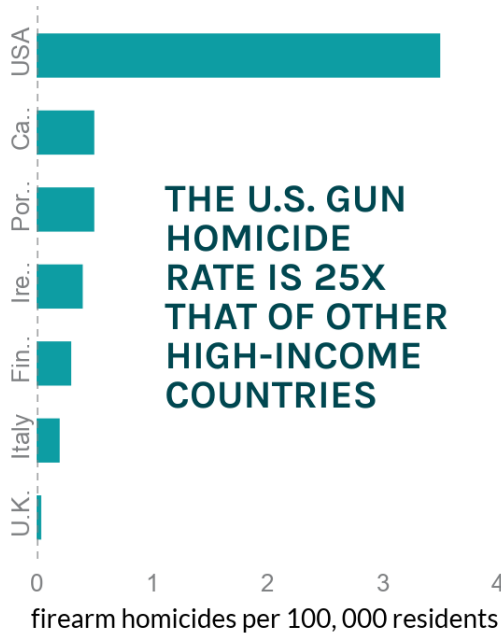


Background Checks on Private Firearm Sales

Kaitlin Galindo



The U.S. has higher rates of gun violence than other developmentally comparable countries



THE U.S. GUN HOMICIDE RATE IS 25X THAT OF OTHER HIGH-INCOME COUNTRIES

Source: Grinshteyn & Hemenway, 2016

Current Gun Laws in the United States

In 1993, the Brady Act created the National Instant Criminal Background Check System and began requiring licensed sellers, those 'frequently' engaged in the business of selling firearms, to certify through a background check that a buyer is not a member of any prohibited categories, including felons domestic-violence offenders, and controlled-substance addicts (Ludwig & Cook, 2008). However, private sellers, those who sell guns 'infrequently,' are not required to do so (Ludwig & Cook, 2008). It is illegal for a private seller to sell a firearm to a person in a prohibited category, but

only if the seller has reasonable cause to believe that the buyer belongs to such a category (Webster et al., 2009). Under current law, private sellers are incentivized to avoid asking questions as to whether a person belongs to a prohibited category, which enables illegal purchases. This makes the current law ineffective. As Ludwig and Cook (2000) note, the Brady Act had no effect on gun related homicide and suicide rates. The current law enables legally prohibited purchasers to attain firearms and harm themselves and others.

40%

of all gun sales in the US are made by private sellers (Wintemute et al., 2010)

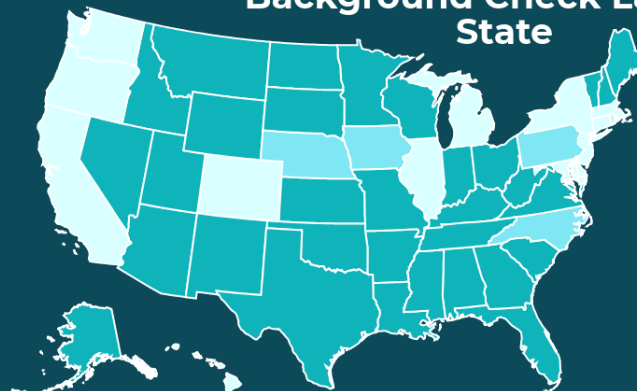
85%

of guns involved in criminal activity have passed into the hands of an uncheck buyer (Wintemute et al., 2010)

States with tighter Background check laws have fewer gun-related deaths

The effect of the lack of regulation in the private market is particularly evident when firearm fatality rates are compared between states that have expanded background checks to the private market and those that have not. Fleegler et al. (2013) found that states with stronger background checks had lower firearm fatality rates. Sen & Panjamapirom (2012) found that stronger background checks correlated with lower firearm-related suicide rates. Additionally Zeoli et al. (2018) found that when domestic violence restraining orders were included in the barred from purchase categories of background checks and background checks were extended to the private market there was a 10% reduction in intimate partner homicide. Extending background checks to the private market has reduced firearm-related violence in states that have implemented the policy.

