

Closing Illegal Gun Markets

LICENSING ACCESS TO HANDGUNS



A Report by the Educational Fund to Stop Gun Violence

A message from Joshua Horwitz, Executive Director of the Educational Fund to Stop Gun Violence

Americans overwhelmingly support licensing access to handguns. But the gun policy debate often is typified more by heated political rhetoric, than by meaningful discussion of the definition and value of a licensing system. Through thoughtful analysis and input from nationally and internationally renowned gun policy experts, this report by the Educational Fund to Stop Gun Violence is designed to elevate the licensing debate.

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OUR MISSION

The Educational Fund to Stop Gun Violence was founded in 1978 as an educational nonprofit dedicated to ending gun violence by fostering effective community and national action.

Closing Illegal Gun Markets

Licensing Access to Handguns

Educational Fund to Stop Gun Violence
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If we want to reduce the nearly **30,000** gun deaths each year in America, we must give law enforcement critical new tools to do it. We must license access to handguns.

Introduction

For years, polls have shown strong, stable public support for the idea of licensing access to handguns. The public intuitively understands both the concept of licensing and why it is appropriate to license people who want access to handguns. But responsible licensing systems have eluded policy makers and advocates in Congress and in most state legislatures.

Part of the problem is that the widely-shared intuition about licensing in general glosses over the many politically-charged details that must be negotiated. These details vary in importance, but proponents do not always foresee their relevance and are not always well-prepared to prioritize them.

This report discusses the meaning and value of licensing access to handguns and recommends key components of a responsible licensing system.

The Meaning and Value of Licensing Access to Handguns

What Does “License” Mean?

In one sense, “license” means “permission to act.” Implicit in this sense of the term is the concept of an authority, such as the State, with the power to grant or deny permission to act. The authority may withhold permission until the person seeking permission satisfies established preconditions.

These preconditions may be as simple as making a formal request or reaching a minimum age, or they may be extremely demanding, like passing the Bar exam or completing a long medical residency.

In another sense, the word “license” refers to a document demonstrating that permission has been granted. Possession of a state-issued driver’s license, for example, is taken as proof that the person possessing the license has passed his or her driver’s test. In other words, the use of a physical license helps authorities distinguish between those who have satisfied the required preconditions and those who have not.

However, a person could acquire a driver’s license through theft or fraud without having satisfied the required preconditions. Similarly, a person who has satisfied

the preconditions may have lost or forgotten his or her physical license. As a result, police do not rely solely on the possession of a physical license to determine whether a person is “licensed.” Instead, they use information from the physical license to search a database of licensees. The police could just as easily submit information from a different form of identification, like a passport, a state ID card or, eventually, a thumbprint, to determine whether the person is licensed. Thus, while a physical “license” may make it easier to enforce the requirements of a licensing system, “licensing” does not necessarily require the use of a special physical document.

“Handgun licensing,” therefore, means the establishment of (1) a set of qualifications that must be met before a person who wants access to a handgun receives permission to acquire or own one,

- 83% of registered voters favor handgun licensing
- 71% of gun owners favor handgun licensing
- 66% of self-described NRA supporters favor handgun licensing

and (2) a system for distinguishing between people who have qualified for access and those who have not. The system may or may not include a physical “license” as evidence of qualification.

How Can Licensing Access to Handguns Help Reduce Gun Deaths and Injuries?

The ultimate goal of licensing, or of any other gun law, is to reduce the number of gun deaths and injuries. To understand how licensing access to handguns can achieve that goal, one must know something about how gun deaths and injuries occur.

In the last decade, the number of gun deaths per year in America has ranged from a high of nearly 40,000 in 1993, to a low of just under 29,000 in 1999. Every year since 1995, more than half of these have been suicides, often involving young people and usually involving a handgun. Suicide is often associated with depression, which can be caused by life events, a chemical imbalance or substance abuse. Accordingly, firearm suicide tends to occur when one of these circumstances, which may be treatable or transient, coincides with access to a handgun. Intentionally self-inflicted gunshot wounds are almost always fatal.

Most of the remaining gun deaths and injuries each year result from the intentional commission of crimes, often by people who cannot legally acquire guns. A small percentage of shootings annually are unintentional, resulting from careless or negligent use or storage of firearms. A few hundred deaths each year result from the legal use of a firearm, and the vast majority of those killed in these cases are criminal suspects shot by law enforcement officers. Although the data available for nonfatal gunshot injuries are relatively imprecise, the National Center for Injury Prevention and Control estimates that in 2000, there were over 75,600 nonfatal firearm injuries nationally.¹

These basic statistics tell us that many deaths and injuries result when criminals or young people gain access to handguns. Other deaths and injuries occur because legal gun owners fail to understand or follow basic rules of safe handling and storage. Licensing seeks to reduce the frequency of each of these situations by making it harder for a dangerous, irresponsible, suicidal, or untrained person to gain access to a handgun.

