

Can Gun Owners Love the Bipartisan Background Check Bill?

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Takeaways

This memo explains how the proposed bipartisan legislation achieves that goal, and why policymakers from both perspectives—gun lovers and gun skeptics—can support the bill:

- **It requires criminal background checks*** for commercial sales conducted at gun shows or over the internet but not for sales from one friendly neighbor to another, recognizing that commercial sales are the real source of guns to traffickers.
- **It creates no gun registry**—it simply relies on the same recordkeeping system that is currently employed by 59,000 licensed gun dealers around the country, who already keep paper receipts from the sales of about 170 million guns—and requires individuals to keep no new records.
- **It improves the background check system itself** in order to more effectively keep guns out of the hands of criminals and the mentally ill.

This week, Senators Manchin (D-WV) and Toomey (R-PA) with the support of Senators Schumer (D-NY) and Kirk (R-IL) introduced a bipartisan amendment to expand background checks for many private gun sales. Senators Schumer and Kirk (longtime gun safety advocates) and Senators Manchin and Toomey (A-rated, NRA-endorsed, gun rights stalwarts) crafted a compromise that protects the Second Amendment

rights of gun owners while strengthening our ability to keep guns out of the hands of criminals, terrorists, and those who are severely mentally ill. This memo explains how the proposed bipartisan legislation achieves that goal, and why policymakers from both perspectives—gun lovers and gun skeptics—can support it.

In one sense, this legislation proposes a major change in our gun laws. It would require that many previously unregulated, person-to-person firearms sales go through a background check in order to vouch for the legality of the buyer. In another sense, it is both seamless and familiar. Buyers purchasing firearms from private individuals through commercial venues will undergo the same background check from the same entity that they use when purchasing guns from a store. Since the passage of the Brady Law in 1993, nearly 200 million firearms sales have utilized this very same background check.¹ And where once the check took seven days to complete, fewer than 10% take longer than 7 minutes to complete today.²

In the twenty years since Brady became law with the support of large bipartisan majorities in Congress, we have learned a great deal about crime guns. For example, in nine of ten crimes in which a firearm was recovered and traced by police, the person using the gun in the crime was not the original purchaser of the firearm from a store.³ In one out of three of these same crimes, the firearm crossed state lines.⁴ And the most common age for someone to be arrested for a gun crime is 19, while the legal age to purchase a handgun is 21.⁵ These facts, when put together, indicate that crime guns reach criminals through a massive web of gun trafficking throughout America. The lubricant that makes this shadow market work, we have learned, is the unregulated private sale. This bill seeks to disrupt this shadow market while having the least possible impact on anyone else.

What kind of sales would be covered by the background checks?

The bipartisan amendment would treat commercial sales conducted at gun shows or over the internet differently than a sale from one friendly neighbor to another. This distinction recognizes that the former—strangers in the marketplace selling guns to one another, without background checks—are more similar to transactions by federally licensed firearms dealers (FFLs) who are “in the business” of selling firearms, so they should be treated similarly to those other commercial sales under the law. Ensuring that the buyers in these transactions are not legally prohibited from purchasing a gun would be a consequential step towards drying up the market of guns used in illegal trafficking.

Gun Shows

In this month alone, more than 100 major, arena-size gun shows are being held in 35 states.⁶ Gun shows happen every weekend across the country. They are heavily marketed and attract thousands of gun buyers and sellers. (A Tulsa gun show this month boasts 4,100 tables of sellers.) They are represented by an organization—the National Association of Arms Shows—which publishes a gun show calendar and advertises gun shows in each state. They are frequented by gun enthusiasts and licensed firearms dealers, but also criminals and gun traffickers, because of the ease with which firearms can be purchased at these shows without a background check.

In the 33 states that don’t require background checks at gun shows, private sellers at these shows routinely offer for sale large quantities of guns with “no questions asked”—often even parked right next to a licensed firearms dealer who is required to perform background checks for the exact same purchases. A number of states have closed the so-called “gun show loophole” already, and it hasn’t had the slightest impact on the ability of legitimate buyers and sellers to enjoy gun shows.

The bipartisan background check bill would require all sales of firearms at gun shows to undergo a background check. The operator of the gun show or another FFL would conduct the

check for any seller who isn't a licensed gun dealer himself, and that licensed dealer would keep the receipt just as they already do for firearms sold from their own inventory.

Ninety-two percent of these checks will be approved in just a matter of minutes, and the sale can quickly proceed just as it would for a sale by a licensed gun dealer at the next table over. The other 8% may take longer, which generally indicates the possibility that the buyer may have a prohibiting record in the instant check database.⁷ But due to the shortened timeframe of a gun show, the amendment would allow the time limit to complete a check to be compressed.

This policy is similar to the one Senator McCain authored in his 2004 amendment which passed the Senate.⁸ It would shut down the current nonsensical two-lane process for sales at gun shows—making the rules on background checks apply equally to everyone, instead of offering criminals an advertised short-cut to getting their hands on large numbers of guns.

Internet Sales

A quick search on the website Armslist.com displays 2,219 firearms listed for sale in Ohio, 1,686 in Oklahoma, 1,311 in Indiana, 643 in Virginia, 578 in Pennsylvania, and on and on. Armslist and other firearms websites serve as a type of eHarmony for gun buyers and sellers. In most states, these websites operate with little regulation, connecting buyers and sellers who have never met and allowing them to transfer guns 100% legally without conducting a criminal background check.

