

CRS Issue Brief for Congress

Received through the CRS Web

Gun Control

Updated June 19, 2000

William Krouse
Domestic Social Policy Division

CONTENTS

SUMMARY

MOST RECENT DEVELOPMENTS

BACKGROUND AND ANALYSIS

Pro/Con Debate

Pertinent Statistics

- Number of Guns

- Criminal Use

- Gun Violence and Youth

- Injuries

- Suicides, Accidents, and Other Deaths

- Self-defense

- Recreation

- Brady Act Implementation

Federal Law

Developments in the 106th Congress

- Gun Shows

- Semiautomatic Assault Weapons

- Child Safety Locks

- Violent Juvenile Offenders Firearms Ban

- Pawnshops

- Internet Gun Sales

- Handguns

- Federal Firearm Law Enforcement

- Background Check Record Retention

- Background Check Fee

- Project Exile

- Federal Firearm Prosecutions

- Bureau of Alcohol, Tobacco, and Firearms (ATF) Funding

- Smart Gun Technology

- Gun Buy-Back Programs

- Handgun Licensing and Registration

- Gun Industry Liability

- Smith & Wesson Agreement

Gun Control

SUMMARY

Members of Congress continue to debate the efficacy and constitutionality of the federal regulation of firearms and ammunition. Various federal laws have been enacted since 1934 to promote such regulation. Supporters of such controls argue that they curb access by criminals, juveniles, and other “high-risk” individuals. They contend that only federal measures can succeed in reducing the availability of guns. Some seek broad policy changes such as near-prohibition of non-police handgun ownership or the registration of all firearm owners or firearms. They find no constitutional barrier to these measures and no significant social costs. Others advocate more moderate policies that they maintain would not impede ownership and legitimate firearm transfers.

Opposition to federal controls also varies. Gun control opponents deny that such policies keep firearms out of the hands of high-risk persons; rather, they argue, controls often create burdens for law-abiding citizens and infringe upon constitutional rights secured by the Second Amendment. Some argue further that widespread gun ownership is one of the best deterrents to crime as well as to potential tyranny, whether by gangs or by government. They may also criticize the notion of enhancing federal, as opposed to state, police powers.

The two most significant federal statutes controlling firearms in the civilian population are the National Firearms Act of 1934 and the Gun Control Act of 1968, as amended. The 1934 Act established strict registration requirements and a transfer tax on machine guns and short-barreled long guns. The 1968 Act prohibits mail-order sales and the interstate sales of firearms, prohibits transfers to minors, limits access to “new” assault weapons, and sets forth penalties and licensing requirements for manufacturers, importers,

and dealers.

Congress, with the support of the Clinton Administration, has enacted significant amendments to the Gun Control Act. The 103rd Congress established significant new restrictions on the manufacture, sale, and possession of firearms through the Brady Act (P.L. 103-159) and the assault weapons ban in the Violent Crime Control Act of 1994 (P.L. 103-322). In the 104th Congress, persons convicted of a domestic violence crime were prohibited from possessing a firearm. In the 105th Congress, the omnibus appropriations act (P.L. 105-277) included prohibitions on charging a fee for background checks under the Brady Act and gun sales to non-citizens who are temporarily admitted to the United States (with exceptions). The act also requires that federal licensees agree to sell gun storage and safety devices.

The 106th Congress has considered proposals to 1) require background checks at gun shows, 2) require handgun safety locks, and 3) increase controls on assault weapons. Such provisions were included in the Senate-passed Violent and Repeat Juvenile Offender Accountability Act of 1999 (S. 254). The House adopted similar provisions as amendments to the Mandatory Gun Show Background Check Act (H.R. 2122); however, this bill was defeated. The Senate amended the House-passed Juvenile Justice Reform Act (H.R. 1501) with the text of S. 254. Most recently, on May 17, 2000, the Senate passed two amendments to the Military Construction appropriations act calling for congressional action on the juvenile justice conference on H.R. 1501. Nevertheless, it remains an open question whether conferees will resume consideration of H.R. 1501 in the 2nd Session of the 106th Congress.

MOST RECENT DEVELOPMENTS

On May 17, 2000, the Senate approved two firearm-related amendments to the Military Construction appropriations act. The first expresses the sense of the Senate that the Second Amendment to the U.S. Constitution protects the right of law-abiding citizens to own firearms for self-defense or recreation. It also criticizes the Administration's record on firearm prosecutions, and calls for the enactment of provisions in the Juvenile Justice Reform Act (H.R. 1501) that would enhance firearms law enforcement. The second lauds the participants of the Million Mom March on May 14, and calls for passage of a juvenile justice conference report (H.R. 1501) by Memorial Day. Despite similar measures passed in the House, the conference on H.R. 1501 has been stalled.

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: 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 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," (1) is obsolete; or (2) is intended solely to guard against suppression of state militias by the central government and therefore restricted in scope by that intent; or (3) does not guarantee a right that is absolute, but one that can be limited by reasonable requirements. They ask why a private citizen needs any firearm that is not designed primarily for hunting or other recognized sporting purposes.

Also, proponents have advocated policy changes on specific types of firearms or components that appear to be 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 prior to 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 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 point to studies indicating 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. They further believe that the Second Amendment includes a right to keep arms as a defense against potential government tyranny, pointing to numerous examples in other countries of the use of firearm restrictions to curb dissent and secure government power.

The debate has been intense. To supporters of restrictive controls, the opposition is out of touch with the times, dogmatic about the Second Amendment, or lacking in concern for the problems of crime and violence. To opponents, control 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, or moved by hostility to firearms and gun enthusiasts.