Background Check Laws By State

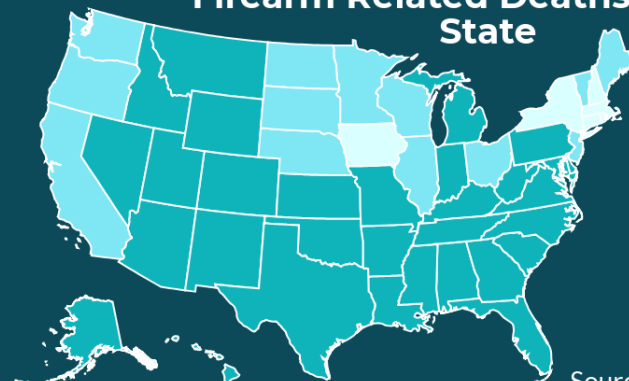


Background Checks on all Private Sales

Required on Private Sales of Handguns

Not Required on Private Sales

Firearm Related Deaths Rate By State



<5 firearm deaths per 100,000 people

6 to 10 firearm deaths per 100,000 People

>10 firearm deaths per 100,000 people

Source: Florida, 2011

MYTH: Background checks are unconstitutional

FACT: While there is much debate about the meaning of the Second Amendment, in *District of Columbia v. Heller* (2008), the Supreme Court ruled that, “**Nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill...or laws imposing conditions and qualifications on the commercial sale of arms**” (pt.3). The court ruled that background checks on commercial sales are constitutional to prevent felons and the mentally ill from purchasing firearms.

MYTH: If background checks are expanded, people who can currently legally buy guns will no longer be able to.

FACT: **92.5%** of people who were prevented from purchase by the background check system were attempting to purchase while in a prohibited category, which is already illegal (Frandsen, 2012). Law-following buyers are virtually unaffected by background check expansion, and the few who are can appeal. Expanding background checks to the private market would resolve the incongruence in current policy that allows a legal sale to be an illegal purchase, it would not prohibit anyone who can currently make a legal purchase from doing so.

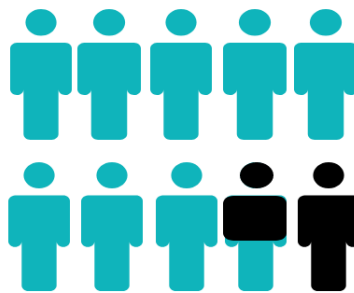
MYTH: Background checks take a long time, ultimately equating a bureaucratic waiting period

FACT: **90%** of background checks for firearm sales are completed within minutes (Wintemute et al., 2010). Furthermore, the current law stipulates that if a background check is not completed within three days, the buyer is allowed to purchase the firearm without a background check. Therefore, for the 10 percent of people whose background checks take longer than a few minutes, the max waiting period is currently three days.

MYTH: We should just close the “gun show” loophole

FACT: While many people believe that requiring background checks at gun shows would be sufficient to fill the gap that allows people in legally prohibited categories to purchase firearms, **most private unregulated purchases do not occur at gun shows, and occur instead online or through private transfers** (Wintemute et al., 2010). Thus, closing the “gun show loophole” would be insufficient to address the problem, and this inaccurate issue rhetoric distracts from the extent of the large unregulated private firearms market.

Give The People What They Want



85% of Americans favor expanding background checks to private sales, **91% of Democrats** and **79% of Republicans** (Pew Research Center, 2018).

How do we satisfy the American public and prioritize public safety?

STEP 1 Support H.R. 8 "to require a background check for every firearm sale"

House Bill 8 (2019), which has passed the House, and is in the Senate, extends background checks to private firearm sales. This bill aims “to require a background check for every firearm sale” by requiring all transfers of firearms, with a few hunting and familial exemptions, to operate through a licensed retailer (Section 2). H.R 8 would operate most similarly to the background check law of California, which, as Wintemute (2013) describes, requires all private sales to be routed through a licensed retailer who performs a background check on the buyer and caps the fee licensed retailers can charge at \$10 per gun. Some argue that this requirement inconveniences private seller, buyers, and retailers. However, as Wintemute notes, this law serves the interests of buyers, sellers, licensed retailers, law enforcement, and the public by allowing buyers and sellers to transact without ever meeting and by bringing business into licensed sellers’ stores, while preventing the illegal acquisition of firearms. Thus, achieving the policy goal of increasing public welfare while benefiting those involved in the transaction.

STEP 2 Support H.R. 1118 to extend background check return periods

After H.R. 8 expands the background check system to the private market, H.R. 1118 will increase the system's effectiveness. House Bill 1118, which has passed the House and is in the Senate, seeks to extend the period in which the FBI has to return a conclusive background check to 10 days before an unchecked consumer is allowed to purchase a firearm (Landers, 2018). Like H.R 8, this policy follows the lead of several states including California and Rhode Island (Giffords Law Center, 2018). While opponents of this legislation argue that it places burdens on law abiding citizens, it would only effect the 10% of purchasers for whom a background check is not returned within minutes and would only increase the wait for that 10% by one week from the current time limit (Landers, 2018). H.R. 8 expands background checks to the private market and H.R. 1118 increases the effectiveness of this extension by allowing the system more time to ensure both that illegal purchases are prevented, and that law abiding citizens are not accidentally denied.

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