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CRS Report for Congress

Gun Control Legislation

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Gun Control Legislation

Summary

Congress has continued to debate the efficacy and constitutionality of federal regulation of firearms and ammunition, with strong advocates arguing for and against greater gun control. Although several dozen gun control-related proposals were introduced in recent Congresses, only a handful of those bills have received significant legislative action. On June 26, 2008, however, the Supreme Court issued its decision in *District of Columbia v. Heller* and found that the District of Columbia (DC) handgun ban violates an individual's right under the Second Amendment to lawfully possess a handgun in his home for self defense. Dissatisfied with the District's response to this decision, pro gun Members have reportedly convinced the House leadership to consider a bill (H.R. 6691) in September that would overturn major provisions of the District's gun laws.

Earlier in the 110th Congress, the tragic events at Virginia Tech on April 16, 2007, prompted the passage of the NICS Improvement Amendments Act (P.L. 110-180; H.R. 2640). This Act includes provisions that encourage states, as a condition of federal funding, to update and make available disqualifying records on persons found to be "mental defective" and convicted of misdemeanor crimes of domestic violence for inclusion in the National Instant Criminal Background Check System (NICS). On a related matter, the Senate Veterans' Affairs Committee has approved a bill (S. 2969) that was amended to include a provision that would revamp procedures by which veterans are found to be "mentally incompetent" and, thus, lose their firearms eligibility (for a similar bill, see S. 3167).

The Senate Judiciary Committee, meanwhile, has reported a bill (S. 376) that would amend the Law Enforcement Officers Safety Act (LEOSA) to widen eligibility under that law, as well as clarify other provisions related to eligibility, credentialing, and certification. The House companion bill is H.R. 2726. Congress has made permanent funding limitations on the Bureau of Alcohol, Tobacco, Firearms and Explosives' release of firearm trace data in the Consolidated Appropriations Act, 2008 (P.L. 110-161). In addition, the House has passed a public housing bill (H.R. 6216) that includes a provision that would prohibit housing authorities from barring tenants from possessing legal firearms as a condition of their lease. The Senate leadership, however, has blocked an amendment to a public lands bill (S. 2483) that would overturn federal regulations prohibiting loaded and concealed firearms in National Parks and Wildlife Refuges (for a similar bill, see S. 2619).

Other salient gun control-related issues and related proposals that may reemerge in the remainder of the 110th Congress include (1) authorizing federal judges, judicial officials, U.S. Attorneys, and Department of Justice personnel to carry firearms for self-defense (H.R. 2325 and S. 1235); (2) retaining Brady background check records for approved transactions to enhance terrorist screening (S. 1237, S. 2935, H.R. 2074, and H.R. 3547); (3) more strictly regulating certain long-range .50 caliber rifles (S. 1331); (4) further regulating "assault weapons" and "large capacity ammunition feeding devices" (H.R. 1022, H.R. 1859, H.R. 6257, and S. 2237); and (5) requiring background checks for firearm transfers at gun shows (H.R. 96, S. 2237, and S. 2577). This report will be updated to reflect legislative action.

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Legislative Developments

Congress has continued to debate the efficacy and constitutionality of further federal regulation of firearms and ammunition. Several dozen gun control-related proposals were introduced in recent Congresses, but only a handful of those bills have received significant legislative action. On June 26, 2008, however, the Supreme Court issued its decision in *District of Columbia v. Heller* and found that the District of Columbia (DC) handgun ban violates an individual's right under the Second Amendment to lawfully possess a handgun in his home for self defense.[1] Dissatisfied with the District's response to the *Heller* decision, pro gun Members have reportedly convinced the House leadership to consider a bill (H.R. 6691) after the Labor Day recess that would further overturn major provisions of the District's gun laws.

Earlier in the 110th Congress, the tragic events at Virginia Tech on April 16, 2007, prompted the passage of the NICS Improvement Amendments Act (P.L. 110-180; H.R. 2640), a bill designed to provide incentives to states to update and make available disqualifying records on persons adjudicated "mental defective" and convicted of misdemeanor domestic abuse crimes accessible through the National Criminal Background Check System (NICS) for the purposes of determining firearms possession and transfer eligibility. On a related matter, the Senate Veterans' Affairs Committee has approved a bill (S. 2969) that was amended in full committee markup by Senator Richard Burr to include a provision that would prohibit the Department of Veterans of Affairs (VA) from determining a veteran to be "mentally incompetent" without "the order or finding of a judge, magistrate, or other judicial authority of competent jurisdiction." The Burr amendment would also require the VA to notify veterans who are found to be mentally incompetent that they will lose their firearms possession eligibility and would give those veterans greater opportunity to appeal those findings administratively. Senator Burr previously introduced a similar bill as a stand-alone bill (S. 3167).

The Senate Judiciary Committee has reported a bill (S. 376; S.Rept. 110-150) sponsored by its chair, Senator Patrick Leahy, that would amend the Law Enforcement Officers Safety Act (LEOSA) to widen eligibility under that law, as well as clarify other provisions related to eligibility, credentialing, and certification. Representative Randy Forbes has introduced a similar bill (H.R. 2726). Congress has made permanent funding limitations on the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF's) release of firearm trace and multiple handgun sales report data in the Consolidated Appropriations Act, 2008 (P.L. 110-161).

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[1] For legal analysis, see CRS Report RL34446, *District of Columbia v. Heller: The Supreme Court and the Second Amendment,* by T. J. Halstead.

In addition, the House has passed legislation (H.R. 6216) that includes a provision that would prohibit the Housing and Urban Development Secretary from accepting as reasonable any management or related fees charged by a Public Housing Authority (PHA) for enforcing any provision of a lease agreement established by a PHA that requires tenants to register an otherwise legally possessed firearm, or prohibits firearm possession outright. On the other hand, the provision would also allow PHAs to terminate the lease of any tenant who illegally uses a firearm. The Senate leadership, meanwhile, has successfully blocked an amendment during consideration of a public lands bill (S. 2483) that would overturn federal regulations that prohibit the carrying of loaded and concealed firearms in National Parks and Wildlife refuges. Senator Tom Coburn previously introduced a similar bill (S. 2619).

Other salient gun control-related issues and related proposals that may reemerge in the remainder of the 110th Congress include (1) authorizing federal judges, judicial officials, U.S. Attorneys, and Department of Justice personnel to carry firearms for self-defense (H.R. 2325 and S. 1235); (2) retaining Brady background check records for approved transactions to enhance terrorist screening (S. 1237, S. 2935, H.R. 2074, and H.R. 3547); (3) more strictly regulating certain long-range .50 caliber rifles (S. 1331); (4) further regulating "assault weapons" and "large capacity ammunition feeding devices" (H.R. 1022, H.R. 1859, H.R. 6237, and S. 2237); and (5) requiring background checks for firearm transfers at gun shows (H.R. 96, S. 2237, and S. 2577).

Background and Analysis

Pro/Con Debate

Through the years, legislative proposals to restrict the availability of firearms to the public have raised the following questions: What restrictions on firearms are permissible under the Constitution? Does gun control constitute crime control? Can the nation's rates of homicide, robbery, and assault be reduced by the stricter regulation of firearm commerce or ownership? Would restrictions stop attacks on public figures or thwart deranged persons and terrorists? Would household, street corner, and schoolyard disputes be less lethal if firearms were more difficult and expensive to acquire? Would more restrictive gun control policies have the unintended effect of impairing citizens' means of self-defense?

In recent years, proponents of gun control legislation have often held that only *federal* laws can be effective in the United States. Otherwise, they say, states with few restrictions will continue to be sources of guns that flow illegally into more restrictive states. They believe that the Second Amendment to the Constitution, which states that "[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed," is being misread in today's modern society. They argue that the Second Amendment (1) is now obsolete, with the presence of professional police forces; (2) was intended solely to guard against suppression of state militias by the central government and therefore restricted in scope by that intent; and (3) does not guarantee a right that is absolute, but one that can be limited by reasonable requirements. They ask why in today's

modern society a private citizen needs any firearm that is not designed primarily for hunting or other recognized sporting purposes.

Proponents of firearm restrictions have advocated policy changes on specific types of firearms or components that they believe are useful primarily for criminal purposes or that pose unusual risks to the public. Fully automatic firearms (i.e., machine guns) and short-barreled rifles and shotguns have been subject to strict regulation since 1934. Fully automatic firearms have been banned from private possession since 1986, except for those legally owned and registered with the Secretary of the Treasury on May 19, 1986. More recently, "Saturday night specials" (loosely defined as inexpensive, small handguns), "assault weapons," ammunition-feeding devices with capacities for more than seven rounds, and certain ammunition have been the focus of control efforts.

Opponents of gun control vary in their positions with respect to specific forms of control but generally hold that gun control laws do not accomplish what is intended. They argue that it is as difficult to keep weapons from being acquired by "high-risk" individuals, even under federal laws and enforcement, as it was intended to stop the sale and use of liquor during Prohibition. In their view, a more stringent federal firearm regulatory system would only create problems for law-abiding citizens, bring mounting frustration and escalation of bans by gun regulators, and possibly threaten citizens' civil rights or safety. Some argue that the low violent crime rates of other countries have nothing to do with gun control, maintaining instead that multiple cultural differences are responsible.

Gun control opponents also reject the assumption that the only legitimate purpose of ownership by a private citizen is recreational (i.e., hunting and target-shooting). They insist on the continuing need of people for effective means to defend person and property, and they point to studies that they believe show that gun possession lowers the incidence of crime. They say that the law enforcement and criminal justice system in the United States has not demonstrated the ability to furnish an adequate measure of public safety in all settings. Some opponents believe further that the Second Amendment includes a right to keep arms as a defense against potential government tyranny, pointing to examples in other countries of the use of firearm restrictions to curb dissent and secure illegitimate government power.

The debate has been intense. To gun control advocates, the opposition is out of touch with the times, misinterprets the Second Amendment, and is lacking in concern for the problems of crime and violence. To gun control opponents, advocates are naive in their faith in the power of regulation to solve social problems, bent on disarming the American citizen for ideological or social reasons, and moved by irrational hostility to firearms and gun enthusiasts.

Gun-Related Statistics

Crime and mortality statistics are often used in the gun control debate. According to a recent study, however, none of the existing sources of statistics provide either comprehensive, timely, or accurate data with which to definitively

assess whether there is a causal connection between firearms and violence.[2] For example, existing data do not show whether the number of people shot and killed with semiautomatic assault weapons declined during the 10-year period (1994-2004) that those firearms were banned from further proliferation in the United States.[3] Presented below are data on the following topics: (1) the number of guns in the United States, (2) firearm-related homicides, (3) non-lethal/firearm-related victimizations, (4) gun violence and youth, (5) gun-related mortality rates, (6) use of firearms for personal defense, and (7) recreational use of firearms. In some cases, the data presented are more than a decade old but remain the most recent available.

How Many Guns Are in the United States? The National Institute of Justice (NIJ) reported in a national survey that in 1994, 44 million people, approximately 35% of households, owned 192 million firearms, 65 million of which were handguns.[4] Seventy-four percent of those individuals were reported to own more than one firearm.[5] According to the ATF, by the end of 1996, approximately 242 million firearms were available for sale to or were possessed by civilians in the United States.[6] That total includes roughly 72 million handguns (mostly pistols, revolvers, and derringers), 76 million rifles, and 64 million shotguns.[7] By 2000, the number of firearms had increased to approximately 259 million: 92 million handguns, 92 million rifles, and 75 million shotguns.[8]

Most guns available for sale are produced domestically. In recent years, 1 to 2 million handguns were manufactured each year, along with 1 million rifles and fewer than 1 million shotguns.[9] Annual imports are considerably smaller — from 200,000 to 400,000 handguns, 200,000 rifles, and 100,000 to 200,000 shotguns.[10] Retail prices of guns vary widely, from $75 or less for inexpensive, low-caliber handguns to more than $1,500 for higher-end, standard-production rifles and shotguns.[11] Data are not available on the number of "assault weapons" in private possession or

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[2] National Research Council, *Firearms and Violence: A Critical Review* (Washington, 2005), p. 48.

[3] Ibid., p. 49.

[4] Jens Ludwig and Phillip J. Cook, *Guns in America: National Survey on Private Ownership and Use of Firearms*, NCJ 165476, May 1999, 12 pp., available at [http://www.ncjrs.org/pdffiles/165476.pdf].

[5] Ibid.

[6] U.S. Department of the Treasury, Bureau of Alcohol, Tobacco & Firearms, *Commerce in Firearms in the United States*, February 2000, pp. A3-A5.

[7] Ibid., pp. A3-A5.

[8] U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, *Firearms Commerce in the United States 2001/2002*, ATF P 9000.4, April 2002, pp. E1-E3.