Pertinent Statistics

Number of Guns. 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. Seventy-four percent of those individuals were reported to own more than one firearm. The Bureau of Alcohol, Tobacco, and Firearms (ATF) estimates that as of the end of 1996, approximately 242 million firearms were available for sale to or were possessed by civilians in the United States. That total includes roughly 72 million handguns (mostly pistols, revolvers, and derringers), 76 million rifles, and 64 million shotguns. Most guns available for sale are produced domestically. In recent years, one to two million handguns were manufactured each year, along with one million rifles and less than one million shotguns. Annual imports are considerably fewer — from 200,000 to 400,000 handguns, 200,000 rifles, and 100,000 to 200,000 shotguns. Retail prices of guns vary widely, from \$50 or less for inexpensive, low-caliber handguns to more than \$1,500 for high-quality rifles or shotguns. Data are not available on the number of “assault weapons” in private possession or available for sale, but estimates prepared in 1989 by a firearms expert associated with the Smithsonian Institution generally placed the number of such firearms at that time in the range of one to four million, less than 3% of the number of guns estimated to exist in the civilian market.

Criminal Use. Reports submitted by state and local law enforcement agencies to the Federal Bureau of Investigation (FBI) and published annually in the *Uniform Crime Report* indicate that both the crime rate and the violent crime rate have declined since 1981. Of the homicides in which the type of weapon could be identified, 60% to almost 70% have involved

firearms each year. The number of homicides and the proportion involving firearms have declined in recent years. In 1998, of the 14,088 homicides in which the type of weapon was identified, 65% (9,143) were committed with firearms. Of those committed with firearms, 81% (7,361) involved handguns. Some data are available on one particular type of criminal act: workplace violence. According to a July 1998 report issued by the Bureau of Justice Statistics (BJS) of the U.S. Department of Justice, fewer than 10% of all workplace violent crimes involved firearms.

The other principal source of national crime data is the *National Crime Victimization Survey* (NCVS) conducted by the Bureau of the Census and published by 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 1998, BJS estimated that, nationwide, firearms were used by offenders in 670,500 criminal incidents, roughly 10% of all violent crimes reported to the NCVS.

Gun Violence and Youth. Firearm homicide rates for the 14- to 24-year-old age group increased sharply from 1985 to 1993, but have declined since then. According to the Bureau of Justice Statistics, from 1985 to 1993 the homicide offending rate for 14- to 17-year-olds tripled, and the percentage of firearm-related homicides increased from 58% to 82% of total homicides. From 1993 to 1998, the homicide offending rate for 14- to 17-year-olds decreased by 57%. From 1985 to 1993, the homicide offending rate for 18- to 24-year-olds doubled, and the percentage of firearm-related homicides increased from 55% to 76% of total homicides. From 1993 to 1998, the homicide offending rate for 18- to 24-year-olds decreased by 25%. For both groups, handguns accounted for over 80% of firearm-related homicides. For further information, see *Homicide Trends in the United States*, by James Alan Fox, at [<http://www.ojp.usdoj.gov/bjs/homicide/homtrnd.htm>].

Although gun-related violence in schools is statistically a rare event, a recent Department of Justice survey indicated that 12.7% of students age 12 to 19 reported knowing a student who brought a firearm to school. For further information, see CRS Report RL30482, *The Safe and Drug-Free Schools and Communities Program: Background and Context*, by Edith Fairman Cooper.

Injuries. The Firearms Injury Surveillance Study, initiated by the Centers for Disease Control and Prevention, Department of Health and Human Services, collects data about gun-related injuries treated at hospitals. According to the most recent data from the study, hospital emergency rooms reported treating 69,554 non-fatal firearms injuries in 1996.

Suicides, Accidents, and Other Deaths. Another source of national data on firearms deaths is the publication *Vital Statistics*, published each year by the National Center for Health Statistics. Firearms deaths reported by coroners in each state are presented in four categories: homicides and legal intervention, suicides, accidents, and unknown circumstances. In 1997, a total of 32,436 firearms deaths occurred, according to such reports. Of this total, 13,522 were homicides or due to legal intervention; 17,566 were suicides; 981 were unintentional (accidental) shootings; and 367 were of unknown cause.

Also in 1997, there were 2,284 juvenile (under 18 years of age) deaths attributed to firearms. Of the juvenile total, 1,315 were homicides or due to legal intervention; 679 were suicides; 247 were unintentional shootings; and 43 were of unknown cause.

Self-defense. According to the Bureau of Justice Statistics, 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. Another 20,000 persons each year used guns to protect property. Persons in the business of self-protection (police officers, armed security guards) may have been included in the survey. 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. According to a poll published in *USA Today*, December 30, 1993, one in seven (14%) of those surveyed had used a gun in self-defense.

Why do these numbers vary? 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 criminal 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, sometimes not providing the right tools for producing satisfactory levels of precision from small incident populations. For example, the sample in the National self-defense Survey might have been too small, given the low incidence rate and the inherent limitations of survey research.

Recreation. According to the National Institute of Justice (NIJ), in 1994 recreation was the most common motivation for owning a firearm. There were approximately 15 million hunters, about 35% of gun owners, in the United States and an approximately equal percentage of the owners of firearms engaged in sport shooting in 1994. The U.S. Fish and Wildlife Service reported that 31.6 million persons purchased hunting licenses or permits in 1993 and, according to the National Sporting Goods Association, in that year approximately 18.5 million persons took part in firearms sporting activities.