In a sense, the federal government has “licensed” certain handgun buyers for decades. The handgun sales recordkeeping requirements of the Gun Control Act of 1968, supplemented by the Brady background check in 1994, constitute preconditions that must be satisfied before a person can buy a handgun from a licensed dealer. (Since 1998 the background check requirement has applied to long gun purchases as well.) All of these buyers must pass a criminal background check, attest to certain facts, and provide certain personal information. These basic

Handgun licensing:

- 1 A set of qualifications that must be met before a person who wants access to a handgun receives permission to acquire or own one, and
- 2 a system for distinguishing between people who have qualified for access and those who have not.

federal requirements for purchases from licensed dealers enjoy virtually universal support.

In other words, we need not debate *whether* we should have handgun licensing, because we already have it and all sides agree that we need it, at least in some form. Instead, we need to determine what the components of licensing should be and how to implement them. Before we get to that, however, we must understand in greater detail both the objectives of licensing and the extent to which current law meets those objectives.

The Objectives of Licensing

To reduce gun deaths and injuries, a licensing system must accomplish three main objectives:

Objective 1: Defining Qualifications for Access

A licensing system must define who may or may not legally buy or own handguns. This definition reflects the community's general view about how broadly accessible guns should be. If a community believes that guns should be widely available, the definition will be less restrictive than if the community prefers very limited access.

The federal list of prohibited purchasers, discussed more fully below, provides one example of how the line can be drawn and, as a legal matter, establishes minimum restrictions that apply nationwide. Federal law allows anyone who does not fall into one of the prohibited purchaser categories to gain access to handguns.

However, states can and do impose their own restrictions on access. Roughly half of the states have identified at least one additional category of prohibited purchaser, and over a dozen have defined specific steps that people who are otherwise qualified must take before they may legally acquire or own a handgun. These steps may include providing law enforcement with fingerprints or other proof of identity or residency, a demonstration of relevant knowledge and skills, or other requirements.

Objective 2: Distinguishing the Qualified From the Unqualified

A licensing system must include a mechanism for determining who has qualified for access and who has not. The ease of ensuring that a person has satisfied the requirements varies widely, depending on the requirement. In addition, the system must account for circumstances in which people who once were qualified and who later become unqualified.

For example, verifying that a gun owner or buyer does not have a record of violent crime requires a check of criminal record databases that already exist and that are, for the most part, reliable.² In contrast, determining whether a gun owner or buyer has a non-criminal history of violence (i.e., violent behavior that has not led to criminal prosecution) may require time-consuming and controversial new processes. Some preconditions (e.g., proof of age or residency) may pose a risk of fraud in the absence of strict controls, while others (e.g., vision testing) may require special equipment or expertise.

3

Objective 3: Allowing Access for Those Who Qualify While Preventing it for Everyone Else

Most importantly, a licensing system must ensure that only people who are permitted by law to

buy or own handguns and who have taken the necessary steps actually get access to handguns. The success of the entire system depends on the extent to which it accomplishes this objective, which in turn depends on how effectively the system meets the first two objectives, and on how vigorously the system is enforced.

The Failure of Current Federal Law

Although current federal law seeks to prohibit some people from gaining access to guns, it fails to accomplish the objectives of a responsible licensing system. As a result, the current system does not do enough to reduce gun deaths and injuries.

The federal list of prohibited purchasers, discussed more fully below, implies a federal policy that guns should not be available to people who are at high risk for committing future crimes or who cannot reliably exercise good judgment in the handling and use of a firearm. Federal law defines some qualifications for access, but those qualifications are inadequate. By leaving out many people known to be at high risk for subsequent criminal activity or questionable judgment, the federal system establishes an overly broad definition of who qualifies for access to handguns.

Similarly, the federal system only partially accomplishes the second objective. The record-keeping practices of many state and federal agencies fail to provide current information about who is in the various prohibited categories.³ Also, for some of the prohibited categories, no mechanism exists for determining a person's status.

As for the third and most important objective, the federal system fails miserably. One gaping hole in the federal system is its failure to confirm the status of many gun buyers at the point of purchase. Federal law requires background checks only for purchases from licensed dealers, but anyone is allowed to sell guns. Prohibited purchasers can easily gain access to handguns from unlicensed sellers, who are not required to confirm that the buyer is not in a prohibited category.

Even more troubling is the fact that under the federal system, prohibited purchasers can often gain access to handguns directly from licensed dealers, who are subject to little oversight and have a direct financial stake in allowing transactions to proceed. A 2001 study by the General Accounting Office found that counterfeit identification with fictitious names was readily accepted by dealers.⁴ The use of a false name and other identifying information ensured that the background check would not block the transaction, and dealers either were unaware that the identification was phony or were unwilling to lose the sale. Many dealers will also allow a “straw purchase,” in which

FAILURES OF CURRENT FEDERAL LAW

- ▶ Insufficient prohibited-purchaser categories
- ▶ Unreliable screening for prohibited status
- ▶ Limited application of background checks
- ▶ Insufficient oversight for preventing fraud
- ▶ “Default-proceed” for inconclusive background checks

someone other than the intended recipient completes the necessary paperwork in order to allow a prohibited transaction to proceed.