[9] Ibid., pp. E1-E3.

[10] Ibid.

[11] Ned Schwing, 2*005 Standard Catalog of Firearms: The Collector's Price and Reference Guide*, 15th edition (Iola, Wisconsin, 2005), 1,504 pp.

available for sale, but one study estimated that 1.5 million assault weapons were privately owned in 1994.[12]

How Often Are Guns Used in Homicides? Reports submitted by state and local law enforcement agencies to the FBI and published annually in the *Uniform Crime Reports*[13] indicate that the violent crime rate has declined from 1981 through 2004; however, the number of homicides and the proportion involving firearms have increased in recent years. From 1993 to 1999, the number of firearm-related homicides decreased by an average rate of nearly 11% annually, for an overall decrease of 49%. From 2000 to 2003, known firearm-related homicides *increased* by

- 2.0% (to 8,661) in 2000,
- 2.6% (to 8,890) in 2001,
- 7.2% (to 9,528) in 2002, and
- 1.4% (to 9,659) in 2003.

In 2004, firearms-related homicides decreased by 2.8% (to 9,385). In 2005, however, firearms-related homicides increased again by 8.2% (to 10,158). In 2006, firearms-related homicides increased by 0.2% (to 10,177, according to preliminary data). In the past 10 years, about half of all homicides for which the cause is known were handgun-related. Of those homicides, the annual percentage that were firearms-related ranged from a low of 63% in 2001 to a high of 68% in 2006.

How Often Are Guns Used in Non-lethal Crimes? The other principal source of national crime data is the *National Crime Victimization Survey* (NCVS) conducted by the U.S. Census Bureau and published by the Bureau of Justice Statistics (BJS). The NCVS database provides some information on the weapons used by offenders, based on victims' reports. Based on data provided by survey respondents in calendar year 2003, BJS estimated that, nationwide, there were 5.4 million violent crimes (rape or sexual assault, robbery, aggravated assault, and simple assault). Weapons were used in about 1.2 million of these criminal incidents. Firearms were used by offenders in about 367,000 of these incidents, or roughly 7%.[14]

How Prevalent Is Gun Violence Among Youth? Youth crime statistics have often been used in the gun control debate. The number of homicides committed annually with a firearm by persons in the 14- to 24-year-old age group increased sharply from 1985 to 1993; they have declined since then, but have not returned to the 1985 level. According to BJS, from 1985 to 1993, the number of firearm-related homicides committed by 14- to 17-year-olds increased by 294%, from 855 to 3,371.

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[12] Christopher S. Koper, *Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003* (Washington, July 2004), 108 pp.

[13] Go to [http://www.fbi.gov/ucr/ucr.htm].

[14] U.S. Department of Justice, Bureau of Justice Statistics, National Crime Victimization Survey, *Criminal Victimization, 2003*, by Shannan M. Catalano, available online at [http://www.ojp.usdoj.gov/bjs/pub/pdf/cv03.pdf].

From 1993 to 2000, the number of firearm-related homicides committed by persons in this age group decreased by 68%, from 3,371 to 1,084. From 1985 to 1993, firearm-related homicides committed by 18- to 24-year-olds increased by 142%, from 3,374 to 8,171. From 1993 to 1999, firearm-related homicides committed by persons in this age group decreased by 39%, from 8,171 to 4,988. They increased by 3% to 5,162 in 2000.[15] More recent statistics for youth have yet to be reported. Although gun-related violence in schools is statistically a rare event, a DOJ survey indicated that 12.7% of students age 12 to 19 reported knowing a student who brought a firearm to school.[16]

How Prevalent Are Gun-Related Fatalities? The source of national data on firearm deaths is the publication *Vital Statistics*, published each year by the National Center for Health Statistics. Firearm deaths reported by coroners in each state are presented in four categories: homicides and legal intervention,[17] suicides, accidents, and unknown circumstances.

Firearm fatalities decreased continuously from 1993 through 2001, by an average rate of nearly 5% annually, for an overall decrease of nearly 28%. Compared with firearm deaths in 2000, such deaths increased by 3% in 2001. They increased again by 2% in 2002. In that year, there was a total of 30,242 firearm deaths. Of this total, 12,129 were homicides or due to legal intervention, 17,108 were suicides, 762 were unintentional (accidental) shootings, and 243 were of unknown cause.[18]

Of firearms-related deaths in 2002, there were 1,443 juvenile (younger than 18 years old). Of the juvenile total, 879 were homicides or due to legal intervention, 423 were suicides, 115 were unintentional, and 26 were of unknown cause. From 1993 to 2001, firearm-related deaths for juveniles decreased by an average rate of 10% annually, for an overall decrease of 56%. From 2001 to 2002, such deaths increased slightly, by less than 1%.[19]

How Often Are Firearms Used in Self-Defense? According to BJS, NCVS data from 1987 to 1992 indicate that in each of those years, roughly 62,200 victims of violent crime (1% of all victims of such crimes) used guns to defend themselves.[20] Another 20,000 persons each year used guns to protect property.

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[15] U.S. Department of Justice, Bureau of Justice Statistics, *Homicide Trends in the United States*, by James Alan Fox and Marianne W. Zawitz, at [http://www.ojp.usdoj.gov/bjs/homicide/teens.htm].

[16] For further information, see CRS Report RL30482, *The Safe and Drug-Free Schools and Communities Program: Background and Context*, by Edith Fairman Cooper.

[17] "Legal interventions" include deaths (in these cases by firearms) that involve legal uses of force (justifiable homicide or manslaughter) usually by the police.

[18] National Vital Statistics System data taken from the Injury Statistics Query and Reporting System (WISQARS), available at [http://www.cdc.gov/ncipc/wisqars/default.htm].

[19] Ibid.

[20] U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Guns and Crime: Handgun Victimization, Firearm Self Defense, and Firearm Theft*, NCJ-147003,

(continued...)

Persons in the business of self-protection (police officers, armed security guards) may have been included in the survey.[21] Another source of information on the use of firearms for self-defense is the National Self Defense Survey conducted by criminology professor Gary Kleck of Florida State University in the spring of 1993. Citing responses from 4,978 households, Dr. Kleck estimated that handguns have been used 2.1 million times per year for self-defense, and that all types of guns have been used approximately 2.5 million times a year for that purpose during the 1988-1993 period.[22]

Why do these numbers vary by such a wide margin? Law enforcement agencies do not collect information on the number of times civilians use firearms to defend themselves or their property against attack. Such data have been collected in household surveys. The contradictory nature of the available statistics may be partially explained by methodological factors. That is, these and other criminal justice statistics reflect what is *reported* to have occurred, not necessarily the actual number of times certain events occur. Victims and offenders are sometimes reluctant to be candid with researchers. So, the number of incidents can only be estimated, making it difficult to state with certainty the accuracy of statistics such as the number of times firearms are used in self-defense. For this and other reasons, criminal justice statistics often vary when different methodologies are applied.

Survey research can be limited, because it is difficult to produce statistically significant findings from small incident populations. For example, the sample in the National Self-Defense Survey might have been too small, given the likely low incidence rate and the inherent limitations of survey research.

What About the Recreational Use of Guns? According to NIJ, in 1994, recreation was the most common motivation for owning a firearm.[23] There were approximately 15 million hunters, about 35% of gun owners, in the United States and about the same number and percentage of gun owners engaged in sport shooting in 1994.[24] More recently, the U.S. Fish and Wildlife Service reported that there were more than 14.7 million persons who were paid license holders in 2003[25] and, according to the National Shooting Sports Foundation, in that year, approximately

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[20] (...continued)
April 1994, available at [http://www.ojp.usdoj.gov/bjs/pub/ascii/hvfsdaft.txt].

[21] Ibid.

[22] Gary Kleck, "Armed Resistance to Crime: The Prevalence and Nature of Self Defense with a Gun," *Journal of Criminal Law and Criminology*, vol. 86, issue 1, 1995, available at [http://www.guncite.com/gcdgklec.html].

[23] Jens Ludwig and Phillip J. Cook, *Guns in America: National Survey on Private Ownership and Use of Firearms*, NCJ 165476, May 1999, p. 2.

[24] Ibid., p. 3.

[25] U.S. Department of the Interior, U.S. Fish and Wildlife Service, *National Hunting License Report* (December 2, 2004), [http://www.nssf.org/IndustryResearch/PDF/CurrLicSales.pdf].

15.2 million persons hunted with a firearm and nearly 19.8 million participated in target shooting.[26]

Federal Regulation of Firearms

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

The Gun Control Act of 1968 (GCA)

As stated in the GCA, the purpose of federal firearm 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 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.

The GCA, as amended, contains the principal federal restrictions on domestic commerce in small arms 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 Secretary of the Treasury 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.

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[26] American Sports Data, Inc., *The SUPERSTUDY of Sports Participation*, available at [http://www.nssf.org/IndustryResearch/PDF/HistTrendsParticipation.pdf].

Private transactions between persons "not engaged in the business" are not covered by the GCA. These transactions and other matters such as possession, registration, and the issuance of licenses to firearm owners may be covered by state laws or local ordinances. As amended by the Brady Handgun Violence Prevention Act, 1993 (P.L. 103-159), the GCA requires background checks be completed for all nonlicensed persons seeking to obtain firearms from federal firearms licensees. For a listing of other major firearm and related statutes, see the **Appendix**.

Firearm Transfer and Possession Eligibility. Under current law, there are nine classes of persons prohibited from possessing firearms: (1) persons convicted in any court of a crime punishable by imprisonment for a term exceeding one year; (2) fugitives from justice; (3) drug users or addicts; (4) persons adjudicated mental defectives or committed to mental institutions; (5) unauthorized immigrants and most nonimmigrant visitors; (6) persons dishonorably discharged from the Armed Forces; (7) U.S. citizenship renunciates; (8) persons under court-order restraints related to harassing, stalking, or threatening an intimate partner or child of such intimate partner; and (9) persons convicted of misdemeanor domestic violence (18 U.S.C. § 922(g) and (n)).

Since 1994, moreover, it has been a federal offense for any nonlicensed person to transfer a handgun to anyone younger than 18 years old. It has also been illegal for anyone younger than 18 years old to possess a handgun (there are exceptions to this law related to employment, ranching, farming, target practice, and hunting) (18 U.S.C. § 922(x)).

Licensed Dealers and Firearm Transfers. Under current law, federal firearms licensees (hereafter referred to as *licensees*) may ship, transport, and receive firearms that have moved in interstate and foreign commerce. Licensees are currently required to verify with the FBI through a background check that nonlicensed persons are eligible to possess a firearm before subsequently transferring a firearm to them. Licensees must also verify the identity of nonlicensed transferees by inspecting a government-issued identity document (e.g., a driver's license).

Licensees 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. Licensees, however, may *not* transfer handguns to unlicensed out-of-state residents. Transfer of handguns by licensees to anyone younger than 21 years old is also prohibited, as is the transfer of long guns to anyone younger than 18 years old (18 U.S.C. §922(b)). Also, licensees are required to submit "multiple sales reports" to the Attorney General if any person purchases two or more handguns within five business days.

Furthermore, licensees are required to maintain records on all acquisitions and dispositions of firearms. They are obligated to respond to ATF agents requesting firearm tracing information within 24 hours. Under certain circumstances, ATF agents may inspect, without search warrants, their business premises, inventory, and gun records.

Private Firearm Transfers. Nonlicensees are prohibited from acquiring firearms from out-of-state sources (except for long guns acquired from licensees under the conditions described above). Nonlicensees are also prohibited from transferring firearms to any persons who they have reasonable cause to believe are not residents of the state in which the transaction occurs. In addition, since 1986, it has been a federal offense for nonlicensees to knowingly transfer a firearm to prohibited persons. It is also notable that firearm transfers initiated through the Internet are subject to the same federal laws as transfers initiated in any other manner.[27]

Brady Handgun Violence Prevention Act

After seven years of extensive public debate, Congress passed the Brady Handgun Violence Prevention Act of 1993 (P.L. 103-159, the Brady Act)[28] as an amendment to the Gun Control Act of 1968, requiring background checks for firearm transfers between federally licensed firearm dealers and non-licensed persons. The Brady Act included both interim and permanent provisions.

Interim Provisions. Under the interim provisions, which were in effect through November 1998, background checks were required for handgun transfers, and licensed firearm dealers were required to contact local chief law enforcement officers (CLEOs) to determine the eligibility of prospective customers to be transferred a handgun. The CLEOs were given up to five business days to make such eligibility determinations.