Brady Act Implementation. According to the Bureau of Justice Statistics, since the implementation of the Brady Act on February 29, 1994, through calendar year 1999, over 22 million firearm background checks were completed, resulting in 536 thousand denials. During the interim period of the Brady Act (phase I), from February 1994 through November 1998, there was a waiting period of up to 5 days for handgun transfers in states without instant check systems. Nearly 13 million firearm background checks were completed, resulting in 312 thousand denials. For further information on phase I of the Brady Act, see *Presale Handgun Checks, the Brady Interim Period, 1994-1998* (Washington, June 1999). See: [<http://www.ojp.usdoj.gov/bjs/pub/pdf/phc19.pdf>].

The permanent provisions of the Brady Act became effective on November 30, 1998 (phase II). Under these provisions, background checks are conducted of applicants for both

hand and long guns transfers, but there is no federally mandated waiting period for handgun transfers. In 15 states, state agencies serve as points of contact (POCs), and conduct full background checks for both long guns and handguns. In 10 states, state agencies conduct partial background checks for handguns only. In POC states, federal firearm licensees contact the state agency, rather than the FBI. In non-POC states, federal firearm licensees contact the FBI directly through the NICS system.

During the first 13 months of operation (through December 31, 1999), the National Instant Background Check System (NICS), operated by the Federal Bureau of Investigation (FBI), received over 8.6 million requests from state agencies and federal firearm licensees. Of this number, about half were handled by the FBI, and the other half were handled by state agencies. Of total checks, 2.4% resulted in denials. Over 70% of denials occurred because the applicant was a felon or was under felony indictment. The next most common reason for denial, about 13% of cases, was a domestic violence misdemeanor conviction or restraining order. For further information on phase II, see *Background Checks for Firearm Transfers, 1999* (Washington, June 2000), at [<http://www.ojp.usdoj.gov/bjs/pub/bcft99.pdf>].

Of NICS checks handled by the FBI, about 75% of the checks resulted in immediate determinations of eligibility. Of the remaining 25% of checks, which resulted in a non-definitive response—neither a proceed nor a denial, 80% were turned around within 2 hours. The remaining 20% of delayed transactions took hours or days for the FBI NICS examiners to reach a final determination. In many cases, these sales were delayed, because there was an outstanding charge against the person seeking to purchase the firearm for which there was no final disposition. 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 in order to determine the outcome of the charge and, thus, establish the eligibility of the transferee to possess a firearm. For further information, see GAO Report GGD/AIMD-00-64, *Gun Control: Implementation of the National Instant Criminal Background System* (Washington, February 2000).

For state agencies, background checks may not be as expeditious. Background checks through state agencies, however, may be more thorough, since state agencies may have access to databases and records that are not available through NICS. For further information on Brady Act implementation, see *National Instant Criminal Background Check System (NICS): The First Seven Months (November 30 1998 - June 30, 1998)* (Washington, revised August 1, 1999), at [<http://www.ojp.fbi.gov/programs/NICS/>].

Federal Law

Two major federal statutes regulate the commerce in firearms, or their ownership: 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. Ch. 44, Section 921 et seq.).

The National Firearms Act 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. That law taxes all aspects of the manufacture and distribution of such weapons. Also, it compels the disclosure (through

registration with the Secretary of the Treasury) of the production and distribution system from manufacturer to buyer.

The Gun Control Act of 1968, 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, 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. Transactions between persons “not engaged in the business” are not covered by the Act. These transactions and other matters such as possession, registration, and the issuing of licenses to the owners of firearms are covered by state laws or local ordinances.

The Gun Control Act of 1968 prohibits federal firearm licensees from selling or delivering a rifle or shotgun to a person under 18 years of age, or a handgun to a person under 21 years of age.

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 and importation of ammunition composed of certain metal substances and certain full-jacketed ammunition.
- The Undetectable Firearms Act (P.L. 100-649, 1988), 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 law enforcement officers conduct background checks of prospective purchasers of firearms.

- The Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322) prohibits the manufacture or importation of semiautomatic assault weapons and large capacity ammunition feeding devices (for a 10-year period). In the case of large capacity ammunition feeding devices, the ban on importation applies to those devices manufactured after September, 1994. This Act provides an exception for the transfer, sale, or possession of semiautomatic assault weapons and large capacity ammunition feeding devices lawfully possessed on the date of enactment. This Act also bans the sale or transfer of handguns and handgun ammunition to, or possession of handguns and handgun ammunition by, juveniles (under 18 years of age) 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 enhances penalties for the criminal use of firearms and makes other changes to existing law.
- Federal Domestic Violence Gun Ban (the Lautenberg Amendment, in the Omnibus Consolidated Appropriations Act for FY1997, P.L. 104-208) prohibits persons convicted of a misdemeanor crime of domestic violence from possessing guns and ammunition. The ban applies retroactively, regardless of when the offense was adjudicated. On January 21, 1997, the Fraternal Order of Police (civil case 97-145) filed suit to challenge the law's retroactivity as unconstitutional. On August 28, 1998, the U.S. Court of Appeals for the District of Columbia found in favor of the Fraternal Order of Police regarding provisions of the Lautenberg Amendment to be in violation of the equal protection clause. A motion for rehearing, however, was filed by the Department of Justice. The U.S. Court of Appeals of the District of Columbia reversed its earlier ruling on April 16, 1999, stating that "there is no fundamental right to possess a gun in a community service job and that the Fraternal Order of Police had presented no evidence that officers who lost their jobs because of the law were denied due process." It is reported that the Fraternal Order of Police will appeal this ruling as far as the Supreme Court.