Finally, the federal system allows a transfer to proceed if the National Instant Criminal Background Check System (NICS) does not reject it within three business days. Although most background checks are completed within hours, a small percentage generates inconclusive results. For example, the system may discover a felony arrest but no record of the outcome of the case. It may take a week for authorities to contact the appropriate agencies and determine whether the arrest resulted in a disqualifying conviction that was not properly entered into the system. If the gun is transferred within 3 business days but authorities learn two days later that the recipient was prohibited, they must then try to retrieve the gun. According to the United States Department of Justice, prohibited transfers occur in this fashion a dozen times a day, on average, and nearly half take more than 30 days to identify as prohibited.^{5,6} With limited resources, however, these retrievals are rarely a high priority for law enforcement agencies.⁷

The current federal system is a poor substitute for a responsible licensing system. The system's many gaps and limitations promote fraud and allow prohibited purchasers to gain access to guns, essentially at will. Fortunately, however, states can design their own licensing systems, and a well-designed state system can do a much better job than the current federal system at controlling the flow of guns into the illegal market.

Components of a Responsible Licensing System

The components of a responsible licensing system can be grouped into five categories. The first two categories define the qualifications for access to handguns by setting forth the characteristics of people for whom access is prohibited and prescribing any additional steps that everyone else must take to gain access. Only people who are not prohibited and who have taken the necessary steps may legally gain access handguns.

The third category establishes the mechanisms for distinguishing between qualified and unqualified applicants. These gate-keeping components are the central elements of a licensing system, giving teeth to the access rules defined by the first two categories of components. They provide the functional screens used to separate people who qualify for access from those who do not.

The components in the fourth category implement the licensing system at the point of access. These components form the last defense against illegal access, and the quality of every licensing system depends, in the end, on the accuracy of screening at the point of access.

The fifth category of components focuses on enforcement. The system must provide appropriate tools and adequate resources to ensure the identification and prosecution of anyone who breaks the rules.

Some components, like a criminal background check, already exist under federal or state law but may be too narrowly applied. Other components will be entirely new. In each jurisdiction, advocates and policy makers should understand what the law already provides and should investigate the quality of each existing component, as well as identifying necessary new components.

Finally, the quality of interaction among the many distinct but related components of a licensing system often depends on the implementation of each component. Designing a

responsible licensing system requires explicit consideration of each component and of the options for implementing it to maximize the achievement of the three objectives of licensing.

Category 1: Identifying Those Prohibited From Access to Handguns

This category comprises the descriptions of people who are prohibited from gaining access to handguns. These descriptions identify people whose past or whose characteristics at the time of acquisition raise concern that they will misuse a handgun in the future. That concern can result from a history of erratic, criminal or violent behavior, from impaired or immature judgment or from physical conditions that limit a person's ability to follow safe handling practices. An effective handgun licensing system must identify people in those defined prohibited categories and deny them access to handguns from every source.

Current Federal Law

Federal law prohibits the delivery of handguns to any person who falls into one of the following categories:⁸

- ▶ Anyone under a felony indictment or with a felony conviction
- ▶ Fugitives from justice
- ▶ People who illegally use or are addicted to any controlled substance
- ▶ Anyone who has been adjudicated a “mental defective” or committed to a mental institution
- ▶ Illegal aliens
- ▶ Anyone with a dishonorable discharge from the military
- ▶ Anyone who has renounced citizenship
- ▶ Anyone who is subject to a domestic violence restraining order
- ▶ Anyone convicted of a misdemeanor crime of domestic violence.

Current law also bars federally licensed dealers from transferring handguns to anyone under the age of 21.⁹ Unlicensed sellers cannot transfer handguns to anyone under the age of 18.¹⁰ With minor exceptions, federal law also prohibits transferring handguns to any person who is not a resident of the state in which the transferor is located.¹¹

Research suggests that some people not prohibited from buying guns under federal law may nonetheless be high-risk buyers. In one study, buyers with a prior, non-violent, non-firearm-related misdemeanor conviction were 6 times more likely to commit a crime after buying a handgun than buyers with no previous convictions. Buyers with a single violent misdemeanor conviction were 9

5 CATEGORIES OF HANDGUN LICENSING COMPONENTS

- ▶ Define prohibited purchasers
- ▶ Prescribe steps required for others to gain access
- ▶ Establish “gate-keeping” mechanisms
- ▶ Implementation at point of access
- ▶ Enforcement

times more likely to commit a future crime, and buyers with multiple misdemeanor convictions for violent crimes were over 11 times more likely to commit a future crime.¹²

While some additional high-risk categories, like people with violent misdemeanor convictions, can be identified simply by expanding the existing criminal background check, identifying others may require more labor-intensive screening techniques.

Improving the System

A responsible licensing system includes additional prohibitions to prevent access to handguns by other high-risk purchasers.

- ***Conviction of a Violent or Firearm-related Misdemeanor***

Expanding background checks to include violent or firearm-related misdemeanor convictions will prevent purchases by people at high risk of committing future crimes.

- ***Anyone Under the Age of 21***

The ambiguity in federal law about access to handguns for people aged 18–21 years complicates enforcement and undermines the message that young people and handguns do not mix. Anyone under the age of 21 should be prohibited from acquiring handguns from any source, not just from licensed dealers. If necessary, the definition could exempt the supervised use of handguns at firing ranges or during other lawful activities.

