



June 27, 2022

## Gun Control: Juvenile Record Checks for 18- to 21-Year-Olds

On June 25, 2022, President Biden signed into law the Bipartisan Safer Communities Act (P.L. 117-159). This law includes several firearms-related sections. One of them, Section 20001, addresses juvenile records by amending

- a firearms transfer prohibition to include persons who have previously incurred potentially disqualifying records as a juvenile (18 U.S.C. §922(d)); and
- background check procedures to screen persons 18 to 21 years of age for disqualifying juvenile justice or mental health records and, if necessary, allow authorities to take up to 10 business days to make such determinations (18 U.S.C. §922(t)).

The law will require upgrades to the background check system (P.L. 103-159, Sec. 103) to implement these measures. Records of potentially disqualifying juvenile justice court adjudications and mental health determinations fall principally within the domain of state law and are held by state authorities. Prior to P.L. 117-159, it does not appear that such records were routinely queried as part of a federal firearms background check. Prohibited firearm transfers, background checks, and background check system requirements under federal law, as well as the amendments made by P.L. 117-159, are described below.

### Firearms Receipt, Possession, and Transfer Prohibitions

The Gun Control Act of 1968 (GCA, 18 U.S.C. §§921-931) is the principal statute regulating interstate firearms commerce in the United States. The purpose of the GCA is to assist federal, state, tribal, territorial, and local law enforcement in ongoing efforts to reduce violent crime.

The GCA requires all persons engaged in the business of importing, manufacturing, and selling firearms to be federally licensed as federal firearms licensees (FFLs). The law generally prohibits unlicensed persons from transferring any firearm in interstate or foreign commerce without going through an FFL. The GCA prohibits FFLs from transferring a long gun (rifle or shotgun) or ammunition to anyone under 18 years of age; and a handgun or ammunition suitable for a handgun to anyone under 21 years of age (18 U.S.C. §922(b)(1)). The GCA also generally prohibits any person from transferring a handgun or ammunition suitable for a handgun to a juvenile, and juveniles are prohibited from possessing a handgun or ammunition suitable for a handgun, although there are exceptions enumerated in statute (18 U.S.C. §922(x)); for example, adult supervision, employment, ranching, farming, target practice, and hunting.

The GCA sets forth nine categories of persons prohibited from shipping, transporting, receiving, or possessing firearms or ammunition (18 U.S.C. §922(g)). For example,

prohibited persons include individuals convicted of a felony or domestic violence misdemeanor offenses; or “adjudicated as a mental defective,” found guilty by reason of insanity, or committed to mental institutions.

According to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), persons “adjudicated as a mental defective” include anybody who a court, board, commission, or other lawful authority has determined, as a result of marked subnormal intelligence, mental illness, incompetency, condition, or disease:

- is a danger to himself or herself, or others;
- lacks the mental capacity to contract or manage his or her own affairs;
- is found insane by a court in a criminal case; or
- is found incompetent to stand trial, or not guilty by reason of lack of mental responsibility, pursuant to certain provisions of the Uniform Code of Military Justice.

Also according to ATF, persons “committed to a mental institution” include anybody who has been formally committed to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily; for mental defectiveness or mental illness; or for other reasons, such as drug use. The term does not include a person admitted to a mental institution for observation or by voluntary admission (27 C.F.R. §478.11).

In addition, under the GCA, persons under felony indictment are prohibited from receiving (but not possessing) any firearm or ammunition (18 U.S.C. §922(n)). It is a felony for any person to transfer, or dispose of, any firearm or ammunition to any person knowing, or having reasonable cause to believe, that the transferee is a prohibited person (18 U.S.C. §922(d)). The nine categories of prohibited persons enumerated under 18 U.S.C. §922(d) are parallel with 18 U.S.C. §922(g) and (n). Violations of 18 U.S.C. §922(d) are punishable by a fine and up to 10 years’ imprisonment (18 U.S.C. §924(a)(2)).

### Amended Prohibited Transfers and Juvenile Records

P.L. 117-159 amends the firearms transfer prohibition under 18 U.S.C. §922(d) to include the transfer of any firearm or ammunition to any person the transferor knows or has reasonable cause to believe would fall into at least one of the nine prohibited categories under that provision, “including as a juvenile.” It amends §922(d)(4) to include any juvenile who has been “adjudicated as a mental defective” or “committed to any mental institution” at “16 years of age or older.”