Developments in the 106th Congress

In the 106th Congress, debate over measures to increase federal regulation of firearms has intensified in the wake of a string of shootings, most notably, the incident at Columbine High School in Littleton, Colorado, on April 20, 1999.

On May 17, 2000, the Senate approved two firearm-related amendments to the Military Construction appropriations act. The first expresses the sense of the Senate that the Second Amendment to the U.S. Constitution protects the right of law-abiding citizens to own firearms for self-defense or recreation. It also criticizes the Administration's record on firearm prosecutions, and calls for the enactment of provisions in the Juvenile Justice Reform Act (H.R. 1501) that would enhance firearms law enforcement. The second lauds the participants

of the Million Mom March on May 14, and calls for passage of a juvenile justice conference report (H.R. 1501) by Memorial Day.

Meanwhile, it remains an open question whether conferees will resume consideration of gun control provisions included in Juvenile Justice Reform Act (H.R. 1501). On March 15, 2000, the House passed another motion to instruct conferees (218-205) to hold their first substantive meeting to accept amendments within two weeks. The conference on the Juvenile Justice Reform Act (H.R. 1501) has yet to meet. On November 6, 1999, it was reported in the *Congressional Quarterly Weekly Report* (p. 2655) that a draft compromise proposal on the most contentious gun control provision — extending the “Brady” instant background checks to all firearm transfers at gun shows — was offered by the Chair of the House Judiciary Committee, Representative Henry Hyde, but this compromise proposal was rejected by the minority leadership. During debate on the motion to instruct conferees, however, Representative John Conyers, the ranking minority member on the Judiciary Committee, indicated that there was an agreement on a modified gun show provision that would require all background checks at gun shows to be completed within 1 day, except for those checks that resulted in a non-definitive response — neither a proceed nor denial. For those cases, about 5% of background checks, the agreement would allow the FBI a 2-day period to complete the check. (See *Congressional Record*, March 15, 2000, p. H1144.)

On July 28, 1999, the Senate considered the House-passed Juvenile Justice Reform Act of 1999 (H.R. 1501), amended it with the text of the Senate-passed Violent and Repeat Juvenile Offender Accountability Act of 1999 (S. 254), and passed the measure. Previously, on July 15, the House voted to return S. 254 to the Senate on the grounds that it infringed upon the privileges of the House by including a revenue provision that did not originate in the House. This provision, to ban the importation of high capacity ammunition feeding devices, was not included in the Senate amendment to H.R. 1501.

The House-passed juvenile justice bill (H.R. 1501) includes gun control provisions that would increase penalties for misusing firearms or explosives, and authorize increased funding of federal gun control law enforcement. This measure, however, does not include provisions that would 1) require background checks for all firearm transfers at gun shows, 2) require safety locks with handguns, and 3) place further controls on assault weapons and ammunition clips. Such provisions were included S. 254, which the Senate passed on May 20, by a vote of 73 to 25. On June 17-18, the House adopted provisions similar to those in S. 254 as amendments to the Mandatory Gun Show Background Check Act (H.R. 2122), but this bill was defeated by a vote of 280 to 147.

Regarding H.R. 1501, the House and Senate have adopted several motions to instruct conferees:

- On July 30, 1999, the House passed a motion to instruct conferees to refrain from weakening existing law regarding background checks at pawn shops and other firearm laws, and to include gun show provisions in the conference version of the bill, by a vote of 305 to 84.
- On September 23, the House passed a motion to instruct conferees that was nearly identical to the one passed on July 30, by a vote of 305 to 117.
- On September 24, the next day, the House passed a motion to instruct conferees that the agreement should include provisions that would 1) require

unlicensed dealers at gun shows to conduct background checks, 2) ban juveniles from possessing semiautomatic assault weapons, 3) require safety locks be sold with handguns, and 4) ban violent juvenile offenders from possessing firearms, by a vote of 241 to 167.

- On the same day, the House passed another motion to instruct conferees to reject all provisions that do not recognize the “individual right of American citizens to keep and bear arms,” and that would “impose unconstitutional restrictions on the Second Amendment rights of individuals,” by a vote of 337 to 73.
- On April 6, 2000, the Senate passed an amendment to the Budget Resolution (S.Con.Res. 101) to express the sense of the Senate regarding the need to reduce gun violence and consider H.R. 1501 not later than April 20, 2000, by a vote of 53 to 47.
- On March 15, 2000, the House passed a motion to instruct conferees to have their first substantive meeting to offer amendments and motions within two weeks, by a vote of 218 to 205.
- On May 17, 2000, the Senate passed two firearm-related amendments to the Military Construction appropriations act. The first calls for more aggressive enforcement of existing gun laws, tougher penalties for gun-related crimes and protection for the rights of law-abiding gun owners: it passed by a vote of 69 to 30.
- The second lauds the participants of the Million Mom March and calls for consideration of H.R. 1501 by Memorial Day: it passed by a vote of 50 to 49.

Prior to Senate consideration of S. 254, the Administration delivered a legislative package to Congress on May 9, 1999. The accompanying legislative language was introduced by Senator Schumer (S. 995) and Representative Conyers (H.R. 1768). In a press statement on April 27, 1999, Deputy Attorney General Eric Holder outlined a number of gun control proposals included in this legislative package.