Permanent Provisions. Under the Brady permanent provisions, Congress required the Attorney General to establish a national instant criminal background check system (NICS) by November 1998. In turn, the Attorney General delegated this responsibility to the FBI. Today, the FBI's Criminal Justice Information Services (CJIS) division maintains the NICS. Under the Brady permanent provisions, federally licensed firearm dealers are required to contact the FBI or state authorities, who in turn contact the FBI, to determine whether prospective customers are eligible to be transferred a handgun or long gun. The FBI and state authorities have up to three business days to make such eligibility determinations. It is notable that federal firearms laws serve as the minimum standard in the United States. States may choose, and have chosen, to regulate firearms more strictly. For example, some states require set waiting periods and/or licenses for firearm transfers and possession.

POC and Non-POC States. Although the FBI handles background checks entirely for some states, other states serve as full or partial points of contact (POCs) and federal firearms licensees contact a state agency, and the state agency contacts the FBI for such checks. In 14 states, state agencies serve as full POCs and conduct background checks for both long gun and handgun transfers. In four states, state agencies serve as partial POCs for handgun permits, whereas in another four states,

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[27] For further information, see CRS Report RS20957, *Internet Firearm Sales*, by T.J. Halstead.

[28] 107 Stat. 1536, November 30, 1993.

state agencies serve as partial POCs for handgun transfers only. In these eight partial POC states, checks for long gun transfers are conducted entirely through the FBI. In the 28 non-POC states, the District of Columbia, and four territories (Guam, Northern Mariana Islands, Puerto Rico, and the Virgin Islands), federal firearms licensees contact the FBI directly to conduct background checks through NICS for both handgun and long gun checks.

For state agencies (POCs), background checks may not be as expeditious, but they may be more thorough, because state agencies may have greater access to databases and records that are not available through NICS. According to the Government Accountability Office (GAO), this is particularly true for domestic violence misdemeanor offenses and protective orders.[29]

Brady Background Check Statistics. Through calendar year 2005, nearly 70 million background checks for firearm transfer applications occurred under both the interim and permanent provisions of the Brady Act.[30] Of this number, nearly 1,360,000 background checks, or about 1.9%, resulted in firearm transfers being denied.[31] Under the interim provisions, nearly 13 million firearm background checks (for handguns) were completed during that four-year period, resulting in 312,000 denials.[32] Under the permanent provisions of the Brady Act, more than 57 million checks were completed, resulting in over 1 million denials, or a 2% denial rate.[33] Nearly 32 million of these checks were completed entirely by the FBI for non-POC states, the District, and four territories.[34] Those checks resulted in a denial rate of 1.5%.[35] More than 25 million checks were conducted by full or partial POC states.[36] Those checks resulted in a higher denial rate of 2.3%.[37]

System Delayed Transfers. NICS eligibility determination rates (how expeditiously the system makes eligibility determinations) have been controversial. According to GAO, about 72% of the NICS checks handled by the FBI resulted in immediate determinations of eligibility. Of the remaining 28% that resulted in a non-definitive response, neither a "proceed" nor a denial, 80% were turned around within

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[29] For further information, see GAO, *Gun Control: Opportunities to Close Loopholes in the National Instant Criminal Background Check System*, GAO-02-720, July 2002, p. 27.

[30] U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Background Checks for Firearm Transfers, 2005*, November 2004, p. 1.

[31] Ibid.

[32] Ibid.

[33] Ibid., p. 2.

[34] Ibid.

[35] Ibid.

[36] Ibid.

[37] Ibid.

two hours. The remaining 20% of delayed transactions took hours or days for the FBI NICS examiners to reach a final determination.[38]

In many cases, firearm transfers were delayed because there was an outstanding charge without a final disposition against the person seeking to purchase the firearm. Such cases necessitate that the FBI examiners contact local or state authorities for additional information. Under current law, the FBI is authorized to delay the sale for three business days to determine the outcome of the charge and, thus, establish the eligibility of the transferee to possess a firearm. The FBI reported that, from July 2002 through March 2003, the immediate determination rate for NICS increased to 91%, compared with less than 77% from November 2001 through July 2002.[39]

Systems Availability. NICS availability — how regularly the system can be accessed during business hours and not delay legitimate firearm transfers — has also been a source of complaint. GAO found, however, that in the first year of NICS operation, the FBI had achieved its system availability goal of 98% for four months. System availability for the remaining eight months averaged 95.4%.[40] The FBI reports that NICS service availability was increased to 99% in FY2001 and FY2002.[41] During consideration of legislation in the 106th Congress to extend the Brady Act background check provisions to all firearm transfers at gun shows, the capacity of NICS to instantaneously accomplish these checks became a major stumbling block to enactment.

Legislative Action in the 110th Congress

In the wake of the Supreme Court decision in *District of Columbia v. Heller* that the DC handgun ban violated an individual's right under the Second Amendment to possess a handgun, the House of Representatives reportedly will consider legislation to overturn certain related DC gun laws. Some Members of Congress maintain that the DC Council has not changed its laws to adequately reflect the "spirit" of the Supreme Court's decision.

Congress has also passed, and the President has signed, a bill designed to strengthen Brady background checks for firearms transfers as a response to the tragic events at Virginia Tech on April 16, 2007, and other shootings. The Senate Judiciary Committee has approved a bill that would revamp procedures by which Veterans are adjudicated "mentally incompetent" and, thus, lose their firearms eligibility. The House has passed legislation that would prohibit public housing authorities from barring tenants from possessing legal firearms as a condition of their lease. The

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[38] For further information, see GAO, *Gun Control: Implementation of the National Instant Criminal Background Check System*, GGD/AIMD-00-64, p. 68. (Hereafter cited as GAO, *Implementation of NICS*.)

[39] See *National Instant Criminal Background Check System (NICS): 2001/2002 Operational Report*, May 2003, p. 8. (Hereafter cited as *NICS 2001/2002 Operational Report*.)

[40] See GAO, *Implementation of NICS*, p. 94.

[41] See *NICS 2001/2002 Operational Report*, p. 6.

Senate leadership has prevented consideration by that body of a proposal that would overturn federal regulations prohibiting the possession of loaded and concealed firearms in National Parks and Wildlife Refuges.

In addition, the Senate Judiciary Committee has reported legislation that would amend the Law Enforcement Officers Safety Act (P.L. 108-277), a law that gives concealed carry privileges to certain qualified active-duty and retired law enforcement officers. Furthermore, Congress has reconsidered and made permanent funding limitations placed on the ATF in regard to the release of firearm trace and multiple handgun sales report data.

Constitutionality of DC Handgun Ban and Related Legislation

On June 26, 2008, the Supreme Court issued its decision in *District of Columbia v. Heller* on the constitutionality of a DC gun law that banned handguns for 32 years, among other things. Passed by the DC Council on June 26, 1976, the DC handgun ban required that all firearms within the District be registered, all owners be licensed, and prohibited the registration of handguns after September 24, 1976. In a 5-4 decision, the Supreme Court found the handgun ban to be unconstitutional, because it violated an individual's right under the Second Amendment to possess a handgun in his home for lawful purposes such as self defense.[42]

DC Council Passes Emergency Law. On July 15, 2008, the DC Council passed a temporary, emergency law that allows residents to apply for a "home" handgun license that would allow them to keep a handgun in their home as long as that firearm has a capacity of fewer than 12 rounds of ammunition and is not loadable from a magazine in the handgrip, which in effect limits legal handguns under the temporary law to revolvers as opposed to semiautomatic pistols. The emergency law also continues to require that handguns be kept unloaded or disassembled or trigger locked, unless an attack in a home is imminent or underway. Pro gun groups immediately criticized the Council's emergency law for not being in the "spirit" of the Supreme Court's decision, because it continued to ban semiautomatic pistols and did not fully roll back the trigger lock requirement.

Legislation to Overturn Major DC Gun Laws. Reportedly, pro gun Members of Congress are also dissatisfied with the DC Council's temporary law. On July 24, 2008, Representative Mike Ross filed a motion to discharge the Rules Committee from consideration of H.Res. 1331, a resolution that provides for the consideration of a bill to restore Second Amendment rights in the District of Columbia (H.R. 1399).[43] This bill is similar to previous bills introduced by Representative Mark Souder and Senators Kay Bailey Hutchison and Orrin Hatch in previous congresses. Representative Ross introduced H.R. 1399 in the 110th Congress for himself and Representative Souder on March 27, 2007, and Senator Hutchison introduced a companion measure (S. 1001) on March 28, 2007.

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[42] For legal analysis, see CRS Report RL34446, *District of Columbia v. Heller: The Supreme Court and the Second Amendment,* by T. J. Halstead.

[43] Under the Home Rule Act (P.L. 93-198), Congress has reserved for itself the authority to legislate for the District.

In the 110th Congress, Representative Travis Childers introduced a similar bill (H.R. 6691) on July 31, 2008. All three bills would amend the DC Code to

- limit the Council's authority to regulate firearms;
- remove the term "semiautomatic weapon," defined as a firearm that can fire more than 12 rounds without manually reloading, from the definition of "machine gun";
- amend the registration requirements so that they do not apply to handguns, but only to sawed-off shotguns, machine guns, and short-barreled rifles;
- remove restrictions on ammunition possession;
- repeal requirements that DC residents keep firearms in their possession unloaded and disassembled, or bound by a trigger lock;
- repeal firearm registration requirements generally; and
- repeal certain criminal penalties for possessing unregistered firearms or carrying unlicensed handguns.

Representatives John Dingell, John Tanner, and Mike Ross reportedly have an agreement with the House leadership to consider H.R. 6691 sometime in early September.[44] H.R. 6691 includes language that states as a congressional finding that DC officials "have indicated their intention to continue to unduly restrict law firearm possession and use by citizens of the District." H.R. 6691 also includes a provision that would allow DC residents to purchase firearms from federally licensed gun dealers in Virginia and Maryland.

DC Voting Rights Act. Representative Lamar Smith successfully scuttled the District of Columbia House Voting Rights Act of 2007 (H.R. 1433) on March 22, 2007, when he offered a motion to recommit the bill to the House Oversight and Government Reform Committee for consideration of an amendment to repeal portions of the DC handgun ban.[45] Rather than vote on the motion, debate on H.R. 1433 was postponed indefinitely.

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[44] Keith Perine and Seth Stern, "House Democrats Plan Vote To Roll Back D.C. Gun Laws," *CQ Today Online News,* August 5, 2008.

[45] Jonathan Allen, "Gun-Rights Gambit Sidetracks D.C. House Vote," *CQ Today*, March 22, 2007; and for further information on H.R. 1433, see CRS Report RL33830, *District of Columbia Voting Representation in Congress: An Analysis of Legislative Proposals*, by Eugene Boyd.

NICS Improvement Amendments Act of 2007[46]

Earlier in the 110th Congress, the Senate amended and passed the NICS Improvement Amendments Act of 2007 (H.R. 2640) following lengthy negotiations, as did the House, on December 19, 2007, clearing that bill for the President's signature. President Bush signed this bill into law on January 8, 2008 (P.L. 110-180). The enacted NICS amendments:

- strengthen a provision in the Brady Handgun Violence Prevention Act (P.L. 103-159) that requires federal agencies to provide, and the Attorney General to secure, any government records with information relevant to determining the eligibility of a person to receive a firearm;

- require states, as a condition of federal assistance, to make available to the Attorney General certain records that would disqualify persons from acquiring a firearm for inclusion in the FBI-administered National Instant Criminal Background Check System (NICS), particularly those records related to convictions for misdemeanor crimes of domestic violence and persons adjudicated as mentally defective;[47]

- require states, as a condition of federal assistance, as well as federal agencies like the Department of Veterans Affairs (VA), to establish administrative relief procedures under which a person who has been adjudicated mental defective could apply to have his firearms possession and transfer eligibility restored;[48]

- authorize additional appropriations for grant programs to help states, courts, and local governments establish or improve automated record systems; and

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[46] As described in greater detail above, the National Instant Criminal Background Check System (NICS) is administered by the FBI, so that federally licensed gun dealers can process a background check to determine a customer's eligibility to possess a firearm before proceeding with a transaction.

[47] Under 27 CFR 478.11, the term "adjudicated as mental defective" includes a determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or 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. §850a, 876(b).

[48] Federal law authorizes the Attorney General to consider applications from prohibited persons for relief from disqualification (18 U.S.C. §925(c)). Since FY1993, however, Congress has attached an appropriations rider on the ATF salaries and expenses account that prohibits the expenditure of any funding under that account to process such applications.

- prohibit the FBI from collecting any fees for such background checks.

H.R. 2640 was introduced by Representative Carolyn McCarthy and co-sponsored by Representative John Dingell. As passed by the House, by a voice vote, on June 13, 2007, H.R. 2640 reportedly reflected a compromise between groups favoring and opposing greater gun control.[49] The Senate Judiciary Committee approved similar, but not identical, NICS improvement amendments as part of the School Safety and Law Enforcement Improvement Act of 2004 on August 2, 2007, and reported this bill on September 21, 2007 (S. 2084; S.Rept. 110-183).