- ***History of Violence Not Leading to Conviction***

Violence does not always result in a criminal record. Many domestic violence cases, for example, stay within the home. Similarly, the man responsible for a mass shooting at a church near Fort Worth, Texas in 1999 was a legal handgun buyer, despite a long history of violence known to his family and neighbors. In some cases, local law enforcement officials may be aware of such histories. In some areas, law enforcement agencies conduct detailed investigations to implement this component. Iowa law includes people with histories of “repeated acts of violence” among its prohibited-purchaser categories.¹³

- ***History of Substance Abuse Including Alcohol***

The link between substance abuse and violence is well established, yet federal law only prohibits access to guns for a small fraction of people with records indicating substance abuse problems. At least 14 states have added prohibitions for people with certain histories of alcohol abuse.¹⁴ Other states, like Hawaii, have adopted a definition of substance abuse that is much broader than federal law.¹⁵

- ***Mental Health Histories Other Than Adjudication or Commitment***

A history of certain serious mental illnesses calls into question the ability of a prospective gun buyer to exercise appropriate care and judgment in the handling of a firearm. Current federal law only blocks sales to people whose mental health history includes either a formal determination of mental illness by a court or commitment to a mental institution. But even severe mental illness does not always lead to formal adjudication or commitment. Other sources of information might be available to identify people with relevant histories of mental illness including depression, a major risk factor for suicide. In addition, some mental health institutions, citing concerns about privacy and

confidentiality, routinely fail to submit records of disqualifying mental health histories. Of course, any use of medical records must be accompanied by stringent measures to protect the privacy of people seeking treatment.

Category 2: Additional Qualifications For Non-Prohibited Purchasers

This second category of components establishes additional qualifications required of anyone who is not a prohibited purchaser. These qualifications mainly involve training and testing of people seeking access to handguns. Although training and testing requirements cannot ensure that every gun owner will behave responsibly, they do ensure that every gun owner has the fundamental knowledge and skills necessary for responsible ownership.

Current Federal Law

Although voluntary gun safety training is available for those who choose to pursue it, federal law does not require training or testing prior to acquiring a handgun. Licensed dealers have no obligation to educate buyers about safe handling, use or storage, and buyers do not have to demonstrate any relevant knowledge. For most handgun sales, the buyer can legally bring a handgun into the community without ever having touched one previously. The buyer does not need to know anything about how the gun works, how to handle it safely, or how to recognize or deal with common hazards.

Similarly, most states do not require training or evaluation prior to getting a handgun. Some states require training but not testing (MD requires training but *prohibits* testing). Other states require testing but not training (CA buyers have to pass tests but do not have to take courses). States requiring written tests list specific topics that must be covered by the training or test, such as state and federal gun laws, safe storage practices, lawful use of lethal force, etc. Hawaii law requires training to include, at least in some circumstances, two hours of firing training at a range. No other state requires any firing training. New legislation in CA, which will take effect in 2003, requires a demonstration of safe handling, without live ammunition, at the point of transfer. No state currently requires handgun buyers or owners to pass a vision test or routinely tests for physical capacity to follow basic rules of handgun safety.¹⁶

Improving the System

► Mandatory Safety Course

The goal of a mandatory safety course is to ensure that everyone who brings a handgun into the community is familiar with basic safety rules and laws concerning the safe and legal handling of firearms. The course should ensure that no one can legally purchase a handgun without first learning the most fundamental requirements of responsible gun ownership.

Handgun buyers should be required to complete a comprehensive course, taught by a trained instructor, covering all of the following:

- Safe use and handling
- Responsible storage
- Sales and distribution laws relevant to unlicensed sellers

- Laws governing the use of lethal force
- Strategies to prevent unintentional shootings or unauthorized use

► ***Mandatory Range Training***

Range training exposes handgun buyers to the actual operation of handguns. The goal is not to produce sharpshooters but to ensure that no one buys a handgun without first having gained some experience in how to operate it safely, under the supervision of a trained instructor. Range training allows prospective purchasers to fire handguns in a relatively safe environment. Typical range courses take two to four hours, at the end of which participants have received instruction and experience in loading, unloading and firing a handgun several times. Range training also provides an opportunity for handgun buyers to see first hand how to handle certain predictable and potentially hazardous situations, like malfunctions and misfires.

► ***Testing***

The safety course and range training should both be followed by appropriate testing to ensure that prospective buyers have understood the training and can safely operate a handgun in practice. Safe handling includes the ability to see well enough to identify a target and evaluate its surroundings and the ability to operate any functional or safety-related components of the handgun.

Category 3: Distinguishing Between Qualified and Unqualified Applicants

Components in this third category enable a licensing system to separate qualified applicants from unqualified applicants. To do so, the system must include processes for confirming that an applicant has satisfied all of the qualifications and for subsequently identifying qualified applicants.

The confirmation process involves the review of records and personal information to determine three things: the identity of the applicant, the applicant's absence from any prohibited category, and the applicant's satisfaction of any additional qualifications. Law enforcement agencies generally can conduct the confirmation process efficiently and securely, since they typically have appropriate skills (e.g., taking fingerprints) and access to the required information. Also, direct contact with law enforcement reduces the risk of an applicant providing false information.