Gun Shows. Under current law, instant background checks are only required for firearm transfers made by federal firearm licensees. Non-licensed vendors, that is, private citizens who are not “engaged in the business,” are not required or authorized to initiate an instant background check for persons to whom a firearm would be transferred. Consequently, persons prohibited from possessing a firearm, like convicted felons, could bypass the instant background check system by buying a firearm from a private citizen at a gun show. The Administration and others see this as a loophole in the law. For further information see *Gun Shows: Brady Checks and Crime Gun Traces*, (Washington: January 1999). See: [<http://www.atf.treas.gov/>], click on “Publications.”

During consideration of S. 254, the Senate debated five amendments related to gun shows. On May 12, the Senate rejected an amendment, offered by Senator Lautenberg, that would have required that all firearm transfers at gun shows be made through federal firearm licensees. On the same day, the Senate approved an amendment, offered by Senator Craig, that would have created a special licensing and registration process to allow non-licensees who sought to transfer firearms at gun shows to initiate instant background checks on the prospective transferee. Opponents criticized the construction of the amendment’s language on the basis that the special licensing and registration provisions were voluntary. On May 14, the Senate passed an amendment, offered by Senator Hatch and Senator Craig, that built on

the original Craig amendment by requiring that all firearm transfers at gun shows be made through a federal firearm licensee or a special licensee/registrant.

On May 20, the Senate passed an amendment, offered by Senator Lott for Senator Gordon Smith, to insert language strengthening the mandate that special licensees for gun shows initiate instant background checks before transferring firearms to any person. (This amendment also included a provision to strip out a section of the original Craig amendment related to exempting pawnshops from the NICS check when a customer sought to reclaim a firearm.) Later in the same day, however, the Senate passed an amendment, offered by Senator Lautenberg, that renders the entire Craig amendment and the gun show provisions included in the Hatch/Craig amendment null and void. Similar to the previously rejected Lautenberg amendment, the second Lautenberg amendment would require that all firearm transfers go through federal firearm licensees, when such transfers would be made by private citizens (non-licensed vendors). It would also require that gun show promoters, persons who organize, plan, promote, or operate gun shows, be registered with the Secretary of the Treasury prior to organizing such an event. This amendment passed by a vote of 51 to 50, with Vice President Gore casting the deciding vote.

The gun show provisions in H.R. 2122, *which did not pass*, would have also required gun show organizers to register with the Secretary of the Treasury, and that all firearm transfers at gun shows be subject to instant background checks. This bill, however, includes “instant check registrant” provisions that would allow persons other than federal firearm licensees to conduct instant background checks at gun shows. In addition, H.R. 2122 would have also changed the amount of time that a firearm transfer can be delayed, when instant background checks result in non-definitive responses — neither a proceed nor a denial — from “three consecutive business days” to “72 hours.” The House adopted an amendment, offered by Representative Dingell, to require that instant background checks at gun shows be completed within “24 hours.” The House debated two other amendments, offered by Representatives McCarthy and Conyers, that included gun show language similar to the Senate-adopted Lautenberg language, but both amendments were defeated.

For similar legislation that would require gun show promoters to register with the Secretary of the Treasury, and that instant background checks be completed for all firearm transfers at gun shows, see H.R. 2037, H.R. 1903, and H.R. 902/S. 443.

Semiautomatic Assault Weapons. The Administration has called for enactment of two proposals related to semiautomatic assault weapons. The first would prohibit the sale or transfer to, or possession of semiautomatic assault weapons and large capacity ammunition magazines for juveniles. (For similar legislation, see H.R. 2037, H.R. 2048, and S. 891.) The second would ban the importation of all large capacity ammunition magazines manufactured prior to September, 1994. (For similar legislation, see H.R. 1037 and H.R. 2037.) The Senate, on May 13, passed amendments to S. 254 that are similar to these measures. An amendment, offered by Senator Ashcroft, would ban juveniles from possessing assault weapons and large capacity ammunition feeding devices. The House adopted a similar amendment to H.R. 2122 offered by Representative McCollum, but this bill was defeated. An amendment, offered by Senator Feinstein, would ban the importation of all large capacity ammunition feeding devices. Again, the House adopted a similar amendment to H.R. 2122 offered by Representative Hyde, but this bill was defeated. Later, this provision was the source of contention between the Senate and House, since it has been viewed as a revenue

provision that did not originate in the House. The House voted on July 15 to return S. 254 to the Senate. It is notable that the Senate-passed version of H.R. 1501, which was amended with the text of S. 254, does not include this provision.

Child Safety Locks. The Administration also called for requiring child safety locks to be sold with every newly purchased firearm. (For similar legislation, see H.R. 2037, S. 149 and S. 319.) On May 18, the Senate passed an amendment to S. 254, offered by Senator Kohl and Senator Chafee, to require that gun storage and safety devices accompany every newly sold, delivered, or transferred handgun. The House adopted a similar amendment to H.R. 2122, offered by Representative Davis, but this bill was subsequently defeated.

Violent Juvenile Offenders Firearms Ban. The Administration also proposed disqualifying anyone who adjudicated to have committed violent crime as a juvenile (under 18 years of age) from possessing a handgun. (For similar legislation, see H.R. 2037, S. 9, S. 254, and S. 991.) On May 14, the Senate passed amendment no. 344 to S. 254, offered by Senator Hatch and Senator Craig. Among other things, this amendment would ban juveniles who have committed an act that, if committed by an adult, would be a serious violent felony, from possessing a firearm. The House adopted a similar amendment to H.R. 2122 offered by Representative Rogan, but this bill was subsequently defeated.

