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Gun Control: Juvenile Record Checks for 18- to 21-Year-Olds

On June 25, 2022, President Biden signed into law the Bipartisan Safer Communities Act (BSCA; P.L. 117-159), which includes several firearms-related sections. Section 12001 addresses juvenile access to firearms by

- clarifying that the prohibition on transferring a firearm to a disqualified individual applies to juveniles (18 U.S.C. §922(d)); and
- expanding background check procedures to screen persons 18 to 21 years of age for disqualifying juvenile justice or mental health records (18 U.S.C. §922(t)).

To implement these measures, the law required upgrades to the background check system established by the Brady Handgun Violence Prevention Act (Brady Act, 34 U.S.C. §40901, P.L. 103-159). Prior to P.L. 117-159, it does not appear that such records were routinely queried as part of a federal firearms background check. Prohibited firearm transfers, background checks, and background check system requirements under federal law, as well as the amendments made by P.L. 117-159, are described below.

Firearms Receipt, Possession, and Transfer Prohibitions

The Gun Control Act of 1968 (GCA, 18 U.S.C. §§921-931) is one of the two principal federal statutes—along with the National Firearms Act of 1934 (NFA, 26 U.S.C. §53)—regulating firearms in the United States.

The GCA requires all persons engaged in the business of importing, manufacturing, and selling firearms to be federally licensed as federal firearms licensees (FFLs). The law generally prohibits unlicensed persons from transferring any firearm without going through an FFL. The GCA prohibits FFLs from transferring a long gun (i.e., rifle or shotgun) or ammunition to anyone under 18 years of age, and from transferring a handgun or ammunition suitable for a handgun to anyone under 21 years of age (18 U.S.C. §922(b)(1)). The GCA also generally prohibits any person from transferring a handgun or ammunition suitable for a handgun to a juvenile, and juveniles are prohibited from possessing a handgun or ammunition suitable for a handgun, although there are exceptions (e.g., under adult supervision, or for employment, ranching, farming, target practice, and hunting [18 U.S.C. §922(x)]).

The GCA sets forth nine categories of persons prohibited from shipping, transporting, receiving, or possessing firearms or ammunition (18 U.S.C. §922(g)). For example, prohibited persons include individuals under indictment or convicted of a crime punishable by imprisonment for a term over one year; subjected to a court order that restrains them from harassing, stalking, or threatening an intimate partner or child of such intimate partner; convicted of a domestic

violence misdemeanor offense; who have renounced U.S. citizenship; addicted to a controlled substance; aliened unlawfully in the United States or admitted to the United States under a nonimmigrant visa; dishonorably discharged from the Armed Forces; “adjudicated as a mental defective”; found guilty by reason of insanity; committed to mental institutions; or who are fugitives from justice.

According to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), persons “adjudicated as a mental defective” include anyone who a court, board, commission, or other lawful authority has determined, as a result of marked subnormal intelligence, mental illness, incompetency, a condition, or a disease,

- is a danger to himself or herself, or others;
- lacks the mental capacity to contract or manage his or her own affairs;
- is found insane by a court in a criminal case; or
- is found incompetent to stand trial, or not guilty by reason of lack of mental responsibility, pursuant to certain provisions of the Uniform Code of Military Justice.

Also, according to ATF, persons “committed to a mental institution” include anyone who has been formally committed to a mental institution by a court, board, commission, or other lawful authority. A commitment includes a commitment to a mental institution involuntarily, for mental defectiveness or mental illness, or for other reasons, such as drug use. A commitment does not include a person admitted to a mental institution for observation or by voluntary admission (27 C.F.R. §478.11).

In addition, under the GCA, persons under felony indictment are prohibited from receiving (but not possessing) any firearm or ammunition (18 U.S.C. §922(n)). It is a felony for any person to transfer, or dispose of, any firearm or ammunition to any person knowing, or having reasonable cause to believe, that the transferee is a prohibited person (18 U.S.C. §922(d)). The nine categories of prohibited persons enumerated under 18 U.S.C. §922(d) are parallel with 18 U.S.C. §§922(g) and (n). Violations of 18 U.S.C. §922(d) are punishable by a fine and up to 10 years’ imprisonment (18 U.S.C. §924(a)(2)).

Amended Prohibited Transfers and Juvenile Records

P.L. 117-159 amended the firearms transfer prohibition under 18 U.S.C. §922(d) to include the transfer of any firearm or ammunition to any person the transferor knows or has reasonable cause to believe would fall into at least one of the nine prohibited categories under that provision, “including as a juvenile.” It also amended Section 922(d)(4)

to include any juvenile who has been “adjudicated as a mental defective” or “committed to any mental institution” at “16 years of age or older.”

