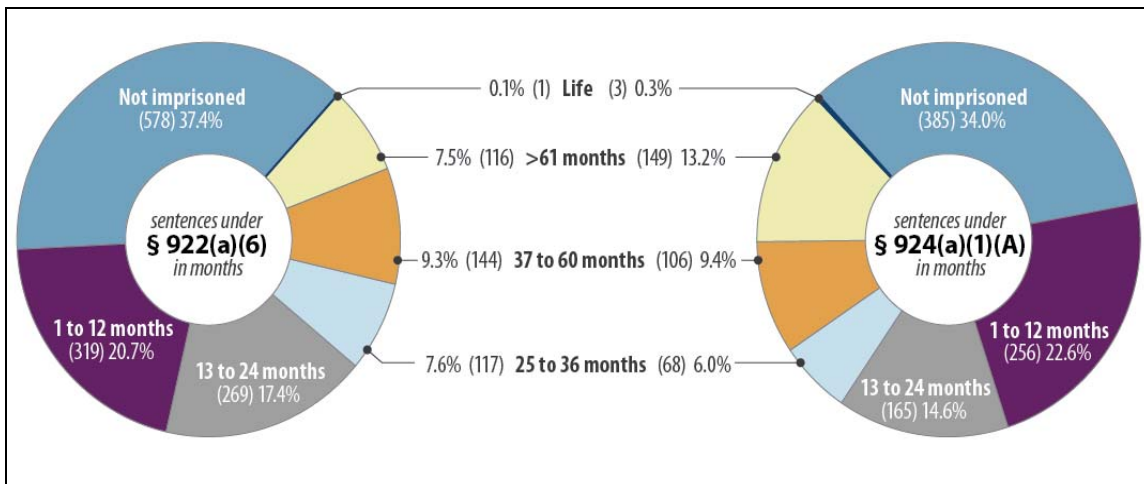
**Figure 1. Federal Defendants Charged and Convicted Nationally under 18 U.S.C. Sections 922(a)(6) and 924(a)(1)(A)**  
FY2004-FY2010



**Source:** Data from U.S. Attorney’s Office. Figure created by CRS.

**Notes:** Under 18 U.S.C. §922(a)(6), it is unlawful if a firearms purchaser makes any false statement to a FFL with respect to any fact material to the lawfulness of a prospective firearms transfer. Under 18 U.S.C. §924(a)(1)(A), it is unlawful for any person knowingly to make any false statement with respect to the records that FFLs are required to maintain.

**Figure 2. Federal Sentences Imposed Nationally under 18 U.S.C. Sections 922(a)(6) and 924(a)(1)(A)**  
FY2004-FY2010



**Source:** Data from U.S. Attorney’s Office. Figure created by CRS.

**Notes:** Violations of 18 U.S.C. §922(a)(6) are punishable by up to 10 years of imprisonment under 18 U.S.C. §924(a)(2). Violations of 18 U.S.C. §924(a)(1)(A) are punishable by up to five years of imprisonment under 18 U.S.C. §924(a)(1)(D).



As **Figure 1** shows, nationally, the defendants charged under §922(a)(6) declined from 459 for FY2004 to 218 for FY2010, or by about half (-52.5%). Similarly, defendants convicted under Section922(a)(6) declined by more than half (-58.6%) for those years, even though they increased from FY2007 to FY2008 (17.3%). The defendants charged under Section924(a)(1)(A) also declined from 290 for FY2004 to 209 for FY2010, but at a slower rate of change (-27.9%). Convictions under that provision also declined through FY2008 (-22.3%), but increased for FY2009 (18.7%) and FY2010 (2.4%). Under either provision, about two-thirds of defendants were convicted during FY2004 through FY2010 cumulatively.

As **Figure 2** shows, moreover, over a third of the individuals convicted under either provision received no prison sentence. Over a third received a prison sentence of up to two years. The remainder received prison sentences of greater than two years. Several individuals received life sentences, but those individuals were likely career criminals who were convicted of additional offenses.

## **Gun Trafficking Proposals**

The President's plan to reduce gun violence calls for increased penalties for gun trafficking. Although the Administration has not transmitted any specific proposal or language to Congress, several bills that address gun trafficking and/or straw purchases have been reintroduced in the 113<sup>th</sup> Congress.