Pawnshops. Under current law, individuals purchasing firearms from pawnshops are subject to instant background checks, as are persons who sell their firearms to pawnshops and later seek to reclaim their firearms. Further, a pawnbroker may initiate an instant background check when the firearm is offered as collateral for a loan. If the check should result in a denial, the pawnbroker must inform the chief law enforcement officer within 48 hours.

During Senate and House consideration of S. 254 and H.R. 1501, there were attempts to overturn these provisions related to pawnshop firearm transfers. The Craig amendment of May 12 to S. 254 would have overturned these provisions. On May 20, however, the Senate passed the Lott/Smith/Jeffords amendment to strip out the pawnshop provision in the Craig amendment. Then, the Senate subsequently passed the Lautenberg amendment, which struck the entire Craig amendment, so that S. 254 as passed by the Senate would have left these provisions intact. The House, on the other hand, adopted an amendment to H.R. 2122, offered by Representative Sessions, that would have only required instant background checks when persons reclaim firearms that had been held for collateral by a pawn shop operator for over 365 days, but this bill was defeated. Despite these attempts, the FY2000 Treasury, Postal Service and General Government Appropriations Act (P.L. 106-58) makes the provisions related to firearm transfers at pawnshops, which were temporary, permanent.

Internet Gun Sales. Legislation (H.R. 1245/S. 637 and H.R. 3020) has been introduced to regulate the transfer of firearms over the Internet. This legislation would require that any Internet site operator who offers firearms for sale be a federal firearms licensee, and that the Secretary of the Treasury be notified of the address of the Internet site. The Senate rejected amendment to S. 254, offered by Senator Schumer, to provide regulation of firearms over the Internet.

Handguns. The Administration has called for enactment of three proposals related to handgun control. The first would limit handgun purchases to one per month. (For similar legislation already introduced, see H.R. 315, S. 407, and S. 891.) The second would raise the

ban on possession of a handgun from 18 to 21 years of age. (For similar legislation, see H.R. 85 and H.R. 515.) The third would reestablish a waiting period (3 days) following a handgun purchase. (For similar legislation, see H.R. 1062 and S. 457.)

Federal Firearm Law Enforcement. The Administration has called for enactment of five proposals that would increase federal firearm law enforcement authority. The first would expand the Youth Crime Gun Interdiction Initiative (YCGII). The Senate approved amendment no. 344 to S. 254 that would authorize an expansion of the YCGII to 75 cities or counties in FY2000, 150 cities or counties in FY2002, and 250 cities or counties in FY2003. The House-passed H.R. 1501 included a similar provision. (For similar legislation, see H.R. 1342, H.R. 2037, S. 9, and S. 735.) Also, for further information, see *Crime Gun Trace Analysis Reports: The Illegal Youth Firearms Markets in 27 Communities* (Washington: October 1998). See: [<http://www.atf.treas.gov/>], click on "Publications."

The second would increase ATF authority to make multiple inspections of federal firearm licensees. (For similar legislation, see H.R. 920, S. 2448 and S. 534.) The third would establish a new mandatory penalty for transferring a firearm to a juvenile. The fourth would double the "gun-running" penalty for selling firearms without a license. And, the fifth would make some parents liable for knowingly or recklessly allowing a juvenile access to a firearm that was used later to cause injury or death.

Background Check Record Retention. The Department of Justice published a proposed rule that would reduce from 6 to 3 months the length of time that the Federal Bureau of Investigation would retain information pertinent to an approved firearms sale gathered as part of the instant background checks under the Brady Act (see 64 *Fed. Reg.* 10263-10265, March 3, 1999). The Senate-passed Lautenberg amendment (no. 366) to S. 254 would codify the 90 day record retention period. H.R. 2122, as introduced, included a provision requiring the immediate destruction of all records related to approved sales, but this bill was defeated.

Background Check Fee. The Administration has indicated in its FY2000 budget request for the Department of Justice that it will offer a legislative proposal for a user fee to recover the cost of instant background checks under the Brady Act. The FBI estimates that it will conduct 7 million checks at a cost of \$73 million in FY2000. The Administration maintains that if funding for these checks is covered with a direct appropriation rather than an user fee, fewer resources will be available for other critical law enforcement programs. Such a proposal would reverse a statutory provision prohibiting such fees included in the FY1999 Omnibus Appropriations Act (P.L. 105-277). H.R. 2122, as introduced, included a provision to prohibit the collection of any fee for an instant background check, but this bill was defeated. The conference agreement on the FY2000 Commerce, Justice, State Appropriations Act (H.R. 2670), which passed both the House and Senate on September 20, 1999, includes a provision prohibiting such a fee in FY2000. This provision was subsequently included in the FY2000 Consolidated Appropriations Act (P.L. 106-113).

Project Exile. In 1997, the U.S. Attorney for the Eastern District of Virginia initiated "Project Exile" to coordinate federal, state, and local law enforcement efforts to reduce gun violence in Richmond, Virginia. At that time, Richmond had the second highest homicide rate for cities with populations of 100,000 or more. Of those homicides, 80% were committed with a firearm. As part of Project Exile, the U.S. Attorneys review cases involving felons with firearms, drug users/traffickers with firearms, and domestic violence referrals that involve

firearms. These cases are prosecuted in federal court. A felon caught carrying a firearm while trafficking in drugs is very likely to be sentenced to 5 years in a federal prison. From 1997 to 1998, the homicide rate in Richmond dropped by 31%. This decrease in the homicide rate has been attributed to Project Exile, and U.S. Attorneys in other major metropolitan areas began adopting this approach.