### Federally Required Firearms Background Checks

Pursuant to the Brady Handgun Violence Prevention Act, 1993 (Brady Act; P.L. 103-159), the Federal Bureau of Investigation (FBI) activated the National Instant Criminal Background Checks System (NICS) in November 1998. NICS queries federal, state, tribal, territorial, and local criminal history and other public records for information that could indicate that an unlicensed, prospective customer (transferee) is prohibited from acquiring a firearm under the GCA. Whenever an unlicensed person seeks to acquire a firearm from an FFL, both the FFL and prospective purchaser must complete and sign an ATF Form 4473. On this form, the purchaser attests under penalty of law that he or she is not a prohibited person and that he or she is the “actual buyer.” The FFL must also verify the purchaser’s name, date of birth, and other information by examining government-issued identification (e.g., a driver’s license). The signed and completed Form 4473 authorizes the FFL to initiate a background check through NICS on a prospective unlicensed customer who seeks to acquire a firearm from them through a sale, trade, or redemption of firearms exchanged for collateral (18 U.S.C. §922(t)).

Under the Brady Act, states may opt to handle firearms eligibility determinations or allow the FBI to handle such determinations. States that have opted to handle those determinations themselves are known as Point of Contact (POC) states. In response to a background check, the NICS is to respond to an FFL or POC state official with a NICS Transaction Number (NTN) and one of four outcomes:

1. “proceed” with transfer or permit/license issuance, because a prohibiting record was not found;
2. “denied,” indicating a prohibiting record was found;
3. “delayed,” indicating that the system produced information, suggesting there could be a prohibiting record, such as criminal charges without a final disposition; or
4. “canceled” for insufficient information provided.

In the case of a “proceed,” the background check record is purged from NICS within 24 hours; “denied” requests are kept in perpetuity. In the case of a “delayed” transaction, after the passage of three business days, FFLs may proceed with the transaction at their discretion if they have not received a final eligibility determination from the NICS. During this time, NICS examiners, or POC state officials, may attempt to ascertain whether the person is prohibited. If it is learned that a transferee is prohibited after a transfer has occurred, a firearms retrieval referral is to be issued to the ATF and state or local chief law enforcement officer.

### Amended NICS Procedures

According to the Giffords Law Center, 27 states prohibit individuals from accessing firearms for a limited period after they have been adjudicated or convicted of certain offenses as juveniles. Some state prohibitions extend past the age of 21. While POC states possibly query record systems for such offenses as part of a federally required firearms background check under 18 U.S.C. §922(t), it does not appear that NICS has had the capacity to make such queries for non-POC states. To require that such records be queried nationally, P.L. 117-159 amends the GCA (18 U.S.C. §922(t)) with a separate procedure for persons under

21 years of age. This procedure is parallel with existing procedures for all other persons, except that it allows a firearms transfer to be delayed for an additional seven days (i.e., up to 10 business days total) for persons under 21 if “cause exists to further investigate a possibly disqualifying juvenile record under” under 18 U.S.C. §922(d).

### NICS-Queried Computer Systems and Files

Based on the prospective customer’s name and other identifying information, NICS queries several national data systems for records that could disqualify a customer from receiving and possessing a firearm under federal or state law. Those systems include the:

- Interstate Identification Index (III) for records on persons convicted or under indictment for felonies and serious misdemeanors;
- National Crime Information Center (NCIC) for files on persons, who are subject to civil protection orders and arrest warrants, immigration law violators, and known and suspected terrorists;
- NICS Indices for federal and state record files on persons prohibited from possessing firearms, which would not be included in either III or NCIC; and
- Immigration-related databases maintained by the Department of Homeland Security’s Immigration and Customs Enforcement (ICE) for non-U.S. citizens, who may have been previously deported or are believed to be residing unlawfully in the United States.

### Amended NICS System Requirements

P.L. 117-159 amends the Brady Act (P.L. 103-159, Sec. 103) and requires the Attorney General to upgrade NICS with the capacity to contact immediately three possible sources of disqualifying juvenile records under 18 U.S.C. §922(d) for persons under 21-years-old in the jurisdiction where they reside. Those sources include the pertinent

- state, tribal, or territorial repositories of criminal history record and/or juvenile justice information;
- state, tribal, or territorial custodians of mental health adjudication records; and
- local law enforcement agencies.

The requirement that NICS contact these state authorities expires in 10 years, on September 30, 2032.

### Reporting Requirement and Appropriation

P.L. 117-159 requires further that any federal or state agency that submits (or makes accessible) disqualifying records under 18 U.S.C. §§922(d), (g), or (n) to NICS, to report annually to Senate and House Committees on the Judiciary and Appropriations on the records removed from NICS, why the records were removed, and cause for their original submission. For FY2022, P.L. 117-159 appropriates \$100 million to FBI to upgrade NICS with the capacity to make the required information system queries or agency contacts.

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