### **Stop Illegal Trafficking in Firearms Act of 2013 (S. 54)**

On January 22, 2013, Senator Patrick J. Leahy, chairman of the Senate Committee on the Judiciary, introduced S. 54, a "gun trafficking" proposal. On March 7, 2013, the committee approved this bill. As amended and ordered reported, S. 54 would amend the GCA to establish standalone straw purchasing and gun trafficking prohibitions and increase related penalties. The gun trafficking prohibitions are similar to those included in S. 179 and H.R. 452 (described below).

Under the straw purchasing prohibition, S. 54 would prohibit any unlicensed person from knowingly purchasing, or attempting or conspiring to purchase, any firearm from an FFL on behalf of or at the request or demand of another person, known or unknown.<sup>70</sup> Under a more narrowly focused, but parallel, provision, S. 54 would prohibit any unlicensed person from purchasing or conspiring to purchase any firearm from another unlicensed person on behalf of or at the request or demand of another person, known or unknown.<sup>71</sup> In the latter case, however, the prohibition would be limited to subsequent transfers on behalf of persons who

- are prohibited under 18 U.S.C. Sections 922(g) and (n);
- intend to carry, possess, sell, or otherwise dispose of the firearm in furtherance of a crime of violence<sup>72</sup> or drug trafficking crime;<sup>73</sup>

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<sup>70</sup> Proposed 18 U.S.C. §932(b)(1).

<sup>71</sup> Proposed 18 U.S.C. §932(b)(2).

<sup>72</sup> Under S. 54, the term "crime of violence" has the same meaning as 18 U.S.C. §924(c)(3):

an offense that is a felony and—(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or (B) that by its nature, involves a  
(continued...)

- do not reside in any state and who are not citizens of the United States; or
- intend to sell or otherwise dispose of the firearm to any person who would fall under any of the categories described above.

Under either provision, violations would be punishable by a fine and/or imprisonment of not more than 15 years.

Notwithstanding the “crime of violence” prohibition already included under the second straw purchasing provision noted above, S. 54 would additionally provide that if prohibited transfers under either provision were committed knowing, or with reasonable cause to believe, that the firearm would be used in a crime of violence, violations would be punishable by a fine and/or imprisonment of not more than 25 years. Exceptions would be provided for bona fide gifts and winners of organized raffles, contests, or auctions.

S. 54 would amend the GCA to establish standalone “trafficking in firearms” offenses under three provisions.<sup>74</sup> The first provision would make it unlawful for any person to receive, ship, transfer, cause to be transported, or otherwise dispose of two or more firearms that have been shipped or transported in interstate or foreign commerce (regardless of whether anything of value is exchanged), while knowing, or having reasonable cause to believe, that one or more of those firearms would be transferred subsequently to another person whose receipt of a firearm would be unlawful or who intends to or will use, carry or possess, or dispose of the firearm unlawfully, or would result in a felony violation of federal law. The second provision would make it unlawful for any person knowingly to direct, promote, or facilitate such conduct. The third provision would make it unlawful to conspire to violate either provision described above. Violations of these provisions would be punishable by a fine and/or not more than 15 years of imprisonment. Moreover, it would provide that any person who acts in the capacity of an organizer, a supervisory position, or any other management position in concert with five or more other persons would be subject to a fine and/or not more than 25 years of imprisonment.

With regard to violations of the bill’s straw purchase or trafficking in firearms provisions (proposed 18 U.S.C. §§932 and 933), S. 54 would include such offenses under asset forfeiture, Title III electronic communications intercept, racketeering, and money laundering provisions.

S. 54 would amend a provision of the GCA that prohibits any person from transferring a firearm or ammunition to any prohibited person<sup>75</sup> to include specifically not only persons already prohibited under current law (under 18 U.S.C. §§922(g) and (n)), but also persons who

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(...continued)

substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

<sup>73</sup> Under S. 54, the term “drug trafficking crime” has the same meaning as 18 U.S.C. §924(c)(2): any felony punishable under the Controlled Substances Act (21 U.S.C. §801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. §951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. §1901 et seq.).

<sup>74</sup> Proposed 18 U.S.C. §933(a), (b), and (c).

<sup>75</sup> 18 U.S.C. §922(d).

- in turn intend to sell or otherwise dispose of the firearm or ammunition to any prohibited person; or
- intend to sell or otherwise dispose of the firearm or ammunition in furtherance of a crime of violence, drug trafficking offense, or illegal export of the firearm or ammunition.