The House- and Senate-passed conference agreement on the FY2000 Commerce, Justice, State appropriations act (H.R. 2670) provides over \$7 million for the U.S. Attorneys “to continue and expand intensive firearms prosecutions.” The conference agreement was subsequently included in the FY2000 Consolidated Appropriations Act (P.L. 106-113). In addition, according to a recent White House press release, the Administration’s FY2001 request will include funding to hire more than 1,000 new state and local prosecutors and 100 additional U.S. attorneys to prosecute firearm-related cases. The federal prosecutors will be dedicated to replicating in twenty cities a comprehensive anti-crime strategy implemented in Boston, “Operation Ceasefire.”

On April 11, 2000, the House passed the *Project Exile: The Safe Streets and Neighborhoods Act of 2000* (H.R. 4051). This bill would amend the Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322) to create a program to provide firearms sentencing incentive grants to encourage states to adopt programs that would be similar to Project Exile. It also includes an authorization for appropriations of \$10 million for FY2001, \$15 million for FY2002, \$20 million for FY2003, \$25 million for FY2004, and \$30 million for FY2005. (For related legislation, see H.R. 4066, S. 1760, S. 2338, and S. 2390.)

Federal Firearm Prosecutions. According to the Bureau of Justice Statistics, federal firearm prosecutions decreased by 19% from 1992 to 1996, they leveled off through 1997, and increased in 1998 and 1999. The decline in federal prosecutions can be attributed in part to a Supreme Court decision (*Bailey v. United States* (516 U.S. 137, 116 S.Ct. 501)) that limited the use of the charge (18 *United States Code*, § 924(c)) – use of a firearm during a violent or drug-related offense. See *Federal Firearm Offenders, 1992-98 (with Preliminary Data for 1999)* (Washington, June 2000), at [<http://www.ojp.usdoj.gov/bjs/pub/pdf/ffo98.pdf>].

Bureau of Alcohol, Tobacco, and Firearms (ATF) Funding. ATF is a law enforcement agency that monitors compliance with federal laws related to the manufacture, importation, and distribution of alcohol, tobacco, firearms, and explosives. While these laws prohibit certain illegal activities, they also regulate legal activities related to these commodities. ATF also enforces federal laws related to arson. In enforcing federal law, ATF officers often work closely with other federal, state, and local law enforcement officers. ATF’s mission is focused on three goals: 1) reducing crime, 2) collecting revenue, and 3) protecting the public. From FY1992 to FY2000, Congress has increased ATF direct appropriations from \$336 million to \$605 million.

For FY2000, the Senate Appropriations Committee has approved a measure (S. 2536) that would provide ATF with nearly \$94 million to fund program enhancements requested in the Administration’s FY2001 request (see below). This funding, however, is contingent on a presidential designation that it be provided for emergency purposes (S.Rept. 106-288).

For FY2001, the Administration is requesting \$756 million for ATF, an increase of nearly 25% over the previous year’s funding. The Administration’s request includes \$105 million in

program budget increases to expand ongoing initiatives, such as the Integrated Violence Reduction Strategy (\$41 million), the Youth Crime Gun Interdiction Initiative (\$19 million), expanded gun tracing (\$10 million), enhanced ballistic imaging (\$23 million), tobacco compliance (\$5,521,000), and the national laboratory center transition (\$6 million).

To expand the *Integrated Violence Reduction Strategy*, the Administration is requesting \$41 million to fund 224 agents, 112 inspectors, and 59 support staff. With these additional resources, ATF would:

- intensify local firearm initiatives like Boston's Ceasefire and Richmond's Project Exile,
- review all FBI referrals where Brady background checks indicate that a prohibited person received firearms as result of a delayed denial,
- investigate cases where data intelligence indicates that prohibited persons are engaging in multiple attempts to purchase firearms from different Federal Firearm Licensees,
- investigate cases where prohibited persons with a history of violent crime are known to have acquired firearms through legitimate or illegal markets,
- and review the records of Federal Firearm Licensees to ensure that instant checks are being performed on all firearm transfers and that the required records are being maintained.

To expand the *Youth Crime Gun Interdiction Initiative (YCGII)* to 12 additional cities, the Administration is requesting \$19 million to hire 72 agents and 98 inspectors. The objective of the YCGII is to reduce youth firearm violence and firearms trafficking among youth by making federal resources like ATF's firearms trace and ballistics technology available to state and local law enforcement agencies, and by providing coordination of those efforts.

To continue the *Comprehensive Crime Gun Tracing Initiative*, the Administration is requesting \$10 million and 20 positions. This initiative provides nationwide comprehensive tracing capability for state and local law enforcement. The additional resources will provide for faster trace results and indexing of gun identification information from business records.

For the *Expanded Ballistics Identification Initiative*, the Administration is requesting \$23 million and 20 positions. On December 2, 1999, the ATF and FBI signed a memorandum of understanding that will provide for the further development of the Integrated Ballistics Identification System (IBIS) as the federal system that will compare images of ballistic evidence (projectiles and cartridge casings). From 1993 to 1997, the ATF and FBI operated two parallel but incompatible systems.

For *Tobacco Compliance/Diversion*, the Administration is requesting nearly \$6 million and 88 positions. These resources, according to ATF, are needed to monitor new permit and revenue requirements for importers of tobacco products that were enacted as part of the Balanced Budget Act of 1997. Also, for *Laboratory/Fire Research Center Maintenance*, the Administration is requesting \$6 million.