The Senate Judiciary Committee included four other measures in S. 2084. With some modification, those measures included the School Safety Improvements Act (S. 1217), the Equity in Law Enforcement Act (S. 1448), the PRECAUTION Act (S. 1521), the Terrorist Hoax Improvements Act (S. 735), and the Law Enforcement Officers Safety Act of 2007 (LEOSA, S. 376). Support for the NICS improvement and the LEOSA amendments (described below) in S. 2084 was reportedly divided and uneven, however.[50] Citing privacy and cost issues related to the NICS amendments, Senator Coburn reportedly placed a hold on that legislation.[51]

In addition, some opposition to NICS improvement amendments had coalesced around an assertion made by Larry Pratt of Gun Owners of America that, under these amendments, any veteran who was or had been diagnosed with Posttraumatic Stress Disorder (PTSD)[52] and was found to be a "danger to himself or others would have his gun rights taken away ... forever."[53] Under current law, however, any veteran or other VA beneficiary who is adjudicated or determined to be mental defective, because he poses a danger to himself or others, or is incapable of conducting his day-to-day affairs, is ineligible to possess a firearm. A diagnosis of PTSD in and of itself is not a disqualifying factor for the purposes of gun control under the NICS improvement amendments or previous law. Under the enacted NICS improvement amendments, VA beneficiaries who have been determined to be mental defective could appeal for administrative relief and possibly have their gun rights restored if

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[49] Jonathan Weisman, "Democrats, NRA Reach Deal on Background-Check Bill," *Washington Post*, June 10, 2007, p. A02.

[50] David Rogers, "Democrats Stall on Gun-Records Bill: Despite Support, Background-Check Measure Staggers in Senate Amid Infighting," *Wall Street Journal*, September 21, 2007, p. A6.

[51] Seth Stern, "Coburn Blocks Gun Background-Check Bill, Citing Concerns About Privacy, Spending," *CQ Today*, September 25, 2007.

[52] PTSD is an anxiety disorder that can occur after one has been through a traumatic event. Symptoms may manifest soon after the trauma, or may be delayed. For further information, see U.S. Department of Veterans Affairs, National Center for Posttraumatic Stress Disorder, Fact Sheet, available at [http://www.ncptsd.va.gov/ncmain/ncdocs/fact_shts/fs_what_is_ptsd.html].

[53] Larry Pratt, "Veterans Disarmament Act To Bar Vets From Owning Guns," September 23, 2007, available at [http://www.prisonplanet.com/articles/september2007/230907Disarmament.htm].

they could demonstrate that they were no longer afflicted by a disqualifying condition.

Veterans, Mental Incompetency, and Firearms Eligibility

On June 26, 2008, in full committee markup, Senator Burr successfully amended the Veterans' Medical Personnel Recruitment and Retention Act of 2008 (S. 2969) with language that would provide that "a veteran, surviving spouse, or child who is mentally incapacitated, deemed mentally incompetent, or experiencing an extended loss of consciousness shall not be considered adjudicated as a mental defective" for purposes of the Gun Control Act, "without the order or finding of a judge, magistrate, or other judicial authority of competent jurisdiction that such veteran, surviving spouse, or child is a danger to him or herself or others."

Mental Defective Adjudications. Under 27 CFR §478.11, the term "adjudicated as a mental defective" includes a determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or 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. §§850a, 876(b).

This definition of "mental defective" was promulgated by the ATF in a final rule published on June 27, 1997.[54] In the final rule, the ATF noted that the VA had commented on the "proposed rulemaking" and had correctly interpreted that "adjudicated as a mental defective" includes a person who is found to be "mentally incompetent" by the Veterans Benefit Administration (VBA). Under veterans law, an individual is considered "mentally incompetent" if he or she lacks the mental capacity to contract or manage his or her own affairs for reasons related to injury or disease (under 38 CFR § 3.353).[55] In a proposed rulemaking, the ATF opined that the inclusion of "mentally incompetent" in the definition of "mental defective" was wholly consistent with the legislative history of the 1968 Gun Control Act.[56] Reportedly, the VA could have been the only federal agency that had promulgated a definition like "mentally incompetent" that overlapped with the term "mental defective."[57]

Veterans, Mental Incompetency, Firearms Eligibility. In November 1998, the VBA provided the FBI with disqualifying records on 88,898 VA beneficiaries, whom VA rating specialists had determined to be "mentally incompetent" based on medical evidence that they were incapable of managing their

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[54] *Federal Register*, vol. 62, no. 124, June 27, 1997, p. 34634.

[55] *Federal Register*, vol. 61, no. 174, September 6, 1996, p. 47095.

[56] Ibid.

[57] Personal communication with Compensation and Pension Program staff, Department of Veterans Affairs, July 9, 2008.

own affairs.[58] Thus, a fiduciary (or designated payee) was appointed for them. During the determination process, beneficiaries were notified that the VA was proposing to rate them "mentally incompetent," and they were able to submit evidence to the contrary if they wished.[59] This determination process is still followed today at the VA.[60]

Interestingly enough, the Veterans Medical Administration has not submitted any disqualifying records on VA beneficiaries to the FBI for inclusion in NICS for any medical/psychiatric reason (like PTSD), unless those veterans had been involuntarily committed under a state court order to a VA medical facility because they posed a danger to themselves or others. In those cases, the state in which the court resides would submit the disqualifying record to the FBI, if such a submission would be appropriate and permissible under state law.[61]

Nevertheless, the decision by the VA to submit VBA records on "mentally incompetent" veterans to the FBI for inclusion in the NICS mental defective file generated some degree of controversy in 1999 and 2000.[62] Critics of this policy underscored that veterans routinely consented to mentally incompetent determinations so that a fiduciary (designated payee) could be appointed for them. Those critics contended that to take away a veteran's Second Amendment rights without his foreknowledge was improper. They also pointed out that no other federal agencies were providing similar disqualifying records to the FBI. This controversy subsided, but it reemerged when Congress considered the NICS improvement amendments (described above). Also, as of April 30, 2008, VA records make up about one-fifth (or 21.0%) of all the 552,800 federal and state records in the NICS mental defective file. Senator Burr has introduced a bill, the Veterans 2nd Amendment Protection Act (S. 3167), that would achieve the same ends as his amendment to S. 2969.

Public Housing and Firearms Possession and Use

On July 9, 2008, the House passed legislation that would make changes related to the administration of the public housing program (H.R. 6216). The public housing program is administered by the Department of Housing and Urban Development (HUD) through local public housing authorities (PHAs). The bill includes a provision that would prohibit the HUD Secretary from accepting as reasonable any management or related fees charged by a PHA for enforcing any provision of a lease agreement that requires tenants to register firearms that are otherwise legally

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[58] Ibid.

[59] Ibid.

[60] Ibid.

[61] For further information on the treatment of mental illness and substance abuse for the purposes of gun control, see Donna M. Norris, M.D., et al., "Firearm Laws, Patients, and the Roles of Psychiatrists," *American Journal of Psychiatry*, August 2006, pp. 1392-1396.

[62] John Dougherty, "VA Give FBI Health Secrets: Veterans' Records Could Block Firearms Purchases," *WorldNet Daily.com*, June 22, 2000; and "VA Defends Vets' Records Transfers to NICS System," *New Gun Week*, vol. 35, issue 1650, July 10, 2000, p. 1.

possessed, or prohibits their possession outright. On the other hand, the bill would allow PHAs to terminate the lease of any tenant who was found illegally using a firearm.

The gun-related provision in H.R. 6216 reportedly reflects a compromise.[63] The original language restricting fees for enforcing gun restrictions was included in a motion to recommit offered during floor debate on a similar public housing bill (H.R. 3521). That bill was not approved by the House, but was sent back to the House Financial Services Committee for further consideration. A new version of the public housing bill (H.R. 5829) was introduced that included language from the motion to recommit, but it did not include the lease termination proviso, and the bill received no further consideration.

Public Lands and Firearms Possession and Use

During consideration of a public land bill (S. 2483), Senator Coburn offered, but later withdrew, an amendment (S.Amdt. 3967) that would have overturned federal regulations that prohibit visitors to parks and wildlife refuges managed by the National Park Service (NPS)[64] and Fish and Wildlife Service (FWS)[65] from possessing operable and loaded firearms. While these regulations were last revised substantively in 1981 and 1983, similar firearm restrictions go back to the 1930s in an effort to curb poaching and other illegal activities. There are exceptions for hunting and marksmanship under current law. Since the 1980s, however, many states have passed laws that allow persons to carry concealed handguns for personal protection. Although 48 states have "concealed carry" laws, only 24 of those states reportedly allow concealed handguns to be carried in state parks.[66]

On April 30, 2008, at the urging of pro-gun Members of Congress in part, the Department of Interior (DOI) published proposed regulations that would authorize the possession of loaded and concealed firearms, as long as carrying those firearms in that fashion would be legal under the laws of the states where the public lands are located.[67] While the initial comment period was scheduled to end on June 30, 2008, it was extended until August 8, 2008.[68] DOI reports receiving approximately 90,000 comments on those proposed regulations.

Senator Coburn has also introduced a bill, the Protecting Americans from Violent Crime Act of 2008 (S. 2619), that is very similar to his proposed amendment and DOI's proposed regulations. Supporters of those proposals point to a reported rise in illegal activities and violent crime on public lands. Opponents argue that the

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[63] Seth Stern, "House to Try Again on Public Housing Bill," *CQ Today*, July 8, 2008.

[64] 36 *Code of Federal Regulations* Part 2.

[65] 50 *Code of Federal Regulations* Part 27.

[66] Warren Richey, "Bid to Allow Guns in National Parks," *Christian Science Monitor*, August 19, 2008, p. 3.

[67] 73 *Federal Register* 23388.

[68] 73 *Federal Register* 39272.

risk of a violent crime encounter in National Parks and Wildlife Refuges is negligible.[69] They argue further that allowing others to carry loaded and concealed handguns on their person would make them less safe.

Law Enforcement Officers Safety Act of 2007

On September 5, 2007, the Senate Judiciary Committee reported the Law Enforcement Officers Safety Act of 2007 (S. 376; S.Rept. 110-150). This bill was introduced by Senator Leahy, Chair of the Judiciary Committee. Representative Forbes has introduced a similar bill (H.R. 2726). As described above, the language of S. 376 was incorporated into S. 2084 when that bill was reported on September 21, 2007 (S.Rept. 110-183). That language would amend the Law Enforcement Officers Safety Act (LEOSA, P.L. 108-277), which authorizes certain qualified active-duty and retired police officers to carry concealed firearms across state lines.

The Senate-reported LEOSA amendments would (1) clarify that certain AMTRAK and executive branch law enforcement officers are eligible for concealed carry privileges under P.L. 108-277, (2) reduce the length of service criterium for eligibility under that law from 15 to 10 years, and (3) clarify other provisions of the law related to certification and credentialing. In the 109th Congress, the Senate amended H.R. 1751 with similar LEOSA provisions and passed that measure.

Tiahrt Amendment and Firearm Trace Data Limitations

Representative Todd Tiahrt offered an amendment that placed several funding restrictions and conditions on ATF and the FBI during full committee markup of the FY2004 DOJ appropriations bill (H.R. 2799). While modified, those restrictions were included in the Consolidated Appropriations Act, 2004 (P.L. 108-199). The Tiahrt language:

- prohibits the use of any funding appropriated for ATF to disclose firearm trace or multiple handgun sales report data for any purpose other than supporting "bona fide" criminal investigation or agency licensing proceeding,

- prohibits the use of any funding appropriated for ATF to issue new regulations that would require licensed dealers to conduct physical inventories of their businesses, and

- requires the next-day destruction of approved Brady background check records.

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[69] CRS compilation of *FBI Uniform Crime Reports* data show that from 2002 through 2006 there were 15 murders and non-negligent homicides reported by the FWS and 48 reported by the NPS. However, FWS reports all crimes encountered by its agents, whether or not they occurred on refuge land. It is difficult to determine how many of the 15 murders occurred on refuges.

Of these limitations, the first dealing with disclosure of firearm trace or multiple handgun sales report data is probably the most contentious. A coalition of U.S. mayors, including New York City Mayor, Michael Bloomberg, maintain that they should have access to such data in order to identify out-of-state federally licensed gun dealers who wittingly or unwittingly sell large numbers of firearms to illegal gun traffickers. Despite this opposition, Congress has subsequently included the Tiahrt language in DOJ appropriations measures for FY2005 through FY2008.