The process of identifying qualified applicants is what most people think of as “licensing.” This process results in some form of evidence that a given person is licensed to gain access to handguns. Whether that evidence takes the form of a separate physical “license” or simply an entry in a remote database, the goal of this process is to create an efficient and reliable way to tell who is licensed and who is not.

Research shows that states that require some form of license are more efficient at weeding out prohibited purchasers than states with no such requirement.¹⁷ Also, a recent study demonstrated that in states with licensing and registration systems, a higher proportion of crime guns come from out of state than in states that do not have licensing and registration systems.¹⁸

Current Federal Law

For transactions involving federally licensed gun dealers, the dealer confirms the age and identity of the intended recipient by reviewing a driver's license, state ID card or military ID card. The dealer is not required to confirm that the recipient is an actual resident of the

state. Driver's licenses and state ID cards typically do not require proof of residency and are, therefore, available to residents and non-residents alike.

Current federal law requires licensed dealers to perform a background check by submitting identifying information about the person seeking a firearm to the National Instant Criminal Background Check System, known as "NICS." The NICS system compares that information with a series of databases containing criminal histories, mental health records, immigration data and information about military service. While existing systems usually identify people in some prohibited categories (convicted felons, fugitives, people with domestic violence misdemeanor convictions), other categories are not readily identifiable in the databases checked by the systems (people with certain mental health histories or users of controlled substances).

Also, the accuracy of the NICS system depends on how often and how thoroughly state and federal agencies update the records in the NICS databases. Colorado's experience in 1999 provides an example of the problems with relying solely on the NICS system. Simon Gonzales was a prohibited purchaser who bought a gun from a Colorado dealer. His disqualifying record, a domestic violence restraining order, was contained in a state database not included in NICS, but Colorado law did not require a separate search of state records. Gonzales purchased a gun while subject to the restraining order and used it to murder his three daughters. Three weeks later, Colorado switched to a system that includes checking state databases. Nineteen other states, however, still use only the federal background check system for handgun purchasers.¹⁹

If a transfer does not involve a licensed dealer, the seller is not required to perform a background check. Because federal law allows unlimited transfers by people without a federal firearms license, a huge proportion of gun transactions occur without any effort to confirm who the recipient is or determine whether he or she is a prohibited purchaser. As a result, prohibited purchasers routinely gain access to handguns from unlicensed sellers. Some states, such as MD and CA, have imposed background check requirements on some or all private sales, but enforcing those requirements is extremely difficult without a strong registration law to ensure gun owner accountability.

Improving the System

The following components help distinguish between qualified applicants and unqualified applicants. All of these components can be implemented in a single visit to a law enforcement agency:

D *Confirmation of Identity*

Anyone seeking to acquire a handgun must provide some reliable proof of identity. Government-issued ID cards, like driver's licenses, passports or military IDs, generally serve this purpose fairly well. Review by a law enforcement agency may block or deter attempts by unqualified applicants to use altered or forged identification cards to evade the qualification requirements.

D *Confirmation of Residency in the State*

Proof of residency usually takes the form of a document demonstrating that the buyer has significant roots in the state, like a utility bill, a mortgage stub, a current residential lease or a pay stub showing an in-state address. Such documents indicate a level of participation in activities within the state that can help prevent transient visitors from buying guns illegally.

► *Confirmation of Non-prohibited Status Using Fingerprint- and Name-based Background Checks of State and Federal Databases*

The use of fingerprints in handgun licensing systems is more complicated than many expect, because the system must establish what prints to take, where to take them, and what to do with them. A full set of prints may improve the quality of a background check but getting and running a clean, full set for every transaction can be expensive and time-consuming.

An efficient, effective licensing system balances the potential improved accuracy of a full-print system and the reduced cost of a non-print system by requiring a full set of prints for the background check at this stage, but not for the subsequent check at the point of transfer (see below). Prints should be captured by law enforcement personnel who have had appropriate training, and the background check should include state and federal databases.

Once a person receives a license, the system should constantly, or at least periodically, compare the database of licensed people with new records of disqualifying circumstances. This allows the immediate invalidation of the license of someone who falls into a prohibited category after receiving a license.

► *Confirmation of Completion of Safety Training and Testing*

Applicants should have to complete the training course and pass all relevant tests. Course providers and test administrators can give successful participants documentation of completion and can also report completion directly to law enforcement. This dual record-keeping allows independent confirmation of completion and provides people who have misplaced their own documentation with another way to demonstrate that they have satisfied these requirements.

► *Issuance of License*

An applicant becomes licensed after law enforcement personnel have confirmed all of the necessary information. As proof of licensure, the system may provide a physical “license” indicating completion of all of the required qualifications. A person seeking to acquire a handgun would then present the license to the transferor as part of the point of transfer requirements (see below).

The system may also record the fact of satisfactory completion in a database and make that information available to transferors at the point of transfer, without issuing a physical “license.” In this case, the transferor would use the recipient’s identifying information to search the database to determine whether the recipient has satisfied all of the qualifications required for access to handguns.

► *Term No Longer Than 5 Years*

The term of the license reflects a balance between the quality of screening and the resource demands of the system. The longer the term, the greater the risk that a license holder may fall into a prohibited class before the license expires. The shorter the term, the more often buyers or owners have to complete all or part of the licensing process. In some cases, a limited term applies to some components (like a background check, which should be periodically updated) while others (like fingerprints or training) may not require updating over time.

