

Re: Firearm Background Check – Enhanced NICS

The jumping up and down for gun control by those who have no idea what they are talking about when it comes to firearms, should not force congress to kneejerk reaction legislation. As a member of NRA, I agree with strengthening background checks by fixing the “cracks”. All 50 states require background checks when purchasing through an FFL dealer, which is about 90+% of all gun purchases. All major trade shows that sell firearms require the purchaser to pick up their purchase at an FFL dealer near the purchaser's home. That is done to double check that the purchase is okay within the state and that the background check is enforced.

It is the semi-private gun shows, like ones held at a local VFW, that do not follow the same protocols. This is one place I believe everyone can agree to enforce a background check as this is a public sale. The semi-private shows can elect to have a local FFL dealer present to run the test and record the sale. The semi-private sale can only be executed between residents of the state; this may get pushback from NRA. The transfer of ownership between friends and relatives should not require a background check as the partners in the transaction know each other.

Banning any firearm is not necessary. ATF already tags certain firearms that require special licensing and background checks. Some of these checks can take up to one year to complete. (As an aside I do not think a hunter needs a 100-round magazine, but ATF should exercise its responsibility to address these types of sales, same as machine guns.)

Now as to Red Flag laws I have heartburn over these initiatives. They mean well and some are already in effect in several States. They violate the 2nd, 4th and 5th Amendments. There is no due process for the person accused of "unstable" action. Who makes that medical decision; a cop or a judge? I am sure there will be some most obvious situations where even I could say someone is displaying troubling behavior or a fit of pique. But, to immediately confiscate their firearm(s)? Not so fast.

Just recently an innocent person was accused in FL and had to hand over his firearm and pay to get it back. It was a case of mistaken identity and the police recognized it right away. But the law prevented the police from using common sense. Now the government has a registry of ownership, which violates the law.

Think about the law-abiding citizen who is going to get caught up in these actions. We will be making them criminals without giving them their chance to defend themselves. (This would be like the inaccuracies of the "No Fly List".) That is just not American.

It would make more sense to harbor the accused in jail or a mental health facility to ascertain their state of mind. Just like a common DUI, provide access to council and a hearing before a Judge within 48 hours. While they are incarcerated there is no need to confiscate their firearm as they are separated just like the DUI driver and his car. If they are found not sound enough to return to the community then the firearms can stay where they are. If they are found mentally okay then no harm done and there was no need to confiscate their firearm.

If a person was deemed unstable and is remanded to long term care or incarcerated because of a criminal charge, then a condition of returning home is that the home be free of firearms. If there are other residents in the home that own firearms, they can either transfer the firearms to someone else or the accused has to find a different home. This is no different than how we treat felons today under a probation supervisor. Forcing other household members to give up their firearms would violate their rights. Prohibiting someone under probation from entering such an environment or a gun range as a condition to freedom, is not a violation, as the person has a choice.

If it is necessary to confiscate the accused's firearm then the police should transfer the firearms to a local FFL dealer or Storage Facility until such time the final disposition of the firearms is made. The FFL dealer or Local Storage has the secure environment to store the firearms and should be compensated for the storage. If the number of firearms is so great that a single FFL dealer cannot store them then they should be allocated to several. Under no circumstance should the government confiscate the firearms. This should only be done if the firearm was used in a crime.

The mental health issue is complex and needs to be thought out and consulted with various doctors. Who is unstable? A grieving spouse or parent that consults a therapist or doctor? A DUI arrest that is committed voluntarily or involuntarily for observation? How about a veteran that is being counseled for PTSD? These situations are real and the person could be a danger to the community. The doctor could have a political agenda and therefore it should be a review board to give the "patient" a chance to state their case. (This also gives the doctor relief of being the sole responsible party to the action.)

What about HIPPA? Are we violating the law that was passed to protect a patient's privacy? What about doctor/patient confidentiality? We can address this the same as we address client/attorney relationships. An attorney has a duty to report a crime, or suspected crime or contemplation of a crime without violating the relationship. Folks that should seek help won't for fear of getting a "Scarlett Letter".

What is the protocol for local authorities for reporting to the various databases? Law enforcement needs to update "a" database of criminal activity; the military needs to update databases of their criminal activity and the patient's medical assessment; civilian medical doctors need to update "a" database of their patient assessments. These should all be separate databases to help prevent unauthorized use of the information similar to state requirements of sex offenders register. The background check only need verify the existence of a record in these databases with a yes/no code. There also has to be a procedure for a person to erase (not just correct) the history in these databases. A warrant should be necessary to access the actual recorded data behind the yes/no flag.

How is the NICS Flag Set? What protocol is necessary? A judge, upon recommendation of the medical review panel, is required to assign a person to be "observed" and a judge is therefore required to lift the "observation" order. Once the observation order has been revoked then all related records should be expunged. A judge says "observe" and sets the Red Flag to "No" for cannot purchase a firearm. The judge lifts the order when the person is no longer deemed a risk and sets the flag to "Y". But, if the doctor panel says person can return to society, but no firearm the Red Flag stays at "N".

Note that the medical and criminal documentation is maintained, but is not available to the NICS

Background Check if the Red Flag is set to "No".

Juvenile Records have been deemed under the radar for many years as local laws in some states prevent anyone from piercing the veil of juvenile record protection. Many of the people that have been guilty in mass shootings had juvenile records, both criminal and medical, that should have raised suspicions of their actions. The Parkland Boy had punched his mother and she lost some teeth. If this was the only occurrence it may be a pass on a Red Flag, but other actions when viewed as a whole should have committed this boy. His mother tried to do this but was stonewalled. How many misdemeanors add up to a felony charge that becomes a public record? Schools have been prevented from suspending or expelling students in the thought that keeping them in school is a better solution. Schools, parents, neighbors and even law enforcement are concerned at the push back or public outcry if they are viewed as overreaching or overacting.

I would rather congress address the mental health and juvenile record issues before we do Red Flag laws that are willy-nilly in damning innocent people to satisfy political pandering. You may have noticed I referred above to "threat to others" and not to one's self. That was deliberate. If someone wants to take themselves out why should we stop them? There are those that have political agendas promoting the murder of babies in the womb and doctor assisted suicide, and that seems to be OK, so why should we interfere with a suicidal person's desire to ruin the lives of their families.

NICS Databases

These databases contain identification, nomenclature (criminal / medical), Red Flag, Applicable Dates (Start, End), Judges, Law Enforcement (fed, state, local, military), Tracking Code to Source of Red Flag.

Can have multiple occurrences as one could be Flagged as No and then Yes and back to No again.

NICS has access to only these databases to execute a background check.

Civilian Databases:

Criminal – Federal, State, Local

Medical – Patients under Observation or Declared Unstable by medical psychiatric panel.

Juvenile – those minors who have been identified with a both misdemeanors or felons.

Military Databases:

Criminal – served in military prison or dishonorably discharged for misconduct or troubling behavior.

Medical – active duty, reserve duty, discharged personnel under medical psychiatric care.