For FY2008, the Tiahrt limitation on firearm trace and multiple handgun sales report data debate, when the Senate CJS Appropriations Subcommittee did not include this limitation in its draft bill. Senator Richard Shelby amended the FY2008 CJS appropriations bill (which became S. 1745) with similar, but modified, limitations in full committee markup. Similar language had been included in the House-passed CJS appropriations bill (H.R. 3093), and was included in the Consolidated Appropriations Act, 2008 (P.L. 110-161; H.R. 2764), into which the CJS appropriations were folded.[70] The modified FY2008 limitation includes new language that authorizes ATF to

- share firearms trace data with tribal and foreign law enforcement agencies and federal agencies for national intelligence purposes;
- share firearms trace data with law enforcement agencies and prosecutors to exchange among themselves; and
- release aggregate statistics on firearms traffickers and trafficking channels, or firearms misuse, felons, and trafficking investigations.

The FY2008 limitation, however, continues to prohibit the release of firearms trace data for the purposes of suing gun manufacturers and dealers. Moreover, the limitation includes the phrase, "in fiscal year 2008 and thereafter," which makes the limitation permanent law according to the Government Accountability Office.[71]

Firearms Enforcement-Related Funding Bills

The 110th Congress has considered legislation that either funds the ATF or authorizes increased appropriations for that law enforcement agency.

ATF Appropriations for FY2008 and FY2009.[72] The ATF enforces federal criminal law related to the manufacture, importation, and distribution of alcohol, tobacco, firearms, and explosives. ATF works both independently and through

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[70] For further information, see CRS Report RS22458, *Gun Control: Statutory Disclosure Limitations on ATF Firearms Trace Data and Multiple Handgun Sales Reports*, by William J. Krouse.

[71] U.S. General Accounting Office, "Bureau of Alcohol, Tobacco, Firearms, and Explosives — Prohibition in the 2008 Consolidated Appropriations Act," July 15, 2008, available at [http://www.gao.gov/decisions/appro/316510.pdf].

[72] For further information, see CRS Report RL34514, *The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF): Budget and Operations*, by William J. Krouse.

partnerships with industry groups, international, state and local governments, and other federal agencies to investigate and reduce crime involving firearms and explosives, acts of arson, and illegal trafficking of alcohol and tobacco products.

From FY1999 to FY2008, Congress increased ATF appropriations from $541.6 million to nearly $1.008 billion, an increase of 86%. The FY2008 funding includes $984.1 million for salaries and expenses and $23.5 million for construction. For the same 10 years, with some fluctuation, ATF staffing increased from 3,969 to 4,880 full-time equivalent (FTE) positions, a 23% increase. Despite increased funding, the acting ATF Director, Michael Sullivan, recently testified before Congress that ATF is currently operating under a $37 million shortfall, as funding for ATF salaries and expenses was not increased for FY2008. Meanwhile, Congress has provided an additional $4 million in the Supplemental Appropriations Act, 2008 (P.L. 110-252) for ATF operations in Iraq.

For FY2009, the Administration has requested $1.028 billion and 4,942 FTE positions for ATF salaries and expenses, or $44 million and 62 FTE positions more than the amounts appropriated for FY2008 ($984 million, not counting the $4 million supplemental). According to ATF, the FY2009 request would be allocated among ATF budget decision units in the following amounts: $740 million (72%) for firearms compliance and investigations, $267.2 million (26%) for arson and explosives investigations, and $20.6 million (2%) for alcohol and tobacco diversion. The House Appropriations Committee-approved draft FY2009 Commerce, Justice, Science, and Related Agencies (CJS) appropriations bill would provide $1.054 billion million for ATF, $70 million (4.6%) more than the FY2008 enacted level and $26 million (2.6%) more than the FY2009 request. The Senate-reported bill (S. 3182) would provide $1.043 billion, $35 million (3.5%) more than the FY2008 enacted level and $15 million (1.5%) over the FY2009 request.

Merida Initiative and Southwest Border Gun Trafficking. On the Southwest border with Mexico, firearms violence has spiked sharply in recent years as drug trafficking organizations have reportedly vied for control of key smuggling corridors into the United States. In March 2008, President Felipe Calderón called on the United States to increase its efforts to suppress gun trafficking from the United States into Mexico. As part of the Merida Initiative,[73] the House has passed a bill (H.R. 6028) that would authorize to be appropriated over three years, for FY2008 through FY2010, a total of $73.5 million to increase ATF resources dedicated to stemming illegal gun trafficking into Mexico. Similar authorizations are included in S. 2867, H.R. 5863, and H.R. 5869.

Legislative Action in the 109th Congress

In the 109th Congress, gun control-related legislative action included (1) passage of two laws; (2) the approval of four bills by the House Judiciary committee, one of

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[73] For further information, see CRS Report RS22837, *Merida Initiative: U.S. Anticrime and Counterdrug Assistance to Mexico and Central America*, by Colleen W. Cook and Clare Ribando Seelke.

which the House passed; and (3) consideration of several amendments to, and provisions in, appropriations and crime legislation.

Enacted Legislation and Related Amendments

Protection of Lawful Commerce in Arms Act. The 109th Congress reconsidered and passed the Protection of Lawful Commerce in Arms Act (P.L. 109-92).[74] This legislation (S. 397) was very similar to a bill considered in the 108th Congress.[75] P.L. 109-92 prohibits certain types of lawsuits against firearm manufacturers and dealers to recover damages related to the criminal or unlawful use of their products (firearms and ammunition) by other persons.[76] The Senate passed S. 397 on July 29, 2005, by a recorded vote of 65-31 (Recorded Vote Number 219). The House Judiciary Committee had previously reported a similar bill (H.R. 800; H.Rept. 109-124) on June 14. The House considered and passed the Senate-passed bill (S. 397) by a recorded vote of 283-144 (Roll no. 534) on October 20, 2005.

It is notable that several amendments passed by the Senate in the 108th Congress were also reconsidered and passed — for example, an amendment offered by Senator Herb Kohl requiring that a child safety lock be provided with newly transferred handguns, and another offered by Senator Larry Craig increasing penalties for using armor-piercing handgun ammunition in the commission of a crime of violence or drug trafficking. However, other amendments related to assault weapons or gun shows that were passed by the Senate in the previous Congress were not considered. It is notable that House-passed legislation (H.R. 5672) included a provision that would have blocked implementation of the child safety lock provision sponsored by Senator Kohl.

Child Safety Locks and Handguns. As described above, P.L. 109-92 includes a provision that requires a child safety lock be provided with newly transferred handguns.[77] The House passed an amendment, offered by Representative Marilyn Musgrave, to the FY2007 DOJ appropriations bill (H.R. 5672) that would have prohibited the expenditure of any funding provided under that bill for the purposes of enforcing the child safety lock provision in P.L. 109-92. The House passed H.R. 5672 on June 29, 2006. The Senate reported H.R. 5672, but no further actions was taken on that bill.

Armor-Piercing Ammunition. The "Armor Piercing Ammunition" Ban (P.L. 99-408, 1986, amended in P.L. 103-322, 1994) prohibits the manufacture,

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[74] 119 Stat. 2095, October 26, 2005.

[75] In the 108th Congress, the House passed a similar "gun industry liability" bill (H.R. 1036). The Senate considered a similar bill (S. 1805) and amended it with several gun control provisions, but this bill did not pass.

[76] For further information, see CRS Report RS22074, *Limiting Tort Liability of Gun Manufacturers and Gun Sellers: Legal Analysis of P.L. 109-92 (2005)*, by Henry Cohen.

[77] In addition, the Omnibus Consolidated and Emergency Appropriations Act, 1999 (P.L. 105-277), requires all federal firearm licensees to offer for sale gun storage and safety devices.

importation, and delivery of handgun ammunition composed of certain metal substances and certain full-jacketed ammunition. As described above, P.L. 109-92 includes provisions that (1) increase penalties for using armor-piercing handgun ammunition in the commission of a crime of violence or drug trafficking and (2) require the Attorney General to submit a report (within two years of enactment) on "armor-piercing" ammunition based on certain performance characteristics, including barrel length and amount of propellent (gun powder).

Disaster Recovery Personal Protection Act of 2006. In the Department of Homeland Security Appropriations Act, 2007 (P.L. 109-295), Congress included a provision (§ 557) that amends the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5207).[78] This enacted provision prohibits federal officials from seizing or authorizing the seizure of any firearm from private persons during a major disaster or emergency, if possession of that firearm was not already prohibited under federal or state law. It also forbids the same officials from prohibiting the possession of any firearm that is not otherwise prohibited. Also, the law bans any prohibition on carrying firearms by persons who are otherwise permitted to legally carry such firearms, because those persons are working under a federal agency, or the control of an agency, providing disaster or emergency relief.

Section 557 of P.L. 109-295 is very similar to bills (H.R. 5013/S. 2599) that were introduced by Representative Bobby Jindal and Senator David Vitter. Those bills addressed firearms seizures that occurred in New Orleans after Hurricane Katrina.[79] On July 13, 2006, the Senate passed a related amendment, offered by Senator David Vitter, to the Department of Homeland Security appropriations bill (H.R. 5441) by a recorded vote of 68-32 (Record Vote Number 191), and the Senate passed that bill on the same day. On July 25, 2006, the House Committee on Transportation and Infrastructure ordered reported H.R. 5013 (H.Rept. 109-596), and the House passed that bill on the same day by a recorded vote of 322-99 (Roll no. 401). While H.R. 5013 received no further action, the language of the Vitter amendment was included in P.L. 109-295, as described above.[80]

House Judiciary Committee Considered Gun Bills

The House Judiciary Crime, Terrorism and Homeland Security Subcommittee approved four firearms-related bills, which were subsequently considered by the full committee. Two of those bills were ordered reported. One was passed by the House.

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[78] 120 Stat. 1391, October 4, 2006.

[79] Regarding those seizures, the National Rifle Association (NRA) and others maintained that state "emergency powers" do not trump the Second Amendment right to keep and bear arms. The NRA and the Second Amendment Foundation filed a joint lawsuit in federal court seeking injunctive relief from those seizures. Pursuant to a court order, New Orleans authorities were directed to cease seizing firearms from citizens, who had otherwise committed no criminal violations, and to return already confiscated firearms. *NRA* v. *Nagin*, Civil Decision No. 05-20,000 (E.D. La. September 23, 2005).

[80] 120 Stat. 1391, § 557.

ATFE Modernization and Reform Act of 2006. H.R. 5092 was introduced by Representative Howard Coble, chair of the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security, and Representative Robert Scott, the subcommittee's ranking Minority Member, on April 5, 2006. Among other things, the bill would have amended Gun Control Act provisions governing the suspension and revocation of federal licenses for firearms dealers, manufacturers, and importers by establishing a graduated scale of fines and penalties for administrative violations. For serious violations, however, revocation would have remained an option. It would have also barred ATF from initiating administrative enforcement actions for violations that are more than five years old, except for cases involved the intentional obstruction of discovery of such violations by the licensee.

Proponents for this proposal argue that these provisions would allow federal firearms licensees greater opportunity to address non-substantive recordkeeping issues that under current law could have led to the revocation of their licenses. Opponents argue that relaxing such provisions would weakened ATF authority and efforts to reduce the number of "kitchen table top" dealers, who were not substantively engaged in the business and, hence, ineligible for such licenses. H.R. 5092 was approved by the Crime subcommittee on May 3, 2006. The House Judiciary Committee ordered this bill reported on September 7, and a written report was filed on September 21 (H.Rept. 109-672). The House passed this bill on September 26, 2006, by a recorded vote of 277-131 (Roll no. 476), but no further action was taken on this bill.

ATF Operations at Richmond Area Gun Shows. H.R. 5092 included provisions that would have required the DOJ's Office of Inspector General to conduct a study of ATF firearms enforcement operations at gun shows and would have required the Attorney General to establish guidelines governing such future operations. The House Judiciary Crime subcommittee held two oversight hearings examining ATF firearms enforcement operations at guns shows in Richmond, Virginia, in 2005.[81] ATF agents reportedly provided state and local law enforcement officers with confidential information from background check forms (ATF Form 4473s), so that those 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.

In addition, according to testimony heard from both gun show participants and organizers, as well as ATF officials, firearms were seized from some of the gun purchasers, and some of those seizures might have been illegal. ATF officials conceded that those Richmond area gun show operations "were not implemented in

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[81] 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.

a manner consistent with ATF's best practices,"[82] and that guidance had subsequently been provided to ATF field offices on such matters.