And, S. 54 would increase the penalty for unlawful transfer to a prohibited person or possession by a prohibited person under either 18 U.S.C. Section 922(d) or (g) from not more than 10 years to not more than 15 years of imprisonment.<sup>76</sup>

Moreover, S. 54 would amend the GCA (at 18 U.S.C. §924(h)) to make it unlawful for any person to receive or transfer a firearm or ammunition knowingly, or to attempt or conspire to do so knowingly, if he had reasonable cause to believe that such firearm or ammunition would

- be used to commit a crime of violence or drug trafficking;
- violate the Arms Export Control Act (22 U.S.C. §2751 et seq.);<sup>77</sup>
- violate the International Emergency Economic Powers Act (IEEPA; 50 U.S.C. §1701 et seq.);<sup>78</sup>
- violate the Foreign Narcotics Kingpin Designation Act (Kingpin Act; 21 U.S.C. §1901 et seq.);<sup>79</sup> or
- violate Section 212(a)(2)(C) of the Immigration and Nationality Act (8 U.S.C. §1182(a)(2)(C)).<sup>80</sup>

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<sup>76</sup> Proposed 18 U.S.C. §924(a)(8).

<sup>77</sup> The Arms Export Control Act of 1976 (AECA; codified, as amended, at 22 U.S.C. §2778 et seq.) governs the exportation and importation of arms, ammunition, and implements of war. In other words, under the AECA, the President has the authority to control the export and import of defense articles and defense services in furtherance of world peace and the security and foreign policy of the United States. Authority to administer the permanent import provisions of the AECA was delegated to the Attorney General, while the authority to administer the export and temporary import provisions of the AECA was delegated to the Secretary of State. See Executive Order 11958 of January 18, 1977, as amended by Executive Order 13284 of January 23, 2003, 3 C.F.R. Executive Order 13284. Hence, the Department of State's Bureau of Political Military Affairs' Directorate of Defense Trade Controls (DDTC) administers the export provisions, while DOJ's ATF has traditionally administered and continues to administer the importation provisions. Under the Homeland Security Act of 2002 (P.L. 107-296), ATF was transferred from the Department of the Treasury to DOJ. Importation regulations issued under this law are in 27 C.F.R. Part 447.

<sup>78</sup> The IEEPA gives the President authority to regulate commerce after declaring a national emergency in response to any foreign-sourced unusual and extraordinary threat.

<sup>79</sup> Under the Kingpin Act, the Department of the Treasury, in consultation with several other federal agencies, blocks the property and interests in property, subject to U.S. jurisdiction, owned and controlled by significant foreign drug traffickers.

<sup>80</sup> Under 8 U.S.C. §1182(a)(2)(C), CONTROLLED SUBSTANCE TRAFFICKERS- Any alien who the consular officer or the Attorney General knows or has reason to believe—(i) is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in §102 of the Controlled Substances Act (21 U.S.C. §802)), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so; or (ii) is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity, is inadmissible (from entry into the United States).

Violations under this provision would be punishable by a fine and/or not more than 25 years of imprisonment, the term for which would run consecutively (not concurrently) with any other term of imprisonment imposed on an offender under the straw purchasing provisions described above.

With regard to cross-border smuggling, S. 54 would amend the GCA (at 18 U.S.C. §924(k)) and increase the penalty from not more than 10 years to not more than 15 years of imprisonment for smuggling a firearm or ammunition *into* the United States while engaged in or promoting conduct that would be a violation of federal or state controlled substances laws, or a crime of violence. It would also establish a similar offense for smuggling a firearm or ammunition *out of* the United States while engaged in or promoting conduct in violation of federal controlled substance laws or a crime of violence. Offenses would be punishable by a fine and/or up to 15 years of imprisonment.

Finally, S. 54 includes a limitation on DOJ that would prohibit any undercover operation whereby an FFL (federally licensed gun dealer) would be directed, instructed, enticed, or otherwise encouraged by a DOJ agent to transfer a firearm to an individual, if there were reasonable cause to believe that such an individual would be purchasing a firearm on behalf of another individual for an illegal purpose, unless certain safeguards were met. This last provision was offered as an amendment by Senator Charles E. Grassley, the ranking minority Member, during full committee markup. This provision addresses ATF's conduct of Operation Fast and Furious. The language of S. 54 has been included in the Safe Communities, Safe Schools Act of 2013 (S. 649).