A license should have a term of no more than five years. This allows for periodic updating of the background check and reduces the use of old documents by people who may have entered a

prohibited category since the initial background check. In some states, the term is extremely short (e.g., 10 days), and the license (or “permit”) may only be used for a single acquisition.

Category 4: Requirements at the Point of Transfer

This category of components encompasses the process that takes place when a person actually tries to acquire a handgun. The point of transfer is the last opportunity to prevent unqualified applicants from gaining access to guns. These components are designed to ensure that the acquirer has not become unqualified since receiving a license and to prevent fraud in licensing and testing.

Current Federal Law

Federal law requires anyone seeking to acquire guns from a licensed gun dealer to submit to and pass a federal background check. Applicants must also provide proof of identity and must attest that they are not prohibited by law from purchasing firearms. These requirements do not apply to purchases from sellers who are not licensed to sell guns. There is no waiting period for any gun sales under federal law.

Improving the System

► *All Requirements Must Apply to Every Gun Transaction in Every Venue*

This is the single most important improvement to point of purchase requirements. There should be no exceptions for sales by unlicensed sellers or for transactions that take place at gun shows, over the Internet, or in any other venue.

In addition, the following should occur prior to every gun transaction:

► *Presentation of Proof of Qualification*

Every person seeking to acquire a handgun should prove that he or she is qualified to do so. A physical license may be one element of such proof. However, to prevent fraud, even a physical license should be confirmed by reference to a remote database maintained by a law enforcement agency. This step also ensures that the person’s license has not expired or been revoked, despite appearing on its face to be valid.

► *Presentation of a Valid, Current Photo Identification Card*

The transferor should confirm the identity of the intended recipient with a current, valid government-issued photo identification card, like a driver’s license or state ID card. Also, the identification information on the physical license, if applicable, and in the database should match the identification provided at the point of transfer.

► *New Background Check*

Every transaction should be preceded by a new background check using state and federal databases. In addition, inconclusive background checks should bar delivery of the firearm until the check is complete. If all transactions are processed through licensed dealers, as in California, a background check will happen automatically since the dealer cannot transfer a gun without first performing a background check.

► *Thumbprint*

The recipient should provide a thumbprint at the point of transfer, which eases prosecution in the case of a “straw purchase” or the use of fraudulent identification documents. Also, a thumbprint captured at the point of purchase can be compared with a print taken during the confirmation process or with a print stored on the person’s identification card to ensure that the person seeking access is presenting accurate identification.

► *Proof of Residency*

Unless the permit to purchase is valid for a very short time (e.g., 10 days), the buyer should present current proof of residency at the point of transfer. The longer the delay between confirmation of in-state residency and the application to acquire a gun, the greater the risk that a permit holder is no longer a state resident. Requiring proof of residency at the point of transfer ensures that the residency is current.

► *Waiting Period*

A waiting period of no less than 72 hours should elapse before a recipient who passes the background check takes delivery of the gun. This reduces the incidence of inconclusive background checks by allowing time to investigate ambiguous or incomplete entries and provides a reasonable “cooling-off” period to prevent impulse gun purchases in the heat of an argument.

Category 5: Enforcement

The final category of components provides the tools necessary to encourage compliance with the rules established by the licensing system. If gun sellers see little risk in transferring guns to unlicensed recipients, the system will lose the ability to prevent access by people who do not satisfy the licensing requirements. The enforcement components should motivate compliance by anyone who seeks to transfer or receive a handgun.

The most fundamental tool necessary for effective enforcement is the transparency of gun transfers. Authorities cannot reliably identify and punish people who fail to comply with transfer requirements if transfers occur out of view. The harder it is for sellers to hide their activities, the easier it is to prevent access to handguns for unqualified recipients. Of course, even if illegal transfers become visible, enforcement cannot succeed if law enforcement agencies lack the funding or the interest to pursue violations.

Current Federal Law

In many ways, current federal law seriously undermines the ability of law enforcement agencies to enforce the limited federal licensing system.

Research shows that approximately 40% of gun transactions, amounting to millions of transfers every year, take place without the involvement of federally licensed gun dealers.²⁰ However, because federal background check requirements apply only to transfers by federally licensed gun dealers, all of these non-dealer transactions are completely invisible to law enforcement. Sellers are not required to investigate the status of their buyers or to keep any records of transfers. Given this vast, hidden market, it is no surprise that nearly 90% of guns recovered in crimes have changed hands since they were first purchased from a licensed dealer.²¹

Even worse, current federal law prevents law enforcement agencies from using some of the limited information about transfers that they do have. When a licensed dealer submits information about a prospective buyer for a background check, the system produces a record of the submission. Law enforcement officials could use those records to identify purchase patterns suggesting criminal activity, but federal law prohibits the retention of those records.²² Under its own regulations, the US Department of Justice has been keeping those records for 90 days and has used that time to identify at least 9,700 cases of illegal or erroneous transfers. New rules proposed by Attorney General John Ashcroft would require destruction of those records within 24 hours, even further restricting enforcement capabilities.²³