Smart Gun Technology. The Administration's FY2001 request includes \$10 million to continue research into the viability of smart gun technology. A "smart" gun would be designed to personalize a weapon so that only authorized users could fire that weapon. DOJ's National

Institute of Justice (NIJ) has overseen two studies related to smart guns since 1992. NIJ initiated these studies following a 1992 FBI report showing that over a decade one in every six law enforcement officers killed with a firearm was killed with his own firearm after being disarmed by an assailant.

In 1996, the Sandia National Laboratories reported to NIJ that smart gun technology could be developed. Sandia also identified law enforcement requirements for a smart gun and various technologies that might be applicable to the development of a smart gun, including radio frequency tags, magnetic coding, and various biometrics like voice recognition, hand geometry, and finger length. In 1997, NIJ contracted with Colt Manufacturing to develop two prototype smart guns using radio frequency technology. NIJ began testing these prototypes in FY1999. While the results of these two studies have been favorable, it is presently unclear how available these new technologies are, or how widely they can be applied to civilian use. (For a related legislative proposal, see H.R. 2025).

Gun Buy-Back Programs. Following a gun buy-back program conducted by the District of Columbia's police department, on September 9, 1999, the Administration announced that it was designating \$15 million of funding for gun buy-back programs by providing grants to local housing authorities through the Department of Housing and Urban Development's Public Housing Drug Elimination Program (PHEDP). The Administration has cited Section 3 of the United States Housing Act of 1937 (42 U.S.C. 1437(c) et al.) as the authority to initiate this grant program. Under this Act "low-income housing" is defined as "decent, safe, and sanitary dwellings." Of the \$15 million dedicated for these purposes, the Administration plans to utilize \$1 million to conduct a study of the effectiveness of gun buy-back initiatives. (For similar legislative proposals, see H.R. 724 and H.R. 2813.)

While gun buy-back programs usually receive wide acclaim and favorable media coverage, there is little empirical research demonstrating the effectiveness of these programs. Below is a listing of the pros and cons in the debate:

Pros:

Gun buy-back programs remove lethal firearms from homes and, therefore, prevent gun violence by removing the possibility that a firearm may fall into the hands of a child (or adult) who may accidentally or intentionally shoot themselves or others. Gun buy-back programs are voluntary attempts by private citizens and communities to reduce gun violence. Such programs lend a sense of empowerment to communities seeking to end gun violence.

Cons:

Persons who are intent on using firearms for criminal purposes are unlikely to exchange firearms. If they do exchange a firearm, they may use the money to buy another more lethal firearm. Many gun buyback programs offer some form of amnesty or immunity from prosecution to the person exchanging the firearm. If such an amnesty is not offered, it is less likely that the firearms that need to be removed from the streets will be exchanged, with the result that firearms are likely to remain in the hands of criminals. (According to the Administration, their program will offer no form of amnesty for criminal activity.)

For further information, see *Under Fire: Gun Buy-Backs, Exchanges, and Amnesty Programs*, edited by Martha R. Plotkin (Police Executive Research Forum, 1996).

Handgun Licensing and Registration. In the State of the Union address on January 27, 2000, President Clinton proposed a nationwide handgun licensing requirement that would be administered by the states. The Administration's handgun licensing proposal has yet to be introduced and, reportedly, is still being developed. Conceptually, this proposal would require states to issue licenses to persons seeking to acquire a handgun in either transfers from a federal firearm licensee or a private citizen. Also, as part of the licensing process, potential licensees would be required to undergo a firearm safety and responsibility training course.

At this time, American Samoa, Connecticut, Delaware, the District of Columbia, Florida, Hawaii, Illinois, Iowa, Louisiana, Massachusetts, Michigan, Minnesota, Nebraska, New Jersey, New York, North Carolina, the Northern Marianas, Puerto Rico, Rhode Island, and the Virgin Islands have some form of firearm licensing. Of these jurisdictions, only the District of Columbia, Hawaii, Louisiana, and the Northern Marianas require some form of firearm registration. (For similar legislation, see H.R. 2916, H.R. 2917, H.R. 3472, S. 2099, and S. 2525.)

Gun Industry Liability. Several bills have been introduced that would allow states, local governments, organizations, businesses, and other persons to sue gun manufacturers or gun dealers to recover damages for deaths, injuries, and other related costs that were incurred due to the discharge of a firearm, if the gun manufacturers or dealers were negligent in the design, importation, marketing, distribution or sale of the firearm, or if manufacturers were responsible for its defective products (H.R. 1049; H.R. 1086/S. 560; H.R. 1233/S. 686). By contrast, legislation (H.R. 1032, S. 2270) has been introduced that would prohibit suits against firearms manufacturers and dealers in federal or state courts. (For further information, see *Gun Industry Liability: Lawsuits and Legislation*, by Henry Cohen, CRS Report RS20126).

Smith & Wesson Agreement. In the fall of 1999, the Department of Housing and Urban Development announced that it intended to file a class action suit against gun manufacturers on behalf of the public housing authorities under its jurisdiction. On March 17, 2000, the Administration negotiated an agreement with the Smith & Wesson Corporation in exchange for withdrawing the threat of such a law suit. For their part, the Administration has entered into a tentative agreement that Smith and Wesson and the corporation's distributors will abide by a long list of new requirements that are aimed at not only greater self-regulation, but greater oversight by federal and local authorities as well. For a copy of the agreement, see: [<http://www.smith-wesson.com/misc/agreement.html>]. On May 18, 2000, the House approved the FY2001 Defense Authorization act (H.R. 4205) that includes a provision that would prohibit the preferential treatment of any marketer or vendor who enters into agreements, like the Smith & Wesson agreement, in regard to awarding defense contracts. (For similar legislation, see H.R. 4257.)