### **Gun Trafficking Prevention Act of 2013 (S. 179 and H.R. 452)**

On February 12, 2013, Senator Kirsten E. Gillibrand introduced a proposal (S. 179) that would amend the GCA to establish a standalone federal "trafficking in firearms" offense under two provisions. The first provision would make it unlawful for any person to receive, transfer, or otherwise dispose of two or more firearms that have been shipped or transported in interstate or foreign commerce (regardless of whether anything of value is exchanged), while *knowing, or having reasonable cause to believe*, that one or more of those firearms would be transferred subsequently to another person whose receipt of a firearm would be unlawful, or who intends to or will use, carry or possess, or dispose of the firearm unlawfully. The second provision would make it unlawful for any person knowingly to direct, promote, or facilitate such conduct. Violations of either provision would be punishable by a fine and/or not more than 20 years of imprisonment. Moreover, it would provide that any person who acts in the capacity of an organizer, a supervisory position, or any other management position in concert with five or more other persons would be subject to not more than 25 years of imprisonment. In addition, S. 179 would make it unlawful to conspire to violate the first provision, and would make such a conspiracy punishable by a fine and/or not more than 10 years of imprisonment. Exception would be provided under the bill for transfers of gifts or by bequest. Representative Carolyn B. Maloney has introduced a similar bill (H.R. 452). The "trafficking in firearms" provisions included in S. 54, as amended and approved by the Senate Committee on the Judiciary, are similar to the provisions in S. 179 and H.R. 452.

### **Straw Purchaser Penalty Enhancement Act (H.R. 404)**

On January 22, 2013, Representative Adam Schiff reintroduced a proposal (H.R. 404) that would create a two-year mandatory minimum sentence for straw purchasing. This bill would amend the GCA to create a mandatory minimum sentence of two years of imprisonment for any person who

makes a false statement in violation of either 18 U.S.C. Sections 922(a)(6) or 924(a)(1)(A) in the firearms transfer records (ATF Form 4473) that FFLs are required to maintain under current law, if the transferee

- knows or has reason to believe that the false statement will further the transfer of two or more firearms to a prohibited person; and
- has the intent to conceal the identity of the prohibited person to whom the firearm is to be transferred.

### **Detectives Nemorin and Andrews Anti-Gun Trafficking Act of 2013 (H.R. 722)**

On February 14, 2013, Representative Peter T. King introduced a proposal (H.R. 722) that would also amend the GCA to create a standalone federal “trafficking in firearms” offense punishable by a fine and/or imprisonment of not more than 20 years for committing certain existing offenses under the GCA under one of two sets of conditions. The first set of conditions would be the offering for sale, transfer, or barter of two or more handguns, semiautomatic assault weapons,<sup>81</sup> short-barreled shotguns, short-barreled rifles, or machine guns, of which at least one was transported, received, or possessed by that person and stolen or had the importer’s or manufacturer’s serial number removed. The second set of conditions would be the offering for sale, transfer, or barter of two or more handguns, semiautomatic assault weapons, short-barreled shotguns, short-barreled rifles, or machine guns, of which at least one was offered by sale, transfer, or barter to another who is either prohibited by federal or state law from possessing a firearm, not at least 18 years of age, is in a school zone, or is not a resident of the state in which he has attempted to acquire the firearms.

If someone committed one of the offenses already punishable by the GCA,<sup>82</sup> each of which carries its own penalty, under either of these conditions, such a person could be prosecuted under this separate gun trafficking crime and face a fine and/or imprisonment of not more than 20 years. This bill is silent as to whether the sentences for the proposed “gun trafficking” crime and the

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<sup>81</sup> It is notable that a statutory definition for “semiautomatic assault weapon” no longer exists. The 1994 Semiautomatic Assault Weapons (SAW) Ban, which expired in 2004, had defined, for example, 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 telescopic scope, (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. (Former 18 U.S.C. §921(a)(30)). Similar definitions existed for semiautomatic pistols and shotguns.