The government's ability to monitor the activities of licensed dealers is similarly hampered by legislative limits. For example, current federal law prohibits the Bureau of Alcohol, Tobacco and Firearms (ATF), which is charged with enforcing gun distribution laws, from inspecting records of licensed dealers more once a year.²⁴ Still, in a typical year, the ATF inspects less than 5% of the more than 100,000 licensed dealers.²⁵ During the 1990s, ATF's staff of criminal investigators dropped by 14%, while the number of cases it referred for prosecution dropped by a whopping 44%.²⁶ This inadequate oversight allows crooked dealers to sustain illegal activity for long periods of time before getting caught. Research shows that corrupt licensed dealers are a major source of supply for illegal gun traffickers.²⁷

If the ATF does catch licensed dealers breaking the law, federal statutes severely restrict the agency's ability to impose appropriate penalties. Violations of record-keeping requirements are punishable only by revocation of the license, a severe sanction that can embroil the ATF in costly and time-consuming litigation.²⁸ Without the ability to impose less strict penalties, like suspensions or fines, the ATF simply ignores many violations. For example, a gun dealer might have errors in the paperwork for a very small percentage of his transactions. Rather than revoke the dealer's license, which would put him out of business, the ATF may overlook the errors or even commend the dealer on his generally good performance. But for a high-volume gun dealer, a small percentage of flawed records can represent the illegal transfer of hundreds of guns every year.

Improving the System

Federal authorities need much more effective enforcement tools and the resources to implement them, before they can effectively stop the flow of handguns into the illegal market.

► *Accountability Through Registration With Periodic Renewal*

Every handgun should be registered to a properly licensed owner. By creating accountability for legal gun owners, registration provides an incentive for them to obey the rules of a licensing system. Periodically, ideally once a year, the legal owner of a handgun should either reaffirm his or her responsibility for that handgun or explain why he or she should no longer be held accountable for its whereabouts and use. Suitable explanations might include a lawful transfer (supported by proof of compliance with all relevant laws), theft (supported by a timely police report) or destruction (supported by some reasonably reliable evidence). If the registered owner declines to respond or fails to provide an adequate explanation, he or she will remain accountable for the whereabouts and use of his or her handgun.

► *Appropriate Penalties*

Violations of the requirements of the licensing system should be treated as serious crimes because of the tragic consequences that result from illegal access to guns. Personal accountability alone is not sufficient to deter illegal activity. Weak penalties undermine the deterrent power of the system and reduce the intensity of law enforcement pursuit of violations.

► *Adequate Funding*

Appropriate enforcement requires funding sufficient to allow meaningful oversight of all elements of the licensing system. Advocates and policy makers should consider whether to support the system entirely through fees paid by licensees or to subsidize the system with public funds.

► *Community Involvement*

Community interest can help make licensing enforcement a high priority. Local advocates can work with law enforcement agencies to identify and overcome any obstacles to vigorous enforcement.

Conclusion

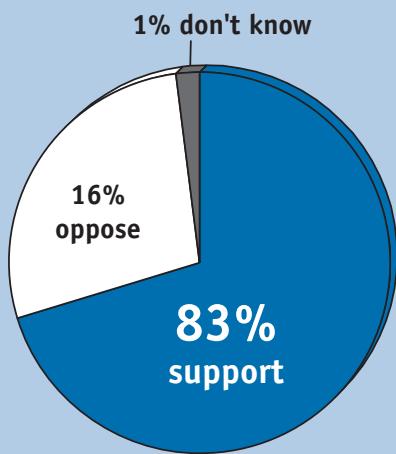
Rigorous licensing systems can be efficient and cost-effective, if they are carefully designed. An effective licensing system will prevent the vast majority of unqualified applicants from gaining access to handguns, while allowing access for the vast majority of those who do qualify. Advocates and policy makers must decide whether the system should err by preventing access for too many or by allowing it for too few, using the political process to balance the quality and cost of the system.

A responsible handgun licensing system should reflect prevalent attitudes about who should have access to handguns. Most existing licensing systems, however, more accurately reflect the balance of political power. Advocates and policy makers hoping to shift that balance should have a good understanding of what “licensing” means and what they want it to accomplish. This knowledge improves the prospects of better licensing proposals by empowering proponents to make wise decisions about which battles to fight.