Firearms Corrections and Improvements Act. H.R. 5005 was introduced by Representative Lamar Smith on March 16, 2006. It was the topic of a hearing held by the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security on March 28, 2006. This bill was approved by the subcommittee on May 18, 2006. The House Judiciary Committee began considering this bill on September 7 and ordered it reported on September 13, 2006. However, a written report was never filed, and no further action was taken on this bill. It is notable that H.R. 5005 included several provisions related to firearms trace data and multiple handgun sales reports that are opposed by mayors in several major cities.[83]

Codification of Firearms Trace Data Limitations.[84] Of the provisions in H.R. 5005, Section 9 was the most controversial. It would have codified limitations on the disclosure of firearms trace data and multiple handgun sales reports for any purpose other than a bona fide criminal investigation. Similar limitations were included in the ATF appropriations language since FY2004.[85] Proponents for Section 9 contend that the business records of federal firearms licensees should be confidential. They argue that access to these records is only authorized under federal law for the purposes of conducting ATF trace requests in order to solve crimes. They argue further that it was never intended that firearm trace data should be used to support civil public nuisance lawsuits against firearms manufacturers and dealers, such as a lawsuit pursued by New York City.[86]

Opponents of Section 9, like Mayor Bloomberg, counter that every tool is needed to "crackdown" on irresponsible gun dealers by analyzing firearm trace data on a regional and national basis, so that federal, state, and local law enforcement authorities can be informed of the source and market areas for "crime guns."[87] They contend further that Section 9, if enacted, would have precluded such analysis.

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[82] Testimony of ATF Assistant Director for Field Operations Michael R. Bouchard, 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) Part ll: Gun Show Enforcement," 109th Cong., 2nd sess., February 28, 2006.

[83] Sewell Chan, "15 Mayors Meet in New York to Fight Against Gun Violence," *New York Times*, April 26, 2006, p. A18.

[84] For further information, see CRS Report RS22458, *Gun Control: Statutory Disclosure Limitations on ATF Firearms Trace Data and Multiple Handgun Sales Reports*, by William J. Krouse.

[85] For FY2004, the limitation on the use of ATF firearm trace data was inserted into the ATF appropriations language by an amendment offered by Representative Todd Tiahrt in full committee markup.

[86] For further information, see *City of New York* v. *Beretta U.S.A.*, No. 00-CV-3641, 2006 U.S. Dist. LEXIS 24452 (E.D.N.Y. April 27, 2006).

[87] Sewell Chan, "15 Mayors Meet in New York to Fight Against Gun Violence," *New York Times*, April 26, 2006, p. A18.

Senator Robert Menendez and Representative Steven R. Rothman introduced identical bills (S. 2460/H.R. 5033) to repeal the FY2006 appropriations limitation on ATF sharing firearms trace data and multiple handgun sales reports. Senator Charles Schumer introduced a similar bill (S. 2629) and has reintroduced that bill (S. 77) in the 110th Congress.

Multiple Handgun Sales Report Restrictions. Regarding multiple handgun sales, section 7 of H.R. 5005 would have eliminated a provision that provides for the transfer of multiple handgun sale reports made by gun dealers to the Attorney General to state and local law enforcement authorities. Proponents argue that state and local authorities have mishandled such confidential records and often ignore certain certification requirements set out in the Gun Control Act. Opponents counter that those reports often lead to illegal gun traffickers and without them vital leads would go undiscovered.

Gun Dealer Out-of-Business Records. Section 8 of H.R. 5005 would have prohibited the Attorney General from electronically retrieving the records of gun dealers who had gone out of business by name or any personal identification. It is notable that "out-of-business" records have been converted from paper to a digital format at the ATF National Tracing Center. Proponents argue that such a prohibition would protect the privacy of former federal firearms licensees, and that the prohibition would not extend to searches of those records by firearms serial number. Opponents counter that, if available, those records should be analyzed further to uncover wider patterns of gun trafficking and other illegal activities.

Importation of Machine Gun Parts Kits and Other Matters. Section 3 of H.R. 5005 would have lifted restrictions on the possession, transfer, and importation of machine guns, and certain other shotguns and rifles, for contractors providing national security services to the United States government and training related to such services, and for manufacturers for test, research, design, and development purposes. Section 10 would have relaxed importation restrictions on barrels, frames, and receivers for firearms other than handguns for repair and replacement parts. Those proposals are generally supported by Class III gun dealers who are licensed under the National Firearms Act of 1934 to deal in machine guns and other destructive devices, which are more tightly regulated under federal law than other firearms.

Codification of Brady Background Check Fee Prohibition. Finally, section 5 of H.R. 5005 would have codified a limitation in the DOJ appropriations acts for the past eight years (FY1999 through FY2006) that prohibits the Attorney General from charging any tax or fee for any background check made for the purposes of determining firearms possession/transfer eligibility. In the 110th Congress, the House-passed H.R. 2640 and Senate-reported S. 2084 would also codify the background check fee prohibition.

Firearm Commerce Modernization Act. H.R. 1384 was introduced by Representative Phil Gingrey on March 17, 2005. This bill would have amended the Gun Control Act to allow federal firearms licensees to transfer any firearm to out-of-state residents as long as those transfers complied with the laws of both states, that is, the laws of the state in which the licensee's business was located and the laws of

the state in which the licensee's customer resided. Under current law, licensees are permitted to transfer long guns to out-of-state residents only if such transfers are made in person (face-to-face). H.R. 1384 would have allowed federal firearms licensees to transfer handguns to out-of-state residents as well.

In addition, H.R. 1384 would have allowed federal firearms licensees to transfer any firearm to other federal firearms licensees at out-of-state gun shows or similar events as long as those transfers complied with the laws of both states. Under current law, federal firearms licensees are permitted to display and take orders for firearms at out-of-state gun shows, but they must return to their business locations to initiate the subsequent transfers of those firearms.

Proponents argue that this proposal would eliminate federal requirements on shipping such firearms interstate and reduce the risk that such firearms would be stolen during shipment. Opponents counter that relaxing existing federal requirements regarding the interstate transfer of handguns could necessitate dual-state background checks. In addition, in the view of the proposals's opponents, the relaxation of these requirements could be exploited by illegal firearms traffickers. H.R. 1384 was approved in subcommittee markup on May 18, 2006, but no further action was taken on this bill.

NICS Improvement Act of 2005. H.R. 1415 was introduced by Representative Carolyn McCarthy and co-sponsored by Representative John Dingell. Among other things, this proposal would have (1) amended the Brady Handgun Violence Prevention Act to require federal agencies to provide, and the Attorney General to secure, any government records with information relevant to determining the eligibility of a person to receive a firearm for inclusion in NICS; (2) established incentives to states to make available to the Attorney General certain records that would disqualify persons from acquiring a firearm, particularly those records that relate to convictions for misdemeanor crimes of domestic violence and persons adjudicated as mentally defective; and (3) authorized appropriations for grant programs to help states, courts, and local governments establish or improve such automated record systems. H.R. 1415 was approved in subcommittee markup on May 18, 2006, but no further action was taken on this bill.[88] Representative McCarthy reintroduced this bill (H.R. 297) in the 110th Congress. As described above, a modified bill (H.R. 2640) was introduced and passed by the House on June 13, 2007. Congress passed this bill, and it was enacted (P.L. 110-180).

Gun Provisions Attached to Funding and Crime Bills

Gun control-related provisions were either included in, or amended to, appropriations and crime legislation in the 109th Congress.

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[88] During the 107th Congress, the House passed a similar bill entitled Our Lady of Peace Act (H.R. 4757), but no further action was taken on it before that Congress adjourned. In the 108th Congress, Senator Daschle introduced the Justice Enhancement and Domestic Security Act of 2003 (S. 22), which included the Our Lady of Peace Act (Title V, Subtitle B), and Senator Charles Schumer introduced a similar bill (S. 1706). Neither bill was acted on, however, in the 108th Congress.

District of Columbia Handgun Ban. Representative Souder reintroduced a bill to overturn the District of Columbia (DC) handgun ban (H.R. 1288), which was previously passed by the House.[89] Senator Hutchison introduced a companion measure (S. 1082). In addition, during consideration of the FY2006 DC appropriations bill (H.R. 3058), the House passed an amendment offered by Representative Mark Souder that would have prohibited the use of funding provided under that bill to enforce the DC code's trigger lock requirement on June 30, 2005, by a recorded vote: 259-161, 1 present (Roll no. 349). Although there was some support in the Senate for including a similar provision in the funding bill considered by that body, such a provision *was not* included in P.L. 109-115, the omnibus funding measure into which the FY2006 DC appropriations bill was folded.

Sex Offenders and Firearm Possession Eligibility. The Children's Safety Act of 2005 (H.R. 3132) was amended on September 14, 2005, to include a provision that would have prohibited the transfer or possession of a firearm to or by a person convicted of a sex offense against a minor. This amendment was offered by Representative Jerrold Nadler. H.R. 3132 was passed by the House on the same date, but no further action was taken on this bill. During consideration of H.R. 5005, however, the House Judiciary Committee amended that bill with language of the Nadler amendment.

Court Security and LEOSA Amendments. The House-passed Secure Access to Justice and Court Protection Act of 2005 (H.R. 1751) was amended on November 9, 2005, by Representative Steve King to include a provision that would have authorized any federal judge, magistrate, U.S. Attorney, or any DOJ officer who represents the United States in a court of law to carry firearms for self-defense. Similar provisions were included in the House-passed Adam Walsh Child Protection Act of 2006 (H.R. 4472), but they were not included in the Senate-passed version of this bill, which was subsequently passed in the House and signed into law by the President (P.L. 109-248). Representative Phil English introduced a similar bill (H.R. 4477) as well.

The Senate, in turn, amended H.R. 1751 with an amendment in the nature of a substitute, and passed that bill on December 6, 2006. The Senate-passed version included similar provisions regarding firearms and federal judicial officials, as well as amendments to the Law Enforcement Officers Safety Act (LEOSA, P.L. 108-277) that would have clarified and expanded this law, which gives concealed carry privileges to qualified on-duty and retired law enforcement officers. Other House-passed provisions, however, related to mandatory minimum sentences and the death penalty were not included in the Senate bill, and no further action was taken on H.R. 1751.

In the 110th Congress, as described above, similar provisions that would authorize certain federal judicial officials to carry firearms for self-defense were not

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[89] In the 108th Congress, the House passed a bill (H.R. 3193) introduced by Representative Souder that would have repealed the "DC handgun ban" and other limitations on firearms possession on September 29, 2004 by a recorded vote: 250-171, 1 present (Roll no. 477). A similar measure was introduced in the Senate (S. 1414) by Senator Orrin Hatch.

included in the Senate-passed court security bill (S. 378), nor were they included in the House-passed bill (H.R. 660). Regarding LEOSA, however, Senator Leahy has included amendments to that Act in a stand-alone measure (S. 376), which was reported by the Judiciary Committee (S.Rept. 110-150) on September 5, 2007. The provisions of S. 376 were also folded into S. 2084 in the reported version of that bill (S.Rept. 110-183).

ATF Appropriations for FY2005, FY2006, and FY2007. For FY2005, Congress appropriated $882 million for ATF (P.L. 108-447; P.L. 109-13). According to DOJ, this amount funded 5,073 positions, including 2,446 agents and 785 industry operations investigators and industry operations specialists, as well as 1,842 other positions. For FY2006, Congress appropriated nearly $936 million for ATF. This amount reflects certain department- and government-wide rescissions in P.L. 109-108 and P.L. 109-148, as well as supplemental appropriations. This amount funded 5,128 positions, including 2,509 agents and 797 industry operations investigators and industry operations specialists, as well as 1,822 other positions.

For FY2007, the Administration requested $860 million for ATF; Congress provided $984 million in the FY2007 Continuing Resolution (P.L. 110-5). This amount is anticipated to fund 5,148 positions, including 2,502 agents and 797 industry operations investigators and specialists, as well as 1,849 other positions. For FY2008, the Administration's request includes $1.014 billion and 5,032 positions for ATF (a net reduction of 116 positions, compared with FY2007). The Senate-passed CJS appropriations bill (S. 1745) includes $1.049 billion for ATF's FY2008 appropriation, an increase of $35 million over the Administration's budget request and $65 million more than the FY2007 appropriation. The House-passed CJS appropriations bill (H.R. 3093) would provide the same amount as requested by the President, $30 million more than the FY2007 appropriation.

Proposed Explosives User Fee. The Administration's FY2007 request was based on a legislative proposal that would have authorized an explosives user fee for criminal background checks required under the Safe Explosives Act (P.L. 107-296). The Administration projected that this fee would have generated $120 million in off-setting receipts in FY2007 for ATF. The House-passed DOJ appropriations bill (H.R. 5672; H.Rept. 109-520) would have provided $950 million. The Senate-reported bill (H.R. 5672; S.Rept. 109-280) would have provided $985 million. The House bill included a provision that would have authorized an explosives fee that was projected to generate $30 million in off-setting receipts. The Senate bill did not include a similar provision. No final action was taken on H.R. 5672, and no provision was included in the FY2007 Continuing Resolution for such a fee. Furthermore, the Administration's FY2008 request did not call for such a fee.