<sup>82</sup> The GCA offenses in title 18 that would have been implicated in this new gun trafficking crime were (1) §922(a)(1)(A), unlawful to willfully engage in business of dealing firearms without a license; (2) §922(a)(3), unlawful for non-licensee to willfully transport or receive a firearm obtained in another state into his state of residence; (3) §922(a)(6), unlawful to knowingly make a materially false statement to a FFL; (4) §922(b)(2), unlawful for an FFL to willfully deliver a firearm to a person where the purchase or possession would violate state law; (5) §922(b)(3), unlawful for an FFL to willfully deliver a firearm to a person residing in a state other than the FFL’s; (6) §922(b)(5), unlawful for an FFL to willfully dispose of a firearm without making entries required by law; (7) §922(d), unlawful for any person to knowingly dispose of a firearm to a prohibited person; (8) §922(g), unlawful for any prohibited person to knowingly receive or possess firearm or ammunition; (9) §922(i), unlawful for any person to knowingly transport or ship a stolen firearm; (10) §922(j), unlawful for any person to knowingly receive, possess, conceal, store, barter, sell, or dispose of a stolen firearm; (11) §922(k), unlawful for any person to knowingly transport, ship, or receive a firearm that has an obliterated or altered serial number; (12) §922(m), unlawful for an FFL to knowingly make a false entry in or improperly maintain records required by law; (13) §922(n), unlawful for any person to willfully ship or receive firearms or ammunition if under indictment for felony; (14) §924(c), unlawful for any person to use or carry a firearm during or in relation to a federal crime of violence or drug trafficking crime; (15) §924(h), unlawful for any person to transfer a firearm knowing it will be used to commit a crime of violence or a drug trafficking crime.

individual predicate GCA offenses, if a person was prosecuted under both provisions, would be served consecutively or concurrently.

## **Military Style Firearms**

Under the Violent Crime Control and Law Enforcement Act of 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 more than 10 rounds that were not legally owned or available prior to the date of enactment (September 13, 1994). The SAW ban prohibited the further manufacture for, and transfer to, private persons certain firearms that (1) were listed by make and model as SAWs, or (2) met a SAW “military-style” features test for rifles, pistols, and handguns. Semiautomatic assault weapons and LCAFDs that were legally owned prior to the ban were grandfathered, meaning they were not restricted and remained available for transfer under applicable federal and state laws. The SAW-LCAFD ban expired on September 13, 2004.

Senator Lautenberg and Representative McCarthy have introduced the Large Capacity Ammunition Feeding Device Act (S. 33/H.R. 138), a bill that would prohibit the manufacture or importation of detachable magazines of over 10-round capacity. While this proposal would grandfather existing magazines, it would also make those grandfathered magazines non-transferable, meaning that those magazines could not be sold or traded and would become contraband upon the owner’s death. This bill would require that any newly produced magazines, or large-capacity ammunition feeding devices, be identified by a serial number that clearly shows that the device was manufactured after enactment.

Senator Feinstein and Representative McCarthy have introduced similar proposals (S. 150 and H.R. 437), both titled the Assault Weapons Ban of 2013. These similar proposals would build upon and modify the expired federal ban. These proposals, like S. 33/H.R. 138, would ban ammunition magazines with a greater than 10-round capacity and would grandfather existing magazines, as did the expired federal ban, but they would also ban any further transfer of those magazines. For semiautomatic firearms, these proposals would establish separate “one military feature” tests for rifles, pistols, and shotguns that are in many ways similar to California state law, instead of the “two military features” tests that were included under the expired 1994-2004 federal ban (see the tables below). They would prohibit the future manufacture and importation of firearms that fell under these tests, as well as 157 firearms specifically named in the proposal by make and model. The proposals would grandfather any existing firearms that met the “one feature” tests, but they would require background checks for any future transfers of grandfathered “assault weapons” by an unlicensed person to another unlicensed person. Finally, the proposals would exempt from the ban over 2,200 firearms by make and model.

On March 14, 2013, the Senate Committee on the Judiciary approved S. 150. Several amendments offered by the minority were rejected during full committee markup. As described above, Senator Reid has included several other Senate-reported bills in in the Safe Communities, Safe Schools Act of 2013 (S. 649). Although this bill does not include the language of S. 150, according to press accounts, Senator Feinstein has indicated that Senator Reid has assured her that he would allow her to offer an “assault weapons” amendment when the Senate considers the proposals described above.<sup>83</sup>

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<sup>83</sup> Ed O’Keefe and Philip Rucker, “Assault Weapons Ban Dropped from Gun Bill,” *Washington Post*, March 20, 2013, (continued...)