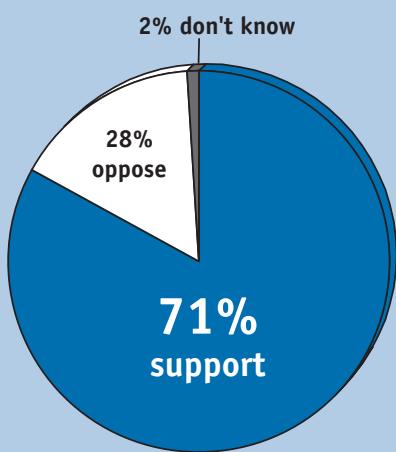
Notes

- ¹ National Center for Injury Prevention and Control, WISQARS online nonfatal injury reports at url <http://webapp.cdc.gov/sasweb/ncipc/nfires.html>, accessed 8/05/2002.
- ² Although there is much room for improvement in the completeness of the data systems used for background checks, nearly half of states have automated 100% of their criminal history records, and 13 others have automated over 80% of their records. See Bureau of Justice Statistics, *Improving Criminal History Records for Background Checks*, Doc. No. NCJ-192928 (2002). Still, nearly 10,000 prohibited purchasers have bought guns that later had to be retrieved. US DOJ, Notice of Proposed Rulemaking, 66 Fed. Reg. 35567, 35569 (2001).
- ³ For example, as of February, 2002, the federal registry used to determine whether a prospective purchaser is an unlawful user of a controlled substance (the definition of which does not include alcohol abuse) contains just 121 records. Bureau of Justice Statistics, *Improving Criminal History Records for Background Checks*, NCJ-192928 (2002).
- ⁴ General Accounting Office, *Firearms purchased from federal firearm licensees using bogus identification*, GAO-01-427, March 2001.
- ⁵ Federal Bureau of Investigation, *National Instant Criminal Background Check System (NICS) 2000 Operations Report* (April, 2001).
- ⁶ Notice of Proposed Rulemaking, 66 Fed. Reg. 35567, 35569 (2001)
- ⁷ See General Accounting Office, *Gun Control: Implementation of the National Instant Criminal Background Check System*, GAO/GGD/AIMD-00-64 (2000).
- ⁸ 18 U.S.C. § 922(d).
- ⁹ Id. at § 922(b)(1).
- ¹⁰ Id. at §§ 922(x)(1)(A), (x)(5).
- ¹¹ Id. at § 922(a)(5).
- ¹² Wintemute, GJ, et al., *Prior misdemeanor convictions as a risk factor for later violent and firearm-related criminal activity among authorized purchasers of handguns*, 280 JAMA 2083 (1998).
- ¹³ Iowa Code sec. 724.15(d).
- ¹⁴ Bureau of Justice Statistics, *Survey of State Procedures Related to Firearm Sales, Midyear 2001*, NCJ-192065 (2002). Pennsylvania, for example, excludes anyone with 3 or more drug- alcohol-related driving convictions in the preceding 3 years. Pa. Cons. Stat. § 18:6105(c)(3).
- ¹⁵ See, e.g., Hawaii Revised Statutes § 134-7(c)(1).
- ¹⁶ New Jersey has a unique provision prohibiting the issuance of a necessary purchase permit “[t]o any person who suffers from a physical defect or disease which would make it unsafe for him to handle firearms.” N.J.P.S. 2C-58.3(c)(3). However, the statute does not provide for testing to determine the presence of a disqualifying condition.
- ¹⁷ Bowling, M., et al., *Background Checks for Firearm Transfers, 2000*, Bureau of Justice Statistics, July 2001 (NCJ 187985).
- ¹⁸ Webster, DW, Vernick, JS, Hepburn, LM, “The relationship between licensing, registration and other state gun sales laws and the source state of crime guns.” 7 Inj. Prev. 184-189 (2001).
- ¹⁹ These state are: Alabama, Alaska, Arkansas, Idaho, Kansas, Kentucky, Louisiana, Maine, Mississippi, Montana, New Mexico,, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, West Virginia and Wyoming. Bureau of Justice Statistics, *Survey of State Procedures Related to Firearm Sales, Midyear 2001*, NCJ-192065 (2002).
- ²⁰ Cook, PJ and Ludwig, J, *Guns in America: National Survey on Private Ownership and Use of Firearms*, National Institute of Justice Research in Brief, May, 1997.
- ²¹ Bureau of Alcohol, Tobacco, and Firearms, *Crime Gun Trace Reports National Report* (2000), (2002).
- ²² 18 USC 923(g)(4), 926(a).
- ²³ US General Accounting Office, *Gun Control: Potential Effects of Next-Day Destruction of NICS Background Check Records*, GAO-02-653 (2002).
- ²⁴ 18 USC 923(g)(1)(B)(ii)(I).
- ²⁵ Bureau of Alcohol, Tobacco and Firearms, *Firearms Commerce in the United States, 2001/2002*, (2002).
- ²⁶ Transactional Records Access Clearinghouse, Syracuse University, web site at <http://trac.syr.edu/tracatf/findings/national/atfstaff92986.html>, accessed on July 19, 2002.
- ²⁷ Bureau of Alcohol, Tobacco and Firearms, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* (2000).
- ²⁸ 18 USC 923(e).

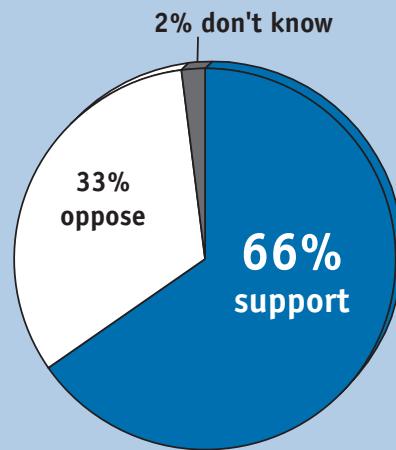
Voter Support for Handgun Licensing



Gun Owner Support for Handgun Licensing



NRA Supporter Support for Handgun Licensing



Source: Lake, Snell, Perry & Associates, May 2001.

This report is a project of the Educational Fund to Stop Gun Violence. For more information, contact:

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