ATF Authorizations for Appropriations. In the Violence Against Women and Department of Justice Reauthorization Act of 2005 (P.L. 109-162), Congress authorized to be appropriated for ATF the following amounts: $924 million for FY2006, $961 million for FY2007, $999 million for FY2008, and $1.039 billion for FY2009. Also, on May 11, 2005, the Gang Deterrence and Community Protection Act of 2005 (H.R. 1279) was amended with a provision offered by Representative Diane Watson that would have authorized additional appropriations to hire 100 agents and 100 inspectors at ATF to be assigned to new "High-Intensity Gang

Activity Areas." The House subsequently passed H.R. 1279, but no further action was taken on this bill.

Other Salient Gun Control Legislative Issues

Other salient firearm-related issues that continue to receive attention include (1) retaining Brady background check records for approved firearm transactions to enhance terrorist screening, (2) more strictly regulating certain long-range .50 caliber rifles, (3) further regulating certain firearms previously defined in statute as "assault weapons," and (4) requiring background checks for private firearm transfers at gun shows.

Brady Background Checks and Terrorist Watch Lists[90]

Background Check Fee and Record Retention. Beginning in FY1999, Congress has prohibited the collection of any fee for firearms-related background checks made through the FBI-administered NICS in DOJ appropriations.[91] Beginning in FY2004, that provision also included language (originally added by the Tiahrt amendment) to require the next-day destruction of approved background check records. The issue of approved Brady background check record retention has been contentious since the inception of the FBI-administered NICS, because a provision in the Brady Act (§ 103(i)) prohibits the establishment of any electronic registry of firearms, firearm owners, or approved firearm transactions and dispositions.

Nevertheless, under Attorney General Janet Reno, DOJ proposed a rule that would have allowed such records to be maintained for up to six months for audit purposes on October 30, 1998.[92] The NRA challenged this proposed rule in federal court, arguing that retaining the approved records was tantamount to a temporary registry. On July 11, 2000, the United States Court of Appeals for the District of Columbia found that nothing in the Brady Act prohibited the temporary retention of information about lawful firearm transfers for certain audit purposes.[93] On January 22, 2001, DOJ promulgated a final rule that allowed such records to maintained for up to 90 days.[94] Attorney General John Ashcroft opposed this rule, however, and

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[90] For further information, see CRS Report RL33011, *Terrorist Screening and Brady Background Checks for Firearms*, by William J. Krouse.

[91] In the 110th Congress, the House-passed H.R. 2640 and Senate-reported S. 2084 include provisions that would permanently codify the NICS fee prohibition (see discussion of the NICS Improvement Amendments Act of 2007 above). For FY2008, such a prohibition is also included on an annual basis in the House-passed and Senate-reported CJS appropriations bills (H.R. 3093/S. 1745).

[92] 63 *Federal Register* 58303.

[93] *NRA* v. *Reno* (No. 99-5270, 216 F. 3d 122; 2000 U.S. App. Lexis 15906).

[94] 66 *Federal Register* 6470.

DOJ proposed another rule that called for the next-day destruction of those files on July 6, 2001.[95]

In July 2002, meanwhile, GAO reported that under Attorney General Reno, the FBI had conducted "nonroutine" searches of the NICS audit log for law enforcement agencies to determine whether a person, whom subsequent information showed was a prohibited person, had been transferred a firearm within the previous 90 days. The FBI informed GAO that such searches were routinely conducted but were a "secondary benefit" given that the audit log was maintained primarily to check for system "accuracy, privacy, and performance." In addition, GAO reported that the next-day destruction of records would "adversely affect" other NICS operations, including firearm-retrieval actions, NICS audit log checks for previous background checks, verifications of NICS determinations for federal firearms licensees, and ATF inspections of federal firearms licensees' record keeping.[96]

Despite those adverse affects, opponents of greater federal gun control viewed the non-routine use of NICS records as beyond the scope of authority given the Attorney General under the Brady Act. As described below, GAO reported that DOJ took steps to minimize the adverse affects of the next-day destruction of those records, but in the wake of the September 11, 2001, terrorist attacks, additional issues regarding Brady background checks emerged.

Terrorist Watch List Checks. Historically, terrorist watch list checks were not part of the Brady background check process, because being a suspected or known terrorist was and is not a disqualifying factor for firearm transfer/possession eligibility under federal or state law. As is the case today, to determine such eligibility, FBI-NICS examiners check three databases maintained by the FBI. They include the National Crime Information Center (NCIC), the Interstate Identification Index (III), and the NICS index. The NICS index includes disqualifying records on persons (1) dishonorably discharged from the armed forces, (2) adjudicated mentally defective, or (3) convicted of certain serious immigration violations. The III includes criminal history records for persons arrested and convicted of felonies and misdemeanors. The NCIC includes law enforcement hot files on fugitives and persons subject to restraining orders, among other persons. NCIC also includes a "hot file" known as the Violent Gang and Terrorist Offender File (VGTOF). Prior to the 9/11 attacks, this file included *limited* information on known or suspected terrorists and gang members. NICS examiners were not informed of VGTOF hits, as such information was not considered relevant to determining firearms transfer/possession eligibility.

Following the 9/11 attacks, FBI officials reportedly searched approved firearm transaction records in the then NICS 90-day audit log for 186 illegal alien detainees.

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[95] 66 *Federal Register* 35567.

[96] For further information on these issues, see GAO, *Gun Control: Potential Effects of Next-Day Destruction of NICS Background Check Records*, GAO-02-653, July 2002.

Two were found to have been improperly cleared to be transferred firearms.[97] Upon learning of this practice, however, then Attorney General Ashcroft barred the FBI from searching the NICS audit log, maintaining that the Brady Act prohibited the use of NICS as an electronic registry of firearms, dispositions, or owners.[98] Advocates of greater gun control opposed this shift in policy, arguing that law enforcement and counterterrorism officials ought to have access to NICS records to further ongoing terrorist and criminal investigations. As described above, however, gun rights advocates successfully amended the FY2004 Justice appropriations to require the destruction of those records within 24 hours. A similar requirement was enacted for FY2005 and FY2006 as well. It was also been included in the House-passed and Senate-reported versions of the FY2007 DOJ appropriations bill (H.R. 5672).

In February 2002, DOJ initiated a NICS transaction audit to determine whether prohibited aliens (non-citizens) were being improperly transferred firearms. As part of this audit, NICS procedures were changed, so that NICS examiners were informed of VGTOF hits. Under Homeland Security Presidential Directive 6, moreover, the Administration initiated a broad-based review of the use of watch lists, among other terrorist identification and screening mechanisms.[99] In September 2003, the FBI-administered Terrorist Screening Center (TSC) was established and work was begun to improve and merge several watch lists maintained by U.S. government into a consolidated Terrorist Screening Database (TSDB). One of these "watch lists" was VGTOF. As part of those efforts, TSDB lookout records from other agency watch lists were downloaded into VGTOF, growing that file from 10,000 to more than 140,000 records. Effective February 2004, the FBI officially changed its NICS operating procedures to inform NICS examiners of VGTOF hits for known and suspected terrorists.[100]

Under the new procedures in non-Point of Contact (non-POC) states, NICS staff validate terrorism-related VGTOF hits by contacting TSC staff. The latter have greater access to identifiers in terrorist files, with which known and suspected terrorists can be more positively identified. In full and partial POC states, the law enforcement officials that conduct firearms-related background checks under the Brady Act contact TSC staff directly. In the case of valid hits, NICS staff delay the transactions for up to three business days and contact the FBI Counterterrorism Division to allow field agents to check for prohibiting factors. If no prohibiting factors are uncovered within this three-day period, NICS staff *anonymize* the transaction record by deleting the subject's identifying information. The firearms dealers may proceed with the transaction at their discretion, but FBI counterterrorism officials continue to work the case for up to 90 days. If they learn of a prohibiting factor within that 90-day period, they are able to contact the NICS unit and de-

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[97] Fox Butterfield, "Justice Dept. Bars Use of Gun Checks in Terror Inquiry: FBI Wants to See Files," *New York Times*, December 6, 2001, p. A1.

[98] Subparagraph 103(i) of P.L. 103-159 (107 Stat. 1542).

[99] For further information, see CRS Report RL32366, *Terrorist Identification, Screening, and Tracking Under Homeland Security Presidential Directive 6*, by William J. Krouse.

[100] Dan Eggen, "FBI Gets More Time on Gun Buys," *Washington Post*, November 22, 2003, p. A05.

anonymize the transaction record by filling in the subject's identifying fields. At the end of 90 days, if no prohibiting factor has been found, all records related to the NICS transaction are destroyed.

Senators Joseph Biden and Frank Lautenberg requested that GAO report on these new NICS operating procedures.[101] In January 2005, GAO reported that in a five-month period — February 3, 2004 through June 30, 2004 — NICS checks resulted in an estimated 650 terrorist-related record hits in VGTOF. Of these, 44 were found to be valid. As noted above, however, being identified as a known or suspected terrorist is not grounds to prohibit a person from being transferred a firearm under current law. As a consequence, 35 of these transactions were allowed to proceed, 6 were denied, one was unresolved, and 2 were of an unknown status.[102] GAO recommended that the Attorney General should (1) clarify what information generated by the Brady background check process could be shared with counterterrorism officials and (2) either more frequently monitor background checks conducted by full and partial POC States that result in terrorism-related VGTOF hits, or allow the FBI to handle such cases.[103]

Several related pieces of legislation were introduced that are related to NICS operations and terrorist watch lists. The Terrorist Apprehension and Record Retention Act of 2005 (S. 578/H.R. 1225), introduced by Senator Lautenberg and Representative John Conyers, would have required that the FBI, along with appropriate federal and state counterterrorism officials, be notified immediately when the NICS indicated that a person seeking to obtain a firearm was a known or suspected terrorist. Furthermore, the proposal would have (1) required that the FBI coordinate the response to such occurrences, (2) authorized the retention of all related records for at least 10 years, and (3) allowed federal and state officials access to such records.

In addition, Representative Peter King introduced H.R. 1168, a bill that would have required the Attorney General to promulgate regulations to preserve records of terrorist- and gang-related record hits during such background checks until they were provided to the FBI. Representative Carolyn McCarthy introduced H.R. 1195, a bill that would have made it unlawful for anyone to transfer a firearm to a person who was on the "No Fly" lists maintained by the Transportation Security Administration. In the 110th Congress, Representative McCarthy has reintroduced this measure (H.R. 1167). Also, Senator Lautenberg has introduced a bill (S. 1237) that would authorize the Attorney General to deny the transfer of firearms or the issuance of firearms and explosives licenses to known or suspect terrorists. The language of S. 1237 reportedly reflects a legislative proposal made by the Department of Justice.[104]

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[101] For further information, see GAO, *Gun Control and Terrorism: FBI Could Better Manage Firearm-Related Background Checks Involving Terrorist Watch List Records*, GAO-05-127, January 2005, 38 pp.

[102] Ibid., p. 9.

[103] Ibid., p. 26.

[104] Michael Luo, "U.S. Proposal Could Block Gun Buyers Tied to Terror," *New York Times*, (continued...)

Representative King has introduced an identical measure (H.R. 2074). More recently, Senator Lautenberg has introduced a separate measure (S. 2935) that would authorize the Attorney General to retain firearm transfer records on persons who are suspected terrorists or their supporters, but who have been transferred a firearm.

Long-Range .50 Caliber Rifles[105]

In the 109th Congress, legislation was introduced to regulate more strictly certain .50 caliber rifles. Some of these rifles are chambered to fire a relatively large round originally designed for the Browning Machine Gun (BMG) and have been adopted by the U.S. military as long-range "sniper" rifles. Gun control advocates argue that these firearms have little sporting, hunting, or recreational purpose. They maintain that these rifles could be used to shoot down aircraft, rupture pressurized chemical tanks, or penetrate armored personnel carriers. Gun control opponents counter that these rifles are expensive, cumbersome, and rarely, if ever, used in crime. Furthermore, they maintain that these rifles were first developed for long-range marksmanship competitions and then adopted by the military as sniper rifles.

The Fifty Caliber Sniper Weapons Regulation Act of 2005 (S. 935), introduced by Senator Dianne Feinstein, would have amended the National Firearms Act (NFA)[106] to regulate ".50 caliber sniper weapons" in the same fashion as short-barreled shotguns and silencers, by levying taxes on the manufacture and transfer of such firearms and by requiring owner and firearm registration. In the 110th Congress, Senator Feinstein has introduced a similar measure (S. 1331).