**Table 3. Expired and Proposed Definitions of Semiautomatic Assault Rifle Compared**

<b>Expired 1994-2004 Federal Definition for Semiautomatic Assault Rifle (a two features test)</b>	<b>Proposed Assault Weapons Ban of 2013 Definition for Semiautomatic Assault Rifle (a one feature test)</b>
<p>A semiautomatic rifle that had an ability to accept a detachable magazine and had at least two of the following:</p> <ul style="list-style-type: none"> <li>(1) a folding or telescoping stock;</li> <li>(2) a pistol grip that protruded conspicuously beneath the action of the weapon;</li> <li>(3) a bayonet mount;</li> <li>(4) a flash suppressor or threaded barrel designed to accommodate a flash suppressor; or</li> <li>(5) a grenade launcher.</li> </ul>	<p>A semiautomatic rifle that has the capacity to accept a detachable magazine and any one of the following:</p> <ul style="list-style-type: none"> <li>(1) a pistol grip;</li> <li>(2) a forward grip;</li> <li>(3) a folding, telescoping, or detachable stock;</li> <li>(4) a grenade launcher or rocket launcher;</li> <li>(5) a barrel shroud; or</li> <li>(6) a threaded barrel.</li> </ul> <p>Also, any semiautomatic rifle that has a fixed magazine with the capacity to accept more than 10 rounds, except for an attached tubular device designed for and only capable of accepting .22 caliber rimfire ammunition.</p>

**Source:** See expired 18 U.S.C. §921(a)(30)(B) and S. 150 and H.R. 437 as introduced in the 113<sup>th</sup> Congress.

**Table 4. Expired and Proposed Definitions of Semiautomatic Assault Pistol Compared**

<b>Expired 1994-2004 Federal Definition for Semiautomatic Assault Pistol (a two features test)</b>	<b>Proposed Assault Weapons Ban of 2013 Definition for Semiautomatic Assault Pistol (a one feature test)</b>
<p>A semiautomatic pistol that has an ability to accept a detachable magazine and at least two of the following characteristics:</p> <ul style="list-style-type: none"> <li>(1) an ammunition magazine that attached to the pistol outside of the pistol grip;</li> <li>(2) a threaded barrel capable of accepting a barrel extender, flash suppressor, forward handgrip, or silencer;</li> <li>(3) a shroud that was attached to, or partially or completely encircles, the barrel and that permits the shooter to hold the firearm with the nontrigger hand without being burned;</li> <li>(4) a manufactured weight of 50 ounces or more when the pistol is unloaded; or</li> <li>(5) it was a semiautomatic version of an automatic firearm.</li> </ul>	<p>A semiautomatic pistol that has the capacity to accept a detachable magazine and any one of the following characteristics:</p> <ul style="list-style-type: none"> <li>(1) a threaded barrel;</li> <li>(2) a second pistol grip;</li> <li>(3) a barrel shroud;</li> <li>(4) the capacity to accept a detachable magazine at some location outside of the pistol grip; or</li> <li>(5) it was a semiautomatic version of an automatic firearm.</li> </ul> <p>Also, any semiautomatic pistol with a fixed magazine that has the capacity to accept more than 10 rounds.</p>

**Source:** See expired 18 U.S.C. §921(a)(30)(C) and S. 150 and H.R. 437 as introduced in the 113<sup>th</sup> Congress.

(...continued)  
p. A5.

**Table 5. Expired and Proposed Definitions of Semiautomatic Assault Shotgun Compared**

<b>Expired 1994-2004 Federal Definition for Semiautomatic Assault Shotgun (a two features test)</b>	<b>Proposed Assault Weapons Ban of 2013 Definition for Semiautomatic Assault Shotgun (a one feature test)</b>
A semiautomatic shotgun that had at least two of the following: (1) a folding or telescoping stock; (2) a pistol grip that protruded conspicuously beneath the action of the weapon; (3) a fixed magazine capacity in excess of five rounds; or (4) an ability to accept a detachable magazine.	A semiautomatic shotgun that has one of the following: (1) a folding, telescoping stock, or detachable stock; or (2) a pistol grip; (3) a fixed magazine with the capacity to accept more than five rounds; (4) the ability to accept a detachable magazine; (5) a forward grip; or (6) a grenade launcher or rocket launcher. Also, any shotgun with a revolving cylinder.

**Source:** See expired 18 U.S.C. §921(a)(30)(C) and S. 150 and H.R. 437 as introduced in the 113<sup>th</sup> Congress.

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