Federally Required Firearms Background Checks

Pursuant to the Brady Act, the Federal Bureau of Investigation (FBI) established the National Instant Criminal Background Checks System (NICS) in November 1998. NICS queries federal, state, tribal, territorial, and local criminal history and other public records for information that could indicate that an unlicensed, prospective transferee is prohibited from acquiring a firearm under the GCA. Whenever an unlicensed person seeks to acquire a firearm from an FFL, both the FFL and prospective purchaser must complete and sign ATF Form 4473. On this form, the purchaser attests under penalty of law that he or she is not a prohibited person and that he or she is the “actual buyer.” The FFL must also verify the purchaser’s name, date of birth, and other information by examining government-issued identification (e.g., a driver’s license). The signed and completed Form 4473 authorizes the FFL to initiate a background check through NICS on a prospective unlicensed transferee who seeks to acquire a firearm from them through a sale, trade, or redemption of firearms exchanged for collateral (18 U.S.C. §922(t)).

Under the Brady Act, states may opt to handle firearms eligibility determinations or allow the FBI to handle such determinations. States that have opted to handle those determinations themselves are known as Point of Contact (POC) states. In response to a background check, the NICS is to respond to an FFL or POC state official with an NICS Transaction Number (NTN) and one of four outcomes:

1. “proceed” with transfer or permit/license issuance, because a prohibiting record was not found;
2. “denied,” indicating a prohibiting record was found;
3. “delayed,” indicating that the system produced information suggesting there could be a prohibiting record, such as criminal charges without a final disposition; or
4. “canceled” for insufficient information provided.

In the case of a “proceed,” the background check record is purged from NICS within 24 hours; “denied” requests are kept in perpetuity. In the case of a “delayed” transaction, after the passage of three business days, FFLs may proceed with the transaction at their discretion if they have not received a final eligibility determination from the NICS. During this time, NICS examiners, or POC state officials, may attempt to ascertain whether the person is prohibited. If it is learned that a transferee is prohibited after a transfer has occurred, a firearms retrieval referral is to be issued to the ATF and state or local chief law enforcement officer.

Amended NICS Procedures

P.L. 117-159 amended the GCA (18 U.S.C. §922(t)) with a separate procedure for persons under 21 years of age, allowing a firearms transfer to be delayed for an additional 7 days (i.e., up to 10 business days total) for persons under 21 if “cause exists to further investigate a possibly disqualifying juvenile record under” under 18 U.S.C. §922(d). If the investigation is not completed within 10

business days, or if at any point the FBI identifies the “possibly disqualifying juvenile record” to be inaccurate, including for mental health adjudication records that occurred while the intended purchaser was under 16 years of age, P.L. 117-159 requires that the firearm transfer be allowed to occur. Pursuant to the Brady Act, the Attorney General is required to remove these erroneous records from the system with 30 days.

P.L. 117-159 requires any agency that makes accessible the aforementioned possible disqualifying records under 18 U.S.C. §§922(d), (g), or (n) to NICS to report annually to the Senate and House Judiciary Committees and the Senate and House Appropriations Committees on the records removed from NICS, why the records were removed, and the cause for their original submission.

The requirement that NICS contact state authorities expires on September 30, 2032.

NICS-Queried Computer Systems, Files, and Amended System Requirements

Based on the prospective purchaser’s name and other identifying information, NICS queries several national data systems for records that could disqualify him or her from receiving and possessing a firearm under federal or state law. These systems include the

- Interstate Identification Index (III) for records on persons convicted or under indictment for felonies and serious misdemeanors;
- National Crime Information Center (NCIC) for files on persons who are subject to civil protection orders and arrest warrants, immigration law violators, and known and suspected terrorists;
- NICS Indices for federal and state record files on persons prohibited from possessing firearms, which would not be included in either III or NCIC; and
- immigration-related databases maintained by the Department of Homeland Security’s Immigration and Customs Enforcement for non-U.S. citizens who may have been previously deported or are believed to be residing unlawfully in the United States.

P.L. 117-159 amended Section 103 of the Brady Act to require the Attorney General to upgrade NICS with the capacity to contact immediately, for purposes of 18 U.S.C. §922(d), possible sources of disqualifying juvenile records for persons under 21 years old in the jurisdiction where they reside, including state, tribal, or territorial repositories of criminal history, records, juvenile justice information, and/or mental health adjudication records, as well as local law enforcement agencies.

The FBI was appropriated \$100 million in FY2023 to conduct these NICS upgrades. In January 2024, the U.S. Department of Justice reported that 527 gun sales to individuals under the age of 21 have been blocked because of rule changes made by P.L. 117-159.

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