The other proposal introduced by Representative James Moran, the 50 Caliber Sniper Rifle Reduction Act (H.R. 654), would have also amended the NFA to include those weapons but would have also amended the Gun Control Act[107] to effectively freeze the population of those weapons legally available to private persons and to prohibit any further transfer of those firearms. In other words, H.R. 654 would have grandfathered in existing rifles but would have banned their further transfer. Consequently, the proposal would have eventually eliminated those rifles all together from the civilian gun stock. It would have been likely that covered .50 caliber rifles would have had to be destroyed or handed over to the ATF as contraband when the legal firearm owner died or wanted to give up the firearm. H.R. 654 included no compensation provision for rifles destroyed or handed over to the federal government.

Furthermore, both proposals (S. 935 and H.R. 654) would have defined ".50 caliber sniper weapon" to mean "a rifle capable of firing center-fire cartridge in .50 caliber, .50 BMG caliber, any other variant of .50 caliber or any metric equivalent of

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[104] (...continued)
April 27, 2007.

[105] For further information, see CRS Report RS22151, *Long-Range Fifty Caliber Rifles: Should They Be More Strictly Regulated?* by William J. Krouse.

[106] 26 USC, Chapter 53, §5801 et seq.

[107] 18 USC, Chapter 44, §921 et seq.

such calibers." Many rifles, and even some handguns, are chambered to fire .50 caliber ammunition, meaning the projectile is about one-half inch in diameter. Opponents of this legislation note that this definition was very broad and would have likely covered .50 caliber rifles that would not be considered "long-range" or "sniper" rifles. The .50 BMG caliber round, on the other hand, is an exceptionally large cartridge (projectile and casing), which was once used almost exclusively as a heavy machine gun round. Representative Moran also offered an amendment to the FY2006 Department of Commerce appropriations bill (H.R. 2862) that would have prohibited the use of funding provided under that bill to process licenses to export .50 caliber rifles, but that amendment was not adopted by the House.

Expired Semiautomatic Assault Weapons Ban

In 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-LCAFD ban expired on September 13, 2004. Assault rifles were originally developed to provide a lighter infantry weapon that could fire more rounds, more rapidly (increased capacity and rate of fire). To increase capacity of fire, detachable, self-feeding magazines were developed. These rifles were usually designed to be fired in fully automatic mode, meaning that once the trigger is pulled, the weapon continues to fire rapidly until all the rounds in the magazine are expended, or the trigger is released. Often these rifles were also designed with a "select fire" feature that allowed them to be fired in short bursts (e.g., three rounds per pull of the trigger), or in semiautomatic mode (i.e., one round per pull of the trigger), as well as in fully automatic mode. Semiautomatic firearms by comparison, including semiautomatic assault weapons, fire one round per pull of the trigger.

Under current law, any firearm, including "assault weapons," that can be fired in fully automatic mode or in multi-round bursts is classified as a "machine gun" and must be registered with the federal government under the National Firearms Act of 1934. Furthermore, it is illegal to assemble a machine gun with legally or illegally obtained parts. The population of legally owned machine guns has been frozen since 1986, and they were not covered by the semiautomatic assault weapons ban. According to a 1997 survey of 203,300 state and federal prisoners who had been armed during the commission of the crimes for which they were incarcerated, fewer than 1 in 50, or less than 2%, used, carried, or possessed a fully automatic or semiautomatic assault weapon.[108]

The statute classified 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 telescoping stock, (2) a pistol grip, (3) a bayonet mount, (4) a muzzle flash suppressor or threaded barrel capable of accepting such a

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[108] For further information, see *Firearm Use by Offenders*, by Caroline Wolf Harlow, at [http://www.ojp.usdoj.gov/bjs/pub/pdf/fuo.pdf].

suppressor, or (5) a grenade launcher.[109] There were similar definitions for pistols and shotguns that were classified as semiautomatic assault weapons.[110] Semiautomatic assault weapons that were legally owned prior to the ban were not restricted and remained available for transfer under applicable federal and state laws.

Opponents of the ban argue that the statutorily defined characteristics of a semiautomatic assault weapon were largely cosmetic, and that these weapons were potentially no more lethal than other semiautomatic firearms that were designed to accept a detachable magazine and were equal or superior in terms of ballistics and other performance characteristics. Proponents of the ban argue that semiautomatic military-style firearms, particularly those capable of accepting large capacity ammunition feeding devices, had and have no place in the civilian gun stock.

In the 108th Congress, proposals were introduced to extend or make permanent the ban, whereas other proposals were made to modify the definition of "semiautomatic assault weapon" to cover a greater number of firearms by reducing the number of features that would constitute such firearms, and expand the list of certain makes and models of firearms that are statutorily enumerated as banned. A proposal (S. 1034) introduced by Senator Dianne Feinstein would have made the ban permanent, as would have a proposal (H.R. 2038/S. 1431) introduced by Representative Carolyn McCarthy and Senator Frank Lautenberg. The latter measure, however, would have modified the definition and expanded the list of banned weapons. Senator Feinstein also introduced measures that would have extended the ban for 10 years (S. 2109/S. 2498). In addition, on March 2, 2004, the Senate passed an amendment to the gun industry liability bill (S. 1805) that would have extended the ban for 10 years, but the Senate did not pass this bill.[111] In the 109th Congress, Senator Dianne Feinstein introduced a bill that would have reinstated previous law for 10 years (S. 620). Representative McCarthy and Senator Lautenberg reintroduced their bills to make the ban permanent (H.R. 1312/S. 645).

In the 110th Congress, Representative McCarthy has reintroduced a similar proposal (H.R. 1022) and another measure (H.R. 1859) that would prohibit the transfer of a semiautomatic assault weapon with a large capacity ammunition feeding device, among other things. Representative Mark Steven Kirk has introduced the Assault Weapons Ban Reauthorization Act of 2008 (H.R. 6257). Senator Biden has included provisions to reauthorize the ban in the Crime Control and Prevention Act of 2007 (S. 2237).

Gun Shows and Private Firearm Transfers

Federal law does not regulate gun shows specifically. Federal law regulating firearm transfers, however, is applicable to such transfers at gun shows. Federal

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[109] 18 U.S.C. § 921(a)(30)(B).

[110] 18 U.S.C. § 921(a)(30)(C) and (D).

[111] For further information, see CRS Report RL32077, *The Assault Weapons Ban: Legal Challenges and Legislative Issues*, by T.J. Halstead, and CRS Report RL32585, *Semiautomatic Assault Weapons Ban*, by William J. Krouse.

firearms licensees — those licensed by the federal government to manufacture, import, or deal in firearms — are required to conduct background checks on nonlicensed persons seeking to obtain firearms from them, by purchase or exchange. Conversely, nonlicensed persons — those persons who transfer firearms, but who do not meet the statutory test of being "engaged in the business" — are not required to conduct such checks.

To some, this may appear to be an incongruity in the law. Why, they ask, should licensees be required to conduct background checks at gun shows, and not nonlicensees? To others, opposed to further federal regulation of firearms, it may appear to be a continuance of the status quo (i.e., non-interference by the federal government into private firearm transfers within state lines). On the other hand, those seeking to increase federal regulation of firearms may view the absence of background checks for firearm transfers between nonlicensed/private persons as a "loophole" in the law that needs to be closed. A possible issue for Congress is whether federal regulation of firearms should be expanded to include private firearm transfers at gun shows and other similar venues.

Among gun show-related proposals, there are two basic models. The first model is based on a bill (S. 443) that was introduced in the 106th Congress by Senator Lautenberg, who successfully offered this proposal as an amendment to the Senate-passed Violent and Repeat Juvenile Offender Act (S. 254). Several members introduced variations of the Lautenberg bill in the 107th Congress. In the 108th Congress, Representative Conyers — ranking minority member of the Judiciary Committee — introduced H.R. 260, which was very similar to the Lautenberg bill. In addition, former Senator Daschle introduced the Justice Enhancement and Domestic Security Act of 2003 (S. 22), which included gun show language that was similar to the Lautenberg bill.

The second model is based on a bill (S. 890) introduced in the 107th Congress by Senators McCain and Lieberman. In the 108th Congress, Senators McCain and Reed introduced a bill (S. 1807), which was similar to S. 890. In the 108th Congress, on March 2, 2004, the Senate passed an amendment offered by Senator McCain to the gun industry liability bill (S. 1805) that would have required background checks for private firearm transfers at gun shows, but the Senate did not pass this bill.[112] In the 109th and 110th Congresses, Representative Michael Castle reintroduced this bill as the Gun Show Loophole Closing Act of 2005 (H.R. 3540 and H.R. 96). Senator Lautenberg has reintroduced his gun show proposal as the Gun Show Background Check Act 2008 (S. 2577). Previously, Senator Biden had included similar provisions in the Crime Control and Prevention Act of 2007 (S. 2237).

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[112] For further information, see CRS Report RL32249, *Gun Control: Proposals to Regulate Gun Shows*, by William J. Krouse and T.J. Halstead.

Appendix. Major Federal Firearm and Related Statutes

The following principal changes have been enacted to the Gun Control Act since 1968.

- The Firearms Owners Protection Act, McClure-Volkmer Amendments (P.L. 99-308, 1986), eases certain interstate transfer and shipment requirements for long guns, defines the term "engaged in the business," eliminates some record-keeping requirements, and bans the private possession of machine guns not legally owned prior to 1986.

- The Armor Piercing Ammunition Ban (P.L. 99-408, 1986, amended in P.L. 103-322, 1994) prohibits the manufacture, importation and delivery of handgun ammunition composed of certain metal substances and certain full-jacketed ammunition.

- The Federal Energy Management Improvement Act of 1988 (P.L. 100-615) requires that all toys or firearm look-a-likes have a blazed orange plug in the barrel, denoting that it is a non-lethal imitation.

- The Undetectable Firearms Act (P.L. 100-649, 1988, amended by P.L. 108-174, 2003), also known as the "plastic gun" legislation, bans the manufacture, import, possession, and transfer of firearms not detectable by security devices.

- The Gun-Free School Zone Act of 1990 (P.L. 101-647), as originally enacted, was ruled unconstitutional by the U.S. Supreme Court (*United States* v. *Lopez*, 514 U.S. 549 [1995], April 26, 1995). The Act prohibited possession of a firearm in a school zone (on the campus of a public or private school or within 1,000 feet of the grounds). In response to the Court's finding that the Act exceeded Congress's authority to regulate commerce, the 104th Congress included a provision in P.L. 104-208 that amended the Act to require federal prosecutors to include evidence that the firearms "moved in" or affected interstate commerce.

- The Brady Handgun Violence Prevention Act, 1993 (P.L. 103-159), requires that background checks be completed on all nonlicensed person seeking to obtain firearms from federal firearms licensees.

- The Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322) prohibited the manufacture or importation of semiautomatic assault weapons and large capacity ammunition feeding devices for 10 years. The Act also bans the sale or transfer of handguns and handgun ammunition to, or possession of handguns and handgun ammunition, by juveniles (younger than 18 years old) without prior written consent from the juvenile's parent or legal

guardian; exceptions related to employment, ranching, farming, target practice, and hunting are provided. In addition, the Act disqualifies persons under court orders related to domestic abuse from receiving a firearm from any person or possessing a firearm. It also increased penalties for the criminal use of firearms. The assault weapons ban expired on September 13, 2004.

- Federal Domestic Violence Gun Ban (the Lautenberg Amendment, in the Omnibus Consolidated Appropriations Act for FY1997, P.L. 104-208) prohibits persons convicted of misdemeanor crimes of domestic violence from possessing firearms and ammunition. The ban applies regardless of when the offense was adjudicated: prior to, or following enactment. It has been challenged in the federal courts, but these challenges have been defeated.[113]

- The Omnibus Consolidated and Emergency Appropriations Act, 1999 (P.L. 105-277), requires all federal firearms licensees to offer for sale gun storage and safety devices. It also bans firearm transfers to, or possession by, most nonimmigrants, and those nonimmigrants who have overstayed the terms of their temporary visa.

- The Treasury, Postal and General Government Appropriations Act (P.L. 106-58) requires that background checks be conducted when former firearm owners seek to redeem a firearm that they sold to a pawnshop.

- The Homeland Security Act of 2002 (P.L. 107-296) establishes a Bureau of Alcohol, Tobacco, Firearms and Explosives by transferring the law enforcement functions, but not the revenue functions, of the former Bureau of Alcohol, Tobacco and Firearms from the Department of the Treasury to the Department of Justice.

- Law Enforcement Officers Safety Act of 2004 (P.L. 108-277) provides that qualified active and retired law enforcement officers may carry a concealed firearm. This Act supersedes state level prohibitions on concealed carry that would otherwise apply to law enforcement officers, but it does not override any federal laws. Nor does the Act supersede or limit state laws that permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property or prohibit or restrict the possession of firearms on any state or local government property, installation, building, base, or park.

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[113] See CRS Report RL31143, *Firearms Prohibitions and Domestic Violence Convictions: The Lautenberg Amendment*, by T.J. Halstead.