In 1993, when the bipartisan Brady law established the current background check system, no one could have envisioned the internet playing the role it does in our lives today. Then, a gun show was the best and perhaps only commercial enterprise in which stranger-to-stranger sales could take place on a large scale. Today, a gun show is seconds away, every day, on the internet.

The new legislation would make internet brokers who act like gun stores behave like gun stores by requiring background checks for these sales. Under the proposed law, all commercial sales advertised online or in a publication would have to go through a licensed firearms dealer who will conduct a background check. This is how interstate private sales are done today. Since directly selling guns across state lines is currently illegal, buyers and sellers use FFLs as a middleman. The FFL briefly takes possession of the firearm, performs a background check, and transfers the gun to the buyer. A simple way to view this proposed law is that internet sales would have to go through the same background check requirement as out-of-state sales.

Neighbor to Neighbor and Family to Family Sales

For people selling to friends, neighbors, or family members who they know to be legal buyers, this law will have no effect. Thus, sales between private individuals that have no nexus to a commercial venue will remain unregulated.

Is this a gaping hole in the law? While background checks for all gun sales would be optimal, this is not a substantial hole in the law for the following reasons:

1. The bipartisan authors of this legislation correctly determined that commercial sales at gun shows and on the internet are a much more alluring market for gun traffickers and much more significant sources of guns flowing into the illegal market than neighbor-to-neighbor sales. Every gun begins as a legal object, and then some leak into illegal commerce. Much of this leakage into the illegal market is inadvertent, at least from the perspective of the seller who often has no earthly idea that a buyer is a criminal and no way to check. What occurs is that a law-abiding citizen legally sells his firearms (without a background check) to a stranger who, unbeknownst to that seller, is actually a gun trafficker or prohibited buyer. If a background check bill covering commercial sales is passed, law abiding gun sellers could now be confident that they weren't accidentally supplying guns to criminals or others who shouldn't have them, and much of this leakage would be plugged.
2. The legislation includes new law enforcement resources. It would allow law enforcement to conduct stings and arrest those who sell a gun at a gun show or online without a background check. And it would make it a felony punishable by 5 years in prison to sell to a prohibited buyer or a law enforcement officer through an online advertisement or at a gun show without conducting a check. This would be a strong inducement to ensure sellers comply with the law.
3. The compromise amendment would offer further incentive to sellers to conduct a check by guaranteeing that anyone who can prove they ran a background check before selling their gun in a commercial sale would have immunity and could not be held liable for anything that happens with that gun in the future.

What would happen to the records of newly covered sales?

The proposed bipartisan legislation would create no gun registry—either in fact or appearance. It would rely on the same recordkeeping system that is currently employed by 59,000 licensed gun dealers around the country, who already keep paper receipts from the sales of about 170 million guns.⁹ It would add no new recordkeeping requirements for individuals. It would not change the fact that the government must destroy the record of a background check within 24 hours, nor would it alter the law that makes it illegal for the government to create a national gun registry of any kind. In fact, it would make it a felony punishable by up to 15 years in prison for anyone who misuses or illegally retains records of gun sales.

In practice, this means that for gun shows, the operator or an FFL keeps the paper receipt from gun sales for which it performs the background check. For sales advertised on the internet or in a publication, the gun store that performs the check will keep the receipt of sale, just as it does for its own inventory.

Why do records matter?

The record of a gun sale serves two purposes. First, it makes the background check law easily enforced by having a readily located receipt on file at a licensed firearms dealer. Second, it makes it possible for law enforcement to more accurately trace firearms that are recovered in crime.

When a gun is recovered in a crime, law enforcement often requests a trace from federal authorities. That trace will reveal the original purchaser of the firearm, the store from where it was first sold, and the date that sale occurred. From that point on, police must rely on old-fashioned legwork to track down the chain of ownership from that first purchaser until the gun arrived in the hands of the criminal. Police only request these traces in bona fide criminal investigations. The traces can uncover illicit gun traffickers and straw buyers, and the receipts of these sales are essential for successful tracing.

Conclusion

The bipartisan bill would also improve the background check system itself in order to more effectively keep guns out of the hands of criminals and the mentally ill by incentivizing states to get their records up to date. The system is currently good but not great—yet even with its problems, it has been effective at keeping 2.1 million guns out of the hands of those who shouldn't have them.¹⁰ States that have subjected all commercial gun sales to background checks have seen that it works—a recent study by Mayors Against Illegal Guns found that in states that require background checks for private sales, women are 38% less likely to be killed with a gun by a domestic abuser, and law enforcement has seen a 48% decrease in gun trafficking.¹¹

But states can't do it on their own—states with tougher gun laws simply see more of their crime guns come in from neighboring states with more lax ones. The bottom line is that anyone buying a gun from a stranger should have to go through a background check—whether the gun is sold in a store, at a gun show, or online.

Background checks have become part of the fabric of our Second Amendment right to own firearms for protection, collection, and sport. Universal checks were once endorsed by the NRA.¹² More than 170 million firearms were sold with background checks over the past 20 years, including 16.5 million in the last year on record.¹³ The bipartisan background check bill is a necessary and important step in defending gun rights for law-abiding citizens and denying criminals access to guns. And because it was carefully crafted with law-abiding gun owners in mind, you can love guns and like this legislation.

END NOTES

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